

SOME ASPECTS OF THE CRIMINAL JUSTICE SYSTEM  
OF THE PEOPLE'S REPUBLIC OF CHINA

I. Introduction

The inquiry received poses questions about various aspects of the criminal justice system of the People's Republic of China (PRC), particularly the role therein of extrajudicial institutions (such as mediation committees) in the handling of juvenile delinquency and the status therein of the concept of criminal responsibility in the case of juvenile delinquents and the mentally ill. As will be indicated herein, some of the questions are simply unanswerable on the basis of our current knowledge of the Communist Chinese legal system. To others, only incomplete answers can be given. In drawing the outlines of an answer to this latter type of question, various types of sources will be used. These varied sources generally date from two distinctive periods in the legal history of the PRC, that is, the 1950's and the post-Cultural Revolution period of the 1970's. The current relevance of sources dating from the 1950's must be assessed in light of a general familiarity with the evolution of the Communist Chinese system of criminal justice. Some comments upon the general direction of the evolution of justice in the PRC hence are offered as an introduction to the attempt to outline answers to the specific questions posed.

Western scholars have presented differing periodizations of the PRC's post-1949 legal development. To serve our purposes

here we may adopt a greatly simplified scheme which treats the mid-1957 antirightist movement as a fundamental watershed. In this simplified scheme the early constitutional stage, that is, the period between September 1954 and mid-1957, is regarded as one of meaningful competition for expression in the criminal justice system between two different models of law: the Maoist model and a "democratic" model reflecting indirect Western influences.

A complex amalgam of elements derived from the Chinese legal tradition, the pre-1949 experience of the Chinese Communist Party (CCP), certain aspects of the Soviet legal system, and the thought of Marx, Lenin, and Mao Tsetung, the Maoist legal model focuses primarily upon protecting and advancing the ever-changing interests of the socialist state/society as these interests are defined by the CCP leadership. In it a higher valuation is placed upon mass involvement in the legal process than upon strict adherence to published and detailed guidelines by a corps of technically expert legal personnel. In the Maoist model what the Chinese regard as the "legalistic" approach of the West is eschewed.

The essential elements of the "democratic" model appear in the 1954 Constitution of the PRC, the Organic Law of the People's Courts, and the Organic Law of the People's Procuratorates. One should not exaggerate the democratic features of these documents, but it is nonetheless true that certain of their features reflect

the characteristically Western concern with the protection of the rights of the individual vis-à-vis both other individuals and the state through constant, orderly, and impartial legal processes. Thus, they include provisions proscribing arbitrary arrest by the public security organs (the police), guaranteeing the accused a right to defense, allowing closed trials only in exceptional cases, declaring the courts to be independent and subject only to the law, requiring the procuracy to supervise the legality of the operations of the courts and the police, etc.

In the period between September 1954 and mid-1957, due to the always dissonant and competing influence of the Maoist model upon the Chinese criminal process, the "democratic" model was never firmly established in practice. Nonetheless, during this period, it often was used as a standard against which the actual performance of the legal system was officially measured, and members of the top leadership at times voiced aspirations toward a fuller realization of the "democratic" model. During this period a draft criminal code was circulated, and there was talk of the drafting of a code of criminal procedure. Scholars were encouraged to produce serious studies of problems of criminal law and procedure to guide legal cadres and to help to lay the groundwork for future comprehensive criminal legislation. Although the enactments of the period fell far short of Western standards of draftmanship, they displayed a

concern for precision of definition and protection of the individual that has never again been seen in Communist Chinese legislation. The "people's lawyers" began to establish a role for themselves in criminal trials. The police no longer felt as free as before to act arbitrarily. The CCP was less likely than before to interfere with the judicial decision-making process in concrete cases. The procuracy "was usually able to carry out conscientiously its obligation to review police recommendations to prosecute."<sup>1/</sup>

The liberal spirit of the early constitutional period of the PRC culminated in the spring of 1957 in the Hundred Flowers campaign, in which, at the bidding of the CCP leadership, Chinese intellectuals aired their criticisms of the regime's performance up to that time. Stunned at first by both the bitter tone and the sweeping scope of the criticisms which its encouragement elicited, the Peking leadership eventually responded with the launching of the antirightist movement in mid-1957 in order to strengthen its control of Chinese society.

With the onset of the antirightist movement, there was a fundamental shift in the official attitude toward the "democratic" and the Maoist strains in the PRC's legal system. The apologetic

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<sup>1/</sup> Jerome Alan Cohen, The Criminal Process in the People's Republic of China, 1949-1963: An Introduction, Cambridge, Massachusetts, Harvard University Press, 1968, p. 13.



tone about failure to realize constitutional standards for legality was replaced by a tone of more and more emphatic defense of the Maoist elements in China's legal system. In this atmosphere the modest experimentation with legal reforms that had characterized the early constitutional period understandably withered. By the time of the Cultural Revolution (1966-1969), the attitude among some radical Maoist groups was such that the entire legal edifice described in the 1954 basic statutes was denounced as the counter-revolutionary creation of Liu Shao-ch'i,<sup>2/</sup> the chief victim of the Cultural Revolution, and an editorial entitled "In Praise of Lawlessness" appeared in People's Daily, the official organ of the

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Canton Fan P'eng Lo Hei Hsien, No. 2, July 1968, an issue of one of the Red Guard publications that proliferated throughout the PRC during the Cultural Revolution, contained an item entitled "Completely Smash the Feudal, Capitalist and Revisionist Legal Systems." The relevant passage from this item, as translated in Selections from China Mainland Magazines, No. 625, September 3, 1968, reads:

Therefore, at the instruction of Liu Shao-ch'i, a law-making body was organized. Under the auspices of P'eng Chen, the "Organic Law of Procuratorates and the Organic Law of Law Courts" were cast forth in 1954. Following this, they created public opinion in a big way and clamored for 'strengthening the legal system.' The feudal, capitalist and revisionist sets of lawyer and notary public system, legal procedure, judiciary proceedings, etc., were adopted wholesale. Many bureaucratic organs were set up, and the old legal concepts were inherited and spread for the purpose of corrupting socialism and rivaling the proletarian dictatorship.

