

HOW FAR WILL THE NPC GO IN IMPLEMENTING REFORM?

ABOUT

The Chinese have long been obsessed with strategic culture, power balances and geopolitical shifts. Academic institutions, think tanks, journals and web-based debate are growing in number and quality and give China's foreign policy breadth and depth.

China Analysis, which is published in both French and English, introduces European audiences to these debates inside China's expert and think-tank world and helps the European policy community understand how China's leadership thinks about domestic and foreign policy issues. While freedom of expression and information remain restricted in China's media, these published sources and debates provide an important way of understanding emerging trends within China.

Each issue of China Analysis focuses on a specific theme and draws mainly on Chinese mainland sources. However, it also monitors content in Chinese-language publications from Hong Kong and Taiwan, which occasionally include news and analysis that is not published in the mainland and reflects the diversity of Chinese thinking.

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Introduction by François Godement

The annual meeting of China's National People's Congress (NPC) opens on 5 March, and this year, there is far less speculation about the event than there has been in previous years. It is easy to see why expectations are low. Just a few months ago, the party announced a long list of reforms. But, reading the fine print of the 60-point "Decision on Major Issues Concerning Comprehensively Deepening Reforms", almost 200 reforms were proposed by the Central Committee at the Third Plenum in November 2013. How could the government possibly announce more?

Moreover, Xi Jinping's mandate at the helm of the Communist Party and the state has asphyxiated the contentious debates of the last few years. And his vigorous anti-corruption campaign has engendered real fear among China's officials. Right now, it is ensnaring just about every known relative of Zhou Yongkang, a former Standing Committee member who once wielded fearsome authority at the head of China's domestic security agencies.

But Xi is not omnipotent: environmental pollution has reached unbearable levels in Beijing and the Northern Plains. And the country has just been hit by an extremely audacious act of terrorism, killing 29 people and injuring 109 in Kunming. People in China are talking less about Xi's long-term goals or orientation than about his actual capacity to implement the reforms put forward in November 2013. How many of the reforms will see some concrete

implementation at the NPC meeting?

This special issue of *China Analysis*, previewing the NPC meeting, reflects these concerns. Long-time exponents of reform in China are sceptical of the top-down process favoured by Xi. Major changes since 1978 have always been accomplished with a good measure of bottom-up initiatives, as local actors, firms, and civil society worked to drive change. Some new announcements have already been made since the Plenum, and the implications of these announcements are described in this issue. In particular, the shape of China's National Security Commission is now clearer. It will not be a Western-style national security council, but instead essentially an inter-agency body under three top leaders who can exercise authority over the party, the legal system, and the economy and coordinate process. The sources on reforming the legal system outline a situation that would be impossible elsewhere: the will to implement the rule of law and autonomous regulation within the economy, even as their application in politics remains very limited.

Other titbits have emerged recently. China is reining in some of its runaway infrastructure investment, including new railway construction and new coal and steel capacities: Hebei province surrounding Beijing produces almost as much steel as Europe and the United States combined, an achievement that must have something to do with the region's "airpocalypse". New IPOs have been accelerated, although they still account for only 2 percent of new financing for firms. More private firms have appeared, even though the value of their capital only equals that of China's SOEs. The abolition of re-education by labour has been confirmed. Shanghai's new Free Trade Zone, which had disappointed hopeful international investors, has now been provided with currency exchange regulations. There are rumours of other moves such as a share divestiture by Sinopec, China's largest oil company, after an anti-corruption campaign cut a swathe through China's energy sector.

Perhaps the most interesting development is not an act of reform at all: it is the unprecedented autonomous move taken by China's central bank to depreciate the renminbi in late February. The move came as a surprise to the markets, which had come to see the gradual appreciation of China's currency as a sure-fire process. It is doubtful, of course, whether the central bank could have done this without getting a green light from the political leadership. And the central bank has always "guided" the market, essentially through phone calls to Chinese banks, which invariably listen to what the government tells them. But this is the first time that the central bank has taken the market by surprise in this way.

One possible reason for the move is that if China is to rein in runaway credit via shadow banking, it must close loopholes. In the last three years, the biggest loophole has been borrowing offshore, especially in Hong Kong and other markets trading renminbi, in order to lend money in China

and thereby escape credit limits. What better lesson to give the powerful Chinese actors indulging in these practices than to show them that forward betting on the renminbi can turn into a bloodbath? And what better example to set than to use the central bank, for the first time, as an autonomous and unpredictable agent?

The move will have its undesirable international effects – for example, it will feed international currency depreciation. But it does show that the central bank has been given a degree of financial autonomy, and it represents a move against some powerful vested interests. The key question of the next few days is whether the NPC will set in motion any other steps towards the regulation of vested interests.

