Perspectives

Published by the Overseas Young Chinese Forum
http://www.oycf.org
Volume 4, No. 4, Wednesday, December 31, 2003

OYCF Wishes You a Happy New Year!

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1. From the Editors

As this issue of Perspectives comes out, we are stepping into year 2004. In this past year, we have published 30 Chinese articles and 28 English articles in the Perspectives. Thanks to the support from our readers and authors, we have been allowed to indulge in our favorite activities: to promote discussions, to bridge differences, and to seek intellectual stimulation. And we will pledge to do so in the coming year.

This December issue of Perspectives includes seven articles on various topics. Under "Law," Yi SHENG's extensive article (part 1 in this issue) takes a close look at the impacts and inadequacies of part of China's 1996 reform of its criminal justice system. Under "Education," Yu ZHANG studies China's booming private education sector: its strengths and weaknesses, and its interactions with the society in large. Following their separate teaching trips to China, Yi YANG and Di WANG share with us their unique experience in teaching university students in China in two teaching reports. Under "Review," Leslie WANG examines a book by Elizabeth Perry and Mark Selden entitled "*Chinese Society: Change, Conflict and Resistance*," and Yang SU offers his critique of the long anticipated Tarantino movie "*Kill Bill: Volume 1*." In the "Letter to Editor," Jin CHEN expresses her point of view on a previously published article by Wentong ZHENG on Iraq war and American foreign policy.

We hope you will enjoy this issue of Perspectives and welcome your comments, suggestions and article contributions. As always, we encourage you to send us feedback.

Best wishes for the New Year!

The Editors

2. A Promise Unfulfilled: The Impact of China's 1996 Criminal-Procedure Reform on China's Criminal Defense Lawyers' Role at the Pretrial Stage (Part 1)

(Yi SHENG[1])

[Author's notes: I would like to thank Professor Paul Gewirtz for his invaluable guidance and support. Special thanks to Professor Bian Jianlin, Professor Zhen Zhen, Professor Li Baoyue, Professor Jonathan Hecht, and Professor He Weifang for their advice and support. I would also like to thank the many procuratorators and defense lawyers who had consented to be interviewed for this article. I am very grateful to the editors of Perspectives for their editorial work. Last, but not least, I would like to thank the China Law Center at Yale Law School for its support in many respects.]

INTRODUCTION

In many contemporary Western countries, the criminal procedure features procedural protections afforded to the accused, such as the right to counsel, the privilege against self-incrimination, exclusion of wrongly obtained evidence, abundant opportunities for pretrial discovery, and many more. In these countries, the public view with much horror the prospect of wrongly convicting an innocent person, and are hence committed to values besides the relentless pursuit of truth—most notably, the protection of a broad spectrum of basic human rights. However, much of what has been accepted as fundamental to a Western criminal justice system has only just entered public discourse in China. China has long been denounced for its poor human rights record. Human rights protection is especially inadequate in China's criminal justice system. The roots of this phenomenon are, on the one hand, a long-standing negative attitude toward criminal defendants embedded in the Chinese culture and, on the other hand, the criminal justice system's deference to the power of the State. Even though China's unprecedented economic development has brought forth rapid reconstruction of its legal landscape, China's criminal procedure remains an area dictated by old customs.

In 1996, China completed a major revision of its Criminal Procedure Law (CPL), which was originally enacted in 1979. Two key elements of the new CPL are the expansion of the role of criminal defense lawyers and the adoption of a more adversarial trial procedure.[2] The new CPL was heralded as an audacious reform undertaking that

1. The research methodology for this paper includes interviews, field trips, and literature search. The author personally interviewed more than 50 people, including procuratorators from the Supreme People's Procuratorate and a number of provincial or county-level procuracies, prominent criminal defense lawyers in China, judges at provincial or district levels, as well as a large number of law professors from leading law schools and research institutions in China and in the United States. The author has also attended a number of criminal trials and visited several detention centers in China.

2. The exact definition of an adversarial model of trial procedure is still under intense academic debate. The distinctions between the adversarial and inquisitorial procedural models will be discussed in detail in Part III, Section 2 of this paper. For the majority of this paper, unless otherwise indicated, the term

promised to afford the accused more procedural protections for the accused and to bring China's criminal procedure closer to international standards.

The profession of criminal defense, a product of Western civilization that was introduced to China at the beginning of the 20th century, has never taken a strong foothold in the Chinese culture. Even though the Chinese public is just as charmed by defense lawyers in American movies and TV series as many people are in Continental Europe, for a variety of cultural and ideological reasons which will be explored later in this paper, the revival of this profession after China's Cultural Revolution has not garnered much public support. Reflected in laws governing the work of criminal defense lawyers in China, prior to the 1996 CPL, they had few work-related privileges[3] and their work was largely limited to presenting mitigating factors and pleading for a lenient sentence. However, after the 1996 revision, CPL now provides criminal defense lawyers with a series of work-related privileges and authorizes the involvement of defense lawyers from the beginning of the charging process, namely, the time from which the Procuratorate starts to examine the case for prosecution.

The pretrial stage—the focus of this article—is a critical stage for the accused not only because it leads to the Procuratorate's decision on whether to bring any charges, but also because thorough investigations and ample preparations by the defense during this period are crucial to the effectiveness of defense and hence the outcome of any subsequent criminal trial. However, the past four years have demonstrated that the 1996 CPL failed to bring about the kind of improvement envisioned by its drafters.

This paper aims to examine the impact of the 1996 CPL on the role of China's criminal defense lawyers at the pretrial stage—specifically, during the charging process—and to explore factors that may have contributed to the ineffectiveness of the new CPL. Major problems with the current status of criminal defense lawyers will be analyzed and suggestions for further reforms will be proposed at the end.

I. AN OVERVIEW OF THE 1996 CRIMINAL PROCEDURE REFORM

1. Historical Background and Guiding Principles for the 1996 Reform

a. China's economic development demands a modern legal system

The active building of China's legal system in the past two decades can be divided into

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'adversarial system' refers to the party-contest model of criminal procedure, and the term "inquisitorial system' refers to the official-inquest model of criminal procedure.

3. The word 'privilege' here refers to work-related privileges, for example, the privilege to review the prosecutor's file on the accused, the privilege to maintain attorney-client privilege. People in the United States may view these tasks more as essential components of a criminal defense lawyer's job or basic responsibilities of a criminal defense lawyer than as 'privileges'. In China, however, since criminal defense as a profession is still at its nascent stage, these tasks are still in the process of being incorporated into the law as parts of a lawyer's job. Therefore, for a Chinese criminal defense lawyer who had to reveal what his client has told him upon request of the prosecutor or other state officials, the right to keep such information confidential is viewed more as a "privilege."

two phases[4]. The first phase took place against the backdrop of the Culture Revolution. It was marked by the historic Third Plenary of the Eleventh Central Committee of the Chinese Communist Party (CCP) in late 1978, which officially established that a strong legal system was imperative for China's economic development[5]. Law was viewed as a means to restore the stability and unity lost during the "lawless" years of the Culture Revolution[6]. During a period of intense rehabilitation, many important legal institutions were re-established and a series of new laws passed, among which was the PRC's first Criminal Procedure Law[7]. Chapter Four of the 1979 CPL prescribed the rules for legal representation during criminal proceedings, and hence reestablished the legitimacy of the institution of criminal defense lawyers.[8]

The Second phase of legal reform was marked by the birth of the phrase "the socialist market economy," which signified a major shift in China's economic policy. Following Deng Xiaoping's trip to southern China in 1992, the Chinese Communist Party decided at its 14th Party Congress that China from then on would move in the direction of a "socialist market economy,"[9] completing a major shift in the country's dominating ideology. The shift in ideology tremendously liberalized the scope of legal reforms. During the first phase of legal reforms, China's legal academics, which constituted the major force behind most reform efforts, constantly found themselves constrained by the tenets of Marxism and the forbidden territories of political sensitivity[10]. The new economic regime introduced the concept of the "rule of law," a term that was widely used to describe the use of legal means to restrain the power of government, both procedurally and substantively. "Socialist market economy" was viewed as a "rule of law" economy that was predicated upon a more rule-oriented legal infrastructure.

The decentralization and deregulation that took place in this new wave of economic reforms allowed a variety of interests to flourish[11]. At least in theory, interests of individuals and collectives no longer have to conform to that of the State. Thus, in the area of criminal procedure, discussions of the protection of individual rights was re-energized after a nadir in the aftermath of the 1989 student movement. In December 1993, the State Council approved the "Proposal on Further Reforms of the Lawyers by the Ministry of Justice."[12] The immediate implementation of this proposal completed the transition of definition of lawyers from "legal workers of the State" to "self-employed legal professionals." This transition had major significance for the development of

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4. *See generally,* Albert Chen, *Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law*, 17 UCLA PAC. BASIN L.J. 125 (1999); Eileen Danahoe, *The Promise of Law for the Post-Mao Leadership in China*. 41 STAN. L. REV. 171 (1988).
5. Communiqué of the Third Plenary Session of the 11th Central Committee of the Communist Party of China, Xinhua Radio Broadcast, Dec. 23, 1978 (in English), *transcribed in* U.S. FOREIGN BROADCAST INFO. SERV. DAILY REP.: PEOPLE'S REPUBLIC OF CHINA, Dec. 26, 1978, at E4, E10 (No. 78-248).
6. Danahoe, *supra* note 4, at 173.
7. China's first Criminal Procedure Law was enacted in July 1979. Zhiming Zhang, *Lawyers in Contemporary China*, *in* TOWARDS AN ERA OF RIGHTS, 135, 147 (Yong Xia ed. 1995).
8. *Id*.
9. Albert Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA, 209 (rev. ed. 1998).
10. Chen, *supra* note 4, at 126.
11. Zhang, *Supra* note *7,* at 151.
12. *Id*. at 154.

criminal defense. In a criminal proceeding, the defense lawyer represents the interest of the accused, which is in direct opposition to that of the State. The old classification of lawyers as "State workers" was at odds with lawyers' responsibility as the legal representative of the accused. The change in definition resolved the conceptual difficulties and the potential conflict of interest on this issue, and was interpreted as a welcoming gesture from the Chinese government to further reforms in the area of criminal defense.

However, the fact that economic development served as a major force behind the legal reforms presaged the emergence of certain problems as the reforms proceeded. Unlike legal scholars who have serious interests in many fundamental issues concerning the function of law in a socialist society, the Chinese leadership's support for legal reforms was mainly motivated by a practical consideration:[13] they had come to the realization that the establishment or the *appearance* of a modern and westernized legal system "implies legal certainty, rationalized market behavior, a stable atmosphere for direct foreign investments," and hence could allay the fear of arbitrary governmental action.[14] Thus, the eagerness for legal reforms exhibited by the Chinese leadership was more a manifestation of its desire for faster economic development—because a modern legal infrastructure is conducive to the flow of foreign investment—than an equally willing embrace of underlying legal principles. One potential problem with this latent inconsistency between the intentions and actions of the leadership is that the leadership would be more eager with legal reforms that have direct impact on the economy, but less so with reforms that only touch on the economy tangentially, especially if the latter adversely affect other interests of the leadership. Therefore, the Chinese government has placed great emphasis on improving laws governing foreign investment or China's fledgling capital market, but has been far less enthusiastic about reforms pertaining to the criminal justice system, partly because the impact of such reforms on China's economic development seem minimal and ancillary, and partly because such reforms are perceived to undermine another important political objective of the government — crime control. These topics will be explored in detail in Part II.

b. Globalization of human rights protection in criminal proceedings

Another force behind China's CPL reform was the emergence of an international standard of human rights protection in criminal proceedings. The Preamble of the United Nations Charter places the protection of human rights as one of its principle goals.[15] Since the accused in a criminal proceeding is particularly susceptible to human rights violations perpetrated by the government, the 1948 Universal Human Rights Declaration (UHRD) incorporated a number of articles pertaining specifically to the criminal justice

13. CARLOS WING-HUNG LO, CHINA'S LEGAL AWAKENING: LEGAL THEORY AND CRIMINAL JUSTICE IN DENG'S ERA, 247-48 (Hong Kong Univ. Press. 1995).
14. Robb M. LaKritz, *Taming a 5000 Year-Old Dragon: Toward a Theory of Legal Development in Post-Mao China*. 11 EMORY INT'L L. REV. 237, 238 (1997).
15. U.N. CHARTER, preamble, *available at* http://www.un.org/aboutun/charter/ ("to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small").

system.[16] Article 11 of UHRD established the importance of criminal defense by stating that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."[17] Between 1975 and 1990, the United Nations passed a series of conventions imposing minimum standards in criminal procedure.[18] These conventions reflected a broad recognition of the value of human rights protection in the global community.

