

The Case of the Virgin Prostitute:

CHINESE MEDIA AND LEGAL REFORM

— Qiang Fang —

The years preceding the People's Republic of China's (PRC) open-door policy of 1978, especially during the Great Proletarian Cultural Revolution (1966-1976), as Xiaoshan, a writer for *Law and Life* magazine argued recently, comprised a virtually lawless period during which torture and public display of criminals were the most common acts of authority.¹ Not only was no single law legislated by the National People's Congress (NPC), but "law" itself had also largely been reduced to the exertion of the willpower of individual cadres. To put it another way, the status of "criminal," especially those who had been arrested and then brutally tortured political prisoners like the Rightists, was decided not by law, but by Communist Party leaders at all levels. Even the former Chinese President, Liu Shaoqi, a long time comrade of Mao Zedong, was illegally arrested and tortured to death, despite a clear stipulation in the Chinese constitution reserving the dismissal of the national President for the NPC.

Memories of such unpleasant incidents were of primary importance to China's post-1978 legal reform, when Deng Xiaoping, who himself was a victim in the Cultural Revolution, called on China to reform and open its doors to the outside world, and as an important component of this comprehensive institutional reform movement, the Chinese legal system has seen dramatic development

since then. For instance, before 1978, a mere eleven laws had been legislated by the NPC, and none of them was enforced during the Cultural Revolution. However, since 1978 and especially after 1989, both Chinese national and local congresses have enacted thousands of laws. In the NPC alone, 291 laws were legislated in that time, 216 of them after 1989. Moreover, the increase in the number of laws was matched by an increase in attention devoted to individual rights within these laws. For example, China signed the United Nations Convention against Torture in 1988; seven years later, the NPC enacted the Judges Law and the People's Police Law in which torture is clearly prohibited. Even more telling is the switch from a presumption, dating to ancient times, of the accused's guilt, to a presumption of a defendant's innocence in 1996. Police today are required by law to show their arrest warrant when arresting suspects. In theory, all are equal before law.²

Other distinct evidence of progress toward the rule of law can be found in this period. People show an increasing sensitivity to law when settling their disputes. The legal profession has become more attractive and respectable, as demonstrated by the tens of thousands of youths who have taken the lawyer qualification test every year throughout the 1990s. Judges, whose poor quality has long invited criticism by observers, will soon be

¹ Xiaoshan, "Law and Life, Raise Doubt on 'Public Arrest,'" *Falu Yu Shenghuo (Law and Life Magazine)* 10, 2001.

² Article 6, Chinese Criminal Procedure Law (Revised), 1996.

required to hold a bachelor's degree in law. However, despite the progress made by Chinese legal reformers, and despite the fact that the present legal environment is far better-developed than the period preceding the PRC's reform, some questions remain: how close does Chinese law come to meeting society's need for regulation? To what extent have those new laws been implemented? What problems persist?

This paper examines a recent case involving a girl who, though actually a virgin, was forced through torture to confess to being a prostitute. I will not approach this case through any jurist's opinion, nor through the victim's eyes. Rather, I shall study it from the Chinese public media's perspective, to illustrate, according to news articles, what progress has been made in legal reform and what challenges remain, with an eye toward the implementation of the rule of law. Then, from a critical reading of the articles, including a comparison to Western media treatment of Chinese criminal justice, I shall attempt to evaluate the degree to which the views forwarded by Chinese public media are accurate by examining where they succeeded in highlighting certain challenges, as well as signs of progress, and where they failed.

I

Ma Dandan is an eighteen-year-old girl who lives in a small village in Jingyang county, Shaanxi province. On January 8, 2001, while watching TV in her sister's barber shop with her brother-in-law and her niece, two plain-clad men suddenly came directly in her living room as if they were looking for something. Ma Dandan asked them whether they wanted a haircut. The men did not answer but one of them asked for a girl named Ma Dandan. After Ma Dandan identified herself, the men then said they were policemen and forced her into a van.

The men, named Wang Haitao and Hu Anding, were from the local police station. That night, they tortured Ma for almost twenty-

three hours in the presence of the chief police officer, Peng Liang. According to the Qilu Evening News, a Shandong provincial newspaper, they repeatedly beat her on her head and body and did not allow her to eat or drink. They finally forced her to sign her name on a confession before releasing her. Subsequently, the Jingyang county police published a falsified report that changed Ma Dandan's arrest date to February 9, a month later, and described Ma Dandan as a male.

Hoping to restore her reputation, which is considered very important in rural China, Ma Dandan submitted a petition of revision to the Xianyang city police bureau, the authorities superior to the Jingyang county police, requesting the dismissal of the Jingyang county police's judgment, punishment of the policemen who tortured her, an amount of 8000RMB (US\$1000) to cover treatment and salary loss, and 50,000RMB (US\$ 6000) in damages for psychological distress.

However, despite Ma's requests, the Xianyang police bureau did nothing. They instead asked her to be inspected by a local hospital to confirm that she was a virgin. Even after the doctors certified her virginity, the Xianyang police still took no action. Enraged, Ma Dandan disclosed her case to the media. The next day the Huashang Daily in Shaanxi reported this case, causing an immediate sensation among the public.

In response to public fury, the Jingyang county police finally apologized to Ma Dandan for their misdeed. However, the Xianyang police wanted Ma Dandan to submit to another inspection of her virginity to "make sure." Ma Dandan submitted to this request for a second time, though she felt that it was shameful. However, a Qilu Evening News report presented this requirement as a police attempt to take advantage of the second inspection to find any problems which might justify their misdeed.³

When the attempt failed to bear fruit, the police finally succumbed to pressure from the media, withdrawing their former report on Ma Dandan and dismissing the

³ "The Secret of an Eighteen-Year-Old Girl Being Forced to Admit a Prostitute," Qilu Evening News, 12 March 2001.

policemen who committed the torture. Ma Dandan was not satisfied with the police decision because she thought they were not properly punished. She therefore submitted a petition to the local Xianyang court asking for a 5 million RMB (US\$600,000) payment for psychological damages on February 13.

