The Study of Criminology (犯罪學) in China

Kam C. Wong

Available at: https://works.bepress.com/kam_wong/19/
The Study of Criminology (犯罪學) in China

Kam C. Wong
22442 words
3/4/08 -10.30 pm

March 4, 2008
Paper under publication review
Not to be cited without permission
All rights reserved

Visiting Professor of Law, City University of Hong Kong, School of Law (Summer 2005 – 7). Chair and Professor, Xavier University, Cincinnati, OH 45207. B.A. (Hons.), J.D. (Indiana); Diploma (N.I.T.A. – Northwestern); M.A., Ph.D. (SUNY – Albany); vice-Chair, Hong Kong Society of Criminology (1999 – 2002); vice-President (1999 – 2002); Associate Fellow, Center of Criminology, University of Hong Kong, vice-President (2001-2), President (2002-3) AAPS (Asian Association of Police Studies). His has published 70 books/articles appeared in Criminal Law Bulletin; Georgetown Journal of Law and Public Policy; Columbia Journal of Asian Law; British Journal of Criminology; Journal of Information Law & Technology (JILT); Pacific Rim Law & Policy Journal; International Journal of the Sociology of Law; Australian Journal of Law and Society; Australian and New Zealand Journal of Criminology; John Marshall Journal of Computer and Information Law, and others. His latest books are: The Impact of USA Patriot Act on American Society: An Evidence Based Assessment (N.Y.: Nova Press, 2007) and The Making of USA Patriot Act: Legislation, Implementation, Impact (Beijing: China Law Press, 2008) (in Chinese). He is working on a new book: Policing with Chinese Characteristics (Peter Lang, 2008) (Forthcoming).
ABSTRACT

As a scholarly discipline, criminology in China is growing in stature, maturity, and utility. In a short 30 years since 1979, China has successfully established criminology as a scientific field of study with well defined subjects, recognized scholars, and copious research/publications. To date, there is very few systematic and comprehensive study of criminology (in English language) as an emerging and important field of academic discipline in China. As a result, we know very little about its focus and scope, direction and trend, theories and findings, problems and issues. This is a first attempt to do so.

The article begins with a general survey of crime in China during the reform period before it explores “Literature on law, crime and punishment in China,” “The idea of crime (“Fanzui”),” “History of criminology in China,” “Nature and structure of criminology as a discipline,” “Traditional criminological thoughts,” “Recent development of criminology in China,” “Contemporary theory on crime and punishment.” Finally, the conclusion discusses some of the more “Fundamental Issues and Challenges” facing criminological research in China.
The Study of Criminology (犯罪學) in China

Criminology research in the 21st Century should be conducted under the guidance of Marxism, thought of Mao Zedong and theory of Deng Xiaoping. It should start with the real circumstances of our nation and insist on combing theory and realities. It should contribute to construction of socialist economy and serve comprehensive social control and administration. It should contribute to ‘permanent order and lasting peace’ and people’s safe living and happy work.”

Kang Shuhua
Founding President of Chinese Criminology Association (1992)

Introduction

Since 1978, Chinese economic reform has brought along tsunami size crime waves. In 1950, the People’s Republic of China (PRC) recorded 513,416 crimes, or 9.3 crimes per 10,000 people. The crime rate was reduced to 56, 3000 crimes (5.9/10,000) and 57, 482 crimes (4.2/10,000) in 1952 to 1952 respectively. It has remained low since then until the reform era, starting 1978.
In 1981, only two years into the reform, crime rose to 89,000 or 8.9/10,0005 (Table 1). Since then the crime rate in China keep on increasing. Between 1981 and 2001 robberies grew 18 times, from 22266 to 352216.6 In 2007, there were 80,000 juvenile arrests, up from 30,000 in 1998.7

In terms of nature and prevalence of crime, in 2005 there were 4,585 cases of arson (21.3% decrease over the same period last year); 543 bombings (17.7% decrease); 11,000 murders (13.6% decrease); 15,000 rapes (5.8% decrease); 65,000 assaults and batteries (0.1% decreases).8

As to crime trend, Ministry of Public Security reported more street crimes, lower on set age, and richer victims. Finally, there were more and more new criminality, e.g., car thefts, con games, blackmail, and e-prostitution.9 Most of the crimes in this period were perpetrated by youth,10 migrants11 and gangs.12 Crimes of major concerns were economic,13 violent, official14 and internet crimes.15

7 “Youth crime in China explodes as social values decline: report,” Sino Daily, December 5, 2007. (Rise of juvenile crime resulted from decline of social values and increase in broken families.) http://www.sinodaily.com/reports/Youth_crime_in_China_explodes_as_social_values_decline_report_999.html
9 Id.
10 Kang Shuhua, Youth crime and management/control (“Qingshaonian Fanzui yu Zhili”) (Beijing: Zhongguo renmin gongan daixue chubanshe, 2000), esp. “Basic circumstances of development and changes in youth crime in our country in the last 50 years.” (“Wushi nian lai woguo qingshaonian fanzui fazhan bianhua de jiben qingkuang”) pp. 37 - 51
Chinese criminologists give many reasons for the precipitous and substantial increase in crimes, chief of which are the demise of communist ideology,\(^\text{16}\) decline in personal morality,\(^\text{17}\) dilution of social control,\(^\text{18}\) criminality in static terms” ("Liudong renkou fanzui qingtai miaoshu") pp. 31-52; Guoan Ma, “CHAPTER 5 Population Migration and Crime in Beijing, China.” In Pp. 65-72. Jianhong Liu, Lening Zhang, Steven Messner, \textit{Crime and Social Control in Changing China} (Greenwood Press, 2001). Daniel J. Curran, “Economic Reform, the Floating Population, and Crime: The Transformation of Social Control in China,” \textit{Journal of Contemporary Criminal Justice}, Vol. 14(3): 262-280 (1998) (Much of the crime in the reform era is caused by the “floating population.” The current administrative strategy (such as household registration) and penal measures (such as labor reform) is not effective in addressing the economic problem); “Sheltering for Examination: Law, Policy, and Practice,” in Occasional Papers/Reprints Series in Contemporary Asian Studies, University of Maryland, School of Law (9/1997), pp. 53
\(^12\) An Chen, “Secret Societies and Organized Crime in Contemporary China,” \textit{Modern Asian Studies} (2005), 39: 77-107. (Unemployment, impoverishment, economic inequality, relative deprivation, and political corruption created and afflicted disadvantaged and marginalized social groups leading to organized gangs.)
\(^17\) “More juveniles involved in crimes in China,” \textit{People’s Daily Online} August 2005. (Juvenile crimes are going up because of lack of family education.)
existence of crime opportunities, increase in economic incentives, and arriving of a corrupting culture. Foreign observers attributed Chinese crime and disorder problems to strain and anomie, more generally social disorganization and political discontentment.

Table 1
Crime Rates in China, 1950-2002
(Per 100,000 population)

<table>
<thead>
<tr>
<th>Year</th>
<th>Crime Rate</th>
<th>Year</th>
<th>Crime Rate</th>
<th>Year</th>
<th>Crime Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>93.0</td>
<td>1972</td>
<td>46.2</td>
<td>1988</td>
<td>77.4</td>
</tr>
</tbody>
</table>

23 L. Cao, “Returning to Normality: Anomie and Crime in China *Int J Offender Ther Comp Criminol*, Vol.: 51(1): 40 – 51 (2007) (The study investigates the relationship between anomie and crime in China. It found that: “employment, having children, and satisfaction in life were significantly related to anomie; however, the effect of education was related to anomie in the direction that was inconsistent with what was known in the Western literature. Age had no significant effect on anomie”); Paul Friday, “Crime and Crime Prevention in China: A Challenge to the Development-Crime Nexus,” *Journal of Contemporary Criminal Justice*, Vol. 14 (3): 296-314 (1998) (Article explains the linkage between increase of crime and development in China with Western theories: Durkheimian Modernization, Marxist, and Victimology. It reaffirms the need for traditionally Chinese crime-prevention policies and practices in the midst of unprecedented social changes.)
<table>
<thead>
<tr>
<th>Year</th>
<th>Crime Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951</td>
<td>59.1</td>
</tr>
<tr>
<td>1952</td>
<td>42.3</td>
</tr>
<tr>
<td>1953</td>
<td>49.7</td>
</tr>
<tr>
<td>1954</td>
<td>65.1</td>
</tr>
<tr>
<td>1955</td>
<td>53.0</td>
</tr>
<tr>
<td>1956</td>
<td>28.7</td>
</tr>
<tr>
<td>1957</td>
<td>46.1</td>
</tr>
<tr>
<td>1958</td>
<td>32.0</td>
</tr>
<tr>
<td>1959</td>
<td>31.3</td>
</tr>
<tr>
<td>1960</td>
<td>33.6</td>
</tr>
<tr>
<td>1961</td>
<td><strong>64.1</strong></td>
</tr>
<tr>
<td>1962</td>
<td>48.2</td>
</tr>
<tr>
<td>1963</td>
<td>36.3</td>
</tr>
<tr>
<td>1964</td>
<td>30.5</td>
</tr>
<tr>
<td>1965</td>
<td>29.8</td>
</tr>
<tr>
<td>1973</td>
<td>60.1</td>
</tr>
<tr>
<td>1974</td>
<td>56.8</td>
</tr>
<tr>
<td>1975</td>
<td>51.4</td>
</tr>
<tr>
<td>1976</td>
<td>52.2</td>
</tr>
<tr>
<td>1977</td>
<td>57.7</td>
</tr>
<tr>
<td>1978</td>
<td>55.7</td>
</tr>
<tr>
<td>1979</td>
<td><strong>65.2</strong></td>
</tr>
<tr>
<td>1980</td>
<td>76.7</td>
</tr>
<tr>
<td>1981</td>
<td><strong>89.4</strong></td>
</tr>
<tr>
<td>1982</td>
<td>73.7</td>
</tr>
<tr>
<td>1983</td>
<td>60.0</td>
</tr>
<tr>
<td>1984</td>
<td>49.9</td>
</tr>
<tr>
<td>1985</td>
<td>52.1</td>
</tr>
<tr>
<td>1986</td>
<td>51.9</td>
</tr>
<tr>
<td>1987</td>
<td>54.1</td>
</tr>
<tr>
<td>1989</td>
<td>181.5</td>
</tr>
<tr>
<td>1990</td>
<td>200.9</td>
</tr>
<tr>
<td>1991</td>
<td><strong>209.4</strong></td>
</tr>
<tr>
<td>1992</td>
<td>138.6</td>
</tr>
<tr>
<td>1993</td>
<td>140.3</td>
</tr>
<tr>
<td>1994</td>
<td>142.9</td>
</tr>
<tr>
<td>1995</td>
<td>144.0</td>
</tr>
<tr>
<td>1996</td>
<td>135.1</td>
</tr>
<tr>
<td>1997</td>
<td>135.0</td>
</tr>
<tr>
<td>1998</td>
<td>159.1</td>
</tr>
<tr>
<td>1999</td>
<td>178.6</td>
</tr>
<tr>
<td>2000</td>
<td>287.3</td>
</tr>
<tr>
<td>2001</td>
<td>349.3</td>
</tr>
<tr>
<td>2002</td>
<td>337.6</td>
</tr>
</tbody>
</table>

Source: Liang (2005)

Though not entirely unanticipated and still very low by international standard, the increase in crime in a communist state poses ideological challenges and practical problems.²⁴ Party leaders from Deng to Jiang have insisted on stability at all costs.²⁵ Resolute and forceful actions were

---

²⁴ Mark Cowling, “Would Communism Eliminate Crime?” Fourth Manchester Workshops in Political Theory, September 3-5, 2007 (“A central claim of much Marxist criminological theory is that Communism would eliminate or greatly reduce crime.” Esp. n. 3 - 5)


²⁵ The CCP identified four major kinds of instabilities: foreign (Western capitalistic) infiltration and destruction; succession efforts (Taiwan); cult (Falun Gong) activities;
necessary to protect the rights of the people, maintain the stability of the nation, make possible economic reform under socialism, strengthen rule of law.\textsuperscript{26}

The Chinese Communist Party responded with draconian “strike hard” (“yanda”) campaigns.\textsuperscript{27} In September of 1983, the National People’s Congress, Standing Committee issued the “Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals who Seriously Endanger Public Security.” (September 2, 1983). The campaign was able to reduce crime growth momentarily to 7.48 million crimes or 7.4/10,000 in 1984. Such campaigned were repeated in 1990, 1996, 2001,\textsuperscript{28} and were successful in reducing crime, albeit momentarily.\textsuperscript{29} The police resort to pervasive and invasive comprehensive crime control programs.\textsuperscript{30} As the reform depends,

\begin{flushright}
\textsuperscript{28} "Zhongguo zai quanguo fanweinei kaizhan yanda zhengzhi douzheng zhongdian daji san zhong fanzui" [China begins a nationwide "Strike Hard" campaign focusing the attack on three crime categories] \textit{Xinhua}, April 3, 2001.
\textsuperscript{29} "Yanda: zouchu sige wuqu" [Yanda: the four main mistakes], \textit{RMRB}, 8 August, 2001, p. 10. (“Yanda is a vicious cycle, it's a treadmill that we can't get off ... The more we attack the busier we get, the harder it is to keep up with the attacks, the harder it is to prevent further crimes occurring.”)
\end{flushright}
such control measures were found to be difficult to maintain and marginal in effect. \(^{31}\)

Of late (1990s) and in desperation, the Party has turned to scientific research for answers, i.e., “Strengthen the country with science and technology” (“kexue qiang quo”). Police studies and criminological research come to the rescue of a besieged nation, promising hope for the disillusioned “mass” and addressing concerns of anxious investors. Western theories are borrowed and scientific researches mounted to discover the nature and prevalence, patterns and distribution, causation and cure to the nation’s runaway crime problem. \(^{32}\)

As a scholarly discipline, criminology in China is growing in stature, maturity, and utility. \(^{33}\) In a short 30 years since 1978, China has successfully established criminology as a scientific field of study with a well defined subject area, recognized scholars, and copious research/publication. \(^{34}\) Still, there are many boundary debates, \(^{35}\) theoretical

\(^{31}\) Yingyi Situ & Weizheng Liu, “Restoring the Neighborhood, Fighting Against Crime: A Case Study in Guangzhou City, People's Republic of China,” *International Criminal Justice Review*, Vol. 6 (1): 89-102 (1996) (Market reform and social change posed serious challenges to traditional informal social control system at the grassroots. The introduction of comprehensive treatment of social order helps to breach the gap but was not altogether successful to keep criminality at bay.)


