

Chinese Legal Traditions: Punitiveness versus Mercy

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Scholars have often linked differences in punitiveness and legal practices among nations to fundamentally different legal traditions and ways of legal thinking that were fostered differently throughout history. China is often considered to have a long tradition of harsh punishment, mainly due to its greater number of executions of capital punishment compared with other nations. This article argues that the “predominant punitive tradition” in China is an incomplete picture of Chinese legal thinking and practices. Legal thinking and criminal justice practices in China since the fifth century BC were largely influenced by Confucianism and as a result had a feature of mercy that is reflected in modern Chinese legal practices as well.

Studies on legal punitiveness have been the subject of considerable academic debate in many countries. As in other areas of criminology and criminal justice, such research has received extensive support from international organizations such as the United Nations and the Council of Europe (Walmsley 2003a), and government agencies in many nations (van Dijk et al., 1990; van Kesteren et al., 2000; Walmsley, 2003b). Previous studies on punitiveness have primarily been concerned with examining different levels of punitiveness and determining the sources of punitiveness in western societies (e.g. Cohn et al., 1991; Bazemore & Dicker, 1994; Grasmick & McGill, 1994; Young & Thompson, 1995; Baron et al., 1996; Leiber et al. 2002; Chiricos et al., 2004; Unnever et al., 2005; Green et al., 2006; Johnson, 2008; Almond, 2008; Gartner et al., 2009; Fathi, 2009). Among studies which examine punitiveness of legal practices in China, most focus on discussing harsh measures in dealing with criminal cases. Qi and Oberwittler (2009) argue that China tends to have harsh criminal laws and sanctions as a result of historically high crime rates. Harsh

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punishments are manifested in frequent application and execution of the death penalty and low rates of offenders under probation and parole.

First, the use of the death penalty is often viewed as an indicator of harsh punishment in China. According to the 1997 Penal Code of China, which is still in effect today, 68 types of offences carry the death penalty. The number was reduced to 55 in 2011.² China ranks the highest in the world in terms of the number of criminals executed each year. Its executions range from 2,000 to 15,000 annually (Johnson & Zimring, 2009). It is estimated that in 2010 a minimum of 5,000 executions, or 85.6% of world total executions, were carried out in China (Hands off Cain 2011 Report, 2011). Because of these numbers, scholars have viewed China as a nation with harsh and punitive laws and legal practices.

A second indicator of harsh punishment in China lies in its low rate of offenders under probation and parole. Compared with many western countries China's probation and parole rates are quite low. In 2000 more than 70 percent of offenders under correctional supervision, either on probation or parole, in western countries such as Canada, Australia, and America, were supervised in the community (Liu, 2007). The rates of probation and parole combined were approximately 45% in the Russian Federation and in South Korea. In China, the rates of probation and parole were only around 15 percent and two percent respectively (Yang & Chen, 2010; Li, 2001). Wu (2003) reports that among many Asian and Pacific countries/regions China's probation rate (2.3%) ranked the lowest fourth, with only Fiji, Sri Lanka, and Indonesia having a lower rate (See Table 1). Due to the fact that the majority of the offenders in the correctional system in China are incarcerated in prison, it is not difficult for some scholars to conclude that the Chinese criminal justice system is more punitive than many western societies.

Scholars have often linked the differences in punitiveness and legal practices among nations to fundamentally different legal traditions and ways of legal thinking fostered throughout the history (Whitman, 2003, Xu, 2008). A widely accepted perception of legal punitiveness in China has been that China has a long history of harsh punishment, with predominantly strict penal codes and severe punishment. Several studies have attempted to explain the root causes of the current severity of punishment in the Chinese legal system by tracing it back historically (Xu, 2008). Yu (2009) argues that specific geographical features, the political background and personal customs, account for the long-established existence of severe punishment in Chinese history.

