

AUSTRALIA-CHINA AGENDA 2013

Lessons of Bo Xilai: princelings and the state of law in China

JOHN GARNAUT

John Garnaut was China correspondent for *The Sydney Morning Herald* and *The Age* from July 2007 to June 2013. He is a regular contributor to *Foreign Policy* magazine and writes occasionally for other publications including *Prospect*, *The International Herald Tribune* and *Caijing* magazine. He is the author of the short Penguin book, *The Rise and Fall of the House of Bo* (2012). He has returned to live in Melbourne with his wife and three children, where he has taken leave to work on a second book.

THE AUSTRALIAN Centre on China in the World engages with the public and policy discussion of relations with the People's Republic of China and the Chinese world. Australia-China Agenda 2013 is our contribution to this important election year and the on-going consideration of the bilateral relationship.

This is a relationship that touches on virtually every aspect of our national life. A mature and beneficial engagement of such breadth and depth requires the leadership and support of government at all levels, as well as public stewardship, media understanding, educational enhancement and the strategic involvement of the business community.

Australia-China exchanges are also profoundly influenced by regional and bilateral relationships. Australia and China trade in goods as well as culture, politics and people, ideas and education, community and personalities.

Australia-China Agenda: 2013 brings to the attention of the public and the media, politicians and specialists some reflections and policy ideas authored by specialists with a professional interest and involvement in the relationship.

—Geremie R. Barmé
Founding Director, CIW

中 華 全球研究中心

AUSTRALIAN CENTRE ON
CHINA IN THE WORLD



Australian
National
University

ANU College of Asia & the Pacific
Canberra, Australia

2013

JANUARY 一月

FEBRUARY 二月

MARCH 三月

APRIL 四月

MAY 五月

JUNE 六月

JULY 七月

AUGUST 八月

SEPTEMBER 九月

OCTOBER 十月

NOVEMBER 十一月

DECEMBER 十二月

二〇一四年

When Tony Abbott arrived on his first trip to Beijing as Opposition Leader in July last year, he injected values and human rights into the Coalition's China relationship, where previously they had not featured. He visited a state-sanctioned Catholic church, and was deeply moved by the experience, and spoke publicly in unusually strident terms. 'As prime minister I would hope for political reform to match China's economic liberalisation', said Abbott.

But when he moves into the Lodge as Australia's Prime Minister, as the polls suggest he will, he will come under pressure from some of his wealthiest backers to tone down the advocacy for the sake of a bilateral relationship that accounts for about one-third of Australian exports. Some have made their views known publicly but the heaviest pressure has been applied behind closed doors, according to sources who have been subjected to it.

Abbott will also contend with an Australian foreign affairs bureaucracy that instinctively minimises differences between the two countries, even when they are important. In the eyes of Australian officials in Canberra and Beijing – with several honourable exceptions – the growing list of successful Australian business people who have been detained and dispossessed in China would have, and should have, remained 'mere consular matters', were it not for meddlesome media attention.

The Australian Government should support, not undermine, the painful and uncertain project of building the rule of law in China.

But it is not in Australian interests to tout the blue-sky potential for doing business in China while burying those who have pioneered the field. Some of the leading Australian investors in Chinese biotechnology (Du Zuying), tourism (Matthew Ng) and education (Charlotte Chou) are all behind bars in China while their business partners and related officials have redistributed their assets among themselves. The cases against them were flimsy, at best.

The Australian Government should support, not undermine, the painful and uncertain project of building the rule of law in China. This requires

strategy, and consistency and, at the very least, that Australia does not assist in covering up and excusing official thuggery. Australian officials, politicians and also business leaders should study and take their cues from the experts in the field, like lawyer Chen Youxi, who acted for both Matthew Ng and Charlotte Chou in their kangaroo-court trials in Guangzhou. It is unlikely that Chen's powerful and courageous performances in court reduced the sentence of his clients. But he did defend the principles of truth and

law as well as his clients' dignity. Most importantly, lawyers like him impose a public relations cost on bad behaviour. If that doesn't sound like much then it's worth looking more closely at the central role that Chen and other lawyers and public advocates played in the fall of Bo Xilai.

