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Leigha C. Crout

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A Reform Revolution: The Legal Profession Under Authoritarian Closure

LEIGHA C. CROUT*

INTRODUCTION

The rule of law is once more threatened by a rising tide of authoritarianism, characterized by populist political movements and systemic attempts to undermine its core values. Legal mobilization—the strategic use of legal institutions, discourse, and mechanisms to challenge power structures and advance legal and political change—has emerged as a critical response. This process may be initiated by lawyers, but also extends beyond traditional legal practice, encompassing social movements, strategic litigation, and collective efforts to leverage legal tools for institutional transformation.

The efficacy of legal mobilization varies dramatically across political systems. In liberal democracies, actors can strategically deploy legal mechanisms through courts, legislative processes, and public advocacy to challenge state policies and protect fundamental rights. However, in authoritarian regimes like the People’s Republic of China, the absence of institutional independence and a culture of information control and political repression limit the potential to effect meaningful change. Legal mobilization under these circumstances mandates the careful navigation of immense political and institutional barriers and personal risk.

China represents a pivotal site for understanding legal resistance under conditions of extreme institutional constraint. In an era marked by democratic backsliding, where authoritarian leaders are gaining perceived legitimacy, the nation offers a crucial laboratory for examining

* J.D., LL.M. Assistant Professor of Law at DePaul University College of Law. Fellow at the Neukom Center for the Rule of Law at Stanford Law School. This Article is the product of the excellent contributions and collaborations that took place during the 2025 Indiana Journal of Global Legal Studies Symposium on Lawyers as Agents for Change in Countries Facing Distress.

how social actors can negotiate power in seemingly impenetrable political systems when traditional pathways are foreclosed.

Moreover, China's model of authoritarian governance—characterized by sophisticated mechanisms of control, economic dynamism, and strategic global positioning—has become an increasingly attractive template for other emerging authoritarian states. By investigating legal mobilization in this context, it is possible to better comprehend the broader global trends of democratic erosion and the innovative strategies of resistance that emerge in response.

This article will trace the development of legal mobilization against authoritarianism under Party-state governance, utilizing a comparative and historical frame. It will begin with a brief description of the legal system's decimation under the Cultural Revolution (文化大革命, *wenhua dageming*), its re-professionalization and the nation's economic rise during the era of Reform and Opening Up (改革开放, *gaige kaifang*) and beyond, and then turn to today's New Era (新时代, *xin shidai*) under the present administration's leadership.

What follows will analyze how actors have strategically challenged authoritarian leadership through legal mobilization and protected the values incidental to the rule of law. Through a case study on the evolving methodologies of the legal profession in China, this Article aims to illustrate strategic pathways for lawyers in other authoritarian states or in struggling democracies to achieve reform within their own jurisdictions. It will begin with an abbreviated discussion of the scope of this study.

I. BACKGROUND & SCOPE

This article limits its focus to legal actors within the People's Republic of China. While this may appear to be a straightforward determination, there are in fact many gradations of legal service providers who are or have been active participants within this expansive category.¹ Sida Liu likened this to “wandering in a big rain forest”:

As you walk into the jungle, you find a bewildering array of occupational species adhering to different licensing requirements but competing for similar work. In ordinary litigation, lawyers (*lüshi*) face strong competition from a parallel occupation called “basic-level legal workers” (*jiceng falu gong zuozhe*), from many types of legal advisory agencies

1. See generally William P. Alford, *Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers*, CHINA Q. 22 (1995); Sida Liu, *The Changing Roles of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists*, 2 in THE NEW LEGAL REALISM: STUDYING LAW GLOBALLY 180 (Heinz Klug & Sally Engle Merry eds., 2016).

(*falü zixun jigou*), and from a large number of unauthorized “black lawyers” (*hei lüshi*) and “barefoot lawyers” (*chijiao lüshi*).²

To simplify reference to this diverse group, this article focuses its attention on members of the legal profession that possess characteristics derived from Lucien Karpik and Terrence Halliday’s concept of the legal complex.³ It incorporates select examples of strategic action advanced by (1) those with formal training to “create, elaborate, transmit, and apply the law;” (2) holding occupations involved with “drafting, representing, advising, judging, prosecuting, teaching, and writing law;” and (3) who utilize their training or occupation to mobilize against authoritarianism, seek democratic reform, or to advance liberal ideals like human rights and the rule of law.⁴

Legal mobilization can be broken down further into instances of “formal” and informal or nonformal mobilization. The former takes place in institutional avenues, such as the courtroom, and incorporates traditional examples of legal activism, such as cause lawyering.⁵ In contrast, the latter form of mobilization is performed outside these venues and may take place via demonstrations, organized social movements, online campaigns, and other activities outside the scope of state institutions.⁶

This brief article cannot hope to incorporate every instance of legal mobilization over this period but rather turns an eye to critical themes and strategic efforts towards catalyzing institutional change. These are significant because legal mobilization is a fundamentally dynamic, incremental process. Although they tend to feature prominently in legal mobilization studies, immediate and decisive victories are few and far between. Instead, this article analyzes the cumulative pressure, discourse shifts, and gradual institutional responses that may result in incremental reforms.

