Using Mao to Package Criminal Justice Discourse in 21st-century China

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Abstract

"Strike hard" anti-crime campaigns, "harmonious justice" and "stability maintenance" are the three key politically inspired agendas of crime control and punishment in 21st-century China. This paper is a study of how discourse has helped to package these agendas and to mobilize politico-legal functionaries into action. It examines discourse in the first weeks of the 2014 "people's war on terror" and the agendas of "harmonious justice" and "stability maintenance" in the Hu Jintao era. It finds that each has been rationalized and shaped by an understanding of the utility of punishment based on Mao's utilitarian dialectics. The political virtuosity of Mao's dialectics is that it can be adapted to suit any political situation. In understanding how Mao connects with criminal justice in China today, this paper identifies what is the "political" in "politico-legal" discourse in the fight against crime in the 21st century.

Keywords: criminal justice; the people's war on terror; harmonious justice; China; stability maintenance

Maoist dialectics is the common denominator undergirding the last three and a half decades of criminal justice operations in China. In this period, three main political agendas have intrinsically shaped the landscape of criminal justice in China: "strike hard" (*yanda* 严打) at serious crime, "harmonious justice" (*hexie sifa* 和谐司法) and "stability maintenance" (*weiwen* 维稳). All three of these state responses to crime and dissent share a particular understanding of punishment that has its origins in Maoist ideology concerning the people and their enemies. This ideology has helped to package criminal justice language and practice across disparate agendas, across the different political priorities of Party leaders from Deng Xiaoping 邓小平 to Hu Jintao 胡锦涛 and Xi Jinping 习近平, and so across time. This paper discusses how, across these three agendas, the discourses associated with Maoist ideology have helped to frame and justify the way the party-state punishes those it has identified as offenders in order to preserve political and social stability. While the modes of operation and crime targets differ markedly in each of the three criminal justice

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programmes under our lens here, the rationale for punishment in all three shares a common element that can be traced directly back to Mao Zedong 毛泽东. Criminal justice policy in China today is still tightly connected to utilitarian dialectics and is based on the idea that criminal punishment policy needs to incorporate the "unity-of-opposites" (*duili tongyi* 对立统一) – that is, a balance between lenient punishment for the majority and severe punishment for a minority. Ebbs and flows of social instability and crime necessitate that the party-state is agile in responding to changing targets of instability including both criminals and dissenters. The flexibility inherent in this Mao-inspired leniency–severity dialectic and its accompanying political language allows authorities to align policy with shifts in political perceptions of instability.

It is not surprising that politics drives criminal justice discourse in China, since the preservation of social stability has been given top political priority for the past 36 years. According to the Central Party Politico-legal Committee, criminal justice institutions are designed to fulfil the central political task of preserving stability in society.[1] As the driving force behind crime control and punishment in China for over three decades, this stability imperative has shaped politico-legal culture (*zhengfa wenhua* 政法文化) through both discourse and action. Politico-legal discourse is not merely vacuous rhetoric used as a smokescreen to conceal human rights abuses; it enables politico-legal authorities in Beijing to adapt to social stability threats and to communicate these adaptations to local authorities through the intensity of the political language used. The relative intensity of "red discourse" signals from Beijing indicates the degree of severity that central authorities expect local functionaries to apply to targeted crimes from one period of time to another.

Below, I examine the politico-legal rhetoric employed in three politico-legal agendas and illuminate how each in its own way is tied to Mao's utilitarian dialectics. Mao's dialectical approach sets up a distinctive way of understanding the utility of punishment that in essence combines harsh punishment for a minority of offenders with relative leniency for the majority. Mao's utilitarian dialectics is informed by his theory of handling social contradictions, which was the basis of social control policy in the pre-1979 era. Mao's strategy was to "divide and break up" criminals, providing separate treatment regimes for "the people" and their enemies. In Mao's time, authorities were encouraged to treat with leniency the majority (the people) whose illegal behaviour or misdemeanours could be counted as internal contradictions among the people. In contrast, politico-legal functionaries were encouraged to isolate and punish severely the minority of more serious offenders whose actions were considered to be contradictions between the people and their enemies.[2] This logic provides all three agendas under the lens in this paper – and particularly the "war on terror" – with a ready-made rationalization for punishment. It also rationalizes modification of routine

1 Lin 2004.
2 Keith 1994, 154–55.

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procedures to accommodate new priorities for crime control: for the "strike hard" war on terror, modification comes in the form of a strategy of "severe and swift" punishment; for "harmonious justice," it comes in the form of a new emphasis on reducing social antagonism in the community through mediation and criminal reconciliation; and for "stability maintenance," the emphasis is on containing social protests by creating a sharp division between "the people" and the ringleaders of "mass incidents."

In the first part of this paper, I look at the language of harsh justice in the lead-up to, and first few weeks of, the 2014 "war on terror," which began in late May. My focus is on how the campaign was packaged discursively using the strategy of punishing offenders "severely and swiftly" (*congzhong congkuai* 从重从快), and how this language helped to shift criminal justice operations from (non-campaign) routine process into the wartime procedure of the campaign. "Swiftness and severity" as a strategy used in anti-crime campaigns is reserved for an extremely small minority of offenders, while the majority are treated with a less harsh response. In 2014, Party authorities called this approach "hyper-hard-line" policing and punishment. The second part of the paper reflects on how Mao's utilitarian dialectics has framed punishment policy in the war on terror in particular, and criminal justice in general. This discussion feeds into the final part of the paper which explores how Mao's utilitarian dialectics has also informed both the harmonious justice and stability maintenance agendas of the Hu Jintao era, even though the key terms of their discourses suggest a more congenial, less strident approach. During the period of harmonious justice, from the mid to late 2000s, rather than using the hyper-hard-line approach of severely and swiftly punishing criminals, the main logic driving crime control policy appears to be the emphasis on handling contradictions among the people through more lenient punishment as a way of curbing social instability. The targets of crime control in this era of social instability are mainly the "masses" – the majority of people whose crimes are recognized to be at least partly the product of the unequal distribution of wealth and opportunity. Here, more lenient punishment is the appropriate response. However, I find that the Hu Jintao era cannot be categorized as moving unilaterally towards a more lenient system of punishment. Rather, Hu's stability maintenance agenda incorporates aspects of Mao's understanding of social contradictions that sharply bifurcate how types of dissenting behaviours are treated: severity for the minority who are ringleaders in mass protests (the enemy) and leniency for the majority of disaffected masses (the people).