1. Battling interest groups: a case for enlightened despotism

Agatha Kratz

Sources:

Ding Xueliang, “After the Third Plenum: empty words vs implementation”, *Financial Times* (Chinese version), 26 November 2013.¹

Editorial, “The power of ‘interest groups’ should not be overestimated”, *Huanqiu shibao – Global Times*, 20 November 2013.

Liu Shengjun, “How will China overcome the obstacle of special interests?”, *Aisixiang*, 23 December 2013.²

Wu Guoguang, “Modernisation in China: discussion on the Third Plenum of the 18th Congress”, *Epoch Times*, 29 November 2013.³

Zhang Qianfan, “The risks of centralised reform”, *Financial Times* (Chinese version), 20 November 2013.⁴

On 15 November 2013, at the Third Plenum of the 18th Chinese Communist Party (CCP) Congress, the 373 members of the Central Committee adopted a 60-point plan for reform titled the “Decision on Major Issues Concerning Comprehensively Deepening Reforms” (中央关于全面深化改革若干重大问题的决定, *zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jue ding*). Chinese researchers mostly approve of the reform programme. They recognise the “extended” (广, *guang*), “deep” (深, *shen*), and “complete” (全, *quan*) nature of the road map. Many commentators believe that the plan could generate a real “reform dividend” (改革红利, *gaige hongli*). However, critics say that the reform programme was designed with too great a degree of centralisation. And because of the involvement of powerful interest groups, implementing reform could be difficult.

Centralisation and reform

Zhang Qianfan and Wu Guoguang say that power has become increasingly centralised since Xi Jinping took over as China’s leader. Zhang says government has become a “one-man show” (独角戏, *dujiaoxi*). Wu Guoguang thinks the consolidation of power was the biggest development to

emerge from the Plenum. Both fear that this concentration of power will be a barrier to the success of reform.

The *Huanqiu shibao* editorial is more reserved in its criticism: it says that the fulfilment of the reform programme will depend on aligning attempts to carry out reform and the benefits derived from the programme with Chinese society. As society becomes more complex, it becomes harder to apply purely “top-down” (自上而下, *zishangerxia*) plans and to ensure that all levels of government participate properly in achieving results. If the plan is to succeed, the current reform proposals will have to address this problem.

Zhang Qianfan says that, ahead of the Third Plenum, Chinese researchers and experts presented six proposals to the government.⁵ Three of these proposals were included in the government’s plan: economic reforms, legal reforms, and respect for the constitution. But the government ignored the other three: democratisation of the Communist Party, standardisation of elections, and the extension of freedom of expression. Zhang says that these omissions show the government is keeping a tight hold over the reform process. The leadership has conceived, directed, and controlled the reform programme based on a highly centralised model.

This centralisation leaves no space for the “people” (民众, *minzhong*) or for “society” (社会, *shehui*) to participate in ensuring the success of reform. Zhang says that the government has promoted the idea of “delegating power to society” (社会放权, *shehui fangquan*). However, this kind of devolution cannot be achieved without integrating the three missing proposals into the reform programme and giving the people the chance to take part in the reform process. The absence of these proposals betrays the government’s fears that the people will become a threat to the “one-party” (一党, *yidang*) system. By leaving no room for public participation, the leadership has made the reform programme “the government’s own internal affair” (改革成了政府自己的内部事务, *gaige chengle zhengfu ziji de neibu shiwu*).

Over-centralisation of the reform process is dangerous because it means reform’s chances for success rest on two dubious assumptions: that the leadership is “benevolent” (善心, *shanxin*) and that it is “omnipotent” (万能, *wanneng*). Assuming a benevolent leadership gives too much importance to the human dimension. And no matter how benevolent they are, the seven members of the Standing Committee cannot supervise all aspects of the reform process without help. They will have to give some tasks to other organisations, and these other bodies will thus have significant power over the process. Zhang points out that delegating authority can lead to “abuses” (滥用, *lanyong*) and corruption. Moreover, to monitor the progress of reform, the central leaders will have to rely on potentially unreliable feedback channels, which could cause

⁵ These proposals were part of a joint publication by 70 Chinese academics, “Written proposal for a consensus on reforms” (改革共识倡议书, *gaige gongshi changyishu*).

¹ Ding Xueliang is a professor in the Social Science Division at Hong Kong University of Science and Technology.

² Liu Shengjun is executive deputy director of the China Europe International Business School Lujiuzui Institute of International Finance, Shanghai.

³ Wu Guoguang is a former secretary-general of the Chinese Academy of Social Sciences, former editor-in-chief of the opinion section of the People’s Daily, and a former member of the Communist Party Central Committee’s political reform discussion group. He has been a researcher at Harvard University, Columbia University, and the Chinese University of Hong Kong, as well as a lecturer at various Chinese and international universities.

