



## **New Developments in Law in the People's Republic of China**

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*Recently, Chinese leaders have begun to promote the development of legal standards and formal legal institutions for China. In this article, Mr. Lubman explores the background and current status of the role of law in China and assesses its relationship to China's economic development, domestic politics, and international economic relations. Mr. Lubman suggests that students of Chinese law must create new theoretical perspectives to study the new developments.*

The leaders of the People's Republic of China, after long refusing to use formal legal institutions in augmenting China's drive for economic modernization, have recently begun to promote the development of formal legal institutions. This has been done not only to facilitate economic development and maintain popular discipline, but also to create objective legal standards. The new emphasis on law is part of the bold new policies of modernization that emphasize economic rationality and orderly decision-making.

The new policies have also begun to involve China in the world economy to an unprecedented extent. Trade will be used for the large-scale importation of foreign technology and equipment and to earn the foreign exchange needed to finance such imports. China will also borrow from abroad. As a result, China will become more a part of the international legal order than it was previously.

The new developments reviewed here pose a challenge to foreign legal scholarship, which has hitherto been merely descriptive and lacking in the development of suitable theoretical models. By attempting to

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create such models, we should be able to expand our understanding of Chinese law, as it has been and as it is now developing.

### RECENT DEVELOPMENTS

Over the past twenty years, formal legal institutions have been accorded a minor role in Chinese society, although not without leadership and lower-level indecision on the role of such institutions.<sup>1</sup> From 1949 to 1957, China experimented, frequently with varying degrees of commitment, with a legal system based in part on that of the Soviet Union and in part on the experience of the Chinese Communist Party in ruling large areas of China before its final victory. A three-tiered judicial system was established, law schools began to train the nucleus of a small bar, and attempts were made to institutionalize substantive and procedural rules.

Throughout these early years of Communist reign, despite some growth of legal institutions, conflicts over leadership, administration, and policy-implementation within the legal system remained unresolved. The relative roles of objective standards vis-a-vis the subjective judgments of administrative cadres, of rules as opposed to persuasion, of legal specialists as opposed to political generalists, were not clearly or consistently defined. Yet, as part of the drive to industrialize China, the framework of a modern legal system was established, some legal specialists were trained, and many laws and regulations were promulgated. By 1956, work was begun on law codes, several legal periodicals were being published with regularity, and the small bar began to be active.

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<sup>1</sup> It is impossible in the brief space available to trace the complicated history of Chinese policies toward law. The interested reader would be well advised to consult an excellent overview, V. LI, *LAW WITHOUT LAWYERS* (1977). The roots of the Chinese Communist policies toward law lie in the history of the Chinese Revolution itself. See, e.g., S. LENG, *JUSTICE IN COMMUNIST CHINA* 1-76 (1967). For a broad interpretation of Chinese Communist attitudes toward law, see Li, *Role of Law in Communist China*, *CHINA Q.*, Oct.-Dec. 1970, at 66.

On criminal law, J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA 1949-1963* (1968), contains many translations of Chinese materials and a useful chronological discussion and an analysis of developments in the Chinese legal system to the mid-1960's. For other works on Chinese criminal law, see Li, *The Evolution and Development of the Chinese Legal System*, in *CHINA: MANAGEMENT OF A REVOLUTIONARY SOCIETY* 221 (J. Lindbeck ed. 1971); Lubman, *Form and Function in the Chinese Criminal Process*, 69 *COLUM. L. REV.* 535 (1969).

No general Western language text or collection of materials on civil law has yet been published. For selected civil law topics, see Lubman, *Methodological Problems in Studying Chinese Communist "Civil Law"* in *CONTEMPORARY CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES* 230 (J. Cohen ed. 1970); Huang, *Reflections on Law and the Economy in the People's Republic of China*, 14 *HARV. INT'L L.J.* 261 (1973); Lubman, *Mao and Mediation: Politics and Dispute Resolution in Communist China*, 55 *CALIF. L. REV.* 1284 (1967); Pfeffer, *Contracts in China Revisited, With a Focus on Agriculture*, *CHINA Q.*, Oct.-Dec. 1966, at 106.