CCP Central Committee and China's leading newspaper.<sup>3/</sup>

In the post-Cultural Revolution period of the 1970's there has been a retreat from the excesses of the most heady days of that unprecedented upheaval, but the "democratic" model of the early constitutional period has not been resurrected. The current legal system, which was given a terse description in the revised Constitution adopted by the First Session of the Fourth National People's Congress on January 17, 1975, affirms the Maoist model in its lack of concern with the statutory protection of the individual in the criminal process and in its marked emphasis upon mass involvement in legal proceedings. While it is possible that the recent purge of the radical "gang of four" will result in some changes of emphasis in the administration of justice, it is unlikely that there will be any fundamental departure from the Maoist model which has generally prevailed since the antirightist movement of mid-1957.

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<sup>3/</sup> See People's Daily (Jen min jih pao), January 31, 1967; an English translation of this editorial appears in Survey of the China Mainland Press, No. 3879, February 14, 1967, p. 13.

Sources. The materials upon which the following responses are based generally were drawn from three types of sources: (1) enactments of the PRC dating from the 1950's, (2) articles and teaching materials by Chinese jurists also dating from the 1950's, and (3) transcripts of interviews with Communist Chinese legal personnel conducted by Western visitors in the 1970's and reports on the legal system and mental health system written by Western visitors in the 1970's.

(1) Enactments of the PRC dating from the 1950's. The current applicability of these enactments is not known since the few recent primary materials we have indicate that the Chinese no longer cite specific statutes as the basis for punishment.

(2) Articles and teaching materials by Chinese jurists dating from the 1950's. As Cohen states, scholarly texts dating from this period "were both to guide the administration of justice during the period prior to the completion of the projected legislation and to aid in the drafting of the legislation itself."<sup>4/</sup> With the repudiation of the "democratic" model in mid-1957, such scholarly publication deteriorated in quality, dwindled, and gradually disappeared. Legal publication came to a halt during the Cultural Revolution, and it has not since resumed in any meaningful terms.

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<sup>4/</sup> Cohen, op. cit., p. 12.

Since these articles and teaching materials reflect what the Chinese now denounce as a "legalistic" approach, they are mainly of historical interest.

(3) Transcripts of interviews with Communist Chinese legal personnel conducted by Western visitors in the 1970's and reports on the legal system and mental health care system written by Western visitors in the 1970's. Our knowledge of the current state of the legal system and psychiatry in the PRC is based almost entirely upon these two types of sources. Since these types of material constitute our basic source of information, it is understandable that our knowledge of both of these areas is extremely limited. Particularly in the case of the administration of justice, it must be stressed that the available sources provide insufficient information about individual cases to provide a basis for generalization about the handling of cases in the system as a whole.

1. How are juvenile offenders being adjudicated, e.g. by informal proceedings of local "conciliation committees?" How are formal court proceedings handled?

We have insufficient information upon which to base any generalization concerning the handling of juvenile delinquents in the system as a whole. It seems unlikely, however, that the manner of handling a case involving a juvenile delinquent would hinge only on the fact that the principal is a minor; it is much more likely that the manner in which the case would be handled would depend



upon the nature of the offense, the current policy of the regime toward the type of offense involved, the attitude of the offender toward his offense, and the past record of the offender.

One statement by Chinese jurists on juvenile delinquency, a matter about which the Chinese generally are reticent, was located. Note, however, that, if the translation is accurate, the speaker contradicted himself with respect to whether juveniles are "sentenced," a term by which he evidently intended to refer to the meting out of criminal punishment to a juvenile. The following statement appears in Richard P. Brown's account of his October 1974 meeting with members of the law faculty of Peking University:

Juvenile Delinquency. We have a re-education house to educate and supervise juvenile delinquents. Youngsters under eighteen years of age are not sentenced. They are sent to a re-education house and do manual labor. They have the right to appeal their sentence, but usually they are not given any sentence. They have the same rights as the adults, if they are sentenced. As to the problem of juvenile delinquency, we punish those who provoke delinquency in our children. 5/

One bit of recent evidence would seem to indicate that there is no absolute rule exempting a juvenile delinquent from criminal punishment. A February 11, 1972, Notice of the Chinese People's Liberation Army Military Control Committee Over Public Security Organs of

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Richard P. Brown, Jr., "Present Day Law in the People's Republic of China," American Bar Association Journal, April, 1975, p. 479.

Shih-mao Region, Yunnan Province, which came into the hands of Hungdah Chiu, an American student of Chinese law, indicates that a male member of a "capitalist family," 16 years of age, was sentenced to 15 years of imprisonment for having committed theft many times, attempting to use a stolen gun to commit robbery, and resisting reform.<sup>6/</sup>

In 1975 Margaret Jones of the conservative National Times of Sydney, Australia, reported:

Visitors to southern provinces of China in recent months have reported seeing truckloads of young people under armed guard drawn up at streetcorners. All wore white placards round their necks, Cultural Revolution style, and were being publicly exhibited as an example and a warning to others. Foreigners were not allowed to stay and witness the sights but guides reluctantly admitted that the boys and girls were under detention for "running away." This could mean either that they were "illegals" who had made the journey to Hong Kong and been returned by the Hong Kong government or that they were middle school graduates sent to the countryside for their two-year "rustication" who had illicitly returned. <sup>7/</sup>

Several enactments of the 1950's contain special provisions applicable to juveniles.