⁴ Zhang Qianfan is director of the Centre on the People’s Congress and Parliamentary Studies at Peking University Law School, Beijing.

information to be distorted or manipulated. And they will have to depend on a sprawling bureaucracy that cannot be completely controlled. By rejecting public participation, the leadership is depriving itself of a powerful information channel in the form of civilian oversight, which has in the past uncovered abuses of power and other obstacles to the achievement of government policies.

Wu Guoguang believes that the main “flaw” (败笔, *baibi*) in the reform project is that it reproduces a “Chinese model that has serious shortcomings for the country” (中国模式的弊病, *zhongguo moshi de bibing*). This model is characterised by the coexistence of a neoliberal market and a “dictatorship” (专制, *zhuanzhi*) that encourages “malpractice” (弊端, *biduan*). The proposed reform programme would give this model more power and would increase the influence of the market. Wu says that he considers himself a “liberal” (自由派, *ziyoupai*), but that in China’s current situation, over-reliance on the market is not the answer. Markets need to be subject to democracy and the rule of law. Without changing things so that the market is under better control, abuses will only get worse. This will lead to “social disintegration” (社会分化, *shehui fenhua*), environmental degradation, and a decline in moral spirit.

The influence of interest groups

Other commentators see “interest groups” (利益集团, *liyi jituan*) as a potential obstacle to the success of the government’s reform programme. Hu Shuli has written many editorials, both in Chinese and in English, warning Xi Jinping and his “Central Leading Small Group for Comprehensively Deepening Reform” (中央全面深化改革领导小组, *zhongyang quanmian shenhua gaige lingdao xiaozu*) against “special interests” (既得利益, *jide liyi*) that could make the reformers’ task more difficult.⁶

Ding Xueliang quotes a poll published on 23 November 2013 in the Beijing-based newspaper, *Beijing bao*, in which 75 percent of respondents said that the main barrier to reform would be interest groups, specifically, local governments and state-owned enterprises (SOEs). Zhang Qianfan says that during previous reform efforts in the 1980s, interest groups profited substantially, through increased industrial revenues and through corruption. This created a great deal of resentment among the Chinese people and was a key factor in the events of 1989. Since then, interest groups have either directly managed or exerted significant influence over reform programmes, in the process gaining considerable benefits.

Ding says that, because of this, the most important element of the new wave of reform is the affirmation of the market’s “decisive” (决定性, *juedingxing*) role. From now on, the market, not interest groups, must provide leadership on economic matters. A good reform plan would be one that facilitates the primacy of the market, and the success of the

⁶ Hu Shuli is editor-in-chief of *Xin Shiji* and one of the most famous and respected economic commentators in China.

reform programme depends on implementing this kind of programme.

Ding suggests an action plan to ensure that interest groups do not hold up reform. First, “people must be dealt with before affairs” (先办人后办事, *xian banren hou banshi*). For reform to be successful, the process must have support from the public and from key stakeholders, who must be mobilised and prepared to implement the reform plan. Ding suggests a radical way to ensure support from government bureaucracy: anyone who opposes reform should be “sacked” (撤职, *chezhi*), or even “punished” (惩处, *chengchu*). He suggests involving the powerful Central Commission for Discipline Inspection, and even advocates the use of the *shuanggui* process to guarantee compliance.⁷ He adds that while he does not support the abusive or illegal use of the *shuanggui* process, coercion is the only way to break up the interest groups that have up until now monopolised the benefits of growth and reform.⁸

By leaving no room for public participation, the leadership has made the reform programme “the government’s own internal affair”.

Ding says that performance targets and auditing mechanisms need to be implemented. He believes that, like many previous

reform projects, the “Decision” is mainly a “philosophical” (哲学, *zhexue*) document that does not provide real-world economic policies. If reform is to be successful, the guiding principles need to be translated into performance targets so as to motivate the government to carry out real reform. Ding says that civil servants who do not meet the targets should be severely punished. The details of the policies as well as the performance targets must be published, so that the public can monitor whether they are achieved or not. Without transparency, Ding says, abuse of power and corruption will remain the norm.

Like Ding Xueliang and Liu Shengjun, *Huanqiu shibao* says government agencies and SOEs are the most important interest groups. But the *Huanqiu shibao* editorial is less concerned than the other commentators about the potential of the interest groups to do serious harm to the reform process. It says that not even the most powerful of what it calls the “interest communities” (利益群体, *liyiqunti*) has enough power to influence the implementation of reform. The central government retains “absolute authority” (绝对权威, *juedui quanwei*). The editorial notes that other, competing interest clusters exist within Chinese society, especially on the Internet. Over the last few years,

⁷ *Shuanggui* is an internal procedure under which the Chinese Communist Party investigates its members. See Marc Julienne, “Reviewing Party discipline in the shadow of *shuanggui*”, *China Analysis: Law and Power in Xi’s China*, December 2013.

