

## Chapter 13

# The Political Meaning of the Crime of “Subverting State Power”\*

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The moment you try to understand your country, you have already started down a path of crime.

— Ai Weiwei (艾未未)<sup>1</sup>

After it established itself as the ruling power in 1949, the Chinese Communist Party (hereafter “Communist Party” or “Party”) immediately launched a movement to detect and repress counter-revolutionaries. In July 1950, the Government Administration Council and the Supreme People’s Court jointly issued the Regulation Concerning the Suppression of Counter-revolutionary Activities and in February 1951, the Central People’s Government promulgated the Regulation on Punishing Counter-revolutionaries. By the end of the “Great Cultural Revolution,” the practice of criminalizing “counter-revolution” had not only become entrenched in the law; it was also an important part of political and social life.

In the 1979 Criminal Law of the People’s Republic of China, twenty counter-revolutionary crimes were set out in Chapter One of the division containing provisions on specific crimes.<sup>2</sup> Among these, Article 90 defined the crime of counter-revolution as “any act committed with the aim of overthrowing the political power of the dictatorship of the proletariat and the socialist system, and endangering the People’s Republic of China.” The 1997 Criminal Law of the People’s Republic of China abolished the designation “crimes of counter-revolution” and replaced it with “crimes of endangering national security.” This, at the

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time, was thought of as progress, both conceptually and practically. At least in form, it seemed to free the Criminal Law from its old ideological shackles; this liberation seemed to be in line with the political changes occurring domestically, as well as with international trends. Article 105 of the 1997 Criminal Law stipulates in its first subsection that:

Among those who organize, plot or carry out the scheme of subverting the State power or overthrowing the socialist system, the ringleaders and others who commit major crimes shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years; those who take an active part in it shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

In its second subsection, Article 105 provides that:

Whoever incites others by spreading rumors or slanders or any other means to subvert the State power or overthrow the socialist system shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; and ringleaders and others who commit major crimes shall be sentenced to fixed-term imprisonment of not less than five years.<sup>3</sup>

These two provisions define “subversion” and “incitement to subversion.” The present chapter focuses on the political background and meaning of these two variants of the crime of subversion.<sup>4</sup>

## **Deprivation of the Right to Effect a Lawful Change of Government**

In modern democracies, the government is responsible toward the people, and the constitution safeguards the people’s freedom of association, a freedom that naturally includes the freedom to form political associations to ensure that popular demands can find expression through different political parties. Each political party gets the chance to participate in political decision-making by competing in elections; and it is through elections, through the media, non-governmental organizations (NGOs), and various other mechanisms that citizens can

constrain and supervise the exercise of public power. Thus, changes of the ruling party and of political leaders can be effected in a peaceful and lawful manner. While there is room for improvement in Western democracies, the opportunity peacefully to change the government satisfies a minimum standard of modern political civilization that has not yet been met in China.

From 1949, the Communist Party established itself as a typical totalitarian and communist political power in China. Basing its control upon the use of violence and terror as well as ideology, and launching wave after wave of political movements, it trampled on citizens' basic human rights and human dignity. Not only was there no space for civil society, but also the individual's right to privacy and freedom of belief and thought were nonexistent.<sup>5</sup> The Communist Party's monopolization of political power, as well as its control of thought and expression were taken to an extreme degree. Any word or act opposing the Communist Party or the government, opposing the official ideology, or opposing individual leaders' words or acts could all lead to a person being branded a "counter-revolutionary." Indeed, there were also examples of people who were loyal to the idea of Communism and to individual leaders, but who were so labeled nevertheless.

After the end of the Great Cultural Revolution, a change in the form of governance occurred. Class struggle, in particular, and other rigid ideological doctrines were abandoned, along with the planned economy, while elements of competitive market economy were introduced. This did lead to great social and political changes — but the Communist Party never changed its monopoly on political power, and China remained strictly a one-party state. Just as the 1954, 1975, and 1978 Constitutions had done before, so, too, did the 1982 Constitution enshrine the Communist Party's leading role, and this turned the provision concerning the freedom of association in Article 35 of the Constitution into an empty clause, not to say a trap ensnaring those who sought to rely on it. The inherent contradiction in the Chinese Constitution is that the fundamental rights and freedoms of citizens set out in its second chapter cannot be realized under the power structure established by its other chapters. The right peacefully to change their government cannot even be sensibly discussed in such conditions. And yet in fact, the right to revolution that is mentioned by

