

DEFENDING RIGHTS THROUGH LAW IN CHINA: PROGRESS AND CHALLENGES

The Robert L. Bernstein International Human Rights Fellowship Symposium

April 12-13, 2007

The Orville H. Schell, Jr. Center for International Human Rights and
The China Law Center
Yale Law School
127 Wall Street
New Haven, Connecticut

A central controversy in efforts to assess and improve the human rights situation in contemporary China concerns the possibility of achieving greater respect for human rights through law. An increasing number and range of Chinese citizens have sought to vindicate rights ostensibly protected under Chinese law. These actions, most commonly directed against local governments, have been taken through a variety of strategies and channels, including public interest litigation, petitioning, media reportage, “rightful resistance,” and social protest. Where this approach is successful, it is viewed as an important indicator of “rights normalization,” for a mature legal system is precisely one that permits and encourages a continuous process of self-reform. Conversely, a legal system that does not create and protect a space for political critique is itself both a symbol and an instrument of authoritarianism.

Much turns, therefore, on the reform capacities of the Chinese legal system. Does the appeal to law represent a move toward the normalization of rights? This is a critical question for the international human rights movement, which must evaluate the claims made for the effectiveness of an internal legal process in protecting rights. Arguably, international actors should give room to a self-correcting legal system to pursue an indigenous process of reform. But, if the legal system operates only within the narrow parameters permitted by an authoritarian regime, or even threatens to co-opt the reformers, then the human rights community is right to seek political change through external pressure.

This year’s Bernstein Symposium will examine the nature of reform through law currently possible in China. It will focus on the tension between progress and co-optation, bringing together members of the community of “rights defenders” – lawyers and social activists challenging particular legal violations explicitly to promote systemic political change – and the skeptics of a law-based strategy of reform for China.

Thursday, April 12, 2007

6:00 p.m. Discussion with Current Bernstein Fellows
Faculty Lounge

Ethel Higonnet ('05), Human Rights Watch, working in and around the Ivory Coast documenting sexual violence in the current civil war.

Jeremy Robbins ('06), The Center for Legal and Social Studies and the Association for Civil Rights in Argentina, working to develop and enlarge legal resources for prisoners seeking to challenge human rights violations in prisons.

Friday, April 13, 2007

**11:00 a.m. Jerome Cohen and Jonathan Spence in Conversation with Orville Schell
Room 120**

Reform or repetition? Are Chinese Leaders Prisoners of the Past in Their Approach to Legal Reform?

China's recent spectacular economic growth has been accompanied by a less spectacular expansion of legal and political reform. While the potential for economic growth seems virtually endless, both reformers and critics wonder what the limits on legal and political change are. This conversation aims to understand whether and how China's history constrains its leaders' – and people's – capacity to imagine change. No one is better qualified to speak to the weight of Chinese history than Jonathan Spence, the foremost historian of China in the United States. Jerome Cohen has been an internationally renowned expert on the Chinese legal system and China's interaction with the United States, as a scholar and an advocate, for more than thirty years. Since the 1960s, Orville Schell has been honored for his coverage of China as a journalist and for the nine books he has written about China.

- **Jerome Cohen**, Professor, New York University Law School, and Adjunct Senior Fellow, Council on Foreign Relations
- **Jonathan Spence**, Sterling Professor of History, Yale University
- **Orville H. Schell, III**, Dean, Graduate School of Journalism, University of California, Berkeley

**1:15 p.m. Strategies for Using Law and Reforming Law to Protect Rights in China
Room 127**

This panel will examine the ways in which people are trying to use law in China to protect individual rights. When and where have these strategies succeeded? Why have some efforts been more successful than others? What obstacles constrain the potential for defending rights through legal processes and legal reform? How should success be measured?

- **Li Fan**, Director, World-China Institute, Beijing, China
- **Xu Zhiyong**, Director, Open Constitution Initiative, and Lecturer, Beijing University of Posts and Telecommunications
- **Zhou Dan**, Executive Director, Yu Dan, Shanghai, China
- **Moderator: Paul Gewirtz**, Potter Stewart Professor of Constitutional Law and Director, The China Law Center, Yale Law School

3:15 p.m.
Room 127

Critical Perspectives on the Impact of Legal Advocacy and Reform Strategies

This panel will critically assess the potential of legal action and reform to bring about the fundamental change necessary to make China a rights-respecting society. To what extent are efforts to use and reform the law prone to co-optation by those committed to the political status quo? How might the use and development of law in China be a source of stability or instability? In light of these assessments, how should human rights advocates outside China respond to law-based efforts to protect rights?

- **Nicholas Bequelin**, China Researcher, Human Rights Watch
- **Fu Hualing**, Professor, Faculty of Law, University of Hong Kong
- **Titi Liu**, Program Officer, Ford Foundation, Beijing, and Visiting Professor, University of Washington School of Law
- **Moderator: Jeffrey Prescott**, Bernstein Fellow and Associate Director and Senior Research Scholar, The China Law Center, Yale Law School

5:30 p.m.
Faculty Lounge

Reception and Introduction of 2007-2008 Robert L. Bernstein Fellows

The Orville H. Schell, Jr. Center for International Human Rights at Yale Law School was founded in 1989 to honor the late Orville H. Schell, Jr., a distinguished lawyer, vice chairman of Helsinki Watch and chairman of Americas Watch from its founding in 1981 until his death in 1987. The Schell Center coordinates a diverse program of human rights activities that serve students and scholars at Yale and contribute to the growth and development of the human rights community locally and internationally. Programs under the Schell Center's auspices include the **Allard K. Lowenstein International Human Rights Clinic and Project** and the **Kirby Simon Summer Human Rights Fellowships**.

The China Law Center carries out research and teaching, promotes academic exchanges with China, and undertakes a variety of cooperative projects on important issues in Chinese law and policy reform. Established in 1999, the Center has become an important institution in the United States working with Chinese counterparts to advance the rule of law in China. The Center's cooperative projects with leading Chinese experts and institutions are in the areas of judicial reform, administrative law, policy and regulatory reform, criminal law and procedure, constitutional law, and legal education. In combining practical on-the-ground reform projects with research and education in a mutually reinforcing way, The China Law Center is playing an unprecedented role, and its work has established a significant new channel between the United States and China.

The Bernstein Fellowships were established at Yale Law School in 1997 to honor Robert Bernstein, the founder and former chair of Human Rights Watch; former chair, president, and chief executive officer of Random House; and a tireless champion of human rights. The fellowships, supported by the family, friends, and colleagues of Robert Bernstein and administered by the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School, promote innovative and creative approaches to human rights advocacy.

Each spring, the Bernstein Fellowship Program convenes a symposium, which includes a series of workshops and other events designed to promote thoughtful, creative discourse on international human rights. Past and current fellows return to Yale Law School to speak with students and each other about the challenges of human rights advocacy, and leading activists and scholars in the field join in discussions exploring effective approaches to the defense of human rights.