

Rule of Law in the Party-State: Examining Cause Lawyering in post-1989 People's Republic of China

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How does the Chinese “rule of law” accommodate for cause lawyering and to what extent is cause (rights defense) lawyering effective within the constraints of the party-state of the People's Republic of China? Amidst intensified pressure on “rights defense” (*weiquan*) lawyers in the People's Republic of China (PRC), Chinese authoritarian legalism has contributed to potent rights claims in the Chinese party-state. Despite sentiments that Western liberal-democratic constitutional systems are more appropriate frameworks for individual rights claiming, *weiquan* lawyers in the PRC have realized gains for their clients while also adhering to the Chinese Communist Party's (hereafter “the CCP” or “the Party”) legal culture. Rights defense lawyers, often working independently, must navigate state-dominated channels and operate within the margins of the Chinese party-state's legal institutions, constraining opportunities for effective rights litigation. Protracted regime insecurity, sparked by widespread student protests in 1989 that precipitated international condemnation and demands for China's democratization, prompted the Party to legislate a series of administrative reforms in the 1990s.

The systematic expansion of legal knowledge positioned emerging cause lawyers to contest misconduct within Party limits, catalyzing the rise of the *weiquan* movement in the 2000s. The beginning of the *weiquan* (维权) lawyer, which translates to “right-protection, rights-defense, rights activist, human rights, civil rights, cause, and public interest” can be traced to the mid-2000s (Michelson 2020, p. 354). *weiquan* lawyers are “adherents to political liberalism [and] attach importance to a modern state, the rule of law, basic legal freedoms, and civil society” (Michelson 2020, p. 355). They “accept the legitimacy of the existing political system and seek to protect and improve the rights of citizens within the constitutional constraints and legal framework of the PRC” (Fu and Cullen 2008, p. 112). Rather than being deterred from Party guardrails, *weiquan* lawyers are empowered by the PRC's endorsement of the rule of law and diffusion of legal information. The dichotomy of the CCP's law dissemination initiatives and the increasing use of legal aid against the government by *weiquan* lawyers has given rise to a complex, adversarial relationship between rights defense lawyers and Party organs.

This paper will explore China's mode of authoritarian legality on rights litigation through an examination of the concept of the rule of law in China, its lasting implications on rights consciousness, and the emergence and development of *weiquan* lawyering under the party-state. This paper will critically examine the evolution of *weiquan* lawyers and their legal challenges to administrative misconduct following the 1989 student protests in China. Prior to the early 1990s, legal representation for the accused was minimal and subordinate to the state. Defense lawyers in the 1979 trial of the Gang of Four aligned with the prosecution and offered a lackluster, if not virtually nonexistent defense; it was not until the Tiananmen dissidents' trials that serious legal representation “became a legal possibility” (Fu and Cullen 2008, p. 121). The evaluation of the emergence and mobilization of *weiquan* lawyers would be incomplete without this historical narrative.

This paper relies on authors who specialize in authoritarian legality and are familiar with how the rule of law in China operates. These include, but are not limited to Dr. Susan Whiting, Hualing Fu and Richard Cullen, Randall Peerenboom, Taisu Zhang & Tom Ginsburg, and Dr. Cho Young Nam. In its exploration of Chinese legalism, the first section will draw upon Peerenboom's “thin-versus-thick” explanation of “rule of law” in China. The third section will develop arguments for how the CCP's administrative reforms and expansion of legal knowledge in the post-1989 era have sanctioned rights litigation under the regime's “rule of law” framework. The fourth section will provide further context regarding the background and strategies of *weiquan* lawyers within the confines of the party-state, the obstacles they face, and the outlook of the *weiquan* movement. The fifth and final section will acknowledge gaps in the literature and consider the implications of the findings.

Rule of Law in China

Before I investigate the literature on authoritarian legalism in China, it is important to understand what “rule of law” means in the context of this paper and the conception of rights in China that influence rights-claiming procedures. Individual rights in China carry a different meaning than in the West and cognizance of these differences is a prerequisite for further analysis of the development of China's

rule of law. It's important to note that Chinese legalism, at its core, is not antithetical to rights consciousness. Western questioning of an alleged moral vacuum in writings on contentious politics in China dismisses the legitimacy of the progress of bottom-up rights claiming as well as the limited adjustments the CCP has made to its legal system in response to rights claiming. In bottom-up rights claiming, "private parties and other informal or unofficial lawmaking communities" rather than the government drive the charge for legal reform (Levitt 2008, p. 50). A 'bottom-up' paradigm to rule of law systems "creates expectations between governing and governed" (Fortin 2021), a standard associated with Chinese statecraft.

