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## CRIMINAL PUNISHMENT IN MAINLAND CHINA: A STUDY OF SOME YUNNAN PROVINCE DOCUMENTS

HUNGDAH CHIU\*

### INTRODUCTION

In an era of information explosion, one of the most serious problems for doing research is to find enough time to search and to digest voluminous materials. A student of Chinese law fortunately does not have to face this problem. He does, however, face a more frustrating problem: the lack of sufficient information or research materials concerning legal developments in the People's Republic of China (PRC).

Since the outbreak of the Cultural Revolution in 1966, almost no scholarly writings on law have appeared in the PRC. The only PRC law journal, *Cheng-fa yen-chiu* (Studies in Politics and Law), ceased to appear in mid-1966.<sup>1</sup> The official PRC compilation of laws and decrees, *Chung-hua jen-min kung-ho-kuo fa-kuei hui-pien* (Collection of Laws and Decrees of the PRC), has not appeared since 1964, after thirteen volumes covering the period 1954-1963. Since the reopening of the PRC to foreign visitors in the early 1970's, thousands of foreigners have visited the PRC. Despite the voluminous publications arising out of these visits, there have been only a few reports on the law in the PRC.<sup>2</sup> While a few visitors did interview some judicial cadres or law professors and acquired some interesting and useful information concerning PRC law,<sup>3</sup> they were not generally allowed to see the courts in criminal trial, the prisons, or legal education classes in the uni-

versities. Except for a Canadian hockey team,<sup>4</sup> none of the visitors appeared to have acquired any legal document or law teaching materials in the course of their visits. In the academic circle, although a course on Chinese law is being offered at six or more American law schools,<sup>5</sup> there have been only a few articles on post-1966 PRC law and almost none of these papers has resorted to recent PRC legal documents.<sup>6</sup>

Recently I have acquired a number of post-1966 PRC legal documents from various sources. These documents include court judgments, decisions rendered by the People's Liberation Army (PLA), reports on crimes issued by local revolutionary committees or public security organs, and others. An analysis of these documents, together with information gathered from foreign visitors, former residents of the PRC, and other sources, should provide a general picture of criminal justice in the PRC, although conclusions derived from a study limited to these limited sources must, to a certain extent, be tentative. This article attempts to use the above-stated sources to study an important aspect of the PRC's criminal justice: the types of anti-social acts which the PRC considers to be criminal and the types of sanctions imposed on offenders. In order to make this analysis more incisive, I have limited the

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<sup>1</sup> Two other law journals, HUA-TUNG CHENG-FA HSÜEN-PAO (East China Journal on Politics and Law) and FA-HSÜEH (Science of Law), ceased to publish long before the outbreak of the Cultural Revolution.

<sup>2</sup> See, e.g., Cheng Huan, *Law in China: Will the People Please Take the Stand?*, 75 FAR EASTERN ECON. REV. 14 (1972); Cohen, *Chinese Law: At the Crossroads*, 59 A.B.A.J. 42 (1973); and Crockett, *Criminal Justice in China*, 59 JUDICATURE 240 (1975). These are among the few reports on law in mainland China.

<sup>3</sup> See, e.g., Ruge, *An Interview with Chinese Legal Officials*, 1975 CHINA Q. 118 (No. 61) and Lamb, *An Interview with Chinese Legal Officials*, 1976 CHINA Q. 323 (No. 66).

<sup>4</sup> The team sighted a judicial judgment posted on a wall in Harbin, northern Manchuria, and the case was later noted in the New York Times. See Burns, *Racheteers Prey on China Systems*, N.Y. Times Jan. 28, 1974, at 5 col. 1. For a partial translation of this judgment, see Hungdah Chiu, *The Judicial System Under the New PRC Constitution*, in THE NEW CONSTITUTION OF COMMUNIST CHINA: COMPARATIVE ANALYSIS 113-14 (M. Lindsay ed. 1976).

<sup>5</sup> Harvard, Columbia, University of Maryland, Washington University (St. Louis), University of California at Berkeley and Stanford.

<sup>6</sup> The only article which deals with post-1966 PRC law in significant length is Tao-tai Hsia, *The Tenth Party Congress and Future Developments of Law in China*, in HOUSE COMM. FOR FOREIGN AFFAIRS, SINO-SOVIET CONFLICT—JAPAN AND THE OIL CRISIS, IN HEARINGS BEFORE SUB-COMM. ON ASIAN AND PACIFIC AFFAIRS, 93 Cong., 1st & 2d Sess. 390 (1973-74).

use of PRC documents to those which come from Yunnan Province in the southwest part of China. All PRC documents analyzed in this article have been verified as authentic by former residents of the PRC and, whenever possible, by former residents of Yunnan Province.

#### CRIME IN THE PRC

Until very recently,<sup>7</sup> there have been very few reports on crimes in the PRC and some visitors, conducted on guided tours, have even obtained the impression that the PRC has generally solved one of the most serious social problems facing all societies—crime. An American judge, after visiting the PRC in 1975, expressed the view that “in this new society [of the PRC] . . . serious crime is a rarity, juvenile delinquency nearly nonexistent and lawyers virtually unnecessary.”<sup>8</sup> In response to questions concerning crime in China, submitted by this judge and members of his group, some law professors at Peking University explained the reasons for the low crime rate in the following terms:

Crime is an expression of the existence of the class struggle. So long as classes exist in a society there will be crime.

In old China crime was a very serious problem. There were gangs, robbery, prostitution, opium, etc. But the reforms brought about by our socialist society have changed all of this and crime has been greatly reduced because the people feel more secure. There still are some crimes, but for the most part they are counter-revolutionary cases involving persons who have been influenced by the exploiting class's ideas.<sup>9</sup>

While the above observation and the information gathered from a visit to the PRC are useful in studying Chinese law, one must realize the limitations involved in such resources. Professor Robert A. Scalpino has said concerning the value of visitors' reports in Chinese

<sup>7</sup> See, e.g., Munro, *Hints of Unease and Indiscipline Appear in China*, N.Y. Times, July 26, 1976, at 1, col. 3; Butterfield, *Robbers of China Bank Seem to be Folk Heroes*, N.Y. Times, Aug. 23, 1976, at 1, col. 1; and *China: The Breakdown*, NEWSWEEK, Sept. 6, 1976, at 26. After the devastating earthquake that rocked the Tang-shan area in north China in August 1976, the authoritative Jen-min jih-pao (People's Daily) disclosed in an editorial of September 2, 1976 that looting occurred after the earthquakes. See *Peking Discloses Looting Occurred After Earthquake*, N.Y. Times, Sept. 3, 1976, at A3, col. 1.

<sup>8</sup> Crockett, *supra* note 2, at 247.

<sup>9</sup> *Id.* at 246.

studies:

[a] trip to the People's Republic of China can be highly misleading under certain conditions, and it is my personal conviction that the accounts of some returnees have been marked either by an extraordinary naivité or deeply rooted commitments. To be sure, one's response to what one sees, in China or elsewhere, is particularly governed by one's personal, political and cultural biases, and none of us can free ourselves totally from such biases. It is always hazardous, moreover, for the totally uninitiated to take any managed trip.<sup>10</sup> Yet I strongly disagree with those who regard a trip to the People's Republic as meaningless for the American scholars. If approached with seriousness and some rigor in preparation, it can be an important learning experience, and valuable for certain specific research purposes, albeit, in no sense a substitute for the other research sources [such as original primary source materials represented by Communist journals, newspapers, leaflets, and party directives and resolutions, and interviews].<sup>11</sup>

The assertion that crime is no longer a serious social problem in China is certainly not true. In many places open to foreign visitors, one sees barred windows, walls with spikes on the top, crops guarded by barbed wire, and watchmen on duty; bicycles, the most common means of transportation, are always locked when parked. These precautions all indicate that some Chinese, having failed to be transformed into Mao Tse-tung's New Man, do steal from each other. Other evidence of crime in the PRC comes from official PRC documents, local broadcasts, court judgments or other legal documents smuggled out of China, observation by sharp foreign visitors<sup>12</sup> and information supplied by former residents. The types of crimes

<sup>10</sup> No foreigners, including diplomats, can freely travel in China. See 2 J. COHEN & HUNGDAH CHU, *PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY* 1017 (1974). See also Adie, *Pilgrims to China*, 10 CHINA REPORT 15 (1974).

<sup>11</sup> Scalpino, *The Study of Chinese Communism: An American Political Scientist's View*, in PROCEEDINGS OF THE THIRD SINO-AMERICAN CONFERENCE ON MAINLAND CHINA 69 (Chan Lien ed. 1974). The paper is summarily reported in *A Trip to China Can Be Misleading*, 22 ASIAN STUDENT 1 (No. 7, 1973).

<sup>12</sup> See, e.g., Burns, *supra* note 4. In his visit to the PRC in the summer of 1976, Professor Ramon H. Myers of Stanford University also saw two posters in a city in Kirin Province reporting criminal activities, mostly murder cases. Letter of Professor Myers to the author (Nov. 5, 1976).

disclosed in this manner include murder, rape, robbery, bribery, theft, black marketeering, speculating, faking official seals or documents, illegal selling of food or cloth coupons, adultery, counterrevolutionary activities, and many others.

