

The Politicisation of China's Law-Enforcement and Judicial Apparatus

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The Chinese Communist Party has politicised the judicial and law-enforcement apparatus despite Beijing's avowed commitment to global norms. This paper shows how, in the wake of the 4 June 1989 crackdown, the CCP leadership enhanced its control over the courts and procuratorates so as to boost its capacity to punish dissidents, separatists, and other destabilising elements. Despite President Hu Jintao's slogan of "running the country according to law," the prospect for rule of law and judicial independence remains illusory.

Political reform in China came to a virtual halt with the gunshots on Tiananmen Square 20 years ago. The threads of liberalisation begun by former CCP general secretaries Hu Yaobang and Zhao Ziyang have not been picked up by their successors, Jiang Zemin and Hu Jintao. Party elders, including Deng Xiaoping, Chen Yun, and Wang Zhen, saw in the "1989 turmoil" a collusive effort by "bourgeois-liberal elements" among China's intellectuals and cadres as well as "anti-Chinese forces in the West" to topple the Chinese Communist Party (CCP) regime. It is therefore not surprising that after mid-1989, the leadership has made stability, especially snuffing out dissent and other challenges to the regime, the Party's foremost task. Perhaps the most tangible result of reform in the 1980s – separation of Party and government, in addition to some degree of truncation of the Party's administrative powers – has been rolled back with a vengeance. Indeed, the CCP has since mid-1989 concentrated more power than ever in the Party Central Committee, and especially in the Politburo and its Standing Committee.⁽¹⁾ Top priority has been given to ensuring that the Party is in control of the "tools of democratic proletarian dictatorship," with the goal of safeguarding the CCP's monopoly on power. The Party's penchant for control has been exacerbated by the series of "colour revolutions" (or "velvet revolutions") that took place in central Asian countries such as Georgia and the Ukraine, and most recently in 2005, in Kyrgyzstan, which shares a border with China's Xinjiang Autonomous Region (XAR).⁽²⁾ Apart from beefing up the "pillars of proletarian dictatorship" such as the People's Liberation Army (PLA)

and the People's Armed Police (PAP), the Party leadership has been putting more emphasis on judicial and legal weapons to defuse threats to the status quo and to maintain the CCP's "perennial ruling-party status."

This paper will look at how the CCP has boosted political control over law-enforcement and judicial organs – especially the courts and the procuratorates. Given that China has some 190,000 judges, 160,000 procurators, 150,000 lawyers and hundreds of thousands of legal specialists, the so-called *zhengfa* ("political and legal") machinery could become a fierce juggernaut against perceived enemies of the Party and State.⁽³⁾ Particular emphasis will be placed on developments since Hu Jintao and Wen Jiabao took over the leadership at the 16th CCP Congress in 2002. Despite the Hu-Wen team's protestations about their commitment to *yifazhiguo* or "administering the country according to law," the Party has tightened its grip over the *gongjianfa* (the police, procuratorates, and courts) apparatus through means including investing more authority in the secretive Central Commission for Political and Legal Affairs. More appa-

1. For a discussion of ways in which Jiang Zemin concentrated most decision-making powers in the Politburo and particularly its Standing Committee, see, for example, Willy Wo-Lap Lam, *The Era of Jiang Zemin*, Singapore, Prentice Hall, 1999, pp. 86-88.
2. For a discussion of the CCP's attitude toward "colour revolutions," see, for example, Thomas Lum and Hannah Fischer, "Human rights in China: Trends and Policy Implications," Congressional Research Service Report for Congress, 31 October 2008, Congressional Research Service, Washington D.C., http://china.usc.edu/App_Images//crs-china-human-rights-081031.pdf; for an official view on "colour revolutions," see "Political advisory system can help China avoid 'color revolution': advisor," Xinhua News Agency, 10 March 2006.
3. For a discussion of China's legal and judicial system, see, for example, Jerome A. Cohen, "China's Reform Era Legal Odyssey," *Far Eastern Economic Review*, December 2008.

ratchiks, rather than legal professionals, have been appointed to senior posts. And the imperative of maintaining the CCP's monopoly on power seems to have taken precedence over the sanctity of the Constitution and the law. This paper will also examine how the politicisation of the judicial system has hurt the interests of the masses and adversely affected the overall modernisation enterprise.

The CCP and judicial organs during the Jiang Zemin era

It was a key element of Maoist statecraft that the *gongjianfa*, or police, procuratorate, and judiciary, be deemed key tools for the dictatorship of the proletariat. In 1958, the Central Leading Group on Politics and Law (CLGPL) was set up to substantiate the Party's control over the judicial and legal apparatus. Peng Zhen, a veteran member of the Beijing municipal leadership, was appointed head of the group, a post that during the Cultural Revolution was taken over by the hated secret police chief and Mao confidante Kang Sheng. After Deng Xiaoping took over power at the Third Plenary Session of the 11th Central Committee in late 1979, the CLGPL was renamed the Central Commission on Political and Legal Affairs (CCPLA).⁽⁴⁾ Cadres who have held the position of secretary of the CLGPL or CCPLA have included Peng Zhen, Chen Peixian, Qiao Shi, Ren Jianxian, Luo Gan, and Zhou Yongkang. The status of the CCPLA was raised at the 16th CCP Party Congress, when its secretary was given membership in the ruling Politburo Standing Committee.⁽⁵⁾

It is important to note, however, that both Deng and such of his liberal protégés as Hu Yaobang and Zhao Ziyang had wanted to do something about "separation of Party and government" in the early- to mid-1980s. This ideal was formally attained at the 13th CCP Congress in October 1987, when "separation of the Party and government" became a section of the *Political Report* that General Secretary Zhao delivered.⁽⁶⁾ Even before he replaced Hu as Party chief in January 1987, however, Zhao had become interested in relatively radical reform ideas. While it might be far-fetched to cast Zhao as an advocate of Western-style "independence of the judiciary," the reformist titan had by the mid-1980s realised that China's economic and political modernisation would be hampered by the Party's excessive interference in legal and judicial operations. With the help of liberal advisers such as Hu Qili and Tian Jiyun, Zhao set about an incremental program to dismantle the CCPLA, beginning with the partial abolition of several provincial Committees on Political and Legal

Affairs in 1987 and 1988. This was despite the fact that in public speeches, Zhao still clung to the standard mantra that "our *zhengfa* cadres must be loyal to the Party."⁽⁷⁾

