

# GOING TO COURT IN CHINA

## Observations on a minor criminal case

FRANCIS REGAN

**A**fter waiting three months through three different permissions I was finally sitting in a Chinese courtroom waiting for the case to commence. It is unsettling to sit in a court in any society — courts are designed to remind people of the majesty, seriousness and power of the legal system. This Chinese court was no exception. But to go to court in China was particularly interesting because I knew that China had had to re-establish its legal system after it had largely ceased functioning during the Great Proletarian Cultural Revolution. It was not clear what I would see in what was a relatively young court system. So I was curious therefore when I was finally given permission to observe a minor and relatively common type of case in China: the defendant was accused of, and had pleaded guilty to, stealing a bike!

The visit to the court reported here is by no means an evaluation of Chinese courts in general. Instead it reports an observation of one recent, simple, routine, guilty plea in the lowest level court in one city, Beijing. It is also impressionistic rather than drawing on statistical or other hard data. It was, for example, impossible for me to read the court files relating to the case because I cannot read Chinese. Fortunately the court officials arranged interpreters for me and as a result I understood most of what was said during the case. But leaving aside these qualifications, I was able to compare what I observed in court to what was supposed to happen under Chinese criminal law. I was also able to compare what happens in China with common law courts and to ponder the differences and similarities between the two legal traditions. The Chinese court system, for example, is often said to be more severe than the common law system due to its heavy emphasis on using punishment as a deterrent. But was that actually the case?

### Getting to court

It was not easy to get to court. My friend's cousin worked in a Primary Peoples Court, a first instance court in Beijing.<sup>1</sup> When I asked if my friend could arrange a visit I explained that I always tried to visit court when I went to another society. I was not bothered whether I saw a civil or criminal case, but I wanted to see the court environment, what happened in the proceedings and be able to compare Chinese and common law courts. I also asked if she could translate the proceedings so that I would have a reasonable chance of understanding what I observed.

She assured me that there would be no problem arranging a visit, as court hearings are generally open to the public in China under Article 11 of the Criminal Procedure Law (CPL). The CPL also allows for public hearings in all cases in the Primary People's Court except those 'involving State secrets or private affairs of individuals' (article 152). As it turned out she was optimistic. While the hearings might be in public it did not mean that it was simple to get approval to observe a court case. In fact she had to seek three different permissions including one from her University, one from the local Justice Bureau of the Justice Department and finally approval from the actual court. All this took considerable time.<sup>2</sup> The fact that I was a foreigner wanting to visit a functioning Chinese court was the reason so many approvals were required.

### First impressions: The court building

In common with those in most societies, the court building was imposing on the outside as well as inside. It was a modern building some 7 or so storeys high. We walked through a security system at the bottom of 20 to 30 steps leading up to the grand entrance. But in marked contrast to low level courts in common law societies, the Chinese court was not busy inside or out. It was a cold day so people were not standing around outside. Inside there was a steady trickle of people coming and going, and some sitting in waiting rooms, but it was by no means busy. The relatively unhurried atmosphere was similar to courts that I have visited in civil law societies in Northern Europe. By contrast, the courts that I have visited in common law societies had people milling around outside the court and running backward and forward inside the building. The reason for the difference is that the common law courts generally proceed with larger numbers of small cases which often involve hearings on separate occasions. By contrast the civil law courts often try a lower number of cases but finalise them in one hearing. In the first instance court in my home city, for example, they hear many guilty pleas in one minute. The consequence is that a large number of people come through the court every day.

The Chinese court used a system to filter cases, unlike other societies I have observed. The bottom floor of the building contained a string of small offices. A judge sits in each office and their role is to advise members of the public about whether the problem is a legal problem and what the court can and cannot do about it. In other words, rather than lodging paperwork such as an application to initiate a case, it was a filtering

### REFERENCES

1. The Chinese court system has four levels: Primary, District or County People's Court, Intermediate People's Court, Higher People's Court, and Supreme People's Court.
2. This article refers to my most recent attempt to observe a Chinese court case. An earlier attempt had failed miserably; it had been impossible to arrange in my tight schedule.

system to quickly and efficiently dispose of cases where the court was unable to resolve the problem under law.

