

# Legal and Political Rights Advocacy in Wrongful Conviction Death Penalty Cases in China: A Study of the Leping Case of Injustice

---

JIANG Jue<sup>\*</sup>

## *Introduction*

The problem of wrongful conviction has become more widely acknowledged in China today. At the Third Session of the Twelfth National People's Congress held in March 2015, Zhou Qiang, chief justice of the Supreme People's Court, stated that they "feel a deep sense of self-blame for wrongful convictions."<sup>1</sup> He demanded that courts at all levels "draw a profound lesson [and] improve the mechanisms for effectively preventing and correcting wrongful convictions."<sup>2</sup> In the year of 2014, according to Zhou, Chinese courts had revised 1317 criminal cases, among which there were "a batch of major wrongful conviction cases"; Zhou then promised that they would "be responsible to the people and correct every single wrongful conviction case once it is found out."<sup>3</sup> However, in judicial practice, for an individual to get the wrongful conviction corrected may not become any easier

---

<sup>\*</sup> The author, JIANG Jue, is a visiting scholar (honorary) at the Centre for Rights and Justice (CRJ), Faculty of Law, The Chinese University of Hong Kong. Email: jiangjuejiangjue@gmail.com. The author thanks CRJ for providing research resources

<sup>1</sup> Josh Chin, *China Top Judge Apologizes for Wrongful Convictions*, Wall Street Journal, Mar. 12, 2015.

<sup>2</sup> *Id.*

<sup>3</sup> See the full context of Zhou Qiang's report at [http://www.npc.gov.cn/npc/zhibo/zzyb33/node\\_5846.htm](http://www.npc.gov.cn/npc/zhibo/zzyb33/node_5846.htm).

- drawing on a study of the Leping case of injustice, in which four defendants were convicted of rape and murder and sentenced to death for a crime they had not committed, this article discusses how the efforts of correcting it meet a deadlock in China's judicial system, and how, in this circumstance, Chinese civil society initiates and runs a network advocacy aiming at breaking the deadlock and advancing the correction.

The first section briefly describes the Leping case, illustrating how strong incentives to use torture remain in China's criminal justice system and how laws to curb its use can be circumvented and subverted, in this case even in the face of inter-departmental contention about using evidence obtained under torture. This helps to understand obstacles of official efforts to reduce or eradicate torture through legislative reforms and other top-down measures. As analysed in the second section, the roots of torture, including the structure of the Public Security Bureau, the People's Procuratorate, the People's Court as an "iron triangle," in which the Public Security Bureau possesses overwhelming power and outranks the other two institutions, and the various political tasks such as "cracking all homicide cases (*ming'an bipo*)" imposed on the police, are necessary for the Chinese authorities to implement and reinforce the utilitarianism, which embeds that suspects/defendants/criminals are "bad" or "evil" and should be "wiped out" by the authorities for the purpose of maintaining "public order" and "public interest." The utilitarianism serves for the ideological foundation of the authoritarian rule. Since the roots of torture, namely the "rightfulness" and "almightiness" of public power, are crucial for utilitarianism, it is hard to reckon on the authorities to address them; in turn, the utilitarianism also provides justification for the use of torture. In this context, correction of wrongful conviction cases could be understood as the authorities' selective response - as shown in the Leping case of injustice, even though the "true perpetrator" has admitted guilt, the judicial system still turns a blind eye to the appeal of retrying and correcting it. Against this background, a group of people including lawyers, rights activists, videographers, and netizens collaborated to challenge the four defendants'

wrongful conviction and draw the attention of the general public to the plight of the incarcerated defendants and their families, making use of diverse verbal and visual advocacy tools including the legal process, the social media, and independent documentary film. The last section traces these advocates' efforts based on legal documents, empirical observations, media reports, online discussions and audio-visual materials, and argues that beyond documenting the torture of the suspects/defendants and advocating for correction of individual cases, the grassroots efforts have been part of an increasingly resilient socio-political network opposing the abuse of public power. Entailing long-term objectives such as abolishing the death penalty and promoting civic consciousness in China, this network advocacy also constitutes a significant challenge to the utilitarianism and the Party-state's authoritarian rule.

#### *The Leping case of injustice*

Two brutal crimes which happened in 1999 and 2000 shook the tranquil village of Zhongdian in the outskirts of Leping City in Jiangxi Province.

Xiong Jun, one of the victims of the first case, said that at midnight on September 8th, 1999, she and her boyfriend Zou Fuxin were robbed in a place known as Denggao Hill in Leping – her boyfriend was stabbed to death by the robber(s) and she was seriously injured.

Only months later, on the evening of May 23rd, 2000, two other villagers, Hao Qiang and Jiang Decai, who had been dating each other, were attacked in a rice field. Jiang's body was discovered the next day, but that of Hao had disappeared. A few days later, in the village, several villagers saw a dog holding a severed human arm in its mouth. This severed arm was identified later by the police as belonging to Hao and having been severed from her body, although neither Hao's body nor the tool used to dismember her body was found.

These two brutal murder crimes were, without further explanations from

the authorities, linked<sup>4</sup> by the local police and were immediately tagged as “major and egregious cases” (*zhongda exing anjian*).<sup>5</sup> The provincial-level Public Security Bureau stepped in to oversee the handling of the cases and set a deadline for the local police to “solve” them.<sup>6</sup> Nevertheless, for two years, Leping police were unable to find the killer(s). Pressure on them mounted from the provincial-level Public Security Bureau. Also, Leping Public Security Bureau was facing much criticism from the public, and it failed to pass the annual assessment by the local People’s Congress in 2002.<sup>7</sup> At the end of this long period of stagnation, some police officers in charge of this case were demoted. But soon after a new team of police investigators took over, four villagers, Huang Zhiqiang, Fang Chunping, Cheng Fagen and Cheng Lihe, were seized as suspects in both cases. Another villager, Wang Shenbing, was a fifth suspect, according to the police, and had escaped detention. The criminal

---

<sup>4</sup> According to one lawyer representing one defendant of this case, Zhang Zanning, Leping police thought these two crimes were conducted by one criminal gang. See: Zhang Zanning (张赞宁), 酷刑下的奇冤——方春平等“抢劫、强奸、杀人”案重审辩护词 (Grave Grievances Under Torture - Defense Statement for the Retrial of the Leping Case), Sina Blog (Nov. 25, 2012), available at [http://blog.sina.com.cn/s/blog\\_65de346801017y6q.html](http://blog.sina.com.cn/s/blog_65de346801017y6q.html).

<sup>5</sup> Major and egregious cases, or in Chinese, 重大恶性案件, *zhongda exing anjian* has no clear legal definition, but it is widely used in China to identify or describe some cases, not only criminal but also economic cases. And “major and egregious cases” are usually connected with “dealing with those cases severely and swiftly” (or in Chinese, 从严从快处理, *congyan congkuai chuli*). This kind of cases is often overseen by the authorities of higher level(s) and gave time limits to solve it - this point is elaborated and illustrated in the Leping case. See e.g. Huangshun (黄顺), 每天7000警力坚守安保一线节日未发生重大恶性案件 (7000 Policemen Work Every day, No Major and Egregious Case During Festival), Shenzhen Commercial Newspaper (深圳商报), Feb. 7, 2014; Zhang Liming (张黎明), 浦江速破四起重大恶性案件 (Four Major and Egregious Cases Solved in Pujiang), Jinhua Daily (金华日报), Jan. 10, 2012; 证监会: 从严从快处理重大恶性案件 (CSRC: To Deal With Major and Egregious Case Severely and Swiftly), Aug. 25, 2013.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *Id.* According to Articles 8 and 44 of the Organic Law of the Local People’s Congresses and Local People’s Governments of the People’s Republic of China (中华人民共和国地方各级人民代表大会和地方各级人民政府组织法), this belongs to the “supervision (*jiandu*) responsibility” of the local People’s Congress and the Standing Committee of a local People’s Congress.

detention of the four suspects very much relieved the local police – soon after they had filed the case (*li'an*) formally opening a criminal investigation against these four villagers, Leping police called a press conference to report to the whole country that these two “major and egregious murder, rob, rape and corpse-dismemberment” cases had been solved. Public Security Departments of the provincial and municipal levels then awarded bonuses to the new team of police investigators.<sup>8</sup>

No information on what the police said exactly at the press conference is publicly available at this point. But it is unlikely that they addressed the process of questioning the four suspects in any detail. According to their defense lawyers' statements in the first and second instance trials, all of the four suspects were severely tortured by the police to extract “confessions” from them.<sup>9</sup> According to their description, based on interviews with their clients in detention, the police handcuffed Huang Zhiqiang and suspended him by his wrists from staircase railings and tied up his mouth with socks to force him to “agree” to make a “confession” in accordance with the police's requirements. This process of making “confessions” lasted four nights and five days, during which Huang was also deprived of food, water and sleep. The other three suspects made their “confessions” under similar forms of torture and inhumane treatment. Their accounts, as recorded by their lawyers, convey a sense of the agonies they suffered.<sup>10</sup>

The cruel torture let me think about suicide—I would have preferred to die! But they said [that if I killed myself] they would simply put it out that I had killed myself to escape punishment;

---

<sup>8</sup> *Id.*

<sup>9</sup> Zhang Zanning (张赞宁), 方春平 “抢劫、强奸、杀人” 案再审辩护词 (Defense Argument in Retrial by the Lawyer of Fang Chunping's), Weiquanwang (June 4, 2007), available at <http://www.weiquanwang.org/?p=149>; *Id.*

<sup>10</sup> *Id.*

I didn't know how to answer their questions during the interrogations - I told them the truth yet they refused to take it and beat me even more severely. God! I really wanted to die; but then I thought of my dear wife, my son, my entire family—I missed them so much...I had no other choice but to say whatever they [the police] asked me to say.

After these “confessions” as well as the hurried awards for already “solving” these crimes, in March 2003, Leping Public Security Bureau transferred the cases to the Procuratorate with a recommendation to prosecute these four villagers on charges of robbery, rape and murder, despite many obvious questions regarding the evidence. Some of the main questions, as detailed in their lawyers' defense and appeal statements, are the following: i) regarding the alleged murder and rape of Hao Qiang, only one arm of Hao's body was found, rendering it impossible to determine whether or not she had been killed or raped; ii) their “confessions” notwithstanding, three of the four suspects had alibis (supported by witnesses and evidence) and did not know each other whereas the police accused them as a “gang” in committing the alleged crimes collectively; iii) none of the seven murder tools “confessed” by the suspects had been found by the police, nor did the police collect any material evidence such as the suspect's fingerprint, footprint, seminal stain from the alleged criminal scene - that is to say, the suspects' “confessions” constituted the sole “evidence” in this case; and iv) there were abundant contradictions among the “confessions” made by these four suspects and in the statements given by the victim (of the 1999 case) Xiong Jun. For example, one of the suspects, Huang Zhiqiang, “confessed” that he had *only* abandoned two bags of Hao Qiang's dismembered body (not including her arm) in place A, yet he at the same time “confessed” that the severed arm (allegedly belonging to Hao) was abandoned by him in place B. And, according to the “confessions,” the four suspects were dismembering Hao Qiang's body in a forest less than

400 meters away from the criminal scene simultaneously when the police were there undertaking the investigation. The forensic examination result showed that Xiong Jun had only minor injuries causing little haemorrhage, yet she claimed (in the testimony) that she had fallen into deep coma [caused by the injuries] and then been raped. Besides, in the four testimonies Xiong provided for the police in 1999 after the incident, she was very certain that there was only one offender, but three years later when the police seized the four suspects and asked for her testimony again, she then said that “there were at least two offenders.”<sup>11</sup>

Realizing the evident doubts about the case as well, the Procuratorate transferred the case back to the Public Security Bureau four times,<sup>12</sup> stating as reason that “the facts [were] not clear and the evidence not sufficient,” and requesting supplementary investigation. The Public Security Bureau, however, did not provide any new evidence in the supplementary investigations and at one point even admitted in its own internal report produced at the end of the investigation that “no valuable physical evidence [to corroborate the “confessions”] had been obtained.”<sup>13</sup> This means that the “confessions” extorted by torture had been the key evidence that drove the police to transfer

---

<sup>11</sup> More questions of the case can be seen in the lawyers' defense and appeal statements at [http://blog.sina.com.cn/s/blog\\_a22c60db0101hq1u.html](http://blog.sina.com.cn/s/blog_a22c60db0101hq1u.html) (for Fang Chunping by lawyer Zhang Zanning), <http://www.weiqianwang.org/?p=310> (for Huang Zhiqiang by lawyer Li Qinquan), and [http://blog.sina.com.cn/s/blog\\_bd2099560101ko19.html](http://blog.sina.com.cn/s/blog_bd2099560101ko19.html) (for Cheng Fagen's appeal by Teng Biao).