\(^{34}\) Kang, the former President of Chinese Criminology Research Association, is more circumspect. While Kang conceded that criminology as a field of research and study has come a long way. But he was quick to point out that Chinese criminology is not as mature
problems,\textsuperscript{36} methodological issues\textsuperscript{37} and application challenges waiting to be resolved. Jurists interpret apply and assess law with the help of cases and rule. Criminologists understand and predict crime with grounded research or statistical surveys.

To date, there are very few systematic and comprehensive studies of criminology (in English language) as an emerging field of academic disciplines in China.\textsuperscript{38} This is a first attempt to do so.

This article is organized into the following sections. After this brief introduction, Section I provides an extensive review and critical assessment of the state of “Literature on law, crime and punishment in China.” Section II investigates into “The idea of crime (“Fanzui”)” in China. Section III

\textsuperscript{35}Disciplinary boundary disputes exist between jurists and criminologists, with jurists claiming criminology such as sub-division historically which the criminologists insisting that as a discipline its has more to do with sociology, psychology, and public administration.

\textsuperscript{36}Problems of theory include, First, there are few attempts to formulate a general theory of crimes particular to Chinese history, culture and circumstances. Second, theories of are rarely tested empirically.

\textsuperscript{37} Jurists interpret apply, and assess law with the help of cases and rule. Criminologists understand and predict crime with grounded research or statistical surveys.

\textsuperscript{38} The rare exception being Frank, “Penology and Reformation in Modern China” by Dikotter. In Bakken \textit{Crime, Punishment and Policing in China} (Rowen and Littlefield, 2004), pp. 29 – 64.
traces the “History of criminology in China.” Section IV describes the “Nature and structure of criminology as a discipline.” Section V explores some of more the influential “Traditional criminological thoughts.” Section VI details “Recent development of criminology in China.” Section VII discussed “Contemporary theory on crime and punishment”. Finally, the conclusion (VIII) discusses some of the more prominent “Fundamental Issues and Challenges” facing criminological research in China. It finishes off with a few observations about the problems and prospects of criminological research in China.

I

Literature on law, crime and punishment in China. 39

In the West, there is no independent field of study entitled “Chinese criminology,” 40 though sinologists have studied crime, law and justice since the 19th century. Indeed, foreign, comparative and cross-cultural criminological studies, especially from an indigenous perspective, 41 are

---

39 For development of criminology in Hong Kong, see “Developing a criminal justice program in Hong Kong.” Prepared for Department of Law, City University of Hong Kong, 1989 (On file with author); for Taiwan, see Bill Hebenton, Susyan Jou, “In search of criminological tradition: the development of criminology in Taiwan,” Crime, Law and Social Change Vol. 44(3): 215 – 250 (2005). There is no study of criminology development in Macau. This study is limited to investigating criminological research in and about PRC.

40 Bakken observed that it is an ignored field of study because of received mysticism about China and perceived uniqueness of Chinese history and culture. In Bakken, Crime, Punishment and Policing in China (Rowen and Littlefield, 2004), p. 64.

rare.\textsuperscript{42} Since inception, the focus, methods, theories, and style of criminology scholarship in and about China are clearly and pre-dominantly Euro and Anglo-centric.\textsuperscript{43} As yet very few indigenous theories of Chinese crime have emerged and made it into mainstream Western scholarship. For example, the practice of community policing\textsuperscript{44} and the idea of re-integration shame\textsuperscript{45} had been practiced in China for centuries, and are now being (re)introduced to China from the West, as a novelty. Western countries, and especially the Americans, are net exporters of criminological theories,\textsuperscript{46} while China is a passive consumer.

Until 1980s, crime and punishment in China has been studied as an appendage to the larger intellectual terrain of China studies.\textsuperscript{47} The primary focus was on Chinese political philosophy,\textsuperscript{48} government administration,\textsuperscript{49} and communal social control.\textsuperscript{50} The prefer research methodology was textual

\textsuperscript{43} \textit{Id.}
\textsuperscript{44} Michael R. Dutton, \textit{Policing and punishment in China: from patriarchy to "the people"} (New York: Cambridge University Press, 1992).
\textsuperscript{49} John R. Watt, \textit{The District Magistrate in Late Imperial China}. (New York: Columbia University Press, 1972)
\textsuperscript{50} Hsiao Kung-chuan. \textit{Rural China: Imperial Control in the Nineteenth Century} (Seattle: University of Washington Press, 1960)
analysis of historical and classical materials,\textsuperscript{51} of late some archeology work.\textsuperscript{52} There was little empirical investigation and field research into the nature and kind, incidence and prevalence, distribution and pattern, causation and remedy of crime.\textsuperscript{53}

This preference for textual understanding of government control and not empirical study of personal deviance is not hard to explain:

First, the first generation of Western scholars has ready access to Chinese philosophy, history and classics,\textsuperscript{54} and little facility with anthropological knowledge or social science research methods. For example, Kargren, the founding father of sinology of Scandinavia started with the study of Chinese linguistics before turning to literary criticism.\textsuperscript{55} Ironically, there is a reversal of fortune of sorts in the 1990s. More and more Western educated Chinese criminologists are entering the field, e.g., J. Liu\textsuperscript{56}.

\textsuperscript{54} It took the rude awaking of a new generation of intellectuals – Hu Shi, Kang You Wai, who spearhead the new cultural movement (“xin wenhua huodong”) to break the hold of the past. Tze-Ki Hon, "Ethnic and Cultural Pluralism: Gu Jiegang’s Vision of a New China in His Studies of Ancient History,” \textit{Modern China} Vol. 22 (3): 315-339 (1966). (Hu rejected the “high culture” (classical) approach to education in favor of more down to earth text and style of instruction. (p. 324)
and Kam C. Wong. Still they faced a lot of difficulties in conducting field research in China.

Second, the study of China through the reading of Chinese history (Shiji - Book of History) or classical text (Confucius Lunyu) caused the Western scholars to look at the world through Confucius lenses, i.e., perfection of emperor’s rule as a way to bring about a utopian state, free of crime and disorder.


Finally, Confucius and his follower Mengzi understood human nature to be good. Crime and disorder resulted from immoral rule manifested as dysfunctional government.

Of late, a few overseas scholars are paying increasing attention to criminology – law, crime and punishment - issues in China.

63 Unless otherwise specified, criminological refers to the study of criminal law, crime and punishment, and is used interchangeably.
In the West, investigators of crime and punishment in China can be classified broadly into three main groups: China observers and sinologists from Asian studies discipline, legal scholars and jurists from American law schools – legal profession, and finally comparative sociologists and criminal justice scholars. As yet there is no integrated effort or cross disciplinary collaboration to study crime and punishment in China. Indeed, rarely do these three groups talk to each other. Within the respective groups there are contributions: “The Promise of Repentance. Prison Reform in Modern China,” pp. 240-249; “Incarcerated Chinese Men. Their Life Experiences and Criminal Onset,” pp. 250-266; “Legal Representation and Criminal Processing in China,” pp. 267-280, Author: Lu, Hong; “Policing in the People's Republic of China. The Road to Reform in the 1990s,” pp. 281-316, Author; “Narcotic Culture. A Social History of Drug Consumption in China,” pp. 317-336, Authors: Dikötter, Frank; Laamann, Lars); X Chen, “Social control in China: applications of the labeling theory and the reintegrative shaming theory Int J Offender Ther Comp Criminol. Vol. 46(1):45-63 (2002) (The author, a PRC law professor, discusses philosophy and functions of social control in the Chinese society, finding the Chinese favoring macro – social more so than micro-individual control. “The article also scrutinizes the implications of labeling theory and reintegrative shaming theory, as they are elaborated in the West, and tests their sensitivity to cross-cultural differences.”); Xin Ren, “Prostitution and Economic Modernization in China, “ VIOLENCE AGAINST WOMEN Vol.5: 1411-1436 (1999) (PRC has shifted prostitution policy from eradication (19592) to control (1980s) to regulation (1990s). Prostitution resulted in part from women’s marginalized status in traditional society which lead to less education, economic and political opportunities); J. Liu, S. F. Messner, and A. E. Liska, “Chronic Offenders in China,” International Criminal Justice Review International Criminal Justice Review Vol. 7 (1): 35-46 (1997) (Using a sample of Tianjin inmates survey the author discovered no chronicle offender profile with serious offenders but distinct chronic grouping with administrating offender.) Keith Forster, “The 1982 Campaign Against Economic Crime in China,” The Australian Journal of Chinese Affairs, No. 14: 1-19 (1985); Jainhong Liu; Dengke Zhou; Allen E. Liska; Steven F. Messner; Marvin D. Krohn; Lening Zhang; Zhou Lu, “Status, power, and sentencing in China,” Justice Quarterly, Vol.15 (2): 289 – 300 (1998) (Severity of sentencing of in China is positively related positively to individual status and negatively to the status of friends); Lening Zhang, Steven F. Messner, “Family Deviance and Delinquency in China,” Criminology Vol. 33 (3), 359–387 (1995). (Authors explore “the relationship between family deviance and delinquency using survey data from Tianjin, a large city in China. We hypothesize that, similar to findings in the West, family deviance will be positively related to delinquency in China… Consistent with expectations, family deviance is positively related to official delinquency status, exhibiting indirect effects via family controls, moral commitments, and deviant associations, and direct effects that are likely to reflect family group pressures….” (ABSTRACT)
few attempts to build upon the work of each other, in theory, methods or findings, e.g., validation and extension studies are non-existence. Overall, there is no common language, agreed upon paradigm, and accumulation of knowledge.  

Of the three groups, the Chinese observers were the first to study China. The first generation of sinologists was missionaries and diplomats. They lived and worked in China. They learned the language and were immersed in her culture. They were more appreciative of the complexities, intricacies, nuance and characteristics of the Chinese criminal justice system. The jurists and lawyers, mostly Americans, came to China to make money or spread ideology. They were less interested in understanding China on her own terms than seeing China in their own image. Finally, criminal justice scholars are the last to appear on the scene. Thus far, due to lack of data and interest, their efforts have not yet made a mark.

For a long time, the most futile area of criminological investigation into China is the study of imperial legal code and criminal justice system, especially that of the Qing dynasty. Most of these studies are descriptive 

65 The author reads and publishes on all three kinds of journals. It is clear from experience, as borne out by research, that there clear and distinctive scholarship style and disciplinary expectations within respective fields. This make cross-disciplinary publishing with inter-disciplinary piece very time consuming and difficult.


67 The study of imperial legal code and administration is the study of criminal law and criminal justice administration. According to some account, in imperial China there is no civil law but only criminal code.

68 Some of the more important scholarship in Qing legal system included: Chang Wejen, Ch’ing-Tai Fachih Yen-Chiu (Research on The Legal System of The Ch’ing Dynasty) Vol. 1-3 (1983), Tao Hsi-Sheng, Ch’ing-Tai Chou-Hsien Yaen Hsing-shish Shen-pan
accounts of how the legal system worked on paper. Many of them are documentary in nature and expository in style. They draw heavily from the Qing code and occasionally from historical and Confucian sources. They amount to detailed annotated treatises of the Qing Code.

