

In the Trenches of Lawfare: Reflections on Citizenship Struggles in China

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Let's begin with a phenomenological approach of citizenship in China, and ask: what does "citizenship" mean to the Chinese and how does it operate in Chinese society? What practices are organized, understood and framed in terms of "citizenship"?

Many would point to the widespread practice of "*weiquan*". The term refers to activities to pursue and protect one's lawful rights – e.g. protests, petitions, filing lawsuits, organizing, etc. Increasing numbers of aggrieved Chinese have participated in *weiquan* with impassioned energy, incisive knowledge of specific laws, and claims informed by a mix of moral and economic reasoning. Invoking the self-styled identification of "*gongmin*" or citizens, Chinese urban home owners, for instance, armed with the new Property Rights Law passed in March 2007, have become increasingly assertive in fighting against encroachment of their property rights by real estate developers, property management companies and various basic level governments. In the countryside, land requisitions have replaced taxation burden and birth control campaigns as the principal lightning rod of riots and unrest. Farmers see their land use rights violated by local officials often in collusion with elected village leaders. The Land Management Law, most recently revised in 1998, and the Rural Land Contracting Law (2003) provide the ground for many legal and extra-legal mobilizations in rural China in the past decade. Finally, the Chinese labor force, the largest in the world at about 780 million, also seizes the rhetoric of "rights protection" in battling against rampant problems of wage default, dismissal and industrial injuries. The new Labor Contract Law, promulgated in 2008 along with two other labor-related legislations, has already triggered dramatic increases in both labor lawsuits and labor dispute arbitrations. Amidst all these rights activisms, the Chinese leadership, too, has persistently hailed "ruling the country according to the law" as a principle of government, even writing it into the Constitution in 1999. A notable flourishing of rights discourses and rights mobilizations in many quarters of Chinese society has emerged.

Why are Chinese citizens so focused on the law, in glaring incongruity with the weak legality for which China is infamous? Also, very few Chinese citizens take issue with the power structure that produces these laws, or question the lack of popular participation in law making. Nor is there demand for the social rights (e.g. education, medical, housing) that communist countries in general and China in particular once purportedly provided and are now mostly overhauled by market reform. In short, what is puzzling about citizenship practices in China today is the fetishization of the law, i.e. the appearance in the social imaginary of the law as an autonomous force that conceals its roots in concrete social and political relations. What accounts for this focal concern with legal rights out of the many rights (social rights, political rights, civil rights, etc) that are usually associated with modern citizenship?

To broach these questions, we can turn to Margaret Somers' *Genealogies of Citizenship* (2008) for some sensitizing propositions. She suggests that the parameters of any citizenship regime (with its membership rules and contents of rights) are the results of a triadic "instituted process" involving the state, the market and civil society in a continuous struggle for dominance. These citizenship struggles take the forms of the deployment of governance technologies, political idioms and rights claiming practices and are a source of identity. She argues that in the United States, three decades of market fundamentalism has led to a "contractualization of citizenship" whereby non-contractual rights and obligations of the American citizenry are being reorganized on the principles of quid pro quo market exchange.

Both the heuristic lens and the substantive argument put forth by Somers are instructive for reflecting on the Chinese case. In the triadic assemblage of power that defines a citizenship regime, the Chinese central government is still perceived as the ultimate repository of political authority and economic power. Break-neck marketization notwithstanding, "market fundamentalism" is very much constrained by the continuous dominance of the Chinese state which retains at its disposal a considerable apparatus of political intervention at all levels of the market economy, from macro-economic control, to sectoral and firm level ownership, and market regulation.

Under socialism, the Chinese state sponsored enduring structures of unequal citizenship. The rural-urban hierarchy, the panoply of *hukou* and *danwei* categories, and Communist Party membership all conferred differential social and political rights to Chinese citizens. Against this background, the market economy has brought mobility opportunities outside of the state apparatus, and is therefore *experienced* by many as a liberating and equalizing force. Social rights, never equally distributed, are jettisoned together with the "iron rice bowl" employment system now deemed by many officials as irrational and inefficient. Social rights, like the planned economy, are rejected as legitimate items on the reform agenda.

But as the market produces class-based inequalities, and its functioning calls for the erection of a legal regulatory infrastructure, the state turns to the law as a governing technology. Civil society therefore targets the law, the embodiment of state authority, in counterbalancing market-driven inequality and injustice. Of course, besides the legal reform initiated by the Chinese state, other forces converge to promote the "rule of law" as an instrument of governance. These include local branches of transnational advocacy networks, international foundations, the World Bank, the revived and transformed Chinese bar and the expanding contingent of lawyers. The Chinese government is hardly unique in emphasizing the law as an instrument of rule, but its staunch repression of opposition politics and organized dissent gives the law unique poignancy as the crucible of citizenship struggle in China.

To speculate on the future development of rights activism in China, I want to underscore the significance of people's direct experience, conceptions and practice, and not scholarly political theory. Elizabeth Perry recently maintains that the Chinese conception of rights emphasizes subsistence and national development, and not rights as liberty or protection from tyrannical state power characteristic of the American political discourse. While I agree with her suggestion that 'political citizenship' (e.g. the right to vote, to file petitions, to stage protests, to establish associations, etc) in China is generally understood as a state-conferred privilege rather than a natural or an inalienable prerogative, my own research on the rights activism of many homeowners, villagers and workers indicate that they demand as much economic as procedural justice; and in the process of citizenship struggles many have come to realize the anti-tyrannical potential of the law, particularly in containing the arbitrary and abusive power of local

officials. These practices, or performance, of citizenship is creating a formidable force from below to compel more accountability in the exercise of judicial and political power.

A more serious challenge, as far as my ethnographic fieldwork has discovered, resides in the capacity among Chinese citizens to recognize fellow citizens as moral equals, and not just in making claims to the state. I have observed too many instances in which Chinese citizens have difficulties developing solidaristic publics and moral communities, and find themselves atomized by the juridical individualism that comes packaged in the law and its classical liberalist premises. Elsewhere, I have argued that the political economy of “decentralized legal authoritarianism” has produced cellular interests, identities and mobilizations that are not conducive to cross-locality, much less cross-class solidarity. Further research can explore whether and how *communities of citizens* can be engendered out of and *against* these institutional conditions.