

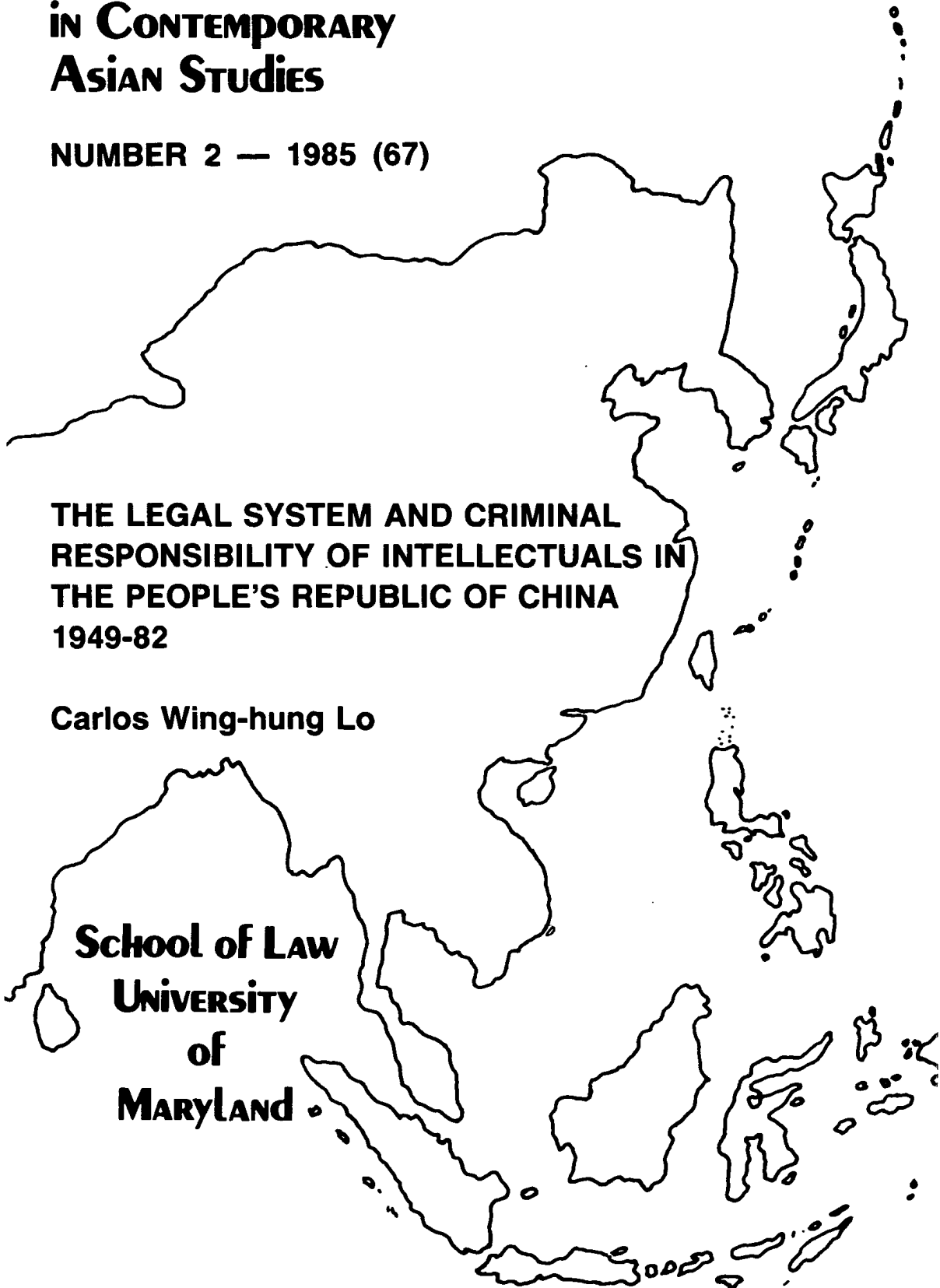
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**THE LEGAL SYSTEM AND CRIMINAL  
RESPONSIBILITY OF INTELLECTUALS IN  
THE PEOPLE'S REPUBLIC OF CHINA  
1949-82**

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**Hungdah Chiu**

July 1, 1985



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**IN**

**THE PEOPLE'S REPUBLIC OF CHINA**

**1949-82**

**by**

**Carlos Wing-hung Lo**

**Baltimore: Occasional Papers/Reprints Series  
in Contemporary Asian Studies, 1985**



## Table of Contents

	Page
Abstract .....	v
Acknowledgements .....	vii
Introduction .....	1
Purposes of the Study .....	2
The Significance of the Study .....	2
Limitations of the Study .....	3
Source and the Organization of the Study .....	3
Chapter One: Conception of the Legal System and the Sources of Criminal Responsibility of the Intellectuals: The Case of China .....	6
A. The Communist Conception of Legality: Mao versus Deng .....	7
1. Mao's Conception of the Legal System .....	7
2. Deng Xiaoping's Conception of the Legal System .	10
B. The Sources of Criminal Responsibility of Chinese Intellectuals within the Single Party Communist Regime .....	19
Chapter Two: The Characteristics of the Legal System in Communist China: Change and Continuity .....	27
A. Relationship between the Party and the Judiciary ...	27
1. The Redefinition of Party Leadership and the Assertion of Judicial Independence .....	27
2. Recruitment and Staffing .....	29
3. Party Policy versus Law .....	30
B. The Distinction of "Two Categories of Contradictions" versus the Principle of "All Are Equal Before the Law" .....	31
C. Legality Concerning the Deeming of Offenses and the Application of Penalties (Zuixing Fading Zhuyi).....	33
D. Towards Depoliticization in the Distinction between Criminal and Non-Criminal .....	36

	Page
E. From Mass Trials and Mass Movements to Open Trials and Strict Observance of Legal Procedures ...	38
Chapter Three: The Chinese Communists' Attitude and Policy Towards the Intellectuals .....	45
A. The Communist Attitude towards the Intellectuals Under Mao .....	45
B. The Policy Towards the Intellectuals under Deng ....	50
1. The Redefinition of the Class Status of the Intellectuals .....	52
2. The Reassertion of the Indispensable Role of Intellectuals in Socialist Construction .....	54
3. The Guarantee of Certain Freedoms .....	55
4. The Creation of A Better Objective Environment for the Intellectuals .....	57
Chapter Four: Demands for Intellectual Freedom and Democratization of the Communist System .....	64
A. Conditions in the Maoist Era before the Hu Feng Incident .....	64
Case One -- The Hu Feng Incident .....	66
A Brief Account of Hu Feng and his Relations with the CPC .....	66
The Demands of Hu Feng .....	66
1. The Attack on the "Five Daggers" .....	66
2. Hu's Demand for Organizational Reform in the Literary Circle .....	68
Case Two -- The Advocacy for Democratization of the Political System During the Hundred Flowers Campaign ...	69
1. The Attack on the Dictatorship of Party Rule ...	69
2. The Abolition of One-Party Rule .....	71
3. The Demands for the Enlargement of the Role of Democratic Parties .....	71
4. The Demand for a Better Working Environment ....	73
B. Democratization in Deng's Era .....	74
Case Three -- The Beijing Spring .....	74



	Page
The Perspective of Wei Jingsheng towards Democracy .....	75
1. Disclosing the Dictatorial Nature of the Communist Regime .....	75
2. Democracy -- The Way for the Good Life .....	76
3. The Achievement of Democracy by Struggle .....	77
Chapter Five: Justice in the Application of Law .....	83
A. Justice Under Mao .....	83
Case One -- The Incident of the Hu Feng Counter- revolutionary Clique .....	84
1. Politicization of the Issue .....	84
a. The First Stage -- Ideological Criticism .....	84
b. Political Accusation and Broadening of the Scope of Struggle .....	85
i. Anti-Party Stage .....	85
ii. The "Counterrevolutionary" Stage .....	86
2. Counterrevolutionary Crime on the Basis of "Ideological Offenses" .....	87
3. Historical Background as a Source of Accusation .....	88
4. Lack of Legal Actions and Violation of Legal Practices .....	89
The Fate of Hu Feng and His Friends .....	90
Case Two -- The Anti-Rightist Campaign .....	90
1. The Employment of a Political Campaign Against the Intellectuals .....	91
2. The Redefinition of the "Principle" and "Ideological Accusation" .....	94
3. Historical Background as a Source of Accusation .....	95
4. Violation of Legal Procedures .....	97
B. Justice Under Deng .....	98
Case Three -- The Trial of Wei Jingsheng .....	98
1. Procedure .....	98

	Page
a. Legal Authority .....	98
Legal Sources of Arrest and Trial .....	98
The Legal Source of the Prosecution and Adjudication .....	99
The Adjudication .....	100
b. Public Trial .....	101
c. The Right to Defense .....	101
d. The Right to Appeal .....	102
The Trial of Wei -- Substance .....	103
Chapter Six: Institutionalization of the Legal System and Democratization of the Political System: Limitations and Prospects .....	110
A. The Four Fundamental Principles under Deng .....	110
1. Socialist Road .....	110
2. Dictatorship of the Proletariat .....	111
3. Leadership of the Party .....	111
4. Marxism-Leninism and Mao Zedong Thought .....	111
B. Institutionalization of the Legal System .....	112
C. Democratization of the Political System .....	114
Chapter Seven: Conclusion .....	120
Graphs and Tables	
A Comparison of Two Ideal Types -- Revolutionary Justice versus Procedural Justice .....	15
Sequential Development of the Revolutionary Justice System and Procedural Justice System in the PRC .....	19
A Comparison of Justice in the Application of Law .....	123

### Abstract

This study investigates: (1) the conception and characteristics of the legal system of Mao Zedong and Deng Xiaoping in order to highlight the extent to which intellectuals can be legally protected. It also shows: (1) the reform and continuity of the legal system under Deng; (2) why there exists a phenomenon criminal liability of intellectuals in Communist China for counterrevolutionary crime being much higher in degree than that of the workers and peasants, especially under Mao; (3) the sources criminal responsibility of intellectuals; (4) why the degree of criminal responsibility of intellectuals varies under the leadership of Mao and Deng respectively; and (5) the limitations and prospects for the legal system under Deng to offer legal protection to intellectuals so as to reduce their criminal responsibility. The ultimate purpose of the study is to search for ways to improve the socialist legal system in light of the fact that the degree of criminal responsibility of intellectuals illuminates the defects and shortcomings of the legal system under Mao and Deng.

This study, mainly based on the analysis of relevant documents, information and materials, is a comparative study from a political perspective. It compares the basic conception of the legal system under Mao and Deng; their attitude and policies towards intellectuals; their responses to the intellectuals' demands for freedom and democratization, as well as justice in the application of law in handling these cases. Using a political approach implies that the focus is on the role of politics in influencing the organization and practices of the legal system in Communist China.

Although the time period covered in the study is from 1949 to 1982, indeed the period of the Cultural Revolution is excluded since at that time the legal system was completely destroyed, 1982 was a crucial year in Communist China which marked a milestone in the political and legal developments in the People's Republic of China since two important Constitutions were born -- the Constitution of the Communist Party of China and the Constitution of the People's Republic of China. It is on these two documents that the principle of the supremacy of law is confirmed.

The cases chosen for comparison are the "Hu Feng incident" (1954-55), the "blooming" and "contending" and the "Anti-Rightist" campaigns (1957) in Mao's era on one hand, and the Beijing Spring Democratic Movement (1979) on the other hand. These incidents are linked by the fact that all the victims were intellectuals. The comparison is aimed at illustrating the degree of criminal responsibility of intellectuals within the legal frameworks of Mao and Deng.

The study concludes that the legal system, either under Mao or Deng, is chiefly a tool for achieving the Party goals as defined by the Party leaders. Indeed, Communist ideology, as

interpreted by Mao and Deng, determined the working principles of the legal system, as well as the Party attitude and policies towards intellectuals. This in turn dictates the degree of legal protection for intellectuals. The legal system under Deng (which is characterized as a "procedural justice system") is superior to that under Mao (which is characterized as a "revolutionary justice system"). This is true not only in the sense that the former can offer certain legal protection to the intellectuals, but also in that the pursuit of procedural justice marks an end to the revolutionary era, and that the system is evolutionary in nature on the basis of socialist democracy. In short, this study demonstrates that the criminal responsibility of intellectuals is a function of: (1) the degree of the monolithic rule demanded by the Party leader; and (2) the legal protection that can be offered by the legal system. Finally, in assessing the limitations and the prospects for socialist rule of law under Deng, one must not neglect the inherent dictatorial and anti-democratic tendencies of Communist ideology.

### Acknowledgements

Important changes have taken place in the People's Republic of China since the death of Mao Zedong. The development of China's legal system is essential to the Four Modernizations. It strengthens political stability and long term economic development. Intellectuals in the past were discriminated against and suffered a great deal due to their criminal responsibility. Current leadership under Deng Xiaoping has endeavored to protect the intellectuals by means of the legal system. These developments stimulated me to undertake this work.

I am grateful to Dr. K.S. Liao, my supervisor, for generously offering his invaluable advice and guidance in preparing this study. I should also like to thank Dr. C.Y. Chang, Mr. Leonard Chu, Dr. H.C. Kuan, Dr. Peter N.S. Lee, Mr. Benjamin Ostrov, and Miss Elaine Kurtenbach for their advice and comments.

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## Introduction

Two correlated political phenomena in Communist China motivated this study. First, in Communist China, the social and political order has been in constant chaos. Stability, which is the pre-condition for socialist construction, is rare. Indeed, since the establishment of the Communist regime, economic development has been emphasized, the goal of which is to "transform the country from an agricultural to an industrial one."<sup>1</sup> Yet political struggles and movements have been the order of the day until late 1978 when Deng Xiaoping resumed leadership. The suppression of counterrevolutionaries, land reform movement, "three-anti" and "five-anti," liquidation of counterrevolutionary movement, Anti-Rightist campaign, "four-cleans" movement and Cultural Revolution have all disrupted stability. These political phenomena raise questions about the role of the legal system which has long been the institution for maintaining order. The principle targets of these movements were claimed to be "reactionaries." The Chinese Communist leaders like Mao Zedong reasserted the vitality of a sound legal system and stressed the observance of law,<sup>2</sup> yet social and political conflicts have seldom, if ever, been resolved through the legal means. Throughout the Maoist era, a well-established legal system never did come into being; what existed was totally destroyed during the Cultural Revolution.<sup>3</sup>

The Third Plenary Session of the Eleventh Central Committee of the Communist Party of China (CPC) is a point of demarcation in legal development in Communist China. The program for the reconstruction and the modernization of the country after ten years of turmoil as embodied in the Communique promulgated on that occasion is claimed to rest on the basis of a sound socialist legal system and an internal environment of stability and unity. Never have the Chinese Communists openly affirmed the value of the legal system and social order in the past three decades of Communist rule. With the rise and the consolidation of the power of the pragmatic leaders under Deng, they have voiced the resolution to restore and strengthen the legal system. In fact, the Communique formally put an end to the past controversy over the line of development and the role of the socialist legal system. It is both fruitful and significant to compare the legal conceptions of the Party leaders in these two distinct periods to highlight just how far the legal system in the new era has to go to perform the functions of resolving conflicts and preserving order.

Second, although the Communist leaders have stressed the indispensable role played by the intellectuals in socialist revolution and construction, since 1954 onwards the intellectuals have constantly suffered from struggles, humiliation and persecution. They have been labelled as "reactionaries," "rightists," and even "counterrevolutionaries" during the Hu Feng incident, the Anti-Rightist campaign, as well as the Cultural Revolution. Moreover, they were not only unable to enjoy the rights and freedoms as provided by the Constitutions, but their exercise of these rights and freedoms has been the source of their criminal

responsibility. The legal system has been a complete failure in offering any protection to the intellectuals. This phenomenon has been moderated since late 1978 with Deng's reassertion of the positive contributions of the intellectuals. But the arrest and trial of the "dissidents" and criticism on the intellectuals persists. This study will thus delve into the question of why intellectuals have been criminally responsible for their seemingly legal actions.

These two political phenomena are correlated in the sense that if the legal system can offer legal protection to the intellectuals, their criminal responsibility can be greatly reduced. Yet this depends highly on the conception of the legal system of Mao and Deng, as well as their attitude and policy towards the intellectuals.

#### **Purposes of the Study**

The orientation of the study is basically a comparative one:

1. To compare the conception and characteristics of the legal system of Mao and Deng in order to highlight the extent to which the intellectuals can be protected. This also shows how far the legal system under Deng has been improved.

2. To study why there exists the phenomenon of greater criminal responsibility of intellectuals in Communist China for counterrevolutionary crimes over that of the workers and peasants, especially under Mao.

3. To establish the sources of criminal responsibility for intellectuals.

4. To study the reasons why the degree of criminal responsibility of intellectuals varied under the leadership of Mao and Deng.

5. To enumerate the limitations and prospects for the legal system under Deng to offer legal protection to the intellectuals so as to reduce their criminal responsibility.

In short, the degree of criminal responsibility of the intellectuals shows the defects and shortcomings of the socialist legal system under Mao and Deng. Thus the ultimate purpose of the study is to search for ways to improve the socialist legal system.

#### **The Significance of the Study**

The significance of the study is fourfold:

1. There are few book length studies of China's legal system from Mao to Deng. Recently, Chiu and Leng, and Amnesty International published two insightful studies. These aside, most of the studies in the field are out-of-date. Recently, for example, Brady wrote a fairly comprehensive work, but it covered



the period only up to 1979, the time when Deng had just assumed power and his conception of legal system was just put into effect.<sup>5</sup> Thus, an in depth study of the legal system from Mao to Deng may provide a positive contribution, especially from a comparative perspective.

2. Most studies are historical and sociological rather than analytical, and lean away from legal analysis. Few touch on the legal frame of Deng comprehensively. Brady is the one among the few, yet his study is mostly from an historian-sociologist's perspective. Moreover, he has not explored Deng's conception of a legal system in adequate depth.

3. Most scholarly works are historical case studies. The case study in this article is a comparative analysis of cases that were handled under the legal framework of Mao and Deng. The cases are compared in terms of concepts, which illustrate their different conceptions of legality with concrete examples.

4. Few have mentioned the criminal responsibility of the intellectuals and used this as the point of departure to demonstrate the merits and demerits of the legal system between Mao and Deng as well as the defects of the legal system.

As a whole, these comparisons further discussion in the improvements Deng has made as well as the problems and prospects in the perfection of the legal system in Communist China.

#### **Limitations of the Study**

There are clear limitations of this study. First of all, due to the author's lack of training in law, this study of the legal system might seem superficial in the eyes of professionals in legal studies. Rather than employing a legal approach, this author wrote from a political perspective. Second, since the cases are compared in terms of concepts of freedom, democratization and justice, an intrinsic difficulty lies in how to expose and compare the defects and strengths of the legal frameworks of Mao and Deng with regard to these concepts. This is by no means an easy task.

#### **Source and the Organization of the Study**

This study is based on relevant reports in primary sources, including documents, Renmin Ribao, Beijing Review, and Hongqi, and law-related periodicals of the People's Republic of China (PRC), such as Minzhu yu Fazhi (Democracy and Legal System), Faxue Zazhi (Legal Studies) and Faxue Yanjiu (Studies in Law). It is mainly a comparative study from a political perspective.

The organization of the study is as follows:

Chapter One discusses the legal system and the criminal responsibility of intellectuals within the single Communist Party regime. This includes a comparison of the legal conceptions of

Mao and Deng as well as the sources of criminal responsibility of intellectuals and their relationship with the legal system.

Chapter Two carves out the different characteristics of legal systems under Mao and Deng in order to show the reforms and continuities in legal practices under Deng. In fact, legal practices have a direct impact on the criminal responsibility of intellectuals, especially in the application of law. This in turn reflects the defects of the legal system.

Chapter Three is a study of Mao's attitude and Deng's policies towards intellectuals. A study of the legal policies towards the intellectuals would be lacking without any knowledge of the Communist leaders' attitudes and policies towards the intellectuals.

Chapter Four and Five are comparative case studies which form the core of this study. They attempt to verify the above analyses through concrete examples.

Chapter Six is a discussion of the limitations and prospects for the institutionalization of the legal system and democratization of the political system under Deng. These two are related since it is said that the perfect socialist legal system would be the socialist rule of law on the basis of a socialist democracy. Moreover, the degree of democratization determines to what extent the legal system can offer legal protection to the intellectuals.

## Notes

1. "The Common Program of the Chinese People's Political Consultative Conference," in Theodore H.E. Chen, The Chinese Communist Regime: Documents And Commentary, London: Pall Mall Press, 1967, p. 36.
2. Mao Tse-tung, "Talks at a Conference of Secretaries of Provincial, Municipal and Autonomous Region Party Committees," in Selected Works of Mao Tse-Tung, Vol. V, Beijing: Foreign Language Press, 1977, p. 379.
3. K.S. Liao, "Cong renmin minzhu fazhi kan shehuizhuyi fazhi," (From the People's Democratic Legal System to See the Socialist Legal System), Ming Bao Monthly, (August 1982), p. 39.
4. See Shao-chuan and Hungdah Chiu, Criminal Justice in Post-Mao China. Albany, NY: State University of New York Press, 1985; Amnesty International, China -- Violations of Human Rights: Prisoners of Conscience & the Death Penalty in the People's Republic of China. London and New York: Amnesty International, 1984.
5. James P. Brady, Justice and Politics in People's China: Legal Order or Continuing Revolution? London: Academic Press, 1982. Aside from its narrow coverage, this volume is also plagued with other flaws. See review in China Quarterly, No. 96 (December 1983), pp. 740-41.

## Chapter One

### Conception of the Legal System and the Sources of Criminal Responsibility of the Intellectuals: The Case of China

The Chinese Communists, from the very beginning of their rule in China, denied the Western conception of the legal system which is based on a "rule of law."<sup>1</sup> From their point of view the Communist system should have its own legal framework. In the early years of the Communist regime, then President Liu Shaoqi adopted the structural components of the Soviet legal system. Mao Tse-tung inherited the legal philosophy and practices of the Soviet Union along his lines of revolutionary ideology. In contrast, Deng Xiaoping's conception of a legal system is a combination of political experience combined with the consideration of the objective condition and the need of Communist China to be built on the line of institutionalization of judicial procedures. In fact, his conception of the essence of the legal system is by no means the same as the Soviet Union's. He insisted:

We should learn from foreign countries and draw on their experiences. But mechanical copying and application of foreign experience and models will get us nowhere. . . . To integrate the universal truth of Marxism with the concrete realities of China, blaze a path of our own and build socialism with Chinese characteristics. . . .<sup>2</sup>

A continuity of Liu's line on legal justice changed with Deng's assertion that the legal system of Communist China must be "Chinese" rather than "Soviet." Indeed Deng was a hardcore member of Liu's faction, if it ever existed as asserted by the Maoists.

In fact, both Mao and Deng manipulated the legal system as an instrument in the pursuit of their goals. Though it is superficial to say that the ultimate goal of the two is the same -- Communist society -- yet this is only the case ideologically. From another dimension, if only intermediate goals are taken into consideration, differences between them can be identified. For Mao, the legal system was only useful and could serve as an instrument if it facilitated the promotion of his own conception of justice. He would not hesitate to put aside the law whenever it constituted an obstacle to "class struggle." But it is just the opposite for Deng. He treats the legal system and law as indispensable instruments which in all circumstances can facilitate the achievement of his goals. This is mainly because their conception of legal systems were based on different premises and ideological considerations, as well as their perception of the objective political environment.

Indeed, ever since the establishment of the PRC, many have characterized the political system as a monolithic party rule or "party supremacy." Within such a ruling framework, the essence

and nature of the legal system has been inevitably affected by the line of political development adopted by the top Party leaders.

The political system under Mao de-emphasized institutionalization. In Mao's conception, it was to be a moral unit in which equality and human potentiality were the central values. Since Mao had faith in the human potential of becoming good through education, it was a process to internalize Mao's conception of new Communist morals and ethical values. As a result, he did not emphasize formal law within its institutionalized legal structure. To some extent, this was due to his distrust of intellectuals or "experts." Since "politics in command" was the basic characteristic of the single party Communist system, it was a closed system under Mao's directive.

Since the demise of Mao and the rise of Deng in late 1978, the Communist system has been evolving towards bureaucratization. After decades of political chaos, what Deng looks for is political stability and social unity for socialist modernization. The regime stresses pragmatism which presupposes rationality and efficiency, and this tends to accelerate the process of routinization and depolitization, as well as to raise demands for participation in the political system. Thus the political system under Deng has tended to be an open system in which democracy has begun to acquire value. The legal system is to develop along the line of institutionalization since it is treated as playing an indispensable role in maintaining order.

Based on these premises, the concept of legality in Mao's and Deng's eras, as well as the sources of the criminal responsibility of Chinese intellectuals will be discussed. In fact, the former has a direct impact on the latter.

#### A. The Communist Conception of Legality: Mao versus Deng

In the legal realm, the Communists believe in the existence of "correct" justice. For the Chinese Communists, substantive justice is "proletarian" justice<sup>3</sup> which possesses a strong class nature and should be the justice for all in the advent of the Communist society.

Basically, the top leaders in the CPC agree on the notion of substantive justice for the socialist and Communist society. Yet there have been disagreements about how to achieve it. Mao subscribed to the "mass line" whereas Liu Shaoqi and later Deng were inclined to promote justice through an institutional framework. One may characterize the two trends as "revolutionary justice" and "procedural justice" respectively.

##### 1. Mao's Conception of the Legal System

The Communists believe that law will be abolished following the withering away of the State. Having adopted the viewpoint of Marx, Lenin confirmed the instrumental function of law as an instrument of suppression and class rule, a system of sanctions

designed to safeguard the fundamental principles of class rule and the particular interests of the ruling class.<sup>4</sup> Mao basically inherited the Marxist-Leninist interpretation of law. Thus law for him was just for the purpose of consolidating Communist rule, and eliminating enemies of the revolution as well as attaining the development of a Communist society. Finally, law in all cases had to give way to politics. Politics for Mao was just the struggle of class against class.<sup>5</sup> In this regard, Cohen has already pointed out the overriding influence of Communist ideology on Mao's conception of legal system.<sup>6</sup>

Following Marxism-Leninism, Mao asserted that class struggle was still to be carried on or even intensified during the period of socialist construction or transition.<sup>7</sup> Thus, in his mind the dictatorship of the proletariat was established on the basis for class confrontation.<sup>8</sup> So Mao, in most cases agreed with Lenin that:

The dictatorship of the proletariat, that is, the organization of the vanguard of the oppressed as the ruling class for the purpose of suppressing the oppressors. . . . The dictatorship of proletariat imposes a series of reconstructions on the freedom of the oppressor, the exploiters, and the capitalists. We must suppress them in order to free humanity from wage slavery, their resistance must be crushed by Force. It is clear that where there is no freedom, let alone democracy, where there is suppression and where there is violence;<sup>9</sup>

and

Briefly: the dictatorship of the proletariat is the rule -- unrestricted by law based on force -- of the proletariat over the bourgeoisie, a rule enjoying the sympathy and support of the laboring and exploited masses.<sup>10</sup>

Under the belief that "suppression" and "violence" were regarded as necessary and were the essence of dictatorship, revolutionary justice was discriminated against classes other than the working class and the peasantry, or in Mao's terms, those being excluded from the club of "people." Communist law under Mao had neither objectivity nor universality. Thus relentless violent struggles and purges against "enemies" were confirmed. Law was implemented not so much by judicial bodies, but chiefly by mass participation in the form of political campaigns and mass movements. In fact, the revolutionary society denied pure legal order, justice and law must be considered under a larger framework of politics and ideology.<sup>11</sup> Mao just took "law as politics" and wanted justice to be an active revolutionary force.

To Mao, class struggle and "politics in command" were the order of the day under the dictatorship of the proletariat. The

struggle was not only limited to physical elimination, it was also to take place in the domain of thought, that is, the ideologies. This was especially obvious from 1954 onward when most of the overt "enemies" had been eliminated since Mao had emphasized ideological purity:

Our country is a great socialist country under the dictatorship of the proletariat . . . . We need a united thought, revolutionary thought, correct thought, that is, Mao Zedong thought. Only under this ideology can we promote our energetic revolutionary spirit and firm, correct political direction.<sup>12</sup>

In fact, the essence of politics in command was "Mao Zedong thought in command."<sup>13</sup> In Mao's conception, everything was to be subordinated to politics, be the issue economic, military or culture. Since Mao felt that Communist revolution was not subject to legally binding or judicial regulations,<sup>14</sup> a sense of legality is lacking in Mao's ideology -- those who wield supreme political power are not bound by legal norms.<sup>15</sup> Under Mao's leadership, the legal system was only a coercive instrument for the promotion of revolutionary justice. "The law is the so-called state ideology, which the ruling class enforces by the use of arms. Laws, like the state, are merely tools that protect the interests of a given ruling class."<sup>16</sup> Accordingly, Mao endorsed the class character of law and its subordination to political dictates. Law, in Mao's view, was the totality of the rule of conducts reflecting the will of the Party leadership and it was enforced by the coercive power of state to ensure the development of a desirable social outlook. "Law is nothing but the manifestation of the Party leadership." As a whole, the legal system was designed for political expediency. Mao's extremely low assessment of the importance and utility of law or even a contempt for the law during the Cultural Revolution highlights this point.<sup>17</sup> The chief source of legitimacy and guidance in the revolutionary judicial system was not so much from law but from political ideology.

