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From Punishment to Control: Assessing Juvenile Diversion in China

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China's juvenile justice system has grown and changed substantially since the 1980s. While considerable research focuses on institutional treatment of juvenile delinquents, little attention has been paid to the diversion processes and measures that allow troubled juveniles to be directed away from the formal justice system. Through a comparison with juvenile justice in the United States, this article aims to investigate the development of the juvenile diversion framework in China. We argue that despite their similar efforts to divert juvenile delinquents from traditional court proceedings, in practice China's diversionary arrangements diverge from those of their US counterparts. Unlike in the United States, Chinese juvenile diversion does not operate according to welfarist or restorative models. Rather, juvenile diversion in China is a managerialism-driven scheme that rests on two key pillars: institutional diversion, which imposes punishment and control on juvenile offenders pursuant to their level of offending and dangerousness, and noninstitutional diversion, which revolves around risk-based management and correction through community-level interventions. We conclude that China's distinctive sociolegal culture and political priorities have shaped a practice that appears to be at odds with the officially advertised narratives of the state's juvenile justice policy.

INTRODUCTION

Diverting juvenile offenders from the traditional criminal justice system has a long history in youth justice. Premised on the idea that children's involvement with the criminal justice system has a destructive impact on the young (Becker 1963; Lemert 1981; Binder and Geis 1984; Cox et al. 2003), channeling juveniles out of judicial proceedings has become a formalized and routinized response to juvenile offending over the last century, as a diverse array of liberal democracies have adopted diversionary approaches.

Across different regimes, diversion of delinquent juveniles varies significantly in form, appearance, and purpose, from the initial point of contact with police through disposition in the courts.[1] Yet scholars have identified certain basic characteristics of diversion. Lemert (1981, 36) defines it as "the process whereby problems [of juveniles] otherwise dealt with in a context of delinquency and official action will be defined and

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1. Although crime prevention strategies that attempt to prevent young people from committing offenses in the first instance may also be characterized as the diversionary initiatives (Hawkins and Weis 1985), in this article we focus on the diversion of young people who have been involved in delinquent acts.

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handled by other means with minimal penetration of the juvenile justice system." A "true" diversion, according to Lemert (1971), would require direct, informal, and discretionary referrals by law enforcement agencies to avoid the criminogenic effect any official action may bring in its wake. Likewise, Binder and Geis (1984, 625) describe diversion as "the substitution of an alternative to further processing in the justice system for an alleged young offender." Diversion can occur at any stage after the offender is arrested or discovered (Roberts 2004). These definitions seem to be broad but clearly indicative of a specific aim at navigating offenders away from the traditional justice system. Rather than subjecting youths to institutional treatment, legal authorities implement diversion strategies to promote community-based treatment and rehabilitative interventions. Diversion can also, from an operational perspective, refer to "the use of a wide range of interventions as alternatives to either initial or continued formal processing" (Kammer et al. 1997, 51). Law enforcement agencies have employed tactics such as warning (cautioning), family conferencing, drug and psychological counselling, and neighborhood-run educational services to treat juveniles outside the formal system, while simultaneously lessening the caseload burden on prosecutors and the judiciary (Lo et al. 2006).

Although diversion in Western juvenile justice systems (particularly the United States) has been thoroughly studied, the theoretical and practical attributes of juvenile diversion in China have escaped similar scrutiny. Chinese law defines juvenile offenders as those between age fourteen and eighteen whose misconduct is regarded as delinquent or criminal according to respective administrative and criminal statutes (the Criminal Law, Article 17). The state's legal strategy for youth deviance has evolved and diversified in the past decades. One scholar has characterized it as a "mixture of informal control or low-level institutionalization and formal control or the surveillance approach" (Wong 1999, 29). Relying upon grassroots networks and formal correctional institutions to address delinquency (*weifa*) and crime (*fanzui*) (Clark 1989; Curran and Cook 1993; Zhao et al. 2015), the official rationale for the treatment of Chinese juvenile offenders has appeared to prioritize education and correction, and pursue punishment as an auxiliary means to better support an educational aim—known as the principle of "education first, punishment second," as advocated by the government (Jou et al. 2014). This is primarily articulated in important laws and policies relating to juvenile offending introduced in the reform era, when a significant rise of youth crime was recorded during the country's economic marketization and social transformations (Bakken 1993). The legal and policy discourse encourages measures that reduce judicial intervention and calls for noninstitutional treatment as a major handling strategy. To this end, the government has instituted a host of programs to redirect young people from prosecution and court proceedings.

Through a comparison with the United States, this article traces the rhetorical underpinnings and practical patterns of juvenile diversion in China to reveal its distinctiveness and wider implications for the juvenile justice system. By adopting this methodology, we are cautious about generalizing diversionary initiatives in these two socially and culturally diverse countries. Specifically, our analysis is concerned with the use of diversion measures in urban sectors while acknowledging that regional variation exits in operation. Therefore, we wish to present a critical account of the

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inherent value, discourse, and act of juvenile diversion within the context of the disparate justice systems, acknowledging that these two systems are intrinsically different in structure, form, and spirit. Our aim is not to simply identify similarities and differences across the American and Chinese models of juvenile diversion, which are readily discernible. Rather, we use the US experience to shed light on how juvenile diversion has come to acquire its particular characteristics in China. Insights gathered through comparative analysis reveal the inner mechanisms of the process and help illuminate different perspectives that yield a deeper understanding of the Chinese diversionary system.

The central issue we address is the extent to which the operation of the diversionary model in China reflects the stated ideal of lenient justice as prescribed in the country's juvenile policy and law. While formal adjudication and some sentencing options (mainly noncustodial penalties such as community corrections and suspended sentences) may also be justified as a diversionary instrument to prevent juvenile offenders from being incarcerated (Polk et al. 2003), this article focuses on the pretrial stage whereby juvenile offenders are diverted by police or procuratorates to avoid the formal court process. By examining an array of diversionary programs, we argue that the Chinese authorities have not been successful in establishing a diversion system that embodies the notions of deinstitutionalization or decriminalization. Unlike its Western counterparts, juvenile diversion in China functions according to neither welfarist nor restorative principles. It is rather a managerialism-oriented scheme that is grounded on two key tenets—punitive management through institutional diversion in the form of administrative detention that deals with juvenile offenders pursuant to their level of offense and dangerousness; and risk-based correctional management through noninstitutional diversion that centers on community-level interventions to prevent reoffending. These two models are not mutually exclusive but rather dynamically intertwined and synchronously employed as part of the toolkit to avert juvenile offenders from the judicial proceedings and curtail future offenses.

Although the stated purpose of Chinese juvenile diversion programs is to prevent incarceration, in many ways the system reflects the control and punishment approach of the formal criminal justice system. More specifically, risk-based logic has gained prominence in crime control because of the government's endorsement of "social stability preservation" as the underlying agenda of state governance. If juvenile diversion in the United States promotes, more or less, rehabilitative treatment and restoration, the Chinese model evinces a burgeoning trend of the country's criminal justice toward punitive control and prevention, with correction serving as a less salient objective in legal action (Li 2018). Like adult offenders, juvenile delinquents are perceived as risks to public order who need to be managed to avoid society-threatening behaviors. Thus, the effects of net-widening, namely law enforcement results in a greater number of juveniles being subjected to mass incarceration, and the lack of due process are evident within the Chinese diversionary context.[2]

2. In the field of juvenile justice, net-widening refers to a process in which law enforcement results in a greater number of juveniles being controlled and subject to the criminal justice and prison systems (Zimring 2005).

