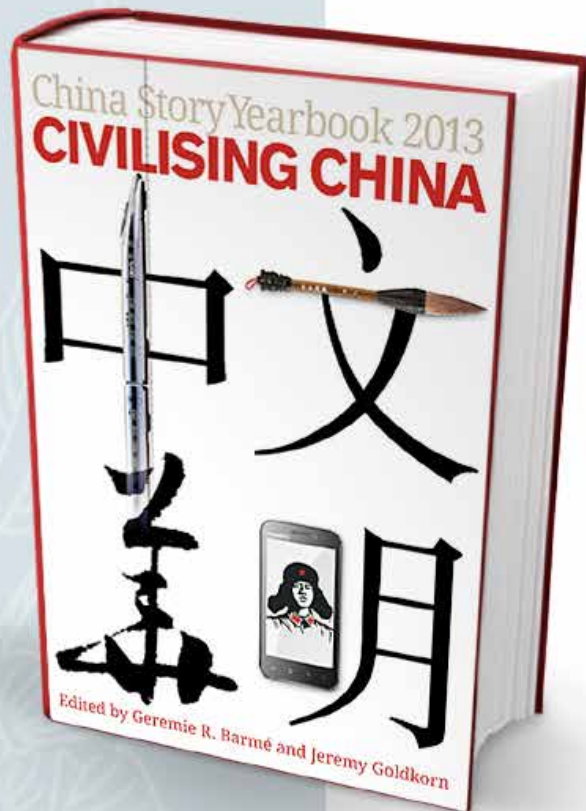


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CHAPTER 4

UNDER RULE OF LAW

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CIVILISING CHINA

文明中华

EDITED BY

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As China becomes wealthier and more confident on the global stage, it also expects to be respected and accommodated as a major global force — and as a formidable civilisation. Through a survey and analysis of China's regional posture, urban change, social activism and law, mores, the Internet, history and thought — in which the concept of 'civilising' plays a prominent role — *China Story Yearbook 2013* offers insights into the country today and its dreams for the future.



Chinese football fans, Guiyang, June 2011.
Source: ImagineChina

4



UNDER RULE OF LAW

Susan Trevaskes and Elisa Nesossi

上海

SHANGHAI

Protesters against the Re-education Through Labor system at a Politico-Legal Commission Work Conference where Meng Jianzhu announced reforms.



IN POST-EIGHTEENTH Party Congress China, politics continue to dominate the justice agenda, particularly in corruption cases and in cases that may have an impact on social stability. Despite its staunch opposition to liberalism, the new party leadership recognises that, during the last decade, encroachments of the Stability Maintenance agenda on the legal system have resulted in a widespread loss of public trust in the law. Hence, in 2013 rhetorical expressions such as ‘using rule-of-law thinking’ have reappeared in the politico-legal discourse. This in no way implies a new commitment to liberal values. Indeed, the prescribed route to development and prosperity in Xi Jinping’s China remains unmistakably socialist, intolerant of the ‘deviant path’ of Westernisation and heavily reliant on anti-corruption rhetoric and Mass Line discourse, and these ideological concerns justify and inform justice practices.

Civilising justice has been an ongoing national project in post-Mao China. Officially, it goes under the description of ‘reform’ — an effort to instil the values associated with the rule of law into the practice of justice. Yet in these times of rapid social transformation, the civilising of justice is inseparable from politics. Increasing demands for ideological conformity have an inevitable impact on the way the justice system works both in theory and practice.

Since late 2012, the new party leadership has been realigning its politico-legal agenda. It has been pulling away from the hardline insistence on ‘Stability Maintenance’ (*weiwen* 维稳, short for *weihu shehui wending* 维护社会稳定) that was eroding public confidence in the law (and which we discussed in the 2012 *Yearbook*), and is returning to an emphasis on building the rule of law. Collective public protests or ‘mass incidents’ (*qunti shijian* 群体事件) drew the particular ire of the party-state in the years after the Seventeenth Party Congress. Over the years 2007 to 2012, these increased from around 80,000 to well over 100,000 annually, possibly up to 180,000. After 2007, and bolstered by a dramatically increased annual budget, police and other security agencies implemented a conservative approach to policing, or what the legal scholar Yu Jianrong describes as ‘rigid Stability Maintenance’ (*gangxing weiwen* 刚性维稳) operations. State responses to protests began to soften as a result of the Guangdong provincial government’s success in negotiating a peaceful resolution to the stand-off between police and protesters in Wukan village that captured the nation’s attention in December 2011, as discussed in the 2012 *Yearbook*. The political fallout from the March 2012 downfall of Bo Xilai further turned the tide.

Loss of public trust in the law has been central to the party-state’s decision to revive rhetoric around the rule of law. By mid-2012, it was apparent that the party leadership recognised the futility of rigid Stability Maintenance as a long-term political solution. It began to favour instead the relatively peaceful process of mediating and resolving disputes through local courts and government agencies.

Refining Stability Maintenance



Special police force on the move.
Source: Xinhua

The law–politics nexus in China is well illustrated by the major political events of 2012–2013. This period’s justice-related highlights and lowlights include the dramatic downfall of the Bo Xilai empire in Chongqing, his wife’s murder trial in August 2012 and the associated criminal trial of his right-hand (police-) man Wang Lijun in September 2012. They include other high-profile trials such as that of millionaire businesswoman Wu Ying, who escaped execution apparently as the result of nationwide public demands for leniency, and that of Burmese drug lord Naw Kham, whose final hours before execution March 2013 in Yunnan province were televised nationwide.