Juvenile or youth offenders (between the ages of sixteen and twenty-five) constitute a significant portion of criminal offenders in the PRC. One of the main reasons for this disproportionate number of youth offenders is Mao Tse-tung's Hsia-fang policy of sending educated youths to settle in the rural or frontier area. This policy has met with stiff resistance by the youth, and some of them have escaped to the cities and resorted to criminal activities to maintain their living. The situation is described by a Western reporter as follows:

Many of the youths sent to the countryside have reportedly found it difficult to settle down in the far less comfortable circumstances of the commune . . . .

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 . . . .

Without money and the coupons needed to purchase cotton, meat, fuel and cooking oil, the basic means of subsistence 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.

Consequently, defectors from the resettlement program are believed to be responsible for a sizable part of the current street crime.<sup>13</sup>

Other reports indicate that some young women who sneak back to the cities from the countryside even engage in prostitution.<sup>14</sup>

<sup>13</sup> Burns, *Street Crime Up in Chinese Cities*, N.Y. Times, Jan. 11, 1974, at 7, col. 1.

<sup>14</sup> See, e.g., a Reuters report from Canton, Aug. 21, 1973, where a foreign visitor saw a court notice sentencing a woman to five years labor reform for running a prostitution business. Min Pao (Bright

In addition to crimes committed by the youth sent down to the countryside who sneak back to the cities—the so called “black person or black household,” *i.e.*, officially non-existent persons in the cities—several recent PRC documents have revealed the existence of a significant number of criminal acts committed by juveniles or youths below the age of twenty-five. Among these documents, the most revealing one is a Yunnan Province document entitled “Severely Strike at the Destructive Activities of Counterrevolutionary and Various Criminal Elements” issued in March 1973.<sup>15</sup> With respect to juvenile or youth criminals, the document stated:

In 1971 and 1972, the whole region of [Shih-mao]<sup>16</sup> handled XXX cases of juvenile or youth offenders between the ages of 16 and 25. They constitute about 14% of the total offenders handled. The peculiar aspects of these juvenile or youth offenders are as follows:

1. [Some of them] came from families of the exploiting class and they resisted thought reform, persisted in a reactionary stand, showed hostilities toward our party and the socialist system, and engaged in various criminal activities. Some engaged in current counterrevolutionary activities; some escaped abroad and joined the enemy camp by participating in American-Chiang special agent organization; some engaged in theft, hooliganism, rape and other criminal activities. . . .

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Daily), Aug. 2, 1973 (Hong Kong). See also M. London & I. London, *Prostitution in Hong Kong, Excerpts from Interview Protocols*, CHINA NEWS ANALYSIS, July 9, 1976 (No. 1046) (Hong Kong). A recent traveler's report said a notice in Changsha, Hunan Province announced the execution of a woman accused of prostitution. *China Said to Execute Man Who Defaced Wall Poster*, N.Y. Times, Nov. 15, 1976, at 5, col 1.

<sup>15</sup> CHIEN-CHÜEH TA-CHI FAN-KE-MING HO KO-CHUNG HSING-SHIH FAN-TSUI FENG-TZÜ TI P'O-HUAI HUO-TUNG (Internal propaganda materials on law and discipline), published jointly by the Military Control Committee over the Public Security Organ of Shih-mao Region, Yunnan Province, PLA and the People's Protection Section of the Shih-mao Region Revolutionary Committee, Yunnan Province (Mar. 1973) [hereinafter cited as Y-VIII]. Photocopy of the document in my personal file.

<sup>16</sup> This region consists of five counties and four autonomous counties; it is not clear how many people reside in this region. The Yunnan Province as a whole consists of 106 counties with a total population of about 20 million. See I-CHIU-CH'I-SHIH CHUNG-KUNG NIEN-PAO (Yearbook on Chinese Communism) 1-48 (1974).

2. [Some] gave up thought reform and forgot their [class origin] and thus changed their class character. At the beginning, they showed dissatisfaction with the party and the socialist system, then gradually [degenerated into] engaging in current counterrevolutionary activities. . . .

3. [Some] craved for easy living and disliked laboring, indulged themselves in comfortable life, and embezzled state's and collective's property. . . .

4. [Many homicide cases were committed by these juvenile or youth offenders.] Some committed robbery and murder because of their greed for money; some killed a person because of an adultery dispute; some killed their wife because they [had an affair] with another woman; some are morally degenerated and [even] killed their parents . . . .<sup>17</sup>

The same document also discloses an interesting phenomenon in Yunnan Province: the existence of illegal planting, smoking, or selling of opium. It even mentions the existence of a criminal gang engaged in opium trade.<sup>18</sup>

Another Yunnan Province document is entitled "Severely Strike at the Criminal Activities Undermining the [Program] of Sending Educated Youth to the Mountain Area or Countryside" issued on September 26, 1973.<sup>19</sup> This document discloses the existence of many sexual offenses against young women sent down to the countryside.<sup>20</sup> This phenomenon may partially explain why some young women made every effort to sneak back to the cities.

#### THE DEFINITION OF CRIMINAL ACTS IN THE PRC

While crime remains a serious social problem in the PRC, there is no criminal code; there

<sup>17</sup> Y-VIII, *supra* note 15, at 12-13.

<sup>18</sup> *Id.* at 10-11.

<sup>19</sup> CHIEN-CHÜEH TA-CHI P'O-HUAI CHIH-SHII CH'ING-NIEN SHANG-SHAN HSIA-HSIANG TI FAN-TSUI HUOTUNG, published by the People's Protection Section of the Revolutionary Committee of Te-hung Autonomous Chou for T'ai Nationality and Ch'ing-p'o Nationality, Yunnan Province (Sept. 26, 1973) [hereinafter cited as Y-IX]. A not very literal translation under the title *Deal a Hard Blow to the Crimes Undermining the Program of Sending Educated Youths to Rural Areas* appears in 11 ISSUES & STUD. 111-15 (No. 3, 1974). (The date that appeared in this translation was mistakenly printed as Apr. 26, 1974).

<sup>20</sup> A Tientsin Court judgment of Aug. 5, 1973, also revealed a number of sexual offenses committed against female youths sent down to the countryside. For a partial translation of the judgment, see Hungdah Chiu, *supra* note 4, at 111-12.

are only a few special criminal statutes dealing with special types of offenses.<sup>21</sup> On May 13, 1974, a German correspondent, Grerd Ruge, was able to interview five members of the Kwangtung Institute of Law and Political Science. They explained to him how the courts can handle cases in the absence of a code. They said:

There is in the country now no published code but we have individual regulations concerning special penalties. For example, regulations concerning penalties against counterrevolutionaries.

If the case is not covered by one of the special regulations we deal with it according to the policy of the Party.<sup>22</sup>

Although there is no "published code,"<sup>23</sup> information gathered from interviews does indicate the existence of unpublished regulations defining murder, rape, arson, and many other common crimes and setting forth the maximum and minimum penalties for each.<sup>24</sup> Despite searches in libraries and research institutions in Hong Kong, the republic of China on Taiwan, Japan, and the United States, the author has been unable to obtain any copies of these regulations. Their contents remain a mystery.

In view of the above stated situation, one cannot be certain of what types of acts constitute criminal offenses in the PRC, and of the punishment attached to each type of offense. In the following, I have attempted to summarize the facts, charges and punishment imposed

<sup>21</sup> There are only three major criminal statutes, namely: (1) Act of the PRC for Punishment of Counterrevolutionaries (promulgated on Feb. 21, 1951), (2) Act of the PRC for Punishment of Corruption (promulgated on Apr. 21, 1952); and (3) Provisional Act for Punishment of Crimes that Endanger State Currency. The first two Acts were translated in J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963: AN INTRODUCTION* 299-302, 308-11 (1968).

<sup>22</sup> Ruge, *supra* note 3, at 119.

<sup>23</sup> According to the Kung Ming jih pao (Enlightenment Daily), Nov. 24, 1956, the Law Section of the Standing Committee of the National People's Congress was about to complete a draft criminal code at that time. The draft code is divided into two parts, General Principles and Parts, and altogether contains 14 chapters with 261 articles.

<sup>24</sup> See COHEN, *supra* note 21, at 317. Interviews also indicate that Party guidelines or instructions were sometimes issued to change the minimum or maximum penalties provided in the unpublished regulations.

on selected cases taken from a number of Yunnan Province documents in order to find out the types of offenses recognized in the PRC. For convenience of presentation, the study is presented in TABLE I. Some of the documents are presented as well in the appendix.

