

Moral Transformation in the Chinese Legal System: Contradiction or Complementary Relationship?

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Accepted Version of chapter published in Yingjie Guo, ed., *Jiaohua: Chinese Ideas and Practices of Moral Transformation* (Springer 2025), pp. 85-102.

Abstract

This chapter begins with a brief introduction to traditional Chinese views of law, especially the Confucian critique of laws/punishments as fostering crafty and immoral behaviour among the common people. Examples from a Song Dynasty legal casebook will demonstrate how this tension between codified law and morality was uneasily resolved in the imperial period by building Confucian moral values into the legal codes, and varying legal punishments based on the relationships/social status of the parties.

The chapter will then focus primarily on contemporary China. Despite the massive political upheavals and reforms of the last two centuries, a similar tension is still apparent today between “black letter law” and “socialist” or “traditional” moral values. Examples drawn from recent court cases will show how judges, People’s Procurators (ie, public prosecutors), and the CCP regularly seek to use court judgments, “guiding cases,” organizational discipline, and the state-controlled media to promote “correct” moral values and modify the behaviour of both Party-state officials and the broader populace. The chapter will conclude by identifying some critical weaknesses of this hybrid law/morality approach as it is currently implemented in certain types of anti-corruption and politically sensitive cases.

Introduction

Moral cultivation or transformation has played an important role in Chinese philosophy for at least two millennia, especially in Confucianism, and this has strongly influenced the Chinese political and legal systems. Despite the earth-shaking changes that have taken place in Chinese society since the late 19th century – not least the Communist revolution in 1949 and subsequent capitalist economic reforms from the late 1970s – the idea that rulers must actively “educate” ordinary people in “correct” ways of behaviour continues to impact how Chinese courts resolve legal cases, and it is clear that the ruling Chinese Communist Party (“CCP”) views the law as a key tool for inculcating its constantly evolving set of “core socialist values” (Zhang and Yao 2013).

To demonstrate both the continuities and contrasts between moral cultivation in the traditional and contemporary Chinese legal systems, this chapter will begin with a brief analysis of Confucian and Legalist attitudes to law and their impact on the Chinese penal codes. We will

also include examples from a pre-modern Chinese legal casebook to illustrate the positive and negative influences of moralistic legality as compared with strict adherence to the letter of the law.

The main part of the paper will then focus on contemporary China. We will demonstrate how Chinese courts and public prosecutors have assisted the CCP's moral transformation efforts by seeking to educate ordinary citizens and wayward government officials through their enforcement of the law. The analysis is divided into four categories of cases, each with a different balance between law and moral transformation: (1) Legal Judgments with Morals Attached; (2) Law as an Educational Opportunity; (3) Law as a Blunt Instrument to Promote Mediation; and (4) 'Morality' vs. Law in Anti-Corruption and Politically Sensitive Cases.

In the first two categories, law is still primary, but the moral lessons of the legal decision are emphasized to the disputing parties by the judges, or are promoted to a broader audience of government officials and the public. In the third and fourth categories, law becomes subordinated to sometimes questionable moral values. We conclude with a critical analysis of the risk that this heavy focus on moral values poses to the still-fragile contemporary Chinese legal system.

Confucian Suspicion of Law and Legalist Influences in Traditional Chinese Penal Codes

It is common knowledge that traditional Confucian teachings placed a strong focus on moral self-cultivation and correct behaviour, and by the Song Dynasty (960-1279), this had already hardened into a rigidly hierarchical and patriarchal social system governed by a complex set of rituals or rules for correct behaviour (*li* 礼) in which every individual was supposed to know their own place and behave accordingly (Ebrey 1991). Less well known is the fact that traditional Chinese penal codes also strictly enforced these Confucian-influenced hierarchies through adjusting the punishment of offenders depending on their social status.

For example, someone who committed an offence against a "superior" in the hierarchy would be punished much more severely than someone who committed the same offence against an "inferior." In the Qing Dynasty (1644-1911), a son who struck his father, for example, could be sentenced to execution by beheading even if the father was not injured; but a father who struck his son would not be punished unless the son died from his wounds, and even then, he might be acquitted if the son had brought the beating on himself by being "insolent" (Ch'ü 1965, pp. 41-4).

All other family and social relationships were dealt with by the law in accordance with similar discriminatory principles based on the relative status of the parties to each other. Wives were considered subservient to their husbands and their parents-in-law, and if a wife was unable to produce a son, it was a legally accepted practice for the husband to take one or more concubines to try and continue the family line. However, under this patriarchal system, wives

could not take extra husbands to compensate for the lack of attention from their first husband (Ibid. pp. 105-6; 118-27).

