

# **The Same the Whole World Over? A Review Essay on Youth Offending From the 1980s and Youth Justice in Contemporary China**

## **1. Introduction**

The rapid development of the Chinese economy over the past three decades has brought with it what appears to be an increase in crime (Zhang, 2008). The upsurge of youth offending in particular is thought by some social scientists to be a consequence of rapid shifts in the economic system and its social conditions (Curran and Cook, 1993; Bakken, 1993). This seems to add weight to the claim made by Durkheimians, Left Realists and some Critical Criminologists that these economic shifts, combined with widening social inequality, can disrupt fragile socio-cultural systems and produce the conditions for increases in crime, especially the types associated with youth disaffection and migration into criminal markets (Winlow, 2001; Lea, 2002; Reiner, 2007; Currie, 2010).

Our discussion starts from 1980 for two major reasons. First, we are investigating youth crime and youth justice from a comparative perspective that compares China and the West. China joined the Western-dominated capitalist world when Deng Xiaoping initiated the ‘opening up’ policy in 1978. Whilst benefiting from capitalism’s ability to boost economic growth, China has also inherited the system’s social problems. The second reason concerns the ‘data problem’ that impedes research on crime in China. Official crime data were largely unavailable until the 1980s. Since then, although official statistics are released from time to time, they are unsystematic, incomplete (Jiang, 2014; Zhang, Messner & Liu, 2007) and

‘questionable’ (He, 2014: 147) in terms of accuracy, consistency and reliability (Curran, 2014). Official statistics are not disaggregated by gender, age and specific crime types (Shen & Winlow, 2013), therefore they cannot be relied on to represent or predict with any rigour trends and patterns of youth offending.

However, in the past few decades there have been some positive developments. ‘Investigator-initiated’ criminological research has enabled a rich seam of unofficial crime data to be mined. Efforts made by western researchers – overseas Chinese scholars in particular – have improved the construction of crime statistics to the extent that they will be more useful for future studies (He, 2014; Zhang, 2014). This method has indeed provided a useful alternative to official crime statistics (Pyrooz and Decker, 2013). There is now a body of literature presenting the data-sets collected by these researchers. Such data have enabled scholars to reach a cautious conclusion that over the past 15 years youth delinquency has been rising along with China’s modernisation (Zhang, 2008). This claim will be further clarified in this article by using a more recent data set.

Furthermore, consulting open sources to gain information from published materials, such as academic publications in the Chinese language, news reports and official documentation available in public domain has helped to enhance this method of studying crime-related matters in China (see for example Shen, Antonopoulos & von Lampe, 2010; Davies and Shen, 2010; Shen, Antonopoulos & Papanicolaou, 2013). However, caution must be exercised because the figures cited from open sources are sometimes overlapped,

inconsistent and vaguely defined in their original sources (Shen and Winlow, 2013). Unsurprisingly, we have found that the statistics indicating youth offending in the same period are frequently inconsistent, largely because they were collected by different agencies for various purposes, a similar situation to that which made US crime statistics in the nineteenth and early twentieth centuries unreliable (see Hall and McLean, 2009). Youth crime trends are indicated by the numbers of offences recorded by the police, arrest and clear up rates, or the numbers of administrative sanctions, prosecutions, convictions or imprisonments. Methodological problems are not unique to China. Estimating levels and rates of crime is difficult for all jurisdictions, largely because of myriad well-known problems relating to official statistics. However, the data problem does not prevent western social scientists from paying attention to post-1980 youth crime in China and the official responses to it. This is because contemporary China, with its geographic vastness, cultural diversity and complex changes caused by the economic transition, offers exciting opportunities for researchers (Liu, 2009).

Whilst many scholars have made useful contributions to the issue and some existing review essays discuss these contributions (for example Zhang, 2008), the field requires revision and further analysis. This article differs from previous review essays for two main reasons. Firstly, it does not aim to summarise the major findings of previous studies. Nor does it simply aim to expose the limitations of earlier studies and suggest future research (see

Zhang, 2008). Rather, it is comparative in nature, and compares the trends of youth crime and youth justice with those in the West. Relying on published materials in both English and Chinese, it considers trends in different cultural, political and economic settings.

Secondly, and more importantly, the patterns observed previously may no longer apply fully to the current situation, especially in the regions most affected by reforms (Zhang *et al*, 1996). As a consequence of these reforms and the further incorporation of neoliberal economics into the social structure in China, the traditional collective structure has been significantly weakened, if not totally disintegrated. The *danwei* system, for example, which once helped to reduce the risk of young people becoming official offenders (Zhang and Messner, 1999; Zhang, 2008), no longer plays a significant role in Chinese society (Ren, 2013). It is therefore reasonable to expect that youth offending and youth justice have been reshaped by such radical administrative changes. For example, it was observed nearly twenty years ago that gang crime was not a serious problem (Zhang *et al*, 1997), whilst recent literature tells a different story (see for example Yao, 2012; Pyrooz and Decker, 2013). We will return to this later. Simultaneously, however, following developments in global restorative justice movements in recent years, new restorative measures have been created primarily for juvenile offenders (see Shen and Antonopoulos, 2013). Thus, in the midst of these rapid, complex and confusing changes, our existing knowledge needs periodic updating and expansion to better inform our analyses. This study seeks to draw upon updated

knowledge to analyse the current circumstances in youth offending in China and how the nation is responding to the problem in ways that both ensure the stable continuation of economic growth and comply with the globalising principle of ‘child friendly juvenile justice’ (see Goldson and Muncie, 2011).

Previous studies seem to have emphasised the uniqueness of youth offending as a product of China’s distinctive socio-cultural and political history (Liu, 1984; Wok, 1990; Curran and Cook, 1993; Bakken, 1993). Drawing from the culturalist and pluralist theoretical frameworks that have been influential in Western social science (see Hall, 2012), Chinese youth crime and justice tend to be seen as distinct from Western models (Wong, 2001; 2004). However, underneath the obvious differences, many important similarities appear to have been overlooked.