<sup>12</sup> *Supra* note 8. Article 171 of the Criminal Procedure Law stipulates that “in examining a case that requires supplementary investigation, the People's Procuratorate may remand the case to a public security organ for supplementary investigation or conduct the investigation itself. In cases where supplementary investigation is to be conducted, it shall be completed within one month. Supplementary investigation may be conducted twice at most.” CECC, [http://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-people-s-republic-of-china#第十节\\_侦查终结](http://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-people-s-republic-of-china#第十节_侦查终结). In the Leping case of injustice, the Procuratorate returned the case file to the police twice at the examination stages for both the first and second instance trials.

<sup>13</sup> In Chinese, “未提取到有价值的物证.” See Zhang Lei (张蕾), Liu Jie (刘洁), 江西乐平杀人案“真凶”疑云 (Mystery of the “Real Perpetrator” in Jiangxi Leping Murder Case), 南方人物周刊 (Nanfang Renwu Zhoukan) (Aug. 13, 2012), available at <http://www.infzm.com/content/79609>.

the case and suggest public indictment. In fact, according to one of the defense lawyers, Zhang Zanning, the local police may have had no easy retreat at that point—since they had already announced their success of “solving” these two cases to the whole nation and received commendations and rewards for that, they had to “leave the mistake uncorrected and make the best of it,” as well as to “silence the witnesses (of their mistakes).”<sup>14</sup>

Their determination of the “facts,” due to the problematic relationship among the Public Security Bureau, the People’s Procuratorate and the People’s Court in China, amounted to an instruction for the People’s Procuratorate and, later, the People’s Court on how to deal with this case. Hence, the Procuratorate eventually decided to indict the four suspects. During the first instance trial, the four villagers’ defense lawyers applied to the Court for a forensic examination of the injuries their clients had suffered as a result of torture, but this application was rejected by the judge.<sup>15</sup> All the four villages withdrew their “confessions” made during police investigations, and told the judge that they had “confessed” falsely due to severe police torture.<sup>16</sup> Their lawyers also pointed out the abovementioned obvious contradictions in the “evidence.”<sup>17</sup> However, in July 2003, the Court of the first instance trial found all the four defendants guilty as charged and sentenced them to death to be immediately executed. All the four defendants appealed to Jiangxi High People’s Court. In January 2004, the High Court overturned the sentence and

---

<sup>14</sup> In Chinese, “将错就错, 杀人灭口.” See: Zhang Zanning (张赞宁), 酷刑下的奇冤——方春平等“抢劫、强奸、杀人”案重审辩护词 (Grave Grievances Under Torture – Defense Statement for the Retrial of the Leping Case), Sina Blog (Nov. 25, 2012), available at [http://blog.sina.com.cn/s/blog\\_65de346801017y6q.html](http://blog.sina.com.cn/s/blog_65de346801017y6q.html).

<sup>15</sup> *Id.*

<sup>16</sup> Xing Bingyin (邢丙银), 江西乐平现“一案两凶”四名嫌犯称遭刑讯逼供 (Two Murderers of One Case Appeared in Jiangxi Leping; Four Suspects Claimed Subjected to Torture), *Oriental Morning Post* (东方早报), June 22, 2014.

<sup>17</sup> *Id.*



sent the case back for retrial (*chongshen*).<sup>18</sup> The retrial upheld the sentence, which drove the four defendants' appeal again.<sup>19</sup> However, in May 2006, in the second instance, the High People's Court upheld their conviction merely changing their sentences to death penalty with two years' suspension [a form of punishment leading to commutation to a sentence of life-long imprisonment in the majority of cases; and in this case as well]. The only reason the High People's Court provided for this suspension was what it, very generally and vaguely, called "the specific circumstances of this case."<sup>20</sup> Its judgment was final.

Since then, the four defendants and their families have never stopped appealing against the verdict. The defendants in prison have kept writing appeals (to the Supreme People's Court and the Supreme People's Procuratorate),<sup>21</sup> in some instances using their own blood, and conducted hunger strikes on multiple occasions.<sup>22</sup> Outside the prison, firmly believing the defendants' innocence, the four families, mainly the four convicts' over-60-year-old parents, have started their petitioning—that is, making complaints to the authorities, which, if successful, might lead to yet another retrial. Every year since 2003, they have travelled to the county, the provincial

---

<sup>18</sup> Appeal for the Leping Case of Injustice Made Big Progress (江西乐平冤案申诉取得重大进展), Capital Equity Legal Group Huzhou Law Firm (June 20, 2014), available at <http://www.hujhls.com/news/new-529.html>.

<sup>19</sup> *Id.*

<sup>20</sup> In Chinese, "鉴于本案具体情况." *Id.*

<sup>21</sup> One appeal they addressed to the Supreme People's Procuratorate and brought outside and published online by one of their lawyers can be seen at <http://www.baoyanji.com/p/index.php?q=aHRocDovL2Jsbn2cuYm94dW4uY29tLzhlc m8vMjAxMDAyL3RlbmdiLzNfMS5zaHRtbA%3D%3D>.

<sup>22</sup> Petitioning (*shangfang* or *xinfang*), a system established in the 1950s, means that a citizen, legal person or any other organization reports facts, submits suggestions, or files complaints to the Xinfang (literally: "Letters" and "Visits") offices, to be established at all levels of administration and in all branches of the Party and State. See more on the petitioning system in Carl F. Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 *Stanford Journal of International Law*, 103 (2006).

capital city and Beijing many times for petitioning.<sup>23</sup> This has driven the four families into further destitution and desperation.<sup>24</sup> Since all the four convicts are the eldest sons in their families—in China's village, this normally also means main financial source of the entire family—after they were imprisoned, their parents had sold off all that they could sell in order to get the fares for hiring lawyers and going petitioning.<sup>25</sup> The family members also had to go begging or undertake some heavy yet low-paid handwork for sustaining their daily life. By doing all this, as described by one defendant Cheng Lihe's mother, they could afford standing-room-only tickets for the train to Beijing, while in Beijing, could only sleep on the street and eat the food thrown away by others.<sup>26</sup> All the four families have been under heavy debts. When these elderly parents were sick, they could not afford seeing the doctor, and the four defendants' children could go to school only by relying on donations from lawyers, journalists and netizens.<sup>27</sup>

However, the years of tough persistence did not bring them any progress in the case—throughout the years, all their appeals were simply circumvented by the various authorities. When the family members went petitioning outside Leping, they were forcibly escorted back by the local officials and usually held

---

<sup>23</sup> Shen Hong (沈洪), *The Lawyers' Group in the Leping Case (乐平疑案中的律师团)*, Tencent News (Aug. 14, 2015), available at [http://view.inews.qq.com/a/NEW2015081401309204?from=groupmessage&isappinstalled=0&url\\_type=39&object\\_type=webpage&pos=1](http://view.inews.qq.com/a/NEW2015081401309204?from=groupmessage&isappinstalled=0&url_type=39&object_type=webpage&pos=1).

<sup>24</sup> *Supra* note 18.

<sup>25</sup> Xin Bingyin (邢丙银), Liu Jing (刘旌), *"True Murderer" of the Jiangxi Leping Rape, Murder and Dismemberment Case Appeared, How About the Truth?* (江西乐平奸杀碎尸疑案: "真凶"出现了, 真相呢?), *The Paper* (澎湃新闻) (July 26, 2014), available at [http://m.thepaper.cn/newsDetail\\_forward\\_1258241\\_1](http://m.thepaper.cn/newsDetail_forward_1258241_1).

<sup>26</sup> Qiao Long (乔龙), *More Than 40 Lawyers Discussed Death Penalty and Torture, Lawyers Appealed to The Provincial High People's Court But Controlled by Bailiff* (四十多位律师论废死刑及刑讯逼供 律师省高院递状纸被法警控制), RFA, Dec. 21, 2013, available at <http://www.rfa.org/mandarin/yataibaodao/renquanfazhi/ql-12212013085714.html>.

<sup>27</sup> Hong, *supra* note 23.

under administrative detention (as a punishment for their petitioning to higher-level authorities).<sup>28</sup> Huang Zhiqiang's father, Fang Chunping's father, mother and wife were even sentenced to criminal detentions for petitioning under the charge of "creating disturbances."<sup>29</sup>

In June 2013, the "escaped, fifth suspect," Wang Shenbing was seized by the police. Despite having alibi and refusing to admit guilt, he was held in the detention centre. Yet after he had been detained there for one year, unexpectedly, the detention centre informed Wang that he was released on "bail pending further investigation (*qubao houshen*)," which was still a criminal compulsory measure not meaning innocence, but indicated the police' acknowledgement of their lack of sufficient evidence for a continuation of detention. Wang asked the detention centre why they decided to release him [on bail]. He got no information but was told to "feel happy for that."<sup>30</sup>

*"Torture is like chives, which just grow up again once being cut": an assessment of China's top-down efforts to eradicate torture*<sup>31</sup>

---

<sup>28</sup> Li Mingyu (李明宇), *Feast and Hunger Strike – Recording Petitioning Experience of Family Members of the Leping Convicts in Beijing* (盛宴与绝食——江西乐平冤案当事人家属北京上访纪实), Wang Jinbo Independent Blog, Jun. 26, 2010, available at <http://wangjinbo.org/archives/407>; Bingyin, *supra* note 16.

<sup>29</sup> *The Aged Petitioned for Son, Sleep on Street and Eat Steamed Bread Every Day* (老人为儿伸冤上访 天天露宿街头吃馒头), Phoenix TV, Jul. 18, 2014, available at [http://phtv.ifeng.com/program/shnjd/detail\\_2014\\_07/18/37401175\\_1.shtml](http://phtv.ifeng.com/program/shnjd/detail_2014_07/18/37401175_1.shtml).

<sup>30</sup> Zhao Fuduo (赵复多), *Bail of the Leping Case Suspect Expired, Wang Shenbing Expects Innocence* (乐平“5.24”案嫌犯取保一年期满 汪深兵期待收获清白), Caixin Net, Jun. 21, 2015, available at <http://china.caixin.com/2015-06-21/100821306.html>.

<sup>31</sup> In Chinese, “刑如韭，剪复生” a phrase revised from an East Han Dynasty (25-220) ballad “发如韭，剪复生；头如鸡，制复鸣；吏不必可畏，小民从来不可轻 (Hairs are like chives, which just grow up again once being cut; heads are like roosters, which still sing after being cut; no need to fear officials, people must never be underestimated).” It is a metaphor quite often used by domestic scholars to describe the officials measures of curbing torture – as these measures never touched upon the crux, they are just like cutting chives which grow up soon after being cut. See e.g. Chen Ruchao (陈如超),

In the Leping case, the use of torture by the police to extort “confession” is shocking on one hand; on the other hand, as the above brief account of the case’s progress through the phases of the criminal process has shown, it becomes virtually impossible for the institutions of the system to correct this grievous mistake “from within.” Many other individual case studies have also focused on understanding the use of torture in China, taking domestically widely known and discussed cases such as that of Zhao Zuohai, She Xianglin and Nie Shubin as the basis of their empirical discussion.<sup>33</sup> On the basis of such abundant studies, it could be seen that the Leping case of injustice, sadly, is almost a common one in the context of a criminal justice system in which the pace of the struggle to reduce and eradicate the use of torture has been glacial. If it is not common, it at least has a familiar ring to it. As my discussion of advocacy in this case further below shows, a large similarity with such widely known cases has allowed this particular case to draw attention from criminal justice advocates.

There are also many quantitative studies suggesting that torture in the Chinese criminal justice system remains common. For example, after examining 322 death penalty verdicts in four provisions/municipals, scholar

---

*China’s Address of Torture* (刑讯逼供的中国治理), CSSN, Mar. 20, 2015, available at [http://law.cssn.cn/fx/fx\\_xsfx\\_990/201503/t20150320\\_1554197.shtml](http://law.cssn.cn/fx/fx_xsfx_990/201503/t20150320_1554197.shtml); Wu Danhong (吴丹红), *Torture from the Perspective of Sociology of law* (法社会学视野中的刑讯逼供), 2 Peking University Law Journal (中外法学), 147 (2006); Feng Lixia (封丽霞), *Why Should We Oppose Torture* (我们为什么要反对刑讯), China Election and Governance, Jul. 16, 2010, available at <http://www.chinaelections.org/article/125/182304.html>.

