

THE CRIMINAL CODE OF THE PEOPLE'S REPUBLIC OF CHINA, No. 25 in The American Series of Foreign Penal Codes. Translated and with an Introduction by CHIN KIM [Littleton, Colorado: Fred B Rothman & Co and London, Sweet & Maxwell Ltd. 1982. xiii + 74 pp.]

IN 1979 a new Criminal Code was adopted in the People's Republic of China. The Code has been translated by Professor Chin Kim, of California Western School of Law. The translator has written an introduction which sketches the Code's legislative history and discusses some of the salient features of its one hundred and ninety two articles.

The adoption of the Code was part of the process of the return to legality after the turmoil of the Cultural Revolution. Its function, as stated in Article 2, is to defend "the dictatorship of the proletariat, protecting socialist property of all people...." while at the same time protecting "legitimate property privately owned," and "citizen's right of person, democratic rights and other rights". Such lofty aims having been stated, the drafters of the Code turned to matters which are more familiar to criminal lawyers. Article 4-9 deal with the extra-territorial applicability and applicability to aliens. Articles

10-26 deal with general principles such as liability for negligence, excuses and complicity in crime. The following Articles, 27-56, concern punishment. They range from "public surveillance" to the death penalty. There is an interesting provision whereby in a case where the death sentence is imposed, "but there is no immediate need for execution", a two year reprieve may be pronounced (Article 43). If, within those two years, the offender shows "true repentance" the death sentence will be commuted (Article 46). Provisions relating to particular aspects of sentencing law are found in Articles 57-78. Articles 79-89 are mainly in the nature of definition sections, 'public property' being defined, for example, in Article 81. Of more interest is Article 79.

"A crime not specifically prescribed under the specific provisions of the present law may be confirmed a crime and sentence rendered in the light of the most analogous article under the special provisions of the present law; provided, however, that the case shall be submitted to the Supreme People's Court for its approval."

Even with the safeguard provided by Article 10, which appears to confine the concept of crime to non-trivial acts which endanger social order or encroach or infringe on citizens' legitimate rights, Article 79 seems rather startling. Professor Chin Kim's observation, in his Introduction (at p. 13), "The principle of *nullem crimen sine lege* is not strictly implemented in the Code" would appear to be something of an understatement. However readers of the Code should not imagine that Article 79 is a socialist aberration, if aberration it be. It embodies an idea that has a long history in Chinese law. The punishment of conduct not prescribed by any particular provision was sanctioned in Imperial China, the court being permitted to apply "by analogy" any provision which prohibited similar conduct (See Bode and Morris, *Law in Imperial China* (1967) at pp. 175 *et seq* and 517 *et seq*).

In Part II (Articles 90-192) one finds the range of offences created under the Code. They are grouped together in various categories. There are Counter-Revolutionary crimes, crimes against Public Security, crimes against the Socialist Economic Order and crimes against the Societal Management and Order. The offences which may be considered as designed to protect the individual's rights, of the person and property, are to be found in the Chapters concerning crimes against citizen's rights, encroachment on property, crimes against marriage and the family and, to some extent, in the last chapter of the Code, "Misconduct in Office", which includes offences of judicial corruption and abuse of power.

Some of the crimes are described in very broad terms and perhaps this is inevitable if one is to have such things as "Counter-revolutionary" crimes. However, even in the Chapter concerning property offences, there is less legal definition than one familiar with criminal codes like the Indian Penal Code would expect. The terms "larceny" "fraud" and "robbery" are used, and they are in a sense legal terms of art, but they are not defined. The revised Criminal Code of the Republic of China promulgated in 1935, contained, by contrast, quite detailed definitions of such criminal conduct.

Professor Chin Kim has provided a welcome addition to the American series of Foreign Penal Codes. It was published in 1982, by which time changes had been made in the Code itself. Under the Code any sentence of death had to be approved by the Supreme People's Court (Article 43). In June 1981, the National People's Congress gave to higher people's courts of the provinces and autonomous regions the power to confirm death sentences on certain classes of offenders *e.g.* murderers. This change was one of the responses to a mounting crime wave. Subsequently the scope of the death penalty has been further extended. In 1982 it was made available in cases of serious offences of smuggling, profiteering and dealing in drugs (see Shao Chuan Leng, "Crime and Punishment in Post-Mao China" Vol II China Law Reporter 5 (Spring 1982)).

More recently (January 1984) this reviewer read a newspaper report which stated that a pornographer had been executed in Shanghai for recruiting young girls to pose for pornographic pictures. He had earlier been placed under police supervision for a similar offence. The brief report did not indicate which provision of the Criminal Code was held to be applicable. Article 170 deals with the publication of obscene pictures but, in its original 1980 version at any rate, it did not provide for capital punishment. Was the charge brought under one of the Articles in the Chapters on Counter revolutionary crime or crimes against Societal Management and Order? Or was Article 79 in some way invoked? In the absence of fuller information one is only able to speculate as to how, in reality, the new Code is being employed by the authorities in the People's Republic in their rigorous crack-down on crime.