# 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 The largely unpublished guidance material probably implies much experimentation, and portions of this material may have been applicable only in parts of the enormous realm that is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".[3] 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.[4] 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 te 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.

Law is an essential tool for modernization. International law has always been especially neglected, and China should be mindful of the oppression of the imperialists in the past. In times when on the international scene important changes have occurred, it would be a matter of the greatest urgency to train personnel in the field of international law. China must strive to set up a complete legal system and to train the personnel for maintaining and further developing it.[5] Other articles are in the same vein. They also demand freedom of legal research, the old problem of "inheritability" again appears, and the study of legal history is promoted in order to acquire more insight into the essence of the law, naturally all in the Marxist-Leninist interpretation. The need for individual research in law and a wider interest is thus clearly discernible.

P'eng Chen in his address to the National Congress also stressed the problem of enforcement of the law. He finds the solution in "putting the law into the hands of 900 million people in order to check state organs and individuals and to struggle against violations". Special organizations must be set up and a powerful professional contingent trained for that task. "The law must become the watchword for the entire people and the Communist Party."

Perhaps stability is an ugly word for a country which calls itself dedicated to the revolution, but it seems that the present government is bent in the first place on establishing a firm basis of law and creating an atmosphere in which according to an old phrase "the officials know what rules to apply and the people what to stand in awe of". The law must restore respect for and confidence in the government in order that it may proceed with the urgent tasks of modernization and of instilling in the people the desire to exert themselves.

The law which must aid the government in this task contains 192 articles, divided into two parts—general provisions and specific provisions.

## Part One: General Provisions

The first two articles of the general provisions state the character and the aim of the law. Among the usual phraseology, we find that "the law reflects a policy of combining correction with leniency" (art. 1), and that apart from protecting publicly and collectively owned property it also affords safeguards for the "lawful private property of the citizens". For a definition of such lawful private property, we have to turn to the last of the general provisions (art. 82) which says that it means: "the legitimate income, savings, houses and other means of livelihood and *private plots of land,* livestock and trees which belong to the individual and his family according to law". However, the PRC Constitution of 1978 says in Article 7: "Provided that the absolute predominance of the collective economy of the people's communes is assured, commune members may farm small plots of land for personal needs, engage in limited sideline produc-

tion, and in pastoral areas they may also keep livestock for personal needs".[6] This seems to be something different from private property. The rest of the first section of Chapter I is devoted to the scope of the applicability of the law, which is generally confined to Chinese territory. The special position of diplomats is recognized. Chinese citizens who commit counterrevolutionary and some other crimes abroad still come within the ambit of the law. The last article (art. 9) provides that the law comes into effect on 1 January 1980 and that offenses which were punishable under previous laws of the PRC should until that date still be adjudged on the basis of those laws, unless the period of limitation for prosecution according to the present law would have elapsed. Accordingly, the dissenters who have been tried in the latter half of 1979 have still been sentenced according to the law on counterrevolutionary crimes of 1951.

The second section of Chapter I deals with offenses. The criterion for an offense is its social danger (art. 10). The subjects of intent and responsibility are treated here. The age of responsibility is 16, but when those between the ages of 14 and 16 commit homicide and some other specially indicated crimes they are still held responsible; persons between 14 and 18 years of age receive reduced punishments. Mentally ill persons are not responsible, but their family members and guardians are to be instructed to keep them under strict supervision (art. 15). A similar provision is found in the traditional code where it is said that when the insane person committed homicide, the family members who had not enchained him or reported him to the magistrate would be punished in the same way as would those who, knowing the evil intentions of a person towards someone else, had not prevented him from committing the crime or had not reported him to the magistrate.[7] Drunkenness is no excuse for committing crimes. There are also provisions dealing with handicapped persons, with rightful defense and acts exceeding the limits thereof, and with emergency measures for the public benefit which result in harm done to individuals. This section contains some additional provisions concerning negligence, irresistible or unforeseeable circumstances, etc.

