

LAW AND POWER IN XI'S CHINA

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.

The French version of China Analysis can be accessed online at www.centreasia.eu.

Introduction by François Godement

Absolute power obliterates legality, but even limited power challenges it from time to time. This issue of *China Analysis* deals with the struggle between the law and party or customary rule in China. The issue is not unique to the PRC: Tanguy Lepesant's article in this issue discusses the intense debate in Taiwan after President Ma Ying-jeou used (or abused) his powers to wiretap a key rival and have him indicted for corruption. Meanwhile, in Japan, the Abe government is encountering opposition to its new law on the protection of national secrets, which many people see as an attack on civil liberties. And far worse, of course, is North Korea's regime – in December 2013, the country's second-in-command, previously believed to be the key power figure behind Kim Jong-un, was arrested in Saddam Hussein fashion during a filmed session of the ruling Workers Party.

China and its top leader, Xi Jinping, are unique in that they are able to develop a dynamic and expanding legal system, while at the same time holding onto the capacity to deploy arbitrary power where they think it matters. Xi could in fact be described as being on both sides of the fence, as demonstrated the Resolution and 60 Decisions from the recent 3rd Party Plenum. He favours both absolute pre-eminence for the Party and detailed attention to due process, whether administrative, regulatory, or legal. Marc Julienne details the origins and the workings of *shuanggui*, the extrajudicial system that the party uses to investigate

the sins of its own members, sometimes involving long-term arrest and interrogation.

How can this balancing act be maintained? One of our sources, discussed by Hugo Winckler, explains that Xi's intentions and actions are often unclear. Is he a target of anti-constitutional radicals? Or has he given these radicals a green light as a way to cap constitutional debates and put down liberal and legalist arguments? Another source, detailed by Jerome Doyon, shows that Xi embraces China's "princelings", the children of former revolutionaries or top leaders, almost as if their pedigree was as good as a party membership card. His rapport extends all the way to stalwart Maoist types, and in fact New Left opposition to Xi and to his current policies has disappeared. He also reaches out to politically liberal "red princes", including one pro-democracy businessman who has ties to the Xi family. One might add that today, in addition to a biography of Xi's own father, Beijing bookshops display the autobiography of Hu Dawei, the son of the late leader Hu Yaobang. Only a year and a half ago, Hu Dawei was the most outspoken voice for political liberalisation inside the establishment.

Does this mean, as some say, that Xi Jinping is a closet reformer? Could he even be "waving the red flag to fight the red flag", as the Cultural Revolution slogans used to have it, or currying favour with the left in order to pursue his own reformist agenda? Perhaps another factor should be considered: Xi does not see a contradiction between authoritarian party rule from the top and market-driven development. Just as the Great Leap Forward "walked on two legs", he thinks his leadership and the party system will succeed in spanning the divide.

1. The constitutional government controversy

Hugo Winkler

Sources:

Yang Xiaoqing, “A comparative analysis of constitutional government and popular democracy”, *Hongqi Wengao – Red Flag Manuscripts*, 21 May 2013.¹

Editorial, “Constitutional government is an alternative means of challenging China’s development”, *Huanqiu Shibao – Global Times*, 22 May 2013.

Du Guang, “The Seven Taboos, constitutional government, and the ideological crisis – 2013 has affected all three”, *Dongxiang – The Trend Magazine*, Number 6, 28 May 2013.²

Luo Ya, “Xi Jinping’s counter-attack against Liu Yunshan; a left-wing professor is forced to resign from Renda”, *The Epoch Times*, 22 June 2013.³

Ma Huaide, “What does the rule of law mean in China?”, *Xuexi Shibao – Study Times*, 5 August 2013.⁴

Editorial, “The strange debate on constitutional government”, *Chengming*, 31 August 2013.

Since the beginning of 2013, Chinese intellectuals have been engaged in a media war that gives an insight into debates at the very highest level of power. The movement has been dubbed “May’s reaction to constitutional government” (反宪政的五月逆流, *fan xianzheng de wuyue huli*) or the “red month of May” (红五月, *hong wuyue*). The controversy has seen supporters of “constitutional government” (宪政, *xianzheng*) face off with those who favour preserving a “socialism with Chinese characteristics” (有中国特色社会主义, *you zhongguo tese de shehui zhuyi*). Alongside the passionate exchange of ideas, the conflict is evidence of power struggles between different factions of the Communist Party. Du Guang says the confrontation signals an ideological crisis that is inevitable and that has been brewing in China since the beginning of the economic transition.

The conservative viewpoint

Luo Ya says that the public controversy began with the publication of an academic paper by Yang Xiaoqing in May 2013, in which Yang rejects any form of the constitutionalisation of political power. Yang sets out to prove that there is a fundamental incompatibility between a “constitutional government” and “popular democracy” (人民民主制度, *renmin minzhu zhidu*). Yang says this incompatibility exists because the act of constitutionalising political power is a concept unique to capitalism. The two

types of regime are therefore essentially different and cannot be merged: a “socialist constitutional government” (社会主义宪政, *shehui zhuyi xianzheng*) is impossible. The problem is also one of class: a “constitutional government” would necessarily be in the hands of those who control the means of production – in other words, capitalists. On the other hand, socialism has its roots in the people (人民, *renmin*). The writer illustrates her position with particular reference to the philosophy of Mao Zedong.