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JUVENILE JUSTICE AND DIVERSION: A SNAPSHOT OF THE US MODEL

Since the late 1960s, attempts to limit the impact of stigma and exposure to the carceral environment have catalyzed an international effort to divert youth offenders from criminal courts and prisons (Muncie 1991). In the United States, UK, Australia, and other Western states, diversion has grown as a favored approach to dealing with first-time, low-risk juvenile offenders (Lo et al. 2006). The diversion movement in the United States represents a classic example of this trajectory. An examination of the evolution and development of juvenile diversion in the United States—"the premier exporter of 'theories,' slogans and measures on the crime safety front" (Wacquant 2009, 20)—sheds light on the normalized process, form, and rationale of this interventionist measure. Through a comparison with the US model of diversion, we aim to tease out the particular traits and facets of the juvenile diversion system in China.

The diversionary system in the United States has undergone major shifts over the past century or so. The Illinois Juvenile Court Law of 1899 and the ensuing establishment of the nation's first juvenile court marked the birth of the juvenile justice system (Bartollas and Miller 2012). In contrast to the pre-1900 era when juvenile offenders were handled in the same justice system as adult criminals, the nationwide expansion of juvenile proceedings in the early 1900s was an initial step toward differential treatment for children to reflect their vulnerability and prospects of rehabilitation (ibid.). The divorce of youths and juveniles from the adult criminal justice system was engineered to protect children by allowing them to avoid the negative effects of being involved in adult court. But it also extended the reach of the juvenile justice system to capture larger numbers of youth, including those without prior records and status offenders who had previously been channeled into government social services (Zimring 2005).[3] Such net-widening processes, which occurred more frequently between the 1970s and the 1990s, were inadvertent, yet inevitable as a result of growing social unrest and volatility caused by neoliberal marketization which brought social anomie, economic inequality, and class division among other ills (Petit 2001). The spike in juvenile crime rates in the last one-third of the twentieth century created heightened fears of juvenile delinquency among the American middle- and upper-class population (Zimring 2005). In response, states across the United States resorted to juvenile courts as opposed to social service programs hoping to impose rigid regulation on juveniles engaged in crime, minor delinquency, and status offenses (ibid.). The juvenile system thus experienced a draconian shift, characterized by increasing incarceration rates and harsher sentencing for youths (Singer 1996; Finley 2007).

Some have expressed concerns over the effectiveness and practicality of the increasingly expansive and punitive youth justice system. Since the 1980s, the juvenile system has struggled with overcrowded detention facilities as well as increased recidivism (Cocozza et al. 2005). Enormous caseloads and limited resources left judges no

3. Normally, a status offense refers to a noncriminal act that is only considered as an offense if committed by a minor. Typical status offenses include running away from home, violating curfew, truancy, alcohol abuse, etc.

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choice but to substitute individualized and rehabilitative services for intensive, custodial approaches (Zimring 2005). From 1980 to 1984, the arrest rate for violent crimes committed by juveniles increased from 300 per 100,000 to 500 per 100,000 (Butts and Travis 2002). Research has shown that detention makes jailed juveniles more likely to continue to engage in delinquent behavior and may increase the odds of recidivism (Holman and Ziedenberg 2006). Starting in the late 1990s, many US states began rethinking the "get-tough" policy and its counterproductive effects. This skeptical attitude toward draconian approaches to juvenile delinquency has gained more momentum due to the significant decline in juvenile crimes (especially violent and sexual crimes) following the turn of the twenty-first century. In the last twenty years or so, almost all state governments have begun to place more emphasis on improving the treatment of juvenile offenders through diversion (Hoge 2016).

The US juvenile justice system has moved toward a divided treatment of juvenile delinquents. Juveniles who commit serious crimes may be transferred to the adult justice system, either based on a statutory requirement or at the discretion of the juvenile court judge (Meng et al. 2013). An estimated 200,000 youth are prosecuted, tried, and sentenced as adults every year across the United States (Ryan 2014). Meanwhile, juveniles involved in trivial wrongdoings, particularly those who commit status offenses, may be referred to diversionary programs as an alternative to prosecution and sentencing. As of 2010, over 1,050 diversionary programs operated in forty-nine states across the United States (Niedzwiecki et al. 2015).

Diversionary programs across the United States share certain goals. They are based on the idea that juveniles can be served at a lower cost and treated with leniency while still being held accountable for their actions (Zimring 2000). They seek to address delinquent behaviors informally with minimal contact with the criminal justice systems, relying upon local administrative and welfare authorities in conjunction with social institutions that provide different degrees of services (Zimring 2005).

Despite these similarities, the structure and process of interventionist strategies differ across programs and jurisdictions. Depending on whether juveniles are diverted within or outside the justice system, diversion may be divided into caution and intervention programs. Warning and caution by police are the least invasive and are often applied to low-risk offenders with no further action. Under a police warning/caution, the juvenile offender is normally released after admitting guilt. Besides reprimand, police will neither record the offense nor summon the legal guardians or refer the juvenile offender to a family conference. In contrast, intervention programs involve social treatment of offenders, often through referral to a contracted external agency by police or prosecution. Certain intervention programs provide specialized services to tackle problems related to substance abuse or mental health. The Delaware Juvenile Drug Court Diversion Program, for example, refers juveniles with misdemeanor drug possession offenses to outpatient substance abuse counselling and case management services (Ray and Childs 2015). If the youth completes all required treatment goals, charges will be dismissed (O'Connell et al. 1999). Diversion models also differ with regard to the criteria used to determine juvenile eligibility, the point at which diversion occurs, and the authority of law enforcement agencies to make the initial decision, and the use of risk tools to assess the intake (Cocozza et al. 2005; Whitehead and Lab 2001).

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Intervention programs may also be designed with a restorative focus. Some local jurisdictions have juvenile civil citation programs. Serving as an alternative to arresting young people who commit misdemeanors, a civil citation system offers youth offenders a wide range of restorative justice initiatives to achieve outcomes of responsibility and forgiveness, including community service, victim-offender conferences, restitution, and formal apology (Sullivan et al. 2010). Most programs require a written contract from the juvenile and a guardian (Wilson and Hoge 2013). All charges are dropped for those who complete the program successfully, while those who fail the program are transferred to the prosecutor's office (Ray and Childs 2015).

Recent estimates suggest that approximately 58 percent of youth engaged in the juvenile justice system are placed in at least one diversionary program (Niedzwiecki et al. 2015). Although research has been inconclusive on whether diversion helps reduce recidivism (Duxbury 1973; Rausch 1983; Davidson et al. 1987; Andrews et al. 1990; Wilson and Hoge 2013), the proliferation of diversionary programs over the past two decades has significantly reduced youth contact with the police and judicial systems. Between 2005 and 2014, the number of juveniles arrested by police dropped 45.7 percent, and delinquency cases processed by juvenile courts dropped 42 percent (Puzzanchera and Hockenberry 2018). However, this is not to suggest that the US juvenile justice system has replaced its "tough on crime" policies with an intervention-focused system. Evidence shows that arrest and pretrial detention are still among the most commonly used measures for responding to juvenile crime threats nationwide, particularly offenses committed by youth of color (Hockenberry and Puzzanchera 2017).