This article attempts to throw some light on the contentious issues outlined above and fill a void in the literature by providing an easily digested review of what we now know about youth offending patterns and youth justice in China and how they compare to the West. It begins with a brief discussion of definitional issues, and then outlines recent patterns of youth crime in China before proceeding to explore the philosophical basis of Chinese youth justice and recent developments in policy and practice. Finally, it concludes that patterns of youth offending in China are beginning to converge with those of the industrialised West despite China’s unique and diverse cultural landscape. Indeed, criminal justice systems in most

nations now face similar challenges (Pakes, 2004). Although the adult criminal justice system in China retains many of its traditional punitive principles and practices and differs quite significantly from those typically found in the West (Liu and Palermo, 2009), youth justice in China is an exception. It shares many characteristics with Western systems and operates on similar core principles based on social reintegration. However, it must be said that while the principles of Chinese youth justice do not differ substantially from those of the West, some systems and practices differ among various internal jurisdictions, as they do amongst Western nations and regions (Doob and Tonry, 2004), and in some cases may fall below the standards required to uphold core principles.

We will now examine some definitional issues before entering the main discussion on youth offending and youth justice in contemporary China. Definitions of ‘youth’ vary in China according to cultural contexts, but since the inception of the People’s Republic, the justice and welfare systems have tried to draw on categories and values that are shared across the whole nation. The legal term *wei-cheng-nian-ren* (non-adults) is enshrined in the *Law on the Protection of Minors* 1991 (LPM 1991), referring to juveniles from 14 up to 18 years old. The same definition is used in the *Law on Prevention of Juvenile Offending* 1999 (LPJO 1999). It is also used in a series of guidelines issued to the judiciary, for example, the *Supreme People’s Court (SPC) Several Rules on Criminal Trials Involving wei-cheng-nian-ren* 2000 (thereafter ‘SPC Rules 2000’) and the *SPC Interpretations to Several Issues in Regard to the Application of Law to Deal with Criminal Trials Involving wei-cheng-nian-ren*

2006 (thereafter ‘SPC Interpretations 2006’). The juvenile court is called *shao-nian-fa-ting* to emphasise the young ages of those subject to its rulings.

Chinese literature and official documents also draw upon the common culturo-legal term *qing-shao-nian*, and the term ‘*qing-shao-nian* crime’ therefore refers to crime committed by *wei-cheng-nian-ren* together with youths of 18-25 years old. Curran and Cook (1993) conclude that overall the Chinese juvenile justice system has jurisdiction over all youth offenders up to the age of 25, which means, for non-capital offences, relative leniency in sentencing and the availability of support services for a significantly longer period in the life-course compared to most Western countries.

The broad term *qing-shao-nian-wei-fa-fan-zui* is preferred in the context of youth justice in China. This indicates that youth offending should include both delinquency (*wei-fa*) and crime (*fan-zui*) (Wang, 2006). Delinquency is explicitly defined in *LPJO* 1999, in which the organicist metaphors ‘unhealthy behaviour’ and ‘very unhealthy behaviour’ reflect the meanings and sentiments that prevail in popular culture. Although legally defining deviance may incur some contestation in culture and theoretical difficulties in legal and academic circles, Chinese culture and law together adopt a pragmatic approach governed by the principle that a consensual view of deviance helps to solve problems in practice – an approach that prioritises problem-solving above both retribution and deterrence.

## **2. Juvenile Offending in China from the 1980s**

Before we investigate patterns of offending, it is worth repeating that the official statistics and academic estimates cited below are vaguely defined in their original sources. They are far from accurate and must be read with a high degree of caution. However, the unreliability of statistics is a common problem for criminologists in all environments where more revealing qualitative research has not been conducted. Until qualitative work commences on a wide scale, we have little choice but to use available data in a comparative mode to construct initial heuristic conceptions of rough movements in temporal and spatial patterns (see Hall, 2012).

Whilst some observe that the People's Republic of China (PRC) had very low crime rates in its early days (Dutton, 1997; Zhang *et al*, 2009), Dixon (1981) argues that juvenile offending has always to some extent been a source of concern to the Chinese Communist Party (CCP). Existing literature analysing patterns of youth offending in the PRC from its establishment in 1949 through to the 1990s (see Mok, 1990; Dixon, 1981; Bakken, 1993; Zhang, 2002) suggests that it had a distinct characters in each of its phases: the new PRC phase (1949 - 1965); the Cultural Revolution phase (1966 - 1976); the post-Cultural Revolution phase (1976 - 1979); and the economic reform and development phase (1980 - present day). Accepting with caution the basic claims made in the past research, this study will focus on the final phase in which youth crime seems to display a broad trend similar to trends in youth crime in Western nations.

From the late 1970s politically-managed reform radically changed the economic landscape in China. Although it increased investment, production and export-driven wealth it



also widened and hardened social inequality (Peerenboom, 2008). Rates of youth offending began rising year by year (Zhang, 2002). In 1978-80 it accounted for 70 to 80 per cent of overall crime (Liu, 1984). It dropped slightly and stabilised at 70 per cent in the eighties (Yang and Zhong, 2007) only to be followed by a dramatic upsurge in the 1990s (Curran and Cook, 1993; Bakken, 1993). It has returned to around 70 per cent in recent years (*Legal Daily*, 2013).

