FOR THE RULE OF LAW

LAW IN COMMUNIST CHINA

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LAW IN COMMUNIST CHINA

by

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The Chinese juridical order cannot be described in the classical manner by an analysis of texts. Texts are few, and, on many points, non-existent; moreover, they give hardly any authentic idea of reality — it might even be implied that they knowingly try to dissimulate it. On the other hand, there are certain basic conceptions to be found in all fields, though somewhat veiled, which act as the foundation of the juridical edifice. These conceptions clarify existing texts and are of particular importance in the comprehension of those practices which are so difficult to analyse according to our traditional juridical classification. In order to ascertain these conceptions, I had to make use of my own experience as a foreigner living freely in China, as well as my experience as an accused and as a prisoner, insofar as, by reason of other evidence, I may be in a position to make generalities thereon. [1] I omitted anything that might be considered purely as anecdote.

The reader should bear in mind these words of Iehring: "Law comprises latent rules. In law, the same as in speech, we apply rules which we have never heard of and of which the scholar himself is not always conscious". [2]

I. General Conception of Law

After the "liberation" in May 1949, that is, the seizure of power by the army and the Communist Party, the population of Shanghai learned gradually and by experience what the new conception of law was. They expected new legislation, but, little by little, they realized that the change was of a much more radical nature. The very foundation of the juridical

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[1] I lived in China from 1931 to 1954, and under the communist regime in Shanghai from May 1949, the date of the "liberation", until April 1954, the date of my expulsion. I spent the last ten months of this period in prison: from June 15, 1953, to April 22, 1954.

[2] Iehring, *Esprit du Droit Romain* (The Spirit of Roman Law), translated by Meulenaere, Vol. I, p. 30.

system underwent an astonishing mutation. All the former texts were abrogated in mass, without being replaced by others. In the course of the following years, there appeared only certain "regulations", such as those dealing with political offences during the movement for the "liquidation of reactionaries", a procedural rule, largely theoretical, the law on agrarian reform, the law on marriage, certain texts on trade unions and cooperatives. At the present time, there is not yet a criminal or civil code.

Undoubtedly, readers of Marx and Lenin could point out to the initiates what the new orientations might be, but the instruction of the masses in this regard was carried out in a much less theoretical manner, even by action and practice. In this way, it was gradually understood that former laws were bourgeois, not so much by their content — which could have been modified — but by their very nature as *legislative texts offering support to the individual in the face of power.* The new jurisdiction was not to be hampered in its action for the benefit of the people by laws which might be invoked by an accused or a defendant as a means of self-protection. The government had to be completely free of juridical impediment. While former laws were, according to theory, only a class instrument, the new State aims only at the happiness of the masses. In this regard, the State, and even the most humble of its officials, is presupposed to be endowed with true infallibility. Consequently, former texts would result in a hampering of beneficent action by impeding adherence to the circumstances.

Moreover, such a text might arm the individual and frustrate the omnipotence of the People's State. And this People's State, acting, by definition, in the spirit of the Revolution, must not be limited in any way whatsoever.

In further consequence, the person brought before justice is not to defend himself but to yield. To defend oneself constitutes a veritable revolt against the established power. One of my friends, accused of having asked and received key-money for renting a room in his house, attempted to explain to the judge that the tenant had simply accepted to

pay for a trivial electrical repair. The very amount of the sum paid indicated clearly that it differed from key-money, of which the current rate was sixty times higher. The judge flared up: to dare defend oneself, even in respectful terms, amounted to an attack on the government; did the accused believe himself still to be under the old regime, etc. This case, chosen from among thousands, provides a good illustration of the fundamental idea behind the juridical system.

In final consequence, absolute obedience is due in the event of any indication, however slight it may be, of the will of the government. It is not necessary that this will of the government be laid down by legislative or statutory text. The order of an ordinary local official need not be based on a text; it is law in itself because it is the voice of the government; it is a veritable source of law. It was thus that the agrarian reform took place over a period of many months before the publication of the legal text which is supposed to govern it. It is by orders of this nature, given by functionaries called "kanpu", that the expropriation of peasants, the distribution of land, the gradual intrusion of the State upon private enterprise, the policing of worship, etc. are effected. These orders are often veiled behind what is called the "will of the people" manifested by a popular judgment (agrarian reform) or by an industrial trade union decision (socialization of enterprises, called "State socialism"). But, frequently, even this screen is not used, and there results a diversity of practices which confuse the observer. As a further result, the observer may also be led into fatal errors of reasoning: for instance, we read in the agrarian law that the property of wealthy peasants who carry on their own farming is not affected by the reform; however, apart from the text itself, we must realize that there exists a practice, on the part of functionaries in charge of the reform, by which these same farmers have been subjected to spoliation: the will of the "kanpu" constitutes a source of law which carries the same degree of validity as does the text, but only the text alone is read by the foreign observer. Another example: the foreign observer may see that, in a certain locality, the church or pagoda is open to the

public, and he reasons implicitly that its closing can be effected only by a legal text; since such a text is non-existent, and since one pagoda is open, he thinks, therefore, that all are. But that is to reckon without taking into consideration the *quasi* total freedom of the functionaries and local "kanpus" who may close, prohibit or expropriate without bothering about statutory texts and without accounting to anyone but governmental or party superiors.

II. Penal Law and Penal Procedure

This conception of the whole evidently results in the disappearance of rules which the West considers as essential. In the first place, the separation of powers no longer exists. A judge will say, as if it were the most natural thing in the world, that he has consulted a certain governmental department (e.g., the Department of External Affairs, where a foreigner is concerned) in order to ask their directives in such and such a case. This, of course, is logical: the law being that which appears right in the eyes of the government at a given moment, [3] and the government acting only in the interest of the people, it is as much the function of the executive as that of the judiciary to reveal the will of the State.