Put differently, in lieu of looking simply at one “failed” demonstration or suit, this article looks to the greater context of the support and

2. Liu, *supra* note 2, at 181 (citations omitted).

3. Lucien Karpik & Terence C. Halliday, *The Legal Complex*, 7 ANNU. REV. LAW SOC. SCI. 217, 220–21 (2011).

4. *Id.* See also Leigha Crout, *The Legal Complex and the Rule of Law: Lessons in Democratic Resilience* (forthcoming).

5. STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 3–4 (Nachdr. ed. 2005). There are many definitions of cause lawyering, but the simplest is legal activism to pursue ideals that transcend the client’s specific claim.

6. This distinction is adapted from Lynette Chua’s typology of mobilization in authoritarian states, and is utilized in a forthcoming article on comparative legal mobilization across alternate political jurisdictions. Lynette J. Chua, *Legal Mobilization and Authoritarianism*, 15 ANN. REV. L & SOC. SCI. 355 (2019). Leigha C. Crout, *Legal Mobilization & the Rule of Law: Lessons in Democratic Resilience* (forthcoming).

transformations these single events can inspire. While the ultimate trajectory of these endeavors is unpredictable, a careful analysis may reveal underlying patterns and pathways for future reform. The goal is not to predict specific outcomes, but to map the strategic landscapes in which legal mobilization takes place.

Finally, it is important to note here that the legal community in China is far from unified under the banner of political liberalism. As within other authoritarian states, many lawyers are concerned with performing their work with competence rather than achieving political change, a trend that can arise both from the structure of the profession and the threat of reprisal.⁷ With regard to criminal defense, Qin Ma has referred to this group as the “passive majority.”⁸

It is ultimately impossible to know how many might support the objectives of reformers. In practice, the risks to personal and professional welfare in a repressive authoritarian state like China mean that only a small minority are willing and able to publicly support views that might threaten the existing administration.⁹

Moreover, those within the profession that fall within the category of liberal or reformist advocates are divided on what precisely they would like to achieve. A non-insignificant number of advocates are supporters of President Donald Trump, for example, and support a libertarian view of governance.¹⁰ By honing in on these thematic, productive challenges to

7. In the case of Russia, Kathryn Hendley attributes the lack of activism primarily to the fragmentation of the profession and the accusatorial bias in Russia’s criminal justice system, among other societal drivers. China’s profession faces many of the same considerations. Kathryn Hendley, *United We Stand, Divided We Fall: Reflecting on the Fragmentation of Russia’s Legal Profession(s)* (FORTHCOMING) (2025). Kathryn Hendley, *Defenders but not Resisters: The Role of Lawyers in Putin’s Russia* in *GLOBAL RESISTANCE TO AUTHORITARIAN DIFFUSION* (David Trubek, ed., forthcoming) (on file with the author).

8. Qin Ma, *Agents for and Against Change: The Dual Role of Chinese Defense Lawyers in Judicial Reform* (FORTHCOMING) (2025).

9. Five Years after 709 Crackdown, Lawyers Continue to Face Repression and Punishment, Cong.-Exec. Comm’n on China, <https://www.cecc.gov/publications/commission-analysis/five-years-after-709-crackdown-lawyers-continue-to-face-repression> (last visited Aug 31, 2023); Tom Phillips, “It’s Getting Worse”: China’s Liberal Academics Fear Growing Censorship, *THE GUARDIAN*, Aug. 6, 2015, <https://www.theguardian.com/world/2015/aug/06/china-xi-jinping-crackdown-liberal-academics-minor-cultural-revolution> (last visited Jan 12, 2025).

10. Support (or lack thereof) for Donald Trump has created a rift within the liberal intellectual community. “Conservative liberals” support the U.S. President’s politics, and criticize 白左 (*bai zou*, white liberals) as being overly politically correct. For a fascinating discussion (in English) of these divisions within China’s liberal intelligentsia. See Ling Li & Teng Biao, *An Anatomy of Trump’s Appeal to Chinese Liberals: A Conversation with Teng Biao*, *MADE IN CHINA J.* (Feb. 1, 2021), <https://madeinchinajournal.com/2021/02/01/an-anatomy-of-trumps-appeal-to-chinese-liberals-a-conversation-with-teng-biao/> (last visited Jan. 16, 2025).

authoritarianism, this article puts aside the internal fragmentations of the profession to focus on actions over questions of identity and alliance.

The following section will begin with a short description of the development of the legal profession in the nation's early history, then turn to the ways in which the legal profession's tactics have evolved in response to progressive authoritarian control.