Political realignments in late 2012, meanwhile, began to shift politico-legal agendas. As the head of the Central Party Committee Politico-Legal Commission from 2007 to the end of 2012, Zhou Yongkang played a central role in formulating and implementing justice policy, driving the Stability Maintenance agenda from central to local criminal justice agencies, through politico-legal party committees in courts, procuratorates and police stations across the nation. But Zhou’s support for Bo Xilai sealed both

MASS INCIDENTS IN 2012

In January 2013, Legal Daily (Fazhi ribao 法制日报) published a summary of a report that tabulated and analysed 'mass incidents' in China — riots, civil unrest and protests. The sources of information and the methodology underpinning the report were not clear; the summary also failed to give a total number of mass incidents for 2012. The numbers of incidents by location indicating, for example, that Guangdong experienced only eight mass incidents, made no sense when compared with previous official reports that spoke of an annual total of 80,000–100,000 mass incidents nationwide. But the report did provide a snapshot of some of the challenges faced by the Communist Party. Following are translated highlights from the Legal Daily report.

Duration of Incidents

- one day: 75.6 percent
- two to seven days: 20 percent
- seven days to three months: 4.4 percent.

Geographical Distribution (the most restive provinces)

Guangdong, Sichuan and Henan provinces had the most mass incidents with eight, five and four respectively.

Causes

The report declared that in 2012 the causes of mass incidents were more varied than in the past. These included:

- social disputes/issues 社会纠纷: 24.4 percent
- forced demolitions/removals 征地强拆: 22.2 percent
- conflict between the police and the People 警民冲突: 22.2 percent
- conflict between officials and the People 官民冲突: 13.3 percent
- defence of environmental rights 环境维权: 8.9 percent
- ethnic conflict 族群冲突: 8.9 percent.

Public Interest

The report said cases detrimental to the public interest (*gonggong liyi shou sun* 公共利益受损) are the most common type of mass incident at 57.8 percent, whereas harm to private or individual interests (*geren liyi shou sun* 个人利益受损) is the cause of 42.2 percent of mass incidents. 'Public interest' is defined as something that affects a large group of people — for instance, an environmental problem — whereas an example of 'private interests' is damage to a person's property.

Types of People Involved

Mass incidents in 2012 involved the following types of people:

- residents of cities and towns 城镇居民: 51.1 percent
- farmers/rural residents 农民: 46.7 percent
- migrants 外来人口: 17.8 percent
- students 学生: 11.1 percent
- minorities 少数民族: 4.4 percent
- foreign nationals 外籍人士: 2.2 percent.

Tactical Response

The report recommended that local governments put a major effort into preparing emergency response mechanisms to deal with mass incidents, and divided them into the following categories:

- spontaneous 临时突发的: 53 percent
- organised in advance 事前有组织: 31 percent
- progressively/gradually unfolding 递进式开展: 16 percent.

Means of Organisation

The report said that although the majority of mass incidents are organised face-to-face or by telephone calls, social media 'cannot be ignored'. From the report:

It's worth noting that in 13.3 percent of mass incidents, new media Weibo was used as an organisational tool. One can see that the nature of mass incidents is changing with the development of the Internet, and there are more and more methods of organising people who have never met before into an interest group that encourages a mass incident to break out. In these circumstances, all local government departments need to professionalise their use of official Weibo accounts and their monitoring and control of public sentiment on the Internet.

Means of organising:

- personal (face-to-face/ phone call) 人际 (当面/电话): 95.6 percent
- Weibo 微博: 13.3 percent
- instant messaging 即时通讯: 4.4 percent
- Internet forum 论坛: 4.4 percent
- unknown 不确定: 2.2 percent.

Aftermath

The report recommends careful consideration of how to 'achieve win-win outcomes' in relation to mass incidents, and breaks down the consequences of mass incidents in 2012 as follows:

- damage to property 财产损失: 73.3 percent
- injuries 人员受伤: 71.1 percent
- peaceful resolution 和平解决: 11.1 percent
- fatalities 人员死亡: 8.9 percent.

Measures Taken

According to the report, the Chinese government dealt with mass incidents in 2012 using the following types of responses:

- negative measures 负面应对措施: 62.2 percent
- positive measures 正面应对措施: 57.8 percent
- no measures taken 无应对: 15.6 percent.

Positive measures are defined as:

- official announcements 官方声明
- thorough investigation 深入调查
- dealing with the persons responsible 处理负责人
- consoling/persuading concerned parties 慰问/劝说当事人
- publicising policies, laws and regulations 出台政策法规。

Negative measures are defined as:

- information blackout 封锁信息
- dispersal using force 强硬驱散
- arresting and detaining concerned parties 逮捕/拘留当事人。

Bo Xilai

Bo Xilai on trial.
Source: Xinhua

Gu Kailai, Bo Xilai's wife on trial.
Source: CCTV

Xinhua News Agency announced on 28 September 2012 that former Chongqing Communist Party chief and Politburo member Bo Xilai had been expelled from the Communist Party and removed from his remaining public offices. According to Xinhua, the decision was made during a Politburo meeting and was based largely on Bo's handling of Wang Lijun's unauthorised entry into the US Consulate in Chengdu early that year, the involvement of Bo's wife, Gu Kailai, in the murder of Englishman Neil Heywood in late 2011, and disciplinary violations dating back to Bo's time as mayor of Dalian in the 1990s. Bo was removed from the Politburo and the Party's Central Committee, and his case was turned over to the judiciary.

On 23 October 2012, the neo-Maoist website Red China published an open letter to the Politburo Standing Committee arguing that Bo's removal from office was politically motivated and legally questionable. It was purportedly signed by more than 300 people, including former senior officials. There were other small, muted acts of protests, but on 25 July 2013, Bo was formally charged with taking bribes, corruption, and abuse of office.

Gu Kailai, whom the state media consistently referred to as Bogu Kailai after her arrest, had already been formally charged with Heywood's murder on 26 July 2012. During her one-day trial on 9 August 2013, she reportedly confessed to the crime, blaming her actions on a mental breakdown. On 20 August, the court handed down a suspended death sentence. Her aide, Zhang Xiaojun, was sentenced to nine years in prison. According to the official Xinhua narrative of the crime, Gu had poisoned Heywood out of fear for the safety of her son, Bo Guagua, whom he had reportedly threatened via email during a financial dispute.

