LEGAL REFORMS IN THE AFTERMATH OF TIANANMEN SQUARE

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I. Introduction

More than a year has passed since the Pro-Democracy Movement of 1989 and the harsh government crackdown on June 3-4 in Tiananmen Square. In looking at the legal picture in China since that time, there are a number of issues that have been much talked about. There is the questionable validity by which martial law was imposed on parts of Beijing on May 20, 1989. There is the failure of the central government to follow the 1979 criminal procedure code in its prosecution of those involved in the demonstrations, including arbitrary arrests, warrantless arrests and searches, secret trials, and the imposition of administrative rather than criminal sanctions. These actions of the

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4. In 1989, the people's courts handled a total of 392,564 criminal cases of the first instance, an increase of 25.3% over the previous year, and passed judgment on 482,658 accused people, marking an increase of 30.88% over the prior year. Of this number, 34.24% were sentenced to imprisonment of 5 years or longer, to life imprisonment, or to death (including death with reprieve), while 64.18% were sentenced to imprisonment of a term less than 5 years or to detention and control. See Ren Jianxin, "Supreme People's Court Report", Renmin Ribao, (People's daily), 10 April 1990, 2-3.
Chinese government have led to an outcry that China is violating not only its own laws, but the human rights laws of the international community as well.

There is, however, a third and equally critical area for examination, that is, the direction of legal reforms in the aftermath of Tiananmen Square. The decade from 1978 to mid-1989 was a period of marked legal reform for the People's Republic of China. The P.R.C. government sought during that decade to recover from the chaos of the Cultural Revolution, and took steps to reestablish its judicial system. Numerous laws and regulations were passed as the Deng government voiced the need for "rule by law, not by man". The question is, what has happened to this momentum of legal activity since June 4th, 1989.

To be sure, intellectuals calling for major reforms are silent for the moment, but what voices are coming through the legislative activities and pronouncements of the Chinese government? Since June 4 1989, the National People's Congress (NPC) and the State Council have remained active in enacting new laws and regulations. This paper will survey the laws and regulations promulgated or discussed in the immediate months after Tiananmen Square. The paper will also address the role that the legal system has played in the aftermath of Tiananmen Square, and the language now used in the discussion of law and legal reform.

In considering these developments, it is important to acknowledge that laws in China, though promulgated, do not all get implemented. While this article will not attempt to assert how well the new laws are being implemented in China, it will examine the newly enacted laws to assess what messages the Chinese government is trying to send. Indeed, the P.R.C. government continues to use law selectively. This selective use of law is not a new development in China, but rather reflects the P.R.C.'s legal philosophy which defines law as the state's wills and rights as the state's creation.6 In the critical year 1989-1990, as the


6. Louis Henkin, "The Human Rights Idea in China", in Human Rights in Contemporary China, (R. Randle Edwards, Louis Henkin & Andrew Nathan, eds.), New York 1986, 35-38. This concept of rights was also prevalent during the brief Guomindong period, when the influence of legal positivism via Japan and Germany was strong. Hence, an accepted view of law and rights during the Guomindong period was "constitutional rights should not be based on the theory of natural rights . . . beyond controversy that any enforceable right is the creation of the law, only