Locke<sup>6</sup> and in the American Declaration of Independence is also articulated in some Marxist theorists' works,<sup>7</sup> while parts of the Preamble of the Constitution [of the People's Republic of China], draw on the "revolutionary history" of the Communist Party. Only, by establishing totalitarian political rule in the name of "perpetual revolution," the Communist Party actually ended all possibility of revolution. Yet, according to Arendt, "the goal of revolution has always been and will always be freedom."<sup>8</sup> So the Communist Party's "revolution" has in fact only been a false revolution, or a counter-revolution.

It is this kind of political system, a system that robs the people of the right to elect their own government and of the right to wage revolution, that has created the crimes of "counter-revolution" and of "subversion of state power."<sup>9</sup> The very fact that it uses the "crime of subversion of state power" to punish dissidents shows that this political power lacks legitimacy; this very fact already shows that this political power ought to be changed. Legitimacy means that a political system deserves to be accepted. Historically, different kinds of system have enjoyed legitimacy, but for governments in our time, their only legitimate source of legality is approval by the people, gained through a system of elections. Since the totalitarian system rests on the use of violence and ideology, it is incapable of obtaining people's genuine approval. After the totalitarian ruler dies and the totalitarian system he built falls apart, those in power have no choice but to introduce reforms in order to alleviate the ensuing crisis of governance and regain legitimacy by acquiring merit in the eyes of the ruled. But even if they can achieve a situation in which basic human rights are protected and living standards are continuously rising, such rulers will at best attain "justification" of their rule; they can never attain "legitimacy."<sup>10</sup> How much worse, then, are the chances for a reform that only promotes the economy and does not make any progress at all in the area of politics! Through such a process, not only will basic rights not be protected but social and economic problems will also become more and more serious: in particular, issues of collusion between officials and businesspeople, rising wealth disparity, and environmental degradation.<sup>11</sup>

Even democratic elections can only superficially be seen as a source of legitimacy. The true source of legitimacy is freedom of expression. The Party-state system lacks legitimacy from its very beginnings,

because there are neither elections nor popular approval to legitimize it. In order to maintain political control/rule, the system must repress the people’s efforts to fight for democracy and freedom. It must take away or restrict the right to elections; suppress non-official media and carry out “prior restraint” censorship; impose restrictions on collective demonstrations; and suppress civil society NGOs. It must use the state security apparatus as well as domestic security squads belonging to the police to control thought, and bring the administration of justice and education under Party control. Viewed from this angle, the crime of “subversion of state power” is a repressive instrument used by the Party which is the last means save for the use of military force.

### **Civil Resistance under Post-Totalitarianism/ Neo-Totalitarianism**

The translation and distribution of *Havel’s Collected Works* in Mainland China made a mark in contemporary China’s intellectual history. Even though the book was not openly on sale, copies were widely distributed in private and on the Internet, and thus Havel’s thought came to influence many civil society intellectuals. Havel had used the concept of post-totalitarianism to provide an incisive analysis of the social psyche and people’s conduct in Czechoslovakia; and because post-1989 China greatly resembled this situation, Chinese intellectuals drew great hope from Havel. The immediate reason that Havel’s books could not be published in China was that the translator refused to omit the lengthy foreword written for the Chinese edition of this book by Li Shenzhi (李慎之),<sup>12</sup> entitled “The Power of the Powerless and Anti-Political Politics — Life Philosophy in a Post-Totalitarian Age” (无权者的权力和反政治的政治——后极权主义时代的人生哲学). Li believed that China was also in a situation of post-totalitarianism, and many other scholars agreed with this.<sup>13</sup>

Ben Xu (徐贲)<sup>14</sup> believes that from 1949 onward until the end of the Cultural Revolution, the Chinese political system closely resembled the original model of totalitarian government. From the end of the Cultural Revolution until the brutal repression of the students’ movement in 1989, it reflected a post-totalitarian model, whereas the political system after 1989 reflected a “neo-totalitarian” model: in parting with

post-totalitarianism, it reverted to original totalitarianism for help, but was still unable fully to return to Stalinism. According to Xu:

Thus this system generated features drawing on original totalitarianism but also retained some features of the post-totalitarian era; and in addition, it developed some historically new features. [The Communist Party] fell into a state of unprecedented existential fear concerning its prospects as a ruling power; a state that it had never experienced before. This gave rise to a very defensive mindset and meant that whenever there was the slightest attack it became afraid of a “demise of Party and state.” As a result, [the Party] has no confidence in “positive guidance”. Its exercise of political power has gradually reverted to traditional methods, such as for instance reinforcing its plainclothes police contingents and relying on them to carry out comprehensive infiltration and surveillance; further strengthening its totalitarian organization and propaganda apparatus, and controlling the media, public opinion and expression within civil society even more severely, etc. Without any doubt, these [recent] measures represent a regression from post-totalitarianism back toward totalitarianism.<sup>15</sup>

“Neo-totalitarianism” may also be understood as a mere result of post-totalitarianism’s transformation. The political prospects of this system await further analysis.<sup>16</sup>

Whichever of these concepts one uses, it is clear that compared to the Mao Zedong era, Chinese society after 1989 developed a multitude of subtle and complex new features.

With a gradual reduction of ideological jargon, the government has been forced to invent language taken from elsewhere to deal with social changes. But whether it is “Three Represents” (三个代表)<sup>17</sup> or “Harmonious Society” (和谐社会)<sup>18</sup> or “Scientific Development Perspective” (科学发展观),<sup>19</sup> none of these slogans can command genuine respect. In fact, not only do the people show zero enthusiasm for the slogans of the government, but even government and Party officials have also stopped believing in these rigid dogmata. The government’s language has even become the substance of ridicule, parody, and spoofs in popular verses, jokes, video clips, etc. People who enter the Party do so out of personal interest, and the status attached to being a Party member cannot compare to what it once was. The Communist Party has thus become a for-profit group lacking in self-confidence; it

is an organization for mutual benefit endowed with special powers; and it no longer has anything to do with ideological attitudes. It has hijacked the state's power to make policies and has thus become a crucial obstacle to political transition.

Through policies that liberalized the economy, a superficial kind of prosperity was achieved and living standards were improved. But the repression of the democratic movement by means of the 1989 massacre and the ensuing great reckoning and purge made everyone first afraid, and then later unwilling to engage too much in political questions. The political movement, its leaders, and its ideology lost their deified status. People had opportunities to make money, and under the influence of consumer greed, sensory stimulation, and the mediocrity of mass culture, they indulged in self-intoxication. Now, consumerism and vulgarity have pervaded the whole of society.

In his book *The Malady of Cynicism — Contemporary China's Mental Crisis* (犬儒病——当代中国的精神危机), Hu Ping (胡平) analyzes the causes and manifestations of this "illness" that has affected intellectuals and the general public:

Totalitarian rule is founded on people's fanaticism, and consolidated through widespread terror. However, neither fanaticism nor terror is long-lasting. Therefore ultimately, totalitarianism comes to rely on despondency and apathy amongst the people to stay in existence.

Fear is not cynicism; it is only a bridge leading to cynicism. ... The admission and knowledge of fear would necessarily push us toward the stance of dissidents and opponents, even if we kept our dissident views locked in our hearts. But precisely because a proper understanding of fear stimulates one's conscience, because it can lead to an awakening and revolting of conscience, the majority of people will try to avoid fear. They will avert their faces and pretend not to see, pretend that such-and-such a matter does not exist, and prefer to leave their consciences in a state of confusion. This is what is called "hard-to-attain confusion."<sup>20</sup>

Attaining this "confusion" actually requires the ability to engage in "double-think" as described in George Orwell's 1984. "Double-think" is not an easily acquired skill, but an indispensable survival technique for people under totalitarianism. In "Civic Virtues and Civic

Responsibilities in the Post-Totalitarian Age” (后极权时代的公民美德与公民责任), I once wrote that:

Shying from sublimity, mocking sincerity, disdainng ideals, vilifying heroes, deconstructing morality, questioning humanity, dissecting meanings, and denying faith are the characteristics of the post-totalitarian mentality in China. Apathy and lack of empathy, vulgar enjoyment without reverence, forgetful contentedness, “clever” self-preservation, servility and submissiveness, blind belief and blind obedience, all of these become everyone’s life philosophy.<sup>21</sup>

And only against this background can we fully understand the uniqueness of political prisoners — prisoners of conscience convicted of crimes of “subverting state power.” They are outstanding individuals belonging to a tiny minority of people who do not want to go against their own conscience, who do not want to shirk their civic responsibilities, who dare to push for political change and break political taboos.