In many respects, though, the United States has developed a functioning juvenile diversion system. Two primary models—the community-based welfare model based on counselling, rehabilitation, and education, as well as the restorative model centered on accountability, reparation, and sanction—have been adopted to divert juvenile offenders at the early stage.

JUVENILE DIVERSION IN CHINA: THE LEGAL AND POLICY FRAMEWORK

How does the historical trajectory of the US juvenile justice system compare to that of the Chinese juvenile justice system? Since the 1980s, China has experienced a similar trend in juvenile crime. Although China has a considerably shorter history of juvenile justice, the alternative diversionary model has gained a foothold in the system and become an indispensable instrument in dealing with juvenile offenders. In this section, we examine diversion schemes within China's unique sociolegal environment over the last thirty years. In particular, we investigate the legislative developments, policy settings, grassroots implementation, and procedural rules of diversionary measures in China to understand the rhetoric used to justify diversion, how it works in practice, and the gap between rhetoric and practice.

Official and academic sources have pointed out a sharp rise in offenses committed by juveniles and young adults (i.e., people under age twenty-five) following market liberalization under Deng Xiaoping (Bakken 2004; Shen and Hall 2015; Xu 2018). Crimes committed by people in this category accounted for 70–80 percent of overall

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crime in the 1980s, up from 20–30 percent in the 1950s and 1960s (Liu 1984). In the following decades, with economic modernization accelerating, juvenile and young adult crimes continued to increase. Between 2000 and 2008, the number of convicted juvenile and young adult offenders increased by an average of 14 percent each year (Law Yearbook of China 2009). Although official data show a decrease since 2009, scholars have challenged this conclusion (Bai 2010; Shi 2014).[4] Since 1990, the number of juvenile offenders has grown even more quickly than the number of offenders in the 18–25 age category, from approximately 42,000 in 1990 to 67,000 in 2011 (Zhao et al. 2015).

Nevertheless, such data do not include juveniles who commit delinquency. In Chinese criminal law, the distinction between delinquency and crime is predicated mostly on the degree of social harm or consequences caused by an unlawful act. Any individual who violates the criminal law may be exempt from criminal prosecution and sanction if the social harm of his/her act is considered not serious enough to amount to a criminal offense (Trevaskes 2013). Such distinction is particularly evident in the wide range of equivalent offenses included in both the Criminal Law (the CL) and the Public Security Administration Punishment Law (*Zhian Guanli Chufa Fa*)—an administrative law passed to standardize police response to minor street-level offenses. These similar offenses encompass stealing, assault, prostitution, drug abuse, gambling, and group licentiousness, just to name a few. When conduct does not meet the social harm criteria of criminalization, it is treated as a delinquency regulated by police in accordance with administrative law (Biddulph 2007). While most everyday "incivilities" escape official records, it is not surprising that many juveniles engage in acts associated with drug use, sex, and other public nuisance violations (Zhao et al. 2015).

Despite the increase in juvenile offenses, it is widely contended that China has not yet developed an independent system of juvenile justice, let alone a diversion mechanism, as the process of dealing with juvenile criminal cases is regulated by the adult criminal justice system (Wang 2007; Zhao et al. 2015; Zhang and He 2018). But opponents tend to argue that the origin of juvenile justice in China can be traced back to 1984 when the first juvenile tribunal was set up in the Changning District People's Court, Shanghai (Zhang 2008; Jou et al. 2014). Since then, the number of juvenile tribunals has climbed rapidly from approximately 150 in 1988 to approximately 3,500 in 1993 (Yao 2014). Despite closure of about 1,200 juvenile tribunals in 1995–1996 (Zhang 2008), the children's courts have operated on a national scale in response to the rise of juvenile crimes (Zhao et al. 2015). Additionally, procuratorates in some prefectures have established a special criminal prosecution office in charge of formal legal actions against juvenile perpetrators. Situated within the Bureau of Public Prosecution, the juvenile prosecution office enjoys discretion to approve arrests, proceed with or drop prosecution, and undertake the supervision of juveniles (ibid.).

4. According to the National Courts Statistics on the Adjudication of Juvenile Crimes in the *Law Yearbook of China* (2009–2016), the number of juvenile offenders has dropped significantly from approximately 80,000 in 2009 to 35,000 in 2016. Such data have been criticized by scholars and practitioners as being inaccurate and unreliable.

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Simultaneously, China has made significant legal efforts to formalize and systemize its juvenile justice framework. Starting in the 1990s, the government introduced a series of statutes, judicial interpretations, and administrative regulations to deal with juvenile crimes and safeguard juveniles' well-being and rights. At the legislative level, China passed the Juvenile Protection Law (JPL) (adopted in 1991, revised in 2006 and 2012) and the Prevention of Juvenile Delinquency Law (PJDL) (adopted in 1999 and revised in 2012) as the fundamental laws that set the general guidelines, principles, and procedures of juvenile protection. The laws identify protection, education, and rescue as the overarching objectives of handling juvenile delinquents (JPL Article 54; PJDL Article 44). In 2012, the revised Criminal Procedure Law (CPL) incorporated a new chapter to establish specific procedures applicable for criminal cases involving juveniles. Several new measures have been introduced to afford accused juveniles access to various entitlements in consideration of their special interests and needs. More specifically, the law: mandates the sealing of court records and promotes conditional nonprosecution (*Futiaojian Buqisu*); demands the use of behavioral and psychological assessments; and improves protections for juvenile suspects facing detention, interrogation, and trial. Many of these new stipulations reflect the rules and standards enshrined in important international treaties on juvenile protection (e.g., the United Nations Standard Minimum Rules for the Administration of Juvenile Justice—the Beijing Rules), of which China is a signatory. The new addition to the CPL treats punishment as an ancillary aspect of juvenile justice, subordinate to the primary goals of education and rehabilitation (CPL Article 277).

Legislative efforts to champion light treatment of delinquent juveniles have coincided with China's recent attempts to decrease harsh penalties and promote noncustodial sanctions, while preserving social stability. Since the mid-1980s, in addition to the steadily increasing crime rates, China has experienced mounting civil unrest including protests, demonstrations, picketing, and group petitioning—i.e., organized requests to the governments seeking extralegal remedies—as a consequence of growing social injustice, including economic inequality, class stratification, and corruption (Biddulph 2015). As such, upholding social order has become a social-political priority of the ruling party. A stability imperative that goes by Deng Xiaoping's motto "social stability overrides all else" (ibid.,7) was inherited by Jiang Zemin. On the heels of the Hu Jintao administration, the imperative was elevated to inform *stability preservation* as the Party's grand policy (Feng 2013). As part of the "Harmonious Socialist Society" initiative of the Hu government,[5] the social stability concern enabled China to push a penal policy of "Balancing Leniency and Severity," which has flourished and carried weight with the justice system through the Hu administration and the latest government of Xi Jinping. The new paradigm calls for the nuanced application of punishment by considering cases individually and embracing the ideal that only the most heinous criminals should be harshly sanctioned. Crimes that cause minor social harms or carry mitigating circumstances should be punished less severely

5. A harmonious society, according to Hu Jintao is "democratic and ruled by law, fair and just, trustworthy and fraternal, full of vitality, stable and orderly, and maintains harmony between men and nature" (Chan 2008, 821).