We argue, however, that "punitiveness" is a relative term to "mercy. "We generally know less about empathy, forgiveness, mercy and the sanctions that align with them (e.g. community sanctions) than we do about punitive orientations" (King, 2008: 191). In line with King's (2008) view, scholarly discussions often show a too simplified tendency to label China as a "punitive society" and few studies have explored the mercy side of Chinese society. As a result, the long-standing and well established "punitive" tradition of legal culture in China is a misperception. Meanwhile, we agree

² The Fourth session of the 11th National People's Congress held the second plenary meeting on March, 2011. The meeting passed the eighth amendment to the Penal Code and abolished the death penalty for 13 economic-related non-violent crimes. The total number of crimes that carried the death penalty was reduced from 68 to 55.

Table 1: Number of Offenders on Parole in Asian and Pacific Countries/Regions in mid-2000 (Wu, 2003)

Countries or regions	Number on parole	Percentage
Australia	7611	39.7
New Zealand	1502	39.4
Thailand	23348	37.9
Canada	9925	32.7
Kiribati	4	5.1
Korea	12407	5.1
Japan	6317	5.0
Hong Kong	3966	3.5
China	30075	2.3
Indonesia	3966	1.9
Fiji	27	1.9
Sri Lanka	123	0.6

that some societies are indeed more punitive than other.

However, the argument about China being more punitive than most nations against criminals is an incomplete picture of legal practices in contemporary China.

First, Chinese legal history is by no means primarily punitive in nature. Although the death penalty existed and became an integral part of the criminal justice system as far back as the Qin dynasty (221-207 BC), its use may have been less frequent than assumed by many scholars (Bakken, 2011). Mercy or benevolence, as proposed by Confucius (551BC-497BC) and later advocated by his followers and many feudal government officials, existed and guided Chinese legal practices throughout history. Second, due to the limited statistics available on crime and imprisonment rates in China, it is difficult to conclude that contemporary China is more punitive in all aspects when dealing with crimes. As a matter of fact, a large portion of criminal cases are handled through extra-legal means, the most important form of which is the people's mediation mechanism. Third, scholars often consider high probation and parole rates as indicators of leniency. China is cited as one of the nations with the lowest probation and parole rates. We argue that since probation is often designed for misdemeanors or less serious cases and because a majority of minor/misdemeanor cases have been handled through extra-legal means in China, it is not a surprise to see a lower parole rate in China. Consequently, a lower parole rate does not necessarily mean harsh punishment.

This article will first review the historical development of Confucianism as a philosophy and moral code. It will then discuss the lenient features in legal practices and criminal justice policies in contemporary China. We take comparative perspective to discuss features mercy relative to punitiveness.

HISTORICAL DEVELOPMENT OF LEGAL THINKING AND PHILOSOPHIES

While mercy and benevolence coexist with harshness and rigidity in the Chinese criminal justice system, harsh punishment and cruelty were not the primary focus historically. A long historical tradition of mercy, as established by the well-known philosopher Confucius (551-479 BC), in Chinese legal thinking and criminal justice practices has been largely ignored by today's scholars. Confucianism contains a body of knowledge and ethical principles that guides people's lives and legal thinking. It focuses on five basic principles of ethics: benevolence (仁), righteousness (义), propriety (礼), wisdom (智), and faith (信), which are believed to be the greatest traditional source for codes of ethics in Asia (Glenn, 2000:280).

The body of Confucian philosophical ideas experienced a series of developmental stages. It was first proposed and established by Confucius in the Spring and Autumn Period (770BC-476BC). It was further developed, expanded, and made known by the general public by the followers of Confucius, including the two well known philosophers, Mencius (372-289 BC) and Xun Zi (312-230 BC) (Ma, 1997). In the Western Han Dynasty (206 BC- 8 AD), the policy on "removing all other schools and exclusively emphasizing on Confucianism" (罷斥百家, 獨尊儒術) was adopted by Han Wu Di (156 BC- 87 BC), the seventh emperor of the Han Dynasty. Since then and until the end of the Qing Dynasty (1644-1912) Confucianism officially dominated China's feudal society and became the mainstream culture of society. The benevolent legal thinking, as advocated by Confucius and his followers, also became the dominant philosophy in Chinese legal tradition.

The development of Confucianism, however, is not without interruption. The introduction of Western democratic ideas by the end of the Qing Dynasty destabilized the dominant position of Confucianism, which was further weakened and banished during the Chinese Revolution (from the May Fourth Movement in 1919 to the establishment of the People's Republic of China in 1949) and the Cultural Revolution (1966-1976). The rapid modernization processes since the "open-door" policy in 1978 is accompanied with the feeling of culture crisis, which leads to the reconsideration of Confucianism.

