

## **In Memoriam: A Tribute to Jiang Ping's *Nahan***

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The open display of love, affection and reverence for a legal educator and legal activist after his death in Xi Jinping's China is heartening. It was in a chilly morning in December 2023 when students and teachers of law, as well as common people from various sections of society paid the final tribute to Professor Jiang Ping, at the Babaoshan crematorium in Beijing.<sup>1</sup>

In a special interview with *Caijing* in 2013, Jiang had stated that speaking the truth was an important principle of his life, and that his most favourite phrase was “bowing only to the truth” (*zhi xiang zhenli ditou* 只向真理低头). According to him, the common people would ultimately sympathise and offer their support if one were to firmly adhere to the truth.<sup>2</sup> At the same time, the truth is never a gastronomic delight for autocratic rulers anywhere in the world, and its existence outside the realm of the ‘core’ leadership of the Communist Party of China under Xi Jinping is anathema. Nonetheless Jiang's prophecy proved right. Defying the regime of stringent control in today's China, members of the legal fraternity as well as thousands of common citizens congregated at Jiang's funeral, which was a modest, non-official arrangement organised by students and teachers of the Chinese University of Political Science and Law (CUPL). However, what attracted public attention were the floral wreaths carrying the names of Zhu Rongji, Wen Jiabao, and some other Party cadres from the previous generations.<sup>3</sup>

Jiang Ping's student, and a recently retired professor from Beijing University, He Weifang considers that this gesture from veteran leaders of the Party was an effort to reconcile the healthy force within the system with the positive force of the people, for the cause of establishing rule of law (*fazhi* 法治).<sup>4</sup> Prof. Jerome A. Cohen, however, thinks differently. He points out that the Party wanted to keep the situation under control as “the experience in China has shown that funerals can sometimes provide the single spark that lights a prairie fire”. Cohen noted that both the Supreme Court and the Supreme Procuracy also sent tributes to the funeral.<sup>5</sup>

Until his last breath at the ripe age of 94, Jiang Ping dedicated his life to building rule of law, and establishing the foundations of legal education and theoretical research on jurisprudence in China. His personal experience of political persecution made him a staunch proponent of individual and human rights. He believed that the philosophy and spirit of rule of law are enshrined within democracy, freedom, equality, and human rights. He also popularised the concept of domination of rule of law (*fazhi tianxia* 法治天下), and the China dream for him was no less than healthy improvement and perfection of rule of law.<sup>6</sup> With this conviction he worked with the government on drafting some of the most important laws enacted during the reform period, namely, the Constitutional Amendment Law, the Administrative Procedure Law, the Trust Law, the General Principle of Civil Law, the Contract Law, the Property Law, the Civil Code, the Commercial Law, and the Corporation Law, among others.

When Jiang Ping was a student at the Department of Journalism in Yanjing University, in 1948, democracy, freedom, equality, and rights were key terms in slogans raised against the autocratic rule of the Guomindang. From 1951 to 1956, he studied law at Moscow State University. He was later instrumental in establishing the Centre for Roman and Italian Law in Beijing, which served as an important base for translation, research, and teaching of Roman Law in China. During his stay in the Soviet Union, the denunciation of Joseph Stalin's tyrannical rule by Nikita Khrushchev left an indelible impression in Jiang's life, and he was convinced that socialism only in name could never ensure freedom from tyranny.<sup>7</sup>

Upon his return to China in 1956, Jiang Ping started teaching at the Beijing Political Science and Law Institute (later renamed as CUPL), and like most of the intellectuals of his generation he was soon labelled as a rightist reactionary and an enemy of socialism. Under political pressure, his wife, whom he had recently married, divorced him, and later, he lost one leg in a train accident, when he was sent for labour reform (*laogai* 劳改). In 1978, after twenty-two long years, Jiang Ping was reinstated at his university. He went on to become a member of the Standing Committee in the Seventh National People's Congress (1988-1993), and also held the positions of Deputy Director of the Legal Committee of the NPC, and Head of the Legal Research Group of the Legislative Affairs Commission of the NPC, among others. By 1988, he had become the President of the CUPL.