Neither the second section, covering preparation for an offense, as well as attempt and uncompleted offenses (arts. 19-21), nor the third section of the second chapter dealing with joint offenses, various forms of complicity, instigation, and duress, show very remarkable characteristics.

The third chapter or the general provisions is on punishments. The various kinds of punishment are enumerated in article 20(1). They include:

(1) surveillance;
(2) detention;
(3) imprisonment for a term;
(4) imprisonment for life;
(5) death.

Five kinds of punishment, just as in traditional law! Apart from these there are three subsidiary punishments; namely, a fine, the deprivation of political rights, and confiscation of property (art. 29). In special cases, these subsidiary punishments may be imposed as principal punishments.

Surveillance had been introduced by the Law against Corruption of 21 April 1952.[8] It was imposed on corrupt elements for one or two years (art. 3), but it apparently did not entail the loss of civil rights (art. 11, *a contrario*). It was considerably extended and intensified a few months later in the Provisional Measures for Control of Counterrevolutionaries of 27 June 1952, and any doubt about its penal character was definitely dispelled. Under the Provisional Measures, the controlled elements had to observe the government's control measures, to engage in proper employment and actively work for production and, upon discovery, to immediately report on counterrevolutionary activity of others (art. 15). The proper fulfillment of the later duty could even entail their own discharge from surveillance (art. 8(3)). As to proper work, article 14 deprived them of all civil rights franchise, the right to hold any government or organizational office, the freedom of speech, etc.; proper work therefore consisted of ordinary labor under the supervision of anyone. The maximum term of control was three years (art. 6). The imposition of surveillance could be by order of the court or by the security organs, *i.e.* the police (art. 11). The security organs usually made extensive use of this power; they were at any rate charged with the surveillance duties (art. 13). These laws and measures were the result of the terror movements in 1950 and 1951, and they summed op the experiences after hundreds of thoussands persons had fallen victim to mob terror. In November 1956, the Standing Committee of the People's Congress passed a decision which ordered that, in the future, control of counterrevolutionaries and other criminals should be decided upon by a judgment of the people's courts and interim termination also was to be decided by the courts. This was obviously the result of a more liberal policy which was expedient at that time.

Then in 1957, the application of this measure of control was extended in the countryside to persons of the wrong class origin (landlords, rich peasants, and the like) or to minor counterrevolutionaries who were admitted to the advanced agricultural cooperatives conditionally under surveillance. Later in that same year, a measure was taken by the Party Central Committee and the State Council which called for surveillance of loafers and "those who like to run to other places" and who tempt others to do so. This was done to stem the flow of villagers to the cities. In the wake of the anti-rightist movement of 1957-1958, many rightists were placed under surveillance and amalgamated with rich peasants, landlords, counterrevolutionaries, and other "bad elements", of which a large number had surfaced when the agricultural cooperatives were transformed into communes. In the new outburst of the revolutionary élan of 1958 in the Big Leap Forward, which was to ensure a tremendous increase in

industrial and agricultural production, any discussion of the need for due process was further discouraged and the mass-line was introduced with slogans like 'Smash permanent rules". The developments in the 1960s with continued stress on the mass line and the decline of the role of the courts made it unlikely that surveillance was practiced as a regular punishment imposed by a court, but it does tend to confirm that it became more and more an uncontrolled coercive measure in the hands of the police with or without the cooperation of the procuracy. How the institution functioned under the Cultural Revolution can only be ascertained after a careful study of different localities.