Modern means of communication and the Internet have gradually widened spaces for civil society. The emergence of the Internet has presented an enormous challenge to the Communist Party. On the one hand, it must, for the sake of economic growth and promotion of its own political interests, go with the wave of globalization, accede to the World Trade Organization, hold the Olympic Games and World Expo, and thus cannot possibly isolate itself from the Internet. On the other hand, if it wants to maintain the current political system, it must repress speech and the free flow of information, use Internet blocks and take down website content, and engage in prior restraint and *ex post facto* censorship at all times. And yet it is virtually impossible to control the Internet in the way traditional media could be. There is no way of banning and removing “sensitive news” or “politically opposed essays” completely. With Freegate, Ultrasurf, and similar tools for scaling the Great Firewall, as well as new media and new forms of Internet communication — such as Twitter, Facebook, Skype, e-mail list software, online chat groups, discussion forums based on membership participation — news can now spread even more rapidly and conveniently than before, and has become more difficult to block. Modern technology has thus brought a certain measure of informational freedom. Add to this economic progress as well as widening spaces and increased capacities



for civil society activism — all this has very greatly strengthened exchange among and association of “people power” elements. Genuine NGOs have begun to emerge, as have activists engaged in popular movements, human rights lawyers, citizen journalists, independent writers, and rights defenders: and those belonging to the opposition within the establishment are progressively reinforcing each other and becoming united.

Clashes between officials and citizens have become increasingly common, intense, and publicly known. Because the authoritarian one-party system does not allow for the existence of any organized opposition force, it lacks effective checks on the power of the government, and systemic corruption becomes more and more serious. Because collusion between officials and businesspeople distorts the market, monopolies held by elites of wealth and power allow them to make enormous profits, and paths for upward mobility from the lower to the higher strata of society are increasingly blocked off. The disparity between rich and poor is already very striking: China’s Gini coefficient has already reached a level internationally considered alarming, and there is palpable discontent with unfairness in society.<sup>22</sup>

Because the administration of justice is not independent, new miscarriages of justice are occurring every day: for instance, large scale human rights violations occur as a consequence of land expropriations, building demolitions, and relocation of original residents. In addition, because the right to vote has been virtually taken away or denied, the right to assemble and demonstrate severely restricted, the media controlled, and “letters and visits” (*xinfang*, 信访) as an avenue to redress have become basically ineffective, it is harder for public anger to find an outlet, and “mass incidents” are becoming more common and acerbic.<sup>23</sup>

On the other hand, the general public is increasingly aware of the law and increasingly rights-conscious, and there is a rising potential for resistance [to illegal government action] among the general public. A liberal-minded force of human rights lawyers, rights defenders, citizen journalists, independent writers, and Internet and traditional media users is playing an increasingly important role in this area. The creation of the slogan “ruling the country in accordance with law” and the writing of “human rights” into the Constitution meant that “rule

of law” and “human rights” attained a certain measure of formal legal recognition. Clashes between ordinary people and officials that used to be brought under control, silenced, and violently suppressed are now increasingly reported and have thus entered public awareness.

The post-1989 “Chinese model” can be said to have achieved economic development at the cost of weak human rights protection, collusion between officials and businesspeople, rising disparity between the rich and the poor, and environmental destruction. It has led to confusion among the people through control of the media, ideological propaganda, and consumerism, and to acquiescence among intellectuals through criminalization of speech on the one hand, and bribes and payoffs on the other. “Mass incidents” have been handled by the use of violence as *ultima ratio*. Calls for democratization from within the system have been stemmed temporarily with *ad hoc* measures. China today is an extraordinarily complex system; in the areas of politics, intellectual life, culture, etc., there are concurrent, seemingly contradictory trends. Against this background, the scope, methods, and current position of popular resistance are necessarily somewhat different from what they used to be.<sup>24</sup>

