BUREAUCRACY AND LAW
A STUDY OF CHINESE CRIMINAL COURTS AND SOCIAL MEDIA

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by

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ABSTRACT OF DISSERTATION

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Abstract

Born in a firmly-rooted bureaucratic society, Chinese judiciary has never gained the opportunity to build its own identity. Concurrently, Chinese people, immersed in a bureaucratic culture, always pin their dream of justice on a powerful bureaucracy rather on a weak judiciary. The current study discusses the thousands years of Chinese history and the significant impact of bureaucracy on Chinese society and courts, and then look into the potential change in a global era revolutionized with technology and internet. A story-telling mode is used to analyze eleven important criminal cases to disclose the operations of criminal courts in China. Large amount of social media data are presented to showcase the dynamic legal community and online activism. We do not know exactly the impact of government monitoring of the social media and it is an open question. Chinese online legal activism derives its methods and vitality from multiple and intersecting forces, including the particular internet transmitting formats, actual contemporary protest forms, incipient public space promotion. This study weaves these strands together to create a vivid story of a new era of informational politics in a background of criminal court framed in bureaucratic culture. The current research claimed that we have to review Chinese bureaucracy within Chinese cultural context rather than from a Western perspective. We found the history and characters of Chinese bureaucracy has significant influence on legal system and the vibrant social media has become an emerging force for potential change.
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Preface

An increasing number of English writings in recent decades, focusing broadly on Chinese criminal justice and its imperial legal history (e.g., Bodde & Morris, 1967; Ch’u, 1961; Cohen, 1968, 1969; Watt, 1972), the modern criminal justice system and practice (e.g., Brown, 1997; He, 2013; Hegel, 2009, 2007; Leng & Chiu, 1985; Lo, 1995; Lubman, 1999; McConville & Pils, 2012; Shih, 1999; Trevaskes 2007), and criminal court procedures and legal reform (e.g. Lu and Miethe, 2002; 2003). These studies have important discussions regarding the theoretical and conceptual framework of Chinese criminal courts. However, they rarely review the court and criminal justice system within the framework of Chinese bureaucratic hierarchy. Therefore, this study emphasizes the style and characteristics of the Chinese bureaucracy due to the particular characteristics of Chinese bureaucracy, using the abbreviation CB to refer broadly this special type of bureaucracy.

What is the Chinese style of bureaucracy? Why is it important to explore the bureaucracy framework in a study of the courts? During the past three millennia, Chinese society has been deeply rooted in a hierarchical bureaucratic culture. Without understanding the bureaucratic context of the Chinese court, we cannot understand why it is so difficult for China to build up judiciary independence and the rule of law, which are considered so important in Western democracies. This thesis argues that ‘rule of law’ concepts dwarf against a tradition of hierarchical bureaucracy which has endured for thousands of years.
The Chinese people have their own uniquely Chinese dreams in history, as do all peoples on Earth. However, in the tradition of political thought, these dreams tend to relate to bureaucracy rather than individuals. The three Chinese dreams are: wise Emperor, honest Official, and upright Knight (Yi Ming, 2010). Born in a culture of bureaucracy, Chinese people rest their hope of justice and a good life in the bureaucracy, their emperors, and their officials. They expect that there could be a good emperor who can bring a well-ruled dynasty in which people can live in peace and wellness. They expect local officials to be honest and to care about people. If these two dreams are broken, they expect that some brave knights could save poor people by hacking the richer ones. None of these three dreams is related to the rule of law or resorting to legal assistance to protect ordinary people. Now thousands of years have passed, has this type of culture changed? Has the rule of law and democracy entered Chinese people’s minds? Have the Chinese people had set up new dreams of their future?

This current research will examine criminal court and legal reform in the context of bureaucratic society in China, present both historical and cultural angles to reflect on the legal reforms, and explore through social media the extended legal changes. We will discuss the complex nature of the criminal justice system in China, investigating whether the Chinese judiciary can build its independent identity out of the bureaucracy and contribute to the future of democracy. We argue that the Chinese judiciary was born in bureaucracy and has been functioning as a bureaucratized system. The bureaucratized judiciary is a heritage from thousands years of Chinese history rather than a random development after the revolution of 1911 or 1949.
The current study looks back through the long Chinese history (Chapter 2) for roots of the ambivalent state of the Chinese judiciary. Born, nurtured, and functioning in the imperial bureaucracy, the judiciary has never had opportunity to develop an identity independent of the bureaucracy. Around 1000 B.C. or earlier, the bureaucracy had started to take shape in China and had managed both executive and judicial affairs. From the central to local governments (郡 jun and 县 xian¹), appointed officials possessed both executive and judicial powers. Since then, this type of patrimonial bureaucracy has provided structure and staff to promulgate and administer law, while the law defined and promoted the bureaucracy. As a result, no independent judiciary has ever been established out of the administrative bureaucracy. Although the bureaucracy can increase efficiency in the judiciary, efficiency cannot override justice and judicial independence. There have been several attempts to build a modern legal system and judiciary since the beginning of the 20th century, such as the legal reforms in the late Qing dynasty and the legal changes after the imperial dynasty was overthrown after 1911. These attempts had all met blocks from the bureaucracy system and floundered on their way to realizing effective changes.

The revolution led by the Chinese Communist Party succeeded in 1949, and the revolutionary changes thereafter were attempts to build a new system and to smash all old ones. However, it failed in its objectives and finally led to a wreck during the 10 years of Cultural Revolution. The reconstruction of the judiciary began after 1978, with both the increasing legislation and institution building. Chapter 3 takes a review over the past 30 years legal reform and describes the current state of Chinese judiciary.

¹郡 (jun) and 县 (xian) are the administrative area of local governments.
We discuss methodology and data collection in Chapter 4. Although the legal reform bears impacts from the West, the Chinese judiciary is still a bureaucratized system and operates with administrative style. In order to obtain a better understanding of Chinese criminal justice system, the current study not only uses a case study method to analyze the criminal case processing but also investigates the legal professional community through their active presence on the internet. We use both criminal case narratives and social media texts to expose the hidden truth behind the closed doors of criminal justice system. Criminal case narrative is a story-telling way to capture those important cases which have significantly impacts on both criminal legal system and the society, while social media text displays a vivid picture of current legal professionals who are writing legal history in China.

Although the legal reform bears impacts from the West, Chinese judiciary is still a bureaucratized system and operates with administrative style. In Chapter 5, eleven criminal cases will be used to analyze the current criminal justice system in China. These cases will showcase how a culture of bureaucratization has not only affected the trial model but also shapes the people’s framework of understanding in criminal lawsuits; how the highly centralized political bureaucracy leads to absolute administrative power which further weakens the legal system; how the Justice system can be manipulated by administrative officials to pursue personal interests; how the judiciary lacks independence and strength to distribute justice and diverse formats of intervention from political bureaucracy exist; and how the diverse extension powers from political bureaucracy can exert extra-legal coercive measures beyond legal control.
In order to hold a bureaucratized system accountable, a vibrant civil society is needed. The prevalent internet opens possibilities for public space and surveillance. In Chapter 6, we discuss the development of a virtual civil society, especially how a dynamic legal online community adds strength to offline legal activism and push legal reform forward. Using these dynamic tools, the current study would like to show that the importance of the criminal courts and criminal justice in China has already gone beyond the merely legal aspect, and that its performance will influence the whole society. In chapter 7, we present the conclusion and future research direction.
Chapter 1   Introduction: Bureaucracy and Law

As scholars had stated, bureaucracy has great importance for modern society, and the history of the twentieth century is largely bureaucratization (Fiss, 1983). Almost every phase of modern life in developed societies is dominated by large-scale, complex organization, and the same trend occurs to all the government powers, including legislative, judiciary, and administrative offices. Although Weber himself described bureaucratic authority as a rational-legal authority, he specifically acknowledged that the legal method of England and America, opposed to that of the Continent, was not bureaucratic (Weber, 1958). However, the bureaucratization of the judiciary in the U.S. now has grown beyond the Weberian analysis of bureaucracy and is being criticized by legal scholars. The bureaucratization of the judiciary in the Western countries signifies a full development of bureaucracy due to the complexity of modern life. It is the expanding of bureaucracy from administrative office to the judiciary, while administrative office and judiciary are originally independent from each other resulting to the separation of powers in Western countries.

Compared to the bureaucratization of the judiciary in the U.S. and other Western countries, the judiciary in China is developing in a different direction or manner. Although Weber thought that bureaucracy is fully developed in political and ecclesiastical communities only in the modern society and in the most advanced institutions of capitalism, he also had to admit that imperial China already had a developed and large bureaucracy (Weber, 1958). The origin of Chinese
bureaucracy is to be found in the governmental practice of the Western Zhou state (1100-771 BC), which appeared much earlier than Western bureaucracy (Hsu & Linduff, 1988). As an agrarian society, China has a vast peasant social base without organization, and the merchant class was treated condescendingly and lacked autonomy. The officialdom has consistently held the power for thousands of years. In addition, those bureaucrats were specialists in dealing with human beings, utilizing mutual supervision among the members of society. The tradition of collective responsibility has become a way for the bureaucrats to avoid and shift their work obligations. Confucianism, the state ideology, teaches respect and submission towards one's elders, and helps officialdom strengthen their rule.

China is deemed as a permanently bureaucratic society, and the long duration of Chinese bureaucracy has a tremendous impact on all aspects of Chinese life (Balazs, 1964). Max Weber argued that the organizational forms based on kinship and personal loyalty cannot deal with the diverse activities of large numbers of individuals in the modern capitalist society. The capitalist societies call for rational bureaucracy which has more efficiency. Some ancient bureaucracies, such as Chinese bureaucracy, were quite effective even they do not satisfy the Weberian criteria for a bureaucracy. Chinese bureaucracy differs from Weberian rational bureaucracy (Whyte, 1973). We refer to Chinese bureaucracy as CB in this research. The traditional Chinese bureaucracy had an emphasis on philosophical and literary training for service, and a person attained high office by virtue of his degree of educational achievement rather than through any specialized knowledge of the office. This education system bred condescension of officials toward the king while maintaining an arrogant attitude toward the people (Jumper, 1957).
Entering modern society, Chinese bureaucracy has seen an increasingly formal bureaucratization, with the communist party ruling over the political system. Actually, Weber had already predicted that future socialist societies would require an even higher degree of formal bureaucratization than do capitalist societies (Weber, 1968:225). It is argued that bureaucratization is an inevitable concomitant of economic development and modernization both in socialist or capitalist countries (Whyte, 1973). Weber noted that the traditional Chinese bureaucracy differed from the rational bureaucracy (Weber, 1968). The modern Chinese bureaucracy still sways away from the ideal type of Weberian bureaucracy, and it still lacks a high degree of specialization and the development of professionalism due to the dominance of the party. The action of the bureaucracy is not only supposed to maximize internal efficiency, but to pursue certain revolutionary social goals or policy objectives, with the latter take precedence during any conflict between the two (Whyte, 1973).

Unlike the judiciary bureaucratization in Western countries, the Chinese judiciary has been born as part of imperial bureaucracy. For thousands of years, the Chinese judiciary has not had an independent status and identity from administrative power, and imperial law was administrated by bureaucracy. As a result, the bureaucratization of the judiciary is a birthmark of Chinese law; the bureaucratized judiciary is born rather than acquired. The acquired bureaucratized judiciary in Western countries with liberal democracy can be controlled by the neutral political power, while this kind of control cannot be achieved for a born bureaucratized judiciary (Haque, 1997). In a permanently bureaucratic society, how could there be control of the strong bureaucracy which has deeply penetrated into virtually all aspects of the society and restore a rational-legal system which could effectively serve the modern society without overriding humanity and
democracy? Which route should China take in its legal reform, a destructive revolution or a gradual evolution?

Compared to the past hundreds of years, the evolution instead of revolution seems to be the more popular tune in the 21st century, although these two are fundamentally the same and may reach the same end. Moore (1966) argued that all modernizing societies have undergone a version of one of these three types of revolution: bourgeois revolutions (England, France and the United States), revolution from above (Germany and Japan) and peasant revolution (Russia and China). A revolution, mostly a violent rejection of the legal order of the past, is characterized by judicial iconoclasm: destroy old laws and system (Berman & Whiting, 1980; Salas, 1983; Kim, 1987).

However, rebuilding a new rationalized legal system takes a much longer time after the destruction of existing institutions, and during this interim period, leaders rising from the revolution tend to rule the new regime based on their personal charisma (a nonrational type of leadership). Although charisma is a source of primordial power, it uses improvisation and often results in legal instability and inconsistency, and it even can overturn established orders (Gonzalez, 1983; Weber, 1978). If the leader cannot retain the prestige and admiration of the population, the new system will not be secure (Valdes, 1976). In order for there to be survival and stable development, a predictable, pragmatic, and stable legal system must be established (Berman & Whiting, 1980; Weber, 1978). The impersonal rule of the modern bureaucratic state has been seen to replace traditional and charismatic premodern authority (Weber, 1978, 245). The bureaucracy state must establish its legitimacy in order to survive and rule effectively (Meyer & Rowan, 1977).
Similarly, legal–rational forms of domination assume a distinct identity after it succeeded traditional and charismatic premodern authority. This is a gradual evolutionary development. Evolution has no fervor of destruction because its development is based on current and historical experience, and evolution is not necessarily opposite to revolution. It is argued that the revolution can be tempered by evolution, and the evolution sometimes is punctuated and accelerated by revolution (Watson, 1987). Evolution, a nonviolent revolution wrapped by peace and caution, is a more gradual and continuous development in morals and ideas without entailing some sort of catastrophe (Reclus, 1891). Because evolutionary change is more easily acceptable to people who look upon revolution with fear, such slower development will win larger numbers of supporters on the way toward the goal. Haste makes waste, and it is worthwhile to choose a more rationally-planned road which takes a longer time but risks fewer catastrophes.

Particularly, the development of any legal system may require an evolutionary process. The law is essentially discovered in distributed social experiences; it is neither made nor revolutionized. In its systemic discovery process, a system of law adopts and reflects many of the experiences of all or most people in the unfolding history. Law, as a natural outcome of society, takes an evolutionary and developing route (Younkins, 2000). It would be difficult to imagine that a rational legal system could be built in an overnight revolution. The idea of law includes rules of behavior as well as institutions and devices for changing, clarifying, refining, and applying the rules, and all these complex, sophisticated processes take much time and effort, sometimes lasting even for several generations. Building any effective legal system is a process of institutionalization by which legal organizations and procedures acquire value and stability (Huntington, 1968, p. 12).
The Chinese criminal court was born as part of the imperial ruling bureaucracy and had been a reigning tool for thousands of years. Although China has experienced numerous wars and revolutions, it is surprising to find that the changes to the legal system and bureaucracy are slower than people had imagined. The Chinese Judiciary still has a bureaucratic structure following the Party’s leadership and local government. Administrative bureaucracy not only can issue and interpret their own rules but also can require the courts to enforce them. In the criminal justice area, the extensive power of the police, administrative offices, and the Party riding over the criminal process still exist (Lubman, 1999). In addition, the Chinese legal system most likely adopts something similar with its own characteristics. For example, China has a tradition of written law, so it is much easier to adopt continental laws which are codified written law system.

A bureaucratized judiciary is a heritage from Chinese thousands years of history, rather than a random result after revolutions after 1911 or after 1949. As we discussed above, the development of legal system is an evolutionary process and violent revolution did not help the establishment of the judicial independence. Chinese judiciary was born in the bureaucracy and has never got the chance to build its independent identity. The bureaucracy can help with the routines of governmental organizations, fulfill their basic responsibilities—to legislate, to enforce laws, to adjudicate disputes, and so on, but it cannot help ensure the legitimacy in governance. Although bureaucracy can increase efficiency in judiciary, efficiency cannot override justice and judicial independence.

The revolutionary movement attempted to build a new system and smash all old ones after 1949 and it finally led to a wreck during 10 years Cultural Revolution. The reconstruction of judiciary
began after 1978 with both the increasing legislation and institution building. The past 30 years legal reform has established a comprehensive system with tons of legislations, rules and regulations. However, a good legal system is more than detailed laws, and it requires efforts from a judiciary which can make decisions right and independently. Although the legal reform bears impacts from the West, Chinese judiciary is still a bureaucratized system and operates with administrative style. The deep reasons of this come from the long Chinese history and culture. In order to better understand Chinese court, we have to start from the beginning of the story. In Chapter 2, we will look into Chinese long history of bureaucracy which gave the birth of Chinese judiciary.
Chapter 2: Bureaucracy and Chinese Criminal Court in History

Introduction

Today’s Chinese judicial system is a heritage from Chinese history, rather than a random choice. As we discussed in the first part of the paper, imperial China already had a developed and large bureaucracy, and the Chinese judiciary, born in such a highly centralized bureaucratized politically-integrated system, has little chance to develop its autonomy and independent identity. In order to understand bureaucratized judiciary in China, we need to look back over thousands years of Chinese history and review the deep impact of the integrated political system on the judiciary and the rest of the society.

Having the longest surviving civilization in the world, China is one of the best places to learn the development history of law. Chinese law originated from the ruling needs of political bureaucracy. When the population increased and families aggregated in the primitive society, social relations were transferred from a familial to a territorially-integrated foundation, along with the evolution of both legal principles and provisions of law (Maine, 1930). The origin of Chinese law is related to this fundamental change of social structure and in China; this occurred during the Zhou dynasty (1100-256 BC). We will first discuss the start of bureaucracy and law in
ancient China as well as the theory model of Chinese imperial law. We then proceed to describe
how the imperial law was ruled by bureaucracy and politics. The tradition of law by bureaucracy
continued from the imperial time to the 20th century, and it even shadows today’s legal system.

The Origins of Bureaucracy and Law

A. Irrigation, Colonialism or Social Unit Change?

When did the bureaucracy and law begin in ancient China? What were the stages of Chin’s
feudal bureaucratic system, which held back science and inventions from making further
progress, and which prevented Chinese society from developing modern science, which resulted
in China’s very long experimental stage in science and technology? Many researchers have
worked on theoretical explanations of how early Chinese society developed. One such approach
type is a geographic-economic explanation. For example, Wittfogel’s hydraulic civilizations
theory shows how irrigation, which required substantial and centralized control of forced slave
labor, called for monopolized political power, which dominated the economy and resulted in an
absolutist managerial state (Wittfogel, 1957). This is known as the theory of hydraulic empire,
hydraulic civilization, hydraulic despotism, or water monopoly empire. Wittfogel (1896–1988), a
20th century thinker, had taught that the technological development of the irrigation of fields had
led to the use of mass labor and that an organizational hierarchy was needed for organizing labor
and then coordinating and directing its activities.
Although the tribal societies’ form of government was usually personal and familial in nature, irrigation could not have been achieved without breaking the bonds of familial kinship; it required a new, distinct, abstract, and permanent institution. Thus, an abstract and impersonal government for directing mass labor and ensuring the proper distribution of the water was established, with the implied development of a ruling officer class. Wittfogel believed that irrigation changed living styles: larger numbers of people migrated into the towns and cities because of the increased food supply, which irrigation had made possible; armies were needed to protect these population clusters from opportunistic outsiders; concentrations of human population enabled the specializations of labor; the more complex economies required records, which required writing and enabled the accumulation of knowledge (Wittfogel, 1957).

A similar thesis argues that a major theme in the history of Chinese society has been the interplay of forces between the agrarian society in central China and the nomadic society of China's northern periphery (Lattimore, 1951). The civilization in northern China was based on a mixed economy of hunting and fishing, and of food-gathering, which would have occasioned generalizations about crops and animals and specialized terms in language. Later on, as animals were domesticated and primitive agricultural methods were developed, irrigation became a crucial factor because of the seasonal irregularity of rainfall in northern China. However, informal social organization was insufficient for maintaining order, and a governing structure was needed to initiate and regulate the labors involved in irrigating. The successes of irrigated agriculture led to increased population and wealth, which abundance brought about social changes. When very large irrigation projects required dependable cooperation of the feudal nobles, who needed to act
together, larger political combinations promoted the amalgamation of small states and formed a
new kind of bureaucratic empire (Lattimore, 1951).

Theories of “irrigation” focus on geographic features to explain the origins of organized societies, but the causal linkage between irrigation and these features is not fully proved because some of these features may appear without large-scale irrigation. Moreover, Chinese civilization began in the northern China, which did not require irrigation for the culture of wheat and millet. Some even stated that the irrigation projects were only a valuable by-product of some water projects of canals which had been designed to secure the transportation routes; building real irrigation works usually came from the local populace and not from a centralized government (Eberhard, 1952). Archaeological evidence fails to support theories that irrigation is the primary cause (rather than the result) of the formation of coercive political institutions, even if labor and irrigation were controlled bureaucratically in late Imperial China. Further, the more complex systems of irrigation arose after the appearance of cities and other indicators of bureaucratic statehood (Adams, 1966; 1978). Moreover, some countries which under similar conditions—they had large rivers and needed to control them for substantial food production and therefore needed irrigation projects, e.g. India and Sri Lanka—developed their decentralized caste-oriented state structures, while China developed into a tightly organized political and social bureaucracy (Subramaniam, 2009). It is no doubt that geographic features have important impacts on politics, but we lack sufficient evidence to truly prove that they are decisive factors which predictably produce certain political structures or even bureaucracy. We may have descriptive historical knowledge, but our historical knowledge is not predictive.
Contrasting with geographic-economic perspectives are socio-political approaches, which describe the feudalism in China as a result of an ethnic super-stratification by expansion and then colonial activity. Zhou rulers from Western China, accompanied by a group of militarily organized tribes, conquered and occupied East China; by means of purchases, force, and other methods, the rulers probably gained much of the land originally possessed by the natives, and by this land acquisition they created a new landlord-tenant relationship (Eberhard, 1952). This “colonial” thesis stresses the structural importance of human relationships; however, it has not found sufficient evidence for proof in available archaeological finds. Neither geographic-economic theory nor a socio-political approach has provided a fully satisfactory explanation for the initiation of feudal society. They both neglected the change of the basic unit of society: from a familial system of loyalties to a territorial system of regional governance, which may exert the more significant influence on the evolution of Chinese society, consequently leading to the development of a powerful bureaucracy and enforceable laws in emerging China. We will discuss the radical social changes in the Zhou dynasty.

B. From Familial System (Zu) to Feudalism

Besides these two major approaches which focus directly upon the development of early Chinese society, an array of scholars with diverse views has explored the transitions of human society. When theorizing about the origins of family and state in the Athenian state, Marx and Engels described the declining of gentile society and the rising of state organization due to the land distributing and the intermixture of tribes (Engels, 1972). Ancient China had a similar developmental trajectory (see Appendix I). In the Shang dynasty (1600-1027 BC), zu (lineage)
was the basic unit of society, and it was a consanguineous group of families with people
descended from a common ancestor (Y.Liu, 1998). More than 200 zu have been distinguished
from the oracle bone inscriptions (Ding, 1956). Some large lineages were independent and
semi-independent polities and states, and they had norms which were recognized by their
members but were not applied to members of other zu. These norms (or ‘family values’) were
probably the earliest laws of China. After Zhou zu subdued the Shang, the geographic expansion
and increasing population posed challenges to the administrative control. Zhou government tried
to build a united political authority through strategy of fengjian, which was like a dual pyramid.

Fengjian in Chinese means feudalism. As noted in the International Encyclopedia of the Social
Sciences (1968), Feudalism conventionally denotes the type of society and the political system
originating in western and central Europe and dominant there during the greater part of the
Middle Ages, especially from the eleventh through thirteenth centuries (Johnson, 1968, p.393). It
often refers to a system of government in which a ruler personally delegates limited sovereignty
over portions of his domain to vassal (Creel, 1964, p163). The term feudalism in English is
derived from a Germanic word “fehu-od” meaning "property in cattle" (or chattel) and, later,
"tenure" or "property in land" (Sills, 1968, p.393). It stresses the importance of land tenure and
the rights and privileges attached to it in the system. The king had the ownership of all land, and
beneath him was a hierarchy of nobles, the most important nobles holding land directly from the
king, and the lesser from them, down to the seigneur, who held a single manor (Darity, 2008).
The seigneur granted peasants use of the land and his protection in return for personal services
and for dues. Weber considered feudalism as one type of "patriarchal authority" (1957, pp.
375-376).
There are several types of feudalism in world history. Feudalism in Western Europe emerged as a form of social, economic, and political organization after the fall of the Roman Empire between 300 and 500 AD. The Romano-Germanic society saw the diminishing importance of cities as centers of administration and of specialized economic activities. Through migration and settlement, the Germanic tribal families had loosened their tribal ties, and a state structure able to take over and to fulfill its public duties emerged (Sills, 1968, p.394). It is argued that Japanese feudalism, which developed at the end of the twelfth century, may have the feudal characteristics which are most similar with those in the various institutional spheres within Western Europe. Local proprietors began to divide lands among family members or retainers, and vassal families became the basis of the social system. Unlike what developed in Europe, the imperial center had the continuous importance in Japanese feudalism and familistic rather than contractual elements were expressed in the relations between lords and vassals (Johnson, 1968, p.399).

In Russia, the feudal (patrimonial) principality in medieval Russia was accompanied by a certain immunity from political authority, and was conferred by the private possession of land (Sills, 1968, p.400). It was based upon the absolute sovereignty of the tsar, who, requiring service from any of his subjects, established this relationship by granting a pomesfe in return for such service (Szeftel, 1956). In the Byzantine Empire, giving lands to a person in pronoia is to give lands into his care. In actual practice, it meant that estates for administration were given as a reward for services to high officers of the state or army, to monasteries, and to private persons, and there was a predominance of economically independent small estates combined with a growing political decentralization (Sills, 1968, p.400). Chinese feudalism also had political decentralization. Many politically self-sufficient patrimonial units in Chinese feudalism were
highly developed, but there was not a fully developed system of vassal-lord relations or a full-fledged social organization of a military political class.

Although there have been different types of feudalism in the world, they all conferred power and status by the dividing of available land. In China, politically self-sufficient patrimonial units in feudalism also developed with the distribution of the land. From figure 1 below, we can see this process in which the feudal system divided and subdivided and assigned or bequeathed land among sons through a succession process of inheritance, prioritizing the land bequeathed to the firstborn son. The king was not only the ruler of the country; he also was the leader of his own royal zu. After he died, his eldest son would succeed him as both the king of the country and the leader of royal zu. The other sons of the king were minor descendants and were invested with land and people to build their small states; thus, they became princes of those states (the zhuhou). After these princes died, the same process would take place among their eldest sons and their ‘minor’ descendants. The ministers and great officers applied the same succession principle among all their sons, but their minor descendants would merely be given the title of officers; after these minor descendants died, their minor sons would become commoners, and so on.

Figure 1 below is designed to show the land dividing outline of the feudal system in Zhou dynasty
The Fengjian (feudalism), a pragmatic device to control newly acquired territories and population, has significantly influenced Chinese society. First, Fengjian split the land into small units though lineage-based division into smaller land parcels and allowed localities to grow because smaller parcels could be developed. Fengjian was originally designed to rationalize the absolute authority of a central government, but in practice the opposite resulted, with the decline of central power and the emergence of local divisions. Driven by self-interest, local powers never tired of fighting for territory in ancient China; the nation underwent a continual cycle division—unification—division—reunification—further division—and further reunification……

In order to achieve effective control, rulers relied on a systematic bureaucracy composed of a tiered hierarchy of ranked elites and officials. The hierarchical system in some degree characterizes the real patterning of China: a sheet of loose sand (Fei, 1992). Feudalism had been
a foundation for a powerful bureaucracy in China, and the large, growing system of bureaucracy has kept its character well during its long history. A powerful bureaucratic structure is a cushion which reduces or buffers social turmoil, but it also remains a powerful obstacle to social reforms. Any real social change or reform must start with changing the bureaucratic structure.

Second, feudalism broke the old residence style in which each zu lived in separated place, and it forced different zu to live together. In order to solve the conflicts between different customary laws of various zu, on the one hand, the Zhou government allowed non-Zhou peoples to use their own customs and customary laws continuously so far as “such a continuation did not pose a threat to the rule of the Zhou House” (Hsu & Linduff, 1988, p. 188). On the other hand, Zhou government started to design a series of li (rites) to maintain the unity of Zhou zu and to remain separate from other peoples, such as wei, qi, lu, yan, wei, etc. (Y. Liu, 1998).

Now we can see how change of the social structure brought the need of a powerful bureaucratic system and how feudalism established the foundation for China’s rising bureaucracy and its system of integrated law. During the Zhou dynasty, state bureaucracy started taking shape gradually with feudalism as its background. Next, we discuss the initial stage of bureaucracy and law in the Zhou dynasty.

C. The Rising of Bureaucracy and Law

The evolution of early Chinese law and the associated penal system was a gradual process (Liu, 1998). In order to help the readers understand this process, we include a chronology of Chinese
history in appendix I. In the Shang dynasty, people live in zu and each zu handled internal affairs according to their own customary norms, so the state was a loosely knit organization. The customary law of any particular zu was applicable only to its own members, and there was no unified state law universally applied to various zu (Y. Liu, 1998). If a zu member infringed upon the norms in his zu, he or she would be punished – by the zu. Based upon available historical records, most people agree that Chinese criminal law and the systems of punishment originated during the Shang Dynasty or even earlier, and that the earliest written codes of China is Zheng ren zhu xing shu (Criminal Code of State Zheng 郑人铸刑书) (536 B.C.) (Legge, 1960).

In the Western Zhou period, the lord of the state maintained a small government due to its rigidly stratified feudal structure, and he maintained contact with these nobles at different levels through liaison with a few great officers (Liu, 1998). No clearly defined body of law existed, and it posed a problem: how to control the feudal lords and solidify the feudal system? The Zhou dynasty then introduced a special code of law—the li (rites) (禮). A series of rites were formulated to regulate the behavior of the nobles, and nobles disposed the affairs of their zu according to their own customary laws. These rites only applied to nobles, not to commoners, and there was still no universal law (Y. Liu, 1998).

This li was to instill in the people, or to train them to develop, a sense of propriety (K-C. Wu, 1982). Through the strict performance, li tried to inculcate the concepts of high and low positions, the different ranks of the nobility, and the nearness and remoteness of relationships into the minds of all nobles, and thus a hierarchical ranking system could be built and take root in the society. However, the rigid li could not accommodate radical social change and would encounter
serious problems during a transition time. The *Spring and Autumn* period saw the radical social change and social disorder, and since 770 BC, the power of the *Zhou* king had become weaker and weaker.

During the following *Warring States period* (475-221 BC), states had to gain wealth in order to compete in the wars. They needed to build large-scale waterworks, to construct new walled cities, to raise armies by conscription, and to levy taxes; a new administrative system was greatly needed (Y. Liu, 1998). The expanded territories and the increasingly heterogeneous population gained through constant wars also called for more systematic management. A bureaucratic system filled with officials then emerged with this tide, and an institution of legal codes correspondingly was also created to help consolidate the new social structure. These law codes were written, publicly enacted, and equally applied to all peoples, in place of the various customary laws of the *zu* (Y. Liu, 1998).

Although the growingly bureaucratic system and new law codes encountered severe resistance from the strong *zu*, some countries continued this reform. In Qin, the *Code of Qin* (*秦律* made by Shang yang) was publicly enacted and applicable to all people. The old system of land tenure was abolished, and land could be bought and sold by the peasants; land tenants paid taxes directly to the state rather than to their immediate overlords. Various small towns and villages were organized under the *jun* (*郡* commandery) and *xian* (*县* county), with their officials appointed by the lord of the state. At the grass-roots level, families were organized by the *shiwu* system, which grouped five and ten families together, and every family was equally responsible for the wrongdoing of every other family, and equally subject to punishment if one failed to
inform the authorities of such wrongdoing (Y. Liu, 1998). Based on the Xian and Shiwu system, the lord of Qin could effectively control the individual families, the basic units of society, through his officials in a bureaucratic system, according to the written codes (Y. Liu, 1998). Qin became the most powerful state and finally defeated all its rivals and established a unified empire—the first united imperial empire in Chinese history—the Qin dynasty. Qin Empire later was replaced by the Han dynasty and the Han regime continued and extended the jun-xian system. By the end of the first century, there were eighty-three jun and 1314 xian with administrative power located in the hands of the centrally controlled bureaucracy. According to historical records, there were 130,285 officials under Emperor Ai (Hanshu, 1970).

During Zhou times, a centralized bureaucratic system of administration which handled both executive and judicial affairs started to take shape, and later it was established during the Qin and Han dynasties. The bureaucracy and legal system have been complementing each other during the long history of China since then. The bureaucracy provided structure and staff to promulgate and administer law, while the law defined and promote the bureaucracy. From the central to local governments (jun 郡 and xian 县), salaried appointed officials held both executive and judicial powers. During the Qin and Han dynasties, the framework of imperial law including the penal system and most of the important legal institutions had been laid out. The earliest political and legal theories of traditional China emerged, the earliest written codes were promulgated, and some of the most important characteristics of traditional Chinese law formed (Y. Liu, 1998). We next discuss the traditional Chinese legal theories which explain why law in

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2 Junxian system is a prefectural system referred to the division of the empire into artificial administrative jurisdictions such as prefectures and counties and their governance by centrally appointed, salaried and rotated professional officials (Rowe, 2010, p.60).
China was always a ruling tool rather than a protection for its citizens.

D. The Traditional Chinese Legal Theories

Along with the bureaucracy emerging in Zhou dynasty, traditional Chinese law started to take shape and diverse sets of legal theories were formulated. During the following Warring States period (475-221 BC), the whole stratified structure of the feudal system gradually collapsed, and the *li*, which had been used to regulate the relations between the *Zhou* king and nobles, became less observed and was often even ignored or violated. The *li* was no longer practiced in sacrifices, funerals, and marriages. For example, only the Son of Heaven and the princes of states could make sacrifices to Tai mountain according to the *li*, but the chief of some big families also went to make sacrifices to that mountain³ (Legge, 1960, p.154-156). Though old *li* books were losing the regulating power, a new type of *li* was emerging. At the end of the Spring and Autumn period, some learned scholar-officials attempted to define a *li* and relevant theories, and Confucius was the most famous one who completed a theory system.

Confucius was fascinated by *Zhou li* (*Rites of the Zhou*), and he once said, “*Zhou* had the advantage of viewing the two past dynasties. How complete and elegant are its regulations! I follow *Zhou.*” (Legge, 1960, p. 160). Confucius also observed and studied the various customs and usages in numerous *zu*, and tried to compile a type of new concepts of *li* which would be applicable to all people and to all human relationships, treating all people as equal human beings (Creel, 1949; Liu, 1998). Confucius could be one of the first scholars in Chinese history who

³ *Lun Yu*, Vol. 1, p.154-156
recognized all human beings as politically equal, and this was due to the social situation in the Spring and Autumn period when the social unit shifted gradually from the zu to the individual family. Old Zhou li was abandoned, and new norms were needed to regulate human relationships. Confucius’s li helped stabilize the new structure of society and human relationships, and his theories were then transcended into a school—Confucianism with numerous works of his followers.

As an example, in Book of Rites, Confucius emphasizes the significance of Rites, and he thinks the world can achieve a great unification if the rites are followed by everyone as law. We quote his words below:

“When the Grand course was pursued, a public and common spirit ruled all under the sky; they chose men of talents, virtue, and ability; their words were sincere, and what they cultivated was harmony. Thus men did not love their parents only, nor treat as children only their own sons. A competent provision was secured for the aged till their death, employment for the able-bodied, and the means of growing up to the young. They showed kindness and compassion to widows, orphans, childless men, and those who were disabled by disease, so that they were all sufficiently maintained.

Males had their proper work, and females had their homes. (They accumulated) articles (of value), disliking that they should be thrown away upon the ground, but not wishing to keep them for their own gratification. (They labored) with their strength, disliking that it should not be exerted, but not exerting it (only) with a view to their own advantage. In this way, (selfish)
schemings were repressed and found no development. Robbers, filchers, and rebellious traitors did not show themselves, and hence the outer doors remained open, and were not shut. This was (the period of) what we call the Grand Union.”

(Book of Rites, chapter of Liyun⁴)

The spirit of law in ancient China was guided by the Confucianism which has served as China’s state ideology from the early Han dynasty until the collapse of the Qing in 1911 (MacCormack, 1996a). The “rites” in Confucianism, refer to ideological institutionalization of social norms which include regulate relationships: rulers and their subjects, senior and junior, man and woman, the blood-related and the acquainted (Ren, 1997). If people can be located in structured individual relationships and use rites to regulate their behavior, the society will be in order (McKnight, 1997; Ren, 1997; MacCormack, 1996a). Confucianism views human nature as good, and criminals could be reformed through moral education, as long as the ruler can set a moral example for his subjects, instill them with virtue, eliminate social evils, and ensure the stability and prosperity of the state (Windrow, 2006).

Hierarchical relations are stressed in Confucianism as tools to mitigate deviancy, while laws are regarded as little legitimate function. Confucius exalted the “benevolence” (仁) as the universal principle of ethics and advocated “moral enlightenment and prudent punishment (明德慎罰)” in the Western Zhou Dynasty (16th century- 770 BC), for “moral enlightenment is primary while penalty is supplementary” (德主刑輔) (Liu, 2009). Although Confucius’s li was similar to the

⁴ Chinese text project, March 5ᵗʰ, 2014 retrieved from http://ctext.org/liji/li-yun
Western conception of natural law, its basis was not law, and it was still rites. For Confucius, “law” is punitive punishment, a tool of ruling, rather than the protection of rights, and he realized that rites need support from “law”, the punishment.

Confucius’s idea faced challenges during the early Warring States period. The competitor of Confucianism—the philosophy of Legalism which even today is often seen as part of Taoism, was a philosophy of administration in ancient China which focused upon the running of the state. Legalism emphasized the need for order above all other human concerns. It taught that the *li* (propriety) grounded in kin solidarity could no longer regulate the political sector, and instead pursued constructing a new political form distinguished from rule by propriety. The new political order simultaneously established a type of norm which was independent of the clan code, called the law, as a stabilization mechanism (Park, 2006). These laws developed centered around criminal law and administrative law, and became simply a means to govern rather than as a means to secure rights (Park, 2006; MacCormack, 1996a). The Legalism believed individuals’ greed and selfishness inevitably led them astray, irrespective of education or social pressure, so severe punishment was necessary (Ren, 1997).

The rule by law in Legalism is different from the modern rule of law in the West where the law had a long history of growth in the private sector before joining the political state. The law in imperial China had been combined with politics since it was born. As a result, unlike the law in the West, which assumed the task of regulating state power from the beginning, law in ancient China was used to cooperate with political system. Politics and law in the Legalism defined and constituted each other, and both were externalized from society without supervision (Park, 2006).
Legalism actually reaffirmed the idea in Confucianism: law is the ruling instrument of the ruler, and it even “completely rejected the traditional virtues of humanity and righteousness” (MacCormack, 1996a, p.4). It believed that law should be made according to political needs; punishment and harsh law can reduce crime and meet political needs (Windrow, 2006; Park, 2006).

