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## Political opportunities in non-democracies: the case of Chinese *weiquan* lawyers

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The present article examines human rights practice by China's *weiquan* ('rights-defence') lawyers in the years 2003–2014. Notwithstanding the Chinese authorities' hostility and overt repression towards rights defenders, the number of *weiquan* lawyers has increased over the past decade. Most of them are able to bring cases to court, publish in foreign media and cooperate with foreign donors. This article is an attempt to examine why and how this has been possible. It does so by relying on the theoretical framework of the political opportunity structure applied to non-democratic contexts.

**Keywords:** China; human rights lawyers; political opportunities; repression; non-democracies

### Introduction

Since 2003, a scattered group of Chinese lawyers, generally known as *weiquan* ('rights-defence')<sup>1</sup> lawyers has started representing victims of human rights violations and taking up cases with wide social and political significance. Two decades of rapid economic development and social change have been crucial to the development and transformation of human rights practice in the People's Republic of China (PRC). On the one hand, the economic boom experienced by the country has enlarged dramatically the gap between the richest and poorest members of society, creating social tensions and massive discontent among various social constituencies. On the other hand, economic transformation has also facilitated the development of new social forces and created the need for a more stable legal system; these, in turn, have favoured the rise of a stronger civil society and a more pluralistic and diversified discourse on law and human rights issues. It is in this context that at the beginning of the 2000, more rights-aware citizens started to articulate their causes in human rights terms, providing fertile grounds for the emergence and strengthening of *weiquan* legal practice.

In the years 2003–2014, *weiquan* lawyers have helped to raise public attention on sensitive cases and, eventually, to bring them to the consideration of the courts. Their causes vary greatly, but they are all ultimately related to the assertion of the rights of the weakest parties within society, very often against the interests of the Chinese State-Communist Party (generally referred to as State-Party). They have defended and provided legal aid to Tibetans and Uighurs, Falun Gong practitioners, human rights defenders, families of victims of

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the 2008 Sichuan earthquake and tainted milk powder,<sup>2</sup> migrant and rural workers involved in labour disputes against their employers, victims of environmental pollution, land expropriation and house eviction, defendants in sensitive criminal cases and other public interest cases.

Very often, the significance of the causes they represent extends far beyond the mere gains of an individual case to larger issues of social justice and equality. For these lawyers, the truth is that abused citizens deserve justice and the legal system should provide them with the adequate avenues to have their grievances heard and redressed. The fact that many such cases do not reach the courts or, when they do, are not won,<sup>3</sup> and that those making legal arguments are harassed and maltreated, to them illustrates the continuing political nature of the official understandings of the 'rule of law' and human rights in China, a reality that they want to denounce and fight against.

In just over a decade, the number of *weiquan* lawyers has grown exponentially, from the three prominent names – Xu Zhiyong, Yu Jiang and Teng Biao – involved in the Sun Zhigang accident – the event that marked the start of the rights defence movement<sup>4</sup> – to a list including more than 100 *weiquan* lawyers today. The scope of their actions has expanded as well and has become increasingly complex and diversified, attracting the attention of media, international donors and civil society groups as well as the ire of the Chinese government. On the one side, lawyers confront an authoritarian state, in which legal and political institutions are strictly interdependent and mobilisation<sup>5</sup> from below is highly risky. On the other, they operate amidst the tense state–society confrontations that characterise contemporary China and, in so doing, contribute to the ongoing legal and political discourse focused on change and reform.

The Chinese authorities have interpreted the actions of *weiquan* lawyers as a form of political dissent that could potentially hamper the Communist Party's legitimacy and foment social instability. Hence, in 2012, *weiquan* lawyers figured first in the list of the 'New Black Five Categories of People' that threaten China's social stability and party-dominated top-down reform.<sup>6</sup> Political authorities also have the perception that lawyers are dangerous in view of their participation in the human rights discourse both at the national and international levels. Whilst pursuing human rights claims from below, they become associated with 'foreign' ideas concerning human rights, mainly promoted by the Western organisations they cooperate with.

Yet, the Chinese government has implicitly accepted the fact that *weiquan* lawyers exist, bring their cases to the courts and even publish in foreign media. This has meant that *weiquan* lawyers have continued to operate notwithstanding the repressive political environment, the harassment and the various violent abuses they have been subject to. This article is an attempt to explain why and how this has been possible.

Two intuitive, albeit fairly unsatisfactory, explanations may be given to these vexing questions. The first implies that *weiquan* lawyers have been able to operate because the State-Party has been somehow indulgent towards lawyers and towards *weiquan* activities, even opening up spaces for them to act. The second explanation suggests that lawyers have been responding to an appeal from below. That is, they have been feeling the urge to use legal tools to protect the innumerable victims of abuses and rights violations perpetrated by official agencies and private actors (for example, land developers, enterprise owners, corrupt local officials, police officers). A stronger legal framework, together with an increased visibility of the incongruence inherent in State-Party actions and more vociferous media, has created the spaces for the lawyers to act.

This article is an attempt to provide a more elaborate view on the development and changes in *weiquan* lawyering activities in the years 2003–2014 by reframing and

expanding the two broad explanations offered above using the theoretical framework of political opportunity structure. In particular, the article provides an empirical and theoretical contribution to the conceptual challenges posed by Osa and Schock when redefining political opportunities in non-democratic contexts.<sup>7</sup> On the basis of their analysis, I consider the following variables as political opportunities: increasing/decreasing repression, divided elites, influential allies, media access/information flows, and social networks. The case of *weiquan* lawyers explored here proves the high interdependency of the identified variables and illustrates how repression, somehow paradoxically, may create new opportunities for action and, in particular, for change of lawyers' strategic thinking. This model offers a valuable tool to interpret *weiquan* lawyers' activism in China today, as it links knowledge and understanding of the social-legal and political structure with individual and collective choices.

Strictly speaking, this article considers *weiquan* lawyers primarily in their capacity as human rights defenders rather than as legal professionals in a context 'where neither law is strong nor politics is open'.<sup>8</sup> In so doing, it provides a nuanced picture of human rights practices and discourses in contemporary China, in light of the complex and peculiar relationships between law and politics, and between state and society.

### The political opportunities structure in non-democracies

In a 2007 article, Osa and Schock offer a re-assessment of the conceptual framework defined as 'political opportunity structure', with the aim of responding to its various critics.<sup>9</sup> In particular, they advocate for its 'resuscitation' and 'correction' to interpret social movements in non-democracies. Hence, they contend, 'in non-democratic systems, political opportunities may be more effective as a theoretical framework because the sources of political opportunity are fewer and narrower in scope'.<sup>10</sup>

Specifically, Osa and Schock put forward a number of conceptual propositions to be tested empirically in non-democratic contexts. First, they claim that in non-democracies, opportunities for mobilisation may stem from institutional failures, from government attempts to increase legitimacy through institutional reforms, or from outside the formal institutions (for example through social networks). Indeed, these circumstances expose the vulnerabilities intrinsic in institutions that are originally designed to concentrate power instead of diffusing or sharing it. Second, Osa and Schock argue that in non-democracies alteration in political opportunities is crucial for initiating mobilisation because of the relatively higher barriers and risks associated with any form of dissent and the limits imposed on political access and independent activism. Third, they state that 'in non-democracies, opportunities for mobilization arise from some combination of the following: divided elites, influential allies, increasing/decreasing repression, media access/information flows, and social networks'.<sup>11</sup> Such variables, they claim, may be highly interdependent.

