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**The Philosophical Basis of Social and Legal Control
in China
with Special Reference to Juvenile Delinquency**

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**Submitted to the School of Graduate Studies and Research,
University of Ottawa,
in partial fulfillment of the requirements
for the degree of Master of Arts
in Criminology**

1999



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ABSTRACT

This thesis delineates the underlying philosophy and functions of social and legal control systems in both traditional and contemporary China. This topic is particularly interesting because specific control functions are grounded in a unique macro-control system, which is totally different from that typical of Western Countries. Social and legal control is carried out in China through a complex network of formal and informal institutions that foster the government's ability to penetrate popular culture and co-opt elements of that culture to define state ideology and social norms. The key social and legal institutions, such as family, community and criminal law, as well as special methods, such as the system of household registration and mass campaigns, are used to lend substance to the analysis. The research suggests that the Chinese social control system depends strongly on mass participation. The heavy emphasis is clearly on informal and quasi-formal rather than formal methods of social control; on prevention and pro-active measures rather than reactive control. However, some changes have taken place since the onset of economic reforms in 1978. A new comprehensive control system has been instituted by Chinese authorities. This system emphasizes both the informal control by masses and the formal control by criminal justice organs. State laws and legal institutions, which were not seen as very important in traditional China, are now recognized as principal tools for the achievement of social stability and economic development. Nevertheless, this trend should not be viewed as indicative of a transition to Western practices, rather it represents the adjustment of an old model to a new social environment.

The thesis provides some insights into social and legal control of juvenile delinquency in

China based on the data available. The work examines social and legal control system of juvenile delinquency and focuses on the early social-education intervention, work-study school and juvenile reformatory, examining their philosophy, official policy and their apparent success in preventing juvenile delinquency and reforming juvenile offenders.

The thesis examines the process of translation of the overall philosophical and ideological assumption about the human nature and the essence of society into concrete practices of control and rehabilitation of juveniles. The thesis also scrutinizes the implications of labeling theory and reintegrative shaming theory, as they were elaborated in the West, and tests their sensitivity to cross-cultural differences. The Chinese social and legal control systems seem to give more emphasis to the positive effects of labeling and reintegration, which may be explained by a more collectivist nature of Chinese society. My findings thus lend support to the reintegrative shaming theory, developed by John Braithwaite.

In order to make the final interpretation of my findings more significant, I assess them from a comparative perspective. Chinese positive thinking about the human nature, the bottom-up social control system, emphasis on mass participation and the Chinese system of reforming juvenile delinquents undoubtedly offer some sobering lessons to Western countries. However, the Chinese rigid definition of deviance and the appropriate nature of humans, disregard for formal social control and safeguards, and negative effects of the early social-educational intervention and incarceration in the work-study school and juvenile reformatory are obvious drawbacks. It is my belief that the parallel development of formal and informal mechanism of social control is the best way to approach crime and delinquency.

ACKNOWLEDGMENTS

I would like to take this opportunity to express my deepest gratitude to those who offered me assistance in the process of working on this thesis, especially to Dr. Maria Los for her guidance and patience. Without her countless hours of assistance this thesis would not have been possible; to Dr.M. Petrunik and Dr.R. Melchers, examiners of my thesis, for their valuable suggestions and recommendations; to those of the professors in the Department of Criminology who taught me criminology and other related knowledge; to the secretarial staff in the Department of Criminology for their personable and professional help; to my wife Zhang Jin and other members of my family for their encouragement and support to seek my dreams.

TABLE OF CONTENTS

Abstract

Acknowledgments

Chapter One Introduction	1
1.1 Research Objectives	1
1.2 The Definition of Juvenile Delinquency in China	4
1.3 Juvenile Delinquency in China	7
1.4 Organization of the Thesis	9
 Part I, Social and Legal Control in China: A Historical and Sociological Perspective	
Chapter Two Social Control in China	11
2.1 Conceptualization of Social Control	11
2.2 Family	17
2.3 Community	30
2.4 The System of Household Registration	41
2.5 Campaigns	51
2.6 Conclusion	61
 Chapter Three Legal Control in China	64
3.1 Legal Control in the Traditional China	64
3.2 Legal Control in the Contemporary China	71
3.3 Conclusion	82
 Part II, Social and Legal Control of Juvenile Delinquency in China: Selected Aspects	
Chapter Four Early Social-Educational Intervention	85
4.1 Philosophy	85
4.2 Official Policy	88
4.3 Conclusion	95

Chapter Five Work-Study Schools

97

5.1 Official Policy

97

5.2 The Methods of Education

99

5.3 Conclusion

106

Chapter Six Juvenile Reformatories

109

6.1 Philosophy

109

6.2 Official Policy

112

6.3 Conclusion

123

Chapter Seven Discussion

125

7.1 Key Features of the System of the Social and Legal Control in China

125

7.2 An Assessment of the Labeling Theory and the Reintegrative Shaming Theory
in the Light of Chinese Experience

131

7.3 The Lessons Learned from China and Western Countries and the Relevance
of Their Disparate Experience for Each Other.

144

Notes

152

References

153

Appendix

164

Table 1. Youth Offender Rates per 1,000 Persons under Age 25

Table 2. Youth Offenders in Two Age Groups in the Total Number of Criminal
Convictions

Chapter One

INTRODUCTION

1. 1 Research Objectives

The goal of this research is to explore the unique features of the Chinese way of thinking about and dealing with crime and juvenile delinquency and the Chinese social and legal control system including its development, organization and functioning, and to present the reader with a systematic discussion of social and legal control of delinquency in China. It is hoped that this approach will enable the reader not only to obtain an understanding of social and legal control of delinquency in China, but also to compare control of delinquency in China and Western countries.

In my thesis, I discuss both formal aspects of the criminal justice system and informal social control mechanisms and their historical development. Informal¹ social control is particularly significant as it appears to play a more important role in controlling and preventing crime and juvenile delinquency in Chinese society than in the Western world. Limitations of space and knowledge require that I restrict my subject only to those aspects of the social and legal control that I found particularly important. I focus on three selected models of control of juvenile delinquency in China: early social-education intervention, work-study school and juvenile reformatory.

Knowledge about Chinese society, especially about crime, juvenile delinquency, and the general social-legal control system, seems to be rather limited among most Westerners. Western

mass media always seem to highlight human rights, incarceration rates and public executions but pay little attention to the routine workings and structure of the social and legal control system and relatively low crime rate in Chinese society. China's social control system weaves together a unique combination of formal and informal mechanisms, with a strong emphasis on the latter. In my thesis, I begin by looking at Chinese thinking on crime and human nature, and by studying historically Chinese social control methods that rely on the **family, neighbourhood, household registration system and mass campaigns**. These methods seem to have affected the thinking and behaviour of Chinese citizens in a very intense and lasting way. The criminal justice system constitutes a key element of the social control system, but it appears to be more of a last resort. Therefore, my assertion is that the key to understanding the Chinese society's approach to crime is the control exerted over Chinese people at the informal and semi-informal, grass-roots level.

In this thesis, I will try to describe some of the major social and legal institutions and methods used in China to control and correct juvenile delinquents. I will also try to assess what makes them unique and different from western approaches. A comparative perspective can help clarify the continuum that distinguishes purely unique from more general features of crime and delinquency and their social and legal control. Although each social system establishes its own social norms for governing behavior and its own limits of tolerance for violations of those norms there undoubtedly exist some cross-cultural commonalities.

My research on the social and legal control of juvenile delinquency in Chinese society is primarily based on published Chinese materials and Western sources. Statistics on juvenile delinquency in China are not readily available because China does not have a system of crime statistics, and even when they are produced, it is impossible to assess the accuracy of these

figures since little is known about the data collection and compilation procedures. In other words, these data are not produced through a systematic examination. Therefore, any numbers should be treated cautiously and not generalized, even if some of them are still worth presenting. Precisely because of the lack of sufficient and reliable data, my research is mostly qualitative in nature.

For the sake of clarity and emphasis, I have mostly focussed on an idealized version of the Chinese social-legal control mechanisms and models dealing with delinquents. Moreover, I may have established a more clearly defined intellectual and analytical framework for the Chinese social and legal control mechanisms than that which the Chinese themselves have developed through practical action. Undoubtedly, there are discrepancies between the ideal forms of social and legal control mechanisms and their practical operation. I believe, however, that even if I am unable to analyse in detail how the social and legal control mechanism works in practice, my research still offers some valuable insights into the philosophical and ideological underpinnings of that mode of control.

I also hope that the readers will carefully consider the policy implications that the Chinese experience offers for crime and delinquency control policy in their own countries. Certainly, the Chinese social and legal control methods can not be simply replicated by other countries. However, because Chinese society and Western societies may represent the two different extremes with respect to the nature of social control, they may perhaps learn from each other's experience. The cultural foundation of control institutions in Chinese society is unique and predates the socialist regime. However, although each country has its own unique culture and tradition, this does not mean that different countries can not learn some lessons from one another.

Given the problems stemming from the inadequate data, fundamental differences in Chinese and Western conceptual approaches and underlying assumptions, and the lack of comparable terms in the Chinese and English languages, I do not want to claim that my attempts at comparative analysis are absolutely accurate. In fact, my discussion may bring more questions than answers. My conclusions are reported here based on what I have seen, heard, read and experienced. Also, readers should remember that Chinese society is changing rapidly. What I have reported here may already be somewhat out of date, But it is at least a starting point for an understanding of the Chinese social and legal control of juvenile delinquency.

1. 2 The Definition of Juvenile Delinquency in China

The term "juvenile delinquency" is used so frequently that it is often assumed that everyone means the same thing when using it. Yet definitions of juvenile delinquency differ widely in meaning and content. People generally agree that juvenile delinquency is a form of serious misbehaviour by children, but there is much less agreement on the specifics of what constitutes misbehaviour or who falls into the category of children. In the United States, for instance, each state, the District of Columbia, and the federal government have passed laws that defined delinquency. The result was 52 separate definitions of juvenile delinquency. Although each jurisdiction provided an enumeration of acts to be defined as delinquent, these delinquency-defining statutes vary in content and scope from one jurisdiction to another. Therefore, it is essential, at the outset, to pin down the term "juvenile" as that term (*qingshaonian*) is used in Chinese parlance.

As in other countries, definitions and meanings of juvenile delinquency vary within criminological literature in China. Generally speaking, however, in China, "youths" covers citizens of the 14-25 age group. According to China's relevant legal provisions, people under the age of 18 are subsumed under a joint name "minor". Thus, minors and youth are two different but overlapping concepts; the first being a legal category and second a social one. Under the current Chinese criminal law, juvenile delinquency is not a legal term. The Criminal Code of The People's Republic of China neither defines the term "juvenile" nor discusses the concept of "juvenile delinquency." However, it provides legal parameters to the juvenile delinquency concept through its definition of what constitutes a crime.

Article 10 of the Criminal Code stipulates: " All acts that endanger the sovereignty and territorial integrity of the state, endanger the system of the dictatorship of the proletariat, undermine the socialist revolution and socialist construction, undermine social order, violate property owned by the whole people or property collectively owned by the labouring masses, violate citizens' lawful privately owned property, infringe upon citizens' personal rights , democratic rights and other rights, and other acts that endanger society, are crimes if according to the law they should be criminally punished; but if the circumstances are clearly minor and the harm is not serious, an act shall not be deemed a crime" (quoted from the English translation of the Criminal Code of the People's Republic of China). According to this definition of crime, there are three major characteristics that jointly define crime: (1) Crime is an act which endangers society; (2) Crime is an act which violates criminal law; (3) Crime is an act which should be criminally punished. This general definition of crime is applicable to juvenile delinquency.

Under the Chinese Criminal Code, adult criminal responsibility begins when an individual

reaches the age of 16, though the law provides that offenders under the age of 18 shall receive a lesser or mitigated punishment. Article 14 of the Criminal Code provides: " A person who has already reached the age of 16 when he commits a crime shall bear criminal responsibility; A person who has reached the age of 14 but not the age of 16 when he commits the crimes of killing, serious injury, robbery, arson or habitual theft, or other crime seriously undermining social order shall bear criminal responsibility."(quoted from the English translation of the Criminal Code of the PRC) This indicates that reduced criminal responsibility is borne by the offender between the age of 14 and 16, although an offender over the age of 14 may bear adult criminal responsibility for certain serious offenses. Under the age of 14, no criminal responsibility attaches for any act whatsoever. However, in accordance with the criminal law, the head of the family or guardian of a person who is not punished because he or she is under the age of 16 shall be ordered to subject him or her to discipline. If necessary, the child may be kept in a reformatory for education and rehabilitation by the government.

Article 15 of the Criminal Code states: "A mentally ill person who causes dangerous consequences at a time when he or she is unable to recognize or unable to control his or her own conduct shall not bear criminal responsibility ; but his or her family or guardian shall be ordered to subject him to strict surveillance and arrange for his medical treatment; A person whose mental illness is of an intermittent nature shall bear criminal responsibility if he or she commits a crime during a period of normality"(quoted from the English translation of the Criminal Code of the PRC). This provision is also applicable to juvenile delinquents who are deemed insane.

In general, according to the spirit of the provisions in the Criminal Code, the definition of the juvenile delinquent in China may be formulated as---a person between the age of 14 and

18 who has committed acts which endangered society, violated criminal law and were liable to punishment according to the criminal law. Only those who are under the age of 18 may be singled out for special treatment reserved for juveniles under the Chinese law. However, it must be mentioned that juvenile delinquency is given a broader scope in this thesis. Juvenile delinquents here include not only those who have violated criminal law but also those who have been sanctioned for misbehaving or minor law infractions.

1.3 Juvenile Delinquency in China

An Egyptian priest wrote 6000 years ago:" our earth is degenerate in these latter days...because children no longer obey their parents " (quoted by Stullken, 1956:833).This sentiment rings true also in China today where juvenile delinquency is perceived as a major and growing problem by both general public and researchers. As Guo Jie and Yang Xiaobing state:

Juvenile delinquency in China is a new social problem which first began to attract notice in the 1970s and has now aroused the attention of the people's government at all levels, departments concerned, and all quarters of society. The seriousness of the problem has spurred many people to come up with solutions and, to that end, many units around China have formed joint scientific teams with institutions of higher education and specialized institutes have been established to conduct research (1989:24).

Not only is China experiencing what is generally described as a 'crime wave' but also a change in the nature of criminal activity and a decrease in the age of offenders (see Appendix, Tables 1 and 2). In the cities, in particular, armed robberies, rapes and violent hoodlum activities

have become the new 'problem crimes'. Street crimes carried out by 'hoodlum elements' now tend to predominate in official reports.

There are many competing explanations of the increase in juvenile delinquency among Chinese youths. However, the Chinese people generally believe that economic reforms might have contributed to the growth in criminal activity. In the past two decades, the Chinese people have witnessed rapid social and economic transformation. On the positive side, the economic reform has resulted in improvement of living standards of people, but it has had an unsettling side, too. As China speeds forward toward modernization and implements an open door policy, the unprepared youth of China are being confronted with new ideas, values and attitudes. The current generation of Chinese youths is being reared in a society that is significantly different from that of their parents and grandparents. Compared with the elder generation, the present generation of Chinese youth generation is said to be "without a highly developed sense of social responsibility, ...impetuous, uninterested in academic studies, hedonistic, and lacking in moral standards" (Beijing Review, 1988:12). The magnitude and speed of social change are producing what some Chinese are calling "contaminated blossoms." In addition, the continued infusion of Western values and ideas into China and their ready absorption by the Chinese youth have further complicated matters. It does not mean that the diffusion of these new ideas is necessarily harmful in itself, but the fact that they appeared so suddenly and dramatically after China has been cut off from the outside world for centuries may account for the scale of the normative confusion and anomie. With the growing visibility of juvenile crime and the mobilization of social and legal efforts to combat it, it is interesting and useful to analyse various layers of control in China and assess their continuity and change.

1. 4 Organization of the Thesis

This thesis is divided into seven chapters. Chapter Two and Chapter Three constitute Part I, entitled “ Social and Legal Control in China: A Historical and Sociological Perspective.” The two chapters are intended to provide the reader with some relevant background material on Chinese society and the context of the social and legal control systems. Chapter Two compares the social control roles of the traditional and modern Chinese families and neighbourhood communities. It also examines two other important methods of maintaining social control and preventing crime, namely the Household Registration System and Mass Campaigns. Chapter Three deals with the legal control system in China, including the Chinese legal tradition, ideological background, the emergence of criminal law, the principles of criminal law and some unique characteristics of the criminal justice system in China.

Part II, entitled “ The Social and Legal Control of Juvenile Delinquency in China: Selected Aspects,” includes Chapter Four through Chapter Six. These chapters focus specifically on the Chinese handling of juvenile delinquents. Chapter Four discusses early social-education intervention as a part of the comprehensive approach to social order in China. Chapter Five and Chapter Six respectively look at the roles of corrections, the work-study schools and juvenile reformatories and how they function in China. These three chapters also explore Chinese people’s strong belief that human beings can be rehabilitated.

Finally, Chapter Seven, the concluding chapter, discusses and interprets my research finding. It includes three sections. Firstly, I summarize the key features of the system of the social

and legal control in China. Secondly, I assess the Chinese control system of juvenile delinquency in the light of labeling theory and reintegrative shaming theory and assess these theories in the light of the Chinese experience. I have picked labeling theory because it has received certain empirical support from many Western criminological studies, but cross-cultural verification seems to be lacking. Interestingly, the Chinese system seems to rely greatly on benefits of labeling in preventing and controlling juvenile delinquency. I have considered the reintegrative shaming theory because John Braithwaite, in his original exposition of reintegrative shaming, argued that Japan represented a interdependent and communitarian society which practices reintegrative shaming 'writ large' (1989:62). Due to influence of Confucianism, there are many similarities between Japanese and Chinese societies. Therefore, I wanted to test if the reintegrative shaming theory can be generalized and relevant to Chinese society. Finally, in the closing section, I interpret my findings by comparing the Chinese and the North American experience of social and legal control.

Part I

Social and Legal Control in China: A Historical and Sociological Perspective

Chapter Two

SOCIAL CONTROL

2. 1 Conceptualization of Social Control

In every society, a normative order must be accompanied by an institutionalized structure for maintaining this normative order. Although crime, delinquency and social control are universal facets of social life, every society exercises a cultural option when it develops a specific way of looking at crime and delinquency and a characteristic mechanism for controlling them (Erikson, 1966). China offers an interesting context for extending previous-- mainly American and European-- research because of the profound social and cultural differences between Chinese society and Western societies.

Something called social control takes place in all societies because every society has a set of social norms. Social control is found wherever and whenever people hold each other to certain standards. The concept of social control has appeared in various radical, critical or revisionist writings about crime, delinquency and law over the past three decades. However, there are quite big differences within this literature--between labeling theory, reintegrative shaming theory, Marxist critical criminology, abolitionist theory and left realism. In my opinion, social control, crime and delinquency can not be studied in abstract but certain abstract concepts do have general applicability. Although social control takes many forms and appears in many places, it always is a manifestation of the same essence. "Social control" should be considered as a generic term for response to nonconformity, including both perception of and reaction to rule

breaking (Wilson, 1977:6). In other words, it includes the formal and informal ways society has developed to help ensure conformity to social norms. Social control takes place when a person is induced or forced to act according to the values of the given society, whether or not it is in accordance with his or her own interests. I agree with Kimball Young's view (1942:898) that the aims of social control are "to bring about conformity, solidarity, and continuity of a particular group or society." Of course, due to different cultures and traditions, there exist different models of social control in different societies. Compared with the West, Chinese society has developed a very different model of social control. As Xin Ren states:

The most important distinction, perhaps, is the efforts of the Chinese state to control both the behavior and the minds of the people. Social conformity in the Chinese vocabulary is not limited to behavioral conformity with the rule of law but always moralistically identifies with the officially endorsed beliefs of social standards and behavioral norms. Perhaps it goes against the free-will notion of the classical theory of criminology or perhaps it is socialist totalitarianism. Whatever it is, the Chinese tradition of so-called "greatest unity" has always attempted to achieve ultimate uniformity of both mind and act within Chinese society (1997:6).

China's traditional value system is a complex amalgam of ideas that evolved over centuries and was shaped by Confucianism, Daoism, Buddhism, and other influences. Traditional thought accepted social stratification as natural and considered social groups to be organized on hierarchical principles. Much concern centered on the need for properly ordered social relationships. Society thus was seen as a hierarchical pyramid of roles, and these roles entailed fairly well-established norms governing how people in those roles were supposed to behave in relation to people in other roles. It was assumed that if every person, from emperor to the poorest peasant, could be socialized to play their designated roles properly, then society would be well

run, and happiness and harmony would be enjoyed. Confucius stressed that for a society to have order, there must be social stratification and obligations of each level must be made clear. He believed that without a distinction between the nobility and the common people there could be no imperial country (Chang, 1969:17). Therefore, traditional philosophical texts are full of descriptions of what it means to be a dutiful son, a loyal official, and even a benevolent ruler. Social status in traditional China was based on respectability, which is rooted in Confucianism's ideal type of social relationship. Ancestor worship was an important act by which an individual became a member of a group and his or her position within this group was clearly defined (Yang, 1961:46). It is generally assumed that the secular function of ancestor worship interacted with the spiritual practice of honoring and protecting the soul of an ancestor and stabilized social-political order. The ceremony was designed to express the government's veneration for old age and to encourage others to show respect for their elders thus guaranteeing a stable cultural value system (Streib and Streib, 1978).

With a preeminent emphasis on societal order and value consensus, it is perhaps not surprising that notions of individualism never flourished on Chinese soil. Individuals were seen as finding their meaning as members of ordered collectivities, and an isolated person without familial or other ties was a source of danger. Striving for individual achievement and excellence was highly valued, but success was seen as the result of the support of one's family or other collectivity and not solely an individual matter. Similarly, individuals who committed crimes were not seen simply as bad individuals but as products of bad family and other influences. Credits or blame for individuals' acts were spread outward to affect these wider groups, as in the traditional *baojia* system, in which groups of families could be punished for the misbehavior of one of their

number. It is thus clear that China's traditional value system evolved over many centuries in directions that are quite distinct from the West. For example, the Western emphasis on individualism, human rights, and equality never assumed primary importance in traditional China.

Contemporary social control is rooted in the Confucian past. The Confucianism which remains the dominant Chinese philosophy has influenced Chinese society and provided the basis for the social order throughout the Chinese history. Although another ancient school of thought, legalism -- which maintained that man was by nature evil and had to be controlled by strict rules of law and uniform justice that applied equally to upper and lower classes -- was opposed to Confucianism, it lacked the enduring impact of the latter and prevailed over the Confucianism only during the Qin dynasty (221-207 B.C). Since the Han dynasty (206 B.C.-221 A.D.), Chinese social and political institutions have been based on Confucian ideology and social control has been founded on ethical and moral persuasion backed by a state penal code as a last resort. The code of ethics teaches people how to accept obligations in the family, among friends and in their duty to respect the political/legal authority. In Confucius' opinion, a society could be ruled by *li* (rite) — a Confucian-based set of social values or norms of behavior, enforced by society rather than a court — or by *fa* (law). Confucianists believed that *li* makes it possible to reach a stage of government free of disorder and dispute because the principle of *li*, combined with moral education, prevented evil in society before it occurred by inculcating respect for basic social values (Chu, 1965:60). In contrast, control based primarily on the law will not result in the stability of the society. Just as Bodde states: "Lead the people by regulations, keep them in order by punishments (*xing*), and they will flee from you and lose all self-respect. But lead them by virtue and keep them in order by established morality (*li*), and they will keep their self-respect and

come to you" (Bodde, 1963:384).

Therefore, for a long time, social order in Chinese society has mainly been based on moral socialization, not on the deterrence of law. In other words, conformity to proper modes of conduct is not obtained through fear of official sanctions but from an understanding and acceptance of the rules based on an early and on-going educational process. This is consistent with the traditional Chinese concept that persuasion and education are more powerful than force. The Chinese have a strong belief in internalizing rules of conduct to the point where the individual will conform to accepted behavior due to moral persuasion rather than due to the fear of punishment. Because of the size of the Chinese population, this internalization of the socially accepted mode of conduct is perhaps the sole practical means of controlling behavior.

The influence of the West came particularly in the late nineteenth and early twentieth centuries. When Western values were introduced to Chinese education, Marxism, a Western doctrine, eventually was proclaimed the basis for the official values of the Chinese socialist society. Marxism provided a critical basis for a re-examination of Chinese values and customs. When the Chinese communists came to power in 1949, they set about to produce major changes in the way Chinese society was organized. Their goal was a radical social revolution and not simply a political revolution. As stated by Mao Zedong,

A revolution is not the same as inviting people to dinner, or writing an essay, or painting a picture, or doing fancy needlework; it cannot be anything so refined, so calm and gentle, or so mild, kind, courteous, restrained and magnanimous. A revolution is an uprising, an act of violence whereby one class overthrows another (1954:274).

Indeed, many aspects of traditional social life -- class relations, family organization, women's roles, personal values, and so on -- did not meet the requirements of the socialist revolution and construction and were slated for fundamental change. Schurmann argues that the traditional trinity of control that derived from Confucianism, the gentry, and the *pater familias* was destroyed by the Communist revolution in China. New organizational structures ranging from "macro social and political networks to the smallest human groups" replaced the traditional Chinese pattern (1968: 1-15). However, many of the social forms in China had evolved slowly over the centuries and were imbued with deep meaning for the general population. All could not simply be swept aside overnight. Moreover, the Chinese communist leaders had also been schooled themselves within the Chinese traditions before they became exposed to Western and Soviet influences. As a result they developed deeply ambivalent feelings about traditional values. At the same time, in order to mobilize the population in support of the goals of the Chinese Communist Party (CCP), the Chinese government had to selectively build upon and reinforce some elements of traditional social life in order to try to change other elements. Based on this consideration, the bundle of traditional ideals and values was not rejected completely by the Chinese government. Rather, some traditional values continued to be accepted as natural and proper, while others were expected to be eradicated or changed. The result of this complex change process has been a fundamental transformation of society. But, at the same time, the contemporary social system and social values are in many clearly identifiable ways still very Chinese. The main form of social control is still before-the-fact socialization, not after-the-fact arrest (Schurmann, 1968). A unitary set of values required by society remains a basic way of thinking in contemporary China. Likewise, accepted as a matter of course is the notion that

individuals are malleable and can be socialized and influenced to behave in proper ways. Given these continuities, persuasion is still seen as preferable to coercion as a means of social control. This is also why the role of early conditioning for social control is emphasized in China more explicitly and consciously than in the West. Accordingly, present social institutions are a complex mixture of old and new.

