

The Neoliberal Penalty Thesis in China: When Western Theory Meets Chinese Reality

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Abstract

The neoliberal penalty thesis links recent penal shifts toward punitiveness and managerialism to market liberalisation that has swept western societies since the 1980s. While this paradigm has been largely examined in the western context, less is known about how it may be applicable to the eastern context. This article aims to understand the possible conceptual limitation of the neoliberal penalty thesis for understanding modern penal practices in contemporary China ('reform China'), where economic reform has also significantly altered the state's social landscape over the last several decades. Through an examination of the 'Strike Hard' campaigns and administrative detention, it is argued that punishment in reform China has not increased in its severity, as has occurred in many western states. Rather, the growing need to maintain a harmonious society has enabled China's penal practices to be more managerial in orientation, analogous to the development of actuarial justice in western states.

Introduction

In the late 1970s and early 1980s, western governments adopted neoliberal strategies to open markets and privatisation in an attempt to pursue economic 'competition' and 'efficacy' (Messner and Rosenfeld 2000; Harvey 2005). The economic liberalisation has brought a wide array of social, cultural, political and economic transformations that have swept western societies over the last several decades of the 20th century (Crouch 1999; Swyngedouw, Moulaert and Rodriguez 2002; Harvey 2005). While scholars attempt to map out the repercussions of neoliberalism on countries' economic conditions and political arrangements, a large body of literature has considered the relationship between the advent of neoliberalism and shifts in penal policies and practices in liberal democracies (Garland 2001; De Giorgi 2006; Cavadino and Dignan 2006; Reiner 2007; Wacquant 2009; Bell 2011).

Arguments have centred on what Lacey (2013) has referred to as the 'neoliberal penalty thesis' — the contention that the rise of neoliberalism has corresponded with a shift away from social welfare-oriented policies, towards an intensification of punishment (Wacquant 2009; Feeley and Simon 1992; Brown 2011). Matthew (2005) argues this thesis will play

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out differently in different states, and what is required to shed light on the relationship between punishment and society is an understanding of the distinctive neoliberal culture and mode of governance in each neoliberal state. For example, in the United States (US) (Garland 2001; Simon 2007; Wacquant 2009) and other western nations (Hinds 2005; Moore and Hannah-Moffat 2005; Bell 2011), authors have described this fundamental shift from post-war welfare-oriented crime policies to governance through a punitive politics of crime control (Garland 2001; Simon 2003). Wacquant, in particular, argues that the ascendancy of neoliberalism explains the upsurge in penal severity in the US, which is characterised by soaring imprisonment rates and justified as a 'healthy necessity' for a society 'threatened by the gangrene of criminality' (Wacquant 2009:8). Although some have argued that 'punitiveness' is not well-defined, which limits its usefulness in cross-national studies (Matthew 2005; Jou and Heberton 2011), its broadly applied 'working definition' suggests excess, or the disproportionate use of sanctions and a deviation from the principle of proportionality (Matthew 2005). As stressed by Cohen (1994), 'punitiveness is characterized by coercion, formalism, moralism and the infliction of pain on individual legal subjects by a third party'. The late modern shift away from 'penal welfarism' also corresponds with the emergence of a 'managerialist' approach driven by cost-effectiveness and techniques for identifying, classifying and managing offenders, rather than rehabilitating them (Feeley and Simon 1992:455).

While the neoliberal penalty thesis presumes a direct connection between neoliberalism and a trend towards increased punitiveness and managerialism, some experts are in disagreement as to whether it extends to other jurisdictions (O'Malley 2004; Nelken 2009; Lacey 2013). Lacey (2013:269), for example, argues that 'the historical path to neoliberalism is one which applies only to certain countries'. She uses the example of Northern Europe to demonstrate that, notwithstanding a certain level of neoliberal political rhetoric, penal practices in particular European countries (eg, Sweden and Norway) have remained relatively unaffected by a neoliberal political and economic agenda, so have not witnessed the 'punitive turn' evident in the other liberal market economies such as the US (Lacey 2013). The applicability of the neoliberal penalty thesis has not yet been examined in regimes outside the West that have also experienced market liberalisation. In particular, Harvey (2005) and others (Yan 2003; Hoffman 2006) have described the neoliberal character of Chinese economic modernisation that began with Deng Xiaoping's reforms in 1978. Nonetheless, potential links between these shifts and penal practices over the period have not been examined. Nor has similar attention been focused on the potential influence of the neoliberal penalty thesis on penal practices in reform China (ie, China since 1978).

