From Independent Lawyer Groups to Civic Opposition: The Case of China's New Citizen Movement

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I. INTRODUCTION

In January 2014, Xu Zhiyong (许志永), a legal scholar and veteran human rights defender, was sentenced to four years in prison for the crime of gathering a crowd to disrupt public order. Xu's supporters greeted the news with a mixture of dismay and relief. There was dismay because Xu's conviction signalled continuing systematic oppression of innocent and patriotic human rights defenders in China. Yet there was also relief because the charge against Xu could have been more severe considering Xu's prominent role in the New Citizen Movement (Xin Gongmin Yundong 新公民运动).[1] Moreover, Xu had long expected to be imprisoned; he was prepared to accept this as a consequence, however unjust, of his work.[2] As detailed later, Xu was able to continue his vocal advocacy from jail by releasing a video-recorded statement from pre-trial detention, and publishing the statement he prepared for trial.[3] The New Citizen Movement

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[1] Didi Tang, *China Hits Activists With Common-Crime Charges,* SAN DIEGO UNION-TRIBUNE, May 27, 2014, http://www.sandiegouniontribune.com/sdut-china-hits-activists-with-common-crime-charges-2014may27-story.html. Hermann Aubié & Xinhong Wang, *(Un)Doing Constitutionalism: The Cases of Liu Xiaobo and Xu Zhiyong*, ASIAN STUDIES REVIEW 377-93 (1965).

[2] Interview by Yaxue Cao with Teng Biao, in Washington D.C. (Feb. 2014), https://chinachange.org/2014/04/10/who-is-xu-zhiyong/.

[3] Josh Chin, *Prominent Chinese Activist Releases Jail Video,* WALL STREET JOURNAL (Aug. 8, 2013), http://blogs.wsj.com/chinarealtime/2013/08/08/prominent-chinese-activist-releases-jail-video/ (discussing the video recording of Xu Zhiyong's

that Xu co-initiated inspired the creation of a dissident newsletter in support of the Movement and its goals.

The New Citizen Movement is one of the most prominent examples of civic legal-political advocacy in the shadows of China's authoritarian system to date. It is the Chinese "Arab Spring" or "Occupy" that never quite happened. Although the New Citizen Movement attracted only a few thousand participants before the inevitable swift-and-sweeping government crackdown, it was likely noticed by far more than those who dared to participate in it. Occurring at a time when rights advocacy was still met with limited tolerance from the government, the New Citizen Movement's rise and repression is emblematic of not only the respective strengths of the Party-State and its people, but also a shift in the development of China's civil society.

This article provides an account of the New Citizen Movement and similar initiatives – their precursors, their prospects, and the legal-political human rights advocacy from which they arise. The groups and initiatives discussed herein can organize more effectively and engage in more vocal political rights advocacy than when professional rights defense emerged as a socio-political phenomenon in China ten years ago. The spontaneity and fluidity of organizers' strategies and methods of communication have helped them overcome obstacles commonly found in highly repressive systems. This organizational openness has also allowed organizers to strengthen their identities as citizens in an overtly political, liberal, and democratic sense.

Reflecting global changes in legal-political advocacy, these initiatives are significant for Chinese and transnational civil society regardless of whether they succeed in the shorter term. The persecution both of the New Citizen Movement and the broader human rights-lawyer movement toward the end of the research period[4] illustrates how law can drive the defense of human rights and legal advocacy can evolve into political resistance. These insights are all the more important at a time when a "new authoritarianism" and "democratic recession" appear to take hold in an increasing number of political communities around the world.[5]

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statement at the end of his trial in Beijing on January 22, 2014); Xu Zhiyong, *In Beijing, Xu Zhiyong's Closing Statement Channels Freedom, Justice And Love,* HUFFINGTON POST (Yaxue Cao trans., Jan. 27, 2014), https://www.huffingtonpost.com/2014/01/27/xu-zhiyong-closing-statement-beijing_n_4673856.html (discussing the translated reproduction of Xu Zhiyong's closing statement).

[4] *See infra* Part V for a discussion on the lawyers who were interlocutors for this project- many of whom were included those targeted in the so-called "7-09" crackdown on lawyers. Names of interlocutors in this paper have been kept anonymous for their safety.

[5] Alexander Cooley, *Authoritarianism Goes Global: Countering Democratic Norms,* 26 J. DEMOCRACY 49, 53 (2015), http://www.journalofdemocracy.org/article/authoritarianism-goes-global-countering-

The following discussion addresses the New Citizen Movement's background in independent, legal-political advocacy (Part II), as well as advocacy NGOs and independent organization amongst human rights lawyers (Part III). Understanding the New Citizen Movement's rise and repression between 2012 and 2014, other novel forms of civic organizing in China, and the political implications of these initiatives (Part IV) is also essential to understanding the subsequent increase of pressure, exemplified by even harsher attempts to destroy and vilify civic lawyer advocacy from 2015 onward (Part V).

This Article draws on, inter alia,[6] loosely structured interviews (in-person and via social media) with individuals who self-identify as "rights defence lawyers," "human rights lawyers," or human rights defenders working with lawyers, and first-hand observations of their gatherings and discussions between October 2010 and July 2017.[7] The discussion adopts an interpretive, value-based approach that is rooted in an understanding of law and human rights as separate but related social practices underpinned by political-moral values.[8]

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democratic-norms (discussing counter-norms against liberal democracy); Larry Diamond, *Facing Up to the Democratic Recession,* 26 J. DEMOCRACY 141, 144 (2015), http://www.journalofdemocracy.org/article/facing-democratic-recession ("the world has been in a mild but protracted democratic recession since about 2006"); Steven Levitsky & Lucan Way, *The Myth of Democratic Recession,* 26 J. DEMOCRACY 45, 46 (2015), http://www.journalofdemocracy.org/sites/default/files/Levitsky-26-1.pdf ("there is little or no evidence of democratic recession").

[6] Further sources of information and commentary have been drawn from the academic literature, as well as online and social media commentary.

[7] The author conducted audio-recorded conversations in person with about eighty rights lawyers and twenty non-lawyer rights defenders between October 2010 and July 2017, and communicated with some of the interlocutors beyond this point via social media. The interlocutors were chosen mainly from a small group of some one to three hundred legal professionals and human rights advocates. Some ninety percent of these conversations were conducted in mainland China; and of these, some ninety percent were conducted in urban and semi-public settings such as coffee-shops and public parks. Some other conversations were held in Hong Kong and other places outside China; and some in non-urban settings such as in the context of a lawyer workshop retreat. All quoted passages have been anonymized using standard social science techniques and bearing in mind the fact that the interlocutors are at high risk of government abuses. I conducted recorded conversations with about eighty rights lawyers and about forty non-lawyer rights defenders between October 2010 and July 2017. Of these interlocutors, as of August 2017, some nine lawyers and four non-lawyers have been criminally convicted for their advocacy. Some twenty-two have suffered detention without trial, including forced disappearances; and well over half have reported suffering physical violence, including torture.

[8] *See* ISABEL TRUJILLO & FRANCESCO VIOLA, WHAT HUMAN RIGHTS ARE NOT (OR NOT ONLY): A NEGATIVE PATH TO HUMAN RIGHTS PRACTICE (2014) (an interpretive account of the social practice of human rights); *see generally*, RONALD DWORKIN, LAW'S EMPIRE (1986) (on the legal theory, "interpretivism," developed by Ronald Dworkin).

II. POLITICAL RIGHTS ADVOCACY AS A CHOICE PRODUCED BY INSTITUTIONAL DYSFUNCTION

Forceful legal advocacy is a relatively recent phenomenon in the history of the People's Republic of China ("PRC"). Rights defense (*weiquan* 维权) lawyers, or as they more commonly call themselves, human rights (*renquan* 人权) lawyers, emerged in the late 1990s due to the legal reforms of the 1980s and early 1990s.[9] Their emergence might be regarded as a further, possibly unintended, consequence of the Party-State's attempts to seek legitimacy through lawful administration and protection of people's legal rights and interests. Throughout the 1990s and until about 2004, the idea of rights defense was generally tolerated, and rights lawyers achieved some, albeit limited, success, such as the revocation of a State Council Regulation in the wake of the now-famous Sun Zhigang Incident (Sun Zhigang Shijian 孙志刚事件).[10]

In 2003, Sun Zhigang (孙志刚) died in custody a young, internal migrant, beaten to death by inmates and prison guards.[11] Sun was held under the special administrative detention system created for internal migrants, often rural-urban migrants, who were found without required documents showing they had any right to be in the city.[12] Abuses of the system were rife; they included ransom-taking and violence in custody against these *sans-papiers*.[13] Following the death of Sun Zhigang, liberal scholars, including three young Ph.D. graduates – Teng Biao (滕彪), Yu Jiang (俞江), and Xu Zhiyong – argued that the administrative regulation permitting Sun's detention was unconstitutional under Article 37 and Sections 8 and 9 of the Legislation Law. These provisions required that deprivation of liberty be based on National People's Congress ("NPC") law and premised on a

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[9] *See* Richard Cullen & Fu Hualing, *Weiquan (Rights Protection) Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering,* 59 THE CHINA JOURNAL 111, 116, 123 (2008) (discussing forceful legal advocacy and noted legal reforms); *see* Teng Biao, *What is Rights Defence, in* A SWORD AND A SHIELD: CHINA'S HUMAN RIGHTS LAWYERS 122-128 (Stacy Mosher & Patrick Poon eds., 2009).

[10] *See* Keith Hand, *Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China,* 45 COLUM. J. TRANSNAT'L L. 114, 138 (2006), http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1227&context=faculty_scholarship.

[11] *See id.* at 108.

[12] *See id.* at 105.

[13] Eva Pils, *Citizens? The Legal and Political Status of Peasants and Peasant Migrant Workers in China*, *in* ZHIDU, FAZHAN YU HEXIE (制度，发展与和谐) 173-243 (Liu Xiangmin ed., 2007).

judicial or pro-curatorial decision.[14] Their argument centered upon the broader principle that restrictions of the general right to personal liberty must themselves be lawful, and that mere say-so by power-holders was not enough.

The scholars' arguments, supported by popular press and public support, prevailed. The detention system at question in the Sun Zhigang Incident was officially abolished thanks to their advocacy efforts. According to Teng Biao, one of the three co-initiators, some abuses caused by the system persisted but the incident was nevertheless an instance of "bringing the Constitution alive (*jihuo xianfa* 激活宪法) in the inclement conditions of the existing legal system."[15] At the time, the success of the "three doctors of law" was celebrated by fellow academics and in the public media.[16] Drawing on this early success, Xu, Teng, and their colleagues sought to play a role in China's progression towards a more liberal system through their later advocacy efforts, as discussed in this Article.

As the Sun Zhigang Incident illustrates, a human rights lawyer's advocacy often begins with an individual case of injustice.[17] These lawyers seek justice, or redress, through institutionalized mechanisms. This means court litigation in most cases, but a human rights lawyer's ability to promote and protect constitutional rights, or human rights as defined under public international law, is limited.

The 1982 Constitution (last revised in 2004) does articulate liberal principles in Chapter 2, and authoritarian (Leninist and Maoist) principles in Chapters 1 and 3.[18] Chapter 2 safeguards the right to equality before the law, the right to vote, freedom of speech, freedom of assembly and association, freedom of religion, freedom and security of the person, freedom from insult, freedom from violation of the home, the privacy of

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[14] *See* Hand, *supra* note 10, at 138-140 (discussing the arguments in challenging the constitutionality of the now-abolished Custody and Repatriation system); Zhonghua Renmin Gongheguo Lifa Fa (中华人民共和国立法法) (promulgated by Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000), art. 37, 2000 P.R.C. LAWS 8, 9, http://www.gov.cn/test/2005-08/13/content_22423.htm (China).

[15] Teng Biao, The Sun Zhigang Incident and the Future of Constitutionalism: Does the Chinese Constitution Have a Future? 3 (Dec. 30, 2013) (unpublished occupational paper) (on file with the Chinese University of Hong Kong Centre for Rights and Justice) https://www.law.cuhk.edu.hk/en/research/crj/download/papers/2013-tb-szg-constitutionalism.pdf.

[16] Hand, *supra* note 10.

[17] *See generally*, EVA PILS, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE (2014).

[18] *See, e.g.*, Teng Biao (滕彪), *The Political Meaning of the Crime of "Subverting State Power"*, *in* LIU XIAOBO, CHARTER 08, AND CHALLENGES OF POLITICAL REFORM IN CHINA 273 (Jean-Philippe Béja et al. eds., 2012).

correspondence, as well as certain socio-economic rights.[19] The Constitution also gestures at a principle of genuine rule of law. For instance, Article 5 states:

> All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No individuals or organizations are above the Constitution or the law.

In 2004, an amendment to Article 33 added the phrase, "the State respects and preserves human rights."[20] Furthermore, China is a party to numerous human rights treaties. China has signed, albeit not yet ratified, the International Covenant on Civil and Political Rights ("ICCPR"),[21] and has ratified the International Covenant on Economic, Social and Cultural Rights ("ICESCR"),[22] the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"),[23] the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"),[24] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"),[25] the Convention on the Rights of the Child ("CRC"),[26] and the Convention on the Rights of Persons with Disabilities ("CRPD").[27] Still, China has not acceded to the Convention on

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[19] XIANFA ch. 2 (2004) (China). *See* Albert Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PRC (4th ed. 2011) at 54-57 (discussing constitutional rights in China).

[20] XIANFA art. 33 (2004) (China); *see also*, XIANFA art. 51 (2004) (China) (stating that the exercise of citizens' constitutional rights may not "infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens").