Traditional Chinese legal scholarship is highly sophisticated in workmanship, as evidenced by its comprehensive scope and painstaking documentation, but it is grossly lacking in theoretical framework and empirical support. Few Chinese studies have a theoretical perspective other than emphasizing the historical continuity of the Tang Code, ideological dominance of Confucian ethics or observing the draconian nature of penal administration. This caused one 19th century French student of Chinese legal system to lament openly:

(N)one of these collections [Chinese law treatises], to my knowledge at least, contains an analysis of the whole Chinese law or has tried to deduce from it any theory whatsoever. Each commentator picks over the law, phrase by phrase, and tries to bring out some comparison, to find some unforeseen circumstances, and most of all, to justify the provision of the

---

Chih-tu Chi Cheng-Hsu (The System and Procedure for Resolving Judicial Matters at the District Level During the Ch'ing Dynasty) (1972).

law. Alongside certain remarks that show a great exactitude in criticism, they are often platitudes and wretched inanities.69

The description of Chinese legal scholarship as “platitudes” and “inanities” was overkill and most unfortunate. It reflected perhaps a lack of understanding of the Chinese mind and insensitivity towards the oriental ways.70 Nevertheless, the piercing criticism registered a real dissatisfaction and frustration with Chinese criminal law scholarship. It was also not a lone voice. It echoed widely shared sentiments and attested to a huge cultural gap. Negative reception of Chinese criminal law and punishment pervaded the Western scholarly community before the twentieth century, and has only recently been addressed.71

Chinese criminological studies were carried out by sinologists who were more interested in criminal law as an integral part of Chinese comprehensive social control society72 and lawyers whose main focused

---


70 In spite of its long history and vast influence, the study of the Chinese legal system has been neglected by Western comparative legal scholars. Id. pp. 1-2, esp. n. 2. (No one in the comparative law field pays any attention to major non-European legal systems such as those of China and Islam.)

71 Meijer (1949), Chu (1961), Bodde (1967), Creel (1970), Chen (1970), Sprenkel (1962), Brockman (1973) and Edwards (1980) have done much in replacing frustrated criticisms with constructive dialogues. See generally Cohen, Edwards, and Chang Chen, Essays on China’s Legal Tradition (Princeton, 1980). More recently Alford (1984), Allee (1994), Jones (1994), and Huang (1994) have brought understanding and respectability to the Chinese legal system. For example Alford argued that the Qing judicial process has real and effective check and balance, i.e., accountability. Huang observed that the Qing trial process was effectively rule bounded, i.e., predictable. Both suggested that the Qing judicial process operated within a true and effective legal system.

were on black letter law. There was no dominant paradigm, theoretical orientation, or methodological approach to the study of Chinese law. Most of the investigations were philosophical in nature, descriptive in approach, documentary in substance, content analytic in methods, and evaluative in overtone. Sources of representative Chinese criminal law and justice research include: Geoffrey McCormack, *Traditional Chinese Penal Law* (Edinburgh University Press, 1990); B.E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: University Press of Hawaii, 1981); William C. Jones, "Studying the Ch'ing Code: The Ta Ch'ing Lu Li." 22 *The American Journal of Comparative Law* 330-64 (1974); Jones, "Theft in the Qing Code" 30 *The American Journal of Comparative Law.*


74 For example, Traditional Chinese Penal Law, op. cit. At least, one author transformed his descriptive account into a theory (of a sort), see Order and Discipline in China, Op. cit.

75 Almost all pre-WWII works are work of this gem. The most famous ones are of course Ta Tsing Leu Lee: Being the Fundamental Laws of the Penal Code of China, Op. cit. and E. Alabaster, *Notes and Commentaries on Chinese Criminal* (1899).

76 See the works of William C. Jones, "Studying the Ch'ing Code: The Ta Ch'ing Lu Li," and "Theft in the Qing Code" op. cit.


For the most part, Western scholars perceived the Chinese law and criminal justice system in negative light. For example, Professor William P.
Alford pointed out that Western scholars were in the main concerned with four aspects of the Qing legal system: (1) There was a lack of separation of power, especially at the district magistrate level. (2) The Qing legal system was an instrument of political control, not a vehicle of individual justice. (3) The Qing law did not protect individual rights or promote social equality; rather it reinforced state and family authority. (4) The Qing system was abusive and oppressive.\(^78\)

Such negative assessments resulted from the Western scholars trying to decipher Chinese social control system with a Western interpretative lens. As Professor Scogin, Jr. observed, the Western comparative jurists, the likes of Hegel, Weber, Maine, were much influenced by Western disciplinary paradigm and value system. Thus, Sir Henry Maine found China laboring under a status oriented society\(^79\) and Weber concluded that Chinese suffered from an irrational justice system.\(^80\)

A minority of Chinese legal scholars have observed that Chinese law differs from the West in philosophy, purpose, functions, style and methods.\(^81\) These scholars represented a shift in research focus and method.\(^82\)

---

78 See William P. Alford, pp. 1190-96.
82 See discussion and literature in note 77 supra.
The state of the scholarship on Qing's criminal justice system and the difficulties of investigating the Chinese legal system are best summed by William P. Alford, a Chinese historian and law professor:

Ironically, for all the certainty with which the later imperial criminal justice process has been presented in the West over the past two centuries, we still know far too little about either the theory or operation of that process. This may be attributable to the lingering disdain of Confucian-oriented scholar-officials for law, to absence of systematic, official case reporting, or to the sheer difficulty of securing, reading, and evaluating the pertinent original source materials. But whatever its cause, notwithstanding the important efforts of a small number of specialists both here and abroad, research in Chinese legal history remains at too preliminary a stage to warrant exclusive judgments about the character of the formal criminal justice process.  

II

The idea of crime (“Fanzui”)  

In imperial China

In Chinese, “crime” is translated as “fan zui” or “violating” (“fan”), what has been “prohibited” (“zui”), or “weifa” (violation of the law).  

---

85 *Id.* pp. 37 – 38.
Historically and linguistically, the character “fan” first appeared in <Huai Nan Zhi.Xiuwu> equating “fan” with “chu”. “Chu” means to “touch” offensively. Thus “chu fan” means to “touch” and “violate” in the process. As to how people can violated the law, the legalist Han Fei (289 – 233 BC) observed in <Hanfeizi (韓非子). Wutu> (“Five Vermin”) that “Scholars violate the law with the pen,” martial people violate (“fan”) prohibition by force.” This is surely the first criminological theory of white collar crime.

The character “zui” according to Mozi (470 – 391 BE C) is equated with violation (“fan”) of a normative prohibition (jin”), as in “fan jin”. The old word for “zui” has two radicals, “zhi” on top referring to “noose” and “xin’ the radical down bottom is a form of penal instrument. When “zhi” and “xin” were put together the character looks like the character standing for emperor “Huang - 皇”. Since in imperial China it was forbidden to use any words referring to or related to the emperor directly, the word “zui” was used as a substitute to offend the emperor, attracting punishment. Since then “zui” or “fan zui” means violating what is prohibited.

**In the PRC**

Currently, there are two different definitions of crime: one is defined by criminal law and the other as defined by criminology. When crime is defined

---

86 “Fan” is violation of person, boundary, rule or norm. “Zui” is crime. “Fanzui” is thus a criminal violation. **PYCED** 188R.
87 Huainan Zhi (淮南子) also known as the Huainan Honglie (淮南鸿烈) (“The Great Brilliance of Huainan”) was complied in 2nd BCE during the Han Dynasty. It presented literary and philosophical debates between Liu An (King of Huainan) and his guests in court. **PYCED** 103R.
88 **PYCED** 103R.
89 “Ru yi wen luan fa”
90 “Xia yi wu fan jin”
by law, a criminal act is determined with reference to the law. The purpose of law is to decide whether a set of act and circumstances rise to the level of a crime. As defined by Criminal Law of the People's Republic of China (PRC), Article 13:

“All acts that endanger the sovereignty, territorial integrity, and security of the state; split the state; subvert the political power of the people's democratic dictatorship and overthrow the socialist system; undermine social and economic order; violate property owned by the state or property collectively owned by the laboring masses; violate citizens' privately owned property; infringe upon citizens' rights of the person, democratic rights, and other rights; and other acts that endanger society, are crimes if according to law they should be criminally punished. However, if the circumstances are clearly minor and the harm is not great, they are not to be deemed crimes” 91

When crime is defined by criminology a person’s conduct is determined to be a crime or not a crime not (only with) reference to law, but also with reference to the nature (“benji”) (immoral vs. harmful) or origination (deviance, labeling) (“yuanyin”) of the act in question. 92 The purpose here is to ascertain the causation and consequences of an act against social prohibitions, criminally, morally and normatively.

91 Criminal Law of the People's Republic of China (Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997).
As a unit of analysis, both the jurists and criminologists consider crime as a legal violation. The jurist is contended in finding criminal violation in accordance with the law. The criminologists go further. The criminologists study crime as well as other normative violations or deviance, i.e., acts that violates moral, custom, rules in place and are harmful to society. This is an important distinction. First, in China, all criminal acts are violation of morality, but not all immoral (and deviant) acts are criminal in nature. Second, causal factors (personal or social) of crime, immorality and deviance are not the same. Third, since moral violations and deviances are equally offensive to the victims and harmful to the society, they must be dealt with separately. Fourth, prevention is better than cure. Minor infractions or immoral acts are prelude to crime. They must be dealt with to prevent crime from happening. Lastly and more significantly, the jurists ask the question whether there is a crime (given the facts of a case), the criminologists investigate how, why and what to do about crimes.

III

Nature and structure of criminology as a discipline in China

Sutherland defines criminology as: “the scientific study of making laws, breaking laws, and reacting toward the breaking of laws.” Chinese scholars define criminology as a discipline seeking to discover the origin, development, causation, prevention, and reaction to crime. In terms of

93 See “Confucianizaion of the law”.
94 Id. 44 – 45.
95 Id. 42 – 43.
scope for study and research, criminology can be construed narrowly or broadly.

Narrowly constructed criminology seeks to understand the relationship between society and crime (“fanzui shehui xue”), and biology and crime (“fanzui zhengwue xue”). The former studies how social structure and process impacts crime, e.g., social psychology of crime. The latter studies how biological constitution and physiological conditions affects crime, e.g. DNA.\footnote{Id. p. 11}

Construed broadly, criminologists study the causation as well as reaction to crime.\footnote{Id. p. 12}

In terms of nature of the discipline, the criminology is associated with two well established disciplines: sociology and law. There are other classification schemes, namely: First, criminology can be classified as a supplemental discipline to criminal law study. Second, criminology can be classified as a branch of sociology. Third, criminology can be classified as an independent discipline. Fourth, criminology can be classified as an integrated discipline, including any and all disciplines contribute to our help understanding of the phenomenon, causation or reaction to crime.\footnote{Id. p. 13}

IV

History of Criminology in China\footnote{Id.}

Until very recently (1980s), there is no independently organized field of study called “criminology” (“fanzui xue”) in China.\footnote{Id. p. 12} In imperial China,
problems of “crime” and issues with “punishment” are thought about philosophically and theoretically as integrated governance issues. Historically, ideas of crime and punishment were discussed as part of the larger scheme of things, called the “cosmic order”.\textsuperscript{103}

From the beginning of time, the sage thinkers were pre-occupied with how to secure peace and maintain order under heaven. The dominant view is that the peace and order is achieved first through personal self-cultivation by individuals as augmented with paternalistic regulations by the family and by virtuous rule of the emperor. In this way, the discussion of crime and punishment, law and order was blended imperceptibly into and merged holistically with the larger intellectual landscape and cultural discourse\textsuperscript{104} on political philosophy and social practice of good governance and social control \textsuperscript{105}

The philosophy of good governance has one objective, how to perfect the emperor’s rule approximating mandate of heaven. Good governance requires moral leadership and benevolent rule of the emperor (by and through his officials), manifested as stern discipline for intellectuals, ethical

\textsuperscript{102} Chinese economic reform brings with it precipitous growth in crime rates. The crime explosion, especially youth crime, caused grave concern to the political leadership. This led to call for the study and control of crime, scientifically. One of the earliest attempt to study crime is in 1979 by CCPC “Report regarding requesting the party to pay attention to solving youth crime problems” (<Guuanyu tiqing quandang zhongshi jieju qing-shaoxionian weifa fanzui wenti de baogao>)《关于提请全党重视解决青少年违法犯罪问题的报告》


\textsuperscript{104} George A. Hayden, Crime \textit{and Punishment in Medieval Chinese Drama: Three Judge Pao Plays} (Cambridge, Mass: Harvard University Press, 1978) (Crime drama as morality play.)

education for the public (especially the intellectuals), sound economic policy and paternalistic social programs by officials; all presented as universal principles and best practices of a good government.

V

Traditional criminological thoughts

As intimated, from the earliest days, ideas of crime and punishment in China were discussed and debated as political philosophy and social policy issues. They were largely policy advices rendered by government officials or public intellectuals to the emperors, to implore them to rule morally and ethically so as not to run afoul the mandate of heaven. The ultimate aim is to secure peace, promote prosperity, and seek fulfillment and happiness for all. Some of the earliest noteworthy sages who influenced Chinese thinking on crime and punishing are presented here.

Zhou Gong

The origin of criminological thoughts in China is traceable to Zhou Gong of Western Zhou (11 Century to 771 BC). Zhou Gong, brother to Emperor Wu of Western Zhou, penned <Zhouli>, which was a required reading of Confucius. <Zhouli> set forth the protocol and etiquette in imperial court, and a must read for officials of the time.