Wang Lijun was tried on 17–18 September 2012 for abuse of power, attempted defection, taking bribes and bending the law for selfish ends. He was sentenced to fifteen years in prison. State and commercial media portrayed Wang as an image-obsessed wheeler-dealer who had assisted Gu in covering up the Heywood murder.

Gu's trial took place in a closed court in Hefei, Anhui province, that released a terse, scripted statement about what took place, but during Bo's trial, conducted by the Jinan Intermediate People's Court just over a year later, from 22 to 26 August, edited excerpts of the court transcripts were released regularly to Sina Weibo. Gu testified via video. Bo called her 'crazy' and vigorously cross-examined businessman Xu Ming, a witness for the prosecution.

On 22 September the court found Bo guilty on all charges, stripped him of his assets, and sentenced him to life in prison. Xinhua published photographs of him listening to the verdict. As during the hearings, the 1.85 meter tall Bo, wearing fashionable black sneakers as clearly visible as his handcuffs, is flanked by two policeman specially chosen to tower over him. In some of the photos, Bo is smiling, in apparent defiance, or in sheer disbelief; or a perhaps sign that he was dreaming of revenge.

Naw Kham

Naw Kham (also romanised as Nuo Kang and Nam Kahn) was an ethnic Shan Burmese criminal gang leader who was convicted by a Chinese court of planning and carrying out the murder of thirteen Chinese mariners on 5 October 2011. The sailors were crewing on two cargo ships — the *Hua Ping* and *Yu Xing 8*. The ships operated on the Mekong River in the 'Golden Triangle', where criminal gangs often demand protection money from boats and sometimes hijack them to transport illegal goods such as drugs. The mass murder caused great public outrage in China after photos of dead Chinese sailors went viral on the Internet.

After the sailors' bodies were found, the Chinese authorities quickly suspended all Chinese shipping on the Mekong and requested co-operation from Thailand, Laos and Burma in solving the crime. In December 2012, the four countries signed a security agreement to administer joint patrols on the Mekong. They launched a man-hunt, under Chinese direction, involving members of an elite Thai anti-narcotics force, to capture suspects including Naw Kham and members of his gang. Laotian security forces apprehended Naw Kham in late April 2012 in Bokeo province. He was extradited to China to stand trial. The court sentenced him and two other members of his gang to death in November 2012; they were executed by lethal injection on 1 March 2013. The graphic televised report of the execution caused considerable comment both in China and internationally.

Some observers viewed the Chinese government's actions as indicative of China's growing role in regional security, or what the *New York Times* called 'cross-border clout'.



Naw Kham on trial.
Source: Xinhua

his own fate and, indirectly, the fate of rigid Stability Maintenance. With Bo's downfall, Zhou Yongkang found himself politically isolated. As the political mood shifted, in July 2012 he publicly affirmed the more moderate 'Guangdong Model' (that is, a negotiated solution to local strife).

In August, Zhou further tried to salvage his reputation as well as his protégés' within the bureaucracy by touting what he referred to as a more 'civilised' security and justice agenda. This consisted of standardising justice practices throughout the nation and urging strict enforcement of laws and regulations. In January 2013, the well-known activist lawyer Pu Zhiqiang made an extraordinary public attack on Zhou, accusing him of abusing human rights through rigid Stability Maintenance, calling him a 'traitor to the people' and characterising his actions as 'poisonous'. Pu argued that for China to emerge from the shadow of Stability Maintenance, Zhou would have to be 'held to account' (*qingsuan* 清算) for its negative political and social fallout. Although these comments were later deleted from the Chinese Internet, at the time of writing Pu had not suffered serious consequences for his outspokenness. This alone suggests the level of disdain for Zhou in even the highest political circles.

Wu Ying

Wu Ying on trial.
Source: Xinhua

Wu Ying, an entrepreneur from Zhejiang province, founded Bense Group in 2005 and by 2006 was ranked by the *Hurun* Report as the sixth-richest woman in China. In February 2007, she was formally arrested for illegal fundraising and was sentenced to death for fraud in December 2009. The provincial high court upheld her sentence on appeal and submitted it to the Supreme People's Court for authorisation.

Wu Ying's case shed light on the application of the death penalty to a wide range of economic crimes and led to calls for legal reform, particularly because the illegal fundraising she was convicted of could also be viewed as the sort of underground financing that may be the only option available to private businesses shut out by the state-run banking monopoly. Wu also admitted to bribing officials, but because bribery is not a capital crime, popular opinion held that the court imposed the sentence partially to prevent the investigation escalating to include the more than one hundred officials who had allegedly lent her over half a million yuan each.

Speaking at a press conference on 14 March 2012, then Premier Wen Jiabao noted approvingly that the Supreme People's Court had taken a 'cautious approach' to her case, a remark interpreted as nudging the court toward a reprieve. The court issued a narrow ruling quashing the original sentence on the grounds that Wu had co-operated with investigators, although it affirmed the particulars of the lower court rulings. On 21 May 2012, the Zhejiang court sentenced Wu Ying to death with a two-year stay of execution.

Regaining Trust in the Law

Security agencies deployed three million people including police, other security personnel and volunteers to maintain stability and protect the some 2000 national party delegates who descended on Beijing for the week-long Party Congress beginning on 8 November 2012. This congress set the 2013 politico-legal agenda, announcing new rule-of-law-based slogans and a crucial change in the politico-legal power structure. Until 2012, politico-legal authority was concentrated largely in the person of Zhou Yongkang as Politburo Standing Committee member and head of the Politico-Legal Commission. After November, Xi Jinping and colleagues recentralised this authority back into the collective hands of the Politburo Standing Committee.