The June 4, 1989 massacre dealt a brutal end to almost all aspects of liberalisation. This was despite Deng's having indicated that "not one character of the 13th Congress *Political Report* should be changed."⁽⁸⁾ During much of Jiang Zemin's tenure as Party chief, which stretched from 1989 to 2002, this beneficiary of the Tiananmen Square crackdown pulled out the stops to roll back whatever political reform had been contemplated and implemented by the "Hu-Zhao liberals," including separation of Party and government as well as separation of Party and the judiciary.⁽⁹⁾ Jiang and "Tiananmen butcher" Li Peng, who remained on the Politburo Standing Committee until 2002, played a sizeable role in beefing up the powers of the CCPLA, usually referred to in the Chinese media as the *Zhengfawei*. Li, who might have borne a personal grudge against the Tiananmen Square dissidents, had good reason to ensure that the legal and judicial apparatus acquit itself well of the task of putting "state enemies" behind bars. He did much to promote the career of right-hand-man Luo Gan, who was CCPLA Secretary from 1998 to 2007.⁽¹⁰⁾

Luo revived much of the agenda of a politicised legal and judicial apparatus in a revealing interview with the Party

4. For a discussion of the function and the origin of the CCPLA, see, for example, "A brief introduction of the CCPLA," www.cpc.people.com.cn, 17 July 2007, <http://cpc.people.com.cn/GB/64114/64135/5994757.html>; see also Ma Ruliu, "On how to fulfill well the function of the party's political and legal affairs committees," www.xjpeace.cn, 10 November 2008, http://www.xjpeace.cn/ht/2008-11/10/content_14874925.htm.
5. By the turn of the century, the CCP leadership had developed a tendency to promote career police officers or senior cadres with public security experience to senior slots in the CCPLA. Thus, the current CCPLA Secretary, Zhou Yongkang, was a minister of public security from 2003 to 2008. None of his predecessors had had this experience. Moreover, the current secretary-general of the CCPLA, Zhou Benshun, and his predecessor, Wang Shengjun, are former heads of provincial police departments.
6. For a discussion of Zhao's views on political reform, see, for example, Wu Guoguang, "Democracy and Rule of Law in Zhao Ziyang's Political Reform," in Guoguang Wu and Helen Landsdowne (eds.), *Zhao Ziyang and China's Political Future*, Abingdon, Oxon, Routledge, 2008, pp. 32-57.
7. "National Conference on political and legal affairs is held in Beijing; Zhao Ziyang holds discussion with participants," Xinhua News Agency, 19 January 1988. For a discussion of Zhao's reforms of the legal apparatus, see, for example, Willy Lam, "Zhao Ziyang's contributions to reform in historical perspective," in *Zhao Ziyang and China's Political Future*, *op. cit.*, pp. 151-163.
8. For a discussion of Deng's commitment to reforms introduced at the 13th CCP Congress, see Chen Baocheng, "Huang Puding: 'Beware of the negation of reform in the name of re-examining reform,'" *People's Daily*, 15 March 2006.
9. For a discussion of the political conservatism of Jiang, including his reinstatement of near-absolute party authority, see, for example, Willy Lam, "China's conservative backlash," www.cnn.com, 25 June 2003.
10. For a discussion of the relationship between Luo Gan and Li Peng, see, for example, Kjeld Erik Brodsgaard "The 16th Party Congress in China: A Note on Personnel Changes," *The Copenhagen Journal of Asian Studies*, vol. 16 (2002), <http://rauli.cbs.dk/index.php/cjas/article/view/8/8>.

mouthpiece *Outlook Weekly* in early 1999. The hard-line cadre noted that the *zhengfa* establishment must “resolutely uphold the CCP leadership over political work,” and that Party authorities would provide the “political guarantee [of the objective] of *yifazhiguo* [running the country according to law].” The CCPLA secretary added that “the top priority of *zhengfa* work is to safeguard social and political stability.”⁽¹¹⁾ In periodic meetings of the *Zhengfawei* (which includes representatives from the courts and procuratorates), Luo issued a series of harsh dictums on how law-enforcement and judicial agencies should fulfil the goals of the state. Many of these mantra-like instructions were given during *yanda* (“strike hard”) campaigns against putative hard-core criminals, which were revived with gusto in the 1990s. For instance, Luo pointed out that during *yanda* movements, relevant departments must heed the principle of “putting emphasis on heaviness [in punishment], speed, and severity while executing the law.” He indicated that apart from gangs and other underground rings, *yanda* targets included “terrorist forces, ethnic separatist forces, religious extremists, enemy forces in and out of [China’s] boundary, and the Falungong evil cult.” In addition to enforcing the internal-security objects of the CCP leadership, the *Zhengfawei* would ensure that law-enforcement and judicial organs have sufficient political and other resources to carry out their jobs in such a way as to reach a “synthesis of legal effect, social effect and political effect.”⁽¹²⁾

Xiao Yang, who was President of the Supreme People’s Court (SPC) from 1998 to 2008, noted that during “strike hard” campaigns, courts must aim for “the synthesis [of the requirements] of ‘stability, accuracy, and toughness.’” He explained that “the stability [criterion] means that the ‘strike hard’ struggle must be waged in a planned, methodical and orderly manner, and under the leadership of the [relevant] Party committees.”⁽¹³⁾ Xiao, who studied law at Renmin University in Beijing in the late 1950s and early 1960s, was regarded as a relatively forward-looking cadre, at least during the period when he served in the Guangdong Procuratorate from 1983 to 1990. However, upon being promoted to the SPC presidency, Xiao began to bend over backwards to accommodate the CCP leadership’s harsh demands on the legal and judicial sectors.

