

THE NEED FOR A UNITED FRONT ON RIGHTS DEFENSE

BY TAO YE

Lawyers stand at the forefront of rights defense, and as a result are increasingly targeted by new regulations and other forms of official suppression. Progress in the rights defense movement requires increasing participation by other social sectors, and improving the general public's awareness of their rights.

Just as China's rights defense (*weiquan*)¹ movement was starting to gain momentum, the All-China Lawyers Association issued a document entitled "Guidelines on Lawyers Undertaking Class Action Lawsuits."² These guidelines impose a series of restrictions and controls on rights protection lawyers (*weiquan lǚshī*),³ strengthen the authorities' capacity to interfere with their work and set up an attorney reporting system. The central government is clearly establishing a system of channels for controlling the rights defense movement by passing new laws restricting the defense of rights, but none punishing violations of human rights. For its part, the nascent Chinese rights defense movement needs to decide what course to follow, because impetuous, radical and irrational emotions brewing within it threaten to open the floodgates to all sorts of unpredictable forces.

The following are few general reflections on the rights defense movement.

Aims

The fundamental aims of China's rights defense movement are humanitarian. Humanitarianism is not only the starting point in the defense of rights; it is also its process and end result. The rights defense movement began in a spirit of humanitarianism, with the wish to uphold citizens' constitutional rights and human dignity, thereby promoting justice and human values, which brings us back to humanitarianism. In defending rights, we must therefore consider not only the starting point but also the effectiveness of our methods and their outcome. We must look at what is ultimately achieved by defending people's rights.

In defending rights, we must also take pains to avoid any outcomes that run counter to humanitarianism and its aims.

Methods

The rights defense movement uses nonviolent methods and possesses all of the defining characteristics of nonviolent resistance: it is peaceful, reasonable, self-reliant, nonviolent, law-abiding and driven by spiritual values. In the midst of so much social and institutional change, the rights defense movement emphasizes gradual and cumulative progress. It does not entertain extravagant hopes for strokes of luck or sudden change, and it steers clear of radicalism.

Levels

The rights defense movement currently operates on four levels: It works in the realm of *politics* to promote political reform and constitutional democracy; in the *legal arena* to promote judicial fairness and judicial independence; in the area of *public welfare* to mobilize citizens and society; and in the realm of *public opinion* to build up intellectual and strategic reserves.

The defense of rights in the *political arena* has implications at both the institutional and the legislative levels. To bring about institutional transformation, rights advocates critique the political system and its institutions. They also push for new laws and the revision of existing laws as a way to limit and monitor government action, bring institutional corruption under control, promote governmental and administrative reform and influence policymaking. It should be noted that it only makes sense to speak of the defense of rights in the political arena in the context of political dictatorships. In democratic societies, violations of rights are resolved through the judicial process, but in dictatorial societies that lack judicial independence, cases of rights violations cannot be prosecuted in courts of law because the violators are above the law. The defense of rights in the political arena is particularly necessary when political or judicial rights are violated, or when the government itself violates rights and abuses its powers. This political defense of rights aims to reform the political system at the top and to establish constitutional democracy; at the same time, it is a bottom-up process driven by gradual change in the judicial and public welfare arenas. Consequently, the protection of rights in the political arena is

the most difficult and complex part of the rights defense movement.

In the *legal arena*, rights campaigners employ a variety of judicial methods to seek redress for individual cases in which rights have been violated, and to protect the rights and interests of disadvantaged social groups and communities. Legal rights work seeks to balance the exercise of administrative and local government power and to promote some measure of judicial independence at the local level. It is a grassroots movement that gradually affects and transforms existing constitutional and institutional structures to build a society governed by law. Human rights lawyers who have established their practices in this area have thereby also advanced their own professional stature, rights and privileges. By promoting judicial fairness and independence from below, legal rights work has become the most practical and useful part of the rights defense movement.