This article draws on Lacey's challenge to the universality of the neoliberal penalty thesis as a starting point to examine modern Chinese penal practices. The aim is to revisit the reach of the neoliberal penalty thesis by exploring its applicability to the patterns and characteristics of punishment in a non-western context. To begin, I will argue that many of the social and market forces that have been associated with a punitive turn in western countries also occurred in China since the 1980s, which was period of rapid economic liberalisation. Taking account of these social forces, I will then examine shifts in Chinese penal practices over the same time period. In particular, the article focuses on two different policies — the 'Strike Hard' campaigns and administrative detention — to consider the philosophical and practical characteristics of penal practice in reform China.

The neo-liberal penalty thesis with 'Chinese characteristics'

Over the last three decades, the neoliberal penalty thesis has become one of the major discourses to explain the political economy of punishment in contemporary society. Inspired significantly by American and British penal exceptionalism, the thesis offers powerful descriptions of an emerging 'culture of control' (Garland 2001); a new paradigm of 'governing through crime' (Simon 2007) concerned with penalising the 'poor' (Wacquant 2009), and actuarial justice to manage and control risk (Feeley and Simon 1992).

While the neoliberal penalty thesis seems to suggest an undifferentiated global transition toward 'neoliberalism', paralleled by an equally uniform tendency toward penal severity, some scholars consider this to be an over-generalised narrative. Lacey (2008), for example, argues that advanced capitalist democracies vary in their neoliberal tendencies and, as a result, in their degree of punitiveness. Lacey points out that while 'neoliberal market economies' such as the US and the United Kingdom (UK) have witnessed a marked transition from a welfare approach to a hardline penal approach to crime control and punishment, 'coordinated market economies' such as Northern Europe have remained fairly stable in punishment practices over the last three decades. Lacey's critical account of the comparative limitations of the neoliberal penalty thesis in western democracies may be usefully expanded to a similar analysis of non-democratic regimes such as China, where massive economic modernisation has taken place in parallel with neoliberal marketisation since the 1980s.

Beyond the distinctive political, institutional and ideological systems that may inhibit comparisons between China and the West, perhaps part of the reason that scholars have given little consideration to the connection between Chinese market liberalisation and the corresponding penal practices of the state, lies in the lack of consensus on the existence and influence of neoliberalisation in contemporary China (Ong 2007; Nonini 2008). Some scholars, such as Nonini (2008) and Ong (2007), conceive governance in China as a form of 'market socialism' composed of practices and discourses of the Communist Party, during which state power and intervention has been strengthened, rather than receded, in the form of nationalisation. Others have argued that the program of economic reforms since 1978 is similar to the neoliberal shift in the West, with a market economy and an 'open-door' policy, to a degree, replacing a centrally planned economy (Harvey 2005). They argue that China's extraordinary economic growth in the last three decades — making it one of the fastest growing economies in the world (Allen, Qian and Qian 2005) — accompanied by the move toward greater liberation of individual entrepreneurial freedoms (Yan 2003), can be characterised as a neoliberal restructuring or a 'mutated' form of neoliberalism (Liew 2005).

Neoliberalism has been discussed in terms of its applicability to the recent political and economic reforms in China; however, much less attention has been paid to the possible influence of neoliberalism on criminal justice and penal evolution in the country. It is true that legal scholars and criminologists examine the political economy of China's punishment in the modernised 'open-market' society. But they tend to focus the debate on the narrow domain of Deng's economic liberalisation as a singular economic factor associated with the development of China's penal practice, without making reference to the neoliberal scenario (Peerenboom 2003; Liu 2005). However, in spite of the scholarly disagreement, at a minimum the economic and political shifts since Deng provide an opportunity to examine the applicability of the neoliberal penalty thesis.

