Disagreements over human rights are a highly contested issue in EU-China relations. At stake are not only diverging interpretations of human rights, but also the efficacy of Europe's human rights advocacy. What results have EU-China dialogues on human rights led to? The EU's 'carrot and stick' approach to the promotion of human rights, the rule of law, and democracy has yielded moderate results on issues like the death penalty, administrative detention, the protection of civil and political rights, as well as religious freedom and minority rights. European financial and technical support, as well as diplomatic pressure, rather than shaming, has proven more effective to elicit a gradual improvement in China's record on human rights.

An Anatomy of European and American Perspectives on China in the International System

Despite the growing quantity of linkages between both sides, EU-China ties remain derivate of relations with the US. The EU and China are not each other's foreign policy priorities. A close analysis of five key 'lenses' of understanding Sino-European affairs reveals the extent to which US interests and alliance commitments mediate, shape, and influence the relationship between Europe and China. The controversy surrounding the attempts to lift the EU's arms embargo on China is a case in point.
China's ability to exploit differences among EU member states has been reduced not only by better coordination among the EU but also by the formation of EU-US transatlantic dialogues on the rise of China.

The Rainbow Lobby
Douglas Sanders

in Queer Bangkok: 21st Century Markets, Media, and Rights
Published in print: 2011 Published Online: September 2011
Publisher: Hong Kong University Press
Item type: chapter

This chapter discusses how the initiatives of an autonomous national human-rights commission in Thailand have been a factor as the state has begun to play a more active role in recognizing and organizing the country's various lesbian/gay/bisexual/transgender (LGBT) communities to promote their social and economic participation in society. It discusses the factors that made the emergence of the Sexual Diversity Network possible in 2007. First, the chapter describes the 1997 constitution (the subject of the 2007 amendments). It then assesses LGBT organizations and personalities active in 2007. The chapter also examines the National Human Rights Commission, and refers to the sexuality issues that were current in 2007.

The Judiciary
Benny Y. T. Tai

in Contemporary Hong Kong Politics: Governance in the Post-1997 Era
Published in print: 2007 Published Online: September 2011
Publisher: Hong Kong University Press
DOI: 10.5790/hongkong/9789622098299.003.0004
Item type: chapter

This chapter deals with the fundamental principles of the Hong Kong Special Administrative Region's (HKSAR's) legal system, which include the common law system, rule of law, judicial independence, and the protection of human rights. It explores the two new institutional arrangements that were introduced after the handover, namely the power of final adjudication (vested with the Court of Final Appeal) and the power of the Standing Committee of the National People's Congress (SCNPC), to interpret the Basic Law. The chapter then argues that the SCNPC's power to interpret the Basic Law has established an institutional link between the HKSAR legal system and the Chinese legal system. Furthermore, the impact of SCNPC's interpretation of the Basic Law on
the HKSAR courts is investigated. It is noted that the judiciary is able to maintain the principle of rule of law and human rights of the Hong Kong people if matters it adjudicates do not involve the interests of the central authorities. The Hong Kong judiciary is as powerless as the citizen who has started the judicial review proceeding. In the long run, judicial autonomy in Hong Kong will be hurt by more frequent interpretation of the Basic Law by the SCNPC.

Who Needs Human Rights?
John Nguyet Erni

in Creativity and Academic Activism: Instituting Cultural Studies
Published in print: 2012 Published Online: May 2013
DOI: 10.5790/hongkong/9789888139392.003.0012
Item type: chapter

The writer envisages a “relocation” of Cultural Studies in a closer relation to public institutions active in international struggles for social justice. By situating the discipline in relation to formalized “institutional rules of engagement” — in particular those of international human rights law — He envisages a metamorphosis of its worldly practice into one that perhaps invests as much in professional training and public participation as it does in critique.

Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China
Jean-Philippe Béja, Fu Hualing, and Eva Pils (eds)

Published in print: 2012 Published Online: January 2013
DOI: 10.5790/hongkong/9789888139064.001.0001
Item type: book

In December 2008 some 350 Chinese intellectuals published a manifesto calling for reform of the Chinese constitution and an end to one-party rule. Known as “Charter 08,” the manifesto has since been signed by more than 10,000 people. One of its authors, Liu Xiaobo, was awarded the Nobel Peace Prize in 2010 but has remained in prison since 2009 for subversive crimes. This collection of essays—the first of its kind in English—examines the trial of Liu Xiaobo, the significance and impact of Charter 08, and the prospects for reform in China. The essays include contributions from legal and political experts from around the world, an account of Liu's trial by his defence lawyers, and a passionate—and ultimately optimistic—account of resistance, repression and political change by the human rights lawyer Teng Biao.
Charter 08 is a document that seeks to forge a grand alliance of Chinese liberal elements within the system and outside the system. Its signatories and supporters include known dissidents as well as officials, retired officials, and others from within the system. More significantly, Charter 08 symbolizes yet another alliance between political dissidence and the weiquan movement which is more rooted in Chinese society. The two political forces have been sharply divided since 1989. While the former challenges the CCP directly and calls for a fundamental political change, the latter takes concrete actions in protecting the legal rights of citizens within the framework of the existing political system. Charter 08 provides a common ground for the two forces.

