

“Supervision Power”: Party Discipline Under Xi Jinping

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The National Supervision Law, passed in March 2018, provides a legal basis for the centralization of power under the Chinese Communist Party. While three pillars of state power—executive, parliamentary, and legal—have been institutionalized since the beginning of the Deng era, the National Supervision Law codifies the medium through which the Party has always expressed and exercised its power: “supervision power.” A flexible tool, highly granular in its application, “supervision power” allows the Party to involve itself in people’s daily lives in ways that have not been the habit since the Mao era ended in 1976.

The passage of the National Supervision Law in March 2018 has been interpreted as evidence that all power is being drawn toward Party Secretary Xi Jinping as an individual and the Party that he leads, often to the detriment of the state.⁴⁹ This is because the National Supervisory Commission (NSC), created alongside the passage of the law, brings supervision power, which had previously been shared by the Party and the state, back into central Party control, and extends Party-mandated supervision across all government workers. That extends the jurisdiction of Party supervision to a huge number of people, including workers in state-owned enterprises, universities, schools, hospitals, and all other areas where the employer is ultimately the state.

A narrative has emerged out of the Xi era that supports this interpretation of predatory Party movement. It is clear that the anti-corruption struggle Xi’s leadership instigated in 2013 carried a heavy political element. The campaign was meant to operate as a corrective to the years of excess during the late Hu Jintao era (2002-2012), when officials seemed to be getting out of control, feathering their own nests, and looking after their own networks rather than the broader Party good. The causes célèbres of this phenomenon were the shenanigans of Chongqing Party Secretary and Politburo member Bo Xilai, his connection to the murder of British businessman Neil Heywood in 2012, and the misbehavior of figures like former General Office Director Ling Jihua and retired Politburo Standing Committee member Zhou Yongkang, who were dealt with the following year. All of these powerful figures were investigated and expelled from the Party.

⁴⁹ See Joseph Fewsmith, “The 19th Party Congress: Ringing in Xi Jinping’s New Age,” *China Leadership Monitor* 55 (Winter 2018). “The congress made clear that the party is in charge of China and Xi Jinping is in charge of the party,” p 1. <https://www.hoover.org/sites/default/files/research/docs/clm55-jf-final.pdf>.

The anti-corruption campaign was intended to serve as a kind of quasi-cultural revolutionary struggle. The issue was the hedonistic, self-serving attitude spreading among officials and the need to remind them of their prime responsibility—the corporate, collectivist needs and aims of the Party. Under Xi, those aims have sharpened to a more nationalist bent and are focussed on delivery of the first and second centenary goals in 2021 and 2049 respectively, for the Party and then the state.⁵⁰

National rejuvenation and the delivery of the “China Dream” needed a disciplined, focused, and loyal cadre of Party workers—not a rabble of fragmented groups, busy enriching themselves with off-balance wealth, kickbacks, and graft, and antagonizing and alienating the public. The Xi leadership also felt a clear need to demonstrate and make clear and tangible the self-cleansing of the Party—and that meant a very public, very dramatic movement.

But the “tigers and flies” drama in which seemingly no one was immune from the sweep of the Central Commission for Discipline and Inspection (CCDI) under Wang Qishan, its enforcer from 2012 to 2017, did not last long. And while there has been a steady trickle of victims of the anti-corruption purge right to the present, with a promise to ensure continued pressure, the tactics have evidently shifted.⁵¹ Were such a movement to continue perpetually with such intensity, it would raise the question of whether the Party was intrinsically prone to corruption and could never correct itself. The logic of the anti-corruption campaign post-19th Party Congress therefore is now that a new Party culture and ethos have presumably been cultivated and anti-corruption thinking and action have been internalized by cadres at all levels, the primary task of the campaign must be to consolidate this new atmosphere.

This gives some context to the conditions under which the new Supervision Law was drafted and ultimately passed. In the Xi era, while many are fixated on the personal power that he seems to have accrued, the real story is how the Party has imposed itself across almost all areas of society and governance.⁵² The political necessity for this extension of the Party’s reach comes from a pragmatic acceptance that the Party is, through accident as much as design, the only unifying, broad-based institution in the country that can carry China as a nation towards fulfilment of its

⁵⁰ These are all spelled out in Xi Jinping, “The Governance of China Vol. 2” (Beijing: Foreign Languages Press, 2017).