Meng Jianzhu, the former Minister of Public Security, became the new head of the Commission in November 2012. Meng's debut speech implored criminal justice organs to 'civilise' their practices, conduct their work 'on the basis of the rule of law', and 'standardise' justice practices across the nation to ensure that the law is properly enforced. As Meng declared:



Meng Jianzhu,
former Minister of Public Security.
Source: Xinhua

... Making use of concepts and methods of the rule of law, we should also enhance, in a practical way, our ability to resolve conflicts and maintain stability ... We should rigorously implement the basic strategies of the rule of law, and conscientiously address the issue of developing our capacity to enforce the law in the context of constructing a socialist country within the framework of the rule of law. Public security organs should tenaciously build up the concepts of socialist rule of law, skilfully handle all kinds of complex problems with the help of rule-of-law thinking, skilfully resolve various social conflicts with the help of legal approaches, and skilfully maintain social order with the aid of law and regulations. This way, solutions to social conflicts and problems can be addressed via the rule of law ... Law enforcement should be performed on the one hand, strictly and justly, and on the other hand, in a rational and civilised manner.

Immediately following important Party Congress speeches, political factions and personalities often test regime tolerance through provocative statements. While some political authorities clung to Stability Maintenance rhetoric, at the other end of the political spectrum others took advantage of the opportunity to promote more robust rule of law values. Writing in the *People's Forum* (*Renmin luntan* 人民论坛), Supreme People's Court Deputy Chief Justice Jiang Bixin's endorsement of the virtues of the rule of law went far beyond the modest enforcement-orientated goals of Meng Jianzhu's speech. Rebuffing those in the Party who ridiculed the idea of 'universal values', Jiang lauded the civilising effects of law and justice:

Concepts such as democracy, freedom, equality, rule of law, justice, integrity, and harmony should be incorporated into core socialist values These concepts have never been merely patents of the bourgeoisie, but are the product of the civilising process which is commonly created by all human beings. These concepts symbolise both the moral values of humanism which are embedded in the rule of law, and the fundamental conditions upon which the rule of law is conceived. ... [T]he inclusion of these concepts into core socialist values will not only enrich the core socialist values system, but will also endow socialist values with a commonality and compatibility with other value systems.



Spotting imperfections.
Photo: Hsing Wei

The reignition of rule-of-law rhetoric may point more to a change in the political mood for limited internal reform than the delivery of dramatic improvements to the structure of state power. Yet the upsurge in references by politicians to the rule of law in late 2012 and early 2013 signalled intentions within the Party to make the judicial and security organs more conducive to 'supervision' and the 'mutual restraint' of authority — a boon, ultimately, for the long-term resilience of the regime. This change of political heart will influence the carriage of justice in courts and policing agencies, many of which in recent years took the stability imperative to extremes.

The 'localisation' (*difanghua* 地方化) of court agendas over the last decade has meant that at each sub-national level (county, municipal, provincial), local party and government officials have been able to interfere with and heavily influence the work of individual judges in politically sensitive and potentially socially destabilising disputes over land, labour and environmental issues. Given that courts and judges rely on local governments for their resources and remuneration, systemic entrenchment of local power relations has often mitigated against judicial fairness in cases with implications for social stability. Hence, rule-of-law statements posit nationwide 'standardisation' (*guifanhua* 规范化) in place of destabilising 'localisation'.

Promoting the Rule of Law

In January 2013, at a national politico-legal work conference, Meng Jianzhu announced four main areas to be targeted for reform in the coming years: the Re-education Through Labour (RTL) system — the ‘letters and visits’ (*xinfang* 信访) petitioning system, the balance of power structures within the politico-legal system and the household registration system. These are detailed on the Politico-legal Commission’s new ‘Chinapeace’ (*ping’an Zhongguo* 平安中国) website, which declares that ‘the core of politico-legal work is located in peace and rule of law’. The Commission recognises that for this to be realised on a local level and in fairer justice practices generally, power relations among and between the police, procuratorates and courts need to be fine-tuned.

The announcement related to RTL reform in January garnered by far the most media attention. As a form of administrative detention that is solely at the discretion of the public security organs, RTL bypasses the judicial system, allowing detention without trial for up to three or four years for prostitutes, petty thieves, those judged to have disrupted social order, people involved in unlawful religious activity and even petitioners. Many scholars have been arguing for years that the RTL system is unconstitutional and should be abolished.

In cutting out the middlemen (the court system as decision-maker and the Ministry of Justice as administrator), RTL gives police great flexibility in dealing with public order misdemeanours and provides a convenient dumping ground for those, like petitioners, who have become a political nuisance to local authorities.

Take the case of Tang Hui. The mother of an underage rape victim, Tang protested outside local government buildings, claiming that police had falsified evidence in order to mitigate the punishment of men who had kidnapped and raped her eleven-year-old daughter, forcing her into prostitution. In August 2012, the police sentenced Tang to eighteen-months detention at a RTL facility in Yongzhou, Hunan province, for ‘seriously disturbing social order and exerting a negative impact on society’. A public outcry helped secure her speedy release. She tried to bring an



Tang Hui was sentenced to re-education for being a nuisance petitioner.
Source: *Want China Times*

administrative lawsuit against the RTL committee. In April 2013, the Yongzhou court rejected Tang’s claim for compensation, but in July she won her case on appeal and was compensated 2,941 yuan.

One main reason why RTL was not abandoned years ago is that the politico-legal authorities are yet successfully to rebalance existing horizontal power relations between courts, police and the Ministry of Justice. The public security organs have a vested institutional interest in retaining a system that involves hundreds of facilities, thousands of personnel and substantial budgets. Absence of a viable alternative that suits all institutional players also explains RTL’s continued existence. The courts do not want their workloads increased, and China’s crowded and under-resourced prisons do not need more inmates.

The authorities have begun discussing cost-effective alternatives to RTL for punishing misdemeanours that would not further stress the already overburdened criminal trial system. Many provinces are now opting to reform the system by simply not arresting people for RTL-related misdemeanours or transforming RTL facilities into compulsory drug treatment centres. In 2012, Yunnan, for instance, became one of the first provinces to decide no longer to detain people for three illegal (non-criminal) behaviours including ‘suspected violations of national security’ (*shexian weihai guojia anquan* 涉嫌危害国家安全), ‘causing a nuisance through petitioning and visits to authorities’ (*chanfang naoshi* 缠访闹访) and ‘sullyng the reputation of national leaders’ (*wuru guojia lingxiu* 污辱国家领袖). Interestingly, authorities have done their best to avoid public attention and press coverage on the process of RTL abolition.

