



March 24, 1986

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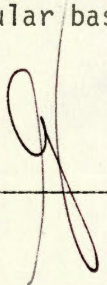
To: Qing-nan Meng, JSD Candidate
From: Prof. Edgar Gold, Chairman, Supervisory Committee
Subject: Completion of Thesis

Further to my memorandum dated 13 March 1986 and subsequent meetings and discussions with Professors O'Brien, MacDonald and Letalik, I would like to confirm the following arrangements made to assist you to satisfactorily complete your work.

1. Although we continue to have certain reservations, it is acceptable that you accept your long-standing obligation with Messrs. Ladner, Downs in Vancouver. We accept that if you would not go such a decision would have adverse effects for you.
2. We understand that you expect to remain in Vancouver until the latter part of June/early July 1986. At that time, you will return to Halifax. You expect to have sufficient time available in Vancouver to carry on work on your thesis.
3. At present, your thesis is in reasonably good draft shape. However, as we all realize, it requires considerable additional work before being ready for final submission. In addition to some substantial re-writing in the first and final chapters, there needs to be very careful proofreading and a lot of work on proper footnoting. It may well be necessary to ask Prof. MacDonald to look at the next draft.
4. You have undertaken to have the final draft ready for submission to the Supervisory Committee in late May. At that stage, you have agreed to send a copy of this draft to Prof. Letalik per courier at the Faculty of Law, National University of Singapore, Singapore.
5. You will meet with me during my visit to Vancouver, 3-7 June 1986. At that stage, you will give me my final draft copy. It should be emphasized that I am referring to a "Final Draft" at the end of May. We would not be willing, at that stage, to make further substantive revisions or corrections. That will have to be arranged between Prof. MacDonald and yourself.
6. After Prof. Letalik and I have had a chance to read the Final Draft, we will be in contact with each other, per telephone, about 10-13 June 1986, to consult on our final agreement on the thesis. Any further suggestions will be communicated to you by me at once.

2.

7. You will then make final adjustments (typing, proofreading, etc.) in order that you can submit the FINAL ACCEPTED DRAFT to the Faculty, as agreed, by 15 July 1986 at the latest. Please be fully familiar with the regulations regarding format, number of copies, etc. However, as you should be back in Halifax by that time, you will be able to supervise this personally.
8. The official submission of your thesis by 15 July 1986 will give you a minimum of one month to prepare for your final examination, which can then take place in the latter part of August, subject to the availability of your examination committee, including the external examiner.
9. This schedule places considerable pressure on you. On the other hand, the Committee has gone out of its way to accommodate you. Accordingly, a departure from this agreement will not be accepted. If, after settling into your Vancouver duties, you find yourself in difficulties, you are required to communicate with Prof. MacDonald and myself at once.
10. We expect that your Final Draft should be as perfect as possible. There should be no typographical errors, the footnotes should be perfect, the table of contents and official pages should be in the proper form, etc. In other words, there will be no more possibility of substantial revision and correction.
11. Furthermore, I would suggest that you communicate with Prof. MacDonald on a regular basis, at least once a month, and report on your progress.



E. Gold

EG:nh

cc: Prof. L. O'Brien
Prof. R. St. J. MacDonald
Prof. N. Letalik

THE LAWYER SYSTEM IN CHINA

Its History and Present Situation

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1982

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LAWYER SYSTEM IN CHINA:
ITS HISTORY AND THE PRESENT SITUATION

"The Provisional Regulations Governing the Work of Lawyers of the People's Republic of China" was enacted by Ye Jianying, Chairman of the Standing Committee of Chinese People's Congress in his order on August 26, 1980. It is a big event in the Chinese legal history and it marks the new stage of the developing of the Chinese socialist legal system.

In order to get a better understanding of the significance of the new regulation, it is worth recalling the history of the development of the lawyer system in China.

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I. Historical Review

1. The first lawyer in ancient China.

Two thousand years ago, during the period of Spring and Autumn in Chinese history, there was a man whose name was Deng Xi. He was an officer of high position in the country called Zeng. At that time Zeng was just in its changing period from a slavery society into a feudalist society. Deng Xi was a man who supported the land-lord class in the ruling circle of the slavery society. He was not satisfied with the slavery law of Zeng and repudiated it himself. He wrote his new law

on pieces of bamboo, so it was called "Bamboo Law" by writers after that. Thus, Deng Xi became the first man who suggested law privately in China.^① Besides, using his legal knowledge, he often gave people advice in their litigation and often gained good results. So a lot of people asked him for help and some began acquiring legal knowledges from him. He became the first "lawyer" in Chinese history.

But, since his behavior badly disturbed the order of the slavery society, he eventually was cruelly murdered

In 221 B.C., the first feudalist dynasty was established. China entered her dark and long period of the feudalist society. Following the principle "the person is presumed guilty before the trial", the legal system gave the accused no right to defence. The existence of the lawyer system was completely impossible.

2. "Song Shih" ---- a lawyer(?)