Bo on trial

Amid the sordid tales of murder, philandering, corruption and generally world class hypocrisy, it was possible to miss the significance of Bo Xilai picking up his pen, peering over his reading glasses and lecturing Chief Judge Wang Xuguang on basic principles of jurisprudence. But there he was – the man whose Mao-revivalist campaigns and torture-based methods of justice had made even hardened colleagues blush – explaining and exposing the weaknesses of the confession-based evidence that the prosecution had arraigned against him.

With trademark flair, Bo shredded the credibility of prosecution witnesses. His former attack dog, police chief Wang Lijun, was a 'vile' compulsive liar and his mentally unstable wife was forced to fabricate evidence to save herself. 'Under the circumstances of her mental illness, the investigators placed huge pressure on her to expose me', said Bo. 'Her testimony as far as I am concerned, was made under psychological pressure, and driven by (hope of) a reduced sentence'. Bo explained that even his own confession was not worth the paper it was written on. 'It was written under circumstances when I was suffering some improper pressure', said Bo, while hinting at the complex political dynamic that had led him to retract it. 'I thought the direction my case was heading toward was irreversible'.

It was to be expected that Bo, whose four-year reign in Chongqing municipality came to be dubbed 'the Red Terror', would fight to uphold universal norms and principles of justice that he had previously attacked as soon as he was personally deprived of them. That's how it has been with most of China's purged and discarded leaders, who conceived law as a weapon more than a shield until it was no longer in their hands. What is new about Bo's case is that the Chinese public was able to hear of his concerns in a relatively transparent fashion and the prosecution was prepared to take some steps to cater to them.

What is new about Bo's case is that the Chinese public was able to hear of his concerns in a relatively transparent fashion and the prosecution was prepared to take some steps to cater to them.

Power is becoming too fragmented, truth too hard to control and universal understandings of justice too entrenched for the old ways to work like they used to.

In all analogous cases in the history of the People's Republic, leaders have purged their perceived rivals without bothering to present publicly an evidence-based case and have it tested in a (relatively) open court. In the old days Chinese leaders didn't need any court of law to resolve their differences, let alone a transparent one. Mao destroyed his imagined rivals, physically or mentally, based partly on testimony extracted from their family members and underlings. He would then deploy wall posters, megaphones

and cult-like 'struggle' and 'study' sessions to drum his version of the facts into the elite and the masses until their brains were too numb to think. Deng locked rivals in their houses until death, or left them in living purgatory at their desks, and simply wrote them out of history. Gradually, the political purges shifted into courtrooms, where corruption laws were applied selectively in closed-door hearings, as less-dominant leaders were forced to present an appearance of having justice on their side.

This time, Bo has been given the right to contest the case against him, cross-examine prosecution witnesses and have his argument presented to the public via the court's own weibo (microblog) account. Bo's testimony implies that the prosecution shifted from the old, seemingly 'irreversible' course to something more contestable at some point after President Xi Jinping's elevation to power. The change coincided with an upwelling of dissatisfaction among representatives of China's ruling families, many of whom did not support Bo's policies but were nevertheless alarmed at the precedent of the Party arbitrarily destroying its own children.

It seems likely that President Xi Jinping defined the charges against his princeling rival narrowly and gave Bo the capacity to defend himself in order to impose peace among the families and preserve his fragile legitimacy. Indeed, a look back at Bo's own methods in Chongqing demonstrates that the old ways of purging rivals served Bo spectacularly well, for a short while, and then brought him crashing down. Power is becoming too fragmented, truth too hard to control and universal understandings of justice too entrenched for the old ways to work like they used to.

Rough justice: Bo in Chongqing

To many Chinese, Bo Xilai's moral offense, when he was party chief of Chongqing municipality from November 2007 to March 2012, was to build a wave of Mao revivalism that glossed over the tens of millions who lost their lives under Mao's mass campaigns,

including his own mother. And his true crimes, for which he should have been tried, related to the reign of police-terror that he unleashed across the city. Senior officials were tortured, business associates were framed and lawyers were arrested for doing their jobs – far beyond what was normal conduct. Bo re-deployed Mao-era political games into the city's courts, as exemplified by the case of the old Chongqing police chief, Wen Qiang.