Data from Bai's (2010) study of police statistics in the period from 1988 to 2007 suggest a clear rise in the overall offending rate: in 1988 the rate per 100,000 of the population was 75.5, while by 2007 it had risen to 363.9. Although like everywhere it is reasonable to think that the figures may suffer from some degree of unreliability due to variations such as possible fluctuations in crime reporting and recording, the overall statistical shift is supported by other sources such as the Ministry of Public Security (MPS). The proportion of youths in the overall rate seems to be high. For example, *Xinhua News* (2005) quoted from the MPS: 'in the first half of 2005, 44.75 per cent of the criminal suspects were young offenders at ages 10-25'. Interestingly, interim statistics seemed to suggest that in this period the youth offending rate had stopped rising and had gradually become more stable. Ju (2007) explains that this may reflect changes in the arrest criteria implemented by the MPS in 1992. As a consequence fewer criminal cases were recorded. Similarly, the new criminal law of 1997, which decriminalised a number of acts, may have also reduced the youth offending statistics.

Yao (2011), based on an analysis of the numbers of youth offenders tried in the courts in the period 1990 – 2009, offers a rough trend given that it does not take into account growth in the adult and youth populations in the same period. It shows that, despite fluctuations and the changes in law and recording practices, the overall youth crime rate has been increasing in the last ten years or so, and the number of crime involving *wei-cheng-nian* offenders has been persistently rising. Ju (2007) indicates also that young offenders now tend to be engaged in criminality at an increasingly younger age.

Thus, despite the usual data problems, sufficient evidence available in the researcher-collected data sets suggests an upward trend in the rate of youth offending from the early 1990s to the present day. This is simply too significant to ignore. The literature also suggests that a combination of factors can be attributed to this upward trend from the beginning of the 1980s. The mainstream theory coming from the more critical positivist and realist perspectives tends to link youth offending to socioeconomic disruption, widening social inequality and other consequences of modernisation such as expanding opportunities and youth disaffection (see Bai, 2010; Cao, 2007; Liu, 1984; Bakken, 1993; Li, 2011). This is very similar to the basic contextual causes of youth crime identified in some studies of crime in Western industrial regions (see Taylor, 1999; Lea, 2002; Currie, 2010). Theoretical approaches based in shifting socioeconomic conditions are often unfairly criticised as ‘reductionist’, but on closer inspection most contemporary theories grounded in the socioeconomic context are sensitive to cultural mediation and local variations (see Reiner,

2007). It would possibly be fairer to criticise cultural theories that pay too little attention to underlying economic conditions as cultural reductionism (see Hall, 2012).

Seeking further clarification of the issue, a set of studies was carried out by western researchers in China to test existing theories. The results are also largely consistent with the general findings in the mainstream western literature on the aetiology of youth crime and delinquency. For example, in a birth cohort study, Friday and colleagues (2003) claimed that their findings supported the ‘general theory of crime’ as proposed by Gottfredson and Hirschi (1990). Research carried out by Lening Zhang and Steven Messner addressed a variety of correlations of involvement in delinquency in China by applying social control theory and labelling theory (see Zhang, 2014). The findings of Bao and colleagues in China (2007) provided support for the application of the general strain theory. Recently, in the research on gang involvement and delinquency, the findings in China (see Friday *et al*, 2005; Pyrooz and Decker, 2013) consistently parallel those from the USA and Europe, and support the Western theory of peer group pressure. They conclude that at the individual level the positive statistical relationship between gang involvement and delinquency is invariant despite the geographic, cultural, and political differences across regional contexts (Pyrooz and Decker, 2013). Overall, the results of these studies suggest that a number of established criminological theories constructed in Western contexts can be applied to empirical data currently being gathered in China. In addition, cross-cultural studies have enabled researchers to discover replicable risk and protective factors for youth offending in different cultural

contexts (Farrington and Loeber, 1999; Friday and Hage, 1976; Kamon, Harada and Yonezato, 2002), including China (Friday *et al*, 2003; 2005). A number of studies confirm that, like in the West, the quality of family relations is associated with youth offending in China, as are young people's attachments to school and the quality of educational provision in the school (Friday *et al*, 2003; 2005; Wang *et al*, 2002; Zhang and Messner, 1995). Parental expectations, especially those of fathers, are also associated with youth offending in China (Friday *et al*, 2005). Following the global trend, recent literature draws attention to the impact of the internet and computer games in China (see for example Bax 2013). According to a Zhejiang survey, 48.8 per cent of young suspects were frequent visitors to internet cafés prior to their arrests (Yang and Zhong, 2007). Shang (2012) reports that internet-related crime is increasing by 30 per cent each year, mirroring a similar rise in the West (see Wall, 2001). The striking finding in a study conducted by Greenberger *et al* (2001), which compares juvenile misconduct in three different cultures including China and the USA, suggests that living in settings with closer links to the global economy is associated with lax conduct and the perception of more lenient attitudes toward adolescent misbehaviour. Thus, alongside globalisation and its homogenisation of socioeconomic conditions we expect to find more similarities in youth crime and crime in general across ostensibly different cultural settings (Palidda, 2013).

Earlier studies on youth offending conducted in China (see for example Ren, 1997; Wang *et al*, 2002) suggest that the dynamics and cohesion of families in China are different

from those in the West. It was argued that as a conventional institution family plays a significant role in the prevention of youth delinquency in China. However, conventional institutions are under strain in the wake of rapid socioeconomic changes (Merton, 1938; Reiner, 2007). For example, Zhang and Messner (1995) argued that in the 1980s and the 1990s, ‘friend deviance’ was not associated with the official status of youth delinquency in China to the extent that it is in the USA. However, in a subsequent study Greenberger *et al* (2001) found that in rapidly changing societies school peers now have an independent effect on misconduct among Chinese youths because, as the influence of the family wanes, peer influences become stronger. The intrusion of mass-mediated consumer culture in family relations also diminishes the relative influence of parents and strengthens that of peers (Hall *et al.*, 2008).

