

THE BROOKINGS INSTITUTION

RULE OF LAW IN CHINA:
SPEECH BY MADAME TAO KAIYUAN,
VICE PRESIDENT OF CHINA'S SUPREME PEOPLE'S COURT

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Introduction and Moderator:

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The Brookings Institution

Featured Speaker:

TAO KAIYUAN
Vice President
Supreme People's Court of China

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P R O C E E D I N G S

MR. LI: And welcome to today's very special event featuring the vice president of the China's Supreme People's Court, Madame Tao Kaiyuan.

Madame Tao, we are so happy to have you with us, and you will note that we arranged not only for the snow to stop falling, but also to have such beautiful sunshine during your visit.

My name is Li Cheng. I'm the director of the John L. Thornton China Center here at Brookings. My colleague and I at Brookings have long been interested in the prospect of rule of law in China. Of all the issues presented by China's ongoing economic and the social-political transformation, none may ultimately prove as consequential as the development of the Chinese legal system.

Last October, for the first time in PRC history, a Central Committee meeting focused on the rule of law, the country's legal development. At that meeting, the Xi Jinping administration outlined important legal reforms, including the establishment of circuit courts, which will increase judicial independence, and to establish a new mechanism of keeping records of officials who interfere in judicial cases. Last but not least, the call for more vigorous professional training and selection of lawmakers, judges, and the prosecutors.

Our speaker today, Madame Tao, is a perfect testimony to China's remarkable development in legal professionalism. Born in Hunan in the middle 1960s, Tao studied international law at the prestigious Wuhan University Law School where she later also received her Masters and Doctoral degrees in law.

She taught international business law and intellectual property rights at the Jinan University in Guangzhou for over a decade. She also studied abroad on a short-term basis as a visiting scholar at the University of British Columbia and UC

Berkeley and the Harvard Kennedy School.

An accomplished legal scholar with 18 authored and co-edited books and over 30 scholarly articles, Tao also devotedly pursued her career as a judge. At the age of 35, as a non-CCP professional, Madame Tao became the vice president of the Guangdong superior court. About a year ago, she was promoted to become vice president of China's Supreme People's Court, working at the center of the country's legal reform.

Today, Madame Tao will provide 20 minutes or so of remarks, which will be translated consecutively, and we will also follow with a discussion with her and two of her colleagues that I will moderate. You can also join today's discussion by our Twitter account at Brookings China.

Now, please join me in welcoming a law professor, a legal scholar, a Supreme Court judge, and one of the most distinct female leaders in China, Madame Tao Kaiyuan.

MS. TAO: Thank you very much for your kind introduction, Director Li Cheng. Good afternoon, ladies and gentlemen and dear friends.

First of all, on behalf of the delegation, I would like express our sincere thanks to Brookings Institution and the vice president, Martin Indyk, John Thornton China Center, and the director, Li Cheng. Thank you for squeezing time out for me for today's presentation. My thanks also goes to the Chinese Embassy for their great support to the trip and all the events here.

As we all know, the Brookings Institution is one of Washington's oldest think tanks and the most influential one in the world. Several days ago, if you talked to (inaudible) for 8 years of world-leading think tanks by the University of Pennsylvania. Congratulations.

I know a lot of good speakers are lining up to speak on this stage, but not all of them have the luck I have. I must cherish this valuable chance to introduce and share information on the progress of the new legal changes in China.

In one week, on February 4th, we will have a special day on China's Lunar Calendar. It is (speaking Chinese). It means the beginning of Spring. There is a Chinese saying which goes like, 'A year's playing starts with spring.' It means we should waste no time in starting early. The new leadership of the CPC has demonstrated such things of urgency right after they were elected.

They made clear their overall governance strategy by putting forward the idea of completing the building of a moderately-prosperous society in all respects on the 18th National Party Congress in 2012, the plan to comprehensively deepen reform and the third plenary session of the 18th Central Committee in 2013 and the plan to comprehensively the rule of law in the fourth plenary session of the 18th Central Committee in 2014. These three things, as shown in this slide, are interconnected with its own logic.

The first one is the ultimate goal. The second one provides the motivation for achieving the goal. The third, rule of law, provides a legal guarantee to the deepening of the reform and the ultimate achievement of the goal.

The third decision, erecting the rule of law, was a newly-made one in last October. This is the first time that the rule of law was chosen as a central theme of a plenary session in the history of the CPC.

The plenary session set forth the general target of advancing rule of law, which is the establishment of a Socialist rule of law system with Chinese characteristics and building a Socialist rule of law country. It is a top-designed and also a call of the Party to mobilize the general public to build China into a country on the rule of law. This

decision is regarded as the milestone in China's legal construction and will certainly have a far-reaching significance to the country.

