

# IN SEARCH OF PEOPLE'S COURTS IN CHINA IN 1999

*Vincent Luizzi*

**I**N FEBRUARY 1999, China announced it was opening its courts, allowing citizens and foreign visitors to witness proceedings long closed to the public. That June, I left my own municipal court in San Marcos, Texas, and my post as philosopher of law at the university there to have a look for myself and press on with my study of people's courts.

China's judicial reform was one of several events that year that signaled a China bent on political and market reform. Other events, however, served to sustain China's image as an oppressive Communist regime. 1999 was a year of anniversaries for China: it marked the fiftieth year since the founding of the People's Republic of China and the tenth since the massacre in Tienanmen Square when, on June 4, 1989, Chinese troops opened fire on students protesting Beijing's political abuses.

As I headed for China on June 4, 1999, I learned that China was temporarily blocking the transmission of *CNN* to its citizens, presumably to ward off any provocation that documentaries and feature stories about the tragedy in Tienanmen Square might cause. Still, Beijing's blocking of *CNN* did not prevent *CNN* reporters from interviewing Chinese students who gathered freely in the Square on that tenth anniversary. Viewers outside China heard these students dissociating themselves from the goals of the protesters of 1989 and asserting personal goals of achieving economic success in China's new market economy.

When I arrived in Beijing, I stepped into a city that had signs everywhere of its preparation for the celebration on October 1 of

Vincent Luizzi is Professor of Philosophy and Chair of the Philosophy Department at Southwest Texas State University. He is also a Municipal Court Judge for the city of San Marcos.

the anniversary of the People's Republic. Workers were busy repairing rutted roads and crumbling sidewalks. They were brightening faded temples and monuments with fresh red and gold paint. The days to come would show that the contrast of old and new that is evident in Beijing's architecture, and in its current events, is also a primary feature of China's judiciary.

#### TRIAL IN BEIJING: JUNE 10, 1999

Accompanying me as guide and interpreter was Rui Zhu, a colleague on the philosophy faculty at Southwest Texas State University. Rui, a Chinese native and a melange of youthful sage, playful panda, and wiry athlete, was instrumental in arranging my court visits and in setting up some discussions with students at Beijing University (also known as Beida). He took a Masters there and, proving to be their wonder-boy philosopher, attained faculty status in his early twenties and taught there for awhile before leaving to take his Doctorate at Tulane.

Rui had a deep understanding of Chinese thinking about freedom, which ended up playing an important role in my study of Chinese courts. I'm always interested in seeing how other judges introduce the right amount of informality in order to allow citizens to represent themselves in otherwise formal proceedings, and I was especially interested in the way judges in China balanced formality and informality in a society in which liberties are restricted. I was soon to see, however, that features of the Chinese judiciary freed judges from worrying about this balancing act, just as features of Chinese metaphysics freed citizens from worrying about restrictions on their civil liberties. Ultimately, I would see, both from visits to courts in Beijing and Shanghai and from discussions with students at Beijing University, how guilty I was of imposing Western thinking on Chinese ways.

On June 10, 1999, Rui and I attended a trial at the Mid-Level People's Court of the Haidian District in Beijing. On trial for theft is Xiaodong Yang, a 30-year-old male. Twice before he has been arrested for theft, convicted, and sentenced to a term in a labor camp. The Haidian District Prosecutor alleges that Yang burglarized five houses and stole about 3,129 *yuan* RMB (\$377 US) in violation of section 264 of China's penal code.

Prior to the trial, a spokesman and translator for the Chief Judge of the court conveys this information to the audience of

about 200 visitors; he stands with the chief judge in front of the bench close to the audience. They pass a microphone back and forth and create a pleasant atmosphere, something like a talk-show. The crowd in the courtroom consists mostly of Chinese citizens, but also includes a group of students and faculty from Duquesne University's Summer Seminar on Chinese Law.