Like most established police chiefs in China, Wen Qiang's power extended well beyond his official portfolio. His patrons included one of Bo's powerful predecessors, who had been promoted to the Politburo Standing Committee, and protégés were stacked throughout the municipal political-legal establishment. Wen controlled many of the city's bath houses, where business was often done, and there were few entrepreneurs who could succeed in the city without developing a relationship with his people in order to gain approvals and protection and clear away tangles of red tape. Chongqing entrepreneurs have told me that more than half of their time was invested in banquet halls, bath houses and other forums for establishing and managing political *guanxi*. In other words, Chongqing was an ordinary mainland city in which a new leader who lacked local patronage ties had little hope of getting anything done – unless he could purge the old regime.

Bo's first major political move after arriving at the Yangtze River metropolis was to move his family's attack dog, Wang Lijun, to be Wen Qiang's deputy police chief, along with a team of Wang's own protégés, from where they could collect intelligence and map Wen's patronage ties. In March 2009, Bo shifted Wen Qiang sideways, to be the minister of justice, while promoting Wang Lijun to take his place and arresting Wen's key police department deputies and protégés. One of them reportedly died of a heart attack in custody. Another reportedly died by smashing his head against a wall. Wen's sister-in-law was dubbed the 'Godmother of the Underworld' and sentenced to 18 years jail. Wen's wife was shown pictures of her husband with an underage prostitute – and she promptly led police to the family millions, buried under a gold fishpond.

With potential critics silenced, and unenthusiastic officials locked in jail (including the head of Chongqing TV, who was concerned that viewers were refusing to watch his 'red' programming), the completion of Bo's ascendancy was announced by text message. The front page headline read: 'Wen Qiang Is Dead, The People Rejoice, Chongqing is at Peace'. Newspapers recounted the last hours of his life – including two hours between the verdict being handed down and the injection being administered – as if it were a reality TV show.

Bo and his sidekick Wang Lijun moved through the city's commercial precincts. Police were given quotas of 'black society' members to detain in each district. Alleged gang-

sters were asked to testify against wealthy entrepreneurs who, in turn, were forced to testify against higher political targets. ‘Basically, the 20 richest guys in Chongqing, he sent them all to jail and confiscated all their assets,’ said Wang Boming, publisher of *Caijing Magazine*, in an interview.

The system of justice, based mostly on lies extracted by torture, proved to be a phenomenally powerful tool of political control. Bo became locally popular for articulating social concerns and cleaning up the streets. Nationally, he became the hero of China’s growing neo-Maoist and New Left movements. Ambitious scholars, entrepreneurs, officials, generals and international statesmen were drawn into his orbit. By the start of last year he seemed to be on the cusp of breaking into the top leadership sanctum.

But Bo’s methods were so brutal, and so out of kilter with the values of China’s increasingly pluralistic and sophisticated society, that they galvanised a new breed of courageous, professional and strategically-calculating lawyers to take a historic stand. Relatives of Wen Qiang used military police contacts to approach an able and well-connected Beijing lawyer, Li Zhuang. Li declined to take on Wen’s case but did accept the case of one of Wen’s entrepreneur associates, Gong Gangmo, whose wife was stricken

with cancer and whose brother kowtowed at his feet. Gong, who had made his billions making motor bikes, was charged with bribing Wen Qiang and leading an underworld gang. Li, the lawyer, says the bribery allegations were probably true but the mobster charges were entirely fabricated.

The system of justice, based mostly on lies extracted by torture, proved to be a phenomenally powerful tool of political control.

To provide some insight into the interrogation process that produced Gong’s confession, the experience of his co-accused was such that he tried to kill himself, twice, by beating his head against

the wall and then attempted to chew his own tongue off (he succeeded with help from a prison guard). We know this only because his lawyer, Zhu Mingyong, risked his own life to interview him about the six-month routine of daily torture and display his grotesque wounds on a video, which he uploaded on the Internet in a last-ditch (but unsuccessful) effort to save his client from execution. ‘The whole investigation and trial process has been so flawed; I must provide every single piece of information I have now to save [my client’s] life,’ said the lawyer, Zhu.

Li Zhuang, lawyer for Gong Gangmo, took similar risks. It is of some interest, given Bo Xilai’s retraction of his own confession, that when Gong retracted his confession in court Bo and police chief Wang were so furious that they arrested Gong’s lawyer, Li

Zhuang, for allegedly coaching his client to lie. Li's 18-month ordeal inside the organs of Chongqing justice, during which he was about to be re-arrested when on the verge of being released, sent waves of protest across the country.