It should be noted, however, that at least during the first half of the “Jiang era,” the legal and judicial apparatus was first and foremost called upon to maintain law and order. It was only after 16th CCP Congress that much more emphasis was put on the *zhengfa* organs’ role in ensuring the Party’s mandate of heaven or “perennial ruling Party status.” This can

be seen from the “eight foremost objectives” of law-enforcement and judicial units that then-CCPLA secretary Ren Jianxin enunciated during a meeting of *zhengfa* cadres in 1995. The first three of these priority tasks were “upholding [socio-political] stability,” “meting out, in accordance with the law, heavy and expeditious punishment to criminal elements who pose a serious threat to law and order,” and combating corruption and other activities that undermined the socialist market economy. “Upholding the Party’s overall leadership of *zhengfa* work” was the last of the eight goals.⁽¹⁴⁾ Moreover, even Luo Gan was careful to stress that legal and judicial departments must strictly observe relevant statutes. For instance, Luo pointed out in talks to judges and *zhengfa* cadres in 1998 and 1999 that “no organisations or individuals have the special privilege to override the Constitution and the law.” He also admonished legal and judicial officials that “the fair implementation of the law is the lifeline of *zhengfa* work.”⁽¹⁵⁾ We shall see that respect for legal precepts has been further undermined during the Hu Jintao administration.

The Hu Jintao leadership’s efforts to boost Party control over the judicial apparatus

The Hu-Wen team’s dubious “respect for the law”

In the first year after taking power at the 16th CCP Congress in 2002, President Hu and Premier Wen Jiabao gave hope to the nation’s intelligentsia that the so-called Hu-Wen *xinzheng* (“New Deal”) would translate into more substantial efforts to promote rule by law, if not rule of law. Soon after becoming CCP General Secretary, Hu initiated the equivalent of an ideological campaign to safeguard the sanctity of the Constitution and the law. This was the theme of the first “Politburo study session” that was called in

11. Liu Jinghui, “Comprehensively push forward cross-century work in the political and legal field, an interview with Politburo member Luo Gan,” *Outlook Weekly* (Beijing), 4 January 1999 pp. 12-13.
12. “The Central Political and Legal Affairs Commission convenes teleconference on plans for the ‘Strike Hard’ campaign,” Xinhua News Agency, 26 March 2002.
13. “Xiao Yang: The ‘Strike Hard’ campaign should uphold the criteria of ‘stability, accuracy and toughness,’” Xinhua News Agency, 20 April 2001.
14. “National *zhengfa* work conference takes place in the capital; Jiang Zemin and Li Peng give important addresses,” *People’s Daily*, 19 December 1995.
15. Cited in “National *zhengfa* work conference held in Beijing; Jiang Zemin talks with participants,” 22 December 1998; “Luo Gan emphasises that central authorities support the people’s courts in the implementation of the law and safeguarding the legal system,” *People’s Daily*, 14 August 1999.

December 2002, when all members of the ruling council listened to the lectures of two famous professors of law, Xu Chongde and Zhou Yezhong. "We must uphold the basic strategy of ruling the country according to law," said Hu on the occasion. "We must further raise the entire society's consciousness regarding the Constitution as well as the authority of the Constitution." Significantly, Hu linked the ideal of "administration according to law" to the oft-stated goal of "strengthening and improving Party leadership."⁽¹⁶⁾ That Hu intended to adopt some form of legalism was first evident in an address he made soon after the 16th Congress to mark the 20th anniversary of the promulgation of the 1982 Constitution. The Party chief pointed out that "no organisation or individual has special privileges to override the Constitution and the law." "The Constitution has promoted the construction of our country's socialist democracy," he added. "We must uphold the basic principle of running the country according to law."⁽¹⁷⁾

The so-called Sun Zhigang episode – in which a young graphic designer was apparently beaten to death while detained by Guangdong police in May 2003 under the "Regulations on the detention and deportation of vagrants and beggars in the cities" – also seemed to illustrate the Hu-Wen administration's emphasis on respect for the law. After protests by a dozen or so law professors, the draconian regime was annulled three months later, and a new regulation called "Administrative means to help vagrants and beggars in cities who have no means of livelihood" was promulgated. The Ministry of Civil Affairs converted 833 detention centres nationwide into Stations for Providing Succour and Help. It was estimated that they could provide aid to 2 million people a year.⁽¹⁸⁾ The Hu-Wen team also seemed to be more observant of "global norms" in giving a fair deal to underprivileged sectors, including AIDS patients, especially after the SARS epidemic struck the nation in early 2003. Unfortunately, the "legalistic phase" of the Hu-Wen New Deal began petering out by 2004. Hu resumed the Jiang Zemin tradition of pulling out the stops to firm up Party supremacy. This was evidenced by the "Political Report" endorsed at the Fourth CCP Central Committee Plenum of 2004, which was entitled "Resolution on Strengthening the Construction of the Party's Governance Ability." The "resolution" indicated, for example, that "the Party should strengthen leadership over legislation work."⁽¹⁹⁾ Obviously, Party domination over the legislative and judicial spheres ran counter to the much-praised ideal of "rule by law" and "respect for the constitution" raised by Hu and his Politburo colleagues in the first six months of their administration. It is

noteworthy that in a speech after the 4th Plenum, the SPC President Xiao Yang underscored the courts' obedience to Party leadership. While noting that the courts must "uphold judicial authority," he pledged that cadres and staff in the judicial system would "uphold the authority of rule by law, as well as the authority of the Party."⁽²⁰⁾

Boosting the efficacy of the gongjianfa apparatus

Hu's 2007 dicta on zhengfa work

Since apparently consolidating power at the 17th CCP Congress in 2007, the Hu-Wen leadership has gone even further than the Jiang era in using the law-enforcement apparatus to bludgeon dissent and to safeguard the CCP's monopoly of power. More so than his predecessor, Hu has laid down a systematic – what his publicists might call "scientific" – principle to ensure the efficacy of the legal and judicial "tools of proletarian dictatorship."⁽²¹⁾ Hu's strategic views on the *zhengfa* system were enunciated in a national conference in December 2007 on political and legal work, in which the nation's top judges and procurators took part. The Party chief noted that the foremost concern of law-enforcement officials should be the "organic synthesis of [the principles of] upholding Party leadership, letting the people be masters of the country, and running the country according to law." Hu also spelt out these "three top priorities," namely, *zhengfa* cadres must "from beginning to end give top priority to the Party's enterprise, the people's interests and [the sanctity of] the Constitution and the law." In addition, the cadres must "earnestly maintain the CCP's ruling Party status, uphold national security, safeguard the people's rights, and ensure overall social stability." He added that law-enforcement and judicial work must abide by the overall

16. Cited in H. Lyman Miller, "Hu Jintao and the Party Politburo," *China Leadership Monitor*, Hoover Institution, Stanford University, No. 9 (Winter 2004).

17. Cited in "Construction of the legal system and perfecting the socialist market economic system," Xinhua News Agency, 26 April 2004.