II. 从革命到改革 FROM REVOLUTION TO REFORM

The Cultural Revolution was a national movement that began in 1966 under the leadership of the first Chairman of the Communist Party of China, Mao Zedong.¹¹ It was a targeted campaign to make way for the “Four News” (四新, *si xin*—new customs, new culture, new habits, new ideas) by way of the elimination of the “Four Olds” (四旧, *si jiu*—old customs, old culture, old habits, old ideas).¹² In practice, this effort was carried out with a violence that decimated any perceived relics of the nation's imperial history, as well as any external Western influences to make way for new socialist and communist ideology.¹³

This campaign to purge China of these influences included individuals who were seen to be representative of the same values. Scholars, technical experts, lawyers, and many others were disappeared, executed, or sent to reeducation facilities.¹⁴ China's legal system was deconstructed, along with related institutions such as formal education and instruction.¹⁵

Qianfan Zhang, *Zhang Qianfan, “Left and Right,”* READING THE CHINA DREAM, <https://www.readingthechinadream.com/zhang-qianfan-left-and-right.html> (last visited Jan. 17, 2025).

11. Today, “Party General Secretary” has replaced the term “Chairman,” bringing the Party's political structure closer to that of the then-Soviet and Eastern European models. Lowell Dittmer, *The 12th Congress of the Communist Party of China*, 93 CHINA Q. 108, 112 (1983).

12. There are many other explanations for the commencement and course of the Cultural Revolution, which extend beyond the scope of this paper. Xing Lu, *Rhetoric of the Chinese Cultural Revolution: The Impact on Chinese Thought, Culture, and Communication* 61–62 (2020); Tillman Durdin Special to The New York Times, *China Transformed by Elimination of ‘Four Olds’*, The New York Times, May 19, 1971, <https://www.nytimes.com/1971/05/19/archives/china-transformed-by-elimination-of-four-olds.html> (last visited Feb. 6, 2025).

13. This is not to suggest that there was a total sanction on the destruction of cultural heritage by the Communist Party. In fact, there is evidence that Premier Zhou Enlai protected the Forbidden City in Beijing from destruction. For a compelling autobiographical account of the course of the Cultural Revolution. See JUNG CHANG, *WILD SWANS: THREE DAUGHTERS OF CHINA* (First Touchstone edition ed. 2003); CHEN JIAN, *ZHOU ENLAI: A LIFE* 566–91 (2024), <http://www.jstor.org/stable/10.2307/jj.12570390> (last visited Feb. 6, 2025).

14. Sheldon M. Slaybod, *The Strange World of China's Lawyers*, 7 BARRISTER 10, 12 (1980).

15. Chiu Hungdah, *JUDICIARY IN POST-CULTURAL REVOLUTION CHINA* | *Office of Justice Programs*, U.S. DEP'T OF JUST.: OFFICE OF JUST. PROGRAMS (1976), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/judiciary-post-cultural-revolution-china> (last visited

The Cultural Revolution ended in 1976 with the death of Mao Zedong, sparking a transition in the nation's leadership and a new beginning for the legal profession.¹⁶ Under the leadership of Deng Xiaoping, China entered its era of "Reform and Opening Up" and began laying the foundations for future institutional growth.¹⁷ One of these important developments was the reinstatement of the legal profession with the Lawyers Law in 1980.¹⁸ Another was the adoption of a new, liberalizing Constitution in 1982 that incorporated a chapter on basic rights and the separation of powers.¹⁹

The legal profession initially struggled to resituate itself in the aftermath of the Cultural Revolution. Most practitioners during this era were either politicians or army veterans and very few possessed formal training; the profession at this stage was deeply tied to the Communist Party.²⁰ Eventually, however, the practice of law transitioned from "a fully public profession to an almost fully private profession" within the course of a decade, although it did not totally abandon its deep connection with the Communist Party.²¹

A related development of the Reform and Opening Up Era was the coordinated building-up of state institutions, including the judiciary.²² Through this, and a Party-sponsored commitment to developing its institutional economics via the introduction of formal laws and regulations, avenues for legal mobilization began to form. At the same time, activism led by civil society groups began to tentatively develop as the necessary components were introduced.

To be clear, activism of any sort in the People's Republic of China (PRC) does not and has not taken place under the same conditions that can be observed within liberal democracies. However, the Era of Reform and Opening Up marked the commencement for a new generation of lawyers in skillfully and strategically experimenting with different litigation

Feb. 6, 2025). Xin Meng & Guochang Zhao, *The Long Shadow of a Large Scale Education Interruption: The Intergenerational Effect*, 71 *LAB. ECON.* 102008 (2021).

16. See generally Alford, *supra* note 2.

17. EZRA F. VOGEL, *DENG XIAOPING AND THE TRANSFORMATION OF CHINA* (First Harvard University Press paperback edition ed. 2013).