[21] G.A. Res. 2200A (XXI) International Covenant on Civil and Political Rights (Dec. 16, 1996).

[22] G.A. Res. 2200A (XXI) International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1996).

[23] G.A. Res. 34/180 Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979).

[24] G.A. Res. 2106 (XX) Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965).

[25] G.A. Res. 39/46 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984).

[26] G.A. Res. 44/25 Convention on the Rights of the Child (Nov. 20, 1989).

[27] G.A. Res. 61/611 Convention on the Rights of Persons with Disabilities (Jan. 24, 2007).

the Protection of the Rights of All Migrant Workers and Members of Their Families[28] or the International Convention for the Protection of All Persons from Enforced Disappearance.[29]

Regrettably, however, there are few institutional mechanisms for safeguarding the standards and principles articulated in the treaties China is party to, which limits their effectiveness. At the international level, China has opted out of the individual-complaints procedures of the United Nations ("UN") institutions. At the domestic level, as Björn Ahl has pointed out, courts apply treaty provisions only "on the basis of statutory reference provisions or judicial interpretations commanding application of an international standard," [30] and no such reference provisions or interpretations are available for human rights norms. The judiciary has also been unable to overcome bureaucratic obstacles that prevent domestic constitutional human rights norms from being implemented.[31] Moreover, the judiciary's ability to review norms in violation of ordinary NPC laws is limited. The mechanism used in the wake of the Sun Zhigang Incident, on the other hand, is lacking in transparency and does not adopt a forensic format, which makes it difficult to achieve or even track success.[32] The Sun Zhigang Incident also showed that the system is riddled with systematic abuses, especially in the context of administrative and criminal detention and the wider criminal justice system. Many of these abuses violate not only constitutional rights, but also written laws that courts are mandated to apply and uphold.[33] For various institutional reasons, which Li Ling has termed

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[28] G.A. Res. 45/158 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990).

[29] G.A. Res. 61/177 International Convention for the Protection of All Persons from Enforced Disappearance (Jan. 12, 2007).

[30] Björn Ahl, *Chinese Law and International Treaties*, 39 H.K.L.J. 737, 745, (2009); Cai Congyan, *International Law in Chinese Courts,* 110 AM. J. INT'L L. 269, 282 (2016); *see The United Nations Human Rights Treaties- China,* BAYEFSKY, http://www.bayefsky.com/bycategory.php/state/36 (for an overview of treaties signed and ratified).

[31] *See infra* Part IV.

[32] Hand, s*upra* note 10, at 138 (explaining that ordinary private users of this system are not even entitled to a reply to their suggestion letters sent to the relevant NPC Standing Committee working group).

[33] *See* Thomas E. Kellogg, 9 *The Death of Constitutional Litigation in China?*, CHINA BRIEF, 4, 4-6 (2009) https://jamestown.org/wp-content/uploads/2009/04/cb_009_7_02.pdf?x87069 (The mainstream view is that Chinese courts are not allowed to rely on constitutional norms when making decisions. Only the NPCSC is allowed to interpret the Constitution. In 2008, the SPC reinforced this view by revoking an earlier decision that had appeared to modify it).

"judicial dependence," the courts are unable to effectively address systematic abuses, such as police torture.[34]

In conditions of such systemic disregard for the law, even a lawyer's mere insistence on taking the written, black-letter rules of the law, let alone the more abstract rights and principles found in constitutional rights provisions, may become an act of subversion of the system as it ordinarily works. Examples are not limited to high profile cases like Sun Zhigang's; everyday examples include the simple act of demanding that a defendant's forced confession be excluded as evidence supporting a conviction,[35] or attempting to get an application for civil or administrative court litigation accepted by a judge who fears being disciplined or retaliated against.[36] Whereas the system's "law on the books" envisages and invites challenges to public power, its "law in action" – the practice of legal institutions – is highly intransigent to such challenges.[37] A lawyer's courtroom advocacy is fraught with difficulties, whether it's blocking sympathizers from attending court hearings, suppressing arguments and evidence during court hearings, or defending against lawyer intimidation.[38]

The principle of "judicial dependence," as Li Ling has argued,[39] is pervasive. The judicial process is especially dysfunctional in cases deemed politically sensitive. Take, for example, Li Heping's first-hand account of a "sensitive" trial. The defendant was Falun Gong practitioner, Wang Bo; she was tried for the crime of "using an evil cult to undermine the implementation of the law."[40] A team of human rights lawyers, including Li Heping and Teng Biao, represented her.

> This 'open trial' was really ridiculous. . . . The three

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[34] Li Ling, *The Chinese Communist Party and People's Courts: Judicial Dependence in China,* 64 AM. J. COMP. L. (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2551014.

[35] Report, Human Rights Watch, Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China (May 13, 2015), https://www.hrw.org/report/2015/05/13/tiger-chairs-and-cell-bosses/police-torture-criminal-suspects-china; *see generally,* Comm. Against Torture, Concluding Observations on the Fifth Periodic Report of China, U.N. Doc. CAT/C/CHN/CO/5 (2016).

[36] *See See* Pils, *supra* note 17.

[37] *See* Mike McConville, *Comparative empirical co-ordinates and the dynamics of criminal justice in China and the West*, *in* CRIMINAL JUSTICE IN CHINA: COMPARATIVE PERSPECTIVES 13-69 (McConville & Pils eds., 2013) (for a comparative discussion on how even the far more open process in liberal systems can exhibit such intransigence to an astonishing degree).

[38] *See* Pils, *supra* note 36.

[39] Li Ling, *supra* note 27, at 34.

[40] LI HEPING, THE WANG BO CASE AND FREEDOM OF RELIGION (Stacy Mosher trans., 2010) (unpublished manuscript on file with author).

> defendants were brought in wearing handcuffs and prison uniforms. In accordance with law, we requested that the court remove the defendants' shackles and uniforms, and the court consented. *When we tried to talk about religion and the Constitution, however, the judges repeatedly interrupted us, saying we could only speak of the facts and not of the law*. I was very angry and loudly challenged them: If the court doesn't allow lawyers to talk of the Constitution or of the law, how can it be a court? The judges were tongue-tied, but they continued to interrupt us all the same.
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> It should be said that all five lawyers on the defense bench performed very well and were very attentive in their exploration of facts and law. The prosecution could only ward off our blows without any power to strike back. During the trial, when we read out our defense plea, *the prosecution was humiliated and enraged, saying our political inclinations were problematic and we would be investigated*.[41]

As a result, it is nearly impossible to win certain types of cases using individual rights advocacy through the judicial process or, for that matter, *any* institutionalized process controlled by the Party-State. Even in cases involving a clear miscarriage of justice, lawyers find themselves unable to obtain adequate redress for their clients. One lawyer who practiced rights defense since the early 2000s summed up his experience as follows: "As long as there is no judicial independence, whatever you do in the courtroom in those cases of repression really just amounts to helping them enact a piece of theatre. They don't care."[42]

In their own conversations and writings on social media, rights lawyers have characterized the attitude of the Party-State in these contexts as "anti-rule-of-law" (*fan fazhi* 反法治); insofar as it is intended to strengthen rule of law, rights lawyers regard their advocacy as rightly challenging and destabilizing authoritarian control of the legal system.[43]

In this situation, it is a logical next step for lawyers to not only raise their arguments in court, but also "to take the action from inside the courtroom to [the] outside, and let the Great Public Jury [the court of public

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[41] *Id*. (emphasis added).

[42] Interview with Interlocutor #23, in China (2013).

[43] *Statement on the Abolition of Re-education Through Labour (RTL) and Related Problems by Chinese Lawyers for the Protection of Human Rights,* SIWEILUOZI'S BLOG (Nov. 19, 2013), http://www.siweiluozi.net/2013/11/statement-on-abolition-of-re-education.html.

opinion] decide."[44] For example, speaking on the trial of Wang Bo, a rights lawyer who had been part of her legal team commented:

> Even though the Party committee had the final say in the judgment of the case, a serious defense could still make an impression in court and at least win the hearts of those in the public gallery. I believe we achieved that goal in the Wang Bo case. This is not hard to understand. After all, the few judges and prosecutors who take any notice of religious issues or citizen's constitutional rights invariably side with the Party committee and resort to clichés when confronted by rule of law. These specious standpoints can't stand up under systematic, closely-reasoned questioning, and judges who don't candidly admit defeat can only balk, as in our trial. A judge who simply balks instead of speaking of fairness, justice and law falls into disrepute and loses credibility.[45]

As a result of the institutional dysfunctionality exhibited by trials such as Wang Bo's, and the problems of unfair trials and denial of access to justice mentioned above, lawyers have moved outside the courtroom to engage in what can be called political and legal rights advocacy concerning specific cases outside the institutions and channels provided by the Party-State. For example, lawyers have complained publicly about being prohibited from seeing their unlawfully detained clients by unfurling protest banners, holding up signs outside official buildings, and disseminating images of these actions online.[46] Lawyers and other rights defenders have used social media to report on the progress of court cases, and have also used secretly produced pictures and video footage to disseminate evidence of torture in cases where authorities refused to address allegations of torture.[47] Rights advocates have also signed public statements in support of colleagues working on such cases and of colleagues who have been personally victimized. Moreover, advocates have used blogs, microblogs, and the media – particularly overseas media – to disseminate such messages.

Publishing litigation documents, submissions to the court, and other sensitive information on social media may be reprehensible in a better-functioning legal system. In the circumstances of a system marred by

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[44] Interview with Interlocutor #23, in China (2013).

[45] Anonymous, The Wang Bo Case and Freedom of Religion, 5 (2009) (draft on file with author).

[46] Shi Qing Lushi (石青律师), Yingkou Zhongyuan Feifa Boduo Lushi Yuejuanquan (营口中院非法剥夺律师阅卷权), Bo Xun (博讯), Apr. 4, 2014, http://news.boxun.com/news/gb/china/2013/04/201304040209.shtml.

[47] Video, Conversation with Lawyer Zhu Mingyong on Torture (He Yang (何杨) 2010) (on file with author).

obscurity and repression, however, some rights lawyers contend that these methods are legitimate due to the suppression of legitimate arguments and evidence when trying to use official channels.[48] Lawyers in China disagree on how much publicity is appropriate. An older generation of lawyers, represented by the well-known Mo Shaoping, is generally more averse to publicity.[49] As Teng Biao's reflection on this discussion illustrates below, the discussion is inseparable from a long-standing, wider debate about the nature of law and lawfulness within the constraints of an authoritarian system. Broadly speaking, positivistic views, which hold the law strictly separate from morals, argue that lawyers must not concern themselves with matters thought to be beyond the letter of the law. This approach would not capture the moral responsibility to stand up against immoral law.[50] Understandably, such views have always been attractive in systems where advocacy is risky or even dangerous. As Teng Biao put it:

> According to one view, as a lawyer, you must only discuss the law, discuss what the evidence and the applicable law in a particular case are, what procedural problems exist -- you can only discuss the law, not politics; you can't talk about the persecution of religion or introduce your own political demands. Concurrently[,] you also mustn't take media interviews, especially from the overseas media, or hype up an issue, and so on. There is a faction that holds, to use Mo Shaoping's phrase, that 'political issues must be legalized, legal issues must be professionalized and professional issues must be technicized' and that through these 'three –izations' human rights cases can be sublimated without trace.
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> Other human rights lawyers hold that in the Chinese context, any legal problem is hard to separate from the influence of politics. For example, taking on [Protestant] house-church

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[48] *See* TERENCE C. HALLIDAY & SIDA LIU, CRIMINAL DEFENCE IN CHINA: THE POLITICS OF LAWYERS AT WORK 144-170 (2016) (for a discussion of the ethics and politics of lawyers' networking); *see* Eva Pils, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 133 (2014) (for a discussion of the movement outside the courtroom).

[49] *See* Celia Hatton, *Chinese Lawyer Mo Shaoping on His Career, Justice, and Democracy*, BBC NEWS (June 4, 2015), http://www.bbc.com/news/av/world-asia-33002876/chinese-lawyer-mo-shaoping-on-his-career-justice-and-democracy (discussing how the Mo Shaoping Law Firm that has undertaken the criminal defense of many famous dissidents and rights lawyers); *see also* Mo Shaoping, Gao Xia, Lü Xi, and Chen Zerui, *Criminal Defense in Sensitive Cases: Yao Fuxin, Yang Jianli, Jiang Lijun, Du Daobin, Liu Xiaobo, and Others*, *in* CHARTER 08 AND THE CHALLENGES OF POLITICAL REFORM IN CHINA 62-78 (Jean-Philippe Béja et al. eds., 2009).

[50] *See* H.L.A. Hart, THE CONCEPT OF LAW 210 (2d ed. 1994) (insisting that the certification of legal validity was "not conclusive of the question of obedience").

> cases, undertaking criminal defense in Falun Gong cases -- if you only discussed whether that particular Falun Gong practitioner printed 200 or 300 [proselytizing] leaflets, whether they should be sentenced to two years or to five -- if that's all you discuss, it is totally meaningless, because you don't change the outcome [anyway]. So, the constitutional and freedom of religion issues in the background [of such a case] absolutely have to be discussed.[51]

From Teng Biao's perspective, the approach that rejects isolating narrow legal questions from deeper constitutional and moral ones demands more expansive advocacy strategies to overcome the abovementioned obstacles that result from institutional dysfunction. Rights lawyers have responsibilities beyond the courtroom, especially where the courtroom is not a forum in which the law will be upheld or in which justice could possibly be achieved. Accordingly, rights lawyers strive to achieve transparency about what they do and what the authorities do, not just because exposing abuse is more likely to promote favorable outcomes in specific cases.[52] Rights lawyers also address their arguments to a wider public, promoting healthy skepticism.[53] In conversations with the author, rights lawyers stated that they generally eschewed encouraging their clients to trade justice for 'leniency,'[54] and that they were not inclined to, and could not afford to, engage in any behavior that would expose them to accusations of violating the law or professional discipline (such as bribing a judge).[55] Even when going public does not change the outcome of the legal process they engage in, it may help to reduce or prevent further abuse. For example, by exposing a confession extracted by torture, a human rights lawyer may be able to obtain less harsh treatment for their client.

