

EXCERPTED FROM

To Build a
Free China:
A Citizen's Journey

Xu Zhiyong

Copyright © 2016
ISBN: 978-1-62637-584-0 hc



LYNNE RIENNER PUBLISHERS

1800 30th Street, Suite 314
Boulder, CO 80301 USA
telephone 303.444.6684
fax 303.444.0824

This excerpt was downloaded from the
Lynne Rienner Publishers website
www.rienner.com

Contents

<i>Introduction</i> , Andrew J. Nathan	vii
Preface: Being a True Citizen	1
1 One Life for One Dream	5
2 Village Travels: My Days at the Rural Edition of <i>China Reform</i>	27
3 The Death of Sun Zhigang and the Citizen Recommendation to Appeal “Custody and Repatriation”	33
4 The “Illegal” Life of a Private Enterprise: Defending Sun Dawu	49
5 Be True to the Law: Campaigning for a Seat as a People’s Congress Delegate	71
6 On Behalf of Free Expression: The <i>Southern Metropolis Daily</i> Case	87
7 We’re in This Together: Life in “Petitioner Village”	101
8 The Citizens’ Alliance, or Gongmeng	115
9 Returning to China	133
10 What’s Your Motive?	143
11 The Prayers of Poshang Village: For Cai Zhuohua and the House Churches of China	147

12	Experience and Reflection: The Gongmeng Tax Case	153
13	In This World	165
14	Practice Love on the Road to Justice	173
15	The Critic: For My Brother, Teng Biao	181
16	Cherish Your Ballots!	187
17	Our 2011	195
18	The Idealists	203
19	China's New Citizen Movement: A Manifesto	211
20	I Am a Free Citizen	219
21	Hearts Filled with Justice	225
22	Ngaba	231
23	The New Citizen Movement in 2012	237
24	The Last Ten Years	243
25	China's Path	253
26	Love Along China's Borders	259
27	For Freedom, Justice, and Love: My Closing Statement to the Court	267
	<i>Index</i>	283
	<i>About the Book</i>	297

Introduction

Andrew J. Nathan

How to change China? In 1978, a dissident named Wei Jingsheng used his eloquent writing brush to produce a wall poster demanding “Democracy—the Fifth Modernization.” He was sent to prison and later into exile in the United States. In 1989, the leader of the Communist Party, Zhao Ziyang, advocated dialogue with students who were demonstrating for more democracy. He was purged and placed under house arrest for the rest of his life. In 2008, the writer Liu Xiaobo led hundreds of intellectuals to call for the Chinese regime to obey the letter of its own constitution. For leading this “Charter ’08” movement Liu was sentenced to eleven years in prison, which he continues to serve despite his receipt of a Nobel Peace Prize.

Xu Zhiyong—whose memoir this brief essay introduces—tried an approach perhaps more creative than any of the others. His career has hinged on the simple yet weighty concept of the “citizen.” Chapter II of the Constitution of the People’s Republic of China is entitled “The Fundamental Rights and Duties of Citizens.” Twenty-three articles long, it lays out extensive rights—to vote, to speak, to criticize government, to enjoy dignity of the person—and duties for all who hold Chinese nationality.

Xu Zhiyong’s bold idea was to take these rights and duties seriously. As he puts it (see page 212):

At the core of the New Citizen Movement is the idea of “citizenship.” This is a concept that applies to individuals, politics, and society alike. Citizens are not subjects; they are independent and free individuals who comply with a legal order that is mutually agreed upon and are

not required to kneel in submission to anyone. Citizens are not “commoners”; they are the owners of the state and those who govern must get their power through elections involving the entire community of citizens and say goodbye forever to the barbaric logic of “political power grows out of the barrel of a gun.”

This idea has a distinguished lineage in China. A prominent reformer of the late Qing period named Liang Qichao had promoted the idea of active citizenship as an alternative to dynastic rule in a journal called *The New Citizen*, published from 1902 to 1907. But Liang eventually decided that the Chinese people were too disorganized and uneducated to perform as citizens until after a period of benevolent dictatorship. Sun Yat-sen—the “father of the revolution” that overthrew the Qing dynasty in 1911—promoted the phrase “All under Heaven Belongs to the Citizenry” (*tianxia weigong*). Xu Zhiyong would later use Sun’s calligraphic rendition of the word “citizen” (*gongmin*) as a logo for his New Citizen Movement. But Sun, too, believed that the Chinese people would have to undergo a period of “tutelage” before they would be ready to perform their roles as responsible citizens.

