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After the July 9 (709) Crackdown: The Future of Human Rights Lawyering

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ARTICLE

AFTER THE JULY 9 (709) CRACKDOWN: THE FUTURE OF HUMAN RIGHTS LAWYERING

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I. INTRODUCTION

Eighteen months after the 709 crackdown on human rights lawyers,¹ a debate took place within China's human rights lawyers' communities.² It is a brief, yet passionate and provocative debate focusing on some of the fundamental questions about law's limits in seeking justice and protecting rights in an authoritarian state and the limited role of lawyers in their endeavour. Having grown for about twenty years since the mid-1990s, human rights lawyers have engaged in social-legal activism in wide policy areas including consumer protection, anti-discrimination, rights in the criminal process, and the

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1. For a critical analysis of the crackdown, see Fu Hualing, *The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State*, J. OF CONTEMPORARY CHINA (forthcoming, 2018).

2. See, e.g., Chen Jiangan, *Zhang Sizhi Lun [Thoughts on Zhang Sizhi]* (Nov. 15, 2016), http://www.mychinese.news/2016/11/blog-post_16.html [<https://perma.cc/EV4C-88JY>]; Yan Wenxin, *Zaitan Gean Tuidong Fazhi [Rethink About Promoting Rule of Law Through Individual Cases]*, WALL OUTSIDE (Dec. 1, 2016), <https://www.letscorp.net/archives/113008> [<https://perma.cc/SL84-3YQD>].

freedom of religion and speech.³ The growth of legal rights and their enhanced protection in China in the past two decades are inextricably tied to China's growing legal profession, especially a small group of lawyers who variously called themselves *weiquan* lawyers, die-hard lawyers, or human rights lawyers—lawyers who are public interest-minded, legal rights-focused, and politically motivated in their battles against arbitrary powers.⁴

Yet, those are the lawyers who have received severe crackdown, and the repression has naturally provoked some of them to reflect on the vulnerability of the legal profession in the authoritarian state and the future prospect of socio-legal activism in bringing meaningful changes in society.⁵ The debate involved two issues: one specific and the other one general. The specific, pointed question that they have raised is this: is the traditional case-focused and law-centred legal mobilization, moderate or aggressive, still a feasible approach to take to bring structural changes to the political system, incremental or otherwise?⁶ In the aftermath of the crackdown, estranged lawyers started to reflect on their past success and failure, to cast doubts about their potential of their own profession in catalysing political transformation, and to express their deeply felt anxiety, frustration, and confusion about law, courts, and human rights lawyering.⁷

A more general question touches on a more sensitive issue relating to the politics of lawyering. For the rights lawyers who have experienced or witnessed the crackdown, the Party has revealed its true nature and whatever hope that lawyers may have on law's potential to tame the Party must have proven false.⁸ For them, what matters in the Chinese political-legal system is Article 1 of the Constitution that states

3. See generally Fu Hualing & Richard Cullen, *Climbing the Weiquan Ladder: A Radicalizing Process for Rights-Protection Lawyers*, 205 *THE CHINA QUARTERLY* 40-59 (2011).

4. See JONATHAN BENNEY, *DEFENDING RIGHTS IN CONTEMPORARY CHINA* (2012); Fu Hualing & Richard Cullen (2008), *Weiquan (Rights Protection) Lawyering in an Authoritarian State: Building a Culture of Public Interesting Lawyering*, 59 *CHINA J.* 111 (2008); EVA PILS, *CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE* (2014); Rachel E Stern, *Activist Lawyers in Post-Tiananmen China*, 42 *L. AND SOC. INQUIRY* 234-51 (2017).

5. See, e.g., Sui Muqing, *709 zhishang: 709 Jingli [My Experience as a 709 Victim]*, HRIC, <https://www.hrichina.org/chs/zhong-guo-ren-quan-shuang-zhou-kan/sui-mu-qing-lu-shi-709zhi-shang-wo-de-709jing-li-tu> [<https://perma.cc/4G4A-C6LV>].

6. For an analysis of the spectrum of human rights lawyering in China, see Fu and Cullen, *supra* note 4. See also Sida Liu and Terence G. Halliday, *CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK* (2016).

7. Yan, *supra* note 2.

8. *Id.*

clearly that China is a democratic dictatorship.⁹ The occasional success in a few legal battles, they admit, may have blinded their eyes on the true nature of the Party state.¹⁰ Some of them, they admit, may just have forgotten that, in Svobik's terms, repression is the "original sin" of authoritarianism.¹¹ If that were the case, human rights lawyers should step out of the shadow of law, call a spade a spade and confront the Party head-on. Human rights lawyers need to be openly political.

Before the 2015 crackdown, China had experienced waves of social-legal activism since the mid-1990s in which right discourses are translated into rights practices.¹² As it happens, human rights lawyers and other activists have been situated at the forefront in the tireless efforts to expanding the sphere of rights and freedom and in constraining the arbitrary exercise of state power.¹³ Together with media, especially social media and domestic Non-governmental organizations ("NGOs") working in different sectors, human rights lawyers form a strategic "legal complex" in China in protecting legal rights and freedom and in the process hold the Party state accountable to its own legal rhetoric.¹⁴ Supported and sometimes aided by foreign donors, the legal complex used law as an entry point to engage in social-legal activism in shaping public opinions and influencing court decisions. For what they have done in leading and organizing those movements, lawyers and other activists have paid heavy prices and, one may argue, the prices that they pay are precisely indicative of their significance and impact. During the crackdown, leading human rights lawyers were placed under lengthy and secretive detention; many were humiliated and forced to confess their sins in state controlled or arranged media outlets, some were sentenced to lengthy imprisonment terms for subverting state power, and all were placed under tight control.¹⁵ The post-crackdown era also witnessed enhanced professional regulation by the government regulators—the Ministry of

9. *Id.*

10. *Id.*

11. See MILAN W. SVOLIK, *THE POLITICS OF AUTHORITARIAN RULE* 10 (2012).

12. See generally BENNEY, *supra* note 4; Fu & Cullen, *supra* note 4; Pils, *supra* note 4; Stern *supra* note 4.

13. See generally Fu, *supra* note 1.

14. See Fu Hualing, *Can Lawyers Build a Legal Complex for the Rule of Law in China?*, HRIC (July 25, 2014), <https://www.hrichina.org/en/china-rights-forum/can-lawyers-build-legal-complex-rule-law-china> [<https://perma.cc/TN3L-VLFV>].

15. See CHINA HUMAN RIGHTS LAWYERS CONCERN GROUP, *REPORT ON THE 709 CRACKDOWN* (2016).

Justice (“MoJ”) and its provincial and local counterparts.¹⁶ With the appointment of Fu Zhenghua as the Minister of Justice, the Party seems to be determined to disappear human rights lawyering in China once for all.¹⁷

Ultimately all the challenging questions boil down to this: is there a future for human rights lawyering in China as we know it? After examining the debate on the future of rights lawyering among human rights lawyers, this article proposes three overlapping alternatives for human rights lawyers in the post-crackdown era: a triviality thesis, a co-optation thesis, and a resilience thesis. While the authoritarian system can be suffocating for its enemies, human rights lawyers can struggle to create their own breathing space.

II. TRIVIALITY

The Triviality Thesis is a popular one and has gained currency in recent years.¹⁸ According to this thesis, the party-state has developed a tight control, through fear and enhanced management, over the profession, which is now structured in such a way that the political role of lawyers is negligible.¹⁹ It is not as if lawyers have not tried; human rights lawyers have tried in many ways, in vain, to have an impact on the system.²⁰ No matter how hard lawyers try, either in working within the law or against the law, the system, as is expected, remains in firm

16. *Chinese Authorities Continue to Suppress Lawyers after Replacing Minister of Justice*, CONG.-EXECUTIVE COMMISSION ON CHINA (Mar. 15, 2018), <https://www.cecc.gov/publications/commission-analysis/chinese-authorities-continue-to-suppress-lawyers-after-replacing> [<https://perma.cc/3KCN-ZWFT>].

17. As the Chief of the Beijing Police, Fu apparently orchestrated the 2011 jasmine crackdown on human rights lawyers in Beijing. Fu was then promoted to the Ministry of Public Security. As the Executive Vice Minister of Public security, he was behind the July 9 crackdown on human rights lawyers in 2015. See Christian Shepherd, *Chinese Rights Activists Fearful as Policeman Takes Charge of Legal Affairs*, REUTERS (Mar. 21, 2018), <https://www.reuters.com/article/us-china-parliament-rights/chinese-rights-activists-fearful-as-policeman-takes-charge-of-legal-affairs-idUSKBN1GX0C5> [<https://perma.cc/L2RM-5PTZ>].

18. See, e.g., Yan, *supra* note 2; Yedu, *Fazhi Mengmie: Zhongguo Weiquan Yundong Binlin Zhongjie* [*Broken Dream of the Rule of Law: China's Weiquan Movement is Coming to an End*], 12 DONGXIANG (2016), <https://botanwang.com/articles/201612/法治梦灭·中国维权运动濒临终结.html> [<https://perma.cc/Y76L-7ZJM>].

19. See, e.g., Han Zhu, *Eva Pils's Human Rights in China*, 19 ASIA-PACIFIC J. HUM. RTS AND THE L. 74, 76 (2018) (book review).

20. See Eva Pils, *HUMAN RIGHTS IN CHINA: A SOCIAL PRACTICE IN THE SHADOWS OF AUTHORITARIANISM* 52-54 (2017).

control, and can easily see off any challenge.²¹ Lawyers' contributions and, for that matter, their challenges, if any, are trivial.²² The triviality thesis is based on four harmful impact that the crackdown had created or reinforced.