The court is expecting Rui and me, and a guard directs us to the first two seats of the front row. We thought that China's new policy of open courts would make it easy for us to gain admission to the trial, but this was not so. We still needed to get clearance to enter. Rui's contacts put us in touch with some law professors at Beijing's Central University of Finance and Economics. They, in turn, contacted China's Supreme Court in our behalf and ultimately obtained its written permission for us to attend the trial.

Before the trial begins, a spokesman welcomes the citizens from the United States and says that he hopes the trial will help them understand China's legal system. The Chief Judge is clad in a uniform of light gray slacks and a guayabera-like gray shirt with two big pockets and red epaulets; he wears socks and sandals. He expresses his wish that the visit will promote mutual communication and an exchange of ideas. Shortly after he departs, three judges who will actually try the case file in and sit at the bench facing the audience. In the center is Wang Lijuan. She wears a uniform like the Chief Judge's and is apparently the presiding judge of the session. To her right is Judge Huang, and to her left is Judge Yu. Both men are dressed casually, with Huang in a polyester polo shirt and Yu in a plaid sport shirt. Directly in front of the judges' bench is a cube-shaped structure for the clerk who, like the judges, sits facing the audience. To the judges' right is a table for the prosecutor.

A guard escorts Yang to a witness box of sorts about three feet in diameter with bars — spaced about six inches apart and a yard high — around the perimeter; in effect, it fences Yang in. The bars come up to his shoulders. The cage-like box has a door, itself made of bars, which the guard latches shut. The guard positions himself near the defendant and eventually turns around and faces the bench by taking sharp angular steps in a counterclockwise direction; he raises his right foot high and outward with each step. Another guard stands to his right and faces the

audience. At the other side of the courtroom, two more guards face us, standing at attention.

The presiding judge begins questioning the defendant, who cannot refuse to testify under Chinese law. Yang is not sworn in. He responds to her questions and at one point offers his own account of the events, acknowledging that he took the goods in question. Yang is wearing blue jeans, rolled up to form a single cuff at the bottom of each leg, and a long-sleeved white shirt with the sleeves rolled up to just cover his elbows. His black hair is cropped short, and he sports a very stylish Western appearance. Even if standing in the cage-like box diminishes him or confers on him some appearance of guilt, his ability to appear in civilian clothing, rather than in prison-wear, seems to underscore his status as someone who has been accused but not convicted. Yang remains in the cage-like box throughout the entire trial, separated from his attorney, who sits at a table in what looks like a jury box in front of and to the left of the three judges on the bench.

The prosecutor calls no witnesses. She presents the state's case by reading documents to the court, putting a lot of questions to the defendant, and placing into evidence a photograph of the stolen goods, which include a black beeper, cash, and a battery charger. The prosecutor wears a forest green uniform of slacks, a Nehru jacket, and a military officer's hat which has a visor and a round flat top that slopes upward in the front. Red and gold epaulets adorn her jacket, and a red and gold braided cord is draped diagonally across the front. Through the questioning, she reveals that the defendant was caught with the stolen items in his possession. Under the pretense of being a salesman, Yang initially gained entry into a number of homes in the same neighborhood and made observations of their contents. Later, when he determined that the residents were not at home, he broke in for the heist. The police found the items reported as missing or stolen from these homes in Yang's apartment.

The defense counsel remains silent throughout the trial. He calls no witnesses, raises no objections, puts no questions to his client, and makes no inspection of the photograph the prosecution presents. Only at the end of the hour-long proceeding does the defense counsel speak for about two minutes in the defendant's behalf. After conferring, the court convicts Yang and

sentences him to serve five years in prison and pay a fine equivalent to \$3,000.

#### INTERPRETING THE COURT VISIT

The same professors who helped us get into the trial assist us with understanding it. Professor Gan Gong Ren, Director of the Department of Law at Beijing's Central University of Finance and Economics, points out that China has been implementing an adversary system since 1996, but that the legal system is still in transition and that, since judges are still actively involved in questioning the accused, one might more accurately say that China has yet to fully embrace an adversary system in which the judges typically ask no questions. This account fits well with what we observed at the trial. There were two sides, defense and prosecution, as the adversary model requires. Yet the defense was all but invisible; the presiding judge was quite active in the examination of Yang; and the presence and authority of the state in general seemed magnified by the number of court personnel wearing uniforms of a military nature, including the four guards, the clerk, the prosecutor, and the presiding judge herself.