As China seeks integration into the global market, its leadership faces tremendous pressure to conform to international human rights standards. By 1997, China had signed seventeen international conventions regarding human rights, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[19] Talks were under way in 1997 about entering the International Covenant on Civil and Political Rights.[20] This Covenant is most explicit and specific about human rights protections in the administration of criminal justice. The principles established by the Convention include the presumption of innocence, prohibition against illegal searches and seizures, right to counsel, and prohibition against self-incrimination, etc.[21] Even though it's not yet clear how much binding power these Conventions will have on the actions of the Chinese government, the Chinese government may feel compelled to translate at least some of these promises into legislative actions if only to uphold its own credibility in the eyes of the international community. Moreover, for people who are actively pushing for reforms of the criminal justice system, the signing of these Conventions could be used as a form of validation of their actions or as a shield to fend off potential political repercussions from opposition.

2. Major Changes in the Pretrial Procedure brought by the 1996 CPL

Against the domestic and international backdrops described above, the National People's Congress (NPC) took the lead in revising China's CPL, and the final product went into effect in 1996. One of the principal goals of this revision was to "strengthen the protection of the rights of the accused and to improve the status of the accused in a criminal proceeding."[22] The 1996 CPL addressed this goal with the following three approaches: 1) the abolition of "shelter and detention" for the purpose of investigation;[23]

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16. Universal Human Rights Declaration, *available at* http://www.hri.ca/uninfo/treaties/1.shtml (UHRD has rules on the prohibition against double jeopardy, the right to appeal, prohibition of arbitrary arrest and detention, etc.).
17. *Id*. art.11.
18. Guangzhong Chen, *UN Standard in Criminal Justice and Reform of Chinese Law*, *in* THE UNITED NATIONS STANDARD AND CHINA'S LEGAL SYSTEM OF CRIMINAL JUSTICE, 56-61 (Guangzhong Chen & Daniel Prefontaine ed. al. 1998).
19. *Id*. at 69.
20. *Id.* China signed this Covenant in October 1998, but it has not yet been ratified by the National People's Congress.
21. Yuguan Yang, *On 'The International Covenant on Civil and Political Rights of United Nations'*, *in* NEW STUDIES ON PROCEDURE LAW—COLLECTION OF PAPERS CELEBRATING PROFESSOR CHEN GUANGZHONG'S 70TH BIRTHDAY (China Law Press, 2000).
22. Qiuhong Xiong, TREATISE ON CRIMINAL DEFENSE, 54 (China L. Press, 1998).
23. Criminal Procedure Law of the People's Republic of China, art. 52, 96 (1996) (hereinafter 1996 CPL) [this should not be in footnote].

2) the adoption of a more adversarial trial procedure;[24] and 3) the expansion of the function of defense lawyers in criminal proceedings, especially at the pretrial stage.[25] This article focuses on the third approach regarding the role of criminal defense lawyers in the charging process.

Under old criminal procedures, the official involvement of defense lawyers would commence only seven days before the trial.[26] During the entire police investigation and charging process, the role of criminal defense lawyers was not defined by law. The legal recognition of lawyers as defense counsels is imperative to the securing of essential work-related privileges, such as the privilege to meet with the defendant or the privilege to review the case file. Therefore, because old criminal procedures were silent on the role of lawyers before the seven-day statutory period, lawyers had no legal basis to demand access to their clients or to review case files during the rest of the pretrial period, and the police or the Procuratorate could deny requests for access at will.

This situation led to two serious consequences. First, there were great disparities between the Procuratorate and the defense lawyer with respect to the amount of time available to them for trial preparation, and consequently, to the level of understanding of the facts and applicable laws of the case. Second, during the majority of the lengthy pretrial period (before the seven-day statutory date), the defense counsels had no legal guarantee that they would be able to meet with their clients, review the government's case, or carry out their own investigation. Therefore, the function of criminal defense lawyers was extremely limited at the pretrial stage, which led to poor performance during the trial. In most cases, defense lawyers did little in questioning the government's case against the accused. Rather, their main function was to offer mitigation after the government had presented its case and to plead for a more lenient sentence. Thus, the gap between the quality of criminal defense in China and that in Western countries was astonishing.

Drafters of the 1996 CPL tried to narrow this gap by authorizing the appointment of "defenders" at a time when the Procuratorate begins to examine the case for prosecution.[27] Three types of people can be appointed as "defenders" under the 1996 CPL: 1) lawyers; 2) people recommended by a public organization or a work unit to which the defendant belongs; and 3) guardians, relatives or friends of the defendant.[28] The significance of such authorization lies in the fact that the new CPL also grants "defenders," especially defense lawyers, a series of work-related rights and privileges

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24. *Id*. Chpt. 2.
25. *Id*. art. 32-41.
26. Criminal Procedure Law of the People's Republic of China, art. 151 (1979). Article 151 of the 1979 CPL provided that the People's Procuratorate has to deliver a copy of the charging document to the accused and inform the accused of the right to have legal representation at least seven days before the trial. In practice, few procurators would inform the accused of their rights earlier than the seven-day statutory date.
27. 1996 CPL, art. 33 (stipulating that the accused in a case of public prosecution has the right to have legal representation from the date the case is transferred to the Procuratorate for examination). The term "defender" is used here to include both defense lawyers and other qualified defenders who are not necessarily legal professionals.
28. *Id.* art. 32.

essential to the performance of their defense work.[29] For example, Article 36 of the 1996 CPL states that counsel may meet and correspond with the accused, consult, extract and duplicate charging documents and technical materials.[30] Article 37 provides the "defenders" with the right to collect evidence from witnesses or other related parties upon their approval.[31]

However, these rights are only available to people who are legally authorized to be "defenders." Thus, because the statutory role of a "defender" is not available prior to the initiation of the charging process, even though one could obtain counsel assistance, those counsels are not "defenders" under the statute and hence not entitled to the aforementioned statutory rights until after the accused has been charged. In fact, the 1996 CPL distinguishes the scope of legal representation before and after the beginning of the charging process. For the period before the charging process, Article 96 of the 1996 CPL stipulates that lawyers at that stage can "provide [the accused] with legal advice and file petitions and complaints on his behalf."[32] This description basically reduces the function of counsel to a mere advisory role, and precludes more proactive activities that are central to the task of 'criminal defense.' Not surprisingly, Article 96 further spells out an extremely limited set of privileges for the lawyer at that stage, the lawyer "shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to inquire about the case."[33] Such language suggests that the 1996 CPL does not intend to sanction the participation of lawyers before the charging process and it only contemplates a very perfunctory role for the lawyers at that stage. It is not until the beginning of the charging process that lawyers are repositioned as "defenders" and their responsibilities are expanded to include "presenting, according to the facts and law, materials and opinions proving the innocence of the criminal suspect or defendant, the pettiness of his crime and the need for mitigated punishment or exemption from criminal responsibility, and safeguarding the lawful rights and interests of the criminal suspect or the defendant."[34] Thus, based on the 1996 CPL, the defense function of a lawyer does not start until the lawyer becomes a "defender" at the beginning of the charging process, and a lawyer is extremely constrained in what he could do during the entire period of police investigation.

From an Anglo-American perspective, the 1996 revision was a rather irresolute reform effort because it failed to allow the appointment of "defenders" during police investigation, the period during which human rights violations were most rampant. Nevertheless, in China, the 1996 CPL was received with much enthusiasm by lawyers and legal scholars at the time of its enactment. For an area that had persistently resisted change, the new CPL was a major victory and it signified the inception of a new era of

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29. Defenders who are not lawyers may also meet and correspond with the accused, consult, extract and duplicate charging documents and technical materials, but they need the permission from the People's Procuratorate in order to do so. *Id.* art. 36. However, defenders who are not lawyers do not have the privilege to investigate the case. *Id.* art. 37.
30. *Id*. art. 36.
31. *Id*. art. 37.
32. *Id*. art. 96.
33. *Id.*
34. *Id*. art. 35.

procedure fairness. However, defense lawyers and legal scholars soon discovered that they have miscalculated the power of the new CPL as well as the recalcitrance of old guards and old customs. Serious problems began to surface during the implementation of the 1996 CPL.

II. MAJOR PROBLEMS DURING THE IMPLEMENTATION OF THE 1996 CPL

1. Access to the Accused

Even though the 1996 CPL grants defense lawyers unlimited access to their clients, in practice, defense lawyers still face a variety of obstacles when they seek access to their clients. The criminal process in ancient China was very inquisitorial in nature, which means that judges took the primary responsibility of questioning defendants and witnesses to ascertain the facts. In addition, criminal procedure of the PRC was initially modeled after that of the former Soviet Union,[35] which also has a strong inquisitorial tradition. Thus, China's criminal procedure inherited many of the defining characteristics of an inquisitorial system, one of which was the heavy dependence on confessions. Today, such reliance remains largely the same. Some attributed this situation to the lack of modern investigative technology available to the police and the Procuratorate;[36] others blamed it on the inadequacy of a comprehensive system of proof that is capable of compelling witness cooperation in criminal proceedings.[37] In the absence of incriminating evidence from other sources, confession remains crucial to the strength of the Procuratorate's case.

There is a common fear among the procurators that counsel assistance would result in retraction of prior confessions by the accused. The incidence of retraction did rise significantly with increased participation of defense lawyers.[38] Many in practice and in academia believe that this increase is mainly a reflection of the prevalence of police misconduct during the investigation process.[39] The use of torture, prolonged detention, and other unlawful means to extract confession has long been a staple of the Chinese criminal process, subject to sharp criticism from both domestic and Western human rights advocates. Upon appraisal by the defense counsel of their legal rights, a large number of suspects claimed that their prior confessions were untruthful and that they were pressured to give such statements only to avoid further bodily harm. To a certain extent, the increased incidence of retraction could be interpreted as a positive sign that the newly furnished procedural protections were at work as purported, even though one could not rule out the possibility of a certain percentage of false claims. In the eyes of many procuratorators, however, these retractions were utterly unwarranted complications that unduly interfered with the performance of their public duties. The Procuratorate soon

35. *See generally,* CHEN RUIHUA, FRONTIER QUESTIONS IN CRIMINAL PROCEDURE, 27-29 (People's Univ. China Press, 2000).
36. Interview notes A.
37. China's first evidence law is currently in the drafting process. In the absence of compulsory measures to ensure witness collaboration, there is tremendous culture and social barrier to testifying in public, especially if the witness and the accused have prior relationships.
38. Interview note A.
39. *Id*.

discovered that the system under the 1996 CPL harbored opportunities for reducing "interference" from defense lawyers.

Due to the inadequacy of the bail system, by the time the case is transferred to the Procuratorate, most often the accused has been confined to a detention center. Current regulations require defense lawyers to have the following documents in order to be granted access to the detention center: 1) an official Opinion issued by the Procuratorate regarding charges against the accused; 2) a Certification from the Procuratorate identifying the defense counsel for the suspect; 3) lawyer's certification; 4) reference from the lawyer's firm; 5) power of attorney from the accused (if available).[40] Therefore, defense counsel would not be able to meet with his client until he obtains the Opinion letter and the Certification from the Procuratorate. In order to secure a confession from the accused, the procurators often use a variety of means to delay issuance of these documents until they have interrogated the criminal suspect.[41] If a defendant has given the same confession twice—once before the police and once before the Procuratorate — it then becomes more difficult for the defense to challenge the confession on the ground of extortion by way of torture because the Procuratorate can argue that since it did not use any illegal means, the second confession should be voluntary and truthful.