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<sup>6/</sup> This information appears on page 8 of a table accompanying the paper Dr. Chiu presented at the 29th Annual Meeting of the Association for Asian Studies, March 25-27, 1977, in New York. The title of this unpublished paper is "Mainland China's Criminal Justice as Revealed by Some Recent Legal Documents."

<sup>7/</sup> Portions of Ms. Jones' article appear in ATLAS World Press Review, Vol. 22, No. 9, September 1975, p. 19-21.

The Security Administration Punishment Act of the People's Republic of China, passed at the 81st meeting of the Standing Committee of the National People's Congress, October 22, 1957, authorizes the public security organs to impose the administrative, i.e., non-criminal, sanction of a warning, a modest fine, or detention of up to 15 days for "an act that disrupts public order, interferes with public safety, infringes citizens' rights of the person, or damages public or private property" if "the circumstances of the case are minor, if the act does not warrant criminal sanctions, and if it is punishable according to" the act.<sup>8/</sup> Article 26 of the act prescribes:

No punishment shall be given for acts that violate security administration by persons who have not reached the age of thirteen; acts that violate security administration by persons who have reached the age of thirteen but who have not reached the age of eighteen shall be punished lightly. However, the heads of their families or their guardians shall be ordered to discipline them more strictly. If this kind of act arises from indulgence by the head of the family or guardian, the head of the family or guardian shall be punished, but punishment shall be limited to a warning or a fine.<sup>9/</sup>

The Decision of the State Council of the People's Republic of China Relating to Problems of Rehabilitation Through Labor, approved at the 78th meeting of the Standing Committee of the National

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<sup>8/</sup>  
Cohen, op. cit., p. 205.

<sup>9/</sup>  
Ibid., p. 232.

People's Congress August 1, 1957, provided that "persons with the capacity to labor who loaf, who violate law and discipline, or who do not engage in proper employment" would be "provided shelter" and subjected to rehabilitation through involuntary, but compensated labor for an unspecified period.<sup>10/</sup> The decision was made specifically applicable to four categories of persons, into any one of which a juvenile delinquent seemingly could fall. The four categories of persons are:

(1) Those who do not engage in proper employment, those who behave like hooligans, and those who, although they steal, swindle, or engage in other such acts, are not pursued for criminal responsibility, who violate security administration and whom repeated education fails to change;

(2) Those counterrevolutionaries and antisocialist reactionaries who, because their crimes are minor, are not pursued for criminal responsibility, who receive the sanction of expulsion from an organ, organization, enterprise, school, or other such unit and who are without a way of earning a livelihood;

(3) Those persons who have the capacity to labor but who for a long period refuse to labor or who destroy discipline and interfere with public order, and who [thus] receive the sanction of expulsion from an organ, organization, enterprise, school, or other such unit and who have no way of earning a livelihood;

(4) Those who do not obey work assignments or arrangements for getting them employment or for transferring them to other employment, or who do not accept

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<sup>10/</sup>  
Ibid., p. 249.



the admonition to engage in labor and production, who ceaselessly and unreasonably make trouble and interfere with public affairs and whom repeated education fails to change. 11/

The Regulations of the People's Republic of China in Reform Through Labor were promulgated by the Government Administration Council on September 7, 1954. These regulations provide for the imprisonment in corrector labor camps of criminals already convicted. Section 4 of the regulations deals with juvenile offenders as follows:

Article 21. Juvenile offenders 13-18 years of age shall be kept in corrective settlements for juvenile offenders.

Article 22. Corrective settlements for juvenile offenders shall lay emphasis on the political education of the juvenile offenders, on educating them in the spirit of the new morality, on instilling them with the basic concepts of culture and industrial technology; they shall be set to light work with due regard for their physical development.

Article 23. Corrective labor settlements for juvenile offenders shall be established in the provinces and cities in accordance with actual need. They shall be under the jurisdiction of the people's provincial and municipal public security organs.

Article 24. Corrective settlements for juvenile offenders shall have one settlement chief, one or two

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Ibid.



deputy chiefs, and perhaps several teachers, depending on work requirements. 12/

By 1958 the network of corrective labor settlements for juvenile offenders evidently had not been completely established, for a Report of the Ministry of Public Security Relating to the Work of Preparing the Establishment of Houses of Discipline for Juvenile Offenders (February 21, 1958) indicated that nine new or rebuilt houses of discipline for juvenile offenders, capable of accommodating over 5,000 persons, was only then "almost ready for use." The report indicated that at that time there were "altogether over 4,500 juvenile offenders who [had] already been sentenced to criminal punishment." Prior to the opening of the nine new facilities, these juvenile offenders, except for some held in custody in houses of discipline for juvenile offenders, were dispersed in prisons and reform through labor groups along with adult offenders. 13/

The Lectures on the General Principles of Criminal Law 14/  
in the People's Republic of China, the most extensive Communist

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12/  
Fundamental Legal Documents of Communist China, edited by Albert P. Blaustein, South Hackensack, New Jersey, Fred B. Rothman & Co., 1962, p. 246.

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Cohen, op. cit., p. 595-596.

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An English translation of the text of the Lectures on the General Principles of Criminal Law in the People's Republic of China was published by the U. S. Department of Commerce's Joint Publications Research Service as its number JPRS 13,331, 30 March 1962.