In the summer of 1989, like many presidents of universities in Beijing, Professor Jiang faced political pressure to deal with protests on the university campus by students who were keen to join the ongoing demonstrations at Tiananmen Square. As the head of the institution, he first sat in front of the university gate, and urged the students to not leave the campus. When the students continued to display their desire to partake in the movement, he joined them, for he knew that the young protesters had a legitimate right to carry out peaceful protests. He was also one of the signatories in a letter written by various university presidents to plead the authority to continue dialogue with the students. One after the other, all the signatories were removed from their positions. In a recent interview, Jiang had mentioned that his conscience was clear, and that he had proved his worth to the people at that crucial juncture of national politics.<sup>8</sup>

Jiang Ping, however, was able to retain his professorship, and in 2001, the administration of CUPL conferred on him, and two of his colleagues, Chen Guangzhong and Zhang Jinfan, the title of “lifetime professor” (*zhongshen jiaoshou* 终身教授). For over fifty years, Jiang Ping and his colleagues were frontrunners in promoting the education of politics, law and related fields, and laid the foundations for teaching, and conducting research on civil and commercial law, procedure law, legal history, and other aspects of jurisprudence. They trained highly qualified academic teams at the CUPL, and other schools of law, as well as generations of competent legal experts, lawyers, and civil rights activists in the country.<sup>9</sup>

Jiang Ping liked to introduce himself as a legal educator and activist rather than a legal scholar. In the preface of his autobiography, written in 2010, he identified two types of Chinese intellectuals: first, the ‘free spirited’, who were not ready to yield to any political pressure, and dared to think independently; and, second, the ‘critical-minded’, who had an academic conscience, and dared to possess a critical judgement of reality. At the age of eighty he was still willing to hold high both an independent spirit and the ability to think critically.<sup>10</sup>

His book titled, *All That I Can do is Cry Out* (*Wo suo nengzuo de shi nahan* 我所能做的是呐喊), reflected his indomitable spirit and commitment to the cause of reform. In an interview with *Beijing News*, he had explained four layers of meaning of the word *nahan* (呐喊 “outcry”)<sup>11</sup>: intellectuals should have an independent voice to express their ideas and concepts; not one,

but different voices of the people are to be resonated and demands for their rights should be raised; to call for rule of law and decry rule of man; and, appeal for reform and movements for ideological emancipation. He believed that no one could change the tide of progress towards rule of law and democracy in China, and stated that it was the duty of intellectuals to raise a “hue and cry” for social causes.<sup>12</sup> Jiang was a strong voice of reform, including political reform, but he guarded himself from becoming an opponent of the Party. He managed to express contempt for autocratic rule and at the same time evaded arrest and imprisonment. Though he avoided open confrontation, he never deviated from his personal values and never hesitated to call out the mercurial behaviour of the authorities.<sup>13</sup>

The CPC’s rule at the beginning of 21<sup>st</sup> century, under Hu Jintao, hinged upon his ideological convictions, conservative forces within the party, enlightened forces in the system, people’s power, and making global opinion in favour of China. There was an abysmal degeneration in the Party in terms of ideology, along with rampant corruption. The majority of the cadres were only interested in personal gains. At the time of conflict between the Party and the interests of the masses, Hu’s policies often protected the collective interests of the Party at the expense of ordinary people despite the general Party line on the concept of “people first” (*yirenweiben* 以人为本). Discontent among the masses ran so high that 74,000 cases of social unrest, the resignations of 7.4 million Party members, numerous movements of legitimate rights and interests (*weiquan yundong* 维权运动) were reported, and scores of fearless spokespersons raised their voice against injustice in China.<sup>14</sup>