If the trial was a good example of a judiciary in transition, then it was no example of what I was studying — how judges adjust formal proceedings to allow citizens to represent themselves; after all, Yang did not represent himself and did have an attorney. A proceeding of this sort was not at all what I had traveled to China to see. Professor Gan explains that, although self representation is common in simple civil matters like divorce, it is not an option in criminal cases. Defendants either hire their own lawyers or, if they are indigent, have counsel provided by the state. He also points out that China requires all licensed attorneys to take three *pro bono* cases a year. When pressed about citizens representing themselves for minor offenses and about the nature of courts that hear these matters, Professor Gan explains that these matters are considered administrative rather than legal and that citizens settle them directly with the police.

The next day Rui and I witness an encounter between the authorities and a citizen concerning one of these "administrative matters." This one concerns compliance with the health and sanitation code. At lunch in a small cafe, Rui and I eat tofu in spicy sauce and slurp noodles from soup bowls as the owner of the

restaurant haggles with the authorities. Two officers want to see his certificate for doing business. When the owner fails to produce the document, one of the officers issues a citation. The owner has the option of paying the fine within a day, producing evidence of compliance, or getting a new license.

In a way, this method of handling minor offenses and violations is the functional equivalent of methods for dealing with minor infractions in the United States, where most people simply pay the fine on a citation, whether it be for running a red light or for allowing a dog to run loose. Whether they send their fines to the police department or to the municipal court is probably a matter of indifference, and they probably pay little attention to who gets the payment. But when American citizens want to pursue some course of action other than paying the standard fine, they usually go directly to a court. These citizens may be interested in doing community service in lieu of paying a fine; they may want a payment plan or an extension; they may want to tell the judge something to get the fine reduced; they may be seeking a probationary period that will culminate in dismissal of the ticket; or they may want a trial. When they come before the court for any of these purposes, including the trial itself, they usually represent themselves. It is in this context that the question arises about how judges can best balance formality and informality in the court proceeding to accommodate these citizens representing themselves. When these infractions are treated as administrative and not legal matters, as is the case in China, the question simply does not arise.

#### VISIT TO CHINESE COURTS AS PART OF LARGER PROJECT

My trek to China was part of a larger study of judging in a people's court. As a municipal court judge for eighteen years, I have taken a special interest in adjudication at this level and have sought out my counterparts for discussion and observation, with visits to courts in America, Bali, Belgium, the United Kingdom, Ireland, Hungary, and Romania. It was in this capacity that I went to China, not as a student of the its language, civilization, legal system, or philosophy.

Judges of people's courts, courts in which citizens typically represent themselves, are pulled in opposing directions. On the one hand, these judges should conduct their proceedings using

the same rules of evidence and procedure as any other court. On the other, they should relax these procedures to allow citizens, who know little of these formal rules, to represent themselves as effectively as possible. In effect, these judges must strike a balance between the conflicting demands of running a formal proceeding and running an informal one. I have dubbed the task "the dilemma of the municipal court judge."

Judges in these courts in the U.S. and abroad report that they attempt to solve this dilemma in a variety of ways. A common approach to introduce informality is to devote some time to educating the participants about court procedures while avoiding the use of technical legal terms. To maintain formality, some judges rely on the symbolism of the judicial robe, gavel, and bailiff, while others find that courtroom practices — like calling the proceeding to order, reading the docket, and swearing in witnesses — serve this purpose. Sometimes these judges encounter special challenges in their attempts to balance formality and informality. They may, for example, have to deal with citizens who are not native speakers, or they may be conducting a hearing where one side is represented by counsel and the other side is not.

