

New Developments in Western Studies of Chinese Law: A Symposium

Introduction

JEROME ALAN COHEN

WHATEVER else the nineteen sixties may be remembered for—the proliferation of macroweapons, microstates or miniskirts—historians of the decade might allot a footnote to the more modest, but less disconcerting, proliferation of English language studies of Chinese law. Thirty years ago a survey of then recent research on Chinese law¹ revealed “an increased interest on the part of Chinese, Japanese, and Western scholars.” The author noted that, although “[t]he amount of work achieved . . . constitutes as yet but a slight beginning in what is still a largely unworked field,” it “clearly indicates the potential contributions which further researches can make to our understanding of the evolution of Chinese social, economic and political life and institutions.” No one rose to dispute the author's conclusion that Chinese law offers “a rich source from which to derive a more realistic appraisal of the forces actually at work in Chinese society at different epochs. . . .” Yet, except in Japan, where all scholars of things Chinese received additional stimulus from the adventitious circumstances of international politics, the cumulative impact of the Sino-Japanese War, World War II, the Chinese Civil War and the triumph of Communism slowed the development of what had been a promising academic field.²

For almost a generation English language research in Chinese law lay in the doldrums. In Great Britain, although occasional articles were published during this period,³ no work comparable to that previously done by Staunton,⁴ Alabaster⁵ or

Jerome Alan Cohen is Professor of Law at Harvard University.

¹ Cyrus H. Peake, “Recent Studies On Chinese Law,” *Political Science Quarterly*, LII (1937), p. 117.

² For Japanese scholarship on Chinese law before 1953, see John K. Fairbank and Masataka Banno, *Japanese Studies of Modern China* (Rutland, Vt. and Tokyo, 1955), pp. 73–80; for publications during the period 1945–1960, see Hirano Katsuaki, “Sengo ni okeru Chūgoku hō kankei bunken mokuroku” [A Bibliography of Post-War Publications on Chinese Law], *Hogaku shirin*, LVIII (1961), pp. 178–199; and for a convenient listing in English of Japanese language books and articles on Chinese Communist law, see “Japanisches Schrifttum zum Recht der Volksdemokratien Asiens,” *Osteuropa-Recht*, VI (1960), pp. 303–305; and Hisashi Uchida, “Japanisches Schrifttum zum Recht der Ostblockstaaten,” *id.*, IX (1963), pp. 239–264.

³ See, e.g., D. E. Greenfield, “Marriage By Chinese Law and Custom In Hongkong,” *International and Comparative Law Quarterly*, VII (1958), pp. 437–451; Henry McAleavy, “Dien in China and Vietnam,” *JAS*, XVII (1958), pp. 403–415; and Denis Twitchett, “The Fragment of the T'ang Ordinances of the Department of Waterways Discovered at Tunhuang,” *Asia Major*, N.S., VI (1957), pp. 23–79; and “The Fan Clan's Charitable Estate, 1050–1760,” in *Confucianism in Action* (Nivison and Wright, ed., Stanford, 1959).

⁴ George T. Staunton, *Ta Tsing Leu Lee, Being the Fundamental Laws . . . of the Penal Code of China* (London, 1810).

⁵ Ernest Alabaster, *Notes and Commentaries on Chinese Criminal Law* (London, 1899); “Notes on Chinese Law and Practice Preceding Revision,” *Journal of the North China Branch, Royal Asiatic Society*, N.S., XXXVII (1906), pp. 83–149; “Dips into an Imperial Law Officer's Compendium,” *Monumenta Serica*, II (1936), pp. 426–436.

Jamieson⁶ appeared. Nor, apart from Roscoe Pound,⁷ did the United States produce successors to Americans who, in the course of assisting China to develop modern law schools and legal institutions during the late nineteenth and early twentieth centuries, had published a variety of studies and reports on Chinese law.⁸ Moreover, Chinese lawyers with Western training, who had begun to add to our understanding of their country's legal heritage,⁹ seem increasingly to have been diverted from this pursuit.¹⁰

If one looked to the continent for consolation, the situation was little better, except in the Netherlands. Shortly after the War, a number of Dutch scholars renewed the Leiden school's distinguished tradition of law and sinology and, ironically, produced some of the best writing that has appeared in English.¹¹ But in post-war France the impressive precedents that had been set by Philastre,¹² Hoang,¹³ Pelliot,¹⁴ Deloustal,¹⁵ Boulais,¹⁶ Maspéro,¹⁷ Escarra,¹⁸ and others inspired few emu-

⁶ George Jamieson, *Chinese Family and Commercial Law* (Shanghai, 1921).