Although the court determined that Ma Dandan was in fact innocent, had been brutally tortured for almost twenty-three hours by the policemen, and had already paid more than 1000RMB (US\$130) for medical treatment, the Xianyang court awarded her only 74.66RMB (US\$9) as compensation. Still unsatisfied, Ma Dandan sent a second petition to the same court insisting on her 5 million RMB (US\$600,000) spiritual remuneration and a public apology by the Jingyang police. This suit has yet to be settled.

II

This case is simple, involving only a common girl, but the media's coverage of it reveals both challenges and progress for the reform and development of Chinese criminal law. The most obvious challenge is police corruption, which largely takes the form of abuses of power, which can be seen in their torture of suspects. When Ma Dandan was humiliated by the police and decided to reveal her story to the media, the Huashang Daily first published the case and the news quickly spread all over China. Although they analyzed the case from different angles, the initial reports provided a relatively detailed explanation of this case. For example, a report of the Qilu Evening News quoted Ma Dandan's words about her experience of being tortured on March 12 reads:

I was driven to a room. After asking me for my name, birth date and home address, Wang Haitao asked me whether I knew the reason they had arrested me. I said, 'no.' He then said I was not honest. Hu Anding came in to

interrogate me afterward. When I said, 'Why did you arrest me?' Hu jumped up and slapped my face, and then he took me by the collar and led me outside. He cuffed me on a basketball frame... Until 4:30 am, I had not drunk any water, and I suffered continuous beatings and abuses in the cold outside night...⁴

Yu Teng, the first Huashang Daily journalist to interview Ma Dandan, later reported more of Ma Dandan's statement:

At about four o'clock AM, January 9, 2001, when Wang Haitao and Hu Anding failed to get anything useful... Peng Liang, the chief of Jingyang police station, appeared. Peng led me to his office to continue the interrogation and wanted a confession that I had committed 'prostitution' before. Peng said, 'I have already arrested the guy who has had sex with you and he has confessed. If you still don't confess, I will tell everybody you know. I will tell your parents, sisters and brothers, and let them all know you are a prostitute. How can you be a person in the future? However, if you confess, I will let you leave immediately and I will not tell anyone else.' Peng then began touching me on my breast and face. Being scared, I cried and shouted loudly. Peng said, 'Here, I am the king and the law. All your crying and shouting is useless. No one would dare enter unless I order them to.' Seeing that I still would not confess, he threatened me, 'I will throw you in prison and let you know the taste of it if you don't confess.' When I refused, he kicked me on my belly, making me lose consciousness.⁵

As the sensation surrounding Ma Dandan's suit grew, however, instead of

⁴ "The Secret of an Eighteen-Year-Old Girl Being Forced to Admit a Prostitute," Qilu Evening News, 12 March 2001.

⁵ Yu Teng, "The Case of The Prostitute Attracts the Heart of the Nation, Ma Dandan Breaks Her Heart for Regaining Her Purity," Huashang Daily, 24 July 2001.

continuing to provide readers with neutral, full coverage of the case, reports tended to focus on the abuse of power by the police and seriously criticized problems in China's criminal justice system. In a July 23, 2001 article in Beijing Youth Daily entitled, "The case of Virgin Prostitute: The Enlarged Virgin Hymen and the Ignored Small Detail," Lao Cai, for instance, argues that a small group of thugs had compromised the law. "In the 23 hours when she lost her physical freedom, Ma Dandan was cuffed, slapped on the face, beaten, threatened, stripped of her pants, abused, and sexually molested."⁶ Lao Cai goes on to say the law afforded Ma Dandan no means of defending herself; instead, she was forced to sign a so-called "confession." Lao concludes with a claim that in some distant regions, [criminal] law has been reduced to a means by which a small number of thugs can arbitrarily display their influence in pursuit of their own interests, bully common people, and find an outlet for their sexual desires. As such, [current] law does not effectively empower common people to take advantage of their rights, because, as it does not successfully limit officials' power, the power given to them by the people becomes a "sharp weapon" against the people.⁷

Lao Cai also calls on people to look carefully at the specifics of the Ma Dandan case, for he believes within the details of the damage to Ma Dandan's body and psyche, lies the evidence of many grave, widespread problems in China's criminal justice system including irresponsibility, low quality of personnel, and dereliction of duty. If people do not understand these specifics, he continues, they have no basis for assessing a fitting punishment for those wrongdoers, and will not learn adequately from the case to prevent another tragedy like Ma Dandan's from taking

place again. Thus, the spirit of the Rule of law will not be achieved.⁸

A July 26, 2001 Labor Daily article, "Human Dignity is the First Thing," charges police with corruption and abuse of power. It said:

We are surprised at their desecration of the law and of the image of the People's Police; we are most surprised because, in their eyes, there is no such thing as human dignity. [The police] involved in this case deliberately ignored details [indicating Ma Dandan's innocence] in order to win. While we are surprised at the lack of attention paid to just this sort of violation of human dignity, we are more surprised that law cannot cover everything.⁹

Cui Li, a reporter from the China Youth Daily, quotes Yuan Shuhong, a law professor from the Institute of State Administration, as saying, "In pursuit of so-called 'evidence,' the police turned Ma Dandan into a 'man' so that they could accuse her of 'committing prostitution,' as if by turning white to black or a deer into a horse. Such activity is a case of forging proof and accordingly violates criminal law."¹⁰ "After reviewing this case," Yuan said, "activities committed by the police such as punishment, forced interrogation, and forcing a girl to do medical tests violate human rights laws. Since such violations are very serious and will badly influence [public sentiment], heavy punishment of those who are responsible is vital."¹¹ In this way, the media devoted much attention to the challenge police corruption represents to the establishment of Rule of law.

The second challenge after police corruption that the public media emphasizes

⁶ Lao Cai, "The Case of Virgin Prostitute: The Enlarged Virgin Hymen and the Ignored Small Detail," Beijing Youth Daily, 23 July 2001.