As it was mentioned above, in the feudalist legal system, there was no right to defence and no lawyers were needed. But, sometimes, the original complaint of the plaintiff seemed very important.^② So a profession named "Song Shih" emerged, whose only task was writing complaint for the plaintiffs.

3. Lawyers in Public Period.

The first public government was set up under the leadership of Sun Yiet shien, the pioneer of the Chinese democratic revolution, in 1911. Since then, following the

Western model, the lawyer system in the modern sense was accepted by the Chinese people gradually.

The word "LU SHIH" (means lawyer in Chinese) was first translated from English. In ancient China, "LU" meant "LAW". "SHIH" meant a man with special knowledge. So "LU SHIH" in Chinese is "a man with special knowledge in law".

In 1927, the first "Regulation for Lawyers" was published.

But the lawyer system did not work well in old China. That was because that the feudalist tradition still played a decisive role after the founding of the public government. Since 19th century, invaded by imperialist countries, China became a semi-feudal and semi-colonial country. The Chinese nationalist bourgeoisie was naturally very weak. As everybody knows, the public government lasted only 2 years and there happened the restoration of the feudalist dynasty. Not long after that China was divided into different parts and ruled over by "war-lords". Since then wars (including the war among the war-lords, civil wars, anti-Japanese war and the liberation war) lasted for about 30 years during which China was in fact under military rule. The right to defence as a right of democracy was very limited.

For example, in 1923, the famous lawyer Shih Yang was killed by the war-lord simply because he defended the workers on strike.

Another reason that the lawyer system did not work well was that the life of the broad masses in old China was very hard. How could the poor people pay the lawyer when they had nothing to eat?!

4. 1949--- 1954

In 1949, the People's Republic of China was founded. It created a completely new socialist government, drastically different from the old China by private ownership changing into public ownership. So the old laws which were based on the principle of protecting private property had to be completely reformed and the old lawyer system, as a subsidiary part of the whole legal system, had to be terminated. Former lawyers, treated as being educated by the bourgeoisie, were asked to reform the ideological thinking. A group^{of} communist cadres were sent to work as lawyers. This was a period called "Judicial reform" .

5. 1954 --- 1957

In 1954, the first Constitutional Law of PRC and the Organic Law of the People's Court were enacted. The right to defence, among those democratic legal guarantees, was clearly provided by the Constitution: "The accused has the right to defence." The Organic Law of the People's Court also stipulated: "The accused, besides personally defending his case, may designate advocates

(lawyers) to defend it..."

Since then, many legal advisory offices were set up, first in big cities, such as Beijing, Tienjin and Shanghai, then in the towns and counties. In most of the provinces there were Bar Associations with totally 3000 full-time lawyers and 300 part-time lawyers. They tried their best to play an active part in solving legal disputes.

Taking the situation in Shanghai as an example. In 9 months period of 1956, over 1800 ^{criminal} cases were tried with defence lawyers appearing in the courts. Only few of the cases were appealed. No wrongly judged case was found.

But, in 1957, in the "anti-rightists" movement, the work of the people's lawyers was criticised as "speaking for the bourgeoisie and the class enemies" and the system as "being a product of capitalism". A lot of lawyers were called "rightists" and had to stop working. Since then, the lawyer system existed in name but disappeared gradually in fact. ③

6. The Cultural Revolution. (1966 -1976)

During the Cultural Revolution, in order to seize the power of the state, Lin Biao and the "Gang of Four"

first called on the Red Guards to destroy the organs of Security Office, Procuracy and courts. They said that these organs were the instruments of bourgeoisie dictatorship. Later they set up their "reformed" judicial organs and took their policies as law. People could be arrested with any excuse or even without an excuse. People could be put into the prison in the name "being against the proletarian headquarters" or even killed. They were carrying out a fascist dictatorship. No people's rights remained, clearly, there could be no lawyer system at all.

6. Observation.

On the whole, before 1976, in the history of China there never has existed a complete lawyer system. The legal profession in traditional Chinese society never attained the same status and importance as it has in the west.

The question "why?" would naturally be raised. In order to find out the answer we should trace back to the origin of the lawyer system--- the civil representation in Roman law. (The only time that the people were granted the right of having a legal representative in law suits in the slavery society.)

The lawyer system was greatly developed and completed only after the revolution of the Bourgeoisie in the 17th and 18th centuries. In the struggle against feudal autocracy, the Bourgeoisie raised a package of judicial democratic principles, such as "the punishment be equivalent to the crime", "everybody is equal before law" and "a man is innocent until proven guilty". The right to defence was affirmed by legislation. For example, such provision can be read in ^{the} French Constitution of 1791, in the American Constitution (amended) in the same year, in the Code of Criminal Procedure of France in 1809, in Japanese Law of Lawyers of 1893.

It is very clear that the lawyer system was the twin sister of the judicial democracy. The lawyer system can never **exist** in a society of judicial autocracy.

