

CHINA POLICY STUDY GROUP
BROADSHEET

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AFTER 30 YEARS — NEW UNITY

WITH the 30th anniversary of the foundation of the People's Republic of China the Chinese Revolution is entering a new phase: the emphasis is no longer on the struggle against political enemies but on socialist modernisation. The need for ideological vigilance still exists, the class struggle still exists, but the dictatorship of the proletariat is firmly established. In years to come 1979 is likely to be seen as the year when the Chinese people, having found out of struggle a new unity, began to build on the foundation laid in preceding years.

Few will dispute the magnitude of the Chinese achievement in raising their country from the pre-1949 abyss; nevertheless, with success problems get bigger and China is on a road never travelled before.

Under Mao Zedong's leadership China reached a stage at which entry into the world of modern technology and of expanding production on the basis of socialism was a practical possibility. Many of Mao's writings show that he believed the time for this had come. But instead Lin Biao and the Gang of Four posed the greatest threat to the Chinese Revolution since 1949. Progress towards socialism ceased and instead there was division and retrogression, causing devastating material and spiritual losses. These losses have by no means been made good yet, but painstaking work by the Party has overcome the main problems and made it possible to concentrate on the modernisation of agriculture, industry, science and technology, and defence. Every development in domestic and international affairs shows this to be *essential*.

Mao Zedong left valuable pointers for the next stages of the journey forward, among them *On the Ten Major Relationships*, a speech delivered as long ago as 1956, which was not published officially until 1978. Reading it now it is obvious that many of its theses (e.g. on the relationship between heavy industry and light industry and agriculture, the relationship between central and local authorities, the relationship between Party and non-Party people) had never been taken to heart—had indeed been suppressed—and that it is just in those fields that some of the most serious mistakes were made.

Errors being righted

Great efforts are now being made to right these errors. Agriculture is being given its rightful importance, the allocation of funds to heavy industry is being cut back and that to light industry and agriculture increased, local initiative and involvement are once more being encouraged, the Party is remaking its ties with the people. Not all problems have been solved, but a very good start has been made. Most important of all is the rapid development of socialist democracy, backed up by the creation of a new code of law. People are encouraged to speak out their criticisms and ideas, newspapers print hundreds of readers' letters, which are dealt with by the appropriate organs in a businesslike and comradely fashion. Individuals who were wrongly accused and penalised in the past are being brought back to leading

positions. Those who were rightly criticised and 'set aside' are being brought back to useful jobs, though perhaps to positions much less elevated.

The 3rd Session of the 11th CC of the CPC, in late 1978, may be said to mark the watershed between the old and new periods. The Communiqué issued on December 22 'unanimously endorsed the policy decision ... on shifting the emphasis of our Party's work and the attention of the people of the whole country to socialist modernisation'. It suggested there had been too much centralism and too little democracy.

Frankness and trust

The general lines laid down in the Communiqué are now being followed enthusiastically, as is shown by the figures given at the NPC in June this year. The publication of these production achievements in absolute quantities instead of in percentage terms as almost always in the past, is itself an indication that the Party and Government have decided to share their knowledge with the people more fully and to rely on them to draw correct conclusions from it.

Among the figures it is worth mentioning the following: grain output in 1978, at 304,750,000 tons, was 7.8 per cent more than in 1977 and the output of other crops showed a marked increase; in the two years 1977 and 1978 steel output rose from 20,460,000 to 31,780,000 tons; coal increased from 483 to 628 million tons, oil from 87 to 104 million tons, electricity from 203 to 256 million kilowatt-hours, and the volume of rail freight from 820 to 1,070 million tons. These figures are surely an indication of the eagerness for production released in the whole country after the fall of the Gang of Four.

There remains one question, and a supremely important one: how can we be sure that the promise in the new Constitution, of a new, socialist legality, will be fulfilled? There have been good constitutions before, there have been splendid speeches, sincere promises. But they did not stop things going wrong. The only possible answer is that *the people* must keep the revolution on the right lines by *supervising their leaders*. The people made the revolution, it is theirs, and if they see things happening which do not benefit the country, and from which there is no conceivable long-term benefit, they have the right to protest and should do so. They did not protest effectively when the Gang of Four engaged in sabotage, but they have certainly learned from that experience and have laws which encourage them to take action. More and more consciously the masses are applying Marxism-Leninism to planning, to social-economic problems, to education, to production. In other words they are, more truly than ever before, applying the teachings of Mao Zedong. The conscious use of Marxism-Leninism gained great impetus during the Cultural Revolution and that experience will not be forgotten. Keeping the revolution on course is a responsibility which only the people can shoulder.

