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## Commentary

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## COMMENTARY

**Dr. Richard L. Walker\***

I find myself in the position of wanting to take up the challenge that Professor Li threw out, the whole business of the mass line, the belief in the masses. I suppose one could say that this is the great belief, as he was referring to it, in common sense. And I do want to dissent on this because it is my experience that sense is not common at all.

The traditional sinologists, students of all kinds of obscure and wonderful poetry and history from the greatest of all civilizations, in some respects, to whom Mr. Cohen refers in his paper, were shocked by some of the nonsinologists' analysis of Chinese tradition and its different conceptions of law. For example, Wittfogel's *Oriental Despotism* raised an outraged and anguished cry from many of our leading China scholars, most of whom had been converted, like most of our missionaries were converted, by the urbane sophistication of the Chinese gentry. But such books have laid low the mythology of Chinese feudalism, upon which Marxist and other analyses have been based over the decades; and few of the sinologists remembered that that uniquely Western political institution, feudalism, with its backdrop of contractual relations based over the holding of property, a property concept which offered a buffer between the individual and the State, had no real meaning for China.

I think Professor Cohen is absolutely right in turning to the Chinese traditional despotism. Now, this despotism, through history, was mollified by two major factors. First was the Confucian state ideology, which placed major emphasis on interpersonal relations, the concept of harmony. And I think, in a way, the points Professor Li has raised are exactly the points a traditional member of the Chinese gentry, a Confucianist, would ask about our rule of law.

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Secondly, there was the fact that the State permitted the existence, beyond its concern, of secondary forms of activity—religion, guilds, clan associations, and even literary activity. With the adoption of Marxism-Leninism as a State faith, and its emphasis on necessary class violence and struggle, the last very fragile buffers against arbitrary authority, and the last defenses against an imposed conformity at the whim of the despot, had fallen. The worst features of the Chinese traditional system were reinforced.

There is no rule of law in Mainland China. This is, in effect, what Mr. Cohen's paper has to say, and I agree. In fact, we may be heading for some Stalinesque disillusionment if we predicate policies on the expectation that the responses from Peking will be those of a government for which legal restraints have some meaning, internally or externally.

With regard to Professor Cohen's remarks it is worth pointing out some items which perhaps he does not say, though he spends one section asking questions which allude to these.

First, the ideology of class struggle occupies a central position in the China of Mao Tse-tung. And basically for Mao, there have been only two classes—those who agree with and support him, and those who are apathetic or disagree with him. There can be no middle ground. He says this again and again. The only catch is that in recent years there has been disagreement among some as to how best to support Mao's thoughts, and who really supports him best.

Secondly, civil law—and Professor Cohen, who has written on this, didn't have time to go into it—has been Party fiat until recently. Now it is Party fiat within the Army Party. And this has meant that there could be only command, not contention or adjudication.

Third, within this framework, all is official. There can be no unofficial forms of expression. This is the reason for the permanent purge which has characterized more than two decades of the Chinese People's Republic. We can ask what happened to Ting Ling, the great novelist, or Hu Fung, the member of the league of leftist writers, or where is Wu Han, the man who was recently purged? Why have some of Lu

Hsun's writings become un-literature? Under the aging Mao, a Stalin-type uniformity persists. It is drab, boilersuit uniformity, which the Chinese have had to accept before, during centuries of despotic rule.

Within this framework, fourthly, spoof and parody is the only way around the system. And the esoteric productions of the intellectuals become one of the most interesting forms of intellectual enterprise and one of the most sophisticated methods of protest in China.

There has been no Khrushchev secret speech, to detail what has happened in fifty years of the Chinese Communist Party. But the cost, in terms of slave labor camp deaths, mass executions and purges, has been staggering, numbering in the millions, according to Chou En-lai's own admission. My own estimate, in a study I've just finished for a Senate committee, is in the range of thirty-four to sixty-three million deaths in the fifty-year history of Mao's party. A human cost of fifty million would seem to be a conservative figure.

I hasten to add that in terms of having provided, in the last twenty years, a fair amount of stability, and, in a way, providing food and the rest, the argument can quickly be raised, "Yes, but maybe many more than that might have died from starvation, had there not been this kind of effective and efficient government."

Actually the item to which I really want to turn is that the major targets and victims, since the Chinese Communists came to power twenty-one years ago, have been the intellectuals. For them there has been no freedom of expression or dissent; and intellectuals, of all people, need lawyers. They have plowed their energies frequently into non-political-type activities, in hope that maybe they could make some sort of a contribution to their country. Professor Cohen alludes to the new Constitution. In many respects, analysis and study of the Constitution, within the style of Maoist rule, is almost a futile exercise. He makes only brief mention of the mass line.

A rule of law is an intellectual and institutional construct. And I think he is absolutely right on this point. We make a mistake if, in attempting to analyze Chinese society, past or

present, within the framework of concepts of proprietary rights, adjudication, contracts, or other such patterns, which to us, when we use the words, carry overtones that have no Chinese counterpart. We make a grave mistake if we attempt to project them onto the Chinese society, because within the framework of Maoist rule, unfortunately a number of items seem inescapable:

One, there is an absence of those very factors which tend to make for a civilized society, in times of crisis in that society — decency, respect for old age, intellectual integrity, or cultural freedom.

Two, within the confines of an outworn dogma, there is no room for nonconformity, the subject of our conference. The Party government has attacked and temporarily destroyed those former nonofficial forms of human association. And, interestingly enough, one of the greatest victims in the process has been that fabled Chinese sense of humor which Professor Li demonstrated for us so well.

I would suggest, in conclusion, that for Americans who would play Ping-Pong with this government, there should be a constant reminder that there can be no rules for the game except those decided by the opponent, so there should not be expectation of a fair contest.