⁷ In 1946, ten years after his retirement as Dean of Harvard Law School, Pound, at the age of seventy-five, became adviser to the Ministry of Justice of the Republic of China for two years. See Pound, *Some Problems of the Administration of Justice in China* (Nanking, 1948); "The Chinese Constitution," *New York University Law Quarterly Review*, XXII (1947), pp. 194-232; "Progress of the Law in China," *Washington Law Review*, XXIII (1948), pp. 345-362; "Comparative Law and History as Bases for Chinese Law," *Harvard Law Review*, LXI (1948), pp. 749-762; and "The Chinese Civil Code in Action," *Tulane Law Review*, XXIX (1955), pp. 277-291.

⁸ See, e.g., W. A. P. Martin, *Traces of International Law in Ancient China* (N.P., 1881); T. R. Jernigan, *China in Law and Commerce* (New York, 1905); R. T. Bryan, Jr., *An Outline of Chinese Civil Law* (Shanghai, 1925); W. W. Blume, "Christian Legal Education in China," *China Law Review*, I (1922-1924), pp. 131-134; and "Legal Education in China," *id.*, pp. 305-311; and C. S. Lobingier, "The Corpus Juris of New China," *Tulane Law Review*, XIX (1945), pp. 512-552, which lists that author's numerous prewar essays.

⁹ See, e.g., John C. H. Wu, *The Art of Law* (Shanghai, 1936); Boyer P. H. Chu, *Commentaries on the Chinese Civil Code* (Shanghai, 1935); and F. T. Cheng, *The Chinese Supreme Court Decisions* (Peking, 1923).

¹⁰ For sporadic exceptions, see Chao-Lung Yang, "Powers of Chinese Courts," *Vanderbilt Law Review*, I (1947) pp. 16-46; Yu Kwei, "Some Judicial Problems Facing China," *Washington Law Review*, XXIII (1948), pp. 363-374; Tien-Hsi Cheng, "The Development and Reform of Chinese Law," *Current Legal Problems*, I (1948), pp. 170-187; Chiyen Chen, "The Foster Daughter-In-Law System in Formosa," *American Journal of Comparative Law*, VI (1957), pp. 302-314; and Chin-Sui Liu, "The Chinese Council of Grand Justices," *id.*, VII (1958), pp. 402-408.

¹¹ See especially Marinus J. Meijer, *The Introduction of Modern Criminal Law in China* (Batavia [Jakarta], 1949); M. H. Van der Valk, *Interpretations of the Supreme Court at Peking, Years 1915 and 1916* (Batavia [Jakarta], 1949), and *Conservatism in Modern Chinese Family Law* (Leiden, 1956); A. F. P. Hulswé, *Remnants of Han Law*, Vol. I (Leiden, 1955); Robert H. Van Gulik, *T'ang-yin-pi-shih, "Parallel Cases from under the Pear-tree"* (Leiden, 1956).

¹² P. L. F. Philastre, *Le Code Annamite*, etc., 2 vols. (Paris, 1876; second ed., 1909).

¹³ Pierre Hoang, *Notions Techniques Sur La Propriété En Chine* (Shanghai, 1897); and *Le Mariage Chinois Au Point De Vue Légal* (Shanghai, 1898).

¹⁴ Paul Pelliot, "Notes de bibliographie chinoise, II: Le Droit chinois," *Bulletin de l'École Française d'Extrême Orient*, IX (1909), pp. 123-152.

¹⁵ Raymond Deloustal, "La justice dans l'ancien Annam," *Bulletin de l'École Française d'Extrême Orient*, VIII-XIII (1908-1913); XIX (1919); XXII (1922).

¹⁶ Guy Boulais, *Manuel de code chinois* (Shanghai, 1924).

