



rights activism in china

by ching kwan lee

If the Beijing Olympic Games are the coming out party for a Chinese Communist leadership eager to showcase the country's achievement and aspirations, many zealous party crashers have announced their early arrival.

From the usual suspects like Reporters Without Borders and Human Rights Watch to the unusual alliance of Nobel laureates, U.S. law makers, and Hollywood celebrities, the rallying cry for detractors has been China's human rights violations at home and abroad.

For the better part of the past year, most of the international media attention and political debate has focused on high-profile, highly charged cases involving Sudan, Tibet, and the torch relay itself. Less visible to international audiences (and, likely, to future Olympic visitors), however, is another kind of rights activism.

Without any national organizations or charismatic public leaders, a quiet “rights revolution” is taking shape among ordinary Chinese people whose everyday lives have been radically, and in many cases adversely, transformed by three decades of market reform. What the Chinese call *weiquan*, meaning “the protection of lawful rights,” has become a generalized social movement commanding intense passion in many quarters of Chinese society.

Weiquan is invoked constantly in different kinds of public discussions, including newspaper headlines, academic writings, and everyday conversations. Rather than appealing to the purportedly universal notion of human rights, Chinese citizens demand the specific rights—labor rights, property rights, and land rights—enshrined in various Chinese laws.

The rights activism of *weiquan* is profoundly transforming Chinese society, the Chinese state, and the relationships between them. With the state simultaneously promoting rights and restricting them (if not violating them altogether), and with society itself deeply contentious and in constant change, the outcomes of all this are far from clear. But a better understanding of how rights—and the law itself—are being constructed and struggled over provides a fascinating window into contemporary China.

the challenges of legal revolution

The Chinese leadership has repeatedly insisted that “ruling the country according to the law” (*yifazhiguo*) is a key principle of government in the reform era. Written into the constitution in 1999, all major party announcements and government reports invoke the “rule of law,” and in the past 25 years, more than 400 pieces of legislation, 1,000 administrative acts, 10,000 local rules and regulations, and 30,000 administrative procedures have been enacted or amended. To appreciate just how phenomenal this legislative explosion has been, consider that during the Cultural Revolution from 1966 to 1976 the government passed only nine laws.

That this legal proliferation has occurred alongside China’s spectacular economic development is not coincidental. But more than just the imperative of the market economy motivates the turn to the law. The legitimation of one-party authoritarianism is another major concern for the Chinese Communist government.

A Chinese worker pauses during work on residential buildings at a construction site in Dalian. Photo © Nick Kozak

Popular support for the ruling regime was strong in the first two decades of market reform, but in recent years discontent about social injustice, wealth, and power gaps has fueled social unrest. The central government therefore now emphasizes legality and a wide range of “rights” for citizens as a means of ensuring a harmonious and just society. This new configuration has been the basis of rights claims made by aggrieved Chinese citizens. Outside China, globalization of

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legal norms and practices has also reinforced the practical need for and the legitimating functions of Chinese law reform.

If the central government in Beijing pursues legal reform to bolster its authoritarian rule, however, the implementation of law and protection of actual citizens’ rights face formidable obstacles at the local level.

The top priority of local governments—those at or below the provincial levels—is accumulation of revenue and resources rather than legal reform. Partly this is the result of the central government’s strategy of economic and fiscal decentralization. By allowing revenue retention at the provincial and local levels, the central leadership has prodded entrenched vested interests among provincial officials to promote and sustain the reform drive. But fiscal decentralization has also generated powerful financial incentives for local governments and government officials to collude with employers, investors, and land developers in violation of citizens’ lawful rights. Since the Chinese judiciary is also decentralized, with local governments funding and employing court personnel, local courts are often beholden to the capricious dictates and interventions of local officials.

Filling the gap between laws promulgated by Beijing and lawlessness at the local level is the precarious crucible of rights activism being forged by Chinese citizens. Navigating fluid political spaces, Chinese workers, homeowners, and farmers are using strategies ranging from petitions to government bureaucracies, new civil associations, and public protests to work both within and against emerging systems of law and legality in contemporary Chinese society.

labor rights activism

A series of labor laws have been passed since the early 1990s, and more are expected. The National Labor Law (1994), the Trade Union Law (1992 and 2002), and most recently the Labor Contract Law (2007) and the Law on the Mediation and Arbitration of Employment Disputes (2007) have replaced

“policies” and the elusive socialist social contract in regulating employment relations. These laws explicitly define such workers’ rights as hours, compensation, wage rates, and social insurance. At the same time, in an effort to contain labor activism within institutional channels, the law lays down a set of bureaucratic procedures for labor dispute resolution and prohibits independent unionism.