Yang Xiaoqing’s article was immediately reprinted in the paper of the Central Committee, the *People’s Daily*. Other op-eds soon followed, all agreeing with this conservative line of thought. The *Huanqiu Shibao* editorial was one such article. It says that there is no point arguing over a choice between “constitutional government” and “socialism with Chinese characteristics”, because the decision has already been made, and China has opted for socialism. The decision was not easy, but it is now the fundamental principle of China’s political system, so any move towards constitutionalising the government is impossible. The editorial also talks about another irrevocable decision, that of “governing the country based on the rule of law” (依法治国, *yifa zhiguo*). According to *Huanqiu Shibao*, “law” here means the constitution. Since the constitution already guides the authorities in exercising power, a constitutional government is unnecessary. Du Guang, a liberal, responded to this by saying that the Chinese constitution has no legal authority. Without a system to ensure its implementation, it is purely symbolic and has no force to guide the ruling class in its decision-making.

Several conservative writers criticise what they see as illusory concepts imported from the West, including that of “constitutional government”. Chinese society cannot develop based on an abstract concept that has no grounding in China’s reality, because such a concept cannot take into account the country’s true needs. “Constitutional government” is an empty notion. It is a mere symbol that anyone can use without really understanding its significance. It represents a supposedly universal, though in actuality Western, prescription for remedying all of China’s ills. The debate about constitutionalising the government is just a distraction from the real issue of what should be done to improve China’s current political system.

The conservative thinkers often seem to see conspiracy all around them. For example, the *Huanqiu Shibao* editorial contains a veiled allusion to a plot. The writer suspects that foreigners have promoted the concept of “constitutional government” so as to set back China’s development. The concept has been maliciously introduced to spread false and counter-productive ideas. So, it must be handled with caution and carefully examined. Some commentators, including Luo Ya, see these highly critical articles as a direct criticism of some of Xi Jinping’s positions. At the 18th Party Congress, Xi stressed the role of the constitution and the need for political reform.

¹ Yang Xiaoqing is a law professor at Renmin University, Beijing.

² Du Guang is a former professor at the Central Party School.

³ Luo Ya is a journalist with *The Epoch Times*.

⁴ Ma Huaide is vice-president of China University of Political Science and Law.

The liberals and their apparent leader

Ma Huaide's article was published in response to the conservatives. He begins by pointing out that China has recently undergone a renewal of its political leadership. The great majority of the new leaders, at all levels of the state, studied law or social sciences at university. Ma says this proves that the status of the rule of law in China has improved. He says that the subject of the "rule of law" (法治, *fazhi*) was much discussed during the 18th Congress.

Ma Huaide says that the rule of law began to be promoted within the Chinese political system during the liberalisation of China under Deng Xiaoping. Xi Jinping has taken a new interest in the rule of law, speaking of the need for a "China at peace" (平安中国, *pingan zhongguo*) and "ruled by law" (法制中国, *fazhi zhongguo*). Ma says the new Chinese president seems to see the development of the legal system as very important. He notes that Xi Jinping has throughout his career established structures supporting the development of the rule of law in several regions, including Zhejiang and Hunan.⁵ Du Guang quotes Xi Jinping's speech in 2012 at the thirtieth anniversary commemoration of the 1982 adoption of the new constitution. In this speech, Xi praised constitutional government as "supporting the emancipation of the people" (人民发自内心的拥护, *renmin fazi neixin de yongyu*). Du says that the conception of the "Chinese dream" (中国梦, *zhongguo meng*) is going through a social, economic, political, and ideological transition. The debate on constitutionalisation is just one expression of the crisis brought about by this transition, which will require changes in mindset from many Chinese thinkers.

In response to the conservatives' arguments, Du Guang says that the Chinese constitution can be used in two ways: it can help to protect people's rights or it can serve as a tool for an authoritarian regime to maintain the privileges of the ruling class. Du believes that at the moment, the constitution fulfils only the second function. He criticises Yang Xiaoqing's article and *Huanqiu Shibao*'s editorial for putting forward a point of view that has innate contradictions: the constitution should be accepted as a symbol that can give legitimacy to those in power, but it should not provide for a constitutional government whose conduct would be based on the rule of law. Du Guang, who is himself an important member of the Chinese elite, opposes the conservative position as merely the reaction of an elite afraid of losing its privileges.

Xi Jinping's ambiguous role: target or instigator?

Chengming says that the legal debate's focus on theory limits its popular appeal. But this abstruseness hides a serious rivalry for influence within the Chinese intellectual and political elite. Luo Ya says that Yang Xiaoqing's article has caused a stormy reaction on the Internet as well as in print. Many bloggers and commentators have even called

⁵ For example, Xi Jinping founded an advisory council on the rule of law in Zhejiang province (法治浙江咨询委员会, *fazhi Zhejiang zixun weiyuanhui*).

for the law professor's resignation. Some Internet users have voiced concerns about the values being taught to students at Yang's institution, the prestigious Renmin University. Luo says the rivalry between Yang's supporters and her opponents is neither a simple academic debate nor a disagreement within public opinion. Instead, he says it is evidence of an internal struggle within the party itself, uniting cadres from different generations whose political leanings are sometimes completely at odds.

Luo Ya's article, written in June 2013, considers the idea that Xi Jinping might be the target of this ideological unrest. Xi's political manoeuvring has caused discomfort among some of the party's top officials. Under the pretext of the fight against corruption, Xi Jinping has gradually marginalised party members who were loyal to his predecessors. The main objective of Xi's "clean sweep" (大扫除, *da saochu*) is said to be to reduce the number of party cadres who are still close to Jiang Zeming. Luo points out that Liu Yunshan,

According to *Huanqiu Shibao* there is no point arguing over a choice between "constitutional government" and "socialism with Chinese characteristics", because the decision has already been made, and China has opted for socialism.

who is one of these officials close to Jiang, controls the party's propaganda outlet. Luo suggests that Liu used the censor's power to orchestrate the media debate on constitutionalism, with the aim of

creating a confrontation with Xi Jinping.