The central task of revolutionary justice in Mao's mind was educational. The legal system had to be oriented toward guidance, training and discipline of the people to be loyal, and devoted to the aims of the society as formulated by the Communist Party. It was used as an instrument for educating the masses about the correct values and norms of Communist ethics of Maoist vision.<sup>18</sup> Under the revolutionary judicial system, wrongdoers or those who violated the new norms of conduct were punished not through formal legal procedures, but through struggle and campaigns. The standard was a political rather than a legal one since politics overshadowed legality in Mao's ideology. In Mao's view, words (or more precisely, ideology and thought) and deeds can be judged as right only if they: (1) help to unite the people of all nationalities; (2) are beneficial to socialist transformation and socialist construction; (3) help to consolidate the people's democratic dictatorship; (4) help to consolidate democratic centralism; (5) help to strengthen the leadership of

Communist Party; and (6) are beneficial to international social unity and the unity of the peace-loving people of the world.<sup>19</sup> Under these six criteria, there was no distinction between criminal and civil cases. As L.S. Tao once stated, "Hardly any legal question is not resolved, sooner or later, into a political or ideological question."<sup>20</sup>

Since political expediency was the chief consideration, revolutionary justice was to be pursued under Mao's guidance since he had always considered himself as a social engineer. Moreover, China remained a revolutionary society, marked by rapid, violent social change, even after the establishment of the Communist regime. Since struggles and conflicts were common political phenomena, under these uncertain and unstable political conditions, law would soon become outdated, and new measures and policies had to be promptly issued to resolve conflicts and struggles. Thus to Mao, since law was unable to meet revolutionary needs, it was better to use his own judgment and policies as the substance of the revolutionary justicial system. After all, Lenin stated that "the power of proletarian dictatorship is not restricted by law." This was the case in Mao's era. In the final analysis, Mao's conception of the legal system was indeed, a system of the "rule of man" since the Party rule under Mao never relied on law but was based on his policies and decrees.<sup>21</sup> Law was not in an essential position in the operation of the revolutionary justice system which was marked by a lack of a written set of laws, simplicity and flexibility as well as mass participation. In fact, under the rule of Mao, the PRC operated a legal system without a criminal code or criminal procedure code.<sup>22</sup>

## 2. Deng Xiaoping's Conception of the Legal System

As early as the 1950s, Deng already held that socialist construction through a well-structured political and legal system was the first priority of the regime rather than class struggle. His political experiences only reinforced his ideas.

Most pragmatic leaders, especially Deng, have had bitter political experiences due to past mass movements particularly during the Cultural Revolution which was at times a state of complete lawlessness. The ten years of internal instability had taught them that the socialist legal system is the "only" powerful weapon to protect the people, to strike against the enemies and to consolidate the people's democratic regime. They came to realize that only with a complete set of legal codes and a sound legal system could a country be ruled properly and developed smoothly; otherwise political chaos and turmoil will result. At the end of the Cultural Revolution, Deng pointed out the defects of Chinese political system.<sup>23</sup> In order to correct past mistakes, he denounced the past practice of disregarding the law and made clear that he intended to establish the spirit of observing the law throughout the whole country since this tradition had not yet taken root in the Party-state: "We must now earnestly establish a socialist democratic system and socialist legal system. Only then can the question be resolved."<sup>24</sup> Thus his conception of the legal system is a highly institutionalized one which sets



its base on socialist democracy. Indeed he shared with Liu the idea that it is possible to attain substantive justice through certain institutionalized standard procedures which are applicable to all.

Since his rise to power, Deng has paid close attention to restoring order, preventing the danger of another "Cultural Revolution," and promoting the well being of the society. He planned to establish and maintain long-term "political stability and unity," to "make China a modern, powerful socialist country."<sup>25</sup> To pave the way for achieving these ends, Deng formally declared the end of class struggle which he regarded as the chief source of social instability and an obstacle for his modernization program. At the Third Plenum of the Eleventh Party Central Committee convened in December 1978, the pragmatists already denounced the principle of "taking class struggle as the key link."<sup>26</sup> Deng later repeated that "class struggle no longer constitutes the principal contradiction after the exploiters have been eliminated"<sup>27</sup> and "we are opposed to intensifying the class struggle, we do not believe that there is a capitalist class within the Party, or that under the socialist system in which the exploiting classes and exploiting conditions have been destroyed, that it is still possible to create a capitalist class or other exploiting classes."<sup>28</sup> Although social contradictions still exist in Chinese society, few of them belong to the realm of class struggle. Since class struggle and conflict are no longer the major contradictions, the task of the country has been shifted to socialist construction. A party member stated:

After socialist transformation was fundamentally completed, the principal contradiction our country has had to resolve is that between the growing material and cultural needs of the people and the backwardness of social production. It was imperative that the focus of Party and government works be shifted to socialist modernization centering on economic construction and that the people's material and cultural life be gradually improved by means of an immense expansion of productive force.<sup>29</sup>

Thus the present objective of the Party's struggle in the new historical period is to turn China step by step into a powerful socialist country with modern agriculture, industry, national defense and science and technology and with a high level of democracy and culture.<sup>30</sup> Yet, Deng worried most over the problem that Professor Chiu once raised: How could the PRC administer its modernization program under the past irrational, unpredictable and repressive criminal justice system?<sup>31</sup>

Under these considerations, Deng has intended to establish a stable, predictable and secure political environment based on unity which de-emphasized struggle and conflict but stressed legal order. Indeed the procedural judicial system under Deng is designed for creating and maintaining an orderly, predictable

environment for socialist modernization. In Deng's eyes, political stability is to be built on the foundation of a sound legal system with a formal set of laws and well established legal procedures whereas unity is to be achieved through the promotion of socialist democracy. The very essence of strengthening the legal system is that "there must be laws for the people to follow, these laws must be observed, their enforcement must be strict and law breakers must be dealt with."<sup>32</sup> Equally important is socialist democracy which contributes to mobilizing the people's vigorous efforts, initiative and creativity for the Four Modernizations and serves as the cornerstone for unity. As stated, the Party line is that

In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy will be systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws. . . .<sup>33</sup>

Of the greatest significance is the inner-Party democracy which helps to prevent the emergence of a personal dictator who would force the whole system back to "the rule of man." Ye Jianying concurred with Deng's idea that:

The People want to strengthen and improve China's socialist legal system. An improved legal system can effectively guarantee the people's democratic rights provided for by the Constitution and constantly develop stability and unity and a lively and vigorous political situation in the interest of socialist construction.<sup>34</sup>

Peng Zhen, in explaining the Criminal Law, has explicitly spelled out the ultimate aim of Deng who entrusts the fate of Communist China to the legal system to

. . . . protect the interests of the people and the state, consolidate and promote the lively political environment of stability and unity and ensure the smooth advance of socialist modernization.<sup>35</sup>

The legal system pervades every aspect of society, it must be strengthened "adequately to protect socialist democracy, to combat against enemies, to maintain revolutionary order, to consolidate the people's democratic dictatorship, to protect socialist economic base, to foster the development of production and to speed up the four modernizations."<sup>36</sup> The immediate task of the regime is:

. . . . to improve our Constitution and laws and ensure their strict observance and inviolability. We must turn the socialist legal

system into a powerful instrument for protecting the rights of the people, ensuring order in production, work and other activities, punishing criminals and cracking down on the disruptive activities of class enemies.<sup>37</sup>

In order to perfect the legal system for the safe of creating a legal order, its substance, that is, law, must be enacted in respect to every aspect of people's life. In sum, there must be laws and regulations for all kinds of social political economic as well as cultural activities. Upon the approval of seven draft laws, which is regarded as a monumental step, during the second session of the Fifth NPC in June 1979, Peng Zhen, Director of the Commission of Legislative Affairs of NPC Standing Committee, shared the view of his colleagues Dong Biwu and Deng who have always been concerned over the inadequacy of laws and the need for legislation, in declaring:

As the focus of nation's work has been shifted to socialist modernization, China must earnestly strengthen socialist democracy and the socialist legal system so that its 900 million citizens will have laws to abide by and restrain and punish those who do evil.<sup>38</sup>

In fact, under Deng's leadership a series of laws covering all social activities have been passed by the NPC. Only with a complete set of laws can the country be ruled by law.

It is generally accepted that the law must possess the nature of stability and continuity, as well as authoritativeness, and only through legal procedures can the laws be amended. Universality and impartiality in the application of law must be guaranteed in the sense that all people are equal before the law which has made possible since most of the population are "people" with the extinction of the exploited classes. Theoretically, then, no person would be allowed the privilege of being above the law. Under this new framework, law governs both the Party leaders and Party members. No longer is the "Party above the law." All social contradictions must be resolved by law and political campaigns and large scale political criticism are prohibited in solving social contradictions. Legal reformers also emphasize that the law must be publicized among the masses and party-members, and they must be educated to observe and act according to the law. Measures have been and must be taken to strengthen the legal sense of the people in order to eliminate the legacy of legal nihilism. Thus law is no longer treated as seriously as an instrument for class struggle, but rather serves as a means to maintain order, protect the people and people's democracy, as well as a means for realizing the fruits of modernization.<sup>39</sup>

If the revolutionary political system under Mao was characterized by "politics in command," Deng aims to establish a Chinese political system with "law in command." The socialist legal

system under Deng has been elevated to an unprecedentedly prestigious and authoritative position in Communist China and the principle of the "supremacy of law" is confirmed: all contradictions should be handled "in accordance with the procedures prescribed by Constitution and Law." Thus, procedural justice draws its legitimacy and guidance from the Constitution and laws. In sum, Deng believes that a sound legal system is a sine qua non in "protect[ing] people's democratic rights, consolidat[ing] political stability and unity, develop[ing] socialist economic construction and rais[ing] the living standards of the people."<sup>40</sup> It is a legal system in which law "would not be changed because of a change of leadership, or because of a change in the viewpoint or attention of the leadership."<sup>41</sup>

Although Deng has stressed the role of law, his conception of socialist legal system is one approximate to "rule by law." The legal system is far from being a system based on the "rule of law." Even in the sense of the "socialist rule of law" which is based on socialist democracy, the system is still backward:

Only with the completion of all kinds of law, and at the same time, the realization of democratization and legalization and institutionalization of democracy, among which are included the continuous improvement and perfection of all political institutions of the state, the managerial system of the state, the system of elections, supervision and recall of all levels of leading cadres. In all these respects, there must be laws to follow, and all must work strictly according to law, only under these conditions can "socialist rule of law" be possible.<sup>42</sup>

"Rule by law" is the only system in which both citizens and rulers are subject to law,<sup>43</sup> whereas the "socialist rule of law" must possess all the above conditions.

Table I    A Comparison of Two Ideal Types — Revolutionary Justice versus Procedural Justice\*

<u>Content</u>	<u>Revolutionary Justice</u>	<u>Procedural Justice</u>
1. Nature	Politicized	Depoliticized
2. Structure	Simple and flexible	Bureaucratic
3. Staffing	Politically reliable "red" cadres	Professional
4. Essence	i. Justice for 'people' not for 'non-people'  ii. De-emphasis of procedure  iii. Absence of a set of legal codes  iv. Policy above law The principle of "Supremacy of Law" is denied  v. Party in leadership Court is only tool  vi. It is hope through mass participation to cultivate the class conscious of the mass Aimed at the trans- formation of 'non-people' to socialist men  vii. Sanction through social intimation  viii. Mass mobilization in the execution of law	i. Justice for all  ii. Procedures applied to all  iii. Complete set of legal codes  iv. Law above policy The principle of "Supremacy of Law is attained Emphasis on uniformity continuity, authori- tativity of Law  v. Administered by independent organs subject to law  vi. Aim at maintaining order and social stability Aim at maintaining justice  vii. Sanction through legal bodies

/.... (to be continued) ....

(.... continued ....)

<u>Content</u>	<u>Revolutionary Justice</u>	<u>Procedural Justice</u>
5. Definition of Crime	There is no differentiation between political, criminal and civil case  All are handled by the same method and of same nature	Separation of political crime from criminal (general) and civil crime  Different procedures and laws for different nature of cases
6. Highest Form	- permanent revolution - the ideological and demand become upgraded - target is being enlarged - perfect monolithic society	Socialist rule of law based on socialist democracy
7.	Cyclic (or dialectic) but cyclic is the common phenomenon whereas dialectic is an idea	Evolutionary
<u>Condition</u>	1. Revolutionary fever is , still carried on The charismatic leader is still alive  2. Proletarian justice cannot be applied to all since enemies still exist  3. Contradictions are the dominant phenomena and can only be resolved by struggle	Revolutionary fever is retreated and order is emphasized to facilitate construction The demise of charismatic leader  Proletarian justice is believed to be capable of achieving through a complete set of legal procedure and law  Only when there is an end to class struggle can the system be perfected, that is, conflicts are to be solved by legal procedure between state and people, Party and people, and Party and state

/.... (to be continued) ....

(.... continued ....)

<u>Condition</u>	<u>Revolutionary Justice</u>	<u>Procedural Justice</u>
	4. Extra-legal means are utilized such as campaigns	Extra-legal means are condemned
	5. Enemies are always present and must be reformed through the mass line	No 'non-people' elements exist which according to Communist ideology must be treated by revolutionary methods
	6. Closed system in the law making process - Party direction - People only act and react but no interactions	Open system in the law making process People are permitted to participate in the perfection of the legal system
	7. A clear distinction between 'people' and 'enemies'	No such distinction
	8. The legal sense is weak or simply absent	Only possible when the whole population especially the cadres have acquired a strong legal sense
	9. Political reliability is emphasized	It is presupposed
	10. Social intimation is believed to be most effective in forcing one to reform and adopt the socialist world view	People are to be educated by formal means of socialization through school and mass media
	11. Revolution and struggle are not subject to the limitations of legal institution or laws which are only tools for such purpose	All must be worked according to law any violations will be punished
	12. It is believed humans can be reformed through permanent revolution	

/.... (to be continued) ....

(.... continued ....)

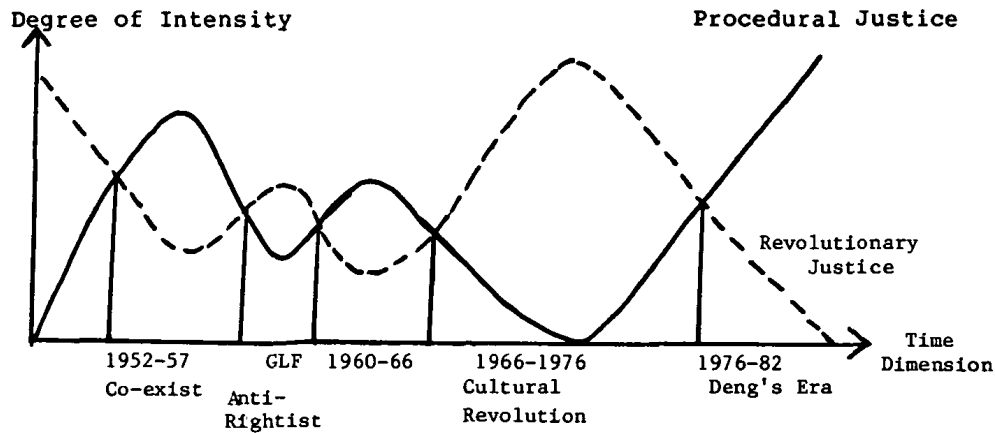
<u>Consequences</u>	<u>Revolutionary Justice</u>	<u>Procedural Justice</u>
	1. Power is law	1. Supremacy of Law
	2. Discriminative	2. Non-discrimination
	3. Confusion and struggle, mass mobilizations are order of the day	3. Pure Legal Order
<u>Limitations</u>	-	1. Only beginning
	-	2. Ideological and revolutionary limitations and legacy
	-	3. Certain past unhealthy working principles remain unchanged (see Party II)
	-	4. The legal education of people and the cadres is inadequate
<u>Remarks</u>	1. The transformation has already taken place from revolutionary justice to procedural justice.	
	2. The prototype existed during the Mao's era when revolutionary justice was the dominant system. It existed as a competing system.	
	3. It is characterized as 'revolutionary' because it is not only aimed at mass education but the transformation of those non-people's <u>weltanschauung</u> as well as those decadent elements who formerly possess a proleterian <u>weltanschauung</u> .	
	4. It is characterized as "procedural" but not "institutionalized" or "Bureaucratic" (as used by Brady), because it is more appropriate: on one hand, it shows the stress on the legal procedure in handling cases prescribed by the Constitution and law; on the other hand, "procedural" already presupposes the prerequisite of an institutionalized or bureaucratic legal structure.	



\*Mao's ideal type of revolutionary justice was put into practice during the Cultural Revolution, whereas Deng's ideal type of procedural justice is at its genesis and is still evolving. This table will contrast these two ideal types. The ideal type simply means the orientation of development of the legal system means the orientation of development of the legal system under the Communist leaders. Although revolutionary justice and procedural justice are two extreme ideal types, they both aim at the promotion of proletarian justice.

The legal system developed along the line of procedural justice in the early years of the PRC. Because of the opposition from Mao, procedural justice was never fully established and was forced to co-exist with the revolutionary justice. It was completely eliminated during the Cultural Revolution. In fact, the two were incompatible rather than complementary: the revolutionary and procedural justice systems stand in sharp ideological and political contrast. The promulgation of Criminal Law and the Law of Criminal Procedure in latter 1979, as well as the statutory provisions in the 1982 Constitution for the organization of a formal legal system, herald the end of revolutionary justice and the final triumph of procedural justice as the "correct" way to pursue substantive justice.

It is no doubt that Mao's model of justice was predominant while Liu's line of legal justice was a competing model until late 1978 when Deng resumed his leadership position in Communist China. The sequential development of these two alternative models can be graphed as follows:



**B. The Sources of Criminal Responsibility of Chinese Intellectuals within the Single Party Communist Regime**

A single party Communist regime is typified as totalitarian. Political control penetrates into every sphere of the people's

daily life. Intellectual life is without exception. The critical character of the Chinese intellectuals and the "dogmatic" nature of the Communist regime are incompatible. Intellectuals' individualistic and eccentric tendencies are direct challenges to the Communist goals of a monolithic, collective society. In the first instance, their subjective demands for a free environment is the chief source of their criminal responsibility. Intellectual freedom and the freedom of speech would lead to open criticism and challenge of the correctness of the Party ideology and Party policy. The liberalization of thought which presupposes independent thinking would result in the emergence of deviant ideas and ideological deviances. These mean the denial of thought control and thought reform and thus go against the Party principle of strict ideological conformity and the Party's aim to eradicate all non-Communist ideologies in order to create a "collective society with a uniform proletarian world view." Mao made his aim explicit in the ideological front:

In our country, bourgeois and petty bourgeois ideology, anti-Marxist ideology will continue to exist for a long time. . . but we have not yet won complete victory on the political and ideological front. In the ideological field, the question of who will win in the struggle between the proletariat and the bourgeoisie has not yet been really settled. We still have to wage a protracted struggle against bourgeois and petty bourgeois ideology. . . . All erroneous ideas, all poisonous weeds, all ghosts and monsters must be subject to criticism: in no circumstance should they be allowed to spread unchecked.<sup>44</sup>

Under the Chinese Communist system, students and intellectuals, in order to progress both ideologically and politically, should study Marxism-Leninism. It is considered that "one . . . [has] no soul if he does not have a correct political point of view."<sup>45</sup> Whereas the demand for the democratization of the political system by the intellectuals clashes with the very essence of the system, single Party leadership has been regarded by Mao and Deng as the most important principle in Communist China. All these demands, if realized, would result in pluralism which is contradictory to monolithic rule: one party, one authority, one ideology and one culture. Thus, the regime is hostile to the intellectuals' way of speech and style of thinking, which would undermine the Party single rule on which the whole system of control is based. This is why "ideological accusation" has been so common in Communist China. Indeed the definition of the crime is rather politically relative. In sum, the criminal responsibility of the intellectuals in Communist China is more or less a function of the scope and degree of the monolithic rule demanded by the Party leaders. To be more precise, it depends on the democratic values of the Party leaders, which to a large extent determine how far legal protection can be offered to the intellectuals.

On the other hand, the image of the intellectuals in the eyes of the Party leaders determines their vulnerability to political forces. This is especially important with regard to legal treatment under revolutionary justice which denies the principle of "all are equal before the law." Because class nature is de-emphasized in the procedural judicial system, criminal responsibility becomes a function of the level of institutionalization of the legal system and the degree of democratization of the political system. Finally, since Communist ideology has a tremendous impact on legal practices, which are subjected to the open interpretation of Party leaders, justice in the application of law towards the intellectuals is a dependent variable of the Party leaders' attitudes and policy toward the intellectuals.

The degree of criminal responsibility of the intellectuals and the legal protection provided to them in Mao's and Deng's period can best be compared by their reactions to the intellectuals' demands for freedom and democratization, and the justice realized in the course of the application of law to the intellectuals within the two legal systems.

## Notes

1. The concept of "rule of law," which forms the fundamental principle of constitutionalism, originates from the Western liberal tradition. Individualism, liberalism and rights of man are the core values of rule of law. Herbert Han-pao Ma, "Communist China and the Rule of Law: Theory and Practice on Review," Issues & Studies, (July 1981), p. 72. It stipulates a kind of relationship between the individual and the state in which:
  - a. Individuals are guaranteed protection from any arbitrary power: it means the absolute supremacy of predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. A.V. Dicey, An Introduction to the Study of the Constitution, Hong Kong: The Macmillan Press Ltd., 1979, p. 202. It further posits that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary conception of law. Dicey, An Introduction, supra, p. 188.
  - b. Law is to be universal: it means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary court. Dicey, An Introduction, supra, p. 202. This simply implies that no man is above the law no matter what power and position he possesses.
  - c. Procedural and institutional guarantees exist for the exercise of rights by individual: it means the present of institutional and procedural guarantees to safeguard and to advance the civil and political rights of the individual as well as to establish social, economic, education and cultural conditions under which one's legitimate aspiration and dignity can be realized. Ma, Community China, supra, p. 78.

The ideals of rule of law, in sum, lay on the imposition of limitations on the state. That is, executive and legislature in exercising power provided by both constitutional law and statutory law as well as the confirmation of the supreme value of human personality. Ma, Communist China, supra, p. 78. The rule of law postulates free elections and government in accordance with the will of the people, with the corollary that a government can be removed from power if it loses the support of the country. Thus, the rule of law safeguards the democratic value of a liberal society. The division of power with judiciary independence and representative government by free election are the primary requisites of the rule of law which is based on the "supremacy of the constitution." Professor de Smith stated:

. . . Constitutionalism is practiced in a country where the government is generally accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organize in opposition to the government in office and where there are effective legal guarantees in dependent judiciary.

B.O. Nwabueze, Constitutionalism in the Emergent States, London: C. Hurst and Company, 1973, p. 10.

2. Deng Xiaoping, "The Opening Speech at the 12th National Congress of the Communist Party of China," Da Gong Bao, September 2, 1982, p. 3.
3. Such term is inspired by Leng's idea of "class justice." Shao-chuan Leng, Justice in Communist China, New York: Oceana Publication, Inc., 1967, p. 7.
4. Eugene Karnenka, "The Soviet View of Law," Problems of Communism, Vol. XIV, (March-April, 1965), p. 8.
5. Mao Tse-tung, "Talks at the Yen-an Forum on Literature and Art," Selected Works of Mao Tse-Tung, Vol. III, Beijing: Foreign Languages Press, 1967, p. 86.
6. Jerome A. Cohen, The Criminal Process in the People's Republic of China, 1949-1963, Massachusetts: Harvard Press, 1967.
7. Lin Biao, "Zai Zhongguo Gongchan Dang Di Jiu Ci Quanguo Daibiao Dahuishangdi Baogao," (Report on the 9th National Congress of the Communist Party of China), Hongqi, No. 5 (1969), pp. 12-13.
8. Hongqi, No. 1 (1966).
9. V.I. Lenin Collected Works, Moscow: Progressive Publishers, 1964, pp. 461-462.
10. Ibid., Vol. 6, pp. 112-113.
11. James P. Brady, Justice and Politics in People's China: Legal Order or Permanent Revolution? London: Academic Press, 1982, p. 109.
12. Hongqi, No. 1 (1966).
13. Ibid.
14. Gene T. Hsiao, "Communist China: Legal Institutions," Problems of Communism, Vol. XIV, No. 2 (March-April 1965), p. 112.

15. Cheng P'u, "Thoroughly Destroying the Old Legal System and Eliminate Bourgeois Legal Thought," Chinese Law and Government, Vol. I, No. 3 (1968), p. 68.
16. G.S. Ostroumov, "Politico-Juridical Ideology and the Crisis of Political Power in China," Chinese Law and Government, Vol. I, No. 3 (1968), p. 68.
17. Tao-tai Hsia, "Legal Developments in the PRC since the Purge of the Gang of Four," Review of Socialist Law, Vol. 5, No. 2 (1979), p. 113.
18. To Mao, political, economic and military success were not enough. His ideal was a commonwealth, a harmonious society which emphasizes the individual's total self-abnegation and total immersion in the collectivity. Benjamin Schwartz, "Modernization and the Maoist Vision -- Some Reflections on the Chinese Communist Goals," in Roderick Macfarquhar, ed., China Under Mao: Politics Take Command, Massachusetts: The M.I.T. Press, 1966, p. 3. The Communist ethics, in Mao's vision, is built on the Communist fighters of Lei Feng and Wang Kit style: hard working, brave, resolute, self-reliance and selfless with the spirit of self-sacrifice and dedication to the Communist cause. "Zhengzhi shi tongshuai, shi linghun," (Politics in the Command, the Soul in Everything), Hongqi, No. 1 (1966), p. 213. "Taking up the responsibility of the world as one's own" is the core value. More precisely, in Lei Feng's words:

The life of man is limited, but rendering service to the people is unlimited. I want to devote my limited life to the unlimited cause of rendering service to the people. . . . My happiest moment is when I can make the broad masses of people cherish warm love for the Party, for Chairman Mao, and for the Liberation Army. . . . I have only one purpose and one mind: that is, my heart go to the Party, to Socialism and to Communism.

Renmin Ribao (People's Daily), February 7, 1963, in John Wilson Lewis, ed., Major Doctrines of Communist China, New York: W.W. Norton & Company, Inc., 1964, p. 332.

Thus the new ethics has its own basis in the collective interest and common aim: cherishing the lofty ideal of Communism and working for Socialism.

19. Mao Tse-tung, "Correct Handling of Contradictions Among the People" Selected Works of Mao Tse-Tung, Vol. V, Beijing: Foreign Languages Press, 1977, pp. 411-412.
20. L.S. Tao, "Criminal Justice in Communist China (i)," Issues & Studies, (June 1977), p. 15.

21. Tao Xijun, "Tan shehuizhuyi fazhi," (Talks on the Socialist Rule of Law), Fazhi Yu Renzhi Wenti Duilunji (Collection of Discussions on the Questions of "Rule of Law" and "Rule of Man"), Beijing: Masses Press, 1981, pp. 1-6.
22. Hungdah Chiu, "China's New Legal System," Current History, Vol. 79 (September 1980), p. 29.
23. Deng Xiaoping, "Dang he guojia lingdao zhidu de gaige," (The Reform of the Leadership System of the Party and the State), Deng Xiaoping Wenxuan (Selected Works of Deng Xiaoping), Beijing: The People's Press, 1983, p. 307.
24. Ibid.
25. "Communique of the Third Plenary Session of 11th Central Committee of the Communist Party of China," Beijing Review, No. 52 (December 29, 1978), p. 11.
26. "Scientifically Understand and Handle Class Struggle in China," Beijing Review, No. 49 (December 6, 1982), p. 17.
27. Fei Xinmin, "Jiaqiang minzhu he fazhi jianshe shi shixian xi shiqi zongrenwu de baozheng," (The Strengthening of the Construction of Democracy and the Legal System is the Guarantee for the Realization of the General Mission of the New Era), Hangzhou University Bulletin, Vol. 13, No. 4 (December 1983), p. 15.
28. Deng Xiaoping, "Jianchi sixiang jiben yuanze," (Insistence on the Four Fundamental Principles), Deng, supra note 23, p. 14.
29. "On Questions of Party History - Resolution on Certain Questions in the History of Our Party Since the Founding of the People's Republic of China," Beijing Review, No. 27 (July 6, 1981), p. 36.
30. Ibid.
31. Chiu, China supra note 22, p. 30.
32. "Communique of the Third Plenary Session of the 11th Central Committee of the Communist Party of China," Beijing Review, supra note 25, p. 14.
33. Ibid.
34. Peng Zhen, "Explanation on the Seven Laws," Beijing Review, No. 28 (July 13, 1979), p. 8.
35. Ibid., p. 42.
36. Sirenbang Pipan (Criticism of the Gang of Four), Beijing: China Social Science Press, 1983, p. 304.

37. "On Questions of Party History," Beijing Review, supra note 29, pp. 36-37.
38. Peng Zhen, "Strengthening the Legal System and Democracy," Beijing Review, No. 27 (July 7, 1979), p. 32.
39. "Xuexi xingfa zhong di jige wenti," (Certain Questions of Criminal Law in Practice), Renmin Ribao (People's Daily), (January 15, 1980), p. 5.
40. Yu Songyan, "Anding tuanjie yu shehuizhuyi fazhi," (Stability and Unity and Socialist Legal System), Renmin Ribao, (January 22, 1980), p. 5.
41. Deng Xiaoping, "Jiefang sixiang, shishi qinshi, tuanjie yizhi xiangqian kan," (Liberalization of Thought, Seeking Truth from Facts, Unifying Together to Look Forward), Deng, supra note 23, p. 136.
42. Wu Daying, Liu Han, "Zhengque renshi renzhi yu fazhi de wenti," (To Understand Properly the Questions of "Rule of Man" and "Rule of Law"), Renmin Ribao, (March 21, 1980), p. 5.
43. Ibid.
44. Stuart R. Schram, ed., Quotations From Chairman Mao Tse-Tung, U.S.A.: Bantom, 1967, p. 11.
45. Ibid., p. 78.