This article examines *weiquan* lawyers' activism by testing the variables identified by Osa and Schock as part of the theoretical opportunity structure in non-democracies. Indeed, to date, there has been no attempt to test these assumptions and propositions empirically and their appeal has not been widely taken up.

In the Chinese context, social movement theories have been used only sporadically to explain the development of dissent and social organisations. In his 2012 work on social protests in contemporary China, Chen examines how the rise and routinisation of social protests is directly facilitated by the State-Party.<sup>12</sup> He contends that, in the present Chinese circumstances, popular contentions are strictly linked to the limits displayed by the current power structure, and, in particular, to the contradictions and ambiguities within

state ideology and institutions, rather than to a decline of the state's capacity. According to Chen, protesters, in order to be effective, need to be able to develop a 'strategic pattern of political opportunism' that balances defiant activities with actions of obedience.<sup>13</sup> In this context, both changes and continuities in the political system may create opportunities.

Hildebrand adopts a similar conceptual approach to explain the development of environmental, HIV/AIDS, and gay and lesbian non-governmental organisations (NGOs) in China. He claims that social organisations have been sprouting because of the 'policy windows' opened by the state when addressing pressing social problems.<sup>14</sup> Both Chen and Hildebrand consider elite divisions and the related opportunities offered by institutional vulnerabilities and ideological discords, approaching the political opportunity structure as devised to analyse democratic contexts.<sup>15</sup> They both agree that such a framework well suits the Chinese context where the authoritarian state plays a pivotal role in determining any form of social activity and any state-society relationships.

Differently from Chen and Hildebrandt, I consider elite division as only one among the various variables creating the political opportunity structure and I take the variable 'increasing/decreasing repression' as the point of departure for analysis. Indeed, while the social and political circumstances that have led to the emergence of the *weiquan* phenomenon have already been discussed among a number of Western scholars,<sup>16</sup> very little attention has been paid to date to the ways in which lawyers respond to repression and the effects that repression has been having on lawyers' activism. In addition, relatively little has been said about the other variables constituting the political opportunity structure in non-democracies.<sup>17</sup>

### The conceptual paradox of repression

The effects of repression upon human rights activities do not necessarily lead to predictable outcomes. Tilly explains that repression works by either raising the costs of mobilisation or by directly suppressing actions.<sup>18</sup> However, in non-democracies, studies have demonstrated that repression may generate three effects on dissent: a negative response, whereby an increase in repression decreases dissent<sup>19</sup>; a positive one, whereby repression increases dissent<sup>20</sup>; and 'an inverted-U shaped relationship', whereby dissent is lowest at low and high levels of repression and highest at mid-levels of repression.<sup>21</sup> While a negative response is generally the most intuitive, the latter two deserve a deeper explanation.

Osa and Schock identify three main approaches taken to corroborate such puzzling relations based on three different causal mechanisms at work: the configuration approach, the strategic approach and the rational choice approach.<sup>22</sup> The configuration approach implies that the effect of repression on mobilisation 'depends on the broader configuration of opportunities in which it occurs'. That is, repression may increase or decrease mobilisation depending on the presence or absence of other dimensions of political opportunity.<sup>23</sup> The strategic approach assumes that the strategy adopted,<sup>24</sup> the range of tactics employed, the targets of protest and the organisation of the challenge are of central importance in determining how repression influences mobilisation.

Since challengers and authorities adapt to each other's action over time, challengers must alter their tactics to prevent demobilization ... Tactical innovation – activists' creativity in devising new non-institutional tactics – facilitates continued mobilization despite increasing repression.<sup>25</sup>

Finally, the rational choice approach is based on the assumption that once a sufficient number of people overtly criticise and defy the government, the costs of dissent drop and mobilisation

increases. By joining their voices, dissenters feel united and protected.<sup>26</sup> Lohmann explains that mobilisation extends when moderate elements of the population realise that the government is less legitimate and the cost of silence is greater than the risk of protesting.<sup>27</sup>

In the case of Chinese *weiquan* lawyers, repression does not dissolve dissent but clearly changes its nature and its modalities of expression. As illustrated in the following sections, *weiquan* activism highlights how the three approaches are not mutually exclusive and can be all equally valid. Indeed, lawyers' activities are made possible by the wider configuration of opportunities offered to them, by the tactical innovation that repression and group enlargement impose, as well as by a rational choice that weighs the costs of dissent against that of silence.

### Political opportunity 1: repression

Fu claims that in today's China there exists 'a high voltage line' between permissible and prohibited legal practice.<sup>28</sup> Punishment and repression result from crossing this line. The line shifts over time and is drawn differently in dissimilar cases and by various levels of government, according to the perceived political importance of the relevant case.<sup>29</sup> *Weiquan* lawyers seem to have crossed this line frequently.

The preferred coercive tools involve depriving human rights defenders of their fundamental rights through legal and extra-legal means. The key measures taken against *weiquan* lawyers and other activists include<sup>30</sup>: direct actions by the authorities from the Ministry of Public Security, the local public security bureaus and, in particular, the so-called 'domestic security squad' (*guobao*), the Ministry of State Security and its police and local governmental officials; indirect actions, that is measures aimed at restraining or putting pressure upon *weiquan* lawyers through their employers, landowners, family, friends and neighbourhood; legal methods that rely on legal norms and procedures; extra-legal measures, including 'any form or degree of punitive response that is beyond legal review and the legality of which is clearly dubious even by criteria of political crime laws'<sup>31</sup>; severe action in the form of 'physical assault, imprisonment beyond a few days, and/or the loss of material resources for either the resister or persons emotionally significant to the resister, such as relatives, friends and sympathizers'<sup>32</sup>; and other milder reactions. Violence, harassment and intimidation of the individuals or their families very often provide the corollary to such measures and frequently go unreported. While some of these acts may occur only once, others may be recurrent.

While legal measures may expose the state to public scrutiny and have significant political costs, 'measures operating in the shadow'<sup>33</sup> are sufficiently flexible to be used discretionarily by state authorities. Deprivation of physical liberty for example may take the form of imprisonment,<sup>34</sup> 'residential surveillance' (*jianshi juzhu*)<sup>35</sup> and 'soft detention' (*ruanjin*). While imprisonment is regulated by the Chinese criminal legislation, the other two measures lie in a limbo between legal and extra-legal dimensions. When subject to 'soft detention', for example, *weiquan* lawyers (like other activists) are regularly monitored and constrained within their homes or in other places often designated by local state security bureaus.<sup>36</sup> In addition to physical segregation in places of detention or at home, their travel documents can be confiscated and they are routinely prevented from leaving the PRC – even travelling to Hong Kong may often prove problematic.<sup>37</sup>

When harassed or ill-treated on account of their human rights-related activities, *weiquan* lawyers are often dissuaded or prevented from speaking out or writing about their ordeal. Their telephones are frequently tapped and their email traffic monitored; they may be watched and followed by police officers, have surveillance cameras installed near their

homes and offices and their neighbours may be recruited to monitor them. Invitations to have tea (*qing he cha*) with the authorities or ‘being assigned a guard’ (*bei shang gang*) have become a fairly common form of intimidation generating the feeling of being constantly watched over.<sup>38</sup> Organisations founded or operated by human rights defenders are closed,<sup>39</sup> their operations strictly monitored, and their sources of funding rigorously controlled, if not cut off. Their offices and homes are recurrently subject to unauthorised searches and defenders are forced to pay heavy fines for trivial administrative transgressions.<sup>40</sup>

*Weiquan* lawyers are also targeted in their capacity as legal professionals. Since the mid-1990s, the Chinese authorities have been using the annual licence registration to manipulate the work of lawyers who, if deprived of a licence, are not able to represent their clients in court. Since 2007,<sup>41</sup> various human rights lawyers have seen their licences denied or revoked because of their handling of sensitive cases,<sup>42</sup> and the operations of their law firms frozen or subjected to administrative sanctions. In addition, lawyers have been barred from mass cases and ‘discouraged’ from taking up cases concerning ethnic and religious groups and other sensitive cases.<sup>43</sup> They are also warned against participating, or encouraging their clients to participate, in petitions to governmental offices and contacting foreign organisations and media.