<sup>33</sup> See *Hubei Man Convicted of Wife’s Murder Ten Years Ago Exonerated*, CECC, Apr. 8, 2005, available at <http://www.cecc.gov/publications/commission-analysis/hubei-man-convicted-of-wifes-murder-ten-years-ago-exonerated> (featuring studies); *Wrongful Execution Sparks Controversy in China*, CECC, Apr. 8, 2005, <http://www.cecc.gov/publications/commission-analysis/wrongful-execution-sparks-controversy-in-china> (featuring studies); Leng Wanbao, “Resurrection” Exposes Confession under Torture, China Rights Forum, available at <http://www.hrichina.org/sites/default/files/PDFs/CRF.2.2005/2.2005-BL-Resurrection.pdf>; H.E. Jiahong and H.E. Ran, *Empirical Studies of Wrongful Convictions in Mainland China*, 80 U. CIN. L. REV. (2012), Margaret K. Lewis, *Leniency and Severity in China’s Death Penalty Debate*, 24 COLUM. J. ASIAN L. 303 (2011).

Xiong Qihong found that ninety-six percent of the suspects in these cases had “confessed” during the first police interrogation.<sup>33</sup> Using rather vague language, Xiong concluded that such a high percentage of confession “implies some linkage between ‘confession’ and torture.”<sup>34</sup> Yet, in cases like that of the Leping case, it is very difficult to exclude such “confession” from the trial process. Furthermore, serious investigations over torture allegations are rarely conducted. A report on police abuses by Human Rights Watch examined 432 court verdicts announced between January and April 2014, in which defendants had alleged been tortured by police, and found that evidence was excluded only in thirty-two of them, whereas none of the defendants obtained acquittal.<sup>35</sup> As noted by Ira Belkin, confession can just make conviction much easier.<sup>36</sup> In fact, the Chinese criminal justice system is well-known for its remarkably high conviction rate, which is over ninety-eight percent.<sup>37</sup> Publicly available statistics on acquittal rates demonstrate that from 2001 to 2014, this rate continuously drops every year – in 2014, in total 1184,000 individuals were tried for criminal cases, whereas only 778 of them got acquittal, accounting for a rate around 0.0006 percent.<sup>38</sup> It is hard to resist the conclusion that what contributes to these almost-zero acquittal rates is serious violations of suspects and defendants’ rights and justice.

---

<sup>33</sup> Xiong Qihong (熊秋红), *Wrongful Conviction Prevention and Rights Protection* (冤案防范与权利保障), 25 *Legal Forum* (法学论坛), 33-38 (2010).

<sup>34</sup> *Id.*

<sup>35</sup> *Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China*, Human Rights Watch, May 13, 2015, available at <https://www.hrw.org/report/2015/05/13/tiger-chairs-and-cell-bosses/police-torture-criminal-suspects-china>.

<sup>36</sup> Ira Belkin, *China's Tortuous Path Toward Ending Torture in Criminal Investigations*, 24 *COLUM. J. ASIAN L.* 303 (2011).

<sup>37</sup> Jerome Cohen, *The Plight of China's Criminal Defense Lawyers*, (2003) HKLJ 231.

<sup>38</sup> Yin Wen (殷文), *Raveling Out Responsibilities of The Public Security Bureau, Procuratorate, Court, Addressing Wrongful Conviction Cases From Origin* (理清公、检、法责任 从源头治理冤假错案), *Phoenix Weekly* (凤凰周刊), Mar. 2015, at 44.

According to a 2007 (hence somewhat dated) survey conducted by researchers at Wuhan University on inmates of seven prisons in four provinces in China, 55.3 percent of the inmates alleged being tortured directly during police interrogation; 60.1 percent alleged being subjected to disguised torture (*bianxiang xingxun*).<sup>39</sup> Chen Yongsheng analysed twenty wrongful conviction cases widely reported by the Chinese media after 2010 and found that nineteen among them reportedly involved police torture.<sup>40</sup> In one case, for example, the suspect was tortured for seventy-one times by police during interrogations, yet he was sentenced to life imprisonment almost solely on the ground of the “confession” he gave in merely one of the seventy-one instances of cruel torture.<sup>41</sup> Such detailed case descriptions, some scholar acknowledge, are just the tip of the iceberg. According to Chen Xingliang, “almost all wrongful conviction cases are caused by torture.”<sup>42</sup> Zhou Fengting also contended that “confession by torture occurs regularly in criminal investigation. . . it is an unwritten rule in law enforcement.”<sup>43</sup>

---

<sup>39</sup> Lin Lihong, Yin QuanHuang Qihui, *Report on The Situation of Torture - A Survey on Inmates* (刑讯逼供现状调查报告——以监狱服刑人员为调查对象), 3 *Journal of Hubei University of Police* (湖北警官学院学报), 35, 38 (2010). “Direct torture,” or “直接刑讯” in Chinese, as provided in the researchers’ questionnaires refers to “beating, binding, hanging etc.”; “disguised torture,” or “变相刑讯” in Chinese refers to “starving, deprivation of sleep, standing for a long time, intense interrogation, freezing etc.” According to Article 95 of The Supreme People’s Court’s Interpretation on the Application of the PRC Criminal Procedure Law, “use of physical punishment, covert physical punishment or use of other methods that cause severe physical or psychological pain or suffering, compelling a defendant to confess against his will, shall be understood to be the ‘use of torture to coerce confessions and other illegal methods’ provided for in Article 54 of the Criminal Procedure Law.” China Law Translate.

<sup>40</sup> Chen Yongsheng, *A Probing of Criminal Wrongful Conviction in China - An Analysis Based on 20 Shocking Wrongful Conviction Cases As A Sample* (我国刑事误判问题透视——以 20 起震惊全国的刑事冤案为样本的分析), 3 *China Legal Science* (中国法学), 45, 53 (2007).

<sup>41</sup> *Id.*

<sup>42</sup> Chen Xingliang (陈兴良), *What Lead To A Wrongfully Decided Case* (错案何以形成), 5 *Public Security Science Journal* (公安学刊), 12, 12 (2005).

<sup>43</sup> Wei Wu & Tom Vander Baken, *Police Torture in China and its Causes: A Review of*

Increasing media exposure of such cases in recent years, and perhaps most importantly, public criticism of the authorities triggered by these reports, as noted by some scholars, have formed a catalyst for intensive reforms.<sup>44</sup> Revision of the Criminal Procedure Law in 2012, new regulations, in particular the two Evidence Rules, namely Rules on Certain Issues Relating to Examining and Judging Evidence in Death Penalty Cases (关于办理死刑案件审查判断证据若干问题的规定), and Rules on Certain Issues Relating to the Exclusion of Illegal Evidence in Criminal Cases (关于办理刑事案件排除非法证据若干问题的规定) taking effect in 2010, new policies, and trainings (mainly targeting police officers and prosecutors) were launched by the Chinese government in an attempt to combat torture.<sup>45</sup>

Although there is still hope with these government-initiated, top-down reform efforts (mostly from the perspective of domestic Chinese academia), as argued by some scholars through probing the roots of torture in China, the *de facto* effectiveness of these reforms is dubious. For example, Margaret Lewis contended that these official efforts, essentially for the authorities to maintain its power facing public dissatisfaction in cases of injustice, are nowhere near the crux of the prevailing practices of torture.<sup>46</sup> By and large, the crux, as widely discussed in academia, includes lack of access to lawyers of suspects/defendants in criminal proceedings, the close collaboration of the Public Security Bureau, the People's Procuratorate, and the People's Court (summarily referred to as "*gong jian fa*" in Chinese), in which the Public Security Bureau outranks the other two, under the intense control of the Chinese Communist Party's Political-Legal Committee (*zhengfawei*), the lack of judicial independence and the weakness of the Court in the *gong jian fa* system,

---

*Literature*, 43 AUSTL. & N.Z. J. CRIMINOLOGY 557.

<sup>44</sup> Margaret K. Lewis, *Controlling Abuse to Maintain Control: The Exclusionary Rule in China*, 43 N.Y.U. J. INT'L L. & POL. 629 (2011).

<sup>45</sup> Belkin, *supra* note 36, at 281-287; Lewis, *supra* note 44 at 658-667.

<sup>46</sup> Lewis, *supra* note 44, at 687-694.

the problematic incentive (or, disciplinary) structure which imposes enormous pressure on the police to “break the case,” and the same tortuous quota/internal assessment system implemented inside the Procuratorates and Courts nationwide in China, involving requirements on certain amount of prosecution, acquittal, and change of the first instance trial verdict.<sup>47</sup>

Scholars have commented on why these problems are quite unlikely to be addressed (and in fact, not addressed) in those top-down reforms. Xia Yong’s analysis of what he describes as the philosophical and ethical roots of torture in Chinese society may shed some light. Xia argues that “in essence, what supports torture in China today is not legislation or the legal system; it is the ideology of utilitarianism, which lays the foundation for the theory of deterrence.”<sup>48</sup> According to utilitarianism, torture can not only deter potential offenders, but also prevent offence, which is for the good of “all”—this constitutes the utilitarian morality.<sup>49</sup> Xia notes that despite the official efforts in eradicating torture in and through the statutes (including the 1996 CPL and the Evidence Law) as well as condemning torture in policies, domestic appraisals on such efforts are based mainly on the ideology of utilitarianism, i.e. some claim that “it is in line with the international practices and for the purpose of taking initiatives in international affairs/battles,” since China has signed the international treaties on curbing torture; another prevalent opinion is that torture will cause wrongful convictions, and therefore is not a scientific way to collect evidence, or that presumption of innocence also carries advantages of advancing investigation and litigation work.<sup>50</sup> However, as pointed out by Xia, these discussions virtually follow and even strengthen the ideology of utilitarianism, which, as a moral theory of consequentialism,

---

<sup>47</sup> See, e.g., Lewis, *supra* note 44; Belkin *supra* note 36; Wu & Beken, *supra* note 43.

<sup>48</sup> Xia Yong (夏勇), *Torture And Utilitarianism - An Ethical Analysis* (酷刑与功利主义——一个伦理学的分析), Ai Sixiang, Feb. 2, 2015, available at <http://www.aisixiang.com/data/83445.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*



justifies torture through its alleged consequence of bringing more utilities. In fact, utilitarianism usually takes the form of moral passion and social justice which are under the name of “public” (*gong* or 公) in considering issues like torture, whereas the morality or justice in such a form leaves out individuals.<sup>51</sup> Xia also maintains that insofar the top-down efforts in eradicating torture are largely based on people’s fear of torture and the persecution and wrongfully decided cases they witnessed during China’s Cultural Revolution, rather than on a serious thought or reflection of human rights, humanitarianism and liberalism.<sup>52</sup> In this context, Xia argues that torture remains acceptable in the eyes of many people as long as they can be made to believe that the power to administer it is in the hands of “good people” or even simply, “the people (*renmin*),” and for public interest.<sup>53</sup>

Such a viewpoint is shared by some other scholars based on survey results showing that although there is always public outrage pursuant to media disclosure of torture and wrongful convictions, the populace is typically indifferent or unemotional towards torture in cases where they are made to believe that the suspect/defendant has indeed committed some crime or violated the law (i.e. has done harm to society),<sup>54</sup> as exemplified in the case of an alleged mafia chief Liu Yong.<sup>55</sup>

This utilitarianism seems to have echoed the Chinese authorities’ *de facto* discourse on the principle of the criminal justice system: despite the official

---

<sup>51</sup> *Id.*

<sup>52</sup> *See generally id.*

<sup>53</sup> *See generally id.*

<sup>54</sup> *See* Wu Danhong (吴丹红), *Role, Context and Social Tolerance—Torture from the Perspective of Sociology of Law* (角色、情境与社会容忍 —— 法社会视野中的刑讯逼供), 18(2) *Peking University Law Journal* (中外法学), 147, 161 (2006).

<sup>55</sup> *See* Fu Hualing, *Between Deference and Defiance: Courts and Penal Populism in Chinese Capital Cases*, SSRN (May 1, 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2601494](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2601494).

claim of trying to balance “cracking down on crimes” and “protecting human rights,” the balance is actually tipped toward “cracking down on crimes,” and if human rights are to be protected, the authorities may require to be first convinced that the person deserves such treatment and did not commit the crime. In this case, even though the Chinese authorities have encountered public outcry surrounding torture and wrongful convictions, as long as they can maintain such a utilitarian ideology and moral stereotype in society, they could keep up with those problems at the root of the practice of torture.