⁸ Ding cites as positive examples the procedures launched against Chen Liangyu under Hu Jintao and Wen Jiabao and against Jiang Jiemin under Xi Jinping and Li Keqiang.

traditionally disadvantaged groups have demonstrated that they can bring significant pressure to bear when they are unhappy: some groups have shown their strength, for example, in opposing forced evictions and polluting industrial projects. For this reason, the situation should not be viewed as a binary opposition between interest groups and reforms. This limited reading only serves to divide Chinese society into supporters and opponents of reform. According to *Huanqiu shibao*, that would be a mistake. The reform programme is so broad and far-reaching that it will affect the whole population, and everyone in China, regardless of background, will in practice be part of one or more “interest community”.

Liu Shengjun believes that the interest groups are only one of several potential obstacles to reform. Ideological resistance and bureaucratic inertia will also be problematic. However, Liu says that special interests will be the most difficult obstacle to overcome, because the main interest groups are very powerful. They include government departments such as the National Development and Reform Commission (NDRC) and the China Securities Regulatory Commission (CRSC), both of which may end up losing much of their authority in the reform process. Large SOEs will also resist reform, to avoid losing their market monopoly, preferential treatment, and exemption from paying dividends.

Liu sees three possible solutions to combat these interest groups, with varying chances for success. The first, which Liu does not believe would work, would be to appeal to the goodwill and conscience of the agents involved. The second would be to make use of popular pressure. However, this method could lead to unrest, as seen in Tunisia and Egypt. The third would involve the leadership using its authority to threaten and coerce. The central administration has the power to punish recalcitrant civil servants and interest groups. The leadership should, therefore, be directly involved in implementing reform. Xi’s “iron fist” (铁腕, *tiewan*) policy is the most likely way of ensuring the success of his reform programme.

Liu says that the implementation of reform will be China’s biggest challenge in the coming years. But if half of Xi’s proposed reforms have been introduced by the end of his term in office, the president would be able to consider this wave of reform a clear success.

2. The new Central National Security Commission

Marc Julienne

Sources:

“Communiqué from the Third Plenum of the 18th CCP Congress”, *Xinhua*, 12 November 2013.

“CCP Central Committee’s Decision on Major Issues Concerning Comprehensively Deepening Reforms”, *Xinhua*, 15 November 2013.

Xi Jinping, “Press Release on the CCP Central Committee’s Decision on Major Issues Concerning Comprehensively Deepening Reforms”, *Xinhua*, 15 November 2013.

Lu Gang, “The mechanisms of national security at the top, from the historical point of view of foreign policy decisions”, *Wenhuibao*, 12 November 2013.⁹

Xiao Hui, Chu Xinyan, and Xing Shiwei, “Experts shed light on the National Security Commission, a tradition among the great powers”, *China News*, 14 November 2013.¹⁰

Han Yong, “Decrypting the National Security Commission: twice the pressure to improve the national security system”, *China News*, 28 November 2013.¹¹

The aim of the Third Plenum of the 18th Chinese Communist Party (CCP) Congress, which was held in Beijing between 9 and 12 November 2013, was to set down a framework for “comprehensively deepening reforms” (全面深化改革, *quanmian shenhua gaige*). One of the reforms announced was the creation of a National Security Commission (NSC, 国家安全委员会, *guojia anquan weiyuanhui*).¹² This innovation attracted a lot of attention from the media and from observers in China and abroad. On 24 January 2014, the foundation of the Central National Security Commission (中央国家安全委员会, *zhongyang guojia anquan weiyuanhui*) was officially announced, and some members of its board of directors were named. Few details have been provided about the commission. But even so, some of the commission’s aims can be inferred by examining the official information released after the Plenum alongside analyses made by Chinese experts.

Interpreting official statements

On the evening of 12 November, a press release was published announcing the broad outline of future reforms, including the creation of the commission. On 15 November, the Central Committee published a 60-point blueprint for reform, the “Decision on Major Issues Concerning

⁹ Lu Gang is a professor of political science at East China Normal University, Shanghai.

¹⁰ Xiao Hui, Chu Xinyan, and Xing Shiwei are journalists with *China News*.

¹¹ Han Yong is a journalist with *China News*.

¹² Note that in November 2013, the official *Xinhua* press agency translated the term as State Security Committee, but on 24 January 2014, changed it to National Security Commission.

Comprehensively Deepening Reforms”. That same day, a long statement signed by Xi Jinping provided more details of the Plenum’s conclusions.