Garland (2001) has observed that the new economic arrangements from the 1970s onwards, combined with other social, cultural and technological changes, exposed citizens

in the US and the UK to unprecedented rates of crime and also brought into question the capacity of governments to do anything about it. From this perspective, a politics of crime control became focused around the victims of crime and a more punitive approach to offenders as a way for states or politicians to maintain legitimacy in response to seemingly unstoppable increases in crime (Garland 2001:103). Likewise, China began to experience an extreme upsurge in crime after 1978, coinciding with rapid economic development and modernisation (Curren 1998; Bakken 2004; Cao 2007). Whereas the first period of economic reform (1978–1988) saw a steady increase in crime rates,¹ the late reform era (1988–onwards) witnessed a substantial upsurge in crime (Liu and Messner 2001). While this rise may be at least partly due to changes in policing practices, along with crime recording and reporting practices, it also closely corresponds to the timing of Deng's market liberalisation.

Moreover, changes in the pattern of crime-types suggest a link with broader macro-economic forces. For example, property and violent crimes (ie, corruption and other white-collar crimes and robbery), which were rarely recorded in Maoist China, rose over the period (Liu 2005; Bakken 2005). Importantly, the increase in crime cannot be seen as a continuation of similar trends witnessed during Maoist China, where class struggle dominated citizens' daily life (Leng and Chiu 1985). It more likely is an inevitable outcome of the reallocation and redistribution of resources resulting from economic reform (Liu and Messner 2001). This rearrangement of wealth produced a variety of negative economic, ethical, and socio-political consequences that have contributed greatly to increasing crime rates in China (Liu and Messner 2001). From this perspective, market liberalisation has served to exacerbate inequalities and concentrate the ownership of economic resources (Yao 1999; Lewis and Xue 2003). This is perhaps most evident in the urban/rural divide where rural regions have suffered an exodus as people migrating to increasingly dense urban areas, with socio-economic disadvantage becoming increasingly concentrated in rural regions (Zhang and Kanbur 2005). Economic reforms also coincided with the emergence of a new 'class structure', including the 'beneficiary' class and the 'deprived' class, with the concentration of wealth in the hands of the Party's elites and private entrepreneurs (Lewis and Xue 2003).

These demographic changes experienced in China, characterised by growing social inequality and rapid urban growth (Cai 2010) echo similar patterns in the post-1970s era in the West. For instance, Garland (2001:84) identifies the migration of citizens from rural to urban regions as a key post-1970s contributor to rising crime in western countries. In an important respect, the flow of rural migrants to China's urban areas also parallels Wacquant's arguments about the rising 'underclass' in the US and the 'criminalisation of poverty' (Wacquant 2009:4). Thus, China's economic reform has produced a large number of surplus rural labourers and the urban poor, which have become more visible in Chinese society, and are increasingly seen as a 'threat' to urban social stability and order (Curran 1998). In fact, various scholars have attributed a large proportion of the recorded crime in urban areas to the migrant population. For example, Ma (2001) has argued that in Beijing more than half of the crimes are committed by migrants from rural areas. Urban Chinese have also been repeatedly expressing hostile attitudes towards these 'floating populations' and the 'urban poor' (Lo and Jiang 2006).

¹ The explosion in crime since the economic reform in China is evident in the statistical material from official public security sources. The *Law Yearbook of China* (1981–2002) published by the Chinese Government reveals that the crime rate rose from around 80 per 100,000 population in 1981 to approximately 360 per 100,000 population in 2001. Bakken (2007) argues that the extent to which crime has increased is even greater given the existence of the 'hidden figure' of crime due to political considerations.

In many respects, the social and economic changes that have occurred in China since the 1980s reflect the global influence of 'neoliberalisation' (Harvey 2005) as they parallel changes in western countries. High crime rates, free-market policies, widening inequalities, anti-migration hostility and rise of an 'underclass population' have now become evident social problems in both western and eastern jurisdictions. However, while scholars argue that particular social and political developments have shifted the penal landscape in western states, the question remains as to whether they have also impacted on the severity and form of punishment in reform China.

China's penal policies: Towards a punitive trend or something different?

