

Fissures between Human Rights Advocates and NGO Practitioners in China's Civil Society: A Case Study of the Equal Education Campaign, 2009–2013

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Abstract

This article uses a case study to analyse the fissures between human rights advocates and NGO practitioners. Since 2009, the Open Constitution Initiative, an organization run by human rights advocates, has been campaigning for migrant children's right to attend local schools. While fragmented resistance on the same issue has long existed in activities organized by migrant community NGOs, there has been almost no cooperation between the two parties during the campaign. Based on ethnographic research, I elaborate on how these two groups of activists differ in their strategies and goals, and how their choices are related to their understanding of political struggle and political transformation. I contend that this case provides a new lens through which to view the recent decline in some human rights activism in China, and illustrates the importance of investigating the internal structure of civil society.

Keywords: civil society; human rights lawyer; China; NGO; migrant children; equal education

Access to China's educational resources is determined by a person's *hukou* 户口 registration. Consequently, migrant¹ children's access to schools has long been circumscribed.² Since 2009, the Open Constitution Initiative (*Gongmeng* 公盟, hereafter OCI), an organization made up of human rights advocates, lawyers, and pro-democracy intellectuals, has campaigned to change this situation. Hoping to convince the state to abolish the *hukou* restriction in China's school enrolment system, activists at the OCI organized a group of migrant parents in Beijing to protest at the education bureau on a monthly basis, and lobbied

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1 In this paper, the term "migrant" is used to indicate the factual separation between place of residency and *hukou* registration. As a child's *hukou* status is obtained through its parents instead of place of birth, a "migrant child" may be born in a place, live there with family for many years, but still have a *hukou* registered in another place.

2 Zai and Chen 2007; Chen, Yuanyuan, and Feng 2013.

deputies to raise the issue at the National People's Congress. Although the OCI is well known for its work within China's "rights defence movement" (*weiquan yundong* 维权运动), it was not the first or indeed the only group to organize collective actions on the issue of migrant children's right to education. Long before the OCI's involvement, various forms of resistance were organized by migrant community NGOs. Activists in these community-based NGOs helped migrant families to defend their children's rights by establishing alternative schools, publishing research reports, and negotiating with local government officials and officials from public schools. However, although the OCI and these migrant community NGOs both work towards promoting the cause of equal education, there has been almost no cooperation between the two parties. So what has prevented these two types of organizations from joining forces or cooperating? How do their perceptions of Chinese politics differ? What are the implications of these fissures for the development of China's civil society?³

This paper provides an analysis of the inter-organizational relations in the equal education campaign. It aims to scrutinize and re-examine the role of human rights lawyers in China's civil society. Since the Sun Zhigang 孙志刚 case in 2003, China has witnessed the emergence of a group of human rights advocates, many of whom are lawyers or legal scholars.⁴ These advocates have established themselves in civil society by taking on politically sensitive cases, criticizing social problems, and articulating visions for democratization.⁵ Because they frequently bring up constitutional principles in public,⁶ many observers perceive this group to be the "vanguard" of China's civil society⁷ or leaders of the "rights defence movement."⁸ In studies that mention the interaction between these human rights advocates and other players in civil society, researchers usually emphasize that the advocates are able to form collaborative relations with NGO practitioners and garner support from the wider public.⁹ However, almost all the extant judgements are made from the perspective of human rights lawyers.¹⁰ What is lacking is an intersubjective analysis of how human rights lawyers and other activists in civil society perceive each other. Likewise, there is no account of how NGO practitioners respond when human rights lawyers launch a campaign that is highly relevant to the policy concerns of NGOs.

3 In this paper, I define civil society as a space for various organizations and voluntary networks that exists between the state and the market. The boundary between this space and the state is porous, and subject to political struggles.

4 The Sun Zhigang case has been widely celebrated as the first case in China in which public opinion formed in civil society successfully forced the state to abolish an unjust law. For details, see Pils 2014, 49.

5 Fu and Cullen 2008

6 Liu, Liang and Halliday 2014; Pils 2014; Halliday and Liu 2007.

7 Stern 2016, 9.

8 Fu 2010.

9 For example, Fu and Cullen 2008, 124; Lei and Zhou 2015.

10 Some notable human rights advocates claim that NGOs in China are their "reserve army" or "natural ally." See, e.g., Teng 2010.

Studies on the relationship between cause lawyers and social movements in democratic regimes suggest that the impact of cause lawyers is historically contingent. Owing to the professional role of lawyers and their faith in the efficacy of courts and law, they are often in conflict with other movement players who have broader or more radical concerns.¹¹ In authoritarian China, this kind of conflict rarely occurred in the late 1990s and the early 2000s, because civil society was generally repressed. Since the threshold for registration was rather high, most well-known NGOs at that time were established by elite human rights advocates or intellectuals with close ties to these advocates.¹² However, in recent years, as the Chinese state has begun to employ more complex policy tools to govern NGOs, the situation has changed. On the one hand, local governments have opened up space for social organizations by relaxing the criteria for registration and by financially supporting service-oriented NGOs. On the other hand, the same governments also keep these organizations in check by penalizing activists who become involved in disruptive and confrontational activities.¹³ While these measures have imposed new constraints on NGOs, they have also provided opportunities and resources for non-elite citizens to establish new organizations. As a result, China's civil society has become more differentiated. Whether or not human rights lawyers are still able to find an affinity with other actors in civil society is now an empirical question that needs to be investigated.

