

On justice in China: 'I'm a petitioner - open fire!'

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One night in July, Wang Yu, a lawyer in her mid-forties, returned to her home in Beijing after seeing her husband and teenage son off at the airport, unaware that they had both been detained by police before boarding their flight to Australia. Around 3 a.m. she sent a text message to friends: 'Electricity and wifi were cut off suddenly. Someone is working on my door lock. I can hear murmured whispers outside, though it's so dark I can't see anything through the peephole.' Neighbours later reported seeing dozens of police, who told them they were arresting a drug addict. Nothing has been heard of Wang since the text message. Her whereabouts are not known.

More than a hundred lawyers across the country signed an open letter demanding an official explanation. In response, police raided the offices of Fengrui, the law firm where Wang worked, arrested its founder and director, Zhou Shifeng, and rounded up its associates across the country. The official media hailed it as a successful crackdown by the Public Security Ministry on a 'major criminal gang' that had been undermining the social order since 2012. By 22 July, more than three hundred lawyers and civil rights activists had been detained or were being questioned. Those who signed the letter defending Zhou were barred from Beijing.

Nothing quite like this has happened in China before. It's true that there hasn't been a single instance since the beginning of the Reform Era in the early 1980s of the country's rulers hesitating to silence or jail anyone regarded as a threat to the political system. And the list of those who've been persecuted is long and steadily getting longer. Classic targets have been dissident intellectuals, rebellious workers or peasants, unruly students. A number of recent cases have included individual lawyers. But a nationwide attack on a group within the legal profession is something new.

Law as a profession was reintroduced in China in the early Reform years, after its suppression during the Cultural Revolution. Nowadays it's a popular career choice: law schools across the country churn out more and more graduates who compete every year in the Chinese Bar examinations. Although the pass rate is low - 10-25 per cent - the number of certified lawyers has increased by a factor of ten over the past decade, up from fewer than 30,000 to more than 270,000 at the end of 2014. In a population of 1.4 billion, that's still an extremely small number. Moreover, the majority of lawyers are concentrated in the big cities along the east coast: inland and agricultural regions lag far behind. Official estimates indicate that as of late last year between 6 and 10 per cent of counties either had just one lawyer, or none. In these places, justice is by and large administered by local courts on their own.

There are just under 200,000 judges in China, civil servants whose performance is evaluated at the end of each year according to how many cases they bring to a conclusion. But everywhere below the surface lurk the traces of a Chinese system going back thousands of years in which the magistrate - who was in charge of all administrative and ritual matters - took on the dual role of prosecutor and judge, while at the same time commanding the equivalent of a modern police force, the yamen runners. Today, it's still common for a court to co-operate closely with the local power nexus - the police force, the prosecutor's office, various officials and, most important, the local branch of the Communist Party. In isolated regions lawyers can function only if incorporated into local circuits of

corruption. As for those whom the system has abused, their last resort is the petition channel and the faint hope that a top official will notice their case and issue a binding decision on their behalf. Official figures are sporadic and unreliable, but it's estimated that there are between ten and twenty million petitioners nationwide, between half a million and a million of whom come to Beijing every year in an attempt to settle their cases. The phenomenon of petitioners who spend almost their entire lives on the road in a pathetic search for redress, powerfully captured in Zhao Liang's documentary *Petition*, is rooted in this longstanding tradition.

Ever since the Tiananmen uprising, CCP cadres across the country have been told: 'The top priority is development. The top responsibility is stability.' Today maintenance of stability, the suppression or pre-emption of any kind of protest or 'mass incident' that might unsettle the regime, absorbs a larger share of the budget than defence (at least as officially acknowledged). This priority has obviously entailed a major expansion in the state's instruments of surveillance and coercion - television cameras, internet monitors, heavily equipped riot police and the rest - as well as a system of cash payments to buy off or cool down protest, together with efforts to resolve disputes through out-of-court mediation. Rapid economic growth and the unbridled commercialisation of social life in the past few decades have weakened or altered the fabric of communities, fuelling legal disputes at every level, most of all between government-backed business interests and ordinary citizens. The 'mass incidents' quelled by the regime are typically triggered by expropriation of peasant land, eviction of urban householders, and mistreatment by officials, though strikes and protests over unpaid wages are also a common cause. Local authorities are nearly always directly or indirectly implicated. So nowadays the courts confront issues not just of criminal or civil law, but of public law - that is, not punishment of citizens by the state, or disputes between citizens, but disputes between citizens and the state. In those disputes, local authorities have used various legal instruments to protect their economic interests. One such instrument was the office of 'preliminary registration', which determined whether or not a case was accepted by a given court. In many areas, cases inconvenient to the local authority were routinely kicked out.