Zhou Gong is known for his insight into and mastery of the intricacies of statecraft. He is also known for establishing a model government for later

---

emperors to follow. *Zhou Gong* was very much a consummated craftsman of justice administration. He was driven by ideal of justice but was also grounded in realities of the time. He diligently sought to apply abstract principles of justice meticulously\(^{108}\) to solve governance problems of the day. *Zhouli* was the annual of good government. It gives us the blueprint of what a perfect government should look like\(^{109}\) and functioned.

\(^{108}\) The meticulousness of administration is best illustrated by the detail regulations for bells to be produced for performance in rites: “The "Wild Duck Master" produces bells. The two edges at the opening of the bell are called xian, the part between the edges (the opening) is called yu ("expansion"), the part above the "expansion" (the lower, undecorated part of the corpus) is called gu ("drum"), the part above the "drum" (the decorated upper part of the corpus) is called zheng ("sounding part"), the part above the zheng (the head of the corpus) is called wu ("dancer"), the part above the wu (the top of the corpus) is called yong ("protuberance"), the upper part of the hanger is called heng. The suspension part is called xuan, the dragon-like decoration of the suspension is called han ("reinforcement"), the belt-like decoration of the corpus is called zhuang, the (belt) parts between these "belts" are called mei, the protruding buttons (the "nipple nails" 乳釘) are called jing...” See “6. 冬官考工記 Dongguan Kaogongji Winter Ministry with the Overseer of Public Work.” In *Zhouli* 周禮 "Rites of the Zhou"  
http://www.chinaknowledge.de/Literature/Classics/zhouli.html#kaogongji

\(^{109}\) Chapters in *Zhouli* included:
1. 天官冢宰 Tianguan Zhouzai Celestial Ministry with the Prime Minister
2. 地官司徒 Diguan Situ Terrestrial Ministry with the Overseer of Public Affairs
3. 春官宗伯 Chunghuan Zongbo Spring Ministry with the Overseer of Ritual Affairs
4. 夏官司馬 Xiaguan Sima Summer Ministry with the Overseer of Military Affairs
5. 秋官司寇 Qiuguan Siguan Autumn Ministry with the Overseer of the Penal Affairs
6. 冬官考工記 Dongguan Kaogongji Winter Ministry with the Overseer of Public Work. 

The chapter on “天官冢宰 Tianguan Zhouzai Celestial Ministry with the Prime Minister provided: “The only person that constitutes the empire, is the king. He determines the [four] regions and fixes the [governmental] positions; he embodies the cities and measures the countryside; he creates the ministries and separates their respective functions; this all to make a fixed pole for the people. Therewith, he institutes the "Heavenly ministry" and the office of prime minister, he charges the prime minister to head his subordinates and to take into his hands the administration of the state, to help the king to regulate the fiefdoms
According to Zhou Gong, the Prime Minister (大宰 or Dai Zai”) is charged with establishing the “Six Constitutions” (“Liu Dian”) to regulate the country. What is apparent from reading <Zhouli> is that in fostering good governance, nothing is left to chance: Officials as with people needed to be regulated (First Constitution).\footnote{“First, the Regulating Constitution, to measure the fiefdoms and the state, to regulate the ministries and to structure the people.” (“一曰治典, 以經邦國, 以治官府, 以紀萬民。”) Id.} This is to be achieved first and foremost by instruction to officials and education of the people (Second Constitution)\footnote{“Second, the Instructing Constitution, to consolidate the country, to instruct the Ministries and to civilize the people.” (“二曰教典, 以安邦國, 以教官府, 以擾萬民”) Id.} with the use of rites, which define the role of the people and proscribe the conduct of the officials (Third Constitution).\footnote{“Third, the Ritual Constitution, to harmonize the country, to unite the Ministries and to bring the people together.” (“三曰禮典, 以和邦國, 以統百官, 以諧萬民”) Id.} Officials should act responsibly and people must behave correctly. This can be achieved by administration (Fourth Constitution).\footnote{“Fourth, the Governmental Constitution, to appease the country, to correct the officers, and to make equal of all people.” “四曰政典, 以平邦國, 以正百官, 以均萬民” Id.} Punishment is needed to correct officials and disciplined the people (Fifth Constitution).\footnote{“Fifth, the Punishment Constitution, to correct the country, to chastise the officers, and to bind the people to what is needed.” (“五曰刑典, 以誅邦國, 以刑百官, 以糾萬民”) Id.} Finally,
the state is charged with responsibility “to enrich the country, to make active the officers, and to nourish the people.”115

To Zhou Gong, a country that is well nourished, with a people that is well education, administered by responsible officials and supported with a fair but firm penal system is a country without crime and disorder.

Zhou Gong is also known for his enlightened penal philosophy. Learning from the fall of Shang dynasty, Zhou Gong cautioned against using indiscriminate and harsh punishment to rule. Instead he called of “ming de sheng xing” (promote benevolence and careful with penalty”) in governance.

The central tenets of Zhou Gong’s penal philosophy were: 116

First, punishment should be applied prudently. There should be no personal punishment without individual liability.

Second, punishment should be imposed discriminatory. Penal measures should be made proportionate to the crime and suitable for the criminal, e.g., intentional act and habitual criminals should be punished more heavily, even with minor transgression, and accidental and occasional criminals should be treated lightly, even with major offense.

Third, punishment should be based on individual liability, not collective responsibility, or guilt by association.

The major contribution of Zhou Gong’s criminological thoughts was in rejecting arbitrary, capricious and harsh punishment born out of ignorance, whim and mysticism. Zhou Gong was instrumental in introducing objectivity, rationality and normality into criminal punishment.

115 Sixth, the Labour Constitution, to enrich the country, to make active the officers, and to nourish the people.” (“六曰事典，以富邦國，以任百官，以生萬民。”) Id.

Specifically, Zhou Gong called for the adoption of “ming de sheng xing” as a penal policy. In so doing, Zhou Gong achieved three advances in criminological thinking of the time:

First, Zhou introduced analytical criminology to China by adopting a causal model in understanding crime, e.g., benevolent governance reduces crime and indiscriminate punishment increase criminality;

Second, Zhou introduced the idea of classification of crime and criminals for punishment purposes, suggesting that some criminals (habitual) and crimes (intentional) are more dangerous than others;

Third, Zhou shifted the focus of crime and punishment study, from exclusively focusing on the act of the offender to that policy of the state. Instead of asking why individuals commit crime, the focus is on how the emperor can avoid disorder and maintain peace. This is consistent with Chinese philosophy of seeking the cultivation the self (by the emperor), instead of regulating the conduct of others.

With <Zhouli>, an objective and analytical criminology system of thoughts was born.

**Guan Zhong**

Guan Zhong was appointed the Prime Minister of the state of Qi in 685 BC. He was known for his enlightened reform policy in strengthen Qi state and improving the livelihood of the people. Guan Zong articulate and explain his policy in <管子 (Guan Zi)>. A carefully reading the book shows

---

117 “Guan Zhong (Chinese: 管仲, Wade-Giles: Kuan Chung) (born 725 BC, died in 645 BC) was a politician in the Spring and Autumn Period. His given name was Yíwú (夷吾). Zhong was his courtesy name. Recommended by Bao Shuya, he was appointed Prime Minister by Duke Huan of Qi in 685 BC.” [http://en.wikipedia.org/wiki/Guan_Zhong](http://en.wikipedia.org/wiki/Guan_Zhong)
that Guan is a realist, i.e., take things as they are, and a pragmatist, i.e., judge policy by results.

Guan suggested that the principles of governance are based on natural law, much like we need to know the season and soil in planting crops. Thus “with the help of heaven above, small effort result in large achievements; act against the heaven, success will turn into failure. Act in accordance with heaven, one will be success, act against to heaven’ ways, one bears the blunt of failures.” Particularly, Guan observed: “Effective governance follows people’s heart; dysfunctional governance runs against people’s heart.”

Rulers who are shepherds of people (“mu min”) need to be vigilant and industrious. If the country is rich and strong, people would come from fair. “If the storage is full, people will know about protocol, if they have are properly clothed and fed, they know about shame and glory.”

Guan Zhong’s major approach to enforcing law, maintaining order and preventing crime is by providing for the material well being of the people. According to him, the effective governance of people starts with the provision of physical security and material well being. In this regard, Guan Zhong made clear: “When citizens are rich, they will settle peacefully at home and pay attention to the family (“an xiang zhong jia”), if they settle peacefully at home and pay attention to the family they will be respectful of

---

118“不務天時, 則財不生; 不務地利, 則倉廩不盈” <Guan Zi. Mu Min>: “If (people) do not follow the heaven’s rhythm, then things of value will not materialize; if (people) do not work according the earth’s way, the granary will be empty.”

119“政之所興, 在順民心; 政之所廢, 在逆民心。” <Guan Zi. Mu Min>: “Government proper, when it is responsive to the people’ heart; government fails, when it goes against the people’s heart.”

120“倉廩實, 則知禮節; 衣食足, 則知榮辱” <Guan Zi. Mu Min>: “If the granary is full, (people) know about protocols; if (people) are properly clothes and fed, (they will) know glory and shame.”
authority and fearful of crime ("jing shang wei zui"), if they are respectful of authority and fearful of crime, they are susceptible to rule.” <Guan Zi. Mumin> 

In order to govern well, the state must inculcate the people with four dispositions, i.e., li, yi, lian, and qi. People who know etiquettes will not transgress norms, thus people will not undermine authority. People who know honesty will not ask for more than deserve, thus people will not act dishonestly. People who know honor will not cover up bad deeds, thus people will not indulge in illegality and immorality. People who know shame will not tolerate injustice. Thus people will tolerate bad deeds. The best state policy is to remove people’s anxiety, poverty, emergency and evilness. Conversely, the worse policy is to use punishment and coercion. Because punishment can never effectively remove desire and coercion has a tendency to court rebellion.

---

121 <Guan Zi. Mumin> is a chapter on herding (“mu”) the people (“min”). For the book of <Guan Zi. Mumin> see ftp://sailor.gutenberg.lib.md.us/gutenberg/etext05/8guan10.txt

122 “何謂四維? 一曰禮, 二曰義, 三曰廉, 四曰恥 ” What are the four protocols: First is rite; Second is justice; Third is integrity; Fourth is shame.”

123 “Li” is “etiquette; rite; protocol”, PYCED 415L.

124 “Yi” is “justice; righteousness”. PYCED 821L.

125 “Lian” is “sense of honor”. PYCED 424L.

126 “Chi” is “sense of same”. PYCED 92L.

127 “禮不逾節, 義不自進, 廉不蔽惡, 恥不從枉。” “To follow rite is not to exceed bounds, to do justice is not to transgress norms, to have integrity is not to tolerate wrong, to know shame is not to participate in evil.”

128 “民惡憂勞, 我佚樂之; 民惡貧賤, 我富貴之; 民惡危墜, 我存安之; 民惡滅絕, 我生育之。” “When people are satisfied they are worried, it is my job to make them happy; when people do not like poverty, my job is to make them rich; when people are concerned with safety, it is my job to secure them; when people do not have hope, I cultivate them.”

129 “故刑罰不足以畏其意, 殺戮不足以服其心。故刑罰繁而意不恐, 則令不行矣; 殺戮眾而心不服, 則上位危矣。” “Thus punishment is not sufficient to deter people’s mind, killing and maiming is not sufficient to pacific people’s heard. Thus more
Kongzi (Confucius)

The greatest intellectual contribution Confucius brought to crime and punishment is perhaps the idea that people should be treated different as a class.

Confucians claimed that people were born different. They were endowed with different intellect, ability, and moral disposition. This was deemed as self-evident. Structuring of society and ordering of human affairs must take such innate differences into account. The reasoning was as simple as it was pragmatic. All people have needs and wants. They are by nature insatiable. When unlimited wants met with limited goods, strife prevails. Thus, Hsuntze observed:

Man by birth has desire. When desire is not satisfied, then he cannot be without a seeking of satisfaction. When this seeking for satisfaction is without measure or limits, then there cannot but be contention. When there is contention, there will be disorder; when there is disorder, then there will be poverty.

---

130 The distinction of noble and humble, superior and inferior were to be based on three sets of criteria: talent, virtue, and relations. Thus an educated person is superior to an illiterate, a virtuous superior to a mean person, and a father superior to a son. T’ung-Tsu Chu, Law and Society in Traditional China (Paris: Mouton & Co., 1965), p. 229.

131 Consistent with Confucian’s philosophical approach, he did not provide any justification for this most fundamental assumption.

It is interesting to observe that Confucius anticipated Merton’s anomie theory by 2,000 years. Insatiable needs were Confucian’s concern. Misdirected drives are the conceptual cornerstone to Merton’s theory. The major difference between the two rests on the nature of the human needs and their social control. Confucius felt that human needs are born. Merton is of the opinion that human drives are socially induced. Confucius felt that human needs should be kept in place. Merton felt that human drives should be properly channeled. Their differences may have a lot to do with their relative historical era, political background, and intellectual orientation.

