

ALTERNATIVE LEGAL SYSTEMS---CHINA

SOURCES: Edgar Snow, "The Other Side of the River"
Felix Greene, "Awakened China"

When we criticize the present criminal justice system and demand its abolition, many people will immediately ask us what we intend to put in its place. Information about the judicial systems in other countries, particularly socialist countries like China can help us to answer such questions. This does not mean that we have to advocate the adoption of the entire Chinese system in the U.S. It does mean that there are many aspects of this system which could be used in constructing a new system of justice in this country.

In giving examples from the Chinese system, we will probably be asked about the source and reliability of the information. The books used here were written by men who have spent several months on several occasions traveling in China. Snow is an "old China hand" and speaks Chinese. Greene is a journalist who does not speak the language and used interpreters. Both chose the places they wanted to visit and the people to whom they wanted to speak. Both visited Chinese courts and prisons and talked to prisoners as well as wardens, lawyers, and judges. The impression conveyed by both books is that the authors are by no means communists but both have the ability to lay aside personal and political prejudices and look at things in an objective way. It should be noted that neither Snow nor Greene saw any signs of forced labor or concentration camps in China. Their visits took place in the late 50's, early 60's, and late 60's.

The legal system of traditional China considered that an illegal act must be considered against the background of the circumstances surrounding it. Civil disputes were regarded as disharmony which needed resolution. In pre-revolutionary China, civil, commercial, and religious disputes were resolved by village elders or by the guilds or associations to which the disputing parties belonged. The state was concerned only with criminal law. As the old society broke down in the 19th and early 20th centuries, this system ceased to work. Contemporary China is developing a legal system that will fit a modern industrial society while preserving the best of the traditional concepts.

Before 1949, Chinese cities, particularly Shanghai, had more crime than New York has today. Shanghai was practically ruled by underworld gangs who killed to order, sold opium, and ran innumerable houses of prostitution. Many dead bodies were picked up in Shanghai every morning-- people who had been murdered, died of drug overdoses, or who had starved to death because of the great poverty of most of the people. Within a few years of the communist victory, all this was changed and there was almost no crime in Shanghai or elsewhere in China. How did this change come about?

First, under the socialist system there was work and a modest but adequate income for all. This eliminated the economic motive that underlies most crime. Second, the Communist Party and administration, unlike the corrupt KMT officials, were determined to eliminate the drug traffic and the criminal organizations which controlled it. Third, the basis of the communist organization is the neighborhood or work-place committee which enlists the aid of the people in making and carrying out decisions. This organization helped to restore the sense of community and cooperation in the Chinese cities.

New York as well as other American cities has similar problems to those of pre-revolutionary Shanghai. There is a serious unemployment, particularly in the ghettos. The drug traffic is unchecked by the authorities and drugs spread with the help of the police who are supposed to control them. The mood of the people is either apathy or fear and there is almost no sense of responsibility to others or community of interest in our cities.

Chinese law is made by the National People's Congress and the laws apply to the whole country--the Chinese system is national rather than federal. The Chinese court system is divided into three parts:

1. The Supreme People's Court
2. Special People's Courts
3. Basic People's Courts

The Basic People's Courts are generally the courts of first instance and the majority of cases are heard in them. Each case is heard by a judge and two People's Assessors whose function is somewhat like that of our juries. The People's Assessors are elected by popular vote for a two-year term and are given some legal training while serving. There are 40-100 People's Assessors in each county. When a case comes to trial, two of them are chosen to attend. They have equal rights with the judge and the two together may outvote the judge.

Below the courts are the Neighborhood People's Conciliation Committees. These are composed of trusted community members. The Committees help to settle personal and family disputes and deal with minor infringements of the law. Use of the Committee is voluntary. The Committees are able to settle many disputes which would otherwise have to go to court.

The Chinese police are under the Ministry of Public Security. There are not very many police in China and they patrol unarmed. Maintenance of order on a day to day basis is the responsibility of the street and work-place committees rather than the police.

Before an individual can be arrested, a complete investigation must be made and evidence sufficient to satisfy the court must be submitted in advance. The arrest must be made in public, in the daytime, and in front of witnesses. The family of the arrested person must be notified. The accused person must be shown the full evidence against him at least three days before his trial. He may choose his own lawyer or have the court appoint a lawyer for him. The case must be heard within one month of the charges being laid. A Canadian lawyer, Kenneth Woodsworth, and a British lawyer and Member of Parliament Mr. F. Elwyn Jones have observed the arrest and trial procedures and both were satisfied that these rules were not just on paper.

The Chinese lawyers (there are only about 3,000 in China) and courts do not have too much business. Often, there are no court cases for several days, even in large cities. China has no property litigation of the type that fills Western courts. There are no channels in China to dispose of stolen goods or to obtain or sell illegal drugs. The random violence toward persons and property which is so common in the West is almost unknown in China.

Both Greene and Snow visited the Peking municipal prison, the

only one in the city which has about 1800 prisoners. About 100 of these prisoners were women at the time of Snow's visits. Peking has a population of slightly over four million. This prison has no armed guards or bars. The prison shops are run by prisoner foremen. The prisoners also run the library, canteen, and barber shop. The prisoners have their own band, theatre group, and opera troupe. Men and women prisoners eat together and attend plays and movies together.

The majority of prisoners were in for theft of state property, embezzlement and forgery. Few were in for violent crimes against persons. Chinese laws provides for the death penalty for murder and for rape of a victim under 14. However, the death sentence is automatically suspended for two years to give an opportunity for reform. If a person under the death sentence shows evidence of sincere reform, his sentence is usually commuted. Few sentences extend more than ten years.

Besides the regular city jails, a convicted person could be sentenced to probation (for minor crimes or first offenses) or sent to a state reform farm. Snow reported that the reform farms are very much like the ordinary state farms of China and definitely are not a Chinese version of Siberia.

The emphasis of the Chinese prison system is reform. Only a very small percentage of Chinese prisoners are repeaters. The authorities want the prisoner to be persuaded of the justness of the cause of communism and to attain an awareness of how his actions can help or hurt that cause. The Chinese believe that real conviction must be the basis of the person's cooperation with the aims of society. The techniques used to achieve this cooperation are study, criticism, and self-criticism. Prison officials told Snow that violence is never used and he was inclined to believe this because the chief tactics of the Chinese Communists have been education and persuasion in enlisting people on their side.

This process of study and criticism is the basis of the so-called "brainwashing" of the Chinese. It is based on the conviction that a person can change in fundamental ways. The Chinese believe that this transformation of the individual is essential in order to create a new society. The reform of prisoners is but one example of the change of consciousness that the whole people must undergo.