There were similar legal distinctions between commoners, servants, slaves and “mean people” in imperial China. But perhaps most unique was the privileged treatment of government officials, who generally received much lighter sentences than non-official commoners. In most cases, apart from some “unpardonable offences” like harming a relative of the emperor, officials could avoid imprisonment, beating or banishment by paying a monetary fine or resigning from their official position. The close family members of these officials received similar privileged treatment (Ibid. pp. 177-206).

This values-laden adjustment of punishments was a compromise between two influential philosophical attitudes towards law in ancient China. Confucian thinkers tended to criticize written laws as too inflexible and simplistic to deal with complex ethical situations, and correctly assumed that if laws were fixed in written codes, cunning and self-interested people would seek to evade them. The *Analects* attributes the following saying to Confucius: “Lead the people by regulations (or policies: *zheng* 政), keep them in order by punishments (*xing* 刑), and they will flee from you and lose all self-respect. But lead them by virtue and keep them in order by rituals (*li*), and they will keep their self-respect and come to you” (*Analects* II.3, cited in Bodde and Morris 1967, pp. 21-2).

In other words, people should be constantly educated in moral principles so that they would learn how to deal with complex ethical situations in a balanced yet fair way. (Bodde and Morris 1967, pp. 19-21).

Yet while this was the Confucian ideal, Chinese rulers and their more practical legal advisers understood that clear laws and punishments were required to back up moral values with sanctions for misbehaviour. They were heavily influenced by the Legalist ideas of thinkers like Han Feizi, who believed that people were fundamentally self-centred, and the only way for rulers to prevent disorder and govern effectively was through publicizing penal codes and enforcing them strictly and uniformly. As Han Feizi put it: “For governing the people there is no permanent principle save that it is the laws (*fa* 法) and nothing else that determine the government” (*Han Feizi* chs. 14 and 54, cited in Bodde and Morris 1967, pp. 25-7).

The traditional Chinese penal codes that developed from the Han Dynasty onwards therefore attempted to balance Legalist ideas about uniformity with Confucian ideas about treating people differently depending on their social status within the hierarchy. In other words, they aimed at a pragmatic compromise between universal laws and flexible adaptation to individual cases.

Unfortunately, as Confucius had predicted, petty and self-interested people would frequently try to exploit the law to serve their own evil purposes, and local magistrates had to be constantly on their guard against becoming unwitting accomplices assisting the settling of personal or family scores.

Some interesting examples are provided in the Song Dynasty legal casebook entitled *Magic Mirror for Deciding Cases* (*Zheyu guijian* 折狱龟鉴), originally compiled in 1133, where the writer Zheng Ke – who was himself a local judicial official for many years – includes a commentary praising good judges and criticizing poor ones based on their ability or failure to uphold Confucian values and morally transform the people who came before them in the magistrate’s court (Zheng 1985, hereafter *Guijian*; Liu 1988, hereafter *Yizhu*).

For example, Zheng asserts that judges should always be looking for justifiable reasons to *avoid* punishing people as strictly as the law demands, especially if a death sentence is involved. When it came to accusations of unfilial behaviour or other inter-generational conflict within families, judges should be especially cautious, because the prescribed punishments were very harsh and a mistaken judgment would destroy the family, which was the central nexus of Confucian harmony.

Zheng cites one case where a father and son accuse the son’s wife of disobedience (*Guijian*, p. 8.135; *Yizhu*, p. 506: entry 266, “Zhang Yong”). The judge, Zhang Yong, suspects that they are not telling the truth, and releases all the parties with a warning to the wife, adding a further piece of advice to his subordinates: “The punishments for younger and inferior members within the five mourning groups are extremely harsh. Officials who care for their people should be very cautious when dealing with [such cases]” (*Ibid.*)

Zheng Ke then comments on this case: “[Here] the precepts of family life required that the younger and inferior members be castigated. Yet the one thing you must not do [in such situations] is hastily resort to the full force of the law. This is why [the judge] forgave her offences and simply admonished her to look after her elders” (*Ibid.*)

Another example gives an even clearer illustration of a judge seeking to transform the moral behaviour of the parties while avoiding over-harsh and strict application of the law. Zheng selects three similar cases where mothers have accused their sons of being unfilial. According to the relevant penal codes, the normal punishment for those convicted of this offence in the Tang or Song would be at least two years’ penal servitude (Johnson, pp. I.74-80; II.399-400). In each case, the judge prefers to educate the accused about filial behaviour rather than convicting them. Zheng Ke gives the following admiring comment:

If [the judges] had punished them according to the law, the sons’ sentences would not have been light. ... So we should respect [these judges] for their compassion and care. (*Guijian*, pp. 8.135-6; *Yizhu*, p. 509: entry 267 appendix, “Wei Jingjun”).