⁷ Lao Cai, "The Case of Virgin Prostitute: The Enlarged Virgin Hymen and the Ignored Small Detail," Beijing Youth Daily, 23 July 2001.

⁸ Lao Cai, "The Case of Virgin Prostitute: The Enlarged Virgin Hymen and the Ignored Small Detail," Beijing Youth Daily, 23 July 2001.

⁹ Liu Jiawei, "Human Dignity is the First Thing," Labor Daily, 26 July 2001.

¹⁰ Cui Li, "Tracking the Case of Virgin Prostitute: Specialists Say the Police Violated Law by Turning the Truth Upside Down," China Youth Daily, 11 May 2001.

¹¹ Cui Li, "Tracking the Case of Virgin Prostitute: Specialists Say the Police Violated Law by Turning the Truth Upside Down," China Youth Daily, 11 May 2001.

is the defective nature of the State Compensation Law. After the court ordered the Jingyang police to give Ma Dandan 74.66RMB (US\$9) as a remuneration, and Ma Dandan was so angered that she decided to launch the currently pending suit, public media responded with the publication of numerous articles, most of which presented the court's judgment as absurd. In a June 24, 2001 Legal Daily article, "The Law Separated From Human Beings," Zhou Shijun vehemently argues against the judgment:

Although Ma Dandan's individual freedom had been denied for as long as 23 hours, and although medical care for injuries sustained during police torture alone cost Ma Dandan over 1000RMB [US\$ 120], the court, 'according to the law', ordered the Jingyang police to pay merely 74.66RMB as Ma Dandan's compensation. As for the psychological damage to Ma Dandan and her family, our existing laws have no clear provisions [for remuneration].¹²

Zhou then poses a question and a possible solution:

Is the law not making fun of Ma Dandan? In the case of the 'Virgin Prostitute,' it is obvious that Ma Dandan suffered spiritually. Yet the State Compensation Law can only recognize physical and property damage, but not spiritual damage. Therefore, a pittance of 74 RMB is to serve as a spiritual remuneration for the police abuse of Ma Dandan.

Finally, Zhou sharply criticizes the law, which he views as unable to provide people with much-needed protection. "Everyone says, 'The net of law is so tight that no one can evade its punishment.'" However, in the case of the

'Virgin Prostitute,' why did the law act so generously to such arrogant defendants???"¹³

Likewise, when Cui Li asked Professor Yuan for his view of the State Compensation Law with respect to Ma Dandan, Yuan said he was not surprised at her small compensation, given that "the State Compensation Law states that the standard compensation for confining an individual's freedom is equivalent to the national average daily wage of the last year, which is to say, only about several dozen RMB. The 74.66 RMB compensation might come from the days that the plaintiff had been confined." Yuan then concluded that the biggest tragedy in this case was the State Compensation Law itself.¹⁴

In another article in the China Youth Daily published after Cui Li's, Chen Jieren also pointed out the problem as intrinsic to China's State Compensation Law. He quoted an unnamed specialist's opinion – that the law was flawed in its protection of people's rights:

The State Compensation Law's Articles 3 and 4 simply recognize the range of the state compensation, which only states that 'if, while implementing policy, a government entity and its staff violate citizens' physical or property rights, the victims have the right to ask for compensation.' Spiritual compensation, however, is not included.¹⁵

Even Wang Zhouhu, the Northwest Legal Institute professor who represented the Jingyang police in court, supported the court's judgment in favor of Ma. Responding to a Legal Daily reporter's question regarding whether he see the compensation plan as reasonable, he answers:

For the cases relating to the violations of fame and dignity, Article 30 of the State Compensation Law has only

¹² Zhou Shijun, "The Law Separated from Human Beings," Legal Daily, 24 June 2001.

¹³ Zhou Shijun, "The Law Separated from Human Beings," Legal Daily, 24 June 2001.

¹⁴ Cui Li, "Tracking the Case of Virgin Prostitute: Specialists Say the Police Violated Law by Turning the Truth Upside Down," China Youth Daily, 11 May 2001.

¹⁵ Chen Jieren, "The Tragedy of Ma Dandan, Rethinking the Dilemma of Law in the Virgin Prostitute Case," China Youth Daily, 8 August 2001.

recognized remuneration by means of retraction of slander or apology though not through monetary compensation. As a scholar, I, too, am unsatisfied with the contents of the State Compensation Law. Yet, under the current legal system, it is hardly possible for the courts to surpass [the compensation provisions in] that law. Morally and emotionally speaking, I am deeply sympathetic to the experience of the plaintiff, but laws are laws: reaching judgments should follow the law, use the law, and defend the law, and must not be influenced by popular opinion.¹⁶

Given that this very sanctity of the law, including the State Compensation Law, appears to only be preserved at the expense of what many scholars see as justice for Ma, the pressure to modify the law is high. Within this dynamic, the *Jiangnan Times*' publication of a speech delivered by a professor from China's Political and Legal University is timely. In his speech, he argues for a pressing need to revise the State Compensation Law: "Regarding damages caused by the state, spiritual damages outweigh property damages." The professor elaborates:

For example, if a man has been sentenced for ten days, he suffers more spiritual damage than physical and property damage. The earlier sensational case of 'Ma Dandan Virgin Prostitute' is a typical example. The victim [Ma Dandan] suffered great psychological as well as physical damage but merely obtained 74 RMB. All of us feel this is ridiculous. However, there is nothing to be done for her, because it is all the compensation law allows. Thus, monetary remuneration for spiritual damages should be added in the State Compensation Law.¹⁷

These views resonated with public opinion. A website belonging to the *People's*

Daily polled its members on whether they saw the court's judgment as "legal," with about 85% regarding it as "illegal," and 11% regarding it as "legal." Members were also polled on whether they saw the judgment as "reasonable," with almost 95% of respondents regarding it as "unreasonable" and only 3% regarding it as "reasonable." In this instance, the views expressed in the press and those held by the public are consonant, demonstrating a considerable sensitivity to popular sentiment on the part of a press that ultimately aims to serve the general public.¹⁸ Again reacting to public opinion, the media devoted much attention to a challenge facing the establishment of Rule of law, in this instance the shortcomings of the State Compensation Law.