The current leadership of the CCP under Xi Jinping is aware of the danger that the massive corruption of the party-state over the last three decades poses to its own legitimacy, and has launched an unprecedented campaign to clean up the higher echelons of power. A purge of senior officials has changed things in the top ranks of the party, but lower down, where corruption is most widespread and petitioners most common, the centre has nothing like the same degree of control. Late last year, the government once again began to speak of the need to 'rule the country according to the law', which allowed it to step up pressure on provincial and local authorities without undermining its own authority. Among measures taken to give force to the slogan, it redefined the procedure for registering cases. From 1 May this year, in order to 'protect people's rights to sue', cases can no longer be rejected by the registration office except on technical grounds to do with documentation. As a result the number of cases allowed to go to trial jumped by almost a third: a million were successfully registered in the month of May, among them cases involving abuse of authority on the part of the bureaucracy soared by 221 per cent - a good indication of the number of such disputes suppressed in the past.

At the same time, there was official concern at the shortage of lawyers. The Ministry of Justice reported that in 2014, of eight million cases heard in the courts, only about a quarter of defendants had a lawyer present. It was suggested that the state help fund the establishment of law firms, and that legal volunteers be recruited from big cities. Two days before the reform of the registration office came into effect, the *People's Daily* ran a prominent editorial under the headline 'Let Lawyers Speak, Let Laws Enjoy Greater Dignity.' It denounced the prevailing view that police, prosecutor and judge are courtroom comrades in arms battling against a common enemy - the accused and his lawyer. Six days later, Meng Jianzhu, the highest authority in China's judicial system, gave a speech

emphasising the importance of recognising the trial lawyer's authority. The new measures were encouraging to lawyers committed to defending citizens' rights – the same lawyers who a month later would be caught up in a police dragnet. How could one development have led to the other?

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On 2 May, the day after the new registration rules came into force, transport police shot dead a peasant at a train station in Heilongjiang, in the far Siberian north of Manchuria. The region is remote, but eyewitnesses quickly put photos of the dead man up online. Sitting on the ground next to the corpse, in a state of shock, visibly dirt-poor, were the four members of the peasant's family who had been travelling with him: his hunchbacked mother, in her eighties, and his three young children, all under seven. Belatedly realising the explosive effect the images would have, local police hurriedly traced the other passengers ('anti-terrorist' regulations require travellers to produce identification before buying a train ticket), and working round the clock, demanded that all photos and video clips of the killing be deleted. To quell 'rumours', a deputy county head applauded the 'heroic' spirit of the police and offered the victim's mother 200,000 renminbi (around £20,000), provided it was accepted not as compensation, but as a voluntary donation from railway employees. The man's children were sent to an orphanage. Instead of calming things down, these gestures further enraged the public. In almost no time evidence of fraud by the county's deputy head was uncovered, and within days ten separate complaints had been filed against the county government.

At this point, another figure arrived on the scene: Wu Gan, a well-known legal-aid activist and employee of the Fengrui law firm in Beijing. He made himself the leader of a citizens' crusade against the cover-up by offering rewards, from several hundred to 10,000 renminbi (£1000), to anyone who could provide video clips or eyewitness accounts of the killing. By 8 May, moving one step ahead of the police, he'd posted two short videos and a long interview, and had two more testimonies in hand. He also raised the possibility, based on information he'd collected, that the peasant had been harassed by the police in the first place because they saw him as a trouble-making petitioner and wanted to stop him boarding any train. The supposition was false, but it aroused an even greater public response. Petitioners from other parts of the country rushed to the site, each holding a placard that read: 'I am a petitioner – open fire on me!' Photos showing the same placard were also quickly uploaded from different locations.