Zheng is clearly alerting his readers to the possibility that many of these so-called unfilial acts were simply minor family quarrels brought to the courts on impulse, or false accusations. Hence, to split up the family by banishing the child would cause the family great hardship and

do nothing to reform the child's behaviour. This explains his call for re-education rather than penal sanctions in such situations.¹

Zheng does not merely praise good judges but also includes numerous negative examples where judges resorted to hasty and harsh decision-making, neglecting their duty to transform the people through their own moral example and potentially leading to serious injustice.

One such negative example involves a stepmother who was plotting to kill her stepson (*Guijian*, p. 5.64-5; *Yizhu*, p. 252: entry 118, "An Zhongrong"). After exposing her plot, the judge An Zhongrong then immediately shoots her dead with one arrow from his bow. Zheng Ke criticizes him strongly:

From ancient times, it has been common for second wives to be jealous of prior wives' children. ... But why was it necessary to take such hasty measures to deal with her in a way that violated the law? There is a saying: "One who kills people without [transforming them through] education is called a tyrant."

Note that Zheng's quotation about tyrants is taken from the *Analects* of Confucius (XX.2, see Lau 1979, p. 160). At the same time, his severe criticism of An's hasty decision to execute the stepmother was apparently not shared by other compilers of these model cases, as he notes that previous collections included this case as a positive example. In other words, we should not assume that Confucian magistrates in traditional China were all as morally scrupulous as Zheng Ke. At the same time, there is a clear Confucian ideal that transformation through moral persuasion is superior to punishment through harsh laws.

Due to the turmoil of the past two centuries, with China experiencing extended foreign invasions, two revolutions, and dramatic modernization accompanied by wholesale rejection of old ideas, it is hard to establish whether traditional Chinese values still influence peoples' behaviour today. Clearly, many Confucian ideas about relationships, hierarchy, and women's status are no longer accepted in contemporary China. However, as the following discussion demonstrates, there are some parallels between the practices of contemporary Chinese courts and mediators (guided by the CCP) and traditional Confucian ideals of using law as a tool for moral transformation, or counterbalancing judging strictly according to law with the requirement to inculcate moral values.

Moral Transformation in the Contemporary Chinese Legal System

As with traditional Chinese law, it is impossible to do more than scratch the surface of this topic. In recent years, there has been an explosion in the number of legal judgments published by Chinese courts, and the largest public database, China Judgments Network, currently contains over 120 million cases, which provides a truly daunting amount of material on how

¹ For further examples of leniency in family conflicts, see entries 265, 268, and 269 (*Guijian*, p. 8.134, "Lang Mao"; p. 8.136, "Ren Bu" and "Su Huan"; cf. *Yizhu*, pp. 504, 511, and 512).

Chinese judges resolve legal disputes. Any conclusions will therefore necessarily be based on only a small subset of court decisions.

However, the author's research into a variety of legal topics over the past decade has revealed at least four distinct ways in which the idea of moral transformation influences courts and the broader Chinese legal system today. In categories (1) and (2), law is still primary, but the moral lessons of the legal decision are emphasized to the disputing parties by the judges, or are promoted to a broader audience of government officials and the public. In categories (3) and (4), law becomes subordinated to moral values. In other words, the harshness of a purely legal decision is emphasized to encourage parties to settle disputes, or the courts are expected to obediently serve the CCP's crackdown on corrupt behaviour or political undesirables without questioning the Party's (sometimes dubious) moral judgments.

While some consideration of moral issues may be justified in certain types of cases, there are also serious risks with this subordination of basic legal principles and processes, as discussed in the concluding section of the chapter.

(1) Legal Judgments with Morals Attached

The past two decades have seen a huge proliferation of private lawsuits brought by disputing parties in China, with around 16.1 million civil cases started in Chinese courts in 2019 alone (Zhou 2020).

The quality and legal knowledge of judges and lawyers has also improved significantly since the 1990s, and procedural laws have also been revised to make it much harder for Chinese judges to decide cases in an arbitrary way (Peerenboom 2014).

Due to these improvements, most judges will stay as close as possible to the written law and follow predictable, relatively transparent procedures when deciding cases (Hawes 2022, ch. 7). At the same time, after deciding the case based on the letter of the law, it is still common to see judges tacking on a moral exhortation at the end, in an attempt (possibly vain) to remind the parties to behave better in future.