Packaging the 2014 People's War on Terror

When President Xi Jinping came to power in late 2012, great efforts were made to distance the new administration and leader from the political agendas of the Hu Jintao era that had sullied the reputations and credibility of the politico-legal agencies under Zhou Yongkang 周永康. But, unmistakably, politics would still be the driver of criminal justice through the legal system. The Hu Jintao-era

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rhetoric was replaced with new discourse on the banner of "Party-rule-through-law," which is neo-legalist in its political intention. In his speech at the national politico-legal conference on 8 January 2014, Xi declared that China's politico-legal organs would need to be central to the Party's current plan to bring about sustainable economic prosperity and social stability.[3] Referring to them as the "dagger-handle of the Party and the people" (*dang he renmin de daobazi* 党和人民的刀把子), Xi implored the police, courts and procuracies to play a pivotal role in the Party's plan to respond to sources of instability in Chinese society.

Party leaders began to talk about a "new situation" (*xin xingshi* 新形势) emerging in China,[4] and identified it as a political struggle against three main internal threats to national stability and security: corruption, internet and social media activism, and terrorist attacks by Muslim extremists. Even before a violent terrorist attack in Kunming in March that year, politico-legal authorities had begun to adjust their "Party-rule-through-law" rhetoric to support a political and cultural crackdown in Xinjiang. Two months before Xi's speech on 8 January, the Xinjiang Autonomous Region Party committee office drafted a restricted document known in internal circles as Document No. 11.[5] The document stressed that Party units in the region would now be required to exercise strict control over all Muslim social and religious activities in order to prevent escalations of violence. Party and government employees across Xinjiang were banned from wearing any attire that identified them as Muslim. Increasingly from January to April 2014, the political language in speeches by Xi Jinping, Party Politico-legal Commission head Meng Jianzhu 孟建柱,[6] and Xinjiang Party secretary, Zhang Chunxian 张春贤, indicated that the Party was about to launch a new campaign. In a speech in March at the Xinjiang Work Forum, for instance, Zhang exhorted politico-legal workers to "organically unify political, social and legal outcomes of terrorist-related cases."[7] In May, authorities warned, using Deng Xiaoping-era "strike hard" catchcries, that criminals committing terror-related activities were becoming "swollen with arrogance" (*xiaozhang qiyan* 嚣张气焰), and that aggressors would need to be dealt "a crushing blow" (*huimiexing daji* 毁灭性打击).[8]

By May 2014, "strike hard" rhetoric was back in full force and on the centre stage of politics. Politico-legal authorities needed no introduction or training in how to use "strike hard" policies to justify severely and swiftly punishing

3 Xinhua News 2014.
4 Meng 2014.
5 Xinjiang Academy 2013; "Yierxiati Wusiman: jianjue chanchu yingxiang Xinjiang wending de 'duliu'" (Yierxiati Wusiman says: eradicate all "malignant tumours" that are influencing Xinjiang's stability), *Xinjiang ribao*, 20 December 2013, http://cpc.people.com.cn/n/2013/1220/c64102-23902342.html Accessed 20 September 2014.
6 Meng 2014.
7 "Dui baokong fenzi buneng ren" (We can't be humane to terrorists), *Jinghua shibao,* 7 March 2014, http://epaper.jinghua.cn/html/2014-03/07/content_70706.htm. Accessed 20 September 2014.
8 Pan 2014a.

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campaign targets. "Strike hard" as both a policy and a type of anti-crime campaign has been a regular feature of the criminal justice landscape for decades. Beginning in the Deng era in 1983 and ending in 2003, "strike hard" campaigns had two different formats depending on their scale. The first and most widely known was the generic "strike hard" campaign, which operated for up to three years and focused on a wide range of different crime targets. The first generic "strike hard" campaign ran from 1983 to 1986. The second campaign format was the "specialized struggle" (*zhuanxiang douzheng* 专项斗争), which used "strike hard" policy to target one specific category of crime, such as drugs or terrorism, usually over a period of months.[9] Both campaign formats combine the efforts of police, judges and prosecutors, who work closely together to investigate, prosecute and sentence a minority of serious criminals in a timely and united manner.[10] While generic "strike hard" campaigns were discontinued after 2003 under Hu Jintao, specialized campaigns against terrorism/separatism, drugs and organized crime were continued across the 2000s and beyond. The processing of the much heavier flow of criminals through the criminal justice system from the 1980s to the end of 2003 was enabled by the key campaign strategy of "severity and swiftness," which aimed to maximize procedural and substantive flexibility. It is thus not surprising that front and centre in the discursive framing of the 2014 "war on terror" campaign was the revival of severe and swift punishment.