However, attempts to regularize and expand the legal system came to an abrupt halt in 1957. In that year, China's leaders, greatly concerned at the vehemence of much of the criticism that was expressed during the "Hundred Flowers" campaign of 1956-57,<sup>2</sup> launched a campaign against "rightism." Among the chief targets of the campaign were the legal specialists and the codes and objective standards they had promoted. The specialists had complained about the gaps in the law, the failure to make progress on the new codes, and the disregard of established laws and procedures by many cadres. As a result of the campaign, many legal specialists lost their jobs, codification projects were suspended, legal research almost ended, and the content of legal curricula was greatly politicized.

As an additional result of the party's campaign against "rightism," the courts have been little used in China since 1957. Many functions of the courts, such as sanctioning minor offenses, were assigned to the police, to the local neighborhood organizations in the cities and in the lower levels of the rural communes, and to work units such as factories and offices. The procuracy, a prosecutorial institution established during the 1950's, disappeared for years.

The Cultural Revolution, begun in 1966,<sup>3</sup> saw yet further attacks on the formal legal system. Even the police, which had come to dominate the "political-legal system," a triad consisting of the police, the courts, and the procuracy, was for years supplanted by the People's Liberation Army in its role of maintaining public order.

Attempts to reverse this trend were discernible in the early 1970's. The police reappeared, the law courts were occasionally mentioned in the press, and at least one law department, at Peking University, began again to be more active.

However, not until early 1978 was law prominently mentioned, either as representing a desirable institution or an academic discipline. Now, in the wake of the overthrow of the "Gang of Four,"<sup>4</sup> as the nation's leadership sets China upon a course of intensive moderniza-

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<sup>2</sup> Communist Party leaders launched the "Hundred Flowers" campaign to spur extensive discussion and debate, out of which emerged intense criticism by some of Party policies and rule. *See* THE HUNDRED FLOWERS CAMPAIGN AND THE CHINESE INTELLECTUALS (R. McFarquhar ed. 1960).

<sup>3</sup> The literature on the Cultural Revolution is immense, and growing. *See generally* BARNETT, UNCERTAIN PASSAGE 6-8, 337 n.5 (1974).

<sup>4</sup> After the death of Chairman Mao on September 9, 1976, the "Gang of Four" was purged for anti-party activities. The "Gang of Four" consisted of Mao's widow, Chiang Ch'ing, and three other top Communist officials, Wang Hung-wen, Chang Ch'un-ch'iao, and Yao Wen-yüan.

tion, the leadership is moving quickly toward using law to strengthen China's administrative system. Indeed, the new developments have been so rapid that this article can only chronicle them incompletely, with the full expectation that by the time of publication many more events will have occurred to interest foreign students of Chinese law.

The new policy toward law was signaled in March 1978, when a new Constitution was adopted by the Fifth National People's Congress. In many ways, it is much like other Chinese constitutions; it is as much a programmatic statement as it is a framework for the structure of the Chinese state. Significantly, however, it contains separate sections devoted to the courts, to the newly reappeared procuracy, and to the fundamental rights of citizens.

In addition, there have recently been clear indications of leadership policy to reconstruct and develop China's legal institutions. In February 1978, it was announced that the newly-established Chinese Academy of Social Sciences included a Law Institute, offering graduate courses. Han Yü-t'ung, the Deputy Director of the new Institute, has since made several interesting statements which undoubtedly reflect official policy. In an interview she accused the "Gang of Four" of having sabotaged the police and the courts; she also stressed the need for orderly procedures in criminal cases.<sup>5</sup>

On March 16, 1978, Han Yü-t'ung also published an important article in the *People's Daily* entitled *Smash Spiritual Shackles—Do Legal Work Well*.<sup>6</sup> The article called for lawmaking and adherence to law in terms that have not been used in China for many years. The article blamed the failure to formulate the necessary laws on the "Gang of Four," although some observers would trace the de-emphasis of law further back, as has been suggested above. More striking than the focusing of blame for the past neglect of law, however, was the call for new legal activity in the future.

For instance, the article, quoting Chairman Mao as having stated that "it won't do to have no law," proposed a program of lawmaking. "To strengthen socialist legality," the article urged, "we must first of all proceed with legislative work on a large scale." To do this, "necessary legal organs and legal institutions must be revived and established," and legislation on "criminal law, criminal procedure, civil law and civil procedure" should be enacted, as well as "important laws on economic

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<sup>5</sup> Han Yü-t'ung, Deputy Director of Law Institute Discusses Socialist Legality (Feb. 21, 1978) (People's Republic of China Mission to the United Nations Press Release No. 12).