¹⁷ Henri Maspéro, "Le Serment dans la procédure judiciaire de la Chine antique," *Mélanges chinois et bouddhiques*, III (1934-1935), pp. 257-317.

¹⁸ Jean Escarra, *Le Droit chinois* (Peking, 1936). This work has been translated into English: Gertrude R. Browne, tr., *Chinese Law* (Seattle, 1936), reprinted (xerox) (Cambridge, Mass., 1961). For other useful work by Escarra, see, e.g., "Western methods of researches into Chinese law," *Chinese Social and Political Science Review*, VIII (1924), pp. 227-248.

lators.¹⁹ And Karl Büniger's departure to diplomacy in the early nineteen fifties deprived post-war Germany of its foremost specialist in Chinese law,²⁰ although scattered articles by others kept alive the flame.²¹

This bleak Western picture began to brighten in the early nineteen sixties with the publication by non-lawyers of a number of important books in English relating to pre-modern Chinese law. Although not explicitly focussed on the legal system, Hsiao Kung-chuan's "Rural China, Imperial Control in the Nineteenth Century"²² proved to be a mine of information on the actual functioning of informal and formal legal processes. Shortly thereafter, Ch'ü T'ung-tsu published a revised and improved English version of his earlier Chinese text, "Law and Society in Traditional China,"²³ which analyzed the relation of pre-modern substantive law to China's ideology, social structure and value system. This was followed in 1962 by Ch'ü's "Local Government in China under the Ch'ing,"²⁴ a detailed study of the personnel and procedures of the basic level organization for administering the substantive law. In the very same year Sybille van der Sprenkel produced "Legal Institutions in Manchu China,"²⁵ a concise, comprehensive and well written synthesis of existing learning that, despite its sociological disclaimer of legal competence, might well have been subtitled "What every young lawyer should know about traditional Chinese law." And Denis Twitchett's "Financial Administration Under the T'ang" shed new light on the formative epoch of the traditional system.²⁶

Even more encouraging in terms of the long range development of the field has been the recent realization by American law faculties that the study of Chinese law is too important to be left exclusively to non-lawyers—a position that sinologists had been unsuccessfully urging for years. Not only have law schools in this country begun to support research in Chinese law, but, more significantly, in view of the strong teaching emphasis in American legal education, they have also begun to introduce courses in Chinese law into their curricula. In 1960 no American law school offered instruction in this subject. Today it is taught in the law schools of the University of California (Berkeley), Harvard, the University of Indiana, the University of Michigan, N.Y.U., the University of Pennsylvania, the University of Washington, and Washington University (St. Louis). Columbia, George Washington University, and Yale have also experimented in this area, and other institutions are preparing to do the same. Given the professional orientation of law schools, this is a remarkable development. To be sure, some of the impetus for it has derived

¹⁹ For happy exceptions, see Étienne Balazs, *Le Traité juridique du "Souei-chou"* (Leiden, 1954); and Jacques Gernet, "La Vente en Chine d'après les contrats de Touen-houang (IXe-Xe siècles)," *T'oung Pao*, XLV (1957), pp. 295-391.

²⁰ See, e.g., Karl Büniger, *Quellen zur Rechtsgeschichte der T'ang Zeit* (Peiping, 1946); "The Punishment of Lunatics and Negligents According to Classical Chinese Law," *Studia Serica*, IX (1950), pp. 1-16.

²¹ See especially Eduard J. M. Kroker, "Rechtsgewohnheiten in der Provinz Shantung," *Monumenta Serica*, XIV (1955), pp. 215-302; "Dienst-und Werkverträge im chinesischen Gewohnheitsrecht," *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, CVII (1957), pp. 130-160; and "The Concept of Property in Chinese Customary Law," *Transactions of the Asiatic Society of Japan*, 3d series, VII (1959), pp. 123-146.

²² Seattle, 1960.

²³ Paris and The Hague, 1961.

²⁴ Cambridge, Mass., 1962.

²⁵ London, 1962.