Between 12 and 15 November, many articles were published in China and abroad about the proposed commission. One of the main questions raised was whether the commission would focus on internal or external security: would it have jurisdiction over public security or foreign affairs? The phrase “national security” usually refers to foreign and military affairs. However, the 12 November press release announcing the NSC’s creation did not mention foreign relations. Out of a press release of 5,000 characters, just 158 characters dealt with the commission. Within this brief description, the statement talked about “new social governance” (新社会治理, *xinshehui zhili*), “social development” (社会发展, *shehui fazhan*), “social stability and order” (社会安定有序, *shehui anding youxu*), and the “public security system” (公共安全体系, *gongong anquan tixi*). Only the last sentence in the description referred to “national security”: “Establish a National Security Commission, improve the national security system and the national security strategy, ensure national security” (设立国家安全委员会, 完善国家安全体制和国家安全战略, 确保国家安全, *sheli guojia anquan weiyuanhui, wanshan guojia anquan tizhi he guojia anquan zhanlüe, quebao guojia anquan*).

In the 15 November 60-point “Decision”, point 50 discusses the NSC, again in terms of internal security. Part of the section on “social governance” (社会治理, *shehui zhili*), point 50 is aimed at “improving the public security system” (健全公共安全体系, *jianquan gongong anquan tixi*). It calls for strengthening the regulatory system for food and drug safety, reinforcing natural disaster management mechanisms, and instating a more robust Internet governance system.

Xi Jinping’s 15 November statement, however, explicitly refers to external security. The president explained that China faces a “twofold pressure” (双重压力, *shuangzhong yali*). External pressure necessitates the “protection of national sovereignty, security, and development interests” (对外维护国家主权、安全、发展利益, *duiwai weihu guojia zhuquan, anquan, fazhan liyi*). And internal pressure calls for “maintaining political security and social stability” (对内维护政治安全和社会稳定, *duinei weihu zhengzhi anquan he shehui wending*). Xi says that China’s security organs are not meeting the country’s national security needs. For this reason, China needs to establish a platform to “plan” (统筹, *tongchou*) national security activities.

Xi Jinping assigned four responsibilities to the commission, covering a relatively wide range of competences: to develop and implement a national security strategy; to promote the development of a national security law; to create a national security policy; and to study and resolve important national security issues.

The evolution of national security management

Lu Gang says that since the emergence 30 years ago of “non-traditional security” (非传统安全, *fei chuantong anquan*), national security is no longer the prerogative only of the ministries of foreign affairs, defence, state security, and public security. Professor Xu Hui of the People’s Liberation Army (PLA) National Defence University tells the *China News* journalists, Xiao Hui, Chu Xinyan, and Xing Shiwei, that national security no longer centres on the need to be ready for a potential “foreign invasion” (外敌入侵, *waidi ruqin*). Instead, ensuring national security involves finding ways to deal with the threats of terrorism and trafficking, as well as addressing risks related to the economy, the Internet, public health, and the environment. These new threats are transversal and transnational, but traditional government departments still have well-defined responsibilities. The commission could act as an intermediary between the different ministries to help the country cope better with internal and external threats.

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Many Chinese commentators noted the potential similarities between the Chinese NSC and the US National

Security Council (NSC). Several countries have already created agencies based on the US model, including the United Kingdom and Russia. And the US NSC seems to have been remarkably efficient since its creation in 1947. For example, it played an important role during the Cuban Missile Crisis and during the normalisation of the US relationship with China, instigated by Henry Kissinger as national security advisor to President Richard Nixon.

Several researchers point out that this is not the first time China has considered creating a body inspired by the US NSC. China has already put in place various high-level decision-making structures. Li Wei, a researcher at China Institutes of Contemporary International Relations (CICIR), tells Xiao, Chu, and Xing that the first iteration of the NSC was crafted, if not implemented, in 1997 after a high-ranking Chinese delegation met with the US NSC at the White House.

Lu Gang reviews the evolution of Chinese national security decision-making structures. The Central Committee’s Foreign Affairs Leading Small Group was created in 1958 (中央外事领导工作小组, *zhongyang waishi lingdao gongzuo xiaozu*). The National Security Leading Small Group (中央国家安全领导小组, *zhongyang guojia anquan lingdao xiaozu*) was established in September 2000. Both entities are chaired by the incumbent Chinese president. And both structures make use of the services, such as research, meeting preparation, and communication,

provided by the Central Foreign Affairs Office (中央外事办公室, *zhongyang waishi bangongshi*) under the principle of “two brands, one institution” (两快牌子, 一套机构, *liang kuai paizi, yi tao jigou*).¹³

It seems, therefore, that there are multiple decision-making and advisory structures for national security in China. In addition to the ministries and the two Leading Small Groups discussed above, Han Yong talks about two new Leading Small Groups, one of which deals with counter-terrorism (国家反恐工作领导小组, *guojia fankong gongzuo lingdao xiaozu*), and the other with maritime rights and interests (中央海洋权益工作领导小组, *zhongyang haiyang quanti gongzuo lingdao xiaozu*).¹⁴ And the Politics and Law Commission (PLC, 中央政法委, *zhongyang zhengfa wei*), which comes under the authority of the Central Committee, is the highest-ranking public security decision-making body in China.

