

# Seizing the ‘Arbitrage Opportunity’ for Legal Rights

*Innovations Case Discussion:*  
International Bridges to Justice

The idea of innovation used to conjure up images of scientists in white lab coats peering into microscopes. Then, what sprang to mind were buff Silicon Valley entrepreneurs devising new business models. These caricatures sound simplistic, but they largely held. However, a new form of innovation has emerged that forces us to change our mental picture again. Its agent of action is the social entrepreneur, and the method is to do for society what their forbearers did for business.

On the surface, the link between innovation and rights may not be apparent. International Bridges to Justice’s operations seem straightforward: it promotes legal rights around the world by partnering with governments to develop and assist a community of public defenders. It sounds like another do-good non-governmental organization.

But this is to severely misunderstand IBJ’s work and the method of its founder and president, Karen I. Tse. Rather, it represents a radical approach. On one level, IBJ cleverly turned a series of difficult obstacles into a “market opening” for its activities. At the same time, IBJ’s initiatives effectively transform legal rights from a political problem to an economic issue. By putting it on a different plane, a window of opportunity is opened whereby substantial, long-lasting change is possible.

The IBJ story is instructive not only because it reveals a new form of innovation, but because IBJ’s approach may serve as a model for other global problems that require many stakeholders to be brought together. Yet it embodies something far greater, too. From its modest first step of fostering rights, where it ultimately ends is at the audacious goal of ending state-sanctioned torture in this century. To realize this, Ms. Tse implores, requires a change in consciousness.

It is powerful ideal. Does it simply fit the pattern of the wonderful hyperbole that all entrepreneurs share? Or is Ms. Tse actually on the path towards achieving this, in the footsteps of people like Mahatma Gandhi or Martin Luther King Jr. To consider this, it is vital to understand the rich dimensions of IBJ’s innovation, which is not obvious on the surface.

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EXPLOITING THE GAPS

“The entrepreneur is the innovator who implements change within markets through the carrying out of new combinations,” the economist Joseph Schumpeter famously wrote in 1934.<sup>1</sup> The way this happens is that entrepreneurs identify what in hindsight we may refer to as “opportunities,” but looks very different at the outset. It is a reality where something seems amiss. Entrepreneurs often spot this where most of us do not. A way to think about it is as the “white spaces” or “holes” on a map, not the images of land. Jean-René Fourtou, the former chief executive of Rhône-Poulenc, called it “la vide” (emptiness).<sup>2</sup> Sachio Semmoto, the founder of numerous Japanese telecom firms, describes it as “the contradiction”—that is, an inconsistency in what exists that opens up a chance for the what-can-be.<sup>3</sup>

In the case of IBJ, Ms Tse saw something special at a special time—but saw it in a new way. She noticed that there was a gap between what countries had signed up to do regarding legal rights and what they were actually doing. As she noted in her essay, some 113 countries are said to practice torture, even though around 93 have signed international conventions and established domestic laws to safeguard citizens’ rights. The difference between the public pronouncement and the practice created a sort of “arbitrage opportunity.” There was a way to use the system itself to plug the hole. The art of arbitrage is to capitalize on the difference that exists between things at the same state in time. Yet what was needed was an entity to point out the divergence and come up with a way to bridge it. Thus, “*International Bridges to Justice*.”

The international dimension—the “I” in “IBJ”—is essential. The local legal community cannot do it alone: it does not have the infrastructure, training, or resources. In fact, trying on their own might only invite retaliation from those whom its actions threaten—the very people, ironically, charged with upholding the law, such as police, government officials, and even judges. (It is not uncommon for judges in countries where IBJ operates to detain lawyers who argue that their client was tortured.) In addition, IBJ “partners” with governments. It is welcomed in since it sells itself as a sort of service-provider to help the country’s own reforms. Legal rights, after all, is a foundation to all other social goals.

