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Disciplinary Brief

## **COURAGE AND PRUDENCE IN CHINA'S HUMAN RIGHTS STRUGGLES**

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Since 2005 I have been engaged in empirical research on struggles for basic legal freedoms in China. At the intersection of sociology, law and politics, this research has ranged across many of China's cities and provinces. It has included hundreds of interviews, analysis of media and online materials inside China, interviews with international human rights groups, foreign governments, and analysis of international media (Liu and Halliday 2016). At the core of this research was a fundamental question that I had been pursuing with many other specialists on law and the politics of lawyers across the world since the 17<sup>th</sup> century: what role have lawyers played in struggles for political liberalism, viz., in their terms, for political societies in which there is protection for basic legal freedoms, construction and defense of an open civil society, together with moderation of executive power in the state, often through balance of powers or constitutional limits on rulers (Halliday and Karpik 1997; Halliday, Karpik and Feeley 2007; Halliday, Karpik and Feeley 2012)?

As our China research progressed, I was drawn inside a circle of China's leading human rights lawyers, many of whom I came to learn were Christians. In repeated crackdowns, from 2008, 2011, and most dramatically in 2015, almost all these lawyers have suffered deeply. They have lost jobs and lost careers, been detained and "disappeared," tortured and imprisoned, subject to hardship for their families, been forced to move at the arbitrary whim of security police, forced into exile, or forbidden to leave the country, because they continued to fight for human and legal rights, rule of law and a constitutional order.

We have written a good deal on these lawyers and their fight for basic legal freedoms, all from within scholarly frames in the sociologies of law and professions. Jennifer Herdt's [Theology Brief on The Virtues](#) presses me to revisit my social science research and writings from a fresh angle.

In this essay I explore tentatively how the lens of Christian virtues, and most especially those of courage and prudence or practical wisdom, might provide insight into the struggles of China's notable rights lawyers for a new New China. I proceed through four steps. First, who are these lawyers, what is their cause, and what price have they paid for their activism? Second, how does a Christian concept of courage

intersect with conventional social science understandings? Third, can we observe the Christian virtue of prudence in lawyers' encounters with a regime built upon vice? And, fourth, is the theological power of a Christian virtues' approach, as it is reflected in China's Christian rights' community, amplified by attributing vices and virtues not only to individuals, but to collective actors—organizations, businesses, professions, and communities, among others. In each of these steps I raise more questions than offer definitive answers.

## Who Are China's Rights Lawyers?

From the early 2000s in mainland China, a small number of activist lawyers emerged, sometimes called rights or *weiquan* lawyers (Fu and Cullen 2011). They spearheaded legal approaches to China's most intractable problems. Numbering only a few hundred at their peak, these lawyers took on cases highly sensitive to the government, including land takings, religious persecution, environmental hazards, abuse of women, ill treatment of migrant workers, among others, issues involving hundreds of millions of Chinese citizens.

Because these issues sometimes threatened local social stability, and, more fundamentally, the reputation and legitimacy of the Party, it became dangerous work for rights lawyers. The Chinese Communist Party (CCP) readily imagined the prospect of an Eastern Europe-type "Color Revolution" or a "Jasmine Revolution" in the wake of North Africa's Arab Spring uprisings. Whether they were headline legal disputes, or using courts as a stage to activate publics, or *causes célèbres* that could light up the internet, or an explosion of stories on social media—any might be the spark that enflamed a forest fire which ultimately might bring down the CCP's control of China's state, conventionally labeled the Party-state.

The periodic crackdowns on lawyers unfolded through warnings, detentions, "disappearances" where lawyers simply could not be traced for months at a time, psychological and physical torture, and prison sentences. Between crackdowns lawyers would be pressured not to take cases or withdraw from them, threatened with loss of their practice licenses, placed under various levels of surveillance by the security apparatus, and even accosted physically by the "black mafia" under government direction. Since 2008, the sufferings of these activist and defense lawyers reached worldwide audiences through the international media, international human rights groups, and foreign governments, including the European Union and United States (Liu and Halliday, 2017: 157-67).

Sociologically, it can be seen why the Party-state, and its five systems of coercive control, [ 1 ] fear this relative handful of lawyers, even though they represent a tiny fraction of the hundreds of thousands in a legal profession that has exploded since 2000. The notable activists, as we labeled them (Liu and Halliday 2015: chapter 1), projected ideals that fundamentally challenged the monopoly over power by the Party.