<sup>25</sup> Abbreviation of Source Materials:

- YI = Translated in Document 1 of this paper.
- YII = Notice of the Chinese PLA Military Control Committee Over the Public Security Organ, the Procuracy, and the Court of Kunming City, Yunnan Province, March 14, 1970.
- YIII = Notice of the Chinese PLA Military Control Committee (Section) over the Public Security Organ, the Procuracy, and the Court of Hsi-hsuan-pan-na Chou and Ching-hung County, [Yunnan Province], [Chou is an administrative unit somewhat equivalent to a county in the minority area of a province] Jan. 26, 1971.
- YIII\* = Those parts of YIII which have been translated in Document 2.
- YIV = Notice of the Chinese PLA Military Control Unit over the Public Security Organ, the Procuracy, and the Court of P'an-lung Borough, Kunming City, Feb. 12, 1971.
- YV = Notice of the Chinese PLA Military Control Committee over Public Security Organs of Shih-mao Region, Yunnan Province, Feb. 11, 1972.
- YVI = Notice of the Chinese PLA Military Control Unit over the Public Security Organ of Meng-lien County, Yunnan Province, Aug. 8, 1972. Part of this notice is translated in Hungdah Chiu, *supra* note 4, at 108-10.
- YVII = Notice of the Chinese PLA Military Control Committee over the Public Security Organ of Shih-mao Region, Yunnan Province, Mar. 5, 1973. This notice is printed in Y-VIII, *supra* note 15, at 3-5.
- YVIII = See footnote 15.
- YIX = See footnote 19.
- YX = Notice of Jui-li People's Court, Sept. 22, 1974.
- YX\* = These parts of YX have been translated in Document 4.
- YXI = Translated in Document 3.
- YXII = Notice of Bureau of Public Security of Yunnan Province, High People's Court of Yunnan Province, [and] Revolutionary Committee of Kunming Railway Bureau (Apr. 14, 1975). A not very literal translation appears in 11 ISSUES & STUD. 78-84 (No. 11, 1975).

Examination of TABLE I shows that except for the counterrevolutionary charges (Item XII), which are governed by the 1951 Act of the PRC for Punishment of Counterrevolutionaries,<sup>26</sup> none of the remaining eleven types of charges is governed by any published statutes. However, even in the absence of published statutes, an ordinary person with common sense would know that rape, homicide, theft, opium trade or smuggling all of which are generally recognized as criminal acts in most societies, are criminal acts. Judged by that standard, the cases summarized above would reveal only two peculiar criminal offenses in the PRC.

The first of these is the so-called offense of undermining the marriage of a military serviceman (Fang-hai chün-hun). In case No. I-10, the PRC's judiciary appears to extend the scope of protection even to the engagement of a military serviceman. In that case a person who had sexual relations with the fiancée of a military serviceman was subject to criminal sanction.<sup>27</sup>

The second peculiar offense is the killing or wounding of an ox or cow used for plowing (P'o-huai keng-niu). The background of this offense needs explanation. After the establishment of the commune in 1958, all privately owned oxen or cows became the property of the commune. As a result, any injury done to these animals is, in the PRC view, in the nature of damaging collective property. In many rural areas of China, there has always been a chronic shortage of meat. Occasionally, some peasants intentionally wound or kill an ox or cow so that the meat can be distributed among the commune members. Needless to say, the killing of a plowing ox or cow would reduce the number of available oxen or cows used for plowing the field and affect the efficiency of farming. It is for this reason that this act is a criminal offense in the PRC.

However, in the PRC whether or not an offense is specifically provided for in a published statute is not juridically important. The reason for requiring a criminal offense to be explicitly provided in a published statute is based on the principle of "Nullum crimen sine lege, nulla poena sine lege" (there can be no

<sup>26</sup> See note 21, *supra*.

<sup>27</sup> For a similar case reported in an interview, see COHEN, *supra* note 21, at 324.

punishment of crime without a preexisting law). But the PRC's judicial practice and theory has categorically rejected this "bourgeois" theory. Therefore, the most important PRC criminal legislation, the 1951 Act of the PRC for the Punishment of Counterrevolutionaries, not only does not define with great precision the kinds of conduct that come within its reach,<sup>28</sup> but also explicitly permits the use of analogy<sup>29</sup> and the retroactive application of the Act to cover "pre-liberation" (1949) activities.<sup>30</sup> Legal writing in the PRC also advocates this theory.

In judicial practice, even the discussion of whether analogy or retroactivity should be used is not relevant to an accused, because the PRC has only a few pieces of criminal legislation. It does not seem possible for legal personnel to make widespread use of the doctrine of analogy or retroactivity. Moreover, in rendering a sentence, a PRC court is not required to cite the legal basis of its decision, except to include the vague expression of "sentence . . . according to law."<sup>31</sup> In some cases, a PRC court will only read its judgment to an accused, without giving him or her a written copy.<sup>32</sup>

<sup>28</sup> In practice, considerable confusion continues to exist after the promulgation of the Act. In his famous speech entitled *Problems Relating to the Correct Handling of Contradictions Among the People*, (address at the 11th enlarged meeting of the Supreme State Conference, Feb. 27, 1957), Mao said: "In the work of liquidating counterrevolutionaries, good people were mistaken for bad. Such things have happened before, and still happen today." COHEN, *supra* note 21, at 88.

<sup>29</sup> Article 16 of the Act provides: "Those who, with a counterrevolutionary purpose, commit crimes not covered by the provisions of this Act may be given punishments prescribed for crimes [enumerated] in this Act which are comparable to the crimes committed." COHEN, *supra* note 21, at 302.

<sup>30</sup> Article 18 of the Act provides: "The provisions of this Act also apply to those who were counterrevolutionary criminals before this Act was put into effect." *Id.*

<sup>31</sup> Generally speaking, only with respect to some cases relating to aliens did a people's court choose to cite statutory provisions to support its judgment. See, e.g., *Judgment Against the Alleged U.S. Spies Downey-Fecteau* decided by the Supreme People's Court on Nov. 23, 1954, translated in PEOPLE'S CHINA 6-8 (No. 24, Supp. 1954). Document 1 is among the few exceptional cases where a people's court did cite statutory provisions to support its judgment.

<sup>32</sup> Information supplied by former residents of mainland China. See also the following information supplied by a former PRC judge to Bao Ru-wang when both were in a Chinese prison: "There is nothing in China to limit the sentencing power of

#### SPECIFIC TYPES OF PUNISHMENT

The case summaries reported in TABLE I also provide interesting information on the principal kinds of criminal punishment applied by the PRC courts. While this problem has been studied by Professor Jerome Alan Cohen<sup>33</sup> and others, these case summaries nevertheless shed some light on recent developments. The specific types of punishment revealed by the Yunnan case summaries are as follows:

- (1) Criminal penalty exempted—e.g., case Nos. III-3 and IV-1.
- (2) Criminal penalty exempted but subject to criticism and education by the masses—e.g., case Nos. II-14 and II-15.
- (3) Suspension of sentence—e.g., case No. VI-4. In the Yunnan Province document analyzed here, only one case resulting in suspension of sentence is reported. In that case the accused was sentenced to two years with sentence suspended for two years. It is not clear whether suspension of sentence can only be applied to a criminal who has been sentenced to no more than two years of imprisonment. A 1957 PRC lecture on criminal law suggested that only sentences of a duration less than three years can be suspended.<sup>34</sup>
- (4) Control—e.g., case No. II-5. Control is a special type of punishment applied by the PRC courts. According to a 1952 PRC law,<sup>35</sup> a person under control shall be deprived of some political rights such as the right to vote, to be enlisted in the military service, choice of residence, movement of household, and demonstration and procession. A person under control should also engage in proper employment; he or she should actively labor for production and should immediately report the counterrevolutionary activities of others. A controlled person, however, is not placed under the custody of the PRC authorities.

the government. The common analogy is the rubber band—a sentence can be stretched or abbreviated, depending on dozens of nonobjective factors. . . . If, as in my [Bao's] case, the actual sentence was twelve years, they [the judges] may announce twenty to him, or even life." BAO RU-WANG (J. Pasqualini) & R. CHELMINSKI, PRISONER OF MAO 99 (1973).

<sup>33</sup> See COHEN, *supra* note 21, at 514-44.

<sup>34</sup> *Id.* at 523.

<sup>35</sup> Provisional Measures of the PRC for Control of Counterrevolutionaries (promulgated on July 17, 1952), translated in COHEN, *supra* note 21, at 277-79. For the application of this law by a PRC court, see Document 1.

TABLE I  
SUMMARY OF SELECTED CRIMINAL CASES FROM THE YUNNAN PROVINCE, PRC

No.	Charges	Name	Sex	Age	Occupation	Class Background	Summary of Criminal Activities	Sentence	Source
I. SEXUAL OFFENSES <sup>1</sup>									
1	Rape	Chang Shih-hua	Male	27		Bourgeois family	Raped an educated female youth sent down to the countryside.	7 years imprisonment under the supervision of the masses	Y-IV
2	Rape	Hsieh Chih-k'uan	Male	32	Employee of the Automobile Transport Regiment		Attempted to rape an unmarried female worker, but frankly confessed his crime.	3 years imprisonment	Y-V
3	Rape and undermining the program of sending educated youth to the countryside	Yang Fu-chung	Male	38	Chairman of a Revolutionary Committee and a member of the Party Committee of a commune		Used his power to have illegal sexual relations with female educated youth sent down to the countryside.	20 years imprisonment	Y-IX
4	Same as No. 3 [Nos. 4 & 5 are one case]	Chang ch'un-y'ung	Male	20	Worker of the Yunnan Production and Construction Military Corps		Raped and wounded a female educated youth.	20 years imprisonment	Y-IX
5	Same as No. 3	Chien Shu-lung	Male	21			Attempted to commit rape but confessed his crime.	Criminal punishment exempted	Y-IX
6	Same as No. 3	Yi Yi-chih	Male	22	Peasant		Raped an educated female youth.	15 years imprisonment	Y-IX
7		Yueh P'o-fu	Male	37			Attempted to rape an educated female youth.	5 years imprisonment	Y-IX
8	Having sexual relations with his adopted daughter	Chao Lien-sheng	Male	35			Had sexual relations with his 10-year-old adopted daughter many times.	10 years imprisonment	Y-IV

<sup>1</sup> Sentences on 4 other criminals omitted.