Rights lawyers commented that, in the Chinese legal process, the public dissemination of case-related information served a dual function in the context of legal advocacy and resistance.

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[51] Teng Biao, *The History and Current Situation of the Chinese Rights Defense Movement,* https://www.purdue.edu/crcs/events/purdue-symposium-ch/purdue-symposium-2014-ch/tengbiao/; *see also* Eva Pils, *Asking the Tiger for His Skin: Rights Activism in China*, 30 FORDHAM INT'L L. J. 1209-87 (2007).

[52] This does not mean, of course, that lawyers go out of their way to let the authorities know about activities likely to trigger persecution; or that they feel under obligation to disclose their activities. Interview with Interlocutor #122, in China (2016).

[53] Interview with Interlocutor #74, in China (2013); *see* Zhang Xueran, *China's All-Star Legal Team Pleads for Defendants' Rights on Social Media,* TEA LEAF NATION, (July 25, 2012).

[54] *See* JUE JIANG, CRIMINAL RECONCILIATION IN CONTEMPORARY CHINA: AN EMPIRICAL AND ANALYTICAL ENQUIRY 191 (2016).

[55] Interview with Interlocutor #23, in China (2013).

> In these typical cases, lawyers resisting together achieve that firstly, they raise legal consciousness and promote the idea of the rule of law [in the general population]. . . . Through lawyers' resistance, the so-called internal forces in public power are also prompted to gain a better understanding of problems that exist in their own work. . . . [I]t may help to encourage them to respect the law more in future.[56]

Notwithstanding their disagreements, all rights lawyers feel the same pressures, and the systemic obstacles rights lawyers tackle affect all lawyers. Communication about cases thus creates a natural basis for alliances between human rights lawyers and lawyers who sympathize with them. This includes lawyers who see themselves as "diehard" (*sike* 死嗑) – that is, tough and principled – and lawyers who prefer the description "rights defense" or "human rights" lawyers. One lawyer remarked that "Chinese human rights lawyers are amongst the most vibrant, dissident forces in Chinese civil society these days. While the pressure I spoke of brings about more self-censorship amongst some, amongst others, it enhances a sense of opposition and shared values."[57] Comments such as these reflect the fact that the dysfunctionality of legal institutions encourages a move from "human rights as law" to "human rights as politics."[58] Since the Party-State system does not accommodate oppositional politics and strictly controls independent civil society activities, the move to "human rights as politics" makes rights advocacy a substitute for oppositional politics. From the perspective of the authorities, it makes human rights advocacy potentially subversive.

Although severely limited within their institutionally-defined roles, lawyers can make a conscious decision to oppose such limitations, even in the highly restrictive setting of the authoritarian Chinese legal system. Lawyers interested in liberal progress can appeal to liberal values, rules, and principles that are already recognized in the laws of the Chinese Party-State, even though these values, rules, and principles are in conflict with authoritarian principles that are also recognized by that very same system. When these lawyers insist on adhering to those rules and principles, they engage in a form of legal advocacy that is concurrently an exercise of their human rights of expression, as well as a form of political resistance (at least in part because the authorities view it as such). Moreover, their use of, and

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[56] Interview with Interlocutor #74, in China (2013); *see also* Xueran, s*upra* note 53.

[57] Interview with Interlocutor #74, in China (2013).

[58] Michael Ignatieff, Lecture at the Tanner Lectures on Human Values: Human Rights as Politics, Human Rights as Idolatry 287-319 (Princeton University, Apr. 4–7, 2000), http://tannerlectures.utah.edu/_documents/a-to-z/i/Ignatieff_01.pdf.

experience with, public legal advocacy can awaken other lawyers to the potential of mass-communication as a tool of resistance. This is all the more important, because in contrast to liberal-democratic settings, adversarial politics as an alternative pathway to demand change is not available to lawyers.[59]

The logical next step, indeed, one that has already been taken by establishing informal communicative networks, is to create independent associations.

III. ADVOCACY GROUPS WORKING ON RIGHTS CASES AND CAUSES

Chinese lawyers face many obstacles to independent professional organization. Authorities in China have established an official professional organization for lawyers that is strictly hierarchical. Membership in the All China Lawyers' Association ("ACLA") is compulsory for all licensed lawyers. ACLA and its local branches seek to control the professional activities of lawyers down to the question of what kinds of cases they may take and what strategies they ought to employ. Official lawyers' associations could therefore be described as agents of state corporatism.

ACLA and its subordinate organizations claim to represent the legal profession's interests.[60] Yet, ACLA can exert great pressure on law firms and individual lawyers working in these firms. ACLA exerts comprehensive pressure through a professional licensing system, where ACLA plays a central role. In addition, ACLA and other authorities can impose further disciplinary and punitive measures, such as suspensions of their license to practice or disbarment, against lawyers and firms considered disobedient. ACLA also acts as conduit for Party influence. For example, it became the conduit through which the Party unfolded a "total coverage" (*quanfugai* 全覆盖) campaign, which ensures that all law firms have a Party branch established or associated with them.[61]

ACLA's role reflects a corporatist, party-state-centric approach to the legal profession.[62] The system in China does not tolerate free professional associations for lawyers and severely restricts non-governmental civil society organizations.[63] As a result, lawyers face

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[59] Michael Walzer, *The Politics of Resistance,* DISSENT MAGAZINE (Mar. 1, 2017), https://www.dissentmagazine.org/online_articles/the-politics-of-resistance-michael-walzer.

[60] *See* PRC Law on Lawyers [中华人民共和国律师法], passed on 28 October 2007, effective as of 1 June 2008 (stating the role of Lawyers' Associations).

[61] *See* Pils, *supra* note 17, at 146-88.

[62] Anthony Spires, *Contingent Symbiosis and Civil Society in an Authoritarian State: Understanding the Survival of China's Grassroots NGOs,* 117 AM. J. SOC. 1, 5-10 (July 2011).

[63] *See* Edward Wong, *Clampdown in China Restricts 7,000 Foreign Organizations,*

regulatory limitations if they wish to form or join independent professional organizations or advocacy NGOs. Thus, several important lawyer-driven rights advocacy NGOs, including the Open Constitution Initiative discussed below, the Transition Institute, and China Against Death Penalty, were either registered as commercial non-profit enterprises, or not registered at all. Throughout the research period,[64] NGOs considered hostile by the authorities were heavily monitored and at risk of being charged with tax violations or dissolved. Criminal law can also be used to control lawyers by charging them with violations of "state security" or public order offenses,[65] and placing them under the various restrictions introduced in 2015. Moreover, special provisions criminalizing "illegal assembly"[66] can be used to disrupt meetings.

In addition to rules and measures limiting lawyers' ability to organize independently, the Party-State's security apparatus also uses measures to control lawyers, such as electronic surveillance, requests for "chats," "being travelled," house arrest, forced disappearances, and torture.[67] Lawyer repression became increasingly severe around 2004,[68] when Gao Zhisheng (高智晟) engaged in online advocacy to publish the narratives of Falun Gong practitioners, who detailed their experiences of torture at the hands of the State. Authorities, such as the Ministry of Justice's official lawyers' associations, the judiciary, the police domestic security protection squads (*guonei anquan baowei duiwu* 国内安全保卫大队 or *guobao* 国保 for short) of the Public Security (Police) Ministry (*Gong'anbu* 公安部) and its subordinate bureau, as well as the Ministry of State Security authorities (Guoanbu 国安部), contribute to repression ranging from instructions to lawyers not to take on particular cases or to handle them in particular ways, to disbarment, prison sentences, forced disappearances, and torture. On occasion, these authorities have expressly stated to lawyers, the victims of such measures, that their goal is to isolate them from other

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N.Y. TIMES (Apr. 28, 2016), http://www.nytimes.com/2016/04/29/world/asia/china-foreign-ngo-law.html (explaining how the passage of new legislation on domestic charities and on foreign NGOs testifies to this tendency); *see also* Wu Fengshi & Chan Kinman (Chen Jianmin), *Graduated Control and Beyond: The Evolving Government-NGO Relations,* 2012 CHINA PERSPECTIVES 9, 9 (2012) http://chinaperspectives.revues.org/5928.

[64] The research period was between June 2010 and July 2017. *Supra* note 6.

[65] *See* Tang, *supra* note 1.

[66] Zhonghua Renmin Gongheguo Xingfa (中华人民共和国刑法) (promulgated by Standing Comm. Nat'l People's Cong., July 6, 1979, rev'd Aug. 29, 2015, effective Jan. 1, 1980), art. 296, (China); *see* discussion *infra* note 135.

[67] McConville & Pils, *supra* note 37 at 424-36.

[68] *See id.* at 626; *see* Pils, *supra* note 51.

lawyers and to prevent them from forming groups and building alliances, in accordance with the strategy known as, "split and disintegrate, discipline and strike, educate and rescue" (*fenhua wajie, chengjie daji, jiaoyu wanjiu* 分化瓦解, 承接打击, 教育挽救).[69] Repression, on the other hand, gives lawyers an incentive to tackle the political causes of their predicament.[70]

Organization by human rights lawyers and other human rights defenders must be understood against this background. Lawyer organization has adopted, broadly speaking, two types of strategies: the formation of advocacy groups bearing a name and visible organizational structure; and the creation of more fluid, less visible structures of interaction and coordination among rights lawyers, without setting up formal or informal NGOs. The experience of Xu Zhiyong, and the organizations and initiatives he created, spans this spectrum.

In 2003, the year of the Sun Zhigang Incident, Xu and some fellow legal academics, including Teng Biao, came together to form a "civic alliance" (*gongmin lianmeng* 公民联盟), which later became known as Gongmeng (the Open Constitution Initiative).[71] As a rights advocacy group, Gongmeng successfully advocated for a variety of human rights issues that encompassed mass-grievances. For example, true to their origins, in a case concerning personal liberty, they led a campaign against the use of so-called "black jails," which are unofficial detention centers used for holding unwelcome petitioners who lodge complaints against the authorities in the capital. Gongmeng worked with petitioners at these black jails to demand that the inmates be liberated. While they did not achieve immediate success due to the jailors' fear of self-incriminating exposure,[72] eventually, the central authorities were persuaded to denounce unofficial prisons and to shut at least a few of them down.[73] Gongmeng worked on other mass-grievance cases, such as forced evictions, the household registration system, and equal education rights for the children of migrant workers. They also

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[69] Interview with Interlocutor #23, in China (2013). Summing up their experience of repression, a lawyer commented in July 2014, 'Pressure from the authorities … is invisible but palpable. It comes from the departments in charge, such as the justice bureau and lawyers' association and judicial organs, and from the secret police such as the guobao (public security domestic security protection squads) and Guoan (Ministry of State Security), and then there is a sort of additional, comprehensive pressure coming from all sides. Interview with Interlocutor #73, in China (2014).

[70] *See* Pils, supra note 17, at 232-73.

[71] Interview with Interlocutor #2, in China (2013).

[72] *See* Video, Melissa Chan of Al Jazeera Reports on Black Jails, or Secret Jails, in Beijing (Apr. 27, 2009), http://chinadigitaltimes.net/2009/04/chinas-black-jails-uncovered/.

[73] Melissa Chan, *Inside China's "Black Jails",* AL JAZEERA (Mar. 13, 2012), http://www.aljazeera.com/blogs/asia/2012/03/104616.html.

took on cases such as the tainted milk-powder scandal in 2009, where three hundred thousand babies were affected by adulterated milk-powder, causing an unconfirmed number of deaths.[74] Moreover, Gongmeng did not shy away from working on issues the authorities deemed "highly sensitive," such as the human rights of Tibetans following the unrest that broke out in Tibet in 2009.[75] It was this "sensitive" work that appeared to provoke the crackdown on Gongmeng described later in this Article.[76]

According to several lawyers, the formation of independent associative structures (*lüshituan* 律师团) is a direct reaction to the official All China Lawyers' Association's general failure to protect lawyers as well as occasional collusive attempts to persecute them. For example, one lawyer stated: "[L]egal teams are formed because the Lawyers Associations are inactive – they do not function as organizations for lawyers."[77] One of the lawyer's colleagues elaborated by arguing that "the judicial authorities" – including the Judicial Bureau – had failed them:

> My view is that lawyers' teams emerged because the judicial authorities didn't act in accordance with the law and do not respect the law. If lawyers could engage in regular legal practice, then the judicial authorities would not have triggered resistance from the lawyers. The lawyers resist, because very commonly there is no justice in the judicial process. Lawyers feel that if each one of them just relies on themselves, they are too weak. So, they get together and unite – spontaneously, without there being an organization.[78]

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[74] Li Fangping, *The Zhao Lianhai Case of "Picking Quarrels and Provoking Trouble,"* HUMAN RIGHTS BI-WEEKLY (Mar. 30, 2010), http://www.hrichina.org/en/content/4845.

[75] Gongmeng Legal Research Centre (公盟法律研究中心), Zang qu 3.14 shijian shehui, jingji chengyin diaocha baogao de fuben (藏区 3.14 事件社会、经济成因调查报告的副本) [Copy of the investigative report on the social and economic causes of the 14 March (2008) Incident in the Tibetan Regions], *China Series Blog* / Xilie. Zhongguo (系列. 中国) BLOG (June 11, 2009), http://www.tibet-china-conference.org/content/pdf_chn/Think_Thank_Chinese.pdf (Part VI of this report by Gongmeng makes suggestions for improving governance in Tibet, e.g. by taking on board the Tibetan populations views and strengthening constraints on local government power).