2. 2 Family

As an institution of social control, the importance of family in the youngster's life is generally emphasized by theorists in various countries, regardless of their particular professional orientation or academic discipline. The family is the context in which children spend most time and often establish their most durable and influential interpersonal relationships. The family provides the children with their first experiences with other human beings and introduces them into the world in which they are destined to live. It is also the family that provides the child's earliest definition of himself or herself. Family can inculcate in the younger generation an ability to accept and adjust to any adverse circumstances in society when they grow into adulthood. What happens in the family, such as dislocation in a youth's family, the absence of the family's potentially positive effects, and severe disturbance in one or both parents, can have a great impact on how the child functions in and adjust to other social institutions.

Many theorists consider the family the most significant factor in the development of juvenile delinquency. A review of the Western literature reveals that theorists ranging from those steeped in Freudian psychology to those working in the sociological field consider the family the

most important and influential environment of the child. Walter Gove and Robert Crutchfield (1982:302) concluded that "the evidence that the family plays a critical role in juvenile delinquency is one of the strongest and most frequently replicated findings among studies of deviance."

For a long time, family has been considered to be the most important organization of social control in Chinese society. Since the most basic living unit of the Chinese, *jia*, is not completely identical with the term "family" referred to in Western sociology, I should first explain that "the family" about which I speak refers to the most fundamental living unit of people in the given culture. In China we often use *jiating* as the translation of Western concept of family. But strictly speaking, as a common Western sociological concept, the "family" refers usually to the group composed of husband, wife, and their unmarried children. In modern European and North American societies, it is the most fundamental living unit which is also called the nuclear family (*hexin jiating*). In China, many of the basic living units consist of only nuclear families with parents and children, but there are also many which are larger than nuclear families, such as the stem family which consists of parents, their unmarried children, and one married child (normally son) with his or her spouse and children; the extended family which is made up of two or more generations with two or more pairs of married couples in one generation and their unmarried children; and other type of family which may even include other related members, for example, unmarried brothers and sisters, uncles or aunts with nephews or nieces, and other people living together without being bound by blood or marital relations. Therefore, the Chinese "*jia*" (family), especially in traditional China, should be regarded as an extended family group built around the nuclear family. It is the most basic social group in which the Chinese carry out their common

living.

The Family in Traditional China

The family has historically been the dominant institution in China. Perhaps the most significant feature of traditional China is the fact that it was "family oriented" to an extraordinary degree. The society was overwhelmingly focussed on the family in the sense that, ideally speaking, it was expected that decisions be made primarily with reference to family interests. When family interests were in conflict with those of other groups in which individual participated, family interests were to take precedence. The individuals owed loyalty first, last, and always to their families. As Yang (1959:5) observes, there was hardly any major aspect of social life in traditional China that was not "touched by the ties and influence of the family." This tremendous influence was manifested in multiple contexts. For instance, many of the nonfamilial social relations in China were patterned after the family system and were described using the rhetoric of family relations. A good example is the traditional linkage between the family and the polity. Mencius, the greatest philosopher of the Confucian school, wrote that "the root of the empire is in the State. The root of the State is in the family" (Lang, 1946:9). A nation is a combination of family units. The state authority might collapse, but family could still provide order, discipline and individual needs. This philosophy led to deliberate efforts to ground the socio-political order in family relationships. As Lang(1946:5) explains, "the family, a primary social unit of any social organization, was consciously cultivated in China perhaps more than in any other country in the world and achieved greater importance."

The family in traditional China was not only the overriding focus for individual loyalties

in the ideal case. It was also the basic unit in terms of which the economic aspects of life were carried out. The average family, and that means the ordinary peasant family in traditional China, was self-sufficient in both production and consumption to a degree that it is difficult for persons living in contemporary societies to understand. They produced most of what they consumed and consumed most of what they produced. When substantial goods and services had to be purchased from the outside, the situation was considered unfortunate, and when substantial payment in the form of rent, interest, or payment for consumption had to be made, that too was considered unfortunate. Apparently this self-sufficiency contributed greatly to the strength of family ties.

The family also was the basic unit in terms of how the allocation of power and responsibility took place. The average Chinese had most of his or her contacts with family members. The hierarchy of power and responsibility with which he or she was most familiar was that of his or her own family. The dominant position of the institution of the family manifested in traditional China was in the authority granted to family roles. Parents had virtually complete authority over their children, and older brothers over younger siblings (Chao, 1983:42,62; Lang, 1946:24-30). These authority relations were supported by two important traditional virtues: *Xiao*, filial piety, towards parents and *Ti*, love and respect for one's elder brother. The *Xiao* was proclaimed "the root of all virtue" in traditional Chinese society (Chao, 1983:71-100; Lang, 1946:10). According to Confucianism, "Filial piety is the teaching of Heaven, the righteousness of earth, and act of the people. The teaching of Heaven and Earth is the rules for the people. The universe (world) follows the rules of the light of Heaven, the cause of the profit of Earth" (Tsuda, 1939:53).

It is clear that filial piety is, as a way of man, grounded in the way of Heaven and Earth. The filial piety founded in human nature is Heaven endowed (Tsuda, 1953:55). The famous

classic, *The Twenty-Four Examples of Filial Piety*, contained various stories providing models of the devotion of children to parents. As a result of these strong cultural traditions, the “high respect for family and parental authority” evolved as a distinguishing feature of Chinese civilization (Lang, 1946:9).

The emphasis on kinship relations is indeed a characteristic of Chinese society and is more distinctive than in modern Western societies. Clan was primarily a kinship group. In many places, neighbourhoods were largely made up of families of the same clan. Large and well-organized clans often took pains to keep order and uphold morals in their own communities. They shared obligations to common ancestors (Levy, 1949: 40) which defined a closed group for the purpose of maintaining genealogical records and ancestor worship, providing for the material needs of the clan members, and educating the young concerning the norms and values of the community (Hsiao, 1960: 341). Written codes of conduct based on familial roles and the patriarchal family structure echoed the basic principles of Confucianism. Sons were urged to be filial to their parents, wives dutiful to their husbands, brothers affectionate one to another. All were warned against laziness, extravagance, gambling, quarrels, violence, and other offensive conduct. Adultery and failure to perform filial duties were pronounced grave offences, often punishable by expulsion or even death. It was in the Qin dynasty (221-207 BC) that the punishment of *zuxing*, or clan punishment, came into being although the Qin government emphasized the unification of punishment. According to Zhang Jinjian, it was at this time that:

China's laws adopted the concept of clanism. Clans were to have responsibilities for the crimes committed by clan members... If a person commits a serious crime... then three categories of clan member that is the parents, brothers and wife of the criminal

would be held responsible and executed. If it was an extremely serious crime all his clan, as well as relatives who held the same name would be executed. This family or clan death sentence, was one of the cruellest forms of punishment devised (1968:47-71).

In fact, clan did not challenge the existing dynastic order. The clan codes of personal conduct often reinforced the state's penal laws. A system of rewards and punishment legitimated the functioning of this familial group within Chinese society. Its importance to social order might be considered as a "buffer" between the state authority and the individual. Therefore, the clan was used by every dynasty as an instrument of social control. An obvious example is that in Qing Dynasty when clan leaders were directly required by imperial government to report lawbreakers among their clansmen. The clan leader had police-type responsibilities just like the local *baojia* (see the next paragraph) agent (Streib and Streib, 1978).

The use of the family as the vehicle of governmental control as exemplified in the *baojia* system is very obvious. The *baojia* system, a system of household registration starting with the Qin dynasty (221-207 BC), while engaging the family in a specific order of power, offered no direct challenge to the order of the clan. Indeed it enhanced the power of the clan. However, it also set limits on its power. It offered a series of power relations outside and beyond the familial ones. They were largely extensions of the familial power. The *baojia* system legitimated the power of both family and the clan but, at the same time, set limits and monitored that power's effects. Yet, even in exercising this control, the pressure was often brought in family terms. The individual family members were constrained in effect by the threat that they would achieve only the short term profits for their family -- but in the long run their acts would so unite other families against theirs as to bring about its downfall. Because the *baojia* system inserted itself between

family and society and designated the appropriate way of organizing family order, it identified anti-social behavior as being anti-familial. Crime constituted a threat not only to the law, the state and the emperor but also to the family order. Thus a crime both broke the law and threatened the power of the family. The family became, therefore, the principal institutional locus for a highly effective form of social control, which Braithwaite, a contemporary Western criminologist, has labelled "reintegrative shaming". Reintegrative shaming represents a societal response to deviance that affirms wrongdoing while encouraging the reacceptance of deviants back into society (Braithwaite, 1989). According to Braithwaite, families are usually the most effective agents of social control precisely because they are oriented toward reintegrative forms of shaming. Societies in which the family is the dominant social institution can, therefore, be expected to exhibit low overall rates of crime (Braithwaite, 1989).

In spite of importance of family, some organizations, such as the neighborhood council and the guilds, that brought pressure to bear on family and limited the extremes to which the individual might sacrifice the interests of others to the interests of his family, did exist in traditional China. These organizations often operated in such a way as to limit the pursuit of family self-interest. For example, the guilds achieved this purpose by the tendency to offer apprenticeships, particularly in the more lucrative fields. According to Yang (Yang, 1961: 75), a group of craft workers often adopted a patron saint who became the focal point of their association. Temple meetings and sacrifices in honor of the saint often included business matters as well as the disciplining of those who had acted to discredit the craft guild. All ceremonies and transactions of the guild served to "constrain aggressive individualistic tendencies", and elevated the members' view above the level of immediate individual advantage. Like clan, guild also had

the codes of conduct and told its members what was right. Through both the use of moral suasion and social and economic sanction, it effected limitations to individualistic activity endangering group solidarity. The importance of craft guild was due to its role in maintaining group solidarity and cohesion within a community.

The family also played a critical role in the emotional and social life in traditional China.

Liang Shuming, a well-known scholar of Chinese culture and history, writes:

For the Chinese, the family is the fountainhead of his life and the place which he regards as his final repose. It is extremely difficult to stabilize life except by the tie of the family. Life usually brings more grief than joy, but the family provides the sentiments of joy. To the Chinese people, the family provides consolation and encouragement, and practically performs the function of religion (quoted in Yang, 1959:167).

In sum, the family played a critical role in traditional China, serving as the principal institutional foundation of the social order.

The Family in the Transitional Historical Period

In the last more than one hundred years, China developed from a feudal society to a semi-colonial, semi-feudal society, and then to a socialist society, and from a small-scale peasant economy to socialist industrialized large-scale production. Such changes could not but influence the family structure. A trend emerged that signified a gradual transition from large and extended families to small families, from lineal and extended families to nuclear families. The reason for the rise of these changes are historical. Starting during the Opium War (1840-42), driven by economic necessity and internal contradictions, using techniques of intrusion, interference,

manipulation and domination, some imperialist countries exercised aggression in military, cultural, political and economic spheres. They worked to undermine China's autonomy and sovereignty as a nation, reducing traditional China to a semi-colonial and semi-feudal society. Capitalism spurred the gradual disintegration of the feudal and autarchic natural economy, so families changed accordingly. Among the laboring people, the number of peasants who went bankrupt and became homeless and landless increased due to annexations of land by a minority of bureaucrats and landlords. In hardship and destitution, it was extremely difficult to care even for a small family and virtually impossible to support a large family. The impoverished peasants migrated either to other localities to become long-term farmhands for landlords or to the cities to work for factory owners. The workers in the cities had to work hard for little pay and their living conditions were extremely poor. All of these factors caused the large family to lose the basis for its existence. Among the exploiting classes, some feudal landlords tried their best to maintain large feudal families in line with the clan system, in order to preserve both their own status as masters of the family and the tradition of " five generations under one roof." But none of them could resist the influence of industrialization and urbanization as their children moved into the cities, becoming burgeoning industrial and commercial entrepreneurs or government functionaries, and established their own small families. With the development of capitalism in the cities, the bourgeois families were no longer units directly engaged in production, so there was no need for or possibility of maintaining big families (Wu, 1987: 146-49).

In the ideological realm, there was no individualism in traditional Chinese culture and no civil or political rights for citizens until the western democratic concepts of rights and constitutional system of government came to China. Western liberal moral principles clashed with

the traditional Chinese doctrines of Confucius and Mencius. People borrowed slogans such as "human rights", "liberty, equality, and fraternity," and "liberation of individual personality " to challenge the feudal ethics of "three cardinal guides and five constant virtues" and " the three obediences and four virtues"². These situations led to changes in the people's conception of the family. Their main manifestations were in the cities, especially among young people, as increasing numbers of people favoured the system of small families. Therefore, not surprisingly, modernization has ushered in changes in Chinese family life, beginning at the end of the nineteenth century and continuing through the course of the present century .

A more significant change in the traditional Chinese family institutions has taken place since the establishment of the People's Republic of China in 1949. In addition to the post-1949 social-economic change, the Chinese communist government's family policy also played a crucial role in the family revolution. It launched vigorous attacks on the ideals and practices in Chinese family which have endured for the previous more than two thousand years. Radical reform was the order of the day after 1949, and in most cases these efforts accelerated changes of traditional Chinese family that were already well underway as a result of economic change and Western influence. The government attempted to use political campaigns, trained propaganda teams, women associations, and local cadres to persuade and pressure the populace to change their family behavior to accord with the new law and policy in the ensuing years.

The most direct aspect of these efforts was the promulgation of the Marriage Law of 1950 and the Marriage Law of 1980. The Marriage Law of 1950 " was intended to cause ... fundamental changes ... aimed at family revolution by destroying all former patterns ... and building up new relationships on the basis of new law and new ethics" (Meijer, 1971:5).

According to that law , “ the feudal marriage system ... [was to] be abolished ... The new democratic marriage system ... [was to] be put into effect” (Buxbaum, 1978). Thirty years later (1980), a new Marriage Law was passed to replace the 1950 law and strengthen efforts to modify and control marriage and family life. The fact that a new law was prepared and passed suggests that there were still many problems and that there was still a great deal of work to be done before the traditional Chinese marriage system was replaced by the new revolutionary ideal form based on the communist ideology. However, many changes in Chinese family relationships did occur. The more important consequences associated with the specific family policies and legal enactments of the Chinese government include the following: an increased emphasis on conjugal relationships; lower fertility and a reduction in family size; greater equality between husbands and wives; reduced power of the aged; greater freedom in the choice of spouses, especially in urban areas; and an increase in the usual age of marriage (Chen, 1985; Tsui, 1989; Wei, 1983; Whyte and Parish, 1984; Zang, 1993). Some of these changes, especially the increased autonomy of young people in selecting marriage partners and the reduced authority of the elderly, have probably weakened the social control functions of the family when compared with the situation in traditional China.

Since the Marriage Law of 1950 was promulgated, freedom of marriage and divorce and sex equality have been guaranteed to the people. The young people were encouraged and supported to break away with the traditional normative pattern based on the Confucius' ethics and teaching on marital affairs. The number of divorce cases has increased significantly throughout the country.

Another policy adopted by Chinese government in 1979 is the very unpopular one-child

population policy which is, by any standards, a radical path to modernization and development. This policy has evoked a demographic revolution which has greatly modified and reshaped the age and sex compositions of the Chinese population because of the Chinese preference for boys. The great impact of this policy, paralleled and reinforced by the ongoing modernization program, has also created rapid and profound changes in the extended family system. The one-child policy has had direct effect on extended family, the manner in which family members relate to one another, and the content and features of inter-generational ties. The thrust of the one-child policy has weakened the extended family network by greatly trimming the average family size. The absence of siblings; the subsequent loss of in-laws, uncles and aunts, and the thinning out of extended consanguineous relationships remove a large number of branches from the previously complex family tree. The re-structuring of the Chinese family, propelled by the one-child policy, has limited and weakened family ties.

According to the communist ideology, in order to achieve equal status with men, women must, on the one hand, gain economic independence through participation in economic production and, on the other, attain social and political independence through participation in political activities. Therefore, after 1949, Chinese communist government has tried very hard to achieve this ideal by opening opportunities for women to secure gainful employment outside the family. The one-child policy objectively lessens married woman's traditional role of child-rearing and related household chores. It thus reinforces the policy, based on which a great majority of married Chinese women work outside the home. Women's participation in economic production and political activities outside the home have been widespread in modern China. The effects of gainful employment by both parents has weakened control and supervision of children, traditionally

performed by women, and also undermined the previously close relationship between mothers and children. This situation has been a major influence on child development in modern China.

The Family in Contemporary China

Since the economic reform in 1978, an increasingly individualistic attitude toward life has developed among young people in China. In general, the attitude concerning the purpose of living is, first of all, to create a better material life for oneself and one's conjugal family, and possibly to try also to do something good for others and society as well. This value orientation is different not only from the unselfish, collectivist orientation emphasized by the Communist Party, but also from the traditional familism, which calls for self-sacrifice for parents and ancestors. As both the traditional and collectivist orientation emphasize a total devotion to the group--the family and the state, respectively --some results of recent changes are a growing gap and conflict between generations and a desire on the part of young people to be free from their elders' supervision. This change tends to create or intensify family conflicts and may lead to the final disintegration of the extended family.

Thus, historically, the Chinese family has experienced structural strain. Economic factors have undermined the extended kinship system, causing break-up of the extended family into smaller household units. The Chinese family system has undergone significant transformation in modern times, including changes in its composition, type, role in the life of the individual, and so forth. There is no doubt, however, that family has occupied and retains a position of special prominence in contemporary China and it continues to be at the center of social life. Family is also at the heart of social control in Chinese society, although the role it is expected to play has

changed dramatically over time, from the *zuxing* (clan punishment) of the Qin dynasty to the contemporary situation.

In contemporary Chinese society, the family ties remain still relatively strong and the family itself has survived as the key site of education and control. It exercises the greatest intervening influence in a person's relations with the state and the society in general. Parents do not depend on formal schooling in order to train their children properly. Rights, obligations and proper conduct among family members have remained essentially unchanged. Unlike the West, Chinese young people, while favoring small families, still believe in supporting and caring for their parents even though the generation gap between the young and the old does exist. This is a characteristically Chinese view, one that is also cultivated by the state as it relies on relatives to take care of other family members. Furthermore, the family is still used as the main basis for social control because Chinese society has developed no other forms of social control that would operate effectively and stably in the absence of family control.

2. 3 Community

The primacy of the family notwithstanding, the willingness and responsibility of the community to assist in control and socialization of young people should not be underestimated. Based on the tradition of management of social conflict through a combination of popular mediation and discipline sanctions applied through an administrative rather than an adjudicative process, tight control over community organization and neighborhood life has been a characteristic of the Chinese social control system. Building on the pre-1949 legacy of social

control, such as the *baojia* system, the Chinese have tried to monitor the activities of residents while developing urban communities. Community has played a very important role as the basis of social order in contemporary China. Organized as an informal institution of social control, it has been both an arm of higher-level control and a means by which the community can manage itself, solving minor routine problems on the spot. Western sociological and criminological literature on crime and delinquency seems to customarily focus on specialized, formal agencies, such as police and courts. Undoubtedly, formal institutions are very important, however, informal institutions should not be overlooked. Otherwise, biased results may be produced. Such would certainly be the case for Chinese society today, for embedded within complex organizations are many informal and quasi-informal institutions, such as neighborhood committees or small groups, established to perform control, mobilization, and other important functions.

The strong emphasis on a communal existence, with powerful neighborhood committee work groups and a relatively sophisticated peer pressure system, produces throughout the country a social control net that is much different from that present in Western countries. One of the most apparent differences is that the definition of behavior that needs social control is produced at the local community level. Although the pendulum is swinging from popular justice ("*li*") toward a more formal justice system ("*fa*"), reaction to deviant behavior is still largely shaped by local sentiment. The organization of neighborhoods is grounded in citizen participation through a network of committees. These so-called popular justice institutions, such as the neighborhood committee, mediation committee and public security committee, are both proactive and reactive in identifying potentially troublesome social situations, preventing crime, resolving conflicts and dealing with offensive behavior. Most commonly, these committees are composed of cadres and

interested persons of the neighborhood or work unit, including retired people. The common criteria are ideological correctness, effective work style, respect for people and positive personality qualities. In Western literature, these low level people's committees tend to be viewed as informal forms of control, but, in reality, they are constituted in China as quite formal institutions of social control. They are officially set up and integrated into the operation of the formal agencies. Therefore, they may be regarded as the first level of the governmental structure which certainly has a great impact on the nature of local crime and delinquency.

To the Chinese mind, police and judicial organs are essential, but they are not deemed sufficient to rely on them alone. In fact, there is a very low police to population ratio. In China, there were 1.2 million professional police and 600,000 armed police in 1990. The current ratio of about one police officer for every 1,400 people (Li Qiwei and Chui Xiaofang, 1991) is well below the standard found in various Western societies of around one officer for every 500 people ("A New Perspective", 1991). At the same time, the security organs (police) at all levels are also required to adhere to the principle of relying on the broad masses in their work. Therefore, the so-called mass-line organizations -- the public security committees (sometimes divided into several groups) formed by elections at the grass-roots level, almost in every neighborhood, factory, village or organization — are considered to be the main channel to the masses. They are instrumental in maintaining and improving public order and constitute a link between the security organs and the masses. It is the reliance upon and coordination with these committees that is described in current police parlance as "the mass-line in policing" ("An outline", 1985:85). "The mass-line" is a product of the early Chinese communists' faith in the innate wisdom of the masses.

The task of the public security committees is to assist security organs in matters of social

order, under the leadership of the local police. They are empowered to monitor and examine potential problems of social order, block opportunities for crime and delinquency and be the first response point when matters are brought to their attention. They cultivate “activists” (*jiji fengzi*) to assist them with their onerous tasks and organize “residents’ picket corps” (*jumin jiuchadui*) for guard and patrol duty. For example, they are supposed to be on the lookout for illegal peddling, black marketeering, and people staying in the neighborhood without proper registration. Once they find suspicious people or activity in the neighborhood, they report to the police and lead them in a surprise nighttime search of apartments or other places. Individuals can be carted off to the local police detention station if they are not able to provide a satisfactory justification for their presence. Unlike Western values, both the traditional Chinese philosophy and socialist ideology conceive the individual to be primarily a member of a network of groups, give priority to duty over privacy, and favor external intervention in personal affairs (Victor Li, 1979:225). Peers, friends and immediate neighbors have little compunction about taking action when deviance is suspected. Since the informer is not an object of disdain as in the West, the public security committees are effective in mobilizing residents in cooperation with the local police.

In order to elicit country-wide, quick- response crime prevention programs and crackdowns, the entire social control system has been mobilized in the name of “legal education”. This includes training the masses to understand specific behavior standards and ways of operation of the social control system and mobilizing and organizing people to fulfill the task of social control. As part of this effort, neighborhood committees often organize local residents to attend sentence-pronouncing meetings and send representatives to attend mass condemnation rallies, and they regularly warn residents to be vigilant against disorder. Individuals who commit deviant acts

may be targeted for criticism at neighborhood meetings and, in some cases, may be subjected to "supervision" or "control" within the neighborhood. Serious crimes and delinquency are likely to bring referrals for criminal processing. Overall, the committees exercise major influence upon the types of behavior to be regarded criminal and delinquent, the targeting of specific persons as suspects of offensive behavior, deciding against whom criminal proceedings may be launched and the exact manner in which the criminal events are handled.

In general, neighborhood committees administer many social control activities and play a very important role in keeping social order. To some extent, decisions at all levels of the criminal justice system rely on consultation with them. Of course, they are not limited to seeking out and responding to incidents of criminal behavior. They also handle many domestic problems (e.g., drinking, fighting, neglecting housework, noise, etc.), inter-family squabbles, etc. Under this circumstance, no individual can easily escape the social pressure to conform to the proper code of conduct which is based on the tradition of more than 2000 years and the communist ideology. In rural China, village officials and party cadres represent the authority of the government to guide villagers to conform with public policy and good conduct standards.

The public security committee established by the Qinghe Street of Heping district, Tianjin has been said to be a successful model because it led to seven 'crime free' years in an area previously renowned for its high rates of crime. Among routine activities of this committee are: patrolling the neighborhood, checking on local security and ensuring that the neighborhood life is run in an orderly manner. They are also charged with the task of organizing educational programmes for the young people of the district. They organize youths into small groups and give lectures on the law and morals. Additionally, they send youths to local factories and farms to

work alongside the laborers. This combination of small group activities centering upon both education and labor was designed to counter the emergence of youth crime and to strengthen the ideological commitment of the young to the socialist legality (Dong and Sun, 1991:81-83).

The economic reform that started in 1978 has weakened community bonds. It might appear logical to suggest that these mass-line organizations have become only historical relics. Contrary to some people's expectations, however, the reforms in policing strategies have led to the strengthening rather than weakening of mass-line style policing. The mass-line organizations still constitute the basis of contemporary community policing. Chinese government has exerted greater effort to ensure that social order in urban areas is maintained. Not only has the number of police officers and resources been increased but also the neighborhood security organizations have been re-emphasized. In this respect, besides the traditional methods, some new methods have been introduced, such as the economic insurance responsibility system (*jingji chengbao zerenzhi*) through which economic inducements and penalties are allotted depending on the level of social order in a certain area. Thus, far from being moribund, the urban neighborhood security committees and groups are growing in city areas, while rural security committees and groups that have not implemented new methods are in decline.

Between 1986 and 1989, there has been a 10.8% increase in the number of public security committees in cities and towns (or an additional 16,414 committees) and a 10.8% increase in membership (or 92,576 people). Over the same period, the rural public security committees have declined. The number of village public security committees fell by 4.5% (or 33,205 committees) in the corresponding period and the participation rate fell by 7.3% (or 209,911 people). Other public security organizations also show the same trend. For example, the number of small public

security groups in cities and towns grew by 20.4% (or 80,549) over this period, while the village public security groups fell by 28% (or 629,830). The number of members active in the city and town groups grew by 19.1% (or 207,979 persons), while active members in village groups fell by 9.1% (or 396,976). By 1991, urban and rural communities have formed 1.17 million public security committees, whose 12 million members were responsible for organizing local residents to maintain social order (Wang Zhongfang, 1989; Law yearbook of China--1991, 1992).