This chapter considers Charter 08 as a manifestation of China's long fight for dignity by generations of dissidents. Indeed, despite the different views between Wei Jingsheng and Liu Xiaobo on Charter 08, they are both part of a common intellectual history and political movement. Speaking one's mind against the government when called for and fighting for a political system that one believes in is, in essence, what a self-respecting person would do in keeping his or her dignity. After all, only human beings are capable of transcending basic animal instincts for the pursuit of higher values. It is that pursuit of higher values that has been motivating dissidents and activists in a hostile environment.
Charter 08 and Violent Resistance: The Dark Side of the Chinese Weiquan Movement
Eva Pils

This analysis of the weiquan movement focuses on its “dark sides.” Drawing on interviews with lawyers and petitioners, this chapter describes the at-times brutal persecution of rights defenders and discusses increasingly vindictive and violent reactions among some members of the movement. A brief review of attitudes toward violence amongst petitioners, intellectuals, and lawyers shows that beneath an oft-asserted commitment to non-violence in political resistance, there is much doubt and debate within the movement, and that to some violence seems to be the only last answer. While Charter 08 provides little guidance on how to effect the rational, liberal transformation of Chinese society that is so clearly its vision, its protagonist Liu Xiaobo is perhaps best understood through his noble but hard-to-emulate credo of “having no enemies.” In that sense, Charter 08 represents a moral challenge both to the repressive authoritarian state and to the weiquan movement.

Facing the Red Dragon: Hollywood’s 1997 Response to the Hong Kong Handover
Kenneth Chan

This chapter examines Hollywood's response to the 1997 Hong Kong Handover through films like Red Corner, Kundun, and Seven Years in Tibet. These films address the political implications of the Handover through their portraiture of Chinese ideological and military aggression and its disregard for human rights, a not-too-subtle index of what the West conjures as the terrifying political fate awaiting Hong Kong.
Boundaries of Tolerance: Charter 08 and Debates over Political Reform

Pitman B. Potter and Sophia Woodman

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China

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Item type: chapter

This chapter provides a critical review of Charter 08's compatibility and inconsistency with the existing constitutional and legal order. Charter 08 is a sophisticated document that both reflects a Western bourgeois agenda in advocating a new liberal order and engages the existing system in calling on the Party-state to live up to its own rhetoric of rights. Because the charter adopts official rights discourses to challenge the government, it opens a window of opportunity for a possible alliance between the Chartists outside the political system and reformers within the political system. In the end, the perceived danger of Charter 08 can only be understood within China's segmented publics, in which the Chinese government sets formal and informal rules to limit discussions of particular issues to specific institutional spaces.

The Sky is Falling: Inciting Subversion and the Defense of Liu Xiaobo

Joshua Rosenzweig

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China

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Item type: chapter

This chapter examines Liu as a target of criminal prosecution. It provides a careful and detailed historical review of the offence of inciting subversion, on which Liu was convicted. The chapter traces the legislative change from “counter-revolutionary crimes” to “crimes endangering state security” and the accordingly changing elements and nature of subversion offences. In the second half, Rosenzweig provides an analysis of the defenses that Liu Xiaobo and his lawyers presented in the trial. The chapter concludes that, given the offence of subversion is so vaguely defined, defenses are hard to come up with and of little legal consequence. This analysis thus supports the conclusion that prosecution of “subversion” only serves the purpose of silencing political speech.
The Political Meaning of the Crime of “Subverting State Power”
Teng Biao

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China
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Item type: chapter

This chapter explores the psychology of resistance that explains why and how some people refuse to back down, acquiesce, accommodate official lies, and reach arrangements with the system. In a largely “neo-totalitarian” system like that of China today, the problem is no longer naked fear such as might be induced by a tyrannical regime. Rather, it is the ability to avoid thinking, “that hard-to-attain confusion” that allows people not even to be aware of their deep-down anxieties and constraints. While some observers believe that the government has won legitimacy in the sense of wide social acceptance of its rule, this analysis leaves no room for such a comforting conclusion. There is no doubt that political change will come eventually — “you can destroy the flowers but you can’t prevent spring”.