In addition to the obstacles posed by the Procuratorate, the police also have incentives to prevent lawyers from meeting with their clients. The interest of the police is largely aligned with that of the Procuratorate—successful prosecution of criminals is a major consideration in performance evaluations within the police department. Therefore, the police are equally hostile to early involvement of defense lawyers and they also use different excuses to delay or deny lawyer-client meetings. In one case, defense lawyers' request to meet with their clients was denied fourteen times by the police staff at the detention center within a two-month period.[42]

Another reason for the limited contact between the defense lawyer and accused is the lack of initiatives from defense lawyers themselves. A number of factors contributed to the lack of such initiatives. The first and foremost factor is the non-lucrative nature of criminal defense work. With the rapid development of China's new economy, especially the rise in foreign investments, most law firms are preoccupied with corporate transactions that bring in more abundant financial returns. There has been a severe shortage of lawyers who are willing to take on criminal matters. In April 1997, China instated a full legal aid program to ameliorate the shortage of criminal defense lawyers.[43] Under this program, when a court needs to appoint counsel for an eligible defendant, the court would authorize the local legal aid agency to appoint a lawyer for the defendant within three days.[44] Because there is no public defender system in China, most of these

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40. *Id*.
41. *Id*.
42. *Final Decision on the First Case involving Lawyer's Privilege in the East Three Provinces—Lawyer's Meeting with Criminal Suspect Needs No Approval*, *at* http://chinalawinfo.com/fzdt/bg_jdft.asp?id={A8C3E647-03CD-436A-8FF7-A844F997018F}.
43. *See* Joint Notice from the Supreme People's Court and the Ministry of Justice on Criminal Legal Assistance Work (1997), *reprinted in* LATEST JUDICIAL EXPLANATIONS OF THE LAWS OF THE CRIMINAL JUSTICE SYSTEM.376 (China Univ. Law & Pol. 1999).
44. *Id.*

lawyers are from local law firms. Each law firm has to meet a certain quota of criminal cases every year.[45] For each case where counsel is appointed, the counsel would usually receive RMB150 from the Legal Aid Office, and another RMB150 from his own law firm.[46] Since detention centers are usually located in distant suburbs, a cab ride to the detention center could easily cost RMB100. Therefore, for court-appointed counsels, it is not financial profitable for them to arrange for additional meetings with their clients or to invest additional time and energy than the bare minimum required by the law.

Second, meetings with the accused often are unproductive. Even though current regulations do not require officer presence at these meetings, in practice, in almost all cases, meetings between the defense counsel and the suspect are under the watch of police officers or surveillance cameras.[47] Client-lawyer confidentiality, a crucial prerequisite for legal representation in Western criminal justice systems, has encountered stanch resistance in China. The non-confidential settings at these meetings make the accused fearful of the possibility of disclosing self-incriminating evidence to the government. Hence, defense lawyers often obtain little additional information from these meetings than what they would have learned from the Procuratorate.

The third factor that contributes to the lack of initiatives among defense lawyers is the difficulty in proving police or procuratorial misconduct. In addition to getting a first-hand account of the facts of the case, the main purposes of pretrial meetings also include appraising the accused of their legal rights and obligations, investigating police or Procuratorial misconduct during investigations, and seeking legal remedies for such misconduct. However, many defense counsels have learned from their experience that it is exceedingly difficult to successfully challenge police or procuratorial misconduct.[48] Some of the coercive means used by the police left no physical evidence on the accused.

For example, starvation and sleep deprivation are frequently used to compel confessions or other types of cooperation. Even if the coercive means did leave physical marks at the time of their commitment, the wounds most likely would have healed by the time defense lawyers met with their clients. Police often defended allegations of torture by attributing the injuries to inmate fights at detention centers.[49] For fear of police retaliation, few inmates would be willing to come forward and testify against the police. Even though there are no official statistics on the number of incidents in which the defense succeeded in pursuing a charge against the police with torture or other illegal conduct, most practicing attorneys and legal academics believe that the number is low.

For the reasons described above, defense lawyers, especially court appointed ones, have limited contacts with their clients prior to the trial. Such an outcome demonstrates that even if the law guarantees access to the accused, it may not be effective in practice if complementary measures are inadequate, such as the lack of sufficient financial assistance to court-appointed counsels, or if access is rendered meaningless by the lack of confidentiality in meetings resulting from such access.

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45. Interview note A.
46. *Id*. RMB150 is equivalent to US$19.
47. *Id*.
48. *Id*.
49. *Id*.

2. Access to Files: Narrower Scope of Review by the Defense

Article 36 of the 1996 CPL provides defense lawyers with the right to review the Procuratorate's files. Article 36.1 states that "from the day the people's Procuratorate begins to examine a case for prosecution, defense lawyers may consult, extract and duplicate charging documents and technical materials."[50] It is unclear from the language of the 1996 CPL what "charging documents" or "technical materials" entails. Soon after the enactment of the 1996 CPL, the Supreme People's Procuratorate (SPP) issued its own regulations (the "1997 SPP Regulation") to facilitate the implementation of the CPL.[51] The 1997 SPP Regulation offers detailed explanation of many terms that are vaguely defined in the 1996 CPL. In fact, the SPP Regulation was meant to be a major "judicial" interpretation of the CPL.[52]

The 1997 SPP Regulation stipulates that charging documents refer to documents that are procedural in nature. They include the decision to file a case, detention warrant, arrest warrant, search warrant, and other documents that are prepared for the taking of compulsory measures or other investigative and prosecutorial procedures.[53] Because these procedural documents generally do not state reasons for the granting of various permissions, they are of little use for the defense to appraise whether government actions are indeed supported by the facts of the case. The 1997 SPP Regulation further stipulates that technical materials refer to documents that record the conclusions of technical examinations, which include blood tests, psychological tests, and other examinations by qualified professionals.[54] Because these documents often contain conclusions only, and without detailed description of methodology or actual data from the tests performed, they are again of little value to the defense. Statements from witnesses and victims, or even the identities of those expected witnesses, as well as other evidentiary materials such as tangible objects, are excluded from the legally prescribed scope of document review by the defender. Therefore, the 1997 SPP Regulation practically excludes defense lawyers from reviewing any substantive materials in the Procuratorate's files, thus preventing them from any meaningful evaluation of the strength of the government's case during the charging process.

This is not the only problem with the defense's right to review the file. Article 36.2 of the 1996 CPL deals with access to files once the case is transferred to the court. It states that the defense counsel could consult, extract and photocopy judicial documents "pertaining to the criminal acts in the case".[55] There has been much debate among practitioners, legislatures and legal academics regarding the intended scope of document

50. *Supra* note 30.
51. Regulation by the Supreme People's Procuratorate on the Implementation of the PRC Criminal Procedure Law (1997), *reprinted in* LATEST JUDICIAL EXPLANATIONS OF THE LAWS OF THE CRIMINAL JUSTICE SYSTEM 182 (hereinafter SPP Regulation).
52. In China, the SPP shares judicial interpretation power with the Supreme People's Court. This subject will be explored in detail in Part III. Section 4.
53. SPP Regulation, art. 278.
54. *Id.*
55. 1996 CPL, art. 36.2.

review at this stage. In practice, the scope of review has been limited to documents that have been submitted to the court prior to the trial.

Under the old CPL, the Procuratorate should submit the entire file and all the evidence on the accused to the court prior to the trial and defense lawyers could review everything that has been submitted to the court. This used to be, and to a certain extent still is, a characteristic practice in inquisitorial systems in the Continental Europe. Supporters of the Continental inquisitorial system have hailed such practice—namely, complete access to the government's case by the defense—as a major advantage over the Anglo-American adversarial system.[56] However, such practice has also been the target of relentless criticism for its prejudicial impact on the trial judge. Having seen the government's entire case before the trial, judges are likely to form pre-conceived opinions as to the guilt and innocence of the accused, and hence make it more difficult for the defense to challenge such pre-conceptions during the trial. In China, this problem had been particularly acute due to the nepotism between courts and the Procuratorate. Trials often became a formalistic run of the statutory procedures rather than a meaningful examination of evidentiary materials. Legal academics in China have long recognized this problem and mockingly referred to such practice as "judging first, trial second."

In an attempt to cure this defect and level the playing field for the defense and the Procuratorate, the 1996 CPL prescribes that only "major evidence" will be submitted to the court before the trial. Soon after the enactment of the 1996 CPL, disputes arose between the courts and the Procuratorate with regard to the meaning of "major evidence." The courts preferred a broad construction of the phrase, insisting that major evidence should include materials pertaining to the nature and details of the criminal acts involved in the case.[57] The Procuratorate, on the other hand, preferred a narrower construction.

Even though an extensive pretrial review of the government's case by the court offers the benefit of framing the court's first impression to the government's advantage, because everything that is submitted to the court is also accessible to the defense, the defense will be better prepared to counter the government's case during the trial. Thus, the Procuratorate insisted that major evidence should include critical incriminating materials only.[58] It shall be remembered that a central task of the 1996 revision was to convert the trial procedure to a more adversarial form. Therefore, from the standpoint of legislative intent, the drafters of the 1996 CPL may have intended to restrict the amount of evidence that a judge could be exposed to prior to the trial. Hence, the Procuratorate's interpretation of "major evidence" gained favor among various parties that had participated in the revision process.

In January 1998, a joint interpretation of the 1996 CPL was issued by the Supreme People's Court (SPC), SPP, the Police Department, the Ministry of National Security, the Ministry of Justice and the Legislative Affairs Commission of the Standing Committee of

56. *See generally,* JOHN H. LANGBEIN, COMPARATIVE CRIMINAL PROCEDURE: GERMANY (West Pub. Co. 1977).
57. Interview notes C.
58. Interview notes B.

the National People's Congress.[59] Article 36 of the Joint Interpretation states that "major evidence" shall include the following: 1) main evidentiary materials of each category of evidence in the decision to prosecute; 2) main evidentiary materials among multiple categories of evidence of the same type; and 3) voluntary confession, withdrawal, failed attempt, self-defense, and other exculpatory or mitigating evidence.[60] By limiting the types of evidence that is submitted to the court, the Joint Regulation also effectively narrowed the scope of evidence that the defense counsel was able to review before the trial.

Another issue worthy of attention is that the scope of major evidence is within the subjective judgment of the Procuratorate. Even though the drafters of the Joint Regulation took pains to define major evidence, they still left much room for procuratorial discretion. The dangers of subjectivity are especially serious with regard to exculpatory and mitigating evidence. There is no legal definition of exculpatory or mitigating evidence. Exculpatory evidence is generally understood as evidence that helps to establish the defendant's innocence; mitigating evidence is used to fine-tune the criminal penalty once the defendant is found guilty of the crimes charged, similar to mitigating factors in U.S. sentencing guideline. In practice, the question of what constitutes exculpatory evidence or mitigating evidence often becomes a subjective judgment. Even if there is no purposeful suppression of such evidence, the Procuratorate and the defense, by nature of their adversarial positions on a case, are likely to have different opinions as to what is exculpatory or mitigating in the specific case. A practical consequence of this situation is that the Procuratorate can easily leave out potentially exculpatory or mitigating evidence, thus precluding defense access to information that is beneficial to the accused.

Other than consulting materials that are open for review, defense lawyers have almost no other access to the Procuratorate's file before trial. In general, there is little direct contact between the Procuratorate and the defense lawyer during the charging process. The 1996 CPL requires the Procuratorate to take advice from the defense counsel.[61] The legislative purpose for requiring such communication is to provide defense lawyers with the opportunity to report any alleged police misconduct to the Procuratorate, and to discuss with the Procuratorate whether there is sufficient evidence to bring charge. The subsequent SPP Regulation also requires the Procuratorate to contact the accused or his counsel by phone or in writing.[62] However, compliance with this article has been extremely poor. The Procuratorate argued that such practice would only open doors for the defense to extract more information from the Procuratorate. Some procurators who did comply with this article were mainly motivated by the possibility of obtaining

59. Joint Regulation by the Supreme People's Court, Supreme People's Procuratorate, the Police Department, Ministry of National Security, Ministry of Justice, and the Legislative Affairs Commission of the Standing Committee of the National People's Congress on Issues regarding Implementation of the Criminal Procedure Law, *reprinted in* LATEST JUDICIAL EXPLANATIONS OF THE LAWS OF THE CRIMINAL JUSTICE SYSTEM 91 (hereinafter Joint Interpretation).
60. *Id*. art. 36.
61. 1996 CPL, art. 139 [duplicate the language of the regulation here].
62. SPP Regulation, art. 221.

additional evidence from the defense, in their words, to convert defense counsels into "secondary procuratorators who will assist the procuracy in the pursuit of truth."[63]

To a certain extent, the defense lawyers' access to files has worsened rather than improved after the 1996 revision. Before the 1996 CPL, even though many defense lawyers had only seven days to examine the Procuratorate's file, they did have access to the whole file. After the 1996 CPL, defense lawyers got involved earlier but their access to the government's file was significantly restricted. This situation has become especially problematic in combination with China's attempt to adopt a more adversarial trial procedure. The adversarial model as practiced in the United States and England has always viewed defense as suffering serious information disadvantage as compared to the prosecution, and has developed a sophisticated discovery mechanism aimed at correcting for such disadvantages. Unfortunately, China's 1996 criminal procedure reform left out this key component of the Anglo-American trial procedure. We see here the perils of an isolated reform endeavor: when a segment of a foreign norm is transplanted alone, the new environment may alter the function of this singular transplant and render the intended benefit of the reform immaterial.