It is what the Party-state has been devoting itself to, relying on methods ranging from launching theatrical *public arrest* (*gongbu*), *public trial* (*gongshen*) and *public sentence* (*gongpan*) meetings.<sup>56</sup> This includes, coercing some key suspects to *confess* and *repent* their misdeeds on public TV shows,<sup>57</sup> to

---

<sup>56</sup> *Gongbu*, *Gongpan*, and *Gongshen* meeting refer to conducting arrest, trial or sentence, normally of dozens of suspects/defendants at gymnasium, auditorium or square through public meeting attended and observed by a number of people (*qunzhong* or the mass). As a practice prevailing in China during the 1950s and 1960s, these meetings are expected to serve for a mix of functions including deterrence, humiliation and education. Although these conducts have been banned in the “Notice on Managing Detainees in Accordance with Law in a Civilized Manner (关于依法文明管理看守所押人犯的通知)” promulgated in 1992 by the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security Bureau, in recent years, they have been conducted more and more in many places in China. See e.g. Chen Yao (陈焱), Wang Huan (王欢), Yu Qin (俞琴), *Public Trial and Public Sentence Meetings Held Four Times Within Three Years In Huarong* (公捕公判, 华容三年办了四次), Southern Weekly (南方周末), Nov. 20, 2014. Here are some photos of a “public trial” meeting held in Henan in 2012. Feng Su (冯骥), *Dignity Under Public Trial Meetings* (被公审的尊严), Tencent Photos (Apr. 15, 2016), available at [http://news.qq.com/zt2011/shijie/under\\_the\\_public\\_trial.htm](http://news.qq.com/zt2011/shijie/under_the_public_trial.htm) (consisting of photos of a public trial meeting held in Henan in 2012); Binwang Lin, 公捕公判大会 (Public Trial and Public Trial Meeting), YOUTUBE (May 14, 2012), available at [https://www.youtube.com/watch?v=Iz\\_1cZEaa-A](https://www.youtube.com/watch?v=Iz_1cZEaa-A) (consisting of a video clip on a public arrest and trial meeting held in 2012). Many discussions of these meetings mentions its correlation with the Cultural Revolution, e.g. Zhou Peng’an (周蓬安), *How Could We Be Different To Public Trial and Public Sentence?* (对公审公判怎能“集体无意识?”), ZHOU PENG’AN BLOG (June 28, 2015), available at <http://zhoupengan.blogchina.com/2550138.html> (also discussing the co-relation of these meetings with the Cultural Revolution).

<sup>57</sup> See Tom Phillips, *Chinese reporter makes on-air ‘confession’ after market chaos*, THE GUARDIAN (Aug. 31, 2015), available at

stressing “the feelings of the people and society” as one of the three significant standards a judge should take into account when deciding whether or not to render a capital sentence,<sup>58</sup> and reiterating “the mass line” in establishing a “socialist rule of law system with Chinese characteristics.”<sup>59</sup> This can be understood as the tactics of authorities in sustaining the utilitarianism that, since suspects, defendants or criminals as well as lawyers representing them are considered *bad* or *evil* (with regard to public interest), they should be *wiped out* by the *gong jian fa* system, and the Party’s (or that of its political-legal committee) control of the *gong jian fa* system entrenched under the official claim of “maintaining social order and stability” is for “larger good” and “the people.” In launching confessions on TV shows, or public arrest, public trial and public sentence meetings which are humiliating in nature, the authorities are delivering the message that the suspect, defendant or criminal

---

<http://www.theguardian.com/world/2015/aug/31/chinese-financial-journalist-wang-xiaolu-makes-alleged-on-air-confession-after-market-chaos> (“In recent years activists have expressed extreme discomfort at the growing number of people being paraded on Chinese television to make such so-called confessions. And “those made to broadcast such statements include Gao Yu, a veteran journalist jailed in April for leaking an internal Communist party document, Charles Xue, a venture capitalist and blogger, and Peter Humphrey, a British private investigator who was released from prison in June after nearly two years behind bars.”; also quoting, Eva Pils, an expert in Chinese law at King’s College London that it is “a sort of trademark Xi Jinping thing”); See also, *Chinese reporter makes on-air “confession” after market chaos*, the Guardian, Aug. 31, 2015. More discussions can be seen at *The Authorities’ Another Illegal Conduct: Confession On-air Prior To Be Convicted In Court* (当局的又一种违法方式: 司法定罪之前的电视认罪), BOWEN PRESS (July 15, 2015), available at [http://bowenpress.com/news/bowen\\_6587.html](http://bowenpress.com/news/bowen_6587.html); Bethany Allen-Ebrahimian, *Chinese Web Users Aren’t Blaming Detained Journalist for Market Panic*, FOREIGN POLICY (August 31, 2015), available at <http://foreignpolicy.com/2015/08/31/china-stock-market-crash-cctv-confession-wang-xiaolu-scapegoat-weibo>.

<sup>58</sup> See Qin Xudong (秦旭东), *Basis of The Death Penalty Raised by Supreme People’s Court President Triggered Debates* (最高法院院长谈死刑依据引发争议), CAIXIN NET (Apr. 11, 2008), available at <http://www.caijing.com.cn/2008-04-11/100056061.html>.

<sup>59</sup> See Cen Jiali (岑嘉俐), *How To Practice The Mass Line of The Rule of Law* (如何走法治群众路线), THE PEOPLE’S FORUM NET (人民论坛网) (Feb. 9, 2015), available at <http://www.rmlt.com.cn/2015/0209/372277.shtml>.

no longer has human dignity and human rights that should be respected, because they may have harmed the “general order and interests.”<sup>60</sup> As commented by some scholars, the authorities are inciting hatred in society towards suspects and criminals, which facilitates to produce *karma-style* justice and to shift their responsibilities towards offence and society.<sup>61</sup> Enshrining the concept such as “the feelings of the people and society” or “the mass” in the meantime can also serve for reinforcement of the utilitarian morality that the authorities are “working for the public.” Following this utilitarian morality, torture, as long as it is believed to be for the purpose of maintaining social order through solving cases swiftly and effectively, can be easily justified.

One further question is: in what way can the audience (namely, the public/*the people*) accept such information and identify themselves with the utilitarian morality? Recalling his experience during the 1960s and 1970s in China when violence, public trial and public sentence, as well as revolutionary criticism and denouncement were filling people's everyday life, writer Ye Fu comments that:

[I]n that context, violence and humiliation had been taken by us as the normal lifestyle [...] the cruel reality asks for a cruel heart to accommodate.<sup>62</sup> [...] Since the dominant “golden rule” at that time taught us to ‘treat the comrades as warm as the spring and the

---

<sup>60</sup> Liu Xiping (刘希平), Li Xiuqing (李秀卿), Guo Guosong (郭国松), *Public Trial And Public Sentence Meetings: Shirking Responsibility, Shifting Dissatisfaction With The Government On The Crimes* (公审公判大会: 推卸责任 把不满从对政府转向对犯罪), RENMIN NET (人民·网) (Mar. 11, 2013), available at [http://news.ifeng.com/history/zhongguoxiandaishi/special/zhongduliuqingshanzhangzishan/detail\\_2013\\_03/11/22974205\\_5.shtml](http://news.ifeng.com/history/zhongguoxiandaishi/special/zhongduliuqingshanzhangzishan/detail_2013_03/11/22974205_5.shtml).

<sup>61</sup> See *id.* See also Yi Xiaobin (易晓斌), *Public Trial And Public Sentence: Hilarity Vanishing Humanity* (公审公判: 一场泯灭人性的狂欢), BOXUN (Oct. 3, 2014), available at [http://blog.boxun.com/hero/2007/miluotiankong/59\\_1.shtml](http://blog.boxun.com/hero/2007/miluotiankong/59_1.shtml).

<sup>62</sup> Ye Fu (野夫), *Education of Brutality* (残忍教育), DOUBAN (July 20, 2010), available at <http://www.sbk8.cn/mingzhu/zhongguoxiandaiwenxuemingzhu/shenbiandejia/159916.html>.

enemies as ruthless as the autumn wind sweeping away fallen leaves,<sup>63</sup> we discarded our sentiments, ability to think, and even the most basic compassion, and merely abided by the political standpoints which were wrapped with glorified and noble ends.<sup>64</sup>

The result of all this, however, as alerted by Ye Fu, is not the defeat of our “enemies,” but of humanity and dignity of everyone.<sup>65</sup> The official claim of the people or the masses is the other face of the same coin, because, by stressing such collective concepts, human being (*ren*) is further fuzzed and overwhelmed. As pointed out by Leïla Choukroune and Antoine Garapon, the idea of “one people” is something common to totalitarian systems and that it may not be possible to say that there exists something like “one people.”<sup>66</sup> In a totalitarian system, individuals feel that they can (re)gain their sense of dignity by identifying themselves with certain groups or campaigns, even if they are *invented* by the authorities.<sup>67</sup>

Those aforementioned crux leading to torture as widely discussed in scholarly work are expected by the authorities to serve for this utilitarian morality as well. For instance, the official propaganda with statistics showing that the police are capable of breaking all homicide cases and solving almost

---

<sup>63</sup> In Chinese, “对待同志要像春天般温暖，对待敌人则要像秋风扫落叶一样无情，” allegedly originated from Lei Feng (雷锋).

<sup>64</sup> *Supra* note 58.

<sup>65</sup> *See id.*

<sup>66</sup> *See* Leïla Choukroune & Antoine Garapon, *The Norms of Chinese Harmony: Disciplinary Rules as Social Stabiliser*, 3 CHINA PERSPECTIVES 36, 39 (2007), <https://chinaperspectives.revues.org/2013?file=1>.

<sup>67</sup> *See* Shi Hua (施化), *Totalitarianism In Modern China (中国现代极权主义思潮)*, SHI HUA'S BLOG (Aug. 8, 2011), available at [http://blog.creaders.net/shihuadeboke/user\\_blog\\_diary.php?did=90743](http://blog.creaders.net/shihuadeboke/user_blog_diary.php?did=90743). *See generally* Eva Pils, *Taking Yuan (冤) seriously: Why the Chinese State Should Stop Suppressing Citizen Protests against Injustice*, 25 TEMP. INT'L & COMP. L.J., 285, 327 (2011).

all the cases promptly, can be used to convince the public that police power (or public power) represents *goodness* or *justice* and is indeed *working for the people*. When torture, mistreatment and wrongful conviction cases are exposed, officially tolerated discussions portray them as merely individual cases and their discussion does not extend to addressing the general practices that have led to them. Based on this characterization, official discourse generally focuses on calling for more supervision and control and stricter disciplinary mechanisms in the *gong jian fa* system in order to maintain its *integrity* and eradicate the few individual cases of police torture. As such, since measures that may put an end to torture in the criminal justice system would present a challenge to the utilitarianism, which is the basis of which the ruling Party attempts to build its legitimacy (i.e. its dedication to the people and its competence to protect the interests of the people), they are very unlikely to be really incorporated in the government initiated, top-down reforms.

Official discourse also affects the way in which wrongful conviction cases are discussed, when exceptional circumstances warrant public discussion. As summarized by some scholars, the typical pattern of producing a wrongful conviction death penalty case as well as of correcting it afterwards goes the way of “seizing a suspect, beating (torturing) him/her, under the official requirement of ‘breaking all homicide cases,’ and under the collaboration of the brotherhood of *gong jian fa* led by the Political-Legal Committee, extorting confession through torture, convicting the suspect despite doubts, and then, the ‘dead’ victim(s) reappearing or the ‘true’ murderer admitting guilt.”<sup>68</sup> Following such a pattern, the decision to correct (so far as still possible) a wrongful conviction lies primarily with the authorities, that is, the *brotherhood* of *gong jian fa*, instead of an independent judicial system. It also generally indicated the authorities’ selective reaction to public outrage over wrongful convictions caused by torture. For example, in the well-known wrongful

---

<sup>68</sup> Ye Zhusheng (叶竹盛), *Systematic Obstacles In Correcting Wrongful Conviction Cases* (冤案难昭雪的制度性障碍), SOUTH REVIEWS (南风窗) (May 12, 2013), available at <http://www.nfcmag.com/article/4054.html>.

conviction capital case of Zhao Zuohai, Zhao *confessed* to a killing accusation under thirty-three day severe torture by the police and was subsequently sentenced to death, in part due to the interference and pressure from the Political-legal Committee. However, one day after Zhao had been imprisoned for ten years, the victim, whose murder Zhao had *confessed* to, surprisingly appeared. This case immediately came into the spotlight on account of media exposure and public outrage and criticism of China's *gong jian fa* system mounted rapidly. A month later, the Henan High People's Court announced Zhao's innocence and Zhao was released and compensated for the wrong imprisonment.<sup>69</sup> Nevertheless, in another similar widely discussed wrongful conviction death penalty case, the case of Nie Shubin, the authorities' reaction was quite different. When the (alleged) true offender confessed guilt to the rape and murder case causing the execution of Nie over ten years back, the authorities merely claimed to reopen Nie's case for a review and yet, after having been conducted for over ten years as of the time of writing, this review is allegedly still ongoing without any result announced.<sup>70</sup>

The Leping case of injustice seems to follow a *typical pattern*. Occurring in an especially dramatic fashion, at the end of 2011, another villager named Fang Linzai was seized as suspect in a series of rape and murder cases that

---

<sup>69</sup> See generally Clifford Coonan, *Zhao Zuohai: beaten, framed and jailed for a murder that never happened*, THE INDEPENDENT (May 14, 2010), available at <http://www.independent.co.uk/news/world/asia/zhao-zuohai-beaten-framed-and-jailed-for-a-murder-that-never-happened-1973042.html>; Elizabeth Lynch, *When the Murder Victim Turns Up Alive - Will Justice Be Served?*, CHINA LAW & POLICY (July 21, 2010), available at <http://chinalawandpolicy.com/2010/07/21/when-the-murder-victim-turns-up-alive-will-justice-be-served/>.