Criminal Procedure Law and the Mental Health Law

Rebalancing power relations and providing better enforcement mechanisms are the underlying themes of two major legislative reforms realised in 2012: the amendment of the 1996 Criminal Procedure Law and the promulgation of the Mental Health Law. After a decade of intense public discussion, scholarly proposals and negotiations among the various politico-legal powers, the National People's Congress (NPC) amended the Criminal Procedure Law in March 2012. Despite the insertion of the clause 'respect and safeguards for human rights' into the aims of the law, the revised law immediately generated public concern and scepticism.

Debates among scholars and in the media have focused on the clauses concerning the system of 'residential surveillance'. Article 73 of the new law ensures that the public security authorities maintain their exclusive power to put people suspected of crimes against national security (*weihai guojia anquan fanzui* 危害国家安全犯罪), terrorism (*kongbu huodong fanzui* 恐怖活动犯罪) and extremely serious corruption cases (*tebie zhongda huilu fanzui* 特别重大贿赂犯罪) under house arrest for up to six months in a location at their discretion. Commentators argue that since the definitions of these crimes remain extremely vague, Article 73 could easily justify incommunicado detention of political troublemakers, as has happened in the past.

Another crucial legislative document issued in October 2012 is the Mental Health Law — almost thirty years in the making. Amending the 1996 Criminal Procedure Law and issuing a new Mental Health Law could



Guo Zhiyuan,
mental health
law specialist.
Source:
The China Story

well improve the protection of the most vulnerable in society. However, as leading Beijing-based specialist in mental health law Guo Zhiyuan has noted, both of these legal areas have become ideological battlefields between those who believe the thrust of the law is to protect society and maintain stability and order, and those who oppose this imperative when it threatens the protection of the rights of the vulnerable.

Protecting the Interests of the 'Masses'

The rhetoric of the 'rule of law' has not by any means supplanted the language of mass-line justice that has been a staple of justice administration since the mid-2000s. Now more than ever, the Party is keen to be seen as responsive to the needs of the masses. This is reflected in law and order rhetoric. For instance, just days before he left for his American tour in June 2013, Xi Jinping spoke at a national conference organised by the Central Party's Politico-Legal Commission. He highlighted the need to allow the 'people's demands for the administration of justice' (*renminde sifa yaoqiu* 人民的司法要求), along with the requirements of economic development, to be the guiding force of police work in China. Gone, for now at least, is Zhou Yongkang-style 'rigid Stability Maintenance'. But the commitment to stability remains: the NPC announced in March 2013 that the budget for 'stability maintenance' would increase by 8.7 percent over 2012 to RMB761.1 billion (US\$123.7 billion).



The portrayal of crackdowns on crime encourage the public to appreciate the benefits of a strong and protective state.
Source: ImagineChina

The Slaying of Zhou Kehua

Zhou Kehua was a Chinese armed robber and fugitive wanted in connection with crimes dating back to 2004. He was suspected of committing multiple homicides and armed robberies; reports variously attribute between eight and twelve deaths to him. He was also wanted on a charge of ‘committing a terrorist act’ after he was alleged to have shot and killed a PLA sentry before stealing his rifle in 2009. He committed his crimes across the country, from Nanjing to Changsha, but ended up being shot dead by police in his home city of Chongqing.

According to media reports, Zhou is believed to have committed his first murder in 2004. Prior to that, he was twice jailed for stealing and illegally carrying firearms. Media reports say that sometime before 2004, he worked as a mercenary soldier in Burma, which explains his familiarity with guns. He was nicknamed ‘Brother Headshot’ (*baotouge* 爆头哥) for his habit of shooting his victims in the head at point-blank range.

On 10 August 2012, armed with a handgun, Zhou robbed customers coming out of a bank in Chongqing. He shot two people dead and injured one at the bank, and killed a police officer as he fled the scene. The crime triggered the largest man-hunt in China in recent years, involving thousands of police officers and soldiers. Four days later, on 14 August 2012, Zhou was spotted in Chongqing’s Shapingba district by the police and was shot dead in an exchange of fire.

The man-hunt came a few months after the sacking of Bo Xilai. Chongqing’s former party chief had been known for his tough-handed crackdowns on criminal gangs in the city before his political fall and detention in early 2012. The timing of the man-hunt prompted speculation that it was intended in part to reassure local people that security in Chongqing would not worsen after Bo was removed from his position.

That it took the authorities almost nine years after the first murder to capture Zhou drew criticism for inefficiency, though some media reports emphasised that Zhou’s mastery of disguise and survivalist skills had made capture very difficult. A number of reports said that Zhou had been spotted camping in a graveyard in Nanjing and that he was used to living in the mountains. He often fled the scene of his crimes by taking a pedicab, shunning the riskier public transit system and never staying in hotels. He rarely used mobile phones.

Immediately after his death, photos showing a dead body lying face down in blood appeared on the Internet. The photos fed various conspiracy theories, including one that disputed the official account of his death, arguing that Zhou committed suicide. Others proposed that the dead man in the picture was not Zhou, but a plain-clothes police officer who was killed when his colleagues mistook him for the fugitive. Despite the plethora of media accounts, there does not seem to be an authoritative account of Zhou’s life and crimes.

On 22 March 2013, Zhang Guiying, Zhou’s girlfriend, was sentenced to five years in prison for concealing stolen property.



Front page news in Chongqing on 15 August, 2013: the shooting of the serial killer Zhou Kehua.
Source: *Chongqing Shangbao*

Official media portrayals of crackdowns on crime encourage the public to appreciate the benefits of a strong and protective state. The news gives prominent coverage to such high-profile justice operations as the capture and killing of ‘China’s most dangerous man’, Zhou Kehua, and the capture and execution of Naw Kham, one of the Golden Triangle’s biggest drug lords. ‘Strike Hard’ police operations on 24 May 2012 that ended with mass arrests and the extradition of 126 Chinese citizens from Malaysia and Thailand who were suspected of involvement in international telephone scams perpetrated against Chinese people back home also made the headlines. Less newsworthy, in China, at least, was news of Australians and other foreigners in trouble with the law in China, unless they were involved in crimes against Chinese citizens.