Years of repression and harassment have not silenced *weiquan* lawyers. Their strategies though have been changing to match available opportunities. Until 2011, the responses of *weiquan* lawyers to repression took a number of different ad hoc forms depending significantly on the nature of the repressive measures as well as on individual attitudes, beliefs and personal circumstances.<sup>44</sup> A number of lawyers – generally not the most radical ones – reacted with silence and self-censorship. Others with stronger contacts – perhaps IT savvy rights defenders – found ways to organise effective virtual networks among themselves and continue their human rights work both secretly and in the open.

### **Since 2011**

I agree with Fu in noting how 2011 represented a strategic turning point in the lawyers’ approaches to repression.<sup>45</sup> While repression has continued, and even intensified at specific times deemed particularly sensitive by the Chinese government, a number of high-profile cases demonstrate how *weiquan* activism has changed. During 2011, lawyer Li Zhuang, the defender of the Chinese mafia crime boss Gong Gangmo, became a household name when he was charged, tried and jailed for allegedly helping his client falsify evidence. Strictly linked to the ‘Strike Black’ campaign against corruption carried forward in Chongqing by the then Party’s chief Bo Xilai,<sup>46</sup> the case against Li was widely regarded by China’s legal world as a travesty of justice and a significant challenge to the survival of the profession itself. It spurred intense strategic reflections,<sup>47</sup> as it brought out in the open how the law could be easily manipulated to serve the interests of the most powerful in society against any rule of law principle. Chinese lawyers – particularly those involved in criminal defence work – started to reflect more critically on how to become stronger actors in the justice system and, consciously or not, cooperation and collective actions emerged as a possible answer.

Three other cases are worth mentioning here: the Beihai case, the Xiaohe case and the Jiangsanjiang case.

#### *The Beihai case*

During a murder trial taking place in Beihai (Guangxi Province) between 2010 and 2011, four defence lawyers seriously challenged the evidence and testimony brought by

prosecutors as having been obtained through torture. Two of the four lawyers were arrested for ‘witness tampering’ (Article 306 of the 1997 Criminal Law) and the two others put under house arrest. The perjury case prompted an outcry among their peers all across China. More than 20 lawyers, including various *weiquan* lawyers, formed the Beihai Lawyers Concern Group and travelled to Beihai to provide legal assistance to their colleagues. While there, they were subject to harassment, beatings and obstruction of their inquiries. That prompted a strongly written letter of protest from the All China Lawyers Association. The case came to an end only in February 2013, when the court decided that the evidence provided by the prosecutors in relation to the murder of Huang was insufficient and the case against the four lawyers was cancelled.

### *The Xiaohu case*

In 2010, Guiyang businessmen Li Qinghong was charged with involvement in organised crime. Li’s lawyers claimed that the case was procedurally flawed and the evidence fabricated.<sup>48</sup> Zhou Ze, one of Li’s defence lawyers, started revealing the details of the case on Sina Weibo – one of the most popular Chinese microblogs – generating wide attention among Chinese netizens. On 3 September 2011, he published a letter online asking for help, which resulted in more than 30 lawyers from all over China joining Zhou’s defence.<sup>49</sup> The lawyers stated that their defence was aimed at protecting not only the defendant’s rights but also the future of the Chinese bar as an independent, functioning part of the justice system, as well as wider values of human rights and procedural justice.

Throughout the 47-day trial, the defence posted more than 1000 tweets, some even providing real-time updates during the sessions. In July 2012, Li Qinghong was sentenced to 15 years in prison for leading organised crime. Nonetheless, the cooperation between local lawyers and outsider lawyers established during the trial was considered fruitful.<sup>50</sup> Lawyers from different parts of the country created a cohesive legal team that collaboratively worked on the case defence strategy and they established an informal, albeit highly symbolic, protective network around the local lawyers involved. Several years later, lawyers still consider the case as an example of the crucial role played by collaborative work within the wider project of China’s legalisation.<sup>51</sup>

### *The Jianganjiang case*

In late March and early April 2014, a group of lawyers and citizens visited a ‘legal education base’ in Jianganjiang (Heilongjiang Province) that they suspected to be a re-education through labour camp – such camps continue to exist despite official abolition at the end of 2013<sup>52</sup> – or an illegal black jail.<sup>53</sup> As reported by Human Rights in China, one day after their visit, the local police authorities detained four *weiquan* lawyers (Jiang Tianyong, Tang Jitian, Wang Cheng and Zhang Junjie) as well as an unknown number of citizens. As news of their detention became public, many lawyers and dozens of activists from different parts of the country travelled to Jianganjiang to press for the release of the lawyers and citizens in custody. Several of the visiting lawyers, including a number of outspoken *weiquan* lawyers, also began a hunger strike to protest the authorities’ refusal to let the lawyers see the detainees held at the Qixing Detention Centre.<sup>54</sup> The account by lawyer Tang Jitian to *The Guardian* reports a story of violent abuses by the police.<sup>55</sup> Lawyer Zhang Junjie was released first and the other three lawyers only ten days later.

Overall, these three cases demonstrate how, notwithstanding repression, the actions of *weiquan* lawyers have become increasingly collective even in areas of work that are



traditionally more sensitive and problematic like criminal justice.<sup>56</sup> They also show the strategic links that *weiquan* lawyers have been developing with ‘mainstream lawyers’, the support they have been able to solicit from the Chinese Bar and the crucial role played by virtual social networks.

### Political opportunity 2: elite divisions, legitimacy and reforms

One of the reasons explaining *weiquan* lawyers’ resilient activism lies in their awareness of the divisions, struggles and contradictions inherent among those in power and their ability to exploit these at times. Paradoxes and ambiguities of the Chinese State-Party started to emerge already at the beginning of the 1980s when the country – after 30 years of authoritarian rule – embarked on a process of accelerated institutional, economic and legal reforms. Drastic changes in various areas of social life and governance exposed flaws and the intrinsic vulnerabilities of a fairly closed political system.<sup>57</sup> In the aftermath of the Tian’anmen massacre, Western scholars started to warn the international community against any simplistic understanding of Chinese political power as monolithic and unified.<sup>58</sup>

As numerous studies on Chinese contentious politics show, the actions of *weiquan* lawyers and other human rights activists within China have been directly affected by the multi-layered structure of the state.<sup>59</sup> Their rights assertions have been facilitated by vertical divisions within the State-Party institutions operating at different levels of authority as well as by horizontal fissures among various agencies at the same level. Lee explains that the State-Party’s decentralised legal authoritarianism may generate popular activism ‘by furnishing the aggrieved groups with both the vocabulary and an institutional mechanism to express their demands and seek redress’.<sup>60</sup>

*Weiquan* lawyers have taken advantage of the legal vocabulary that is promoted officially. The language of law has gradually become an instrument of empowerment for both the lawyers and their clients. Indeed, one of the main reasons explaining the emergence of the *weiquan* movement is the fact that lawyers could exploit the gaps existing between the legal rights promised officially by the government and their violation in practice.<sup>61</sup> Since the early 1980s, the Chinese government has been fervently engaged in enacting legislation and promoting legal education. As a result, citizens have become more legally aware, more conscious about their rights and more alerted to the abuses they may be subject to.<sup>62</sup> Government promises and the frequent references to human rights in public statements and official documents have increased citizens’ expectations as well as scepticism over official benevolence. Therefore, vulnerable and aggrieved citizens have felt the need for their voices to be heard and their causes to be fought with various means, including legal means.