The "strike hard people's war on terror" was officially launched on 23 May 2014. It followed Xi Jinping's speech the day before at the Central Work Forum in Xinjiang, during which he exhorted politico-legal functionaries to punish the most serious offenders severely. He also outlined plans for an assimilation policy to modify the attitudes and behaviours of the vast majority of (presumably non-violent) Muslims in the region.[11] Here, the Party's tactics were to punish severely a minority of the most violent offenders while seeking to address the socio-cultural antagonism of the broader Muslim majority through less punitive approaches. Immediately after President Xi's Central Work Forum speech, senior Party leaders met to address the issue of stabilizing the situation in Xinjiang in the aftermath of more violent explosions in Urumqi the previous day. The Xinjiang Party secretary, Zhang Chunxian, announced in a press release that, on 25 May, Party leaders had decided that police, prosecutors and judges would be required to switch into campaign mode, to conduct "hyper-hard-line operations" (*chaoqiangying cuoshe shouduan* 超强硬措施手段) "beyond the bounds of routine [justice system] measures" (*chaochanggui shouduan* 超常规手段). This would entail "ferretting out … and publicly trying and sentencing and 'severely and swiftly' punishing major violent cases involving terror-related crimes."

9 Trevaskes 2010.

10 The history of "strike hard" campaigns is not the focus of this paper. For a detailed history of the 1983–1986 campaign, see Tanner, Harold 1999; Tanner, Murray Scot 2000; Trevaskes 2010.

11 Pan 2014b.

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Judges and prosecutors would need to cooperate with police immediately when a case was filed and to be involved in case disposition well before their role in the criminal process would normally begin. This is a classic "strike hard" practice developed in the 1950s and perfected in the Deng era of the 1980s, known as "entering the system ahead of the stipulated time" (*tiqian jieru* 提前介入). All three organs would need to "strengthen their cooperation" (*jiaqiang peihe* 加强配合) to ensure suspects were "swiftly tried, swiftly arrested and swiftly punished" (*kuaishen, kuaipu, kuaipan* 快审, 快捕, 快判).[12]

Two days after this announcement, the Xinjiang Higher Court held a teleconference for all senior judges across the region to relay the news about the campaign launch. The Party secretary of the Higher Court, Yan Fenxin 闫汾新, advised that "launching strike hard is an extremely important, necessary and urgent political task," and that courts across Xinjiang had to grasp the importance of this political operation and all judges needed to "align their thought and operations with those of Xi Jinping's important speech at the Xinjiang Central Work Forum and with the thought of the central Party decision to strike hard." He ordered all judges across Xinjiang to "strike with force" and "strike heavy blows" through the policy of "severely and swiftly" punishing violent terrorist-related crimes, and to "attack the inflated arrogance of criminals." He announced four main campaign targets: violent terrorist activity; religious extremism; the illegal manufacture and distribution of weapons and explosives; and the organization of and participation in training groups outside China's borders.[13] A notice outlining the targets of the 2014 campaign implored criminals involved in terrorist-related activities, such as the production and dissemination of messages inciting violence, to surrender within the first weeks of the campaign so as to receive more lenient treatment.[14] Leniency for those who surrender and confess is an enduring feature of Maoist campaign tactics.

The Party secretary of the Xinjiang Higher Court also encouraged courts to hold sentencing rallies in public venues "as a powerful deterrence" (*qiangda de weishi* 强大的威士). Most importantly, he ordered judges to issue sentences for all violent terrorist-related crime from the *very top* of the sentencing band (*guanche dingge zhongpan de yaoqiu* 贯彻顶格重判的要求): "All crimes determined to be extremely serious in nature must be given the death penalty with immediate execution," and when there was more than one death sentence in a court, those courts "must collectively sentence in public those who are to be executed."[15] There is a marriage of Mao and Deng in this discourse and practice. While the

12 "Zhang Chunxian: chaoqiangying cuoshe shouduan daji baokong" (Zhang states that hardline operations that reach beyond the bounds of routine justice system measures are necessary to fight violent terrorist activities), *Jinghua shibao*, 26 May 2014, http://epaper.jinghua.cn/html/2014-05-26/content_92034.htm. Accessed 1 September 2014.

13 Pan 2014b.

14 Chinalawtranslate.com. 2014. "Xinjiang notice of strike-hard campaign on terrorism," 24 May, http://chinalawtranslate.com/en/xinjiang-notice-of-strike-hard-campai/. Accessed 10 September 2014.

15 Pan 2014b.

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conceptual understanding of punishment through utilitarian dialectics and the handling of social contradictions (discussed below) is straight from Mao, many of the "strike hard" catchphrases emanate from the Deng leadership that packaged the discourse for the "strike hard" campaign frame in the 1980s.

On 28 May, the national *Legal Daily* published a Xinhua editorial summarizing campaign tactics as: "combining crime prevention with attacking crime," "opening the way by blasting through with force" (*yida kailu* 以打开路), "attacking and going on the offensive first" (*zhudong jingong* 主动进攻) and "[gaining the initiative by] striking the enemy first" (*xianfa zhidi* 先发制敌). This comes straight from the "strike hard" discourse of the 1980s, replete with the (Mao-inspired) Deng Xiaoping-era phrases that aim at dehumanizing criminals. Justice officials were exhorted to mobilize all the masses so that terrorists, like rats, "will have nowhere to hide, with everybody shouting 'beat them'" (*wuqu cengshen, renren han da* 无区曾深, 人人喊打). Public shaming was also called for. The judiciary was ordered to convene large-scale arrest and sentencing rallies and make offenders' families witness the events "to make them ashamed of being related to criminals who commit terror-related crimes."[16]