Juvenile Justice Issues(4): Restorative Justice (RJ) for Young Offenders
Francis Wing-lin Lee

in Nurturing Pillars of Society: Understanding and Working with the Young Generation in Hong Kong
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Item type: chapter

Since human rights have increasingly been highlighted over recent years, retributive measures for correction that involve punishing offenders for their wrong-doings are being de-emphasized. Although rehabilitative measures are also developed for providing more specific treatments, this approach has also experienced a decline in faith. As such, attention has been drawn to the restorative justice (RJ) model as the most appropriate alternative. The input of the offender, the victim, their corresponding families, the community, and other criminal justice system stakeholders are considered in this chapter in an ideal RJ method. In countries that have already adopted the RJ model, it has been observed that young offenders are more open to correction as they are more capable of
change. While the crimes are found to be more circumstantial and impulsive, RJ appears to have more potential as an alternative.

**Challenging Authoritarianism through Law**

Fu Hualing

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China

Published in print: 2012 Published Online: January 2013


This chapter provides a historical background discussion of the legal rights-based weiquan movement in China, traces the tension between the supply and demand of rights, and explains an institutional failure in meeting the increasing demand for rights and the social consequences of that failure. Armed with legal rights, citizens of different social and economic backgrounds have started to assert these and engage in a movement of rightful resistance. Gradually, law has become a rallying point for aggrieved people, and lawyers have become organizers of an emerging social movement. However, the brutal social changes and acute conflicts are often beyond the capacity of legal norms and institutions to grasp. As a result, the legal system has failed to serve as a governing tool for the Party-state and to provide remedies for citizens seeking justice — both are giving up on law and resorting to extralegal and illegal measures to settle the score.

**Charter 08 and Charta 77: East European Past as China's Future?**

Michaela Kotyzova

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China

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This chapter offers a comparison between Charter 08 and Charta 77, the manifesto written by Czechoslovak dissidents, mainly Václav Havel and Jan Patocka, to demand the respect of human rights by the Communist Party in Czechoslovakia. The two charters are similar in their content, both invoking international human rights norms and both attempting to function largely within the existing legal framework. Another related similarity between the two lies in the fact that their objectives are not so much to subvert the regimes as to provide a support structure when the
regimes fall. However, despite their similarities, both exist in drastically different political and economic contexts. China in 2008 was different from Czechoslovakia in 1977 in terms of the politics, economy, and soft power that the respective communist parties may have, and those differences affect the impact of the respective charters in society.

Is Jail the Only Place Where One Can “Live in Truth”? : Liu Xiaobo's Experience

Jean-Philippe Béja

in Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China

This chapter introduces Liu Xiaobo as a scholar and activist. It highlights the turning points in Liu's life and puts them in political context. Liu's transformation from a bookish scholar into a person at the forefront of the opposition was triggered by political events. In his case, the experience of the bloodshed on June Fourth had a profound impact on his thinking and priorities in life. He moved from literary critique to political critique, engaging in progressively open criticism of the Chinese Communist Party and advocacy for fundamental political reform. Subsequent developments led to his increasingly overt challenges and his participation in the drafting of Charter 08.

Criminal Defense in Sensitive Cases: Yao Fuxin, Yang Jianli, Jiang Lijun, Du Daobin, Liu Xiaobo, and Others

Mo Shaoping, Gao Xia, Lü Xi, and Chen Zerui

In this chapter, Liu Xiaobo's defense team, led by Mo Shaoping, introduce major subversive cases that they have defended over the years. By setting out the prosecution evidence and arguments, the authors invite readers to pass judgment on the legality of the prosecution, and the constitutionality and legitimacy of the “subversion” crime at its core. The authors also offer a concise account of the substantive and procedural legal difficulties they have encountered throughout their defense, as well as an analysis of the political causes of these difficulties.
Popular Constitutionalism and the Constitutional Meaning of Charter 08
Michael W. Dowdle

This chapter places Charter 08 in the comparative and historical context of popular constitutionalism. Popular constitutionalism appeals to the understanding of generations of people who make use of, and give meaning to, the constitutional text. It also speaks to the tension and dialogue between the popular and official components in the constitutional development. Putting it in the Chinese context, this chapter traces the growth of popular constitutionalism from the trial of the Gang of Four, the creeping Parliamentarianism, and public litigation and petition. Significantly, popular constitutionalism continues to evolve and develop in the form of online and offline citizen activism even though it is facing the post-2005 crackdown. Charter 08 is part of the evolving popular constitutionalism in China and its significance lies in its ability to broaden and free the epistemological space.

The Politics of Liu Xiaobo's Trial
Willy Wo-Lap Lam

This chapter explores the macro-level political development in China and the possibilities of liberalization in the context of weiquan and weiwén. The government is resorting to both hard and soft measures to maintain stability and legitimacy. On the one hand, a “scorched earth policy” is used against dissidents who may be perceived to challenge the Chinese Communist Party directly, as demonstrated by the prosecution and heavy punishment of Liu Xiaobo and his comrades-in-arms. On the other, the CCP has taken a reconciliatory approach in dealing with the poor, the liberal elements within the CCP, and the Uighurs in Xinjiang. In general, however, the CCP is retreating to a conservative comfort zone ideologically and institutionally. This suggests that there are only slim chances of further political reform.