18. See Wang Junshou, "Ministry of Civil Affairs says stations for providing succor and help nationwide can help 2 million people a year," *China Youth Daily*, 28 July 2008; Wang Pan, "Guangdong abolishes regulation on custody and sending back [vagrants]," China News Service, 25 July 2003.

19. See "Hu Jintao makes major speech at the Fourth Plenary Session of the 16th CCP Central Committee," Xinhua News Agency, 19 September 2004.

20. Cited in Xu Yu, "Xiao Yang appeals for the upholding of judicial authority," *Wen Wei Po* (a pro-Beijing Hong Kong daily), 9 October 2004.

21. Hu Jintao and Wen Jiabao lay down their *kexue fazhan guan* or "scientific outlook on development" in 2003 to cover all aspects of governance, including the legal and judicial fields. And cadres in both the procuratorates and courts have spoken out in detail on how to apply this *kexue fazhan guan* to their sectors.

direction of “socialism with Chinese characteristics,” and that judges and prosecutors must do their utmost in helping to protect national security.⁽²²⁾

Party veterans said it was the first time in CCP history that a general secretary had so blatantly called upon judicial officials to help extend its mandate of heaven. During the 1990s, the most common goal cited for the *gongjianfa* apparatus was to maintain socio-political stability. From 2002 onwards, however, more references have been made to the *zhengfa* apparatus helping to maintain the CCP’s “perennial ruling-party status,” what Hu referred to as *dangde shiye*, or the “Party’s enterprise.” Hu’s dictums about the role of security and judicial departments in “steadfastly safeguarding the CCP’s ruling Party status, as well as national security and the people’s interests” were repeated through 2008.⁽²³⁾ It was in the same year, of course, that the *gongjianfa* establishment’s ability was put to the test during a number of major events, including the Olympics, the insurrection in Tibet, “quasi-terrorist attacks” by underground Uyghur outfits, and a large number of confrontations between the police and the populace.

At the same time, security, legal, and judicial officials have been warned against being misled by “Western” concepts of democracy, political freedom, and the independence of the judiciary. The official *Legal Daily* noted in mid-2008 that different groups of police and court officials had watched a film entitled “Lessons from the ‘Colour Revolutions.’” The documentary, put together by the CCPLA and the Chinese Academy of Social Sciences (CASS), was about political changes in Georgia, the Ukraine, and Kyrgyzstan from 2003 to 2005, when “pro-West” opposition forces managed to seize power after defeating conservative, autocratic ruling parties. The daily reported that after watching the film, “the political consciousness [of the audience] was enhanced” and that they were more committed than ever to “combating various subversive activities of enemy forces both in and outside China and to resolutely uphold the socialist order.”⁽²⁴⁾

More powers to the Zhengfawei and the Ministry of Justice

Following the 17th CCP Congress in late 2007, the Hu-led Politburo Standing Committee has boosted the power of the CCPLA as a main vehicle through which the Party’s goals and policies on the legal and judicial fronts would be attained. This was evident from the higher frequency with which CCPLA cadres appeared in the media giving instructions to police, procuratorates, and judicial units.

Take the June 2008 national conference of *zhengfa* units held in Beijing to discuss how to implement Hu’s December 2007 instructions – and to bolster security for the upcoming Summer Olympics. The keynote address was delivered by Zhou Yongkang, a former police chief who has headed the CCPLA since the 17th Congress. The newly promoted PSC member asked the nation’s senior judges, prosecutors, police officers, and other *zhengfa* cadres to nurture the “lofty quality of being loyal to the Party.” He urged these officials to “perpetually uphold the political orientation of being loyal to the Party, loyal to the country and the people, and loyalty to the law.”⁽²⁵⁾ Again, it was no accident that in Zhou’s pecking order, the Party came well before the law.

Indicative of the *Zhengfawei*’s rising clout is that senior cadres from the commission have been appointed to senior slots in the courts and the procuratorates. This was evident from the surprising appointment of former CCPLA secretary-general Wang Shengjun as President of the Supreme People’s Court – a post that is equivalent to Chief Justice – at the National People’s Congress of March 2008. Wang, who does not have a law degree and had never served as a judge, built his career with the police department of Anhui Province. He became head of the provincial public security department before being seconded to the CCPLA in 1993.⁽²⁶⁾ His predecessor Xiao Yang, by comparison, was a legal scholar and a veteran government prosecutor at both the provincial and central level. Moreover, most of the dozen-odd SPC vice-presidents are respected law professionals, including a couple who used to be professors in well-known law schools. Wang’s appointment as chief judge seems to reflect the Hu leadership’s eagerness to put the courts under the control of trusted Party functionaries.⁽²⁷⁾ After all, as late as mid-2002, central authorities had made a commitment to the professionalisation of legal personnel. A report in the *People’s Daily* quoted Xiao Yang as saying that “the professionalisation of judges is a requirement for

22. “Hu Jintao: Earnestly and firmly open up new vistas for our country’s political and legal work,” Xinhua News Agency, 25 December 2007.

23. See, for example, Wang Shengjun, “The people’s courts must assiduously fulfill the people’s four new expectations,” Xinhua News Agency, 26 August 2008.

24. Cited in “Cadres in the *chengfa* departments watch the film ‘The lesson of the Color Revolutions,’” *Legal Daily*, 20 June 2009.

25. Cited in “Zhou Yongkang meets grassroots representatives who attend the feature discussion class of the *zhengfa* establishment,” Xinhua News Agency, 20 June 2008.

26. For a discussion of the career of Wang Shengjun, see, for example, Willy Lam, “The CCP Strengthens Control over the Judiciary,” *China Brief*, Jamestown Foundation, Washington D.C., vol. 8, no. 14, 3 July 2008.

27. *Ibid.*

[the goal of] rule by law, and this will be the main objective for the construction of judicial corps.”⁽²⁸⁾ Putting political qualifications before professionalism, however, amounts to a retrogression on the CCP's overall personnel and organisation policies.

