

# Crimes and Punishments

## Zuìxíng 罪刑

**China's first comprehensive legal code was set forth during the Tang dynasty (618–907 CE) and served as the model for many years of imperial rule. Traditionally, Confucianism played a huge role in ensuring a relatively crime-free society. Since the reforms of 1978–79, and the subsequent imbalance between rich and poor, crime has been on the rise.**

The Chinese way of life dates back more than five thousand years, and traditions from the past continue to influence life in the twenty-first century. In 1949 China became a Communist nation with the establishment of the People's Republic of China (PRC), and the current political and economic structures and processes are, to a significant degree, the product of dramatic social changes since then. Most important, since 1978 China has undergone economic reforms that started to transform the national economy from one based on state control to one based on market capitalism. These transformations have increased personal freedom and wealth for many Chinese. They have resulted in the concentration of wealth and increases in economic equality—and in crime.

### Confucianism and Social Order

Confucianism has been the longest lasting influence and among the most important influences on Chinese values

and social order. In Confucius's view society is hierarchical, with the concept of *li* being the behavioral norm for people of superior status and inferior status. According to *li* it is virtuous for the inferior to respect and obey the superior. In an extreme interpretation of *li* by some later Confucians, "A minister will oblige should the emperor order him to die; a son will oblige should his father ask him to die" (Xia 1995, 16). Confucius (551–479 BCE) maintained that if all individuals acted according to *li*, order would prevail without conflict. Confucianism fostered an orderly society based on suppression of self-interest and acceptance of authority. Lawsuits, for example, were deemed confrontational and disruptive, and the Chinese continue to prefer to avoid resolving disputes in courts.

Traditional law in ancient China was largely set forth in the criminal code and targeted behaviors that were seen as threatening to the status quo. During the Tang dynasty (618–907 CE) the first comprehensive legal code was set forth, and subsequent dynasties adopted the code without changing its fundamental elements. The use of informal methods of social control was emphasized and remains important today.

After China was politically unified in 221 BCE, centralized government control became the dominant political structure, and all aspects of the judicial system were under government control. The criminal justice system was managed by government officials, and judicial authority was one of the powers delegated to local officials by the central government. The inseparable relation between judicial function and other authority made it impossible for courts to appreciate equity in justice.

## The Legal System of the PRC

China's modern history began with the fall of the Qing dynasty in the revolution of December 1911 and the abdication of the emperor in February 1912. Civil war and foreign aggression fragmented the new Chinese Republic until 1949, when the country was unified under the Communist government of the PRC. The new regime modeled the country's judicial system after that of the Soviet Union's. The system consisted of four components; each was under a centralized administration in Beijing:

- The police were responsible for investigation, detention, and preparatory examination of criminal cases. Police are under the command of the Ministry of Public Security (MPS).
- Procurates were responsible for approving arrests and initiating public prosecution. Procurates are under the Ministry of the Supreme People's Procurate.
- Courts were responsible for adjudication. Courts are subject to the administration of the Supreme People's Court.
- Corrections were under the Ministry of Justice.

Because the Communist Party Central Committee is the true locus of power in China, party ideology and politics determine the nature of the criminal justice and judicial systems.

### LAWLESSNESS DURING THE FIRST THREE DECADES

From 1949 to 1979, the PRC operated a legal system with neither a criminal code nor a criminal procedure code. The major criminal legislation during this time was the Act for the Punishment of Counterrevolutionaries, promulgated in 1951. The act defined many deeds as counterrevolutionary or subversive. Article 16 established the principle of crime by analogy; behavior unspecified in the act could be punished according to analogous specified crimes in the act. Article 18 enabled a retroactive application of the act to crimes committed before the PRC was established. Conventional crimes, such as murder and rape, and their penalties were allegedly defined in

unpublished regulations. Without legal guidelines to follow, the people's courts often made no reference to the law and specific provisions as the basis of a given judgment. The Arrest and Detention Act of 1954 is the only known document from this time detailing some safeguards against arbitrary arrests or detention. In practice they were frequently ignored.

With political control as the rationale and the absence of criminal law and legal procedure, the government had thousands of individuals arrested and punished for ideological reasons. Many were convicted as Rightists or black (*hei*, meaning corrupt or illicit) elements, such as former landlords and rich peasants. In 1966 Mao Zedong instigated the Cultural Revolution, encouraging revolutionaries to destroy all establishments in defense of true Marxist socialism. As a result mobs and thugs acted as free agents of justice from 1966 to 1976. They purged, abused, convicted, and executed thousands of innocent people and destroyed numerous homes and personal possessions without having to employ judicial process. During the revolution many senior party leaders were accused of being capitalist followers, reactionary authorities, counter-revolutionaries, and revisionists. Their own victimization and humiliation motivated them to steer the party away from Mao's obsession with ideological wars after Mao's death in 1976.