The use of the law both as a concept and as a concrete instrument for claim-making has brought to light some of the incongruence inherent in the Chinese current power structure, as well as some of the ‘contradictions and ambiguities between state institutions and ideology’.<sup>63</sup> Hence, despite the rhetoric of the rule of law – promoted as a fundamental principle of governance under Xi Jinping<sup>64</sup> – legal institutions, including the legal profession at large, are regarded by Chinese leaders as but one of the many functional departments of the State-Party.<sup>65</sup> As such, they face intractable ethical quandaries and have to choose between abiding by the national law, upholding values like human rights and the rule of law and, at the same time, preserving harmony and stability. Judges, for example, are caught in the difficult struggle of working for justice whilst advancing their careers.<sup>66</sup>

For years, there has been a debate among lawyers as to whether they should work within the system or challenge it from the outside; whether and how they should exploit its

inherent tensions and uncertainties; and whether they are entitled to use the law to achieve larger political objectives.<sup>67</sup> Throughout the decade, responses have been inconsistent.<sup>68</sup> Radical lawyers have claimed their full opposition to the system and rejected any form of collaboration with the authorities. Moderate ones have adopted a more diplomatic approach and engaged with the authorities in putting forward specific suggestions for reform.<sup>69</sup> According to Fu, the repressive episodes against *weiquan* lawyers in 2010–2011 have modified the stakes and changed traditional thinking. Instead of bypassing the courts and not engaging with legal institutions, ‘there is now a more critical engagement between judges and lawyers both online and offline. The common understanding is that the court is now a significant battlefield and a significant entry point into the system and a platform on which to speak to power.’<sup>70</sup> In the Beihai and Xiaohe cases, for example, the lawyers were quite vocal in defence of their endangered peers because they could leverage the legislation and rhetoric by central government authorities on the prohibition on torture. In particular, they knew that local courts were adjusting their adjudicating practices in view of the official attention paid to the problem of confession extracted through torture and the impact that wrongful convictions could have had on judges’ ranking and promotions.<sup>71</sup>

### Political opportunity 3: influential allies

As in other developing countries and non-democracies,<sup>72</sup> Chinese *weiquan* lawyers have been able to develop and sustain their activism through the support of influential allies, in particular, foreign allies. Controlled by the state, potential domestic allies – like the ACLA and local bar associations – have been precluded from responding to the plight of *weiquan* lawyers. International allies, on the other hand, offer resources, information and political leverage that human rights lawyers would not be able to mobilise on their own – except in very rare circumstances (such as the Li Zhuang and Beihai cases for example).

International organisations, funding agencies and NGOs – primarily based in Europe and the United States and sometimes with offices in China – have been providing expertise and economic assistance to the work of *weiquan* lawyers. Foreign NGOs have organised training on international human rights standards (for example, on the prohibition of torture, freedom of religion,<sup>73</sup> freedom of expression), internet security and gender equality. Some have invited human rights lawyers to travel abroad to attend trainings on human rights, offering them the opportunity to meet international peers. Within China, they have also facilitated lawyers’ gatherings in the form of salons and contributed to the design of lawyers’ lectures to law students in law schools around the country. Foreign religious organisations – in particular Christian organisations based in the United States – have offered financial support, legal training and Christian rights education to the numerous Chinese Christian *weiquan* lawyers.<sup>74</sup> Foreign diplomatic officers and representatives from international organisations have been frequently meeting rights defenders to understand their working environment and personal situations; they have paid visit to those in distress, often bringing defenders’ plights to the open in the context of human rights dialogues, official state meetings and through the voice of foreign media.

Alliance with foreigners has not always been easy; hence, it has taken time to develop and consolidate. Mutual needs had to be understood and re-interpreted to adapt to the local working circumstances of *weiquan* lawyers. Indeed, initially lawyers were not used to working in partnership beside individual networks of friendships and, very often, they established alliances with foreigners with both parties knowing very little about each other’s expectations. The language and practices of lawyers were not familiar to foreign

donors, sometimes creating misunderstandings and a sense of frustration at both ends. Foreign allies have been approaching *weiquan* lawyers with ideas about possible projects. These were shaped by their knowledge of the Chinese circumstances but also by the narratives built by foreign media and human rights groups about the conditions in which such lawyers were operating. In this context, their aim was that of supporting the nascent Chinese civil society and contributing to the discourse on liberal rights that was seemingly happening within China. At times though, international partners have been complaining about lawyers' lack of strategic thinking.

Though mostly kept secret, alliances with foreign donors sometimes might have also increased the level of sensitivity of the activities of *weiquan* lawyers. The Chinese authorities have associated lawyers' activities with a sensitive and hostile political agenda promoted by foreign organisations under the guise of human rights protection.

Cases of repression of prominent *weiquan* lawyers well-known to the international community prove that international allies do not hold political leverage strong enough to deter the deployment of coercive measures. Indeed, they are believed 'to create noise but, only a politicised and fairly rudimentary noise that does not really have significant political weight'.<sup>75</sup> Other potentially more powerful allies, like businesses or professional organisations, have not offered their support to the activities of *weiquan* lawyers, remaining silent when repression occurred.<sup>76</sup>

#### **Political opportunity 4: media access/information flow**

Journalism started to develop in China at the beginning of the 1980s<sup>77</sup> when cuts in government subsidies led newspapers, magazines and television to enter the free market for revenue. Notwithstanding the state's continued control over information and expression,<sup>78</sup> the media landscape has become progressively more diversified. Today, with more than 2000 newspapers and 9000 magazines published annually,<sup>79</sup> the print media includes publications with different degrees of independence and outreach, varying from state-owned newspapers under the strict control of the Chinese Communist Party (CCP) (for example, the *People's Daily* and *Guangming Daily*) and various ministries in the government (for example, the *Legal Daily* and *China Public Security Daily*) to more independent ones (for example, *Southern Weekend*). Marketisation and diversification have facilitated the development of a public sphere infused with new ideas and values and have played a crucial role in defining the contours of the politics of justice in China.

Greater transparency has come about with more opportunities for victims and their advocates to openly reveal information about cases of injustices. Indeed, to generate revenue, 'commercial media need story that sell'<sup>80</sup> and, 'legal matters help to sell papers'.<sup>81</sup> It is in this context that investigative journalism emerged in the early 2000s. Investigative journalism in China entails 'negative reporting' about power abuses, official misconduct and injustices with the aim of 'asking for accountability, fighting for justice, and promoting certain visions of justice and equality in society'.<sup>82</sup> Investigative journalists, often working together with lawyers, have reported about legal cases of wider social impact and political relevance, exposing the wrongs of those in power. Svensson, Saether, and Zhang explain that disenchanted citizens have sought out lawyers and journalists when other institutions have let them down.<sup>83</sup>

Notwithstanding their collaboration with investigative journalists, *weiquan* lawyers and their most sensitive cases never figure in Chinese domestic newspapers. Thus, the lawyers have two main channels to make their causes known: foreign journalists and the social media. Those who work in alliance with international partners may be put in touch with

foreign journalists who may report about their stories and create awareness and mobilisation around their causes.<sup>84</sup> The majority though mainly rely on social media, including blogs and microblogs. Indeed, mobile communications enable them to share information rapidly and bring violations to the attention of the extensive online community.<sup>85</sup> Staying one step ahead of the internet censors, bloggers are required to constantly set up new blogs as old ones are closed down the moment they stray across the ill-defined boundaries of what is permitted. In particular, in times of high political tension and when the perceived sense of risk is quite high, lawyers use microblog communication not only to express their opinions but, crucially, to report to their peers and their followers every event in their daily life that might be a potential source of risk. For example, in the early months of 2011, when anonymous calls for a ‘Jasmine Revolution’ were spreading online, or during the month leading to the 25th Anniversary of the 1989 Tian’anmen protest, *weiquan* lawyers were targeted for repression and made to disappear by the authorities. At these times, microblogs like Twitter and Weibo were used by the lawyers to inform their peers and followers about police visits and ‘invitations for tea’, about the circumstances of their meetings with the police and, sometimes, the details about their detention.

