Occasional Papers/Reprints Series in Contemporary Asian Studies

NUMBER 5 — 1980 (34)

Certain Problems in Recent Law Reform in the People's Republic of China

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School of Law University of Maryland
Occasional Papers/Reprint Series
in Contemporary Asian Studies

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Published with the cooperation of the Maryland International Law Society.
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500 West Baltimore Street, Baltimore, Maryland 21201 USA.
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Subscription is US $10.00 for 8 issues (regardless of the price of individual issues)
in the United States and Canada and $12.00 for overseas. Check should be addressed to
OPRSCAS and sent to Professor Hungdah Chiu.
Price for single copy of this issue: US $1.50

OPRSCAS no. 5-1980
ISSN 0730-0107
Occasional Papers/Reprint Series in Contemporary Asian Studies

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BY HUNGDAH CHIU*

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CERTAIN PROBLEMS IN RECENT LAW REFORM
IN THE PEOPLE'S REPUBLIC OF CHINA

BY HUNGDAH CHIU*

Introduction

Since late 1977, Chinese law and the legal system have been frequently discussed in Chinese politics. On an official level, for instance, Premier Hua Kuo-feng stated in his report on the Work of the Government to the First Session of the Fifth National People's Congress, delivered on 26 February 1978: "It is essential to strengthen the socialist legal system if we are to bring about great order across the land".¹

In early December 1978, the New China News Agency reported that about one-hundred and sixty jurists and scholars had met in Peking to discuss socialist legislation and the judicial system. This was the first such report in many years. Among the issues discussed at the meeting were the concept of rule by individuals versus rule according to law; the relation between policy and law, between the mass movement and law enforcement, and between the judicial system and leadership by the Communist Party;² and legal research in the fields of constitutional law, international law and other branches of law.³ Similarly, there have been numerous reports on people's complaints of abuses by the authorities, on people's demands for basic human rights or democracy, and on other law-related issues in wall posters, underground literature and other sources.⁴

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3. See Kuang-yuan Yu, "Several Questions Concerning Socialist Legislation and Legal System — Excerpts of Remarks made at Peking Conference on Socialist Legislation and Legal System", Faxue Yanjiu (Fa-hsūeh Yen-čhū in Wade-Giles) (studies in law), preliminary issue 1978, pp. 5-8. (This issue is for internal use only.)
4. For example, see Fox Butterfield, "Peking Dissident, in Rare Account, Tells of Political Prisoners' Torture", The New York Times (7 May 1979), pp. A1, A10. For a collection of unauthorized publications on human rights in China, see Chung-kuo jen yueh-kan (China Monthly, Hong Kong),
Why did law become an openly discussed and reported topic among Chinese officials and the people? Why has it apparently begun to gain an honorable place in the Chinese political system?

These recent changes stand in sharp contrast to an editorial that appeared on 31 January 1967 in Jen-min jih-pao (People's Daily) entitled “In Praise of Lawlessness”, in which law was denounced as a bourgeois form of restraint on the revolutionary masses. Again, as recently as five years ago, the late Premier Chou En-lai, while recognizing the important role to be played by law in carrying out his four modernizations policy, did not even dare to use the term “law” in his Report to the Tenth National Congress of the Communist Party of China but could only vaguely express his concern for “rational rules and regulations”. Perhaps the reasons for the resurgence of interest in law should begin with the official explanation advanced by the People’s Republic of China (PRC).

In an article on the PRC’s legal system that appeared in the 12 January 1979 Beijing Review (formerly known as Peking Review), Lin Piao (Biao in Pin-yin) and the “gang of four” were accused of disrupting the development of China’s socialist legal system as follows:

A serious setback was delivered to the socialist legal system by Lin Biao and the “gang of four” just as efforts were being made to improve it. The socialist legal system stood in their way to usurping party and state power, so right at the start of the Great Cultural Revolution in 1966 they began to dismantle the public security departments and the procuratorial organs and charged that the socialist legal system was a

(June 1979) vol. 1, no. 5. There are also numerous reports in official publications of mistreatment of people or cadres. See, for example, “Mistakes Must be Corrected Whenever Discovered”, Peking Review (15 December 1978), vol. 21, no. 50, pp. 7-9, and “Historical Lessons in Redressing False Charges”, ibid., pp. 10-12. In a recent article concerning the death of Ms. Zhang Zhixin in 1975, it was frankly acknowledged that “she was tortured beyond description both mentally and physically” in prison, denied the right to appeal for her death sentence and no report on her death sentence had been sent beforehand either to her place of work or to her relatives. “The Nation Contemplates: Why Was an Outstanding Woman Communist Killed?”, Beijing Review (27 July 1979), vol. 22, no. 30, p. 20.

5. See Peking Review (7 September 1973), vol. 16, nos. 35 and 36, p. 25.
“shackle” and a “straightjacket” holding back the mass movements. China’s judicial organs were suspended. Abusing the power they had usurped, Lin Biao and the “gang of four” began cracking down on large numbers of revolutionary cadres and people. They let loose hoodlums and thugs to smash, grab and loot, to break into and ransack homes, illegally detain people, set up kangaroo courts and torture innocent people to extort confessions. In places and units they controlled there was no freedom of person because socialist order was non-existent.

In those days, declared a special commentator of the journal Zhongguo Qingnian (China Youth), anyone who dared to show his disapproval of Lin Biao or the “gang of four” was immediately condemned and punished for committing a heinous crime. Anything that was regarded as a slight disrespect to them constituted a “counter-revolutionary crime”. One Nanjing worker got five years merely because he inadvertently commented on Lin Biao’s build. The whole thing was, of course, extremely absurd, but at least it was done with a semblance of “judicial proceedings”, the special commentator added. At least, some sort of “reason” was given and it was known where the worker was imprisoned so that members of his family could visit him occasionally. In many cases even a semblance of judicial proceedings was dispensed with. Personal property and personal freedom were wilfully encroached upon and safety of people’s lives was not guaranteed. In short, wherever Lin Biao and the “gang of four” held sway, socialist democracy gave way to feudal despotism married to 20th century fascism.6

The article goes on to acknowledge frankly that China’s legal system is not yet perfect and is in need of further improvement. It also recognizes the important role to be played by law in the country’s economic development, by saying:

Development of the productive forces in China will necessitate major changes in the relations of production as well as in the superstructure, of which laws, decrees and rules and regulations form an important component. To this end, various laws and regulations on economic work, including those for the people's communes and factories, fulfillment of con-

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tracts, protection of forests, grasslands and the environment, will be drafted and gradually perfected. Judicial organs will be established to arbitrate disputes and lawsuits between enterprises.\(^7\)

As a matter of fact, the problems in the PRC's law and legal system run much deeper than the above quotation recognizes.\(^8\) First, the legal system has not even been able to guarantee the personal security of top leaders and high officials, many of whom have been purged, tortured, imprisoned, or otherwise abused without a judicial investigation. On the other hand, in criminal cases party members usually have been treated more leniently than non-members; in some cases, accused party members have gone unpunished or have been exempted from the judicial process. Second, the only major PRC criminal legislation prior to July 1979 — the Act of the PRC for Punishment of Counter-Revolutionaries (21 February 1951) — was so loosely worded that large-scale imprisonment on political grounds was widely permitted. At present, it remains to be seen whether the newly-enacted codes will apply equally to all members of Chinese society. Third, institutionalized discrimination has been practised against at least thirty million people on the basis of their class origin (such as descendants of former landlords and rich peasants) in judicial process and other aspects of daily life.\(^9\) Fourth, mass arrests have occurred during each political campaign according to the perceived political necessities of that campaign. Fifth, political offenders have been detained for long periods before trial and have, furthermore, no constitutional or legal guarantee of the right to a defense. Sixth, the use of torture, long-term detention or mental pressure to extract the confession of accused persons has been widespread. There have been many other abuses of human rights under the PRC legal system. The Chinese system has been so repressive that, until recently, Western diplomats, correspondents and visitors were able to meet no dissidents, and no Chinese dared to talk to foreigners without official authorization. When Chinese did speak to foreigners, their conversation invariably followed the official party line.

\(^7\) Ibid, p.30.

\(^8\) For details see, Political Imprisonment in the People's Republic of China (1978), Amnesty International.

Recent Chinese Law Reform

Under such an irrational, unpredictable and repressive legal system, could the PRC carry out its present modernization program? The present leadership in the PRC does not appear to believe so.