The new Criminal Law of 1979 keeps surveillance as a punishment; it must be imposed by a court and thus, at least theoretically, it could be contested in appeal (art. 129 of the Law on Judicial Procedure, promulgated simultaneously with the Criminal Law). The actual implementation is still in the hands of the security organs. The term is between three months and two years (art. 33). During the term, the offenders must "observe the laws", submit to mass supervision and take part in collective labor, regularly report to the executive organs, and request permission for change of address and travel. They receive equal pay for equal work (art. 34). When the period is over, the police must immediately inform the offender and the masses (art. 35). For those offenses to which surveillance applies, we must look at the specific provisions in Part Two of the law, where we find it as a minimum punishment for 16 offenses.[9] The punishment has evolved from an instrument for controlling counterrevolutionaries to a general punishment for lighter offenses. In this connection, it is logical that the deprivation of civil rights will not always accompany surveillance (arts. 51-53). The law gives the impression of making an effort to bring order into the imposition of surveillance, which severely curtails the freedom of movement and especially the range of employment of an offender. It is not immediately clear that surveillance will mostly entail demotion, especially in the case of intellectuals where the work which they are required to perform may very well be the cleaning of latrines of a public building. It is definitely not a light punishment.

In conditions of detention (15 days to 6 months), the inmates are "appropriately" paid for their labor and receive one or two holidays per month. Imprisonment is served either in prison or in "reform-through-labor centers". Capital punishment (by a firing squad) shows specific Chinese characteristics, insofar as the majority of the sentences are conditional. This has often given rise to criticism, and it has been considered inhuman to leave a criminal for a long time in a state of suspense as to whether he will be executed or not. In traditional China, a suspended death sentence was a sign of leniency. In the old days, the law indicated capital sentences as being either "immediate" or executable "after waiting in jail", but both kinds needed imperial approval. The majority of capital crimes belonged to the second category and after the Emperor, having heard the Ministry of Punishments, had confirmed the sentence as being in

accordance with the law, the case was once more reviewed by a special high court which held session in the autumn; in many cases the punishment was commuted in view of mitigating circumstances to permanent banishment or to a lighter punishment.[10] The provisions about capital punishment in the present law bear some resemblance to the old system. It is said that "unless immediate execution is necessary" (art. 43), a reprieve for a period of two years may be pronounced simultaneously with the sentence. The reasons for immediate execution are not mentioned in the law. All capital sentences require confirmation by the Supreme Court. The reprieve may be handed down by the High Courts. During the period of reprieve, the offender is to be imprisoned and subjected to reform through labor. No immediate sentence of death shall be imposed upon a minor under age 18, and suspended sentences may be pronounced for persons between 16 and 18 years of age. When during the period of reprieve the offender has shown repentance, the punishment will be commuted to life imprisonment; if he is obdurate, his sentence may still be carried out (arts. 43-47). As regards the secondary punishments, it may be mentioned that deprivation of rights always accompanies a sentence for counterrevolutionary crimes. Confiscation of property may be total.

In Chapter IV, the application of punishment is regulated. It is said that though the law provides maximum and minimum punishments, the minima are not absolute; they may be lowered with the permission of the judicial committee of the People's Court (art. 59).[11] Recidivism is considered to have occurred when a person who has been sentenced to a term of imprisonment commits—within three years after having served the term for his first offense—another crime which is punishable by imprisonment for a term; the term of three years does not apply to counterrevolutionary offenses. Voluntary surrender to justice as a ground for the reduction of punishment was a feature of the traditional system; it was a reward for virtue and a sign of repentance.[12] It is also found in the criminal code of Taiwan (art. 62), but there (as in traditional law) a condition was that the crime had not yet been discovered. In the relevant article of the present law, it is said that when there are meritorious aspects to the case, voluntary surrender may even be followed by complete exemption of punishment; this wil probably refer to the situation when a counterrevolutionary plot has been voluntarily disclosed.

The subjects of concursus and probation do not reveal any special features, but they are followed by a section called "reduction of punishment" dealing with commutation of the sentence after the offender has served part of his term in prison, or under detention or surveillance, and where he has shown evidence of repentance or displayed "meritorious service". This must not be confused with parole, because then the sentence is *conditionally* suspended. If we go by the letter of the law, at commutation the "meritorious service" is an important element, whereas in cases of parole repentance and the evidence that the of-

fender is no longer a social danger prevails and the condition is that the offender must have served half of his term (in case of life imprisonment, 10 years).

