

dergraduate or graduate student's introduction to law, it promises enlightenment not only, or mainly, from its wealth of information about the legal system, but because it displays the system as it should be perceived—in process, questioning.

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FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA. Edited by Albert P. Blaustein.\* South Hackensack: Fred B. Rothman & Co., 1962. Pp. xxix, 603. \$14.00.

The triumph of Communism in China made the world's most populous country the subject of a gigantic social and economic experiment. If Western social scientists have been slow to face the challenges implicit in this experiment, the response of their lawyer colleagues has been even more disappointing. Anglo-American and European journals contain merely a scattering of articles on Communist Chinese law, and except for the careful work of Leiden's M. H. van der Valk,<sup>1</sup> these articles are general in nature and reveal meager research. Elsewhere the situation is no better. While Japanese writers have published profusely and have occasionally transmitted data not otherwise available outside the mainland, for the most part they have been either unwilling or unable to subject their materials to serious and impartial analysis. More predictably, much the same can be said of both Soviet and Nationalist Chinese sources. Thus, thirteen years after the founding of the People's Republic of China, we know little of its legal system.

This state of affairs does not reflect subject matter intrinsically lacking in interest. Study of the role of law in the application of the Communist formula for rapid industrialization of Asia's major society should add to our understanding of law, of Communism, and of the process of modernization. Nor can our present ignorance of Chinese law be attributed to its lack of political significance. It has by now become commonplace to note the need for "a study of Communist Chinese legal principles, seeking for any indication of possible common grounds upon which, on a long-range basis, a world legal order embracing the communist and non-communist countries can be built."<sup>2</sup> We should also expect lawyers to contribute substantially to the more immediate task of comprehending political developments in Communist China. We might recall that a principal purpose of Henry VIII in establishing chairs in Roman Law at Oxford and Cambridge was to educate English diplomats for dealing with the countries of the Continent.

How then explain this failure to undertake serious research on contemporary Chinese law? The Chinese language is only the foremost deterrent to Western

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1. See, e.g., Van der Valk, *China*, in *THE LAW OF INHERITANCE IN EASTERN EUROPE AND IN THE PEOPLE'S REPUBLIC OF CHINA* 297 (1961); *The Registration of Marriage in Communist China*, in *16 MONUMENTA SERICA* 347 (1957); *CONSERVATISM IN MODERN CHINESE LAW* (1956).

2. LARSON, *DESIGN FOR RESEARCH IN INTERNATIONAL RULE OF LAW* 89 (1961).

lawyers. Among other factors, most obvious is the difficulty of acquiring first-hand knowledge of the system through sustained, uninhibited observation not merely of its courts but of the many other processes for settling disputes. At present, most of us must be content to learn from the outside, a very unsatisfactory vantage point. Printed reports—ranging from formal legal documents to letters to the editor—therefore assume an even greater significance in the study of Chinese law than they do in the study of the contemporary law of other countries. But there is a striking paucity of conventional legal materials produced by the regime, which has neither enacted a comprehensive statutory scheme nor systematically published the decisions of its judicial and administrative organs. Moreover, many important legal directives are closely-kept secrets, while those formal documents that are made public are often difficult and expensive to obtain outside of China. Less formal materials can only be found through the laborious sifting of Chinese magazines, Chinese newspapers, and the voluminous translations published by our Government. A source of further discouragement is the vagueness and lack of detail in the statutes, decrees, and decisions that do become accessible. The available treatises, reports on legal problems, articles, and speeches, replete with the clichés of the “mass line,” tend to be superficial, uninformative, and downright dull.

In time, some of these difficulties may be minimized. Yet a more profound class of problems confronts the scholar of Communist Chinese law. One really must know everything before he knows anything, or so it would seem. Historical perspective—knowledge of the role played by law in traditional China and during the Republican era—is, of course, one of the principal prerequisites to understanding contemporary developments. Equally significant is familiarity with Soviet law, which exercised enormous influence on the Chinese system, at least from 1949 until 1957. Indeed, more than a passing acquaintance with the Continental legal tradition is essential. In addition, to appraise legal developments on the mainland, the scholar must be versed in their political, economic, and social setting. He must also be sophisticated enough to avoid both ethnocentrism and extreme relativism in his judgments—not an easy task in a subject suffused with political emotion.