### Political opportunity 5: social networks

In non-democracies, networks offer real opportunities for mobilisation even in the most repressive circumstances as they stimulate cohesion and create a sense of solidarity and security.<sup>86</sup> In the Chinese context, recent cases of repression have demonstrated how networking has become crucial to the survival of human rights lawyering.

The scope of networking between *weiquan* lawyers and mainstream lawyers has been changing over time. At least until 2010–2011, the fact that many *weiquan* lawyers expressed very critical views of the government and engaged in sensitive political activities induced mainstream lawyers to distinguish themselves from the *weiquan* lawyers, especially from the radical ones, who were perceived as non-strategic and unable or unwilling to identify effective tactics for cooperation with existing institutions at the expenses of their clients and their own safety.<sup>87</sup> After various perceived attacks on the profession – in the Li Zhuang case, for example – an increased number of lawyers have started to identify a common professional identity built around shared interests and values. In pursuing the same objectives of rule of law and accountable government, lawyers are reaching out to each other and increasingly cooperating in high-impact cases. They are attempting to link with their peers, with institutional actors and NGOs.<sup>88</sup>

*Weiquan* lawyers have often offered support to Chinese NGOs. According to Fu, such relationships have become stronger and more diversified over time.<sup>89</sup> In particular, Fu identifies two ways of networking with NGOs. The first is led by NGOs themselves. That is, those well-organised and structured NGOs – Yirenping, for example<sup>90</sup> – match legal expertise with specific legal needs by reaching out to individual lawyers and providing a platform for legal intervention in public events. Where NGOs lack the necessary capacity, lawyers tend to be more proactive in connecting with NGOs and identify their particular legal needs. ‘Lawyers need NGOs to reach the sources of problems so as to bring cases which are otherwise invisible to legal attention, and NGOs need lawyers to bring new strategies and opportunities on board.’<sup>91</sup>

The internet has also served as a powerful tool to overcome the isolation of rights defenders from the outside world. While poor language skills still pose a challenge to effective communication of their experience to an international audience, Chinese human rights defenders may count on a strong network of civil society organisations that help support

their cause and spread word about their plight. Indeed, in the last decade, in addition to the various organisations that have been traditionally working on Chinese human rights issues, other ad hoc organisations – like China Human Rights Defenders<sup>92</sup> or the China Human Rights Lawyers Concern Group<sup>93</sup> – have also been established with the aim of offering support to human rights defenders and their families.

In addition to virtual networking, Chinese human rights defenders still value ‘real’ discussions and gatherings in restaurants and teahouses. Indeed, China’s many restaurants with private rooms and the tradition of eating out enable activists to meet and share their experiences, provided the timing is not ‘sensitive’. Such informal gatherings often take the form of salons in which information is shared and human rights actions discussed. Lawyers have also devised a system whereby prominent lawyers travel around the country to meet their peers in person and discuss matters relating to the cases they are working on. Leading figures are also offering lectures concerning public interest cases to law students, in order to create wider knowledge and followers on issues of public interests.

### Conclusions

This article takes up the conceptual challenges posed by Osa and Schock in 2007 in relation to non-democracies and demonstrates how in the contemporary Chinese context all the five political opportunity variables – repression, divided elites, influential allies, media access/information flows and social networks – are highly interdependent and make lawyers’ mobilisation possible notwithstanding the risk of repression. As discussed by Osa and Shock, changes in relation to one variable reflect on the others and produce a mechanism of evolving action with new opportunities arising.

Notwithstanding the authoritarian nature of the Chinese government and its ongoing repression of dissent, mobilisation is actually possible even without a clear and coherent strategy for action. While it is hard to use quantitative measures to say whether repression has had a significant impact on the number of lawyers involved in *weiquan* activities, it is fairly safe to say that repression has changed the dynamics of mobilisation among *weiquan* lawyers, potentially even facilitating the emergence of other opportunities and, as a result, new forms of mobilisation.

The case study of *weiquan* lawyers demonstrates that the three approaches devised to clarify the paradoxical link between repression and increase of mobilisation – the configuration, the strategic and the rational approach – are all equally valid and useful in explaining why and how repression changes the forms of dissent. In the case of *weiquan* lawyers, repression triggers lawyers to create strong alliances with their peers, with the foreign community of donors and with domestic and foreign NGOs; it makes them also heavily reliant on journalists. With time, it has made lawyers reflect critically on their strategies and on the difficult relationship between law and politics that exists when supporting the causes of the weakest parties in society. Furthermore, to prove Lohmann’s argument, repression, when extreme and unjustified, has raised the attention of domestic professional associations and provided the opportunity to create new alliances with domestic ‘mainstream’ peers who consider the costs of repression less onerous than the ones attached to silence.

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No potential conflict of interest was reported by the author.

### Notes on contributor

Elisa Nesossi is a research fellow at the Australian Centre on China in the World. She is the author of *China's Pre-Trial Justice. Criminal Justice, Human Rights and Legal Reforms in Contemporary China* (Wildy, Simmonds and Hill, 2012) and (with S. Trevaskes, F. Sapio and S. Biddulph) *The Politics of Law and Stability in China* (Edward Elgar, 2014).