Beyond police corruption and the nature of the State Compensation law, the application of law, specifically the state's willingness to act in accordance with the law, emerged as a third major question the public media posed. Yu Teng's report, "The Case of The Prostitute Attracts Attention of the People, Ma Dandan Breaks Her Heart to Restore Her Reputation," highlights the law's unequal treatment of authorities of higher status. Though the Jingyang police had tortured Ma Dandan brutally, Yu learns that:

The cause of the Ma Dandan "Virgin Prostitute" case, Peng Liang, has been transferred to another police station in the nearby town, Yunyang... [which made] Ma Dandan's family upset. What confuses them is why, in court, they always faced the two policemen. Why would no one do anything to punish Peng Liang, Wang Haitao and Hu Anding [together]?¹⁹

Yu Teng directs this question toward Wang Bingsheng, a *Huashang Daily* legal advisor, who replies that the Administrative Procedure Law was not applied to all responsible

¹⁶ Gao Di, "Using Reason to Defend Rights: Another Topic of the Virgin Prostitute Case," *Legal Daily*, 20 August 2001.

¹⁷ "Specialists suggest the need to revise the State Compensation Law," *Jiangnan Times*, 19 September 2001.

¹⁸ People's Website belonging to the *People's Daily*, 10 August 2001.

¹⁹ Yu Teng, "The Case of The Prostitute Attracts the Heart of the Nation, Ma Dandan Breaks Her Heart for Regaining Her Purity," *Huashang Daily*, 24 July 2001.

violators because they represent the state administration.

If in Wang's formulation, the police represent the state, does that role mean they will not be punished in line with law? A Labor Daily report, "Enforcing Administrative Law Must Not Ignore Morality," provides answers to this question. It argues that hierarchical consciousness is the main cause of apparent inequality under the law:

"Generally speaking, one main reason [for the practice of torture] is that some 'Official Masters' do not recognize common people's rights at all by heart. Do the illegal interrogation, stripping, and abuse of [an inferior] represent [unjust] damages [to Ma Dandan's well-being]? [From the masters' point of view] she is lucky to have received any remuneration, so why does she still want compensation for psychological damage? In addition, the failure [of the criminal justice system] to apply the law equally is another important contributing factor."²⁰

In a seminar on China's administrative law organized by the Beijing Youth Daily, Chen Yaowen, editor-in-chief of China Central Television (CCTV), argues that the administration is like a big basket; when its staff violate law, they would all be put in the basket, and there would be no punishment for a single person. Even if a policeman were driven out of the Party, he would still be a policeman. But what about Ma Dandan? After her humiliation, she might be burdened by the dispute throughout her life. A common person and an official are indeed unequal in present judicial practice. Since officials are treated as superior to common people, common people are unable to address a dispute with the administration as equals. In this case, Ma

Dandan was inferior and therefore in a weak position. If, on the contrary, it was Ma Dandan who had beaten a policeman, that would be real news.²¹

Another article by Chen Jieren included some jurists' views about the unfairness in the Ma Dandan case based on a study of criminal law itself. According to One jurist, Article 247 of Chinese criminal law indicates that if court staff use force on suspects, defendants, or witnesses to get testimony, they are to be imprisoned for no more than three years or be forced to do certain labor service. If their actions result in any injury or the death of the suspects, they are to be punished severely in keeping with Articles 234 and 232, which exhaustively detail punishments for those guilty of police torture. Despite this, the law in question does not protect people who are not suspects, defendants or witnesses such as plaintiffs like Ma, who might seek damages from any state entity in a lawsuit.²² This report also quotes a lawyer who claims that Article 247 of Chinese criminal law "actually harbors and protects those officials who use force to extract testimony."²³ In this way, the public media went to great lengths to stress the challenges facing the adaptation of Chinese society to rule of law.

While the public media has focused on the problems of the legal system, it has also carried several positive stories on progress toward rule of law. For example, after suffering torture and humiliation in the Jingyang police station, Ma Dandan and her family dared to sue the police, earning Yu Teng's admiration, as expressed in her article, "The Full Coverage of The Absurd Virgin Prostitute Case." "If I were a member of Ma Dandan's family," Yu writes, "I don't know whether I would have had the courage to face that law suit."²⁴ Indeed, Yu has great reason to admire Ma, as it is no easy task for a peasant family at the bottom of

²⁰ Wei Wenbiao, "Enforcing Administration Law Must Not Forget Morality," Labor Daily, 6 August 2001.

²¹ Chen Yaowen (in seminar), "Administration Law Doesn't Provide Compensation, Then Who Can Soften Ma Dandan's Injury?" Beijing Youth Daily, 31 July 2001.

²² Chen Jieren, "The Tragedy of Ma Dandan - Rethinking the Dilemma of Law in the Virgin Prostitute Case," China Youth Daily, 8 August 2001.

²³ Chen Jieren, "The Tragedy of Ma Dandan - Rethinking the Dilemma of Law in the Virgin Prostitute Case," China Youth Daily, 8 August 2001.

²⁴ Yu Teng, "The Full Coverage of The Absurd Virgin Prostitute Case," Huashang Daily, 24 July 2001.

the society to challenge the police, one of the most powerful organs of the government. The other major sign of progress toward rule of law to which much of the press devoted considerable attention was the willingness of many jurists and scholars to express their discontent with the Xianyang Court's judgment, even to seriously criticize the legal system; such criticism was unheard of two decades earlier.

