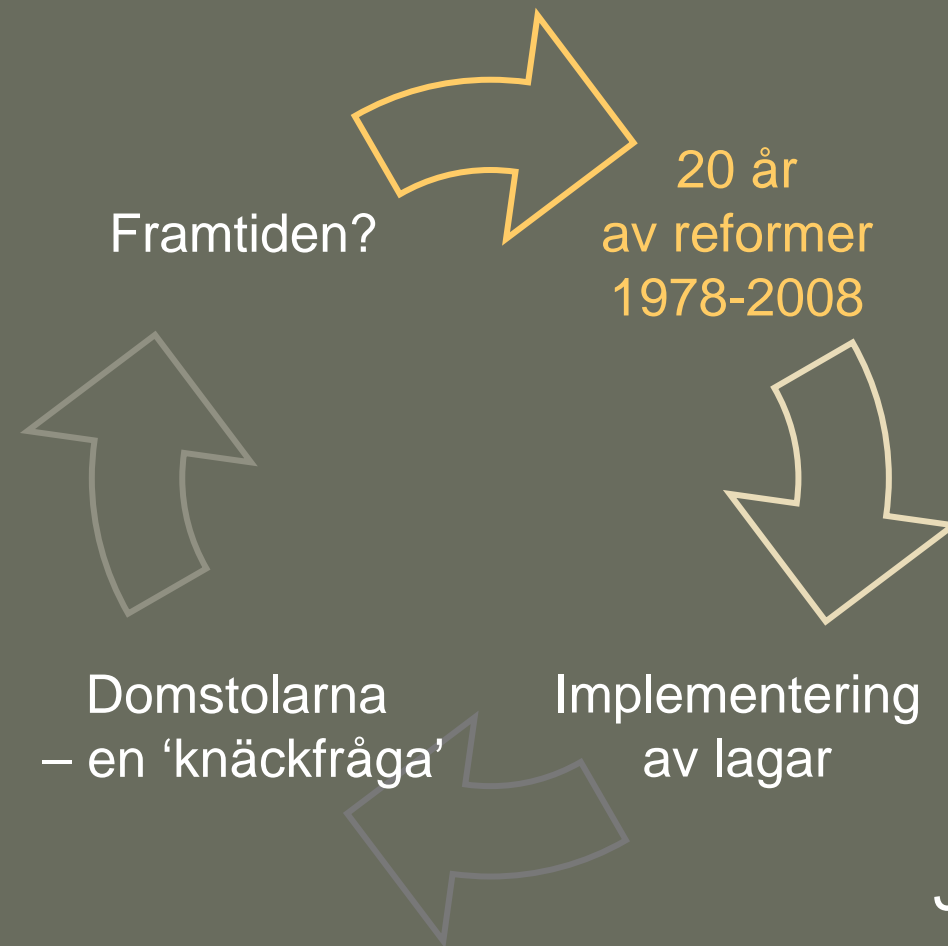


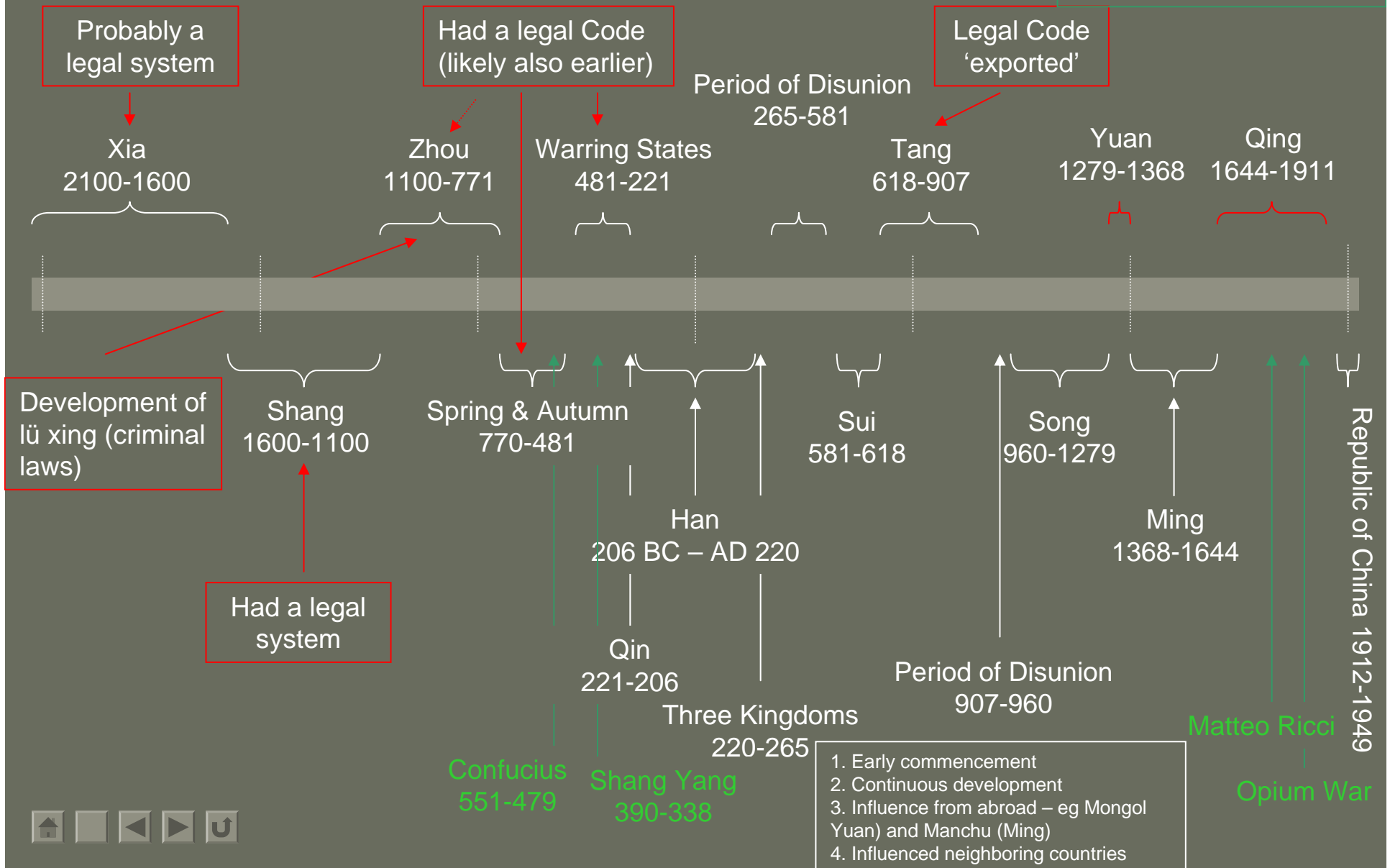
Lov og Rett i Kina

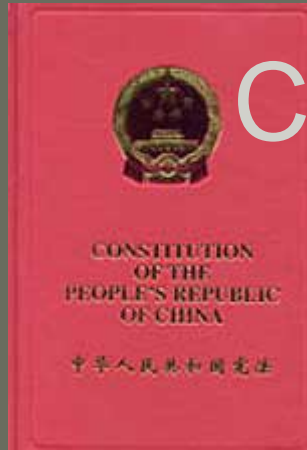


Jonas Grimheden
Raoul Wallenberg institutet
Lunds universitet, Sverige

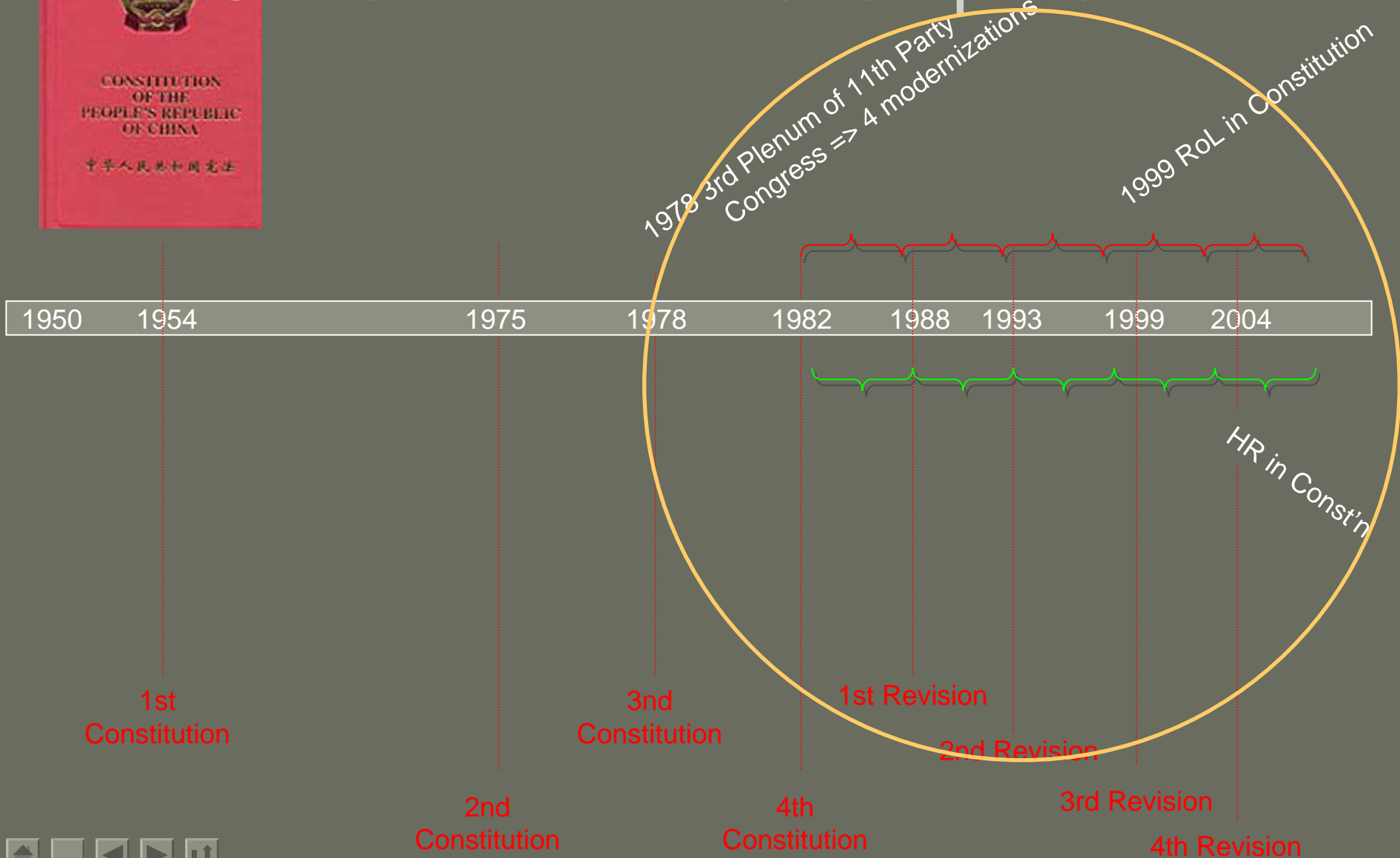
Ancient Legal History

2-3000 BCE: Babylonian and Assyrian legal documents








Constitutional Development



Comparative Overview: Criminal – Civil – Administrative

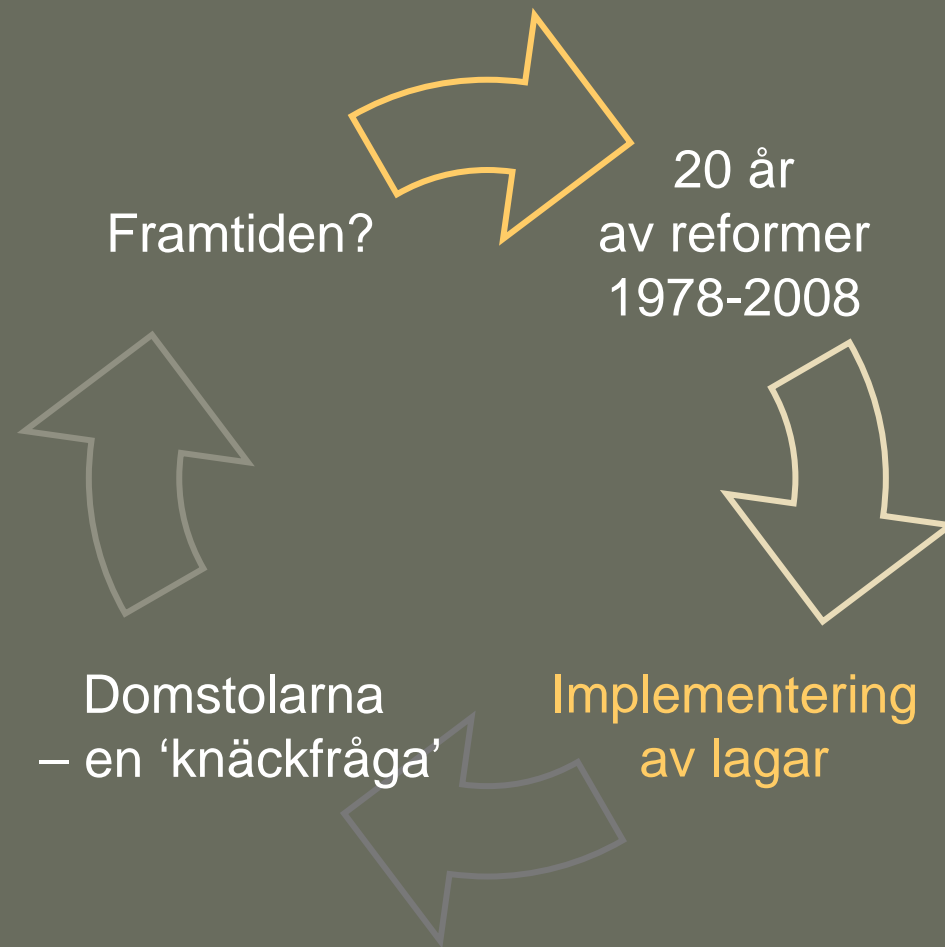
CrimL	CrimPL	CivL	CivPL	AL	APL
Early 1900	1906	1906-1911	1906		
1950 1 st draft	Mid-50s	1929-1930			
1957 22 nd	Early 60s	1956 1 st draft			
1962 33 rd		1964 2 nd draft			
1979 ('62 draft) Soviet influence	1979	1979 3 rd draft	1982 Trial version	1989 ALL; 1994 Compensation L 	
1982 Decision to Revise		1986 General Principles	1991	1997 Supervision Law 	
1997	1996 Revised			2004 Licensing L 	Drafting started 2002
Revision 2006	Revision 2008	Civil Code by 2010?	Revision 2007		Finished 2008?

