

China Law & Policy Interview with Eva Pils,
Associate Professor of Law, Chinese University of Hong Kong
Research Fellow, NYU's U.S.-Asia Law Institute
April 6, 2014

Transcript of April 6, 2014 Interview with Eva Pils

This is *China Law & Policy* and welcome our podcast.

Since President Xi Jinping took office last year, Chinese human rights lawyers and activists have experienced one of the worst crackdowns in recent memory. In January, well-known human rights advocate, Xu Zhiyong was convicted of “disturbing public order” for attempting to hold a protest demanding equal education rights for children of migrant workers. He received four years in prison. On March 14, the world woke to learn that rights activist Cao Shunli had died of tuberculosis while in police custody. Her supporters allege that she was denied medical treatment and was abused in the detention center. What caused the police to detain her? Advocating for civil society and citizen involvement in China’s drafting of its reports for the UN’s Universal Periodic Review and of its National Human Rights Action Plans.

To put in perspective what exactly is happening on the ground in China and why is Prof. Eva Pils, an associate professor of law at the Chinese University of Hong Kong and research fellow at NYU’s U.S.-Asia Law Institute. In 2006, Prof. Pils wrote the seminal article on human rights lawyers in China, *Asking the Tiger for His Skin: Rights Activism in China*. This summer, Prof. Pils will continue her work with a book on rights activism entitled *China’s Human Rights Lawyers: Advocacy and Resistance*.

[01:26] **EL:** *Thank you for joining us today Prof. Pils. Let’s start with a little bit of background. These human rights lawyers, who are most frequently referred to as “rights defense” or “rights defending” lawyers, when did they first start to emerge and why?*

[01:41] **EP:** Thank you. I think that they used to call themselves ‘rights defense – *weiquan* [维权] lawyers’ – but I think that actually over the past one or two years, they’ve started preferring the term *renquan lushi* [人权律师] which means ‘human rights lawyers.’ That’s in a way related to how they emerged. They emerged because in the post-Mao era, especially from the 1990s onward, it became possible to use the law to defend rights, for one thing of course because there [now] *was* law -- it was only under the Deng Xiaoping reform and opening policies that law became an accepted tool of government of the Party-State, after it had been completely denounced in essence as a counter-revolutionary idea in the last decade under Mao Zedong

[02:33] Then the other thing is that there was a period, [from the beginning of the post-Mao era until]the 1990s when the Party-State authorities were essentially encouraging the use of law to address certain kinds of dispute, certain kinds of conflict in society. During that time, *weiquan* – rights defense – was actually an officially propagated term. As background, one would have to say that rule by law – *yifa zhiguo* [依法治国] – was an idea that the authorities were making use of in the Deng Xiaoping era in order to claim political legitimacy. That in a way replaced the political legitimacy coming from the idea of a communist revolution that was what political legitimacy was based on in the Mao Zedong era.

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[03:37] I think that this argument [about law as a tool of governance] is quite right, this is how Deng Xiaoping wanted to develop China in the post-Mao era, but also I think that the authorities, perhaps including Deng Xiaoping, didn't fully realize what they were letting themselves in for when they promoted the idea of [rule by law and] *weiquan*. Perhaps this was because they were quite good Marxist-Leninists and believed sincerely that law was *nothing other* than a tool of governance to be used by the ruling power. Whereas of course, from the *weiquan* or rights defense perspective, [law] is connected to justice and it's connected also, potentially at least, to political resistance, to the idea of rights, of human rights. I think that it's a step toward a more explicitly political agenda that the lawyers who used to be referred to as *weiquan* lawyers have now chosen to call themselves human rights lawyers.

[04:43] *EL: In terms of the political agenda, the agenda of the human rights lawyers in China, in terms of their issues - is there something that unifies them as a single issue or are there different issues? In general, are they located in one area or do you find them throughout the country.*

[05:01] EP: I think in terms of area, definitely there is a huge concentration in Beijing and also in a couple of other cities, in particular Guangzhou and of course also Shanghai. But when you look at how they work and where they work, it is very important to see that they really work all across the country. In the Jiansanjiang case you mentioned just before [the interview] you have a couple of human rights lawyers going to this extremely remote location in Heilongjiang with the purpose of freeing, or in any case providing legal support to, a couple of people who are extra-legally detained there. That's an example of what human rights lawyers do regardless of where they are based.

