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The New Code of Criminal Procedure in the People's Republic of China: Protection, Problems, and Predictions

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This paper is a "nuts and bolts" look at criminal procedure in China as outlined by Chinese and Western scholars, the Chinese code of criminal procedure, and my own observations in the People's Republic of China. China has finally formalized, at least to some degree, its criminal justice procedures and protections after years of ad hoc procedures. Also, along with codifications of criminal procedures, the Chinese are making greater use of defense attorneys, and trying to work out their version of "presumption of innocence." Finally, the Chinese are grappling with these new rules and procedures, attempting to develop a fair and consistent system of criminal procedure that sometimes still gives way to political expedience.

AMERICANS, who are used to laws, codes, judicial decisions, and regulations on almost every aspect of life, may find it hard to comprehend, but the People's Republic of China did not have a comprehensive code of substantive or procedural criminal procedure until 1979 (Shao-Chaun, 1982:205). There was no formal system of criminal procedure until this time, but there were a few scattered laws, namely the Act of Punishment of Counterrevolutionaries of 1951, the Arrest and Detention Act of 1954, and the Security Administration Punishment Act (SAPA) of 1957 (Shao-Chun, 1982:205). The reason for this ramshackle approach, according to Shao-Chaun (1982), is that Mao Zedung disliked bureaucratization and preferred the "the mass line," emphasizing an informal or societal model of law over the formal or juridicial model of legal process.

So, why this break with thirty years of practice and the adoption of a coherent and detailed code of criminal procedure? According to official Chinese sources, the code of criminal procedure is "designed to guarantee the correct enforcement of the Criminal Law by means of judicial procedure" (Peng, 1979:12). That in itself is not enlightening. The real answer to the Chinese codification of criminal procedure is more likely a response to the blatant lawlessness that occurred from 1966 to 1976 during the Cultural Revolution (Baker, 1982:752). During this period, many of the leaders now in power suffered personally from the bands of Red Guards and the arbitrary and capricious tribunals that stripped them of their rank, power, and prestige (Baker, 1982; White, 1983). Also, a good many of them were physically abused, some even killed, without so much as a trial (Baker, 1982; White, 1983). Therefore, according to Koetl (1982), the new code of criminal procedure represents, at least to some degree, a concern for establishing law and order in China while protecting the individual against official acts of lawlessness. Whether that is actually the case is an open question.

Perhaps an easy way to understand how the Chinese criminal code of procedure works is to look at it in its basic form. As in American or Western systems, many of the familiar actors are present – police, courts, prosecutor, defendant, and attorneys. The names of these actors change some in China, and so do their roles. According to the Criminal Procedure Law of the People's Republic of China (hereinafter the CPL) Article 3, the roles are divided accordingly:

> The *public security organs* (the police) are responsible for investigation, detention and preparatory examination in criminal cases. The *people's procuracies* (the prosecution) are responsible for approving arrest, conducting procuratorial control (including investigation) and initiating public prosecution. The *people's courts* are responsible for adjudication. No other organ, organization or individual has the right to exercise these powers.
>
> In conducting criminal procedure, the people's courts, the people's procuracies and the public security organs must stricly observe this law and the relevant provisions of other laws. (emphases added)

According to CPL Article 5, these three branches of the judicial system are to "coordinate with each other and restrain each other" in enforcing the law.

Thus, under the new laws, could the authorities in China enter your home without a warrant in search of evidence? According to CPL Article 81, a search warrant must be obtained except in exigent circumstances (Shao-Chaun, 1982:215). This is similar to American law. However, the CPL does not say who issues the warrant or what kind of showing of fact must be made to the body or person that issues the warrant. Further, under CPL Article 82, the authorities must have at least two people present during the search – family members, neighbors, or friends – for it to be valid (Wang, 1983). How official searches square with Article 80 of the CPL, obligating "Every unit and individual . . . on the demand of the people's procuracies and public security organs, to turn over material evidence and documentary evidence that may prove the guilt or innocence of a defendant," is not explained. How this article in conjunction with Article 82 provides protection to the accused is suspect, given the nature of the Chinese to observe each other closely. Still, like the American "exclusionary rule," evidence obtained illegally by the authorities is supposed to be excluded from trial (Wang, 1983). Perhaps the situation is similar to the distinction made in the U.S. where evidence obtained illegally by the authorities is excluded while evidence illegally obtained by individuals or units is admissible.