<sup>2</sup> Sentences on other 14 criminals omitted.

<sup>3</sup> Sentences on other 4 criminals omitted.

<sup>4</sup> Sentences on 7 other criminals omitted.

<sup>5</sup> Sentences on 2 other criminals omitted.

<sup>6</sup> Sentences on 4 other criminals omitted.

<sup>7</sup> NOTE: Sentences on other 19 criminals omitted.



9	Having sexual relations with very young girls	Chang Yu-ch'ing	Male	67	Smoked opium, sold opium and had sexual relations with 4 very young girls.	10 years "imprisonment" under the supervision of the masses	Y-IV
10	Undermining the marriage of a military serviceman	Shen Shao-kuei	Male	38	Had sexual relations with the fiancée of a military serviceman and illegally received public funds.	3 years "imprisonment" under the supervision of the masses	Y-IV
11	Hooliganism	Chou Chia-shun	Male	34	Had sexual relations with 15 women by pretending to be a physician.	7 years imprisonment	Y-VII
II. ORDINARY HOMICIDE OFFENSES <sup>11</sup>							
1	Homicide	Not Legible	Female	40	Former rich peasant	Beat a person to death.	Y-II
2	Homicide	Not Legible	Male	38		Killed a person, robbed his money, and destroyed the body.	Y-II
3	Homicide	Yen (second character not legible)	Male			Killed a person in order to steal a bicycle.	Y-IV
4	Homicide	Sha (second character not legible)	Male	31		Killed his wife, but voluntarily surrendered to the authorities and confessed his crime.	Y-III
5	[Attempted] Homicide	Chiang (second and third character not legible)	Male	31		Stabbed his wife 14 times in attempt to kill her	Y-III
6	Homicide	A Shan	Male	24	Director of a Co-operative	Tied up a person and then threw him into the river to drown.	Y-V
7	Homicide	Pei Wen-hsin	Male	32	Cadre of the state	Used a hammer to beat his wife to death.	Y-V
8	Homicide [Nos. 8 & 9 are one case]	Wang Fu-tsai	Male	24		Jointly planned to kill Tao's husband; Wang did the killing and they removed the corpse together to erase evidence.	Y-V

TABLE I—Continued

No.	Charges	Name	Sex	Age	Occupation	Class Background	Summary of Criminal Activities	Sentence	Source
9	Homicide	Tao Erh-wei	Female	49			See	15 years imprisonment	Y-V
10	Homicide in an affray	Chou Lien-sheng	Male	20			Instigated the parties to engage in an affray.	6 years imprisonment	Y-V
11	Nos. 10 to 15 are all involved in an affray	T'ang Fu-hsin	Male	19			Incited the parties to engage and participated in affray.	6 years imprisonment	Y-V
12		Chao Wen-chi	Male	18			Used a sword to hack a person to death.	5 years imprisonment	Y-V
13		Chou San-y'ung	Male	20			Participated in the affray and showed bad attitude in confessing his crime.	5 years imprisonment	Y-V
14		Cheng Chi'ang sheng	Male	20			Participated in an affray but showed good attitude in confessing his crime.	To be criticized by and educated by the masses	Y-V
15		Chao Wen-ch'Han	Male	20			Participated in an affray but showed good attitude in confessing his crime.	To be criticized by and educated by the masses	Y-V
16	Using poison to kill a person	Yü Pao	Male	27			Had adulterous relations with his sister-in-law, poisoned his wife to death, but frankly confessed his crime.	20 years imprisonment	Y-V
17	Homicide	Tzou Cheng-ch'ing*	Male	34			Suspected his wife having adulterous relations with another person and killed her, but showed good attitude in confessing his crime.	15 years imprisonment	Y-VI

18	Committing (at-tempted) homicide [Nos. 18 and 19 one case]	Chao Pei	Male	20	A member of the Yunnan Production and Construction Military Corp.	Attempted to kill an educated youth who exposed their stealing of five chickens to the owner. (The victim was seriously wounded)	8 years imprisonment	Y-X	
19		Hsiung K'uei-Ch'uan	Male	20	Same as no. 18		5 years imprisonment	Y-X	
III. THEFT <sup>III</sup>									
1	Theft	Ho King-hal	Male	34		Committed theft many times.	5 years imprisonment	Y-IV	
2	Theft	Chen Kun-fa	Male	20		Committed theft many times, and pretended to be a PLA member to commit the crime, but frankly confessed his crime.	3 years "imprisonment" under the supervision of the masses	Y-IV	
3	Theft	Yu Hsun-kun	Male	27		Committed theft twice but frankly confessed his crime.	Criminal punishment exempted	Y-IV	
4	Theft	Han Hua-yun	Male	16	Capitalist family	Committed theft many times, attempted to use stolen gun to commit robbery, and resisted reform.	15 years imprisonment	Y-V	
5	Theft	Lo Lin-shang	Male	21	Employee of the Forest Bureau	Stole public funds, but later returned the funds and frankly confessed his crime.	To be criticized and educated by the masses	Y-V	
6	Theft	Li Pao-chang	Male	20	Resided in a Railway Workers Dormitory	Committed theft many times, arrested by the Public Security organ many times for education but still refused to correct himself.	15 years imprisonment	Y-XII	
7	Members of a group of thieves	Wang Y'ung-sheng (ringleader)	Male	29	Peasant	Stole materials used for national defense, military supplies and construction.	12 years imprisonment	Y-XII	

TABLE I—Continued

No.	Charges	Name	Sex	Age	Occupation	Class Background	Summary of Criminal Activities	Sentence	Source
8	SAME	Ma Te-y'ung	Male	25	Worker		SAME	8 years imprisonment	Y-XII
9	SAME	T'ang Cheng-hua	Male	25	Peasant		SAME, but frankly confessed his crime.	Criminal punishment exempted	Y-XII
1	Offense concerning Opium	Chang Hung-ming	Male	37		IV. OFFENSE CONCERNING OPIUM <sup>iv</sup>	Engaged in opium trade but voluntarily surrendered to the authorities.	Criminal penalty exempted	Y-III
2	SAME	Chou Wen-fa	Male	60			In 1953 he was sentenced to 3 years imprisonment and in 1966-1968 he again engaged in opium trade.	7 years "imprisonment" under the supervision of the masses	Y-IV
3	SAME	Tsui Chih-ch'in	Female	44			Engaged in opium trade.	3 years imprisonment	Y-IV
4	SAME [Nos. 4 & 5 are one case]	Ho Te-shu	Male	30			In 1962, he was arrested for engaging in opium trade and released after receiving education, but in 1966-68, he again engaged in opium trade and also showed bad attitude in confessing his crime.	20 years imprisonment	Y-VIII
5	SAME	Han Wen-hua (wife of Ho)	Female				Joined her husband in opium trade.	3 years control and put on bad elements hat on her head	Y-VIII
6	SAME	An Chih	Male	49			Engaged in opium trade but frankly confessed his crime.	10 years imprisonment	Y-VIII
7	SAME	Ma Yao-chu	Male	28		Former landlord family	Engaged in opium trade, sold silver dollars and gold, and pretended to be a state employee to buy opium.	20 years imprisonment	Y-X

8	Offense concerning Opium	Ma Hsueh-ping	Male	28	Former rich peasant family	Engaged in opium trade, sold cloth coupons and pretended to be a state employee to buy opium. In 1967, he was arrested for engaging in opium trade but was released after receiving education.	17 years imprisonment	Y-X	
9	SAME	Ma Yun-ku	Male	32		In 1964, he illegally received public funds and was sentenced to one year imprisonment with sentence suspended for one year. He pretended to be a state cadre to buy opium and showed bad attitude in confessing his crime.	15 years imprisonment	Y-X	
10	SAME	Ma Shu-ying	Female	29		Engaged in opium trade and pretended to be a state cadre to buy opium, but frankly confessed her crime and exposed the criminal activities of others.	5 years imprisonment	Y-X	
V. SMUGGLING									
1	Smuggling	Hu Ch'ing-sheng	Male	22		Smuggled industrial products, and stole and sold mercury.	5 years imprisonment	Y-X*	
VI. ASSULT AND BATTERY									
1	Engaged in a group fight	Chien Kuei-chang	Male	21		They got together to engage in a group fight and used knives to injure others.	5 years imprisonment	Y-IV	