In August, *Chengming* came up with another explanation for the controversy: rather than being a target of the media debate, Xi Jinping might well have instigated it. This row has arisen less than a year after Xi Jinping came to power, in spite of his public claim, as *Chengming* reports, to want to "apply the constitution" (落实宪法, *luosi xianfa*) and to carry out "deep water reform" of the political system (改革的深水區, *gaige de shenshuiqu*). The conservative commentators are party members but use a quasi-revolutionary vocabulary and seem to be acting against their own leader. The writer considers two possible underlying reasons for the revolt. It might be the sign of a red elite that is viscerally hostile to any political change and is determined to take action to maintain the status quo in China. This would make the constitutional debate a battleground for supporters of both sides to assess each other's strengths. The second possibility is that Xi Jinping is backsliding on implementing the constitution. In this scenario, the president, having pretended to support liberal views, in fact intends to initiate a return to conservative theory and practice in exercising power. The writer says that the direction of this constitutional debate is not yet clear. But, like other commentators, *Chengming*'s editorialist believes that the debate is based in deep-rooted trends in Chinese political circles, and that it is indicative of a violent confrontation between certain members of the

political class.

The whole affair is complicated by the emergence of “Document No. 9” (九號文件, *jiuhao wenjian*), which is supposed to have been supported by Xi Jinping.⁶ This document, a memorandum from the General Office of the CCP denouncing the risks posed to the party by concepts such as the rule of law, takes the conservative side. It also identifies “seven taboos” (七不讲, *qi bu jiang*) that are forbidden for discussion.⁷ If Xi supported this document, according to the *Chengming* editorial, it could be evidence that Xi Jinping is moving closer to the left of the party. It would indicate that Xi is not the target of the anti-constitutional revolt, but in fact set it off himself. It would also show that China is not going to move towards democratisation or the rule of law.

These explanations are based more on rumour than on known fact. But the debate gives an indication of a divide that could last for a long time – in part because of the emergence of a “new left” (新左派, *xin zuopai*) in China and in part because Xi Jinping is a complex figure whose political intentions remain unclear.

2. Xi Jinping and the Princelings

Jérôme Doyon

Sources:

Na Xiongnu, “The princeling faction and its influence on Xi Jinping, I”, *Dongxiang – The Trend Magazine*, No. 331, March 2013.⁸

Na Xiongnu, “The princeling faction and its influence on Xi Jinping, II”, *Dongxiang – The Trend Magazine*, No. 332, April 2013.

Na Xiongnu, “The princeling faction and its influence on Xi Jinping, III”, *Dongxiang – The Trend Magazine*, No. 333, May 2013.

China’s president, Xi Jinping, is a member of a group of descendants of Maoist leaders known as the “princelings” (太子, *taizi*). These princelings have risen to become influential in their own right within Chinese government, military, and academic circles. The Hong Kong-based magazine *Dongxiang* recently published a series of three articles looking at the influence of the princelings on Xi Jinping. Rather than accepting the simplistic view of a politically unified “princeling faction” (太子党, *taizidang*), Na Xiongnu emphasises the varying political opinions and different career paths of the princelings. By extension, he shows the diverse range of influences they exert on the president. Na does not concentrate on those princelings who became prominent officials, such as Bo Xilai and Wang Qishan, about whom much has already been written. Instead, he focuses on those in academia and the military, along with those whose influence is less obvious.

Princelings in academia

Na analyses publications from the Ministry of Propaganda and speeches by Xi Jinping to show the direct and indirect influence of the princelings on the president. He notes that the princeling Wang Boming wrote the 23 February 2013 text published by the Ministry of Propaganda, which stated that “imperfect reforms are preferable to a crisis arising from a lack of reforms”.⁹ Wang Boming has been a personal advisor to Xi Jinping since 2010. He first came to prominence in 1989 as director of the Stock Exchange Executive Council, which was at the time a reformist research centre. Wang Boming is the son of Wang Bingnan, who was deputy to Zhou Enlai when he was Minister of Foreign Affairs. Wang Boming is also a childhood friend of the influential princeling, Wang Qishan, who is currently a member of the Politburo Standing Committee. In 1989, Wang Boming took full responsibility for the Stock Exchange Executive Council’s involvement in the student movement. This ensured that Wang Qishan, who was also linked to the organisation, was able to escape association with the

⁶ The full name is “Concerning the Situation in the Ideological Sphere” (关于当前意识形态领域情况的通报). The document was brought to light in August by the foreign press.

⁷ The seven taboos are: “universal values” (普世价值, *pushi jiazhi*), “freedom of the press” (新闻自由, *xinwen ziyou*), “civil society” (公民社会, *gongmin shehui*), “civil rights” (公民权利, *gongmin quanli*), “mistakes made in the history of the Chinese Communist Party” (中国共产党的历史错误, *Zhongguo gongchandang de lishi cuowu*), “the bourgeois elite” (权贵资产阶级, *quanguai zichanjieji*), and “the independence of the judiciary” (司法独立, *sifa duli*).

⁸ Na Xiongnu is a journalist for the Hong Kong magazine *Dongxiang*.

⁹ “We accept the criticism, but there is no crisis”, *People’s Daily*, 23 February 2013.

movement and continue his career. Since a political career was no longer an option for Wang Boming, he got involved in the media, becoming, among other things, editor in chief of *Caijing* magazine. Na intimates that Wang Boming's association with Wang Qishan means both princelings exert some influence over Xi Jinping.