Chinese treatise on criminal law and procedure, was written by Li Meng, Chu Yu-huang, Ch'en Tse-chieh, and Li Chieh of the Institute of Criminal Law Studies of the Central Political-Legal Cadres School "on the basis of collective discussions." A prefatory note to its text indicates that it "was originally a criminal law text used to train by rotation the political-legal cadres at the hsien [county] level and above." The decision was made to publish the lectures "in order to provide a reference to those political-legal cadres in active service, for their self-study in the theory of criminal law." The manuscript was completed at the end of April 1957. Prior to its publication in August 1957, the antirightist movement was launched. In a pre-publication announcement, the Institute of Criminal Studies cautiously indicated that "we are too late to reflect the significance of this hectic struggle in our lectures, nor are we able to criticize and refute the bourgeois rightists' reactionary statements on criminal legislation and judicial problems." The Institute expressed the hope that "the reader will not hesitate to criticize these lectures and give us advice so that we can correct our mistakes, make up our defects, and revise the lectures at the time of re-printing." Thus unrevised, the Lectures remained, in Cohen's phrase, "essentially a law reform manifesto."<sup>15/</sup> The Institute of Criminal Law Studies

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Cohen, op. cit., p. 58.

carefully indicated that in the case of conflict between the lectures and the existing criminal legislation, the latter would prevail. While certain of their passages may still adequately describe the criminal law and criminal process of the People's Republic of China, today the Lectures are mainly of historical interest. Lecture VIII in this treatise contains a section on the role of age in the determination of an offense. A xerox copy of this section appears as Appendix I to this report. It will be noted that this section makes reference to a 1956 joint notification of the Supreme People's Procuratorate, the Supreme People's Court, the Ministries of Interior, Justice, and Public Security on the "Question of Procedures Governing Apprehension, Detention, and Disposition of Juvenile Delinquents." We have not succeeded in locating the text of this joint notification. The Arrest and Detention Act of the People's Republic of China, passed at the 3rd meeting of the Standing Committee of the National People's Congress, December 20, 1954, contains no special provision for juvenile offenders.<sup>16/</sup>

We have located citations for two articles from Communist Chinese law journals of the 1950's dealing with youthful offenders. They are:

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See the entry "Arrest Act" in the index to Cohen, op. cit., for references to pages on which portions of the Arrest and Detention Act appear.

Feng, Shih-ming. Problems pertaining to handling criminal cases involving minors. Cheng fa yen chiu [Political-Legal Studies], No. 2, April 1957: 13.

Shih, Yen. The age for criminal responsibility. Fa hsueh [Jurisprudence], No. 2, April 1957: 22.

Unfortunately, the second of these two titles is not available to us. We will summarize the contents of the first article in the second of the two reports we are to forward.

As to trials involving juveniles, we have located a Decision of the Standing Committee of the National People's Congress on Cases Which Should Not Be Conducted in Public, adopted by the 39th session of the Standing Committee of the National People's Congress, May 8, 1956.<sup>17/</sup> This decision stipulates that one of the categories of trials which should not be conducted in public is that category involving crimes committed by juveniles who have not reached a full 18 years of age. It should be noted, however, that, notwithstanding the constitutional provision that trials in principle should be conducted in public, public trials have always been the exception rather than the rule in the PRC.<sup>18/</sup>

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<sup>17/</sup>  
1957 Jen min shou ts'e [People's Handbook], Hong Kong, Ta Kung pao she, p. 337.

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Here "public trials" should not be confused with "mass trials." A "mass trial" is a carefully staged "trial" before a multitude of people who are required by the authorities to attend the proceedings because they are believed to have especial educational significance in relationship to a current policy. "Public trial" here means only that persons other than those immediately involved in the proceedings can attend if they so desire.



Westerners have not been permitted to observe criminal trials in the People's Republic of China in the post-Cultural Revolution period, and accounts of such trials do not appear in Chinese sources. Western visitors, however, have published accounts they were given by Chinese jurists of criminal trials in the PRC.

On November 17, 1974, Franklin P. Lamb conducted an interview with Professor Yang, chairman of the Revolutionary Committee of the Faculty of Law, Peking University, and Judge Wu, said to be a member of the Supreme Court of China. Judge Wu gave Mr. Lamb an account of a criminal trial that he had observed. Judge Wu's account appears as Appendix II to this report. It is taken from The China Quarterly, No. 66, June 1976, p. 324-325.

In November 1976 Martin Garbus held twelve hours of dialogue in Peking and Shanghai with "the judges of the Peking and Shanghai Higher Courts." Mr. Garbus indicates that Mr. Wu, "a judge of the High Shanghai Court, described a case that should not be resolved in the neighborhood units." Mr. Garbus' account of Judge Wu's description of the trial appears in the March 1977 issue of Judicature. This account appears as Appendix III to this report. Note especially that the trial took place the day after the decision was made as to what would be the offender's sentence.

A third account of a trial, given by a Shanghai legal official to a visiting American lawyer in February 1976, appeared in Chinese



on June 9, 1976, in Hua ch'iao jih pao [China Daily News], a Chinese-language newspaper published in New York that is generally sympathetic to PRC policies. This account reads in our English translation as follows:

The Shanghai legal official used a recent criminal case to explain the principle of carrying out the mass line. The place of adjudication was a factory. A worker was accused of blowing up a safe in the factory and stealing 2,000 yüan (almost US\$1,000). The public security bureau carried out the mass line; relying on the masses, it conducted an investigation. The result was that the fingerprints of the accused were found on the safe. The public security bureau, after arresting the accused conducted a preliminary hearing, and afterward it turned the case over to the people's court. The legal official responsible for handling the case, in addition to examining the results of the public security bureau's investigation, also carried out the mass line; he went to the factory's revolutionary committee and asked for its members' opinions about the case. He first told the revolutionary committee the results of the investigation. After an exchange of opinions he followed the proposal of the revolutionary committee and allowed the workers to participate in the adjuration of this criminal case.