## Chapter Two

### The Characteristics of the Legal System in Communist China: Change and Continuity

The legal philosophies of Mao and Deng are opposite. There are great differences between the revolutionary justice system and the procedural justice system despite the fact that they both intended to achieve "proletarian" justice. The former system is profoundly influenced by politics, while the latter depoliticizes the system and restores it to neutrality as a means to uphold justice.

#### A. Relationship between the Party and the Judiciary

##### 1. The Redefinition of Party Leadership and the Assertion of Judicial Independence

The leadership of the Party over the judiciary in Communist China under Mao was absolute. The judiciary never acquired an independent status insulated from political influence. In fact, the Chinese Communists never concealed their rejection of the principle of judicial independence based on the assumption that "law and politics are inseparable."<sup>1</sup> During the Anti-Rightist Campaign, the Party even openly and repeatedly declared that "Party leadership is indispensable." The reason given was that law could not provide sufficient guidance, since the law in China was not yet complete.<sup>2</sup> Article 78 of the 1954 Constitution provided that "People's Courts shall conduct adjudication independently and shall be subject only to the law." It was never put into practice with the excuse that independent adjudication was a denial of Party leadership. Soviet propagandists also criticized Peking's violation of "socialist legality." In 1964, Izvestia declared that:

Things have come to a strong pass when the secretary of a district Party committee ousts the judge, sits at the bench himself, and starts to decide cases. Such instances are presented in the press as positive experience.<sup>3</sup>

Shen Chunzhu, first President of the Supreme People's Court, stated that "our judicial work must serve political ends actively, and must be brought to bear on our current political tasks and mass movements."<sup>4</sup> Franz Schurmann concluded that "the Party in effect had supplemented the judiciary as the instrument of the law."<sup>5</sup> It followed that only the Party could choose the judiciary's scope of jurisdiction at any given time, and that the Party was in a position to decide whether and what kinds of cases ought to be handled by legal procedures - which were rather formalistic ones under the system of Party committee review and approval cases.

With the intention of establishing the "supremacy of law" which is the basis of legal order as well as the separation of work between the Party and State, the CPC explicitly decided to restore judicial independence.<sup>6</sup> In July 1979, the "Organic Law of the People's Court" was adopted in which Article 4 stipulates that "the people's courts shall exercise judicial power independently in accordance with the law." The Central Committee of CPC later declared to abolish the system of Party Committee reviews and approval cases. "The Directive of the Central Committee of the CPC Concerning the Resolute Guarantee of the Strict Implementation of the Criminal Law and the Law of Criminal Procedure" has pointed out that "the leadership and cadres of the Party and all administrative organs, no matter how high their post, and how great their powers, cannot 'replace law by words,' or use ones' will or opinion as law or force others to implement."<sup>7</sup> It further stated that all cases tried must be conducted according to law.

The new working principle in the organic law of the judiciary on one hand denies the interference of any administrative organs, public organization or individuals in the adjudication process either secretly or openly when the courts conduct the trial. On the other hand, it affirms that cases must be strictly handled by law and the People's courts should obey the law only rather than the order from any organs or individuals.<sup>8</sup> This manifests the pragmatists' concern over the unhealthy effects of external influence (e.g., the Party) in the judicial process and the legal nihilism (falu xuwuzhuyi), which was prevalent in Mao's era.

While advocating the importance of judicial independence, the Party has also redefined the "Party leadership of the Judiciary" with emphasis on upholding the dignity and uniformity of law which are expressed in its inviolability and its universal application.<sup>9</sup> The leadership of the Party Committee over the administrative judicial departments should be strengthened with respect to major guidelines and policy problems should not intervene in the handling of individual cases by the People's Courts. The same applies to the People's Procuratorate. In so doing, the Party first of all denounces the past practices of "replacing law by words," "replacing law by power," and "replacing law by Party discipline" in order to establish the dignity of law by remolding the attitude of the cadres and the masses from "being afraid of power but not law" to the "being afraid of law but not power."<sup>10</sup> The Judiciary, thereafter should obey the law instead of power. The most important task for strengthening Party leadership over the judiciary, as claimed by the Party, is "to perfect the law through legislation, to guarantee the enforcement of law and the independence of the people's courts in exercising adjudication power."<sup>11</sup> As stated by a leading Party official:

In exercising leadership over State affairs  
. . . the Party must . . . ensure by every  
means the effective functioning of the organs  
of . . . judicial organizations . . . carry  
out their work responsibly and on their own

initiative. . . . As with other social organizations, Party organizations at all levels must conduct their activities within the limits permitted by the Constitution and the Law.<sup>12</sup>

Thus "to handle cases based on law is equivalent to obeying Party leadership."<sup>13</sup> In the light that "all must observe law" and "law must be strictly enforced," the Party at the same time asserts that cadres must set an example and lead the masses to observe the law and it reminds the Party members that "they do not transcend but are within the limits of law."

In building up the dignity and the prestige of the judiciary which was trampled during the Cultural Revolution, an eminent jurist declared that "the authority of the judiciary must be respected, the decision of the Courts must be obeyed."<sup>14</sup> Since the people's court is the only organ authorized by the Constitution and the law to exercise the exclusive power of adjudication, the verdicts and convictions of the court possess legal binding force after being put into effect. They cannot be changed arbitrarily except through prescribed legal procedure, and must be strictly enforced even if they are in doubt. In order to prevent any intervention, the Party committee is now being deprived of its former power of changing court decisions. It is strictly the responsibility of the judiciary to investigate and make final conclusions.

In sum, as presented by Jiang Hua, the President of the Supreme People's Court, the most essential principle of socialist legal system is "strictly handling cases according to law and unswervingly insisting on the independent adjudication of the people's courts." The strengthening and correctness of the party leadership in the new era is a function of how far this principle can be achieved. In short, these are the guidelines for perfecting procedural justice. Thus, the expansion of the activities of the courts and the de-emphasis of the role of extra-judicial institutions are the prominent phenomena of the legal development in the PRC since the rise of Deng.

## 2. Recruitment and Staffing

The Party has controlled the recruitment policy and the staffing of the judiciary. This was especially significant during the Anti-Rightist Movement. The Party took action to "purify" the judiciary by removing from its ranks all those cadres -- both Party and non-Party -- whose behaviors or words were considered as "rightist" or "anti-party." To ensure the ideological purity of the judiciary, the Party restricted the selection of judges to Party cadres. Judiciary personnel were subject to study, criticism, struggle and other techniques of ideological indoctrination.<sup>15</sup> The "redness" of the legal cadres prevailed throughout Mao's leadership.

This policy has not been abandoned by the pragmatists but the orientation and the spirit are completely different. The new

staffing policy is based on raising the professional standards of the legal cadres. Summing up their past experiences, the Communist leaders have realized that only with a profound understanding of the law can legal cadres and judges enforce the law properly. Thus, what they have endeavored to do is to emphasize the professional quality of the legal cadres. Jiang Hua has said that adjudication is a professional task, thus the legal cadres must be experts.<sup>16</sup> Other leaders like Ye Jianying have called for "fearless judges and procurators who are ready to sacrifice their lives for the dignity of the legal system"<sup>17</sup> by being an impartial judge who enforces the law strictly without any fear of power. The Party has now undertaken the task of professionalization of the legal system as a form of strengthening the Party leadership over the judiciary and has formally put an end to dispute over "red" and "expert" in the field of the judiciary.

### 3. Party Policy Versus Law

Before 1976, the contents and application of law, especially criminal law, typically the Act of the People's Republic of China for the Punishment of Counterrevolution (hereinafter referred to as "Act"), as well as court verdicts, were decided by Party policy and the Party line, but did not strictly adhere to the "law." This means that Party policy was above law. The Party directed and led the judiciary through its policy: "The relationship between Party policy and the people's democratic legal system is one in which the policy of the Communist Party is the soul of the people's democratic legal system. It is an important instrument for the realization of Party policy."<sup>18</sup> The Communists stressed that "the policy of the Communist Party is not only the basis for enactment of law, but also for the application of laws, and jurisdiction changes as Party policy changes."<sup>19</sup> Law was only the routinization and regularization of Party policy which shared the same nature and status with Constitution and laws. It was said that "even after the completion of law in the future, we must still work according to the concrete conditions, and grasp the spirit of Party policy in order to enforce law accurately."<sup>20</sup> Party policy thus determined the contents and essence of the law, for example, the "Act," which varied at different times, or with different movements. Due to the ambiguity of the crimes and penalties defined in the "Act," the legal cadres, especially during mass campaigns, had to adhere to Party policy or directives to decide the degree of severity of the crime and punishment, whether "suppression" or "leniency." Thus, when the legal cadres conducted trials on counterrevolutionary crimes, they had to have a full understanding of Party policy, otherwise they would be accused of being "conservatives" or "rightists":

The Party leadership of counterrevolutionary struggle is done through party policy. The policies made during the struggle is the weapon that guarantees the entire enforcement of law.<sup>21</sup>

In short, there was a lack of a written legal code throughout Mao's era.

Under the new principle that the "law is supreme," the relationship of law and policy has been redefined. It is said that "only when the law is incomplete should we follow policy. But after there is law, we must act according to the law."<sup>22</sup> The past practices are criticized as the "rule of man" in the light that the cadres thought that when there was policy, there was no need for law. This idea that "Party policy is law" is being denounced because the Party leadership recognizes that the major cause for past mistakes was a lack of law and a lack of respect for law. Although the law is the crystallization of Party policy and is the regularization of Party policy, it cannot then be inferred that policy can replace law.<sup>23</sup> The understanding of Party policy of course contributes to realizing the essence of law but the function of policy cannot be exaggerated for this will lead to overlooking the prescriptive nature of law. The Party for the first time has asserted that in practice one must not stress policy too much and disregard law. The proper relationship is that the two are complimentary and cannot replace each other since they are of different natures. Although law is enacted on Party policy, it is more mature and perfect than policy, in terms of stability, continuity and uniformity. Policy is in the hands of Party leadership, and is the will of the leadership, so it is rather unstable as it changes when the will and attention of the leadership are changed. Law cannot be changed by any individual, any amendments must be publicly declared and worked out according to prescribed procedures.<sup>25</sup> Moreover, the law is above policy since law is enacted by the highest authority of the state. The Party, on the other hand, makes policy. Thus the law possesses the mandatory nature and authoritativeness which outweighs policy. Thus, policy is bound by law which cannot contradict to law but must facilitate its enforcement. Furthermore, the compulsory nature of policy is not for all, whereas law is enforced through the coercive power of the state organs imposed on the whole country. The violation of laws will be penalized. Though law can be proposed by the Party, it must, however, be scrutinized, passed and promulgated by the NPC. Since law is supreme, there are no individuals or organs that transcend the limits of the law or who are above the law. One may conclude that the enactment of and implementation of law are the fundamental form and important methods of Party leadership and "to obey law is the same as obeying Party leadership." Finally, the Party has warned that policy cannot direct the enforcement of law, for this would be a denial of the value of law.

B. The Distinction of "Two Categories of Contradictions" versus the Principle of "All Are Equal Before The Law"

Mao's ideas deeply affected the operation of the Chinese legal system. He explicitly pointed out that in handling legal cases, the legal cadres had first to decide the nature of the case whether it was "a contradiction among people" or "a contradiction between the people and the enemies."<sup>26</sup> These considerations dominated and politicized the application of law.

In Mao's theory, the proletariat constituted the core group of "people." The peasants came next, as the surest allies of the proletariat. As for the bourgeoisie, petty or national, it was stipulated that they were only admitted to the exclusive club the "people" on good "political" behaviour. With the exception of proletariat, peasants and soldiers, the political and legal status of all other classes or strata was uncertain. Even within the same group, for example, the intellectuals, some might be categorized as "people," while others are "enemies." The categorization of the contradictions was totally dependent on the understanding and the interpretation of the "six criteria" laid down by Mao in the "Correct Handling of Contradictions Among the People" which were strictly political ones. In fact, the nature of the contradictions depended on one's political attitude and behavior as well as "class essence": one was likely to receive a more severe punishment for a given offense than a person who was not a black element.<sup>27</sup> The contradictions between people were to be dealt with by the methods of persuasion and education, democracy and discussion while coercion, repression and compulsion were to be applied to antagonistic contradictions. Based on Mao's legal philosophy in which political force remained the sole judge of the category of contradictions, the use of distinction of contradictions publicly repudiated the principle of "all are equal before law."

The legal practice of "all are equal before law" seems to be a challenge to the former practice of the distinction of two categories of contradictions. Under this principle, law is applied to all without exception: all must obey law, whoever violate the law must be dealt with and sanctioned according to law,

All are equal before the law - this is a slogan of our entire people, the entire Party membership and all our revolutionary cadres; it is an ideological weapon in our fight against any one who pursues privilege. Before the law, Party members and revolutionary cadres have only the obligation to take the lead in observing it in an exemplary fashion, and they have no special right whatsoever to violate it. Whoever breaks the law and commits a crime, no matter how great his seniority, how important his office and how large his contributions, shall not be indulged and shielded but shall be punished according to law.<sup>28</sup>

According to the Party, regardless of socio-political status, differences of social essences and political backgrounds, whether or not the crime of the accused belonged to antagonistic contradiction, all are equal before law in the application of law which also refers to the equality of judicial process. Based on this, even counterrevolutionary crimes should be punished according to law. The same is for the crimes among the people.<sup>29</sup> In other words, regardless of whether the crime is classified as one between the contradictions among the people or

antagonistic contradictions or a general crime or counter-revolutionary crime, all must be tried and punished according to the Criminal Law. Thus, the application of law is being depoliticized.

It is clear that the crimes among the people are beyond the question of "correct and incorrect." They are instead legal questions. Thus all should be sternly punished by law since the subject of punishment is a criminal offender, with all offenders receiving punishment of the same nature.<sup>30</sup> This sheds light on the Party's denial of the distinction of the nature of contradictions which are to be handled differently especially when the sphere of dictatorship gets smaller and smaller. It is said that the distinction of two categories of contradictions is fundamentally based on political attitudes. This is incompatible with decisions based on the nature of the crime which is a concrete action.<sup>31</sup> It is standard to distinguish people from enemies but in no sense the standard for evaluating whether one has committed a crime. In fact, the nature of contradiction and the constitution of a crime are two completely different concepts which must not be confused. It follows that antagonistic contradictions do not necessarily constitute a crime and by the same token, not all criminal cases belong to antagonistic contradictions. To adopt the practice of the distinction of contradiction falls short in two respects. The first one is the question of criteria, for it is difficult to distinguish "people" from "enemies." Secondly, there is a tendency to confuse political concepts with legal concepts and indeed, political standards cannot supersede criminal provisions which would lead to a disregard for the status of the law and would be unrealistic. With the promulgation of the Criminal law, any distinction of contradictions would only lead to the violation of the principle of "all are equal before the law" as well as "handling cases only subject to law." Indeed although the Party has not yet openly abandoned the old practice, the assertion of the restoration of the principle of "all are equal before the law" has rendered the distinction of contradictions irrelevant and it eventually will become insignificant in the legal practice.

C. Legality Concerning the Deeming of Offenses and the Application of Penalties (Zuixing Fading Zhuyi)

The Party under Mao adopted the principle of flexibility in the definition and application of law. According to the Chinese Communists this practice possessed positive value during the transitional period which was marked by radically changing conditions and complicated political struggles. Flexibility was the guiding principle of the "Act" which the Party preserved as an elastic interpretation of the criminal law. Thus, the "Act" explicitly stipulated the use of analogy in Article 16: "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 crime committed." The reason given was that since struggles were of a long term nature, it was impossible to list all types of crime. It further argued that if crime by analogy

was not employed, the Party could not suppress the crime in a timely effective and efficient way. But in Western practice use of analogy should be permitted only when such an action is advantageous to the criminal prosecuted and is prohibited in case of any discriminative effects that would arise.<sup>32</sup> The practice by the Chinese Communists is just the opposite. Punishing by crime by analogy contradicts the general principle of nulla poena sine lege (no crime without a pre-existing prohibitory rule). Under this principle, if the crime is not "clearly" or "explicitly" defined in the criminal law, it does not constitute a crime and is not subject to sanction.<sup>33</sup> The spirit is built on the basis of the protection of individual rights and the prevention of criminal abuse. But to the Party, this principle only restricted its power: the limitations imposed by law, its rigidity and binding force, all prohibited the Party from carrying out "struggles" through political campaigns at whim. The method of analogy was flexible and could be widely used without any limitations. At the same time, it also confirmed the principle of severity of punishment and the practice of "it is better to risk condemning an innocent man than to save a guilty one." The Party ideology is in fact incompatible with this principle. The flexibility of the "Act" was enhanced by the permission in Article 18 for the retroactive application of the "Act" to "counterrevolutionary crimes" committed before the "People's Republic" came into existence:

It applies to the crimes committed in the basis of People's Revolution which have not been tried, and all the crimes committed during the KMT reactionary rule.<sup>34</sup>

Moreover, after the Communist regime's abolition of all the laws of the Republic of China, civil and criminal codes were never enacted. This enabled the Party to make full use of the "Act," as an omnipotent tool for struggle. Thus power and rank became the decisive forces in trials. Power was the law, truth and "crime and punishment were stipulated by power:" whether one had committed the crime and the severity of the punishment depended on the will of those who held power. "Legal nihilism" thus developed. The phenomenon was that:

As there is no unified Criminal law, lawlessness has become universal . . . . The concept of a legal system has become very shadowy indeed among both the cadres and the masses . . . . There are cadres who openly protect criminal members of their unit . . . . There are cadres who set up their own laws.<sup>35</sup>

With all its ambiguities and vagueness, the law possessed the character of a universal penal code and afforded the Party maximum flexibility for the purpose of eliminating its political opponents and thus furthering Party policies.



With the promulgation of the Criminal Law, one must ask whether its enforcement is based on the principle of nulla poena sine lege or on "criminal analogy." Engels once said that "all parties and classes which seize the power through revolution demand the absolute recognition for the legal system created by the revolution, and is to be treated as holy."<sup>36</sup> This highlighted the importance of upholding the dignity of law. In light of past practice, the Party under the pragmatists has realized the advantage of conducting criminal convictions and punishment based on the principle of nulla poena sine lege. It enables criminal trials to punish accurately the criminal offenses, to protect the people and to create a stable social order for social modernization. Secondly, only if cases are handled by law can the defects of the "rule of man" be rectified thereby working toward the universality of law. Thirdly, the law which explicitly prescribes on paper what is legal and illegal advises people clearly of which conduct is criminal. With the adoption of the principle of "crime and punishment stipulated by law," the legal cadres and judges no longer hesitate in their adjudications to suit the will of the leaders. On the other hand, the Party does not deny the practice of analogy. But the crime must be "serious" so as to make analogy necessary. Even so, the Party has warned that analogy must be employed "cautiously" and "must be confirmed by the Supreme People's Court" (which is not specified in the "Act").<sup>37</sup> A commentator stated that "our legislation is inclined to the principle of crime and punishment stipulated by law (hereinafter referred to as "Principle") in adopting the method of criminal analogy."<sup>38</sup> All these aim at timely sanctions for those criminals whose crimes are not written in Criminal Law and at the prevention of arbitrary analogy. Towards the perfection of the Criminal Law, it is believed that the boundary of "criminal analogy" ought to be narrowed. Only when "criminal analogy" is based on the "Principle" can the law be used to protect people's rights and people will no longer be afraid of the law. The confirmation of the positive value of the "Principle" reveals that the pragmatists have become conscious about the past practice of "crime and punishment decided arbitrarily," and are aware of the lack of authoritative of the law which has been the object of policy. All these have negative effects on the long term social stability. The "Principle" indeed can define the criminal law more accurately, and correct the above defects in order to preserve social order.

The Criminal Law differs from the "Act" in that although both provide for a retroactive application, yet the former is more precise and clear concerning the time for retroactivity. The Criminal Law has certain prescriptions: 1. If the highest legal punishment is life imprisonment and capital punishment, the case must be reviewed after twenty years; after confirmation by the Supreme People's Procuratorates, it can be investigated; 2. The time for retroactivity is a function of seriousness of the crime committed - the heavier the longer. It can be over twenty years for individual cases.<sup>39</sup> The time and conditional limits set for retroactivity can reduce the room for flexibility.

D. Towards Depoliticization in the Distinction Between Criminal and Non-Criminal

The "Act" in the People's Republic of China under Mao chiefly served the political purpose of eliminating the enemies of the regime. An individual's family, economic, political and even educational background could also constitute the source of counterrevolutionary crimes. Thus counterrevolutionary crimes were of a political nature and were of the content of "purges" and "struggles." "The theory of the unique importance of class origin" was the typical expression of the political nature of the "Act."

Counterrevolutionary crimes tended to be all inclusive crimes. The Party did not separate counterrevolutionary crimes from other general criminal crimes or civil cases. From the viewpoint of the Communists, who employed the principle of a presumption of guilt,<sup>40</sup> all categories of crime contained the essence or aim of "anti-Party" or "anti-Communist" regimes. The sole standard was political. General speaking, any words, deeds or ideologies which hindered the achievement of the monolithic rule or attempted to damage the monolithic order, or violated the newly-set standards of social behavior, were said to be counterrevolutionary: politically opposing the Party leadership, or criticizing policies; opposing the socialist road; ideologically opposing or doubting "Chinese Communism"; or violating Communist ethics. In sum, whatever deeds, words or thoughts, no matter how serious, intentionally or unintentionally, all were regarded as counterrevolutionary if they were opposed to the Communist rule or harmful to its interests.

In realizing its past defects, the Party has tried to be more clear in the content, conception and definition of what is a "crime" in the distinction between criminal and non-criminal, especially between counterrevolutionary crimes and general crimes. Depoliticization of definition of crime tends to be the direction taken.

Generally speaking, the core criterion for criminal offense is conduct or action. Accordingly, first, the conduct must be harmful to the society; secondly, the conduct must be intentional; and third, all crimes and conduct must be punished in accordance with the Criminal Law.<sup>41</sup> The Criminal law is thus aimed at preventing the reappearance of "ideological crimes" (sixiang fan) by which one is proved to be guilty purely to one's ideological thoughts as well as crimes which are based on irrelevant objective criteria such as social status and family background. Another objective is to separate counterrevolutionary crimes from general crimes which have been generally confused in the past.

The Party has openly announced that there is no such crime as an "ideological crime."<sup>42</sup> Any ideology or thinking which is wrong or even reactionary, as long as it has not been translated into action, is not harmful to the society. It thus does not constitute a source of crime. The Party has in fact admitted that the appearance of "incorrect" ideologies is inevitable, and

has accepted this fact. Dong Biwu has also pointed out that "there is a strict difference between treatment towards those who only possess reactionary ideologies but without counterrevolutionary activity and counterrevolutionary elements."<sup>43</sup> The Party's "Guiding Principle for Inner-Party Political Life" adopted at the Fifth Plenary Session of the 11th CPC Central Committee expressed that "matters of right or wrong in ideology and theory can be solved only by the method of presenting facts and reasoning things out and conducting democratic discussions, and on no account should the method of coercion be adopted."<sup>44</sup> Party members point out:

Opposition to a certain view of a certain comrade cannot be equated with opposition to this comrade; opposition to a certain comrade of a certain leading body cannot be equated with opposition to the leadership, let alone opposition to the Party.<sup>45</sup>

The same spirit can be applied to the judicial practice in distinguishing the boundaries of ideological questions, political questions and criminal questions. Article 90 of the Criminal Law has set conduct as the sole source of judgement for counterrevolutionary crimes, but it is emphasized that not under all conditions is this judgement correct. Marx once said that "those laws which do not set its base on conduct but the style of thinking of the people concerned as the chief standard of crime, it is equated with the open recognition of illegal conducts."<sup>46</sup> The Communist Party seems to have the intention of rectifying the past practice of subjectivity.

Moreover, the Party has cautiously redefined "the crime of counterrevolutionary propaganda incitation" and the principle of "blame not the speaker." More concrete elaboration has been made. The Party clearly shows that freedom of speech is relative but not absolute: in case of not violating those legal conditions concerning rebellious incitation, slander, obscenity, profanity, false witness and the leakage of state secrets; one can speak freely.<sup>47</sup> Thus, freedom of speech must be conducted according to law. On the other hand, since the "crime of revolutionary propaganda incitation" is the most confusing and sensitive one, the Party has made it more specific. The Criminal Law defines this crime as "inciting the masses to resist or to obstruct the implementation of China's laws or decrees with a counterrevolutionary motive; or such things as distributing counterrevolutionary leaflets or other means of propaganda inciting the overthrow of the dictatorship of [the] proletariat and the socialist system." This is not to punish thoughts and words but the conduct that breaks the law. Actionable conduct must: first, be counterrevolutionary; and second, be harmful to the PRC. It is claimed that only reactionary thought short of inciting behavior does not constitute a crime. For the principle of "blame not the speaker," it is specified that if the speeches do not fall into any article on the Criminal Law, all are to be considered non-criminal.

In condemning "ideological crimes," cautiously defining the crime of counterrevolutionary propaganda incitation and the principle of "blame not the speaker" as well as making a clear distinction between criminal and non-criminal, the Party has encouraged legal cadres and the general public to understand the boundaries of the freedom of speech in order to prevent the past practice of accusing guilty parties based on ideological differences. The Party has also reasserted that "we cannot arbitrarily label as 'anti-Marxist' or counterrevolutionary crime in dealing with those who have different ideas." People have the right to criticize the leadership and cadres and to raise opinions. Even if the criticisms are incorrect, the people still cannot be punished. Marx's idea that "Law is the Holy Bible of the people's freedom"<sup>48</sup> perhaps has become the new legal philosophy of the Party.

E. From Mass Trials and Mass Movements to Open Trials and Strict Observance of Legal Procedures

Mass trials and mass movements have been the common practice in the Chinese legal system under popular justice, especially during the early years and the Cultural Revolution. Both were judiciary practices for popular participation. Mass trials, the trials of landlords, rich peasants and all exploited classes were held publicly, mostly before peasants. The final verdicts were usually conducted based on the demand of the "masses." The mass trials were based upon the policy of "mass line" which characterized the administration of the law during that time.<sup>49</sup>

Mass movements were of a similar nature. They were lawful movements for developing mass self-consciousness, demanding democracy and carrying out laws and decrees.<sup>50</sup> It was said that the principle of the legal work of the dictatorship of the proletariat was basically speaking, the question of relying on the masses to carry out dictatorship.<sup>51</sup>

Mass trials and mass movements were treated by Mao as a means to educate the masses about values, and policies of the Party. Their political use thus outgrew their legal purpose. They were used to arouse the hatred of the exploited masses against the classes other than the working class and peasantry, such as counterrevolutionaries and "undesirable elements" and thus to involve the masses directly in the struggles. The Communists wanted to promote political consciousness because:

The Chinese peasants have for thousands of years undergone the cruel political, economic, ethical and cultural exploitation and oppression of feudalism, and unless we have a moment to awaken them, we will not be able to educate the masses in their thoughts, to awaken the awareness of the masses, or to achieve economic and political equality. That is to say, unless we go through the force of a movement, we will not be able to break down the firmly rooted old

feudal system or the old order, and we will not be able to establish a new democratic system or a new order.<sup>52</sup>

As the focus of the regime has shifted to the restoration of social order for socialist modernization under the leadership of Deng, it is said that the class struggle should be handled in accordance with the procedures prescribed by the Constitution and the Law:

. . . . to launch this struggle, it cannot take the past form of political campaign but to follow the principles of a socialist legal system.<sup>53</sup>

Thus the procedural judicial system stresses conformity to legal procedures. The People's Public Security Bureau is responsible for the investigation of all criminal cases. The People's Procuratorate is responsible for review and decisions for arrest and prosecution; whereas the People's Court is responsible for trials.<sup>54</sup>

It is prescribed by Article 8 of the Law of Criminal Procedure that "all cases handled by the People's Courts, except for those involving special circumstances as specific by law, shall be heard in public." A public trial is conducted by the Court openly and independently. This differs from a "mass trial." Only after being sentenced as guilty through a trial can the legal status of the "accused" be converted to that of a criminal offender. Throughout the trial, the court adopts neither the principle of assumption of guilt nor the presumption of innocence but the principle of "neither guilty nor innocent": no accused shall be adjudged guilty and sentenced without evidence other than his confession; he shall be convicted and punished if there is sufficient evidence against him without his confession -- that is, the principle of taking facts as the basis and the law as the sole criterion.<sup>55</sup> In principle, the burden of proof rests on the prosecutor whereas the accused has no right to refuse to answer related questions. The accused has the right of defense, appeal and the demand for protection during the proceedings which enable him to have an adequate chance of self defense. All these rights were not provided in the past. The Party stresses that punishment is to deter crime, and it has no relationship with the distinction of the two categories of contradictions which are based on political attitudes. The Party has indicated that the "theory of essence" cannot be adopted as a source of adjudication in criminal proceedings. Criminal conduct must be separated from family background and the political history of the accused. The trial focuses only on the crime committed by the accused. The President of the Supreme People's Court, Jiang Hua, pointed out that public trial must conform to legal procedures and it must be conducted by the court organized on the basis of law. Adjudication must be made by the court members and adjudicators must be professionals; the trial cannot be conducted in mass assembly and the verdict cannot be announced by those other than the official

members of the court.<sup>56</sup> These assertions have formally repudiated the use of mass trials, the system of Party committee review and approval cases as well as those trials which are not conducted according to legal procedures which have been the manifestation of despising law.