3. Right to Investigation by the Defense

Article 37 of the 1996 CPL provides that "upon approval by the witness or other relevant unit or individuals, the defense lawyer may collect from them materials related to the case, or they may ask the People's Procuratorate or the People's Court to collect such evidence, or they may ask the court to notify the witness to testify at trial."[64] Article 36 provides that collection of materials from the victim has to be sanctioned by the People's Procuratorate or the People's Court, and receive further approval from the victims or their relatives.[65] Thus, rather than giving defense lawyers the right to investigate, the law merely made it permissible for defense lawyers to investigate the facts. In contrast, investigations conducted by the courts and the Procuratorate are accorded with solid legal backing. Article 45 states that "the People's Courts, People's Procuratorate and the public security organs shall have the authority to collect evidence from the parties and individuals concerned."[66] Moreover, the CPL requires the concerned parties and individuals, including the accused, to provide 'truthful evidence.'[67] Thus, in comparison to the Procuratorate's pervasive investigative power, the right to investigate by the defense is merely a somber mockery.

Testifying publicly against an acquaintance is still viewed with much distaste in the Chinese society. In addition to the usual concerns about interruption of work and possibilities of retaliation, people are also worried about being cast unfavorably as ones who betray friends or families and are therefore untrustworthy. Even though the traditional social web that once connects individuals with one another has largely broken down due to shrinking family sizes, enhanced job mobility and increased commercialization, the social stigma attached to being a prosecutorial witness continues

63. Interview notes B.
64. 1996 CPL, art. 36.
65. *Id*.
66. *Id*. art. 45.
67. *Id*.

to persist. The probability of cooperation is even slimmer with victims and their relatives due to the double approval requirements of the new CPL. In addition, there have been a great number of cases involving torture or prolonged detention of witnesses by the police or the Procuratorate for purposes of obtaining the desired testimony.

Paradoxically, even though the Chinese government is known for its formidable coercive power over its citizens, the Chinese courts have not been authorized to use coercive means to compel witness appearance at trials. Proposals for empowering the courts to compel witness appearance have been obstructed at the legislative level. On one hand, the legislature is seriously concerned about the tremendous government resources required for complementary measures such as witness protection programs. On the other hand, the majority of the legislators has not fully comprehended the truth-seeking value of cross-examinations and therefore lack the political will to tackle this challenging problem. In more than ninety percent of current criminal proceedings, there is no live witness participation.[68] Witness testimony is usually presented in the form of either the Procuratorate or the defense reading a copy of statement signed by the witness. Therefore, in addition to limited investigative power before the trial, defense lawyers have no opportunity to cross-examine witnesses at trial either.

In many Western countries, defense lawyers' investigative power also has no legal guarantees and witness cooperation might be difficult to achieve. For example, in the United States, most witnesses who have spoken to police, prosecutor, or grand jury would have been advised not to discuss their testimony with the defense. The defense can do nothing effective to break the wall of silence before the trial. If he should try, he runs the risk of being charged with tampering with witness.[69] However, the United States has amended the adverse consequences of this deficiency by using a combination of pretrial discovery and compulsory measures during the trial. Once again, China doesn't have these complementary measures and defense lawyers are left haplessly with a vacuous right to investigate.

4. Increased Incidence of Criminal Prosecution of Defense Lawyers

An unexpected development spawned by the 1996 criminal procedure reform was the increase in the incidence of criminal prosecution of defense lawyers. Even though this article has devoted lengths to detail the failure of the 1996 CPL to significantly expand the function of criminal defense lawyers during pretrial proceedings, the limited expansion that did result has ironically exposed defense lawyers to a disproportionately greater danger of criminal prosecution. Article 38 of the 1996 Criminal Procedure provides:

[D]efense lawyers and other defenders shall not help the criminal suspects or defendants to conceal, destroy or fabricate evidence or to tally their confessions, and they shall not intimidate or induce the witnesses to modify their testimony or give false testimony, or conduct other acts to interfere with the proceedings of the judicial organs.[70]

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68. Interview notes C.
69. Abraham S. Goldstein, *The State and the Accused: Balance of Advantage in Criminal Procedure.* 69 Y.L.REV. 1149, 1182 (1960).
70. 1996 CPL, art. 38.

The 1996 CPL further stipulates that whoever violates the above provisions will be investigated for legal responsibilities.[71] A related provision in the Chinese Criminal Code, Article 306, specifies the legal consequences of such violations: depending on the gravity of the violations, in most cases, defenders will be sentenced to less than three years in prison or be subject to detention; however, in severe cases, defenders may receive up to seven years of prison sentence.[72] The task of investigating and prosecuting crimes under Article 306 falls in the province of the People's Procuratorate, which is China's constitutionally designated judicial supervisory organ. Since the statute is unclear as to what constitutes fabricating evidence or interfering with the judicial process, the Procuratorate has great latitude in enforcing this provision. A defense lawyer could be easily accused of these charges if a defendant or a witness changes his story after meeting with the defense lawyer.

A further complication in the situation is the fact that after the implementation of the 1996 CPL, because the new procedure demands the Procuratorate to play a more active role during the trial, the People's Procuratorate started using conviction rates as a measure of the successfulness of investigation and prosecution.[73] Even though the purpose of this measure is to drive the procuratorators from their old, passive mode of trial participation to an aggressive, contest mode of trial participation, in practice, it has provided more incentives for the Procuratorate to use their supervisory power to thwart advances by the defense.

Since 1996, the number of defense lawyers being prosecuted under Article 306 of the Criminal Code has escalated, and the most frequent accusation in such cases has been "distortion or fabrication of evidence."[74] Due to the sensitive nature of this issue, there is no official tally of the incidence of such prosecutions. However, an unofficial survey by the All-China Lawyers' Association revealed that since 1996, there have been more than 100 lawyers who were subject to criminal prosecution while acting in their capacity as defense lawyers.[75] The Association acknowledged that this survey was far from complete and it estimated that more than 200 defense lawyers have been subject to various types of persecution since 1996, including arrest, detention, education through labor, and criminal prosecutions.[76]

Undoubtedly, in some of the 200 plus cases, the defense lawyers did commit illegal activities in violation of Article 306 of the Criminal Code. However, it has been widely observed that the Procuratorate often use their broad discretion under Article 38 of the CPL and Article 306 of the Criminal Code to retaliate against defense lawyers who have

71. *Id.*
72. Chinese Criminal Code, Art. 306.
73. Chen, *supra* note 35, at 538.
74. Mark O'Neill, *Tortured for defending fair justice: an eminent lawyer was detained on the mainland for 26 months for carrying out his duty*, S. CHINA MORNING POST, Feb. 12, 2001, at 17.
75. Hongyin Wang et. al., *Thoughts on the Establishment of an Immunity Regime for Criminal Defense Work*, at http://www.chineselawyer.com.cn/article/show.php?cId=895.
76. *Id.*

successfully undermined the strength of the government's case.[77] Even though the official procedure requires a full investigation by the supervisory division of the Procuratorate to establish sufficient evidentiary basis for the arrest or prosecution of defense lawyers, in reality, defense lawyers were often arrested right after the trial without any incriminating evidence, and hence the infamous practice of "arrest first, investigation second" by the Procuratorate and the police.[78] In a few extreme cases, the procuratorators on the case interrupted the trial proceeding and ordered the defense lawyer to be arrested on the spot.[79]

In most of these retaliatory prosecutions, the alleged criminal violations by defense lawyers lacked factual basis. According to a survey by the All-China Lawyers' Association, between 1999 and January 2002, the Association received fifteen appeals from defense lawyers who were prosecuted for perjury or obstruction of justice.[80] Among these fifteen appeals, there was only one case in which the lawyer's certificate to practice was revoked. In four of the fifteen cases, no conclusion has been reached till this day as to the guilt of the accused; three of these four arrests took place in 1997, which means that the attorneys have been imprisoned for five years without a conviction. In the remaining ten cases, the lawyers were found not guilty and released;[81] a few lawyers received monetary compensation under the State Compensation Law.[82]

Many scholars and practitioners believe that the high error rate in the fifteen cases surveyed by the All-China Lawyers' Association is representative of the overall picture—that prosecution of defense lawyers was often the results of arbitrary and capricious actions by the Procuratorate as a form of retaliation. Chinese Minister of Justice Gao Changli admitted publicly in 1999 that "incidents of interfering with or attacking and persecuting lawyers who are legally practicing law are quite common in China today, and some of these have been rather grave."[83]

Once arrested, the lawyers often found themselves in the most precarious circumstances. In many cases, they had difficulty finding attorneys who were courageous enough to act on their behalf to fight the vengeful resolve of the Procuratorate; even if they did find counsel assistance, their defense counsels often had extremely limited access to the

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77. *E.g.*, *Lawyers behind bars,* S. CHINA MORNING POST, Jan. 29, 2000, at 1 (the article cited two cases in which defense lawyers were arrested on charges of falsifying evidence when they found evidence to prove their clients' innocence);
78. *E.g.*, Fuhai Du, *Criminal Prosecution due to Defense Work Reflects the Lawyers' Professional Difficulties*, LEGAL SERVICE TIMES, March 8, 2002, at 7, available at http://www.chineselawyer.com.cn/article/show.php?cId=910. The article cited a 2000 case in the City of Ha'erbing. On September 28, 2000, upon completion of a public trial of a criminal organization, East Ocean Dragon, at the Intermediary People's Court of Ha'erbing, the Ha'erbing People's Procuratorate recommended the establishment of a criminal case against the defense lawyer, Dedong Ding, on the basis of obstruction of justice. Immediately thereafter, the Ha'erbing Security Bureau (the local police department) issued an arrest warrant of Dedong Ding and handcuffed him at the attorney's stand in the court.
79. Interview notes, Chen Ruihua.
80. Du, *supra* note 78.
81. One of these lawyers is Shaobuo Sun, a renowned defense attorney. He had been in detention for 597 days before being found not guilty and released. *Id*.
82. *Id*.
83. *Trying times as defense Lawyers build a fair case*, S. CHINA MORNING POST, May 6, 1999, at 10.

government's files, which rendered effective defense almost impossible.[84] In some cases, defense lawyers were tortured or forced to sign statements of confession, and thrown into jail without trial.[85] Those defense lawyers who were fortunate enough to get their names cleared often eventually had to endure prolonged detention or imprisonment before regaining their freedom.

In one extreme case, two lawyers were imprisoned for 10 years before their convictions were reversed based on insufficiency of evidence.[86] During the 10 years of imprisonment, these two lawyers took 526 appeals to different governmental organs, including the Supreme People's Court, the Supreme People's Procuratorate, the National People's Congress, the Department of Justice, and the Political and Law Committee of the Communist Party's central committee, and appellate review of their case finally took place under mounting pressures from these different directions.[87] Even though the Lawyer's Associations were often the first place to which appeals were taken, due to their non-governmental status, they were often powerless in protecting their members from malicious official persecution.[88]

5. Summary

Many legal academics that participated in the drafting of the 1996 CPL have lamented over the outcome of this once-promising endeavor. Five years after its enactment, the 1996 CPL has clearly failed to effectuate the drafter's original intention to enhance defense lawyers' functions at the pretrial stage. Defense lawyers have expressed much anger and frustration over the adverse impact of the 1996 CPL. In Part II to be published in the next English issue of the Perspective, Chapter III of this article seeks to identify some key factors that contributed to the failure of the new CPL, and Chapter IV of the article proposes some suggestions that could potentially improve the status of defense lawyers.

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84. Interview notes A and C. *See also*, *Lawyers behind bars*, *supra* note 77.
85. *E.g.*, O'Neill, *supra* note 74; *Lawyers behind bars*, *supra* note 77.
86. *Id.*
87. *Id*. The ordeal of these two lawyers were not unique. For similar accounts, see O'Neill, *supra* note 77. O'Neill reported the imprisonment of one of the best-known lawyers in Henan province, Kuisheng Li. Li was detained for 26 months and tried multiple avenues of appeal. During Li's detention, Li's original client died mysteriously 6 days before a court appearance.
88. *See e.g.*, comments from Director of the Beijing Lawyers' Association, in *Lawyers behind bars*, *supra* note 77.