[76] *See infra* Part IV (on the crackdown on Xu Zhiyong and Gongmeng, and the initiation of the New Citizen Movement). The further persecution of individual lawyers working with Gongmeng is beyond the remit of this Article.

[77] Interview with Interlocutor #30, in China (2013); Interview with Interlocutor #70, in China (2013); Interview with Interlocutor #67, in China (2013); Interview with Interlocutor #14, in China (2013).

[78] Interview with Interlocutor #71, in China (2013).

A widely noted example of these legal teams was established during the case of the "Beihai lawyers" in 2011. Dozens of lawyers had travelled to Beihai City to provide criminal defense and moral support to four of their colleagues, who were detained on patently spurious charges of falsifying evidence while defending four (later five) young men, whose confessions to a murder they had not committed had been extracted through torture. The lawyers who went to rescue their colleagues suffered attacks at the hands of thugs, including the very severe beating of Li Jinxing (李金星). They used social media to report their own plight, and that of their colleagues and their colleagues' clients. This caused widespread outrage in professional circles and ultimately lead to the release of their professional colleagues, and convictions on a lesser-crime for their colleagues' clients. The case was widely seen as a success and signaled the emergence of the legal team as a significant socio-political phenomenon.[79]

Particularly since 2010, human rights lawyers have also formed, or discussed forming, a number of other groups whose focus is not an individual case, but rather a particular cause or issue, such as the death penalty, torture, forensic evidence, disability rights, or forced abortions.[80] These groups pool expertise and insights to work on individual cases of injustice, while simultaneously engaging in wider advocacy by reporting on cases and holding trainings and research meetings. A human rights lawyer group that announced its existence through Weibo (微博) micro-blogs and other social media, such as WeChat (Weixin 微信) and Telegram (Dianbao 电报).[81] Notably, this group kept partially migrating to new forums, such as groups on Whatsapp and Signal, as other social media groups were rendered inoperable due to Party-State scrutiny and interference.[82] Even when the

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[79] Chen Yanhui (谌彦辉), Fenghuang zhoukan: neidi xian lüshi zutuan da guansi (凤凰周刊：内地现律师组团打官司) [Phoenix Weekly: mainland lawyers forming litigation teams], Fenghuang wang zixun (凤凰网资讯), Jan. 9, 2012, http://news.ifeng.com/shendu/fhzk/detail_2012_01/09/11851698_0.shtml.

[80] One group that formed openly is China Against Death Penalty (CADP) (Beijing Xingshan Yanjiusuo 北京兴善研究所), on Twitter at https://twitter.com/beijingcadp. The author participated in meetings of this group in December 2011 and December 2012 and had opportunities to participate in meetings of, or to discuss, looser advocacy groups addressing the other issues mentioned in the main text, between 2011 and 2014.

[81] *See* Weiquan lüshi faqi chengli Zhongguo baozhang renquan lüshi fuwutuan (维权律师发起成立中国保障人权律师服务团) [Chinese *weiquan* lawyers initiate and establish a Human Rights Protection Lawyers' Service Team], VOICE OF AMERICA CHINESE (Chinese) (Sept. 15, 2013), https://www.voachinese.com/a/china-right-20130915/1750006.html.

[82] Groups with similar names kept being formed, dissolving, and regrouping from 2013 until the end of the period during which research for this project was conducted. They key people remained largely the same. The author followed these migrations over the years and is primarily part of groups on Telegram, Whatsapp and Signal at the time of this writing.

number of human rights lawyers had risen to an estimated three hundred or more,[83] lawyers explained that it simply was not enough. In order to become a significant force in civil society, a thousand, or even five or ten thousand, lawyers would be needed;[84] and rights lawyers themselves are in constant need of legal counsel. A Lawyers Rights Defense Network ("LRDN"), established to meet this demand, was described as having "our own website, our own decision mode, and our own way of seeking donation . . . we want to establish a grassroots NGO that complements the official All China Lawyers' Association (ALCA), to help lawyers in distress, for example, when they [are] disbarred."[85] The lawyer further explained LRDN's relationship with ACLA: "[O]f course we are in fact a lawyers' association but we don't say so – we are entirely set up like a bar association, but we are more democratic than the [official] lawyers' association, for example through our voting mechanism."[86] Rights lawyer and scholar, Teng Biao (滕彪) states that these efforts are reminiscent of what scholar Clay Shirky has analyzed as a global phenomenon of social organizing "without organization" in the time of the internet and social media.[87] Shirky argues that certain uses of the internet allow for mass amateurization of certain kinds of action, such as journalistic reporting, and that they challenge traditional ideas of how political power is organized in sovereign states. While Shirky does not think that the tectonic shift brought about by new communication forms will make government wither away, he argues that this shift does affect what he describes as an institutional monopoly on large scale coordination currently held by government.[88] Shirky argues that today's new media allows citizens to coordinate action in fluid, easily-changing, unfixed forms, such as "flash-mob action," that challenges the monopoly hitherto held by government.[89]

See Keith Bradsher, *China blocks Whatsapp, broadening online censorship*, N.Y. TIMES (Sept. 25, 2017), https://www.nytimes.com/2017/09/25/business/china-whatsapp-blocked.html?_r=0. (discussing the current state of social media censorship).

[83] Interview with Interlocutor #73, in China (2041).

[84] Interview with Interlocutor #14, in China (2014); Interview with Interlocutor #22, in China (2014); Interview with Interlocutor #73, in China (2014).

[85] Interview with Interlocutor #73, in China (2014).

[86] *See id.*

[87] *See* Teng Biao, *Rights Defence, Microblogs, and the Surrounding Gaze: The Rights Defence Movement Online and Online,* 3 CHINA PERSPECTIVES 29, 40 (2012); CLAY SHIRKY, HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS (2008).

[88] *See* Shirky, *supra* note 87, at 143.

[89] *See* Shirky, *supra* note 87, at 161-87 (discussing flash mobs and similar organizing methods).

Such forms of organizing are particularly relevant to civil society activism in today's China, and they might stand a chance of succeeding even in the restrictive conditions of the Chinese system. New modes of activism present unprecedented challenges to the government, which is correctly characterized as holding a monopoly on large scale organization. Yet, the examples of both the human rights lawyer groups, and the even more ambitious and potentially momentous New Citizen Movement, also illustrate inherent limits of politically organizing "without organization," at least in China.

IV. The Rise and Suppression of the New Citizen Movement

The NGO Gongmeng achieved remarkable success, but both the organization and its director, Xu Zhiyong, came under attack for alleged tax evasion in 2009 when Xu and at least one of his co-workers, namely Zhuang Lu, were temporarily held in criminal investigation custody.[90] Some interpreted this action as an attempt to destroy Gongmeng.[91] Xu and Zhuang were eventually released and were able to continue operating.[92] However, since Gongmeng had been ostracized and was forced to stop taking foreign funding, the group struggled to continue its operation.[93]

Following the attempt to crush Gongmeng, the organization no longer appeared to be an entirely adequate platform for pursing the civil right goals of the "civic alliance" as it was originally meant to be. Its co-creator, Xu Zhiyong, reached the view that there should be a change in strategy and approach. Speaking at a conference in 2013, Xu explained:

> In the nearly ten years from the Sun Zhigang Incident, our main work really was rights defense in individual cases . . . [but] from last year [2012] onward, our modus operandi changed. We have gone from [working on] individual cases to wider advocacy, calling for everyone to be a citizen.[94]

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[90] Evan Osnos, *Where is Xu Zhiyong?*, The New Yorker (July 30, 2009), https://www.newyorker.com/news/evan-osnos/where-is-xu-zhiyong.

[91] *See, e.g.*, Teng Biao, *The Confessions of a Reactionary*, China Change (Aug. 27, 2013), https://chinachange.org/tag/gong-meng/.

[92] *See* Xu Zhiyong, *The Last Ten Years*, China Change (March 16, 2013), https://chinachange.org/2013/06/05/the-last-ten-years/.

[93] Interview with Interlocutor #2, in China (2009); Teng Biao (滕彪), Gongmeng Bu Si (公盟不死) [Gongmeng is not dying], Jan. 17, 2009, http://blog.qq.com/qzone/622007804/1248271496.htm; Gongmeng Zai Xingdong (公民在行动) [Gongmeng is still active], Gongmin Yuekan (公民月刊), (Jan. 2009); Karla Simon, *The Regulation of Civil Society Organisations in China,* 9 Int'l J. Civ. Soc'y L. 55 (2011), https://ssrn.com/abstract=1781075.

[94] The Constitution, the Media and the Chinese Rights Defence Movement: Ten Years after the Death of Sun Zhigang, CUHK,

The New Citizen Movement, initiated April 2010 and launched in May 2012 by Xu and others, reflected this "wider," more explicitly political mode of advocacy. More assertive than its predecessor, Gongmeng, the New Citizen Movement employed a normatively rich and ambitious concept of citizenship. It is a concept that reaches back into China's indigenous liberal or republican tradition with the idea of *gongmin* (公民), "public person," which was initially associated with intellectuals of the late-imperial era, such as Kang Youwei, and political figures, such as Sun Yat-sen,[95] as well as the European Enlightenment era.[96] It evoked older historical references to the broader concept of *gong* (公).[97] As Xu Zhiyong explained at a "civic meal" in late 2012, the concept "[R]eflects what sort of system the State should have, what the relationship between the State and its citizens should be, and [the idea of] civil society as an independent and free entity."[98]

Choosing "freedom, justice, love" (*ziyou* 自由, *gongyi* 公义, *ai* 爱) as its motto, the Movement saw these values as expressive of "the new democratic spirit of the Chinese nation" and of "the universal values of mankind."[99]

In 2010, Xu and some others published an online "Citizens' Pledge," calling for citizens to sign up by sending an email. The pledge included a general part, which stated:

> 1. My conduct will be rooted in conscientiousness, understanding, respect, and love and care for my fellow human beings;
>
> 2. I will respect the Constitution and the laws and defend their correct implementation;
>
> 3. In my life, I will, with legal means and with a caring heart, defend social justice and practice/manifest social

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http://www.law.cuhk.edu.hk/en/research/crj/news/20130413-sunzhigang-coverage.php.

[95] The founding father of the Republic of China, also claimed as founding father of the Party's erstwhile arch enemy, the Kuomintang. *See also* Bei Li, (贝立), GOOGLE+ (May 31, 2012), https://plus.google.com/107919448256984307579/posts/UqUxVFoDziD (on the origin of this calligraphy, *gongmin* (公民)).

[96] *See* Simon Schama, CITIZENS: A CHRONICLE OF THE FRENCH REVOLUTION 291 (1989).

[97] As in *tian xia (wei) gong* 天下为公.

[98] Zhiyong Xu, Shui ba "ziyou, gongyi, ai" dangcheng diren, yiding shi Zhonghua minzu de diren! (谁把"自由,公义, 爱"当成敌人, 一定是中华民族的敌人) [Those who turn "freedom, justice and love" into enemies are enemies of the Chinese nation], No. 3 Gongmin Zhuankan (公民专刊) 76, 78 (2013).

[99] *See supra* note 76.

righteousness.[100]

The online call also specified how citizens in different roles and positions, including lawyers, should act: "[I]n my station at work I will follow the following minimum moral standards: . . . As a lawyer, I will be true to the law and not bribe judges."[101] The email action provided the initiators with a database of names, which they could then contact to initiate further activities. The New Citizen Movement was founded on this basis during meetings beginning in May 2012 by Xu and other citizens, including some lawyers and scholars.[102]

What makes the concept of a citizen a good point of reference around which to organize a movement is that it is so clearly recognized by official legal jargon, as much as it is also a concept used in the context of rights defence and dissent.[103] For example, the PRC Constitution uses the term, even as authorities reject liberal and democratic political values and the idea of "civil society".[104] The concepts of love, justice and freedom, which constitute the New Citizen Movement's key motto, speak directly to communities of people, who experience injustice, oppression, or deprivation. These concepts also meet the expectations of a pop-culture reliant on "emotional" social media communication and emotive politics. In contrast to populist movements reliant on demagogic mobilization against perceived threats, however,[105] as seen from the quoted passages above, the New Citizen Movement explicitly aims to overcome "us against them" narratives and foster inclusiveness, rather than resentment or fear. This aspect of its stated agenda calls to mind the work of contemporary political philosophers seeking to craft novel interpretations of certain "political emotions." According to Martha Nussbaum, love, as a distinct form of

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[100] Bo Xun (博讯), Zhuming Weiquan Renshi Xuzhiyong Fabu "Gongmin Weiquan Shouce" (著名维权人士许志永发布 "公民维权手册") [Famous rights defender Xu Zhiyong publishes 'Citizen Rights Defense Manual'] (Apr. 10, 2010), http://boxun.com/news/gb/china/2010/04/201004182312.shtml.

[101] It is of note that the "New Citizen Movement" uses as its logo a distinctive calligraphy usually displayed white or silver on blue, based in a piece of calligraphy by Sun Yat-sen.

[102] The initial meeting was organized in a discreet manner but nevertheless interrupted by the police.

[103] MERLE GOLDMAN, FROM COMRADE TO CITIZEN: THE STRUGGLE FOR POLITICAL RIGHTS IN CHINA 10 (2004).

[104] *See, e.g.,* Zhou Benshun (周本顺), Zou Zhongguo Tese Shehui Guanli Chuangxin Zhi Lu (走中国特色社会管理创新之路), QSTHEORY (May 16, 2011), http://www.qstheory.cn/zxdk/2011/2011010/201105/t20110513_80501.htm.