The IBJ method is novel. Most human rights groups take the opposite approach. Rather than work with governments, they relish their role as outside agitators. To work within the system would seem tantamount to condoning it. Furthermore, they tend to focus on major cases and try to remedy specific abuses. If the person gets released, they claim victory and may turn their attention elsewhere. An example is Amnesty International’s classic letter-writing campaign, which although extremely useful on the individual level, is not as effective on the societal level. Other groups like Human Rights Watch document and expose abuses—itsself vitally important, yet leaves the fundamental problems unaddressed.

In 2001, when IBJ was founded, no organization was working solely on the broader plane of the long-term, practical implementation of rights in criminal law. There are many reasons why, but the most important is because when earlier

groups were formed, the circumstances were not ripe for much more. But today, almost all governments are moving in the direction of adopting global norms and standards. It creates a market opening. For example, in 2001 China joined the World Trade Organization and won a bid to host the 2008 Olympics—important symbols of the country's integration into the international community. Adhering to global legal rules is a part of the trend.

So in this way too, IBJ bridged a gap between what other rights groups were doing and the new area where it could act. In Schumpeter's terms, it was the "market" by which IBJ effectuated change through "new combinations."

Those "new combinations" have other features. IBJ works with the existing defender community. It is a humble approach. This makes its work more easily accepted by the defenders as well as governments. Also, it enables the programs to develop deep roots among the practitioners, so that IBJ's initiatives have staying power. Moreover, instead of aiming for immediate victories, IBJ focuses on the long-term, by slowly developing a sustainable infrastructure for legal rights. Ms. Tse often refers to this as creating "generational change," that is, institutionalizing defense rights so that it does not rely on the goodwill of any particular individuals at any particular time, but is an inherent feature of a country's judicial system.

Again, this is new. To think of it in parable terms, it is not a question of giving a man a fish or teaching him to fish—the innovation here is organizing him into a co-operative. (That is, taking fishermen and providing them with better training, better materials, and establishing a community so that they can do what they do better.) In so doing, IBJ does not want to *stop* rights abuse so much as *prevent* it.

In addition to being a hub for the local defender community, IBJ also acts as a sort of "market-maker." It establishes the environment for legal rights to take hold by being the agent that brings parties together. IBJ found that assisting the defender community only addresses one part of the problem. It is not enough if the climate in which they work is not amenable to their activity. Instead, it is necessary to bring different parts of a judicial system together—such as the prosecutors, police, judges, prison officials, etc.—so that defenders were not seen as hostile to the judicial process but an essential component to it. This is not so obvious to people from non-Western legal traditions, or countries with embryonic judicial systems. The West's adversarial legal process otherwise looks disrespectful; defenders are seen to antagonize other parties (whose reaction is to lash out against them).

So IBJ took on the role of market-maker by bringing these groups together. With such a tense situation, it took an outsider to be the agent of action. IBJ was seen as neutral. And Ms. Tse herself did not seem threatening (more "reverend" than "lawyer" perhaps...). In many instances, the meetings among prosecutors, defenders, police, and judges represented the first time the parties had ever met outside a courtroom. In Ms. Tse's spiritual facet of her work, she describes this as a chance for their uniforms to disappear and their humanity to show through. By connecting in this larger, spiritual way, people could empathize with each other and learn. And from this, change. Often, in the honesty and intensity of the dialogue, participants found their faces moist with tears.

Strikingly, the most important dimension of IBJ's innovative approach is also its most discreet (and I disclose it with care). IBJ works on "legal rights"; the idea of "human rights" almost never appears in its literature and is very rarely discussed. Ms. Tse publicly emphasizes that the central problem facing countries with developing legal systems is not so much the handful of political prisoners that already have the attention of the West, but the tens of thousands of ordinary people who face abuse in the criminal justice system on an everyday level. Clearly the basic legal rights of citizens—the young Cambodian boy accused of stealing a bicycle, in the example from Ms. Tse's essay—is something that everyone can sign on to, be it government official, policeman, or prosecutor. Human rights might be controversial; legal rights need not be.