One element of the 'punitive turn' experienced in western countries, as postulated by Garland (2001) and Simon (2007), was an attempt of government to regain public support through harsher punishments (ie, 'three-strikes' law). Similar to arguments about 'governing through crime' in the West (Garland 2001; Simon 2007; Bell 2011), China's official reaction to rising crime and deteriorating social security in the reform era has been driven by the need to maintain public and political support (Chen 2008). The difference, however, is that crime is not seen as threatening the professional middle classes (who are still a minority group in Chinese society), but is largely viewed as an impediment to economic growth and social stability (Peerenboom 2002). The administration of penal policy in China — a typical one-party authoritarian state — has always embodied the Communist Party's long-term political pursuit of gaining social conformity that guarantees political control and national development (Peerenboom 2002).

Some have argued that harshness has increased in China's contemporary criminal justice practices (Bakken 2004, 2005, 2011; Trevaskes 2003, 2007). Nelken (2009:297), for example, maintains that China has become more punitive through the heavy use of the prison, without necessarily being neoliberal. In particular, authors unanimously perceive the 'Strike Hard Anti-Crime' campaigns as the typical penal form to justify their observation of increased penal punitiveness. For example, Bakken (2011:41) points out that 'harshness was elevated to a basic principle of punishment when China opened up legal reforms in the late 1970s'. The Strike Hard campaigns are argued by Bakken (2011) and others (Liang 2005; Trevaskes 2003) to exemplify Deng's advocacy of harshness as the driver of the authorities' desire to impose more punitive justice compared to the first ever *Criminal Law* adopted by the post-Mao Government in 1979. They further contend that the Strike Hard strategy of crime control was inherited from the previous period of Maoist China in rhetoric, marking continuity with the long-existing penal culture developed in Maoist philosophy (Trevaskes 2003; Bakken 2011). While agreeing with these views on the philosophical origin of the Strike Hard campaigns, I question whether this campaign-style penal form and practice in China's reform era necessarily mirrored a general intensification of punishment. In other words, I consider whether the Strike Hard campaigns serves as a sufficient proxy to mirror global trend toward increased punitiveness in reform China.

Strike Hard campaigns — An index of increased punitiveness?

Directly initiated by Deng, this second-generation Party leader defined the Strike Hard campaigns as a dictatorial action important to strengthening the Party's power (Liang 2005). This perception was not an original idea of Deng, but a continuation of the regime's penal philosophy of people's democratic dictatorship established and developed by Mao Zedong.

In the climate of political struggle that dominated the country prior to 1978, 'class foes' became the most common and principal objective of China's criminal justice system. Harsher sentencing was frequently imposed on political criminals in light of their 'anti-revolutionary' character compared to non-antagonistic offenders (Leng and Chiu 1985). In the 1980s, this approach has largely formed the theoretical basis of the Strike Hard campaigns. Deng conceptualised the Strike Hard campaigns as a political movement to target criminals whose crimes had seriously affected social stability and the smooth process of economic development (Deng 1994). In response to the legal authorities' concern over the reinvigoration of dictatorial penal patterns that swept the Maoist society, Deng (1994:371) specified that 'in the "Strike Hard" campaigns, handling serious crimes was to solve the contradictions between the people and the enemy'. According to Deng, it is correct and imperative to use the Party's dictatorial strength through harsh and swift handling of criminals for safeguarding the country's economic and social order (Deng 1994). Deng's ideal of relying on the Strike Hard campaigns to realise people's dictatorial democracy has been inherited by subsequent Party leaders, such as Jian Zeming, who launched the 1996 and 2001 Strike Hard movements to reassure 'the public that the enemies would always be suppressed by the state's enforcement bodies (police and armies) and the people would be well protected' (Jiang 2006).