‘Administering justice for the people’ (*sifa wei min* 司法为民) is very much alive in mediation work, which has dominated the agenda of the courts in recent years. Judicial mediation between the masses and local companies, developers and government in labour, land and environmental disputes has become a politico-legal priority. In February 2012, the Ministry of Justice required judges at lower levels to encourage parties to exhaust all avenues of dispute resolution before proceeding through the trial process, allowing litigation only as a last resort. Mediation is additionally attractive to the central authorities because if complainants agree to the terms of a mediation agreement, they no longer have the right to petition in the capital for redress. But pressure from Beijing on local courts to ‘close the case and solve the problem’ (*anjie shiliao* 案结事了) before it reaches higher levels of justice administration — or before petitioners head off to Beijing to protest — means courts are now clogged with administrative cases, many of which are difficult to mediate in favour of the complainant. According to some Chinese sources, with the ‘petition-isation’ of court work (*sifa xinfanghua* 司法信访化), seventy to eighty percent of administrative cases are now required to undergo mediation rather than going straight to trial.

THE TEN BIGGEST CRIMINAL CASES

In December 2012, the Qinghai Legal News (Qinghai fazhi bao 青海法制报) — a newspaper from the northwest province of Qinghai — published a list of China's ten biggest criminal cases of the year. The selection included cases involving massacre, homicide, fraud, corruption, a religious cult and sex slavery:

1. Naw Kham and the Massacre of Chinese Sailors

Myanmar national and criminal overlord of the Mekong river basin, Naw Kham, was extradited to China, where he was sentenced to death on 6 November for the massacre of Chinese sailors on the Mekong River.

2. The Trial of Bogu Kailai and Zhang Xiaojun

The spectacle of the Bogu Kailai murder trial occurred in the Hefei Intermediate People's Court in Anhui province on 20 August. Bo Xilai's wife, Gu Kailai, known in the state media as Bogu Kailai, and her accomplice, Zhang Xiaojun, were found guilty of planning and carrying out the murder of British businessman Neil Heywood in Chongqing in November 2011.

3. Wu Ying's Fundraising Fraud

In 2009, a court in Zhejiang found that from May 2005 to February 2007, while acting as the legal representative of a firm in Zhejiang province, Wu Ying had defrauded around 770 million yuan. Sentenced to death, she appealed. Her appeal was rejected, but in April 2012 the Supreme People's Court sent the case back to the lower court in Zhejiang, which deferred the death sentence by two years. A significant factor in Wu Ying's reprieve was an online campaign for her to be spared the death penalty.

4. The Gansu School Bus Accident

On 16 November 2011, a minibus from the Little PhD Kindergarten 榆林子镇小博士幼儿园 in Shaanxi province was travelling in Gansu province when it collided head-on with a goods van. The minibus could legally carry nine people, yet no fewer than sixty-four people including sixty-two children were crammed inside at the time. Nineteen children and two adults died in the accident; forty-three other children were injured. In July 2012, a court in Gansu sentenced Li Jungang — chairman of the board of the kindergarten — to seven years' imprisonment. The case became a *cause célèbre* on the Internet. Commentators drew pointed comparisons between China's generally shoddy school buses and the gift by the Chinese government to Macedonia, publicised around the same time as the Gansu accident, of several high-end school buses.

5. The 488 Million Yuan Sichuan Pyramid Scheme

In 2009, Chen Lijun set up the company Sichuan Xingfuyuan Agricultural Development Limited 四川省幸福缘农业开发有限公司 to manufacture nutritional products. Within a few months, the company attracted 150 million members across China, who had invested a total of 488 million yuan in what turned out to be a massive pyramid scheme. In June 2012, a court in Sichuan sentenced Chen to ten years in jail and imposed a fine of five million yuan.

6. Luoyang Sex Slaves

In August 2009, Li Hao, a civil servant, excavated a burrow underneath the cellar of his house in Luoyang, Henan province. Luring six women aged between sixteen and twenty-four, he imprisoned them, raped them and forced them to perform in pornographic shows on the Internet. In 2010, Li murdered one of the women, and in June or July forced three of the remaining women to kill one of the others. He was caught in 2012 after one of his captives escaped. On 30 November 2012, the Luoyang Intermediate People's Court sentenced Li to death for murder, rape, organising prostitution, detaining people against their will and manufacturing and distributing obscene materials.

7. Liao Dan and the Fake Treatment Form

After paying for six months of expensive dialysis treatment for his wife, Liao Dan found someone to fake a treatment form for his wife at Beijing Hospital (run under the auspices of the Ministry of Health) that would entitle her to obtain dialysis free of charge. He got away with it for four years, avoiding 1.7 million yuan in hospital fees. Although Liao Dan attracted much sympathy from people online, in December 2012, a court in Beijing sentenced him to three years in jail for fraud and an additional fine of 3,000 yuan.

8. Almighty God Cult

On 30 October 2012, a court in Inner Mongolia charged eight people with being members of Almighty God (*Quannengfu jiaohui* 全能父教会), what the court called a 'cult organisation'. Almighty God is a heterodox, millennial Christian cult that teaches that the new messiah is a woman from north China. The newspaper article refers only to 'Almighty God' but other reports specify that the eight accused were members of Eastern Lightning (*Dongfang shandian* 东方闪电) — an offshoot of Almighty God. On 14 December, one week before Eastern Lightning literature predicted the world would end, the court handed down sentences ranging from four to five years.

9. Zhou Kehua



The two police officers who killed Zhou.
Source: *Chongqing Business News*

Zhou Kehua was an armed robber and murderer. Originally from Chongqing, he had been on the run from the law since 2004, committing robberies during which at least six and possibly as many as twelve people died. He was cornered by the police in Chongqing in August 2012 and shot dead.