Cases involving people trading insults on social media are a ripe area for this type of moralizing by judges. For example, in a defamation case brought by the TV soap actor, Tian Muchen, against his co-star Michelle Ye in 2016, Tian claimed that Ye had seriously harmed his reputation by calling him a "cheat and fraudster" in an online magazine article. He sued under Article 36 of the *PRC Tort Liability Law*, which dealt with "making use of the internet to harm someone's reputation."²

However, Ye successfully raised the defence of truth. She provided text messages showing that Tian had told her his mother was suffering from cancer and could not afford to pay for her medical expenses. On this basis, Ye had loaned Tian 600,000 yuan to help his mother, but in

² This provision has now been replaced by Art. 1028 of the 2020 *PRC Civil Code*.

fact Tian had lied about his mother being sick, and he instead used the loan money to buy himself a Porsche Cayenne and lead a “decadent lifestyle” (Beijing Intermediate People’s Court 2016).

The Beijing Intermediate People’s Court accepted Ye’s defence – she should not be legally liable for calling Tian a “cheat and fraudster” in these circumstances.

Despite this finding of no liability, the court added a moral exhortation to Ye:

Whenever people publish statements about others, they should always stick to the facts and remain fair and balanced. They should avoid using highly inflammatory language. Although Ye’s inflammatory opinion of Tian did not go so far as to infringe his rights, it was still inappropriate. In the future, if Ye expresses opinions on similar matters, she should be more cautious and avoid being swayed by her personal feelings into publishing such emotionally charged statements (Ibid).

These kinds of moralistic statements are not unusual in Australian or other common law court judgments: the technical term for them is *obiter dicta* (“something said in passing”) as opposed to the *ratio decidendi* (“reasons for decision” based on the law). Though the law clearly prevails in such cases, the judge wants to remind one or both parties that they were lucky to get away with it this time, or that they could have avoided all the expense and stress of a lawsuit if they had exercised more self-control.

Yet while the law does prevail in most Chinese tort cases, the situation alters dramatically in more politically sensitive cases or those involving alleged official corruption, as discussed in section (4) below.

(2) Law as an Educational Opportunity for Officials

In the second category of cases, the law is used to educate and transform not just the disputing parties but a much broader range of stakeholders.

It is common knowledge that China’s rapid economic growth has led to a massive environmental pollution crisis. The government has introduced tough new legal measures to crack down on polluting corporations, but its environmental protection agency cannot keep up with enforcement, and in many local regions its environmental officers have been co-opted by local corporate-political networks seeking to continue their dirty (and highly profitable) business as usual (Hawes 2022, chs. 8-9).

To counter this collusive behaviour, the government has introduced a new type of public interest lawsuit brought by people’s prosecutors (who are called “procurators” in China) under the *PRC Environmental Protection Law*. In terms of numbers, this experiment has been very successful. During the two-year pilot program from 2015-17, over 9000 public interest cases were brought by procurators, the vast majority of which focused on environmental pollution (Zhang 2017, p. 34). The program has since been expanded nationwide, and a work report by

the Supreme People's Procuratorate ("SPP") claimed that around 84,000 public interest environmental cases were initiated in 2020 alone (Zhang 2021).

Some of the early environmental cases brought by procurators were used as legal and moral education tools both within the ranks of the procuracy and more broadly among environmental and other local government officials. The purpose was clearly to imprint on the minds of all official stakeholders that the era of dirty business as usual was over, and they might be the targets of similar lawsuits if they failed to crack down on local polluting corporations.

In 2017, the SPP selected five public interest lawsuits as so-called Guiding Cases, which were circulated to all procurators throughout China and published in the national media (Supreme People's Procuratorate 2023, hereafter Guiding Cases). Reading these cases, it is very clear that the lawsuits were not primarily aimed at the polluters but rather at re-educating local government officials who had turned a blind eye to the problem.

For example, in one Guiding Case, seven stone materials processing companies in Jinping County, Guizhou Province, had continued to operate despite the local procurator warning the Jinping County environment bureau that the companies were breaching laws against discharging polluted waste into the Qingshui River. Besides causing serious floating waste and effluent problems in the river, the extra sediment also increased the risk of flooding in reservoirs further downriver. The Jinping environmental protection bureau failed to respond to the procurator, and only after one year ordered the companies to pay relatively small fines, but it did not stop them operating or require remediation of the polluted waste (Guiding Case 8.32).³

In December 2015, the Jinping County procurator then brought a public interest lawsuit in Fuquan City People's Court against the Jinping environmental bureau. The Court held that the environment protection bureau had been negligent in carrying out its supervisory duties, and ordered it to act immediately to stop the illegal pollution and close the infringing companies (Ibid).

A great deal of publicity surrounded this case, doubtless because it was one of the first to apply the new procedure allowing people's procurators to initiate public interest lawsuits. Clearly there are two different educative functions of this Guiding Case.

The first is to remind procurators throughout China that they now have a duty to bring these public interest cases, and to school procurators on the importance of certain types of cases and the proper procedures for bringing about an effective result.

