

Rights Defence Lawyers as Dissidents in Contemporary China

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Abstract

Rights defence lawyers in contemporary China have attracted tremendous attention. Their supporters take them as a leading force for social and political change toward justice, the rule of law and democracy, whereas the hardliners of the ruling Chinese Communist Party regard them as a dangerous hostile force of political dissent. In this article, we will trace the resumption and development of the legal profession in China since the 1980s after its forced disappearance for three decades. Then we will explore the emergence of a group of “rights defence lawyers” in the context of recent economic, social and political changes. The article will end with a discussion about the potential role of rights defence lawyers in China’s social and political transformation. We argue that the name “rights defence lawyer” reflects the current politically charged environment for the legal profession in China and the dual identities of socially concerned lawyers as both legal professionals and rights advocates. We also argue that lawyers in China become political dissidents when defending clients whose rights are violated by the party-state and power holders, and that, in response to political persecution, rights defence lawyers have interacted with other lawyers, other rights activists and the wider society to advance their causes of bringing about justice, the rule of law and democratic political reforms in China. We therefore identify a connection between their lawsuits, including their media campaigns as an extension of those lawsuits, and the rise of rights consciousness and quest for the rule of law in China.

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1. Introduction

On 31st July 2012 the overseas edition of the *People's Daily* published an influential and controversial article “What Are the Real Challenges for China”, listing “rights defence lawyers, underground religions, dissidents, Internet opinion leaders and vulnerable groups” as the five major subversive forces in China.¹ This analysis from the mouthpiece of the Chinese Communist Party (CCP) calls to mind the “Black Five Categories”, namely Landlords, Rich Peasants, Counter-revolutionaries, Bad Elements and Rightists, designated by the party-state as the major categories of “class enemies” during the Maoist Era. Who are these “rights defence lawyers” (*weiquan lüshi* 维权律师) in China? Why do they top this list of subversive forces? In this article, we will trace the resumption and development of the legal profession in China since the 1980s after its forced disappearance for three decades. Then we will explore the emergence of a group of “rights defence lawyers” in the context of recent economic, social and political changes. The article will end with a discussion about the potential role of rights defence lawyers in China’s social and political transformation. We argue that the name “rights defence lawyer” reflects the current politically-charged environment for the legal profession in China and the dual identities of socially concerned lawyers as both legal professionals and rights advocates. We also argue that lawyers in China become political dissidents when defending clients whose rights are violated by the party-state and power holders, and that, in response to political persecution, rights defence lawyers have interacted with other lawyers, other rights activists and the wider society to advance their causes of bringing about justice, the rule of law and democratic political reforms in China. We therefore identify a connection between their lawsuits, including their media campaigns as an extension of those lawsuits, and the rise of rights consciousness and quest for the rule of law in China.

2. The Re-birth of the Legal Profession in China

The modern profession of lawyers was introduced in China during the Late Qing when the Chinese started to “learn from the West”. A full-fledged legal profession and system of modern laws had developed in the Republic of China by the 1940s, before they were rejected by the Chinese Communist Revolution due to their close connection with the Chinese Nationalist Party regime. During the Maoist period, especially in the Cultural Revolution, lawyers and judges were not permitted to practice, and many were imprisoned and persecuted due to their “bourgeois” tendencies. Since the 1980s, as part of the policy of reform and opening to the outside world (*gaige kaifang* 改革开放), efforts have been made by the Chinese communist party-state to

carry out legal reforms and engage with human rights norms as they are embodied in international treaties. Legal reform and development in China have been characterized by massive transplantation of Western laws into the Chinese legal system, and many of these new laws grant further rights to Chinese citizens.² The CCP leadership has also created space for the growth of the legal profession. In 1980, the *Lawyer's Regulation (Provisional) of the People's Republic of China* was passed by the Standing Committee of the 5th National People's Congress (NPC), followed by *The Lawyers Law of the PRC*, which was issued by the Standing Committee of the 8th National People's Congress in 1996. In the 1980s, there were only a few hundred Chinese lawyers employed at the state law firms as "state legal workers". By 2010, there were around 200,000 lawyers working in some 19,000 mostly private law firms nationwide.³

Like lawyers elsewhere, these Chinese lawyers are professionals who make use of their expertise in law to provide paid service and advance the interests of their employers or clients. They have statutory obligations set out in *The Lawyers Law of the PRC* to "safeguard the lawful rights and interests of the parties concerned, ensure the correct implementation of law, and uphold social fairness and justice".⁴ They engage in the whole range of legal business such as lawsuits, legal aid, judicial certification, notarization, contract drafting, and legal mediation. They have played a key role in China's economic development and social reconstruction, although a majority of them have allegedly become brokers of the rich and the powerful.⁵

