

People's Courts

Rénmín fǎyuàn 人民法院

The current Chinese legal system is based on the 1982 constitution, which established a hierarchy of people's courts to handle both civil and criminal cases. People's courts are units of the government charged with advancing the interests of the state (i.e., maintaining the social and economic order), are subject to the direction of CCP officials, and do not involve an adversarial prosecutor/defender relationship, as is common in the West.

The Chinese legal system has undergone several substantial changes since it was established by the Constitution of the People's Republic of China of 1954. The legal system under this constitution was based largely on early Soviet legal practices and included Western concepts such as freedom of religion, speech, and correspondence, and freedom from arbitrary arrest, unless those arrests were authorized by people's procuratorates. In the Chinese system, procuratorates serve as both prosecuting attorney and public defender. By 1957 the emphasis on legal rights had come to be perceived as a threat to central authority, and arrest powers were granted to police forces. Judicial power was undermined by local officials who assumed the functions formerly assigned to the procuratorates.

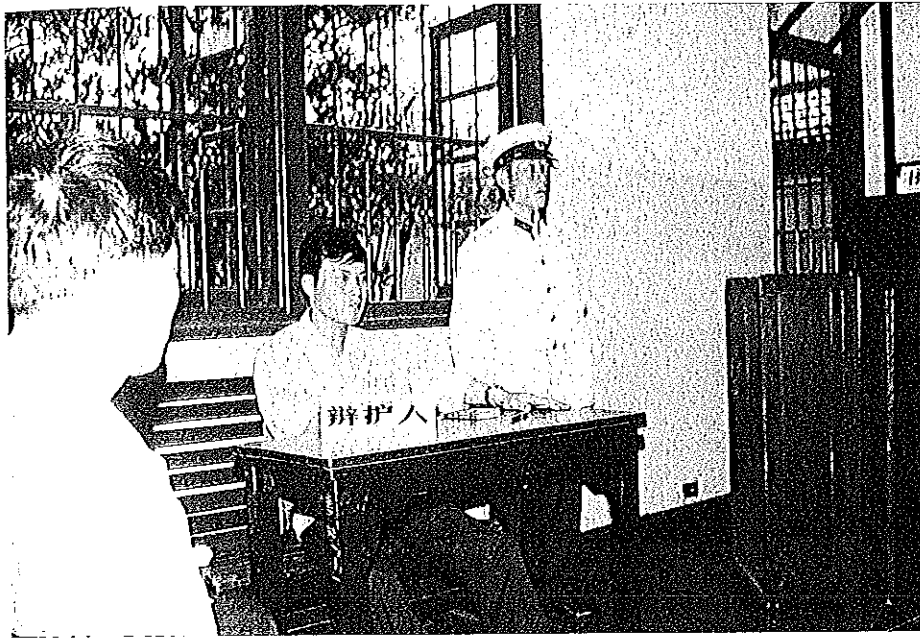
The breakdown of constitutional legal authority contributed in part to the Great Proletarian Cultural

Revolution (1966–1976), which ended with the promulgation of the new constitution of 1975. Procuratorates were not included as part of the legal authority under this constitution, and their functions were assigned to the police. This increased party authority but undermined the rights of citizens. Legal reforms continued with the 1978 constitution and again with the 1982 constitution, in which the legal organs of the 1954 constitution were brought back.

The current Chinese legal system dates from the 1982 constitution and is quite different from Western systems, in both criminal and civil cases. But China's court systems, and its legal procedures as a whole, have been undergoing substantial change as China shifts from the hard-line socialist authoritarian regime it was in 1982 to a more market-based one that must address pragmatic matters and international observation.

Section 7 of the 1982 Chinese constitution directs the structure of the people's courts and the people's procuratorates. Unlike some Western judicial systems, courts are not independent. According to the Chinese constitution, the Supreme People's Court answers to the National People's Congress and oversees the operations of lower courts. These include military courts, special people's courts, and local people's courts. The separation of powers that exists in modern Western governments does not exist, and courts are subject to the direction of party officials. But the increasing openness of Chinese political activities serves to balance the decisions of the people's courts.

