

---

# A RIGHTS DEFENSE LAWYER TAKES THE LONG VIEW

## **An interview with Mo Shaoping** **by the editors of *Ren Yu Renquan***

One of China's most prominent rights defense lawyers talks about the need for more lawyers and more people to care about democracy, social justice, legal reform and human rights.

In February 2007, Mo Shaoping went to France to attend the 3rd World Congress Against the Death Penalty. After that, Mo accepted an invitation from China law expert Jerome Cohen to give a talk at the New York University School of Law. *Ren Yu Renquan* interviewed Mo Shaoping while he was in New York.

**Ren Yu Renquan (RYRQ):** *Mr. Mo, I'm very glad to have the chance to interview you in New York. Can you tell us a little about your recent itinerary?*

**Mo Shaoping (Mo):** The 3rd World Congress Against the Death Penalty, held in Paris from February 1 to 3, was organized by *Ensemble contre la peine de mort* (Together against the Death Penalty) and the Paris Bar Association.<sup>1</sup> It was attended by representatives of nongovernmental organizations from dozens of countries, and was sponsored by the European Union and the governments of France and Germany and other countries, which also sent representatives to attend and speak at the congress. The attendees included judges, prosecutors, lawyers and other judicial officers from many countries. Opposing the death penalty is a human rights policy of the European Union (EU), which excludes from membership any country that has the death penalty.

**RYRQ:** *Then the Congress must have a lot of criticism of China's death penalty policies.*

**Mo:** Of course, China carries out more executions than any other country in the world. Every year China has more than 8,000 executions, which, incredibly, makes up 95 percent of the world total. For that reason, many speakers at the Congress called on China to abolish the death penalty.

**RYRQ:** *What's your own view?*

**Mo:** Personally, I oppose the death penalty for many reasons—from the perspective of

---

the law, morality and human rights—and I hope China will abolish it in the future. But it would be very hard for China to do so at present. The reasons are complex, and they include China's large territory, its immense population, low education levels, high crime rate, the traditional view that a killer must lose his life, the blind faith of lawmakers and judges that the death penalty can serve as a deterrent, and so on.

Abolishing the death penalty in China will require a process. For example, recently China allowed the Supreme People's Court to resume its power to review death penalty cases, which is progress. We should also remember that a number of other countries still have the death penalty, including the United States, Japan and Singapore. On a per capita basis, Singapore actually executes four times more people than China. During the Congress, I pointed out these facts to other representatives, which made me look like I was defending the death penalty. But in fact, I oppose it.

**RYRQ:** *Could you tell us what else you did in France?*

**Mo:** While in Paris I gave a lecture on legal issues in China at the invitation of the International Institute of the *Centre national de la recherche scientifique*,<sup>2</sup> which is similar to the Chinese Academy of Sciences. After that I came to the U.S. at the invitation of Professor Jerome Cohen to give a lecture at the New York University School of Law. Professor Cohen is an expert in Chinese law—he's sometimes called the "godfather" of Chinese law—and counts Ma Ying-jeou and Annette Lü<sup>3</sup> among his former students. He had invited me a long time ago, but I was too busy to accept his invitation. This time, since I was attending the conference in France, I decided not to disappoint Professor Cohen again, so I came over to America.

**RYRQ:** *I know this isn't the first time you've given a lecture in the U.S.; you gave a talk at George Washington University in 2005. How many lectures do you plan to give here?*

**Mo:** NYU Law presented a lecture series from February 4 to 14 focusing mainly on China's criminal law. Most of the participants were law students at NYU, along with some scholars and experts on China issues such as Professor Andrew Nathan of Columbia University. The emeritus chair of Human Rights in China, Robert Bernstein, and HRIC's executive director, Sharon Hom, also took part.

I studied law as an undergraduate for four years and as a graduate student for three years, and then worked as a lawyer for 20 years, so I'm quite familiar with China's criminal law and the legal profession. After I arrived in New York, I received invitations to lecture at several universities. This afternoon I have a lecture at Yale, and last Sunday I went to Princeton, where I saw Professor Perry Link. But I don't really have time to go anywhere else.

**RYRQ:** *From what you've seen, how well do your Western colleagues understand China's legal and judicial system?*

**Mo:** A few experts understand it, and are even proficient in it, like Professor Jerome Cohen. But most of my Western colleagues don't understand it very well.