In 1999, I was particularly interested in the way judges strike this balance while taking into consideration the amount of freedom that a particular legal system grants its citizens. What if the judge is dealing with citizens who have more liberties than they are aware of? In Alaska, part of the Native American ethic is owning up to one's misdeeds, and some Native Americans do not know of their rights to remain silent and to have the state prove its case against them. What if the judge is dealing with citizens whose liberties are curtailed? This question is where a study of Chinese courts entered the project; China is candid about its position on the current necessity of restricting individual liberties in the name of order, progress, and transition. So China initially appeared to be an ideal setting for the investigation, but owing to China's distinction between administrative and legal matters, the investigation could never get off the ground. As I have already said, the minor offenses for which Americans represent themselves in court are administrative matters in China, and as a result, Chinese citizens do not go to a court to handle these matters; they are not in the situation of representing themselves

before a court, and thus Chinese judges do not have to worry about adjusting proceedings to accommodate citizens representing themselves for these minor offenses.

#### THE ROAD TO SHANGHAI: ANOTHER COURT VISIT

After telephone conversations with representatives of both a mid-level court and the American Embassy about a visit to a court in Shanghai, Chen Fu Min, a judge and Head of the Civil Division of the mid-level court in Shanghai, granted an interview. The judge and his clerk receive Rui and me in a spacious sitting room with large brown-leather easy chairs positioned along the perimeter. We sit three abreast; I am to Judge Chen's right, and Rui to my right. Judge Chen wears a white shirt and red tie; a contemplative and measured demeanor offsets his boyish looks. The clerk is a tall woman in her twenties; her simple black dress makes her look svelte, smart, and solemn. She serves us tea in blue and white porcelain mugs that have lids to keep the tea warm; tea leaves float in the cups like seaweed in an aquarium.

I tell the judge about my interest in self-representation, and he confirms what we had learned in Beijing — that defendants in criminal cases are represented by counsel. He points out that there are different types of counsel for providing this representation, including a private attorney hired by the defendant, one appointed and paid for by the court, and one doing required *pro bono* work.

It occurs to me that China's practice of providing representation for defendants is an indicator for the Chinese of their legal system's progressive nature and that my inquiry may have been taken as an attempt to uncover a deficiency in the system. So I acknowledge that the United States thought it was improving the legal system when it extended the right to an attorney to indigent citizens in cases where their liberty was at stake. I underscore that the offenses that Texas municipal courts like my own handle are those for which indigent citizens have no right to a court-appointed attorney and that, in these cases, the norm is for citizens to represent themselves. I also point out that it is commonly known that the only dealings most American citizens have with the judicial system are at the level of municipal courts, so that the judges of these courts have an interest in handling matters well. It is for this reason, I explain, that I seek the advice of other



judges about how to create an appropriate setting for citizens who represent themselves.

Judge Chen slowly nods his head up and down, suggesting that he accepts my explanation and that no offense is taken. He then verifies what we had learned in Beijing: minor offenses like traffic violations are handled by the police and are not matters for the court. He distinguishes minor traffic violations from traffic violations that cause harm to people. He describes serious violations as aggravated offenses that do become matters for the court and, once again, matters for which the court requires counsel for defendants. One other circumstance in which minor offenses become legal matters is when the citizen challenges the procedures which the police or agency followed in connection with a citation. Judge Chen also confirms the claim that Chinese citizens do represent themselves in some civil cases. He explains that in these matters every effort is made to honor the wishes of the parties if they have come to an agreement. He further explains that citizens must be eighteen years old and of sound mind in order to represent themselves. He suggests that the interests of private parties are quite relevant in civil cases and that this makes self-representation appropriate. But in criminal cases, according to this reasoning, the defendant's interest in how the matter is resolved is not relevant, and defendants must be represented by counsel.