### *The Risks of Resistance*

In historical comparison, the likelihood of being convicted and sentenced to imprisonment for “inciting subversion of state power” has slightly decreased. An article similarly critical of the Party or government leadership that would have landed you in jail in the 1980s may now be safe to write.<sup>25</sup> Because frontline activists are tirelessly engaged in probing the boundaries and breaking taboos, spaces for speech are continuously widening in society, and the authorities are forced to become more tolerant too. Formerly, dissidents were frequently convicted and sentenced to imprisonment for writing one or two such articles, or for signing an open letter; nowadays, this is fairly unlikely to happen, although it certainly still cannot be ruled out. If everyone who had written articles criticizing the Communist Party were sent to jail, it would be hard to fathom the number and range of persons affected. To use Charter 08 as an example, among its signatories are retired former high officials, well-known dissidents, university professors, journalists,

lawyers, civil servants, peasants, workers, and students: the signatories come from vastly different groups in society. Criminally convicting all the signatories — or even just the 303 initiators and first signatories — of the Charter would already far exceed the authorities’ capacity.

Compared to before, those who have been sent to prison for “inciting subversion of state power” are likely to be sentenced to shorter terms of imprisonment. During the era of “the crime of counter-revolution,” dissidents were frequently sentenced to ten years or more, with many sentenced to life imprisonment or given the death sentence.<sup>26</sup> From 1999, the number of cases with a sentence of ten years or longer decreased, and there were more cases with a sentence of five years or less.<sup>27</sup> Broadly speaking, then, the costs of engaging in democracy activism and political dissent have decreased, while the number of people able to overcome fear has increased, as has, very clearly, the number of those who participate in activism and dissent. This is in part due to the point discussed in the following section.

### *Changes in Resistance Methods and Strengthened Ties between Resistance Activists and Ordinary People*

The democracy activists of the 1980s more often formed political associations, used political slogans and declarations, wrote proposals for constitutional amendments, and signed open letters calling for political reform and the release of political prisoners. These pro-democracy pioneers were sentenced to long prison terms under the name of counter-revolutionary crimes, or were banned from the country and forced to go into exile. They made very great sacrifices, as well as significant contributions to the promotion of political opening in China. But these political ideals and political slogans lacked a direct connection with ordinary people’s lives and interests, because social conditions were not ripe yet. In the wake of further dissemination of democratic ideas in society, the rise in Internet usage, the emergence of human rights lawyers as a group, and the growth of independent NGOs, it became possible for the citizen rights defense movement to connect to people’s interests through participation in individual cases and promotion of public interest litigation. Many dissidents were aware of this and actively joined this form of resistance.<sup>28</sup> Even though the government

tried hard to block any information about political prisoners, as a consequence of the incessant rise in the number of persons whose fundamental rights had been violated and of the rapid dissemination of information through the Internet, the influence of those involved in resistance among ordinary people was also on the rise.<sup>29</sup>

Even though some dissidents are still mainly calling for the formation of a political opposition party, there is growing popular consensus that the time is not yet ripe,<sup>30</sup> and that work of the following kinds is more practical and effective: protecting human rights and freedom of speech and religion; promoting the participation of independent candidates in basic-level elections through individual cases; encouraging the perfection of civil society organizations through NGOs; providing skills training for rights defenders; as well as fostering connections and integration between rights defenders in various places. The vast majority of persons convicted and sentenced to prison under Article 105 of the Criminal Law have engaged in human rights work and independent writing, not in the establishment of a political organization opposed to the Party or other organizations of a political nature.

### *Widening of the Circle of Persons Engaged in Resistance*

With expanding social space and decreasing costs of engagement in dissidence, there has been a gradual rise in activism. Consequently, the range of persons convicted of “subversion of state power” has also widened. As Guo Guoting (郭国汀) puts it:

Subversion and inciting subversion have become two crimes that serve as readily available tools for the Chinese Communist Party to incarcerate democracy activists for their speech as they please; it is a set of chains fastened around the people’s neck. All kinds of people have been ensnared by this crime: some have been convicted because they took video footage of schools collapsed in the Sichuan Earthquake and posted it online; some because they put forth the slogan “We Want Human Rights Not the Olympics”; some because they engaged in environmental activism and voiced support for Tibetans; some because they proposed the protection of the rights of workers and peasants; some because they called for democracy and constitutional government; some because they called for support for the Dalai Lama’s request for Tibetan