Evidently, the rule *nulla poena sine lege* is incompatible with this conception of law. The government cannot consent to deprive itself of eventual means of action by establishing a restrictive list of offences. Anything may, therefore, be branded as a crime. Hence, the inutility of a penal code, which, in fact, does not exist. Hence, also, the formal negation of the non-retroactivity of penal laws, in texts promulgated on political offences. And hence the deliberately vague wording which opens the door to all analogous reasoning. One is accused of "sabotage", "feudalism", "reactionist tendencies", "anti-revolution", and there is hardly a single act which cannot be fitted into one or other of these flexible

[3] I intentionally employ the word which is always used: *tcheng fou*, meaning "government", and at the same time "administration", and not the word *kouo kia*, meaning "State" and also "nation".

categories. Priests are accused of "abuse of spiritual rights", etc. In this way, they tried to make me confess that I had "criticized" the government. I could have replied: Is that prohibited? By what text is it prohibited? I did not even entertain the idea, because I knew that even the slightest criticism was qualified as "anti-revolutionary" and punishable by forced labour or even death. During the obligatory and supervised discussions on "government policy", which we had to hold for three hours every day, my fellow prisoners, speaking — sincerely or not, it matters little — as thorough communists, declared without hesitation that a tradesman who said to his client, "Formerly, the cloth was better", was guilty of the crime of anti-revolution. The judge accused me of having listened to American radio broadcasts. I was careful not to say that no regulations had ever been passed in this regard, a reply which would have been misunderstood, so poorly did it coincide with prevailing thought. I merely denied the fact. [4]

There is no penal code, only certain laws dealing with political offences, and in particular, the so-called law dealing with "the liquidation of anti-revolutionaries", which, as stated before, expressly admits analogous reasoning and retroactivity. It should be noted that judges rarely say: "You have committed this or that act". They say rather: "You *are* a reactionary", "You *are* a foreign agent". [5] This manner of speaking gives a clear picture of the new conceptions of policy in penal matters: in order to prosecute and convict, the State does not have to name any act in particular, even if the act in question is not expressly regulated by law; its liberty with regard to repression is greater still since it suffices to qualify the man, and not the act.

State omnipotence manifests itself even more in the procedure presently applied. Here, in order to realize in what

[4] The accusation was unfounded: I had no radio, and the judge knew it because he told me so later in order to prove to me that the government knew all about me.

[5] On the warrant of arrest, shown to me at the time of arrest, was written: "B. *Imperialist element,* arrested for anti-revolutionary activity."

circumstances the accused finds himself, it is necessary to have undergone the experience, as hundreds of prisoners have done. The accused often has to wait a long time for the first interrogation. [6] During that time, with the aid of whatever legal knowledge he may have, he prepares his responses to whatever accusations he feels may be made against him. However, the judge speaks to him in a quite different language: "You are guilty because the government has not arrested you without considerable investigation and deliberation. Therefore, two ways lie open to you: either you confess and implore the clemency of the government, in which case the government will be lenient, or you resist and subject yourself to the severest of punishments". This speech has been repeated to every accused, both in the field of political crimes and that of ordinary crimes; in each case, it has been repeated many times; it was clear that judges and interpreters alike knew these words by heart. It is understandable, therefore, that to plead innocence is to offend the government; and moreover, you are told so: "So, you dare accuse the government of frivolity or injustice!" That is another offence which makes your case worse. Thus, not only is the accused presumed guilty, but he is forbidden to prove the contrary: to try, is to revolt. [7] Not only does the judge have nothing to prove, but he is even dispensed from the necessity of pronouncing a precise accusation: You are guilty; we know it; accuse yourself. When I ask: "Guilty of what?", I am told that it is not for the accused to put questions; there is only one thing he can do: confess and ask the government's pardon.

In this respect, three remarks should be made. Firstly, there is no text promulgated by the communist legislator from which the foreign observer might examine this procedure

[6] I was questioned for the first time only 19 days after my arrest. I once remained five months without coming before a judge. Some of my fellows went six months or a year without being questioned.

[7] This presumption is irrefutable to such a degree that the "political instructor" of the prison, assistant to the judge in the "reform of our thoughts", told me one day: "The very fact that you do not see what crimes you have committed makes your case even worse, because it proves your obduracy."

so extraordinary in our eyes but logical in China. Secondly, this procedure is absolutely in general practice, as I may state with conviction in the light of the many declarations made by Chinese and foreigners and in the light of my own experience. Thirdly, this procedure is perfectly coherent with the conception of law, such as we have attempted to analyse above: omnipotence and infallibility of the State in all its functions, because the State personifies the revolution, the triumph of History.

It may be understood, therefore, that the procedure is paradoxically placed under the symbol of "sincerity", a word which is continually repeated to you: "you are guilty", which has become a fact because of the arrest itself; but the government, free of all textual limitations with regard to both absolution and punishment, will pardon you if you are sincere, sincere in your confessions, sincere in your repentance. The door is, therefore, open to even the most whimsical of self-accusations: to escape the entanglement, you accuse yourself in desperation of imaginary offences. [8] The door is especially open to organized delation and false accusation. The proof of sincerity — it is repeated ceaselessly by the political instructor of the prison and by the organ of the "little discussion group" which is organized obligatorily every evening in each cell — lies chiefly in the denunciation of others, whether accomplices or not. To this end, there are printed forms which are generously offered to you; I have seen prisoners accuse in this way dozens of persons, and always on the same vague grounds of anti-revolution or reactionary tendencies. [9]

The position of the prisoner thus urged into sincerity is hazardous. The protection offered by a code or precise texts is lacking to him, and he should be aware of the fact that the most innocent steps could be qualified as anti-revolutionary activity or espionage manoeuvres. Experience shows, however,

[8] Cf. François Legrand, *Pourquoi j'ai avoué* (Why I Confessed), "Revue Nouvelle", 15 January 1955, p. 33, (Tournai, Paris).

[9] These forms are in current usage even outside prisons. During the periods of "thought reform", which every citizen must undergo, each is invited to fill out several forms.

that many accused persons fall into the trap of sincerity. Exhausted by months of prison, they resign themselves to a confession, for example, of having criticized the government. Since the judge wants a confession, since, according to all appearances, an offence has been committed, since it is perhaps a means of putting an end to the matter, since the government already knows (it knows everything, says the judge), since, finally, it is probably exact, why not make a show of sincerity? But the confession turns immediately against its author. That special form of judicial logic overtakes him again and attacks him with renewed energy: "He has criticized the government, and has, therefore, acted as an imperialist and as an anti-revolutionary". And the accused suddenly finds himself enveloped by guilt as if by quicksand. In writing, he will have to admit being an anti-revolutionary and an enemy of the government by indicating his regret and by imploring clemency. Moreover, this confession, having finally been obtained, is only a beginning: "There are certainly many other things which the accused is concealing, and to which he must also make a confession". And further: "If his repentance is sincere, he will have to make a declaration setting out the persons to whom he has made criticisms". And this creates other suspects who, in their turn, will face similar treatment: confess, we know everything! The confession has served no purpose. All my fellow prisoners had confessed their misdeeds, real or imaginary, during the first few days, but, however, they afterwards remained in prison for six months or a year or were transferred to forced labour camps.