Is the emphasis on legal rights a political calculation so that IBJ stays in the good graces of the governments with whom it partners? What is certain is that IBJ's approach gives it access and therefore influence. Is the link between legal rights and human rights close, such that concentrating on one will surely improve the other? It is clear that creating the infrastructure for the rule of law is critical on many dimensions, from protecting property rights and upholding contracts to ensuring basic legal safeguards that lead to a stable society.

Ultimately, the gaps that Ms Tse encountered, and which seemed to others to be obstacles, actually turned out to be "market openings" through which an innovative approach could take hold. In this way, Ms Tse's work sheds new light on Schumpeter's idea of innovation and change. Yet it required not only looking at the issue differently but acting differently too.

## TRANSFORMING THE PROBLEM

In speeches where she has sought to explain IBJ's unique approach, Ms. Tse likes to quote Kofi Annan, who in 2005 as United Nations Secretary-General said about human rights: "The era of declaration is now giving way, as it should, to an era of implementation."<sup>4</sup> Where in the past it was important to get countries to sign on to accords, now that they largely have, the key is to get them to fulfill their commitments in practice. That is the gap that IBJ identified as a sort of arbitrage opportunity.

But the genius of IBJ, and the second pillar of its innovation, is in how it did this. The work of IBJ had the effect of changing the nature of the problem. Enforcing legal rights on a day-to-day level where it affects the lives of ordinary people is hard. It requires making changes deep into the legal system: its institutions, practices, and attitudes. (Hence, IBJ's activities had to encompass the overall legal environment, not simply defenders.) Still, developing a robust infrastructure for the defense side of the docket is critical.

As Ms. Tse noted in her essay, defenders are the first line of support in a criminal justice system; the sooner a person has access to an attorney, the less likely his rights will be violated. IBJ's work shows that when resources are put towards informing citizens of their rights and ensuring a supply of well-trained defense

attorneys, the incidence of abuse is markedly reduced. But building out this infrastructure takes time and money. Indeed, the more pragmatic the work, the more capital intensive it is.

The implication is that IBJ's method actually transforms the issue of ensuring legal rights from a political problem to an economic one. Thinking about it in this way changes its nature and creates new possibilities for change. Indeed, it becomes possible to informally calculate the cost of legal rights. This puts a price tag on rights abuse; a monetary sum above incalculable physical and emotional costs. In so doing, it suggests that it may also be possible to out-finance it.

For example, based on IBJ's experience of running programs in Asia and elsewhere over the past seven years, the amount needed to provide a basic level of rights is extremely low: perhaps only a few cents per year, per person. This encompasses establishing a national network of legal-aid centers, publicity of rights campaigns, access to defense lawyers and case support. Thus, a country like Thailand with 65 million people might need around \$10 million to provide basic legal rights and prevent torture; for Niger's 14 million people, around \$4 million; and so on. We may quibble about the right amount. But by transforming the problem in this way, the IBJ method opens up a promising new avenue for it to be addressed.

This sort of informal economic analysis suggests that governments, civil-society groups and the business community might want to rethink their approach to fostering rights. IBJ's initiatives that establish a creative partnership among stakeholders seems appropriate, since the issues are larger than any one group can handle on its own. New relationships between the local community and a global support-system is also crucial. Lastly, the role of the private sector is vital, since it excels at the very on-the-ground implementation that is required. In this respect, IBJ has forged alliances with private law firms and has tried (albeit with only limited success) to engage the business community.

One reason why IBJ has made the cost of realizing rights so low is due to its creative use of technology. A question that IBJ's experience raises is whether the organization could have existed prior to the Internet. Of course, other human rights groups existed earlier. Yet, as always, one is hostage to one's times. Technical limits impose invisible constraints that we only see in hindsight. Earlier rights organizations needed to grow slowly and piecemeal, since there were limitations on the "coordination costs" that their activities entailed. Management is difficult when it happens over a telephone and fax machine; information is scarce and costly to share.