### THE NEW ORDER SINCE 1979

After thirty years of lawlessness, the PRC initiated efforts to develop a rational system of criminal justice. In 1979 the National People's Congress (NPC) enacted China's first criminal code and criminal procedure code. The criminal code had 192 articles and classified crime into eight categories, including crimes of counterrevolution. Most of the laws and decrees promulgated since 1949 remained in force. In 1990 the Standing Committee of the Congress established the prohibition of drugs. In 1997 the NPC amended the first criminal code by abolishing the use of analogy as a general principle—stipulating that a crime must be legally defined before a conviction can be imposed, and abolishing the crime of counterrevolution and replacing it with the crime of harming state security. Although this might seem to be a mere name change, it does provide real progress. For example, superstitious practices are no longer listed as a type of crime. The

**Madame Mao (Jiang Qing), at the age of sixty-seven, testifying in her defense during the Gang of Four Trial. The trials were televised nationwide, and parts of the 20,000-word indictments of the four were printed in Chinese newspapers. PHOTO BY JOAN LEBOLD COHEN.**



criminal code provides five principal penalties, including the death penalty, and three accessory penalties. Article 5 stipulates that all death sentences are to be reviewed by the Supreme People's Court for approval. The death penalty does not apply to offenders under eighteen and females pregnant at the time of trial or sentence.

Criminal trials in the PRC resemble those based on the civil law legal tradition. Instead of a trial jury, a panel of judges and people's representatives decides the guilt of the defendant and the sentence if the defendant is found guilty. The number of judges and people's representatives increases as the administrative level of the court increases. In these people's courts, people's representatives have equal rights with judges. If opinions of panel members diverge, the minority defers to the majority. The minority opinion is entered into the court transcript. Law is more than a legal vehicle in the PRC. Criminal trials sometimes are held in public areas to draw large crowds for educational purposes.

## CRIMES

In the PRC police are the only regular source of national crime information. Crime statistics were not available to the public before 1986. Since then, the Ministry of Public Security has provided such information to the annual

publications *Social Statistics of China* and the *China Yearbook of Law*. Before 1991, the official statistics covered murder, injury, robbery, rape, larceny, fraud, and counterfeiting. After 1991, statistics are also provided for the three emerging crimes of kidnapping, smuggling, and drug offenses.

China has experienced dramatic increases in crime rates since 1979 when economic reforms were initiated. But changes were distinct before, during, and after the Cultural Revolution, as indicated by three following statistics: Between 1951 and 1965, China's annual crime rates per 100,000 population varied between 30 and 60. Rates then rose from 56 in 1978 to 89.9 in 1981 and to 200 in 1990. The average annual crime rate increase was 2.2 percent before the Cultural Revolution (1966–1976), 10 percent during the revolution, and 12 percent in the reform period between 1979 and 1991. During the more aggressive reform period of 1985 to 1991, the average annual increase was 32 percent. The Cultural Revolution, however, was an unusual time. Because of mob justice, crime statistics for this time may not be comparable to crime statistics for other times. Although there have been increases in traditional crimes, new crimes, and especially drug offenses, account for much of the increase. Court records indicate an average of 21 percent annual increase in drug crimes from 1991 to 1994 nationwide. Regardless of the

upward trends, China's crime level is low by international comparison. In the 1994 International Crime Victimization Survey, China's one-year overall victimization rate was 12.6 percent, which was the lowest in the developing countries surveyed and was lower than the lowest rate in the developed countries surveyed.

The emphasis on economic development has transformed not only the economic lives of the Chinese people but also the country's cultural ethos as well. Being wealthy, no longer chastised as bourgeois decadence, is now glamorous and desirable. Under the initial reform policy of "let some people get rich first," many public officials and their family members are certainly among the first to make a fortune. This is often achieved by exchange of power for bribes and personal benefit in various forms. Temptations are particularly irresistible in the public sector where officials have discretion to allocate government-monopolized resources or information, such as goods at undermarket price, loans, and market-entry opportunities. Corruption, as an uninvited guest of the economic reforms, has plagued the reform era. In 1997 150,000 corruption cases were reported to authorities, triple the number of reports in 1993. Studies have shown that while reported corruption cases have been leveling off, more cases after 1993 involved senior party officials and much higher financial values. The rampant

corruption problem is a major source of growing domestic discontent and social unrest amidst China's impressive economic growth.

## PUNISHMENTS

Thought-and-labor reform has been the guiding ethos of the Chinese penal system. China boasted of a 2 percent recidivist rate before economic reforms. The penal system alone, however, could not achieve such success without societal supports. The Chinese population was rather immobile due to the difficulty in changing jobs and residence. After serving time in the penal system, most ex-offenders had to return to their previous workplace, demoted, a requirement that ensured employment. On the other hand, the workplace, where everyone knew the ex-convict, became a powerful force for shaming, rehabilitating, and controlling behavior. The effect of thought-and-labor reform has been weakened since 1978. Economic liberalization has produced a dramatically different world than the one that supported reform-through-labor programs. Employment is no longer guaranteed, even for law-abiding citizens.