In the presence of such a conception of procedure, can we be astonished at the complete suppression of lawyers? The conception is rooted in the logic of the system, and the services of a lawyer before such tribunals becomes not only superfluous but absolutely unthinkable. *Defence amounts to revolt.* Who would dare, even as a lawyer appointed by law, to oppose the "government" in the defence of an accused. The words of the lawyer would die in his throat and he would feel equally as guilty as his client. The absence of defence counsel

in the criminal process is not, therefore, accidental, but, on the contrary, imperatively solicited by the fundamental conceptions of communist penal law.

The omnipotence of the State which manifests itself in the failure to define offences, the dispensation of proof in cases of accusation, the legal obligation of confession on the part of the accused, all these constitute a group of traits which characterize communist penal law. But there appears another particularity, no less astonishing to an observer from the free world. This is the juridical restraint on thought, the obligation to think "right", and the repression of "wrong" thought, to employ the conventional expressions.

Immediately upon seizing power, the new regime began to instil in the entire population the necessity of thinking according to the new norms. The methods put into action would require too much space for explanation here. But it is essential to note that here we have something more than the mere propaganda that we have already seen diffused in totalitarian countries. To think right constitutes a truly juridical obligation. The undertaking of "thought reform" in all schools, factories, administrations, offices, hospitals, stores, etc. is supported by professional penalties: expulsion of the schoolboy or student with the impossibility of continuing studies elsewhere, dismissal of the worker or employee with multiple vexations. In addition, obstinately reactionary thought suffices as grounds for arrest: as a matter of fact, this form of thought falls into the "anti-revolutionary" category which is not limited to outward acts.

The speeches which we heard over loudspeakers in prison repeated endlessly this assertion: you are in prison because your thought is "wrong"; you can regain your freedom only through thought reform. The idea was constantly revived and repeated in compulsory "discussions" among prisoners. It appeared not only acceptable but evident to all the prisoners who were, nonetheless, victims of it. I said one day to my companions: "You have spoken to me in praise of the French Revolution; but do you know that one of the fundamental principles, set out in the Declaration of Human Rights, is that

no one may be disturbed because of his religious or political beliefs?" The most well-read from among them replied, expressing candidly the thought of the regime which was oppressing him but which he had to flatter: "Formerly, such was the case, because the government was weak. Now, the world has progressed, the government is stronger, strong enough even to force you to agree with its ideology".

The juridical aspect of this obligation of belief must be emphasized. However strange it may appear to the West, the power of the State extends even to the private life of the individual and applies sanctions to the very workings of the intelligence. Since these intellectual operations are by nature secret, one might be tempted to interpret these mistaken ideas in a more classical way by saying that the manifestation of a thought opposed to State policy is prohibited, and that it is simply a question of imposing an abstention. This would not be a precise interpretation. In the little discussion groups in which every citizen is obliged to participate several times a week and which are under strict police domination, each participant must speak in his turn and must express explicit adherence to government thought such as it may appear from day to day in the press. It is not a question of abstention; on the contrary, there is a constant demand for positive commitment, and this demand is sanctioned by the punishments which are meted out to anti-revolutionaries: death, prison and especially forced labour.

There is another aspect with regard to which it is evident that the reading of a simple legal text would not permit the western jurist to grasp a clear picture of a system so far removed from that with which he is familiar and even from that which he believes possible. Here, we are concerned with those "latent rules" which, as Iehring has pointed out, lie beneath and support the more obvious precepts.

With regard to punishment, the same arbitrary approach is the rule. The government can, at any time, liberate a person condemned either to forced labour or to prison, even though his punishment has not been fully meted out, simply by declaring that the thought of such person has finally been

reformed. This liberation is often accompanied by hidden commitments: the guilty party is declared converted because he has agreed to play the role of informer or act as an agent provocateur in the society to which he returns; all of which means that an understandable mistrust, sometimes unwarranted, follows those who leave prison.

More often, however, the convicted continue at forced labour after the termination of the punishment. A fairly recent text, [10] which aims at giving a juridical appearance to the institution of forced labour already in practice for six years, reveals, if properly interpreted, that the release of prisoners rests entirely in the discretion of the administrative authority. In order that the convicted be given his freedom, "the organs in charge of investigation and judgment must make it known that the criminal is to be released." The expiration of the sentence is not, therefore, sufficient, while, on the other hand, mere silence on the part of the pertinent offices is sufficient for an indefinite prolongation of the punishment. Further, a prisoner can always wish "voluntarily" to remain at forced labour, although, as a result of experience gained under the regime, the methods employed for extracting the expression of such a free wish are well known. And finally, the convicted may be held at forced labour in those cases where he has neither a home nor employment in civil life (many will have neither one nor the other after five or ten years) or if manpower is needed for the development of the vast and uninhabited regions of the West. It is obvious that the administration may detain indefinitely whomever it wishes, and this fact is revealed rather naively by these articles which are designed to dissimulate it.

III. Civil Law and Civil Procedure

The designs displayed in this field ever since the liberation may be reduced to two: to simplify the "bourgeois" procedure and thus bring the institution of justice more within the under-

[10] See analysis in the Bulletin of Information of the International Commission against Concentrationist Regimes, I, December 1954.

standing of litigants; to judge not according to a code, but *ex aequo et bono.* This program was bound to please the Chinese people, easily discouraged by procedural formalities and traditionally wary of the written rule. Soon there were created in large cities, such as Shanghai, divisional tribunals (more than fifteen) for each section of the city. But at first, recourse was often made to the police (how poorly public opinion distinguishes justice!) which assumed the right to act as a service of arbitration. Very often, as a paradoxical result, the suppression of the codes of the Kouomintang regime brought back into play the old traditional mistaken ideas. Thus, betrothals concluded only by arrangements between parents, and which former judges would have declared null under the civil code, became much more difficult to break because these *quasi* self-appointed judges, imbued with past ideas and ever anxious to obtain a settlement, required the consent of the two parties in order to effect a breach.