(Yu ZHANG)

Historically, private schools played a key role in Chinese intellectual heritage. After the Chinese Communist Party (CCP) took power in 1949, private schools disappeared for three decades, while public education dominated the educational system. From 1978 when the reform and opening policy was implemented, the Chinese government embarked on a course towards diversification of the economy by allowing private sectors to grow, in the process allowing the establishment of schools by the private sectors. Private educational institutions are expanding in scope and number and are increasingly important in China. By private education I mean those schools that are founded or operated by people or organizations other than the government. The issue of privatization in education involves debate on ideology, equality, efficiency and autonomy, and touches on all aspects of a society experiencing tremendous social transformation. It is essential to consider the role of private education in the socialist China, and most importantly, the unique features of educational reform shaped by a social transition period. In this article, I will explore the strength and weakness of the part of private education that belongs to a formal schooling system, and how the development of these schools interacts with a society in transition.

Reemergence of private education against the backdrop of social transition

The inauguration of the post-Mao economic reforms since 1978 has resulted in many fundamental changes permeating every aspect of society. Likewise, Chinese education has undergone significant metamorphosis, of which private education is one of the most dynamic and fastest-growing segments. The background of the resurgence of private education encompasses political, economic, social and educational arenas with the interplay of all these forces.

In terms of political aspects, the shift to a period of political relaxations brings about an unprecedented outpouring of enthusiasm in education. Economically, transition from socialist planned economy to socialist market economy has important implications for education.

On the educational platform, the state adopts the human capital theory, and regards education as a vehicle to modernization and development. The focus of education is no longer on serving as a political instrument, but transmitting the knowledge and skill necessary towards China's modernization. The state recognizes human capital's importance in determining "the rate of growth of an economy and its ability for integration in world markets."(Mehmet, 1997, p.138). As Deng Xiaoping, the widely acknowledged general architect of China's reform, put it in 1983: "Education should face modernization, the world, and the future." (Peterson, Hayhoe, and Lu, 2001, p.174) In 1985, the CCP reiterated the necessity to develop the requisite human capital in its Resolution on the Reform of the Educational System which notes, "our massive socialist modernization program requires us not only to give full rein to the skilled people now available and to further enhance their capabilities, but also to train, on a large scale,

people with new types of skills who are dedicated to the socialist cause and to the nation's economic and social progress."(Agelasto & Adamson, 1998. p.3) In 1992, the Fourteenth National Congress of the Communist Party of China established the major framework of reform and development in the 1990s, clearly pointing out "that China must make education a strategic priority. It is of fundamental importance to China's modernization drive to raise the ideological and ethical standards of the entire population as well as its scientific and educational levels." (*People's Daily,* 1998, p.5)

However, there is a tremendous gap between the ideal and reality in education. According to "Report on China's Education and Human Capital Resources," issued by the Ministry of Education this year (2003, Feb. 13), in China, by 2000, only 18% of the population between the ages of 25 and 64 had received a senior high school education or above, and 42% of the population between the ages of 25 and 64 had received less than primary school level education. In addition, the government does not have sufficient resources to realize its goal. During the reform era, the central government shifted the burden of funding education more and more to local governments, which, in turn, shuffled much of the burden to schools to generate their own funding. However, governmental schools are handicapped by a lack of funding and space to absorb the flood of candidates. "Because of the lack of funding, more than 30 percent of eligible rural students cannot go on to secondary school, which in turn shut the door to higher education."(Lin, 1999, p.42)

Like the modernization theory, the human capital theory provides the government a basic justification to diversify the provision of its system. Consequently, private sectors in education have been brought to the forefront, which can help to bridge the enormous gap between the goals of modernization and the existing mass ignorance. As shown by Table 1, public funding to education has declined 10 percent as a percentage of total funding, but multiple alternative ways of bringing in financial resources to support education have formed an indispensable part of China's education.

TABLE 1. STRUCTURAL CHANGES IN FUNDING SOURCES TO EDUCATION IN CHINA

Year	Total 100 million RMB	Percentage of sources					
		Total	Public Finance	Educational Enterprises	Individuals and Social organizations	Donation	Others
1994	1488.78	100	78.9	9.9	0.7	6.6	4.0
2000	3349.04	100	68.9	20.7	1.6	4.8	4.0

Sources: *Almanac of funding statistics in Chinese education*.

Along with further opening up to the outside world and the deepening of economic and social reforms, the social structure has undergone significant adjustment. A greater degree of social differentiation is emerging and a variety of avenues and options become available. Economic growth creates a rapidly expanding middle class, which is comprised of "professionals such as lawyers and doctors, rural peasants, urban private entrepreneurs, real estate agents, consultants, movie stars, and intellectuals possessing modern scientific-technological skills. As of 1997, they comprised 5-10 percent of the 1.2 billion population."(Lin, 1999, p.28) Their financial affluence, lack of spare time to

attend to children, and their intense desire to offer their children the best educational opportunities available lead to a large group of clients for the education market. In addition, another group of people consisting of immigrants to urban cities, with children denied access to urban public schools, established their own schools with poor conditions and formed another extreme of private schools.

Stages of development and unfolding of government's policy

2001 Green Paper on Education in China: Annual report on Policies of China's education, an official annual report, points out that there have been three stages of development in private education since its reemergence in 1978, (National Center for Education Development Research, 2001, p.119) including: a Restorative stage (1978-1992), a Rapid growth stage (1992-1997), and a Regulatory development stage (1997-) A general picture of its development in primary and secondary levels is shown in Table 2.

TABLE 2. NUMBER OF NEWLY FOUNDED PRIVATE PRIMARY AND SECONDARY SCHOOLS

Year	Before 1978	1978-1992	1993-1997	1998-2000
Number	18	110	377	263
Percentage	2.3	14.3	49.1	34.2

Sources: National Center for Education Development Research, 2001, p.119

1) Restorative stage (1978-1992)

The majority of private schools appeared in late 1970s and early 1980s and were "exam-assisting" organizations offering remedial tutorials aimed at all kinds of academic tests. Initially, the government's attitude toward these schools could be characterized as passive tolerance rather than active support. The government endorsed these private schools because they harnessed resources left idle and provided at least some education to the population. Because education plays an important role in the national political consciousness, the central government viewed these private educational initiatives more cautiously than economic ones. The government did not publicly encourage the establishment of these schools, but its acquiescence exhibited a willingness to allow them so long as they did not transmit ideas undermining the legitimacy of the state.

Increasingly, the growing power of the Chinese economy pushed the government to seek means to sustain its economic ascendancy. Recognizing the argument that education not only improves the choices available to individuals, but also provides the type of labor force necessary for industrial development and economic growth, the state tried to translate market opportunities into realities through increasing investment on education. Therefore, the contribution of private schools to education was eventually acknowledged by the central government in successive laws such as Resolution on the Reform of the Educational System (1985), Law of Compulsory Education (1986), and Provisional Regulation on Schools Run by Social Forces (1987). These developments signaled official and public acceptance, so the number of academic private schools accelerated.

2) Rapid growth stage (1992-1997)

Since Deng Xiaoping's South China tour in the early 1992, rigidity in the policy of Ministry of Education was further loosened and private education initiated a fast growth stage. Deng advocated renewed economic reform, and private education's contribution to increase human capital was gradually recognized not just an ancillary channel of funding, but an indispensable part of the educational system. The 1993 Outline of Chinese Educational Reform and Development stipulates that the state will "change the structure of government monopoly of running schools, establish step by step a system centered around government's operation of schools, with the help of social forces." and it further points out that the state adopts policy of "active encouragement, vigorous support, correct guidance and enhanced management." (National Center for Education Development Research, 2001, p.119)

During this period, more than 800 new private higher institutions were established, rising from 450 schools in 1991 to 1319 in 1995. (World Bank, 2002, p.19) In 1994, the Ministry of Education, for the first time, accredited six private higher institutions to issue graduate certificates. In 1996, the number of students enrolled in private higher institutions broke the point of one million.

3) Regulatory development stage (1997-)

Today, private schools take more diverse forms. Some provide training lasting a few weeks, while others follow a curriculum and schedule that parallels state schools. Some operate from makeshift facilities catering to the masses, while others have sophisticated instructional equipment and luxurious accommodations serving almost exclusively the elites. However, it is estimated that "80 percent of private schools in China are ordinary schools serving the needs of the general public". (Lin, 1999, p.70)

By 2001, the scope of private education was quite spectacular. There were 56,274 private schools with 9,220,000 students enrolled.(World Bank Report, 2002, p.18) The fast development of private education urgently pushed the central government to pass relevant laws. In particular, Regulation on Schools Run by Social Forces issued in 1997 by the State Council was the first regulatory law on private education in the nation. The issuance of this regulation marked a new era, in which private education began to be subjected to a more tightened and systematic control of the government. It reflected the Ministry of Education's decision to direct private education into a more formal and more manageable development track.

At the same time, the Ministry of Education began to organize academic qualification examinations for those private higher institutions not accredited to issue graduate certificate. By 2001, 436 private higher institutions in 18 provinces, autonomous regions and direct municipalities had been permitted to tentatively offer their graduate certificates.

Issues and trends in private education in social transition

China's private schools in an era of social transition are characterized by civil participation, practical orientation, great uncertainty, lack of recognition, and yet impressive vitality of growth.

(1) Civil Participation

One interesting impact of private education is that it becomes a major engine in building up a civil society. No evidence documents any direct international influence to China's privatization of education, although it coincides with international trend. The tide in China is mainly driven by local initiatives that push the government to take a series of measures to accommodate and direct the tide. Since "education acts as a change agent to the political system," (Fagerlind and Saha, 1989, p. 120), we can generalize that the expanding scope of individual enthusiasm to run schools signals a more active participation of people, which is an important characteristic of civil society. As "a population in which there is extensive political mobilization" is "preferable to one in which the masses are politically inactive or stagnant," (Fagerlind and Saha, 1989, p. 119), it is desirable to see that the current trend pushed by "social forces" moves China to be a more democratic and open-minded country. Furthermore, investment in education not only leads to more professionals who will build the country's economy, but also creates more educated individuals who are essential for strengthening institutions of civil society and for building good governance, which are critical elements in the effective implementation of sound economic and social policies.

(2) Practical orientation

In most private schools, a practical orientation characterizes their curriculum and activities. At the primary and secondary levels, because "in larger environment of education in China, exam scores still count more than talents and skills", therefore, in order to have more students passing entrance examination to universities, like their counterparts in public schools, "private schools, with no exception, are under tremendous pressure to teach students to study for examinations." (Lin, 1997, p.165) On the higher education level, private universities view students' interests and needs as the guiding principles for the design of curriculum. In order to enhance their students' employment opportunities on the job market, they are sensitive to market demands. They offer mainly vocational and technical courses, as well as classes in business and commerce. On the one hand, they are remarkably more resourceful in identifying undersupplied niches in market, so their graduates are more responsive to market in such areas as foreign languages and hotel management; on the other hand, they are a threat to traditional universities who have defined themselves as institutions with a core educational mission and a common understanding of the values of academia. The fact that these newly emerging private universities are subject to all of the commercial pressures of the marketplace make the concept of higher education more like a commercial product, and the goal of having the university contribute to all disciplines of knowledge, in particular, the humanities, would be more difficult to fulfill. As Altbach points out, "If universities are to survive as intellectual institutions, they must pay close attention to their core responsibilities of teaching, learning, and research. Maintaining loyalty to traditional academic values will not be easy, but the costs of growing commercialization are much greater." (Altbach, 2001) However, with their exclusivity on practical training and lack of research tradition, these vocationally oriented higher institutions cluster at the bottom of reputation ladder, whereas leading universities in China are non-profit institutions renowned for their advanced research in basic science and humanities, who share the "the

norms and values of top universities worldwide in terms of academic freedom and the involvement of the faculty in institutional governance." (Altbach, 1999, p.6-p.8)

(3) Great Uncertainty

In part because private schools take many initiatives on their own, in part because government's legislation requires lengthy discussion, many laws concerning private education are either absent or too vague to be really effective. This gives rise to a great uncertainty for private schools' development. Right now, the major theoretical debate is on issues of property ownership.