It is no wonder that lawyers have been reluctant to enter this field. Perhaps the wonder is that in recent months American scholars have demonstrated a remarkable amount of interest in contemporary Chinese law, and the subject is suddenly enjoying a vogue quite different from the slow growth of interest in Soviet law that took place prior to World War II. In 1961-62 a few leading law schools instituted seminars that sought to view Chinese law in the light of its historical development. Several others have begun teaching Soviet law on a Sino-Soviet basis. Moreover, individual scholars—social scientists and sinologists as well as lawyers—have initiated research at many universities.

The book under review provides the first hard-cover manifestation of this flurry of activity. Mr. Blaustein has collected English translations of what he deems “the *fundamental* laws of the People’s Republic of China.” His belief is that “no study of the Communist Chinese legal order can be undertaken

without a careful examination of the nature of these laws and the policies which they set forth and encompass."<sup>3</sup> These materials are assembled under the following headings: "Constitutions and Programmes," "Organic Laws," "Nationalities and Elections," "Penal Laws," "Marriage Law," "Property Laws and Regulations," and "Labour Laws and Regulations." In addition, there is a twenty page introductory essay that proposes to put the materials into context and to describe them.

Given the backward state of the art and the formidable obstacles confronting those who venture so far afield from American law, it is wise to think positively about whatever contributions come forth. Unhappily, to twist a favorite Party slogan, the book's shortcomings are the main thing while its achievements are incidental.

The book fails to keep its promise. Despite its title and despite the fact that "fundamental" is repeatedly italicized in the Introduction, apparently on the assumption that repetition at some point becomes persuasion, a number of laws that *are* fundamental to understanding the system have been inexplicably omitted. The Arrest and Detention Act,<sup>4</sup> the Act for the Control of Public Order,<sup>5</sup> the People's Police Act,<sup>6</sup> the laws that set forth the organization and duties of the notorious People's Tribunals,<sup>7</sup> the Public Security Stations,<sup>8</sup> the Urban Street Offices,<sup>9</sup> the Urban Residents Committees,<sup>10</sup> the Public Order Protection Committees,<sup>11</sup> the People's Reconciliation Committees,<sup>12</sup> the 1953 directives on the implementation of the Marriage Law,<sup>13</sup> and the

3. Pp. ix-x (italics original).

4. Law of Dec. 20, 1954, 1 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 239 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, SURVEY OF CHINA MAINLAND PRESS, No. 953, p. 9 (1954). [Hereinafter cited as SURVEY.]

5. Law of Oct. 22, 1957, 6 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 245 (Ch. P. Rep.), English translation in SURVEY, No. 1646, p. 1 (1957).

6. Law of June 25, 1957, 5 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 113 (Ch. P. Rep.), English translation in SURVEY, No. 1564, p. 6 (1957).

7. Government Administration Council General Rules of July 20, 1950, [1952] Chung-yang jen-min cheng-fu fa-ling hui-pien 71 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, CURRENT BACKGROUND, No. 151, p. 4 (1952).

8. Law of Dec. 31, 1954, 1 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 243 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, CURRENT BACKGROUND, No. 310, p. 6 (1955).

9. Law of Dec. 31, 1954, 1 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 171 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, CURRENT BACKGROUND, No. 310, p. 4 (1955).

10. Law of Dec. 31, 1954, 1 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 173 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, CURRENT BACKGROUND, No. 310, p. 1 (1955).

11. Ministry of Public Security Provisional Regulations promulgated Aug. 10, 1952, [1954] chung-yang jen-min cheng-fu fa-ling hui-pien 56 (Ch. P. Rep.), English translation in U.S. CONSULATE, HONG KONG, CURRENT BACKGROUND, No. 216, p. 11 (1952).

12. Government Administration Council General Rules of March 22, 1954, [1955] chung-yang jen-min cheng-fu fa-ling hui-pien 47 (Ch. P. Rep.), English translation in SURVEY, No. 784, p. 11 (1954).