Thus both Confucianism and Legalism advocate the law as a ruling tool, and punishment is the key of law. This ideology was dominant in the spirit of Chinese law and rooted in Chinese culture. “Law” in Chinese language also presents as punishment. *Shuo Wen Jie Zi* (《說文解字》), a dictionary compiled in the Eastern Han Dynasty (around AD 100-121), stated that “法 (Fa), 刑 (Xing)也 (law is punishment)”. The ancient Chinese character of “law” (“法”) can be separated into three parts: “氵”, “廌” and “去” (Liu, 2009). “氵” means “water” and represents “fairness, equality, and justice” because when one pours water into a closed container or a space, the surface of the water, as liquid, keeps flat (fair). “廌” (Zhi), the unicorn, is a mythological animal with a single horn representing “justice” because Zhi will call out the criminal suspect with hitting him/her with its horn. “去” means “to remove” the criminals, and it represents “punishment”. Thus, “law” in Chinese language originally means that the law is to punish crime with fairness, equality and justice. To a great extent, the *Fa* (law), was synonymous with punishment (*Xing*), and its fundamental role was to "stop violence and eliminate evil" (Zhang, 1999, p.68). Thus, the traditional Chinese legal system was almost entirely a criminal law system (Zhang, 2010). But, in this legal system, who was in charge of using the law to punish? If the law is the water to symbolize bringing justice, what kind of container can hold the water? Next, we will discuss the bureaucracy which controlled the application of law in China.

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Law by Bureaucracy and Politics

Both Confucianism and legalism supported a highly centralized and hierarchical bureaucracy, and both focused primarily upon the relationship between the state and its citizens from the perspective of the state. This led historically to the one-sided development of a legal system in which the development of the body of civil law was largely overshadowed by the development of the criminal law and a corresponding system of punishments. No independent court system had developed in imperial China, and the functions of policing, prosecution, and trial had been all addressed by imperial bureaucracy officials rather than by an independent judicial system. The emerging legal profession in China was despised officially, and those who helped in lawsuits could be prosecuted by law. The body of legal expertise was not recognized as a profession, and the independent identity of the judicial system could not grow under the control of the imperial bureaucracy which held exclusive power for defining and administering justice.

A. Imperial Bureaucracy

Legalism is a Classical Chinese philosophy that emphasizes the need for order above all other human concerns and its political doctrine was developed during the Fourth Century B.C. (Schafer, 1967). Legalism scholars argued that a strong government and a carefully devised code of law (Lau, 1963). Both Confucianism and Legalism called for governmental hierarchy and adherence to tradition. Confucianism possessed an optimistic view of human potential and advocated ruling benevolently. However, Legalism focused its interpretation of life on the potential malevolence of human nature and, as a result, emphasized a policing force to
stringently and impartially enforce rules and to punish harshly even the most minor infractions.

Despite the emphasis on “benevolence”, Confucius was aware that the maintenance of hierarchical relations needs law and power. He believed that a too tolerant government will lead to people’s negligence by default, which must be “corrected with a firm grip” (Park, 2006, p.11). Confucianism advocated a centralized power system, a political bureaucracy to support the law, and the king on the top of the bureaucracy. The ideal governance in Confucianism is a system in which the state should be ruled by a King who had the virtue “benevolence (ren 仁)” using “rites (li 礼) to regulate the people’s behavior, with law and punishment (xing 刑) as a complement to royal wisdom (Windrow, 2006; Park, 2006; Erie, 2003). The Legalist philosophy also advocated centralization of authority in the powerful ruler, and its specific ideas included the creation of extensive legal codes, building a vast bureaucracy, and implementing severe but impartially uniform punishments (Y. Liu, 1998; Monthly, 1998; Ren, 1997; MacCormack, 1996a; Huang, 1996).

The imperial Chinese bureaucracy is to be found in the governmental practice of the Western Zhou state (1045-771 BC), which has been cited as the inventor of "modern-style bureaucracy" (Finer, 1997, p87-90). Max Weber's pure type of bureaucracy was based on modern Western governments which separate officials from the means of administration, describing how the "rational-legal" authority of the modern state promotes impersonal rules with a paralleling progress of modern democracy (Weber, 1958, p225-226). Weber's conceptualization of bureaucracy can be characterized as a series of variables: division of labor, hierarchy of authority, extensive rules, systems of procedure, impersonality, separation of administration from
ownership, and basing hiring and promotion entirely upon technical competency (Weber, 1958; Hall, 1963; Pugh, Hickson, Hinings, and Turner, 1968). However, Chinese imperial officials were not separated from their positions which were evaluated as either “fat” or “lean”, and officials could accumulate personal wealth through work whenever there was a general confusion between private and public resources (Will, 2012, p. 10).

Chinese imperial bureaucracy, in contrast to the pure form of bureaucracy, was "patrimonial bureaucracy" based on "traditional authority" (Will, 2012, p. 10). It had a focus on the generalist officials, the “mandarin”, and was also called a “mandarin bureaucracy” (Ferguson, 1902). The employed officials were generalists and were qualified by their humanistic learning through a selection examination, but still they often lacked the necessary technical proficiency for their administrative work (Riggs, 1997).

The Western Zhou government intended to manage its affairs on a day-to-day basis, and it already started to build a permanent body of administrative officials, rather than temporary ones (Yang, 1984; Yang, 1999). Thus a body of clerical officials might already exist in order to do the routine maintenance, and male and female servants were recruited to work there (Hsu, 1966; Huang, 1985; Shizuka, 1954). The general structure of Western Zhou government was a hierarchy. On the top of the system was a body of officials who were associated with the Ministry (qingshiliao, 齊事寮), the most important segment; below it were the Many Officials (zhuyin), and they were also officials of the central government; following were the District Administrators (lijun), who were local civil officials in charge of delimited areas directly controlled by the Zhou central court. Hundreds of Craftsmen were at the bottom, and they
worked in the government-operated workshops (F. Li, 2008). The regional rulers of the various statuses such as hou (侯), dian (甸), and nan (男), who own their states, were local leaders, and they were beyond the administrative control of central government.

General structural divisions of administrative roles and procedure already existed in Zhou government. The Ministry, or "Bureau" (Liao, 寮), a congregation of multiple relevant offices, had emerged, and it was routinely maintained by a collective management within an institutionalized structure at a particular location; certain definitions of roles and standard administrative procedures started to develop (F. Li, 2008, p.53). The three most important offices were: Supervisor of Multitudes, Supervisor of Construction, and Supervisor of Horses, and with a role separated from other offices. It is still contentious that the judicial function of the Zhou government had constituted a legal office because bronze inscriptions showed that lawsuits had been part of the Supervisor of Construction’s function. But it is argued that the general trend to enforce the state legal system and to promulgate written legal codes gradually took place in the Spring and Autumn period because the role of Supervisor of Lawsuits (sikou 司寇) had been frequently mentioned in the official records F. (Li, 2008). Some suggest that sikou 司寇 should be translated as Supervisor of Criminals, since they assisted the high officials at the Zhou court in their legal duties (Skosey, 1996).

The state Qin adopted the legalist theories and built the first Chinese imperial dynasty. Qin’s government was highly centralized and ruled with a uniform legal code. The Qin’s governance is characterized by an extensive apparatus of penal and administrative rules, together with an elaborate bureaucracy (MacCormack, 1996b; Grafflin, 1990). Its detailed, penal-oriented legal
code and the vast, tightly regulated bureaucracy were later adopted by all successive dynasties (Lin, 1998; Ren, 1997; MacCormack, 1996a; MacCormack, 1990). The immense size and extremely long duration of the Chinese bureaucratic machine had developed a deeply-rooted culture of bureaucracy, and the profound reverence for bureaucratic order is still an essential part of contemporary Chinese culture. In the year 5 BC, the total number of officials in the ancient Chinese empire had reached 130,285 (exclusive of military officials), roughly twenty times the number of those in the Roman Empire of the same time (H-C. Wang, 1983; Y.-C.Wang, 1949; J. Li, 2008). This trend continued increasing until now. The ratio of officials to civilians was 1:900 in the Qing dynasty, and it had increased to 1:26 in 1999. The ratio of officials in charge to staff is now 1:0.84, compared to 1:1.17 in the U.S., and 1:3.6 in Japan (International Herald tribune, 2005). The poorer the province in contemporary China, the higher the ratio of officials to civilians; becoming officials in some places has become the only way that people can live a good life (International Herald tribune, 2005).

**B. Imperial Law**

Imperial law did not separate civil code from the criminal code. This has led to the now discredited belief that traditional Chinese law had no civil law, much less a distinction between civil and criminal procedural laws (Park, 2010; Muhlhahn, 2009; Zihe, 2003). Civil law was largely overshadowed by the criminal law in the imperial legal system because the *Li* premised legal system was mainly concerned with the relationship between the state and its citizens (a vertical relationship); there was little attention to civil matters (a horizontal relationship) (Zhang, 2010). In almost every dynasty, criminal law constituted the backbone of the legal code, and
the same code contained both criminal and civil laws, placing criminal punishment at the center of the system. Research shows that Qing code sorts cases as “major” or “minor” into different jurisdictions (Zhao, 2003). For example, a county/district court can hear minor cases, including household registration, inheritance, marriage, land, irrigation, and debt disputes if these minor cases are not involved in death or severe thefts; for major cases, a county/district court has first instance jurisdiction, but it must report to the higher court for review (Zhao, 2003). For both types of cases, there is no distinction in procedures used.

Dynasties in ancient China mostly had codification of the national law, i.e. Qin (221–206 BC) had very harsh codes, Han Dynasty had the “Jiuzhanglv” (九章律), and Tang (618–907 AC) had the “Tanglvshuyi” (唐律疏議). The process of amalgamation of Confucian views and law codes was considered complete by the Tang Code of AD 624, and this code was regarded as a model of precision and clarity in terms of drafting and structure. The codification with Confucianism revised form as state orthodoxy continued during the Song (960–1279 AD), Ming (1368–1644 AD), and Qing (1644–1912 AD) dynasties. The traditional Chinese law was primarily penal in nature, and it was largely in place by the Qing dynasty; there were only a few provisions dealing with civil and commercial issues (Brockman, 1980, p. 85). Though imperial dynasties all tried to codify law, it is argued that the rites (Li) dominated the Chinese legal system for a very long time and all acts against ritual propriety were defined as crimes (Muhlhahn, 2009; Keith, 1994). Since the ritual norms, maintained by tradition, are natural rules for people to follow, the imperial law with rites as the core then did not require a special legal system for the enforcement, but relied on administrative bureaucracy (Fei, 1992). As a result, the legal institution in ancient China was not well developed; instead, it was located within the political administrative system.
Independent court systems in imperial China did not exist, and the administration of justice was done by the imperial bureaucracy with the judges as officials (Gray, 1972). The imperial legal system was actually all about “criminal justice”, not for human rights protection, but about punishment of wrongs. It focused upon correcting wrongs rather than protecting rights. The function of policing, prosecution, and trial had been all addressed by imperial bureaucracy for thousands of years. Legal professionals were not honored, and all magistrates were either the emperor’s agents or failed sages; those who could help “manage a lawsuit” were considered “litigation hoodlums” and could be prosecuted (Jenner, 1992). The institutionalization of the legal branches has no tradition in China. The imperial bureaucracy, which represents the emperor, had the exclusive power for justice.

C. Judiciary Bureaucracy in Imperial China

Lawsuit affairs in the Zhou government had never been part of the Supervisor of Construction’s function. In the Spring and Autumn period, the role of Supervisor of Lawsuits (sikou, 司寇) is believed to emerge, and the general trend to enforce the state legal system and to promulgate written legal codes gradually took place. No matter how the name of a judicial bureau changes, it was always a part of imperial bureaucracy and never had opportunity to develop its own independent identity. The magistrates were the administrative officers, and they were experts in Confucian classics rather than in relevant legal skills. The legal profession was banned, and the institutionalization of a judiciary in China cannot be achieved by those lay-men judicial officials.
1. The Traditional Imperial Judiciary

Inherited from legalist and Confucius thoughts, law was taken as a tool to control the wayward people, and the legal system functioned as part of the centralized administrative system of ensuring social order (Park, 2010; He, 2005; Alford, 1984). The imperial judiciary prioritized criminal law and punishment to inhibit deviations from propriety. No autonomous legal institution existed, the judiciary was part of the imperial bureaucracy, and judicial power was actually part of administrative power; administrative levels were “the judicial ladder”, from county to central government (Park, 2010; He, 2005; Alford, 1984). Since the Shang dynasty, the judiciary bureau at the central court assisted the emperor with legal affairs. In the Zhou dynasty, the central court had a judicial official called major Sikou (司寇), and below him was minor Sikou (司寇); below them were staff. In the Qin and Han dynasties, the judicial official was Tingwei (廷尉), Yushi (御史) took charge of monitoring function (Zhang, 1999).

Later, the judiciary bureaucracy became even more systematic. There were three legal branches at the central level: the Board of Punishment (Xing Bu,刑部), the Central Judicial Court (Da Li Si,大理寺), and the Office of Censors, or the Censorate (Yu Shi Tai,御史台) (Zhang, 1999). This three-branch format was established during the Tang dynasty, and subsequent dynasties largely adhered to it. The Board of Punishment was in charge of drafting and examining laws and regulations, and classifying criminal punishment. It also had the power to review judgments concerning both the death sentence and exile, means of removing persons from the society. As the top body of criminal law legislation and enforcement, the Board of Punishment was the most powerful of the three branches (Zhang, 1999). The Central Judicial Court, much like the US
Supreme Court, was responsible for adjudicating all cases, except for the death penalty and exile cases that were subject to the Board of Punishment's review and approval. The Office of Censors mainly dealt with supervision of officials at the central and local levels, but it was also authorized to adjudicate certain cases (Zhang, 1999).

However, such a division between these branches did not mean a separation of powers, and the ultimate source of law was the emperor, who possessed all the powers of the legislature, administration, and judiciary. For some important cases, the three branches would sit together to try a case, called a "joint hearing by the three branches" (San Tang Hui Shen, 三堂会审 (Zhang, 1999, p.520-521). No matter how the judiciary changed names or function, the emperor had the ultimate power in all cases, and the imperial edict was the supreme law of the land. The judiciary was not independent but was generally subordinate to the administration (Zhang, 2010).

Although the judiciary had three divisions at the central level, there were no local courts, and an executive officer handled everything at the local level.

The figure 2 below shows the structure of judiciary in imperial times.
Beginning with the Qin Dynasty, the local administration was divided into three levels: province, prefecture, and county. Each of these local administrative offices was called *Yamen*, and it served as both the executive office and the courtroom. The executive officer thus was empowered with judicial authority for adjudicating civil and criminal cases (Zhang, 1999). With this dual authority, he could determine the life of any particular person, and he was often venerated as a "parental officer" (*Fu Mu Guan*) (Zhang, 1999, p.214). The combination of the
administration and the judiciary into one combined local office continued throughout the feudal period of Chinese history and impacted the post-imperial era (e.g. Republic period). This system was organized in this way to ensure that the nation's judicial power was retained in the emperor’s control, but it also made the executive office superior to that of the judiciary, an imbalance of power. As a result, there has been a tradition since imperial China that executive power was able to interfere with judicial proceedings (Zhang, 2010).

2. A Laity-Judiciary Bureaucracy

The government structure in ancient China remained highly centralized and uncomplicated in its tiered simplicity (He, 2005). In most dynasties, at least four levels in administration existed from the lowest to the highest: (1) county or district (xian 县), (2) prefecture (fu 府), (3) province (sheng 省), (4) and the central government (Park, 2010). The county officials, appointed by the central government, exercised comprehensive responsibilities, including the enacting of rules (legislature), the execution of rules (administration), and the resolving of disputes (judiciary) (Park, 2010; He, 2005; Alford, 1984). County official, the magistrate, exercised jurisdiction as the judge of the lowest tribunal (Park, 2010).

Instituting the process of recruiting judicial officials was begun during the Shang and Zhou periods. A judicial officer needed good skills in administration and justice, and he was required to be both strict and fair in legal practice. In the Western Zhou, a judicial officer was required to strictly follow the law in order to work. The qualification of recruitment was “Sanjun (Three requirements, 三俊)”: the officer must respect and follow the law, must judge by the law; and
must be meticulously cautious about the practice of the law. Qin’s law was very harsh, and its judicial officers were mostly recruited from the ranks of lower level criminal justice clerks. Criminal justice became a profession, and it was inherited by certain families. This tradition continued throughout the Han dynasty.

Since the time of the Southern and Northern Dynasties, the Wei dynasty had established a career position of Lv Boshi (Juris Doctor, 律博士) who took charge of teaching the law and educating legal officers; this was the earliest institution of legal education for legal officers. The Sui and Tang dynasties had clear procedures for recruiting its legal officers. For example, the Sui dynasty had legal courses taught by Juris Doctors, and students who passed that exam could be assigned to legal positions in the government. Civil examinations had been instituted in the Sui dynasty, and those citizens who wanted to become officials needed to pass the civil exams. Such exams required an extreme familiarity with the classical ancient philosophical works of Confucius, and examinees were required to give persuasive explanations of some of these Confucian viewpoints.

Thus, this process of recruiting officials was also called a process of Confucianization (He, 2005). Civil service examination may use the “rule of knowledge” to complement the “rule of man”, tempering human will and numerical fairness with evidence-based judgments about likely outcomes of a decision; however, these judgments based entirely upon these Confucian classics could not handle all administrative affairs adequately, much less the complex judiciary issues which required more specialized legal knowledge (Ch'ü,, 1962).

Civil examinations actually produced a class of scholar-officials (or mandarins), who held all the
power and owned the largest amount of land in the society. This unproductive elite enjoyed incomparable prestige, which was not related to their heredity, social experience and background, and education, but instead it was related to the functions they performed—their position in the large state bureaucratic hierarchy. This special scholar-official class carried and controlled all the functions of the state, and ordinary people had almost no claims in any aspects of state affairs. Thus, both the nation and its peoples were under the control of the bureaucracy and the scholar-official class. It is argued that the tentacular bureaucracy led to a totalitarian state, in which the bureaucratic state held complete control over all activities of human social life, and, as a result, very limited social freedom and power was left for ordinary persons (Balazs, 1971).

In late imperial China, a single official, the district or county magistrate, presided over some 200,000 to 250,000 residents, and had to deal with more than 10,000 cases for less than a year (Alford, 1984; Cohen, 1968). At the same time, the district magistrate had to filter filed petitions to reduce caseloads, and to deal with administrative and fiscal tasks because county officials were not legal experts, and to hire consultants or assistants who had the technical knowledge needed to resolve these legal issues. The role of office (衙门, yamen) underlings and legal secretaries played roles in the filtering which could not be disregarded. The local tribunal usually consisted of officials’ private secretaries, clerks who specialized in law, as well as a police force composed of constables and lictors, who carried out police duties such as detection, arrest, interrogation, and torture.

All the other people working inside the government served as the magistrate’s assistants and had no power at all to check the magistrate’s execution of power (Park, 2010; He, 2005). In the
hierarchical bureaucratic system, the county official was only subject to the supervision of higher government. If officials found difficult criminal cases, they might escalate those cases to judicial review at the next higher level (Park, 2010). Performance of judicial duties was one standard in evaluating officials, and a magistrate could be punished for his incompetence in any judicial function, e.g. inability to arrest the criminals or needing too much time to solve criminal cases (Park, 2010).

Since there was no arrangement for the separation and check of powers, the county official held absolute power (judicial power included) without the supervision and check of any horizontal entity (He, 2005; Alford, 1984; Cohen, 1968). The county officials—the magistrates—had the power of detectives and judges, and they accumulated evidence, evaluated the evidence, rendered a judgment, and passed a sentence. Few restrictions for this kind of human rule existed, and most were the review and check from the higher level. For instance, the Tang Code explicitly stated that higher level officials reviewed all cases requiring punishment greater than a beating, and the implementation of the death penalty required imperial review (Windrow, 2006). Some dynasties did have strict codes to punish crimes committed by officials; for example, the Tang Code had approximately 205 articles on criminal acts by bureaucrats in their official capacity, compared to 243 articles on criminal behavior among the general populace. However, the strict code couldn’t compete with the corruption from the absolute power of county officials, and potential defendants commonly paid bribes in order to dismiss the action (Burke, Cutshaw & Krishna, 2006).

Since the judiciary was part of an imperial bureaucracy which was furnished with meticulous and
systematic documentation, proper documentation was required in each court case. Every step in legal proceedings needed to be documented. Therefore, a case record would include a variety of legal documents such as written petitions, testimonies, summonses, warrants, a summary of the charge, and the judge’s verdict (Susumu, 2003; 1993). A case document had three categories of texts: complaint or gao (告) petition or su (诉) and verdict or shen (审). A summary of the case was required in order to use the prescribed form and rhetoric, including statements of litigants, witnesses, petition writers, notaries, the office underlings, clerks, legal secretaries, and judges. All the people involved in the case may impose own meanings on the text. Eventually, it was not so difficult for a judge to manipulate a case record in a subtle way to elicit sympathy or disgust for defendants. The generation, age, sex, and mourning-period relationship between the criminal and victim affected the sentencing. For example, cursing at one’s parents or paternal grandparents qualifies as lack of filial piety and warrants decapitation if performed with spells, or just strangulation if done solely with rude language; contrast, cursing maternal grandparents does not even fall within the Ten Abominations (Windrow, 2006).

In order to attract the magistrate’s attention in the case filtering, the people needed professional help from a litigation master (songshi) for crafted petitions; otherwise, their petitions might not get a chance to be heard at the district magistrate’s court (Susumu, 1993; Macauley, 1998). Although the actual profession of law and lawyers had been banned officially, the legal profession who “illegally” helped the people with lawsuits never actually disappeared (Park, 2010; He, 2005; Burke, Cutshaw & Krishna, 2006). These people not only wrote petitions for litigants, but also helped them with their litigation (song), and they were called as “litigation masters (songshi)” – a dishonorable business persistently banned by the government (McKnight
Most of those who were involved in this kind of business were educated literati who failed to climb the ladder of success through civil service examinations, and they were self-trained in law. All of their work was done outside the court and remained in secret, for they could not represent clients and argue in court due to their illegal status.

As a result, He (2005) exclaimed that “the traditional Chinese legal concept was a direct result of a judicial process dominated by laymen (p.97)” In ancient China, the magistrates had no training in law, and they dealt with disputes and cases as part of their administrative function. With their Confucian knowledge background, magistrates mostly applied the teachings of Confucianism or historical works in their trials and sentencing. Case decisions were based upon the specific facts of the case, without reference to legal precedents, and with much less concern for the continuity and coherence of the rules across cases (He, 2005). Ad hoc individual judgment prevailed. Without lawyers as adversaries, officials in the local tribunal dominated in all the proceedings. As a result, many rules and theories of justice could not be developed, such as the Rules of Evidence, Neutrality and passive jurisdiction, and the rights of parties etc. (Gelatt, 1982; Cohen, 1968). Litigation business was condemned as pettifoggery and banned, and its illegal status could not nurture an honorable legal profession committed to impartial justice.

Western history shows that the independence of the judiciary is related to the independence of legal professionals as a group, which originated from the accessibility to the profession. The independence of a legal professionals group can establish the legitimacy of the judiciary and cultivate the ideology for legal justice through the formality and essence of the work of legal professionals (Posner, 1995, p.35). For example, if judges apply strict legal procedures and make
decisions without interference and those decisions will become unshakable once they obtain the procedural validity. Legal professions consistently work for legal justice, and legal justice lays a strong foundation for the independence of the judiciary—a basic principle of Western legal thought. However, the legal profession was banned in ancient Chinese, and the development of an ideology for the legal profession was nipped in the bud. The institutionalization of the judiciary in China could not find support from a group of legal professionals anywhere in Chinese imperial history. In the imperial legal practice, we can see the disconnection between the law written in the books and the law as practiced in reality.

3. Bureaucracy and Legal Practice

A bureaucratized legal system tended to set up detailed rules in legal practice and the traditional imperial law did have fully structured four levels of trial or review process. The bureaucracy also had a review and check system to pursue justice. However, all these reviews and checks were within the bureaucratic framework, and no effective outside supervision existed. The bureaucracy itself presented more obstacles to the justice process.

a. The Legal Process in the Books

Imperial bureaucracy in ancient China was quite hierarchically organized, and it had detailed rules for the legal process. Criminal cases entailing penal servitude and more severe punishments went through four levels of trial or review (county, prefecture, province, and imperial capital). The written law also had detailed check and review stipulations over the judiciary. First, penal
and administrative laws and regulations established comprehensive standards regarding matters including the apprehension, interrogation, trying, and sentencing of felons. (Shiga, 1974; Metzger, 1973; Ch'ü, 1962). Rules also prescribed that all persons accused of committing a single crime be confronted with one another; the rules also specified in detail the type and degree of torture which could be applied in order to extract needed confessions (The Great Qing Legal Code). Magistrates would be punished if they violate these rules and would be tried as common criminals (Ch'ü, 1962).

Second, based on bureaucracy hierarchy, the formal criminal justice process had a so-called “obligatory review system.” Magistrates could impose and carry out sentences only in cases involving a relatively minor sanction (Bodde & Morris, 1967). In cases involving more serious punishments, magistrates had to pass the case to higher level officials for review. The heavier the sentence was to be, the more levels of official review it had to pass before it could be carried out. All death penalty cases had to be under scrutiny by the Emperor himself (Shiga, 1974). There was an appellate procedure, and after one’s district level trial was complete, one could directly petition either those officials of the provincial government responsible for that district magistrate or specified entities in the capital; the Emperor could affirm or reverse the original verdict, dispatch a special commission to investigate the matter, order the Board of Punishments to reexamine the case itself, or refer the case to the appropriate provincial governor (Shiga, 1974).

Third, the bureaucracy had an internal check for district magistrates. The provincial superiors, circuit (tao) intendants, and censors were required to check on lower level officials. Officials directly above the magistrate in the line of official authority not only heard cases arising through
both the obligatory review and appellate systems but also had an affirmative legal obligation to uncover and report all wrongdoings committed by officials beneath them (Metzger, 1973). Circuit intendants were empowered to conduct annual reviews of all cases heard at the district level (Shiga, 1974).

Fourth, there were relatively independent imperial censors, and they were responsible for ferreting out abuses committed by officials and for remonstrating with the Emperor (Metzger, 1973; Hucker, 1966). To foster their independence, imperial censors were not supervised by the Board of Punishments but were allowed to communicate directly with high-level authorities, including the Emperor (Hsu, 2000).

b. The Legal Process in Reality

Although bureaucracy’s legal processes were written in details, they had not been exactly followed throughout the bureaucracy. First, the bureaucratic system had obstacles for ensuring the administration of justice. Because both magistrates and their superiors would be punished if judicial errors were affirmed, the higher level officials were reluctant either to accept or seriously reexamine the findings of subordinates. Thus the obligatory review system and appellate procedure was filled with empty promises (Ch‘ü, 1962). Also, reversal of a conviction led to an unresolved case, and this could be a serious impediment to the bureaucratic advancement of the superiors involved. In addition, most major appeals actually were directed back from the capital to the local officials who had worked on these cases, and it was impossible to ask these officials to scrutinize themselves.
Second, a bureaucracy deeply rooted in politics could not avoid undue political influence and follow a formal criminal justice process. It often led to the appointment of relatively unqualified individuals to official positions, minimizing the possibility that well-connected officials would receive punishments, thus reducing their incentive to follow closely the many rules designed to govern their behavior. Moreover, undue political influence frequently prevented the correction of judicial errors. The formal criminal justice process also faced interference by gentry. Conflicts between different political groups also delayed or disrupted the formal criminal justice process, since legal or administrative issues were often transformed into full-blown political disputes in the bureaucracy (Alford, 1984).

4. Bureaucracy and Legal Reform

The legal reform in imperial China had never been easy, and the government had to deal with conflicts between different political groups. The highly centralized government bureaucracy, which held all the military, legislative, judicial, administrative, and taxation powers, was an obstacle to the legal reform. First, any dissenting voice or act would be suppressed by the imperial bureaucracy as crimes of ‘treason’ or ‘insurgency’ (Ai, 2004, p6). Second, ministers and governors were reluctant to change for fear of losing their power and benefits that might come about from any reforms (Ai, 2004). Third, the open recruiting system of bureaucracy was attractive to people. It had many ways to enroll members of society, including imperial examinations (科举), recommendations (贡监生), inheritance (荫袭), or donations (捐纳), etc.

The legal reform lacked a strong social foundation, since people from the bottom would be reluctant to rise against the existing system (Ai, 2004). Aspirants sought to copy already
established policies and procedures in order to be accepted into the established bureaucracy. As a result, few legal reforms had been conducted successfully in the imperial history.

For example, the first Chinese modernized legal reform in late Qing dynasty was hampered by the bureaucracy and eventually failed. In the early 20th century, the late Qing dynasty was facing severe situations: the threat from the oppression and invasion of the Western powers, as well as the rising dissatisfaction and protestation within the nation. Manchus, the corrupt leadership of Qing dynasty, tried to maintain their rule through legal reform (Ai, 2004). They wished the revised legal code modeled after foreign laws might help relinquish extraterritorial privileges of Western powers and regain imperial ruling authority over Chinese people (Xu, 2008; Ai, 2004; Li, 1989).

The Law Bureau within the Ministry of Law (Fabu法部) was set, and Shen Jiaben (1840-1913) and Wu Tingfang (1842-1922) were appointed to lead the drafting commission called the Law Compilation Commission (Fulv bianzhuan guan法律编撰官), which later was renamed the Law Codification Commission, LCC (Xiuding falv guan修訂法律馆) (Xu, 2008; Li, 1989). Interestingly, the first step of this reform chosen was not a constitution, but writing a criminal code, and this again showed that criminal law, a ruling tool, was always the priority of imperial rulers. The drafting, which was started in 1904, was to be ready by 1907 in order to solicit opinions from provincial governors before the autumn of 1910. At the same time, a civil code was started to be drafted, and this was the first attempt in Chinese history to separate civil matters from criminal matters.
Drafting was based on the “present situation of foreign relations and the legal codes of other countries” (Li, 1989, p85). The draft criminal code was completed in October 1907. Under this code, punishments were limited to four types: the death penalty (by strangulation), imprisonment ($tuxing$) (term or life), detention ($juliu$) (under two months), and fines. Exile and corporal punishment were abolished, and it decriminalized illicit sexual intercourse with unmarried women in the old code. The draft also rejected the application of the law by analogy, and thus it established the legal principle that any act which was not explicitly prohibited by the law constituted no offense (Xu, 2008). The draft code encountered vehement objections from high officials in the bureaucracy system and was not formally announced (Xu, 2008). This draft code was later adopted as the Provisional New Criminal Code after the founding of the Republic.

Reformers extended an attempt on the institutionalization of legal process. First, is the procedural standardization. The Ministry of Law in 1907 proposed to standardize the judiciary, using standard complaint forms across the country. All issues regarding judicial administration, judicial process, and legal interpretations in all provinces should be reported to and decided by the ministry (Xu, 2008). Second, the concept of due process was introduced, and torture during trials was proposed to be prohibited in most criminal cases (Xu, 2008). Although this did not go into practice until 1911; it went well into the Republican era. Third, the draft of criminal and civil procedural laws in light of foreign model was completed by April 1906, including representation by lawyers and jury trial (Xu, 2008). Because the draft was opposed by most provincial officials, it was not formally enacted.

The reformers also tried to institutionalize judicial independence, by separating judiciary from
administrative bureaucracy. In 1906, the Board of Punishment was refashioned into the Ministry of Law, which only took charge of judicial administration rather than trial function. The General Procuracy was set up to function under the supervision of the Ministry of Law. The Court of Judicial Review (Dalisi) became the Supreme Court (Dailiyuan), the final appellate court in the country. The SC and Ministry of Law then argued for creating a system of four-level courts and three level trials. The four-level courts were township trial bureaus (xiangyanju乡研局), district courts (difang shenpanting地方审判庭), provincial high courts (gaodeng shenpanting高等审判庭), and the Supreme Court (Xu, 2008). The trial bureaus would take up criminal cases entailing flogging and penal servitude and civil cases involving less than 200 taels\(^5\). The appeal in such cases would go to a second trial at the district court and end in a third trial at the high court. Criminal cases entailing punishments of more than penal servitude and civil cases involving more than 200 taels would first be tried at the district court, and appeals would go to the high court for a second trial and end with a final trial at the Supreme Court. This system was actually mirroring Qing practice in a way, but it was not implemented smoothly since the bureaucracy was reluctant to lose any part of its power. The court system plan did not finish before the Qing dynasty fell in 1911, and later this system was inherited by the Republic. In 1912, there were a total of 345 courts at the provincial level, district courts at major cities, and courts of first instance at some counties, each with corresponding procuracies (Xu, 2008).

Traditional China did have a formal prison system. Prison system reform was launched during

\(^5\) It is a part of the Chinese system of weights and currency.
the late Qing Dynasty, and a draft of the Prison Law was finished in 1910. It classified institutions of penal confinement into prisons (jianyu, 监狱) (for imprisonment with labor), jails (juliusuo, 拘留所) (for imprisonment without labor), and detention houses (liuzhisuo, 留置所) (for criminal defendants waiting for trial), and it provided for separate juvenile quarters, separate male and female quarters, and single cells within institutions of penal confinement. It emphasized a humanitarian spirit of prison management, and it embodied the principle of punishing and reforming convicts as the functions of incarceration by requiring work and moral education within prisons. The draft law was not enacted but offered a blueprint for prison regulations under the Republic (Xu, 2008).

The late Qing legal reform did not win the battle over a thousand-year-old bureaucracy. Although the first constitutional document in Chinese history, the Imperial Constitutional Outline, was published in 1908, it was actually a tool to protect the inviolable imperial authority (Dai, 2009; Ai, 2004). There was no actual alteration of the administrative bureaucracy, and the imperial court still held the highest authority in major issues (Ai, 2004). The nascent Chinese judiciary did not reach the goal of independence and due process, but it is no doubt that the judiciary had since started its long journey of self-identity seeking.

A series of modernized law drafts were later inherited by the Republic. Western legal thoughts such as judicial independence, due process, and rule of law were introduced and modern legal education was also started. Traditional Chinese law began to interact with other legal systems and to adopt their components. In 1906, the Qing court for the first time sent five ministers as
government representatives to Japan, the U.S., Britain, France, Germany, and Russia, to study modern Western political and legal systems. Further, common law, continental civil law, and Japanese law were introduced during this period, but in the end, Roman civil law replaced the common law covering all the newly-revised laws (Wang, 2006). Because almost every dynasty in ancient China had an exclusive set of codes, it was relatively easier for China to adopt a civil law tradition which are based on statutes (Wang, 2006). A new civil law tradition began to appear in the Chinese legal system. The figure 3 below shows the structure of the judiciary in 1935 during the Republic era.

Figure 3

**Judiciary in Republic Era (1935)**
Chinese Modern Legal System and Criminal Court

A. The Northern Warlords government (Beiyang) (1911-1927)

Chinese legal tradition is based on the Confucian philosophy of social control and integration through moral education, as well as the legalist emphasis on codified law and criminal sanction (Liu, 2009). As one of the oldest legal traditions in the world, the Confucian background is still influential today. In addition, several external factors have also affected the development of China’s modern legal system, i.e. foreign interference, later imperial legal reform against extraterritorial judicial privileges, influence from foreign legal system, and the people’s widespread and abject poverty. The achievements of the legal reform movement launched by the late Qing dynasty were kept and continued in the Northern Warlords government (NWG)\(^6\) from 1911 to 1928. The reform in this era was still motivated by two related goals: to modernize China and to end extraterritoriality\(^7\) (Xu, 1997). The laws enacted by the late Qing government were repromulgated and put into operation without any significant changes.

Following the 1911 Revolution, the Republic of China adopted a largely Western-style legal code under the civil law tradition. The Republic inherited a series of draft laws in the late Qing legal reform, and Sun Yat-Sen’s Provisional Government founded in 1912 enshrined the principle

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\(^6\) Although the years between 1916 and 1927 were extremely unstable politically, the government bureaucracy personnel remained unchanged and the central bureaucracy continued to function (Strauss, 1998, p.32)

\(^7\) Extraterritoriality is the state of being exempted from the jurisdiction of local law, usually as the result of diplomatic negotiations. Extraterritoriality can also be applied to physical places, such as foreign embassies, military bases of foreign countries, or offices of the United Nations.
of judicial independence in the Provisional Constitution, with the separation of powers of the three branches of government: executive administration, the legislature, and the judiciary. The Provisional New Criminal Code (Zanxing xin xinglu 暂行新刑律) was issued in the same year (Yang, 1930). The following Yuan Shikai government (1912-1916) continued with the institutional formalization of the judiciary. Educational credentials were a prerequisite for judiciary appointments, and there were judicial compliance officials to ensure that judicial officers upheld professional ethics (Xu, 2008; Meng, 1931). For example, magistrates were asked to sever political ties, which would result in a politically independent bench (Zhengfu gongbao fenlei huibian, 政府公报分类汇编, no. 36, 11). (Government Bulletin compiled in categories)

Although the Law on Organizing Courts provided a four-level court system (the Supreme Court, the high court, the district court, and the court of first instance) and a three-trial process, provincial governors disapproved this plan and complained that it would consume too much of their local budget. As a result, most courts of first instance had to be removed by 1914 due to the lack of funding. Instead, the County Judicial Office served as a first instance court, and a trial officer and the county magistrate worked together to try cases. This was similar to the imperial era and was a retreat from the separation of the judiciary and administration (Xu, 2008).

Because there were no sentencing guidelines, the judges had too broad a scope to impose punishment for offenses, leading to inconsistency in sentencing. Another problem in the court was that judges and procurator could not speak the local dialects where they served, since the rule of avoidance prohibited them from serving in their hometowns. If they could not speak Mandarin either, they had to rely on court functionaries to speak with and to deal with litigants.
County functionaries might control the access to trials in order to squeeze illegal charges from litigants, and thus they might spawn irregularities and abuses in trial (Zhengfu Gongbao, 1927, no.4986). Clerks of county offices controlled all paper-work and collected fees, and they knew everyone in the region and were insiders at the county office, so they knew various ways to squeeze money out of ordinary people who had to litigate or were prosecuted.

The County magistrate, assessor (chengshen yuan), and secretary (shuji) were all powerful persons in the county judicial process. They would decide when to hear a case or to settle a suit, and who should win and who should lose, all depending on which way they could extort the most money (Xu, 2008). Because these officials were associated with the corrupt local gentry, litigants had to pay money to the latter before they could hope that their cases would be won or even be heard. When it was a bandit case (fei’an), money could buy one's safety; otherwise, all kinds of tortures were used, no matter what the result of the trial. Judicial police and jail guards were equally resourceful in manipulating, mistreating, and extorting money from ordinary people (Xu, 2008).

The formalization of process also met challenges. First, litigants were not well informed about the rules. Second, courts and procuracies saw the litigation fees as a ploy to increase overall state revenue rather than judicial revenue in order to operate the system. These two problems discouraged lawsuits (Xu, 2008). For the trial procedures, torture in trials was rendered illegal, and an open trial was required. In 1912, the Minister of Justice prohibited detaining civil defendants until trial (Zhengfu Gongbao, 1913, no. 33). The principle of legal defense was accepted, but lawyers only could represent defendants or plaintiffs in formal courts. Regulations on Lawyers ruled that lawyers could not appear at trials conducted at county level by the
magistrates (Zhengfu Gongbao, 1913, no. 280). Thus, people in most rural areas could not have legal representation in a trial.

Regulations on Trial Deadlines for Criminal Prosecution were enacted in 1915. Investigation of a criminal case was to be done within ten days of detaining the defendant, a pretrial hearing was to be held within ten days of receiving the case file, and the sentence was to be handed down within ten days of prosecution, and within twenty days in cases of prosecution for homicide and robbery (Zhengfu Gongbao, 1915, no. 974). In 1918, new regulations of the Ministry of Justice extended an extra five days for each of these three deadlines (Zhengfu Gongbao, 1918, no. 851). Trial review for high courts and the Supreme Court was to be finished within ten days of receiving the case file. County magistrates should finish trying a criminal case within sixty days of their receiving the case.

