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Strengthening Juvenile Rights or Doing the Opposite: The legal mysteries of the Chinese juvenile justice system behind the “Li gang-rape case”

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ABSTRACT

After three-decade expansion since 1984, Chinese juvenile justice, largely seen as subsystem of general criminal justice, has reached to a good scale and idea of “giving priority to education and supplementing it with punishment” has served as a fundamental principle. Encouraged by these, more legal provisions have arisen to safeguard juvenile offender’ rights. However, the one-sided principle of education first and punishment second often ignores the legitimate requests arising from the victims and the general public are, in effect, not only drawing criticism to juvenile’s rights, they also might undermine the fairness and justice of society as a whole. Therefore, now it seems unavoidable to advocate and establish a unified specialized juvenile justice system, and introduce restorative approaches focusing more on juvenile offender accountability, offender competency development and community protection.
Introduction

Among tens of thousands of juvenile criminal cases adjudicated in China in 2013, the *Li gang-rape case* captured media attention widely, not only because of a wave of suspicious voices regarding the fact that the main perpetrator, Li, was the 16-year-old child of privileged military officials, but also because of the intense clash between the general public’s demand for a transparent judiciary and pressures to safeguard the rights of juvenile suspects and defendants. Li was ultimately convicted and was sentenced to 10 years in prison.

In considering this case, as well as others involving similarly entangled thinking, it is not difficult to apprehend that juvenile justice academicians and professionals have been confronted with an overwhelming challenge. While the juvenile justice system has weathered significant modifications since 1984, there are still a lot of pending questions that must be answered. The Chinese juvenile justice system is under symbolic attack because it is focused more on education and rehabilitation than punishment. The current dilemma in the Chinese juvenile justice system is eerily and intimately familiar, a reiteration of that which occurred in the 1970s and 1980s in America. While America’s juvenile justice pendulum has slowly been swinging towards juvenile accountability, the role of juvenile justice is perceived much differently in China. Some legal mysteries have arisen as the Chinese juvenile justice system engages in reforms. It is apparent that, in China, juvenile justice is at a crossroads.

The first section of this paper will introduce a controversial juvenile gang-rape case. The second section will brief the background of the Chinese juvenile justice system, summarizing its historical evolution and legislation. Then, the third section will analyze the legal mysteries behind the cases. Based on the preceding sections, the fourth section will examine the roadblocks that are faced by the Chinese juvenile justice system, with a focus on their policy implications.

Li Gang-rape Case and Beyond

On November 13, 2013, the Chinese Supreme Court announced the Regulations on Online-Release of Adjudicative Documents, which applies to all courts across the country. In this judicial regulation, the Court stipulated that all effective adjudicative documents, decided by the courts at all levels, must be released online for public dissemination, except for cases involving national security, personal privacy, juveniles, mediation or other inappropriateness. Therefore, it is hard to track the panorama of juvenile criminal cases, despite the huge annual caseload. This paper first stitches together the fragmented pieces that recently have been discovered by state-run Chinese news media, such as the China Daily, and influential western news media, such as CNN, ABC, BBC, Fox News and the New York Times, to restore the details of the “Li gang-rape case,” which will be the basis of the remaining discussion.

On February 19, 2013, the Hadian district police department in northwest Beijing received a call from Ms. Yang, who claimed to have been gang-raped by Li and four accomplices (three juveniles and one young adult) two days earlier. According to the victim, she had been drinking with Li and the other club-hoppers, and then, she had been taken to a hotel, where she was beaten and gang-raped that night. All five suspects were caught by local police the next day, and Li was approved for arrest by the district procuratorate on March 7. He repeatedly denied the rape charge against him, saying he was drunk at the time; further, he alleged that Ms. Yang was a prostitute. Li was the ringleader, despite the fact that he was a 16-year-old drop-out. Before this case, Li had been ordered to enter a reeducation-through-labor camp for a year over a road rage incident in 2011. China’s Criminal Code of 1997 stipulates: “[W]hoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than 3 years and not more than 10 years of fixed-term imprisonment.” Nevertheless, in cases that are deemed severe, including gang-rape and those causing serious injury or death, an offender can be sentenced to not less than 10 years of

3 Reeducation-through-labor (RTL) was used as an administrative detention to detain persons for minor offenses, such as petty theft, prostitution and the trafficking of illegal drugs, and it drew substantial criticisms for its inhumanity and cruelty. It was abolished by the Chinese government on November 15, 2013.
fixed-term imprisonment, life imprisonment or death. However, the Code also stipulates: “[A] person who has reached the age of fourteen but not the age of eighteen who commits a crime shall be given a lesser punishment or a mitigated punishment” and “[t]he death penalty is not to be applied to persons who have not reached the age of eighteen at the time the crime is committed or to women who are pregnant at the time of adjudication.”