Before I elaborate my analysis, it is necessary to explain what the equal education campaign is a case for. The campaign is a special case in many ways. Unlike many examined cases in which human rights advocates and lawyers play auxiliary roles such as providing *pro bono* aid,¹⁴ in the equal education campaign, human rights advocates in the OCI actually led the collective action. In fact, even for the OCI, the campaign was extraordinary. The OCI was established in 2003 by Xu Zhiyong 许志永, Teng Biao 滕彪, and their colleagues. Xu and Teng both received their PhDs in law from Peking University and earned their reputations as rights lawyers through criticizing the unconstitutionality of China's custody and repatriation regulations in the Sun Zhigang case. The original intention of the OCI was to promote China's democratization and rule of law by consolidating the fragmented "rights defence movement." However, prior to the equal education campaign, activists within the organization were mostly dealing with individuals, such as victims of contaminated milk. The equal education campaign was the first case in which the OCI successfully represented and campaigned on behalf of a large and visible group in society. When Xu Zhiyong was

11 Sarat and Scheingold 2006.

12 For example, many of the earlier NGOs in China's AIDS movement were established by notable human rights advocates, for example Wan Yanhai and Li Dan. Leading activists in China's oldest environmental NGOs, such as Liang Xiaoyan and Wang Lixiong, are also closely connected to human rights lawyers and even dissident intellectuals.

13 Spiers 2011; Teets 2014.

14 With reference to Fu and Cullen's taxonomy, the human rights lawyers in the cases are mostly "moderate lawyers" who take the state's discourse of rule of law seriously and incline to solve problems within the state's legal institutions. Fu and Cullen 2011.

imprisoned in 2013, most of the OCI's activities were brought to an end. It was prudent to assume that opportunities for human rights advocates to lead and organize other such campaigns would be curtailed, at least in the near future. Considering this background, I do not intend to use the case to generalize a model for inter-organizational relations in China's civil society. However, because the campaign is an extreme case, I regard it as particularly useful for exploring the boundaries of the "rights defence movement" and how different visions of resistance come into play in China's fledgling public sphere.

Data and Method

This study is part of a larger project on civil society activists in China. The ethnographic data presented here consist of two parts. The first covers the OCI and the equal education campaign. From 2011 to 2015, I made four field trips to Beijing. During these trips, I conducted in-depth interviews with 11 human rights advocates and lawyers who had been working for the OCI, or who were closely connected to the organization. To understand how the OCI had organized the equal education campaign, I also interviewed five activists from the campaign. Some of these activists were university students working as volunteers for the OCI; others were migrant parents in Beijing. In addition to these interviews, in the winter of 2012 and the spring of 2013, I immersed myself in various campaign activities, such as migrant parents' meetings with the OCI, their monthly petitions to the government, street petitions and open salons.

The second part of the data focuses on the migrant community NGOs not directly involved in the campaign. In 2011, 2013, 2014 and 2016, I conducted interviews with 12 activists in migrant community NGOs in Beijing, Shanghai and Guangzhou. I chose these three places not only because they are big cities with large migrant populations but also because they all have civil society organizations working on the issue of migrant children's education. My interviewees during these field trips had either dedicated themselves to the cause of migrant children's education, or else had been involved in migrant families' struggles for their children's education rights.

The article is arranged as follows. In the next section, I introduce China's *hukou*-based education system and migrant children's education problems. This section is followed by a description of how the OCI and migrant community NGOs fought for equal education. I then analyse the fissures between these two types of organizations from three perspectives: the activists' views on what constitutes radical strategy, their policy goals, and the target audience of their advocacy. I maintain that underlying these fissures are two different philosophies of political struggle. I elaborate these philosophies by analysing the different understandings of the relationship between the "rights defence movement" and democratization, the organization of civil society in an authoritarian regime, and the formation of "rights consciousness" (*quanli yishi* 权利意识). I discuss the implication of this case study in my concluding remarks.

Migrant Children's Education: Policies and Practices

Ever since labourers have been allowed to move freely in China, migrant families have found it difficult to find suitable places to educate their children. Although the amended Compulsory Education Law, passed in 2006, stipulates that migrant children should have equal access to compulsory education (Grade 1 to Grade 9), in practice, the *hukou* restriction in school enrolment still poses problems for many migrant families.¹⁵

The first and foremost problem is that although migrant children's right to compulsory education is advocated at the national level, it is not properly guaranteed at the local level. Unable, or unwilling, to accommodate all children in public schools, local governments often require migrant children to provide additional documents to certify their long-term residency.¹⁶ A research report published in 2014 suggests that only 69 per cent of migrant children in China are enrolled in public schools, while the rest attend substandard, privately run schools.¹⁷ Since 2014, in the guise of maintaining "population control," municipal governments in several big cities, including Beijing, Shanghai and Guangzhou, have increased the enrolment requirements for migrant children to attend public schools.¹⁸ As a consequence, fewer migrant children will have access to public schools.¹⁹

A further problem concerns the issue of where migrant children should go after finishing Grade 9. Since the Compulsory Education Law does not guarantee migrant children's right to secondary education, their access to high schools (Grade 10 to Grade 12) and vocational schools depends entirely on local policies. Some local governments in China today issue "work and residency certificates" (*gongzuo juzhu zheng* 工作居住证), or "talented resident certificates" (*rencai juzhu zheng* 人才居住证) to migrant workers with professional skills.²⁰ These certificates provide the children of these workers with equal access to education beyond Grade 9. However, migrant children whose parents do not have the certificate have to study at high schools in the place of their *hukou* registration, or else simply drop out of school after Grade 9, unless their family can afford

15 See Compulsory Education Law of the People's Republic of China, Art. 12.

16 For example, local government bureaucracies in Beijing and Shanghai have long been asking migrant children to provide "five certificates" (*wuzheng*), which include a temporary residence permit, *hukou* registration record (in the children's hometown), proof of parental employment, proof of residency, and a certificate verifying a lack of guardianship in their hometown. These certificates are not easy to gather. Interview with NGO practitioner, Beijing, 8 January 2014; interview with NGO practitioner, Shanghai, 25 June 2013.