The check system for trial included both a trial review and an appeal process. The trial review from the imperial period was retained. The 1912 regulations required trial review only for cases entailing five-year prison terms and above, and county magistrate then tended to give sentences just below five-year prison terms in order to avoid the review (Xu, 2008). The 1914 regulations required almost all criminal cases tried at the County Government Office to be sent for review within five days of sentencing (Zhengfu Gongbao, 1914, no. 777). For appeal process in criminal cases, the plaintiff could appeal within seven days to the superior; if a procurator decided not to prosecute a case; the procurator could appeal within three days if a judge decided not to prosecute a case after a pretrial hearing; either the defendant or the procurator could appeal within ten days after a trial for sentences heavier than detention and fine (Xu, 2008). A third trial
appeal was limited to cases where either conviction or sentence contradicted the law. After the final decision, either party could file a special appeal to the Supreme Court, limited to the reason that the trial was improper and therefore illegal. For civil cases, litigants could appeal to a second trial court within twenty days of a first trial; one could appeal for a third trial within twenty days of a second trial if the remedy sought was more than 100 yuan, (Xu, 2008). The challenge for an appeal process was that many counties were far away from district courts and lacked convenient transportation, which restricted the litigants’ access to appeal. The Ministry of Justice had to approve designating a county court as an appeal court for a neighboring county in such situation. In some areas, the administrator was even empowered with judicial responsibility to act as a court of appeal and to review cases previously tried in the counties (Shi Bao, 1914, December 24, p.5). This practice was a deviation from the formalization of process.

We can see in the Northern Warlords government period, the Ministry of Justice had tried to establish judicial independence and due process through formally setting judicial institutions and procedures, but its plan often was stymied by defects inherent in the bureaucracy. The administrative bureaucracy had budget control of the judicial system and had tried to reduce the scope of judiciary; at the county level, the judiciary was still mixed with the administrative bureaucracy, but no political ideology was involved. The defects in the county level judiciary, such as the abuse of power of the functionaries, squeezing litigation fees from the accused, the lack of legal representation, needing to travel a long distance to the appellate court, etc., limited the access to practical justice for ordinary people. The effort to formalize the process and to institutionalize the system usually had to be negotiated with the realities, and deviation from regular process was not uncommon.
B. Kuomintang Nanjing Government period (1927-1949)

Different from the Northern Warlords government, the Kuomintang (KMT), which rose from a bourgeois revolution, had a distinctive party doctrine or ideology (*dangyi* 党意) to guide their state-building. On one hand, it raised the idea of democratic constitutional government in the theory of the Three Principles of the People (*Sanmin zhuyi* 三民主义); on the other hand, it emphasized that the democracy had to experience or undergo three stages of development: first was the military government (*junzheng* 军政), then through tutelage government (*xunzheng* 训政), and finally to reach constitutional government (*xian-zheng* 宪政). During the first two stages (starting from 1927), the KMT would exercise state power on behalf of the people and rule the country through the party (*yidang zhiguo* 以党治国). In other words, it was the KMT that controlled the political, administrative, and judicial systems of the country, and thus the country was called the Party-state (*dangguo* 党国).

The *Kuomintang Nanjing* governmental structure was divided into five departments: legislative, executive, judicial, examinations, and control. The department of Control had two main functions: impeachment and auditing, which were similar to the Board of Censors in the Imperial regime. The division of examinations was also closely associated with the political thought of the Imperial regime. The Nanjing government not only inherited the laws, civil regulations, and conventions enacted before but also made new laws. A new criminal code was enacted in 1928, followed by a criminal procedure law. In 1931, the first Chinese Civil Code was promulgated and it was based upon the experience of civil legislation of the groups of nations which had developed with Roman-style legal systems, such as Germany, Japan, and Switzerland. The
Collection of the Six Major Laws (constitutional law, civil law, commercial law, criminal law, civil procedure law, and criminal procedure law) finally took shape in China. This represents a process of a traditional Chinese legal system being replaced by Roman civil law, and a new legal tradition was finally being established (Wang, 2006).

Under the *Party-state* ideology, the politicization of the judiciary was used as a weapon to strengthen political control and order. It was proposed that judges trained in politics and party doctrine could become new and revolutionary. The prohibition of judges from joining political parties was abolished, and no persons could be judicial officers other than those who were KMT party members (*Falü pinglun*, 法律评论, 1927, No. 185). In addition, the jury had to be composed of KMT members who had been selected by officials from the local party headquarters. The justification for this policy was that the KMT had claimed to rule the country on behalf of society and the people, so the party was the body that should make the laws (*Zhonghuafaxue zazhi*, 中华法学, 1930).

Under the influence of party ideology, categories of political crimes were created around 1930s for the first time in Chinese history, so that the state could go beyond the regular legal system and process to eliminate those persons who were opposed to the political control (Xu, 2008). These crimes classified some uncooperative persons as being “counterrevolutionaries” or “local bullies and evil gentry”, which were adopted in the Communist era later (Xu, 2008). Such classifications undermined the formalizing judicial institutionalization, and a host of political dissidents were incarcerated and executed outside of the normal judicial procedures. Those “counterrevolutionaries” were detained in concentration camps and labor camps controlled by
civilian and military secret services (Xue, 1986).

The principle of party dominance over the judiciary had a deep effect in following years, and it is argued that is has been continued into the judicial practices under the Chinese Communist Party (CCP), which evolved from the Soviet Republic era through the Maoist era to the present (Michael, 1962; Leng, 1967; Cohen, 1968; Cohen, 1969; Lotverit, 1973; Butler, 1983; Liao, 1983; Leng & Chiu, 1985; Ladany, 1992; Xu, 1997; Xu, 2008). Partifying the judiciary (danghua sifa) was apparently at odds with the principle of judicial independence, but the collective perception of KMT officials did not think so. To their justification, the judicial independence was a still concept, meaning that the establishment of a court system was independent of administration. However, judicial independence is not only an independent system, but it also includes the independent operation of the court system and judicial practice. "Partifying" the system made judicial independence complementary to party dominance, serving the purpose of the party-state (Xu, 1997; Xu, 2008).

Even for the court system, it was not established completely, the local administrative officials continued to exercise judicial powers where no county judicial courts existed because of the shortage of funding and personnel; lawyers were still prohibited from practicing and were not even allowed to work as legal consultants (falü guwen 法律顾问) at the county level (Sifa xingzheng gongbao, 司法行政公报, 1932, no. 2; Faling zhoukan, 法律周刊, 1932, no. 87-90; 1933, no. 148; Liu, 1934, p.34; Sifa gongbao, 司法公报, 1935, no.18). County magistrates were mostly educated at a post-secondary education level. There was an examination system to improve the competence of county magistrates, but it was not used consistently.
A detailed prescription of behavior for county magistrates existed; however, the abuse of power and the miscarriage of justice were severe at the county level, and county magistrates often failed to follow the judicial procedures required by the law (司法公报, 1935, no. 74).

There was no stable enforcement of the law, and encroachment upon the powers of the legislature and the judiciary by the frequently changing administrative officers, mostly the nominees of the military leaders, attempted to give popular sanction to the laws and their administration. The military law and the military courts had great powers in imposing drastic penalties and procedure at the expense of the civil law and the civil courts (Keeton, 1937).

For example, county magistrates would add a variety of fees in order to extort money from the citizens to cover their administrative costs. Both judicial officials and scholars agreed that such problems at the county level were due to the fact that county magistrate held these unlimited judicial powers (法律评论, 1927, no. 215; 1929, no. 31; 中华法律杂志, 1934, no. 5). On the one hand, at the county level, appointed by the magistrate, judicial personnel had no way of conducting the judicial process independently. On the other hand, the local gentry could impose their influences on the county judicial process, since they could give important support to administrative affairs.

The KMT Nanjing government tried to build a court system from the capital down to the county level, which was separate (but not necessarily independent) from the administrative bureaucracy, and which had properly trained and disciplined judicial officers who would be guided by the rule of established law, and which was judicially independent. However, this court system could not be completed due to a shortage of funding and qualified personnel; so, the judicial function was still carried out by the administrative bureaucracy at the county level. The funding problems also
bred power abuse and undue influences on the administration of justice. Moreover, political ideologies began to influence the judiciary’s behavior during this era, and it had a severe impact on the development of the Chinese legal system. First, the theory of a “partifying” judiciary severed the operation from the court system, leaving the judicial independence concept without a reality in practice. Second, the idea that party control of the judicial system rather than established judicial independence was reinforced in the people’s minds, and the judiciary lost both its spirit and its identity. The model of judicial independence gave way to party-dominated social control model. The judiciary during this era was an incomplete court system highlighted with an ideology of party control, a clear deviation from modernized judiciary independence.


During most of the period of the Kuomintang governance, the Chinese Communist Party had its own government in the areas of its influence. In November 1931, the Chinese Soviet Republic was established in Ruijin, Jiangxi province. Its central government promulgated the Constitution, issued currency, and designed the national flag. The Interim Supreme Court, the highest judicial organ of the Chinese Soviet Republic, was set up in 1932, and at all levels of government, magistrate divisions were also established. The legal practice encountered challenges due to the lack of education and legal knowledge in judiciary. During this time, law had been taken as a weapon of dictatorship in order to establish a revolutionary order. The People's Commissariat of Justice developed more than 10 criminal laws and regulations to punish counter-revolutionary behaviors. Judicial procedure was under test, and certain processes had been set up, including: trial records, judgments, summons, warrant, pre-trial records, work reports, search
Seven major systems had been initiated: (1) a public trial system and the Circuit Court, (2) the collegial system of trial and the jury system, (3) a defense system, (4) a system where the judges of the avoidance system with the families and relatives of the accused who have ties or personal relationships, regardless of whether the trial or jury, shall not participate in the trial of the case, (5) the appeal system in the prescribed appeal period, where the defendant may appeal to the higher judicial bodies, (6a ) death penalty review system, and (7) the People's Mediation System. Jiangxi Soviet republic was the first Communist government in China, and its legal practice could be seen as the predecessor of the socialist legal system of today (Li and Yang, 2004).

Due to the failure of the fifth anti-encirclement campaign, the Chinese red army was forced to begin its long march, and the Chinese Soviet Republic moved to the Shan-Gan soviet area. In 1937, the Chinese Soviet Republic changed name to Shaanxi-Gansu-Ningxia Border Region Government. The government established the Supreme Court, which had 8 divisions: procuracy, criminal court, civil court, secretariat office, general office, production office, secretary, and jail. Each county and town had a judicial clerk (Feng, 2007). The justice systems were gradually set up, including law-making and law practice, substantive law and procedure law, and the legal institution and recruitment of judicial officials. The court during this time not only inherited the seven major legal systems in Jiangxi Soviet Republic, but it also developed more systematic and efficient legal institutions and practices. The most popular system was the simplified trial procedure and its unified leadership in the judiciary.

In 1949, the People’s Republic of China was founded by the Chinese Communist Party (CCP), and the legal system started a new page in Chinese jurisprudence. The simplified trial procedures
increased trial efficiency and later, after 1949, became incorporated into the legal system of the People’s Republic of China. This type of unified leadership was also adopted in PRC legal practice. Although the unified leadership in the judiciary was a transitional measure during war time, it was actually a covered intervention in independent trial. It actually exerted a negative influence on the justice system. Chapter 2 will discuss the current situation of the Chinese courts and China’s criminal justice system.

Summary

As a nation with a long history of a highly-centralized bureaucracy, an independent judiciary could not have been developed in imperial China. Chinese patrimonial bureaucracy was based on the traditional patterns of authority, and it nurtured a deeply-rooted culture of bureaucracy throughout Chinese society. The law had never gained enough support to develop its own independent identity; instead, it became a useful reigning tool of the imperial government. Law was used to control and regulate everyone’s life, morality, and even emotions. The traditional imperial judiciary was formed by magistrates who were not legal experts. They had absolute power without any effective check, and they had no motivation to pursue judicial independence. Previous attempts of legal reform in Chinese history had met tenacious objections from the bureaucracy. In the beginning of 20th century, the imperial dynasty’s history came to an end, and modern political parties started to replace the emperor in order to build new governments.

Unlike Western Party politics, political parties in China aimed to build a party-state system to control both the political, administrative, and judicial systems of the nation. Although emperors
disappeared, the powerful political bureaucracy still existed, and the judiciary did not gain independence. Diverse revolutions witnessed the vicissitudes of dynasties and leaders, but the thorough permeation of the bureaucratic culture could not be effectively overcome merely by the revolution. The Chinese Judiciary, bounded in a strong political bureaucracy through which it had been nurtured, is still struggling in a long historical way to develop its independence. After the new socialist country had been established, how much is the PRC’s court different from the one of Kuomintang government? How much was the system inherited from the previous history? In chapter 3, we will discuss the court development after 1949.
Chapter 3: The Court and Criminal Justice
System in China (1949-2014)

Introduction

During the past three decades, profound economic reform has occurred in China, including opening the country to foreign investment, with permission for internal trade and start-up businesses. It has brought the nation both vibrant economic growth and dramatic social change. High social mobility, urbanization, stratification, and inequality provide ample opportunities and incentives for crime. All these call for a justice system that provides formal legal rights as protection for individuals and which maintains its political legitimacy through its political independence and integrity. However, legal reform in China lags behind the nation’s economic development, and there is, as yet, no independent judicial system (Lubman, 1999). The Chinese judiciary is still more like a highly bureaucratized administrative branch under the Party, and a government system rather than an independent judicial function.

As with the highly centralized imperial dynasty, the structure of the Chinese courts remains as a hierarchical system parallel to both the government and the Chinese Communist Party. The judiciary belongs to the civil service system, and judges are employees of a quasi-executive
branch. Diverse division offices are set up within each court to oversee different types of cases. The court is under the leadership of Chinese Communist Party. The court is highly localized because it has no centralized budget and basically is funded by local governments. The court and the criminal justice system in China have undergone a long, arduous process and are now in a transitional era. This chapter will look into the current court institutions and analyze its organization structure and bureaucratic characteristics.

Court Institutions in Present China

A. Legal System after 1949 (1949-present)

In 1949, the People’s Republic of China was founded by the Chinese Communist Party (CCP). The new country did not keep the old laws. It indicated very clearly that “Under the democratic dictatorship of the proletariat, Collections of the Six Major Laws of the Kuomintang should be abolished” (Wang, 2006, p76) because, in classical Marxism, law is a tool of the ruling class and the newly established political power must dismantle the old state apparatus and establish its own legal system and order (Wang, 2006). Hence, the Collection of the Six Major Laws of Kuomintang was then abolished, and socialist laws and judicial principles were progressively enacted. Judicial work should be based on laws, orders, regulations, and resolutions in the new democratic policies, and the judicial organs should also learn and master the statist and legal perspectives in Marxism, Leninism, and Mao Zedong’s Thought, as well as the guiding
principles (Peking University Law Department, 1980). These principles are still more or less reflecting the current Constitution. China started to build the Communist legal system, which adopted a format from the Soviet law, including public ownership of the means of production and subordination of the legal system to the Communist Party (Liu, 2009). Not only the 1954 Constitution, the first formal Constitution of the PRC, but also the 1950s legislative work designed to draft basic civil, criminal, and procedural codes, all borrowed extensively from the Soviet model.

Development of the socialist legal system occurred in two stages. During the first stage, from 1949 to 1976, China created a legal infrastructure using the Soviet approach, but rapidly this system descended into political fanaticism and ended in the Cultural Revolution, a ten-year period of turmoil that paralyzed the legal system. The second stage of China's legal development began after Mao's death in 1976, along with the economic reform. Beginning in the late 1970s China entered into a period of rebuilding its legal system by enacting laws and regulations at an accelerated pace (Xin, 1999; Jones, 2003).

From 1979 to 2008, the National People's Congress (NPC), the nation's top legislative body, promulgated over 231 laws, and the State Council enacted more than 600 regulations (Office of the State Council of China, 2008). In the White Paper released by the Office of the State Council of China in 2008, China claims that the foundation of the modern Chinese legal system

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8 The constitution of People’s Republic of China, page 1, reads, “Both the victory of China's new democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships.”
has already been laid: this foundation is described as consisting of one core, three levels, and seven categories. At the core is the 1982 Constitution that has been amended four times through 2004. Under the Constitution, there are three levels of legislations, representing the hierarchy of legal sources. At the top is "law," which is passed by the National People's Congress; the second level is the legislation made by the State Council and Provincial People's Congress termed as "regulations"; the third level is the legislation adopted by various government ministries/agencies and by local government termed as "rules or decrees" (Office of the State Council of China, 2008). The seven categories are the branches of law, which are (a) the Constitution and related law, (b) civil and commercial law, (c) administrative law, (d) economic law, (e) social law, (f) criminal law, and (g) litigation and non-litigation procedure law. In addition, local people's congresses have passed over seven thousand local regulations, and various ministries and regional governments issued multiple rules and decrees (Xin, 1999).

After 65 years, a brand-new socialist legal system basically has been formed, but traces of the Roman law tradition still exists. First, the legal tradition of the former Soviet Union is in fact in many aspects heavily influenced by Roman law (Quigley, 1992). Second, law is always established on the basis of the original legal tradition. The socialist Chinese law cannot avoid the influence from civil law tradition which had existed for three decades before 1949 (Lin, 1995). However, the inherited tradition of laws has been facing change in recent years. During the early 1990s, along with the collapse of the Soviet Union, the influence of Soviet law has been diminishing. After 30 years of economic reform, China’s economic system is now changing from a socialist planned economy to a socialist market economy. The complex of Chinese law tradition is beyond the scope of the current research, and more details can be found in other
Unlike the relatively simple economic relations in a planned economy, the increasing levels of trade and transactions call for more regulations to designate property rights, transaction orders, and market rules, etc. The legal system must adapt to these changes and protect the market economy. In addition, global cooperation also requires that the Chinese legal system begin to harmonize with the international system, and international laws already have exerted their impact on the promulgation of law in China. More Chinese students are starting common law study overseas and bringing back legal concepts from their study. Although the common-law system, which is based on cases and rules, is not inherent in Chinese law, the increasing foreign trade has required more common-law elements to be used. In addition, Hong Kong and Macao both retain their laws after returning to China; China now has three coexisting legal systems: Roman-law-based socialist law (mainland), common law (Hong Kong), and Continental Roman law (Macao). Along with the globalization and international cooperation, both the civil laws and the public laws are facing the challenge to change. The criminal law and criminal procedure law have become the hot topics in Chinese legal reform.

B. Court Development After 1949

The founding of the People's Republic of China in 1949 started the new era of China's judicial system, and around 1949, the number of people's courts reached a peak (around 1900). In October 1, 1949, Shen Junru was appointed as the President of the Supreme People’s Court, and
in November 1, 1949, the Supreme People’s Court started to work. Some local courts, such as
the provincial courts and county courts, were set up. For example, the court of Harbin city was
set up in 1946; the court of Jilin province was set up in 1948. Other local courts were established
after taking over the judicial office of the nationalist government. The Court of Beijing was set
up on March 18, 1949; the court of Shanghai was set up on August 11, 1949. Most courts in the
beginning only had three units: the office, the criminal trial unit, and the civil trial unit.
The rate of establishing new courts in China was still high during the early 1950s, but a national
campaign in mid-1952 disrupted the process which had sought to apply the mass line to legal
work and to build a mediation system, rather than a strong judiciary (Lubman, 1999). The police
took the major tasks in administering law and sanctions. The court and Procuracy figured little in
decision-making and were used to formalize the most serious punishment. Mass line, rather than
judicial procedure, was emphasized (Lubman, 1999). The court usually started mediation first in
the courtroom rather than adjudication.

Formal steps were taken to regularize the legal system after 1953. In 1954, at the first session of
the first National People's Congress (NPC), a constitution was enacted, and the Organic Law of
the People's Courts was adopted, which systematically determined the nature, functions,
organization, and activities of the courts. A tripartite division of functions was set up: the police
were to investigate suspected offenses and make arrests that had been approved by the Procuracy;
a formally independent Procuracy was made outside the courts; and the courts were to determine
guilt in public trials before one judge and two citizens acting as jurors, in which the accused had
a right to defense (Lubman, 1999). We can see that the number of courts built in 1954 was still
huge, at around 600.
However, after 1955, further political campaigns were launched to suppress counter-revolutionaries, with the involvement of direct police sanctioning and the courts promoting specific policies. The formal criminal procedures and tripartite division among the police, Procuracy, and courts on the disposition of the cases were largely disregarded. In most cases, the Procuracy and courts relied on the file assembled by the police in the case and merely confirmed the police recommendation for disposition (Lubman, 1999). During the anti-rightist campaigns of 1957-1958, close cooperation among courts, Procuracy, and police were urged, and the formal procedures were again disregarded. Three agencies continued to work together and to apply the official mass party line⁹ to their legal work. Statutes were promulgated to declare the power of the police to administer minor punishments, while the negation of courts increased, along with rising role of police (Lubman, 1999).

In figure 4, we can see in both 1959 and 1964, that the number of courts built was around 100, while in 1969, the number of courts established was only 36. During the Cultural Revolution, the already fragile judicial system was almost paralyzed (1966-1976). Few courts were built due to the disruption of legal work during the Cultural Revolution. The Procuracy had been abolished in the late 1960s, and the function of the courts had been disrupted and usurped, while the public security organs—the Police—playing a growing role at the expense of the Procuracy and the courts. Later, the People’s Liberation Army (PLA) intervened to restore the chaos created by the Cultural Revolution and handled many criminal cases without the participation of the courts (Chiu, 1992).

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⁹ It is the political, organizational, and leadership method developed by Chinese Communist Party, which means applying correct ideas that the masses gain in everyday life.
The number of courts built has begun to increase since 1974. The 1975 Constitution confirmed the subordination of the judiciary to the administrative organs, and officially abolished the Procuracy, whose function was transferred to the public security organs at the corresponding level (Chiu, 1992). Under the old ideology, the judicial system had a minimum role to play, and it ranked last in the list of all three legal branches (police, procuracy, and court) (Liang, 2008). Throughout the 1950s, 1960s, and 1970s, Chinese courts dealt mostly with criminal cases, which accounted for approximately half of the caseload of the courts before 1979.

In 1978, the 11th Central Committee 3rd plenary session of CCP officially acknowledged that the current principle contradiction is between the growing material and cultural needs of the people and the backwardness of China’s social production (Leng & Chiu, 1985). The government’s priority became economic development rather than the class struggle, officially establishing a strong legal system as imperative for China’s economic development. The 1978 Constitution revived the Procuracy and claimed the rights to defense. It was in 1979 that the Criminal Law and Criminal Procedure Law were enacted. The number of courts built was around 200 in 1974, around 300 in 1979, and around 400 in 1984, but it was only about 100 in 1989.

In 1993, the CCP set a socialist-market economy as the major target of the reforms, and the first Session of the Eighth National People’s Congress amended article 15 of China’s Constitution, stating that “the state practices socialist market economy”. The transition to the socialist market

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The economy inspired tremendous progress in the legal system and in criminal justice. The reform first started with the rural contract responsibility system, which greatly promoted farmers’ incentives and enhanced agricultural production, and the gross output value of farming increased more than 16-fold, from 111.76 billion yuan in 1978 to 1.96 trillion yuan in 2005 in a little more than 25 years. The reform also expanded into the industrial sectors, leading to the reemergence and growth of the non-public-owned private sectors, which contributes more than 50% of China’s total GDP annually, according to the official data of 2005 and 2006 (Liang, 2008). We can see that, during this period, the number of courts built increased stably to around 200 by 1999.

In 2001, China gained accession to the World Trade Organization (WTO), and it drives the development of legislation, administration, and the judiciary in China. Market economy was formally adopted by the government, and the legal system has been improved in order to help the promotion of the economy. A series of revisions to laws and regulations were made on foreign trade and intellectual property, and requirements for transparency in administration and rule-making were explored in the preparation for this accession. It was agreed that the massive change that economic reform brought to the Chinese economy created a need for massive change in China's legal system.

In the beginning of the reform and in the opening period, the main task for the judiciary was to establish an institutional system of People's courts and Procuratorates and the relevant trial and prosecution systems. About 2,000 courts were established nationwide after the founding of the new China, and in order to fulfill these increasing needs after the reform, the number of courts was increased to more than 3,000 and stabilized at 3,500 in the 1990s (Liang, 2008).
After examining the trajectory of the court establishment, we can see the key role of political needs in court development. For example, the new governance or new policy often calls for more courts to be built. However, the court development could be stopped when the judicial system was eradicated due to political needs, such as the Cultural Revolution time. This unique development pattern of the Chinese courts can find its root cause in the political bureaucracy system in which it was born. A judiciary, born from a political bureaucracy, has never gained its independence and cannot decide its own development. Instead, it must rely on the powerful bureaucracy system, which is overridden by the Party.

Figure 4. The chart below displays the number of new courts established each year from 1949 to 2004. Green color represents the number increased, while red color represents the number decreased.
With the expansion of the courts, the internal structure of the court has become more specialized and the number of people working in courts at all levels is increasing. In order to cope with different types of cases, specialized divisions were established within the court, such as an economic disputes division, an administrative litigation division, and a criminal litigation division. (Liang, 2008).

Along with the economic reform, the legal system in China began to develop, and the power and roles of the judicial system grew as its function was greatly expanded into the economic, political, and social domains. The Criminal Law and Criminal Procedure Law were enacted in 1979; the Civil Procedural Law (CPL) took effect in 1982; in 1990, the new Administrative Litigation Law (ALL) was enacted; and the State Compensation Law became effective in 1994. The burgeoning market economy and social developments at the time made reforming the judicial system important, becoming the front line in efforts to resolve social conflicts, and also presenting great challenges to the judicial system.

The total number of cases accepted by the courts was 447,755 in 1978, and the number reached 5,161,170 by 2005, a greater than tenfold increase in 27 years – averaging about 39% annual increase in the number of courts, evidence of a profound policy shift in China during this period. The distribution of court cases also changed dramatically: criminal cases represented more than 30% of all cases in 1978, then in 2005 they only represented about 13% of total cases heard by the courts (Liang, 2008). It became increasingly obvious that the judicial system had not kept up with social and legal developments, and this problem becomes even more serious after 2005.
According to the statistics of the Supreme People’s Court, there are 190,000 judges in 2006, and the ruled cases number is around 8,555,000; there are about 189,000 judges in 2007, and the ruled case number is around 8,551,000; about 189,000 judges in 2008, and the ruled case number is around 9,839,000; about 190,000 judges in 2009, and the ruled case number is around 10,545,000; about 193,000 judges in 2010, and the ruled case number is around 10,999,000. It shows the number of judges keeps stable, but the ruled case number increase quickly. To July 2013, it is noted the number of judges has reached to around 196,000. The chart below displays the increasing case number is much faster than the increasing number of judges. Red color indicates the case numbers, and blue line indicates the judge numbers.

Figure 5

**Number of Judges and Ruled Cases in Chinese Courts (2006-2010)**
In addition, we collected population, economics, and employment data from the Chinese Statistics yearbook (2006-2010)\textsuperscript{11} for this same period. Table 1 compares the number of judges, number of cases ruled, population census, and GDP, and data allows us to see the different development trajectory among these five variables.

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Year & Judge number $\times 10,000$ & Case number $\times 10,000$ & Population $\times 10,000$ & GDP $\times 100$ million yuans \tabularnewline \hline
2006 & 19 & 855.5 & 131448 & 216314.4 \tabularnewline \hline
2007 & 18.9 & 855.1 & 132129 & 265810.3 \tabularnewline \hline
2008 & 18.9 & 983.9 & 132802 & 314045.4 \tabularnewline \hline
2009 & 19 & 1054.5 & 133450 & 340902.8 \tabularnewline \hline
2010 & 19.3 & 1099.9 & 134091 & 401202.0 \tabularnewline \hline
\end{tabular}
\end{table}

We find that, although the court case numbers, national population, and GDP are all increasing very fast, the number of active judges has not increased very much. In such situations, the ‘administrationization’ of court trials is one of the most effective ways to handle large amount of cases with a limited number of active judges. The administrationization of court trials refers to the replacement of the content of the judicial system with administrative goals, structures,

\textsuperscript{11} http://www.stats.gov.cn/english/statisticaldata/yearlydata/
approaches, principles, and effects, thereby transforming the judicial system by directing it to operate in an administrative mode (Long & Yuan, 2014). This is a profound cultural change in the court. In order to meet the practical needs for both efficiency and speed, the bureaucratization of the judicial system ironically becomes the destiny for the Chinese court which has been born in a country with a long history of bureaucracy. Interestingly, each person growing up in China inevitably has to bear such a birth mark, and the court cannot avoid this trend. As part of state administration, courts now are managed like government departments within a hierarchical structure (Keith, Lin and Hou, 2013). How do the bureaucratized Chinese courts and the criminal justice system deal with criminal cases? The case studies in chapter 4 will discuss the shadow of bureaucratization over the law and trials in China.

C. Structure

Chinese courts are organized to precisely parallel the hierarchical structure of the government and the Chinese Communist Party. The Organic Law of People’s Courts of the People’s Republic of China (OLPC)\(^\text{12}\) was revised in 2006, and it states that the judicial authority in China is to be exercised by the following courts: local people’s courts at various levels; military courts and other special people’s courts; and the Supreme People’s Court (Articles 1 and 2 of OLPC). Special people’s courts are tribunals set up by special institutions for deciding special cases. These include military courts, maritime courts, railway transportation courts, and special courts of agriculture, forestry, oilfields and seaports; they operate on only two levels: basic and intermediate.

\(^{12}\) The English translation of OLPC is from lawinfochina.com, withdrawn at 2/2/2012

The top of this system is the Supreme People's Court (SPC), the highest judicial organ of the State. It supervises the administration of justice by the local people's courts at various levels and by the special people's courts, but it has no administrative authority over lower courts (Article 31 of OLPC). The Supreme People's Court handles the following cases: cases of first instance assigned by laws and decrees to its jurisdiction and which it considers that it should itself try; cases of appeals and of protests lodged against judgments and orders of higher people's courts and special people's courts; and cases of protests lodged by the Supreme People's Procuratorate in accordance with the procedures of judicial supervision (Article 32 of OLPC).

Local people’s courts at various levels are divided into basic people’s courts, intermediate people’s courts, and higher people’s courts (Article 2 of OLPC). The judicial work of the lower people’s courts is subject to supervision by people’s courts at higher levels (Article 17 of OLPC). The higher people’s courts include higher people’s courts of provinces, higher people’s courts of autonomous regions, and higher people’s courts of municipalities directly under the Central Government. A higher people’s court handles the following cases: cases of first instance assigned by laws and decrees to their jurisdiction; cases of first instance transferred from people’s court at lower levels; cases of appeals and of protests lodged against judgments and orders of people’s courts at lower levels; and cases of protests lodged by people’s procuratorates in accordance with the procedures of judicial supervision (Article 28 of OLPC).

Intermediate people’s courts are established in prefectures of a province or autonomous region, municipalities directly under the Central Government, municipalities directly under the jurisdiction of a province or autonomous region, and autonomous region (Article 23 of OLPC).
An intermediate people’s court handles the following cases: cases of first instance assigned by laws and decrees to their jurisdiction; cases of first instance transferred from the basic people’s courts; cases of appeals and of protests lodged against judgments and orders of the basic people’s courts; and cases of protests lodged by the people’s procuratorate in accordance with the procedure of judicial supervision (Article 25 of OLPC). When an intermediate people’s court considers that a criminal or civil case it is handling is of major importance and requires trial by the people’s court at a higher level, it may request that the case be transferred to that court for trial (Article 25 of OLPC).

Basic people’s courts are on the lowest level, including county people’s courts and municipal people’s courts, people’s courts of autonomous counties, and people’s courts of municipal districts (Article 18 of OLPC). Except for cases otherwise provided for by laws or decrees, a basic people’s court adjudicates criminal and civil cases of first instance (Article 21 of OLPC). When a basic people’s court considers that a criminal or civil case it is handling is of major importance and requires trial by the people’s court at a higher level, it may request that the case be transferred to that court for trial (Article 11 of OLPC). Besides trying cases, a basic people’s court may undertake the following tasks: settling civil disputes; handling minor criminal cases that do not need to be determined by trials; and directing the work of people’s mediation committees (Article 22 of OLPC).

The figure 6 below shows the structure of the courts in present China.
D. Staff System of People’s Courts

The task of the people's courts is to try criminal and civil cases and, through judicial activities, to punish all criminals and to settle civil disputes. The courts shall exercise judicial power independently, in accordance with the provisions of the law and shall not be subject to interference by any administrative organ, public organization, or individual (Article 3 of OLPC).
In order to fill up this function, the people’s court has a staff system, including judge, clerk, judicial police, and administration staff.

1. Judges as Civil Servants

In the U.S., people get appointed as judges often after a career in some other branch of the legal profession, such as private practice, prosecution, or teaching (Posner, 2005). In contrast, the Chinese judiciary belongs to the civil service system, and judges are managed as government civil servants. Fresh law school graduates can be employed by the court as law clerks and can expect to rise to become assistant judges and higher as he or she gains experience (Posner, 2005). As employees of a quasi-executive branch, Judges are elected and subject to recall by the NPC or local people’s congress, and they have no greater job security than any other governmental appointees have (Clark, 2008). Moreover, the NPC supervises the courts’ work by requiring them to submit annual reports, and the NPC deputies may also submit questions and queries to the courts.13

The Supreme People's Court is headed by a president, who is elected by the National People's Congress. Its vice-presidents, chief judges, associate chief judges of divisions, and judges are appointed or removed by the Standing Committee of the National People's Congress (Article 27 and 34 of OLPC). A higher people’s court and an intermediate people's court are both composed

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13 Article 17 of the OLPC reads: “The Supreme People’s Court is responsible to and reports on its work to the National People’s Congress and its Standing Committee. Local people’s courts are responsible to and report on their work to the local people’s congresses at corresponding levels and their standing committees. The judicial work of people’s courts at lower levels is subject to supervision by people’s courts at higher levels.”
of a president, vice-presidents, chief judges, and associate chief judges of divisions, and judges (Article 24 and 27 of OLPC). A basic people's court is composed of a president, vice-presidents, and judges (Article 19 of OLPC). Local people’s courts are also led by court presidents. Presidents of these local people's courts at various levels are elected by the local people's congresses at their corresponding levels, and their vice-presidents, chief judges, and associate chief judges of divisions, and judges are appointed and removed by the standing committees of the local people's congresses at their corresponding levels (Article 35 of OLPC).

People's courts at all levels may, according to their needs, be staffed with assistant judges, who shall be appointed or removed by the people's courts themselves (Article 37 of OLPC). People’s courts may have elected people's assessors of citizens, who are members of the divisions of the courts in which they participate and who enjoy equal rights with the judges during the period of the exercise of their functions in the people's courts (Article 38 of OLPC).

2. Other Staff

People's courts at all levels have clerks to keep records of the court proceedings and to take charge of other matters concerning the trials (Article 40 of OLPC). Local people's courts at various levels also have marshals to carry out the execution of judgments and orders in civil cases and the execution, in criminal cases, of the parts of judgments and orders concerned with property. Local people's courts at various levels have forensic physicians, and people's courts at all levels have a certain number of judicial policemen (Article 41 of OLPC).
E. Functional System

The basic trial unit is a collegial panel. Cases of first instance in the people's courts shall be tried by a collegial panel of judges or of judges and people's assessors; simple civil cases, minor criminal cases, and cases otherwise provided for by law may be tried by a single judge (Article 10 of OLPC). Appealed or contested cases in the people's courts are handled by a collegial panel of judges (Article 10 of OLPC).

Collegial panels belong to different divisions. Different from the U.S. court, Chinese courts set up diverse divisions, e.g. criminal division, civil division, economic division, etc. The Supreme People's Court, higher people's courts, and intermediate people’s courts all shall set up a criminal division, a civil division, an economic division, and such other divisions as are deemed necessary (Article 32, 27, 24 of OLPC). A basic people's court may set up a criminal division, a civil division, and an economic division, and each division has a chief judge and associate chief judges (Article 19 of OLPC). A basic people’s court may set up a number of people’s tribunals according to the conditions of the locality, population, and cases (Article 19 of OLPC).

Along with the economic reform and transition to market economy, people’s courts have become the major mechanism to channel social conflicts and disputes due to dramatic social changes. In order to deal with diverse new issues, courts have started to build various divisions, and the total division numbers of courts in China since 1979 have continued to increase. Since the law of OLPC states that a court can set other divisions as are deemed necessary, the court divisions have become more and more carefully refined and increasingly complicated. New divisions include case-filing division, administrative division, juvenile division, intellectual property
division, etc. In addition, some divisions have branches; for example, the Shenzhen intermediate court has two economic divisions, and the 2nd economic division only deals with economic cases involved in foreign trade. Some courts set up sub-divisions; for example, the economic division has a sub-division of real estate.

Besides the multiplication of divisions, the people’s courts also have set many offices, including administration office, human resource office, supervision office, facility center, veteran cadres Office, etc. The CCP also has set branches across all levels of the court. Since 1995, people’s courts have started to build a judicial police system, which is in charge of the court safety and decision enforcement. Judicial police now also implement the death penalty. Along with the more detailed job division in the people’s court, the numbers of staff working in courts has increased dramatically from 59,000 in 1978 to 300,000 in 2008 (Liu, 2009).

From a positive perspective, the high job division in people’s court can improve judicial power by expanding the organization’s capacity by hiring more staff members. For example, the 1996 revision of criminal procedural law increases the investigative power of the public security bureau because the PSB has more personnel than the procuratorial organs (Liu, 2009). However, job and division refinement is self-reflexivity which means that the fine division causing internal problems in the court itself. More divisions do not necessarily increase the capacity of the courts but instead cause overlapping and overstaffing. Courts need to build more administrative and supervision offices for the huge division system, but diverse divisions may have jurisdiction conflicts (Liu, 2009). Due to the disassociation of adjudication from petition filing and enforcement, one case must be examined two or three times by different divisions of the court,
and this increases the judicial cost (He, 2009). Over-refined divisional structure leads to inefficiency and a weakened judiciary.

The Court with Chinese Characteristics

A. Under the Leadership of CCP

Article 126 of the 1982 Constitution (as amended in 2004) proclaims judiciary independence from any interference by administrative, public, and individual organs:

“The people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations, or individuals.”

However, it is not clear whether the CCP is included as one of those organs that possibly could interfere with the independence of the Chinese judiciary. The Constitution upholds the single party ruling system and emphasizes the leadership of the Communist Party. According to the Constitution, the CCP possesses all powers of the nation, including the military. In reality, the CCP is found to have influence over the judiciary, and the Party has continued to influence the judicial reforms for its interests (Ji, 2001). People’s courts set up local entities of CCP, the courts are led by the committees of CCP of the corresponding districts, and judges are cadres who are selected, trained, and managed by the CCP. Appointments of judges, especially high ranking officials, are under the charge of the Party’s local committees located in the areas of the courts.
In addition, the Constitution does not provide checks and balances for such power, and the internal check system in the CCP has yet to be proven effective. The CCP leadership not only determines the trend of legal development in China, but also affects how law is made and enforced. It is argued that this phenomenon is reminiscent of traditional Confucian philosophy in that the success of the country depends on a leader rather on a system, though popular human rule is replaced by the rule by the party (Wang, 2008). The leadership of CCP is structured from the central level down to the grass roots, and is secured through so-called "party branches" or party committees on the site of particular work units (Zhang, 2010). In almost every employment sector, including businesses and universities, behind the executive head there is a party chief who actually exercises ultimate control. In order to achieve party control over the practice of law, the Ministry of Justice (MOJ) makes it imperative that each law firm form a party branch or a quasi-party organization (Zhang, 2010).