While the ideology of 'struggle' as the rhetorical similarity between the Strike Hard campaigns and Mao's crime policy of democratic dictatorship is evident, the practical parallels are just not as obvious. If punishment and sentencing in the Strike Hard campaigns are considered harsh and cruel, penal practice in the political movements under Mao's leadership was, in essence, more disproportionate and draconian — based on an individual's class origin, rather than their criminality (Leng and Chiu 1985; Mühlhahn 2009). During the mass campaigns between 1949 and 1976, numerous political enemies were arrested, imprisoned, sentenced to death and executed (Leng and Chiu 1985; Mühlhahn 2009), though the Government has never officially provided an estimate of the relevant numbers that have long been considered as a state secret. Mao, for example, in one of his secret speeches, admitted that over the course of the anti-counterrevolutionaries campaign in the years of 1950–53, a total number of 800,000 people were killed (Mao 1957) and many more were executed and sentenced to long-term imprisonment in the Cultural Revolution during 1976–77 (MacFarquhar and Schoenhals 2006). The number of executions in this single political movement is in essence higher than the number sentenced to death in 1983, 1996 and 2001 during the Strike Hard campaigns. For example, according to the *People's Daily* (a state-run media), the number of death sentences during the 1983 Strike Hard campaign is 24,000 and approximately 682,000 people were sent to Laogai (the formal penitentiary system) (Tanner 2005:174–5). In addition, from 1990 to 1999, the Chinese legal system has sentenced 27,599 people to capital punishment, with 18,194 of these being executed (Zhang 2005:2). In the years of the Cultural Revolution period, many people were severely punished or imprisoned for criticising the political leaders. One specific case is that of a Party cadre who was sentenced by the people's tribunals to eight years' imprisonment on a charge of engaging in counterrevolutionary activity relating to accidentally damaging a newspaper which contained Mao's picture (Leng and Chiu 1985). The imposition of punishments on non-criminal behaviours was less frequently seen in the Strike Hard campaigns following the establishment of a formal criminal justice system in the late 1970s (Lubman 1999). Although criminals were tried and sentenced in a swift fashion during the campaigning format crackdowns, a judicial procedure was more or less guaranteed, though in a fragmented way, in light of the 1979 *Criminal Law* compared to a general lawlessness and lack of proceduralism in Mao's criminal justice system.

Perhaps the criminologists supportive of the argument that penal severity exists in China's reform period also overlook the limitation of the Strike Hard campaign as a solitary crime policy in persuasively explaining the penal evolution. As an occasional state-orchestrated movement, Strike Hard campaigns suffer from the flaw of being too interim to be an exclusive index of increased punitiveness in reform China's penal practice. In other words, Strike Hard campaigns cannot be singled out as a typical use of punitive sanction, nor a regular penal policy to signify the prevailing penal feature in contemporary China. Although the anti-crime campaigns result in the heavy use of prison and capital punishment, their patterns of practice, form and frequency reveal that this type of penal policy is no more than a situational 'struggle' tool, driven by specific political considerations and triggered by distinctive social conditions over the period.

Hence, the argument about China increasing its penal severity by means of the Strike Hard campaigns may not be an accurate assessment. If this anti-crime action does not represent a reflection of a penal shift toward punitiveness, then what fundamental function did the Strike Hard movements serve? Trevaskes (2003:362) observes that judgments and sentencing of convicted persons or groups during the Strike Hard campaigns were often carried out in a public forum. Public sentencing rallies provided a symbolic reassurance of the capacity of the state both to protect its citizens and to reflect the prevailing moral order. Trevaskes (2003) pointed out that one of the major functions of rallies during the Strike Hard campaigns was to serve an emotive objective of public shaming and moral indignation. This is because this form of punishment has its origins in the 'mass-line trials' of the revolutionary period of China. In Maoist China, citizens were encouraged to engage in the adjudication, sentencing and execution at mass trials. By allowing the public to be an integral part of the criminal justice system, the Government attempted to heighten public vigilance against class enemies, which helped to restore the social order and uphold the Party's legitimacy (Cohen 1968). Mass trials are better captured by Durkheim's position on the functional aim of punishment as 'the ritualized reaffirmation of collective values and reinforcement of group solidarity' (Durkheim 1933:87). From this perspective, the Strike Hard campaigns can be viewed as representing much of an expressive form of justice aimed at shaping a process of ritual and representation of the state, in addition to serving as a response to the social and economic forces of market liberalisation.

