

A Comparison Between the Brennan Center for Justice and Zhicheng Public Interest Lawyers

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In 2015, I spent three months as part of my Marc Haas Fellowship at Columbia Law School at the **Brennan Center for Justice**. Brennan Center was established in 1995 to promote the legacy of Supreme Court Justice Brennan under the NYU School of Law. It is a nonpartisan law and policy institute that seeks to improve the systems of democracy and justice in the U.S. The Center's model is a combination of research, advocacy, communication and some litigation.

Zhicheng Public Interest Lawyers (Hereafter referred as **Zhicheng**) [\[1\]](#) in China is the organization where I had been working for about 10 years before my job in India on the faculty of Jindal Global Law School. Zhicheng is a mix of direct legal service and policy advocacy. It was established in 1999 by Beijing Zhicheng Law Firm (owned by Tong Lihua) and the private lawyer Tong Lihua. It started as a very small grass-root NGO, working on children's rights. Now it has grown into an umbrella organization working on children's rights, migrant workers' rights, criminal justice and other issues with 50 full-time staff in Beijing, 32 affiliated public interest law organizations outside of Beijing and a national pro bono network of 9000 lawyers.

To understand both organizations, let's look at their respective strategies.

Brennan Center Strategy: Rigorous Research for Practical Solutions

The Brennan Center conducts rigorous research but is also committed to seeking workable solutions. Its reputation and independence is based on that research. The Brennan Center based also carefully crafts workable proposals for policy change and interacts with policy makers. For example, when it came to reforming the New York Police Department, the Brennan Center first released a report critiquing law enforcement's approach to counterterrorism, followed by a policy proposal on why NYPD should have an inspector general. As the result of a media and lobbying campaign, the New York City Council established an inspector general.

Brennan Center Strategy: Build Common Ground

The Brennan Center is nonpartisan and its research is problem-oriented instead of partisanship-based. For example, in milestone reports on voting rights 2011, the Brennan Center conducted a non-partisan survey of new voting laws. It uses a neutral title, *Voting Law Changes in 2012*. While this neutral standing helps the Brennan Center identify critical problems, it also helps the

Brennan Center garner more supporters for its solutions. The Brennan Center has worked with both parties to put a mass surveillance limit into the USA Freedom Act. And in litigation against New York State Board of Elections, it has assembled a group of bi-partisan plaintiffs to challenge campaign finance law.[\[2\]](#)

Brennan Center Strategy: To Change the Law. You Must Change the Public

Communications outreach is a central Brennan Center goal. Its staffers frequently write Op-Eds and appear in the media. Here is an example of how the Brennan Center uses its research to further its advocacy through the press. In the summer of 2011, Brennan Center research found that “19 states passed 25 laws and two executive actions that curbed voting rights”[\[3\]](#). Moreover, the research found that the “new state laws will make five million eligible voters harder to vote”[\[4\]](#) who are mainly “young, minority and low-income voters, people with disabilities.” [\[5\]](#) *The New York Times* picked up on this research and used it in a frontpage story. The *Times* story touched off a robust discussion about voting reform, and by election day, all of the worst new laws had been blocked, blunted, postponed and or repealed.[\[6\]](#)

Zhicheng Strategy: Independent, But Working Within the System

Unlike many civil society organizations that try to keep distance from the government, Zhicheng believes that there is large space for meaningful change within the system. As a Western diplomat in Beijing said, “If you are prepared to play within the system you can get a lot done.”[\[7\]](#) Zhicheng actively seeks opportunities to work with government. First, Zhicheng promotes the Party’s concepts and policies which are in line with its mission. Zhicheng closely follows the Party’s policies and speeches by top leaders and fills meaningful ideas into them for promoting social change. Here are two examples. When the Party says lawyers are “socialist legal workers” Zhicheng uses this idea to promote public interest lawyering practice. When the term “right-defending” becomes sensitive Zhicheng promotes the idea with evidence that right-defending is the precondition for maintaining social stability. The latter is a big concern for officials.

Zhicheng also creates and values opportunities for internal advocacy. While focusing on advocating toward the public, Zhicheng also values the internal advocacy opportunities. From Zhicheng’s experience, internal advocacy is even more effective than external advocacy. Even though the policy-making process in China is not formally open to the public it is common practice that experts in the field will be invited to join internal discussion during the policy framing process. Zhicheng focuses on training lawyers to be capable experts for effective communication in internal policy-making process, such as having workable solutions in his or her field, translating the professional recommendations into language and ways popular in government culture and communicating the information in line with the style of the official who would make the decision. Zhicheng experts have been invited to join policy-making process on children’s rights, migrant workers’ rights, civil society management, and judicial reform.

Zhicheng Strategy: Diversify Partnerships and Funding Sources

Civil society development is still new in China. For right-defending organizations, its survival is even more challenging both in terms of available funding and friendly policy. Zhicheng's strategy for survival and thriving in such surroundings is to diversify its partnership and its funding sources. It builds up a wide network of partnerships with different stakeholders at different levels. Zhicheng is patient enough to find common ground with different stakeholders even if sometimes the common ground is very limited. Under this strategy, Zhicheng has developed partnerships with government, international NGOs, UN agencies and programs, lawyers' associations, government organized non-government organizations, private law firms, media outlets, universities and some charitable organizations. Within government, it further develops partnerships with different agencies at different levels^[8]. More than that, Zhicheng has developed strategic partnerships with some selected partners. For example, the strategic partnership with All China Lawyers Association, helps incubate more than 30 public interest law organizations outside of Beijing and develop a national network of 9000 pro bono lawyers for children.