The leadership of CCP applies to both legislature and judiciary. Chinese jurisprudence is still the doctrine of Marxism, which states that the law is a manifestation of the will of the ruling class, and legislation is the process of turning that will into the will of the state (Yu, 2001; Shen, 2004). As China is a socialist country, the dominant class in the constitution is the proletariat, and the CCP is deemed as the only representative of it. It is argued that the law in China is actually the expression of the will of the Communist party and that the propositions of the CCP become the will of the state through the legislative process (Wu & Li, 2007). In China, the CCP holds all the real legislative power; the legislature, NPC, and its Standing Committee must follow the leadership of the CCP (Zhang, 2010).
For example, in the legislative arena, it is unyielding principle that the Central Committee of the CCP must examine and approve all drafts of major laws of national importance, and later this principle was unequivocally announced by an internally circulated official document of the CPCs Central Committee (CCP Central Committee, 1991; Zhang, 2010). So virtually all laws passed by the NPC were pre-reviewed and approved by the Central Committee of the CCP (CCP Central Committee, 1991).

In addition, the NPC is required to make all efforts to ensure that all candidates recommended for various government posts by the CCP are both elected and appointed (Wu, 2009). The CCP also controls elections of delegates to the NPC. The direct election of delegates only takes place at the county level, and all other delegates are elected from the candidates recommended by the CCP (Zhang, 2010). Another provocative point is that, among the delegates of NPC, a vast majority of them are the members of the CCP, and all delegates who are CCP members must vote for whatever proposals the CCP has made for the NPC (Xia, 1998).

All courts in China are bound by a stated principle that the judiciary's work must adhere to the leadership of the CCP (Wang, 2009). A common practice in early 1980 was that any case handled by either people's court or people's procuratorate would need to get approval from the party committee of government at the same level before a decision was made. This practice was repealed in September 1979 under the CCP's Instruction on the Firm Assurance of the Earnest Implementation of Criminal Law and Criminal Procedure Law (Wang, 2008; Wu, 2008). The lack of independence affects the public confidence in the legal system because the general public still doubts that the current Chinese legal system is adequate to provide a just result (Woo, 2004).
Nowadays, there are still political and legal commissions (zhengfa weiyuanhui 政法委员会) in every security and judicial organization (public security, state security, justice, procuratorate, and court) at every level. These commissions are empowered to intervene in the major and most sensitive cases and court presidents and adjudication committee leaders are tempted to consult with them before making difficult decisions (Cabestan, 2005).

Many presidents of the courts, if not all, are political appointees, and some do not even have a legal background. A most recent survey reveals that among thirty presidents of provincial people's courts, fourteen are government officials with little or no legal training, fourteen have some work experience in legal areas (a few are formally trained lawyers), and two are from academia (Zhang, 2010). People's courts at all levels are directly under the supervision of the political and legal commissions of the CCP at their corresponding levels, and all major cases must be reported to such committees before a court judgment is made (Zhang, 2010). The Supreme People's Court recently adopted the "Three Supremacies" as its guiding principle for the courts: "the Cause of the Communist Party Supreme is supreme, the Interest of People is Supreme, and the Constitution Law is Supreme" (Zhang, 2010).

B. The Courts are Localized

Since there is no plea bargaining, most criminal cases in China go to trial, which requires a significant deployment of public resources and is extremely costly (Sheng, 2003). However, the Chinese judiciary system has no centralized budget and financial allocation by its own, and the courts basically are financed by local governments (Zhu, 2007). Consequently, the financial allocation for
infrastructures, facilities, administrative fees, and salaries of judges in people’s courts at various levels flow directly from fiscal expenditure at the corresponding levels. The financial condition logically requires courts to take into consideration the relationship that is not laid down by laws or even illegal relationship with the administrative organs at the corresponding level. The appointments of judges in local courts also are affected by executive offices (Zhu, 2007). In addition, according to procedure laws, executive organs have the obligation to help accomplish the item relevant to lawsuits mandated by courts, so it is difficult for the trial and other activities of courts to strictly obey the provision of the Constitution as to “not be subject to interference by any administrative organ…” (Institute of Law Chinese Academy of Social Science Beijing, 2001).

In recent years, costs of judiciary have increased beyond the allocation of money from the local governments. As a result, many courts have relied on litigation fees to make up for the gaps, and courts in remote areas have even sought to increase litigation fees by discouraging parties from withdrawing lawsuits, stretching or ignoring jurisdictional rules, and preventing parties from joining in class action suits so as to charge each plaintiff a separate filing fee (Peerenboom, 2008). The government is experimenting with a system whereby all litigation fees are sent to the provincial and central level and then redistributed through the finance bureau and high-level courts, and this also has increased central funding (Peerenboom, 2008).

Since 1999, the Supreme People's Court (SPC) started a five-year plan for reforming China's courts. The 2005 plan (covering 2004-2008) raises the topic of centralized financing of courts, but it proposes no specific steps towards this goal. On November 28, 2008, a proposal by the Central Legal-Political Commission to centrally-fund all People’s Courts was endorsed by the Chinese Politburo (the “Opinions of the Central Legal-Political Commission on Several Issues in
the Deepening of Reform in the Judicial System and Work Mechanism”). If this proposal can be implemented, it may prove a very important step in creating a more independent judiciary in the PRC and unhooking the Courts from the power and influence of their current paymasters, the local governments, and the Party organs where they sit (He, 2009). This proposal has not been put into law yet.

C. Institutional Dilemma of the People’s Courts

Based on the Chinese Constitution, different levels of the people’s courts are formed through appointment by corresponding strata of the people’s congresses. However, the localized nature of China’s courts brings judges under the influence of both local enterprises and higher courts, and local courts and judges are actually buffeted on all sides within trials (Qiao, 2005). First, the courts’ reliance on funding and enforcement on the administrative system leads to their deep localization, and local government departments, enterprise, or even certain enterprises and individuals that provide services to the courts, can intervene in the court trial (Qiao, 2005).

To make this issue more complicated, the Chinese laws of litigation prescribe that the higher court can either order the local court to conduct a retrial, or it can directly change the verdict (Article 136 and 138 of CPL). According to China’s regulations, if the retrial or change of verdict is due to misjudged cases, judges and chief judges will then be held responsible. The

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14 In 1998, the Supreme Court made the people’s court judges’ accountability measure for illegal trial (人民法院审判人员违法审判责任追究办法(试行)). The people’s court trial disciplinary measure (人民法院审判纪律处分办法(试行))
court system actually must respond not only to the National People’s Congress and higher court supervision, but also to various local government departments, enterprises, or even individuals. This reflects a major constitutional issue which presents institutional obstacles to the unification of China’s judiciary and judicial independence (Qiao, 2005). The court system lacks an effective supervision mechanism, and it is very difficult for the SPC to monitor compliance with procedural requirements in local courts.

There are also internal pressures to judicial decisions. First, each court has a judicial committee which is stated in Article 11 of OLPC. The task of the judicial committees is to sum up judicial experience and to discuss important or difficult cases and other issues relating to the judicial work. Members of judicial committees of local people's courts at various levels are appointed and removed by the standing committees of the people's congresses at the corresponding levels, upon the recommendation of the presidents of these courts. Members of the Judicial Committee of the Supreme People's Court are appointed and removed by the Standing Committee of the National People's Congress, upon the recommendation of the President of the Supreme People's Court. The presidents of the people's courts preside over meetings of judicial committees of the people's courts at all levels; the chief procurators of the people's procuratorates at the corresponding levels may attend such meetings without voting rights (Article 11 of OLPC).

The internal managerial system in the court also discourages judicial independence (Clark, 2009). The president of each court is both the chief judge and the chief executive. The president has the power to influence the promotion and demotion of any particular judge in the court, and to supervise all judges through a reporting system. In most cases, the local people’s court president
is a political appointee by the local government. In addition, though cases are tried by a collegial panel, the panel’s decision is subject to review by the adjudication committee consisting of the president, vice presidents, and division directors. Thus, the ability of the judge or collegial panel to reach an independent decision on a case is considerably limited.

D. The Relationship among Court, Procuratorate, and Police

Court, Procuratorate, and Police are three major agents in the criminal justice system in China. According to the article 135 of the Constitution, the people’s courts, the people’s procuratorates, and the police, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law. Under the adjudicative model, a detention decision must go through a trial in the court with all parties: prosecutor, defendant, legal counsel, witness, experts, and victim, who all have opportunities to present their case before the court. However, suspects are handled mainly by administrative bodies with administrative rules. Thus, the decision is a matter of policy, subject to social, political, or economic exigencies, rather than a consistent process, such as a court decision (Yu, 2006).

The Public security organs (police), as authorized by law, possess a type of power within the whole body of administrative powers. Because a Chinese court must rely on administrative organs for funding and for trial decision accomplishment, public security organs often have much more power. The Court is not the only state power in China which can take a suspect into custody, and there are administrative detentions. Administrative detention refers to any
arrangement whereby an administrative official, rather than a judge, decides to detain a person in physical custody under a process not governed by the Criminal Procedure Law (Yu, 2006).

In China, there are 6 different types of administrative detention, including: (i) administrative detention up to 15 days (xingzheng juliu, 行政拘留) under the Security Administrative Punishments Regulations (SAPR); (ii) education through labor (ETL) (laodong jiaoyang 劳动教养 or laojiao 劳教 for short), which has received most of the attention abroad and within China and finally was announced to be abolished in 2013; (iii) detention for education (shourong jiaoyu); (iv) compulsory drug treatment (qiangzhi jiedu 强制戒毒); (v) forced detention in psychiatric hospitals; (vi) detention of juveniles who commit criminal offenses in juvenile centers (shourong jiaoyangsuo 收容教养所) or juvenile ETL centers and detention of juvenile troublemakers whose actions do not amount to criminal offenses in work-study schools (gongdu xuexiao 工读学校); and (vii) stop and question (liuzhi panwen 留置盘问), whereby suspects may be detained for up to 48 hours of questioning (Yu, 2006).

In November 2013, the Third Plenum of the 18th Central Committee of the Chinese Communist Party (CCP) has pledged to promote judicial openness and strengthen human rights protections. The decision states that China will optimize the allocation of its judicial functions and powers, improve the mechanism where judicial organs share responsibilities, cooperate with and check up on each other, and strengthen and regulate the legal and social supervision of judicial
activities. The third Plenary Session of the 18th CCP Central Committee also claims that China will abolish the "reeducation through labor" system.

In this part, we discuss the court institutions in present China, including the structure and functional system, as well as the legal system with Chinese characteristics. The Chinese court institution is a hierarchical system under the leadership of the Chinese Communist Party. At the same time, court institutions are localized without any centralized budget. Due to external and internal management systems, judicial independence can barely exist. Compared to the strong administrative power, the Chinese judiciary has an innate deficiency. Without any court decision, administrative detentions can be decided to detain a person in physical custody under a process not governed by the Criminal Procedure Law. Legal revisions have been taken to reform criminal justice system and next we will discuss the criminal justice system in a transition era.

Criminal Justice in a Transition Era

During the past three decades, China has carried out profound economic reforms, and the average yearly GDP increase from 1978 to 2003 was 9.47 per cent (Liu, 2005). This vibrant economic growth has undermined not only the economic planning but also the associated social organizations of the planned economy (Fu, 2011). Rising crime rates usually could be anticipated during any dramatic social change that results from the breakdown of traditional values, or

anomie (Durkheim 1893; 1897). High social mobility, urbanization, stratification, and inequality provide ample opportunities and incentives for crime. Official statistics reported a more than threefold increase of total crime and a tenfold increase in serious crime from 1979 to 1990 (Curran, 1998; Liu, 2005; Rojek, 1996; He, 2013). In 1978, the crime rate was 55.91 per 100,000; it reached 355.5 per 100,000 in 2005 (Zhang, Messner & Liu, 2008). This rising trend has been steady in the past 30 years. As a result, a balanced criminal justice system is needed in current social change to provide formal legal rights protection for individuals and maintain political legitimacy. Since the beginning of the nation in 1949, the criminal justice system in China has undergone a long arduous change and development process.

A. Historical Development of Criminal Justice System after 1949

Legal tradition has been rooted in history, culture, and social environment, and it could influence the current legal system even after all previous laws have been destroyed. The vicissitudes of dynasty in Chinese history has not changed the imperial legal tradition much: didactic and punitive moral education rather than any rule of law always has been the social priority in China, for the sake of conformity; the court has no independent judicial power, but is instead a division of administrative bureaucracy. The criminal justice system has been burdened with this tradition, imposed with a spirit of “partifying” during the KMT era and then continued into 1949. The criminal justice system during the Maoist period (1949-1976) was an instrument of social control, and there was neither a criminal code nor a criminal procedural code, let alone lawyers, who were virtually non-existent during that time period (Chiu, 1992).
Chinese courts throughout the 1950s, 1960s, and 1970s were predominately dealing with criminal cases before 1979. Crime, more than a violation of the criminal law, was stated as a manifestation of class struggles between proletariat and the bourgeoisie, and a challenge to the emerging political order (Fu, 2011). Thus, the criminal law had long been an instrument used by the “people” against their enemies. Courts, as places and instruments of dictatorship, were used to fulfill the function of class struggle and class repression. Punishing counter-revolutionaries, real or imagined, was the core judicial function. Courts, as organ of dictatorship, should not be concerned with contradictions among the people. Otherwise, the proletarian dictatorship would be diluted and diminished (Fu, 2011).

During the period of Cultural Revolution (1966-1976), the Procuracy had been abolished in the late 1960s, and the function of the courts had been disrupted and usurped, while the public security organs—the Police—played a growing role at the expense of the Procuracy and the courts. Later, the People’s Liberation Army (PLA) intervened to restore the chaos created by the Cultural Revolution and handled many criminal cases without the participation of the courts (Chiu, 1992; Ma, 2000). The 1975 Constitution even confirmed the subordination of the judiciary to the administrative organs, officially abolishing the Procuracy whose function had been transferred to the public security organs at the corresponding level (Chiu, 1992).

In 1978, the 11th Central Committee 3rd plenary session of CCP officially acknowledged that the current principle contradiction was between the growing material and cultural needs of the people and the backwardness of social production (Leng & Chiu, 1985). Economic development rather than the class struggle became the government’s priority and also officially established
that a strong legal system was imperative for China’s economic development. The reform first started from the rural contract responsibility system which greatly promoted farmers’ incentives and enhanced agricultural production; the gross output value of farming increased more than 16-fold, from 111.76 billion yuan in 1978 to 1.96 trillion yuan in 2005 in a little more than 25 years. The reform also expanded into the industrial sectors, leading to the reemerging and growing of non-public-owned sector which contributes more that 50% of China’s total GDP annually, according to the official data of 2005 and 2006 (Liang, 2008). Along with the economic reform, the legal system in China started to revive and develop. The 1978 Constitution revived the Procuracy and claimed the rights to defense.

It was in 1979, after the 10-year "Cultural Revolution", that the Criminal Law and Criminal Procedure Law were enacted. Chinese Criminal Law and the Criminal Procedure Law of 1979 ended the history of handling criminal cases only according to policies, special laws, regulations, and even experiences, or replacing law by personal words (Chen, 2010). Nonetheless, the Chinese legal system was extremely underdeveloped at that time, both laws were enacted under general and simple principles, e.g. the 1979 Criminal Procedure Law consisted of only 164 provisions, with many issues not precisely addressed. These laws still had certain political elements, e.g. taking the concepts of Marxism, Leninism, and Mao Zedong as its guide and proclaiming to use criminal punishments to struggle against all counter-revolutionary and other

criminal acts in order to safeguard the system of the people's democratic dictatorship and the smooth progress along the course of socialist construction.

Aligning with the strictly planned economy and the highly centralized administrative model, public security organs and prosecution organs were given strong power and function of investigation and prosecution, with extensive and flexible authority. On the opposite side, defendants, the already weak parties, were restricted in their rights to counter the strong investigation and the prosecution organs. In addition, three divisions of the criminal justice system, the public security, the procuracy, and the courts, were all under the direction of the party committee at the same level. The party committee, delegated by the political-legal committee, in practice makes decisions as to arrest, prosecution, and sentencing (Chiu, 1992). To some extent, it is difficult to distinguish one criminal justice institution from the other in the jurisdiction division since judgment might have been decided before trial by the political-legal committee (Chen, 2010).

During the 1980s, the CCP acknowledged that China’s socialism was still in a preliminary stage, the market then was stated first as a supplement to the planned economy, then it was presented as an organic component of the planned socialist economy. In 1993, the CCP set a socialist-market economy as a major target of the reforms, and the first Session of the Eighth National People’s Congress amended article 15 of China’s Constitution, stating that “the state practices a socialist market economy”. The transition toward a socialist market economy inspired a tremendous progress in the legal system. In 1996, the Criminal Procedure Law and the Criminal Law were amended by experts according to the democratization and scientification of the criminal
procedure system, with reinforcement in the protection of personal rights. Below, we will discuss the revisions of criminal law and criminal procedure law to see the improvement of the criminal justice system.

The amendment introduced some adversarial elements, e.g. the court no longer conducts or participates in any pre-trial investigation, and it is the Procuratorate that is responsible for the validity of the evidence and for carrying the burden of proof. Under the revised CPL, the court's pre-trial role will be limited to a procedural review of the materials submitted by the prosecutor, instead of a thorough pre-trial examination of the substance of the case. The court thus takes a decidedly more passive role, and the principal burden of producing evidence and arguing the case will now be assumed by the prosecutor and defense counsel. However, some issues remain unsolved. The presumption of innocence is not fully recognized, and there are no adequate safeguards against the use of evidence gathered through torture or any other illegal means. Appeals are often ritualistic, and defendants' rights are often at the discretion of the law enforcement bodies themselves without effective remedies.

B. Change under Revised Criminal Law and Criminal Procedure Law

1. Revised Criminal Law

The 1979 Criminal Law (刑法) was revised on March 14, 1997, in order to promote the democratization of criminal law and to strengthen the rights of criminal defendants. The 1997
revision has made certain progress which, though, is still limited. The revisions have been argued as a battle between individual rights protection and state power; between judicial power and executive power; between the judiciary and other agencies (this trend also exists in the revisions of Criminal Procedure Law). To date, the Criminal Law has been revised by amendment eight times: December 25, 1999; August 31, 2001; December 29, 2001; December 28, 2002; February 28, 2005; June 29, 2006; February 28, 2009; and February 25, 2011.

These amendments add new types of offenses to control new criminal behavior in the transition to the socialist-market economy, and they clarify crimes and gradations of criminal offenses. The death penalty has been eliminated for 13 offenses, and persons of 75 years of age or older are excluded from the death penalty unless the accused caused the death of another person by extremely cruel means (Art. 17A, Art. 49, CL).

Also, they allow for the mitigation of punishment for defendants who did not initially and voluntarily surrender but who later confess truthfully, especially if serious harm is thereby prevented by their surrender (Art. 67 CL). They eliminate a public record of conviction, with penalty of less than five years, for youth who commit a crime when they are younger than 18 years of age (Art. 100 CL). They add to criminal punishment a provision for community correction and prohibitions regarding engaging in certain activities, going to places or contacting people, parole regulations, an increase of minimum sentence requirements, and regulations affecting recidivists (Art. 38 CL).
One major progressive development in the revision of CL is the depoliticization of the Criminal Law, such as that the category of crimes of counterrevolution was replaced by the category of crimes endangering national security. Certain political terms have been removed; for example, references to Marxism-Leninism-Mao Zedong Thought, and to the people's democratic dictatorship led by the proletariat and based on the worker peasant alliance, have been removed. In March 1999, the term "counterrevolutionary activities" was also removed from Article 28 of the Constitution and replaced by "crimes endangering national security." However, it is argued that virtually all the previous offenses under the heading Counterrevolutionary Crimes have been retained as Crimes of Endangering National Security except for some minor changes, so the terminological change may be merely superficial, depending on how the revised laws are enforced (Dobinson, 2002).

Second, the revision eliminated the practice of prosecution by analogy and stipulated that only acts which are clearly defined as crimes by the law shall carry criminal liability. This reflected a success of rule of law against rule by policy, and emphasized the supremacy of law and that everyone, including the Party and the State, was required to obey the law. However, punishment without law is still possible by the police through the Security Administration Punishment Regulations in China. The police are authorized to maintain social order through criminal detentions and arrests; they are also empowered to use administrative coercion to detain or shelter a person, or to sentence a person to a labor camp, without judicial procedures (Dobinson, 2002).

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Third, the principle that all persons are equal before the law first appeared in the revised Criminal Law in 1997. Nevertheless, political inequality still existed in the 1997 Criminal Law. One example is the difference between white collar crime and blue-collar crime. Officials who are charged with corruption and embezzlement where the amount is between 5000 and 10,000 RMB ($600 and $1200 U.S. dollars) may receive a lesser punishment – or even no punishment – where they return the money (Article 383 of 1997 CL); however, no such option is given to those who engage in blue-collar crimes, such as fraud or robbery (Come, 1997).

In addition, such reforms have been undermined in practice due to ingrained police and prosecutorial attitudes. For example, suspects may be allowed to meet with a lawyer as required by law, but police are present in the room or the time provided is too short to make the meeting meaningful. According to Article 306 of Criminal Law, defense lawyers themselves are subject to criminal liability if they introduce false evidence at trial or assist in the fabrication of evidence. Statistics reveal that the percentage of criminal cases in which defendants are represented by counsel has been declining, despite a continuing increase in the number of lawyers in China. According to the Beijing Bar Association, only 9% of the criminal defendants in Beijing are represented by counsel, leaving the majority of them fending for themselves in court. (Sources: Beijing Youth Daily, July 2, 2003 & October 23, 2002).

2. Revised Criminal Procedure Law

In March 1996, China's national legislature revised the Criminal Procedure Law ("CPL"), effective on January 1, 1997. The first improvement in the revised CPL is in the pretrial
detention. The administrative measure "Shelter and investigation" which was used widely now is incorporated into the procedural law, with a maximum of thirty-seven days, and formal arrest must be approval by the prosecutor. However, the Police still have enormous discretion to hold suspected criminals, and the courts play no role in issuing or reviewing detention orders. Only one among five pre-trial detention subjected to external check is arrested, which must be approved by the prosecutor, and pre-arrest detention can in some instances last for more than a month. Detainees have no right of habeas corpus and bail, and the requirement to notify detainees' families of their whereabouts can be waived if, in the view of the police, this might hinder their investigation. There are still five types of administrative detentions.

Second is the expansion of the function of defense lawyers in criminal proceedings, especially at the pre-trial stage (Article 32-41 of CPL). Under the revised CPL, all suspected criminals are to be notified of their right to counsel when cases are transferred from the police to the prosecutor for a decision on whether or not to seek a trial, allowing more time for defense lawyers to prepare and present a more effective case on behalf of their clients. Courts are now required to appoint counsel for all defendants who are facing the death penalty. However, the police have the unreviewable power to block a suspect's access to counsel in cases involving ill-defined "state secrets", and the police can be present at meetings between suspects and their counsel. The revised law continues to allow closed trials in cases involving so-called "state secrets." Defense lawyers are at a clear disadvantage relative to the prosecutor in terms of their ability of review case materials, gather evidence, and call witnesses.

Third, the role of court in the trial is strengthened, and now it is up to the trial court itself, rather
than outsider, e.g. the court president in the prior law, to decide whether it needs to refer a case to this higher body. More importantly, the revised CPL eliminates the term "exemption from prosecution" and only a lawful court verdict can determine whether a person is guilty or not. However, the discretion of judges is limited by establishing maximum terms of imprisonment (Turack, 1999). The judiciary is not independent in terms of recruitment and funding, which are under the control of administrative offices and the CCP (Hecht, 1996; Peerenboom, 2005). A major form of nonjudicial determination of guilt, "reeducation through labor" is still beyond courts’ control. Good news is the third Plenary Session of the 18th CPC Central Committee in November 2013 has decided to abolish “reeducation through labor”.

However, the current criminal justice system in China has limitations for crime control. First, not enough financial resource exists because the courts basically are financed by local governments. Second, institutional capacity, especially the judicial resources, is limited given the large number of criminal cases each year\(^\text{19}\). The criminal justice process is more like an assembly line for which the quality control is constrained by limited (judicial) resources (Fu, 2011). Finally, the institutionalization of China’s criminal justice is far from perfect. Judicial power is still under the control of executive power; the leadership of CCP is above the law; the criminal trial is a judge-led event, with lawyers having only a minor role, and it lacks protections for the defendants’ rights.

However, positive developments should be noticed, too. First, judicial autonomy is growing: the criminal court is developing a professional identity and institutional interest which will cultivate

\(^{19}\) In 2009, Chinese courts accepted 768,507 first instance criminal cases (Chinese Law Yearbook 2010)
its ability to resist external interference into the judicial process (Fu, 2011). Second, judicial autonomy also inspires competence within the criminal justice system: the court and other institutions, such as the prosecution and the police, develop standard rules of evidence and procedures, and they comply with the established rules. Third, the increasing competence of the criminal justice institutions improves fairness and due process through acting against any interests of the bureaucratic government and better protects the rights of the defendant (Fu, 2011). Fourth, the development of civil society also contributes to the due process protections of criminal justice.

**Summary**

The legal system in China has special characteristics. The present Chinese courts are organized to precisely parallel the hierarchical structure of the government and the Chinese Communist Party. There is not much difference between the judiciary and civil service in China. Judges are civil servants and they are appointed and promoted by merit. The judiciary must follow the leadership of both party and government, local government can dominate the judiciary through financial measures, and the court’s internal managerial system also reduces judicial independence. The Chinese judiciary must rely on administrative organs for funding and to implement court decisions. The history shows that the criminal justice reform in China is a gradual and arduous process. However, we see growing judicial autonomy, the development of professional identity in Chinese courts, the increasing competence within the criminal justice system, and a rising civil society. All these contribute to the fair and due process of criminal justice. The 18th Central Committee of Chinese Communist Party (CCP) in November 2013
pledged to promote judicial openness and strengthen human rights protection, optimize the allocation of its judicial functions and powers, improve the mechanism where judicial organs share responsibilities, cooperate with and check up on each other, and strengthen and regulate the legal and social supervision of judicial activities. It provides new hope for building judicial independence. China’s criminal justice has started to develop breathing space for its own institutional growth and professional development.

With the depoliticization of crime and criminal justice, the court is able to function in a relatively stable political and social environment. As a result, criminal trial becomes routine and normalized, hence the institutionalization of the criminal process. However, the institutionalization of the criminal justice system must overcome many obstacles, and the deeply characteristic personality of Chinese bureaucracy with its long, arduous history is one of those obstacles. The case studies in chapter 5 will show the impact of bureaucracy and bureaucratic culture on criminal case trials. In chapter 4, we will discuss the methodology of the current study.
Chapter 4: Methodology and Research

Design

Introduction

This current study is trying to describe the present courts’ operation in China and to reflect the impact of political bureaucracy on the courts. Since it is not simple to acquire direct information from the closed court system, this current research will use a case study approach to examine court operations. In addition, we will use social media analysis to showcase the new development of legal community in the era of the Internet. The research into the court and criminal justice system in China must face the challenges to methodology and data collection, considering the current political reality in China. The court and criminal justice, one of the important ruling tools used by the government, has always been a sensitive topic in China, and usually information about the courts is closed to the public. Previous research on the Chinese criminal court has focused on legal reform and judicial procedures. These earlier scholars have discussed variously the theoretical and conceptual framework of criminal courts, while the empirical research is limited due to the lack of data. In this chapter, we first will overview the methodology of previous research which has a focus on Chinese criminal court, and then we will discuss the methods of our current study.
One of the obstacles to Chinese court research is the practical difficulty of gaining access to meaningful data. The court documents are not easily reached for research use, and any large scale court observation turns out to be impossible because of both facility limitation and administrative restrictions (Liang, 2008). Brave scholars, however, have not stop trying to gather useful data collection and doing meaningful research, and tremendous progress has been made during the past two decades. These studies have tried a diverse array of methods, such as interviewing lawyers (e.g., Liu & Halliday, 2011), studying lawyers’ online discussions (e.g., Halliday & Liu, 2007), studying court documents (e.g., Lu and Miethe, 2002), and studying online televised trials (Zhong, Hu & Liang, 2011).

Some research has been on criminal processing and collecting sentencing data, such as legal rulings through case collection publications, for example. Lu and her colleagues have examined a series of cases collections during the past decade (2002; 2003; 2006; 2008). After examining legal defense issues with data on the prosecution and adjudication of theft cases in a Chinese court, they found that legal representation has little net impact on pretrial detention and sentencing decisions, and some types of defense were more likely to be accepted by judges than others. They also used a sample of 1,009 criminal court cases to examine confessions and criminal case disposition in China and found that that the majority of offenders confessed to their crime and that confession is associated with less severe punishments.

Interviewing is another way of collecting data in Chinese court research. Liu and Halliday (2011) conducted 194 in-depth interviews with criminal defense lawyers and other informants in 22
cities across China, to test politics in everyday legal practice using the case of Chinese criminal
defense lawyers. They argued that lawyers’ everyday politics have two facets or sides: on the one
hand, lawyers could challenge state power, protect citizen rights, and pursue proceduralism in their
daily work; on the other hand, they often rely on political connections with state agencies to protect
themselves and to solve problems in their legal practice. Their data show that the Chinese criminal
defense bar is differentiated along these two meanings of politics into five clusters of lawyers,
namely, progressive elites, pragmatic brokers, notable activists, grassroots activists, and routine
practitioners.

The other studies accumulate data through news media. Liu and his colleagues systematically
collected data from the journals of the police, procuracy, judiciary, and lawyers’ associations
from 1979 to 2005 through newspaper and periodicals (2009). They argued that Chinese lawyers’
difficulties in criminal defense have deep roots in the recursive nature of the criminal procedure
reforms. In particular, those difficulties were produced through certain mechanisms in both
lawmaking and implementation. Although knowing it is difficult, some scholars still tried to
collect court data themselves. Susan Trevaskes attained the first-hand grassroots court data in a
court in Inner Mongolia (2001; 2007). She examined the politics, practice, procedures, and
public perceptions of yanda (严打) anti-crime campaigns in the first 25 years of the post-1978
reform period. Trevaskes develops the concept of campaign policing and justice in China in
order to describe the Chinese criminal justice practice to punish criminals “harshly and swiftly”
in response to an increasing crime rate since the start of its economic reform in the 1980s.
Along with the more open environment and more mature research development, more and more empirical studies are operating in China through the cooperation between scholars from local and overseas. Mike McConville and his associates’ research (2011) presents a survey of basic- and intermediate-level courts from 2001 to 2006 by observing the criminal process at work and interviewing key actors in the daily operation of the courts, with some additional follow-up in 2007–2009. They studied every stage in the formal criminal process at 13 courts throughout China where they had unmediated access to a total of 1144 case files. Courtroom observations were undertaken in 227 cases. The team also conducted 267 interviews with judges, procurators and defense layers. The study focused on first instance cases in the Basic Court and in the Intermediate Court, giving an overall assessment in respect of every stage of the criminal justice process: from the manner in which crimes come to the attention of authorities, through the collection of evidence, through the trial stage, and to the conclusion of a criminal trial. The book stated the ambiguousness of some substantive criminal law, underscoring how both the criminal procedure law and criminal law combine to obstruct the accused from effectively arguing their cases. The authors argued that changing the law has not significantly changed the behavior of courtroom actors since the result, in terms of both verdict and sentence, is almost invariably predetermined before a trial begins.

Dr. Phil He conducted a “Legal Representation and Criminal Processing in District People’s Courts: A Pilot Study in J Province” (LRCP) during 2009-2011. The data collection in this study includes four components: (1) a comprehensive questionnaire survey of Fujian lawyers, judges, procurators, and police officers (n=642); (2) more than 300 full length criminal court trial observations (n=325), conducted in two-thirds of the district people’s courts (i.e., 55 courts out
of a total of 82) in the Province; and (3) a sample of complete criminal case dossiers (n=149, ranging from 1994 to 2010), collected from ten district courts in five of the nine prefectural cities. This study obtained valuable empirical knowledge on how criminal defendants are represented in Chinese courts, especially at the lowest level district people’s courts, and demonstrates both the necessity and feasibility of conducting comprehensive empirical legal research in China (He, 2013). His book opens with a historical framework of the Chinese criminal justice system, with both Western and Chinese interpretations, and an overview of the current state of the system, using the data from ordinary criminal trials. It unveils the day-to-day reality of criminal cases tried by the lowest level courts in China. The data used in their study include hundreds of criminal trial observations, complete criminal case dossiers, and a comprehensive questionnaire survey of criminal justice practitioners.

With the prevalence of computer and network technology, the Internet has gained solid ground in the world. Since the mid-1990s, the Internet has revolutionized popular expression in China, enabling users to organize, protest, and influence public opinion in unprecedented ways (Yang, 2009). Internet data collection has begun to attract scholars considering digital advantages, such as easier and broader access and relatively low cost. Halliday and Liu (2007) looked into lawyers’ online discussions, from which they argued that China has enacted criminal and procedural law which bears resemblances to legal liberalism, and it has laid the foundations of a legal profession and a regulatory framework. However, the formal law is not descriptive of practice; that professional regulation is scarcely self-regulation. The legal profession in China appears to be a hapless victim in a larger drama where there are long traditions, hostile ideology, and powerful institutions. They are still optimistic and have argued that even hollow law in time and changed
circumstances could become a solid foundation for the construction of political liberalism.

Guobing Yang (2009) collected data through the Internet (online forum, discussion board, blog, etc.) over a decade and employed a variety of (mostly qualitative) methods to examine social movements, voluntary organizing, and Internet politics in China. Though Yang’s research on online activism in China is largely irrelevant to the legal field, it has significant value for legal research. Yang’s research concluded that social change in China cannot be properly grasped without understanding the radical nature and contested struggles in China’s cyberspace. Since the mid-1990s, the Internet has revolutionized popular expression in China, enabling users to organize, protest, and influence public opinion in unprecedented ways. Chinese cyberspace becomes an arena for creativity, community, conflict, and control, with an innovative range of contentious forms and practices.

Yang delineates a nuanced and dynamic image of Chinese online activism which leverages cultural and social resources from China's incipient civil society. The combination of online activism and civil society thus creates a vivid story of immense social change, indicating a new era of informational politics. Also, Yang’s online data collection method is a good guide for social media data collection in our field. For example, Yang registered his own account online to follow online forums, discussion boards, and blogs, and he collected data from those online texts. He then annotated the content of these texts to analyze the context and conditions of online activism. This current research also uses a similar text analysis to analyze the online legal community and legal activism. These analyses will be discussed in chapter 6.
Part of Liu and Halliday (2009)’s three-year online ethnographic work collected and analyzed a large number of written discussions from the official Internet forum of the All-China Lawyers Association (ACLA) regarding the practice of Chinese criminal defense lawyers. Their research conducted a data analysis based on 60 threads of messages on criminal defense in the ACLA forum. Through their unique data source, they were able to examine the spontaneous exchanges among lawyers about their problems in the implementation of the CPL that purport to institutionalize basic elements of political liberalism. Because these exchanges were directly from lawyers without contamination by outside observers, the authors thought that such data could help contrast the “public voice” of the bar association journals with the “private voices” of its members (p.916). Their empirical analysis shows that four recursivity mechanisms, indeterminacy of law, contradictions, diagnostic struggles, and actor mismatch, are linked in pairs and in sequence by interactions with each other in both lawmaking and implementation. The authors argued that Chinese lawyers’ difficulties in criminal defense have deep roots in the recursive nature of the criminal procedure reforms.

The research based on online legal forums depicted a picture of the legal professional sphere and explored the potentials for future legal research in the Internet era. Although Internet censorship in China may cast doubt on the data collected online in terms of the amount of sample bias in opinions, Liu and Halliday thought the forthrightness of opinion in the forum indicates that official censorship and even self-censorship is surprisingly restrained. A detailed content analysis (Halliday & Liu 2007) shows that lawyers on the forum spoke openly and forthrightly, and often very critically, about almost every aspect of legal practice, the courts, the police, the concentration of political power, and the absence of rule of law or democracy.
Through the study of those forum discussions, they found that China’s criminal and procedural law bear resemblances to legal liberalism and that it has laid the foundations of a legal profession and a regulatory framework. However, formal law is not descriptive of practice, and professional regulation is scarcely self-regulation. The legal profession in China appears to be a hapless victim in a larger drama of long traditions, hostile ideology, and powerful institutions. They are still optimistic and argued that even hollow laws, in a different time and under changed circumstances could become a solid foundation for the construction of political liberalism. Their research further consolidated the methodology of online data collection.

It is a good method to do a triangulation using diverse data. For example, we had discussed the research of Liu and Halliday (2009), which used three data sources types. One is the archival materials on the historical development in legislation and practice. Second is the online ethnographic data from an action wide Internet forum hosted by the official All-China Lawyers Association. They also conducted two rounds of interviews with sixty-six law professors, bar association leaders, criminal defense lawyers, judges, and procurators in five major Chinese cities in September 2005 and October 2007.

The Current Study

Research Question

The current research exploring development of criminal courts in a bureaucratized Chinese society found data access difficult. First, the organization and bureaucracy of criminal courts is
mainly closed to outsiders. Second, the abstract concept of bureaucratization is hard to operationalize by measures. Third, the process of bureaucratization must be understood dynamically rather statically with numbers or other measurements. Considering all these challenges, the current study used both case studies and social media analysis as the main methods to develop a vivid and dynamic sense of Chinese criminal justice and court work. Legal case studies and social media analysis will provide deep insights into the administration of justice and criminal case processing in China.

The current study aims to explore following questions. What is the major impact of long history of political bureaucracy on legal system? How do the current courts deal with political cases? If the political bureaucracy system obstructs criminal case processing, how do they? The major questions I will look into in this dissertation are:

1. Has the long history of Chinese bureaucracy formed the mind-set of relying on administrative authority for justice rather than pursue justice through court?
2. Does the Chinese Judiciary lack independence and strength to distribute justice?
3. Does the Chinese Judiciary have to face indirect and direct challenges from powerful bureaucracy authority?
4. How has the social media changed the legal discourse?
Case Study

Why Case Studies?

We will use criminal case studies to examine the Chinese court and legal system because of the unique situation of the Chinese court. As a part of a bureaucratic system, Chinese courts have rarely disclosed their inside operations to the public, and it is difficult to gain their organization information. For example, the Chinese Procuratorate system published its organizational information each year, with detailed numbers of offices and prosecutors at different jurisdiction levels; while the Chinese court has never released official organization information except for the total count of judges and courts in the country. In addition, it is not easy to collect court operation data due to the strict controls, and little previous research has been done on Chinese court operations and organization. If we want to describe the current court operations in China, a relevant case study is needed.

Case study method is an empirical inquiry that investigates a contemporary phenomenon within its real-life context (a) when the boundaries between phenomenon and context are not clearly evident and (b) in which multiple sources of evidence are used (Yin, 1984, p. 23). Although some may criticize the study of a small number of cases that can only do exploratory research and not yield reliable findings, carefully planned and crafted studies can give a successful description of real-life situations, issues, and problems (Soy, 1997). Using detailed contextual analysis of a limited number of events or conditions and their relationships, case studies can examine contemporary real-life situations and provide a basis for applying ideas and extending methods (Soy, 1997). Selected criminal cases can be used to describe the present situation of
Chinese courts and to reflect upon how the political bureaucracy and a deep culture of bureaucracy influences court operations.

As scholars discussed, case study research is useful when we try to examine how or why questions about a contemporary set of events, when the relevant behavior cannot be manipulated and the investigator has little or no control (Yin, 1994, p.9). Case studies can involve single or multiple cases to undertake an investigation into a phenomenon in its context, and there is no need to replicate the phenomenon in a laboratory or in experimental settings. Criminal cases are a set of events which we cannot manipulate, and they provide a natural context to study Chinese criminal court and factors which have impact on case processing within the real life context.