When human rights violations are not prosecuted in the courts and political demands and goals remain unclear, human rights can only be defended in the *public welfare arena*. Unequal access to resources, information and social benefits produces conflict between ordinary citizens and local governments and incites members of the public to organize, demand their rights and take action, with uncertain repercussions on the legal and political arenas. For example, citizens protesting forced relocations or seeking access to medical care or education for their children write petition letters, make appeals to the higher authorities or engage in dialogue. Depending on circumstances, such activities may ultimately enter the legal or even the political arena, but they may also remain confined to the realm of public welfare. Citizens mobilizing to promote common interests are spurring the growth of the rights defense movement, but their tendency toward spontaneous action also deprives the movement of stability and a clear direction.

In the realm of *public opinion*, rights defenders rely on the media, the Internet and other available resources, as well as on scholarly research in the fields of philosophy and politics, to educate the public about the values of freedom, democracy and human rights, and to raise awareness of rights protection issues. They also expose and denounce human rights violations, act as government watchdogs and use public opinion to promote judicial fairness. The defense of rights in the realm of public opinion provides intellectual, strategic and theoretical assets to other levels of the rights defense movement. Public opinion is a multi-tiered platform for the exchange of information among members of society. Regardless of results, the most dynamic and vivid arguments for the defense of rights are expressed in the realm of public opinion.

These four levels complement each other. In all societies, the law is the most basic level for the defense of rights. At the levels of politics, social welfare and public opinion, rights are defended in reference to the law.

The core of the movement

Who is at the core of China's rights defense movement? Given the four different arenas of rights defense work, it is important that the roles of those who form the backbone of the movement

do not overlap or become blurred, as this could be detrimental to the healthy development of the movement as a whole.

The defense of rights in the *political arena* ought to be waged by political opposition parties and democratic forces within China, but political repression has made this impossible. Instead, the leading role in the political struggle for rights has been played by the overseas democracy movement, which attempts to coordinate with dissidents and intellectuals within China who are fighting their own battles. But the history of the overseas democracy movement, with all its ups and downs, raises doubts about its ability to serve as an effective proxy for a China-based rights movement. Rights will only be defended and advanced in the political arena if democratic forces emerge within China to form the core of the movement.

In the legal arena, the defense of rights is driven by disadvantaged groups and individuals who have had their rights violated. Although they are assisted by rights defense lawyers, the victims serve as the pivotal link between the violation and the defense of rights. If victims were to withdraw from rights protection activity, the movement would collapse. Some people mistakenly assume that human rights lawyers are the backbone of the rights defense movement, but in fact, even if lawyers stopped defending victims' rights, the movement would continue in spite of the consequent setback.

In the realm of public welfare, ordinary citizens organizing spontaneously are the core of the rights defense movement. Spontaneous collective action often turns into large-scale resistance, which can have far-reaching legal and political ramifications. But to defend their rights, ordinary citizens urgently need the help of lawyers and intellectuals.

The intellectual and social elite form the backbone of the movement in the realm of public opinion, while the educated public gives the movement its basic strength. Intellectuals are generally at the forefront because they have first access to intellectual and social resources. Without their intellectual dynamism, public opinion would be like a stagnant pool, and the rights defense movement would be sapped of all vitality.

Violations of rights

Whether an act constitutes a violation of rights must be judged through the legal process. A rights violation has three essential factors: the violator, the incident and the victim, each of which must be established through the legal process if a violation of rights can be said to have taken place.

The fact that someone may have had his or her rights violated is not the same as a violation of rights in the eyes of the law; for a violation of rights to have legal meaning, the victim must bring his or her case to court. But due to a slave mentality born of long years of dictatorship, many victims do not realize that their rights have been violated and that they have a right to take the violator to court, nor do they understand how to turn to the law to defend their rights. Unless victims go to court, the law will not recognize them as victims and afford them its protection. Likewise, unless the violators are tried in a court of law, the law will not recognize them as culprits and punish them accordingly. Therefore, prosecution in a court of law is a prerequisite for a rights violation to be recognized.



The core of the rights defense movement is composed of victims who have become defenders of their own rights. Photo: Getty Images

Whether a violation of rights has taken place also has to be determined according to whether or not constitutional provisions recognize that right. Any violations of rights that take place outside of the constitutional framework—such as actions that are considered violations from a logical or ethical standpoint—do not legally constitute a violation of rights, and in these cases, rights defense work cannot operate in the legal area. The question is: How many laws and constitutional provisions are actually enforceable in today's China? How many of them are fair and impartial? To be sure, the lack of enforceability and impartiality of the Chinese constitution poses difficulties for rights defenders, but this should not be used as an excuse to give up on rights defense work.

