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William C. Whitford

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The Beijing conference on legislation

WILLIAM C. WHITFORD

I had the good fortune to attend a seminar on "Legislation" held on the campus of Peking University, March 14-16, 1990. The conference was co-sponsored by the Faculty of Law, Peking University, the Legal Bureau of the State Council, and the Ford Foundation. The conference was originally scheduled for June 1-3, 1989 but "postponed" for obvious reasons. It was then rescheduled. Participants at the conference included about 40 Chinese Nationals and 10 citizens of other countries. The Chinese participants included both academics from various law schools around the country and employees of the legal drafting departments of various state agencies, including the two most important agencies in this respect, the National People's Congress and the State Council. The foreign participants came from 5 different countries. Most of the foreign participants did not have special expertise in the Chinese legal system, but were asked to draw on their experience in their own countries with parallel legal problems. Conference proceedings were in English and Chinese, with simultaneous translation of oral comments for the benefit of those who spoke only one of these languages. Papers prepared for the conference were also translated into both languages before the beginning of the conference.

Legislation is a significant topic in any country, but it is an especially revolutionary one in the Chinese context. Until the end of the cultural revolution China did not have what lawyers trained in Western legal systems would regard as a professionalized legal system or even the rule of law. This was true throughout history, both before and after the Communist revolution. During this period the Chinese did not attempt to control the decisions of local bureaucrats and judges through the adoption of governing rules and the development of a profession specializing in the interpretation and application of these rules. Rather, they emphasized educating officials in the proper moral and/or political principles, so that these principles could guide the exercise of discretion in a satisfactory manner. Indeed, for a period beginning with the "anti-rightist" campaign in 1959 and ending approximately with the end of the cultural revolution, lawyers or legal specialists tended to be vilified. The law schools were even closed for a period during the cultural revolution. And when open, they did not award their students law degrees and in the classes they taught emphasized political theory more than legal doctrine. Few judges were appointed because of their legal training; most judges got their jobs because of political loyalty. In these circumstances, it is not surprising that at the end of the cultural revolution the number of people with formal legal training in China was very limited.

Shortly after the end of the Cultural Revolution, which the Chinese date with the arrest of the Gang of Four in 1976, the Chinese Government and the Communist Party adopted a policy of legality and embarked on a program of legislation. This program has featured the adoption of general statutes by the National People's Congress and the adoption of regulations under these statutes by the State Council. Parallel agencies have been established at provincial levels of government. In recent years efforts have been made to professionalize the judiciary. A high percentage of law school graduates are now being assigned to judicial positions.

This Conference marked the first time Chinese academics and important staff in the legal drafting departments have gotten together to discuss the program of legislation since the tumultuous events in the Beijing of May and June 1989. Although there have certainly been changes in China since then, the government has indicated its intent to continue the legislation program. Conference participants seemed particularly interested in any data that would suggest whether that was in fact the case. Since June 1989, the pace of enactment of legislation and regulations by the National People's Congress (NPC) and the State Council has apparently declined slightly. Recent statistics reported at the Conference indicate that the output of the NPC has declined 15% and of the State Council 40%. While this decline concerned some conference participants, staff members of these two institutions insisted there had been no change in policy and that the decline in "output" was related to the complexity of the matters with which they are dealing and the like.

A wide range of topics were covered by the papers delivered at the conference. The greatest percentage of the papers, however, related to the need for more legislation to facilitate China's program of Economic Reform. Initiated at about the same time as the legislation program, the Economic Reform program involves both a deemphasis on the role of central planning in the operation of state enterprises and the introduction into the economy of private enterprise, both domestically and foreign owned. This decentralization of economic decision-making has brought about the need for rules both to define the identity of different economic entities (e.g., a basic corporations code) and to guide their interaction (e.g., a contracts law based on market transactions, rules of unfair competition). There seems to be a general consensus that legislation is the best method to meet this need.

Although a number of other topics were mentioned, only occasionally was any mention made about legislation defining or regulating the country's political structure (e.g. method of selections of local councils) or individual rights. And although a few foreigners tried to raise questions about the role of the Communist Party, both in the legislative process and in the government of economic enterprise in a period of economic reform, there was virtually no discussion of this topic. I have little doubt that the reluctance to discuss these subjects was a reaction to last year's crisis in Tian'anmen Square.