Confucian foundations in Chinese legalism impose an inalienable obligation upon the state to fulfill the collective expectations of its subjects. Liang Qichao, a traditional Confucian proponent of rights consciousness, resolved rights consciousness as an ethical responsibility toward the collective good rather than a protection of individual freedoms (Perry 2008). Confucian principles of a moral economy prioritize a proactive role of the government in protecting and promoting the people's livelihood (Perry 2008). The provisions of China's 1995 Labor Law were designed to facilitate state goals of protecting the legitimate rights and interests of laborers, which aligned with Marxism-Leninism's emphasis on economic dynamism and state-orchestrated improvements in the livelihoods of the peasantry (Perry 2008). The Chinese state diligently encourages a conceptual linkage between "livelihood" and rights" (Perry 2008). This orthodox depiction of the Chinese government and its party-state cadres as paternalistic guarantors of collective claims to just livelihoods embeds itself in the institutionalization of the PRC's legal framework.

In his essay on Chinese legal doctrine, Randall Peerenboom proposes two interpretations of the rule of law: thick and thin (Peerenboom p. 2). A "thin" rule of law includes the features that any legal system must possess to function effectively as a system of jurisprudence, "regardless of whether the legal system is part of a democratic or non-democratic society, capitalist, liberal or theocratic." A "thick" conception of rule of law incorporates "elements of political morality, such as particular economic arrangements" or "conceptions of human rights" (Peerenboom pp. 2-4). Thin rule of law is a minimalist version that includes the basic political conditions to operate and maintain a legal system and does not preclude the content and quality of its norms (Burnay 2018). As a one-party, socialist state, China's conception of rule of law does not align with the thick categorization (Al Saud & Salman 2012). Between 1989 and 2003, the Chinese government passed numerous laws to create what appeared to abide by Peerenboom's thin

version of rule of law (Al Saud & Salman 2012). Authoritarian principles within the Chinese government have fueled discourse over whether China can be considered a "rule of law" system. Many of the Party's powers and actions "lack a clear legal basis" and sometimes are "at odds with the law" (Peerenboom p. 112). The "modern conception of rule of law is integrally related to the rise of liberal democracy" and for many, means "some form of a liberal democratic version of rule of law" (Peerenboom p. 4). Theories on the functionality of Chinese rule of law should not assume a liberal democratic framework and should be consistent with China's salient circumstances and other contingent factors, such as ideology and the current state of legal and political institutional developments. (Peerenboom 2003).

Peerenboom describes the Chinese party-state as an alliance with statist socialism; a non-democratic system in which the Party plays a leading role (Peerenboom pp. 109-112). The party-state does not operate on and actively opposes Western liberal-democratic constitutionalism. Assumptions that the Party's statist socialist configuration does not allow for legal reform, however, are erroneous. The PRC has agreed with the United States on a wide range of reforms to improve the PRC's legal system, "notwithstanding the U.S. liberal democratic conception of rule of law and the Chinese government's statist socialist conception" (Peerenboom p. 7). China's commitment to legal reform signals a positive trend in the development of the rule of law. Rule of law limits the arbitrary acts of government, which has been one of the biggest sources of instability in the Party itself and regularizes central-local relations (Peerenboom p. 121-122). Regulating arbitrary practices from local cadres became a driving force in state agencies promoting legal consciousness among the populace, contributing to regime legitimacy and a transformed legal structure for rights activist lawyers to mobilize.

Legal Consciousness and Regime Legitimacy

The CCP's Marxist-Leninist ideology permeates China's legal and political institutions. Marxism-Leninism's "social transformation" dogma constitutes the mass appeal of the CCP, providing peasants with strategies for survival and moderating radical policies to broaden its appeal to the public (Whiting 2024). Government performance is measured by attaining socioeconomic security (Whiting 2017). The Party uses the promotion of legal consciousness to demonstrate its commitment to social transformation, which is used to measure trust in the government and is symptomatic of regime legitimacy. The PRC's law dissemination campaign, which started in the early 1980s, became a "political reform policy that shifted the mode of nation-

-al governance from the rule of person to the rule of law (Cho 2014, p. 30). The state-guided dissemination of legal knowledge is a core component of China's thin "rule of law" framework. These state-sponsored campaigns started as effective measures to cope with the misconduct of party-state cadres and to protect legitimate rights and interests (Cho 2014, p. 29). The PRC has "taken the initiative in developing a legal system and the rule of law policy" (Cho 2014, p. 40). Dr. Cho presents the 15th Party Congress in 1997 and the Fourth Plenum of the 18th Central Committee of the CCP in 2014 as examples of the PRC's initiative (Cho 2014, p. 40). Both events determined the rule of law policy as a ruling principle (Cho 2014, p. 40).