(1) Confucius lived in a time when the political ambitions of a few disrupted the orderly life of many. Insatiable desires were considered destructive (at least disruptive). Powerful people (dukes, lords) needed be kept in their places. Merton lived in America at a time where unlimited human opportunities were made the national ethos. Drives were considered constructive (at least potentially so). People should channel their drives properly.

(2) Confucius worked as a state official. He saw the need of and utility in suppressing unhealthy human needs. Merton was interested in observing the desirable effects and undesirable consequences of excessive drives. He saw the need to structure social desires...

(3) Confucius was a philosopher. His preoccupation was ethics. His major concern was human nature as given. Merton was a social scientist. His preoccupation was social facts. His major concern was social nature as induced.

It also interesting to note that while Confucius thinks that insatiable human needs are bad and should be controlled, Adam Smith thinks that unlimited human desires (as economic demands) are good and should be
promoted. Thus while Confucius frowns on letting human needs run wild, Adam Smith preaches against curbing human demands except by market forces. More significantly, while Confucius believes that unbounded human needs lead invariable to disorder and destruction, Adam Smith is confident that unrestrained demands bring about market order and improved efficiency.

Similarly, all people possess different ideas about how things should be done. When people are considered all equal, no one idea prevails. More time is spent arguing over right and wrong than doing the right thing. More significantly, differences in ideas promote conflicts with no resolution possible; violence ensures. Nothing can be done: “When people are equal, no one will be able to command the services of others ... Two nobles cannot serve each other, and two humble persons cannot command each other.”

The solution is to have settled expectations, i.e., to build an ethical system explicitly recognizing people’s abilities in assigning communal duties and distributing social goods:

Therefore the ancient kings formulated *li* and righteousness and made distinctions in order to have grades of the noble and humble, the difference between the elders and the young, and discrimination between the intelligent and the stupid, the able and the capable, thus making everyone assume his function and get into his proper position. Then the amount of one’s salary will be in accordance with his ability.

---

133 Dubbs, p. 123.
134 Dubbs, pp. 65-66.
135 It is also a virtue in China to be tolerant in the face of adversity and impositions.
Instead of distributing social goods to satisfy people’s unlimited wants, the wise emperor should set limits in accordance with social status, which is determined by an individual’s virtue, ability, and contributions to the society.\textsuperscript{136} The distributive principle is as simple as it is compelling. Social goods (privileges and salary) are given to those who are more intellectual, virtuous, and wise. “For those whose merits are great the salary is high; for those whose virtue is great the rank is high.”\textsuperscript{137}

Confucius contemplated two types of work corresponding to two kinds of people in an ideal society. There are those who labor with the mind and those who work physically. The mental workers prevail over the labor workers in social status and material rewards. It is also the duty of the former to govern the later. The scholars and officials belong to the first group. They are the educated and virtuous; the “gentlemen” and “big people.” Their sole function is to study, seek virtue, and govern. The latter group consists of the commoners and “little people.” Their purpose in life is to serve.\textsuperscript{138}

The above brief excursion into Chinese criminological thoughts and social control theories should put to rest any residual doubt that Chinese has no coherent approach to the understanding of or reaction to crime.\textsuperscript{139} It

\textsuperscript{136} For a theoretical discussion of such a reward system, see Talcott Parsons, \textit{The Social System} (Glencoe, Ill.: Free Press, 1951), pp. 195-98.
\textsuperscript{137} Ksuo Kan (171-218), quotes in n. 4, p. 227.
\textsuperscript{138} Legge, Chinese Classics, II, 125
should also raise the specter that there are other ways to look at crime and punishment issues. 140

First, in the West, understanding crime is a scientific exercise. In China, explaining crime is a cultural venture. 141 Second, in the West criminologists study how to stop crime. In China, philosophers study how to perfect governance. Third, in the West criminologists sought justifications for punishment. In China, philosophers promote formula for successful rule. Fourth, in the West, crime is natural. People are born bad (genetically) or turned evil (sociologically). In China, crime is unnatural. People are born good. They turn to crime out due to necessity and otherwise made to do so. Fifth, in the West the unit of analysis is the criminal. The question is why do some people commits crime and others do not. In China, the unit of analysis is the society. The question is how do state policies or government (in) action contribution to crime.

VI

Recent development of criminology in China

140 Liquin Cao & Francis T. Cullen, “Thinking about Crime and Control: A Comparative Study of Chinese and American Ideology,” *International Criminal Justice Review*, Vol. 11 (1): 58-81 (2001) (Research finds: (1) PRC citizens more so that the government considers crime to be caused by structural defects in social order. (2) Both Chinese and Americans considered the causation to and control of crime in a multi-dimensional way. (3) There are substantial differences between Chinese and Americans with the appropriate role and powers the state should adopt in fighting crime.)

141 Shame is more effective than punishment in stopping crime because: (1) It is also a more populist measure. Only government can impose punishment. But everyone can show moral disapproval of certain misconduct. (2) It is a more democratic measure. Only experts can understand crime and propose punishment. But everyone has an opinion about right or wrong, and acts accordingly. (3) Punishment is expensive and cumbersome. Moral disapproval is cheap and fast. John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989), p. 12. (Government can impose punishment, and experts can poses solution to crime. But everyone can dispense with moral disapproval.)
In contemporary China, criminology developed in three distinctive stages, i.e., before 1949; between 1949 and 1978; and after 1978.\textsuperscript{142}

\textit{The First Stage - Before 1949}\textsuperscript{143}

Sociology came to China from the West in late 1890s. The Qing dynasty was threatened with foreign military aggression and pressured by domestic intellectual movement to reform and modernize herself.\textsuperscript{144} Foreign military imposition exposed China’s internal weakness. Domestic intellectuals discovered Western industrial might and economic strength. Eventually, the Qing dynasty was overthrown in 1911, but many of the reform measures, including constitutional form of government\textsuperscript{145} and scientific study of crime,\textsuperscript{146} stayed and blossomed in the Republican of China era.

After 1911, China was in turmoil.\textsuperscript{147} A civil war was raging. Warlords were out of control. Japanese plundered China. Gangs\textsuperscript{148} and criminals were running amok. Western political and social ideas and ideals, ways and means, filed a vacuum left open by a crumbling civilization, i.e., Confucius tradition.\textsuperscript{149} Started as an intellectual movement, the May Fourth Movement

\textsuperscript{144}Yang Yabin, \textit{Contemporary Chinese sociology} (upper vol.) (“Jindai zhongguo shehuixue (shang)”) (Beijing: Zhongguo shehui kexue chubanshe, 2001)
\textsuperscript{148}Id.
\textsuperscript{149}Ambrose Yeo-Chi King and Wang Tse-Sang, “The Development and Death of Chinese Academic Sociology: A Chapter in the Sociology of Sociology,” \textit{Modern Asian
changed China politically, socially, economically, and more importantly, culturally – “Mr. Science” and “Mr. Democracy” was invited to help understand crime and treat criminals.

In 1908 penology was introduced to China. Dr. Sbigejiro Ogawa (1861 – 1915) a penologist was invited from Japan to establish a prison system and teach corrections. In 1909 the First Prison of Peking was build with suggestions from Dr. Ogawa. In 1910 a Chinese delegation visited the Eighth International Prison Congress at Washington in the U.S. via Europe. In 1912 Dr. Hsu Shih Ying, one the delegate, was appointed the Minister of Justice. He appointed Mr. Wang Yau Sheng, a student of penology from Japan to organize the prisons. By 1922 every province began to construct new prisons with a new mission, i.e., reform of prisoners.

From this humble beginning, Chinese scholars and students began studying criminology, sociology and anthropology. In 1922 Lombrosos’s book was translated into Chinese. In 1924 the Department of Sociology at Yenching University offered the first course on criminology. It was taught by Americans with the use of American materials. In 1926 this course was taught by the Commissioner of Prisons, the Honorable Wang Wen Pao. In 1932, the first Chinese criminology textbook was published.

---


150 Guo Ming, Brief history of Penology (“Zhongguo jianyu xue shigaan” (Zhongguo zhongzheng chubanshe, 2005).

151 “Chapter XII: Prisons”. In Sidney David Gamble, John Stewart Burgess, Peking: A Social Survey Conducted Under the Auspices of the Princeton (George H. Doran Company, 1921) pp. 303 – 323. (Prisoners were treated barbarously and degradingly. Prisons were known as “hell”. They were crowded, dark, and unsanitary. (p. 304)

One prison reformers\textsuperscript{153} of the time provided indispensable leadership in bringing crime and punishment study to China.

Yan Jing-yue (1905 - 1976) was born in Zhejian province. He studied sociology at Peiping Yanjing University as an undergraduate (1924-8), and stayed as a teaching assistant, conducting research and teaching criminology.\textsuperscript{154} He was interested in crime and punishment problems in China while in college. He discovered that there was very little research conducted and data collected about crime and punishment in China.\textsuperscript{155} This gave him the incentive to pursue criminological study. While in school (1927), he volunteered to stay in two Beijing model prisons for three months in the summer to learn about prison conditions. In the follow summer, he toured eight provincial capital’s prisons. In 1930 he worked as a research assistant at the Central Research Institute (Zhongyang yangjiu yuan). While there he received a scholarship from Academica Sinica to conduct a four-month long survey of prisons in Shanxi, Hebei, Hunan and Hubei with three Yanjing sociology students, including C.K. Yan. All told they conducted prison survey in 20 cities and compiled over 300 case studies.\textsuperscript{156} This was to be the first scientific study of Chinese prisons ever. The prison survey and prisoners’ case studies allowed him to have access to the personal history, family background, and social circumstances of the prisoners. They

\textsuperscript{153} Other noteworthy penologists of the time included: Wang Yuanzeeng who served as director of Beijing Number One Prison and then Minister of Justice (Nationalist government). Sun Xiong, another penologist who worked in prison. \textit{Jianyuxue} (Changsha: Shangwu Yinshuguan, 1936) Li Jianhua who wrote a defining book on penology. \textit{Jianyuxue} (Shanghai: Zhonghu shuju, 1936).

\textsuperscript{154} Yan Jingyue, \textit{Zhongguo de fanzui wenti yu shehui bianqian de guanxi} (Beijing: Beijing daxue chubanshe, 1986), pp. 1 – 11.


contribute to his understanding of the reasons why prisoners engaged in crime and how they were treated in prison.

In 1934, Yan obtained a Ph.D. in sociology from the University of Chicago.\textsuperscript{157} His doctoral work involved systematic and scientific survey of crime in China. His dissertation was appropriately entitled “Crime in Relation to Social Change in China.”\textsuperscript{158} His broke ranks with the past and his peers in proposing to study crime empirically, scientifically and sociologically. Particularly, he championed the use of statistical evidence to understand the nature, characteristics, incidence, prevalence and distribution of crime. Influenced by the Chicago School, Yan conducted social research with ground level observation and looked at prison as a functioning community, e.g., as a “social hospital” for criminals who were sick.\textsuperscript{159}

Yan’s defining and enduring contribution to the study of crime and prison included:

(1) Crime has a legal as well as sociological definition. Legally, crime is to act against law. Sociologically, a crime are conducts harmful to the society.\textsuperscript{160}

(2) Study of crime must be done scientifically and objectively with the use of empirical data and grounded theory.\textsuperscript{161}

(3) Crime can only be completely understood and effectively dealt with in cultural context.\(^{162}\) How criminals, victims and society perceived and received crime depends on cultural meaning assigned and feelings evoked.

(4) Criminals are not born evil but a product of their social environment.\(^{163}\) People are born into pre-existing roles and relationships which affect their outlook and determine their action.

(5) Prisons should not be an institution of punishment, but a place to reform offenders.\(^{164}\)

(6) Prisoners should be treated individually.\(^{165}\) Collective treatment and punishment of prisoners with uniform rule, identical policy and fixed regulation will not be effective in reforming prisoners, who suffer from different personalities, labor under disparate life circumstances, and offend in unique situations.

(7) Prisons should be staffed by social workers schooled in treatment of sick people and not prison guards specialized in the punishment of offenders.\(^{166}\)

---


\(^{162}\) *Id.*, p. 199.

\(^{163}\) *Id.* Pp. 199 – 200.


\(^{165}\) *Id.*

\(^{166}\) *Id.*
PRC came to power in 1949. During such time (1949 – 1957), there was neither the luxury, time, and above all the motivation to study the causation and remedy to crime. Right after the revolution, the Chinese Communism Party was busy doing battles (against feudalism at home, imperialism from abroad, and capitalism all over) consolidating powers, fighting criminals, re-educating a people and reconstituting a government. Mao mobilized the “mass” to carry out rounds and rounds of anti-crime campaigns – “san fan” & “wu fan” - to rid the Party-government of economic crime (corruption, waste, fraud)\(^{167}\) and cleanse the society of social pathologies (opiate addiction, gambling and prostitution) and organized crime.\(^{168}\)

At this juncture of nation building, the Communist leaders have no need for or desire to study crime. Under the leadership of Mao, the Communist Party, as with the people behind it, was interested in building a new China; a utopian state devoid of injustice and criminality. According to Marx, crime resulted from class oppression and economic exploitation. In the words of Mao, contradictions between the enemies, as counter-revolutionary activities, need to be resolutely and resolutely suppressed with coercive measures. Contradictions between the people, as routine conflicts and minor infractions, need to be patiently and carefully resolved with civil – mediation, education, administration – means.