If there is no way of establishing the culprit's identity or if he has disappeared or escaped from the law's line of vision, it may be impossible to obtain a legal finding that a right has been violated. Furthermore, if a mistake is made in identifying the culprit, or if the wrong person is accused, the rights of the victim cannot be defended. The current condition of China makes it very difficult to identify and accuse those who violate the rights of others, because the violators are often those who hold power—which means they are beyond the reach of the law and operate from behind the scenes. For example, a property owner may appear to be responsible for a rights violation, when in fact the real culprit is an influence-peddling official who manipulates a transaction. Likewise, a company may appear to be responsible, when the real culprit is a local gov-

ernment or agency that sets a particular policy. Or a local police department may seem to be at fault, when the real culprit is the government that issued the order. In such cases all efforts to find the culprit may be a waste of time.

Defending rights

The defense of rights invariably lags behind the violation of rights. A right can be defended if the three essential factors that constitute a violation (the violator, the incident and the victim) exist, but even then the defense will not necessarily get off the ground. Defending a right requires three essential factors: a person willing to stand up for his or her rights, a lawyer and a court of law.

Whether or not a right is defended depends first and foremost on whether the victim can make the transition from victim to rights defender. If a victim knows that his rights have been violated but fails to assert or defend them, either for economic or political considerations or because he has been intimidated, then his rights will never be defended. The vast majority of rights violations committed in China do not result in a defense of those rights, mainly because of social limitations and deficiencies in the legal system, but also because of a lack of civic consciousness, judicial awareness, courage and resourcefulness on the part of victims. Therefore, the main task of the rights defense movement is to inform victims of their inalienable rights and to help them make the transition from victims to rights defenders, so that they have the courage to go to court.

Another reason why most rights violations have not been defended in court is that many victims do not have a lawyer to assist them. Most of China's so-called lawyers have been trained within the Chinese political system and belong to that system; they have been specifically trained to act as the defenders and apologists of the dictatorship. They uphold the dignity of the dictatorship, not of the law, and represent the interests of the regime and those with power and influence, not of ordinary citizens and disadvantaged groups. There are very few rights defense lawyers in China. The few that do exist face not only substantial financial burdens but also political risk, and require moral integrity and a spirit of sacrifice. That is why rights defense lawyers are accorded great respect by the public. Yet because these lawyers are subjected to all sorts of pressure and persecution from the authorities, their own lawful rights and interests are not protected, and their ability to defend their clients is restricted. This has made it extremely difficult for more lawyers to join the rights defense movement. Internal and external interference often distorts rights concepts and produces misguided opinions about efforts to defend victims' rights. It also has the potential to lead to a crisis of division among rights defense lawyers.

Whether or not a right is defended depends first and foremost on whether the victim can make the transition from victim to rights defender.

Finally, if we are to persist in defending rights cases, we must deal with shortcomings in the courts and existing laws. If existing constitutional rights are not protected, how can we permit ourselves the luxury of discussing the defense of rights that are not enshrined in the constitution? And if victims cannot make a dignified appearance in a court of law and defend their rights with the confidence that justice is on their side, how can we begin to talk of a rights defense movement, much less of winning lawsuits? To be sure, China's current legal system offers little redress to ordinary people; government officials shield each other, because they are all bound together for good or ill. But it is not in the nature of human rights defenders to give up. Their character is to forge ahead despite all obstacles.

Practical problems and confusion

Difficulties and confusion in the rights defense movement are caused by both internal and external factors. Internally, these problems are exacerbated by the fact that the movement operates on different levels and through different groups of people. Externally, these problems are brought on by China's current political and judicial systems. Intellectual confusion and practical difficulties at each of the different levels naturally affect the movement as a whole.