Confucian Legal Thinking in the Pre-Qin Period (先秦)

The origin of mercy in Chinese legal thinking and practices can be traced back as early as the Spring and Autumn period (770BC-476BC) and Eastern Zhou Dynasty (770BC-256BC). Confucius was the founder of Confucian School (儒家, *Ru*). His thoughts consisted of a body of concepts and ideas which as a whole serve the purpose of building harmonious human-society relationships and harmonious human-nature relationships (Liu, 2007). Three main legal principles could be generalized from Confucian thoughts and works: benevolence (仁), propriety (礼), and moral integrity (德).

Benevolence, or *Ren*, is the starting point in understanding Confucianism as it is relevant to legal thinking. The basic meaning of *Ren*, or benevolence, is "loving

others” (仁者愛人)³ (Nie, 1994). “Loving others” is the primary principle of Confucius on interpersonal relationships. On the basis of “loving others”, Confucius expanded the scope of *Ren* to “*Fan Ai Zhong*” (泛愛眾)⁴, which emphasizes loving as many others as possible. He further advocated that the feudal government practice “rule by benevolence” (仁政) in order to build a harmonious society.

Propriety, or *Li*, originated in sacrificial ceremony as a customary practice of clan society (Chen, 1998). At the beginning of Western Zhou Dynasty, The Duke of Zhou, Ji Dan (周公旦) conducted large-scale of *Li*-based activities (禮).⁵ *Li* ensured the proper conduct of social members within the feudal political and clan code of ethics and sustained the status hierarchy. *Li* reflected not only the prevailing social relations, but also the different levels of rights, obligations, and status of members of society. It was the general term for all social norms, with the meaning of law. Confucius believed that *Ren*, or benevolence, was the core of noble morality, which took the form of *Li*, or propriety. In other words, *Li* is the manifestation of *Ren*, the practical guide of *Ren*. One deserved to be called *Ren* only when acting in accordance with *Li* (恭而無禮則勞, 慎而無禮則憊, 勇而無禮則亂, 直而無禮則絞).⁶ *Li*, in Confucius’s advocacy of “*Wei Guo Yi Li*” (為國以禮)⁷, or “managing a state by propriety”, was treated as a set of legal norms as well.

De (德), means moral integrity. Confucius believed that a person who is benevolent also has moral integrity. In order for members of society to behave in accordance with propriety, *Li*, it is necessary for the government to rule by *De* (為政以德)⁸, moral integrity, which contains two levels of meanings: one refers to rulers’ own moral integrity, and the other refers to educating people by moral virtue (以德化民).

It should be noted that along with the development of *Ren*, *Li*, and *De*, the concept of *Xing* (刑), which means punishment, has become an integral part of Confucian legal thinking as well. Confucius, however, believed that *Li* should dominate the legal system and is supplemented by *Xing* (以禮為主, 以刑為輔). Only when all forms of *Li* have been exhausted can *Xing* be used (先禮後刑). Confucius opposed the use of punishment without prior warning and education (不教而誅)⁹ as well as the idea of “rule by punishment only” (折民唯刑)¹⁰.

Confucius compared the three principles, “rule by moral integrity”, “rule by propriety”, and “rule by penalty”, and believed the former two were better, because rule by penalty could not erase crime from people’s thoughts, while rule by morality could nip crime in the bud.¹¹ As a result, Confucius advocated education as means of crime prevention. His illustration on the relationship between *Li*, *De*, and *Xing* serves

³ “Analects of Confucius: Yan Yuan” (《論語·顏淵》)

⁴ “Analects of Confucius: Xue Er” (《論語·學而》)

⁵ “Analects of Confucius: Ba Yi” (《論語·八佾》)

⁶ “Analects of Confucius: Tai Bo” (《論語·泰伯》)

⁷ “Analects of Confucius: Xian Jin” (《論語·先進》)

⁸ “Analects of Confucius: Wei Zheng” (《論語·為政》)

⁹ “Analects of Confucius: Yao Ri” (《論語·堯日》)