An anonymous researcher with the PLA told Xiao, Chu, and Xing that the large number of national security organisations makes for a lot of “infighting” (各自为战, *gezi wei zhan*). Each body is reluctant to share the information it has collected; for example, the defence and state security ministries do not coordinate well. As a result, the country’s leaders make decisions inefficiently. The NSC aims to bring together the skills and knowledge of each of these organisations. But how will this affect the role of the other security bodies? Li Wei says that the new commission will intervene only in times of crisis or in cases where it would not be appropriate for the other bodies to take action. However, Xi Jinping said that the commission will be responsible for developing a national security strategy and for drawing up a national security law. This would make it a ministerial level body rather than a simple crisis management structure.

National Security Commission members

The Central National Security Commission was formally established on 24 January 2014 at a meeting of the Central Politburo of the CCP. The addition of the term “central” (中央, *zhongyang*) to the title indicates that the commission is under the supervision of the Central Committee. A press release in *Xinhua* said that the commission would be a decision-making and coordinating body for national security issues and activities, under the direct authority of the Politburo and Standing Committee.¹⁵ The statement said that Xi Jinping would be president of the commission. Prime Minister Li Keqiang and Zhang Dejiang, president of the National People’s Congress and member of the

¹³ For more information on the Leading Small Groups, see Alice Miller, “The CCP Central Committee’s Leading Small Groups”, *China Leadership Monitor*, No. 26, Autumn 2008.

¹⁴ In contrast to the Central Leading Small Groups, the counter-terrorism group is a State Leading Small Group. It was formed at the end of August 2013 with Guo Shengkun, public security minister and member of the Political and Legal Commission, as president.

¹⁵ “Xi Jinping to lead Central National Security Commission”, *Xinhua*, 24 January 2014, available at http://news.xinhuanet.com/politics/2014-01/24/c_119122483.htm.

Politburo Standing Committee, will be vice-presidents.

The nomination of Xi Jinping as president of the commission was not a surprise. Since coming to power, he has centralised all the key functions of head of state and party. Neither Chinese nor outside observers expected that Li Keqiang would be given such an important role, probably because he has so far largely been in Xi Jinping’s shadow – but he was also given the number two position in the Leading Small Group for Comprehensively Deepening Reforms (全面深化改革领导小组, *quanmian shenhua gaige lingdao xiaozu*), which was established after the Third Plenum and is led by Xi Jinping.

The remaining members of the commission were not named, although Hong Kong media outlet *Mingjing News* published a list of likely members on 20 November based on information provided by a source in Beijing.¹⁶ *Mingjing News* was correct about the roles taken by Xi Jinping and Zhang Dejiang. The article said that Liu Yunshan and Yu Zhengsheng, both members of the Standing Committee, would be named as vice-presidents. It suggested that Geng Huichang, minister for state security, would be NSC secretary general, with Wang Yongqing of the PLC and Wang Jianping of the People’s Armed Police as deputy secretary generals. The other members of the commission, according to *Mingjing News*, would be director of the Central Policy Research Office and Politburo member Wang Huning, Deputy Prime Minister Wang Yang, Minister of Public Security Guo Shengkun, president of the PLC Meng Jianzhu, state councillor Yang Jiechi, army chief of staff Fang Fenghui, and Central Military Commission members Fan Changlong, Xu Qiliang, and Chang Wanquan.

This article has similarities to an article published in *Mingjing yuekan* in June 2013, which said that Xi had appointed his close ally, current PLC president Meng Jianzhu, to set up the NSC.¹⁷ According to *Mingjing yuekan*, Meng was to be assisted by Wang Yongqing and Wang Huning. Wang Yongqing is Meng Jianzhu’s right-hand man; he has been a member of the Central Committee and secretary general of the PLC since 2012. Wang Huning is a member of the Politburo and the director of the CCP’s Policy Research Office, as well as a personal advisor on foreign policy to Xi.

Two of the three people appointed to create the commission are from the world of public security and one is from foreign affairs. Given these profiles, it seems that, as Xi’s press release of 15 November indicated, the commission will be responsible for both internal and external security. External security may, however, only relate to China’s periphery. The “external pressures” mentioned by Xi are mainly found in China’s immediate neighbourhood: border disputes with

¹⁶ Zhang Qian, “Zhang Dejiang, Yu Zhengsheng could join the NSC”, *Mingjing News*, 20 November 2013.