Perhaps, an alternative perspective to the dominant scholarly position that the Strike Hard campaigns represented an increased level of punitiveness, is that they represented a continuation of past penal rationales aimed at maintaining political authority and social order, and a different manifestation and substance of penal practice from revolutionary China. This is not to suggest that punishment in reform China is not punitive. Rather, harshness has long been a defining feature of China's penal system and continues to be one of the major ideologies after 1978. However, the index of penal severity, as observed by Lacey in some Northern European countries, has remained relatively stable or has even become weaker over the period of economic modernisation, departing significantly from penal shifts that have occurred in most neoliberal states, such as the US and UK. In China, since the 2000s, penal punitiveness has been gradually supplanted by a shift towards penal leniency and moderation in the context of the 'rule of law' rationale and the building of a 'harmonious society'. This is perhaps also demonstrated in the fact that from the year 2000 onwards, the strike-hard strategy was gradually replaced by other forms of punishment that reflected the regime's desire to combine the penal rationales of punitiveness and incapacitation. This new penal trend is typified by the implementation of the 'comprehensive management of social order' program formed in 1991 as a new official rhetoric of controlling crime and preserving social stability. It revives the Maoist 'mass-line'

strategy — relying on the masses to assist the authorities' work of social order management, and incorporates the forces of society, legal apparatus and other disciplines to implement multiple penal policies that promote both harshness and leniency in handling offenders. While retaining a punitive aspect — severe treatment of serious and recidivist criminals — the penal ideal of rehabilitation and incapacitation is particularly emphasised, and in fact, represents a watershed moment of penal change in reform China. Administrative detention is one example.

Administrative detention — A new function of managerialism

Scholars have argued that in addition to the intensification of punishment, penalty in western states has also evolved to focus more on the control of risk and become managerial in orientation (Garland 2001), which embodies a 'new penology or actuarial criminology' (Feeley and Simon 1992:449, 466). The same penal trend has also largely taken place in China since the economic reform period, which has seen a set of crime control and penal strategies that resemble actuarial justice. One example is administrative detention.

Created in the 1950s, administrative detention was designed to deal particularly with individuals who committed minor deviant acts, such as prostitution, drug abuse and public order nuisances. These were handled by the police through administrative procedures, and sanctioned by administrative regulations in parallel with the criminal penal system. For example, re-education through labour ('RTL'), as the heaviest form of administrative detention, is solely practised by the police based on three administrative regulations: the 1957 *Decision of the State Council Regarding the Questions of Re-education through Labour*; the 1979 *Supplementary Decision of the State Council for Re-education through Labour* and the 1982 *Trial Methods for the Implementation of Re-education through Labour*. The RTL committee at each level decides the severity of the administrative offence, imposes the corresponding administrative detention and regulates the incarceration of offenders in detention centres. These committees are dominated by the police. Garland (2001) observes that one of the prominent characteristics of late-modernity (neoliberal) penal practice is to filter minor offences out of the criminal justice system so as to preserve resources for more serious criminal activity. Such practices resulted in the decriminalisation of minor offences in favour of efficiency. This kind of penal arrangement has long been a hallmark of the justice system in pre-1978 China, where administrative measures were perhaps the most remarkable penal practice that represented the Maoist ideal of crime control. While severity of punishment was the central tenet of the revolutionary criminal justice system, administrative detention was relied on as way to achieve what Mao's defined non-antagonistic justice — ie, contradictions that were 'among the people' and that could be resolved through education and administrative penalties (Cohen 1968). As such, administrative detention was utilised to reform, educate and rehabilitate delinquents based on the mass-line approach and was conceptualised by Mao as an instrument to tackle 'minor conflicts between the masses' (Shaw 1998).

Administrative detention largely remained intact until China was liberalised economically, with concomitant sweeping social and demographic consequences. As indicated, one of the most significant changes of the last three decades has been the growth of the deprived class, such as rural migrants (labourers), laid-off workers, land-expropriated farmers, prostitutes and drug abusers. This has led to what Simon and Feeley (2003:96) have referred to as 'a group of persons permanently trapped in poverty and social marginality', with these groups subject to strategies such as selective incapacitation and preventive detention.

In comparison to administrative detention in Maoist China, administrative detention in reform China has been integrated to be a coherent penal framework, embracing a sentencing scheme of classification and differential incarceration. This includes public order detention, detention for education/coercive drug detoxification and RTL. For example, public order detention incarcerates those who disturb social order for the first time or whose wrongdoings carry minimal social consequences (eg, minor assault or public affray). Detention for education and coercive drug detoxification is aimed at two specific types of offenders, namely drug abusers and prostitutes. Those who have been detained under public order detention and continue to use drugs or prostitute themselves are also subject to custodial measures such as incarceration. In addition, RTL targets repeat offenders, ranging from habitual public order offenders (eg, those who frequently commit public nuisances) to recidivist prostitutes, who fail to comply with compulsory education or treatment in previous detention periods. From the last decade of the 20th century onwards, the scope of targets of RTL has also shifted to cover protesters, petitioners, adherents to banned religious organisations (eg, Falun Gong) and autonomy-seeking minority groups (eg, Xinjiang Uyghurs) (Fu 2005).