independence and autonomy; some because they published texts heralding democracy; some because they drafted a Charter; some because they published online articles commemorating June Fourth; some because they published appeals in the form of open letters; some because they formed a democratic party; some because they published articles satirizing Deng Xiaoping [邓小平], Jiang Zemin [江泽民], or Hu Jintao [胡锦涛]; some because they spoke the truth about Falun Gong [法轮功] adherents; some because they criticized the Four Basic Principles [四个基本原则], the Three Represents, the Communist Party, or the politicized administration of justice in online texts; some because they wrote essays criticizing and exposing corrupt officials, causing their downfall; some because they published open letters to [Hu Jintao (胡锦涛) and Wen Jiabao (温家宝)] asking for political reform and requesting an end to the persecution of Falun Gong; some because they proposed separation of powers and a multi-party system; some because they used Mao Zedong songs to criticize Jiang Zemin's corruption; some because they wrote critical commentaries about politics and current affairs; some because they wrote letters to Voice of America; and some even because, themselves suffering from mental disability, they were instigated by others to post anti-government slogans. But the majority amongst them has been wrongfully convicted due to essays on political and current affairs published online. Not one among them was convicted because they proposed a violent overturn of the Chinese government; even less is there anyone who actually engaged in violence. The victims [of this law] have come in all kinds of social roles; there have been professors, lawyers, authors, scholars, journalists, teachers, officials, businessmen, editors, democracy movement activists, dissidents, religious believers, workers, peasants, urban residents, and students.<sup>31</sup>

### *Stability Preservation Work in New Forms*

The domestic security squad police officers<sup>32</sup> and state security officers<sup>33</sup> are no longer loyal guards of Communist Party ideology. Mostly, their attitude is one of "obeying orders," "needing to put food on the table," and "not letting anyone mess things up." Due to a widening of social spaces; ever-increasing pluralism of thought and opinion; and the fact that "subversion of state power" and "inciting subversion of state power" lack conceptual clarity, are hard to delineate, and are enforced

using inconsistent criteria,<sup>34</sup> the fates of those dealt with under Article 105 of the Criminal Law are vastly different. For quantitatively and qualitatively similar writings, some are heavily punished, while others are punished more lightly. The factors taken into consideration include how well known or influential the defendant is, his attitude, his status, his family situation, international and domestic pressure to help him, and the mindsets of officials concerned. Some authors write biting criticisms of the government yet remain safe and undisturbed, or merely receive some warnings from the police, while other authors are criminally punished because of one open letter, a small number of essays, or even just an e-mail. Some are arrested on suspicion of “inciting subversion of state power” but ultimately sent to re-education through labor, or the charges against them are dropped after they have been released on bail.<sup>35</sup> Some are clearly imprisoned for political reasons but convicted of “illegal business operation.”<sup>36</sup> Sentences for dissident national minorities are clearly heavier, and more of them are sentenced (far more than is known to the outside world, or than the outside world reports on or appeals about); moreover, in those cases there is even less of a show of adhering to criminal procedure rules.<sup>37</sup> Some regions are more tolerant toward dissidents; others are harsher.<sup>38</sup>

That different people receive different treatment reflects the subtlety and complexity of the political scene under neo-totalitarianism. On the one hand, the authorities are unable to seize everybody who is in opposition, and are not even able to set down consistent criteria of application of the law as to who ought to be detained or criminally convicted. Instead, they must take all kinds of extralegal factors into consideration in handling individual cases. On the other hand, the logic of this system requires them to keep seizing, trying, and imprisoning its political opponents in order to reaffirm its political legitimacy and to maintain deterrence, create a climate of fear, and intimidate other activists and potential opponents.

Another often overlooked and so far under-researched problem is that domestic security squad police and state security apparatuses, of course, have their own motives for consuming, misappropriating, and applying for more funds for “stability preservation.” They and the members of the political opposition (as “targets of stability preservation”) come to live in a subtle relationship of symbiosis. Without

targets of stability preservation, domestic security squad police and state security would have no work achievements to claim, and these officials could therefore not benefit from the stability preservation budgets. That, surely, constitutes a difference to the bygone era of "counter-revolutionary crimes."<sup>39</sup>

## **The Crime of Subverting State Power and Prospects for China's Political Transition**

If we consider law in practice as opposed to merely statutory texts, it is clear that all the vast majority of those who have been labeled with this crime have been to express their political views. "Subverting state power" has become a kind of "political crime" and "inciting subversion of state power" a kind of "thought crime." This clearly violates both China's Constitution and international treaties. China's current system still clearly preserves some features of a totalitarian system, and this kind of system still needs to be able to label some people as having "subverted state power." It must at all times investigate, identify, and punish "dangerous" and "subversive elements": all persons who have independence and dignity, dare to speak the truth, and dare to change the political system may be identified as "subversives" at any point.