By contrast, one of the Internet's key attributes is that coordination and collaboration is far easier, and communities can form and interact far more efficiently. In this light, it is unsurprising that in 1997, at the dawn of the commercial Internet, the Nobel Peace Prize was awarded to Jody Williams and the group she coordinated largely via the Internet, the International Campaign to Ban Landmines, which had been founded only six years earlier. In the same way, IBJ is a beneficiary of using information-technology as a cornerstone of its activities.

At its most basic level, the technology is a way to keep defenders abreast of cur-

rent laws and rulings. In the West, where information flows smoothly, it is easy to take this for granted. But in developing countries, something as modest as an Internet-enabled PC serves as a massive law library. And it is not always certain that prosecutors and judges are familiar with the law; arming the defenders with information is vital. The computer acts as a “neutral messenger” with which defense lawyers can present unwelcome statutes and precedents to the court. In some circumstances, to contradict a judge or prosecutor is considered insulting and invites trouble. Being able to shrug one’s shoulders and point to the PC as the source of the information depersonalizes the situation.

Additionally, computers and the Internet act as the eyes and ears of the capital cities and international community. It also provides a voice to the defense attorneys. The technology is a life-line for defenders (sometimes in remote areas) to reach the broader world to get support and advice. It also redraws the balance of power, because judges and prosecutors are implicitly put on notice that what happens in the court room is being watched elsewhere.

Furthermore, the technology enables the defenders to form a community, in which they can support one another, provide advice and rally for change. This might sound banal, but it is one of the most important aspects of IBJ’s work, and one of the biggest benefits that the Internet brings. All great movements require communities, whether artistic groups, scientific schools of thought, political parties, or social change. Invention may be a solo activity, but change happens through groups. It takes a village. Online, people can share information and form groups easily. For defenders in immature judicial systems, there is strength—and safety—in numbers.

Lastly, the technology enables IBJ to scale—that is, grow larger by extending marginally less, not more, resources. This is because the IBJ method is above all intellectual property—and like most informational goods, developing the first one is expensive and time-consuming, but replicating it is cheap. The magic of the IBJ approach is that many elements of it can be easily applied to other countries and other contexts. IBJ estimates that around 70 percent of its projects and materials, such as the defender “toolkits” and accreditation systems, can be reused elsewhere with only minor modification.

Importantly, the IBJ method is “iterative” or “emergent”—Silicon Valley terms that basically mean that IBJ learns as it goes along, rather than simply executes a preset plan. This makes the organization flexible to change depending on the circumstances. At the same time, it means that the process is inherently open to incorporating improvements, which then can flow through all of IBJ’s activities elsewhere almost instantaneously.

The ability for organizations to generate and share knowledge in this way, and to learn, is what distinguishes 21st century enterprises from their 20th century counterparts. And it is why IBJ has been successful in the handful of countries where it has direct activities, while also being able to go global. Other NGOs adopt a sequential approach whereby they grow through incremental steps and country-by-country in a linear fashion. However, IBJ recognizes that the technical tools

now exist that let it can reach deep into legal communities around the world simultaneously from its base in Geneva. The IBJ model scales because it explicitly taps into the abilities of others, while upholding the notion that to lead is to serve.

### THE SPIRITUAL ELEMENT

Medieval alchemy occupied itself with turning base metal into gold. Yet this is actually a superficial characterization: it took place in the context of religious mysticism not science. At its core, it was about the spiritual transformation of the alchemist. So, too, the journey that Ms. Tse pursues has as its apex not so much a reform of the legal system, but a change of consciousness among individuals, so that they share in their common humanity. The context is globalization and markets; the transformation is in awareness. Legal rights are simply the immaterial residue that is left in its trace.