By early June, central judicial authorities had joined the propaganda surge with their own "strike hard" rhetoric. The Supreme People's Court (SPC) Party secretary, Chief Justice Zhou Qiang 周强, announced at an SPC Party meeting that "courts across China must take further measures to strengthen criminal trial work, and severely and swiftly try and punish violent terrorist cases in accordance with the law."[17] Both Chief Justice Zhou and the prosecutor-general announced that they would step up their guidance function over courts and procuratorates in Xinjiang to counsel local decision making on how best to apply the policy of severely and swiftly trying and punishing violent terror-related cases in accordance with the law, placing particular stress on case efficiency and speed, and "entering the criminal process ahead of their scheduled time" in order to ensure speedy arrests, speedy prosecution and to coordinate the activities of the three arms of justice.[18] These measures would improve the capacity of prosecutors to handle major cases and violent incidents effectively and to improve case outcomes in violent and terror-related cases.[19] On 5 June, a Xinjiang Higher Court spokesperson implored courts across the region to continue to punish serious offenders with "life imprisonment or the death penalty."[20] Serious offenders were specifically identified as those who commit violent acts, lead terrorist organizations, refuse to be rehabilitated or refuse to surrender and admit their guilt. He reiterated the need for relative leniency to anyone who surrendered to police

16 Legaldaily.com. 2014. "Wei gongpan gongpu jiaohao" (Let us applaud public sentencing and public arrest rallies), 28 May, http://sx.legaldaily.com.cn/content/2014-05/28/content_5556258.htm. Accessed 2 September 2014.
17 Jiang, Yu 2014.
18 Ibid.; Chen, Fei 2014.
19 Chen, Fei 2014.
20 Pan 2014a.

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between late May and late June 2014, to juvenile offenders and to those found to have been deceived by others into committing a crime.[21]

This discussion of the discursive packaging of the "people's war on terror" reveals the crucial importance of discourse in the "strike hard" campaign. Flush with understandings and nuances widely recognized by politico-legal functionaries, the discourse is a valuable instrument for mobilizing those who are instrumental to giving the campaign its life through the legal system. This discourse signifies powerfully the seriousness of the party-state in responding to certain types of crime in the particular "strike hard" way. It conveys a message not just to those who work to enact "strike hard" as punishment practice but also to all Chinese citizens who have a role to play as supporters in the "strike hard" drama and as law-abiding citizens in Chinese society. We see, too, how control over the content of the discourse provides a valuable source of power – in this instance, for criminalizing the political (casting Xinjiang separatist resistance as terrorism) as well as politicizing the criminal (the "strike hard" campaign at all turns).

Utilitarian Dialectics

The above discussion of the discourse from the first weeks of the 2014 "war on terror" reveals how the "strike hard" specialized campaign employs two main discursive rationalizations that have their foundations in Mao-era conceptions of crime and punishment. One is ideological, adapting what Ronald Keith identifies as Maoist "utilitarian dialectics" to justify dramatic increases in the severity of punishment for certain types of crime during periods when the authorities identify the need for "political struggle."[22] The other is the enduring idea – adopted in the Mao era and adapted in the Deng era – that police, prosecutors and judges need to be flexible in procedure in order to adapt routine practices to suit changing Party priorities.

Mao's utilitarian dialectics of punishment was first developed into policy in the 1950s. The development came through a rhetorical mechanism devised by Mao and used by Party authorities to drive the levers of punishment policy, and to gain better control over the numbers of people executed, as a way of positively advancing the cause of socialist state-building. This mechanism was the dialectical lever of severity–leniency, which was embedded in a policy first called "combining suppression and leniency" (*zhenya yu kuanda xiang jiehe* 镇压与宽大相结合).[23] This policy was introduced to control the spiralling rate of executions following the initial excessive severity of punishments during the first months of the "suppress counterrevolutionaries" campaign. From February to May 1951, 540,000 people were put to death, which was over 70 per cent of the total

21 Pan 2014c.
22 Keith 1994.
23 Trevaskes 2012.

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712,000 executed during the entire two years of the campaign.[24] Mao recognized that "rebalancing" the scales of justice was a necessary strategy to ensure political stability. The severity–leniency dialectic used in this case reflects a Maoist understanding of political action as the "unity-of-opposites" (*duili tongyi*).

This severity–leniency dialectic informed sentencing throughout the remaining mass campaigns of the 1950s and was guided by a dominant political principle distinguishing between the minority and the majority of offenders according to the type of their crime. It would deliver the harshest punishment to a minority of the criminal population identified by the authorities as the enemies of socialism. The majority of offenders – those whom the authorities deemed to be of "the people" and who were therefore redeemable – were spared from the harshest punishments.[25] The flexibility inherent in this dialectic and its fluid labels enabled authorities over time to expand and contract the proportion of the minority relative to the majority in line with shifts in perceptions of instability, the Party's views about how best to protect social and political stability, and movements in the perceived utility of capital punishment. Later in the 1950s, the policy was renamed "combining punishment with leniency" (*chengban yu kuanda xiang jiehe* 惩办与宽大相结合). Replacing "suppression" with "punishment" perhaps rendered a more accurate name for the policy, which was still rooted in the idea of severely punishing the most serious criminals but which now treated with leniency accomplices, those who confessed, and those who performed meritorious acts.[26] With "severity" and "leniency" at the extreme ends of the punishment spectrum, the policy lever could be shifted either way to adjust the proportions of minority/majority and the relative severity imposed on both.

The idea of "combining" the opposite ends of the punishment spectrum is a rationale of punishment that is itself informed by dialectics: "the people" versus "the people's enemies"; the "majority" versus the "minority"; "the general enemies" versus the "immediate enemies."[27] The dialectics incorporating these was informed by the Maoist theory of handling social contradictions, which was the basis of social control policy in the pre-1979 era. Mao's strategy was to "divide and break up" groups of criminals according to the nature of their crimes and provide separate treatment regimes for "the people" and their enemies. For the majority, i.e. "the people," their offending behaviour was cast as relatively minor crimes, social conflicts or misdemeanours that could be counted as internal contradictions among the people, and they should therefore be treated with leniency. For the more serious offenders, i.e. the minority, their actions were cast as contradictions between the people and their enemies and they should therefore be isolated from the people and punished as "the enemies."[28] Ronald Keith explains: "On the one level, Mao's strategy of 'dividing

24 Yin 2014.
25 Cohen 1968.
26 Dai 2010.
27 Keith 1994, 154–55.
28 Ibid.

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and breaking up criminals' (*fanhua wajie fanzui fenzi*) seeks to educate and reform the majority of criminals, while, on another level, there is a targeting and isolation of a supposed minority of intransigent criminals, which requires the swift application of severe punishment."[29] Articulating punishment responses in this way set in train a mindset of justice administration that successive leaderships have continued to uphold since 1979. "Combining" these two responses creates the dialectical space for the unity of opposites that enables criminal justice authorities to respond flexibly to what they perceive as new stability threats.