II. "The Provisional Regulations Governing the Work of Lawyers of the People's Republic of China"

1. Strengthening socialist democracy and the socialist legal system is the motive force to rebuild the lawyer system in China.

The ten- years Cultural Revolution has taught the Chinese people a good lesson' --- without a sound socialist legal system, a sound socialist democracy can hardly be realized, and without the true socialist democracy the nature of the socialist country will change into a feudalist fascist dictatatoship.

As Ye Jinying, Chairman of the standing Committee of NPC pointed out: "The people want to strengthen and improve China's socialist legal syste . An improved legal system can effectively guarantee the people's democratic rights provided for by the Constitution and vigorous political situation in the ihterest of socialist construction." This is the tide of history.

After the downfall of "Gang of Four", the new leaders concentrated themselves immediatly on drafting the new Constitution and other six major laws --- Criminal Law, Criminal Procedural Law and etc. The seven laws were enacted in 1979 and enforced on Jan.1,1980.

The Law of Criminal Procedure stipulates that apart from the punishment of culprits, one purpose of the law is to protect innocent persons from illegal

criminal prosecution. To this end, the law stipulates that besides exercising the right to defend himself, an accused may have for his defence a lawyer, a relative, a guardian or a citizen recommended by a people's organization or the unit he belongs to. The law also states: "The responsibility of an advocate is, according to the facts and law, to present materials and offer opinions exonerating or extenuating the accused and speaking for a mitigation or remission the legitimate rights and interests of the accused."

In order to guarantee the enforcement of the procedural law, in April 1979, the Commission for Legal Affairs of the National People's Congress Standing Committee set up a special group to draft regulations for lawyers. The work was transferred to the Ministry of Justice after its founding in September 1979. This Ministry also canvassed the opinions of related departments and then submitted its draft of the Provisional Regulations to the 15th Session of the Fifth N.P.C. Standing Committee. The regulation was enacted in August last year.

2. Characteristics of the Regulation.

This Regulation has four chapters with 21 articles. Chapter 1: Tasks and Nature. Chapter 2: Qualifications. Chapter 3: Organs. Chapter 4:

a) The social status of the People's Lawyers.

The first article of the Regulation states: "Lawyers are state legal workers." Thus, their social status has been fixed in terms of law.

China is a socialist country of proletarian dictatorship. According to the political theory, a legal system is part of the social super-structure and must serve the socialist economic base. So the nature of the lawyers' work is highly political in China. Like judges and prosecutors, lawyers are members of the state judicial system, playing different roles in the complete judicial activities.

b) Tasks.

The nature of the Chinese lawyers is also reflected in the stipulations of their tasks.

The first article of the Regulation states their tasks in general: "The duty of a lawyer is to give legal help to government organizations, enterprises and other undertakings, social bodies, people's communes and ordinary citizens so as to ensure the just implementation of law and defend the interests and the collective and the legitimate rights and interests of citizens."

In article 2, the special activities of the lawyers are clearly stipulated. First, when requested, lawyers act as legal advisors to government organs, enter-

prises and other undertakings, social bodies and people's communes. Secondly, lawyers take part in litigations, not only act as defence lawyers in criminal cases but also act on behalf of litigants involved in civil lawsuits. Thirdly, lawyers may furnish parties not involved in litigation cases with legal advice, answer legal questions from the general public and draft legal papers upon request.

Thus, in a wider sense, lawyers in China are legal advisors to the public. They inform people about what is legal and illegal. These services often help people protect their legitimate rights and interests through legal procedures, or persuade them to drop their illegal demands at an early date. This is beneficial to the country's stability, unity and production. Fully publicizing the socialist legal system is the duty of lawyers as state legal workers.

Theoretically, law, in a socialist country, is the concentrated reflection of the people's will. Only when the interests of the people are very well protected on the whole, can the legitimate interest of the individual be protected. So the just implementation is the prerequisite of seeking the interest of the individual person.

c) The principle which lawyers should follow in their work.

Article 3 of the Regulation states: "The lawyers must base themselves on facts and take law as the criterion." Article 26 of the Law of Criminal Procedure says: "The responsibility of an advocate is, according to the facts and law, to present materials and offer opinions exonerating or extenuating the accused and speaking for a mitigation or remission the legitimate rights and interests of the accused."

The lawyer is an independent subject in the litigation. He has his own right in the process of the suit. In article 7 of this Regulation and in Law of the Criminal Procedure, the same provision is stated: "A defence lawyer may inspect the files in question, acquaint himself with the details of the case and interview and correspond with the accused". Article 6 of the Regulation says: "When the lawyer considers that the accused has not told true facts, he has the right to refuse the request of being the advocate."

The principle of "Being loyal to the client" is completely denied.