For extinctive prescription (arts. 76-78), the period is generally as long as the maximum period of imprisonment for a term—for the more serious crimes it is 15-20 years with the approval of the Higher Procurator.

The last section of Part One contains the very important provision of analogy. It states: "Those who commit offenses not explicitly defined in the specific provisions of the criminal law may be convicted and sentenced according to the most approximate article in the criminal law. However, approval must be obtained from the Higher People's Court." Whatever may be the role of analogy in the law of the Soviet Union, it was allowed in traditional Chinese law. The criminal code of the last dynasty (Ch'ing 1644-1911) contained a provision which, in Staunton's translation, is as follows: "From the impractibility of providing for every possible contingency, there may be cases to which no laws or statutes are applicable; such case may then be determined by an accurate comparison with others which are already provided for and which approach most nearly to those under investigation in order to ascertain afterwards to what extent an aggravation or mitigation of the punishment would be equitable."[13] Since the old code provided the exact punishment for each crime, analogy was almost indispensable, and as it allowed the magistrate some discretion, it was applied perhaps in more cases to mitigate than to aggravate the punishment. It will be interesting to se how analogy will be applied in this period. The section in which this provision is inserted is called "Other Provisions". One of them is the definition of private property which we have met before (art. 82).

## Part Two: Specific Offenses

### *Chapter I: Counterrevolutionary Offenses*

Any act which endangers the People's Republic of China and which has been committed for the purpose of overthrowing the regime of the dictatorship of the proletariat and the socialist system is a counterrevolutionary offense (art. 90). The following articles give examples. I think it would be difficult to assume that after the broad overture of article 90, the offenses which are specifically mentioned in the following articles should be taken as limitative. These offenses are:

(1) Entertaining connections with foreign countries and secretly conspiring to endanger the sovereignty, territorial integrity, and safety of the fatherland (art. 91);

(2) Plotting to overthrow the government and to split the country (art. 92);

(3) Instigating an official or member of the military, police, or militia forces to rebellion or treason, or bribing or persuading them to that end (art. 93);

(4) Defection and committing treason (art. 94);

(5) Acting as ringleader of or actively taking part in an armed rebellion (art. 95);

(6) Playing a leading role in organizing jailbreaks and (similar?) serious offenses (art. 96);

(7) Spying for, or supplying information or arms or other military material to the enemy, joining a foreign secret service (art. 97);

(8) Organizing or leading a counterrevolutionary group or taking part in such group (art. 98);

(9) Organizing secret societies or sects by utilizing feudal superstition in order to perform counterrevolutionary acts (art. 99);

(10) Destroying military installations or means of transport, production, or telecommunication, or public property in general by bombing, inundation, fire, or by mechanical or other means; directing the enemy to a bombing target (art. 100);

(11) Administering poison, spreading bacteria, or using other measures to kill or injure people for counterrevolutionary purposes (art. 101);

(12) Inciting the masses to resist and to violate the laws, and spreading propaganda to overthrow the government if done for counterrevolutionary purposes (art. 102).

The premise is that all these offenses are done with the purpose of overthrowing the regime of the dictatorship of the proletariat and the socialist system; in other words, aiming at the obliteration of the results of the revolution. One can blow up a plane in order to kill a foreign delegation, in which case it would be a crime against the public order (arts. 108 or 110), or with the aim of harming the government, when the passengers were *e.g.* the Chinese delegation to the United Nations, judged on the basis of article 100. There is an ideological basis to counterrevolutionary crimes, but in the present law there are no indications that they are only crimes of thought—there must be an act.