## The defendant

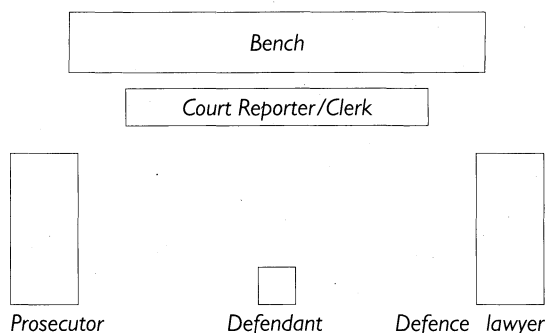
The young man was 20 years old and born in one of China's provinces. He lived in Beijing, and was unemployed at the time of the offence. As we later found out he was married and his wife was expecting a child. He looked scared and confused when he came into the courtroom. He searched the faces of the people and appeared to be trying to see if family or friends were present, but did not acknowledge any individual with a smile, grimace or other gesture.

He was young and dressed in ordinary but shabby clothes, not prison uniform. He wore a yellow sleeveless jacket that is typically worn by defendants and convicted criminals in China. He was not injured in any obvious way so there were no signs of recent ill treatment.

When the defendant entered the courtroom he was in handcuffs but not leg irons. A policeman who held his arm and guided him to his place in the court accompanied him. He then removed the handcuffs and pushed him into the seat. The policeman sat very close to him at all times during the proceeding and at one point, when the defendant attempted to stand up without being asked to, the policeman pulled him back into the seat.

## Location, location, location!

Unlike the common law courts the defendant in a Chinese criminal trial is the centre of attention in the courtroom. They sit in the centre of the room immediately in front of but at a safe distance from the bench. The other participants, prosecutors and defence lawyers, literally sit on the sidelines. The Chinese court in this way displays its origins in the traditions of the civil law family.



The defendant's location in the Chinese criminal court is no accident. Instead it is designed to be very significant. The dominant relationship in the court is between the bench and the defendant; the defendant is firmly and clearly juxtaposed with justice. They are in a close and almost exclusive relationship with the justice system as represented by the judges. The prosecutor and defence lawyer are by contrast literally on the sidelines. While they are not disconnected bystanders, their location symbolises that they are not the dominant relationship that is present in court.<sup>3</sup>

The consequence of the defendant's location in the centre of the court however, is that they are in a sense abandoned. They are physically on their own apart from the policeman who is by no means their supporter. The defendant's lawyer is not close to them. So in this stressful and often new situation the defendant is left on their own in the middle of the room in a sense defenceless against the procedures of the justice system. It is no doubt daunting to be sitting in that seat.

## Other aspects of the courtroom

The courtroom itself was similar to many others around the globe. The walls were covered with a light pine coloured timber panelling that created a quite stark and clinical atmosphere. The bench on the other hand was made of a dark timber — eye-catching in the lighter surroundings. It was a modern and well-lit room. Microphones were available for the active participants, and the court reporter and prosecutor — but not the defence lawyer or the judges — used computers. The courtroom was divided in two in the same way that common law courts are — a low wooden fence enclosed the working area with gates in much the same way as courts are around the world. The gallery made up the rest of the room. The seats were comfortable and modern. The room could seat about 40 people. We also visited other courtrooms in the building and they all had a similar layout and quality of technology and furnishings. The largest courtroom I visited was used for large civil trials. It would have seated perhaps 500 people. Unlike the criminal courtroom, in the civil courtroom the parties sat with their lawyers rather than the defendant sitting isolated in the middle of the room under gaze of all.

## The judges

The bench was composed of three individuals, all males, and all aged in their early to mid 40s.<sup>4</sup> The presiding judge had two assistant judges; normally lay people appointed from a panel of reliable citizens. The Presiding Judge wore the long knee length black robe with a short splash of red down the centre that is typical of a Chinese judge. Underneath the robe the Presiding Judge wore a suit and tie, as did the two assistant judges.<sup>5</sup> On the robe he wore the red badge that all judges wear. It includes the scales of justice in its centre. Unfortunately it looks at first glance identical to the official government badge/decoration displayed on all government buildings in China that is also red and includes the 5 stars. Until a few years ago judges wore the official government badge but it was decided that the courts needed a separate badge. To an extent the two images are different, but the change is not dramatic and initially they appear very similar. It is a signal that the judiciary are separate from the government but there is still some way to go in making this imagery crystal clear.

The presiding judge sat in the centre of the bench and was the only judge to speak during the proceedings. He was authoritative and formal according to the

3. In common law courts by contrast the dominant relationship is between the judge and the prosecutors and defence lawyers. The defendant in the common law court is as a result a bystander in many respects.

4. We were later advised that there were 300 judges at that level in that court in Beijing and that a quota was used to ensure that women usually comprised one third of judges.

5. The judges were not formally dressed in every respect. We later talked to a judge who was dressed in the official robes. But when I sat next to her I glanced down and saw she was wearing grey sneakers.