Regime insecurity can trigger a defensive hardening of the state, which can manifest itself in authoritarian legality. State-constructed legal consciousness enhances regime security (Whiting 2017). Dr. Whiting's study, which identifies links between state-constructed legal consciousness and regime legitimacy using media campaigns, revealed that learning about state-provided legal aid significantly enhanced trust in the government (Whiting 2017). She found that awareness and knowledge of legal aid are fundamental to the construction of rule of law by bringing more civil disputes into the legal framework. In return, trust in the government was significantly enhanced (Whiting 2017). Dr. Cho corroborates these findings by elucidating that the "rapid increase in lawsuits since the mid-1980s confirms that taking legal action to deal with disputes has become a universal mode of action for Chinese citizens" (Cho 2014, p. 37). The party-state "invests in the normal legal system to enhance its legitimacy" (Fu and Dowdle 2020, pp. 63-64 as cited in Whiting 2023, p. 370). Law dissemination campaigns in China emphasized establishing and disseminating "easily-accessible legal aid systems so that ordinary citizens can protect their legitimate rights and interests by using the law as a weapon" (Cho 2014, p. 34). Protection against arbitrary rulings of regional government cadres can be considered codified into Chinese "rule of law," so long as it follows Maoist norms of socioeconomic security and gradual improvements in the standard of living.

In their investigation of Chinese legal structures, Zhang & Ginsburg contribute to ongoing debates on China's acclimation to and capacity-building for rule of law. Zhang and Ginsburg recognize that the Party consolidates its regime by harnessing the organizational and legitimizing capacities of law (Zhang & Ginsburg 2019, p. 310, as cited in Whiting 2023, p. 361), but argue that the current literature, driven by the harsh reaction of the regime towards the *weiquan* movement, portrays China's judicial system as "weak and politicized despite some efforts to change it" (Zhang & Ginsburg 2019, p. 319). Zhang & Ginsburg call

into question conventional depictions of China's legal system as purely rhetorical and insufficient for rights claiming. They reject the impressions of China as "turning against law" and claim that the Party leadership "places greater emphasis...on legality than ever before" (p. 323). Zhang & Ginsburg (2019) trace the Chinese population's attachment of sociopolitical legitimacy to law and legality to the PRC's empowerment of legal institutions, which has reaped the benefit of political legitimacy for the government. The legal structures of China, including their effectiveness and credibility, are proportional to regime stability.

Weiwan Lawyers

Background

Rights defense lawyers generally abide by the basic constitutional system of their respective countries, although protections entrenched in liberal-democratic systems differentiate public interest lawyers in liberal democracies from Chinese *weiquan* lawyers, who are not afforded those same privileges (Fu and Cullen 2008, p. 112). *weiquan* lawyering is made feasible because "the government is increasingly relying on the law to alleviate its legitimacy crisis" – in the decade after the events of Tiananmen Square in 1989, the government enacted a "series of laws creating important legal rights for citizens and limiting the power of government authorities" (Fu & Cullen 2008, p. 123). Subsequent global isolation and economic fallout from Tiananmen Square jeopardized the PRC's ambition of state revival and accession to international organizations, aided by the nascent U.S.-China rapprochement in the 1970s. To rectify demands for democratization without conceding authoritarian control, the CCP promoted "administration according to law" throughout the 1990s (Fu 2010, p. 5). The National People's Congress passed several initiatives, such as the 1989 Administrative Litigation Law, to outline mechanisms for accountability and redress and codify legal procedures (Fu 2010). *weiquan* lawyering was further made possible by the 1996 PRC Lawyers Law, which privatized the legal profession and facilitated the conversion of the legal status of lawyers from state legal workers to independent, professional lawyers (Chia 2018). The legal effort for constitutional review in the 2003 case of Sun Zhigang (孙志刚), a migrant worker whose detention and wrongful death were argued to be unconstitutional, is considered the beginning of the rights protection movement (Whiting 2023, p. 364). The party-state "faced a high degree of institutionalization in the mobilization of lawyers in the wake of the Qingan shooting", a separate case involving a police killing in the small county of Qingan (Fu 2018, p. 556). As established earlier, *weiquan* lawyers defend constitutional rights accounted for by Chinese law and promote incre-