The status of the Political and Legal Affairs Committees (PLAC) in regional administrations has also been enhanced. In several provinces such as prosperous Guangdong, the PLAC Secretary doubles as vice-provincial secretary. (Since the early 2000s, the CCP began cutting down the number of vice-Party secretaries for provinces and major cities to just two, one of whom is invariably the governor or mayor of these jurisdictions.) In mid-2008, Guangdong's PLAC Secretary Liu Yupu made news when he called upon law-enforcement and judicial officials in his province to “unify their thoughts and arm their brains” with Hu's instructions concerning how police and court officers can contribute to national security. Liu, who is also Vice-Party Secretary of the Guangdong Party Committee, noted that “the state security situation in Guangdong is tough because being close to Hong Kong and Macau, the province is at the frontline of the struggle against state enemies.”⁽²⁹⁾

At the same time, Hu has politicised the Ministry of Justice (MOJ), which is playing an increasingly potent role in the rendering the judicial system into a “tool of proletarian dictatorship.” Wu Aiyong, minister since 2005, is a member of the Communist Youth League Faction headed by Hu. A career Party functionary and organiser – most of her career consisted of running “mass organisations” such as youth and women's groups in her native Shandong Province – the 57-year-old Wu never went to law school or had any formal training in judicial matters. Like SPC President Wang, she was picked mainly due to her political loyalty to the powers-that-be.⁽³⁰⁾ And particularly after Hu's December 2007 speech, the public statements of Minister Wu and her colleagues have evinced an awe and respect for the supremo that borders on obsequiousness. A September 2008 editorial in the MOJ organ *Justice of China*, a monthly journal, noted that the judicial establishment must “always uphold the Party's absolute leadership over judicial work.” Moreover, judicial cadres must “in the areas of ideology, politics and action maintain a high level of unison with the Party central authorities with comrade Hu Jintao as General Secretary.”⁽³¹⁾

By the turn of the century, the MOJ's portfolio included running the country's prisons and *laogai* institutes; regulating and licensing law firms and lawyers; setting standards for and regulating law schools; liaising with judicial institutions abroad; and providing logistic support to the courts and the

procuratorates. Minister Wu has echoed Hu's insistence that all *zhengfa* workers must be “politically resolute, professionally competent, and that they must have a superior work-style and be able to administer the law in a just manner.” In a mid-2008 article on how the Party-state apparatus should train the nation's lawyers, Wu cited Hu's remark that “upholding the correct political orientation is to key to the success of *zhengfa* work.” The minister told her MOJ colleagues that “upholding the Party's leadership of lawyers” was the cardinal principle in managing and regulating China's nearly 150,000 lawyers. “Each developmental step taken by our legal profession has been achieved under the leadership of the Party.”⁽³²⁾ Little wonder that since Wu took over the MOJ in 2005, dozens of well-known “activist” or human-rights lawyers have been incarcerated. Moreover, the ministry has regularly threatened liberal or activist lawyers that involvement in unsanctioned political activities would lead to loss of their licenses.⁽³³⁾

The courts as tools of proletarian dictatorship

As Peking University law scholar Shi Fei pointed out, China's judicial system suffers from “an institutional deficiency.” Shi attributed this to “the political stress [by the authorities] on using the repressive function of the courts to bring about the reform of the social order and to consolidate the fruits of the revolution.”⁽³⁴⁾ This was despite the fact that by the turn of the century, the court system had tried to demonstrate a modicum of diversity and pluralism – if not reform – by hoisting the relatively neutral, non-politicised slogan of “implementing judicial fairness and efficiency.”

28. “China will further boost the professionalization of judges,” *People's Daily*, 8 July 2002.

29. See “Guangdong political and legal affairs secretary Liu Yupu: We must strive to become frontline soldiers for national political and legal work,” *Legal Daily*, 19 June 2008.

30. For a discussion of the career of Wu Aiyong, see Qiu Ping, *The Fifth-Generation Leadership of the Chinese Communist Party*, Hong Kong, Xiafeier Press, 2005, pp. 312-313.

31. Wu Aiyong, “Deepen the activity of ‘studying and discussing on a large-scale’,” *Justice of China* (monthly journal of the Ministry of Justice, Beijing), September 2008, p. 1.

32. Wu Aiyong, “Firmly conducting the activity of ‘Comprehensive Study and Discussion’ and promoting the sound and rapid development of the legal profession,” *Justice of China*, August 2008, pp. 6-8.

33. For a discussion of the MOJ's tactics against “disobedient” lawyers, see, for example, “A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protesters,” Human Rights Watch (New York), December 2006, <http://www.theconglomerate.org/files/china1206webwcover.pdf>; “Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China,” Human Rights Watch, April 2008, http://lawprofessors.typepad.com/china_law_prof_blog/files/080400_hrw_lawyers_in_china.pdf.

34. Shi Fei, “The evolution of the political task of the Supreme People's Court,” www.opentimes.cn website, <http://www.opentimes.cn/to/200801/123.htm>.

In editorials written in January 2001 and 2002 for the SPC mouthpiece *People's Justice*, Xiao Yang wrote, "There is no question that ceaselessly going after judicial fairness and efficiency should become the most honorable task of the people's courts in the new century." Xiao also noted that "the hope and necessary path for new developments for the people's courts lie in reform and innovation."⁽³⁵⁾ The veteran judicial cadre pointed out that "[the system of] justice has developed from a simple tool of dictatorship [of the proletariat] to a fundamental mechanism for punishing crimes, upholding the rights of citizens, and resolving the contradictions and strife within the people." Xiao referred to the need to modernise the judicial system after China's accession to the WTO just a few months earlier. While Xiao, like other senior judges, went through the motions of saluting the Party leadership, it seems clear that he was putting the emphasis on a relatively high degree of judicial independence. Xiao cited a clause in the *Political Report* of the 15th CCP Congress (1997) – "implement reform of the judiciary, and ensure through institutional means that judicial organs can independently and justly execute in adjudication and procuratorial powers according to the law."⁽³⁶⁾

Particularly after Wang Shengjun took over the SPC in 2008, however, all pretence at judicial impartiality as understood in the West went out the window. Speaking for the nation's nearly 200,000 judges, Chief Justice Wang indicated at the aforementioned *zhengfa* conference in mid-2008 that "only by upholding the 'three priorities' from beginning to end can the work of the people's courts go along the correct political path." In what amounted to a drastic politicisation of the judiciary, court officials were told to rally behind the leadership of the "Party central authorities with comrade Hu Jintao as general secretary." "We must unify our consciousness, thoughts and action regarding what kind of flag the courts will hoist and what kind of road they will take ... in order to ensure the correct political direction of the people's courts," Wang added.⁽³⁷⁾