17 New Citizenship Program 2014.

18 The central government has decided that in cities with populations greater than five million, such as Beijing, Shanghai, and Guangzhou, the population needs to be tightly controlled. See State Council 2014.

19 Interview with NGO practitioner, Shanghai, 15 September 2016; interview with NGO practitioner, Beijing, 17 July 2015. Also see Chen, Jiabin, Wang and Zhou 2017.

20 The criteria for the "work and residency certificate" vary across cities. For example, in Beijing, Shanghai, and Guangzhou, in principle, a college degree is demanded.

expensive tuition fees.²¹ In recent years, municipal governments in big cities such as Beijing and Shanghai have encouraged migrant children to attend vocational schools, offering an option for migrant children who do not want to leave cities. But, in China, choosing vocational school largely means giving up the chance to attend college. These policy arrangements thus largely deprive migrant children from poor families of opportunities for upward mobility.²²

The Equal Education Campaign and Its Potential Collaborators

Pre-existing migrant community NGOs

In each of the three cities, there are several migrant community NGOs. The founders of these organizations have different backgrounds. Some of the founders are intellectuals. For example, Zhang Yichao 张轶超 was previously a graduate student in philosophy at Fudan University and worked as a volunteer in a poorly equipped private school for migrant children. Inspired by the French movie, *The Chorus*, he set up a choir in the school, which later became the basis of Jiuqian 久牵, a non-profit organization that teaches music to migrant children. Some NGO founders are themselves migrant workers. For example, United Heart Home of Hope (*Tongxin xiwang jiyuan* 同心希望家园), a self-help network providing childcare for working mothers, was established by Ma Xiaoduo 马小朵, a female migrant worker in Beijing. Ma decided to establish her own organization because in her eyes many NGOs were not paying enough attention to the role of women in community organization. Another type of migrant community NGO is founded by social workers. These organizations are usually partially or fully dependent on the state for funding. Some of them have taken an active part in state-initiated community building programmes.

These organizations do not all focus exclusively on the issue of migrant children's education, but as they are closely connected to the migrant community, activists in these organizations occasionally become involved in migrant families' struggles for their children's right to education. For example, Migrant Workers' Home (*Gongyou zhi jia* 工友之家), an NGO in Beijing, has established a school for migrant children who have been refused entry to public schools. Whenever local government bureaucracies attempt to close down the school in the name of "regulating illegal schools," activists in the Migrant Workers' Home mobilize migrant families and celebrity journalists to protest. In another case, activists from Jiuqian, whose main programme is to teach migrant children music, have also organized and represented migrant families who are unable to procure the "five certificates" in negotiations with government officials. Migrant community

21 When I was doing fieldwork in Beijing in 2012, the fees were already as high as 200,000 yuan, which was far beyond what ordinary migrant families could afford. Interview with campaign activist, Beijing, 11 December 2012.

22 For a detailed discussion on how the vocational school policy has shaped migrant children's identity and class consciousness, see Ling 2015.

NGOs have also been involved in advocacy campaigns. For example, Migrant Workers' Home and the New Citizen Program (*Xingongmin jihua* 新公民计划), a Beijing-based organization, have both published research reports on the education problems faced by migrant families. Besides these efforts, some activists have proposed policy suggestions to the state through their personal connections with government officials or via channels provided by scholars.

The OCI and the equal education campaign

Unlike the NGOs mentioned above, the OCI had never worked on migrant children's right to schools prior to the equal education campaign. Xu Zhiyong and his colleagues at the OCI first came into contact with the migrant community in the winter of 2009, when a migrant mother turned to the organization for legal aid. Through this migrant mother and her network in the migrant community, human rights advocates at the OCI learned that many migrant families were having difficulties enrolling their children in public schools. Later, they also came to realise that a reform of the school enrolment system might have an impact not only on migrant families in Beijing but also on the millions of migrant children throughout China. The organization thus decided to launch a campaign for equal education.

In 2010, an office for equal education was established at the OCI, and a full-time staff was assigned to organize migrant parents. Advocates at the OCI named the campaign, "Citizens' united action for equal education" (*jiaoyu gongping gongmin lianhe xingdong* 教育公平公民联合行动). By opening a QQ chat group and constructing a website, the OCI was able to build connections with many migrant parents in a short period of time, and around 50 of these parents later became activists or volunteers with the campaign.