**Criminal Cases**

I chose and made qualitative analyses about eleven criminal cases which have attracted nationwide attention in China. Information from these cases is collected from the national news websites. All eleven cases have certain relationships with the bureaucratization system.

**Sampling**

Eleven criminal cases which have nationwide attention: eleven cases are chosen based upon citations and national voting on Chinese news. In China, newspapers every year will let readers vote and select the most important news in different fields and there are a ranking list for rule of law events. I will use these lists to choose important criminal cases during 2000-2013. After
selecting eleven big cases, I search these cases in the internet to obtain their news reports from major news websites. These news websites are popular news websites reporting Chinese news. The list includes six Chinese websites: Xinhua news, South China Morning Post, Sohu news, People net, Chinanews.com, and globaltimes.com. I also pick five international news websites, including New York Times, The Guardian, BBC news, Wall Street Journal, and CNN news. Using news reports from these ten news websites, I gather all relevant information for the eleven cases, including the case processing, investigation, evidence, legal representation, and trial hearing.

Because our case studies aim to study the context of these criminal cases instead of a word analysis of the court dossier, I describe these cases in a story telling narrative to keep the feeling of a lived world. As a result, we mostly will paraphrase these news stories using our own words rather than citing a heavily written document. Sometimes, these words may appear colloquial in order to describe a vivid story. We list below the simple introduction of these cases and their relationship with bureaucracy. There are limitations for case study method. Since we only choose limited samples and the result we found cannot generalized to the population. The criminal cases are complicated, and we cannot collect all the useful information for each case. Our analyses could be biased and incomplete. For case studies, we may have subjective feelings which may influence our analyses.

**Case List**

1. The Case of Zhu ling
This 19-year-old unsolved poisoning case (1995-2013) took place in China and has sparked a petition to the United States government; the petition collected more than the 100,000 signatures necessary for an official response from the White House. This case shows how Chinese people have been used to rely on an up-level official to solve wrongs rather than resort to law.

2. Case of Wang Lijun

3. Case of Bogu Kailai

4. Case of Bo Xilai

These three cases are three layers of a big case involving CCP high level official: Bo Xilai. This big case exposed the absolute corruption leading from the absolute power in the political bureaucracy while high ranking police officials had become loyal, supporting forces. The trial for these cases is presented with unprecedented transparence, though shortcomings still exist. It can be seen as an initial step for the judicial system to develop its own identity.

5. Two season case of Li Zhuang

Li Zhuang, a lawyer, was sentenced to eighteen months for perjury, and this case illustrates the plight of trapped Chinese lawyers since the enforcement of Article 306 of the 1997 Criminal Law, the crime of lawyer’s perjury. This case attracted lawyers across China who support Li and cried out for their own redemption. This case also gives a taste of the distorted “plea bargain” in some Chinese criminal cases.

6. Case of Nie Shubin

7. Case of Wang Shujin

These two cases test the Chinese criminal justice system. Nie Shubin, was convicted for a murder in 1994 and then executed. In 2005, Wang Shujin was arrested and confessed to four cases of murder and rape, including that of Nie Shubin’s case. However, the courts have repeatedly dismissed Wang’s confession and blocked the appeal from Nie’s family. The Chinese court again faces a test on the principle of ‘innocent until proven guilty’.

8. Case of Chen Yongzhou
Chen Yongzhou, an imprisoned Chinese journalist, confessed to wrongdoing on the state television. The prime media is essentially conducting a media trial and therefore violating the presumption of innocence as a standard principle of adjudication.

9. Case of Yu Qiyi
10. Case of Chen Qingxia
11. Case of Xia Junfeng

These three cases demonstrate the existence of coercive measures outside the criminal justice system. These measures are extensions of bureaucracy’s power and must be regulated under a formal legal system.

**Case Analysis plan**

Case narrative will be presented, and I will use a story-telling mode to explain the case based on an ordered timeline. In order to improve validity, I will use multiple sources to present the cases rather than single news website. At the same time of telling the story, problems of each case will be analyzed according to the law, and cause and effect will be examined. Especially according to the theme of my dissertation, case studies will analyze the shadows of administrative bureaucracy in these cases. These qualitative analyses will show how unlikely it is for an independent judicial system to be born and to develop within the context of a powerful administrative bureaucracy.
Social Media Data

Why Social Media Analysis?

In December 2011, China already had 513 million Internet users and the world’s most active social-media population. The radical Chinese cyberspace greatly refaces the social change in this country, and social media has pushed “online activism” to a higher degree. Social media in China is more and more becoming both a reflection of public opinion and a seedbed of social forces. Persons in the legal field, including professors, lawyers, judges, prosecutors, and police officers, often have college, graduate, or professional degrees and can effectively, proficiently use social media as a convenient tool for communication and expression. They discuss legal issues about diverse online social media, including the legal web forums, blogs, and microblogs. Particularly, microblogging has become part of people’s life with the rapid development of mobile devices. The latest research from DCCI shows that microblog users in China account for 88.81% of total Chinese netizens. Netizen is a new word created in the Internet era and means a person who actively uses the Internet, especially in a proper and responsible way, according to Merriam-Webster online dictionary.²⁰

Microblogs are now very popular in China and attract many kinds of people there. Legal professionals found on microblogs are opinionated users with large personal followings and often express their own opinions. Most legal professionals post discussions on legal issues, including legal reform, law revision, and important criminal cases. We collect my social media

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data through microblogs and analyze their opinions. Unlike traditional social media, tweets of a microblog can spontaneously involve a large amount of people in certain discussions and form a very responsive virtual community. Law professors, judges, prosecutors, lawyers, and police officers can response to each other on diverse legal issues and present their own opinions. Through this data source, we can overhear, with less contamination by outside observers, the spontaneous exchanges among legal professionals about their problems. Analysis of tweets can develop a more interactive picture of the legal community. However, I realize there is government monitoring and it may have impact on what people talk on the internet. It is similar like in the U.S., people may change their behavior if they are aware that they are being monitored by the NSA. Since social media data analysis has rarely been used in criminal justice research, I hope this research can have some valuable findings and initiate more interests for future studies.

**Data Collection**

In order to collect social media data, we registered microblog accounts in Sina, where many legal scholars have opened their microblogs. Sina Weibo has an identity validation system, and most legal professionals have passed this validation process, so their real name and profession can be found. In May 2012, we searched legal professionals on microblog by key words “Judge, lawyer, police officer, prosecutor, and law professor”. We had two selection criteria for those whom we follow. First, he or she has at least 1000 tweets. Because Sina Weibo has launched around 800 days from August 2009 to May 2012, 1000 tweets means that this person has tweeted at least twice each day. This ensures that the accounts I follow are active and not fake accounts. Second,
his or her 50% tweets must be original. Although retweeting and forwarding also show attitudes, I need more original tweets as data to reflect individual opinions. Finally we chose to follow 180 legal professionals on *Sina Weibo*, including 48 lawyers, 24 judges, 24 prosecutors, 11 police officers, and 16 professors. Since most criminal law professors are also lawyers, we then categorized those people who mostly post legal thoughts rather than specific criminal cases they are dealing with as scholars in order to differentiate them.

Through following these 180 people, we collect their tweets, on legal discussions in the legal community, including original, retweets and forwarding ones. Most people also have legal blogs besides their microblogs in the same web platform, and we thus also can collect articles on their legal blogs. From May 2012 to November 2013, we collected 475 tweets and 80 legal blog entries. Among all the 475 tweets we collected, 297 are from lawyers, 95 are from Judges, 38 are from scholars, 25 are from prosecutors, and 20 are from the police officers. We use these data to analyze the impact of microblog on legal reform in chapter 6. It is interesting to find that lawyers and judges are more active and brave in talking about rule of law issues on microblogs. Prosecutor and police officers rarely talk about these issues, so that it is hard to collect relevant tweets from them. Further, eight of the tweets we collected from police officers *Sina Weibo* accounts are later deleted by themselves. All these tweets are translated from Chinese to English and are used in my analysis.

Since social media data are rarely used in criminal justice research, no previous model can be found in literature. We will incorporate traditional survey and interview methodology into my analysis. These social media data can be treated similarly as the interviewee’s responses in
traditional survey and interview study. We will label the microblog account’s name in a blue color with underlining and quote their original tweets during my analysis. Since most microblog account names are web names, we refer to them using big letters, such as A, L or S, in my narrative along with their Chinese original web names in order to identify different micro-bloggers.

**Social Media Analysis plan**

Since social media data are rarely used in criminal justice research, no analysis method can be found in literature. The research has to be creative. Any study of social media will have to develop new approaches. Microblog texts are written by bloggers directly and assume multiple forms, including: (1) descriptions of problems; (2) stories; (3) analysis of situations; (4) proposals for remedies and solutions; (5) emotional encouragement; and (6) explicit promotion of collective action by the lawyer community. These social media data can be used for content analysis and case study. Due to their different roles in the legal community, legal professionals present their opinions on certain legal issues, and this is like respondents’ answers to certain survey or interview questions. Moreover, because the social media can make people response to each other instantly, it is more interactive than traditional survey and interview. Thus, I will use these social media data to describe the interactions within and among the legal community and to explore trends of legal development.
Summary

The study on the Chinese criminal court and the criminal justice system must overcome many obstacles; lack of data is one of the most difficulties. It is even harder if we want to go beyond pure theoretical discussion and to search the deep roots of the system. In order to develop a better understanding of the Chinese criminal justice system, the current study not only uses case study to analyze the criminal case processing but also investigates the legal professional community through their active presence on the internet. We use both criminal case narratives and social media texts to expose the hidden truth behind the closed doors of the criminal justice system. Criminal case narrative is a story-telling way to capture those important cases which significantly impact both the criminal legal system and the society, while social media text displays a vivid picture of current legal professionals who are writing legal history in China. Using these dynamic tools, the current study would like to show how the importance of criminal courts and criminal justice in China has already gone beyond the legal aspect, and its performance will influence the whole society. In chapter 5, we will start the first part of our empirical study, the case study.
Chapter 5: Chinese Criminal Courts: Case Study

Introduction

We discussed the long history of Chinese law in chapter 1 and learned that the legal system had been born in a powerful hierarchical bureaucracy. During imperial times, the administrative officers took charge from their offices of all powers, including the judicial power. In modern times, political parties replaced the emperors, but did not change the bureaucracy ruling system. Instead, they tried to build a “party state” which held politics and the country more closely in order to strengthen ruling system. In chapter 2, we discussed the present Chinese court and criminal justice system. After the socialist country was established in 1949, past 60 years of the development of Chinese court was not always smooth.

From 1949 to 1959, large numbers of courts were built to deal with the legal needs after the new government had been established. Court building was almost stopped during the Cultural Revolution period because this revolution tried to throw down all of the prior justice system. Courts started to build up again after economic reform policy because the government realized the importance of legal regulation of economic affairs. We could see the court development had followed the guidance of the political bureaucracy. The Chinese court system, affiliated with the
political bureaucracy system, could not decide its own fate before it had gained independent status. In this chapter, we will explore how the long history and culture of bureaucracy have influence the court and criminal cases. The method of case study is used to provide deep insights into the administration of justice and criminal case processing in China.

**Case Studies**

As we discussed in Chinese legal history (chapter 2), there was no separate court system in the imperial era, and administrative officers held the absolute power at his level of governance, including the judicial power. As a result, Chinese people have been used to seeking justice from administrative officers rather than an independent court, which had not existed in the past thousands of years. In this chapter, we will discuss eleven cases, which all have gained nationwide attention in recent years. These cases will show the following key points:

1. How a culture of bureaucratization not only has affected the trial model but also had shaped people’s mind regarding criminal lawsuits (Case 1).

2. The highly centralized political bureaucracy leads to absolute administrative power, which further weakens the legal system. The justice system can be manipulated by corrupt administrative officials to pursue personal interests (Case 2, 3, 4).

3. The judiciary lacks independence and strength to distribute justice and diverse formats of intervention from political bureaucracy exist (Case 5, 6, 7, 8).

4. Diverse extension powers from political bureaucracy can exert extra-legal coercive measures beyond legal control (Case 9, 10, 11).
Below are eleven cases, the analysis will follow an order with a summary of the case, then the analysis.

Eleven Cases

Case 1—Zhu Ling

Summary

People who are interested in the Chinese legal system should not miss seeing a movie called “The story of Qiu Ju” in 1992, directed by Zhang Yimou. The movie depicted a Chinese village woman’s attempt to use the legal system to seek justice for her family. Not satisfied in using the village or legal system to get justice for her husband, the woman Qiuju, travels from authority to authority for someone to force her husband’s attacker, the village chief, to apologize. Her futile attempts actually make Chinese audiences feel comedic but leave Americans scratching their heads with confusion.

Qiuj’s pursuit of justice through administrative authority rather than law is a normal phenomenon which can be traced back to ancient Chinese society. A fair and nice officer to distribute justice for ordinary people is one old Chinese dream, and Chinese people call this type of officer as “Qing Tian (青天)” literally meaning as “blue and clean sky”. The superior “blue and clean sky” is like a mirror to reflect the humble social status of ordinary people who only can kneel down to beg the justice from the authority.

Thousands of years pass, but the minds of ordinary people in China have not changed much. The culture of bureaucracy not only presents organizational barriers for the rule of law in China, but
it also forms and nurtures the people’s mindsets. Most Chinese people today still rely on authority figures for justice subconsciously, and the Case of Zhu Ling is an example of this type of mind-set. In this typical case, people failed to obtain justice from Chinese administration and then switched to administration in the U.S. The culture of bureaucracy has brainwashed Chinese people deeply, conditioning their thinking even when they leave their home nation and go to another country. We start this story from a petition to the White House.

In May 3rd, 2013, an unsolved almost two-decade-old unsolved poisoning case (1995-2013) which happened in China sparked a petition to the American government. The petition within three days of its posting exceeded the 100,000 signatures necessary for generating an official response from the White House. I quote the petition here:

WE PETITION THE OBAMA ADMINISTRATION TO:

Invest and deport Jasmine Sun, who was the main suspect of a famous Thallium poison murder case (victim: Zhu Lin) in China.

In 1995, Zhu Ling as a Tsinghua university student was found out to be purposely poisoned twice by lethal chemical: Thallium, which leads to her permanent paralysis. It was indicated that Sun, her roommate, had the motive, and access to the deadly chemical. Jasmine Sun was investigated by police as suspect in 1997. But resources show that the case was mystically closed due to her

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21 “g” is missing from the original text
family's powerful political connections. Resources also show that she changed her name and entered USA by marriage fraud.22

The petition demanded the deportation to China of a woman who was investigated but not charged in connection with the case and over 140,000 users have signed this petition. This petition has been called “hasty” and charged with containing factual and grammatical errors, and even the name of Zhu Ling was misspelled once in the title. Zhu’s parents in China said that they do not support this petition, and they still believe that this case could be solved in normal bureaucratic ways. One of the normal ways Zhu’s parents have pursued for 19 years is to have police, Beijing Public Security Bureau, disclose the investigation file of this case.

The police investigation started in May 1995, and it was not until January 2006 that the Beijing Public Security Bureau finally revealed to the media that their initial investigations had yielded a possible suspect. However, no one has yet been formally charged in connection with the case and no explanation was given for the delay in releasing this information. The primary investigator, Li Shusen, told a correspondent from Southern People Weekly in a January 2006 phone interview that investigators had in fact reached some important conclusions regarding the case, but that the information is too sensitive to be released to the public at this time. Unable to pursue the justice they wanted from Chinese authorities, more than 100,000 Chinese people felt bad enough about the failures of justice that they then petitioned the U.S. government on the White House petitions website.

Analysis

Interestingly, as of June 2013, five of the six latest petitions on the White House petitions website related to China. Another petition from Chinese web users demanded that the Obama administration "remonstrate" with the Chinese government about a paraxylene (PX) project in Kunming, Southwest China's Yunnan Province. There was a joke on Chinese twitter that US President Barack Obama had become the "head of China's petition office." Some netizens stated that the opaque judicial system and a lack of credibility have caused people to petition the White House instead of resorting to legal tools and it becomes an outlet for the public's long-term dissatisfaction at the government's internal policies. At the same time, this type of petitioning also shows the traditional Chinese mindset for justice: rely on government and bureaucracy rather than a neutral judicial agent.

“Chen Guangcheng Escape” is a similar event related to the U.S. authority. Chen is a blind Chinese civil right activist who had organized a landmark class-action lawsuit against local authorities for the excessive enforcement of the one-child policy. He was arrested and went on trial. However, all three of his lawyers were detained by the local police, and none of them can

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23 Global Times News, Chinese turn to White House website for help with petitions, August 10 2012 retrieved http://www.globaltimes.cn/content/780009.shtml#.UfA1g7HA8gA


25 According to the Merriam-Webster online dictionary, netizen means a person who actively uses the Internet especially in a proper and responsible way; an active participant in the online community of the Internet. December 14th, 2013 retrieved from http://www.merriam-webster.com/dictionary/netizen

present in the court to do defense for Chen. Chen was sentenced to four years and three months for "damaging property and organizing a mob to disturb traffic." He was released from prison in 2010 after serving his full sentence, but he remained under house arrest with the police surveillance. In April 2012, Chen evaded security forces surrounding his home, escaped to Beijing, and found refuge in the American Embassy. Chen’s escape to an American Embassy is another example that Chinese ordinary people seek justice from authority, and the U.S. government serves as the figure of “Blue and Clean Sky”.

Chen and those who petitioned to the White House had been born in the Chinese bureaucracy culture, so it became natural for them to seek justice from the highest possible administration, which from the Chinese layperson’s perspective may seem like it’s the President of the United States. This also shows that the Chinese judiciary lacks a high authority and status. For thousands years, the Chinese judiciary was always affiliated with executive administration and had no independent power or status. It had been used as a ruling tool for imperial governments, and nothing more could be expected. Even today’s criminal court is still affected by administrative power. Next, we will discuss three political cases which show the processing of political cases through criminal trial in present China.

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Case 2, 3, 4—Wang Lijun, Bogu Kailai and Bo Xilai

The criminal justice system has been an effective ruling tool in China’s long history, and it is used to control ordinary people rather than to keep high-level officials in check. As written in Confucius’s The Book of Rites, criminal law cannot be applied to senior officials and the etiquette cannot be applied to common people (Liu, 1998). As a result, laws must and can only be enforced discriminately in imperial era. The Communist China after 1949 inherited the discriminative enforcement of law because the proletarian dictatorship laws were nothing but a tool for one class to suppress another.

Since the 1970s, three decades of reform and opening up have not only brought economic development, but they also have made progress in establishing the rule of law. However, because of the lack of political reform, it is hard to say that China now has a sound rule of law, and the legal system confined within strong political bureaucracy hierarchy cannot find or establish its own independent identity. People in China often complain that the nation’s laws do not apply equally to everyone and that law enforcement is often used to serve political or other parochial purposes (Wu, 2009).

It will be useful to review cases involved with high level officials and to investigate the impact of politics on criminal case processing. First, we can see whether formal legal procedures have been followed in case processing. Second, we should check the gap between the current criminal justice system and the rule of law in each of these cases. In this section, we bring up three trials related to the Bo Xilai case which has attracted public attention, both at home and abroad. On the one hand, it is positive to see that political cases now follow formal legal procedures and that big
cases which are involved with high level officials are becoming more open and transparent. On the other hand, we still can see the deep impact of politics in criminal cases. The first case is the Wang Lijun case, which is the fuse bringing out the whole scandal. The second case is Bogu Kailai, Bo Xilai’s wife, who was convicted as a murderer. The third case is the Bo Xilai case which involved with the highest level communist leader in three decades.

The First Chapter-- Wang Lijun

Summary

Before the blind activist Chen’s escape to an American Embassy, another Chinese citizen entered the U.S. consulate, and that event started the biggest political scandal in China in recent years. On February 6, 2012, Wang Lijun, former Chongqing police chief, went to the U.S. consulate in Chengdu, Sichuan province, and spent more than 24 hours there. He reportedly revealed to U.S. officials the details of corruption and the murder involving his boss, Bo Xilai, the Communist Party leader of Chongqing, a nearby city. Among the shocking news that emerged was that Bo’s wife, Bogu Kailai (maiden name as Gu Kailai), had poisoned British businessman Neil Heywood in a Chongqing hotel in 2011.

Then the Chongqing city government's news department said on its micro-blog site that Wang had gone on leave. The tweet said that “It is understood that Vice-Mayor Wang Lijun, who has suffered overwork and immense mental stress for a long time, is seriously physically indisposed.

After agreement, he is currently taking holiday-style medical treatment.”30 It was reported that people had seen large numbers of police officers who had set up roadblocks outside the consulate31. After talks with Chongqing Mayor Huang Qifan in the consulate, Wang Lijun left the building and was detained by Chinese security agents32. As indicated by the US state department spokeswoman Victoria Nuland, Wang "left of his own volition”33.

Wang Lijun became associated with Bo Xilai while Bo served as governor of Liaoning, and Wang followed him to Chongqing. On July 10, 2009, Bo launched the Chongqing crackdown campaigns against gangs, with Wang his top enforcer34. During these crackdown campaigns, 1,544 suspects were arrested, including wealthy businessmen, government advisers, crime bosses, and senior police officers (Wang, 2013).35. This campaign had helped raise Bo's national and international profile, which may promote his political career in central government.


31 Ibid


Wang Lijun had a close relationship with both Bo and his wife Bogu Kailai until November 2011, when Bogu told Wang that she had murdered British businessman Neil Heywood. Though Wang recorded the conversation, he assured Bogu that she would not be implicated in the case and tried to cover it up. In January, Wang told Bo that his wife is a key suspect in Heywood's death, and Bo responded angrily, slapping Wang in the face. Wang asked his officers to compile evidence related to the case, including blood extracted from Heywood's heart. A week late, Bo ordered the arrests of several assistants of Wang and reassigned Wang to a lower position. Fearing the retribution from Bo, Wang Lijun went to the U.S. consulate on February 6, 2012.

Wang Lijun's case processing followed a formal criminal procedure. The National People's Congress Standing Committee announced the termination of Wang's post as a deputy to the 11th NPC on June 30, 2012. On July 22, Wang was arrested by the State Security Bureau of Chengdu for defection, after the Chengdu Municipal People's Procuratorate approved the arrest. On August 2, after the investigation had been completed, the case was handed to the Chengdu Municipal People's Procuratorate for examination before prosecution. On September 5, the Chengdu Municipal People's Procuratorate filed charges against Wang with the Chengdu Municipal Intermediate People's Court. The Chengdu Municipal Intermediate People's Court held a closed-door trial for Wang on the charges of defection and abuse of power because it touched on state secrets and an open trial on the charges of bribe-taking and bending the law for selfish reasons.

Prosecutors and members of the defense counsel cross-examined the defendant in court.

Prosecutors presented material and documentary evidence, witness testimonies, defendants'
statements and video and audio materials. The defendant and his defense questioned the evidence. The prosecution and defense teams also debated issues, including facts, evidence and application of the law. Although this trial has not been broadcast live, the state news agency Xinhua late released an article to report the details of Wang Lijun’s trial\textsuperscript{36}. Wang was sentenced to 15 years’ incarceration and deprived of political rights for one year. However, Wang Lijun’s abuse of power during the crackdown campaigns has not been investigated, and it is reported that those campaigns have been alleged as lacking due process and a fair trial. In case 5, we will discuss a case in which a lawyer had gone through a distorted plea bargaining process.

\textbf{Analysis}

The Wang Lijun case exposed several issues in the Chinese legal system. First, the current legal system is under the control of local officials. Wang had to turn to the U.S. consulate for protection after he had offended the local official\textsuperscript{37}. Second, the magnitude of power that local law enforcement has is really broad and can be used to cover crimes while no effective supervision exists. Third, local officials and their family members can manipulate law-enforcement agencies and command the personal loyalty of police officers. These show that

\begin{itemize}
\end{itemize}
an independent judicial system that can make horizontal and vertical checks on power must be implemented\(^{38}\).

**The Second Chapter-- Bogu Kailai**

**Summary**

As we discussed in *Wang Lijun’s* case, Wang had tried to help cover the murder made by *Bogu Kailai*. *Bogu Kailai* (maiden name was *Gu Kailai*), the wife of *Bo Xilai*, the former party leader of Chongqing, was tried at the Intermediate People's Court in the eastern Chinese city of *Hefei, Anhui* province on August 9, 2012. She and her household aide, *Zhang Xiaojun*, were accused of murdering a Bo family associate, *Neil Heywood*. The trial was attended by 140 mourners, including relatives and friends of the two defendants, relatives and friends of British victim Neil Heywood, diplomats from the British embassy and consulates in China, media representatives, members of China's legislature and political advisory body, and some of the general public\(^{39}\). Prosecutors presented evidence and summoned forensic experts to testify, while the defense counsels of *Bogu Kailai* and *Zhang Xiaojun* conducted briefings for them, respectively. Legal representatives for the victim's family also presented their opinions.

*Neil Heywood* had moved to China in the 1990s, where he had met *Bo Xila*, the mayor of the Dalian city. Heywood introduced foreign firms to key officials, and he helped the *Bo* family

\(^{38}\) Ibid

manage their aff airs in Britain where Bo’s son, Bo Guagua, studied at Harrow. As Bogu stated in the court, Heywood demanded millions in compensation for a deal he assisted with and thus had a dispute with Bo Guagua over the money. Bogu believed Heywood was a threat to her son’s safety, so she then lured Neil Heywood to a hotel in the southwestern mega-city of Chongqing. On the evening of November 13, 2011, Bogu drank with Heywood until he was intoxicated, and then she poured poison into his mouth with the assistance of Zhang Xiaojun. After Heywood was dead, Bogu told Wang Lijun, the city's police chief, what she had done. Wang and his aides had tried to cover this crime for her, but Wang recorded Bogu's admission that she had killed Heywood. Four police officers from Chongqing went on trial in Hefei on Friday for covering up her crime. Wang confronted Bo with allegations against Bogu and soon was given a demotion. Feeling threatened, Wang then fled to the US consulate in Chengdu, and this unleashed the whole scandal of Bo Xilai. The trial lasted for about seven hours and was closed to international media. On August 20, 2012, Bogu Kailai received a suspended death sentence, and Zhang Xiaojun was sentenced to nine years in jail.

**Analysis**

Bogu Kailai’s murder case has some implications for law in China. First, she sought and received help from a local police chief to cover up her crime due to her special status: the wife of a local administrative official. This shows that administrative officials and their family members can get privileges in many areas, including in the legal system, because administrative

40 Ibid
bureaucracy still can override the law. Second, four high ranking police officials assisted with covering up Bogu’s crime, faking written testimony, hiding evidence, persuading Heywood's family to accept the conclusion that he died of an alcohol-triggered heart attack, and cremating the body without an autopsy. Bogu herself was a well-versed lawyer. It is astonishing to see lawyers and police officers’ defiance of the law, and there is a lack of supervision over agents in the legal system. Third, although the trial was claimed to be open, the detailed processing was not available to the public except for the short release of the news report. Because what the court describes as “solid evidence” is unavailable to the public, some still harbored doubts about the specific details of the murder case. The lesson here is that cases involved with high profile officials should have more openness. In Bo Xilai’s trial, we are happy to see the unprecedented openness.

The Third Chapter-- Bo Xilai

Summary

July 25th, 2013, Bo Xilai, former Communist Party of China (CPC) chief of the Chongqing Municipality, was delivered to the Jinan City Intermediate People's Court, Shandong Province, where he was charged with taking bribes, embezzlement, and abuse of power, according to the Jinan City People's Procuratorate41. Bo, 64, also formerly had served as mayor of the city of Dalian, as governor of northeast China's Liaoning Province, and as China's minister of commerce. It is alleged by some political analysts that these charges are relatively narrow; for example, Bo's

anticorruption campaign during his time in Chongqing government used the courts to stifle
opponents and others, but this did not even get mentioned in the released charge statement.\footnote{Spegele, Brian, July 25, 2013. China Indicts Former Senior Official Bo Xilai in Corruption Case. October 1, 2013 retrieved from http://online.wsj.com/article/SB10001424127887323971204578627730368509700.html}

The procedures in this case followed the standard legal process. \textit{Bo} and his wife, \textit{Bogu Kailai (Gu Kailai)}, were detained after \textit{Bo}'s former police chief and close confidante \textit{Wang Lijun} fled to the U.S. consulate in the nearby city of Chengdu and detailed for American diplomats a litany of allegations against the couple in February 6, 2012.\footnote{BBC News, November 11, 2013. Bo Xilai Scandal: Timeline. December 12, 2013 retrieved from http://www.bbc.co.uk/news/world-asia-china-17673505} \textit{Bogu} was accused of being involved in the death of \textit{Neil Heywood}, a onetime close family confidante, who had been found poisoned in a Chongqing hotel room. On March 15, \textit{Bo Xilai} was removed from his post as party chief in Chongqing; on October 26, \textit{Bo Xilai} was expelled from parliament, and this removed his immunity from prosecution.\footnote{Ibid} The Supreme People’s Procuratorate passed the case to \textit{Jinan} People's Procuratorate on April 10, 2013; \textit{Jinan} People's Procuratorate instituted a public prosecution against \textit{Bo} on July 25, 2013, on the three charges of bribery, embezzlement, and abuse of power.\footnote{Ibid.}

\textit{Bo} was alleged to have taken advantage of his position as a civil servant to seek gains for others, and to have accepted bribes worth about 21.8 million \textit{yuan} (about 3.5 million U.S. dollars) directly or jointly with others; and to have embezzled five million \textit{yuan} of public funds and

\footnote{\textit{Bo} and his wife, \textit{Bogu Kailai (Gu Kailai)}, were detained after \textit{Bo}'s former police chief and close confidante \textit{Wang Lijun} fled to the U.S. consulate in the nearby city of Chengdu and detailed for American diplomats a litany of allegations against the couple in February 6, 2012. \textit{Bogu} was accused of being involved in the death of \textit{Neil Heywood}, a onetime close family confidante, who had been found poisoned in a Chongqing hotel room. On March 15, \textit{Bo Xilai} was removed from his post as party chief in Chongqing; on October 26, \textit{Bo Xilai} was expelled from parliament, and this removed his immunity from prosecution. The Supreme People’s Procuratorate passed the case to \textit{Jinan} People's Procuratorate on April 10, 2013; \textit{Jinan} People's Procuratorate instituted a public prosecution against \textit{Bo} on July 25, 2013, on the three charges of bribery, embezzlement, and abuse of power. \textit{Bo} was alleged to have taken advantage of his position as a civil servant to seek gains for others, and to have accepted bribes worth about 21.8 million \textit{yuan} (about 3.5 million U.S. dollars) directly or jointly with others; and to have embezzled five million \textit{yuan} of public funds and...}
abused his power, causing major losses to the interests of the state and people. Bo had been informed of his legal rights and interviewed by prosecutors, and his defending counsel then delivered its opinion. According to the prosecution, Bo's conduct violated Clause 1 of Article 385, Article 386, Clause 1 of Article 382, the first entry of Clause 1 and Clause 2 of Article 383, and Clause 1 of Article 397 of the Criminal Law of the People's Republic of China, and he should be held criminally responsible for the three charges and be punished accordingly.

Bo’s trial started August 22, 2013, and was concluded August 26 after 5 days, three days longer than had been expected. It is generally agreed that the trial had followed proper legal procedures and that the defendant’s legal rights had been protected. The court approved all applications by Bo and his lawyers, guaranteeing them enough time to express their views. Neither judges nor prosecutors ever interrupted or stopped Bo or his lawyers from speaking, and even Bo agreed that the judges were fair and that the trial procedure was both humane and civilized. When the investigation phase was complete, the prosecution and defense debated the facts, evidence, and charges. Both sides expressed views on facts, evidence, and law, and questioned the defendant.

During the trial, Bo not only denied the evidence, but he overturned his handwritten confession. The prosecutors stated that the charges had been filed on the basis of a large body of factual evidence, rather than solely on confession. Prosecutors claimed that the defendant had failed to provide evidence which could help refute the facts regarding his charges and had offered


numerous conflicting statements during his defense. Based on the Amendment 7 and a judicial interpretation on corruption by using the influence (2009)\(^{48}\), the crime of taking a bribe can be convicted if factual evidence proves that the bribers have given the bribe to Bo’s family, even if he denied that he knew of this.

It is a satire that Bo had described his pre-trial confession to accepting massive amounts of money as having been obtained through unjust pressure and coaxing\(^ {49}\). He might forget the torture cases among Chongqing crackdowns on organized crime, the “anti-black” (da hei, 打黑), when he was as the local communist party leader during the period from 2009 to 2011. For example, one of the Chongqing torture victims was Fan Qihang, who had been driven to attempt suicide by months of pre-trial torture\(^ {50}\). Bo now must realize the importance of the rule of law, which is the only way to ensure justice.

### Analysis

Bo’s five day trial had displayed neutrality and transparence. The trial was unprecedentedly open. First, about 110 persons attended the trial in the court room. Second, the court continued updating news of the trial and the trial transcript on its official Weibo (Chinese microblogging

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\(^{49}\) He, Wefang, August 29, 2013, Bo Xilai trial was a satire, but still helped to further rule of law in China, October 1, 2013 retrieved from http://www.csmonitor.com/Commentary/Global-Viewpoint/2013/0829/Bo-Xilai-trial-was-a-satire-but-still-helped-to-further-rule-of-law-in-China

\(^{50}\) Ibid
site) where over 100 users were following the trial during peak time. The court had tweeted more than 110 Weibo posts, including transcripts, pictures, and audio and video files of evidence, and many of the posts have been retweeted thousands of times\(^5^1\).

Second, it is the first time that Chinese courts had published its trial transcript to the public, those of which before had been trial secrets, and even the lawyers could not make a copy. Although there had been some screening, it seems that most of the utterances in the court have been published.

Third, significant witnesses testified in court, and the testimony and videos of witnesses were also posted to the public. It is rare to let stain witnesses testify for the criminal bribery cases in court, while Bo’s trial presented a good model of a witness testifying in court. Witnesses Xu Ming, chairman of Dalian Shide Group Co. Ltd., Wang Zhenggang, then director of the Dalian municipal bureau of urban and rural planning and land, and Wang Lijun, former vice mayor of Chongqing, appeared to testify in court. Both the prosecution and defense had cross-examined the witnesses. Compared to the Hefei trial of Bogu Kailai and the Chengdu trial of Wang Lijun, this was a major improvement. Prosecutors played video recordings of Bo's wife Bogu Kailai and Tang Xiaolin, general manager of Dalian International Development Co. Ltd., and presented evidence, including documents and audio-video materials, witnesses’ testimony, and the confession and arguments of the defendant.

Fourth, the major parties of the trial, including the judges, the public prosecutor, and the defense counsel, behaved professionally, and the defendant’s right to speak in his own defense had been protected to a considerable degree. It is fair to see that this trial showcased the high level professionalism of agents in the Chinese legal system.

However, some drawbacks are also obvious. First, the scope of crimes indicted by the Procuratorate of Jinan was constrained by the Commission for Discipline Inspection, rather than by strict legal criteria. For the same reason, the public prosecutor and the collegiate bench judges had not been able to investigate certain issues thoroughly, and it turned blurry when these issues arose during the trial. For example, the defense lawyer argued that Heywood had demanded 14 million pounds from Bo Guagua (Bo Xilai’s son) as a commission on a project, and this was unrelated to the house in the case. This actually is a very good clue to investigate the Bo family’s other alleged financial crimes, to find what kind of a transaction could generate such a huge commission, and further, to discern the true motives behind Bogu Kailai’s murder of Neil Heywood. All these questions should be thoroughly investigated with legal criteria, but the public prosecutor let it pass.

Another example is that Bo Xilai explained that he had hit Wang Lijun because of an improper relationship between Wang and Bogu Kailai. The court should expose exactly what relationship existed between them, whether it was improper, and what kinds of business transactions occurred during that period because this may also be related to what actually transpired for Bogu Kailai to have killed Neil Heywood. However, the court also did not pursue this.
Second, many witnesses who should have appeared in the court did not appear; all of the witnesses who appeared in court have been witnesses for the prosecution. No witnesses for the defense appeared, and none of the written evidence laid out in court had been favorable to the accused. Also, Bo Xilai clearly said in court that he twice had applied for Bogu Kailai to testify in court, but this was denied by the presiding judge because Article 188 of the Criminal Procedural Law stipulates that relatives cannot be forced to testify in court. It is known that the legal rights protected by this regulation is the value of the ethical relationship between relatives, but the broadcasting Bogu’s testimony on site showed that Bogu had already agreed to testify via video. It seemed that whether or not to appear in court was only a technical difference, but her not appearing in the court made no way to repeatedly confront the many things that touched upon the guilt or innocence of the accused.

Third, the duration of the entire trial was still too brief, given the complexity of circumstances involved in this case, especially when the trial had already exposed some clues which had not been thoroughly investigated by the prosecutors. Fourth, transparency of the trial was limited -- to those who were allowed to participate or view it. Bo's trial lacked independent observers -- Bo's family, government officials, and a handful of pre-approved journalists were allowed into the courtroom -- while foreign media had been relegated to a hotel across the street, without access or opportunity to attend or otherwise witness and directly cover the trial. The information disclosed by the court was likely to have been heavily edited. Some commentators claimed it as
“selective transparency”52. In addition, Bo was prevented from using his own lawyers, and the sentence was probably decided at a higher level (Clarke, 2013)53.

In September 22th, 2013, Jinan intermediate People's Court has handed down verdict on Bo Xilai’s case. Bo was found guilty on all charges, sentenced to life in prison, and stripped of all political rights for life, after being convicted of bribery, embezzlement, and abuse of power. He did appeal to Shandong provincial High Court against his sentence and conviction. The High Court rejected his appeal and upheld the original verdict. Some commentators thought that Bo’s verdict was harsher than expected and suspected that Bo’s denial of guilty strong self-defending which seemed to have broken a deal during the case may lead to this harsh verdict (Zweig, 2013)54. It is speculated that the sentence was probably decided at a higher level and it was a political battle in which Bo has lost rather than a case just being targeted for corruption (Clarke, 2013)55. When Bo was expelled from CPC in September 2012, the decision of Political Bureau of the CPC Central Committee stated that Bo seriously violated Party disciplines, abused his power, made erroneous decisions in the promotion of personnel, received huge bribes, maintained improper sexual relationships with a number of women, and involvement in other crimes. However, Bo was finally only charged on bribery, embezzlement, and abuse of power.


54 Ibid.

55 Ibid.
Case 5—Li Zhuang

Summary

Li Zhuang, a lawyer, was sentenced to eighteen months for perjury after his client, a suspected gangster, reported to the police that Li incited him to lie to the court that police officers tortured him during his interrogation. This case attracted lawyers across China who supported Li publicly, and criticized the Chongqing government heavily. This case also gave a taste of the distorted “plea bargain” in some Chinese criminal cases.

As we discussed in Bo Xilai’s case, Chongqing, during the time from 2009 to 2011 when Bo Xilai was as the local communist party leader, had undertaken a series of feverish crackdowns on organized crime called the “anti-black” (da hei, 打黑) through which Bo was able to create a national reputation for the promotion to the Politburo of CCP. During the course of the da hei from 2009 to 2011, 4,781 people were arrested, including gang members, police and governmental officials, judges, and a former deputy police commissioner (Johnson & Loomis, 2013).

Among the arrested was Gong Gangmo, a local businessman, charged with organized crime activities, murder, illegal trading, purchasing of firearms, drug trafficking, and extortion. Gong was detained on June 20, 2009, and Li Zhuang, a lawyer specializing in criminal defense from the renowned Beijing Kangda Law Firm was Gong’s defense lawyer. Li Zhuang and his assistant, Ma Xiaojun met Gong on November 24 and 26, and on December 4. Li had arguments with the
police officers who insisted on being present during the interviews and Gong told Li that he had been intermittently tortured for eight days at the first meeting (Lim, 2012).