On the other hand, in the area of economic reform as well as some other topics, discussion was robust and the disagreements many. Though there seemed to be nearly universal enthusiasm for continuing the program of economic reform, there were differences of opinion about how to proceed. I noted that both the comments about economic reform and the stated disagreements were often cast in general and tentative terms. For example, there were continual calls for enacting basic laws essential for establishing a legal basis for market transactions, such as laws defining what are legal entities and concerning their internal governance, or providing a legal basis to the trading of shares in enterprises. Calls were made for more laws to promote research and development or for the protection of consumers. A common criticism of such proposals was that they were too general, but the critic did not provide the specificity either. When more specific comments were made, they tended to be criticism of somebody else's proposals. For example, it was pointed out that many enterprises did not have the money needed to pay judgments (or fines for violating environmental or consumer protection regulations), and that if enterprises were not required to continue to remain responsible for workers' social needs even if the workers are redundant, there was no substitute social security system for them. Again however, practical solutions to these problems were not proposed.

In general, it seemed to me that there were fewer suggestions for specific programs or

legislative initiatives than I would expect to hear at a conference in the United States on a similar topic (though there were some). Perhaps this reluctance also was a reaction to the events of last year—the hypothesis being that specific suggestions at were more likely to get one in trouble. It is possible, however that least in part this tendency reflected simply Chinese conventions about the appropriate level of abstraction at an academic conference, a convention that might well have been reinforced by the very general subject matter of the conference.

There were two papers delivered at the conference that provoked particularly lively discussion and are worthy of special mention. One paper dealt with the relation between law and morality, and the topic that produced the most animated disagreement was the extent to which the society should continue to rely on moral teachings as a method of social control. Some participants at the conference were more willing than others to use law as an almost exclusive means of social control, at least social control emanating from government. The second paper concerned the implementation of legislation. It was pointed out that because of ignorance of the law (by judges and administrators) as well as corruption in government, much of the legislation already enacted is not being applied fully. There was also reference to "some leaders" who expect their word to be followed, even if inconsistent with existing legislation. One reaction to this paper was to suggest that perhaps China was enacting legislation more quickly than the system for implementation of new laws could handle. This implicit suggestion, that the pace of legislation should be slowed, was one of the more specific suggestions during the entire conference, but it provoked considerable hostility from conference participants. Though there was agreement that implementation problems were widespread, the majority seemed unwilling to deal with them by slowing the pace of legislation, perhaps fearful that this would risk the policy of promoting legislation altogether.

It seemed to be the general consensus by all concerned that the conference was a great success. A number of participants commented that the discussion was more spirited and there were more conflicts of opinion than had been anticipated. I took such comments as suggesting that, perhaps the Chinese participants were feeling more secure in expressing their personal opinions than they had felt in the first months after Tian'anmen Square. It was also clear that there was nearly universal enthusiasm among conference participants for the program of legislation, with a full understanding that this represented a shift from traditional methods of social control in China to a more westernized system. Such a change has considerable significance for the role of lawyers and law schools in Chinese society, of course, so in some sense the program of legislation can be seen as in the self-interest of those attending the Conference. It can also be seen as a commitment to control of official discretion, and in that sense a commitment to reducing the power of present officeholders.

No comment on this Conference would be complete without noting two additional matters. First my decision to attend the conference was not made without difficulty. I was aware, and made aware by numerous friends, of the feeling that China should be boycotted as a protest of violent ending of the Tian'anmen Square protests. I decided to attend because I felt that the people at Peking University Law School, the primary organizers, were not the people who should be boycotted, and my experience has convinced me that I was right. I think no purpose is served by avoiding contact with the very people who were the primary victims of the crackdown. Whether one should simply be a tourist in China at this time is more difficult question. Tourism is down, and there is little doubt that it is taking an economic toll, perhaps an appropriate one.

My final point is simply to note the extreme generosity with which the Chinese hosted the foreign guests at the conference. English speaking students at the Faculty of Law were particularly giving of their time, in translating for us and in guiding us to the

many tourist sites in the Beijing area. A special thanks is due to Dean Wang Chenguang of the Peking University Law School, who organized the conference and saw to it that our every need was met.