In some historic cases it has proved possible for a country's economy to develop even under a harshly repressive legal system. The cases of Nazi Germany and Stalin's Soviet Union are two examples. But the latter legal systems, though repressive, did ensure that an orderly environment for economic development existed. Also, the Nazi German and Stalinist Soviet systems did possess all the essential elements of a modern and stable legal system — codes, courts, procuracy, professional judges and lawyers — and these governments did emphasize law as an essential instrument for maintaining social order and carrying out policies. Stalinist and Nazi repression were carried out in an institutionalized way. These states never allowed a single group of people to attack the official bureaucracy, to fight another faction, or to set up various private courts. The Stalinist and Nazi legal environments stand in contrast to that in the PRC, where factional strife was common during the Cultural Revolution and where private courts outside the government were set up to deal with accused offenders against the Cultural Revolution. Moreover, in further contrast to the PRC, neither the Nazi nor the Stalinist regimes ever experienced a long period of national disruption caused by the rise and fall of top leaders.

The PRC leaders now view the last ten years as "lost"; they now claim that progress in economic development could have been made in the last decade, but instead time was largely wasted in anarchistic internal struggle. 10 While there are many causes that contributed to the "ten lost years", the lack of a stable legal system is certainly one of the foremost.

In order to carry out the PRC's ambitious modernization program, it is self-evident that the Chinese legal system must be strengthened and perfected so as to provide an orderly, predictable environment for economic development. Beyond that, the PRC also is confronted with a population demoralized and frightened

by years of chaos and uncertainty; thus, it also is necessary to provide a more secure environment for the people. This is especially true with regard to gaining the confidence of the intellectuals who suffered most in the last decade. Without the enthusiastic participation of the intelligentsia, it will be simply impossible to modernize China's economic and technological establishment. Moreover, the leaders of the PRC apparently have decided that expansion of the PRC's foreign trade program and the inflow of foreign investment funds are essential to the success of the modernization program. However, until recently there has been no attempt to codify commercial law in the PRC to guarantee the rights of foreign investors in joint ventures, to protect their patents, or to settle trade disputes. Even with the recently enacted laws (see infra) it will be impossible to assess the full impact of China's steps towards legal reform until several years' experience under these laws has accumulated.

In the last two years, the PRC has taken a number of measures to strengthen or improve its laws and its legal system. In 1978, the government released more than one hundred thousand intellectuals who had been declared rightists during the 1957 "Hundred Flower Movement" and had been detained since then in labor camps. The three authors of the well-known poster "On Socialist Democracy and Legal System" were released on 8 February 1979 at a rally in which officials of the Kwangtung Provincial Party Committee publicly acknowledged their mistake in handling the case and declared that neither the authors nor the posters were reactionary. The officials also have been more tolerant towards people's complaints and people's contact with foreigners. There are also reports of reversals of verdicts for many people who had been innocently detained or imprisoned.

The discriminatory policy towards descendants of former landlords and rich peasants, including those born after 1949, also has been apparently revised. Formerly, those persons were de-

11. "Big-Character Poster Authors 'Li Yi Zhe' Exonerated", Beijing Review (2 March 1979), vol. 22, no. 9, pp. 15-16.
proved of the rights to take part in political activities, to attend senior middle schools and schools of higher learning, and to participate fully in other aspects of life without discrimination. Now, the proclaimed policy of the PRC is as follows: as long as the former landlords and rich peasants and their descendants support socialism they will no longer be discriminated against.\textsuperscript{13} Although on the one hand this policy may certainly benefit the millions of people who formerly suffered discrimination, on the other hand one must remember that millions of people have been labelled as “rightists” in the course of purging the “gang of four” and its followers. (In China the followers of the losing side in a power struggle are always labelled as “rightists”, regardless of their political doctrines.) These “rightists” apparently have received treatment similar to that of descendants of former landlords and rich peasants.

On the legislative level, the 1978 PRC Constitution\textsuperscript{14} pays more attention than its predecessor to legality and individual rights. It revives the people’s procuratorates “to ensure observance of the Constitution and the law by all the departments under the State Council, the local organs of state at various levels, the personnel of organs of state and the citizens” (Article 43). Formerly (1966 – 1977), the public security organ was responsible for prosecutions as well as investigations. In his report on the draft of the new PRC Constitution, General Yeh Chien-ying said:

Detention and arrests must follow legal procedures, and the system of checking and approval must be strictly observed in this regard. In the trial of cases, stress must be laid on the weight of evidence and on investigation and study. To obtain confessions by compulsion and then give them credence is strictly forbidden. Only thus will it be possible to protect the people effectively and strike sure, accurate and relentless blows at the enemy, with the stress on accuracy.\textsuperscript{15}

This statement clearly indicated that the PRC is moving in the direction of providing its citizens a more secure legal environment.

\textsuperscript{13} “Policy Towards Descendants of Landlords and Rich Peasants”, \textit{Beijing Review} (26 January 1979), vol. 22, no. 4, p. 8. Whether the cadres do seriously implement this policy on the local level is far from clear.

\textsuperscript{14} English text in \textit{Peking Review} (11 March, 1978), vol. 21, no. 11, pp. 5-14.

\textsuperscript{15} Ibid, p. 22.
In February 1979, a new law was promulgated to prevent illegal arrests and detentions, replacing a similar law enacted in 1954. The old law, however, was never fully implemented and was totally ignored in the last decade. While at this moment there is no way to predict the fate of the new law, at least on paper it represents an improvement of human rights in the PRC. It establishes three conditions for future arrests:

1. The principal facts relating to the crime committed must be thoroughly investigated;
2. The crime or crimes must be such that the criminal will be liable, if convicted, to be sentenced to imprisonment; and
3. The arrest must be absolutely necessary.

However, under the new law, public security organs will be able to detain major suspects or persons accused of a crime before obtaining a warrant from the people's court or procuratorate in such exigent cases as assault and battery, robbery, and seriously undermining work, production and social orders. Evidence against the detainees must be submitted to the appropriate people's procuratorate within three days or, in special circumstances, seven days. The procuratorate must either sanction the arrest or order the release of the detainee within three days. The law further provides that interrogation must start within twenty-four hours after arrest, and the detainee must be released if no positive evidence is found.

Perhaps the most serious defect of the PRC's legal system before 1979 was the absence of a criminal substantive and procedure law. A recent article in the People's Daily said:

As there is no unified criminal law, lawlessness has become universal ... the concept of a legal system has become very shadowy indeed among both the cadres and the masses ... there are cadres who openly protect criminal members of their units ... there are cadres who set up their own laws ... 17

With surprising speed, the Second Session of the Fifth National People’s Congress, held between 18 June and 1 July 1979, enacted seven laws: 18

1. The Organic Law of the Local People’s Congresses and the Local People’s Governments;
2. The Electoral Law for the National People’s Congress and the Local People’s Congresses;
3. Criminal Law;
4. Criminal Procedure Law;
5. The Organic Law of the People’s Courts;
6. The Organic Law of the People’s Procuratorates; and
7. The Law on Joint Ventures with Chinese and Foreign Investment. 19

Immediately after the promulgation of these laws, a publicity campaign was begun across the country to make the laws known to all the people. For instance, all the leading newspapers in the country have published the full texts of the seven new laws, together with explanatory articles and commentaries. Some newspapers have published special columns answering questions concerning the laws and explaining legal terms. The Central People’s Broadcasting Station has started a twenty-minute special program every other day on criminal law. It also has been announced that popular and easy-to-understand books on law soon will be published. 20 Never before in the thirty-year history of the PRC has law become so widely discussed and so important.

These recent legal developments have raised fundamental questions: How far will the PRC’s legal reform go, and in which direction? Will it move in the direction of institutionalizing rule by law, rather than by individuals, as demanded by some Peking wall posters? Or will it move in the direction of so-called “socialist legality and socialist democracy”, as practised in the Soviet Union and most Communist countries? There are some indications that it is more likely that the PRC is moving in the latter direction.

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Socialist Legality and Socialist Democracy

According to the concepts of "socialist legality and socialist democracy", as understood in the Soviet legal system, legality and democracy are conditioned by the needs of socialism; the latter needs, in turn, are defined by the Communist Party in its leadership role. As a consequence, no principle, however normatively stated in the constitution, is permitted to conflict with the policy needs of the Communist Party. Nevertheless, although these two concepts do contain the potential for instability and lack of predictability, the Soviet legal system does not, as a rule, operate arbitrarily or in an ad hoc fashion. Stability and predictability are important elements in the ordering of any society, including Soviet society, so these two elements are embodied in Soviet socialist legality and socialist democracy. However, the stability and predictability which are a part of socialist legality and socialist democracy do not inhibit arbitrary state action in areas of special party concern, such as the security of the regime and the integrity of the Communist system. 21 This distortion of the legal system appears, for example, in the so-called dissidents' cases.