In the end, Mao was vindicated, in both end and means. The Communists was successful in building a relatively crime free society, i.e., a society of “dao bu shi yi” (“no one picks and pockets anything on the road”)


and “ye bu bi hu” (“no house locks the door at night.”). This was achieved with an all embracing ideology, totalitarian state and paternalistic government by means of ideological indoctrination, economic planning, social administration for the believers and political education and labor reform for the dissenters.

In 1952, criminology, as with other social sciences like sociology and political science, was unceremoniously declared as “bourgeois pseudo science” and abolished in China’s haste to reconstitute her higher education system.

From 1950 to 1953, more than 20 departments of sociology in various universities were closed. During the Hundred Flower Movement, Dr. Fei Xiaotong, a leading sociologist in China pleaded with Mao Zedong to spare sociology from being axed. For that, he was labeled a rightist in 1956. Since then, sociologists and political scientists were not allowed to conduct social scientific research, still less empirical study in China. Scholars in these departments were reassigned to geography or foreign languages departments to conduct more useful study for the state. Criminology was permanently and irrevocably damaged.

---


172 Wong Siu-lun, Sociology and Socialism in Contemporary China (London ; Boston : Rutledge and K. Paul, 1979.).

How were crime and disorder during the formative years of PRC being studied, understood and dealt with? Doctrinally, Chinese leaders believed that social issues should be studied from a Marxist perspective, which was the only source of the “truth” ("zhen li"). Collaterally, the role and functions of (social) science is not to dispute (political) “truth” but to validate its principles, and help realize to put them in practice. For example, Dr. Yan’s work was cited (and lauded) by the communist regime as demonstrating that crime and economics are irrevocably linked. Alternatively, any attempt to explain crime solely or deterministically in biological or social terms is deemed as lacking in the appreciation for the true nature, core essence and ultimate cause of crime. With regard to the later, MPS collected extensive data on “counter-revolutionaries” and “corrupted” cadres to help prevent or eradicate subversive behaviors challenging communist ideology.

The “ politicization” and “ idealization” of criminology was to have dire and lasting consequences on the development of criminology as a robust and credible field of academic study in China.

---

174 While the “objective” nature of harm occasioned by an act – people hurt, property damaged - that is being criminalized, cannot be dismissed, the “subjective” understanding of and reaction to such harm is open to debate. To a Marxist criminologist, depending upon whose interests is being affected, “objective” harmful act might be “subjectively” “dealt” with differently.

175 No two harmful acts are alike. Not ALL harmful acts should be treated alike. How should we make a distinction between one harmful act from another? This turns on the “essential” quality of the harm, as evidenced by the historical context and situational circumstances of a harmful; why do certain acts take place. Killing a person is a harmful act. How we react to the act “subjectively” often turns on the how and why the killing occurred? In common law, killing in self-defense is totally justified. Killing in the heat of passion is mitigated. Killing in cold blood is condemned.

176 Common law place moral blame and impose criminal liability on persons who directly cause a crime to occur. Marxist criminologists are concerned with the proximate and ultimate cause(s) of a crime, e.g., treating poor people who steal in a capitalistic state as understandable and excusable, and perhaps even justifiable or expected because they are acts of desperation, alienation or self-help.
First, when “ideology” is allowed to prevail over “science,” there is no need for an independent and objective way to discover facts and ascertain truth. This is evidenced by the uniform content, monolithic tone, mantra quality of the criminal and punishment papers published in this era, e.g., crime is caused by scum of a by-gone era who have yet to reform.

Second, when “politics” substitute for “reason”, researchers learned to defer to power, becoming advocates of interest than speakers of truth.

Facing these waves of crime, there were studies of crime. But these studies were to meet specific needs of investigation, punishment and correction. There were no truly criminological studies at this time.

Mao contributed to the study of crime and punishment in China is the following ways.

Mao insisted that “no investigation, no right to speak”, testing theory with practice, and applying alien ideas to fit with indigenous conditions. In this way, Mao has consistently applied “science” to solve crime related problems in China.

The Third Stage after 1978

During the early years of reform, criminological studies, as with law and political science, still made to serve the Party political agenda and

---

social needs. In 1979, Deng Xiaoping, the architect of reform policies in China, ordered the (re)building of academic studies, including law studies, sociology and political science. Dr. Fei Xiaotong was given the responsibility to reestablish the discipline of sociology in China.

Criminology requires nourishment to grow and prosper. The reform driven crime waves provided the necessary incentives and opportunities for criminology to develop on its own terms, albeit under the watchful eyes of the Party and state. Deng’s reform policies liberated the mind and challenged the people to investigate crimes, beyond the straitjacket of communist ideology.

In 1979, crime rate reached 65.2/100,000 and by 1981 it was 89.4. One distinct characterizes of these two crime waves was that many offenses were perpetrated by youths between the age of 14 to 25, and juveniles between the age of 14 to 18. In 979, youth crimes accounted for 47.6% of all the crime in China. By 1981, it soared to 64.0%. Meanwhile juvenile delinquency accounted for 3.3% of the total crime in 1979, and then swiftly jumped into 13.3% in 1981 (see Table 2).

Chinese media traditionally descried the youth as “the flower of the home country.” The runaway juvenile delinquency and youth crime alarmed the nation. In August of 1979 the Chinese Communist Party promulgated an official document directing more attention to be paid to juvenile delinquency. The CCP document paved the way for academic and scientific studies of crime and control, with special focus on juvenile delinquency.

<p>| Table 2 |
| Youth and Juvenile Delinquency as a Percentage of Total Crime |
| (1952-1991) |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Youth Delinquency (14-25 years old)</th>
<th>Juvenile Delinquency (14-18 years old)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>20.2</td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>22.0</td>
<td></td>
</tr>
<tr>
<td>1956</td>
<td>18.0</td>
<td></td>
</tr>
<tr>
<td>1957</td>
<td>32.3</td>
<td></td>
</tr>
<tr>
<td>1961</td>
<td>30.0</td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>30.0</td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>35.0</td>
<td></td>
</tr>
<tr>
<td>1966-74</td>
<td>40-50</td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>37.0</td>
<td></td>
</tr>
<tr>
<td>1977</td>
<td></td>
<td>1.4</td>
</tr>
<tr>
<td>1978</td>
<td></td>
<td>2.2</td>
</tr>
<tr>
<td>1979</td>
<td>47.6</td>
<td>3.3</td>
</tr>
<tr>
<td>1980</td>
<td>61.2</td>
<td>7.0</td>
</tr>
<tr>
<td>1981</td>
<td>64.0</td>
<td>13.3</td>
</tr>
<tr>
<td>1982</td>
<td>65.9</td>
<td>19.6</td>
</tr>
<tr>
<td>1983</td>
<td>67.0</td>
<td>18.0</td>
</tr>
<tr>
<td>1984</td>
<td>63.3</td>
<td>20.4</td>
</tr>
<tr>
<td>1985</td>
<td>71.3</td>
<td>23.8</td>
</tr>
<tr>
<td>1986</td>
<td>72.5</td>
<td>22.3</td>
</tr>
<tr>
<td>1987</td>
<td>74.4</td>
<td>21.6</td>
</tr>
<tr>
<td>1988</td>
<td>75.7</td>
<td>21.0</td>
</tr>
<tr>
<td>1989</td>
<td>74.1</td>
<td>19.9</td>
</tr>
<tr>
<td>1990</td>
<td>69.7</td>
<td>16.3</td>
</tr>
<tr>
<td>1991</td>
<td>65.0</td>
<td>14.6</td>
</tr>
</tbody>
</table>
In March 1980 the National People’s Congress of China collaborated with the Central Committee of the Communist Youth League of China in sponsoring a symposium to draft a brand new Juvenile Protection Law. In the same year, the Division of the Study of Juvenile Delinquency was set up in the Institute of Youth Studies of China Academy of Social Sciences. The division was the first research entity specializing in juvenile delinquency. Later the same year the Division of the Study of Juvenile Delinquency established the *Bulletin of Juvenile Delinquency Studies*, later renamed *Study of Juvenile Delinquency*, which was the first academic criminological to appear in China.

In the summer of 1981 the National Planning Conference on Juvenile Delinquency Studies was hosted in Qingdao City, China. This conference propelled the study of juvenile delinquency all over China. In June 1982, China First Symposium on the Study of Juvenile Delinquency was hosted in Nanning City, Guangxi Province. The Society of Juvenile Delinquency Research of China was formally founded at this symposium. This symposium was the first academic meeting specifically addressing the research issues of crime. This symposium and the founding of the Society symbolized the commencement of criminology in China.

**VII**

**Contemporary thinking on crime and punishment**

Chinese theories of crime – in causation, correction – are built upon Chinese traditional jurisprudential thoughts, Marx analysis, and of late Western ideas.
Communist theory of crime

Traditionally, the dominant theory of crime, law and punishment in Communist China is that of Marxism. Max’s political – economic theory however does not specifically addresses issues of crime and disorder. According to Marx, crime is a by product of a class – politically oppressive and economic exploitative – society. The discovery of private property necessitates the invention of the state and law, to be secured by police, prison and army. Criminals are the casualties of a class – economic war between the haves (the capitalists) and have not (the proletarian). With the demise of the capitalistic order, there is no need for law, police, court and prison. In a Communist society there is no crime.

It takes a generation of Marxist criminologists to construct a Marxist theory of crime. Bonger was one of the very first social theorists to elaborate upon and document the relationship between crime and economic conditions in the 19th Century, theoretically and statistically.

Fundamentally, Marxists departed from Western criminologists in following regards: First, crime is natural, not abnormal. Second, crime is inevitable, not exceptional. Third, crime is a result of social (labeling)

---

182 *Id.* Chapter II “The Statisticians” pp. 29 – 87.
184 Crime is inevitable in two senses. In absolute sense, starving people is forced to lie, cheat and steal to survive. In relative terms, poor(er) people are envious of the rich(er)
not personal (deviance).\textsuperscript{186} Fourth, crime is not determined by individual free will or biological constitution, but resulted from oppression of the ruling (capitalist) class\textsuperscript{187} alienation of the dominated (proletarian) mass.\textsuperscript{188} In sum, crime is material in origin, structural in consequence,\textsuperscript{189} and personal in manifestation.

Since 1980s, Chinese contemporary criminologists adopt a less ideological and more scientific approach to the study of crime and people will be more likely to steal than not. In both instances, draconian law and severe punishment will not be effective in stopping crime. Willem Adriaan Bonger, \textit{Criminality and Economic Conditions} (Translated by Henry Pomeroy Horton) (Little, Brown, and Company, 1916). Crime is also inevitable because according to conflict theorists consensus in ideas/ideal and convergence of individual/collective interests in any society is a myth. In real terms, a society is made up of various groups pursuing their own interests and competing for dominance. For example, economically, politically, militarily powerful groups are able to promulgate law to protect their own interests. Austin Turks, \textit{Criminality and Legal Order}. Chicago: Rand McNally, 1969)

\textsuperscript{185} What is an immoral and in turn illegal act is on which hurts interest of some group(s) in the society who holds the balance of power to immortalize or criminalize an act. Willem Adriaan Bonger, \textit{Criminality and Economic Conditions} (Translated by Henry Pomeroy Horton) (Little, Brown, and Company, 1916), p. 379.


\textsuperscript{187} “Le testament de J. Meslier” pp. 28-36, Bonger observed that the expropriation of property that belong in the natural state to all by a few caused many to do without. This caused envy and disorder: “From these spring in turn murmuring, complainings, commotions, insurrections, and wars, which cause an infinity of evils among men ..it also happens that those who have nothing, or who have not all that they need, are constrained and obliged to employ evil means to get subsistence. From this come the frauds, deceptions, rascalities, in- justices, extortions, robberies, thefts, murders, assassinations, and brigandages which cause such an infinity of evils among men." Willem Adriaan Bonger, \textit{Criminality and Economic Conditions} (Translated by Henry Pomeroy Horton) (Little, Brown, and Company, 1916), p. 8

\textsuperscript{188} Marx’ theory of alienation is fundamental in the understanding of etiology of criminal in a capitalistic state. According to Marx, the working class proletarians do not own the means of production. They subsist by selling their labor as a commodity, and in the process feels alienated by it. Once alienated the workers have no compunction to obeying “Alienation”. http://www.marxists.org/glossary/terms/a/l.htm.