---

**RYRQ:** *In what areas do you see the greatest lack of knowledge?*

**Mo:** I would say it's the judicial system. In my lectures, I always give details of specific cases, and my audience is invariably mystified as to how a particular judgment is reached. They don't understand Chinese jurisprudence, and view the cases from a Western perspective. Judicial independence is a fundamental principle in Western jurisprudence, but there is no judicial independence in China.

Article 126 of China's Constitution states, "The people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations or individuals."<sup>4</sup> Many people think this means the judiciary is independent, but they haven't scrutinized the article closely enough.

First of all, the article says that the people's courts "shall exercise judicial power independently," but that's not the same as saying that individual judges exercise their power independently. Secondly, the people's courts are led by the Chinese Communist Party. Every Party committee includes a member of the Politics and Law Committee, who serves as vice-secretary in charge of judicial work. Moreover, China's courts have judicial committees composed of the court's president, vice-president and presiding judge, which decide on major cases, difficult cases and complex cases—which means deciding on all of the important cases. In other words, it is a unique characteristic of China's judicial system that those who try the cases do not pass judgment on them, and those who do not try the cases do pass judgment.

**The Party's leadership of the judiciary, as embedded in the Constitution, is the key to understanding China's judicial system.**

Furthermore, in the Constitution, the term "public organization" does not include the Party, which means that the Constitution does not prohibit the Party from interfering with the judiciary. The Party's leadership of the judiciary, as embedded in the Constitution, is the key to understanding China's judicial system. Luo Gan, the Communist Party's top official in charge of the police and prisons, has in recent times repeatedly emphasized that "the Party committees at all levels should strengthen and improve their leadership role in politics and law, and should make a concerted effort to establish a sound system for the Party to exercise leadership in politics and law."<sup>5</sup>

**RYRQ:** *People are already aware that China's judiciary is not independent, but they aren't as deeply familiar with it as you are. The more common opinion is that China's Constitution stipulates an independent judiciary but that it just hasn't been implemented in practice. What you're saying, though, is that China's Constitution provides for a judiciary that is not independent.*

**Mo:** Yes, that's correct. Another important factor is that the judiciary is under the control of local political bodies. The local courts and procuratorates are not part of an independent system directly led by the Supreme Court and the Supreme Procuratorate, but rather fall under the leadership of local Communist Party committees. This creates a system of local protectionism for the judiciary, with the result that the central government is unable to implement laws uniformly across the country. In addition, the courts cannot carry out trial procedures independently, but have to comply with the opinions

---

of the local Party Committee and the local government. This is another element that prevents China's judiciary from being independent.

**RYRQ:** *Then how can China ensure an independent judicial system?*

**Mo:** Judicial independence requires a constitutional government. Conversely, if China wants a constitutional government, it must also ensure judicial independence. It will take time for China to gradually establish a constitutional government, but for the time being we can still enhance judicial independence to some degree. For example, could we consider breaking through the regional political demarcation and establishing a judicial system that is unified from top to bottom, so the judiciary is no longer subject to local political influence? Could we also gradually reduce the influence of judicial committees and strengthen the power of judges in the judicial process?

**RYRQ:** *You were one of China's first human rights lawyers, and have taken on many major human rights cases, defending important "political criminals" such as Xu Wenli, Liu Nianchun, Yang Jianli, Liu Xiaobo, Yao Fuxin, Shi Tao, Zhao Yan, Gao Zhisheng and Guo Feixiong. You've played an important role in advancing judicial progress and human rights in China. Now there are more human rights lawyers in China, and there's been a big change in people's attitudes toward defending people accused of political crimes; for example, human rights lawyers are now called "lawyers of conscience," which shows that people approve of and support them. At the very least, they regard you as righteous and courageous people. As I recall, back when you first stepped forward to defend "political criminals" and "counterrevolutionaries," it was regarded as quite a risky undertaking. Could you tell us what your thoughts were at the time?*

**Mo:** In fact, my thinking at that time was very simple. Every profession has its own professional requirements. I'm a lawyer, and it's my duty to defend the law and to do whatever is required of a lawyer. According to the law, every criminal suspect is entitled to defend himself—this is a basic right. It's abnormal if lawyers in a given country are afraid to defend political criminals, because the purpose of having laws and lawyers is to defend human rights. This is what lawyers are for. Of course, defending political criminals involves a lot of risk and little pay—I've often had to put up my own money for a case. And of course, we're fighting the government, so we can't win. Nevertheless, the fact that a lawyer shows up to defend a political criminal shows that laws exist and that we are protecting the rights of political criminals. This is the least that we as lawyers can do.