Similarly, it was found previously that the coherence of the community and the force of social pressure towards the collective good were correlated with lower rates of youth crime in China (see for example Ren, 1997). However, alongside dramatic economic reforms, social norms have changed and community cohesion is weaker following large scale urbanisation (Reiner, 2007). Overall, neoliberalism has set the conditions for fundamental changes in interactions between social institutions and individuals and among individuals themselves. As a result, China is now becoming a ‘stranger society’ (Xu, 2013: 209) – an oriental version of the ‘empty world’ in the post-industrial West where what was once ‘the social’ is excluded from many of the spaces in which people interact (Winlow and Hall, 2013). It is therefore

reasonable to assume that, regarding the social conditions that underpin youth crime, the cultural gaps between China and western societies are narrowing down significantly.

Admittedly, in the context of China, some localised and perhaps less convincing theories have also been aired in academic and political circles. For example, it has been argued that the rising number of youth offenders is also associated with a 'baby boom' during the Cultural Revolution. The expanded youth population correlates with youth crime (Bakken, 1993; Ju, 2007). Curran and Cook (1993) attribute the increasing level of youth offending to the impact of the one-child family policy and the weakened family discipline in one-child families. However, this argument tends to ignore the underlying context of widening socioeconomic inequality and the disruption of culture and social systems caused by the urbanisation and industrialisation processes, all of which place significant strain on the family unit (Currie, 1997). Some Chinese officials, taking an overtly ideological and ethnocentric view, see the rapid growth of youth offending as the result of bad cultural influences from the outside world (Liu, 1984), with emphasis placed on the corrupting impact of Western bourgeois ideology (Bakken, 1993) and rotten feudalism, capitalism and other non-Marxist forms (Yang and Zhong, 2007). However, if we consult more sophisticated academic research that attempts to dig underneath simplistic theories and the official line we can see that the primary contexts and possible causes of youth offending identified in China do not seem to be too different from those often put forward by academics in the West. Nevertheless,

current youth offending in China presents criminologists with complex details that require further analysis.

Firstly, long-term trends show that both property crimes and offences against the person are commonplace but, as in the West (see Roe and Ashe, 2008), the former category had been traditionally predominant. Wang (2006) reported that larceny normally accounted for 80 per cent of juvenile delinquency. However, in the first half of 2005, 75.8 per cent of the offenders in the age-range 10-25 were arrested for robbery (*Xinhua News*, 2005). The MPS statistics show that in 2008, 85.1 per cent of the young offenders aged 16-17 and 95 per cent of those aged 15-16 were convicted for theft, robbery, mugging and assault (Chen 2012). This indicates that in the past few years youth offending has shifted to more serious violent offences, in which murder, armed robbery, serious assault, rape and use of explosive devices are major components (Huang, 2012). This mirrors a trend towards versatility and violence, which has been experienced in England and Wales from the 1980s onwards (Winlow, 2001; Soothill *et al*, 2008; Hall, 2012). Increasing media representation of violence is often thought to have a direct influence (Huang, 2012), but this has largely been disproven by research in the West: the media tend to reflect – albeit in a distorted manner – rather than cause changes in cultural values, norms and behaviours (see Carrabine, 2008).

Secondly, more young people now commit crime at an increasingly younger age. Yang and Zhong (2007) discovered that since the 1990s the average age of first offending has become two to four years earlier than it was the 1970s. The *China Youth Offending Research*

*Institute* reports that more than 70 per cent of offences are now committed by juveniles aged 14-16. More young people under age 14 are taking their first steps in offending (Huang, 2012; Ju, 2007), and even those aged 10-13 were found to be committing crimes at a notably increased rate (Huang, 2012). Despite this new trend, the findings of Friday *et al* (2005) suggest that 37.7 per cent of the offending population commenced their criminal behaviour after age 18. This is consistent with findings in western contexts (see Sampson & Laub, 1993; Tracy, Wolfgang and Figlio, 1990). Also, comparative literature (see for example Friday, Ren and Weitekamp, 2003) indicates similarities between China and the West in research on the criminal careers, which fits with the general claims of developmental and life-course criminology (Farrington, 2002), although the western concept of a ‘chronic offender’ (Wolfgang, Figlio and Sellin 1972; Weitekamp *et al*, 1996) did not seem to be applicable in China (see Friday *et al*, 2003), where very few repeated young offenders have been identified. Updated research on this aspect of criminal career development is required to find out whether it is still a discernable trend.

Thirdly, youth offending is becoming more organised. The number of ‘joint ventures’ has increased, the number of associates has expanded and the internal organisation has been enhanced. Yao (2012) claims that, now 70 per cent of the total for the age-range, gang-related crime has increased as a proportion of overall youth crime. This echoes Pitts’s (2008) observation of increasing gang crime in London. In the western contexts, a rich body of literature on peer influence and youth gangs (for example, Carrington, 2009; Decker and



Pyrooz, 2010; 2013; von Lampe and Johansen, 2004; Hallsworth, 2013) suggests the tendencies of youth to co-offend. Worldwide, it is argued that gangs are a key factor in the fields of violence and victimisation (see Decker and Pyrooz, 2010), while in China a survey carried out in Shangdong in 2004 shows that 53.42 per cent of the total of 1,600 juvenile offenders committed offences in groups of three to seven or more. Similarly, a Yunnan survey revealed that 66.3 per cent of juvenile offending was gang-related (Yao, 2012). Webb, *et al* (2011) used a virtually identical survey instrument in both China and the USA in order to compare youth gangs and related behaviours. They find that Chinese youth gang members were less likely to be associated with violent crimes and drug related offences. However, Pyrooz and Decker (2013) argue that self-reported rates of delinquency and gang involvement were not unlike Western countries, and their findings on the relationship between gangs and delinquency, particularly violence, are consistent with the existing western literature. Local Chinese scholars, for example Yao (2012), claim that juvenile gangs, driven by material gain and status seeking, have enlarged in average size and increased in effectiveness. Therefore, mindful of the grey figure of unrecorded crime, we should not underestimate the harms caused by organised young offenders.