\textsuperscript{189} Gary Jensen, “The Lingering Promise of a Structural Criminology,” \textit{Contemporary Sociology} Vol. 9(1): 12-14 (1990). (Structural theorists argued that people in position of power is less likely to be criminalized, as compared to the people with little power.)
punishment. In liberating themselves from the straightjacket of Marxist
theory, Chinese criminologists began to look at crime in multi-faceted and
nuanced ways, i.e., crime is a social as well as individual phenomenon, an
individual as well as collective problem. Thus crime can only be adequately
explained and effectively controlled by looking at it as a social (structural,
process, material and/or cultural) as well as a personal (psychological,
physiological, experiential, mental) problem. In this regard, crime is caused
by objective social factors, e.g., class oppression or cultural corruption, as
well as subjective factors, e.g., biological constitution, individual propensity
and personal indiscretion. Any treatment of criminal and control of crime,
be it prevention or reform, must take all crimonogenic factors into account.
Anti-crime measures in China is called comprehensive crime control
(“zhonghe zhili”), and include arresting corrupting influence by family,
providing for education by schools, conducting supervision by community. 190

In theorizing about crime, Chinese criminologists observed that: First,
crime has “radiating” effects, or crime spread from one place, person, idea to
another, replicating, accelerating and amplifying. The radiating effect of
crime is a function of information communication, and culture. 191 Thus the
control of crime must be by removal of corrupting influences, e.g., blocking
off Western media, and early intervention, e.g., administration control of
risky population. 192

Second, crime has wave like tendency over time (or crime trend) and
undulating effect in places (or crime pattern), what we called the distribution

190 Kang Shuhua, *Criminology: History, Status, Future* (“Fanzui xue: Lizhi,
Xianzhuang, Weilai”) (Beijing: Qunzhong chubanshe 1998), p. 45
191 *Id. 50.*
192 *Id. 51.*
of crime, in time and place. A criminologists’ job IS to observe and document the relative distribution of crime, prospecting the future development and providing for prevention or intervention. Thus treatment of crime must be contingent on time, place and people, not with a one size fits all approach.

Third, crime is caused by many factors. We should seek to understand causation of crime from the phenomenon of crime itself, e.g. its distribution in time, place, or with people. Reasons of crime can be classified as primary and secondary, direct and indirect, subjective and objective, historical and reality. They can be political, economical, cultural, historical or customary.

Fourth, explanation of crime is local and hidden. To say crime is local is to observe that explanation for crime differs from one region and community to another. To observe that crime is hidden is understand the manifestation of crime might be due to structural or permanent conditions not apparent to common observations.

Fourth, there is no single or uniform explanation for all crime and all criminals. Since there are many kinds of crime, e.g. crime against the state vs. crime against the person, economic crime vs. personal crime, the explanation for crime and reaction to crime necessarily different.

Mao’s theory of contradiction

\[193\] Id. 51.
\[194\] Id. 52.
\[195\] Id. 53.
\[196\] Id. 53.
\[197\] Id. 67 – 69.
Mao did not propose a theory of crime and punishment. Mao’s idea on such issues is made part of his larger political thought of class struggle and proletarian dictatorship.

The clearest exposition of Mao’s thinking on crime and punishment is in a speech at the Eleventh Session (Enlarged) of the Supreme State Conference, entitled: “On the Correct Handling of Contradictions” on June 18, 1957. “Contradiction” refers to “unity and opposite” state of affairs inherent in existence of all things. It registers the contentious relationship and conflictual tendency between material things and abstract ideas, leading to dialectical interaction and resulting in evolutionary changes. In the context of crime and punishment, “contradictions” manifested as conflicts of ideas or ideal or competition in values and interests are ultimately settled with the use of law and punishment. Unresolved personal disputes (“contradiction”) will lead inevitably to disrupted social relationship, manifested as crime.

In the speech Mao drew a clear distinction between “contradictions” (or conflicts) of the people and between enemies, the former are non-antagonistic in the nature while the later is antagonistic in kind:

---


199 Mao Tse-tung, “ON CONTRADICTION” (August 1937). *Selected Works*, Vol. I, pp. 321-22 (“The law of contradiction in things, that is, the law of the unity of opposites, is the basic law of materialist dialectics. Lenin said, "Dialectics in the proper sense is the study of contradiction in the very essence of objects." (Note 1)


The contradictions between ourselves and the enemy are antagonistic contradictions. Within the ranks of the people, the contradictions among the working people are non-antagonistic, while those between the exploited and the exploiting classes have a non-antagonistic as well as an antagonistic aspect. There have always been contradictions among the people, but they are different in content in each period of the revolution and in the period of building socialism. …Our People's Government is one that genuinely represents the people's interests, it is a government that serves the people. Nevertheless, there are still certain contradictions between this government and the people. These include the contradictions between the interests of the state and the interests of the collective on the one hand and the interests of the individual on the other, between democracy and centralism, between the leadership and the led, and the contradictions arising from the bureaucratic style of work of some of the state personnel in their relations with the masses. All these are also contradictions among the people. Generally speaking, the fundamental identity of the people's interests underlies the contradictions among the people.²⁰²

The two kinds of “contradictions” are to be dealt with differently:

Since they are different in nature, the contradictions between ourselves and the enemy and the contradictions among the people must be resolved by different methods. To put it briefly, the former entail drawing a clear distinction between ourselves and the enemy, and the latter entail drawing a clear distinction between right and wrong. It is of course true that the distinction between ourselves and the enemy is also one of right and wrong. For example, the question of who is in the right, we or the domestic and foreign reactionaries, the imperialists, the feudalists and bureaucrat-capitalists, is also one of right and wrong.

wrong, but it is in a different category from questions of right and wrong among the people.  

While both kinds of “contradictions” are structural in nature, only the “contradictions” within the people are – can and should to be - resolved through reconciliation and education. “Contradictions” between enemies are to suppressed by force.

To maintain public order and safeguard the interests of the people, it is necessary to exercise dictatorship as well over thieves, swindlers, murderers, arsonists, criminal gangs and other scoundrels who seriously disrupt public order.

This includes “For instance, to arrest, try and sentence certain counter-revolutionaries, and to deprive landlords and bureaucrat-capitalists of their right to vote and their freedom of speech for a certain period of time -- all this comes within the scope of our dictatorship.”

Mao’s theory of contradictions while appearing simply on its face, is very complication when applied. Three kinds of question come to mind:

First, who are the people? Who are the enemies? How are such status conferred, maintained and removed? Mao suggested that a person can be a member of the “people” in one situation and not the other, e.g., KMT cadres were treated differently during (internal) civil war vs. in the (external) Sino-

---

205. Id.
Japanese war? How and when a “people” become an “enemy” and vise versa is never to clear. Although it is clear that when one owns up to ones wrongdoing by demonstrating contrition and providing for assistance, his “counter-revolutionary” acts might be forgiven.

Second, what makes for the “antagonistic” vs. “non-antagonistic” nature of an act? Is it a function of the nature (i.e., kinds of harm, such as spying) and/or consequence (i.e. degree of harm, such as petty theft) of the act? Is it a function of the status of the offender, e.g., counter-revolutionaries vs. patriots? It appears that a member of the “people” (“mass”) can also engage in “antagonistic” contradiction with the requisite intent to harm the communist state or subvert the Party ideology. It is also not clear whether an “enemy” of the people can escape “antagonistic” treatment for minor infraction against the state. A study of what constitute counter-revolutionary crime (an antagonistic contradiction if performed) should demonstrate the difficulties involved and issues presented in separating antagonistic vs. non-antagonistic contradictions.

The PRC Criminal Law (1979) provides in Article 90 that “Conduct which is harmful to the People’s Republic of China and done with the purpose of over-throwing the proletarian dictatorship and socialist system are all counter-revolutionary crimes.” Counter-revolutionary crimes include the following elements: (1) inciting people to resist and harm the implementation of state law and order and (2) use counter-revolutionary slogans, pamphlets and other means to incite others to over-throw the proletarian dictatorship and socialist system. (The PRC Criminal Law (1979) Article 102.)

An exhaustive review of prior and existing counter-revolutionary laws, regulations, and directives is not informative on what constitute
counter-revolutionary conduct beyond the fact it refers to speech or conduct which is intended to or in effect was harmful to the state’s political order or challenge the established government.  

206 See for example “Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Ganlin (The Chinese People’s Political Consultative Conference Common Program) (promulgated on September 29, 1949) Article 7; PRC Constitution (promulgated on September 20, 1954) Article 19; Zhengwuyuan, Zuigao Renmin Fayuan, “Guanyu Zhenya Fangeming Huodong de Zhishi” (Government Administrative Council and Supreme People’s Court “Directive on the Suppression of Counter-revolutionaries”) (promulgated on July 23, 1950); Zhonghua Renmin Gongheguo Zhenzhi Fangemin Tiao Li (PRC Punishment of Counter-revolutionary Regulations) (promulgated on Feb. 20, 1951), Article 2.; Zhongyang Sifabu “Guanyu Eba, Guanfei, Bufa Dizhu Ruhe Shiyong Zhenzhi Fangemin Tiaoli Pifu” (Party Central Judicial Department “Reply Regarding How to Apply Punishment of Counter-revolutionary Regulations to Local Tyrant, Habitual Criminals, and Illegal Landlord”) (promulgated in 1951); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaiwenzi de Jieshi ji Chuli de Jiazhe Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements (promulgated March 3, 1956); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaiwenzi de Jieshi ji Chuli de Zengce Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee “Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated March 3, 1956); Zhongyang Zhonggong Xiren Xiaozu Dui “Guanyu Fangeming-fenzi he Qita Huaiwenzi de Jieshi ji Chuli de Zengce Jiexian de Zanxing Guiding” de Buchong (Communist Party Central Party of Ten Committee “Supplement to Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated June 24, 1957) (Counter-revolutionary damages mean causing damage with counter-revolutionary intent and purpose); Renmin Gongan Pianweihui Guanyu Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaiwenzi de Jieshi ji Chuli de Zengce Jiexian de Zanxing Guiding” de Buchong Jieshi Zhong Yixie Wenti de Ji eda (PRC Organizing Committee “Answers to Certain Questions on Supplementary Explanation Regarding Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated 1957) (Contemporary counter-revolutionary elements means people who spread reactionary pamphlets with counter-revolutionary intent); Zhongyang Xiren Xiaozu “Guanyu Putong Fangemin Fenzi ji Qita Fandong Fenzi de Jieshi” (Committee of Ten from Party Central “Explanation Regarding Common Counter-revolutionary Elements and Other Reactionary Elements”) (November 1957) (Counter-revolutionary elements are people who insist upon their reactionary class viewpoint); Zhongyang Zhonggong Xiren Xiaozu “Guanyu Xinde Fangeming Fanzui Xingwei de Jieshi” (Committee of Ten from Party Central “Explanation Regarding Common Counter-revolutionary Elements and Other Reactionary Elements”) (November 1957) (Counter-revolutionary elements are people who insist upon their reactionary class viewpoint); Zhongyang Zhengfa Xiaozu “Guanyu Xinde Fangeming Fanzui Xingwei de Jieshi” (Party Central Political-legal Committee “Regarding the classification of Counter-revolutionary Elements” (1962). (People who are merely critical of the party or government policy or
Third, how should “antagonistic” vs. “non-antagonistic” be treated? Should people’s contradiction with great consequences be punished? Should minor enemy’s contradiction with little impact be ignored?

**Theory of corrections**

In 1960 Mao once said: “Our prisons (unlike those in the past) are really schools, they are also factory or farms.” This statement is most revealing of Mao’s thinking on corrections and reform, and has been practiced in China since 1930s. Mao’s idea is based on the fundamental believe that “man can be reformed” (“ren shi keyi gaizao de”). Finally, Mao’s theory of correction is grounded in Marxist analysis, particularly a person’s thinking is conditioned by society, material base and economic relationship. People can be made to change their mind by education and indoctrination and society ah s a responsibility in removing corrupting ideas and correcting unwholesome ideology. Mao called his theory a scientific one. Thus observed, Mao’s correction theory is very much “environment”

---

208 Id. p. 8. The thesis that “man can be reformed” raises many issues, including: First, what kind of man can be reformed? Mao suggested that enemies of the state cannot be reformed and must be deal with coercive means, including extermination. Second, how can man be reformed? By education? By labor? With punishment? In prison? Third, are all men (who are not enemy of the state) amenable to form, in theory and practice.
209 *Id.* p. 35.
210 *Id.* p. 35.
(macro change in social structure and material condition) and “mind” work (individual change of mental state and ideology).

First, Mao believed that prisons are for punishment as well as education, with the later function being more prominent and important. Prison is not only for inflicting punishment and achieving incapacitation, but to reform and transform prisoners by way of education. Mao’s punishment as reform comes right out of Confucius teaching, i.e., education can transform people, in thinking, action and character.