In the political arena, the overseas democracy movement's current role as the backbone of the rights defense movement creates a geographic distance from the realities on the ground

that results in all sorts of tactical miscalculations and practical problems. Shortcomings within the rights defense movement also cause practical problems and confusion: a lack of long and short-term strategies; a lack of introspection and careful consideration about whether to proceed gradually and steadily or rapidly and impetuously; a fondness for hollow political mobilization and self-defeating posturing; excessive zeal and a rash tendency to escalate acts of resistance; and impatient eagerness for legal rights efforts to lead to political struggle. An important step in avoiding such problems and confusion is to gradually move the center of the rights defense movement back to China and to integrate it with domestic legal rights efforts. The only way to set China's rights defense movement on the right track is to integrate the top-down political rights movement and the grassroots legal rights movement at both the macro and the micro levels.

In the legal arena, arguing that existing laws are designed to maintain the one-party dictatorship and concluding that they are pernicious and that we would be better off without them makes no sense from the perspective of the rights defense movement. The rights defense movement does not need empty put-downs and hollow debates. What it needs is to gain experience in defending rights with the laws currently in force, no matter how bad. This means on the one hand overcoming the limitations of bad laws, and on the other making full use of what fairness there is in the judicial process to obtain fair rulings. To demand that the rights defense movement forsake its current pragmatic course of pursuing justice through the law and the courts for abstract matters of principle is not only to lead it astray, but also to negate its *raison d'être*. If rights are not defended in the courts, what are human rights lawyers supposed to do?

The core of the rights defense movement in the legal arena is composed of victims who have made the transition to being defenders of their rights. But this core is very unstable: it changes with every case and dissolves whenever a case reaches its conclusion. The people who form the core of the movement are concerned about the specific rights claims they make in a particular case, not its universal human rights implications. That is why the defense of individual rights cases is scattered, localized, temporary and spontaneous. How resilient, widespread, long-lasting and aware the rights defense movement is will depend on an increased awareness of rights defense issues among ordinary citizens, and on an increase in the numbers of lawyers practicing rights protection law. The involvement of diverse political actors will complicate the legal rights movement, and there is always the danger that different political actors will use the assets, or resources, of the rights defense movement for their own ends. As everyone knows, human rights organizations are independent of government organizations and party politics. The same ought to be true of the rights defense movement.

Originally, rights defense lawyers played a supporting role by providing legal assistance to people standing up for their rights. But because their position was relatively stable and their pleas on behalf of their clients caused a sensation, the public mistakenly assumed that lawyers were the backbone of the

rights defense movement. This misattribution has confused certain rights protection lawyers regarding their own role. When lawyers begin to assume that they are the core of the rights defense movement, they may stop considering issues from the perspective of ordinary citizens, become too sure of their own opinions, and overstep their duties. Thus the challenge for rights defense lawyers is how to correctly assume their role as rights defenders. Moreover, the “Guidelines on Lawyers Undertaking Class Action Lawsuits” have deprived rights defense lawyers of any room for maneuver to practice their profession and have further restricted their ability to collect evidence and defend their clients. Some 500 lawyers are behind bars in China,⁴ a fact that strikes terror in the hearts of other lawyers and testifies to the high price that rights defense lawyers have to pay.

In the public welfare arena, rights are mainly defended through collective action. When social conflicts escalate, citizens’ efforts to defend their rights can quickly develop into huge protest rallies. In this situation, with a government that is increasingly inclined to respond with force, it is imperative to defend rights through nonviolent means in order to avoid bloodshed. That is the bottom line. The choice of nonviolence also follows from the character and meaning of the rights defense movement. Intensifying social conflict to achieve political ends is a reckless strategy and a violation of humanitarian values. It is necessary to differentiate between “mobilizing citizens” and “manipulating the masses in a political movement.” Some veteran leaders of the democracy movement are especially susceptible to the latter course. Some people opt to answer violence with violence, but violence is at best an opportunity for brief displays of courage, and is no way to attain the goals of the rights defense movement. When violence becomes an ingrained habit, ordinary citizens will keep their distance, unable to distinguish the violence of activists from that of the government.

The intellectual elite that constitute the backbone of the rights defense movement in the realm of public opinion creates confusion through their inability to agree on fundamental questions of values and their eagerness to make their own points of view heard at the expense of everyone else’s. A lack of philosophical and political maturity creates the risk of seducing people into rashness and radicalism; inciting blind risk-taking based on misguided idealism; inducing irrational acts regardless of possible harm to others; privileging abstract ideas over practical action to defend citizens’ rights; appealing to vulgar popular tastes through the most contaminating aspects of media commercialism; and suppressing rival political opinions.