To promote the campaign's vision, Xu Zhiyong and his colleagues devised a number of strategies. First, Xu encouraged major activists among the parents to protest at the Ministry of Education and at the education bureau of the municipal government of Beijing. Second, the OCI networked with several scholars in law, education, and sociology. Of these scholars, the most prominent was Zhang Qianfan 张千帆, a professor of law at Peking University. He openly supported the campaign and frequently expressed the opinion, via mass media, that China's school enrolment system was unconstitutional.²³ Third, the OCI drafted a "non-governmental proposal" (*minjian fang'an* 民间方案) for reforming China's college enrolment system, and posted it on the internet. The proposal stressed that education was a child's basic right, and demanded that the state "provide equal education opportunities for children of all tax payers, regardless

23 For example, "Guanyu tiqing guowuyuan shencha bing xiugai jiaoyubu 'putong gaodeng xuexiao zhaosheng gongzuo guiding' de jianyi" (A requisition to the State Council on reviewing and revising the "regulation on the enrolment of general institutions of higher learning" by the Ministry of Education), *Aisixiang*, 2 November 2011, <http://www.aisixiang.com/data/45948.html> Accessed 20 October 2016.

of *hukou* location, wealth, and socio-economic status.” In 2012, following Xu’s instructions, leading campaign activists lobbied members of the National People’s Congress (NPC), and convinced 60 of them to submit the proposal at the annual plenary session of the congress. Last but not least, in an effort to garner wider support, the OCI also encouraged campaign activists and volunteers to launch street petitions in migrant workers’ residential communities. By March 2012, 100,000 people had signed in support of the “non-governmental proposal.”

These strategies were quite effective at helping the migrant parents get their message across to the wider public. From 2011, major activists from the campaign were invited on to some popular TV talk shows, such as Tiger Talk (*Yihu yixi tan* 一虎一席谈) on Phoenix Television and Adversary (*Duishou* 对手) on CCTV, to express their opinions about China’s education system. Newspapers had also begun to report migrant parents’ collective actions.²⁴ As so many NPC deputies had submitted the “non-governmental proposal” to the congress, the problem of migrant children’s lack of access to education became a heated discussion topic at the annual meeting of the congress in 2012. In the opening session of the NPC annual meeting, the minister of China’s education bureau, Yuan Guiren 袁贵仁, disclosed to journalists that the government was considering the feasibility of relaxing the *hukou* restriction in school enrolment.

However, although the state council issued a requirement in 2012 for provincial-level governments to enact new regulations on migrant children’s school enrolment, improvement at the local level remained quite limited.²⁵ In major host cities of the migrant population, such as Beijing, Shanghai, and Guangzhou, most migrant children were still excluded from public schools even after the municipal governments had adjusted their policies. Despite the limited achievements, the state began to suppress the campaign in 2013. Xu Zhiyong was initially placed under strict supervision and then arrested for “picking quarrels and making troubles” (*xunxin zishi* 寻衅滋事). As the OCI was closed down, and the migrant parents lost their leader, all campaign activities, including the monthly protests and the street petitions, quickly subsided.

Fissures between Human Rights Advocates and NGO Practitioners

Most of the activists working in migrant community NGOs were aware of the equal education campaign but none showed any interest in joining the movement or assisting the OCI. Xu Zhiyong also personally knows many of the activists from the NGOs mentioned above. However, he did not invite any of them to participate nor did he make use of the network established by the NGOs in the mobilization of his own campaign. This is because of the huge gaps between the two parties regarding the strategies employed.

24 See, e.g., Li 2011; Lan 2011.

25 State Council 2012.

Divergence on taking radical strategies

The most salient gap lay in the two groups' understanding of radical strategies. For most NGO practitioners, the strategies employed by the human rights advocates at the OCI were seen as too risky. NGO practitioners held this view for two reasons. First, the OCI's strategies involved a lot of mass mobilization. Second, the campaign publicly criticized the *hukou* restriction in school enrolment and attempted to shame the government for not being able to provide migrant children with access to public education. On the other side, the OCI human rights advocates regarded a campaign without mass mobilization and public criticism as too mild and thus ineffectual.

Behind this divergence are the different modes of function adopted by each organization. Most migrant community NGOs are registered. Besides advocacy campaigns, many run service-delivery programmes. For example, in all the three cities, there are migrant community NGOs running after-school programmes that help rural migrant children adapt to life in the city. To ensure the smooth operation of these programmes, these organizations need long-term, steady funding from government bureaucracies and/or private foundations. NGO practitioners are afraid that getting involved in disruptive and confrontational activities will cost them their status as non-profit organizations.²⁶ In an interview, an activist in Shanghai reported that, "If we help Xu Zhiyong to organize a protest, we will no longer be able to provide services to migrant children."²⁷ Therefore, although many NGO practitioners also strongly believe that the current enrolment system is unfair and unjust, they prefer to lend a helping hand only in individual cases, or to negotiate with government bureaucracies through personal channels.

Xu Zhiyong and his colleagues, on the other hand, have habitually employed strategies such as publicly criticizing the government since the Sun Zhigang case. Within the circle of human rights advocates who believe that the "rights defence movement" should lead China to political reform, being radical is the norm. In fact, during the equal education campaign, Xu and his colleagues were also conducting another campaign, one calling for the public disclosure of government officials' personal assets, which also involved frequent collective actions.

On another level of analysis, another reason human rights advocates at the OCI were not afraid to use radical strategies was because a moderate level of state repression would hardly impinge on their network. Even before the launch of the equal education campaign, the OCI, which was registered as a business, had been closed down by the government for "tax evasion," and this was not the first time that the organization had encountered this kind of difficulty. After being released, Xu did not even bother registering the organization as a business again. The human rights advocates in the OCI simply changed the

26 Registered NGOs have to go through the local government's annual review in order to keep their status as non-profit organizations. Those organizations that are involved in confrontational activities, or simply show the potential to be involved in this kind of activity, will be warned.