Rights issues occupy a special position and have become increasingly important in lawsuits in China, alongside the rise of rights consciousness among the Chinese population. The 1989 *Administrative Litigation Law* for the first time authorized lawsuits against government agencies and judicial review of government decisions. Some have argued that this was also the first time in Chinese history that some Chinese citizens began to attach more value to rights than monetary benefits.⁶ Having joined more than 20 international human rights covenants, the Chinese government has also contributed to the rise of rights consciousness in China. In 1991, the Chinese government published its first *White Paper on Human Rights*, followed by similar reports almost annually after 1995. Numerous government-sponsored research centres on human rights were set up throughout the country. The government signed *The International Covenant on Economic, Social and Cultural Rights* in 1997 (ratified in 2001) and *The International Covenant on Civil and Political Rights* in 1998 (pending ratification). After accession to the WTO in 2001, China also revised the *PRC Constitution* in 2004 to add the words "the state respects and protects human rights". More broadly, legal reform and development in China have been characterized by massive transplantation of Western laws into the Chinese legal system, and many of these new laws grant further rights

to Chinese citizens (Zou 2006). Likewise, the Party has officially replaced the concept of “class struggle” with the ideal of “harmonious society” and increased emphasis on rule of law.

Chinese lawyers have made good use of domestic and international human rights laws to assert citizens’ rights, and they have not always been treated as enemies of the state. Indeed, in rights issues that do not pose a direct challenge to the authority of the party-state, such as the rights of consumers, the rights of shareholders, or the rights of women and children, lawyers’ contributions are often welcomed by the government.⁷ As the government introduces still more laws and ratifies human rights and other international treaties, it is bound to face increasing pressure, mainly domestically, to uphold the basic legal rights of its citizens, as set out in these legal instruments and in the *PRC Constitution*.

3. The Chinese Legal System and the Dual Identities of Rights Defence Lawyers

The emergence of the rights defence movement and the group of rights defence lawyers as a leading force of that movement is a complex phenomenon reflecting the current predicament of social movements and the legal system in contemporary China.⁸ The term “rights defence” was originally used by the party-state in the late 1990s to showcase its policy to protect and advance the people’s legal rights and benefits (*hefa quanyi* 合法权益). Chinese citizens then creatively employed the government’s own rights discourse to their advantage. The current popular use of the term sees it as a justification for defence of social, economic, and political rights to which the Party is paying lip service but is not yet prepared to accept in reality. The popular activism to assert these rights since the early 2000s in China has been identified by both the activists themselves and neutral observers as a rights defence movement.⁹ It is this emerging social movement and the institutional context of one-party rule that creates the dual identities of Chinese rights defence lawyers as lawyers and rights activists at the same time.

The rights defence movement has unfolded in two forms, namely collective petitions and protests against rights violations on the one hand and individual litigation and petitions for a legal remedy to address injustice and grievances on the other. The former is defined by the Chinese authorities as “mass incidents”, referring to various forms of collective protests such as unapproved strikes, assemblies, demonstrations, petitions, obstructions, collective sit-ins or physical conflicts, sometimes involving thousands of people and resulting in police and paramilitary intervention leading to loss of life. According to official figures, these “mass incidents” numbered 60,000 in 2003, 74,000 in 2004 and 87,000 in 2005, an average of 200 protests a

day.¹⁰ Official figures were not published after 2006, but according to some sources the number of “mass incidents” continued to rise and jumped to 180,000 in 2010, close to 500 a day on average.¹¹ Most cases of this rights defence movement aim to defend economic and social rights, including protests by peasants against excessive taxes, levies and forced seizures of farmland; strikes of workers against low pay, arrears of pay and poor working conditions; protests by laid-off urban workers against unfair dismissal by their employers; protests by home owners against forced eviction by government and developers; protests of residents against forced relocations; campaigns by citizens for unpaid social entitlements; campaigns for the rights of women and children; and protests of affected residents against environmental pollution. But there are also cases of defending civil and political rights, including campaigns by citizens for the freedom of speech and press; campaigns by practitioners of the Christian house churches and Falun Gong 法轮功 practitioners for the freedom of religion, beliefs, assembly and association; and protests by villagers against irregularities and voter manipulation in village elections.