Investigations in China appear to be a more important stage, or at least to be conducted by more organs, *supra*, than investigations in the U.S. The investigatory stage in China, according to Shao-Chaun (1982:214–5), is very elaborate with the defendant receiving some safeguards.

> The pretrial proceedings of the Chinese criminal process are composed of two principal parts: (1) arrest and detention and (2) investigation. To prevent illegal arrests and prolonged detentions proper procedure and strict time limits are set by the Procedure Law as well as by the revised Regulations Governing Arrest and

> Detention promulgated in February 1979 to replace the old enactment of 1954. . . . Interrogation must start within twenty-four hours after an apprehension or arrest, and the detainee or the arrested must be immediately released if no legitimate ground is found. When the public security organ deems it necessary to declare a detainee arrested, the matter should be submitted to the procuratorate for approval within three days, or, in special circumstances, seven days. The procuracy must either sanction the arrest or order the release of the detainee within three days.

So, under the new law according to Shao-Chaun (1982), the days of detaining someone for a length of time without charges or "continuous interrogation" are gone.

Thus far, all sounds well and good. A defendant cannot be sent to jail on no charges or on trumped-up charges. According to the new Chinese Constitution, the public security organ is authorized to make an arrest only after the "main facts of a criminal case have been thoroughly investigated and the offender's minimum possible sentence will be imprisonment," and if the offender's freedom would be a threat to the public (Baker, 1982:767). While these may be safeguards for the accused, if things get to this point in the investigation, the Chinese assume, for all practical purposes, that the suspect is guilty. In fact, 97% of those who get to this point are found guilty (Baker, 1982:761, 764). (Presumption of innocence will be discussed *infra.*) As Koetl (1982:761) describes the Chinese investigatory process, the defendant is out of luck if the process runs this far: "at this point, the investigation has established the suspect's guilt for all practical purposes — an obvious contrast to our (American) system where an arrest is usually only the beginning of the suspect's troubles."

Also, as in any criminal investigation, confessions play an important role in bringing about these convictions. Historically, the Chinese legal system, not only during the Cultural Revolution, but also during its Imperial period, often relied on coerced confessions in order to obtain criminal convictions (Baker, 1982; Gelatt, 1982:264; Shao-Chaun, 1982; White, 1983). In fact, a confession was often *necessary* to obtain convictions during the Cultural Revolution, but the CPL now recognizes their unreliability (Baker, 1982:767). Article 35 of the CPL now resembles the U.S. approach:

> In the decision of all cases, the emphasis should be placed on evidence and investigative research, and credence should not be readily given to oral statements. In cases where there is only the testimony of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to a criminal punishment; in cases where there is no testimony of the defendant and the evidence is complete and reliable, the defendant may be found guilty and sentenced to a criminal punishment.

While confessions alone cannot convict, they are still an important part of the Chinese criminal justice system, from surrender to authorities, to trial, to imprisonment (Baker, 1982; Epp, 1983a). The accused in a Chinese criminal proceeding has no 5th Amendment right to remain silent and there is no rule

against hearsay (Baker, 1982:767). Although not formally part of the system, the confession operates to obviate the harshness of sentence or imprisonment (Baker, 1982; Epp, 1983b). Those who "voluntarily surrender" or present a "good attitude toward their crime," will be shown leniency, according to Article 63 of the Criminal Law of the PRC. Quoting from the official newspaper *Renmin Ribao (People's Daily)* on the role of confessions in China, Koetl (1982) shows how the confession continues to operate in the Chinese criminal justice system:

> For those lawbreakers and criminals who turn themselves in, frankly acknowledge their own offense or inform against or expose others' offense, we must act according to law, or treat them with leniency according to law, or mitigate the sentence according to law in order to divide and demoralize criminals, solve more cases and facilitate the work or interrogation, education and transformation.

Thus, while not to be coerced, confession is still important in criminal proceedings, albeit for different reasons than in the past.