TABLE I—Continued

2	SAME	Tung (second character not legible)	Male	21		SAME	5 years imprisonment	Y-IV	
3	SAME	Lu Chih-yuan	Male	27		SAME	3 years imprisonment	Y-IV	
4	SAME	Wen K'un-sheng	Male	26		SAME	2 years imprisonment with sentence suspended for 2 years	Y-IV	
VII. ROBBERY									
1	Robbery on the road	Li Tien-fu	Male	21	Worker	Used a knife to rob a female worker's watch and also attempted to commit rape.	20 years imprisonment	Y-X	
2	Robbery	Lei Chang-fu	Male	21	Lived in 11th Regiment of Yun-nan Production and Construction Military Corps.	Used a sword and dagger to rob the property of educated youths, engaged in theft, and smuggling, wounded other persons, and secretly listened to enemy radio broadcast.	20 years imprisonment	Y-X	
VIII. DESTROYING STATE PROPERTY									
1	Disobeying instructions in operating machine and causing serious damage to state property; having reactionary thought	Kuei Chia-cheng	Male	40	Worker	In 1968, he shouted reactionary slogans. In operating a crane he disregarded instruction and destroyed a printing machine worth \$110,500 Jen-min-pi [about U.S.\$ 55,250].	15 years imprisonment	Y-XII	

## IX. KILLING OR WOUNDING OX OR COW USED FOR PLOWING

1	Killing or wounding ox or cow used for plowing; rape	Wang Ta	Male	58	In August 1970, he raped his daughter-in-law and since 1971, he killed two oxes/cows and wounded one.	8 years imprisonment	Y-VII
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X. SETTING FIRE TO DESTROY FOREST<sup>v</sup>

1	Setting fire to destroy forest; rape	Chao Shih-ta	Male	45	In March 1971, he raped a girl and on April 19, 1972, he set fire to 800 acres of forest and destroyed 20,000 trees.	7 years imprisonment	Y-VIII
2	Setting fire to destroy forest	Cheng Yu-ho	Male	46	Set fire to forest to cultivate land and destroyed 15,000 acres of forest, 75,000 big trees, and 18,700 other trees, but he frankly confessed his crime.	3 years imprisonment	Y-VIII

XI. SWINDLING, PROFITING AND SPECULATING<sup>v</sup>

1	Swindling	Li Tzu-yuan	Male	24	Pretended to be a state cadre to acquire money and materials by fraudulent means.	8 years imprisonment	Y-X
2	Profiteering and speculating	Kuo Hua-ying	Female	36	Constantly engaged in profiteering and speculating and was arrested 5 times for education but still refused to reform herself. She also pretended to be a state cadre.	15 years imprisonment	Y-IV

XII. OFFENSE CONCERNING COUNTERREVOLUTIONARY ACTIVITIES<sup>vi</sup>

1	American imperialist spy	K'ang Wan-nan	Male	30	Gathered intelligence information and organized armed counterrevolutionary group.	20 years imprisonment	Y-IV
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TABLE I - Continued

2	American-Chiang spy	K'ang Nan-lang	Male	46		Gathered intelligence information and instigated the masses to escape to foreign countries.	20 years imprisonment	Y-IV
3	American-Chiang Armed Special Agent	Chen Ch'uan-kuo	Male	31		Entered the country with weapons in order to engage in destructive activities and after his arrest he attempted to escape from the prison.	Death	Y-V
4	American-Chiang Armed Special Agent	Lu Hsuan-shou	Male	33		Entered the country with weapons in order to engage in destructive activities, but after his arrest he frankly confessed his crime.	15 years imprisonment	Y-V
5	Chiang gang Special Agent	Chen Yung-wu	Male	24		Stole local newspaper and instigated people to defect.	15 years imprisonment	Y-IX
6	Current counter-revolutionary killer	Tseng (second character not legible)	Male	25		Spread the terror of war and killed a PLA member.	Death	Y-II
7	Current counter-revolutionary [element]	Li Chi-hsiao	Male	24		Spread reactionary remarks, shouted reactionary slogans and wrote reactionary posters.	20 years imprisonment	Y-III
8	Current counter-revolutionary [element]	Shih (second character not legible)	Female	38	Former landlord family	Spread reactionary remarks.	5 years control	Y-III*
9	Current counter-revolutionary [element]	Wuo Chun	Male	29	Former rich peasant family	Wrote reactionary [essays] and slogans.	10 years imprisonment	Y-IV



10	Current counter-revolutionary [element]	Chang Jen-ching	Male	29	Former landlord family	When he was teaching at an elementary school, he attacked the Party and the socialist system. He also said that Liu Shao-ch'i (former Chairman of the PRC who was deposed in 1968) was innocent.	20 years imprisonment	Y-VII
11	Current counter-revolutionary [element] who undermined the program for sending educated youth to the countryside	T'ang Mi-chung	Male	24		He had sexual relations with female educated youth, participated in Chiang special agent organization and instigated educated youth to defect.	15 years imprisonment	Y-IX
12	Counterrevolutionary [element] and political swindler	Liu (second character not legible)	Male			He pretended to be a cadre to take over a factory and then dismissed all the employees, causing the factory to stop production.	Death	Y-II
13	Current counter-revolutionary [element]	Liu Chung-ho	Male	33	Poor peasant family	Wrote anonymous letter to spread reactionary ideas.	2 years control	Y-I
14	Historical counter-revolutionary [element]	Yang Ming-hua	Male	46	Former KMT self-defense team member	He concealed his reactionary history but upon discovery frankly confessed his crime.	5 years control	Y-IV

In the 1952 laws, the term of control is limited to three years, but "may be extended when necessary." From several cases summarized in TABLE I, it appears that control may be imposed by a PRC court for as long as five years (case Nos. XII-8 and 14).

- (5) Control plus putting a (hypothetical) bad element's hat on one's head—*e.g.*, case No. IV-5. Great effort has been made to make this sanction appear to be a "new born thing" of the Cultural Revolution. Before the Cultural Revolution, a person "wearing a bad element's hat" was usually placed under supervised production or labor, that is to say, he or she was required to do more labor work under supervision than an ordinary person. Moreover, such a person was required to spend many evenings in study and meetings and to perform special labor projects, during holidays or after his or her regular working hours.
- (6) Imprisonment for a fixed term—After the Cultural Revolution, there developed two types of imprisonment for a fixed term. The first type entails the execution of a criminal's fixed term sentence "under the supervision of the masses" (cases Nos. I-9 and 10, III-2, IV-2). This is also a "new born thing" of the Cultural Revolution. According to information provided by former residents of mainland China, this form of imprisonment was originated by Mao. The exact content of this sanction is not clear, but information gathered from interviews gives the impression that those so sentenced may serve their sentence at home by engaging in supervised labor. The freedoms of such persons are severely restricted in a manner similar to the restrictions placed on persons under control. The maximum term of this sanction is not clear, but case No. I-9 suggests that it can be as long as 10 years.
- The other type of imprisonment for a fixed term entails sending the criminal to one of the many reform through labor camps for hard working.<sup>36</sup> The maximum term of this sanction appears to be 20 years.
- (7) Life Imprisonment—None of the cases summarized indicated the imposition of life imprisonment, but this does not mean that the PRC no longer uses this type of punishment. At least two recent cases decided by the courts in other provinces indicate that life imprisonment is still in use.<sup>37</sup>

- (8) Death Penalty—There are two types of death penalty: one is immediate death (*e.g.*, case Nos. II-1 and 2, XII-3 and 12), and the other one is suspension of the execution for two years (*e.g.*, case Nos. II-3, 6 and 7). After the two year period of suspension of execution, the criminal may be executed or resented to life imprisonment or other long-term imprisonment.<sup>38</sup> In some cases, the criminal or his or her family has to pay the cost of two bullets (0.35 Jen-mi-pi each, about 0.17 U.S. dollars) used to execute the criminal.<sup>39</sup>

#### OTHER ISSUES IN THE ADMINISTRATION OF CRIMINAL JUSTICE

The case summaries also reveal some limited information on the PRC's practice with respect to some problems closely related to the PRC's criminal justice, such as criminal responsibility of the youth, evidence in criminal trials, and reasons for increasing or decreasing punishment.

In every civilized society, a person assumes criminal responsibility only upon reaching a certain age. The PRC also follows this principle. A 1957 PRC criminal law book notes that until 1957, the PRC "lacked a uniform criterion for the specific age at which minors assume criminal responsibility." However, the book concluded that relevant documents appear to suggest that "fifteen years of age is in the period of complete assumption of criminal responsibility."<sup>40</sup> In the case summaries presented in Table I the youngest offender sentenced to criminal sanction is sixteen years old (case No. 2, III-4). This appears to be the minimal age for criminal responsibility.

The legal materials from Yunnan Province under analysis disclose very little concerning evidence and fact finding at criminal trials. There is no mention of the defense of the accused. For example, in a number of cases, the reason for lenient treatment was either that the criminal "frankly confessed the crime" (*e.g.*, case Nos. II-16, III-2, 3, 5 and 9) or "showed a good attitude toward confessing the crime" (*e.g.*, case Nos. II-14, 15 and 17). On the other hand, those who showed a "bad attitude toward

<sup>38</sup> According to PRC officials, only a few criminals sentenced to a suspended death penalty are actually executed at the end of the two-year term.

<sup>39</sup> Information supplied by several former residents of the PRC.

<sup>40</sup> See COHEN, *supra* note 21, at 345.

<sup>36</sup> For a detailed case story, see BAO, *supra* note 32.

<sup>37</sup> See, *e.g.*, Harbin court judgment mentioned *supra* note 4 and a Tientsin court judgment mentioned *supra* note 20.

confessing the crime" (*e.g.*, case Nos. IV-4 and 9) were given a more severe punishment. This policy would result in discouraging an accused from challenging the evidence presented by the authorities against him or her.

