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Sources and Legal Development in the People's Republic of China
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Library of Congress

This paper was presented at a panel meeting entitled, "Sources and Methodological Problems in the Study of Post-1949 China," on the program of the 30th Annual Meeting of the Association for Asian Studies, held in Chicago, March 30-April 1, 1978.

Soon after purging the so-called "Gang of Four," the Hua Kuo-feng Administration proclaimed that one of its overriding goals was to create great order across the land. Thereafter it began to evidence a strong concern with adherence to "rational rules and regulations." Both the concern with order and the concern with rational rules and regulations are still guiding the regime. In this favorable atmosphere there have been increasingly numerous signs in the last few months of a resumption of the legal development that had been brought to a virtual standstill by the Cultural Revolution. The most concrete of these signs is the restoration of the hierarchy of people's procuratorates in the judicial system described in the 1978 Constitution. Another promising sign is a recent article in People's Daily calling for the drafting and adoption of legal codes.¹

These two signs are the most important evidence of the resumption of legal development, but they are not the only ones. In the last few months, and particularly in the last few weeks, articles with relevance to law have been appearing in People's Daily and Kuang Ming Daily with increasing frequency, and one major article on strengthening the legal system appeared in Red Flag in late 1977.² Early in the Hua administration, the articles relevant to law that appeared in the Chinese media limited themselves to criticism of the position and activities of the "Gang of Four" that affected the legal organs. Although they are still somewhat sketchy and vague, the more recent articles outline the evolving policy of the Hua administration toward law and the legal system.

The articles that have appeared in the two leading newspapers and Red Flag since the purge of the "Gang of Four" are the most meaningful treatments of legal topics that have appeared in the Chinese press in the past decade. They are, in fact, almost the only items that have appeared.

With the onset of the Cultural Revolution, legal education and legal publication were suspended. With the exception of a notable editorial written in praise of lawlessness and published in People's Daily³, few articles relevant to law appeared in the newspapers during the Cultural Revolution. For information on the situation of the legal organs, outsiders had to comb the multitude of Red

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After the winding down of the Cultural Revolution in the late 1960s, legal publication did not resume, and the Chinese media were silent with respect to legal topics.

With China's opening to the West in the early 1970s, a limited amount of information on the legal system again appeared, but not in the Chinese media. This information appeared instead in the form of reports written by Westerners who had had contacts with Chinese officials during visits to China. For many years the reports and interviews and tours given to Western visitors and published in Western periodicals were the most substantial source of current information on China's legal system. Such a source has obvious limitations.

The reappearance of articles relevant to law in the Chinese newspapers has aroused the hope of students of Chinese law. Newspapers have been one of the major primary sources for the study of Chinese law. The climate in China now is such that it no longer seems unreasonable to expect that we soon will have access to even more substantial sources of legal information.

One of the basic sources in the pre-Cultural Revolution period was a multi-volume compilation of what the authorities deemed to be the most important laws and regulations. The last volume of this compilation to appear covered the period from January, 1962, to December, 1963, and it was published in 1964. It may be that the post-Mao leadership will regard the legislative output of the Cultural Revolution and "Gang of Four" periods as so sensitive that it may choose not to publish a compilation of these enactments, and there may always be a major gap in the basic statutory compilation. In the area of international law, however, five additional volumes of the basic compilation of treaties have appeared in the 1970s: Vol. 15, 1966-67, published 1974; Vol. 16, 1968-69, published 1976; Vol. 17, 1970, published 1973; Vol. 18, 1971, published 1973, and Vol. 19, 1972, published 1977.

In 1972 the People's Communication Press in Peking published a volume of recent shipping regulations of the PRC entitled, Chung hua jen min kung ho kuo chiao t'ung pu shui lu huo yun shu hui tse [Regulations for the carriage of goods by water of the Ministry of Communications of the People's Republic of China]. Until quite recently these regulations were the only post-Cultural Revolution enactment, other than the 1975 Constitution, to which we had access. Then, on July 21, 1977, People's Daily carried on its front page an article on the newly promulgated "Experimental Regulations Governing the Control of Weights and Measures." The appearance of this article in conjunction with a number of articles underlining the importance of having appropriate rules and regulations gives promise of the promulgation and publication of many new laws and regulations. In his "Report on the Work of the Government at the 5th National People's Congress," Hua Kuo-feng spoke of the need to "gradually make and perfect various socialist laws." This statement, too, points toward an increase in legislative output.

No issue of a law journal is known to have been published in China since the No. 2 issue of Cheng-fa yen-chiu [Political-Legal Research] appeared in 1966. In his "Report on the Work of the Government at the 5th National People's Congress," Hua called for the formulation of a National Development Plan for Philosophy and the Social Sciences, so that research could be developed in various disciplines, including law. He also called for
"changing the present state of affairs in which books and periodicals are few."

We have read that in the fall of 1978 the Institute of Law of the Academy of Social Sciences will begin working with research students specializing in areas such as constitutional law, legal history of China, criminal law and criminal procedure, and civil law and civil procedure. Other articles have condemned the "Gang of Four" for destroying research materials. All in all, it would not be surprising if a legal journal were to appear.

In the pre-Cultural Revolution period various academic journals of a general nature occasionally published articles dealing with law. While these academic journals suspended publication during the Cultural Revolution, they have since reappeared. They now are designated non-exportable items. The Library of Congress nonetheless has acquired many of their issues. A check of the Library of Congress holdings of these journals in the post-Cultural Revolution period has turned up only one article dealing with law. However, these academic journals may soon re-emerge as a source of legal information.