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(Trevaskes 2010). At the National Meeting of Political and Legal Work held in late 2009, Zhou Yongkang, the then Secretary of the Central Political and Legal Affairs Commission, construed the "Balancing Leniency and Severity" narrative by referring to it as "Two Reductions and Two Expansions." Zhou explained this directive as follows:

> For those who are first-time offenders, occasional offenders, juvenile offenders and aged offenders committing minor crimes, sentencing should be reduced and de-criminalisation should be encouraged to use according to law; if a punishment is necessary, the imposition of custodial penalty should be reduced and the imposition of non-custodial penalty and probation should be encouraged to use according to law. (Lewis 2011)

So, how does the new philosophy of Chinese juvenile justice affect the operation of juvenile diversion? China has no official standard for diversion; the term is not defined in the CPL. For the purposes of this article, we adopt a generally understood concept of diversion—that is, when juveniles are dealt with by the police, prosecution, and other agencies without receiving a formal trial (the Beijing Rules, Rule 11.1)—to sketch the contours of the Chinese juvenile diversion system. We differentiate institutional and noninstitutional diversion of troubled juveniles in China. While institutional diversion utilizes administrative detention as an alternative to criminal trial and sentence, noninstitutional diversion relies on community-based interventions to distance juveniles from the formal processes in the criminal justice system. Although these two models display characteristic operational features, they tend to serve a broadly synonymous purpose: to manage and regulate juveniles, minimizing the likelihood of their (re)offending. On this account, the boundaries of institutional and noninstitutional diversion overlap largely in terms of the target juveniles. While institutional diversion regularly manages delinquent juveniles in a punitive environment, which leads to remand in different levels of administrative custody, it also involves underage youth relieved from criminal responsibility on legal technicality. Similarly, while noninstitutional diversion applies to juveniles committing minor criminal acts in given circumstances, which allows procuratorates to suspend the criminal charge and order correctional programs, it also embraces those who are deemed wrongdoers of petty delinquency on the street level. The lack of a clear standard distinguishing crime from delinquency in China's criminal law enables law enforcement agencies to characterize juvenile wrongdoings and apply institutional and noninstitutional diversion haphazardly and interchangeably as they see fit. Because there is no coordinated pattern of juvenile diversion, we scrutinize a range of diversionary measures scattered in the criminal and administrative procedure to explore the development of juvenile diversion in China.

INSTITUTIONAL DIVERSION: ADMINISTRATIVE DETENTION AND PUNITIVE MANAGERIALISM

Juvenile diversion in China typically takes place through punitive measures at the discretion of police. In the field of criminology, punitiveness is variously

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interpreted and indecisively defined (Jou and Hebenton 2011), as is the measurement of punitiveness in empirical studies of punishment (Forest 2008). Therefore, to assess the punitiveness of administrative detention, we focus on a specific aspect of punitiveness: the "excess" notion or "the pursuit of punishment (or law enforcement) over and above that which is necessary or appropriate" (Matthews 2005, 179). It suggests the disproportionate exercise of legal powers, including the use of harsher penalties, which favors strict, severe punishment over proportional sanctions reflecting "just deserts." Oftentimes, the imposition of heavier sentences is deemed the corollary of legal authorities exercising their extensive, if not unfettered, latitude within the context of poorly drafted laws and equivocal regulations (Simon 2007). Such unrestrained utility of draconian punishment can, inevitably, lead to the encroachment on various civil rights of individuals facing the criminal justice system, including the right to freedom and fair treatment (Matthews 2005).

Over many decades, penal punitiveness has been linked to a managerial model of justice. The ideal of controlling and preventing crime through management of offenders is common to the Western criminal justice and penal system. Along the lines of intensified punishment in the neoliberal era (Garland 2001; Simon 2007; Lacey 2013), the Anglo-Saxon states (i.e., the United States, the UK, and Australia) have seen penal rationales and practices geared toward a "new penology" of controlling and managing threats that individual offenders represent (Feeley and Simon 1992, 449). As posited by many leading criminologists (e.g., Feeley and Simon 1992; Garland 2001; Hannah-Moffat 2005; Kohler-Hausmann 2014), this managerialist form of penalty is engineered to identify, categorize, and regulate offenders in a cost-efficient fashion rather than rehabilitate them. At the apex of this penological thinking, how to incapacitate dangerous people takes precedence over any other consideration (Feeley and Simon 1992). Thus, a range of managerial instruments have taken root in the US criminal justice system to seek outcomes of risk minimization, mass incarceration, mandatory minimums laws, drug tests, and selective incapacitation (Lacey and Soskice 2018). Increasingly, police and penal institutions are adopting risk-assessment tools and evidence-based evaluations (e.g., the risk-need-responsivity model) to predict the probability of delinquency and crime (Hannah-Moffat 2005).

The institutional diversion of juvenile delinquents in China appears to dovetail with the underlying elements of penal punitiveness and managerial justice. Upon the first contact with police, juveniles may be cautioned or subjected to administrative detention measures, the duration of which ranges from five days to three years. In accordance with the Public Security Administration Punishment Law (PSAPL), formal caution results in a written warning and a disciplinary referral to legal guardians (PSAPL Article 10). Generally, formal caution applies to juveniles above the age of fourteen who are engaged in petty wrongdoings (PSAPL Article 12). Police may also impose administrative detention on those between the ages of fourteen and eighteen. Operated outside the framework of the criminal justice system, administrative detention is decided upon and carried out solely by police through administrative procedures and sanctioned by administrative decrees as opposed to criminal codes.

To date, the major administrative custodial approaches to juvenile delinquency are Public Order Detention (*Xingzheng Juliu*), Detention for Education (*Shourong Jiaoyu*), Coercive Drug Detoxification (*Qiangzhi Jiedu*), and Detention for

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Reformation (*Shourong Jiaoyang*). Public Order Detention (POD) incarcerates minors who disturb public order with minimal social consequences (i.e., public affray, gambling, prostitution, and drug abuse), albeit the PSAPL states that POD does not apply to juveniles under sixteen or youths between sixteen and eighteen with no prior offenses (PSAPL Article 21). [6] Detention for Education (DE) and Coercive Drug Detoxification (CDD) are aimed at juvenile prostitution and drug abuse. Those who have been detained under POD and continue to prostitute themselves or use drugs are also the targets of these two compulsory measures (Biddulph 2007). Detention for Reformation (DR) deals specifically with offenders aged between fourteen and sixteen, younger than the minimum age of criminal responsibility (PJDL Article 38). As legally stipulated, DR can apply to juvenile offenders who lack parental supervision and discipline (Article 17(4) CL). However, whether parental guidance is absent is exclusively determined by police, though there are no clear expositions in the provisions of the CL and the PJDL. Apart from POD, which is usually less than twenty days, the longest durations of DE/CDD and DR are two years and four years respectively, though many offenders do not serve the maximum term (Li 2016).