²⁶ Cambridge, England, 1963.

from considerations of the "know-thine-enemy" stripe, and occasionally one has the feeling that, just as every nation that aspires to great power status must have an atomic bomb, so too every aspiring law school must have a Chinese law course, if only to appear among the *avant-garde* on the next trip to the Ford Foundation. But one need not seek ulterior motives, for, as Max Weber demonstrated long ago, the Chinese legal experience has much to contribute to the study of both law and the processes of modernization. Moreover, as an increasing number of law firms and government agencies have come to recognize, various aspects of contemporary Chinese law even relate to what law graduates do, both in public and private capacities.²⁷

This belated interest of American law schools in Chinese law is now beginning to have an impact upon scholarship. Law-trained people, some of whom are Chinese, have already published a substantial number of articles. Because legal scholarship is customarily concerned with current problems, because foundation grants are often readily available for studies of Communism, and because the requirements for research in legal history are formidable, most of these articles deal with Communist China. There have been studies of legal institutions and procedures,²⁸ criminal law,²⁹ civil law,³⁰ public international law,³¹ legal aspects of international trade,³²

²⁷ See, e.g., *Kristovich, Public Administrator v. Shu Tong Ng*, 228 California Appellate 2d 160 (1964), certiorari denied by the United States Supreme Court, 381 U.S. 902 (1965); and *Louknitsky v. Louknitsky*, 123 California Appellate 2d 406 (1954); these were respectively an inheritance case and a divorce case in which, had expert testimony on Chinese law been produced, it would have facilitated enlightened judicial decision-making. See also Gabriele Crespi Reghizzi, "Legal Aspects of Trade with China: The Italian Experience," *Harvard International Law Journal*, IX (Winter, 1968), pp. 85-139; Victor H. Li, "Legal Aspects of Trade with Communist China," *Columbia Journal of Transnational Law*, III (1964), pp. 57-71. In negotiating the recent treaty on outer space, one of the frustrations experienced by members of the American delegation to the United Nations arose from their inability to find within the United States Government someone trained in both law and Chinese studies who could verify the accuracy of the Chinese version of the treaty, which had been prepared by the U.N. Secretariat. The United States finally had to rely on the approval of the delegation of the Republic of China.

²⁸ See David C. Buxbaum, "Preliminary Trends in the Development of the Legal Institutions of Communist China and the Nature of the Criminal Law," *International and Comparative Law Quarterly*, XI (1962), pp. 1-30; Jerome A. Cohen, "The Criminal Process in the People's Republic of China: An Introduction," *Harvard Law Review*, LXXIX (1966), pp. 469-533; Gene T. Hsiao, "Communist China: Legal Institutions," *Problems of Communism*, XIV (1965), pp. 112-121; Luke T. Lee, "Chinese Communist Law: Its Background and Development," *Michigan Law Review*, LX (1962), pp. 439-472; George Ginsburgs, "Theory And Practice of Parliamentary Procedure in Communist China: Organizational and Institutional Principles," *University of Toronto Law Journal*, XV (1963), pp. 1-48; G. Ginsburgs and Arthur Stahnke, "The Genesis of the People's Procuratorate in Communist China, 1949-1951," *China Quarterly*, No. 20 (1964), pp. 1-37, and "The People's Procuratorate in Communist China: The Period of Maturation, 1951-54," *China Quarterly*, No. 24. (1965), pp. 53-91.

²⁹ See the articles by Buxbaum, Cohen, Hsiao, Lee, and Ginsburgs and Stahnke cited in note 28; also David C. Buxbaum, "Horizontal and Vertical Influences Upon the Substantive Criminal Law in China: Some Preliminary Observations," *Osteuropa-Recht*, X (1964), pp. 31-51; Tao-tai Hsia, "Justice in Peking: China's Legal System on Show," *Current Scene*, V (1967), pp. 1-12; Fu-shun Lin, "Communist China's Emerging Fundamentals of Criminal Law," *American Journal of Comparative Law*, XIII (1964), pp. 80-93; and Lung-sheng Tao, "The Criminal Law of Communist China," *Cornell Law Quarterly*, LII (1966), pp. 43-68.

