



Contents lists available at ScienceDirect

International Journal of Law, Crime and Justice

journal homepage: www.elsevier.com/locate/ijlcrj

China and “La questione criminale” (“the criminal question”): Revolutionary and reformist periods

Liqun Cao, Bill Heberton*

Faculty of Social Science and Humanities, University of Ontario Institute of Technology, Oshawa, Canada
Centre for Criminology, School of Law, University of Manchester, United Kingdom

ARTICLE INFO

Keywords:

China
Crime definition
Law
Mao
Reform
Revolution

ABSTRACT

While there is good recent scholarship on the social production of police and crime statistics in China, arguably the matter of the more contextualising “criminal question,” particularly during Mao’s time (1949–1976), has not been re-visited or scrutinised in recent years. The mixing of revolutionary socialist and post-reform discourses has permitted usages of terms according to their surface meanings in English without consideration of their complex historical meanings. Thus Chinese realities can be misunderstood. In the revolutionary period, crime became broadly conflated with China’s own version of Marxist-Leninist law and justice. This article examines the changing nature of the “criminal question” during both Mao’s time, where the political question of friend/enemy was key, and the economic reformist period where the social dynamic was based on profit and loss and where the myth of markets and commodities came to be “naturalised.”

... they know whereof they speak - even if they do not say all they know.

Simon Leys, *Chinese Shadows*, 1976: 214

1. Introduction

For many, the study of crime is different from studying the criminal question. For the Italian school of critical criminology in the mid-1970s, its journal “*La questione criminale*” came to embody the meaning that “crime is not considered independently from the procedures by which it is defined, the instruments deployed in its administration and control and the politics and debates around criminal justice and public order. The criminal question can therefore be provisionally defined as an area constituted by actions, institutions, policies and discourses whose boundaries shift” (Pitch, 1995: 52). Indeed, as Balbus notes, claims over definitions are made all the more contentious through the institutional application of “the law” itself: “One of the central tenets of law is that crime is not an entity in fact but an entity in law. Violent activities therefore have to be fitted into predefined categories in law. [In legal terms] the political character of motivations is irrelevant. The effectiveness of the process of course, will depend on the extent of political involvement and the ideological coherence of the participants” (Balbus, 1973: 3). This latter point is as applicable to the controllers and their mechanisms of control as it is to the controlled.

Constructing one’s object of inquiry in this fashion does not deny the objective existence of harmful actions with negative consequences for the lives of others; yet it does imply analysing how and why and with what consequences these behaviours come to be defined as crimes. Further, it implies taking into account the necessity of different viewpoints, including one’s own way of seeing that

* Corresponding author.

E-mail addresses: liqun.cao@uoit.ca (L. Cao), bill.heberton@manchester.ac.uk (B. Heberton).

<http://dx.doi.org/10.1016/j.ijlcrj.2017.10.002>

Received 29 March 2017; Received in revised form 2 October 2017; Accepted 9 October 2017

1756-0616/ © 2017 Elsevier Ltd. All rights reserved.

shapes the construction of the criminal question; and recognising that the criminal question exists only ever as indicating a certain position. In adopting this approach, we explicitly recognise that, by definition, in this perspective the criminal question is suffused thoroughly by a rich historico-cultural context (Nelken, 2010; Garland, 2011).

In this paper we take China and consider not “crime” but the “the criminal question”; by adopting such a perspective, one both de-naturalises and de-formalises any simple conception of crime. This perspective does useful work in drawing our attention to the specific temporal and geographical location and assemblage of a set of forces (understood in a similar vein to Bourdieu’s well-known “field” concept - see Bourdieu, 1980), and the themes, debates and dilemmas that comprise it. In so doing, we also attempt to write what Foucault calls “a history of the present” (1977), the idea of using history as a means of critical engagement with the present. Thus, such an approach should illustrate the weight of its own history and display the “stickiness” of the particular political culture’s many facets - legal, institutional and discursive.

While there is good recent scholarship on the social production of police and crime statistics in China (see He, 2014; Zhang, 2014), arguably the matter of the more contextualising “criminal question” in China, particularly during Mao’s time (1949-1976), has not been re-visited or scrutinised in recent years. This criticism, of course, is not limited to the situation in China. While mainstream criminology in the USA spends insufficient time discussing the definition of crime (Agnew, 2011), the impact of critical criminologists, including labeling theorists is limited (Chambliss, 1989; Green and Ward, 2004; Michalowski, 2010). Yet, labeling theorist Becker (1967) reminded us the politico-moral nature of crime by asking, “whose side we are on?” Echoing that call from a very different angle, Jiang Qing, Mao Zedong’s widow, herself on trial in Beijing in 1980 (*The Trial of Jiang Qing*, 1980), interrogated the judge rhetorically and answered it triumphantly, “What is crime? Anti-Mao is crime!”.