At the neighborhood level, the mediation committee is another main factor in the functioning of the Chinese legal system and social control system. The unusual importance of mediation may be one of the most striking aspects of the social control of China. The mediation committee serves the purpose of both settling civil disputes and disposing minor criminal matters, such as minor theft, disorderly conduct, simple assault and fighting, and educating the people about the law and consequences of disobedience.

The mediation committee can be said to be a direct offshoot of the theory and practice of social control. To the Chinese, law is not an ideal mechanism for solving social disputes. Chinese have traditionally favored mediation and compromise over litigation. They do not wish to have winners and losers as in an adversarial process. There is a deeply entrenched disrespect for the legal process and a concerted attempt to mediate and avoid losing reputation. The Chinese have long believed that behavior which is directed by moral values is far superior to behavior which is coerced by laws and fear of punishment (Li, 1978). Therefore, in traditional and even contemporary China, involvement in the courts is an experience to be avoided. A Chinese proverb suggests "It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit." This thought may originate from Confucianism:

According to Confucianism, the legal process was not one of the highest achievements of Chinese civilization but was, rather, a regrettable necessity. Indeed, it was usually considered disreputable to become involved in the law courts, even as a party with a legitimate grievance. A lawsuit symbolized disruption of the natural harmony that was thought to exist in human affairs. Law was backed by coercion, and therefore tainted in the eyes of Confucianists. Their view was that the optimum resolution of most disputes was to be achieved not by the exercise of sovereign force but by moral persuasion. Moreover, litigation led to litigiousness and to shameless concern for one's own interests to the detriment of the interests of society (Cohen, 1967:59).

Confucian values emphasize not the rights of the individual but the functioning of the social order, the maintenance of the group. Ideas of order, responsibility, hierarchy and harmony were enshrined in the prevailing social norms, the *li*, which were approved patterns of behavior prescribed in accordance with one's status and the particular social context. Harmony was the preeminent idea. Once it had been disturbed it could best be restored through compromise. If a person felt he or she had been wronged, the Confucian ethic taught that it was better to suffer a little and smooth the matter over rather than make a fuss over it and create further dissension. If one was recognized as being clearly in the right in a dispute, it was better to be merciful for the sake of the group solidarity rather than exact one's pound of flesh and further alienate the offender from the group (Cohen, 1967:59-60).

Based on Chinese traditional values, mediation has been emphasized in both traditional and contemporary Chinese society. In the ancient China, for example, during the Qin dynasty, elders, village gentry, clan leaders and guild members dealt with a great many instances of antisocial conduct and in doing so they did not confine themselves to persuasion. Respected friends, relatives, neighbors and middlemen also played a role, especially in helping to adjust minor frictions. Moreover, minor criminal cases that did reach the magistrate's *yamen* (office)

were sometimes referred back to the relevant local group for informal handling, even though this appears to have violated the laws of the Qin dynasty (Cohen, 1968:98).

Chinese communists consciously built upon the traditional Chinese preference for coping with disputes and antisocial conduct by means of persuasion and informal pressures and, after 1949, immediately established extrajudicial mediation committees at almost every corner of Chinese society. Even prior to 1949, all of the major areas liberated by Chinese communists had established such mediation committees. The 1982 Constitution of the People's Republic of China, Article III, gives explicit recognition to the existence of the mediation committee:

The relationship between the residents' and villagers' committees and the grassroots organs of state power is prescribed by law.

The residents' and villagers' committees establish committees for people's mediation, public security, public health affairs and social services in their areas, mediate civil disputes, help maintain public order and convey residents' opinions and demands and make suggestions to the people's government (quoted from the English translation of the 1982 Constitution of the PRC).

The term "mediation" here refers to the range of methods by which parties seek to resolve, by an extrajudicial process, a civil dispute or dispose a minor criminal matter without imposing binding decision. It also is a means by which justice is provided at the lowest level — the neighborhood.

Mediation committees operate at the neighborhood level in large urban areas, villages, and in mining communities. The membership of mediation committees is established on the basis of popular local elections and includes mainly the local cadres and some volunteers. Terms of service are for two years with re-election permissible. The basic qualification for running in these

elections is an interest in helping with neighborhood mediation.

In the process of mediation, the mediators may not only establish communication between parties but may define the issues, decide fact and recommend the terms of a settlement. They even may make a tentative or advisory decision and mobilize such strong political, economic, social and moral pressures upon one or both parties as to leave little option for them but to comply. However, mediation is optional. People are free to utilize the courts to solve their disputes. Moreover, if any of the disputants is dissatisfied with the outcome of the mediation process, the case may still be taken to the courts.

Regarding minor criminal cases, such as assault or petty theft, mediators seek to prevent the invocation of formal criminal processes through the use of re-education, peer pressure, publicizing the incident in the community, reparations to the victim, and counseling. They do not label individuals as criminal and have no authority to inflict criminal punishment. The police may be invited by the committee to offer advice and help, but they are not a formal part of mediating minor offenses. They do not formally charge a person with an offense at the mediation committee level. To most Chinese minds, the minor criminal offenses brought to mediation are hardly proper for formal punishment. The corrective actions such as restitution of the property, public obloquy, or full payment for damage inflicted are considered to be sufficient when coupled with the remedial actions mentioned above. Surveys (Jiang Bo and Dai Yisheng, 1990) conducted in some provinces, municipalities and autonomous regions show that criminal cases resulting from aggravated civil disputes constitute a large part of all criminal offences. In some places, cases of intentional homicide resulting from civil disputes made up to 80 percent of all cases of homicide. Mediation among people is believed to play an important part in reducing such crimes. As Yang

Yonglin, the former Vice Minister of Justice, said: "When a mediator discovers a problem he has an obligation to go to those people. I believe if this were not done the problems would get larger" (Delegation Journal, 1983:31). The principle of mediation is to intervene at the first stage of trouble. This is believed to be a proactive measure of crime prevention.

People in contemporary Chinese society still faithfully follow the instruction of Mao Zedong that "disputes among the people ought to be resolved, whenever possible, by democratic methods, methods of discussion, of criticism, of persuasion and education, not by coercive, oppressive methods" (Mao Zedong, 1957:5-6). Using persuasion-education and mediation to handle disputes among people is still a firm policy. The basic method is to conduct energetic political and legal education of the vast masses of people and propagandize law and discipline, thereby heightening their political-legal awareness and preventing or reducing the occurrence of disputes. Of course, with the changes of the situation, some new methods and forms of mediation have been adopted to correspond to the different nature of disputes. Yet, at present, most civil disputes between individuals are still settled by extrajudicial mediation. According to the statistics (Jiang Bo and Dai Yisheng, 1990), in 1987, there were 980,325 mediation committees and a total of 6,205,813 mediators in China. These mediation committees settled over 14 million cases of civil disputes.

In general, emphasizing informal and community-based models of conflict-resolution appears to contribute to preserving traditional values. In the contemporary Chinese society, such social institutions as family and community, although less conspicuous and apparent, are still believed to be effective in correcting and controlling crime and delinquency while at the same time supporting the formal criminal justice system.

2. 4 The System of Household Registration

The system of household registration that operates as a means of policing and controlling the country and its people has had very long history in China. The practice of community-based social control through the use of household registration dates back as far as the Western Zhou dynasty (1022 BC to 771 BC) , an era prior to the unification of China. Starting with the Qin dynasty, the *baojia* system of household registration has been used to control the community through an emphasis on the functions of mutual-help and mutual-aid. Although different modes and systems of registration were implemented throughout the dynasties, the *baojia* was one of the most important household registration systems. Its main principle was to organize people into groups of families which would be mutually responsible for each other's behavior.

With the establishment of the *baojia* system, the imperial Chinese government officially incorporated the family organization as a vehicle for ideological control. Usually one thousand households (*bao*) were placed under the control of the *baozhang* (the head) who supervised the moral and political conduct of the households and reported crimes against the imperial and local order to the local government (Lang, 1946: 17). The *baozhang* also took the official census, as all male members of each household were required to register with him. This system symbolised specific efforts by the imperial government to develop a system of self-policing for the general population. It was designed to deter criminal conduct through fear and suspicion because every person was a potential informer (Hsiao, 1960: 45-46). According to Levy (1949: 239), another important effect of the *baojia* system was the tendency to offset the self-interest of individual

families within the village or district. This is especially significant since members of the gentry were not excluded from control by the *baojia* although they were forbidden leadership positions within the system (Hsiao, 1960: 67).

In different historical periods, there existed other household systems. For instance, in the Qing dynasty (1644--1911), the imperial government created the *She* (community) which was a rural division of 20-50 households (Hsiao, 1960:67). The *She* basically functioned as a mutual assistance organization of farm households, which over time came to assume police functions. The *She* is an example of the imperial government transforming organizations of rural family into instruments of social aid and relief. But, like the *baojia*, it was also instrumental in administering and maintaining the local social order.

The *baojia* system extended beyond the imperial period into the Republican period (1911-1949). In order to increase the effectiveness of governing such a large population, the *Guomindang* government developed the system of collective responsibility, or *baojia*, rooted back in the previous imperial period. According to Yang (1959:102-104), this system was based on the family as the primary unit of collective responsibility for the proper and law-abiding behavior of all its members. Ten families formed a *bao*, and ten *bao* formed a *jia*. Each family sent a representative to elect the head of a *bao*, and the head of the *jia* was each elected by the respective constituting representatives. The headship of these units of collective responsibility was thus set up by indirect election which became official only after the government had formally appointed them. Under this system, the line of authority was from the top down, the head of each unit being responsible not to the constituents below but to the superior chiefs above. The *baojia* therefore took on the nature of an extension of the centralized system. The main function of this

collective responsibility system was to assist the government in the administration of law, the execution of policies and control of crime and disorderly elements. The head of each unit organized a self-defence unit and was held responsible to the superior chiefs for the good conduct of all constituents and for transmitting to them governmental laws and orders. He and all constituent members were held collectively responsible for anything that went wrong, and especially for harboring any illegal elements in the locality, the crime of one individual in theory bringing punishment to all. As a part of routine function, the head of each *bao* unit maintained records and reported regularly to the superior chief on births, deaths, marriages, movements of the constituents, and any illegal acts found among them.

Through the *baojia* mechanism, combining with the kinship system and other local informal power structure, the social order was maintained effectively, especially in the rural areas. Many aspects of Chinese society have contributed to shaping this structure for maintaining public order. For example, in traditional China, urban and rural dwellers seldom changed their residences. Neighborhoods remained closely knit communities. Especially in rural areas, most villagers stayed in one location for generations and knew each other intimately. Under the circumstances, everybody was likely to know everybody else and notice most of what happens. Therefore, mutual surveillance and peer pressure was extremely effective.

With the growing influence of the West in the late 19th century, policing, in the modern Western sense, came into being and resulted in the change of traditional *baojia* system. According to Wen Juntian (1988:4), "the essence of *baojia* changed, the administration of public security and the *baojia* administration, which had previously been separated were now brought together." Indeed, this change was considered to be a major reform that laid the foundation of the modern

Chinese police system. According to Hao Chang, a famous scholar of Chinese history, the reform meant "...improvements over the traditional *baojia* system in order to strengthen organization and order at the grass-roots level of local society" (Hao, 1980:303).

After the establishment of the People's Republic of China in 1949, there was a transition from the *baojia* to the socialist form of registration, the *hukou*, an administrative system of household registration (HRS). While a system of household registration continued to operate, it assumed a different content and purpose. According to "The Regulations on Household Registration in the People's Republic of China", issued on January 9, 1958, the goal of the new household registration system was to "maintain social order, to protect the citizens' rights and interests, and serve socialist construction." Unlike its predecessors, the new registration system was concerned with the national economy and state planning rather than household economy; it was designed to geographically organize and demographically secure labor supply at the site of production rather than establish an ethical regime based on community mutuality. Additionally, it offered accurate, up-to-date population data for human resources management. Socialist registration, in as much as residency and work are concerned, is governed by an unified national plan. The *hukou* is an important and indispensable feature of Chinese socialism. As Dutton states:

The new system for the registration of households, ... is not simply the re-emergence of some feudal notion of collectivity but, instead, draws quite heavily on a Marxist tradition of centralized economic planning. It is, after all, within certain Marxist traditions that an ethical privileging of the workplace takes place. Moreover, central to virtually all existing socialist states is the notion of a central economic plan and a strong disciplining of labour. The register has shifted from disciplining the home to disciplining the place of work. There is little in this that resembles the *baojia* of old (1992:190).

This shift has established a new ethical regime, which centres not on oeconomy but on economy, not on family and government but on work unit, government and economic planning. In other words, the record is based not on family and community as sites of moral training to construct the virtuous subject but on the work unit and production as the socialist equivalent (1992:219).

While functioning as an important structure of policing and social control, the *hukou* carries out the vital task of controlling the movement of the population so as to maintain a sense of stability. In particular, it acts to forestall the occurrence of large scale migration of the rural population into the cities. Because China has an enormous agrarian population, its land resources are insufficient. The existence of surplus rural labour is thus inevitable. Disparities also exist between the levels of economic development in the cities and countryside. Apart from political and economic considerations, unchecked rural-urban migration can be hazardous to social order and public security. Therefore, *hukou* is one of the main instruments of controlling both deviance and migration.

In Chinese cities, all residents are legally required to have household registration books (*huji bu*). There is no single unified format of a household registration book because registration is administered at the municipal rather than the national level. However, they are essentially the same and include the basic information for all family members, such as the person's name, nationality, birth date, occupation, place of work, family background, civil status, and ancestral place of origin. The head of the family (usually husband) is responsible for keeping this book up to date, and for reporting births, deaths, or other changes to the local police station.

This system is very important for keeping under control all citizens of a city, not just criminal transgressors, because its functions go far beyond ordinary public security and control

of clearly criminal deviance. Any urban resident who wishes to obtain a regular job, school admission at all levels, housing, marriage certificate, or (from the early 1950s to the early 1980s) rationed food and clothing must have valid household registration. It is the basic identification instrument of every urban citizen throughout his or her life.

The household registration system is administered by *gong'an* organs (police). A neighborhood police station is established in every community. Since the early 1950s, each neighborhood police station has to have a "household registration section" or a "household registration group" (*huji ke* or *huji gu*). The census police officer in a neighborhood station is responsible for all families living in the defined geographical area. He or she will record births, deaths and movement of people into and out of this area. A person wishing to move out of an area, or take a trip to the frontier areas must obtain permission, usually in the form of a certificate, from the local police station. A person moving into or visiting a neighborhood for a certain time must register with the police, too.

Since 1978, the economic reform has brought about tremendous economic growth and development. The rate of urbanization has been on the rise since then, with the overall city population increasing at an average annual rate of 16.1%. The number of large cities with population in excess of 1 million has increased from 13 in 1978 to 25 in 1987 (Zhao and Guo, 1993). Modernization and industrialization have attracted the surplus labourers to move from rural areas to the cities. With the breakdown of the system of the people's commune³, the new rural responsibility system⁴ has created millions of surplus peasants in the countryside. They are moving to the cities to seek employment. For example, in 1985, the number of temporary residents in Beijing was 660,000 which constituted 12.6 per cent of all residents (Beijing Wanbao,

1985). By 1988, the floating population of Beijing reached 1.15 million (Renmin Ribao, 1989). In reality, the problems Beijing faces are now common to all Chinese cities. At the same time, state enterprise reforms in the cities have made many urban workers redundant. Some of them migrate to other cities in search of work. To recapitulate, the combined forces of the urban pull and rural push triggered off an unprecedented wave of spontaneous migration in China at the time when rationalization and marketization of employment policies reduced demand for labor.

Migrants offer a source of cheap labour supply to enterprises in the cities. They, however, also contribute to both the planning problems, related to such areas as transportation, housing, provision of public utilities and pollution, and the law and order problems, such as increased crime and reduced ability to monitor and control the movement of people. They venture into the cities seeking better paid jobs and an improved standard of living. Many, however, experience disappointment and dissatisfaction. When job opportunities are not forthcoming or when the harsh working environment becomes intolerable, some migrants may turn to crime. At the same time, conflicts often occur between migrants from different provinces owing to their diverse background. There is a greater tendency to resort to violence to settle their disputes as a result of the frustration and pressure they experience. Reports of migrants being culprits of social disorder and other delinquent acts are common. The Ministry of Public Security, Research Unit No.5, asserts that criminal gangs have taken advantage of the reduced ability of police to monitor and control the population of the cities where there has been a large enough influx of people to conceal their activities. They point to the rapid increase in the crime rate as corresponding with the growth in the transient population (Yang and Wang, 1993). The types of crime alleged to be perpetrated in large or medium cities are of an increasingly violent nature and

encompass new forms of criminal behavior (Zhao and Guo, 1993). A report in the *Renmin Ribao* (People Daily, 26 February 1989) accused the floating population of being a disabling force in cities. It pointed out that in 1988, 50,000 migrants were arrested, that is one in a thousand people constituting the floating population. Xu Miaofa (1989) conducted research on crime and the floating population in 1987. He concluded that substantial increase in the temporary population within a community led to an increase in the crime rate. Because:

mixed in with the outsiders are criminal elements who take advantage of economic activity and become part of the mobile population moving hither and thither and committing crime. From an examination of various large, important and particularly vicious cases it can be seen that there has been a very sudden increase in the number of outsiders committing these types of crime (1989:38).

He illustrated this with some examples. The records of a number of courts in Zhejiang and Fujian Provinces show that of the 55 criminal convictions in a district court of Hangzhou in 1987, 87 per cent involved outsiders. In Fuzhou, of the 627 convictions registered throughout the city in 1987, 31 per cent involved outsiders. What his research indicates is that things have changed so much in the period of economic reform that when it comes to criminal activity, one can no longer simply look at the permanent household register (Xu, 1989). Nevertheless, it should be noted that official data may exaggerate the share of migrants among the perpetrators of crime. Outsiders are more visible than local residents and social reactions to their behavior may be differential. As a result, they are more likely to be reported to the police and less likely to be dealt with by local community.

The increasing level of labour mobility and the rise of free markets greatly undermined

the effect of the *hukou* and its ability to monitor and contain the movement of the population. The *hukou*, once an effective and important mode of controlling the movement of the population, has proved to be inadequate and ineffective to serve its principal task of keeping rural people from the cities. The floating population usually moves to an area on a temporary basis only, and so would not be registered as residing in the area where they are working. The *hukou* control methods, developed for a stable population, have been jeopardised with the breakdown in the effectiveness of the system of household registration. By 1984 - 85, urban reform measures were called for when it became apparent that the *hukou* could no longer keep the surplus peasants in the rural areas. Facing the difficult situation, the Chinese government had to come up with a practical solution to meet the pressures generated by increased urbanization. As a part of this effort, a supplementary system of issuing Personal Identity Cards (*shenfenzheng*) was established in 1985 by the Law on Regulations Governing the Personal Identity Card of the People's Republic of China. According to the Regulations, all adult citizens (18 or over) were issued with personal identity cards to establish their citizen status. This system was mainly designed to overcome problems such as the inability of people to establish their identity by an official document when they moved away from their place of household registration. The Personal Identity Card is, to some degree, a modification of the *hukou* rather than a substitute for it. It only takes over the nonterritorially based policing functions of the register, while the *hukou* is still used as an important reference in addition to the Personal Identity Card. The Personal Identity Card system is, in essence, a system of registration by which the movement of population is monitored, policed and managed. Dutton argues that the Identity Card System strengthens rather than replaces the *hukou* in that the former territorial based system of population control is now being

improved and can extend to the population in transit. He points out that "previously, most policing had been conducted at the points of departure and arrival, through the household registration system... With the introduction of the identity card system, China has a uniform system by which to efficiently and effectively monitor the moving population" (1992:334-335). Therefore, this system offers a simpler and more direct means of policing the migrants. At present, this system has been fully implemented all over the country, and travel without the Personal Identity Card is impossible.

Issuing the Temporary Resident Card and Work Permit is another important measure. In order to resolve the problems posed by migrant workers, it is deemed essential to ascertain and contain the size of the migrant population. By 1985, a scheme under which migrants were required to register with the neighbourhood committee and in turn obtain a temporary resident card was adopted on a nation-wide basis. Solinger (1985:101) indicates that "the regulation appears to acknowledge that outsiders have come to the city and may stay there, ...and that they have economic motives for this move," "...it could be an indication that controls now are aimed more at managing population, household registration and food supply than at economic behavior and hiring practices".

It is thus clear that different modes and systems of household registration have been implemented throughout Chinese history. Although they were subject to different influences of Legalism, Confucianism, and Marxism, these systems have always been constructed upon and organized around the household and the community. The internal order and relations of the family and community were thus linked to the order and stability of the state. Apart from providing a structure for promoting mutual aid and support in the community, the registration systems have,

to a greater or lesser degree, featured the masses as a means of policing by obligating households to mutually check on one another. This function has continued under socialism.

2.5 Campaigns

Campaigns (*yundong*) are an ubiquitous phenomenon in contemporary China. Almost everyone in China has experienced one campaign or another in his or her lifetime. Campaigns are as common to the Chinese people as elections are to the American people. Used as a means of social control, campaigns reflect a unique characteristic of Chinese society. Perhaps only in China, millions of people can be mobilized to participate in campaigns.

Campaigns refer to massive mobilizations of manpower, material resources, time and energy to achieve certain goals. Mao Zedong, the chairman of the CCP, once equated the political campaigns he launched with tidal waves and suggested that there was "no need to be afraid of tidal waves; human society has evolved out of 'tidal waves' " (Mao Zedong, 1970:114). Consecutive Communists governments have followed this "tidal wave" strategy as they have launched massive assaults upon crime, delinquency, or other deviant activity.

Campaigns are a product of "mass line" advocated by Mao Zedong and his comrades. Chinese communist leaders have a profound understanding of the importance of co-operation of the masses in successful crime control. Therefore, the Chinese crime control policy is expected to rely mainly on the "mass line" approach, which means that the people are mobilized for preventing crime and maintaining social order as part of a broad-based comprehensive system to address the crime problem. The "mass line" is a tradition of the Chinese Communist Party. The

experiences of the long-term struggle against the rule of the *Guomindang* convinced Mao Zedong and his comrades of the invincibility of mass movements and their potential as a revolutionary weapon. The “mass line” instructs the party members to maintain constant contact with workers and peasants by listening to them, experiencing their way of living, and working with them. Otherwise, “bureaucratism” will undermine the party’s representation of the people and its leadership of the revolution.

Crime or deviance control campaigns have a long history which can be traced back to the Anti-Rich-Peasant Campaign of the Jiangxi Soviet period (the late 1920s - the early 1930s). The Rectification Campaign of Yan’an in 1942-44 is acknowledged as the most pertinent predecessor to the modern deviance control campaign. The other pre-Liberation campaigns include the campaign against landlords and rich peasants carried out in the early stages of the Land Reform Movement in the liberated areas and the rectification campaign that succeeded it. The period after 1949 is marked by a series of deviance control campaigns. They mainly include the Campaign Against Counterrevolutionaries and the Thought reform Campaign of the early 1950s; the Campaign Against the Worship of America carried out as a part of the Resist America and Aid Korea Movement; the Campaign Against Bourgeois Influence in the mid-1950s; The Anti-Rightist Campaign in the late 1950s; the Socialist Education Campaign in the early 1960s; the Great Cultural Revolution Campaign in the 1960s; the Campaign Against Confucius and Lin Biao in the mid-1970s; the Severe Strike (*yanda*) Campaign Against Street Crime in the early 1980s; the Public Legal Education Campaign in the mid-1980s and the early 1990s’ Campaign Against “Six Evils”(*liuhai*) that targeted prostitution; producing, selling and spreading pornography; kidnapping women and children; drug cultivation, processing and trafficking;

gambling and defrauding people by superstitious means (Zhu, 1994).

In socialist China, campaigns, as a means of social control, may be divided into two categories: mass campaigns and anti-crime campaigns by criminal justice organs.

Mass Campaigns

The mass campaigns typically aim at the eradication of erroneous ideas and the reform of the persons who hold them. Therefore, criticism and self-criticism are often considered as a process of "cleaning out" or "washing away" the "dust" and "dirt" that accumulate in the mind. In another image, it is seen as a "cure" for the "germs" and "infections" that "contaminate" one's thought (Mao Zedong, 1966:2-3). In such mass campaigns, a multifarious array of products, including new speeches, new forms of organization and communication, new activists, new individual and organizational models, and even new types of deviants, such as "rightists", may be produced.

Among many new forms of organization, the "small group" (*xiaozu*) is perhaps the most strategic organizational unit. These groups are formal and are often utilized for the enforcement of behavioral norms promulgated by the government. In schools, factories, offices, military units, urban neighborhoods, and even penal institutions, individuals are organized by authorities into small groups. These groups serve routine functions of political and ideological socialization and social control.

One of the important activities of the small group is to engage in "study", involving reading, explaining and discussing many kinds of material. These materials range widely and usually include the documents of the Party and government, laws and regulations, newspaper,

history, art and literature. As Li (1978) points out, privacy is not a cherished value. Each person has a social duty to participate in group activities and to help others in the collective living arrangement. The group, whether it is the working unit or the neighborhood community, is expected to resolve difficulties before they escalate to major problems. The mandate to help means assuming responsibility for others and correcting their faults. The group is encouraged to study documents and important materials and discuss them in detail. Newspapers, for example, are not only a chronicle of daily events but also a means by which messages are sent from the central authority of the state to the masses. Social control is not predicated on a model of coercion but on an educational process whereby the individual internalizes expected patterns of behavior. It is assumed that through engaging in constant study, everyone should become familiar with social norms and rules and the consequences of transgressions.

Not only do small groups engage in "study", they also carry self-criticism and mutual criticism. In fact, self-criticism has been regarded as a means of social control in Chinese society for a very long time. Perhaps, this attitude originated from the Confucian ideology. According to that ideology, when a gentleman was treated by another in an unreasonable manner, he should attribute the difficulty to his own personal failings, acknowledge his misconduct and correct his ways without blaming anyone else or the society for his supposed failure. By improving his own behavior, he would evoke a positive response from the other persons and thereby put an end to the matter. As a gentleman, he should not persist in the exclusive correctness of his own position, but settle a dispute through mutual concessions that permitted each to save "face". In contrast, a law suit causes one party to lose "face" (Cohen, 1967:60). In Chinese society, the attitude of self-criticism has been considered to be very important, especially in regulating one's deviant

inclinations, because it may influence individuals not to take lightly their personal engagement in crime. Therefore, self-criticism as well as criticism by others have been actively encouraged. Based on this consideration, the small groups hold regular meetings and evaluate their work, academic study or other activities in light of the demands and standards presented in their study materials. Individuals who have been perceived as deficient in some respect are expected to scrutinize their own conduct for deficiencies, to engage in self-criticism and remedial actions, and to receive criticism and advice from other members to help them eliminate harmful attitudes and values and get them not only to comply with society's norms but to believe in their legitimacy. These small groups are an effort to preempt or co-opt informal primary groups that would otherwise exist in large-scale organizations in order to insure that individuals are surrounded by social pressure in support of official goals. Martin King Whyte (1974:2) points out that these small groups tend to derive their fundamental strengths as the socialization and social control agents from their face-to face character. They consist of people with whom one has a great deal of contact, such as fellow workers, classmates, colleagues and immediate neighbors. As such, any peer pressure applied by the small group is extensive and effective.

