

Happy returns?

Jerome A. Cohen says China's legislative reform is floundering just as the Communist Party must confront the costs of its remarkable economic success. How much longer can repression work?

On July 1, the Chinese Communist Party's 90th birthday, many will celebrate its extraordinary economic achievements, and the political and military power they sustain. Even human rights critics acknowledge China's impressive progress in health, housing and education. Greater openness at home and expanding global exchange are also helping to transform an increasingly urban people into a more sophisticated society. China has indeed "stood up".

During its 10th decade, however, the costs of the party's success are likely to become more apparent. Massive official corruption and the growing gap between rich and poor are eroding communist legitimacy, and environmental disasters loom ever larger. The struggle over land is spawning social conflicts daily, and management-labour tensions have been rising rapidly. The number and breadth of mass protests cry out for a governmental system that will effectively respond to widespread grievances.

The party's refusal to create democratic institutions and credible political mechanisms for resolving social conflicts has led many Chinese to turn to the courts, but the result often proves disappointing. First, the party sometimes prohibits courts from handling disputes. Second, it uses its influence over judges to preordain the results in many "sensitive" cases. Third, despite significant advances in legal education, many Chinese judges lack professional competence. Fourth, personal relationships, political connections, corruption and the felt need to protect local interests often distort judicial decision-making. Finally, substantial litigation requires lawyers, but, in less developed areas, lawyers are few, and everywhere they have to avoid offending local authorities.

Disappointed litigants generally turn to the system for petitioning government agencies, which rarely yields a happy ending. The internet and social media offer important outlets for venting frustrations, if not resolving disputes, but censorship is thorough, and those who cross an unclear line are punished severely. Indeed, the party's reaction – to what it considers an objectionable exercise of the political and religious freedoms protected in the constitution – continues to be repression.

Repression requires punishment, causing the leadership's increasing reliance on the Central Committee's political and legislative affairs committee, which co-ordinates the ministries of public security, state security and justice, as well as the courts and prosecutors. This committee also influences, via the Politburo, the legislative norms that regulate the administration of criminal punishment.

Since 1979, when the party allowed the National People's Congress to adopt the first codes of criminal law and procedure after three decades of lawlessness, criminal legislation has

been undergoing fitful changes as law enforcers struggle with reformers to develop mutually acceptable measures for an effective, yet fair, punishment process.

Earlier this decade, the police successfully resisted an attempt by influential scholars and lawyers to persuade the NPC to abolish "re-education through labour", which confers virtually unfettered power on the police to incarcerate people for up to several years of allegedly "non-criminal" punishment. Yet law reformers have persisted in their efforts to make progress wherever possible, despite the now more conservative political climate.

Last year, for example, China's legal institutions, in the hope of combating endemic police torture of suspects, jointly promulgated procedures and standards for the exclusion of illegally obtained evidence in criminal prosecutions. In order to curb unfairness and inequality in criminal sentences, they later issued "guiding opinions" prescribing procedures and criteria for limiting judicial discretion. This year, the NPC reduced from 68 to 55 the number of offences punishable by death.

It has also scheduled an overhaul of the Criminal Procedure Law, last comprehensively revised in 1996. Revisions may confirm defence lawyers' rights to have unrestricted access to detained clients and to conduct their own investigations – rights that were granted by the Law on Lawyers but denied by police. There are

also reports that the NPC might establish the principle of the presumption of innocence and even a suspect's right to silence during police interrogation, a momentous reform.

Nevertheless, experience cautions against optimism. With the backing of party leaders, China's police have proved formidable opponents of legislative reform. They have also turned their legislative defeats into practical victories by failing to implement norms they oppose, distorting legislative exceptions and manipulating legal concepts to defeat legislative intent.

In some cases, police have gone outside the already permissive criminal justice and administrative punishment systems. Building on precedents such as their mistreatment of many Falun Gong adherents and their confinement of petitioners in "black jails", they now simply kidnap certain lawyers, hold them in undisclosed locations and subject them to torture that compels written confessions and guaran-



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tees of co-operation. When released, these victims face continued monitoring and control.

Apart from the rights lawyer Gao Zhisheng (高智晟), perhaps the most egregious known example of these lawless abuses has been that of the blind "barefoot lawyer" Chen Guangcheng (陳光誠) and his wife, Yuan Weijing. Shandong (山東) police are not content with the slow death that Chen faces after over four years of imprisonment, long-untreated illness, inadequate diet and the isolation inflicted since his return home. A letter recently smuggled out reveals that, in both February and March, dozens of police officers and thugs led by a deputy party secretary broke into their farmhouse, beat Chen unconscious and left Yuan crippled, stripping them of virtually all remaining possessions including their five-year-old daughter's books and toys. At the letter's end, Yuan expresses the hope that the couple's Beijing lawyer friends can initiate prosecution of those who assaulted and robbed them. She could not know that all the lawyers she named are already suffering various forms of police restraint.

Is this the way the party wants to celebrate its birthday?

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