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CHINESE CRIMINAL CODE SYMPOSIUM

FOREWORD—CHINA'S CRIMINAL CODES

JEROME ALAN COHEN*

A law reform movement began to sweep the People's Republic of China ("PRC") following the death of Communist Party Chairman Mao Zedong and the arrest of the "Gang of Four" in the fall of 1976. By mid-1979 the widespread revulsion against the long nightmare of the Great Proletarian Cultural Revolution of 1966-76 and earlier periods of lawlessness had led China's leaders to enact the first substantive and procedural criminal codes since the founding of the PRC in 1949. Drafting, and reaching consensus on, these landmark laws proved to be a formidable political, ideological and intellectual task. Yet the Chinese Government currently confronts an even greater challenge—that of translating the words on the printed page into reality. To what extent will it succeed and in what time frame?

Surely the obstacles to making the new criminal codes part of China's "living law" are myriad. First of all, although reliable comprehensive statistics are not available, the sheer number of offenses in the world's most populous nation must be mindboggling. Now that the "Marcopoloitis" that paralyzed the critical faculties of so many American visitors to China in the 1970s has abated, and Chinese officials have begun to put into practice the slogan of "seeking truth from facts," it seems clear that antisocial conduct is a serious problem for China, as it is for other countries.

Second, given China's authoritarian heritage and the Party's own dictatorial traditions, it will not be easy for the Party elite quickly to convert to the rule of law, especially in dealing with dissidents, who are

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inevitably perceived to be threatening to stability. Moreover, even if the leadership should embrace the new norms in practice as well as theory, the relatively small number of well-trained and disciplined police, prosecutors, judges, and Party officials concerned with law, the limited availability of legal education, the inadequacy of communications in a vast, largely rural nation, and the lack of legal awareness among the masses would all impose objective restraints on implementation of the codes.

Indeed, during the short time that the codes have been in effect, evidence of the difficulties of enforcing them has begun to accumulate. We may put to one side the trial of the Gang of Four, for that highly-charged mobilization of the media against Chairman Mao's widow and her Shanghai cohorts—China's most famous political trial—can hardly be representative of the new system in action (although we should not underestimate the importance in the Chinese context of the decision to process their case in an ostensibly formal, if actually truncated, trial rather than dispose of them by more informal means). More to the point are official reports, such as one from Guangdong Province, that in ordinary cases:

after the promulgation and implementation of the criminal law and the law of criminal procedure, [basic-level cadres] are still illegally detaining people, setting up clandestine tribunals, arbitrarily interrogating people and even tying them up and marching them around to be struggled against, extorting confessions by torture, illegally searching people's homes and humiliating them.¹

In order to take account of various practical difficulties, the Standing Committee of the National People's Congress has thus far twice announced decisions allowing the relaxation of the time limits imposed on the law enforcement agencies by the Criminal Procedure Law.² Similarly, the new Law's requirement that the Supreme People's Court review all death sentences has been temporarily suspended in cases of murder, robbery, rape, bombing, arson, poison, breaching of dikes, or sabotage of communications and power facilities.³ And, perhaps most demoralizing from the viewpoint of those who pin their hopes on the new codes, is the almost simultaneous revival of the "non-criminal" sanction of "rehabilitation through labor," under which a person may be confined by administrative decision for up to four years in the virtual equivalent of a labor camp without the opportunity to exercise any of

¹ *Guangdong Provincial Broadcast*, Foreign Broadcast Information Service, Daily Report: People's Republic of China [hereinafter cited as FBIS-CHI], Oct. 27, 1980, at P2.

² See the note to Article 92 of the Criminal Procedure Law of the People's Republic of China, p. 188 *infra*.

³ See the note to Articles 144-45 of the Criminal Procedure Law of the People's Republic of China, p. 199 *infra*.

the rights prescribed for an accused in the Criminal Procedure Law.⁴

What do the new codes provide? What is their significance for China, the socialist world and the rest of us? And how sophisticated are Chinese discussions of criminal law in official and scholarly circles? This issue of the *Journal of Criminal Law and Criminology* offers preliminary responses to these questions. It first presents English translations of the codes. These are followed by Professor Shao-chuan Leng's overview and analysis of the criminal process. Professor Harold J. Berman then illuminates the Chinese scene by viewing it through the lens of the USSR, the former Soviet "big brother" from whom the PRC made an abortive attempt to import criminal codes in the mid-1950s. Finally, in an article that is not only intrinsically stimulating but that also reveals the quality of legal debate in the PRC, Mr. Timothy Gelatt shows us how the presumption of innocence has been understood and treated in contemporary China. It is our hope that this collective effort will make a modest contribution to the understanding of problems that are universal as well as Chinese and facilitate cooperation between China and the outside world in the field of criminal law and criminology.

⁴ See SUPPLEMENTARY REGULATIONS OF THE STATE COUNCIL ON REHABILITATION THROUGH LABOR (promulgated Nov. 29, 1979), *trans. in* FBIS-CHI, Nov. 30, 1979, at L3.