When we overlook for a moment this ideological aspect of counterrevolutionary crimes and consider the offenses by themselves, most of them could be found in any European continental criminal code under the heading of offenses against the security of the state.

The present law is different from the old Law on the Punishment of Counterrevolutionaries of 21 February 1951. The old law also punished retroactively the evil deeds of landlords and similar acts committed before the "liberation" (art. 7, third paragraph). The old law was vindictive; it was said to be summing up the experiences of the hecatombe which resulted from the terror movement of 1950—it probably was rather its blueprint. It also said that 'Those who com-

mit crimes not covered by the provisions of this law may be given punishments prescribed for the crimes enumerated in this law which are comparable to the crimes committed" (art. 16).[14] The old law also contained an article prohibiting the crossing of the national border secretly, which probably derived its counterrevolutionary character from the aspect of avoiding revolutionary justice (art. 11). The old law comprised 21 articles, 11 of which enumerated counterrevolutionary offenses and among them 8 provided a sentence of death as possible punishment.

It may be argued that the new law is not much better, because there is the general provision about analogy (art. 79) and article 103 provides for the possibility (except for the offenses listed in articles 98, 99, and 102) of a sentence of death when the harm done to country and people is particularly grave or when circumstances are extremely serious. It may also be said that in most cases the description of the offenses does not differ to a great extent between the two laws. This is all true, but the new law has no retroactive provisions—crossing the border is a minor offense which is "harmful to the regulation of social order" under article 176 with a maximum punishment of one year's imprisonment; the application of a provision by analogy is subject to approval of a higher court, and the range of punishment for counterrevolutionary offenses starts from lower minima. Though the new law is based upon the old one, its character is different; it no longer sums up bloody experience of the recent past and it is not a war law. In fact, it would only be a minor operation to remove the ideological frills and transform the chapter on counterrevolutionary activity into one of offenses against the security of the state.

*Chapter II: Offenses against Public Safety (arts. 105-115)*

These offenses include: infliction of damage to or destruction of industries, enterprises, pipelines, buildings, or other public property by willful action without (art. 105) or with death, injury, or serious damage as a result (art. 106); sabotage of means of transportation or communication, roads, bridges, public utilities (art. 110); the illegal manufacture, transportation of or trading in arms and ammunition or theft of the same from state organs, the police, or the militia (if not for counterrevolutionary purposes); violation of rules by communications or transportation personnel which causes serious injury, death, or loss of property; failure to obey orders by industrial or other occupational workers who thereby cause serious accidents, or the arbitrary ordering of workers to engage in hazardous work in defiance of the rules and also causing accidents; violation of rules governing the control of dangerous substances and thus causing accidents. The death penalty is only possible under articles 106 and 110.

*Chapter III: Offenses against the Socialist Economic Order (arts. 115-130)*

This chapter provides comparatively stiff punishments for serious cases of smuggling, engaging in smuggling as an occupation, speculating, and profiteering, especially when committed by officials, for violations of the currency and precious metals regulations, and for tax evasion. The punishments for counterfeiting money, forgery, and reselling of planned supply certificates, checks, stocks or valuable securities, stamps, tickets, and receipts, as well as for wrecking machinery, injuring draft animals or disrupting production in other ways, for the misappropriation of state funds earmarked for relief purposes, and for violating the forest preservation regulations, the protection of aquatic products and resources law, and the hunting law, are quite moderate.

*Chapter IV: Encroachment upon the Citizen's Personal and Democratic Rights (arts. 131-149)*

The title might suggest an enumeration of offenses which infringe political and non-political rights of the citizens such as property, franchise, etc. The chapter deals, however, with murder, injury, sexual offenses and, in the second place, with disturbance of domestic peace, false accusation, illegal arrest, having one's mail opened, and insult. The meaning of the title is that the citizen has a right to be protected from these acts, the state guarantees that protection and the murderer, for instance, is punished because he prevents the state from protecting the citizen. This reminds us of a breach of the King's peace; at any rate, it seems to be a breach of public order.