Before the trial, whether the accused is guilty or innocent is still a question. ④ Only when there is

socialist system, have the right to vote and to stand for election, after assessing their proficiency, can be qualified as lawyers:

i) A graduate from a university law school with at least two years judicial, or law teaching, or legal research experience;

ii) A person who has received professional legal training and once worked as a judge in the people's court or as a prosecutor;

iii) A person who once received high education and has at least three year experience in economic or scientific-technical work, has a good grasp of the knowledge of his profession and the relative legal knowledge, after a period of legal training and considered suitable to be a lawyer; and

iv) Others who have the equivalent professional legal training⁽¹⁷⁾ and reach the equivalent educational level to the persons described in i) and ii) of this article.

The quality of the lawyers is of great importance to the effectiveness of the lawyer system. As only a few law students were trained during the ten years of Cultural Revolution, the resource of lawyers is a big problem. Paragraph iv) of this article seems to be necessary.

Wang Yuechen, Vice-minister of Justice, in his

- ii) Claims for foster fee;^⑤
- iii) claims for pension for the disabled of the family of the deceased;
- iv) answers to oral questions about the law; and
- v) inability to pay the fee because of economic reasons.

'Collective working' is confirmed with the public ownership of the socialist country according to the Chinese theory. If lawyers are allowed to work privately and can charge the fee freely, some of them may only think of seeking their personal interests and treat money as the only criterion of their work. (Sometimes, in this situation of private work in order to make living, they have to consider the money problem.) Thus, as the result, like the situation in old China and the present situation in some of the western countries, lawyers might concentrate in a few big cities. As the former American President Carter said on May 4 1978 that now in America 90% of the lawyers are serving 10% of the people ... lawyers are not solving but heating the disputes." Lawyers might not work for justice but as a slave of the money holders.

e) Qualifications.

Article 8 of the Regulation is about the qualifications of the lawyers. "The following citizens, who love the People's Republic of China, support the

plenty of evidence which can prove that he is guilty, can the accused be punished according to the law. So to maintain the just enforcement of the law, lawyers must base themselves on the facts, help the court to examine the evidence and find out where it is true. If the facts prove that the accused is guilty, then the lawyers will debate the amount of punishment with the court. The lawyers would not follow the principle of "being loyal to the client", since that might encourage the lawyers to distort the facts or lead to sophistry. ⑤

d) Working in the Legal Advisory Offices.

"The working organ of the lawyers is the legal advisory offices. They are non-profit organizations led and supervised by the state judicial organs." The expenditure of the offices are covered by the government and their incomes are handed over to the state! This is Article 13 of the Regulation.

The state judicial organs will supervise the deployment, qualification, rewards and penalties ideological education, professional training, outlay of the work, and etc. The legal advisory office will organize the vocational work.

The lawyers get their from the government. The clients will pay a reasonable fee to the office. Some exceptions are as follows:

- 1) claims for the damages for the injury in one's work;

statement at a national forum on the work on lawyers in 1980, said that up to 1980, 20 provinces, municipalities and autonomous regions have or are preparing to set up lawyer association, and 380 legal advisory offices have been established with a total 3,000 lawyers. However, there is only one lawyer for every 300,000 now far short of the demand.

He also stated that according to the plan of the ministry of Justice, the legal profession will grow dramatically in the next five years. By the end of 1985 there will be one lawyer for every 10,000 city dwellers and one for 50,000 peasants.

To open all avenues for people of talent is the only way out. Although the graduates of law schools are the main source of the lawyers, persons as described in ii), iii) and iv) are another important source. The key problem is to have a strict system to assess professional proficiency.

III. Prospect of the Chinese lawyer system.

If China insists in carrying out the policy of judicial democracy, no doubt the lawyer system will be rapidly and greatly developed.

1. In order to meet the needs of the development of economic activities, more laws and regulations governing all kinds of disputes can be expected. More and more

lawsuit arbitration cases or mediations, both domestic or international, will be solved by the involvement of the lawyers.

2. As the codification of civil law is completed in the near future, more and more lawyers will be requested to be representatives of the civil suits.

3. Since there are still criminal cases existing, being advocates is still an important aspect of the lawyer's work.

China has a population of over 800,000,000. Lawyer as a legal professional will have a large space for development.

But presently there are still many obstacles.

First, since China has a 2,000 year-long history of feudalist rule, the traditional thinking cannot be overlooked. Some people, even some cadres, think that the judges are the symbol of the state power, the advocate lawyer is the opposite of the judges, so he is the opposite of the state power. The principle "the accused is presumed guilty before trial" is still in some people's mind. They think the lawyers are speaking for the offenders. Some lawyers, since they "have learned a lesson from the Cultural Revolution", dare not to speak for the accused. Some judges, having not a correct understanding of the role of the lawyers, think that the lawyers are 'trouble makers'.

This problem must be solved by constant ideological education and by setting up examples. Practice is always persuasive to make the people understand what is correct and what is wrong.

Secondly, China does not have enough law schools. From 1953 to 1979, less than 20,000 graduated from law school or law departments of the universities, only 0.6% of the total amount of the university graduates.