³⁰ See Gene T. Hsiao, "The Role of Economic Contracts in Communist China," *California Law Review*, LIII (1965), pp. 1029-1060; Richard M. Pfeiffer, "The Institution of Contracts in the Chinese People's Republic," *China Quarterly*, No. 14 (1963), pp. 153-177, and No. 15 (1963), pp. 115-139; and "Contracts in China Revisited, With a Focus on Agriculture, 1949-63," *China Quarterly*, No. 28 (1966), pp. 106-129.

³¹ See Hungdah Chiu, "Communist China's Attitude Toward International Law," *American Journal of International Law* (hereafter *AJIL*), LX (1966), pp. 245-267; "The Theory and Practice of Com-

and problems of research methodology.³³ But even lawyers preoccupied with the present want to know how it got that way and how to evaluate it. Thus there is a growing interest in studying the traditional legal system and non-Communist efforts to modernize it.³⁴

Very recently, largely but not exclusively as a result of law school programs, the pace of book publication has quickened. After collaborating for six years in a course at the University of Pennsylvania Law School, a distinguished sinologist, Derk Bodde, and a distinguished legal scholar, Clarence Morris, have produced a major work, "Law In Imperial China";³⁵ this volume of commentary and translated cases presents the most comprehensive analysis of the Ch'ing dynasty's judicial process yet to appear in the West and also serves as an excellent vehicle for classroom discussion. My own teaching materials on Communist sanctioning processes have just been published,³⁶ as has Leng Shao-chuan's study of the evolution of Communist judicial institutions.³⁷ Happily, research aids are also gradually emerging. Lin Fu-shun has compiled a bibliography of English language sources on Chinese law.³⁸ Along with an essay on the administration of justice in the People's Republic, Hsia Tao-tai has published a list of its 1949-1963 legislation and of legal articles from mainland periodicals.³⁹ And the Harvard Law School Library's "Preliminary Union List of Materials on Chinese Law" has now appeared.⁴⁰

British and continental lawyers have not attempted to duplicate this American

munist China With Respect to the Conclusion of Treaties," *Columbia Journal of Transnational Law*, V (1966), pp. 1-13; "Communist China And The Law Of Outer Space," *International and Comparative Law Quarterly*, XVI (1967), pp. 1135-1138; "Certain Legal Aspects Of Communist China's Treaty Practice," *Proceedings of the American Society of International Law* (hereafter *Proceedings*) (1967), pp. 117-126; and "Communist China's Attitude Toward the United Nations: A Legal Analysis," *AJIL*, LXII (1968), pp. 20-50; Jerome A. Cohen, "Chinese Attitudes Toward International Law—And Our Own," *Proceedings* (1967), pp. 108-116; R. Randle Edwards, "The Attitude Of The People's Republic Of China Toward International Law And The United Nations," *Papers On China*, XVII (Harvard University, 1963), pp. 235-271; Tao-tai Hsia, "Settlement Of Dual Nationality Between Communist China And Other Countries," *Osteuropa-Recht*, XI (1965), pp. 27-38; and Douglas Johnston, "Treaty Analysis And Communist China: Preliminary Observations," *Proceedings* (1967), pp. 126-134. For an interesting article by a political scientist, see Shao-chuan Leng, "Communist China's Position On Nuclear Arms Control," *Virginia Journal of International Law*, VII (1966), pp. 101-116.

³² See articles by Crespi Reghizzi and Li, note 27, and Gene T. Hsiao, "Communist China's Foreign Trade Organization," *Vanderbilt Law Review*, XX (1967), pp. 303-319.

³³ Jerome A. Cohen, "Interviewing Chinese Refugees: Indispensable Aid To Legal Research on China," *Journal of Legal Education*, XX (1967), pp. 33-62.

³⁴ See Jerome A. Cohen, "Chinese Mediation on the Eve of Modernization," *California Law Review*, LIX (1966), pp. 1201-1226; David C. Buxbaum, *Osteuropa-Recht*, note 29, and "Chinese Family Law in a Common Law Setting," *JAS*, XXV (1966), pp. 621-644; Herbert H. P. Ma, "The Chinese Control Yuan: An Independent Supervisory Organ of the State," *Washington University Law Quarterly* (1963), pp. 401-426; and Wen Yen Tsao, "The Chinese Family from Customary Law to Positive Law," *Hastings Law Journal*, XVII (1966), pp. 727-765. For an historian's analysis of some Ch'ing judicial decisions, see Judy F. Harrison, "Wrongful Treatment of Prisoners: A Case Study of Ch'ing Legal Practice," *JAS*, XXIII (1964), pp. 227-244.