Surprisingly, our research discovered that a significant proportion of these several hundred rights lawyers, perhaps forty percent at one point, have been Protestant Christians. That in itself presented a further danger to the Party since these lawyers were also committed to another ideology counter to the official

Party line. Inside China they were closely connected to China's largest civil society formation—unofficial Protestant churches, and sometimes official Three-Self and sometimes Roman Catholic churches. These connections posed a threat to the Party and its security apparatus—estimated by some to be a larger line of government expenditure than its entire military budget. Moreover, the connections that Christian lawyers had forged with Christian churches and organizations worldwide gave them spokespersons, defenders and enablers outside of China and beyond control of the Party.

## **Courage as a Virtue**

Our sociological account of courage proposed that lawyers' fortitude was generated and sustained by three factors: lawyers' life experiences; their secular and religious beliefs; and sustained support from inside and outside China (Liu and Halliday 2015:chapter 5). How might a theological ethics of the virtues amplify or inform a social science analysis?

## **Courage as a Radical Christian Virtue**

Herdt (2013) helpfully contrasts Aristotle's concept of courage with that of Thomas Aquinas. In so doing she brings a Christian orientation much closer to the empirical reality of China's rights lawyers. For Aristotle, courage was exemplified on the battlefield, "limited to those who face death in battle." It thereby was restricted to the very few and animated by "some good that transcends their lives and is thus honored by the community" (Herdt 2013:110-12). For Aquinas, the meek submission of Christ to death on the cross presents a radical contrast in courage. This bold virtue now can be exemplified by all: "even those living a humdrum ordinary existence can have opportunities for genuine courage," even to its ultimate expression in martyrdom (Herdt 2013:122). The seemingly ordinary person exemplifies courage when s/he faces persecution and suffering for their faith and its expression in his or her persistent efforts to bring about a common good that "stands firm in truth and justice" (Herdt 2013:125).

Many of China's Christian lawyers affirm that their activism is underwritten by ideals of charity (Halliday 2021). Their conviction about God's enduring love for them drives them to express that love for those far beyond their intimate circles of family or locality, indeed, out to other religions or even members of the CCP itself. In the contest with evil, in confrontations with persecutors, the Christian stays the course, fights the good fight, armed with this gift of the Holy Spirit, a "confidence that all dangers will be finally overcome, not just that they may be endured" (Herdt 2013:126). The most resilient of the Christian rights lawyers would resonate with the affirmation of the Catechism of the Catholic Church that courage in the guise of fortitude reveals itself as "the moral virtue that ensures firmness in difficulties and constancy in the pursuit of good (Pinsent 2017)." Or, in their moments of greatest stress, they would express the hope that not only could they exercise courage of "the kind that faces danger," but they might maintain the fortitude that "sticks at it under pain" when so many have experienced excruciating physical and psychological torture (Lewis 1952:62).

Yet, courage has its limits. When confronted with the loss of livelihood, poverty, public disgrace, torture, disappearance, long prison sentences, for some rights' lawyers fortitude weakened and courage crumbled. It is not a virtue that can be taken for granted, nor indeed confidently predicted when the pain becomes unbearable. Some have counted the struggle too painful and have walked away from it.

### **Manifestations of Courage in Rights Struggles**

These characterizations of courage and fortitude resonate immediately in the context of China's rights struggles. There is a manifest struggle within China where the great majority of the lawyer vanguard are not great personages, eminent academics, or conventional notables in great law firms, but ordinary lawyers, frequently of humble backgrounds, who become extraordinary by their refusal to ignore the terrible harms being done by the Party to hundreds of millions of China's people (Halliday, Zilberstein, Espeland 2021), and by their persistent commitment to fight with whatever weapons of the weak that come to hand.

Their fight has taken place on many fronts. They have taken on some of the most widely publicized cases: where a mother was arrested for her protests over failure to hold a high school principal accountable for raping her daughter; when hundreds of villagers protested, many subsequently arrested, because their seaside land was arbitrarily taken from them; when babies suffered and died because a baby formula manufacturer adulterated the "milk"; when religious believers had their places of worship destroyed or their leaders arrested; among many others.

Often cases morphed into public information campaigns as bloggers, lawyers, and netizens stirred up protests at manifest injustices, cruelties, and government indifference. On occasion they took the form of public theater, when defense lawyers attracted media attention by dramatic acts or banners on the steps of courtrooms. In a country where civil society and public discourse was in its infancy, these lawyers essentially became spokespersons for publics. After the country-wide 709 Crackdown, beginning on 9 July 2015, profiles of courage shifted within China and in the international media as outspoken wives of the disappeared and imprisoned lawyers, notably Christians Wang Qiaoling and Li Wenzu, led protests on behalf of their husbands.