[05:56] Is there something that unifies them? My impression in having done so many hundreds of interviews over the past couple of years with, I suppose, a few dozen human rights lawyers, [is that] they are very diverse, they are very different in terms of their personalities, their approach to their work, and in some of their convictions. But there are things that do unite them. I think that for one thing, they see themselves as adopting different methods from what many other lawyers are prepared to do. For instance, they reject the idea of wining and dining the officials concerned in their clients case to get results. In that, they're not different from a group of lawyers called *sikepai* [死磕派] lawyers, lawyers who are very uncompromising. But what sets them apart from the *sikepai* lawyers is that they are willing to take on cases that nobody else will want to touch. I suppose one good example for that is the cases of people who practice Falun Gong. And thirdly, they [human rights lawyers] have recently started identifying more clearly around political ideas. They want democracy.

[07:42] *EL: Just in terms of the crackdowns that we are seeing and I think you talk a little bit about this in your previous answer. There has always been a crackdown on dissent in the People's Republic of China, even in the post-Mao era. You see the 1978 Democracy Wall movement, there is a crackdown. You see the Tiananmen protests of 1989, there is a*

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crackdown. Should we be surprised that the same Chinese Communist Party is looking to crackdown on these rights defense lawyers and activists?

[08:12] **EP:** No. No, we should not be surprised. I don't think that the lawyers are surprised either. And I say this, although I just said that initially, in the 1990s, there was this official promotion of and use of the idea of rights defense. There was, I think, for a couple of years, especially around 2003 when you had the famous Sun Zhigang incident, this notion that perhaps rights defense could mean a bold group of courageous lawyers, legal professionals, and legal academics sympathizing with them, *persuading* the State to introduce incremental reforms. One of [these reforms], for instance, could have been to introduce some sort of meaningful constitutional adjudication -- whichever mechanism one would have used -- this would have made a potentially very great contribution towards making constitutional rights guarantees more effective in actual people's lives and actual legal practice in China.

[09:36] So, [until around 2003] you had that hope -- and of course along with that an expectation -- that the State would tolerate *weiquan*. But actually very early on, from the moment almost when they started being successful, these *weiquan* lawyers also encountered repression. I think we now understand better than perhaps a couple of years ago, that that was really based in a high-level perception that *weiquan* presented a political challenge and that consequently, it had to be controlled.

[10:16] So, what has been happening from about 2004 and especially over the past couple of years, has been a tightening of control, and the use of ways of trying to stop lawyers from engaging in *weiquan*. I don't think that anyone I have spoken to has been surprised by what has happened.

[10:47] **EL:** *So in terms of the tightening of control, you mention that the Sun Zhigang case in 2003 is kind of a high point. But then by 2009, we see a government crackdown with Gao Zhisheng basically being abducted and being held incommunicado. Also in 2009, you see the disbarment of activist lawyers like Tang Jitian and Liu Wei; you see Xu Zhiyong being investigated. Then in 2011, with the Arab Spring, we see another crackdown. Now, 2013, 2014, we are seeing perhaps the worst treatment of advocates. So you were talking about how some of the responses [to *weiquan* lawyers] is coming from high-level. I think a lot of people see these different crackdowns as separate incidents, just a knee-jerk reaction by the Chinese Communist Party. But should we see it that way or should we see it as part of a larger trend?*

[11:45] **EP:** I think that it is based in a decision that as I just said was essentially made in 2004 that they would have to be controlled and I think that basic attitude and policy has remained the same also before and after the recent changes in leadership. So I definitely think this is part of a larger trend, yes. I think that also the situation at the moment is worsening.