18. Zhonghua Renmin Gongheguo Lüshi Fa [Lawyers Law of the People's Republic of China], promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2007, (effective June 1, 2008), <https://govt.chinadaily.com.cn/s/201712/26/WS5c18b454498ee2f0291e3ffa/law-of-the-peoples-republic-of-china-on-lawyers.html?>

19. Zhonghua Renmin Gongheguo Xianfa [Constitution of the People's Republic of China] (2018), https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html

20. Sida Liu, *Beyond Global Convergence: Conflicts of Legitimacy in a Chinese Lower Court*, 31 *LAW SOC. INQ.* 75, 82 (2006).

21. Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*, 113 *AM. J. SOCIO.* 352, 353 (2007).

22. Jamie P Horsley, *The Rule of Law: Pushing the Limits of Party Rule*, in *CHINA TODAY, CHINA TOMORROW: DOMESTIC POLITICS, ECONOMY, AND SOCIETY* 51 (Joseph Fewsmith ed., 2010).

tactics in seeking better outcomes for their clients and in attempting to elicit broader sociopolitical transformations.

Formal legal mobilization during this period was not entirely uncommon. To some, it was “seen as a way to do politics by means other than overt political confrontation,” while for others in the profession it was a means of pursuing their clients’ best interests—and in so doing, would often preserve important legal rights.²³ Hualing Fu and Richard Cullen have referred to this latter type as more successful than their counterparts.²⁴ Regardless of motivation, formal legal mobilization became a common method for a new generation of privatized, professional lawyers in the mid-1990s and the early 2000s.²⁵

In the courtroom, lawyers “ground[ed] their action on a technical—apparently apolitical—soil and [framed] it in terms of values professed by the Chinese Communist Party (CCP), claiming to help it govern according to the law and advance the socialist rule of law.”²⁶ As this description implies, these actions were often not inconsistent with sanctioned state practice. During this early phase of the legal system’s development, workers were called to “use the law as a weapon” to defend their rights, for example.²⁷ This, in turn, would produce better quality working conditions as well as a higher standard of living, both of which were special objectives of the Communist Party.

The utilization of the law to enforce labor standards, to advance government accountability via administrative litigation, and in the pursuit of public interest lawyering were hallmarks of this period.²⁸ With regard to labor, Mary Gallagher writes that grassroots legal mobilization to protect workers rights led to a type of informed disenchantment that encouraged actors to approach the legal system critically, while also promoting rights consciousness within their society.²⁹

Supported in part by counsel from legal aid representatives, workers were empowered to enter negotiations and mediations with their

23. Chloe Froissart, *Using the Law as a ‘Harmonious Weapon’: The Ambiguities of Legal Activism in Favour of Migrant Workers in China*, 10 *J. CIV. SOC’Y*. 255, 256 (2014).

24. Hualing Fu & Richard Cullen, *Weiquan (Rights Protection) Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering*, *CHINA J.* 111, 117 (2008).

25. Eva Pils, *The Practice of Law as Conscientious Resistance: Chinese Weiquan Lawyers’ Experience*, in *THE IMPACT OF CHINA’S 1989 TIANANMEN MASSACRE* 109, 110–13 (Jean-Philippe Béja ed., 2011).

26. Froissart, *supra* note 21 at 256.

27. Mary E. Gallagher, 3. “Use the Law as Your Weapon!”: *Institutional Change and Legal Mobilization in China*, in *ENGAGING THE LAW IN CHINA* 54, 55 (Neil J. Diamant, Stanley B. Lubman, & Kevin J. O’Brien eds., 2005).

28. Mary E. Gallagher, *Mobilizing the Law in China: “Informed Disenchantment” and the Development of Legal Consciousness*, 40 *LAW SOC’Y REV.* 783, 785 (2006).

29. *Id.*

employers and advocate for their own interests.³⁰ Especially with regard to those in non-State-Owned Enterprises, “workers [ignored] the widely known flaws of legal institutions, mimicking the state’s own recourse to legality, and [used] these laws to press for their own rights and interests.”³¹

Administrative litigation also seemed to take shape as a form of political action.³² While the overall efficacy of suits against the state in the administrative context was limited, there were some important victories that led “hundreds of thousands. . . to challenge acts by county and township governments, Public Security Bureaus, industrial and commercial departments, cultural, environmental and public hygiene agencies and Civil Affairs Bureaus.”³³ Through this work, like in the context of labor, actors were able to vitalize and vindicate their preexisting legal rights.³⁴

A final and notable form of legal mobilization took place via public interest litigation and rights defense work. A self-identified group of “human rights lawyers” (维权律师, *weiquan lǚshī*) took on the mantle of cause-lawyering in the protection of their clients’ legal entitlements and in an effort to limit arbitrary government action.³⁵ Through this work, lawyers could transform a single case into an appeal to broader principles of justice and the rule of law.