## Notes

1. Tao Xijun, "Falu jie de douzheng," (Struggle in the Legal Circle), Renmin Ribao (People's Daily), (August 13, 1957), p. 7.
2. It was said that the legislation of the proletariat, in terms of when and how, was restricted and decided by the dictatorship of the proletariat, but not vice versa. Ibid.
3. Jerome Cohen, "The Party and the Court," China Quarterly, No. 38 (April-June, 1969), p. 142.
4. Ibid., p. 12.
5. Franz Schurmann, Ideology and Organization in Communist China, Los Angeles: University of California Press, 1973, p. 180.
6. The meaning of "judicial independence" here is different from its usage in the West. It is the court but not the individual judge to conduct trial independently. "Speeding up the Work of Law-Making," Beijing Review, No. 9 (March 2, 1979), p. 3.
7. Renmin Ribao, (August 25, 1980).
8. Qiao Wei, "Duli shenpan, zhixian fucong falu," (Independent Trial, Subject Only to Law), Renmin Ribao, (January 5, 1979), p. 5.
9. Wang Liming, Cui Min, "Shilun fazhi di tongyi he zunyan," (Discussion on the Unity and Dignity of the Legal System), Shehui Kexue (Social Science in China), (June 1982), pp. 2-3.
10. "Yao zhenzheng zuodao yi fa zhiguo," (Rule According to Law Must Be Realized), Democracy and Legal System, (September 1980), p. 3.
11. Xiong Xianjiao, "Lun shenpan duli yu jiandu shenpan," (Independently Administering Justice and Supervising the Administration of Justice), Faxue Yanjiu, (January 1981), p. 12.
12. "On Question of Party History," Beijing Review, No. 27 (July 6, 1981), pp. 38-39.
13. Gong Zheng, "Jiaqiang guojia fazhi, baozhang shehuizhuyi xiandaihua jianshe," (To Strengthen the Legal System in order to Safeguard Socialist Modernization), Hongqi, No. 2 (1979), p. 12.
14. Guo Buyue, "Yiding yao yi fa banshi," (All Must Work Strictly According to Law), Faxue Zazhi, (January 1981), pp. 8-9.

15. Cohen, The Party, supra note 3, p. 142.
16. "Jiang Hua yuanzhang zai Beijing Xingshi Shenpan Gongzuo Huiyi shang fabiao zhongyao jianghua," (The Important Speech Made by President Jiang Hua in Beijing on the Conference of the Work on Criminal Trial), Faxue Zazhi, No. 2 (September, 1980), p. 9.
17. "Speeding the Work of Law-Making," Beijing Review, No. 9 (March 2, 1979), p. 3.
18. "On the People's Democratic Dictatorship and the People's Democratic Legal System," Chinese Law and Government, Vol. I, No. 2 (Summer 1968), p. 4. See also Li Shiwen, "Bao youpai sufan weifa de fanlun," (The Rebutal of the Rightist Fallacy on the Liquidation of Counterrevolutionaries), Zhengfa Yanjiu, (1957), p. 33.
19. Ibid., p. 6.
20. Li, Bao Youpai supra note 18.
21. Ibid.
22. "Xuexi xingfa zhong de jige wenti," (To Learn Certain Questions on the Criminal Law), Renmin Ribao, (January 15, 1980), p. 5.
23. Lin Yingren, "Guanyu zhengce he falu xiangyu guanxi de jige wenti," (Certain Questions on the Mutual Relationship of Policy and Law), Faxue Yanjiu, No. 4 (August 1980), p. 45.
24. Gao Chengzhang, "Jinnianlai woguo faxue jie zhenglun de yixie wenti," (Certain Questions Contending Within the Legal Circle of Our Country in Recent Years), Shehui Kexue, (February 1982), pp. 73-74.
25. Pan Nianzhi, "Guanyu jianqiang shehuizhuyi fazhi wenti," (Questions Concerning the Strengthening of the Socialist Legal System), Shehui Kexue, (January 1979), p. 107.
26. Mao Tse-tung, "Correct Handling of Contradictions Among the People," Selected Works of Mao Tse-Tung, Vol. V, Beijing: Foreign Languages Press, 1977, pp. 384-395.
27. Hungdah Chiu, "China's New Legal System," Current History, Vol. 79, No. 458 (September 1980), p. 31.
28. Peng Zhen, "Explanation on the Seven Draft Laws," Main Documents of the Second Session of the Fifth National People's Congress of the People's Republic of China, Beijing: Foreign Languages Press, 1979, p. 218.
29. Li Guongcan, "Lun falu mianqian pingdeng," (Discussion on "All are Equal Before Law"), Shehui Kexue, (April 1980), p. 12.



30. Ding Jianjin, "Lunzui kexing buyong chufen lianglie maodun," (It is No Need to Make Distinction on Two Category of Contradiction in the Definition of Crime and Sanction), Democracy and Legal System, (June 1980), p. 5.
31. Ibid.
32. Song Yuangui, "Maogong xingzui fagui shang zhi leitui shiyong wenti," (Questions on the Application of Analogy in the Criminal Law of Communist China), Wenti yu Yanjiu (Problems and Research), Vol. XIII, No. 2 (November 1973), p. 174.
33. Zhou Mi, "Zuixing fading haishi falu leitui," ("The Principle of Legality Concerning the Deeming of Offenses and the Application of Penalties"), Faxue Yanjiu, No. 4 (August 1981), p. 25.
34. Zhu Yuhuang, "Wo guo xingfa de sujixiaoli wenti," (Question on the Retroactivity of the Criminal Law of Our Country), Zhengfa Yanjiu, (1957), p. 27.
35. Cited in Chiu, China's, supra note 27, p. 31.
36. Xu Xianyu, Xia Jixian, "Luelun zuixing fading," (A Brief Discussion on "The Principle of Legality Concerning the Deeming of Offenses and the Application of Penalties"), Democracy and Legal System, (February 1980), p. 17.
37. "Shenmo shi leitui?" (What is Analogy?), Renmin Ribao, (November 5, 1982), p. 5.
38. "Xuexi xingfa zhong de jige wenti," (To Learn Certain Questions on the Criminal Law), Renmin Ribao, (January 15, 1980), p. 5.
39. Zhonghua Renmin Gongheguo Xingfa Zongze Jiangyi (Lectures on the General Principle of the Criminal Law of the PRC), Beijing: Masses Press, 1980, p. 269.
40. Shao-chuan Leng, "Criminal Justice in Post-Mao China: Some Preliminary Observations," China Quarterly, No. 8 (September 1981), p. 410.
41. "Xuexi xingfa zhong de jige wenti," supra note 38.
42. Sun Ruiyuan, Li Yan, "Shehuizhuyi guojia buneng gao 'sixiang fan'," (There Must Not Be Any 'Ideological Offenders' in the Socialist Country), Xinhua Yuebao, (September 1979), pp. 27-28.
43. Dong Biwu, Lun Shehuizhuyi Minzhu he Fazhi (Discussion on Socialist Democracy and Legal System), Beijing: People's Press, 1979, p. 115.

44. "Guiding Principles for Inner-Party Political Life," Beijing Review, No. 14 (April 7, 1980), p. 16.
45. Ibid.
46. Chen Chunlong, Liu Hainian, "Luelun fangeming zui de goucheng," (A Brief Discussion on the Constitution of Counterrevolutionary Crime), Xinhua Yuebao, (November 1979), p. 36.
47. Ye Zi, "Yao chundui de yanlun ziyou ma?" (Has There Absolute Freedom of Speech?), Hongqi, No. 7 (1981), p. 36.
48. He Bingso, "Shilun woguo xingfa de minzhu yuanze," (Discussion on the Democratic Principle of the Criminal Law of Our Country), Faxu Yanjiu, No. 4 (August 1981), p. 23.
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50. "Judicial Work in T'ai Hang," Chinese Law and Government, Vol. VI, No. 3 (Fall 1973), p. 30.
51. "On the People's Democratic Dictatorship and the People's Democratic Legal System," Chinese Law and Government, Vol I, No. 2 (Summer 1968), pp. 3-36.
52. "Judicial Work in T'ai Hang," Chinese Law and Government, Vol. VI. No. 3 (Fall 1973), p. 31.
53. Deng Xiaoping, "Guanche diaocheng fangzhen, baozheng anding tuanjie," (Thoroughly Implement the Directive of Regulation, Safeguard Stability and Unity), Deng Xiaoping Wenxuan, (1975-1982), (Selected Works of Deng Xiaoping), Beijing: People's Press, 1983, p. 330.
54. Zhou Laiyi, "Anzhao falu chengxiu chuli anjian," (To Handle Cases According to Legal Procedures), Renmin Ribao, (June 6, 1979), p. 5.
55. Great Trial in Chinese History, Beijing: New World Press, 1981, p. 138.
56. "Jiang Hua yuanzhang zai Beijing Xingshi Shenpan Gongzuo Huiyi shang fabao zhongyao jianghua," (The Important Speech Made by President Jiang Hua in Beijing on the Conference of the Work on Criminal Trial), Faxue Zazhi, No. 2 (September 1980), p. 7.

### Chapter Three

#### The Chinese Communists' Attitude and Policy Towards the Intellectuals

Mao's policy toward the intellectuals was heavily influenced by his attitude towards the intellectuals which was formed even before the beginning of his revolutionary career. Reviewing their past political experiences, Deng and his colleagues have realized the mistakes committed by the Chinese Communist Party under Mao. Thus they tend to be more realistic and careful in formulating their policy toward the intellectuals.

##### A. The Communist Attitude towards the Intellectuals under Mao

The Chinese Communist attitude towards intellectuals, as represented by Mao, is a conflicting one. On one hand, they valued the positive contribution of the intellectuals. On the other hand, they believed there is an ideological contradiction between them and the intellectuals.

As early as the revolutionary period, Mao emphasized the significance of support from the intellectuals:

In the long and ruthless war of national liberation, in the great struggle to build a new China, the Communist Party must be good at winning intellectuals, for only in this way will it be able to organize the millions of peasants, develop the revolutionary cultural movement and expand the revolutionary united front. Without the participation of intellectuals, victory in the revolution is impossible.<sup>1</sup>

After establishment of the Communist regime, Mao and the top party leadership endeavored to draw the intellectuals' support. This can be observed in the Communists' efforts during the early years in administrative recruitment and absorption of intellectuals into the state machinery and their unequivocal expression of welcome to the non-Communists to serve the "Central People's Government to Build up a new China." It was mainly due to the realization that without the co-operation and participation of the intellectuals, the Communists would not run the government smoothly and successfully. In fact, many Chinese "liberal intellectuals" -- educators, writers and artists, technicians, professional people -- had accepted the Communist leadership and its program of "New Democracy."<sup>2</sup> Moreover, the intellectuals were the chief source of knowledge and skill for social and economic reconstruction which could not totally rely on the workers and peasants who were mostly illiterate or poorly educated. As expressed by Zhou Enlai in 1956:

. . . if we want to go ahead with our socialist construction on the largest

possible scale, quickly, effectively and economically, we must rely on the energetic labor not only of the working class and the broad masses of the peasants, but also the intellectuals. . . . The different construction projects in which we are now engaged require the participation of intellectuals in ever growing numbers. . . . Thus intellectuals have become an important factor in every aspect of our national life. To find a correct solution for the question of intellectuals to mobilize them more effectively and make fuller use of their abilities in our gigantic work of building socialism, has therefore become essential if we are to fulfill the fundamental tasks of the transition period . . .<sup>3</sup>

Although Mao recognized the indispensable role of intellectuals in the building up of socialism, his treatment of the intellectuals was chiefly utilitarian. As described by Jerome B. Grieder:

Even a government which distrusts the elitist implications of the intellectual vocation and resists the intellectuals' claim to autonomy must make use of their skills and make place for some exercise of independence on their part: if not "freedom of speech and opinion," then at least some encouragement to preserve and perpetuate intellectual skill.<sup>4</sup>

According to Marx, only the proletariat alone is really a revolutionary class while all other classes are conservative or even reactionary.<sup>5</sup> Mao yielded to this notion and had faith only in the working class and peasantry. Mao thus never concealed his discriminative attitude in favor of the workers and peasants:

I started as a student. . . . At that time I felt that the only clean people in the world were the intellectuals. . . . After the revolution when I joined with with the workers, peasants, and soldiers, I gradually came to know them thoroughly, and they too gradually came to know me. . . . Only then did I basically outgrow those bourgeois and petty bourgeois sentiments which the bourgeois school had taught me. I came to feel that the intellectuals not only were in spirit unclean in many places, but their bodies too were unclean. The cleanest ones were still the workers and peasants -- even taking into account that their hands were black and their feet covered with cow dung, they were still cleaner than the bourgeoisie, big and small.<sup>6</sup>

In fact, Mao, before the beginning of his revolutionary career, already possessed an anti-intellectual sentiment. His distrust and prejudice against intellectuals developed from his personal experiences and ideological bias. Throughout his life, he lacked confidence in the revolutionary spirit of the intellectuals and was continually suspicious of their devotion to the Communist cause.

Mao's attitude towards the aloofness of the intellectuals was shaped by a sense of resentment which came from his unpleasant contacts with the intellectuals, namely, the philosopher Hu Shih, when he was a library worker in Peking University. It was these contacts that contributed to a bitter distrust over intellectuals as a group in Mao's mind.<sup>7</sup> During his revolutionary years, his prejudice was deepened by the tendency of the intellectuals to "use words but to avoid direct involvement in practical problems." This led him to conclude that the intellectuals were only to be regarded as necessary collaborators and could never be the central elements of the revolution. To him,

the intellectuals often tend to be subjective and individualistic, impractical in their thinking and irresolute in action until they have thrown themselves heart and soul into mass revolutionary struggle or made up their mind to serve the interests of the mass and become one with them. Hence although the mass of revolutionary intellectuals in China can play a vanguard role or serve as a link with the masses, not all of them will remain revolutionaries to the end. . . . Some will drop out of the revolutionary ranks at critical moments and become passive, while a few may even become enemies of the revolution.<sup>8</sup>

His bias against intellectuals can be reflected in a comparison on the firmness of the standpoint of them on revolution to that of the workers and peasants:

Once a storm comes, the intellectual's position is clearly different from that of the workers and the majority of the peasants. The former is wavering while the latter is firm; the former is ambiguous, while the latter is clear.<sup>9</sup>

Mao always asserted that the workers and the peasants were where the strength of revolutionary force rested. The Chinese Communists summarized the weakness of China's intellectuals as follows:

- (1) Because of their close association with the landlord class and the bourgeoisie, most intellectuals are disdainful of the laboring people.

- (2) Since most intellectuals have not participated in the hard struggle for production or in the bitter national and class struggles, they can only rely on book knowledge and consequently commit such ideological errors as subjective thinking, reformism, utopian socialism, and egalitarianism.
- (3) They lack courage in combating reactionary forces. . . . They are eager to participate in the revolution when it is successful, but become pessimistic when it suffers a reverse.
- (4) The petty bourgeoisie are accustomed to a liberal and individualistic way of life . . . and are averse to organization and discipline.<sup>10</sup>

Reduced to a more fundamental level, it is the class nature of Communist ideology that had strengthened Mao's bias against intellectuals. To Mao, the "Chinese intellectuals" could be placed in the category of petty bourgeoisie, judging by their "family-origin," their living conditions and their political outlook. The Party later pointed out the bourgeois background of the intellectuals:

. . . Most of the intellectuals come from families of landlords, rich peasants, and the bourgeois and petty bourgeois classes, and have been contaminated by bourgeois education.<sup>11</sup> [emphasis added]

Therefore, from the viewpoint of Mao and other Chinese Communists, the relationship between the Party and the intellectuals remained basically one of class struggle. Moreover, since "they are more or less equipped with bourgeois scientific knowledge," their ideology belonged to the bourgeoisie or petty bourgeoisie. It was clear for Mao that only a few of them had accepted Marxism-Leninism, even those who had joined the Party. Mao had once said that:

There are many Party members who have joined the Communist Party organizationally, but not yet joined the Party wholly, or at all ideologically. Those who have not joined the Party ideologically still carry a great deal of the muck of the exploiting class in their heads, and have no idea at all of what proletarian ideology or communism, or the Party, is.<sup>12</sup>

It is then clear that the nature of the conflicts between the Chinese Communists and the intellectuals is a question confined to the ideological realm: the contradiction between bourgeois and petty bourgeois ideology and the proletarian ideology, or in

another sense, the contradiction between Marxism-Leninism and Mao Zedong thought and that of non-Communist ideologies.

Mao's thought was characterized by revolutionary romanticism. For him, profitability and efficiency had to give way to political expediency. Ideological purification and political reliability were his own image of the intellectuals' outlook: what he wanted was to remould intellectuals into a functionary group with "correct ideology" because their knowledge came from the old society and from bourgeois education, and they could not be used until they had undergone Party education and revolutionary conditioning. He would feel easy only when the intellectuals' bourgeois ideas had been totally eliminated and replaced by Communist ideology as well as their integration with the workers and the peasants:

If our intellectuals and art workers who have come from the rank of the intelligentsia one would make their own work welcomed by the masses, they must transform and completely reconstruct their own thought and feelings.<sup>13</sup>

He had demanded without reservation, even with coercion, that the intellectuals reform themselves ideologically. Accordingly, "the intellectuals can overcome their shortcomings only in mass struggle over a long period."<sup>14</sup> Indeed, "struggles" had been launched on that party of "proletarian ideology against non-proletarian ideologies" since the rectification campaign in Yen-an, 1942:

They [the intellectuals] must continue to remould themselves, gradually shed their bourgeois world outlook and acquire the proletarian Communist world outlook so that they can fully fit in with the needs of the new society and unite with the workers and peasants. The change in world outlook is fundamental. We hope that they will continue to make progress that in the course of the work and study, they will gradually acquire a Communist world outlook, grasp Marxism-Leninism and become integrated with the workers and peasants.<sup>15</sup>

Thus the intellectuals were urged to develop themselves by taking part in the struggles of the masses and to practice "self-criticism" known as inner cultivation or ideological cultivation:

it is . . . in the main struggle in our mind between the ideology of the proletariat and other ideologies as a struggle in our minds, between the Communist outlook on life . . . and other outlooks on life. . . .<sup>16</sup>

Mao, due to his distrust of the intellectuals, redefined the role of the intellectuals, especially the traditional relationship between them and the workers and peasants. In the past, it

was the intellectuals or the so-called elite of the society who monopolized the political power and were in the dominant position to design the social outlook, that is, to socialize the value or ideology they wish to mould the society. But under the dictatorship of the proletariat, it is the workers and the peasants, as represented by the Communist Party, who hold the power and impose their own ideology on the intellectuals, forcing them to remould their thought so as to get rid of their bourgeois ideology and feudalistic thinking which are harmful to the construction of socialism. Thus the intellectuals are "deprived of the authority of design. They become like other men, laborers: skilled artisans who could render services essential to the construction of the new order, but who are no longer entitled to think of themselves as its architects."<sup>17</sup>

Since not all the intellectuals were willing to reform themselves and accept Marxism-Leninism, in Mao's words, "there are still some intellectuals who are skeptical about socialism or do not approve of it."<sup>18</sup> A forceful method, for example thought reform or indoctrination, was deemed necessary.

As a whole, the attitude of Mao towards the intellectuals is an ambivalent one: he needed the services and the prestige of the intellectuals, yet he suspected the intellectuals of harboring latent anti-Communist tendencies and did not feel comfortable unless their non-Communist weltanschauung was totally eliminated. Indeed the intellectuals had been all subject to various kinds of attacks, discrimination and humiliation because the Communist regime under Mao had relegated the role and status subordinated to that of the workers and peasants and were excluded from the category of "people."

#### B. The Policy Towards the Intellectuals under Deng

Having learned their lesson from the Great Leap Forward and the Cultural Revolution, the pragmatic leaders have only strengthened their feeling that without the participation of intellectuals as well as their support, any attempt to modernize is doomed to failure. They are still shocked by the price paid under the ruling of the "red" cadres. Yet the knowledge and initiative of the intellectuals can be effectively translated into constructive efforts and benefits to the regime only in the case of voluntary support rather than a coercive one. Though the role of the intellectuals has become more important than ever as the system is evolving towards an institutionalized single Party system, there must be a corresponding change of the ruling patterns within the system in order to accommodate the demands for democracy from the intellectuals. Otherwise those conflicts that occurred in the past might reoccur. Disillusioned by the Communist rule under Mao as well as their unpleasant relationship with the Communist Party, the intellectuals tend to be more realistic, and in some sense, more cynical. They cannot forget Mao's suppression, humiliation and persecution of the intellectuals since 1954 which culminated in the Cultural Revolution. They thus demanded more concrete guarantees for their status, freedom and dignity. In realizing the hostile character of the Communist regime toward



their so-called "bourgeois world outlook" and having been subject to criminal sanctions in the past, they hardly trusted the system. Absent fundamental reform in the system has been which would create a better environment for them, both political and academic, the intellectuals would continue to harbour such sentiment. Moreover, unless their basic rights and freedoms, as written on the Constitution, could be guaranteed through legal institutions and their class status could be improved, their confidence in the regime will remain shaky. As long as the intellectuals still hold the viewpoint that they are only an "indispensable cog" in the modernization and that their role is instrumental only, it will be difficult for them to be devoted wholeheartedly to the regime, especially when they have doubts in the goodwill of the Party. In short, the contribution of the intellectual is a function of dissipating their suspicions towards the Party.

The Party must convince the intellectuals that they will be treated by the Party as "intellectuals," as "people" and their relationship with the Party is no longer one of class struggle, that their demand for basic freedom is met and safeguarded from any infringements. To what extent the freedom of intellectuals can be tolerated within the system does constitute a serious question for the Party leadership. Provided with the intolerance of the Communist Party and the exclusive nature of the Communist system, it is extremely difficult for the Party to gain the intellectuals' trust. From the viewpoint of the intellectuals, the Party's future policy towards intellectuals lacks credibility. They are not optimistic about the present leadership. Furthermore, it is highly questionable whether the goals and interests of the Party and the intellectuals are compatible. It is true that both groups hope for the modernization and strengthening of China. The difference is still the old one: how? The intellectuals demand democratization and the rule of law, which is not surprising since these conditions are the only ways to safeguard their interests from arbitrary rule. Within the present system, the intellectuals feel uneasy because even if the leadership is sympathetic to the demands of the intellectuals, Party policy changes frequently, and there is a lack of institutionalized guarantees. These are the fatal defects of the single party regime that cannot be denied. The nature of the system and the Party ideology have in fact set the limits for the longitude and latitude of the reforms that can take place. In the past, it is the Party that distrusted and discriminated against the intellectuals, now it is the intellectuals who feel alienated from the system and lack confidence in the Party.

In light of the above analysis, the most urgent task for the regime is to solve the conflicts between the Party and the intellectuals. The former persecution and oppression of the intellectuals are denounced. The basic orientation of the present policy of the Party is to remove the intellectuals' suspicions towards the Party regime in order to re-establish their faith in the sincerity of the leadership in eliminating all the past discriminatory policies. In order to achieve this, the Party has to rectify the prevailing attitudes of despising knowledge and

intellectuals which have taken root among the cadres. This is by no means an easy task. Despite the difficulties, the Party leadership has abandoned the Maoist policy and has introduced a range of new policies within the limits permitted. Indeed, the aim of the policy is to create the image that the Party thereafter would respect the intellectuals as "human." In short, "treat them equal politically, use them with trust, and be concerned with their living standards"<sup>19</sup> are the three great principles of the appeasement policy towards the intellectuals. The aim is to remove the anti-elitist image of the Chinese Communists as represented by Mao.<sup>20</sup>

#### 1. The Redefinition of the Class Status of the Intellectuals

The unpleasant relationship between the Party and the intellectuals in the past is derived from Communist ideology.

In order to eliminate the root of the past conflicts of the Party with the intellectuals and to win their support to work for modernization, the Party has formally redefined the class status of the intellectuals. The intellectuals are now identified with the working class and have become part of the "people." As early as 1978, Deng had already "upgraded" the political status of the intellectuals:

. . . Generally speaking, the overwhelming majority of them [intellectuals] are part of the proletariat. The difference between them and the manual workers lies only in their different roles in the social division of labour. Those who labor, whether by hand or by brain, are all working people in a socialist society.<sup>21</sup>

The term "stinking number nine" which was assigned to describe the intellectuals during the Cultural Revolution has been denounced. In doing so, the Party hopes to provide a sense of political security to those who have long been considered as "bourgeois." Their vulnerability to political forces due to the past uncertainty of their status as "people" or "enemies"; "revolutionaries" or "reactionaries"; and "proletariat" or "bourgeoisie" is greatly reduced, at least apparently. The Party has further made this change official by condemning discriminative policies and affirming the new status of the intellectuals in the "Resolution on Certain Questions in the History of Our Party since the Founding of the CPC" in 1981, saying that:

We must firmly eradicate such gross fallacies as the denigration of education, science and culture and discriminating against intellectuals, fallacies which had long existed and found extreme expression during the Cultural Revolution. . . . We unequivocally affirm that, together with the workers and peasants, the intellectuals are a force to rely on in the cause of socialism.<sup>22</sup>

The Party has often reiterated that the intellectuals can no longer be treated as "forces opposed to the people" or "enemies":

In the past few years, the Party has done a lot of work in bringing order out of chaos for intellectuals. The Party has in theory and policy expounded and affirmed that the intellectuals of our country, like workers and peasants, are part of the working people and an important supporting force of our Party.<sup>23</sup>

The correct way to treat the intellectuals, it is said, "is a question of correct[ly] handling the relationship among the working class itself: it is no longer one of handling the relationship between the working class and its allies."<sup>24</sup> In short, Hu Yaobang said that it is imperative to strengthen the unity among the workers, peasants, and intellectuals. He claimed that any viewpoint that separates mental labor from physical labor is wrong.<sup>25</sup> There, in reality, exists no class distinction between mental and physical labor. The intellectuals are now politically equal with the working class and peasants.

On the other hand, this policy is intended to show that the Party has faith that the intellectuals are politically reliable: it is an historical prejudice that intellectuals are politically unreliable.<sup>26</sup> Most intellectuals are said to have acquired a proletarian outlook since "they are patriotic, love the Party and socialism, and are willing to serve the people."<sup>27</sup> Thus no matter what their background, most are trustworthy according to the Party leaders. They have already integrated themselves with the workers and peasants in terms of their commitment towards the Communist regime. Under these circumstances, the title of "bourgeois intellectuals" is removed and is now the working class intellectuals. At the same time, the past policies of "uniting, educating and remoulding" are declared outdated and no longer applicable to the intellectuals.<sup>28</sup>

The Party has refuted the past idea that "the more knowledgeable, the more reactionary" and has denied that the intellectuals can only "be used" but cannot be trusted. Deng and other leaders said that "we must fully trust and freely use people with specialized knowledge."<sup>29</sup> In fact, under the new policy, the Party has already rehabilitated the reputation of the intellectuals. Many intellectuals who were purged during the Cultural Revolution have been restored to their former position.

Deng now considers the political standard of redness in terms of contribution instead of in a purely political sense. This is more realistic: "to devote oneself to our scientific socialism and contribute to it is an important manifestation of being red, the integration of being red and expert."<sup>30</sup> In other words, the greater one's devotion to his work, the greater one's devotion to socialism. In regarding the proper party leadership towards intellectuals, it is said that the Party ought to assess accurately the role of intellectuals in socialist construction,

trust them and rely on them, place them in proper positions and help them to attain progress ideologically and politically.<sup>31</sup> Most significant of all is that Party membership, which in the past was monopolized by workers and peasants, is now open to the intellectuals. Accordingly, it is estimated that up to 1982, one-fourth of the members admitted into the Party were intellectuals.<sup>32</sup> For the first time in the history of Communist China the intellectuals have received the same political treatment as the working class and peasant in concrete terms. The spirit of the present party policy is reflected in the Communist assertion that "under present circumstances, if we should reform the intellectuals, we should reform them in the same way as we reform the workers and peasants."<sup>33</sup>

## 2. The Reassertion of the Indispensable Role of Intellectuals in Socialist Construction

Since the "Anti-Rightist" campaign, the Chinese Communists, notably Mao, reduced the role of the intellectuals in building socialism. The Great Leap Forward was an attempt to boost economic development by relying on the workers and peasants. This tendency culminated in the Cultural Revolution during which nearly all the intellectuals, both Party and non-Party, were either purged or dismissed from the leading posts. They were replaced by "red" cadres. The disasters resulting from these two "experiments" led to the bankruptcy of Mao's mass-line politics in modernization since most cadres were "red" rather than "expert," and thus were professionally incompetent.