[12:22] **EL:** *I think we can guess what it that the Chinese government is so afraid of. But what precisely is it? Is it the issues themselves or is it another power base that could take away power from the Party? What is it that they are so afraid of?*

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[12:39] **EP:** Well, I think from the perspective of the Chinese authorities, or at least from [the perspective of] that part of the Chinese government that is entrusted with the task of stability preservation - of *weiwen* [维稳], it's quite clear (and perhaps it is clearer to them than to lots of people outside and inside China) that the human rights movement of which human rights lawyers are of course an important part, stands for political ideas that challenge the Party's political existence.

[13:17] There is a perception also amongst the establishment that the current system isn't viable unless it's somehow changed. But I think what leads to this attitude of having to crack down on human rights lawyers is that the establishment, the authorities, are completely reluctant to allow any civil society forces to take control of the changes that need to be introduced. So, yes, there may have to be changes; but certainly we, the Party-State, want to stay in control of changes. Another way of putting the same thing, I suppose, is to say that the *tizhinei* [体制内] forces, the system, the establishment, can't accept the idea of accountability to people outside of the system; and in a way, it is not institutionally set up to accept that idea. That of course means that the notion, the idea of political opposition, the idea of a free open political discussion of popular grievances, of the forces of social unrest, of the various contentious issues which you have in Chinese society right now is even less acceptable.

[14:50] **EL:** *So just to get a little bit more specific, I want to turn now to focus on Xu Zhiyong who just received in January four years in prison. He is a part of this "New Citizen Movement." Can you describe what that movement is a little bit? Where did it emerge from and what its platform is?*

[15:10] **EP:** So the New Citizen Movement, it emerged in 2012, around May 2012. I think that it can be seen as in some ways a response to the problems that we have just been discussing, the [social] grievances, and also the problem of repression of civil society. In some ways it is also due to changes that have come about because of new communication technologies - the social media - that have enabled a new form of activism to emerge not only in China but also in other parts of the world. Think of the various Occupy movements and the Arab Spring.

[16:05] That's I think one the reasons why the New Citizen Movement emerged. Obviously it focuses on the idea of the citizen. When you look at what Xu Zhiyong in particular has provided as an analysis of citizenship, the concept of the citizen, you can see that it is a very strong, richly normative political conception of the citizen; a sort of 18th-century-Europe notion of the individual who has rights against the state. I think that looking at the history of the human rights movement [in China] that we just discussed, you could perhaps also say that Xu Zhiyong, having tried for ten years to introduce beneficial changes in China through case-by-case legal rights advocacy, comes to the conclusion, around 2011- 2012, that now a new method of advocacy has to be tried; that rights advocacy in a way has to move beyond working on individual cases, and become more issue-focused and more explicitly political.

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[17:47] So how do you do that in the context of a political system that very clearly does not allow a political opposition? Like in other places in the world, the answer that seems to be emerging in China right now, as I see it, is to adopt forms of organization that are significantly different from what we've seen before. Teng Biao, another very important scholar and rights advocate, has used Clay Shirky's idea of organizing without organizations to describe what is going on here. The idea is basically that you could achieve a high degree of coordination and initiate various types of actions, civil society actions, without having a visible traditional organizational structure. It's also that in a new civil society political movement of this kind, you have to be very open. You have to be the opposite of what characterizes, for instance, the rise of the Chinese Communist Party from its sort of underground years, to this moment when it manages to control power.

[19:21] An example of that [openness] would be, for instance, these so-called *gongmin jucan* [公民聚餐], the citizen meals that were organized by the New Citizen Movement. The idea was really that you would somehow get people to distribute information about venue and time and so on online. At some of the *gongmin jucan*, the new citizens meals that I have observed, it really was possible for people who simply had come across this information online to come along and join the meal. It was entirely open towards anyone who wanted to show up. That's remarkable in the context of a system that, as you just said a while ago, scrutinizes everybody so much and has so much surveillance. But the idea really was that this sort of openness represented a new form of political power that could be used to initiate some sort of change. Along with that of course goes the idea that the activism of the New Citizen Movement must be non-violent.