There are many examples of human rights lawyers utilizing this platform in taking action. Some of the more prominent cases include the protection of the rights of Falun Gong religious practitioners and the right to practice one’s religion; the Sun Zhigang case, which led to the reform of the custody and repatriation system when a young man was tragically killed while in detention for suspected unlawful internal migration; and anti-discrimination litigation, discussed further below.³⁶

Together, these three forms of legal action—promoting workers’ rights, administrative litigation, and public interest litigation—served to define this phase of legal mobilization efforts. These efforts were capable

30. Gallagher, *supra* note 28; Chua, *supra* note 7 at 364.

31. Gallagher, *supra* note 26 at 785. See also Kevin J. O’Brien, *Rightful Resistance*, 49 *WORLD POLIT.* 31 (1996).

32. Gallagher, *supra* note 26 at 74–75.

33. The authors conducted this study in the context of rural China, but this limitation indicates that the final sum of those pursuing administrative claims during this period is likely even more impressive than this general estimate. Kevin J. O’Brien & Lianjiang Li, *Suing the Local State: Administrative Litigation in Rural China*, *CHINA J.* 75, 76–77 (2004).

34. In 1992, a survey indicated that 65% of over 1,000 respondents in Harbin had never heard of China’s Administrative Litigation Law. By the late 1990s, 97% of persons polled in Jiangsu had heard of individuals suing the government by some means. O’Brien & Li, *supra* note 31, at 92; RANDALL PEERENBOOM, *CHINA’S LONG MARCH TOWARD RULE OF LAW* 405 (2002).

35. Fu and Cullen, *supra* note 22 at 111–13.

36. See Ronald C. Keith & Zhiqiu Lin, *The “Falun Gong Problem”: Politics and the Struggle for the Rule of Law in China*, 175 *CHINA Q.* 623 (2003). Keith Hand, *Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People’s Republic of China*, 45 *COLUMBIA J. TRANSNATL. LAW* 114, 114 (2006).

not only of preserving individual rights and liberties, but also to elicit more expansive legal and social transformations under certain favorable conditions.

It is important to note that formal legal actions during this time were no panacea for the protection and promotion of rights (and other democratic values). Often, legal actions were strategically paired with other informal methods of mobilization, like media engagement, organized public events, and petitions, which were intended to improve the chances of the suit's success.³⁷

There are many notable illustrations of this, but one of the more prominent examples arises from anti-discrimination litigation against HBV positive individuals:

In the early 2000s, over 10% of China's population was estimated to be HBV positive—or more than 120 million people. No regulations existed to protect individuals from discrimination, and many of those who were HBV positive were excluded from select occupations, institutions, or other opportunities on the basis of their condition. When a young man with HBV was denied employment as a government official for his medical status, a novel lawsuit was brought on the basis of unlawful discrimination under the Constitution...

Both the complainant and his attorney made several public statements expressing hope that the case would instigate widespread and systematic legal reform, a tactic used by other rights lawyers within China as well to facilitate grassroots support of litigants and place pressure on the state. While the court in this case ultimately side-stepped the constitutional question, it reversed the complainant's disqualification from government office. Subsequently, many provinces elected to independently adopt regulations prohibiting discrimination based on HBV status... [T]he case demonstrates that rights defense and impact litigation can result in positive policy changes – and potentially inspire other advocates to adopt similar strategies.³⁸

In-person calls to action served as another method of seeking legal redress. Subject matter limitations, prohibitions on suits against political figures, and other factors would sometimes interfere with a complainant's

37. Hualing Fu, *Challenging Authoritarianism Through Law: Potentials and Limits*, 6 NAT'L TAIWAN U. L. REV. 339, 351-52, (2011).

38. Leigha C. Crout, *Global Resistance to Authoritarian Diffusion: The People's Republic of China* in in GLOBAL RESISTANCE TO AUTHORITARIAN DIFFUSION (David Trubek, ed., forthcoming) (on file with the author). Hand, *supra* note 34 at 163. While the Constitution was judicialized in the *Qi Yuling* case at the Supreme People's Court, the ruling was later rescinded. For a concise discussion, see Thomas E. Kellogg, *The Death of Constitutional Litigation in China?*, 9 (7) CHINA BRIEF 4 (2009), <https://jamestown.org/program/the-death-of-constitutional-litigation-in-china/>.

ability to bring a suit during this period.³⁹ In Lezhi County, Sichuan Province, dozens of residents staged a demonstration wherein they knelt before a judge and pleaded with him to take their case. This maneuver was successful, and the group was permitted to bring their suit.⁴⁰

Finally, other non-formal acts, including the drafting of grassroots constitutional proposals, demonstrations, and protests were also sometimes employed independently to instigate democratic reforms. As the following section will indicate, these tactics were consequential in the development of contemporary legal mobilization tactics.