Five types of correctional institutions are used in the PRC: prisons; labor reformatories; juvenile reform houses; detention houses for those who have been



**Young criminals are sentenced in a television show, 1979. Juvenile reform houses are one of five types of correctional institutions in use in the People's Republic of China. PHOTO BY JOAN LEBOLD COHEN.**

sentenced (*juyi*); and detention houses for those awaiting trial (*kanshou*).

In Chinese law, detention is divided into two types. One is administrative detention, in which the detainee goes through labor education in a reformatory institution. The other is criminal, with prisoners undergoing labor reform within the prison sector. The first type is not criminal punishment, and its education is a form of penalty for public disorder offenses, such as prostitution and drug addition. These detention centers are under the direct control of police. They are mostly in no condition to provide real education because of financial strains. As a result police have discretionary power and flexibility over their operation.

The prison system operates through two administrative divisions: the Labor Reformatory Administration, under the Ministry of Justice, and the local labor reformatory bureaus, under the Justice Bureau in the provinces, autonomous regions, and municipalities. The bureaus oversee labor reformatory work. They also oversee prisons in their own jurisdictions.

Prison inmates are offenders given death sentences with a two-year suspension; offenders sentenced to life imprisonment; offenders who must serve at least ten years in prison before release; foreign offenders; and female offenders. Offenders given other sentences are held in reform-through-labor teams. Juvenile reformatories provide special correction services to juvenile offenders.

In 1991 there were 684 prisons, including labor reformatory teams and juvenile reformatories. The daily average population in correctional institutions was more than 1.2 million, 2.15 percent females and 8.4 percent minorities. The estimated annual admission was 250 per 100,000 population. Violent offenses accounted for 34.4 percent, property crimes for 60.6 percent, and drug crimes for 0.8 percent. The remaining 4.2 percent were other crimes. By 1993 those who committed other crimes had increased to 18.7 percent, with 33.6 percent convicted of violent crimes and 48 percent of property crimes.

Chinese correctional policy holds that all offenders can be reformed. Work is believed to be the most effective reform method. By law, all inmates capable of working must work. Those who are not capable of working because of age or illness or unfitness are spared from work. In 1990

about 10 percent of the prison population did not engage in work activities.

Education is one of the most emphasized prison programs. In 1981 the government included prison education in its national education program. By 1991, 72.8 percent of prisons and labor reformatory branches had established special education programs with a dean, a faculty office, and a curriculum. (The branches are operating units that house and supervise individuals going through labor reform.) Some teachers are chosen from those prisoners with a higher education level. The curriculum includes cultural, moral, legal, and technical education. Inmate students study two hours a day. After passing locally administered exams, students receive an educational certificate equivalent to those issued by educational institutions outside the prison. Some prisoners enroll in distance-learning programs and take higher-education exams for self-study.

An important part of prison education is vocational programs. In 1991 more than 561,000 participated in vocational courses, representing 83 percent of the total number of eligible prisoners. Labor departments issued 546,000 proficiency certificates for various technical skills.

A 1992 national study of 159,177 adult offenders released from prison from 1982 to 1986 indicated the success of China's correctional policies. It showed an overall recidivism rate of 8.28 percent in a three-year follow-up period. Offenders holding temporary jobs had a 5.13 percent recidivism rate, whereas those unemployed had a 15.9 percent rate. Offenders returning to their original workplace or being employed in private enterprises had the lowest recidivism, with 1.9 percent and 2.3 percent, respectively. Compared to the rates in industrialized countries, including Japan, these are much lower rates.

## A CONTINUING PROBLEM

The Chinese government acknowledges alarm at the increase in crime. It attributes such increases to the capitalist influence of the Western world and to changing values in the Chinese people in a new economy. The growing privatization and social mobility have stimulated individualism and increased the emphasis on profits. Also, an increase in social inequality and the loss of a guarantee of lifetime employment have become major causes of social instability.

China has made efforts to strengthen informal social control at the grassroots level. Neighborhood committees are an example. Private citizens in these committees watch for problems, mediate disputes in and between families, and work with neighborhood police. But there is a steady weakening of other informal mechanisms, such as control through job stability and immobile residency. Reducing informal social control will inevitably lead to an increased use of police and punishment, as has occurred in many developed societies. The Chinese government periodically launches campaign-style crackdowns on both street crime and official corruption. A major campaign measure is increasing the use of police and capital punishment. While the public approves of this get-tough policy, the effectiveness of such a strategy is questionable because it does not tackle the social conditions that breed crime and recidivism.

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