Fourthly, like adult offending, youth offending seems to have become more technologically sophisticated and 'professional' (Yu, 2012; *Xinhua News*, 2005), again following trends in Britain and the USA (see Wall, 2001; Yar, 2006). Youth crime often involves careful planning, co-ordination and use of advanced counter-detection measures.

Modern technology now plays a role in financial fraud, gambling, rape and robbery involving youths (Yang and Zhong, 2007).

Female youth offending is also rising steeply (Wang, 2006). Economic gain in a society with widening socioeconomic divisions, increasing opportunities, declining social cohesion and rapidly shifting norms might be the most common reason (Yan, 2009; Zheng, 2013). Female youth offenders in China, a category that includes schoolgirls, are seen to be engaged in various offences, including drug taking and prostitution (Long, 2010; Yang and Zhong, 2007). This follows the trend in the West, for example Britain and the USA, the most overtly neoliberal nations (see for example Chesney-Lind, 1993; Joe-Laider and Hunt 2001; Sharpe, 2012; Wallworth, 2013). There are also similarities in gender disproportionality in both China and the West (see Friday *et al*, 2003). As a result, as in the West (see Heidensohn, 1996), female offending in China has historically been underrepresented (Wang, 2002). Further research is required to look closely into the criminality of girls and young women and their experiences in the criminal justice process.

Overall, youth offending in China does seem to display some broad trends, characteristics and underlying contexts largely similar to those of youth crime in the West, while it retains others that are unique to the Chinese cultural and legal settings. For example, although it has recently been increasing (see *Legal Daily*, 2013), drug-related crime is still comparatively under-represented in the overall picture of Chinese youth crime (Friday *et al*,

2003). This may be partly attributed to the intensive drug control policy – a legacy of the reaction to what Chinese culture and government regarded as serious physical, cultural and socioeconomic harms caused by large-scale drug distribution in the nineteenth century – under which the death penalty is still an available option. On the other hand, the increase in drug-related crime suggests that deterrence is gradually becoming less effective than it once might have been. However, existing literature does suggest that, like in the West, drug users in China tend to be young male and female adults, poorly educated, either employed or self-employed (Gui, 2005; Kurlantzick, 2002; Liang, 2014). Also, the statistics suggest that the number of young offenders involved in robberies in China is proportionately higher than in the Western jurisdictions, such as, for instance, England and Wales (see Roe and Ashe, 2008), but that may well be down to differences in legal definitions (Peerenboom, 2008), an issue that again requires further comparative research. However, evidence in existing literature does indicate indisputably that the primary underlying socioeconomic and cultural conditions associated with crime elsewhere are also evident in China.

### **3. The Chinese Youth Justice Model: Tradition, Policy and Practical Developments**

Is China's youth justice system substantially different in principle and practice from those in the West? Our analysis begins with traditional Chinese philosophy.

In China, Confucianism and Legalism are the major traditional philosophies underpinning the legal system (Lee and Lai, 1977-1978). On one side, China's criminal

justice policy is deeply rooted in Confucian philosophy (Wong, 2004), which emphasises secular government and human agency guided by moral rules (*li*), and *li* should be brought about by education (Dikotter, 2002). In Confucianism's *li*, humanitarianism is recognised as an important element (Bodde, 1973). On the other side, Legalism promotes legal rules (*fa*), using formal systems and sanctions to enforce compliance with the law (Chen, 2011).

Confucian acknowledgement of the inequality of people, human particularism and humanitarianism justified special legal provisions concerning weaker members of society, such as the young, who are guilty of crime. The Opening Chapter of *Li Ji*, for example, states that '[a] person of seven is called a child deserving of pity. Children deserving of pity are not to be subjected to punishment, even though they may have committed a crime' (Bodde, 1973: 441). Legalism, in contrast, does not in principle differentiate rules according to varying social positions, circumstances, age-ranges and degrees of vulnerability. A hypothetical pure Legalism would insist on complete equality before *fa* and the enforcement of objective and unvarying rules of conduct (Lee and Lai, 1977-1978).

Confucianism and Legalism merged during the period of the Han Dynasty between B.C. 202 and A.D. 9 (Liu and Palermo, 2009). Confucianism's successors recognise the combination of education and criminal sanctions. Xun Zi, for example, argued that '[s]anction without education would result in the frequent use of sanction but failure to eliminate evils; education without sanction would allow bad people to go unpunished' (*Encyclopedia of Chinese Culture*, 2013). The Legalists also made concessions and sought to

interpret Confucianism from their own perspective. For example, Dong Zhongshu promoted the principle that the political and legal policy should emphasise virtue (*de*) as primary and criminal sanctions (*xin*) as secondary (Zhou, 2012). Over time the result has been that Legalism now accepts Confucian *li* and humanitarianism when enforcing *xin*. Such fusion is reflected in China's criminal justice policy today. The utilitarian goals of punishment and the humanitarian principles of education and social inclusion are both appreciated in the development of the modern criminal justice system (Chen, 2011), with the balance now shifted towards *li* (Liu and Palermo, 2009).

The human rights abuses of which China is often accused by Western governments (Brahm, 1996) loomed large during the Cultural Revolution prior to the period of reform. However, such abuse is not formally endorsed by culture, government or the principles of the youth justice system. The legal reform over the past 25 years that seeks to bring China closer to the international community is unique, and 'no other region has made such progress in such a short period of time' (Max Planck Research, 2008: 40).