If this explanation of the meaning of the law is correct, the question arises as to what the difference is between the offenses comprised by this chapter and those under Chapter VI entitled "Offenses against Public Order"? The answer should, in our opinion, be that the translation of the title of Chapter VI is not a very fortunate one. It deals with offenses of generally a much less serious character than those of Chapter IV with sanctions which rarely exceed five years imprisonment. Some of them resemble those which formerly came within the ambit of the Security Administration Punishment Act, and they refer to obstruction, all forms of deceit, sheltering criminals, and the like. A better translation could be "Offenses which Infringe the Regulation of an Orderly Society".

The offenses of Chapter IV are of a serious nature and concern the integrity of the person, of personal freedom, and of reputation. Integrity of the person includes homicide, injury, application of torture, mob violence, and sexual offenses. Homicide (arts. 132-133) covers intentional and nonintentional homicide. For nonintentional homicide, the term *kuo-shih sha* is used, an old term which formerly meant homicide by negligence or mishap—what it is going to

mean now is hard to say; the term "manslaughter" which is used in the current translation seems misleading. For injury, the same remark obtains (arts. 134-135). The offense of applying torture in order to obtain a confession refers to a state-official *viz.* the police or procurator (art. 136). The second paragraph of that article is not quite clear; it states: "If corporal punishment is used with the result that the person is disabled, he (the state official) will be charged with injury and severely punished." Since the term *ju-hsing* means only corporal punishment and nothing else and in extorting confessions one cannot speak of "corporal punishment" and corporal punishment is nowhere mentioned in the law, we wonder what is meant. Article 137 punishes the organizers of a "beat, smash, and loot party"—in other words mob violence—when life is lost or injury sustained as a consequence of it by the punishments reserved for injury and homicide, and when only goods have been taken by those for robbery.

Sexual offenses are heavily punished. For rape, imprisonment has been provided of from three to ten years (art. 19). The second paragraph of article 19 says according to the current translation: "Seduction of a female minor under 14 years of age will be charged with rape and severely punished." The term translated by seduction really means "impudicity" or "committing indecent acts"; it does not seem necessary that intercourse has been completed, and the expression "severely punished" is an old expression which used to mean "punished by the maximum punishment", or in case of concursus "punished for the more serious offense". When a victim of rape has been seriously injured or killed, the punishment may go up to capital punishment. Rape by two or more persons in turn is punished by the maximum. Forcing a woman to engage in prostitution is punished as serverely as rape (art. 140).

The integrity of personal freedom consists of protection against unlawful imprisonment by an official or deprivation of liberty by a private person (art. 143), unlawfully subjecting someone to surveillance or to search of his person (art. 144), obstructing his exercise of the right to vote (art. 142), depriving a person of the freedom of religious belief or violating the customs of minorities to a serious extent (art. 47), and tampering with someone else's mail (art. 149).

The integrity of reputation includes protection against false accusation (arts. 138 and 146) and against insult (art. 145). For false accusation, which was formerly a curse in China and still seems to be so, the law falls back on the traditional method of punishment, namely in proportion to the graveness of the offense of which the victim has been calumniously accused. Insult is an offense where prosecution only takes place upon complaint, unless the interest of the state is at stake or public order has been disturbed. It also covers insult by big or small character posters and entails detention, deprivation of political rights, or even imprisonment up to three years. A special case of false accusation is that by a state official who makes false charges against plaintiffs in a lawsuit and thus

abuses his power; the offense of jobbery is mentioned at the same time.

In Chapter V, Encroachments on Property, we find provisions against robbery (art. 150), theft, swindling, or plunder either simply (art. 151) or habitually (art. 152), or in combination with violence or threats of violence and resisting arrest or destruction of evidence (art. 153), extortion (art. 154), embezzlement of public funds by an official (art. 155), and destruction of property (art. 156). Property, with the exception of article 155, means public as well as private property.

