

Criminal Justice in Post-Mao China: Analysis and Documents, by Shao-Chuan Leng

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CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS. By Shao-chuan Leng, with Hungdah Chiu. Albany, N.Y.: State University of New York Press, 1985, 319 pp., \$39.50 (cloth); \$19.50 (paper).

Shao-chuan Leng, Professor of Government and Foreign Affairs at the University of Virginia in Charlottesville, is the author of numerous articles and books on Chinese law, many of which deal with criminal process. Among them is *Justice in Communist China*, published in 1967, which deals with the judicial system of the People's Republic of China (PRC) during the first twenty years of its existence. Hungdah Chiu is Professor of Law and Director of East Asian Legal Studies at the University of Maryland School of Law, and has also written extensively on Chinese legal issues.

The aim and organization of *Criminal Justice in Post-Mao China* are clearly outlined in the introductory first chapter. The authors seek to provide a basic survey of the "development, organization, and functioning of the criminal justice system" of the present-day PRC. They include in their discussion formal aspects of the system, such as the court, the procuratorate, lawyers, and criminal procedure, as well as less formal but equally important features, such as extrajudicial sanctions. They disclaim any attempt to give a comprehensive description of all Chinese criminal offenses. They have drawn primarily upon published Chinese-language materials, supplemented by published Western sources and interviews with Chinese lawyers.

The book is divided into two main parts. Part I, in seven chapters, is an analysis and interpretation of China's current criminal justice system. Chapter One, as noted above, introduces the themes and structure of the book. Chapter Two provides the reader with background information about the PRC's legal system under Mao's leadership. Chapter Three sets forth the reforms enacted during the post-Mao period; Chapter Four deals more specifically with the restructuring of judicial institutions as a result of the reforms. Criminal process under the new Law of Criminal Procedure and crime and punishment are dealt with in Chapters Five and Six, respectively. In Chapter Seven, the authors present their conclusions about the present system of justice in the PRC and its future prospects.

Part II of *Criminal Justice in Post-Mao China* is a collection of sixteen documents, fourteen of which are laws. Some of the items are excerpts. They cover a broad period, from 1951 to 1983. As a result of the chaotic situation in China during the 1960s and early 1970s, there are no documents included from that time. Excerpts from the 1982 Constitution also constitute one of the items included.

The authors have been generous with supplementary special features. A Wade-Giles to Pinyin Conversion Table has been provided at the beginning of the book. There is a glossary of legal terms following the "Documents" section, and there are tables showing the number of laws, decrees, and other documents adopted in the PRC during various periods, from 1949 to 1983. The authors have also provided an index and a selected bibliography. References to Chinese sources are in English. That is to say, titles of articles are translated and the journal names or book titles are romanized. A translation of the journal titles precedes the bibliographic entries; book titles are translated in parentheses following the romanized title.

Criminal Justice in Post-Mao China contributes to the field of law in general, and to Chinese law in particular in several important ways. The authors have made extensive use of Chinese legal materials, many of which have not been translated into English. This is of great benefit to American legal specialists interested in Chinese law who do not have access to books and articles written in the original and who therefore remain unaware of these items unless they appear in translation. Thus, while the authors have cast their net wide, drawing upon a variety of sources, they have the additional advantage of being able to use original material.

Second, most of the handful of American China law specialists are busy practicing law on a full-time or part-time basis, and are involved primarily with clients interested in doing business with the PRC. This leaves them little time for other than practical pursuits, such as writing articles on the foreign trade laws of China, and the like. It is highly commendable, therefore, that Professors Leng and Chiu have devoted their time and energy to this much-needed study of the criminal process.

Third, this is the first book-length study of criminal justice in the post-Mao era. It will therefore be of interest to students of criminal process and human rights in the PRC, and to students of comparative law in general. Given the rapid pace of change in China's legal system, the book will help provide a good vantage point from which to view some of the new developments.