LPM 1991 and LPJO 1999 are the major pieces of legislation addressing both juvenile protection and the prevention of youth offending. LPM makes it clear that the State should prioritise the protection and nurturance of juveniles. It emphasises the principle that, depending on the crime, the offender and their specific circumstances, *wei-cheng-nian-ren* should be given mitigated or reduced sentences, or be exempted from criminal sanctions altogether in accordance with the law. LPJO goes further to ensure the education of juveniles,

prevention of juvenile offending and reduction of recidivism. Both statutes specify the general principles that should apply in all responses to juvenile offending: ‘education is primary; punishment is secondary’ and ‘combining education, *ganhu* and rescue’ (Section 54 of LPM 1991; Section 44 of LPJO, 1999). Based on a Mencian view of human nature, the notion of *ganhua* further affirms the belief that even criminals can achieve self-improvement through proper institutional guidance (Dikotter, 2002). These principles form the fundamental basis of the Chinese youth justice policy, and are consistently emphasised in all legal documentation regarding treatment of juvenile offenders, for example, Article 2, the *MPS Notice on Dealing with Criminal Cases Involving wei-cheng-niai-ren 1995* (thereafter ‘MPS Notice 1995’); Article 3, *SPC Rules 2000*; Introduction, *SPC Interpretations 2006*; Article 2, the *Supreme People’s Procuratorate (SPP) Rules on Dealing with Criminal Cases Involving wei-cheng-niai-ren 2007* (thereafter ‘SPP Rules 2007’). Thus, the overriding principle in Chinese law is that the legal system should offer leniency in order to give young offenders a chance to turn over a new leaf and contribute to national development (Mok, 1990).

While empowering policy to shape the formal structure of the law, the CCP also represents traditional moral values, in a way similar to Durkheim’s description of the development of Western law (Ziegert, 1980). Taking the views of the two traditional schools of philosophy, the Chinese criminal justice policy combines *kuan* (leniency) with *yan* (rigidity), which, couched in Western terms, is essentially a complex combination of retribution, deterrence, rehabilitation and restoration. As demonstrated in the *SPC Opinion on*

*Implementing the Criminal Justice Policy of Combining Leniency with Rigidity 2010*, young offenders must be treated with leniency to restore their relationship to society, whilst on occasions in practice harsher penalties are allowed for juveniles who are involved in serious crimes (Wang, 2006; Bakken, 1993).

The Chinese value the function of education in shaping individuals' thoughts and behaviours (Zhang and Liu, 2007). This is taken very seriously by policymakers. For example, in response to the first wave of youth offending in the late 1970s, a central government document was distributed in 1979 to stress the use of informal measures, particularly educational programmes, for young offenders (*Document 2000*). When reacting to the second wave of youth offending in the 1980s, the central leadership issued a notice in October 1985, further emphasising the use of educational measures and the engagement of the whole society in the attempt to reduce crime and rehabilitate offenders. Shen and Antonopoulos (2013) argue that the same principles are reflected in the newly created measures for youth offenders. Over the years, juvenile-friendly principles have been developed in line with the basic Chinese philosophy of youth justice.

The Chinese philosophy of youth justice – in contrast to the Western classical liberal emphasis on individual responsibility and guilt supported by individualised welfare programmes (see Garland, 1985) – is based on the belief that youth crime is in essence a social problem, and its prevention and reduction requires the participation of the whole society (Liu, 2011). *Document 2000*, for example, addresses the provision of employment

opportunities for youths, the prevention of youth delinquency through education, and the guarantee of appropriate settlements for released prisoners. Since 1990, the Comprehensive Treatment Strategy (*zong-he-zhi-li*) has required the cooperative participation of all agencies and the use of coordinated multiple measures in response to crime (Wang, 2006). Under *zong-he-zhi-li*, informal educational and supervisory programmes are the most important means. Common measures include *bangjiao*, study-work schools and the recently developed restorative justice programmes (see Liu and Palermo, 2009).

The term *bangjiao* means rehabilitation in the community – a measure similar in some ways to the UK’s welfare model (Smith, 2005), recognised by Braithwaite (2002) as China’s important contemporary restorative justice institution. *Bangjiao* offers various informal, community-based crime control programmes in partnership with state agencies – for example, designated officers from the local police station – and runs largely on a voluntary basis. Community care through *bangjiao* was reasonably successful (Mok, 1990), and therefore has been recognised as an important crime control mechanism in China (Zhang *et al*, 1996). However, in recent years, with the change of socioeconomic circumstances and a more mobile population, *bangjiao* came to be regarded as a helpful embellishment rather than an effective crime control measure in itself (Liu, 2011). To enhance *bangjiao* new initiatives have been launched (Liu, 2011; Yao, 2011), and in practice restorative justice programmes tend to incorporate *bangjiao* in order to achieve intended outcomes (see for example Wu, 2008).



Similar to *bangjiao*, the study-work school is an informal crime control mechanism in China, but available exclusively to juveniles. It admits students aged 12 to 18 who have displayed ‘unhealthy behaviour’ or ‘very unhealthy behaviour’, and are deemed unable to continue studies at ordinary schools. The main function of study-work schools is educational. Curran and Cook (1993: 311) suggest that ‘the placement of juveniles in the work-study setting integrates the positive reinforcement of the community’, and, according to one Chinese commentator, ‘having one more study-work school, one more prison can be avoided’ (*China News Agent Net Hainan Division*, 2006). However, another commentator argued that, although not regarded as a punitive measure, study-work schools ‘actually harm their students by labelling them as wrongdoers’ (*ibid*). A combination of diminishing effectiveness in a context of changing social circumstances and a growing awareness of the deleterious effects that can follow the criminalisation of young people has influenced the decline in the use of this measure over recent years. Like *bangjiao*, study-work schools are now used for juvenile offenders as part of newly developed restorative justice interventions (Wang and He, 2012), and thus regarded as a hopeful development in restorative justice (Braithwaite, 2002).

After the Western concept of restorative justice was introduced to China in 2002 (Yao, 2007), a number of programmes have been developed in the Chinese youth justice system. Some resemble processes described by Braithwaite and others – for example, Victim-Offender Reconciliation (see Shi, 2008) – whilst others are recognised as restorative justice merely in China, which may well, from a Western perspective, be seen as alternatives derived

from China's criminal justice tradition that only pay lip service to restorative justice principles. For example, Community Service Orders are used by the people's procuratorates in China to divert young offenders from the formal processes (Li, 2005). Despite misgivings by some commentators, a clear trend towards the embedding of restorative justice principles at the core of the youth justice system of the country can be discerned (Shen and Antonopoulos, 2013).