However, the new tribunals gradually took shape and had to re-establish a minimum of formalities: one no longer saw judgments drafted on cigarette packages, as sometimes was the case at first. Certain former judges were retained in office after having been subjected to a process of "thought reform". Young men having completed all or part of their law studies, or even fresh from secondary school, found themselves entrusted with judicial functions after a preliminary course of instruction in ideology. Their number was gradually augmented by the addition of men from the working and farming classes; but it is a known fact that these workers are of inferior quality, not necessarily in respect of juridical matters, but with regard to the writing of the difficult Chinese language.

The task of the judges, deprived of all aid from textual sources, at times became embarrassing. Some of them, without saying so, sought solutions in the former civil code, and, without citing it, of course, applied it as written law. But they were rapidly recalled to order. The work of the judges is oriented by circulars, but these circulars remain secret, and the public rests ignorant of them. Thus, law fell back

into the mysterious realm of its remote sacerdotal origins, an unexpected consequence but logical in the light of the basic principles exposed above and in view of state omnipotence. Political considerations play an admitted role in all judgments in the sense that the mental attitude, reactionary or advanced, of the plaintiff or the defendant can and must be examined as well as the actual facts of the case. The work of the judiciary seems to be accomplished by joint collaboration in each of the sectional tribunals: a single judge is never alone in charge of a case, but rather, the eventual judgments are discussed in small discussion groups among judicial functionaries. Every judgment must be signed by an official who is a member of the party (a rule which may be concealed, but, nonetheless, certain).

It should be pointed out that there exists, on a lower level, a certain organism often considered by public opinion as a veritable tribunal. This is the sectional or village group. It plays a conciliatory role which it frequently transforms into a true power of decision: in this way, through the exertion of its own pressure, it may impose a divorce by mutual consent, and thus settle litigation which normally would be submitted to judges, or else it may effect an arrangement between tenant and proprietor or between neigbours. A considerable degree of confusion reigns, therefore, in the administration of justice, and the judges themselves, in matters of marriage, for instance, distinguish very poorly between the civil and criminal aspects of a given problem. The conception of penal law, as set out above, adds to this state of confusion.

The few texts in existence are drafted in such a way as to favour the maximum freedom of the judge. Marriage law, the pride of the regime, [11] is a very good example. Article 2 prohibits concubinage, but no one knows whether the principle applies to concubinages contracted before the coming into

[11] Through propaganda, it is claimed that, prior to this law, marriage was governed by "feudal" customs. But the Code of 1930 assured as best possible the dignity of the married woman, as well as the freedom of consent in marriage. It had the additional advantage of being technically well drafted.

force of this law; and further still, no one knows by what penalty this prohibition is sanctioned, or even if such a penalty exists at all. Article 6 requires the registration of marriages, but no one knows if the failure to do so would result in nullity. Article 100 is a masterpiece of wilful unintelligibility: "Husband and wife possess equal rights of ownership and of disposal with regard to the . . ." — or with regard to their, both translations being possible — ". . . family property." No other article clarifies this latter article which may be interpreted as a separate or as a common ownership of property.

It should be added that, in case of divorce, the wife repossesses the property she possessed prior to marriage (nothing is mentioned about property acquired during the marriage, nor about the earnings of the parties); as for other matters, apart from any arrangement which might exist between the parties, the tribunal, in making its ruling "takes into account the interests of the wife and children, and the principle of development of production" (article 23). All of which constitutes empiricism giving a free hand to the initiative of the judge. Regarding the solutions adopted, it is not possible to give an overall picture because they have not been published. The Russian conception of marriage, a simple state of fact, seems to have been invoked when one takes the trouble to analyse these solutions. It is in this manner that a husband can be obliged to leave his first wife and keep the second which is called a concubine.

Above all, we must not forget the existence of the jurisdiction known as the "popular tribunal". We might be tempted to qualify it as an exceptional jurisdiction, but it plays a role, both usual and paramount in nature, in respect of the great "movements" by which society is transformed. And it has acted as a basis for the application of matrimonial law. Here, the judge is the people; or, rather, one should say "the crowd". [12] The entire village is assembled, or a large

[12] The great popular judgments of Shanghai, in 1951, gathered together, on the stands of a sports arena, thousands of people who, in a single voice, pronounced the verdict of death on hundreds of reactionaries squatting on the football field.

number of the inhabitants of a city section, and this assembly, acting as a tribunal, regulates not litigation in the classic sense of the word, but dialectical disputes which, according to theory, must oppose social elements, sharpen latent contradictions and finally give birth to a state possessing new qualities by way of environment. It was in this way that the agrarian reform was effected, not by the application of a text, but by a clash between the different classes. The meeting is directed by the "kanpus" or functionaries, sent for that purpose, who have arrested the victims, have coached the accusers and the prompters. This method is put forth as the ideal method, perfectly popular and perfectly dialectical, for meting out justice. Recourse to this practice is taken not only for the accomplishment of vast social mutations such as the agrarian reform and the liquidation of reactionaries (two aspects of the same operation: the liquidation of a class), but even for civil litigation such as might arise from the application of matrimonial law. Prime Minister Chou En-lai declared solemnly, at the time of the promulgation of this law, that it would be put into action in the same way as was done for the agrarian reform. And such has been the case.

The word "litigation" must not, therefore, be permitted to mislead you. In the greater number of cases, it is not a question of individuals who spontaneously request a judge to settle their claims by setting out the law, but a "movement" instigated by the "kanpus". All family situations which lend themselves to such a procedure are brought before this popular tribunal which pronounces judgment without making any distinction between the civil and criminal aspects of the question; and it is in this organized disorder, in this atmosphere full of hate, that problems of a family nature are settled.