After further investigation of the accusation, a trial was openly held before two hundred workers. The legal official and two workers conducted the trial of the case. First, the defendant confessed, and afterwards the masses freely expressed their opinions. The result was that that evidence established the crime of the defendant. The masses not only criticized the behavior of the defendant, they also analyzed the reasons why he committed a crime. Their conclusion was that the principal reason was the influence of anti-socialist elements and at the same time the defendant was influenced by the bourgeoisie. This case served as a negative object lesson and served an educational purpose.

2. Please provide any information on the nature, extent, and availability of Chinese research on the topic of crime, delinquency, and criminal justice systems.

We have no information on the nature of Chinese research on these topics. An American lawyer reported in June 1976 that in February 1976 he had seen catalog cards for approximately 100 books on Western law, most of which were in English, in the catalog at Peking University.<sup>19/</sup> Appendix IV presents the titles of articles appearing in Chinese law journals in the 1950s and early 1960s which dealt with non-communist law.

3. With some understanding that formal criminal proceedings are infrequently used so that there is no systematic collection of statistics, are any statistics available on the number of serious crimes such as murder, aggravated assaults, rapes, robberies, etc.

While it seems very likely that the Chinese compile such statistics, we know of none that have been released in recent years. An American lawyer who visited China in February 1976 was told at Peking University that "the principal categories of crimes are: (1) counterrevolutionary activities, (2) homicide, (3) arson, (4) rape, (5) theft, (6) fraud, (7) corruption, and (8) speculation."<sup>20/</sup>

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<sup>19/</sup> P'an Nai-kang, "The Judicial System of New China," Hua ch'iao jih pao [China Daily News], June 5, 1976.

<sup>20/</sup> Ibid., June 16, 1976.

4. Of what interest to the Chinese has been the recent emergence in the West of "radical criminology?" Are the legal or criminological scholars there familiar with such developments in the West?

No information is available upon which to base a response to these questions.

5. It would be desirable to know about the precise manner in which offensive or problematic juvenile behavior is viewed and handled. Are they viewed as serious social problems and what do they view as problematic youth behavior? Would it be disrespect and disobedience of parents? Would it be truancy from school or assigned work and duties? Are there problems of so-called "hooliganism," or do they seem to get channeled into political protests, demonstrations, and the like?

Communist Chinese authorities are likely to regard offensive or problematic behavior among youth as a serious social problem for several reasons. Historically, young people have been among the more activist groups in all societies, and disaffected youths have constituted the ranks from which many revolutionary movements have drawn their members. Modern Chinese history provides an excellent illustration of this generalization. The Communist Chinese leaders are doubtless still keenly aware that it was the young students of China who in 1919 gave the real impetus to the noted May 4th Movement, a period of profound cultural and political ferment in China of which Mao himself was a product. In his study The Origins of the Cultural Revolution Roderick MacFarquhar stresses that it was the vehemence of student criticisms of the Communist regime that led Mao to call a halt to the Hundred

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Flowers Campaign in 1957.

More than an appreciation of the revolutionary potential of disaffected youth enters into the Communist Chinese attitude toward youthful misbehavior. The authorities also have a vested ideological interest in the matter. Since the People's Republic of China was established in 1949, the young people of today have known only communist rule. According to a rather crude statement of the Marxist-Leninist theory of the origins of crime, criminal behavior is to be attributed to the lingering influences of the overthrown reactionary classes and the still active influence of the international imperialists. That young people who have enjoyed a lifetime of the benefits of socialist society would allow themselves to be led into criminal behavior by such influences could be interpreted as an indictment of socialism. The communist authorities are anxious to avoid such an indictment.

Further, due to both his romantic glorification of youth and his calculated attempt to loosen the grip on Chinese minds of the traditional veneration of the aged, Mao encouraged a spirit of rebelliousness among Chinese youth. During certain stages of the Cultural Revolution period (1966-1969), the army and the police were forced to stand aside while young Maoists engaged in acts that normally would have been punishable. If the charges against the recently purged "gang of four"

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Roderick MacFarquhar, The Origins of the Cultural Revolution, Vol. I (Contradictions Among the People 1956-1957), New York, Columbia University Press, 1974, p. 218-231.



are to be believed, the "gang" continued to encourage youths to engage in rebellious and even criminal behavior in the 1970s. The Hua administration, which has placed a great stress on the maintenance of order, must cope with the aftereffects of the former official encouragement of rebelliousness while at the same time preserving the appearance of fidelity to the vision of Mao. Since it thus is faced with a difficult task, the Hua administration is likely to regard offensive and problematic behavior among youth as an extremely serious problem.

The type of misbehavior among Chinese juveniles most frequently mentioned in Western press accounts is crime committed in the cities by youths who have illicitly returned to the cities in order to avoid compulsory settlement in rural areas. Such crime is described in a January 11, 1974, article in the New York Times, a copy of which is attached as Appendix V.

Disrespect and disobedience of parents also might be brought to official attention. It will be recalled that Article 26 of the Security Administration Punishment Act made parents and guardians liable to punishment in the case of misbehavior by their charges. Also, Article 13 of the 1950 Marriage Law of the PRC provides that "children have the duty to support and assist their parents. Neither the parents nor the children shall maltreat or desert one another."<sup>22/</sup> If truancy from

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<sup>22/</sup> Fundamental Legal Documents of Communist China, p. 269.

school or assigned work and duties resulted in expulsion from school or an enterprise, the person expelled might be liable for punishment under the 1957 Decision of the State Council of the PRC Relating to Problems of Rehabilitation Through Labor (see above, response to question 1).