However, Gong on December 10 reported to police that Li encouraged him to lie in court by testifying that he was tortured during his interrogation. It was said that Gong reached a bargain with the police that this could get himself out of death penalty (Luo & He, 2012; Huang, 2012). Gong later claimed that he turned on Li because he wanted to gain sufficient credit to avoid the death penalty. Li was arrested on December 13 for subornation of perjury and was brought to trial before Chongqing Jiangbei Court on December 30. Li Zhuang first requested that the Jiangbei District People’s Court, the Procuracy, and all their associates to abstain from the case. His requests were denied or ignored. Li testified that Gong had shown him wrist wounds and told him that police had strung him up for eight days and the written testimony of a medical expert said that the bruise on Gong’s left wrist was caused by a blunt instrument (Huang, 2012). Chongqing police said that Chongqing Detention Center’s audio and video records showed that Li had tried to persuade Gong to give false testimony. However, the prosecutor did not present

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the records during the trial and the detention center claimed that it has no audio and video equipment. Instead, the prosecutor read written statements of eight witnesses to prove Li’s guilt. Li requested theses witnesses appear in court to be cross-examined, but his request was denied again. On January 8, 2010, Li was found guilty and sentenced to two and a half years imprisonment. Li firmly denied his guilt and appealed the verdict to the intermediate court.

The second instance hearing was not only open to the public, but it also had six criminal suspects, including Gong and two police officers who appeared in court as witnesses. In addition, the Chongqing authorities invited representatives of the People’s Congress, the People’s Political Consultative Conference and the Beijing Lawyers Association, along with reporters from about 20 media outlets, and faculty and students from local universities to observe the hearing. Surprisingly, Li declared that he was guilty in the court (Liu, Liang and Halliday, 2014). On February 9, the Chongqing No. 1 Intermediate People’s Court upheld the charges from the first trial but reduced the original sentence from two and an half years to 18 months.

Upon hearing the verdict, Li exclaim that he was cheated by the Police’s bargain,

“My earlier admissions were forced. I was forced to do it. The police and procuracy said they’d reduce my sentence to probation if I admitted to [wrongdoing]. They said if I pleaded guilty, then the second hearing would be an open trial. And still I’m sentenced. If you read my written confession carefully, you would see I was just deceiving the police and procuracy.”

(Liu, Liang, & Halliday, 2014, p. 9).
Li Zhuang said that his written confession was actually a “hidden poem” in which the first and last Chinese characters of each sentence of Li’s confession formed the anagram “[I was] forced to admit guilty to get probation, once released [I would] firmly appeal” (beibi renzui huanxing, chuqu jianjue shensu, 被逼认罪缓刑，出去坚决申诉). Six months after his release from prison, Li Zhuang revealed in his blog the story of his confession⁵⁹. As a defense technique, Li proposed to a high-ranking public security official after the first trial that he would confess to his crime if the second trial could be opened to the public and he could get probation as the final sentence. This proposal was welcomed by the Chongqing authorities who think that it would mitigate some of the procedural problems during Li’s first hearing and change the unfavorable public opinions at the time (Liu, Liang & Halliday, 2014). Li said that the alleged authorities had promised to let him walk free if he said he was guilty⁶⁰.

Because Li did not fully trust the Chongqing authorities, he carefully prepared the “hidden poem” while in jail in order to leave chance to retract. The Chongqing authorities also did not keep their promise and gave him an 18-month final sentence (Liu, Liang & Halliday, 2014). This twisted “plea bargain” then went further with new cases. On April 19, 2011, Li Zhuang, who was serving his sentence, was brought to trial before Chongqing Jiangbei Court again and he was charged with enticing a witness to give false testimony in Shanghai Xuhui Court in July 2008 during an


⁶⁰Branigan, Tania ‘Chinese lawyer claims he was ’tricked’ into confessing to falsifying evidence: Li Zhuang who had vowed to appeal a conviction for falsifying evidence before saying he was guilty claims he was cheated’, February 10, 2010, July 27, 2013 retrieved from the Guardian, http://www.theguardian.com/world/2010/feb/10/chinese-lawyer-tricked-pleading-guilty?INTCMP=SRCH
embezzlement trial. However, this case should be under the jurisdiction of Shanghai rather than Chongqing according to jurisdiction law.

The trial of new Li Zhuang case was reported in real time on the Internet by both the Chongqing media and many lawyers on their micro-blogs. Three days later, the prosecutors unexpectedly dropped the charge against Li due to lack of evidence. It generated many rumors about the reasons behind the withdrawal, and some speculated that the central leadership may actually exert influence on the trial, while other people thought the Chongqing authorities corrected their own mistake to prevent further damages to their reputation (Liu, Liang & Halliday, 2014). No matter which idea tells the truth, it shows people believe that both central leadership and local administration can have influence on the jurisdiction system in China.

Analysis

The Li Zhuang case raises several problems in the current criminal justice system in China.

First, the Western style “plea bargain” is problematic in China because of the lack of judicial independence and possibly inappropriate interventions from administrative authorities. The plea bargain could be used to cover or mask real facts rather than merely achieving efficiency and justice.

Second, it demonstrates the weak status of defense lawyers in the criminal justice system. Defense lawyers can be easily trapped legally, since the enforcement of Article 306 of the 1997 Criminal Law, the crime of lawyer’s perjury. This “Big Stick 306” is often used by the procuracy...
against lawyers, and it discourages many lawyers from collecting their own evidence in criminal cases.

Third, the *Li Zhuang* case also brings attention to the *Chong Qing* crackdown campaign which *Li Zhuang* claimed that his client’s confession had been obtained through torture. His claim gained credibility after *Chongqing* police Chief *Wang Lijun*’s case which took place in February 2012. The evidence shows that the Chongqing crackdown proceedings ignored both Chinese procedural and substantive law and that the use of torture was prevalent.

However, little has been done to correct the abuse of power during this crackdown. First, crackdowns have been used frequently in China to control crime, and it is usually pushed by administrative officials rather than by following legal procedure. As a result, it is hard for the court to correct wrongs in a crackdown if the political bureaucracy has not decided to do so. Second, criminal cases in China are usually corroborated by police, prosecutors, a Political Committee, a Party Committee, and the administration office, so it is really hard to correct wrong conviction. In our next case, we will discuss this problem further.

**Cases 6 and 7—Nie Shubin and Wang Shujin**

**Summary**

We have discussed in above cases that the court lacked independence from the political bureaucracy and in this case we can see that wrong convictions cannot be easily corrected due to lack of independence. *Wang Shujin*, a defendant arrested on charges of raping and killing three
women, insisted upon his guilt in a fourth murder, but prosecutors had sought to invalidate his confession and affirm his innocence. This forth murder happened in 1994 in which woman was raped and killed in a corn field in Shijiazhuang City, Hebei Province, and another man, Nie Shubin, was convicted for this crime and executed. In 2005, Wang Shujin was arrested and confessed to four cases of murder and rape, including that of Nie Shubin’s case. However, this confession did not get attention from the procuracy and court on first instance trial of Wang in 2006.

If Wang Shujin in fact killed the woman, Nie Shubin was actually grievously wronged. Wang appeal to the Hebei High Court, but the court in 2013 ruled that no evidence proves that Nie’s case’s real murder is Wang Shujin. Seven years passed between the first and second instance trials. Nie Shubin was convicted based solely on his confession, and many believe that the confession was forced. It was reported that Nie had told a lawyer hired by his family that he was beaten into a confession on his sixth day in jail61. Besides Nie’s oral confession, prosecutors did not prove any of the witnesses or any of the purportedly physical evidence, such as fingerprints, blood, or semen to prove his guilty62.

Wang Shujin has since claimed he was the real murderer, but the courts have repeatedly dismissed Wang’s confession and invalidated his appeals. Prosecutors argued that Wang Shujin was able to provide some accurate details about the murder only because he had worked in a

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62 Ibid
factory near the corn field, and because he was familiar with the surroundings. The High Court ruled that the evidence cannot prove that Wang Shujin committed this murder, and it thus blocks the appeal against the rape and murder conviction of Nie. Lawyers said that the ruling ignored Wang's confession and numerous matches with the evidence and it is hard to find adequate evidence to sustain Wang’s guilt or Nie’s conviction after 18 years. Furthermore, scholars argued that the principle of ‘innocent until proven guilty’ should apply to both the trial of Wang and Nie. If the court did not convict Wang of murder due to lack of evidence now, it should have not convicted Nie then (Mao, 2013).  

Analysis

There are two possible reasons that the High Court dismissed Wang’s confession. First, the High Court, which was responsible for Nie Shubin’s final sentencing, could not possibly rectify its own wrongdoings. Second, a criminal case in China usually gets police, prosecutors, a Political Committee, a Party Committee and the administration all involved. All these parties work together cooperatively with each other. If the conviction were to be overturned, all of the parties would need to be held accountable; the proceedings of the retrial are full of barriers. It is argued that the root cause of this problem is that China’s court system is not an independent entity, but that it is subordinate to the administrative department; the court and procuratorate act as branches

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63Mao, Lixin, 9/27/2013, October 29, 2013, retrieved from Sina weibo, http://www.weibo.com/p/1005052002687103/weibo?profile_ftype=1&key_word=%E7%8E%8B%E4%B9%A6%E9%87%91&is_search=1#_0
or extensions of the Party and government (Xu Xin, 2013). People called for the retrial of Nie’s case to correct the possible wrong conviction and to promote the principle of ‘innocent until proven guilty’.

If the judiciary lacks independence, it neither could afford an independent, fair, and just trial, nor could it correct any wrong convictions because those convictions are collective decisions from different agents, including the political bureaucracy. Nie Shubin and Wang Shujin’s cases again show that an independent judiciary from political bureaucracy is needed in order to achieve fair and just trials. The influences from the political bureaucracy could be a direct intervention through policy and order, and also can be through other formats, such as media and propaganda. In next case, we will discuss how state media can exert impact on legal system.

**Case 8 — Chen Yongzhou**

**Summary**

In previous cases, we have discussed how the political bureaucracy can influence the legal system directly because the judiciary needs to rely upon the administrative office for funding and policy guidance. There is also indirect influence from the bureaucracy, such as the state media. In China, major media are state-owned mouthpieces and need to follow the direct guidance from the CCP Propaganda Department. State media usually plays an important role in Chinese

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criminal cases, and it is hard to underestimate the effect of sensationalist media coverage.

On Friday, October 18, 2013, *Chen Yongzhou*, an imprisoned Chinese journalist confessed to wrongdoing on the state TV. *Chen*, a reporter of Guang Dong-based New Express Newspaper was detained that day by police from Hunan Province and had been held at a detention center in *Changsha, Hunan*, on charges of “damaging the commercial reputation” of *Zoomlion*, which is China’s second-largest maker of construction equipment based in *Hunan* province. *Chen* had written a series of articles on *Zoomlion* over the previous 18 months, and *Zoomlion* had filed a police report, arguing that *Chen*’s series of investigative reports alleging financial fraud was incorrect and had damaged the company’s reputation. *Chen*’s detention has raised worries among media professionals that police are overstepping their legal jurisdiction in criminalizing civil disputes. The New Express Newspaper made two appeals for police to release *Chen Yongzhou* using unusually bold front-pages.

However, the New Express Newspaper on the third day made an apology saying that its response to the investigation was inappropriate and "seriously hurt the credibility of the press.”

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turn-around follows a report aired by state-run China Central Television (CCTV) on October 27 showing footage of Chen Yongzhou being interrogated by police in Changsha. Dressed in a detention-center vest, handcuffed and with his head shaved, Chen was heard saying that the information he released was "absolutely not objective" and that "I'm willing to admit to the crime and repent." This made people doubt whether the New Express Newspaper had been pressured to make the apology due to the social impacts transmitted by the CCTV, which usually represents the central authority. It is interesting to see that CCTV can do their broadcasting so easily in the police’s detention center while lawyers often complain that it is hard for them to get permission to meet with their defendant clients. It is argued that this broadcast is actually against the principle of rule of law because it should not intervene in the legal process and claim to show the defendant’s guilt or innocence (Goldkorn, 2013).

Analysis

TV confessions have almost become a way of establishing a public presumption of guilt when the investigation has barely started and this does not match principles of criminal justice reforms in recent years (Pils, 2013). It is questionable that a state-run TV can conduct a ‘trial by media’ when it broadcasts this kind of “confession” while the case is still in the pre-trial process and when no court verdict has been made. Influencing public opinion this way is essentially

68 Lbid, also see BBC News, China reporter Chen Yongzhou 'confesses' on TV, October 29, 2013 retrieved from http://www.bbc.co.uk/news/world-asia-china-24682523
69 Lbid

70 Ford, Peter, October 28th 2013, Why China is turning to 'trial by television' in sensitive cases, October 29, 2013 retrieved from http://www.csmonitor.com/World/Asia-Pacific/2013/1028/Why-China-is-turning-to-trial-by-television-in-sensitive-cases
conducting a trial by prime media, and thus it has violated the presumption of innocence until proven guilty as a principle of adjudication. In addition, such media reporting also may leak much evidence to the public before the trial began, which not even the procuracy and which only the defense lawyers had the right to disclose. So, this practice may exert inappropriate influence on the adjudication procedure (Liu, Liang & Halliday, 2014).

There are six persons, including Chen Yongzhou, who have been shown on public TV and who have confessed, although none of them had been charged with any crime71. Around 30 years ago, the police across China used to parade suspects in the back of open-bed trucks before their trials. After decades of economic and legal reforms, this type of public humiliation assumed a new form as television broadcasting. The police and state-run public media, which representing the administrative authorities, are functioning as a public “court” to try suspects even before their due process begins.

This case is neither the first time nor the last time that the prime media produced a damaging effect on public discussion of the case and provoked a vigorous outcry from the Chinese legal profession. For example, in case 5, the Li Zhuang case, the China Youth Daily had published an article titled “The Surprising Exposure of ‘Lawyers Falsifying Evidence’ in Chongqing’s Anti-Black Campaign, Nearly 20 People Arrested”(China Youth Daily, December 14th, 2009) which was mostly based on a standard news brief provided by the Chongqing government (Liu, Liang and Halliday, 2014). This article’s negative tone described lawyers as greedy but incapable of doing their jobs, quoting one anonymous Chongqing official who said that many

71 Ibid
Beijing lawyers were coming to Chongqing to seek opportunities of “business” and “hidden rules” (qian gui ze, 潜规则). This article was published just four days after Li’s arrest and had implied that Li already was guilty, though he had not gone on trial.

Media may argue that they have the freedom of the press, but that freedom cannot become an excuse to intervene in the legal procedure and deprive defendants of their due process in civil trials. The defendant should not be forced to become a witness against himself, even before the public media. State-owned media have such improper privilege because of their support from the administrative bureaucracy. Besides media, there are several other types of branches which gain support from the bureaucracy, by which they can override the proper legal processes. We discuss these branches in the cases below.

**Cases 9, 10, and 11 — Yu Qiyi, Chen Qingxia and Xia Junfeng**

In these three cases (below), we discuss three types of power which exist beyond the legal system and which can exert coercive powers. They are the internal investigation power of CCP, local violence against petition, and urban management enforcement.

**Case 9 — Yu Qiyi, an Official Died in Shuanggui Process**

**Summary**

In China, if you are a Communist Party member, you will get punished if you are against the Party discipline even before a legal process begins. The Party disciplinary committee has a
complete investigation and punishment process which is not open to the outside supervision. As a result, it is beyond the reach of legal process, and extreme coercion could take place. In this case, a Party member died during the disciplinary process.

*Yu Qiyi*, Communist Party member and the chief engineer of the state-owned *Wenzhou* Industry Investment Group, died during the *Shuanggui* process. *Shuanggui*, or “dual designations” is a Communist Party internal disciplinary procedure and means Party members attend questioning sessions for wrongdoings at a designated place for a designated duration. *Yu Qiyi* had been detained for internal investigations into a land deal since early March of 2013. On the night of April 8, 2013, his head was submerged several times in a tub of icy water by six investigators who were attempting to extract a confession from him; he died during the early hours of April 9. Since his body was found to have many internal and external injuries after dying, it is possible that he had been tortured in other ways apart from the drowning during his 38 days detention. These six investigators are Party officials, not the Police. Five of them are from the Commission for Discipline Inspection, the Party’s watchdog for corruption.

**Analysis**

Investigation by party discipline organs is outside the formal criminal justice system and can result in a suspension of all procedural rights (Sapio, 2010). Both the investigated targets and interrogators are party members and are bound by the party's disciplinary code. The whole

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process and details are mostly kept out of public view. In Yu Qi’s case, his family had never been notified after he was detained. After the investigation, the suspect may be turned along with selected evidence to prosecutors. Besides the local party disciplinary process, local governments also have power to stop people’s petition efforts. The next case will discuss this type of coercive measure which is also outside of formal legal procedure.

Case 10 — Violence against Petitioners

Summary

As we discussed before, local governments have high administrative power, and even the local level courts must rely on them to get their funding. We also know that Chinese people tend to appeal to higher administrative authority instead of to the judicial system when their complaints cannot get solved in local level governments. The people usually petition all the way to the petition office in the capital city of Beijing, and this is annoying to local officials because it can reduce their chances of getting promotions. As a result, they have officers who stop those petitioning people. In this case, a woman was detained for three years after her petition attempt was stopped by local officers.

Chen Qingxia, a woman from Heilongjiang Province, was stranded in a deserted mortuary for three years by relevant local department, totally losing her personal freedom, after she tried to go...
to Beijing to appeal to higher authorities to seek justice. Chen’s husband, suffering from mental disease, was sent to the local labor camps in 2003 for reeducation because he had damaged the barriers in the road. Two months later, her husband was set free due to his mental illness. However, Chen Qingxia was stunned to find several bruises on her husband’s body, and thereafter his mental ability was worse than before. Chen decided to go to Beijing to appeal to higher authorities and to seek justice for her husband, like Qiuju had done in the movie I mentioned in the beginning of this chapter. However, Chen was forced back from Beijing to Heilongjiang in 2007 and was sent to reeducation through labor for 18 months. In 2010, Chen was sent to this mortuary and had been locked inside since that time. She has got paralyzed during the three-year “imprisonment” in the mortuary, which is guarded 24 hours by staff workers hired by the department. Her 12-year-old son, who was missing during her petition to the Beijing Letters and Visits Office, has not been found. Four people in a car parked outside the mortuary had watched her 24 hours a day, and Chen could not leave the mortuary.

Analysis

Because Chinese people have a tradition of appealing to higher authorities to redress injustices, each year numerous people go to Beijing to make petitions. At the same time, local governments are trying to stop these petitions and to force back those petitioners because they fear that they will face demotions or other forms of retribution from higher levels of government, based on the number of petitioners who come to Beijing. It is not unusual for local governments to intervene

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74 Zhu Wenjia, January 24, 2013, Woman stranded in deserted mortuary 3 years due to petition. 10/31/2013 retrieved from http://english.sina.com/china/p/2013/0123/552917.html
in the petitioning process, abducting the petitioners either before they leave or once they arrive in Beijing, and some of the petitioners will be sent to detention centers or to reeducation through labor camp. This type of corrective measure is outside the formal criminal justice system and is without legal procedures. Good news is that the third Plenary Session of the 18th CCP Central Committee also claimed that China will abolish the "reeducation through labor" system by November 2013. However, local governments not only have these direct coercive measures, but also have extension power through diverse enforcement groups, such as the urban management enforcement. We will discuss such extension power in the next case.

Case 11 — Xia Junfeng and Chengguan (Urban Management Enforcement, 城管)

Summary

The rate of urbanization in China is increasing, and governments at several levels are trying to find effective ways to manage the development of the cities. According to predictions, nearly 70% of the Chinese population will live in urban areas by 2035, and this requires the construction of high-rise buildings, mass transit, educational and healthcare facilities, police and fire re-organization for greater efficiency, and major long-term budgetary planning. Chengguan (Urban Management Enforcement,城管) is one way of management. However, this one group has been authorized far too much power with little effective supervision. As a result, it has gained notoriety due to its pattern of brutal enforcements. The following case is an example.

On September 25, 2013, Xia Junfeng, a street vendor convicted and executed for killing two city officials, raised cries of unfairness in the criminal justice system over Chinese social media. On May 16, 2009, while selling chicken strips, roasted sausages, and other snacks with his wife Zhang Jing near a crossroads in Chenhe District, in the north-eastern city of Shenyang (沈阳沉河区), Xia Junfeng was seized by urban management officers known as Chengguan (城管) who manage the local city codes. Xia was taken to their office, and he was beaten by those officers. During the course of the beating, Xia Junfeng fought back with a small knife he carried in his pocket, stabbing two Chengguans to death and injuring one. Xia said it was in self-defense after the two officers beat him. The court refused to consider testimony from six witnesses that Xia had acted in self-defense and convicted him of murder, mostly based on testimony from the Chengguan. Xia was convicted of intentional homicide and sentenced to death during the first trial in 2009, and the second trial in July 2011 upheld the verdict of the first trial. The Supreme People’s Court in Beijing reviewed the case and approved the death penalty on the early morning of September 25, 2013.

Xia’s case resonated with the public because people become disgusted over the impunity with which Chengguan imposes local codes on street peddlers – often with violence. Among China’s numerous law enforcement ranks, the City Urban Administrative and Law Enforcement Bureau, called Chengguan in Chinese (城管) has been the most feared and despised for their...
brutality and total disregard of the laws. Holding a close relationship with the local government, *Chengguan* is used frequently by the local government to deal with various issues, including urban management, forced demolishment, and local codes enforcement.

*Chengguan*, the urban management system, had been established in 1997 initially to manage the problem of transient street peddlers and vendors. However, the *Chengguan* system actually has no constitutional foundation and turns into a branch of local administrative power. Because at present there are no national laws and regulations controlling the *Chengguan* system, it gains unbridled power and easily commit criminal activities during law enforcement. *Guangzhou* city government in August 2010 released a regulation that *Chengguan* can request police assistance if they anticipate encountering violence when entering unauthorized buildings for investigations or demolition work. In many places, *Chengguang* and the Police are cooperating in demolition work.

In recent years, there is a series of violent confrontations involving *Chengguan*, who are charged with enforcing sanitation codes and other rules. In July 2013, a watermelon seller in Hunan Province collapsed and died on the street after a *Chengguan* reportedly struck him in the head with a metal weight from his scale. *Cui Yingjie*, an unlicensed sausage vendor in Beijing, was

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convicted in 2007 of slashing to death an enforcement official who had seized his cart. The power of Chengguan even can be used to fight against the army. In September 4, 2013, over a hundred Chengguan besieged a guard room at a military compound in Qingdao city, Shandong Province, with the intent to forcibly demolish the guard room. A fierce conflict broke out between the two sides, and the PLA side in the end was unable to resist and was beaten into retreat due to the Chengguan having more people.\(^1\)

**Analysis**

Chengguan, as an extension of administrative power, often tramples citizens’ rights and it has been labeled as “brutality” in people’s mind. Xia Junfeng won feelings of sympathy from the general public, and thousands of postings appearing on social media overwhelmingly sided with Xia’s side, although he finally was executed. It is argued that the verdict was unjust because Chengguan has no legal foundation.\(^2\) The support for Xia highlights a lack of faith in China’s judicial system, which is heavily weighed against defendants and which often takes into account and prioritizes the interests of the state.\(^3\)

Furthermore, Xia was contrasted with Bogu Kailai, the wife of Bo Xilai, whose death sentence was suspended. Some people doubt the differential treatment of citizens with different background under the justice system: Bogu Kailai was found guilty of murdering Neil Heywood,

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\(^1\) Ibid


\(^3\) Ibid
a British businessman, and she got a suspended death sentence penalty, which ordinarily would have become a sentence of life imprisonment after a two-year suspension. A user of the microblogging site said of Bogu's sentence: "The trial indeed shows respect for life, her life. But what kind of people can enjoy such respect. Can Xia Junfeng enjoy that?"84 Suspended death penalty rather than death penalty has been used for a few of high profile officials who committed serious crimes in recent years. The rich and powerful in China normally will not get the death penalty because of the family's connections (Zhang Ming, 201385).

Besides Chengguan, other local enforcement systems also exist; for example, the local security team also holds para police enforcement power. Ji Zhongxing's petition is another example. Ji was angry because his life was destroyed by local security team and his years’ petition was in vain. On June 28, 2005, Ji Zhongxing who was driving his rickshaw in Dongguan, Guangdong Province, was stopped by a local security force, known as zhianduiyuan(治安队), and demanded to check his documents. The local security force is employed by the police department to maintain order including tackling unlicensed vehicles. Ji claimed that he was chased by the officials and received a brutal and sustained beating that left him paralyzed in his lower limbs, while officials say Ji was injured after he fell from his vehicle86. Ji became one petitioner and went to Beijing to seek justice for the alleged attack. After years of repeated attempts to seek


85 Ibid, Zhang Ming, a political science professor at Beijing's Renmin University, is quoted in this CBS News.

compensation with little success, Ji tried to draw attention to his case using extreme way so he detonated a small home-made bomb in Beijing's international airport in July 2013. Ji was soon arrested and sentenced to six years imprisonment.

Chengguan and Zhiandui are seen as para police forces, and it is much easier for them to commit brutality beyond the control of formal criminal justice system. They are the extensions of administrative power and need to be regulated under formal legal procedure. The force local governments use to obstruct petitioner has no legal foundation and the party internal discipline process needs to be enter into formal legal procedure. From these three cases, we can see each individual could be hurt by extra-legal coercive measures no matter he or she is a petitioner, party member, street vendor. The only way to protect basic rights of citizens is to build an independent justice system and no conviction can be made without a fair court trial.

Summary

Being born and nurtured in a deeply bureaucratized society, the Chinese judicial system not only must struggle under the administrative powers, but also must face the deep and growing mistrust from ordinary people who habitually appeal to higher authorities instead of seeking justice through the courts. In this chapter, the case of Zhu Ling shows this deeply rooted Chinese tradition, though this time the higher authority becomes the American administrative office. A judiciary without independence cannot assure people’s confidence in justice.

The cases of Wang Lijun, Bogu Kailai and Bo Xilai are probably the highest profile corruption scandal in recent years which gives an example of how absolute power without legal supervision
will corrupt absolutely. *Wang Lijun*, the local police chief, had to escape to the American Consulate for protection because he thought that the law could not help him against the corrupted local administrative officials. Multiple local high ranking police officials, including *Wang Lijun*, had been manipulated by local administrative official’s wife to cover her criminal behavior. The hierarchical bureaucracy provides a perfect environment to nurture absolute power and to trample the law. Officials and their family members in the bureaucracy system, like *Bo Xilai* and *Bogu Kailai*, can turn public power into a tool to satisfy their family’s interests. These high level officials and their associates have been convicted for their criminal behavior, the trials have become more open and transparent, and formal legal procedures are increasingly being followed. These all show the trends of depoliticization and institutionalization concerning the criminal justice system.

However, the judicial system still has big gaps to cover in terms of the quantity and quality of judges, prosecutors, police officers, and lawyers. The *Li Zhuang* case exposed the distorted plea bargaining process in the criminal justice system. The cases of *Nie Shubing* and *Wang Shujin* disclosed the “close” mutual collaboration relationships among criminal justice agents without mutual supervision, which makes the wrong convictions hard to be corrected. Besides these internal dilemmas, outside interventions also exist. The media which represents the administrative authority also can intervene in the criminal justice process as we see in the case of *Chen Yongzhou*. In addition, the political bureaucracy has many different extensions which can exert extra-legal coercive measures, such as the party disciplinary measures and local para police force. All these examples we can see in cases 9, 10, and 11.
Since 1949, the Chinese new judicial system has passed an up-down-up path. After 30 years of legal reform, there is no doubt that the judicial system has enjoyed a stable development path and that a comprehensive court structure has been established. However, the cases we discussed in this chapter depict that Chinese judiciary as not fully separated from political bureaucracy and still lacking independent function and authority. Because the political bureaucracy holds an absolutely high and previously seldom-questioned power in Chinese characteristically bureaucratic society, it can override the legal system and its extended powers are far beyond the legal control.

As we discussed in chapter 3, the recent third Plenary Session of the 18th CCP Central Committee already claims that China will abolish the "reeducation through labor" system. More and more people know the importance of a fair, even-handed, and just judicial system. As those posting on social media are advising, anyone could become a victim of an abused system, like Li Zhuang, Nie shubin, or Chen qingxia, if China does not have an independent judicial system the people can rely upon and trust as they live their lives in modern China. The judiciary is struggling for the independence it needs, and it requires informed and wise collective efforts from the whole society. Interestingly, the rapid developing of the Internet may actually provide for this show a stage, the social media. In the next chapter, we will discuss the impact of social media on the rule of law in China.

Chapter 6: Social Media and Rule of Law in China

Introduction

In the first two chapters, we looked back at Chinese history to trace the origin of bureaucracy and legal system. Born in the powerful bureaucracy system, the Chinese judiciary has never really opened up its own ground independently. The imperial rulers’ reform efforts had long been cast in the pattern of an outworn tradition of using the law as a ruling tool. Based on the history, it is not hard to understand the arduous path of legal reform in China. In the last chapter, we used eleven criminal cases to look into the current criminal justice system and examine the struggle of judicial system against the powerful political bureaucracy. This struggle is not a solo show, and the pursuit of judicial independence is backed up by Chinese people’s dream of justice. Interestingly, legal reform has long neglected the participation of ordinary people due to the rare presence of a mature civil society in Chinese political arena.

Civil society had been suppressed during thousands years of the feudal imperial dynasties in China. However, the Chinese people are becoming more and more aware of civil and political rights after achieving economic abundance. Civil society is the nurturing soil for social and economic justice. Rousseau in his book The Social Contract (1762), claims that humans acted
only upon their physical impulses in the state of nature and lacked a sense of justice. During the transition from the state of nature to civil society, the human started to feel a duty to other humans, their mental faculties developed slowly through social engagement, and their ‘spiritual soul’ becomes elevated through and because of this moral change of socialization. As the basis for every social system, the social contract makes the physical differences found in the state of nature insignificant so that all humans may become equal through social convention and by inherent natural right.

The criminal justice system is a way to measure the social development and political liberalism (Karpik, 1997, 1999; Pue, 1997). It is argued that legal professionals, especially lawyers in criminal law, potentially the anchor institutions of civil society. Lawyers need to make their own professional associations self-governing and can mobilize a profession against the state, or ally with other groups in civil society, or variously ally with the judiciary or restrain and critique it (Halliday & Liu, 2007). The autonomy of the bar can help lawyers confront most directly the coercive and potentially repressive arms of the state in criminal law. In China, such autonomy has as yet not been realized in general.

The prevalent expanding of the Internet use is creating an amazing chance to build civil society in China through virtual public space, online community, and public surveillance. Internet overcomes the barriers of time and place for the communication and collectivism in a big country with large population. The microblog provides Chinese legal professionals with an unparalleled site for public discourses and the development of professional identity, but it also helps in forming a mindful microcosm of modern civil society. In this chapter, we will discuss
the development of civil society in the era of the Internet and its impact on the rule of law. First, we will look into the development of civil society in China. We not only give a survey of current legal activism through the Internet, but also use collected social media data to depict the dynamic interaction among online legal community.

There are limitations for this type of data use. First, the microblogs have a huge data system, and there are more than 500 million registered users on *Sina Weibo*<sup>88</sup>. My analysis only can catch a small part of the online legal community. Second, legal professionals express their opinions on social media based on their knowledge and thoughts of the topics, and these opinions are not necessarily correct. As an observer, I only can do my best to present what I have seen. Even with these limitations, we still think that these observations based on social media could be valuable. First, legal professionals play an important role in the Chinese legal system, and this type of data provides a new way to study those people who are working in legal professions in an the Internet era. Second, these legal professionals express ideas and opinions through tweets which have the similar function as the interview or survey data but this type of data is rarely used in criminal justice study so far.

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<sup>88</sup> February 28<sup>th</sup> 2013, Chinese Internet Watch, November 12<sup>th</sup> 2013 retrieved from http://www.chinainternetwatch.com/1965/overview-of-sina-weibo-2012/
We have seen the powerful bureaucracy system in previous chapters, and you may wonder whether there is a type of power that can contend with and balance the bureaucracy. Based on Western experience, a vigorous civil society can hold the state bureaucracy accountable and promote democracy. According to Rousseau (1754), the origin of civil society itself can be traced to an act of deception, and the private property was conventional and the beginning of true civil society. Rousseau asserts that, rather than bend to the whims of an absolute monarch, the people should exercise their sovereignty by banding together and creating a public person: the sovereign, which aims for the common good. Every person is both a citizen as a member of the sovereign and a subject to obey its decisions (Rousseau, 1754). Human societies are grounded in and held together by shared norms and moral understandings. Why is civil society important? The rights of humans are more basic than any human political structure, and they provide a point of revolutionary leverage from which any state structure may be radically altered (Bellah, 1967). When people join together to form a community, they create a political body with a life and will of its own. This community could be seen as the initiative form of civil society (Rousseau, 1754).

Civil society is an arena in which citizens associate to achieve a range of different purposes, and it has four basic elements: autonomous individuals, autonomous civic associations, more or less organized activities, public spheres (Yang, 2003). It is argued that autonomous individuals and autonomous civic associations can engage in more or less organized activities in public spheres.
Civil society is an important power to restrain individuals who lead the governing state from becoming all-powerful, lest they abuse that power to oppress others for their own benefit (O'Brien, 1999). Although China has a large population, the civil society in China has been weak and undeveloped compared to the powerful bureaucracy. There are several reasons.

First, autonomous individuals and civic associations barely can exist in imperial era. The lands and people belong to the emperor in ancient China. Individuals may have certain freedom in economic activities, but not in political activities (Hu, 2000). Cities were where bureaucrats resided, and it was unlikely that any strong self-governing organizations could exist. Although some automatic association did appear in urban society in late Qing, they were actually protected and manipulated by the state, and it was no more than a sphere attached firmly to the state (Takahashi, 2008). Chinese social organizations are more likely seeking to build good mutual relations between the state and the society, and the weak civil society holds its instrumental nature or characteristics to strengthen the state (Takahashi, 2008).

Second, it is hard to find and gather people in a public sphere to nurture civil activities in a big country with a large population. Public sphere means places outside the immediate control of the state but not entirely contained within the private sphere of the family (Calhoun, 1994, p.190). Public sphere, where the public can discuss, debate, and get involved with affairs of the state, plays an important role in realizing democracy (Habermas, 1989). In order for the public sphere to work, the public needs to have opportunities, for example, the right and space, to express and exchange their opinions on public affairs (Tang & Shi, 2001). The large population in China has been like a sheet of loose sand (Fei, 1992). The Chinese public sphere’s development during the
imperial era was highly localized rather than having a nationwide autonomy (Liu, 2011).

After 1949, the state-controlled mass media have been representative of the state publicity rather than the underpinning of the public sphere (Li, 2003: 4). Scholars agree that the public sphere in China remains incipient and weak, since most social institutions are state-controlled, i.e. most mass media are owned by the state (Yang, 2003). The economic reform in the 1980s gradually transformed the landscape of media and to a certain degree, and the traditional media in China were starting to act as props of the public sphere (Wang & Bates, 2008). However, the reform did not fully change the nature of mass media, which all continue to be state-owned. The prevalence of the Internet since the 1990s is starting to make things work differently. The Internet breaks into the public arena and is formulating dynamic online communities. Next, we will discuss how these communities can nurture a virtual civil society.

The Virtual Civil Society

No one can deny that the Internet has brought huge changes to our daily life. We first briefly review a history of the Internet. The Internet actually arose from a series of government-funded computer networking efforts. The precursor to the Internet began with the U.S. Defense Department's ARPAnet in 1969. Several other agencies also developed networks so their researchers could communicate and share data\textsuperscript{89}. In 1981, for example, the National Science Foundation (NSF) provided a grant to establish the Computer Science Network (CSNET) to

\textsuperscript{89} NSF website has a detailed history of the Internet http://www.nsf.gov/news/news_summ.jsp?cntn_id=103050
provide networking services to all university computer scientists. NSF intended to provide
greater access to the high-end computing resources to scientists and engineers around the country
and a viable solution would link many research universities to the centers. As a result, NSFNET
went online in 1986 and connected the supercomputer centers at 56,000 bits per second—the
speed of a typical computer modem today. In a short time, the network became congested and,
by 1988, its links were upgraded to 1.5 megabits per second. A variety of regional research and
education networks were connected to the NSFNET backbone, extending the Internet’s reach
throughout the United States.

The creation of NSFNET was the first large-scale implementation of Internet technologies in a
complex environment of many independently operated networks. Throughout the existence of
NSFNET, the number of Internet-connected computers grew from 2,000 in 1985 to more than 2
million in 1993. To handle the increasing data traffic, the NSFNET backbone became the first
national 45-megabits-per-second Internet network in 1991. Tim Berners-Lee and colleagues at
CERN, the European Organization for Nuclear Research, in Geneva, Switzerland, launched the
World Wide Web (WWW or W3) in 1991.

1993-1998. Commercial firms noted the popularity and effectiveness of the growing Internet and
built their own networks. NSF awarded contracts in 1995 for three Network Access Point (NAPs)
to provide connection points between commercial networks and one routing arbiter, to ensure an
orderly exchange of traffic across the Internet. In addition, NSF signed a cooperative agreement
to establish the next-generation very-high-performance very-high-speed Backbone Network
Service (vBNS). The most visible, and most contentious, component of the Internet transition
was the registration of domain names. Domain name registration associates a human-readable character string with Internet Protocol (IP) addresses, which computers use to locate one another. In 1993, there were 7,500 domain names. Five years later, in September 1998, the number of registered domain names had passed 2 million. The year 1998 marked the end of NSF’s direct role in the Internet, and the network access points and routing arbiter functions were transferred to the commercial sector. Currently, in 2014, there are more than 271 million domain names.

Part of the initial motivation for the Internet was information sharing. Communication and social networks soon become one of the major motivations its further development. For example, electronic mail became the most significant impact of the innovations, and it provided a new model of how human beings could communicate with each other, and it changed the nature of human collaboration. The success of Internet is largely attributable to both satisfying basic community needs as well as utilizing the community in an effective way to push the infrastructure forward. Commercialization of the Internet involved not only the development of competitive, private network services, but also the development of commercial products implementing the Internet technology.

When the Internet enters China and meets with 13 billion people, it is not easy to predict what kind of surprises it can create. The rapid development of the Internet not only changes personal life from the inside out; it also it raises a full set of new proposals: can we create a virtual civil society through online communities in China? If this transformation does develop through innovative electronic media, this virtual civil society may have huge impacts because it can overcome the long-insurmountable barriers of time and space which are significantly important
in a big country with a large and urbanizing population like that in China. First, we look at the
development of online community.

**Internet and Online Community**

Internet usage has expanded more quickly in China than it has anywhere else in the world. In December 2011, China had 513 million Internet users; between 356 and 900 million people have access to the Internet via their mobile phones (Chiu, Lin & Silverman, 2012). Social media, as the one of most active part of the Internet community, is exploding worldwide, and China has by far the world’s most active social-media population. A new McKinsey survey of 5,700 Internet users in China has found that 95 percent of those living in Tier 1, Tier 2, and Tier 3 cities are registered on a social-media site (Chiu, Lin & Silverman, 2012). The radical nature and contested struggles in China’s cyberspace greatly reface the social change in China, and social media has pushed the “online activism” to a higher degree (Yang, 2009).