The Soviet legal system, based on socialist legality and socialist democracy, so far has appeared to be functioning reasonably well. It ensures the supremacy of party rule, but it also provides a framework for the orderly development of Soviet society. While there are still a number of dissidents or political offenders in the Soviet Union, their numbers have diminished and they do not seem to present a serious threat to the regime. Of course, this does not diminish the significance of detention of political dissidents from a more absolutist human-rights viewpoint. In the Stalinist period, there were several million political prisoners; that number has been reduced to about ten thousand today. 22 The great majority of the Soviet people appear either to support the regime or, at the worst, to be prepared to live with it.

Despite the poor relations between the Soviet Union and the PRC, the Soviet legal system model appears to fulfill the following needs of the PRC: a guarantee of the supremacy of the party, the

maintenance of a reasonably stable legal order, and the reservation of the right to deal resolutely with anyone who challenges the basic principles of the regime.

If the Chinese choose not to follow the Soviet model, there appear to be only two other practical alternatives: to return to the traditional Chinese legal system or to follow the Western legal system.

The traditional legal system certainly cannot work for today's China because it was designed to govern an isolated agricultural society. The written law of traditional China was overwhelmingly penal in emphasis, and matters of a civil nature, such as contracts, were either ignored by it entirely or were given only limited treatment within its penal format (for example, property rights, inheritance, and marriage). There were no professional judges in the modern sense; there were no lawyers or prosecutors; nor was there a formal legal education. At the end of the nineteenth century, even the imperial Chinese government found that the traditional legal system had become inadequate to govern a rapidly changing Chinese society under Western influence. At that time, the Chinese government sought legal reform based on Western models. Ironically, the PRC's judicial practice, at least in the last decade, embodied several practices that were similar to traditional Chinese practice: the use of torture to obtain confessions in criminal cases, the two-year suspended death sentence, the lack of judicial independence and of professionally trained personnel (judges, prosecutors and lawyers) to handle judicial cases, the disregard for civil matters in the legal system, the use of analogy in criminal law, the presumption of guilt in criminal cases, the reluctance of the judicial authorities to acquit an accused, the lack of equality of all persons before the law, and others. Thus, the PRC's legal system, which already contained some severely criticized aspects of the traditional legal system, cannot be improved or strengthened by reverting to the traditional Chinese legal system as a model.

The adoption of the Western model for legal reform in the PRC would be equally unsuitable, simply because the Western

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25. For details, see *Political Imprisonment in the People's Republic of China*, supra n. 8, and references cited in n. 4.
legal system does not guarantee one-party rule and the legally established dominance of one ideology — Communism — in the society.

Conclusion – The Prospects of Chinese Law Reform and Its Problems

The 1978 PRC Constitution defines the nature of the Chinese state as a “socialist state of the dictatorship of the proletariat led by the working class and based on the alliance of workers and peasants” (Article 1). Recently, a special feature article entitled “Proletarian Democracy and Proletarian Dictatorship in China,” which appeared on 2 March 1979 in Beijing Review, elaborated this concept as follows:

Proletarian dictatorship has two meanings; democracy (people's democracy or socialist democracy) for the proletariat and other sections of the people; dictatorship over members of the exploiting classes who resist socialism. The scope of the people is rather extensive ... workers, peasants, urban petty bourgeois elements, patriotic intellectuals, patriotic capitalists and other patriotic democrats come within the category of the people.  

The article further pointed out that the “object of the dictatorship” refers to traitors, counter-revolutionaries, bad elements and newborn bourgeois elements. Since these broadly and loosely defined elements are the object of the dictatorship, they apparently are denied “fundamental rights of citizens” provided in the Constitution.

The Constitution explicitly guarantees a dominant position to the Communist Party of China by providing that the party “is the core of leadership of the whole of the Chinese people,” and through it the “working-class exercises leadership over the state” (Article 2). In the chapter on “Fundamental Rights and Duties of Citizens”, the Constitution also specifically stipulates that “citizens must support the leadership of the Communist Party of China, support the socialist system, safeguard the unification of the motherland and the unity of all nationalities ... [in China] and

27. Ibid.
abide by the Constitution and the law” (Article 56). With regard to the judicial system, while the Constitution does restore the people’s procurates at each level of the courts to “ensure observance of the Constitution and the law by all the departments under the State Council, the local organs of state at various levels, the personnel of organs of state and the citizens” (Article 43), there is no guarantee of either judicial independence or of the equality of all persons before the law.

Within the framework of the current PRC Constitution, it appears that the Chinese legal system is intended to operate with the following special features:

1. The concept of class justice will be maintained, though the number of sub-class citizens (gang of four followers, bad elements, and others) will be drastically reduced. However, there is no doubt that substantial numbers of citizens still will be within those categories excluded from full participation in society.

2. The regime does seek to establish a more stable and predictable legal system, but it is not yet willing to promote judicial independence, even within the framework of Communist Party rule.

3. Under the present legal system one cannot challenge the basic principles of Communist rule; one who mounts such a challenge risks being labelled a reactionary and losing all rights under the PRC Constitution.

The Chinese system, as it is evolving, appears to be more strict than the Soviet concept of socialist legality and socialist democracy. The Soviet Union long has proclaimed itself an “all people state”, with no specific class discriminated against in the Soviet society. The 1977 Soviet Constitution also specifically guarantees judicial independence. Therefore, even assuming that the Soviet model is the goal of the current PRC law reform, the PRC still has a long way to go. But is China willing to go that far?

Recent domestic criticisms of the legal system in the PRC have concentrated on the period of the Cultural Revolution (1966

1976). Does this period of examination imply that the legal system between 1958 and 1966, the period of Liu Shao-ch'i-Teng Hsiao-ping's rule, was satisfactory to the Chinese people? If that is the expectation of the present leadership, it certainly is not the view of the great majority of the Chinese people. The arbitrariness of the Chinese legal system in the Liu-Teng period was vividly described by Bao Ruo-Wang, who was in a Chinese labor reform camp between 1958 and 1964, in his book *Prisoner of Mao.*

It also is possible that the Liu-Teng group and their followers did not pay much attention to the improvement of China's legal system in 1958 to 1966 because at that time they did not realize the serious consequences of having an arbitrary legal system. Because Liu and Teng and their followers themselves became victims of that arbitrary legal system during the Cultural Revolution period, they now may realize that a more reasonable legal system is not just for the benefit of the great majority of the Chinese people but also for the benefit of the leaders themselves.

At present, while it is not clear what Teng Hsiao-ping and Hua Kuo-feng have in mind for the goal of the current legal reform and how far it should go, a few people in the top leadership already have pointed out the serious consequences of an arbitrary legal system. For instance, at the 1978 December plenary session of the Central Committee of the Communist Party of China, General Yeh Chien-ying (Ye Jiénying in Pinyin) recalled that Lin Piao and the gang of four took advantage of the PRC's incomplete legal system to enforce a fascist dictatorship and to arrest people as they pleased. This, General Yeh declared, was a lesson to all of them that a country must have its laws and a perfect legal system. He went on to elaborate on what he considered necessary for making the legal system perfect:

1. There must be stability and continuity of the laws, rules and regulations. Everyone must abide by them and implement them.

2. The laws, rules and regulations must have full authority. Revisions must be made only through legal procedures, independent of the personal will of any leader.

3. The procuratorial organizations and the courts must faithfully serve the people's interests, abide by the laws, rules and

regulations, keep to facts, and maintain their independence as required.

4. There must be fearless procurators and judges who are ready to sacrifice their lives to uphold the dignity of the legal system.

5. It is essential to guarantee the equality of all the people before their own laws and to deny anyone the privilege of being above the law. 31

Will the PRC's legal system move in the direction suggested by General Yeh? Or, under a system of party supremacy and class justice, is it possible for the PRC's legal system to move in that direction?

