



CHINA'S LEGAL SYSTEM

BY CHENG LI AND JORDAN LEE

THE CHINESE GOVERNMENT'S SUDDEN detainment of the famous lawyer Xu Zhiyong in July 2009 sent shock waves through the international community and rattled lawyers and scholars invested in China's evolving legal system. Dr. Xu, a lawyer and activist renowned for his work on behalf of China's most disadvantaged and his commitment to advancing the rule of law in China, was hardly a legal gadfly out to provoke the Chinese Communist Party (CCP) or challenge one-party rule. Quite the contrary, he had a clear record of support for incremental reform, both in his litigation that aimed at the enforcement of guarantees already enumerated in the Chinese constitution, and because he had run for and won a

seat in his local People's Congress in Beijing's Haidian District (one of a handful of contested elections nationwide). He was also roundly considered to be a man of strong ideals and impeccable integrity, and this sterling reputation made the grounds of his formal arrest, "suspicion of evading taxes," very difficult to swallow.

What can Xu Zhiyong's experience tell us about the state of legal reform in China? In the first instance, it is a blunt reminder that "rule by law" in China (or put less charitably, "rule of man") has yet to evolve into substantive rule of law. It is also a stern admonition to the country's expanding lawyerly ranks: steer clear of politically sensitive cases, the kind that Xu and other "rights protection

**Participation
and
Democratisation**

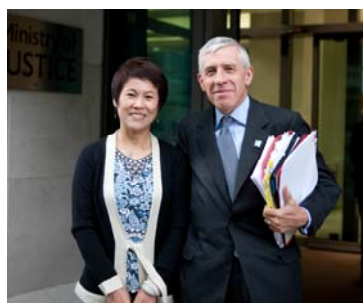
Shaun Breslin

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**Worshipping
China's Cart
God**

Calum Macleod

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lawyers” (*weiquan lüshi*) find alluring, or face the wrath of the state. That lawyers and activists are sensitive to this kind of overt political pressure underscores the uneven development of China’s legal system and its continued subordination to the whims of powerful political actors.

This pessimistic view, however, overlooks other more encouraging trends in Chinese legal reform. Indeed, the mere fact that Chinese authorities felt the need to foist a façade of legality upon Xu’s case suggests the extent to which legal norms have already permeated Chinese society. After listening to their leaders stress the importance of law and order for thirty years, the Chinese public has come to expect, at the very least, a thin patina of legal reasoning to justify state actions. Moreover, while Xu’s prosecution is certainly a striking, if altogether too familiar, instance of an authoritarian state arbitrarily wielding extralegal power, it is taking place against a backdrop of decades of slow but steady improvements to the legal system. In addition to the gradual accumulation of workaday laws and enforcement procedures, a mundane but important process in its own right, four key trends bode well for the future of China’s legal system: the steady accumulation of China’s body of laws, the blistering growth of the legal profession in general, its increasing economic autonomy and sense of professionalism, and the rapidly rising number of Chinese political elites, including some senior CCP leaders, who received their academic training in law.

Laying the Foundation for China’s Legal System

Like many policies announced after Deng Xiaoping assumed power three decades ago, legal reform began as an open-ended process. With the total anarchy of the Cultural Revolution still fresh in their minds, delegates to the December 1978 Third Plenum of the 11th Central Committee boldly declared: “there must be laws to follow, these laws must be observed, they must be strictly enforced and lawbreakers must be dealt with.” In subsequent years, as the party began the market transition process still underway, the “laws to follow” category rapidly grew in number. By March 2009, China’s body of laws included approximately 231 individual laws, 600 administrative regulations, 7,000 local rules and regulations, 600 regulations issued by autonomous regions, and a sizable number of departmental rules governing more quotidian affairs – a far cry from the legal vacuum of Mao’s China. Admittedly, many of these laws are unclearly implemented or insufficiently enforced, but they nonetheless represent an important foundation on which a more effective system can be built over time.

The Remarkable Growth of China’s Legal Profession

Nearly keeping pace with this rapid emergence of a Chinese body of law is a burgeoning legal profession. In the early 1980s there were only 3,000 lawyers in a country of over one billion people. By the end of 2008 this group had expanded 52-fold to 157,000 licensed lawyers and 14,000 registered law firms. If law school enrolment is any indication – in 2009 China’s 620 law schools will produce roughly 100,000 law graduates – these numbers will continue to swell in the coming years. The following factoid is emblematic of the tectonic shift currently underway in the profession: in 2004, Peking University Law School’s enrollment of over 20,000 students – 217 Ph.D. candidates,



Front page: graduates from China University of Political Science and Law, Beijing; above, hat-throwing graduation ceremony at Northwest University of Politics and Law, Xi’an

1,128 master’s degree students, 704 undergraduates, 1,200 part-time graduate students, and 17,044 part-time undergraduates – was roughly equal to the total number of law students the institution had trained over the preceding fifty years.

