

Imposing artificial 'stability' at the expense of justice can no longer work for a changing China, writes **Jerome A. Cohen**

Law for the times

Only enlightened leadership will move China towards a rule of law. Bottom-up cries for justice and independent courts increase daily. Will the top eventually respond with structural reform rather than dictatorial repression? Can China's deeply conservative political elite, so determined to impose artificial "stability" on a dynamic nation, produce leaders with the vision and vigour to press for a legal system in keeping with the country's economic and social progress and its world stature?

The Communist Party's current attack on human rights lawyers and law-reforming non-governmental organisations exemplifies the problem. Lawyers lead the battle to implement the constitutional rights and statutory protections that the party has promulgated in its quest for legitimacy. The battle has become increasingly intense as the party seeks to preserve its monopoly of power against multiple challengers who have been disappointed by their inability to obtain relief from the truncated, authoritarian and inadequate legal system established by Deng Xiaoping (鄧小平) after the Cultural Revolution.

Activist lawyers have thus become the battle's first casualties. Yet they are closer to the people than party officials and represent growing popular demands for justice and for a court system that is honest, fair and competent, untainted by corruption, political instructions, local protectionism and personal connections. Party leaders, however, refuse to tolerate the development of an autonomous legal profession and impartial courts. Instead, they have resurrected the "mass line" of the pre-1949 communist "liberated areas" that glorified political justice.

Plainly, the legal institutions and "spirit" of rural, revolutionary China seven decades ago cannot respond to today's demands or those of economic development and international co-operation. China now needs leaders who can take on the huge task of systemic legal reform with the same dynamism that former premier Zhu Rongji (朱鎔基) devoted to economic modernisation. Is it far-fetched to think such leaders might appear?

Chairman Mao Zedong (毛澤東) knew little about law and cared less. Deng understood a legal system's importance to economic development but believed in law under government rather than government under law. Neither faced the sophisticated demands of the 21st century. Vice-President Xi Jinping (習近平) and Vice-Premier Li Keqiang (李克強), slated to



assume the nation's helm in 2012, are well-educated and experienced administrators capable of appreciating the benefits that rule of law can confer on a changing China. Might they undertake this historic task?

The recently published memoir of the late premier and party general secretary Zhao Ziyang (趙紫陽) suggests that, had he not been toppled by the 1989 Tiananmen tragedy, he might have done the job. During the 1986-89 period, there were public hints that Zhao's hopes to separate the party from daily government administration included plans to eliminate party interference with judicial decision-making. Zhao's memoir indicates how far his thinking had evolved.

Zhao came to see that economic reform could not be sustained without political reform. Although he did not then wish to end the party's monopoly on power, he thought that "its method of governing had to change". As he told the then-Soviet president, Mikhail Gorbachev, even socialist countries should be governed not by "rule by men" but by "rule of law". Moreover, he thought that legislation should be enacted to gradually implement

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the rights enshrined in China's constitution, including media freedom – the handmaiden of the rule of law.

Zhao saw that an independent judiciary was essential. Without it, he wrote, "the courts could not judge a case with a disinterested attitude". Yet Zhao was stunned, even before the June 4 massacre, at the enormous opposition to such reform at every level of party leadership.

After his fall, Zhao's endless, lawless detention radicalised his views. He concluded that, without a multiparty, democratic, parliamentary system that featured an independent judiciary, China could never have a healthy market economy, curb corruption, reduce the gap

between rich and poor, and meet popular demands for reform.

Zhao's detention also showed him how arbitrary the administration of justice could be, even for the nation's highest officials. No legal process was ever applied to him, nor did the party elite follow party procedures in punishing him. Their accusations were factually distorted, and they decided his case in secret and without a fair hearing. Formal investigation of the accusations was never completed, and party officials refused to announce their decision and punishment even within party circles. They frequently lied to the public about his situation during the 16 years before his death, denying that he was under house arrest.

Zhao's fate may well deter would-be law reformers among the leadership. But unless someone steps forward, the very instability that present leaders fear is sure to intensify. To paraphrase Mao: "Sailing the seas depends upon the helmsman."

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