Apart from the education-oriented preventive measures discussed above, China, in keeping with other nations, does have a network of youth prisons for juvenile offenders under 18 at the time of sentencing – the *Institute of Rehabilitation for Juvenile Offenders* (IRJO). Unlike adult prisoners, however, in IRJO inmates are regarded as 'learners' who are required to participate in political, moral and factual education, work and regular self-reflection and group evaluation. The primary function of IRJO is rehabilitative, but the learners are given various light jobs of specified types and durations. Hence, apart from a further emphasis on the rehabilitative function, if we use the example of youth custody in England and Wales, the Chinese youth prison is in principle – and, as far as we know at present, in practice – fairly similar to that in many Western jurisdictions.

Emphasising similarities in youth correctional institutions between China and the West is not to deny that policing and punishment have been key factors in protecting the open reform agenda in China for the last few decades, running alongside but to some extent displacing traditional social welfare principles (Trevaskes, 2010). This echoes the relative

decline of welfarism, the rise of neo-classicism and the tense relationship between the two in the West in the midst of the socioeconomic rupture and ‘crime explosion’ in the 1980s (see Reiner, 2007; Smith, 2005). It is perhaps quite noteworthy that abrupt industrialisation and deindustrialisation have both produced similar effects in the spheres of crime and justice in two culturally distinct nations (see Hall and McLean, 2009). To justify this dualistic approach, alongside welfarism there is also a strong emphasis on views that reflect Western retributivism and classicism, i.e. the open choice facing criminals – they know what they do and they know what they do is wrong, so they deserve punishment (Bakken, 1993). Young people, in particular, are regarded as capable of being ‘put right’ through punishment once they have been convicted. The idea here, common across the world, is to deter future criminality and ‘nip crime in the bud’. Formal systems are also important in China’s overall youth justice framework (Wong, 2004).

The formal process, although punitive in nature, does not undermine young offenders’ interests and rights. In an attempt to ensure that juvenile offenders are treated appropriately in the formal process, procedures are regulated by occupational guidelines that aim to prevent arbitrary, inconsistent practices. The *MPS Notice 1995*, for example, requires the police to establish specialised units and deploy specialised personnel to handle cases involving juveniles. The relevant staff must have the basic awareness of psychology, criminology, pedagogy and law along with a certain level of investigative experience. Use of coercive measures is largely restricted, and investigating officers must not interrupt the normal

schedule of a student suspect. The formal standard set here does not appear to be any lower than that in many Western jurisdictions (see Muncie and Goldson, 2006).

Similarly, the *SPP Rules 2007* indicate that procuratorates are required to exchange opinions with defence lawyers to jointly comply with educational requirements. The *SPC Rules 2000* demand that juvenile court judges should take into account the defendant's level of biological and mental maturity. Accurate wording must be used in documents and verbal exchanges so that juvenile defendants can understand clearly, and inducing, rebuking, sarcasm and threatening language are all prohibited. The judges may, if necessary, visit convicted juveniles who are exempt from custodial sentences in order to monitor their rehabilitation performance and advise the young offenders' families on how best to fulfil the supervisory responsibilities required to create a suitable environment for eventual reform. These are clearly 'juvenile friendly' approaches, and again, the official standard is high.

As in most countries, however, we must suspect that principles are not always perfectly practised. Indeed, in such a vast country it is difficult to ensure that local practitioners always follow formal guidelines. Although formal humanitarian considerations are well documented in Chinese youth justice policies (Zhou and Lin, 2001; Lu, 2011; Hu, 2011; Yu, 2012), evaluation is by no means comprehensive, and it is often unclear how these rules are implemented in everyday practice. While it has been observed that the leniency elements that are designed to ensure juvenile offenders' welfare are not always reflected in practice (Zhang and Liu, 2007), the evidence we have to hand suggests that most practitioners attempt to

maintain standards (see also Zhou and Lin, 2007). Policy and law in action is the sphere where China is often criticised for suspected human rights abuses (Braithwaite, 2002). However, it is also common in Western youth justice systems to practise formal approaches as harshly as they are allowed even after apparent increases in youth crime have levelled out (Doob and Tonry, 2004). Serious comparative research could be undertaken only by, firstly, introducing some universal measure of harm to ground the abstract concept of human rights abuse (see Hall, 2012) and, secondly, developing the ability to generate reliable quantitative and qualitative data at the local level of practice.

In China, reparative and restorative disposals are also available in the legal system. This includes *admonishment*, the order to sign a pledge of repentance or the order to make apologies or pay compensation, although these were rarely used in practice (Hu, 2012). In recent years Chinese scholars and practitioners have been recommending the expansion of the use of less punitive approaches – such as lenient sentencing, individualised sentencing, non-custodial sentences or non-criminal restorative measures – for juveniles (see Hu, 2012; Ding and Liu, 2004; Yu, 2012; Ma, 2012). Indeed, between 1996 and 2000 25.2 per cent of the juvenile offenders received non-custodial sentences or were diverted from criminal sanctions (*China Youth Study Centre*, 2008). At the same time, it is worth noting that combining leniency with rigidity remains a key principle in the aspects of Chinese criminal justice policy that apply to young offenders. However, there is a vague boundary. Ma (2012) argues that youth offenders who have committed serious crimes, habitual offenders, recidivists and the

organisers or principal members of criminal groups must be treated more harshly to deter further offending. Where this boundary lies in principle and practice requires further detailed research.

