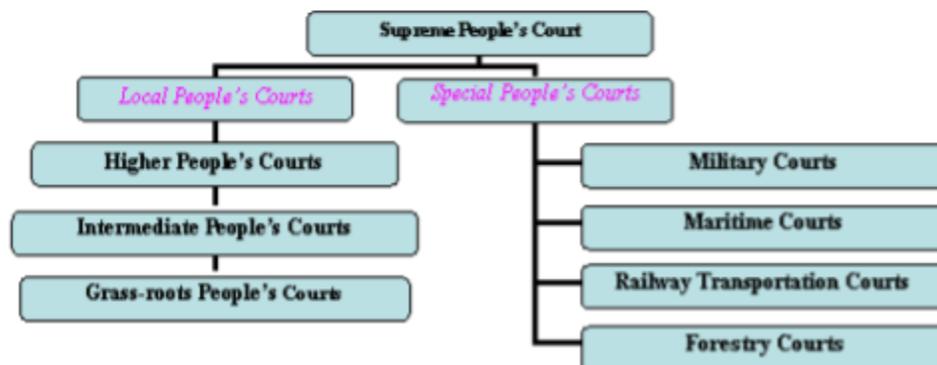


Good morning, thank you all for waking up bright and early to be here with me today. While at first glance the Chinese Legal System may seem like an arbitrary issue, human rights are not and that is what the failures of the Chinese Legal System have become: a human rights issue.

Legal systems are put in place to interpret laws. Since many laws are put in place to protect the rights of citizens, legal systems should, by extension, protect citizens' rights. However, in China, this is very rarely the case. In recent years, China has become known around the world for its rapid economic growth. However, this growth comes with a very high human cost, with migrant workers being mistreated in factories and people losing their houses so that the government can rebuild them for profit. Theoretically, the legal system should protect these workers from exploitation, but in practice, it rarely does. It is not the courts themselves that have an issue, it is the party. Since the party holds absolute power in China, they are able to control the entire government, including the courts. Ultimately, the court system in China does very little to help those who are underprivileged, but it is the result of party interference rather than legal ineptitude.



The hierarchy of the Chinese Legal System

Slide one:

Before we can judge the failures of the Chinese Legal System-- and more importantly, the causation of these failures, we must understand its structure. The Legal System in China was redone with the 1984 Constitution to match with the party's beliefs and with some laws passed from 1978. As you can see from this diagram, the new structure makes discrimination easy because of the way in which courts are split. People are tried according to their class, such as "grassroots", which is the lowest class in the hierarchy.

This is ironic because the "grassroots" people are responsible for putting the party in charge during the Cultural Revolution in the Maoist era- a fight which was meant to make all people equal under a communist government. As payment, the party that was put in power by the grassroots people began to look down upon them as if they were lower class citizens, effectively invalidating one of the main points of the Cultural Revolution. This discrimination in the form of failure to protect comes in many different ways, each of which has a negative impact on many groups of Chinese citizens.

One of the groups that the legal system fails to protect is the Chinese labor migrants. These migrants are unable to find work in their home towns and villages, and thus, they are forced to relocate. However, in order to relocate, they must forfeit their residency in their hometowns, and are unable to acquire residency permits in their new cities. Effectively, these people are forced to work as if they are illegal immigrants- within their own country. Because these people are living outside of the law, they are susceptible to mistreatment by the owners of the factories they work in. They are forced to work long hours for little pay, and are often taken away from their families. The government has tried to interfere by enacting laws such as the Labor Contract Law, which is described in Hsiao-Hung Pai's *Scattered Sand*. The law outlines

ninety-eight articles that employers have to abide by, including the following: **Slide 2**

“workers must be provided with contracts of employment that are based on “equality and free will” and the principle of “negotiated consensus and good faith” (Pai p34).