Taken together, Li faced a sentence of fixed-term imprisonment to life imprisonment if he was found guilty by the court.

Both of Li’s parents are well-known singers of red (patriotic) songs in China’s People’s Liberation Army (PLA), and his father holds a high military rank equal to that of general. Because of Li’s family lineage, the case has sparked public anger over the seemingly privileged lives of elite youths. The whole case was watched closely by both print media and Internet media, especially the latter. There is an undeniable interest in digging up dirt, and through Internet searches, almost every detail about Li and his family has been disclosed, even some that are irrelevant to the case itself. On September 26, 2013, Li was ultimately convicted of rape and was sentenced to 10 years in prison by the Haidian district court, while the other accomplices received sentences of between 3 and 12 years. In less than two months, the appellate court upheld the conviction on November 19, 2013, a ruling that dominated many headlines in the news media.

Both trials were closed to the public according to law. The controversy arising from this case is not simply about Li’s family background: more important are the legal mysteries underlying the case. The aftermath of the case has continued; the primary focus is a reconsideration of the leading legal philosophy of the juvenile justice system.

Inevitably, there is a direct question that needs to be faced and answered: Will a juvenile be treated differently if he or she is not a child of dignitaries? Further, warnings and promises regarding juvenile rights fly in the face of a series of increased duties and juvenile crimes. In fact, this has been a new source of alarm for the public as a result of several recent high-profile juvenile cases that have aroused people’s

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4 Criminal Code of 1997, Article 236.
attention and have caused them to ponder the issue. Despite the fact that juveniles are involved in a proportionately small number of violent crimes each year, they have been subjected to the spotlight of media coverage. On the afternoon of September 15, 2014, a 21-year-old girl was robbed, raped and beaten to death by a 17-year-old boy. More outrageously, the young perpetrator smashed her head and inserted a stick deep into her throat. This horrific case happened in a semi-urban area of the Jinzhong prefecture of north China’s Shanxi Province, a large coal-producing province that requires a large amount of cheap immigrant labor; the suspect was later found to be a migrant worker. The young victim’s misfortune was not uncommon. Although no exact national figure is available, some small-scope data might provide an estimation of the configuration of juvenile convicts’ families. Based on face-to-face interviews within a 6-month period with 358 juvenile inmates who were newly admitted in a provincial juvenile reformatory (the equivalent of prison), only 1.6% of juveniles are sons of government officials and civil servants, whereas 10.3% of juveniles are from urban working families. Furthermore, 4.8% are from laid-off urban families, 65.9% are from rural working families and 17.5% are from immigrant working families (i.e., they immigrated from rural areas to urban areas). In other words, approximately 88.1% of those juvenile convicts are from lower-class families. Therefore, procedural justice aimed at safeguarding juvenile rights, which is not confined to confidentiality, is particularly important as those juveniles enter the criminal justice system.

Here, the length of sentence is not the issue, although it is vital to the offender and the victim. The real issue is the level and effect of the implementation of safeguards for the rights of juvenile offenders, without regard to whether they are rich or poor, suspects or convicts. Li’s nouveau riche background could have provided him with a substantial amount of legal assistance, both visible and invisible, which certainly could not be matched by juvenile offenders who are subject to economic hardship.