CHINA'S NEW LAWS

FEW have been the commentators and theoreticians of law produced by the Chinese nation, though a nation of scholars', wrote Jean Escarra, Professor of Law at the University of Paris, in 1936. Twenty years later, at the 8th Party Congress of the CPC, Dong Biwu, then President of the Supreme People's Court, remarked:

It must be pointed out that our jurists have not yet produced a single fairly good book written with knowledge of the theories of jurisprudence and in accordance with the Marxist-Leninist point of view (*Congress Report*, Vol. II, p. 90).

Like many of the problems, economic as well as social, confronting China, legality and the legal system must be viewed against the background of two thousand years of feudalism. In contrast to the Graeco-Roman conception of law, China, comments Escarra, 'has felt able to give to law and jurisprudence but an inferior place in that powerful body of spiritual and moral values which she created and for so long diffused over so many neighbouring cultures'. This is not to say that laws and law-making were unknown to the early Chinese. Joseph Needham refers to the oldest datable codification of Chinese law as of BC 535, but already in that text appears an 'uncompromising objection' to codification, arguing that ordinances 'awaken a litigious spirit among the people' and that when people know there are laws regulating punishments, 'they have no respectful fear of authority'.

Throughout Chinese history the concept of paternalistic law based on good customs, mores and justice contended with systematic or positive laws. Dr Needham comments that in China the former was, for the greater part of history, enormously more important than the latter. Thus the Chinese, through years of social practice, have had imprinted on their attitudes and thinking a certain concept of law very different from our own. 'Pre-Liberation China had no democratic tradition to speak of and, in this respect, was more backward than Russia before its October Revolution' (*Beijing Review*, 12 Jan. 79).

The civil liberties for which we have fought and which we assume to be basic rights in our society, sometimes to our cost in periods of social tension, are not taken for granted in a country which has not passed through a phase of bourgeois democracy. Mao Zedong realised that bourgeois democracy has its merits. He said in June 1954, 'we should not write off bourgeois democracy with one stroke of the pen' (*Selected Works*, Vol. V, p. 143). (He went on to say that the present-day constitutions of the imperialist countries are designed to deceive and oppress the majority of the people.)

The causes of disregard of the legal system were deeply embedded in Chinese history and society, commented Dong Biwu in 1956. He referred to hatred of the old legal system among revolutionaries who, having no legal means of waging the struggle to seize state power, had to do revolutionary work by outwitting the legal system.

At the 8th Party Congress Dong Biwu called for the gradual completion of the structure of the legal system, explaining that 'we still lack several urgently-needed, fairly complete basic statutes such as a criminal code, a civil code, rules of court procedure and so forth'.

Of course, the broad constitutional principles and the rights and duties of the people had been set forth by the Common Programme of 1949 and the Constitution of 1954, at which time the organic laws of the central and local organs of state were adopted. Up to 1957 the system of People's Congresses worked fairly effectively, but after 1958 the role of the People's Congresses at the various levels was eroded. The National People's Congress did not meet between 1964 and 1975 and it was only from 1978 that the local People's Congresses gradually became active again.

As in so many matters, Lin Biao and the Four took advantage of the feudal hang-ups, riding roughshod over people's civil rights in the name of the 'class struggle' as they defined it, which meant, among other things, trying to stamp out any criticisms and expressions of opinion which did not conform to their own. They were above the law, in practice following the passage in the Record of Rites which states that 'li (mores, jus) does not reach down to the people; hsing (punishment, penal statutes) does not reach up to the great officers'.

The seven draft laws presented to and approved by the National People's Congress in June 1979 are part of a process to correct this situation, in which, to quote Hua Guofeng, 'autocracy, bureaucracy, love of privilege, the patriarchal style of work, and petty bourgeois individualism, liberalism and anarchism are apt to spread'. The seven laws are:

- Organic law of the local People's Congresses and local people's governments;
- Electoral law for the National People's Congress and local People's Congresses;
- The criminal law;
- The law of criminal procedure;
- The organic law of the People's Courts and of the People's Procuratorates;
- The law on joint ventures with Chinese and foreign investment.

Some of these are revisions of earlier laws now strengthened to expand democratic rights; others, such as the criminal law, are based on earlier drafts which were never promulgated. An explanation of these laws is published in *Beijing Review*, 13 July 79. Here we can only comment on some of the more important features.