27 Interview with NGO practitioner, Shanghai, 15 September 2016.

name of their organization to Citizen (*Gongmin* 公民) and continued their involvement in various protests in support of the “new citizen movement” (*xin gongmin yundong* 新公民运动). Additionally, the OCI was funded by overseas foundations such as the National Endowment for Democracy. These foundations usually provided support for the OCI for its broader work promoting the rule of law and constitutional democracy in China, rather than for carrying out projects in any specific field. At least before the state began to systematically imprison human rights advocates and lawyers in 2013, this kind of funding had provided the OCI with some level of protection.

Divergence on policy goals

Beside the divergence on whether the campaign should employ radical strategies, human rights advocates at the OCI and NGO practitioners also disagreed with each other over which policies the campaign should aim to reform.

At the outset, the equal education campaign had a wide range of policy goals, including migrant children’s enrolment in high school and equal access to middle school (Grade 6 to Grade 9). But, after July 2010, the goal of the campaign reoriented to advocate for migrant children’s right to sit the college entrance exam.²⁸ From then on, leading activists in the campaign used the terms “equal education campaign” and “campaign for college enrolment in different places” (*yidi gaokao* 异地高考) interchangeably to refer to themselves. The “non-governmental proposal” also only discussed the reform of China’s college enrolment system. In the proposal, it was advocated that a student should be granted eligibility for college enrolment in a certain province so long as he or she had a successive three-year high school academic record in that province.

This change in direction was adopted because of two main concerns. First, while Xu Zhiyong and many other human rights advocates at the OCI knew that migrant children’s access to compulsory education had not been properly guaranteed, they considered that a campaign that struggled for rights beyond laws would have a greater “boundary pushing” effect than a campaign that operated within existing laws.²⁹ Second, the OCI activists believed that, compared with a reform of the high school enrolment system, the reform of the college enrolment system would initiate more fundamental changes. This was because high school enrolment was organized at the local level whereas college enrolment was organized at the national level.³⁰

Activists in migrant community NGOs disagreed. First of all, in their opinion, since local governments in big cities had continued to institute additional

28 According to current regulations, in principle, an applicant can only sit the college enrolment exam in the province where his or her *hukou* is registered.

29 Interview with campaign activist, Beijing, 18 December 2012; interview with Xu Zhiyong, Beijing, 17 December 2012.

30 Interview with campaign activist, Beijing, 29 December 2012; interview with campaign activist, Beijing, 18 December 2012.

requirements for migrant children seeking to enrol in primary school (Grade 1 to Grade 6) and middle school, defending children's equal access to compulsory education was still an urgent task, even if this right had already been codified in law.

In addition, most NGO practitioners did not regard the locally organized high school enrolment as less important than the state organized college enrolment. When discussing migrant children's education problems, these NGO practitioners usually emphasized that for the vast majority of rural migrant children whose parents were unable to obtain a "work and residency certificate," the *hukou* restriction in high school enrolment was the first insurmountable hurdle they encountered after completing their compulsory education. Advocating for the right to college without mentioning the fact that most migrant children did not even have access to high school would only benefit a small group within the migrant population. This divergence in aims led quite a few NGO practitioners to draw the conclusion that the OCI had organized a "rich people's movement," or a "middle class movement."³¹ Some of them suggested that considering the fact that many migrant families would not choose to send their children to high school after Grade 9, a more realistic goal was to push the government to improve the education at vocational schools.

Divergence on target audience for advocacy

The advocacy of the activists at the OCI was aimed solely at the state or policy-makers, and the response and attitude of local residents was seen as being of secondary importance. When justifying the campaign's claim that migrant children should have the right to sit the college enrolment exam, campaign activists on occasion argued in public that because of the extremely unequal distribution of educational resources in China,³² local children in cities like Beijing and Shanghai were the privileged group, and that by allowing migrant children to dilute this privilege, the overall fairness of China's education system would be improved. For example, on the TV talk show, *Adversary*, one activist asserted, "The acceptance rate [of college enrolment] in Beijing is now over 80 per cent. If we could double the students in Beijing, the acceptance rate would be lowered to 40 per cent, which would be approximately the national average. Because of the high acceptance rate, Beijing is like a piece of low land. If we release the valve around this lowland and let water fill in, it would soon be levelled up."³³

31 Interview with NGO practitioner, Shanghai, 15 September 2016; interview with NGO practitioner, Beijing, 8 January 2014; interview with NGO practitioner, Shanghai, 25 June 2014; interview with NGO practitioner, Beijing, 28 November 2012.

32 This is related to the quota system in China's college enrolment. Because there are many elite universities and colleges in Beijing and all these elite universities and colleges tend to allocate a disproportionately large number of places to local students, it is easier for students in Beijing to enrol in elite universities and colleges. For discussions on the inequality of the quota system, see Zhang 2011a.