Na Xiongnu says that Xi's recent speeches calling on China to implement limited reforms in order to avoid the path taken by the last Soviet premier, Mikhail Gorbachev, seem to be inspired by the work of Qin Xiao. Qin Xiao is the son of Qin Lisheng, a second-generation revolutionary who became close to Xi Zhongxun, Xi Jinping's father, after they fought together in Shaanbei in the Civil War. Qin Xiao is a successful businessman who is known as an advocate of democratisation. Qin supports his liberal ideas by drawing parallels between China's situation and the corruption of the Soviet system. His ideas are generally too liberal for most of the princelings, and Xi is unlikely to adopt them in their entirety. But Na believes that Qin's reformist think tank, the Boyuan Foundation, is increasing in political influence. Just before the plenary session of the two assemblies, it published a critique of the Stalinist model inspired by the ideas of Hans Modrow, the last communist leader of East Germany. Na says that the foundation serves as a mouthpiece for "reformist princelings" (太子党改革派, *taizidang gaige pai*), who want to warn Xi against the temptation of neo-Maoist ideas.

The neo-Maoist princelings

Na Xiongnu says that although the liberal princelings are gaining influence in academic circles, there are still some influential neo-Maoist princelings, in spite of the fall of the most prominent neo-Maoist, Bo Xilai. The writer says these neo-Maoists support the main neo-leftist websites, such as *Mao Flag* and *Utopia Village*.¹⁰ In particular, Na notes the return to public life of Mao Yuanxin, a nephew of Mao Zedong. After the fall of the Gang of Four, Mao Yuanxin was purged and sentenced to 17 years in prison. He officially reappeared in October 2012, taking part in a visit to an important hydraulic centre in Sichuan 60 years after his uncle first proposed the project. Mao Yuanxin's influence remains minimal, but Na interprets this public appearance as a gesture from Xi Jinping to appease the neo-Maoists.

Na points out Xi's strategy of openness towards neo-Maoists within the party. Na compares Xi's skilful manoeuvre in not taking revenge on Bo Xilai's supporters with the actions of one of the most famous strategists in Chinese history, Cao Cao. Leader of the Wei Kingdom during the Three Kingdoms period, Cao Cao discovered letters from his generals pledging their allegiance to his enemy, Yuan Shao. Instead of condemning the traitors in public, Cao Cao kept the news of the discovery quiet and burned the letters. Na sees Xi's success in avoiding conflict with the neo-Maoist

princelings as evidence that the president is a remarkable strategist.

Xi's indulgence towards the neo-Maoists is seen as "returning the favour" (投桃报李, *toutaobaoli*). During the 18th Party Congress, when Xi was appointed party leader, the neo-Maoists could not openly oppose the government's agenda or challenge the programme of reforms. Na believes that, given the growing tensions among the fifth generation of leaders, Jiang Zemin knew that Xi Jinping was the only one who would be able to balance the various princeling factions. This allowed Xi to take the leadership over Li Keqiang, who was supported by Hu Jintao.

Princelings in the military

Na says that the princelings within the People's Liberation Army (PLA) are ideologically divided. Xi Jinping must negotiate a path between the interests of moderates, such

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as Liu Yazhou, Liu Yuan, and Zhang Haiyang, and those of hawks, such as Zhu Chenghu, Zhu Heping, and Luo Yuan.

Liu Yazhou is not himself a princeling, but he is married to Li Xiaolin, daughter of Li Xiannian, who was president of the PRC during the 1980s. Li Xiaolin is president of the Chinese People's Association for Friendship with Foreign Countries. She was recently sent to Japan within a diplomatic mission. Although Li's influence on Sino-Japanese relations is limited, Na Xiongnu has interpreted Xi's decision to include her in the Japan trip as part of a strategy to contain Liu Yazhou, who has significant influence in the army. Liu is known for his statements arguing for peaceful relations with Japan and for political reform more generally. Na says that during his time as leader, Hu Jintao was already concerned about Liu Yazhou's growing influence within the army. Hu promoted Liu to the rank of general, but to limit his influence Hu transferred Liu from his role as vice political commissioner of the air force to a new position as political commissioner of the National Defence University. Liu has made reformist comments about the need to develop an intra-partisan democracy, and he is thought to be in favour of nationalising the army. These ideas run counter to the Communist Party's control of the PLA and have given Liu Yazhou a reputation among the army's hawk faction of being "careerist" (野心家, *yexin jia*).

Liu Yuan is the son of Liu Shaoqi, who was president of the PRC between 1959 and 1968. Liu Yuan is also considered to be a moderate voice within the army. He has criticised corruption within the PLA. Their outspokenness seems to

¹⁰ *Mao Flag* is available at <http://www.maoflag.net>. *Utopia Village* is available at <http://www.wyzxsx.com>.

have cost both Liu Yazhou and Liu Yuan promotions to the Central Military Commission during the 18th Congress. Zhang Haiyang, son of former general Zhang Chen, was another princeling who missed out on a seat at the heart of the PLA's command structure. However, his exclusion seems to have been mainly due to his links to Bo Xilai.

Although Liu Yazhou, Liu Yuan, and Zhang Haiyang were not promoted to the Central Military Commission, they have all achieved the rank of general and are members of the Central Committee of the Communist Party. The more hawkish princelings, who tend to be of lower rank, are unhappy with the high status of these moderates. Zhu Chenghu and Zhu Heping, both grandsons of PLA founder Zhu De, are only major-generals. Luo Yuan, son of former head of the Chinese secret service Luo Qingchang, was also a major-general before his retirement. Zhu Chenghu, Zhu Heping, and Luo Yuan have all made aggressive statements about Japan and the United States. In 2005, during a time of heightened tensions between China and the US over the issue of Taiwan, Zhu Chenghu even said that China should consider a nuclear war with the US. These hawks cannot all be promoted at once, but Na says that Xi Jinping must do something to manage the dissatisfaction of this faction within the army. Even if their provocative statements are mostly linked to personal political ambition, this kind of belligerence could have a negative impact on relations with the US and must therefore be curtailed.