<sup>70</sup> See *Quest for Retrial: Court Holds Novel Hearing on Nie Shubin Case*, DUI HUA (May 19, 2015), available at <http://www.duihuahrjournal.org/2015/05/quest-for-retrial-court-holds-novel.html>; See also Steven Jiang, *Mother's fight to exonerate executed son galvanizes China*, CNN (Oct. 20, 2011), available at <http://www.cnn.com/2011/10/19/world/china-mother-executed-son/>; Cao Gen, *We are All Nie Shubin*, HRIC (Feb. 2005), available at <http://www.hrichina.org/sites/default/files/PDFs/CRF.2.2005/2.2005-BL-All.pdf>.

occurred in Leping from 2004 onward. Facing an almost certain death sentence, Fang went on to claim (an audio recording documenting this is available)<sup>71</sup>, to other villagers as well as his lawyer and the police that he killed Hao Qiang and Jiang Zecai in 2000.<sup>72</sup> This seemed to bring some hope to the four villagers in custody but when the four families went to the police, they were simply told that Fang's confession was not true and were required not to go petitioning anymore.<sup>73</sup> Fang said this again to the judge during the trial in October 2013 and asked the court to investigate, whereas he was immediately interrupted by the judge who claimed that "the police and the prosecutors had already investigated but there was no such thing."<sup>74</sup> After this court hearing, nevertheless, the Procuratorate withdrew the prosecution of Fang for allegedly conducting supplementary investigation.<sup>75</sup>

In November 2013, Jingdezhen Intermediate People's Court announced that the Procuratorate and the Public Security Bureau had initiated a process of "screening and verification (*zhenbie heshi*) work" for the Leping case of injustice and would "publish the outcome in a timely fashion."<sup>76</sup> Meanwhile, however, Leping Public Security Bureau still sent the case of the *fifth suspect* Wang Shenbing to the Procuratorate for examination before prosecution. The Procuratorate returned the case of Wang to the Public Security Bureau, requiring clarification of the contradictions among Wang's *confession* and the other four defendants' *confessions*, as well as material evidence for supporting

---

<sup>71</sup> SELF-RESCUE OF THE REAL KILLER OF THE CASE OF THE LEPING FIVE(乐平一案两凶之真凶), (on file with author) (consisting of excerpts from the audio recording).

<sup>72</sup> See *id.*

<sup>73</sup> See Xing Bingyin *supra* note 16.

<sup>74</sup> "True Murderer Admitted Committing Murder, Judge Claimed "No Such Thing" (真凶认领"奸杀案法官称"没这事"), CHUTIAN GOLDEN NEWSPAPER (楚天金报) (June 22, 2014).

<sup>75</sup> True Murderer of The Leping Case Appeared, Four Wronged People Still In Jail (江西乐平命案真凶出现 冤判四人仍未获释), NTD (Nov. 14, 2014), available at <http://ca.ntdtv.com/xtr/gb/2014/11/14/a1153997.html>.

<sup>76</sup> See *supra* note 22.



Wang's *confession*.<sup>77</sup> This was later evaluated by the lawyers as the leading cause of Wang's release on bail in June 2014.<sup>78</sup> But in relation to the other four wronged villagers, no outcome or further information on this *screening and verification work* was announced, and the four villagers are still held in custody, already for fourteen years. The supplementary investigation of Fang Linzai's admission of guilt has no further progress either, and Fang has been detained for nearly four years. In summary, the process of addressing this case *top-down* through officially approved investigation and further measures appears to have become deadlocked.

It is noteworthy that responding to the defendants and their families' failed efforts to get justice in this case, which begged so many obvious questions concerning the flaws of criminal procedure and the injustice of the verdicts, and seeing some hope in the emergence of the "true perpetrator," a group of citizens, including lawyers, film makers, rights activists and netizens threw themselves into legal and other advocacy work on this case, and since 2010 onward, they have never given up on their efforts. As shown in the following, their efforts, while targeting mainly on correcting the Leping case, have also been touching upon broader issues, including torture, the death penalty, and abuses of public power. And their activities have been spanning from online discussions and establishing organisations to performance art and street protests. Through observing their efforts and advocacy, this article argues that the above mentioned utilitarianism, which is commented by some scholars as still predominant and in-rooted in Chinese society needs further examination and assessment.

---

<sup>77</sup> Huzhou Law Firm, *Appeal of Leping Case of Injustice Gained Major Progress* (江西乐平冤案申诉取得重大进展) (June 20, 2014), available at <http://www.hujhls.com/news/new-529.html>.

<sup>78</sup> *See id.*

*Grassroots efforts for correcting the Leping case of injustice: network advocacy against torture, the death penalty and abuses of public power*

At the outset, the major driving force is the four convicts' lawyers—more than twenty lawyers were successively involved as defense lawyers and provided legal aid to the four villagers at different stages of the criminal proceedings.<sup>79</sup> These defense lawyers did not limit their efforts in the judicial system through defending their clients' innocence in court hearings and keeping on appealing to the Court after sentencing. At the same time, they had been reporting on and discussing this case online via their micro-blogs (*weibo*), Wechat (*weixin*) and other websites.<sup>80</sup> They also put their defense and appeal statements and the Court's verdicts on the Internet in an attempt to attract more public attention and stimulate a wider discussion of this case.<sup>81</sup>

In 2010, a small, unregistered advocacy group (NGO) called China Against the Death Penalty (CADP)<sup>82</sup> was set up by a human rights lawyer Teng Biao; it drew support from many peer rights lawyers. CADP, aiming to abolish the death penalty in China, decided to choose wrongful conviction death penalty cases as their starting point.<sup>83</sup> The Leping case of injustice was one of the cases they engaged in.<sup>84</sup> A special website was established—information on

---

<sup>79</sup> *Three Wronged Convicts Conducted Hunger Strike for Six Days, Families Are on the Way of Petitioning in Beijing* (景德镇监狱三冤犯绝食六天，家人正在赴京上访途中), Weiquanwang (Jan. 28, 2010), available at <http://www.weiquanwang.org/?p=20153>.

<sup>80</sup> Some can be seen at Sina micro-blog at Free Weibo, available at <https://freeweibo.com/weibo/%E4%B9%90%E5%B9%B3%E6%A1%88>.

<sup>81</sup> A collection of defending opinions, appeals and the Court's verdicts can be seen at Weiquanwang, <http://www.weiquanwang.org/?cat=48>.

<sup>82</sup> China Against the Death Penalty (北京兴善研究所), available at <http://www.cadpnet.org/en/> (the website has been closed by the authorities.)

<sup>83</sup> Zhang Ping (张平), *Hard Movement of China's NGO Advocating For Abolishing The Death Penalty* (中国废死刑民间组织举步维艰), Deutsche Welle (June 17, 2013), available at <http://www.dw.com/zh/%E4%B8%AD%E5%9B%BD%E5%BA%9F%E6%AD%BB%E5%88%91%E6%B0%91%E9%97%B4%E7%BB%84%E7%BB%87%E4%B8%BE%E6%AD%A5%E7%BB%B4%E8%89%Bo/a-16887453>.

this case, like multiple other wrongful conviction death penalty cases, had its own column; research reports on these cases, the flaws of the Chinese criminal justice system and China's death penalty system were produced by these lawyers and published on the website; and easier reach of legal aid was also provided via this platform to more wronged individuals' families. Since 2011, this small group has held annual conference for fellow legal professionals, scholars, etc., to discuss individual cases and wider issues ranging from the reforms of the Chinese criminal justice system to the abolishment of the death penalty embodied in those cases. The Leping case of injustice has always been one of the focuses in their discussion. Several family members of the convicts were also invited to attend and discuss with the conference participants.<sup>85</sup>

The lawyers' efforts have grown with the development of this case. When Wang Shenbing was arrested in 2013, the already-established legal team working on behalf of the other four defendants immediately got involved. According to one lawyer in the group, this provides the lawyers with a good opportunity for their legal advocacy, since it is unfortunately likely that this fifth "suspect" will stand trial. Ten lawyers working on criminal defense for the five defendants have formed a core group of legal advocacy. They regularly discuss defense strategies in person or via social media. More human rights lawyers have organized a "lawyers' observation group"—they not only publish information regarding the injustice of the Leping case of injustice, but they also provide advice to the ten defense lawyers and discuss with them any further actions. Since all the defense lawyers' work is free legal aid, this "lawyers' observation group" started fundraising via Weibo and Wechat—thus far, have it has opened a special bank account for receiving donations and online stage auctions for paintings, calligraphies, and curiosities donated by

---

<sup>84</sup> Jiao Guobiao (焦国标), *Working For Pass Line Of Political Civilization - Lawyer Teng Biao's Rights Defense Experience* (为政治文明及格线而奋斗——滕彪律师的维权之路), Boxun (Nov. 2010), available at [http://blog.boxun.com/hero/201011/tengb/1\\_2.shtml](http://blog.boxun.com/hero/201011/tengb/1_2.shtml).

<sup>85</sup> The author's observation in a death penalty conference organized by CADP in December 2012.

citizen activists.<sup>86</sup>

Gradually, these efforts have successfully absorbed more and more public attention for the Leping case. Initially, netizens mostly reposted the lawyers' posts introducing this case and called for a retrial, which was called "surrounding gaze" (*weiguan*)—for instance, a post introducing this case on Weibo (the Chinese twitter-like platform) repost was heavily reposted, followed by a netizen's appeal of "concerning for others is concerning for ourselves." Most of the comments in the reposts were about the injustice of *gong jian fa* and the plights of the wronged individuals as well as their families. One netizen posted that "the injustice of judiciary is more serious than terrorism! In order to let the wronged persons get remedy sooner, let us spread [this post]."<sup>87</sup> Another netizen questioned that "concealment, lying and torture are here, there and everywhere. So many cases have been exposed, yet how about those unknown yet? Who give those police officers such a privilege?"<sup>88</sup> Also, a netizen commented that "the wrongful conviction is caused by the officials' intervention and instruction for their own performance."<sup>89</sup>

Later on, some netizens took action further than simply commenting on this case online. In 2013, on their own initiatives, they set up a "civil observation group" and spread this news online calling for more citizens to join them.<sup>90</sup> The advertisement illustrated that this "civil observation group"

---

<sup>86</sup> Xin Yu (心语), *Rights Defense Netizens Launched "Warm Winter Activism," Selling Artwork To Help Prisoners of Consciousness* (维权网民发起“暖冬行动”义拍艺术品帮助良心犯), RFA (Dec. 27, 2013), available at <http://www.rfa.org/mandarin/yataibaodao/meiti/sy-12272013095552.html>; *Lawyers Hope You Donate For Leping Case of Injustice* (众律师请您为江西乐平特大冤案捐款), Sina Blog (Nov. 17, 2013), available at [http://blog.sina.com.cn/s/blog\\_65d6195b0101dm5.html](http://blog.sina.com.cn/s/blog_65d6195b0101dm5.html).

<sup>87</sup> *Supra*, note 70.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> In Chinese, “公民观察团.”

mainly assumed the work of a) media support, b) information collection and release on social media, c) internet/communication technology support, d) short video clips production, e) conferences discussing the case, and f) fundraising.<sup>91</sup> The founding members of this group divided their work while collaborating closely with each other and with the lawyers' defense and observation groups. For instance, the persons in charge of work b) and f) included citizen rights activists, lawyers and paralegals. And, even though the part of conference organization was handled by three lawyers, the citizen rights defenders also had their significant role in those conferences—for example, at the end of 2013, in a conference organized by the lawyers specifically for discussing the Leping case, the citizen activists taught the four families how to use social media to connect and publish information online.<sup>92</sup> One volunteer with a background in documentary film, Xu Xiuping produced an independent documentary film about the case, "The Real Murderer of Leping." Draft versions were shown in the various conferences discussing this case and other wrongful conviction death penalty cases. In October 2013, it was shown publicly at the 4<sup>th</sup> "Murder by Numbers" Film Festival in Taiwan, which according to one lawyer of the advocacy group attracted much attention to this case.<sup>93</sup> The showing in Taiwan had a full-house; one defense lawyer in the case, Liu Weiguo, and the director Xu Xiuping further talked about the related issues in the Chinese criminal justice system afterwards and communicated with the audience.<sup>94</sup>

---

<sup>91</sup> *#Leping Case of Injustice# Updates On Lawyers' Group* (#乐平冤案#律师团最新情况通报), Boxun (Dec. 19, 2013), available at [http://www.boxun.com/news/gb/china/2013/12/201312191328.shtml#.VdFgsje\\_w95](http://www.boxun.com/news/gb/china/2013/12/201312191328.shtml#.VdFgsje_w95).

