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Penological developments in contemporary China: Populist punitiveness vs. penal professionalism

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ABSTRACT

This article examines the penal development in China over the last six decades to understand the ways in which populist punitiveness functions in the Chinese political and social contexts. It argues that populist punitiveness in China is a ‘top-down’ process whereby manipulative political elites play on public anxieties and fears of crime and social insecurity to serve different political objectives of the Chinese Communist Party. While public sentiment was promoted and reflected in penal policy in revolutionary (1950s–1970s) and reform (1970s–1990s) China, their influence, in the post-reform era (2000s–), has been blocked or filtered by the political will due to the emergence of a series of moderate political agendas. A new penal politics that favors professional knowledge over public opinion to serve the country’s soft governance strategy is now taking shape in contemporary penal regime to prevail China’s policy-making power and process.

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1. Introduction

Developed in the Western penal regime, ‘populist punitiveness’ is characterized as ‘the notion of politicians tapping into, and using for their own purposes, what they believe to be the public’s generally punitive stance’ (Bottoms, 1995: 40). It depicts a transformation in the process of penal policy making, from originally being devised by professionals following thorough research, to a less informed approach by which political elites use public opinions and moods to inform and shape penal practice and sentencing decisions. Bottoms (1995) perceives populist punitiveness as one of the thematic changes that has occurred in most Western democracies.¹ Based on his theory, a common belief seems to be accepted by criminologists that recent penal strategy has experienced a surge in harshness with many crime control approaches dominated by punitive mentalities to reflect the public call for harsh justice (Garland, 2001; Matthew, 2005; Pratt, 2007; Wacquant, 2009).² In high crime societies, such as the US and the UK, the leading voice of crime policy has no longer been that of professionals, but the long-suffering and ill-served public – especially of ‘the victim and the fearful, anxious members of the public’ (Garland, 2001: 13).

Populist punitiveness needs to be distinguished from penal populism – a penal theory coined by Pratt (2007) which originates from the former to describe the implications of public opinions and sentiments for penal policy and practice in

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¹ The three other main movements of penal thought in the Western criminal justice are just deserts/human rights; managerialism and community justice.

² Over the last two or three decades, ‘zero tolerance’ policing strategies and harsher sentencing policies have been implemented to curb crime, particularly in the areas of drugs, sexual offences and terrorism (e.g. the US).

modern society. Different from populist punitiveness, penal populism has wider connotations that include social forces, policy development and political ethos. More specifically, Pratt (2007) views penal populism as a product of dramatic social and cultural changes that have taken place following the advent of neoliberalism in the 1970s.³ The significant rise of crime rates, which is generally attributed to the economic deregulation and driven by other socio-political factors such as 'baby boom and 'war on poverty' (Langan, 1999; Blumstein and Wallman, 2005; Hinto, 2016), has contributed to a substantial extent to the decline of public confidence in social security and criminal justice apparatus. To (re-)gain public support that endorses their electoral success, major political parties put forward hard-line penal policies to compete with each other to get tough on crime. Essentially, populist punitiveness is a top-down explanation of contemporary penal development, whereby politicians take the initiative to advocate harsh justice in the name of people; penal populism, on the other hand, is a 'bottom-led' explanation, seeing law and order lobby groups, tabloid journalism, victim's groups, talk-back radio hosts and the like setting much more punitive penal agendas which governments then rush around trying to put into place.

Given China has a long history of being a single-party state, this article focuses on the theory of populist punitiveness as a conceptual lens through which China's penal development and evolution can be perceived and understood. Over the last six decades, populist punitiveness has been argued to be the manifest feature of punishment in China (Cohen, 1968; Trevaskes, 2003; Bakken, 2004; Mühlhahn, 2009). In China's criminal justice system, punishment has functioned not only as an instrument to serve varied political and social objectives, but as a populist mechanism through which 'collective values can be re-affirmed and group solidarity can be reinforced' (Garland, 2013: 23). In the revolutionary era (1950s–1970s), the Chinese Communist Party (CCP) adopted severe policies and practices to target 'undesirable class foes'. While the use of harsh justice was a tool for class struggle, political repression and ideological rule, reflecting Mao Zedong's dichotomy of 'people's democratic dictatorship' (人民民主专政),⁴ it served as the Party's response to the public demand for revenge on anti-revolutionaries and establishing an equitable communist state (Mühlhahn, 2009). After the death of Mao, China has entered an era of economic modernization that begun with Deng Xiaoping's reforms in 1978. In the process of dramatic social transformations Deng's open-door policy brought in its wake, post-Mao China experienced a continued use of harsh and draconian justice characterized by the launch of a series of 'Strike Hard' campaigns. These anti-crime crackdowns employed the retributive potency of severe and swift punishment to help secure social order as the means for ensuring economic success in the crucial epoch of unprecedented economic growth (Trevaskes, 2007). In the meantime, the campaign-style justice operated as a populist venue through which the public demands are satisfied and confidence of the masses in the Party is boosted (Miao, 2013).

However, evidence suggests that toughness which permeated penal policy in both revolutionary and reform China has begun to decline in scope and scale since the early 2000s. This is particularly demonstrated in the fact that the strike-hard strategy has gradually given way to other forms of punishment that reflect the state's new crime policy of 'Balancing Leniency and Harshness' (宽严相济刑事政策). More significantly, there has been, over the last decade, a suddenly increased support for the correctionalist ideal in the practice of criminal justice and punishment. Protecting offenders' rights and helping them reintegrate into society has become the dominant theme of penal policy. This new penal philosophy is gaining more ground when China announced to build a 'socialist harmonious society' and achieve 'social stability' under the auspices of a 'rule of law' political program since the mid-2000s.

This 'lenient turn' of punishment appears to take place at the time when social instability has continued to escalate and the public anxiety of social insecurity has continued to rise. In particular, during the last ten years, the crime rates grew steadily with the proliferation of public order offences in the majority of urban sectors (Biddulph, 2007). Meanwhile, social injustice and inequality produced by rapid social and economic changes has led to dramatic rise in social upheaval (e.g. petition and protest) (Pils, 2005). The felt need of the general public to establish control over risks and uncertainties has justified continued support for punitive sentencing policy (Jiang et al., 2007), which has become the most urgent aspect of public culture in contemporary China. These social conditions and processes seem to be sufficient for China to 'legitimately' resume the tradition of penal punitiveness that reflected the populist demand of punishment. The question thus raised is why the modern structures of penalty in post-reform China are increasingly oriented towards a more lenient and correctionalist program of action?

In this paper, I explore the penal development in China over the last six decades to understand the ways in which populist punitiveness have functioned in the Chinese social and political contexts. Like what Bottoms and others (Garland, 2001; Matthew, 2005) have observed in the Western regime of penalty, populist punitiveness in China is a 'top-down' process in which manipulative political elites make use of public anxieties and fears in a bid to tough up on crime and to enhance the Party's popularity. The public opinion on crime and punishment is only valued when it is coincident with and/or conducive to political considerations. While this penal power was allowed to grow in revolutionary and reform China, its influence, over the last decade, has been filtered by the political will due to the emergence of the Party's soft political agendas. Under the Party's new leadership since the 2000s, the primary goal of constructing a harmonious and rule-of-law state has shaped a

³ Neoliberalism refers to the economic policies that advocate for markets to be completely liberated from any type of governmental interference. Consumerism refers to the social and economic policies that encourage the increasing consumption of goods and services which form the basis of a sound economy.

⁴ People's democratic dictatorship refers to the rhetoric that the state represents and acts on behalf of the masses and uses dictatorial powers and measures against political enemies such as anti-revolutionaries, capitalists and landlords.

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