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translation we received in our headphones. In his appearance, presentation and use of formulaic legal language that dictates courtroom procedures he was similar to judges in other societies. This was, after all, a fairly routine case in the lowest level court. He was professional but also appeared a little bored by what was unfolding in his court.

### The prosecutors

Two prosecutors attended the hearing. The lead prosecutor was a woman in her forties; her partner was a young man in his twenties. They both wore a black tie and simple black uniforms that looked similar to a black suit. The lead prosecutor was the only one of the two to speak. The young man by contrast spent most of the time typing on a computer. It was not clear what he was typing but it was not (likely) a transcript because the court reporter was typing that on a computer.

The prosecutor was also suitably professional. Her demeanour told us that she had seen it all before and, while she was not obviously jaded, she had little obvious fire in her belly. It is after all hard to maintain enthusiasm for court work when often the people you prosecute are down and out, and have simply made stupid, impulsive decisions that escalate very quickly into something quite serious.

### The defence attorney

The defence attorney wore a suit and tie, and appeared to be in his early forties. He spoke very little during the proceedings. Indeed, on most occasions when he was asked by the presiding judge if he wanted to say anything or ask any questions, he declined the opportunity.

Afterwards we were advised that he had been appointed by the court to defend the young man and he was undertaking the case as part of his annual obligation to represent legal aid clients. That obligation is required of all Chinese lawyers under Article 42 of the 1996 Lawyers Law and is also in Articles 34 and 151 of the CPL. This provision is one of the foundations of China's contemporary national legal aid scheme. The defence lawyer is, under Article 35–37 CPL, able to meet with his client prior to the court hearing and to take an active role in the hearing itself.<sup>6</sup> Unfortunately we did not learn how many times the defence attorney had met with his client or whether this had happened at all. It was clear, however, that there was not a strong bond between the two. I observed no greeting between them when the defendant was led into the

court, nor any eye contact between them during the hearing. When the defence attorney asked questions he did not look at his client. Nor did he stand up from his position and move physically near his client; in other words, he did not physically symbolise that he was defending his client. The layout of the court explained above reinforced the perception that they were not working together as a partnership on the case.

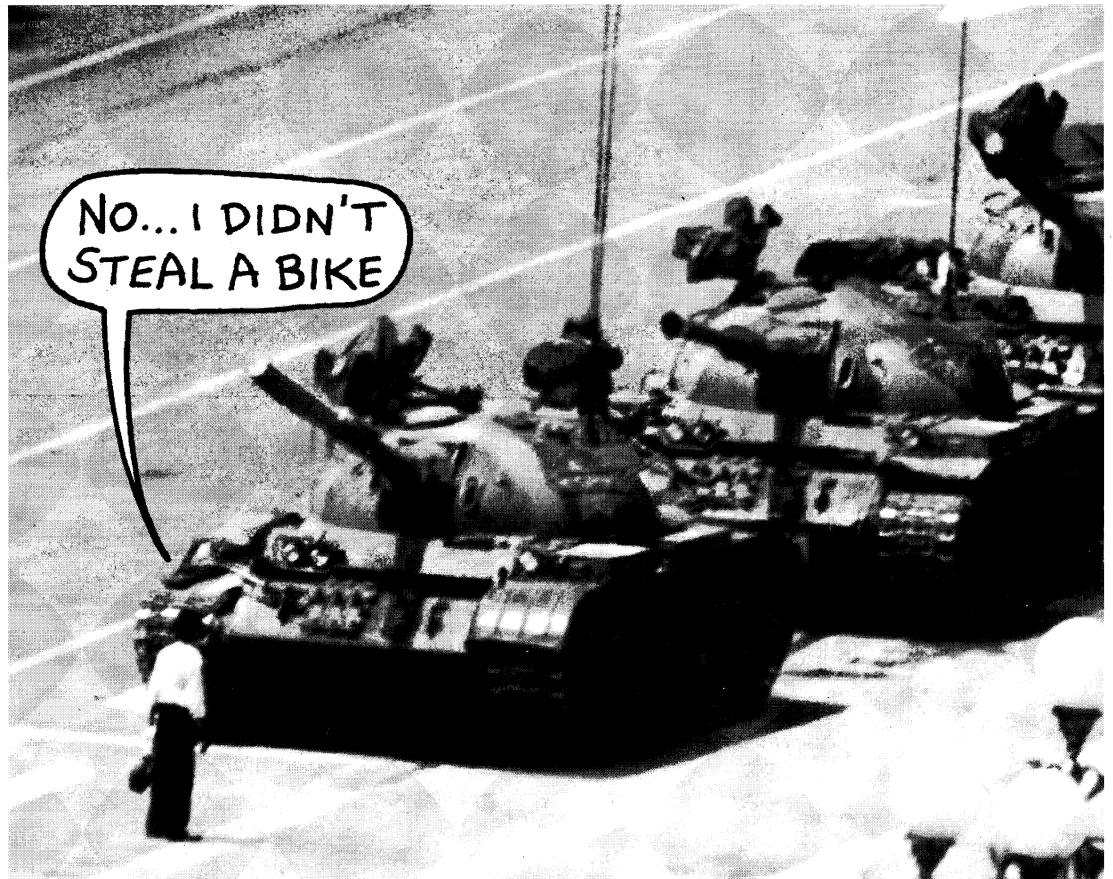
Sadly of all the legal professionals in court that day the defence lawyer appeared to be the least professional. He fidgeted constantly and shuffled his papers aimlessly 10 to 15 times during the half hour case. He appeared to be bored, that he wished he could be elsewhere, anywhere except in this court defending a young man who had already admitted the crime. His attitude was unfortunate and apparently quite widespread in China. One judge I talked to later commented that defence attorneys in legal aid cases 'were a waste of time' because they were so unprofessional in their approach to their work. Often they did not visit their clients in jail, especially if this involved time and costs to visit them in a distant jail. While the legal aid system relies heavily on lawyers fulfilling their obligation to undertake legal aid cases, this by no means guarantees the quality of their work. As we saw that day, 'defending your client' might be a misnomer for the activity that occurs in at least some Chinese court cases.