<sup>92</sup> *Seminar On The Leping Case of Injustice Held In Suzhou* (江西乐平“死刑冤案”研讨会在苏州召开), Weiquanwang (Dec. 22, 2013), available at [http://wqw2010.blogspot.hk/2013/12/blog-post\\_5600.html](http://wqw2010.blogspot.hk/2013/12/blog-post_5600.html).

<sup>93</sup> *The Many Faces of The Death Penalty* (死刑犯无声的呐喊——杀人影展 4), littlef1209 Blog (Oct. 19, 2013), available at <http://littlef1209.pixnet.net/blog/post/101014451>.

The “fifth suspect,” Wang Shenbing’s release on bail in June 2014 tremendously inspired these lawyers and citizen activists; they welcomed the release as a “significant turning point bringing new hope for retrying and correcting the Leping case of injustice.”<sup>95</sup> More short videos recording verbal accounts of the horrible torture to which the four convicts were subjected, the four families’ experiences and plights, as well as the lawyers’ comments on the Chinese criminal justice system were shot by citizens and uploaded to domestic websites (including some like the Chinese version of YouTube).<sup>96</sup> In addition to CADP, two additional loose civil organizations, which also aim to provide support to the correction of wrongful conviction cases by attracting and coordinating efforts from various areas in society—*Xiyuan* (submitting grievances) Net<sup>97</sup> initiated by rights lawyer Li Jinxing, and The Innocence Project (*wuguzhe jihua*)<sup>98</sup> initiated by scholar Xu Xin—have also started keeping tabs on the case of the Leping Five and conducting advocacies for it. Different from the U.S. based “Innocence Project” which has thus far proved more than 300 prisoners’ innocence through DNA technology, these Chinese projects rely largely on the internet – on the one hand, they collect and post information related to individual wrongful conviction cases online (via their website and social media accounts), and try to attract public

---

<sup>94</sup> *Id.*

<sup>95</sup> By lawyer Yu Shijun (虞仕俊) on his weibo at <https://freeweibo.com/weibo/%E4%B9%90%E5%B9%B3%E6%A1%88>.

<sup>96</sup> *E.g.* This piece, *Investigation Over Leping Murder Case, “True Murderer” Shows Up* (乐平血案调查死刑犯背后“真凶”现身), was shot by a citizen and uploaded on a domestic Chinese popular video website PPSream at [http://v.pps.tv/play\\_3AJZP7.html](http://v.pps.tv/play_3AJZP7.html) in December 2013.

<sup>97</sup> *Xiyuan* Net’s website is [http://www.xiyuanwang.net/html/list\\_1228.htm](http://www.xiyuanwang.net/html/list_1228.htm); Wu Lei (伍雷, lawyer Li Jinxing (李金星)’s alias), *Appeal of Wrongful Conviction Cases – Challenges To Criminal Attorneys With Chinese Characteristic* (冤案申诉——中国特色刑辩律师的挑战), New Citizens Movement (Jan. 12, 2015).

<sup>98</sup> The Sina Weibo account of the “Innocence Project (无辜者计划)”, available at <http://www.weibo.com/wangjinginbeijing> (this is also their main activism platform.)

attention to these cases; on the other hand, they assist the families finding lawyers for taking up defense and other advocacy work in those cases (as shown in that of the Leping case of injustice).<sup>99</sup>

Recently, such a network has gone beyond one single case; individuals advocating in different wrongful conviction death penalty cases have started to work jointly. In this sense, an even more widespread network triggered by wrongful conviction capital cases is forming in Chinese society. At the beginning of 2015, lawyers and citizen rights defenders initiated a campaign called “injustice correction caravan” (*pingyuan dapengche*), in which family members of five well-known wrongful conviction death penalty cases, including the Leping case of injustice, will drive together to the different places where these five cases happened in an attempt to provide the families with support and suggestions for their advocacy.<sup>100</sup> In March, this caravan arrived at its first stop, Nie Shubin’s home in Shijiazhuang City of Hebei Province, when Nie’s case was at its critical point of a possible retrial and correction.<sup>101</sup> Their activities there mainly involved discussions with lawyers working on different wrongfully decided cases and with progressive journalists having experience of reporting such cases.<sup>102</sup> At the end of March, as their fourth stop, this caravan drove into Leping; the lawyers, citizen activists, and the four families gathered again there to discuss a new launch of advocacy for this case. In May, after repeated rejections by the High People’s Court of Jiangxi province to review the case file, a right clearly stipulated in China’s

---

<sup>99</sup> Liu Chang (刘长), He Jiawen (贺佳雯), Wang Yi (王祎), *Chinese Version of The “Innocence Project” Was Initiated* (中国版“洗冤工程”启动), *Southern Weekly* (南方周末), June 13, 2014.

<sup>100</sup> *Koala is Koala* (考拉就是考拉), *Injustice Correction Caravan’s First Stop: Shijiazhuang* (The Nie Shubin Case) (平冤大篷车行动, 第一站: 石家庄(聂树斌案)), *New Citizens Movement* (Mar. 21, 2015), available at <http://xgmyd.com/archives/15348>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

Criminal Procedure Law, the defense lawyers led by lawyer Zhang Weiyu, several citizen activists led by Wu Gan (well known among Chinese rights activists as “super vulgar butcher,” his online nickname), and the four wronged convicts’ fathers went to hold banners that read “defending the lawyers’ rights to review case files” outside the court building.<sup>103</sup> During their long protest, one lawyer, Wang Fei, started singing “Do You Hear the People Sing,” a song that spread speedily in China’s rights defense network along with the movie *Les Misérables*.<sup>104</sup> Wu Gan initiated a performance art there - he erected two bold posters, portraying the court president Zhang Zhonghou’s image with resemblance to an Imperial Japanese Army soldier (by merely adding a small pinch of beard above Zhang’s upper lip) on a painted tomb, and asking Zhang to offer a price for corrupting him.<sup>105</sup> Pictures and videos of these lawyers’ and citizens’ activities have been posted, reposted and commented on by fellow activists and netizens widely online. Multiple days passed, some local netizens went to visit and support these lawyers; some also went to consult these lawyers about their own cases.<sup>106</sup> After 19 days’ silence on the lawyers’ and activists’ advocacy on their legal rights, Jiangxi High People’s Court and the local police finally responded—by putting Wu Gan under a ten day administrative detention for “insulting the court president” and asking the

---

<sup>103</sup> Chen Jiangang (陈建刚), Zhang Zhonghou, *Where Are You Going? - A Discussion With President of Jiangxi High People’s Court* (忠厚, 你何去何从? ——与江西高院院长张忠厚先生探讨), *Xiyuan Net* (May 30, 2015), available at [http://www.xiyuanwang.net/html/lpxla\\_1267\\_1981.html](http://www.xiyuanwang.net/html/lpxla_1267_1981.html). A video clip showing a confrontation between the officials and the lawyers asking to review the case file can be seen on Youtube (May 26, 2015), available at <https://www.youtube.com/watch?v=1cKzJtEfuSk>.

<sup>104</sup> From one defense lawyer’s assistant, Zhao Wei (赵威)’s Weibo posts at <http://www.weibo.com/u/2818229470>.

<sup>105</sup> Xin Lin (忻霖), Rights Activist “Butcher” Seized By Jiangxi Police (维权人士“屠夫”遭江西警方抓捕), *RFA* (May 19, 2015), available at <http://www.rfa.org/mandarin/yataibaodao/renquanfazhi/xli-05192015103245.html>.

<sup>106</sup> *Id.*



lawyers and citizen activists to leave and wait for “further information which will come out between end of July and early August.”<sup>107</sup> The lawyers and activists then distributed such news and transferred their “battlefield” temporarily to the internet while protesting against the authorities’ abuse of power in detaining Wu Gan—several lawyers addressed letters to president Zhang Zhonghou challenging his response to Wu’s performance art; some transferred money to Wu’s wife to express their support and respect; notably, within only one day after Wu was taken away by the police, more than one hundred lawyers had volunteered to serve as his attorney (in case the police decided to criminally detained him following the administrative detention).<sup>108</sup>

At this point, it could be observed that the advocacy for correcting the Leping case of injustice had formed a sort of network in which, not only lawyers, but also other professionals and non-lawyer defenders had assembled. Also, they have resorted to not only the judicial system, but also various other platforms/channels in their network advocacy. Such network could further facilitate “organizing without organisation” in rights advocacy in Chinese civil society.<sup>109</sup> Some scholars also noticed likewise efforts in individual death penalty cases recently emerging in China and called it “bottom-up efforts.” For instance, Margaret Lewis commented that the coverage of wrongful conviction cases caused by torture, involving more and more “grassroots and non-government-mouthpiece media sources” nowadays, demonstrates a “marked bottom-up approach.”<sup>110</sup> That is to say, these efforts, as observed in some cases, have successfully received the mainstream media’s coverage and the authorities’ notice, and then possibly a decision of retrial or correction,

---

<sup>107</sup> *Id.*

<sup>108</sup> *Supra*, note 99.

<sup>109</sup> Teng Biao, *Rights Defense (weiquan), Microblogs (weibo), and the Surrounding Gaze (weiguan)*, 3 *China Perspectives*, 29, 40 (2012).

<sup>110</sup> Lewis, 669

like in the aforementioned case of Zhao Zuohai. It looks as though the efforts by the lawyers and citizen activists in the Leping case of injustice are marching towards this direction as well – gradually, more and more domestic newspapers and websites, including some run by local governments, have reported on this case; several TV stations, including China’s largest official media, CCTV, have also produced specials for this case.<sup>111</sup> A lawyer commented this as “joint efforts outside and inside the system (*tizhi wai he tizhi nei heli*)” in correcting the Leping case of injustice.<sup>112</sup> Even lawyer Li Jinxing, who founded the *Xiyuan* Net and has been taking part in many such advocacies, tried to explain or summarize such an approach or strategy by referring to some official discourse—in a Wechat group called *Dou’e Brothers and Sisters* (*dou’e xiongdi jiemei*), where allegedly wronged individuals gather together to discuss their cases (and grievance) as well as strategies to correct them, lawyer Li called it an “interaction between the ruler and the people (*chaoye hudong*).”<sup>113</sup>

Let us further broaden our vision: we even need to find out which National People’s Congress delegates, which Party representatives (*dang daibiao*), which former Red Army soldiers, which writers, and journalists we can resort to. We should connect ourselves to all the fields in society. Besides, we should keep an eye on others’ cases and help each other.<sup>114</sup>

---

<sup>111</sup> The special program by Phoenix TV on July 17, 2014 at <https://www.youtube.com/watch?v=Hph4p9uYgaY> and by CCTV on July 8, 2014 according to lawyer Zhang Weiyu (张维玉) at <https://freeweibo.com/weibo/3730023707994280>.

<sup>112</sup> By lawyer He Huixin (何辉新) on his weibo <https://freeweibo.com/weibo/%E4%B9%90%E5%B9%B3%E6%A1%88>.

<sup>113</sup> Wu Lei, *supra* note 93.

<sup>114</sup> Wu Lei, *Talks About How Family Members of Wronged People Appeal* (伍雷谈冤案家

However, if the leading goal driving these lawyers' and citizens' advocacy still lies in getting the authorities' attention or support, does it not operate within the confines of the authorities' efforts of curbing torture? As discussed above, the authorities can just choose to ignore this individual case (while retry and correct some others), like what they did for the case of Nie Shubin. In this sense, some academics warned against such "bottom-up" path—through analyzing grassroots advocacies in the death penalty cases, Fu Hualing argues that these efforts, driven by the fact that currently in China, public opinions may affect court (and governmental) decisions, have formed "penal populism."<sup>15</sup> This "penal populism," as Fu further contends, is "case specific" and "limited to judicial disposal of those cases," and it neither "offers a structural solution" nor includes "will or capacity to develop a long term interest in promoting legal changes."<sup>16</sup> Similar doubts were seen in media reports on such efforts in some other wrongful conviction death penalty cases. People were asking: "how many cases can be corrected in such way?"<sup>17</sup> For example, a reporter wrote after one wrongful conviction death penalty case, the case of Huugjilt, was finally corrected at the end of 2014 after many years' advocacy by various areas in society,<sup>18</sup>

But the correction of the case of Huugjilt is a super-unlikely

---

属如何申冤), *New Citizens Movement* (Apr. 25, 2015), available at <http://xgmyd.com/archives/17113>.