This thinking about the inappropriateness of people representing themselves in criminal matters is part of a network of ideas that supports the judicial system to which China has long been committed, an inquisitorial system of justice. In this context, it makes no sense to speak of representing oneself or presenting one's own side, since there are no sides in an inquisitorial system. China's treatment of minor offenses as administrative matters explains at one level why there is no self-representation in China comparable to that in municipal courts in the U.S. But China's continued adherence to features of an inquisitorial system explains why self-representation for an offense of any severity is not allowed.

Three primary factors, then, make it inappropriate to ask how Chinese judges pave the way for citizens to represent themselves for minor offenses. First, the courts do not hear these minor cases since they leave such cases to the police to handle; there is

no Chinese counterpart to our municipal courts. Second, when defendants do come before Chinese courts on criminal charges, they have counsel. Chinese courts may be called People's Courts, but they are not people's courts as we think of them with citizens mostly representing themselves for minor matters. And third, the Chinese system, although in transition to an adversary system, still bears the indelible marks of a system of inquisitorial justice deeply rooted in China's heritage.

#### *THE INQUISITORIAL SYSTEM V. THE ADVERSARY SYSTEM*

An inquisitorial or interrogative system of justice is usually contrasted with an adversary system in which there are two opposing sides and a judge serving as a neutral, mostly passive decision-maker. According to the latter approach, the truth is thought to emerge through the clash of adversaries or the competition of two opposing ways of looking at the case. The adversary model of the Anglo-American tradition emerged in sixteenth-century England as a way of keeping a check on tyranny. As this system developed, it combined people's freedom from the abuses of an absolute government with their rights to offer evidence on their own behalf and to have the assistance of counsel.

Inquisitorial systems are still in place in countries with a civil law tradition like France and Germany; they assign the role of active inquirer and investigator to the judge. The difference between the adversarial and the inquisitorial systems is often described in terms of each system's primary commitment: the adversarial system is committed to the individual, and the inquisitorial system is committed to the truth. The adversary system strives to show respect for the accused by granting the accused a right to present his or her side, while the inquisitorial system first and foremost strives to find out if the accused really committed the offense. Sometimes, since the adversary system originated in an attempt to contain governmental monopoly on freedom, the inquisitorial system is associated with restrictive and powerful governments.

China's use of an inquisitorial system dates to antiquity. Accounts of ancient Chinese cases are replete with clever, inquiring magistrates renowned for their abilities to assess evidence, deduce conclusions, and generally be resourceful, and these cases serve as charming and simple examples of how a system func-

tions when the judge serves as an active inquirer to determine the truth. "The Evidence in the Belly" is a typical account:

When Fu Yan was the Magistrate of the District of Shanyin, he came across a case of two farmers fighting over the ownership of a chicken. Fu asked each man what he used as chickenfeed. One said millet while the other said red beans. When the chicken's belly was opened, millet was found. The man who said he fed the chicken with red beans was punished. Fu's fame as a shrewd judge spread throughout the district and no one dared to be a thief. (Kiu 91)

In another case, "A Simple Calculation," a man collides with a cake vendor and damages the cakes. The vendor rejects a payment for 50 cakes and claims that 300 had crumbled. The magistrate resolves the controversy by sending for one whole cake and determining its weight as a reference point for calculating the number that the seller could have been carrying (Kiu 83). "Thirty Too Many" tells of a woman charged with stealing melons. She claims she took one for her son, and the owner of the field claims she took thirty. The magistrate orders the owner to show how many melons he can hold with one hand with a child in his other hand. The number turns out to be five which indicates that the owner of the field was lying (Kiu 155).

Once we deepen our understanding of how judges function in an inquisitorial or interrogative system, we see how closely tied the notion of self-representation is to the framework of an adversary approach to justice. When the defendant's case is one of two sides and the defendant has the option to represent him or herself or to have an attorney, it makes sense to ask what assistance the court may offer defendants who choose to represent themselves. But absent this presentation of two sides, the issue as to what adjustments the judge makes to facilitate self-representation becomes moot.