<sup>6</sup> Han Yü-t'ung, *Smash Spiritual Shackles—Do Legal Work Well*, *People's Daily*, March 16, 1978, at 3 (London ed.).

construction." In addition, "leading organizations and leading cadres must become models in carrying out and following the constitution and the law." The article also called for the development of popular education about law on a large scale throughout the media.

The Han article signified an end to the long hiatus in Chinese law-making. It suggested that China's leaders are beginning to stress the need for regularized rules to guide China's current modernization efforts. The link forged by the article between the making of law and its observance by an educated population is also significant, because officials and population alike have in the past often been encouraged to be impatient with rules and regulations. Indications that the new policy was being implemented have been seen by foreign visitors, for example during one of the author's visits to Canton in April 1978. A statute originally promulgated in 1957, providing for police punishment of minor violations of public order, had been promulgated and posted in downtown Canton; also, outside the offices of a neighborhood residents' committee, a poster urged all to support Chairman Hua's call to strengthen the socialist legal system.

Soon thereafter, in May, the Chinese Communist Party's theoretical monthly, *Red Flag*, featured an article by Chiang Hua, President of the Supreme People's Court. The article called for enforcement of the new constitution and improvement of the legal system.<sup>7</sup> Emphasis was laid on party discipline, on the need for cadres to obey the law, and on protection of persons who "expose bad persons and deeds in state institutions." The need for orderly and regularized judicial procedure was, thus, explicitly recognized by a high-level spokesman in an authoritative forum.

Elsewhere, authoritative statements by local leaders<sup>8</sup> and the national media<sup>9</sup> echoed the themes articulated in the above-mentioned Han Yü-t'ung article. Most recently, reports in the media have stressed the reestablishment of formal legal institutions, such as local procuracies and public trials. The *People's Daily* has consistently emphasized the need for cadres to obey the laws. Of particular note are the signs that the new policies are welcomed; most dramatically, in spontaneous wall posters and rallies in Peking, Chinese citizens have hailed the new institutions and have publicly called for greater definition and protection of their rights.

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<sup>7</sup> *Red Flag on New Constitution, Socialist Legal System*, FBIS-CHI-78, May 11, 1978, at E7.

<sup>8</sup> See, e.g., *Kiangsu Meeting on Public Security, Judicial Work in Nanking*, FBIS-CHI-78, May 10, 1978, at E4.

<sup>9</sup> See, e.g., *Call for Rule of Law*, FBIS-CHI-78, May 10, 1978, at E10 (report on editorial, *Be Models in Abiding by the Constitution and Obeying the Rule of Law*, Liberation Army Daily, May 7, 1978).

These developments suggest nothing less than attempts to conceptualize and articulate notions of law as an objective set of rules and standards to protect rights. Moreover, the Chinese leadership has continuously shown itself to be responsive to these ideas, as a recent statement by the Central Committee of the Chinese Communist Party illustrates:

In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to insure the stability, continuity and full authority of this democratic system and these laws. There must be laws for people to follow, these laws must be observed, their enforcement must be strict and lawbreakers must be dealt with. From now on, legislative work should have an important place on the agenda of the national people's congress and its standing committee. Procuratorial and judicial organizations must maintain their independence as is appropriate; they must faithfully abide by the laws, rules and regulations, serve the people's interests, keep to the facts, guarantee the equality of all people before the people's laws and deny anyone the privilege of being above the law.<sup>10</sup>

Some of the implications of the new policies are quickly beginning to appear. Notably, a tendency has appeared for the formal legal system to preempt other sanctioning systems and to allow it to operate with some independence from the influence of other such systems. At a recent conference on procuratorial work, China's chief procurator, Huang Huo-ching, said, "It is imperative to resolutely guard against and rectify the chaotic situation where organs and individuals other than the public security and judicial departments arrest and detain people without authorization."<sup>11</sup> He also urged that it was necessary to "disregard the law-breaker's position and post."<sup>12</sup> Consistent with this emphasis on systematization is the view espoused in a recent article that local officials must not depart from the standards and procedures articulated in national legislation.<sup>13</sup>

In criminal law, articles have appeared calling for the decisions of cases using objective standards rather than on the basis of the family background and economic class designation borne by the accused.<sup>14</sup> In addition, the Central Committee of the Chinese Communist Party has recently decided that henceforth the designations "landlord," "rich peasant," "counterrevolutionaries," and "hard elements," which have

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<sup>10</sup> *Chinese Party Statement Sets New Economic Goals and Stresses Public Rights*, N.Y. Times, Dec. 26, 1978, § A, at 4, col. 6 (excerpts from communique translated by Hsinhua, New Chinese Press Agency).