<sup>15</sup> Fu Hualing, *Between Deference and Defiance: Courts and Penal Populism in Chinese Capital Cases*, SSRN (May 1, 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2601494](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2601494), at 4.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> Xu Xin (徐昕), *Can Correction Of the Nian Bin Case Copied? (念斌案的平反能否复制?)*, *Caixin Net* (Aug. 25, 2014), available at <http://magazine.caijing.com.cn/2014-08-25/114339116.html>.

<sup>18</sup> Gu Yuefei (谷岳飞), *Huugjilt Got Acquittal, Petitioners Consulted His Family (呼格吉勒图冤案平反 上访者向其家属取经)*, *Ningxia Net (宁夏在线)* (Feb. 4, 2015), available at <http://www.nxing.cn/article/128578.html>.

event that cannot be duplicated by most people [in the similar situation]. Because, perhaps you do not have a that relentless mother, or, you do not have the luck to meet such an upright journalist who had no fear of public power, and such a real murderer who, unexpectedly, had a strong sense of justice, and so on...

These arguments and doubts raise a need to dig more deeply into the network advocacy in the Leping case of injustice as well as other wrongful conviction death penalty cases. On the basis of further examining the discourse in these network advocacies, this article finds that these advocacies have actually gone beyond the confines of individual cases and the utilitarian morality implemented by the authorities. Embodying important rights and liberal connotations, they have broadly touched upon China's criminal justice system, judicial system, death penalty and political system. CADP's founder, Teng Biao, talked about why they decided to start from individual wrongful conviction death penalty cases for achieving a long-term objective of abolishing the death penalty system in China and how this is going to work:<sup>119</sup>

Individual wrongful conviction death penalty cases are a crucial channel to make the public reflect over the criminal justice system, and the death penalty system. It [Abolishing the death penalty] will be a long road for China to go... It should be a comprehensive social movement including efforts from various areas in society such as law and literature. Through documentaries, films, and public discussions and debates, workshops and conferences etc., we hope to promote the public's reflection over life, over the right to life.

---

<sup>119</sup> Author's observation at the conference.

This thought is shared by many lawyers taking part in the network advocacy. When talking about their aims in advocating for correction of wrongful conviction death penalty cases at one of the CADP's annual conferences, three lawyers, for example, respectively related that:<sup>120</sup>

Through criminal defense in those [wrongful conviction death penalty] cases, we can raise our clients' and the public's awareness of rights, life and citizenship. We can also popularize legal knowledge.

We should promote the concept of abolishing the death penalty in China through our advocacies in individual wrongful conviction cases, whatever outcomes we finally got [in those individual cases].

It is important that our representation and defense can have some impact on those family members... Abolishing the death penalty requires advocacy from society and every person... We should start from building civil society in China.

The founder of *Xiyuan* Net, Li Jinxing, had in another instance further explained their aim of promoting judicial reform through correcting wrongful conviction death penalty cases.<sup>121</sup> In this instance, what he referred to as "interactions between the ruler and the people" mentioned earlier in this article may actually aim at promoting judicial reforms.

Correction of wrongful conviction cases needs participation of the whole society. Why we do individual cases? Our goal is not merely solving these individual cases. It is more a

---

<sup>120</sup> *Id.*

<sup>121</sup> Wu Lei, *supra* note 93.

“muckraking (*pafen*)” movement as we want to promote judicial reform. Although we use performance art or the media in our advocacies, we lawyers do not want to uglify judiciary in itself. Criticism is different from mockery. We criticize our judicial system and hope to attract the public to criticize it, since we believe that, in China nowadays, if the public do not exercise their right to criticize, if we do not count on the grassroots efforts to “force” the authorities to launch judicial reforms (*daobi sifa gaige*),<sup>122</sup> there would be no hope of a real judicial reform.

In this aspect, the lawyers also have more concrete proposals. At the same CADP conference the author observed, for example, the lawyers have discussed their ideas on possible reforms of the current criminal justice system, which, in brief, include developing alternative penalties to the death penalty, changing the current two-tier trial system to a three-tier one for capital cases, and extending the time period between sentence and execution.<sup>123</sup>

The citizen’s rights consciousness is another important objective in the advocacy. Xu Xin wrote that he had been receiving an enormous amount of appeals from the families of alleged wronged defenders every day after setting up the online platform of Innocence Project. He has always been trying to deliver the discourse of rights, justice and fighting for rights and justice to those family members:<sup>124</sup>

I have been imposed on too many and far too high

---

<sup>122</sup> In Chinese, 倒逼司法改革.

<sup>123</sup> *Supra*, note 114.

<sup>124</sup> Xu Xin (徐昕), *Injustice Redress, the Innocence Project and Strategies to Advance It* (申冤、无辜者计划及其推进策略), New Citizens Movement (May 19, 2015), available at <http://xgmyd.com/archives/17911>.

expectations [from those family members]. But I have kept on telling them that the realization of justice after all lies in themselves, not in me. If *they* do not fight for rights, justice will never just fall from the sky. I believe that either the realization of justice or the establishment of the rule of law relies on individuals' own initiatives and perseverance in the course of defending for their own rights.

From these accounts, we can observe the ideology of the founders of the three main organisations/platforms working on correcting wrongful conviction death penalty cases in China, and that of some lawyers who have been throwing themselves into the network advocacy—rather than as an objective, they view individual cases as a crucial approach to advance structural and systematic reforms; rather than placing their hope on the authorities, they are trying to raise rights consciousness and reflections over life among Chinese citizens, which are the real power in achieving their ultimate goals. The proliferation of their network advocacy, importantly, can provide opportunities and platforms for more and more individuals to communicate and exchange their thoughts, which is described by Teng Biao as a process of “detoxification.”<sup>125</sup> According to Teng, “no one who has grown up under China’s education system and social environment can say that he or she has no need for ‘detoxification,’ so ‘the process is first and foremost a process of personal education and growth, and ‘enlightenment’ must take place within oneself.”<sup>126</sup> Through discussing public interest litigation in China, Fu Hualing further notes the value of public discussion to politics. According to Fu, “winning or losing may be less relevant or important than the public interest

---

<sup>125</sup> Teng Biao, *What is Rights Defense*, in Stacy Mosher & Patrick Poon (ed.), *A Sword and A Shield: China’s Human Rights Lawyers*, China Human Rights Lawyers Concern Group, 126 (2009).

<sup>126</sup> *Id.*

generated by the case and the symbolic value of public discussion.<sup>127</sup> “Public interest litigation generally produces greater value in political symbolism than it delivers in tangible results for litigants.”<sup>128</sup> In the advocacy initiated for correcting wrongful conviction death penalty cases, as one defense lawyer working on the Leping case of injustice well summarized:<sup>129</sup>

I think there should be three main points in defeating torture and wrongful convictions. First, we, as lawyers, should not just consider criminal proceedings [in the process of correcting wrongful conviction death penalty cases]; we should overview the most basic structure of our society, the entire unjust system, and the criminal justice system. We need to promote those just elements and change those unjust ones. So the general circumstance leading to torture and wrongful convictions can be changed from the root. Second, we need pay close attention to “human hearts” (*renxin*), and change people’s benefit-oriented minds to value-based ones. Currently, in some such cases, the government just paid some “cash-for-silence” to the victims [families] and asked them not to “speak out” of these matters anymore, namely, to give up on advocating their rights. In this form, the government reached its claimed goals of “stability” and “harmony.” However, by doing this, injustice just continues. Hence, we need to let our clients realise that their cases entail not only interests to themselves, but also values such as justice to

---

<sup>127</sup> Fu Hualing, *Developing Rule of Law through Public Interest Litigation*, in Stacy Mosher & Patrick Poon (ed.), *A Sword and A Shield: China’s Human Rights Lawyers*, China Human Rights Lawyers Concern Group, 139 (2009).

<sup>128</sup> *Id.*

<sup>129</sup> Author’s observation at the conference.



society. The third point is freedom, autonomy and self-rule—every individual, every company, and our State should be like this, so that we can avoid being controlled by evil.

Moreover, it is noteworthy that unlike China's investigative journalists who, as noted by Marina Svensson, have adopted moral discourse as "China's conscience (*zhongguo de liangxin*)," "the protectors (*shouwangzhe*)," and "hero," or integrated the ideas of rights and justice into these descriptions, such as "protecting weak groups in society,"<sup>130</sup> in the network advocacy of correcting wrongful conviction death penalty cases, the lawyers have consciously refrained from forging certain "moral images" as a group. Instead, they attempt to garner public attention for the legal and political issues embedded in those wrongful convictions. According to Zhang Yansheng, the leading lawyer in correcting the widely-reported wrongful conviction death penalty case of Nian Bin, "when justice is realized, we lawyers should walk off the 'stage.' Don't call it lawyers' triumph."<sup>131</sup> Lawyer Li Jinxing commented similarly:<sup>132</sup>

We do not want to give the public an impression that the successful correction of wrongful conviction cases is a lawyers' "revelry." The fact is that once after a wrongful conviction death penalty case was corrected, we lawyers just left quietly.

---

<sup>130</sup> Marina Svensson, *Media and Civil Society in China: Community Building and Networking among Investigative Journalists and Beyond*, 3 *China Perspectives* 19, 22 (2012).

<sup>131</sup> Li Lin (李林) & Guo Meihong (郭美宏), *No "Appearance of True Murderer", No "Resurrection of Dead Victim", Nian Bin Returned Home* (没有"真凶再现"或"亡者归来", 念斌回家了), *China Youth Online* (中青在线) (Aug. 25, 2014), available at [http://zqb.cyol.com/html/2014-08/25/nw.Duo000zqnb\\_20140825\\_2-03.htm](http://zqb.cyol.com/html/2014-08/25/nw.Duo000zqnb_20140825_2-03.htm).

<sup>132</sup> Wu Lei, *supra* note 93.

We may view the progressive journalists' deployment of such moral images as a challenge to the utilitarian morality implemented by the authorities, which is, as discussed above, built on the authoritarian concept that public power represents the "larger good" and "rightness." Yet in the author's opinion, these lawyers' deliberate removal of a collective moral image and discourse may constitute a more thorough rebuttal to utilitarianism. As argued by Hatla Thelle, this is a process of individualization in China, which is leading to the disappearance of old power structures and the emergence of new ones.<sup>133</sup>

In fact, the participants of the network advocacy in wrongful conviction death penalty cases have widely discussed political rights and how their advocacy may entail changes to the political system in China, based on the relationship between criminal justice and democratic values, with a particular reference to the death penalty system. One defense lawyer of the Leping case of injustice, for instance, said:<sup>134</sup>

As we learned in other jurisdictions, the abolishment of the death penalty has little business with public opinion; it is because the [death penalty] system has violated human rights. Wrongful conviction and torture are caused by the system (*tizhi*), but no system can guarantee that there would be no wrongful conviction. Worse, in China, the death penalty is in fact the tool of political sovereign and dictatorship!

In a similar vein, another lawyer said:<sup>135</sup>

The death penalty system is a significant part of the machine

---

<sup>133</sup> Hatla Thelle, *Torture in China*, 3163 *Torture* 268, 274 (2006).

<sup>134</sup> Author's observation at the conference.

<sup>135</sup> *Id.*

of maintaining stability for the Party-state. So abolishing the death penalty is indeed a political issue, instead of a cultural one as still maintained by many people nowadays. I think the process of abolishing the death penalty is also a process of promoting democracy and constitutionalism.

Zhang Weiyu, also one of the defense lawyers in the Leping case commented after a later CADP conference discussing this case:<sup>136</sup>

Most of the forty participants [of the conference] agreed that the death penalty should be abolished in China. It is a global trend. The death penalty itself does not reduce crime rates... It today has become a source for organ transplantation... Those holding power in the current regime often abuse the death penalty, and use it as means to silence people they do not want to speak up.

A myriad of researches have discussed the significance of the death penalty for the Party-state's authoritarian rule. Andrew Scobell, for example, has pointed out that following the Leninist rationale of viewing the death penalty as an indispensable tool of social control, the post-Mao China used it to "educate the mass" on one hand, and to "assuage the people's anger" on the other.<sup>137</sup> Such state pragmatism is well illuminated in the question raised by the People's Daily in 1984 - "foreign bourgeois 'humanitarians' claimed that China's use of the death penalty was 'inhuman,' [but] was it 'humane' to let

---

<sup>136</sup> NTDChinaNewsChannel, *Discussing Retention or Abolishment of the Death Penalty, Wrongful Conviction Cases Shed Light on Problems of Judiciary* (论死刑存废 冤案折射司法体制缺陷), YOUTUBE (Dec. 24, 2013), available at <https://www.youtube.com/watch?v=9H8Z8WPhP7l>.