The media's celebration of this openness is in fact what emboldened more prominent legal scholars to express equally candid, critical views concerning faults in China's laws and in its judicial system, which were in turn printed. Major figures including Yuan Shuhong of the Institute of State Administration, Wan Zhouhu of the Northwest Legal Institute, and He Weifang of Beijing University not only criticized the State Compensation Law, but also called for a revision of that law. As Yuan Shuhong argues, "state compensation [law] should not simply offer help to the victim and protect his rights, but it should also prevent the administrative and judicial government from violating the law."²⁵ Equally bold among these was China's People's Police University associate professor Yu Lingyun, who makes a clearer, if comparatively conservative, argument about changing China's legal system. "Ma Dandan got only 74 RMB spiritual compensation," Yu argues. "This is reasonable according to the law. What is certain is that the [judicial] system has flaws. Yet, as for any flaws related to the system, they can only be resolved by means of the system."²⁶

More significantly, several scholars felt comfortable in extending their blame beyond the State Compensation Law by denouncing the current Chinese judicial and social system that produced the haughty attitude of the police and allowed them to go unpunished. Wei Wenbiao and Chen Yaowen both argue that in China, a hierarchical social

system exists in which the police behave as the "official-master," above commoners such as Ma Dandan in terms of status, and by extension, possess the *de jure* right to preferential treatment by the judicial system. With respect to this problem, a Ph.D. student from China's Political and Legal University, Yang Weidong crystallizes the perceived need for fundamental social change:

As far as the origin of official power is concerned, it should be no different from citizen's power. [But] traditionally, people do not treat citizens' rights as possessing a status equal to those of the state. Rather, people often place the state and its administrators in a position superior to that of human rights. This is the question we must deal with. We should reconsider public rights as well as the coordination of the relationship between public rights and the citizen.²⁷

Generally speaking, then, we see that, despite the public's distaste for the Xianyang court's judgment, the media coverage of Ma Dandan's suit served to highlight progress in the establishment of the rule of law. Simple details that might be taken for granted outside China, such as the fact that the court reached its judgment in accordance with legal statutes as opposed to a judge's own whimsy, or even that both plaintiff and defendant decided, in spite of their different social roles, to face each other in court with legal representation, represent enormous progress in China. As Wang Zhouhu said to a journalist of the *China Youth Daily*, "I want to emphasize here that any organization or person, no matter whether [he behaves] lawfully or unlawfully, should have equal legal status and rights. Even in the case of a person as inexcusable as a murderer, he can also have the right to defend himself in court. This is a crucial embodiment of the rule of law."²⁸

²⁵ Cui Li, *China Youth Daily*, 11 May 2001.

²⁶ Yang Weidong (in seminar), "Administration Law Doesn't Provide Compensation, Then Who Can Soften Ma Dandan's Injury?" *Beijing Youth Daily*, 31 July 2001.

²⁷ Yang Weidong (in seminar), "Administration Law Doesn't Provide Compensation, Then Who Can Soften Ma Dandan's Injury?" *Beijing Youth Daily*, 31 July 2001.

²⁸ Gao Di, "Using Reason to Defend Rights: Another Topic of the Virgin Prostitute Case," *Legal Daily*, 20 August 2001.

In conclusion, in the case of the virgin prostitute, China's public media cover both challenges facing China's present legal establishment, as well as that establishment's progress toward the rule of law. The next questions therefore become: do the problems and progress for Chinese legal reform, as presented by China's media, match those identified by foreign media or specialist observers? More generally, what have the Chinese public media missed, and why?

III

Flaws in the present Chinese legal system reported by China's media have also received the attention of major overseas media and scholars. Chief among these is the widespread use of torture in law enforcement. Observers hailing not only from newspapers such as The New York Times but also from well-established human rights groups including Human Rights Watch and Amnesty International have reported a great deal of police torture as well, though I have seen nothing in their reports on the Ma Dandan case.

Craig S. Smith, a reporter for The New York Times, is no less of a stranger to police torture than the Chinese themselves. In an article entitled "Torture Hurries New Wave of Execution in China," Smith exposes a case in which a Chinese man, Liu Minghe, was wrongly charged with murder by Chinese police during the recent "Strike Hard" campaign against crime. Although Mr. Liu was finally acquitted, he was originally convicted based on a confession extracted by police torture, and had already spent five years in prison awaiting execution. He comments more generally in an article on the seriousness and frequency of torture activities in China:

China routinely executes more people than all other countries combined. This year, though, has been far from routine.

Without much notice at home or abroad, the government has begun sending unknown thousands of people to execution grounds, often after they have been tortured into confessing crimes that to foreigners seem minor.²⁹

Smith also quotes Liu's wife, who says that her husband "was handcuffed to a window so that he could either stand or hang from his wrists he was only allowed to eat a few bites of food by lowering his head to a bowl." Worse, a document submitted by Mr. Liu's lawyer said that he "had not been allowed to drink or close his eyes during the interrogation." Moreover, Smith adds, policemen who torture suspects are not only free of punishment, but are also actually rewarded by their superiors. "Though forced confessions are technically illegal, the country's Public Security Ministry – whose local bureaus are charged with investigating crimes – reward officers who extract confessions, while usually only lightly punishing those whose abuse goes too far."³⁰

Smith's report is not alone. In the 2001 Amnesty International Report, China's police torture and ill-treatment of people in custody is one of the main issues:

Torture and ill treatment of detainees remained widespread. Victims included both political detainees and criminal suspects. Incidents were reported in police stations, detention centers, prisons, labor camps, repatriation centers and drug rehabilitation centers. There were also frequent reports of the use of torture during non-custodial control measures such as 'residential supervision' and during the 'special isolation' of officials being investigated for alleged corruption.³¹

Similarly, the latest Human Rights Watch report also points out the legal abuses

²⁹ Craig S. Smith, "Torture Hurries New Wave of Execution in China," The New York Times, 9 September 2001.

³⁰ Craig S. Smith, "Torture Hurries New Wave of Execution in China," The New York Times, 9 September 2001.

