

Champion of change

Jerome A. Cohen says legislative revisions aside, the rule of law in China won't improve without a charismatic reformer defending the cause, and therein may lie the unrecognised tragedy of Bo Xilai's downfall

Last week, within 24 hours, China's National People's Congress enacted a revised Criminal Procedure Law and its Communist Party ousted a rising political star. Superficially, the two events seemed unconnected. Yet they are linked.

Many Chinese legal experts took grim satisfaction at Bo Xilai's (薄熙來) removal from office as party leader of Chongqing (重慶). Bo, after all, had created nostalgia for the national nightmare that was the Cultural Revolution, a decade-long, lawless trampling on the lives of over 100 million people. Even more obnoxious to Chinese law reformers was Bo's endorsement of Chongqing police, prosecutors and judges who violated the rights of suspects while pursuing his campaign to snuff out alleged organised crime and corruption. Bo and his henchman, public security chief Wang Lijun (王立軍), subjected detainees to hideous torture, coerced confessions and unfair trials, and intimidated and punished defence lawyers.

The central government's public response to those blatant illegalities was virtually nil. Yet the mysterious halting in mid-trial of a second prosecution against lawyer Li Zhuang, who had already been convicted and imprisoned for supposedly instigating false testimony by claiming that his client had been tortured, may have signalled Beijing's impatience with Chongqing justice. That second case had evoked unusual protests from prestigious lawyers, law professors and others.

Sadly, in 2010, the Supreme People's Court ignored a golden opportunity to repudiate Chongqing's practice of coerced confessions when reviewing the death sentence of another supposed gangster boss. In that case, in an effort to persuade the court to exercise its power to reject capital convictions, lawyer Zhu Mingyong sent the court a covertly made video showing the marks of torture on his jailed client's arms, and posted this footage on the internet. Yet the court's judgment made no mention of Zhu's contention that the coerced confession should have been excluded from evidence, even though the court's own rules for judicial exclusion of illegal evidence had just gone into effect.

The newly revised Criminal Procedure Law was designed to curb some of the abuses exemplified by, but certainly not limited to, Chongqing. It provides that, henceforth in capital cases, the Supreme People's Court should hear arguments presented by defence counsel. It also imposes new limits on police powers of arbitrary detention, enhances the role of lawyers in defending suspects, prescribes procedures for excluding evidence obtained through torture, increases the likelihood that witnesses might appear in court and be cross-examined, and makes numerous other important, if often imprecise, procedural improvements.

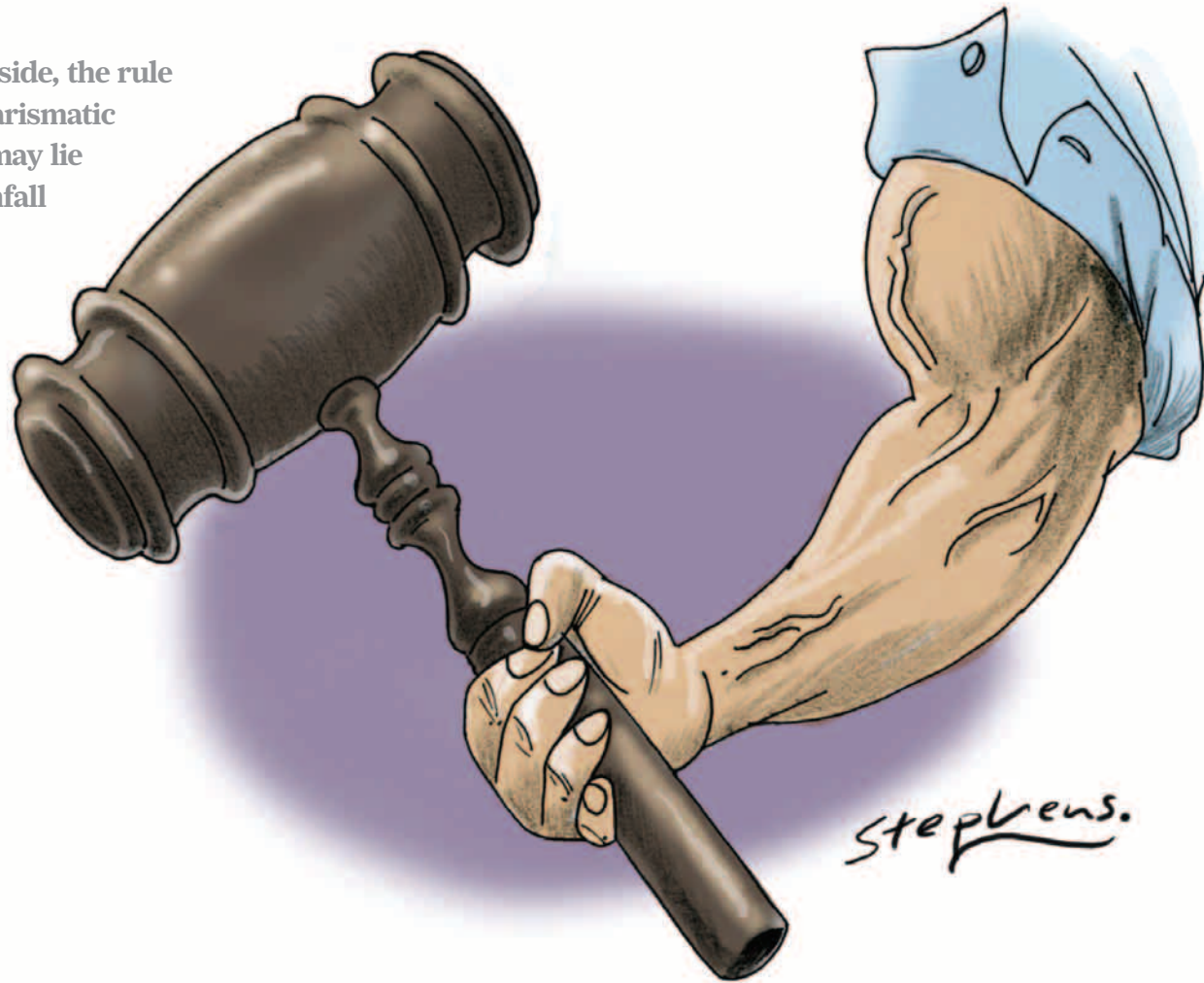
To be sure, the revised law contains explicit compromises reflecting the demands of the ministries of public and state security. For example, despite strong protests by civil libertarians and the public against provisions in the draft law that authorised police detention of certain suspects in "designated locations" for six months of "residential surveillance", the law as enacted retains this authorisation if police claim they need it to investigate people suspected of involvement in cases of "endangering state security", "terrorism" or "major bribery".