“The criminal question” is especially important for China study because the society has undergone significant transformation over the period, especially post-reform (1978 - present); and while arguably the genealogy could be taken back to the Legalist tradition in Chinese history, where the “criminal question” was formed in the language of the credo “protect the emperor”(see Hu, 1994; Ren, 1997), we have chosen to focus our attention on the most recent transformation. The year 1978 was a turning point in China, where the secularized “covenant of grace” that had tied Mao to the people, was, as Michael Dutton notes, abandoned and replaced by a new set of political and economic conventions that would revolutionize the country (Dutton, 2000: 65). Whereas today the “criminal question” in China still has arguably its own distinctiveness, in relation to international standards, differences are largely a matter of degree (Cao and Cullen, 2001). In Mao’s revolutionary China, the “criminal question” implied a qualitative difference in kind.

2. “The criminal question” under Mao

The legal experience of some twenty-five years of revolutionary struggle from the early 1920s arguably preconditioned the approach to the “criminal question” adopted by the Chinese Communist Party (CCP thereafter) in the post-1949 era. Indeed, the function, procedures and infra-structure of the legal system itself were transferred largely intact from the pre-1949 practices (Griffin, 1976). For the early CCP (1927-1949), the three key factors governing their approach to “the criminal question” can be seen as (1) the immediate circumstances of a revolutionary “crisis” situation, (b) communist ideology, mixed with Chinese traditional notions of “law,” and (c) the practical experience of actual leadership. During this pre-1949 period, the environment was characterised by infighting among party factions, Comintern’s remote dictates, economic scarcity, guerrilla warfare, poor communication infrastructure, and a generally apathetic populace. The rapidly changing political, economic and military situations and/or territories required a flexible assemblage of laws and procedures. With few “legal specialists,” detailed codes of law were practically useless. Nor should the impact of a civil wartime atmosphere be overlooked; there are parallels with Chinese Nationalists “national emergency” approach toward “political” offenders in Taiwan in period 1949-1987 (for commentary on this see Peng, 1971; Cohen, 1977).

Turning to ideology, this was also clearly important in determining “the criminal question.” Quite simply, because of the close connection between ends and means in Communist ideology, laws varied with changes in the political objectives of the ruling Party. For example, in the early period a broad definition of counter-revolutionary activity was needed to coincide with the objective of class struggle. When the objective shifts to national resistance against the Japanese invaders (1937-1945), the CCP adopted a narrow definition of counterrevolutionary activity as well as many of the Chinese Nationalist’s laws in an effort to show political unity. As the Party objectives reverted to a class struggle in the post-civil war period, the definition of counterrevolutionary activity was again expanded to include, for example, economic crimes (Cohen, 1977).

Third, the actual learning process of leadership experience allowed for development of practices, especially in the interpretation and use of “mass-line” practice (Li, 1970). The mass line was translated into several precise techniques in respect of “the criminal question,” and alongside the idea of “class line” the approach was inherently flexible in addressing any “criminal question.” Class line was especially flexible, since the criterion of economic class could remain latent, only to be selectively applied when convenient for broader political objectives. Class was particularly significant in defining counterrevolutionaries during periods of redistribution of wealth for instance, but not in periods requiring a united front against the Japanese. The core defining praxis of “flexibility” of the legal system was seen as perhaps a “permanent” feature of law with Chinese characteristics (Hazard, 1969; Li, 1970) or as a feature of combining of morality and law. In this sense, such praxis arguably carries the interpretive resonance of Hans Kelsen’s ‘Grundnorm’ concept (Vinx, 2007).

To comprehend the “criminal question” in China under Mao, one must appreciate that everything was pulled by the gravity of the prior binding political question, “Who are our enemies, who are our friends?” This single question dominated the Chinese lifeworld in a myriad of ways, including how to understand crime and its control; to paraphrase Joseph Needham, the enemy/friend dyad was the core of Maoism’s “moral theology” (Needham, 1971). In its revolutionary phase, the country operated almost entirely on the basis of this binary divide: revolutionary “friend” or “enemy” (see Dutton, 2005 for the classic exposition).

Download English Version:

<https://daneshyari.com/en/article/7532037>

Download Persian Version:

<https://daneshyari.com/article/7532037>

[Daneshyari.com](https://daneshyari.com)