¹⁰ “Zuo Zhuan: Zhao Gong Year 20” (《左傳·昭公二十年》)

¹¹ “Analects of Confucius: Wei Zheng” (《論語·為政》)

the ultimate goal of justice, *Wu Song* (无讼), no law suit (Liu, 2007). Confucius argued, “The way I try a lawsuit is not different from others. But it would be better still if there were no lawsuits.”¹² When there are lawsuits there is a society with conflicts and disputes. Only when there are no lawsuits can a society achieve harmony and restore peace. A society whose members are benevolent and behave with moral integrity and in accordance with propriety is less likely to have disputes among its members. As a result, no lawsuit (无讼) has become the ultimate goal of justice in achieving a harmonious society.

After the death of Confucius, Confucianism gradually evolved into eight different subgroups (儒分為八)¹³, among which Mencius (孟子, 372BC-289BC) was considered the most important philosopher/disciple who further developed Confucianism. Mencius considered “studying from Confucius”¹⁴ as his life goal. While maintaining the principle of benevolence (*Ren*, 仁), Mencius advanced Confucianism to a new level to form the “moral school” in the Pre-Qin Period (Yang, 1983). One of the greatest contributions of Mencius is probably his “good human nature” argument (*Xing Shan Lun*, 性善論)¹⁵, which consolidates the idea of “rule by benevolence” and “rule by moral integrity”. Specifically, Mencius believed that human nature was good and full of compassion. He therefore proposed the idea of “rule by benevolence” or “rule by compassion” (行不忍人之政)¹⁶. This again does not mean that punishment cannot be applied against crimes or misbehavior. Rather, the ruling class has to be very cautious with using punishment (“Shen Xing”, 慎刑) (Liu, 2001). Furthermore, Mencius clearly opposed cruel punishment, or torture.¹⁷

The third Pre-Qin Confucianism philosopher is Xun Zi, who strengthened the dominant role of benevolence and propriety in dealing with misbehaviors. Different from Mencius, Xun Zi believed in the “evil nature of human beings” and therefore suggested using both propriety and punishment (禮法並施)¹⁸ to rule the country. He did not deviate much, however, from Confucius and Mencius in that he considered education and propriety as the most important of all means to rule the country (禮者，人道之極也)¹⁹. Punishment or penalty is only supplemental to education (進退誅賞)²⁰ and should not be abused (刑不過罪)²¹.

Confucianism as a whole had a profound impact on the ancient Chinese legal system. It became the source of mercy and helped shape a tradition of mercy in ancient China. In the Western Han Dynasty, Confucianism was officially made the only principle guiding legal thinking and practice.

¹² Analects of Confucius book Twelve, article thirteen.

¹³ “Han Fei Zi: Xian Xue”(《韓非子·顯學》)

¹⁴ “Mencius: Gong Sun Chou Shang”(《孟子·公孫醜上》)

¹⁵ “Mencius: Gao Zi Shang”(《孟子·告子上》)

¹⁶ “Mencius: Gong Sun Chou Shang”(《孟子·公孫醜上》)

¹⁷ “Mencius: Liang Hui Wang Xia”(《孟子·梁惠王下》)

¹⁸ “Xun Zi: Cheng Xiang”(《荀子·成相》)

¹⁹ “Xun Zi: Li Lun”(《荀子·禮論》)

²⁰ “Xun Zi: Zhi Shi”(《荀子·致士》)

²¹ “Xun Zi: Jun Zi”(《荀子·君子》)

Confucianization of Law and Legal Practices in the Western Han Dynasty

During the Western Han Dynasty, Dong Zhongshu (179-104BC), the most important thinker of the Confucian school at that time, advocated the idea of “removing all other schools and exclusively emphasizing Confucianism”(罷斥百家，獨尊儒術)²² as the ruling philosophy. The idea was adopted by the seventh emperor of the Western Han Dynasty, Han Wu Di, who officially made Confucianism the only philosophy guiding legal thinking and practices. Henceforth, the principle of ruling predominantly by benevolence and supplemented by punishment has become the most important principle in Chinese legal tradition. Several terms were used to refer to the same legal tradition including *De Zhu Xing Fu* (德主刑輔, benevolent means, such as moral education, dominates the administration of law. Punishment is only supplemental to education) *Chu li Ru Xing* (出禮入刑, only when benevolent means do not work for criminal cases can punishment be used), and *Ming De Shen Xing* (明德慎罰, rule of virtue and cautious employment of penalty).