### Notes

1. Benney provides a detailed account of the changes that have occurred in the use of the term *weiquan* in China. Jonathan Benney, *Defending Rights in Contemporary China* (London and New York: Routledge, 2013), 12–34.
2. The scandal involved Sanlu, a Hebei-based dairy company, whose melanine-contaminated baby milk formula had sickened thousands of babies around the country. Litao Zhao and Tin Seng Lim, 'The Tainted Milk Formula Scandal: Another Hard Lesson for China', EAI Background Brief No. 406, 29 September 2008, <http://www.eai.nus.edu.sg/BB406.pdf>.
3. Lawyers may occasionally win in administrative courts or in general courts, but to win special conditions should be created. See: John Givens, 'Sleeping with Dragons? Politically Embedded Lawyers Suing the Chinese State', *Wisconsin International Law Journal* 31 (2013): 734–87; Mary E. Gallagher, "'Use the Law as Your Weapon!'" Institutional Change and Legal Mobilization in China', in *Engaging the Law in China: State, Society, and Possibilities for Justice*, ed. Neil Jeffrey Diamant, Stanley B. Lubman, and Kevin J. O'Brien (Stanford, CA: Stanford University Press, 2005), 54–83; Alex Wang, 'The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China', *Harvard Environmental Law Review* 37 (2013): 365–465.
4. Verna Yu, 'A Blow For Freedom: The Campaign In Memory Of Sun Zhigang, 10 Years On', *South China Morning Post*, 14 May 2013, <http://www.scmp.com/news/china/article/1236973/blue-freedom-campaign-memory-sun-zhigang-10-years>.
5. In this article, I use the word 'mobilisation' in its broadest sense, as defined by Osa and Corduneanu-Huci, whereby mobilisation in non-democracies includes all manifestations of high risk/high cost political action. Maryjane Osa and Cristina Corduneanu-Huci, 'Running Uphill: Political Opportunity in Non-Democracies', *Comparative Sociology* 2 (2003): 612.
6. Peng Yuan, 'Zhongguo zhenzhen de tiaozhan zai nali' [Where Are The Real Threats To China], *Sina.com*, 31 July 2007, <http://news.sina.com.cn/pl/2012-07-31/035924873558.shtml>. For a translation of the article see: Geremie Barmé, 'The Five Vermin Threatening China', *The China Story Journal*, 4 November 2012, <http://www.thechinastory.org/2012/11/the-five-vermin-五毒-threatening-china/>.
7. Maryjane Osa and Kurt Schock, 'A Long, Hard Slog: Political Opportunities, Social Networks and the Mobilization of Dissent in Non-Democracies', *Research in Social Movements, Conflicts and Change* 27 (2007): 123–53.
8. Frank W. Munger, Scott L. Cummings, and Louise G. Trubek, 'Mobilizing Law for Justice in Asia: A Comparative Approach', *Wisconsin International Law Journal* 31 (2013): 396.
9. Jeff Goodwin and James M. Jasper, 'Caught in a Winding, Snarling Vine: The Structural Bias of Political Process Theory', *Sociological Forum* 1 (1999): 27–54; Doug McAdam, Sidney Tarrow, and Charles Tilly, *Dynamics of Contention* (Cambridge: Cambridge University Press, 2001).
10. Osa and Schock, 'A Long, Hard Slog', 142.
11. *Ibid.*, 143.
12. Xi Chen, *Social Protest and Contentious Authoritarianism in China* (New York: Cambridge University Press, 2012).
13. *Ibid.*, 192.
14. Timothy Hildebrandt, *Social Organizations and the Authoritarian State in China* (New York: Cambridge University Press, 2013).
15. *Ibid.*; Chen, *Social Protests and Contentious Authoritarianism*.
16. Eva Pils, 'Asking the Tiger for His Skin: Rights Activism in China', *Fordham International Law Journal* 30 (2007): 1209–87; Hualing Fu and Richard Cullen, 'Weiquan (Rights Protection) Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering', *The China Journal* 59 (2008): 111–26; Eva Pils, 'Rights Activism in China: The Case of Lawyer Gao Zhisheng', in *Building Constitutionalism in China*, ed. Stéphanie Balme and

- Michael W. Dowdle (New York: Palgrave MacMillan, 2009), 243–60; Hualing Fu and Richard Cullen, ‘Climbing the *Weiquan* Ladder: A Radicalizing Process for Rights-Protection Lawyers’, *The China Quarterly* 205 (2011): 40–59; Eva Pils, *China’s Human Rights Lawyers: Advocacy and Resistance* (Abingdon: Routledge, 2014).
17. Fu and Cullen, ‘Climbing the *Weiquan* Ladder’; Hualing Fu, ‘Can Lawyers Build a Legal Complex for the Rule of Law in China?’, *Human Rights in China*, 25 July 2014, <http://www.hrichina.org/en/china-rights-forum/can-lawyers-build-legal-complex-rule-law-china>.
  18. Charles Tilly, *From Mobilization to Revolution* (Englewood Cliffs, NJ: Prentice Hall, 1978), 100–2.
  19. Mark Lichbach, ‘Deterrence or Escalation? The Puzzle of Aggregate Studies of Repression and Dissent’, *Journal of Conflict Resolution* 31 (1987): 266–97; Mark Lichbach, *The Rebel’s Dilemma* (Ann Arbor: University of Michigan Press, 1995); Mancur Olson, *The Logic of Collective Action* (Cambridge MA: Harvard University Press, 1965); Neil Smelser, *Theory of Collective Behavior* (London: Routledge and Kegan Paul, 1962).
  20. Charles Brockett, ‘A Protest-Cycle Resolution of the Repression/Popular Protest Paradox’, *Social Sciences History* 17 (1993): 457–84; James de Nardo, *Power in Numbers* (Princeton, NJ: Princeton University Press, 1985); Marwan Khawaja, ‘Repression and Popular Collective Action: Evidence from the West Bank’, *Sociological Forum* 8 (1993): 47–71; Marwan Khawaja, ‘Resource Mobilization, Hardship, and Popular Collective Action in the West Bank’, *Social Forces* 73 (1994): 191–220; Johan Olivier, ‘State Repression and Collective Action in South Africa, 1970 to 1984’, *South African Journal of Sociology* 22 (1991): 109–17; David Snyder and Charles Tilly, ‘Hardship and Collective Violence in France, 1830–1960’, *American Sociological Review* 37 (1972): 520–32.
  21. Terry Boswell and William J. Dixon, ‘Marx’s Theory of Rebellion: A Cross-National Analysis of Class Exploitation, Economic Development, and Violent Revolt’, *American Sociological Review* 58 (1993): 681–702; Edward N. Muller, ‘Income Inequality, Regime Repressiveness, and Political Violence’, *American Sociological Review* 50 (1985): 47–61; Kurt Schock, ‘A Conjunctural Model of Political Conflict: The Impact of Political Opportunities on the Relationship between Economic Inequality and Violent Political Conflict’, *Journal of Conflict Resolution* 40 (1996): 98–133.
  22. Osa and Schock, ‘A Long, Hard Slog’, 135–7.
  23. *Ibid.*, 135.
  24. As claimed by Meyer and Staggenborg, ‘strategy includes decisions about tactics, claims, targets, and alliances, and these decisions are interrelated’. David S. Meyer and Suzanne Staggenborg, ‘Thinking about Strategy’, in *Social Movements, Protest, and Contention, Volume 37: Strategies for Social Change*, ed. Gregory M. Maney, Rachel V. Kutz-Flamenbaum, Deana A. Rohlinger and Jeff Goodwin (Minneapolis; London: University of Minnesota Press, 2012), 6.
  25. *Ibid.*, 136.
  26. Timur Kuran, ‘Sparks and Prairie Fires: A Theory of Unanticipated Political Revolution’, *Public Choice* 61 (1989): 41–74; Timur Kuran, ‘Now Out of Never: The Element of Surprise in the East European Revolution of 1989’, *World Politics* 44 (1991): 7–48.
  27. Susanne Lohmann, ‘The Dynamics of Informational Cascades: The Monday Demonstrations in Leipzig, East Germany, 1989–1991’, *World Politics* 47 (1994): 42–101.
  28. Fu and Cullen, ‘Climbing the *Weiquan* Ladder’, 51.
  29. *Ibid.*, 52.
  30. I follow here the methods of classification of repressive measures identified by Turk. See Austin Turk, *Political Criminality. The Defiance and Defence of Authority* (Beverly Hills, CA: Sage Publications, 1982).
  31. *Ibid.*
  32. *Ibid.*
  33. Eva Pils, ‘“Disappearing” China’s Human Rights Lawyers’, in *Comparative Perspectives on Criminal Justice in China*, ed. Mike McConville and Eva Pils (Cheltenham, UK: Edward Elgar, 2013), 418.
  34. Charges such as ‘subversion’ and ‘inciting subversion of state power’ (Article 105 of the 1997 Criminal Law), along with ‘splittism’ and ‘inciting splittism’ (Article 103), and ‘leaking of state secrets’ (Articles 111 and 398) are generally characterised as crimes of ‘endangering state security’ and punished with relatively long periods of imprisonment. Other vague provisions such as