The second educative function is within the local and provincial government where the pollution was taking place. The official commentary included with the Guiding Case makes it clear that the Guizhou provincial government took a very active role in spreading knowledge of

³ The Guiding Cases are numbered by batch and then case number. For example, this Guizhou case is found in Batch 8, and is Guiding Case 32.

the case and using it to change the behaviour of local government officials. Besides requiring the Jinping County government to produce an environmental protection plan, and creating a “personal responsibility” system for environmental officers, the Guiding Case states that during the period of the court proceedings, “the directors of all municipal and county environmental protection offices in Qiandongnan Prefecture, the main managers of all government administrative departments in Jinping County, and all directors of townships in the region where environmental degradation is serious attended court to listen to the trial, and in this way a single case being brought in the court served as a salutary warning to educate a whole region” (Ibid).

This tendency to treat court cases as educational lessons to transform polluters’ and government officials’ behaviour is common to many of these environmental public interest lawsuits,⁴ and because the Chinese media is largely controlled by the state, the government and its departments and agencies can ensure that the message about these cases is consistent. They can also distribute the case summaries to all their officials and require them to attend “study sessions” to change their attitudes towards environmental protection and improve their behaviour.

This differs from how legal cases are publicized in liberal democratic states, where the media are independent from the government. While certainly some controversial legal cases involving the environment or negligence of their own government officials may be reported in the Australian or international media, the analysis of the cases may differ significantly depending on the views of the editors or media owners, and the political leanings of the media outlet. In many cases, the media may strongly criticize or question the court’s decision, or the government policy that is being enforced. Some reports may include a balanced account of views for and against the issue to allow viewers/readers to make up their own minds. At the same time, other media outlets, especially the more polarized online and social media, may present a single and often highly misleading perspective using methods not so different from the kind of propaganda seen in authoritarian regimes.

Yet when it comes to the balance between law and morality in these Chinese environmental lawsuits, the law still takes precedence. The cases are decided first, based on clear legal rules and procedures – and in fact those technical details are strongly emphasized in the case summaries. The subsequent publicity and moralizing in the media then reinforce the fact that government officials must comply with these new environmental protection laws. In other words, morality complements and even strengthens the effect of law by throwing the government’s full weight behind the legal decisions.

The precedence of law over moral values is less clear, and sometimes disappears altogether, in the next two categories of cases. The third category considers legal disputes where resorting to the full force of the law might lead to injustice or negative moral consequences.

⁴ For example, see also Guiding Cases 8.30 and 8.31.

(3) Law as a Blunt Instrument to Promote Mediation

While the Chinese government has strongly promoted what it calls a “rule of law system” for at least three decades, and this has resulted in the kinds of improvements and increased professionalism of legal practitioners that we noted in the previous section, it has also led to a massive increase in lawsuits, which has threatened to overwhelm the court system. Secondly, the increased complexity of the Chinese economy and the rapid transition from a largely state-owned property and commercial system to a predominantly private and individual business and property ownership system has caused countless legal disputes, sometimes involving hundreds of plaintiffs with similar grievances.

These so-called “growing pains” cases are difficult for courts to deal with because if they decide purely based on legal rules, it will likely lead to social protests and instability, which the Chinese government greatly fears. In some cases, especially those involving property rights, the rules are also very murky, or the situation is complicated due to the different ways that property was owned in the past (Peerenboom and He 2008, pp. 15-21).

As a result, while still calling for “rule of law” to be perfected, the Chinese government has also strongly encouraged so-called people’s mediation, either within the court system or through informal mediation outside the courts. The 2010 *PRC People’s Mediation Law* provided more consistent rules for these practices, and the state-controlled (but increasingly commercialized) Chinese television industry saw an excellent opportunity to launch numerous television mediation reality shows to publicize the benefits of mediating legal disputes (Hawes and Kong 2013). Though certainly aimed as much at entertainment as instruction, these shows do attempt to educate the broad mass of viewers on how disputes arise and the pros and cons of law as a dispute resolution method. They therefore provide useful source material on the official Chinese stance towards moral transformation and its relationship to the legal system.

We will give an extended example from the popular reality television show *Gold Medal Mediation* to illustrate what we call “using law as a blunt instrument to promote mediation,” and will then analyse the benefits and drawbacks of this approach.

Noxious Neighbours:

In this dispute, broadcast during the 15 August 2011 episode of the TV show *Gold Medal Mediation*, a railway worker had helped his neighbour (the son of his good friend) to purchase a subsidized apartment from their state railway company work unit back in 1997 (Jiangxi Satellite

TV 2011).⁵ This was part of the massive privatization of state-owned housing that occurred from the late 1990s onwards, where state-owned enterprises sold their existing property to the people who were already living there as renters, who were generally working for the enterprises.