³⁵ Cambridge, Mass., 1967.

³⁶ Jerome A. Cohen, *The Criminal Process in the People's Republic of China, 1949-1963: An Introduction* (Cambridge, Mass., 1968).

³⁷ *Justice in Communist China* (New York, 1967).

³⁸ *Chinese Law, Past and Present* (New York, 1966).

³⁹ *Guide To Selected Legal Sources of Mainland China* (Washington, D. C., 1967).

⁴⁰ Cambridge, Mass., 1968. This volume was sponsored by the Joint Committee on Contemporary China's Subcommittee on Chinese Law, whose origin and activities are discussed below.

great leap forward,¹ but promising developments seem to be under way in a number of countries. In Britain, Henry McAleavy, who continues to include occasional articles on law among his varied interests,⁴¹ now has Anthony Dicks as a colleague.⁴² In the Netherlands, M. H. van der Valk has maintained a steady output of informative articles in English,⁴³ and Marinus Meijer and A. F. P. Hulswé are preparing volumes on the Communist and Han periods, respectively. There has been a marked increase in German language publications on traditional law.⁴⁴ Scholars at the Université Libre de Bruxelles have produced several works.⁴⁵ And a young Italian, Gabriele Crespi Reghizzi, has begun to introduce the subject of contemporary Chinese law in his country.⁴⁶ Unfortunately, France's establishment of diplomatic relations with mainland China does not yet seem to have spurred French lawyers to action, although sinological research in legal history has not entirely disappeared.⁴⁷

Those who have engaged in this recent flurry of activity have encountered common problems. Not surprisingly, the most immediate and intractable of these is the translation of Chinese legal terms. Anyone who has ever attempted to render provisions of the Ch'ing Code into English has confronted as exasperating a challenge as is known to legal scholarship. Alabaster, for example, long ago warned that, while there were a vast number of resemblances between Chinese and Western legal systems, there were very few real analogies. It was, therefore, dangerous, he maintained, to apply foreign legal terms to Chinese law; to do so "clothes the language artificially and gives it a baboon-like look."⁴⁸ Yet it is difficult, to say the least, for lawyers to escape their own language, the indispensable system of specialized communication that constitutes the very bond of their profession. Is it any wonder that

⁴¹ See, e.g., "The People's Courts in Communist China," *American Journal of Comparative Law*, XI (1962), pp. 52-65.

⁴² See Dicks, Review of Ni Cheng-ao, *kuo-chi-fa-chung-te ssu-fa kuan-hsia wen-t'i* [Problems of Jurisdiction in International Law], *International and Comparative Law Quarterly*, XV (1966), pp. 913-915.

⁴³ See "Voluntary Surrender In Chinese Law," in *Law In Eastern Europe*, XIV (1967), pp. 359-394; "Movables And Immoveables And Connected Subjects In Chinese Law," *id.*, VII (1963), pp. 167-206; "[The Law Of Inheritance In] China," *id.*, V (1961), pp. 297-364; "Security Rights In Communist China," *Osteuropa-Recht*, IX (1963), pp. 210-235.

⁴⁴ Eduard J. M. Kroker has continued to be productive; see "Sachenrechtliche Gewohnheiten in der Provinz Feng-t'ien (China)," *Zeitschrift für vergleichende Rechtswissenschaft* (hereafter ZVR), LXII (1960), pp. 1-84; and "Rechtsgewohnheiten in Hei-lung-chiang (China)," ZVR, LXVI (1964), pp. 29-156. In addition, see, e.g., Klaus Mäding, *Chinesisches traditionelles Erbrecht* (Berlin, 1966); Wolfgang Bauer, "Die Frühgeschichte des Eigentums in China," ZVR, LXIII (1961), pp. 118-184; and Koichi Miyazawa, "Über einige Vorschriften allgemeinen Charakters des 'Kai-Yüan-lü' etc.," *Zeitschrift für die gesamte Strafrechtswissenschaft* (hereafter ZGS) LXXVII (1965), pp. 119-138. For recent studies relating to problems of modernization, see, e.g., Wolf Middendorff, "Strafgerichtsbarkeit und Kriminalität auf Formosa," ZGS, LXXVIII (1966), pp. 3-39; and Wang Tse-chièn, "Die Aufnahme des europäischen Rechts in China," *Archiv für die Civilistische Praxis*, CLXVI (1966), pp. 343-351.