⁵¹ Kerry Brown, “The Anti-Corruption Struggle in Xi Jinping’s China: An Alternative Political Narrative,” *Asian Affairs* 49, Iss. 1 (February 2018): 1-10; Konstantinos Tsimonis, “Sharpening Swords and Strengthening Cages: Anti-Corruption under Xi,” in *The Chinese Nineteenth Party Congress: Start of a New Era*, ed. Kerry Brown (Singapore: World Scientific, 2018), 55-87.

⁵² See, as an example, “Can Xi Jinping Make Use of the Power He Has Accumulated,” *The Economist*, March 31st 2018. <https://www.economist.com/china/2018/03/31/can-xi-jinping-make-use-of-the-power-he-has-accumulated>

great national rejuvenation goal. This is partly because the Party has, since the Tiananmen Square uprising in 1989, destroyed any viable opposition.

It is also partly because no other entity that could be trusted—neither the army nor the state—had the capacity to extend itself into the areas the Party currently penetrates. The Party reaches down as an organization to every single one of China’s 40,000 plus townships, to its 800,000 village level entities, even into the households of most citizens (it has, after all, 90 million members, meaning there is a good chance that most families will have, somewhere in them, Party members). For Chinese unity, therefore, not just Xi but the whole leadership around him sincerely believes that it is a simple choice—the Party or nothing.

“Transparency with Chinese Characteristics”

In view of that, the Party’s main effort since 2012, beyond the enforcement of discipline in officials and the restoration of their status and reputation amongst the public (most survey and anecdotal evidence shows the anti-corruption struggle has been a popular success), has been a parallel attempt to legitimize the Party and state through a stronger rule by law. The primary agenda of the Xi leadership, despite complaints about it being dictatorial and centralizing, is to carry out a program of renewed reform that goes beyond the purely economic—the default up till 2012.⁵³

The acknowledgement of the creation of a ‘new normal’ in the Chinese economy and a more diverse, bourgeois, urbanized society has been accompanied by attempts to encode and create frameworks upon which this new paradigm is founded. The Third Plenum of the 18th Party Central Committee in 2013 delivered an extensive manifesto full of new promises covering fiscal, administrative, and other issues. In 2014, the focus shifted to the legal area. The Fourth Plenum then promised “rule by law,” not “rule of law.” In essence, that means “socialist law”—a system in which the Party continues to be accountable only to itself but at least recognises this is its legal language.⁵⁴

Such “transparency” with Chinese characteristics has had some interesting outcomes. The law for overseas non-governmental organizations passed in 2016 was widely criticized for the extra controls it imposed and for restricting the space for civil society domestically. But in many ways, the law only codified what was already widely practiced. Obnoxious and autocratic as it may

⁵³ For a lengthy, searing critique for the Xi’s power culture, from within, see Xu Zhangrun, “Imminent Fears, Immediate Hopes,” trans. Geremie Barmie, China Heritage. <http://chinaheritage.net/journal/imminent-fears-immediate-hopes-a-beijing-jeremiad/>

⁵⁴ On the Fourth Plenum, see Zachary Keck, “4th Plenum: Rule of Law with Chinese Characteristics,” The Diplomat, October 20th 2014. <https://thediplomat.com/2014/10/4th-plenum-rule-of-law-with-chinese-characteristics/>

have been at least it was open rather than covert. In China, such changes often stand for progress of a sort.⁵⁵

The same can be said of the Supervision Law, a draft of which was issued at the end of 2016, inviting comments and feedback. The law places Party centralization at the heart of everything—and gives it a legal base. It is at least a tacit admission that the Party does need to have a stated legal foundation for the way it extends its control over all state spaces. A common criticism of the state constitution currently in force is that there are no stipulations on the relationship between the state and the Party (which after all has its own separate constitution). Now at least we know the answer: the Party believes it should have complete and absolute control over the state.

The quasi-liberal moves in the 1980s to set up a constitutionalist movement and to codify areas of competence and clear boundaries for Party and state has, under Xi, lost whatever little life it still had.⁵⁶ And the Xi leadership has been savage and persistent in turning down all attempts to promote and breathe new life into any constitutionalist ideas. In this context, the rewriting of the 1982 state constitution removing time limits for the president, the most notorious development of the 2018 National Congress, can be viewed as a deliberate piece of sabotage and heavy messaging. Xi may well not continue on as President after 2023 (though most believe he will). But the point has been made: the Party, and only the Party, runs China. And it has complete discretion over how precisely it does this.⁵⁷

“Supervision Power”: A Tactical Narrative of the National Supervision Law

For all the monopolizing and centralizing that catches the headlines, the Xi leadership is above all a tactical one. This is because, unlike Mao Zedong, a figure with whom he is often compared, Xi has to deliver to a rising, highly demanding, and expectant middle class. They will be the figures that decide the future of China rather than any particular CCP leader. It is therefore important to work out not only the political narrative of the National Supervision Law but also

⁵⁵ Nectar Gan, “Why Foreign NGOs are Struggle with the New Chinese Law,” *South China Morning Post*, 13th June 2017. <https://www.scmp.com/news/china/policies-politics/article/2097923/why-foreign-ngos-are-struggling-new-chinese-law>.