The neighbour paid for the property, but because the son was not himself a railway worker (his father had been, but was already dead), if he wished to obtain the fully subsidized price offered to the work unit's employees, he had to get the railway worker to put his name on the registration certificate. In 2006, the son attempted to sell the property, but by that time his neighbour, the railway worker, had died, and the neighbour's wife (Mrs. Yang) refused to sign the property transfer certificate, claiming that the property now belonged to her through inheritance.

Though this was a valid legal argument, because her husband was technically the registered owner of the property, the assembled observers on the show appealed to Mrs. Yang's sense of moral decency: one observer pointed out that her husband had acted in a truly selfless way by helping her neighbour to buy the apartment, and surely her husband would not want her to get into a bitter dispute with her neighbours about it after he died.

Another observer, a judicial official, identified three aspects of the case: under the law, he said, the property belonged to Mrs. Yang; but in terms of morality (*daode*), knowing of her husband's arrangement with the Dings, it would not be right for Mrs. Yang to claim the property back; and finally, based on human feelings (*ganqing*), it would be better to keep on good terms with her neighbours rather than ruining their relationship through this dispute.

Two other observers then took the other side: they criticized the neighbour for causing this dispute in the first place by trying to get a petty advantage instead of paying the full price for the property, and for selling the apartment to someone else without first getting Mrs. Yang's consent. Anyone with even the slightest legal knowledge should have realized that property disputes will occur if you don't have a valid ownership certificate. Finally, the mediator encouraged the parties to settle their differences, reminding them that a lawsuit would be extremely complicated and time-consuming.

There appears to be a ritual of public shaming going on here, designed to exert social and peer pressure on disputants to "do the right thing" even in the face of their legal rights. And the favoured type of moral teaching in these shows is strongly traditional, even Confucian. Individualistic insistence on rights and self-interest is discouraged, but in its place we do not see a revival of "Communist" values, such as collective ownership of property and attacks on private enterprise. Instead, there is constant affirmation of "family feeling," "brotherly love," and "filial behaviour."

⁵ *Gold Medal Mediation (Jinpai tiaojie)*, episode originally broadcast 15 August 2011 on Jiangxi Satellite TV.

At the same time, law does also play an important, if subordinate, role on these shows. Many episodes include discussions of the legal rights of the parties, often with lawyers or legal experts providing opinions on the parties' chances of success in a court of law. Viewers could learn a great deal about current Chinese legal principles relating to contracts, property rights, family law, and wills and estates from watching such mediation shows regularly. Yet generally the law is used either as a stick to encourage both sides to compromise, or as an inferior option when viewed from the perspective of morality and social harmony (Hawes and Kong 2013).

There is nothing wrong with promoting moral behaviour if it does soften the harshness of formal legal adjudication and reduce social or family tensions. However, many cases leave viewers with a feeling that the voluntary mediation agreement is unsatisfactory and will be short-lived. One wonders how long the disputants' new-found "harmony" and "family feeling" will last in their cramped, stress-filled living conditions.

The other major drawback of television mediation shows is that to retain the support of local governments and justice bureaus, they must carefully avoid any disputes where the defendants are themselves local government officials or state institutions. Yet this is not unique to television mediation (Wu 2013). As we discuss further below, Chinese courts do not have the authority to satisfactorily adjudicate lawsuits against powerful state officials and institutions either.

It seems that the Chinese government prefers to focus on the tips of the branches – placing the burden of reform on ordinary people, and urging them to behave in a more moral and harmonious way – rather than the root of the problem. As Abel put it, informal institutions treat "all conflict as individually caused and amenable to individual solutions"; they "disorganize" grievants, trivialize their grievances, and frustrate collective responses, making it seem "unnecessary to question basic social structures" (Abel 1982, pp. 6-7).

On the other hand, in some types of legal cases, especially those involving corruption, government officials may indeed be the defendants, but here it is common to see the legal system almost totally subordinated to morality, propaganda, and politics. These cases are the subject of category (4).

(4) 'Morality' vs. Law in Anti-Corruption and Politically Sensitive Cases

This category includes two main types of cases, both of which generally involve the Chinese government as the main instigator, and they almost inevitably result in a criminal conviction or extra-legal punishment.

The first type is high profile anti-corruption cases, where we see a common co-ordinated sequence of events unfolding for each defendant. These types of cases have become increasingly frequent in the Xi Jinping era: the ongoing anti-corruption campaign since 2012 has

already resulted in almost 3 million Chinese government officials being disciplined for corruption or leading an extravagant, immoral lifestyle, and among these, several hundred thousand have been criminally prosecuted in the courts. Even some very senior Communist Party leaders have not escaped convictions, such as former Politburo Standing Committee member Zhou Yongkang in 2015 (Hawes 2022, ch. 5).