10 Each province, municipality and autonomous region (equivalent to province) in China has one juvenile reformatory to imprison juvenile inmates. In the current study, the province, with a population of over 46 million, holds approximately 1300 males under the age of 18 in its juvenile reformatory on any given day, while about 50 females under the age of 18 were imprisoned in the provincial women’s prison’s juvenile unit.
11 HONGWEI ZHANG, TECHNICAL REPORT OF FACE-TO-FACE INTERVIEWS WITH 358 NEWLY ADMITTED JUVENILE INMATES (2013).
12 Tragically, Li’s attorney seemed keen to disrupt key critical issues of evidence and to disregard many legal provisions. For example, the Criminal Procedure Code of 2012 clearly stipulates that all case trials involving juvenile offenders under the age of 18 will be closed to the public (Article 74). But the attorneys surprisingly insisted and persuaded Li’s mother to demand a public trial. This farce ended in the trial court’s rejection of the allegations. (See: Wang Wen, Li’s Mother Asks for Public Trial and Legal Expert Responds Impossible, (last visited on September 24, 2014), http://ent.sina.com.cn/ent/2013-07-28/007143974460.shtml. In Chinese. From another angle, this also revealed that even some prominent criminal defense lawyers in Beijing are unfamiliar with legal provisions designed to protect the procedural rights of juvenile offenders. Worse still, Li’s attorney willfully disclosed personal information about the victim through his blogs (See: Chen Xiu, The Victim Takes the Initiative to Chase Sex
But Li’s full name, image and other personal details have been seen everywhere, including YouTube, and he is a household name who has been discussed by everyone. Beyond that, we may find that there are some deeper conflicts that the circle of juvenile justice practitioners must face down the road. Accordingly, some fundamental questions arise: Will the vast proportion of resources that ensure juvenile offenders’ rights impede the interests of the victims and the public? How can the contradictions between the public’s demand for judicial transparency and protection for the community against delinquency be reconciled with the diminished capabilities of juveniles that have resulted from the way the system has been designed and operated? Should the current single structure that deals with juveniles evolve into a better and more effective system that safeguards juveniles’ rights to a reasonable degree, and if so, how?

Background: China’s Juvenile Justice

As a country with a vast territory of 3.7 million square miles and a large population of close to 1.35 billion, China is developing within a communist political system that is transitioning to a market economy. Due to its spectacular growth, the Chinese economy surpassed Japan’s in 2010 to become the world’s second-largest economy, and it remains resilient, despite the global financial crisis. As China has become the most dominant player in the global economy, the crime rate has climbed quickly because of sharp social disparities. Criminal cases tried by courts throughout the country indicate that the number of convicts increased from 639,814 in 2000 to 1,173,406 in 2012, while the number of convicts under the age of 18 increased from 41,709 to 63,782 during the same time period. It is important to note that, unlike the national crime rate, which has climbed steadily since the turn of the millennium, juvenile criminal rates have fluctuated, with

Footnote:
a peak of 88,891 in 2008; juvenile convictions have entered a downtrend since that time. However, it is worth noting that the official crime statistics should be interpreted with caution, as they report only juvenile crimes with a certain level of severity, but omit minor criminal cases. Many examples of minor criminal behavior, such as disturbing the public order and thefts of small amounts of money or items of equivalent value, are usually not classified as crimes. This type of minor criminal behavior is defined as a public order violation and is subject to administrative penalties regulated by the Security Administration Sanction Law of 2005; it is handled by the public security police, instead of the courts. The range of juvenile crimes punishable by criminal courts in China evaporates in comparison with its American counterparts. Therefore, the reality of juvenile crime remains a mystery to the nation, and the scope of juvenile violence continues to plague it “due to very limited access to obtain official data and conduct surveys on delinquency in China.” Even accepting the official figures, the absolute number of Chinese juvenile convicts is likely to stay high, reaching about 60,000 per year. By comparison, in the U.S., the number of delinquency cases judicially waived to criminal court peaked in 1994 at 13,300 cases, and juvenile courts waived an estimated 6,000 delinquency cases in 2010.

In order to provide a brief account of the Chinese juvenile justice mechanism, a short examination of its development may be necessary. Early Chinese principles for juvenile liability were deeply rooted in traditional agricultural society, and juveniles in this predominantly patriarchal society are traditionally meant to be demure. Influenced by Confucianism, juveniles under the patriarchal order were usually treated no differently from adults in the criminal justice system throughout most of Chinese history. The mending-law reforms of the end of China’s last imperial Qing dynasty (1644-1911) were a transplantation of Western law on a large scale, and they began the modern historic revolution. Sensitized by that movement, the ideas of puberty, adolescence, capability and rights, which had seldom been addressed previously, were introduced. While the first juvenile court was established in 1899 in Chicago, as a byproduct of the Progressive movement, to divert children from the

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criminal justice system, China was experiencing social unrest and sharp changes. Just one year before, Chinese reformists had staged the far-reaching Hundred Days’ Reform movement to make radical changes to the Qing dynasty, which was on the verge of collapse. Under the disappointing backlash of conservatism, this first wave of promising top-down westernization failed, and the principles of democracy and rule of law remained slightly out of reach. Not surprisingly, a juvenile justice system was not established in a timely manner.