33 For a clip of the programme, see <http://tv.cntv.cn/video/C25539/7b00c80fb9294dd48e59d049995d1be5>.

This line of argument annoyed some local residents. During the campaign, countermovements sprang up in different regions, especially in Beijing and Shanghai. For example, members of the Beijing Guo'an football team (*Beijing guoan zuqiu julebu* 北京国安足球俱乐部) fan club openly blamed the deteriorating traffic and environment in the city on the migrant population, and once even presented a silk banner to the education bureau in Beijing to praise the municipal government for successfully preventing the “outsiders” (*waidiren* 外地人) from seizing local resources.³⁴ Human rights advocates at the OCI and campaign activists chose to ignore such local reactions and occasionally suspected that the participants were hired by state agencies in an attempt to undermine the solidarity of the equal education campaign.³⁵

NGO practitioners, on the other hand, tended to be more wary of local backlashes. Some of them suggested that since local governments would not relax the *hukou* restriction in school enrolment without considering how local residents would react, soliciting support from local residents was of real importance. They also suggested that to elicit the sympathy of local residents, a campaign should highlight the real difficulties in ordinary people's daily life, rather than abstract principles of equity.³⁶

Different Philosophies of Struggle

As outlined above, the OCI human rights advocates and migrant community NGO activists disagreed over the goals and strategies of the campaign. The fundamental basis of this fissure lay in their oppositional understandings of how resistance should be organized and how an authoritarian system might be transformed. In other words, in their different philosophies of political struggle.

On the relationship between “rights defence movements” and democratization

Most of the human rights advocates and lawyers who formed the OCI believe that citizens' “rights defence movements” are part of China's democratic movement. Some of them even perceive the various “rights defence movements” as a means to achieve constitutional democracy.³⁷ Although these advocates have seldom discussed how fragmented acts of resistance might contribute to the formation of democratic institutions, having the “big picture” in mind, they tend to think that enduring state repression, or even sacrificing some short-term interests during “rights defence movements,” is unavoidable. As leaders of these

34 Guo'an is a soccer team in the city of Beijing. Fans claim that only those who watch Guo'an games in the Beijing Workers' Stadium are “real Beijingers.” They also complain that the surge in migrant populations in recent years has undermined traditional culture in Beijing.

35 Observation note, Beijing, 29 November 2012.

36 Interview with NGO practitioner, Shanghai, 25 June 2013; interview with NGO practitioner, Beijing, 28 November 2012.

37 For example, Zhang 2011b.

movements, they require themselves to be dedicated, and sometimes expect the same of others.

Xu Zhiyong and his colleagues' attitude during the equal education campaign well illustrates this rationale. State repression of the campaign began as soon as the OCI became involved. Leading activists among the migrant parents were now and then invited to "have tea" in police offices. The security police also harassed campaigners by exerting pressure on their relatives, friends, landlords, superiors in their work units, or even teachers in their children's schools.³⁸ When faced with these challenges, Xu Zhiyong urged these migrant parents to be more courageous and confident, as their goal of promoting equal education was a legitimate and just one. To encourage more people to support the protests and street petitions, he also frequently promised participants that the state policies would certainly be changed if more than 100,000 people signed the petition to support the "non-governmental proposal."³⁹

Most migrant community NGO practitioners recognize and appreciate the courage of the human rights advocates in publicly articulating constitutional principles and principles of justice and fairness. Many also agree that the breathing space for civil society will not be substantively enlarged unless China's formal political institutions are transformed. However, they do not regard "rights defence movements" necessarily as being a constituent part of China's democratic movement. On the contrary, almost all of the NGO practitioners believe that helping the needy to defend their rights is in itself meaningful. Hence, when protecting the interests of rights defenders comes into conflict with articulating political ideals in public, NGO practitioners usually prioritize the former.

With respect to the case of the equal education campaign, NGO activists pointed out that the OCI had not fully considered the negative impact the campaign would have on participating migrant families. In these activists' opinion, the human rights advocates' insistence on employing radical strategies had not only endangered themselves but had also put many ordinary migrant parents and children in a dangerous position. One activist suggested in an interview that the "OCI was cultivating revolutionaries, rather than promoting migrant children's welfare."⁴⁰ Another activist suggested that since the vast majority of migrant parents working with the OCI either had "work and residency certificates" or earned a decent income, a better way to help their children would have been to inform them how to prepare for the college entrance exam in their hometown, or to assist them in applying to college in Hong Kong, Singapore, and the United States.⁴¹

38 One of the leading activists told me in an interview that her family had been forced to move twice within a few months. Because of pressure from the police, her daughter's teacher openly sneered at the girl in class, labelling her family as "freeloading outsiders" (*baichi baihe de waidiren*). These comments made her daughter extremely upset about her involvement in the campaign. Interview with campaign activist, Beijing, 11 December 2012.

39 Observation note, Beijing, 11 December 2012; interview with Xu Zhiyong, Beijing, 13 July 2011.

40 Interview with NGO practitioner, Beijing, 28 November 2012.

41 Interview with NGO practitioner, Beijing, 15 July 2011.

On the organization of civil society in an authoritarian regime

The OCI human rights advocates believe that where an authoritarian state represses all kinds of political expression, the most important task for civil society is to criticize the state, or encourage the rise of social groups so as to check state power. In such a situation, the role of professional activists is to help whoever is ready to stand up and to amplify these individuals' voices in public. This idea of a total civil society being against a total state has led many human rights advocates and lawyers to ignore the inequality of power within civil society.