The latter form of the rights defence movement is led by rights defence lawyers, a small number of legal practitioners who believe in the supremacy of human rights and choose to take on politically sensitive cases in defiance of the party-state. This group of legal practitioners includes licensed lawyers, “bare-foot” (self-educated) lawyers, who are officially allowed to provide legal advice and other legal services without a license, and concerned legal scholars. Ordinary lawyers become rights defence lawyers when they challenge or they are believed to challenge state power or state interests by becoming involved in any cases deemed sensitive or inappropriate to the state. Applying their professional knowledge and in many cases demonstrating great courage, rights defence lawyers have provided both practical support and theoretical justification for the emerging rights defence movement and enjoyed an increasingly high profile in the Chinese and international media.¹²

The Sun Zhigang 孙志刚 case in 2003 has been widely regarded as the landmark event marking the beginning of the rights defence movement in contemporary China. In March 2003, Sun Zhigang, a resident from Hubei Province looking for employment in Guangzhou, was detained for not having proper identity documents and was beaten to death in police custody. The incident triggered nationwide protests led by legal practitioners against institutional discrimination and inhumane treatment of migrant workers. In particular, the petition sent to the National People’s Congress by three young graduates holding PhD degrees in law from Beijing University, Yu Jiang 俞江, Teng Biao 滕彪 and Xu Zhiyong 许志永 generated tremendous public support and forced the state to conduct a rare review on constitutional grounds and abolish the notorious *Regulations on Detention and Repatriation*

of Beggars and the Floating Populace. The event bears the defining features of the rights defence movement led by legal practitioners, using the legal process and grounded in the existing legal framework to redress human rights abuses, especially abuses by power holders. At the same time, these lawyers also made use of publicity to bolster their cause. In this sense, the rights lawyers and rights defence movement helped to define each other. The Sun Zhigang incident also encouraged many law scholars to practise law part-time concurrently with their academic duties.

However, the current Chinese legal system is hostile and harmful to the rights defence movement and rights defence lawyers. There are notorious “evil laws” against lawyers on the books, in particular against those perceived to be rights defence lawyers. In the Criminal Procedure Law, there are discriminatory provisions imposing onerous limitations on lawyers in meeting with their clients, accessing evidence, and investigating facts. The Criminal Law includes broad and vague provisions about “state secrets” that have been cited to prevent lawyers from investigating and obtaining a whole range of evidence. Most notorious is Article 306 of the Criminal Law with regards to “fabricating evidence”, which makes lawyers’ position disturbingly precarious and has been arbitrarily used to charge hundreds of lawyers in general and convict many high profile rights defence lawyers in particular.

Institutionally, lawyers are kept under strict control by the Party and its associated security apparatus. The first layer of control is exercised by the Party, which has an institutionalized status above the law. The CCP Committee of Political and Legal Affairs at each level of the administration is in charge of the daily operation of all legal agencies, including the police, procuratorates and courts. Usually the police chief is concurrently appointed as the secretary of the Committee of Political and Legal Affairs, thus directly subordinating judges and lawyers to the police. The second layer of control comes from the state administration, namely the Ministry of Justice in the central government and Judicial Bureaus at local levels of government. The Judicial Bureaus also use lawyers associations as a proxy to control lawyers. It is compulsory for all lawyers to join a local Lawyers Association, which is automatically a member of the All China Lawyers Association. These lawyers associations are extended arms of the Ministry of Justice at the central level and Judicial Bureaus at local levels, although the professional associations are theoretically meant to be independent from the government and treated as civil society organizations. The independence is illusory however. In 2006, the All China Lawyers Association virtually banned rights defence lawyers from taking “collective cases” involving ten or more people. Likewise, on behalf of the government, the Association issued a regulation requiring lawyers to go through a political screening process and accept the supervision and guidance of judicial administrative organs if they take on “collective

cases”.¹³ Again, originally the Judicial Bureaus were responsible for the annual examination and renewal of the licenses of lawyers. The responsibility has now been partially transferred to Lawyers Associations, which in 2008 revoked the licenses of many rights defence lawyers who openly expressed their willingness to defend the participants in the Tibetan Riot of 2008, or who signed a petition for open elections in the Beijing Lawyers Association.

The third level of control is the naked violence of the State Security Division of the police, political police specialized in the suppression of political enemies of the Party. These political police are given extra-legal powers to keep their targets under round-the-clock surveillance, and even engage in kidnapping and physical assault on their targets, some of whom include rights defence lawyers.