Despite movement toward an adversarial system, the contemporary Chinese judiciary still displays features that are distinctive of an inquisitorial approach: judges actively question the accused, for instance, and features important to an adversary system, like the defense's presentation of its own side, are almost absent, as the trial of Yang demonstrated. Also, Judge Chen spoke of the inappropriateness of people representing themselves in criminal matters, and this seemed directly to invoke the logic of an inquisitorial approach. It seems fair to infer that the

thinking and practices connected with an inquisitorial system remain defining features of China's current judiciary and are part of an explanation of why people do not represent themselves in any criminal matters.

#### TALKS AT BEIJING UNIVERSITY

The notion that China's judiciary still has strong ties to an inquisitorial approach surfaced in discussions I had with students at Beijing University. They believed that China's judicial system is primarily inquisitorial, and most of them thought that it should be. Their views provide one more reason for acknowledging the inquisitorial approach as an important component of adjudication in contemporary China.

I met these students through a series of talks that I gave at the university on judging, law, and punishment. Rui had arranged these sessions with the help of his former mentor, Dr. Chen Quwei, and Beijing's Philosophy Chair, Dr. Deng-hua Zhao. The students assembled in the Hall of Philosophy, a majestic structure with an exterior of red brick and vines crawling up its two stories. Ornamental woodwork outlined the building, and its tiered top made it look like a pagoda.

The talks and the subsequent discussions occur in a classroom on the first floor. The room is at once intimidating, inspiring, and whimsical. Some thirty desks are arranged in rigid rows facing the front of the room, which has blackboards spanning the entire front wall. The wall to the right of the students facing the blackboard has tall widows reaching to the top of the thirteen-foot ceilings, seemingly designed to stretch the imagination. The windows open out into a courtyard of trees and foliage which all but creep into the classroom. Behind the desks at the back of the classroom are two ping pong tables which seem to serve as reminders that serious learning and play should never be rigidly separated.

During the question-and-answer session after my talk on judging, one student seeks an explanation of how O. J. Simpson, who seemed clearly to have committed a murder, could have been exonerated. She thinks that what really matters is the truth and that the procedural irregularities, which Simpson's defense relied on so heavily, are irrelevant. The question allows for some

elaboration of the differences between an adversary system and an inquisitorial system.

I point out that some theorists see the adversary approach as the better of the two, since it recognizes that the accused is a party to the controversy and should be active in presenting a defense. The interrogative approach, on the other hand, designates the judge as the most active participant. I note that some commentators see the inquisitorial approach as embracing the model of inquiry used in most fields: according to this model, a single inquirer pursues the truth, whether this inquirer be a historian, a scientist, or a philosopher. The judge, in this view, is an inquirer of this type. Other commentators think it is the adversary approach that embraces the model that historians, scientists, and philosophers use. They argue that scientists, for example, present their views to the community of scientists for scrutiny. Criticism and debate ensue, and, through a conflict of opposing views, the truth comes out.

One student acknowledges that the competition of two completely different ways of looking at a case in an adversary system has value. It serves to insure that the judge gets a balanced look at the case and prevents the court from pursuing only one line of inquiry. What is important, this student points out, is that there be some way of putting a check on narrow, misdirected inquiry. He argues that an adversary approach is not the only way to achieve this goal and observes that such processes as the trial and error of a skilled inquirer could serve as a significant check on the judge in an inquisitorial system.

Another student questions the viability of a single-party system like China's. He talks about how such a system seems to impede social progress, as it limits opposing viewpoints. He draws an analogy between it and the inquisitorial system of justice in which so much hinges on the judge's line of inquiry. He expresses skepticism that inquiry of this sort can succeed in a court, yet like his classmates, he is convinced that this is the approach China's judiciary uses.

These students at Beijing University are part of a privileged community occupying a lush and lavish sector of Beijing. Guards of the state are positioned at the two main entrances of the campus to ensure that only students, faculty, and a few specially authorized people gain access to the campus. The setting evokes a

classic conception of the university as an enclave with ways and purposes that are quite independent of the rest of society. In the streets outside the university, traffic moves in a seemingly chaotic yet structured flow. The Chinese seem to tolerate all manner of irregularity, yet nothing seems to compromise safety, and the streets seem remarkably free of accidents. The noise usually associated with chaos is noticeably absent, and one wonders if there is any connection between this absence of noise and the elderly women at street corners who hold up signs saying "Don't honk!"