6. In another area, that of mental health or mental illness, would you advise about policies and practices with regard to how the PRC handles and treats the mentally ill. Also, what do they define as serious mental illness? Is there some form of involuntary hospitalization, and if so, what seems to be the criteria for using such involuntary hospitalization or involuntary treatment?

As in the case of the legal system, only extremely limited information is available on the PRC's policies and practices with regard to the mentally ill in the post-Cultural Revolution period, and that which is available comes almost entirely from accounts written by Western visitors who have visited mental health facilities and spoken with mental health care personnel, including psychiatrists.

One source estimates that there presently are 60,000 beds for psychiatric patients in the PRC and about 3,600 practicing psychiatrists.<sup>23/</sup> Especially in the post-Cultural Revolution period, official policy has been to combine Western and indigenous methods of

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<sup>23/</sup> Philip D. Walls, M.D., Lichun Han Walls, Ph.D., and Donald G. Langsley, M.D., "Psychiatric Training and Practice in the People's Republic of China," The American Journal of Psychiatry, Vol. 132, No. 2, February 1975, p. 122.

the treatment of hospitalized patients.<sup>24/</sup> The sources generally report an eclectic approach to therapy in which many types of treatment are combined. Favored indigenous methods in this eclectic approach are herbs and acupuncture. Western drug therapy also figures prominently in in-hospital treatment. According to one source,

chlorpromazine and haloperidol are used freely in the treatment of schizophrenia and imipramine or amitriptyline are used in depression, where they are more effective than the monoamineoxidase inhibitors. Lithium is not yet used because of the dangers of toxicity....Although electroshock therapy was formerly used, in recent years it has been abandoned. <sup>25/</sup>

Another source indicates:

A report of the treatment of mental illness at the Third Peking Hospital in 1972 indicated that schizophrenia was managed with "customary drug therapy" (usually chlorpromazine) and insulin coma therapy and that depression was treated with antidepressant medication....Moreover, psychiatrists in Nanking told us that "insulin shock and ECT [electroconvulsive therapy] are used in schizophrenia, insulin more than ECT, if regular measures fail in a given case. It is not used in depression since cases get better with drugs as a rule." According to two reports, insulin coma therapy and ECT have not been used in at least one Shanghai mental hospital since 1970..., although this may not yet be the case in general. Currently, the usual treatment for depression seems to be anti-depressant medications. Lithium carbonate is used in the treatment of mania....<sup>26/</sup>

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<sup>24/</sup> Ibid., p. 123.

<sup>25/</sup> Seymour S. Kety, "Psychiatric Concepts and Treatment in China," The China Quarterly, No. 66, June 1976, p. 318.

<sup>26/</sup> Walls, Walls, and Langsley, op. cit., p. 123.

Other components of the eclectic therapy used are work therapy, group therapy in which the participants engage in study of political documents in much the same fashion that all other Chinese citizens do, self-analysis, discussions with other patients, regular discussions with nurses and doctors, and physical exercise.

A perhaps unique feature of the Chinese method of treatment is the involvement of the friends, family, and coworkers of the patient in the treatment. This feature is illustrated in the following account of one patient's therapy:

A further example of education in the treatment of a particular illness is found in the case of a worker who was assigned to make technical innovations on a machine. He determined to do a good job, and sometimes worked very late. When a setback occurred in the improvement of the machine, he felt that he had failed to accomplish the task entrusted to him, that he was not worthy of the hope placed in him by the Party and the revolution, and that his comrades would laugh at him. He continued to work hard at the job during the day, but at night he suffered from insomnia. He became ill, suspecting the leaders and his comrades of not trusting him and of always gossiping about him. He was diagnosed as schizophrenic, and treated by medication, acupuncture. He was assigned study of Mao's essay, "Serve the People," to deal with petit-bourgeois vanity, the man's main problem. Through study of this essay, he learned that we are to innovate for the revolution, that we work not for ourselves, nor for fame and gain, but for the revolution. The leadership and comrades of his original unit came to praise him for his activism and enthusiasm, and at the same time to point out his non-proletarian



ideas--his subjective deflection from his main tasks. They told him that they trusted him, that they were not gossiping and laughing about him. He pledged to study Mao and to remold his ideology (his point of view) and to be a good worker wholeheartedly working for the revolution. 27/

This source later states that

it is possible to involve family and related people in the treatment not only as informants on background information and verification or as providers of moral support, but as objective witnesses to the reality of the situation and the motivations of people which the patient has misconstrued. 28/

Hospitals are reported to arrange "appropriate job modification after discharge." Patients in Chinese mental hospitals were reported in different sources to have an average length of hospital stay varying from three months to 70 to 84 days. 29/ After release, the patient can return to the hospital for follow-up outpatient visits.

The sources consulted also refer to mental health clinics in the cities, to the role of barefoot doctors in the treatment of mental illness, and to mobile teams of staff from psychiatric institutes. Outpatient treatment is also given to neurotic patients.

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27/ Leigh Kagan, "Report from a Visit to the Tientsin Psychiatric Hospital," China Notes, Vol. X, No. 4, Fall 1972, p. 40.

28/ Ibid.

29/ Walls, Walls, and Langsley, op. cit., p. 123.