Many rights defence lawyers have become victims of these “evil laws” and hostile institutional arrangements. More often than not, the cases represented by rights defence lawyers are those sensitive cases avoided by ordinary lawyers and it is almost impossible for the rights defence lawyers and their clients to win the cases of this nature. Worse still, many defence lawyers representing those sensitive cases have been turned into defendants themselves by the state procurators on the charges fabricating evidence, leaking state secrets or inciting subversion of state power. High profile cases include Zheng Enchong 郑恩宠’s imprisonment for three years for representing a group of evicted Shanghai residents in a lawsuit against a real estate developer and the local government; Zhu Jiuhu 朱久虎’s detention for representing oil-field operators in Shaanxi whose contractual right to operate oil wells was unilaterally and arbitrarily taken away by the local government without proper compensation; Li Baiguang 李柏光’s detention for representing peasants in Fujian Province fighting for their land rights; Guo Feixiong 郭飞雄’s detention for representing villagers in Guangdong in an action to recall their village leaders; the suspension of Gao Zhisheng 高智晟’s practicing license and the closure of his law firm for defending Falun Gong members; and the suspension of Guo Guoting 郭国汀’s practicing license for defending dissident journalists and Falun Gong practitioners.¹⁴ Besides these cases, there have been many other examples of lawyers’ licences being revoked for engaging in rights defence activities. A report by the Chinese Urgent Action Working Group in 2009 documented thirty-five such cases in 2008-9 alone.¹⁵ And in the most recent government pre-emptive strike on Middle Eastern-style protests in connection with an online call to gather in public places – the so-called Jasmine Spring of 2011 – rights lawyers have again become major targets of intimidation and abuse.¹⁶

Rights defence lawyers in China differ in important ways from human rights lawyers or cause lawyers involved in civil and political rights or broader public interest cases in democracies. In terms of legal process, they are doing

much the same thing as their western counterparts in pursuing interests that are larger than those of their immediate clients through the legal system.¹⁷ However, due to the political reality in China, their status, functions and fate are fundamentally different from that of cause lawyers who are effectively protected by law in democracies. In a democracy, civil rights lawyers or human rights lawyers are lawyers who specialize in civil rights or human rights laws and represent their clients in cases that clearly involve human rights, such as the right to life and liberty, freedom of thought and expression, and equality before the law. According to the *Universal Declaration of Human Rights* issued by the United Nations in 1948, all humans are entitled to these basic rights and freedoms “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. These are the typical kinds of cases taken on by cause lawyers in democratic societies.

By contrast, rights defence lawyers in China are not necessarily involved in obvious human rights cases, but often are simply seeking to defend the regular legal rights and interests of individuals that have been abused by powerful interests in society. However, due to the tight link between the Chinese legal system and the party-state, and the sensitivity of the party-state to certain kinds of legal cases that involve their vested interests, legal cases that superficially seem apolitical often become highly political, and lawyers who seek to represent clients in such cases themselves become objects of attack. In the next section, we will explain in more detail how this results in lawyers becoming “dissidents” rather than simply “rights defence” lawyers.

4. The Chinese Political System and Rights Defence Lawyers as Dissidents

Political dissent refers to any expression conveying dissatisfaction with or opposition to a government. Repressive governments have always suppressed and punished, whereas the protection of freedoms that facilitate peaceful dissent has become a hallmark of free, democratic and open societies. A dissident, broadly defined, is a person who actively challenges an established doctrine, policy, or political institution. There were dissident movements explicitly or implicitly challenging the communist rule in the former USSR and other East European communist states during the period of the 1950s-1980s and the harsh suppression of dissidents and dissident movements was a defining feature of communist rule.

Political dissidents did not exist in communist China until the 1980s. It is true that successive political campaigns were launched during the Maoist years to purge thousands or even millions of class enemies, but there was no political or social movement during that period to consciously and openly

challenge the state ideology and communist rule. It was only in the 1980s that some democratic pioneers in China started to imagine and fight for a democratic alternative to the communist rule, most notably exemplified by Wei Jingsheng 魏京生's call for democracy as the "fifth modernization" on top of the Party's programme of "four modernizations" in economy and technology. The forces of dissidence in China have now developed several generations of democracy movement leaders in charge of dozens of democracy movement organizations at home and abroad, as well as religious dissidents such as Falun Gong adherents and leaders of Christian house churches.

Nevertheless, it is a very new development beginning less than a decade ago for rights defence lawyers to emerge as dissidents from the party-state. Indeed, most of the rights defence lawyers in China did not intend to be dissidents and do not regard themselves as dissidents. It is the current political system that treats them as dissidents and turns their professional endeavours and social activities into political dissent. Much of their discontent with the current system results from the failure of the government to uphold its own enacted laws. For example, as early as 1979, the newly enacted Chinese Criminal Law reflected the spirit of rule of law following the lawless Cultural Revolution by softening the provisions on counter-revolutionary crimes which had condemned millions to death or misery in preceding years. But that did not stop the party-state from using other excuses to continue persecuting political dissidents. In 1997, the Criminal Law was revised again to substitute "the crime of endangering national security", including "subversion of state power" and "incitement for subversion of state power", for "counter-revolutionary crimes".¹⁸ But the suppression of dissidents still continued.