This pattern has considerable affinity with selective incapacitation — a utilitarian model of punishment depicted as the ‘clearest example of the new penology’s method’ (Feeley and Simon 1992:458). Two major similarities exist. First — akin to the objective of selective incapacitation to identify ‘average offenders’, ‘high-risk offenders’, and ‘career criminals’ — the administrative detention system in China aims to classify high-risk offenders and then subject them to long-term control (maximum of four years under RTL), while investing in short-term forms of control over lower-risk offenders (15–20 days under public order detention). One example is the handling of prostitutes and drug addicts by administrative detention. In Maoist China, prostitution and drug addiction were considered ‘feudal social ills’ and offenders were sent to detention centres for reform and education, in keeping with the official efforts to eradicate ‘morally corrupted behaviours’ (Biddulph 2007). This perception, however, has changed over the last three decades of economic modernisation. While experiencing a resurgence of drug abuse and prostitution alongside economic reform, China has begun to envisage that these behaviours are a normal consequence of social transformation (Li 2010). It has been documented that the majority of drug abusers and prostitutes since the 1980s are, statistically, underclass people who are jobless, with low financial capability resulting from changes in the economic system (Li 2012). This has reshaped the practice of administrative detention from eliminating drug use and prostitution, to preventing these behaviours from posing risks to society. Differential treatment is prescribed for prostitutes and drug addicts depending not only on the severity of their offending, but also on their risk profiles. For example, prostitutes with regular employment and social connections are usually sent to public order detention for a period of one week. In China judgement of a person’s social connection includes their Hukou (household registration) status and the extent to which one is tied to their local community and his/her family (Li 2012). Only offenders who have local residency and whose information is kept by his/her neighbouring community are remanded under public order detention. In contrast, migrants to the city, can be kept on detention for education for between six months to two years, and then repatriated to their registered residential area upon release. Those who have no regular employment or social and familial ties, or who continue to prostitute after being remanded under public order detention and detention for education, are sent to RTL for lengthier periods (Biddulph 2007).

Since the economic reform period, the aim of administrative detention in transforming offenders has been diminishing, with the ideological impetus of administrative detention

becoming divorced from its rehabilitative ideal. Originally in Maoist China, the ‘mass-line strategy’ was employed to exercise administrative detention, which enabled the public to play a crucial role in overseeing and managing offenders under the guidance of the local police (Leng and Chiu 1985). In this context, the public was often relied on to carry out the confinement of offenders and their educational correction in the community. For example, those who had committed acts that were not sufficiently serious to warrant criminal imprisonment were subject to administrative control — organised into work teams to labour under the supervision of public representatives (Dutton 2005). Landlords and rich peasants with the capacity to labour and those released from reform through labour were forced to work in their own neighbourhoods under community supervision (Biddulph 2007). This practical flexibility of administrative detention has been in decline since the 1980s. A series of legal modifications and an institutional reconstruction of administrative detention were adopted by the state in favour of the exclusive use of this measure by the police. In the current administrative detention system, the police are granted a large degree of discretionary power, and the majority of offenders are more or less unable to access legal counsel to challenge the police use of administrative detention powers (Peerenboom 2003). For example, the power to carry out RTL is, on paper, vested in RTL administrative committees composed of public security, civil affairs departments and labour departments. However, in practice, the police are virtually the only legal apparatus conducting this instrument, from filing a case to sending offenders to a labour camp (Biddulph 2007). The only way for the detained to challenge the detention decision is to bring an action against the public security organs pursuant to the *Administrative Procedure Law of the People’s Republic of China* (1989). But even if the court is willing to take the case, the execution of RTL is not suspended pending appeal, which has very little effect on stopping the use of the police’s administrative detention power. Although, in recent times, courts in China are more engaged in the hearing process for the imposition of administrative custodial measures, the judicial checks and balances to oversee police practices and scrutinise their exercise of administrative detention powers remains difficult to implement fully due to the legal complexity of bringing actions against the authorities (Peerenboom 2003).