When the differences in civil society are too salient to ignore, human rights advocates sometimes choose to veil them in an attempt to uphold an image of a unified civil society. For example, in 2011, activists in the equal education campaign drew a sample of 2,000 people from those who had signed the petition to support the "non-governmental proposal" and conducted a telephone survey. The first draft of the questionnaire was designed by a graduate student intern at the OCI, and it aimed to explore the various problems migrant families encountered at different stages of their children's education. Yet, this questionnaire was rejected during one of the OCI's regular meetings for being "too trivial."⁴² Later, when the survey was carried out, all questions relevant to respondents' socio-economic status were deleted, and respondents' were simply asked whether or not they would like their children to attend the college enrolment exam in Beijing. Disadvantaged migrant families were thus left with no channel to express the idea that college enrolment was not their concern, and the OCI gathered a dataset without variation.⁴³

Most activists in migrant community NGOs think of civil society differently. Working with disadvantaged groups over a long period of time, these activists tend to think that even under an authoritarian regime where all kinds of independent organizations and criticisms are repressed, civil society could still become a place where inequality and domination are reproduced. Therefore, apart from criticizing the state, the function of professional activists also includes helping the unseen and the unheard to "enter the public sphere."⁴⁴ With respect to the equal education campaign, some of these activists were critical of the fact that by presenting the demands of a small group as a universal concern, the OCI's intervention reinforced the "class bias" in the public discussion on migrant children's education problems.⁴⁵

42 Interview with campaign activist, Beijing, 29 December 2012.

43 The survey asked respondents the following five questions: how old are you?; When did you come to Beijing?; Why did you come to Beijing?; Do you want your children to sit the college enrolment exam in Beijing?; Why do you want your children to sit the exam in Beijing? With regard to the fourth question, almost everyone said "yes." With regard to the last question, most respondents simply said things like "I want my kid to stay in this city."

44 Interview with NGO practitioner, Guangzhou, 24 March 2013.

45 Interview with NGO practitioner, Shanghai, 25 June 2013; interview with NGO practitioner, Guangzhou, 24 March 2013; interview with NGO practitioner, Guangzhou, 23 March 2013.

The imagining of a total civil society standing against a total state has also led many human rights advocates at the OCI to ignore the conflicting interests within civil society. In the advocates' view, the fundamental problem lies in the state policies that hierarchize citizens' rights according to *hukou* status and thus the conflicts would naturally be resolved when these unjust policies are abolished. When discussing the rise of local resistance to the campaign in an interview, Xu Zhiyong made an analogy with the civil rights movement in America. He believed that the participants in the countermovements in Beijing and Shanghai were like the whites who had risen up to deny the civil rights of the black population. He suggested that there was no need to worry about such opponents, because "they [participants in the countermovements] are not on the side of justice, and are doomed to failure."⁴⁶

Activists from the migrant community NGOs, on the other hand, are less optimistic about the dissipation of local opposition. Several NGO activists in Shanghai mentioned that while those taking part in the countermovements could be regarded as extreme cases, it was already common practice for local families, especially the well off, to send their children to "key-point schools" (*zhongdian xuexiao* 重点学校) so they did not have to mix with migrant children.⁴⁷ Hence, rather than criticizing the state, these activists are usually more concerned with cultivating mutual understanding between different social groups within civil society.

On the formation of "rights consciousness"

Human rights advocates and lawyers at the OCI regard state repression as the biggest if not the only obstacle preventing citizens from defending their rights. These advocates usually believe that if citizens could be shown that the constraints imposed by the state are not insurmountable, then more people would stand up to claim their rights. This rationale, together with their imagined view of a total civil society, have led them to think that prioritizing the interests of a small group in a "rights defence movement" is a reasonable choice. In an open salon organized by the OCI campaign, when an audience member asked Zhang Qianfan about the class bias in the campaign's policy suggestion, Zhang simply acknowledged it and then sought to justify it. "The 'rights defence movement' in China can only develop step by step. If today this group of migrant parents [who have 'work and residency' certificates or who are well off] can defend their rights through struggle, people may be inspired and see hope. Tomorrow other groups may join us, and then the movement will have grown."⁴⁸

46 Interview with Xu Zhiyong, Beijing, 17 December 2012.

47 Even if migrant children are able to obtain the necessary documents in Shanghai, the municipal government only allows them to attend certain schools; public schools of better quality, or the "key-point schools," are not usually open to migrant children. Interview with NGO practitioner, Shanghai, 15 September 2016; interview with NGO practitioner, Shanghai, 6 July 2011.

48 Observation note, Beijing, 12 December 2012.

Most activists in the migrant community NGOs are suspicious of Zhang's assumption. In interviews, they suggested that many rural migrant workers accept the state's arrangement that migrant children only enjoy nine years of education in cities not because they are afraid of state repression but rather because they never truly identify as city residents themselves.⁴⁹ With respect to migrant workers' subjective perceptions of their children's rights, several activists mentioned the impact of some new local policies. In recent years, municipal governments in big cities have gradually de-emphasized the *hukou* system and have introduced more complex and precise means to regulate the migrant population. For example, in 2015, the municipal government of Shanghai abolished the previous "talented resident" certificate and introduced a point-based system (*jifenzhi* 积分制) based on education level, age and social security payment record to assess migrant workers' claims for social welfare. Under the new system, a migrant child may attend high school and sit the college enrolment exam in Shanghai if his/her parents' scores reach a certain level.⁵⁰ In an interview, one activist commented, "[Following the introduction of the new system,] rather than feel angry about the fact that their children's right to public schools has been taken away, migrant workers believe that it is their lack of ability (*mei ben-shi* 没本事) that has caused their children's difficult situation."⁵¹ This activist also suggested that because the exclusion policies have become increasingly buried in other policies, one or two disruptive events, such as in the Sun Zhigang case, were no longer so effective at spurring citizens' "rights consciousness." Professional activists now should concentrate on pursuing a more gradual approach, such as the building up of community among the migrants.