<sup>11</sup> *Hu Yao-pang Addresses Procurators Work Conference*, FBIS-CHI-79, Jan. 2, 1979, at E25.

<sup>12</sup> *Id.*

<sup>13</sup> *Guangming Daily on Current Problems in Drafting Laws*, FBIS-CHI-79, Jan. 4, 1979, at E7.

<sup>14</sup> *Id.* at E8.

been applied literally to generations of Chinese since 1949, should be removed in most cases.<sup>15</sup>

Another trend has been to revive the use of courts as fora for the settlement of civil disputes. Experiments are being conducted with new rules of civil procedure, which include expression of the policy that "the court should make it convenient for the plaintiff to file suit whenever he finds that his property, marriage, family, or other civil rights have been infringed upon."<sup>16</sup>

As these developments unfold it is clear that Chinese lawmaking is proceeding quickly. Announcement has been made that a draft criminal code will soon be debated by the National People's Congress, as well as new statutes on trade unions, marriage, land use, and forestry.<sup>17</sup> New regulations on arrest and detention have already been promulgated.<sup>18</sup>

Although the emphasis on legality has been expressed only very recently, its reappearance in China is noteworthy and invites speculation on its significance. It suggests that the Chinese leadership is committed to the orderly leadership of government and the structured administration of economic development. Overall, it is probable that socialist law will also be used to reinforce discipline, as it was during the 1950's, the last time heavy industrialization and the rule of law were simultaneously stressed in China. Time will tell whether these new policies and lawmaking activities will take hold sufficiently to prevent the repoliticization of administration that overrode legality in 1957.

It is important to stress the trend toward using the making and application of rules and regulations to systematize China's economy, as well as its apparatus of government. Han Yü-t'ung's article specifically mentioned the need for "important laws on socialist construction."<sup>19</sup> In pursuing industrial modernization, the Chinese have become concerned with the role of law in administering economic development. Since 1949, a great number of internal bureaucratic regulations have been promulgated to direct the activities of economic units and their

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<sup>15</sup> See *Public Security Minister on Restoring Citizen's Rights*, FBIS-CHI-79, Feb. 1, 1979, at E12.

<sup>16</sup> *Regulations on Civil Law Procedures Outlined*, FBIS-CHI-79, Jan. 24, 1979, at E12.

<sup>17</sup> See *Central Organizations Preparing Draft of New Laws, Regulations*, FBIS-CHI-79, Feb. 7, 1979, at E3. See also *Ye Jian-ying [Yeh Chien-ying] Discusses Revisions in Nation's Legal System*, FBIS-CHI-79, Feb. 14, 1979, at E4.

<sup>18</sup> See *NPC Promulgates New Regulations on Arrests, Detentions, Text of Regulations*, FBIS-CHI-79, Feb. 26, 1979, at E2-E4.

<sup>19</sup> Han Yü-t'ung, *supra* note 6.

relations with each other. China's current modernization drive is likely to produce legislation expressing general principles of economic administration that until now have not been articulated. Legal and economic planning officials stated in July 1978, that drafts of such principles were being circulated internally, and a recent speech by Hu Chiao-mu, now President of the Chinese Academy of Social Sciences, is most suggestive.<sup>20</sup> Hu called for greater rationality in economic accountability of enterprises. He urged more extensive use of inter-enterprise contracts, organization of functionally specialized economic units, the strengthening of the central bank's role in economic management, and the strengthening of "economic legislation and economic judicial work." In connection with this last item, he called for the establishment of "strict economic judicial organs to sternly handle, in accord with legal procedures, all enterprises or individuals violating economic law." China will soon have, if Hu's advice is followed, specialized administrative boards to handle contract disputes. Indeed, as of late, local economic commissions have already been resolving contract disputes; Hu's speech seems to augur the promulgation of formal legislation.

Contemporaneously growing with the new emphasis on domestic legality is the interest in using new laws to govern China's international economic relations. The increased complexity of its internal economic system and the new emphasis on foreign trade are affecting the Chinese foreign trade apparatus. New organizations are being created and new forms of foreign trade have become possible. It is no surprise, then, to find evidence of strong Chinese interest in international trade law and practice. The bolstering of the domestic legal institutions may reflect a cast of mind and a relative doctrinal openness that could indicate receptivity to new ideas and to flexibility in foreign trade.