In spite of all this legislation, labor standards in China have remained abysmal over the 30-year period since economic reform began. Chinese labor problems have been so obvious and unsettling that the central government felt compelled to commission a multi-ministry survey in 2006 on the conditions of the country’s 130 million migrant workers. These workers are largely from the countryside and provide the main source of labor for manufacturing, construction, and services in the country. The survey gave an authoritative and shocking portrait: only 12.5 percent of workers have a signed labor contract and only 48 percent are paid regularly. Most work every day of the week and are seldom paid the legal overtime wage.

Lacking the ability to form independent unions, aggrieved workers find the National Labor Law and the legalized labor arbitration systems—flawed as they are—their most important institutional sources of leverage. In their attempt to claim legal rights, workers are also assisted by numerous (their ephemeral and ambiguous legal status makes it almost impossible, not to mention undesirable, to count them) non-governmental organizations focused on labor. Many major cities have non-governmental organizations (NGOs) that specialize in offering legal advice or other assistance to migrant or female workers.

Under the influence and guidance of transnational or international labor advocacy groups, Chinese NGOs adopt standard features resembling those in other countries: legal counseling sessions, hot-lines, and labor law classes. The protocols of internationally funded projects often require an annual quota of labor lawsuits for which these organizations must provide representation. They usually choose cases with “paradigmatic” significance and wide demonstrative effects, either for the court or for workers.

For example, a popular NGO servicing women workers, well-funded by international foundations and visited by prominent female political figures including Hillary Clinton and Cheri Blair, eagerly took up a domestic worker’s complaint about wage arrears and lack of rest days. The goal was to stir public debate about the lack of legal protection for the large number of women working in private middle-class homes in the cities.

Another NGO sued the American fast food giant Kentucky Fried Chicken, which employed mostly dispatched (or subcontracted) workers and allegedly denied them severance payments when workers left the firm. This case became a cause célèbre for Chinese NGOs when the fast food giant stopped hiring subcontracted workers altogether.

The idea of “labor rule of law” is universally embraced, a



Photo used with permission

A woman in rural China spreads seeds on a bitumen road to dry them.

common denominator among the international labor community, the Chinese government, and Chinese NGOs. Its utility for workers and labor activists in China is apparent in the newly established national network of Working Stations for Migrant Workers Legal Aid, a joint effort between the United Nations Development Programme, the All China Lawyers’ Association, and the China International Center of Economic and Technical Exchange under the Ministry of Commerce. This project aims to train a nationwide network of qualified lawyers dedicated to working full-time for migrant workers in 20 provinces.

The growth of the Chinese bar has also, perhaps inadvertently, contributed. Denounced as “rightists” in the Mao era and numbering only 3,000 at the beginning of reform, there are now some 150,000 attorneys in China and another 100,000 “barefoot lawyers” working without formal certification. Since labor cases aren’t economically attractive, bigger law firms and more established lawyers shun them in favor of lucrative corporate and criminal cases. Yet, younger and newly minted lawyers without established clients, as well as lawyers without official registration, take up labor rights cases out of moral and civic obligation, or simply to fill an emerging market niche. Regardless of their motivation, the growth of the legal profession has channeled labor grievances into the legal system.

With legal assistance, many workers are now filing labor dispute arbitration claims and lawsuits, while others take their grievances to the street by blocking traffic, holding managers hostage, or threatening to commit collective suicide. Labor unrest even prompted Beijing to pass (against very vocal and public opposition from foreign investors) a controversial Labor Contract Law in 2007 that required employers to sign labor contracts with employees and “restricted” the practice of casual employment. However, the institutional dependence of the Chinese judiciary on local governments seriously undermines the legal system’s capacity to resolve the mounting pressures generated by rising legal rights consciousness, labor unrest, and persistent violation of labor laws by employers.

property rights activism

Housing stock in urban China has been almost totally privatized since 1998 when the government overhauled the public housing system previously organized by socialist work-units and local governments. And while private residential neighborhoods have since mushroomed in major cities, violence by thugs has become a serious challenge for urban homeowners.

Thugs are routinely hired by land developers and their subsidiary property management companies to silence and intimidate homeowner activists or elected members of the homeowners’ associations who dare challenge their interests. A Renmin University study of 100 residential neighborhoods in Beijing found that from 2001 to 2005, 80 percent experienced serious conflicts between property management companies and homeowners and 37 percent witnessed physical violence and bodily injuries in these disputes. Hence the term “property management terrorism.”

The root cause of property rights violations is the enormous financial interests at stake for both local governments and their allied land developers in China’s housing market.