In this series of articles, Na Xiongnu illustrates the complex dynamics within the group of princelings, which is often seen as unified. He also sheds light on the delicate balance Xi Jinping must strike between the need to reform the system and the need to maintain unity among the princelings, who have enormous influence within the party. So, in spite of the corruption that the president says threatens the survival of the regime, Xi must be extremely careful in his dealings with the princelings. Pressure from the neo-Maoists could be the reason that Xi tends to leave the promotion of a reformist agenda to his premier, Li Keqiang, and to redirect the blame towards Li when the agenda is criticised.

3. Reviewing Party discipline in the shadow of *shuanggui*

Marc Julienne

Sources:

Fan Xiancong and Gu Xiaoming, "Legal analysis of 'shuanggui'", *Fazhi yu shehui – Legal System and Society*, No. 5, April 2013.¹¹

Interview with Li Yongzhong, "What is *shuanggui*: a special system of investigative measures and methods", *Sina Weibo*, 19 October 2003.¹²

Ye Zhusheng, "*Shuanggui*, between discipline and law", *Nanfang Chuang – South Reviews*, 10 June 2013.¹³

In 2013, the Chinese judicial sphere was rocked by corruption scandals and by the efforts of China's new president, Xi Jinping, to address the country's corruption problem. Some of 2013's scandals were particularly high profile: the trials of Bo Xilai, Wang Lijun, and Liu Zhijun made world headlines, as did investigations into senior Chinese Communist Party (CCP) officials such as Liu Tienan, Jiang Jiemin, and four members of the China National Petroleum Corporation executive committee. These investigations were led by the powerful Central Commission for Discipline Inspection (CCDI, 中央纪律检查委员会, *zhongyang jilü jiancha weiyuanhui* or 中纪委, *zhongjiwei*). An internal organisation of the CCP, CCDI conducts its investigations using *shuanggui* (双规), a special process that falls outside any legal framework. CCDI's complete freedom of action has led to serious abuses and to tragic outcomes for some of those under investigation.

The origins and meaning of *shuanggui*

The authors say that the origins of the *shuanggui* process can be found in two documents. The first, "Administrative supervision regulations" (中华人民共和国行政监察条例, *zhonghua renmin gongheguo xingzheng jiancha tiaoli*), was published by the State Council on 9 December 1990.¹⁴ The second document, "Regulations on case investigations by Chinese Communist Party discipline inspection agencies" (中国共产党纪律检查机关案件检查工作条例, *zhongguo gongchandang jilü jiancha jiguan anjian jiancha gongzuo tiaoli*), was published on 1 May 1994. This

¹¹ Fan Xiancong is associate professor in the Law and General Management Department of Yibin University (Province of Sichuan) and director of research in civil law and legal reforms. Gu Xiaoming is associate professor in the Student Affairs Department of Yibin University and director of research in the field of legal reforms.

¹² Li Yongzhong is an expert in the fight against corruption and a former member of the Central Commission for Discipline Inspection (CCDI). This interview was originally published in the print version of *Nanfang chuang – South Reviews*.

¹³ Ye Zhusheng is a journalist with *Nanfang chuang*.

¹⁴ This document was replaced in 1997 by the Administrative Supervision Law (中华人民共和国行政监察法, *zhonghua renmin gongheguo xingzheng jiancha fa*).

document introduces the use of the *shuanggui* process. The organisations responsible for applying *shuanggui* are the CCDI and the Ministry of Supervision (监察部, *jianchabu*). These two organisations have shared personnel and offices since 1993, the year in which their remit was expanded. *Shuanggui* describes an investigative process that is initiated by the CCDI. The process begins as soon as a party member falls under suspicion and ends when the suspect is proved to be innocent – or, more frequently, when he or she is found guilty. Where the commissioners consider it appropriate, party membership can be withdrawn from the official under suspicion and jurisdiction can be given to the ordinary courts, as happened in the cases of Bo Xilai and Wang Lijun.

The word *shuanggui* means “double regulation”. The process is also sometimes referred to as *lianggui* (两规), “two regulations”, or *liangzhi* (两指), “two designations”. “Double regulation” means that the discipline inspection agencies define, at their own discretion, the time and location of the investigation. Party members under disciplinary investigation are held in secret locations for an indefinite period of time. The original intention of *shuanggui* was not only to set up a means for controlling party members, but also to ensure that disciplinary investigations remained free from any interference. Fan Xiancong and Gu Xiaoming say that a party member under suspicion is immediately cut off from all ties with the outside world, so as to avoid collusion with accomplices or the destruction or fabrication of evidence. The CCDI is given all the time it considers necessary to carry out its investigation.

Ye Zhusheng says that the place of detention can be a house, a building, a hotel, or even a military base. According to a document issued by the CCDI in 2001, the location must guarantee the suspect’s security, so it is usually a house under surveillance or the ground floor of a building. Lin Zhe, professor at the Central Party School, told Ye that she had visited one of these sites. She described it as being similar to a standard hotel room, but with all sharp edges covered with rubber to prevent accidents. These details give a dark indication of the methods used by the CCDI in its investigations and interrogations. It is easy to see why some cases have had such tragic results. One case that received significant media coverage was that of Yu Qiyi, chief engineer at Wenzhou Industry Investment Group, who died in April 2013 during an interrogation carried out under the *shuanggui* process. Ye Zhusheng says that some reports said Yu died after he “fell in the shower” (洗澡期间摔倒, *xizao qijian shuaidao*). But later versions reported numerous bruises on his body and said he “died of drowning” (溺水死亡, *nishui siwang*) after his head was submerged several times in a bathtub full of iced water. For the first time, six party officials were convicted after this case and sentenced to between four and 14 years in prison.