Bo's brutal excesses in Chongqing established his political dominance for a while but also served to galvanise lawyers, editors, historians and other intellectuals to fight to protect personal and public interests. The only weapon they had was to talk truth, in and outside the courtroom, while letting China's information revolution and an increasingly engaged public take their course. Several of them warned of a return to the most lawless chapter of China's recent despotic past.

'During the Cultural Revolution there was nothing left of the law, and this caused the entire nation to slide into civil strife,' said Li Zhuang's lawyer, Chen Youxi, writing in the *Southern Weekend* newspaper. 'Injustice prevailed everywhere, and even the Chairman of the Republic (a reference to Liu Shaoqi) could not be protected,' said Chen, framing his views in ways that China's rising princeling leaders could understand. A fortnight later he penned another piece, more squarely directed at Bo's Chongqing, which was immediately censored from Wang Boming's *Caijing* website.

China's nascent civil society network, by this time woven together by microblog, did not built a credible legal system overnight but it did raise the political cost of committing grotesque judicial abuses. Eventually, the pressure forced open cracks in the political elite. Bo's courtroom persecutions of his rivals were so perverse and so public – despite his prodigious censorship and propaganda efforts – that enemies sharpened their hatchets and allies found it harder to defend him. Indirectly, as I argue in *The Rise and Fall of the House of Bo*, this is what brought Bo crashing down.

Since then, the trials of Wang Lijun (defection) and Gu Kailai (murder) were judged to be so unprofessional and opaque – by the new and higher standards of Chinese civil society – that basic things that probably were true became make-believe. Transparency was so minimal and murky confessions so pivotal to the cases that even the most fundamental facts were seriously questioned, including whether the lady in court was actually Gu Kailai.

China's nascent civil society network, by this time woven together by microblog, did not built a credible legal system overnight but it did raise the political cost of committing grotesque judicial abuses.

Lessons from Bo

Bo's experience in Chongqing is instructive in the search for clues as to why President Xi Jinping and his new team took the unprecedented step of posting regular (although incomplete) transcripts of the Bo Xilai proceedings on social media and giving the defendant the right to cross-examine prosecution witnesses. Given the precarious balance of patrons, factions, families and interests that Xi must hold together, he could not afford the prosecution of his charismatic and capable rival to be seen as farce.

It is possible that Xi genuinely wants to build something closer to a workable legal system than the one he has inherited. Currently, the absence of a credible legal system is draining the Party's legitimacy and making management of a complex, pluralistic, modern society almost unworkable. It is also probable, I think, that as Chinese political power grows increasingly dispersed, China's ruling families and competing elites are being forced to find new ways and set new conventions to resolve their differences. Relative court room transparency and the cross-examination of witnesses may seem mundane in the West, where the rule of law evolved over several centuries to mediate conflict between an increasingly pluralistic elite. But never before has this happened in the People's Republic of China.

The prosecution in Bo's case was forced to buttress its argument with a chain of evidence that could withstand the tainting of confession-based evidence. The more-robust legal process has made it possible, at least, for China's ruling families to walk away satisfied that their man has had his day in court and that his reputation, or at least his dignity, has not been gratuitously shredded. Bo's conviction – which will surely be announced in coming days or weeks – will be more stable than if Xi had not given some concessions to legal process. It's not by accident that Chinese scholars, and individuals within the princeling elite, are delving back into the history of British jurisprudence.

Currently, the absence of a credible legal system is draining the Party's legitimacy and making management of a complex, pluralistic, modern society almost unworkable.

The legal privileges afforded Bo flowed, of course, from his unique status as the child of a leading revolutionary, a friend of other powerful scions, and icon of the neo-Maoist left. But what may have been intended as a one-off flicker of transparency has lifted the bar for what is possible and raised the cost of the litany of daily judicial abuses that will continue to take place. Certainly, the defendant lawyers who did so much to limit Bo's abuses in Chongqing believe they have a new precedent to work with.

‘This trial is extraordinary,’ said Li Zhuang, the lawyer who was jailed when his client retracted his confession in court, and whose courage helped bring Bo undone, ‘This (the Bo trial) has almost reached a genuine level of ... transparency’, said Li, speaking with Phillip Wen in *The Sydney Morning Herald*.

Li Zhuang’s lawyer Chen Youxi, who had warned that conditions in Bo’s Chongqing resembled those in the Cultural Revolution, went further. The new precedent set by the Bo trial ‘will have a profound and far-reaching impact on Chinese criminal trials,’ said Chen, writing on his personal blog.