The post-Mao Party leadership shares the consensus that the Party can successfully promote the well-being of society only if it can co-opt the intellectuals into the gigantic task of the Four Modernizations. In fact, this is the chief motivation behind the Party policy for including the intellectuals in the working class. In this regard, the Party has shown unprecedented concern for the recruitment of the intellectuals into the Party and the establishment and the emphasis on the importance of knowledge. Indeed never since the establishment of the PRC have the intellectuals been regarded by the Party as so important. The same is knowledge which the Maoists had openly condemned. In these respects, the Party has admitted without reservation:

In the past, owing to the influence of "leftist" ideas and the small-producer mentality, erroneous views such as the underestimation of the importance of education, science and culture and discrimination against intellectuals were rife in our Party over a fairly long time.<sup>34</sup>

The reversal of past policy towards intellectuals began in early 1978 when Deng delivered his speech at the opening ceremony of the National Science conference and the policy was further consolidated in the Third Plenary Session of CPC Central Committee in late 1978. Attempts have been made to resume the tradition of respect for knowledge and intellectuals. To eliminate

ideological obstacles for enlisting the support of intellectuals, Deng has made clear that knowledge itself is not class-bounded. He emphasizes the importance of "acquiring a higher level of scientific knowledge and general knowledge" as the country moves towards modernization. In short, "to raise the status and expand the role of education, science and culture in our drive for modernization"<sup>35</sup> has been adopted as the basic policy line which paves the way to raise the status of intellectuals. Hu Yaobang's words have to a large extent, highlighted the Communist treatment of knowledge:

In our country which is backward economically and culturally, it is the key to determine the success or failure of construction or whether we can master the modern science, culture and knowledge.<sup>36</sup>

Since knowledge is power, and is vital to the socialist development, the intellectuals are now regarded as a force on which the Party must rely. The Party intends to build "a mammoth force" of well-educated and more professionally competent cadres to assume the responsibility of administering the modernization program. It is said that:

We must put intellectuals, both Party and non-Party members . . . into appropriate leading posts so as to gradually raise the number of cadres who have a good educational level and technical expertise and who know how to manage in the leading bodies of enterprises and undertakings to 30, 50, and 70 percent of the total staff.<sup>37</sup>

Intellectuals are thus considered as indispensable since there is a severe shortage of talent in China. A commentator recently stated that "without the participation of the intellectuals, it is impossible to achieve the four modernizations."<sup>38</sup> Deng has claimed that "we must value talent since it is difficult to have talent"<sup>39</sup> and "in order to achieve success in socialist modernization, we must have knowledge and talents."<sup>40</sup> Other Party leaders like Chen Yun, Hu Yaobang, and the late Liao Chengzhi have also foreseen that as modernization proceeds, there will be an increasing need for the services of intellectuals. In response to this, Liao pointed out that "as the country develops, the obligation of the intellectuals will become heavier and heavier."<sup>41</sup> Hu confirms that "in the course of our great mission, we must respect and rely on the intellectuals."<sup>42</sup> This culminates in the condemnation of Mao's theory that "red can lead everything" and it puts forward the assertion that the intellectuals are "core" members in science, technology, culture and education, public health, literature, and art.

### 3. The Guarantee of Certain Freedoms

The Party leaders now have a true understanding from past experience that "no talents can be cultivated if there is no

freedom of expression." In fact, dogmatic thinking imposed on the intellectual world and suppression of freedom in the pursuit of knowledge choked the academic circle of its vitality and creativity for nearly three decades. Scientific and general knowledge were in a state of inertia. In order to reverse the tide, the Party advocated the policy of the emancipation of the mind and the policy of the "two hundreds":

In the academic field, the policy of "letting a hundred flowers blossom, and letting a hundred schools of thought contend" must be implemented in real earnest and different viewpoints and schools must be allowed to freely contend. [sic]<sup>43</sup>

Indeed, there would be no creativity and initiative if there were no debate among various schools of thoughts and if the atmosphere of free discussion in academic circles was suppressed. The intellectuals would soon lose the incentive to study and research if too many restrictions were imposed on them. To the intellectuals, progress can only be made in a free academic environment in which the scholars can exchange their ideas. Learning that science and the intellectual world cannot prosper in the absence of democracy, Deng has criticized the "suppression of discussion" and "the prohibition of intercourse" under the Gang of Four which he described as an improper style of learning.<sup>44</sup> Independent thinking is now re-emphasized. "Dare think, dare say and dare do" as well as "seeking truth from facts" is Deng's conception of the proper style of learning.<sup>45</sup> In light of the fact that academic democracy is very important, he and other Party leaders like Hu Yaobang have encouraged intellectual discussion and the exchange of viewpoints in scientific and academic circles. "At present," as pointed out by Deng, "the contentions among different ideas and discussions are not too many but too few." He comforts the intellectuals by saying that "incorrect ideas may appear through discussion but this is not strange and need not be afraid."<sup>46</sup>

In order to eliminate doubts over the sincerity of the Party policy in adopting a democratic line in the intellectual world, Deng has publicized the need for the institutionalization and legalization of democracy.<sup>47</sup> At the same time, he reiterated the "principle of three nots": not seizing others' faults, not putting labels on people and not using the "big stick." By saying that, "it is not horrible even if some people use democracy for other purposes out of discontent,"<sup>48</sup> Deng intended to show the Party's resolution in promoting democracy even with some unintended consequences. The core of the policy which the Party is going to uphold is that opinions must be permitted to be raised and academic contention must be allowed. As a whole, freedom of discussion, freedom of creation and freedom of competition in the intellectual world are confirmed. Through these measures, the leadership hopes to satisfy the demands of the intellectuals in order to mobilize their positivity and creativity for the four modernizations.

#### 4. The Creation of A Better Objective Environment for the Intellectuals

Other than rhetorical measures, the Party has indeed in the past few years taken concrete actions to improve the treatment of the intellectuals. All such measures are intended to raise the incentive of the intellectuals in order to transform their knowledge and skills into a constructive force to foster the Four Modernizations. Simultaneously, they are also intended to improve the image of the Party in the eyes of the intellectuals.

The Party is concerned about the living standards and working environment of the intellectuals. The Party leaders have realized that only with adequate living standards and better working conditions can the intellectuals concentrate their attention on their work, study and research. The conclusions of a survey on intellectuals' present conditions reveal that:

In general, the working, studying and living conditions of these intellectuals are relatively unsatisfactory and there are many problems.<sup>49</sup>

In Communist China, the pay for the intellectuals has been lower than that of the workers and peasants because of class discrimination. Many have criticized that:

Intellectuals, especially middle-aged intellectuals, who are the backbone element of teaching and scientific research, are shouldering heavy tasks. Their burden of livelihood is also heavy. It is unreasonable that their wages are below average. They must be paid according to their work.<sup>50</sup>

Reacting to this phenomenon, Deng has said that it is necessary to subsidize and offer assistance to the intellectuals who thereafter must be paid with the salary they deserve.<sup>51</sup> His statement has formally put an end to egalitarianism and now one's pay is assessed according to his competency. Wage adjustments, the problem of overcrowded housing, health problems, and the problem of married couples being assigned to separate localities have already received attention.

The intellectuals can also be exempted from political affairs such as political study. Deng has claimed that hard work in research is not a crime but must be encouraged. Thus he specified that with regard to the intellectuals, for example the scientists, "we cannot bother them with political affairs, we must provide them with time and the environment which will enable them to conduct their research."<sup>52</sup> Moreover, the Party has also tried hard to improve their access to books and information.

The leading cadres are now encouraged and urged by the Party to assign the intellectuals to the work that needs their services. As instructed by the Party, they must trust the

intellectuals fully, respect them, use them without reservation and give them both authority and responsibility. The Party is very concerned about whether the intellectuals have been placed in proper positions so that they have the opportunity to make full use of their knowledge. It is said that in working with the intellectuals, the cadres must be democratic and take care of the intellectuals:

Leading comrades and comrades in charge of Party work and political work must have a democratic style of work, listen earnestly to the opinions of scientists and technicians, actively back their rationalization proposals and inventions, encourage them to continue to ponder on and raise problems and solve them<sup>53</sup>

and

when a problem arises, there should be frank, sincere exchanges of views to reach an understanding and proper settlement. As to intellectuals with failings and mistakes, warm-hearted help should be given.<sup>54</sup>

Also, they must listen and accept the opinions of the intellectuals who must be given a free hand to work in planning. Then cadres are also assigned the task of selecting outstanding intellectuals to take over leading posts and managerial tasks. They are warned that this must be truly implemented. To facilitate their work, the Party has also established a special system for the intellectuals. For example, a sound technological responsible system is set up for technicians who can take part in the management of the enterprise.<sup>55</sup>

In order to clear the way for the new policy toward intellectuals the Party has already taken action to rectify incorrect attitudes of cadres towards intellectuals by eliminating the legacy of the Gang of Four. It condemns the wrong idea of discriminating against the intellectuals:

All cadres at various levels must realize the role and contribution of education, science and culture in the socialist modernization. This is the key to implementing correctly the policy towards intellectuals.<sup>56</sup>

Within the party, the leadership has launched a lesson to educate the cadres about the policy towards intellectuals and the correct attitudes toward non-Party intellectuals.

To increase the incentive for the intellectuals to work, the Party has announced that those who have the qualifications must be conferred with suitable titles and are to serve the NPC and People's Congress at various levels as well as CPPCC, especially the middle-aged. The intellectuals can also be recruited into



the Party regardless of their family, historical and social background.<sup>57</sup>

Finally, outstanding intellectuals are offered the opportunity to further their study in advanced Western countries and absorb advanced knowledge and technology. Academic exchange with foreign scholars is arranged and encouraged. The leadership hopes that through these interactions, the level of academic knowledge and scientific knowledge of the country can be raised. This knowledge is an invaluable asset for Socialist modernization.

In short, the Party has made every endeavour to create and provide a favorable environment for the intellectuals whose contribution is essential to the success of socialist modernization.

In sum, the core of the Chinese Communists' new policy toward intellectuals can be summarized by Hu Yaobang's speech on the centenary of Marx's death:

Firstly . . . to establish the correct concept to valuing scientific and general knowledge, and to mobilize the whole Party and the whole people to strive to acquire knowledge of modern science and culture.

Secondly, to oppose the erroneous tendency of separating intellectuals from the working class, juxtaposing them with the workers and regarding them as "alien force," to confirm the correct concept of intellectuals as part of the working class; and to strengthen a hundredfold the unity between workers and peasants on the one hand and intellectuals on the other.

Thirdly . . . to implant the correct concept that all leading personnel must strive to be experts; and to ensure that our cadres become better educated and professionally more competent by becoming more revolutionary-minded.<sup>58</sup>

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## Chapter Four

### Demands for Intellectual Freedom and Democratization of the Communist System

Intellectual freedom is subsumed under the broad concept of "human rights." Human rights is a totality of political rights and civil liberties that people exercise and enjoy in a society. It presupposes both the advancement of individual's material and spiritual well-being. Intellectual freedom can only be possible under the condition of emancipation of mind and freedom of expression. It is impossible to practice intellectual freedom under the imposition of a dogmatic thinking of mind. The basic principle of freedom of person in a spiritual sense is based on the confirmation of the supreme value of human dignity. While the Communists believe that there are only two diametrically opposed class world views -- that is, proletarian versus bourgeois -- and that the latter must be replaced by the former under Communist rule, the intellectuals deny the class nature of world view. They do not believe that there is an authoritarian world view which is the sole standard of "truth" and which possesses the nature of absolute truth. Democratization of a political system, generally speaking, is a process through which institutions, whether formal or informal, become under popular control. Thus, what the democrats and democratic dissidents demanded during the "Hundred Flowers" and the "Beijing Spring" Democratic movement was the opening of the government to the general public so that the people would have more chances to influence or participate in the policy making through direct election.

Intellectual freedom and democratization of the political system have been advocated by the intellectuals in Communist China which by its nature, negates all these demands.

#### A. Conditions in the Maoist Era before the Hu Feng Incident

The most severe violation of freedom of person in Communist China is the ideological reform or indoctrination imposed on the intellectuals who traditionally were highly respected. This practice transcended physical torture to the spiritual realm by using a technique which is considered to be the most inhumane in the liberal world: the notorious "thought control." The Communists were uneasy about the bourgeois background of the intellectuals. Mao had already paid attention to this question during the revolutionary period and demanded the intellectuals to remold their thoughts on a "voluntary" basis. Thought reform did not receive serious attention until the Communists consolidated their power in the post-revolutionary period. The most important requisite for the intellectuals in serving the regime properly was a "correct" ideological viewpoint and political outlook. This meant the open repudiation of non-Communist ideologies and the acceptance of a proletarian ideology. The intention of the regime to construct an ideological monolith had rendered thought reform of the intellectuals a primary concern, especially after such a practice had been institutionalized.

The ideological rectification movement was launched in 1952 after the Third Meeting of the First Plenary Session of the National Committee of the Chinese People's Political Consultative Conference. At the meeting, Mao emphasized the importance of "ideological remolding of all intellectuals." The utmost insult to the dignity of the intellectuals came from criticism and self-criticism as well as the coerced acceptance of an ideology from which they were alienated. Though the program of "reform through labor" did not become penal law until 1954, yet in reality, it had already been applied to stubborn intellectuals (e.g., Feng Yulan and Liang Shuming). It possessed the nature of penal law. Party policy, in fact, was the law in the Communist mind.

Although it was stipulated by the Chinese Communists that the citizens of the People's Republic of China "shall have freedom of thought, speech, publication, assembly, association . . . .,"<sup>1</sup> which were later formally written to the Constitution (Article 87) in 1954, there were no legal guarantees for people to exercise these rights. It was surprising that "freedom of thought" and "publication" were deleted in the 1954 Constitution. On one hand, the Party had always asserted that people could enjoy unprecedented freedom under the Communist regime. Yet, on the other hand, it was the Party which constantly violated the Constitution and encroached on the fundamental freedoms of the people. The stipulation was significant to the intellectuals since a free working atmosphere was the driving force behind their trek to Yanan. During the Yanan era they pleaded for less interference in cultural and intellectual activities, more opportunities for debate, and a greater tolerance of different viewpoints.

In the post-revolutionary period, the Party set up "strict" ideological standards for intellectual work and also prescribed that work "must be related to the political and class struggle."<sup>2</sup> To the Communists, knowledge was to serve only as a tool for achieving political objectives -- that is, it had a strict utilitarian role. Knowledge had to belong to and serve a definite class, as well as express a definite political line. Never had the intellectuals been given a free hand to go ahead with their work and they were not encouraged to assume responsibility. Though the Party had warned the intellectuals to obey the Party line and policy, yet the intellectuals did not give up any attempt to voice their ideas and opinions on the dictatorial nature of Party policies and the suppression of freedoms.

The political system, from its very beginning, was already under the strict control of the Communist Party. This tendency became more prominent after the 1954 Constitution when the coalition Government was transformed into Communist Party rule. The Communist monopoly of political power aroused widespread discontent especially among the intellectuals because this meant dictatorial rule which violated the democratic rule as promised by the Communists.

## Case One -- The Hu Feng Incident

Hu Feng was the first intellectual who took action to reflect his discontent with the Party's imposition of dogmatic thinking and authoritarian policies on the literary and art circles.

### A Brief Account of Hu Feng and His Relations with the CPC

Hu Feng was a Marxist critic who for thirty years sided with the CPC and the leftist writers. He was one of the chief disciples of Lu Xun. As early as the 1930s, Hu already treated himself as an orthodox leftist literary theorist and Marxist.<sup>3</sup> Yet, his line of thinking was less dogmatic than Mao and Zhou Yang. To a large extent, he disagreed with their ideas about the Marxist theory of literature. Zhou Yang, for the most part, was the decision-maker and the leader of the Communist literary circle. Mao backed his group both before and after the establishment of the PRC. Hu and Zhou had long struggled for the orthodox position in the Communist literary circle. During the War, Hu as the editor of the literary magazine Xiwang [Hope] had already established his theory and his own circle to contend with the "Yenan group": the theoretical base was Mao's "Talks at Yanan on Literature and Art" (hereinafter referred to as Talks). While the Communist literary leadership treated Mao's "Talks" as the "Holy Bible," Hu had expressed his discontent with the "Talks" and advocated a "subjective spirit" which Mao intended to combat. Hu continued to debate with Zhou's group and never concealed his discontent with their manipulation of Party literary policies and the imposition of their interpretation of Marxism on writers. Hu's group was in fact the opposition "party" within the leftist literary circle. In 1952 Hu was forced to engage in self-criticism about his theory of literature. This only served to increase his discontent with the Party policy of strict control represented by Zhou, in both ideology and creation. In July 1954, he boldly submitted his three hundred thousand character "Opinions on Literary Questions" (hereinafter referred to as Opinion) to the Central Committee in hope of reversing the tide in order to liberalize the literary circle. Though Hu's aim was merely to present his opinion in the field of literature, the Party had treated it as a direct challenge to Party leadership and policies on literature. This led to the purge of Hu Feng and his followers.

### The Demands of Hu Feng

#### 1. The Attack on the "Five Daggers"

The first dagger concerned "the compulsory nature of Marxist ideology." Hu refuted the Communist idea that the acquisition of the Marxist world view was the pre-requisite for creation. He felt that as soon as a writer had mastered the creative method of socialist realism, the writer could produce meaningful articles without invoking systematic Marxism.<sup>4</sup> He cited Lu Xun as an example of a writer who never read deeply into



Marxism. Hu also warned that such a requirement could only hinder the writers from creation.

The second dagger which he attacked was that only the life of workers, peasants and soldiers was the sole viable source of inspiration. In this regard, there came his own theory that "life is everywhere,"<sup>5</sup> and thus, there was more than one source of literature.<sup>6</sup> This was contradictory to Mao's idea that people's life was the sole legitimate source of literature. In proposing there were alternative sources, Hu intended to eliminate the restrictions on writing imposed by Mao.

Hu's third dagger was related to ideological reform. He opposed making thought reform compulsory and suggested that writers ought to engage in it on a "voluntary" basis. For Hu, ideological reform could be done only through the practice of writing, and only then could Marxist literature be created. The writer would otherwise be trapped in dogmatism. Hu and his followers rejected the Communist idea that the only way for ideological reform of the writer was either through the study of Marxism-Leninism or through the participation in the mass struggle.<sup>7</sup> Indeed Hu's conception of thought reform was just the opposite of Mao's theory that "being determined consciousness."

The fourth "dagger" was "literary form imposed by the Party." For Hu, the most urgent task was not to learn the cultural heritage but to inherit the new cultural tradition of the May-Fourth Movement and to learn its modern form. He objected to the doctrine of "back to the ancients" because there was not much worth learning from the ancient literary forms. On this point, he shared same idea as Lu Xun. Guo Moruo accused Hu's advocacy as an attempt to "weaken and destroy the national prestige and dignity of China."<sup>8</sup>

The fifth "dagger" was the topic defined by the Party. What Hu disagreed with was the subordination of literature to politics which deprived the autonomy of literature. He believed that topic for writing should be broader and without restriction. This idea was a reaction to the Party prescription that writers were allowed only to praise "the brightness of revolutionary victory," to write about the life of workers, peasants and soldiers, to write their glories but not their dark sides. For him, a realist writer had to disclose both the brightness and the darkness of the proletariat, revolution, socialism and the Party. On the other hand, the bourgeoisie ought not in all cases be condemned. His philosophy emphasized the loyalty to reality and had room for "art for arts' sake."

Basically, Hu's non-dogmatic attitude towards Communist literature and opposition to Maoist literary theory owed its origin to Stalin: write the reality. Let the writer learn from life. If he can reflect the real life by means of high level of artistic skill, he can surely attain Marxism.<sup>9</sup> Thus Hu's understanding of Stalin's literary theory was his chief inspiration in looking for a total liberalization of the literary circle.

2. Hu's Demand for Organizational Reform in the Literary Circle

As soon as the Communist regime was established, the Party set up a framework of control over the activities of the writers through organizations. The Party adopted this practice from the Soviet Union and set up the All-China Federation of Art Circles (hereinafter referred to as Federation) and the Chinese Writers' Union (hereinafter referred to as Union). All newspapers, journals, and magazines were placed under the control of these two organizations. The writers had to join either the Federation or the Union before they could write and publish. Thus, for the sake of survival, all the writers became members either of the Federation or the Union. As a result, the writers whose style of life was originally characterized as liberal and undisciplined were forced to earn their living and conduct their writing under strict organizational discipline. Standards and criteria were set for writers in the publication of their articles. They were constantly under the supervision of personnel cadres and the Party Committee within the Federation and/or the Union.<sup>10</sup> Unhappy with pervasive Party control in the literary circles, Hu proposed the disengagement of Party leadership in literary organizations.

In his "Opinions," Hu's directions for reform of the literary organizational method were based on the Soviet example in order to show that he had no intention to detach from Communist principles. In reviewing the Soviet theoretical guidelines in the literary circle, Hu had pointed out the speciality of literature and thus concluded that free competition should be practiced in the literary world.

His four suggestions for reform which paved the way for free competition were, first, the abolition of the media and magazines under Party control.<sup>11</sup> Second, the dismissal of all "creation centers" which were under the administrative control of the Party. He believed that the Federation and the Union were "official" organizations possessing no mass character.<sup>12</sup> Third, writers should have free association and organization in the reorganization of publications, presses and magazines, each of which should be under the editorship of an influential writer. The selection of writings to be published and the determination of salary should be under the jurisdiction of the editors and not the Party. Creation centers should be organized publisher which was aimed at guaranteeing the freedom of creation of the writers.<sup>13</sup> Last, reform was in need with regard to the Party leadership over literature. This included the abolition of the system of compulsory study and emphasized self-study by the writers. Editors were obliged to report the conditions of the literary circle to the Central Propaganda Department. The daily work of the publications were to be administered by the writers and not the Party. Although there were still Party Committees, they had to respect the speciality of literature.<sup>14</sup>

In sum, the new arrangements entailed the total surrender of Party leadership. Hu's suggestions were exactly what Guo Moruo

had criticized: to dissolve the organization unit of literary circle from Hu's point of view was unnecessary and would only have a harmful effect on the literary circle; to stop the present publications since they were under the control of the faction Zhou Yang and had lost their autonomy. These were to be replaced by "free competition" based on market regulations and "publications run by individuals."<sup>15</sup>

The demand for liberalization was attacked as based on "capitalist ideology" which would lead to "the disintegration of the literary circle, and detachment from the ideological leadership of the proletariat." The result would be "the disintegration of the literary circle, and detachment from the ideological leadership of proletariat," as well as "factionalism and the domination of capitalist ideology."<sup>16</sup> Thus, Hu was accused of being "Anti-Party" for his advocacy for the abolition of Party leadership and for his hatred of the re-enforcement of Party leadership on the literary movement and the support it received.<sup>17</sup>

#### Case Two -- The Advocacy for Democratization of the Political System During the Hundred Flowers Campaign

In order to relax the tension between the Party and the intellectuals after a series of repressive activities and thought reform since the rise of the regime, Mao saw the need for a more moderate policy to appease the intellectuals' discontent sentiment. It was this consideration, together with the Hungarian Crisis that provoked the policies of "Let A Hundred Flowers Blossom, Let A Hundred Schools of Thought Contend" and "Long-term co-existence and Mutual Supervision."<sup>18</sup> These policies took "blame not the speakers but be warned by his words" (yanzhe wu zui, wenzhe zu jie) as the basic principle.<sup>19</sup>

Along with the slogan of "long-term co-existence and mutual supervision" in the Communist political system, there came an earnest desire for the democratization of the regime which had been monopolized by the Communist Party since 1949. The pressure from the leading non-Communists was especially strong. In fact, the political system was a dictatorial one. Zhang Bozhun, Minister of Communication and the Deputy Chairman of the Democratic League, and Luo Longzhi, the Minister of the Timber Industry and Deputy Chairman of the Democratic League, are representative advocates for democratization.

#### 1. The Attack on the Dictatorship of Party Rule

"True socialism is highly democratic but the socialism we have here is not democratic."<sup>20</sup> So Lin Xiling accurately described the totalitarian nature of the Communist Party regime. She stated explicitly that socialism belonged to the people and not to the Party. Zhang and Luo were moderate compared to Lin, but their speeches did not conceal their discontent with dictatorship by Party rule. In stating that "democracy is not enough," Zhang questioned the Party, "Inasmuch as democracy is to be developed, why stress the leadership of the Communist

Party?"<sup>21</sup> He suggested that Party organizations and Party members in fact exercised control over virtually everything, and this had deprived the members of democratic parties the chance to play their due role in state affairs during the past several years.

On this point, Zhu Auping, Editor-in-Chief of the Guangming Ribao [Enlightenment Daily] frankly criticized the key problem of political life reflected in the relations between the Party and the masses which was the idea that "the World belongs to the Party."<sup>22</sup> He pointed out that "a party leading a nation is not the same thing as a party owning a nation. The public supports the Party, but members of the public have not forgotten that they are 'masters of the nation.'"<sup>23</sup> He criticized the Party in its violation of promises for a coalition government:

Before the liberation, we heard that Chairman Mao wanted to organize a coalition government with non-Party members . . . Now there are twelve deputy premiers in the State Council, not one of whom is a non-Party man. Could it be that there is not a single person among the non-Party people who can sit in a deputy premier's chair, or that none of them can be groomed to hold this chair?<sup>24</sup>

The same phenomenon was observed by Yang Yue when he said, "Before the Constitution was promulgated, the government looked like a coalition government. But now, all the democratic parties have been kicked away."<sup>25</sup>

Both Wang Gulun (Chairman of the Standing Committee of the Kuomintang Revolutionary Committee) and Zhang had cited the operation in the Standing Committee of the NPC in decision-making to show the dictatorial nature of the Party regime in the name of coalition government. According to Wang, "On many occasions when important matters were under discussions, often only the democratic personages spoke, whereas the Party members declined to utter a word. Does this indicate that the Party has already discussed and made its decision on the matters concerned?"<sup>26</sup> If so, some contended that the discussion on major policies as well as their approval was only a gesture. Zhang also had the same opinion and said that "if the Party or State Council respects our opinions, why do they not ask for our opinions before decisions are made? Without discussion in the Assembly, the issues presented for approval were the result of formalism and oligarchy. How could this be democracy and democratic politics?"<sup>27</sup> He used the "character reform" as an illustration: before a draft was announced, the policy was treated as if it had already been approved. There was no discussion of whether the characters ought to be reformed and how to reform them. The implementation tended to be compulsory. The people simply had no channel through which to speak. This as described by Zhang, could only be Party dictatorship.

Luo stated the case differently, "the Party has replaced the government." In fact, the Party was attacked for monopolizing everything: the Party made decisions about everything, the Party was the whole people, the Party was the state and the law. There was opposition to the notion of substituting the Party for administration and suggestions for the separation of the Party and State. The duties and authority of the State administrative organs and of the Party organizations had to be clearly demarcated.

## 2. The Abolition of One-Party Rule

As pointed out by Gao Peizhi, a lecturer at China People's University, "China belongs to 600,000,000 people including the counterrevolutionaries, it does not belong to the Communist Party alone."<sup>28</sup> Therefore, the first step for the democratization of the political system was the abolition of one-party rule. Huang Ziping, a teacher in the Third Girls' Middle School of Tianjin was the first to advocate allowing the non-Communist parties to rule. Accordingly, Huang said:

Although the democratic parties are allowed to exist and the political platform of those parties is to advance in the direction of Communism, why could not the method of rotating the democratic parties in power be adopted? If we cast away one-party rule by the Communist Party and let the Communist Party and all other parties put forward their different political platforms, leaving the decision to free election by the masses of the people, the Communist Party and all the democratic parties would work harder to overcome their shortcomings in order to solicit more votes on the basis of their services to the people.<sup>29</sup>

The democratization of the political system, in fact, is incompatible with single-party Communist rule.

## 3. The Demands for the Enlargement of the Role of Democratic Parties

The democratic parties were described as the eyebrows, but not the nose and eyes of the Party. The eyebrow "is not indispensable." At that time, both Zhang and Luo only wanted the democratic parties to have a greater role to play in the decision-making process as well as greater powers for their members. They had no intention of competing with the Communist Party for the ruling position. Zhang had made such a plea in the early period of the rectification campaign:

The role and development of the CPPCC are being strengthened. I think that beginning from its 3rd plenary session, more political tasks for the CPPCC should be considered. Its powers, for instance, to hold

consultations, make proposals and exercise supervision could be strengthened. The CPPCC could gradually be turned, in the course of political life, into a democratic link in the parliamentary system required for the Chinese people's democracy. After this plenary session, we should strengthen the work of the CPPCC at all levels from the central to the local.<sup>30</sup>

Concerning the present role of democratic parties, Hu Zitang was discouraged by the attitude of the Party towards the democratic parties: "at the present moment, the relationship between the Communist Party and democratic parties ought to be closer. But in fact, this was not the case, rather their relationship has been relatively estranged. For example, since the declaration of the line of 'long-term co-existence and mutual supervision,' the Party has not yet discussed with the democratic parties about a set of concrete measures in order to carry out mutual supervision."<sup>31</sup> He suggested that from the angle of an organizational connection, a set of measures related to their relationship and working methods should be established to facilitate that purpose.

In order to enlarge the role of the democratic parties, Luo treated it as a demand that all democratic parties should decide the national policy with the Communist Party as well as the mutual share of the power. Thus, Luo demanded an equal status with the Communist Party in the decision-making process. The past practice was that:

What embarrassed the democratic parties most was the lack of information required for the study of policies. At the Standing Committee meetings of the NPC and the CPPCC, the democratic parties could not voice any effective opinion on matter under discussion because they were not informed in advance of the matters to be discussed, and they had no time to study them at the moment of discussion.<sup>32</sup>

He therefore proposed that when any major policy was to be decided, the democratic parties should be provided in advance with the information and materials related to it and should be allowed the chance to discuss it at the same time as the members of the Communist Party.