### **How Faith Fortifies Courage in the Face of Suffering**

Understandings of courage in the long Christian tradition help explain more convincingly why the Christian lawyers maintain the struggle. Even if they do not themselves know well the tradition, they recognize that courage can be expressed by the outsider, by those with less prestigious educational qualifications, by those who grew up in poorer provinces, and by those who rise out of family poverty. Those few who gave up comfortable practices in commercial and civil law for criminal and rights defense heed the pull of a deeper calling to defend the weak and bring about a just society. For the Christian lawyers, this courage is animated by the theological virtues of faith, hope and charity, as they openly expressed in my fieldwork

(Halliday 2021).

Moreover, for the Christians in particular a virtues' approach helps explain the puzzle of why a hard core of these lawyers keep on fighting on year after year, crackdown after crackdown, suffering piled upon suffering. Many have been urged by their spouses or parents and friends to desist, to give up and shift to safer arenas of legal practice. In these particularly difficult times, as Xi Jinping has deepened his assault on rule of law and lawyers, some still refuse to surrender. In the face of everyday persecution and relentless and intrusive surveillance, they persist. Other notable lawyers and legal academics come anew to the Christian faith.

I conclude that in addition to legal or political or personal ideals that motivate China's rights lawyers to continue the struggle, the Christian lawyers have another source of resolve, a spiritual source, not only as a mystery of faith, but as it is expressed in community, both within China and across the church universal. 709 activist Wang Qiaoling explains that both the courage of the 709 wives and the Christian 709 lawyers are continuously permeated by their sense of God's presence, a confidence in God's leading, a diffuse sense that God is working through them for the hope of a transformed China.

This courage is embedded and fortified in community. The Christian lawyers in Beijing met frequently over meals to discuss cases and to maintain solidarity. They earlier were knit together in a nation-wide online network. They joined together in teams for particular cases. After 709 many of the families were knit together into a supportive community thanks to the indefatigable efforts of resolute wives.

At its extreme, Christian courage confronts violent death. A striking image of martyrdom, even in contemporary China, has imprinted itself on my mind. Reflecting Nero's horrific parade of martyred crucified Christians lining the road to Rome, a drawing some years ago pictured Christians on crosses lining a metaphorical winding road to Tiananmen Square and the entrance to the Heavenly City where China's leaders since Mao have appeared before the masses. A Christian rights lawyer, nailed to a cross, is readily identifiable. Here again the present-day suffering of China's Christian rights lawyers is grafted symbolically into the millenia-long tradition of Christians obedient unto death.

## **Practical Wisdom as a Virtue**

The cardinal virtue of prudence, or practical wisdom, seems dim in its contrast to the blaze of courage. It is equally opaque to many Christians and manifestly absent in explicit terms from my fieldwork with China's Christian rights lawyers. Yet they speak constantly of a kind of practical wisdom that is integral to their practice as lawyers, their livelihoods, and their wellbeing—even their freedom and, *in extremis*, their lives.

Following Aquinas, and a long Christian tradition, the master ideals for the Christian, and the Christian human rights defenders, will be to adhere to principles of justice which give others their due (Wolterstorff, [Theology Brief on Justice and Rights](#)), to bring about a good society which fosters human flourishing, and to act toward others out of Christian charity and love, all ultimately oriented to a heavenly life which is

prefigured now and realized after death (Pinsent 2017:18).

These abstract ideals, however, do not readily convert into a wise decision about how to act in a given situation. For these, there must be *deliberation*, as a person comprehends the particularities of the current situation, *judgment*, as a person decides how and when to act, and *action* itself, as a person carries it out more or less perfectly or competently in practice (Wood 2014:45-7). "Prudence at work," then, for the Christian human rights defender, manifests a transcendence that is more than tactics or cunning (Wood 2014: 41-44).

For the Christian, as I understand it, the necessity for practical wisdom lies in the fit between high level moral norms about how we should behave—the master ethical standards of our faith—and the vast number of everyday circumstances where those norms must be applied (Wood 2014). Since a system of rules for action could not possibly be comprehensive and detailed enough to meet every contingency in every moment in every situation, the "the virtue of knowing the next step to take," and "what we should do in each situation," becomes of the utmost importance (Herdt 2017:17). This is particularly challenging when the powers of evil, the Chinese Communist Party, the Party-state, and its security apparatuses, deliberately create uncertainties about what actions at what moments will be in their red zone, and thus almost certainly ensure a quick punitive responses, and what are in their grey zones, and thus may be tolerated for the moment.