Moreover, we should put our faith in history and believe that people hundreds of years from now will recognize that what we did was right. Nelson Mandela and Kim Dae Jung were both put on trial, and Kim was even sentenced to death, but what happened later on? Now the speech given by Mandela during his trial is kept in the British Museum. Time brings progress and change. As lawyers, we are responsible for defending the rights of the parties involved, and we are also responsible for upholding justice. In addition, we need a sense of morality and ethics, which is so important. You could say that this is the essence of the law; without it, one can hardly be a good lawyer.

**It's abnormal if lawyers in a given country are afraid to defend political criminals.**

---

**RYRQ:** *You have defended more than 20 dissidents, but never with a successful outcome. What's the point of taking on these cases?*

**Mo:** There's more to these cases than their results. The purpose of defending a dissident, regardless of the result, is to defend his or her legal rights, which means ensuring that they are afforded professional legal defense and counsel. Although the laws of China are not implemented effectively, the existence of defense attorneys indicates the existence of law.

Defense lawyers also serve as a check on the judiciary; even if it's just for show, the judiciary has to take account of the lawyer. For example, in most cases the court notifies us by telephone when a court session will start, but in the Shaanxi oil field case,<sup>6</sup> I was notified of the trial date in writing, and the notification was delivered to me in person by a representative who flew over so I could sign the document. Why? The court didn't want failure to notify me to become a point that we could use against them in court, so they were meticulous about the legal procedures. In other words, even if courts make arbitrary rulings, the presence of a defense attorney forces them to take account of the law and follow legal procedures. By his very presence in a courtroom, a defense attorney acts as a check upon the judiciary, which means that at the very least, he might improve trial procedures and facilitate judicial reform. Many changes and much progress in the world takes place gradually, imperceptibly.

Also, court rulings in China are made public, even in cases where trials are held in secret. A public ruling elicits public opinion, which is very important for advancing social justice. For example, although Shi Tao was sentenced to 10 years in prison,<sup>7</sup> there was a public reaction, which shows that people have a sense of justice, and this in turn promotes social values. None of the cases I have handled have had a good result, but there are more human rights lawyers now than in the past, and people's views about dissidents have changed. This is all a mark of social progress.

**RYRQ:** *Some media reports have referred to you as a "lawyer who wears a crown of thorns."<sup>8</sup> This is praise, of course, but it's also an indication of the risks and pressures you have to bear. How do you handle it?*

**Mo:** Anything involves risk and pressure, but of course these are greater when defending dissidents in our country. For example, most of my family members and friends disapprove of me taking on these cases, which, apart from being risky, also pay poorly. Having experienced so many political movements in China, people don't want to see their family members reviled and attacked in public by the Communist Party. Guo Guoting is another human rights lawyer whose experience shows the high degree of risk in such a job,<sup>9</sup> and of course there are other human rights lawyers in China as well, but I won't talk about them here. All the same, it is no longer the Mao era. Chinese society has seen great change, and there is more space for people to do things, which we should cherish and utilize as much as possible.

My motto is: keep a low profile and be professional. The purpose of a constitutional government is to resolve political problems through the law, and this should be our

---

direction. In China, we would rather do such things in a low-profile way. As a lawyer, I have a dream of some day having a constitutional government and perfecting the legal system. In my practical work, I put the cases I take on into a legal framework and handle them according to the law.

Of course, the legal system is not perfect, and as I mentioned earlier, the judiciary is not independent, but improvements will take time and must be undertaken through legal means. When working on specific cases, we need to be factual and realistic, to fulfill our responsibility to the parties involved, to defend their rights, and to not be impulsive. Nowadays, you can see certain undesirable trends in human rights cases, such as lawyers taking on cases for the sake of media exposure and pushing for quick results. The legal profession is one that requires a great deal of professionalism, and I require this of myself. My seven years of legal education, and my 20 years of work experience, should demonstrate my familiarity with this profession. The more professional we are, the better we can defend our clients and the more we can reduce the risks we undertake.