First, there is the incapacitation impact. Repression refrains lawyers from engaging in social-legal mobilization.²³ The high-profile crackdown, coupled with lengthy terms of imprisonment and control tightening further, has created a chilling effect to deter most of the lawyers, their partners and supporters.²⁴ The crackdown has incapacitated a rights movement that had taken two decades to build, and, with the imprisonment, punishment or close monitoring of all key movement leaders, the deterrent impact that the crackdown has sent has an enduring effect on the legal profession generally.²⁵

Second, there is the isolation impact. The ground that produced past leaders and activists no longer exist, and the support structure that had gained strength is under stress and collapsing.²⁶ China under Xi has become more repressive politically, and institutions that used to nurture and support human rights lawyering have been weakened or simply have vanished.²⁷ Clinical education and other platforms for law students in public interest work are tightly controlled if still in existence at all, depriving human rights lawyers of opportunities to recruit volunteers and supporters and to use law schools as a platform to promote public interest law. Clinical legal education networks that had been instrumental in promoting experiential learning and social practices among law students became inactive.²⁸ Foundations, which

21. *Id.*

22. *See, e.g.*, Yan, *supra* note 2.

23. *See* China Human Rights Lawyers Concern Group, *supra* note 15; *see also* Alex W. Palmer, 'Flee at Once': China's Besieged Human Rights Lawyers, THE N.Y. TIMES MAG. (July 25, 2017), https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html?_ga=2.5350324.644513532.1528967319-1693010699.1506870483.

24. *Id.*

25. *Id.*

26. *Cyberspace, Religion, Lawyers, Dissidents: China's Shrinking Civil Society under Xi Jinping's Crackdown*, HKFP (Oct. 18, 2017), <https://www.hongkongfp.com/2017/10/18/cyberspace-religion-lawyers-dissidents-chinas-shrinking-civil-society-xi-jinpings-crackdown/> [<https://perma.cc/S2D4-ND9S>].

27. *Id.*

28. Communications with lawyers and other related individuals (2017-18).

provide much-needed financial support to law school clinics, have been under political pressure to withdraw its support in that sector.²⁹

Law schools have been under pressure to sever ties with or put greater control on, public interest law organizations. For examples, in 2010, Beijing University Law School ordered the Woman Legal Studies and Service Center, led by Guo Jianmei, to leave the University,³⁰ and in 2016, Wuhan University Law School ordered the Public Interest and Development Law Institute, an advocacy NGO closely affiliated with the law school, to leave the Law School premises.³¹ Under pressure, Wuhan University Law School also changed the name of its well-known public interest law center, Center for the Protection of Rights of Disadvantaged Citizens, which was set up in 1992, into a Legal Aid Center, and also forced its director to resign.³² As similar chilling impact had been felt in other law schools that have developed a legal aid and clinical education program. When Guo Jianmei's NGO was told to leave from Beijing University, there was wide-spread criticism in the media of the University and the law school for their action.³³ Similar actions that took place six years later were met with deafening silence.³⁴

Equally significant, with the reform of civil procedural law, which prohibits lay participation in litigation and the crackdown on rights-based NGOs, law students are deprived of the opportunity to experience social reality, which is regarded as the most important factor

29. Communications with lawyers and other related individuals (2017-18). For studies of clinical legal education in China, see Cecily E. Baskir, *Crossing Borders: Creating an American Law Clinic In China*, 19 *CLINIC L. REV.* 163 (2012); Benjamin L. Liebman *Legal Aid and Public Interest Law in China*, 34 *TEX. INT'L L. J.* 211 (1999); Titi M. Liu, *Transmission of Public Interest Law: A Chinese Case Study*, 13 *UCLA J. INT'L L. & FOR. AFF.* 263, 282-83 (2008).

30. See Wu Xiaolei, *Beida Rongbuxia Guo Jianmei [Beida Forced Guo Jianmei to Leave]*, SHIDAI ZHOUBAO [THE TIME WKLY.] (Apr. 15, 2010), <http://business.sohu.com/20100415/n271520491.shtml> [https://perma.cc/MF4R-2RNF].

31. Communication with Chinese lawyers (2017).

32. See China Society for Human Rights Studies, *Wuhan University Center for Human Rights Research and Education*, CHINAHUMANRIGHTS.ORG (Oct. 10, 2014), http://www.chinahumanrights.org/html/2014/MAGAZINES_1010/805_3.html [https://perma.cc/EZ9C-AEN2].

33. For criticism in China's official media, see, e.g., Wu, *supra* note 30; Zhang Han, *Legitimacy of a Legal Center*, GLOBAL TIMES (May 12, 2010), <http://www.globaltimes.cn/special/2010-05/531143.html> [https://perma.cc/A69G-W5T6]; Wang Xiaoyu, *Guo Jianmei: Ni Bushi Yige Ren Zai Qianxing [Guo Jianmei, You're not Alone]*, DONGFAN ZAOBAO [ORIENTAL MORNING POST] (Apr. 19, 2010), <http://star.news.sohu.com/20100419/n271596866.shtml> [https://perma.cc/ZUZ9-GPL4].

34. Observation of media reports.

in creating a public interest law identity.³⁵ Before 2013, Chinese law allowed non-lawyer “citizen representatives,” commonly translated as *litigants ad litem*, to appear in courts as counsel in administrative, civil and criminal litigation.³⁶ In addition to qualified lawyers, any citizen can be a legal representative in the litigation process.³⁷ Lay participation in legal representation did not only compensate for the shortage of lawyers, but also created opportunities for law school legal aid centers and public interest-oriented NGOs to provide free legal aid services to vulnerable groups in society.³⁸ In the end, it allowed extraordinary opportunities for experiential learning and for nurturing a public interest identity through the process.³⁹

Lay representation was significantly restricted after the 2013 reform of the Civil Procedural Law.⁴⁰ After the amendment, lay representation is limited to circumstances in which the workplace or the residential committee of a party to a litigation makes a recommendation.⁴¹ Because of the restriction, citizen representation provided by NGOs, activist citizens, and law school legal aid centers has diminished significantly, if not vanished completely.⁴²

Since Xi came to power, media has been under increasingly tight control, NGOs are diminishing, and foreign funders and supporters are placed under tight control and leaving; the crucial support structure for human right lawyering is collapsing.⁴³ Human rights lawyers relied on a legal complex composed of social media, NGOs and foreign

35. Fu Hualing & Richard Cullen, *The Development of Public Interest Litigation in China*, in PUBLIC INTEREST LITIGATION IN ASIA 9, 16-7 (Po Jen Yap & Holning Lau ed., 2010).

36. Tin Muk Daisy Cheung, *Going Barefoot in the Middle Kingdom: A Preliminary Study of the Strategic Choices of the Non-Licensed Weiquan Lawyers in Modern China*, 1 UCLA PAC. BASIN L.J. 1, 7-8 (2013).

37. *Id.*

38. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 145-6 (2005).

39. Fu & Cullen, *supra* note 35.

40. A revision of the Civil Procedure Law was adopted August 31, 2012 and came into effect on January 1, 2013. See Civil Procedure Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 31, 2012, effective Jan. 1, 2013); Darcy Pan, *Agents of Change or Status Quo? Labor NGOs in South China*, in UNCERTAIN TIMES: ANTHROPOLOGICAL APPROACHES TO LABOR IN A NEOLIBERAL WORLD 135, 144-5 (E. Paul Durrenberger ed., 2017).

41. Civil Procedure Law, art. 58.

42. See, e.g., Phan, *supra* note 38.

43. See Hualing Fu, *Wielding the Sword: President Xi’s New Anti-Corruption Campaign*, in GREED, CORRUPTION, AND THE MODERN STATE: ESSAY IN POLITICAL ECONOMY 134-60 (Susan Rose-Ackerman & Paul Lagunes eds., 2015).

supporters.⁴⁴ Activist lawyers worked closely with social media to publicize their cases and causes, without which lawyers cannot mobilize support or interest in public opinions.⁴⁵ NGOs have been indispensable partners for lawyers and the latter rely on NGOs for reaching out to the communities, for liaising with litigants, and for organizing litigation.⁴⁶ The diminishing or even vanishing NGO sectors in China place the burden of organizing litigation on lawyers. Finally, the control over foreign funding to NGOs and human rights lawyers has delivered a significant blow to the human rights advocacy.⁴⁷

Thirdly, there is the hostility impact. Human rights lawyers remain lone fighters—spirited and courageous, but at an infant stage of building solid alliance.⁴⁸ In particular, they have failed to seek understanding and sympathy from state institutions and their link to the state remains fragile if at all.⁴⁹ In social capital literature, linking refers to the ability to create cooperative relations and build trust with official institutions so to influence government decision-making.⁵⁰ Compared to bridging, which aims at building horizontal ties between groups of similar level of political power, linking is a means to build vertical ties among groups from different hierarchical levels of power.⁵¹ In the context of human rights lawyering, linking refers mainly to the possibility of meaningful dialogue and effective communication between lawyers and a variety of government entities, including political (Party organs), legislative (people's congresses at various levels), judicial (courts and procuratorates), and executive/professional bodies (police, bureau of justice, bar associations). While Chinese

44. Fu, *supra* note 14.

45. See Han Zhu & Fu Hualing, *Transparency as an Offence: Rights Lawyering for Open Government Information in China*, 12:2 J. OF COMP. L. 417, 426-31 (2017); Teng Biao, *Rights Defence (weiquan), Microblogs (weibo), and the Surrounding Gaze (weiguan): the Rights Defence Movement Online and Offline*, 3 CHINA PERSP. (2012).

46. Fu & Cullen, *supra* note 35, at 15.

47. Zheping Huang, *NGOs are under Threat in China's Latest Crackdown against "Foreign Forces"*, QUARTZ (Jan. 4, 2017), <https://qz.com/873489/ngos-are-trying-to-stay-alive-in-chinas-latest-crackdown-against-foreign-forces/> [<https://perma.cc/5J3T-XVNF>]; see also Chongyi Feng, *The NGO Law in China and its Impact on Overseas Funded NGOs*, 3 COSMOPOLITAN CIV. SOCIETIES: AN INTERDISC. J. 95, 99 (2017).

