

Beijing's friend and critic

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US law professor Jerome Cohen has come a long way since he advised Nixon to befriend Beijing. Today, he helps by advocating human rights

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There is something unique about Professor Jerome Cohen, who turns 80 today. The pioneering US expert on the Chinese legal system was an early advocate of engagement with China, long before this became fashionable. And now, as the world is at the feet of China in awe of its economic might, he is one of the few who dare point out its shortfalls.

Back in the 1960s, when the United States was still hostile to "Red China", Cohen was one of a few China experts at Harvard who advised then-US

president Richard Nixon to move towards reconciliation with Beijing, by sending an envoy to hold clandestine meetings with Chinese officials. The now-famous secret trip by Nixon's foreign policy adviser Henry Kissinger in 1971 paved the way for the normalisation of Sino-US relations.

But Cohen has in recent years emerged as one of the most outspoken critics of the mainland's human rights abuses and a champion of the plight of mainland lawyers and dissidents persecuted by the state.

The venerable law academic at New York University's School of Law does not limit himself to talking about improving China's legal process from a safe distance. He takes a personal interest in the individuals who have suffered injustice and is always crusading on their behalf.

In a recent trip to Shanghai, he visited Zheng Enchong, a rights lawyer, even though police tried to stop him. Zheng had been jailed after exposing a property scandal involving high-level officials and is still under house arrest.

He also tried to help Chen Guangcheng, a blind anti-abortion activist also known as the "barefoot lawyer", by urging Beijing to demonstrate its commitment to the rule of law and release him. The activist had been constantly harassed and was jailed in 2006 on trumped-up charges of organising a crowd to interrupt traffic and damaging public property.

At a conference in Beijing in 2007, Cohen shocked his hosts by holding up a T-shirt on which was printed, "Free the blind man Chen Guangcheng", and spoke about him because he wanted "Chinese legal experts to learn more about developments in their own country".

Cohen also campaigns passionately for political prisoners.

Instead of preaching Western ideology, he urges the authorities to adopt the Confucian values of benevolence and forgiveness in handling dissidents such as imprisoned activist Hu Jia and lawyer Gao Zhisheng - who had been jailed and is believed to be detained still.

Cohen laments that even though the mainland has made legislative and institutional progress in the past few decades, abuses still occur daily.

People who are perceived as a threat to the government are subject to arbitrary detention, house arrest and other forms of harassment, even when there is no legal justification. "Lawyers are harassed, punished, intimidated in various ways.

"There is news every day about this, it's crazy," he said, looking exasperated.

Paradoxically, China's economic rise, which has brought about greater affluence among ordinary people and the granting of more personal freedoms to individuals, had created a new class of mainland citizens who demanded more rights, he said.

But people are at the same time frustrated because their legal rights exist often only on paper.

Although the constitution guarantees Chinese people the freedom of speech, press, assembly and association, if a mainlanders tried to exercise these rights, he would inevitably find himself in trouble.

"People have been taking it seriously - now they want to use [these rights] and the party says 'no'. You can't use these lawyers, you can't go to the court with many kinds of cases," Cohen sighed. "Frustrations!"

Rampant corruption, the yawning rich-poor gap and social injustice have created widespread social discontent, but there is not a sound legal system that people can rely on to resolve their problems. Instead, the authorities still resort to harsh punishment such as jail and labour camps to deal with those who dare voice their complaints.

Cohen cites the example of the petitioning system, which is supposed to deal with people who have suffered injustice locally and try to report to the central authorities. In reality they are often detained illegally in "black jails" by their local authorities for daring to complain.

"China is rife with tension, unhappiness, the sense of injustice, so that requires a sophisticated political response," he said. "The party is its own worst enemy for creating more social tension. They ought to have consistent policy and ought to be improving the legal institutions."

During the Cultural Revolution (1966-1976), the legal system on the mainland was virtually eradicated and legal professionals were sent to the countryside for hard labour.

But with Deng Xiaoping's economic reforms, the mainland started reconstructing a legal system, and when Cohen first arrived in Beijing in 1979, he taught commerce officials contract and business law and introduced concepts of foreign investment and joint ventures.

The mainland has come a long way since then, establishing hundreds of law schools, which have trained hundreds of thousands of legal professionals. But today there is still no genuine rule of law, and the judiciary, under the Communist Party, is far from independent.

The Supreme Court stressed in 2008 that a key priority of the mainland's courts should be to "uphold the supremacy of the party's work".

"They have not only stopped, they're going backwards," Cohen said. "They now stress mediation out of court, de-professionalising almost all the systems they have built in the last 30 years."

He finds it exasperating that, in response to rising social tensions in recent years, authorities are increasingly resorting to more policing and heavier punishment, instead of building a credible rule of law.

"When tensions come, instead of creating new political legal institutions to process them, you just repress people, you lock them up."

Clearly, a rising China has been craving respect and recognition for its status as a super economic and military power and is keen to push its "soft power" - it tries to spread its language and culture through establishing Confucius institutes abroad and hosting global events such as the 2008 Olympic Games and the World Expo. But Cohen said China would not win international respect until it ceased locking up political dissidents and treated its prisoners in a more humane manner. "Until the party leaders are persuaded to [embrace] the rule of law, China will not have soft power," he said.

But he believes it is possible for the mainland to follow the rule of law eventually. From advocating the normalisation of Sino-US relations in the 1970s and teaching law during China's economic opening in the 1970s, to pushing for its World Trade Organisation entry in 2001, Cohen's hope was that China, through international co-operation and trade, would gradually adopt the rule of law.

"Are we prisoners of history? Or can we break out and control our own state, taking from the past what we can and taking from the outside world what we can?" he asked.

"The answer is, we're not prisoners of history. Look at Taiwan ... this is a vibrant, democratic society constructing credible rule of law," said Cohen, whose former students include Taiwanese President Ma Ying-jeou and former vice-president Annette Lu.

For all his criticism, Cohen - fluent in Mandarin - manages to travel, speak and lecture freely on the mainland, and so far has never been denied a visa, although his movements are watched and sometimes restricted when he contacts rights lawyers.

He thinks this is because the central government still regards him as a "friend of China" for his work over the past five decades: supporting China's full entry into the world community since the early 1960s, influencing the American policy of

normalisation of relations with Beijing in the 70s, helping make the mainland's legal environment attractive to foreign investors in the 80s and 90s and, in the past decade, working to improve its criminal justice and legal institutions.

"I think even the government recognises that my criticisms try to be constructive," Cohen said. "I am not trying to tear down the system but to transform it into one that does a fairer and better job of dispensing justice according to Chinese and universal minimum standards."

For half a century, he has carved out such a unique and prominent role that, should he decide to retire one day, it would be impossible to find someone to fill his place.

Eva Pils, a China legal expert at the Chinese University of Hong Kong, said: "Jerry could have chosen to ignore the dark and difficult sides of the Chinese legal system completely. He could have focused on commercial law ... he could have chosen to stay in academia, but he chose not to.

"He chose to stay involved in ongoing cases, to try and exert his influence, to help when he could. He has been the one key academic figure to highlight the plight of many human rights lawyers."

But despite his years, Cohen shows no sign of fatigue and still loves his work - writing, lecturing, meeting people and dispensing his particular brand of graciousness and generosity towards those who need his help.

"I am a travelling salesman of the rule of law," he grinned proudly. "Retirement? I am having the best time of my life, and rely on my Chinese and American colleagues to let me know when I am no longer useful."

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