Whither Demos? Notes on the People's Republic of China's Draft Law on Assemblies, Processions and Demonstrations

By *Wolfgang Kessler**

When students in Peking and other cities of China recently took to the streets to voice their, and many others', discontent at incongruities and iniquities in the policies of the Chinese government, the authorities in Peking suddenly seemed to awake to the need of legislating on assemblies, processions and demonstrations (henceforth 'ADP') as a means of political action in a People's Republic nevertheless conceived by the advocates of such legislation as a state characterised by the continued leadership of the Chinese Communist Party.

The freedom to congregate without let or hindrance, in order to express together particular political views, is a fundamental political right in liberal democracies as it constitutes an important means of securing, through collective civic action, publicity and surveillance indispensable to prevent clandestine misgovernment and encroachment on citizens' rights.

The draft "Law of the People's Republic of China on Assemblies, Processions and Demonstrations"[1] may be taken as an instance of an ill-conceived attempt to adopt elements of liberal democracy without reflecting in detail on the compatibility of rights to APD with the essential exigencies of a policy where the ultimate supremacy of the Communist Party remains a cornerstone of the constitutional order. It may equally be taken by some as an attempt to drape the authoritarian machinery of the Communist Chinese state in a flowing cloak of tolerant precepts and seemingly egalitarian policies. We will leave it to the Pekinologists - back in fashion after the Occidental bubble of 'China-as-a-free-market-economy-in-statu-nascendi' has burst - to reveal whether intellectual insouciance or politic calculation has fathered the draft to be considered below.

Most of post-'79 mainland Chinese legislation is prefaced by a stereotyped opening section stating, as does sec. 1 of this draft, the general objectives which the subsequent provisions are designed to achieve. Here, the aims are safeguarding social order and stability, smooth implementation of construction for socialist modernisation and securing citizens' rights to

* The author is a commercial officer at the Shanghai Consulate General of the Federal Republic of Germany; the views here expressed are his own.

1 Published, e.g., in Jiefang Ribao (Liberation Daily), Shanghai, 7th July 1989.

APD. While this customary exordium in most cases, particularly of rather technical legislation, quite innocuously sets out the principal purposes of the act, this opening betrays an idea of civic action as a mere pliant *recitativo secco* euphoniously accompanying the progress of great designs defined from above, but not as the affirmation in a public forum of, particularly oppositional, convictions held and manifested for consideration in the political arena where the demonstrators and their peers have equal voices.

The true shape of civic action to be permitted by the government is aptly circumscribed by sec. 2 of the draft where it is laid down that, inter alia, the activities to be covered shall not be in opposition to the leadership of the Chinese Communist Party. While it may not surprise the student to see the lines tightly drawn around any possible manifestations of dissatisfaction with the tenets of 'scientific socialism' and its ex-cathedra interpretations, a more curious restriction of APD appears in sec. 5. By virtue of this provision citizens may not organise or participate in APD between different districts, units or trades. While this may be read as a juridified aversion against the anarchic 'chuan-lian' of the 'Cultural Revolution'2, such compartmentalisation of civic action if effect denies to APD its primary purpose in liberal democracies: the public avowal, by citizens whose association in APD is solely determined by their interest or grievance, of views or demands for scrutiny by the public. For good measure, all 'civil servants' - a wideranging category in a country founded on the public ownership of the means of production, besides all military personnel on active service and members of the People's Police Forces may not organise or take part in APD without their units' approval. In addition, all those engaged in the provision of water, electricity, gas (scil, not 'petrol'), telecommunications and public transport are barred from leaving their places of work and disturbing the normal availability of such services by engaging in APD, thus summarily depriving large groups of important constitutional rights.

In order to ensure that the harmony between leaders and masses is not upset by any smart-aleck jingles, precautions have been taken, at sec. 7, for the prior registration of all written (biaoyu) and oral (kouhao) slogans. The number of participants in the planned APD also has to be stated in advance.