The "kanpus" charged with the application of the law have too often conducted themselves in a disgracefully brutal fashion. Women who resisted divorce, marriage or remarriage have been handed over to the local militia. By official investigation, it has been established that eighty-three officers of these militias, to say nothing of the men under them, have violated women delivered to them in these circumstances. As

a result of these corrupt practices, the government had to effect a strategic retreat and declare, in 1953, that matrimonial law was of a different nature than agrarian law (which was in contradiction with former statements) and that violence should not be employed. [13]

* * *

In 1955, the Chinese Government promulgated a new constitution. What value should we place on the liberties guaranteed by this constitution? Articles 86 to 100 complacently enumerate them: freedoms of vote, speech, public meeting, the press, association, political demonstration, domicile, work, leisure, education, scientific research, and so forth. The protagonists explain, according to Marx, that these are "real" liberties as opposed to the bourgeois rights which guarantee only "formal" liberties. It would be closer to the truth to state that penal and civil law, such as they exist and such as we have outlined them, cruelly deny these fine constitutional declarations.

It appears to me that such is the way in which the general features of the system presently in force in communist China may be described. It satisfies poorly the Western and bourgeois minds which expect to find in these precise texts solutions which, although, perhaps, shocking, offer to the intelligence certain well-defined contours. On the contrary, everything is changeable and in a perpetual state of coming into being because everything turns at any given moment on the omnipresent and omnipotent will of the government: master today of body and soul to a degree rarely attained in history, it wishes to preserve full mastery over tomorrow without binding

[13] The popular tribunal hands down death sentences not only during periods of great "movements" such as the "liquidation of anti-revolutionaries" in 1951, but at any time. Thus, in August, 1954, Chung In, a worker in the mines of Tangshan (Hopei), was condemned to death for "sabotage" by a popular tribunal composed of workers and their families. Cf. *Jen Min Je Pao*, The People's Daily, Pekin, Editorial of 21 August, 1954.

itself to any set formula. It appears that we would be justified in concluding that, to the extent in which law stands as general rule and prevision, it is and must be considered as banished from the communist city.

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Extracts from the Deposition of Father André Bonnichon, former Dean of the Faculty of Law of the University Aurore in Shanghai, before the Committee on Public Law of the International Congress of Jurists, Athens, Greece.

Dear Colleagues,

If you consult the Constitution of the People's Republic of China, you will find an Article 88 which affirms the liberty of conscience and worship. Moreover, this article forms part of an extremely rich and flattering enumeration of liberties: those of election, speech, public meeting, press association, manifestation, domicile, work, scientific research, education. It is, therefore, one of the most liberal constitutions ever conceived, at least insofar as the tenor of its text is concerned.

In opposition to this enumeration, I would like to describe to you, in a few words, the true situation of the country from the point of view of religion. I have lived in China for 23 years, of which 5 were spent under the communist regime. I feel, therefore, able to say that I know whereof I speak, and further, I beg you to believe that I speak without any resentment and with the greatest objectivity.

In China, all Christian, Catholic and Protestant schools have been confiscated. They are said to have been "taken back by the government".

What remains, then, of the churches where people meet for Divine Service? I cannot give you statistics, but I will indicate the following example, which is significant. It concerns a small diocese not far from Shanghai. This diocese, and I emphasize this point, has been under the direction of a Chinese bishop and ministered to by Chinese priests for at least thirty years. There were 153 churches in the diocese. Now, there are ten for the purposes of prayer and Mass. Forty-

seven others still remain open. The remaining ninety-six are completely closed or destroyed.

All the foreign missionaries have been removed: some after prison periods of varied duration, others without a moment's warning. The Chinese clergy has passed through the prisons, and a great many, several hundred, I believe, are still in prison or at forced labour.

Many Christians are imprisoned. Sometimes, persecution prevents them from going to church. This is very frequently the case with the agricultural classes, because it is pretended that in going to Mass, they wish to diminish "production". But, further, by extremely skilful and impressive means, an effort is made to force these Christians, Catholics and Protestants, to recognize the reform of the Church as effected by the State.

We have there something which appears strange to us here, but which, in China, on the contrary, assumes a capital importance. It can by summed up in the following words of Mr. *Chou-En-lai*, an excellent reference since it comes from the Minister of Foreign Affairs: "In my opinion, it is ridiculous to separate religion from politics".

While our entire civilization tries, on the contrary, to draw a line of demarcation between the spiritual and the temporal, in China — and this falls perfectly in line with communist ideology — religion must serve politics. The priest may continue his mission if he accepts to submitting himself to what is called "the reformed Church". This is a Church which no longer depends on the Pope or the bishops, but on small committees, constituting in reality an emanation of the communist party. It is a complete restraint by the Party and the State on the internal life even of the Church. Such is the situation.

I wish simply to emphasize — and this is, I think, very important for us here — that, with regard to China especially, no texts will ever be acquired which would appear openly opposed to what we call the Rights of Man. Because this government has never any intention of binding itself by texts. By adopting texts, it considers itself to be losing a part of its power over the population. And the greatest error one can

make is to imagine that the few texts which do exist constitute a recourse and a protection for those brought before justice. Such is by no means the case. If, before a judge, you are courageous enough to refer to a text, it is certain that you will be treated as *"rebellious to the government"*.

It is easily understood, then, in these conditions, why the Chinese communist government (I continue to say "government" because, in Chinese, the term "State" is not applied, but rather the term "government") cannot tolerate a religion. For a religion is not only a means of worship; it is not only the burning of incense in a Buddhist pagoda; it is not only the act of singing before the altar of the Chinese. In a Christian, Catholic or Protestant church, religion is more; religion is a belief and a certain authority. That is why every religion which is a true religion, a religion worthy of this name, appears to the Chinese communist government as to all other communist governments — but I speak only of what I know — to be a *usurpation*. This is why the government employs extremely violent coercive methods in order to make Christians accept finally by endorsing the reform effected by the government itself.

A short time ago, we saw, in one of the documents which Christians, Czechs or Poles — it little matters — were asked to sign, that they supported the government of the People's Republic. In China, we have seen the same oath but in much greater detail.

The Church of China was not opposed *a priori* to the government, but, on the contrary, disposed to make every concession compatible with conscience. Now Christians were asked to sign: "I support President Mao-Tse-tung, I support the government of the People's Republic, I support the Communist Party". We, priests, whose duty it is to advise Christians, have always told them: "One can very well sign 'I support President Mao-Tse-tung; one can very well sign 'I support the government of the People's Republic'. There is nothing there which goes against the conscience. But one cannot consciously sign 'I support the Communist Party' when this Party does not hide the fact that it extols a materialistic

and anti-religious ideology." You can, therefore, see that the position adopted by the Christians was extremely candid and, at the same time, not at all *a priori* or keenly in opposition to the government. And yet, persecution of the Christians continues in the manner which I have tried to describe to you.