It is easy to just skim through legal jargon without actually comprehending its full weight, so let's break this down. **Slide 3** Essentially, it means that (1) workers have to be provided contracts, which on paper (no pun intended) should give them rights, which should make it harder for employers to violate these rights. (2) These contracts being based on ‘equality and free will’ means that they are mutually beneficial to both employer and employee, and both are entering into the contract autonomously- without any coercion. (3) The idea of “negotiating in good faith” means that you are sincerely trying to negotiate fairly to reach consensus.

Personally, I believe that these are very low standards for employer/employee negotiations. However, even these benchmarks are not reached, partially because these standards aren't enforced. The Labor Contract Law was mainly the result of an outcry from the public about how high the human cost of production had risen. As can often be seen in history, once the outcry dies down, so does any enforcement that the law has. Ultimately, it has made no difference in the lives of workers because any contracts that are offered are still written in favor of the company, and thus, some workers refuse to sign them for fear of being cheated (Pai p35).

The Labor Contract Law proves that the legal system has laws in place to protect these workers, but fails anyways. **Slide 4**



Gunduz Agayev, from the "Femidead" series

This can be seen in Gunduz Agayev's illustration. This particular illustration is from a series called "femidead", a series meant to make a statement about the treatment of women throughout the world. This particular image makes a statement about the treatment about laborers in China in general. It shows a woman who is clearly a migrant worker being watched over by a man with a sword and silenced by a gag while she assembles scales- the international symbol of justice. It is a very powerful image which represents the complicity of the Chinese judicial system by not helping a mistreated portion of a population it should be defending. Like the woman in the illustration, many Chinese citizens are silenced by a judicial system that refuses to even hear their cases.

In a time of increased urbanization, many cities have resorted to tearing down homes they deem of little to no historical value in order to build bigger and better homes, highways, and other urban fixtures which the city can then profit from. Ian Johnson's *Wild Grass* does a good job at relaying accounts of this and showing the toll that the modernization of Beijing takes.

Residents are proud of their “beautiful old Beijing”, and thus, are sad to see it torn down (Johnson p147). Oftentimes, people are faced with the choice of moving into a high-priced high-rise or moving into the “housing” that the government provides to the people who they displace (Johnson p148). However, this housing is more akin to slums than it is to anything that resembles a decent standard of living. Many of these residents try to take legal action by pursuing lawsuits in the hopes of preserving not just the historical value of their community, but of preserving their homes. Often, these suits are fruitless because they are criticized for being too broad, like in class action lawsuits, or too specific, like in single person suits. In either of those cases, no courts will hear them (Johnson p108). Any suit that actually gets to the point of being filed is either met with no response, or is quickly thrown out by corrupt judges who have already been instructed to rule a certain way (Johnson p96). In the case of a man called Mr. Zhao, an eighty-two year old man who had lived in his courtyard home for fifty years by the year 2000, when the government decided his house would be demolished (Johnson p130). Zhao saw no legitimate reason to leave, so he instead decided to combat the injustice of his house being taken from him. The government refused to appraise the house fairly, saying that his house was not a cultural relic and thus could not be protected. Zhao was quoted as saying, “Of course, if they’d said it was a cultural relic then they couldn’t tear it down, so they said it wasn’t one.” (Johnson p131). This clearly shows the unfairness of the Chinese system: the government was responsible for deciding whether or not his house was worthy of protection as a “cultural relic”, and since they could not tear it down as they had wanted to if it *was* named a cultural relic, why would they give it that status? To combat this injustice, Zhao turned to writing letters and putting in

calls to friends in the media, and eventually went to a lawyer and filed his first suit (Johnson p132).