The incentive for local governments to protect the interests of land developers and their subsidiary property management companies can be traced to fiscal decentralization, especially fiscal reform in 1994.

At that time, the central government regained budgetary control over a range of taxation revenues from local governments. As a consequence, local administrations become ever more eager to locate or create sources of revenue that could be kept at the local level. Land lease sales and urban redevelopment projects emerged as the two main revenue streams for local governments under this fiscal regime.

This tendency was exacerbated when the former Premier Zhu Rongji targeted the housing market as a way to stimulate domestic consumption after the 1997 Asian financial crisis dampened external growth. Since the late 1990s, in fact, construction and real estate have become the pillars of local state

finance, accounting for 50 percent or more of budgetary income in many localities and jurisdictions. Moreover, many land development companies are owned by municipal agencies, state-owned companies, or official acquaintances. In Shanghai, a newspaper report found 60 percent of real estate developers in 2006 were “red-hat merchants,” or private businessmen backed by the government.

As in the case of labor rights, the collusion of local officials and property capital has created major obstacles for property owners seeking to enact and ensure their lawful rights as stipulated in the 2007 Property Rights Law. This landmark piece of legislation, crafted explicitly for the rapidly growing Chinese middle-class, calls for the establishment of homeowners’ associations and stipulates the rights and responsibilities of homeowners’ congresses over a wide range of community affairs, including sanitation, security, and environmental protection.

Thanks to their intricate and intimate ties with the local government (especially the Ministry of Construction) land developers and their affiliated management companies encroach on homeowners’ rights in numerous ways. They have been known to, among other things, convert green areas into additional housing units, overcharge management fees and parking rentals, misappropriate income generated by advertisements on bulletin boards, intimidate homeowners who want to change property management companies, and obstruct the formation of homeowners’ associations.

Aided by their relatively privileged social backgrounds and technical and legal knowledge, homeowners have been able to resist these practices in a wide array of ways. They have filed lawsuits and made extensive use of neighborhood websites. Some homeowners have staged hunger strikes for collective ownership of hot water furnaces, used motorcade protests

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against property management companies overcharging for parking spaces, and refused to pay management fees. Others collectively petition the Ministry of Construction or the local government when the local authorities refuse to register newly formed homeowners’ associations, or stage mass occupations of property management company offices. Leveraging the media has also helped augment the social impact of homeowner activism.

Property rights activism has a tendency to evolve from concrete issues concerning daily community services to more general demands for power and autonomy in running their communities. Activism sharpens homeowners’ collective aware-

ness of the power imbalance that belies the ideals of equality inscribed in the law. This direct confrontation between local state interests and their agents on the one hand, and homeowners organized as neighborhood communities on the other, is producing an awakening among homeowners as “citizens” in relation to the state and not just as owners of material objects.

Whereas labor NGOs are vulnerable both financially and organizationally, the legality of homeowners’ associations is enshrined in the Property Rights Law. They’re also “organic” in the sense that they’re organized and staffed by homeowners themselves and based in their communities, unlike labor NGOs that are organized by professionals, academics, or transnational advocacy groups. In major cities, including Guangzhou, Shenzhen, Chongqing, Shanghai, and Beijing, federations of homeowners’ associations have formed and pledged support for each others’ work. To date, only a minority of commercial housing neighborhoods have elected a homeowners’ association. The Ministry of Construction announced that 18 percent of Beijing’s commercial residential neighborhoods have homeowners’ associations. The legal right to form their own associations isn’t used widely yet, but the trend is unmistakable.

Finally, as in the case of labor rights activism, lawyers play a central role. Many are attracted to the large and lucrative market property rights lawsuits offer. Others are motivated by political idealism and civic consciousness. Seeing property rights as fundamental to the construction of a new Chinese citizenry, they seek to combine their commercial and professional acumen with the pursuit of citizen rights and democratic val-

ues. The rising volumes of property-related civil lawsuits and administrative litigation lawsuits against the Ministry of Construction, which oversees the governance of commercial residential communities, attests to the intensifying conflicts over property rights.

rural land rights activism

In December 2007, tens of thousands of farmers in 150 villages in three provinces (Tianjin, Heilongjiang, and Shaanxi) made a highly unusual political move: they issued three separate statements to the entire country that they were re-taking

These struggles will define China long after the Olympic Games depart.

their land, which had been illegally requisitioned by local officials. It was an act they characterized as their collective right under rural land use rights regulated by the Land Management Law, most recently revised in 1998, and the Rural Land Contracting Law (2003).