Criminal Law Reform 1997

- Limited revision of principles
- But
 - No punishment without law
 - Abolition of analogy
 - Equality before the law
 - Marx-Lenin-Mao abolished as a principle
 - Established proportionality
 - Liability also for legal persons
 - Non-retroactivity

Criminal Procedural Reform 2008

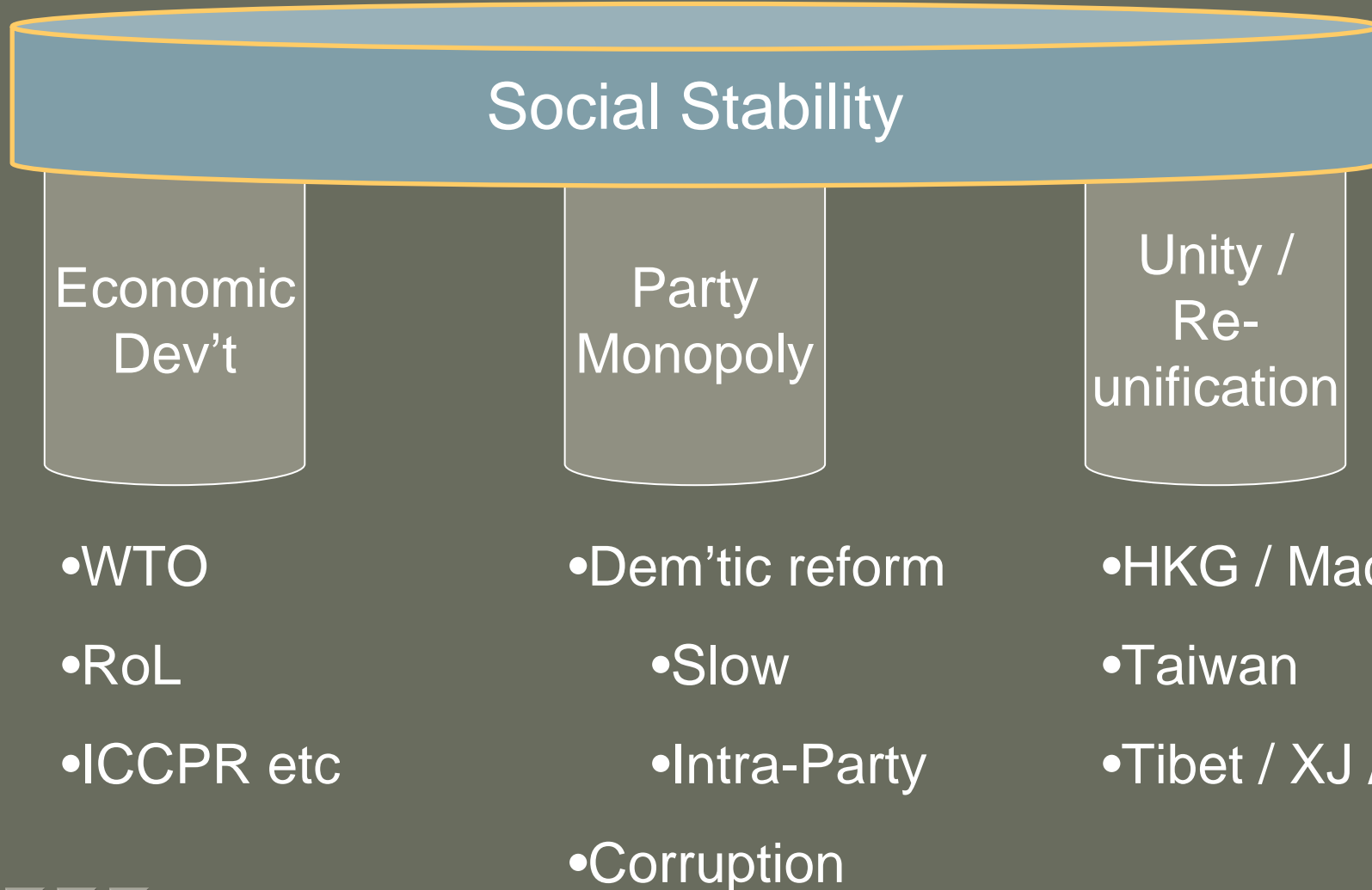
- More detailed and precise
- Resolving contradictions between documents issued:
 - SPC, SPP, MPS
- Separate Law on Evidence
- Witnesses
- Equality of Arms
 - Revise article 38 of the CPL and 306 of the CL
 - Lawyers equal access
 - Case file
- Presumption of innocence reformulated (A 12 CPL)
- Remove supervisory power of procuracy over judiciary?
- Related:
 - Administrative detention



Balancing Interests

- Social stability v. Social stability

Balancing Interests



Ambiguity-Conflict

<i>Ambiguity:</i> <i>Conflict:</i>	<i>Low</i>	<i>High</i>
<i>Low</i>	Admin. implementation - Resources	Political implementation - Power
<i>High</i>	Experimental implementation - Contextual conditions	Symbolic implementation - Coalition Strength

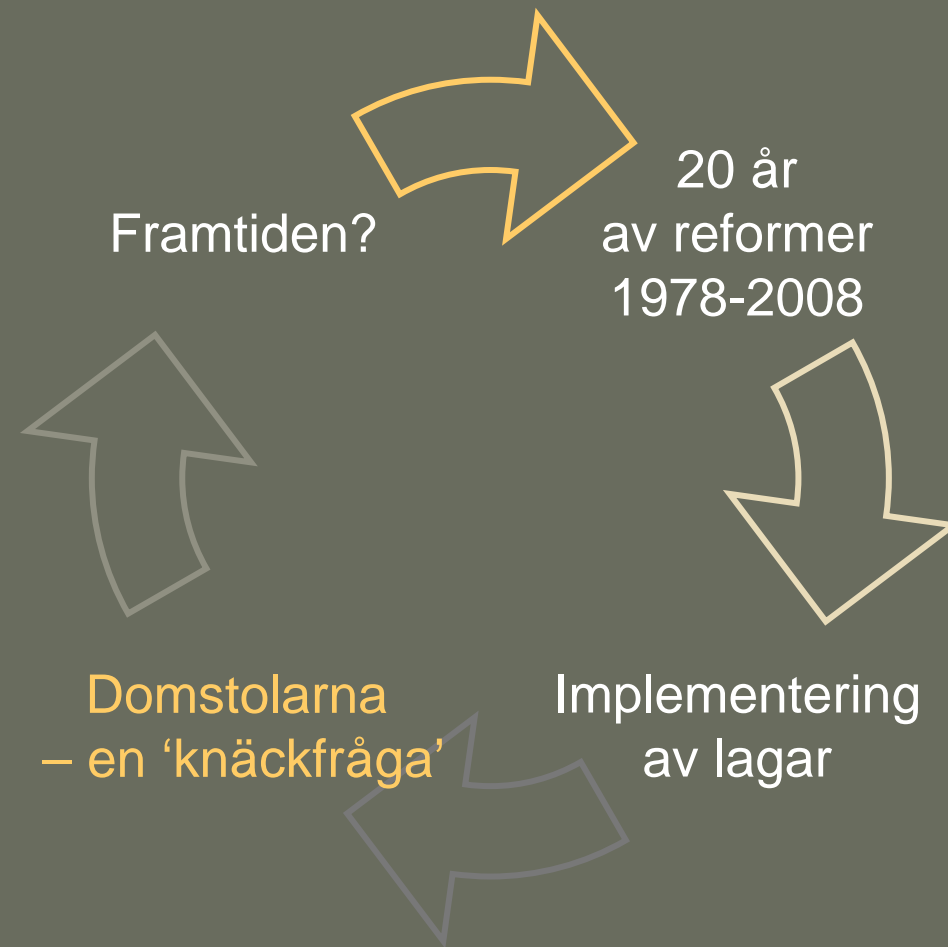
Conflict – Legitimacy

Ambiguity – Incentives (focus)



Rationale?