Now the Chinese government is trying its best to set up more law schools. This raises another problem--- a lack of law professors, books and text-books. The law schools and law departments which have a comparatively long history are now trying to help the newly established ones by sending some professors to give lectures for a short period, or running some training classes. At the same time, those graduates who are not doing judicial work, are called back to be lawyers or law teachers.

But, as all these matters will take time, a rapid increase of the quantity of qualified lawyers cannot be soon expected.

Generally speaking, the future of the development of the Chinese lawyer system is right, but the way of development will still be difficult.

- (1) In ancient China, only the emperor's words could be law. Nobody had the right to suggest law.
- (2) In ancient China, there were no professional judges or prosecutors. The administrative officers were the judges. Most of them did not like to do any investigations before trial. They got the "fact" only from the complaints of the two parties. The officers often believed that the plaintiff was the injured. So the complaint of the plaintiff became very important.
- (3) After 1957, there were still some lawyers working. But as their work was looked down upon by the society, they could not play their role well.
- (4) There is a discussion on "Presumption of innocent" in China. See the article "Trends in Chinese Jurisprudence".
- (5) The denial of "being loyal to the client" does not mean that the lawyer does not work for the client. It means that the lawyer should speak for the client only within the scope admitted by the law. In order to guarantee the right to defence, the lawyer should not speak against his client, but when he finds that the client is telling lies, the lawyer has the duty to persuade his client to tell the truth to the court afterwards.

- (6) Foster fee means the payment for looking after certain kinds of people according to the law. Such as the foster fee for the children in a divorce case.
- (7) "Legal training" means all kinds of legal education, including formal study in the law schools or spare-time schools or classes run by the judicial organs.

[List of reference materials:

- 1) "Enforce the lawyer system, complete the legal system", August 27, 1980, Guang Ming Daily.
- 2) "Explanation of the Provisional Regulations Governing the Work of Lawyers of the PRC", August 29, 1980, Ren Min Daily.
- 3) "Basic Knowledge of Lawyers" by Sun Ying-jie and Feng Cai-jin. Beijing, 1980.
- 4) The text of the Regulation.
- 5) The Law of Criminal Procedure.

Trends in Chinese Jurisprudence

An unprecedentedly lively situation has prevailed in China's law circles since the Second Session of the Fifth National People's Congress (held in June 1979) approved seven important laws, the Criminal Law and the Law of Criminal Procedure included. Fresh questions are constantly raised and discussed in depth at forums on law.

This article, done jointly by Xie Cichang and Xu Chengqing, researchers in social sciences in Qinghai Province, gives an account of recent developments in China's study of the science of law. — Ed.

Old Conventions Broken

WHAT should be included in the study of jurisprudence? This evoked a great deal of controversy in the late 1950s. Owing to the fact that the theory of the state and the law was the basic one guiding the science of law in the Soviet Union at that time, China also made this theory the major content of its researches on law. Later, under the influence of the "Left" trend of thought, the science of law became dominated by doctrines of the state, and the study of law was all but eliminated.

At recent discussions on the subject in law circles, most people held that the state and the law, though closely interrelated, are different social phenomena, each with a particular realm of its own. Therefore the study of the science of law should centre mainly on the legal system. Of course it will inevitably touch on questions of the state but these must be approached from the legal angle. This approach differs both in starting-point and scope from that of political science in dealing with questions of the state. At the symposium held last September in Changchun, Jilin Province, on the history of the Chinese legal system and the history of Chinese legal concepts, many considered that the study should concentrate on the essence, features, main content and laws of development

of legal systems of different types, not the state system. This broke down old conventions in the study of the science of law, marking a big step forward.

Is Law Only an Instrument of Class Struggle?

In the past, the law was generally regarded as an instrument of class struggle (or class oppression). But lately in law circles, divergent views have been presented on this question.

Quite a few people felt that it is not an overall view to consider the law only an instrument of class struggle, for in the history of mankind, the law of the exploiting classes, though directed against the labouring people, was also used to readjust the internal relations of the ruling class. Now capitalist countries use law to regulate the life of the whole society while employing it to protect private ownership. Besides suppressing the class enemies' resistance, sabotage and trouble-making activities, the law of a socialist country is mainly concerned with regulating contradictions among the people and readjusting the relationship between various aspects of national economic construction. If the law in a socialist country is nothing but an instrument of class struggle (or class oppression), how can one explain the laws on seeds, forestry and environmental protection? Can it be that they are also instruments for oppressing class enemies?

Whether the law's functions outside the realm of class struggle are of a class nature or social nature is still a hotly debated issue. Some hold that the law should be divided into two categories: one related to class oppression such as is exercised under a dictatorship, the other to ordinary social life, such as traffic regulations, environmental protection, sanitation and health care, and the utilization of outer space. The people of the whole society benefit from the implementation of the laws on social life. This is why law has a class as well as a

social nature. Others hold that it is not scientific to divide law up into two parts, one having a class nature and the other having not.

Continuity of Laws

Is it a characteristic of laws that they can be carried over? This was heatedly debated in the early 1950s. Those who said yes were criticized together with their viewpoints in the 1957 anti-Rightist campaign, and the question was banned.