Clearly, there is a profound contradiction or paradox in the current Chinese legal system with regards to the rights of citizens. On the one hand, new values and institutions of individual rights have been introduced with great enthusiasm at the constitutional level. On the other hand, these constitutional rights are not justiciable or enforceable through the judicial process. In particular, even though a system of administrative litigation has now been created to address citizen grievances, the judiciary is not independent enough to carry out effective legal supervision over the exercise of administrative powers by the party-state and its agents in the police apparatus. This means that when lawyers seek to defend the legal rights of citizens who have been characterized as dissidents or troublemakers by the state, those lawyers themselves will inevitably end up being branded as dissidents. Indeed, some have argued that through its most recent assault on lawyers and other rights activists, the Party-State has now reversed the previous progress in legal reforms in which there was a tacit agreement between rights lawyers and healthy forces within the Party-State to redress

social and political injustice.¹⁹ In the process, they may have created a whole new group of dissident lawyers.

Many of the cases in which rights defence lawyers have become involved seem only indirectly related to “human rights” issues, for example, defending farmers against excessive taxes, laid-off workers in wrongful dismissal cases, and property owners in disputes with developers. Other cases may be more typical of human rights issues elsewhere, such as defending journalists and religious believers from State harassment and censorship. Yet in these lawyers’ eyes, all such cases are interrelated, part of a broader rights defence movement that is challenging the Chinese political system through law and using the legal system as one central tool for bringing about their ideal of a true civil society and ultimately constitutional democracy in China. To understand the relationships between the diverse strands of their work requires a broader awareness of how the Party-State infiltrates every aspect of Chinese society – typical and highly incendiary examples being property development and control of large corporations – so that even apparently apolitical legal cases can easily generate political ramifications in the macro-legal-political environment.

Rights defence lawyers clearly understand the stark contrast between rights on the books and lack of rights implementation and protection in reality. They also clearly understand that fundamental socioeconomic changes in China and the Party-State’s rule of law discourse have created huge pressures and incentives for the Party-State to resolve the contradiction between the rule of law and the supremacy of the Party. In seeking to assist citizens to uphold their legal rights, many of these rights lawyers have a much more ambitious agenda in mind: bringing about a true rule of law society based on constitutionalism.²⁰ Such lawyers see no contradiction between their litigation work and more direct forms of political action. Not only have they turned the courts into a meeting place for debates on social injustice and political issues; they have also taken actions outside the courts advocating institutional and political changes.²¹ For instance, rights lawyers played an essential role in drafting Charter 08, known by some as the “Chinese human rights manifesto” and signed by more than 10,000 Chinese citizens since its publication on the Internet on 9th December 2008.²²

Without further political reforms that are called for by such lawyers, the current legal system will remain a hollow shell, where even if citizens can have their day in court, they cannot enforce their winning judgments against state-supported defendants and they may even end up being persecuted by the state for daring to stand up for their rights.²³ It is for this reason that rights defence by lawyers in the courts – in other words, upholding citizens’ legal rights through the legal process – has in many cases resulted in persecution of those citizens and their lawyers, and inexorably led many of those lawyers

to become involved in a broader political reform movement challenging the current party-state system. Whether their political aspirations will ultimately prove successful remains to be seen, and the political reform process can be long and tortuous. But in the opinion of the rights defence lawyers themselves, the connection between rule of law and democratic reform is a necessary and inevitable one.²⁴ And due to the broader political ramifications of their rights defence activities, these lawyers are now viewed as dissidents by the party-state and therefore have effectively become dissidents, whether they initially intended to or not.