I will illustrate social control in modern China with an example of "the public legal education campaign," initiated in the mid-1980s. I have picked this campaign because it attempted to teach virtually every citizen about law and the legal system and represented a massive social control effort. Learning lessons from the "Cultural Revolution", Chinese government realized that in order to make law a key instrument for achieving social stability and social justice, it was necessary not only to train thousands of professional legal personnel but also to reverse the distrust of law and legal procedures long reflected in popular attitudes and habits. Law, either in

a formal or informal style, was defined as an important agent of socializing and inculcating people with the socialist morality. Consequently, since the inception of the "public legal education campaign" there has been much stress on the educational function of legality. It is premised on the belief that crime can be prevented and individuals' legitimate rights can be protected by educating people about laws; since thought and belief precede and produce behavior, proper education and training will produce law-abiding citizens.

China does not have a tradition of placing strong reliance on legal rules and procedures. For a long time, Chinese have been guided not by law but mainly by broad moral norms. However, the absence of clear legal guidelines and regular and reliable court procedures often leads to confusion about rights and obligations. According to Zou Yu, former Minister of Justice, a large number of people including many high-ranking officials are unfamiliar with the new laws and have a poor sense of legality. In order to equip Chinese people with the "knowledge about the country's Constitution and basic law", Chinese government launched an extensive and long-term public legal education campaign to enhance compliance with the law and instill faith in the formal legal process (China Daily, 1985:3).

The public legal education procedures were initially introduced in 1979. By 1986, these procedures were enforced by a special campaign. In June 1985, Minister Zou (China Daily, 1985:3) announced a five-year legal education campaign based on the Resolution on Carrying on Public Legal Education in China, which was promulgated by the Thirteenth Session of the Standing Committee of the National People's Congress (NPC), on November 23, 1985. The campaign was launched in 1986 and involved use of the media and has been implemented through judicial organs, work units, schools and neighborhood committees.

The mass media play an important role in legal education. A very large proportion of the laws and regulations are articulated and communicated through newspapers, magazines, radio, and other media. The media prominently display stories about legal cases and laws. Since the mass media can convey only broad ideas, Chinese laws may appear to the Western observers to be statements of general principles or policies rather than a set of detailed rules. However, using the mass media to communicate legal norms directly to the public, China in effect has taken a path to overcoming the public's ignorance of the law. China does not subscribe to the legal fiction that everyone knows the law, but instead has carried out a massive program of public education about law.

Legal education effort in the school may be the most important. Schools have made their legal curriculum more specific. In elementary school, traffic regulations and parts of the social order management regulation are taught. In middle school, the Constitution and some basic laws are taught. At colleges and universities, the emphasis is on a comprehensive theory and practice of law. In other institutions of higher education, a specialization in legal education has been introduced.

Judicial organs and police departments at all levels also positively participate in this campaign. Mass trials and public judgment meetings were used to dispense people's justice and perform not merely a deterrent function but, more importantly, a propaganda-education function of heightening the people's legal awareness. The educational function of the judiciary is also realized through such mass line devices as bringing the courts to the people, distributing case materials to people for discussion and giving speeches to masses to explain the law and legal system. The educational role and activities of police are basically the same as those of judicial

organs. A police officer in Suzhou described the work of the police as follows:

Legal education is our daily work -- to teach our national laws and decrees. To enforce these laws, a "Month of Propagandizing Laws" was established. We use typical case for education, which means we hold seminars and use examples of reformed criminals to help those in worse trouble. We go to the masses with propaganda talks, slide shows, etc. We try to put a sense of abiding the law into the people (Delegation Journal, 1982:39).

The legal education efforts are massive. By the end of 1989, about 300 million Chinese have received a systematic legal education (Jiang and Dai, 1990:6). Educating the public to believe in and to rely on the law -- in reality a complete reversal of a deeply entrenched attitude of disregard and distrust -- is certainly an ambitious undertaking. Is legal education working? Does it in fact lead to a reduction in crime and delinquency? It is a difficult question for me to answer because I do not have enough data. However, some studies do suggest that the legal education campaign has the potential to affect the thinking and behavior of Chinese citizens. After visiting China and reading many reports related to this field, R. Randle Edwards concluded that the public legal education campaign in China "is making genuine headway in disseminating information about law and legal procedures and in spreading the expectation that citizens' rights and interests will receive effective protection from an increasingly comprehensive socialist legal system" (1984). Andrew Nathan (1985: 169) also found that 89 percent of his Chinese respondents spent at least half an hour a day reading newspapers or listening to broadcasts over radio or the loudspeaker. After assessing his interviewees' knowledge, he concluded that the Chinese media were effective in conveying political information in 1970s. If we apply Nathan's research to the public legal education campaign, we can reasonably conclude that the majority of

Chinese have become aware of the new laws and legal system. In fact, I, a Chinese man living in China, also was deeply impressed by the legal environment in China as more and more people around me were seeking judicial channels to solve the civil disputes and minor criminal problems they encountered. Therefore, I believe Andrew Nathan's research conclusion and assume that, at a minimum, the legal education campaign would have some effect on people's attitudes. In any case, Chinese officials are convinced that the campaign is working and will lead to success. Perhaps precisely because of this, the legal education campaign did not end in 1990, only changes were made in strategy and tactics.

Anti-Crime Campaigns by Criminal Justice Organs

The aim of these campaigns is to launch a sharp attack on some particular types of crime in very limited periods of time in order to curb "the tidal waves of crime." For example, since 1978, the policies of open-door to the outside world, the development of special economic zones, joint ventures, de-collectivization, the responsibility and incentive-bonus systems, semi-free market, and economic liberalization in general have brought about a rapid economic development, but they are also believed to have a great impact on the crime situation and create criminogenic conditions (Bonavia, 1983:52). By mid-1983, the recorded crime rates significantly increased and some criminal activities were "running wild and seriously endangering the state and its citizens" (Zhu Mingshan, Vice-president of the Supreme People's Court, quoted by Zhang, 1984:19). According to An, an editor of Beijing Review (An, 1983A : 4), the crackdown against serious crime followed a period in which authorities had failed "to take effective measures against lawlessness". He expressed the new political mood when he said:

For a time, some public security and judiciary workers put undue emphasis on educational work and, where severe punishments were needed, favored leniency. The result was that ... some hardened criminals continued to perpetuate outrages, to the great distress of the people around them. Recently, murderers, robbers, rapists, embezzlers and other lawbreakers have been rounded up and duly punished (An, 1983A:4) ... Meting out stern punishment, including the death penalty ... not only give[s] these lawbreakers what they deserve, but also serve[s] as a warning to other offenders and prevents further crimes (An, 1983B:4).

The mounting crime problem by the early 1980s became a serious internal political problem which threatened the economic reform and social stability. In response to this situation, a campaign against street crime so-called "severe strike" (*yanda*) was launched by criminal justice organs in August, 1983. In the severe strike campaign, criminal justice organs concentrated their main forces and resorted to more coercive means against certain types of violent crime. In order to facilitate arrests, detentions, and prosecution, the National People's Congress (the legislative organ) enacted some new laws and regulations and amended parts of the Criminal Code. According to these laws and regulations, perpetrators of the targeted crimes were to be sentenced more severely and summary trial procedures were to apply to them.

This seemingly popular campaign against street crime was believed to have the desired effect and led to a decline in the rate of crime. As a result of this campaign, social order was declared to be close to its highest level since the founding of the People's Republic of China. In April 1984, officials of the Ministry of Public Security reported that the nation's crime rate had decreased 42.5 percent for the three month period ending November 30, 1983 compared with the same period of 1982 (Weisskopf, 1984) and the nation's crime rate had decreased 44.7 percent during the last four months of 1983 compared with the first eight months of 1983 (Zhang, 1984:20).

The perceived success of this campaign resulted in campaigns playing a more and more important role in controlling crime and setting the trend for future actions. It could be expected whenever any specific type of crime emerged as worrisome, a campaign would be launched to force down the number of offenses. In 1989, another campaign was launched to fight crime following claims of moral decay in society. This campaign was against the so-called "six evils" (*liuhai*): prostitution; producing, selling and spreading pornography; kidnapping women and children; drug cultivation, processing and trafficking; gambling and defrauding people by superstitious means. According to Jiang Bo and Dai Yisheng (1990), this campaign also had a conspicuous effect. By 1990, over 213,000 cases involving 770,000 people who were arrested for one of the six evils had come to light. Of these people, 6,129 were given criminal sanctions, 5,650 were given a period of reform through education under the administrative law, and the remaining 586,000 were punished under the public security regulations. It was concluded that the campaign "played an important role in maintaining order, ensuring the healthy growth of young people, fostering socialist culture and ethics and winning the warm support and approval of the people" (1990 : 4).

2. 6 Conclusion

After 1949, the Chinese government quickly re-established the social control system because it did not assume that the transformation to socialism and other reforms would automatically make the society safe and peaceful. Therefore, it has constantly made vigorous efforts to keep public order. The control mechanism is intended to ensure, as much as possible,

that the whole society has no “dead corners”, that is, areas where crime and delinquency can develop due to the lack of effective supervision. Besides centralized control systems, such as a hierarchical Communist Party, state control over the mass media and an extensive police system, a highly penetrating grass-roots organizational network plays an important role in promoting tight social control and orderly behavior in Chinese society. While it may have some specific predecessors, such as the traditional *baojia* system used to enforce mutual responsibility for dealing with criminal and other deviant acts, the present network of groups founded by the state is far more penetrating and effective.

The Chinese social control system relies strongly on mass participation. Neighborhood committees, including public security committee and mediation committee, mass campaigns and even community policing all illustrate this principle. The social order in China is maintained by “the capacity of society’s members to understand one another and to act in concert in achieving common goals through common rules of behavior” (Johnson, 1983:152-153). The heavy emphasis is clearly on informal rather than formal methods of social control and on prevention rather than rehabilitation.

In spite of the founding of the People Republic's of China in 1949, Confucian thought continues to be important and still has a great impact on Chinese thinking and behavior. Indeed, the Chinese government has abolished many old traditions, but many ideas of Confucian tradition have been kept as useful also under socialism. Family ties are strong and family is still regarded as a main institution of social control. This is not to suggest that modern China is only a simple extension of the old traditional society. There are, however, some cultural continuities.

Nowadays, Chinese authorities are formalizing a new social control system. This system

emphasizes both the informal control by masses and the formal control by criminal justice organs. Therefore, besides strengthening the existing mechanisms, there is a massive effort to develop new laws and regulations and strengthen the criminal justice system. The public legal education campaign and the anti-crime campaigns by criminal justice organs are a part of this effort. They are counted on to lead to the effective solution of the crime and delinquency problem.

In general, the Chinese social control system appears very effective because Chinese society is much more orderly now than it was before 1949 and it is probably more orderly than most societies in the West. After 1949, during most periods, crime has been seen as a relatively minor problem. For long periods in the 1950s and 1960s, people felt they could walk alone at night with no real danger, and they had little fear of criminal victimization. Of course, the perception of crime and actual crime rates are not the same thing. However, perception of crime, to some extent, can reflect actual situations or at least some public concerns. I can illustrate the efficiency of the social control system with an example. During 1959-61, misguided economic policies and natural disasters resulted in a serious famine all over China. Famine alone killed about 20-30 million people (Kane, 1988). If this had happened in traditional China, there would have been a revolt or revolution against the ruling class. But in contemporary China, it did not lead to any organized rebellion. Apparently, the contemporary Chinese state has developed specific structural mechanisms to terrorize and to create docility among the people until the crisis can be mediated. Applied to controlling crime and delinquency, these mechanisms seem to strengthen the pervasive net of social control, reinforce social cohesiveness and discourage rather than encourage crime and delinquency.

Chapter Three

LEGAL CONTROL

Each country has its unique tradition. Laws, when not imposed by external powers, are believed to reflect cultural norms. Chinese laws generally reflect Chinese cultural values and the on-going changing political situations. As one of the world's oldest civilizations, China is imbued with a legacy of cultural prescriptions and proscriptions that have produced a strong normative system.

3. 1 Legal Control in the Traditional China

The Chinese imperial order began in the last centuries before the Christian era. Before that, China had never been a unified country. In the Zhou dynasty (1122-221 BC), society was based on two principles: *Li* (the unwritten moral code) and *Xing* (penalty). The *Li* was to guide the conduct of aristocrats and princes. The *Xing*, on the other hand, was applied only to the common people (Chang, 1984). The famous Book of Rites states: "The *Li* does not go down to the common people; the *Xing* does not go up to the ministers." Obviously, an individual's status within society determined how the law would be applied as well as the punishment to be received. Since members of the ruling class were at that time related to each other by blood and marriage, it was possible to establish their status.

Under the Zhou dynasty there existed many princely feudal states. Their relations were guided by the *Li*. At the same time, kings and princes also applied the *Xing* to keep the common

people in obedience. However, wars among these states quickly destroyed their relations. By the Spring and Autumn Period (770-476 B.C.) and the Warring States Period (475-221 B.C.), when the older order broke down, the confusion of political and social transition was brought about. Therefore, all rulers were forced to search for better policies and seek the best strategists as they groped for new rules for the emerging social order. As a result, greater latitude for social mobility and philosophical thinking was allowed. At this time, China experienced its greatest intellectual growth, which has been called "the period of the Hundred Schools of Thought", an unprecedented era of cultural prosperity -- the "golden age" of China. Many schools of thought came into competition with each other and contended for acceptance by the rulers of the competing states. Of all these schools, the Legalists (the *Fa Jia*) and the Confucianists (the *Ru Jia*) were the most important (Worden, Savada and Dolan, 1987:7).

Since each individual state faced at that time the problem of survival or expansion, their rulers were eager to adopt realistic policies rather than idealistic programs. Therefore, in the fierce political battles of that time, the Legalists won. The *Qin Chi Huang*, the first emperor of the Qin dynasty (221-206 BC) adopted Legalism as the basis of political and social structure. Because the Legalist school advocated high concentration of the "real power" in the hands of the rulers, it started a new approach to " the theory and method of organization and leadership which eventually led to the centralized totalitarian lines" (Fung, 1948:155).

Guan Zi (d. 654 B.C), Li Kuei (d. 400 B.C), Han Fei Zi (289-233 B.C) and Li Si (d. 208 B.C) were major representatives of Legalism. Among them, Li Kuei was usually considered the founder of this school because he incorporated the laws of the past as well as those of different contemporary states into a comprehensive codified law, namely, the Six Chapters of Law (400

B.C). In this law, he defined the basic conditions that constituted a crime; specific crimes and misdemeanors such as property damage, personal injury, escape from prison; punishments; and procedural laws regarding trials and recapture of prisoners (Jan and Jan, 1980).

The Legalist schools proponents assumed that the humans were bad by nature and interpreted this nature as the source of selfishness and bad conduct; human nature had to be kept in check by the rule of law and punishment. Law was believed to be a good guarantee of social order. The Legalists emphasized the art of governing and achieving control through uniform severity of penalty. According to the Legalists, law should be based on principles of objectivity and universality of laws. Punishment should be so severe, consistently applied and well-understood at all times that it alone would be an effective deterrent for potential law-breakers. Law and punishment were viewed purely as an effective tool to reach the unity of the country and total efficiency (Franz, 1967:60). Legalist Shang Yang, the prime minister of Qin dynasty, justified severe penalties as follows:

If, from a condition of rule and law, the people become lawless, and if one tries to rule this lawlessness, it will only increase; therefore, it should be ruled while it is still in a state of rule and order, then there will be true rule and order; if it is ruled, while in a state of lawlessness, lawlessness will remain. Therefore, in the application of punishments, light offenses should be regarded as serious; if light offenses do not occur, serious ones have no chance of coming. This is said to be ruling the people while in a state of law and order (quoted by de Grazia, 1973:338-339).

The contributions of the Legalist school were not limited to the unification of China in 221 B.C.; they have also been credited with the creation of a central administrative mechanism which was efficiently employed to maintain legal-judicial uniformity throughout the country. It was at that time that a quite elaborate legal system similar to the ones in contemporary society

was established. It included special legal officials for making and administering the law, three levels of trial courts, government - appointed officials prosecuting certain types of crime, and some procedural law, (Hsu, 1969:15-19). Since then, the stress on utilitarian functions of centralism and rigid enforcement of law to maintain the uniform standard of conduct and social order has become a characteristic of China (Fung, 1948:157). Theodore de Bary commented on the Legalists' contribution as follows:

The school had unquestionably made the greatest influence upon the political life of its time. Typically, its exponents [were] practising politicians, more concerned with problems and specific mechanism of government than with the underlying principles of it. Indeed, there [was] a strong anti-intellectualism among them and an especial hostility toward vain talk of the philosopher (1960:136).

The political structure built on this system did not, however, last for long. The new dynasty, the Han (206 BC-220 AD), learned the lessons from the collapse of Qin dynasty, under which people could not keep up with the development of laws. Consequently, there were so many lawbreakers that the prisons overflowed and jammed the streets. Intolerable life made people revolt. The collapse of Qin dynasty was thus considered to be the outcome of reliance on Legalism. So the rulers of the Han had to accept the political philosophy and moral code of the Confucian school (Hsu, 1969: 30). Thereafter, the beliefs and teachings of Confucian school became the ideological foundation of the Chinese society.

The Confucian school, represented by Confucius (550-479 B. C.), Mencius (372-289 B. C.) and their disciples, held a completely different view of human nature from the Legalist school. It adhered to the premise that humans are basically good by nature and that their good qualities can be brought out through education and eventually lead to virtue because people are

willing to perfect themselves. People commit crime mainly because of destitution (not greed) or ignorance (Jan and Jan, 1980). Confucius refused any notion that individuals were driven by an uncontrollable force, which would suggest that crime was endemic in human society (Woodward, 1984). Nor did Confucian philosophy accept the concepts of original sin and the “fallen” state of humanity (Li, 1973).

The aim of the Confucian school was to introduce and accept a new code of behavior at a time of breakdown of feudal loyalties and of moral chaos. This school started with the moral rules of family relations and then expended these rules into a system that could be applied in large society and in the state. For this way of thinking, a law enforced by the authorities was a bad thing. Law was regarded only in terms of punishment for violations of the social and political order. The need for such punishment was an admission of the inadequacy of the moral code and a sign that education and the example of virtue had failed (Franz, 1967: 61). This attitude has remained throughout imperial dynasties and continues to have a great impact in contemporary period.

Because of the significant and profound influence of Confucianism, there is no individualism in traditional Chinese culture. According to Zi (1987), Chinese people tend to emphasize the rights of human society, rather than the rights of the individual as is the case in the West. The traditional avoidance of legal rules and procedures was predicated on the Chinese preference for compromise and broad moral precepts. Young people were trained in the concept of social duties and obligations, rather than self-interest or personal aggrandizement. The core of this ethical perspective has become the moral foundation of China.

Because of an authoritarian political tradition and a preference for mediation over

litigation, traditional China did not innovate much in legal philosophy under the Han dynasty and subsequent dynasties. Law did not play a main role and was not a chief guarantor of the social order, although it did help to enforce it. Much more important than the penal code sanctioned by the government was the moral code enforced by society. The moral code took many of the functions usually fulfilled by the law and became the main standard of human behavior. However, despite the Confucian disdain for formal law, a complex legal system, complete with codes, courts and the like, did exist in traditional China. The earliest evidence of the written law in China dates back to 536 B.C. (Bodde and Morris, 1967). Especially since the Tang dynasty (618-907 AD), a series of written penal codes has been developed. They mainly dealt with maintaining the structure and functioning of the government and regulating the people's behaviour. Its main aim was intimidation and assertion of the power of the state against attack and against disturbances of social order.

According to these laws, crime was perceived as behavior deviating from ethical and legal standards required of all citizens and enforceable by the government. The imperial throne was the ultimate source of the authority and exercised discretionary judicial power of punishment. However, all the emperors from dynasty to dynasty adhered to an accumulated experience in conducting criminal trials and in application of punishment. Various kinds of crime and their corresponding degrees of punishment were established. The principle of severe punishment meted out by the absolutist government continued for more than 2000 years. It was believed that this tradition of severe punishment taught the people to behave properly within the limits of the law (Zhang, 1992:183-186).

In reality, the Legalists and the Confucianists shared in common the purpose of

centralizing the governing power. The domination of the Confucian philosophy did not mean that the Legalist philosophy had been abolished completely. On the Contrary, the ideological conflict between Confucianism and Legalism was gradually harmonized in the formative era of the Chinese legal system in the codes of the Han and Tang dynasties by moralization of the law on the one hand, and by legalization of the "*Li*" on the other hand. The "*Li*" and "*fa*" (law) became the two wings of the Chinese codes in the subsequent dynasties. Furthermore, Confucianization of Chinese law succeeded in not only absorbing the Legalist punishment for different purposes but also integrating some influences of other rival schools of thought. From the fall of Qin in 207 BC, the Confucian school inherited the Legalist formula of codifying their ethical-cultural norms into a body of law on the basis of specific punishments. Legalism continued "to influence the political and economic thinking of the Han and later times"(Bodde and Morris, 1967:28). Therefore, the severity of penalty, treated as a deterrence for more than two thousand years, was used as a supplementary support to implement the Confucian hierarchy in human relations and still is the basis of the administration of justice.

Because the law in traditional China was made for establishing balance among competing philosophies, it was a combination of many thoughts of different schools, especially the Confucian and Legalist schools. The long history of the traditional Chinese law has proved that it is very durable and effective. Obviously, the historical development of law in China has taken a very different path from that of the West and has produced some different results. For Chinese society, the art of governing was principally by means of virtue not law. In other words, social order was maintained primarily based on moral socialization, not on the deterrence of penal law. For the Western society, due to the prevalence of law, the enforcement of moral rules seems

to both cover less ground and be less effective. Stanley Lubman (1983:182-183) summarizes four main characteristics of traditional Chinese law: the dominance of informal means of settling disputes and punishing minor offenses; the lack of functional separation between law and bureaucracy; popular fear and avoidance of the legal system; the subordination of law to a dominant state philosophy.

3. 2 Legal Control in the Contemporary China

In the early 20th century, the Nationalist government made a major effort to modernize Chinese law. It began to study Western law in a systematic manner, translating many Western legal works, sending law students to study abroad, and setting up law schools in China. In the 1920s, a complete, new set of criminal codes was promulgated, modeled on German codes. These laws reflected their continental origin in the court structure based on one judge with two lay assessors or of three judges, no jury, and so on. However, due to a succession of foreign or civil wars, the influence of these laws was quite limited.

When the Chinese Communist Party came to power in 1949, it moved quickly to set up a legal system of its own. The Chinese Communist Party placed its faith in Marxist materialism, not in natural law and constitutionalism. Law, like all other elements of the so-called social superstructure, was viewed as a tool of class oppression and as a functional weapon to be employed to achieve intermediate goals on the path from feudal society through socialist transition to the ultimate goal of Communist society. Therefore, law has been an instrument of social engineering and an agent of political socialization and mobilization. Accordingly, laws are

promulgated and interpreted so as to support implementation of the Party policy. The interpretation of a given law, or the punishment imposed for a given crime, may vary widely as the Party modifies its policies to accommodate changing priorities or to respond to perceived changes in the concrete conditions of political behavior or socialist production. Penal policy as a tactic in the exercise of power has emphasized the educational and deterrent effects of the criminal process, popular participation in rule creation and application, flexibility rather than rigidity in the application of sanctions, and the conciliatory and reformative aspects of sanctioning responses (Leng, 1977:366). The law and the criminal justice system have reflected the political ideology of PRC. The following quotation may convey the Chinese communists' view of the proper relationship between law and policy:

.....the law is nothing more than policy made concrete and articulate, and is a tool for the realization of party policy. It is only natural that it should be replaced by party policy when a law becomes outmoded.....Thus, what we consider lawful or not can not be based merely on the norms of the provisions of the law. The norm to be used should be whether it violates party policy and the interests of the people, and whether it violates the interests of socialism and communism (Mao, 1969:11).

Operating with such Marxist assumptions about the nature and role of law, it is not surprising that when the Chinese Communist Party grasped power in 1949, one of its first acts was to abolish the entire political-legal system of the *Kuomintang* government and construct a new criminal justice system. The chart of government of the People's Republic of China, passed by the Communist Party Central Committee in 1949, stated in Article 17: "All of the reactionary *Kuomintang* government's laws, decrees, and judicial systems shall be abolished. Laws and decrees that protect the people shall be adopted, and the people's judicial system shall be

established."

Perhaps precisely because the criminal justice system, based on the Communist ideology, was largely dependent on an informal process and the "mass line", the discarded rules were not replaced immediately by comprehensive new laws. However, it does not mean that no laws existed in China at that time. In fact, besides some decrees, on such topics as counter-revolutionary activities and embezzlement, enacted by the legislature, which resemble laws as they exist in the West, there were many pronouncements that could be called "laws", such as the documents of the Party and government and even some newspapers, such as the People's Daily. They were not usually labelled "law", but they defined what deviant behaviour was, provided means for ensuring that the desired social norms would be followed, and described the consequences of noncompliance (Li, 1973:359). However, the lack of a written law of substance that provides well-defined norms was a serious weakness of the criminal justice system of China at that time. The formal legal codes, after all, embody important principles and provide the framework for predictable exercise of state penal authority.

In December 1978, the policy of economic modernization was introduced by a decision made at the 3rd plenum of the 11th Central Committee of the CCP. An integral part of that decision was a determination to implement a comprehensive legal system and to shift from a system of rule by individuals to the rule by law. The popular demand for stability and justice, the lessons of the "Cultural Revolution", the need for legal rules and procedures to improve economic efficiency, and the desire to attract foreign technology and investment, all might have served as powerful motivations for strengthening the legal system. As a part of efforts to introduce legality, the codes of Criminal Law and Criminal Procedure were enacted, and became effective on

January 1, 1980. They set up standards for defining punishable acts and criminal penalties and regularized the sanctions imposed. These laws were considered to be the landmarks in the development of the Chinese system of criminal justice because they are the first comprehensive codes of the substantial law and procedural law in the history of the People's Republic. They also were a proof that China has taken major steps to develop its new system of socialist criminal justice.