Xu Zhiyong, by contrast, put full faith in the ability of his fellow Chinese to make the Constitution real by living it. As he says in his memoir (see page 268):

The New Citizen Movement advocates a citizenship that begins with the individual and the personal, through small acts making concrete changes to public policy and the encompassing system; through remaining reasonable and constructive, pushing the country along the path to democratic rule of law; by uniting the Chinese people through their common civic identity; pursuing democratic rule of law and justice; forming a community of citizens committed to freedom and democracy; growing into a civil society strengthened by healthy rationalism.

Xu came to this idea in the course of his struggles for justice as a law student and later a teacher of law. He first emerged in the public eye with his effort to get the government to abolish the system of “custody and repatriation,” a network of abusive labor camps where local police locked up anybody who didn’t have the proper papers. A college graduate named Sun Zhigang had been beaten to death in one of these camps. Xu and two friends, Yu Jiang and Teng Biao, built on the public outrage that this incident created to pressure the government to abolish the

camps. To their surprise, as he recounts in the memoir, the effort succeeded. Yet, success was incomplete, because the household registration system that deprives Chinese citizens of the right to live wherever they want remains in place, and fresh facilities have sprung up where the police detain vagrants, migrants, and others deemed undesirable.

Xu pushed ahead with a series of complicated cases recounted in the memoir—among others, those of Sun Dawu, a local entrepreneur unfairly charged with business malpractices; the *Southern Metropolis Daily*, a boundary-pushing newspaper that offended the provincial party secretary and saw its top officials charged with economic crimes; “black jails,” extra-legal detention facilities where petitioners seeking justice in Beijing were locked up; and Chen Guangcheng, the blind village legal advocate subjected to house arrest. Xu and his colleagues also pushed for a law to require government officials to reveal their financial assets, and for access to Beijing public schools for the children of migrant workers.

Xu describes himself as an “idealist.” Even he has a hard time explaining why he chose to be one of the few Chinese who lifted his gaze from the ordinary business of life to see the horizon of social change (see pages 143–144):

“What are you trying to get out of it, by helping them?” asked the party secretary, relaying the question he’d been given by others. “Do you really have no other motives? Why don’t you sit back, write some academic articles, try to get a professorship or snag an official position where you can make some real money? . . . “What’s my motive?” I often posed this question to myself as well. Even though this was an abnormal question premised on scary logic, it was still necessary for me to think the question over seriously and try to answer it. The only selfish motivation I could think of was that I did these things for my own well-being and happiness. . . . Helping others allows me to have a sense of well-being.

But Xu was also highly practical, developing the nearest thing China has seen to a strategy of impact litigation. In the Sun Zhigang case, for example, he not only sought posthumous justice for the victim, but tried to blow life into the constitutional power of the National People’s Congress Standing Committee to exercise a function akin to constitutional review. In the Sun Dawu case, the goal was not only to help a specific businessman, but to crack the virtual boycott state banks place on lending to private enterprises.

Xu's strategy involved selecting cases of egregious injustice that had broader policy implications, using social media to foster attention to the problem, cultivating print media coverage, generating petitions, convening academic and think-tank conferences on the larger issues, and proposing a resolution too moderate for the authorities to refuse. The approach was a combination of legal argument and public relations. As he puts it (see page 95), "there have been those who have criticized us, saying that we used public opinion to interfere with judicial independence. The fact is, however, that we have never tried to use the media to interfere with the judicial process. Our aim was to interfere with those forces outside the law that themselves interfere with the judicial process."

The "forces outside the law" that Xu refers to—local cadres with economic interests in the status quo, security officials trying to keep the lid on any challenge no matter how justified, and more powerful dark forces that Xu chooses not to specify—naturally pushed back. They could do so politely: for example, arranging a crowded itinerary for Xu's student investigators so that they had no time to investigate the local details of the Sun Dawu case. Or they could use force; indeed, Xu's tactics involved sometimes courting physical confrontations, such as when he intruded into venues protected by China's omnipresent plainclothes thugs and took beatings without fighting back. In one example that he recounts (see page 110), "I refused to leave. A tall guy next to Director Liu began shoving me, mixing in some punches and smacks to my head for good measure. He pushed me all the way over to the gate of the nearby Number 62 Middle School, his fists never leaving my cheeks."

In both his failures and his successes, Xu compiled an archive of the remarkable ways things work in China. In his battle against the "black jails," for example, he discovered the existence of a division of labor whereby "retrievers" (thugs) from one province beat petitioners from another province in exchange for retrievers from the second province beating petitioners from the first province, so that the petitioners could not complain that they had been mistreated by officials from their own province. He also uncovered the collusion of the Beijing police with the black jail system when he and his colleagues stood outside one black jail for a whole day, "continuously call[ing] the 110 police hotline and wait[ing] for police to rescue the petitioners being held in that black jail," and no one came (see page 129).