Chapter VI has already been mentioned in connection with Chapter IV and instead of Offenses against Public Order, the translation of "Infringements of the Regulation of Social Order" has been suggested, the idea being that these offenses impede the order of a well regulated society without actually disturbing public peace to an appreciable extent. It is the longest chapter with 22 articles (arts. 157-178), and it contains a collection of miscellaneous offenses of very diverging character, from obstructing an official in the performance of his duty to damaging cultural relics or providing an opportunity for prostitution or gambling. Of interest is the prohibition against crossing the state boundary in violation of border control regulations or assisting another person in doing so for the purpose of gain; the former offense may be punished by at most a year of imprisonment or by detention or surveillance, the latter entails possibly five years of imprisonment (arts. 177-178).

Chapter VII contains provisions aimed at protecting marriage and the family. They have actually been taken from the Marriage Law of 1950, but now they provide sanctions whereas the former law was satisfied by stating that violations would be punished by law (art. 26 of the Marriage Law). Now interference with the freedom of marriage entails detention or imprisonment of not more than 2 years (art. 179), unless the interference had the victim's death as a consequence when the maximum is seven years imprisonment. Two years is also the punishment for bigamy and for ill-treatment of a member of the family (arts. 180 and 182), unless in the latter case severe injury or death has been caused when a maximum of also seven years imprisonment is imposed. The family is no more sacred than it used to be, but nowadays a harmonious family is still considered a breeding place for good (communist) citizens and the excesses of the first years have passed. The privileged position of the old has fortunately made place for the sense of duty to support the old who cannot work any longer. Parasitism is no longer a very special crime, and the murder of an uncle is no more serious a crime than that of any other person—dependent, of course, upon the personal circumstances. For adultery with the wife of a serviceman, one gets 3 years imprisonment (art. 181). This is a legacy from the Kiangsi Soviet Republic of 1931 when the marriage reform was first carried out and the soldiers at the front became restless for fear of losing their wives. Then there is the remarkable provision of article 183 which threatens imprisonment of up to five years, or

detention, or surveillance for those who neglect to support the old, the young, or the invalid whom one is duty bound to support. This is not a legacy of the old days of filial piety, but a consequence of the fact that China is stil too poor to have an adequate solution for those in need of support. The chapter closes with a provision against the abduction of children under 14—detention or imprisonment of not more than five years (art. 184).

Chapter VIII contains provisions against malfeasance in office such as bribery, divulging of state secrets, dereliction of duty and causing serious damage, favoritism in judicial work, ill-treatment of persons under surveillance by a judicial worker, prematurely releasing a prisoner, and tampering with the mail by postal officials. Finally, article 192 provides that state officials who commit the offenses of the last chapter can, in minor cases, be given disciplinary sanction.

It is unsatisfactory to discuss a law when there is no material which allows one to see how it works in practice and when there is not yet a forum of public opinion to signal shortcomings in the application. But it is difficult to realize—for those who do not know China—that the mere promulgation of this law is already an act of courage on the part of the present government. It is a tool in its policy of modernization, which includes the establishment of predictable government and an end to social experimentation; in other words, the establishment of a stable society as China has not known for the last thirty years. I do not think that this is window dressing, for only to a very minor degree may one of the motives have been the restoration of the prestige of China in the eyes of the world. The communist regime in China has never yet promulgated laws which it does not intend to enforce. The enforcement of this law, however, may well prove to be very difficult. It has to be carried out by an officialdom which has had to adapt itself to ever changing circumstances; at times they have managed society in a very highhanded and uncontrolled way, and now they have to be accustomed once again to discipline—this may be difficult, especially for the police. It will also be very difficult for some to swallow the new party line and to promote a policy of modernization with stimuli for making profit and amassing small amounts of capital and to restrain themselves from throwing the Marx-Lenin-Mao book at those new petty capitalists whose gains are now protected by a criminal law. It would seem that an army of censors would be needed to see to it that the law will be enforced, and that there will be no sabotage of the law and no shielding of those who persevere in the old ways.