<sup>137</sup> Andrew Scobell, *The Death Penalty in Post-Mao China*, 123 *The China Quarterly*, 503, 506 (1990).

murderers continue to kill good people?" Execution is justified on the basis of retribution.<sup>138</sup> This retributive justice, simply dividing "the people" into "good" and "bad," echoes the fundamental of torture; namely, the utilitarian morality as discussed in the previous section. In this regard, a fight against the death penalty system through the network advocacy for correcting wrongfully decided death penalty cases is also a fight against the authoritarian rule and control based on utilitarianism. It is a process of advocating not only for legal rights but also for political rights—as shown in the studies on the global wave of abolitionism over the past sixty years, there is a direct and express correlation between this wave and democratization.<sup>139</sup>

Since lawyers have been playing a leading role in the network of legal and political rights advocacy in individual wrongful conviction cases, their thoughts on these wider issues may be able to produce a ripple effect in the whole network of advocacy, as well as in society. Efforts have been observed from the families of the wrongfully sentenced defendants. Two years ago, Wu Changlong, another person wrongfully convicted and sentenced to death, was acquitted and compensated for spending twelve years in prison after years of network advocacy by the lawyers, journalists, citizen rights activists, and netizens.<sup>140</sup> In May 2015, Wu's sister posted a photo on her Twitter account, which at the time had more than ten thousand followers. In this photo, the parents of Chen Xiaying, a victim of another wrongful conviction death penalty case that was decided by the Supreme People's Court to re-open this

---

<sup>138</sup> *Id.*

<sup>139</sup> Stephen Noakes, *The Death Penalty and Institutional Reform: The Case of China*, CANADIAN POLITICAL SCIENCE ASSOCIATION (June 2012), available at <http://www.cpsa-acsp.ca/papers-2012/Noakes.pdf>.

<sup>140</sup> Han Yuting (韩雨亭), Fuqing Qiutu (福清囚徒) [*Fuqing Prisoner*], Nandu Zhoukan (南都周刊) [SOUTHERN WEEKLY] (May 20, 2013), available at <http://www.nbweekly.com/news/china/201305/33136.aspx>; Wen Jianmin (温建敏), Wu Lei: Si Ke Pai Lushi Men (伍雷: "死磕"派律师们,) [*Wu Lei: "Diehard" Lawyers*], China Review (June 2, 2014), available at <http://www.china-review.com/lath.asp?id=34113>.

year, were holding a banner in eye-catching yellow, with a slogan reading, “hope the laws can be implemented fairly and justly.”<sup>141</sup> The parents, according to sister Wu’s tweet, were holding and demonstrating this banner on a hike across their residential city in Fujian Province.<sup>142</sup> This is expected to raise more public awareness not only of their own case, but also of “the law and justice,” said the parents. Some who have long been concerned about torture and wrongful conviction have noticed the rise of rights consciousness and challenges to public power in Chinese society. Chen Ruihua, a domestic Chinese criminal procedure law scholar commented on this trend in a media interview recently:<sup>143</sup>

Fighting crime is something that is in the interest of the entire society. But in recent years there has been growing suspicion toward state power. It’s a sign of social progress that the public no longer blindly submits to state power. Rights consciousness is rising within the public, and these days people are more worried about abuse of state power than they are about the risk of being unable to fight crime. People have increasingly come to understand that “fighting crime,” “maintaining public safety,” and “punishing corruption” are all, fundamentally, [part of] political discourse. Abuse of state power is the more frightening thing and something that ought to be seen as the people’s common enemy. This kind of public opinion is already beginning to form. I believe that this

---

<sup>141</sup> See Xinceng34, TWITTER (May 8, 2015, 8:51 PM), available at <https://twitter.com/xinceng34/status/596885184580067328>.

<sup>142</sup> *Id.*

<sup>143</sup> Dui Hua Foundation, How Chinese Institutions Manufacture Conviction and Quash Acquittal, Dui Hua HUMAN RIGHTS JOURNAL (May 6, 2015), available at <http://www.duihuahrjournal.org/2015/05/how-chinese-institutions-manufacture.html>.

opinion environment presents China with a historic opportunity to bring the problem of wrongful convictions under control.

That is to say, public awareness and rights consciousness is a source of my optimism for the future.

### *Conclusion*

Early August 2015 witnessed remarkable progress in the Leping case of injustice—on the 10th of this month, the defense lawyers got a call from Jiangxi High People’s Court, which finally notified them to review the case files, signalling that another retrial may be held soon.<sup>144</sup> This is also the first time that the lawyers can review all the case files in this case in spite of their persistent protest against the procedural injustice and abuse of public power throughout the years. Nevertheless, what happened simultaneously may make it hard to assess it as a victory for this network advocacy in Chinese civil society—after Wu Gan was released from the ten day administrative detention, he was immediately criminally detained. A few days later, CCTV broadcasted a video clip illustrating how Wu had “disturbed the order of the court and insulted others,” and it also claimed that Wu himself had “confessed” to the police.<sup>145</sup> *Xinhua* net, the People’s Daily and multiple official media outlets swiftly joined in this exposure and smear parade by publishing articles to detail Wu’s similarly “disturbing” conduct in various other cases.<sup>146</sup> In early

---

<sup>144</sup> Hong, *supra* note 23.

<sup>145</sup> Jizhe Diaocha: Wangmin Chaoji Disu Tufu Wu Gan Bei Ju Zhenxiang (记者调查：网民“超级低俗屠夫”吴淦被拘真相) [*Journalist’s Investigation: Truth Behind Detaining Netizen “Super Vulgar Butcher”*], CCTV (May 25, 2015, 11:13 AM), available at <http://m.news.cntv.cn/2015/05/25/ART1432522524740739.shtml>.

<sup>146</sup> See, e.g., two articles entitled Jiekai “Chaoji Disu Tufu” de Zhenmianmu (揭开“超级低俗屠夫”的真面目) [*Revealing The True Colour Of “ Super Vulgar Butcher”*], XINHUA;

July, Wu Gan was arrested under the criminal charges of “inciting subversion of state power” and “disturbing public order.”<sup>147</sup>

Then came an unprecedentedly sweeping crackdown on human rights lawyers and activists—in just two months since July 9th, nearly 300 individuals, including lawyers, law firm staff, citizen activists, and their family members had been criminally detained, held incommunicado (under the name of “designated residential surveillance”), house arrested, summoned, or forbidden to leave the country.<sup>148</sup> Many of them had been taking a leading role in the network advocacy for correcting wrongful conviction death penalty cases, including that of the Leping case, as well as for justice in other cases involving public power abuses. Lawyer Li Heping, who stepped in as the criminal defense and rights advocate for the Leping case since 2003, and his two assistants who had been participating actively in the network advocacy, were all held incommunicado and deprived of the right to meet with their lawyers [as of the time of writing].<sup>149</sup> Meanwhile, the police raided and searched the offices of Li Heping’s law firm and the *Xiyuan* Net. The other defense lawyers involved in the Leping case were questioned and deprived of freedom for various lengths of time. A couple of days after the crackdown was staged, CCTV and the People’s Daily labelled the network rights advocacy as “rights defense-style” disturbances in which the seized lawyers sought

---

PEOPLE’S DAILY (May 28, 2015), available at [http://news.xinhuanet.com/legal/2015-05/28/c\\_1115430447.htm](http://news.xinhuanet.com/legal/2015-05/28/c_1115430447.htm); <http://politics.people.com.cn/n/2015/0528/c1001-27067992.html>.

<sup>147</sup> Gao Shan (高山), Tufu Wu Gan Bei Yi Shandongianfuguojiazhengquan Deng Liang Zui Zhengshi Daibu (屠夫吴淦被以煽动颠覆国家政权等两罪正式逮捕) [Wu Gan Arrested Under Two Charges Including Inciting Subversion of State Power] Power, RFA (July 3, 2015), available at <http://www.rfa.org/mandarin/yataibaodao/renquanfazhi/hc-07032015121143.html>.

<sup>148</sup> Latest Data and Development of Cases as of 1800, China Human Rights Lawyers Concern Group (CHRLCG) (March 18, 2016), available at <http://www.chrlawyers.hk/en/content/%E2%80%98709-crackdown%E2%80%99-latest-data-and-development-cases-1800-18-march-2016>.

<sup>149</sup> *Id.*

“personal fame and status through colluding with petitioners and sensationalising grievance cases on the Internet.”<sup>150</sup> Several seized rights activists and one lawyer were made to talk about their “regrets” on CCTV’s news programs.<sup>151</sup> On August 2nd, lawyer Zhang Weiyu received a disciplinary decision from the local lawyers’ association, in which the association claimed that “lawyer Zhang conducted illegal activities during the appeal for reviewing the case file [of the Leping case] and this has not only disturbed the normal order of the court and society but also caused bad influences to society and seriously damaged the lawyer’s professional image.”<sup>152</sup> Accordingly, it gave lawyer Zhang a punishment of “public denouncement (*gongkai qianze*).”<sup>153</sup>

All this may not be hard to understand when taking into account the authorities’ utilitarianism—seeing the rapid and evident growth of public attention to wrongful conviction cases as well as other unjust cases involving abuses of power, and especially the rise of people’s awareness of their rights and justice along with the network advocacy in such cases, the authorities feel a threat to their utilitarianism, which provides the crucial grounds for their centralized and arbitrary execution of power. In this context, the authorities may decide to retry (or correct) this single case (i.e. the Leping case of

---

<sup>150</sup> Nancy Tang et al., *China’s ‘Rule by Law’ Takes an Ugly Turn*, ChinaFile (July 14, 2015), <http://www.chinafile.com/conversation/chinas-rule-law-takes-ugly-turn>.  
[http://www.chinafile.com/conversation/chinas-rule-law-takes-ugly-turn?utm\\_content=buffer068fe&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.chinafile.com/conversation/chinas-rule-law-takes-ugly-turn?utm_content=buffer068fe&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

<sup>151</sup> Matthew Robertson & Yaxue Cao, *The Vilification of Lawyer Wang Yu and Violence By Other Means*, China Change (July 27, 2015), <http://chinachange.org/2015/07/27/the-vilification-of-lawyer-wang-yu-and-violence-by-other-means/>.

<sup>152</sup> Xin Bingyin (邢丙银) & Mao Weida (毛伟达), Zibo Lu Xie Chufen Leping Yian Yi Lushi Yin Qi Yue Juan Shouzu Dao Fayuan Ju Pai Dian Lazhu (淄博律协处分乐平疑案一律师 因其阅卷受阻到法院举牌点蜡烛) [*Zibo Lawyers’ Association Disciplines One Lawyer of The Leping Case, For His Lighting of Candles and Holding of Banners after Being Rejected to Review Case File*], Pengpai Xinwen (淄博律协处分乐平疑案一律师因其阅卷受阻到法院举牌点蜡烛), (澎湃新闻) [THE PAPER] (August 3, 2015, 8:20 PM), available at <http://www.thepaper.cn/baidu.jsp?contid=1359978>.

<sup>153</sup> *Id.*



injustice)— but most importantly, the public should be convinced that it is the authorities' capacity and willingness, rather than the powerfulness of citizens. In the eyes of the authorities, the network advocacy, which embodies the long-term objectives and functions of letting a citizen be a real citizen that challenges public power and fighting against power abuse, must be stopped. And a quick and easy way to stop it, following the ideology of utilitarianism, is to shame and smear this advocacy, as well as those most prominent and active advocates endeavouring to promote it (in addition to physically put them in custody). By doing all this, the authorities may expect to achieve two goals – for one thing, they aim to produce a deterrence effect by “killing a chicken to scare a monkey”; for another, by categorizing the lawyers and activists in the network advocacy as “bad” people, the authorities attempt to win the public's confidence in them and in public power to address the various problems that cause injustice and rights violation. Ultimately, the authorities' destined failure in addressing or eradicating torture results from their “need” to strangle an independent civil society in China.

Yet to what extent can the authorities reach these ends? After the years of development of rights advocacy into a network involving a wide range of professionals across the country, the process of individualization has already fermented, and this process is irreversible. As discussed in this article, since it is very unlikely that the authorities will address the roots of torture or other judicial injustice, along with the escalation of injustice, the demand for rights and justice will grow and advance the grassroots network of legal and political rights advocacy. Despite facing repression and suppression, this network will resort to various methods and platforms. Abundant discussions surround the starkly increased suppression on civil society and rights activism in China since Xi Jinping took office in late 2012. The discussion in this article may provide some grounds to believe that “chickens” would not be really “killed,” and “monkeys” would not be utterly or no longer “scared.” Or, as a lawyer commented, at the current stage, “although the darkness has not yet gone, the

dawn has already come.”<sup>154</sup>

---

<sup>154</sup> Si Weijiang (斯伟江), *Zai Geming he Gailiang Zhiqian (在革命和改良之前)* [Prior to Revolution And Reform], Caixin Net (October 9, 2012, 3:39 PM), available at <http://comments.caijing.com.cn/2012-10-09/112174659.html>.

Copyright of Columbia Journal of Asian Law is the property of Columbia Journal of Asian Law and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.