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What Direction for Legal Reform Under Xi Jinping?

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Leji, Sun was, apart from being “steadfast in politics and rich in leadership experience,” “familiar with party affairs and economic work.” Zhao also praised Sun for having “broad perspectives” on a wide range of issues of governance (*Chongqing Daily* [Chongqing], December 21; China News Service, December 21).

Hu Chunhua, who took over from the reformist Politburo member Wang Yang as Guangdong party secretary in mid-December, is a veteran party functionary with scant exposure to areas such as finance, foreign trade or high technology. Having spent 19 years in Tibet and three years in Inner Mongolia, Hu has ample experience dealing with tough law-and-order situations, including defusing the anti-Beijing plots of Tibetan and Mongolian separatists. It is doubtful, however, whether the fast-rising star can satisfactorily accomplish the task, first set by predecessor Wang, of turning the Pearl River Delta from “world factory” into a global innovation hub. It is perhaps significant that upon taking over his Guangdong job, Hu hewed to the CCP tradition of giving top priority to establishing a trustworthy and combat-ready corps of cadres rather than reforming institutions and systems of governance. “We must put together a [ruling] team that is united, capable, influential and full of combative [spirit],” the Hubei-born Hu told local officials (*Guangzhou Daily* [Guangzhou], December 19; China News Service, December 19).

It is unique to China that almost all members of its top ruling council, the CCP Politburo Standing Committee (PBSC), since the end of the Cultural Revolution are former party secretaries of provinces, autonomous regions or directly administered cities. Amongst the seven newly-appointed PBSC members, only Liu Yunshan, who is in charge of the CCP Secretariat, has never been a provincial party boss. As the mass-circulation *Global Times* put it in a commentary, provincial party secretaries constitute an elite “talent pool” for the CCP’s highest echelon. “It is the requirement of the Chinese system that the provincial party secretary must have the ability to handle the full range of [political] situations,” the paper said, “They need to have a large ‘magnetic field,’ a sense of authority and ability to project personal warmth. They must also have a very high level of expertise and perceptiveness” (*Global Times* [Beijing], December 19). There seems little doubt that all the newly-elevated party secretaries—and to a considerable extent, governors—

have passed muster in terms of tackling tough political challenges as well as abiding by Beijing’s instructions. The jury is still out, however, on the equally pivotal issue of whether they can break new ground in reform as General Secretary Xi pledged to do during his trip to Shenzhen in early December.

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What Direction for Legal Reform Under Xi Jinping?

By Carl Minzner

Hopes for reform in China have risen in recent weeks. Xi Jinping’s decision to make Shenzhen the site of his first formal inspection tour as party general secretary spurred predictions that he will seek to assume Deng Xiaoping’s mantle as an economic reformer (“Xi Jinping’s ‘Southern Tour’ Reignites Promises of Reform,” China Brief, December 14, 2012). Similarly, Xi’s speech regarding China’s need for the rule of law—given on the 30th anniversary of the 1982 constitution—gave rise to press speculation that he may pursue legal and political reform (*South China Morning Post*, December 13, 2012; AFP, December 4, 2012).

Naturally, this comes against the background of a conservative turn against legal reform by Chinese leaders in recent years [1]. Since 2005, party authorities have cooled on the rule-of-law discourse that characterized the late 1990s and early 2000s. Party political campaigns have warned Chinese judges and courts against foreign legal norms. Public interest lawyers have been subjected to increased pressure, harassment and periodic disappearances or torture. Moreover, under

the leadership of former party political-legal committee head and standing committee member, Zhou Yongkang, extralegal “stability maintenance” (*weiwen*) institutions have ballooned in size and influence.

New language in official pronouncements now suggests Chinese leaders intend to reverse at least some of these policies. This appears to be linked directly to internal party efforts to curb the power of political-legal committees in the wake of the Bo Xilai scandal (“Year-End Questions on Political-Legal Reform,” *China Brief*, December 14, 2012). This shift has allowed activists some greater space to advocate for reforms to state practices, including the reeducation through labor (RETL) system. Central authorities, however, remain committed to maintaining party political control, rendering it unclear how far such legal reforms will be permitted to proceed.

Changes in Party Rhetoric

Ironically, some of the key linguistic shifts have not originated (at least on the surface) from Xi himself. Rather, they came from former Party General Secretary Hu Jintao during the run-up to the November leadership handover.