³¹ "Amnesty International Report 2001: China," Amnesty International Publications, 2001. Available at: < <http://web.amnesty.org/web/ar2001.nsf/webasacountries/CHINA?OpenDocument>>.

in China, though it acknowledges some progress. “Legal reform moved forward, but judicial abuses were still common. In Hebei province, a high court on three occasions overturned murder convictions against four peasants, citing doctored evidence, torture, and threats. Local officials, however, decided to try the men again.”³²

After torture, Chinese media charges of unequal application of the law are matched by foreign media and scholars. Generally speaking, the Chinese legislators’ mindset, premised on the assumption that all are equal before the law, is seen as naive, given that such an ideal has never been fully realized in any society, let alone in Chinese society where a long-established tradition of inequality before the law has rendered equal application of the law an especially daunting task. As T’ung-Tsu Ch’u argues in his book, Law and Society in Traditional China, Confucian doctrine all but prohibits the application of law to implicate one’s superior. Even if an administrator violated a law, he would be treated differently from common people:

Unlike the common people, the nobles and officials were not under the jurisdiction of the ordinary legal mechanism and procedures. As a rule, the authorities had no right to arrest or investigate them unless permission to do so had been granted by the emperor. It was regulated in Han times that when nobles and officials from certain ranks were guilty, special permission had to be requested from the emperor before they were arrested or investigated.³³

Despite the fact that exceptions can be located during various emperors’ reigns, this tradition, Ch’u argues, has lasted throughout the dynasties.

Although Ch’u’s applies this assertion to the pre-republican period, the

unequal application of law in today’s China, to which Chinese news articles point in the Ma Dandan case, does not differ fundamentally from the phenomenon he outlines. Returning to Smith’s article, “Torture Hurries New Wave of Execution in China,” the eventual overturning of Mr.Liu’s conviction is attributed to his Party membership and relatively high social position: “Mr. Liu might be dead today had not his longtime Communist Party membership and social position been a factor that made the provincial court look more carefully at his case, his family and lawyers say. Money also helped. Mr. Liu’s family has spent more than \$36,000 on his defense, an enormous sum here.” Smith then underscores the exceptional nature of Liu’s reversal of fortune: “the vast majority of people executed in China have neither position nor money and their cases often get less scrutiny than Mr. Liu’s, defendants’ lawyers say.”³⁴

A New York based Chinese-language news publication, The Epoch Times, published a similar article on August 24th 2001 entitled, “Only Because His Father Runs Police Station, Rapist Declared Innocent Then Flees.” The article provides an account of how a man named Li Jian, whose father headed a police station, raped a woman with two accomplices in Gutian County, Fujian Province. The same night, the police arrested all three rapists. When the rapists were put to trial in the local court, judge Su Jiafu freed them claiming that evidence was not sufficient. Later, the truth finally emerged: Li Jian’s father bribed Su, asking him to free his son. Both cases demonstrate the continued correlation between sociopolitical status and privileged legal treatment; had Li Jian lacked such an “omnipotent” father, he would likely have been convicted.

As for China’s legal progress, though foreign observers tend to interpret “progress” somewhat differently, they too acknowledge that certain progress has been

³² “Human Rights Watch Report 2001: China and Tibet,” Human Rights Watch, 2001. Available at: < <http://www.hrw.org/wr2k1/asia/china.html>>.

³³ T’ung-Tsu Ch’u, Law and Society in Traditional China (The Hague and Paris: Mouton & Co, 1961), 177.

³⁴ Craig S. Smith, “Chinese Fight Crime with Torture and Execution,” The New York Times, 9 September 2001.

made. For instance, in a Christian Science Monitor article, “New for China’s Courts: Trained Judges, Standard Rules” Robert Marquand affirms changes taking place in China’s legal system:

As China undergoes a massive transition to a market economy – something that may bring social unrest – Chinese leaders are moving to reform the feudal and Soviet-era-style justice system in the hope that this will provide an important ‘safety valve’ for popular grievances. It is a vast and difficult undertaking.³⁵

Marquand then lists a number of new reform measures, regardless of whether they have been actually implemented.

Experiments are under way in local and state courts with relatively new rules, like the presumption of innocence for those accused. Legal aid centers are being set up in every county. And three weeks ago, a highly touted new mandate from the National Party Congress ordered all judges to have legal training.³⁶

From this, we can see that progress in the development of the rule of law in China has registered with journalists outside China.

Nor have such positive aspects of China’s legal system escaped the notice of Human Rights Watch and Amnesty International, both of which habitually criticize China’s poor human rights record. As the Human Rights Watch’s World Report 2001 states:

On the positive side, Chinese authorities continued to reform the legal system, seeking international expertise to help design new legal

structures, train judicial and legal personnel, and help disseminate information on the reforms to the public, the courts, and the police.³⁷

Likewise, Amnesty International’s 2001 report also confirms China’s legal progress, “Although implementation of the law continued to be arbitrary in many cases, the government renewed efforts to encourage implementation of 1997 legal changes, including some aimed at improving the fairness of trials.”³⁸

In sum, not only have China’s public media have demonstrated a sensitive awareness to legal issues including police torture and unequal application of law as well as progress made in reforming China’s legal system, but this understanding on the media’s part is strikingly similar to the analysis of prominent journalists and scholars outside China. Still, questions remain: to what extent is the Chinese media’s interpretation accurate? Is that interpretation comprehensive?

As we know from the above Chinese public news articles, many journalists presented the inadequacy of the State Compensation Law as a big, if not the biggest, contributing factor to the “virgin prostitute” tragedy. Prominent law scholar Yuan Shuhong holds a similar view, specifically that the biggest tragedy in this case is the State Compensation Law itself. Was the weakness of the Compensation Law on its own in fact the main problem behind this case? Although the problem of incomplete legislation is not uncommon in the Chinese legal system, I find this argument dubious in light of the inconsistency with which law generally is applied in court settings. Even if China had a radically more encompassing State Compensation Law, the law would probably not fully implemented.