An overview of Chinese legal developments after 1949 suggests that the Chinese government has made use of two different models of law to mould and control individual conduct: a formal one based on the establishment of a formal, elaborate, codified set of laws and rules that defines legal and illegal conduct and is enforced by a centralized and institutionalized bureaucracy; and an informal process based on community associations whereby a person, through a lengthy and continuing educational process, first learns and then internalizes the socially accepted values and norms by the way of socialization enforced by social pressures. These two approaches have coexisted in socialist China, just as *both Fa* and *Li* operated in traditional China, to regulate human behavior and social order. In certain historical periods, one model may be more dominant than the other, but on the whole, they exist side by side in a combination of harmony and competition. Jerome Krase and Edward Sagarin (1980:222) point out: "There is evidently little conflict between two systems; and if informal control is still widely used, it is not because formal systems have broken down, but because they (the formal) can be more effective with the tools and even the facade of the informal."

The current Chinese law is similar to and derives from the body of Western civil law that was introduced into China at the beginning of this century, however, because China is a

socialist country, what on the surface appears to be similar is in reality radically different. In 1950s, the Soviet codes of criminal law and criminal procedure were used to mold a new socialist legal system. Moreover, the present law has also been influenced by traditional Chinese legal practices because some of the Confucian and Legalist philosophies have similar attitudes towards the functions of law. Apparently, the contemporary Chinese laws reflect a combination of traditional, Western and Soviet influences.

Because one of the main goals of Chinese government is to eliminate breaches of law and order, criminal law and procedure and various kinds of corrective labor laws play a vital role and are emphasized as a primary vehicle for promoting socialist legality. They serve as a fundamental force for the building of the socialist system in China.

The criminal laws are implemented according to a procedure that is embodied in the Code of Criminal Procedure of 1980. Both that law and the Code of Criminal Law encompass the basic legislative norms regarding penalization and govern several organs of the state: the Police, the People's Procuracy, the People's Courts and the reform-through-labor institutions (prisons and juvenile reformatories). Each of these participants has a distinct role. The wide public availability of the relevant legislation, the detailed procedural provisions and the differentiated functions of the state organs involved in the criminal justice system provide a structural basis for the working of the criminal justice system. In addition to penal law, administrative measures also play a role in maintaining social order. What distinguishes administrative detention from the penal one is that it is directed at people whose activities are considered to be antisocial or disruptive but fall short of the scope of criminal law. The existence of the two types of sanctions may illustrate the limited nature of the concept of law in China. Unlike the West, where criminal law

is the sole legitimator of state's exercise of penal power over its citizens, in China, many acts that the criminal law does not prohibit are nevertheless punishable by the state through administrative measures.

With the development of socialist legalism, China has also formalized its juvenile justice system by enacting juvenile protection law, establishing a juvenile court system and reorganizing institutional and noninstitutional treatment of delinquents. In 1991, China enacted its first nationwide Juvenile Protection Law. This law stipulates juvenile offenders' rights, such as the confidentiality of juvenile cases, closed court proceedings and separate pre- and post-trial detention for juvenile offenders. It also defines extensive legal obligations for adults to engage in caring, supervising, educating juveniles and to be held accountable for instigating and corrupting juveniles. The first juvenile court was established by the Tianning District Court of Shanghai in 1984 (Law Yearbook of China, 1991:875). Thereafter, the juvenile courts were fast developed throughout the country. By the end of 1992, more than 2,300 juvenile courts in 80 percent of the jurisdictions were established (Li, 1993: 19). Juvenile courts deal with mainly two kinds of cases involving juveniles under the age of 18. One is protection cases for juveniles' welfare or other private rights. The other is criminal cases involving juvenile offenders between the ages of 14 and 18 (Jiangsu Provincial High Court, Research Division, 1992: 47-50). One of the remarkable features of juvenile courts is their educational sessions for juvenile delinquents before disposition of cases. For example, Tianning Juvenile Court holds an educational session conducted by the lay judges. They must inquire about many problems experienced by juvenile offenders outside the courtroom. These problems mainly include: (1) the Juvenile offenders' family background, such as family structure, living conditions and the relationship between the

child and parents; (2) school performance and other problems, such as truancy or dropping out of school; (3) association with delinquent gangs and peers; (4) the child's talents, personality and psychological problems; and (5) direct causes of offenses. The education session was intended to serve the purposes of helping juvenile offenders analyze the causes of their misbehavior, realize the harmful effect of their behavior to society and feel remorse for their wrongdoings (Tianjin High Court, the First Division, 1988: 18-20).

Central to the contemporary Chinese legal philosophy is the concept that crime prevention is the most effective form of controlling social behavior. As part of this philosophy, the Chinese emphasize the importance of sentencing. The aims of the sentence are: punishment, deterrence, education and reform. The current Chinese laws clearly reflect these aims. According to Article 1 of the Criminal Code, penal law is "formulated in accordance with the policy of combining punishment with leniency in light of actual circumstances." This principle implies both defence of the state's and society's interests, as well as a treatment of convicted persons and their rehabilitation. Perhaps because of the influence of Confucianism, the Chinese believe that almost anyone who has gone astray can again become a useful person after a period of reform. Therefore, the educational function of the criminal law is heavily stressed. This educational function of sentencing is not only for offenders, it is also intended to serve to educate the general public with the use of open trials or sentence- pronouncing rallies.

One of the basic tasks of criminal law is a fundamental remaking of the conscience of the people, to inculcate such ideals as moral soundness and self-sacrifice for the common good. Harold Berman, Susan Cohen and Malcolm Russell (1982) state that the Chinese codes exhibit a profuse moralism and a high degree of latitude in the definition of crimes and in procedure. It

is exemplified by the fact that a contrite attitude of the defendant is very important in sentencing and is treated as a mitigating factor, especially when the accused confesses and apologizes to the victim. Although the policy of "leniency to those who confess and severity to those who resist" is not formally incorporated into the Criminal Code, its spirit appears to run through the entire law. There are provisions for heavier punishment for recidivists (Article 61) and reduced penalties for offenders who voluntarily surrender or perform meritorious service (Article 63). According to the present practice of criminal justice, leniency is applied to those who confess fully, return any ill-gotten gain, and inform on other wrongdoers. This practice signifies more than a recognition of their contribution to the enhanced efficiency of the police and courts. This is grounded in the belief that the nature of most offenders is basically good. Violation of laws is attributed to their low level of moral awareness. In China, the educational function of sentencing receives particular stress because of the Chinese belief in the educability of man and because of the Chinese Communist Party's faith in the "mass line". Moreover, the criminal sentence in China is intended to reform criminal elements in the sense of instilling in the offender a conscientious attitude toward labor, an exact observance of the laws, and a respect for the rules of the socialist community. This is to be achieved through education and corrective labor. The law emphasizes that the execution of a sentence does not aim at inflicting physical suffering or degrading human dignity. The Chinese corrective labor legislation defines the principles and general provisions for the execution and serving of sentences.

It is evident, however, that in addition to moralistic and re-educational functions, deterrence and punishment are also considered important aims of sentencing. They seem to be the most accepted theories in China today because of government's clamor for longer, more severe

and more certain sentences. The hue and cry that "judges and prison officials are too lenient" is heard throughout China. This also partly explains why the death penalty not only still exists in the statute books but also why it is frequently applied. In China, the death penalty is justified in terms of its deterrent value, expressed well in a Chinese proverb: "kill one, scare one hundred." The Chinese regard the death penalty as a necessary deterrent to protect the social order and the public's interests. While this view seems to negate the Confucian faith in reeducability of every wrongdoer, it is consistent with another influential philosophical-school, Legalism, that emphasized the importance of severe punishment. Moreover, the use of the death penalty may be influenced by changing social and political situations. If the social order is perceived as seriously threatened, priority may be given to the restoration of social order by any means available. In such cases, the death penalty may be used more frequently and more extensively as the common, collective good is given the primacy over rehabilitation of individuals.

Under the current Chinese criminal law, the death penalty may be applied for various criminal offenses, but the Criminal Code states that it is to be applied only in the case of the "most odious and atrocious" crimes. Included are offenses that endanger state or public security as well as murder, rape, robbery and some serious economic crimes. The relationship between the death penalty and individual reform is, however, made clear in a unique clause of the Criminal Code that permits the imposition of a two-year suspension if immediate execution is not deemed necessary. Under this provision, the convicted person is sent to reform-through-labor facility. If the convict truly repents during this time, the sentence is commuted to life imprisonment, and true repentance combined with meritorious service may result in a reduction of the penalty to 15-20 years imprisonment. On the other hand, resisting reform in an odious manner and committing a new

crime brings about execution. The death penalty is not to be applied to anyone under age 18 or to pregnant women and must be confirmed by the Supreme People's Court (Article 43 and 44 of the Criminal Code). In reality, the Chinese put heavy emphasis on the outcome of the criminal sentence imposed. If a sentence fails to deter the person sentenced and other potential offenders, society views the risk of harm and injury in the future as a very serious matter.

The wide range of penalties is intended to increase the effectiveness of penal measures. They mainly include: the control (restricted release into the community or work unit), the detention, imprisonment for the certain time, imprisonment for life and capital punishment. Imprisonment is actually synonymous with reform through labor and can be served in a prison or in a juvenile reformatory where inmates are expected to be transformed into new persons under the policy of uniting labor with education. Chinese criminal procedures specify the conditions under which sentences must be served and define the public's role in rehabilitation.

While the principle of combining punishment with reform constitutes a basic guideline for criminal sentencing in China, the precept "taking the facts as the basis and the law as the criterion" (Article 4 of the Criminal Code) appears to govern the application of Chinese criminal penalties. Article 57 of the Criminal Code states: "Punishment for the offender should be determined by the facts, nature and circumstances of the offense and the degree of harm to society. Sentence shall be based on the provisions of the Criminal Law." In other words, a full statement of the facts of the crime and its consequences rather than subjective assumptions should be the basis for conviction and application of penalties. Thorough investigation and substantial evidence should be stressed. The employment of torture to secure confessions is illegal. The offender's social origin and class background as a premise to mete out punishment is no longer

acceptable because it violates the principle, provided by Article 4 of the Code of the Criminal Procedure, that in judicial proceedings all citizens are equal before the law. The requirement of "Taking law as the criterion" forces judicial officials to name offenses and determine appropriate penalties more precisely and confidently in accordance with the provisions of the criminal law.

In China, the basis for measuring penalties is the degree of harm to society, and degree of harm to society is determined not only by the sum total of all the components of the crime in question but also by current, extraneous situations. For example, the anti-crime campaign of 1983 was a case in point.

For Western people, perhaps one of the most striking aspects of the Chinese criminal justice system relates to the extremes that exist within it. Indeed, the emphasis on reform and rehabilitation appears contradicted by China's retention and use of the death penalty. Other contradictions that exist in the Chinese criminal justice philosophy include: the reality that a highly centralized socialist society encourages and supports a decentralized system of crime control; the co-existence of harsh penalties (including extensive use of the death penalty) with a vast system of informal justice; and the co-existence of a huge national public security machinery with small neighbourhood police stations whose personnel serve as community relations officers.

Indeed, Chinese law differs dramatically from legal standards expected by those familiar only with Anglo-American legal traditions. It reflects the Chinese cultural tradition and a vast experience accumulated by government agencies and non-government organizations in controlling, correcting and reeducating offenders. The law, like all other sectors of Chinese life, can be properly understood only against the background of the Chinese culture and history. The Confucian and Legalist heritage; Western influence, for example, the codes of 1920s and 1980s;

and the ideology of the Chinese Communist Party, all have had a great impact on the current criminal justice system of China. Despite their differences with respect to law, all these philosophies have permeated the current law and justice practice. Perhaps, the uniqueness of the Chinese legal system lies in this centralized synthesis of very eclectic elements and influences.

3. 3 Conclusion

Although the Chinese law has changed considerably as a result of social development, often these changes should be seen more as responses to changing political situations or to modern technology than to shifts in attitudes among the general public. Law has traditionally been regarded as, at best, irrelevant and, at worst, disruptive of harmony. Neither written codes nor legal institutions and practices have traditionally been seen as very important by the Chinese themselves (van der Sprenkel, 1966). The function of legal control was minimized by the effectiveness of strong social control within Chinese society. The concept of Confucian morality, the family ties, the kinship system and other mechanisms of social control have been important factors in maintaining social order. According to Black's behavioral theory of law, "law is stronger where other social control is weaker" (1976:107). Conversely, law is weaker where other forms of social control are stronger. Black's assertion that law varies inversely with other forms of social control is certainly applicable in Chinese society.

The situation, however, is changing. As a part of the "legalization" drive, the Chinese government is promoting and strengthening legal control in Chinese society. Law is now officially recognized as a principal tool for the achievement of socialist justice, social stability, and

economic development. Nevertheless, this trend can not be viewed as a phenomenon related to the transition to Western practices. Rather, I think that it represents the adjustment of an old model to a new social environment. This adjustment is characterized by an attempt at a parallel development of social and legal control systems, which is a part of what the Chinese government called “socialism with Chinese characteristics”, intended to meet the new situations of a market economy. These parallel social and legal control systems in reality are not completely at odds with the existing infrastructure of the social control system based on the ideology of the CCP because the Party is still above the state and political stability is always emphasized more than economic development.

China’s emphasis on law as a means of solving social problems such as crime and delinquency is closely connected with specific political situations. Therefore, the punishment and treatment of offenders in China can be recognized as a political tactics. This seems to be consistent with Foucault’s analytic understanding of punishments. According to Foucault (1978: 23-24), the study of punitive mechanisms should not be concentrated on their “repressive” effects alone, or on their “punishment” aspects alone. Rather, these mechanisms should be situated in a whole series of their possible “positive” functions, even if these seem marginal at first sight. Thus punishment is to be regarded as a complex social function. I can assert that goals of punishment and treatment of offenders in China are not limited simply to reducing crime. Indeed, punishment and treatment can be seen as political tactics that serve the following “positive” complex functions: (1) to demonstrate the CCP’s superior power through public rallies of sentence-announcing, open trials and other visual effects; (2) to demonstrate that the social order advocated by the CCP and its government is not to be disrupted and that they have the ability to

maintain peaceful social order; (3) to announce and demonstrate that the CCP and its government can control the direction of political and economic development and can secure the success of and non-interference with their modernization policies; (4) to deflect attention from various critiques of the economic policies pursued and satisfy the widespread desire for speedy restoration of social order, through clamping down on crime; (5) to demonstrate that the CCP and its government are not only instructors of young people but also their guardians, through mobilizing masses to be involved in the early social-educational intervention; (6) to demonstrate that the CCP and its government through their emphasis on the functions of punishment and treatment can solve such social problems as crime and delinquency.

Part II

Social and Legal Control of Juvenile Delinquency

in China:

Selected Aspects

Chapter Four

EARLY SOCIAL-EDUCATIONAL INTERVENTION

4. 1 Philosophy

Donald Black states that " across societies and other social settings, it is possible to observe several styles of social control, each a distinctive way by which people define and respond to deviant behavior" (1980:130). The early social-educational intervention is one of the possible ways to approach juvenile delinquency. The underlying philosophy is that the early intervention at the pre-delinquent stage can be therapeutic because the youth at risk of becoming juvenile offenders can receive the help and education they need in order that they become law-abiding adults.

In China, early social-educational intervention aims at restoring juvenile offenders' self-respect by showing love and concern for them, and educating and helping them to reform with the patience of doctors taking care of their patients. To the Chinese mind, a serious act such as a crime or delinquent transgression should not be regarded as a person's first antisocial act but rather as the culmination of many earlier and lesser expressions of unhappiness or confusion (Li, 1973:151). Early intervention, which is not restricted to overt behavior but also targets covert thoughts, is considered to be an effective way to prevent crime and delinquency. Therefore, all social forces are required to make joint efforts to help and educate juveniles at the first sign of trouble and not to wait until they break the law. This is expected to nip crime in the bud.

The early social-educational intervention is predicated on both Confucianism and the

Chinese communist ideology. Expressed in Confucianism—the main current of Chinese thought—is the idea of all people sharing the same ethical predispositions, which implies, in a sense, the equal ethical value of all human beings (Chan, 1963:44-45). In their natural state, they are near each other because they are equal as to their intrinsic ethical value, their responsibility for moral effort and their potentiality for ethical growth (Bruce, 1923:224). These ideas lead the Chinese to conclude that, given the choice between good and bad, people will choose good. If they do not, their education certainly has not equipped them to make the correct choice. Society thus has responsibility and duty to re-educate them so that they will be able to choose good in the future. Perhaps precisely because of this assumption, Chinese people tend to perceive juvenile offenders as being in need of help and education rather than denunciation and punishment. In addition, Confucianism also holds a general principle that “there is an inherent dynamism in all things that permits them to run a course from imperceptible beginnings to publicly observable full development” (Munro, 1977:35). Applied to crime and delinquency, this principle means not only that the anti-social thought occurs before the anti-social behavior, but that minor norm violations will develop into full-scale crimes if they are left unchecked. Therefore, when an individual’s thoughts or behavior have been detected as deviating from the social norm, initiating a thought or behavior re-education by others will be necessary. It is thus clear that Confucianism stressed the reform of both incorrect thoughts and deviant behavior. In terms of juvenile delinquency, a policy based on Confucian philosophy would not be reactive but proactive, in that it would not wait for criminal behavior to occur, but look for incorrect thoughts.

The Chinese Communist Party and government have fully exploited the Confucian moral code as the springboard for a new socialist order. Mao Zedong and his comrades placed great

importance on the socialization of the young. After 1949, they have actively played the role of moral entrepreneur. Children, from a very early age, were encouraged to raise their political consciousness and were taught the concepts of social duties and obligations, rather than self-interest or personal desires. More importantly, people have been trained to assume a consensus on the definition of deviance. This definition has blended law and morality together, whereby deviance is understood to violate both. Therefore, the social order is maintained by the capacity of all members of society to understand one another and to act in concert in achieving common goals through common rules of behavior. These goals and rules are not to be questioned if the order is to be preserved.

The Chinese Communist Party combines principles of Confucianism with the socialist ideal that each person should be his or her brother's (and sister's) keeper (Li, 1978:45). For example, Mao Zedong (1967:30) commented that "in ordinary circumstances, contradictions among the people are not antagonistic. But if they are not handled properly, or if we relax our vigilance and lower our guard, antagonisms may arise." This means that at the first sign of nonconforming thoughts or behavior, others, such as relatives, friends, neighbors and fellow workers are supposed to help. It is "the socialist duty of one man to help another, an indispensable factor in collective living and a necessary [one] for unity". The concept of help is considered as "basic to the socialist system and philosophic beliefs" (Li, 1978:45).

In the Chinese communist ideology, deviance is often compared to illness. Mao Zedong repeatedly pointed out that in dealing with deviance it was necessary to cure the illness to save the patient and that one did not kill the patient to cure the illness (Wakeman, 1973). Consistent with this analogy is the belief in early intervention. According to this belief, society is both the

cause and victim of crime and delinquency, therefore, society has both the right and the responsibility to intervene as soon as minor deviance appears, even if it does not break the criminal law. Deviance begins with minor acts and then, if unchecked, develops into serious acts. It is more proper and easier to intervene when deviance is still minor and does not take the form of crime. The lesser the deviance and the earlier it is treated, the greater possibility that crime will be prevented. Society should apply its most efficacious treatment while the offender is young and the offenses trivial. "The effort is to solve problems before they get entirely out of control, somewhat like treating a physical disease" (Li, 1973:147). The active role, taken by family, neighborhood, work-unit, school, and local community in controlling individual behavior, is thus always emphasized. This philosophy sanctions practices of pre-delinquent social-education and intervention.

4. 2 Official Policy

In combating criminal phenomena in China, priority has always been given to prevention. Based on this principle, China is implementing comprehensive strategies towards crime and juvenile delinquency. These comprehensive strategies imply that, under the guidance of the central government, the whole society — governmental organs, mass associations, factories, enterprises, schools, neighborhood communities and families or other organizations — is fully mobilized to take all kinds of measures, including political, legal, administrative, economic, cultural, educational, and moral ones, to educate the younger generation, to insure their healthy growth, to prevent youth crimes and reform delinquents so as to maintain a peaceful public order (Gao,

1983).

The term "comprehensive strategies" was first proposed in a 1981 forum, that focused on the problems of social order and public security in Beijing, Tianjin, Shanghai, Guangzhou and Wuhan. The forum stressed that only by mobilizing all possible social forces to maintain public security and by strengthening political, economic, educational and cultural work would it be possible to wipe out social evils, greatly reduce law-breaking and criminal offenses and establish a peaceful social order. In this forum, participants reached consensus that "comprehensive strategies" should be regarded as a general policy for China to maintain public security and social order.

After evaluating the implementation of the comprehensive strategies in the cities mentioned above, the Chinese government formally adopted, in 1982, the comprehensive strategies as the binding policy of maintaining public security and social order. According to this policy, cracking down on serious criminal offences was the "primary link"; intensifying the education of young people was the "focal point"; strengthening grass-roots organizations and their work was the "foundation"; and strengthening the rank and work of public security and judicial departments and establishing a responsibility system in maintaining the public security was the "key to success" (Jiang and Dai, 1990).

The comprehensive strategies for juvenile delinquency consist of three main links: prevention, punishment and rehabilitation. Although these links both relate to and infiltrate one other, prevention is the basic point (Wang, 1989:32). It means that more attention should be paid to eliminate subjective and objective factors that induce crime, to remove the "soil of crime" in order to minimize delinquency. Criminal justice is only the last resort in fighting delinquency.

Therefore, the whole society is called on to pay greater attention to the problems of juvenile delinquency and make joint efforts to educate young people in lofty ideals, moral codes, discipline and legality.

As a part of the comprehensive strategies, early social-educational intervention is thus stressed. All social institutions, such as family, school, labor union, women's association, the Youth League and neighborhood community are mobilized to work in concert and deal with the problems of juvenile delinquency by focusing on the prevention of crime and the education, redemption and reform of young offenders. The main premises of dealing with juvenile delinquency are as follows: (1) Juvenile delinquency, as a social phenomenon, results from the combination of many complicated factors, including political, economic, educational, moral, legal, psychological and physiological ones; (2) Whether or not a young person goes onto the road of crime is not decided by his or her congenital makeup but rather by harmful social factors which influence his or her mind and psychology; (3) Becoming a delinquent is a gradual process. Since this process is recognizable, early intervention is feasible.

In case of practices of the early social-educational intervention, three kinds of juveniles are usually targeted. The first kind refers to the "backward" youths who misbehave; in the second category are those juveniles who committed minor law infractions; the last group consists of those confirmed delinquents who continue their immoral or illegal behavior after being released from juvenile reformatories. For the first group, families, schools and neighborhoods are mobilized to help and educate them in order to improve their abilities to distinguish right from wrong, beauty from ugliness, good from bad, glory from shame, etc. For the latter two groups, teams of the early social-educational intervention are organized, which are comprised of not only their parents,

relatives, teachers, colleagues and neighbors, but also the police, to carry out social-educational work. In order to increase efficiency, the strict system of responsibility has been established for every team of the early social-educational intervention. This system connects the problems of social security not only with honor but also with economic interests, especially for those teams established in factories.

Concrete measures are supposed to be selected according to the nature of the offender and the offence in order to "suit the remedy to the case" (a Chinese proverb). For different cases, there are different educators and methods, ranging from heart-to-heart talk to group study of the Party and governmental documents, laws and regulations; to public discussion of the deviant's problems and offering of suggestions and criticisms; to visiting factories, farms, and historical and cultural sites. In the process of the early social-educational intervention work, four main methods, of persuasion, education, encouragement and criticism, have been stressed.

Because early social-educational intervention aims mainly at the prevention and reduction of juvenile delinquency, special attention is given to the following two combinations of approaches: the combination of persuasive remedy with stern discipline, and the combination of solving ideological problems with addressing practical problems. Therefore, on the one hand, political education, legal education, and cultural and ethical education are emphasized. On the other hand, solving young people's practical problems, such as housing, schooling, employment, marriage and so on, also is seen as essential in creating a good social environment for them and promoting their rehabilitation. Political education, as Starr (1979:246) says, is both a prophylaxis and a cure. As prophylaxis, political education is applied to make the people aware of governmental expectations and to apply group pressure against deviance; as a cure, it is applied

to rehabilitate delinquents and to make them conform to the social consensus. The purpose of legal education is to cultivate young people's law-abiding spirit and habits, to teach them how to understand and observe the law and how to distinguish between what is legal and what is illegal, so that their commitment to legality can be strengthened. The cultural and ethical education aims at correcting poor social conduct, improving unity among neighbors, enhancing harmony in the family and easing social contradictions and civil disputes.

Early social-educational intervention is done informally by mass involvement in enforcing conformity. The important role played by the masses, not only by monitoring juvenile behavior to maintain social order but also by participating directly in the helping activities, is perhaps the most impressive aspect of the early social-education practiced in China. Indeed, the early social-educational intervention relies on the mass support and needs the public's time, resources and energy for its success. This is a concrete application of the mass line strategy to the early social-educational intervention.

As the first line of defense against juvenile criminal activity, the family and the grass-root community organizations play the most important role. In the vast majority of cases, delinquents are put under the supervision of their families and the relevant local authority — neighborhood committee, school or work unit (depending upon the delinquent's status) (China Daily, 1983:4). According to Article 14 of the Criminal Code of China, parents or guardians of offenders under the age of 16 have the obligation to discipline their children. Under the watchful eyes of those with whom the delinquents have the most frequent daily contact, they are encouraged to reform and develop a sense of social responsibility, which will lead to their reintegration into the society and the end of the supervision (Feinerman, 1985).