One such shift originated with Hu’s July 23 speech to ministerial and provincial heads. Attended by all of the then-members of Politburo Standing Committee and presided over by Xi, it was accompanied by an unusually high degree of media coverage. At the time, the speech was widely viewed as an opportunity for top Chinese leaders to demonstrate their unity in the aftermath of Bo’s dismissal and publicly emphasize Xi’s role as the heir apparent in the political succession process, but lacking in substantive content regarding institutional reform (Reuters, July 24, 2012). This speech, however, appears to have introduced a new political phrasing (*tifa*), calling for authorities to “devote more attention...to the important uses of rule of law in national governance and social management (*shehui zhili*)” (*People’s Daily*, July 24, 2012). Since party political-legal authorities had employed “social management” as an umbrella term for the expansion of their activities in recent years, this new phrasing appears to be an implicit rebuke. It suggests that Chinese leaders may deploy rule-of-law norms strategically to curtail the power of party political-legal authorities.

Further linguistic changes appeared in the 2012 work

report delivered by Hu and drafted by Xi (“The 18th Party Congress Work Report: Policy Blueprint for the Xi Administration,” *China Brief*, November 30, 2012). Parallel passages of the 17th and 18th Party Congress work reports also offer some hints of reform:

“Each party organization and all party members must self-consciously operate within the boundaries of the constitution and the law, and must take the lead in upholding the authority of the constitution and the law” (Xinhua, October 24, 2007).

“Since the party has led the people to promulgate the constitution and laws, the party must operate within the boundaries of the constitution and laws. No organization and no individual are entitled to special powers exceeding the constitution and laws. It is absolutely impermissible for (any individual in power) to take their own words as law, to use power to suppress the law, or to bend the law for ones relatives or friends” (Xinhua, November 27, 2012) [2].

The 18th Party Congress Work Report has marginally stronger language that the party itself is obligated to operate within the confines of the constitution and laws. This, however, remains nuanced by the statement that the party itself remains the originator of both. Last, the final sentence clearly implied that this change in nuance is aimed at combating problems raised by recent scandals, such as the one surrounding former Chongqing Party Secretary Bo Xilai.

Yet a third example of a change in rhetoric occurred in the White Paper on Judicial Reform released by the Information Office of the State Council in October 2012 (*The Diplomat*, October 13, 2012). Such documents (issued in 2008 and 2011 as well) serve a regular propaganda function, reeling off state accomplishments in the field of human rights. They also serve to transmit the officially approved political line regarding legal reform.

For example, the 2011 white paper confirmed the shift away from pro-reform agenda of earlier years. Rather than emphasizing the need to establish the “rule of law,” it spoke of building a “socialist legal system with Chinese characteristics.” Where the 2008 document spoke of these efforts as a work in progress, the 2011 version stressed that these efforts were largely completed. It also deleted

discussion of China's efforts to engage in international legal cooperation in favor of extensive rhetoric regarding the inapplicability of foreign legal norms to China.

Now, the 2012 white paper marks a sharp break with the version issued just a year ago. The politicized language regarding a "socialist legal system with Chinese characteristics," a hallmark in Party political-legal pronouncements over recent years, has receded. The white paper clearly states that the current round of legal reforms begun in 2008 (not coincidentally, the year that Wang Shengjun, the current conservative head of the Supreme People's Court, assumed office) is "basically finished." Even more noteworthy, there is not a single reference in the entire document to the Chinese Communist Party.

Of course, it is important to not overstate the thrust of the 2012 white paper. While it characterizes judicial reform as an integral part of "institutional political reform" and states that it will continue to strengthen in the years to come, it gives no concrete suggestions as to how this will be carried out. It also clearly states that Chinese judicial reform will proceed from its own "national characteristics" and will not "copy" models from other countries.

Nonetheless, the white paper does suggest that some Chinese leaders may seek to curb efforts of party political-legal organs to re-impose greater political controls on the Chinese judiciary in recent years. The paper also suggests there may be some openness to dealing with the issue of judicial and legal reform in a more objective manner.

Implications

Liberal intellectuals and reformist officials have sensed the shift in political winds. Many view the party political-legal apparatus as politically vulnerable now, following the fall of Bo Xilai, central discontent with Zhou Yongkang's role in the affair and subsequent central moves to downgrade the bureaucratic rank of political-legal committees.