The Internet has facilitated the environment for what Habermas (1989) had defined as the public sphere, especially for China, and it has wider impact and has become a tool with which to pursue free expression. The public sphere has served as a counterweight to political authority, and it has become a ‘space between’ private individuals and government authorities in which people could meet together, share ideas and perspectives, and hold critical debates about public matters. Habermas (1989) saw a vibrant public sphere as a positive force keeping authorities within bounds because discussions can ridicule political rulings. These discussions can take place physically in face-to-face meetings in coffee houses and cafes and public squares as well as
occur in the public and private media in letters, books, drama, and other arts. The Internet becomes a new place of in the public sphere, and it allows the surfers to be both consumer and creator of information, sometimes at the same time. The Internet actually bears similarities to real-life communication prototypes. In addition, it can also help with more social interactions rather than simply having conversations, and can build communications between the media and the public.

The Internet creates a new social space which is both informational and participational. This is important for the foundation of a civil society which needs the participation of its peoples. The Internet can extend the relations in the physical world and break away the constraints of time and space. It presents great potential and exciting opportunities to reinvigorate civic engagement in new ways (Tai, 2006, 169-171). Because the Internet is much less constrained by the state, the media, or the masses, it promises wide and much easier access for people to collect information, and it helps users to connect with each other and to stand out together to appeal for the political democratization of societies around the world (Liu, 2011).

The most popular Internet product in China now is the social media which means web sites for social networking and microblogging through which users create online communities to share information, ideas, personal messages, and other content. In China, social media is not only a tool for communication, but also it has become both a place of collective opinion and seedbed force for social development and innovation. Of the hundreds of millions of web users, over 300

90 Merriam-Webster online dictionary, December 22th retrieved from http://www.merriam-webster.com/dictionary/social%20media
million have created microblogs. Despite censorship, the discussions in the Internet forum and social media are more wide-ranging and elaborate than they are in conventional media – unless that, too, changes through technological innovation. It is important to note that the Internet has created an unprecedented space for civil discourse in China; a vibrant virtual social space which enables the social efforts in building an effective rule of law to resonate throughout the Chinese cyberspace and among its netizens. Might it become a transformative shadow protocol, somewhat like what shadow banking now does? The social uses of the Internet have fostered public debate and discussion of societal problems, and in that process they have created a new associational form—the virtual community (Yang, 2009). Next let us look at the popular social media websites.

**Social Network Sites: BBS, Blog and Microblog**

There are three types of social media which are popular places for discussing social issues in China. The first one is the Bulletin Board System (BBS), where users from these occupations may reflect on significant social issues and exchange opinions. The second is blogs, in which users (including many scholars) write articles on important social issues, such as legal reform, big cases, and theoretical discussions etc. The third one is Weibo (microblogging), which is more popular than the web forum and blogs. *Weibo* means “microblogging” in Mandarin. Mainland China's first Bulletin Board System was established in 1994 by the National Research Center for Intelligent Computing Systems (国家智能计算机研究开发中心). Since then, social network

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91 Netizen means an active participant in the online community of the Internet (Merriam-Webster online dictionary, December 23, 2013 retrieved from http://www.merriam-webster.com/dictionary/netizen)
sites, including BBS, blogs, and microblogs, have started to emerge and have attracted visually-oriented Chinese *netizens* because of their eye-catching and intercommunicative features.

The number of Chinese blogs has been claimed to be as high as 36.82 million as of December of 2005 (RenMinWang, 2005). In 2010, there were eleven main microblog providers in mainland China (Liu, 2011). It is argued that microblogs are highly valued as an effective vehicle of communication with which people like to talk about political issues because of China's specific socio-political environment because citizens in any collectivist culture are particularly more aware of their collective fates. Their collective opinions can serve as a powerful surveillance tool pressing the government when individuals can hardly influence the political process as single units (Lee, 2006). Microblogs actually facilitate a space for collective culture. Microblogs today are very popular and attract many kinds of people in China.

What has made microblogs so different from other media? First, microblogs are designed to enable individuals to connect with strangers, which engagement would not otherwise be possible as unenhanced natural persons (Boyd & Ellison, 2007). Because microblogging contains or involve fewer reciprocal relationships compared with other social networks, they are formed based upon interests rather than by replication of real worlds (Kwak, Lee, Park & Moon, 2010). Thus, individuals can experience a sense of identification with anyone who shared similar opinions, making the perceived social supports more extensive than other social network sites (Wang, 2013). This forms enlarging social bonds among digital strangers and may increase one’s confidence in the capacity of microblog users as a whole to understand and participate in politics.
(Wang, 2013). Second, emotional feelings on microblogs may also become contagious, thus easily influencing the political attitudes of microbloggers towards positive and negative enthusiasms, and this affect characteristic of new media has been able to promote political involvement among normal citizens (Barnhurst, 2011). Artfully-used microblogs become a space to educate and train the political efficacy of individuals because, the more one discusses issues, experiences, knowledge, and feelings on microblogs, the more one may become motivated to obtain factual knowledge about politics, which is followed by increased internal political efficacy (Scheufele, 2000).

Third, microblog communications are instant and spontaneous. Contrasted with traditional social media, the tweets of microblogs can spontaneously involve a large number of interested persons in certain topical discussions and form a very responsive virtual community. The type of collective political participation facilitated by microblogs is not actualized through collective presences in contiguous physical places; instead, the participants act in different time, at different venues, and with different individual and social experiences (Hogan & Quan-Hasse, 2010). Fourth, microblogs are easily accessible and comparatively cheaper than are traditional media. Even if one has no personal computer, the Internet cafés which cost less than $0.5 per hour are prevalent in most places.

The 2012 research from the Data Center of China Internet (DCCI) reports that microblog users account for 88.81% of total Chinese netizens who are age 19 or older (DCCI, 2012). Three of the most famous microblog websites are Sina Weibo, Tencent Weibo and Wangyi Weibo. Weibo products combine the features of Facebook and Twitter: for instance, users can post personal
updates with a 140-character limit, upload photos and videos, and message other users. *Weibo* has more functions than Twitter, such as commenting on others’ posts, turning a message into a conversation, and uploading and transmitting (sharing) photographs and other files with their posts. *Sina Weibo* introduced a multimedia function a year and a half before Twitter did. *Sina* launched *Sina Weibo* on August 14, 2009, and it invited and persuaded many Chinese celebrities to join the platform, enabling to occupy 56.5% of China's microblogging market that year (DCCI, 2012). *Tencent Weibo* was launched on March 5, 2010; *Weibo* registered users surpassed 100 million in February 2011. Chinese microblog users’ proportion on different *Weibo* platforms are shown below: 87.67% of *Weibo* users have accounts on *Sina*; 84.69% are *Tencent Weibo* users (DCCI, 2012). Among *Weibo* users, 7.74% have master’s degree, 54% have bachelor’s degree, and 25.94% have associate’s degree (DCCI, 2012). The people in the legal field, including professors, lawyers, judges, prosecutors, and police officers, mostly have college or above degree and can proficiently use social media as the convenient and favored tool for communication and expression. Besides these legal professionals, members of the general public in recent years also have been bringing their interest and disciplined attention to legal cases, especially criminal cases.

Among different types of users on social media, about 14 percent are opinionated users and express their own, often very strong opinions and build large personal followings (Chiu, Lin and Silverman, 2012). Legal community users often belong to this type of users, and many legal professionals have their own blogs and post discussions on legal issues. We find that a legal community on microblogs usually includes law professors, judges, prosecutors, lawyers, and
police officers, and that they will response to each other on diverse legal issues and present their own opinions.

In order to better understand online legal community, we collected social media posts on hot topics of criminal justice and analyzed their opinions, including legal reform, law revision, and important criminal cases, etc. The tweets analysis can catch a more interactive picture of the legal community. We will use these data to analyze the impact of microblog on legal reform in the second part of this chapter, describe the interactions among the legal community, and predict some future trends of legal development. Since social media data analysis has rarely been used in criminal justice research, we hope this research can yield some valuable findings. Specific data collection and our findings will be discussed in the third part of this chapter.

During our data collection on social media, we found an interesting trend to be closely related to the virtual civil society. As we know, one function of civil society is to hold government accountable through surveillance. The virtual civil society is doing similar things. The public is now watching officials through the Internet spaces. They express criticism, gather cyber data, nurture vigilantism, and organize online legal activism. Next, we will discuss details of public surveillance via the Internet.

Public Surveillance via Internet

Web–based Criticism

The Internet, as a new medium characterized by interactivity and unlimited information, may
provide a more efficient, convenient, and widely available forum allowing ordinary people to argue about public affairs and to discuss political activity even with restrictions from government (Wang & Bates, 2008). The Internet also brings transformational revolution to traditional media which now works hand in hand with social media to provide and nourish the public sphere for social change. In this part, we will use three cases to describe this transformation revolution. These three criminal cases all drew national attention in China. The first case, the *Sun Zhigang* incident, turns a new leaf for the traditional media to combine with social media and creates unprecedented effects on public surveillance. The second and third cases both combined online and offline activism together.

**Case 1 — Sun Zhigang**

The *Sun Zhigang* incident may be one successful case in which traditional media and new social media are combined to effect a legislation change. Sun, a college graduate from Central China Hubei province, worked in an apparel company in the South China city of Guangzhou. On March 17, 2003, Sun was detained by the police for failing to present his temporary resident card on his way to an Internet café. He was beaten to death three days later while he was still in police custody. Sun’s death was initially exposed online at Xici.net, a popular BBS, and this information inspired the reporters of *Southern Metropolis News* (南方都市报, *Nanfang Dushi Bao*), a traditional newspaper, to conduct a deep and professional investigation (Wang & Bates, 2008). Soon after this newspaper report, more relevant information, in-depth reports, and commentaries on the incident were published and circulated on the Internet.

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92 In China, people need to get temporary resident card if they migrate to areas which are not their officially registered residence.
The Internet created an extraordinarily open and healthy platform for the public discussions and debates and engaged the public in discussions upon the issues of social justice, inequality, and constitutionalism. Furthermore, collective opinions were created through this new but powerful channel and became a noticeable influential factor when the government was making public policy (Liu, 2010). In the end, Premier Wen Jiabao signed a decree abolishing the —Measures for Internment and Deportation of Urban Vagrants and Beggars (城市流浪乞讨人员收容遣送办法, 1982) after a State Council conference on June 20, 2003. It is no doubt an unprecedented victory with the aid of media, especially new social media (Wang & Bates, 2008; Liu, 2010).

Internet and new social media have played an important role in this rare case that the traditional media opened up for the weak and the powerless to speak out. First, the Internet helps spread the information much more widely and rapidly before the story can be censored. For example, on the first day that the Southern Metropolis News published this story online, readers’ reactions reached 10,000 within the first few hours; on Google, the number of items with the key words; an online memorial page for Sun Zhigang attracted more than 10,000 hits in two days (Tai, 2006, pp.264-265). Second, the Internet creates a more freely useful public space for people to show and share their opinions and feelings, compared with what traditional broadcast and print media can do for them. For example, many people visited the memorial page for Sun Zhigang with their best wishes, thoughtful or shallow comments, or donations to Sun's family, and they also criticized police and officials' brutality towards rural residents who are seen as lower-class citizens because their incomes are lower (Tai, 2006: 264). Third, the Internet helps create a nationwide discussion which has pushed the legislation changes on numerous issues. Many other murders under detention were noticed by the media and then by the general public, which
exposure led to a widespread offline and online discussion in relation to the unconstitutional detention and dispatch system, finally leading to the legislation change (Liu, 2011). In this case, public participation was facilitated through online space and communication, presenting a good model of institutional reform and public policy-making through positive interaction between the general public and the government decision makers using new social media in informed, smart, and targeted ways (Wang & Bates, 2008).

Case 2 — Li Qiaoming

The second case includes not only online surveillance, but also initiated offline activism in which web users also participate in the investigation of legal issues. On January 30, 2009, Li Qiaoming, a resident of Yuxi City, was detained in Jinning for felling trees without authorization. He was hospitalized on February 8 and died four days later from severe brain injuries. The Jinning public security bureau claimed that Li was fatally injured while playing hide-and-seek with other inmates, one of whom supposedly reacted angrily when his hiding place was uncovered by Li.93 Li's parents and many web users did not believe this official account, and a story about the incident appeared in a local newspaper in the provincial capital of Kunming on February 13, 2009. Thousands of netizens responded and said Li died from police beatings.

Rather than suppress the accusations, The Yunnan Provincial Publicity Department posted a notice on major Yunnan-based websites and invited the public to join in the investigation. Out of

1000 volunteers, a 15-person committee was selected, and they visited the crime scene together. But they were not allowed to view surveillance tapes, examine the autopsy report, or question the guards. They were also not permitted to interview the prime suspect, Pu Hua-yong (普华永). After disclosing the identities of the volunteers, netizens later found out nearly half of the “randomly selected” investigators were current or former employees of the government or state-run media, including three reporters (including one from Xinhua) and four public security and prosecutors’ staff. It is the first time in Yunnan, and even in China, for netizens to participate in an official investigation, though the outcome remains uncertain. Such inspections cannot solely rely on passion and idealism; they must be built upon, informed dedication, diligent social graciousness, and rational and pragmatic work. This event has again exposed the flaws of the current system and that the need to establish an independent investigation system involving experts is urgent.

Case 3 — Den Yujiao

In the first case, traditional media still had taken an important leading function in creating public surveillance, and then social media stepped in later. In this third case, social media had already started to take the major leading role and to function fully as a driving force for building public surveillance. This case opens the new ground for more and more web users to learn to use the Internet as a tool, and maybe even a weapon, to express their criticism and to watch public (and maybe eventually private) bureaucrats.

Deng Yujiao, a young female pedicurist from Hubei province was charged with murder after stabbing a Party official Deng Guida (no relation) to death on May 10, 2009, with a pedicure knife in a local hotel where Deng Guida had tried to force her to have sex with him and two other officials. After Deng turned herself in to the police, she was initially charged with murder. Deng claimed that she acted in self-defense after the official attempted to rape her. Gan Wu, a citizen reporter known as the Butcher (超级低俗屠夫), was integral to what happened next. He wrote a blog post detailing the night's events and the offenses of the officials involved using “human flesh searches”, the Chinese term for distributed researching using Internet media. Deng’s case then accumulated more than four million posts across websites. This case resonated with millions of Chinese who have become fed up with low-level corruption and social injustice. Deng was regarded as a national hero for resisting official abuse of power. As a result of the national outcry, police released her on bail and put her under house arrest; prosecutors charged her with a lesser offense of "intentional assault" instead of murder. Although government censors ten days later ordered websites to stop reporting the case, Deng Yujiao was set free on her trial, and the murder charges against her were dismissed. Some netizens thought that this result was a “significant victory of the Chinese Internet users and Chinese democracy” compared to previous similar cases. However, it is noted that the effect of the netizens' web supervision depends on the attitude of government. Web-based criticism may be used to try to modify or

96 Ibid
remove a policy where there is division on an issue within the government, but on key issues
where there is government unity, and dissent may be quashed or ignored.

Although the web-based criticism does not always make successful changes, Chinese netizens
find the power of the Internet and know they can some progress which may not have been
possible before. This encourages web users to expand their experiment with online surveillance.
Since the Internet has high volume of data, netizens find it is a good resource to utilize and to
monitor identifiably corrupt officials. Next, we discuss how web users use the Internet as
resources to expose corruption.

**Cyber Vigilantism**

In 2009, the Internet presented another gift to Chinese people: the microblog--Weibo was
launched by Sina. Microblog is a really popular web tool used by large populations. It is believed
that Weibo has an inherent micro-impact (微动力, wei dongli) because Weibo has power in
concentrating the forces of the ordinary people and people can engage in social issues with easy
activities, such as forwarding and sharing even without comments (Liu, 2011). It is suggested
that microblogging actually provides an effective way to connect different social classes and
ordinary people now have a tool to express opinions to the government and leaders (Liu, 2011).
Compared with BBS and blogs, microblogs now can exert even more impact on social issues.
Using mobile phone applications, microbloggers are able to post information or photos at the
scene, reaching their audiences in seconds. As a result, aggregated microblogs becomes a big

99 Ibid
data source where people can search rich information which provides a natural resource for
corruption watch. We have two cases to explain the microblog vigilantism.

**Case 1 — Yang Dacai**

Brother Wristwatch, *Yang Dacai*, may be the top example of microblog vigilantism in 2013.

*Yang Dacai*, the former head of the Work Safety Administration in the province of Shaanxi, was
sentenced to 14 years in prison after being found guilty of taking bribes and holding a large
amount of property which he could not account for\(^{100}\). *Yang* was a nameless official until his
pictures were posted on *Weibo* where he was photographed apparently smiling at the scene of a
tragic accident that had left 36 dead\(^{101}\). This apparent callousness raised the anger of *netizens*
who quickly conducted a human flesh search and soon it was found that the smiling man was
*Yang Dacai*.

The results had been reposted over 8,600 times on *Weibo*, and the accusations swiftly evolved
from callousness to corruption after people zoomed in on his luxury watch in that photo\(^{102}\).

*Netizens* then searched and posted other publicly available photos of *Yang* wearing different
watches, one of which cost between 200,000 and 400,000 (about US$30,000 – US$60,000). It

\(^{100}\) Taylor, Adam. September 5, 2013. Chinese Official Who Sparked Anger By Smiling At Fatal Car
Crash Smiles As He Is Sentenced To 14 Years In Prison. November 9, 2013 retrieved from
http://www.businessinsider.com/yang-dacai-smiles-as-sentenced-to-14-years-2013-9#ixzz2kCffs5CY

\(^{101}\) Kaiman, Jonathan. September 5, 2013. China's 'Brother Wristwatch' Yang Dacai jailed for 14 years
for corruption. November 9, 2013 retrieved from
http://www.theguardian.com/world/2013/sep/05/china-brother-wristwatch-yang-dacai-sentenced

Horrific Accident Scene? November 9, 2013 retrieved from
http://www.tealeafnation.com/2012/08/did-a-chinese-safety-official-just-get-caught-smiling-at-a-horrific-
accident-scene/#sthash.0ob4EUTX.dpuf
was finally found out that Yang had a handsome collection of at least eleven ultra-high-end
timepieces that he could not possibly afford on his public servant's salary. Yang was
nicknamed as “Brother Wristwatch” by the netizens, and he was soon removed from his post,
and an investigation followed. Yang pleaded guilty to charges of taking 250,000 yuan ($40,000)
in bribes and having bank deposits of 5.04 million yuan ($820,000) from dubious sources.

Case 2 — Cai Bin

Another similar story is “Uncle House”, whose wrongdoing surfaced after citizens began posting
pictures of his assets, including luxury homes, on the Internet. Cai Bin, a mid-level bureaucrat in
the southern city of Guangzhou, was convicted of taking 2.75 million yuan ($450,000) in bribes
and court has sentenced him to 11-and-a-half years in jail and fined him 600,000 yuan. Cai
was said to have accumulated at least 22 properties though his salary was less than
twenty-thousand dollars a year. Since Cai’s case, there have been further reports in the state
media of more "Uncles and Aunts" of property, who were officials from Province Shandong,
Guangdong, and Zhejiang, and each of them is alleged to have owned more than 20 properties.

103 Ibid
105 Fox News, September 12, 2013. China's 'Uncle House' given 11 years for bribes: media. November 11,
106 China Daily, October 23, 2012. 'Uncle House' under investigation. November 11, 2013 retrieved from
http://www.china.org.cn/china/2012-10/23/content_26875046.htm
These cases usually started from *Weibo*, where those cases were distributed widely and corrupt officials were found out by netizens by means of the human flesh search.

Since microblogging has a very powerful function, web users can post many pictures and videos to make very attractive postings to expose corruptive officials. These vivid postings further raise more reposting and forwarding to make extremely quick and broad information transmission which formulates powerful online movements. With equipped savvy users, this function has become more popular. There is ascending influence of the virtual civil society in China within which populist “Chinese vigilantes” organize to criticize and attack social transgressors (Herold, 2008). During the process, online participants collectively find demographic and geographical information of deviant individuals, often with the shared intention to expose, shame, and punish them to reinstate legal justice or public morality (Cheong & Gong, 2010, p.474).

It is not surprising that Chinese people ride on the technological wave to exert their critical populist impacts on social affairs, government officials, and policies. In this modern era, citizens feel it is necessary to gain information about public power in order to protect their interests while this sort of civic information about public power is otherwise rarely available and is far less transparent in the state-sponsored media (Gao, 2013). *Netizens* use web crowdsourcing and human flesh searches to seek camaraderie in justice and to develop some stable trust in a sometimes-untrustworthy governing system, and web mass participation can assure them a far higher chance of getting their pressing issues redressed (Wang, 2013).
Some people claim that the human flesh search can find structural similarities in the 1970s Cultural Revolution during which the people posted big-character posters to attack others or to speak out against injustices (Capone, 2012). The visible government leaders also feel uneasy to face high levels of cyber vigilantism from the public, and it needs to react accordingly. Next we look into the government’s reaction.

**Official Reaction to Cyber Vigilantism**

Facing the increasing cyber vigilantism from the public, a watchful and versatile government responds or reacts very quickly, with positive or negative measures. On the one hand, these reactions prove that public cyber vigilantism has real impacts on its targets; on the other hand, the public needs to learn how to improve their activism during this kind of interaction with the government they are trying to make accountable to shifting public wills. Government interactions have included opening government microblogs and supervision over online expressions through legislation and law enforcement. We explain each interaction respectively below.

**Government Microblogs**

Facing the cyber vigilantism from netizens, many governmental institutions, in the name of public accessibility and openness, have started to open up official microblog accounts and e-government websites that utilize the same interactive feature of the Internet to interact with citizens, the ones who already know how to use them and the younger ones and others who are
willing to use new digital social media to engage and talk with their government. (Wang, 2013). By the end of March 2011, altogether 176,714 government institutional accounts and 63,332 governmental officers’ accounts had been created (National School of Administration of e-government research center, 2013). The government microblogs actually are rising to become a new medium for collective opinions to emerge, whereas e-government websites are only one possible online service platform (Hunter, 1998).

Government microblogs have significant differences from what appears on the traditional government portal, blogs, and other forums due to the unique characteristics of microblogs which highlight the personality traits of users and their interaction with each other. All these traits provide a more popular and customized experience of e-governance, and government microblogs attract many people from different social classes to participate in public governance and government expands their service scope effectively to reach diverse social groups with more participation and interaction (Liu and Zheng, 2012).

Courts, Police, and Procuracy have started to open microblog accounts too, and many judges, prosecutors, and police officers also open their own individual accounts. These government microblogs and individual blogs provide resources for ordinary people to gather useful information and to interact with their government. Many big criminal case trials have been broadcast through court microblogs, such as the Bo Xilai case, in which some important video evidence has been publicized, shared, redistributed, and archived. The interactions between government microblogs and netizens are active. For example, the Police microblogs often receive reports from the public through microblogs that include emergency issues, service requests,
crime reports, and general questions and comments. Police departments also post information about public safety, traffic, weather, service, or answers to information requests. For example, Shenzhen Police posted a video to show people how to identify the thief on a bus and prevent being robbed\textsuperscript{108}.

Interestingly, many government microblogs including court, police, and procuracy are demonstrating more cleverness, creativity, and personality. Especially the Police microblogs often post meaningful parables, idioms, stories, or even jokes and humorous stories to promote good behaviors instead of didacticism. In sum, official microblogs have positive effects. First, they make information more transparent. Second, they increase communication with the public and can deliver better services better, faster, more extensively across a growing population, and at lower cost.

**Supervision of Cyber Expression**

History in the year 2008 had already manifested the power of netizens who had helped to disclose a number of high-profile corruption incidents, and quick and decisive official actions had been taken to punish officials who had been identified by the anonymous online postings, a far different and more cooperative engagement than the usual news black-out (Lye & Yang, 2009). This welcome phenomenon was related to the positive attitude to social media from the high level leadership. For example, both the President Hu Jingtao and the Premier Wen, Jiabao had recognized the importance of social media in amplifying and receiving collective opinions,

\textsuperscript{108} November 11, 2013, retrieved from http://www.weibo.com/mygroups?gid=3641806451417768&wvr=5&leftnav=1
and Wen even had a two-hour online chat with netizens in March 2009 (Lye & Yang, 2009). However, it should be noted that change throughout the whole bureaucracy system is needed and that the nominal acceptance from several high level leaders is not enough. For example, in March 2009, netizens launched a campaign to ask “officials to declare their assets” and this type of collective opinion has actually raged for years. Since the asset declaration system has been resisted from most officials in the bureaucracy, this social media campaign cannot reach the goal.109

Furthermore, websites in China may be fined or shut down if they fail to comply with government censorship guidelines. It is reported that around 1,000 censors are hired by each individual website in order to comply with the government, and 20,000–50,000 Internet police (wang jing) and Internet monitors (wang guanban) exist at all levels of government (King, Pan, & Roberts, 2013). It is argued to be a form of democratic mimicry by which rulers seek to be responsive to collective opinion (Fukuyama, 2012).

It is also found that the censorship program is to reduce the probability of collective action by clipping social ties whenever any collective movements are in evidence or expected, rather than simply to suppress criticism of the state or the Communist Party (King, Pan & Roberts, 2013). We do not know exactly the impact of government monitoring of the social media and it is an open question. As we know, social media has a flow of arguments and thoughts, and it is not easy to effectively monitor this flowing.

Social media sometimes are also used by criminals to spread rumors or make illegal profits. Since August 2013, police across China have detained a number of suspects and closed several businesses for fabricating online rumors. For example, two men in Beijing were found to have created and spread online rumors, including false information about a 2011 bullet train accident and about China's most famous Good Samaritan, Lei Feng\textsuperscript{110}. On September 9, 2013, the Supreme People’s Court and the Supreme People’s Procuratorate released the judicial interpretation on the punishment of online rumors and defamation (最高人民法院、最高人民检察院关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释). It stipulates that people will face defamation charges if online rumors that they post are viewed by more than 5,000 Internet users or re-posted more than 500 times\textsuperscript{111}. Some scholars argued it is a reaction to rising liberal ideas, and some online celebrities have been detained.\textsuperscript{112}.

### Online Legal Activism

Although the government reacts to public cyber vigilantism, people feel that very few and very small actual changes being made and sometimes there are negative reactions. Online activists realize that more active activism is needed. As discussed in last part, China’s Supreme People’s Court and the Supreme People’s Procuratorate issued a new judicial interpretation on September 9th, 2013, sanctioning fines or prison time for those profiting from spreading rumors or deleting posts. Anyone deliberately posting lies, for profit or not, may face up to three years in prison if


\textsuperscript{111} Ibid.

\textsuperscript{112} Ibid
their posts are shared more than 500 times or viewed by more than 5,000 people. The speaker of the Supreme Court said that the police, as part of their crackdowns on online rumors, have detained people for spreading false information, but a lack of detailed guidelines has led to inconsistencies from province to province in the handling of cases. But the SPC speaker promised that netizens who help expose corruption online will not face charges, even if their posts are not 100 percent accurate.

The First Case of Online Rumor

The first case of an online rumor after this interpretation involved a teenager, Yang, from Zhangjiachuan County in north-west Gansu province. Yang was detained after he questioned the local police force's conduct after a corpse was found outside a karaoke parlor and the police claimed the man had died from a head injury after his falling from a high perch. On September 14, 2013, Yang wrote on his microblog page that the man had been murdered. He wrote “The karaoke parlor boss is an employee of the court, and there's been a conflict between the police and the masses – they beat up the dead man's family members.” The post was retweeted 962 times and was subsequently deleted. The county court said Yang had "fabricated facts" because the parlor boss was actually a court employee's spouse.

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114 Ibid
Microblog users reacted to the teenager's detention with thousands of tweets, launching an online campaign for his release by retweeting a post bearing the slogan "Save the Child!" more than 10,000 times, adding thousands of comments. Much of the anger was directed at the new judicial interpretation and the perceived bullying of a teenager. Further, people started an online search and found that Zhangjiachuan, a state-level, poverty-stricken county has wasted extensive government aid on vanity projects, including the luxury office buildings, and that the local police chief had bribed his way into his job.

Two activist lawyers, You Feizhu and Wang Shihua, traveled to Zhangjiachuan county and campaigned for his release. These two lawyers posted their 72 hour experience with detention center and the police in Zhangjiachuan county and more than 40 prominent lawyers signed a petition calling for Yang’s release. Lawyer You and kept contact with the microblog community.

You posted tweets saying “the center denied allowing us meeting with Yang and they need to ask permission from their leaders… September 22, 10:37am.” “We asked officers to request permit from leaders…September 22, 11:03am.” Lawyer Chi responded to these tweets with advice “Watch any signatures on whatever the police ask you to sign…do not sign on empty paper…September 22, 12:44 pm.” You continued posting “Officer Wang said we can meet Yang

117 Ibid
118 Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/youfeizhu
in 2:30 pm this afternoon...September 22, 13:06 pm.” “We waited for the morning and afternoon, but still no meeting is allowed. But now two police officers from the county police department came and they can meet Yang immediately... We are angry... September 22, 15:57 pm.” Two lawyers waited until around 22 pm that day to get the chance to speak with two up level officials from the county police department.

At the same time, the online campaign was continuing. Posts about a corruption case that incriminated the police chief in charge of Yang’s detention also circulated online. The pressure from the public has pushed the provincial police bureau to cancel the criminal case and to change the punishment to 7 days of administrative detention. Yang was released around 1am, September 23. This victory raised public optimism for the power of online activism. Lawyer Zhou Ze posted on his microblog “If China’s netizens unite, who can stop them?!

As a new popular communication tool, online social media have open a new era for Chinese people who expect to ride on the new wave to build a society of justice and rule of law. It is no doubt that new social media made certain progress, including the development of e-governance and cyber supervision. As we discussed before, more than 70% people on Sina microblog have bachelor or associate degrees, and the people in legal field, including professors, lawyers, judges, prosecutors, and police officers, mostly have college or above degree and can proficiently use social media as the convenient tool for communication and expression. We find that microblogs have many users who are legal professionals and sometimes their tweets express ideas and

concerns about legal reform. We then follow these legal professionals and use them as a sample to study online legal community. In next part, we use the data collected from this sample to do tweets analysis and describe the current state of legal community.

Microblogs and Online Legal Community

As we discussed above, the Microblog have played a significant role in Chinese society and many netizens are trying to use it to exert supervision over public power. Since criminal justice is a major part of public power, most hot topics on microblogs are about criminal legal issues which provide good data resources. There are several advantages to use data from microblogs. First, the microblogs have a large legal community made of law professors, judges, prosecutors, lawyers, and police officers. These legal professionals mostly have verified status on microblogs and their postings have validity in representing related legal professions. Legal professionals on social media are opinionated users and express their own opinions on legal issues and hot events. I collect blog posts on hot topics of criminal justice and analyze their opinions, including legal reform, law revision, and important criminal cases etc.

Second, the Microblog itself is an interactive community in which people tweet, retweet, forward and reply towards each other. Different legal professionals often interact with each on diverse legal issues, including the hot cases, social events and legal thoughts etc. It is possible to catch the current state of Chinese legal community from these interactions. Third, the microblog postings are spontaneous and active narrative launched by the web users themselves. Since social media data analysis has rarely been used in criminal justice research, we hope that my research
can have some valuable findings. These postings are what web users want to express, not the passive response to investigator-composed survey questionnaire. Without much intervention from investigators, we could observe more free and natural expressions from people.

**Tweets Analysis**

From tweets I collected, one category belongs to discussion on legislation and policy. The other category is more directly the interactions among legal professions.

**Legal Discussions on Microblogs**

It is hard to categorize these legal discussions on microblogs because their content is so broad and touches almost every aspect of legal system. I try to group them into hot topics. I list each topic separately below. Those microblogs’ ID will be in blue color.

**Hot Topics**

One type of legal discussions includes hot topics in legal system and attracted many responses. Some topics have been discussed offline in daily life for a long time, so unified opinion can be reached on microblogs.

**Topic on Procuracy Supervision**

A discussion on the supervision power of procuracy on November 7, 2013, was retweeted 263
times and received 80 responses. This original microblog started by a judge (汉德法官) “We need to establish independent judicial system in order to build rule of law, and the supervision power of procuracy will become the target of reform.” villyy said “The first step of problem in China is to separate legal cases from letter and visit system…rule of law has a long way to go…” 姚燕倩律师 said “Let’s start from urbanization which produces the sense of rule, and nurture citizens…it makes more sense to talk about rule of law in an urbanized society.” 今天立夏: “Rule of law may have more than one way to go, judicial independence is not a religion with no doubt. It is not necessarily that judicial independence must exclude supervision.” @学者游伟: “The multiple roles of procuracy must be changed, otherwise, the supervision function cannot implemented well.” @南方的熊888888 said “How can the procuracy supervise the trial when it is one part of the trial? It is funny that a player becomes the judge of the match. I heard a criminal case once, and the prosecutor opposed because the judge allowed the defense lawyer talk a little more. Is the procuracy supervision supposed to restrict the defense right?”

A prosecutor (常州检察院巢琨宇) responded “Both judge and prosecutor are servant of law, not the master.” A previous prosecutor @Penaljudge said “I hate that people repeatedly try to prove the supervision power of procuracy, and this is the reason now I take a career as a judge.” 山寨检察官在福建 said "Procuracy supervision is learned from USSR (Union of Socialist Soviet Republics) and should have been abolished. The key is the independence of Jude without which no judicial independence will exist. Work hard, folks.” It seems that most people agree that judicial independence is the key in legal reform, and even prosecutors themselves have no solid

120 Sina Weibo, November 1, 2013 retrieved from http://www.weibo.com/1552302990/AhCKWhELo
support for procuracy supervision.

**Topic on Judicial Independence**

Another topic, judicial independence, also has been discussed for a very long time offline, and now the people are braver when they express their viewpoints online. From their tweets, we can see judicial Independence has been agreed by most people. On October 6th, 2012, Professor and lawyer He Bin posted a tweet on Sina Weibo and commented on the People's Daily’s article which praised the Supreme Court for its consistent resistance to the wrong ideas of Judicial Independence as a Western thing. His original post said that “Judicial independence exists in Japan, South Korea, and India…Taiwan, Hong Kong, and Macao of our country also have judicial independence. Is judicial independence a Western idea or a world-wide idea? 121” His post received 3299 responses and was retweeted 9810 times. Most people, including scholars and lawyers, agreed to build a sustainable Chinese form of Judicial Independence and listed their reasons from history, theories, and practice. 韓青子 asked “Is not Marxism also from the Western countries?” Scholar Xie 谢佑平 said “There is no justice if there is no judicial independence”. He further commented, “Marx himself actually promoted judicial independence”. 可可先生 said “…People’s Daily represents a certain interest group. Judicial independence is not good to those who serve this group…”范忠信 said “the nondependent judicial system is an organ to implement the order of upper level officials”. 龙元富律师 said “judicial independence does not belongs to the West only…it belongs to China…the

121 Sina Weibo, November 1, 2013 retrieved from http://www.weibo.com/1215031834/yF9pCsC0K?type=repost
administration of justice is the terminal tool to solve conflicts among human
beings…independence is the nature of administration of justice.” 绿水青山总关情 said, “It is
hard to get justice if there is no judicial independence. The justice will be disturbed if it is not
independent. Judges only can serve upward if it is not independent, rather than serve law and
facts…It is common sense, no matter the West or East…People do Letters and Visits instead of
resorting to lawsuits because of no justice in administration of justice. “

Ordinary people mostly posted ridiculing the comments to this problem. 道德如是说 said “It
will be easier to say that judicial independence belongs to places outside of the mainland and that
we here need human rule.” 黄东 Sir said “It is socialism with Chinese characteristics”. 湖边静思
said “The ‘West’ is a political concept…that equals ‘the enemy’…we oppose everything that our
enemy supports!” 傻菇粮 said “Why do good things always belong to the West?

Why? …” Some people posted angry comments such as 谭奥航 said “I have been sick about the
People’s Daily…Where is the dignity of law? Isn’t our country building the rule of law? Or is it
can the interests of a party override the rights of a country…and its people, enjoying all benefits
without any of the obligations… ”. A few people disagreed. 注疏哲 dw said “Judicial
transparence is good. Independence, how to explain it?…It is just crying from another interest
group…”.

Some people’s thoughts were more insightful. 郑秀军 said “When we talk about the judicial
independence, we should talk more about how to gain this independence. What about whether
the qualifications of our judges can take this responsibility and meet the criteria? We could realize our judicial independence earlier if all of us were thinking, promoting it, and working hard for it!” Scholar Chen 陈泰和-民决团 argued that “It was nice to see so many people supporting judicial independence, and this proved that the rule of law has been promoted in the people’s minds. However, I worried…that it will be a fake independence if the judicial independence is based upon the Continental law with which many scholars agree.” He explained further, “I proposed that judicial independence must take the form of jury which takes control of the court, and this is the really scientific independence”. Another comment from @柳刀叶 said “Justice could not exist even with judicial independence. Let’s remember the Inquisition during the Medieval period in Europe…the Inquisition was one of the darkest judicial places.” BAOGANGSHENG said, “There’s no need to call for judicial independence, and there is a better way to check and balance. Require the administration of justice under the Political Consultative Conference and mandate that all chief justices be non-Communist party legal professionals.”

Some people provided suggestions. Scholar Zhou 周永坤微博 suggested: “The administration of justice should be independent on different levels…supervision should not exist because it will compete for the authority…" This post was retweeted 238 times and received 64 responses. People from different professions posted their comments, also. Lawyer D 地道法律英语: “It is too narrow to define supervision like you did…” Judge Y 一生不读报: “It means no supervision from any outside power, avoiding the intervention. The internal discipline procedure can prevent

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122 Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/2927612341/AhY3zlKuG
and detect wrong cases and correct them…” Lawyer Zhu 朱中华律师—国际国内工程律师 suggested: “List all the court decision documents outside the courts and publish them online permanently, let the society judge their work…judges publicize their property and income…” The original blogger Zhou further commented that “the judicial independence should be the independence of judge, not the independence of court”. Judge Z disagreed: “The independence of court is the foundation of judge independence; it is too early to talk about judge independence since the court has not been independent”. Journalist Ye 叶竹盛 said, “supervision should exist in certain ways, for example, judges can be elected…media can monitor…but these supervision should not disrupt judicial independence…”.

**Informational Tweets**

The second group of tweets is informational, providing legal knowledge, reflections, and ideas. These tweets were written mostly by legal professionals who are dealing daily with criminal cases and who have deep understanding about the criminal justice system and its procedures. These tweets on the one hand can reflect the quality of legal professionals, and on the other hand they disclose certain problems in the system calling for solutions.

First, for some more complicated issues, microblogs lack space to elaborate and mostly play a role to distribute information. In a tweet posted on August 24, 2012, lawyer Mao (ID on microblogs is 刑诉毛立新) worried about the tentative Supreme Court judicial interpretation that the courts can punish lawyers if they act against court order or propose justice administration
organs to cancel lawyers’ practice certificate. This tweet received 160 responses and was retweeted 539 times. Many people responded to express similar concern and criticism. Some doubt this interpretation is legal. @alxonC said “Is this interpretation against law?” 湖边问道人 said, “It is hard for some Judges to make something lawful since they do not understand law.” @倚亭览书 said, “I am surprised to know that the Chief Justice in Supreme Court has no law degree.” 贾军武律师 said that “The Court punishing lawyers exceeds its judicial power.”

