

Crunch time

Jerome A. Cohen says the outcome of one of China's key challenges in the next stage of its development – the moulding of a society ruled by law – may well hinge on the selection of security chief Zhou Yongkang's successor

As China's Communist Party elite prepare to select the country's leadership for the coming decade, to what extent does concern for the rule of law affect their deliberations? Will the successor to Zhou Yongkang (周永康), the Politburo Standing Committee member who controls the legal system, favour continuing lawless repression or seek to subject both party and government to the law on the books that is often ignored in practice?

When the Bo Xilai (薄熙來) scandal erupted, party leaders immediately promised the nation that Bo's case would be handled strictly according to law. Yet, several months later, Bo has still not been turned over to the legal system. He remains cut off from the world and any legal protections, in the custody of the party's discipline inspection commission.

Only when the party chooses to complete its investigation and decide his fate will Bo learn whether he is to be formally punished by the legal system, like ex-Politburo members Chen Xitong (陳希同) and Chen Liangyu (陳良宇), or permanently isolated from society by illegal political confinement like the former party general secretary, the late Zhao Ziyang (趙紫陽).

In Bo's case, it is amazing that party leaders do not acknowledge the blatant contradiction between their promise and their practice. Most of the many other corruption investigations of party members are more quietly handled by discipline inspection commissions, whose secret procedures always take precedence over legal procedures.

Non-party members are often victimised by other kinds of illegal measures. For example, the government's increasingly comprehensive and expensive "stability maintenance" system, which is subjecting more and more people suspected of being potential "troublemakers" to various preventive restraints, has until recently attracted little attention. Unauthorised "soft detention" and even kidnapping, "black jails" and beatings of petitioners, human rights defenders and their associates and family members only occasionally come to light, and those who bring them to light may themselves be illegally persecuted for their efforts.

Shandong (山東) province's extraordinary, unlawful transformation of blind activist Chen Guangcheng's (陳光誠) simple farmhouse into a home prison would have gone unnoticed had the "barefoot lawyer" not already been known to the foreign media.

Chen's case illustrates not only informal punishment imposed without legal basis but also shows how formal punishment is frequently imposed through a perverse application of criminal law and procedure. Between two periods of unauthorised residential lockdown in 2005-06 and 2010-12, Chen spent 51 months in a conventional prison after conviction on spurious charges following farcical trials



where neither his witnesses nor his chosen lawyers were permitted to participate.

Beijing lawyer Gao Zhisheng (高智晟) and Shanghai lawyer Zheng Enchong are other well-known party targets who have suffered from both prison sentences after distorted criminal trials and other detentions that lacked even a fig leaf of legal justification. Gao is still imprisoned in the far-off Xinjiang (新疆) region while Zheng remains restricted at home.

Although the prominent artist and social critic Ai Weiwei (艾未未) had long been informally harassed, since April of last year police have used formal criminal processes to restrain him, twisting the law authorising "residential surveillance" to detain him incommunicado in harsh conditions in their "residence" – not his –

for 81 days, before releasing him on the Chinese equivalent of bail for a year.

Of course, many democracy advocates, including Nobel Peace Prize winner Liu Xiaobo (劉曉波), have received very heavy sentences after unfair trials for acts of courage that ought not to have been treated as crimes in the first place. The list of those who have been persecuted either without legality or through abuse of the criminal process is endless.

Do all the contenders for power among the Chinese leadership want to continue this system of lawlessness? Certainly, many of the able legal professionals who now staff the bureaucracy, the judiciary, the procuracy, the legislature, the legal profession and academic and research organisations, and even some police and party experts, think the time has come for a serious legal system. One might think that, if only to protect themselves, some leaders might see the desirability of bringing due process of law to the administration of justice, even if it requires the party to gradually surrender power over judicial decision-making and to develop institutions for effectively controlling the police.

Given the tensions building in Chinese

society and the apparently widespread sense of injustice that underlies many of the huge number of often violent "mass incidents", a new policy genuinely designed to place both party and government under law might prove popular and help to repair the sagging reputation of party leaders.

This is why the present, largely hidden struggle over who will succeed Zhou Yongkang in the Politburo Standing Committee as the head of the party's national political-legal committee is so important. More than politics and personality is involved. The next occupant of that position, once sought by Bo Xilai, is likely to have a crucial influence over one of the most important policy issues confronting China – whether lawless repression will continue to be the watchword of the leadership, or whether a new generation will establish political institutions and a legal system commensurate with China's progress and its 21st-century aspirations at home and abroad.

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Even some police and party experts think the time has come for a serious legal system