As stated earlier, there is the perception in China that if one is arrested, one is guilty. Nonetheless, CPL Articles 13–22, provide for a trial of the accused. Prosecution, according to CPL Article 100, is to occur when the procuratorate finds conclusive and sufficient evidence and files an indictment with the court (Shao-Chaun, 1982:217). The indictment is much like an indictment in a U.S. trial and includes basic information about the accused, facts and evidence of the offense, and a listing of the article or articles of law violated (Shao-Chaun, 1982:217). The basic criminal trial, like the one I saw in Shanghai, is often no more than a sentencing hearing with a full finding of fact. The trial, at least on the surface, looks in some ways like an American trial, as described by Shao-Chaun at p. 217:

> A trial, as stipulated by the Chinese CP, is divided into four stages: (1) investigation, (2) debate, (3) appraisal by the collegial bench, and (4) judgment. Except for minor cases, trials are conducted in cases of original jurisdiction by a collegiate bench of a judge and two assessors. . . . All cases are heard in public except those involving minors, state secrets, or personal intimacy.

While this scheme looks familiar, there are many factors in a criminal trial unlike those in a U.S. trial. It is only at the trial level, according to CPL Article 110, that the right of counsel begins to attach (Baker, 1982:766). Ordinarily, the lawyer does not become involved until a few days before trial (Baker, 1982:766). In admitting evidence, almost anything under CPL Article 35 is admissible at trial – "All facts that prove the truth of a case are evidence." As stated earlier, there is no hearsay rule and the accused has no right to refuse to answer questions which may incriminate him (Baker, 1982:767). Also, under CPL Articles 53 and 54, a related civil matter which arises out of the criminal case can be tried at the same time as the criminal case.

Another contrasting fact of the Chinese trial is the judge and jury. At the district court level, there is usually a judge and two jurors, also known as

assessors, who decide the case by a majority vote as stipulated by CPL Article 55. Whereas in an American court the judge decides questions of law and the jury questions of fact, that is not the case in China. Juror-assessors have an equal right with the judge under CPL Article 39 to decide questions of law, even though they are not trained in the law. They see and hear all evidence and decide on admissibility with the judge (Wang, 1983). Unlike their American counterparts, Chinese jurors are elected by the people for three year terms and receive their regular pay from their work units, though they may only serve for two weeks per year (Wang, 1983, Baker, 1982:765). Another difference with the U.S. system is that during the trial, the judge and the jurors may ask the accused or witnesses questions (Epp, 1983b).

After adjudication in China, the defendant is sentenced, just as in the U.S. depending upon the violation (Wang, 1983). If it is a minor crime, a reconciliation may be attempted between the victim and the defendant, or restitution may be made (Wang, 1983).
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Again, confession at this stage can play an important role. If the defendant confesses his crime and he is sincere about it, his sentence could be lessened (Wang, 1983). In the trial I witnessed in Shanghai, this was certainly the case. Further, in what is a new change, the Chinese no longer consider class background when sentencing; instead they look at the circumstances of the crime, the sincerity of the confession, and so forth (Shao-Chaun, 1982:228). Also, being a Communist Party member is not supposed to make any difference, but often it does (Shao-Chaun, 1982:229).

Another area of difference between the Chinese and Western criminal justice system is its system of appeals. A defendant in China has the right to appeal (Shao-Chaun, 1983:232; Wang, 1983); so does the procuratorate; so may the defendant's family. If the accused appeals, his sentence cannot be increased; if the procuratorate appeals, the sentence can be increased (Shao-Chaun, 1982:232; Wang, 1983). This is done, according to the Chinese, so criminal offenders are indeed punished for their wrong doings (Shao-Chaun, 1982:232).

It should also be noted that the criminal defendant receives one appeal — "The court of second instance is the court of last instance," as my professor in China concisely put it (Wang, 1983). In other words, the accused can appeal to the court immediately above the one he was convicted in, except that all death penalty cases are supposed to be reviewed by the Supreme People's Court, the highest court in China (Wang, 1983; Shao-Chuan, 1982:232). Any review of a case is a *de novo* hearing (Baker, 1982:765).