- Adjusting to local desires
- Adjusting to local situations
- Symbolic to please higher ups
- Inability
 - Poor drafting
 - Weak implementation mechanisms
- Social stability



Judicial independence – New to China?

“... no occidental mind can exactly fathom either the "how" or the "why" of the Chinese courts, or for that matter, any other institution or practice . . . the practice of administering justice in China no more follows the theory thereof than the practice of operating a bicycle carries out the theory of internal combustion engines.

- Roy M LOCKENOUR, *The Chinese Court System*, V (No 1, November) Temple Law Quarterly 253-259, 1930 , p 253.

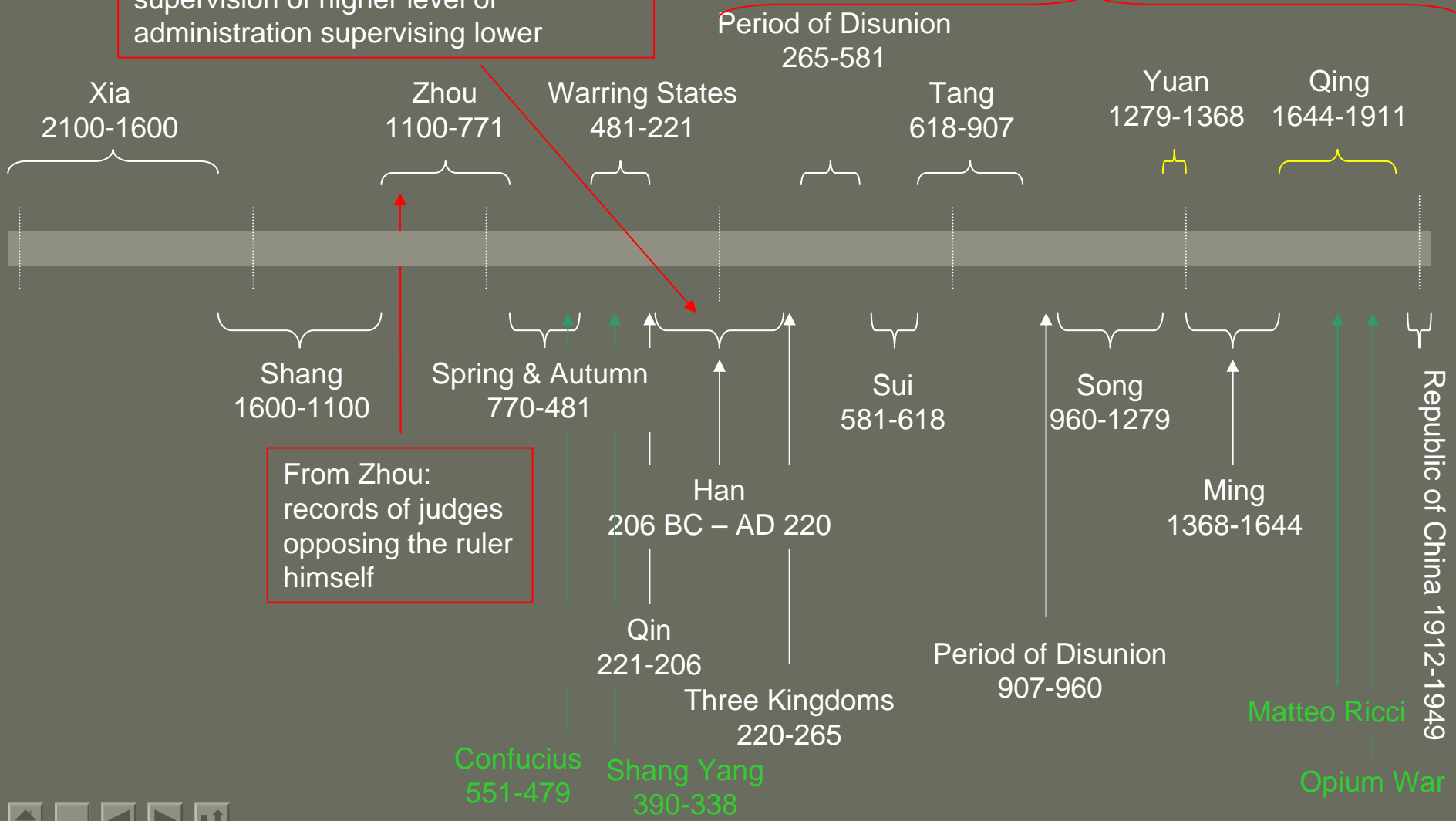


Domstolsförhandling i ett mandarins.

Judicial Independence

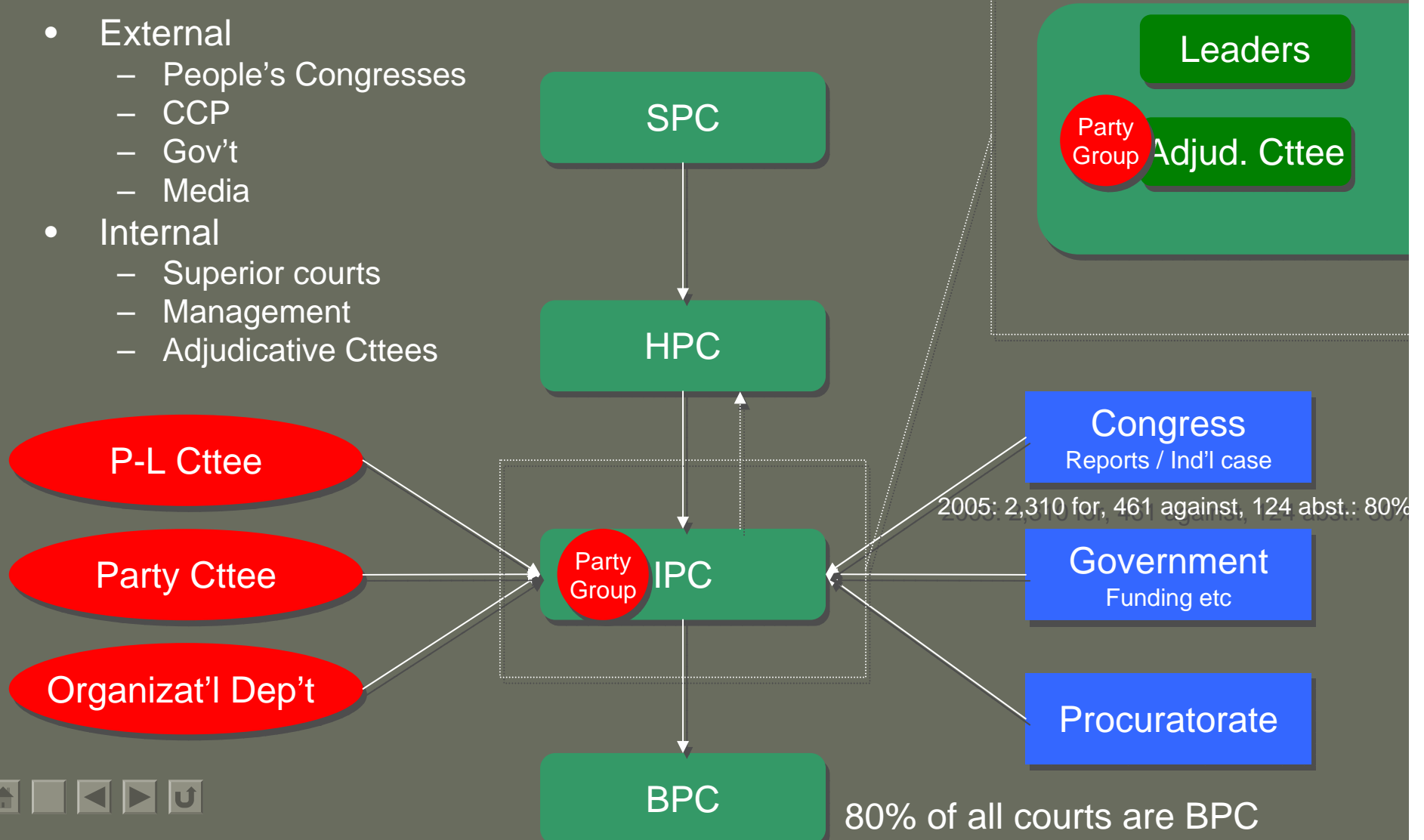
Han Dynasty commencement of supervision of higher level of administration supervising lower