13. Government Administration Council Directive of Feb. 1, 1953, [1955] chung-yang jen-min cheng-fu fa-ling hui-pien 79 (Ch. P. Rep.), English translation in U.S. CONSULATE,

1955 provision regulating the registration of marriages<sup>14</sup> are examples of documents that have already appeared in English translations of varying quality and that should have been included in any collection of this nature. Yet the reader is not even informed of their existence. On the other hand we are given a good deal of peripheral material, such as the regulations on factory safety and sanitation<sup>15</sup> and on workers' retirement benefits.<sup>16</sup>

The documents that the book does include must be treated with caution. Of course the outsider often cannot determine whether the provisions of a given law are being carried out, but it is possible to keep track of formal changes. Yet the book does not apprise the reader of many significant amendments to the laws presented. For example, in reading Article 26 of the Organic Law of the People's Courts,<sup>17</sup> it would be helpful to know that two of the three categories of Special People's Courts for which it provides—the railway and water transportation courts—were abolished in 1957;<sup>18</sup> similarly, in reading Article 2 of the Organic Law of the State Council,<sup>19</sup> one would want to know that the Ministry of Justice and the Ministry of Supervision had been abolished in 1959.<sup>20</sup> We are left in ignorance of a 1956 decree which not only made clear that the regulations for the "control" (a better term for *kuan-chih* than "surveillance") of counter-revolutionaries<sup>21</sup> were applicable to other criminals but also provided that only the courts could impose this sanction, thereby purportedly eliminating powers previously enjoyed by the public security forces.<sup>22</sup> Nor is anything said of the critical 1957 executive order that in effect made the sanctions of the "Reform Through Labor" statute<sup>23</sup> applicable to a wide variety of non-criminal conduct and authorized administrative agencies to impose them without the necessity of judicial approval.<sup>24</sup> These can hardly be dismissed as the quibbles of a pedant.

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HONG KONG, CURRENT BACKGROUND, No. 236, p. 8 (1953); Central Committee of the Chinese Communist Party Supplementary Directive of Feb. 18, 1953, *id.* at 16.

14. Ministry of Interior Regulation of June 1, 1955, 1 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 194 (Ch. P. Rep.), English translation in Van der Valk, *The Registration of Marriage in Communist China*, in 16 MONUMENTA SERICA 347, 354 (1957).

15. P. 566.

16. P. 555.

17. Pp. 131, 139.

18. State Council Decision issued Sept. 7, 1957, 6 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 297 (Ch. P. Rep.).

19. P. 127.

20. National People's Congress Resolution of April 28, 1959, 9 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 108 (Ch. P. Rep.).

21. P. 222.

22. National People's Congress Standing Committee Decision of Nov. 16, 1956, 4 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 246 (Ch. P. Rep.). Whether this decision was actually enforced, particularly following the outbreak of the anti-rightist campaign in June of 1957, is open to question.

23. P. 240.

24. State Council Decision issued Aug. 3, 1957, 6 chung-hua jen-min kung-ho-kuo fa-kuei hui-pien 243 (Ch. P. Rep.), English translation in SURVEY, No. 1589, p. 1 (1957).

The translations themselves are of mixed quality. Strangely, the editor does not identify the translators. The bulk of the translations appear to have been taken from pamphlets published by the Peking Government's Foreign Languages Press while some have been taken from publications of the United States Joint Publication Research Service. Although the former are considerably better than the latter, occasionally they too leave much to be desired and may even mislead the foreign lawyer, as is the case with the translation of several provisions of the Organic Law of the National People's Congress.<sup>25</sup> In the absence of substantial editorial revisions, the JPRS translations, like others on China done under the auspices of our Government,<sup>26</sup> are unsatisfactory tools for lawyers. They are done by laymen in haste and with little regard for the kind of accuracy that translations of legal documents demand. The particular JPRS materials that were included in this volume suffer additionally from being translations of Russian translations of Chinese originals.<sup>27</sup> This may explain the fact that in the translation of the Reform Through Labor Act, for example, a random check reveals provisions that are omitted,<sup>28</sup> unconsciously construed,<sup>29</sup> misinterpreted,<sup>30</sup> or simply unfeelingly phrased.<sup>31</sup>

25. For example, Article 21 § 3 of this law (p. 120) might better have been rendered: Proposals for the appointment or removal of Vice-Presidents, presiding judges [Chief Judges of Divisions], deputy presiding judges [Deputy Chief Judges of Divisions], judges and other members of the Judicial Committee of the Supreme People's Court, or for the appointment or removal of Deputy Chief Procurators, procurators and members of the Procuratorial Committee of the Supreme People's Procuratorate, are submitted to the Standing Committee by its Chairman.