48. See Pils, *supra* note 4, at 248-55.

49. Fu, *supra* note 1, at 11.

50. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

51. *Id.*

human rights lawyers are able to expand their community, build strong and close ties among same-minded lawyers, and, to a lesser degree, reach out and build alliances with media and NGOs, their relations with the Party remain hostile.⁵² The more they struggle, the more alienated they are from the authorities.⁵³ When human rights lawyers look at the Party–state in a wide spectrum, they see enemies.⁵⁴

Take *weiquan* lawyers and courts, the traditional partner in a liberal legal complex, for instance. Traditional *weiquan* lawyers were suspicious of legal institutions and treat courts as their adversaries rather than as partners, which could be relied on in launching any public interest legal action.⁵⁵ Courts in China are not independent, and judges largely comply with political instructions from the Party-state.⁵⁶ In sensitive cases in particular, judges often ignore legal rules and make decisions for the sake of political expediency.⁵⁷ There is not a legal complex in China in which lawyers—broadly defined to include lawyers, judges, and prosecutors, among others—can form a liberal-leaning alliance in fighting for a limited state and a large realm of freedom.⁵⁸ In China, the state uses the courts to control the lawyers and limit the public interest causes behind the litigation.⁵⁹

Not surprisingly, when Chinese lawyers suffer, they suffer at the hands of their fellow professionals. It is the judges who limit the access to justice for lawyers by refusing to accept claims for litigation.⁶⁰ It is the judges who rule against public interest causes regardless of their sound legal grounds.⁶¹ When human rights lawyers are disciplined or disbarred, it is often because these lawyers have launched an aggressive defense in court and protested against unfair treatment and outright illegality.⁶²

52. See generally Feng Chongyi et al., *Rights Defence Lawyers as Dissidents in Contemporary China*, 3 INT'L J. CHINA STUD. 325, 332-340 (2012).

53. *Id.* at 334-35.

54. *Id.* at 332-40; Fu & Cullen, *supra* note 4, at 121-23.

55. Fu & Cullen, *supra* note 4, at 120-23; Fu, *supra* note 1, at 2.

56. RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW, 280-309 (2002).

57. Pils, *supra* note 4, at 104-40.

58. Fu, *supra* note 14.

59. Pils, *supra* note 4, at 104-40.

60. *Id.* at 115-16; China Human Rights Lawyers Concern Group, *supra* note 15, at 39.

61. Fu Hualing, *Embedded Socio-Legal Activism in China: The Case of Yirenping*, 42 H.K. L.J. 245, 267-68 (2012).

62. Pils, *supra* note 4, at 157-60.

Finally, there is the Regulatory Impact. The crackdown does not end when lawyers are sentenced to prison terms unfortunately.⁶³ Repression through criminal punishment, as we have witnessed during the 709 crackdown, has transformed into preemptive regulation that combines political monitoring and professional disciplines.⁶⁴ Institutionally, the site of control and resistance has moved from the coercive security apparatus to regulation at multiple levels.⁶⁵

The crackdown triggered a round of regulatory reinforcement in tearing down the support structure of human rights lawyering.⁶⁶ Courts issued rules to reiterate the authority of judges in controlling court order, the corresponding duty of lawyers and parties in obeying court disciplines, and punishment for disturbing court order and harming court safety⁶⁷ and for demonstrating against courts in areas surrounding the courts.⁶⁸ The MoJ also enacted rules on the management of law firms which creates a duty on law firms to monitor, manage and discipline lawyers in the firm to prohibit lawyers to encourage and organize clients to demonstrate in front of state organs. A wide range of activities are now subject to professional discipline, including making “misleading and distorting comments” on on-going cases; organizing open letters in such cases to create public opinions to scandalize and pressurize legal institutions; walking out in protest from an ongoing trial; or disrupting court order including intimidating, scandalizing or assaulting judicial personnel. Further political restriction on legal advocacy includes any challenge to state determination of cults; and mostly significantly, making and forwarding statements that challenge the basic constitutional system

63. See China Human Rights Lawyers Concern Group, *supra* note 15, at 40-44.

64. *Id.*

65. *Id.*

66. See Eva Pils, *Written Submission on the Human Rights Situation in China—the Crackdown on Human Rights Lawyers*, CONSERVATIVE HUM. RTS (Apr. 2016), http://www.conservativehumanrights.com/reports/submissions/Pils_Submission_on_Human_Rights_Lawyer_Crackdown.pdf [<https://perma.cc/QV9K-FZ9T>].

67. See Guanyu Tuijin Shenpan Wei Zhongxin De Xingshi Susong Zhidu Gaige De Yijian [Opinions on Advancing the Reform of the Trial-Centered Criminal Procedure System] (July 20, 2016), <http://www.court.gov.cn/fabu-xiangqing-28021.html> [<https://perma.cc/5P6U-BY8M>] (noting the issuance by the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security).

68. See Renmin Faynan, Luoshi “Baohu Sifa Renyuan Yifa Lüxing Fading Zhize Guiding” De Shishi Banfa, [The Implementation Measures for the People’s Courts to Implement the Provisions on Protecting Judicial Personnel to Lawfully Perform Their Statutory Duties] (Feb. 7, 2017), <http://www.court.gov.cn/zixun-xiangqing-35572.html> [<https://perma.cc/QP9L-USM5>] (noting the issuance by the Supreme People’s Court).

and endanger national security or using the Internet to incite dissatisfaction of the Party and government.⁶⁹ Violation of the prohibitive rules may lead to dismissal of the law firm.⁷⁰ The MoJ rules, as stated above, are duly codified in January 2017 in the Provisional Rules on Disciplining Members of Law Association for Violation of Rules.⁷¹

The MoJ moved quickly to discipline human rights lawyers using a wide range of instruments ranging from warning, refusal to renew practicing certificates suspending practices to disbarment.⁷² While repression through criminal law inflicted directly on lawyers by the security forces has diminished and is sporadic, political control of the professional regulators, which is more embedded, inside out, and constant, has become the most significant challenge to the survival of human rights lawyering.⁷³

Examples abound. Social media comments made by human rights lawyers are routinely monitored, and Bureaus of Justice (“BoJ”) officials have invited lawyers to tea who made comments that were regarded as offensive, signed open letters or otherwise participated in petitions, demanding deletion, retraction or other undertakings.⁷⁴ During officially sensitive period, officials from the BoJ in Beijing, Wuhan, Changsha, Chengdu and many other provinces gave warnings to lawyers for making critical comments on-line.⁷⁵ The consequence for not complying could be serious. The activist lawyers who survived the crackdown and who refused to be silenced are being disbarred or

69. See Art 50, *Lüshi Shiwusuo Guanli Banfa* [Measures for the Administration of Law Firms] (Nov. 1, 2016), issued by the Ministry of Justice, http://www.gov.cn/gongbao/content/2016/content_5109321.htm [<https://perma.cc/BLE5-GQVF>].

70. *Id.*, art. 67.

71. See Art 34, *Lüshi Xiehui Huiyuan Weigui Xingwei Chufen Guize* (Shixing) [Rules for Punishment of Members’ Misconduct (provisional)] (Jan. 8, 2017), (issued by the All China Lawyers Association, Jan. 28, 2017), <http://www.scslsxh.com/system/20171025/000002005.html> [<https://perma.cc/RQ6E-NKWK>].

72. See A Joint Statement to Strongly Condemn the Chinese Government’s Suppression against Human Rights Lawyers through Revocation and Invalidation of Lawyers’ Licenses, CHRLCG (June 6, 2018), <http://www.chrlawyers.hk/en/content/【-joint-statement-strongly-condemn-chinese-government’s-suppression-against-human-rights> [<https://perma.cc/S6S5-XP99>].

73. *Id.*

74. All information was collected from the *Monthly Brief on the Developments in Rights and Interests of Chinese Lawyers and Chinese Human Rights Lawyers’ postings on social media*, LAW. RTS. AND INT. NETWORK [Zhongguo Lüshi Quanyi Dongtai Xinxi], <http://lvshiquanyiguanzhu.blogspot.hk> [<https://perma.cc/MTC3-CNN8>] (last visited Mar. 22, 2018).

75. *Id.*

suspended, largely for making comments critical of the Party, including Wu Youshui (nine months suspension) in Huangzhou BoJ in 2017; Zhu Shengwu (disbarred) in Shandong in 2017; Wang Liqian and Wang Longde (disbarred) in Yunnan in 2017; Yu Wensheng (disbarred) in Beijing in 2018; Sui Muqing (disbarred) in Guangzhou in 2018. The list goes on and continues to grow.⁷⁶ Soon, the number of human rights lawyers disbarred by BoJ officials will surpass that imprisoned during the 709 crackdown.⁷⁷ Facing continuous state repression, professional discipline, and vanishing support from their peers, the broader society and legal institutions, the survival of human rights lawyering in China is at risk and, even it continues, its contributions will be trivial.⁷⁸

III. COOPTATION

According to the Cooptation Thesis, the legal profession including human rights lawyers may represent a powerful social force that the Party needs to take seriously.⁷⁹ In the middle of the crackdown on human rights lawyers, the Party is also implementing an unprecedented legal reform to further institutionalize the court.⁸⁰ As part of the legal reform, are more proactive and forceful in cooping lawyers into the legal process as defined by courts and have engaged lawyers with both sticks and carrots.⁸¹ While using law and other measures to punish, threaten and discipline lawyers, the Party-state is also reaching out to lawyers to improve their relationship and build

76. See Zhongguo Lüshi, *Guanyu Zunzhong He Baozhang Lüshi Zhiye Quanli De Shengming* [Chinese Lawyers' Statement on Respecting and Safeguarding Lawyers' Right to Practice], RTS. NET (Feb. 1, 2018), <http://wqw2010.blogspot.hk/2018/02/blog-post.html> [https://perma.cc/E7QW-84UN].