#### **4. Conclusions**

This study is intended to provide readers with broad preliminary analyses of patterns and nature of youth offending in contemporary China and the condition of tradition, law, policy and practice in the Chinese youth justice system. Like any society undergoing rapid transition, China has experienced a surge of youth offending since the beginning of the 1980s. Despite the nation's unique political, socioeconomic and cultural settings, the overall trend of youth offending in China is not substantially distinct from that experienced in many other countries as they endured the disruptive effects of urbanisation, industrialisation and deindustrialisation processes. In fact, as we have demonstrated in this article, in most important ways it resembles the trend that many Western jurisdictions have experienced and seems to be embedded in a similar, albeit complex, aetiological context.

Therefore, like any society undergoing traumatic socioeconomic change, China is greatly concerned by the issue of youth offending. To tackle this problem, it relies chiefly on informal rehabilitative measures, largely through education within the community, supported by formal institutions and procedures to ensure enforcement and effectiveness. Lenient treatment is provided throughout the youth justice process as it seeks to maintain the

Confucian humanitarian tradition and also to comply with international humanitarian obligations. China's move towards rehabilitation and restorative justice (see Liu and Palermo, 2009) in principle distinguishes its youth justice system from the adult system. It is however worth noting that in China, as in the West, formal principles and rules may not always be practised in reality in the consistent ways that the lawmakers expect (Davies and Shen, 2010).

As in many other jurisdictions, Chinese policy and law focus on the establishment of a network of appropriate institutions that can deal with the restorative, rehabilitative and punitive elements of overall policy. As we have seen, however, there is a strong emphasis on rehabilitation through education, the use of informal mechanisms and the crucial role of the whole society as the initial means to reintegrate young people before legal and punitive sanctions are brought into play. In the West, for instance England and Wales, over the past two centuries we have witnessed major policy shifts between welfarist, punitive, restorative and, latterly, 'risk management' models of justice (see Muncie *et al*, 2002). These have often been applied in an inconsistent and socially divisive manner even though the role of rehabilitation and education in youth crime control continues to be emphasised (Stephenson, 2006). The principal difference is that in China the shifts of emphasis tend to occur in practice as a pragmatic response to shifting trends in crime in a context of political and cultural consensus, whilst in the West they have shifted to meet the needs of various political parties that were until recently characterised by distinct ideological differences. However,

since the 1990s, Western politics converged around the ‘scramble for the centre ground’ in a post-ideological context characterised by the dominance of neoliberalism (Winlow and Hall, 2012), which also accurately describes the Chinese economy even though it remains under central political control. Despite its governmental and cultural differences, China now shares a neoliberal socioeconomic model with the West. In this shared context the youth crime problem has intensified and juvenile justice appears ever more difficult and fragmentary: neither welfare nor justice but a complex and contradictory amalgam (Muncie and Goldson, 2006). The new risk management orthodoxy in the West represents a move towards a pragmatic approach that has always played an important role in the modern Chinese system, and it could be said that today both systems are struggling to maintain in practice their better formal principles of education, reintegration, welfare and humanitarianism.

Whichever policy is in fashion, and no matter which ideology is behind dominant criminal justice models, youth justice systems in China and the West always face the common problem concerning the proportion of rehabilitation and incarceration to be used in the response to crime, and the need to balance decisions based on humanitarian grounds with the accompanying imperative of protecting the public from harm. In the sphere of education, rehabilitation and restoration the distinction between informal and formal measures is also important. The most notable aspect of youth justice in Western countries is the agreement that there should be some form of separation in the treatment of youth and adult offenders



(Doob and Tonry, 2004). China shares with the West the fact that informal measures distinct from those deployed in the adult system are readily available for young offenders. In both parts of the world there has always been tension among the basic principles and aims that constitute the delivery of justice to different age-groups. The difficulty experienced in attempting to evaluate the success of various policies, models and projects is also a common issue because China shares the same problems facing other countries in criminal justice research, such as the lack of accurate data and evidence available to estimate both the true level of youth crime and the effectiveness of the measures that attempt to tackle it.

This article acknowledges the trap of Orientalism (see Said, 2003) and recognises the diversity of the impact of transnational practices on human relationships in different geographical contexts (see Sheptycki, 2005; Aas, 2007). However, it also undercuts overly pluralist arguments based on essentialist cultural differences by emphasising in detail and in principle the commonalities that exist in socioeconomic conditions and the spheres of youth crime and youth justice when one compares China to many other countries in the West. To clarify and sum up, the principal claims we make are twofold.

Firstly, statistical trends suggest that, in the formal categories and patterns of youth offending and the development of youth justice, many similarities exist between China and, using the example of England and Wales, other modern industrial societies that have undergone and are undergoing profound socioeconomic change. Sometimes it is too easily

assumed that societies with cultural and political settings distinct from our own must also have profoundly differentiated forms of criminality and official responses to crime. This article suggests that this is not always the case, especially during periods of abrupt socioeconomic disruption and change. The common issues we have identified may also be associated with similarities in internal cultural and legal development, the influences of international conventions or just common values derived from the human need to care for children and the difficulties societies experience as they attempt to put them into practice in unstable circumstances.

Secondly, this article identifies the challenges facing China today as it tries to understand and tackle its youth offending. At the end of this study, and despite what it has revealed, there are certainly many more questions that demand answers. For example, are we really sure about the fundamental conditions and causes of youth crime in any given society? How can we discover and analyse forms of crime, assess their actual harm and measure or at least estimate the overall level of youth offending? How can the effectiveness of formal or informal measures be evaluated with more precision? While youth offending may affect the youth justice system (Doob and Tonry, 2004), does the youth justice system have an impact on youth offending? All of these questions and more demand further research and, once better quantitative and qualitative data are generated, the extension of sophisticated criminological theorisation beyond current orthodox Western frameworks (see Hall and

Winlow, 2012). Until more sophisticated theoretical frameworks are constructed and more detailed further research begins to yield more reliable findings to bring what we have discussed here into sharper relief, all prior assumptions should be suspended.

### **Acknowledgements**

We would like to thank the editors, Professor Simon Winlow, and the anonymous reviewers for their invaluable comments and suggestions.

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