Although the feudal law of the Han Dynasty did not stipulate in detail how Confucian legal thinking should be applied to legal practices, the principles abstracted from “*Chun Qiu*” (春秋, the *Spring and Autumn*), the most important work of Confucius, were used as legal principles guiding criminal justice practices. The law suits were adjudicated in line with the spirit of the Spring and Autumn (Chun Qiu Jue Yu, 春秋決獄). As such, Chinese laws were moralized and ethical principles have officially entered the law, which resulted in alleviated penalties on a large scale in criminal cases.

A well-known case illustrating the application of adjudication in line with the spirit of the Spring and Autumn was Ti Ying Jiu Fu (緹縈救父, Ti Ying Saving Her Father), which took place during the period of Han Wen Di (180BC – 157BC):

In 167 BC, an official named Chun Yu Gong committed a crime which, according to the feudal criminal law, deserved the corporal punishment of his nose being cut off (劓刑). His daughter, whose name was Ti Ying, went to Chang'an, the capital city of China to save her father. She wrote a letter to the emperor, Han Wen Di, appealing that a person could not recover from such corporal punishment such as the nose being cut off. Ti Ying stated that in order for the emperor not to execute corporal punishment on her father, she would be willing to serve as a slave to the emperor. Han Wen Di was affected by her filial piety (Xiao, 孝), and ordered the abolition of corporal punishment.²³

The case of “Ti Ying saving her father” reflects the application of ethical principles of Confucianism to criminal justice practices. Ti Ying’s behavior was in accordance with what was defined as filial piety by Confucianism and was therefore endorsed by mainstream culture and the emperor. The abolishment of corporal punishment was in accordance with the principle of “ruling by benevolence and propriety” as well. Since the Western Han Dynasty, Chinese legal practices have gradually adopted much more lenient means in dealing criminal cases.

²² “Han Shu: Genius of Dong Zhong Shu”(《漢書·董仲舒傳》)

²³ “Records of the Historian: Xiao Wen Ben Ji·Tenth”(《史記·孝文本紀第十》)

The Peak of Confucianization of Law and Legal practices in Tang Dynasty (618–907)

Confucianization of law and legal practices reached its peak in the Tang Dynasty and was reflected and integrated with the Tang Code, which stipulated penalties according to morality and propriety at the time. In general, the principle that “everything has to follow morality and propriety” (*Yi Zhun Hu Li*, 一準乎禮) was the fundamental principle guiding the Tang Code. This, however, does not mean that penalties were not applicable at all. In terms of the relationship between morality and penalty, the basic argument was that morality and education were the fundamental principles in ruling the country. Penalties were only supplemental means to morality. When applied to misbehaviors moral and educational methods were entitled to priority over penalty (德禮為政教之本，刑罰為政教之用)²⁴. Under the influence of Confucianism, the number of criminal penalties and the number of legal provisions referring to the death penalty were significantly reduced during the Tang Dynasty²⁵.

Overall, the Confucianization of feudal laws was basically completed during the Tang Dynasty (Huang & Tian, 2007). Since then Confucianism has become an integral part of legal thinking and has guided criminal justice practices for over a thousand of years in imperial China. Bakken (2011) compares the level of punitiveness in punishment between European countries and China and concludes that Chinese culture, whether popular or official, was never primarily about revenge and cruelty. Such elements were in fact weaker in China than in almost any other civilization at the time. Confucianism helped constitute a form of legal humanism in contrast to the tradition of harsh punishment (Bakken, 2011).

The dominant position of Confucianism in imperial China, however, was destabilized accompanying with the introduction of Western democratic ideas by the end of the Qing Dynasty (Ye, 1997). It was further attacked and destroyed during the Cultural Revolution (1966-1976). This does not mean that mercy elements do not exist in contemporary China at all. Instead, such elements exist in abundance in various legal provisions and the criminal justice practices.