Two weeks after the death of Yu Qiyi, the media reported that Jia Jiuxiang, vice-president of the Intermediate People’s

Court of Sanmenxia (Henan Province), had also died during the *shuanggui* process. As in the Yu Qiyi case, authorities initially reported the cause of death as a heart attack. Later, it was revealed that Jia Jiuxiang’s body showed extensive signs of torture, indicating a more violent death.

***Shuanggui* is not compatible with the rule of law**

Fan Xiancong and Gu Xiaoming say that *shuanggui*’s position outside the legal framework leads to two key abuses: “abuse of authority” (超越权限, *chaoyue quanxian*) and excesses in the “scope of *shuanggui*” (双规 对象扩大化, *shuanggui duixiang kuodahua*).

By abuse of authority, the writers mean that the *shuanggui* process involves illegal actions. Article 37 of the Chinese constitution states that “the freedom of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with a decision from a People’s

The *shuanggui* process exists in parallel to the Chinese legal system, undermining the law of the state.

Procuratorate, a People’s Court, or the public security organisations. Any unlawful detention, restriction, or deprivation of a

citizen’s freedom is prohibited. Any unlawful investigation into a citizen is prohibited”. Moreover, paragraphs 4 and 5 of Article 8 of the Legislation Law (立法法, *lifa fa*) of 2000 states that any restriction of freedom and any application of sanctions must only be made as part of a legal process. Article 3 of the Criminal Procedure Law (刑事诉讼法, *xingshi susong fa*), which was revised in January 2012, states that “public security organs are responsible for any criminal investigations, arrests, detentions and inquiries [...]. Except as otherwise provided by law, no other organisation, group, or individual has the right to exercise these powers.” Article 50 of the same law states that “it shall be strictly forbidden to extort confessions by torture or to collect evidence by coercion, inducement, deceit, or any other unlawful means. No person shall be forced to testify against himself or herself.” All these provisions demonstrate the gap between the legal code and the methods used under *shuanggui*. The *shuanggui* process exists in parallel to the Chinese legal system, undermining the law of the state.

In terms of abuse of scope, the *shuanggui* process was originally only intended to apply to party members, as noted in a document issued by the CCDI in January 2000: “The use of ‘*lianggui*’ procedures by discipline inspection agencies” (关于纪检机关使用“两规”措施的办法, *guanyu jiwei jiguan shiyong “lianggui cuoshi de banfa*). But in practice, the scope of investigations has extended to include civil servants, non-party members, and even private economic actors. Fan and Gu say that this wider application of the *shuanggui* process represents a serious threat to the individual rights of citizens.

A necessary evil?

Shuanggui seems relatively uncontroversial among Chinese academics. Li Yongzhong, an anti-corruption expert and fervent supporter of *shuanggui*, says that in fighting corruption, “no other approach is as effective” (没有比‘两规’更厉害的做法了, *meiyou bi lianggui geng lihai de zuofale*). He says that *shuanggui* is founded on “a principle and three laws” (一个道理和三大定律, *yige daoli he san dadinglü*). The principle is that corrupt circles act according to common economic interests, but are never bound by friendship. Three laws follow from this principle. Firstly, as soon as an official is dismissed, the evidence of embezzlement will appear immediately (“closet law”, 马桶定律, *matong dinglü*). Secondly, once the official is isolated, his or her accomplices will panic and it will be easier to apprehend them (“the law of rats abandoning a sinking ship”, 树倒猢猻散定律, *shudao husun san dinglü*). And finally, as soon as the official is caught within the *shuanggui* system and cut off from the world, any associated alliances or plots will disintegrate automatically (“law of asymmetric information”, 信息不对称定律, *xinxi bu duichen dinglü*). For these reasons, Li Yongzhong says, *shuanggui* is essential to fighting corruption effectively.

Other analysts are less enthusiastic. Fan Xiancong and Gu Xiaoming say that *shuanggui* is a “double-edged sword” (双刃剑, *shuangren jian*). Although it plays a central role in the fight against corruption, it also violates citizens’ basic rights. While some believe that the effectiveness of *shuanggui* is due to its position outside the law, Fan and Gu think that the process should be “progressively incorporated into a legal framework” (逐步纳入到法律的轨道上来, *zhubu narudao falü de guidao shanglai*). To achieve this, a special law could be devised to allow discipline inspection bodies to restrict individual freedoms in certain circumstances and for a legally pre-defined period. Alternatively, *shuanggui* could be used only in special circumstances, since most cases do not require depriving the suspect of legal freedoms. Where appropriate, the People’s Procuratorate would make this decision in accordance with the Criminal Procedure Law.

The authors’ opinions show that *shuanggui* still has wide support, even if some people argue that the process should be anchored within a legal framework. After every scandal revealing the CCDI’s abuses, such as for example the cases of Yu Qiyi and Jia Jiuxiang, people call for reform of the *shuanggui* system. But when powerful leaders are arrested, opinions on the process become more favourable. Wang Qishan, the current secretary for the CCDI, said this year that “the current fight against corruption must focus on the symptoms in order to save time when treating the causes” (当前反腐要以治标为主, 为治本赢得时间, *dangqian fanfu yao yi zhibiao wei zhu, wei zhiben yingde shijian*). Since the Chinese government currently considers *shuanggui* to be the best treatment for the symptoms of corruption, major changes are unlikely in the short and medium term.