¹⁷ Liu Ziwei, “Meng Jianzhu and Wang Huning help President Xi as he prepares to set up a national security committee”, *Mingjing Yuekan* (Mingjing News group), No. 40, 28 June 2013.

India, Japan, and South-East Asia; terrorist threats in Xinjiang and Central Asia; instability along the borders with Afghanistan, Pakistan, and North Korea; and the American strategic rebalancing towards the Asia-Pacific region. Each of these threats could also have an impact on internal security, uniting the two remits of the commission.

3. Rule of law: a game plan for the economy

Hugo Winckler

Sources:

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Xia Nan, "From judicial reform to reformed justice", *Caijing wang*, 10 December 2013.²¹

For many years, academics in China have debated the role of the law in moderating political power. Some of the more contentious issues have included the reform of criminal procedure, the reform of the re-education through labour system, the problem of judicial corruption, and the constitutionalisation of government. These concerns were reflected in the agenda of the Third Plenum of the 18th CCP Congress. The Plenum announced that a new rule of law, based on more solid foundations, would be promoted in China. What form will this new Chinese rule of law take?

In speeches on 24 January 2012 and 24 February 2013, Xi Jinping stressed the importance of continuing to develop the rule of law in China. Hu Jianmiao says that Xi qualified what he means by rule of law. It must have "Chinese characteristics" (中国版, *Zhongguo ban*), because the rule of law cannot be achieved without acknowledging China's specific circumstances. And it must be "comprehensive" (综合版, *zonghe ban*), because establishing the rule of law is useless without also creating a society ruled by law. Xie Zhusheng says that Xi Jinping's project is ambitious, but that the economic imperatives currently facing Chinese society make its achievement essential.

The Central Committee's "Decision on Major Issues Concerning Comprehensively Deepening Reforms" (中央关于全面深化改革若干重大问题的决定, *zhongyang guanyu quanmian shenhua gaige ruogan zhongda wenti de jue ding*) published after the Third Plenum focused particularly on judicial reform. The plan called for abolishing re-education through labour, streamlining court funding and jurisdiction, reducing the number of offences liable to a death sentence, systematising respect for the constitution in court proceedings, and increasing protection for private property. Point 9 of the document outlines a programme for

¹⁸ Xie Zhusheng is the former dean of the law faculty at the University of Hong Kong.

¹⁹ Hu Jianmiao is professor of law at Zhejiang University.

²⁰ Jiang Huiling is a senior judge at China's Supreme People's Court.

²¹ Xia Nan is the pseudonym of Chu Wangtai, a lawyer from the Beijing Huayi practice. He frequently comments in the press on current legal news.

developing the rule of law. The Central Committee's reform plan has been endorsed by at least one of the figures who will have the most responsibility for its implementation: in November 2013, the head of the Central Committee's Politics and Law Commission, Meng Jianzhu, published an article in the *People's Daily* under the headline, "Deepening judicial reform" (深化司法体制改革, *shenhua sifa tizhi gaige*), examining the reform programme announced by the Plenum. Each of the measures proposed in the Decision represents a significant breakthrough. Chinese commentators have tried to tease out and analyse the most important elements of the plan.

Identifying what will change

The reform plan aims to create the structural conditions necessary to establish an independent judiciary. The various measures proposed are still at the planning stage, but the basics seem to have been decided on. Now, the evolution of the Chinese judicial system will need to be monitored.

Jiang Huiling says that the cornerstone of the reform project is the reform of the financing of the judicial system. This will involve both judges' salaries and court operating costs, in trial chambers and in investigative organs. A single authority at the provincial administration level (法检省级统管, *fajian shengji tongguan*) will manage the justice budget. Academics have long argued that this kind of change to the financing system is needed as a fundamental guarantee of judges' independence. Jiang Huiling says that a central system would have been too complex to implement and that a local system would in practice have ended up being influenced by local politics. By taking the compensation system out of the hands of local interests, the reform programme aims to provide the judicial sector with the structural means to ensure its independence. The new system will include a national compensation system for the Supreme Court and High Courts (最高法院和高级法院, *zuigao fayuan he gaoji fayuan*) and a provincial compensation system for basic and intermediate people's courts (基层法院, *ji ceng fayuan*, 中级法院, *zhongji fayuan*). Jiang says this decoupling should help avoid most conflicts of interest.