On the other hand, good things could sometimes happen in surprising ways. After generating a great deal of publicity over the unfair pros-

ecution of the *Southern Metropolis News* officials, Xu was rewarded by the intervention of two former Guangdong party secretaries, who wrote to the current provincial boss—the same man behind the attacks on the newspaper—using roundabout language to urge him to treat the case with care lest he offend public opinion. As a result, the sentence of one of Xu’s clients was reduced and a second client was released without indictment.

Xu’s idea of changing China by practicing citizenship took shape around the time he ran for a seat in the local People’s Congress in 2003. Looking past the reality that the elections are pervasively manipulated by the Communist Party, Xu decided to practice as-if politics, treating the election process as if it were real. “What’s most important,” he tells his supporters (see page 84), “is to take part. I hope that my participation will tell everyone: Believe in our laws, believe in the progress of this era. Please believe that we have a genuine right to vote.” Surprisingly, he did win a seat, with the broad support of faculty and students at the university where he taught. The story ends there, however, because—as Xu’s Chinese readers would have known—People’s Congress delegates have no power and nothing substantial to do.

Also in 2003, Xu formed The Citizens’ Alliance, aka Gongmeng, aka the Open Constitutional Initiative (OCI)—the organization that eventually morphed into the New Citizen Movement and took Sun Yat-sen’s calligraphic word “citizen” as its logo. As Xu writes in the preface to his memoir (see page 1), “The most ideal reform model for China is to develop constructive political opposition groups outside the existing political system that can negotiate with progressive forces within the system to enact a new constitution and, together, complete a transition to constitutional democracy.” The members of this group—it was not really an organization—sought to change China by running for the only office available, that of local People’s Congress delegate; holding meetings on public policy; writing letters on policy issues to the National People’s Congress; seeking to rescue victims from black jails; agitating for change in the Beijing dog ownership regulations; pushing for equal educational access for the children of migrant workers; and so on.

It is always hard to assess the causal effects of human rights work, and this is true of Xu’s work as well, because of the black box nature of Chinese governance. But by all appearances Xu’s work was influential at first. This, however, was a relatively open time. As Xu recalls (see page 116):

There was a sort of inherent logic to OCI's beginning in 2003. That year, more than 100 media outlets throughout the country launched or expanded their opinion pages. One of the most popular television series was "For the Sake of the Republic," a historical depiction of the last years of the Qing dynasty and the origins of the 1911 revolution. The devastating effects of the SARS outbreak in Beijing led to cracks in decades of habitual information control. That year, the media, legal scholars, and the public coalesced around the Sun Zhigang case to launch a new wave of protecting constitutional rights. A group of legal professionals looking to defend citizen rights appeared on the public stage. The citizens' rights-defense movement was an inevitable result of our society's having reached a certain stage in its economic development.

Even so, OCI confronted constant harassment in the form of deregistration, tax investigations, and mysterious shutdowns of its website. Xu received a series of warnings (see page 131):

The "stability preservation" authorities began putting even greater pressure on Gongmeng beginning in March 2012. Once more, we were forced to lose our office. The authorities had chats with each of our employees, demanding that they quit working for Gongmeng. One of our volunteers, Song Ze, who had been responsible for investigating black jails and rescuing petitioners, was placed under criminal detention on May 5 for "picking quarrels and creating a disturbance."

On July 16, 2013, Xu was arrested, charged with "gathering a crowd to disrupt order in a public place." Six months later he was sentenced to four years in prison, a sentence he is serving at this writing. His memoir was completed before his arrest—except for the last item, his eloquent "Closing Statement to the Court."

The Chinese government could not abide a citizen. Throughout this memoir, Xu expresses his patriotism, his respect for the authorities, and his belief in gradualism. "Deep down," he says (see page 76), "I was a nationalist myself. You could say that, deep in my heart, I had a strong China fixation. I longed for our country to be fair and just and for our people to be free and happy." If a person this loyal and moderate cannot perform his role as a citizen, who can? As Xu warned the court (see page 267), "By trying to suppress the New Citizens Movement, you are obstructing China on its path to becoming a constitutional democracy through peaceful change."

Despite repression, China is still rife with activists. Just before his arrest, Xu warned what must happen if the regime would not tolerate pressure for change (see page 254):

Revolution will erupt in the blink of an eye and will be unpredictable and difficult to defend against. No matter how imposing the “stability maintenance” system might be, in a society with a huge gap between rich and poor, intensifying conflict between the people and the government, and a cruel and arrogant bureaucracy, the fuse of revolution can be lit at any moment.

We have no way of knowing what Xu is thinking as he endures four years in jail. But among China’s options for the future, surely his vision remains the best (see page 255):

In order to get democracy running well in the shortest amount of time possible, China must have a relatively mature constructive political opposition. If such a force exists, then China’s political transition will be a peaceful one no matter how the authoritarian system departs the stage of history.