

A Legal Defense Against Chinese Oppression

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Can the American Bar Association protest China's crackdowns without risking the safety of its staff?



Over the past year the American Bar Association has faced a dilemma over how to respond to China's repression of human-rights lawyers as well as some public-interest and criminal-defense lawyers. Some leading ABA figures have felt strongly that the association should denounce China's harsh measures.

The ABA's professional staff in Washington opposed any public condemnation. They feared that, in the current repressive atmosphere in Beijing, the association's China office might be shut down and some of their Chinese staff detained.

Despite supporting legal training programs in China for many years, the ABA has never had a secure status there. It could easily suffer the same fate as other recently closed domestic and foreign groups that promoted the rule of law.

I argued that the ABA urgently needed to make a public statement, but one that both criticized the treatment of lawyers and recognized the importance of the ABA's law reform efforts in China. Such a statement would encourage other foreign bar associations not only to issue condemnations but also to expand their own law-reform efforts.

The result last August was a faint criticism that satisfied no one. The pot continues to boil every time there is an ABA conference in China, such as the two held in November.

Unfortunately, the Xi Jinping regime has become even more repressive. My own feeling, that the ABA should speak out forcefully, has grown stronger.

But more intense repression has heightened the risk of an adverse Chinese government reaction to any significant condemnation. Last summer I thought that Beijing staff were unlikely to be locked up if the ABA took a stronger stand and that it was worth the risk of the office being terminated in order to voice an appropriate protest. But the criminal detention and ultimate expulsion of the Swedish rule of law worker, Peter Dahlin, and the continuing detention of his Chinese colleagues, shows that the risk of office closure and staff detentions, even for foreigners, has increased.

In any event, the ABA should again consider the problem, debating whether it should make sharper criticism and perhaps take other actions in a major public protest. The ABA can do various things in the U.S. to help China's human-rights lawyers.

Many Chinese lawyers have taken refuge in America and are unable to return home without facing prosecution. They need financial support, opportunities for relevant research, meaningful work and advanced education. The ABA can also sponsor internships, conferences and study tours so that, when these marooned rights advocates can safely return, they will be better equipped to advance legal reform.

Some American lawyers even favor taking the initiative now to close the ABA's China office until the human-rights pendulum begins to swing in a positive direction again. They believe that little significant law-reform progress can be made in China in the present climate and the office is a hostage that impedes an appropriate response to repression.

But if the ABA leaves China, what will become of the Chinese staff and their American colleagues in terms of employment and personal safety? Pulling out isn't likely to dissuade the Xi regime from its repression.

In principle, tens of thousands of China's judges, prosecutors, lawyers, administrators, law professors and students who helplessly oppose the current repression would welcome a stronger foreign protest. But ABA withdrawal might also create a sense of abandonment by those who have encouraged

Beijing's efforts to develop a genuine rule of law. One has to weigh the world-wide effects of its strong condemnation of Beijing's repression against the loss of the valuable training contribution resulting from the ABA's forcible or voluntary withdrawal from China.

For me it's a close question. But on balance, because of the ABA's huge membership, prestige and responsibility for the legal profession, it should now take a much tougher stand than it has, even if its protest could lead to its departure from China. The Beijing government is making it impossible for lawyers to advocate for their clients and the rule of law, and that reality must be recognized and condemned.

President Xi is playing a rough game, and cooperation between foreigners and Chinese in the legal field may become extremely difficult during the rest of his tenure. Powerful opposition both within and outside China offers the only hope of improving a dire situation. This is a messy, unhappy time for the rule of law in China, and there are no good solutions.

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