Another key element of the reform programme is the institution of a "separation" (两区适当分离, *liangqu shidang fenli*) between legal and administrative responsibilities. Each judge's jurisdiction will include parts of several administrative districts and judicial nominations will no longer be the responsibility of local officials. This should help to get rid of collusion between political leaders and the judiciary. And with local officials coming under the jurisdiction of more than one judge, corruption should become more risky and more costly.

Jiang says that while this step is crucial, if the corrupt links between politicians and the judiciary are to be completely severed, courts will also need to be able to set

their budgets independently, without interference from local administrations. Jiang also highlights the need for equalisation between the different provinces. The system is to be run independently in each province, but poorer provinces must be able to obtain sufficient funding to ensure that their judicial systems can properly develop.

Jiang says that the reform plan proposes strengthening property rights by establishing legal safeguards against dispossession. Furthermore, the reform project aims to increase the responsibilities of investigators during enquiries, so as to prevent information being coerced and evidence being fabricated. Finally, the reform plan should lead to the abolition of the death penalty for 13 offences, especially those related to non-violent economic crimes. The system for reducing sentences should also be reviewed.

The abolition of re-education camps was announced a long time ago and is the result of earlier political decisions.²²

Even so, Hu Jianmiao says that the Central Committee's specific mention of reforming the system of re-education through labour represents a significant step towards increased protection of basic freedoms in China.

Law can be used to "create order out of chaos" in China's economic development.

Making sense of the changes

Xia Nan says that for the last 15 years, the judicial system has evolved in a haphazard way, driven by the need to respond to specific events. Changes have been initiated not by political bodies but from within the judicial system itself. However, after the Central Committee's "Decision", Xia says the judicial system is now "being reformed" (被改革, *bei gaige*).²³ From now on, legal reform will be the result of a coordinated and systematic process led by the political authorities. Moreover, the reform process is closely linked to work carried out at the national and local levels by the Central Committee's Politics and Law Commission. The party has taken over judicial reform.

Because the current process has such close ties to the party, Xia sees it as the first significant reform project in years. And he believes that those in power are determined to see it through. However, he thinks that the reform process is missing one key element: genuine, committed public participation. The Politics and Law Commission carried out all the meticulous research and preparation work for reform and, as such, the reform programme is guided by the government's point of view rather than informed by any external perspectives. Without public participation, the

²² See Hugo Winckler, "Vers l'abolition des camps de rééducation par le travail", *China Analysis*, No. 42, April 2013.

²³ The first character here, 被, indicates the passive voice and is often used in the Chinese media to imply involvement by the Party, without actually naming it.

project will remain an internal party matter.

The main objective of these “top-down” (顶层设计, *dingceng sheji*) reforms is to support the Third Plenum’s proposed economic reforms. Xie Zhusheng says that legal reform will not only affect the judicial system, but will also involve adjusting the judicial system to a market-oriented logic. Xie believes this reform will be crucial to China’s continued growth. The law must be adapted to keep up with economic transformation. This rationale is central to understanding the challenges and stakes of reform, which aims to create a more independent legal system that is better equipped to play a regulatory role in China’s economic development.

Xie Zhusheng foresees a new rule of law aimed at supporting economic development. Law can be used to “create order out of chaos” (拨乱反正, *boluanfanzheng*) in China’s economic development. Market logic is now fairly well developed in China, but legal protection is still too weak. The current logic of the “priority doctrine” (先行思维, *xianxing siwei*) formulated by Deng Xiaoping calls for economic reform to be implemented first, followed by legal improvements to support economic reform. Xie says that, as a result, reform seems to be an end that can justify any means: he says that “the law is the ‘caged bird’ of reform” (法治成了改革的“笼中之鸟”, *fazhi chengle gaige “longzhong zhiniao”*)²⁴.

However, economically focused legal reforms cannot be implemented without some repercussions for the central authorities. The country would move from being controlled by the “visible hand” (看得见的手, *kandejian de shou*) of the party as central regulator of the economy to being governed by the invisible hand of the market. Xie suggests that Shanghai’s transformation into a free trade zone might offer a template for the new model. The economic zone should define specific legal conditions to ensure that the Party cannot intervene in private economic relationships. The party’s role would no longer be one of “management” (管理, *guanli*), but instead would involve “governance” (治理, *zhili*).

This view of law as an economic tool creates a framework for understanding the debate on law reform. It also establishes a paradigm for the debate on constitutionalisation of government that preceded the 18th Congress.²⁵ China’s new focus on legality applies primarily to the economy. The debate has been split into two different branches: economic rule by law and political rule of law. What is missing from today’s reforms – an endorsement of constitutionalism and the true rule of law – is as revealing as their content.

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²⁴ The image of a bird free to fly in a cage was a famous metaphor for the market and the state in the reform era of the 1980s.

²⁵ See *China Analysis: Law and Power in Xi’s China*, December 2013.

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