Similarly, although the revised law requires police, within 24 hours, to notify a suspect's family that he is detained (but not where or why), this need not be done "if there is no way to notify them". While prosecutors are charged with monitoring such decisions, they are notoriously weak in supervising police, and there is no effective way detainees and their family or lawyers can challenge wrongful detention.

Whether the revised law will prove a landmark in China's progress towards the rule of law



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will depend on good-faith police implementation. Yet, enforcement of the 1996 Criminal Procedure Law demonstrated that China's police are masters at interpreting to their own advantage every ambiguity, loophole and exception in legislation, and that neither the procuracy nor the judiciary has proved capable of regularly correcting police misconduct.

On those relatively rare occasions when police feel frustrated by criminal justice legislation, they can always escape its constraints by either imposing the administrative punishment of "re-education through labour" (up to four years of confinement) or by beating, kidnapping and detaining their victims with no pretence of legal authority.

There is only one way to stem this lawlessness. That is for China's leadership to give higher priority to the lawful administration of criminal justice. It should assign as the next head of the party's central political-legal committee a dynamic leader capable of not only mobilising the police and other legal cadres to enforce the law in good faith, but also enlisting greater popular support for this Promethean task.

What Chinese criminal justice urgently needs is a reformer with the power, energy, vision, ability, personality and determination of Zhu Rongji (朱鎔基), the former premier who in the late 1990s saw the need to transform the traditional socialist economy and, through relentless effort, brought it about.

Is there such a leader on China's horizon?

Communist officials do not reach the apex of their system by advocating human rights and criminal justice, and none would show his hand before attaining power. Nikita Khrushchev's introduction of "de-Stalinisation" of the Soviet Union in 1956 stunned many observers who, before his ascension, had mistaken him as Stalin's "running dog".

This may be the unrecognised tragedy of Bo Xilai. Before turning Chongqing into a "leftist" base for his ascent, Bo had impressed foreign observers with his intelligence, education and sophistication. Had his risky campaign succeeded, he might have seen that China's new stage of development requires not a return to Maoism but greater respect for the rule of law, and seized the opportunity to play a historic role by doing for criminal justice what Zhu did for the economy. Surely, Bo had the charisma and boldness required to mobilise both bureaucratic and public support for this momentous change.

Far-fetched? Remember, it was Richard Nixon, the arch anti-communist, who had the foresight, nerve and political freedom to move towards the future by travelling to what he had called "Red China". Sometimes, cynical politicians become statesmen – if they reach the top.

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