The landscape of law and politics has since changed in the PRC, necessitating a commensurate evolution of reform-oriented legal mobilization.⁴¹ The following section aims to provide an abbreviated overview of some of today's prominent legal mobilization efforts, and in doing so, invites further engagement with grassroots, extra-institutional forms of legal mobilization taking place in China and elsewhere.

III. BEYOND REFORM

Legal mobilization during the Era of Reform and Opening Up was sophisticated, strategic, and limited in efficacy and scope. Nevertheless, important victories that preserved democratic values remained possible through formal channels. Today, the ability to challenge state action and preserve norms through this venue has been even further reduced. Since the current administration assumed office in 2013, rule of law measurement indices have documented a steady and progressive decline in China's rule of law metrics.⁴²

These findings translate to a gradual closure of China's political leadership (and subsequently state institutions, consistent with Party-state governance) to criticism and dissent. In 2015, human rights lawyers were especially targeted by the administration in an event now referred to as the "709 Crackdown," during which over 300 rights lawyers were detained for their activism and charged with various political crimes.⁴³

39. O'Brien and Li, *supra* note 31 at 80.

40. *Id.* at 82.

41. This is shorthand for the concept of "Xi Jinping Thought on Socialism with Chinese Characteristics for the New Era," a concept introduced by the Xi administration in his first term and subsequently included in the Constitution as part of the 2018 Constitutional amendments. For more on this and Xi's leadership, see Susan L. Shirk, *China in Xi's "New Era": The Return to Personalistic Rule*, 29 J. DEMOCR. 22 (2018).

42. VariableGrap, Varieties of Democracy, https://v-dem.net/data_analysis/VariableGraph/ (last visited Jan 9, 2024). (utilizing both the Freedom House rule of law indicator as well as the Varieties of Democracy rule of law index).

43. Five Years after 709 Crackdown, Lawyers Continue to Face Repression and Punishment | Congressional-Executive Commission on China, *supra* note 9; Letter from Legal Experts on

Since then, the system has become progressively hostile to rights advocacy and public interest lawyering.

Commensurate with this crackdown on rights advocacy, formal legal mobilization has stalled.⁴⁴ Criminal defense and administrative litigation continue in some limited areas but are unable to match its potential in earlier years.⁴⁵ Despite this grim development, mobilization persists. Instead of the courtroom, actors are now appealing to the non-formal sphere to pursue their case. Online activism, petitions, campaigns, diplomatic appeals, and even demonstrations are occurring more frequently, with at least one organization suggesting that protests are more common today than under prior administrations.⁴⁶

Academic contributions discussing the topic of democratic reforms in China are now one of these core areas of today's mobilization strategies. Given the sensitivity of these topics and that the administration views "constitutionalism" (宪政, *xianzheng*) and other "Western values" as a threat to Party-state governance, domestic publication houses that are willing to accept these essays are few and far between.⁴⁷ Scholars and other contributors who openly discuss these values are also met with retribution by state actors, further narrowing windows of opportunity.⁴⁸

However, international publications and the online sphere remain open to these contributions and may on some occasions be preferred by the authors to elicit further engagement with their ideas. With regard to international publications, one recent journal, *China Democracy Quarterly*, stands out in its mission to feature pieces that discuss Chinese politics, democracy and democratic transition, and that are accessible to a wide range of readers in mainland China and elsewhere.⁴⁹ While an uncommon model, *China Democracy Quarterly* has featured articles from the world's foremost researchers in these areas, which is indicative of its global appeal and impact.

Detained Chinese Lawyers | Human Rights Watch, (Jan. 18, 2016), <https://www.hrw.org/news/2016/01/18/letter-legal-experts-detained-chinese-lawyers> (last visited Feb 28, 2025).

44. Environmental administrative litigation is one such area, with some suits successfully binding the state to observe the applicable standards. Wei You et al., *Types of Environmental Public Interest Litigation in China and Exploration of New Frontiers*, 20 INT. J. ENVT. RSCH. PUB. HEALTH 3273, 3289 (2023).

45. Sida Liu & Terence C. Halliday, *Prologue*, in *CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK* ix, xiii (1 ed. 2016).

46. Kevin Slaten, *Grassroots Protests Are Frequent in Xi Jinping's China*, FREEDOM HOUSE, <https://freedomhouse.org/article/grassroots-protests-are-frequent-xi-jinpings-china> (last visited Aug. 31, 2023).

47. An internal Communist Party document discussing the "dangers" of Western values was released by journalist Gao Yu in 2013. *Document 9: A ChinaFile Translation*, CHINAFILE (Nov. 8, 2013), <https://www.chinafile.com/document-9-chinafile-translation>.