I feel that my intervention can have some importance if I succeed in making it understood that, in studying a communist juridical regime, *we must not concern ourselves only with the texts*. Obviously, the existence of texts facilitates our work. But these governments are generally skilful enough not to let out texts of any great precision, of which, moreover, they have no deed in order to act. It was thus that the Chinese agrarian reform was realized before the corresponding act was adopted. Similarly, the matrimonial laws were published after the reform had been inaugurated. The Church reform is now underway in the absence of any law whatsoever thereon. Each reform is only a question of applying Communist Party decisions by police measures, by popular reunions, by the setting up of communist cells . . . It has nothing to do with the application of specific juridical texts and in this domain, we, who are jurists on the other side of the Iron Curtain, have much to learn by way of study. And this study must be pursued if we wish to pass judgment on the communist juridical regime because these rare texts, for which communist regimes can be reproached, never give but a very slight idea of the violations committed against individual liberty . . .

Deposition of Father André Bonnichon, former Dean of the Faculty of Law of the Catholic University Aurore at Shanghai, before the Committee on Criminal Law of the International Congress of Jurists, Athens, Greece.

Mr. President, Ladies and Gentlemen,

I should like to recount to you in a few words, as clearly and as objectively as possible, my experience with criminal procedure such as it is practised today in the People's Republic of China. I underwent this experience due to the fact of having lived in China for 23 years, 5 of which were spent under the regime of the People's Republic. In 1949, more precisely the 25th of May, 1949, the communist army entered Shanghai where I was living. I was arrested on the 19th of June, 1953, and remained in prison until my expulsion from China the 19th of April, 1954.

My experience is not exceptional and, furthermore, I am leaving to one side anything that might be of an exceptional nature. I will speak only of what has happened to me, experiences which I know have been undergone also by others, foreigners as well as Chinese. Now if, at present, there are but few foreigners remaining in China, we must not forget the countless Chinese submitted to the juridical regime which I am going to try and describe to you.

But before dealing with the procedure which I had to endure, I should like to emphasize slightly a point which appears so astonishing to the Occidental World, but which, in China, constitutes an element of everyday life. I speak of the *crime of thought.* This is a notion which reappears constantly in the political education to which the entire population is submitted.

As a matter of fact, the population is enveloped in a tight web of political education which lasts from primary school

till death. Each individual, in his place of work, his place of habitation, is obliged to take part in a little group which meets several times per week. During the course of the discussions, government politics and general policy are commented upon, and each person is obliged to speak his mind, to fall in line with and pledge himself to the government. This is what gives rise to the statement which is ceaselessly repeated to you: "Your crime is a crime of thought."

Over the special broadcasts reserved for us as prisoners, I heard repeated a hundred times the statement that *the only reason for our presence in prison was that our thought was wrong, and that the only way of getting out was to reform our thought.* And the government claims *not only to control the manifestations of thought, but thought itself.* A person is in prison because he *is revolutionary*. Such is this element, so strange to our occidental way of thinking that I felt it my duty to place emphasis thereon.

A second institution truly destructive of human liberty is the following: the rule to which we hold fast — and rightly so — namely, that there is no infraction if there is no text of law which makes provision therefore, is frankly and openly repudiated. *A person may be accused of offences which are not repressed as such by any text whatsoever.*

The law which serves as a basis for all political proceedings is found in an act of 1951 bearing the title "enactment for the liquidation of anti-revolutionaries" (in translating, I employ the word 'liquidation', for this renders the true sense of the Chinese word). Article 18 of this act provides for judgment by analogy. It begins by setting out a list of five or six crimes, sabotage, false report, then adds: "anything which might in any way be prejudicial to the Republic and the Revolution". Such is the formula more or less. Unfortunately, I do not have the text because all my papers, all my notes were confiscated and I left China with nothing more than the clothes I wore on my back. In any event, I am certain that Article 18 openly provides for offences by analogy. Moreover, it is not astonishing because Soviet legislation contains the same rule.

I come now to my own story insomuch as it may give some idea of penal procedure in China.

For 15 years, my position had been the following: I was a professor in law and Dean of the Faculty of Law of the Catholic University Aurore in Shanghai. I have lived in this country under several regimes. First, the Kouomintang regime, next, a regime of foreign occupation which lasted eight years, from 1937 to 1945. There followed another Kouomintang regime, and finally, that of the communists. I bring out this enumeration in order to indicate how careful we were, my colleagues and I, to keep out of the way of Chinese internal politics and foreign policy, and notably, anything that might be interpreted as an action favourable to the government of our country. I did not, of course, renounce my French nationality. I always pointed out very clearly to my students that I was not an envoy from my native country, but a missionary of the Catholic Church, and that I remained strictly outside all political questions. I think that the judges were in a position to know this because "there is nothing of which they are not unaware", and this is something they were truly able to know . . .

I was first expelled from the University at the same time as my French and Chinese colleagues. I was living in a small house with two of my colleagues. In 1952, April 29th, I asked permission to leave China. For this, it was necessary to obtain an exit visa. I continued to wait for a reply to my demand for a visa. This was obviously a very bad sign, because those who do not obtain the visa fairly quickly are suspect. On April 29th, 1953, exactly one year after making my demand, I wrote a courteous and extremely respectful letter to the Minister of Foreign Affairs asking him to give a ruling in my case. I said that I wished to leave China since I no longer had there sufficient employment.

I did not receive a reply. But on June 15th, 1953, at half past ten in the evening, the police invaded the little house where I was living. After having closed in on me in my room, they showed me the warrant of arrest.

For there was a warrant of arrest issued in my name. It was

drafted in Chinese and was very brief. It was composed as follows: "Bonnichon", then my name in Chinese, "imperialist element, arrested for anti-revolutionary activity". I was immediately placed in prison where I had to remain for ten months . . .

For 19 days, I waited for my first interrogation. I was then introduced into one of the rooms of the prison known as the "tribunal". It was a small room in which I found myself before a military judge in uniform, his name visible on a small piece of white cloth on the left side of the chest, as typical of Chinese armies, communist or otherwise. He was accompanied by a clerk and an interpreter.