The last 2000 years have seen division of tasks between ministries



Control & Supervision of the Courts

- External
 - People's Congresses
 - CCP
 - Gov't
 - Media
- Internal
 - Superior courts
 - Management
 - Adjudicative Cttees



Renovating the Judicial System



人民法官之歌

1=F $\frac{2}{4}$

许德林 词曲

进行曲速度 坚定地自豪地 J = 108

(5̣·5̣ || 1̣ - | 1̣ 3̣ 1̣ 3̣ | 5̣ - | 5̣ 5̣·5̣ | 1̣ - | 1̣ 3̣ 1̣ 3̣ | 6̣ - |
 6̣ 4̣ 5̣ 6̣ 7̣ | 1̣·6̣ 5̣ 6̣ | 5̣·3̣ 2̣ 3̣ | 1̣ 5̣ 5̣ 5̣ 5̣ | 1̣ 5̣ 5̣ 5̣ 5̣) | 1̣ 1̣·1̣ |

将 思 诚

1̣ 5̣ | 5̣ 5̣ 5̣ 5̣ 6̣ | 5̣ - | 6̣ 6̣·6̣ | 5̣ 3̣ | 2̣ 2̣ 2̣ 2̣ 3̣ | 2̣ - |
 铸 进 庄 严 的 国 徽， 用 公 正 架 起 金 色 的 天 平。

1̣ 1̣ 1̣ 1̣ 1̣ | 1̣ 5̣ | 5̣ 5̣ 4̣ 5̣ | 6̣ 1̣ | 5̣·1̣ 1̣ 6̣ | 5̣ 3̣ | 5̣ 5̣ 2̣ 3̣ |
 法 制 建 设 的 路 上 开 拓 奋 进， 法 律 春 风 吹 遍 城 市 乡

1̣ 0 | 6̣·6̣ | 6̣ 3̣ | 2̣ 2̣ 2̣ 1̣ | 6̣ - | 2̣ 2̣ 2̣ 6̣ | 1̣ 2̣ | 3̣ - |
 村。(女) 明 察 秋 毫 去 伪 存 真 是 我 们 的 义 务，
 (女) 忠 于 法 律 严 肃 执 法 是 我 们 的 天 职。

3̣ - | 5̣·5̣ | 3̣ 5̣ | 6̣ 6̣ 6̣ 5̣ | 3̣ - | 2̣ 2̣ 2̣ 1̣ | 2̣ 6̣ 5̣ | 5̣ - |
 (男 声) 怒 恶 扬 善 匡 扶 正 义， 是 我 们 的 使 命，
 (男 声) 为 人 民 服 务 无 私 奉 献， 是 我 们 的 奋 斗 目 标。

[5̣ 5̣ 6̣ | 1̣·1̣ | 1̣ - | 6̣ 6̣ 6̣ 5̣ | 4̣ 4̣ 4̣ 5̣ | 6̣ - | 6̣ 5̣ 6̣ |
 (合) 啊！ 自 豪 吧 共 和 国 的 人 民 法 官， 啊！
 0 2̣ 3̣ | 3̣·3̣ | 3̣ - | 4̣ 4̣ 4̣ 3̣ | 2̣ 2̣ 2̣ 3̣ | 4̣ - | 4̣ 2̣ 3̣ |

[1̣·1̣ | 1̣ - | 6̣ 6̣ 6̣ 5̣ | 4̣ 4̣ 5̣ 6̣ | 2̣ - | 2̣ - | 6̣ 6̣ 6̣ 5̣ |
 自 豪 吧 共 和 国 的 人 民 法 官， 光 荣 属 于
 3̣·3̣ | 3̣ - | 4̣ 4̣ 4̣ 3̣ | 2̣ 2̣ 2̣ 1̣ | 7̣ - | 7̣ - | 6̣ 6̣ 6̣ 5̣ |

[1̣ 2̣ 3̣ 0 | 2̣·2̣ 2̣ 1̣ | 2̣ 3̣ 5̣ 0 | 6̣·5̣ | 2̣·2̣ 3̣ | 1̣ - | 1̣ (5̣·5̣ |
 我 们， 光 荣 属 于 祖 国 光 荣 属 于 人 民！
 6̣ 7̣ 1̣ 0 | 6̣·6̣ 6̣ 6̣ | 7̣ 1̣ 2̣ 0 | 4̣·2̣ | 7̣·7̣ 5̣ | 1̣ - | 1̣ 0 ||