77. A Joint Statement to Strongly Condemn the Chinese Government's Suppression against Human Rights Lawyers through Revocation and Invalidation of Lawyers' Licenses, *supra* note 72.

78. Yedu, *supra* note 18.

79. See Chen Youxi: *Fazhi de Xianshi yu Qianzhan (Da Dushi Kuaibao Wen)* [Chen Youxi: *Reality and Prospect of the Rule of Law (Interview with the City Express)*] (Mar. 10, 2011), <http://www.glawyer.net/article/180.html> [https://perma.cc/F4LN-4K2W].

80. See Hualing Fu, *Building Judicial Integrity in China*, 39 HASTINGS INT'L AND COMPARATIVE L. REV. 167 (2016); Randall Peerenboom, *Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!*, 7 HAGUE J. ON THE RULE OF L. 49 (2015).

81. SEE YOU IN COURT, THE ECONOMIST 31-32 (Sept. 30, 2017).

trust.⁸² Indeed, the official media was careful not to cast the net of repression and condemnation too wide.⁸³

In the post-crackdown era, the Party has also sent some conciliatory signals to placate the profession in general, and regulation replaced repression.⁸⁴ Repression alone would never work in achieving regime survival, and, in China's authoritarian state, there is a relationship of "contingent symbiosis" between the state and civil society in which the state negotiates with society in reaching compromises.⁸⁵ Lawyering, and for that matter, the legal system in its entirety,⁸⁶ is a conservative enterprise that is firmly embedded in and reinforces the existing political and legal order.⁸⁷ It operates largely within a legal framework.⁸⁸ Persistent repression may drive die-hard lawyers underground and radicalize human rights lawyers.⁸⁹ The Party has proven adaptable to new challenges and remained resilient,⁹⁰ and is able to capture emerging challenges through state-initiated legal reform.⁹¹

82. See, e.g., Zhang Jun: *Lvxie Yao Tingzai Qianmian Ciqian Zhize Buming Zeren Zai Women* [Zhang Jun: *Lawyers Associations Should Take the Lead and We Should Be Blamed for the Unclear Obligations and Duties*], LEGAL DAILY, (Aug. 31, 2017), <http://news.sina.com.cn/nd/2017-08-31/doc-ifykpuuh9917522.shtml> [<https://perma.cc/HMF6-CRZ8>].

83. See, e.g., Zheng Yan, *Lvshi de Zhanchang Yingzai Fating* [Lawyers' Battlefield should be in Court], PEOPLE'S DAILY (July 12, 2015), <http://opinion.people.com.cn/n/2015/0712/c1003-27290080.html>; Wei Zhezhe, *Ruhe Baozhang Lvshi Hefa Quanli* [How to Protect Lawyers' Legal Rights?], PEOPLE'S DAILY 19 (Feb 7, 2018).

84. See, e.g., Provisions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and Other Departments on Legally Protecting Lawyers' Practicing Rights (Sept. 16, 2015); Wei, *supra* note 83.

85. Anthony J. Spires, *Contingent Symbiosis and Civil Society in an Authoritarian State: Understanding the Survival of China's Grassroots NGIS*, 117 AM. J. OF SOC. 1 (2011).

86. See Kwai Hang Ng & He Xin, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA (2017).

87. For the political embeddedness of lawyers in China, see Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*, 113 (2) AM. J. OF SOC. 459 (2007); Liu & Halliday, *supra* note 6.

88. Fu & Cullen, *supra* note 4, at 112, 116-20.

89. Fu & Cullen, *supra* note 4, at 57-58.

90. See Andrew J. Nathan, *Authoritarian Resilience*, 14 J. DEMOCRACY 6 (2003); DAVID SHAMBAUGH, CHINA'S COMMUNIST PARTY: ATROPHY AND ADAPTATION (2008).

91. See Carl Minzner, *Legal Reform in the Xi Jinping Era*, 20 ASIAN POLICY 4, 4-9 (2015); Fu Hualing, *Politicized Challenges, Depoliticized Responses: Political Monitoring in China's Transitions*, in *Surveillance*, in COUNTER-TERRORISM AND COMPARATIVE CONSTITUTIONALISM 296-312 (Fergal Davis et al., eds., 2014); See You in Court, *supra* note 81.

Lawyers may dissent, but in the end, legal reform is able to absorb the energies that the legal profession may release and eventually silence or tame those challenging voices in the bar. The triviality thesis is wrong in that it presumes that the Party is hostile to the causes that human rights lawyers advocate and punish lawyers because the Party fundamentally disagrees with the ideas that those lawyers stand for. Following that logic, since the Party had Xu Zhiyong convicted for organizing demonstrations to demand equal right to education for migrant children, then the Party must be hostile to the substantive idea that Xu and his comrades struggled for. If the Party had lawyers and labor NGOs punished for organizing collective bargaining, then collective bargaining must be something that the Party is hostile to or uncomfortable with.

The difficulty with this reasoning is that the Party has a variety of individuals punished for multiple reasons including blowing the whistle against corruption, campaigning against sexual harassment in public transport, and advocating for equality rights or government transparency.⁹² Most of the causes that lawyers were punished for have also been on the reform agenda of the Party.⁹³ The hostility, upon closer examination, is directed not against the ideas *qua* ideas, but the individuals who assert a representative role over the matter and the way they went about in putting them into practice.⁹⁴

There is often a consensus between the Party and its “enemies” that there is an urgent need for certain policy reform, and their fight, to a large degree, is over the ownership of the issue, pace of reform, and the proper methodology that can be used to solve the problem.⁹⁵ It is often the case that once the fight is over and lawyers are put away, the Party would soon initiate reform that the lawyers demanded and were punished for.⁹⁶ The Party initiated anti-corruption campaigns after having lawyers and others punished for exposing corruption and demanding enforcement, passed rules to discipline police after having sanctioned lawyers and others who campaigned against police abuse of

92. See Pils, *supra* note 20, at 51; Leta Hong Fincher, *China's Feminist Five*, 4 *DISSENT* 84-90 (2016).

93. See, e.g., Fu Hualing, *Wielding the Sword: President Xi's New Anti-Corruption Campaign*, in *GREED, CORRUPTION, AND THE MODERN STATE* 134-158 (2015); Fincher, *supra* note 92.

94. *Id.*

95. Fu, *supra* note 93, at 147-8.

96. *Id.*

power,⁹⁷ and implemented collective bargaining and started to reform official unions immediately after having people imprisoned for advocating the very ideas.⁹⁸

The Party is willing to implement some reform that lawyers advocate, and lawyers are a crucial part of the process.⁹⁹ But lawyers' participation has to be managed and placed under the firm hands of Party. In essence, it is the Party's reform, and thus should be properly credited to, and carried out under, the leadership and guidance of the Party, and according to a pace as the Party sees fit.

What are the cooptation strategies? First of all, the Party has, through prosecution and public censure, separated hard-core *weiquan* lawyers from other types of human rights lawyers, especially the die-hard lawyers in the criminal bar.¹⁰⁰ In justifying the 709 crackdown, the *People's Daily*, for example, made a distinction between die-hard lawyers who advocated forcefully inside the court and those who mobilized aggressively outside the court.¹⁰¹ While it condemned extra-judicial activism harshly, it expressed certain respect for lawyers who pushed the legal limit within the court.¹⁰² More recently, Xiong Xuanguo, a Vice Minister of the MoJ, openly congratulated die-hard lawyers for contributions in the overturning of a number of high profile wrongful conviction cases.¹⁰³ Similarly, Zhang Jun, the former Minister of Justice replacing the disgraced Wu Aiyong, praised Tian Wenchang, a leading criminal lawyer known for his courage and skills

97. For instance, in December 2016 the Chinese authorities proposed to amend the 1996 Police Law to specify the circumstances under which police can use firearms. Dong Heng, *Draft Law Includes First Gun Use Rules for Police*, *SIX TONE* (Dec. 5, 2016), <http://www.sixthtone.com/news/1645/rules-gun-use-chinese-police-put-draft-law> [https://perma.cc/SK3T-QEQF].

98. See Stefan Brehm, *Collective Bargaining: New Hope for China's Workers?*, INST. FOR SECURITY & DEV. POL'Y (Mar. 31, 2017), <http://isdpl.eu/publication/collective-bargaining-new-hope-china/> [https://perma.cc/6KX3-TT6A].

99. See, e.g., Keith J. Hand, *Citizens Engage the Constitution: The Sun Zhigang Incident and Constitutional Review Proposals in the People's Republic of China*, in *BUILDING THE CONSTITUTIONALISM IN CHINA* 221-42 (Stephanie Balme & Michael W. Dowdle ed., 2009).

100. See, e.g., Zou Wei & Huang Qiangchang, *Jiekai "Weiquan" Shijian de Heimou* [Exposing the Dark Inside of "Weiquan" Incidents], *PEOPLE'S DAILY* (Jul. 12, 2015); Zheng, *supra* note 83.