Now, let me present the topic in three parts: The first part is: Why should China promote the rule of law now? The second part is: What will be the major legal changes? The third part is: Unprecedented ongoing judicial reform in China.

As the time is limited and everybody here has already gotten the handout of the PPT, that one is the detailed one. This one is a condensed one. Have you got it? No? Not yet?

MR. LI: Yeah. It's all out.

MS. TAO: Oh, it's (inaudible). I'm sorry for that.

Anyway, I would like to go through part 1 and part 2 quickly and focus on the third part because the third part is relating to the judicial reform, which is my work area.

Now, let's move to part 1: Why should China promote the rule of law now? We can simply say there are four causes. The first one is to complete the building of a moderately-prosperous society in all respects calls for the rule of law. The second is to comprehensively deepen reform cause for the rule of law. The third one is to maintain long-term peace and stability calls for the rule of law. The last one is to take the responsibility as the major country calls for the rule of law.

Then the next part, part 2: What will be the major legal changes? I can say that there are altogether nine points of major changes, at least that we know. One: Rule of law will become the main theme of China's system building. Two: Major changes will be introduced to the governing style of the CPC. Three: The constitution will enjoy unprecedented supremacy. Four: Legislation will be more scientific and democratic. Five: The building of a law-binding covenant that is open, responsible, and the

streamlining will speed up. Six: People's interests and their rights will be better protected. Seven: Mechanisms to guarantee fair justice will be improved. Eight: People's awareness of law will be enhanced. Last one: The CPC will further strengthen party disciplines in accordance with law.

Now let's focus on the third part: Unprecedented ongoing judicial reform in China. The judicial reform will focus on six areas. Let me introduce them one by one.

The first one: Strengthen systems to ensure fair justice. The background is: after 14 years of development, China's judicial system is still not yet meeting the expectation of the general public.

Then why justice is so important? Because justice is the lifeline of the rule of law. Judicial justice is the most important index of social justice, and judicial injustice is a destructive blow to social justice. The decision touches some deep-rooted problems affecting judicial justice, and judicial reform takes a larger part in the decision, covering judicial administration, judicial power, operating, mechanism, and etc.

The purpose is to make people feel fairness and justice in any judicial case. Actually, this sentence is said by President Xi in a speech. The second area: Strengthen mechanism to ensure courts and to procuratorates exercise their power independently, fairly, and in accordance with law.

To achieve this target, we'll establish several mechanisms. The first one: A mechanism to allow the personnel, finance and property of courts and the procuratorates to be uniformly managed as a provincial level to avoid local interference.

The second mechanism is to record officials who interfere in judicial cases and to name them publicly to hold them accountable.

The third one is: A mechanism to protect the safety of the judicial staff. The last one is: A mechanism to safeguard the supremacy of judiciary.

Third area: Implement measures to hold judges and collegial panels accountable for their decisions. The principle of judiciary determines that judges are there to hear and decide, and those who give verdict should be held accountable. China is a country with a large number of lawsuits. There are over 10 million lawsuits every year. The number hit 13 million in 2013 and more than 15 million in 2014.

Relevant mechanisms will be reformed to select excellent judges who can be relied on in producing high-quality cases. This reform is carried out in the newly-established Zhuhai Hengqin New district court, the intellectual property of courts, and circuit courts of the SPC.

Now let's move to the fourth area: Improve mechanism to make the judiciary more open and convenient for the public. We have many majors in this area. First of all, decisions are all put online. All elected decisions by the SPC and 22 provincial courts are all put online. By January 10th this year nearly 6 million decisions are published online. According to my knowledge, this is the biggest number in the world. The picture is the website of where you can find all the decisions. It's open to the public.

The second one is: Adjudication process is made fully open. The website of China's public database of the adjudication process was launched by the SPC on November 13th last year. This picture shows the website.

Why? Information on decision enforcement is fully accessible. This picture shows their website of the SPC. You can get information of the enforcement here.

Now let's move to the fourth: Improve mechanism to make the judiciary more open. Still this area. The next measure is the SPC launched its own micro-blog, and We-Chat account. Real time uploading of in-court minutes of important cases such as the trial of Bo Xilai, a senior CPC official, through microblog has won applause from the society.

Foreign diplomats in China were invited to hear trials related to foreign commercial and maritime cases. The left picture is a trial presiding by one justice, Xi Xiao Minh, of the SPC relating to IP cases is open by the microblog.

The right one is another case presiding by Judge Luo, who is one of our members. This case is related to a foreign investment. This case we are invited the foreign diplomats in Beijing to hear the case.

