

Preface

Chinese law has attracted and mystified foreign legal scholars and merchants for hundreds of years. During the age of Voltaire, Chinese legal and political institutions were widely admired from afar. Europeans at that time had very little real knowledge of the actual substance and administration of China's imperial codes. Yet, they assumed that a country so rich in culture and material wealth must have an excellent and highly advanced legal system. By the early nineteenth century, however, Western merchants were complaining bitterly about Chinese law — the criminal law was perceived as harsh, civil and commercial law as inadequate and the courts as inaccessible to foreigners.

This dramatic shift in perceptions of Chinese laws resulted largely from improvement in Western legal procedures rather than changes in the Chinese legal process. Only in the late eighteenth and early nineteenth centuries did Europeans and Americans begin to acquire real knowledge of China's legal codes and practices through commercial contact, political intercourse, and military conflict. Recent scholarly studies on China's imperial legal system have concluded that it consisted of a comprehensive and systematic criminal code, with elaborate procedures for review and appeal. The principal purpose of the imperial legal process was to reinforce a hierarchical social system and the imperial political order, which relied upon an elite civil service schooled in the Confucian orthodoxy. With the tacit approval of the state, an informal extra-governmental network of family heads and clan leaders wielded great authority over social deviants. In civil and commercial matters, even less guidance was exerted by the state, which was concerned only with household registration and the collection of taxes. All other non-criminal activity was guided by norms of customary law and regulated by guilds and other non-governmental bodies.

Complaints by British merchants about Chinese law were among the factors causing the British government to employ gunboats to open China forcibly to commercial and diplomatic intercourse with the West. This conflict, known as the First Opium War, lasting from 1839 to 1842, ushered in a century of semi-colonialism in China, known to Chinese patriots as the "unequal treaty system" or the "century of humiliation."

During this period, Chinese subjects continued to be governed by traditional legal concepts and procedures. Collective interests were

avored over individual interests and conciliation was preferred to litigation, which was regarded as aggressive, shameful and disruptive of social harmony. Europeans in China, however, enjoyed special extra-territorial rights. In effect, they were subject to the law of their home country or to no law at all. There was little incentive for foreigners, other than legal scholars or anthropologists, to seek genuine understanding of China's formal internal law or actual legal practice.

In the mid-1930's, the Nationalist government of China promulgated six modern legal codes, the result of thirty years of careful study of the experience of Japan and various European countries. While these "Six Codes" were the chief subject of instruction in Chinese law schools during the thirties and forties, they had little impact on actual legal practice outside urban areas, as China was ravaged by the Japanese invasion and civil war for this entire period.

Mao Zedong announced the total abrogation of the Six Codes when the People's Republic of China was established on October 1, 1949. The Communist Party sought, and obtained, a clean slate upon which it would write the revolutionary guidelines intended to lead China to socialism and, ultimately, to communism. During the early 1950's, very few laws were promulgated, as the Party leadership sought to avoid any restrictions on the massive and violent campaigns it employed to eliminate counterrevolutionaries, the landlord class, and the corrupt bourgeoisie. Only in 1954 with the enactment of the first state constitution and other laws did it begin to appear that the Communist Party had decided to place greater reliance on legal institutions.

This trend toward legal formality was short-lived, however, as Mao Zedong launched the Anti-Rightist campaign in 1957. Many law professors and judges were dismissed from their posts and subjected to years of hard labor for espousing "bourgeois legality," a catch-all phrase leveled at advocates of greater independence for the judiciary. The fledgling legal profession was also dismantled in the late 1950's after only two years of experimentation. Although well-received by the public, the legal advisor's offices were closed by the Party because their legal staff was perceived as overly committed to formal legality and to their clients' interests and not sufficiently subservient to Party leadership. The status of law sank even lower during the Cultural Revolution when the courts were closed down completely and the procuracy formally abolished.

Following the death of Mao Zedong, Deng Xiaoping eventually emerged as the paramount leader of China and began to steer Chinese political and economic development in a more pragmatic manner. In

December 1978, the Central Committee of the Chinese Communist Party declared an end to violent political movements, and stated that economic construction should take precedence over political and cultural revolution. All sectors were to undergo structural reform and to develop policies and guidelines fostering scientific research and more efficient economic production and distribution.

Since 1978, China's leaders have regarded development of a comprehensive socialist legal system as a top priority. An eight-year plan for legal development, announced in 1978, called for the rapid expansion of legal education, enlargement of the court structure, drafting of hundreds of laws, and expansion of the legal profession from two thousand to several hundred thousand. The principal aims guiding the explosion of activity in the legal sphere were the establishment of a stable social order and elimination of arbitrary official behavior; reform of the domestic economic structure and enhancement of economic efficiency; and erection of a framework of rules and procedures to attract and protect foreign capital and technology.

Exchange between Chinese and foreign law schools and legal professionals has grown rapidly during the first half of the 1980's. This growth has significantly furthered understanding of the Chinese legal system on the part of foreign scholars and businessmen and has helped Chinese officials and legal scholars engaged in the task of "perfecting socialist legality." The pace of change in Chinese legal policy, law and legal institutions has been so rapid, however, that foreign perceptions often lag far behind Chinese reality. Likewise, Chinese awareness of foreign reaction to their legal reforms is sometimes not very comprehensive or deep.

The *Journal of Chinese Law* has been founded to help foreign scholars, lawyers, businessmen and government officials grasp at least the essence of Chinese law and institutions and the efforts to establish "socialist legality." It is important to cast the net wide — to explore both Chinese legal history and current legal developments, and to address criminal, civil and economic law as well as those rules and procedures pertaining specifically to foreign trade and investment.

The *Journal* will contain translations and original scholarly articles from China, the United States and abroad. It will also feature symposia presenting views of both government legal officials and legal scholars. In addition, the *Journal* will take advantage of the large number of Columbia University law students specializing in Chinese law by publishing outstanding student notes on important issues in Chinese law. The *Journal* will also select for publication articles from Chinese legal periodicals which focus on major topics in China's

ambitious legal development program. It is hoped that the *Journal* will provide those interested in Chinese law with a deeper and more balanced understanding of the theory and practice of Chinese law than is currently provided by available literature.

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