In China today, the discourse of combining relatively harsh and relatively lenient punishment remains at the core of criminal justice policy. While serving as a discursive and practical vehicle for effecting politics through the legal system, it perpetuates the use of Mao's utilitarian dialectics. This discourse informs justice system policymakers who broadly advise the judiciary and other politico-legal functionaries ideologically and practically on the relative severity of punishment for specific criminal populations and types of crime in order to keep punishment commensurate with the overall political goals of national development. In the context of the 2014 "war on terror" campaign, this discourse provided a frame for rationalizing party-state efforts to encourage assimilation of the vast majority of Xinjiang's population in order to control their behaviour and movements – as evidenced by the instructions provided in Document No. 11. For the majority in Xinjiang – "the Uyghur people" who are Muslim – their social conflicts or misdemeanours in favouring Xinjiang's separation from China could be treated as internal contradictions among the people. At the same time, this discourse enabled authorities to punish all offences labelled as terrorism, including nonviolent offences, from the very top of the sentencing scale. Because this "people's war" used the Mao-inspired campaign model of "strike hard" hoisted on the strategic rhetorical axis of "terrorism," it was articulated and brought to politico-legal life as a "political struggle." The term "struggle" (*douzheng* 斗争) is an essential part of the campaign package. As a commonly understood component of the "strike hard" discourse, it enables authorities to employ a lexicon of Maoist and Dengist terminology to rationalize the need to isolate the enemy from the majority of the people, offer lenient treatment to those who surrender and provide information about other criminal activities to the police, and punish the minority of serious offenders severely.

The imperative of political struggle effectively places politico-legal functionaries on a war footing, to deliver justice using the Mao-inspired Dengist strategy of severely and swiftly punishing offenders. The concept of "severity" (*congzhong* 从重) within the strategy of severity and swiftness is closely connected with the "suppression" end of the Maoist "combining suppression and leniency" spectrum that was first touted in the campaign to suppress counterrevolutionaries in the early 1950s. It invites, or in some cases exhorts, judges to mete out the most severe

29 Ibid.

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punishment within the options set down by the law. Anti-crime campaigns, both generic and specialized, encourage judges to use their sentencing discretion in only one direction: towards the top of the punishment scale. Recognizing mitigating circumstances, as outlined in the Criminal Law, that might affect the length or severity of punishment is discouraged by Party officials responsible for meeting campaign targets, and judges are routinely required to apply a greater level of severity across the board for all targeted crimes. "Swiftness" (*congkuai* 从快) means accelerating and simplifying the criminal procedures that deal with targeted criminals. Swiftness is rationalized in terms of its perceived deterrence value. It is understood that the shorter the time between when a criminal commits a crime and when punishment for that crime is meted out, the greater are the social benefits of punishment in terms of its deterrence value, and the more conspicuous the relationship between crime and punishment in the minds of the public.[30] But it is also necessary to recognise how swiftness can actually increase the severity of the punishment. Conducting sentencing swiftly forces the abandonment of sentencing processes that take time, such as identifying and substantiating mitigating circumstances that draw more lenient sentencing.

The second rationalization that can be seen in the language of the 2014 campaign, language that formed its roots in the Mao era and was developed into Deng-era discourse in the early 1980s, concerns campaign procedure. Exhortations to deliver justice "swiftly" urged judges and other functionaries to swing into political action, and to approach criminal procedure flexibly so they could quickly adjust routine criminal processes, simplify procedures and build momentum for campaign mode. The rationale behind swift justice is that the nation's criminal justice functionaries need to operate first and foremost to protect party-state interests. When authorities perceive that society is threatened by instability, politico-legal functionaries should be prepared to adjust their practices to suit changing circumstances that shape the Party's socio-political goals. Complementary to swiftness is a united approach. Prosecution and courts are to cooperate with the police and be involved in a case from the start of the arrest process. This so-called unity-of-thinking (and action) can also be seen in the discourse, discussed above, surrounding the shock-and-awe sentencing rallies that were convened within days of the campaign launch and attended by all three arms of the criminal justice system – police, prosecution and courts.

In short, the Mao-style discourse of campaign justice provides a framework that enables authorities to switch deftly into campaign mode "for political struggle" when they deem it necessary. Authorities perceived the need for political struggle in Xinjiang in 2014 owing to the increasingly violent separatist activity that threatened not only stability but also national unity in a part of the nation that has enormous strategic value through connecting China to central Asia. As the 2014 "war on terror" reveals, swift punishment provides the procedural

30 Trevaskes 2007, 2012.

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framework within which political intention (protecting stability) can be converted into criminal justice action (delivering swift punishment) at short notice. It encapsulates both the rationalization for change and the procedural framework needed to adjust and innovate by quickly changing routine criminal practices. Catchphrases that contextualize the exceptional practice of severe and swift punishment are bolstered by others such as "creating an organic unity between social and legal outcomes," "entering the system ahead of the stipulated time," and implementing "hyper-hard-line operations" that "reach beyond the bounds of routine measures." These exhortations validate – indeed require – judges to sentence both non-violent and violent crime cast as "terrorist related" at the very top of the severe sentencing band regardless of the individual circumstances of a case. Judges must also sentence to execution all criminals determined to have committed a crime that is "extremely serious in nature," often regardless of any mitigating factors that in routine times would warrant more lenient sentencing.