Administrative detention appears to run contrary to the cardinal tenets of juvenile justice as prescribed in the state's legislation: "education first, punishment second." At the heart of the administrative detention system, sanctioning juveniles takes precedence over understanding and addressing the causes of their behavior in order to rehabilitate and reintegrate them into society. Biddulph (2007) depicts the administrative detention system as a police-dominated penal mechanism and a product of the "second line of defense" that favors deterrence and retribution, not education and rehabilitation, in tandem with the traditional criminal justice system in present-day China.[7] Conceived in this way, diverted juveniles face a system of punishment characterized by "coercion, formalism, moralism" and a high degree of punitiveness (Cohen 1994, 63). Specifically, the punitiveness of administrative detention can be manifested on three axes: first, the disproportionate severity of detention; second, the arbitrary process of imposition by police; and third, incursion on civil rights of juveniles.

Foremost, juvenile administrative detention is disproportionately severe even when compared to confinement in the formal criminal process. Upon receiving the police-issued detention order, juveniles are jailed in detention facilities controlled and managed by the police. Each type of administrative detention is implemented by public security officers within a penitentiary-like institution, where detainees have no access to their families or the community. In POD, for example, juvenile offenders with either little or no proper parental guidance are housed in public order detention centers set up by district public security bureaus and Minor Reformatory camps

6. According to Article 17 of the Chinese Criminal Law, juveniles under the age of fourteen do not bear criminal responsibility. Juveniles aged fourteen to sixteen are only criminally responsible for intentional homicide, grievous bodily harm causing serious injury or death of the person, rape, robbery, drug trafficking, arson, explosion, or poisoning.

7. According to Biddulph (2007, 120–21), the first line of defense against crime includes the use of basic-level, local community organizations and local police work, such as maintaining household registers and education.

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(*Shaonianfan Guanjiaosuo*) established by local governments.[8] Regarded essentially as prisoners, diverted juveniles are locked up, like adult perpetrators, with limited access to educational and rehabilitative treatment programs (Lv and Xie 2013).

Once directed to DR, diverted juveniles are subject to more stringent confinement than they would be under some formal criminal custodial measures. As illustrated in data-based research conducted by Chinese scholars on DR in several Chinese provinces (Li 2016; Yao 2017),[9] juveniles who are exempt from criminal liability but with minimal parental guidance are also incarcerated in Minor Reformatory or Reeducation through Labor (RTL) (*Laodong Jiaoyang*) camps where (convicted) juvenile offenders serve their sentences.[10] The duration of DR under administrative measures is substantially longer than certain criminal penalties such as Criminal Detention (*Juyi*, one to six months, with a maximum penalty of one year for multiple offenses) and Public Surveillance (*Guanzhi*, three months to two years, with a maximum penalty of three years for multiple offenses).[11] Inside the facilities, juveniles are required to work—mandatory labor has been endorsed as the ideological underpinning of institutional correction since Maoist China (Shaw 2010). The DR facilities employ a variety of internal sanctions to penalize juvenile detainees for misbehavior, including warning (*Jingao*), demerit (*Jiguo*), confinement and introspection (*Jinbi Fanxin*), and extension of detention (*Yanchang Qixian*) (Li 2016). In contrast to certain low-level criminal penalties, i.e., Public Surveillance, which only partially restricts offenders' mobility, DR occurs in a totally enclosed area with unavoidable security and surveillance. That being said, DR represents a paradoxical facet of administrative detention. That is, while Chinese authorities advertise administrative custodial measures as a corrective, educative, and reformative tool (Biddulph 2007), their practice hampers rehabilitation and reintegration into society by further alienating the detained and cutting off their familial ties and social connections (Biddulph et al. 2017a).

Furthermore, because China has yet to pass a unified law specifically to regulate a variety of administrative custodial measures, the application of these oppressive punishments is largely discretionary and arbitrary. In all forms of administrative detention, police are granted the prerogative to handle juvenile delinquents in a speedy and

8. Minor reformatory camps are juvenile prisons designed to educate, rescue, and reform convicted juveniles aged 14–18 (Shen and Hall, 2015).

9. Li's (2016) findings were drawn from the data collected in B province between 2003 and 2013. Yao's (2017) research was based on the data analysis in S province during 2011–2015.

10. Created in 1957, Re-education through Labor was arguably the oldest and harshest form of administrative detention where a person can be imprisoned with a maximum term of four years without trial. It aimed mostly at repeat offenders, ranging from habitual public order offenders to recidivist prostitutes, who failed to comply with compulsory education or treatment in previous detention periods. RTL targeted both adults and juveniles between the ages of sixteen and eighteen. Before its repeal in 2013, RTL was often employed to jail political dissents and human rights activists in the name of "stability preservation" (Biddulph 2015). Convicted juvenile offenders refer to those who have been formally prosecuted and tried in the criminal justice system.

11. Criminal Detention is a custodial criminal punishment imposed on offenders who committed petty crimes resulting in a minor degree of social consequence/harm. Public Surveillance is a semi-custodial criminal punishment which allows minor offenders to serve the sentence in the community. Since the Eighth Amendment to the Criminal Law (2011), those who are sentenced to Public Surveillance are incorporated into the community corrections system.

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simplified fashion without the involvement of procuratorates and courts. Such concentration of power is particularly problematic in the use of DR. According to the Regulation on Handling Juvenile Delinquency and Crime by Public Security Organ (1995)—an administrative regulation promulgated by the Ministry of Public Security—police are the sole authority that dictates the entire course of DR, from making the initial recommendation, through reaching the final decision, to carrying out the actual detention (Li 2016). Following a juvenile's confinement, police have exclusive discretion to release detainees or extend the length of DR, which lacks a proper legal channel for the detainee to contest any police decisions. As noted by Biddulph (2009, 172), administrative detention is "imposed without any real procedural safeguards, and the potential for abuse of power is very real."

Lastly, the imbalance between the insufficient legal protections of juvenile delinquents and the excessive police power to restrict civil liberty further intensifies the punitiveness of administrative detention. If statutory and constitutional law in the United States has more or less provided youth with procedural safeguards to attempt to ensure the fairness of treatment (Zimring 2000), China's institutional diversion fails to honor the core values of proceduralism. Neither the CL nor the administrative laws/regulations provide effective checks and balances on administrative detention power or allow juveniles to challenge its abuse. Although jailed juveniles are entitled to appeal the decision of administrative custody through either a process of administrative reconsideration (*Xingzhen Fuyi*) or an action of administrative lawsuit (PSAPL Article102), these legal redresses cannot prevent wrongful detainment in the first place. Besides the post-detention judicial review of lawfulness and necessity of custody, the rights to legal representation, present evidence, and cross-examine witnesses that would otherwise be enjoyed by accused juveniles (or adults) in the criminal procedure are unavailable in the administrative penal system (Biddulph et al. 2017b). Although there are scarce data on juvenile delinquents placed under administrative detention across the country, the extent of disproportionality, arbitrariness, and incursions on rights arising from the operation of the system lends itself to a retribution-centered and punishment-oriented mode of diversionary justice.[12]

Besides the domination of punitiveness in the practical application of institutional diversion, the hierarchical structure of administrative detention encourages a managerial form of control, which concentrates on the regulation of juvenile delinquents in an attempt to prevent them from engaging in wrongdoing. In several respects, administrative detention shows considerable affinity with one of the tools of managerial justice: selective incapacitation—a utilitarian model of punishment portrayed as the "clearest example of the new penology's method" in postmodern Western Democracies (Feeley and Simon 1992, 458). In the United States, the objective of selective incapacitation is to identify "average offenders," "high-risk offenders," and "career criminals," while at the same time employing different levels of control based on offenders' likelihood of future criminal behavior (Blackmore and Welsh, 1983). As suggested by Greenwood and Abrahamse (1982), selective incapacitation is not a sentencing theory but rather an administrative policy that is intended to use

12. China does not have official records of the rates of administrative offenses and the number of individuals jailed under administrative measures.