101. Zheng, *supra* note 83.

102. *Id.*

103. Mr. Xiong said that "the profession and the entire society" recognized lawyers' significant role. See Lin Zizhen, *Xiong Xuanguo: Chongfen Zunzhong Lvshi Yijian Neng Bimian Yuan'an* [Xiong Xuanguo: Fully Respecting Lawyers' Opinions Can Avoid Wrongful Convictions], *CAIXIN*, (Apr. 27, 2017), <http://m.china.caixin.com/m/2017-04-27/101083751.html> [https://perma.cc/39C5-MMKL] (last visited March 22, 2018).

in representing sensitive cases in the 1990s, as a true die-hard lawyer.¹⁰⁴

Lawyer-official meetings seem a regular practice.¹⁰⁵ Upon assuming duty, the Chief Justice, Zhou Qiang, also made some symbolic gestures to patch up relations.¹⁰⁶ The Chief Justice has repeatedly spoken on the importance of legal representation in the judicial process and the need for courts to respect lawyers and take seriously their submissions.¹⁰⁷ He said that respecting lawyers and relying on lawyers (and legal scholars) has significant instrumental and normative values.¹⁰⁸ The legal profession is an integral part of the legal community, and, as such, cooperative relations with and high trust from lawyers are indispensable for the court to build and restore its credibility and legitimacy.¹⁰⁹ The court reform is still on-going and expanding in both depth and scope, lawyers, who were allowed only to shout at the system from outside, may have better opportunities to reform the system from within, if lawyers are willing to adopt, tone-down their rhetoric and, in particular, accept the political reality.¹¹⁰

The former Minister of Justice, Zhang Jun, following the example of the Chief Justice, tried to send a reconciliatory message to all human rights lawyers by meeting with more than fifty lawyers upon assuming office.¹¹¹ Unlike the Chief Justice, Zhang met lawyers from a wide range of political stances including *weiquan* lawyers, such as Li Fangping and Chen Jianguang, whose critical views of the government have been well known.¹¹² During the meeting, Zhang openly

104. See Jiang Anjie, 68 *Wei Xingbian Lvshi Shouci Yu Buzhang Mianduimian* [68 *Criminal Lawyers Meeting with Minister of Justice for the First Time*], FAZHI RIBAO [LEGAL DAILY] (Aug. 29, 2017), http://www.legaldaily.com.cn/leader/content/2017-08/29/content_7298802.htm [https://perma.cc/YM8U-F7TL].

105. *Monthly Brief on the Developments in Rights and Interests of Chinese Lawyers*, *supra* note 74.

106. See The Supreme People's Court, *Quan Shehui Gongtong Nvli Tuijin Zhengsifa Tisheng Sifa Gongxinli* [The Whole Society Works Hard to Promote Fair Justice and Enhance Judicial Credibility], COURTS.GOV (April 27, 2013), <http://www.court.gov.cn/zixun-xiangqing-7783.html> [https://perma.cc/R5VT-6AVP].

107. *Id.*

108. *Id.*

109. *Id.*

110. Zheng, *supra* note 83.

111. Liu Ziyang, *Xingshi Bianhu Lvshi Changyishu Dansheng Ji* [The Production of a Proposal Made by the Criminal Lawyers], LEGAL DAILY (Sep. 2, 2017), http://www.legaldaily.com.cn/index/content/2017-09/01/content_7304375.htm?node=20908 [https://perma.cc/7FU9-GQ8F].

112. *Id.*

complained about the facts that security forces in the past detained lawyers without properly notifying the MoJ and promised to provide a “home” for lawyers in trouble.¹¹³

Taking their cue from Beijing, Lawyers’ Associations in Beijing, Guangzhou and elsewhere have, since May 2017, reached out to *weiquan* lawyers who are members of the respective lawyer’s associations to solicit critical views of associations.¹¹⁴ The conversation between Chen Jiangang and Cheng Hai (who represent Wang Quanzhang, one of the lawyers detained during the 709 crackdown) and the President of Beijing Lawyers’ Association, Gao Zicheng, illustrated the willingness on the part of the MoJ to make a change.¹¹⁵ Cheng Hai and Chen Jiangang complained about the failure on the part of Beijing Lawyers’ Association to offer effective protection of the rights of its members and, in particular, the lack of legal defense in the case of Wang Quanzhang.¹¹⁶ Interestingly, that conversation led to a subtle reply from the Beijing Lawyers Association that the Lawyers Association of Tianjin, where Wang had been detained, would offer assistance on the matter.¹¹⁷ And a few weeks later, a controversial meeting between lawyer Chen Youxi and Wang occurred.¹¹⁸

It seems possible that the MoJ arranged that surprising but significant meeting between Chen and Wang to demonstrate that the MoJ’s new leadership could make a difference and also that lawyers could participate in even the most sensitive case under the new leadership. The meeting proved to be highly controversial and drove another wedge between *weiquan* lawyers and die-hard lawyers, and

113. See Zhang Jun: Lawyers Associations Should Take the Lead and We Should Be Blamed for the Unclear Obligations and Duties *supra* note 82.

114. See, e.g., 2017 Nian 6 Yuefen de Zhongguo Lvshi Quanyi Dongtai Xinxì [Monthly Brief on the Developments in Rights and Interests of Chinese Lawyers (June 2017)], LAW. RTS. AND INT. NETWORK, <http://lvshiquanyiguanzhu.blogspot.hk> [https://perma.cc/Z5EW-28AR] (last visited June 16, 2018).

115. See Cheng Hai, *Lvshi Chenghai He Chen Jiangang Yingyue Yu Beijing Lvshi Xiehui Gao Zicheng Huizhang Deng Huimian* [Lawyers Cheng Hai and Chen Jiangang Met with the President of Beijing Lawyers Association Gao Zicheng] (June 6, 2017), http://lvshiquanyiguanzhu.blogspot.hk/2017/06/blog-post_6.html [https://perma.cc/7CFX-4SNK].

116. *Id.*

117. *Id.*

118. See Chen Youxi, “Guanpai Lvshi” Bude Bushuo De Jiju Hua [Some Words the “State-appointed” Lawyer Has to Say], SINA (July 26, 2017), http://blog.sina.com.cn/s/blog_63aeaff70102x764.html [https://perma.cc/FKQ6-Z73V].

created another split between human rights lawyers who are allegedly officially appointed working within the system and for the system and those who remain independent.¹¹⁹ Chen Youxi was a well-known *sike* lawyer, who developed his fame as a leading *sike* lawyer for his defense of lawyer Li Zhuang during Bo Xilai's rule in Chongqing.¹²⁰ Chen, however, while remaining faithful to the *sike* tradition, later developed a reputation for cooperating with investigators and prosecutors and for his willingness to work with, instead of working against, the government in hard cases.¹²¹ Chen Youxi had shown little interest in the 709 cases in general and the arranged meeting with Wang, regardless of who was behind the decision, proved to be offensive to all the *weiquan* lawyers who had been fighting hard for Wang's cause ever since his highly secretive detention.¹²² The All China Lawyers Association (ACLA) had to make a public statement that lawyers are equal members under the Lawyers Law and no such division exists between lawyers who are inside the system and those who are without.¹²³

Second, the MoJ has become more forceful and assertive in regulating the profession, with the law associations playing a proactive role in making a more effective regulatory system.¹²⁴ Whether the joint efforts by the MoJ and the subsidiary ACLA can create a "home" for lawyers, potentially a shelter for lawyers in trouble, is difficult to see. At least the Ministry has openly shown that they are not pleased and uncomfortable with security overreach and complain that security

119. Li Ruohan, *Lawyer Warns Colleagues to Avoid Illegal Means to Address Injustice as Case Sparks Debate*, GLOBAL TIMES (Jul. 27, 2017), <http://www.globaltimes.cn/content/1058424.shtml> [<https://perma.cc/YNF5-XUPK>]; see also Chen *supra* note 115.

120. Fu, *supra* note 1, at 4-6.

121. Xie Wenting, *Veteran Lawyer Brushes off Criticism of being a 'Toady,' 'Fence-sitter'*, GLOBAL TIMES (Aug. 11, 2017), <http://www.globaltimes.cn/content/1060916.shtml> [<https://perma.cc/GA9N-MXZL>].

122. Mimi Lau, *The Chinese Lawyer who Vanished Two Years Ago and the Only Man who's Seen Him since*, SCMP (July 26, 2017), <http://www.scmp.com/news/china/policies-politics/article/2104246/missing-human-rights-lawyer-good-health-tianjin> [<https://perma.cc/YBD6-Z5WH>]; also see Chen, *supra* note 115.

123. See *Lüshi Xiangyou Tongdeng Quanli Yiwu Bu Cunzai Renhe Paibie [Lawyers Share the Same Rights and Obligations and No Factions Exist]*, MINISTRY OF JUST. OF THE PEOPLE'S REPUBLIC OF CHINA (Aug. 25, 2017), <http://www.moj.gov.cn/2017/0825/5666.html> [<https://perma.cc/NP6T-N8X5>].

124. E.g., *the 2017 Amendment of the Lawyer's Practice Code of Conduct issued by the ACLA includes new courtroom discipline rules*, WAIZI, <http://www.waizi.org.cn/doc/24973.html> [<https://perma.cc/R6Q9-XHDX>] (last visited July 14, 2018).

detained lawyers without notifying the MoJ before detention of lawyers was proved.¹²⁵

In doing so, the MoJ may be sending out a message to both sides, lawyers and their minders, that it is in charge and has to be taken seriously. On the one hand, the MoJ reminds the security forces of its authority as the regulator of lawyers, and therefore its review on action taken against lawyers should be properly sought and respected. While this intra-government communication is not visible, it can be inferred from public statements made by MoJ officials, including their critical view of a security overreach and the newly found confidence and assertion of authority on the part of the MoJ in their dealing with other legal institutions such as the SPC and the public security.¹²⁶

On the other hand, the MoJ is tightening the regulation of the legal profession and enhancing the disciplinary capacity of law associations and law firms over individual lawyers, leading to promulgation of a series of prohibitive rules and measures to rein in the out-of-courts speech and extra-legal activism of lawyers.¹²⁷ Those rules and measures are regarded as repressive—even more so than the 709 crackdown because it lowers the threshold of controls by punishing mere speech of lawyers, and because the ultimate punishment—that is disbarment—is harsh.¹²⁸ Naturally those new rules and measures have received much critical attention by lawyers and commentators, who argue that an assertive MoJ has not helped lawyers as it claims.¹²⁹ On the contrary, it has become another oppressor which controls lawyers at a much closer distance. It is therefore hard to reconcile the repressive professional control over law firms and lawyers and some of the repressive episodes, as outlined above, with MoJ's claim that it tightens the discipline out of its “deeply-felt care for lawyers,” implying that it

125. See *Sifabu Shuli Muqian Lvshi Zhiye Quanli Baozhang Cunzai de Shida Wenti* [Ministry of Justice Identified Ten Issues in Protestation of Lawyer's Rights to Practice], PEOPLE.CN, (Apr. 26, 2017), <http://legal.people.com.cn/n1/2017/0426/c42510-29238119.html> [<https://perma.cc/Y5F2-7BWX>].