Another situation that can result in a reduced criminal punishment is voluntary surrender (Tzu-shou). The PRC, in this respect, still follows the traditional Chinese legal practice under which a criminal who voluntarily surrenders receives a more lenient treatment (*e.g.*, case No. II-4).

In the case of co-offenders, one who is willing to expose the crime of the other would receive more lenient treatment (*e.g.*, case No. IV-10) or would be exempt from criminal sanction (*see e.g.*, Document 4) (Ma Cheng-pang's case).

Whether the class background of an accused affects the degree of severity of punishment against a criminal is not very clear. Information gathered from interviews, furthermore, is conflicting. Some felt that class background was an important factor, but others considered that the party's periodic guidelines may be a more important factor, although class character is also one of the important factors in determining the sentence. Among the 132 criminals reported in the Yunnan Province documents (seventy-eight of which were summarized either in the table or in the documentary parts of this paper), twenty-two were specifically mentioned as coming from "black elements." The materials, except for a few cases (*e.g.*, case No. XII-13) are silent on the class background of the remaining 110 criminals, and I was told by several former residents in the PRC that under such circumstances they were from the "people" (five red categories). The information provided by the Yunnan materials does not warrant a definite answer to this question, although in some cases it does indicate that class background may be an important factor in deciding the severity of the punishment. This factor seems especially relevant in the case of counterrevolutionary charges (*e.g.*, case No. XII-10).

#### CONCLUDING OBSERVATIONS

Needless to say, an analysis of a limited number of PRC legal documents from the Yunnan Province still leaves many unanswered questions concerning practices with respect to PRC criminal punishment. However, this anal-

ysis of the documents does provide a general view of the operation of the criminal justice system and enables one to discern a few of its basic principles.

The imposition of criminal punishment in the PRC appears to rely on vague terminology, general party policy, and unpublished regulations. These factors allow flexibility of interpretation at the discretion of the law-enforcement agencies. Thus, for example, the punishment for the offense of theft can range from criticism and education by the masses (case No. III-5) to fifteen years imprisonment (case No. II-6).<sup>41</sup> Similarly, punishment for committing the offense of homicide ranges from three years imprisonment to the death penalty.

This practice of flexibility in imposing a criminal punishment for a specific offense may partially explain why the PRC does not want to have a criminal code which would restrict the discretionary power of the judiciary. This explanation, however, raises another interesting question. Why, twenty-seven years after the establishment of the Communist regime, does the PRC still want to have such a flexible judicial system? One answer is that this flexibility is closely related to the Communist theory of law and the Maoist view of permanent revolution.

According to the Communist legal theory, law is primarily an instrument of state policy. Therefore, law has to be sufficiently flexible to be able to vary with the circumstances of the revolutionary state. In Mao's view of permanent revolution, China's status as a revolutionary state will continue forever. If this is the case, then class struggle must also continue and the law, especially criminal law, must be as flexible as possible so as to serve the needs of a constantly changing environment and its changing political objective in liquidating class enemies.

Not all PRC leaders have agreed with Mao's view. Some leaders, for example, deposed Chairman Liu Shao-ch'i and the former Mayor of Peking, P'eng Chen, asserted that the "class struggle is out theory" and urged the enactment of a criminal code and other major legislation.

<sup>41</sup> On June 28, 1955, a PRC court sentenced a habitual thief to death. *See* Chiang-hsi jih-pao (Kiangsi Daily), June 29, 1955, translated in COHEN, *supra* note 21, at 540-41.

It appears that the question of enacting a criminal code is closely related to the question of class struggle in China. A widely publicized big-character poster put out by some educated youths in Canton in 1974 demands that "the 'Fourth National People's Congress' should stipulate in black and white that all the democratic rights which the masses of people deserve should be protected, and that dictatorship will be exercised over the criminals who committed murder, arson, gangsterism, robbery and theft and the elements who incited armed struggles and organized conspiratorial cliques."<sup>42</sup>

A few weeks later, another poster, which was believed to be prepared by the PRC authorities, severely criticized, among other things, the above quoted exhortation for not mentioning the need for exercising dictatorship over the landlords, bourgeoisie, rich peasants, rightists and counterrevolutionaries, the so-called five black elements.<sup>43</sup> In view of this, as long as the PRC insists on classifying the population into two major types, the five red elements and the five black elements, it seems desirable, from the PRC's point of view, not to have a criminal code to restrict the judiciary in its application of criminal punishment.

#### SELECTED DOCUMENTS

##### *Document 1*

Criminal Judgment of the Intermediate  
People's  
Court of Kunming City of Yunnan Province  
Hsin (59) Chung-i-tzu No. 134

Organ filing the Complaint: Yunnan Mining Machinery Factory. Defendant: Liu Chung-ho, also named Liu Sung, male, thirty-three years of age, of Han nationality, and a native of [Chinese character not legible]-chiang county in Yunnan Province, poor peasant family background, with personal class status of worker, middle school graduate cultural level, is a fitter at the Yunnan Mining Machinery Factory. He has a previous criminal record.

The Liu Chung-ho counterrevolutionary case was tried publicly by this Court on Febru-

<sup>42</sup> See *Concerning Socialist Democracy and the Legal System—Dedicated to Chairman Mao and the Fourth National People's Congress*, (Nov. 10, 1974), translated in 12 ISSUES & STUD. 142-43 (No. 1, 1976).

<sup>43</sup> See *Concerning the Socialist Democracy and Legal System* (Dec. 3, 1974), in 12 ISSUES & STUD. 132-33 (No. 2, 1976).

ary 1, 1959 and we find that:

In 1941, the defendant joined the San-ch'ing-t'uan.<sup>44</sup> In 1943, he passed a recruiting examination [held by the Nationalist Government] and joined the 4th Regiment of the bogus Second Honor Division and served first as a lieutenant and then as a captain in charge of military supplies. In 1947, he joined Ch'ing-pang [an underground group]. After liberation [in 1949], criminal Liu was arrested for committing offenses such as harboring counterrevolutionary elements, abducting married women, faking [official] seals, and counterfeiting identification documents used in escaping to Tientsin. Although he was leniently handled, he not only did not repent but also showed extreme dissatisfaction toward our government. In 1957, he wrote an anonymous letter to the Provincial Council distorting and exaggerating [certain facts]. He also organized a small reactionary group with T'ao Chu (already under arrest) and Li Lien-ching (already placed under control)<sup>45</sup> to engage in spreading rumors and other destructive activities. They disseminated reactionary utterances such as, "Revolution makes no sense, early revolution is no good as late revolution, and the latter is no good as counter-revolution." [Translated literally from the Chinese and the translator does not know the real meaning of this sentence.] The defendant, moreover, was not satisfied with his wage and spread the rumor by saying, "Other workers are at the third class, while he is at fourth class. First class people do office work, second class people wait to eat, third class people wait to receive money, and the fourth class just wait for death." In addition, he actively instigated and directed criminal T'ao to escape to Burma by telling T'ao, "You can cross [the national boundary] by pretending to be hunting there." He also said, "If I were as young as you are, I would have already crossed [the national boundary]." At work, the defendant was a loafer. He failed to observe labor discipline and incited others to do the same, saying, "There is nothing to be afraid of," or "Don't be afraid of being discharged," and so forth. Furthermore, he ingratiated himself with ap-

<sup>44</sup> Abbreviation of San-min-chu-i-ching-nien-t'uan (Three Principles of the People's Youth Corps). This was a Nationalist youth organization.

<sup>45</sup> Control is a type of criminal sanction in the PRC, see SPECIFIC TYPES OF PUNISHMENT, *supra* at 379 & 390.

prentices by teaching them to sing sexually suggestive songs, with extremely deleterious effects.

On the basis of the above stated fact, the defendant is indeed a current counterrevolutionary element and should be punished according to law. In accordance with Article 3 of the Provisional Measures for Controlling Counterrevolutionary Elements,<sup>46</sup> this court renders the following judgment:

Defendant Liu Chung-ho shall be placed under control for two years.

If the defendant disagrees with the judgment, an appeal petition with a copy may be filed with this Court within five days from the day after receipt of this judgment. The appeal is to be made to the High People's Court of Yunnan Province.

February 1, 1959 The Criminal Tribunal of  
the Intermediate People's  
Court of Kunming City of  
Yunnan Province

(Seal of the Court)

Acting Judge Lin Liang-t'sai

March 1, 1959

This copy is the same as the original. Clerk  
Yu Chung-lun

#### *Document 2*

#### Supreme Directive

Resolutely purge all bandits, special agents, local despots and other counterrevolutionary elements.

In order to safeguard social order and the interest of the broad [masses], it is also necessary to exercise dictatorship over burglars,

<sup>46</sup> The Measures were approved by the Government Administration Council on June 27, 1952 and promulgated by the Ministry of Public Security on July 17, 1952. Article 3 provides:

The following counterrevolutionaries who historically committed evil acts and who, since liberation, have not demonstrated or proved their repentance and reform though they have not engaged in current counterrevolutionary activity, must be given definite punishment; but, if the degree [of seriousness] of their evil acts does not require that they be arrested and sentenced, they all shall be controlled in accordance with these measures:

. . . .

