

Book Review

Eva Pils

Human Rights in China: A Social Practice in the Shadows of Authoritarianism (Polity 2018)

Eva Pils' new book, *Human Rights in China: A Social Practice in the Shadows of Authoritarianism*, is a timely study as China enters the Xi Jinping era, which is marked by blatant human rights transgression and dramatic legal-political reform measures that dazzle many outside observers concerned with the legal development of the country. The author's thorough examination of human rights practices and the law in China unveils the logic behind the 'rule of law' rhetoric employed by the Party-State and exposes the difficulties of human rights advocacy in a variety of rights fields. The book concludes by casting serious doubts on China's possible progress towards a liberal transition through legal institutions under authoritarianism.

Similar to the author's previous works, this book advances debates on the development of the rule of law in an authoritarian regime, such as China, in the context of the global revival of authoritarianism. From the very beginning, the book challenges some theories of the 'incremental reform' argument regarding China's transition to the rule of law and doubts the fulfillment of a genuine rule of law in the Party-State polity. The first two chapters set up the book's overarching framework and introduce the key concepts of the rights and legal institutions available for rights advocacy in contemporary China, including pro- and counter-rights protections. The analysis of the ideological and institutional dimensions of Chinese law reveals a paradoxical authoritarian legal system that features 'a duality of law-based, normative and law-denying, prerogative Party-State actions'.¹

The first chapter summarises three major rights discourses that compete with, or in some circumstances complement, each other in present-day China: the *yuan* tradition of righting wrongs, the modern rights concept developed since the 19th century, and the official counterdiscourses of human rights. The ideological review sheds lights on a better understanding of the recurrent struggles between pro-liberal and pro-socialist legal development in China and the deep-rooted conflicts of rights consciousness under the surface of the contention between the state and civil society.

The second chapter introduces the legal resources available for rights advocacy in China, including legal norms and institutional avenues (i.e., the judiciary, 'letters and visits', and the media). The chapter argues that although the legal institutions introduced in the post-Mao era have enabled the rise of rights advocacy, they still largely fail to protect rights and thus drive rights advocates to challenge the fundamental foundation of the political system.

After presenting China's paradoxical legal environment, which is filled with contradictory rights ideologies and institutions, the rest of the book covers a wide range of inter-connected human rights subjects in which rights violations are most rampant and rights advocacy is also vibrant. Chapters three, four, and five separately address three different, but interconnected, groups of human rights (i.e., liberty and life, expression and thought, inequality and socio-economic rights), and Chapter six examines the agents of rights advocacy. In each chapter, the author analyzes the gap between relevant international treaties and domestic norms as well as the gap between the laws on books and their practice. The detailed account of human rights practices in each chapter is supported with the most updated instances and first-hand narratives from interlocutors, which delineate a vivid picture of the reality of human rights on

¹ Eva Pils, *Human Rights in China: A Social Practice in the Shadows of Authoritarianism* (Polity 2018) 147.

the ground in China today. The analysis of the three different groups of rights well illustrates different attitudes of China's Party-State toward the law and rights protection in the different rights fields, which gives rise to a thought-provoking question that is worthy of further exploration: what factors contribute to such differences, and what possible impact may this have on rights advocacy in relevant rights fields?

The book provides a panoramic view for readers who are interested in obtaining a comprehensive knowledge of human rights and the role of law in China today. Although the nature of the topic prevents the book from going deeper into each specific rights subject, it provides a comprehensive blueprint for researchers who are interested in exploring a specific rights field and relevant Chinese laws. The book convincingly makes the case that all rights, as well as right violations, are interdependent, which explains why the suppression under China's Party-State needs to be so comprehensive and nuanced. The author also stresses that the interconnection goes beyond the Chinese territory but extends to other jurisdictions through the context of a global revival of authoritarianism. No man or nation is an island with regard to human rights protection.