⁵⁶ For an overview of the debates about Chinese constitutionalism, see Lison Harris, “China’s Constitutionalism,” in *Interpreting Hong Kong’s Basic Law: The Struggle for Coherence*, ed. Fu Hualong, L. Harris and SNM Young (New York: Palgrave Macmillan, 2007), 243-257.

⁵⁷ A comprehensive discussion of the Xi attitude towards constitutionalism can be found in Larry Catá Backer, “Chinese Constitutionalism in the New Era: The Emerging Idea and Practice of Constitution in the 19th CPC Congress Report,” Working Papers Coalition for Peace & Ethics, No. 11/1 (November 2017). <https://ssrn.com/abstract=3066974> or <http://dx.doi.org/10.2139/ssrn.3066974>

the tactical narrative. What part does the law play in the game of achieving the clear endpoint—sustainable, stable one-party rule? The key thing to think about here is the issue of “supervision” and “supervision power.”

Sun Yat-sen, the founding father of modern Chinese nationalism, talked in the early part of the twentieth century of there being five divisions of powers needed in China: executive power, legal power, parliamentary power, supervision power, and examination power (meaning in this case, the right to set school university and other public exams).⁵⁸ Under the Communist Party, at least since the era of Deng Xiaoping in the 1980s when more effort was put into establishing stronger institutions, there have been three pillars: executive (through the State Council), parliamentary (through the National Peoples Congress), and legal (through the Supreme People’s Court).

The glaring omission here is precisely where the Party expresses and exercises its power. Until now, it has existed almost like a supernumerary body, known about but not labeled. With the addition of what we can call “supervision power,” that has been partially rectified—because it is a Party, not a state, legal, or parliamentary body that exercises this power. The National Supervision Law is so extensive in its remit, with a list under its 15th article that encompasses “Civil servants of organs of the Communist Party of China, organs of the people’s congresses and their standing committees, people’s governments, supervision commissions, people’s courts, people’s procuratorates, organs of committees of the Chinese People’s Political Consultative Conference at all levels, organs of the bodies of the democratic parties at all levels, organs of the federations of industry and commerce at all levels, and personnel managed with reference to the *Civil Servants Law of the People’s Republic of China*.”

It then extends to “personnel engaged in public affairs at organizations authorized by laws or regulations, or lawfully retained by state organs, to administer public affairs, managerial personnel of state-owned enterprises, personnel engaged in management in state-run education, scientific research, culture, health care, sports, and other such units, personnel engaged in collective affairs management at basic-level mass organizations of self-government and other personnel who perform public duties in accordance with law.” In the end, the National Supervision Commission has the ability to inspect, investigate, hold to account, and then deal with literally anyone doing anything with a link to governance and organization.⁵⁹

As usual with “socialist law with Chinese characteristics,” the wording of the things that can be investigated, how they can be investigated, and what actions can then be taken is so abstract as to

⁵⁸ On Sun’s constitutional thinking, see Yu-long Ling, “Dr. Sun Yatsen’s Doctrine and its Impact on the Modern World,” *American Journal of Chinese Studies* 19, No. 1 (April 2012), 1-11.

⁵⁹ See “Translation: Second Draft of the Supervision Law,” NPC Observer, February 5, 2018. <https://npcobserver.com/2018/02/05/translation-second-draft-of-the-supervision-law/>

be almost meaningless. Counterrevolutionary crimes were removed from the criminal law statutes over two decades ago. But with this new law, anti-state and therefore anti-Party actions are criminal and punishable offences, with the added bonus that the Party can define what these crimes are almost on a case-by-case basis. It is no wonder then that during the consultation for the law from 2016 to 2017, there were 13,268 responses, far more than any other legislation slated at the same time.⁶⁰ Chinese people are evidently aware, and concerned, about these sweeping new powers. But so far, that has not stopped them from being rolled out.