126. *Id.*

127. See Pils, *supra* note 66.

128. See *Revised Measures on Law Firm Further Curb Independence of Chinese Lawyers (9/21-10/3, 2016)*, CHINA HUM. RTS. BRIEFING (Oct. 3, 2016), <https://www.nchrd.org/2016/10/chrb-revised-measures-on-law-firms-further-curb-independence-of-chinese-lawyers-921-103-2016/> [<https://perma.cc/3Q2Y-JVA7>]; see also A Joint Statement to Strongly Condemn the Chinese Government's Suppression against Human Rights Lawyers through Revocation and Invalidation of Lawyers' Licenses, *supra* note 72.

129. *Id.*

punishes lawyers and puts the house in order to preempt further repression from the security forces.¹³⁰

Finally, the continuous promotion of legal reform in the post-709 era is creating more space in the legal system to make lawyering more meaningful and effective. Some of the changes are substantial to coopt lawyers into the institutional process. Three examples can highlight the efforts to bring lawyers into the legal process and make lawyers' participation more meaningful and effective.

The first is the increase in legal aid budget to improve access to lawyers.¹³¹ As the rule of law project in China, as the Party defines it, continues,¹³² government legal aid funding continues to grow. The Party has demonstrated a strong political determination to expand the legal aid system and also the financial capacity to do so.¹³³ In 2015, for example, the Party's General Office and that of the State Council, two key policy-making bodies in China's political structure, jointly issued a document entitled *Opinions on Improving the Legal Aid System* (Opinions). The Opinions demanded concrete measures to be taken to channel disputes and conflicts into the legal process through the expansion of legal aid to disputes involving labor, family, food and medicine, education and medical care; they also require the creation of a duty lawyer scheme in courts and detention centers.¹³⁴ For those who promote legal aid in China, the Party has offered a target list of commitments.¹³⁵ The State's 13th Five Year Plan further undertakes the improvement of general public services and has included legal aid service as part of the larger public services that the government is duty-bound to provide.¹³⁶ The legal aid budget from both the central and local levels have increased on par with the growth of the Chinese GDP,

130. See Ministry of Justice Identified Ten Issues in Protestation of Lawyer's Rights to Practice, *supra* note 125.

131. *China Calls for More Lawyer Participation in Legal Aid*, XINHUANET, (Mar. 10, 2017), http://www.xinhuanet.com/english/2017-03/10/c_136118966.htm [<https://perma.cc/5DNK-L5YE>].

132. Albert H.Y. Chen, *China's Long March towards Rule of Law or China's Turn against Law?*, 4 THE CHINESE J. COMP. L. 1, 24-25 (2016).

133. *Id.*

134. See *Guanyu Wanshan Falü Yuanzhu Zhidu de Yijian [Opinions on Perfecting the Legal Aid System]*, XINHUANET (June 20, 2015), http://www.xinhuanet.com/politics/2015-06/29/c_1115759994.htm [<https://perma.cc/HH96-8BTT>].

135. *Id.*

136. See THE 13TH FIVE YEARS PLAN OF NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT OF PEOPLE'S REPUBLIC OF CHINA, Ch. 75 § 4, (Mar. 17, 2016) <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf> [<https://perma.cc/N5TP-LR54>].

and the amount of case subsidies that the government pays per case have also increased correspondingly.¹³⁷ Beyond broader rule of law promotion, the Party is also increasing public spending on public services to improve the livelihood of the poor with specific reference to the constitutional right of equality for all.¹³⁸

Secondly, with the improvement in legal aid, the SPC is in the process of making it legally compulsory to provide defense in every criminal case unless a defendant decides otherwise.¹³⁹ With the right to defense in criminal cases being regarded as a core human right, the central government is strongly incentivized to improve access to lawyers in criminal cases as soon as the police finish their first round of interrogation.¹⁴⁰ In a new pilot project in eight provinces, the MoJ and SPC have provided comprehensive legal aid coverage for all criminal cases at trial, on appeal and for post-conviction reviews where the defendant has no legal representative.¹⁴¹ The court is invested with the duty to inform a competent legal aid center and failure to notify where this leads to the deprivation of the defendant's right to lawyer "shall" result in the appellate court automatically quashing the conviction and remanding the case for a retrial.¹⁴²

Finally, to take one step further, the Party has promoted class action and public interest litigation (PIL) that is controlled by the government and led by the Supreme People's Procuratorate (SPP) to channel collective disputes back to the courts for legal resolution.¹⁴³ To

137. See DEPARTMENT OF LEGAL AID WORK OF THE MINISTRY OF JUSTICE, JIANQUAN FALV YUANZHU ZHIDU DIAOYAN BAOGAO HUIBIAN [COLLECTION OF RESEARCH REPORTS FOR LEGAL AID SYSTEM IMPROVEMENT] (2014).

138. See *The Press Conference of the Ministry of Justice on the Opinions on Improving Legal Aid System*, XINHUANET (June 30, 2015), http://news.xinhuanet.com/politics/2015-06/30/c_1279666971.htm [<https://perma.cc/K7G6-YGMF>].

139. Zhang Yan, *All Criminal Cases to Have Defense Lawyers*, CHINA DAILY, (Jan. 19, 2018), <http://www.chinadaily.com.cn/a/201801/19/WS5a613083a3106e7dcc1352ce.html> [<https://perma.cc/5CMB-3FAS>].

140. *Id.*

141. See *Zuigaofa Sifabu Lianhe Chutai Banfa Kaizhan Xingshi Anjian Lvshi Bianhu Quanfugai Shidian* [The Ministry of Justice and the Supreme People's Court Jointly Issuing Measures to Offer Blanket Coverage of Legal Aid by Lawyers for Criminal cases], XINHUANET (Oct. 12, 2017), http://news.xinhuanet.com/politics/2017-10/12/c_129719121.htm [<https://perma.cc/NG3V-MV5W>].

142. *Id.*

143. See Dimitri de Boer & Douglas Whitehead, *Opinion: The Future of Public Interest Litigation in China*, CHINADIALOGUE (Aug. 11, 2016), <https://www.chinadialogue.net/article/show/single/en/9356-Opinion-The-future-of-public-interest-litigation-in-China> [<https://perma.cc/467R-6ZNM>]; King & Wood Mallesons, *Trends in Class Action-Type Public Interest Litigation in China*, CHINA LAW INSIGHT (May 29, 2015), <https://www.chinalawinsight.com>.

take oxygen out of the fire of the human rights lawyers-led social-legal activism, this SPP-led PIL reform, in particular, aims to create more space in the judicial system to bring collective disputes to the courts.¹⁴⁴ There are abundant mass disputes affecting the rights and interests of particular groups of people, which have failed to reach the courts for legal resolution.¹⁴⁵ And with the assistance of human rights lawyers and NGOs, these groups have increasingly resorted to non-institutional, extra-legal measures to assert their rights.¹⁴⁶ The refocusing of the legal system on class action and PIL expects to bring mass disputes from streets to the courtroom-- a process that is likely to undermine the mobilization capacity of *weiquan* lawyers and at the same time to provide further opportunities for rule-based legal advocacy within the legal process.¹⁴⁷

IV. RESILIENCE

Finally, there is a more optimistic Resilience Thesis.¹⁴⁸ There is always a debate on the degree to which human rights lawyers should engage with the legal system and whether lawyers should act merely as legal technicians arguing narrow legal issues in courts or should broaden the horizon and take a wider political-legal view.¹⁴⁹ Should lawyers merely rely on law, use law proactively in a dynamic fashion or should they challenge law's vulnerability to de-legitimize the underlining political system?¹⁵⁰ This has been the lingering question

com/2015/05/articles/intellectual-property/trends-in-class-action-type-public-interest-litigation-in-china/ [https://perma.cc/EAC5-QKA9]

144. *Id.*

145. Pils, *supra* note 4, at 124-7.

146. *Id.* at 136-40.

147. See Fu Hualing, *What Future is There for Human Rights Lawyering in China?*, 2 *MADE IN CHINA* 12, 15 (2017); See You in Court, *supra* note 81.

148. See, e.g., Han Zhu, *Law-Oriented Lawyering vs. Political Lawyering: A Comparative Study of Mainland China, Taiwan and South Korea*, 48(2) *H.K.L.J.* (forthcoming, 2018); *The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident*, CHRLCG (Jul. 11, 2017), <http://www.chrlawyers.hk/en/content/【forward】-china-human-rights-lawyers-group-statement-upon-2nd-anniversary-709-incident> [https://perma.cc/YP4Z-8C6L]; Statement of Teng Biao at the Hearing of the Congressional-Executive Commission on China (June 28, 2017), <https://www.cecc.gov/sites/chinacommission.house.gov/files/CECC%20Hearing%20-%2028june17%20-%20709%20Lawyers%20-%20Teng%20Biao.pdf> [https://perma.cc/29F8-UMZQ].

149. See generally Eva Pils, *Asking the Tiger for His Skin: Rights Activism in China*, 30 *FORDHAM INT'L L.J.* 1209-87 (2007).