As a theorist, Mao should not be understood as ignoring the punitive aspect of correction process. Mao is a realist, just as Confucius is a pragmatist. Education would only work if offenders are given a choice between punishment and education.\textsuperscript{212}

Second, to observe that prison and labor farm is like a factory is to suggest that offenders should sweat off their crime. To Marx and Mao, there is something special – liberating and fulfilling – about the laboring process. The sweat labor cleanses the (evil) soul and purify ones (polluted) mind, from capitalistic tendencies and corrupting way of life.\textsuperscript{213} He is a productive member of a society relying on his own effort. Last not least, living the life of a labor and working from hand to mouth as a farmer, allows the offender to see things the proletarian and peasant way. In essence, through working in the factory and farm, the prisoners not only come to learn about their mistakes. They become transformed socially (be a good citizen) and

\textsuperscript{212} \textit{Id.} p. 31. The idea originated in early years of PRC, in how to deal with political prisoners, e.g. ex-KMT officials or capitalists. Mao opted for sever punishment and compassionate treatment at the same time.

\textsuperscript{213} \textit{Id.} P. 9.
politically (be a good communist).\textsuperscript{214} In the ultimate analysis, Mao is less interested in reforming prisoner, as much as he is committed to recreating a new breed of socialist citizens.\textsuperscript{215}

Mao also postulated that in order for reform to work, prisoners must be treated humanly, not oppressively, i.e., he should be adequately cared for. He should be given a realistic hope of rejoining the community as a productive member of society, totally re-integrated and forgiven. The idea here is that the prisoner is not changing because of cold utility calculus (pain of imprisonment vs. likelihood of liberty) but because of heart felt appreciation for the compassion shown him by the state, or “ganhua” (moved emotionally to reform). The larger cultural context is that Chinese are taught to “bao en, bao de” or “repay kindness with kindness, repay virtue with virtue”.\textsuperscript{216}

Finally, any successful reform scheme must involve the mass which helps with community supervision (“bangjiao”) and social reintegration.

\textbf{VII}

\textbf{Conclusion:}

\textbf{Fundamental Issues and Challenges}\textsuperscript{217}

\textsuperscript{214} Mao’s labor education policy was first codified in “PRC Regulations on labor reform” \textless Zhongghu renmin gonghe guo laodong gallazo tiaoli” (August 26, 1954).


\textsuperscript{216} \textit{Id.} p. 10 See Dutton, \textit{Street Life in China} (Cambridge University Press, 1998), p. 32 (“Bao” stands for mutuality and reciprocity, a larger principle governing the cosmos.

\textsuperscript{217} Wang Zhongxing (王仲兴), Li Po (李波), “Criminological research method and research on methods” (“Woguo fanzui yanjiu fangfa you fangfa yanjiu - 我国犯罪学研究方法与方法研究”) Chinese Criminology Society (“Zhongguo fanzui
There are a host of theoretical as well as practical issues attending the development of criminological studies in China.\textsuperscript{218}

_First, what is the nature and purpose of criminology in a communist state?_

This question is central to the understanding of role and function of criminology as a communist “statecraft”? Theoretically, how might political ideology affects the agenda, paradigm, method and perspective of criminology? Practically, how might criminology be used to advance communist ideology?

In 1952, Chinese leaders, consistent with Marxist dogma, have condemned criminologists as “pseudo scientists.” Sociologists and criminologists were routinely chastised for not following communist lines, program and policy by insisting on speaking “scientific” truth. In contemporary time, conflict and radical criminologists rejected mainstream – classical, positive, consensus and functional - criminology as too “establishment” oriented; too quick to defend the status quo, to uncritical of existing economical, political and legal arrangements. In both instances the neutrality and objectivity, centrality and utility, validity and legitimacy of criminology as an academic discipline, scientific enterprise or intellectual pursuit is under attacked.

The above question cannot be adequately answered without first resolving the following empirical issues. Currently, is China a communist

\textsuperscript{218} Extensive interview with Professor Mei Jianming of Chinese People’s Public Security University over a five days period in November 2007 in Beijing. The interviews are unstructured and informal. The focus of the interviews is one problems and issues confronted by criminology as an emerging academic discipline. Professor Mei is the Executive Board member of Chinese Criminology Association.
vs. socialist vs. capitalistic state? In the future, what political ideology is China moving towards as a political union?

Second, as an academic discipline what is the intellectual roots and scholarly relationship between criminology and criminal law?

This question raises fundamental issues of identity and boundary, paradigm and protocol, methods and conduct with criminology as a scholarly enterprise. Traditionally criminology is considered as a secondary discipline of criminal law for good reasons. There is considerable overlap between law and criminology as a field of study. In imperial China, law defines crime and jurists are only interested in punishment issues, as fulfilling mandate of the emperor and seeking to realize cosmic harmony. In communist China, law and crime can only be understood with Marxist analysis and in communist ideological terms. Thus, there is no need to study of crime independent of law and politics.

Increasingly, as the prevalence of crime increase and the utility of communism in explain crime wane, there are renewed calls for establishing criminology as an independent study. Ever since 1978, the “secularizing” of crime and punishment has been on the match.

Third, what is the proper object of criminology?

In the past decade, Chinese scholars have explored the causation, etiology, control, prevention and correction of crime. Professor Wang Mu has argued that criminologists should not be pre-occupied only with the origin or etiology of crime alone, e.g., looking at crime in a communist society solely in political ideological terms. As a social phenomenon, crime is too complicated to be attributable to any one single factor. It is also unrealistic what we will ever discover the complete picture of causations and dynamics of crime.
There is still ongoing discussion and debate over the concept of crime. In law, the idea of a crime is commonly understood as a violation of criminal law. More specifically, a harmful act (to person or society) which is prohibited and punished by law. But in the criminology field, there is no consensus as to what is the nature and essence of a crime. The question posed is not what acts should be prohibited and punished by law, but what kind acts make for a crime, by law. For example, the law pre-supposes that crime is a harmful and dangerous act objectively without realizing that harm and danger is a matter of subjective assessment; the robbing of the rich to pay the poor (as in Robin Hood) benefited many at the expense of a few.

*Fourth, how to explain crime in communist vs. reformed China?*

In understanding crime in China, the first challenge lies in liberating from past ideological straightjacket. From the Marxist perspective, the Chinese government traditionally holds that people who are liberated from oppression of a reactionary ruling class have no reason to commit crime. A society led by Communist Party is a utopian society with no exploitation and inequality, thus no cause for crime.


“Since the imperialist invasion in our country, opium has been imposed and afflicted our nation more than one hundred years. In the reactionary regime, bureaucratic warlords and feudal compradors led their wanton, flagitious and corrupted lifestyles, they didn’t forbid the cultivation of opiate products, one the contrary, they forced people to cultivate. Especially during the invasion of Japanese imperialists, they systematically poisoned
Chinese and made countless loss in Chinese human life and property. Now our people have been liberated. In order to insure the public health, recover and develop the productivity, this directive is promulgated to ban opium and other opiate products.”

Edgar Snow, the author of Red Star Over China, was invited to visit China in 1960 by his friends, Mao Zedong and Zhou Enlai. Snow wrote that

“Goodbye to all the night life: the gilded singing girl in her enameled hair-do, her stage makeup, her tight-fitting gown with its slit skirt breaking at the silk-clad hip . . . the hundred dance halls and the thousands of taxi dollars; the opium dens and gambling halls . . . the sailors in their smelly bars and friendly brothels on Sichuan Road; the myriad short-time whores and pimps busily darting in and out of the alleyways . . . gone the wickedest and most colorful city of the old Orient: goodbye to all that.”

Chinese government under CCP was rightfully proud of its achievements in purifying and simplifying Chinese social life. But law and order conditions in China changed drastically with Deng’s reform of China in the late 1970. Deng Xiaoping explained criminality in post reform China in his well-known speeches during his inspection tour to South China in 1992, thusly:

---

219 http://news.xinhuanet.com/ziliao/2004-12/14/content_2332921.htm
220 http://members.tripod.com/~orgcrime/darkside.htm
“Since China opened its doors to the outside world, decadent things have come in along with the others, and evils such as drug abuse, prostitution and economic crimes have emerged in some areas. Special attention must be paid to these evils, and resolute measures must be taken to stamp them out and prevent them from spreading. After the founding of New China, it took only three years to wipe these things out. Who in this world has ever been able to eliminate the abuse of opium and heroin? Neither the Kuomintang nor the capitalist countries. But facts have shown that the Communist Party was able to do it”.

This approach of blaming outside factors neither scientific nor useful in understanding and finding solutions to crime. The ideological straitjacket prevented the Chinese government from facing up the reality of crime as an endogenous social problem for any society, primitive vs. developed, East vs. West, communist vs. capitalist. In this regard, Professor Wang Mu has called for the scientific investigation, empirical discovery and theoretical understanding of crime as a social phenomenon, i.e., depoliticization of criminological studies.

_Fifth, what are some of the difficulties facing the development of criminology as a respected academic field in China?_
First, criminology is an inter-disciplinary and multi-disciplinary pursuit. As such it lacks a clear focus and defined boundary. More practically, it lacks disciplinary ownership and vested defenders. In contemporary China, criminal law experts attempt to claim exclusive ownership of criminology by claiming that historically criminology is a secondary subject and theoretically a derivative discipline of criminal law. Without its own concepts, theories, and paradigms to differentiate criminology from other disciplines, it is difficult, if not impossible, for the criminologists to promote and defend criminology as an independent discipline.

Second, as a field of study, criminology in China is too pre-occupied with applied researches and policy studies. Recalling criminology was first established by the government to fight crime in the reform period, it owns its existence to its ability to provide for an understanding of the causes and cure to crime. As expected, the criminologists highlighted the practical utility of the discipline at the expense of its academic mission. In other words, scholars are too eager to solve crime than discover knowledge. There is a real concern that criminology will lose resources and support once its usefulness is done with, i.e., when China return to being a relatively crime free society.

In order to attract scare government sources, scholars are more than willing to compromise academic independence and intellectual integrity in the service of the government’s needs and wants; making researchers ipso fact government servants.

Third, the development of criminology needs dedicated scientists whose sole mission is to advance criminological knowledge. Currently, most senior members of the Chinese Society of Criminology are affiliated with law schools or work with the criminal justice system. Most of them are
lawyers steep in politics. Few of them are trained as social scientists. As a result most criminological research works in China are not conducted in a scientific way, i.e., driven by theory and supported by empirical evidence.

Fourth, there is a lack of theoretical driven research and evidence-based findings. Since the mid 1980s, criminological researches in China have touched topics such as crime phenomenon, victimization, criminal, causation, crime prevention and control, and juvenile delinquency. There are at least ten Chinese journals or series focusing on crime or juvenile delinquency such as “Criminology Series” sponsored by the China Society of Criminology, “Study of Juvenile Delinquency”, “Research on Crime”, “Problem of Juvenile Delinquency”, “Crime and Countermeasures”, “Research on Labor and Correction.” These do not include public security journals, e.g., Chinese People’s Public Security University Journal.

However, quantitative research is rare in China. The scarcity of quantitative research resulted from:

(1) There is no transparency to the criminal justice process, starting with data gathering. Overall, the government is unwilling to publicize crime data or reveal policing problems. In the context of Chinese bureaucracy, such as the police, the disclosure of crime statistics, e.g., increasing crime rates, is considered damaging to political leaders and harmful to ones professional advancement. Even if the crime data is readily available, there is no way to confidently verify the reliability and validity of such data.

(2) Criminologists in China are short of critical research skills, e.g., SPSS or sampling. Many senior Chinese criminologists were educated in the field of criminal law, politics, or humanities. The curriculum of the newly established criminology departments is also short on statistics or research methods courses.
Research funding is difficult to come by. Good quantitative research requires a lot of resources in terms of staff, money and time. In terms of money, there is a limited fund to support large scale and long term quantitative research. Currently, research grants from the government amounting to RMB 50,000 (about USD 6,000) or more are rare and very competitive. In terms of time, many junior scholars cannot take time away from their busy teaching and publishing responsibilities, which is important for promotion and advancement, to conduct quality research.

Some final observations before we closed. This preliminary study makes clear that criminology scholarship development in China lags far behind the pace of reform. Reformers are struggling to keep up. There are many thorny challenges, but few effective solutions. Appeal to political ideology has lost much of its luster in the market economy and a materialistic world, and have little relevancy with a learning community captured by the later. The mantra of communism, much like the recitation of Confucianism, is poisonous to a critical mind and suffocating to creative spirits. Campaign style mobilization does little good in changing people’s conduct and institutional behavior, still less in making a difference to collective culture and individual attitude in universities. Reform by slogan is destined to fail; it focuses too much on form over substance, preferring

---


223 Learning culture at the PSU is not robust. Students have no incentive to work hard. They are guaranteed a good job after graduation. Interviews with PSU undergraduate students on November 24, 2007. Teachers are distressed by low salary and discriminatory treatment at PSU. Informal discussion over dinner with 4 PSU faculty. November 23, 2007. All interview/discussion conducted at PSU.
symbolism than realism. Ultimately, police education reform efforts are severely limited and compromised by what is going on in the society.²²⁴

**Some personal reflection**

If criminology is to have a future in China, the way forward is to take Mao and Deng seriously at their words. Mao preached about the need to make knowledge “scientific” and “relevant”, i.e., grounded. Deng called for discarding the old to make room for the new, i.e., have an open mind. Both approved of action oriented research - learning as one goes strategy, or “Crossing the river by felling the stone,” one stone at a time.

---