The author challenges the optimistic belief that China is on a path of slow progress towards improved rule of law and liberal transition by exposing the difficulties and persecutions rights defenders face as well as the deteriorating legal environment under the new central leadership. From the macro perspective, I share her scepticism that legal development alone will lead to the liberal transition that many observers have expected since the start of the post-Mao period. What the book concludes foreshadowed the constitutional amendments proposed recently, which are deemed by many as a significant setback for legal and democratic development in the country.²

Despite the negative outlook about possible top-down liberal transition through legal development, the author appears relatively optimistic about the political implication of *weiquan* (rights defence) activism. The book asserts that the persecution of rights defendants can 'spur wider calls for political change',³ and 'mass grievances ... are bound to trigger calls for political accountability where no functioning legal accountability mechanisms are available'.⁴ Just as the book describes, in the decades-long *weiquan* movements, we saw the rise of political consciousness among rights lawyers and other defendants. However, such a rise of political consciousness has hardly been translated into any actual influential campaign and neither has it had a salient impact on the wider public. The silence among the wider public and even mainstream legal professionals about the unprecedented persecution of lawyers in the recent '709' crackdown seems to be a bleak sign of any expected political change resulting from rights defence activism. This same silence was characteristic of the recent amendments to China's Constitution poised to tighten the Party's grip on government, as the revision met little open opposition from either the elites or civil society. The influence of *weiquan* activism on converting legal and social capital into political capital may only be expected in the distant future.

In contrast to the optimism towards the possible political implications of rights activism, the book shows a general pessimistic view about what can be achieved through rights advocacy within the existing legal framework. The book mentions some rights defendants, such as *Teng Biao*, *Tang Jitian*, *Xu Zhiyong* and *Gao Zhisheng*, who have suffered severe prosecution and faced difficulties continuing their rights defence, as a stark illustration of the challenges and setbacks of rights defences in China. However, what seems to be amiss in the landscape are the low-key rights advocates who have persisted in their rights advocacy for decades and also the newly-emerged rights advocates, e.g., the younger generation of human

² 'Xi Won't Go' (*ChinaFile*, 25 February 2018) <<http://www.chinafile.com/conversation/xi-wont-go>> accessed 27 February 2018.

³ Pils (n 1) 54.

⁴ Pils (n1) 103.

rights lawyers and the die-hard rights lawyers,⁵ who took up the torch to pass on the legacy of the ‘vanguard’ generation, The author more or less incidentally mentions some relatively promising public interest causes, such as the anti-HBV discrimination campaigns, and their agents, but a more detailed exploration of these stories may present an interesting contrast to the darker side of China’s rights advocacy. The division regarding ‘radical’ and ‘mild’ rights advocacy may offer a convenient explanation for the contrast, but this division is probably too broad and somewhat oversimplified. A more nuanced comparison of relatively successful and long-sustained rights advocacy (e.g., public interest causes) with failed rights campaigns may be necessary. It may also contribute to a more in-depth understanding of the multifaceted authoritarian law by elaborating why and how some rights advocates survive and persist and why new blood continues to join the *weiquan* rank, despite an increasingly hostile legal environment and the failure of legal institutions. In the end, the question may come down to a strategical one the author has raised a decade ago: is it moral or applicable for Chinese rights advocates and the international shareholders to ‘ask the tiger for its skin’?⁶

Unfortunately, neither academia nor any radical or mild Chinese rights advocates have identified a way to break the bottleneck of current rights advocacy being confined by the existing legal institutions that have largely disappointed rights activists and the grieved. As the book points out, the law, no matter how flawed, seems to remain the only available resource for civil society to promote its causes as well as for the Party-State to achieve a certain level of success in social management. In addition to the aforementioned question regarding why and whether the law still matters to Chinese rights advocates, another interrelated question is: why and whether the law still matters to the Party-State, even in the Xi Jinping era? The Janus-role of the law in China is perplexing. For example, why has China’s Party-State not degraded into some authoritarian dictatorship since the authorities have the power to do so, as shown by the appalling abuse of power exposed in the book and by the radical constitutional change in 2018? Why does the Party-State not act like some of the bureaucratic authoritarian regimes in Latin America that used assassination or tossed advocates into the ocean⁷ but to make such an arduous effort to manipulate the law? Do the recent constitutional changes and the series of mysterious deaths of dissidents (e.g., *Li Wangyan* and *Cao Shunli*) indicated a trend towards lawlessness? Whether and why does the law still matter for the regime almost 30 years after the Tiananmen incident when the function of law as window dressing for human rights protection seems to be marginalized as the book argues. The book touches on these questions as it highlights the ‘seemingly deliberate ambiguity of the rules’ in China with reference to the ‘ruling against rule’ type constitutions in other communist countries.⁸ However, these questions still provoke further thought and concerns.