Leigh Kagan reported after a 1972 visit to the Tientsin Psychiatric Hospital:

Patients come to the hospital by family or co-workers' referral, either by reporting to the hospital or requesting that the hospital come to get the patient. Labor protection insurance covers the patient's hospitalization expenses of 50 yuan (US\$22.50) a month for bed, food and medicine. It pays in full for workers and one-half for family dependants. This is standard coverage for medical expenses. 30/

As to the Chinese concept of mental illness, Walls, Walls, and Langsley wrote in 1975:

The theory of mental illness in the People's Republic of China appears to be no less controversial than the statistics, although of course this statement is equally true of Western schools. Pavlovian psychology was a powerful influence up to and probably beyond the Sino-Soviet rift, which took place in 1960. On the one hand, the biological determinants of mental disorder may be stressed in theory and practice, and on the other hand, sociopolitical factors may take the limelight. At different times and in different places, one or the other orientation has been given emphasis....

The controversy continues up to the present. In reply to our questions about the etiology of schizophrenia, Nanking psychiatrists cited their belief in genetic and organic origins. Kagan's report from Tientsin...seems to show a bias toward social factors there, although the point that biological and social factors are not mutually exclusive is also made. In Shanghai a middle ground seems to be taken. 32/

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30/ Kagan, op. cit., p. 37.

31/ Walls, Walls, and Langsley, op. cit., p. 124.

All sources agree that Freudian psychology is rejected.

Walls, Walls, and Langsley report the following diagnostic categories for hospitalized patients: schizophrenia, manic-depressive psychosis, involutional psychosis, organic psychosis, symptomatic psychosis..., and psychogenic psychosis, which includes hysterical psychosis and depression. They report that additional diagnostic categories found in Shanghai included postpartum psychosis, encephalitis, senile psychosis, cerebral atherosclerosis, and mental disturbances secondary to stroke. <sup>32/</sup> Kety wrote in 1976 with reference to the Shanghai Psychiatric Hospital:

Approximately 60 percent of the patients are schizophrenics and other disorders include acute psychogenic reactions and organic psychosis. Affective disorders are rather infrequent, manic depressive psychosis and involutionary depression each constituting 3 to 4 per cent. Senile dementia has always been rather rare. <sup>33/</sup>

Ruth Sidel wrote after a visit to China in late 1971:

The doctors at the Psychiatric Ward of the Third Hospital in Peking say that hospitalization is nearly always through persuasion, through the persuasion of relatives, friends, and colleagues at work. Admission to the hospital is generally a joint effort by the family and the authorities of the unit in which the patient works and usually they all agree on the need for hospitalization. Occasionally commitment is by force but this was thought to be exceptional. <sup>34/</sup>

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<sup>32/</sup>  
<sup>33/</sup> Ibid., p. 125.

<sup>33/</sup>  
<sup>34/</sup> Kety, op. cit., p. 320.

<sup>34/</sup>  
in Medicine and Public Health in the People's Republic of China, Joseph R. Quinn, Editor, National Institutes of Health, June 1972, p. 303.

With respect to involuntary commitment of mentally ill offenders, Article 37 of the Act of the People's Republic of China For Reform Through Labor, passed at the 222nd meeting of the Government Administration Council on August 26, 1954, provides:

Article 37. A health examination shall be given to offenders who are committed to custody. Except for major counterrevolutionary offenders and other offenders whose criminal acts are major, commitment to custody shall not be permitted in any one of the following situations:

- (1) Mental illness or acute or malignant contagious disease;
- (2) Serious illness that may endanger the life of the offender while he is being held in custody;
- (3) Pregnancy or childbirth six months or less before the time of commitment.

Offenders who under the preceding items may not be committed to custody shall, after the organ that originally ordered their commitment to custody has considered the situation, be sent to a hospital, turned over to a guardian, or put in another appropriate place. 35/

7. Related to the above, is there any concept of or doctrine of the P.R.C. legal system with respect to criminal responsibility and an "insanity defense?" In practice, how does the system in China deal with a seriously mentally ill person (acute paranoid schizophrenic with obvious delusions) who has killed another person?

Article 27 of the Security Administration Punishment Act of October 22, 1957, provides:

Article 27. No punishment shall be given to a mentally ill person who violates security administration at a time when he is unable to understand the nature of or to control his own acts; the head of his family or his guardian shall be ordered to watch over him more strictly and to give him medical care. If the family head or guardian actually has the ability to watch over

him but does not and he causes a violation of security administration, the family head or guardian shall be punished but punishment shall be limited to a warning or a fine. 36/

The authors of the Lectures on the General Principles of Criminal Law in the People's Republic of China also dealt with the concept of criminal responsibility in the case of the mentally ill. Their statements appear as Appendix VI.

The manner in which one offender who probably was mentally ill was handled in the Chinese criminal process is discussed in Tao-tai Hsia's "Justice in Peking," Current Scene, Vol. V, No. 1, January 16, 1967. A copy of this article is attached as Appendix VII.

8. Also, in the area of mental retardation, how does the above apply to those who are classified as mentally retarded and to juveniles involved in serious criminal offenses?

No information is available on mental retardation. For the concept of responsibility in the case of juveniles involved in serious criminal offenses, see the response to question 1.

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36/  
Ibid., p. 233.



9. What are some of the notions, in P.R.C., with regard to "dangerousness," "sexual psychopaths," "defective delinquents," etc.?

No information is available on the topics of "sexual psychopaths" and "defective delinquents."

10. More specific information would be very useful with regard to the kinds of situations, conflicts and problems for which the P.R.C. uses "informal" dispute settlement systems, e.g., involving work and neighborhood groups, representatives of the masses, and the like.