How can we understand practical wisdom theologically in ways that enrich empirical data on skills, intuitions, tactics commonly discussed by lawyers who live in twilight zones of danger and risk?

### **Practical Wisdom in Chinese Legal Rights Practice**

Over many years of fieldwork and hundreds of interviews, rights defense lawyers reveal a plethora of questions and decisions they make about ways to maintain courage without the losses to practice, livelihood, comfortable living, or even life, which exist as tangible threats always on their minds.

When a lawyer is told by the Justice Bureau to walk away from a case, should s/he? When judges refuse to hear a witness or enter evidence, should the lawyer rouse the public to pressure the judges? When pressured by a prosecutor or judges to "harmonize" or settle a contentious case prematurely, should they? How far should they adopt the tactics of extreme proceduralism—so-called die-hard tactics—to tie up a court whose judges are acting in a hostile manner? When should a lawyer accept a case without payment or costs? When should a lawyer accept moneys from overseas, whether for a case, or personal support, or for an NGO? When should lawyers gather together in fraught times? Should a lawyer refuse to answer her/his phone when repeatedly contacted by public or state security? During harsh interrogation, should a captive lawyer implicate friends and colleagues?

At the outset, it can appear that courage and prudence stand in some degree of tension. At one pole an excess of courage can lead to impetuosity, excessive risk-taking, recklessness, unconstrained impulses of anger or frustration, visceral outbursts, negligence or rashness (Wood 2014:37-8, 47-8). For instance,

Gao Zhisheng, among the most incorrigible and relentlessly persecuted Christian lawyers, has been criticized by an eminent international authority on China's laws because Gao kept on speaking out about the manifest injustices of his incarceration even though his outspokenness ensured harsher treatment, and possibly death (Gao 2017). What good does it do, asked the international authority, if Gao disappears into a Chinese grave and his voice is silenced?

Prudence has dangers of too little or too much. Too little, and persons act rashly, with harsh even fatal consequences; too much, and persons act timidly, letting down not only their clients and cause, but the reputation of Christians and the faith itself. For instance, a rights' lawyer is asked to take on a case where the detained or arrested person is a member of Falun Gong, a brutally repressed quasi-religious movement whose members have been killed and imprisoned in the thousands, since Falun Gong boldly surrounded Zhongnanhai, the walled residential and office heartland of China's rulers, adjacent to the Heavenly City and Tiananmen Square. The risks are high. Falun Gong has been classified as an "evil cult." To take on Falun Gong cases risks harassment for the lawyer from the local Justice Bureau, pressure on law firms to withdraw from a case, black marks that can affect renewal of an annual lawyer's license, and thereby the lawyer's livelihood. Yet the boldest of rights' lawyers once hailed peers who dared to take such cases as the pinnacle of rights defense in China. Christian lawyers can see this stand for a religious group as a public display of Christian charity in the face of savage injustice.

Or consider the decision of Li Heping, a leader of Christian rights lawyers in the 2000s, to "step back from the front line" of representing clients in "sensitive cases" and to focus on NGO activities against torture in China. After being badly tortured himself during detention in the 2008 crackdown, Li Heping judged that anti-torture activities would be less sensitive for the security apparatus. Alas, when arrested and "disappeared" for many months in the nationwide 709 Crackdown in 2015, Li Heping learned under interrogation that the security apparatus considered his anti-torture campaign, with its international connections, to be a threat to the Party.

Repeatedly in my fieldwork, I witnessed or was told of lawyers' perpetual challenge to stay the course in acts of courage, yet without going either to the extreme of full retreat from their rights representation or to the extreme of actions so provocative that they almost certainly would lead to severe repercussions. Their lives were repeatedly punctuated with judgments about which actions, in the present moment and in view of a lawyer's earlier encounters with public and state security, could or should not be undertaken.

Integrating practical wisdom into our understanding of the rights struggle may therefore yield a double benefit.

First, from a conventional social science vantage-point, we can see that the rights struggle for the Christian lawyers is more than a professional obligation and calling, more than an outworking of their inward sense that the weak must be defended and the strong be held accountable. It goes beyond intuitive or juridical ideals of justice, or the codification of justice in constitutionalism or rule of law ideals and institutions. The lens of practical wisdom brings what might be seen as a transient particular case into a

cosmic moral order, into the sphere of entangling with principalities and powers.