Six lawyers from different parts of China converged on the area, and persuaded the victim's mother to return the government money and pursue a case against both the local government and the railway security system. Their first request was to view the footage of the killing taken by the surveillance cameras in the station waiting room. For ten days, the case was one of the most discussed topics online, and the censors feared there would be further outcry if they suppressed the discussion. Beijing couldn't ignore the matter any longer. The deputy county head was removed on charges of fraud and corruption. The Public Security Ministry sent an investigative team to the north-east. Then Central Television ran a major story on the case, editing video from five surveillance cameras at the station to show that the peasant wasn't a petitioner but a drunk who refused to obey an order to stand still, then grabbed a policeman's baton and hit out with it before being shot. The broadcast was designed to prevent the case going to court. Meanwhile, local authorities avoided meeting outsiders but worked hard on family members and villagers, presumably using financial inducements to persuade them to withdraw the case.

Wu issued a statement questioning the programme's editing of the video clips, and the fact that Central Television had been given access to the original footage whereas the lawyers had not. But by then he'd left the area and gone to Nanchang, the capital of Jiangxi Province in south-central China, where four villagers convicted of a double murder in 2000 were serving life sentences after the provincial high court commuted their executions. Except at the outset, when they confessed under

torture, they had always maintained their innocence. In 2012, another man from the same village had admitted in court that he was the true culprit. The families of all four men had become petitioners, travelling to Nanchang and Beijing several times a year. Over the years, nearly fifty lawyers from Beijing, Shanghai and other provinces have tried to get the verdict overturned, but a retrial requires the approval of the supreme court of the province, which wasn't forthcoming. In fact, the Jiangxi supreme court persistently impeded defence lawyers' access to the original files. On 11 May several lawyers started a sit-in in front of the court, asserting that it was their right to see the files.

Photos of the sit-in were posted online, but didn't get much attention. Wu arrived a week later, with much more dramatic plans. He decided to target the president of the supreme court, and made two big kerbside placards. One showed a Chinese-style funeral, with a photo of the president in the centre and a sarcastic couplet on either side. On the other, he wrote in big letters: 'I Am for Sale! I Need Money to Bribe the President to Let the Lawyers See the Records.' He was going to get a proper demonstration going the next day but the police arrived too soon. They took him away in the early morning, giving him ten days in detention for blocking traffic and libel. Later, he was formally arrested on criminal charges. The lawyers halted their sit-in after agreeing to inter-provincial negotiations aimed at securing the access rights Wu had lost his freedom for supporting.

Wu's firm sent Wang Yu to be his defence lawyer. Wang had started out practising commercial law, but changed course after railway police in Tianjin station manhandled her when she tried to board a departing train. After being kicked to the ground, she was detained for two years on a trumped-up charge of injuring one of the policemen. She was eventually released and reinstated at the bar after her treatment was brought to light in the prominent weekly magazine *Caixin*. Since then she has devoted herself to civil rights cases: she defended the activist Cao Shunli, arrested as she was about to board a flight to a UN conference on human rights in Geneva for participating in a sit-in outside the Ministry of Foreign Affairs. Cao was interrogated under torture and died in a military hospital in March 2014. Wang also represented the Uighur economist Ilham Tohti, who received a life sentence in early 2014 for criticising conditions in Xinjiang. In another high-profile case, a dozen or so thugs broke into the home of a 64-year-old peasant in Suzhou who had refused to accept the meagre compensation for his land offered by developers with government connections. Though he called the police, they didn't show up for three-quarters of an hour. He was dragged out of his house and beaten, and when he saw his wife and son were being beaten too he fought back with a fruit knife, killing two of his assailants, and was charged with manslaughter. Wang took the case on, entering a plea of not guilty on grounds of self-defence. The trial began early this year. When the judge rejected her request to authenticate footage the prosecutors claimed had been captured by surveillance cameras, she walked out of court and held up a placard outside the building, condemning the court's 'illegal conduct'. Supporters took pictures of her and instantly posted them online. Wang was barred from returning to her seat in the courtroom, and on 8 May the peasant was sentenced to eight years in prison, without her being notified. Three days later, the lawyers began their sit-in in Nanchang, while in the north-east Wu was posting eyewitness interviews connected to the killing in Heilongjiang.