Luo was supported by Zhang who believed that equality, independence and freedom between the Communist Party and democratic parties ought to be relative. For him, suitable conditions had to be created in order to achieve these aims. He pointed out that "at present, some institutions, and regulations exist as obstacles for the realization of equality and independence and freedom as well as the functions to be performed by the democratic parties."<sup>33</sup>

On the question of the power of democratic parties and their members, it was said that it had to be decided how to organize the participation of democratic parties in the governmental administration. Zhang said that at present many state affairs were decided by the Party and the orders were made through the party system but not the administration.<sup>34</sup> The members of democratic parties who took up administrative responsibilities felt that they did not have the power corresponding to their official position. Thus, they hoped that real power was to be given to the non-Party administrators so that they could function effectively. Later Zhang made the suggestion for a political design department and said that the Communist Party should fully co-operate with the National Committee of the CPPCC, the Standing Committee of the NPC, the democratic parties and the people's organizations in discussing important policies and problems. The department as advocated by Zhang should take in more non-Party intellectuals with technical and field experience to work with them.

All these proposals were aimed at improving the power position of democratic parties vis-a-vis the Communist Party as well as breaking down of the latter's monopoly of the political system.

#### 4. The Demand for a Better Working Environment

To permit active participation of the democratic parties, the political environment had to be improved. Wang noticed that the democratic parties lacked a stable working environment. He cited the case of the Standing Committee of the NPC as an example and disclosed three shortcomings in this area: the Standing Committee had little knowledge of the conditions of state affairs; there were a few substantive discussions and there was little opportunity for contact.<sup>35</sup> He asked for improvement.

Luo viewed the problem from another dimension -- organization development. He said that if the democratic parties hoped to co-exist with the Communist Party in the long run, three problems should be tackled: how to develop their organizations, how to take part in policy making conferences and how to improve the work of the grass-roots level organization. As for "long-term co-existence," Luo took the stand that in the organization of the democratic parties might find the conditions for co-existence, but added that it was too early to talk about the problem of co-existence before the question of membership recruitment was solved. The democratic parties were not allowed to recruit members from the masses of the workers and the peasants but only from the old-style intellectuals who were by then quite old. Since the road to socialism was a long one, the restriction of their recruitment to the middle-aged and old persons would deprive them of the longevity required for "long-term co-existence."<sup>36</sup>

As a whole, it was impossible for the democratic parties to play a greater role if the Communist Party refused to provide them with stable and objective political environment.

Since the advocacy for political change in the orientation of democratization would endanger the dictatorship of Party rule, Zhang, Luo and Zhu were widely attacked as reactionary, anti-party and anti-socialist. They were accused of opposing the dictatorship of the proletariat, opposing Party leadership and opposing the socialist road. The latter two had long been considered by Mao as the core of the Communist regime that could not be violated. It was said that any opinions which denied Party leadership or weakened Party leadership were incorrect. The speeches that deviated from orthodox socialism had to be rectified. Ultimately, it was prescribed that all criticisms and suggestions had to be raised on the basis of upholding socialism and of consolidating Party leadership.<sup>37</sup> According to this standard, Luo and Zhang's political suggestions were identified as distrust of Party leadership (that is, the political design department and the Commission for rectifying injustice) and were aimed at overthrowing the leadership position of the Communist Party. They were later accused of having formed an Anti-Communist alliance with a "political plot" to bring about the capitalist system and were purged.

## B. Democratization in Deng's Era

### Case Three -- The Beijing Spring

. . . Since for a period in the past democratic centralism was not carried out in the true sense, centralism being divorced from democracy, it is necessary to lay particular emphasis on democracy at present . . . . In ideological and political life among the ranks of the people, only democracy is permissible and not suppression or persecution . . . . The constitutional rights of citizens must be resolutely protected and no one has the right to infringe upon them. In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws.<sup>38</sup>

This unprecedented stress on democracy by the Communist regime, together with the rehabilitation of the "Tian'anmen incident" inspired the hope for democratization which resulted in the so-called "Beijing Spring" (Beijing Zhi Chun). "Beijing Spring" was a democratic movement, during which there was active participation in the big-character poster movement among young intellectuals and many unofficial publications appeared. Among them were April 5th Tribune (Si Wu Luntan), Beijing Spring (Beijing Zhi Chun) and Exploration (Tansuo). This section will focus on the most representative figure active in this democratic movement, Wei Jingsheng, since his viewpoints on democratization is the most systematic and comprehensive.



This democratic movement possesses two distinctive characteristics. First, the majority of the participants were intellectual youths who grew up "under the red flag." Their family backgrounds were mostly proletarian. Second, they did not superficially raise demands for freedom and democracy, but were more realistic. They looked to "socialist democracy and socialist legality." They believed that there was the need to consider the necessity of democratization under the socialist system. For them, democracy was indispensable to socialism: democracy is not only the means but ought to be the end. Thus, based on their line of argument, the policy line of the state under socialism must be the will of the great masses; socialist legality must be perfected. For instance, there was a need to enact new laws for publication, to use laws to protect people's democratic rights, as well as the realization of supervision of the Party by the masses so that the people could become the "real masters" under socialism.

#### The Perspective of Wei Jingsheng towards Democracy

After the rise of Deng and the rehabilitation of the "Tian'anmen Incident," under the slogan of "Four Modernizations," Wei revealed his hopes for democratization to Deng. But he was soon disillusioned and regretful: the old political institutions that they (the people) abhorred refused change. The democracy and freedom for which they craved were not mentioned at all, and nothing has been done to improve their living standards.<sup>39</sup> Thus, he wrote a number of big-character posters on democracy which he characterized as the "Fifth Modernization" to arouse the aspirations of the people to struggle for democracy by themselves. He was also the founder of Exploration (Tansuo). In a series of big-character posters, he concentrated on disclosing the dictatorial nature of the Chinese Communist regime, pointing out that democracy was the only hope for the success of modernization and better life and finally concluding that democracy could only be achieved through the struggle of the people themselves.

##### 1. Disclosing the Dictatorial Nature of the Communist Regime

Wei radically pointed out that under the leadership of the Communist party, the Chinese people could only have "democracy under a centralized leadership," and this was not real democracy. Moreover, the people were always warned to be obedient. According to Wei, "the slogan that the 'people are the masters of history' has been turned into an empty phrase by the Party" because the people could not grasp their own fate in accordance with the wishes of the majority. Instead people were "good slaves."<sup>40</sup> He directly said that the people in China did not have democracy but they wished to and ought to be the masters of their own destiny. In fact, democracy has gone even within the Party under the name of the dictatorship of the proletariat -- indeed, it was one-man dictatorship of the "great leader."<sup>41</sup> Dictatorship had already violated Marxism: the premise of socialism is that the people or the proletarian masses are the

masters of the country. But what Chinese people had was a Chinese-style socialist autocracy -- a feudalist monarchy under a socialist cloak.<sup>42</sup> Wei made a comparison between totalitarianism and Western democracy to highlight the dictatorial nature of the Communist regime: a totalitarian way of rule restrains personality and makes slaves of the people whereas democracy is based on a mixture of personalities. Totalitarianism is characterized by its suppression of personality while freedom is identified by its safeguards and blending of personality.<sup>43</sup> To put it clearly, Wei made it more explicit:

The people in the West enjoy abundant freedom, yet they are still not satisfied. The Chinese people have already had a lot of discipline and someone still wants to give them more. Western governments take the protection of the 'citizens' human rights as one of their bases; whereas the right of the citizens in the 'socialist countries' is to be servile subjects of a few.<sup>44</sup>

Wei ascribed totalitarianism to Marxism: democracy is only something the empty talkers of bourgeois society use to humble the people, dictatorship is the only way for the people to go to obtain their rights to equality and freedom of living.<sup>45</sup>

He boldly and openly declared that China under the Communist ideology was in fact a political dictatorship:

In our country as the result of a long period of dictatorial rule under ideology of Marxism and Maoism, workers, farmers, soldiers and the masses have all lost every vestige of political freedom . . . . By using the superstition of idealism in support of apolitical to bring everything under social control in a system of modern socialism, we have reached a state in which the people are deprived of all political rights and are enslaved and exploited in their daily life.<sup>46</sup>

In saying these words, Wei aimed at disclosing the undemocratic and exploitative nature of Communist China. The hope was, in the first step, to help people to realize that their country was indeed a totalitarian one.

## 2. Democracy -- The Way for the Good Life

For Wei, democracy belongs to the people. If they ask for democracy, they are merely asking for what originally belongs to them. He described anyone (the Party leadership) who refused to return democracy to them (the people) as a "shameless robber." Since democracy is the most formidable and irresistible enemy of dictatorship, the only alternative for liberation from the yoke of totalitarianism is democracy -- people must first be the

masters in distribution, including power and resources. Democracy, according to Wei,

. . . is to put power and authority under the control of the entire working people. In this way the people have the right to select their agents according to their own will and have things done in conformity with their wishes and interests. In addition, they must have the power to recall those agents any time they want to, so as to prevent the agents from riding rough and shod over the people in their name.<sup>47</sup>

Wei voiced his goal as achieving the restoration of the people as the masters of the country, and not as the modernized tools to satisfy the expansionist ambitions of dictators.

From his observation of historical development, Wei reached the conclusion that the economy of any nation with a highly developed democratic system usually has a rapid grow rate in production. The reasons are: (1) a free enterprise system; (2) distribution, both in power and resources, is determined by the majority; (3) free competition under the equal opportunity to control production; and (4) conflicts can be peacefully resolved by democratic politics.<sup>48</sup>

To Wei, democracy, freedom and happiness were the sole objectives for modernization. He asserted that without this "Fifth Modernization," the economic modernization would tend to be a failure. So the political system of Communist China must first be modernized and democracy must be put into practice before modernization can be achieved. Therefore he regarded that only if "there is democracy, can there be the possibility and opportunity to bring about equal human rights and the modernization of people's lives." This would arouse the democratic aspirations of the people and point out the direction of life they ought to pursue.

### 3. The Achievement of Democracy by Struggle

Wei's assertion that "let's have confidence in our strengths" and "human history is created by us" expressed his disillusionment over the dream of achieving democracy through Party leadership. He thus entrusted his hope in the people's common efforts: as long as the people can clearly discern objectives and impediments, they can overcome every obstacle and difficulty. Since he never believed that the dictators would let the people carry out democracy, he appealed for people to join the battle in struggling for democracy:

Every single branch of twig and true and valuable democracy has been saturated with blood of martyrs and tyrants. Each stride towards democracy has led to withstand the all-out assault of the reactionary forces.

That democracy has been able to overcome all these obstacles exactly throws light on its preciousness to the people . . . . As long as they [the Chinese people] find out their right direction [that is, democracy], the power of the tyrants will no longer be undefeatable.<sup>49</sup>

He denounced the traditional practice of hanging the hope for better life on a handful of saviors: two thousand years of Chinese history tell us that a happy life cannot be secured by relying on salvation by a small number of people. The only reliable guarantee for the happiness of the majority is to struggle for a democratic social environment by themselves. He negates the Marxist theories in the pursuit of equality and democracy and insists that equal rights can be obtained only in practical and continual struggle in the evolution of human history.<sup>50</sup>

Ultimately in achieving democratization, Wei stressed the importance of the rule of law. He felt that the system ought to bring about equal rights to the people:

In the law-making process, the people should heighten their vigilance and focus their attention on whether the law enacted is useful to us in maintaining equal human rights. Whoever attempts to stealthily change the contents will be our enemy.<sup>51</sup>

In the final analysis, what he wanted was a democratic system based on the rule of law in which people have the final say in every aspect of social life. In the fulfillment of this aim, according to Wei, people must grasp the power of delegation and supervision. Moreover the procedures and rights of election and recall must be protected by law.

Wei's uncompromising attitude towards dictatorship and arbitrary rule was revealed in his article entitled "Democracy or New Dictatorship?" The article was aimed at Deng because he criticized the big-character posters as disturbing the social and political unity and stability which are pre-conditions for realizing the Four Modernizations. Wei has bravely challenged Deng's understanding of democracy and has claimed that if the people do not possess the freedom of expression, how can there be democracy. He further warned the people to be aware of Deng becoming a new dictator. Indeed, the target of Wei was not only the Party leadership, but the system as a whole -- democratization of the political system in the orientation of the rule of law was the only alternative to rescue China and its people from poverty and slavery.

In comparison with the "contending" and "blooming" in 1957, the speeches of those who participated in this democratic movement were far more forceful than the "rightists" of the late 1950s. For example, Wei was quite blunt in stating that "Mao Zedong thought is not much better than the medical plasters sold

by quacks," and has portrayed the dictatorship of proletariat as "feudalistic monarchy under a socialist cloak." This, in fact, was seen as a direct challenge to Party prestige. Wei's radical and sharp criticisms were not tolerated by the Party. Thus Wei was arrested on March 29, 1979. Indeed during this period, many "democratic elements" like Fu Yuehua were arrested. But it is important to notice that the "Beijing Spring" did not end in a nation-wide suppression and large-scale political campaign like that in 1957. This more or less, reflects a change of attitude of the pragmatists toward legality. Finally, Wei was also "tried formally."

## Notes

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## Chapter Five

### Justice in the Application of Law

Justice is closely related to fairness and impartiality. At the most general level, the function of the legal system should reflect the society's perception of justice.<sup>1</sup> In the law, the term "justice" is used to cover the whole field of principles and procedures that ought to be followed.<sup>2</sup> In upholding justice, the law protects rights. Thus a system of law is concerned with the protection of rights. A law can be called unjust for failing to meet the moral idea of justice. The same holds true for the administration of law if it fails to meet the standard of firmness required by the procedures of the legal system.<sup>3</sup> The idea of justice is to defend the rights of the individual, even a guilty individual, against political utility.<sup>4</sup> Generally speaking, in the legal realm, standards of justice are supposed to be universal. That is, the concept of justice is applicable to all and transcends class limits. Equal treatment for all is the basic requirement.

#### A. Justice under Mao

Mao believed that there was no such things as universal justice, but only "class justice": bourgeois justice versus proletarian justice. Long before 1949, the Chinese practiced criminal justice from a class viewpoint. Counterrevolutionary elements from landlord-gentry, rich peasant and capitalist backgrounds were punished severely, while in general those from the ranks of workers, peasants and toiling masses were treated with leniency. The "Statute of the Chinese Soviet Republic Governing Punishment of counterrevolutionaries" (1934) provided lighter penalties for crimes committed by workers and peasants:

Workers and peasants who commit an offence but are not leaders or major offenders may have their punishment reduced from that stipulated in the various articles of this statute composed to elements from the landlords and bourgeoisie who commit the same class of offenses. (Article 34)

Though it was no longer explicitly written in the law, criminal justice based on class lines continued after the establishment of the regime, which claimed to be a dictatorship of the proletariat. In fact, socialist legality did not prevent the employment of extra-ordinary measures against persons branded as class foes.

The adoption of a class viewpoint in the application of law was unjust as referred to in Article 85 of the Constitution (1954) which provided that "citizens of the PRC are equal before law." The distinction between the "people" and "enemies" as well as the distinction between the two categories of contradiction in handling legal cases were political considerations which violated legal principles since they were subjected to different

treatment. "Ideological offences" -- that is, a criminal offence in one's ideology reflected in one's writings, short of concrete action, and one's historical background, which was also treated as a source of evidence of crime -- were also regarded as unjust. The prejudice towards the intellectuals was explicit when Mao openly admitted that the masses might have some shortcomings, but "these are to be removed by means of criticism and self-criticism, discussion as well as education within the ranks of the people."<sup>5</sup>

According to the 1954 Constitution, in handling criminal cases:

The system of people's assessors applies, in accordance with law, to judicial proceedings in the people's courts. [Article 75] . . . Cases in the People's courts are heard in public unless otherwise provided by law. The accused has the right to defense. [Article 76] . . . in administering justice the People's courts are independent, subject only to law. [Article 78]

Case One -- The Incident of the  
Hu Feng Counterrevolutionary Clique

1. Politicization of the Issue

The incident (contradiction) had been transformed from the ideological level to the political level through the utilization of public opinion with Party direction and mobilization behind the case. The target was later extended to Hu's friends.

a. The First Stage -- Ideological Criticism

From October 1954 to March 1955, the criticisms on the "Opinion" were restricted to the ideological realm. They focused on the discussion of whether Hu was a true Marxist or not.

Zhou Chengchang alleged that Hu was not a "real Marxist" who employed a wujiejie (classless) perspective to treat the question of literature.<sup>6</sup>

Cai Yi pointed out that the fundamental difference between Marxist literary ideology and Hu's bourgeois idealist literary ideology rested in the latter's denial that socialist realist writers "must possess the proletarian standpoint and Marxist viewpoint." He thus concluded that Hu's literary theory was "idealistic," "anti-people," and "anti-realism."<sup>7</sup> Bao Chang held the similar view. He attacked Hu's literary theory as being of a capitalist nature and said that Hu resisted the Party's literary line in the name of Marxism-Leninism.<sup>8</sup>

Mao Dun, the Minister of Cultural Department and the Chairman of All-China Federation of Literary and Art Circles, then launched the most comprehensive criticism on Hu's ideology. He

charged that the literary theory of Hu was plagued with subjectivism, and that it was the negation of the importance of the proletarian world view on the part of the writers. Accordingly, Hu's ideology was labeled as bourgeois subjectivism in Marxism color. His literary line had long been contradictory to that of Mao, and his activities were that of sectarianism.<sup>9</sup>

b. Political Accusation and Broadening of the Scope of Struggle

i. Anti-Party Stage

The publication of Guo Moruo's article entitled Fan Shehui Zhuyi Di Hu Feng Gangling (Hu Feng's Anti-Socialist Program) on April 1, 1955 in the Renmin Ribao (People's Daily) marked the change of the incident from an ideological one to a political one. In the last point of the charge Hu was accused of attempting to deny Party leadership by suggesting the dismissal of the unified organization of the literary circle. Guo concluded that Hu's program was "anti-Party" and "anti-people" which indeed paved the way for the imposition of the charge of counterrevolutionary crimes on Hu and his clique. The escalation of the incident from the ideological and literary sphere to the political sphere simply by utilizing public opinion without in-depth investigation was indeed unfair.

The publication of Hu's self-criticism together with his letter to She Wu before liberation served as evidence to prove that Hu's circle was an "anti-Party clique." Especially misleading was the editorial remark added to Hu's self-criticism. In fact, the editorial remarks which were said to be written by Mao<sup>10</sup> implied that the Party rejected Hu's self-criticisms and pointed out the direction of proceedings of the issue. Moreover, the headlines and concluding remarks given before and after the letters as well as the "interpretation" of the key words in the letters were intended to direct the readers to the Party tracks and to inform the writers of the standpoint and attitude of the Party in handling the issue.

Finally, She Wu's criticism of Hu Feng was only a personal accusation without any legal ground. After that, the Party mobilized all the pro-Party writers to launch personal attacks on Hu which had already transcended the limits of ideological contention. He was denied self-defense. The slogan at that time was "Enhance One's Vigilance, Disclose Hu Feng."<sup>11</sup> The editorial remark on May 18, 1955 in Renmin Ribao pointed out that Hu Feng and the elements of the clique were "pretending to support but in fact were opposing the people, and were pretending to support the revolution but in fact were opposing the revolution."<sup>12</sup> This remark already highlighted the ultimate aim of the Party. There were many articles written attacking Hu and his friends in the Tianjin Da Gong Bao, Renmin Ribao, and Guangming Ribao. Among these articles, the most notable was also written by Guo and advocated that "Hu Feng should be dealt with according to the law."

## ii. The "Counterrevolutionary" Stage

Zhang Tianyi's article "This Is the Struggle Between Revolution and Counterrevolution" first transformed the issue into a struggle between revolutionaries and counterrevolutionaries. The Party also mobilized cultural circles through the press to conduct conferences to condemn Hu: May 17 in Canton, May 20 in Shanghai, and May 21 at Peking University. Then there came the publication of the "Materials on the Hu Feng Anti-Party Clique, Part II," and the Joint Conference of the Federation and the Union presided by Guo Moruo on May 25. A resolution was passed on the grounds that Hu Feng was "a hidden counterrevolutionary element within literary circles":

1. According to the article 4 of the Constitution of the Chinese Writers' Union, Hu was expelled and dismissed the directorship in the Union and the editorial member of "People's Literature."
2. Hu was dismissed from Committee Membership in the National Committee of All-China Federation of Literary and Art Circles.
3. A suggestion was made to the Standing Committee of NPC, based on article 38 of the Constitution, to dismiss Hu's qualifications as a delegate to the NPC.
4. The suggestion was made to the Supreme People's Procuratorate: the counterrevolutionary crime of Hu must be dealt with.
5. The resolution prescribed that the elements of Hu Feng Clique in the Federation and Union must stand out to disclose Hu, conduct self-criticism, and reform themselves. Whether their membership will be preserved or not would depend on the condition of their concrete action.<sup>13</sup>

May 31 marked another stage of the event when the slogan was changed to "Firmly and Thoroughly Crush Hu Feng's Counterrevolutionary Clique" in the Renmin Ribao. Attacks were broadened to include Hu's friends like Liu Xuefeng, and Zhang Yu. The whole issue culminated in the publication of "Materials concerning Hu Feng's Counterrevolutionary Clique, Part III." It is worthy to note from the title that the term "anti-Party" was changed to "counterrevolutionary." This time, the Party mobilized those who were far more important than those within the literary circles. Articles in the June 11th Renmin Ribao were written by Li Jishen, Chairman of Revolutionary Committee of Kuomintang; Shen Junru, Acting Chairman of China Democratic League; Ma Xulun, Chairman of China Association for Promoting Democracy; Peng Zemin, Vice Chairman of Chinese Peasants' and Workers' Democratic Party; Chen Qiyou, Vice Chairman of China Zhi Gong Dang; Li Chungqing, Taiwan

Democratic Self-Government; Xi Yao Jia Nuo, Acting President of Chinese Buddhist Association. On June 12, the Communists again changed the slogan to "Firmly Liquidate the Hu Feng Clique and Hidden Counterrevolutionaries."

Since the crime of Hu Feng's clique was elevated from anti-Party to Counterrevolutionary, in the Communist regime, the counterrevolutionary had to be suppressed. On this basis, Hu and his friends were no longer in the category of "people"; the contradiction was being transformed into an antagonistic one which could not be solved by self-criticism or education but by struggle.

Indeed, literary dissent ought to be resolved within the sphere of literature, it is not justified to raise the ideological question into a political crime. The logic had gone too far.

## 2. Counterrevolutionary Crime on the Basis of "Ideological Offenses"

Hu's "Opinions" had undoubtedly shown the differences of ideological and policy orientations from the Party, yet Hu's action was limited to verbal disagreement with Party control. In Hu's "Opinions," he launched his own criticisms on the present conditions of the literary circle. His suggestion was intended to "rescue" the literary circle from the dogmatic thinking and factionalism, and he "hoped" the Party would take measures to reverse the trend. It was correct that Hu and Mao had different interpretations of the Marxist-Leninist theory of literature, but it was difficult to distinguish whose version was the correct one. Indeed, this was open to debate: Hu was liberally-oriented while Mao was politically oriented. Yet in Communist China, where power politics prevailed, Mao was surely in the authoritative position. He, as Liu Shaoyi once said in 1942, was the "only" legitimate interpreter of Marxism-Leninism in Communist China. Under this condition, any contradiction of Mao's version was treated as possessing the nature of "petty-bourgeois" world view or even counterrevolutionary. Even Hu's understanding of Marxism-Leninism was incorrect, it was still the question within the ideological realm. It was already too harsh to charge Hu as an ideological enemy to the Party. On no grounds could Hu be accused as a political enemy since he never took any political actions to sabotage the regime. The charge of "double-faced tactics"<sup>14</sup> was only a weak and vague substitution for that of counterrevolutionary crime.

The proposal made by Hu from the perspective of the Party might be a direct challenge of Party's supreme power which had no precedence. Although Hu's proposals were somewhat radical -- their aim was to minimize, if not to eliminate, the Party control over the literary circle -- his suggestions were made on paper only. He had not taken any steps to undermine Party leadership. Though his plan could be treated as reactionary, it was short of concrete action that could be transformed into counterrevolutionary crimes. Under the "Act," the counterrevolutionary crime which related to speech is found in Article 10(3): "Engaging in

counterrevolutionary propaganda in manufacturing and spread rumors. . . ." But Hu's "Opinions" were submitted only to the Party. Never had he taken action to publicize his "Opinions" in the form of a leaflet or propaganda. Hu even notified his friends and followers about his action and the content of the letters. Still the Party could not charge Hu since his letter had been "formally" submitted to the Party which resembled the practice of appeal.

In reviewing the Hu Feng incident, the Party accused Hu of being a counterrevolutionary simply on the grounds of the incorrectness of Hu's ideological perspective on literature's role in the Party, and the reactionary nature of the proposal he had made. This was in fact a question of ideology -- that is, the imprisonment or execution of anyone whose ideology is considered as offensive (or "ideologically offensive"). It was the "Hu Feng Incident" that set a precedent for "ideological offenses" and "crimes derived from one's speech or writings" as interpreted by the Party. This was the case in the "Anti-Rightist Movement." Throughout Hu's case, the Party lacked substantive evidence to prove that Hu and his clique had taken actions which were "for the purpose of overthrowing the people's democratic regime and undermining the people's democracy." The case had reflected the political nature in the application of law in Communist China.

### 3. Historical Background As a Source of Accusation

As the event became more politicized and escalated under the slogan of "Firmly and Thoroughly Crush the Hu Feng counterrevolutionary Clique," the Party in publishing the private letters between Hu and his friends, began to trace their historical background. This was to be the evidence to support the clique's counterrevolutionary attempt. At the same time the charge had been changed from "anti-Party" to "counterrevolutionary," which expressed the change of the attitude of the Party toward the issue. In the editorial remark in the June 10th Renmin Ribao, a commentator wrote:

1. Hu Feng . . . in the first revolutionary civil war, had once joined the Communist Youth League. In 1925, when he was in Peking, under the threat of the rule of white terror of Duan Qishui, had firmly demanded the Party permission for withdrawal from the league.
2. Later in the KMT army, he had prepared anti-Communist political works and then went to Japan and engaged in sinister tasks.
3. After his return, he sneaked into the leftist cultural body and conducted factional and destructive activities.

4. During the Hunan and Congqing periods, he had connections with many heads of KMT secret agencies.

Based on this background knowledge, it was said of Hu that "before liberation, he had hidden in the mainland and continued to conduct more sinister counterrevolutionary activities."<sup>1</sup> One of Hu's closest friends had also served as a military officer of the KMT.<sup>16</sup>

The editorial remarks, in reporting their "reactionary political background," were aimed at strengthening their argument that they were in essence "counterrevolutionary." But this evidence was not strong in a legal sense. On the other hand, these "facts" were history, and it was difficult to distinguish whether they were strategic plays or not. On the other hand, there was no evidence of a connection between Hu's clique and the KMT after the liberation. All these inferences are attenuated. In fact, when the backgrounds of the top Communist leadership were reviewed, most of them, including Mao, had once acted as the KMT officers. The headings added among the letters were intended to disclose their reactionary nature. Yet in a legal sense, one's intentions cannot be guessed to serve as evidence.

On June 20, 1955, the Renmin Ribao published the family background of Hu. The title was "Hu Feng's Attitudes Towards a Landlord Family as Evidence of His Counterrevolutionary Standpoint." The article pointed out that "Hu's family is a family of counterrevolutionary landlords." Thus Hu was said to be "either a spy of the imperialistic KMT, a Trotskyist, or a traitor of the Communist Party."<sup>17</sup> All these materials attempted to confirm Hu's counterrevolutionary standpoint from a historical and social approach. This method of tracing one's family background and social history was a general practice of the CPC in proving one's reactionary nature. But too heavy a reliance and reference to background is misleading and most of the time inaccurate, irrelevant and unfair.

#### 4. Lack of Legal Actions and Violation of Legal Practices

The whole case was handled by a political rather than legal approach from the time Hu was accused as "anti-Party" to the final conclusion that he and his clique were "counterrevolutionary." Not only was action lacking, numerous violations of legal practice and procedures also occurred.

With regard to the lack of legal procedure, the most notable omission was that no investigation was conducted by a People's Public Security organ which was supposedly to perform this function whether there was any trial. Moreover, there were violations of legal practices and procedures in handling the case under the Party's direction. In the first instance, it was illegal to label Hu and his faction as an "anti-Party Clique" and a "counterrevolutionary clique" at the Party's whim before they were tried by the People's Court according to legal procedures. Second, even if the trial was going to take place, it was unfair

for the Party to utilize propaganda and public opinion to exert pressure on the accused and to influence the "would-be" decision of the court. Third, the evidence ought to have been kept in strict confidentiality before the trial and presented to the court only. Fourth, the joint-conference of the Federation and the Union was not in the position to determine that Hu had already committed the counterrevolutionary crime. Fifth, it was a violation of Hu's legal rights to deny Hu and his clique the chance to defend their constitutional rights. Sixth, it was a legal abuse that the party made the final judgment. Stated Mao, "Hu Feng and his clique are indeed spokesmen for all counter-revolutionary classes, groups, and individuals." Finally, the imprisonment of Hu Feng violated his right of freedom of person since it was not based on a decision made by the court.