What about Chinese Criminal Procedural Law? Article 247 clearly states,

³⁵ Robert Marquand, “New for China’s Courts: Trained Judges, Standard Rules,” The Christian Science Monitor, 16 August 2001.

³⁶ Robert Marquand, “New for China’s Courts: Trained Judges, Standard Rules,” The Christian Science Monitor, 16 August 2001.

³⁷ “Human Rights Watch Report 2001: China and Tibet,” Human Rights Watch, 2001.

³⁸ “Amnesty International Report 2001: China,” Amnesty International Publications, 2001.

“Any judicial staff using force on suspects and defendants to acquire evidence will be imprisoned up to three years. If the force causes any injury or death, according to Articles 234 and 232, the perpetrators will be heavily punished.”³⁹ However, at the time of the Ma Dandan case, neither this Law, revised in 1996, let alone the UN’s Convention Against Torture, ratified in 1988, impeded police torture of Ma Dandan. As Smith notes, not only are police not punished for torturing suspects as mandated by law, but they are actually rewarded by their superiors for extracting a confession irrespective of the means of extraction. Given Smith’s observation that torture is rewarded rather than punished, future potential torturers have scant motive to heed the law.

What of the Presumption of Innocence codified in 1996? Article 12 of the Procedural Criminal Law states, “Before a People’s court determines a conviction, suspects may not be accused of being guilty.”⁴⁰ To date, this legal principle has rarely been respected. For centuries, Chinese people have been accustomed to a presumption of guilt, and this presumption is so deeply ingrained in people’s minds that it cannot be easily done away with. Guo Luoji, a Chinese scholar who was the first prominent individual to sue the Chinese Communist Party, discusses the deep-rooted tradition of “the presumption of guilt.” Guo writes, “For thousands of years in feudal society, China always applied the law of ‘the Presumption of Guilt.’ Once a person is arrested, he will automatically be presumed as guilty.” Guo argues such tradition is far from dead at the present – it is even evident in Deng Xiaoping’s policies. He then makes reference to Marx’s assertion that the traditions of forebears long since dead, like dreams, are still entangled in living men’s brains.⁴¹ Again, in the Ma Dandan case, the police arrested Ma Dandan because they assumed she was guilty even though they did not have valid evidence. Based on the presumption of guilt, the police

tortured Ma Dandan in order to obtain sustainable evidence by force. When they were torturing Ma Dandan, last on the police’s list of considerations was the principle of the Presumption of Innocence. Such violations of fundamental, albeit new, legal tenets do little to suggest that such ingrained practices can be legislated away.

An article in China Rights Forum discussing rights of Chinese lawyers argues that Chinese lawyers often have to confront empty legal promises. For instance, as far as the collection of evidence is concerned, though the law is well drawn, many man-made obstacles remain:

Both the CPL (Criminal Procedure Law) and the Lawyers Law specify that lawyers have the right to collect evidence about the case themselves. After the case is transferred to the courts for trial, lawyers are allowed access to certain materials about the case held by the authorities. During trial, lawyers should be able to cross-examine witness, review the evidence presented by procurators and conduct legal defense on behalf of defendants. However, in practice, lawyers frequently encounter obstacles in presenting a proper defense for their clients. These obstacles include: restricted access to evidence collected by procurators; insufficient power to collect evidence; and inability to cross-examine prosecution witnesses who have provided testimony but who do not appear in court.⁴²

These man-made obstacles cast more doubt on the public media’s general consensus that the incompleteness of the statutes is the biggest problem. The above argument is a persuasive indication that the problem lies in the overall implementation of the legal system and not just in the statutes. Economist He Qinglian When

³⁹ Chinese Criminal Procedure Law (Revised), 1996, Article 247.

⁴⁰ Chinese Criminal Procedure Law (Revised), 1996, Article 12.

⁴¹ Guo Luoji, Real Report of CCP’s Illegal Violations (Democratic University Press, 1997), 193.

⁴² “Empty Promises: The Role of Lawyers, Human Rights Protections & China’s Criminal Procedure Law in Practice,” China Rights Forum, September 2001, 41.

expresses a similar view: “I have heard more than once the sighs of legal staff, ‘a lack of law to implement is no longer the problem. The problem is non-implementation of the law.’”⁴³ Thus there is strong indication that Chinese public media have failed to provide an accurate analysis of the defects in China’s criminal justice system.

Why the failure? The Chinese media, although currently more autonomous than in the recent past, remains highly regulated by the government. In other words, the media is obliged by the authorities to serve the interest of government, the interest of socialism, and above all, the interest of the Communist Party. Under these conditions, few dare publish any article criticizing the political system as a whole. This does well to illustrate why coverage of the Ma Dandan case focused overwhelmingly on police torture and the weakness of the State Compensation Law, and said nothing about the political system that done as much to sustain the police as it has to reform the law.

Such avoidance of indicting the political system can be seen in Wei Wenbiao argument in the Labor Daily that the Ma Dandan case occurred because the police did not have any “basic moral sense” (*jiben daode yishi*). If the police had this, “this lawsuit would not have been necessary. Certainly, the premise is that the police should have a certain moral sense.”⁴⁴ Yan Yang’s, argument in China Youth Daily that the three policemen should assume exclusive responsibility, smacks of the same avoidance – he presents the police abuse of their administrative power as an abandonment and violation of national authority:

Although [the policemen’s] mistake was made when they were applying the national authority, the fault itself was a kind of individual activity and not a national one. In this ‘Virgin Prostitute Case’, these policemen involved should be responsible for all the mistakes.

When they become the defendants, they will not be the people’s police, but will become common people. And their mistakes are simply individual ones.⁴⁵

In fact, what was behind the police torture, violation of law, and the absurd compensation of 74 RMB was not their own lack of morality, but basic defects in the political system. In China, it is the Chinese Communist Party (CCP) that claims authority over almost everything. Even though Chinese leaders such as Jiang Zemin have called for establishing the rule of law (*yi fa zhi guo*) for years, so far the Party has not made any great progress to this end. Although the PRC Constitution states that all policemen, judges and prosecutors are accountable to the National and Local People’s Congresses, judicial personnel actually report to “Political and Legal Committees,” which are appointed by the CCP. Thus the judiciary is effectively accountable to the Party before the People’s Congresses, and by extension, the law.