Several empirical studies on the practices of Chinese lawyers and legal aid workers have concluded that the vast majority of Chinese lawyers have no interest in upholding the rights of ordinary citizens against state-supported defendants, as such cases are both politically risky and often have little or no economic pay-off.²⁵ It is true that only a small minority of lawyers are actively engaged in rights defence cases. But perhaps the social and political impact of these lawyers is much broader than their numbers might suggest. It is extremely important to study this impact, and to analyze the complex relationship between the work of these lawyers and the development of a rights defence movement in China. Even though this rights defence movement is amorphous and has not coalesced into a single organized entity – due to obvious institutional constraints – some unity has been provided by the involvement of lawyers and their theoretical synthesis of diverse strands of protest into a more unified whole. The legal defence work of these lawyers has covered most of the different areas of social discontent and state-supported legal abuses that have occurred in China over the past half decade. At the same time, in their various writings, these lawyers clearly relate their legal work to a broader political and social reform agenda. In other words, they are an excellent resource for articulating the connection between their rights defence work in individual cases (upholding the “rule of law”) and the much broader goal of creating a national movement for universal civil/political rights and democratic reform in China.²⁶

Having said that rights defence lawyers are treated as dissidents due to their political reform tendencies, we should also point out that there are differences between these lawyers in terms of their approaches to political action. We will conclude this section by dividing dissident lawyers into three rough categories based on their differing choices of clients to defend or causes to uphold. Of course, it may be possible to fit some lawyers into more than one category, and there is some overlap between them, but the division helps to clarify the differing ways in which lawyers may have become dissidents through their legal and extra-legal work.

The first category includes lawyers who became legal or political dissidents due to their defence of and association with dissidents as their

clients. The best known example is Gao Zhisheng, who was categorized as a dissident when he took the risk of defending Falun Gong practitioners both in court rooms and via opinion pieces on social media. Ironically, in 2001, Gao had been recognized by China's Ministry of Justice as one of the country's 10 best lawyers. But over the following years, he defended a wide range of clients who had been victims of injustice, including seeking compensation for families whose homes were expropriated for the 2008 Olympics, appealing the sentence of Zheng Yichun 郑贻春, a journalist and former professor who was sentenced to seven years imprisonment for his online writings, and providing legal assistance to Cai Zhuohua 蔡卓华, the pastor of an unauthorized Chinese house church, who was sentenced to three years in prison for printing and distributing copies of the Bible. Other cases included a legal battle over several hundred acres of farmland that Guangdong Province had seized to construct a university, and in 2005, defending fellow lawyer-activist Zhu Jiuhu, who was accused of disturbing public order while representing private investors in oil wells that were seized by the government in Shaanxi. He secured Zhu's release several months later through an intensive publicity campaign, although Zhu was barred from practicing law.

The Beijing Judicial Bureau tried to prohibit Gao from acting in certain cases and for specific clients, including the Shaanxi oil case and Falun Gong practitioners, but Gao ignored the prohibition. After sending an open letter to the PRC leadership that accused the government of running extrajudicial "brainwashing base(s)" for dealing with Falun Gong practitioners, he received a visit from State Security agents. In November 2005, shortly after being warned to retract a second open letter he had written about his Falun Gong cases, Gao received a new summons from the judicial bureau accusing him of a "serious violation of the Law on Managing the Registration of Law Firms" for failing to promptly register his new business address following a move. He was ordered to suspend operations for a year. In February 2006, Gao, together with Hu Jia 胡佳 and other activists, launched a "Relay Hunger Strike for Human Rights," whereby different activists and citizens fasted for 24 hours in rotation. Finally, in September 2006, Gao was arrested and on 22nd December 2006, he was convicted of "subversion", given a suspended sentence of three years, and placed on probation for five years. The sentence also deprived him of his political rights – the freedom to publish or speak out against the government – for one year.

In September 2007, after writing open letters calling for a boycott of the Olympics, Gao was once again taken away from his home, where he had been under house arrest, by Chinese secret police, and claimed to have been seriously tortured by them. In early 2009, Gao's wife and two children escaped China with the help of underground religious adherents, and were granted asylum in the United States. Between 2009 and 2011, Gao was

allegedly several times interrogated and persecuted by Chinese state security forces, and finally in December 2011, Xinhua reported that Gao had been jailed for three years because he “had seriously violated probation rules for a number of times, which led to the court decision to withdraw his probation.” According to his brother, Gao was being held in a jail in Xayar County, Xinjiang province.

Though Gao Zhisheng was clearly aware that his choices of clients were risky in the Chinese context, he may not have initially started out with the intention to become a dissident himself. However, his defence of religious dissidents both in and outside the court inevitably led to him being viewed as a dissident by the party-state that he was challenging, and ultimately made him into one of the more outspoken dissident lawyers in China.