NOTES

1. Common Programme, September 1949, Article 17. The text is found in *Fundamental Legal Documents of Communist China* (Albert P. Blaustein, ed.), Dobbs Ferry, NY 1962, 34 *et seq.*
2. Jerome A. Cohen, *The Criminal Process in the People's Republic of China 1949-1963*, Cambridge, MA 1968, 200-237.
3. Before the cultural revolution, there were two main legal periodicals in China:
   (a) *Cheng-fa yen-chiu* (Studies in Law and Politics), a bimonthly, published by the Society for the Study of Law and Politics, Peking. It started in 1954 and continued probably up to 1959.
   (b) *Fa Hsüeh* (Study of Law), also a bimonthly, established in 1956 in Shanghai by the Shanghai Committee for Legal Studies. It was discontinued in 1958.
   At present, publication has started of a new bimonthly, called *Fa-hsüeh yen-chiu (Faxue yanjiu)* (Studies in Law), probably a revival and amalgamation of the two former periodicals; the omission of politics in the title could be significant. It started in 1979. An example of the discussions referred to in the text is found in the old 3 *Fa-Hsüeh* 1957, 1-6.
4. *Beijing Review*, 6 July 1979, 32.
5. Liu Shiying, "Criticizing Legal Nihilism and Stepping up Research in Law", *Faxue yanjiu* 1979 No. 2, 28-32.
6. Article 7 of the PRC Constitution of 1978; an English translation of the 1978 Constitution is at 4 *Rev. Soc. Law* 1978 No. 3, 247-258.
7. Guy Boulais, *Manuel du code chinois*, Shanghai 1924, 565. It should be noted that the Security Administration Punishment Act of 1957 punished the family head or guardian of the insane person who had neglected to watch over him by warning or fine (art. 27).
8. I have borrowed extensively for the material on surveillance from Chapter V of Jerome Cohen's book, *op. cit.*, note 2.
9. Namely, in the counterrevolutionary sector: taking an active part in a counterrevolutionary group (art. 98), less serious cases of sedition by utilizing feudal superstition, etc. (art. 99), minor cases of incitement to resisting arrest and use of counterrevolutionary slogans and distributing propaganda material (art. 102). In the sector of offenses against public order: disturbance of the order in public places and obstruction of the police (art. 159), incitement to create disturbances by groups (art. 160), sheltering counterrevolutionaries and giving false evidence concerning them or other criminals (art. 162), manufacturing or pushing drugs (art. 164), practicing witchcraft for gain (art. 165), masquerading as an official with the purpose of deceiving people (art. 166), forgery (art. 167), acting as a ponce (art. 169), and providing opportunity for gambling (art. 168).
10. E. Alabaster, *Notes and Commentaries on Chinese Criminal Law*, London 1899, 27-29, and Derk Bodde and Clarence Morris, *Law in Imperial China*, Cambridge, MA 1967, 131 *et seq.*
11. Judicial committees are appointed by the people's councils to courts of the corresponding levels upon the recommendation of the court's president. Members of the committee of the Supreme Court are appointed by the NPC. The committee meetings are presided over by the presidents of the courts, and the chief procurations have the right to attend. The committees "sum up judicial experience" and discuss difficult cases (Organic Law of the People's Courts of 1 July 1979, enforced on 1 January 1980, Article 11). It looks like the instrument by which the CCP controls the judiciary at the various levels.
12. Sir George Thomas Staunton, *The Ta Tsing Leu Lee, being the Fundamental Laws (and a Selection from the Supplementary Statutes) of the Penal Code of China*, London 1810, 27.
13. *Ibid.* 43.
14. Cohen, *op. cit*, note 2, 299-302.