National and local People's Congresses

Nominations to Congresses can now be made by the Communist Party, the various democratic parties, people's organisations or any four electors. The former practice whereby the number of candidates equalled the number of seats has been changed to provide that the number of candidates exceeds the number of deputies to be elected. Direct elections, which formerly were confined to communes and towns, are now extended to the county level. Direct election of People's Congresses was proposed by Zhou Enlai in 1957 but not followed up.

Local People's Congresses and their Standing Committees are elected by secret ballot and the people have the right to recall their deputies. The local organ of administration, the local people's government, replaces the local Revolutionary Committee. Members of the local people's governments are to be elected and can be recalled, or are to be appointed and can be removed by the local People's Congresses or their Standing Committees. The National People's Congress and the Congresses of provinces and municipalities directly under the Central Government are elected for a term of five years; at county, city and municipal district level the term is three years; People's Congresses of communes and towns are elected for two years.

One of those who took part in revising the original electoral law, Li Guangcan, commented in an interview with Xinhua News Agency on 4 July 79:

China's new electoral law takes a big step forward in comparison with the electoral law of 1953. But nevertheless it remains inadequate and represents a transition stage in the development of a socialist universal electoral system.

The Criminal Law

We saw that Dong Biwu in 1956 was emphasising the need for a Criminal Law and no less than 30 drafts were prepared before the Cultural Revolution. The present law is based on the thirty-third draft. The new law sets out to protect the interests of the people and the state

by imposing penalties to combat all counter-revolutionary and other criminal offences. It explicitly protects the rights of citizens against unlawful infringement by any person or institution, specifically prohibiting the extortion of confessions, the use of torture, unlawful imprisonment and frame-ups. Fabrications to frame-up another person are criminally accountable.

Peng Zhen, Director of the Commission for Legal Affairs, said to the National People's Congress in June:

we must defend the right to criticise and raise suggestions about leadership and work—all of which must be strictly distinguished from libel and insults. The state does not permit suppression of criticism and democracy in the name of the above provisions of the law, nor does it permit insults and libel against another person in the name of democracy.

Much has been made in the Western press of 'Democracy Wall' and the so-called dissidents. Article 90 of the new criminal law states in clear-cut terms that counter-revolutionary offences are limited to *acts* 'undermining the People's Republic of China with the aim of overthrowing the political power of the proletariat and the socialist system'.

Capital punishment is not abolished but, with increasing stability and unity, it has less prominence in the new law. The provisions for reprieve are retained. To avoid irreversible penalties in cases involving unjust, wrong or false charges, provision is made that the death penalty shall be inflicted only by the judgement or with the approval of the Supreme People's Court.

The Law of Criminal Procedure

In 164 articles this law sets forth for the first time since 1949 the ideological guide-lines and basic principles for criminal proceedings. Especially important, in view of the injustices committed under Lin Biao and the Four are the provisions that all citizens are equal before the law, that no privilege is permissible and that only the public security organs, the People's Procuratorate and the People's Courts have powers to investigate, prosecute, try cases and impose verdicts. No other government organ, institution, organisation or person has the right to exercise such powers. Addressing the closing session of the National People's Congress, Ye Jianying, Chairman of the Standing Committee of the NPC, spelled out what this meant:

All citizens are equal before the law, whether or not they are Party members and whatever their rank, social position and class origin. Whatever is in conformity with the law shall be protected by it, and whatever is in violation of the law shall be investigated. . . .

The people have the right and responsibility to supervise the enforcement of laws and safeguard the dignity of the socialist legal system.

By Article 35 the court shall rely on evidence and not accept lightly confessions by the accused. As well as the right to defend himself, the defendant may employ in his defence a lawyer, close relative, guardian or citizens recommended by the people's organisations or the unit the accused belongs to. To encourage the accused to exercise his right of appeal, the court of second instance is not allowed to aggravate the punishment decided by the court of first instance.

The Criminal Law and the Law on Criminal Procedure are not copied from any other country, nor are they extensions of the law in old China, explained Ling Yun, Vice-Minister of Public Security: 'They are based on New China's Constitution and the experience, both positive and negative, gained in public security and judicial work over the last 30 years.'

The lightest punishment (supervision by the masses), he added, is a feature unique to China, in line with the policy of arresting the least possible number of people. Those under supervision work in their original organisations, receive equal pay for equal work and live at home, but are deprived of certain political rights whilst under supervision. This, stated Ling Yun, 'is an expression of both the solemnity of the law and the policy of leniency and revolutionary humanitarianism'.