48. Phillips, *supra* note 9.

49. *China Democracy Quarterly Launched*, ASIAN FREEDOM INST. (Mar. 8, 2023), <https://asiafreedominstitute.org/news/china-democracy-quarterly-launched/> (last visited Mar. 3, 2025).

As a vastly more accessible platform than traditional journals or publishing houses, social media possesses latent potential to reach a broader audience of readers from all backgrounds, to host online, informal mobilization efforts or generate public support for cause lawyering, and to act as an organizing tool for social movements.⁵⁰

One recent example exemplifies the reach of online platforms and the different ways in which reformist academics may present their arguments. During COVID-19, social media became a primary venue for social discourse given strict COVID-19 lockdown measures—a system referred to as “Zero Covid,” or 清零 (*qing ling*).⁵¹ One of the first prominent casualties of COVID-19 was Dr. Li Wenliang, the original whistleblower who is credited with first calling attention to the symptoms of the novel coronavirus.⁵² In response to his early warnings, Dr. Li was censured at work and was forced by state officials to sign a statement recalling his online remarks.⁵³

When Dr. Li passed away from complications arising from the same virus, political figures, corporate leaders, state-sponsored newspapers, and several other sources publicly criticized his treatment by the authorities and the suppression of his warning.⁵⁴ Prominent academics drafted and published a public petition demanding state accountability and the freedom of speech, with key demands including:

[T]o protect people’s right to freedom of expression; to discuss the issue at NPC [legislature] meetings; to make February 6, the day Li died, a national day for free speech; to ensure no one is punished, threatened, interrogated, censored or locked up for their speech, civil assembly, letters or communication; and to give equitable treatment, such as medical care, to people from Wuhan and Hubei province.⁵⁵

50. Crout, *supra* note 4; ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST (2019).

51. Kerry Allen, *How China’s Covid Protests Are Being Silenced*, Nov. 28, 2022, <https://www.bbc.com/news/world-asia-china-63788477>; *China’s Censors Aim to Contain Dissent During Harsh COVID-19 Lockdowns | Opinion*, FREEDOM HOUSE, <https://freedomhouse.org/article/chinas-censors-aim-contain-dissent-during-harsh-covid-19-lockdowns-opinion-0> (last visited Mar. 3, 2025).

52. Jing-Bao Nie & Carl Elliott, *Humiliating Whistle-Blowers: Li Wenliang, the Response to Covid-19, and the Call for a Decent Society*, 17 J. BIOETHICAL INQ. 543 (2020); *Li Wenliang: “Wuhan Whistleblower” Remembered One Year On*, BBC NEWS, Feb. 6, 2021, <https://www.bbc.com/news/world-asia-55963896>.

53. Li Wenliang: Coronavirus kills Chinese whistleblower doctor, BBC News, Feb. 6, 2020, <https://www.bbc.com/news/world-asia-china-51403795> (last visited Mar 3, 2025).

54. Li Yuan, *Widespread Outcry in China Over Death of Coronavirus Doctor*, THE NEW YORK TIMES, Feb. 7, 2020, <https://www.nytimes.com/2020/02/07/business/china-coronavirus-doctor-death.html>.

55. Mimi Lau, Echo Xie & Guo Rui, *Coronavirus: Hundreds in China Sign Petition Calling for Free Speech*, SOUTH CHINA MORNING POST (Feb. 12, 2020), <https://www.scmp.com/news/china/politics/article/3050086/coronavirus-hundreds-chinese-sign-petition-calling-freedom>.

In an effort that resembles now-dormant cause lawyering techniques, Dr. Li's case was employed as an illustration of a greater sociolegal issue in need of reform. The Freedom of Speech Petition was not met with success by its own measure, but did aid in securing state accountability in the form of formal apologies from Wuhan officials and the revival of rights discourse during a critical period.⁵⁶ This activism may have also informed the course of important demonstrations that took place a few short years later, discussed below.

In-person protests and demonstrations have also become a feature of legal mobilization in China. In late 2022, China witnessed one of its first sustained nationwide protests since the Tiananmen Square pro-democracy movement in 1989.⁵⁷ The Blank Paper Protests began in Shanghai in late November, during a vigil held for those who had passed away in a fire in Urumqi, Xinjiang province.

Allegations that the decedents were unable to leave during the fire due to COVID-19 restrictions circulated among the group and led to a demonstration criticizing state action.⁵⁸ This movement began spreading in different cities throughout China, all with the same message—protesters demanded the end of the repressive Zero Covid measures and the reform of the government that allowed the longstanding and undemocratic restrictions on rights and freedoms to be implemented.⁵⁹

To protect their anonymity and to obstruct state censorship, participants began to hold up blank pieces of paper. When asked by journalists what the pages were meant to signify, participants answered with a version of “you know what I am trying to say.”⁶⁰ In a similar development vein as the Freedom of Speech Petition, the Blank Paper Protests may

56. See e.g. Amy Cheng, *Chinese Authorities Admit Improper Response To Coronavirus Whistleblower*, NPR, (Mar. 19, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/19/818295972/chinese-authorities-admit-improper-response-to-coronavirus-whistleblower> (last visited Mar 3, 2025).