“Supervision power” in this light operates as a wonderfully flexible tool. It can be applied anywhere, in any way that might be necessary. But more importantly, it is highly granular in its application. The Party is becoming personal again, trying to involve itself in people’s daily lives in ways that have not been the habit since the Mao era ended in 1976. The supervision powers that the new law accords the NSC, it must be stressed, apply not to institutions but to people within those institutions. The Supervision Law, therefore, is not written to hold the State Council to account but officials in the State Council. It is not applicable to the National People’s Congress but to individual members of the Congress. The same applies to Party officials and any other government workers. The National Supervision Law and its prescripts and scope relates to them as people, not to the entity they work as part of. And it is they as individuals who will be held to account and can be subject to “supervision” and supervision power.

To understand the significance of these newly codified powers, the key question to ask is just how meaningful and workable they will be. The emerging social contract under Xi is such that the Party will fulfill its responsibilities and a cleaned out cadre of officials will adhere to a new mode of acting according to specific codes of behaviour in order to fulfill its collective responsibility to deliver national rejuvenation objectives. But the corollary of that is to ask for responsibility and discipline from society and to have their unified commitment to work with, beside, and through the unified Party apparatus to achieve this.

Here things become far stickier. Can the Party really make this kind of demand when its ideology and belief system is largely unheeded by Chinese society and its legitimacy was until recently built upon the delivery of economic and material goods? The idea that in such a complex and diverse society as China has now become the Party can use such a broad and crude set of supervision measures it has used within its own organization to enforce the same fear and discipline across every sector of Chinese society is a massive and unproved assumption. And as was found with the anti-corruption struggle, one side effect was such widespread fear amongst officialdom that decisions simply stopped being made and no one would dare to do anything unless told by someone higher up for fear of falling foul of the new movement. The same sense

⁶⁰ See Li Jianqiu, “In Depth: What Changes Will the New Supervision Draft Law Bring to China?” iFeng, December 22 2017. http://news.ifeng.com/a/20171222/54402971_0.shtml

of fear might occur, even more widely and with even more debilitating effects, with the full implementation of the new supervision system.

Outlook

The Xi leadership has proved an ambiguous one for the outside world. Centralization of power and the kinds of enforcement of discipline seen within China seem to violate most democratic and liberal principles. And yet they have ironically made things slightly easier to work out within the country for outsiders. In the Hu era, no one properly knew the source of decision-making (witness the meeting between American Secretary of Defense Robert Gates and Hu Jintao in 2011 when a stealth fighter had been used for the first time and the seeming bemusement on the face of the Chinese president who appeared unaware of the test).⁶¹

In Xi's China, we have a much clearer idea—the center in Beijing is where what gets said goes, and it is there, and with a clear set of key stakeholders, that business needs to be transacted. For major national issues therefore it is Xi and Xi alone that needs to be spoken to. Strangely, this parallels the current situation in Washington, though it has to be said that Xi seems to have far more respect for his bureaucracy than his counterpart in America. China appears orderly and clear in its decision-making hierarchy now. And, as already stated, it might have objectionable regulations and laws, but at least these are clearly spelled out in black and white to take issue with rather than being based on supposition.

The Xi leadership is comprehensive by its own description. The key ideological slogan before the writing of Xi Jinping Thought into the Party Constitution in 2017 at the 19th Party Congress was the “Four Comprehensives” of 2015, which promised to comprehensively deepen reform, comprehensively build a moderately prosperous society, comprehensively govern the nation according to law, and comprehensively strictly govern the Party. These map out the magnitude of his leadership's ambitions. The Supervision Law and the NSC relate to the third of the “comprehensives”—to “govern the nation according to law.” The argument would be that the anti-corruption struggle started the process of better governing the Party and that the various economic and administrative changes made since 2012 have contributed to the first two.

“Comprehensive,” of course, is one largely positive way to describe how things are unfolding currently in China now. But it could easily tip into a far more negative word—“overreaching.” And overreach, if that is what does ensue, will occur during implementation of the new law. Under Deng, “practice was the sole criterion for truth.” So will it be with supervision powers. If their implementation is mishandled and they prove to be as draconian as many fear, then the public backlash might be fierce—and unmanageable. If the Xi leadership can seemingly be so

⁶¹ Elizabeth Bumiller and Michael Wines, “Test of Stealth Fighter Clouds Gates Visit to China,” *New York Times*, January 11th 2011. <https://www.nytimes.com/2011/01/12/world/asia/12fighter.html>

disoriented, as seemed to be the case, by the Trump administration's imposition of tariffs, then what might be the impact of an angry revolt against heavy handed, arbitrary attempts at Party supervision?

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