In the period between 1949 and 1966, some 600 legal monographs were published in China. To my knowledge, no legal monograph has appeared since 1965, with the exception of a printing of the Marriage Law and of the 1975 Constitution. I am hopeful that monographic publication will resume. One can imagine, for instance, a popular work on the 1978 Constitution.

An extremely small number of printed textbooks on civil law, criminal law, constitutional law, and other subjects was published either during or immediately after the Hundred Flowers period. It would appear that no law textbooks comparable to those published in the 1957-1958 period have been printed since 1959. Presumably, in the post-Cultural Revolution period, the law schools have continued the former practice of relying principally upon mimeographed materials. None of these mimeographed materials has been examined or acquired in the post-Cultural Revolution period. It is significant that in his report at the Fifth National People's Congress Hua called for the speedy compilation of textbooks.

In the post-Cultural Revolution period, only two other types of primary sources have been available in the West. One is the transcripts of broadcasts made in China and monitored by intelligence agencies. These are often a fruitful source of information, and they normally are the source from which one can most promptly obtain primary information in English. They also provide access to developments in the provinces that do not appear in the national press. A second type of primary source is the sentencing documents posted in Chinese cities and somehow obtained outside the mainland. These are of some value in studying the types of crimes being punished and the types of sentences given, but they offer little illumination of the legal process.

Other than some valuable works on China and international law and some materials on legal aspects of foreign trade, few scholarly studies of Chinese law have appeared in the post-Cultural Revolution period, and those that have appeared necessarily draw heavily upon pre-1966 materials. Various Nationalist Chinese works deal with Communist Chinese law, and they can yield some valuable information and insights if they are used with great care. The Japanese have continued to be among the most prolific writers on Communist Chinese law, but Japanese materials also must be used with great care. Members of the staff of the Far Eastern Law Division have published a bibliography
on China and international law, and a bibliography of Japanese writings on Communist Chinese law.

As to methodological problems, a major one at present is the current relevance of the legal materials published in the 1950s and early 1960s. As in so many other areas, the Hua administration in several respects gives the appearance of taking a great leap backward to the 1950s in the field of law, but we would not be warranted in assuming automatically that the dated materials that we have are still valid. A problem that students of Chinese law have always faced continues in the 1970s. This is the fact that our knowledge of the system is based largely upon analysis of a limited number of published sources, most of which are sketchy and vague by Western standards and normally couched in the special vocabulary of Chinese ideology. Some scholars have tried to get a better picture of the reality behind these published sources by interviewing Chinese refugees in Hong Kong and Macao. While useful, interviewing presents many methodological problems of its own. Another major methodological problem is that of determining the appropriate perspective from which to present the results of research, particularly with respect to the criminal law. Communist Chinese law starts from such different philosophical assumptions and in some senses has such different objectives from Western law that the Western scholar often has a great deal of difficulty getting beyond what strikes him as the injustices, failures, and pretenses of the Chinese system.

As noted at the outset, the most concrete indication of the revival of legal development is the restoration of the procuracy in the 1978 Constitution. In line with the Hua administration's heavy emphasis upon the maintenance of order, other materials are aimed at combatting the influence of the "Gang of Four," who are charged with having preached that law was useless and with having called for the smashing of the judicial, procuratorial, and public security organs. They are also charged with having confused the two different types of contradictions by attempting to use the legal organs against the bourgeoisie within the party rather than against unreformed landlords, rich peasants, counterrevolutionaries, bad elements, and newborn bourgeois elements. The Hua administration is attempting to restore the people's confidence in, and respect for, legal cadres and to improve the morale of legal cadres who had been subjected to many years of attacks and criticisms.

Two major articles on the legal system call for a strengthening of Party control over the legal organs. Without defining procedures, they stress the importance of obtaining proper evidence and acting according to law. One article sternly prohibits the use of torture and coercion in obtaining confessions. In line with the revival of the policy of giving value to both readiness and expertness, the articles call for combining the specialized work of the legal organs with reliance upon the masses. They caution against uncritical acceptance of the opinions and statements of the masses and soundly condemn letting the masses usurp the functions of the legal organs. They seem to promise a strengthening of the role of the courts and a downplaying of the role of the extrajudicial institutions.

All in all, students of Chinese law have reason to feel that they are back in business after a long period of inactivity. Prediction of events in China is risky, but I believe that this new period in legal development will be of considerable duration. Students of Chinese politics, economics, and society would do well to consult the legal sources, for they shed light on all areas
of Chinese life.

NOTES


2. Theory Section of the Supreme People's Court, "Strengthen the Socialist Legal System," Hung ch'i [Red Flag], no. 10, 1977, pp. 81-84.


4. The Center for Chinese Research Materials has compiled for the Far Eastern Law Division of the Library of Congress two massive volumes collecting articles relevant to the political-legal system appearing in Red Guard publications.


6. The more recent of the PRC's two multivolume compilations of basic legislation is Chung hua jen min kung ho kuo fa kuei hui pien [Compilation of Laws and Regulations of the People's Republic of China]. Its first volume appeared in 1956, and it covered the period of September, 1954, to June, 1955. Prior to the start of this compilation, the basic statutory compilation was entitled Chung yang jen min cheng fu fa ling hui pien [Collection of Laws and Decrees of the Central People's Government]; the five volumes in this series covered the period from September, 1949, to the adoption of the Constitution of the PRC on September 20, 1954.

7. The basic compilation of treaties of the PRC is Chung hua jen min kung ho kuo t'iao yueh chi, edited by the Ministry of Foreign Affairs of the PRC.


9. Lü Pin, "Strengthen the Socialist Legal System, Consolidate the Dictatorship
of the Proletariat," Pei ching ta hsüeh hsüeh pao, che hsüeh she hui k'o hsüeh pan [Journal of Peking University--Philosophy and Social Sciences], No. 6, 1974.


