

China's legal system remains subservient to the communist party-state's Soviet principles, writes **Jerome A. Cohen**

# Law unto itself

“We need the stability of laws now more than ever,” Joseph Stalin said at the height of his infamous manipulation of the Soviet legal system to purge millions of political enemies.

In his recent annual report on the work of the Standing Committee of the National People's Congress, Wu Bangguo (吳邦國), its leader, announced that China had established “a socialist legal system with Chinese characteristics”. Wu, a prominent member of the Communist Party's Politburo, made it clear that the party will continue to prefer Mao to Montesquieu and reject the separation of powers and other Western-style institutions for placing government under law. His recitation of the scope and numbers of laws, regulations, interpretations and other norms that China has promulgated was designed to support his claim that there now exists “a complete set of laws covering all areas of social relations”. Yet what kind of legal system has the party built?

Recent events have reignited debate on this critical question among foreign government experts, journalists,

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businesspeople, social scientists and lawyers. Moreover, their Chinese counterparts – and Chinese lawmakers, police, prosecutors, judges and ordinary citizens caught up in the momentous, complex changes under way – are engaged in similar analysis, albeit in necessarily more muted fashion.

Wu emphasised that, while the problem of having no laws to follow had been largely resolved, the problems of compliance and enforcement were now more pronounced. The one statement in Wu's report that even critics can surely endorse is: “The vitality of the law is its implementation.” Yet, the ever-intensifying repression of petitioners, political activists, independent NGOs, internet bloggers, religious practitioners, those who seek to use the courts to alleviate a broad range of politically sensitive grievances, and the lawyers who help them, is being conducted contrary to good-faith application of even the existing limited legislative protections and,

increasingly, totally outside the legal system. The impressive legal environment that has been created to promote domestic economic progress and foreign trade, technology transfer and investment continues to play a positive role in China's development. When it comes to political and civil rights, however, the gap between law and practice is growing dangerously.

“A socialist legal system with Chinese characteristics” does not adequately describe the situation. It would be more accurate to say “a Chinese Communist political-legal system”. The system is undoubtedly Chinese, but so too is the very different legal system that has evolved in democratic Taiwan. The mainland system is clearly “socialist” in that it continues in many ways to embrace the Soviet legal system that Mao Zedong (毛澤東) imported and adapted to Chinese soil late in Stalin's reign.

People often overlook the continuing influence of the Soviet model in China long after the death of the USSR. The mainland Chinese legal system is still that of a “party-state” run on Leninist principles. When, beginning in 1978, Deng Xiaoping (鄧小平) revived the nation after the Cultural Revolution, liberalised the economy and opened China to the world, he essentially resurrected the Soviet legal model, both in terms of legislation and institutions applying the law.

Chinese law and institutions gradually became more sophisticated than the Soviet model to facilitate and reflect China's enormous economic accomplishments and consequent social changes. Spurred by a dramatic growth in legal education and research, demands for justice from an increasingly rights-conscious population and self-confidence acquired from experience, thousands of legal experts have pressed for greater autonomy in the operation of legal institutions, threatening the party leadership's monopoly of power.

Since the 17th Party Congress in 2007, we have witnessed the leadership's “push-back” in an effort to maintain absolute party domination of the legal system. A relatively small group of courageous, able lawyers has sought to challenge this new campaign for “social management”, which uses ideological appeals hearkening back to the party's pre-1949 control of rural “liberated areas” as well as the Confucian emphasis on “harmony” to justify what is now a police-dominated legal system.

The law continues to serve, imperfectly, the functions for which the party under Deng turned to it in 1978: symbolising legitimacy at home and abroad; establishing an efficient state apparatus and norms to control individual conduct



and guide economic development; promoting international business co-operation; settling disputes among the people and economic units; and providing basic protections against recurrence of the arbitrariness and chaos that had marked much of China's 20th-century experience before and during communist rule.

The problem now is that the regime has become a victim of its own economic success. Progress has spawned a more prosperous, educated and demanding society, and also many attendant economic and political tensions, including a large gap between rich and poor. Legal institutions have not made commensurate progress, and the party leadership's reaction to the multiplying signs of socio-political unrest and the perceived threats from foreign “colour” and “jasmine” revolutions is to engage in repression instead of reform.

This reliance on repression has given ever greater influence to the Party Central Committee's Political and Legislative Affairs Commission, led by former Minister of Public Security Zhou Yongkang (周永康),

and to the career party/police officials he has placed in charge of the legal system. That has led to a decline in professional legal considerations in the administration of justice and to greater repression of those lawyers who still seek to use the formal legal system on behalf of embattled and dissatisfied people and groups. It is also behind extra-legal institutional innovations in the form of new “social management” and “stability upholding” offices that, like the regular police, are charged with ferreting out “radical thoughts”, whether in the nation's humblest townships or proudest universities. They are part of an evolving, pervasive “people's warfare” public security apparatus that – at least for political and civil rights – is the reality of “a socialist legal system with Chinese characteristics”.

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