(5) Chiang [Kai-shek]'s bogus military and government officials who persist in their reactionary standpoint; (6) Other counterrevolutionaries who should be controlled.

swindlers, killers, arsonists, hooligan gangs and the various bad elements who seriously undermine the social order.

Chinese People's Liberation Army

The Military Control Committee (Section)  
of the Public Security Organ, the Procuratorial  
Organ, and the Court of Ching-hung County  
Hsi-hsuan-pan-na Chou<sup>47</sup>

Notice

Under the guidance of Chairman Mao's great strategic guideline concerning "sharpening [our] vigilance [against the enemy] and safeguarding our fatherland" and "making war preparation, famine preparation and working for the people"; the people of various nationalities of our Chou received the fighting year of 1971 amid the new high tide of socialist revolution and socialist reconstruction, and the struggle of the people all over the world in opposing American imperialism and social imperialism. In the coming new year, we will continue to raise high the great red flag of Mao Tse-tung's thought, to creatively study and apply Chairman Mao's philosophical thought, to grasp firmly two lines of struggling education, and to raise a new high tide of industrial and agricultural production by a great leap forward through learning from the Tachai agricultural experience,<sup>48</sup> overtaking the Tachai [production record] and surpassing the [production record set forth in the] outline. The situation is very good and is getting better and better. However, "the enemy will not perish of themselves," they will resort to various means to engage in destruction and causing disturbances. In order to follow the great strategic deployment of Chairman Mao, firmly put into full effect the various fighting roles [decided by] the "Ninth [Party] Congress" and the "Second Session of the Ninth Central Committee," to grasp firmly the movement of "strike one-oppose three," and continuously and forcefully to stroke at a handful of counterrevolutionary elements who undermined socialist revolution and reconstruction and ab-

<sup>47</sup> A Chou is a special administrative unit similar to a county in the PRC.

<sup>48</sup> Ta-chai is a Commune at Hsi yang County, Shansi Province. The Ta-chai experience refers to a revolutionary spirit of hard work and self-reliance exhibited by the Ta-chai Production Brigade in its outstanding success in wasteland reclamation and agricultural development in the poverty stricken Ta-chai area.

surdly attempted to restore capitalism, to further put into full effect the preparation for war, to consolidate national defense, to strengthen the dictatorship of the proletariat, and to safeguard the great fruits of the Great Proletarian Cultural Revolution, [we] in accordance with party policy and the demand of the broad masses, [hereby announce] the sentencing according to law of a group of special agents and spy elements, collaborators with the enemy and traitorous elements, current counterrevolutionary elements and killers, as follows:

American imperialist spy K'ang Lang-wang is a male, thirty years of age, of T'ai nationality, and a native of the Man-t'ang production brigade, Ta-men-lung Commune, Ching-hung County, Yunnan Province. Criminal K'ang joined in the American imperialist spy organization in 1967. After receiving a simplified training, assignment, money for secret activities, equipment and materials, he sneaked into our country, actively collected our military, political, economic and Great Cultural Revolution information, and secretly took pictures of our important buildings and military installations. [All information he collected and the photos he took were] turned over to [an American imperialist] secret agent and spy organization. He also attempted to buy over the dregs of the society and to organize a counterrevolutionary armed band in an attempt to subvert the dictatorship of the proletariat. His crime is serious. However, after his arrest, he nevertheless frankly confessed [his criminal activities], and he is hereby sentenced to imprisonment for 20 years.

American and Chiang spy K'ang Nan-lang is a male, forty-six years of age, of T'ai nationality, and a native of the Man-ta-hei production brigade, Tan-meng-lung Commune, Ching-hung County, Yunnan Province. Criminal K'ang has always craved the easy life and disliked working and he has never been properly employed. He frequently crossed the national boundary to seek opium for smoking. [Later,] he was bought over by an American-Chiang spy organization and became a member of it. He actively collected our military, political, economic and cultural revolution information and instigated the masses to flee the country and to become [special agents] of the imperialists, the revisionists and counter-revolutionar-

ies. His crime is serious and he is hereby sentenced to imprisonment for twenty years. . . .

Current counterrevolutionary criminal Chang Yao-tsung is a male, twenty-one years of age, of Han nationality, landlord family background, and a native of Shanghai City. Criminal Chang has persisted in his reactionary standpoint by drawing reactionary pictures, composing reactionary poems, and writing reactionary posters and slogans, to slander and to make malicious attacks against our party and the socialist system, and the headquarters of the Proletariat, in an absurd attempt to restore capitalism. After his crime was exposed by the masses, he tried to flee from the country for fear of punishment and in an attempt to betray the [motherland] and to enter the service of the Soviet revisionists. He was captured by our army and people engaged in frontier defense. The crime committed by criminal Chang is serious. However, during the period of his detention, he nevertheless frankly confessed his criminal activities; [therefore], in accordance with the party policy of "dealing leniently with those who confess and severely with those who resist," he is hereby sentenced to imprisonment for ten years.

Current counterrevolutionary criminal Shih Li (?The Chinese character is not very legible), is a female, thirty-eight years of age, of Han nationality, landlord family background, and a native of Yuan-chiang County, Yunnan Province. Eleven of her relatives had been suppressed [by the People's Government]. Criminal Shih has persisted in her reactionary standpoint and has shown extreme hatred toward our party. Since 1962, she has spread reactionary remarks many times to slander and to make malicious attacks against our party and the socialist system. In the course of the Great Cultural Revolution, she tried to reverse the verdict and to engage in class revenge. Although she was criticized and educated by the masses several times, she still refused to repent and to reform herself. [Criminal Shih] is hereby sentenced to be placed under control for five years. . . .

The party's policy has always been "dealing leniently with those who confess and severely with those who resist" and "to give [the criminal] an opportunity for rehabilitation." We severely warn a handful of class enemies: you have already fallen into the vast expanses of

the ocean of people's war. Your only way out is to turn yourselves in and confess your crime. If you put up a stubborn resistance, you will definitely be subjected to severe punishment by the iron fist of the dictatorship of the proletariat.

January 26, 1971

*Document 3*

Criminal Judgment of the [Basic] People's Court of Meng-hai County, Yunnan Province

(74) Hsin tzu No. 9. Judgment Against Criminal Yen Ying for Starting a Forest Fire.

Criminal Yen Ying, who started a forest fire, is a male, nineteen years old, of T'ai nationality, poor peasant family background, and himself of peasant element. He is a native of Man-kun Stockade, Meng-hai Commune, Meng-hai County. Before committing this offense, he labored at Meng-ta-ta'i Production Brigade of the Meng-hai Commune.

Criminal Yen's spontaneous capitalistic thinking is very pronounced. He has already acquired two private plots totalling 1.42 mou.<sup>49</sup> On February 24, 1974, he went to his private plot, which is one kilometer from the Meng-ta-ta'i Stockade, to open a 0.42 mou piece of land for self-cultivation [without first obtaining official permission]. Criminal Yen set a fire to clear the land. However, the fire first spread to surrounding growth and then to about 2000 mou of national mountains and forests. 1500 mou of national mountain and forests were burned, resulting in the destruction of 180,000 trees (30,000 large trees and 150,000 small trees) and twenty-six bunches of commune members' firewood. Although his act does not belong to the category of engaging in intentional destruction [of state property], the consequence is, nevertheless, serious. It affected the movement of "learning from Ta-chai's agricultural experience" and also undermined [the movement of "grabbing revolution and promoting production. ["] In order to strike at the spontaneous force of capitalism, to safeguard the movement to criticize Lin Piao and Confucius,<sup>50</sup>

<sup>49</sup> A mou is about 733½ square yards.

<sup>50</sup> In 1969, Lin Piao was Vice-Chairman of the Central Committee of the Communist Party of China, Vice-Premier, and Minister of National Defense, and heir-apparent designated by Chairman Mao. However, he was reported to have died in September 1971 following an alleged abortive attempt to assassinate Mao. Confucius (551-479 B.C.) was an ancient

to protect [the movement of] learning from the Ta-chai agricultural experience, and to grab revolution and promote production, criminal Yen Ying, who started the forest fire, is hereby given a severe punishment of seven years imprisonment. (The sentence shall run from March 5, 1974 through March 4, 1981.)

If the [criminal] disagrees with the judgment, an appeal may be filed with this court within ten days from the second day after receipt of this judgment. The appeal is to be made to the Intermediate People's Court of Hsi-hsuan pan-na Chou.

Copied by the Forest Station of Meng-hai County.

September 14, 1974

*Document 4*

PEOPLE'S COURT OF JUI-LI COUNTY

Notice

[74] Jui-fa-pu No. 1

Under the guidance of Chairman Mao's proletarian revolutionary line, the movement to criticize Lin [Piao] and Confucius of this county, like other places the country over, has been victoriously carried out in a penetrating, broad, and persistent manner. Under the impetus of the movement to criticize Lin Piao and Confucius Movement, the work for "grasping revolution and promoting production, work, and war preparation" in various fronts has been flourishing and prospering. The situation is very good and is getting better and better. The dictatorship of the proletariat is further consolidated. However, a handful of class enemies inside and without the country are not reconciled to their defeat. They have resorted to various means to engage in sabotage and disruption, in an absurd attempt to subvert the dictatorship of the proletariat and to restore capitalism. In order to safeguard and to develop the magnificent achievements of the

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Chinese philosopher. His teachings became the basis of the moral system of Confucianism which prevailed in China for two thousand years until the rise of Communism in China in 1949. The basic moral principle of the system is the maintenance of jen (roughly, sympathy) between men by keeping right relationships: treat those who are subordinate to you as you would be treated by those in positions superior to yours. Lin Piao was accused as a follower of Confucianism. A movement to criticize Lin Piao and Confucius was started in the PRC in 1972.