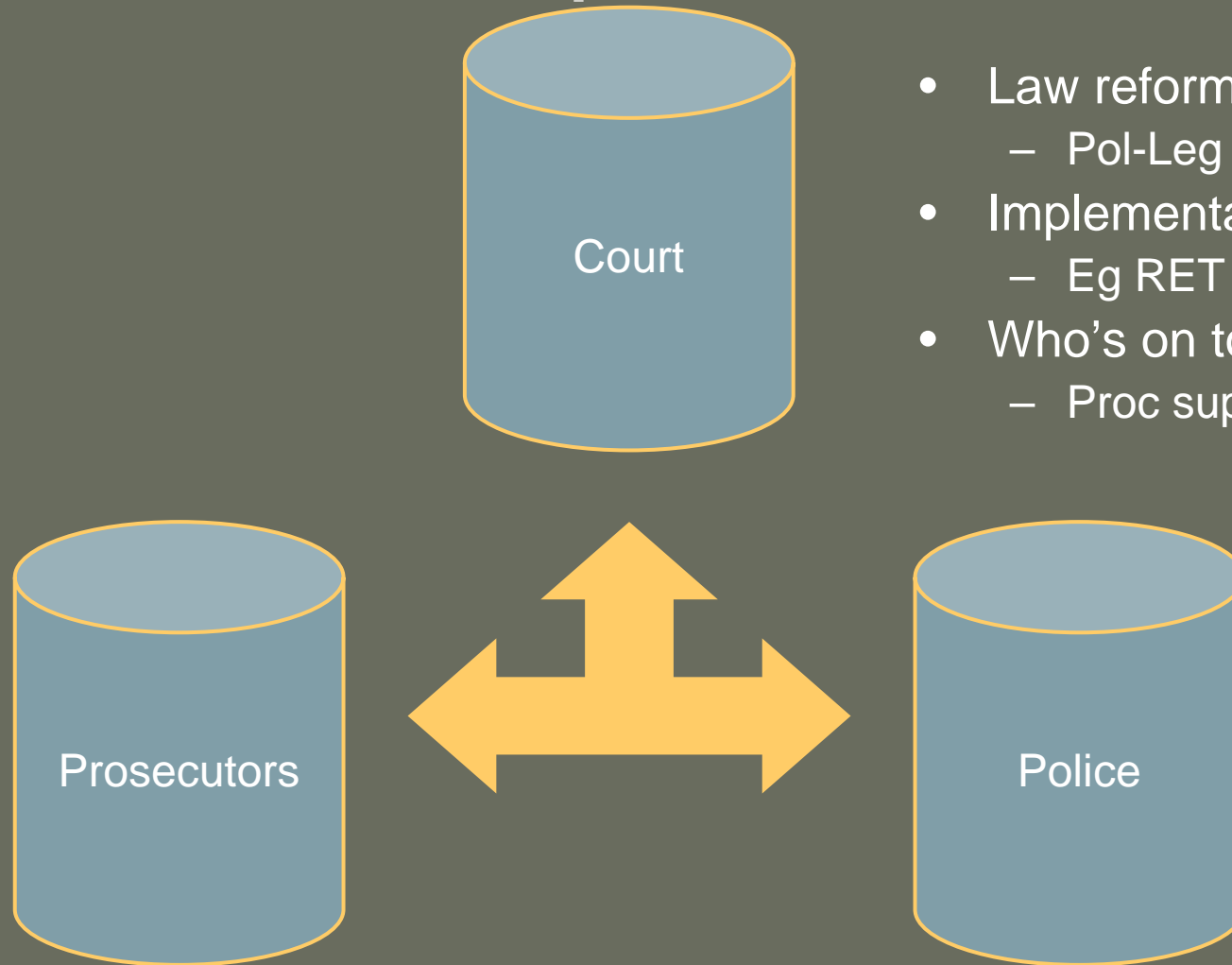
[1̣ - | 1̣ - | 6̣·6̣ | 5̣ 3̣ | 5̣ - | 6̣ 7̣ | 1̣ - | 1̣ - | 1̣ 0 ||
 人 民 光 荣 属 于 人 民！
 1̣ - | 1̣ - | 4̣·4̣ | 3̣ 1̣ | 2̣ - | 4̣ 5̣ | 3̣ - | 3̣ - | 3̣ 0 ||



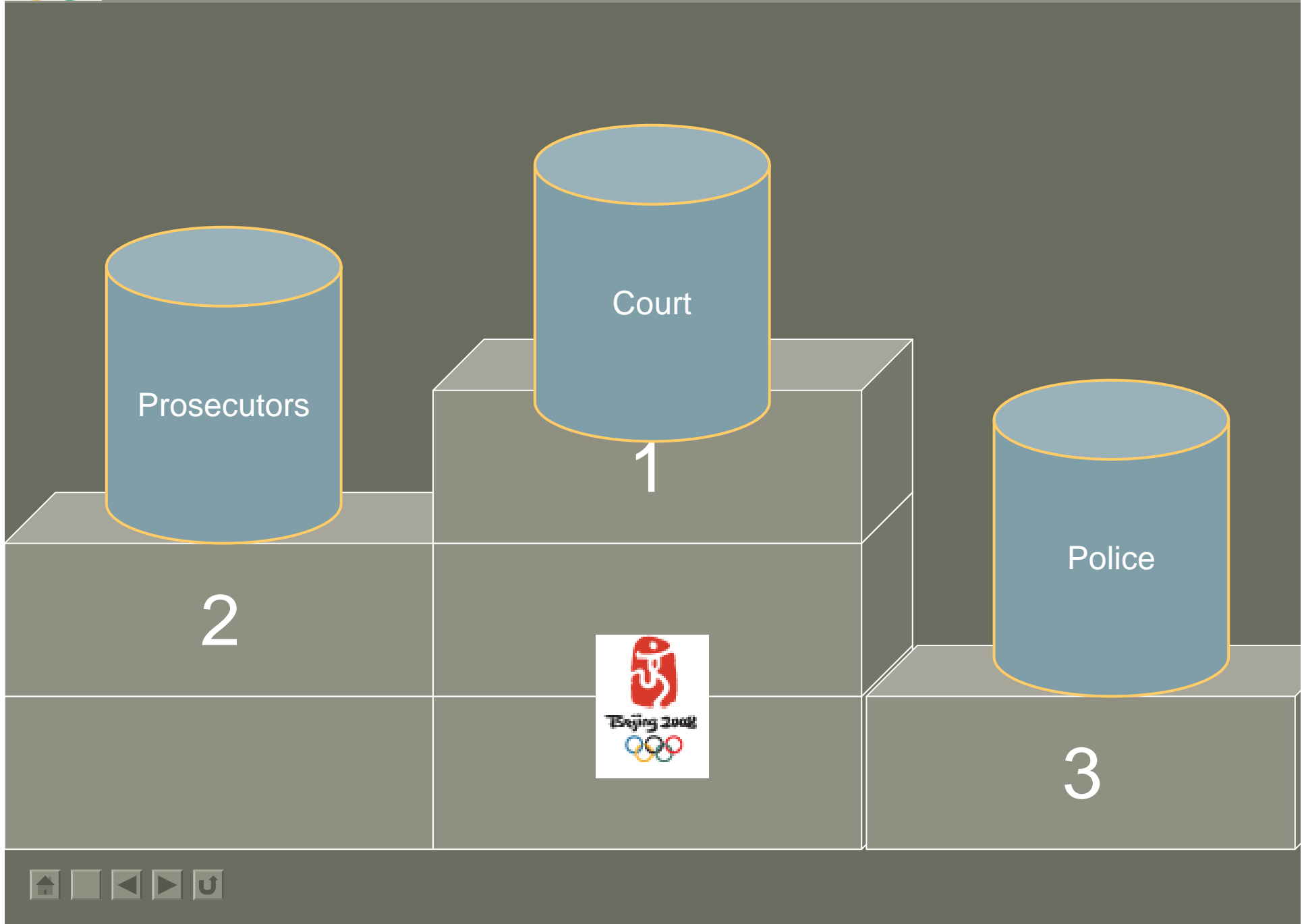


江苏银行股份有限公司挂牌上市人南京黄浦区
银行股份有限公司南京分行其他受托合同
银行一家由于输入错误现在改在二零零四
年十二月九日上午十二时在南京挂牌上市
本行定于二零零四年十一月十八日下午
二时在南京挂牌上市人南京黄浦区
北电子科技股份有限公司挂牌上市人南京黄浦区
南京黄浦区

Competition



- Law reform
 - Pol-Leg Cttee
- Implementation
 - Eg RET
- Who's on top?
 - Proc supervision



