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JUDICIAL WORK IN T'AI-HANG

Editor's Introduction

Guest Editor, Stanley Lubman*

This issue of Chinese Law and Government is devoted entirely to a translation of a report on legal work in the T'ai-hang area in North China in 1946. The Chinese-language version of this report (hereafter "T'ai-hang Report"), located in the Library of the Hoover Institution at Stanford University in 1965, was translated in 1967-68 by Wallace Douglass, then a student at the Law School of the University of California, Berkeley, and now a member of the California Bar. I am pleased to make this translation available in the hope that it will stimulate the study of legal institutions in the areas ruled by the Chinese Communist Party before 1949.

The T'ai-hang Report has more than historical interest for us today. In stressing the mass line, using legal institutions to implement political policies, mediating civil disputes, and educating rather than punishing criminal offenders, the report is consistent with themes prominent in Chinese discussions of judicial work since the establishment of the People's Republic

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in 1949. This is not to say that policy has remained consistent since then: the rise and decline of Soviet influence on the legal system, frequent tensions between the mass line and bureaucratization, and the suspension of the activities of the entire political-legal apparatus for years during and after the Cultural Revolution suggest the existence of conflicts over the configuration and operation of the police, procuracy, and courts. Despite changes and uncertainty in policy, however, the themes of the T'ai-hang Report are nonetheless familiar to us today, more than twenty-five years after the report was written. The Report aims at realizing ideals of a popularized, fluid, mass-type justice which has never been completely attained in any Communist country, let alone China. But the themes of the Report are not merely ideals; recent visits to China by a number of American students of that country, including myself, suggest the persistence of attempts to construct in China today the institutions of justice that were originally developed as part of the gargantuan task of making a great revolution, even though China's task today is the even more challenging one of modernizing a nation.

Publication of this translation seemed particularly appropriate after I had had occasion to reflect on insights into the Chinese legal system that I was fortunate to have as a result of two visits to China, in the fall of 1972 and the spring of 1973. What I had seen particularly during my second visit prompted me to recall how little Western legal scholars of China have studied the antecedents of present-day Chinese legal institutions in Chairman Mao's Yen-an and in other Liberated Areas in the 1940s. More attention has been paid to the influence of Chinese traditional values and of the Soviet model than to China's own revolutionary experience; it seemed to me that what I could learn of the handling of civil and criminal cases alike suggested the persistence of Chinese determination to remain consistent to the styles of justice illustrated in the T'ai-hang Report.

For instance, a divorce trial which I attended in the Hsüan-wu district of Peking in late April 1973 was held at the factory

where one of the parties worked, "for the convenience of the masses," and although three judges formed a "jury" (ho-i t'ing) the proceedings were dominated by the "representatives of the masses," who firmly urged the couple to remain together and compromise their differences. Throughout the proceedings heavy stress was placed on arriving at a solution that was mediated rather than adjudicated. Of course the intensity of the persuasion was strong enough to amount to very firm guidance indeed, especially since the effect of the court's decision was to send the parties home and make them try to effect a reconciliation. But the emphasis on mass-style mediation -- in a style the reader of the T'ai-hang Report will recognize -- rather than a decision by judges was very clear. As in preliberation days, too, the trial aimed at reaching a solution that was politically correct in the context of highly general guidelines expressed both in legislation and less formal but no less authoritative policy statements.*

Other signs of attempts to maintain consistency with earlier policy were perceived in the statements of cadres about the punishment of criminal offenders. In particular, four members of a Shanghai Residents' Committee interviewed in April 1973 described at length the persistent efforts they made to try to "reform" offenders who repeatedly committed such crimes as petty theft. My informants were anxious to emphasize the patience and the care they were willing to devote to persuading wrongdoers of the need to reform, make constructive contributions to collective efforts, and bring about self-renewal through labor. These themes are clearly present in the T'ai-hang Report.

Finally, it should be noted that some of the problems which are noted in the Report continue to exist in China today. Many articles in the Chinese newspapers and legal periodicals of the 1950s and 1960s discuss the need for care and precision in the investigation of criminal cases. The same problems are dis-

*For a fuller account of this trial see Lubman, "A Divorce Trial -- Peking Style," Wall Street Journal, June 5, 1973.

cussed in the T'ai-hang Report. Also, evidence has occasionally emerged indicating that it is often difficult for low-level cadres charged with duties related to the maintenance of order to work out satisfactory compromises of the tensions between orderly administration and mass participation in policy implementation. The T'ai-hang Report contains much discussion that illustrates that these problems were encountered long ago in administering a judicial system — which in the West is thought to require much routinization — while requiring legal work to be responsive to mass movements.

These and other problems remain unsolved, and foreign knowledge of Chinese efforts to deal with them is sadly incomplete. The T'ai-hang Report may help increase our understanding of early Chinese Communist attitudes toward law and, therefore, may also throw light on contemporary institutions and practice.

Stanley Lubman

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