General Yeh's primary concern appears to be the personal security of the people, but the Hua-Teng leadership's interest in legal reform appears to go beyond that. During the turmoil of the Cultural Revolution, the lack of discipline among the people, workers, and peasants seriously affected production on various levels; there were also serious problems, such as corruption and waste, in the operation of state enterprises. To carry out the ambitious Hua-Teng modernization program, it will be necessary to re-establish social discipline and order and to enact such laws as will put the operation of state enterprises in order. Therefore, one must not be misled by the proclaimed aim of the law reform as stated by General Yeh Chien-ying, Chairman of the Standing Committee of the National People's Congress, in his opening speech to the Fifth Session of the National People's Congress, delivered on 18 June 1979: "The people want to strengthen and improve China's socialist legal system. An improved legal system can effectively guarantee the people's democratic rights provided for by the Constitution and constantly develop stability and unity and a lively and vigorous political situation in the interest of socialist construction." 32

Behind the proclaimed aim of law reform, it is possible that more Draconian law or decrees may be enacted or that existing laws may be enforced in a Draconian way to maintain social order or to discipline the people.

32. Cited in Peng Zhen, supra n. 18, p. 8.
While the recently enacted Criminal Procedure Law provides that everyone is equal before the law, it is not clear whether the gang of four and their followers or certain recently arrested dissidents will be excluded from the application of new laws. In the "Explanation on Seven Laws" delivered by Peng Zhen (P'eng Chen), Director of the Commission for Legal Affairs of the National People's Congress Standing Committee, at the Second Session of the Fifth National People's Congress on 26 June 1979, it is stated: "All infractions committed and cases left over before the promulgation of this law [i.e., 1 January 1980] shall be dealt with in accordance with the consistent principles, policies, laws and decrees of the Party and State in the past".

It is not clear whether the PRC is willing to have the gang of four or their followers tried by courts in accordance with the new Criminal Procedure Law. In this connection, the PRC faces a dilemma. At present, the PRC and the Communist Party of China still want to use the image of Mao Tse-tung to rally the whole country while in fact deviating substantially from Mao's policy. If the government and party allowed the gang of four and their followers to be tried under the new Criminal Procedure Law, the defendants would argue that all their actions were on the instructions of Mao or were taken to implement Mao's policy. A conviction in such circumstances would surely tarnish Mao's image among the people.

Here one must take notice of the difference in historical facts between the Soviet Union and the PRC. In the Soviet Union, it was possible for Nikita Khrushchev to denounce Stalin without undermining the very foundation of the Communist rule there, as

33. Art. 4 of the Criminal Procedure Law provides: "The law shall be equally applied to all citizens. No-one shall have any privilege before the law". Kuang-min jih-pao (Enlightenment Daily) (8 July 1979), p. 1. Neither the Criminal Law nor the Criminal Procedure Law provides that the party be subject to the law.


35. It was reported by Japanese Press recently that a high official of the PRC – Ji Peng fei (Chi P'eng-fei), a deputy Chairman of the National People's Congress's standing committee — confirmed that the so-called gang of four would be tried in public soon. See, "Peking is Said to Confirm that Gang of Four Will be Tried", UPI—Tokyo (26 August 1979), in New York Times (27 August 1979), p. A7.
Khrushchev could resort to Lenin for his new policy and even could accuse Stalin of being a traitor to Leninism. In China, on the other hand, Mao was the founder of the PRC and there is no one in the Communist Party of China who could substitute his status and prestige in the history of the PRC. It does not seem possible to denounce Mao without undermining the very foundation of the Communist rule in China.

On the other hand, excluding the gang of four and their followers from the application of the new laws would undermine the confidence of the people in the sincerity of the PRC leaders’ law reform program.

The new Criminal Law and Criminal Procedural Law are silent on the administrative sanctions which the PRC has used since 1949 to impose the de facto criminal sanction, known as rehabilitation through labor, on people for actions ranging from criticism of the government to refusing to accept a work assignment. Under the practice of rehabilitation through labor, many Chinese simply have been picked up by the police and detained for indefinite periods of time in rehabilitation-through-labor camps without being formally charged as criminals. So far, there is no sign that the legal reform movement will touch that practice.

While the new Criminal Law narrows the definition of a counter-revolutionary by stressing that such a person must have committed some overt act, not just harbored a damaging thought against “the dictatorship of the proletariat and the socialist system,” some crucial articles in the new law remain somewhat vague. For instance, Professor Jerome A. Cohen has pointed out that the law does not state whether posting up critical wall posters by itself is counter-revolutionary but indicates that an action should be judged by its intent. Professor Cohen asks: How is this

37. Art. 90 of the Criminal Law provides: "Counterrevolutionary offenses are acts done for the purpose of overthrowing the political power of the dictatorship of the proletariat and the socialist system and endangering the People's Republic of China", Jen-min jih-pao (People's Daily) (7 July 1973), p. 2.
inquiry into intent to be made? Moreover, the Criminal Law, following the precedent of the 1951 Counter-Revolutionary Act, retains the principle of analogy as to criminal acts; Article 79 provides: "Those who commit acts not explicitly defined in the specific parts of the criminal law may be convicted and sentenced, after obtaining the approval of the Supreme People's Court, according to the most similar article in this law."

In short, it remains to be seen whether the new criminal substantive and procedural laws will be implemented without discrimination and in accordance with those practices which in Western legal theory are called fundamental human rights.

Technical difficulties in implementing China's legal reform also should not be ignored. For instance, the PRC lacks enough trained legal personnel to run the new legal system for its 958 million people. Qian Duansheng, a Harvard-trained political scientist, estimates that the PRC would need two-hundred thousand legal personnel. But since 1949 the PRC has turned out only several thousand law graduates, with only several hundred more graduating this year.

Despite these problems in Chinese legal reform, after thirty years of Communist rule the newly-enacted laws represent China's

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"Any of the following acts carried out for counterrevolutionary purposes shall be punished by fixed-term imprisonment of no more than five years, detention, control or deprivation of political rights...

2. Using counterrevolutionary slogans, leaflets or other means to spread propaganda inciting the overthrow of the regime of the dictatorship of the proletariat and the socialist system". *Jen-min jih-pao* (People's Daily) (7 July 1979), p. 4.

39. Art. 16 of the 1951 Counterrevolutionary Act provides: "Those who, with a counterrevolutionary purpose, commit crimes not covered by the provisions of this act, may be given punishments prescribed for crimes enumerated in this Act which are comparable to the crimes committed". Translated in Cohen, supra n. 16, p. 302.

40. Fox Butterfield, supra n. 38, p. A11. Qian Duansheng (Ch'ien Tuan-sheng) received his doctorate in government at Harvard University in the 1920s and later taught at major national universities in China during the Nationalist period. He served in several positions under the Communist rule but was purged in 1957. He was rehabilitated recently.
first serious effort to begin developing a comprehensive legal system. This alone is a landmark development in the history of the PRC. While there is no doubt that the great majority of the Chinese people would welcome the legal reform initiated by the Hua-Teng leadership, many people remain sceptical of the present leadership's sincerity in establishing a stable legal system. As a knowledgeable observer on Chinese affairs commented:

Decades of political uncertainty, characterized by numerous changes in Party line, power struggles and purges, have inculcated a sense of cynicism in young and old alike. Scepticism over the Party's true intentions and its ability to carry out its declared intentions is widespread.

It will not be possible to eradicate overnight or even in a year, the doubts and the suspicions built up over decades. Only when the Party shows, through concrete actions, that there is no justification for such feelings, will the people be convinced of their intent. In this sense, those in power in China are still on probation, and their credibility is still being questioned. 41

Document 1. Public Announcement: Intermediate People's Court of Ssumao Region, Yunnan Province 42

At present, the whole nation is victoriously engaged in deepening the struggle to expose and criticize the anti-Party "Gang of Four" and carry out the strategic policy decision to grasp the key link in running the country well, as put forward by the wise leader Chairman Hua. The people of all nationalities in the entire Region, under the leadership of provincial and regional Party [Committees], holding high the great red banner of Mao Tse-tung thought, have united in a spirited fight against the common enemy. The great struggle to expose and criticize the "Gang of Four" has been developing vigorously. The mass movements "In Industry learning from Taching" and "In Agriculture Learning from Tachai" have also been flourishing. As the dictatorship of the proletariat is still further consolidated, a brand new state of affairs is emerging in the socialist revolution and in socialist construction. The situation is exceedingly favorable and constantly improving. However, because of the interference and sabotage of the counterrevolutionary revisionist line of the "Gang of Four," a handful of class enemies of our society attempted

42. Translated from a document in personal possession of the author.
hopelessly to undermine, to the utmost, the great struggle of exposing and criticizing the "Gang of Four" by interfering with communication and transportation [facilities] and social order, and by sabotaging [the campaign] to grasp revolution and promote production, thus jeopardizing the people's life and property. With a view to safeguarding the deepening of the mass movement to expose and criticize the "Gang of Four," and the development of the mass movements, "In Industry Learning from Taching" and "In Agriculture Learning from Taichai", and so as to fully develop the force of the dictatorship of the proletariat and resolutely suppress all those counterrevolutionaries and criminals who endanger the socialist revolution and socialist construction, the Court, acting in accordance with the policy of the Party and the law of the state, and responding to the strong demand of the broad masses, has, with the approval of [its] superior, recently held sentencing rallies in Siumao, Lants'ang, Chingku, Chengyuan and Chingtung Wenhua Farm, and passed sentences on 17 criminals, including Chang Hsiang-tung.