- ‘creating disturbances’ (Article 293) or ‘gathering a crowd to create public disturbance’ (Article 291) are also frequently used to silence rights defenders.
35. The 1979 Criminal Procedures Law (CPL) and its later revisions (1996, 2012) allow two distinct forms of residential surveillance, which differ depending on the location where the measure is carried out – either in or around the criminal suspect’s place of residence or, in exceptional circumstances, in a residence designated by the police (*zhiding jusuo*). When there is ‘no fixed residence’ or ‘in cases involving offences of endangering state security, terrorism or extremely serious corruption’ (Article 73, 2012 Criminal Procedure Law), the law does not require for notification of the families about the detainees’ whereabouts or the charges they face. Over time, such exceptions have been used to widen the scope of ‘residential surveillance’, which has merged with other extra-legal measures including enforced disappearance or *incommunicado* detention.
  36. Human Rights Watch, ‘China: End Unlawful Practice of House Arrest’, 24 October 2012, <http://www.hrw.org/news/2012/10/24/china-end-unlawful-practice-house-arrest>.
  37. Under the 2006 Passport Law (Article 13(7)) and the 2012 Entry-Exit Law of the PRC (in force from 1 July 2013) (Article 12(5)(6)), officials may prevent Chinese citizens from travelling abroad when they believe that this might harm ‘state security’ or harm or cause ‘major loss’ to national interests. The meaning and scope of ‘harm to state security’ or ‘harm or loss to national interests’ are left purposely undefined to allow a broad degree of official discretion and arbitrary enforcement. China Aid Association, ‘Three Lawyers Barred from Leaving China to Attend US Human Rights Forum’, 2 January 2011, <http://www.chinaaid.org/2011/02/three-lawyers-barred-from-leaving-china.html>.
  38. Yaxue Cao, ‘Drinking Tea with the State Security Police – Who Is Being Questioned?’, *Seeing Red in China*, Comment posted 11 March 2012, <http://seeingredinchina.com/2012/03/01/drinking-tea-with-the-state-security-police-who-is-being-questioned/>.
  39. Tania Branigan, ‘China Officials Shut Legal Aid Centre’, *The Guardian*, 18 July 2009, <http://www.theguardian.com/world/2009/jul/18/china-shuts-legal-aid-centre>.
  40. Human Rights Watch, *Walking on Thin Ice*.
  41. In 2007, the Law on Lawyers was amended and in 2008 the Ministry of Justice issued the Methods for the Management of Law Firms and the Methods for the Management of Lawyers’ Practice imposing an ‘annual inspection and assessment process’ (*niandu jiancha kaohe*).
  42. One of the most extreme cases is represented by the disbarment from the profession of the two Beijing lawyers Tang Jitian and Liu Wei in 2010. Human Rights in China, ‘Beijing Judicial Bureau Revokes Licenses of Two Rights Defence Lawyers’, <http://www.hrichina.org/en/content/398>.
  43. Following the release of the Guiding Opinions on Lawyers Handling Collective Cases in 2006.
  44. Fu and Cullen and Pils offer a systematic classification of *weiquan* lawyers according to ‘a pyramid of *weiquan* lawyering’ including moderate, critical and radicals. Moderate represents the majority of the lawyers, those who try to protect the rights and interests of the Chinese citizens without significantly challenging the legal and institutional constraints defined by the state. Critical lawyers are those who criticise China’s current legal and political conditions, but who express their criticism with a certain degree of caution. They work at an individual-case level, but they also propose longer-term legal and political reforms. Lastly, radical lawyers challenge both the legal and political status quo by taking up extremely sensitive cases which involve the so-labelled ‘enemies’ of the state. Legal defence is accompanied with radical criticism of the political and legal systems. Fu and Cullen, ‘Climbing the Weiquan Ladder’; Fu and Cullen, ‘*Weiquan* (Rights Protection) Lawyering in an Authoritarian State’; Pils, ‘Asking the Tiger for His Skin’.
  45. Fu, ‘Can Lawyers Build a Legal Complex’.
  46. Susan Trevaskes, ‘The Ideology of Law and Order’, in *The China Story Yearbook 2012. Red Rising, Red Eclipse*, ed. Geremie Barmé (Canberra, Australia: Australian National University, 2012), 66–87.
  47. Rongjie Lan, ‘Killing the Lawyer as the Last Resort: The Li Zhuang Case and Its Effects on Criminal Defence in China’, in *Comparative Perspectives on Criminal Justice in China*, ed. Mike McConville and Eva Pils (Cheltenham, UK: Edward Elgar, 2013), 304–21. See also the articles on: [http://special.caixin.com/event\\_0422\\_1/index.html](http://special.caixin.com/event_0422_1/index.html).
  48. On Zhou’s approach to law and justice at the time the cases presented here unfolded see: Trevaskes, ‘The Ideology of Law and Order’.



49. Yueran Zhang, 'China's All-Star Legal Team Pleads for Defendants' Rights on Social Media', *TeaLeafNation*, 25 July 2012, <http://www.tealeafnation.com/2012/07/bilingual-brew-chinas-all-star-legal-team-pleads-for-defendants-rights-on-social-media/>.
50. Ibid.
51. 'Yuanyu fangfan yu lüshi zuowei' (Preventing Wrongful Imprisonment and the Role of Lawyers), *Xinpo pinglun*, 22 December 2013, <http://news.sina.com.cn/pl/2013-12-22/082229050181.shtml>.
52. Re-education through labour (RTL) was a form of administrative detention administered by the public security organs, allowing detention without trial for up to three or four years for prostitutes, petty thieves, those judged to have disrupted social order, people involved in unlawful religious activity and even petitioners. The system was formally abolished at the beginning of 2013.
53. Black jails are unlawful detention facilities where individuals, very often petitioners, could be held incommunicado. See: Human Rights Watch, 'China: Secret "Black Jails" Hide Severe Rights Abuses', 12 November 2009, <http://www.hrw.org/news/2009/11/02/china-secret-black-jails-hide-severe-rights-abuses>.
54. Human Rights in China, 'Lawyers Detained in Jiansanjiang, Heilongjiang', 26 March 2014, <http://www.hrichina.org/en/citizens-square/photos-lawyers-detained-jiansanjiang-heilongjiang>.
55. Associated Press, 'Four Chinese Rights Lawyers Allege Torture by Police', *The Guardian*, 16 April 2014, <http://www.theguardian.com/world/2014/apr/15/chinese-rights-lawyers-police-torture>.
56. On the difficulties experienced by Chinese lawyers in criminal defence work, see: Elisa Nesossi, *China's Pre-Trial Justice. Criminal Justice, Human Rights and Reforms in Contemporary China* (London: Wildy, Simmonds and Hill, 2012), 136–72; Elisa Nesossi, 'Compromising for "Justice"? Criminal Proceedings and the Ethical Quandaries of Chinese Lawyers', in *Comparative Perspectives on Criminal Justice in China*, ed. Mike McConville and Eva Pils (Cheltenham, UK: Edward Elgar, 2013), 256–78; Hualing Fu, 'When Lawyers Are Prosecuted ... The Struggle of a Profession in Transition', *The Journal of Comparative Law* 2 (2007): 95–133.
57. On the risks associated with reformist projects, see: Osa and Schock, 'A Long, Hard Slog', 128–9.
58. Craig Calhoun, *Neither Gods Nor Emperors. Students and the Struggle for Democracy in China* (Berkeley and Los Angeles: University of California Press, 1994); Dingxin Zhao, *The Power of Tiananmen: State-Society Relations and the 1989 Beijing Student Movement* (Chicago: The University of Chicago Press, 2001).
59. Kevin J. O'Brien and Li Lianjiang, *Rightful Resistance in Rural China* (New York: Cambridge University Press, 2006); Elizabeth J. Perry, *Challenging the Mandate of Heaven. Social Protest and State Power in China* (New York: M.E. Sharpe, 2002); Chen, *Social Protests and Contentious Authoritarianism*.
60. Ching Kwan Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt* (Berkeley and Los Angeles: University of California Press, 2007), 17.
61. Pils, 'Asking the Tiger for His Skin'; Hualing Fu and Richard Cullen, 'Weiquan (Rights Protection) Lawyering in an Authoritarian State'.
62. Lianjiang Li, 'Rights Consciousness and Rules Consciousness in Contemporary China', *The China Journal* 64 (2010): 47–68; Mary Gallagher, 'Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness', *Law and Society Review* 40 (2006): 783–816; Merle Goldman, *From Comrade to Citizen. The Struggle for Political Rights in China* (Cambridge, MA; London: Harvard University Press).
63. Chen, *Social Protests and Contentious Authoritarianism*, 16.
64. Yanan Zhao, 'Xi Pledges to Implement Rule of Law', *China Daily*, 12 May 2012, [http://www.chinadaily.com.cn/china/2012-12/05/content\\_15985873.htm](http://www.chinadaily.com.cn/china/2012-12/05/content_15985873.htm).
65. Benjamin Liebman, 'China's Courts: Restricted Reform', *The China Quarterly* 191 (2007): 620–38.
66. Nesossi, *China Pre-Trial Justice*.
67. Fu, 'Can Lawyers Build a Legal Complex for the Rule of Law in China?'
68. Fu and Cullen, 'Weiquan (Rights Protection) Lawyering in an Authoritarian State'; Pils, 'Rights Activism in China'; Nesossi, 'Compromising for "Justice"?'
69. Consider, for example, the suggestions sent to the National People's Congress (NPC) by lawyers Xu Zhiyong, Teng Biao and Yu Jiang that led to the abolition of the system of 'custody and