With the establishment of the first juvenile court in Shanghai in 1984, a considerable change occurred in the juvenile justice system, and juveniles’ rights have gradually been strengthened since that time. Prior to that time, juveniles were tried and punished no much difference as adults. Overall, the circle of juvenile justice academic and practitioners largely admit that there are differences, including the diminished accountability and legal understanding of juvenile offenders, and their greater amenability to treatment.

Deeply affected by both traditional ideology and western thought, the current juvenile justice system in China is the product of a mixture that bridges Confucianism, Maoism and the doctrine of parens partiae. Influenced by Confucianism, the Chinese juvenile justice system emphasizes the doctrines of “caring tenderly for the young” and “protecting infants.” In addition, the establishment of the juvenile justice system was dominated by Communist ideology. For example, the Juvenile Delinquency Prevention Law of 1999 stipulates: “Juveniles shall be educated in ideals, morality, rule of law as well as in patriotism, collectivism and socialism.”

As a member of the international community, China is a signatory to some major international human rights treaties, including, but not limited to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985, the United Nations Convention on the Rights of the Child of 1989, the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993, the Worst Forms of Child Labor Convention of 1999, and Child Prostitution, and Child Pornography of 2000, etc. Although Chinese courts cannot directly apply the rules established in those treaties when hearing relevant cases, the principles between the lines have been mimicked in legislation to reflect international

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20 Ruohui Zhao et al., supra note 16, at 145.
21 Id. at 146.
22 Juvenile Delinquency Prevention Law, Article 6.
obligations. The relevant major laws include the *Criminal Code of 1997*, the *Juvenile Delinquency Prevention Law of 1999*, the *Criminal Procedure Code of 2012* and the *Juvenile Protection Law of 2006*, etc. Marked by political slogans, there are two articles stipulating the protections for juveniles among the 138 articles of China’s *Constitution of 1982*. One of the principles states: “The state promotes the all-round development of children and young people, morally, intellectually and physically.”

In addition, the *Constitution* further stipulates: “Marriage, the family and mother and child are protected by the state. Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.”

According to the *Juvenile Protection Law of 2006*, the age of 18 is the legal age of majority in China. Under the *Criminal Code of 1997*, juveniles are subject to criminal proceedings from the age of 16. Moreover, if a juvenile between the ages of 14 and 16 commits a serious crime, he or she must bear criminal responsibility. According to the *Code*, these crimes include intentional homicide, intentionally hurting another person so as to cause serious injury or death, rape, robbery, drug trafficking, arson, explosions, or poisoning. The *Code* further provides that a juvenile delinquent between the ages of 14 and 18 is subject to punishment, but to a lighter degree.

Most noticeably of all, the newly revised *Criminal Procedure Code of 2012* includes special criminal procedures for juvenile offenders, such as conditional non-prosecution, social background investigation, free legal aid and a sealed criminal record system. It represents the most significant change for juveniles in conflict with the law in China. The *Criminal Procedure Code* was first enacted in 1979, but was amended in 1996; the formalities throughout the criminal procedure have been greatly enhanced through its legal enactment and revisions. The *Criminal Procedure Code of 2012* for juveniles clearly stipulates that it will implement educational, reformative and redemptive guiding principles for juvenile offenders, and that it will uphold the

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24 Constitution of 1982, Article 49.
principle of education first and punishment second. Through the implementation of these laws, the principle of “the best interests of the child” within the criminal justice system has been largely enforced. To date, several areas of change have emerged as authorities have passed laws and judicial interpretations designed to implement the principle of “giving priority to education, supplemented by punishment.” Concern for the due process rights of juveniles is more critical than ever; this can be seen in the number of new legal provisions. Overall, juvenile proceedings demonstrate the protection of juveniles and the focus on their interests throughout the juvenile process, from detention to arrest, prosecution, court trial and rehabilitation. Currently, there is a growing awareness of a focus more on rehabilitation.

Legal and Philosophical Mysteries

But for his controversial military family background, the Li gang-rape case might not have drawn the public eye. However, we should not be blinded by this. The doubts that targeted the administration of the Chinese juvenile justice system did not simply arise from concern that the fundamentals of social justice were being subjected to interference by wealth and power, but more importantly, from concern about fundamental fairness to victims and the general public. Many problems were exposed as the case moved forward.