We have already replaced the review system with the register system in the case filing process, but the number of cases will increase rapidly.

The last one is citizens will have more chances to assessors.

Now let's move to the fifth area: To make judicial jurisdictions more scientific and rational. The SPC decided to setup circuit courts. The first was established in Shenzhen Canton Province, the south part of China, which governs the cases in Canton, Guangxi, and Hai Lan. The second one was setup in Shenyang Liaoning, the north part of China, which will govern the cases from Heilongjiang, Liaoning, and Jiling.

Starting from earlier this year, these two courts will accept and hear major administrative, civil, and commercial cases across administrative regions.

The SPC had setup an environment and resources tribunal in July 2014. We have established our first administrative region course on December 28, 2014. China's first one, namely Shanghai No. 3 Intermediate People's Court were established. Two days later, Beijing No. 4 Intermediate People's Court of the same kind was established.

The last one is IP courts are established and operating well. On August 31st last year, the National People's Congress passed the decision to establish the IP courts in Beijing, Shanghai, and Guangzhou. Beijing IP Court formally opened on November 6 last year and appointed 22 presiding judges selected from all three levels of

court in Beijing. The Guangzhou and Shanghai IP courts opened formally on December 16th and the 28th respectively. Last night we actually paid a visit to the appeals court accepted the appeal IP cases here. It was a wonderful tour and visit.

Now let's move to the last area: Reform their procedure system to make it a focus on hearing and deciding. As you may know, the traditional criminal procedure in China emphasizes too much on investigating and solving a case, sometimes leaving key evidence uncollected or collected illegally in certain cases.

We plan to reform the procedure system to focus on court hearing and deciding. That means the court must play a decisive role. The principle of excluding evidence obtained illegally and no guilt when there is still doubts over guilt must be strictly insisted. Only in this way can the investigation and prosecution withstand the test of law and the wrong judgment or injustice be avoided.

Ladies and gentlemen and dear friends, lastly I would like to conclude my presentation with a Chinese saying: Seeing is believing. Welcome to China to see with your own eyes the legal changes there. Thank you for your time and patience.

(Applause)

MR. LI: -- Dr. Luo DongChuan, who is the president of one of the most important courts in China, and just next to me is Mr. Ma Hui, he works in the Chinese Communist Party's International Department, and welcome too.

I think there are four bios in the program that you can read. We will also post a PowerPoint online. You will probably see that it is available after this meeting. I apologize for the delay. We just received it. We want to make sure that we have copyrights to post so we authorize that.

MS. TAO: I authorize that.

MR. LI: Okay, great. Thank you so much, Madame Tao, for your

wonderful, very comprehensive presentation. Your English is quite remarkable. I thought that because your colleagues said you would not deliver the English speech so I assumed that we would probably hear translations, but you really did very well.

MS. TAO: Thank you.

MR. LI: Now before I open the floor, I want to ask a few questions as a startup. First, certainly that your optimism is quite clear. This is a big contrast with some of the cynicism in China and the outside world. My question is what's the source of your confidence? Is it because the Chinese leadership has made a firm commitment or because the Chinese society has profoundly changed the legal professions, middle class, and media in becoming a very important force to push for change? Now you'd probably say both, but as a law professor, I don't want you to say they're equally important. I want you to make a distinction: Which one is more important in your mind? That's the first question.

The second question is that I think would be helpful, for the audience, to tell us more about China's Supreme People's Court, the operation. As far as I know, they're all together. There's one chief justice and nine justices; you are one of them. I'm curious how that operates: Whether you have ever voted on certain issues; if a vote is split five votes by five, how to make a decision assuming there's equal numbers; finally you mentioned Bo Xilai's trial. It's a very simple question: Could you tell us whether the upcoming Zhou Yongkang trial will also be microblogged live or almost live or something else? These are the three questions.

TRANSLATOR: (Speaking Chinese)

MS. TAO: I have to answer all these three questions by myself. Thank you. (Laughter) Thank you very much for your very good questions -- maybe we can say some sensitive questions. It's okay for me. (speaking Chinese) I suppose you can't

understand Chinese. (Laughter)

TRANSLATOR: First about where does my confidence come from. Actually I can say my confidence comes from strength, and the strength comes from the general trend of the society, that is, where the society is moving to. I think it is not only the moving trend of the Chinese society, but also the moving trend of the whole international community.

Just now you mentioned some people are not so optimistic or even have cynicism when looking at China's rule of law reform. That is because they do not understand what we are doing and they do not understand China. This lack of knowledgeable leads to misunderstanding, and misunderstanding leads to no confidence or cynicism.