In addition, the censorship of the Internet and the media in China has seriously influenced the public’s perception of the rights defense movement. Therefore, the most urgent task for the movement in the realm of public opinion is to break through the censorship of the Internet.

The right path

The rights defense movement is in its infancy, and confusion at this stage is natural and unavoidable. The growth and expansion of the movement will depend largely on the transfer

of its political center of gravity from overseas to mainland China. It will also require less spontaneous action and more civic consciousness and awareness of rights, and a greater degree of intellectual and strategic maturity on the part of the intellectual elite. It is to be hoped that more lawyers with a spirit of sacrifice will join China’s rights defense movement. If we rely on the defense of rights in the political arena to promote political reform and constitutional democracy, in the legal arena to promote judicial fairness and independence, in the realm of public welfare to carry out civic and social mobilization, and in the realm of public opinion to provide intellectual and strategic resources, the rights defense movement will certainly overcome its present difficulties and achieve its goals.

The right path for the rights defense movement is one that is gradual, nonviolent, bloodless and self-aware.

Translated by Paul Frank

The Chinese version of this article is available online at: http://www.chinaeweekly.com/viewarticle_gb.aspx?vID=3573

TRANSLATOR’S NOTES

1. The term *weiquan* (rights defense) is gaining increasing acceptance in China. Kevin O’Brien and Lianjiang Li explain, “Thanks in part to the spread of rightful resistance, terms such as ‘rights defense’ (*weiquan*) have gained acceptance in reform-minded journals and adventurous newspapers and, more gradually, in the mainstream press, including *People’s Daily*.” Xiao Qiang explains, “When confronting abuses of power, people are increasingly using a new term, *weiquan*, to challenge the system.” See Kevin J. O’Brien, Lianjiang Li, *Rightful Resistance in Rural China* (Cambridge University Press, 2006), p. 127; Xiao Qiang, “Internet Bringing Reform to China,” *Taipei Times*, Dec 31, 2003, <<http://www.taipeitimes.com/News/editorials/archives/2003/12/31/2003085825>>.
2. “Guanyu lüshi banli quntixing anjian zhidao yijian,” issued on March 20, 2006.
3. *Weiquan lüshi*, rights defense lawyer, is also relatively new term in China. It could be translated more idiomatically but less accurately as “human rights lawyer” or “civil rights lawyer.” Chen Li explains, “To a great extent, the increasing number of protests in China today can be seen as a result of the growing public consciousness about protecting the rights and interests of vulnerable social groups. Additionally, a multitude of Chinese lawyers who devote their careers to protecting the interests of such groups have recently emerged in the country. They have earned themselves a new Chinese name, ‘the lawyers of human rights protection’ (*weiquan lushi*).” Chen notes that *Yazhou Zhoukan*, a Hong Kong magazine, profiled a number of “rights protection lawyers” as “the heroes of 2005.” See Chen Li, “Think National, Blame Local: Central-Provincial Dynamics in the Hu Era,” *China Leadership Monitor*, No. 17, Winter 2006, <media.hoover.org/documents/clm17_lc.pdf>; Ji Suoming and Wang Jianming, “Zhongguo weiquan lüshi fazhi xianfeng” (China’s Rights Protection Lawyers: Vanguard of the Rule of Law), *Yazhou Zhoukan*, December 19, 2005.
4. The Congressional-Executive Commission on China (CEEC) quotes an October 2004 article in *Beijing Review* as providing this figure. See CEEC, “Beijing Review Examines Key Issues in China’s Legal Profession, Among Them the Obstacles Faced by Defense Lawyers,” <http://www.ceec.gov/pages/virtualAcad/index.phpd?showsingle=5450&PHPSESSID=551ba56adbd46dcea6c4a5b3bd90bb5e>; and Jian Fa, “Independence Called for Lawyers,” *Beijing Review*, [http://www.bjreview.com.cn/200442/Cover-200442\(B\).htm](http://www.bjreview.com.cn/200442/Cover-200442(B).htm)