[20:47] *EL: Just in terms of numbers, what are we looking at in terms...how big would you estimate the movement is if you can even do that? If you can, if you can.*

[21:04] *EP:* On the numbers, I have to say I don't know. Of course we have asked those various questions. There is no very clear answer. Perhaps one could say that in 2013 we had in a number of say in around 30 or so different Chinese cities you had a total of a couple hundred people who were essentially initiating and organizing these meals. And by the way the idea was basically that you had a meal being held at the same time in different locations all over China potentially. So you had a couple hundred people. Perhaps that means a few thousand people who would be willing to show up for one or two or more of those who would be in some way supporting the New Citizens Movement. Perhaps it would be good if we had access to (I have not) the list of people signing the so-called *gongmin chengnuo* [公民承诺] - the citizens pledge - that was issued in 2010 and was kind of an appeal to citizens from all walks of life to essentially pledge to be a good citizen using this political idea that Xu Zhiyong stands for and others stand for.

[22:42] Something else that perhaps you could consider would be the level of support that Gongmeng, the organization co-founded by Xu Zhiyong, got for its activism for educational rights for migrant worker children. As I recall, at the time it was said that in Beijing they would be able to essentially reach tens of thousands of migrant worker parents. So, certainly they were thinking big. They were thinking that they could reach out to potentially everyone. And if you

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look at the composition of the citizen meals, it wasn't just lawyers; it was not just scholars, lawyers, people with legal education or that sort of background. It was also people who were petitioners or people who just took an interest in what was going on there.

[23:48] *EL: You raised the issue of education for migrant children as one of the issues, which would require a change to the hukou system. And some of the other things of the New Citizen Movement advocates like more transparency of Chinese officials and their assets. These are in fact the reforms that in the past year the Chinese government has stated that they are looking to examine or to adopt. So it seems like the Chinese government is sort of listening to the New Citizen Movement or at least their complaints. But then, how do you mesh that with the fact that they're arresting the advocates of that movement for disrupting public order. What gives here?*

[24:32] *EP: I'm not so sure about that analysis. I think that when you look at what the New Citizen Movement has advocated, yes of course you have some similarities to these reform policies announced by the Chinese government. But, I don't think that is by itself evidence that the government is following suggestions from the New Citizen Movement. For one thing, these reform ideas were around long before the New Citizen Movement even emerged.*

[25:15] But perhaps more important is that you could also see this the other way around, and this is how it was analyzed by people involved in the various movements that you currently have in China. People were saying that in some ways the New Citizen Movement had chosen to talk about causes that the government had already said it had adopted. That might be a way of coming across as a little bit less provocative than if you do what very clearly and visibly was done in the south of China [in the context of] various movements around Guo Feixiong, another very important right advocate who is based in Guangzhou. What you had there was really the use of much more aspiring and much more abstract political slogans: constitutional government, democracy, human rights -- in those words.

[26:32] So you have this very interesting discussion within these smaller sub-movements if you like, these groups within the human rights movement. Some people were critical of the New Citizen Movement, saying that essentially it was not a good strategy to choose government slogans. I remember one person saying basically that you shouldn't think that the government is that stupid - those are *his* words - that '[you shouldn't think that] just because you shout the government slogans they won't come after you' -- they are not going to let you off just because you shout the identical slogans.

[27:24] The reason for that [according to my interlocutor was that] as long as you make political demands of any kind they [the Chinese government] will assume that you want a share of the political power and that's what the government won't accept. From that perspective, we were seeing an attempt to be a little bit less provocative by using campaign causes that were similar to the government, but that strategy essentially is not really working. And I think that there is a whole lot more to say about the differences between what the New Citizen Movement, what other movements were calling for, and what the government has so far delivered. For instance, when it comes to anti-corruption and so on.

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[28:21] **EL:** *So you wouldn't say the government is co-opting the movement?*

[28:26] **EP:** Oh no, no, no. I don't think so.