I don't know if I mentioned this to you or not, but I actually started to work for the Supreme People's Court from January 3, 2014. Before that, I worked in Guangdong Province for 26 years in the law field. I saw a lot of old friends dated back to my working years from Guangdong, and it is a great pleasure. They're happy to meet old friends today.

After I started to work in the Supreme People's Court, during the whole year, I myself am not only a witness of all these new changes and establishment of mechanisms and system building; I'm also an actual participant in the process. I'm also one of the forces who is pushing forward this moving trend of China's rule of law reform. That's why I have full confidence about the process.

MS. TAO: (speaking Chinese)

TRANSLATOR: About the second question about the function of the Supreme People's Court, especially concerning the voting question, I can answer your question in two parts.

The first part about voting on things that does not relate to any specific cases, sometimes we discuss issues about administration of the Supreme People's Court or some other things not related to cases. Normally we do not use the voting system because we use the consultation system. We try to have a discussion and express our opinions and consult with each other. Finally, after this consultation, we reach a consensus. We think there's no need for us to adopt this voting system to get the final consensus. We can do it through consultation. It works well. That's why we use this consultation system in resolving some of the administrative decision-making process.

In terms of the decision on certain cases or the deliberation on certain cases, because we think it is a very serious matter, we adopted a very important principle which is everyone's vote is equal. It means that it is not because you are the chief judge that your vote weighs more than the votes of others.

In the Supreme People's Court, we have a judiciary committee. This judiciary committee consists of not only the chief justice and the nine justices, but also senior judges such as Judge Luo himself. He is also a member of the judiciary committee. This judiciary committee actually consists of an odd number instead of an even number.

How does this committee work? Everyone has to express their opinion first, their idea on this case first, and then sometimes they have to resort to the voting system. Then, because it is an odd-number committee, they will get a result, but sometimes when the participants are an even number, 12 for instance, the result might be six to six. In this result, we will ask those who are not present in a previous meeting to come again and to deliberate the case and then vote again. If after several rounds of voting they are still 50 percent to 50 percent, we will try to get everyone on the board to have this meeting until we reach the majority on the decision of the case. I have to

emphasize that the principle of everyone's vote is equal is upheld.

MS. TAO: Sorry for the long answers. (speaking Chinese)

TRANSLATOR: About the role of this judicial committee, it does not only discuss about cases. They also discuss about the judicial interpretation, and in making judicial interpretations, this committee will have full debate and full discussion.

Sometimes we have one-hour or even two-hours-long discussion on even a single article in the whole piece of judicial interpretation. We'll have full debate before we finally get a result.

MS. TAO: (speaking Chinese)

TRANSLATOR: Concerning the third question, it sounds to be a very sensitive one, but actually it is not. It is asked frequently to me not only by Mr. Li Cheng, but also by a lot of people within China. They will ask, how are you going to try the case of Zhou Yongkang, and what kind of method are you going to use in the trial of Zhou Yongkang?

The answer is quite simple: We will do whatever we need to do.

MS. TAO: Should do. (Laughter)

TRANSLATOR: Try to do whatever we should do. Maybe you are aware that now the case has not been referred to the court procedure yet. It is now still in the hand of the People's Procuratorate.

After the case is referred to or enters into the process of being referred to the court, we will decide what kind of method we are trying to use in terms of the trial format based on the situation of the case and the factors involved in this case because there are some cases which, promulgated by law, should not be open to the public. For instance, one of the cases related to or has some factors related to a national secret, a commercial secret, personal privacy, or the protection of juvenile delinquencies, these

cases are not supposed to be open to the public in accordance with law. We will judge whether there is any factors involved in Zhou Yongkang's case, which means that some of the parts are not going to be open or what kind of format we are going to use.

Finally, I think we will give an answer to not only the outside world, but also to Chinese society. I myself have full confidence in this process.

MS. TAO: (speaking Chinese)

TRANSLATOR: I have already taken my responsibility off answering your questions, so I hope more questions will go to my colleagues on the stage.

MR. LI: Thank you very much for answering these questions in a detailed manner, and you did very well.

Now the floor is open. Please identify yourself and also make the question short because we only have about 10 minutes or so. (inaudible) Yeah, can you stand up? Him first.

MR. CHUNGWEI: Hi, I'm Chungwei from China Daily. I have a question regarding what you said earlier that hurt people's confidence and contributed to the cynicism. I think people believe corruption is a problem in the legal system, and some reports suggest actually it's probably worse than some other sectors. How confidently are you going to be able to tell people you will be able to build a clean team in a short period of time? Thank you.