#### A LESSON ON CHINESE THINKING ABOUT HUMAN LIBERTY

My initial goal was to investigate how judges accommodate citizens with restricted liberties when these citizens represent themselves in court for minor offenses. We have seen how features of the Chinese judiciary, including its conception of legal matters and its ties to an inquisitorial system, kept any investigation of this sort from getting off the ground. A deeper look into Chinese thinking about liberty reveals another way in which the initial inquiry was misguided. Rui instructs me in how the Chinese people and their philosophers think about freedom. Their way is largely foreign to many Western ways of thinking about freedom. Most Westerners think that people are free when they can choose their actions in some absolute metaphysical sense. Chinese thinking is primarily concerned with individuals attaining inner peace and happiness within whatever parameters are set. Restrictions of liberty do not automatically destroy individual freedom. According to this view, forces of nature and the state may limit people and push them one way or the other, so people are hardly free in any absolute sense. But the Chinese view asks if people can cultivate themselves, curtail their otherwise rampant desires, and act in ways that promote social harmony and personal tranquility.

Rui's lesson continues with examples of how the teachings of China's major religions support these claims about freedom. Buddhism, I learn, acknowledges the inevitability of human suffering, yet holds out the hope of happiness for its followers. They can achieve this happiness by recognizing that material acquisition does not produce happiness and by turning to a life in which meditating and conforming to the rules of right conduct figure large. Confucianism, too, emphasizes the importance of acting ethically to attain happiness. It places special weight on

tradition in its guidelines for interactions among people who occupy various social roles. Daoism instructs its followers to develop the virtue of *wu wei*, that is, the virtue of actively being passive in the world. Rui draws my attention to an insight of its founder, Lao-zi: "To learn is to increase knowledge, to cultivate is to decrease desire." This way of thinking sends people on an inward search for spiritual well being and turns them away from any outward expansion of personal will. For most Chinese, freedom is quiet and soft, like water flowing down a high mountain. From this perspective, perverse social conditions may actually facilitate the inward search; the more rugged the terrain is, the freer the water flows.

During our travels, Rui asks me to observe that, quite contrary to the image we get from the Western news media, the Chinese are a happy people. The media report infringements of individual liberties in China, and many Americans infer from that that the Chinese people are an oppressed, unhappy lot. But again, it is an open question whether they consider themselves to be free to pursue and attain their happiness even when they face well-documented state restrictions on their liberties.

In a talk he gave upon returning from the trip, Rui summed this up by observing that:

[the] Chinese have a different philosophy about freedom and value a kind of freedom different from what Americans value. By saying so, I am not implying that the Chinese do not value a free press or a free election. But . . . freedom in the East is more a personal concept than a political one. (Zhu)

He reiterated this Eastern conception by pointing out that:

in its most profound sense [freedom] means one's ability to control one's own destiny and remain ultimately responsible for whatever happens. . . . A truly free person is evidenced by his or her transcendental spirit and ability to ride out adversities. (Zhu)

#### THE VERDICT

So there is yet another sense in which this project about self-representation carried with it a Western way of thinking; it assumed a Western notion of freedom. In some ways this case study reveals how truth can emerge from a clash of opposing positions. In the meeting of American and Chinese judicial ways, it became apparent that the problems and questions about self-representa-

tion and liberty which are meaningful in one system have no clear counterpart in another; the People's Courts of China are nothing like the people's courts of the West. It became equally clear that the Chinese judiciary is caught up in a struggle between two very different systems of adjudication. It is a judiciary making a transition to an adversary system while maintaining ties with the inquisitorial approach of its past, and my observations of it in 1999 showed it to be a unique amalgam of those two systems.

### NOTES

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