(a) Anti-Corruption Cases

The typical sequence that these cases follow is that a government official (or a state-owned enterprise executive) first disappears from public view, sometimes for weeks, without any public acknowledgment by the government. Normally this is a signal that the official has been detained by the Communist Party's internal anti-corruption body, the Central Commission for Discipline and Inspection (CCDI). Following a highly intrusive investigation and exhausting interrogation by the CCDI, which often includes detention and questioning of the official's family members and work colleagues, a public announcement will finally be reported in the Chinese media listing the suspect's violations of "Party discipline," and stating whether they have been subjected to internal Party sanctions, such as demotion, or in more serious cases, expelled from the Party and handed over to the procurators for criminal prosecution.

While Chinese media outlets generally remain silent about the suspected official's situation prior to the CCDI's public announcement, once the violations have been revealed, both traditional and online media are often permitted to publish detailed "exposés" not only of the official's financial crimes but also their whole corrupt and immoral lifestyle. As long as these media reports do not attempt to implicate other Party officials who have not yet been detained, or to criticize the Party more broadly, the official censorship system remains mysteriously inactive in the face of all these highly negative reports. Indeed, in many of these high-profile cases, even the CCDI's terse official announcement emphasizes the moral degradation of the suspect.

To give one brief example, Sun Lijun, who was Deputy Minister of Public Security (ie, China's police service), disappeared from public view in April 2020, and several months later the CCDI finally announced that he had been detained for "discipline inspection." Over one year later, in September 2021, the CCDI finally completed its internal investigation, and Sun was publicly condemned in a way that clearly attacked his moral character as much as his financial corruption:

He seriously damaged the political ecology of the public security and legal systems; he ignored the Party's eight regulations for proper behaviour, living a rotten and decadent life. For many years he received a huge quantity of valuable gifts, banquet invitations and wastefully luxurious entertainments that harmed the impartiality of his official decisions. For many years, he lived in luxury accommodation and received extravagant services provided by private business entrepreneurs. He had no moral compass, exchanging

favours and money for sex, and he was extremely greedy, receiving enormous amounts of property in return for official favours (Xinhua 2021).

Sun was handed over to prosecutors and formally charged with crimes in January 2022. However, well before his trial began, China Central TV broadcast an episode of the CCDI's anti-corruption show, *Zero Tolerance (ling rongren)*, in which Sun Lijun was interviewed and confessed to his crimes. Sun described how he lost his moral compass and betrayed the Party's values, and that led to his misdeeds and current ruined career (CCTV 2022; South China Morning Post 2022). Several months later, a criminal trial was finally held, and Sun was given a death sentence, suspended for two years (which is equivalent to a life sentence in prison).

In these cases, clearly the Party and the co-operative Chinese media are seeking to get the broader Chinese public on their side when they detain these powerful officials by actively exposing or tacitly permitting a character assassination of the suspect. The eventual criminal conviction then becomes merely a formality, as the courts have already received the message that the person needs to be condemned.

(b) Other Politically Sensitive Cases

The second type of case bears some similarities in the process, but involves people who have either criticized the Party or senior leaders, or they have engaged in behaviour that the Party views as a threat to its power. The main difference is that most of these cases do not involve official corruption, so the initial detention and investigation is carried out by the police (public security) instead of the CCDI. However, we see a similar dynamic: the person disappears from public view; then at some point, which may be several weeks later, their family is notified that the person has been detained by the police.

If it's a high-profile case, especially when the international media and foreign governments have expressed concern, the Chinese authorities will mobilize their official media to "expose" the person's crimes or televise their "confession" well before any formal criminal charges have been laid. While there is generally less focus on these peoples' decadent lifestyles (because most of them are clearly not wealthy), they are frequently accused of fraudulent activities, such as tax evasion or running unregistered businesses. Finally, the criminal prosecutors may become involved, with a jail sentence ensuing, or the person may be released due to intensive international pressure, but they will continue to face harassment by the local police, and interference in their ability to make a living and even rent an apartment. Some commentators have called this situation "non-release release" (Safeguard Defenders 2021).

A typical example is the publisher Gui Minhai, whose Hong Kong-based company had published books revealing embarrassing scandals about senior Party officials, including Xi Jinping. Despite having Swedish citizenship and living overseas, Gui was kidnapped by Chinese security agents in Thailand and taken back to China in November 2015. When several foreign governments and international media demanded an explanation for this clear violation of national sovereignty, in early 2016, Gui appeared on Chinese television (and also in online interviews given to the *South*

China Morning Post) confessing that he had caused a fatal traffic accident many years earlier, and stating that he had voluntarily returned to China to submit to the Chinese authorities. He also strongly objected to the Swedish government trying to “interfere” in his case. Eventually, he was convicted by a Chinese court in February 2020, and sentenced to ten years in prison (Safeguard Defenders 2018, pp. 6, 10, 25-7 and 33; Mou 2021, chs. 3-5; BBC 2020).

