The New Criminal Law of the People's Republic of China

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On 1 July 1979 at the second session of the Fifth National People's Congress (NPC), the draft of the new criminal law was endorsed. It has come into force on 1 January 1980, and is the first comprehensive law of its kind since all laws of the former government of China were abolished in 1949.¹ Since the establishment of the People's Republic of China, several laws governing specific crimes have been promulgated, such as the Law on the Punishment of Counterrevolutionary Activities of 1951, the Law on the Punishment of Corruption of 1952, the Law on Narcotics of 1950, and the Law on the Undermining of the Monetary System of 1951. The Marriage Law of 1950 also contains some penal provisions. A more general law was the Law on Punishments aimed at Ensuring the Maintenance of Public Peace (also translated as the Security Administration Punishment Act (SAPA)) of 1957,² which covered minor offenses. This was the main body of formal criminal law, though it does not mean that other offenses were not punished. There was a great number of ordinances, regulations, "methods of dealing with", directives, "model cases", and so on, destined only for official use to guide the judicial cadres in the administration of criminal justice. Jerome A. Cohen has tried to give us an impression of this body of internal guidance material in his book The Criminal Process in the People's Republic of China, 1949-1963. The Marriage Law was a revolutionary instrument meant to bring about change in the family system and the position of women in general. The laws against corruption and counterrevolutionary activities were promulgated after intensive campaigns during which the people concerned had been exposed to violence and crude forms of punishment; the laws were said to "sum up the revolutionary experiences". The largely unpublished guidance material probably implies much experimentation, and portions of this material may have been applicable only in parts of the enormous realm that is China.

It should be kept in mind that in China the law traditionally has been considered a tool of government, a technical device. As religion formerly was in the West, ethics and education in morality in traditional China were far more effective in keeping the citizens on the right track. Social censure and stigma were the important sanctions for bad behavior in those times. The communist appeal to morality—communist morality of course—is strongly reminiscent of the Confucianist ancestors' preference for ruling the people "by shame" (including putting them to shame). The techniques of educating the subjects in the doctrine of

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public criticism and humiliation all fit into traditional patterns. And yet, traditional China did have a very respectable legal system and a long legal history, even though the Chinese never attributed divine qualities to justice.

It may be said that the attitude of the communist regime towards law has been ambivalent; but for those whose goal was a well regulated stable state, the legal patchwork of the early 1950s was far from satisfactory. Long debates were held on the question whether or not the laws of the Kuo-min-tang government could to a certain extent be "inherited". Soviet advisers were employed. In 1956, the periodical *Studies in Politics and Law* was full of articles advocating the establishment of a good legal system and the education of judicial cadres. All these voices became mute after May 1957. The system of internal guidance continued, but an undercurrent in favor of codification of at least the criminal law nevertheless persisted.

A portion of the veil covering this work was lifted by Mr. P'eng Chen (Peng Zhen), the Director of the Commission of Legal Affairs of the NPC, in his speech introducing the draft of the new criminal law, where he revealed that this was the 33rd draft of its kind, and that Mao Tse Tung had approved another draft in 1963. Probably that draft had never made it to the Congress because of other urgent matters such as the Cultural Revolution and, in its wake, the Lin P'iao affair and the "Gang of Four". Why then, was it now the time to lay the bill before the Congress?

Mr. P'eng Chen's commentary on the law does not shed much light on that problem. According to P'eng, law must fulfill a role in the modernization of the socialist system, guarantee the prosecution of counterrevolutionary crimes, remove the barriers to the positive attitude of the people to modernization and creativity, and protect the people's rights, person, and property. The commentary is very guarded and prudent. When we look into the new legal periodical, *Fa-xue yanjiu* (Studies of Law), we find more outspoken views. One article attacks legal nihilism, which is laid at the door of Lin P'iao and the "Gang of Four", because they are at the moment the convenient scapegoats. In fact, however, the author's criticism seems to encompass the time before the Cultural Revolution as well. According to him, the Gang adhered to "legal nihilism", which is based on anarchism, and which seems to be a special feature of the petty bourgeois class. They misinterpreted the thesis that law will wither away when the power of the state disappears and that law is dependent on the structure of society. They were wrong in assesing the objective nature of society and misread history. They replaced law by policy and instituted an inquisition, judging people by their thoughts and not by their deeds. They held the view that law bound the hand and feet of the masses. "For 10 years they poisoned the minds of our people." On the contrary, says the author, law is necessary during the dictatorship of the proletariat since it protects the achievements of the revolution; law and revolution are perfectly reconcilable.