Organic Law of the People's Courts

Few changes have been made in the law enacted in 1954. The courts must accept the supervision of the masses, use the system of people's assessors and enable the public to participate in open criminal trials. People's Courts are accountable to the local People's Congresses.

People's assessors will be elected at the same time as deputies to People's Congresses. They are representatives of the masses participating in administering justice. They have equal rights with judges, access to all the material on cases, the right to question defendants and witnesses and to examine evidence. By the end of June 1979 some 2,000 people's assessors in Beijing had been trained. In some areas, People's Courts have set up economic divisions to deal with relations between enterprises (such as breach of contract), embezzlement of workers' wages or state funds and similar questions. An interesting function of these divisions is to deal with failure to treat industrial wastes or neglect operational safety, which can seriously impair the health of workers or peasants or damage public interests.

Organic Law of the People's Procuratorates

The procuratorates are legal supervisory organs of the state, but are not subject to interference by administrative organs or individuals. The Chief Procurators are elected by the People's Congresses at various levels.

Peng Zhen, in his address to the National People's Congress, spoke of the need to strengthen the personnel in public security, procuratorial and judicial work. It is necessary, he said, to choose

old, middle-aged and young people who have distinguished themselves as model workers and pioneers on various fronts and who are fair and honest in their dealings and enthusiastic in serving the people and working for socialism. These people may lack judicial knowledge and experience, but they have rich experience and knowledge in social practice.

The Law of Joint Ventures

The activities of a joint venture shall be subject to Chinese law, which will also protect the foreign participants' investment. The technical contribution of foreign participants shall be up to advanced world standards and appropriate to China's needs.

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Other laws are to follow and the Standing Committee of the National People's Congress is to draft the civil law, the law of civil procedure, the marriage law, the family planning law, the factory law, the labour law, the energy law and the law of environmental protection.

Lin Biao and the Four treated the Constitution, with its provisions for civil rights, as a 'scrap of paper'. The promulgation of the new laws, in itself, is no *guarantee* that socialist legality will be observed and the people's civil liberties safeguarded. Much will depend on the mass movement for democracy and legality now opening up in China which, apart from the study of the new legal provisions, is also exposing and attacking the practices of some cadres who take advantage of their positions to feather their own nests and who expect privileges for themselves and their children.

The new laws, by setting forth in black and white principles and procedures, rights and duties which break decisively with the paternalistic concepts of the feudal past, will be a powerful instrument to educate the people in socialist relations.

In an article in *Beijing Review* (15 June 79) Wu Jialin comments:

Our socialist system determines that our socialist democracy should and can be superior to bourgeois democracy. But 'should be' does not mean 'actually is' and 'can' does not denote 'in reality'.

China is now embarking on the task, by no means easy given the heavy burden of the past, of transforming 'should be' into 'really is'.

Further Reading

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CORRESPONDENCE

THE CULTURAL REVOLUTION Towards a Reassessment

In an article under the title above, Sean Sayers noted, quite correctly, in *Broadsheet* (August) that while the Chinese 'do not yet feel the time is ripe for a general and overall evaluation of the Cultural Revolution, it is clear that they have been re-evaluating and re-assessing many of the particular policies, institutions and ideas of that period'. Though agreeing with much that Sayers writes, I find it hard to reconcile his warning with his later sentence: 'We are now in a position to begin to give a general assessment of the Cultural Revolution'.

Unintentionally, perhaps, he seems to be closing the door to further discussion when the need is to open it wider. Granted that final judgements are premature, nevertheless there is reason for deeper probing.

Certainly, one of the struggles in China that deserves more attention is the Anti-rightist Movement, initiated on June 8, 1957, that abruptly ended the period of the Hundred Flowers. Sayers does not mention it, but he can scarcely be faulted since western authors writing whole books on the Cultural Revolution have generally ignored it. To the credit of the present leadership in China, we should observe that they have taken the trouble to re-examine this earlier struggle and to rehabilitate some of those unjustly victimized—notably, Ding Ling the novelist, and Ai Qing, the poet.