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prisons more pragmatically and cost-efficiently to reduce crime without compromising the integrity of the justice system.

In the same vein, administrative detention in China, apart from its punitive dimension, classifies offenders in accordance with their perceived degree of severity and dangerousness and then subjects high-risk juveniles to long-term control, while investing in short-term forms of control over lower-risk juveniles. For example, POD (one to fifteen days, maximum twenty days for cumulative penalties) is used as a primary instrument to target street-level juvenile delinquents whose risk to society is considered trivial. In this regard, juveniles placed under POD are often those with local familial and social ties, for whom a guardian's supervision and discipline can be ensured upon release (Wong 2009). In contrast, conceived as representing special threats to social order, juveniles involved in prostitution and drug abuse are incarcerated for longer periods under DE (six months to two years) and CDD (one to three years). On the top tier of this administrative system, DR is employed to handle more serious juvenile delinquents who supposedly pose greatest threats to society. It imprisons not only juvenile criminals who are not criminally liable because of their age and minor status but those matching the profile of disobedient and rebellious children with no prospects of being disciplined and educated by their parents (Liu 2012). Li's (2016) research attests to this observation by showing that the top three crimes that lead to imprisonment under DR were theft (71.94 percent), robbery (8.63 percent), and murder (4.50 percent). An empirical study of the demographics of juvenile detainees in one of the Chinese southwestern provinces shows that 83.1 percent of detainees from 2009 to 2011 were from rural areas (Zhang and Lu 2012). While two-thirds of their parents worked in urban cities away from their "left-behind" children, the remaining one-third of parents, who lived with their children, dedicated inadequate time to parental guidance as they were often occupied by farming and other wage labor in the countryside (ibid.). Compared to a maximum incarceration of twenty days under POD, captivity periods of one to three years up to four years under DR enable police to remand juvenile offenders in custody for lengthy periods of time, which is likely to diminish the detainees' chances of reoffending through institutional control and incapacitation.

NONINSTITUTIONAL DIVERSION: COMMUNITY-BASED INTERVENTIONS AND CORRECTIONAL MANAGEMENT

Institutional diversion is not the only avenue whereby juvenile offenders can be removed from the judicial process. The Chinese system also diverts minors by referring them to community-based programs, which is a common practice in the US system. Officially, this form of diversion occurs in two different ways. Procuratorates may choose to withdraw the criminal charge against a juvenile offender with conditions. This is known as conditional nonprosecution. Alternately, youth may be diverted into a neighborhood-based "work-and-study school" (*Gongdu Xuexiao*), a long-established scheme that places juveniles exhibiting so-called "unhealthy behaviors" under compulsory education in law, morality, and vocational skills (Shen 2016). At a policy level, these two programs are presented as offering a way to reform troubled juveniles without formal court involvement. Nevertheless, a close investigation of conditional

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nonprosecution and work-and-study schools shows that while noninstitutional diversion is presented in a way associated with the corrective and restorative ends, in practice, like administrative detention, it functions as a managerial model of intervention.

In 2012, the revised CPL empowered procuratorates to hold off prosecution on minors who are suspected of committing specified offenses under Chapter 4 (infringement upon citizens' personal and democratic rights), Chapter 5 (perpetrations against property), and Chapter 6 (obstruction of administration of social order) of the Criminal Law (Article 282). To exercise this power, procuratorates must be satisfied that there is sufficient evidence for the accused to be punished by fixed-term imprisonment of no longer than one year; the accused must also have expressed regret or remorse (ibid.). In making their decisions, procuratorates must consider the opinions of police and victims before they can make the nonprosecution decision (ibid.). The government argues that the stay of prosecution creates propitious opportunities for harm reparation and restoration, so that juvenile offenders' reentry into society can be guaranteed as part of the "social stability maintenance" discourse (Chen 2013).

The probationary period for conditional nonprosecution is between six months and one year (CPL Article 283). When accommodating a juvenile suspect in the local community, guardians are expected to reinforce the discipline against the suspect in collaboration with procuratorates, who are responsible for the "supervision and inspection of the suspect" (ibid.). The legal conditions at the core of conditional nonprosecution reveal that although this new instrument removes juvenile offenders from traditional criminal procedure, virtually it serves as an approach to managing juveniles' risk in combination with education and rehabilitation programs to "enable fluid, transformative and positive interventions with offenders" (Gouph 2012, 78).

To successfully complete probation, the CPL stipulates that suspects must follow four key requirements, or they will be immediately prosecuted (Article 283):

(1) Submit to supervision and abide by laws and regulations;
(2) Report to procuratorates on their activities, as required;
(3) Obtain approval from procuratorates for moving from or leaving their city or town of residence; and
(4) Receive correction and education as required by procuratorates.

These conditions are elaborated upon and expanded in the Rules on Criminal Proceedings of People's Procuratorates issued in 2013 as a guideline to facilitate procuratorial work in light of the 2012 revision of the CPL. It states that upon the decision not to prosecute, procuratorates may require juvenile offenders to undertake the following activities (Article 498):

(1) Attending rehabilitation programs for dependency/addiction, psychological counselling, and other proper treatments;
(2) Providing service of public interests to communities and charity organizations;
(3) Not going to specific venues, meeting or communicating with specific persons, or carrying out specific activities;
(4) Repairing the harm caused and apologizing to the victim;
(5) Receiving relevant education; and
(6) Abiding by any prohibitive regulations that protect the victim and prevent reoffending.

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At first glance, most prescribed conditions tend to be linked or pertinent to the rehabilitative and reparative ethos. But the intended effect, other than pursuing diversion, appears to focus more on controlling suspects in the neighborhood to reduce their risk of reoffending and ensuring their compliance with the law and social order. Obligations set out under nonprosecution conditions, such as acceptance of supervision, residential restriction, and reporting, resemble those under semi-custodial measures in the criminal procedure—namely, Bail pending Trial (*Qubao Houshen*) and Residential Surveillance (*Jianshi Juzhu*).[13] Applied prior to charge, Bail pending Trial and Residential Surveillance are used by police to allow those who are suspected of committing minor crimes to retain limited freedom while abiding by arduous conditions of supervision and surveillance (CPL Articles 67 and 74). Under both measures, suspects are prohibited from, inter alia: meeting and communicating with other people; leaving the residential places or towns and cities where they reside; and interfering with witnesses (ibid.). Reporting to police when called and submitting travel documents to legal apparatuses are part of the general conditions (ibid.). The official language of such restrictions is to prevent suspects from posing further risk to society and facilitate law enforcement by avoiding the "impediment" to criminal investigation and prosecution, provided suspects are granted an absolute right to mobility (Bian and Liao 2012). Analogous to the consequence of seriously breaching conditions attached to Bail pending Trial and Residential Surveillance, noncompliance with requirements of management under conditional nonprosecution is likely to amount to the revocation of the nonprosecution order and result in formal charges (CPL Article 284). More ominously, such effects also can be triggered by juvenile offenders failing to abide by any administrative regulations in relation to social order (ibid.). However, the criteria constituting the breach of administrative regulations have remained unexplained in the CPL.