Besides the appeal process provided the accused, the procuracy, or interested family members, there is also a form of review called "judicial supervision," used when some definite error in law or fact was made at the trial level (Shao-Chaun, 1982:232). According to Shao-Chaun (1982:232), Article 149 of the CPL provides the following procedure to investigate possible instances of judicial mistake:

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After adjudication in China the defendant is sentenced, just as in the U.S. At this time, as in the U.S., there is still an opportunity to avert a jail sentence, depending upon violation (Wang, 1983). If it is a minor crime, a reconciliation may be attempted between the victim and the defendant, or restitution may be made (Wang, 1983).

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> (1) The Court which gave the judgment in question may refer it to the judicial committee for disposal; (2) the Supreme People's Court or an upper court may review the case themselves or direct the lower court conduct a retrial; (3) the procuratorate may lodge a protest against the given judgment in accordance with judicial procedure.

Therefore, unlike the American system, the defendant could face double jeopardy if the procuratorate decides to appeal or some error in the trial is found by the court or a higher court. The Chinese emphasis seems to be one of not letting wrong-doers off rather than protecting the innocent.

While laws are fine, they need an underlying philosophy and people to interpret them. Perhaps two of the most important cogs turning the wheels of American criminal justice are the defense attorney and the notion of presumption of innocence. While the methods of conducting trials and investigations in China and the U.S. often look similar, the Chinese have entirely different views about the role of the defense attorney and the attitude that a defendant is innocent until proven guilty.

Chinese CPL Article 41 provides for and even encourages defense attorneys to represent defendants in criminal cases. The CPL outlines the role of the attorney in these cases:

> Article 28 — The responsibility of a defender is, on the basis of the facts and the law, to present materials and opinions proving that the defendant is not guilty, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsiblity, safeguarding the lawful rights and interest of the defendant.
>
> Article 29 — A defense lawyer may consult the materials of the case, acquaint himself with the circumstances of the case, and may interview and correspond with a defendant held in custody; other defenders, with permission of the people's court, may also acquaint themselves with the circumstances of the case and interview and correspond with a defendant held in custody.

While not remarkable on its face, this is quite an expansion role of the Chinese attorney. The Chinese have had a deeply entrenched mistrust of lawyers since ancient times (Baker, 1982:753); they were the tools of the exploiters, be they the Imperial court or the Nationalist government. Because of the distrust of lawyers and the Chinese desire to resolve their disputes through mediation rather than in the courts, lawyers have not been prominent in Chinese society (Epp, 1983a). In fact, there are only about 2,000 lawyers in a nation of one billion people (Epp, 1983a; Duncan, 1983:7; *New York Times*, 28 October, 1982:1). Additionally, the Chinese are now training lawyers after about a ten year hiatus from legal education during the Cultural Revolution (Duncan, 1983:10). In this respect then, the growing role of lawyers in China appears to be a positive sign of increased legal protection in China.

However, this is not to confuse the role of the Chinese defense attorney with the role of an American counterpart. Lawyers in China are not an independent profession as they are in the U.S. and there is no such thing as private practice in the People's Republic (Baker, 1982:758). While in the U.S. "a lawyer should represent a client zealously within the bounds of the law" according to Canon 7 of the Model Code of Professional Responsibility, such a notion is foreign to a Chinese attorney: the attorney is first and foremost responsible to the court, not to the client. The Chinese defense attorney must take into account the interests of the proletariat in his representation of his client – a Chinese attorney should not manipulate the facts, as a Chinese Vice Minister of Justice said, like their "bourgeois lawyer" contemporaries (Shao-Chaun, 1982:220). If the client has confessed to his attorney that he committed a crime, the attorney is under a duty to plead his client guilty to the offense (Duncan, 1983:7). Along the same line, there really is no attorney-client privilege as there is in the U.S., since the attorney must turn over to the court any inculpatory information the client gives him (Baker, 1982:760). In fact, it is a criminal offense to shield a guilty client, according to CPL Article 188:

> Any judicial worker who . . . deliberately shields a guilty person and saves him from prosecution stands truth on its head and perverts the law will be sentenced to detention or imprisonment . . . or be subject to deprivation of political rights. . . .