A brief review of some of the major events of this period may be helpful: In February 1956, Khrushchev made his 'secret' but world-publicised speech denouncing Stalin to the 20th Congress, which was followed by a counter-revolutionary thrust in Hungary and riots in Poland. Mao's 1956 speeches reflected his concern with problems of democracy and dissent; in April he delivered *On the Ten Major Relationships* but, owing to inner-party differences, the text was not officially released until 11 years later. At the Eighth Party Congress in August, Mao played a relatively minor role and later criticised some of its theses, especially its estimate that 'the contradiction between the proletariat and the bourgeoisie in our country has been basically resolved.' Mao reasserted his view that 'the contradiction between the proletariat and the bourgeoisie, between the socialist road and the capitalist road, is undoubtedly the principal contradiction in China's present day society'. In February 1957, he gave his speech *On the Correct Handling of Contradictions Among the People*, in which he issued the call for 'great democracy' with the slogan, *Let a Hundred Flowers Blossom, Let a Hundred Schools of Thought Contend*.

During the next two months, the torrent of wall posters and speeches increased, along with what was described as 'the storm in the universities'. Party members, bound by discipline, remained silent even in the face of false charges. Emboldened, some dissidents openly called for an end to socialism and a few for Mao's execution. Unquestionably, the outpouring of criticism and abuse far exceeded the expectations of party leaders, and Mao himself joined in support of the Anti-rightist Movement that closed out the short-lived Hundred Flowers period.

The Anti-rightist Movement swiftly silenced the critics, who were denounced as 'rightists' and 'anti-socialists'. The intellectuals, for whose support Mao had made a special plea in his February speech, became the chief targets of attack. Unfortunately, the distinction between antagonistic contradictions and those among the people was too often ignored, and the failure to correct these mistakes at the time encouraged their repetition

later during the Cultural Revolution. To be labelled a 'rightist' was almost *ipso facto* equivalent to being considered a 'counter-revolutionary'. The excesses committed and largely uncorrected in the Anti-rightist Movement helped to pave the way for ultra-'leftism' in the Cultural Revolution. Owing to the prompt, decisive action of Chairman Hua Guofeng in arresting the Gang of Four, an action supported by the Chinese masses, its dominance was brief.

While acknowledging 'excesses' of the Cultural Revolution, Sayers adjudges it 'a momentous political event, a brilliant and important political achievement of Mao and the Chinese people, which has taken the theory and practice of socialism to a new stage'. He adds, 'It was the culmination of Mao's theory that contradictions among the people, classes and class struggle, continue to exist in socialist society'. In assessing a Cultural Revolution, one should, it might seem, ask what contributions it made to culture—to art, literature, drama, music, films, etc—but Sayers does not. He says, 'It brought enormous political and social changes in factories, farms, schools, hospitals, offices and elsewhere in society'. But specifically what?

At this time, however, I would like to call attention to what seems the most glaring omission in Sayers' assessment—that is, his failure to mention the damage done to the Communist Party of China. Important as other considerations may be, the Party suffered a considerable loss of credibility and its effectiveness as a vanguard has been impaired. Many senior members of the Central Committee who had earlier been toppled have now been rehabilitated, and while the readiness of the present Party leaders to correct mistakes is a good sign indeed, there can be no doubt that the Party has been seriously weakened by the machinations of Lin Biao and the Gang of Four.

One of those posthumously rehabilitated is Peng Tehuai, the former Defence Minister, whose criticisms of the Great Leap brought him under heavy fire at the time. Today, however, it appears that his criticisms are deemed essentially correct by the Chinese leadership and that his adherence to party procedure in making these criticisms was strictly proper. Now that Wang Guangmei, the widow of Liu Shaoqi, has been restored, it seems only a matter of time before Liu Shaoqi himself will be rehabilitated, albeit posthumously.

Inner-party struggle has created grave problems in nearly all Communist Parties, and notwithstanding the long experience of the Chinese Party, it too has had difficulties at times. Its chief strength has been its willingness to reappraise its actions and to correct errors. During the Cultural Revolution, contradictions among the people were too frequently dealt with as antagonistic, and the task of re-examining and sifting the evidence, finding out what charges may be true and what are false, is not an easy one.

In his report to the National People's Congress on June 18, 1979, Premier Hua Guofeng said 'we recognise both that class struggle has not yet come to an end and that at the same time there is no longer any need for large-scale and turbulent class struggle waged by the masses'. After some explanation of what this means, he declared: 'But class struggle is no longer the principal contradiction in our society; in waging it we must centre around and serve the central task of socialist modernisation'. This new estimate of the principal contradiction is obviously very significant.

Until the Chinese complete their investigations and make their reassessment of the Cultural Revolution, foreign commentators cannot be expected to assess the authenticity of documents and the validity of all the accusations. Meanwhile, however, Chinese Party leaders no longer cite Mao's earlier rating of 70-30 and a current estimate would in all likelihood be lower.

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