Caparisons of democratic legislation are donned in sections 8 & 9 where the authorities competent to deal with applications for APD permissions are required to respond to the request at least 48 hours before the intended activity. In case of adverse decisions the

2 'Chuan-lian' (establishing lines) refers to the numerous ad-hoc contacts between students of different universities and schools and between 'Red Guards' of different localities during the 'Cultural Revolution'. 'Chuan-lian' led to large-scale disorganised, and most often decidedly unpaid, use of public transport, particularly trains, when juvenile revolutionists criss-crossed the country in order to join forces with 'comrades-in-arms' of other areas. The term connotes the lawlessness and often violent indiscipline of the 'Cultural Revolution' now abhorred by almost everyone in China.

petitioner may, by dint of sec. 11, have recourse to the local People's Government which in its turn must render a decision on a petition for review within 48 hours of receiving it. Unfortunately, a much-heralded innovation in the corpus iuris of the People's Republic has not been extended to the crucial area of APD: After review by the People's Government no judicial remedy is available to the unsuccessful appellant, judicial review of government decisions on APD neither being included in the limited catalogue of admissable actions at sec. 11 of the recent "Law of the People's Republic of China on Administrative Procedure"[3] nor provided for independently under the terms of the present draft on APD. Ultimate authority to grant or deny any right to any right to APD thus remains firmly vested in the 'executive branch'. Any applicant disheartened by such dismal prospects of his request may, however, draw comfort from sec. 12 of the draft allowing withdrawal of an application before it has been decided upon.

Once underway, APD may still continue to cause prickly problems as is clearly evinced by sec. 15 which enjoins participants in APD to follow directions of the People's Police regarding, inter alia, showing of streamers bearing slogans "not corresponding to the aim" of the APD in question.

Violation of various conditions included in the permission for any particular APD may entail a warning, up to 15 days of 'detention' (juliu), both independently enforceable by the sole authority of the relevant agencies of government and in severe cases to imprisonment of up to five years or lesser forms of confinement to be imposed by a court of law. In this regard it is especially difficult to envisage how any organiser of APD could reasonably vouch for the actual number of participants unless the entire exercise remains a well orchestrated march past beloved of high personages on high rostra on national days and similar edifying occasions.

Sec. 22 bars all aliens from taking part in APD for which permission has been granted to Chinese citizens without a separate approval for joining.

3 Adopted by the National People's Congress on 4th April 1989; to enter into force on 1st October 1990.

The version of the bill eventually adopted[4] by the National People's Congress will indicate whether APD is merely intended to permit collective acclamation of authority or indeed to allow the unimpeded expression of popular opinion.

4 "The final version of the new law was adopted by the Standing Committee of the VIIth National People's Congress at its 10th session on 31 October 1989 (Cf. the text published in e.g. Wenhuibao, Shanghai, 1st November 1989). The principal elements of the draft remained unchanged, while draftmanship was considerably improved and the number of sections increased from 24 to 36.

Some of the more explicitely authoritarian language, such as the prohibiton of APD "opposing the leadership of the Chinese Communist Party" at section 2 of the draft version, has now been toned down in favour of words to the same effect, at sections 4 and 12 outlawing APD "opposing the cardinal principles defined by the constitution": The 1982 constitution of the People's Republic of China it its preamble consecrates the leadership of the CCP as a fundamental element of the PRC's body politic and as one of the "Four Cardinal Principles" (sixiang jiben yuanze) now officially proclaimed as a paramount constitutional doctrine. The principles referred to at sections 4 and 12 are consequently denoted by the term "jiben yuanze" as against the more generic "genben yuanze" in section 2 of the draft.

The drafters' vigilance has further produced, at section 8 of the enactment, an expanded catalogue of information to be furnished by an applicant for permission to conduct APD: Besides the data required by section 7 of the draft version, the number of vehicles involved as well as the nature and quantity of sound equipment to be used must now also be stated in the written application. The atomising restrictions at section 5 of the draft have been partly relaxed, but no less arbitrarily, at section 15 prohibiting only participation in APD in towns (changshi) outside one's place of residence. This prohibition has, however, been stemly fortified at section 33 of the act which empowers the security forces to send back forcibly to their home locality all those venturing elsewhere to engage in APD. Unless special permission has been obtained, APD may only take place between six o'clock in the moming and ten o'clock in the evening.

Recourse to the courts against govemment refusal to permit a particular APD remains conspicuous by its absence; at least there is now a judicial remedy against wamings and short-term imprisonment by the police of alleged offenders who took part in APD.

In line with present govemment policy, this new law would seem to close firmly the road towards democratic pluralism."