At present, the trend is to affirm that according to the nature of the law, it is assimilable, though there are still divergent opinions. Some hold that old laws can only be used for reference and cannot be inherited critically, because, in view of their class nature and practice, they are very reactionary and should therefore be abolished. As for the old science of law and legal concepts, they are cultural heritages and whether they can be assimilated is open to discussion. Many others maintain, however, that the law is, by nature, assimilable, arguing that this characteristic refers to the historical relationship between old and new laws. Old laws can be assimilated critically whether they were enacted during the ascendancy of the ruling class or during its decline. The use of old laws for reference is a particular form of assimilation. Legal standards and concepts are interwoven and cannot be split up sharply.

All Citizens Are Equal Before the Law

It was clearly defined in China's 1954 Constitution and Organic Law of the People's Courts that citizens of China are equal before the law. But this proposition was later criticized for lacking a class viewpoint and "allowing counter-revolutionaries to claim equality with revolutionaries." Now it has been again included in the Organic Law of the People's Courts and the Organic Law of the People's Procuratorates, and this has the warm support of the masses.



Pan Nianzhi, deputy director of the Institute of Jurisprudence under the Shanghai Academy of Social Sciences, discussing methods of informing the public about the legal system.

Are all citizens equal before the law? People's understanding differs. Some hold that this principle refers to the equality of all citizens in the application of the law, because the law itself reflects the will of the people. But, they feel, it is incorrect to give equal treatment to various classes in drawing up legislation. Others hold that equality is not only a judicial but also a legislative principle, because the application of the law is premised by the enactment of the law (legislation). Without affirming the equality of the citizens' rights and obligations in drawing up legislation, there would be no such thing as everyone being equal before the law. The present law even provides that those who have been deprived of their political rights have the right to work and to personal security. It is thus unnecessary and even harmful to restrict the principle "all citizens are equal before the law" to the judicial realm.

The Law and Party and Government Organs

It was due to the imperfections of the legal system that Party and government organs often placed themselves above the law in the past. Recently, some people in law circles proposed to solve this question in the light of the experience of other countries.

Article 43 of China's Constitution stipulates: "The Supreme People's Procuratorate exercises procuratorial authority to ensure observance of the Constitution and the law by all the departments under the State Council, the local organs of state at various levels, the personnel of organs of state and the citizens."

This stipulates clearly that if government organs violate the law, they will be punished according to law like individuals. Law circles therefore propose to set up a special institution to safeguard the authority of the law by dealing with illegal activities of state organs at various levels as well as enterprises and other organizations, when they are exposed or accused by the citizens.

The Theory of Constitution of Crimes

What is a crime? The theory on what constitutes crime appeared in the struggle against the peremptory judicature and the arbitrary imputation of criminality in feudal society during the rise of capitalism. It held that people should be declared guilty only according to the law and that no judge should have the right to convict anyone arbitrarily.

As early as the years before 1957, this theory was studied in law circles in China and introduced in college lectures. But it was condemned as a "bourgeois theory" "exonerating criminals from their crimes" with a view to "opposing the principles and policies of the Party." During the heyday of Lin Biao and the gang of four, there appeared the so-called "ideological criminals" who had never harmed any object or any aspect of reality. They were branded as counter-revolutionaries solely on charges of "viciously smearing Party leaders," though they did not harbour any counter-revolutionary motives.

In view of these historical lessons, law circles again brought forward the theory of constitution of crimes, and it has been generally affirmed. This has facilitated the work of redressing frame-ups.

Differences Over the "Presumption Of Innocence"

The "presumption of innocence" was raised during the bourgeois revolution to oppose the feudalistic principle of the "presumption of guilt." It played a certain progressive role in the struggle against the feudalistic judicial arbitrariness. Does the principle apply to criminal suits under socialism then? This was discussed in the early 50s but the study was later banned owing to interference from the trend of "Leftist" thought. Two viewpoints have been expressed in current discussions of this question. One holds that the bourgeois

principle of the "presumption of innocence" and the feudalistic principle of the "presumption of guilt" differ somewhat only on the question of "innocence" and "guilt," but both are manifestations of idealism and metaphysics. What is more, the "presumption of innocence" is incompatible with the principle of seeking truth from facts and the practice and procedure of investigation, arrest and indictment in China's criminal suits. Therefore, for the proletariat, the principle is rubbish both in content and in form, and should be refuted.

The other viewpoint maintains that the "presumption of innocence" refers to the legal position of the accused prior to the trial. It neither contradicts nor replaces the principle of seeking truth from facts.

Civil and Economic Laws

Law circles are unanimous in the view that it is necessary to enact civil laws and strengthen economic legislation as soon as possible. But the problem is how to do it. Are they to be drawn up as separate laws, or to be combined into one? What should be the particular content and system of each? Study and discussions are still in progress.