Until now, the definition of private property rights in China is far from concrete, and for a long time, it remained a taboo. Since Deng's reform in 1978, the Chinese economy has grown rapidly and steadily in the absence of formal and well-defined property rights. As private entrepreneurs are accumulating more money and as the disparity between the haves and have-nots is enlarging in China, a pressing concern on property right is rising. Although the socialist property rights system could not be openly challenged, the Chinese central government started its efforts to reform ownership system in late 1980s. In 1997, on the 15th CCP National Congress, party leader Jiang Zemin was widely quoted as saying that "any form of ownership that meets the criterion of raising productivity, living standards and the strength of the nation can and should be used to serve socialism". (Jiang Zemin, 1997) Scholars argue that Jiang's speech signals "an ideological justification as well as political endorsement to the complete transformation of the socialist property rights." (Hu Xiaobo, 1998, p. 25) However, although China's Constitution stipulates that the State protects the legal rights and interests of self-employed and private businesses, there is not an explicit mandate, from the Constitution to the Party's resolutions, about the legitimacy of private entrepreneurs' wealth.

In terms of property rights in private education, the picture is even more complicated. First, there is no formal definition of private property ownership regarding private businesses, let alone private schools. Since the issue concerning private business is much more prominent than that of private education, there will always be a lag in policy for the educational sphere. As private business entrepreneurs are uncertain about the future of their property, owners of schools have even less assurance about the prospective definition of their investment by Party's resolutions.

Second, the definition of property rights regarding schools would have a longer way to go, since education right now is still, by law, a public good, whose property belongs to the state, not the individual. Article 36 of the Regulation on Schools Run by Social Forces stipulates that "no organization or individual can take possession of the property of an educational institution." (Lin, 1999, p.193) Furthermore, Article 43 states that when educational institutions dissolve, funds from the liquidation should first go to salary and social insurance owed to faculty and staff, and then be returned to investors according to their original investment. The rest of the property will be handed over to the government. In other words, investors themselves do not have much freedom to control their property put in private education. It is expected that investors shall view their investment in private schools only as a voluntary and not-for-profit contribution to the public good, instead of expecting any returns. (Lin, 1999)

In practice, however, there exists a huge gap in understanding of these regulations between the government and owners. "In a meeting of government officials and school owners, an uproar was caused when an official declared, 'Not even a penny of the owner's investment can be taken back from schools.'" One owner reacted emotionally by saying "among the total investment of 20 million yuan in my school, the majority comes from bank loans. I'm nuts for taking all the risk and working hard to pay off the loans all by self." (Lin, 1999, p.158)

Third, it is quite difficult to distinguish between public and private property within many schools, with their multiple channels of financing. According to Lin, "Private schools are of these types: schools funded entirely by private funds, private school with public assistance, government-run schools with private assistance, state-owned but privately operated schools, community schools, and foreign-Chinese cooperative schools (Lin,1999, p.11).

The issue of property rights is the nucleus of China's private education reform. Without it, school owners would lack the power to control their schools and their incentives to stop losses. Consequently this would adversely affect every dimension of private schools and China's private education as a whole.

If the central government is to respect market mechanism, it will loosen its categorization of education as purely a public good, and redefine the ownership of private schools,. Nevertheless, the exact configuration of ownership will depend on the legal framework and to some extent on the economic and social development of China.

(4) Lack of recognition by government

Another salient problem besieging private institutions is lack of recognition from the government. At the heart of this deeply entrenched discrimination is that the notion "private" feels incompatible with socialist ideology. As a result, privately-owned schools are increasingly labeled as "nongovernmental schools" instead of "private schools". From here, we can perceive an inherent contradiction underlying the assumption of the Chinese government in this social transitional age. On the one hand, it encourages the growth of private schools to help solve urgent social problems. On the other hand, it is reluctant to welcome the existence of "privateness." What makes the issue more problematic is that with the government's reluctance to recognize the legitimacy of these schools, the public finds it harder to give them support, since the public tends not to trust schools with short history and short of official endorsement.

(5) Vitality of growth

Despite the dilemmas that private education faces, its proliferation will likely continue, encouraged by China's economy, and its voice will be stronger. Table 3 demonstrates the impressive expansion of private schools in China in recent years.

TABLE 3: NUMBER AND SCOPE OF NON-GOVERNMENTAL EDUCATIONAL INSTITUTIONS

Year	Kindergartens	Primary Schools	Secondary Schools		Higher Institutions		Total
			Regular	Vocational	College or university	Higher education institution	
1994	18284 1036234	1078 203621	888 164711	392 82773	880		21522
1995	20780 1099866	1465 284513	1202 271726	492 107811	1319		25258
1996	24466 1303902	1453 463200	1467 384539	568 129463	21 14000	1109 1083800	29084 3379500
1997	24643 49898	1806 522284	1702 545526	689 183985	1095 120400		1066 1422093
1998	30824 1707810	2504 727645	2146 768605	899 245374			
1999	37000 2224000	3204 977000	2593 107200	950 273000	1200 148800		44947 3730000
2000	44317 2842600	4341 1308100	3316 1495000	999 303400	37 72000	1282 981700	54292 7002800
2001	44526 3419300	4846 1818400	4571 2328700	1040 377300	89 151100	1202 1130400	56274 9225200

(Sources: China's education and research computer internet, www.edu.cn/20011105/3008194.shtml. Department of Development and Planning, Ministry of Education.
Note: the first row is the number of institutions, and the second row is the number of students enrolled.)

As we can see from the above table, although the development of private schools from kindergartens to higher institutions in recent years has been, for the most part, unplanned and unregulated, the number and the speed of increase of both schools and enrollment have demonstrated astonishing vitality of private education in breaking the norms, opening new ways and creating opportunities. Private education is no longer a marginal issue.

Prospect

Recent growth of private education in China resembles the worldwide experience in that the privatization of education has been a global trend in most parts of the world, mainly pushed by the market and market-friendly neoliberal policies. However, a closer scrutiny indicates that China's experience is also different from that in much of the world. The strategies adopted by the Chinese leadership play a highly important role in terms of creating more educational opportunities in response to emerging market needs, whereas in many other countries privatization comes through creating hybrid institutions that are mainly publicly funded but significantly open to corporate sponsorship. (Currie & Newson, 1998)

The influence of private institutions goes beyond what their number suggests. They encapsulate and reinforce the growing strength of the market in China's socialist society—the adoption of the philosophy of free enterprise, the growth of the private sector in a dual economy, and the polarization of classes.

Private education is expanding and without doubt will continue to grow. The future of private institutions will not only depend on the government's policy and support, but also on the development of China's transitional economy and social structure. Both the government and all other social forces need to answer these questions: How much responsibility does private education have to the public good? To what extent can private schools make a profit? How much autonomy should private education have? Will the emergence of a strong private sector stimulate greater efficiency and effectiveness in the public sector? These are central questions that go to the heart of the concept and role of private education. At present, the answers to these questions are not clear.

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4a. Teaching Education Research Method in China

(Yi YANG)

INTRODUCTION

During September 2003, I taught a short-term intensive course on educational research methods at the Foreign Language School of Xi'an Jiaotong University (XJTU). The Overseas Young Chinese Forum (OYCF) Education Teaching Fellowship sponsored the course. The audience consisted of master students and some young faculty members specializing in applied linguistics. The lectures were held in an auditorium with multimedia facilities. The number of attendees ranged from 30 to 80 people for each session. All lectures were conducted in English using PowerPoint.

COURSE DESIGN

This course was designed to be an introduction to a variety of approaches used in educational research. Before I went to China, a professor at XJTU commented on my course design. She confirmed the relevance of the course content but suggested that I use more examples of foreign language education given the specialization of the audience at the Foreign Language School. I planned four lecture sessions, two computer sessions, and suggested reading materials (all about foreign language education) for each session. Since the school did not own these materials, I donated three books and several journal articles to the Reference Room of the Foreign Language School.

Class One was about research design, in which we compared the qualitative and quantitative research paradigms, illustrated steps in conducting empirical research, discussed ethics in empirical research, and presented types and sampling methods of both quantitative and qualitative research. I also talked about several important issues pertaining to academic writing in English, especially the purpose of a literature review and the appropriate ways of citing sources. These are, as many previous studies on English writing have shown, often weak links for Chinese students and scholars. In addition, I introduced some Internet resources for English language teachers.

Class Two focused on qualitative methodology. We discussed the basic principles of qualitative research, validity concerns and approaches to enhance trustworthiness, techniques in conducting interviews and observations, ways of analyzing narrative data, and how to write up a qualitative report. As examples I used a number of books and dissertations submitted to the Harvard Graduate School of Education.

Class Three was about the design of experiments and questionnaires, including different types of educational experiments, the validity of experimental studies, strengths and weaknesses of questionnaire studies, ways of constructing questionnaires, and questionnaire data coding and analysis.

Class Four concerned certain basic statistical concepts widely used for educational research. I lectured on descriptive statistics (e.g. central tendency, variability, shape of distribution) and inferential statistics (e.g. t-test, chi-square test, correlation). I also

demonstrated how to set up a dataset and do some analysis with Statistical Package for the Social Sciences (SPSS), a widely used statistical package in the U.S.

Class Five was a computer session, where students practiced using SPSS. Some students used the dataset I provided, most students brought their own data. I held two separate computer sessions due to the space limit of the computer lab and students' time conflicts,

STUDENTS' EVALUATION OF THE COURSE

Students generally seemed to be highly interested in this course. On the last class, 30 students filled out the Students Feedback Form. The following is a summary of their opinions.

Regarding the relevance of the course, students in general considered the content practical, and useful for their future research and thesis writing in the foreign language education area. Some students, while talking to me in private, said their previous research was conducted with little scientific guidance. After taking this course, they were able to consider the pros and cons of various research methods. Those who had already collected data for their theses wished they had taken this course earlier so that they could have collected better data for statistical analysis. Students had heard about SPSS, but no teacher was able to teach it. This course helped them to get familiar with this highly useful statistical tool.

Most students felt satisfied with the length and intensity of the course. Due to the non-credit nature and the short-term schedule of the course, I did not make the reading mandatory and did not assign any homework. This to some extent interfered with students' understanding of the course content. Some students wished that I could teach more statistics, as it was difficult to learn on one's own.

In terms of the teaching method of the course, it was mostly teacher-centered, given the structure of the auditorium, the large audience, and the volume of course content. On occasion I tried to ask questions in class, but in each instance literally no one responded. Students seemed more willing to interact with me after class. They asked for copies of my PowerPoint files and for advice on their own research. Most students felt that the lecture format was acceptable, or even desirable. But some students did suggest that there be more student participation in the classroom.

While many students thought the level of difficulty was appropriate, some felt that the technical terms were difficult to understand and that the pace was a little too fast for note taking. They wished I had spoken more slowly and given them more time to view the PowerPoint slides.

In general, students appreciated the OYCF Teaching Fellowship program and valued the opportunity to learn from an overseas scholar. They hoped that more such lectures would be offered in the future.

OTHER TEACHING ACTIVITIES ON THE TRIP

In addition to this course, I also gave three free seminars on this trip.

"Listening to Learners' Reflections on Language Acquisition" at Xi'an Jiaotong University. The seminar was about the findings of my dissertation, which explored some Chinese students' perceptions of their prior English learning experiences in China based on how they actually used English in the U.S. The majority of the attendees were English instructors and graduate students concentrating on English education. To some in the audience, this qualitative type of research seemed new but very interesting, and perhaps something they could use in their own research.

"Suggestions on Learning English in China" at Xi'an Translators College. Xi'an Translators College is a private college of less than 20 years old and is striving to create an East Asian Harvard. The president of the college said such lectures were still very rare at their college but definitely much needed. Due to the limited space of the auditorium, only those English majors in their junior or senior year were allowed to attend. But the lecture was videotaped and was to be broadcast to the whole college. I suggested on ways to improve listening, speaking, reading, and writing, based on my research findings in the U.S. I delivered my talk in English, and the students seemed to understand it very well. They were extremely active in asking questions about life as a graduate student in the U.S. and effective ways of learning English in China.

"Educational Research Methods" at the Foreign Language Department of Tsinghua University. I presented issues pertaining to research design, including the qualitative and quantitative research traditions, pros and cons of several widely used research techniques, ethics in empirical research, as well as cultural differences in academic writing. The audiences were scholars and graduate students specializing in applied linguistics. They were interested in the method I used for my thesis, and how American schools handle plagiarism.