The second category of dissident lawyers are those rights lawyers who challenge a particular state policy, such as Cheng Hai 程海 who has challenged the inequities of the *hukou* 户口 (household registration) system, and Chen Guangcheng 陈光诚 who challenged the implementation of the government’s policy of family planning and forced sterilization. Chen’s case became internationally famous in 2012 when he sought asylum in the U.S. embassy in Beijing, but he had been an active “barefoot lawyer” in Shandong Province since the mid-1990s, assisting villagers in his home town of Dongshigu (东师古村) to challenge illegal land requisitions and other financial irregularities. Then in 2005, Chen spent several months surveying residents of Shandong Province, collecting accounts of forced, late-term abortions and forced sterilization of women who stood in violation of China’s one-child policy. His survey was based in Linyi City (临沂市) and included surrounding rural suburbs. Though coercive late abortions were supposedly illegal, Chen found that such coercive practices remained widespread, and he documented numerous cases of abuse. Chen also solicited the help of prominent legal scholar Teng Biao, who conducted his own interviews in Linyi. Teng and Chen later released a report claiming that an estimated 130,000 residents in the city had been forced into “study sessions” for refusing abortions or violating the one-child policy; residents would be held for days or weeks in the study sessions, and were allegedly beaten.

In 2005, Chen filed a class-action lawsuit on behalf of women from Linyi against the city’s family planning staff. And in June, he travelled to Beijing to file the complaint and meet with foreign reporters to publicize the case. Chen’s initiative was the first class-action lawsuit to challenge the implementation of the one-child policy. Though the case was not successful, in September 2005, the Chinese Family Planning Commission announced that several Linyi officials had been detained for their illegal actions in implementing the policy. But local authorities in Linyi retaliated against Chen, placing him under house arrest in September 2005 and embarking on a campaign to undermine his

reputation. The Linyi officials portrayed him as working for “foreign anti-China forces”, pointing out that he had received foreign funding for his earlier advocacy on behalf of the disabled. During his trial in 2006, Chen’s attorneys were forbidden access to the court, leaving him without a proper defender. On 24th August 2006, Chen was sentenced to four years and three months for “damaging property and organizing a mob to disturb traffic”. He was released from prison in 2010 after serving his full sentence, but remained under house arrest or “soft detention” at his home in Dongshigu Village. Chen and his wife were reportedly beaten shortly after a human rights group released a video of their home under intense police surveillance in February 2011. Finally, in mid-2012, Chen and his family escaped to the U.S. Embassy and were granted political asylum in the United States.

Despite the fact that Chen’s actions were justifiable challenges to the illegal implementation of the one-child policy, and despite the central government’s acknowledgment that Linyi’s officials had broken the law, Chen still could not escape persecution by the local government, who obviously treated him as a dangerous dissident. The result was that he too became a dissident (barefoot) lawyer, and ended up in prison and finally in exile.

The third category of dissident lawyers includes those who have become closely involved in civil society and mobilization for social change. Xu Zhiyong and the case of the N.G.O. Open Constitution Initiative (Gongmeng 公盟) are representative in this regard. Gongmeng is an organization consisting of lawyers and academics in China that advocates the rule of law and greater constitutional protections. It was established in 2003 by Xu Zhiyong, Teng Biao, Yu Jiang and Zhang Xingshui 张星水 from the Beijing University Law School. Some of Gongmeng’s activities included: challenging the constitutionality of the police investigation in the Sun Zhigang case; participating in the drafting of a proposed amendment to include “human rights” in the Constitution, submitted to the National People’s Congress in 2004; defending Yu Huafeng 喻华峰 and Cheng Yizhong 程益中, the General Manager and Editor in Chief, respectively, of the investigative newspaper *Nanfang Dushi Bao* 南方都市报 (*Southern Metropolitan Daily*), against politically motivated charges; conducting research on ways to reform the local people’s congress and letters and petition system; writing reports on the development of human rights in China; monitoring experimental direct elections to the Haidian District (海淀区) of the Beijing Municipality Local People’s Congress; speaking out for the education rights of migrant children; assisting with an administrative suit on behalf of victims enslaved by illegal brick kilns in Shaanxi; organizing a Pro Bono Legal Aid Team to conduct public interest litigation on behalf of victims of the tainted milk scandal in 2008-9; promoting direct elections within the Beijing Lawyers Association; launching activities to promote open government information, including the

disclosure of public expenditures; hosting a training workshop where legal knowledge relating to rights defence and elections was discussed; providing legal aid to victims of “black jails” and petitioners; and launching residence committee elections, to name but a few issues. Their main purpose has all along been to raise public awareness of legal rights and the importance of public participation in the political process, with the ultimate aim of promoting constitutional reform in China.

