THE CHINESE SYSTEM OF CORRECTIONS: SEARCHING FOR ANSWERS

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Chapter three of The Criminal Law of The People's Republic of China sets forth punishments for crimes. It divides punishments into principal and supplementary punishments. The types of principal punishments are public surveillance, criminal detention, fixed-term imprisonment, life imprisonment and the death penalty.

Criminal detention and public surveillance are punishments designated for minor offenses. Fixed-term imprisonment, life imprisonment, and the death penalty are self explanatory and are reserved for more serious crimes. Public surveillance has been analogized to parole or probation, as the wrongdoer lives in society under government supervision. As mentioned, criminal detention is also used for minor offenses. When utilizing criminal detention the offender serves his sentence in a detention house rather than a prison or labor camp. While living in the detention house the subject is paid for any work performed there and is even allowed to go home for up to two days a month.

All of the principal punishments may also be accompanied by supplemental punishments. Article 34 lists the types of supplementary punishments as fines, deprivation of political rights, and confiscation of property. Deportation is an additional punishment that may be applied to foreigners either in addition to or independently of other punishments. While public surveillance, criminal detention and the supplementary punishments may seem minor, one must look closer into their application. Are these punishments what the Chinese say they are? There have been reports of people going missing after being detained by police or after being put on house arrest. Forms of house arrest and public surveillance seem to
vary in form and intensity. The Chinese government even denies the existence of some of these measures.\textsuperscript{12} Take for example the case of Chen Guangcheng. Mr. Chen is on extended home confinement because of his unwillingness to bend in his defense of human rights in China.\textsuperscript{13} Mr. Chen’s home confinement is 24 hours a day.\textsuperscript{14} Security agents and government hired citizens repel visitors, sometimes beating them in the process.\textsuperscript{15} Mr. Chen has no phone service or internet connection.\textsuperscript{16} He has been cut off from the outside world. Not only is he being punished but his wife and daughter are suffering right along with him.\textsuperscript{17} The criminal and prison laws of China don’t mention these punishments. The Chinese government doesn’t even acknowledge these practices. Is this anti-Chinese propaganda? Or is the Chinese government hiding some of its practices from the outside world? It’s hard to find reliable information. The Chinese government does an exceptional job keeping certain information out of the world’s view.

One controversial practice that the Chinese government has not denied is the existence of prison labor. In all forms of Chinese punishment, labor is a recurring theme. Reform through labor and reeducation camps are said to be comparable to minimum security prisons in the United States.\textsuperscript{18} These facilities look and function just as the name suggests - as a camp. The inmates live in dormitory style facilities and self-manage much of their everyday life.\textsuperscript{19} Often these labor camps function within a military model with inmates taking leadership positions.\textsuperscript{20} The role of labor in the Chinese correctional system is a major source of criticism from human rights organizations. Article 46 of the Criminal Law states that anyone sentenced for a crime “who is able to work shall do so to accept education and reform through labor.”\textsuperscript{21} Is the labor they are taking part in their education? Is their labor the means by which they will be reformed? More questions are raised, but information is not easy to come by. Much of the information about Chinese corrections comes from opposite sides of the spectrum. First there is government propaganda preaching reform and education through labor. There are criminal and prison laws which supposedly show the way things are should work in China. There are not supposed to be precedents or discretion on official’s behalf. They are to follow the codes and those alone. Not only does this limit available information but the absence of this information shows that the Chinese government can and most likely does whatever it feels is in the country’s best interest. Much of the contrary information we get about the Chinese prisons and labor systems come from former prisoners themselves. They tell tales of twelve-hour or more work days with minimal food rations and supplies.\textsuperscript{22} They speak of torture and beatings at the hands of prison guards and other inmates solicited by the guards.\textsuperscript{23}

Putting human rights issues aside it is easy to see the benefits of reform through labor. Working can provide structure and meaning for lives that may otherwise be going to waste behind bars. Inmates can develop vocational skills that can turn their life around once released from prison. They can gather the tools to be productive members of society. However, forced labor will most likely always remain a sensitive topic for most Americans.

III. Physical Settings

In my short time in China I did not see one prison, or at least I didn’t realize what it was if I had. In the United States prisons are usually located in areas outside of cities. Communities will sometimes evolve around a prison or jail, as they can be major sources of employment for small communities. In the United States it is generally agreed that institutions should be located within a reasonable distance of the civilian population. The American Correctional Association has set standards which require for new construction that “the institution is located within 50 miles of a civilian population center of at least 10,000 people, or minimally within
In China, prisons tend to be in more distant and remote locations. According to one author, “only about 40% of Chinese prisons are located within 10 kilometers of a county town or bigger city.” There are many different theories on why the Chinese have chosen to put their prisons in rural locations. Some say that they use the mountainous terrain and rural landscape as a means of controlling the prisoners. Additionally, locating prisons in such areas is beneficial, as prison labor can be used to reclaim the uncultivated land and develop those areas. Yet others look to “the Taoist beliefs in the mind-changing value of nature and pristine environment” as to why prisons were placed in remote areas. Whatever benefits are to be had of having prisons and labor camps in remote areas, the Chinese have acknowledged the benefits of having their institutions closer to the city and many of the jurisdictions in China are moving their prisons closer.