An article in the February 15, 1975, China Daily News reported:

Ninety percent of all criminal cases in China fall into the category of light offenses, and offenders in such cases in general will be given "re-education." So-called re-education takes place before a small number of citizens organized by the local street committee or related work units. This small unit will give the offender criticism-education. Only relatively serious offenses will be handled by the regular courts. <sup>37/</sup>

Martin Garbus reported in the March 1977 issue of Judicature that

"Ninety-five percent of all disputes are allegedly resolved without use of the court structure."<sup>38/</sup>

Cohen wrote in 1973 that the basic extrajudicial institutions "settle the overwhelming majority of interpersonal disputes that arise in Chinese life and impose sanctions against

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<sup>37/</sup> Chu-li-an Shu-man, "The Country with the Lowest Crime Rate," Hua ch'iao jih pao [China Daily News], February 15, 1975, p. 3.

<sup>38/</sup> Martin Garbus, "Justice Without Courts; A Report on China Today," Judicature, Vol. 6, No. 8, March 1977, p. 398.

persons whose misbehavior is not serious enough to trouble the  
judicial organs."<sup>39/</sup>

The Provisional General Rules of the PRC for the Organization of People's Mediation Committees, passed at the 206th meeting on government administration by the Government Administration Council, February 25, 1954, provided in their Article 3 that

the tasks of mediation committees shall be to mediate ordinary civil disputes among the people and minor criminal cases and also, through mediation, to conduct propaganda-education concerning policies, laws, and decrees. <sup>40/</sup>

Recent sources do not provide specific accounts of informal settlement of disputes upon which to base any generalization about the type of situations in which this method is used. It should be stressed, however, that work and neighborhood groups and representatives of the masses now apparently also take part in court trials.

11. From the standpoint of legal studies, would you provide the recent changes in the criminal justice process, especially those consequent to the new P.R.C. Constitution of January 17, 1975.

Attached as Appendix VIII is a copy of pages from our previous study of the 1975 Constitution of the People's Republic of China.

<sup>39/</sup> Jerome Alan Cohen, "Chinese Law: At the Crossroads," American Bar Association Journal, Vol. 59, January 1973, p. 42.

<sup>40/</sup> Cohen, Criminal Process, p. 124.

## APPENDIX V

John Burns, "Street Crime Up in Chinese Cities," The New York Times, January 11, 1974, p. 7.

### Militia Units Are Patrolling Many Neighborhoods.

Peking, Jan. 10 - Street crime has increased in Peking and some other Chinese cities to the point where neighborhoods are being patrolled day and night by militia units.

These patrols are backed by a poster campaign urging public support for the fight against "hooliganism."

The posters, which can be seen pasted to the gray walls that line many byways here, give no indication of the offenses involved. But these are reports that the offenses range from petty theft to murder and that the incidence of "hooliganism" is great enough for some residents of Peking to hesitate before walking the streets alone at night.

Anyone going for a midnight stroll here may run into neighborhood patrols--small groups of men and women carrying nightsticks and flashlights.

### Reports From Other Cities

Visitors returning from other major Chinese cities--from Canton in the south to Harbin in the north--report that patrols and posters can be seen there as well. But local officials there, the visitors say, are sometimes more open in discussing street crime than are officials in Peking.

The subject has been dealt with only once in the recent publications available to foreigners here.

An article published last month in the Communist party newspaper Jenmin Jih Pao applauded militia units in the capital for combining their military training with the patrolling of neighborhoods.

By means of the patrols, it said, the militia was "taking the initiative against class enemies, carrying the struggle to every corner of the city, by day and by night and in every kind of weather.

The "class enemies" were not identified, but it is generally believed that the biggest threats to public order are the many young drifters who have made their way back to the cities illegally from enforced resettlement in the countryside.

These drifters, many young men but also including some young women, are deserters from an army of young people sent to the countryside

under a program initiated by Chairman Mao Tse-tung during the Cultural Revolution of 1966 to 1969. According to the latest official estimate, there have been more than eight million sent to the countryside in the last five years.

#### To Instill Peasant Outlook

The proclaimed purpose of the ~~set~~ttlement program is to purge young people of bourgeois tendencies and instill in them a truly peasant outlook. But it also has the advantage of reducing the pressure of population growth in the cities and removing a large number of young people who, as Red Guards, became accustomed to political activism during the Cultural Revolution.

Many of the youths sent to the countryside have reportedly found it difficult to settle down in the far less comfortable circumstances of the communes, and a number have complained that their educations are wasted in the often primitive agricultural tasks.

If reassignment to the countryside were for a limited period only, desertions might not have become so numerous. But for most of the settlers, the only authorized way back to the cities is by admission to a university, which is limited to a tiny minority.

There are no official figures on desertions, but one estimate is that there are in Peking as many as 50,000 who have fled the communes, out of a total of about one million young people from Peking who have been sent to the countryside. Since travelling is tightly controlled, it is a mystery how they make their way back, but many of them probably wait until they are allowed to return home on holiday or to see an ailing relative, then fail to return when their leave is up.

#### Conditions Improved

Without money and the coupons needed to purchase cotton, meat, fuel and cooking oil, the basic means of sustenance ~~is~~ denied to the defectors unless they can persuade their parents or someone else to take them in. But this is risky in a society where neighbors often consider it their duty to inform the authorities of such violations.



Those few officials in the capital who were willing to discuss the situation stress that an effort is being made to deal with the causes of the crime problem, as well as its effects. Stiff sentences are handed down by the People's Courts for the more serious offenders-- for murder, there is an automatic penalty of death, but an attempt is also being made to improve the conditions the young people face in the communes.

One change that is being tried, apparently with some success, involves the assignment of the young people in groups. Instead of arriving singly at their new posts, they go as members of a team, and an effort is made to build morale.

An effort is also being made to give the young settlers work better suited to their educations.