The other important characteristic of early social-educational intervention is police involvement. In China, the security organs (police) have consistently adhered to the principle of relying on the broad masses of people in their work. The police have realized that good cooperation between themselves and the masses is the key to their success in combating crime. The relationship between the police and the people is often described as the relationship between fish and water. This means that without the support and cooperation of the people, the police cannot function. The dependence on mass support and cooperation, combined with the Chinese belief that it is right and necessary to intervene early before minor offences grow into serious crimes, may constitute a unique Chinese policing style. This style follows the "mass line" and is expressed in a slogan: "The people's police are servants of the people." Putting the mass line into operation is primarily the responsibility of the police. Therefore, the police, specifically those working in neighborhood police stations always work closely with local government, factories, enterprises, schools, neighborhoods and other institutions in order to maintain public order, "prevent, reduce and forestall crimes through ideological, political, economic, educational, administrative and legal work" and create a better social environment (Gao, 1983:4). This mandate can be interpreted as calling on the police to prevent crime by responding to many situations in an alternative, non-penal manner. While the police participate directly in the early social-education intervention, they are not concerned with law and punishment as such, but rather with helping juvenile offenders become law-abiding and useful citizens. Therefore, the characteristic Chinese mode of police response is largely non-penal.

For many people in countries with a heritage of individual rights and civil liberties, the Chinese police may play too many roles compared to the police in their own countries.

Moreover, some of the roles may be perceived as not being police business. Indeed, in Western countries, police intervention is mostly limited to situations where they believe that an offence has been committed and an arrest should be made. Otherwise, the intervention may be considered inappropriate. In China, due to the requirements of the comprehensive strategies and the belief of early intervention, the police are expected to respond to minor juvenile offences in the early stage and actively participate in early social-educational intervention to act in concert with the relevant mass groups. They not only provide community surveillance, but also conduct many education programs at the neighborhood level, such as distributing legal materials and educating the residents in the neighborhood about laws and rights; holding community meetings to discuss justice and social problems; preparing and broadcasting messages involving legal and crime prevention matters and persuading residents of the necessity of rules for public security and individual protection; and visiting offenders and their families, friends and relatives to determine what the problem is, seek solutions outside of the criminal justice system and help them solve such problems as employment. Some of these functions may sound similar to those implied by the community policing model in the West, but in the Chinese context they involve more direct ideological work and a greater emphasis on penetrating the daily life of the communities policed.

Educating and helping juvenile delinquents have become one of the main tasks of the police who are working in neighborhood police stations. In some cases, for example, according to Leng (1977), the police station in neighborhood community may draw up a contract between the juvenile and his or her parents, the neighborhood, and the school. If the juvenile meets the terms of the contract within a specified time, then a certificate of good behavior is issued to the youngster, and the case is considered closed. If the adolescent does not meet the terms of the

contract or commits a new violation, then the contract is extended or revised. While the emphasis is on the collective nature of the treatment program -- it is more than just an agreement between the juvenile and the police -- direct involvement by the police is also intended as a reminder that an arrest can still be effected if the juvenile offender strays further from the beaten path. The aim is to put a greater pressure on delinquents. In reality, the police prefer not to arrest juveniles, and there is no strong expectation that they will make an arrest either. The mere presence of the police is considered to be able to strengthen early social-educational intervention and has in fact become an integral part of it. The extent and the diversity of activity performed by the Chinese police indicates that policing not only is a prime force in enforcing the criminal law, but also plays an important role in the elaborate system of informal social control.

4. 3 Conclusion

Early social-educational intervention is neither a punishment for crimes nor a disciplinary sanction. It is a special type of social practice, where various social groups take part in the work of helping and educating the misbehaving juveniles. A distinct characteristic of early social-educational intervention is that it is proactive and continuous; it uses all possible social forces to keep surveillance on juvenile offenders and provide them with incessant help and education. This in-built vigilance not only makes early detection of deviation and early intervention and treatment possible, it also makes for an environment that deters individuals from making illegitimate or illegal material gains, because they would not have the opportunity to enjoy them (Li, 1973).

The early social-educational intervention has won wide support from the whole society and has been carried out on a nationwide scale. From cities to rural areas, from factories to schools, from governmental organs to communities, wherever there are "backward" or misbehaving juveniles, early social-educational interventions occurs.

The effects of social help/education have been praised by the media and researchers. Chongqing city, Wuhan city and Xi'an city have been cited for their excellent work in this field on the basis that the vast majority of the delinquents "have turned over a new leaf" (Beijing Review, 1980: 4). For example, 94.8 percent of the 1460 offenders released in 1986-87 in Lianhu District of Xi'an were employed by 1988. Some of them were awarded special honorable titles, such as "model worker", and obtained many forms of moral and material rewards (Zhang, 1989:321).

As the prevalent method of dealing with crime and delinquency problems in China, early social-educational intervention aims both at prevention and reduction of juvenile delinquency. Although it does have some drawbacks, such as overwhelming pressure to conform and the pervasive surveillance that invades individuals' privacy, the potential of early social-educational intervention to affect people's thought and behavior, especially in case of juveniles is great. It is worthy of note, however, that early social-educational intervention focuses not only on cultivating the juvenile's law-abiding habit, but also, and perhaps more importantly, on improving the juvenile's social environment.

Chapter Five

WORK-STUDY SCHOOLS

5. 1 Official Policy

The system of work-study education for those who have committed minor offences and have been deemed to be out of control by their original schools and family was created in the 1950s. The first work-study school, proposed by Peng Zhen, former Chairman of the Standing Committee of the National People's Congress, was established in Beijing in 1955 during his tenure as mayor of Beijing. Since then, such work-study schools also have been established in other large and medium cities. While all of them had been destroyed during the period of the Cultural Revolution (1966-1976), they were revived in the late 1970s. In 1979, a comprehensive national program to promote the establishment of work-study schools was initiated and they spread rapidly. According to a document of the Commission of State Education in 1988, nearly 100 such schools dotted the country; they employed about 3,000 teaching and administrative personnel and housed over 6,000 students in 1988 (quoted by Zhou, 1988:2).

The system of work-study education can be linked to Chinese traditional philosophy and the socialist ideology of the Chinese Communist Party. The traditionally strong belief in the redemptive qualities of human beings provides the rationale for the work-study school and its practices. The philosophy advocated by Peng Zhen in 1950s still underlies the operation of work-study school today. Peng Zhen stated:

All personnel engaged in work-study education should treat the students with the attitudes of parents, doctors, and teachers toward their children, patients or pupils. Thus the term "three attitudes" applied in the case of work-study students began to find currency among the public. It is a time-honoured custom in China to compare the young to "flowers of the country." On the other hand, the work-study students, who need even greater care in cultivation, are called flowers suffering from plant diseases and insect pests (Quoted by Zhou, 1988:4).

Work-study schools are administered by the Ministry of State Education, through its local bureau in coordination with public security organs (police), rather than by the Ministry of Public Security or the Ministry of Justice (which is responsible for the administration of institutions that represent harsher levels of sanctioning, such as prison and juvenile reformatory). Although work-study school can also be regarded as a correctional facility run by the Ministry of Education, its staff does not consist of correctional officers, but rather of teachers of middle-schools with a particular interest in problem children and child psychology. Therefore, work-study education is only a specific form of ordinary education which offers a part-work and part-study curriculum. It constitutes an integral part of the nine-grade compulsory education system. It is conceived as a distinct type of middle school that provides juvenile delinquents with special education and training and aims at ensuring that a special segment of the juvenile population can be transformed into citizens with good values, morality, culture, discipline as well as certain productive vocational skills.

Work-study school differs from other middle schools in several ways. First, its students have committed minor offences and have been deemed no longer suitable to continue studies at their original schools. Second, they are required to live together in a strict, collective way. It is believed that this can produce emotions and solidarity conducive to the internalization of official

values and norms by the students. There is a conspicuous emphasis on using group pressure to bring about behavioral changes in individuals. Third, compared to regular schools, the work-study schools are relatively small and have a much higher faculty-to-student ratio (Zhou, 1988:2). Fourth, the staff of work-study schools not only try to create an environment to help students reintegrate themselves morally into the society but also provide them with vocational training.

According to the Chinese laws, dispositions in juvenile delinquency cases are based on the nature of the offense and the degree of its seriousness. The majority of juvenile offenders are put under supervision of their families, schools, work units and neighborhood committees. However, if they commit slightly more serious offences, such as minor theft, fighting and gambling, or engage in them repeatedly, juveniles may be sent to a work-study school, normally for a term of up to two years. Usually, their offenses are deemed too trivial to merit the attention of a court or police, but are of serious enough concern to parents, teachers and the neighborhood community. None of these youths have been officially adjudicated and they are referred by a variety of sources: the regular school, the police, neighborhood committees and even their parents. Work-study schools are designed for juveniles between the ages of 12 and 18.

5. 2 The Methods of Education

The curriculum of work-study schools, which is intended to transform delinquent youths into useful members of society, is premised on the idea of combining ideological and academic education with vocational training. Therefore, the regime of work-study schools combines closely supervised middle-school level academic education and light labor as a means of inculcating social

values and teaching self-discipline (Beijing Review, 1981:29). From the start, the process is typically Chinese. A stay at the work-study school is normally divided into three phases.

The **first phase**, namely “make revolution yourself” movement (Zhou, 1979:20), which usually lasts about three months, constitutes legal and moral education and self-criticism aiming at strengthening the student's mental and emotional stability. Juvenile delinquents are helped to understand the philosophy and environment of the work-study school, because they do not know what to expect when they first come to the school. To their mind, the work-study school might be just like prison, fenced by high walls and electric nets, with teachers carrying pistols and batons. Therefore, most of the juveniles arrive in a fearful and uneasy mood. In order to alleviate this problem, it is required that work-study schools be set up like ordinary middle schools rather than prisons or juvenile reformatories. So, when the terrified students arrive and see that the work-study school is almost the same as their previous school and the teachers are just as kind and affable, they simply can not make head or tail of it (Zhou, 1979: 19). During this phase, teachers help students understand the needs of society as well as the nature and harmful consequences of their acts. They also require students to address their shortcomings in an introspective manner and accept the norms of the new community. At the same time, school staff visit their families, previous schools and neighborhood in order to check for any situations that may be causing unusual problems. The comments of directors of the Huhehot Work-Study School in inner Mongolia provide a fine illustration of the orientation process:

After they enter our school, the step we take to help them is to get them to calm down and introspect quietly. We arrange two weeks time for them to sit down quietly and tell what crimes they have committed. The second step, they are to tell

of negative influences exercised upon them by harmful environments and of the unhealthy company which they used to keep and they must make their mind to break away with. The third step, they are taught to understand the nature and tasks of the school, and get acquainted with the rules and regulations and the environments of it. These methods are called the education of "passing three tests."... Before this kind of method was introduced, all the newcomers felt uneasy and restless. Only 55 percent of them felt at rest in three months. However, through the education of "passing three tests", 87 percent of them settle down at the end of two months, and at the end of three months the percentage rises to 91.5 percent (Han Dengre, Wang Bingzhi and Zhang Shenchao 1988:2-3).

The **second phase** -- lasting one year and half -- is essentially a blend of ideological education, academic and cultural education and vocational training (physical labor). The schools, first of all, pay great attention to ideological education (thought education or thought reform). Devices for ideological education include: attending study sessions where the students learn about Marxism-Leninism, the thought of Mao Zedong, state laws, Party policies and documents, and current affairs; undertaking self-criticism and criticism in group meetings, preparing lengthy written confessions and exposing and denouncing wrongdoings of others. Additionally, fostering students' sense of morality and law and raising their capability of telling right from wrong is deemed fundamental to educating and correcting them. Students are encouraged to overcome three "barriers" by trying to (1) observe rigid discipline and live as members of the collective; (2) break away from their former "buddies" and "pals"; and (3) make efforts to find out the objective and subjective causes of their mistakes. As an important part of thought education, emotive persuasion is also emphasized. According to the Chinese philosophy, kindling students' flames of self-respect and helping them establish human dignity are the prerequisites of educating students well, because the sense of self-respect is regarded as the most sensitive part of students' hearts. Once students re-establish their self-respect and dignity, they will have greater confidence

in life. Showing love and respect to students is, therefore, a strongly recommended method of education in work-study school. In a Beijing Review feature article, a teacher of a work-study school in Beijing states:

All parents hope that their children can grow healthily and become useful members of the society. They do not abandon them just because they commit offenses. Now, since the youngsters are away from home, we must take over their parents' job..... Generally, we should do everything we can to light up the flame of self-respect deep in their hearts and let this flame itself burn away what has contaminated them. This means that our teachers should show real concern for the children, love them dearly, think of their future and go on helping them blaze the trail of progress (Beijing Review, 1981:29).

Teachers' concern and love is believed to deeply touch students' hearts. A student is quoted as saying: " Our parents took care of us after work. The team leaders and teachers here also have families but they do not go home. Why? This is all for us. They want to see us grow up healthily and become decent people. We should feel guilty if we let them down" (Beijing Review, 1981:29). In order to express respect to students, they are encouraged to actively participate in the school's life. For example, the faculty members of the work-study school of the Xicheng District in Beijing called a meeting to let students themselves make a decision concerning furlough policy. When the students expressed hope that they could go home once every two weeks and proposed there should be no holidays for those who commit offenses within a certain period, the school authorities considered this reasonable enough and accepted their proposal(Zhou, 1979:19). Generally, work-study schools carry out a combination of love-respect and discipline, with an emphasis on the former. Indeed, loving and respecting the students has become part of the official professional code of the teachers who work in these schools. This approach is intended

to encourage and reinforce students' sincere repentance which is thought to be at the heart of the work-study system.

Academic and cultural education is another very important aspect of the curriculum. The students in work-study schools follow an academic curriculum almost identical to that in ordinary middle-schools. Every student is assigned to a class according to his or her educational level. At the end, after passing the unified examination, administered by the local bureau of education, they receive a certificate.

Work-study schools also provide the students with vocational training that usually amounts to ten hours a week of combined training and physical labor. Schools are permitted to vary greatly in what they choose to teach, ranging from performing or fine arts to cooking and hotel services, to sewing, to light manufacturing, carpentry and electronic repairs. Generally, work-study schools try to provide attractive programs for troubled but talented students. Vocational training teaches them good work habits and provide them with skills that they will be able to use in post-release employment. The proceeds from this work are used to pay for student outings, visits to historical or natural sites, and to fund special assistance for particularly disadvantaged students or their families. After about a two-year training, the students may receive a Grade One or Two Certificate of Vocational Skills. Their schools also recommend them to the local department of labor or related factories for employment. Those students who have difficulty finding a job may be employed in the school factory temporarily.

In order to encourage students to reform, a system of rewards and sanctions is used to influence individual behavior. Sanctions consist mainly of criticism by staff and fellow students without physical punishment. Regarding the system of rewards, "Red Flag Emulation" and activist

elections are probably the most popular phenomena in all work-study schools. "Red Flag Emulation" is rotated on a regular basis so that each class of work-study schools will have an opportunity to be elected as a "Red Flag" class. "Red Flag Emulation" is organized on the principle of collective honor with the aim of building up pride in the collective instead of the individual. Activists, such as the "study activist" and "labor activist" are elected by the students. The standards expected of the activist are almost the same everywhere and include: safeguarding collective interest and winning respect for the collective; boldly fighting against erroneous ideals and misdeeds and voluntarily observing school discipline; studying hard and making great progress; and achieving great results in manual labour. The names or photos of both of those elected as "Red Flag" classes and model progressive students are posted on the school bulletin boards and acclaimed at reward meetings. These expressions of commendation and support are strongly reassuring and reinforcing. Zhou Zheng, a correspondent of Beijing Review, reported on a reward meeting held by a work-study school in Beijing:

Activists were elected to take seats on the rostrum at an intramural school meeting and were given awards by the school authorities. These students, because of their mistakes, had in the last two or three years been subjected to continued criticism and reprimands. To them, to be respected was something out of their reach. On that day, with big red rosettes pinned on their tunics, they were applauded by the faculty members and fellow students. Some were also greeted by their parents and teachers from their former school. When those on the rostrum were in tears, others down below silently pledged to mend their ways in the hope that next time they also could have the same red rosettes pinned on their tunics (1979:20).

The third, **final phase** usually lasts three months. Students continue to live in the work-study school, but they attend their original schools on a type of probation. Files of those who are admitted to work-study schools are retained in their original schools, so once they have been

considered to have progressed well, they can still go back to their former schools. If they behave well and have not violated any rules while on probation, they are officially released from the work-study school. If they do not measure up, their terms may be extended by as long as six months to one year. The standards used to evaluate each individual student are work performance, sincerity in repentance, diligence in study, and responsiveness to reform.

Work-study schools depend greatly on public support and co-operation. The active participation of family, school, neighborhood and other social institutions is believed to have great effect on improving the students' legal and moral conscience, heightening their immunity to delinquent influences and decreasing attractive opportunities for participation in subcultures. Unlike those in juvenile reformatories, the students in work-study schools are usually permitted to spend summer and winter holidays as well as other holidays with their families. Under these circumstances, work-study schools always keep close contacts with the students' families, the original schools which they come from, the neighbourhood in which they live, and other social organizations. Work-study school staff are kept informed of what progress the students have made and what problems they have had while at home on holidays.

In general, the placement of juveniles in the work-study settings integrates the positive reinforcement from the community. Public supports have been deemed to be indispensable factors by work-study schools. Perhaps, I can illustrate what is meant by the positive effect of public support with an example. In a work-study school in Beijing, a new student stole a wallet of a fellow bus passenger. After the incident was discovered, his teacher first helped him to realize his mistake and then asked the class to discuss what should be done about this. The students decided to invite that passenger to come to school and collectively apologize to him. After the

passenger came, he did not harshly reproach the student who stole his wallet but told all of them how he felt after his wallet had been stolen. The wallet contained his monthly wage and driver's licence. Since he was a truck driver, this not only meant the loss of money to support his family but also forced him out of job for several days. He and his family were in a quandary. When that child heard this, he was so ashamed of himself that he could not lift up his head. He had expected to get a good scolding, but instead, what he heard from the passenger was a kindly statement: "I am sure that anyone who has the courage to admit his mistake can overcome it all right." All children were deeply moved (Zhou, 1979:24).

5. 3 Conclusion

Work-study schools carry out academic education and vocational training that equips students with practical skills. However, although educational perspective is paramount, the coercive approach is clear in the schools' public confession and deindividuation procedures. Additionally, since work-study schools have a more vigorous ideological coaching than ordinary middle schools, while at the same time they cut off students from inappropriate social influences and external factors fostering crime and delinquency, these schools may have a greater ideological impact on juvenile students than ordinary middle schools. The low official rates of recidivism among students who have attended work-study schools can be taken as an indicator of their efficacy. A study in Shanghai indicated, for example, that among 926 students who graduated from the work-study school of Zhabei District between 1980 and 1986, 1.1 percent of the students committed an offense within one year of graduation, 7.7 percent in the second year, and

another 5.0 percent in the third year. In all, 13.8 percent recidivated in the three-year time span (Li, 1987:287). The document of the Ministry of State Education also indicates:

These schools, though small in numbers, have been given high regard by the Chinese government. They spare no efforts to have their work well done, which they consider to be highly contributory to enhancing spiritual civilization in the entire community. ... Facts show that China's work-study education is an effective system for preventing, controlling and rectifying criminal acts by the young. According to the statistics, between 1980 and 1987 work-study schools throughout the country had taken in together over 30,000 students.... The average proportion of successful cases was well over 80 percent. For some schools such successful cases reached 90 percent (quoted by Zhou 1988:2-3).

Perhaps, China is not radically different from Western and other societies in terms of problems encountered and the measures employed to handle common adult crime and juvenile delinquency, however, more than any other country in the world, China puts a special emphasis on work-study education, especially its emotive persuasion aspect. Probably due to cultural and philosophical differences, for many Westerners, this kind of education is far too sentimental to be believable. But according to what I have seen, heard, read and experienced, it indeed is a popular phenomenon in work-study schools. The anecdotal examples that I have cited in this chapter do reflect the real life in these institutions to some extent.

Note that I discuss work-study school in this chapter mainly in its postulated, ideal state. I understand that there indeed exist such problems as confinement under pressure and stigmatization in those establishments. However, the education in work-study schools appears to be an effective form for instructing and reforming young students who have broken the law or committed minor crimes. These schools, if well run, can contribute not only to prevention and

control of crime and juvenile delinquency but also to maintenance of public order and building of a peaceful society. In China, they have enormous support from ordinary people. It is my belief that the practices of work-study school do provide concrete examples of how to create an environment for successful community-based programs.

Chapter Six

JUVENILE REFORMATORIES

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country"

By Winston Churchill (quoted by Cross, 1971:40-1).

6. 1 Philosophy

The system of reforming delinquents in the People's Republic of China is based on an unrelenting optimism about human nature. Traditional Chinese thought assumes that people are essentially good but corruptible; education is the best tool for systemic and individual reform; and people are malleable throughout their lives and can be educated well because humans have no unalterable character defects (Munro, 1977). These assumptions are based on Confucianism, a dominant traditional philosophy in the Chinese society. Confucius taught that people were born without innate character defects and their moral growth depended upon education. With the proper amount of education, they can perfect themselves and be led to virtue (Jan, 1983). Therefore, education was the key ingredient for maintaining order in traditional China. Contrarily, punishment did not necessarily make people learn or induce them to be good. The primary aim of education was to cultivate and correct mental attitudes towards social norms. Confucian norms of proper behavior encouraged unity and harmony and discouraged the pursuit of personal interests through legal means (Edwards, 1984). According to Confucius, all people have the

innate capacity to be good, but not all have had equal opportunity in receiving the education that would allow them to develop this capacity to its fullest extent. In the words of Confucius, "By nature, men are nearly alike; by practice, they become very different." Mencius, one of the most famous Confucius's disciples, also argued that all human beings were born with an equal potential for moral growth (Dawson, 1982).

Contrary to the concept of human nature of Confucius, Western people tend to have a more pessimistic view of human nature, which has been influenced by the idea of the "original sin", based on certain strands of the Judeo-Christian tradition. The emphasis on the principle of utility and hedonism in the nineteenth and twentieth century Western social thought has been consistent with this vision of human nature as intrinsically self-centered, demanding, and controllable only by commands and prohibitions, punishments and rewards. Therefore, in the West, human beings are more likely to be viewed as basically selfish, and motivated primarily by self-interest, although even the worst of them may have moments of spontaneous generosity. According to an utilitarian view of human nature, people avoid vice in favor of virtue only because they believe that while vice brings pleasure immediately, it brings pain eventually (Mead 1942: 38).

In contemporary China, Marxism has perpetuated much of the traditional Chinese views with respect to human nature. Rehabilitation is being conceptualized within a Marxist context which locates the causes of deviant behavior in the society rather than in the individual. Unlike Western countries, where the individual has been the central focus, in Chinese society, the internal personality dynamics of the individual are not emphasized, and the external environment is regarded to have greatest responsibility for delinquency. In this view, the delinquent is not looked

upon as a deficient person, but as a victim of certain negative influences in the environment. Moreover, the individual is improvable although sometimes he or she is corruptible. The proper societal response to such deviations is to "treat the illness and save the patient" (Mao Zedong, 1974:145). In other words, the offender should be reformed and reintegrated into society as a useful member of that society. Therefore, in China, the basic philosophy dealing with delinquents is "education, persuasion and salvation."

The officials of juvenile correctional institutions in China proclaim to share this belief. They assert that every young offender can be rehabilitated, although some have not been rehabilitated yet. Not giving up on anyone, regardless of offense or record, has become a part of the correction professional's code. In their view, the recidivism figures reflect failures of the correctional system and not instances of individual intractability or incorrigibility. The concept of rehabilitation is still embedded deeply in the present Chinese theory and practice of reforming delinquents although it seems to be declining in the Western countries, especially the United States. Dramatized throughout the Chinese correctional program is the paternalistic dictum that the individual can and should be reasoned with and guided toward positive ends and, therefore, that correctional officials must be to inmates as parents are to their children, as doctors are to patients, and as teachers are to students. The rehabilitation process in China is based on the task of re-educating the offender, which involves a process of helping the individual to respond to the environment in a way acceptable within the socialist state. Essential to this effort is a combination of education and labor.

6. 2 Official Policy

The Criminal Code of 1980 provides a legal base for reforming delinquents. Incorporating the ideas of Marxism-Leninism and Mao Zedong, the criminal code is formulated in accordance with the policy of combining punishment with leniency. Article 1 of the Criminal Codes States:

The Criminal Law of the People's Republic of China is enacted under the guideline basis of Marxism-Leninism - Mao Zedong Thought, on the basis of the Constitution, in accordance with the policy of combining punishment with leniency and the concrete experience gained by the people of all nationalities in our country in exercising the people's democratic dictatorship, that is, proletarian dictatorship led by the proletariat and based on the alliance of workers and peasants, and in carrying out socialist revolution and socialist construction (quoted from the English translation of the Criminal Code of PRC).

Leniency toward juvenile offenders, especially first-time offenders, is one of the main official principles of the Chinese juvenile justice system. Using education as the primary means and punishment as the auxiliary in handling minors who commit crimes is another guiding principle of China's Criminal Code. This policy in fact originated from the policy of reforming criminals implemented during the Jiangxi and Yan'an period (1927-1949), before the establishment of the People's Republic of China, which was founded on the principle that "education is primary and punishment is secondary" (Criffin, 1974:330). According to the present policy, delinquents are reformed mainly through education and labor, which enables them to earn their living through their own honest labor and become useful to society. Although education and labor are emphasized by both reformatories and work-study schools, the nature and intensity of education and labor are different between them. Unlike those in work-study schools, inmates of

reformatories are juvenile offenders sentenced by courts or sent by the police. The difference may be symbolized by the fact that inmates of reformatories wear uniforms while in the work-study schools, they do not. Director Yin of the Beijing Municipal prison stated the policy succinctly when he said:

In order to carry out the policy of forced labor reformation set by the Chinese government, we adhere to the philosophy that reformation is primary and the labor is secondary. Punishment and supervision are combined with the ideological education. Labor is combined with politics to remold the majority of the inmates into useful people for society. The foremost method for remolding inmates is political education to educate them to recognize their own crimes, to be able to abide by the law, to understand the importance of labor so that they can take part in labor, to know the importance of the government policy, and to see their own future (Quoted by Liu, 1988:176).

The policy of remolding juvenile offenders sentenced to reformatories is based on combining education with labor. Education is designed to help the delinquents re-orient themselves personally and ideologically. They are encouraged to "turn over a new leaf," "make a new start towards a better life" (Han, 1992:156). Forced labor is the second but indispensable ingredient used in reforming young offenders. Labor is emphasized as a part of reform for its rehabilitative effect on delinquents. It provides delinquents with an experience of hard manual labor and an opportunity of seeing the relationship between hard work and production of material goods. This experience may prompt inmates to explore their ideological outlook and personal faults, leading to repentance and reform.