[The sentences] are hereby announced as follows:

Ringleader of the Counterrevolutionary premeditated jail-breaking and escape clique Chang Hsiang-tung, alias Lo Pao-an, is a male, 28 years old, and a native of Chingku County, Yunnan Province. In 1972, he was sentenced to imprisonment for 20 years for homicide.

Principal of the counterrevolutionary premeditated jail-breaking and escape clique Lo Yang-ch'eng, alias Lo H'un, is a male, 57 years old, of landlord family background, and a native of Ching-tung County, Yunnan Province. He was twice sentenced for larceny to imprisonment and to reform through labor.

Principal of the counterrevolutionary premeditated jail-breaking and escape clique Li Yung-chia is a male, 25 years old, and a native of Weining County, Kueichou Province. He was sentenced to imprisonment for 20 years, as a current counterrevolutionary, for raping and persecuting an educated female youth.

The three above-mentioned criminals have persisted in their reactionary standpoint and resisted reform. In March 1975, at the incitement and promotion of Criminal Chang Hsiang-tung, a counterrevolutionary jail-breaking and escape clique was formed, with Criminal Chang acting as ringleader and Criminals Lo and Li as principals, and with Criminals Li Te-chung, Li Shu-hua, Hsu Ch'i-h-ch'un, and Wang Yung-ch'un participating. After thorough planning, they decided to escape from jail, cross the border and organize a counterrevolutionary armed force. They were all captured by our authorities.

(1) Ringleader Chang's thinking is extremely reactionary. He has organized numerous abortive jailbreaks since he was sent to reform-through-labor [camps]. After he was caught, his counterrevolutionary intention (to escape jail) never ceased to exist. Once again he took the lead in organizing the 10-person counterrevolutionary jailbreaking clique. He recruited members, made plans, prescribed counterrevolutionary discipline, disseminated counterrevolutionary views, viciously attacked the Party Central Committee,
and the Party's policy of struggling against the enemy, fought against the dictatorship of the proletariat, advocated the fascist "samurai" spirit, and incited his fellow inmates to oppose the dictatorship of the proletariat. Having committed such grave and heinous criminal acts, he is really a counterrevolutionary not worth reforming. In addition to his previous punishment, ringleader of the counterrevolutionary premeditated jailbreaking clique Chang Hsiang-tung is hereby sentenced, according to law, to death, to be executed immediately.

(2) Principal Lo Yang-Ch'eng came from a reactionary family and has persisted in his reactionary standpoint. He has repeatedly broken laws and committed crimes. Twice he was sentenced to reform through labor, and he attempted to escape many times. As a backbone element, of the [jailbreaking] clique, he was to serve as a guide in counterrevolutionary activities to be conducted in Chingtung Region after the planned jailbreak. He actively prepared things necessary for the escape. [In the prison], he used religious superstitions to disseminate among inmates counterrevolutionary ideas such as overthrowing the government and restoring capitalism, and he viciously attacked our Party and the socialist system as well as the great leader and teacher Chairman Mao. Having committed such grave and heinous criminal acts, he is not worth reforming. In addition to his previous punishment, principal of the counterrevolutionary premeditated jail-breaking clique Lo Yang-cheng is hereby sentenced, according to law, to death, to be executed immediately.

(3) Principal Li Yung-chia has, since he was sent to reform-through-labor [camps], persisted in his reactionary standpoint by resisting reform and repeatedly attempting escape. He, as a backbone element in the [jailbreaking and escape] clique, recruited three members to whom he assigned the job of preparing materials necessary for the escape. He also disseminated reactionary views attacking our Party Central Committee as well as the great leader and teacher Chairman Mao and other comrades in the Party Central leadership, and he also attacked the exceedingly favorable [present] situation. The criminal acts he committed are serious. In addition, to his previous punishment, principal of the counterrevolutionary premeditated jail-breaking and escape clique Li Ying-chia is hereby sentenced, according to law, to life imprisonment.

(4) Members of the counterrevolutionary premeditated jailbreaking and escape clique, Criminals Li Te-chung, Li Shu-hua, Tsai K'ai-yun, Yeh Ch'ao-lung, Chen Shou-hua, Hsu Chih-ch'un, Wang Yung-ch'un, are hereby leniently handled. No additional punishment is imposed.

Criminal Tu Chung-ch'u, who made meritorious contributions in reporting and exposing the clique, is hereby released prior to the conclusion of his sentence.

(5) Counterrevolutionary jailbreaker Ao Ch'e, alias A Lieh, is a male, 38 years old, of rich peasant family background, and a native of Menghai Chi County, Yunnan Province.
Criminal Ao Che's thinking is extremely reactionary. In 1959, he was sentenced to imprisonment for 20 years for counterrevolutionary homicide. Since being sent to reform-through-labor [camps], he has persisted in his reactionary standpoint by resisting reform. An additional imprisonment of 3 years was imposed on him as a result of his repeated attempts to escape. [Nevertheless,] his counterrevolutionary intention never ceased to exist. In 1976, he and two other inmates, including Li I-sung organized a jailbreaking and escape clique, intending to cross the border and engage in counterrevolutionary activities. After much planning, they broke jail on 30 May and escaped. On their way to the border, they stole properties of the masses. They were pursued, apprehended, and brought before the authorities. Criminal Ao Ch'e even recklessly intended to engage in counterrevolutionary revenge by attempting to kill [people]. He is really an unreservedly die-hard enemy of the people and is not worth reforming. His criminal acts are grave and heinous. Public wrath would not subside without his execution. In addition to his previous punishment, counterrevolutionary jailbreaker Ao Ch'e is hereby sentenced, according to law, to death, to be executed immediately.

(6) Counterrevolutionary revenge murderer Tuan Hsüeh-k'o, alias Tuan Shih-pao, is a male, 41 years old, and a native of Panp'o Commune, Chingku County, Yunnan Province.

Criminal Tuan's thinking is reactionary. He has been hostile toward our Party and socialist system. He has spread reactionary remarks, attacked the great leader and teacher Chairman Mao, cursed poor and lower-middle class peasants, and dreamed of restoring [capitalism]. He has cruelly beaten many commune members and [other] members of the masses, out of counterrevolutionary revenge. On 3 January 1976, with a big sword, he hacked 12 times on poor-peasant female commune member Li Chuan-t'i's limbs and belly. He also beat Li with a stick, as a result, Li was seriously injured and permanently disabled. He was seized in flagrante delicto by the masses and handed over to public security authorities. Showing considerable counterrevolutionary arrogance, he [even] stubbornly resisted arrest with his sword. Criminal Tuan's criminal acts are extremely grave and heinous. Public wrath would not subside without his execution. Counterrevolutionary revenge murderer Tuan Hsüeh-k'o is hereby sentenced, according to law, to death, to be executed immediately.

(7) Arsonist-murderer Tao I-sha is a male, 21 years old, and a native of Shanyun Commune, Lants'ang County, Yunnan Province.

Criminal Tao's thinking is reactionary. With evil moral character, he has committed arson and homicide. In 1975, he married Nan En-o, a poor peasant female youth of his commune. When the woman discovered Tao's savagery and unreasonableness in beating up the leader of the production brigade, she dissolved the marriage. Criminal Tao thereupon harbored resentment and decided to kill her. Early in the morning of 24 February 1976, Criminal Tao broke into Nan En-o's house, set fire to it, and killed the four persons inside. Nan En-o, her mother Mich En-nuan and her younger sisters
Nan T'uan and I-chin, were hacked and burned to death. He was caught in *flagrante delicto* by the masses and brought before the authorities. Criminal Tao, by cruelly setting fire [to a house] and killing [people] has committed serious criminal acts in a most evil manner. His crime is extremely grave and heinous. The people are extremely indignant. Public wrath would not subside without his execution. Arsonist-murderer Tao I-sha is hereby sentenced, according to law, to death, to be executed immediately.