While senior *zhengfa* cadres did not lay down specific and detailed targets or "quotas" for their colleagues, it seemed clear that the police and judicial apparatus was told to combat challenges to the socialist order in the run-up to the Summer Olympics. Top judge Wang said the goal of the courts was to "increase harmonious elements [in society] and to curtail disharmonious elements to the maximum degree." In the official media, the phrase "disharmonious elements" was shorthand for criminals, ethnic separatists, dissidents, and foreign spies. Wang exhorted the nation's judges and other judicial officials that "a major criterion for

assessing and testing the juridical and implementation functions of the people's courts" would be whether they could "promote social harmony." In another memorable speech the same year, Wang asked judges to "refrain from mystifying the judicial system," apparently meaning that they should not be too "legalistic" or dogmatic in upholding the statutes. "While emphasis is being put on the professionalisation of judges, this does not mean that [judges] should be detached from society," Wang said. "Judges are social workers as much as legal workers."⁽³⁸⁾

In interviews with the domestic media, officials in *zhengfa* departments nationwide vowed to fulfil their prescribed role as the "tools of democratic proletarian dictatorship." Zhang Wenxian, President of the Higher People's Court in Jilin Province, revived Cultural Revolution-era language to play up the fact that "the people's courts are state judicial organs under the leadership of the CCP." "The courts must uphold the Party's leadership so as to keep up their [correct] political orientation," he added. "They must take as their holy task the sustenance of the Party's ruling foundation and the consolidation of the CCP's ruling-party status." Zhang particularly drew attention to socio-political stability being jeopardised by the "infiltration and disruption activities by Western countries," for example, by "attacking our socialist judicial system through exaggerating and distorting certain judicial cases."⁽³⁹⁾

Things came to such a pass that by the second half of 2008, the judiciary had become a virtual echo chamber for the powers-that-be. SPC President Wang was making periodical media appearances to pledge the courts' support for whatever the Politburo was aiming to do. The latter included campaigns to promote the "scientific outlook on development," to clean up the tainted milk scandal, and to help the economy weather the ravages of the global recession. For example, Wang said in early December that judicial departments would pull out the stops to "provide strong judicial safeguards for maintaining national financial security and ensuring the economy's steady and relatively rapid develop-

35. Xiao Yang, "Our ideals: Realizing judicial justice and efficiency," *People's Justice* (official Beijing journal), January 2002, p. 1.

36. "Political Report of the 13th CCP Congress," *op. cit.*

37. "Wang Shengjun: Firmly grasp the principles of the 'three top priorities' and open up new vistas for judicial work," *People's Court Daily*, 23 June 2008.

38. "Wang Shengjun: Maximize the harmonious factors, and decrease disharmonious factors," *Guangming Daily* (Beijing), 23 June 2008; "Wang Shengjun: Do not mystify the judicial system," *People's Daily*, 28 August 2008.

39. Cited in "Graduation of special class for cadres in the political and legal system," www.Chinapeace.org.cn, 20 June, 2008, http://news.xinhuanet.com/legal/2008-06/20/content_8407006.htm.

ment.”⁽⁴⁰⁾ Yet it is in terms of suppressing “state enemies” that the judicial apparatus has served the leadership best. Infamous cases of dissidents being detained or jailed on dubious charges in the Year of the Olympics included NGO activist Hu Jia and dissident writer Liu Xiaobo. The Hu and Liu scandals elicited widespread condemnation of the Chinese government – as well as sympathy for the victims of the miscarriage of justice. Hu Jia was awarded the Sakharov Prize by the European Parliament in 2008. Liu Xiaobo was incarcerated for his role in spearheading the Charter '08 campaign, which drew inspiration from Czechoslovakia's Charter '77 movement. In December 2008, dozens of Nobel laureates and China scholars joined a signature campaign to urge President Hu to release Liu, who had also played a role in the 1989 student movement.⁽⁴¹⁾

The procuratorate under the Party's thumb

The work of the procuratorate (roughly equivalent to the prosecutor's office in a country with common-law jurisdiction) is less well-known in the West, even though the Chinese Constitution states that it enjoys the same level of power and importance as the courts, and that the police, courts, and procuratorates should engage in some form of checks and balances amongst each other.⁽⁴²⁾ In his “Report to the National People's Congress” on the work of the procuratorate from 1993-98, then Supreme People's Procuratorate (SPP) president Zhang Siqing tried to strike a balance between his unit's fealty to the CCP leadership on the one hand, and legal “professionalism” on the other. Thus, Zhang, who started his legal career in 1952, underscored the imperative of “upholding the Party's absolute leadership over procuratorial work.” At the same time, the SPP chief noted that his department would “exercise procuratorial rights independently and correctly according to law.” He indicated that the procuratorate would seek to rectify the fairly common phenomenon among cadres of “not abiding by the law, failure to seriously implement the law, and failure to take action [upon witnessing cases of] violation of the law.” Zhang also vowed to “implement the regularisation and legalisation of the management of the procuratorial corps.”⁽⁴³⁾

As in the case of the courts, the 17th Party Congress of 2007 – and the change of leadership in the *zhengfa* system during the ensuing NPC session in March 2008 – marked the further politicisation of the procuratorate. When the out-going president of the SPP, Jia Chunwang, talked to the media

during the 17th Congress, he steered clear of sensitive issues such as the way in which the procuratorate should serve CCP imperatives. Thus Jia, who had once worked for late Party chief Hu Yaobang, cited these two foremost tasks of his department: “to fulfill the function of legal supervision and to uphold social harmony and stability as well as justice,” and “implementing the law in a serious, just, and civilised manner.”⁽⁴⁴⁾

The mood – and emphasis – changed after Cao Jianming took over the SPP helm in March 2008, following which the procuratorate has reiterated its unstinting loyalty to the Party leadership. Soon after he replaced Jia, Cao made a major policy statement on the *shuxing* or “[political] nature” of the procuratorate. In an editorial in the mouthpiece *People's Procuratorial Semimonthly*, Cao declared that his department would “uphold the socialist procuratorial system with Chinese characteristics, and resolutely combat the influence of various misguided ideological trends.” Cao then saluted President Hu's now-famous “three top priorities”: “giving top priorities to the Party's enterprise, the interests of the people, and [the sanctity of] the Constitution and the law.”⁽⁴⁵⁾ The top prosecutor was of course warning his colleagues against Western ideas such as the independence of the judiciary. This is despite the fact that the 54-year-old Cao, an expert on international law and former president of Shanghai's famous Huadong University of Law and Political Science, is considered a relatively well-trained and moderate official in the *zhengfa* system.