In addition to being subordinated to CCP superiors within the judiciary, all judicial organs are concurrently under the authority of their respective local governments. Local governments are given the power over judicial workers’ employment, salaries, and housing; in this way the system provides local governments with the ability to influence judicial process. A lack of judicial independence is the byproduct of a political system that subjects the judiciary to the authority of both the CCP and local government. “Chinese judicial workers and Communist Party members alike had been accustomed to regard judicial independence as no more than a myth for the justification of bourgeois dictatorship;” Harold M Tanner remarked on the myth of Chinese judicial independence in his book Strike Hard. “In fact, as judicial power was regarded in instrumental terms as a means for the imposition of the will of the ruling class on social reality, the judiciary could never be independent.”⁴⁶

⁴³ He Qinglian, The Trap of Modernization (Beijing: Today’s China Press, 1998), 371.

⁴⁴ Wei Wenbiao, “Enforcing Administration Law Must Not Forget Morality,” Labor Daily, 6 August 2001.

⁴⁵ Yan Yang, “The Humbled 74.66 RMB,” China Youth Daily, 23 May 2001.

⁴⁶ Harold M. Tanner, Strike Hard: Anti-Crime Campaigns and Chinese Criminal Justice, 1979-1985 (Cornell: Cornell University Press, 1999), 51.

Under the PRC political system, the CCP has supreme power, and as such acts as the real “supreme court” in China. Thus China’s courts, as Marquand wrote, “do not have an independent judiciary that can make decisions separate from Communist Party influence.”⁴⁷ Guo Luoji also argues, “That the CCP has the privilege of being exempt from any legal inspection is the lynchpin of the flawed China’s legal system.”⁴⁸ This fits well with an overwhelming indifference among police, judges and procurators toward common people’s complaints and even law suits against their abuses of power. Given this dynamic, they would know, even if they were to be dismissed under heavy public pressure, their dismissal would merely mean a job transfer.

In the case of Ma Dandan, Peng Liang, former head of the Jingyang County police station is now employed in Chengguan town police station. For Peng, the difference is simply a transfer from Jingyang to Chengguan; in Chengguan, he is still a People’s Policeman. Peng has hardly received serious punishment for his illegal acts of torture and forgery because his activity, as his lawyer Wang Zhouhu argues, was sanctioned by government. Therefore, it is the government that should be punished and not just Peng Liang. If Peng Liang violated the criminal law, then it means the government also violated the same law. Yet, in the present Chinese political system, who can sue the all-powerful government? It is a lawsuit without any hope of success. Due to the nature of Chinese media, few of them will ever dare challenge their boss, the government.

The media fails to notice that major progress has indeed been made in the Chinese legal system because it stems from their own changing role in the system. Had there not been mass news coverage of the Ma Dandan case, the result would have been quite different. In the aforementioned case, when the Jingyang police failed to apologize to her, Ma Dandan revealed her experience to the media. This resulted in numerous reports by the media, and

within a week, Ma Dandan became so popular that the local police, bringing gifts, had to go to her home to apologize. It is also due to the public media’s report that some famous lawyers provided Ma Dandan free service. Because of public encouragement, Ma Dandan stuck to her 5 million RMB compensation lawsuit against the police. Although the result may never favor her, as Yu Teng said: “the public media’s reports have already given Ma Dandan’s reputation.”⁴⁹ No matter the legal result, the Jingyang police lost the lawsuit, because their reputation of brutal torture has become well known in China.

Someone might say that this progress has only been made in the media. However, if the media can play such a significant role in legal cases, sometimes even changing the result or heavily influencing judges’ decisions, can anyone still believe it is only progress in the media? We have to realize that even ten years ago, such a role for the media in judicial cases would have been unimaginable.

IV

Although the Ma Dandan case exposes only the tip of the Chinese legal iceberg, it discloses both the progress that has been made and problems that remain. The problems revealed in the public reports have existed in China’s legal history and in those of other civilizations for centuries. The present government has inevitably inherited some, if not most, traditions from former dynasties. According to a Chinese saying, “three-inch thick ice cannot be made in one day.” If these problems have existed for a long time, a short time is insufficient to eradicate them. There has also been clear progress in the reports of the public media. More people are now willing to go to the courts to settle disputes than ever before. Such a thing was rare decades earlier, when there were not many lawyers, and disputes were largely solved by negotiation. Again, going back two decades earlier, we

⁴⁷ Robert Marquand, “New for China’s Courts: Trained Judges, Standard Rules,” *The Christian Science Monitor*, 16 August 2001.

⁴⁸ Guo Luoji, *Real Report of CCP’s Illegal Violations* (Democratic University Press, 1997), 123.

⁴⁹ Yu Teng, “Specialists Comment the Case of Virgin Prostitute”, *Huashang Daily*, Mar 24, 2001.

would find few scholars commenting on legal reform, an exclusive concern of the central government.

The Chinese public media is incorrect in arguing that a lack of laws is to blame for Ma Dandan's tragedy. It is important to realize that even the good laws

were not implemented. Thus the fundamental reason for China's continuing legal problems lies in a political system, which, for the Chinese public media, discussion is still taboo. Only a decisive change in China's political system will solve those remaining judicial problems.

QIANG FANG is a second year PhD student at the Department of History in the University of Buffalo, State University of New York, having received his Masters degree from Shanghai Teachers University. His current research is on Chinese legal history. He is the founder of the Strategy Forum, a forum focused on Chinese recent political and social issues – the first such among Shanghai universities. Former publications include: Historical Evaluation of Woodrow Wilson's Idealistic Diplomacy (1999), Cooperation Among Great Powers (2000) and Excellences of the Chinese Automobile Industry (1993).