Great Proletarian Cultural Revolution, to safeguard the movement to criticize Lin Piao and Confucious, to strengthen and to consolidate the dictatorship of the proletariat, and to develop the excellent situation of revolution and production, [we] must firmly strike out against the destructive activities of active counterrevolutionary elements and other criminal offenders. In accordance with the policy of the Party, state law, and the strong demand of the broad masses of the people, [this court], according to law, passes sentence on twenty-one criminals, including To Chün, a special agent dispatched by the Chiang group. [The sentences] are hereby announced as follows:

Hsu Yün-hung, a criminal who had illicit sexual relations with and who persecuted female educated youth sent to mountain areas or to the countryside, is a male, thirty years of age, and a native of Ch'i-tung County, Hunan Province. Before his arrest, he was a clerk at 10th Company, 3rd Battalion, 11th Regiment of Yunnan Production and Construction Military Corps.

This criminal is a morally degenerate person and a confirmed hooligan. He acted indecently toward or had illicit sexual relations with female youths several times. In 1968, he acted as a match-maker to deceive a female youth and then had illicit sexual relations with her several times. In 1972, and thereafter, he had sexual relations several times with married woman XXX and thus undermined the marriage relation of another person. Most serious of all, after the distribution of Central Party Document (73) No. 21,<sup>51</sup> he still refused to repent. Pretending to show concern over educated youth and resorting to despicable means such as corrupt bourgeois idea, money and material inducement, he used his position and power to have illicit sexual relations with one, and to act indecently toward three, female educated youths. He, therefore, seriously undermined Chairman Mao's great strategic measure of "sending educated youth to villages." Since January 1973, he embezzled more than 1100 Jen-min-pi<sup>52</sup> of public funds by way of faking bills . . . and other means. His criminal acts are serious, people are very indignant, and his crimes have had a bad influence. Hsu Yün-hung, a criminal who had illicit sexual relations

with and who abused female educated youths sent to the mountain area or countryside, is hereby sentenced, according to law, to fifteen years imprisonment.

Chen Huai-hsing, a criminal who committed homicide, is a male, twenty-four years old, and a native of Fu-yuan County, Yunnan Province. Before his arrest, he worked at the 6th Battalion, 1st Regiment of Yunnan Production and Construction Military Corps.

This criminal was a military affair staff [member] of the Battalion [he served], because of his lack of seriousness in reading books and study and his laxness toward thought reform, he has been arrogant and high-handed [in his behavior] and has not performed his duty seriously. At noon of July 30, 1973, four persons, including [this criminal] and Yang Tsai-k'o—leader of a communication squad in the same Battalion—were playing poker at Yang's room in the dormitory, three children, including Li Yun-shan (thirteen years old), went to watch the game. When watching the game, Li spoke out the kind of cards Chen's partner had. Chen was very annoyed and threatened Li by saying: "Don't say anything, if you say anything again, I'll take a gun and shoot you to death!" He then took Yung's fifty calibre submachine gun, which was leaning on the side of the bed, pointed the gun at Li and pulled the trigger in order to scare Li. [Unfortunately], a shot was fired which hit Li Yun-shan right in the head, whereon Li fell down and died. His criminal act is serious and Chen Huai-hsing, a criminal who committed homicide, is hereby sentenced, according to law, to twenty years imprisonment.

Ma Shao-wu, a criminal who committed an offense concerning opium, alias Ma Kuo-hsiao or Liu Hua-ch'ang, is a male, twenty years of age, and a native of Yung-chien Commune, Wei-shan County, Yunnan Province.

This criminal had serious bourgeois thought, craved the easy life and disliked working. In May 1973, he sold ten ounces of opium and made a big profit. In February 1974, he used counterfeited certificates and pretended to be a government official on a business trip to Jui-li [County] and purchased 130 ounces of opium there and attempted to carry the opium and four smuggled watches to Wei-shan [County]

<sup>51</sup> The translator is unable to locate this document.

<sup>52</sup> \$1 jen-min-pi is about U.S. \$0.50.



for sale. He was caught in *flagrante delicto* by [our security force on this way to Wei-shan]. After going to prison, he did not [cooperate in confessing] his crime and showed an attitude of resistance. Ma shao-wu, a criminal who committed offenses involving opium, is hereby severely sentenced, according to law, to fifteen years imprisonment. All money and articles he illegally acquired are hereby confiscated.

Ma P'in-liang, alias Wang Ch'ao-ming, a criminal who committed offenses involving opium, is a male, twenty-seven years of age, and a native of Yung-p'ing [Production] Brigade, Yung-chien Commune, Wei-shan County, Yunnan Province.

Ma Cheng-pang, an offender in the same case, alias Chao Cheng-hua, is a male, thirty-three years of age, and a native of Yung-p'ing [Production] Brigade, Yung-chien Commune, Wei-shan County, Yunnan Province.

Criminal Ma P'in-liang made a profit by purchasing six more ounces of opium for Ma XX in December 1972. In February 1974, by using counterfeited certificates, the two criminals pretended to be government officials on a business trip to Jui-li [County] and purchased 325 ounces of opium and a watch there in an attempt to carry them to the interior for sale. They were caught in *flagrante delicto* by [our security force on their way to the interior]. In the course of detention and investigation, Ma P'in-liang did not [cooperate in confessing] his crime and showed an attitude of resistance; criminal Ma Cheng-pang, however, frankly confessed his crime, actively exposed the criminal acts of his accomplice [in the same case], thereby exhibited meritorious behavior. In accordance with the spirit of Party policy of "dealing leniently with those who confess and severely with those who resist," Ma P'in-liang, a criminal who committed an offense involving opium, is hereby severely sentenced, according to law, to fifteen years imprisonment. As for criminal Ma Cheng-pang, he is leniently exempted from criminal punishment. All money and articles illegally acquired by the two criminals are hereby confiscated.

Hu Ch'ing-sheng, a criminal who committed the offense of smuggling, is a male, twenty-two years of age, and a native of Ching-te County, Anhwei Province. Before his arrest, he lived at O-lo [Production] Brigade, Chieh-hsiang Commune, Jui-li County.

This criminal was very lax toward his thought reform, craved the easy life and disliked working. He frequently crossed the national boundary to engage in smuggling, speculating and profiteering activities. In 1970 and thereafter, this criminal illegally purchased at Kunming, Pao-shan and other places, industrial products<sup>53</sup> such as more than twenty covers of comforter and pad sheets, liberation shoes, flashlights, and basins, and carried them out of the country and sold them. Then he bought six smuggled watches there, carried them to Kunming, sold them there and thus acquired a big profit of more than 400 Jen-min-pi. At the same time, he also twice illegally sold twenty kilograms of mercury, a contraband proscribed by the state. Moreover, this criminal frequently loafed about in different places to engage in pickpocketing, stealing and gambling activities, and thus seriously disturbed social order. Hu Ch'ing-sheng, a criminal who engaged in smuggling, is hereby sentenced, according to law, to five years imprisonment.

The Party policy has always been one of "dealing leniently with those who confess and severely with those who resist," and "the ring-leader must be punished, while those who were forced to participate in the criminal activities shall not be prosecuted." We severely warn the handfuls of class enemies and criminals: Your only way out is to stop doing evil, give yourselves up, and to become a new person. If you want to resist desperately and continue your evil activities, you will be subject to severe punishment by the dictatorship of the proletariat.

The people of all nationalities throughout the country must further study and carry out the spirit of "The Tenth Party Congress,"<sup>54</sup> firmly recall Chairman Mao's teaching of "never forget class struggle." We must rely on the Party's basic line as the key: persist in "seriously reading books and study so as to master Marxism," continue developing the

<sup>53</sup> In the PRC, many industrial products are rationed, one has to present enough industrial coupons before he can purchase a certain industrial product such as a pair of shoes.

<sup>54</sup> The Tenth Party Congress was held in Peking in Aug. 24-28, 1973 and promulgated a revised Constitution of the Communist Party of China. The Congress supported an earlier decision of the Party's Central Committee to expel Lin Piao from the Party and called upon the people to support the theory of continuing revolution under the dictatorship of the proletariat.

movement to criticize Lin Piao and Confucius in a penetrating, broad, and sustaining way, and to raise a new high tide of “[the movement of] learning from the Ta-chai agricultural experience.” We should also further raise our awareness of class struggle, struggle to [find the correct party line], and the [theory of] continuing revolution under the dictatorship of the proletariat, increase our awareness of

the enemy situation, closely watch the new direction of class struggle, strike against the destructive activities of a handful of class enemies, so as to further consolidate and strengthen the dictatorship of the proletariat. [Let us] “grasp revolution, and promote production, work, and war preparation,” unite together, and achieve an even bigger victory.

September 22, 1974.