NGOs run by rights lawyers and legal scholars, like Gongmeng, were particularly hard hit in the latest round of state repression. The choice of Gongmeng as a target of coordinated attacks in July 2009 revealed the attempt by the party-state to roll back the activities of these NGOs and rights lawyers. The individuals involved were typical moderates within the rights defence movement, fighting for social justice, but also rejecting radicalism. They actively co-operated with the campaign for “good governance” initiated by the Hu-Wen leadership and showed their best intentions and a constructive attitude to the government by refraining from taking on cases involving separatists, Falun Gong, and the Chinese democracy movement. However, they eventually became a target of government attack, as they were increasingly influential nationally and internationally in providing essential legal aid to high-profile public interests cases such as environmental protection, food security, freedom of press, forced home eviction, forced land requisition, and “black jails”.²⁷ The comprehensive attacks on these moderate rights lawyers clearly represented a retrogression of official Chinese legal reform and a backward step on China’s march towards the rule of law.²⁸ In July 2009, authorities declared Gongmeng “illegal”, fined it 1.46 million yuan and shut it down, and on 29th July 2009, Xu Zhiyong was arrested on charges of “tax evasion”. Due to huge domestic social pressure and international pressure, Xu was soon released and Gongmeng was allowed to re-opened in a much reduced size and function in August 2010.

The fact that the CCP rose to power through a violent revolution rather than a democratic election means that it is extremely sensitive to any challenge to its lack of democratic legitimacy. The CCP’s paranoia over political challenge has also become increasingly serious after the collapse of communist regimes in Eastern Europe and elsewhere since the end of 1980s. The political system of one party rule maintained by the CCP does not leave much space for Chinese rights defence lawyers to seek judicial justice and the rule of law. Chinese rights defence lawyers are fully aware of the institutional limits presented by this political system on their legal and political aspirations, but they still dedicate their lives to fighting for justice by means of the Chinese legal system and trying to work within the political system for change. Their preference is to advise the government to abide by the law rather than directly seeking institutional change. Taking advantage

of their legal profession, they have consciously framed burning social and political issues and legal issues about enforcement of rights, not only through their strategic litigations and impact litigations but also through their Internet publications. However, their good will for the judicialization of political issues has not found resonance from the mainstream of the Chinese communist leadership. By treating rights defence lawyers as political dissidents, the Chinese communist leadership actually move in the opposite direction of the politicalization of legal issues. There is an obvious reason for the Chinese communist leadership to move in this direction. Anyway, according to the political logic of the communist one party rule, enforcement of constitutional rights such as freedom of speech and freedom of association, as well as the demand for an independent judiciary, is definitely a political issue and poses a fundamental challenge to the communist legitimacy. The top priority of the current Chinese communist leadership is to maintain regime stability at all costs. In final analysis, the rule of law, including effective legal protection of civil and political rights of all citizens, is not compatible with a Leninist party-state, simply because the core of Leninism is “proletarian dictatorship”, which, according to the classic definition by Lenin himself, means “nothing other than power totally unlimited by any laws and based directly on the use of violence”.²⁹

5. Conclusion

It is critical to examine the role and impact of Chinese rights defence lawyers and, by extension, the “rights defence movement” as a whole, within the broader political context. It is unfortunate that lawyers in China are still not effectively protected by law to practise law in defending the interest of their clients who are not welcome by the party-state. In dealing with politically sensitive cases, the principle of presumption of innocence is not usually upheld in China, as the party-state, the security apparatus in particular, regards political opposition as a hostile and evil force. In order to protect their professional rights to practice law, as well as to seek justice for the society as a whole, Chinese rights defence lawyers are forced to take on dual identities as both a lawyer and rights activists. Rights defence lawyers are treated by the party-state as political dissidents as their quests for judicial justice, independent judiciary and the rule of law are posing a threat to the regime legitimacy in the eyes of communist rulers. Despite rights defence lawyers’ willingness to avoid direct political battle, the difference between the legal and political realms is dangerously blurred and ambiguous in the institutional context of contemporary China. In the contestations between rights defence lawyers and Chinese government, both sides are aware that lawyers played a key role in democratic transition in many countries.

It seems that the Chinese society and the Chinese ruling party are following different logics. While Chinese society is ready for the transition to constitutional democracy, which is a trinity of democratic election, effective protection of human rights and the rule of law, as human rights, democracy and the rule of law presuppose each other. The Chinese communist government still follows its habitual thinking of blocking the transition, and risks plunging itself and China into an abyss of violence and turmoil. There is a viable way to achieve stability in contemporary China through institutional accommodation between conflicting social groups, as well as establishing rules and mechanisms for safeguarding citizen rights and for balancing legitimate interests. For the CCP to rejuvenate itself and maintain relevance, it has to abandon obsolete and discredited Leninism, which is simply not compatible with the rule of law and a robust civil society.

Notes

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