Many similar accounts of forced televised confessions have been reported by human rights organizations, especially involving Chinese lawyers and NGO staff who engaged in rights protection of vulnerable groups in China, thereby stepping on the toes of powerful Party officials (Safeguard Defenders 2018).

Conclusion: Moral transformation and critique of the “selective morality” approach to law and “socialist values”

While the first three categories of cases that we discussed all involve interaction between law and morality, they are generally not problematic because they do not forcibly interfere in the fair operation of the legal system. The kinds of moral exhortations given by judges in category (1) are similar to what many judges in Australia or the United States might include in their court judgments, warning the plaintiff or defendant to turn over a new leaf and stop engaging in bad behaviour, otherwise they may face much more serious consequences later on. They do not affect the decision in the case, which has been made based on purely legal principles. Category (2) cases are similar, in that the courts have already decided the public interest lawsuits based on clear and transparent legal procedures, but the media and the Party’s internal propaganda system take the court judgment and widely publicize it, especially among the relevant administrative officials, as both a guide and a warning to change their negligent behaviour. In category (3), although the law is held up as a blunt instrument to persuade the parties to mediate their dispute, the law is not distorted, and the fact is that in many of these interpersonal property and family disputes, resorting to the courts would lead to an unfair result, possibly for both parties. While some emotional pressure is brought to bear on the parties, appealing to their better moral instincts and their “family feeling” or “brotherly love,” they do still have the option of refusing the mediator’s recommendation and proceeding to a formal lawsuit.

By contrast, the cases in category (4) do involve major interference in the legal process – often including illegal behaviour by the investigative authorities themselves – which should cast doubt on the frequent accusations of immorality and crimes made against the suspects. In these anti-corruption and politically sensitive cases, people are secretly detained without any access to lawyers or meaningful contact with their families. There is credible evidence that they are routinely abused while in custody, either through beatings or sleep deprivation, threats against family members, or other psychological coercion, in an effort to make them confess. Other witnesses may be similarly detained and coerced into falsely testifying against the suspects (Safeguard Defenders 2018). These practices continue to occur despite being illegal

under both the *PRC Criminal Procedure Law* and the *PRC National Supervision Law* which governs anti-corruption investigations.

As noted earlier, in high profile cases, the suspects are also coerced into making their confessions on national television, which frequently occurs long before they have been tried by a court; and even those who do not confess on television will commonly be the subject of highly negative media exposés about their disgraceful immoral and criminal actions. When the cases are finally handed over to the prosecutors and brought before the courts, the defendants are inevitably found guilty, and no meaningful challenge to the evidence provided by the investigative authorities is permitted, despite the clear signs of illegal coercion and abuse. This is because the prosecutors and judges can be easily removed from their positions by the government, and this would certainly occur if they threw out the charges against these types of defendants due to tainted evidence and illegal abuse.

Since the Party and the investigative authorities that it controls are so powerful, and they could clearly interfere in the legal process in the courts to achieve their political ends, why do they feel the need to publicize these cases long before the trial occurs, and in anti-corruption cases, to focus so strongly on the suspects' decadent and immoral behaviour?

It seems that the Chinese authorities are hoping to convince the broader public that the suspects are clearly "rotten" both in their behaviour and their moral character, and therefore justify treating them as exceptions to the normal legal process, due to the "danger" they pose to society. They also seem to believe that if a suspect confesses to their crimes and errors in public (such as on television), this will be sufficient to persuade ordinary viewers that they are guilty, and not to question why a suspect would make such a confession voluntarily before the evidence has even been tested in the court. In other words, the Party is seeking to shore up its own moral authority, to stave off potential popular protests, and to justify its actions by publicly exposing the immorality of those it seeks to punish.

Of course, the main objections to this approach are that the Party is ignoring its own stated principle that no person or organization should be "above the law," and secondly, the investigators are themselves engaging in highly immoral behaviour by forcing suspects to make false confessions, routinely abusing suspects, falsifying other evidence to suit their cases, and intentionally smearing or defaming suspects via the official media. These kinds of immoral acts not only breach Chinese laws and regulations, but they also violate the Party's own "core socialist values" such as "integrity" and "justice" – not to mention traditional Chinese values like "humaneness" and "sincerity" – and they undermine decades of positive efforts by the government to reform the Chinese legal system and promote "rule of law."⁶ Such behaviour may deliver a short-term gain in terms of retaining popular support for the Party, but it will

⁶ For a list of "core socialist values," see Zhang and Yao (2013).

surely undermine the Party's long-term health by making its own officials highly cynical about moral values, honesty, and lawful behaviour.

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