He asked me first if I wished the services of an interpreter. I replied that I did. It is true that I speak Chinese, but the differences between dialects are too great, so much so that one is never certain to speak the same dialect as the judge or, more particularly, to understand him. And then, I must confess that I preferred to assure myself the slowness of pace afforded by the intermediary of an interpreter. Subsequently, with only one exception, I was always questioned in the presence of an interpreter.

The judge spoke to me at great length and, in my opinion, his discourse is of capital importance if one wishes to understand penal procedure such as it is practised in China. Moreover, as with all prisoners, foreigners and Chinese alike, it was repeated to me over and over again. I expected to be accused of specific acts: I would have denied or confessed, or would have explained myself according to the circumstances. But such was not the case.

The judge said to me: *"If you have been arrested, it is not without reason, for the government acts always in the right.* It has observed your anti-revolutionary activity for a long time. It has gathered the witnesses and the accusations necessary. *It is, therefore, certain that you are guilty.* Two paths lie open to you: either you confess your crimes, whereupon the government will be able to act with extreme clemency toward you, because, although judges previously had to pass sentence in accordance with the former procedure based on

the code, we are now able to act with clemency. *Or, on the other hand, you refuse to confess, thus resisting the government, in which case the severest of punishments awaits you.*"

I naturally declared my innocence and asked of what crime I was accused. I received the characteristic reply: "You are not to ask questions. You are to accuse yourself." And this statement subsequently became the basis and the tenor of all the procedure to which I was subjected . . .

One day, the judge, indicating a thick package of papers, said to me: "I have a pile of accusations against you as high as that." I asked who my accusers were. He then replied: "*You do not have to know them.* You must simply confess."

Naturally, I adopted the only position possible, that of speaking the truth. At all times, I replied in the same form, that I had not broken the laws of the people's government, and that I had not opposed the government, which was true.

I was questioned for approximately a month, once every two days, sometimes more often. I must have gone through 25 interrogations in all, each of about three hours' duration. Only once did the judge order me to remain standing; on all other occasions I was permitted to sit. Unlike a good many others, I was not subjected to wilfully exhausting interrogations. I know persons, whose word is beyond question, who, for three consecutive days and nights, remained standing, their hands manacled behind their backs.

On one occasion, the judge accused me of having said in class at the University that China was not a semi-colony. I said, as a matter of fact, that, during the period which saw China as a member of the League of Nations, she could not be considered as a semi-colony but, on the contrary, as a sovereign state. I specified that it was a technical question of no political significance. The judge then retorted: "But this term has been employed by our President Mao-Tse-tung". I expressed regret at having contradicted the President who must have used the term in an oratorical and quasi-political sense during a public address. And I added that I would not change my opinion on the subject. Finally, they passed on to other matters.

On another occasion, the judge accused me of having listened to American radio broadcasts. I could have replied as an Occidental would have, that this had never been prohibited, for there was no regulation forbidding the population to listen to the Voice of America. I took great care not to make this reply and said that I had not listened to the Voice of America because I had no radio. The judge, feeling he had committed an "error", recovered himself by saying: "The government knows very well that you have no radio, because it knows all. But it is quite possible that you may have listened to American broadcasts in the home of a French or Chinese friend."

After a certain time, I felt that, in the face of my denials and my refusal to confess "my crimes", the interrogations of the judge were beginning to exhaust themselves. I had been subjected to a few bursts of anger on his part, but there were also moments in which he revealed a certain amiability. At such moments, he would say to me: "Be reasonable, the government is concerned only with your well-being. Confess. You are the only one who has not done so because all the other priests have already made confessions. *Don't force the government to punish you.*" This last statement is unquestionably a true pearl of humour!

The reproaches made against me were always vague. I was reproached for being an imperialist, a foreign agent, but never for a single specific act. The principle of the procedure is, as a matter of fact, that the accused must remain ignorant of the accusation aimed at him. The same applied as to the identity of his accuser. Thus, after having changed prisons, and judges as well, I said to my second judge, during an interrogation, that I was aware of the fact that certain of my former students had made accusations against me. He was very much taken aback and asked: "How do you know that some of the accusations come from your former students?" I replied frankly that the first judge had told me so. There was then a significant exchange of glances between the judge and the clerk which clearly showed that the first judge had committed a "technical" error. For he never should have told

me that the accusations, the contents of which he had never revealed to me, came from my former students . . . *You do not know who accuses you, you do not know of what you are accused, you must simply accuse yourself* . . .

I come now to the question of prison life. In my first prison, I shared a cell with four other prisoners. There was no maltreatment, but life was hard: we were obliged to remain in a squatting position on the ground along the wall during the entire day, that is, 16 hours out of 24. During 8 hours only were we able to stretch ourselves out on the ground to sleep. The rest of the time, we were not allowed to doze, nor to speak, and the squatting position without budging was sheer agony, especially in mid-summer because there was very little air or light in the cell. During my stay in prison, there were only three twenty-minute periods of interruption during which we could move about in the cell which was very small.

Later, I was moved to another prison where I was placed in a cell of fifteen. Here, as in the previous one, there were no beds, chairs or tables. We were still obliged to sleep on the ground and pass the entire day in silence in a squatting position along the wall.

Every evening, the prisoners were obliged to discuss, in small groups for a period of two and one-half hours, the policy of the government, and especially, matters which concerned us directly, that is, the obligation to denounce ourselves. We were supposed to urge one another mutually to be frank with the government. And I must say that all my prison mates, who were prisoners such as myself, accused of the only existing political crime — anti-revolution — spoke as true and sincere communist servants. Indeed, they had been told that the only way of getting out of prison was by reforming their ways of thinking . . . I, myself, went through approximately three hundred of these sessions during which prisoners praised the regime, expressed satisfaction at having been placed in prison because it afforded them — or so they said — an opportunity to reform their ways of thinking. They declared themselves ready to do anything the government

might ask of them, including forced labour.

I was the only one to reply sincerely to the questions posed. During the first few days, my replies created such astonishment that one of my co-prisooners asked me if I were communist or no. When I answered in the negative, there was a moment of sheer stupor, because *to say in a Chinese communist prison that you are not communist is to defy the government.* And similarly, you defy the government in declaring that you are not guilty.

