

Compassion Magazine: A Chinese "Court" is Not a Court

By Clive Ansley, Esq.

(Clearwisdom.net) Is China's legal system, while "not perfect," marching inevitably toward normality, or "Rule of Law"? One leading scholar and practitioner of Chinese law argues otherwise, insisting this is but self-serving myth. Rule of Law will never be realized on the Party's watch, as revealed in stark terms by the State's genocide against the Falun Gong. If anything, China's courts have backslid over the past 20 years.

Western citizens with little or no knowledge of how China differs from countries governed by the "Rule of Law" typically react naïvely and inappropriately to reports about the Beijing regime's suppression of Falun Gong. Some suggest that Falun Gong practitioners have contravened Chinese laws and therefore have only themselves to blame for their problems; others ask why practitioners do not hire Chinese human rights lawyers to defend them or even to bring lawsuits on their behalf against officials who have illegally seized their property or inflicted torture upon them.

Such optimistic assumptions about and images of the Chinese "judicial" system can in large measure be traced back to the deliberate misrepresentations by leaders of Western democracies to their own citizens.

Motivated by a desire to protect their national economic interests in China, and sometimes even to protect their own individual economic interests there, some Western leaders have consciously whitewashed the Beijing regime's appalling record of gross and bestial human rights abuses. Now that the shocking reality of mass scale organ theft from living and unwilling donors, for profit, has been revealed, it remains to be seen whether Western politicians, in the countdown to what has now been termed the "Bloody Harvest Olympics," will continue to mouth the craven apologies for Beijing which their predecessors mouthed for the Third Reich in the countdown to the 1936 Olympics in Berlin.



Chinese authorities lead a suspect away

Progress?

The fundamental tactic used to divert criticism of the indefensible Chinese "judicial" system is to assert that Beijing's "legal" system, while not perfect, is moving in the right direction. The favorite cliché is "Rome wasn't built in a day." The clear implication is that although it will take years to educate the hundreds of thousands of police, prosecutors, and judges throughout the country, the leadership is determined to do so. The leadership is committed to protecting human rights and to implementing the "Rule of Law." In a nutshell, "Rule of Law" is purported to be a policy of the Beijing Regime; it simply has not yet succeeded in educating the lower level functionaries and in converting them to the cause.

The Beijing leadership is not committed to implementing the "Rule of Law" in either the short term or the long term; on the contrary, China's unelected leaders are fundamentally, irrevocably, and absolutely committed to ensuring that the "Rule of Law" is never implemented in China--ever. Chinese "courts" today are worse than they were 20 years ago, by most meaningful measurements. For example, there was a time when judges in

Chinese courts actually tried to apply law to the facts of a case irrespective of the nationality of the parties. And they were sometimes even prepared to resist demands from higher authorities that they disavow

judgments in favor of foreign parties and substitute in "home town decisions."

Judges in the early years frequently assumed China would implement the "Rule of Law" and they were prepared to play a serious role in the process. Today, "judges" are demoralized, many are totally corrupt, and "home town decisions" are virtually mandatory. In cases involving Chinese and foreign parties, or even a local Chinese party against a Chinese party from another area, there is not even a pretence of due process.

The Communist Party-ruled government is homicidal; it most assuredly is not, and never has been, suicidal. But implementation of the "Rule of Law" in China would mean just that--the end of the Party's monopoly on political power. This Party is not about to commit suicide.

The purported creation of a legal system has thus been a charade, designed to comfort Foreign Direct Investors and lull them into thinking that China has a functioning "judiciary" to protect their investments.

Implementation of the "Rule of Law" is fundamentally anathema to the Chinese Communist Party. It would mean that the Party could no longer stand above the law and the "courts" as it does today; real courts could annul Party actions and laws as unconstitutional, which no "court" in China can do today.

Moreover, the worst human rights violations and atrocities committed in China today result from orders emanating from the highest echelons of the Beijing leadership; they do not result from failure by lower level minions to understand and implement the protection of human rights.

Human rights and the "Rule of Law" have not been delayed in China by the necessity to educate lower level officials. On the contrary, they have been prevented by decisions taken at the apex of government because the Party vehemently opposes the "Rule of Law." At stake is its very survival.