RESTORATIVE LEGAL PRACTICE IN CONTEMPORARY CHINA

A typical legal practice which manifests Confucianism in dealing with criminal cases in contemporary China is the people’s mediation practice, which, to a large extent, is compatible with restorative justice practices. The following section discusses the lenient features of Chinese law and legal practice, with a focus on these restorative practices.

Chinese Mediation Mechanism

The conventional Western concept of justice is to allocate blame and punishment (Zehr, 1990:181). Restorative justice, instead, involves all the parties to seek to restore the broken relationship through such ways as victim-offender mediation. It

²⁴ “Tang Lv Shu Yi: Ming Li I” (《唐律疏議·名例一》)

²⁵ “Tang Lv Shu Yi: Chapter Thirteen” (《唐律疏議·卷第三十》)

respects the feelings and humanity of both the victim and the offender (Wright, 1991:112) and can be implemented under the consent of both parties. Restorative justice advocates the role of informal procedures in handling criminal cases in order to restore the social relationship which was ruined by crime. China's long tradition of mediation practice is highly compatible with the spirit of restorative justice.

Mediation is often practiced for less severe or misdemeanor cases. The most popular forms include mediation by a People's mediation committee, by the town's legal service, by law firms, by respected family clan leaders in rural areas, by relatives and friends, by respected seniors, or by neighbors (Liu & Palermo, 2009). The Temporary Rule for Organization of People's Mediation Committees (1954) established the official status of mediation in China by stipulating the nature, the tasks, the organization, and the methods for mediation activities. Later series of laws, including the 1989 Rules for the Organization of a People's Mediation Committee and the 1990 Rule of Resolution of People's Disputes, consist of specific articles about people's mediation mechanisms (Liu & Palermo, 2009). Specifically, mediation must be based on voluntary participation of both the offender(s) and the victim(s); it has to be in compliance with the laws, regulations, and policies that are published and in effect; either party (the offender or the victim) has the right to suspend the mediation at any time and seek formal trial by court.

This mediation mechanism has played an important role in handling minor criminal cases. It is estimated that the number of cases mediated by the People's Mediation Committee has been seven to eight times the number of cases adjudicated by courts (Liu & Palermo, 2009). From July 1 to December 31, 2005, a large number of cases were settled by mediation outside the court in Beijing. Only a small portion went through formal court trial. In addition, the number of jurisdictions which apply mediation in settling cases has increased rapidly. At the provincial level, such cities as Beijing, Zhejiang, Anhui and Shanghai have created their respective guidelines and principles in victim-offender reconciliation for minor injury cases; at the city level, cities in both Henan and Hunan provinces have issued similar policy papers (Wang & Xiao, 2011). Furthermore, pioneering programs, such as Yantai's 'peace of justice' program, are ongoing. The span of cases settled by mediation or criminal reconciliation has been expanded to include not only minor injury cases, but also juvenile delinquency cases, criminal negligence cases, crimes by university students in school, traffic accident crimes and theft (Liu & Palermo, 2009). Comprehensive application of criminal reconciliation results in the effective settlement of disputes and faster handling of cases.

In short, the majority of criminal cases, especially the less serious or misdemeanor cases, are handled through mediation, an informal way of handling them. Serious offenses, which represent a small percentage of overall crime, go through the formal court trial. As a result of the fact that it is less likely for more serious offenses to receive probation and parole, it is not a surprise to see a lower rate of probation and parole in China.

Although China's mediation mechanism is highly compatible with the Western practice of restorative justice, the rudimentary motive of applying mediation or victim-offender reconciliation in China is different from that in many Western societies. The typical Western restorative justice movement is a response to the problems (such as high recidivism rates) of the justice system (Liu & Palermo, 2009).

Restorative justice practices in contemporary China have developed largely independent of these influential movements outside of China. Rather, the main impetus comes from the persistent influence of traditional Confucian legal culture (Liu and Palermo, 2009). John Braithwait (2002) declared that it is “a pity that so few Western intellectuals are engaged in the possibilities for recovering, understanding and preserving the virtues of Chinese restorative justice while studying how to check its abuses with the literalizing rule of law” (p22).