The purpose of the reformatory is to reform inmates mainly through labor and education and make them become "new people", rather than simply to apply punishment to inmates and to make them pay for their crimes. This goal is based on a strong belief that successful rehabilitation

potentially leads to the restoration of harmony in the social order. Such a policy approach seems to be consistent with the traditional attitude of Chinese people who regard the health of the society at large as far more important than the specific needs of the individual. Unlike the West, in Chinese society, the values and rights of the individuals are not held as sacred.

According to the present Criminal Code, anyone over the age of sixteen should bear criminal responsibility. An offender who is between 14 and 16 years of age should bear criminal responsibility if he or she commits homicide, robbery, arson or other offenses which seriously undermine social order. In addition, according to Article 111, the Law on Criminal Procedure, trials of those who are 18 years of age and under are not open to the public. Clearly, this provision of the Law on Criminal Procedure is intended to protect juveniles from stigmatization and increase the possibility that a rehabilitated offender becomes again part of the community. Terms of sentence are dependent on the nature of offence and the degree of its seriousness. Generally, due to the emphasis on rehabilitation in the cases of juvenile offenders, the length of sentence is shorter in the juvenile justice context than it is the case for adult offenders, with harsh measures generally avoided. While terms are basically fixed, reformatories can recommend their lengthening or shortening; this, however, must be approved by the people's court.

Juvenile offenders serve their sentences in reformatories for juvenile delinquents, which are established at the provincial or municipal level. In reality, not all inmates of reformatories have been sentenced by courts. Some are detained for re-education through labor (*laodong jiaoyang*) with no formal sentence. They are there for breaking administrative regulations rather than the criminal law. When juveniles commit minor offences, the police may recommend their incarceration to a Rehabilitation Through Labor Committee which has authority to order their

confinement for up to three years. The legislative basis of this measure include: (1) the Decision of the State Council Concerning Questions of Reeducation through Labor, approved by the standing committee of the National People's Congress on August 1, 1957 and published by the State Council on August 3 that year (Liang, 1990); (2) the Supplementary Regulations of the State Council Concerning Reeducation through Labor, promulgated on November 29, 1979 (Liang, 1990); (3) the Temporary Measures for Reeducation through Labor, published by the Ministry of Public Security on January 21, 1982 with the approval of the State Council (Wang, 1989). Section two of the Decision of the State Council Concerning Questions of Reeducation through Labor states that " reeducation through labor is a measure of a coercive nature for carrying out the education and reform of persons receiving it. It is also a method of arranging for their getting employment." It is designed to " establish the concepts of patriotic observance of law and of the glory of labor." Although the activities of the two groups of young inmates - those sentenced by the court and those committed for reeducation-through-labor- are similar, they are kept apart and the discipline for the detained for re-education group is not as severe.

Reformatories fulfill their correctional functions in three ways: (1) the traditional function of control of young offenders through incarceration; (2) the function of education or political socialization; (3) discipline through hard labor. By turning delinquents into "new people", recidivism can be reduced. This is supposed to be achieved by three types of education-- ideological, cultural, and technical.

The ideological education is addressed to inmates' moral growth and leans heavily toward current affairs, Chinese culture, history, law observance, political responsibility and communist ideology. It focuses on inmates' thought reform. "Thought reform" seems to have a

fearful connotation because Western people always regard it as "brainwashing". In fact, the Chinese use it to describe an approach to dealing with the past wrongful behavior. It is not only the instillment of communist ideology, more importantly, it aims at the inmate's complete confession and admission of guilt and genuine repentance. Therefore, the insistence on "confession from the heart" and the belief in its redemptive qualities provide the rationale for the reformatories and its practices.

The educational process is usually conducted through classroom lectures, individual presentations, study of political documents and newspapers, films and group discussions. Various other programs are also organized to make the process more vivid and interesting. As a part of ideological education, "the Five Stresses" (civility, politeness, sanitation, order and morality) and "The Four Beauties" (mind, language (speaking), behavior, and environment) have been emphasized. Study sessions are devoted to gaining a better understanding of Chinese history and society. This understanding, in turn, will lead to the offender's recognition of the nature and cause of his or her misdeeds, a deep repentance of their misdeeds, and a sincere desire not to repeat them. Just as Li, a famous scholar of the Chinese problems, states: "There is no great surprise at and no great resistance to the idea that most people are completely reformable. An offender can analyze why and where he went astray, state that he now recognizes his past errors, and promise to sin no more" (1973:154).

Among the many methods of ideological education, there is a typically Chinese approach which consists in presenting people with a model. This approach seems to be based on Confucius's thought. Confucius believed that human learning occurs primarily through the imitation of models. His disciple Mencius was so convinced that people emulated behavior of

others that he urged people to examine the morality of a neighborhood's inhabitants before deciding to move there, because their own behavior would inevitably be influenced by that of their new neighbors (Munro, 1977).

This thought continues to exert a strong influence in the present China. Many reformatory officials are convinced that the use of models provides the most desirable mode of learning and is especially effective because peer respect is a powerful human need (Munro, 1977). Therefore, the inmates are urged to learn from good examples. Emulated models may be living or dead, national or local. For example, Lei Feng, a late soldier of the People's Liberation Army, is renowned throughout the whole country for his hard work, selflessness and patriotism. A model may exhibit general virtues, such as "selflessly serving the people" or particular ones, such as "working hard and doubling one's output in a factory". The other side of this emphasis on the model is to encourage people to become models themselves. Inmates thus are exhorted to act as models for other inmates. Those chosen as models of neatness, productivity, helpfulness, or some other virtue are often lauded at many different occasions, while others are encouraged to follow their example. For example, there are blackboards in every reformatory which display inmates'"good deeds." Many officials believe that the model's example helps to develop an entrenched attitude, which is far more stable than a fear of punishment. Coercive methods are regarded as being a second choice.

Cultural education focuses on the nine-grade compulsory education program and follows a curriculum for part-time students. Usually, inmates are divided into different grades and classes according to their actual educational levels. Those who study well and may further their study after release can be provided with more opportunities to study. If they pass the examination held

by the regional government, they can acquire relevant diplomas. For example, in 1994, 579 delinquents in the reformatory of Hubei province took part in the high-school-level examination. 97.8% of them passed and obtained diplomas (Xiang Zhongyu, 1995:49). Some inmates of the reformatories even took courses at the extramural university or TV university and, eventually, received college diplomas. Participation in sports, physical training, and recreational activities is also encouraged.

Technical education is intended to produce good work habits and help to acquire some useful skills. Therefore, this education is closely related to the state of being rehabilitated and making a contribution to society. All reformatories have their own farmlands or workshops in which inmates can work and require skills. This is based on the Chinese view that the institution of reform should be established like a factory, a farm and a school. Inmates are encouraged to learn some marketable skills in the institution in order that they may have more opportunities for finding a job when they return to society. In the Shanghai reformatories, for example, inmates developed a delightfully landscaped garden, complete with waterfall, gazebo and dragon gate. They earned money through selling flowers and plants planted by themselves in the reformatory's nursery. After taking fourteen courses in gardening, landscape, and horticulture, the inmates may be awarded a Grade Three certificate, which makes its holder highly employable.

Along with education, labor constitutes also an essential ingredient used in reforming delinquents. By hard labor, the inmates not only learn the values of constructive effort, but they also acquire work habits, skills and experiences to pursue a productive role in society. Usually, inmates spend six half-days a week on study and six half-days on farm or workshop labor without pay. In every reformatory, the arts and crafts and other products made by inmates are exhibited

in public areas. Many of the pictures, portraits, models, carvings sculptures, and other objects on display are made from waste materials that would have been discarded, such as wood shavings and toothpaste tubes. These products not only reflect the achievements of labor of inmates, but also imply that even seemingly useless articles can be made into beautiful and useful objects. By analogy, the inmates who have been spoiled, wasted, or discarded certainly can be remolded into "new people", useful to society.

Reform-through education-labor may be called a "carrot and stick" approach because discipline is maintained by rewards, criticism and punishments, with the emphasis on rewards. When inmates behave exceptionally well, they are given home leave (inmates are usually not permitted to go home during their sentence except for some rare cases, such as severe illness or death in the family), material rewards, record of merits in their files, merit points for special work assignments, and, for outstanding performance, commutations of sentences and early parole. If inmates misbehave, they are subject to criticism, warnings, record of demerits and solitary confinement. Furthermore, if they commit new offenses, their sentence is extended.

All reformatory inmates are supposed to receive humane treatment. Considering that they are juvenile and are still growing, more money, according to the regulations, is allocated for the food, education and medical care of juvenile inmates than adult inmates. Moreover, they are also required to do less arduous labor than adult inmates. No corporal punishment or verbal abuse is permitted. Escapes from juvenile reformatories are very rare. The inmate subculture which is found in many Western prisons is not present, either. Martin King Whyte (1973:261-269) comments that the Chinese correctional institutions avoid the resistance of inmate subculture by absorbing off-work time of prisoners in group study; openly using informers; assigning inmates

to groups that lack common backgrounds and interests; selection of group leaders from the most co-operative inmates, and linking the reward-punishment system to reformed attitudes.

Perhaps the most important feature of the Chinese process for reforming juvenile offenders which sets it apart from other juvenile justice systems is the wide range of people that are drawn into it. At the lowest levels, it includes parents and other family members who have the basic responsibility for public welfare. In addition, there is a universal assumption in China that parents' behavior and methods of education can be contributing to their children's deviance because parents are their child's first teachers. Therefore, the important role in reforming delinquents played by parents is heavily emphasized. As Dutton states:

While the family of the inmate was, in the classical period, treated with suspicion and, at times, outright hostility, such relations have been reordered in the contemporary period. The family is now interpolated into the reform and becomes an instrument of government. This transformation in the role of the family within penal discourse would not have been possible had it not been for the other great changes which had transformed the social function of the family (1992:260).

Thus, the family in fact has become an ally of the state in the penal reform process, rather than the co-object of the state's punishment in modern China. Although the positive dimensions of a strong family cannot be denied, the new approach is in some ways a double-edged sword in that it can place extreme pressure on both the child and his or her family. Parents of inmates are expected to combine several roles, as educators of juvenile delinquents, assistants to reformatories and parents of delinquent children. Parents of inmates are often invited to visit dormitories, workshops and classrooms. They also join discussion meetings in which they learn about education and how to improve their parenting skills. Parents are also encouraged to give

the reformatory's suggestions on how these institutions might be better run. They may spend holidays with their child in the reformatory and, sometimes, take their child home for a few days with the reformatory's permission.

Various specialized organizations, through their local branches, also take a hand in urging delinquents to rehabilitate themselves. To the Chinese mind, juvenile delinquents come from society and will eventually go back to the society, social education is an indispensable factor in the process of the reform. People believe that participation of the whole society in reforming delinquents will greatly accelerate the process of socialization of juveniles. Therefore, an unusually broad range of citizens and groups are drawn into the process. Many state or regional leaders and other high-ranking officials often visit reformatorys and show interest in inmates' study, labor and life. Different levels of the People's Congress, government, the People's Political Consultative Council and other organizations, such as labor unions, the Young League, women's associations, schools, factories and communities, even military organs all are assisting reformatorys with reforming delinquents. For example, one naval school of the People's Liberation Army in Shanghai established a link with a local juvenile reformatory. The school regularly sent its staff members and students to the reformatory. Not only did they give lectures on Chinese history, tradition and moral and spiritual civilization but also conducted many kinds of cultural and entertainment programs for inmates. Furthermore, they organized inmate visits to their school and enabled the students to watch their military training (Xiang, 1989:265).

The great pressure which various organizations exert on the individual to conform to group norms must certainly have an impact on juvenile offenders. Indeed, many grass-roots organizations have had considerable success in helping delinquents to reform (Luo, 1980:20). At

the same time, reformatories themselves also organize their charges' visits to factories, farms, schools and historical and cultural sites in order to provide inmates with more opportunities for contacts with society. The purpose of all these efforts is to enable inmates to realize that society has not forgotten and deserted them and to strengthen their confidence in returning to society. Mass involvement in reforming delinquents is one of the most striking aspects of the Chinese justice system that differentiate it from Western models.

After having served his or her sentence, the inmate is released but the reformatory continues to be responsible for its former inmates. Before release, some special courses are held to help inmates overcome the isolation caused by incarceration. At the same time, correctional staff visit the neighborhood, school, or workplace to discuss the young person's return and report to them on how he has been reformed. Staff members also regularly visit the released person's home, usually once every three months for the first year following the release and every six months for the next two years. During this time they may help with school or work problems and if necessary, mediate in any practical or interpersonal difficulties, such as housing and employment, which the released person may be having.

In order to facilitate integration of released juveniles into society, the government has been encouraging work units and schools to accept delinquents for employment or study. Although in traditional Chinese culture, individuals who commit a crime are considered a disgrace on their families and themselves, the present-day Chinese society does not systematically discriminate against them. Usually, released delinquents can get jobs by: (1) returning to their previous work unit (according to the present regulations, the work unit must accept them); (2) returning to their original neighborhood community where the local neighborhood committee or

labor department try to allocate them a job; (3) continuing to work in the prison factory or farm; (4) opening their own small business based on their newly acquired skills. Of course, in practice, it is not always easy. Some factories and schools are reluctant to accept young persons who have a criminal past. In order to solve this problem, the Chinese government has taken two measures. One is to persuade the leadership of the work units to accept the reformed youths is to set up a certain quota that must be filled by the people released from reformatories (Wei, 1981).

6. 3 Conclusion

Within the juvenile justice system in China, there is a profound belief in the application of practices based on the philosophy of reform that aims at making a new person rather than achieving reform in the shape of superficial compliance. The Chinese in general, and specifically reformatory officials, believe that reform through education-labor is effective. This belief is supported by the low rate of recidivism in China. A number of different sources suggest that recidivism rates among those released from reformatories are between 8 percent and 15 percent (Li, 1992: 55). In spite of different estimates, it is clear that the recidivism rate is quite low. From the limited data available it is difficult to judge whether low recidivism rates for the released reformatory inmates are chiefly the result of rehabilitation or are due to other factors, such as tight social control, or post-release surveillance. Nevertheless, the Chinese authorities and correctional officials do believe in the effect of reforming through education and labor and claim its apparent remarkable positive long-term results. Indeed, both the reform through education and

labor and the continued community involvement should be regarded as contributing factors of low recidivism rates.

Chapter Seven

DISCUSSION

This is only an exploratory study of a limited scope. Consequently, many issues remain unexamined and unanswered. Moreover, there are discrepancies between the Chinese system in its ideal form and the manner in which it in fact operates. My thesis concentrates mostly on the philosophy, rhetoric and legal conceptualization underlying this system.

In this Chapter, I will discuss and interpret my findings in three following sections: (1) the key features of the system of social and legal control in China; (2) an assessment of the labeling theory and the reintegrative shaming theory in the light of Chinese experience; and (3) the lessons learnt from China and Western countries and the relevance of their disparate experience for each other.

7. 1 The Key Features of the System of the Social and Legal Control in China

The Chinese social control system has endured for more than two thousand years. Despite the passage of time and the progress of science and technology, ideas and practices associated with the Confucian tradition generally continue to influence Chinese thinking and behavior. This is not to say that modern China is just an extension of the old, traditional society. Rather, there are some cultural continuities.

In the social and legal control mechanisms of contemporary China, mass participation, based on Confucian tradition of stressing the value of the group and the destructiveness of

selfishness (Chin and Chin, 1969), is still regarded as a key tenet. Neighborhood committees including public security committees and mediation committees, and even community policing, are all practical applications of this approach. The social order in China is supposed to be maintained by "the capacity of society's members to understand one another and to act in concert in achieving common goals through common rules of behavior" (Johnson, 1983:152-153). The heavy emphasis is clearly on informal rather than formal methods of social control. The Chinese experience indicates that collective citizen action is an effective strategy for controlling crime, reducing fear of crime, and building a peaceful society. Indeed, social control in Chinese society is so strong that dropping out, becoming invisible, or carving out an area of one's life and declaring it out of bounds to anyone but oneself or one's family, seems to be impossible (Simon, 1985:99-100). Dorothy Bracey (1984) aptly described how and why the Chinese social and legal control systems work in practice. After comparing the social and legal control systems of China and the United States, she made the following comments:

It is only a slight exaggeration to say that if American crime prevention is a device by which citizens assist the police, in China it is seen as a method by which police provide back-up service for citizens.... One senior police official estimated that in approximately 60 percent of all cases cleared, the main work in solving the crime or apprehending the offender was done by citizens.

When the Chinese say that crime is a social problem, they are not simply saying that an individual is a product of the social environment and therefore is not totally responsible for his behavior. They are saying that the social group — not an abstract 'society' but a village, neighborhood or work group — is both responsible for and a victim of crime. The conclusion they reach is that the social group has the right and duty to intervene in behavior that might lead to crime (Bracey, 1984:10).

As a feasible and appealing solution, mass participation in crime prevention will probably continue to exist and develop in China. However, under the current circumstances, the

preeminence of the group has been linked to and interpreted within the socialist ideology. Leng and Chiu (1985) explain the socialist viewpoint:

Under the socialist system, civil rights enjoyed by citizens not only must be guaranteed by law to ensure their realization, but the scope and limits of citizens' exercising their liberties must also be regulated by law. Socialist liberties are liberties that do not violate the basic interest of the broad masses of people; they are liberties that observe the social order and the necessary discipline; they are the liberties of the vast majority of the people. They must obey the socialist laws which reflect the will and interest of the broad masses of people (Leng and Chiu, 1985:53).

Clearly, although Chinese society today has changed greatly and is not the same as it was during the dynastic time, informal social control has adapted to significant political and ideological shifts over the centuries. Even while China is undergoing major changes in the direction of a free market and a more open economy, the traditional focus on matters pertaining to social and legal control and mass group involvement do not seem to have diminished. The basic social unit in the present Chinese society continues to be the group rather than the individual. People firstly learn to behave in response to the family's needs; this helps set the stage for behaving in terms of the school's needs, the work unit's needs, and the neighborhood's needs. Thus, social control rests with these same groups -- the family, the school, the work unit, neighborhood group and only as a last resort, the state. Ultimately, however, the state as definer and protector of the nation's needs is the apex of this structure. All crimes, as a consequence, are regarded as crimes against the state.

Today's China is different from China of the past. Chinese approaches to social and legal control have been undergoing changes, in some areas slowly and in others with breathtaking speed. The Chinese have realized the limitations of control by the masses and informal

procedures; therefore, the trend in the Chinese social and legal control model is toward being more formal and professional to provide equality and protect individual rights. China has recently developed an extensive array of coded laws and made a massive effort to train and professionalize lawyers, police, prosecutors and judges. This does not mean that contemporary China is following the road of Western countries. There are still many fundamental differences in the social and legal control of crime and delinquency between Western and Chinese society. They mainly reflect differences in philosophical and ideological value judgments. Although I understand that the West does not deny the existence and importance of groups, its primary concern is with the individual — whether in terms of legal status, religious salvation, or personal fulfillment. Consequently, the Western system stresses individuality, privacy, diversity. Chinese society places less importance on the individual and greater emphasis on how he or she functions within the context of a larger group. Thus, while China is engaged in the construction of socialist legalism, it is still emphasizing mass participation and a parallel development of formal and informal social control. The stress on informal models and mass participation may be seen as contributing to the preservation of traditional values as it places responsibility on a range of social groups. Social groups, such as neighborhood committees, are becoming less militant and conspicuous in recent years, but they are still counted on for preventing and controlling crime and delinquency and providing support to the formal criminal justice system. Perhaps, due to the sheer size of China and its population, this appears to be the only practical approach to controlling crime and delinquency. In China, a primary reliance on the formal criminal justice system in maintaining the public order would not only be socially impractical but also financially unviable.

However, the theory and practice of Chinese social control indicate that it is not a

completely informal system; rather it is formally invested in less formal structures — in mass groups more than in traditional social institutions. For example, some local neighborhood groups, such as public security committees and mediation committees are legitimized and often trained by local justice organs or police. Formal agencies make informal groups the locus of social control. In such a way, the Chinese social control system appears to reflect Chinese cultural characteristics.

In emphasizing the differences between Chinese and Western systems of social control, we should not lose sight of the fact that there are also some similarities. For example, in theory, the system of Chinese social control appears to reflect the basic principles of two influential Western approaches to crime control, namely, informal social control and opportunity reduction. Jane Jacobs articulated the basic principle behind the informal social control model as it pertains to crime control:

The first thing to understand is that public peace...is not kept primarily by the police, necessary as police are. It is kept primarily by an intricate, almost unconscious network of voluntary controls and standards among the people themselves, and enforced by the people themselves (1961:31-32) .

In practice, many Western countries seem to have grappled with the idea of informal control of delinquency. For example, some studies in the United States suggest that community-based treatment of delinquency may provide a promising alternative for improving results in reducing delinquent recidivism (Kratcoski & Kratcoski, 1982). In fact, appeals to community for crime and delinquency prevention become more and more conspicuous all over the world. They emanate from both the political Left and Right. For the Right the notion of community has largely been associated with top-down intervention that seeks community support for the existing formal

criminal justice system. For the radical Left, community has come to be associated with strategies of local "empowerment" through grass-roots or bottom-up activities which, as a consequence, may result in more oppositional relationships with formal state agencies (Crawford, 1995). Just as Dennis Rosenbaum states:

We are entering the heyday of community crime prevention. Never before has the notion of citizen involvement in crime prevention received such widespread support from law enforcement, the media, the general public, the federal government, and even the academic community (1987:103).

Regarding the control of juvenile delinquents, the Chinese social and legal control usually follows the sequential steps, with the control by family and local mass groups coming first, and the police and the courts activated only very late in the process. The sequence is roughly as follows:

1. Younger juvenile offenders receive early social-educational intervention that emphasizes education in the moral imperative of group living. This is carried out in the family, school and the neighborhood.
2. Continuing transgressions may result in the establishment of a local "social-educational team" which takes direct responsibility for reform in the neighborhood setting.
3. If local control fails, the youth may be sent to a work-study school in order to receive a stricter supervision.
4. For serious misbehavior, a juvenile may be placed by the police in a juvenile reformatory or a rehabilitation-through-education and labor camp for the term of one to three years.
5. If juveniles' behavior involves violations of the criminal code, they may be sentenced

by the court to a juvenile reformatory.

The first three steps in the above sequence address a vast majority of cases. It is the need to prevent and “cure” delinquency among the youth that is most emphasized. Showing love and concern, providing moral and practical education, and bolstering the youngster’s sense of self-worth are the major principles repeatedly stressed in policy statements and practical guidelines. All this indicates that prevention is considered paramount in the realm of control of crime and delinquency. In fact, all programs of social and legal control in China are — at least theoretically— geared to this purpose. For example, the operation of the mediation committees that are involved in settling non-criminal disputes, is based on the rationale that such events eventually develop into serious situations, including crime, unless problems are nipped in the bud. The legal education campaign is premised on the belief that crime can be prevented by educating Chinese citizens about the law. Even the formal criminal justice system is oriented toward prevention. The police spend much time in legal education activities and other community work. Judges and prosecutors are expected, through court trials and other legal fora, to be involved in teaching people about the law with the goal of preventing violations.

7. 2 An Assessment of the Labeling Theory and Reintegrative Shaming Theory in the Light of Chinese Experience

In this section, I will briefly review and assess the labeling theory and its subsequent reformulation, the reintegrative shaming theory, in the light of Chinese experiences. Evidence from the Chinese society will be used to analyze the main tenets of these theories and to probe

both their cultural specificity and possible universality. While both my knowledge of Western classic theories and the data concerning Chinese society are too limited to warrant a conclusive theoretical analysis, I feel that a closer, cross-cultural look at these theories may prove illuminating for both Western and Chinese scholars. Given, however, the cultural disparity between the Western and Chinese ways of thinking, theoretical concepts have to be contextualized and explored differently in each culture. Therefore, many of my ideas may have to be reconceptualized in the process of my analysis.

Labeling theory holds the view that formal and informal societal reactions to delinquency can influence delinquents' subsequent attitudes and behavior. This was recognized early in this century. According to Donald Shoemaker (1996:191), Frederick Thrasher's work on juvenile gangs in Chicago (1927) was one of the first instances in which the consequences of official labels of delinquency were recognized as potentially negative. Thereafter, Frank Tannenbaum (1938) introduced the term "dramatization of evil," in which he argued that officially labeling someone as a delinquent can result in the person becoming the very thing he is described as being. Edwin Lemert (1951) developed the concepts of primary and secondary deviance, which became the central elements of the first systematic development of what has come to be known as labeling theory. These concepts all stress the importance of social interactions in the development of self-images and social identities.

The central tenet of the labeling theory is quite straightforward: Deviance and social control always involve processes of social definition (Schur, 1971:7). Howard Becker made the following succinct comments:

.....social groups create deviance by making the rules whose infraction constitutes

deviance, and by applying these rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label (1973:9).

Labeling theory attempts to account for the mutual effects of the actor and his audience.

The theory is concerned not only with what the actor and reactor do, but also with how each one's actions affect the behavior of the other (Shoemaker, 1996:195). It is thus clear that one of the most central issues with labeling theory is the connection between behavior and the societal reaction to it. According to Lemert (1967:v), "older sociology...tended to rest heavily on the idea that deviance leads to social control. I have come to believe that the reverse idea, i.e., social control leads to deviance, is equally tenable and the potentially richer premise for studying deviance in modern society."

Another issue with labeling theory is the matter of how the label is handled by the labelee. The importance of groups and associations in the actor's reception of societal reactions to his behavior is emphasized. For example, Howard Becker (1973: 37-39) thinks that a final step in the career of a deviant is the identification with an "organized deviant group". It suggests that group support of a labeled deviant may either push him further into an identity as a deviant or serve as a catalyst for a transformation from a socially shunned role to a more positive social status.

The relationship between a delinquency label and consequent identity problems has been analyzed through qualitative research. By examinations of the court processing of juveniles and observations of juvenile gangs, Robert Emerson (1969), Carl Werthman (1970) and Aaron Cicourel (1976) have established the connection between the labeling a juvenile as a delinquent

and the development of delinquent identity or anti-authority attitudes. Frederick Thrasher (1927) and Frank Tannenbaum (1938) also qualitatively assessed the connection between self-concept and formally being labeled as a delinquent. Qualitative analyses suggest that official labels do produce, or at least contribute to, a delinquent self-image. However, some quantitative research and efforts to assess self-reported attitudinal and behavioral consequences of labeling, both formal and informal, among youth in the general population have failed to establish support for the predictions of labeling theory (Snyder, 1971; Mahoney, 1974, Thomas and Bishop, 1984; Ray and Downs, 1986).