(8) Robber-murderer Lo Chung-hsing, alias Lo Ta-he, is a male, 27 years old, and a native of Ch'ienliu Commune, Lants'ang County, Yunnan Province.

Criminal Lo craved the easy life and disliked working. He has never engaged in legitimate employment. He started with pilferage, and pickpocketing and ended with robbery and murder. In 1972, Criminal Lo twice pried open the door locks [of state warehouses, broke into them], and stole the state's and the collective masses' monies, properties and food. In 1974, he roamed across the border into Meng-lien to engage in activities such as speculation, profiteering and stealing. On 16 January 1975, Criminal Lo left Meng-lien for home with a fellow native Yunnanese, Li Ping-an. On the way, Lo had evil thoughts at the sight of the riches carried by Li and killed him and looted his property in the early morning hours of 18 January. Criminal Lo, by robbing [Li of his property] and killing [him], has committed extremely grave and heinous crimes. The people are extremely indignant. Public wrath would not subside without his execution. Criminal Lo is hereby sentenced, according to law, to death, to be executed immediately.

(9) Murderer K'ang Tsung-fa, alias K'ang Ta-he, is a male, 31 years old, of rich-peasant background, and a native of Mengpan Commune, Chingku County, Yunnan Province.

Criminal K'ang has serious feudalistic and superstitious thinking. He would pretend to be a ghost and spirit and delude the public and undermine the campaign to grasp revolution and promote production. The more serious and evil of his activities was to commit murder. On 10 October 1973, he choked his son K'ang Er to death. On 7 May 1975, he choked his daughter K'ang San to death. On 13 May 1975, he killed his younger brother K'ang Tsung-hsiang. Having committed these crimes, he fabricated evidence on the spot in order to deceive the masses. During the investigation, he stubbornly denied all the charges, attempting to impute the blame to others. Criminal K'ang, by cruelly killing three persons, committed serious criminal acts. His crime is extremely grave and heinous. The people are extremely indignant. Public wrath would not subside without his execution. Murderer K'ang Tsung-fa is hereby sentenced, according to law, to death, to be executed immediately.

(10) Revenge murderer Feng Ai-ming, alias Feng I-nan, is a male, 39 years old, and a native of T'ienpa Commune, Changyuan County, Yunnan Province.
Criminal Feng has serious bourgeois thinking and evil moral character. In day-to-day life he used to clash with Liao Hsing-ming, a fellow member of his [production] brigade, and has been at feud with him. When Liao was elected leader of the production brigade, Criminal Feng harbored even more resentment and decided to kill Liao. On 24 March 1976, Feng, with sticks and rocks, beat Liao to death. Criminal Feng committed murder out of revenge. His criminal act is extremely grave and heinous. The people are extremely indignant. Public wrath would not subside without his execution. Revenge murderer Feng Ai-ming is hereby sentenced, according to law, to death, to be executed immediately.

The Party’s policy (towards criminals) has always been one of Leniency for those who confess; severity for those who resist. The ringleader must be punished; the coerced followers may be spared; those who establish merits will be rewarded. We severely warn a handful of counterrevolutionary and criminal elements. : all of your sabotage and disturbance is doomed to fail. To surrender to the people and admit your guilt, to give up evil and return to virtue, and to turn over a new leaf is your only way out. If you obstinately adhere to your error, stubbornly put up resistance, and continue your evil acts, you shall be subject to severe punishment by the dictatorship of the proletariat. The revolutionary people of all nationalities in the Region should hold still higher the great banner of Chairman Mao, closely follow the wise leader Chairman Hua, and resolutely carry out the four combat missions of (the policy) to grasp the key link in running the country well. In deepening the great struggle to expose and criticize the Wang-Chang-Chiang-Yao “Gang of Four” [we should] freely mobilize the masses to report and expose the destructive activities of reactionaries and bad elements, thus waging vehement attacks against a handful of class enemies and capitalist forces. [Let us] struggle hard to consolidate and strengthen the dictatorship of the proletariat, to develop an exceedingly favorable situation, and to achieve an even greater victory in socialist revolution and construction.

*Unite together and achieve an even greater victory!*

(Seal)

13 May 1977,
Document 2. Official explanation on Criminal Law and Criminal Procedure Law, presented by Peng Zhen, Director of Commission for Legal Affairs of National People's Congress Standing Committee, at the Second Session of the Fifth National People's Congress, 26 June 1979\(^3\)

*The Criminal Law*

Criminal law is one of the basic laws of the country. The present draft of the Criminal Law is prepared with Marxism-Leninism-Mao Zedong Thought as its guide and in the light of our concrete experience in exercising the people’s democratic dictatorship led by the proletariat and based on the worker-peasant alliance, that is, the dictatorship of the proletariat. Its function is to “combat all counter-revolutionary and other criminal offences by inflicting penalties,” and thereby protect the interests of the people and the state, consolidate and promote the lively political situation of stability and unity, and ensure the smooth advance of socialist modernization.

(1) One of the main purposes of the Criminal Law is to protect the public property of our socialist society and the legitimate personal property of its individual citizens. The draft provides that property owned by the whole people and property collectively owned by the working people shall be protected. At the same time, all legitimate private property shall be protected. This includes citizens’ lawful income, savings, houses and other means of livelihood as well as such means of production as small plots of land for personal needs, livestock and trees lawfully owned or used by individuals or families.

(2) The draft Criminal Law explicitly provides that “the right of person, democratic rights and other rights of citizens shall be protected against unlawful infringement by any person or institution.” It also provides that extortion of confessions through torture is strictly prohibited; that assembling crowds for “beating, smashing and looting” is strictly prohibited; that unlawful incarceration is strictly prohibited; and that frame-ups on false charges are strictly prohibited. Whoever fabricates facts to frame another person (even a convict) shall be held criminally accountable in the light of the nature, seriousness and consequences of the false charges as well as with the criteria for imposing penalties. During the Cultural Revolution, the widespread practice of extortion of confessions through torture, the “beating, smashing and looting,” and the unlawful incarceration and persecution on false charges perpetrated by Lin Biao and the gang of four led to extremely grave consequences with numerous cases of people being unjustly, falsely and wrongly charged or sentenced. Thus, the provisions in the Criminal Law declaring that these crimes shall be “strictly prohibited” accord with the wishes of the masses and are absolutely necessary.

The draft of the Criminal Law stipulates that "whoever insults another person by violent or other means, including the use of 'big-character posters' or 'small-character posters' or fabricates facts to libel another person, and to a serious degree, shall be sentenced to imprisonment for not more than three years or to detention." It goes without saying that we must continue to adhere to the principle of "three don'ts" (don't pick on people, don't put political labels on people and don't wield big sticks) and we must defend the right to criticize and counter-criticize in work, to refute opposing views in discussion, and to criticize and raise suggestions about leadership and work — all of which must be strictly distinguished from libel and insults. The state does not permit suppression of criticism and democracy in the name of the above provision of the law nor does it permit insults and libel against another person in the name of democracy.

(3) The draft Criminal Law is spearheaded at counterrevolutionary and other criminal acts. It stipulates relatively heavy penalties for major actively counter-revolutionary crimes and for other flagrant criminal offences which seriously endanger society, or which incur great popular indignation. In counterrevolutionary cases committed in a particularly flagrant manner and causing particularly serious harm to the state and the people, and in cases of homicide, robbery, arson, intentional flooding, criminally-caused explosion and poisoning, etc., which results in grave harm, the law stipulates that the death penalty may be meted out.

In order to guard against misuse of criminal charges, the draft Criminal Law stipulates in clear-cut terms that counterrevolutionary offences are limited to acts "undermining the People's Republic of China with the aim of overthrowing the political power of the dictatorship of the proletariat and the socialist system." There are also explicit provisions in the draft concerning other types of criminal offences. As regards those offences not clearly stipulated in the draft, tight restrictions are placed on trial by analogy. It is stipulated that analogous applications must all have the approval of the Supreme People's Court, without exception.

(4) At present the death penalty cannot and should not be abolished in our country, but it should be as rare as possible. Back in 1951, the Central Committee of the Communist Party of China and Comrade Mao Zedong repeatedly advocated minimum use of death penalties. Now that almost thirty years have passed since the founding of the People's Republic, and particularly with the increasing stability and unity in our domestic situation since the smashing of the gang of four, the draft Criminal Law therefore includes fewer articles relating to the death penalty.