The simple fact is that new policies have also created new needs. For instance, China is now willing to welcome joint ventures under certain conditions; it is also willing to undertake "countertrade" transactions in which foreigners are paid back completely or partly in products to compensate them for supplying machinery and know-how. These developments seem to require new Chinese legislation.<sup>21</sup> In February and March 1979, Chinese legal experts in Peking told this author that work is proceeding on the drafting of new laws that would apply to

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<sup>20</sup> *Hu Chiao-mu on Economic Laws, Four Modernizations*, FBIS-CHI-78, Oct. 11, 1978, at E1.

<sup>21</sup> For a recent discussion of the new developments and of some of the legal problems raised by the countertrade transaction, see Liu, *China Keeps its Project Partners Guessing*, FAR E. ECON. REV., Dec. 15, 1978, at 84.



foreign companies, foreign trade contracts, taxation of foreign business activity, and joint ventures. United States lawyers have been asked informally to supply information on the text and application of much American and foreign legislation.

Of interest in this regard is an increase in the number of lawyers' delegations being invited to China. A Canadian bar delegation and two groups from the American Bar Association (ABA) visited China in 1978. The first ABA group, led by then Association President William A. Spann, Jr. in July, was apparently allowed to learn more about Chinese legal institutions than previous visitors, and traveled as official guests of the China People's Friendship Association. This delegation was told by high-ranking officials that law codes were being prepared, and throughout the visit the regular operation of the formal legal system was emphasized.<sup>22</sup> The second ABA delegation had a similarly interesting visit in November 1978.<sup>23</sup>

How much the new laws and increased contacts with foreign lawyers will eventually influence Chinese negotiating practice and contracts is, of course, impossible to predict. In the past, the Chinese have conducted negotiations without significant reference to practice and precedent other than those of the Chinese trade corporation involved. Now it is not impossible to invoke and discuss conventional international practice in some matters. Of course, obtaining the assent of Chinese negotiators to change contract language that has long been in use is, as in any similar situation anywhere in the world, difficult.

Changes are appearing, however, and quickly. One U.S. corporation recently announced that it signed a contract for the development of a large copper mine in China, with its compensation to be determined under a "cost-plus" rather than a fixed price contract.<sup>24</sup> This represents a significant departure from traditional Chinese practice. In other transactions concluded in later 1978, Chinese corporations were exhibiting flexibility and receptiveness to contract clauses common in international trade, but rare in the China trade. As China imports more technology and licensors insist on a greater Chinese willingness to protect patents and proprietary know-how, China is showing greater receptiveness to the international patent system.

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<sup>22</sup> See Ginsburg, *American Bar Association Delegation Visits the People's Republic of China*, 64 A.B.A.J. 1516 (1978).

<sup>23</sup> See generally *Reflections on China*, Colum. L. Alumni Observer, Feb. 20, 1979, at 4, col. 1.

<sup>24</sup> See *Fluor is Awarded \$800 Million Job for Chinese Mine*, Wall St. J., Dec. 8, 1978, at 6, col. 2.

The new relationship between the United States and China may itself impose certain requirements. China cannot receive permanent, most-favored-nation status for its exports to the United States unless a Sino-American trade agreement is signed. Under the Trade Act of 1974, Congress has required that such a trade agreement meet certain substantive standards, including some guidelines on the protection of industrial property.<sup>25</sup> It is thus clear that changes in *domestic* development policy are themselves creating pressures for China to move closer to formal adherence to prevailing norms of international trade law. In the meantime, current policies suggest that Chinese legal institutions may be reemerging as significant components of the Chinese state.

### CONCLUSION

The developments summarized above raise important questions. What are the goals of China's leaders for China's law? Will they aim at creating a *legal system*, at least partially insulated from other institutions, such as the Communist Party, or from values inconsistent with legal regularity? Past experience during the 1950's suggests the difficulty of keeping the line between law and politics from becoming blurred. Even if the violent campaigns that marked China's post-revolutionary years down through the Cultural Revolution are not revived, the Chinese style of political leadership, which relied on those campaigns to accomplish vast social change, will not quickly disappear. We can expect cadres and citizens alike to be cautious in using and developing legal institutions as they were twenty years ago. We can also expect them to be uncertain of their relationship to other, more permanent, institutions.