If the Chinese are in fact moving their prisons closer to the city they may be doing this for a variety of reasons. It’s possible they want a higher quality of guards that the more educated urban areas can provide. They also claim that they can provide higher quality correctional programs using medical, educational and vocational personnel and resources that are more available in the city. This rationale is not very convincing. It seems a little farfetched that the Chinese governmental bodies are concerned with providing better programs for their prisoners. It seems that they would be more concerned with providing these types of programs for the correctional officers and their families. Whatever the motivation, it seems as though the Chinese government is making a transition towards placing their prisons closer to cities. In addition to location, prison size is another way in which Chinese prisons differ from those in the United States. This should come as no surprise when you consider the vast population differences between the two countries, and also the comparative philosophies on the rights of its citizens. Generally, Western countries tend to believe in smaller population prisons. In the U.S., current standards recommend that institutions have a design capacity of no more than 500 prisoners, to provide the facilities with a manageable scale of inmates. However, it is generally acknowledged that the United States has a prison overpopulation problem. Prisons are often kept in gymnasiums instead of cells and double bunking in single bunk cells is commonplace. While the United States may seem to be at the forefront of prison design and planning, the execution and implementation of correctional standards is still flawed.

IV. Goals

Under Article 3 of “The Prison Law of the Peoples Republic of China,” (hereinafter Prison Law) “A prison shall, with regard to prisoners, implement the principle of combining punishment with reform and combining education with labor, in order to transform them into law-abiding citizens.” This author, in over 7 years of studying law and the criminal justice system, has heard the words punishment, reform, and education countless times. Labor and education seem to be the most permeating principles in the Chinese system of corrections. In the United States we try to put a label on the principles and goals of our correctional system as well. The most common labels we use are retribution, deterrence, incapacitation, and rehabilitation. At various points in our history we have placed emphasis on each of these models of corrections. Sometimes it’s the labels we don’t place that are more telling. Often rehabilitative models are met with much resistance. Get-tough advocates want retribution and punishment while others want rehabilitation and to get at the source of an...
inmate’s problems, whether it be education or drug problems. Our goals can sometimes be a major source of criticism for the corrections system. When we read the Chinese Prison Law it seems as though they aim to take on all of the challenges associated with prisoners. They are going to punish, vocationally train, and reform their prisoners through labor and education to transform them into law abiding citizens. This author has learned many lessons by the way of hard work. However, it appears that the true goals of the Prison Law are not those which are expressly stated in the statute. Control of the country’s people and cheap or free labor seem to be closer to the top of the priority list. It is a topic of much debate on whether or not prison labor in China is a profitable endeavor. Some say that it is “A myth created and fueled by Chinese critics about prison labor is that it is gigantic, systematic, profitable, integral to the national economy, and indispensable to the state revenues.” They say that most prisons do not even make enough money to cover their operational costs. Are Chinese prisons really not making enough money to cover operational costs? Are they actually huge operations raking in money? That is a debated topic and one which will likely remain so unless reliable figures are disclosed in the future.

V. Internal Critiques

Do the Chinese people buy into their system of corrections? Do they dare speak out against the government? Chinese scholars say that most Chinese do believe that education, thought reform, and productive labor are the means that should be used to transform criminals into productive members of society. However, just because the Chinese people believe in the ideologies behind their system of corrections, that does not mean they have no criticisms of the system. The Chinese people are said to have concerns about “whether prison guards are conscientious, courageous, and competent enough to put sound ideals and policies into seamless practice.” They are also doubtful as to correction authorities status as part of the communist party. As party officials speak of the wonders and successes of education, labor, and thought reform in prisons, official statistics often criticize party messages. The people question whether or not good news is an effort to cover things up when things are going wrong.

VI. Conclusion

This author’s research has left a lot of questions unanswered. There was no open look into the lives of Chinese prisoners. There were no concrete figures and no official reports of prison conditions. However, there are definitely a lot of differences between the American and Chinese correctional systems, and it is not easy to judge these differences objectively. Both the United States and China could benefit from a better understanding of one another’s correctional systems. Open, honest, information sharing would be step in the right direction for China, while openness to foreign ideas and practices will make the United States a stronger world leader.

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1 Chad Cook is a 2011 graduate of Albany Law School. This paper was completed for the Introduction to Chinese Law course in 2011.

2 Criminal Law of the P.R.C., art. 32-37 (Adopted by the Nat’l People's Cong. on July 1, 1979, amended by the Nat’l People's Cong. on Mar. 14, 1997).

3 Criminal Law of the P.R.C., art. 32 (Adopted by the Nat’l People's Cong. on July 1, 1979, amended by the Nat’l People's Cong. on Mar. 14, 1997).

4 Criminal Law of the P.R.C., art. 33 (Adopted by the Nat’l People's Cong. on July 1, 1979, and amended by the Nat’l People's Cong. on Mar. 14, 1997).


Criminal Law of the P.R.C., art. 34 (Adopted by the Nat’l People’s Cong. on July 1, 1979, and amended by the Nat’l People’s Cong. on Mar. 14, 1997).

Criminal Law of the P.R.C., art. 35 (Adopted by the Nat’l People's Cong. on July 1, 1979, and amended by the Nat’l People's Cong. on Mar. 14, 1997).


Shaw at 56.

Id.

Id.

Id.

Id.


Shaw at 58.


Shaw at 63.

Id.

Shaw at 65.

Shaw at 66.