mental rule of law reform (David 2022). Cases regarding rights protection in China, which can have up to hundreds of plaintiffs, are referred to as “collective” and “mass” cases by state authorities and revolve around livelihood matters, such as land confiscation, layoffs from economic restructuring, non-payment of pensions and corruption from local authorities (Human Rights Watch 2006). The *weiquan* movement and its composition of legal experts, lawyers, and activists advise protestors to refrain from unlawful conduct and to operate within the rules of Chinese law (Human Rights Watch 2006). The rights protection movement in China diverges from other traditional forms of political resistance elsewhere that invoke societal disruption as a means of bringing attention to injustice. Alarming incidents, like the Sun Zhigang and Qingan cases, mobilized Chinese citizens and *weiquan* lawyers to leverage legal means and affirm the government’s adaptation of “rule of law” and its commitments to the collective.

Strategies

Cause lawyers in China respond to episodic, arbitrary government behavior through legal action. Rights-protection lawyers have initiated malpractice lawsuits against government agencies, receiving prominent media coverage (Cho 2014, p. 38). Chinese media has become a close ally of *weiquan* lawyers, and *weiquan* lawyering would not be possible without the assistance of new information technologies (Al Saud & Salman 2012, p. 51). *weiquan* lawyers rely on information technology to expose deficiencies in legality and credibility in the local government. Before the 2010-2011 crackdown, *weiquan* lawyers used litigation as a part of their media and social mobilization strategy in the absence of a legal community of shared identity and objectives (Fu 2014, p. 1). The networked public sphere is “a critical site for studying legal consciousness and legality” (Lei & Zhou 2015, p. 562). Rights activist lawyers in China are active on the ACLA forum, a “web-based asynchronous threaded discussion forum” where lawyers mobilize “in support of better and more strongly enforced legal rights for themselves and their clients” (Michelson 2020, pp. 357-400).

Charles R. Epp (1998, p. 3-4) argues that the support structure for legal mobilization necessitates rights-defense lawyers. Chinese *weiquan* lawyers strategically apply the rules of the system to build foundations for a support structure of legal mobilization in the PRC. Fu and Cullen (2008, p. 116) organize *weiquan* lawyering into a pyramid divided by moderate, critical, and radical categories based on factors including case types, commitment to advancing the rule of law, and methods of legal representation. Fu and Cullen observe that critical *weiquan* lawyers are the most

successful lawyers, operating near the boundary of authorized channels and relying on mobilizing support from the wider public, ultimately exploiting gaps between political and legal institutions (Fu & Cullen 2008, p. 127). Critical *weiquan* lawyers contribute to the advancement of the rule of law by demanding “the system try and live up to its rhetoric” (Fu & Cullen 2008, p. 118).

While Fu and Cullen’s typology of *weiquan* lawyering is fundamental to understanding the varying degrees of radicalization in cause lawyering and their mode of operations, there have been significant changes in Party leadership and tolerance since the study’s publication in 2008. Moreover, Fu and Cullen’s interpretation of the motivations behind the activism of *weiquan* lawyers has been challenged by other experts in recent years, namely Michelson. Michelson (2020) subtly critiques Fu and Cullen’s moderate, critical, and radical categories as a part of a “dizzying array of typologies” that fail to “disaggregate the profession as a whole” (pp. 355-356). Rather than classify Chinese lawyers by the nature and degree of their activism, Michelson suggests an empirical focus on the politically liberal fringe of Chinese lawyers.

Michelson implies that Fu and Cullen’s model does not account for the activist lawyers in China who do not identify as *weiquan* or with the movement, but are still committed to working against the Party-state and supporting ideals of political liberalism (p. 355). Michelson remarks that “some *weiquan* lawyers are not even licensed lawyers, and some *weiquan* lawyers are motivated as much by fee potential as by a larger or social political cause” (Michelson 2020, pp. 355-356). In another article discussing rights defense lawyers in China, Michelson also contests the representation of the word *weiquan* and the politically contentious nomenclature of the *weiquan* movement as used by Fu and Cullen, tracing the word’s origins to China’s legal education campaigns. Michelson argues that initial appearances in the early 2000s of the term *weiquan* were not predominantly associated with contentious politics and its true meaning was tied to state-constructed rights consciousness (Michelson 2019, p. 74).