The origins of the reintegrative shaming theory may be traced to John Braithwaite's publication of *Crime, Shame and Reintegration*. Here he wrote:

The first step to productive theorizing about crime is to think about the contention that labeling offenders makes things worse. The contention is both right and wrong. The theory of reintegrative shaming is an attempt to specify when it is right and when wrong. The distinction is between shaming that leads to stigmatization - to outcasting, to confirmation of a deviant master status - versus shaming that is reintegrative, that shames while maintaining bonds of respect or love, that sharply terminates disapproval with forgiveness, instead of amplifying deviance by progressively casting the deviant out. Reintegrative shaming controls crime; stigmatization pushes offenders toward criminal subcultures (1989:12-13).

Braithwaite's statement reflects that the core of the reintegrative shaming theory is about the positive effectiveness of reintegrative shaming and the counterproductiveness of stigmatization in controlling crime. He argues that "shaming is counterproductive when it pushes offenders into the clutches of criminal subcultures; shaming controls crime when it is at the same time powerful and bounded by ceremonies to reintegrate the offender back into the community of responsible citizens" (1989:4). Therefore, individuals should be confronted in the communities

to which they belong and reintegrated back into them rather than cast out of the community. Otherwise, they may be driven into one of the variety of criminal subculture which are available. According to Braithwaite (1989), informal shaming by those around us is far more effective in preventing criminal behavior than the threat of punishment. Thus, the key to crime control lies in cultural commitment to shaming in ways that are more "reintegrative" than stigmatizing (Braithwaite and Mugford, 1994:166). The theory conceives shaming as a tool to "allure and inveigle the citizen to attend to the moral claims of the criminal law, to coax and caress compliance, to reason and remonstrate with him over the harmfulness of his conduct" (Braithwaite, 1989:9).

The reintegrative shaming perspective is not just an abstract theory. Two major movements, in both formal and informal justice systems, have endeavored to promote and apply shamed-based strategies in practice. One movement advocates the use of judicial shame penalties, such as public exposure and apology. According to David Karp (1998), the shame penalty is meant to reaffirm normative standards and deter future transgressions by creating an opportunity for the offender to experience shame. The threat to social status of the offender is the primary sanction in the shame penalties.

The other movement promotes a model developed through the well known "family group conferencing project" initiated in Australia and New Zealand (Braithwaite and Mugford, 1994). The project aims to involve a wide-ranging group of people connected to the victim(s) and offender(s) in responding to offenses by juveniles, thereby returning conflicts to the community. The offender is urged to take responsibility by caring about what he or she has done. This model provides a public arena and a ceremony in which the offender and the victim consider the offense

and what ought to be done about it. Rather than a formal ceremony dominated by the arcane language of the law, these are informal sessions in which support systems of the victim and the offender and interested local residents meet to discuss the impact of the crime and how the offender might deal with that impact. Under this model, Braithwaite and Mugford outline the conditions for successful reintegration:

1. In contrast to identifying both the act and the offender as counternormative, only the act is identified as such.
2. The offender is not defined by the act, but neither is the act condoned ("hate the sin, love the sinner").
3. The denouncer is viewed as a part of a community of relations, of which offender, victims, and others are a part. Denunciation is in the name of victims and the interest of the community.
4. Through a process of reconciliation in which the offender expresses remorse and commits to reparation, the community responds with forgiveness and decertification of the deviant label, closing the distance between the offender and the community (Karp, 1998).

Generally, the reintegrative shaming theory and practice aim at maximizing shame, while maintaining community links and providing opportunities for the offender to make amends to those injured. According to John Braithwaite, crime is best controlled when members of the community are the primary controllers through active participation in both shaming offenders and concerted efforts to reintegrate them back into the community of law abiding citizens (1989:8).

The major theoretical claims of labeling theory (LT) and the reintegrative shaming theory (RS) are assessed below in the light of the evidence available from the Chinese society.

LT: The primary factor in the repetition of delinquency is the fact of having been formally labeled as a delinquent.

RS: Shaming carries a risk of alienating the first-time offender if it is not combined with positive re-integrative efforts. These efforts are more likely to succeed in a society tied by strong informal bonds.

The Chinese approach to delinquency assumes that labeling a delinquent does not necessarily produce his or her secondary deviance in spite of the existence of an effect of official labels on delinquent identities and behavior. In Chinese society, it is recognized that the social reaction to delinquency (labeling) may have both positive and negative effects, but a greater emphasis is placed on its potential for positive effects. In China, stigma is regarded as a great deterrent; it is shameful and therefore people try to avoid it. It is also believed that labeling contributes to rehabilitation. In Chinese society, upon being labeled deviant, a person is subject to negative reactions and moral condemnation from society and is initially removed from his or her normal position in society and assigned a special role --- a distinctive deviant role. This strategy is expected to force the individual to feel "pain" and recognize that he or she indeed has some problems and therefore become motivated to rehabilitate himself or herself.

This process of labeling takes place in a distinct cultural context, however. Chinese society is a highly interdependent and relatively communitarian society where individual survival depends on the survival of groups, and the functioning of groups depends on the capacity of their members to cooperate (Wrong, 1994). In such a society, social comparison becomes a major concern of members of society. Individuals care profoundly about what others think of them and

their positions in the social world. Penelope Oakes, Alexander Haslam and John Turner explain:

Social identity theory assumes that people are motivated to evaluate themselves positively, and that insofar as a group membership becomes significant to the self-definition they will be motivated to evaluate the group positively. In other words, people seek a *positive social identity*. Since the value of any group membership depends upon comparison with other relevant groups, positive social identity is achieved through the establishment of *positive distinctiveness* of the group from relevant outgroups [italics in original] (1994:82).

Since individuals strongly depend on others for fulfillment of basic needs, pride and shame serve as indicators of the strength of the individual's social connection to others in Chinese society. Because of this sense of interdependence, the Chinese have the greatest esteem for those who make progress in accepting conventional norms. The role of a (positively labeled) model is always emphasized. To the Chinese people, to be praised as a model citizen -- as the chaste widow or dutiful son were praised by Confucians -- is regarded as the most legitimate and desirable form of reward because it moves others to imitate and respect them (Munro, 1973: 126-127). For social control to be effective, however, the effect of negative labeling and shame is also emphasized. The effect of shaming lies not only in deterrence but also reintegration. Although at first, shaming can stigmatize and alienate the juvenile offender when the community expresses disapproval not only of the act but also of the person (Karp, 1998), need to regain or protect one's social status is a strong motivation for conforming behavior. This is facilitated by the subsequent reintegrative efforts of the collective.

Shaming is particularly meaningful in societies with strong social bonds. In China, people, especially juveniles, are closely attached to their family, school and neighborhood. Strong social bonds make shame have a greater effect on offenders because shame is the emotional

cognate to the social bond and shame is felt when the bond is threatened (Scheff, 1990). Once a person is shamed, the shame is often also born by his or her family and, although to a lesser degree, by neighborhood and school. Under these circumstances, juvenile offenders as well as their families, schools and neighborhoods endure painful humiliation. This situation can force shamed persons to regret their behavior because they accrue greater interpersonal costs from shame. As David Karp explains: "What is unique about shame is that it is indicative of a bond between the offender and other members of the community. Where there is no bond, there is no shame. The stronger the bond, the more easily a person is shamed" (1998).

Shaming is powerful and where there is power, there is also a risk. John Braithwaite and Stephen Mugford (1994) argue that stigmatization and exclusion are the most significant risks of shaming. Braithwaite (1989) points out that shame can take dramatically different forms. They range from stigmatizing or disintegrative shaming that brings a degradation in social status to reintegrative shaming. He further explains:

Potent shaming directed at offenders is the essential necessary condition for low crime rates. Yet shaming can be counterproductive if it is disintegrative rather than reintegrative. Shaming is counterproductive when it pushes offenders into the clutches of criminal subcultures; shaming controls crime when it is at the same time powerful and bounded by ceremonies to reintegrate the offender back into the community of responsible citizens (1989:4).

Indeed, a shame-induced negative, or delinquent, self-image has a detrimental effect on some juveniles. In China, some informal or formal control measures, such as early social-educational intervention and confinement in a work-study school or juvenile reformatory, result in considerable stigma. This may persist even though these measures do not attempt to demean

and humiliate offenders and emphasize reintegration into the community following treatment at an institution. For example, although social-educational teams may be assigned to monitor and help reintegrate the returning delinquent, it is impossible to erase stigma completely. Once stigmatized with a deviant label, some juveniles, especially those from broken-families, may lose love, dignity, and respect. In some areas, many schools, factories and other institutions are reluctant to accept youngsters with a criminal or delinquent past. These young people usually have fewer opportunities to enter school, to find jobs, to join army, even to establish family. Thus they may experience a sense of injustice at the way they are victimized by agents of social control. This situation may indeed influence some juvenile offenders to have more negative attitudes towards society, become more involved with delinquent peers, and regard themselves as more delinquent. Under these circumstances, deviance becomes and is rationalized as a defensible lifestyle, which is difficult to change. This partly explains the phenomenon of recidivism in China.

LT: Formal labels eventually alter a person's self-image to the point where the person begins to identify himself or herself as a delinquent and act accordingly.

RS: Shaming may damage a person's self-esteem if it is directed at the individual identity not the act and is not followed by positive re-integrative ceremonies.

According to the Chinese experience, whether or not one resists the negative effects of labeling and becomes positively influenced by the label depends not only on the labelers themselves but also on the efforts of the whole society. On the one hand, stigmatization by certain agents of social control can indeed increase the attraction of outcasts to subcultural groups that

provide social support for crime. On the other hand, concerted efforts of the community can change this situation.

In China, the belief that society is both a cause and a victim of crime and delinquency confers on society the right and duty to be involved in such matters. The deep-seated interdependency and communitarianism in Chinese society and culture are also conducive to the public support and enthusiasm for dealing with any problems affecting the community. Chinese people do not mind only their own business; they prefer to handle juvenile problems in their neighborhood rather than hand them over to professionals. As a result, almost all members of the society seem to have become active controllers of crime and delinquency. Families, neighborhood communities and schools act as positive solvers of problems instead of silent observers. They make joint efforts to help, educate and reform juvenile offenders and to reintegrate them back into the community of law abiding citizens. Unlike, however, in the reintegrative shaming approach, the deliberate focus of labeling in China seems to be both on the offense and the offender. Offenders are first labeled deviants and educated to understand that what they have done has detrimental psychological, social, and economic consequences for victims and also for themselves and other parties and to assume responsibility for what they have done. Then they are showed concern and love which are accompanied by attempts to solve their practical problems, such as housing, schooling and employment. This two-stage approach both expresses community disapproval and symbolizes reacceptance of offenders while also offering a practical basis for reintegrating offenders. Thus, community not only reaffirms the normative order by shaming offenders but also provides them with opportunities for conventional reintegration. This philosophy appears consistent with John Braithwaite's ideas on reintegrative shaming:

Reintegrative shaming means that expression of community disapproval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of reacceptance into the community of law-abiding citizens. These gestures of reacceptance into the community will vary from a simple smile expressing forgiveness and love to quite formal ceremonies to decertify the offender as deviant (1989:55).

It is worthy of note that judicial organizations are also expected to play active roles in reintegrating offenders. Although the judicial shame penalties, such as public exposure and debasement penalties (generally achieved by associating the offender with a noxious activity) which exist in the United States, do not exist currently in China, China does have some judicial options, such as mass trials and sentence-pronouncing rallies, which can reach the same effect as shame penalties. They are designed to convey moral condemnation and inform the public about the offense and the offender in order to elicit public shaming of the offender. In the Chinese social environment, these legal measures can work as both a specific and general deterrent of possible future transgressions. With respect to young people, the educational sessions conducted by juvenile courts before disposition of cases may have similar effect (see Chapter Three).

The Chinese experience of early social-educational intervention, work-study school and juvenile reformatory suggests that informal and quasi-informal social-education, including various education and training programs, operated by parents, relatives, friends or a relevant collectivity, has a greater effect on the juvenile's future behavior and self-identification than sanctions imposed by a remote legal authority. Social-education can induce juveniles to recognize the harmfulness of their conduct and eventually to rehabilitate themselves. This is especially true in Chinese society because of its collectivist nature. As John Braithwaite states:

Interdependent persons are more susceptible to shaming. More importantly, societies

in which individuals are subject to extensive interdependencies are more likely to be communitarian, and shaming is much more widespread and potent in communitarian societies...The shaming engendered is more likely to become reintegrative in societies that are communitarian (1989:101-102).

In fact, through many kinds of education and help, operated by the society at large, and through positive inducement rather than merely criticism or negative incentives, vast majority of the young people initially labeled as criminals or delinquents eventually leave these deviant statuses well and truly behind them. In my opinion, the low rate of recidivism (see Chapter 5 and 6) in China can illustrate this.

In conclusion, the limitations of labeling theory are quite clear in the light of Chinese experience. This may explain why labeling theory obtains only a limited empirical support for its key predictions, even in Western countries. Furthermore, the labeling theory ignores the cultural characteristics of different countries. For example, the concept of shaming is consistent with the cultural ethos of Chinese collectivism rather than Western individualism. Therefore, labeling theory assertions regarding the relationship of a formal delinquency label and secondary deviance do not seem particularly relevant to the Chinese experience presented in this thesis. Rather, my findings tend to support the reintegrative shaming theory developed by John Braithwaite — the collectivist nature, strong social bonds, effective informal social control and emphasis on social-education all make shaming a positive rather than negative tool of social control in Chinese society.

7.3 The Lessons Learnt from China and Western Countries and the Relevance of Their Disparate Experience for Each Other

Throughout the process of working on my thesis, I have kept in mind the need for a comparative analysis of the Chinese and the North American experience. While I focused on Chinese society, I felt that the interpretation of my findings will be more meaningful if I adopt a more comparative format. Each social system establishes its own norms governing behavior and its own limits of tolerance for violations of those norms. A comparative perspective can clarify the continuum that distinguishes the culturally unique from more general features of crime and delinquency and their control. Going beyond a purely descriptive level, through a comparative analysis, we can develop a deeper understanding of different social and legal systems. At the same time, we may find something that might be worth trying in China or in Western countries.

Firstly, Chinese positive thinking about the nature of humans and their potential may offer a sobering lesson to Western countries. Positive thinking about human nature results in the Chinese having strong beliefs that criminal tendencies are not innate and can be cured. The Chinese formal and informal systems of social control are founded on this view. The source of Chinese confidence lies mainly in the appreciation of the strength of the masses and the predominance of group concerns and group involvement in social control, whereby the whole society is encouraged to actively participate in preventing crime and reforming offenders. One drawback of the Chinese approach may be that it assumes a rather rigid definition of what is compatible with the 'human nature'. In Western countries, the presupposition of the innate depravity of humans is common. Westerners accept as a given that there will always be aberrant

behavior; the issue is how it can best be controlled and what specialized agency should deal with it. Based on this belief, Western countries devise criminal justice systems and rely on them for controlling crime. This situation may discourage the public's involvement in crime prevention and the reform of delinquents.

Secondly, intrusion into other people's lives is taken for granted and viewed positively in the Chinese society. It is perceived as a sign of caring rather than meddling. Therefore, the Chinese crime control does not just work from the top down through the formal criminal justice system but, and above all, from the bottom up. Families, friends, neighbors, schools and the police intervene at the first sign of possible trouble. The Chinese experience suggests that many disputes can be handled informally, probably with greater satisfaction on the part of the involved parties. The smaller the deviation and the earlier it is treated, the more confident one can be of success. It follows that the most efficacious treatment results from an early intervention, while the offender is young and the offences are trivial. The result is an extensive, proactive social control apparatus.

Of course, the Chinese experience is not unique. Some other countries have adopted somewhat similar approaches. Based on her study of ten low-crime-rate nations, including Switzerland, Ireland, Bulgaria, East Germany, Costa Rica, Peru, Algeria, Saudi Arabia, Nepal, and Japan, Freda Adler (1983) concluded that in spite of their diverse legal and political systems, the key to low crime levels in these countries was local citizen involvement in norm formation and enforcement, and/or involvement in the formulation of the law. By contrast, in most Western societies, cultural and legal concepts give less encouragement to the use of these extra-legal mechanisms and a greater scope of personal deviance is tolerated. Informal, pro-active social control is often perceived as unacceptable interference or meddling in other people's affairs.

Therefore, on the one hand, people tend to form a litigious attitude whereby they view all conflicts in legal terms and rely on courts to solve them, and, on the other hand, the criminal justice and other control mechanisms seem to be quite distant from the majority of people in their everyday lives. They appear as large bureaucratic organizations located in office complexes, far from residential neighborhoods. They keep their distance and are not forthcoming with help at the early stages of social deviancy. It is only when a serious deviant behavior has actually occurred that they get involved. This situation weakens the preventive effect of social control, for the experience from different countries suggests that for crime control to be effective, public involvement is crucial.

However, I also acknowledge that this aspect of the Chinese model has its limitations. Because whether or not a deviance or dispute is relatively trivial, the public's early informal involvement may not only suppress the juvenile's individual expression and lead to a loss of privacy but also bring about a certain degree of damaging stigma. Additionally, appeals to family and neighborhood committees, such as public security committee and mediation committee, and other informal social groups in preventing and controlling crime and delinquency, may raise political questions about both the extent of the states's responsibility for the citizens' safety and about its effectiveness and legitimacy in the area of crime and delinquency control. The Chinese model gives a greater responsibility to individuals and collectivities and a lesser responsibility to the state in controlling crime and delinquency. Therefore, this situation appears to carry with it its own tensions and contradictions. Moreover, the semi-official role allotted to the family and other intermediary groups legitimates intense surveillance in society and promotes subordination to the dominant state ideology.

Thirdly, based on the philosophy that the law is everyone's business, much power in Chinese society is *de facto* given to the general public. The extensive participation of the public throughout the entire process of shaping conduct and controlling deviancy is regarded as the essence of the "mass line" in legal work. This situation obviously minimizes the function of formal legal control within Chinese society. Although the law is in a constant change as a result of social development, these changes seem to have no effect on the general public's views on functions of legal control. This may explain why after 1949, China delayed for so long promulgation of the formal substantial and procedural laws. This approach may be considered beneficial because few human and material resources need to be invested in the formal criminal system, however this system provides insufficient protection for an individual against unfair group actions as well as inadequate means of restraining improper official actions. The lack of formal procedural laws means that there is no due process and no protection of individual rights. Not only may deliberate abuse of power by law enforcement personnel go undetected but also mob lynching can easily take place. Under these circumstance, how is one to be protected against the tyranny of one's group or neighbors? How can abuse of power by legal officials be restrained? This is especially dangerous when compounded with the awesome discretionary power those law enforcement personnel have (Wilson, 1977). Moreover, this situation also engenders the lack of trained personnel and institutionalized means of carrying out legal work thereby restricting the capacity of the legal system to handle problems more complex than the management of interpersonal affairs.

In the past 20 years, however, there has been a vast improvement in the protection of the individual against state excesses and arbitrary actions in the Chinese criminal justice system.

Indeed the promulgation of criminal laws, and the formal commitment to procedural protections and citizens' rights all tend to provide accused persons with more opportunities to defend themselves in criminal proceedings. Moreover, China's public legal education campaign may suggest something valuable to Western society. It effectively bridges the gap between the requirements of law and the public's ignorance of these requirements. There is a concerted effort to teach youths about laws in China because of the belief that if people are told what the law is they will obey it. Thus, teaching youths about the law will lead to a reduction in crime. In contrast, Western people seem to rely on the judicial assumption that ignorance of the law is no excuse, and they do not insist on teaching people something so important as criminal law. The Chinese experience suggests that the public legal education programs have a great potential to affect people's behavior, and it is especially true for juveniles.

In spite of its unique advantages, there are also many apparent problems and shortcomings in the legal philosophy and the criminal justice system of the present China. Both socialist and traditional theories emphasize order over freedom, duties over rights, and group interests over individual ones. Consequently, whenever the social order is perceived by the authorities, led by the Communist Party, as being threatened, legal niceties may usually be set aside. The existence of many loopholes in the criminal law also gives the judicial system, dominated by the Party, too much arbitrary power in applying criminal sanctions. The continuing active role of the Party's political and legal committees limits the degree of independence allowed to the judiciary. The severity of punishment is strongly affected by the political situation at the given time. For example, the large-scale anti-crime campaign of 1983 is a case in point. The campaign to strike a swift and severe blow at serious criminal activities was first launched by the

Political and Legal Committee of the CCP Central Committee. Then, the Criminal Law and the Law of Criminal Procedure were amended by the National People's Congress to severely and quickly punish certain types of offenders, such as murderers and rapists. It was soon followed by a nationwide crackdown on crime in the form of mass arrests and publicized executions. This exceptionally harsh anti-crime campaign did have the desired effect and led to a temporary decline in the rate of crime. In the long run, however, not only did it appear to be ineffective but also it eroded civil rights and shook the fragile foundation of legalism. Moreover, the summary provisions of the 1983 legislation were so flexible that they could be stretched and applied to other types of offender and circumstances. The campaign against corruption in 1988 followed the same path. A tough and vague legislation gave a signal to the police that greater effort was to be made in pursuing this type of offender and this, in turn, resulted in a greater number of arrests. Consequently, with so many detainees produced by the campaign, it is questionable whether they could be given fair trials. It appears that the anti-crime campaigns have damaged the foundation of legality and they represent a return to the previous political mobilization strategies.

Finally, the unique Chinese system of reforming criminals and delinquents may provide Western countries with some valuable lessons as well as some warnings. The use of both formal and informal resources for the correction of offenders is integrated within the system of macro-control to a degree far greater than in Western societies. The purpose of the offender reform system in China is not simply to apply punishment to criminals and to make them pay for their crimes. Rather the goal is to remake offenders, mainly through labor and education. According to the policy of the state, every correctional institution is established just like a factory, a farm or a school. A reformed offender means a changed person — a “new” person. Every informal and

formal institution has developed elaborate reform techniques. They help and educate offenders with tangible means and ways that relate to the environment to which offenders will have to return upon their release. In contrast, the West appears to be disillusioned with its attempts at rehabilitation of offenders and is in the process of re-defining the purpose of sentencing. Based on the assumption that criminal activities result from a deliberate choice, the former stress on social rehabilitation of offenders seems to be now replaced by the renewed emphasis on punishment, deterrence and incapacitation. The recent interest in community-based sentencing and reintegrative shaming notwithstanding, behavioral compliance rather than repentance and moral re-education are the main goals of the criminal justice system. While this approach does not interfere with the individual's value system, it is, by the same token, unable to produce any meaningful or lasting change in their behavioral and attitude towards others. The lesson for the West may, therefore, lie in the appreciation of the role of the collective and the importance of the sense of belonging. It must, however, be kept in mind that if carried too far the belief in the total malleability of human beings may undermine dangerously their autonomy, and an overzealous stress on conformity may clash with Western values.

In conclusion, in my opinion, the parallel development of formal and informal mechanisms of social control is the best way to approach crime and delinquency. Without law, the basic rights of citizens can not be protected effectively. The formal laws, after all, embody important principles and provide the framework and safeguards for the exercise of state authority. However, law has its substantial limitations. It provides an excuse for not involving the community in maintaining order by relegating this function to the police and judicial organs . Without the active involvement of other social institutions in addressing crime and delinquency

problems, the law may not gain broad enough community support to guarantee conformity and may be perceived as arbitrary and removed from the society. Moreover, law has become too costly and complex to rely on as the primary method of maintaining public order and resolving disputes.

What intrigues me is that recent trends in the Chinese and Western societies seem to converge. On the one hand, to deal with its recent epidemic of juvenile crime, China is emphasizing the formal legal methods in dealing with young offenders. On the other hand, Western countries conduct diversion programs that involve gradual removal of juvenile cases from the general jurisdiction of the courts and entrusting them to informal bodies as a better approach to reducing the juvenile crime rate. Perhaps, only time and further experience will tell whether these hybrid systems can deliver what they promise.

NOTES:

[1] The term "informal" as it is used here has a different meaning from that common in the West. From a strict point of view, it should be considered to be a specific form between "formal" and "informal", which may be more properly called "quasi-formal". In China, "informal" institutions, such as the public security committee and the mediation committee, do not form a part of the formal criminal justice system. Yet they are established based on certain legal regulations. I use the term "informal" to highlight their reliance on volunteers and mass support.

[2] The Three Cardinal Guides are: the ruler guides the subject, father guides the son, and husband guides the wife. The Five Constant Virtues are: benevolence, righteousness, propriety, wisdom, and fidelity. The Three Obediences and Four Virtues apply to women. The former are: obedience to the father before marriage, to husband after marriage, and to son after the death of the husband. The latter are: morality, proper speech, modest manner, and diligent work.

[3] The system of people's communes is a product of the 'collectivization' campaign launched by the Chinese government in 1958. The rural population was organized into three layers of organization, consisting of a production team, usually composed of a natural village, an administrative village-based production brigade, and the people's commune combining several administrative villages.

[4] The rural responsibility system was established in the late 1970s. According to this system, all farming lands were allocated to individual families depending on the size of each family. The family gained greater autonomous power and was less interfered with by the central control in the areas of production and distribution.

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Appendix

Table 1

Youth Offender Rates per 1,000 Persons under Age 25

Year	Offender Rate %	Year	Offender Rate %
1980	14.9	1985	11.6
1981	15.9	1986	12.2
1982	18.1	1987	13.6
1983	17.5	1988	18.7
1984	10.6	1989	27.4

Source: Wang (1989):143-145; The Year Book of Research on Juvenile Delinquency in China--1988:43, 48, 316; Xin (1991):130-140; Zhao(1991):13-16.

Table 2

Youth Offenders in Two Age Groups in the Total Number of Criminal Convictions

Year	14 to 25 years %	14 to 18 years %
1980	61.2	7.0
1981	64.0	13.3
1982	65.9	19.6
1983	67.0	18.0
1984	63.3	20.4
1985	71.24	23.8
1986	72.47	22.3
1987	74.4	21.6
1988	75.7	21.0
1989	74.1	19.9

Source: Wang (1989):143-145; The Year Book of Research on Juvenile Delinquency in China--1988:43, 48, 316; Xin (1991):130-140; Zhao(1991):13-16.