Traditionally, civil law is applied mainly to the readjustment of property relations. In capitalist countries, property is privately owned. This is why civil laws are listed under "private laws." After World War I, with the increase of state participation and interference in the economy, a series of economic laws appeared outside the civil law. State interference in competition, prices and credits by means of law led to the gradual disappearance of the distinction between private and public laws. But no capitalist country has yet worked out a systematic economic law or code; there exists only a body of legislation and legal practice in various sectors of the economy.

There are two different views in China on how to handle the relationship between civil and economic laws. Some people insist that the two laws can be combined into a unified economic code since both are geared to the readjustment of economic relations. As for laws governing the readjustment of private property relations, they could be included in the civil rights laws. But most people hold that at present there are difficulties in enacting such a unified economic law. Accordingly, they propose that civil laws and economic laws should be enacted separately. □

Beijing May 18, 1981

Dear Professor Macdonald:

I'm very glad to receive your letters, both your's and Marria's. I'm really lucky to have the chance to study in your university. Thank you very much for your efforts.

As Professor Wang indicated before, our areas of international law will not be changed. I'll study the law of the sea and Bai will study human right. We are very happy to have Professor Johnston and you being our supervisors. Having such honest directors we are sure to make great progress in our studies.

We have already passed the physical check-up. Now we are waiting for the passports. As I know the procedure is complicated and it may take one or two months. I'm going to get in touch with Dr. Sun. Everything will go smoothly, I think.

My dear professor, would you mind giving my best regards to Professor Johnston and asking him if he has any topics of the thesis which can be suggested to me for consideration? I'm interested in the seabed problems and some Chinese problem on the law of the sea, such as the East China Sea continental shelf.

One more thing to trouble you. My aunt is living in San Francisco. Since My summer holidays will begin on July the ninth and I'm expected to get to Canada in early September, I'd like to see my aunt first on my way to Canada, if I can get the American visa. But I don't know whether it is possible.

How is your sister? All her Chinese friends are missing her. Miss Wang, my mother and sister are eager to have the chance to see her again. When will she come to China again? The earlier the better!

Best wishes to you and your sister.

Yours,

Qing-nan

P.S.

In the future you may write me to the law department or the Foreign Languages Press. Both will do.

June 26, Beijing

Dear Professor Macdonald:

I am very excited to tell you that everything goes smoothly in Beijing. We are now attending the training class held by the Educational Ministry for one week, learning something about the geography, history and present situation of your country. We shall get our passports after the class and will wait for Canadian visa. Our summer holidays will begin at July 9.

This morning we were told that the Chinese government will not pay for our air tickets. Professor Wang once told us that you have already made arrangements for that, but I am not certain. So I am a bit worried about that.

If the air tickets are arranged at your end, would you mind sending me an open air ticket? I hope I can go to see my aunt in San Francisco first and then go to Canada if I have time. Bai will go directly to Canada. Since I don't know the exact date I can get the visa, I can't tell you the exact date I am leaving. I am very sorry for this.

How is ~~Melrose~~? All of my family members are missing her badly. Fortunately, we will meet again soon!

Best wishes from my mother, wife and sister to you all.

Please give my best regards to Professor Johnston.

Yours truly,

Meng Qing-nan

P.S. I shall stay at home since July 9. Please write to Foreign Language Press. Thank you.



DALHOUSIE UNIVERSITY
FACULTY OF LAW

HALIFAX, NOVA SCOTIA
CANADA
B3H 4H9

March 18, 1981.

Mr. Qing-nan Meng,
c/o Dept. of Law,
Peking University,
Beijing,
People's Republic of China.

Dear Mr. Meng:

Re: LL.M. Programme 1981/82.

On behalf of the Graduate Studies Committee of the Faculty of Law, it gives me great pleasure to confirm that you have been accepted into our programme for 1981/82.

Furthermore we have also recommended you for a C\$6000. graduate scholarship. I understand that Professor Macdonald will be writing to you about other arrangements with Dalhousie University in due course. I trust that you will be good enough to inform Professors Chen and Wang of this notification.

We look forward to meeting you in Halifax later this year and hope that you will have a most enjoyable year of studies with us. With best wishes

Yours sincerely,

Edgar Gold
Professor of Law
Chairman, Graduate Studies
Committee

EG/ks
cc. Professor R. St. Macdonald QC ✓



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EG/ks
cc. Professor R. St. Macdonald QC ✓

20 August 1981

Mr. Qing-nan Meng
c/o Foreign Languages Press
(Spanish Section)
Peking
People's Republic of China

Dear Mr. Meng and Miss Bai:

This is just a brief note to say that we are looking forward with great pleasure to receiving you in Halifax any time after September 9th., and that you should communicate with Mr. Lomas or Dr. Sun at the Canadian Embassy; they will make arrangements about the tickets and bill us at this end. There is no reason why you can't stop in San Francisco on your way to Halifax. However, the important thing is that you and Mr. Lomas or Professor Wang send me a cable or telex indicating your flight number and time of arrival.