Even with the lawyer's semi-expanded role, what can he do to represent his clients? Not much, suggests Shao-Chaun (1982). Basically, Shao-Chaun says all a Chinese defense attorney can do is ask for leniency for his client; Chinese defense attorneys are often reluctant to cross examine prosecution witnesses or even call their own witnesses. My observation of a criminal trial in Shanghai supports this. All the two defense attorneys did in the case I witnessed was to ask for leniency for their clients, saying they had confessed their crimes and were truly sorry. One of the attorneys even argued his client should be treated more leniently since the accused had injured his arm as a youth. The only other thing the defense attorneys did was try to blame the other's client as being the "brains" behind the crime, coaxing their client to participate in stealing fruit

from a commune. It is hard to say how effective they were: one defendant received one year in prison, and the other got six months.

Given the belief that if caught, one is probably guilty (which is a belief many Americans probably hold as well), do the Chinese have a notion of presumption of innocence? To be quite honest, I do not think anyone, the Chinese, the Western legal scholars, or I presently have a definitive answer. It caused no end of discussion in my criminal law lectures at East China Normal University. The Chinese describe their burden of proof requirement as "seeking truth from facts." (Gelatt, 1982:261; Wang, 1983). After having this cryptic phrase given to us, the professor then said it meant "the proletariat accuses and the judge decides" (Wang, 1983). That did not help either.

Perhaps a look into China's past would be helpful. During the feudal period (pre-1911), there was a presumption of guilt against an accused (Gelatt, 1982:263). Tortured confessions were allowed and even if the accused's guilt could not be proved, they could be sentenced anyway, but given an opportunity to redeem their sentence through payment of money or property (Gelatt, 1982: 263). Mitigating this harshness, though, was the Confucian value that to sentence an innocent person would disrupt nature, and a person falsely accusing another could himself be punished (Gelatt, 1982:265).

During the Republican period (1911–1949), there was a movement towards presumption of innocence, and in 1935, the notion was adopted into Republican China's laws (Gelatt, 1982:266). While the presumption of innocence became the law, it was strongly opposed by conservatives (Gelatt, 1982:266). After the Communists won in 1949, there again reappeared the notion of presumption of guilt (Gelatt, 1982:268). It was the familiar attitude that the accused would not be before the judge unless there was a good reason, and the protesting of one's innocence was to "defy the government" (Gelatt, 1982:268).

So where does presumption of innocence in China stand today? As recently as the spring of 1983, the Chinese government would not state an authoritative position on the presumption of innocence – they were still debating it (Xu and Xie, 1983). According to Xu and Xie (1983:16), the debate stands as follows:

> The "presumption of innocence" was raised during the bourgeois revolution to oppose the feudalist principle of the "presumption of guilt". It played a certain progressive role in the struggle against the feudalistic judicial arbitrariness. *Does the principle apply to criminal suits under socialism then? . . . Two viewpoints have been expressed in current discussion of the question.* One holds that the bourgeois principle of the "presumption of innocence" and the feudalistic principle of the "presumption of guilt" differ somewhat only on the question "innocence" and "guilt", but both are manifestations of idealism and metaphysics. What is more, the "presumption of innocence" is incompatible with the principle of seeking truth from facts and the practice and procedure of investigation, arrest, and indictment in China's criminal suits. Therefore, for the proletariat, the principle is rubbish both in context and in form, and should be refuted.
>
> The other viewpoint maintains that the "presumption of innocence" refers to the legal position of the accused prior to trial. It neither contradicts nor replaced the principle of seeking truth from facts. (emphasis added)

In attempt to make sense of this debate, Chinese jurist Zhang Youya suggests that China's criminal procedure is based on neither presumption of guilt nor innocence but on the principle of "basing ourselves on facts and taking law as the criterion" (Shao-Chaun, 1982:224).

> According to Zhang "we can insure the correctness of the judgment and avoid an erroneous judgment arising from preconceived ideas. The exercise of this principle can avoid wronging the innocent and allowing the guilty to go unpunished. This complies to the social conditions and concrete conditions of China" (Shao-Chaun, 1982:224).

Perhaps "truth from facts" was the best explanation after all. It appears that true to Marxist theory, the Chinese have put the presumptions of innocence and guilt through a dialectical analysis and "truth from facts" is the synthesis.