4. Democracy, influence, and political infighting in Taiwan

Tanguy Lepasant

Sources:

Huang Cheng-yi, “Mr. President, stop creating precedents harmful to constitutional government”, *Tianxia zazhi – Common Wealth*, 9 September 2013.¹⁵

Nan Fang-shuo, “A madman should not be head of state and chairman of a political party!”, *Ziyou shibao – Liberty Times*, 22 September 2013.¹⁶

Editorial, “The road towards constitutional government on both sides of the Strait: lessons from the September political struggle”, *Wangbao – Want Daily*, 8 October 2013.

On 7 September 2013, Taiwan’s President Ma Ying-jeou tried to inflict a political defeat on Wang Jin-pyng, the speaker of the Legislative Yuan (the Taiwanese parliament).¹⁷ To do this, Ma, used the results of phone taps carried out by the Special Investigation Division of the Supreme Court Prosecutor’s Office (SID, 最高法院檢察署特別偵查組, *zui gao fayuan jiancha shu tebie zhencha zu*). Ma and his allies, including Huang Shih-ming, Prosecutor-General and head of the SID, said the phone taps proved that Wang Jin-pyng tried to influence several members of the judiciary. Wang’s alleged aim was to prevent the launch of an appeal against the acquittal of Ker Chien-ming, a member of the Legislative Yuan for the Democratic Progressive Party (DPP), who was tried and found innocent of breach of trust in June 2013. On 11 September, Ma exercised his right as chairman of the Kuomintang (KMT) to convene the party’s disciplinary committee. Wang was expelled from the party, in the process losing his job as speaker of the Legislative Yuan. However, Wang filed a legal challenge to his expulsion. His appeal was upheld and the speaker managed to hold on to his position. The events have triggered a storm of unfavourable commentary on the state of Taiwan’s young democracy. The Taiwanese press has discussed at length Wang Jin-pyng’s success in holding his ground, the dubious legality of the SID’s phone tapping, the constitutionality of Ma Ying-jeou’s accusations against one of his major rivals in the KMT, and the new insight that the events provide into corruption in local political practices.

Huang Cheng-yi’s article opens with a brief account of Ma Ying-jeou’s 8 September press conference, at which the president denounced the pressures Wang Jin-pyng allegedly brought to bear on judges. Held in the presidential palace, the press conference also included Vice President Wu Den-yih and Premier Jiang Yi-huah. Huang Cheng-yi

¹⁵ Huang Cheng-yi is assistant research professor at the Institutum Iurisprudentiae of the Academia Sinica in Taipei.

¹⁶ Nan Fang-shuo is a political commentator and frequent writer on domestic issues who is highly critical of Ma Ying-jeou.

¹⁷

quotes Ma as saying that Wang's behaviour "constitutes the most serious violation of the independence of the judiciary" (是侵犯司法獨立最嚴重的一件事情, *shi qinfan sifa duli zui yanzhong de yi jian shiqing*). According to Ma, the people must choose between tacit acquiescence and "a refusal to accept the culture of interference in judicial matters" (拒絕關說司法文化, *jujue guanshuo sifa wenhua*). Ma continued: "In my role as president I cannot avoid getting involved, I have to speak out, and I call upon the whole population to be resolute in their defence of democracy in Taiwan" (身為總統, 我無從迴避, 必須挺身而出, 也呼籲全國民眾堅定捍衛台灣的民主治法, *shenwei zontong, wo wucong huibi, bixu tingshen er chu, ye huyu quanguo minzhong jianding hanwei Taiwan de minzhu fazhi*).

Huang Cheng-yi thinks that not enough information has been released about the contents of the SID phone taps to make a judgement on the accusations against Wang Jin-pyng. However, he believes there are real questions to be answered about the constitutional legitimacy of Ma Ying-jeou's actions. Ma spoke not as a single concerned citizen, but in his role as the president of the republic. Huang Cheng-yi says the constitution does not authorise the president to make official pronouncements on the legality of the conduct of the speaker, because "the president does not have the power of judicial investigation" (總統沒有司法調查權, *zongtong meiyou sifa diaocha quan*). Prosecutor-General Huang Shih-ming invoked Article 44 of the constitution to justify informing the president about the contents of the taps. But Huang Cheng-yi says that too is unacceptable, since Article 44 refers to "a conflict between different Yuans" (院與院的爭執, *luan yu luan de zhengzhi*), or different branches of government. In the case of a conflict between, for example, the judiciary and the legislature, the president can call a meeting between the chairs of the bodies involved to try to reach a solution. But the accusations against Wang do not constitute a conflict between branches of government. They involve the behaviour and "personal ethics" (倫理, *lunli*) of one deputy (or two, if Ker Chien-ming is included). Article 48, which sets out the presidential oath, could perhaps be stretched to justify Ma's intervention. It says that the president must "respect the constitution, fulfil all his duties, ensure the well-being of the people, protect the security of the state, and not betray the people's trust". But Huang Cheng-yi argues that the Taiwanese constitution, unlike the US constitution, does not have a "Take care clause" obliging the president to "ensure that the laws are faithfully executed". The provisions of the presidential oath are therefore limited to the president's own actions.