150. See Fu Hualing, *Human Rights Lawyering in Chinese Courtrooms*, 2 *CHINESE J. COMP. L.* 270 (2014).

challenging lawyers' professional ethics and political resolve before and after the crackdown.¹⁵¹ What happens if law is limited in achieving lawyers' ambition and what would be the alternatives? There are radically different views, and harsh criticisms continue to be made by human rights lawyers against one another for their differences.¹⁵² Lawyers will not be silenced, marginalized or coopted as an integral part of the regime.¹⁵³ With that independent spirit as the backdrop, some human rights lawyers will continue to push the boundaries that have been set by the Party.¹⁵⁴ There is nothing new about crackdown on lawyers¹⁵⁵ even though the most recent one is more severe one in both the harshness of penalty and the scope of prosecution.¹⁵⁶ But human right lawyers prove to be resilient and always return with vengeance after a crackdown.¹⁵⁷

At a foundational level, China remains unchanged on two significant issues and the ground that produced *weiquan* lawyers in the past will continue to work in their reproduction.

First, the social and economic background that created the *weiquan* lawyers in the first place continue to exist. Abuse of power and scandals that shocked the conscience of *weiquan* lawyers and motivated them to take the identity of human rights defenders remain in existence, and they will continue to reproduce dedicated human rights defenders as they did.¹⁵⁸ If the persecution of Falun Gong

151. See Fu, *supra* note 147.

152. See, e.g., Yan, *supra* note 2; Chen, *supra* note 2; Pils, *supra* note 149.

153. See The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148.

154. See Albert Ho Chun-yan, *Xuyan [Prologue]*, in ZHONGGUO WEIQUAN LVSHI JIQI YIHUO [CHINESE RIGHTS LAWYERS AND THEIR FELLOWS].

155. See Committee to Support Chinese Lawyers, Legal Advocacy and the 2011 Crackdown in China: Adversity, Repression, and Resilience, <http://www.csclawyers.org/letters/Legal%20Advocacy%20and%20the%202011%20Crackdown%20in%20China.pdf> [<https://perma.cc/333H-R85F>]; Pils, *supra* note 4, at 189-226.

156. The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148; see also China Human Rights Lawyers Concern Group, *supra* note 15, at 53-62.

157. The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148; Albert Ho Chun-yan, *supra* note 154; Fu, *supra* note 151, at 14-15.

158. See, e.g., H. Christoph Steinhardt & Fengshi Wu, *In the Name of the Public: Environmental Protest and the Changing Landscape of Popular Contention in China*, 75 THE CHINA J. 61-82 (2015); *A ChinaFile Conversation: What Is the Significance of China's #MeToo Movement?*, CHINAFILE (Mar. 20, 2018), <http://www.chinafile.com/conversation/what-significance-of-chinas-metoo-movement> [<https://perma.cc/589F-5X3P>].

practitioners made lawyer Gao Zhisheng,¹⁵⁹ systematic discrimination and radical responses against the discriminatory rules and practices nurtured Lu Jun,¹⁶⁰ Sun Zhigang's death created Teng Biao and Xu Zhiyong,¹⁶¹ and Deng Yujiao's self-help confirmed Xia Lin and others' identity as human rights defenders, then all those abuses continue to exist and will work to catalyze another radicalizing process.¹⁶² Wrongful conviction, wide-spread discriminatory practices and political and religious prosecution are at work in reproducing a new generation of human rights lawyers.¹⁶³ To its credit, the Party has been successful in its governance reform to reduce inequality, enhance legality, and rein in abusive and powerful local officials to control the level of social tension.¹⁶⁴ But the authoritarian nature of the Party-state—for example, its intolerance of an independent space for religion and labor and consequently a need to control religion and prohibit independent labor movement—necessarily creates challengers to its system.¹⁶⁵

Second, the traditional dilemma of authoritarian legality remains intact. On the one hand, the Party continues to promote legal rights, enhance the capacity of judicial organs in dispute resolution and develop rules-based governance in social and economic matters.¹⁶⁶ As mentioned above, legal aid is improving, access to justice is improving, and ordinary justice is improving.¹⁶⁷ As long as the regime promotes the rule of law as a key governance strategy, law will empower lawyers in their struggle for better protection of rights and for effective accountability. Law, even in China, offers promises, generates hope, and incentivizes action.¹⁶⁸ As long as legal rights are officially pronounced and procedures in place for their implementation,

159. See Pils, *supra* note 149, at 1227-1223.

160. See generally Fu *supra* note 61.

161. See generally 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. OF TRANSNAT'L L. 114 (2006).

162. See Fu & Cullen, *supra* note 3.

163. Fu, *supra* note 1, at 7-12.

164. Chen, *supra* note 132, at 15-27.

165. See, e.g., Fenggang Yang, *From Cooperation to Resistance: Christian Responses to Intensified Suppression in China Today*, 15 FAITH & INT'L AFF. 79-90 (2017); Ivan Franceschini & Elisa Nesossi, *State Repression of Chinese Labor NGOs: A Chilling Effect?*, 80 THE CHINA J. 111-29 (2018).

166. Chen, *supra* note 132, at 15-27.

167. Chen, *supra* note 132, at 24-25; See You in Court, *supra* note 81.

168. Pils, *supra* note 20, at 15-20, 32-51; Kevin J. O'Brien, *Rightful Resistance*, 1 WORLD POL. 31-55 (1996).

aggrieved individuals will make corresponding claims and rights lawyers will seize the opportunity and step forward to use law to hold the regime accountable. This is part of the professional DNA and a right that the Party cannot deny.

On the other hand, the regime's commitment to law is partial and limited and law's full potential as an autonomous force is something the Party is deeply concerned with.¹⁶⁹ The Party will become repressive if legal claims and lawyers' legal mobilization are collective and organized and regarded as politically challenging and risky to the Party's legitimacy and effectiveness.¹⁷⁰ The Party promotes rights and implements law but only to the degree it sees fit, and once the boundary is crossed, it can mobilize its repressive apparatus to crash the challenge.¹⁷¹ Therefore, conscience-shocking episodes, unfulfilled legal promises and political intolerance, in combination, may be the best recipe for the creation of *weiquan* lawyering. Human rights lawyers are the ones who test the uncertain boundary at the social-legal frontiers. That dynamic worked in the past in catalyzing a rights movement and the same dynamic will continue to produce a generation of human rights lawyers.¹⁷²

Extra-legal mobilization is necessary and unavoidable to address past wrong or to seek future transformation.¹⁷³ There remain many circumstances in which *weiquan* lawyers, together with other activists, have to confront with the system directly by organizing street protests.¹⁷⁴ Many of the cases that triggered mobilization may not be justiciable, such as the extra-legal detention of Falun Gong members and political dissidents, the massive censorship as applied online and offline, or lack of political accountability as in the case of demanding

169. See generally TOM GINSBURG & TAMIR MOUSTAFA, *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* (2008); Tamir Moustafa, *Law and Courts in Authoritarian Regimes*, 10 ANN. REV. L. AND SOC. SCI. 281 (2014); Mark Tushnet, *Authoritarian Constitutionalism*, 2 CORNELL L. REV. 391 (2015); Peter H. Solomon, *Courts and Judges in Authoritarian Regimes*, 60 WORLD POL. 122 (2007); MARY E. GALLAGHER, *AUTHORITARIAN LEGALITY IN CHINA: LAW WORKERS, AND THE STATE* (2017).

170. See Fu, *supra* note 14.

171. See Pils, *supra* note 20, at 32-54; Pils, *supra* note 4, at 265-266.

172. Fu & Cullen, *supra* note 3; The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148.

173. Pils, *supra* note 4, at 136-140; Zhu & Fu, *supra* note 45, at 426-434.

174. See, e.g., *Wife of Detained Chinese Lawyer 'Silent' for 1,000 Days Begins 60-Mile March in Search of Answers*, SCMP (Apr. 4, 2018), <http://www.scmp.com/news/china/policies-politics/article/2140248/wife-detained-chinese-lawyer-silent-1000-days-begins-60> [<https://perma.cc/GX8V-SYY2>]; Zhu & Fu, *supra* note 45, at 432-34.

disclosure of assets of officials, are, essentially, political.¹⁷⁵ They can only be challenged through a political process and, in the Chinese circumstances, the only political channel available is public demonstration of anger, public shaming of officials and public demand for accountability.¹⁷⁶ Indeed, in spite of the on-going legal reform, many human rights lawyers remain disillusioned with the entire legal process and may be ready to opt for a political confrontation.¹⁷⁷ For them, public exposure of systematic wrongs and open expression of common grievances are both rights and virtues regardless of their utilities.¹⁷⁸ They argue that if the political system is the root cause of the social problem, then lawyers should have the honesty and courage to make it explicit in their legal advocacy.¹⁷⁹

But in the eyes of the Party, however, lawyers are slowly sliding to the political end of the mobilization spectrum, and, especially with foreign funding and involvement, have embarked on a color revolution against the Party's political power.¹⁸⁰ Frustrated with the legal constraints in the Chinese legal process and fearful of the crackdown, some human rights lawyers and other activists have scattered into communities and started the painstaking and potentially long process of social empowerment and mobilization.¹⁸¹ As mentioned above, human rights lawyers have, in the past, begun to play a meaningful role in building civil society capacity by offering training, enhancing awareness, designing strategies and taking part in or leading social-legal action.¹⁸² In doing so, human rights lawyers are becoming movement leaders and spokespersons or even representative of certain social groups.¹⁸³ Instead of giving legal advice, lawyers have joined the causes of, and taken the same identity as, the groups they seek to

175. See generally, Eva Pils, *From Independent Lawyer Group to Civic Opposition: The Case of China's New Citizen Movement*, 1 *ASIAN-PACIFIC L. & POL'Y J.* 110-52 (2017).