During this time, a section of editors of different journals and periodicals, advocacy journalists, liberal academics, retired Party cadres, and democrats within the CPC played prominent roles as critics in highlighting the sufferings of vulnerable social groups (*ruoshi qunti* 弱势群体), and exploring the root causes of widespread social unrest. They not only exposed corruption and wanton behaviour of the Party cadres, but also criticised the official narrative of history, nationalism, modernisation, and foreign relations, through the Internet and the publications under their control or influence. It became increasingly difficult to play the role of spokespersons of the common people as the Chinese Propaganda Department began to exert political pressure on editors and journalists, and as a result, various publications were banned.<sup>15</sup>

It was a surprise for many when *Bingdian* (冰点, “Freezing Point”), a supplement of the *China Youth Daily* was banned in January 2006, for publishing an article on history textbooks by Yuan Weishi, a professor of philosophy at the Sun Yat-sen University. Zhang Sizhi, a renowned Chinese lawyer, Jiang Ping and eleven other prominent personalities issued statements of protest. They claimed that official action was unconstitutional and preposterous, and fundamentally it sets aside the national policy of promotion of rule of law in the country. It was argued that freedom of expression and open discussion should not be violated on the pretext of maintaining stability and sanctity of official discourse.<sup>16</sup> Despite protests by intellectuals and the general public, the Party under Hu Jintao banned many magazines and periodicals committed to the social cause and tried to silence independent public voices (*yulun* 舆论).

Xi Jinping, taking up the cudgel from his predecessor, unleashed full-blown attacks on legal activists, legal assistants, and rights lawyers for supporting social causes, mass movements and right defenders, or simply for offering legal advice and taking up cases involving civil society, ethnic minorities, illegal detentions of journalists, believers of various religions, misconduct of government officials, dubious business deals, and injustice towards weaker sections of society. The tribulations of legal professionals began from the first year of Xi’s rule, and reached an all-time high with the arrest of about 300 lawyers and their associates throughout the country on 9 July 2015, infamously known as ‘709 crackdown’. Some forty lawyers were taken into custody, while the rest of them were set free. Despite unleashing brutal attacks, humiliation, and inflicting physical and mental harm on the victims, the crackdown failed to intimidate them. In fact, the fierce attack on fellow professionals made others conscious about the greater mission of the legal profession. The original intention of Xi Jinping’s policy of promoting ‘rule the nation according to law’ was revealed after the crackdown, and China attracted criticism from foreign governments for manhandling its legal community.<sup>17</sup>

On 13 July 2015, Jiang Ping, while talking at the 20<sup>th</sup> anniversary celebrations of a legal firm in Beijing, criticised the authorities for arbitrarily arresting lawyers. He highlighted the issue of social conflicts and contradictions originating from maintenance of stability (*weiwen* 维稳) and the protection of rights (*weiquan* 维权), and categorically noted that the National Political

and Legal Affairs Commission, the National Security Department, and the Procuratorate are not the main forces for maintaining stability. The act of disturbing stability cannot be defined arbitrarily. Whether social order is maintained or not needs to be understood from a legal point-of-view. Maintaining stability and protecting rights are matters for society as a whole, and there should be a convergence between the two. Social stability can be maintained only if lawyers are able to defend the establishment of social rules, and express their views in the courtroom in defence of their clients. According to Jiang, the duty of lawyers is not just limited to protecting the rights of the weaker sections of society, but also includes protecting people in general. Therefore, lawyers should not be punished for being critical in expressing their opinion and raising different issues.<sup>18</sup> It is interesting to note how he argued in defence of lawyers with equanimity when the party-state was still targeting them ruthlessly. His conciliatory approach in dealing with the duality between *weiwēn* and *weiquān* did not fall on deaf ears, but encouraged more and more people to raise their voices against injustice.

A 9 July-like crackdown has not occurred since 2015, although the government has not reduced pressure on lawyers who show courage to defend against injustice. However, fear of coercion in the name of social stability has considerably reduced because of the life long struggle and sacrifice of people like Jiang Ping.

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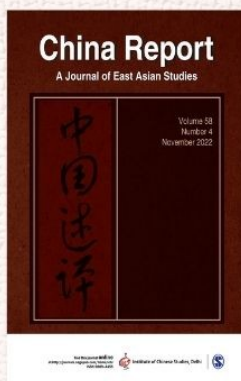


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