As discussed below, these two discursive rationalizations – Maoist utilitarian dialectics and the need for flexible procedure – are present outside the campaign structure in the agendas of "harmonious justice" and "stability maintenance." The next section looks at the politico-legal language in the Hu Jintao era of "harmonious justice" and "stability maintenance" to observe how Maoist utilitarian dialectics was also used discursively to organize state responses to crime during the period of social disharmony and instability in the first decade of the 2000s. Maoist utilitarian dialectics has enabled policymakers not only to rationalize harsh punishment in "strike hard" times when social and political stability is threatened by serious offenders (the enemy) but also to justify adapting a more lenient regime towards some in the criminal population to adjust the minority–majority ratio when social stability and harmony are threatened. We see here continuity in party-state understandings of criminal punishment. The takeaway point is that China's political leadership has, to varying degrees, continued to use the same logic of utilitarian dialectics that is found in "strike hard" campaigns. Mao's concept of dividing up criminals into two different categories has continued to allow Party leaders to adjust the levers of punishment both away and towards greater punishment. Adjustments in the amount of punishment (severe or not severe) and its target (terrorists, dissenters, and so on) are based on the premise that, at any given time, the Party can and does modify who it claims belongs to the majority and minority and what the ratio of that majority/minority should be.

Packaging Harmonious Justice and Stability Maintenance

Harmonious justice

Soon after President Jiang Zemin 江泽民 stepped down from power in 2002, the new Hu Jintao leadership announced an ambitious governance plan to bring about greater social harmony and to narrow income and opportunity gaps

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between the haves and have-nots in an attempt to curb the growing trend of social dissent and instability in China. The "harmonious society" agenda broadly articulated the direction of governance in which the Hu leadership intended to take China in the first decade of the 21st century. Prior to the official "Resolution on building a socialist harmonious society" in 2004, criminal justice authorities had already begun to shift their policing and punishment priorities and targets from striking hard at a broad gamut of serious crimes to a new mode of justice administration characterized by two complementary goals: maintaining stability and supporting building harmony. In late 2003, a year after the change in Party leadership, a new political-cum-policing agenda of stability maintenance began to be developed in politico-legal circles.[31]

Both "harmonious society" and "stability maintenance" were linked to the Party's social stability imperative from the time of their first public airings around 2002–2003. Also at this time, politico-legal language within the criminal justice arena began to shift to incorporate an emerging idea that the severity–leniency lever should again be used to respond to social instability. In supporting the political objective of "harmonious society," the expectation was that justice authorities should devise new ways of addressing crime that created instability and disharmony through a less severe punishment regime that would treat more criminals more leniently than in past years. It was expected that justice organs would need to play a direct role in "reducing antagonisms in society" (*jianshao shehui duikang* 减少社会对抗).[32] In contrast to the "strike hard" approach, politico-legal authorities began to promote a more conciliatory approach to justice administration. This approach was described as "harmonious justice" (*hexie sifa* 和谐司法), as validated below in a *People's Daily* editorial in January 2007:

> The concept of harmonious justice introduced by SPC president Xiao Yang 肖扬, and following trends in justice policy in general, has become a "hot spot" of public debate. Under the auspices of the harmonious society programme, the concept of "harmony" has become embedded in all areas of public policy and harmonious justice is borne out of this movement. From the viewpoint of the development of rule of law in China, harmonious justice should become a leading conceptual touchstone of justice policy.[33]

By 2007, judicial authorities had fully ramped up their promotion of the new Party doctrine of "building a socialist harmonious society," and encouraged dispute resolution procedures rather than litigation in civil disputes as a way to prevent the escalation of social conflict and appeals to higher authorities. Mao-era Ma Xiwu 马锡五 style dispute resolution through mediation was encouraged, especially in land appropriation and other disputes between residents and local governments.[34] Political authorities perceived that discouraging litigation by

31 Trevaskes 2013b.
32 Sina.com. 2007. "Zhengzhou jianchayuan chutai guiding mingque kuanyan xiangji biaozhun" (Zhengzhou procuratorate provisions now specify how balancing leniency and severity is to be implemented), 2 July, http://news.sina.com.cn/c/2007-07-02/195712130968s.shtml. Accessed 3 March 2015.
33 Jiang, Huiling 2007. Author's translation.
34 Liebman 2011.

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promoting mediation was a more effective way to control case outcomes and prevent appeals and petitions to higher authorities.[35] Change to established legal procedure during this period was articulated expressly in terms of its political value. During this period of justice administration from the mid to late 2000s, Party authorities required judges to operate a flexible mode of case disposition and to "harmonize" justice through various initiatives that would see a substantial shift to a more lenient punishment regime for crimes that involved "the masses." This was a vital step to adjust the perimeters of more or less severe punishment applied to the majority. Now, large swathes of those protesting on the streets or taking other actions to express their political grievances were part of "the people": they could not be identified as "the enemy."