#### The Fate of Hu Feng and His Friends

On July 18, the Secretary of the NPC, Peng Zhen, announced that Hu Feng had been arrested "according to the law" under Article 37 of the Constitution:

No deputy to the National People's Congress may be arrested or placed on trial without the consent of the National People's Congress or, when the National People's Congress is not in session, of its Standing Committee.

This was done under the request of the Supreme People's Procuratorate. After that backbone elements such as A Long, Lu Ling, Liu Xuewei, Chang Zhongzhao, Lu Diao, Fang Ran, and others totalling 130 people were arrested.<sup>18</sup> In 1956, Hu Feng was placed in Qin Cheng prison without investigation and trial. In 1958 Mao issued a directive ordering a trial for Hu. But since the incident was so politicized, it was difficult to adjudicate. The verdict was not rendered until 1965 and Hu was finally sentenced to twelve years imprisonment.<sup>19</sup> Indeed the trial was only a formalistic one.

#### Case Two -- The Anti-Rightist Campaign

The original idea of the "blooming" and "contending" was to reduce the tension between the Party and the intellectuals. But the criticisms advanced by the intellectuals were aimed at the whole political system and its orthodox ideology, and even went as far as attacking the ruling policies. In short, criticisms were voiced by nearly all sectors of society against the Communist regime. A similar strategy was employed against the leading figures of the intellectuals as in the Hu Feng incident. The chief target was the Zhang-Luo "anti-communist" Alliance.



1. The Employment of a Political Campaign Against the Intellectuals

In reaction to the accusations and hostile criticisms, Zhou Enlai, in the Fourth Session of the First National People's Congress of the People's Republic of China denounced these criticisms as "vicious slander" against the regime. Thus they were "counterrevolutionary" and could not be tolerated by the Party:

At present, some rightists have used the excuse of rectification to launch destructive attacks against the Party. Many of the attacks are aimed at our political system. They attack our political system from the capitalist perspective. They accuse the People's democratic dictatorship as the root of all mistakes and shortcomings. They attempt to discredit our political system. They try to establish some kind of state organs, for example, the Political Design Department, the Commission for Rectifying Injustices, aside from our highest state organ -- the National People's Congress. Their objective is to separate the state authority from the working class and its vanguard -- Party leadership. . . . This kind of anti-socialist speech cannot be considered as criticism out of good will. The aim of the rightist is to pull our political system off the socialist road onto a capitalist road. This cannot be allowed by the public.<sup>20</sup>

The brief blooming period was followed by the Party's Anti-Rightist counter-offence. The campaign was an unjust one since it marked the violation of the promise of the Communist Party before the rectification -- that is, the principle of "blame not the speaker but be warned by his words."

An editorial entitled "Why This?" in Renmin Ribao on June 8, 1957 formally raised the curtain on the anti-rightist struggle -- against so-called "anti-Party, anti-Socialist" speeches. Indeed the momentum, nature as well as target of the campaign were directed by editorials in Renmin Ribao. Politicization and escalation of the issues to political and class struggle were the basic strategies -- the unnecessary intensification of the issues which were originally non-criminal in nature. Besides that, the Party also mobilized public opinion against leading figures among the rightists: at first the "Zhang-Lo Alliance" and then the "anti-Party Clique" formed by Ding Ling and Chen Qixu -- a repeat of the Hu Feng Incident.

The Party used the excuse of an anonymous letter which attacked Lou Yuwen, a pro-Communist in the democratic party, to ignite the struggle. The Party alleged that the verbal attack signified that some people were trying to take the opportunity of rectification to launch class struggle against the Communists.

The editorial concluded that within our country, class struggle was still carrying on, so "we must employ the perspective of class struggle to interpret the present phenomenon in order to obtain the correct conclusion."<sup>21</sup> Thus the Party took the action against those who criticized the regime and transformed the counter attack as a class struggle against the ideological enemies. The targets as highlighted by the editorial at that time were those who "ascribe to the Western style of politics," that is, Zhang and Luo, the most influential non-Communist intellectuals at that time. They both leaned toward the democratization of the regime.

On June 14, the editorial entitled "Is It a Question of Political Stand?" pointed out those criticisms which denied the achievement of socialism departed from a non-socialist political stand. This implied the "critics" were "anti-socialist." On June 29, the editorial defined what was "right": those speeches and actions which hindered the unity among the people, obstructed the socialist reform and construction, and weakened the people's democratic dictatorship.<sup>22</sup> This definition served as the political standard for the Communists to identify those who were the "rightists." Zhang and Luo were now named as the chief targets for the struggle. "The Unusual Spring" had openly pointed out the ultimate intentions of the "rightists": "to attack the socialist system, overthrow the dictatorship of the proletariat and Party leadership."<sup>23</sup> On July 28, the editorial claimed that the "Anti-Rightist Struggle is a great socialist revolution on political and ideological front" which was said to be a life and death "struggle." The struggle was also brought into the Party against the "rightist" Party members -- Ding and Chen. The Anti-Rightist campaign was greatly intensified by the editorial entitled "Anti-Rightist Struggle Is an Important Test for Each Party Member," which implied that all Party members had to devote themselves totally in the struggle. It was the September 15 editorial which explained why the capitalist rightists were reactionaries who formally transformed the contradiction between the rightists and the people into an antagonistic one.

The attack on Zhang and Luo started on June 10 when Wu Han expressed that Zhang, Luo and Zhu's opinions did not represent the political stand of the Democratic League, and their opinions ought to be criticized. As from the very beginning, the issue was already treated as a political question. As Wu said, "Their opinions have already deviated from Party leadership, the direction of which was anti-socialist."<sup>24</sup> The method employed was to expose their past mistakes by their colleagues.

Zhang was accused of having a strong capitalist tendency because of his admiration of the capitalist system. The accusation rested on the ground that Zhang mentioned transforming the NPC and the CPPCC into a bicameral system which takes after the Western representative political system. He had made a positive comment about the capitalist system:

We cannot belittle capitalism. At present many have denounced the capitalist system.

In fact, capitalism also has its vigor. Why? Because there is a multi-Party system, a democratic system, a House of Representatives, a Senate, a ruling Party and Opposition Party. . . . Capitalism has its merits which are checks and balances as well as mutual supervision."<sup>25</sup>

More severely, Zhang was implicitly attacked as anti-Party leadership since he was politically ambitious and possessed a strong reactionary nature. This was shown by his treatment of the CPWDP (China Peasants' and Workers' Democratic Party) as his sphere of influence and thus his political asset. Moreover, he had never forgotten the third line -- anti-Marxist Reformism.<sup>26</sup> Luo was also said to be fundamentally anti-communist in light of his persistent opposition to the leadership of the CPC.

In addition to the political alliance formed by Zhang and Luo being affirmed, the political ambition of the alliance was said to sabotage the leadership of the CPC. Thus the Zhang-Luo alliance was anti-party and anti-Communist. Most significant of all, Shen Diaoxu, the Chairman of the Democratic League, launched a political criticism campaign against Zhang and Luo:

The mistake committed by the two leading figures of Democratic League, that is, Zhang and Luo, was a question of political stand, and not only ideological. They on the surface support socialism, but in fact oppose socialism. They on the surface support the CPC, but in fact despise the CPC.<sup>27</sup>

Indeed, most of the accusations were grounded on subjective interpretation, exaggeration and deduction, and lacked concrete evidence.

Pressure exerted on them was through the Democratic League manipulated by the CCP. Zhang and Luo were forced to admit there was an "anti-Communist" alliance between them, which harbored the ambition and a plot to control the Democratic League and Literary circle, and finally to overthrow socialism. This led to the self-criticism of Zhang and Luo. In fact, their confessions under large-scale personal attack and public pressure were extra-legal.

Deng Xiaoping's report "On Rectification Campaign" of September 23, 1957 marked the end of the Anti-Rightist Campaign. In the report, Deng concluded that "after more than three months' struggle, the conditions have been tremendously changed. Within the democratic parties, tertiary school, intellectual circle and organs in the provinces, the struggle has already gained decisive victory." He said that "as the struggle has ended, emphasis is to be put on thought reform and ideological education."

## 2. The Redefinition of the "Principle" and "Ideological Accusation"

In replying to whether the Party violated the basic principle of "blooming" and "contending," Guo Moruo quibbled that "non-criminal speakers were non-criminal, and criminal speakers were criminal."<sup>28</sup> He said that when one's words shocked the very foundation of the regime, how could the person still be innocent?<sup>29</sup> Thus only criticisms based on goodwill could be accepted. Indeed the editorial on June 29 set the limits for "blooming" and "contending": it could not surpass the locus of supporting the Communist Party and building socialism. Guo also confirmed that the struggle against the rightists was a political and ideological struggle. Guo's assertions at least reflected two things which were unfair to the intellectuals. The first one was that the Party never set the limits for criticisms before Guo's explanation as well as the June 29 editorial. Yet there still was no discernible criterion for distinguishing whether one was criminal before he launched his criticisms. It was rather the nature of the speeches as interpreted by the Party that determined whether one was a criminal or not. In fact Guo explained nothing on that point. It only showed the arbitrariness of the Communist rule. The second one was the open confirmation that speeches and ideological differences could also be a source of crime (there was no separation of political and criminal crimes in Mao's China).

The formula for determining whether one's actions were criminal was puzzling: when one was displeased with the leadership he was opposing the leadership; opposing leadership was opposing organization; opposing organization was anti-Party; anti-Party was anti-people; anti-people was in fact counter-revolutionary.<sup>30</sup> This was a Stalinist method of dictatorial suppression. The same was true for equating anti-Communist with anti-socialist, and anti-socialist with anti-people. The explanation was quite ridiculous:

Socialism is the result of victory over capitalist class and of the overthrow of capitalism by the working masses under the leadership of the Communist Party. The aim of socialism is to destroy the capitalist class, to reform the petty bourgeoisie and to eliminate the possibility of the capitalist restoration. There would be no proletarian victory and dictatorship of the proletariat as well as socialism if there was no leadership of the Communist Party. Because of this, the socialism in the world was led by the Communist Party, and only under the leadership of Communist Party. All anti-Communist governments of the capitalist class in the world are anti-socialist. From this, we know that the leadership of the Communist Party was the best guarantee for socialist construction. Socialism is supported not

only by the proletariat, but also by the broadest working people. . . . Socialism is the highest will and the best interest of the people. So Anti-Socialism is anti-people. Anti-Communist, anti-socialism and anti-people were inexorably connected.<sup>31</sup>

The logic seems to be misleading. The whole process of deduction is based on many assumptions which have not yet been or can hardly be verified. For example, it negates the concept of patriotism and nationalism as well as equating the Party to the state. Employing this formula to prove that intellectuals were guilty was in fact more political than legal.

### 3. Historical Background as a Source of Accusation

In order to prove the Zhang-Luo alliance was anti-Party and anti-socialist, the leadership of the Democratic League traced back their political history to show their reactionary background.

Wang Yixun pointed out that Zhang had a reactionary family background and a bourgeois educational background. Zhang was born in a landlord family and he had received "European bourgeois education and his brain is full of Western Democracy."<sup>32</sup> In reviewing the political career of Zhang, Li Bazhu had concluded that Zhang had the political ambition to share China with the Communists:

. . . He intended to control south of Yangtze River as his political asset. He predicted that Chiang [Kai-shek], under the American support, could still maintain control over Jiang Zhe [The Jiangsu and Zhejiang provinces]. He felt that under such conditions, he could organize a coalition government with the Chinese Communists . . . His intention was to divide China by three powers.<sup>33</sup>

Based on his attitude towards the Communist revolution, Zhang was accused that he was never pro-Communist, but even anti-Communist and had his own political line. According to Yan Xinmin:

Zhang told people that 'you are afraid of contradicting the CPC. What I say is to compete with the CPC.' Moreover, Zhang praised Chiang, and despised the CPC. He intended to play a balancing role between the two Parties. Zhang's political ambition and individual interest brought him to openly hate the Communist revolution, and the CPC. He especially despised those CPC members within the Democratic League. Zhang had once insulted Mao in stating 'Mao is the first big rogue in Chinese history.'<sup>34</sup>

Qu Tunan wrote an article which spelled out the reactionary political history of Luo Lungzhi. In the article, he said that Luo had a landlord family background. Moreover, Luo was pro-American. He wanted to cultivate a third force based on American support to replace Chiang. Also, Luo always conducted anti-Party and anti-Socialist speeches and actions which were evidenced by his class nature and the class education he had received. Finally, Luo had persistently been pro-American and against the Soviet Union:

For example, in 1956, Chiang and America signed the Sino-American trading treaty. Luo said that the treaty was an equal one. When the people of Shanghai held a conference to repudiate the treaty, Luo was discontent with the motion. In 1957, the Democratic League held a conference in Hong Kong. The resolution passed was to oppose American imperialism, to overthrow Chiang and to respond to the land reform called by the Chinese Communists and to join the CPPCC. Luo did not accept this resolution, and still kept in contact with American imperialists and insisted on a middle line and advocated peace talks. In 1949, Luo attempted to change the Chinese foreign policy of "learning to one-side."<sup>35</sup>

Shang Jicheng accused Zhang and Luo of taking part in anti-Communist actions in the past:

In 1948, Zhang wrote a letter from Shanghai to oppose the resolution of the Democratic League. This resolution made it clear that the Democratic League was going to cooperate with the CPC, to go on the same road, to overthrow Chiang's reactionary government, and to oppose American imperialism. In late 1948, the Central Committee of the CPC called for the conference of the CPPCC. At that time the Democratic League was drafting and discussing the new CPPCC platform. Among them were two: one was to use New Democracy as the guiding ideology, and another one was to admit the leadership of the CPC. But no conclusion was reached in the discussion. This was mainly due to the objection from Zhang in Hong Kong and Luo in Shanghai.<sup>36</sup>

The detailed exposure of Zhang-Luo's political and social history to substantiate the Communist charge was the usual practice of the Party. But this had a profoundly negative influence on criminal justice in respect to Zhang and Luo.

#### 4. Violation of Legal Procedures

The CPC did not take any legal action to investigate the "anti-Party" and "anti-Socialist" nature of the intellectuals before the intellectuals were labelled as "rightist." Neither were there any trials. Most of the actions taken by the Communist Party violated the same legal procedures as in the Hu Feng incident. For example, the Democratic League was not in the position to make the decision that Zhang and Luo were "anti-Party" and "anti-Communist" simply based on their interpretation of Zhang-Luo's speeches and past history. Moreover, it was illegal to label Zhang, Luo and many intellectuals as rightists before they were tried by a People's Court. It was also unfair for the Party to utilize the propaganda and public opinions to exert pressure on the accused and to influence the "would-be" decision of the court. The trial of Lin Xiling serves as a good example. She was found guilty of counterrevolutionary activity by a court which was considered a formalistic one.

"The Resolution of the State Council Concerning the Question on Labor Re-education" passed by the NPC on August 1, 1957, was aimed at the "rightists" who had emerged during the short-lived "Hundred Flowers Movement." Article One applied to:

Those crimes which are not serious, those counterrevolutionaries, anti-socialist reactionary elements who are exempted from criminal accusation, and those who have been expelled by the units like organs, organizations, enterprises and schools.<sup>37</sup>

This practice was considered as "violating socialist legality." An editorial in the Soviet government newspaper Izvesta declared:

In the vigorous movement against so-called "rightist" and "right-leaning opportunities," large-scale suppression was carried out. On August 1, 1957, the State Council of China passed a decision concerning re-education through labor. This decision granted administrative agencies the power to confine almost any Chinese citizens indefinitely in special camps without investigation and trial. . . . Several hundred thousand people were thus suppressed.<sup>38</sup>

The crimes of Zhang and Luo's "anti-Communist alliance" were "conducting anti-Communist activities," and "plotting to overthrow the present regime. They were also dismissed from their posts as deputies to the NPC.

All those intellectuals who criticized Party rules were accused of being either "rightists" or "counterrevolutionaries." Virtually all sectors of the country were involved in the Anti-Rightist Campaign. Thereafter, the Communist Party insisted strongly that the intellectuals had to be continually subject to

ideological reform. The Party's distrust in the intellectuals grew.

## B. Justice under Deng

Communist China under Deng has shown its resolution to reform the past practice of lawlessness in Mao's era. Under the presupposition of strengthening socialist legality, it is stipulated that any offender must be dealt with in accordance with the procedure prescribed by the Constitution and law. There is also the reassertion of "the equality of all people before the law" and public trial. These are aimed at the realization of impartiality and universality (or uniformity) of socialist legality which was denied in the past. The trial of Wei Jingsheng was conducted under this new consideration. In fact, he was the first democratic element that was tried publicly since the rise of the democratic movement in China in late 1978. This section will analyze the handling of this case from two aspects, that is, procedure and substance, to examine justice in the application of law.

### Case Three -- The Trial of Wei Jingsheng

The trial of Wei took place on October 16, 1978.

#### 1. Procedure

The procedural aspects of Wei's trial will be discussed in four dimensions: (1) legal authority; (2) public trial; (3) the right to defense; and (4) the right to appeal.

##### a. Legal Authority

Although the new Criminal Law and the Law of Criminal procedure were already approved by the Second Session of the Fifth NPC in late June 1979, these laws were not put into effect until 1980. Thus the Act for the Punishment of Counterrevolution (hereinafter "Act") promulgated in 1951 and the 1978 Constitution became the source of law for prosecution. There was disagreement over why the trial did not take place until 1980 since most of the provisions in the "Act" were outdated. Moreover, there was no law of criminal procedure to adhere to. All these would affect justice in the course of handling the case. Nevertheless the trial had been conducted on the legal basis of the Constitution and the "Act."

#### Legal Sources of Arrest and Trial

Article 47 of the 1978 Constitution provides that:

No citizen may be arrested except by the decision of a people's court or with the sanction of a people's procuratorate, and the arrest must be made by a public security organ.



Accordingly, Wei was arrested by a Beijing public security organ on May 29, 1979 after the approval of the Beijing people's procuratorate.

After the completion of the investigation, the trial was conducted by the court with the Beijing procuratorate as the prosecutor. Articles 41 and 43 grant "local people's courts at various levels and special people's court [the power to] exercise judicial authority" and "local people's procuratorates and special people's procuratorates [the power to] exercise procuratorial authority within the limit prescribed by law." Thus the procedures for arrest and prosecution found their source in the Constitution.

#### The Legal Source of the Prosecution and Adjudication

The alleged crimes committed by Wei were:

1. Supplying foreigners with military information. The accused Wei Jingsheng, shortly after the Chinese launched the self-defensive counterattack against the Vietnamese aggression of February 1979 supplied a foreigner with military intelligence including the names of the commanders, the number of Chinese troops, the developments of the fighting at the front and the number of casualties.<sup>39</sup> By supplying a foreigner with military information, Wei had committed the counter-revolutionary crime specified in Article 6 of the "Act": "Stealing or giving out government secrets or providing internal and external enemies with secret information." (first clause)
2. Carrying out counterrevolutionary propaganda and agitation. During the period between December 1978 and March 1978, Wei had written and distributed reactionary articles including, "The Fifth Modernization -- Democracy and Others," a sequel and second sequel to "The Fifth Modernization -- Democracy and Others" and "Human Rights, Equality and Democracy." These articles slandered Marxism-Leninism-Mao Zedong thought and advocated the overthrow of the dictatorship of the proletariat and the socialist system and the seizure of state power.<sup>40</sup> Article Two of the "Act" prescribed that "persons committing crimes for the purpose of overthrowing the people's democratic regime and undermining the people's democracy shall be punished in accordance with this present "Act." According to law, those activities aimed at overthrowing the regime of the proletariat and socialist system and endangering the PRC were counterrevolutionary crimes. Since Wei agitated for such purposes, he had committed the crime of carrying out counterrevolutionary propaganda and agitation specified in Article 10: "Instigating the mass to show resistance to government action in the purchase of foodstuffs and levying of taxes, to refuse to carry out conscription duties and perform military service, to

sabotage and to refuse to execute the orders of the people's government," (section 1) "Sowing dissension and hostility among the nationalities, democratic classes, parties and people's organizations, or undermining the unity of the people and the government," (section 2) and "engaging in counterrevolutionary agitation, fabricating and spreading false rumors" (section 3).<sup>41</sup>

#### The Adjudication

The chief judge announced that Wei had betrayed the country by supplying the foreigner with military information. He also violated the Constitution in writing reactionary articles and engaging in counterrevolutionary activity. The nature of the crime was extremely serious. In order to safeguard the socialist system, to consolidate the dictatorship of the proletariat and to protect the smooth process of socialist modernization, it was necessary to suppress destructive counterrevolutionary activities. Wei was sentenced to 15 years imprisonment and was deprived of political rights for another three years after serving this sentence under Article Two, and Article Six, sections One and Two, which provide:

Persons who have committed an act of espionage, or acts aiding the enemy mentioned below are subject to the death penalty, life imprisonment, or under extenuating circumstances, a prison term of 5 years or more (Article Six).

The Court also invoked Article Ten, sections Two and Three, which provide:

Persons who have committed for counter-revolutionary purposes one of the following crimes aimed at incitement and provoking discontent are subject to imprisonment for a term of three years or more and, under aggravating circumstances, to death penalty or life imprisonment;

as well as Articles Sixteen and Seventeen of the "Act," which provide:

Persons who have committed other crimes for counterrevolutionary purposes that are not specified in this Regulation are subject to the crimes which most closely resemble those specified in this Act. (Article 16) Persons who have committed crimes specified in this Act will be deprived of political rights and their property, wholly, or in part. . . . (Article 17).<sup>42</sup>

Thus both the prosecution and the adjudication of Wei were based on the "Act."

b. Public Trial

According to the 1978 Constitution, "All cases in the people's courts are heard in public except those involving special circumstances as prescribed by law." (Article 41)

There is doubt as to whether the trial was really an "open" one in the Western sense, yet in comparison with past legal practice, hardly any case has been handled with such a degree of "openness." Hu Feng and most of the counterrevolutionaries during the Anti-Rightist Campaign were tried secretly. At least the people had been informed when and where the trial of Wei would be conducted, and the crimes with which Wei was charged. During the trial, five to seven hundred people were selected to attend. Dissidents and foreign reporters were allowed to wait outside the court. Finally, people could get some information about the whole course of the trial and the verdict through television and other mass media. This was the first occasion that a trial was conducted in public form in Communist China after the Gang of Four.

c. The Right to Defense

The Constitution offers the accused the right to defense. During the trial, Wei was also provided with the chance to exercise this right. His efforts probably did not amount to "effective defense," but, at least, it gave an impression of fairness.

Wei addresses his reply to the charges point by point. Wei was of the opinion that the indictment of the Beijing procuratorate was untenable:

First, he made defense to the charge of supplying information to the foreigner. He said that the information he had given to the foreigner was not so important that it would affect the course and result of the war. On one hand, he did not know and had not known and had not been told what kinds of information ought to be kept in secret, on the other hand, he had never seen any secret documents. So Wei concluded that he had not cherished the aim of betrayal; he had not supplied any information to his foreign friend; and what he had given to his foreign friend were not state secrets or military secrets. Thus the charge of betrayal was untenable.<sup>43</sup>

Second, he denied the charge of being engaged in counterrevolutionary propaganda and instigation. He explored deeply the actual meaning of "revolution" and "counter-revolution" in the refutation that what he had written was "counterrevolutionary." Rather the opposite, the idea of his articles were "revolutionary."<sup>44</sup>

The third point concerned the slandering of Marxism-Leninism and Mao Zedong thought. Wei said the Communist ideology he attacked in the articles was the version practiced by the Gang of Four and not pure Marxism-Leninism and Mao Zedong thought.<sup>45</sup>

The fourth point Wei rebutted was the charge of under the name of freedom of speech, and the demand for democracy and human rights, instigating the overthrow of the dictatorship of the proletariat and the socialist system. He pointed out that the prosecutor had quoted and interpreted his sentence of "feudalistic monarchy under a socialist cloak" as a reference to the Gang of Four; the half sentence of "not the modernized tools for satisfying the expansionist ambitions of the dictators," was followed by the sentence that "we demand the modernization of the people's livelihood." The sentence could only become meaningful and complete when it was understood within its context.<sup>46</sup>

The fifth point raised by Wei was similar to the fourth one. Wei just wanted to make clear that the Constitution had given people the right to criticize the leadership since they were not gods. They (the Party leadership) could minimize their mistakes only under the people's supervision. He stated that in order to reform the system, people had to be allowed to criticize and discuss the defects of the system. But criticisms were mostly not nice words, nor could all be correct. To demand all criticisms to be correct was equivalent to the denial of freedom of criticism and expression.<sup>47</sup>

d. The Right to Appeal

Since there was no law of criminal procedure to refer to, and no provisions had been written in the 1978 Constitution, there was no legal authority granting the right to appeal. Nevertheless, Wei was given the right to appeal:

If the accused is not convinced by this adjudication, he can appeal to the Beijing Municipal Higher People's Court within ten days after receiving the court verdict.<sup>48</sup>

Wei did make an appeal to the Beijing Municipal High People's Court.

The Court heard the appeal on November 6 lodged by Wei against the judgment of the first instance made by the Beijing Intermediate People's Court on October 16, the indictment of the public prosecutor and the defense by Wei and his advocate. After an exchange between the defendant and the prosecutor, the Chief Judge rejected the appeal by Wei and upheld the public trial judgment: the court ruled that Wei Jingsheng's appeal was groundless and had to be rejected and the original sentence was affirmed.<sup>49</sup>

#### The Trial of Wei -- Substance

The injustice of Wei's trial laid in the criminal charges. The charge of betrayal seemed to be too harsh and there was no evidence to support this charge. The charge of "instigating the overthrow of the dictatorship of the proletariat and the socialist system" tended to be too politicized since the verdict of criminal was derived from words (or speeches). Moreover, many suspected that the trial was an act only, and concluded that the sentence had already been decided before the trial.

Concerning the "crime of treason," Wei was only an average citizen. It is unlikely that he was privy to top secrets of the state. So what he knew about was no more than other people. Thus even if it was improper to talk with foreigners about military affairs, this could not have been so serious as a crime of "treason." Moreover, one may question whether the names of the commanders and the number of Chinese troops, battle developments and the number of casualties were "military secrets." There was much news about the battle both in the mainland presses and overseas. Accordingly, one of the elements of a counterrevolutionary crime is that it was carried out intentionally. In fact, the court had not proven a motive of betraying the country when Wei talked about the war with the foreigner. Moreover, the Court should have considered whether one's behavior has endangered the society. From this perspective, the answer tended to be negative. Furthermore, during the trial many important questions were not mentioned and clarified: for example, the source of Wei's "military secrets," to whom the information was supplied and under what conditions. Finally, it is interesting to note that the foreigner to whom the secrets were allegedly supplied was neither called to testify or identify. Thus the evidence was not strong enough to support a term of fifteen years imprisonment.

The core of Wei's arrest and the sentence of guilty from the beginning to the end, laid in his speeches and articles. Wei was accused of writing and publishing reactionary articles and public actions as a means to instigate the overthrow of the regime. The Court cited many examples from his articles as evidence. Most of them were interpreted and selected out of context (see examples above). It was clear that Wei's speeches were so tough and radical that they transcended the tolerable range of Party leaders. The Court seemingly meted out the sentence of counterrevolutionary simply because his speeches could not be tolerated by the Party leaders. Yet Wei only launched criticisms, and had not

taken any reactionary actions. The expression of opinions contrary to the socialist system was not equivalent to conducting subversive activities. In fact, there were constant demands for the abolition of "guilty derived from speech" in socialist law since this contradicted free exercise of the freedom of speech as protected by the Constitution. Wei's speeches might have had a harmful effect on political and social unity and stability which are indispensable for the modernization. On that ground Wei could be found guilty. But still the degree of severity could not justify the verdict of a counterrevolutionary crime. The impression that the Communist regime still adopts the unreasonable principle of "guilt derived from speeches and writings" cannot be removed although Deng has claimed the abolition of such a practice many times. The trial of Wei was thus "pure formality" and "he was presumed to be guilty."<sup>50</sup>

Wei's trial illustrates that there has been an improvement in the form of handling the cases in respect to socialist legality. That is, the whole case has been handled according to the provisions prescribed by the Constitution and laws. This tends to be fairer than the practice in Mao's era. One scholar commented that the form of the trial was close to the Western model.<sup>51</sup> But the substance of the trial still was not free from political influence. The application of law under procedural justice cannot be perfected unless the spirit and substance of the trial are reconsidered and reformed.