"Rule of Law" means that the law itself is the ultimate authority and no person or entity may stand above the law. It is important to distinguish this concept from that of "Rule by Law." China has not implemented, and under the leadership of the CCP never will implement, the "Rule of Law." But it has implemented to a degree "Rule by law". Overall, this means that the individual CCP leadership constitutes the ultimate authority and can change or ignore the law at will. However, it uses written statutes and regulations as a means of exercising its rule over the population.

The essential point is that these statutes and regulations are invested with no authority of their own; the leadership may hold any citizen or entity to account under the "laws" the leadership has enacted without oversight of any kind; but no citizen, entity, or "court" may hold the leadership to account for violating its own laws. There is no such thing as constitutional law practice in China, because no "court" has the power to enforce the constitution against the leadership.



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What Falun Gong reveals

The so-called "laws" used by the Beijing regime to launch the genocidal campaign against Falun Gong are illustrative. Prior to the decision by the CCP to declare war on Falun Gong, the only item remotely resembling a statute on which the Party could hang its hat was Article 300(1) (2) of the Criminal Code--a piece of atrocious draft ing replete with subjective and undefinable terms eff ectively outlawing "evil cults"

and superstitious fallacies. The article is a superfluous admonition that anyone who "uses cults" to commit any of various crimes already prohibited under the Criminal Code will be charged under that Code. It begs the question: Are non-"cult" members exempted?

From 1996-1999 several anti-Falun Gong campaigns were launched; all were conducted without benefit of any statutory authority. They were ostensibly justified on the basis of arbitrary edicts issued by assorted bureaucratic agencies, and in at least one important case by an internal ("neibu") edict, which means a prohibition not even made public.

Ultimately, by October of 1999, Beijing had managed to enact a "law" (the "Evil Cult Law") to justify its pogrom against Falun Gong. The subjective and meaningless generalities set out in the language of this "statute" would embarrass any legitimate jurist.

But most important was the fact that the Beijing regime officially deprived Falun Gong practitioners of all their constitutional rights as citizens. "Courts" were forbidden to accept lawsuits on behalf of Falun Gong victims; Chinese lawyers were forbidden to provide legal representation to Falun Gong defendants; employers were forbidden to employ Falun Gong practitioners. All these edicts were illegal and unconstitutional under Chinese law.

There are Chinese human rights lawyers and lay advocates who have courageously stood up for Falun Gong practitioners. I would like to cite two, whose experiences have been representative of all those who have stood fast for the "Rule of Law" against this lawless Beijing regime.

Guo Guoting, after firmly defying the threats of the CCP and defending a fellow lawyer against specious charges by the Party, took on a lawsuit on behalf of a Falun Gong practitioner imprisoned and tortured for his beliefs. His licence to practise law was confiscated and all his files and computer records were removed by the police. He was kept under house arrest in Shanghai for an extended period and threatened with criminal prosecution until arrangements were made to bring him to Canada, where he lives in exile today.

Gao Zhisheng, whose writing appears in this publication, is a lawyer of unbounded courage and unshakeable principles. Because he wrote two open letters to the Beijing dictatorship, accusing it of crimes against humanity, and because he argued that Falun Gong practitioners were citizens of China and should enjoy all constitutional rights, and because he met with the U.N. Rapporteur on Torture, Gao too was stripped of his licence to practise law and his law firm was closed down. In the aftermath, there were three attempts on his life and he was detained incommunicado for months, while his wife and 13-year-old daughter were beaten by Chinese police. Today, he remains under house arrest after being given a three year suspended prison sentence in a oneday trial.

A neighbour suing another neighbour in a dispute over the ownership of chickens might receive justice in a Chinese "court," problems involving the systemic bribery of "judges" in such cases notwithstanding. But in criminal cases and cases involving a foreign party against a Chinese party, "judgements" of Chinese "courts" are politically, rather than judicially, driven.

In cases involving Falun Gong, the "courts" are normally not even involved. The mere fact that a practitioner admits to his or her beliefs is sufficient cause for immediate dispatch to a labour camp, involving no "judicial" process whatsoever. In the light of the revelations flowing from the reports produced by David Kilgour and David Matas, it seems clear that an administrative order for shipment to a labour camp may today amount to a death sentence for a Falun Gong practitioner.

Clive Ansley established the first foreign law office in Shanghai in 1985, and has litigated more than 300 cases in China. He has published and lectured widely on Chinese law, and is a former professor of Chinese history, civilization, and law.