SUMMARY

A good command of educational research methods will tremendously enhance a researcher's ability to design a study, collect data, analyze data, and write a report. Improved research will eventually boost the quality of educational practices. However, this area is still underdeveloped in China. When I was a graduate student in China in the mid-1990s, no such courses were offered at Xi'an Jiaotong or Tsinghua universities. I did my master's thesis research at Tsinghua University based entirely on intuition. Currently, both universities are offering courses on educational research methods, but the number, variety, and depth of the courses are by no means comparable to those taught at institutions in the U.S. Applied statistics is a particularly weak link for social science researchers. I suggest that more overseas scholars introduce to China current research philosophies and techniques either in the form of short-term lectures, regular courses for students, or summer institutes for professional training.

(The author obtained her Doctor of Education degree from the Harvard Graduate School of Education (HGSE) in June 2003. She was a teaching fellow for four courses on educational research methods at HGSE. She is currently an Education Specialist at Massachusetts Department of Education.)

4b. Report on OYCF Teaching Fellowship Program

(Di WANG)

I received an OYCF Teaching Fellowship in September 2003, which supported me to teach a course in Sichuan University during October and November 2003. The course I taught was called "Social Movements in Modern China," with both history and political science perspectives. Originally, this course was scheduled to take place between October 6 and 27, but because of a change of my schedule, after a discussion with the History Department of Sichuan University, I changed the teaching schedule to between October 13 and November 5.

TEACHING

During the course, students read, contemplated, and discussed some of the best new scholarship on social movements in China. The course also stressed students' own research -- each student chose a research topic, prepared a bibliography and a research proposal complete with an outline, and drafted, revised and produced a paper between 10 and 15 pages. We devoted some class sessions to research methods and strategies, and the use of library and other resources. Towards the end of the course, students presented drafts of their research papers to the class. To encourage reflective reading, I also invited students to comment on what others in the class wrote and to find out what others thought of his writing before class sessions. All the preparatory work helped make class discussions more productive. For those sessions, students went to class prepared to contribute to a discussion that helped other students learn about the subject matter of the papers. Students also helped shape each other's research by providing helpful suggestions.

The purpose of this course was to help students build a firm foundation in understanding the processes of China's history and to help students understand the present China better. Teaching the course "Social Movements in Modern China" in Sichuan University was a challenging work. I had to keep a balance of "academic freedom" and "political correctness." On the one hand, I tried to make students think how the social movements in modern China affected today's Chinese political system. On the other hand, I had to avoid some sensitive issues in China and put class discussion within the sphere allowed by the authority. Generally speaking, my teaching was based on historical facts, and the readings required in the course allowed students to understand how the Western scholars study and what they think about these major movements. The course format was lectures interspersed with occasional brief in-class discussions.

The course had requirements as follows: first, timely, thorough and careful reading of the assigned materials, regular attendance and active participation in class discussions, including preparing questions and reporting readings. Second, students were asked to report on their research projects, which usually ran from 10-15 minutes while tying the report as closely as possible to the general topic under consideration in that session. Students were asked to answer any questions arising from their reports. Third, students were required to complete a research paper (typed, double spaced and each approximately 8-10 pages in length). Students were evaluated on class participation and

contributions and on written assignments. Final grades were calculated on the following formula: participation in class counts for 50%, and research paper for the other 50%.

Course Materials

This course was designed for students majored in history, mostly for graduate students, but seniors were allowed to attend after my permission. Students were required to read important studies conducted by Western scholars: Joseph Esherick, *The Origins of the Boxer Uprising* (Chinese translation); Elizabeth Perry, *Shanghai on Strike: The Politics of Chinese Labor* (Chinese translation); Elizabeth Perry and Li Xun, *Proletarian Power: Shanghai in the Cultural Revolution*; Roxann Prazniak, *Of Camel Kings and Other Things: Rural Rebels against Modernity in Late Imperial China*; Sidney Tarrow, *Power in Movement: Social Movements, Collective Action, and Politics*; and Jeffrey Wasserstrom, *Student Protests in Twentieth-Century China: The View from Shanghai*. The course concentrated on the following topics for discussion: theoretical approaches to social movements, the rebellion and popular culture, rural rebel, workers' movements, student movements, and Cultural Revolution and after.

This course focused on social movements and collective action in modern China and explored theoretical and empirical issues concerning the history of social movements in modern China: relationship between economy and politics and that between politics and law. The course revealed organizational and behavioral repertoires, and their impacts on various social groups and the state. It combined the methods and approaches associated with the disciplines of history and political science. The course also examined important social, political, economic, and cultural events from late Qing emperors to that of the current Chinese communist government.

Chinese society has experienced a revolutionary change since the nineteenth century. Beginning from the Opium War in the middle of the nineteenth century, China experienced rapid social, economic, and cultural development, as well as urbanization and population expansion. This was followed by the challenge of the Western powers, reforms and revolutions, communist victory, the construction of socialist society, and more recent reforms in the post-Mao era. All these events entailed new elements and revolutionary changes in Chinese social movements. The course also tried to encourage students to think broadly – to take into consideration elements of politics, economy, society, and culture of China, including the structure of Chinese government, economic development, philosophies and religions, women's lives, assimilation and acculturation, and so forth, that influenced social movements.

While paying primary attention to English language scholarship, I on occasions made reference to research conducted in China, Taiwan, or Japan. Coverage was, of course, not intended to be exhaustive. Important areas of research, like religion or cultural history, were also skipped. The principle objective of this course was to familiarize students with changing scholarly interpretations of the events of modern China, and the types of materials and methodologies used in constructing these interpretations. It was also intended to help students practice the skills needed by research scholars: critical reading, writing, and oral presentation.

This course explored how, as China was being politically transformed in the early twentieth century, the reformists and revolutionary movements drew ordinary people into their political orbit, how Chinese culture was transformed into politics, and how both elites and ordinary people redefined their public role mainly through addressing conflicts between the state and commoners and between the state and elites—in short, how commoners' activities in the social movements were exploited to further local political struggles.

Elite reformers regarded commoners as a volatile element, and believed social order would be stabilized if they themselves could gain control of political movements. In addition, reformers sought to manipulate ordinary people for political gains. The elite reformers also believed that the reform movement would benefit if the popular culture could be brought into the local and even national politics, that is, if the popular culture could develop an overtly political orientation. Since the late Qing, elites had tried to increase their influence on the masses through such measures as public readings and lectures, book lending, and reforms of local opera. While elites typically scorned the low classes, and instead preferred to frequent "the circles of gentry, merchants, and students," they nonetheless wanted to insinuate themselves into that class by providing leadership. Commoners traditionally had little interest in local politics, but the sweeping social transformation underway forced their participation. On the one hand, elites attempted to exploit commoners to further their own political agenda and to mobilize against the central government for local rights. On the other hand, commoners also spoke on their own behalf and promoted their own economic interests, especially when their interests were threatened.

The 1911 Revolution and other political movements in the early Republic deepened people's involvement in national politics while simultaneously contributing to the destabilization of public order. The chaos of the early Republic and the new presence of various military and political powers seriously disrupted the familiar patterns of everyday life. At the same time, the public place became a more visible arena for political protest, which resulted in many sensational "social dramas." Of course, people's experiences in the early Republic were similar with each other. In Chengdu, however, politics also adopted some highly local characteristics.

From late Qing to the 1920s, the relationship between the state, elites, and the masses changed constantly. Low-class people and elites had a complicated relationship under the influence of national and local politics: sometimes united and sometimes split. This relationship was often determined by the interaction between the state and elites. In other words, elites, as the agency between the state and ordinary people, shifted their positions between the two ends to suit their own interests. This pattern dictated that when the state were to strengthen its leadership in local communities, the elites would support the state and participate in the new programs against commoners; otherwise, they would oppose or remain neutral regarding new measures and policies. During the period of the New Policies, the state and local elites collaborated to conduct urban reform and to regulate commoners, but when the state jeopardized local political and economic interests, elites and the masses united to protest, such as against the policy of nationalizing railroads, which triggered the 1911 Revolution. After the revolution, both the warlords and Nationalist government abolished the traditional reliance on local elites for social control,

imposing their power directly into communities. Whereas in the late Qing, local elites led commoners, in the early Republic, this control fell to the government's hands. As a result, elites increasingly lost their role and influence in community life, and thus became less enthusiastic toward the government's new programs.

In the late Qing and Republican periods, various social groups played their active roles in national and local politics. In addition to the traditional organizations such as charitable establishments, native place associations, and guilds, many new organizations emerged in the late 1890s, when the wave of the national reform movement swept throughout China. In the early twentieth century, under the promotion of the New Policies, a much larger number of voluntary and professional organizations were established. While these elite organizations played an important role in influencing local politics through their participation in the reformist movements, the role of ordinary people were also very prominent.

In the field of Chinese history, the focus has been primarily on how elite thoughts influenced politics, but little work has been done about the relationship between popular culture and local politics, an exploration of which could give us an opportunity to observe social transformation from another angle. Political uncertainty deteriorated public order and gradually damaged the stability of the neighborhood and community; conflicts increased between sexes, classes, and ethnic groups throughout the city. However, we should also realize that political changes opened up the relatively isolated societies and brought new social, economic, and cultural elements as well. Post-revolutionary Chengdu provides an excellent example of how politics can influence everyday life and underscores the importance of including politics in the study of popular culture.

Conclusion

From this course, students have had a better and deeper understanding of modern China's history, society, culture, and politics. Although because of time schedule and other technical problems, the course might not have satisfied everyone, most of students reflected that they had learned a lot from the new information, new teaching style, and new approach in my teaching. Also, it was a very good experience for me to teach a course in Sichuan University after I left its classroom over ten years' ago. This experience not only will help me build a closer tie for academic exchanges with Sichuan University in the future, but also has made me understand more recent development in China's higher education and campus life. I appreciate very much the OYCF's support for this mission.

(The author is an assistant professor of History at Texas A&M University.)

5a. Book Review of *Chinese Society: Change, Conflict and Resistance* by Elizabeth Perry and Mark Selden

(Leslie WANG)

State-sponsored economic reforms have swept across the Chinese landscape in recent years, permanently restructuring the lives of millions of Chinese citizens in both rural and urban locales. No sector of society has been untouched by the thorough, systematic, and yet in many ways improvised changes. Though discontent runs deep and countless residents engage in everyday acts of resistance against the state, interestingly, no large-scale political party or social movement has arisen to challenge the dominant Party rule since the violent suppression of the 1989 student-led pro-democracy movement.

Chinese Society: Change, Conflict and Resistance, edited by political scientist Elizabeth Perry and sociologist Mark Selden,[1] takes an inter-disciplinary approach to analyzing the roots of conflict in reform China by identifying new structures of social inequality. It also takes a critical look at popular methods of confrontation and accommodation employed by the Chinese populace that challenge conventional notions of the Chinese economic miracle.

As stated in the introduction of the book, by the 1990s some analysts concluded that China moved from one of the world's most egalitarian societies in terms of income, wealth and opportunity to one of the most unequal in a period of a few decades (p.5). Though not meant to simplify the vast changes occurring throughout modern Chinese society in comparison to an idealized past, this statement is included to show that social and economic reform is causing dissatisfaction in new and distinct ways that are leading to increased overt and covert acts of resistance. Though intentionally left open-ended, 'resistance' as conveyed by this book appears to point to any actions taken by average citizens to defy the state or what are perceived to be confining social, economic, or cultural structures.

The various authors of this book focus on the politics of protests against state policies being enacted by groups such as political dissidents, workers, women, migrants, parents, religious practitioners and ethnic minority groups. This poignant and thought-provoking analysis of social change in China deconstructs pockets of organized resistance by highlighting the linkage between rising life expectations, an emergent sense of entitlement amongst citizens, and a history with a long-standing tradition of rebellion. An added benefit is the inclusion of a helpful abstract at the beginning of each chapter.

In order to comprehend the differential effects of reform on Chinese residents over the past two decades, it is necessary to recount the major state-sponsored changes that have been enacted in the countryside and the cities in the name of economic efficiency. In rural areas, the economy was effectively jumpstarted at the end of the 1970s through the creation of the household responsibility system, in effect a return to individual family farming. Simultaneously, the state encouraged the development of small-scale industry in the countryside and also relaxed restrictions on rural-urban migration, which has

[1] Perry, Elizabeth, and Mark Selden. (eds). 2000. *Chinese Society: Change, Conflict and Resistance*. Routledge.

created unprecedented mobility, access to resources, and economic opportunities for rural residents. However, the countryside has also been hit the hardest by family planning policies and unregulated destruction of the environment, which has contributed to considerable strife and tension between citizens and officials.