SPC Chief Justice, Xiao Yang

Report to the NPC March 2008

- Social stability
- Continued reform
- etc



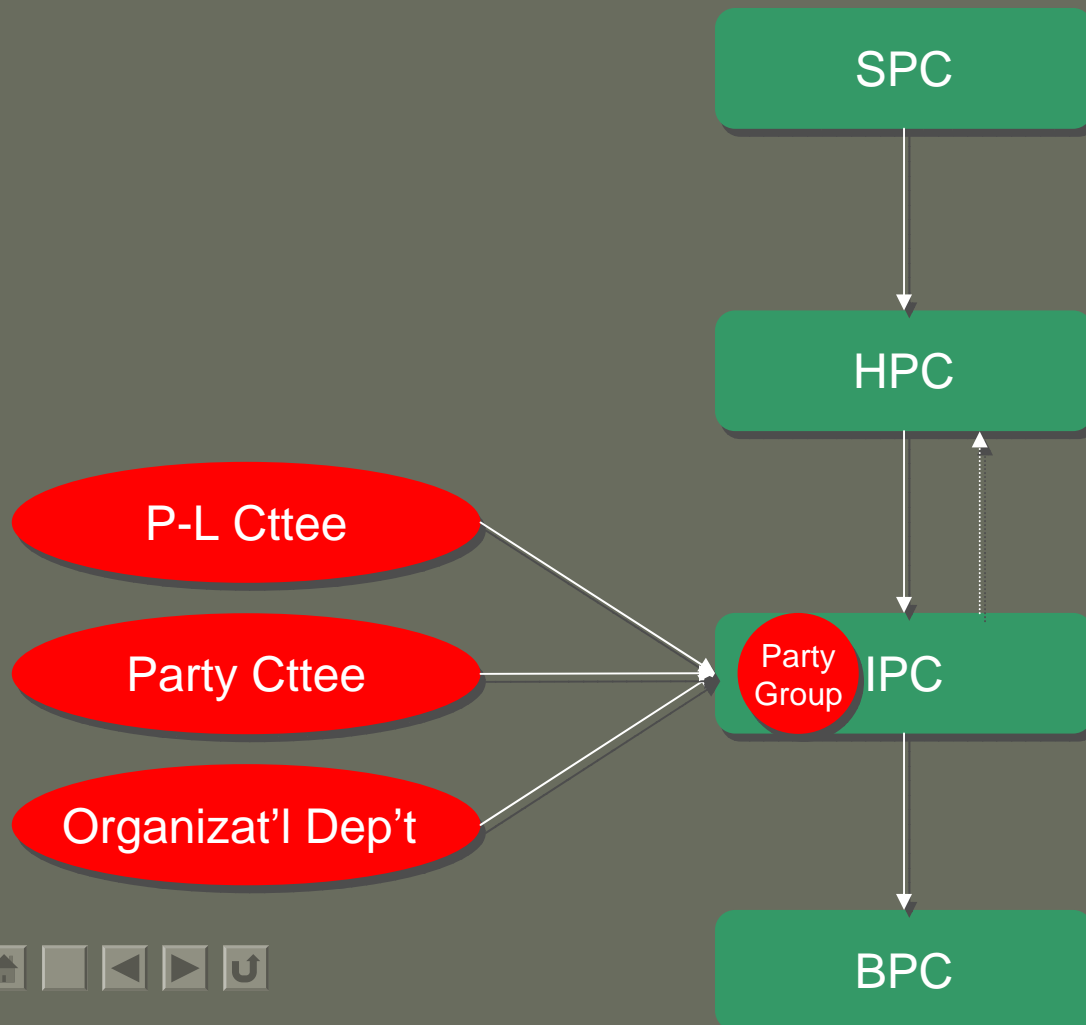
SPC Chief Justice, Wang Shengjun

From Spring 2008

- Lawyer v Politician
- Former S-G of CCP
Pol-Legal Cttee
- SPC Strongest pro-
Reform
 - Stronger backing?