**Table II — A Comparison of Justice in the Application of Law**

		<b>Mao</b>		<b>Deng</b>
		<b>The case of Hu Feng</b>	<b>The case of Zhang-Luo</b>	<b>The case of Wei Jingsheng</b>
<b>Pre-Trial Media</b>	Accusation through public opinions	<ol style="list-style-type: none"> <li>1. Anti-Party and Anti-Revolutionary</li> <li>2. Disclosure of past speeches and behavior as sources of evidence</li> <li>3. Social and family backgrounds as sources of accusation</li> <li>4. Self-criticism was made and published</li> </ol>	<ol style="list-style-type: none"> <li>1. Anti-Party and Anti-Revolutionary</li> <li>2. Disclosure of past speeches and behavior as sources of evidence</li> <li>3. Social and family backgrounds as sources of accusation</li> <li>4. Self-criticism was made and published</li> </ol>	<ol style="list-style-type: none"> <li>1. No public accusation</li> <li>2. No self-criticism was made</li> </ol>
<b>Arrest</b>		Arrest was made in accordance with Article 37 of the 1954 Constitution	No Arrest	Arrest was made in accordance with Article 47 of the 1978 Constitution
<b>Investigation</b>		No investigation	No investigation	Investigated
<b>Court Action</b>	i) Legal authority	Act on the Punishment of Counterrevolutionaries (1951) and the 1954 Constitution	No Court Action	Act on the Punishment of Counterrevolution 1951 and the 1978 Constitution
	ii) Public trial	No public trial took place until 1965		Public trial took place on October 16, 1979

	<b>Mao</b>	<b>Deng</b>	
	<b>The case of Hu Feng</b>	<b>The case of Zhang-Luo</b>	<b>The case of Wei Jingsheng</b>
iii) Right to defense	Not provided	—	Provided
iv) Right to appeal	Not provided	—	Provided
<b>Adjudication</b>	Made by the Party but was confirmed by the Court in 1965	Made by the Party	Made by the Court
<b>Time Lapse Between Arrest, Trial, and Sentence</b>	10 Years	—	7 to 8 Months
<b>Post-Trial Media</b>	Unclear	—	Described as a fair trial
<b>Nature in the Application of Law</b>	Politicized	Politicized	Semi-Politicized



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## Chapter Six

### Institutionalization of the Legal System and Democratization of the Political System: Limitations and Prospects

The hope for the rule of law and democratization of the political system inspired by the slogan of "strengthening the legal system and promoting democracy" since the Third Plenary Session was quickly hampered by Deng's reassertation of the "Four Fundamental Principles" in April 1979. Although the Party continues to encourage the emancipation of the mind and intellectual freedom, and to urge the institutionalization and legalization of democracy, the Party criticism of Bai Hua and the arrest and the trial of Wei Jingsheng as well as other proponents of democracy bring into question the commitment of the Communist Party. The core question is how far the legal system can be institutionalized and the political system will be democratized under the "Four Fundamental Principles." In fact, the criminal responsibility of intellectuals is a dependent variable of these two tendencies. A basic understanding of the content of the "Four Fundamental Principles" under Deng is deemed necessary before an in-depth analysis can be offered.

#### A. The Four Fundamental Principles under Deng

The reassertion of the "Four Fundamental Principles" has a profound implication for the intellectuals. It is more or less a reply to the outcry for freedom and democracy from the the intellectuals, especially from the younger intellectuals. As Deng expressed, "This time, I will concentrate on the criticism of the 'Rightist' ideological tendencies that cast doubt or rejection on the Four Fundamental Principles".<sup>1</sup> Thus this official announcement of upholding the "Four Fundamental Principles" in the Conference on the Party's Theoretical Work in April 1979 was intended to serve such purposes: to clarify the political attitude of the Central Party leadership; to defend the value as well as to redefine the content of socialist principles and to set the limits for relaxation of political restrictions.

##### 1. Socialist Road

In upholding the socialist road, Deng intends to rebut the opinion that "socialism is inferior to capitalism." He argued that history has proved that "only socialism can save China" and blames the backwardness of the economy, technology and culture of socialist China on historical reasons and the Gang of Four. He has defined the superiority of the socialist system vis-a-vis the capitalist system by demonstrating that tremendous progress has been made under socialism and the growth rate has surpassed that of the capitalist countries.<sup>2</sup> And most important of all, the socialist system entails public ownership, which is to serve the people's interest through a planned economy and centralized distribution. There is therefore no exploitation. Indeed, in order to make prominent the merits of socialism, he has eliminated the utopian and unrealistic elements and preserved the practical

ones. Most notably, he has replaced the idea of egalitarianism as advocated by the Gang of Four during the Cultural Revolution by the more realistic idea of "to each according to his ability." He has also proposed that socialist economic construction must proceed according to objective economic law.<sup>4</sup> In sum, the socialist road is the only direction of the Four Modernizations.

## 2. Dictatorship of the Proletariat

Deng has emphasized the democratic aspect of dictatorship of the proletariat which is said to be equated with socialist democracy, which is in his opinion the broadest and most practical democracy in history for workers, peasants, and intellectuals.<sup>5</sup> He admits that the Party has failed to practice democracy. Yet the Party has already begun to take measures to correct such mistakes and to strengthen inner-Party democracy and people's democracy.<sup>6</sup> While affirming that socialist democracy is vital to socialism and socialist modernization, he makes it explicit that in order to suit reality, democratization must be put forward gradually which is a function of the development of socialism. The reason for the need of dictatorship by the Party, as explained by Deng, is the existence of counterrevolutionaries, criminal offenders and other bad elements which will undermine political and social stability. According to Deng, this is a special form of class struggle differed from the past which no longer exists.<sup>7</sup> Deng cloaks the Party's dictatorship in terms of an essential element in developing socialism and democracy, and protecting socialist construction.

## 3. Leadership of the Party

Deng has claimed that it is impossible to have a dictatorship of the proletariat, or socialist revolution and socialist construction without Party leadership. The birth of a new socialist China is a concrete example. Accordingly, the Party is an indispensable organizer and leader for socialist modernization.<sup>8</sup> Therefore, in his mind, democracy can only be promoted under Party leadership, otherwise anarchism and political chaos will result. Deng has expressed that he considers to correct Party leadership which can be achieved by the adoption of measures to strengthen Party discipline, to promote inner-party democracy and people's democracy, to accept people's supervision, to eliminate corruptive practices as well as to raise the educational standards of the cadres and Party members.

## 4. Marxism-Leninism and Mao Zedong Thought

Deng holds firmly that Marxism-Leninism and Mao Zedong thought will continue to be the guiding ideology of the PRC. The Party must consistently adhere to Mao's thought since it is the application and development of Marxism-Leninism in China. Yet, he warns that distinction must be made between Mao Zedong thought and Mao's mistakes.<sup>9</sup> He also deletes all the radical and revolutionary romantic ideas from Mao's thought: continuing revolution under the dictatorship of the proletariat, political campaigns as well as the slogan of "Revolution is Justifiable." He upholds

mostly the practical aspects of Mao's thought which serve the need of socialist modernization, stability and unity. He adopts Lenin's proverb: talk more about economics and less about politics.<sup>10</sup> His attitude towards Mao's thought is reflected in his later policy line: the ideological line of proceeding from reality and seeking truth from facts, the concept of shifting the focus to economic construction in light of China's reality, the principle of establishing a political system with a high degree of socialist democracy, the policy of developing socialist education, science and culture, and the principle of "letting a hundred flowers blossom and a hundred schools of thought contend." In short, in Deng's conception, Communist-led modernization must be guided by Communist thought.

#### B. Institutionalization of the Legal Systems

To institutionalize China's legal system is to formalize its structure and the procedures of the legal processes. This necessitates the establishment of a formal detailed and written set of rules with a well-institutionalized political organization capable of enforcing the compliance with these rules, to resolve ambiguities and to settle disputes effectively through procedural regularity. Most important of all, as a means to resolve conflicts and protect people's rights and freedoms, the law must be supreme vis-a-vis Party policy and the legal system must obtain an absolute degree of autonomy -- that is, judicial independence -- and must be free from the control or influence of other political organizations. Only under this setting can the legal system offer legal protection to the intellectuals and achieve stability, credibility and predictability. Also the universality and impartiality in the application of law can then be guaranteed.

The pragmatic leaders have already realized the necessity of instituting a socialist legal system that stressed institutionalization and legalization as reflected in the Communiqué of the Third Plenary Session. Yet the only obstacle for independence of justice comes from the leadership of the Party which is the core of the "Four Fundamental Principles".

The socialist system is basically the instrument of dictatorship of the Party. This is a concrete principle in Communist China. Thus the Party leadership over the legal system is undoubted.<sup>11</sup> The 1982 Constitution ensured "judicial independence":

The People's court shall in accordance with the law exercise power independently and will not be subject to interference by administrative organs, public organization or individuals. (Article 126)

However, the Party still retains its ideological and political leadership, personnel management and most of all, the Party acts as the supervisor of the legal system in law enforcement.<sup>12</sup> Judicial independence is fragile, based on this relationship

between the People's courts and Party, since the "leadership of the Party" is confirmed by the Constitution. Moreover, the judicial independence in the communist regime only takes the form of "the People's courts administering justice independently, subject only to the law." It is different from the Western practice of "judges administering justice independently, subject to no interference except by the law." In essence, "independent administration of justice" only means an exemption from extra-Party influence.<sup>13</sup> This arrangement has provided the cleavage to Party leadership within the judicial system. In fact, the realization of judicial independence depends to a great degree on the goodwill and the legal values of the Party.

The lack of respect for law was the main reason for the collapse of the legal system in Mao's era. If the sense of legality of the Party leaders and cadres is not strengthened, the legal system will never be an adequate mean to uphold justice and guarantee independent judicature. The spirit of the rule of law that "all are equal before the law" will never be achieved. In the past years, occasions of violating legal practice and procedures do have occurred. For example, the dissident Liu Qing was convicted and assigned three years of "labour reform" by the Beijing Public Security in July 1979.<sup>14</sup> This practice violated the law since the accused must be tried and the verdict must be made by the courts.

Another example is that in October 1980, Chairman Hua Guofeng in telling the reporters in almost the same breath that the Gang of Four would be tried, and that they would not be sentenced "to death." In other words, Hua already knew the verdict before the trial. This leads to a very serious question of whether the court acts according to the law or the will of the Party leaders -- a concrete case of Party intervention in the administration of justice by the courts. Indeed many prominent scholars in law still ascribe to "Party control over the legal system."<sup>15</sup>

Still the endeavors to improve the legal system cannot be denied. First, the institutionalization of the "independence of justice" has shown the Party's determination to disengage itself from involvement in routine judicial works. Moreover, the 1982 Party Constitution clearly defined the scope of Party leadership:

Party leadership consists mainly in political, ideological and organizational leadership. The Party must formulate and implement correct lines, principles and policies, do its organizational, propoganda and education work well. . . . It must see to it that the legislative, judicial and administrative organs of the state and the economic, cultural and people's organizations work in actuality with initiative, independently, responsibly and in harmony. (Preamble)

Second, the supremacy of law has been affirmed. Zhang Youyu stressed that the law is above the Party Committee or any individual. Once the law is put into effect, everybody will have to observe it.<sup>16</sup> Thus it is said that abiding by the law means submitting to Party leadership. The revised (1982) Party Constitution prescribed that "from the central to the grass-roots level, all the activities of Party organization, and Party members cannot be contravened the state Constitution and law." This intention manifested itself in the adoption of the principle of the supremacy of the Constitution by the CPC:

This Constitution is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation. (Preamble)

In short, the implementation of an independent administration of justice and the confirmation of the supremacy of law are crucial steps toward the strengthening of the legal system of communist China. These may pave the road to perfecting the legal protection of people's political rights and civil liberties as written into the Constitution and to promote legal justice in the application of law.

#### C. Democratization of the Political System

After thirty years of Communist rule, China remains in a state of backwardness and poverty. The people, especially the younger intellectuals, have begun to suspect the superiority of socialism as claimed and propagated by the Communists. The ten years of turmoil have greatly shaken their confidence in socialism and the leadership of the CPC. For those who are optimistic, they see the need to look for other alternatives to modernize China. They have looked to the Western advanced countries as a model for development. Those who cherish no illusions about Communism have become cynical. This atmosphere cultivates a tendency for what the Chinese Communists call "bourgeois liberalism."

"The Four Fundamental Principles" are aimed against this tendency. According to Hu Qiaomu, the "bourgeois liberalization tendency" is characterized by "publicizing and advocating bourgeois freedoms, calling for the adoption of the bourgeois parliamentarism, including the two-party system, campaigning for office, bourgeois freedom of speech, press, assembly and association, bourgeois individualism and even anarchism to a certain extent."<sup>17</sup> "Its advocates also promote the bourgeois profit mentality and behavior, the bourgeois way of life, vulgar tastes and standard of morality, and bourgeois arts."<sup>18</sup> The essence of this bourgeois ideological tendency lies in "consciously and



unconsciously demanding China to forsake the socialist road and install the so-called capitalist liberal system in the political, economic, social and cultural arena."<sup>19</sup> Most importantly, as explained by Deng, the core of the bourgeois liberalization is "opposition to Party leadership."

The insistence on the socialist road is a reply to those who cherish the idea of transplanting socialism with capitalist ways of development. Deng has attributed past failures to the inexperience of the Party in the practice of socialism and mostly to the Gang of Four. As the Party has now realized and rectified its past mistakes, the Four Modernizations along the lines of the socialist road offer a greater possibility for the achievement of a strong China.

In the discussion of the dictatorship of the proletariat, Deng has expressed his understanding of the value of democracy. In saying this, he hopes that the intellectuals and the democratic elements will be more patient and moderate toward democratization which can only be gradually achieved as socialism advances. His viewpoint is just the opposite of the dissidents as represented by Wei. Wei treats democratization as the pre-requisite for the success of the Four Modernizations. Moreover, the conception of democracy of Deng on the one hand, and Wei on the other hand are quite different. What Deng supports is socialist democracy, a directive democracy, that is, democratic centralism:

Democracy and centralism are inseparable. Under socialism, centralism on a democratic basis alone conforms with the interests of the state and the people; and only democracy under the guidance of such centralism is socialist in nature. If and when there is centralism without democracy, then it is bureaucratic centralism; on the other hand, if an democracy without centralism, then will lead to ultra-democracy and anarchism, which does not conform with the interests of the people.<sup>20</sup>

Thus Deng's conception is a constructivist one: democracy ought to be promoted under the guidance of centralism in order to prevent political and social chaos. For him, democracy is a means of unleashing fully the initiative and creativity of the intellectuals, contributing to the socialist modernization, and achieving political stability and social unity. In fact, socialist democracy is based on collectivity. Thus, it is the antithesis of Western democracy, which stresses individualism. On the contrary, Wei believes in "spontaneous order," so he rejects the notion that democracy ought to be carried out under the guidance of centralism or Party leadership. He regards each individual as possession the right to decide his own destiny which is not to be affected by collective interest. To Wei, democracy is the end rather than the means. He emphasizes that the people ought to have the rights to elect, supervise and recall their government. The democratization of the political system towards this direction is exactly what most of the democratic elements,

notably Wang Xizhe have demanded. But this goes against the Party leadership which is absolute within the communist regime. Concerning the class struggle, Deng has clearly maintained that the anti-feudalistic and anti-bourgeois struggle will continue to exist in the ideological sphere in the socialist society. The target of this "special form" of class struggle is obviously the democratic elements who advocate "capitalist liberlization and democratization as well as those intellectuals who look for 'bourgeois' freedom".

The greatest force against democratization is perhaps the insistence on the principle of the leadership of the Communist Party which is an all-encompassing one. This has revealed the hope for a Western type of political system -- that is, a two-party or multi-party system -- to be an illusion. Under this principle, it becomes meaningless for the people to be "the real masters of the state, society and enterprises, taking a direct part in making decisions in all fields" since the status of the Party is above the state. The Communist Party entrusts itself with the lofty mission of liberating all mankind, and its leadership is beyond challenge. It is said that "the Chinese Communist Party is capable of discovering and correcting its mistakes."<sup>21</sup> This implies, or even rejects, the redundancy of popular supervision over the Party. It is a very dangerous claim since it affirms the fully autonomous nature of the Party, the discipline of which highly depends on self-control. Thus, Party supremacy is the greatest enemy of democratization.

Party leadership also extends to the socio-political and ideological sphere: the line that Marxism-Leninism is in the leading and guiding position must be carried out; and the line that Party leadership in political ideology must be insisted.<sup>22</sup> Thus, the principle of "Two Hundred" cannot be understood as a detachment from Party leadership. The Party has the right to intervene into what is going to be publicized and published. Moreover, Party leadership in literature and the art is said to be vital to help the literature and art to develop along the line of Marxism-Leninism and Mao Zedong Thought. The spirit and essence of Mao Zedong's "Talk At the Yen'an Forum on Literature and Art" as the guiding ideology for Chinese literature and art has been reaffirmed recently.<sup>23</sup> In fact, the emancipation of the mind does not mean the denial of Marxism-Leninism and Mao Zedong Thought, but rather:

It means, in the first place, that our cadres and people should free themselves from the shackles of the 'Cultural Revolution' and the 'Leftist' errors of the preceding period as well as from fetters of the personality cult and dogmatism, return to the right track of Marxism-Leninism and Mao Zedong Thought, and uphold the fine tradition of seeking truth from facts.<sup>24</sup>

The present position of Marxism-Leninism and Mao Zedong Thought in the intellectual and ideological spheres is quite clear.

Thus, the hope for releasing the intellectual world from the yoke of orthodox thinking seems to be no more than wishful thinking.

Yet since Deng has eliminated many idealistic and revolutionary radical elements from Mao's concept of the "Four Fundamental Principles," and his policies are far less dictatorial than Mao's, there is still much room for intellectual freedom and democratization of the political system. Moreover, since the role of the intellectuals has become more important as the socialist modernization program proceeds, a substantial degree of liberalization and democratization is inevitable. Indeed, the Communique of the Fifth Plenary Session of the Eleventh Central Committee of the CPC has already specified that:

The Plenary Session holds that it is our Party's unswerving policy to carry forward socialist democracy and perfect the socialist legal system, and to guarantee that the masses have the full right and opportunity to express their views on state affairs and raise suggestions to and criticize Party and government leaders.<sup>25</sup>

The 1982 Constitution later stipulated that the establishment of a socialist legal system based on socialist democracy is one of the chief goals of Communist China:

Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a Socialist country with a high level of culture and democracy. (Preamble)

In the final analysis, democratization, the rule of law, all sorts of freedoms and political rights, as well as criticisms cannot transcend and must develop within the limits of the "Four Fundamental Principles."

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## Chapter Seven

### Conclusion

This comparative study clearly indicates that both Mao and Deng have just constructed legal systems to suit their own needs. The legal system is a tool for achieving Party goals as defined by the leaders only. The comparative case studies of the criminal responsibility of the intellectuals provide a good illustration. Indeed the legal frame of the Party leaders is the chief determinant of criminal responsibility. Yet at the macro level, Communist ideology as interpreted by Mao and Deng has determined the working principles of the legal system. First, their different understanding of the states of political development determine the nature and form of class struggle. For Mao, the class struggle is a persistent and constant phenomenon unrestricted by legal constraints. Deng believes that class struggle has basically come to an end, and, therefore, all contradictions ought to be handled in accordance with prescribed legal procedures. Second, their different conceptions of socialist construction determine the role of the legal system: while Mao adopted the strategy of permanent revolution in which revolutionary justice played the role of eliminating class enemies, Deng realizes that socialist modernization is only possible in an orderly environment in which procedural justice maintains order. These ideological differences have differentiated the revolutionary justice system from the procedural justice system.

In light of the comparative case studies, several conclusions can be summarized:

(1) The legal system, that is, the procedural judicial system that Deng aims to establish is fundamentally different from Mao's revolutionary judicial system both in form and content.

(2) The working principles of the legal system have a direct impact on justice in the administration of law.

(3) The legal treatment of the intellectuals, to a large extent, is affected by the attitudes and policies of the Party leaders towards the intellectuals.

(4) The degree of criminal responsibility of the intellectuals is much higher under the revolutionary justice than under procedural justice.

(5) In reacting to the demands for freedom and democratization from the intellectuals, the procedural justice system has provided a certain degree of legal protection whereas the revolutionary justice system has no room for such protection.

(6) In handling these demands in the sense that they surpass the tolerable range of the Communist leaders, Mao, in the revolutionary justice system, took extra-legal means and politicized the issues, whereas Deng, within the procedural justice

system, tends to adhere more to the procedures prescribed by the Constitution and law.

(7) The legal protection and the degree of criminal liability of the intellectuals highly depends on the democratic and legal values of the Party leaders.

(8) In the light of (3), the legal system in Communist China is subordinate to the Party leaders' own ideological and legal framework.

(9) The perfection of the procedural justice can be assessed by the criminal responsibility of the intellectuals who have been the group most discriminated against in Communist China.

(10) The Communist ideology as represented by the "Four Fundamental Principles" under Deng is the chief obstacle for the full play of procedural justice.

Concerning the first point, the orientation of Mao was to treat the legal system as a weapon of class struggle, both physical and spiritual, whereas Deng takes it as an indispensable institution for maintaining order. Mao de-emphasized the structural aspect of the legal system, but Deng stresses its institutionalization. For Mao, the content of the legal system was to be determined by the Party policy. For Deng, the content of the legal system is the supremacy of law. Class nature is of less significance. In short, the legal essence of Deng's ideology is far much stronger than Mao's ideology.

Mao's bias against the intellectuals rendered revolutionary justice unable to offer any legal protection to the intellectuals. Every demand or criticism from the intellectuals had been treated as challenge to the authority of the regime and the leadership of the Party and as a form of manifestation of "reactionary." Deng is more willing to make concessions to the intellectuals' demands and this has reduced the criminal liability of the intellectuals. Even a certain degree of guarantee is offered. For example, the 1982 Constitution provides that the intellectuals are no longer the "opposition force" and that "all are equal before the law."

Since the leadership of the Communist Party is the inalterable ruling principle in Communist China, the core of which is the leadership of a single leader or a committee, the legal system is inevitably constructed to facilitate the fulfillment of the goals of Party leaders. As a whole, the orientation, form and content of the legal system are determined by the Party leaders.

In conclusion, this study has shown that the procedural judicial system is superior to a revolutionary judicial system. This is true not only in the sense that the former can offer certain legal protection to the intellectuals, but also in that the pursuit of procedural justice marks an end to the revolutionary era and the system is evolutionary in nature. Evolutionary here

means that the system can be perfected through a series of steps gradually, most notably in the enactment of new laws and the professionalization of the system. But the procedural judicial system is still in its preliminary stage of development and has inherited some legacies from the revolutionary judicial system. For example, the system has not yet been completely depoliticized and institutionalized. Moreover, the legal system cannot be improved drastically unless the regime puts an end to all forms of class struggle, including special forms as asserted by Deng. The existence of classes under dictatorship means that certain strata would be discriminated against and be treated unequally since they are said to be excluded from the category of the "people." This contradicts the principle that procedural justice is applied to all. In this case, the degree of criminal responsibility of the intellectuals is still uncertain. This can be illustrated by the criticism of Bai Hua and the arrest and trial of democratic dissents as well as the arbitrary sentence of Liu Qing. As a whole, this study has demonstrated that the criminal responsibility of the intellectuals is a function of: (1) the degree of the monolithic rule demanded by the Party leader; and (2) the legal protection that can be offered by the legal system. The interrelationship can best be represented by the following formula:

$$CR = f(M) \\ LP$$

CL: Criminal Responsibility  
M: Degree of Monolithic Rule  
LP: Legal Protection

Since the ultimate goal is to establish a socialist legal system on the basis of socialist democracy which is the highest form of procedural justice, that is, the socialist rule of law, the prospect for its achievement depends on two factors. The first one is the cultivation of a legal tradition among the people, cadres and Party leaders within the Communist regime. Only with a strong sense of legality and the establishment of a good legal tradition can the rule of law become possible. The other factor is the democratization of the regime -- that is, the institutionalization and legalization of socialist democracy. Too much emphasis on centralism would only be at the expense of democracy. The fulfillment of these two requirements would pave the way for the socialist rule of law. One hopes that when the socialist rule of law is achieved, the criminal responsibility of the intellectuals will be reduced drastically. Though procedural justice under Deng is moving in that direction, yet there is little cause for optimism since Communist ideology possesses strong inherent dictatorial and anti-democratic tendencies. In short, the strict observance of law by all would undermine the Party's supremacy on which the whole Communist system rests.



## INDEX

- A Long, 90  
Act of the People's Republic of China for the Punishment of Counterrevolution (Act), 30, 33-34, 35, 36, 87-88, 98, 99-100  
All-China Federation of Art Circles (Federation), 68  
Amnesty International, 2  
Anti-Rightist Movement, 29, 54, 88, 92-93, 97
- Bai Hua, 122  
Bao Chang, 84  
Beijing Intermediate People's Court, 102-104  
Beijing Municipal High People's Court, 102-103  
Beijing Public Security, 99, 113  
Beijing Review, 3  
Beijing Spring (Beijing Zhi Chun), 74, 79  
Brady, 2-3
- Cai Yi, 84  
Canton, 86  
Central Committee (CPC), 28, 37, 54, 96  
Chang Zhongzhuo, 90  
Chen Qiyu, 86  
Chen Yun, 55  
Chiang Kai-shek, 95, 96  
Chinese Peasants' and Workers' Democratic Party (CPWDP), 93  
Chinese People's Political Consultative Conference (CPPCC), 58, 65, 73, 96  
Chinese Writer's Union, 68  
Communist Party of China (CPC), 1, 6-7, 9-10, 28, 30-31, 36-38, 45, 47-48, 50, 51-54, 58-59, 65, 66, 67, 68, 70-71, 73, 76, 79, 89-90, 91-93, 97-98, 110-117, 122; Teachings, 9-10  
Cultural Revolution, 1, 9, 10, 19, 29, 38, 50, 52, 53, 54, 111, 116
- Democratic Party, 71-79  
Deng Xiaoping, 1-4, 19, 56, 75, 78, 93, 105-106, 110-117, 120-121; Legal Philosophy, 6-7, 10-14; Policy towards intellectuals, 50-55; Thoughts on justice, 98  
Dong Biwu, 37
- Exploration (Tonsuo), 74, 75
- Fang Ran, 90  
Faxue Yanjiu (Studies in law), 3  
Faxue Zazhi (legal studies), 3  
Feng Yulan, 65  
Fifth Modernization, 75, 99  
Four Fundamental Principles, 110, 112, 114, 117, 121  
Four Modernizations, 54, 57, 75, 78, 115
- Gang of Four, 58, 102, 110-111, 113, 114  
Gao Peizhi, 71  
Great Leap Forward, 50  
Grieder, Jerome B., 46  
Guangming Ribao, 85  
Guo Moruo, 67, 68-69, 85, 86, 94

Hong Kong, 96  
Hongqi, 3  
 Hu Feng, 66, 67, 84-90, 101, 105-106  
 Hu Qiaomu, 114  
 Hu Shih, 47  
 Hu Yaobang, 53, 55, 56, 59  
 Hu Zitang, 72  
 Hua Guofeng, 113  
 Huang Ziping, 71  
 Human Rights, 64  
  
 Intellectuals, 20-21, 45, 69, 74, 84, 90, 97-98, 115, 120-121;  
     Treatment of, 45-59  
Izvestia, 27, 97  
  
 Jiang Hua, 29, 39  
  
 Kuomintang [KMT--Nationalist Party], 89  
  
 Leninism, 8, 67, 84, 101, 112, 116-117  
 Li Bazhu, 95  
 Li Chunqing, 86, 87  
 Li Jishen, 86  
 Liang Shuming, 65  
 Liao Chengzhi, 55  
 Lin Xiling, 69, 97  
 Liu Qing, 122  
 Liu Shaoqi, 6, 11, 87  
 Liu Xuefeng, 86  
 Liu Xuewei, 90  
 Lou Yuwen, 91-93  
 Lu Diau, 90  
 Lu Ling, 90  
 Lu Xun, 66, 67  
 Luo Longshi, 69, 71, 72, 73-74, 90, 92, 93, 96, 105-106  
  
 Ma Xulun, 86  
 Mao Dun, 84-85  
 Mao Zedong, 1-4, 27, 31, 54, 64, 67, 69, 74, 85, 90, 101,  
     105-106, 111-113, 116-117, 120-121; Legal philosophy, 6-10;  
     Legal system, 31-35; Policy towards intellectuals, 45-50;  
     Thoughts on justice, 83-84  
 Marx, 37-38, 46  
 Marxism, 66-67, 75-76, 84, 101, 116-117  
 Mass Trials, 38-40  
 May Fourth Movement, 67  
Minzhu yu Fazhi (Democracy and Legal System), 3  
  
 National People's Congress, 13, 31, 58, 70, 73, 90  
 National Science Conference, 54  
  
 Peking University, 86  
 Peng Zhen, 12, 13, 90  
 People's Courts, 28, 97, 112-113  
 People's Procuratorate, 28, 35, 99  
 People's Public Security Bureau, 39

People's Republic of China (PRC), 3, 6, 10, 19, 29, 36, 54,  
83-84, 111  
Procedural Justice, 15-19, 120-122

Qin Cheng prison, 90  
Qu Tunan, 96

Renmin Ribao (People's Daily), 3, 85, 86, 88, 89, 91  
Revolutionary Justice, 15-19, 120-122

Schurmann, Franz, 27  
Shang Jicheng, 96  
She Wu, 85  
Shen Chunzhu, 27  
Shen Diaoxu, 93  
Shen Junru, 86  
Supreme People's Procuratorates, 35

Tianjin Da Gong Bao, 85

Wang Gulun, 70, 73  
Wang Xizhe, 115-116  
Wang Yixun, 95  
Wei Jingsheng, 74, 75, 76-79, 98-104, 105-106, 115

Xi Yao Jia Nuo, 87

Yan Xinmin, 95  
Yang Yue, 70  
Ye Jianying, 12, 30  
Yenan, 49, 65, 66, 116

Zhang Bozhun, 69, 70, 71-72, 73, 74, 90, 92, 93, 95-96, 105-106  
Zhang Tianyi, 86  
Zhang Yu, 86  
Zhou Chengchang, 84  
Zhou Enlai, 45, 91  
Zhou Yang, 66, 69  
Zhu Auping, 70, 74



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