On the whole, it seems the Chinese have enacted a very comprehensive and understandable code of criminal procedure. It does appear to provide some safeguards to criminal defendants, though not as extensive as those in Western democracies, but it is a start, especially in light of the lawlessness of the Cultural Revolution. But the question now is, given this code, will the Chinese government abide by it? Unfortunately, if recent history is any indication, they will likely push aside criminal procedure for political expediency. In June 1981, the National People's Congress Standing Committee adopted a resolution, holding that from 1982–1983, the Supreme People's Court's mandatory review of death penalty cases could be suspended in order to mete out swift punishment to criminals who endanger social order – the group affected includes murderers, robbers, rapists, bomb throwers, arsonists, and saboteurs (Shao-Chaun, 1982:234). The Chinese government believes their crime rate is entirely too high, though it is one of the lowest in the world – 7 to 9 crimes per 10,000 people (*Beijing Review* 12 Sept., 1983:4). And, the recent crackdown in China on criminals has taken a vigilante look to it – the Chinese ordered 5,000 executions to be carried out by the end of October 1983 and 40 people were executed at one time in a packed Beijing sports stadium, with banners hung about town proclaiming their deaths (Associated Press, 16 Sept., 1983:3) and Associated Press, 20 Oct., 1983).

To the American lawyer, jurist, or criminologist's eye, these Chinese actions are both severe and arbitrary. However, China is not the U.S. The Chinese are trying to find what works for them not only in criminal law, but in economics and social structure as well. Their concept of individual rights is not as well developed as the West's, which, given China's condition – one billion people living on top of each other – is understandable. The author's experience in China was that the Chinese are willing to learn from the West and adopt what they think is compatible with China. Perhaps the more they deal with foreigners and the law, the better the Chinese will understand the necessity of criminal safeguards which are now only on paper, not yet instilled in the Chinese legal mind.

REFERENCES

American Bar Association. 1981. *Model code of professional responsibility*. Chicago: National Center for Professional Responsibility.

Associated Press. 16 Sept. 1983. "China orders executions to halt crime." *Topeka Capital-Journal* (Topeka, Kansas): 13.

_____. 20 Oct. 1983. "40 executed in crime crackdown." *Topeka-Capital Journal*:4.

Baker, Beverly G. 1982. "Chinese law in the eighties: The lawyer and the criminal process." *Albany Law Review* 46:751.

Beijing Review. 1983."Crackdown on crime." *Beijing Review* 37:4.

Duncan, Myrl. 1983. "Reflections on the People's Republic." *The Circuit Rider* 22, no. 2: 5–15. (Washburn University School of Law, Topeka, Kansas).

Epp, Todd D. 4 Sept. 1983a. "Sag in the bamboo curtain." *Topeka-Capital Journal*: 9–10.

_____. 7 July 1983b. "Notes taken on a criminal trial in Shanghai."

Gelatt, Timothy. 1982. "The People's Republic of China and the presumption of innocence." *Journal of Criminal Law and Criminology* 73:259.

Koetl, John G. 1982. "Civil rights and liberties in China." *Albany Law Review* 46:740.

New York Times. 28 Oct. 1982. "Official census puts population of mainland China at 1,008,175,208." *New York Times*:1.

People's Republic of China. 1983. *The constitution of the People's Republic of China*. Translation. Beijing: Foreign Languages Press.

_____. 1982. "The criminal law of the People's Republic of China." Translation. *Journal of Criminal Law and Criminology* 73:138.

_____. 1982. "The criminal procedure law of the People's Republic of China." Translation. *Journal of Criminal Law and Criminology* 73:171.

Peng Zhen. 1979. "Explanation of seven laws." *Beijing Review* 22, no. 28:8–16.

Shao-Chaun Leng. 1982. "Criminal justice in post-Mao China: Some preliminary observations." *Journal of Criminal Law and Criminology* 73:204.

Tao-Tai Hsia. 1980. "Sources of law in the People's Republic of China: Recent developments." *International Lawyer* 14:25.

Wang Gang-Xiang. July 1983. "Criminal procedure." Lectures given to the Law and Trade Class of the Shanghai Chinese Language Program, East China Normal University, Shanghai, P.R.C.

White, Theodore H. 26 Sept. 1983. "China: Burnout of a revolution." *Time:* 30–49.

Xu Chongquing, and Xie Chichang. 1983. "Trends in Chinese jurisprudence." *Beijing Review* 26, no. 14:16.

Zang Ahiye. 1983. "How do China's lawyers work?" *Beijing Review* 26, no. 23:19–26.