The Legal Profession’s Growing Autonomy

Not only are lawyers more and more numerous; they also boast an unprecedented level of economic and political autonomy and an increasing level of professionalization. Most basically, Chinese lawyers are no longer considered state officials, and are no longer on the state’s payroll. The emergence of bar associations, generously remunerative positions in law firms, and an uptick in public esteem for the profession have also lent legal practitioners greater confidence and autonomy. Although many are content to play the role the CCP prescribed for them – to lubricate market transactions and buttress a legal system meant to absorb more of the increasing number (and variety) of disputes in society – it seems almost inevitable that the profession as a whole will develop a sense of mutual self-interest that favours greater institutionalization of the rule of law. The small but influential coterie of “rights protection” lawyers has already made great strides in this direction. In 2003, for example, after a graphic designer from Hubei province named Sun Zhigang was beaten to death in Guangzhou after being detained for not carrying a registration permit, Xu Zhiyong successfully petitioned the government to repeal the “custody and repatriation” laws that required the permit in the first place. Chen Guangcheng and Hu Jia, two activists who attracted international attention like Xu before being detained and prosecuted, also managed to amass a series of small victories. As the legal professional develops in these different directions, making a deep imprint in society, the CCP finds itself facing unprecedented challenges from this new group in a rapidly changing society.

Political Power Elites: From Technocrats to Lawyers

During a visit to China in 1998, in a meeting with his Chinese hosts, President Bill Clinton is rumored to have exclaimed, "You have too many engineers and we have too many lawyers... let's trade!" Although clearly said in jest, Clinton's witticism conjures up an important analytical approach to the study of political elites. An important theoretical proposition in the Western social science literature on political elites is that the occupational identities of political leaders usually has some bearing on other characteristics of their country's political system.

Naturally, if political elites happen to have a personal or professional interest in a certain policy area, they will strive to leave a legacy of strong leadership in that area. Technocrats, for example, have been known to devote special attention to economic growth and technological development, subjects they studied early in life or centered their careers around. This is manifestly the case for the engineer-dominated fourth generation of PRC leadership still in power. It stands to reason that the upcoming fifth generation, populated as it is by a higher percentage of lawyers and social scientists, may seek to have an impact on the domains of political and legal reform.

According to a detailed look at the biographies of China's senior leadership, the percentage of leaders with a background in law climbed from 3.5% in the fourth generation to 9.3% in the fifth generation. More significantly, many prominent members of the fifth generation studied law as undergraduates or graduate

students, including Vice President Xi Jinping, Executive Vice Premier Li Keqiang, Director of the CCP Organization Department Li Yuanchao, Director of the CCP Policy Research Center Wang Huning, Minister of Justice Wu Aiyang, Governor of Hunan Zhou Qiang, Governor of Shaanxi Yuan Chunqing, the central government's chief representative in Hong Kong Peng Qinghua, and Procurator-General Cao Jianming. These leaders will run the country for the most of the next decade and beyond. Over the last decade a law degree has become a valuable credential for aspiring political leaders within the CCP, and the potential consequences of this development for the Chinese political system deserve greater scholarly attention.

The example of Li Keqiang, a likely successor to Premier Wen Jiabao, is instructive. He was a member of the famous class of 1982, the first college class formed when universities reopened after the Cultural Revolution and whose admissions criteria replaced political loyalty, ideological purity, and class background with a meritocratic national exam. These years formed an exciting period marked by an enthusiasm among Chinese youth for absorbing liberal Western ideas. Li enrolled in the Department of Law at Beijing University, where he actively participated in public lectures and debates organized by a variety of interdisciplinary study groups and faculty members and studied under Professor Gong Xiangrui, a well-known British-educated expert on Western political and administrative systems. Li was particularly interested in foreign constitutional law and comparative government, and published articles on legal development, scientific management, rural economic reform, poverty alleviation, and other socioeconomic issues of the day. Although Xi Jinping, Hu Jintao's likely successor, has a more honorific degree in law, it is reasonable to expect that as the percentage of senior leadership with specialized training in law increases, the likelihood that the party will focus greater attention on the legal system will also increase.

What lies ahead

Xu Zhiyong's current travails are a reminder that even if China's legal system has come a long way in a short period of time, neither its most vocal votaries nor the CCP can afford to rest on their laurels. The state has since released Xu, bowing to domestic and international pressure. As lawyers continue to push the envelope in society and politicians with legal backgrounds proliferate within the party's senior leadership, legal reform is likely to become an increasingly pressing issue. That a similar phenomenon occurred in the 1980s in both Taiwan and South Korea, and that both then made successful transitions to democracy, is ample food for thought. The paradoxical relationship between the demands of advanced legal reform and continued CCP interference in the legal system and harsh treatment of the country's most independent lawyers and NGO activists is a defining characteristic of present-day Chinese politics. China's future will hinge, to a large degree, on whether the continued development of constitutionalism and the rule of law can resolve this impasse.

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Gordon Brown and China's President, Hu Jintao