Community-Based Corrections in China

Traditional Chinese community correction practices, such as parole, probation, and surveillance, which are defined under the Chinese Criminal Law and Criminal Procedure Law, emphasize supervision in communities (Liu, 2007). Contemporary practice of community corrections is a new initiative in Chinese criminal justice reform. Although it may not replicate exactly the same modular approach established in Western societies, Chinese community corrections is quite consistent with the Western methods in that it emphasizes the restoration of a broken human relationship, repentance and pardons among offenders, victims, and communities, and reintegration of offenders into society through community supervision and participation (Liu, 2007; Liu & Palermo, 2009). In August 2002 Shanghai started the first pilot community correction project in three districts. In 2003 the Supreme Court, the Supreme Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued a Notification about Pilot Studies on Community Corrections. The Notification identified three municipalities (Beijing, Shanghai, and Tianjing) and three provinces (Jiansu, Zhejiang, and Shandong) as the first tier to carry out community corrections (Liu, 2007). In 2005, a Notification about Expanding Pilot Studies on Community Corrections was issued. Twelve more provinces were included as the second tier to try out community corrections. Statistics have shown that more than 50,000 offenders from the 18 provinces/municipalities served sentences in communities. A majority of the offenders were parolees and probationers (Liu, 2007). By the end of 2006, this number increased to 65,616, among which, 15,092 had completed the community programs and been released (Liu & Palermo, 2009). Although the number of offenders serving community sentences is much smaller compared with the total number of offenders in the correctional system (844,717 offenders in 2005) (Liu, 2007), the practice of community corrections has been expanding and deemed as a success. The 2006 Decision on Major Issues in Constructing Harmonious Socialist Society confirmed the positive effect of community corrections in the construction of harmonious society. By 2008, the number of provinces which applied community corrections reached 25, or 78 percent of the 31 provinces (Dong & Ding, 2009, see Table 2). More recently, the Supreme Court, the Supreme Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the Opinions on Trying out Nation-Wide Community Corrections (2009) detailing the principles, organizational structure, and tasks of community corrections. Community corrections have grown rapidly. By the end of 2010, all provinces (31), 91 percent of cities, 72 percent of counties, and 65 percent of streets, have applied community corrections (Li, 2011, see Table 2).

Table 2: Application of Community Corrections in China, 2008 and 2010

Administrative Region	N (2008)	% (2008)	N (2010)	% (2010)
Province	25	78.1%	31	100%
City	157	47.1%	304	91%
County	840	29.3%	2053	72%
Street	8430	20.5%	26676	65%

Contemporary practice of community corrections in China reflects the restorative values of the traditional Confucianism in building a harmonious society. Such practice mainly targets the first-time offender who has committed only a minor offense, minors, the elderly, and those in need of assistance (Li, 2010). Specifically, community corrections cover five major types of offenders: those who are sentenced to serve traditional probation, those who serve parole in communities, those who are deprived of political rights and serve sentences in communities, those who are sentenced to temporarily serve their sentences outside of prison (such as the pregnant offenders and seriously sick offenders), and those who receive control/surveillance sentences (Li, 2010). China's practices of community corrections have both unique features and drawbacks. For example, a number of scholars have termed China's restorative justice as a "control restorative model" because it shows such aspect as coerciveness and insufficient protection of offenders (Liu & Palermo, 2009).

Restorative Features in the "Integration of Leniency and Rigidity" Criminal Justice Policy

A hotly debated criminal justice policy in contemporary China is the "integration of leniency and rigidity" policy, introduced at the 2004 National Work Conference on Politics and Law. Subsequent work conferences in 2005 and 2006 confirmed that this "integration of leniency and rigidity" policy is the basic criminal justice policy in China (Li & Ning, 2010). In October, 2006, the Sixth Plenary Session of the Sixteenth Central Committee of the Communist Party of China clearly advocated the implementation of this criminal justice policy in reforming the juvenile justice system and carrying forward community corrections.