Under these conditions, the non-existence of lawyers may easily be understood. For me, it follows naturally that I could not be assisted by a lawyer. Since I was supposed to confess myself to being guilty, I hardly see how another man could have had the audacity to say to a public accuser who was not present, who did not even exist, that he was mistaken and that the prisoner was innocent. In my opinion, such is absolutely unthinkable.

My prison mates were submitted to the same procedure as I, that is, they were invited to confess. Most of them did confess and, asking for paper and pen, squatted along the wall and wrote down their confession. However, I have seen them remain in prison afterwards for six, eight and ten months, having to reaffirm their confessions under the pretext that they were not sincere.

We were also supposed to accuse other persons, such accusations being considered as a proof of sincerity. For this purpose, there were, in the prisons, printed forms of denunciation which could be obtained by asking the guard at the wicket-gate. On the right-hand side of the form, you place the name of the person whom you wish to accuse, his address and the nature of the accusation. On the reverse side, there is space for developing in greater detail the accusation. Here, of course, we are still concerned with political accusations and with the offence of anti-revolutionary tendencies. I have seen my prison mates fill dozens and dozens of these forms.

The same forms are also used during periods of "thought reform" to which, one day or another, entire schools, hospitals, factories, entire branches of industries are submitted. They

were the official forms for denunciation.

In our case, it is difficult to say whether we came under a jurisdiction concerning instruction or a jurisdiction in which judgment was to be passed. Nothing is known about this political procedure which exists absolutely without any text. The judge who questioned me, a young man of 23 years dressed in military uniform, might have resembled what we call an examining magistrate. Among my prison mates, there reigned the conviction that, to be sentenced, you were placed in another prison where there sat a tribunal which condemned you to death or to forced labour.

I come now to my release from prison. After six months without interrogation, I was summoned, without a moment's warning, on Saturday, April 17, to an interrogation which, this time, lasted nine hours. They again tried to make me sign confessions. For the first time, they spoke to me of a certain pious association to which I had never adhered and in which I had never taken part. The People's Government had condemned it as a secret, political and reactionary association. Now the judge, for at least five hours, tried to make me sign a statement that the association was secret and reactionary. I refused, considering that such a move was absolutely contrary to my conscience. I emphasized that they were asking me for an avowal of something which was completely outside my field of activity. And the judge insisted, saying: "You must obey the government, it is the will of the government, you must sign." I replied in saying that I was a foreigner in that country, that I obeyed its laws and the government, but that I could not sign something which was against my conscience. And the judge retorted: "When you are in your church, you are free to obey your religious laws. But here, you are before a tribunal, that is, in prison, you must obey the government." There was, on this point, a barrier of complete incomprehension between the judge and myself. He considered that, outside my church, I must blindly obey the government.

This dispute ceased toward six o'clock in the evening. There were two interrogating judges, and one had gone out to rest. I had no such right. When he came back, the other

judge said to him in Chinese: "Nothing can be done, he won't sign."

"Too bad. Don't sign, then," said the other judge. I understood then that my lot had probably already been decided and that I was going to be expelled.

But then, I was asked to sign another form, according to which I would have prevented other people from signing the Stockholm Appeal. I refused. Then, the judge spoke to me — for the first time — of an account, from among the articles seized at the Catholic University, which I had typed but had not sent out of the country. In this account, I had made allusion, but only in passing, to the presence of anti-aircraft weapons on our football field. This fact was common knowledge since our University was situated on a very much frequented street and the football field was separated from the street by only a simple fence. Now the judge informed me that the matter involved a question of military secrecy. I laughed, saying that this secret was the common knowledge of five million people living in Shanghai. But the judge specified that if it was not a military secret in Shanghai, it was in Hongkong. He added: "Do you want to sign that you have related this thing and that it could be prejudicial to the Chinese people?"

It seemed to me that the absurdity of such a statement reflected not on me but on them, and after thinking it over, I said to myself that it involved nothing contrary to my conscience, nothing which could be prejudicial to my Christian friends, and I agreed to sign the form. Perhaps, I was wrong. Perhaps, you will consider it a display of weakness. In any event, you will see how this confession transformed itself into an instrument of accusation.

Afterwards, I was taken back to my cell, and two days later, was summoned by the judge and told that the military commission of the army of liberation of the people which governed us was going to hand down judgment in my case.

The second following day, I was led from my cell in order to be read the "judgment". It is difficult, of course, to qualify the juridical nature of such an act: is it a judgment,

an administrative decree, an administrative act, a decree of expulsion? These are only subtleties of occidental logic. At any rate, the instrument emanated from "the judicial committee of the military commission of administration of Shanghai." It was drafted somewhat in the form of a judgment. I was not given a copy. It was only read to me, after a request not to interrupt the reading by protestations. I did not understand all of it. The "judgment" contained approximately this: I would have given information on anti-aircraft weapons to a Belgian priest and spy whom I knew and who was also in prison. I was sentenced to expulsion from Chinese territory . . .

In conclusion, it is especially necessary to emphasize the non-existence of the rule that there can be no legal infraction in the absence of a text relating thereto. This is nothing extraordinary since, as we know, the rule does not appear either in Soviet legislation or in that of people's democracies. Next, use is not made of the services of a lawyer. Finally and chiefly, one is obliged to accuse oneself in the absence of even the slightest hint of a specific charge.

In closing, I would like to speak to you of one thing which appears to me worthy of being pointed out. I want to speak of the *death sentence with stay of execution.* In our European legislations, we are familiar with the stay of execution: the penalty to which the accused has been sentenced is not executed immediately but will be in the event of a repetition of the offence. The same principle is applied in China in respect of the death sentence with stay of execution . . . Moreover, it is an institution of which they are very proud and which, to them, appears very humane and efficacious. Now, in my opinion, it is a barbarous institution because it amounts to holding the blade of the guillotine suspended over the neck of a man. For, here again, the repetition of the offence will not depend on the infraction of a specific text. It will be a new accusation as vague as the first, one of anti-revolution, of revolutionary activities.

My personal experiences are in no way exceptional: a great many foreigners and Chinese alike have gone through the same ordeal. I feel that if the international voice were to

to rise in favour of those unfortunates who are still in prison and who suffer the same procedure of compulsory self-accusation, whether they be foreigners or Chinese, if a voice were to rise up against these practices so degrading for the human personality, this international voice would render a true service to humanity . . .