TRANSLATOR: (speaking Chinese)

SPEAKER: (speaking Chinese)

TRANSLATOR: Concerning this question, I have to say first and foremost that the new leadership of CPC has attached great importance to the fight against corruption, and they are also very resolute to fight against corruption in the legal fight.

Considering the severity of corruption, whether it is worse in the legal field than some other fields, I think we need to look at facts instead of raising this issue out of pure perception. According to the numbers and the cases disclosed of those above provincial level or major cases of corruption, there is no case related to a chief justice or justice in China. This is one thing.

The other thing is that our rules to restrain the judges are even stricter than the general rules restricting civil servants because we want to make sure that they are a clean team.

MR. LI: Yeah. The gentleman, yes. We'll probably take two more questions with this one. Yeah.

MR. WINNIE: Thank you. Ralph Winnie with the Eurasia Center.

Madame Tao, I was wondering if you could comment on cases that foreigners have been able to bring in China, the resolution, and what kind of issues did they have in terms of accessibility and the ability to work through the Chinese legal system? Thank you.

MR. LI: The lady in the middle, yeah.

MS. LU: My name is Chang Chang Lu. I graduated from Renmin University of China. Now I'm a PhD student at American University.

My question is what would be the major changes of the checks and balances between the court and the government or administrative behaviors (inaudible)?

TRANSLATOR: I'm sorry. What is the first question?

MR. LI: Can you repeat the last part?

TRANSLATOR: This one I got. The first one.

MR. LI: Okay. (inaudible)

TRANSLATOR: The gentleman.

MR. LI: Eurasia.

MR. WINNIE: (inaudible)

TRANSLATOR: (speaking Chinese)

MS. TAO: Judge Luo is the best person to answer the first question because he's the chief judge of number four civil cases division. This division is filled with cases regarding foreign investment and maritime cases. Please.

MR. LUO: (speaking Chinese)

TRANSLATOR: The Supreme People's Court has attached great importance on the cases related to foreign nationals. My division, which is the fourth civil division of SPC dealing with commercial cases and maritime cases related to foreign internationals, was setup in the year 2000. We stick to a principle that we treat litigants, no matter if he or she is foreign national or a national, equally. We try to keep the procedure equal to them, and we also try to make sure that the transparency of the whole trial is equal no matter whether it is a foreigner or a non-foreigner.

We've done some brilliant trials in the past. Last year, we invited some of the diplomats in Beijing to present in whole trials as observers so as to let them understand some of the procedures of foreign-related cases and some of the basic requirements of these trials. On that trial, which I was presiding, we used the form of collegial panel, and after the discussion of the collegial panel, we pronounced the verdict in court.

MR. LUO: (speaking Chinese)

TRANSLATOR: In that case, the foreign litigant, who was an investor of a Singapore company, won the lawsuit.

MS. TAO: (speaking Chinese)

TRANSLATOR: The second question about the checks and balances

between the judiciary and the administrative branch or the government, I need to say that the judiciary is playing a supervisory role on the government through the format of judicial review.

In China, we have three major categories of litigation: The first one is civil litigation, second is criminal litigation, and the third one is administrative litigation. The judicial review is carried out throughout the cases concerning the administrative litigation. Maybe you are aware that not very long ago the administrative procedure law underwent some divisions. We added new accountants into the administrative procedure law, and the main purpose is to lower the threat by which a case can be filed in the administrative-related cases.

In the past, it was a little bit difficult to file an administrative-related case to the court. These kinds of cases were not only difficult to be filed, but also very difficult to be handled by the courts. We tried to lower the threat so that more of these kinds of cases can be filed and enter into the process of courts.

In terms of the supervision on courts, the courts are under a network of supervision from the National People's Congress, the National People's Political Consultative Conference, from some other institutions in China, and the People's Procuratorate.

MR. LI: I know that there are a lot of questions, and we will continue for another hour or so, but this room will be used for another event and Madame Tao is also going to the Superior Court to see your counterpart. I hope this is only the beginning of our conversation, and maybe next time you and the Superior Court Justice could come here to have a conversation.

MS. TAO: With just you.

MR. LI: Yeah, we will do that. I hope that you mention that it has been

one whole year since I said I hoped there will be a wonderful decade and beyond for China's legal development.

MS. TAO: Thank you so much.

MR. LI: You certainly represent a new image from China's legal profession in legal leadership, judicial leadership, and also present a really clear legal mind. We wish you the best and hope that the next time you will still choose Brookings. I want the audience to join me in thanking you for your excellent presentation and also your co-panelists. And you're so quiet. Thank you. (Applause)

MS. TAO: Thank you so much.

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

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