- repatriation' (*shourong shencha*) in the aftermath of Sun Zhigang's death, or, the 2013 suggestions sent to the NPC by 11 *weiquan* lawyers calling for the revision of the 1990 Regulations on Detention Centres. See: Keith Hand, 'Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizens Action in the Peoples' Republic of China', *Columbia Journal of Transnational Law* 45 (2006): 114–95; Xinhuaawang, '11 ming lüshi jianyi xiugai "kanshou suo tiaoli" jin zhi qiang po lao dong' (Eleven Lawyers Suggest Revising the 'Detention Centres Regulations' and Prohibiting Forced Labour), *Xinhua News*, 18 March 2013, [http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2013-03/18/c\\_124471564.htm](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2013-03/18/c_124471564.htm).
70. Fu, 'Can Lawyers Build a Legal Complex for the Rule of Law in China?'
  71. See, for example: Carl Minzer, 'Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On', *New Mexico Law Review* 39 (2009): 63–88; Ira Belkin, 'China's Tortuous Path toward Ending Torture in Criminal Investigations', *Columbia Journal of Asian Law* 24 (2011): 273–302.
  72. See Boaventura de Sousa Santos and Cesar Rodrigues Garavito, *Law and Globalization from Below, Toward a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005); Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders. Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998); Osa and Schock, 'A Long, Hard Slog', 131.
  73. See, for example, the work done by CHINAaid on freedom of religion: <http://www.chinaaid.org/2014/03/law-and-religious-training-seminars.html>.
  74. Gerda Wielander, *Christian Values in Communist China* (Oxon and New York: Routledge, 2013), 140.
  75. From private conversations with Chinese *weiquan* lawyers.
  76. Nicola Macbean and Elisa Nesossi, 'Living Up to Human Rights Responsibilities: Lawyers and Law Firms in the Chinese Authoritarian Context', in *Human Rights Protection in Global Politics: Responsibilities of States and Non-State Actors*, ed. David Karp and Kurt Mills (London: Palgrave Macmillan, forthcoming 2015), 180–200.
  77. As of 1979, there were only 69 newspapers in the country, all fully controlled by the State-Party and reporting primarily political propaganda. See: Benjamin Liebman, 'Watchdog or Demagogue? The Media in the Chinese Legal System', *Columbia Law Review* 105 (2005): 17; Marina Svensson, Elin Saether, and Zhi'an Zhang, eds, *Chinese Investigative Journalists' Dreams. Autonomy, Agency, and Voice* (Lanham, MD: Lexington Books, 2013), 7.
  78. Karin Deutsch Karlekar and Jennifer Dunham, 'Freedom of the Press 2014. Press Freedom in 2013: Media Freedom Hits Decade Low', *Freedom House*, [http://www.freedomhouse.org/sites/default/files/FOTP2014\\_Overview\\_Essay.pdf](http://www.freedomhouse.org/sites/default/files/FOTP2014_Overview_Essay.pdf).
  79. China.org.cn, 'Mass Media', <http://www.china.org.cn/english/features/Brief/193358.htm>.
  80. Qiang Gang and David Bandursky, 'China's Emerging Public Sphere: The Impact of Media Commercialization, Professionalism, and the Internet in an Era of Transition', in *Changing Media Changing China*, ed. Susan Shirk (Oxford: Oxford University Press, 2011), 40.
  81. Benjamin L. Liebman, 'Changing Media, Changing Courts', in *Changing Media Changing China*, ed. Susan Shirk (Oxford: Oxford University Press, 2011), 153.
  82. Svensson, Saether, and Zhang, *Chinese Investigative Journalists' Dreams*, 1.
  83. *Ibid.*, 7.
  84. See for example: Biao Teng, 'China's Growing Human Rights Movement Can Claim Many Accomplishments', *The Washington Post*, 18 April 2014, [http://www.washingtonpost.com/opinions/chinas-growing-human-rights-movement-can-claim-many-accomplishments/2014/04/18/7c5fb650-c707-11e3-bf7a-be01a9b69cf1\\_story.html](http://www.washingtonpost.com/opinions/chinas-growing-human-rights-movement-can-claim-many-accomplishments/2014/04/18/7c5fb650-c707-11e3-bf7a-be01a9b69cf1_story.html).
  85. The Chinese authorities appreciate the power of the internet and are strictly controlling it. Thus, Section Five of the 1997 Computer Information Network and Internet Security, Protection, and Management Regulations approved by the State Council provides, among others, that the internet should not be used to 'incite splittism' or 'destroy the order of society' – vague clauses that are easily abused in cases involving individuals who are deemed politically sensitive. Since 2010, new legal and institutional structures have been created to further strengthen the state's control over the internet.
  86. Osa and Schock, 'A Long, Hard Slog', 137.
  87. Nesossi, 'Compromising For "Justice"?'
  88. Fu, 'Can Lawyers Build a Legal Complex for the Rule of Law in China?'
  89. *Ibid.*

90. Beijing Yirenping Center, <http://www.yirenping.org/>.
91. Ibid.
92. China Human Rights Defenders, <http://chrdnet.com>.
93. China Human Rights Lawyers Concern Group, <http://www.chrlawyers.hk>.