Second, some legal professions used long tweets to share their reflections on the criminal justice system. For example, in recent years, more judges and prosecutors have high degrees in law and have started to reflect systematically on the legal system, systemically and comparatively. In terms of the limited judicial capacity in the Chinese courts, Prosecutor Li 检察官李小萌 analyzed: “We have non-judicial officials in the courts, and judges also assume many other social responsibilities besides judicial jobs…” Judge Q 倾城 said, “I found that the procuracies always protest pro forma, no matter whether the court decisions are just or not, because they have to protest a certain number of cases every year to complete their required quotas …”. 深客 法缘 said, “Having served the court almost 20 years and having supervised more than ten intern students so far…I hope they all read more classical law books and will not serve as judges unless they love this career very much…it is hard and burdensome to tell them why…” He further commented, “The administrative style of court system and bureaucratization are the obstruction

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124 Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/p/1005051898426140/weibo?is_search=0&visible=0&is_tag=0&profile_ftype=1&page=40#feedtop
to judicial independence…it is wrong to use an administrative system to hold judges accountable…”\(^\text{125}\)

Third, lawyers were more concerned about the practice environment. Lawyer Zhou (周泽律师) worried that “this may become another big stick to hit on lawyers.” Lawyer Gan (甘元春律师) said, “If this becomes true, lawyers become the ears of the deaf.” Lawyer Zhang (张国华) claimed that “judicial interpretation cannot exist if it is against law.” Lawyer Xu (徐宗新) wrote “Lawyers cannot abuse their power…the public power must not be abused, either; the abuse of public power has worse results.” Lawyer Cui (崔小平律师) wrote, “This is trying to get rid of all righteous lawyers and make them become decoration. Once lawyers become decorations, abuse of power will become rampant; how can citizens’ right exist then?”

Lawyers expressed their confusions in working with the court, the procuracy, and the police. Lawyer Zhu 朱明勇律师 posted on January 25, 2013, to puzzled aloud, “What kind of lawyers can help the defendants? You even cannot enter the court; no one lets you check the case file; and the case already has exceeded the time limit. This is the current criminal defense with Chinese characteristics.”\(^\text{126}\) Lawyer Mo 莫梦觉律师 responded that “I feel that it is more useful to be ‘Sike (死磕)’ lawyers and fight for the justice until death.” Lawyer Zhang said “One of my cases has been sent back to trial, but the original court said that they did not find this case; the secondary trial court did not have this case either. Soon afterwards, I found that this case had

\(^{125}\) Ibid

\(^{126}\) Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/1264080891/zg9CEASUo
been referred to a local procuracy of another city… no one knows why the provincial procuracy changed jurisdiction…” Lawyer F said that “If the lawyer brings an order from the central leaders, the court will welcome the lawyer sincerely”. Lawyer Xu dee1976_许小状 said, “The worse is that you were trained not to make hard time with the police, procuracy and court before you enter the profession, and the criminal defense is like to cooperate with them to deal with the defendants…” he further said that “… We lawyers are even less capable that the security guard in front of the court”.

**Emotional Tweets**

The first type of emotional tweet is the strong opinions which propose some opinions which have strong public support. These tweets usually are prevalent hot topics during any period of time, extended or brief, especially when a big event happens. For example, lawyer Zhu 朱孝顶律师 posted on August 18, 2012, claimed that he was beaten and thrown out of the provincial high court in Shandong province on August 17th. Since August 18, 2012, lawyer Zhu has tweeted this issue using on his microblog the title “Yelling once each day!” to call everyday for apologies from the court. After 155 days, no apology has been given. Scholar 徐昕 repeatedly posted, once every day, a tweet on the “Nie Shubin” case and called for justice for Nie. His original tweet, posted first on February 22, 2013, was retweeted 354,902 times and received 35,313 comments. Many people responded that Nie has been wronged and that the court should redress his case. As I discussed in a previous chapter, the Hebei high court maintained its

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127 November 12, 2013 retrieved from http://t.qq.com/p/t/201046066188190
decision and insisted that the evidence cannot prove that Nie is innocent. This type of “Yelling once each day!” has been used often by lawyers and scholars on microblogs to call for justice and to redress issues. The lawyers who are insisting on the “redressing of certain injustices” obtain a name as “Sike(死磕)” lawyer, which literally means one who fights until death for justice.

The second type of emotional tweet is more like releasing personal emotions of anger, sadness, and disappointment. @一口馍 said, “It seems that we only can rely on media and microblogs to prevent this come true.” @狐狸懒懒 said, “Fortunately, I did not choose law as my major.” Lawyer Wang (王绍涛律师) wrote, “In many judges’ eyes, lawyers are unnecessary”. Lawyer Guo (郭爱律师) asked, “If the court can punish lawyers directly, can they punish the prosecutors?” Another Lawyer Zhang (@张锦宏律师) ridiculed the process: “The interpretation should be stricter and we should eliminate the legal defending system; let us all go back home and sell sweet potatoes.” Lawyers also proposed certain solutions: some proposed the constitutional review over judicial interpretation to correct the abuse of judicial power (@律师张国华); some supported that the lawyers’ guild had sent an opinion report to the National People’s Congress and Ministry of Justice (@江净律师). Although there were 160 responses, most were releasing anger, and only a few demonstrated clear and useful opinions.

It is optimistic to see more and more people, even non-legal professionals, starting to participate in online discussions on legal issues, and their participation can not only show a foundation for potential reform; it also could draw broad attention to the issues of legal reform. Legal
professionals, the pioneers for the legal reform in physical world, are also leading online discussions in the social media. However, they have diverse backgrounds which lead to personal conflict with one another. How do they communicate and interact with each other on microblogs? What issue types are they interested in discussing? The following analysis shows the state of current legal community on microblogs.

Legal Community on the Microblogs

Chinese legal community includes lawyers, judges, prosecutors, police and scholars. Different from Western countries, Chinese legal professionals were all government employees before legal reform. These people were called “in the system” and they can switch jobs among the system. After 30 years legal reform, lawyers are gradually separated from the system, while judges, prosecutors and police are still civil servants in the system. It is understandable that there is conflict between lawyers who are “out of system” and those judges, prosecutors and police who are “in the system”.

Microblog accounts for lawyers and scholars often use their true identities, while accounts for judges and prosecutors quite often use fake names. For example, they use “One judge”, “Small judge”, “A judge in local court”, etc. This may show that lawyers and scholars have more career freedom, or the judges and prosecutors may understand reputational risk in an unregulated digital environment of possibly unprincipled speech and other behaviors. Prosecutors and police officers discuss legal issues on microblogs less than do scholars, judges, and lawyers. Prosecutors are
relatively silent on hot topic discussions, and their tweets mostly transmit legal or other
established knowledge or widely-settled principles. The twelve tweets we collected from police
officers either disseminated noncontroversial knowledge on how to prevent victimization or
accidents, or to distribute event warnings.

Judge vs. Lawyer

It is not unusual that judges and lawyers argue against each other on the microblogs. Judge H 汉
德法官 posted a tweet to Scholar He 何兵 saying that he has criticized too much about court
work without facts and that he hopes that he can post his tweets more cautiously129. This tweet
was retweeted 1026 times and received 645 responses. Scholar He 何兵 responded, “Should you
be more specific? Do not know how you have so much superiority… ” Many people said that
there is freedom of speech, and different opinions should be allowed to exist. 假装是法官 said,
“We should support Scholar He since too few scholars can speak up… you can tell the specific
points that he did not speak well and let people discuss…” 帅帅的流氓兔 further commented,
“Judge H has superiority since he is in the system…” lawyer Q 喬老爺 pointed out, “some court
even ruled without facts, how can you require other people do…” Some people thought that
Judge H represented important figures from court to warn He since his speech threatens the
interests of judges.

129 Sina Weibo, November 12, 2013 retrieved from
http://www.weibo.com/1552302990/yFcEMiZZQ#_rnd1384819848615
Lawyer *云之南爨水流* said, “Lawyers have better credentials than judges”. Lawyer *Wei 开诚律师权家林* said, “the court should reflect on its culture and mindset, raise the career ethnicity of judges, get rid of judicial corruption…” Lawyer *Q 青石律师* said, “The problem now is not that lawyers do not respect judges, actually most lawyers obey the arbitrary judges too much, we also break our waist”. Lawyer *W伍雷* said, “Only real judges rather than the accomplice should be respected”. Judge *Y Yanlipingfaguan* said, “I always respect lawyers…what if judges’ rights are intruded?” Another judge *Q倾城* pointed out that the fight between lawyers and judges are useless and only lead to less trust in justice. Legal scholar and lawyer *Xu 徐昕* said, “All legal professionals need do reflection…as a part-time lawyer, I hope lawyers can respect judges to the most degree”. Lawyer *Si 斯伟江* said, “Legal professionals cannot reach agreement because there is a hand behind judges. Lawyers can criticize this hand, but judges cannot. It will get better if judges start saying no to this hand one day.” Lawyer *腌小鱼儿* said, “I hope that all judges know that judges should take more responsibilities in building judicial authority and credibility”.

In August 2013, four senior Shanghai judges were suspended from their posts after it became evident that they had hired prostitutes, and this scandal drew criticisms from lawyers on microblogs. Lawyer *Chi* posted on August 8, 2013, that one judge had not been suspended because he got drunk after the prostitutes came. She asked, “Can we people continue to feed these alcoholic guys as judges? Let them roll back home and plant sweet potatoes!130” The second sentence in China means that civil servants should serve the public well; otherwise, they should go home planting and selling sweet potatoes. This was retweeted 9611 times and received

130 Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/1935084477/A3KcAk0JH
2078 responses. Most posts ridiculed those judges and agreed that they should be fired. Lawyer Yang noted “Alcohol saved him…is that court so dirty?” Lawyer Xiong commented, “A judge like this still got protected, and I see the root is officials shield one another…” SYU said, “We change nothing except for complaining, since all other civil servants who have not been found out are the same…”

We are not pessimistic about these arguments between judges and lawyers because they represent the possible improvement of the Chinese legal system. Healthy debating can reveal truths and help the diligent and publicly-concerned to improve the rule of law. The terminal goal of judges and lawyers is the same: to achieve justice.

**Lawyer vs. Lawyer**

Besides the conflicts between judges and lawyers, lawyers of diverse backgrounds also have conflicts with each other. Some lawyers who had worked “in the system” have since switched to legal practice. Others went to legal practice directly after passing the bar exam. Interesting, these previously “in the system” lawyers are finding success easier because they have wide and well-established connections. For example, lawyer Chen is a very famous lawyer who has been given an important role in several big lawsuits to help weak groups. He used to work in a provincial police bureau, a provincial political and legal committee, and a provincial high court, and then he switched his professional focus to become a lawyer. He posted a tweet on Sina Weibo saying that “Many lawyers do not know that lawyers also have professional titles which are reviewed by the government. I here show you all the files from the government named as
‘Confer 21 people (including Chen) who obtain the high level professional titles of lawyers and greffier’\textsuperscript{131}. Chen’s proud tweet received 242 responses, most of which are doubts and criticism.

Lawyer \textit{Lv (吕峰律师)} said that “the professional titles are not good for the growth of lawyers’ independent personality and professionalism.” Lawyer \textit{Si (斯伟江)} commented “I heard that the first level lawyer used to be like a high level engineer and that was qualified to buy a sleeping berth on the train. Now, anyone can buy it with money; I think that this lawyer review system should have been abolished.” Lawyer \textit{Xing (邢建民律师)} criticized legal titles, saying “Having an unceasing affection for professional titles, pleased with his past experience as a government bureaucrat, he is actually fond of the old bureaucracy system.” Lawyer \textit{Li (李律师在上海)} said “If you value professional titles that much, go back to being a government employee again. If we want to build judicial independence, lawyers have to be independent first.”

These conflicts are not negative because it means that Chinese lawyers are seeking professional identity after their being separated from the state system. It shows that the profession of lawyer is becoming more mature and independent so that lawyers can play better roles in promoting both fair law and sustainable social justice. It would be wrong to say that the profession of lawyer lacks solidarity, since there are many moments when we can see lawyers uniting across their microblogs doing legal activism. There are many examples of the solidarity of Chinese lawyers.

\begin{footnotesize}
\textsuperscript{131} Sina Weibo, November 12, 2013 retrieved from http://www.weibo.com/1803570001/yCO9Ayt8D#_rnd1384388398567
\end{footnotesize}
We have discussed the *Li Zhuang* case in chapter 4, and this case is the start for Chinese lawyers to group together to protect their own rights. In *Li Zhuang* case, twelve lawyers provided free legal assistance to help *Li Zhuang*, a lawyer who was charged of perjury. This event was seen as the self-preservation of lawyers. In addition, during the first case of online rumor, which we discussed in the first part of this chapter, lawyers from diverse areas united online to support the two lawyers who were working on the spot.

Another example of solidarity in legal profession is the *Beihai* lawyer perjury case. On June 13, four lawyers who were defense counsel in a murder trial in *Beihai* were detained by police on charges of “witness tampering” (妨害作证罪) under Article 306 of China’s Criminal Law. Many lawyers in China to form a special group to provide help and a six-lawyer defense group was formed on June 26 and set for *Beihai* to provide legal assistance to the detained lawyers and their defendants.

This event was broadcast on the lawyers’ microblogs to release information instantly and to call for more support for the accused. Lawyers around the country participated actively in this event, following and forwarding tweets, and responding with suggestions. After 48 hours, the local police were forced to release three of the four detained lawyers, all except for lawyer *Yang Zaixin*. *Yang* then was detained in jail for nine months, then changed to residential surveillance, and then put on bail. This continued until February 7, 2013, when the perjury case was cancelled and *Yang*’s innocence was decided. During these 15 months, many Chinese lawyers paid close attention continuously to Yang’s case; posted microblogs almost every day to call for the release
of Yang. Chinese lawyers need to speak out and act forward both for their clients and for themselves. Although they may have conflicts sometimes, professional solidarity is inevitable.

**Prosecutors**

Compared with judges and lawyers, prosecutors on microblogs are relatively quiet. Prosecutors rarely argue with other legal professionals and discuss hot criminal justice events. Most of them post legal knowledge on microblogs and rarely. For example, Prosecutor Leng 冷月检察官 tweeted to clarify the misunderstanding of why the procuracy lodge protests against court judgments and said, “Prosecutors protest against court judgments based on objective facts…the procuracy also protests if the court convicted the innocent people…” Another Prosecutor Ma 检察官马草原 persistently posts legal knowledge on his microblogs. For example, he wrote, “It is depressing to be asked that ‘procuracy is also court, right?’ I have to tell them again that the court is the state judiciary, and the procuracy takes charge of legal supervision… it seems that we need to promote more legal knowledge…”

Some prosecutors dared to express their opinions. For example, Prosecutor Yang 检察官杨斌 said, “Although I belongs to the system…I live based on my knowledge and capabilities…law is my king”\(^{132}\). Her tweet received 65 responses and was retweeted 255 times. Most people are positive, though some people think that she is using high-flown words. She also

\(^{132}\) Sina Weibo, November 12th, 2013 retrieved from http://www.weibo.com/p/1005052184287602/weibo?is_search=0&visible=0&is_tag=0&profile_ftype=1&page=16#feedtop
wrote, “Now I am not that excited when corrupted officials are discovered and sent to prosecution…I do not mean to sympathize with them…I am now feeling that it is useless to catch several corrupted officials if the system which nurtures those evils cannot be removed or changed…”

It is not difficult to explain how different legal professionals behave differently on the social media. Prosecutors and police officers are less likely to post strong opinions because their organizational structures are more of a hierarchical bureaucracy, which clearly has a much stricter management. Court organization is no less bureaucratic, so judges also rarely write posts to criticize the system. Instead, they debate with lawyers who often criticize the courts and the judges. On the one hand, this debate shows the lack of understanding between different legal professions and the pressure lawyers feel from the bureaucracy during their practice. They can do little about it but to complain and debate with the judges online. On the other hand, the Internet provides a space for legal professionals to discuss and get involved in the rough rule of law journey.

**Summary**

In this chapter, we look into the impact of the Internet on Chinese legal system. The Internet has brought progressive changes to Chinese society, both in the physical world and in the people’s minds. First, the Internet has facilitated an online community which provides the foundation of a

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**133 Sina Weibo, January 2nd, 2014 retrieved from http://www.weibo.com/p/100502184287602/weibo?profile_flytype=1&key_word=%E6%88%91%E7%8E%B0%E5%9C%A8%E5%AF%B9%E8%B4%AA%E5%AE%98%E8%90%BD%E9%A9%AC%EF%BC%8C%E4%B9%9F%E4%B8%8D%E4%BC%9A%E6%8B%8D%E6%89%8B%E7%A7%B0%E5%BF%AB%E4%BA%86&is_search=1#_0**
nationwide public space. Second, the Internet has provided the possibility and a public space for open public surveillance of public actors. Third, the Internet, especially the new social media, has involved both the legal professions and the general public in both legal discussion and legal, social, and political activism. There is a great potential for the new social media and the Internet to invent and develop an important role in legal reform if it can support robustly evidence-based activism and develop its own mechanisms for peer review and integrity enforcement. However, it should be noticed that online community needs support from the real world and that virtual legal activism is not enough to make real change. Through those online discussions and arguments, we can see some of the conflicts among the Chinese legal professions and various interest groups. Legal professionals from diverse career paths and background may have developed substantially different opinions on legal issues and concepts, but argument is much better than silence. If we look through this unfolding history, we can see that the online virtual public space is now connecting these discussions in ways that can promote development of a civil society and prepare it for deep changes in the future.
Chapter 7   Conclusion

Background

In this dissertation, we have presented four different types of materials including historical review, data from current criminal courts, case studies of significant modern historical importance and change, and data from social media. We argue that it is necessary to study and carefully review the deeply formative impacts of the inherited bureaucratic system on the broader society if we want to adequately understand the courts and the criminal justice system in China. For this purpose, we reviewed the thousands of years of Chinese history to explore the deep roots of the mandarin bureaucracy, and then we examined the current status of courts and the criminal justice system, using eleven interesting criminal cases. Then we looked beyond the physical setting to consider the possibilities and current uses of the social network and online community. We examined this potential arena for the battle between bureaucracy and a rising civil society, and then we explored its potential impact on the courts and the criminal justice system.

The Chinese government is facing many challenges now, such as restructuring the economic system, responding to the increasing social demands, reducing the endemic corruption, and controlling horrendous environmental pollution. Some well-grounded legal system is essential if we are to complete these tasks well. Some scholars have argued that there is no real legal
system and that the judicial system is tied to the political system in China (Lubman, 1999). Lubman (2012) also stated that Chinese legal institutions, especially the criminal law, are part of a political system. In this dissertation, we look into Chinese criminal courts and have some major findings below.

Findings

Looking back to Chinese long history, we find historically that the Chinese court was born as part of a huge government bureaucracy and integrated with society under the executive or administrative branch. China is a permanently bureaucratic society. Chinese bureaucracy is different from Weberian bureaucracy; Chinese bureaucracy focuses on the mandarins, who are in bureaucratic positions. In ancient times, Chinese mandarin bureaucracy was composed of generalists (mandarins), and their recruitment was based on competitive examinations. Entering modern times, party-state emerged, and the judiciary now is integrated under the leadership of the Community Party. Previously, the Chinese judiciary had not gained an opportunity to build its own independent authority.

A mere 65 years after 1949, almost two thirds of a century, a comprehensive socialist legal system in a very old society but a very young nation is being formed while the court itself is becoming more bureaucratized. These courts are led by the committees of CCP of each of the corresponding districts, and the judges are cadres who are selected, trained and managed by the CCP. The court is also more bureaucratized inside with even more divisions, offices, and staff. The numbers of staff working in the court have increased dramatically from 59,000 in 1978 to
300,000 in 2008 (Liu, 2009), a five-fold increase in only 30 years. Today is six years later still. The current bureaucratized court system does not support an independent and powerful judiciary, and the court system is under the leadership of Party and government. Local governments can dominate the judiciary easily through financial measures. Judges are actually civil servants of a vast government bureaucracy which is subject to a general cadre evaluation system. Courts become a tool for conflict of resolution instead of pursuing broader social goals, perhaps justice, and the courts are without an independent legal spirit.

It is not easy to explore the institution of the Chinese criminal court in a bureaucratized Chinese society. First, the organization and bureaucracy of the criminal court is mainly closed to outsiders. Second, the bureaucratization is an abstract concept; it is difficult to operationalize it statistically - with static measures. Third, the bureaucratization is a process and must be understood in a dynamic way rather than with static / statistical measures or numbers. Considering all these challenges, this current study uses both case studies and social media analysis as its main methods to develop a dynamic, vivid depiction of the Chinese criminal justice and of court work. Legal case studies and social media analysis have provided here – and would provide other researchers - deep insights into the administration of justice and criminal case processing in China.

Eleven criminal cases which have attracted nationwide attention were selected for qualitative analyses. These cases presented diverse issues regarding the impact of Chinese bureaucracy on the court and the institution of criminal justice: the cultural pattern of ordinary persons seeking justice and remedy by appealing to higher administrative authorities instead of to or through the
court; the hierarchical bureaucracy provides a perfect environment to nurture absolute power and to trample upon the law by deftly reframing its points; “close” relationships of mutual collaboration among criminal justice agents without mutual supervision; the intervention to the criminal justice process from abused executive power. These cases show that a judiciary without independence might not assure people’s confidence in justice.

Legal reform in Chinese history has emphasized following certain leading politicians instead of calling for the development of general excellence and the participation of ordinary people because civil society hadn’t matured sufficiently to sustain general excellence in broad citizenship. Today, the Chinese people’s achieving economic abundance supports their becoming more and more aware of their civil and political rights. The criminal justice issues, an important part of social development, have raised interest in the issues of the newly emergent Chinese civil society. In order to show vividly this special arena in Chinese society, we have researched and collected data from selected social media, including blogs, microblogs, and discussion forums. We have compared and studied these data to analyze the impact of social media on Chinese society and its possibilities of legal reform. Although the highly centralized bureaucracy is powerful, the rapid development of modern technology brings both certain challenges and great possibilities, some not yet envisioned because future technologies may not be foreseeable. The Internet potentially overcomes barriers of time and place for the communication among the population and for enhancing our collectivism in a large country with a very large population. The electronic communication has shown the possibility and space for an open public surveillance.
The prevalent expansion of Internet use is creating an amazing chance for people to congregate publicly, and to discuss social issues and their opinions about them. It also helps to build some important dynamics in a maturing civil society through deft uses of virtual public space, online community, and the informational potential for a public surveillance function regarding the courts and the rest of society. There are specific examples of how the Internet helps the people overcome profound barriers brought from time’s influence and the limitations of geographic place, since communication and collectivism in a big country with a large population must be continually improved and reinvented, especially in the areas of our study.

There is an active legal community on the Internet social network, including law professors, judges, prosecutors, lawyers, and police officers. They are leading legal discussions, react to each other upon legal issues and present their own opinions. Legal professions could potentially anchor institutions of civil society and their opinions could present a clearer picture of current civil engagement in China. These comprehensive discussions and debates can help reach common understanding and thus lay a solid foundation for future legal reform.

As we discussed before, mandarin bureaucracy has had a tremendous impact on the Chinese court. In the following, we will give the broad pictures in the following part. First we look into the characters of Chinese bureaucracy. Second, we check two important concepts in Chinese history, one is feudalism, and the other is Confucianism.
Chinese Bureaucracy

Western people may find it is confusing when they check the status of Chinese courts. On the one hand, Chinese judiciary is formally separate from the executive branch with its own system. On the other hand, the judiciary has to follow orders from the party and the government, and the courts need to report to the legislature, the National People's Congress (NPC). It would be easier to see the judiciary in China as a part of a huge government bureaucracy and under the executive branch. Court in China is a conflict resolution tool rather than the independent judiciary in Western view. The cases processed in Chinese court do not necessarily go forward by legal procedure; the function and structure of court also are not the same as their counterparts in Western society. For most part of Chinese history, a centralized bureaucratized political system controlled the whole country including the government, the law and the economy. To understand Chinese law and court, we have to learn about the unique history and culture in China, especially the Chinese bureaucracy or mandarin bureaucracy.

China has been called as a permanently bureaucratic society (Balazs, 1964). Weber argued that the capitalist societies need rational bureaucracy with more efficiency while the imperial China already had developed and large bureaucracy (Weber, 1958). However, Chinese bureaucracy (CB) differs from Weberian rational bureaucracy (Whyte, 1973). It is known that Chinese bureaucracy is a mandarin bureaucracy and it has a focus on “mandarin”. Mandarin, a word originates from Portuguese, first was used in a Portuguese report about China, referring to higher level officials (Ferguson, 1902). A mandarin bureaucracy is a bureaucracy composed of generalists in which the recruitment is based on competitive examinations; training is geared
towards serving the public; and the job environment offer immunity from social, political and occupational pressures (Khator, 1997).

The Chinese mandarin bureaucracy was a powerful bureaucratic system in which generalist officials were selected and graded through an open, competitive, written, national examination system based upon the Confucian classics (Riggs, 1997). The exams tested on whether one had a proper understanding of social ethics and properly cultivated tastes rather than on the knowledge of law or of any other technical knowledge. On the opposite, the Weberian bureaucracy has a focus on technical knowledge and skills of the position. Without these specialties, how could Chinese bureaucrats have exceeded in the system and gained power during thousands of years? It is interesting that the source of power for a mandarin bureaucrat is still expertise and knowledge. The knowledge these bureaucrats held was not about the skills of the position needs, but the administrative and people skills. After gathering enough administrative expertise, they become indispensable and powerful players in the political system (Khator, 1997).

Because the recruitment was through examinations, rather than political appointment, it gives bureaucrats certain degree of neutrality. However, this neutrality also explains why many bureaucrats felt less accountable. The system allows bureaucrats to escape from responsibility because their performance is measured by the degree to which implementation has been carried out rather than the level to which goals have been met (Khator, 1997). As a result, bureaucrats can implement a policy without having to worry about its consequences. In addition, the bureaucrats, who were paid very little by the state, functioned in a tradition where “gifts” (referred to as “going through the back door” or using guanxi) were an accepted mode for
influencing decision-makers (Dellapenna, 2005, p370). It is not surprising to see abusive power and corruption in such a mandarin bureaucracy system.

Unfortunately, Chinese judiciary was born in such a bureaucratized system and had been part of it for thousands of years and never got chance to build its independent identity. Compared to the American way of criminal justice which is decentralized and fragmented splintered into federal, state, county, and municipal sets of agencies, the criminal justice in China is under the control of a highly centralized hierarchy. In order to understand it, we have to delve into the historical background of court in China. The current research starts from the long history of bureaucracy and law in China and explore the significant impact of Chinese bureaucracy (CB) on the legal system and criminal court (Chapter 1 and 2). Two important factors of Chinese bureaucracy were discussed, one is the feudalism, and the other is Confucianism.

**Chinese History**

**Feudalism**

As early as 1045 B.C., the ancient Chinese state already had a legal bureau inside the government to take the judicial functions (Li, 2008). Starting in Qin dynasty (221B.C.), penal-oriented legal system and bureaucratized political apparatus were gradually developed throughout the imperial times of China during thousands of years. A top-down highly centralized hierarchical bureaucracy had been fully established with the emperor on the top, and the bureaucracy system wholly controlled the politics, law and economy of the country. The judiciary was part of the government agencies and the executive officials took charge of the
judicial power (Park, 2010; He, 2005; Alford, 1984). During this process, two factors cannot be ignored. One is the feudalism, and the other one is the Confucianism. The feudalism laid a foundation for a powerful bureaucracy in China and the Confucianism provided content and principles for this bureaucracy system.

Same as other types of feudalism in the world, Chinese feudalism also started with the distribution of the land. The king had the ownership of all land and divided land to a hierarchy of nobles who then became seigneurs (Darity, 2008). Through succession principle, land was divided again among sons of seigneurs and many politically self-sufficient patrimonial units were formed. The seigneur granted peasants use of the land and his protection in return for personal services and for dues. Feudalism was not only the division of land, but also a strategy to build "patriarchal authority" (Weber, 1957, pp. 375-376). Central government tried to attain the absolute authority through feudalism. However, the division of land ownership actually helped local powers to grow and fight for more land.

In order to attain effective control, central government had to rely on a systematic bureaucracy composed of elites and officials with a focus on ranking and obedience. These officials in a line of ranks from top to the bottom and built up a hierarchical mandarin system. This highly centralized system was used by the emperor and central government to monitor local lords. This mandarin bureaucracy system has been kept so well during the long history and continuously resisted social changes. Though a powerful bureaucratic structure can reduce the social turmoil though systematic social control, it has become a strong obstacle to social reform. A real social change or reform has to start on the change of the bureaucratic structure.
Confucianism

Although feudalism can physically help to build a centralized kingdom, it needs philosophic support to remain legitimate. Around 12th century BC, the kingdom Zhou already had a series of li (rites) (Liu, 1998). li (Rites) was used to regulate the relations between Zhou king and local nobles. However, the collapse of Zhou dynasty saw the decline of li. Confucius was fascinated by Zhou li (Rites of the Zhou) and he tried to compile the spirit of li into a type of philosophy which would be applicable to all people and to all human relationships (Creel, 1949; Liu, 1998). His theories were transcended into a school—Confucianism. Confucianism was adopted by imperial dynasties and helped stabilize the structure of society and human relationships through education and inculcation.

The “rites” in Confucianism locate people in structured individual relationships with specific duties prescribed to each other. As a result, five Bonds can be formed: ruler to ruled, father to son, husband to wife, elder brother to younger brother, friend to friend. Juniors owe their seniors reverence, seniors have duties of benevolence and concern toward juniors; husband needs to show benevolence towards his wife and the wife needs to respect the husband in return; the ruled needs to obey the order from the ruler and the ruler grants protection. The social norms and people’s minds in ancient China were guided by the Confucianism which has served as China’s state ideology from the early Han dynasty until the collapse of the Qing in 1911 (MacCormack, 1996a).

Now we can see the change of social structure brought the needs of a powerful bureaucratic system and the feudalism laid the foundation for the rising of bureaucracy and law, while the
Confucianism consolidated this into social minds. During Zhou dynasty, state bureaucracy gradually started taking shape with the initiating of feudalism in the background. As we said above, these officials need to pass comprehensive examinations which were based on classics. These scholar-officials did not need to know technical or legal knowledge in order to adjudicate legal cases. In addition, Confucianism holds that “law” is punitive punishment, a tool of ruling, rather than the protection of rights. The criminal law was used as a reining tool by the imperial bureaucracy system (Park, 2010; He, 2005; Alford, 1984).

Confucianism examinations actually produced a class of bureaucrats, the mandarins, who enjoyed incomparable prestige from their positions in a state bureaucracy hierarchy. This tentacular bureaucracy carried and controlled all the functions of the state and all activities of social life, and very limited social space can be left to the ordinary people (Balazs, 1971). In this mandarin bureaucratic system, the county official was only subject to the supervision of higher government rather than responding to the public. There was separation and check of powers, the executive bureaucrats held absolute power including political, judicial and economic power (He, 2005; Alford, 1984; Cohen, 1968).

In dealing with criminal case, these bureaucrats were both police and judges, and they accumulated evidence, evaluated the evidence, rendered a judgment, and passed sentence. Litigation business was banned and legal profession for justice had no space to grow. It is understandable that many justice rules and theories could not be developed, such as Rules of Evidence, Neutrality and passive jurisdiction, and rights of parties etc. (Gelatt, 1982; Cohen, 1968). Legal profession was condemned in ancient Chinese and the legal profession ideology
was nipped in the bud. An independent judiciary could not be established in Chinese imperial history due to the lack of support from groups of independent legal professionals.

Furthermore, the highly centralized government bureaucracy, holding all the military, legislative, judicial, administrative and taxation powers, had been an obstacle to the legal reform. On the one hand, the bureaucrats wish to maintain the status or fear of losing power and benefits due to reform and suppressed any dissenting voice or act (Ai, 2004). On the other hand, ordinary people dreamed to become bureaucrats through examinations themselves and they also did not expect for the legal change (Ai, 2004). It is shown that bureaucracy has penetrated into the social culture of Chinese society and soaked in daily life. If you ask young people in China what they want to do after growing up, the answer would be becoming a bureaucrat! It is not rhetoric to say that there is a seed of bureaucratic culture in the heart of each Chinese people and it could grow into a tree or even a forest when it gets the appropriate environment. The bureaucratic culture has been prevalent for thousands of years, and has deep impact on the law and society. The change may come in the future, but it will be slow.

**Limitation**

There are limitations for the methods in this research. For case studies we used in Chapter 5, sample cases may not be representative. Since we only choose limited samples and the result we found cannot generalized to the population. The criminal cases are complicated and we cannot obtain all the information for each case. Our analyses could be biased and incomplete. For case studies, we may have subject feeling which may influence the analyses. For the social media data
we used in Chapter 6, there are lots of challenges. First, the sampling of data is not representative. It is impossible to follow all information on the social media considering the huge volume of data in the Internet database. Also, we cannot systematically get involved in social media 24 hours and may miss certain important tweets and events. Our analyses only can catch a small part of online community. Second, legal professionals express their opinions on social media based on their knowledge and thoughts of the topics and these opinions are not necessarily correct. As an observer, we only can do our best to present what we have seen.

Even with these limitations, we still think this research could be valuable. First, this research explores the relationship between Chinese bureaucracy and law. Although much research has been done on bureaucracy or law in China respectively, very limited scholarship has tried to study their relationship. Second, social media data were used in this research besides the traditional case study method. These observations based on social media could be valuable and little research has used this similar method. Although it is hard to predict that the impact of the Internet on Chinese society, the vibrant online activism in China has shown the great potential of this new social space. In addition, legal professionals play an important role in Chinese legal system and social media data provides a new way to study those people who are working in legal professions in an the Internet era. People express ideas and opinions through tweets which have the similar function as the interview or survey data but this type of data is rarely used in criminal justice study so far. For future research, we would suggest more attention to Chinese online community and systematic research on social media could be very useful for social studies.
Future Research

In this research, we discussed many things, but the major issues are the impact of mandarin bureaucracy on court and criminal justice in China. We argue that a better understanding of Chinese court and judiciary has to base on a good understanding of the history and culture in China rather than from a Western perspective. From Chinese history, we look into the thousands years of development of mandarin bureaucracy and examine its unparalled influence on Chinese society. Through the window of Chinese modern society, we still see the impact of mandarin bureaucracy on judiciary and court. Mandarin bureaucracy is not only a governing structure of the state, but also become a culture and life style in the society, deeply rooted in people’s mind. The cases we used in this paper present the struggle of Chinese court in a deeply rooted bureaucracy culture. We definitely see the improvement of legal reform, but also hear the futile shouting of the justice. Though it would be premature to draw conclusions regarding China's continuously effort to promote a distinctive type of independent judicial decision-making, it is not too early to make a few observations. We suggest that the future research should consider things below.

First, the influence of mandarin bureaucracy cannot be ignored. It would be difficult to understand it from a Western viewpoint. Bureaucracy in Western modern society has relative positive meaning and Weberian theories even connect it with modern democracy. However, mandarin bureaucracy in China cannot shirk its responsibility to the autocratic centralization of state power and lack of independent judiciary. Furthermore, the mandarin bureaucracy nurtures a bureaucracy culture adopted in social minds and is taken for granted. During thousands years, it
presents as a huge barrier for possible change and reform. A successful legal reform has to take this in consideration and find a solution.

Second, as we discussed above, we need to study Chinese judicial system from a historical and cultural perspective in order to understand why it remains dramatically different from many countries. Without a contextual analysis, any argument against the current system is pale and may run in vain. Some scholars expect that China could change quickly and follow the steps as other Western countries. We would say this expectation may be unrealistic if we look back to long history laden with deep brand of bureaucratization. Even we can change the mandarin bureaucracy system in relatively short period through political reform, it would take tremendous time to change people’s mind and bureaucratized culture. In addition, the complex of Chinese legal reform may be beyond our imagination due to the mix of Confucian traditions and influence from both continental European and Anglo-American models.

Third, criminal law is a vibrant part of Chinese reform. For thousands of years, criminal law had been used as a ruling tool and deeply permeated into almost every perspective of the governance. Criminal justice system also represents the civilization and social development. The economic reform and increasing modernization call for a more mature criminal justice system in order to protect well beings and rights of people and organizations. In last three decades, certain improvement has been made in legislation and adjudication to protect human rights, punish crime and deter abused power. However, Chinese judiciary has not been fully separated from political bureaucracy and still lack independent status.
Fourth, China's vast population, with the help of prevalent the Internet, has increasingly voiced their demand for fairness and justice in legal system. The Internet has become a potential space for the civil society to initiate and develop. Although it is too early to predict this power, it definitely has two results so far. Firstly, it pushes the government to boost consistent legal reform in order to build popular confidence in the courts and justice. So the legal reform will continue even the movement could be slow. In addition, maybe the most important, the vibrant discussion and congregating through the Internet is a good way to change people’s mind and enlighten citizens’ intellect. With this continuous discussion, we may expect the mandarin bureaucracy culture could be reduced little by little.

Fifth, if the highly centralized bureaucracy has been a barrier to legal reform, is a decentralized model the better way to overcome the negative effects of bureaucratic culture? Is it possible for China to build a federal model with the provincial courts having more authority? All these are open to be tested.
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### Appendix I

#### Chronology of Chinese History

<table>
<thead>
<tr>
<th>Dynasty</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Xia Dynasty</td>
<td>2100-1600 B.C.</td>
</tr>
<tr>
<td>Shang Dynasty</td>
<td>1600-1100 B.C.</td>
</tr>
<tr>
<td><strong>Zhou Dynasty</strong></td>
<td></td>
</tr>
<tr>
<td>Western Zhou</td>
<td>1100-771 B.C.</td>
</tr>
<tr>
<td>Eastern Zhou</td>
<td>770-256 B.C.</td>
</tr>
<tr>
<td>Spring and Autumn Period</td>
<td>770-476 B.C.</td>
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<tr>
<td>Warring States Period</td>
<td>475-221 B.C.</td>
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<tr>
<td>Qin Dynasty</td>
<td>221-206 B.C.</td>
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<tr>
<td><strong>Han Dynasty</strong></td>
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<tr>
<td>Western Han</td>
<td>202 B.C.-A.D. 8</td>
</tr>
<tr>
<td>Xin Dynasty</td>
<td>8-23</td>
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<tr>
<td>Eastern Han</td>
<td>25-220</td>
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<tr>
<td><strong>Three Kingdoms</strong></td>
<td></td>
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<tr>
<td>Wei</td>
<td>220-265</td>
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<tr>
<td>Shu Han</td>
<td>221-263</td>
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<tr>
<td>Wu</td>
<td>222-280</td>
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<tr>
<td><strong>Western Jin Dynasty</strong></td>
<td>265-316</td>
</tr>
<tr>
<td>Dynasty</td>
<td>Period</td>
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<tr>
<td>Eastern Jin Dynasty</td>
<td>317-420</td>
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<tr>
<td>Sixteen Kingdoms</td>
<td>304-439</td>
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<tr>
<td>Northern and Southern Dynasties</td>
<td>420-581</td>
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<tr>
<td>Sui Dynasty</td>
<td>581-618</td>
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<tr>
<td>Tang Dynasty</td>
<td>618-907</td>
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<tr>
<td>Five Dynasties</td>
<td>907-960</td>
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<td>Song Dynasty</td>
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<td>Northern Song</td>
<td>960-1127</td>
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<td>Southern Song</td>
<td>1127-1279</td>
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<td>Liao Dynasty</td>
<td>916-1125</td>
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<td>Jin Dynasty</td>
<td>1115-1234</td>
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<td>West Xia Dynasty</td>
<td>1032 - 1227</td>
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<td>Yuan Dynasty</td>
<td>1271-1368</td>
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<td>Ming Dynasty</td>
<td>1368-1644</td>
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<td>Qing Dynasty</td>
<td>1644-1911</td>
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<tr>
<td>Republic of China</td>
<td>1912-1949</td>
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<tr>
<td>People's Republic of China</td>
<td>Founded on October 1, 1949</td>
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