Huang contends that Ma Ying-jeou arbitrarily granted himself the power of judicial intervention. In doing so, he violated the principle of the separation of powers and set a dangerous precedent for Taiwan's democracy. Even if Wang Jin-pyng is guilty, Ma cannot use his position as president to launch an enquiry into a deputy, to have him punished or removed, without shattering the restraints

placed on the president's power in the constitution. Ma said at the press conference that Wang's actions were "the most shameful day in the development of the democratic rule of law in Taiwan" (台灣民主法治發展最恥辱的一天, *Taiwan minzhu fazhi fazhan zui chiru de yi tian*). Huang Cheng-yi says that statement was only a piece of show business, and a meagre attempt to hide the president's violation of the constitution. Ma used the information provided by the SID in order to act as a judge and "pronounce his verdict" (判決, *panjue*) without waiting for enquiries to be carried out by a court of law or by a committee of the Legislative Yuan. Moreover, the whole affair took place when the person targeted by these public accusations was out of Taiwan and so unable to defend himself: Wang Jin-pyng was in Malaysia for his daughter's wedding at the time.

Huang Cheng-yi agrees with other commentators that the behaviour of members of parliament is frequently unethical. But that does not mean the president can overstep the

limits of his office and encroach on the proper functions of the Legislative Yuan. Huang points to the Lawmakers Practices Act (立法委員行為法, *lifa weiyuan xingwei fa*), which was passed in 2002

"September's political struggle" reveals the limitations of Taiwanese democracy, which must lead "the Chinese on both sides of the Strait" to reflect on the difference between the concept and the reality of constitutional government".

to combat various forms of "influence" (關說, *guanshuo*). He says that it is up to the Legislative Yuan to conduct enquiries into accusations against its members of exerting improper influence. Huang says the law confirms the constitutional principle of self-regulation of the legislature. Any efforts to establish higher parliamentary standards should be carried out according to this principle.

Nan Fang-shuo criticises Ma Ying-jeou even more severely. Nan says Ma's attempted political assassination of Wang Jin-pyng shows that the president is descending into "madness" (瘋, *feng*). This madness is not based in individual psychology – it is a symptom of the exercise of power. Nan says that some of the many studies on the subject identify mechanisms that can cause an "incompetent king" (昏君, *hunjun*) to become a "tyrant" (暴君, *baojun*). Confronted with his own impotence, the weak king tries to shift the responsibility for his failures by blaming others. He begins to see conspiracies everywhere and accuses his advisers and supporters of treachery, leading to an unending series of purges. Nan Fang-shuo believes that, like the final emperor of the Ming dynasty, Ma Ying-jeou is now on the inevitable path from incompetence to violence. That is why he tried to get rid of Wang Jin-pyng in a "life and death struggle" for power (鬥爭, *douzhen*).

In his move against Wang, Ma was assisted by his own

“gang of four” (四人幫, *si ren bang*): envoy to the US King Pu-tsung, Premier Jiang Yi-huah, former Presidential Office Deputy Secretary-General Lo Chih-chiang, and Prosecutor-General Huang Shih-ming. Nan Fang-shuo says that Ma Ying-jeou, supported by this little group, is embedding a “fascist morality” (法西斯道德, *faxisi daode*) at the core of Taiwanese democracy. He is systematically and illegally collecting information about his enemies so as to discredit them and show his own virtue and capacities as a defender of democratic values. Nan draws an analogy with the Watergate scandal in the US, which caused outcry in the US Congress, followed by impeachment proceedings and the eventual resignation of President Richard Nixon. But in this case, Ma Ying-jeou is proud of using illegal SID phone taps and does not care about the consequences for Taiwanese democracy. The people of Taiwan must learn from these events: Ma Ying-jeou’s soft touch and mask of benevolence hide a man who is cold and merciless in dealing with his enemies. The order he has established with the help of his “gang of four” is based on the will of a single individual.

The newspaper *Wangbao* is much softer on Ma Ying-jeou. Its leader writer is convinced of the guilt of Wang Jin-pyng and Ker Chien-ming. But “September’s political struggle” (九月政爭, *jiu yue zheng zheng*) reveals the limitations of Taiwanese democracy, which must lead “the Chinese on both sides of the Strait” to reflect on the difference “between the concept and the reality of constitutional government”. The struggle between Ma and Wang shows the extent of influence peddling in the Taiwanese political system. The paper’s editorial says that if the Taiwanese people were not shocked by Wang Jin-pyng’s behaviour, it is because everyone, at one level or another, tries to take advantage of political influence. So Ma Ying-jeou’s attempt to change the system was bound to fail. Beyond Taiwan, these practices are “shared” (共享, *gongxiang*) with mainland China across the Strait, and they represent a major obstacle on the path to political reform. The episode shows that the values which should be the basis of Taiwanese democracy are in reality empty words used only for political purposes. Ma Ying-jeou used the scandal to try to eliminate Wang Jin-pyng, while the behaviour of Wang and Ker Chien-ming was an insult to democracy. The editorial then criticises the image put forward by the Legislative Yuan and its members. It accuses them of acting out a “farce” (醜劇, *chouju*) and abusing the rights conferred on them by their positions. But *Wangbao* concludes that people should keep a positive and optimistic outlook on the chaotic experience of Taiwanese democracy in practice, since that democracy has to serve as an example for Greater China as a whole.

Aside from the question of the legality of Ma’s behaviour, the Taiwanese press sees the attacks on Wang Jin-pyng as motivated by intentions beyond a simple “defence of democracy”. Ma Ying-jeou is thought to have been trying to strengthen his hold on the party and to eliminate obstacles to the rapprochement of the two sides of the Strait. In June,

for example, Wang was one of those who spoke out against the lack of transparency in negotiations on the agreement on trade in services with China. He called for the Legislative Yuan to reconsider the wording of the agreement, while the Ma administration wanted the agreement to be adopted without debate, as had happened with previous agreements. This act of rebellion annoyed Ma. It seems possible that on the eve of the new parliamentary session in Taiwan, Ma hoped to get rid of Wang and replace him with a more pliable speaker.

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