In a similar way, this reflects the trend in neoliberal states to redefine rehabilitation and view punishment as a means of treating offenders and managing risk (Garland 2001). Over time, the controlling and managerial functions of administrative detention has increased to also focus on populations judged as dangerous. For example, it is now common for police to undertake surveillance of ‘focal populations’ and incarcerate groups using administrative detention powers, when there is an important national social or political event, for example the Beijing Olympic Games (Human Rights Watch 2010). ‘Focal populations’ comprise groups who are: seen as threatening national security; suspected of criminal offences; inclined to criminal and violent conduct due to the escalation of conflicts; criminals convicted of intentional crimes that have been released and minor offenders who have been freed within five years; and drug addicts (Biddulph 2007). While these designated categories of people are subject to extensive surveillance and routine checks or investigation (Biddulph 2007), they are also often the targets of administrative detention. This has seen the lengths of administrative detention in reform China increase (Peerenboom 2003). Apart from public order detention, which is usually below 15–20 days, the longest duration of detention for education/coercive drug detoxification and RTL are two years and four years respectively, though many offenders do not serve the maximum term. These periods of incarceration are longer than Criminal Detention (1–6 months) and Control (3 months–2 years) imposed by the criminal justice system.

The techniques of managerialism as reflected in administrative detention represent attempts to maintain China's 'harmonious society'. While scholars have conceived actuarial justice as a model of criminal justice processing in which the pursuit of efficiency replaces the traditional goals of rehabilitation and deterrence, in China the practice of administrative detention aims to minimise potential risks presented by underclass offenders, as a result of dramatic social changes and developments. Although it has now been announced that RTL will be abolished in 2014, evidence shows that the retained detention centres will continue to serve as the premises of other administrative detentions, such as coercive drug detoxification. This does reflect a great similarity with the decriminalisation of perpetrators in the western societies, where economic and procedural efficiencies of punishment have become the primary concern of the authorities to more effectively regulate and control the possible danger to the public. As stated by Garland (1996:459) in neoliberal penology, 'the promise to deliver "law and order" and security for all citizens is now increasingly replaced by a promise to process complaints or apply punishments in an efficient and cost-effective way'.

Conclusion

The theory of neoliberal penalty argues there has been a shift towards punitiveness and managerialism in most western states over the last several decades of the 20th century. However, less is known about how this paradigm may be applicable to eastern contexts. Drawing on Lacey's (2008) critical analysis of the universality of neoliberal penalty thesis, the aim here has been to examine the case of China to gain a different cultural perspective, which helps further test the generalisability of this narrative in a non-western context.

While China and the West have experienced economic modernisation since the 1980s, their resultant penal trends seem to depart. Having initiated economic reform in 1978, China has not experienced a manifest increase in penal severity compared with previous forms of punishment, which the neoliberal penalty thesis argues has occurred in many western states. Whereas it is true that the Strike Hard campaigns represented an increase in the severity of punishment in reform China compared to the *Criminal Law* enacted in the beginning of the economic reform, these anti-crime measures do not represent a rupture of past penal philosophy that dominated Maoist China, where punitive forms of justice were already pervasive. In practice, the penal form and substance in the Strike Hard campaigns reflect a lightened penal administration in comparison with the Maoist era, which marks the start of the shift toward penal moderation in the reform period.

However, while the severity of punishment in China has not changed in ways argued in the neoliberal penalty thesis, forms of punishment in China aimed at maintaining a harmonious and orderly society have enabled China's penal practices to be more managerial in orientation. This is analogous to the development of actuarial justice in western contexts. This change in penal rationale is exemplified by administrative detention, a penal strategy that has now oriented itself toward the goal of classifying, identifying and incapacitating offenders and subjecting them to a variety of administrative custodial measures. The argument put forward in this article has been that this trend is closely intertwined with the state's concern to maintain social order. The case of China shows that there is inherent contingency in how the neoliberal penalty thesis manifests itself in certain jurisdictions (Lacey 2013) and that an understanding of punishment cannot be separated from the wider goals of governance, which are particularly unique and pertinent to understanding the evolution of punishment in the Chinese context.

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