Second, for the Christian lawyers themselves, a deeper awareness of Christian thought, as it has been elaborated through countless instances of persecution and suffering in the history of the church, might add to their armory of faith. It solidifies fortitude. It lifts a worldly struggle into something transcendent. It takes a trial of this moment and situates it in a trajectory that reaches through the long history of the faith to beyond time.

Despite the evidence that rights lawyers are constantly making judgments about how to act in a given risky moment, I recognize that I am as yet seeing through a glass darkly when I seek to grasp what is the distinctive understanding that is yielded by the Christian ethical attribute of prudence. Is it that the Christian is consciously or diffusely always weighing the action in this current situation in relation to the high ideals of faith and the call to courage? Is the Christian gaining an increment of courage, or a refinement of judgment, because they seek to be faithful to the ideals of justice? Is it that the Christian's decisions to act are driven by the motivations of love or mercy or compassion rather than social ideals, fear or fame? Compared to non-Christian lawyers and rights activists who face risk with experience, discernment and refined judgment, does the Christian activist act prudently in discernibly distinctive ways? Professor Herdt opens up a new angle of orientation to rights struggles in China and far beyond.

## **Communities of Vice and Virtue**

A partial answer to the question of Christian virtues in a contemporary rights struggle may be found in rights' lawyers embeddedness in community. And this brings me to a puzzle in the Christian scholarship on virtues in theological ethics.

Conventionally, it seems, virtues are attributed by theological ethicists to individuals. Individuals with more or less virtue may influence institutions. And institutions can cultivate or erode virtuous behavior by their members. However, I see considerable merit in Oliver O'Donovan's (see Disciplinary Brief on [The Place of Virtue Theory in Christian Ethics](#)) readiness to attribute virtues to collectivities—families, corporations, voluntary associations, states, international organizations.

Here I propose that the community of rights' lawyers in China, and in particular that community of Christian lawyers within the wider community, can be seen as a carrier of courage or prudence. China's Christian rights lawyers have been more than a bundle of individuals, or a network of contacts. They have understood themselves to be in fellowship. They share religious beliefs. They work in teams. They "break bread" together.

In these respects, as social scientists put it, the community of human rights lawyers in China is an emergent social group. True, the virtues of individuals influence the community as a whole. True, the community influences the lawyers within it. But more than that, communities themselves have properties of virtue or vice. Virtues are a constitutive part of the Christian rights community. In community they join

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together to talk through all the dangers and contingencies of practice, in effect, balancing the impetus to courage with the wisdom of prudence. Indeed, we may properly depict the determination of the Christian rights' lawyers to stay connected, despite the efforts to isolate them, as a collective act, an act of corporate courage. And we can well comprehend their judgments about more or less risky behavior as a collective attribute of prudence. Going out of Beijing or lying low during high profile political events in Beijing is one example. Joining high profile trials as a team, and showing solidarity in numbers, is another. Avoiding direct verbal attacks in public or the social media on the CCP or on Chairman Xi Jinping is yet another. Of course, there is variation within the group and there are those step outside the community to act in another way. A core of practical wisdom, however, centers the community and places bounds around an excess of courage.

Against that community of virtue stands a community of vice—the institution of the Chinese Communist Party—which repudiates the Christian virtues of love, justice, temperance, among others. The Christian community depicts the CCP as much more than a conglomeration of Party members. It embodies and propagates vices explicitly at odds with those of the Christian virtues, not least with its addiction to power. Any kind of cruelty is acceptable if it will sustain the Party's control of China's state and society, its cultivation of avarice and nationalism.

We may then speak of a virtuous community. It has a shared ethos of what constitutes courage and the circumstances in which practical wisdom tempers and modifies expressions of courage. This community stands in sharp counterpoint to the institutions of vice which confront it in an enduring struggle over ideals and practices. The density of lawyer networks, their proclivities for working in teams, their connections online and through shared meals melded together in a community which held beliefs in common and which exemplified courage and prudence in the pursuit of justice in deeply unjust society.

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relationship to other virtues.

## End Notes

- [ 1 ] In addition to a conventional criminal justice system, in the early 2000s China had a Party-Disciplinary system, a state-security system, an administrative system, and the Re-Education through Labor (RETL) system.

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