SPP Vice-President Zhang Geng wrote in a 2008 article about the lesson of 30 years of legal reform that the procuratorate should closely work with other legal and executive departments toward realising their common goal of “safeguarding the ruling status of the CCP, maintaining national security, and defending the rights and benefits of the people.” The senior *zhengfa* cadre indicated that all levels of the

40. See, for example, “The Supreme People's Court will provide strong judicial safeguards,” *Chinese Security News* (Beijing), 11 December 2008; “Wang Shengjun: the courts will uphold the scientific outlook on development and serve the overall situation,” Xinhua News Agency, 19 December 2008.
41. For a discussion of Beijing's treatment of the Charter 08 campaign, see, for example, “Chinese Authorities Continue to Suppress *Charter 08*; Number of Signers Exceeds 7,200,” Human Rights Watch (New York) press release, 9 January 2009.
42. *The Constitution of the People's Republic of China*, 2004, http://english.gov.cn/2005-08/05/content_20813.htm.
43. “Work Report of the Supreme People's Procuratorate at the National People's Congress,” *People's Daily*, 11 March 1998.
44. “An interview with Jia Chunwang: Push forward the enterprise of a socialist procuratorate with Chinese characteristics,” *Legal Daily*, 18 October 2007.
45. Cao Jianming, “Open up a new vista for a socialist procuratorial enterprise with Chinese characteristics,” *People's Procuratorial Semimonthly*, Issue 18, 2008.

procuratorate should “self-consciously implement the [political] lines, goals and policies of the Party.” He added that the CCP exercised “political, ideological and organisation leadership” over the procuratorate. “We should strengthen the construction of Party organisations and Party leadership groups within units of the procuratorate,” he said. “We should insist upon the principle of the Party taking charge of cadres.”⁽⁴⁶⁾

Indeed, apparatchiks in the procuratorate system have gained power at the expense of “professionals,” or properly trained and experienced prosecutorial specialists. The *Zhengfawei* has emphasised the leading role of the *dangzu*, or Party organisations, within the procuratorates. In a late 2008 speech, the Chief Prosecutor of the Zhejiang Procuratorate, Chen Yunlong, pointed out that the *dangzu* in his unit would play the role of “dragonhead.” Chen said the *dangzu* would “fulfill the function of ‘the premier responsible person’ and the ‘steering sheep’” particularly in setting the political orientation of procuratorial work in the province.⁽⁴⁷⁾

A stunning set-back for legal and political reform

In a 2008 article, Minister of Justice Wu Aiyang quoted Marx saying that “the judicial system is determined by the political system... and the former also serves to confirm, safeguard and promote this political system.”⁽⁴⁸⁾ Like a fair number of *zhengfa* officials that the Hu-Wen administration has promoted, Wu has not spent a single day in law school – let alone delved into the intricacies of “capitalist” legal systems. The preponderance of CCP functionaries such as Minister Wu and SPC President Wang has demonstrated that while Beijing has for the past decade or so periodically sent legal scholars and judges to Western countries for short-term training or exchange programs, the law-enforcement and judicial apparatus remains dominated by Party hacks ridiculed by intellectuals as *famang*, or legal ignoramuses.

From the CCP leadership’s point of view, of course, politically correct cadres with proven contributions to socio-political stability are worthy of commendation – and elevation. This perhaps explains the sizeable number of *zhengfa* cadres, especially senior police officials, who have been promoted to high-level regional administrative slots. In mid-2008, for example, Assistant Minister of Public Security Sun Yongbo was made Vice-Governor of Heilongjiang Province. In at least seven provinces, the head of the local public security department doubles as either vice-governor or

assistant governor. The Hong Kong daily *Wen Wei Po*, which reflects Beijing’s views, quoted informed sources in the capital as saying that the spate of promotions of senior public security cadres “reflects the importance that central and regional authorities are attaching to security work.”⁽⁴⁹⁾ In early 2009, CCPLA chief Zhou even suggested that in order to make up for the shortfall of judges and procurators in central and western provinces, relevant *zhengfa* academies could recruit high school graduates among demobilised soldiers and PAP officers and provide them with accelerated training.⁽⁵⁰⁾

The politicisation of the *zhengfa* system, however, has hardly contributed to avowed CCP goals such as promoting socio-political stability, let alone improving social justice. A key reason is the dubious quality – and integrity – of large numbers of cadres in departments ranging from the police to the courts. Take, for example, the widespread collusion between police and triad societies, or Chinese-style mafia, particularly in grassroots administrations. Instead of maintaining law and order, illegal activities of police and their triad cronies are often the cause of instability. One of most serious “mass incidents” of 2008 – the riot in Weng’an County, Guizhou, in mid-2008 – was due to the wholesale deterioration of the local public security units.⁽⁵¹⁾ Corruption cases involving senior members of the judiciary are regularly reported even by the official Chinese media. In the second half of 2008, China’s *gongjianfa* circles were shaken by one of the most serious judicial scandals ever: the corruption case surrounding former SPC Vice-President Huang Songyou. Huang was alleged to have pocketed some 400 million *yuan* in ill-gotten gains due to his involvement in real-estate and other deals in his native Guangdong Province. There was also innuendo that his patron, fellow Guangdong native Xiao Yang, was implicated. Other high-level judges

46. Zheng Geng, “A procuratorate system that bears clear-cut characteristics of Chinese-style socialism,” *People’s Daily*, 7 July 2008.

47. Fan Yuehong, “Develop the ‘dragonhead function’ of party committees,” *Procuratorial Daily* (Beijing), 24 November 2008.

48. “Talk given by Wu Aiyang at the party committee meeting of the Ministry of Justice and the national conference of heads of justice departments and bureaus,” Ministry of Justice website, 30 June 2008, http://www.moj.gov.cn/moj/2008-06/30/content_888739.htm.

49. “Many heads of provincial police departments double as members of the provincial Communist Party Standing Committee,” *Wen Wei Po* [Hong Kong], 27 June 2008.

50. Zhou Yongkang, “Safeguard social equality and justice; uphold social harmony and stability,” *Qiushi* (Beijing monthly), 1 February 2009.