The front door of IBJ comprises formalistic things such as habeas corpus and rules of evidence, but it leads to a place where what matters is a shift in thinking. On one level, this is seen in the “Communities of Conscience” program, in which defenders from developing countries and mature legal systems meet. But on another level, it is what drives all of IBJ’s projects, particularly where different stakeholders are brought together to empathize and learn from one another. Ms. Tse’s unique background as both a lawyer and reverend puts her in a position to understand this, just as it gives her credibility to speak on different levels to different people in pursuit of her goals.

Those goals seem modest: helping governments live up to the standards they themselves have set. Yet the ultimate destination is revolutionary: Ms. Tse’s ambition is to end state-sanctioned torture in the 21st century.

It may sound utopian, but it should not. There are parallels with the movement to abolish slavery in the 19th century. It took many reformers from different walks of life. It took many years. It seemed impossible at the outset; powerful interests were entrenched. (And wasn’t it just a sad fact of life: didn’t slavery exist since time immemorial, the argument went...) New institutions needed to be created. Yet ultimately, it was not so much the introduction of law but a change in consciousness that accounted for the success—abolition laws only followed the shift that had already taken place in people’s hearts. Of course, incidents of slavery still crop up today. But they are exceedingly rare, and never state-sanctioned. Most importantly, no one would even try to intellectually justify it.

Like slavery, state-sanctioned torture is an utter anachronism, argues Ms. Tse. Just as the 19th century was the one that saw slavery abolished, so too the current century can be the one in which torture is totally repudiated. In following this path, Ms. Tse is not only carrying forward the ideals of social reformers, but also the legacy of Schumpeter’s entrepreneurs. This is because her objective is not an “incremental improvement” to the system (that is, trying to reduce torture), but an “innovation” that radically upends the order of things (that is, eradicating it).

IBJ has crafted an astute formula for the times. It eschews activism in favor of

institutionalization, by using the system to change the system. It turns obstacles into opportunities by exploiting the “arbitrage” potential of the inconsistencies. It scales tremendously by melding local and global communities. It acts as a market-maker by serving as a neutral platform to bring stakeholders together. Its activities effectively transform the problem of human rights from the political to the economic realm, thereby opening up a new avenue for the issue to be addressed. IBJ’s destination, ending torture, is earth-shaking in its magnitude. And its work is transformative in terms of the rule of law and the way people think.

IBJ’s approach can be usefully applied to other global issues. For instance, in areas as diverse as climate change, public health, economic development, or conflict resolution, multiple stakeholders with overlapping and divergent interests need to be brought together. Yet few of the institutions that currently exist are able to do that, particularly not at an international level; indeed, the very attempts often lack legitimacy and create ill will. At the same time, non-profit organizations and civil-society groups usually position themselves as an alternative to governments rather than their partner.

What makes the IBJ model profound is the way it strives to go beyond these artificial barriers—examples of “old solutions to new situations,” as Ms. Tse expressed it in her essay. Instead, the IBJ method bridges the grassroots with the highest levels of government, and speaks with authority to both. It bridges the local community with the global one. IBJ is a model for how decentralized systems can interact to form powerful communities for change.

In the past we honored the businesspeople that Schumpeter’s idea of the innovator had in mind. As we reset our image for modern times, we can look back at history to others who innovated for the social good, from slavery to suffrage to civil rights. Their battle was not simply with an unjust system, but also with their peers who failed to see that change was possible. It is something all pioneers face. Whether the names of such leaders are etched in marble or lost to memories, to this honored list must now be added Karen I. Tse and International Bridges to Justice.

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  2. Kenneth Neil Cukier 2006: “Hero with a Thousand Faces: Innovative Entrepreneurship and Public Policy” Report of the 6th Annual Rueschlikon Conference on Information Policy, Swiss Re, Zurich.
  3. The Economist 2008: “Disruption of service.” London, Feb. 7.
  4. Kofi Annan 2005: “Secretary-General’s Address to the Commission on Human Rights.” Geneva, April 7. Online: <http://www.un.org/apps/sg/sgstats.asp?nid=1388> (Last viewed May 15, 2007)