### The process

The hearing commenced when the Clerk read out a short statement explaining that the gallery were not to make noise, take photos, make a recording or do anything else that might distract the operation of the proceedings. He then announced that we should all rise for the judges to enter the courtroom. The three judges entered, sat, and the presiding judge ordered the policemen to bring the defendant into court. The charge was read and the defendant was asked if he understood, which he said he did.

The prosecutor was then invited to explain the charge. The young man had stolen an electronic bike from the bike park at the Weather Bureau in Beijing, according to the senior prosecutor. She did not explain what happened after he was apprehended except to say that he was handed over to the local police and arrested under Article 61 of the CPL. That article empowers the police to arrest someone if 'he is identified as having committed a crime by a victim or an eye witness'. We were not informed where he was detained or for how long. We were not told who did the investigation, how

6. While these provisions exist in the law it is not clear if in practice they are always honoured. For an introduction to the recent development of China's legal aid see Francis Regan, 'Legal Aid in China: An analysis of the development of policy', (2004) Vol.24 *Civil Justice Quarterly*, 169–186.



long it took or other interesting things such as when he admitted the offence. For example, if he admitted the offence on the day he was arrested why did it take six months to get the case to court? And why did it come to court in the first place? Stealing a bike is neither a serious, nor an uncommon crime in China.

The prosecutor was then invited by the presiding judge to present the evidence relating to the case (Article 157, CPL). She did this by reading from a dossier of documents that had been collected in the course of the investigation. These consisted mainly of formal documents of arrest and charge but importantly also the witness statements and other evidence such as photos of the bike. The photos were at one point in the prosecutor's recital of the evidence shown to the defendant and the defence lawyer. Both agreed that it was the bike in question. The photos were not shown to the judges.

Most of the witness statements were by people present at the scene of the crime. One was a guard at the Weather Bureau and two or three others were local people also present at the time. Their statements were not read out but were summarised by the prosecutor so it was hard to know whether they were convincing.

The judge did not ask the prosecutor any questions about the evidence. Nor did the assistant judges. Nor did the judges ask questions of the defendant about the evidence, as they are explicitly able to under Article 156 of the CPL.

One notable feature of a number of witness statements was their reference to an injury to the defendant. They did not say exactly what it was nor did they explain exactly how he received it. But they did say that it occurred while he was trying to get away and while they were trying to catch him to hand him over to the police. Chinese people stop and watch when things happen in the streets and so it is quite possible that many people got involved if someone called out

'stop the thief' or something similar. Some onlookers might also have roughed him up in the process. Local community justice can be pretty brutal in China as it can be in any society.

No witnesses were called to give oral evidence to the court because it was after all a guilty plea. Reading the evidence took 10 or 15 minutes. At numerous points the presiding judge asked the defendant and the defence lawyer if they had anything to say or any questions to ask. Each time they replied that they did not.