51. For a discussion of the role of the Chinese mafia in the “Weng’an incident,” see “Weng’an police say more than 111 members of triad societies have been arrested,” Xinhua News Agency, 15 July 2008; “The background of the Weng’an incident: some cadres are in collusion with triad forces,” CCTV news, 27 July 2008, <http://politics.people.com.cn/GB/14562/7503118.html>.

who had in 2007 and 2008 been incarcerated for taking graft and other economic crimes included the presidents of the Higher People's Courts in Guangdong, Liaoning, Hunan, and Heilongjiang, respectively Mai Chongkai, Tian Fengqi, Wu Zhenhan, and Xu Xiandong.⁽⁵²⁾ The reputation of China's courts has fallen to new lows among citizens and foreign businessmen. Fully 70 per cent of the petitions presented by aggrieved Chinese to the State Bureau for Letters and Calls were related to allegations of miscarriages of justice.⁽⁵³⁾

In mid-2008, SPC Vice-President Shen Deyong announced a countrywide "tracking system" under which the nation's highest court would systematically review disputed judicial cases and penalise regional judges with a record of misjudgements. "We will streamline principles governing the discretionary powers of judges, and try to unify standards so as to avoid public doubts about justice because of very different judgments on similar cases," Shen said. By the end of 2008, the SPC and other departments set up a hotline for disgruntled members of the public to complain about miscreant judges.⁽⁵⁴⁾ Even Party and government departments seem to have doubts about the reliability and professionalism of judges. For example, it has become the norm for senior cadres accused of corrupt practices to be put on trial in a province outside the suspect's jurisdiction. The fact that judges have been called upon by the CCP leadership to put political loyalty before other considerations could further erode their ethical and professional standards. The increasingly powerful public-security establishment has also been accused of being a hotbed of factionalism. For example, an exceptionally large number of senior police officers were either born in Heilongjiang Province or have spent a good part of their careers there. Members of this so-called Heilongjiang Faction within the MPS have included Vice Ministers Yang Huanning, Zhang Xinfeng, and Meng Hongwei, and recently-retired Vice-Minister Bai Jingfu.⁽⁵⁵⁾ The lack of "geographical diversity" within the leadership of such a major ministry goes against the well-known Deng Xiaoping dictum on CCP personnel arrangements: that top-level officials in Party and government units should hail from "the five lakes and four seas." Yet in his eagerness to secure the unstinting support of *gongjianfa* officials for goals such as augmenting Party authority and clamping down on dissent, President Hu seems willing to give "loyalists" and apparatchiks additional perks and prerogatives. In the final analysis, while the politicisation of the law-enforcement and judicial apparatus may buy the Party some time, this is hardly a prescription for achieving objectives of the Hu-Wen admin-

istration such as "putting people first" and "upholding social justice." And should the number – and seriousness – of mass incidents increase due to the declining quality of police, procuratorial, and judicial cadres, the CCP's goal of retaining power forever could be dealt a frontal blow. •

Glossary

Bai Jingfu 白景富 Cao Jianming 曹建明
 Chen Peixian 陳丕顯 Chen Yun 陳雲
 Chen Yunlong 陳雲龍 dangde shiye 黨的事業
 dangzu 黨組 Deng Xiaoping 鄧小平
 Falun Gong 法輪功 Fazhi ribao 法制日報
 gongjianfa 公檢法 Guojia xinfang ju 國家信訪局
 Hu Jia 胡佳 Hu Qili 胡啟立 Hu Yaobang 胡耀邦
 Huang Songyou 黃松有 Jia Chunwang 賈春旺
 Jiang Zemin 江澤民 Kaifang zazhi 開放雜誌
 laogai 勞改 Li Peng 李鵬 Liaowang zhouban 遠望周刊
 Liu Xiaobo 劉曉波 Liu Yupu 劉玉浦 Luo Gan 羅干
 Meng Hongwei 孟宏偉 Peng Zhen 彭真
 Qiao Shi 喬石 Qiu Shi 求是
 Renmin jiancha 人民檢察 Ren Jianxin 任建新
 Renmin ribao 人民日報 Renmin fayuan bao 人民法院報
 Renmin daxue 人民大學 Renmin sifa 人民司法
 Shen Deyong 沈德詠 Shenzhen tequ bao 深圳特區報
 Shi Fei 時飛 shuxing 屬性 Sun Zhigang 孫志剛
 Tian Jiyun 田紀雲 Wang Shengjun 王勝俊
 Wang Zhen 王震 Wen Wei Po 文匯報
 Weng'an shijian 瓮安事件 Wu Aiyang 吳愛英
 www.Chinapeace.org.cn 中國安全網
 Xiafeier chubanshe 夏菲爾出版社 Xiao Yang 肖揚
 xinzheng 新政 Xu Chongde 許崇德
 yanda 嚴打 Yang Huanning 楊煥寧
 yifazhiguo 依法治國 Zhang Geng 張耕
 Zhang Siqing 張思卿 Zhang Wenxian 張文顯
 Zhang Xinfeng 張新楓 Zhao Ziyang 趙紫陽
 Zhengfa 政法 Zhengfawei 政法委
 Zhonggong zhongyang zhengfa weiyuanhui
 中共中央政法委員會
 Zhongguo qingnian bao 中國青年報
 Zhongguo sifa 中國司法 Zhou Yezhong 周葉中
 Zhou Yongkang 周永康

52. For a discussion of the alleged graft cases involving Huang Songyou and other senior judges, see "More thoughts on the Huang Songyou case: Corruption within the court system is still serious," Xinhua News Agency, 2 December 2008; Zhong Tong, "Deputy President of the Supreme People's Court Huang Songyou dismissed; Implicated in a 400 million yuan graft case," *Shenzhen Special Zone Daily*, 29 October 2008; Liu Tong, "Death sentence for Yang Jia means that justice is dead," *Open Magazine* (Hong Kong monthly), December 2008.
53. Cited in "The Supreme People's Court announces 'Five Curbs' to curtail corruption," *People's Court Daily* (Beijing), 19 January 2009.
54. Cited in "Judges will be punished for trial errors," *China Daily*, 24 June 2008.
55. "Many heads of provincial police departments double as members of the provincial Communist Party Standing Committee," *Wen Wei Po*, *op. cit.*