Finally, there are a number of law schools in the United States that offer courses on Chinese law. These include, to mention a few, Harvard, Columbia, Berkeley, U.C.L.A., Washington University, the University of Maryland, and George Washington University. There is, however, a lack of published teaching materials that deal with issues and aspects of Chinese law. *Criminal Justice in Post-Mao China* will help fill this gap. As was mentioned above, it covers more than just criminal process in China; it has discussions of related topics as well, such as legal education, legal publications, and judicial institutions.

Despite the obvious and very real contribution made to the legal field by Leng and Chiu's new work, there are a few minor comments to be

added. Some important source materials obtained by Taiwan from the mainland, such as "The Chinese Communist Party Central Committee Directive on Strengthening of Political-Legal Work,"¹ should have been used in connection with the authors' discussion of judicial independence and the role of the Chinese Communist Party in the judicial decision-making process.

In discussing lawyers and the issue of privileged information or confidentiality, the authors translate the expression for the closest Chinese equivalent, *geren yinsi*, as "personal secrets"² or "personal secrets of individuals."³ A similar translation has been offered by another prominent American expert on Chinese law, Professor Jerome Alan Cohen.⁴ The term should, however, really be rendered as "shameful personal secrets" or the like to give something of the moral connotation of the Chinese original.

Throughout *Criminal Justice in Post-Mao China*, the term *tiaoli* is translated as "Act." This translation is not unacceptable, but the authors should have pointed out the difference between *tiaoli* and *fa* (law). This reviewer personally prefers the use of a term other than "Act" for translating *tiaoli*. Admittedly, the Chinese themselves are not very consistent in their use of these terms. If a proposed law is adopted by the National People's Congress (NPC), it invariably becomes *fa*; according to the Constitution of the PRC, one of the roles of the NPC is to adopt basic laws, major pieces of legislation that are to endure for a long time. If a proposed piece of legislation is adopted only by the Standing Committee of the NPC, however, it is generally referred to as *tiaoli*, but sometimes it may be called *fa*. Importance and permanency would seem to be the determining factors here: if it is a more important item and one designed to prevail for a longer time, it is called *fa*; if it is of lesser status, it is called *tiaoli*. To confuse matters even more, sometimes *tiaoli* can be issued by the State Council as well.

One final point should be made in regard to the regulations on counter-revolution. In most civil law countries, a special law is superior to the general law covering a given field. The authors, quoting Harold Berman and others, note that "the Chinese Criminal Law contains some vague and sweeping provisions on 'counterrevolution,' reminiscent of the 1926 Russian Criminal Code."⁵ They go on to state that "[a]lthough the new Law is

1. Directive No. 5, Jan. 13, 1982, in THE YEARBOOK OF CHINESE COMMUNISM (1983-84) (in Chinese).

2. S. LENG, CRIMINAL JUSTICE IN POST-MAO CHINA 73 (1985).

3. *Id.* at 272-73 (Document 14, article 7).

4. Professor Cohen's translation of *geren yinsi* is "individual confidences." See *China's New Lawyer's Law*, 66 A.B.A.J. 1534 (1980).

5. S. LENG, *supra* note 2, at 125.

definitely an improvement over the old statute on counterrevolution, its inclusion of the above provision [Article 102, on the use of slogans and leaflets to spread propaganda], nevertheless, cannot but cause some concern in view of the past and potential abuses."⁶ While the authors refer to "the old statute," *i.e.*, the Act of the People's Republic of China for Punishment of Counterrevolution, 1951, in footnote 1 of this chapter (Chapter Six), and reproduce the Act in Document 1 of their documents section, they fail to point out clearly that this statute has never been repealed. The question remains, therefore, as to which law would ultimately apply — the special statute covering the punishment of counterrevolutionaries, or the relevant specific provisions of the new Criminal Code. A discussion of this issue under the section on counterrevolutionary crimes in Chapter Six would have been a helpful and instructive addition.

The contribution that *Criminal Justice in Post-Mao China* makes to the study of Chinese law by far outweighs these insignificant oversights. It is an objective, timely work, and one that contains surprisingly few errors in comparison with other similar works. I heartily recommend it, therefore, not only to newcomers in the field but also to China scholars already familiar with criminal process in the PRC.

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6. *Id.*

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