10. The Mayor of Haitang Bay in Sanya Loses 700 Million Yuan

In June 2011, a series of irregularities in compensation awarded to villagers in Haitang Bay in Sanya, Hainan province, whose land had been confiscated for the building of luxury resorts, came to light. In December 2012, the Hainan provincial party disciplinary authorities announced that the mayor of Haitang Bay, Li Ji, had accepted bribes of more than fourteen million yuan and was additionally responsible for the loss of 700 million yuan from government coffers. A court in Sanya subsequently sentenced Li to death, but deferred the sentence for two years.

AUSTRALIANS JAILED IN CHINA

Several Australian citizens doing business or working in China have made the news in recent years for their arrest and criminal convictions. The most prominent cases include:

Matthew Ng (Wu Zhihui)

Businessman Matthew Ng is serving a thirteen-year sentence for fraudulent registration of capital, embezzlement of funds and property and corporate bribery (*danwei xinghui* 单位行贿). Ng, who was arrested in November 2010, headed Et-China (*Yiwangtong* 易网通), the majority owner of the national travel agency GTL (*Guangzhilü* 广之旅). His lawyer, Chen Youxi, argued that Et-China's local partner in GTL, Lingnan Group 岭南集团, which is backed by the municipal government of Guangzhou, had ordered Ng's arrest to obtain a controlling interest in GTL on the cheap. The court also handed down prison terms to Et-China's local executives.



Matthew Ng.
Source: Southern Metropolis Daily

Stern Hu (Hu Shitai)

On 29 March 2010, Shanghai's First Intermediate People's Court convicted Stern Hu, an executive for mining giant Rio Tinto, of bribery, and sentenced him to ten years in prison. Three of Hu's Chinese colleagues — Wang Yong, Ge Minqiang and Liu Caikui — also received sentences. Hu had been detained on 5 July 2009 on suspicion of stealing confidential information from Chinese companies, including detailed industry data, shortly after Rio Tinto rejected a bid from Chinalco Mining Corporation (*Zhonglukuangye* 中铝矿业) to raise its stake in the company. The trade secrets charges were dropped prior to the trial, and the defendants pleaded guilty to bribery.

Charlotte Chou (Zou Wanling)



Charlotte Chou
with her son.
Source: Aboluowang.com

Australian entrepreneur Charlotte Chou is serving an eight-year prison sentence in Guangzhou for embezzlement. Chou was the founder and vice-president of the South China Institute of Software Engineering (*Guangzhou daxue huaruan ruanjian xueyuan* 广州大学华软软件学院) — a private college run in partnership with Guangzhou University (*Guangzhou daxue* 广州大学). She was first arrested in 2008 and served an eighteen-month sentence for bribery before her second arrest and subsequent conviction on 4 May 2012. Institute chairman Lin Yongping fled the country to escape prosecution. Chou's supporters allege that cofounder Zhu Hanbang, who succeeded Lin as chairman, was behind Chou's rearrest.

Du Zuying

Police from Tai'an in Shandong province detained Du Zuying — a Melbourne-based heart surgeon and the founder of the blood plasma company China Biologic Products 泰邦生物制品 — at Beijing Capital Airport on 9 February 2011. They failed to notify his family, who spent five or six hours waiting for him at Sydney airport. The Tai'an Intermediate Court handed down a four-year sen-

One of the authorities' most conspicuous moves on behalf of the public interest has been the new anti-corruption drive, as we note elsewhere in this *Yearbook*. Xi Jinping delivered a major speech in mid-November 2012 predicting an end to the Party if corruption could not be brought under control. Since then, he has argued that the abuse of power can be tackled only through the strengthening of the rule of law, or, as he put it, positioning power 'within the cage of regulation'. The words are bold. Yet there has been no introduction of the kind of systemic change that would tackle corruption by forcing the Party to take the Constitution more seriously and limiting party power in government decision-making, despite increasing demands for this throughout the blogosphere and in legal and academic circles.

tence for embezzlement related to 2.4 million yuan he took out of the company in December 2002 and returned a year later. Du appealed the sentence but, as of April 2013, no trial had been held. Du's lawyer claims that the case is an example of interference in the justice system for the benefit of local capital over foreign investment. A lengthy exposé published by Shanghai's *Oriental Morning Post* on 9 April 2013 reported that Du lost control of his company in 2004 when he granted power of attorney to his half-brother, Du Haishan, while fundraising in Australia.

Carl Mather

Carl Mather, a fifty-four-year-old Australian who had taught English in Nanjing for a decade, completed a one-year sentence early in May 2013 for assault following a brawl with four men in his apartment that left one with a broken finger and another with an injured hand. He had been arrested in November 2012 and convicted in January 2013. Mather's wife, Jenny Xie, claimed that he was acting in self-defence, and that the men were intruders who had come in connection with a long-running dispute over money. Mather's lawyer, Si Weijiang, won an appeal in April 2013 because new evidence showed that one of the men was a professional debt collector hired to put pressure on Mather and his wife.



Carl Mather with his wife and daughter.
Photo: Du Wenshuang

Debating the Constitutional 'Key Word'

Xiao Yang, Chief Justice of the Supreme People's Court, presided over a decade of impressive reforms to the court system that ended with his retirement in 2008. He published his memoirs in July 2012 — well before the January 2013 media debates on the need to strengthen the authority of China's Constitution. The *Southern Weekly* published a photograph of an exuberant Xiao Yang on its online edition of 6 July 2012 under the provocative headline 'Xiao Yang's Collected Works Published, His Keywords are "Reform", "the Constitution" and "the Rule of Law"'. Xiao argues that there are already provisions in the Constitution that limit the powers of both the Party and institutions, and that these need to be acknowledged, applied and taken as the 'bottom line' in any discussion on rule of law and reform.