Control & Supervision of the Courts



Party v Courts



NPC



Party

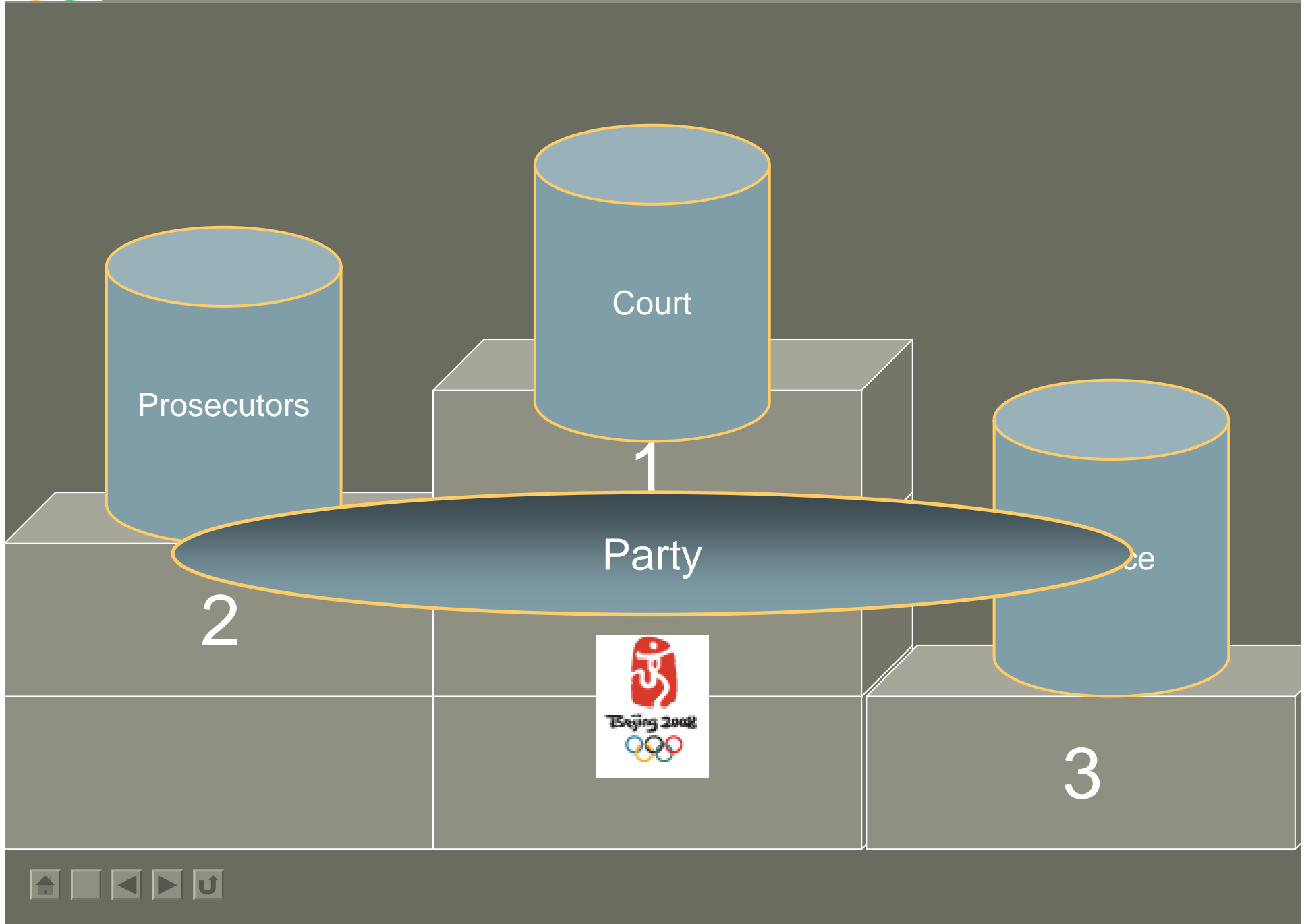
SPC Reclaiming Control

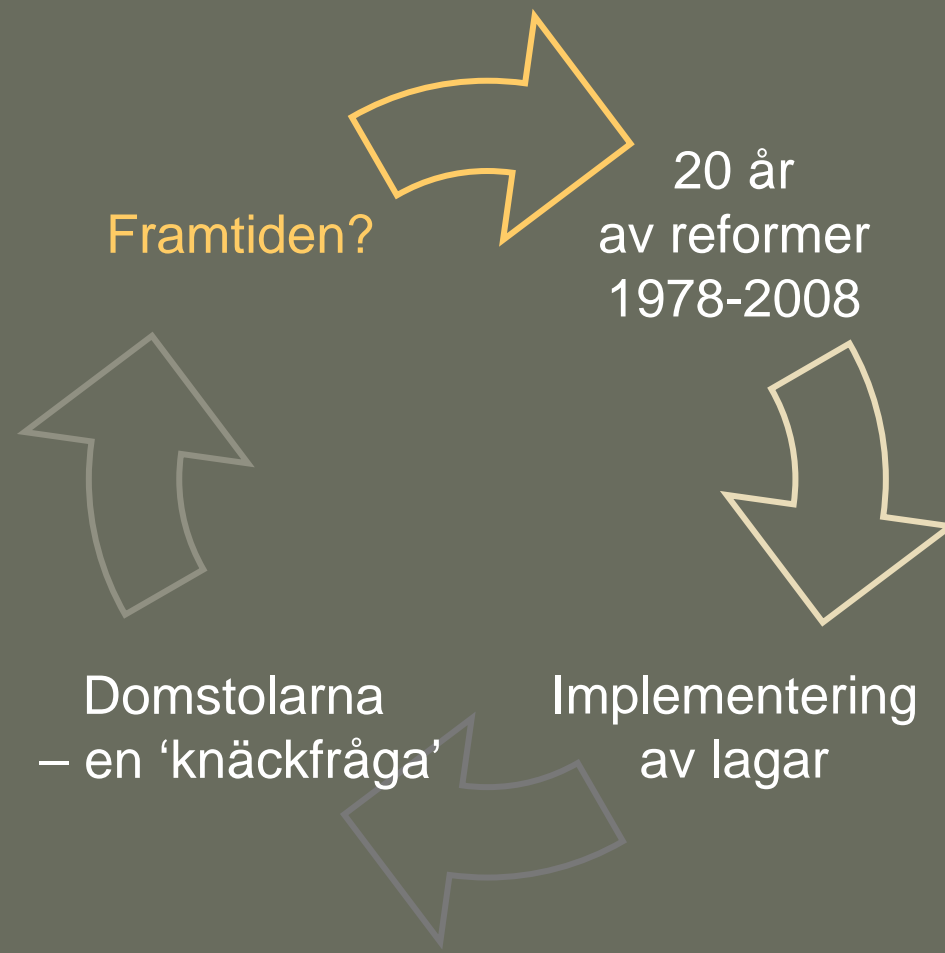
- Provincial high courts used to review over 90 percent of the death sentences handed down in China
 - 1980 Shifted to provincial high courts
 - CL A 48 + CPL A 199 & A 202 unequivocally require SPC approval of all death sentences
- 2007
 - Three criminal tribunals
 - Model for centralization?

Courts Performance

- **Urban** v Rural
- **Commercial** v Socio-Economic
- **Administrative** v Constitutional law





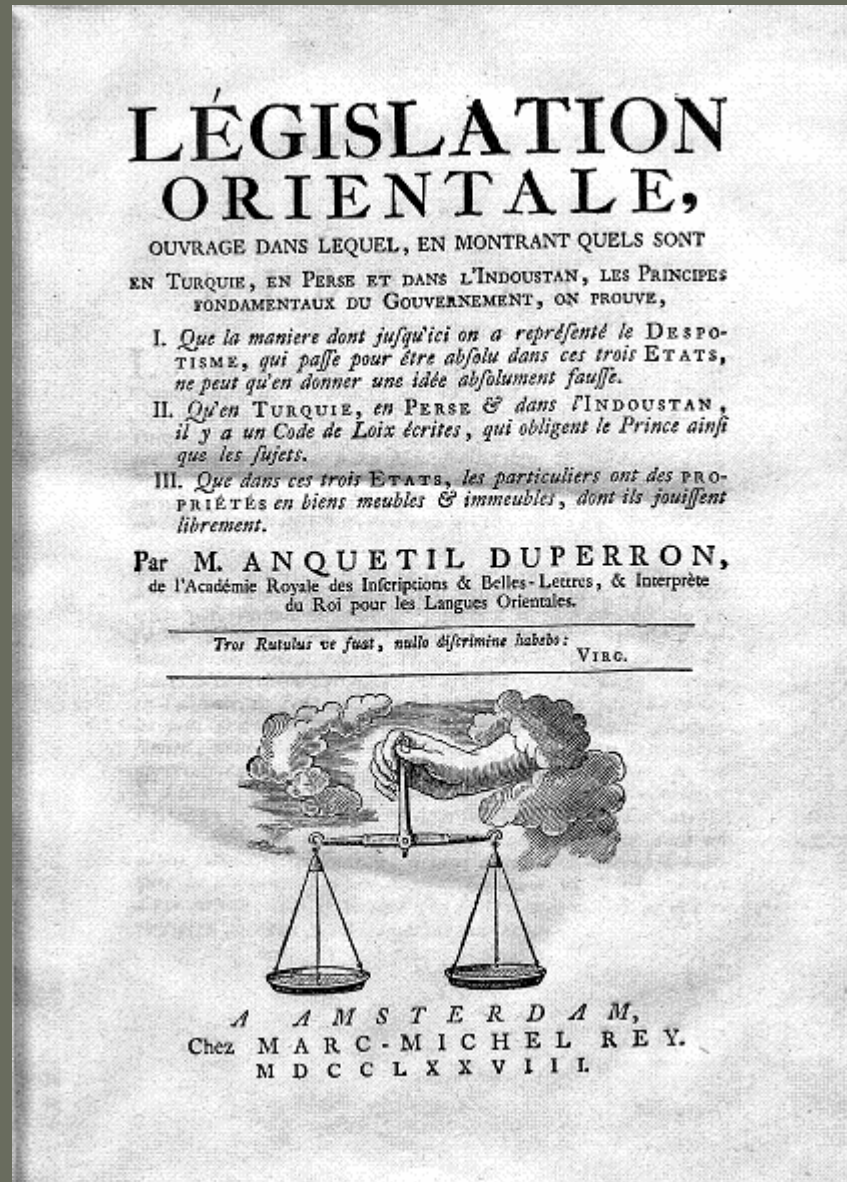


Avoid Legal orientalism

- Euro-centrism
- Described in contrast to 'Western' standards
- Selective emphasis on differences



Fig. 8. An American painter's depiction of the beautiful Japanese model as devil is indicative of American misunderstanding of Japan's true self. The title is "The Distorted Brush of the Devil of Suspicion." *Taiyō* 27, no. 7 (1921): 140.



- Open Attitude
 - Peut être sur certains points d'administration les Européens auroient-ils besoin de prendre leçon des Orientaux?
- 1778

Solution?



The Future?