The *People's Daily* issued a stern editorial in response. Its 'Let Lawyers Speak' op-ed had been printed only two weeks before, but now it advised that 'Lawyers Should Not Be Over-Zealous in Fanning Public Support for Stickler Purposes.' ('Sticklers' - sometimes mistranslated as 'diehards' - is what lawyers who insist on the correct observance of legal procedure call themselves.) It warned sticklers against publicising their cases online or on the street. The next day, Central Television broadcast its version of the railway shooting, and Wu was attacked in the press and on TV. Early in June several anonymous articles were published smearing Wang, claiming she had a criminal record and had served time for injuring a young policeman. Replying online, she recounted the ordeal she'd

been through in Tianjin, pointing out that the Bar Association of Beijing had recognised she was not guilty. After these attacks, and before her abduction, she attended two or three court hearings in which the defendants were members of the banned Falun Gong. Now, charged with subversion, she isn't allowed to see a lawyer. Her arrest was the harbinger of a general crackdown on the sticklers. A month later, Meng Jianzhu, after dismissing sticklers as a 'tiny minority of bad elements' whose repression was in no way 'an attack on the legal profession', called for strong support for lawyers in the good cause of 'running the country according to law', and in September a battery of regulations was issued to 'protect their professional rights'.

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Behind these apparently paradoxical developments lie two of the key directives that have marked Xi Jinping's leadership of the CCP. On the one hand, corruption must be checked if the party is to avoid the fate of the order it overthrew. Before Wang Qishan – the second most powerful figure in China after Xi – took over the anti-corruption campaign, he told officials to read Tocqueville's *The Ancien Régime and the Revolution in France*. It soon became clear that his interest could be boiled down to one quotation: 'The most dangerous moment for a bad government is when it begins to reform.' A week before the legal reforms took effect, Wang Qishan received a visit from Francis Fukuyama, and lectured him on the need to root out corruption in the party, explaining it as a necessary act of self-purification. Fukuyama asked if the constitution should enshrine the independence of the judiciary. Wang answered: 'Impossible. The judiciary must be under the party's leadership. That is the Chinese way.' Modernisation requires unshakeable authority and firm discipline. The necessary lesson can be found in Samuel Huntington's work, which the Central Party School recommended to millions of cadres. But the party's two imperatives – political order and the rule of law – don't work together, in the courts or elsewhere.

The regime tries to defuse disputes between citizens and the state by using the techniques characteristic of stability-maintenance – mediation, compensation, intimidation – to pre-empt an explosive confrontation. The sticklers, however, focus on procedural issues and adhere to the letter of the law, down to the last detail, which makes them a thorn in the authorities' side. Typically based in metropolitan centres or in the coastal provinces, the sticklers travel thousands of miles, taking up cases in distant locations across the country. Far from the courts they're familiar with, sticklers have found it easier to challenge judges who're in the pocket of local power brokers. In several cases lawyers have been physically attacked in their hotels by local thugs or dragged out of court by police. After such incidents, emergency appeals are often posted online, claiming that social justice as well as the legal profession is under threat.

Like-minded lawyers in other parts of the country have been the first to respond to these emergency appeals. Then come online commenters, who habitually post on the government's lack of transparency at all levels. Finally, 'rights-defending' lawyers and internet activists like Wu attract the attention of petitioners who are relatively young, energetic and internet literate. Self-trained as a result of years of dealing with the government, they seize every opportunity to make themselves heard. These roaming protesters, bullied and unorganised, are happy to join in the sticklers' legal campaigns.

The current accusations against Fengrui, that the firm is a criminal gang, include the charge of 'division of labour'. Some petitioners, since denounced for their 'greed', confessed to the police that for placard-holding sessions they were given train tickets plus 500 to 600 renminbi (£50-£60) for each trip, hardly an enviable sum for an ordinary urban resident. But in fact there hasn't been the carefully choreographed division of labour that the state media have alleged: the 'three-layer criminal cliques' the media denounce are a figment of the official imagination. All these groups have done their fair share of placard-holding or banner-waving and all of them post comments or photos

on the internet with equal energy.

Two key terms recur in the official attacks on the sticklers. The first is 'sensitive case'. What makes a case sensitive? Wang Yu represented human rights activists and members of Falun Gong, but none of the cases described here constituted a political challenge to the regime. Most involved local victims trying to arouse and sustain public interest in, and sympathy for, their grievances. In the case of the four prisoners accused of a double murder in Jiangxi, the 'sensitive' aspect, though the authorities never admit it, is the relationship between the centre in Beijing and the provincial supreme court, which is technically the sole body that can reopen a murder case.