Zhicheng Strategy: Directly Serve the People

While focusing on promoting law and policy change, Zhicheng also provides direct legal services to people for instant remedies. In the last 16 years, it has represented more than 600,000 clients. Zhicheng and its affiliated organizations have collected about \$100 million of unpaid salary and workplace injury compensations for migrant workers through mediation and litigation. This direct legal service help builds public esteem for Zhicheng. Also importantly, the direct exposure to many individual stories urges Zhicheng lawyers to think about the most effective for policy changes.

Connecting people to policy makers is also key to Zhicheng's broader strategy. In China, it is very hard to get data for research. Concept-based discussion is not convincing to policy makers. The information pool of direct legal service provides basis for Zhicheng to conduct evidence-based research. Every year, Zhicheng releases different reports^[9] based on its direct legal service which are welcome by policy-makers.

Comparisons

The Brennan Center operates in an established civil society in which there are similar outlets. The organization and its lawyers don't have to worry about being shut down for political advocacy. Zhicheng, by contrast, was the first organization of its kind. There was no example to follow, no experience for reference, no outside funding to seek and no policy support when it was just founded. But Tong Lihua's passion and gift for communication has caused Zhicheng to survive and grow. Although the Brennan Center and Zhicheng operate in very different contexts, there are some similarities.

Similarity: Commitment to Problem Solving

The mindset of these organizations is neither combative or aggressive. They are not emotional or shrill. They may identify critical problems which government and civil society have overlooked, but they do not confine themselves to their role to being a mere whistle-blower or watchdog.

They commit themselves to seeking practical solutions, leading the public to talking about solutions and working with other stakeholders on implementing solutions. They don't have predictable answers to problems because their research is evidence-based not ideology-based. They respect other stakeholders' perspective and are open to healthy compromise. Both organizations are focused on the art of the possible. Lawrence Norden, deputy director of the Brennan Center's Democracy Program, said, "We have to make calculation of what we want and what is realistic." Tong Lihua echoed that sentiment: "When you promote reform you need to know what can be changed within two years and what can be changed 20 years later."

Similarity: Commitment to Communication

Both organizations know how to frame and communicate their ideas in the right time and in the right way. They know how to tailor their message whether it is for a judge, journalist or policy-maker. Each organization also recognizes that sometimes it is best to be quiet and play a role behind the scenes. High-visibility in credible media increases the chance to work with policy-makers on substantive change.

Lessons

Civil society organizations need to develop strategies that are committed to problem-solving and smart in communication. This requires civil society organizations to develop a capacity to work on solutions, instead of just serving as whistle blowers or watchdogs. As Peter Padbury of the Canadian Council for International Co-operation said, "NGOs are often seen as critics. Many NGOs working on the sustainability agenda have shifted from seeing themselves as critics to seeing themselves as 'co-creators' who bring analysis, expertise and solutions to the policy dialogue. They can link local action with the global dialogue."^[10]

None of these efforts should take place in a vacuum. Lasting policy change can only happen with public support. The successful organizations for the 21st century will be those that combine practical problem-solving with incisive communications.

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[1] English website for Zhicheng <http://zhichenglaw.weebly.com/beijing-zhicheng-migrant-workers-legal-aid-and-research-center-mwlarc.html>. Chinese website for Zhicheng and its organizations <http://www.zcpi.org/>; <http://www.chinachild.org/>; <http://www.zgnmg.org/>; <http://www.cncfz.org/index.html>;

[2] Jesse Mckinley, *Bipartisan Group Sues to Close New York's Corporate Donation Loophole*, New York Times, July 14, 2015, <http://www.nytimes.com/2015/07/15/nyregion/bipartisan-group-sues-to-close-new-yorks-corporate-donation-loophole.html>.

[3] Michael Waldman and Jennifer Weiss-Wolf, *Voting 2012-A Case Study*, Spring 2013, p1-3.

[4] Id.

[5] Id.

[6] Id

[7] David, Parkins, *Beneath the Glacier*, THE ECONOMIST, April 12th, 2014, <http://www.economist.com/news/china/21600747-spite-political-clampdown-flourishing-civil-society-taking-hold-beneath-glacier>.

[8] The diversified connection also proves to be very helpful for risk management. Even if one agency or one official gets mad with Zhicheng it has to make calculation about whether the agency has the capacity to shut Zhicheng down.

[9] Here are some examples of its reports: Survey Report on Right Defending Cost for Migrant Workers (2004), for media reports please refer to the link http://news.xinhuanet.com/legal/2005-06/21/content_3112602.htm; Research on Collective Rights-Defending Cases of Migrant Workers, <http://www.zgnmg.org/a/08yjbg/01sdltdmq1/743.html>; Survey Report on Settlement of Legal Disputes in Rural Areas (2011), <http://www.cncfz.org/b/yj/fz/736.html>; Report on Child Sexual Abuse in China (2008), <http://www.chinachild.org/b/yj/694.html>; Report on Crimes Committed by Migrant Workers (focusing on challenges migrant workers faced in criminal procedure, such as high percentage of pre-trial detention, low percentage of probation). Chang Xin, Calling on Providing Legal Aid to All Migrant Workers in Criminal Cases, Legal Daily, July 3rd, 2012, http://www.legaldaily.com.cn/bm/content/2012-07/04/content_3681868.htm?node=20729.

[10] Quotation of Peter Padbury's words of the Canadian Council for International Co-operation by Tom Bigg, in the article of "Implementing Agenda 21-NGOs and the UN System Since Rio Summit", <http://www.un-ngls.org/orf/documents/publications/en/agenda21/01.htm>.