[105] Toril Aalberg & Claas de Vreese, *Comprehending Populist Political Communication, in* POPULIST POLITICAL COMMUNICATION IN EUROPE 4 (Toril Aalberg et al. eds., 2016); SARA AHMED, THE CULTURAL POLITICS OF EMOTION 62-81 (2006).

public emotion ("political love"), ought to be cultivated in a liberal society because it "matters to justice."[106]

The ideals of the New Citizen Movement had thus been decided; but it was still unclear how this Movement was going to operate. What could it achieve in China's highly illiberal, restrictive, and repressive conditions? Despite their ambitious political advocacy goals, the initiators realized that their options were limited. For example, there was no chance of founding a political party. All independent, oppositional parties ever formed in the history of the PRC have been either crushed or reduced to total insignificance with many of their founders imprisoned for many years.[107] Drawing on past examples of failed attempts to form a political party, one lawyer stated:

> Just think, whether we talk about the Chinese Democratic Party of 1998,[108] or the Chinese Social Democratic Party of 1992, [109] everybody has by now thought it through; or perhaps as a result of recent developments, we are now even clearer than before: the risks associated with this kind of organization are extremely high. Consider that Hu Shigen,[110] for example, was sentenced to 20 years. And Qin Yongmin [to eleven years].[111] Their prison sentences were just too long.[112]

It was equally impossible to create an NGO, registered or not, that would serve the function of propagating a political ideal of "citizenship." After all, the NGO Gongmeng had come under attack from the Party-State for attempting to serve this function.

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[106] MARTHA NUSSBAUM, POLITICAL EMOTIONS 388 (2013) (arguing that there is a political form (or aspect) of love that is key to fostering a society of civic-minded individuals committed to their community and to helping others in this community achieve their capabilities). A society without such love could not achieve justice.

[107] *See generally* Béja, Jean-Philippe, *À la recherche d'une ombre chinoise: le mouvement pour la démocratie en Chine* [*In Search of a Chinese Shadow: The Movement for Democracy in China*] (2004).

[108] *See generally*, the China Democratic Party, http://www.hqcdp.org/english/. *See also Genesis of the China Democracy Party*, HUMAN RIGHTS WATCH (2000), https://www.hrw.org/reports/2000/china/china009-02.htm.

[109] *See generally*, CHINESE SOCIAL DEMOCRATIC PARTY, http://www.csdparty.org/index.html.

[110] *Prisoner Profile: Hu Shigen,* HUMAN RIGHTS IN CHINA, 2004, http://www.hrichina.org/sites/default/files/PDFs/CRF.4.2004/PrisonerProfile4.2004.pdf.

[111] *Democracy Activist Qin Yongmin Released from Prison after 12-Year Sentence*, HUMAN RIGHTS IN CHINA (Nov. 29, 2010), http://www.hrichina.org/en/content/4879.

[112] Interview with Interlocutor #2, in China (2013).

The Movement, espousing Shirky's concept of social organizing "without organization,"[113] echoed the methods adopted by the Arab Spring and Occupy movements around the world. The New Citizen Movement's goal was to bring people together as citizens. Accordingly, all the Movement's actions made use of social media and other internet tools, and they included a range of easy-to-join activities, the simplest of which was to gather for a meal:[114]

> Everybody comes together under a shared identity to join in a meal and to discuss some common issues together. . . . Citizens in all locations shall develop spontaneously; they control their own stories, and people in each location do their own thing and have their own local topics, so that Guangzhou and Chengdu have their different local topics.[115]

As co-initiator Xiao Shu explained, one goal of having easy-to-join activities was to "lower the threshold" for citizens' participation. After all, how could the authorities be alarmed by people having a meal together? Gathering for a meal allowed the movement to realize the goals of inclusiveness, as well as to convey a peaceful message, consciously opposed to any idea of underground or violent opposition.[116] At the same time, even the decision to attend a "civic dinner" could be interpreted as a conscious political choice, just as the appeal to the concept of citizenship could be understood both as a simple descriptive fact and as a political message. The political message was that everybody could *choose* to be a citizen in the normative, political liberal-or republican-sense, and that, collectively, citizens had political power.

For this project, the author was able to observe some four "citizen meals" held in different locations, with different participants, from 2012 to

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[113] *See* Teng Biao, *Rights Defence, Microblogs, and the Surrounding Gaze: The Rights Defence Movement Online and Online, in* LOCATING CIVIL SOCIETY, COMMUNITIES DEFENDING BASIC LIBERTIES 40 (Eva Pils ed., 2012); CLAY SHIRKY, HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS 143 (2009).

[114] "Citizen meals" were to take place at the same time (on the last Saturday of every month) in different cities across China.

[115] *See supra* note 98.

[116] Xu Zhiyong, Gongmin Xu Zhiyong: Guanyu yuemo gongmin tongcheng jucanhui he "xiao quanzi" qubie de shuoming (公民许志永: 关于月末公民同城聚餐和"小圈子"区别的说明) [Citizen Xu Zhiyong: Explanation concerning the difference between end-of-month same-city citizen dinners and "small circles"], http://xuzhiyong2012.blogspot.com/2013/05/blog-post_4.html; *see also* CUHK: Centre for Rights and Justice, recording of XU's Skype comments at the public seminar, "The Constitution, the Media and the Chinese Rights Defence Movement: Ten Years after the Death of Sun Zhigang," (Apr. 13, 2013), http://www.law.cuhk.edu.hk/research/crj/news/20130413-sunzhigang-coverage.php.

2013. While some meetings were arranged in a somewhat clandestine manner to accommodate all the participants, the meals themselves seemed open and were not organised using a pre-determined agenda.[117] This openness was characteristic of the New Citizen Movement's commitments. No one was to be excluded. The dinners might well be monitored, and there might well be participants who would later report to the police or other authorities of the Party-State. However, excluding certain participants as suspect would have seemed wrong. Rather, welcoming new participants and refusing to nurture suspicion seemed to be the best way of subverting the intended effects of government monitoring, which was assumed to occur.[118]

Participants at the "citizen meals" included lawyers, petitioners, teachers, and writers. Topics covered included specific human rights issues, and perceived deficiencies of the existing political system. Participants discussed, among other things, how a greater number of people could be motivated to identify and act as citizens with rights; how best to achieve the stated aims of promoting participants' self-awareness as citizens with rights and responsibilities; how to foster a sense of civic community; craft messages of rights advocacy; and protest social grievances that could engage a wide community of people.[119]

As collective actions became increasingly politicized, the risks of participation rose. In 2013, small groups coordinated by the New Citizen Movement used "flash-mob" demonstrations – unfurling banners in public places for just a few moments, and later posting pictures of their protest online – to call on public officials to disclose their assets. Their call in some ways echoed the simultaneously-staged, official anti-corruption campaign.[120] However, in the official campaign, orchestrated by the Party's Central Discipline and Inspection Commission, the Party decided who would be investigated, raising the suspicion that the campaign facilitated an internal purge against some Party members, while protecting other members from investigation.[121] By asking for general financial disclosure on the part

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[117] At one meeting, the author witnessed someone show up who said they had come in response to an online announcement of the gathering. They seemed not to be acquainted with any other participants, but was nevertheless welcomed and included in discussion.

[118] *See generally* Pils, *supra* note 17.

[119] Author observed meals on three different occasions in two locations in 2012 and 2013.

[120] *See* Fu Hualing, *China's Striking Anti-Corruption Adventure, in* THE BEIJING CONSENSUS? HOW CHINA HAS CHANGED THE WESTERN IDEAS OF LAW AND ECONOMIC DEVELOPMENT (Weitseng Chen ed., 2016) (on the official anti-corruption campaign).

[121] An Pei (安培), Wangshi Jiaodian Yi An Shuang Cha (网事焦点一案双), RADIO FREE ASIA, Feb. 6, 2014, http://www.rfa.org/mandarin/yataibaodao/meiti/aw-02062014151216.html (discussing recent trends in the context of Party investigations); *see also* Gillian Wong, *In China, Brutality Yields Confessions of Graft,* ASSOCIATED PRESS

of prominent public officials, the New Citizen Movement underlined that anti-corruption measures must eliminate the arbitrary selection of targets to be effective.

Another campaign was for "equal education rights" (*jiaoyu pingdeng quan* 教育平等权), which primarily aimed to protest the widespread practice of denying the children of migrant workers in cities access to state-funded schools. Like the detention system that provided the setting for Sun Zhigang's death, the bifurcation of rural and urban citizens is based on the *hukou*, or "household registration" system. This system was created in the late 1950s, when China practiced a planned economy.[122] With the Reform and Opening era, the hukou system lost its original function of restricting freedom of movement. As a result of this system, however, internal migrants are sometimes treated like illegal immigrants or as second-class citizens in the urban centers.[123] Since urban centers have created local rules of "immigration control,"[124] most migrants are unable to change their household registration to an urban one. Consequently, these citizens have little to no access to public services, including healthcare and education for their children, who are generally given the household registration of their parents.[125] As a result, these children have to attend privately established schools for migrants, most of which are inferior to the state schools.[126] These inferior schools have occasionally been targeted by orders to close or simply be demolished.[127]

Xu Zhiyong and Gongmeng led efforts to provide legal aid to

(Mar. 10, 2014), http://www.bigstory.ap.org/article/china-brutality-yields-confessions-graft-1.

[122] Statutes on Household Registration, *Hukou dengji tiaoli* (户口登记条例) passed on Jan. 9, 1958 by the NPC.

[123] XUEFEI REN, URBAN CHINA 55 (2013); Donald C. Clarke, *The Famous Hukou Editorial,* CHINESE LAW PROF BLOG (Mar. 26, 2010), http://lawprofessors.typepad.com/china_law_prof_blog/2010/03/the-famous-hukou-editorial.html.

[124] A quota system was established by individual urban centers. *See* Wang Fei-Ling, *Reformed Migration Control and New Targeted People: China's Hukou System in the 2000s,* 177 CHINA QUARTERLY 115, 119 (2004) (describing the trend to abolish quotas in the period from 1997 to 2002).

[125] Charlotte Goodburn, *Educating Migrant Children: The Effects of Rural-Urban Migration on Access to Primary Education, in* SPOTLIGHT ON CHINA: CHANGES IN EDUCATION UNDER CHINA'S MARKET ECONOMY (S. Guo & Y. Guo eds., 2015) https://kclpure.kcl.ac.uk/portal/files/12725675/Charlotte_Goodburn_chapter_Educating_Migrant_Children_revised.pdf.

[126] *Id.* at 6.

[127] Zhao Han, *Rule Change Forces Migrants' Children Out of Beijing for School,* CAIXIN MAGAZINE (Feb. 16, 2015), http://english.caixin.com/2015-02-16/100784599.html.

parents challenging the exclusion of their children from state schools for several years. They had established an informal network of parents who supported their efforts. These efforts became a central part of the New Citizen Movement, which included at least one occasion where approximately one hundred family members of children who were denied access to state schools went to the "Letters and Visits" office of the Ministry of Education in Beijing to submit a complaint about the relevant policies. While authorities later claimed that this activity had seriously disrupted ministry workers, the New Citizen Movement asserted that their actions were conducted in a peaceful, non-disruptive manner.[128]

Both the campaign for equal education rights for migrant worker children and the campaign for asset disclosure were political and pedestrian at the same time. They made specific demands that could be expected to garner sympathy among large numbers of people. Providing access to education for children and implementing effective ways of combating corruption are popular concerns in Chinese society. Transparent use of public funds, public scrutiny of power-holders susceptible to the temptations of corruption, and basic equality of access to public services are also vital to any legitimate political system. Thus, these concerns connect to wider concerns about the functionality of the political-legal system. Soon, pictures of activists unfurling nearly identical banners in a variety of urban locations all over China were circulated via the same social media used to organize such activities.[129]

In China's South, similar initiatives emerged. Like Xu Zhiyong, co-initiator of the New Citizen Movement, Guo Feixiong (郭飞雄), also saw the street movements emerging in the South as the next stage in advocacy and activism that had begun with work on individual cases.[130]

> We . . . organized a signature campaign to demand that the National People's Congress ratify the UN Covenant on Civil and Political Rights (ICCPR). We coordinated small-scale street protests in eight cities in support of ICCPR and the government's anti-corruption policy. Both actions were part of our strategy to promote the drafting of sound laws and the

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[128] BJ, Zhangqingfang Lushī: Xuzhiyong An Zhenxiang (Xiuding Ban) (张庆方律师：许志永案真相（修订版)), July 17, 2015, http://www.hrichina.org/chs/zhong-guo-ren-quan-shuang-zhou-kan/zhang-qing-fang-lu-shi-xu-zhi-yong-zhen-xiang-xiu-ding-ban-tu.

[129] *See* Gongmin Zhuankan (公民专刊), 8 CITIZEN SPECIAL ISSUE (2013) (pictures from various locations).

[130] Guo Feixiong is the pen name of Yang Maodong (杨茂东), a noted scholar and human rights defender. *See Case History: Guo Feixiong*, RIGHTS DEFENDERS, https://www.frontlinedefenders.org/en/case/case-history-guo-feixiong.

> abolition of harmful ones. This activity was *a significant step forward* in pressing against government red lines and in addressing universal values in civic action—*not just protesting individual grievances*.[131]

Some argued that the Southern Street Movement differed in certain respects from the New Citizen Movement. They thought that it was possibly even further-reaching or, in the eyes of the government, more directly politically provocative.