[28:27] **EL:** *Going back to the government, I want to finish with one last question is the government and its relations to the rights activists. Recently, in late 2013, early 2014, you're seeing a lot of rhetoric coming from the Chinese Communist Party calling for things like judicial independence, greater respect for lawyers. I think there are some people in the West who has seen this as a positive development, that it is showing that the government wants incremental legal reform and that there is space. But my question to you: given this crackdown that has happened, should we see this rhetoric as anything positive? How should we view it and how should you view the rhetoric that's happening simultaneously with this very severe crackdown on rights lawyers?*

[29:19] **EP:** Well maybe answering those questions does require looking at least briefly at some of the reform measures and the changes under the new leadership. I think the anti-corruption campaign is probably a good example. Personally I think it would be quite a mistake to see that as a new leadership coming in and trying to essentially provide or establish a basis for further-reaching reforms that ultimately end in this end-goal of the democratization or liberalization narrative which is a stable rule of law system with increasing political openness.

[30:09] Because if you look at what actually happens in the anti-corruption campaign, I believe it would be really hard to deny that people who do end up being investigated for corruption are really those who have somehow lost protection from within the system. It remains a party decision who will be investigated for corruption. So another way and perhaps a more accurate way of seeing what is going on under this so-called anti-corruption campaign is actually a party purge, a party-internal purge that serves the ultimate goal of strengthening and centralizing control under the central leadership, and centralizing control by Xi Jinping.

[31:08] So that is really very, very far from construction of the rule of law, which of course would also require some moves against corruption; but those would take the form of the use of the judicial process, an open process and a rule of law-based process. All of that I don't think we are seeing clearly at all. Just think of the fact that high-ranking officials who are targeted are not processed through the judicial system but, rather, just as they used to be before, they are put under some sort of Party detention.

[31:55] I think that tells us a lot about this liberalization narrative that you just brought up. I think it's a very powerful narrative and has been extremely attractive for essentially anyone who has tried to engage China from the outside, including many foundations, governments, institutions, who have tried to strengthen rule of law development in China over the past decade. I think that from the perspective of these institutions and the individuals working with them, there are very powerful reasons - important reasons - for wanting to see this kind of incremental

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reform process that you mentioned, and to make constructive contributions to this process without at the same time alienating the authorities.

[32:55] But for the reasons that I just gave, I don't think that we see, that we have evidence from the ground that this is what is happening. And of course that means also that this powerful, attractive but then somehow also a little bit anesthetizing narrative of gradual liberalization, just doesn't work.

[33:24] In China, amongst academic circles, I think you can see that reflected in a shift of vocabulary away from constant uses of the word 'reform' or 'judicial reform' - *sifa gaige* [司法改革]. I think that people are sort of becoming more critical of that idea [of reform] because they just reach a conclusion that it does not seem to be working. They're actually talking more broadly about 'change'. I think that what I would take away from that shift is that agency in change – legal-political change - does not necessarily lie with the government. Increasingly the momentum has shifted to civil society, including the human rights movement.

[34:25] *EL: Just one last question. What do you see short-term for the future of human rights advocates in China. Not long term just short term. Do we see it getting worse or do you not even want to try to guess?*

[34:44] *EP:* Well, I think that yes we do see it for the moment getting worse. I would be very pleasantly surprised if there was some loosening or lightening of the pressure. The events of the past couple of weeks and months have sent very strong signals that it is quite likely that more lawyers will be detained. We are now unfortunately finding that human rights defenders when detained can be exposed to very significant levels of violence. Of course you mentioned the terrible case of the death of Cao Shunli.

[35:37] I think that what is interesting is that despite all this repression, despite the worsening long-term crackdown, you also have a rise in numbers of human rights lawyers. You have more and more lawyers showing solidarity with human rights lawyers and expressing a willingness to be called human rights lawyers, identifying with this human rights cause. What I also find remarkable is that human rights lawyers are amongst the most optimistic people I speak to when I go to China.

[36:27] *EL: I guess the increase in numbers gives us some hope amongst all this despair. I want to thank you Prof. Pils for your time and for letting us know and trying to figure out what's happening on the ground in China. Thank you*

[36:42] *EP:* Thank you very much.