The first and foremost problem is the confidentiality of juvenile information. The respect for confidentiality is historically rooted in the development of the juvenile justice system. Various laws and judicial interpretations in China have also stipulated that the disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited. For example, the Juvenile Protection Law of 2006 requires the judiciary to protect juveniles’ legal rights during judicial proceedings. It further stipulates that news reports, movies, shows, publications and networks should not disclose the name, location, photos, images or any other

28 Criminal Procedure Code of 2012, Article 266.
documents that might lead to the identification of juveniles.\textsuperscript{31} Across the country, however, much information related to juvenile offenders is publicly available. On May 14, 2010, four juvenile inmates were asked to draw on their experiences in a visit to a local middle school in the Xi’an prefecture of China’s northwestern Shaanxi Province to educate 3000 school children in an effort to discourage them from delinquency. This event was co-organized by the provincial departments of education and justice administration.\textsuperscript{32} Apparently, the personal privacy of those juvenile inmates, who were seen only as negative stereotypes, was thoroughly compromised.

The administration of juvenile justice in China presents a unique dilemma. The social phenomenon of selectively choosing to discount juvenile confidentiality cannot be explained simply by a lack of legal consciousness, as there are substantive provisions. The legislative expectations and the social reality simply do not line up as expected. The applicable laws generally involve extending procedural protections and increased confidentiality protections for juvenile offenders. Yet their implementation is easier said than done. Although top Chinese legislators have strived to enact or revise the law to meet the social needs, the process has not been easy, and it has been accompanied by both supporters and opponents. For example, the \textit{Juvenile Protection Law of 2006} and the \textit{Juvenile Delinquency Prevention Law of 1999} are the main legal pillars of the Chinese juvenile justice system. However, laws are often publicized for their operation. The maxim “strong in law, but short in reality” would prove to be disastrous in the case of juveniles’ rights. There are no specific provisions regarding how to implement these laws. The provisions are misty and illusory, and therefore, they need additional lower level law to clarify them and to enhance their operability and to enable everyone to follow them.

To recognize and address the rights of victims and other members of the public, American juvenile courts and legislation have reevaluated and modified the principle of confidentiality in recent years. In 1982, the U.S. Supreme Court, in \textit{Globe Newspaper Co. v. Superior Court}, decided that there is a need to balance the general public’s First Amendment right of access to information to criminal trials against the victim’s interest in confidentiality in a juvenile proceeding; it ruled in favor of public

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\textsuperscript{31} Juvenile Protection Law, Article 58.

access.\(^\text{33}\) Clearly, the real disturbance that arose from the *Li case* was at the level of appearances, and the continuing increases in serious and violent criminal conduct by juveniles have weakened the desire for protections arising from the need for juvenile confidentiality.

However, the application of confidentiality for juveniles is not the primary problem. Instead, the purist of origins, particularly, the primary goal of the Chinese juvenile justice system, must be re-valuated before any further suggestions are proposed. The Chinese juvenile justice system has developed with a number of differences that distinguish it from its American counterpart. It is fair to say that the Chinese juvenile justice system is a hybrid between prevention and sanctions. Generally speaking, China does not currently have a distinct justice system for juveniles from the perspective of a Western juvenile justice framework.\(^\text{34}\) In the U.S. and many other nations, juvenile courts are civil proceedings exclusively designed for juveniles, while criminal courts are criminal proceedings designed to try adults.\(^\text{35}\) Unlike the U.S., where juveniles who have allegedly committed serious offenses could be transferred into an adult court, the current Chinese juvenile justice system could be seen as part of the general criminal justice system. It reflects the general administration of criminal justice, which differs from most other jurisdictions.\(^\text{36}\) Unlike American “quasi-civil” proceedings, Chinese juvenile court proceedings are largely considered to be criminal proceedings. Although juvenile offenders might be treated slightly differently from adults, the divergence is not remarkable.