One public announcement asserted that “rural collective land should be owned by all the villagers...Officials and their powerful allies abused the authority of the state and the village collective to usurp our rights as land owners. While they turned themselves into landlords, we villagers become their serfs. We have decided to change this form of land ownership...Land is farmers’ life blood and their most important human right.”

Extraordinarily bold moves like these are part of a rising tide of rural struggles over land use rights. Coercive expropriation, withholding of farmer compensations, and lack of job replacement for those whose land has been taken—each now trigger several thousand land-related conflicts in the Chinese countryside every year. These protests often turn violent and see paramilitary troops, armed police, and hired thugs clashing with villagers who resisted illegal land grabs by local officials. Protesters have been shot dead and villagers have taken local officials hostage.

As in the case of labor and property rights activism, the source of land rights protests is the institutional conflict between decentralized accumulation and legalistic legitimation—in other words, between the interest in revenue and growth of the local government and the central government’s concern for maintaining stability and equity through law.

The Land Administration Law and the



Property owners in Chongqing Municipality, China, hold banners saying they were cheated as part of a protest against a real estate developer. Residents claim the developer built poor-quality apartments.

Photo by China Photos/Getty Images

Law on Rural Land Contracting stipulates that rural land is owned by “village collectives,” while individual households retain land use rights by contracting plots of land from these village collectives, initially for 15, and later 30, years. But these collectives are vulnerable to the decisions of local governments.

Under the pretext of “urban development,” the establishment of high-tech zones and university cities, or simply “public interests,” local governments can ignore the negotiation procedures and compensations stipulated by law and transfer—for a fee—the farmers’ land to state-owned land. The land-use right can then be sold to private developers. Local governments stand to reap a windfall of profits from such land seizures. Indeed, an estimated 34 million to 40 million farmers have lost some of all of their land since 1987.

Like aggrieved workers and homeowners, villagers vent their discontent by petitioning, filing lawsuits, eliciting media attention, and organizing collective protests. Since land grabs often involve local (township and county) governments or the “high-tech zone committee” under them, the Administrative Litigation Law provides the legal basis for farmers to complain about official abuse of power. Again, since the authority of the judiciary is partial and subordinated to the local government, many of these lawsuits have been dismissed by the court.

Blocked by local judiciary, enraged farmers often resort to petitioning Beijing or the provincial government. These long distance “appeals” are increasingly becoming a hide-and-seek game wherein local police and monitors attempt to intercept, arrest, and detain petitioners heading to the national or provincial capital. Mass petitioning and violent confrontations have increased in tandem with farmers’ use of national laws to fight local infractions of land-use laws.

In these legal mobilizations, farmers implicitly or explicitly assert the right to be treated as equal citizens with access to the protection of the law, in addition to insisting on the right to subsistence. Compared to workers, farmers fighting for their land rights command very little organizational or financial support from either international associations or the domestic NGO sector. Compared to homeowners in cities, farmers are also more financially constrained and have less access to professional legal knowledge and services.

An intriguing development in this arena that could have repercussions in others in coming years is the rise of barefoot lawyers. The Chinese legal system allows citizens the right to enlist the legal representation of other ordinary citizens, so long as no fee is charged. These volunteer lawyers are self-taught legal workers motivated by a sense of justice, righteousness, and local heroism to protect fellow villagers and farmers against all kinds of local official abuses.

beyond beijing

The fact that the fights over everyday rights described here have escaped international headlines is perhaps not surprising

given media conventions and conventional biases and assumptions about China and the Olympic Games themselves. But it’s nonetheless disappointing. A real opportunity lost.

This is not only because an understanding of rights activism affords such a rich perspective on Chinese culture and society and all the forces driving the near-total transformation of the most populace nation in the world. It’s also because of the tensions between economic growth and social stability, between authoritarian rule and a more responsive state and involved citizenry; the problematic relationships between state and local government; and the more grounded and specific cultural conceptions of rights and the law itself. And perhaps most importantly, it’s because these are the struggles that will linger and define China long after the spectators and the spectacle of the Olympic Games depart.

recommended resources

Neil J. Diamant, Stanley Lubman, and Kevin J. O’Brien, eds. *Engaging the Law in China: State, Society and Possibilities for Justice* (Stanford University Press, 2005). This reviews a range of legal rights struggles in China.

Ching Kwan Lee. *Against the Law: Labor Protests in China’s Rustbelt and Sunbelt* (University of California Press, 2007). The author’s work explores the politics of labor rights involving migrant workers and state sector workers.

Elizabeth J. Perry. “The Chinese Conceptions of ‘Rights’: From Mencius to Mao and Now,” *Perspectives on Politics* (2008) 6(1): 37-50. The author argues that there are fundamental differences between Chinese and American conceptions of rights.

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