Over the fall, this led to a rising tide of criticism directed at the RETL system run by China's security organs (*New York Times*, December 15, 2012). Used as a convenient tool to suppress prostitutes, petitioners, political dissidents and underground church members, this extrajudicial

detention system has been linked to a range of abuses against detainees. In August, journalists, academics and citizen activists seized on the case of Tang Hui, a mother sentenced to a year and a half in a labor camp after petitioning authorities in search of heavier punishment for the men who allegedly kidnapped and raped her 11-year old daughter. Tang's case generated a surge of sympathetic commentary on micro-blogging sites, resulting in her release by Chinese authorities seeking to appease popular sentiment (*Guardian*, August 16, 2012). Official commentary in state media appeared to indicate some central support for broader reform. For example, a November editorial in the *People's Daily* criticized the RETL system as having devolved into a "tool for attacks and reprisals" by some officials and singled out the case of Ren Jianyu, a local official in Chongqing sentenced to RETL in 2011 for his criticism of Bo Xilai's policies (*People's Daily*, November 21, 2012). Liberal academics and activists have since merged their reform calls with these developments and some have pressed for the complete abolition of the RETL system (t.163.com/weifanghe, October 25, 2012).

Nor have they stopped there. Liberal critics have latched on to new language emanating from central authorities to push for yet deeper reforms. Academics and public interest lawyers have held conferences calling for judicial independence (*Dui Hua Human Rights Journal*, December 20, 2012). Jiang Ping, one of the key figures involved in late 20th century legal reforms, has noted that Hu Jintao's July 23rd speech has had a "positive effect," but that emphasizing rule of law remains "meaningless" absent political reform. Jiang specifically criticized hard-line policies pursued by party political-legal authorities in recent years, including heavy emphasis on social stability, shifts away from efforts to professionalize the Chinese judiciary and promote court adjudication of citizen disputes according to law as well as the heavy use of mediation ratios to evaluate Chinese judges (*Hong Kong Commercial Daily*, November 6, 2012). Similarly, constitutional law scholar Tong Zhiwei has called for central authorities to back up their statements on reform with meaningful action, separating party and state organs and creating mechanisms to supervise rights guaranteed in the constitution (*Time Weekly*, December 14, 2012).

Such calls for deeper legal and judicial reform face serious internal opposition. Supreme People's Court President

Wang Shengjun, one of the key figures responsible for recent hard-line policies in the court system, has retained his seat on the Central Committee. Joseph Fewsmith predicts Wang will follow the bureaucratic path of his predecessor, Xiao Yang, and be permitted to serve until the 19th Party Congress in 2016 (*China Leadership Monitor*, No. 40, Forthcoming). Moreover, as of late December, Wang himself was continuing to reiterate key themes—such as the importance of social stability considerations in handling cases and the overriding emphasis on mediation—that have been hallmarks of the conservative turn against legal reform in recent years (Xinhua, December 27, 2012).

Additionally, prior experience suggests caution in evaluating the promise of legal reform by new party leaders. Following Hu Jintao's accession as party general secretary in 2002, the appointment of moderate reformers to government posts and an increase in official rule-of-law rhetoric, domestic and foreign observers sensed Chinese authorities might be open to meaningful legal reform. This led to a surge of activism by citizens, journalists and legal activists regarding an extralegal detention system (custody and repatriation) linked to the abuse and deaths of detainees [3]. When the new party authorities abolished the system in 2003, many took this as a sign that China's constitutional moment perhaps had dawned ("NPCSC: The Vanguard of China's Constitution?" *China Brief*, February 4, 2008).

A decade later, however, it appeared that these hopes had been premature ("Constitutionalizing Wukan: The Value of the Constitution Outside the Courtroom," *China Brief*, February 3, 2012). Once the new party authorities had navigated successfully the domestic political transition, officials moved to curtail the judicial institutions, the rule-of-law rhetoric and the public interest lawyers that had marked the late Jiang and early Hu periods.

So is the current bout of reformist language a marker of real change or simply a transitory artifact of party divisions arising from the fight over leadership succession? Since it remains highly unlikely that central authorities will announce the creation of meaningful electoral or legal checks on party power, here are some other potential markers to watch over the coming year:

- Whether personnel reforms raise the bureaucratic

profile of the Chinese judiciary vis-à-vis that of the public security organs;

- Whether concrete performance evaluation measures facing local officials
- are altered, particularly the hard-line emphasis in recent years on maintaining social stability and controlling citizen petitioners;
- Whether the content of official "model judge" propaganda campaigns—which has shifted in recent years away from an emphasis on judicial professionalism in favor of revived Maoist populism—is altered to reflect the new language coming from the center;
- Whether official pressure and repression of public interest lawyers is reduced.

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Notes:

1. Carl Minzner, "China's Turn Against Law," *American Journal of Comparative Law*, Vol. 59, No. 4, 2011, p. 935, available online <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1767455>.
2. Author's translation from the original.
3. Keith Hand, "Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China," *Columbia Journal of Transnational Law*, Vol. 45, No. 1, 2006, p. 114, available online <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1972011>.