Combating corruption, inside and outside of the government, is part of why court systems exist. However, when the court system is just as corrupt as the government, these suits prove to be futile. Such was the result in Mr. Zhao's case, where the government argued that was not old enough to warrant protection, despite neglecting to perform the proper tests to identify a Chinese house's true age. Since the initial hearing was before an administrative judge, "the government's word [had] especially strong say." (Johnson p133). This was typical in many cases: judges were pressured to vote the way the party told them to, even if it went against their conscience and against Chinese Law. Eventually, Zhao went through a series of various suits and appeals. The final appeal was set *after* the scheduled destruction of Zhao's home, and the court refused to grant a temporary stay, rendering the case moot. Why argue a case after the house in question has already been demolished? Zhao was forced to leave his house before it was torn down, five days later (Johnson p169). This is like the death penalty being carried out while the case was still on appeal.

Court systems are supposed to prevent injustices such as these, not perpetuate them. Unfortunately for Mr. Zhao and many others, the government has a hand in everything the court system does, so righting housing injustices through legal appeals is highly unlikely, because even though the Chinese government is divided into branches, there is no concept comparable to the American separation of powers. Thus, the Communist Party in China is able to control everything that goes on within any branch of the government- including the judicial branch. Judges are frequently given orders on how to vote by the party. In America, that would be

considered a crime. In China, it is the standard. It is not that the judges do not want to vote according to the established law, rather, they are forced to rule in the way that they are told.

Otherwise, they will lose their seat. *Slide 5*



Peter Schrank, from "Judging Judges"

The concept of the Party ousting judges that try to rule using their conscience and the law is illustrated by cartoonist named Peter Schrank in a political cartoon that was published with a 2015 article in *The Economist*, titled "Judging Judges." The cartoon, shown below, illustrates a pair of hands with communist star cufflinks holding a broom and sweeping judges off of their bench. These hands, representative of the Party, provide a visual image of the realities in Chinese society: judges who try to provide fair rulings are ousted from their seats. As *The Economist* states, "In political cases, few doubt the party will continue to put its thumb on the scales of justice." ("Judging Judges" p1). The party uses the justice system to further the oppression of Chinese citizens, which is why suits so rarely work. Should the party consistently lose these suits, it would ultimately weaken the stranglehold they have over political power in China. Thus,

the party steps in to ensure that the challengers in these suits do not succeed. In fact, some people feel that the PRC (People's Republic of China) Legal System is simply a reflection on the Party's commitment to maintaining their power (Potter p673).

Anthony Dicks, who wrote an essay on the progress made by the Chinese legal system for the China Quarterly, says that **Slide 6** "In the new Constitution of 1981, Article 5 declares that "all political parties . . . must abide by the Constitution and the law," this explicitly acknowledges "the primacy of the state in its own particular sphere, placing the Communist Party and its members firmly under the rule of law" (Dicks p542). Thus meaning that the Communist Party is under the rule of law, and do not-- or should not-- have the power to usurp the law. Dicks also writes about the phrase **click** "policy is the soul of law", and how that is no longer the case because the law is now teleologically motivated and those advocates are now "committed to certain ends"-- essentially meaning that those who should work for the law are instead making sure the law works for them. (Dicks p543). It is the party-- not the policy-- that can be found at the soul of the law and thus, the party, not the policy controls the entire legal system.

When laws or orders are passed in the United States, people can bring suits to court- and frequently win. This does not happen in China, because the party does not allow its power to be questioned. While the legal system of China does not help the people protect themselves against injustices as it should, it usually is not the fault of the judges that make the rulings. In many cases, the judges are told how they must decide before the trial even begins and must abide by what the party says, or risk being demoted. This stands against so much of what legal systems are supposed to stand for. In other parts of the world, this is known as coercion and is illegal,

while in China, it is the norm. Legal systems are supposed to be an avenue through which people should be able to free themselves from oppression or other mistreatments. However, in the case of the migrant workers, those who are getting their houses torn down, and so many more, the failures of the court system only make them more desperate. This desperation can be seen in the suicide rates of Chinese migrant workers (Pai p168). This is where the failures of the Chinese Legal System become a human rights issue: legal systems are supposed to be this beacon of hope-- an avenue through which people can legally combat the government. In China, the legal system is just another instrument the government uses to rule with an iron fist.

Thank you.

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