For China to see progress, people in every profession must make an effort. China will make progress if every one of us has a fundamental desire to achieve a constitutional government and social justice. At the same time, everyone must become proficient in his or her own profession and work hard; only in this way will China advance.

**RYRQ:** *One last question: what are your hopes for human rights lawyers?*

**Mo:** First, the more human rights lawyers we have, the better. There are still too few in China. China needs more lawyers, and also more people to care about democracy, social justice, the legal system and human rights. Also, lawyers should use proper tactics when defending human rights and should do things one step at a time, little by little, and gradually help China to advance. As professional lawyers, we should resolve cases within the existing legal framework, and should improve our professional qualifications. We should strive to be as professional as possible. A large number of high-level professional lawyers will help further the progress of China's legal system.

Finally, I hope the media will try to be factual and avoid sensationalizing cases. The media plays a big role in modern society, but this is a double-edged sword. Fact-based reporting helps us defend the rights of our clients and further judicial progress, but sensationalizing cases and exaggerating the facts only intensifies conflict and pushes matters to an extreme. This is my own viewpoint as a professional lawyer, and may not represent the views of others.

**RYRQ:** *Thank you very much for your rational and clear-headed defense of the values of the legal profession. I've noticed that many politicians in Western democratic countries were once lawyers, which makes me wonder if this might be a factor in developing a constitutional government in China. It would be good for China's future politicians and leaders to include lawyers.*

**Mo:** Well, that's still in the future. Right now, it's enough for me to be a lawyer who does his job well.

**China needs more lawyers, and also more people to care about democracy, social justice, the legal system and human rights.**

---

Translated by Wei Liu

The original Chinese version of the article was published in HRIC's Chinese monthly online magazine, *Ren Yu Renquan*, [http://www.renyurenquan.org/ryrq\\_article.adp?article\\_id=610](http://www.renyurenquan.org/ryrq_article.adp?article_id=610).

**Editor's notes:**

1. For more information on the Congress, see <http://www.abolition.fr/ecpm/english/congress.php?sujet=182&topic=76>.
2. The National Center for Scientific Research, France's largest and most prominent public research organization.
3. Ma Ying-jeou is the former mayor of Taipei, and until recently was chairman of Taiwan's Kuomintang Party. He has announced that he will run for president of the Republic of China in 2008. Annette Lü Shiu-lien is Vice President of the Republic of China and a member of Taiwan's Democratic Progressive Party. She is also considered a contender for the 2008 presidential election.
4. For an official English translation of the full text of China's Constitution, see, <http://english.people.com.cn/constitution/constitution.html>.
5. See, for example, "Luo Gan: Goujian hexie shehui zhengfa jiguan danfu zhongda lishi shiming (Luo Gan: Building a Harmonious Society Is the Mission of Political and Legal Institutions)," *Chinanews.com*, February 1, 2007, <http://www.chinanews.com.cn/other/news/2007/02-01/866108.shtml>.
6. Mo Shaoping served as defense counsel to Feng Bingxian, the leader of a group of private investors fighting seizure of their oil fields by the municipal governments of Yulin and Yanan, Shaanxi Province, in 2003. Feng was ultimately sentenced to three years in prison. See "Court Sentences Shaanxi Investor Feng Bingxian to Three Years Imprisonment," Congressional-Executive Commission on China, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=36987>.
7. Shi Tao, a journalist, was convicted in on April 30, 2005, of "illegally providing state secrets overseas" after he posted online his notes from an editorial meeting regarding preparations for the anniversary of the June 4th crackdown.
8. See "Zhuanfang Mo Shaoping: Daizhe jingji biancheng wangguan de lüshi [An interview with Mo Shaoping: A lawyer for whom thorns have become a crown]," *Radio Free Asia*, October 14, 2005, <http://217.160.247.250:8000/cgi-bin/nph-proxy2.cgi/010110A/http/www.rfa.org/mandarin/shenrubaodao/2005/10/14/moshaoping/>.
9. Guo Guoting, who defended a number of high-profile dissidents, had his law license revoked in February 2005, and soon after that was placed under house arrest. He was granted political asylum in Canada in May 2005.