The presentation of evidence also included a short and rather poignant exchange about the value of the bike. The prosecutor explained that the valuation was 2800 RMB, about AUD\$530. At this point the defendant roused himself and disagreed. He argued that there was something wrong with the bike and therefore the value must be lower than that stated by the prosecutor. The prosecutor did not disagree but rather ignored his comments. The defendant repeated his comment on two other occasions. It was the only issue that roused him to speak more than one word. It was not, however, taken up by the court in any way. It was poignant because the defendant seemed to be expressing his desire and need to have some impact on the proceedings. He could not have an impact on the formal procedures, he could not disagree with his admissions, and he could not on his own challenge what was happening in the court and what was going to happen in the court's decisions and sentencing. But he could at least argue that the bike was not worth very much because there was something wrong with it. At one level he was attempting to take some small action to affect his destiny in the trial. What we will also never know is whether the malfunctioning bike was also significant in other ways. It could be, for example, that he was fixated on this issue because he thought the faulty part prevented him from escaping the scene and it was this issue that in fact resulted in him being in court.

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After the evidence had been presented the prosecutor and defence lawyer were given the opportunity to present their arguments about the case (Article 160, CPL). The defence lawyer argued that the defendant should not be found guilty because the crime of theft had not been proved. His argument was that the bike had not been removed from the premises because the owner had left the bike. While he put that argument, he did not do so forcefully. Nor did he quote sections of law to establish his argument that a theft had not actually occurred. Nor did the judge engage in an argument about what constituted the crime of theft under China's law. Finally, there was no question at any stage of the case as to the reason(s) why the young man stole the bike. This clearly showed that motive was unimportant to the court.

After this short discussion the judge rejected the argument relying on the defendant's admission that he had taken the bike. Finally the judge asked the defendant if he had anything to say in response (Article 160 CPL). However, once again he made no comment.

### The decision

After the deliberations about evidence the judge declared that the charge had been proved and declared the defendant guilty. He was asked if he had anything to say but again the young man said he did not. The presiding judge then declared that the bench would adjourn the case for 10 minutes while they considered the sentence (Article 162 CPL). They duly returned and announced that the defendant was to be imprisoned for 6 months. Because he had been in custody for nearly six months since he was arrested, he would be released about 10 days after the court case. He was also fined 1000 RMB, about AUD\$190.<sup>7</sup>

Finally the judge advised that the document containing the written form of the judgment would be provided to both parties within 5 days (in accordance with Article 163 of the CPL). The defendant replied with a 'thank you' to the judge and was led away.

### Final observations

In many respects going to court in China is not that different to what happens in many other societies. The defendant is terrified and overwhelmed by the

formality and unfamiliarity of all that is happening. And they have usually done something stupid that has grim consequences for them and their family. The judges, prosecutors and lawyers are old hands and perform their duties in a routine manner. The work is neither new nor very interesting. In fact, like legal professionals around the world, they are a bit bored by the routine nature of what happens. The courtroom is, like those in most societies, imposing with lots of use of wood and formal furniture in the layout of the room.

In other respects a Chinese trial is very different. Many countries would not lock someone up for the entire period leading up to their trial, for stealing a bike. The procedure was also very different in many ways compared to what occurs in common law courts. In particular, the judge was far more active and the defence lawyer was far less active than many of their common law counterparts. But the ultimate question is this: would a common law procedure have made much of a difference to the quality of justice meted out to the young man compared to the Chinese procedure? What would need to be different in the process and the outcome, especially given that he was not only caught red-handed but had also admitted the offence?<sup>8</sup>

In the final analysis what I saw in that case in China was both boring and heartening. It was boringly similar to what happens in the lowest level courts in most societies. It is routine justice. It is not complicated. It is not very nice because it exposes the mess that people can get themselves into. Of course we don't know what happened in the procedures leading up to the court case. We don't know, for example, if all the provisions of the CPL relating to contact between defendant and defence lawyer were followed to the letter.<sup>9</sup> In other ways this simple case was also heartening. It suggests that China has come a long way in re-establishing a justice system for routine cases. It deals with the minor and routine cases using clear and agreed rules and procedures. In this type of routine case, which is what most Chinese would experience if they ever go to court, the Chinese system seemed to be quite reasonable. That is a positive sign for a society where, thirty years ago, the legal system was essentially a vacuum.

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7. Unlike sentencing discussions in common law cases neither the judge, the prosecutor or the defence lawyer mentioned any previous court cases or judicial rulings relating to theft, or of theft of bikes when the sentence was handed down.

8. Of course improved performance by the lawyer would have been desirable but lawyer's performance can be a problem in all societies. It is also not a function of Chinese criminal procedures in court but rather is an unfortunate consequence of the current legal aid scheme.

9. As I explained at the outset I did not observe a more serious criminal or political case. Such cases have been subject to a lot of criticism involving performance of China's police, prosecutors and its courts.