Harmonious justice gained momentum quickly and spread from civil to criminal cases. By 2007, judges and prosecutors were required to promote "harmonious justice" by modifying their criminal case decision-making processes to fit the message of the "harmonious society" agenda. New "criminal reconciliation" (*xingshi hejie* 刑事和解) initiatives were applied to minor assault cases. Cases involving defendants with access to funds which would enable them to pay victim compensation would be given a lighter sentence. Criminal mediation also began to be applied to capital crime sentencing, with judges encouraging the defendant and the families of murder victims to participate in mediation to reach a sentencing outcome advantageous or at least acceptable to both parties. The offender would receive a reduced sentence (with execution off the table) in exchange for compensating the victim's family. This was encouraged only for stability-related capital cases arising from family or neighbourhood disputes in which the offender could afford or access funds to restore harmony through cash payment to the victim's family.[36]

This shift towards a more lenient regime of punishment for a wide range of criminal offences was facilitated, in the first instance, by movement in the politico-legal discourse. This involved reinventing the Mao-era criminal justice policy of "combining leniency and punishment," touted in the 1979 Criminal Law as China's "foundational" (*jiben* 基本) criminal justice policy. Its 21st-century reincarnation was a new policy called "Balancing leniency and severity" (*kuanyan xiangji* 宽严相济). By 2007, it was hailed as China's new foundational criminal justice policy.[37] It was used to encourage judges to apply, when appropriate, relatively light sentencing to a greater number and variety of minor crimes involving small-scale stability disputes arising from injuries in traffic accidents or minor assaults in disputes between neighbours. This new shift even applied to some violent crimes when the mitigating circumstances of a case demanded it. According to this policy, severe punishment would now apply mainly to the crimes that most threatened stability, such as terrorism,

35 Liebman 2011; Wang, Yuhua, and Minzner 2015.
36 Trevaskes 2013a, 2015.
37 Trevaskes 2010.

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organized crime or particularly violent murders. In this way, a dialectical balance could be ensured and punitive excess (which might exacerbate rather than reduce social antagonisms) could be avoided.[38]

The descriptions discussed above show how the banner of "harmonious justice" encompassed an array of discourses and practices all aimed at resolving social contradictions and thereby alleviating social antagonisms. In contrast to the "strike hard" language of "political struggle" aimed at the enemy, the language of "harmonious justice" could be said to be conciliatory. As such, justice functionaries in this period were directed to play a political role in "reducing antagonisms in society" and harmonizing social relations by "balancing" the needs and interests of disaffected parties in legal disputes through mediation practices, by "tempering" or "balancing" leniency and severity, and "reconciling" (*hejie* 和解) offenders and their victims through "restorative justice" (*huifuxing sifa* 恢复性司法) initiatives that inspired innovations such as the practice of criminal reconciliation and criminal mediation in death sentencing.

Stability maintenance

Under the "harmonious justice" banner, judicial decision makers were able to treat the vast majority of offences and/or civil disputes with less coercive, more conciliatory, measures. But, while treating the majority of the masses in this way, a harsher response was required for the minority of dissenters and offenders who were deemed "to gravely threaten" social stability. Here, the language of political struggle rears its head again – but not within the "strike hard" framework.

From around the mid-2000s, policing responses to this threat were framed in terms of Mao's social contradictions (*shehui maodun* 社会矛盾). China's "stability maintenance" agenda was premised on the political idea that a small minority of ringleaders (including leaders of mass incidents and human rights advocates) were creating social unrest to threaten the political authority of the Party itself (*zhengquan de wending* 政权的稳定).[39] It was seen that a political threat required a political response. So, while "harmonious society" was in full swing as a key political agenda, "stability maintenance" progressively gained political ground as a measure to complement – indeed perhaps to "balance" – "harmonious justice." It was a hard-line policing and security response to deal with those who directly intended (at least in the eyes of the Party) to create social instability in order to threaten the authority of the Party.[40] Here, the Maoist language of social contradiction was resuscitated once again as a dominant force within politico-legal circles.[41]

In Mao's China, the key criteria for dispensing justice drew from two of Mao's political concepts for dealing with social contradictions: "democracy" to deal

38 Ibid.
39 Shen and Fan 2009.
40 Wang, Hongjun, and Luo 2005.
41 Ibid.; Trevaskes 2013b.

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with contradictions among the people, and "dictatorship" to deal with contradictions between the people and the enemy. Contradictions among the people could be dealt with in a non-antagonistic manner through the democratic means of discussion, criticism, persuasion and education. In contrast to contradictions among the people, which were non-antagonistic and could be resolved by peaceful methods, contradictions between the people and the enemy were antagonistic. These contradictions could be resolved only through punishing the enemy coercively. Decisions about how to respond – either through "education and persuasion" or "coercion" – were determined through assessing the nature of the crime, that is, the degree of social harm it caused and the background circumstances of the criminal.

Under the Hu Jintao administration, mass incidents (collective protests) were officially regarded as "contradictions among the people" and therefore "non-antagonistic." However, the small minority who orchestrated protests for what authorities regarded as malicious or political ends needed to be treated "coercively" through legal punishment since their relationship with the party-state could be considered "antagonistic."[42] As early as 2002, the Party recognized the need to package its response to the burgeoning protest trend using political hyperbole. A 2002 Central Party Committee-commissioned report into the state of social instability identified five ways in which mass incidents directly threaten the nation: (1) they gravely damage the government's image (*yanzhong pohuai zhengfu de xingxiang* 严重破坏政府的形象) and the image of the Communist Party in the eyes of the community (*yanzhong pohuai gongchandang de xingxiang* 严重破坏共产党的形象) since mass incidents are counter to the idea that the Party exists to protect the masses; (2) they gravely threaten the authority of the law since their existence mocks the claim that China has successfully built a legal system and laws that effectively regulate social relations; (3) they gravely threaten political stability (*yanzhong weihai zhengzhi wending* 严重危害政治稳定) by enabling anti-government forces to promote their alternative political causes; and (5) they gravely threaten community respect for order (*yanzhong weihai qunzhong dui shehui zhixu de zunyan* 严重危害对社会秩序的尊严), which has the potential to impact negatively on social values in the community.[43] In a similar vein, a 2002 policing report on the growth of the social protest movement in China stated that, over the past few years, mass incidents had changed significantly in scope and in *the nature* of their targets of protest, thus becoming the biggest threat to social and political stability in China.[44]