Although the top Chinese judicial bodies, the Supreme Court and the Supreme Procuratorate, have repeatedly called for juvenile criminal cases to be handled with “justice tempered with mercy,” social sentiment in China is in favor of punishment and institutionalization in a time of prevalent violence. Individualized justice for juveniles, which has developed as a universal rule of juvenile justice, is alien to traditional Chinese criminal policy, which is centered in the retributive principle of “an eye for an eye.” The severe penalty doctrine, as the guiding principle of criminal law, has been reflected in the *Criminal Code* in both ancient and communist China. The severe penalty doctrine and compassion are largely seen as a pair of inconsistent, 


\(^{34}\) Ruohui Zhao et al., *supra* note 16, at 151.


but concomitant philosophies, and they form part of the Chinese juvenile justice system. This presents a major challenge to the principle of “giving priority to education, supplemented by punishment,” a persistent principle that was established at the inception of the Chinese juvenile justice system.

In the early 1980s, the Chinese juvenile justice system gradually began to form by soaking up foreign elements, while striving to improve the socialist legal system. However, in the process of its development, with its rapid expansion of jurisdiction, potential problems and risks gradually began to be revealed. Some experimental initiatives have been undertaken in the past few years, but many of them were kept in place only for a short time. Some of these mechanisms seem to be too simple or even overly idealistic. Despite its rapid growth, the Chinese juvenile justice system is still in search of a philosophical and ideological foundation. One-sided policies that uphold the principle of “giving priority to education, supplemented by punishment,” but ignore legitimate requests arising from the victims and the general public are, in effect, not only drawing criticism to juvenile’s rights, they also might undermine the fairness and justice of society as a whole. In the name of protecting juvenile rights, the goals of juvenile offender accountability, offender competency development and community protection are intentionally or unintentionally being overlooked. In the face of increasing public concern over juvenile crime and violence, the Chinese juvenile justice system must take these complaints seriously, while it also takes serious action with respect to the special demands of juveniles.

The Chinese juvenile justice system is now facing issues that are similar to those endured by its American counterpart in the 1970s and 1980s. As the legal historian David S. Tanenhaus has noted, “the American juvenile court ideal that children’s cases should be diverted from the criminal justice system and handled in a separate system that emphasized rehabilitation over punishment—had quickly spread nationally and internationally.” However, the American juvenile court system is now barely recognizable, and it has strayed far from the ideology and goals on which it was founded. Since 1966, the U.S. Supreme Court’s decisions in Kent v. United States, In re Gault, In re Winship and McKeiver v. Pennsylvania have blurred the once steadfast

37 Ruohui Zhao et al., supra note 16, at 146-147.
38 Ruohui Zhao et al., supra note 16, at 164.
distinctions between adult and juvenile courts. While the American juvenile justice pendulum has slowly been swinging toward law and order, the Chinese juvenile justice system is apparently going in the opposite direction. In the face of increasing public concern over juvenile crime and violence, the general public and victims are naturally seeking more information about juvenile offenders.

The Li case clearly provides evidence for this. Although cheerleaders can rejoice in the reduction of juvenile delinquency in China since 2008 and can attribute this drop to certain governmental prevention mechanisms, one of the key factors in this rate decrease that should not be neglected is the implementation of juvenile criminal policy and the resulting changes in both procedural and substantive law. For instance, the decrease in the non-arrest rate and the non-prosecution rate in juvenile criminal cases is a result of the performance evaluations that have been mandatorily adopted in many procuratorates, which have led to caseload decreases in courts. In other words, changes in the data do not necessarily indicate a real drop in juvenile delinquency and crime nationwide. In stark contrast to the official data, the general crime rate has increased significantly at the same time. In turn, the soft handling of juvenile crime seems to have puzzled the public, as it has perceived that its quantity has not decreased, and therefore, it has demanded increased control of juvenile crime.

Today, the principle that “children are different” is widely recognized in China, but this does not necessarily mean that different judicial treatment for juvenile offenders will be easily accepted and operated effectively. This attitude is something that can be taken for granted when crimes occur, especially when there is a high rate of crime or when cruel crimes are committed by recidivists. Although the principle of the rule of law has been established and has improved gradually, the traditional view of punishment and the idea of the mitigation of punishment are facing a severe test. The juvenile justice sub-system seems destined to be under the giant umbrella of criminal justice, which has been greatly affected by punishment-oriented policies. While accountability has been considered to be a cornerstone within the criminal justice system, it has been considered secondary in importance in the juvenile justice system, given its emphasis on education and rehabilitation for juveniles. This causes

41 Id. at 160.
communicative failures between the general criminal justice system and the juvenile justice system as a subsystem. They constitute an organic whole, but they clearly have different goals and distinct paths. While the demand for more accountability and punishment for juveniles has increased, legislation and the judicature seem hesitant to keep up with the times. 