People in the countryside are employing creative and often vocal means to resist a powerful and repressive government. Jun Jing discusses the recent increase in environmentally related social protests in rural areas, showing the interplay between a heightened public awareness of the environmental crisis and popular protests demanding ecological improvements for the sake of human livelihood.

Acts of rural defiance also speak to the social and cultural limitations of life in the Chinese countryside in an era of heightened expectations. Sing Lee and Arthur Kleiman describe this reality by analyzing the case of the incredibly high rates of suicide amongst young rural women. David Zweig analyzes the interactions between new political institutions and a 'rights conscious peasantry' that is using legal means to demonstrate public grievances against damaging state policies.

More problematic is Tyrene White's analysis of the effects of the one-child policy, ensuing administrative control and different forms of resistance by rural residents. She argues that resistance to family planning policies takes the forms of direct confrontation with officials, evasion of enforcement or accommodation of state power-- meaning "those acts of resistance that appear to signal compliance with state power, but on terms that simultaneously defy state power" (p.102). According to White, couples that seek to bear a son rather than a daughter often use the tactic of accommodation to resist the state by abandoning infants or sex-selectively aborting unwanted female children. Due to the tremendous human and societal cost of these actions, White's argument seems out of place in a book written to recognize, celebrate and support everyday acts of resistance that empower the populace.

Urbanites, meanwhile, have been severely and often detrimentally affected by the reform of state-owned enterprises. Profit-based motivations and the move toward privatization have led millions to lose their 'iron rice bowl', the previously taken-for-granted lifetime employment and pensions ensured to urban workers through socialism. Downsizing of the public sector has been noticeably gendered, with women bearing the brunt of economic reform. Wang Zheng gives a lucid account of the upsurge in gender discrimination in the workforce, which is causing a new gender consciousness and has laid the groundwork for the rise of feminism. Wang writes that women in the present day are once again embracing the Maoist ideology of gender equality as a means of linking gender equality with modernity.

Overall this exceptionally well-written and concisely edited volume deepens our understanding of the real-life effects of economic reform, though at times it can fall into oversimplifying varied situations as an issue of underdog (Chinese citizens) versus bully (the Chinese state). Though resistance takes many disparate forms in modern day China, the common thread tying them together is a generally increased sense of entitlement to make decisions regarding one's own individual situation and to actively defy victimization. While it is not possible to predict the sources and scale of future conflicts,

this book succeeds in illuminating changing attitudes toward empowerment amongst certain groups and individuals in China that are being reflected in a new era of popular protest.

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5b. Tarantino and Us—A Review of *Kill Bill: Volume 1*

(Yang SU)

It is a testimonial of our time that a former video store clerk is able to seduce millions into a dark room to share his childish obsession; it is a tribute to his talent that he accomplishes this so successfully, even winning critical acclaim. This is a story about two men in one: Tarantino the Great assists Tarantino the Childish to conquer the world. In the end, this single person dictates at the helm, doing whatever excessive as he pleases. We moviegoers, like the mobs in China under Mao, diligently follow.

The director Tarantino's new movie *Kill Bill* is both zealous and meticulous at times. Most of the sequences are shot in close-ups: a lower lip being bitten off from a man's face, half a head rolling down the long black banquet table, and a piece of thinly sliced scalp lopped off with long wavy strands of hair attached. The resulting action scenes are for the eye of beholder, but few would fail to notice the repulsive display of violence throughout.

Time will tell whether we have a new classic in the action movie genre, as some critics pronounce, topping all Kungfu and Samurai movies of all time (for examples see reviews by Roger Ebert of Chicago Sun-Times and A. O. Scott of New York Times). Clearly missing in *Kill Bill* are two key elements critical to this genre--the justification of violence and the source of the hero/heroine's superpower. Tarantino considers it as an innovation to "cut conversations and everything else" out and to make the movie a "pure" action sequence (see Tarantino interview with Sharon Osbourne Nov. 3, 2003, WB). But the end result defies any sense of logic, dignity, let lone, compassion, which could otherwise instill some deep meaning into the technological display of action. When the heroine, the Bride, tortures a woman after cutting off one of her arms, can we still be sympathetic to her way of revenge? When no convincing argument about how her superpower is acquired, how much do we admire in awe of the sequence in which she chops up a roomful of men with her samurai sword?

The story feels simply flat when only the "pure action" exists. People enjoy action movies mainly for two reasons: justice being served and wonders delivered. And the long road of anticipation to the end is as important as the final climax. A slow and deliberate build-up is not only essential but also indispensable. I suspect children would enjoy Disneyland *less*, if they do not have to wait in a long line before each ride. This is why a real classic would take pains to explain how injustice is inflicted and how the hero acquires unusual skills, all at a calculated pace. *Kill Bill* has an accounting for the deep vengeance, employing dramatic shots and extreme actions; but it is cursory and perfunctory, like a short paragraph in a position paper, and does not add content to the flow of the story, which in turn has very few unexpected moments. Because of the moviemaker's impatience, the audience is rushed into fight scenes after fight scenes without any break to absorb the heroine's pain, to identify with her emotions, or to appreciate her moral and physical power. Hence, *Kill Bill* the action movie fails miserably.

When the attempt for an "action movie" fails, the label immediately becomes a thinly veiled guise for the director's repulsive obsession with violence. In the name of "pure action," Tarantino tricks us into a trap filled with splashing blood, flying limbs and rolling heads.

It is hard to imagine how any other director can get away with it. Tarantino can, because he is also great. Albeit brief, Tarantino the Great has an unmistakable presence in *Kill Bill*. The first of such moments comes with the opening song. It is innocent, sad, and nostalgic, and most of all, tender. Who would think of bringing tenderness to the beginning of an over-the-top violent movie? It is genius; it is Tarantino. It forecasts an intriguing movie to come, as we always expect from him, the Tarantino of *Reservoir Dogs*, *Pulp Fiction* and *Jackie Brown*. Sadly, it didn't last long in *Kill Bill*. Oh, what an emotionally powerful scene when the school bus appears in the Pasadena neighborhood. The two fighting women abruptly draw a truce when the 4-year old girl walks in. The ensuing conversation among the characters, loaded with great tension, bears the trademark of Tarantino's talent. Unfortunately Tarantino the Great leaves the movie early and abruptly. He never returns

Tarantino's earlier contribution (*Kill Bill* being his fourth movie) to movie making is the unique ways in which he instills realism in the most improbable situation. Most gangster movies treat gangsters, well, as gangsters. Tarantino, however, brings them back as human beings, with character, emotion, and very often, awkward moments. Who can forget the evening date between John Travolta and Uma Thurman's characters in *Pulp Fiction*? The conversations, the dance, and the implied sexual tension are all memorable and classic. At the end of the date, Travolta talks into a bathroom mirror: "Just have one more drink and go home." He is reminding himself of the danger if messing around with his boss's wife. The same realism is also evident in *Jackie Brown*. In the scene of the parking lot, Robert De Niro's character tries to stop his female companion from talking too much. To no avail, he gets so angry that he gets out of control. He shoots her.

It is this kind of realism that is missing in most of *Kill Bill*. The cold-blooded heroine (played by the same Uma Thurman) is reduced back to a mere killing machine (with a revenge mission not withstanding). What remains in the movie is Tarantino's other trademark, meticulous display of senseless violence, a tradition that is traceable to his first movie *Reservoir Dogs* and the second half of *Pulp Fiction* (mainly played by Bruce Willis).

Without a doubt, people will go to see *Kill Bill* in large numbers. There are two different types of viewers. One type is probably attracted by his earlier genius and expects a similar treat filled with characters, conversations, emotional clashes, in short, the Tarantino realism. This group will be disappointed. The other type is probably attracted by his obsession with pure violence. They will be satisfied. Regrettably, Tarantino the Childish prevails here in *Kill Bill*.

Since I have seen *Kill Bill*, I wonder if I could turn my regret into some thinking. Contemplating *Kill Bill* as a larger phenomenon, I liken the critics and moviegoers to a population under dictatorship. Tarantino's earlier success and his cult following have enthroned him in the world of movie art. Now he can let his demons out at will, insulting

the intelligence and conscience of many, all the while with no one to counsel his better side. We the moviegoers are the mobs, and the critics are like ideologues surrounding the dictator. If we do not work to protest, to make revolution, or better still, to bring out the better side of the supreme leader, we are the only one to blame. For we have become the enablers of the king.

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6. A Response to Zheng's Article on Iraq War

(Jin CHEN)

Zheng Wentong's article on the Iraq War and American neo-conservative foreign policy, published in your April 2003 issue (Chinese Edition Volume 3, Issue 2), delineates the differences between two main American schools of political thought, the conservatives and the liberals, in American foreign policy and their evolutions in the American political scene over time. The broad strokes that the author uses to present how American domestic politics is at work on the Iraq War require readers to discern many details with sophistication so as to avoid inferring some important issues and people in simplistic categorical terms.

Zheng's article implies that if political leaders from one school of thought are in office, they would implement one foreign policy toward Iraq, and if another school of thinkers is in charge, things would be different. But in the case of the Iraq policy, I am highly doubtful. In reading the opinions and the articles by major democratic figures such as former Secretary of the State Madeline Albright and former Assistant Secretary of Defense Joseph Nye, which were meant to be critical of the Bush Adminstration's Iraq policies, I was struck not by the differences between their views and the current policies, but by their similarities. The main difference is that the democrats place much more emphasis on international cooperation. If they were in office, they might have delayed attacking Iraq without a formal UN support. But it is questionable how long they would put off the war since, with the French's and the Germans' view on invading a sovereign country, a formal UN support was essentially not obtainable.

Zheng did not examine how Iraq became an issue in the very first place. In presenting the neo-cons' arguments for the Iraq war, he, like the neo-cons, leaves an impression that the Iraq war is a result of an enlarged definition of national interest by the conservatives, and is a second phase of America's full blown anti-terrorism efforts, following the attack on Afghanistan, while exporting American values such as democracy and freedom to eliminate terrorism at its roots. This is exactly how the Bush Administration wants people to perceive the war. In President Bush's 2003 State of the Union address and Colin Powell's speech at the UN in February 2003, prior to the attack, Iraq and Al-Qaeda are mentioned in parallel, intentionally leaving the impression that attacking Iraq is part of America's efforts to counter terrorism.

Readers of Zheng's article should be aware that in fact, Paul Wolfowitz and Dick Cheney were very much against Saddam Hussein long before the September 11th terrorist attack. September 11th offered them a pretext that they effectively exploited in order to achieve regime change in Iraq. They dressed up the issue in a way that appealed to American public sentiment, which shifted after September 11th from domestic issues to national security, and which also drew in a version of Wilsonian idealism, upholding the universality of democracy and freedom. The Administration gave three reasons for attacking Iraq: 1) weapons of mass destruction under Hussein's control formed an immediate threat to the U.S. and others; 2) Hussein's government harbored terrorists; and 3) it brutally oppressed the Iraqi people. Therefore, according to them, the U.S. must

remove Hussein from power and must foster a democratic government to preserve Iraq's peaceful co-existence with its neighbors and the rest of the world.

Their scorecard so far is not great. Half a year after President Bush's formal announcement of the end of the Iraq war, weapons of mass destruction are still yet to be found, while the death toll of American troops has exceeded 400. The heavy burden of nation building has been inflicted upon the Americans, notwithstanding Bush's contemptuous dismissal of "state building" during his presidential campaign. Exporting American values is likely to be agreeable at an abstract level, but there is no reliable mechanism to actually deliver it.

Apart from Zheng's generalizing approach to presenting the Iraq war, there are other minor points that readers should take in with caution. Although some articles have explicitly linked President Reagan with President George W. Bush, Vice President Dick Cheney and Secretary Donald Rumsfeld, categorizing them as idealist conservatives is arguable in view of their personalities and subtle differences in their policy emphasis. Tracing the origin of the conservatives to Alexander Hamilton and that of the democrats to Thomas Jefferson is also a simplification of the later evolution of views of the two parties. Although Zheng's article is introductory in nature, and these are probably not within the scope of Zheng's four-page article, readers should consider each person, each issue in specific terms, in addition to Zheng's very broad introduction.

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Cambridge, MA
June 30, 2003

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