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HUMAN RIGHTS IN CHINA AND THE RULE OF LAW

*Xu Wenli **

*Introduction by Professor Noah M. Sachs ***

I first met Xu Wenli in January of 2003. It was about two weeks after he had been let out of a prison cell in China. I was the lawyer handling his asylum case here in the United States. The typical problem in asylum cases is finding information and finding documentation to tell the client's story. And, of course, in his case it was the opposite problem; there was an overabundance of information. He has been a leader of the Chinese Democracy movement for almost thirty years.¹ Xu Wenli was one of the founders of the Democracy Wall movement.² He was arrested for the first time in 1979, and at that time he was the publisher of an underground newsletter called the April Fifth Forum.³ He was charged with trumped up charges of illegally organizing a [group] to overthrow the government and began a fifteen year prison sentence in 1981. During his time in prison he was allowed only three visits with his wife, He Xintong, who is also here with us today. For some of those years in prison he was placed in solitary confinement. He was re-

* Senior Fellow, Watson Institute for International Studies, Brown University; Honorary Doctorate, 2003. One of China's most recognized pro-democracy advocates, Mr. Xu spent sixteen years in prison for his activities as a dissident. As leader of the Democracy Wall movement from 1979 to 1981 and previous editor of the April Fifth Forum, Mr. Xu has played a major role in establishing the Beijing-Tianjin branch of the China Democracy Party. His political program is "to abandon one-party dictatorship, lay aside the issue of Taiwanese independence, restore a democratic China, and hope for an equal and prosperous federation between the PRC and Taiwan."

Xu Wenli's speech was delivered in Mandarin and translated into English by Ruo Mei Chua.

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1. See, e.g., MERLE GOLDMAN, FROM COMRADE TO CITIZEN 33-34 (2005); Joseph Albright & Marcia Kunstel, *China Bracing for 'Danger Time,'* ATLANTA J.-CONST., Jan. 18, 1999, at 11A.

2. GOLDMAN, *supra* note 1, at 33.

3. GOLDMAN, *supra* note 1, at 34.

leased in 1993, and he believes it was in part because Beijing wanted the Olympics in that year.⁴ So, he was released and paroled. As a testament to his spirit and commitment, he immediately took up his pro-democracy activities again and founded the Chinese Democracy Party, of which he is still the head today.⁵ About five years later he was jailed again, and then was released at the end of 2002, on Christmas Day. The [U.S.] State Department considered it a big victory because they had been trying to get him out of China for about a decade. He is one of my heroes, he has been called the “Nelson Mandela of China” and the “Godfather of Dissent in China.”⁶ I am honored that [he is] now speaking at the University of Richmond Law School and let’s give a huge round of applause for a true fighter for democracy, a true fighter for the rule of law, Xu Wenli.

“Good morning. I like University of Richmond.” I can only express myself with those two sentences of English, so from now on I will speak in Mandarin. I would like to apologize [for this]. I know this will waste a lot of your precious time.

There are a lot of topics and themes I’d like to cover today so I’ll just do a very brief introduction of myself right now. Most people will look at someone like me and think, perhaps I am crazy. How can someone possibly sacrifice the most beautiful, youthful part of life to be in prison? I know some of you are pre-eminent judges and have sentenced people to long prison sentences. To you, that is very righteous behavior, and I agree, but in my case, being in prison was definitely not something that I chose to do voluntarily. I wish to talk today about some of the most difficult periods during my time of imprisonment in China.

At that time I was in my thirties, so I could be considered a young chap. Before entering prison I was a fearless young man; I didn’t fear anything. I didn’t think I did anything wrong. But at

4. China was then bidding for the right to host the 2000 Olympics, an honor ultimately awarded to Australia. See Charles A. Radin, *Disappointment, Vows to Try Again in Beijing*, BOSTON GLOBE, Sept. 24, 1993, at 8.

5. See, e.g., *South Korean Court Approves Refugee Status of Chinese Democrat*, YONHAP, June 28, 2007 [S. Korea].

6. See, e.g., Tom Mooney, *Finding Sanctuary: Prominent Chinese Dissident Arrives in Rhode Island*, PROVIDENCE J., Mar. 5, 2004, at A1.

the moment I entered the prison gates I felt a jolt of apprehension.

At that point in time, when I was sentenced and went to prison, I was feeling very apprehensive because I was in my thirties; to be sentenced to fifteen years, I wasn't sure I would make it out of that place alive. Then I had the thought of putting down into words, "Why? Why did I sacrifice fifteen years of my life? For what?" I was going to put those words into a book, an autobiography. Because I was a special prisoner, [and] because of my unique circumstances and my high profile, I was kept in solitary confinement so the normal person couldn't enter my cell. There were two policemen in charge of taking care of me, and a supervisor, and even they very rarely entered my room. There were also fellow prisoners staying around me, who observed me, but they only did this through a small hole.