Apart from the confusion engendered by the confounding of the entirely different offices of "Chief Judge of Division" (t'ing-chang) and "presiding judge" (shen-p'an-chang), the translator's insertion of the word "other," which is not in the text, makes an important difference. It implies that the country's highest judicial body, the Judicial Committee of the Supreme People's Court, numbers among its members all the judges of the Supreme Court, which is not at all clear on the basis of other information.

26. The other principal government sources are U.S. CONSULATE, HONG KONG: CURRENT BACKGROUND; SURVEY OF CHINA MAINLAND PRESS; and SELECTIONS FROM CHINA MAINLAND MAGAZINES.

27. See U.S. Joint Publication Research Service JPRS/DC-140, *Criminal Legislation in the People's Republic of China* 1 (1958).

28. Article 3 of the translation (p. 240) omits the third paragraph of the original text, which provides: "Juvenile offenders shall be educated and reformed in corrective settlements established for juvenile offenders." Law of Sept. 7, 1954, [1955] chung-yang jen-min cheng-fu fa-ling hui-pien 33 (Ch. P. Rep.).

29. Article 21 of the translation (p. 246) states:

Juvenile offenders 13-18 years of age shall be kept in corrective settlements for juvenile offenders.

The original text provides for the incarceration of "juvenile offenders who have reached the age of 13 and have not completed their 18th year."

30. Article 27, sentence one, of the translation (p. 247) states:

It is necessary to pay attention to the education of criminals who possess industrial skills and work habits.

The original text provides:

It is necessary to pay attention to training prisoners in production skills and work habits.

31. Article 11, paragraph 3, of the translation (p. 243) reads:

Much of the Introduction is devoted to restating the titles and subtitles of the documents with an unexplained occasional characterization of one or another of them as "important," "most important," or "still the most important."<sup>32</sup> The final portion of the Introduction, entitled "A Bibliographical Note,"<sup>33</sup> is a hodge-podge of inaccurate and incomplete statements. It would have taken very little effort to find out, for example, that sixteen, and not eleven, volumes of the official Chinese collection of laws and decrees were published as of mid-1960; that a number of libraries in this country have managed to assemble complete sets of this collection; that several American libraries also have almost complete holdings of *Political and Legal Research* (*Cheng-fa yen-chiu*), a periodical that is earlier said to be "the only authoritative [*sic*] law journal published in mainland China"<sup>34</sup> and yet is omitted from bibliographic mention; that valuable data on China's legal system can be found in many Chinese newspapers in addition to the *People's Daily*; and that unnamed among what are termed the "lesser" sources of information is Hong Kong's Union Research Institute, perhaps the world's largest non-governmental repository of data on mainland affairs.

The above criticism takes the book for what it purports to be. It does not even reach the question of the utility of a volume that limits itself to the publication of China's formal laws. Nowhere in the world is the gap between law-on-the-books and law-in-action likely to be greater than in the People's Republic. This has been especially true since June 1957, when the savage attacks on the "rightists" crushed those who had been patiently and rather successfully nourishing the tendencies toward routinization and stability that appeared even in China's new revolutionary society. A good deal of evidence can be found—some of it in English—to suggest the nature of Chinese law-in-action both before and after the convulsions brought on by the anti-rightist movement and its sequel, the "great leap forward." To assemble this material on any given topic, to present it in a meaningful way, and to evaluate it will require lawyers to engage in the same kind of slow, painstaking work that confronts other students of contemporary Chinese society. The rewards should be correspondingly great. There are no shortcuts to scholarship. Nor are there any substitutes for it.

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In case of necessity, preliminary detention places supervised by branches of the bureau of public security in municipal regions of cities under central jurisdiction and cities that are provincial centers may be built.

32. How the long obsolete Agrarian Reform Law of 1950 can be called "[s]till the most important of the *fundamental* property laws" (p. xxxv) is especially puzzling.

33. Pp. xxvii-xxix.

34. P. xv. Reference might also have been made to *Study of Law* (*Fa-hsüeh*), a periodical published in Shanghai during the late 1950's, some issues of which are available in this country.

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