> The New Citizen Movement mostly raises issues like equal education rights and financial disclosure: this does not touch so much on the system and is still more moderate. Whereas actions here in the streets in the South address more directly the central problems of the system, for example, by requesting that the State ratify the ICCPR.[132] And, many of the slogans here are about democracy and constitutionalism and so on. They are more direct.[133]

Some also felt that political debates among human rights defenders in the South were more likely to address the question if non-violent resistance could be successful in China's repressive political environment. The New Citizen Movement took a clear stance against violence, whereas some within the Southern Street Movement were in theoretical support of violent resistance, even though, for strategic reasons, no one supported violent action at this particular time.[134]

As these then-novel debates and initiatives unfolded during 2013, a rights lawyer close to the developments commented that, "[t]here was a sense – I felt there was some loss of control; because the people who participated all had their own preferences, and they were getting so enthusiastic[.]" [135] Predictably, these activities were interpreted as unacceptable challenges to the Party-State order and soon triggered

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[131] Guo Feixiong, *The Sovereignty of the People: My Conviction and My Dream,* CHINA CHANGE (Lousia Chiang & Perry Link trans., Nov. 28, 2014), http://chinachange.org/2014/11/28/the-sovereignty-of-the-people-my-conviction-and-my-dream/.

[132] *See* Yang Ming (杨明), Gongmin Quanli Wu Baozhang, Lianshu Zu Pizhun Renquan Gongyue (公民权利无保障, 连署促批准人权公约), VOICE OF AMERICA CHINESE, May 3, 2013, http://www.voachinese.com/content/china-human-right-20130305/1615327.html.

[133] Interview with Interlocutor #88, in China (2013). In his Statement, Guo states that Chinese civil society is in need of an opposition party, but does not discuss how it could be created. *Supra* note 133.

[134] *See generally* Pils, *supra* note 30.

[135] Interview with Interlocutor #19, in China (2013).

measures to stop and punish the initiators. Lawyers, writers, activists, and entrepreneurs were detained on various charges, including illegal assembly, creating a social disturbance, and gathering a crowd to disrupt order in a public place.[136] Some of those detained were released after a short period of time while others, including Ding Jiaxi (丁家喜), Xu Zhiyong, and Zhao Changqing (赵常青), were convicted and sentenced to prison.[137] It appears that the authorities targeted all those who had participated in an initial meeting in early May 2012, including lawyers, scholars, and other advocates. The Party-State authorities also detained and charged those who had engaged in advocacy in the South, including Guo Feixiong.

Such actions had been anticipated by at least some of the initiators, and became possible for the movement to react by releasing a short video-clip showing Xu Zhiyong defiantly reiterating his support for the New Citizen Movement.[138] The criminal trials of Xu Zhiyong and other New Citizen Movement participants in January and February of 2014 reinforced this message. At the trial hearings, Xu's lawyers and those of other New Citizen Movement defendants remained silent or got their clients to "dismiss" them at the beginning of the trial, to protest its unfairness.[139] For these lawyers, refusing to contribute to the trial hearing process by remaining silent, or by instructing their clients to dismiss them, meant taking a risk; after all, on previous occasions, lawyers who had protested the unfairness of the trial by walking out had been disbarred.[140] Even though the lawyers knowingly incurred risk by employing this strategy, it was more effective than participating in a trial process which they regarded as mere

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[136] China Human Rights Def., *Individuals Unlawfully Detained in Crackdown on Peaceful Assembly, Association & Expression*, (Oct. 2013), http://chrdnet.com/2013/07/individuals-detained-in-crackdown-on-assembly-and-association/.

[137] *Id*.

[138] In the video-clip, Xu Zhiyong says, amongst other things, that his only crimes were calling on everyone to be a citizen, a forthright citizen who exercises their civil rights guaranteed under the Constitution and fulfils a citizen's civic duty, advocating for equal rights to education…and asset disclosure by public officials. Josh Chin, *Prominent Rights Advocate Xu Zhiyong Releases Jail Video*, WALL STREET JOURNAL (Aug. 8, 2013), http://blogs.wsj.com/chinarealtime/2013/08/08/prominent-chinese-activist-releases-jail-video/.

[139] Andrew Jacobs, *Chinese Activist's Lawyers Call His Trial Unfair,* N.Y. TIMES (Jan. 22, 2014), http://www.nytimes.com/2014/01/23/world/asia/chinese-activist.html; Tania Branigan & Jonathan Kaiman, *Xu Zhiyong Trial: Reaction of Chinese Officials Has Unexpected Impact,* THE GUARDIAN (Jan. 22, 2014), http://www.theguardian.com/world/2014/jan/22/xu-zhiyong-trial-china-official-reaction-new-citizens-movement.

[140] *See* DIAO ZHAO MEN (吊照门) [*Disbarment*] (2010), http://vimeo.com/12938865 (a documentary film by He Yang (何杨)).

theatre.[141] In his final statement to the court, Xu Zhiyong reiterated the principles of the Movement he co-initiated, and added an emotional plea:

> When hopes of reform are dashed, people will rise up and seek revolution. The privileged and powerful have long transferred their children and wealth overseas; they couldn't care less of the misfortune and suffering of the disempowered, nor do they care about China's future. But we do. Someone has to care. Peaceful transition to democracy and constitutionalism is the only path the Chinese nation has to a beautiful future. We lost this opportunity a hundred years ago, and we cannot afford to miss it again today.[142]

The fact that the court prevented Xu from reading his statement out in its entirety underlined official anxieties about the civic challenge he spoke of, as well a bureaucratic desire to remain in control of the process. Xu's speech was circulated in print and included in a collection of his works that was translated into English.[143]

At his trial in Guangzhou in November 2014, Guo Feixiong recalled the history of democracy protests since the mid-1980s. He said that the current movement had matured from the setback of 1989. His account of his own experience at the hands of the authorities, which included interrogations, brutal torture, and long hunger strikes, was also an account of survival, recovery, and continuity, sublimated as a belief in continued struggle:[144] "Our dream, passed from generation to generation among activists, 'to see the prisons overloaded with conscientious objectors' is nearing realization. Our faith is that totalitarianism, which negates so completely the humanity in its minions, will one day be driven from the earth."[145]

The emergence of the New Citizen Movement and its southern

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[141] The author attended a meeting of lawyers discussing these risks prior to Xu's trial in January 2014. *See* Interview with Interlocutor #23, in China (2013) (on the assessment of the trial process as theatre).

[142] Xu Zhiyong, *For Freedom, Justice, and Love - My Closing Statement to the Court,* CHINA CHANGE (Jan. 22, 2014), http://chinachange.org/2014/01/23/for-freedom-justice-and-love-my-closing-statement-to-the-court/.

[143] XU ZHIYONG, TO BUILD A FREE CHINA: A CITIZEN'S JOURNEY 267-82 (Joshua Rosenzweig & Yaxue Cao trans. 2017); *see also* Ian Johnson, *When the Law Meets the Party,* N.Y. REVIEW OF BOOKS (Aug. 17, 2017).

[144] Guo, *supra* note 133. According to his friends, Guo had tried to avoid becoming an indispensable leader, arguing that the more dispensable he was to his supporters, the safer he would be anyway. Interview with Interlocutor #88, in China (2013).

[145] *Id.*

counterpart show how, in China's conflicted and hybrid system, a system that combines liberal and authoritarian elements, their principled opposition to authoritarian practices could very well drive a growing number of legal advocates into political opposition. The evolution of these movements also reflects the maturing of rights advocacy from work on individual cases and more specific causes to work on the broader, more abstract, and ambitious goals of a transition to constitutional democracy and rule of law.

The incarceration of some of the main protagonists of these initiatives was expected and accepted as a consequence of advocacy. When they went to prison, the structures of communication and coordinated action that Xu and Guo helped create remained active. Their concluding statements and many other messages of a similar nature continue to be disseminated, and as recently as April 2016, rights defenders continue to host "same city citizen meals" in China.[146]

In the face of widespread criticism of these verdicts and a wider crackdown, the Party-State media insisted that the criminal justice process had been lawful and the verdict just. The following comment in an official newspaper is typical; it insists that the law has been followed in Xu's case and that no political or legal judgment has been passed:

> The [first] decision of the Beijing Intermediate Court was made in accordance with the current law and exhibited a firm and resolute attitude. This decision was neither about Xu Zhiyong's morals [*daode*] or personal fiber [*renpin*]; nor was it to determine the nature of the slogans he shouted. It was merely an authoritative decision about where the legal boundaries lay, and about how far Xu Zhiyong had transgressed these boundaries.
>
> We believe that Chinese society truly needs such decisions, indeed, that it urgently needs them. While some people just are not very clear about what constitutes lawful, unlawful, or indeed criminal conduct in areas that concern politics, a minority of people love engaging in risky actions and taking their chances on whether the law will impose sanctions on their conduct.[147]

In fact, Xu Zhiyong was not only prevented from making his concluding statement in full. He later revealed that he had been tortured with cigarette butts and subjected to sleep deprivation during the initial months of his pre-

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[146] Interview with Interlocutor #139, in China (2016).

[147] *Xu Zhiyong Pan 4 Nian, Falu Mingque Taidu He Chidu* (许志永判 4 年，法律明确态度和尺度) [Xu Zhiyong sentenced to 4 years, the law provides clarity in terms of attitude and standards], GLOBAL TIMES (Jan. 27, 2014), http://opinion.huanqiu.com/editorial/2014-01/4793763.html.

trial detention.[148] Guo Feixiong appears to have suffered even worse treatment, not only in pre-trial detention, but also while serving his prison term.[149] No country "urgently needs" criminal processes like the one these two rights defenders had to endure.

This defensively-worded comment stands in clear contrast to the commentary the Party-State (and its controlled media) produced in later cases in the Xi Jinping-era. Xu and Guo had been placed under pre-trial detention in the spring and summer of 2013, during the early months of Xi Jinping's leadership. It was only later that the system began to control and repress human rights defenders and wider civil society in unprecedented ways. The China that Xu was "released" into at the conclusion of his prison term in July 2017 was already a different place from the one in which he had been detained.[150]

V. LAWYERS IN CIVIC OPPOSITION SINCE THE CRACKDOWN ON THE NEW CITIZEN MOVEMENT

Changes signaling a more explicit and unambiguous rejection of the values that rights lawyers and their movements had sought to defend under Xi Jinping's leadership began in 2013, the year of the crackdown on the New Citizen Movement and the Southern Street Movement. During Xu Zhiyong's formal criminal detention, a document known as "Document No. 9" became widely circulated and revealed the Party-State's intention to stop the discussion of so-called "universal values" in places of learning.[151] At its Fourth Plenary Meeting in October 2014, the Party announced that Party leadership and socialist rule of law with Chinese characteristics were

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[148] Zhang Qingfang, *Xu Zhiyong An Zhenxiang (Xiuding Ban)* (许志永案真相(修订版)), CHINA CITIZENS MOVEMENT (July 17, 2015), http://xgmyd.com/archives/1378; *Bu Fangqi Ziyou Gong Yi Ai! Xu Zhiyong Chu Yu Hou Jieshou Gang Mei Zhuanfang* (不放弃自由公义爱！ 许志永出狱后接受港媒专访) [I will not abandon freedom, justice and love! Xu Zhiyong gvies interview to Hong Kong media after his release], RADIO FREE ASIA (Aug. 11, 2017), http://www.rfa.org/mandarin/Xinwen/XQL-08112017032826.html; Liu Yue (刘跃), Tanfang Xuzhiyong Boshi Xiao Ji (探访许志永博士小记) [Notes on visiting Dr Xu Zhiyong], BOXUN (Aug. 15, 2017), https://peacehall.com/news/gb/pubvp/2017/08/201708151023.shtml.

[149] *Update to UN on case of Guo Feixiong,* NCHRD (July 14, 2015), https://www.nchrd.org/2015/08/update-to-un-on-case-of-guo-feixiong-july-14-2015/.

[150] *Xu Zhiyong Release from Prison,* CHINA CHANGE (July 15, 2017), https://chinachange.org/2017/07/15/new-citizens-movement-leader-xu-zhiyong-released-from-prison/.

[151] *Document 9: A ChinaFile Translation,* CHINA FILE (Nov. 8, 2013), http://www.chinafile.com/document-9-chinafile-translation; *Mingjing Yuekan Dujia Quanwen Kan Fa Zhonggong 9 Hao Wenjian* ((明镜月)独家全文刊发中共 9 号文件) [The Mirror exclusive publication of the full text of the Party's Document Number Nine], MINGJING (明镜) (Aug. 20, 2013), http://www.molihua.org/2013/08/9_7925.html.

"identical."[152] In other words, the Party rejected a liberal conception of law limiting public power, and instead signaled that its domination of the legal-political process was acceptable and suited to China's 'national condition' (国情 *guoqing*). In 2015, the Party-State created laws and issued Party rules that gave effect to the re-organization of "social organizations" on corporatist principles and harsh control of foreign civil society organizations operating in China.[153] The Party-State also created and revised its national security legislation in ways reflecting more authoritarian, if not neo-totalitarian, concept of law. For example, the 2015 National Security Law invoked "People's Democratic Dictatorship"[154] as a guiding principle,[155] after decades of comparative reticence on the idea of ruling as a dictatorship against the enemies of the People.

Regarding the legal profession, these changes of norms and attitudes have manifested in two major ways. On one hand, there was an attempt to recruit the legal profession for the purposes of the Party-State in legal dispute resolution.[156] For example, a November 2015 Party Political-Legal Committee "opinion" announced that licensed lawyers would be expected to assist the authorities, and required to "volunteer" their services to help the Party-State address mass grievances. They were to "help petitioners get a correct understanding of the opinions of the authorities regarding the lawful handling of the case" or, in case the authorities had made a mistake, "make suggestions to the governmental and legal authorities," or help petitioners apply for relief and assistance.[157] If successful, this cooptation

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[152] *CCP Central Committee Decision concerning Several Major Issues in Comprehensively Advancing Governance According to Law*, CHINA LAW TRANSLATE (Oct. 28, 2014), http://chinalawtranslate.com/fourth-plenum-decision/?lang=en.