Also within the judicial structure are the people's procuratorates and the public security bureaus. Under



A District courtroom in the Putuo District of Shanghai. At left is the Representative of the Masses. At right is a police guard. China's legal system employs a hierarchy of people's courts to handle both civil and criminal cases. PHOTO BY JOAN LEBOLD COHEN.

the 1982 constitution, all court proceedings are to be open to the public, except in cases of state secrets, private family matters, and children.

Article 135 under this Section 7 of this constitution directs: "The people's courts, people's procuratorates and public security organs shall, 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 correct and effective enforcement of law." This points out that Chinese courts cannot exercise judicial review over legislative matters, and in this regard are not as powerful as many of their Western counterparts. The Chinese constitution does guarantee the right to appeal decisions of the lower courts, but only one appeal is permitted. The Chinese practice of encouraging people charged with crimes to confess (with the expectation of reduced sentences) leads to an extremely high rate of convictions and undermines the effectiveness of appeals.

The lowest level of the people's court functions at the district and county level. Approximately 3,100 of these basic courts 基层人民法院, which operate at the county, city, and municipal level, have been established. The next level is the higher court, or intermediate court 中级人民法院. Thirty of these function in the major municipalities of Beijing, Shanghai, Chongqing, and Tianjin; in

the autonomous regions of Guangxi, Xinjiang, Ningxia, Neimengu, Xizang (Tibet); and in the provinces. Separate judicial systems exist for the Hong Kong and Macao special autonomous regions. The highest level of people's court is the Supreme People's Court 最高人民法院.

Within the Chinese system, Western concepts such as the Anglo-American adversarial relationship between prosecution and defense are not used. Because Chinese courts are units of the government, socialist theory dictates that they should advance the interests of the state, including maintaining the "social and economic order," which is often at odds with the interests of the accused. Another aspect of people's courts that differs from Western systems is that judges in these courts can recommend mediation between the parties; the same judge acts as mediator.

Defense lawyers in the Chinese system do not become involved with their clients until after an indictment has been issued, further limiting their usefulness. Another barrier to defense is the "presumption of guilt" on which the Chinese system operates. Additionally, freeing a defendant on a legal technicality is seen as a threat to the security of society. Lawyers must have their licenses to practice law renewed by local officials, so challenging political authority puts lawyers at risk.

Nevertheless, the complexity of China's legal system



Portraits of Communist Party founders hanging on the back wall remain an imposing presence in the District court house. Putuo District of Shanghai.

PHOTO BY JOAN LEBOLD COHEN.

has led to a need for trained legal professionals, particularly as China's economic system has opened up to more foreign exchange. In the late 1980s, the numbers of professional lawyers did not meet the demand for their services. But since the late 1990s, the number of lawyers and law offices has increased. Since 1990, the number of cases in Chinese courts has doubled, and a new focus on social justice, rather than social and economic order, has developed. Since the late 1990s, people's courts have had to deal with a more litigious population, and the number of civil cases, particularly those dealing with exploitation of migrant workers, has greatly increased.

Thomas P. DOLAN

Further Reading

- Dreyer, J. T. (2000). *China's political system: Modernization and tradition* (3rd ed.). New York: Longman.
- Gillespie, J., & Nicholson, P. (Eds.). (2005). *Asian Socialism & legal change: The dynamics of Vietnamese and Chinese reform*. Canberra, Australia: Asia Pacific Press.
- Ogden, S. (1995). *China's unresolved issues: Politics, development, and culture*. Englewood Cliffs, NJ: Prentice Hall.
- Spence, J. D. (1990). *The search for modern China*. New York: W. W. Norton & Company.
- Wang, James. C. F. (1989). *Contemporary Chinese politics: An introduction* (3rd ed.). Englewood Cliffs, NJ: Prentice Hall.