The death penalty as mentioned in Chapter three serves as a good touchstone to further investigate the issue. Although hardly transparent, since 2007 the Chinese government has reduced the number of times capital punishment has been used, regularised death penalty approval proceedings, and pushed to correct wrongful convictions.⁹ As the author points out, here the Chinese government shows its clearest commitment to human rights values and efforts to protect human rights, despite antagonistic trends observed by the author.¹⁰ *Teng Biao*’s quote, ‘totalitarian and post-totalitarian politics need the death penalty, the way they

⁵ See Fu Hualing, ‘The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State’ *Journal of Contemporary China* (forthcoming).

⁶ Eva Pils, ‘Asking the Tiger for His Skin: Rights Activism in China’ (2006) 4 *Fordham Int’l LJ* 1209.

⁷ See Tomas C. Wright, *State Terrorism in Latin America: Chile, Argentina, and International Human Rights* (Lanham: Rowman & Littlefield 2007).

⁸ Pils (n 1) 42-3.

⁹ E.g., Susan Trvaskes, ‘China’s Death Penalty: The Supreme People’s Court, the Suspended Death Sentence and the Politics of Penal Reform’ (2013) 53(3) *the British Journal of Criminology* 482.

¹⁰ Pils (n 1) 148.

need enemies'¹¹ certainly makes sense. But a possibly more intriguing question is: why a post-totalitarian polity is committed to 'killing fewer.'? The largely top-down death penalty reform in China makes us wonder what motivates the Party-State to expend such an enormous and sustained effort to improve the death penalty system as well as other fields of criminal law; and what interests does the Party-State still have in the law or the human rights protection specifically, especially since the key incentives for its commitments to human rights in the early post-1989 period and international pressures have arguably faded away today. Does the Party-state calculate the benefit of improving the rule of law based on the cost of the threat that may be imposed on its ruling and also the cost of implementing legal reform? Some scholars have identified a set of motivations underlying China's death penalty reform.¹² Is it possible that the same incentives that facilitated death penalty reform can also be applied to other relatively politically-neutral fields, such as anti-domestic violence and gender equality? Is it possible that the authorities and Chinese civil society share some, though quite limited, common interest in the law and human rights protection despite their fundamental ideological differences? These questions are particularly crucial today for international and domestic stakeholders who are interested in the improvement of rule of law and civil society in China, as many of them probably wonder whether there is still room for human rights causes in the context of an increasingly uncertain trajectory of legal development.

Some readers in Hong Kong may find many of the issues raised in this book particularly interesting and highly relevant to them, as the region faces similar challenges under 'one country, two systems'. Just as the author warns in the conclusion that human rights violations will not be contained within China's geographical boundaries,¹³ Hong Kong, which sits at the frontline, has experienced and confronted the 'Chinese characteristics' of the socialism rule of law as described in the book, such as the 'equation of law and power'¹⁴ and 'employ[ing] arguments that seem convenient in the moment'.¹⁵ Under the shadow of powerful authoritarianism equipped with a complex legal system, political advocacy groups in Hong Kong share a similar dilemma with rights defendants in mainland China. Many advocates in Hong Kong have to face the same questions: should they live with the existing constitutional and legal system, be more cooperative with the central government and be satisfied with any incremental progression; or should they confront the Leviathan more aggressively, stick to the idealistic 'rule of law' and demand more democratic input? Despite the fundamental ideological differences, are there any baseline and common interests for both parties in maintaining Hong Kong's rule of law system and the implementation of 'one country, two systems'? Living within an authoritarian polity that is skillful in employing the law arbitrarily, advocates in both Hong Kong and mainland China seem to share the same fate: 'pain is the inevitable; suffering is optional.'

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¹¹ Pils (n 1) 75.

¹² Kandis Scott, 'Why did China Reform its Death Penalty?' (2010), 19(1) Pac Rim L& Pol'y J 63.

¹³ Pils (n 1) 75.

¹⁴ Pils (n 1) 31.

¹⁵ Pils (n 1) 6.