

Senator Max Baucus
Opening Statement
"Taming the Dragon: Can Legal Reform Foster
Respect for Human Rights in China?"
Hearing of the Congressional-Executive Commission on the People's Republic of
China
April 11, 2002

I would like to welcome all of you to the second hearing of the Congressional-Executive Commission on China. Today, we will continue to pursue the relationship between rule of law and protection of human rights in China. At our next hearing in June, we will look at commercial rule of law and the WTO.

In the Commission's work, I start from one fundamental assumption -- that a modern, industrialized nation must have a legal system that is clear, fair, consistent, impartial and independent. There can be no room for arbitrary decisions. The police and the courts must be held accountable for their actions. The law must determine when rights are granted, and when rights may be taken away, not the arbitrary whims of administrative officials. This is necessary in commercial law for routine business to proceed, and it is no less necessary in civil and criminal law.

China is a conundrum. Thirty years ago, Mao Zedong was supreme leader of a totalitarian Marxist-Leninist system. Today, after two decades of reform, the portrait of Mao that hangs from Tiananmen Gate overlooks a vastly different China. On the streets of Beijing, Shanghai and other cities, one would be hard pressed to find any real evidence of Marx or Lenin.

Power in China has become much more diffuse. It is wielded by an ever-increasing number of officials and bureaucrats within the Communist Party and the central government, as well as officials at the provincial and city level. A significant part of the economy is now based on market principles. State-owned enterprises are disappearing rapidly. Some journalists challenge government-imposed restrictions on press freedom. The practice of religion is spreading rapidly. Legal clinics teach ordinary citizens about some of their rights, albeit within strict boundaries.

Nevertheless, despite these changes, Xiao Qiang, head of the NGO Human Rights in China, reminded us at an earlier hearing that the Chinese government has become a system of rule *by* law rather than rule *of* law. And that two-letter preposition, rule by law versus rule of law, makes all the difference. Under rule by law, authorities manipulate the law to achieve their own ends. Laws are often used as a means of subjugation or repression. With rule of law, the law itself is the final word. Human rights can only be protected within a system of laws. Anything else is simply arbitrary.

The Commission is beginning to work on its first annual report which is due in October. The report will include recommendations about how we can help China respect rule of law - a necessary step in China's march to join the community of nations. These hearings, along with the detailed roundtables being held by the staff, will provide significant input into that report.

Let me list several questions that I hope we can address today. We have a distinguished panel of witnesses to help us do that.

--How does the criminal justice process work in China? How can we help improve it?

--What is the current status of lawyers in China? To what degree can they challenge police and prosecutors and defend clients without fear of punishment or retribution? How can we help improve the situation for lawyers in China?

--Is China a more rules-based system than in the past? What are the recent trends?

--Can one differentiate between a rules-based commercial law system and a rules-based civil and criminal law system?