In the police shooting in Heilongjiang, on the other hand, it wasn't the victim or his family but fellow passengers who posted photos online. The dead man, it turned out, was a migrant worker disabled by an accident on a construction site. After he was killed his relatives didn't contest the official version of events, seeing an opportunity for speedy compensation. It was the sticklers, armed with the new rules for lodging a lawsuit, who persuaded the victim's mother to change her mind. But the old lady later gave up her efforts, leaving the lawyers without a client.

Beijing launched a ruthless counterattack. The central propaganda machine - CCTV, the *People's Daily*, Xinhua News Agency, plus the news outlets ordered to use Xinhua's feed on pain of punishment - gave its version of the incident. It began by denigrating the victim - who had indeed been tipsy when he was killed - as a good-for-nothing, making use of interviews with fellow villagers and ground-level cadres. This met with indignation online, but not as much as the initial shooting had produced. The official media didn't respond to the online indignation; they didn't apologise, explain or refute. Then came a 'complete' reconstruction of the incident, after which the lawyers' protests that they'd been denied access to the original surveillance footage were simply ignored. Doubt had been sown about the truth of the popular perception of the case.

In Heilongjiang what was sensitive wasn't the relations between central and local government, but the public's reaction to official abuse. Any case that elicits a public uproar becomes 'sensitive' - a situation that must be handled decisively so that state control can be reasserted. The term 'sensitive' is deliberately vague, ready to be used when some unexpected issue sparks public sympathy or when anyone is tempted to rally public support. Among the several hundred lawyers detained, interrogated or blocked this summer, a few were prominent in politically 'sensitive' cases involving dissidents. Here the implication is more menacing: that the regime is willing to manipulate its legal system to put behind bars people like Nobel laureate Liu Xiaobo, or Ilham Tohti, or the Tiananmen veteran Pu Zhiqiang, defender of Ai Weiwei and others, to submit them to secret trials on charges that wouldn't stand up to the scrutiny of the PRC's own laws.

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The second term the government increasingly uses is 'causing an affray', i.e. finding an excuse to stir up trouble. Since the cases taken up by Fengrui often had little or nothing to do with 'subversion' or 'state secrets', the idea that the law firm engaged in 'affray' was decisive in the official attempt to reframe it as a 'serious criminal gang'. Under Chinese criminal law, provocative jeering and affray-making, if it is deemed a cause of 'serious disturbance of public order', attracts up to five years in prison. This charge is now being used against activists trying to rally support, but what's really being targeted is social solidarity. So whenever there's an uproar online, it's handled in two ways: small activist groups are suppressed and any flare-up among the general public is pacified. It is the project of a 'responsible' state to isolate the former from the latter.

Last March Zhou Shifeng, the director of Fengrui, used eight million renminbi (£800,000) of his own money to set up a fund to help the families, especially the children, of those lawyers who had lost, or

might lose, their freedom. Now he too has been detained. Without exception, those who agreed to defend Zhou or Wang have been harassed. In this round of the government's campaign, about one in ten of those questioned by police have been formally arrested. Police harassment has extended to the lawyers' families. Wang Yu's 16-year-old son was interrogated repeatedly and had his passport confiscated. He was helped to cross the border into Myanmar last month, but was arrested there and taken back to China, where he is now under house arrest. He has been warned not to contact any lawyers on his parents' behalf. The unspoken threat is clear: solidarity will not be tolerated by the authorities.

The regime's chief tactic in its assault on solidarity is to try to undermine those who challenge it by attacking their private conduct. Between late May, when Wu was formally arrested, and early July, when Wang was abducted, the media ran virulent attacks, accusing them both of dishonesty, trickery, indecency and physical violence. After Fengrui's director was taken into custody, a news story claimed he had confessed to 'ulterior' motives in the way he ran his firm: he cared only to raise its profile and attract more lucrative clients. The same tactic can be seen in the way the deputy county head was dealt with in the police shooting case. His removal was announced as if it had nothing to do with his public performance after the killing: it was personal misconduct that brought him down, which of course didn't reflect badly on Beijing or on the local government.