[153] Orville Schell, *Crackdown in China: Worse and Worse,* CHINA FILE (Apr. 4, 2016), https://www.chinafile.com/nyrb-china-archive/crackdown-china-worse-and-worse.

[154] People's Democratic Dictatorship (Renmin Minzhu Zhuanzheng 人民民主专政). The CPC and state represent and act on behalf of the people, but may use dictatorial powers against reactionary forces. In Chinese, the word used for 'dictatorship' (*zhuanzheng* 专政) does not have clearly negative connotations, unlike 'dictator' (*ducaizhe* 独裁者) or 'hegemon' (*bawang* 霸王).

[155] Art. 2, 中华人民共和国国家安全法 [National Security Law of the People's Republic of China], passed on 1 July 2015 at the 15th meeting of the Standing Committee of the 12th National People's Congress.

[156] One might argue that this continued a trend of weakening adjudicative dispute resolution mechanisms begun earlier. Carl F. Minzner, *China's Turn against Law,* 59 AM. J. COMP. L. 935 (2011).

[157] Zhongyang zhengfawei "guanyu jianli lüshi canyu huajie he daili sheaf shesu xinfang anjian zhidu de yijian [shixing]" (中央政法委 关于建立律师参与化解和代理涉法涉诉信访案件制度的意见(试行)) [Party Central Political Legal Committee "Opinion on Establishing A System for Lawyers to Participate in Resolving and Acting as Legal Representatives in Litigation-Related Petitioning Cases (Trial Version)"], Nov. 10, 2015,

strategy could gradually turn lawyers into assistants of the Party-State legal institutions. It could shift the lawyer's responsibility. Rather than being primarily responsible for the rights and interests of the clients, the proposed policy seemed to create a duty to act on behalf of the government.

On the other hand, new rules and draft rules were introduced to tighten the already existing limitations of independent legal advocacy and recruit law firms as collaborators in enforcing such limitations. For example, a September 2016 Ministry of Justice Regulation on the Management of Law Firms imposed stringent requirements on Chinese law firms. Law firms must ensure, inter alia, that their lawyers not:

> [P]ublish distorting or misleading information on cases handled by themselves or others, or maliciously hype up cases . . . put pressure on the authorities and attack legal authorities or undermine the legal system by setting up groups, producing joint letters, or by publishing open letters . . . humiliate, defame, threaten or beat judicial personnel or participants in a litigation, or engage in denial of the state-determined nature of an evil sect organization or other conduct seriously disrupting court order [or] publish or disseminate speech that denies the political order laid down in the Constitution, denies fundamental principles or endangers national security, or use the internet or the media to stoke discontent toward the Party and Government.[158]

Law firms are essentially placed under an obligation to ensure that their staff politically censor themselves. Noncompliance, according to Article 26 of the Regulation, puts the firms' continued registration and, hence, its very existence at risk.

These two trends of eliminating rights lawyers and remodeling the duties of other lawyers correspond to a reconceptualization of law along more authoritarian, if not neo-totalitarian or totalist, lines in the Xi-era. According to Carl Schmitt's concept of the political and his idea of the "total state," the very idea of the political requires the identification of enemies; 'the political' has primacy in all legal orders regardless of their specific design and institutions.[159] This approach supports an understanding of the

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http://news.xinhuanet.com/politics/2015-11/09/c_1117086504.htm (affirming that lawyers must respect the principles of (1) voluntariness (petitioners' wishes must be respected, no one must be forced to resolve [their grievance], no favoritism toward the governmental-legal authorities; no misleading of petitioners); (2) legality; (3) seeking truth from facts; (4) pro bono provision of services – no compensation for the lawyers).

[158] Art. 50, Lüshi shiwusuo guanli banfa (律师事务所管理办法) [Regulation on the Management of Law Firms], promulgated by the Ministry of Justice on 6 Sept. 2016, effective 1 Nov. 2016, http://www.gov.cn/gongbao/content/2016/content_5109321.htm.

[159] According to Schmitt, enmity as a political concept is the essence of the

institutions of the law as projecting the power of the state, not its limitation by law.[160]

It is against this background that we must understand the crackdown on human rights lawyers and lay human rights defenders that followed the rise and repression of the New Citizen and Southern Street Movements. The "709 Crackdown" began with the detention of Lawyers Wang Yu and Bao Longjun and their sixteen-year-old son, Bao Zhuoxuan, on July 9, 2015.[161] Around the same time, the authorities also detained and questioned numerous other rights lawyers and their assistants. Some of those detained and questioned were connected to Fengrui Law Firm. Others were connected to rights lawyer Li Heping; and a third group was connected to activist Hu Shigen and his supporters.[162]

It became clear that the 709 Crackdown differed from earlier action, not only in terms of its scope, but also in terms of its claimed justification, purpose, and specific methods. The authorities had no hesitation in directly threatening prosecution for the mere act of taking up legal representation of, or engaging in advocacy for, a professional rights lawyer, and demanding written guarantees of not engaging in appeals to release their fellow rights lawyers. One lawyer, who was caught getting off a train and later interrogated by police from his hometown, was warned that he would not be allowed to provide criminal defense to fellow lawyers detained in the course of the crackdown. Otherwise, the police told him, he would be regarded as a "co-suspect."[163] In addition to the main targets, who were detained, hundreds of lawyers and supporters were subjected to brief

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political; and it is connected to a 'right to kill' – *ius vitae ac necis*. CARL SCHMITT, THE CONCEPT OF THE POLITICAL 48 (George Schwab trans., 2007).

[160] CARL SCHMITT, POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY 5 (George Schwab trans., 1985) ("Sovereign is he who decides on the exception."); *see also* CARL SCHMITT & LEO STAUSS, IN THE CHINESE-SPEAKING WORLD: REORIENTING THE POLITICAL (Karl Marchal & Carl K.Y. Shaw eds., 2017); Flora Sapio, Carl Schmitt in China, CHINA STORY BLOG (Oct. 7, 2015), https://www.thechinastory.org/2015/10/carl-schmitt-in-china/.

[161] "709" thus refers to the date when the crackdown began.

[162] Over three hundred individuals, including many lawyers, are thought to have been affected by the crackdown. *See ['709 Crackdown'] Latest data and development of cases as of 1800 17 October 2017*, CHINA HUMAN RIGHT'S LAWYERS CONCERN GROUP (Oct. 17, 2017), http://www.chrlawyers.hk/en/content/%E2%80%98709-crackdown%E2%80%99-latest-data-and-development-cases-1800-17-october-2017. For further details on the 709 crackdown China Human Rights Lawyer Concerns Group; Alex W. Palmer, *Flee at once: China's besieged human rights lawyers*, N.Y. TIMES (July 25, 2017), https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html.

[163] Interview with Interlocutor #137, in China (2016); *see also* Interview with Interlocutor #121, in China (2016); Interview with Interlocutor #138, in China (2016).

detentions or coerced "chats" (被谈话).[164] The authorities released most of the lawyers who were held or informally "invited to chat" after a few hours or days.[165]

From the first days of the crackdown, the Party-State authorities engaged in intense efforts to publicize their actions and to vilify the victims of their persecution. Within days of the first detentions, newspapers and national Chinese television carried elaborate, lengthy reports on the detainees, who were described as part of a "rights defense ring."[166] In August 2016, some lawyers and their co-workers were subjected to "televised trials," during which they made even more elaborate statements of submission to the authority of the Party-State; others were forced to give "interviews" to the media.

For example, one lawyer, Zhou Shifeng, was televised during his subversion trial in August 2016. According to official reports of his and some of his colleagues' trials, supplemented by purported trial "transcripts,"[167] the accused had "used a law firm as a platform to hype up key cases and incidents, and carry out activities to subvert state power," and, together with others, he had "put forward systematic ideas, methods, and measures for the subversion of state power."[168] About to be convicted and sent to prison for seven years, Zhou Shifeng not only admitted guilt, he also spoke of his deep gratitude toward the Party-State – the very authorities who

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[164] China Human Rights Lawyers Concern Group (CHRLCG) and Chinese Human Rights Defenders (CHRD).

[165] Among some twenty-five human rights lawyers sought out for (anonymous) conversations about 7-09 in 2016 and 2017, only one had entirely avoided the coerced 'chat.'

[166] *See, e.g.*, Cao Yin, *Lawyers 'Tried to Influence Verdicts',* CHINA DAILY (July 13, 2015), http://www.chinadaily.com.cn/china/2015-07/13/content_21255261.htm; *Gui Quan Zhen Luan--- Yi Tu Du Dong "Weiquan" Quan* (贵圈真乱--- 一图读懂"维权"圈) [Your Circle is a Real Mess – Explaining the "Rights Defence Ring" in One Graphic] FAZHI RIBAO (法制日报) [Legal Daily] (July 13, 2015), http://www.legaldaily.com.cn/zt/content/2015-07/13/content_6168094.htm?node=73108; *see also* Jeremy Daum, *Lawyer Cases Infographic*, CHINA LAW TRANSLATE (July 15, 2015), http://chinalawtranslate.com/lawyer-cases-infographic/?tpedit=1&lang=en.

[167] Transmitted by social media, on file with author.

[168] *Annotated Excerpts from Hu Shigen and Zhou Shifeng's Trial Transcripts,* HUMAN RIGHTS IN CHINA (Aug. 12, 2016), http://www.hrichina.org/en/annotated-excerpts-hu-shigen-and-zhou-shifengs-trial-transcripts. Lawyer Li Heping was accused of "using funding from a certain foreign NGOs to engage in activities to subvert state power." Zhai Yanmin was accused of "unlawful organizing petitioners to make unruly petitions and to stir up trouble in order to carry out activities to subvert state power." Gou Hongguo (who was convicted and, like Zhai, given a suspended sentence) is also mentioned in this outline.

had publicly broadcast his statement of repentance shortly after his initial detention[169] and held him *incommunicado* for over a year.

> Esteemed Presiding Judge, judges, state prosecutors and my two esteemed defense lawyers: you have all been put through so much trouble! Through today's trial, I have come to realize fully what crimes I have committed, and the harm my actions have caused to the Party and the Government. I hereby express my deepest repentance toward our government! [*Bows*]. I trust that a trial so replete with fairness and justice and the rule of law as this will result in a fair verdict, and that it shall stand the test of history and legal scrutiny. I admit guilt and repent, admit guilt and subject myself to the law; and I will never appeal! . . . I thank the court! I thank the prosecutor! I thank my lawyers![170]

It is difficult not to speculate that the implausible obsequiousness of these remarks might have been meant to send a message to his supporters. His mention of "the Party and State" and his expression of gratitude toward his lawyers after the other participants in the trial certainly reflected the hierarchies underlying such a 'politically sensitive' trial.

Whether sarcasm was Zhou's intention, however, is uncertain. As in other 709 cases, the authorities had taken far too much care to ensure that he would not be able to speak independently to anyone who might transmit a genuine message, from the moment he was first detained. For the first six months, he was placed under "residential surveillance in a designated location," a measure available in state security crimes cases, which ensures he was completely without access to legal counsel. The authorities ensured that Zhou was 'represented' by a lawyer the authorities had chosen and that the two had no interaction until trial.[171] Authorities also ensured that Zhou's

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[169] Vivienne Zeng, *Human Rights Lawyers Targeted in Unprecedented Crackdown,* H.K. FREE PRESS (July 13, 2015), https://www.hongkongfp.com/2015/07/13/human-rights-lawyers-targeted-in-unprecedented-crackdown/.

[170] *Annotated Excerpts from Hu Shigen and Zhou Shifeng's Trial Transcripts,* HUMAN RIGHTS IN CHINA (Aug. 12, 2016), http://www.hrichina.org/en/annotated-excerpts-hu-shigen-and-zhou-shifengs-trial-transcripts. *See also Zhou Shifeng Shexian Dianfu Guojia Zhengquan An Yishen Kaiting Dang Ting Chengren Fanzui Shishi* (周世锋涉嫌颠覆国家政权案一审开庭 当庭承认犯罪事实) [At his trial hearing in a case of suspected subversion of State power, Zhou Shifeng admits to the facts of his crime], XINHUA (Aug. 4, 2016), http://www.chinanews.com/sh/2016/08-04/7961539.shtml.

[171] *Lawyer Zhou Shifeng sentenced to 7 years in prison*, FRONT LINE DEFENDERS, https://www.frontlinedefenders.org/en/case/lawyer-zhou-shifeng-sentenced-7-years-prison; Huang Zheping, *China is using televised confessions to shame detained lawyers, journalists, and activists*, QUARTZ (July 15, 2015), https://qz.com/453477/china-is-using-

family would not attend the trial by procuring a note, handwritten by Zhou, stating that he did not want his family to attend because "they are all peasants with low educational attainment and . . . it would not be good for me or them."[172] While no independent accounts of Zhou's trial are available, the author received a detailed account of another trial that was carefully negotiated and scripted, indeed, rehearsed in one of the other 709 Crackdown cases.[173] The available film footage accords with an assessment that the trial was scripted.[174]

Zhou's was not the only case of such startling shows of self-humiliation. For example, his former employee, Wang Yu, who was also detained for over a year without access to independent counsel "on suspicion of state subversion," was put on display for her "release on bail" on August 1, 2016.[175] Speaking to reporters in what appeared to be a holiday resort, Wang renounced her former advocacy, denounced two, foreign human rights organizations for giving her awards earlier that year,[176] and, like Zhou, thanked and praised the authorities.[177] The effects of these

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televised-confessions-to-shame-detained-lawyers-journalists-and-activists/.