The fact that politicians broadly predetermined Bo Xilai’s verdict means the trial was still a show-trial, despite the improvements in legal process. The decision to prosecute Bo was entirely political and far more egregious cases of corruption remain unpunished. Reports in the *South China Morning Post* and the *New York Times* have shown how the published transcript released to the Chinese public excised important parts of Bo’s testimony, including testimony implicating superiors and implicit threats levelled against him to force him to cooperate.

But the fact that Bo, of all people, clung to universal principles of justice to defend himself adds to the legitimacy-costs of the Party continuing to hold itself above its own laws. And, beyond the French mansions and tragic love triangles of Bo’s inner court, it was revealing that Bo used the same arguments and techniques to defend himself as Li Zhuang and his framed mobster client, Gong Gangmo, had once used to devastating effect pleading their own case in Chongqing when it was ruled by Bo.

On the fifth and final day of proceedings, for example, Bo lectured Chief Judge Gu on how the right to retract an earlier confession was deliberately endowed by law in order to prevent miscarriages of justice. And Bo’s words that followed, with their deliberate repetition to labour his point, are worth reproducing in full:

我国法律为了防止冤假错案，设置了公、检、法相互制约的制度，特别是检法的互相制约的机制，还包括辩护人，就是为了防止冤假错案，如果只听检察机关的一面之辞，会导致冤假错案大量发生。

China’s laws established a sensitive system of mutually reinforcing checks, balances and laws to prevent unjust, falsified and mistaken cases. This is especially the case with the mechanisms of the justice system, which include access to counsel. Again, this is to prevent unjust, falsified and mistaken cases. If you only listen to the one-sided language of the prosecution, it can lead to a large number of unjust, falsified and mistaken cases happening.

Earlier, in comments cut from the published transcript (but published in a report in the *South China Morning Post*), Bo complained that his guilt had already been predetermined and proclaimed in official media. ‘This was not consistent with the spirit of rule of law, democracy, fairness and justice,’ said Bo.

This spirit, expressed by a fallen neo-Maoist icon in his moment of need, is something that Australian officials, business leaders and politicians should bear in mind when dealing with China.

AUSTRALIAN CENTRE ON CHINA IN THE WORLD

The Australian Centre on China in the World (CIW), College of Asia & the Pacific (CAP), The Australian National University (ANU) is an initiative of the Commonwealth Government of Australia in collaboration with ANU, a university with the most significant concentration of dedicated Chinese Studies expertise and the publisher of the leading Chinese Studies journals in Australia. CIW is a national research centre that is jointly managed by a body of academics that includes scholars of China at universities in Adelaide, Brisbane, Hobart, Melbourne and Sydney.

The Centre is a humanities-led research institution that is engaged with the broad range of social sciences to produce academic work that, while relevant to the full spectrum of demands of international scholarship, also relates meaningfully to those in the public policy community, and to the broader interested public, both in Australia and overseas. It values a New Sinology, that is an intellectual, cultural and personal involvement with the Chinese world (be it in the People’s Republic, Hong Kong, Macau, Taiwan or globally) that is underpinned by traditions of academic independence, local fluency and disciplinary relevance.

EDITOR: Geremie R. Barmé · PROJECT COORDINATOR: Ryan Manuel · LAYOUT: Markuz Wernli

CIW sites

<http://ciw.anu.edu.au>

<http://www.thechinastory.org>

CIW publications (also available online)

China Story Yearbook 2013: Civilising China, October 2013

China Story Yearbook 2012: Red Rising, Red Eclipse, August 2012

Stephen FitzGerald, *Australia and China at Forty—Stretch of the Imagination*, 澳大利亚与中国已届四十年—舒展的想象力, February 2013

Australia and China: A Joint Report on the Bilateral Relationship 中国和澳大亚：关于双边关系的联合报告, with the China Institutes of Contemporary International Relations (CICIR), February 2012

CIW journals

China Heritage Quarterly

(<http://www.chinaheritagequarterly.org>)

East Asian History

(<http://www.eastasianhistory.org>)

The China Journal, co-published

(<http://ips.cap.anu.edu.au/chinajournal/>)

Danwei, affiliated

(<http://www.danwei.com>)