For the authorities, the two unignorable issues are publicity and solidarity; they want to control the first and repress the second. That these are problems at all is a new development. When protesters gathered in Tiananmen Square a quarter of a century ago, their slogans echoed those of the pre-1949 Communist Party. The 'Internationale' and the national anthem were sung in the square. Demonstrators appealed to police or soldiers to stand on the 'people's side', the regime denounced them as 'counter-revolutionary'. The disagreement was a political one. In the post-Tiananmen years tighter political control was accompanied by greater economic openness. By the end of the 1990s, many activists who had attempted to set up and register political parties had been sentenced to long terms in prison. At about the same time, Falun Gong was driven underground. Thereafter the party kept a tight grip on political speech. The result was widespread, internalised self-censorship. To be seen as 'political' was to be avoided at all costs. For more than a decade, it became common for Chinese artists – painters, writers, directors, sculptors – to emphasise that they had no interest in politics, even though their work was plainly full of political meanings.

When the internet made political discussion possible again, much of it turned on nationalist themes nurtured by the regime: the superiority of the Chinese model of development to the American, or the prospects of conflict with neighbouring countries. Topics like economic polarisation or social stratification were no longer understood in terms of class. Workers and peasants were no longer the backbone of revolution; the poor were merely socially 'disadvantaged', and objects for charity by NGOs. But something 'sensitive' is always lurking. Sensitive times, sensitive words, sensitive names, sensitive questions: young Chinese set up websites that unwittingly trigger them, and are abruptly shown China's political reality when their sites are shut down without explanation.

Developments in the wider world are genuinely sensitive for the party. The Arab Spring alarmed the Chinese leaders. More immediate worries have come from Hong Kong and Taiwan. Students in Hong Kong brought tens of thousands of adults over to their side in 2012, forcing the authorities there to scrap courses in 'patriotic education'. Taiwanese students broke into the country's legislature last year, occupying the building for more than twenty days as a protest against a trade agreement reached behind closed doors with the PRC. A few months later the students in Hong Kong demanded real universal suffrage in the elections due in 2017. Collective action of any kind alarms Beijing more than anything else, and it duly went on the offence, deleting all online postings mentioning the protests in Hong Kong and arresting many who commented on them. But these were political upsurges of a kind the PRC's machinery works well against. What caught the regime off-guard this

spring and summer was the sticklers' use of unpolitical cases to turn the regime's own slogan about the rule of law against it. The principles of publicity and solidarity were no different in Hong Kong and Taiwan, but the sticklers' revolt came in a much more unexpected guise. By rounding up the sticklers, Beijing's project of legal reform was scuppered. Far from improving accountability, local government became even more bureaucratic than it was before and no less corruptible.

The problems the lawyers brought into the open haven't gone away. Since July, Wang Yu has in all probability been held incommunicado in the city where she was earlier illegally imprisoned, Tianjin. There, a month after her arrest, a gigantic chemical explosion devastated a newly developed zone in one of the busiest ports in China, causing 173 deaths and injuring more than a thousand; 17,000 new homes in the surrounding area were damaged. Images of the huge fireball against the night sky made headlines around the world the next morning. But not in Tianjin itself. There it was confined to a single minute on the local morning news, after which all seven local channels ignored it; meanwhile, CCTV in Beijing, just seventy miles away, was broadcasting extensive coverage of the incident. Twenty-four hours later, the municipal government in Tianjin began holding twice daily press conferences on the disaster, attempting to explain away its responsibility, instead of providing timely information to the public. Not one senior official attended these press conferences until five days later. Why? The explosion was regarded by the local authorities as a matter to be discussed with their superiors, not the public. In less than two months they'd handed out all the compensation they were willing to give, coercing victims into accepting it. The central government has arrested the directors of the chemical company, who were in league, as usual, with corrupt customs and other officials, and promised a full inquiry, one that will not tarnish the image of the authorities in Tianjin, let alone Beijing. The CCP would like a 'rule of law with Chinese characteristics'. This could be a recipe for yet greater trouble.

Chaohua Wang

P.S.

* London Review of Books. Vol. 37 No. 21 · 5 November 2015. pages 13-18:
<http://www.lrb.co.uk/v37/n21/chaohua-wang/im-a-petitioner-open-fire?utm>

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