57. Billy Perrigo, *Why a Blank Sheet of Paper Became a Protest Symbol in China*, TIME (2022), <https://time.com/6238050/china-protests-censorship-urumqi-a/> (last visited Dec. 3, 2024).

58. Reuters, *Covid Lockdown Protests Break out in Western China after Deadly Fire*, THE GUARDIAN, (Nov. 26, 2022), <https://www.theguardian.com/world/2022/nov/26/covid-lockdown-protests-break-out-in-western-china-after-deadly-fire> (last visited Dec 3, 2024).

59. Nectar Gan & Selina Wang, *At the Heart of China's Protests against Zero-Covid, Young People Cry for Freedom*, CNN (2022), <https://www.cnn.com/2022/11/28/china/china-protests-covid-political-freedom-intl-hnk-mic/index.html> (last visited May 3, 2023); China Covid: Shocking protests are huge challenge for China's leaders, BBC NEWS, (Nov. 27, 2022), <https://www.bbc.com/news/world-asia-china-63772365> (last visited Feb 22, 2023).

60. Matt Murphy, *China's protests: Blank paper becomes the symbol of rare demonstrations*, BBC NEWS, (Nov. 28, 2022), <https://www.bbc.com/news/world-asia-china-63778871> (last visited Apr 10, 2023).

have been instigated by one influential case but subsequently evolved into a public call for legal and political reforms.⁶¹

The Blank Paper Protests were not held in isolation. Preceding this were several thousand in-person demonstrations on various topics.⁶² China Dissent Monitor, a subsidiary organization of Freedom House, documented 1,080 protests that took place from June 2022 to December 2022, on a variety of subjects. Per their report: “[W]hile property buyers (395 events) and workers (168) constitute the top groups engaged in dissent since June, a wide range of other groups launched protest actions including urban residents (153), students (56), rural residents (33), and faith groups (25).”⁶³

Finally, diplomatic appeals to the international community—especially through United Nations (UN) channels—are one additional platform for the pursuit of reform. Through acts including informing the Universal Periodic Review (UPR) on China, contributing to special reports on domestic issues, and directing global attention to critical matters affecting basic rights, actors may still advocate for their political future despite a culture of Party-state suppression of dissent.

Through these channels—academic contributions, online campaigns, protests and demonstrations, and appealing to the international community—it is still possible to advance towards legal reforms. While success is far from guaranteed, the public appeal of the movements is by no means insignificant and must be considered indicative of the potential inherent within extra-institutional legal mobilization opportunities.

CONCLUSION

This article explored how legal mobilization has evolved under progressive authoritarian closure in the People’s Republic of China. It began with a discussion of the legal profession in China and how it remains a diverse and diffuse collective of actors. It then turned its focus to the subject of this piece, legal mobilization in the pursuit of democratic reforms. A combination of formal mobilization and non-formal or extra-institutional mobilization strategies have been employed throughout the nation’s recent history, but have been altered in response to new limitations in the legal landscape.

61. Chang Che & Amy Chang Chien, *Memes, Puns and Blank Sheets of Paper: China’s Creative Acts of Protest*, THE NEW YORK TIMES, (Nov. 28, 2022), <https://www.nytimes.com/2022/11/28/world/asia/china-protests-blank-sheets.html> (last visited Apr 19, 2023).

62. *Issue 2: October-December 2022*, FREEDOM HOUSE 2, <https://freedomhouse.org/report/china-dissent-monitor/2023/issue-2-october-december-2022> (last visited Mar. 3, 2025).

63. *Id.*

Legal mobilization during and immediately following the Era of Reform and Opening Up was in no way unburdened by state interference, but legal actors were capable of acting with moderately more freedom than their counterparts under the present administration. This is especially true with regard to formal mobilization that took place in the courtroom—during this period, lawyers were comparatively freer to accept “less desirable” clients that had fallen afoul of the Party-state.

Today, reform-oriented legal mobilization must be leveraged cautiously to evade state repression, and non-formal mobilization strategies are utilized more frequently to advance these objectives. Protests, demonstrations, academic contributions, and online campaigns provide the flexibility and anonymity required to pursue these goals while protecting personal interests.

The future of legal mobilization in pursuit of legal and political reforms is unclear under the leadership of the Communist Party. However, China is not the only country witnessing a restriction of freedoms and the gradual closure of its traditional forums for political participation. In the context of global democratic decline and authoritarian closure, it is important and even essential to begin conversations related to what we, as citizens and as members of the legal profession, can do to protect, promote, and revive democratic freedoms and the rule of law.