Taking advantage of the minimal supervision I had, I began penning an autobiographical account of my journey thus far—why and what I was fighting for. I have written this book.⁷ I used very ingenious methods to smuggle [this book] to the United States, [even though] I knew I would pay an even higher price [for doing so].

But at that time I thought it was fully worth it because I didn't know if I would leave the prison. Even if I died in that prison, I would be proud of the fact that I put down my thoughts and aspirations into this book.

Then, from the cell that was only two meters by three meters, I was put into a cell one meter by three meters—into solitary confinement. Not only was I put into solitary confinement in my own one-by-three cell, but they evacuated all of the other prisoners from the surrounding cells. So I was, [effectively, in complete] solitary confinement [as one prisoner] in a whole row of one-by-three cells.

I stayed there for a total of five years in this one-by-three cell which had no windows. I was denied any access to my family and friends. Of course, in doing so, [the Chinese government] hoped to force me to tell them how I managed to smuggle these materials

7. See XU WENLI, *I OFFER MY BLOOD FOR MY HOMELAND* (2001) (on file with the author).

out of prison. I am glad to say I disappointed them. Sorry to say that I have to disappoint all of you sitting here, but I cannot divulge those secrets.

Not only was the loneliness unbearable, the heat, especially in the midst of summer, was also unbearable. Even if I stripped myself all the way down to a little pair of boxers, I was still sweating profusely. There was definitely no air conditioning in that prison. I had to press my body against the concrete walls to cool my body temperature.

As so, because I was in solitary confinement, I tried to wipe away my feelings of loneliness and pass away time by observing little things like the little spider in my room—how it would procreate, how it survived. By doing such little things, I managed to keep myself from going crazy, and to entertain myself and pass the time. Today, if there was a mosquito flying in front of me, I would be able to tell instantly if it was male or female. [Laughter] The secret to telling the mosquitoes apart is really that the female has the sharp pointed end in front of her and the [male] would have a flower shaped object. So that is the secret, so now you know how to detect [their gender]. That is all I'm going to discuss about myself and my personal autobiography today.

Today, the theme I'm going to talk about is that a healthy and vibrant democracy is the sum of freedom and the rule of law. That is the theme for today. This theme is very broad and it's almost impossible to talk about it in detail in this very short period of time that I have now.

I'm sorry if I may seem a little presumptuous and offensive in this, but I'm going to start out my case by making some criticisms of the American jury system. I know that as American scholars yourself, you would also like to hear some criticisms and some objective feedback about the system.

For dissidents, and myself and many others that tried to flee the oppression of the Chinese communist regime, I am sure all of them hope to try and settle down in such a free and democratic country like America in search of their ideal life. But after coming to America, [some people fleeing China] start to get a little perplexed because they came with the idea that wealth is given to you by someone. Someone brings wealth and riches and all this freedom [and puts it] right in front of you. But after coming [to America], [these people] realize it is not so.

I wish to offer two examples here: one of the cases is about my friend who is currently here in the audience today. He has had a very embarrassing encounter with the American jury system. This man is actually a victim of deception by a person who used immigration laws in America for his own profit. In fact he cheated not only [my friend] of his money, but also his two daughters. However, because of the jury system of America, this man, who abused [my friend's] two daughters and cheated [him] financially, has been able to go off "scot free." And so this man is very perplexed and wondering: "[If] the American system is supposed to be just, why then am I not able to get the justice [I deserve]?" Another friend traced this problem back to the jury system of America. I am not able to elaborate in detail about this case, but my friend has written a document about [this issue]. This man realized he was not able to change the American jury system, but he harbors these hopes of transforming and revamping the system of China when democracy comes to the country one day.

As I said earlier, people come to America and are perplexed. Their perplexity lies in the doubts about whether they would be able to get justice in a system like America's.

I am a member of the Chinese Democracy Party and also its founder. The party was founded in 1998 in Mainland China. More than fifty of its top leaders, like me, have been imprisoned in China and to date there are still more than twenty people remaining in prison. But yet some unscrupulous people have set up a fake [organization] and basically use the name of the Chinese Democracy Party, publicize our plight, and then use it to their own personal advantage. Because of this unscrupulous behavior, there are three, maybe four or five, Chinese Democracy Parties in America today. I understand that America has a law [requiring] certain legal procedures to be taken [before one can immigrate]. But a lot of people have exploited loopholes in the system. [They use] immigration laws to trick people [and take] their money, saying, "Yes, we'll help you [with] your immigration procedures." In the process, they trick the [immigrants] and also taint the reputation of the real Chinese Democracy Party. For those of us in the *real* Chinese Democracy Party it is our conviction and our determination not to charge people money if we feel they have been genuinely persecuted. It is our policy to help them, to write letters for them, to appeal for immigration status and not receive a

single cent. But for these people who are doing it purely for profit, they charge from \$1,000 up to \$10,000 for these services.