Well before public discussion began in the media of "stability maintenance," a discursive framework of "stability maintenance" language was being developed internally in policing and political circles. A plethora of new police training manuals, published from the early to mid-2000s, describes the handling of mass incidents (using Mao's words) as how to "win over and reform the great majority

42 Tanner, Murray Scott 2007.
43 Chen, Jinsheng 2004, 214–46.
44 Yang 2002, 22.

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while isolating and punishing the minority" by punishing principal offenders severely and dealing with non-principal offenders relatively lightly.[45] One such manual, for instance, instructs police on the negative social ramifications of mass incidents: they "disturb the social order" (*raoluan shehui zhixu* 扰乱社会秩序), cause people in the community to feel isolated from the Party, promote crime and violence, and impact negatively on "the stability of the political regime" (*zhengquan de wending* 政权的稳定).[46] Another of these manuals similarly positions mass incidents as a grave threat to both national security (*yanzhong weihai guojia anquan* 严重危害国家安全) and the stability of society as a whole (*yanzhong weihai zhengti shehui wending* 严重危害整体社会稳定). Moreover, they gravely damage the image of the party-state, and threaten both development of the reform agenda and dictatorship of the ruling Party.[47]

Conclusion

This paper has identified what is the "political" in "politico-legal" discourse in the fight against crime in China today. In this discussion of criminal justice in 21st century China, as seen through the lens of the 2014 "war on terror," "harmonious justice" and "stability maintenance," I have shown that China's political leadership has continued to adapt the logic of utilitarian dialectics used in Mao's mass campaigns of the 1950s and in Deng's "strike hard" campaigns of the 1980s. Post-Mao, the concept of utilitarian dialectics continues to have great utility for criminal justice both ideologically and in practice because, particularly through the dialectics from which it is comprised, it provides valuable flexibility for adapting the criminal justice system to the evolving challenges of national development. Mao's concept of adjusting the levers of punishment towards leniency or severity grew from an idea that, at any given time, the Party can modify who (what type of criminals) it identifies as the most serious threat to social stability, and on that basis, who can be treated more or less leniently. Precisely how broadly defined the minority of seriously offending enemies should be in relation to the size and proportion of the majority has always been subject to modification based on the political circumstances of the day. This is the political virtuosity of Mao's dialectics: it can be adapted to suit any political situation. Therefore, while Deng, for instance, revelled in the use of the Mao-inspired "strike hard" policy for an arguably large minority while at the same time paying lip service to leniency for minor criminals, punitive culture in the "harmonious society" era gave relatively greater gravitas to the idea that leniency should be given to a much greater proportion of the population of dissenters and criminals through programmes such as decriminalizing minor crimes and developing criminal reconciliation and mediation. The size of the minority given harsh

45 Wang, Hongjun, and Luo 2005, 148–158.
46 Shen and Fan 2009, 201–221.
47 Qiu 2008, 14; Trevaskes 2013b.

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punishment in Hu's era was shrunk to fit the political message of the "harmonious society." The use of "strike hard" policies was contracted to only three main crimes: terrorism, serious drug crimes and organized crime.[48]

Regardless of the leadership style of those in power in the post-Mao period, sways in more or less severe punishment – away or towards harsher punishment for certain categories of crime – have invariably been preceded by discursive justifications for change that are based on authorities' perception of the capacity of punishment to deal with social instability. China's political leaders and the Party's leading politico-legal authorities have each, in their own way, articulated this punishment–stability nexus using Maoist discourse to some degree or another. For instance, in his speech at the National Politico-legal Work Conference on 8 January 2014, President Xi Jinping declared that China's politico-legal organs needed to align their agendas more closely with the Party's current stability and security concerns. He demanded that the police, judges, prosecutors and security officials "unify [their] thinking" in order that the Party could use these organs as the Party's "dagger-handle" to respond swiftly and severely to sources of instability.[49]

Mao's quite visible hand in this rhetoric leads us to acknowledge some continuity between Mao-era rhetoric and 21st century politico-legal rhetoric. And some continuity between past and present means that there are also discontinuities; the criminal justice arena in China has shifted towards a more professionalized approach to justice administration over the past three decades. In conclusion, this paper advocates leaving aside any assumption that there has been a teleological shift towards or away from a rule of law, socialist or otherwise. The alternative argument from this paper is that, even 36 years after the Mao era, the logic of Maoist punishment policy remains as the ideological cornerstone upon which political authorities justify movements in criminal justice responses to social instability in China. This logic is held together by the glue of a political language that continues to refer to struggles and wars, social contradictions and "combining" harsh and lenient punishment, and thus creates the context for current political action and sustains Mao well past what many once thought was his use-by date in 1976.

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Biographical note

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48 Trevaskes 2010.
49 Xinhua News 2014.

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摘要: 严打扫黑、和谐司法和维稳是直至目前的 21 世纪中国犯罪控制与惩罚的三个主要政治灵感和议程。本文论述了中国当局如何通过包装这些议程达致动员政治法律的功能性并付诸行动的实效。本文所研究的中国政治法律话语, 源自习近平 2014 年发动反恐人民战争的第一个星期的文件和报道, 以及胡锦涛时代的和谐司法与维稳议程的相关文件。本文认为他们均在遵循毛泽东式的唯物辩证法, 并将其进一步功利化, 从而塑造为己所用的犯罪控制与惩罚方式; 而毛泽东式唯物辩证法的政治技艺, 亦因此获得了因应多变的政治局势的可能。通过分析并解释毛泽东思想如何连接今日中国刑事司法, 本文确定了当代中国与打击刑事犯罪相关的"政治法律"话语中的"政治"含义与意义。

关键词: 刑事司法; 反恐人民战争; 和谐司法; 维稳

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