176. Zhu & Fu, *supra* note 45, at 426-34.

177. Xie Yanyi, *709 Jishi yu Heping Minzhu 100 Wen* [A Record of 709 and 100 Questions about Peaceful Democracy], <http://www.rosechina.net/jd/szrd/2017-09-05/9209.html> [<https://perma.cc/7RCC-4BSX>]; Yan, *supra* note 2; The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148.

178. Han Zhu, *Social Movement and the Law in Contemporary China: A Comparative Approach* (2016) 197, 204 (Ph.D. dissertation, The University of Hong Kong).

179. Pils, *supra* note 4, at 127-130.

180. Zou & Huang, *supra* note 100.

181. Fu, *supra* note 151, at 15.

182. Fu, *supra* note 1, at 10-12.

183. *Id.*

represent.¹⁸⁴ Lawyers have immersed themselves in a movement and play certain leading and organizing roles in articulating and asserting rights and interests on behalf of certain social groups.¹⁸⁵

Human right lawyers in China are not irrelevant as the triviality thesis suggests and cannot be simply ignored. Repression remains a core component in the regime governance strategy, but repression alone cannot produce good governance, especially in dealing with part of the legal profession.¹⁸⁶ Human rights lawyers cannot be effectively captured either, as the corporatist thesis would have us believe, because human rights lawyers subscribe to a different value system, which is fundamentally incompatible with the existing political and legal order.¹⁸⁷

The fighting spirits remain in spite of the repression and because of the repression.¹⁸⁸ The commitment among rights lawyers and to a large cause and resilience in their struggling are both saddening and encouraging. Take Xie Yang's case for example. Xie Yang was one of the lawyers who were arrested in the 709 crackdown and the only one who was from outside Beijing.¹⁸⁹ Lawyers, such as Jiang Tianyong, Chen Jianguang, and Lin Qilei, gathered to his rescue and showed their support, leading to their own detention and near constant harassment and monitoring.¹⁹⁰

Xie was given a lenient sentencing after a confession.¹⁹¹ At the same time, the government continued to punish, through criminal prosecution and disciplinary proceedings, human rights lawyers who

184. *Id.*

185. For the concept of cause lawyer, see Austin Sarat & Stuart Scheingold, *CAUSE LAWYERING AND THE REPRODUCTION OF PROFESSIONAL AUTHORITY: AN INTRODUCTION*, *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 1-28 (1998). For an analysis of cause lawyering in China, see Fu & Cullen, *supra* note 4.

186. See, e.g., Pils, *supra* note 149, at 1266-67.

187. Fu & Cullen, *supra* note 4, at 120-23; Xie, *supra* note 177; The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148.

188. See, e.g., Xie, *supra* note 177; The China Human Rights Lawyers Group: Statement Upon the 2nd Anniversary of the 709 Anniversary of the 709 Incident, *supra* note 148; Ho, *supra* note 154; Palmer, *supra* note 23.

189. China Human Rights Lawyers Concern Group, *supra* note 15, at 53.

190. See *Case History: Xie Yang*, FRONT LINE DEFENDERS, <https://www.frontlinedefenders.org/en/case/case-history-xie-yang> [https://perma.cc/PX79-ADD3] (last visited July 3, 2018).

191. See Viola Zhou, *Chinese Rights Lawyer Escapes Jail Term After Admitting Subversion*, SOUTH CHINA MORNING POST (Dec. 26, 2017), <http://www.scmp.com/news/china/policies-politics/article/2125664/chinese-rights-lawyer-escapes-jail-term-after-admitting> [https://perma.cc/B4CU-2KJ2].

remain defiant. Jiang Tianyong was sentenced to a 2 year term imprisonment, for his visit to Xie's family in Hunan while he was in detention.¹⁹² It was said that Jiang felt guilty for not being punished in the initial 709 crackdown and the sense of guilt drove him to take provocative action knowing the risks that may involve.¹⁹³ Another lawyer, Yu Wensheng, who defended one of the 709 lawyers, was detained in 2018 for disrupting the performance of public duties, and, after entering a legality trapping door, was charged with a far more serious offense of subverting state power.¹⁹⁴ Yu, a believer of the mantra that the best offense is the best defense, issued an open letter calling for the election of the State President from multiple candidates, and he was detained a few hours after he publicized the open letter.¹⁹⁵ Yu is now defended by activist lawyers, and the tragedy is the fact that Xie Yang has now come forward to defend Yu.¹⁹⁶

Repression emboldens otherwise moderate lawyers to their legal resistance. Given the hostile atmosphere that has been created, lawyers may seem to be fighting a losing battle and some lawyers may be seen to be acting in desperation. Yu's open letter calling for the election of the President immediately before the Party announced its decision to end the two-term limit of the Presidency is courageous.¹⁹⁷ But at the same time, few would have been surprised at the way the Party has acted.¹⁹⁸ Lawyer Yang Jingzhu's open insult to the entire Hangzhou court for what Yang regarded as wanton disregard for procedures in a murder trial may have made it impossible for the government not to

192. See *Jiang Tianyong Shandong Dianfu Guojia Zhengquan Shoushen Chengren Bianzao Xie Yang Zao Kuxing [Jiang Tianyong Tried for Inciting Subversion of State Power and Admitted Fabricating Xie Yang's Torture Claims]*, XINHUA NEWS (Aug. 22, 2017), http://news.ifeng.com/a/20170822/51715070_0.shtml [<https://perma.cc/LF97-WRVU>].

193. Interview with Jiang Tianyong, Lawyer, (Apr. 5, 2016).

194. See Steven Lee Myers, *China Rights Lawyer Detained After Posting Pro-Democracy Appeal*, N.Y. TIMES (Jan. 19, 2018), <https://www.nytimes.com/2018/01/19/world/asia/china-yu-wensheng-rights-lawyer.html>.

195. *Id.*

196. *Video: 'I will not Accept Gov't-Appointed Lawyer unless Tortured,' Arrested Chinese Lawyer Yu Wensheng Says*, HKFP (Apr. 26, 2018), <https://www.hongkongfp.com/2018/04/26/video-i-will-not-accept-govt-appointed-lawyer-unless-tortured-arrested-chinese-lawyer-yu-wensheng-says/> [<https://perma.cc/N92T-QQQM>].

197. Myers, *supra* note 194.

198. *Id.*

punish him.¹⁹⁹ But lawyers nevertheless keep on fighting using all social legal means that are available. They have yet to be silenced.²⁰⁰

V. CONCLUSION

Having crashed the activist lawyers and placed human rights lawyers under tight political and professional control, the Party has also initiated a round of legal reform to create a more autonomous and effective judicial space to lure lawyers from the streets back into the courts. Lawyers' battleground is in the courtroom, as the Party admonishes lawyers,²⁰¹ but returning to court is possible and meaningful only if the court process is fair, independent and effective. The judicial process has to be credible for lawyers and their clients to buy into. The bargain that the Party aims to strike is clear: 1) lawyers will consent to a diminished role in a range of politically sensitive or significant cases, such as corruption cases and national security cases, broadly defined, in exchange for an enhanced role in routine cases touching on general social and economic rights; 2) lawyers will refrain themselves from engaging in extra-legal activism in both real and virtual worlds as they used to do in exchange for a more effective advocacy in a more meaningful legal process.

Under this conceptualization, lawyers' extra-legal mobilization on streets and social media will be further restricted; but their functions in the court process will be further enhanced. Moreover, lawyers' contributions to decision-making in sensitive cases are likely to decline and diminish, if not vanish, but will increase in cases of ordinary justice. As judicial reform goes on, the adjudication process is likely to be more court-centric and rule-bounded with judges playing a more decisive role in the decision-making process. In that court-centric process, lawyers' advocacy is likely to become an indispensable and integral part of the judicial process, eventually making legal advocacy in courts attractive enough so that lawyers can concentrate on legal advocacy and make courts their sole battleground.

199. See Shi Xiaofeng, *Lawyer's Protest Halts Hangzhou Nanny's Arson Trial*, CHINA DAILY (Dec. 21, 2017), <http://www.chinadaily.com.cn/a/201712/21/WS5a3b34baa31008cf16da2a2e.html> [<https://perma.cc/UZX5-LZNX>].

200. See, e.g., *Five Lawyers Write to Minister of Justice: Cease the Campaign-Style Political Crackdown against China's Lawyers*, CHINA CHANGE (Mar. 2, 2018), <https://chinachange.org/2018/03/02/five-lawyers-write-to-minister-of-justice-cease-the-campaign-style-political-crackdown-against-chinas-lawyers/> [<https://perma.cc/E28T-MXVJ>].

201. Zheng, *supra* note 83.

But many questions remain unanswered. Will human rights lawyers, as politicized as they have been, accept the Party's partial commitment to the rule of law? Would the legal reform offer too little to develop a court-centric legal process? Will lawyers accept political constraints as imposed by the Party? Will lawyers accept executive determination of Falun Gong or other religious groups an evil cult as the Party demands? Would human right lawyers accept the fact that dissidents and defendants in sensitive cases will have officially appointed lawyers only; and how would lawyers face the evidential challenges in corruption cases in which lawyers are barred from the entire investigative stage?

Would the partial legal reform, coupled with sever crackdown, be able to halt the radicalizing process that we have observed in the past? As discussed in the Article, in China's social and economic transition, there are bound to be abuses and miscarriages of justice leading to human sufferings. Those sufferings, which had catalyzed human rights lawyering in the past, will continue to provide a fertile ground for social-legal activism. While China is reforming its legal system and expanding the judicial space to create room for meaningful and effective lawyering, the Party's commitment to a court-centric and rule-based dispute resolution is partial and limited, and, as such, the legal process, while being reformed, remains superficial and continues to lack the necessary credibility and effectiveness in solving social problems that triggered the human rights lawyering in the first place. While determined lawyers may continue to resort to extra-legal social-legal activism on traditional or new forums, this option has become increasingly risky.