⁴⁵ See Marthe Engelborgh-Bertels et René Dekkers, *La République populaire de Chine, cadres institutionnels et réalisations. I: L'histoire et le droit* (Bruxelles, 1963); Engelborgh-Bertels, "L'Assimilation De L'Esprit Du Droit Occidental En Chine," *Co-existence*, IV (1967), pp. 77-93; Dekkers, "La vie juridique," in *Le régime et les institutions de la république populaire chinoise* (Bruxelles, 1960) pp. 56-68.

⁴⁶ See "Lo Studio Del Sistema Giuridico Cinese Contemporaneo," *L'Est*, No. 3 (1967), pp. 165-205; and "Diritto Cinese E Rivoluzione Culturale," *Rivista Di Diritto Civile*, XIII (1967), pp. 301-305. Also recall the article by Crespi Reghizzi, note 27.

⁴⁷ See Françoise Aubin, "Index de 'Un code des Yuan' de P. Ratchnevsky," *Mélanges publiés par l'Institut des Hautes Etudes Chinoises*, II (1960), pp. 423-515.

⁴⁸ "Notes on Chinese Law and Practice Preceding Revision," *Journal of the North China Branch, Royal Asiatic Society*, N.S. XXXVII (1960), pp. 139-141.

those who seek: an English version of the Ch'ing Code still must turn to Staunton's monumental, but flawed and incomplete, 1810 translation?

Because those who modernized Chinese law in the first half of the twentieth century drew heavily upon continental civil law models, both directly and via Japan, the task of translating Republican terminology into continental languages is somewhat less frustrating than that of dealing with Ch'ing materials. And for Anglo-Americans the problems resemble the familiar and more manageable ones of seeking linguistic analogies between the common and civil law systems.⁴⁹

The advent of Communism, however, has further complicated the terminological situation. Although the Soviet legal system is itself a cousin of the civil law family, the effort to adapt it to Chinese conditions led to the creation of many new Chinese legal and institutional terms for which Western equivalents must be devised. Moreover, although the Communists have retained many Republican terms, they sometimes attach new meanings to them. They have also tended to resurrect certain traditional terms that had fallen into disuse during the Republican era, but again one must be alert to the extent to which the content of these terms has been modified. Finally, because the Chinese Communists have striven to simplify bourgeois legal language and to minimize the training and role of legal experts, their legal terminology often seems loose and opaque, at least in comparison with that of the Republic, if not with that of the Ch'ing.

As a first step in assisting the development of Chinese legal studies, in late 1962 the Joint Committee on Contemporary China of the American Council of Learned Societies and the Social Science Research Council provided support for the compilation of a Chinese-English dictionary of Chinese Communist legal and institutional terms. It was recognized, of course, that at this early stage of scholarship on the People's Republic one could not hope for a dictionary that would capture all the varieties and subtleties of meaning of certain terms and embrace all terms which in the current context ought to be deemed "legal." These refinements would have to await careful analysis of particular legal problems. But one could hope for a working tool that would be of substantial help not only to Western lawyers brash enough to grapple with a language for which there is no contemporary law dictionary, but also to all students of Chinese Communist affairs, including government experts and even Chinese lawyers on both sides of the Bamboo Curtain.⁵⁰ At a minimum, such a tool could be expected to promote standardization of many English equivalents and to direct scholarly attention to the troublesome problems of substance that often must be dealt with before a translation can be deemed suitable. Fortunately, Philip R. Bilancia, now of the University of Washington law faculty, was willing to leave the practice of law to undertake principal responsibility for this large enterprise, and today, after five years of painstaking effort, he has virtually completed the first draft of a manuscript that runs well over a thousand pages. With the aid of other

⁴⁹ Building on earlier versions, the Law Revision Planning Group of the Council for United States Aid of the Republic of China has published very good English translations of the basic legislation in force on Taiwan today and has thereby done a great deal to alleviate problems of coping with Republican terminology. See *Laws of the Republic of China, First Series* (Taipei, 1961), *Second Series* (Taipei, 1962).