Control of juvenile suspects plays a predominant, but by no means singular, role in conditional nonprosecution. In stark contrast to Bail pending Trial or Residential Surveillance, which are employed within the remit of police forces, conditional nonprosecution relies upon social forces to manage juvenile suspects at the behest of procuratorates, which gives rise to a high degree of community-based interventions in China's noninstitutional diversion (Chen 2013). Operationally, the managerial mode of intervention is mainly carried out by social workers and experts through risk analysis as a primary method to understand the dangerousness of offenders and inform control strategies. As reflected in many practices of managerial justice across liberal democracies, noninstitutional diversion seems to represent a cost-effective way in which offenders are regulated with a lower expenditure of justice resources than are used by imprisonment.

Past research has demonstrated that although procuratorates are the only authorized body of supervision, in regions filled with ample social resources (e.g., Shanghai),

13. Bail pending Trial is a criminal measure that allows suspects to be released on bail by providing security while awaiting trial. Residential Surveillance is a pretrial measure that allows police to restrict suspects to their homes for a period of up to six months (CPL Article 67). For those who are suspected of committing crime to endanger state security, involving terrorist activities, or significant bribes, Residential Surveillance can be carried out at a designated location other than the suspect's domiciles (CPL Articles 72–73).

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neighborhood-based organizations bear the major onus of management on behalf of procuratorates, which often have sparse resources (Shi 2014; Yue 2015; Wei 2016; He and Li 2017).[14] Such tendency has gained greater prominence with the Guidelines on Prosecutorial Practice of Dealing with Juveniles involved in Criminal Cases (Guidelines) of 2013. Introduced by the Supreme People's Procuratorates to standardize the prosecutorial practices of handling juvenile cases, this regulation allows some legal duties of procuratorates to be contracted out to semi-private agencies. Contractors are tasked with social investigation, psychological assessment, and risk evaluation—equivalent to those under the influential Risk-Need-Responsivity (RNR) model in North America (Bonta and Andrew 2007)[15]—to measure the risk of juvenile offenders and suggest more specialized supervisory practices in the community (Wei 2016). Since December 2014, Shanghai procuratorates have used a self-designed risk evaluation tool—the "Psychological Assessment and Risk Control of Juvenile Offenders System"—for the assessment and treatment of juvenile offenders (Shi 2014). As a requirement of actuarial risk assessment and social investigation, community-based entities need to provide an evidence-based report on every offender to assist procuratorates with the precise prediction of his/her risk factors and criminal behaviors. Data show that during December 2014 and April 2015 Shanghai procuratorates made nonprosecution decisions regarding 142 juvenile offenders (an increase by 84 percent compared to the previous year) based on the "positive" results of their risk assessment report (ibid.), despite the fact that the method by which these results were processed and interpreted has remained unexplained and unexplored.

In addition to their role in risk prediction, community agencies are responsible for various services and therapeutic programs. Under the umbrella of *Bangjiao*, one of the oldest remedial and preventative programs at the local level (Zhang et al. 1996), social workers and grassroots organizations have played a crucial role in assisting juveniles with health services, schooling, and job opportunities to ease the difficulties of social reintegration. Yet, several meta-analyses reveal that community interventions have faced obstructions to educating juveniles during probationary terms. The major hindrance is derived from the shortage of specialists in the community who possess skills, experience, and knowledge in providing individualized intervention programs (Zhu 2014; Wang 2015; Jiang et al. 2017). Unlike the United States where there are youth welfare services available for correctional programs, China's social programs lack expertise to professionally conduct behavioral correction, psychological counselling, therapeutic interventions, and the like to address offenders' personal issues (Wang 2015).

14. Conditional nonprosecution may take different forms across various regions of China. For example, He's (2017) empirical research reveals that some regions have established a new procuratorial role referred to as "observing and assistant prosecutorates (*guanhu jianchaguan*)," which are in charge of regulating juvenile offenders by virtue of nonprosecutorial conditions.

15. The Risk-Need-Responsivity model is premised on three notions: (1) the risk notion asserts that criminal behavior can be reliably assessed and predicated; (2) the need notion stresses the importance of criminogenic needs to inform the design and delivery of treatment; and (3) the responsivity notion describes how the treatment should be provided.

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Still, in less developed regions where social support and welfare are deficient, procuratorates need to be directly involved in the community treatment of juveniles, acting as both implementer and supervisor of nonprosecutorial programs (Guidelines Article 41). Despite the Guidelines encouraging procuratorates to refer exempted juvenile delinquents to relevant interventions such as drug detoxification programs and psychological counselling (Article 41), the procuratorates' inability to balance their role as a service provider against that of a supervisory agency has made them less attentive to the outcomes of rehabilitative practices (Wang 2015). Additionally, the Guidelines grant procuratorates the flexible power to make referrals—an optional rather than obligatory decision—creating much leeway for procuratorates to manipulate limited resources for better management at the cost of rehabilitation and restoration (He and Li 2017).

A further example of correctional management in China's noninstitutional diversion system is work-and-study school. Pursuant to the PJDL, work-and-study school is a program based broadly on restorative justice principles that involves an arrangement between administrative agencies and guardians to place juvenile delinquents in specialized schools that promote the correction of misbehaviors and the acceptance of responsibility (PJDL Articles 35–36). Although the interventionist ideal has long been a peripheral component of China's penal system, given the supremacy of punishment harshness (Bakken 2004), it has advanced in a piecemeal manner and has begun to take hold of the country's juvenile justice system to underpin this well-founded and long-existing diversion program.

Established in the 1950s to bridge the gap between caution and criminal penalization of juveniles, work-and-study schools focus particularly on children involved in a broad range of delinquent offenses referred to as "unhealthy behaviors" (*Yanzhong Buliang Xingwei*) that are not serious enough to constitute criminality. Prior to 1999, police had discretionary authority to subject juvenile delinquents to work-and-study schools. In 1999, the PJDL gave a legal definition for "unhealthy behaviors." To send a juvenile to the work-and-study school, he or she must have committed one of the following "serious unhealthy behaviors": causing public affray and disturbing social order; carrying controlled knives repeatedly; intercepting and assaulting others repeatedly and begging for property by force; spreading pornographic readings and visual products; engaging in promiscuous activities and selling sex; stealing repeatedly; participating in gambling repeatedly; and using drugs and other behaviors detrimental to society (PJDL Article 34). In the same year, the PJDL amended the process of enrollment by requiring the consent of juveniles and their parents/guardians and the approval of the local Department of Education (PJDL Article 35).

At the legislative and policy level, the philosophy of work-and-study schools has been tied closely with education and reformation of school-age children caught up in minor wrongdoings. Aiming to transform them to "useful socialist workers with adequate labor skills and legal awareness to comply with social rules" (Xu and Liu 2009, 65), work-and-study schools are built upon two overarching doctrines: education and labor. During an average period of two to three years in the school, students attend mandatory educational programs, including a variety of courses designed to strengthen offenders' legal awareness, ideological consciousness, and social morality. They are intended to help juveniles give up forms of deviant vice, keep away from "bad" hobbies,

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and address the personal cause of offending (Shen 2016). At the same time, occupational training through work is offered to offenders by equipping them with necessary living and professional abilities in preparation for their reentry into society. In some areas, particularly impoverished regions, schools are encouraged to include income-generating labor work in the curriculum to pursue a mixed purpose of education through labor and make up for budgetary shortfalls (Fouts and Chan 1997).