[Many] of us have successfully fled the oppression of the CCP (Chinese Communist Party).⁸ I consider myself one of the more lucky ones. [I am] a professor at a university [with] a stable income; but I am an exception to the norm. Most people come here and they have to risk their lives and do heavy manual labor just to survive. And so the people who have fought for China's freedom and democracy are actually the people who are getting poorer and [more] disadvantaged by their circumstances. But these people who have done nothing for China, they are profiting from it. All they want is the photo opportunity. They call themselves the Chinese Democracy Party; they try to get photos with top political figures in America. That is all they want, nothing more.

The second perplexity comes from people like us, in the real Chinese Democracy Party, who are wondering why is it that the immigration system of America doesn't support generous people like us, but instead allows and facilitates the illicit behavior of the fake Chinese Democracy Party members. Based on my knowledge, especially now that I have come to America, and based on my experience in the American judicial system, I am convinced there is a flaw in how these people perceive America. They have neglected one very important point: America is a country built on the rule of law, and built on the premise that everyone is born equal and ha[s] equal right of access to opportunity. The uniqueness of this system is that no *one* party can go out there and be "the big judge" like the CCP; [there is no one who says] "you are allowed to leave" [when really] you are not.

In this society, as much as righteousness has the freedom to survive, so does evil. America is precisely in this battle between good and bad, righteousness and evil. But America has progressed and blossomed as a society. America's freedom is one that does not discriminate amongst people. Whether you are good or bad, you have freedom. As I understand, the Preamble to your Constitution consists of fifty-two words, of which a lot of emphasis is placed on freedom and happiness based on that freedom.

8. In 1949, the CCP prevailed in the Chinese Civil War and proclaimed the People's Republic of China, a one-party regime still in power today. See DAVID CURTIS WRIGHT, HISTORY OF CHINA 144 (2001).

In America, we see the separation of religion and state; Kaiser is Kaiser, and God is God. America has very cleverly left the insolvable issues to God to handle, so there is no one to say “yes you are allowed to have this kind of religion and belief” or “no you are not allowed to have that belief.” There is no such thing in America. Everyone has the freedom to believe in what they want. And I [believe] the things the government can control from the outside [are] very limited. What goes on in people’s minds, in their beliefs and their convictions, is what is most important. Freedom of speech is extremely valued in this country, and I know there is a former [U.S.] President who said “I would rather not have a government, but I need to have my freedom of speech.”⁹

[Many] Chinese dissidents have this idea that freedom of speech is the most important. For me, [on the other hand, freedom of speech] is important, but more important is freedom of thought. America’s strength and prosperity today comes from its belief [in] and upholding of freedom. But this freedom is not the freedom to impede another people and take advantage of them. This freedom is restricted and constrained by law.

In [1787], there was an assembly to decide upon the Constitution,¹⁰ and it was through majority rule that this idea was cast into stone. They took five months to cast these major principles into the Constitution that it is today. That is something that I very much admire and wish to emulate. I am convinced that while I am unsatisfied with things today, they can be resolved by working with this system of law. And I tell my friends, don’t be discouraged; your problems will be resolved.

We, the Chinese Democracy Party, have a firm belief in the rule of law; [and we] hope to convince China to create this kind of constitution for our country. We wish to bring China back to the republic that was created by Mr. Sun Yat-sen in 1911,¹¹ which

9. See Letter from Thomas Jefferson to Edward Carrington, Jan. 16, 1787, available at http://press-pubs.uchicago.edu/founders/documents/amendI_speechs8.html (“[W]here it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”).

10. The United States Constitution was adopted on September 17, 1787 by the Constitutional Convention in Philadelphia, Pennsylvania and was later ratified by conventions of individual states. See The United States National Archives and Records Administration, http://www.archives.gov/national-archives-experience/charters/constitution_history.html (last visited Aug. 29, 2007).

11. Sun Yat-sen, a doctor from Guangdong in the south of China, traveled across China and the world seeking to oust China’s imperial rulers and implement a republican

was abandoned in [1949].¹² On the fourth of June, the Chinese Democracy Party will have its first overseas representative assembly in Providence, Rhode Island.¹³ We're going to gather the top dissidents from all over and bring them to Providence for this monumental meeting. In this meeting, our theme will be establishing the Third Republic. The first republic was 1911–1937 the second, 1937–[1949]. Now we are determined to establish the Third Republic for China.

Clearly we are short of time. Thank you.

form of government. The culmination of these efforts was the abdication of China's last emperor in 1912. See WRIGHT, *supra* note 8, at 118–22.

12. WRIGHT, *supra* note 8 at 144.

13. See G. Wayne Miller, 18 YEARS AFTER TIANAMEN SQUARE, PROVIDENCE J., June 5, 2007, at A1. The congress, attended by expatriates now living in Europe, Australia, and elsewhere, was held on the eighteenth anniversary of the Tianamen Square protests. *Id.*