I have spoken to Professor Johnston about your thesis and he will be meeting with you, Mr. Meng almost immediately after you arrive; and I will be seeing Miss Bai at the same time.

Looking forward to your arrival and with personal good wishes, I remain,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

16 April 1981

Mr. Qing-nan Meng
c/o Foreign Languages Press
(Spanish Section)
Peking
People's Republic of China

Dear Mr. Meng and Miss Bai:

This is merely a brief note to let you know that things are proceeding smoothly at this end and that we expect to have your courses worked out some time next month.

As you may know, Professor Wang has indicated that Mr. Meng will concentrate on law of the sea and that Miss Bai will concentrate on human rights. This means that each of you will be writing your thesis in the area indicated; Professor Johnston will probably be supervising Mr. Meng's work and I will be supervising Miss Bai's. The precise topic will not be selected until you arrive in September. Our practice is to finalize the subject for research only after careful consultation with the student concerned. If you wish to change to areas of international law other than those indicated, please let me know as soon as possible.

As soon as we work out your courses for the first term we will send you course outlines and reading material. You will be required to participate in the Graduate Seminar and to take two courses during the first term. Evaluation in both the seminar and probably in the two courses will be by paper (essays) rather than examinations, though it is possible that there may be an examination in one course. There will be no formal courses during the second term, when you will be devoting yourselves exclusively to your theses. Almost immediately on your arrival in September, we will have a series of consultations in order to finalize the scope of the thesis work. You will be able to do some preliminary thesis during the first term.

We have made arrangements for you to live within walking distance of the Law School and we expect to finalize travel arrangements in the very near future. The time of

Mr. Qing-nan-Meng
16 April 1981
Page two

arrival depends largely on the availability of faculty. At the moment, we incline to the view that it is unnecessary for you to arrive until early September, when instructors will be on the premises. I myself will be away during the last week in August, and of course I wish to be at the airport to meet you. Also, it will be wiser to make up any additional time that may be necessary at the other end, so to speak; that is, at the end of the summer of 1982. It is very easy to get acclimatized in Halifax and you need have no concern about "settling in": the process is not complicated.

I think that you should see Dr. Mary Sun about a visa for Canada and that you should also get a visa for the United States. Although we are not yet sure, the ticket will probably take you through San Francisco to Toronto to Halifax. Additionally, we hope to arrange for you to attend an international law conference in the United States, during the period that you are with us and for this purpose you will require an entry visa. You might ask Dr. Sun about this matter: whether it is best attended to in Beijing or in Canada.

Please do not hesitate to write to me at any time about your needs and interests. In fact, write me as soon as possible so that we can be in close touch. We at this end are not only looking forward with great pleasure to your arrival, but we are extremely anxious to do everything possible to provide you with the best experience we can.

With personal good wishes to both of you and to the members of your families, I remain,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

P.S. In future, should I write you to the Foreign Languages Press or to the Law Department?

March 3, 1981

Beijing

Dear Prof. Macdonald,

We are very sorry that we hand in the official transcripts so late. Things are quite complicated in China, you know, and we have been waiting for the final decision of the Chinese Educational Ministry. The authority of the university has no right to decide whether her students can go abroad or not. Prof. Wang is so worried that he goes to the director of the Law Department and the president of the university nearly every day. This morning the president of the university agreed to send the transcripts to your school first. We are sure that if we can receive the ^{letter of} acceptance from your school the final decision from the Ministry will come faster. So this is China!

Here are the original transcripts (in Chinese) and the translations. The seal sign on the left is the Law Department's. On the right is ^{the one} of the university.

March 5, 1951

Peking

Our dear professor, we are eager to know
what courses we are going to have during the first
half of the year. We would like to do some
preview work.

How is Mairi? We miss her very much.

Best wishes to you and your sisters.

Yours truly,
Meng Qing-nan
Bai Kwei-mei

Best wishers to you and Mairi from
Miss Wang.

18 December 1980

Mr. Qing-nan Meng
Foreign Languages Press
(Spanish Section)
Peking
China

My dear, dear Friend,

I want you to know on a confidential basis that we are about to complete arrangements under which two postgraduate students from Beijing will be invited to attend Dalhousie University in September 1981. I will be writing to Professor Wang on this matter within the next day or two. Of course it will be for the authorities in Beijing University to decide which students should be nominated, but you must know that I am secretly hoping that you will be one of them. It would give me the greatest pleasure to be able to receive you here and to make token reciprocation for the wonderful hospitality with which you greeted us last March.

✓ I will not only keep you informed of developments but I will soon be sending you some material on Law of the Sea

Please remember me ^{to} ~~with~~ your wonderful mother and your delightful sister. I send them most cordial good wishes for 1981. And be sure to convey my kind regards to all our friends in the Law Department.

With every good wish, dear Mr. Meng, and with the hope that we will soon be working together once again, I remain

Yours sincerely,

R. St.J. Macdonald, Q.C.
Professor

RSTJM:1f