In order to put the principle of fewer death penalties into effect and do our utmost to avoid the meting out of irreversible penalties in cases involving unjust, false or wrong charges, the present draft re-institutes the provision that the death penalty shall be inflicted only by the judgement or with the approval of the Supreme People's Court. The provisions on death penalty with reprieve, peculiar to China, are kept in this draft.
(5) The Criminal Law should, on the one hand, fully protect the people in exercising their democratic rights, and on the other, help to effectively maintain public order, the order in production, work, education, scientific research, and the daily life of the people. Hence, the draft stipulates that "disturbance of public order by any person by any means shall be prohibited." We should definitely not give any counterrevolutionary, enemy agent, spy or other enemy of the people any freedom or right to endanger the people or sabotage the cause of socialism.

(6) The task of the Criminal Law is limited to dealing with criminal offences. Infractions which do not violate the Criminal Law should be dealt with under Party or administrative discipline or by civil law, government decrees, or laws governing economic affairs and must not be considered criminally liable. Therefore, such infractions are not enumerated in the Criminal Law.

(7) The draft stipulates that the Criminal Law is to come into force on the date of its promulgation (1 January 1980). All infractions committed and cases left over before the promulgation of this law shall be dealt with in accordance with the consistent principles, policies, laws and decrees of the Party and state in the past.

The Law of Criminal Procedure

The Law of Criminal Procedure is designed to guarantee the correct enforcement of the Criminal Law by means of judicial procedure. Five points call for explanation:

(1) The functional relationship between the public security organ, the procuratorate and the court involves their joint endeavour, under the leadership of the Party, to safeguard the socialist legal system in accordance with the provisions of the Constitution, the Criminal Law and other laws; each has its own functions to perform while all serve to complement and restrict each other. Such a relationship ensures the dealing of accurate blows at counterrevolutionary and other criminal offences in the interest of the people. The draft Law of Criminal Procedure stipulates, from the procedural point of view, the powers and functional relationship of the three organs. The public security organ is in charge of investigation, provisional apprehension, and inquiry in cases involving criminal offences. The people's procuratorate approves arrests, and procuratorial proceedings (including investigation) and institutes prosecution. If the public security organ differs from the procuratorate on a decision made by the latter, it may request reconsideration of the decision. The court is responsible for trying cases and sentencing offenders, and the procuratorate may lodge a protest against court judgements which it contests.

(2) In the draft of the Law of Criminal Procedure it is provided that, apart from the public security organ, the procuratorate and the court which, in accordance with the law, exercise respectively the rights of investigation,
provisional apprehension, inquiry, approval of arrests, procuratorial activity, prosecution and trial, no other state organs, people's organizations or individuals have the right to exercise such powers. At the same time, in conformity with the principle that the judiciary organs should maintain appropriate independence in their work, the draft Law of Criminal Procedure stipulates that in handling a case, all courts, procuratorates and public security organs "must base themselves on facts and take the law as the yardstick." This is an obvious principle. It is specially reaffirmed this time in order to prevent the occurrence of indiscriminate arrests and detentions, frame-ups and encroachments on the right of person and the democratic and other rights of the cadres and the masses.

(3) The accused, apart from having the right to defend himself, has the right to entrust, according to his own will, a lawyer, a relative, a guardian, a people's organization or an advocate recommended by the institution to which he belongs, to plead on his behalf. If the accused has not called in an advocate, the people's court has the obligation to designate one for him. The duty of the advocate is to defend the legitimate rights and interests of the accused and to help the court to avoid making errors in the trials.

(4) False charges and perjury are strictly guarded against by judicial procedure. In view of the fact that there were abominable cases of false charges and perjury some years ago, false charges, perjury and libel are designated as crimes in the draft of the Criminal Law, and in addition, the draft of the Law of Criminal Procedure provides that the courts, the procuratorates or public security organs, upon accepting an accusation or a report on offence, should clearly explain to the accuser or offence-reporter the legal accountability for false charges and perjury and advise him to refrain from all falsification. When questioning a witness, they must instruct him to be truthful in evidence and testimony and explain if he intentionally gives false evidence or withholds evidence he is legally liable. The law also provides that the court may take action against any witness who, in its opinion, has intentionally falsified or withheld evidence.

(5) The draft of the Law of Criminal Procedure stipulates that "stress should be laid on evidence, investigation and study and one should not be too ready to believe confessions." Attention should be paid to collecting evidence both pro and con so as to be able to prove whether or not the accused is guilty and whether or not his offence, if any, is grave in degree. "Extortion of confessions by torture and collection of evidence by threat, enticement, deceit or any other illegal means are strictly forbidden." "Evidence can be used as the basis of a judgement only after it has been verified." "The testimony of a witness becomes evidence for a final decision only after the public prosecutor and the injured party on the one hand and the accused and his counsel on the other, have conducted interrogation and cross-examination of that witness and other witnesses from both sides and the testimony has been
verified.” The draft also stipulates that the accused shall not be convicted and sentenced without evidence other than his confession, and that he shall be convicted and sentenced where there is adequate evidence even without his confession.

Document 3. Table of Contents and Selected Articles of Criminal Law of the People’s Republic of China, adopted by the National People’s Congress on 1 July 1979 and entered into force on 1 January 1980

Part One. General Principles

Chapter 1. Guiding Ideology, Function and Scope of Application

Article 1. The criminal law of the People’s Republic of China is enacted under the guideline of Marxism-Leninism-Mao Tse-tung thought, on the basis of the Constitution, in accordance with the policy of combining punishment with leniency and the actual experience and concrete experience gained by the people of all nationalities in our country in exercising the people’s democratic dictatorship, that is, proletarian dictatorship led by the proletariat and based on the alliance of workers and peasants, and in carrying out socialist revolution and socialist construction.

Article 2. The function of the Criminal Law of the People’s Republic of China is to use punishment to struggle against all counterrevolutionary and other criminal acts, defend the dictatorship of the proletariat, protect the socialist property of the whole people and the property collectively owned by the laboring masses, protect the legitimate property of the private citizens, protect the personal rights, democratic rights and other rights of the citizens, maintain public order and order in production, work, teaching, scientific research and the life of the people and masses and insure the smooth progress of the socialist revolution and socialist construction.

Article 9. This law shall enter into force on 1 January 1980. Acts committed after the founding of the People’s Republic of China and before the entry into force of this law which were not considered as offenses under the law, decrees and policies at that time shall be dealt with according to the law, decrees and policies at that time. Those which were considered offenses under the law, decrees and policies at that time and are punishable according to Section 8 of Chapter IV of the General Principles of this law shall be punished in accordance with the law, decrees and policies at that time. However, this law shall be applied if an act is not considered an offense, or if a lighter sentence shall be imposed under this law.

44. Translated from Jen-min jih-pao (Renmin Ribao in Pin-yin) (7 July 1979), pp. 1, 3, 4.
Chapter II. Offenses
Section 1. Offenses and Criminal Punishment.

Article 10. Any act which endangers state sovereignty and territorial integrity, jeopardizes the regime of the dictatorship of the proletariat, undermines socialist revolution and socialist construction, disrupts public order, encroaches upon the property of the whole people or the property collectively owned by the laboring masses, encroaches the legitimate property owned by private citizens, infringes upon the personal, democratic and other rights of the citizens or any other act which endangers society and is punishable according to law is an offense. However, if the offense is obviously a minor one and its harm is negligible, it shall not be considered as a crime.

Section 2. Preparation to Commit a Crime, Attempted Crime and Incomplete Crime

Section 3. Joint Offense

Chapter III. Punishment
Section 1. Types of Punishments

Article 27. Punishments are divided into major and supplementary categories.

Article 28. Major punishments are as follows:

(1) Control;
(2) Detention;
(3) Fixed-term imprisonment;
(4) Life imprisonment; and
(5) Death penalty.

Article 29. Supplementary punishments are as follows:

(1) Fines;
(2) Deprivation of political rights; and
(3) Confiscation of property.

In certain cases only a supplementary punishment shall be imposed.

Article 30. Deportation may be applied as an exclusive or supplementary punishment to a foreigner who has committed an offense.

Article 32. Minor offenses which do not require punishment may be exempted from criminal sanctions. However, the offender may be reprimanded or ordered to mend his ways, apologize and pay compensation or be subjected to administrative disciplinary measures from the department in charge in accordance with the seriousness of the case.

