

The mainland will only establish genuine rule of law by limiting political and personal interference, writes **Jerome A. Cohen**

Network solutions

The most formidable challenge to China's establishment of a credible rule of law is neither the quality of its legislation nor the professional competence of its judges, prosecutors, lawyers and police.

Laws and the skills of those who apply them have both witnessed substantial progress in the People's Republic during the past three decades.

The real challenge to the administration of justice in China is, rather, the undue intrusion of politics and, even more broadly, of *guanxi*, the network of interpersonal relations of mutual protection, benefit and dependency that is one of the enduring hallmarks of Chinese society.

Courts and judges have much to lose and to fear if they ignore these influences. Such well-known distortions of the legal process as "local protectionism" and corruption are specific manifestations of politics and *guanxi*.

Although Chinese communist leaders do not publicise the party's intervention in important cases, they openly insist on party control of the judiciary. But they cannot be happy about other distortions of judicial decision-making that undermine the nation's laws.

Of course, to some extent, politics affects the legal system in every country, and every society consists of informal human interaction and influence.

Yet governments that practise the rule of law – not merely proclaim it – seek to limit political and personal interference with the wheels of justice not only by enacting norms that prohibit these universal phenomena but also by promoting values, ethics, policies, institutional changes and customs that support these legal prohibitions.

Crucially, the better rule-of-law systems provide their judges with enough financial and professional security to enable them to resist external blandishments.

Two factors are usually essential to the success of efforts to allow judges, prosecutors, lawyers, police and even victims and witnesses to independently fulfil their respective roles: media that are free to ferret out and expose improper interventions in the legal system; and a genuine electoral system that can, directly or indirectly, call to account officials who engage in such interventions.

For example, in my home state of New York, most attempts to interfere with impartial adjudication will eventually be



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ventilated in the press. Elected officials who may be deemed responsible for such transgressions, if only vicariously, knowing that they and their political party will have to defend themselves before the voters, generally launch investigations, prosecutions and reforms that address the misconduct in question.

That way they reinforce our national aspirations for an independent judicial

system that enjoys public confidence.

New York's current scandal, which has just forced the state's highest-ranking official, Governor David Paterson, to abandon his plan to continue in office by running for election in November, offers the latest illustration. Although details will be confirmed in a criminal investigation to be conducted by the State Attorney General's Office over the next few weeks, the basic facts in the Paterson episode, first revealed by *The New York Times*, are clear.

To prevent the New York City Family Court from issuing an embarrassing protective restraining order against the governor's closest aide, who had allegedly assaulted his former girlfriend, state police from the governor's office, on instruction from the alleged assailant, repeatedly pressed her to withdraw her domestic violence complaint. Moreover, on the day

before the complainant was to appear in court to complete proceedings, the governor himself, who had previously met the complainant socially, arranged a telephone call with her, after which she failed to appear in court and the case was dropped.

This was an ordinary case of domestic violence. It involved no major economic or political issues, and the former girlfriend had not even filed a criminal complaint, as many victims of domestic violence do.

Nor, so far as we know, had the governor's office sought to contact the judge in charge, which would plainly have constituted unlawful interference with the administration of justice.

Yet the revelations in *The New York Times* promptly proved the coup de grace to the political career of a governor who had already seemed incapable of coping with the state's fiscal crisis, its dysfunctional legislature and its chaotic executive branch. The governor's top criminal justice adviser immediately resigned in protest at his "unacceptable" conduct. Ironically, Paterson had made the protection of domestic abuse victims one of his proudest causes.

Because the public immediately condemned his effort to suppress the charges against his aide, his own party's leaders convinced him that he could not be their standard-bearer in the coming election.

Things may get worse for Paterson. The outcome of the criminal investigation cannot be predicted and, in any event, pressures are growing for him to resign rather than serve out his term.

This latest American scandal may reconfirm the belief of China's leaders in the superiority – at least for them – of the "socialist rule of law", which still manages to stifle most investigative reporting and insulates the leaders from free elections, so that their political interventions can continue to assure the judicial outcomes they desire.

Yet the costs of such a system must seem high even to the leaders, since it also prevents them, as well as the public, from learning about and combating much of the *guanxi*, corruption and local protectionism that frustrate public demands for justice.

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