Will law be treated as another variety of bureaucratic leadership to augment the discipline needed to modernize China or will it also be regarded as a source of rights? Hu Chiao-mu's speech, mentioned above, stressed the need for economic law, but other emphases can be discerned in the Chinese media. Cadres are being exhorted to adhere to rules. Also, some of the wall posters that appeared in Peking now appeal to the constitution and to the law to correct alleged abuses of power.

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<sup>25</sup> Trade Act of 1974, 19 U.S.C. § 2101 (1976). Section 2435(b)(4) requires that a bilateral commercial agreement shall "if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention."

At the same time, perceptions of the role of law may differ in China. After the July 1978 ABA delegation was told by officials and legal scholars in Peking and Shanghai that they were still working to reestablish long-neglected institutions, the delegation was told by Vice-Premier Chi Teng-k'uei that the legal system had been "fundamentally reestablished." Indeed, the existence of significantly different expectations about the role and authority of Chinese law exist and have already become apparent. During the spring of 1979, restraints were announced on the posting of dissenting wall posters, and some dissenters were reported to have been arrested.

The answers to some of these questions will soon become known. Chinese and foreigners alike will be able to note whether the media support for a stronger legal system continues, and whether a deep commitment is made to training legal specialists and reviving legal research. The methods used to revive the formal legal institutions also will be significant. During the 1950's, campaigns were often organized to introduce and begin the use of the then-novel institutions, but such attempts showed that more sustained and less spasmodic institution-building was needed. At the moment, it is too early to make any predictions, but the serious activity at the Institute of Law and Peking University's Law Department encourage the foreign visitor to believe that efforts are being made, at least in Peking, to implement the new policies in a disciplined fashion. Whether they might be undercut by other policies remains, however, a question of concern.

These new developments also pose challenges to foreign students of Chinese law. How will we study it? What theoretical perspectives will we bring to our work? Looking back to the research done in the United States since the late 1960's, I am struck by how much remains to be done. Early work in this area is surprisingly deficient in attempts to rise above merely descriptive study.

Further, we must now strive for system-neutral intellectual categories to use in our study of Chinese institutions, even if such neutrality can only be an unattainable goal. The efforts of U.S. scholars in this area have been inadequate. For instance, while we owe a great debt to Professor Jerome Cohen, who first attempted systematic study of the Chinese criminal process, his work also illustrates the constricting grasp of U.S. legal education and its approach to comparative legal scholarship. That is, his book on Chinese criminal law<sup>26</sup> was a *casebook*, which made the Chinese criminal process look more like our own than it can possibly be.

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<sup>26</sup> J. COHEN, *supra* note 1.

We must also begin developing theoretical models defining the relationship between Chinese law today, the Chinese past, and the history of China's own revolution. There is in Cohen's work no sustained attempt to do that. Victor Li's *Law Without Lawyers*<sup>27</sup> is a useful contribution in this regard. However, his work is primarily a useful foundation on which we must build.

The author's own work reveals the same deficiencies. A previous attempt to analyze the continuities—or lack of them—between the traditional Chinese use of mediation and present-day mediational institutions<sup>28</sup> certainly underestimated the influence of the past. Similarly, a previous attempt to consider Chinese policies toward the role of law in the context of broader policies of revolutionary leadership and attitudes toward bureaucracy, while linking conflicts over legal policy to parallel tensions over bureaucratic style, did not progress as far as it should have in the direction of developing analytic categories derived from an emphasis on functionalism.<sup>29</sup>

It is reasonable to believe that the most fruitful attempts to generate theory useful in studying Chinese law will be those informed by social science. Unfortunately, legal scholars, who want to develop the field of academic Chinese legal studies, may have to learn more than is possible about Chinese history, the social sciences, and comparative legal history before scholarship can be advanced much further. Nonetheless, the effort is worthwhile. Although the Cultural Revolution justifiably made foreign observers of Chinese law pessimistic about the future of their scholarly endeavors, now, after many years, there is reason to approach the study of Chinese law with renewed energy and imagination.

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<sup>27</sup> *Supra* note 1.

<sup>28</sup> Lubman, *Mao and Mediation: Politics and Dispute Resolution in Communist China*, *supra* note 1.

<sup>29</sup> Lubman, *Form and Function in the Chinese Criminal Process*, *supra* note 1.