Affected by this, several apparent trade-offs have become more apparent: First, although there are laws that particularly stress the safeguarding of juvenile rights as criminal cases progress, many rights, such as the right to confidentiality, the right to seal juvenile records and the right to counsel, are not strictly enforced. Second, although the law has clearly stipulated that juveniles must be given a lighter or mitigated punishment, the juvenile imprisonment rate still remains high, which is consistent with punishment-oriented values and which causes concern about weak and ineffective governance. Third, although the law has repeatedly emphasized the importance of education and rehabilitation for juvenile offenders, juvenile accountability and their reentry into community have not gotten the attention they deserve. Accordingly, the re-offending rate for juvenile offenders who have reached adulthood still remains unknown, and there is general public concern about the growing number of juvenile offenders, especially those who have committed rape, drug trafficking, murder and assaults resulting in fatalities and serious injuries. All in all, these problems can be considered to be the reason why the juvenile justice system was created. This is a question that is essential to our understanding of juvenile justice philosophy.

Conclusion

China has the largest juvenile population in the world, which makes it easier to generate a high degree of social concern about legitimacy, maintainability and operability when new juvenile policies are introduced, particularly if they involve criminal justice issues. Because young offenders have diminished accountability and legal understanding, the general idea of giving priority to education and supplementing it with punishment has served as a fundamental principle in the
Chinese juvenile justice system. In order to implement this principle, many laws and judicial interpretations have been passed to safeguard juveniles’ rights and to assist in their rehabilitation.

However, there is a Chinese saying: “Thirty years to the East, and thirty years to the West.” Thirty years after the establishment of the first juvenile court in 1984, the legal rights of juveniles are now being considered. Some basic rights, including the right to confidentiality, are effectively being denied to some extent. The ignorance of rights undermines the solemnity of the law, which contains many provisions to protect juveniles. However, the main problem is the considerable debate over the goals and the legal procedures for dealing with juvenile offenders. In recent years, a series of high-profile juvenile cases that have resulted in severe injuries, and in some cases, death, have provoked a public outcry demanding reforms that increase juvenile accountability and are based on protecting society.

Following the conclusion of China’s 2012 transition of power, politicians and academics are striving to define the country’s direction following the downfall of Zhou Yongkang, a political-legal helmsman who was in charge of security and the judiciary, and who is now accused of bearing the responsibility for the retrogression of the rule of law. In their governing agenda, the new communist leadership pledges to promote the rule of law, although the road ahead is rough. Under the current system, the juvenile justice system is a descendent of the general criminal justice system. Therefore, all juvenile offenders, regardless of the severity of their crimes, are subject to being treated within same system as adult offenders, albeit with slight differences.

In principle, future remedial efforts should focus on increasing juvenile accountability and equipping juvenile offenders with the skills they need to re-enter the community. To that end, it is necessary to establish a unified specialized juvenile justice system containing many features that are distinct from those of the criminal justice system. Not surprisingly, quasi-civil proceedings will be applied to juvenile offenders who have committed minor crimes and status offenses; in these proceedings, the principle of “giving priority to education, supplemented by punishment,” which is guided by


the *parens patriae* doctrine, will be easily applicable by the general public and the victims. Meanwhile, certain high-profile juvenile offenders and recidivists could be tried as adults in criminal court, with its primary purpose of punishment. In either case, juvenile offenders need to be educated to bear the responsibility for their delinquency and crimes, thereby promoting the integrity of the justice system.

In the context of a rapidly-modernizing and globally integrating society, the balanced and restorative approaches might be key to leveraging the next generation of Chinese juvenile justice reform. Indeed, the ideas and practices of Western restorative justice were introduced into China at the turn of the twenty-first century. In the most recent decade, an increasing number of translated restorative justice texts and research has provided Chinese scholars and practitioners with a better understanding of the concept and its practice in juvenile justice. As Dennis Wong and his associates pointed out, “[t]his restorative model of delinquency control is in fact also compatible with the mass line ideology which welcomes involvement of indigenous community leaders.”

Chinese people naturally feel more empathy for juveniles, compared with adult offenders, and therefore, they are more oriented toward reconciliation between juvenile offenders, victims and the community.

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