As indicated in Shen's (2016) investigation of a work-and-study school in the capital city of a southeast coastal province of China, "problematic" juveniles have seemed to benefit from various routine activities they are required to participate in at the school. The effectiveness is evidenced by a fairly low crime rate of graduated juveniles (Lo et al. 2006). Though quantitative evaluations on the success of work-and-study schools are rare (Shen 2016), limited research shows that the "transformation" rate—meaning reforming minor delinquents into law-biding citizens who are enrolled in normal high schools upon discharge—is over 90 percent across the country (Xiong 2011). As Curran and Cook (1993, 331) and others (Wong 1999; Shen 2016) suggest, the placement of troubled juveniles in work-and-study schools in China plays an important role in early intervention by "integrating the positive reinforcement of the community."

Yet, in practice, this diversionary measure is not just about education and job training. Work-and-study schools are ordinarily run in a semi-military manner, with severe surveillance and strict management to prevent crime (Yao and Sun 2017). While curriculum for educational practices are the rudimental element of work-and-study schools, stiff governance is concomitantly imposed on students to confine their activities and movements to the perimeter of the school—a prison-like environment "equivalent to youth reformatories" (Yao and Sun 2017, 47; see also Shen (2016)). A report on the Qide Work-and-Study School in Shanghai concluded that the primary concern of the school administrators was students' probability of offending (Li et al. 2016). To control the risk students may present, administrators implemented a "Three Fulls" (*Sanquan*) policy—full attendance, full process, and full coverage—designed to produce an omnipresent environment of supervision and surveillance security. Teachers, who must reside at the school, are required to monitor the students' whereabouts at all times. They are not allowed to rest until all the students are asleep (ibid.). Dormitory room doors must be always kept open, and surveillance cameras are in every corner of the school. An "Anger Room" is established across the self-study rooms in the hope to help students eliminate negative emotions arising from frustration and anxiety of intensive management (ibid.). Little wonder, then, that these practices at times feature a form of house arrest. It deprives students' freedom not for what they have done but rather for what they would do—a technique of risk management and regulation.

Chinese social scientists have identified the managerial attributes of work-and-study schools in extensive quantitative studies. Zhou's (2017) scrutiny of work-and-study schools in Guizhou Province reveals that this long-established interventional measure has become increasingly coercive and castigatory with a strong mark of police intervention. Although as a formal matter, daily operations fall within the purview of the Department of Education, in many localities police are assigned to serve as the primary assisting agency and appointed as members of the management board

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(Zhou 2017). The compulsory enrollment policy was officially eliminated in 2009 but according to Zhou (2017) and Liu (2018), it has been reapplied since the mid-2000s, making police intrusion a default practice in less developed areas where there are large numbers of "left-behind" children. Guiyang, the capital city of Guizhou Province, passed the Measure of Work-and-Study Education in 2014, which directs police to "direct" and "escort" troubled juveniles to work-and-study schools for education and help (Liu 2018). For those who refuse to enroll or drop out after enrollment, police can forcibly register them with the school and ensure that they complete the study within the school (ibid.).

Both conditional nonprosecution and work-and-study schools explicitly aim to prevent juvenile offenders from entering court proceedings. While these programs are intended to reform offenders and then reduce their recidivism outside of formal criminal procedure, the predominant approach used to achieve these objectives is largely risk-oriented and control-centered. More specifically, in imposing stringent obligations of compliance on those who are placed under the nonprosecution order and in the work-and-study school, the need to deprive juvenile offenders of the capacity to commit crimes has outweighed the requirement to rehabilitate them by addressing the underlyingly mental, physical, and cognitive causes of crime. This is particularly manifested by the overt application of a set of risk-mitigating tools in community settings, including but not limited to surveillance, semi-confinement, and risk assessment-based practices. It is worth noting that compared to administrative detention, juvenile offenders subjected to noninstitutional diversion face a less punitive and intrusive exercise of state power. However, both administrative detention and noninstitutional diversion programs rely heavily on managerialism. Our analysis indicates that although educational and correctional programs are at work in community-based juvenile mechanisms, how to predict the probability of (re)offense and tailor the responding tactics has played an exceedingly salient role in their implementation. As the noninstitutional diversion process does not entail absolute freedom-deprivation, risk-based management is a predictable approach to avoiding noninstitutional diversion from becoming a latent hotbed for social instability caused by crime-prone juveniles living in the neighborhood.

CONCLUSION

In this article, we examine the legal and practical trajectories of juvenile diversion in China and investigate their diverging paths within the context of the Chinese sociolegal condition. Notwithstanding official ideals of juvenile justice in China, which place weight on education and rehabilitation, the country's diversion system is punitive with a managerialist tendency, characterized by pre-charge incarceration and restrictive policing. It is a hybrid system encompassing administrative detention modeled on selective incapacitation, as well as community-level intervention operationalized to serve the main purposes of correctional management. Whereas the ideals of education and rehabilitation are not invisible in the policies regulating juvenile diversion, particularly in conditional nonprosecution and work-and-study schools, their impact

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on changing juveniles' delinquent behaviors has been mostly overtaken by concerns of risk identification, calculation, and minimization.

While diversion programs in the United States are generally community-directed, serving as opportunities to correct youths' anti-social conduct with the assistance of their families and youth welfare services, diversion in China has not yet been able to disentangle juvenile diversion from law enforcement apparatuses (particularly police) in both institutional and noninstitutional practices. It is in part because the lack of support from the Chinese social welfare system has diminished the aims of correction and reform, enabling police and procuratorates to dominate the enforcement of diversionary measures. Although discretion is vested in legal authorities to make referrals, professionals, experts, and social workers across many regions in China have been either unqualified or insufficiently assigned to carry out educational and rehabilitative interventions as legally prescribed.

More crucially, the state's mounting concern with social stability justifies controlling juvenile offenders and preventing them from committing more crimes, which requires the involvement of institutional authorities for more effective regulation. Chinese law enforcement, as Trevaskes (2013, 54) observes, has "favored 'flexible' and adaptive work styles to enable stability preservation policy-making to 'shape itself in the making.'" Such preference for legal flexibility, as distinct from traditional justice, has been associated with the deployment of available justice and social resources to figure out the rule-abiding propensities of people and adjust formal regulation accordingly. As such, juvenile law's social control role, characterized by a collection of police-maneuvered custodial measures and community-based penal measures, has been endowed with new functionalities of incapacitation and surveillance, steered more regularly toward a means of prophylactic control as opposed to a reactive response to juvenile crime and delinquency.

In this sense, although juvenile diversion in China lacks an acknowledged, coherent, and coordinated domain of legal enterprise, the foundational rationale for a variety of diversionary options is palpable. That is, heavy law enforcement involvement is necessary to carry out the penalization and control of juvenile offenders by means of coercive and oppressive force. The Chinese juvenile diversion system is similar to the adult criminal justice system in rhetoric and operation. As China is likely to continue to prioritize stability maintenance and risk prevention in its political agenda, diversion in China's juvenile justice system will remain a mechanism that relies on surveillance and compulsion, as well as ill-designed restorative interventions and correctional schemes.

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