Section 2. Control

Article 33. The period of control is to be not less than three months and not more than two years.

Control shall be imposed by the people's court and is to be executed by the public security organs.

Article 34. Criminal elements sentenced to control shall observe the following rules during the period of executing control:
(1) Observe laws and decrees, submit to mass supervision and actively take part in collective labor production or work;
(2) Regularly report their activities to the organs executing control; and
(3) Report to organs executing control for approval of change of residence or travel.

Criminal elements sentenced to control shall receive equal pay for equal work during the period of laboring.

Section 3. Detention
Section 4. Fixed-term Imprisonment and Life Imprisonment
Section 5. Death Sentence

Article 43. The death sentence shall be imposed only for the most heinous criminal elements. In case of a criminal element who should be sentenced to death, if immediate execution of the death sentence is not mandatory, two-year suspension of execution may be announced with the death sentence and the criminal shall be placed under reform through labor during that period to see if the criminal shows evidence of repentence.

Except for those death sentences rendered by the Supreme People's Court, all others shall be submitted to the Supreme People's Court for examination and approval. Suspension of execution of the death sentence may be pronounced or approved by the Higher People's Court.

Article 46. If a criminal shows evidence of repentence during the period of suspension of execution of the death sentence, his/her punishment shall be commuted to life imprisonment at the end of the two-year period. If he/she demonstrates definite signs of repentence and performs meritorious services, his/her sentence shall be commuted to a fixed term imprisonment of no less than fifteen years and no more than twenty years at the end of the two-year period. If he/she seriously resists reform and the evidence of this is verified, the death sentence shall be carried out with the ruling or approval of the Supreme People's Court.

Section 6. Fine
Section 7. Deprivation of Political Rights
Section 8. Confiscation of Properties

Chapter IV. The Concrete Application of Punishments

Section 1. Measurement of Punishment
Section 2. Recidivists
Section 3. Voluntary Surrender

Article 63. Offenders who voluntarily surrender after committing a crime shall be dealt with leniently. Those who commit minor offenses may be given reduced punishment or be exempted from punishment. Those who commit more serious offenses may be given reduced punishment or be exempted from punishment if they produce evidence of meritorious service.

Section 4. Punishment for Several Crimes at the Same Time
Section 5. Probation
Section 6. Reduction of Sentences
Section 7. Parole
Section 8. Prescription

Chapter V. Other Provisions

Article 79. Those who commit crimes not explicitly defined in the specific parts of the criminal law may be convicted and sentenced, after obtaining the approval of the Supreme People’s Court, according to the most similar article in this law.

Part II. Specific Parts

Chapter I. Counterrevolutionary Offenses

Article 80. Counterrevolutionary offenses are acts done for the purpose of overthrowing the political power of the dictatorship of the proletariat and the socialist system and endangering the People’s Republic of China.

Article 98. Those who organize or lead a counterrevolutionary group shall be sentenced to fixed-term imprisonment of not less than five years. Those who actively participate in a counterrevolutionary group shall be sentenced to a fixed term imprisonment of no more than five years, detention, control or deprivation of political rights.

Article 99. Those who organize or utilize feudal superstitious beliefs, secret societies or sects to carry out counterrevolutionary activities shall be sentenced to a fixed-term imprisonment of not less than five years. If the situation is not serious they shall be sentenced to a fixed-term imprisonment of no more than five years, detention, control or deprivation of political rights.

Article 102. Any of the following acts carried out for counterrevolutionary purposes shall be punished by fixed-term imprisonment of no more than five years, detention, control or deprivation of political rights, and the major elements or those whose criminal acts are serious shall be punished by fixed-term imprisonment of not less than five years:

1. Inciting the masses to resist or undermine the implementation of the law or decrees of the state; and
2. Using counterrevolutionary slogans, leaflets, or other means to spread propaganda inciting the overthrow of the regime of the dictatorship of the proletariat and the socialist system.

Article 103. With the exception of Articles 98, 99 and 102, counterrevolutionary offenses provided in this chapter that are seriously endangering the state and the people or the situation of a particularly heinous nature may be given the death sentence.
Chapter II. Offenses of Endangering Public Security

Chapter III. Offenses of Undermining the Socialist Economic Order

Chapter IV. Offences of Infringing the Personal Rights or Democratic Rights of the Citizens

   Article 140. Anyone who forces a female to engage in prostitution shall be sentenced to a fixed term imprisonment for not less than three and no more than ten years.

Chapter V. Offenses of Encroaching Upon Properties

Chapter VI. Offenses of Obstructing the Governing of Social Order

Chapter VII. Offenses Against Marriage or Family

   Article 181. Anyone who cohabitates with or knowingly marries the spouse of an active military serviceman shall be sentenced to imprisonment for not less than three years.

Chapter VIII. Malfeasance

(The last article is Article 192)

Notes

A shorter version of this paper was delivered at the Eighth Sino-American Conference on Mainland China, Institute for International Studies, University of South Carolina, 17-20 May 1979. The revision and expansion of this paper was done while the author was a fellow at the Institute for Sino-Soviet Studies of the George Washington University, July-August 1979. All translations of Chinese laws or materials not otherwise credited are the author's. Document I was translated with the assistance of Mr. Ying-jeou Ma.

Note on Transliteration and Transcription

   Until 1 January 1979, all PRC English publications and translations used the Wade-Giles system for transliteration of Chinese names, places and publications. Since then, the Chinese have switched to the Pin-yin (transcription) system. In this paper, the Wade-Giles system is generally used, with the exception of those Chinese names, places and publications appearing in Chinese publications in English after 1 January 1979. If a Pin-yin transcription is used, the equivalent Wade-Giles transliteration appears in parentheses.
云南省思茅地区中级人民法院
公 告

当前，在全国深入开展揭批“四人帮”反党集团的斗争，实现英明领袖华主席提出的抓纲治国战略决策的胜利形势下，全党各族人民在党中央、国务院带领下，高举毛泽东思想伟大红旗，振作精神，团结一致，团结战斗，彻底批判“四人帮”的伟大斗争正在迅猛发展。社会主义革命和社会主义建设出现了新的春天，形势大好，越来越好。但是，由于“四人帮”反革命修正主义路线的干扰和破坏，社会上一些干部群众进行卑劣勾当，竭力扼杀批判“四人帮”的伟大斗争，破坏安定团结，危害人民生命财产安全。为了保卫党“四人帮”群众运动深入发展，保卫“工农兵大跃进”、“农业学大寨”的群众运动，充分发挥无产阶级专政的威力，坚决镇压一切危害社会主义革命和社会主义建设的反革命分子和刑事犯罪分子，必须根据党的政策和国家法律以及广大人民群众的强烈要求，依法从重从快，最近分别在思茅、澜沧、景谷、思南和思茅东区农场等地，召开审判大会，依法判处张向东等十二名罪犯，现公布如下：

反革命罪犯张向东，男，28岁，云南省景谷县人，一九七二年因杀人罪被判刑二十年。

反革命罪犯杨成，男，37岁，来自云南，云南省景谷县人，因盗窃罪，两次被判刑劳改。

反革命罪犯张向东，男，25岁，云南省景谷县人，一九七二年因抢劫罪被判刑二十年，

上述三犯，坚持反动立场，抗拒改造。一九七五年三月以来，在司法局张向东处非法拉拢下，组成以张向东为首的抢劫集团，李玉清、李克等十一人，有组织、有预谋地进行武装反抗，制造反革命事变，严重破坏社会秩序和人民群众生命财产安全。为了保卫党的“工农兵大跃进”、“农业学大寨”的群众运动，充分发挥无产阶级专政的威力，坚决镇压一切危害社会主义革命和社会主义建设的反革命分子和刑事犯罪分子，必须根据党的政策和国家法律以及广大人民群众的强烈要求，依法从重从快，最近分别在思茅、澜沧、景谷、思南和思茅东区农场等地，召开审判大会，依法判处张向东等十二名罪犯，现公布如下：
反革命侦探越狱逃跑罪犯李德伦、李国华、尹建云、孙超龙、陈守华、徐家钦等七名罪犯犯从宽处理，不予加刑。

对检举揭发领导有功表现的犯人杜忠卿，给予提前释放。

反革命罪犯越狱逃跑罪犯，又名阿来，男，28岁；富顺县人，云南省富顺县人。

罪犯何发中思想顽固，自九月九日周恩来未押送至刑场，又于九月二十日，反革命罪犯李德伦等七名罪犯犯从宽处理，不予加刑。

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