[172] Tianjin Er Zhong Yuan: Zhou Shifeng xiang fayuan shumian qingqiu bu xiwang qinyou pangting tingshen (天津二中院：周世锋向法院书面请求不希望亲友旁听庭审) [Tianjin Second Intermediate Court: Zhou Shifeng Expresses Hope That the Court Not Invite His Family to Attend Hearing in Written Request], PEOPLE'S NETWORK (Aug. 3, 2016), http://legal.people.com.cn/n1/2016/0803/c42510-28608968.html.

[173] Interview with Interlocutor #300, in China (2017).

[174] *See also* Jun Mai, *How Chinese Rights Lawyer's Courtroom Mea Culpa Went Off Script,* SOUTH CHINA MORNING POST (Aug. 22, 2016), http://www.scmp.com/news/china/policies-politics/article/2006700/how-chinese-rights-lawyers-courtroom-mea-culpa-went. In a 10-minute final statement, the Peking University law school master's degree holder praised China's legal system, saying it was 'so much beyond the Western rule of law', and that the trial would 'stand the test of the world'. The praise was not included in the official transcript published hours later.

[175] Javier C. Hernandez, *China Frees Wang Yu, Human Rights Lawyer, After Videotaped Confession*, N.Y. TIMES (Aug. 1, 2016), https://www.nytimes.com/2016/08/02/world/asia/human-rights-lawyer-is-released-in-china-after-videotaped-confession.html.

[176] Namely, the American Bar Association and the Ludovic Trarieux Human Rights Prize Committee.

[177] Bei bu nü lüshi pi waiguo chaozuo weiquan shijian, tu gao luan zhongguo (被捕女律师批外国炒作维权事件, 图搞乱中国) [Arrested woman rights defense lawyer criticizes foreigners for hyping up of rights defense cases and creating havoc in China], Aug. 1, 2016, https://www.evernote.com/shard/s574/sh/d6cf6fa4-2bac-46d6-acdc-34e0ce4016f2/95c538412cc5d523ffd5bb0d3198dc40; Jerome A. Cohen, *More on rights lawyer Wang Yu's "confession and release" and China's revival of "brainwashing" practice*, JERRY'S BLOG (Aug. 3, 2016), http://www.jeromecohen.net/jerrys-blog/2016/8/3/more-on-rights-lawyer-wang-yus-confession-and-release-and-chinas-revival-of-brainwashing-practice; Eva Pils, *"If Anything Happens…": Meeting the Now-*

displays were magnified by accompanying articles in official news media, as well as further audio-visual materials. For example, officially-circulated video-clips cast human rights advocates as enemies, visually associating them with images of United States warfare and portraying Chinese human rights advocates as part of a United States plot to subvert China.[178]

It was only in January 2017 that it became possible to confirm some of the facts explaining the 709 Crackdown. Victims had a strange and unsettling collaboration with the authorities in the criminal process. In late January 2017, Li Chunfu, a lawyer who had been held since September 2015, was released after spending five hundred days in incommunicado detention with signs of serious mental illness.[179] A few days later, one lawyer, Xie Yang, finally met with his defense lawyer, to whom Xie Yang provided a detailed account of his torture. His lawyer decided to publish the news.[180] In July 2017, another lawyer, Wang Yu, released a statement in which she described how she had been kept confined in a small box, deprived of food, and tormented in various other ways during her detention.[181] By July 2017, it had emerged that six detainees were alleged to have been forcibly drugged. One of them commented during an interview in July 2017:

> It made you think you were finished this time. Mentally, it was [the scariest], because you couldn't know [what you'd been given] and so you thought, for sure they want to kill you. You won't get out of here alive.

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detained Human Rights, CHINA CHANGE (Jan. 10, 2016), https://chinachange.org/2016/01/10/if-anything-happens-meeting-the-now-detained-human-rights-lawyers/.

[178] Lin Leyuan (林乐媛), *Yanse Geming* (颜色革命) [Color Revolution] YOUTUBE (Aug. 4, 2016), https://www.youtube.com/watch?v=8qBt-i9ErSY.

[179] Wang Qiaoling, *Chinese Rights Lawyer Li Chunfu Mentally Disturbed and Physically Ruined After Abuse in Custody,* (Cao Yaxue trans.) CHINA CHANGE (Jan. 13, 2017), https://chinachange.org/2017/01/13/chinese-rights-lawyer-li-chunfu-mentally-disturbed-and-physically-ruined-after-abuse-in-custody/.

[180] Xie Yang & Chen Jiangang, *Transcript of Interviews with Lawyer Xie Yang (3) - Dangling Chair, Beating, Threatening Lives of Loved Ones, and Framing Others,* CHINA CHANGE (Cao Yaxue trans., Jan. 21, 2017), https://chinachange.org/2017/01/21/transcript-of-interviews-with-lawyer-xie-yang-3-dangling-chair-beating-threatening-lives-of-loved-ones-and-framing-others/?.

[181] Wang Yu, Bao Longjun: zhijing "709" an bianhuren 王宇、包龙军：致敬！"709"案辩护人 [Saluting the defenders in the "709" cases], BOTAN WEB, July 12, 2017, https://botanwang.com/articles/201707/%E7%8E%8B%E5%AE%87%E6%9B%9D%E5%85%89%E9%85%B7%E5%88%91%E3%80%80%E6%84%9F%E8%B0%A2%E5%85%B3%E6%B3%A8%E4%BF%83%E5%A4%84%E5%A2%83%E6%94%B9%E5%96%84.html.

> It was only in there that I understood what torture was. Whatever we'd been imagining before was nowhere near what it was like.[182]

These revelations were enlightening. Once it was understood that authorities were forcefully drugging the prisoners and thus affecting their mental states, it was no longer hard to understand why, unlike earlier persecuted rights defenders and dissidents, several of these latest victims had co-operated so much with the authorities.

The contrast between the 709 detainees' experiences, their public displays showing the former rights advocates entirely subdued, and the earlier trials of Xu Zhiyong, Guo Feixiong, et al., is significant in several respects. Xu, Guo, and their families were subjected to unjust ordeals at the hands of the authorities. Yet, up to the point when they were tried, they clearly managed to preserve some dignity, sanity, and sense of purpose. In their concluding statements, they were able to state their goals and their resolve to continue their advocacy once released, and to integrate their incarceration into a biography of legal-political activism.

Moreover, those prosecuted for participating in the New Citizen Movement and Southern Street Movement had preserved their public personae as advocates for a more liberal China. One might even argue that their profiles had been enhanced by what was done to them. For example, Xu Zhiyong's release of a video-clip from pre-trial detention, and Xu's and Guo's remarkable trial statements might suggest this conclusion. They clearly envisaged coming out of prison in a state that would allow them to continue their work and self-defined mission. The same was not true, by all available accounts and information, of any of the detainees affected by the 709 crackdown. The attacks on the 709 detainees' mental and physical integrity were amplified by the way its results were broadcast and advertised to China and the world. An interlocutor commented in April 2016:

> [These reports] have, in the eyes of many [rights lawyers] done the worst harm to us because many ordinary people will be inclined to trust these official reports. They might have come across some positive information about rights lawyers; but after these detentions, they will be informed that these lawyers were working in their own interest, to earn foreign money, and that this entire circle has actually been doing these things under the direction of foreign anti-China enemy forces.[183]

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[182] Eva Pils, *A New Torture in China, in* CHINA POLICY INSTITUTE: ANALYSIS (Aug. 10, 2017), https://cpianalysis.org/2017/08/10/a-new-torture-in-china/.

[183] Interview with Interlocutor #124, in China (2016).

Looking back to the New Citizen Movement, Southern Street Movement, and similar groups and initiatives from the vantage point of 2017, it is in some ways easy to gauge how it will be possible for people in China to choose to 'be a citizen' (*zuo gongmin,* 做公民)[184] in the Xi Jinping era. This was a demanding and dangerous choice in the years 2012 and 2013 and has become more difficult since.

Yet, there is evidence that even in the face of the unprecedented 709 Crackdown, the extant community of human rights lawyers and lay human rights defenders has rallied and continued to operate, and that social networks, once created, are hard to destroy completely. Despite intimidation in the wake of the 709 detentions, numerous lawyers organized support for their detained colleagues. For example, the more well-known among the rights lawyers successfully recruited lawyers not yet known to the authorities to take on the criminal defense of their incarcerated colleagues.[185] After the accounts of Xie Yang's torture were disclosed, dozens of lawyers and other supporters came forward with pictures of themselves bearing messages of opposition to torture and support for Xie Yang and other lawyers. Activities directly targeted by the crackdown, such as workshops on sensitive issues, continue to be held.[186] In some cases, spouses of the 709 detainees transformed themselves into resourceful advocates on behalf of their spouses and others detained in the 709 crackdown.[187] The website that was created as a platform for the New Citizen Movement continues to post analyses and commentary. Its title page continues to display Xu Zhiyong's appeal:

> Citizens, let us begin right now. No matter where you are, what your profession is, and whether you are poor or rich, let us all from the bottom of our hearts, in our real lives, on the internet and on every inch of Chinese soil, firmly and proudly proclaim the status that has been ours all along: I am

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[184] *See* Xu Zhiyong, TO BUILD A FREE CHINA: A CITIZEN'S JOURNEY (Joshua Rosenzweig & Yaxue Cao trans., 2017) (translating Xu Zhiyong's work titled, BEING A TRUE CITIZEN).

[185] Interview with Interlocutor #128, in China (2016); Interview with Interlocutor #130, in China (2016).

[186] Interview with Interlocutor #124, in China (2016); Interview with Interlocutor #125, in China (2016).

[187] Catherine Lai, *Reluctant Human Rights Defenders: The Wives of Those Detained in China's Lawyer Crackdown,* H.K. FREE PRESS (July 9, 2015), https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html; Alex W. Palmer, *Flee at Once: China's Besieged Human Rights Lawyers,* N.Y. TIMES (July 25, 2017), https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html.

a citizen, we are citizens.[188]

VI. CONCLUSION

This article has analyzed changes in rights lawyer advocacy over the past two decades. Focusing on the transmutations of lawyer-driven human rights advocacy from the Sun Zhigang case to the Gongmeng organization and the New Citizen Movement, this article has shown how advocacy has evolved from being largely case-focused to more cause-focused. This article has further shown that, ultimately, lawyer-driven human rights advocacy has evolved into a wider, more explicitly political human rights advocacy, and how this has triggered further political-legal consequences.

The discussion urges two major conclusions. First, the experience of China's human rights lawyers and human rights defenders calls into question the top-down, incremental reform paradigm long dominant in China law scholarship. The lawyers whose experiences and voices have chiefly contributed to this article have found institutional spaces for legal advocacy shrinking; they have reported few successes; and much of their work has resulted in their own persecution. Beyond their own, personal experience, the reconceptualization of law on explicitly anti-liberal terms under Xi Jinping has crushed incremental reform expectations, and this has had severe implications for any further engagement in human rights advocacy.

Second, the shrinking spaces for legal advocacy has prompted rights layers increasingly to reject the existing, fixed, corporatist, and inert Party-State-provided organizational structures, and to reach out to wider circles of liberal-minded citizens to organize and articulate their demands. The trajectory from Gongmeng, as a legal advocacy NGO, to the New Citizen Movement has been used as a particularly important, albeit not the only, example illustrating this trend toward more explicitly political demands as a result of years of suppression of *weiquan* demands and repression of rights defenders. The Party-State is not only absent from these new associative structures, which can be characterized as responses to institutional dysfunction within the Party-State, but is clearly opposed to them, as those who build such structures are well aware.

The exercise of rights of expression and association can strengthen a popular sense of these rights and associated civic values, even where such

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[188] This quotation heads every news round-mail from a Google group named, *Xin gongmin luntan, gongmin zhiyuanzhe* (新公民论坛, 公民志愿者) [New Citizen Forum, Citizen Volunteers]. Xu Zhiyong (许志永), *Weile Ziyou, Gongyi, Ai* (为了自由, 公义, 爱) [For Freedom, Justice and Love], SECRET CHINA (Jan. 24, 2014), http://m.secretchina.com/node/528251; Teng Biao (滕彪) & Hua Ze (华泽), *Wo de ziyou Zhongguo* (我的自由中国) [My Free China] TANGTANG ZHENGZHENG ZUO GONGMIN (堂堂正正做公民) [To Be A Citizen] 345 (2014).

rights are severely curtailed and where their exercise is repressed. Citizens' presence and voice, civic rights advocacy outside of institutions, channels and mechanisms has risen steadily since the beginning of the human rights movement. In China as much as elsewhere, human rights is "a driver language behind values triggering political change,"[189] in Ignatieff's words, or at least a driver language demanding such change.

The trajectory described here is thus also one from legal to political action, and from intra-institutional advocacy to resistance against the institutions of the system. It illustrates the deep connection between freedom of speech and the right of resistance, as the most central case of a right that cannot be understood on positivistic, authority-dependent terms. The model for citizen action which the New Citizen Movement represented might survive crackdowns better than more traditionally organized and visible movements. Together with similar and related initiatives, these actions have helped to crystallize a political momentum. They have created virtual-space networks that persist and can be revitalized for new advocacy purposes, even at times of democratic decline and authoritarian resurgence.

[189] Michael Ignatieff, public panel discussion at King's College London, Yeoh Tiong Lay Centre, YOUTUBE (Oct. 28, 2016), https://www.youtube.com/watch?v=c2qBKq6UCnc.