Concluding Remarks

In this article, I analyse the divergent views and strategies of human rights advocates at the OCI and activists in migrant community NGOs in the campaign for equal education. I suggest that human rights advocates tend to employ radical, confrontational strategies and prioritize the articulation of long-term, constitutional principles, whereas NGO practitioners prefer incremental strategies and give more consideration to migrant children's short-term, concrete interests. These divergences have resulted in a lack of cooperation between the two parties. Judging from the influence of the campaign, the failure to work together is politically consequential. Focusing on abstract principles, Xu and his colleagues lacked knowledge of migrant families' needs and wishes. By not forging a

49 Interview with NGO practitioner, Shanghai, 15 September 2016; interview with NGO practitioner, Guangzhou, 4 May 2013; interview with NGO practitioner, Shanghai, 06 July 2011.

50 The deciding factor in the point-based system is educational attainment. For college graduates, reaching the required level is easy as long as one has a job. For migrant workers with a degree from a senior vocational school (*gaozhi*), missing points may be accrued by establishing a social security account and contributing to the account every month on time for 15 years. It is almost impossible for those with less education to accumulate the required number of points.

51 Interview with NGO practitioner, Shanghai, 26 June 2013.

relationship with activists in migrant community NGOs, who had a better sense of how education policies could be implemented and who also had better connections with migrant families, the OCI also missed the chance to conduct a more inclusive and sustainable movement.

This case lends us a new prism through which to view the recent decline in some aspects of human rights activism in China. A common view attributes the decline to a systematic crackdown by the Chinese state since 2014.⁵² However, if we examine the interaction between the most radical human rights advocates and other players in civil society, we discover that the seeds of their decline were planted much earlier. Radical advocates who sought to connect “rights defence movements” with China’s democratization had already become marginalized when the state began to institutionalize NGOs. These advocates were still occasionally able to organize one or two disruptive events before the mass crackdown. However, compared to some registered NGOs, they had already been pushed into a disadvantageous position when it came to creating a grassroots mobilization network and negotiating with the state on concrete policy issues. As these human rights advocates could no longer build any rapport with the new risers in civil society, they had lost the capacity to expand in the social movement sphere.⁵³

My analysis of the case also reveals a methodological issue with studies on China’s civil society. Although many scholars have already noticed the differentiation in civil society,⁵⁴ empirical research on this topic still usually focuses on the interaction between single categories of civil society and the state. The divergence between human rights advocates and migrant community NGO practitioners in the equal education campaign informs us that the Chinese state has controlled civil society not only by imposing constraints on individual organizations but also by structuring the relationship between different types of organizations. Hence, if we want to gain a better understanding of state–society relations in contemporary China, we need to perceive civil society as a field and expend more efforts on investigating how heterogeneous players in this field interact.

As I suggested at the beginning of this article, the equal education campaign is a special case. Having documented the fissure between Xu Zhiyong’s team and migrant community NGOs, I do not intend to argue that cooperation between cause lawyers and NGOs does not exist in China’s civil society. As a matter of fact, although the state has cracked down on human rights lawyers since Xi Jinping 习近平 came to power, cause lawyers’ efforts in expanding litigation have achieved remarkable progress in several fields such as environmental protection.⁵⁵ During this process, cause lawyers usually work closely with NGOs. Of

52 For example, “Mass crackdown on Chinese lawyers and defenders,” Hrichina.org, 16 February 2017, <http://www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders>. Accessed 3 March.

53 In Cross and Snow’s taxonomy, radical human rights advocates in China become “opportunists” or “loners” who are not trusted by grassroots peers. Cross and Snow 2011.

54 For example, Wang et al. 2013; Wu 2012; Hassid 2011;

55 For details, see Bourdeau and Schulson 2016.

course, these lawyers' idea of an ideal civil society is also in striking contrast to that of radical human rights advocates. Human rights advocates' ideal of a civil society is close to the civil society advocated by dissident intellectuals in Eastern Europe before the 1990s: that is to say, they envisage civil society as being the antithesis of a totalitarian state, and as providing a basis for challenging the hegemonic power of the state.⁵⁶ Less radical cause lawyers' understanding of civil society, on the other hand, is more akin to a Habermasian model, in which civil society is seen as the foundation of a public sphere where citizens could problematize social issues and build solidarity through communicative actions.⁵⁷ To what extent could the cooperation between these cause lawyers and NGOs promote the development of civil society in China? And how long would it be before the authoritarian state became intolerant of these "less radical" lawyers? We need to accumulate more empirical details to answer these questions.

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Biographical note

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摘要: 本文通过一个个案来分析维权律师和 NGO 从业者之间的裂痕。从 2009 年起, 公盟, 一个维权律师的组织, 领导了一场呼吁流动儿童教育权利的运动。虽然扎根于流动人口社区的 NGO 早就已经开展过不少针对这一议题的反抗活动, 在这次运动中, 两种组织之间并没有形成任何合作。基于田野调查资料, 本文展开了两种活动家在策略和运动目标选择中的差异, 以及这些选择与他们对于政治斗争、政治变迁的理解的关系。这个个案为我们理解近期中国维权运动的衰落提供了一个新的视角, 同时显示了考察公民社会内部结构的重要性。

关键词: 公民社会; 维权律师; NGO; 流动儿童; 教育公平

⁵⁶ Cohen and Arato 1992, 31.

⁵⁷ Habermas 1987.

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