The focus of the debate on this policy has been on how to interpret and balance leniency and rigidity (See Li & Ning, 2010; Li & Duan, 2010; Liu & Luo, 2010; Li, 2010). Many scholars interpreted the policy in terms of the leniency element and argued that leniency may be interpreted in four aspects, 1) for minor criminal cases, lenient punishment should be applied; 2) offenders of more serious offenses, if showing any good behavior, such as confession or good deeds as stipulated by law, may receive more lenient punishment compared to the circumstances under which they do not behave well; 3) during the criminal processes of investigation, prosecution

and trial, offenses which cause no serious harm is not deemed a crime; 4) at the sentencing stage community corrections may apply for those who are guilty of minor crimes (Li & Ning, 2010).

This “integration of leniency and rigidity” policy applies to both adults and juveniles. Criminal justice practices pertaining to juveniles, especially those under age of 16, are largely lenient and consistent with the principles of restorative justice. They reflect the Confucian principle of the “dominant role of education and supplemental means of punishment”. Similar to the Western “*parens patriae*” doctrine, Chinese juvenile justice aims to “educate, persuade, and save juvenile offenders.” The general principle of the Law on Prevention of Juvenile Delinquency (1999) is clearly defined as protection of the healthy development of youths. The strategy to prevent juvenile delinquency is a “comprehensive treatment” involving all possible parties such as the government, social organizations, criminal justice agencies, schools, families, and urban/rural residential committees (see Article 3). Article 44 further stresses that juvenile justice practices follow the principle that “education has the priority and punishment is only a supplement” (教育为主、惩罚为辅). The general principles and articles of juvenile laws have shown that the Confucian principles on “benevolence,” “education,” and “no lawsuits” continue in Chinese juvenile justice practices. Such practices are highly compatible with the Western restorative justice practices as well.

Under the “integration of leniency and rigidity” policy, both the people’s mediation mechanism and community corrections are encouraged. Lenient measures are carried out frequently and extensively to cover those who commit minor offenses or show good behavior during investigation. The policy, however, does not exclude the use of rigid criminal punishment. The debate on how to weigh and balance leniency and rigidity continues in contemporary China (See Li & Ning, 2010; Li & Duan, 2010; Liu & Luo, 2010; Li, 2010).

CONCLUSION

Previous research has shown that Chinese legal history is by no means primarily punitive in nature. Confucianism has a profound influence in shaping Chinese legal thinking and criminal justice practices. Benevolence and education, as advocated by Confucius, has guided Chinese legal practices throughout the history. A feature of mercy is reflected in modern Chinese legal practices as well. The argument that China is exceptionally punitive in punishing criminals is an incomplete understanding of the Chinese legal tradition and practices.

Although the death penalty still exists in China, its use may be less frequent than assumed by many scholars (Bakken, 2011). In 2011 the number of crimes that carried the death penalty was reduced from 68 to 55 (see note 2). The fact that a large portion of criminal cases are handled through extra-legal means, mediation methods in particular, has resulted in a low probation rate in China. Probation itself is subject to discussion in terms of its lenient nature. On the one hand, scholars believed that probation, as a form of community correction, follows Confucian benevolence philosophy and therefore is more lenient. On the other hand, if probation is abolished or used less frequently offenders tend to serve shorter periods of time in prison (Seiter,

2008). Consequently, it is difficult to conclude that more frequent use of probation represents more lenient criminal justice practice.

Although the debate on how to balance leniency and rigidity is still going on, the “integration of leniency and rigidity” criminal justice policy has a great impact on practices such as decriminalization of offenses that cause no serious harm or depenalization of criminals by placing minor criminals under community supervision. A number of Chinese scholars writing in academic publications and policy reports adore and advocate such practices. Two well-known books advocating more humanistic elements in criminal law are the *Philosophy of Criminal Law* (Chen, 1992) and *Humanistic Basis of Criminal Law* (Chen, 1996). This advocacy of moderation is also seen in works by Kechang Ma (2008), a leading criminal law scholar in China. Ma (2008) views the moderate trend in criminal law as the necessary consequence of traditional Chinese legal culture and the demand for harmonious socialist society. Meanwhile, Western restorative justice principles and practices have also been introduced to China by a few scholars (see Liu et al., 2001; Zhou, 1998). These Western restorative elements and Chinese traditional legal culture will co-exist and may take new forms that reflect unique Chinese characteristics in the criminal justice system in the future.

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