⁵⁰ For discussion of inadequacies in the translations of legal materials published by both Peking's Foreign Languages Press and agencies of the United States Government, see Jerome A. Cohen, *Review of A. P. Blaustein, Fundamental Legal Documents of Communist China, Yale Law Journal*, LXXII (1963), pp. 838, 842.

scholars in this field, we will soon revise the manuscript for publication. Although much remains to be done, preliminary indications suggest that the dictionary will vindicate its promise.

Mindful of Chairman Mao's admonition to "walk on two legs," the Joint Committee did not content itself with the dictionary project, but, as part of a broader program, took steps to foster the kind of careful research into particular problems that would begin to move our understanding of Communist legal language beyond the tentative definitions of the draft dictionary. In 1965 it appointed a Subcommittee on Chinese law, whose major mandate was, with the aid of funds provided by the Ford Foundation, to plan a series of conferences designed to enhance cooperation among researchers in this country and abroad. The first of these conferences, designated "Chinese Communist Law: Tools For Research," was convened May 27-30, 1967. Its thirty participants, in addition to discussing papers that surveyed the range of accessible legal materials, the possibilities of supplementing information from published sources with that derived from refugee interviewing, the data and insights to be acquired from resort to Soviet and Japanese studies of Chinese law, and the perspectives offered by sophisticated application of comparative and sociological methodology, devoted approximately half of their time to examining the historical development of modern Chinese legal terminology and the translation problems encountered by specialists in various topics. The conference papers are being edited for publication in a symposium volume, but it seemed appropriate to publish here the thoughtful studies of David Finkelstein, an expert on China's criminal law, and Hungdah Chiu, who has already done much to enlighten us about Chinese attitudes toward international law.

Although the titles of these articles may seem forbidding to the non-lawyer, their "technical" subjects should actually prove to be of interest to students of China in both the social sciences and the humanities, who confront many similar problems. Moreover, the topics discussed, far from being "merely academic," are often matters of concern to foreign offices that must interpret events in China and negotiate with Chinese officialdom. One can infer from Mr. Finkelstein's article that correct understanding of criminal law terminology can sometimes have an important bearing upon political analysis. For example, whether a deposed leader is said to have been "led" rather than "dragged" through the streets may be of only marginal interest to political observers, but it may not be stretching a point to read political significance into whether he was "taken away" or "arrested." "Arrest" indicates incarceration by representatives of the Ministry of Public Security. If the leader was "taken away," however, it suggests that "the masses" may be incarcerating major figures and alerts the observer to the possibility that those in power may no longer regard the public security agency as a reliable instrument of their will, a situation which would raise grave doubts about the stability of the regime. Yet Finkelstein's emphasis on the imprecise way in which the Chinese Communists employ many legal terms should warn the unwary that it is easy to be misled by the use of one term rather than another.

Problems of translating legal terms have plagued the conduct of Sino-Western relations at least since 1689, when the Russian, Latin and Chinese texts of the Treaty of Nerchinsk reflected widely divergent versions of what the parties had agreed to concerning the punishment of criminals. In some negotiations, of course, inaccurate

translation may have been intentionally resorted to as a compromise that postponed resolution of a delicate question or as a device that saved face for one side or both. In other cases, however, discrepancies were undoubtedly the product of genuine linguistic confusion. Even in our own day, as Dr. Chiu illustrates, there have been instances when Western-trained Chinese diplomats, although sensitive to the legal implications of alternative translations, have nevertheless failed to devise appropriate Chinese equivalents for Western terms, with embarrassing consequences for their government; and translation problems that have been perceived during negotiations have sometimes constituted substantial obstacles to diplomatic achievement.

Scholarship such as Chiu's and Finkelstein's should help to prevent future linguistic misunderstanding. Since they represent a young and rapidly increasing group, we can be confident that more help is on the way.

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