Challenges

Law in the PRC has become “an important aspect of state ideology and of popular consciousness” (Liebman 2009, p. 19). As a result, judicial authorities in the PRC closely monitor civil legal aid structures and direct lawyers to uphold the objectives and leadership of the Party in their work (Human Rights Watch 2008, p. 4). For state officials, supervising and injecting Party ideology into the networks where *weiquan* lawyers and their clients interact success-

ally impedes *weiquan* lawyering without drawing media attention to collective issues. Party authorities undermine popular consciousness (which differs from rights consciousness, as it relates to social and political themes rather than constitutional rights) and the *weiquan* movement's effectiveness by scaling back the mobilization potential of its legal education campaigns. Alterations to China's "socialist rule of law" education campaigns in the 2000s limited the ability of lawyers to take collective cases, vital to the enterprise of *weiquan* lawyering (Human Rights Watch, pp. 22-24). Despite enjoying rapid growth during Hu Jintao's tenure (2003-2013) and social media visibility, the *weiquan* movement found itself in a precarious position following Xi Jinping's crackdowns against cause lawyering (Lyu 2020).

Sui Muqing, a lawyer detained in the 709 crackdown, commented that the suppression of lawyers intensified around 2014 after lawyers began to take charge of rights defense movements (Congressional Executive Commission on China 2020). Compelled by Xi Jinping's crackdowns, Chinese authorities have retaliated against cause lawyers by disbarring them or suspending their licenses, depriving them of their constitutional rights and counsel, denying imprisoned lawyers access to medication and food, and in some cases even resorting to physical torture (Congressional Executive Commission on China 2020). Xi Jinping's ascent to power and consolidation of the judiciary pose a grave threat to the continuation of the *weiquan* movement.

Zhang and Liu predict that when grievances from citizens begin to undermine the Party's legitimacy, access to legal and formal institutions, and by extension, fair representation, will be cut off. Similar conclusions are shared by other scholars in the field. Fu posits that the Chinese regime will "become repressive if lawyers' legal mobilization is regarded as politically challenging and risky to the Party's legitimacy and effectiveness" (Fu 2018, p. 567). An analysis of 1.64 million administrative judicial documents between 2014 and 2020 found that the acceptance rate of cases challenging the government increased by 79% and plaintiff win rates rose to 42.2%, yet plaintiff win rates in cases discussing political rights were much, much lower -- 1.6% in free speech cases and 4.5% for cases related to anti-government demonstrations (Stanford Center on China's Economy and Institutions 2025). Yuxia Zhang and Zhuang Liu, reported that "routine" cases, involving local government services such as labor rights, real estate, public management, and traffic penalties, experienced the highest case acceptance and plaintiff win rates. On the other hand, courts were more reluctant to hear "political" cases, which concern Party decisions and the political rights of citizens (2023). In conjunction with normative hypotheses of state repression, recent empirical evidence indicates that the PRC will con-

tinue to hear cases against the government so long as they do not carry the risk of mobilizing the *weiquan* movement. Xi Jinping's reversal of his predecessors' willingness to tolerate sensitive litigation signals to rights defense lawyers that they must be cautious in their representation even in cases that are not politically contentious.

Looking Forward

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Conclusions

There are gaps in my research that may identify areas of omission. There are varying structure-based explanations for current conceptions of Chinese rule of law that came to be, which I do not consider in their entirety in this paper. Protracted scholarly discourse over "rule of law" interpretations in China can affect the justifications of existing minimal top-down legal reform. I do not fully expound on the personal risks that *weiquan* lawyers encounter, or the ramifications to their legal careers inflicted by the government, which can alter perceptions of progress in China's

legal structure. I also do not go into systematic detail on the moderate and radical classifications of *weiquan* lawyers and their accomplishments. Xi Jinping's deepening of regime authority has drastically recalibrated the Chinese legal domain. In response, I contend that my findings during my review of the literature are sufficient to prescribe an entry-level understanding of the intersection of the rule of law and rights-claiming in the PRC.

China's administrative reforms throughout the 1990s led to legal mobilization that has enabled bottom-up rights-claiming grounded in Chinese legal culture. The legitimacy of the CCP, supported by state-provided legal aid, has been threatened by the formation of a collective identity of rights lawyers in post-1989 China, who employ strategies such as digital media to publicize cases relevant to their causes. Still, China's growing legal community authenticates cause lawyering and an evolving legal practice outside of Western liberal-democratic systems. *weiquan* lawyers concede to boundaries in China's "rule of law" and maneuver within the constitutional constraints of the party-state to reap gains, emboldened by the government's promotion of legal consciousness in the presence of diminished legitimacy.

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