In January 2013, veteran law expert Jiang Ping declared that China needs no less than an entire paradigm shift from an emphasis on collective public (state) rights to private (individual) rights. In a similar vein, Deputy Chief Justice of the Supreme People's Court Jiang Bixin observed that it is imperative to accept and internalise values such as democracy, freedom, equality, rule of law, justice, integrity and harmony — observations that go hand in hand with his earlier, even more provocative suggestions in June 2012 about limiting party power. His essay in the June 2012 edition of *Theoretical Horizons* (*Lilun shiye* 理论视野) called on the Party to take the Constitution at face value and limit the exercise of party rule *exclusively* to the National People's Congress.

As it has been noted in the introduction to this *Yearbook*, lively discussions around the rule of law, constitutionalism and judicial independence dictated the agendas and inspired discussions in the liberal press and scholarly circles in December 2012 and January 2013. Liberal intellectuals and activists increasingly used the expression 'constitutional governance' (*xianzheng* 宪政) to demand the realisation of the basic rights guaranteed by the Constitution. But Communist Party rhetoric about building rule of law — including a call by Xi Jinping in December 2012 to fully implement the authority of the Constitution — revealed the senior leadership had a far more limited agenda.



Xiao Yang in *Southern Weekly* on 6 July 2012.
Source: Infzm.com

The Eighteenth Party Congress Work Report issued in December 2012 stressed the Party's continued commitment to 'using legal-system thinking' to resolve social issues. It also emphasised its intention to improve oversight functions, 'standardise' practices and enforce the law. Yet official renunciation of concepts including 'constitutional governance' and judicial independence in May 2013, made it clear that any legal reforms, in the short term at least, are unlikely to involve changes to the structure of state power. On 21 May, a week after media exposure of an internally circulated party document warning officials against 'dangerous' Western values and other ideological threats, the Party's *Red Flag Journal* (*Hongqi wengao* 红旗文稿) published an article by constitutional scholar Yang Xiaoqing that confirmed a new wave of conservatism. According to Yang, there's no place for talk of constitutional governance in China, even in the context of socialist constitutional rule. The party-sanctioned piece argued that by its very nature, constitutional governance can only relate to capitalist and bourgeois thought. It therefore cannot fit within the 'democratic dictatorship of the people'; in China, 'it would lead to chaos'. The next day, an editorial in the ideologically conservative tabloid *Global Times* repeated Yang's argument, adding that constitutional governance was merely an 'empty political slogan' espoused by a 'minority of liberal intellectuals' in China. The editorial declared that 'If the entire Western world together cannot muster the might [to change China's course], then a small group of dissenters will be even less likely to do so'.

Resistance is Futile

Ye Haiyan, an advocate for the rights of sex workers, better known by her Internet handle 'Hooligan Swallow' (*Liumang yan* 流氓燕), first gained notoriety in 2005 by posting nude photos of herself on her blog. Her exhibitionism developed into activism, an ongoing campaign to publicise the conditions and problems faced by people at the bottom of China's economic ladder. In 2012, she provided free sexual services to migrant workers and then microblogged about her experiences on Sina Weibo. In May 2013, she travelled to Wanning on Hainan Island and stood outside Wanning No. 2 Elementary School holding a sign protesting against the attempted cover-up of the rape of six sixth-grade students by the principal of the school. The sign read: 'Mr Principal, get a room and call me; leave the students alone!' (*Xiaozhang, kai fang zhao wo, fangguo xiao xuesheng* 校长, 开房找我, 放过小学生).

When, at the end of the month, Ye returned to her home in Yulin prefecture, Guangxi province, her landlord, acting under pressure from local authorities, gave her notice that she and her daughter could not continue to live in their apartment. At around noon the same day, 30 May, eleven hired thugs surrounded and attacked Ye. When she fought back, local police promptly appeared and arrested her, accusing her of stabbing three women. A number of Ye's supporters, including Ai Weiwei, have posted photos on the Internet of themselves either holding up similar signs to Ye's original sign or with the words written on their bodies; some have substituted 'Ye Haiyan' for 'students'.

Under pressure from an Internet firestorm of criticism, police freed Ye Haiyan only two weeks after her arrest. But on 6 July 2013, local authorities struck again, evicting her and her daughter from their new home in Zhongshan, Guangdong province, threatening to 'break her legs' if she ever returned.

Authorities in the rural Shandong Linyi prefecture arrested Chen Kegui, nephew of the exiled blind legal rights activist and 'barefoot lawyer' Chen Guangcheng, under similar circumstances. Six days after Chen Guangcheng took refuge in the US Embassy on 26 April 2012, the Shuangzhou village headman Zhang Jian and a number of others burst into Chen Kegui's home and assaulted his parents. In the ensuing scuffle, Chen stabbed a number of the intruders. The assailants then hauled Chen away. Two hours later, police charged Chen with attempted murder. On 30 November 2012, the Yi'an County People's Court sentenced Chen to three years and three months' imprisonment for assault.



Ye Haiyan holding a placard reading 'Mr Principal, get a room and call me; leave the students alone!' on 27 May 2013.
Source: Ye Haiyan's Weibo account

Conclusion

'Reform', 'Constitutional Governance' and 'Rule of Law' were the keywords in debates about justice in 2012 and 2013. Underlying all these is the all-important issue of trust. A major problem for the Party's long-term survival is that it needs the people to trust a judicial system that the Party's members themselves no longer demonstrably believe in. It needs them to trust a system that has been directly undermined by rampant corruption both in the Party and in the government. Maintaining stability in society and the Party's continued rule depends upon this strained fiduciary relationship.

The Party needs the people of China to seek to resolve injustices by recourse to judicial institutions rather than protest. But instead of addressing the problem of corruption and injustice through systemic political change, Xi Jinping has launched yet another 'campaign' against corruption through the media, propaganda and the Party's internal discipline and inspection committees, which have egregiously failed for decades now to tackle the issue. Hardline Stability Maintenance is out of fashion. Despite various moves to 'civilise' justice, however, the Party and its political agenda still drive the realities of both the law and justice in China today. Xi Jinping may have stated boldly that power should be exercised 'within the cage of regulation', but he is some way from taking the advice of Jiang Ping, Xiao Yang, Jiang Bixin and others to make the Constitution the basis of that cage.