But in the era of post-totalitarianism, as a result of the secularization and vulgarization of society, ideology and leadership have long been "exorcised." Among the public, cold indifference has replaced a sense of fear about politics, cynicism has come to replace fanaticism; and the language of rule of law has become widely popular. Partly due to an increasing diversification of interests, there is a certain degree of pluralism of political and moral viewpoints and values. As a further consequence, the authorities are no longer able to plunge the whole of society into crazy political movements at will. They can no longer deploy all the tools for influencing public opinion to brand someone as an "anti-government element" and to instill hatred and abhorrence of "criminal subversives" in the populace.

At the international level, due to reasons such as anti-terror efforts, the North Korea problem, cross-border trade, global warming, the financial crisis, and political short-sightedness, Western countries are focusing less attention and exerting less pressure on China's human

rights problems. But the October 2010 award of the Nobel Peace Prize to Liu Xiaobo, who had been convicted of “inciting subversion of state power” and sentenced to eleven years’ imprisonment, can be regarded as an expression of skepticism on the part of the Western countries toward the legitimacy of China’s rulers. It also became an occasion for the international community to pay renewed attention to human rights and democratization in China. The third wave of global democratization, the trend toward democratization brought about by the color revolutions, and the interest and support coming from international human rights organizations have been a great encouragement to Chinese democracy activists.

Yet the promotion of political changes in China will depend mainly on domestic support. In that context, those who have been labeled with the crime of “subversion of state power” or who stand a chance of being labeled with it are at the frontline of resistance; they are the ones who are best able to challenge the existing system. Spurred by their conscience and sense of social responsibility, these citizens hope for political change; they hope for a system that will respect individual dignity and freedom.<sup>40</sup> So they establish opposition parties or other political groups and underground publishing houses, sign open letters, call for political change, criticize the current situation, expose corruption, distribute leaflets, publicize the truth, protect fundamental rights, organize peaceful protests, and so on. These actions put enormous pressure on the Communist Party authorities; they represent an indispensable part of the force for political change. Surrounded by a general cynical attitude of “resistance is useless,” these citizens, through their practical actions and their suffering, show the people the force of human conscience, the force of truth, and that it is possible to dispel fear and take action. Without them, the survival of civil society NGOs would be even harder. Without them, now not-so-progressive essays and actions would be the most progressive ones, and their protagonists would be the ones thrown into prison. Without them, the fasting movement in support of Liu Xianbin (刘贤斌)<sup>41</sup> and Chen Guangcheng (陈光诚)<sup>42</sup> would have difficulties continuing. Kang Xiaoguang (康晓光) believes that China has become a “society without politics”;<sup>43</sup> in reality, there has been no interruption of genuine popular politics, only popular politics has for a long time been concealed, insulted, locked



up, and forcibly forgotten. In this long and cruel era of suppression, through tears and pain behind and outside iron bars, humanity has been upheld, moral principles proved, political skills honed, experience gained, and common understandings reached. All these have helped prepare the ground for a future democracy. Surely, "you can destroy the flowers but you cannot prevent spring."

China's per capita GDP has already surpassed US\$3,000. It is generally thought that this has an important influence on the economic, social, and political structure. Transition does not occur when citizens are in extreme poverty and totally deprived of their rights; it occurs more easily when the economy has developed up to a certain point, when civil society spaces have opened, when there is an awakening of rights consciousness, and when the ability to resist is gradually increasing. Observers of China may gradually realize that China is on the eve of a massive change. Without any doubt, the values of the current political prisoners and heroic prisoners of conscience will be confirmed by history. China must ultimately realize freedom of the press, general elections, and a multi-party system. But while it has not done so yet, the post-totalitarian Chinese system will continue to send the most courageous, most conscientious, and most historically responsible and outstanding citizens of this society to prison under the name of "subverting state power" and "inciting subversion of state power."

