

# Re-education through Labour in Historical Perspective\*

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**ABSTRACT** Re-education through labour (*laodong jiaoyang* or *laojiao* for short) is an administrative punishment imposed by the police. Since its inception in 1955, it has become a convenient instrument for the government to use to deal with any crisis. Its development has largely followed the ebb and flow of the CCP's political behaviour. Created as a comparatively mild suppression of counterrevolutionary activities, *laojiao* served as a useful instrument of punishment for dissenting intellectuals in 1958, though it was then nearly phased out during the radical years of the Cultural Revolution. *Laojiao* expanded quickly as a result of the CCP's anti-crime strategy after 1983, and has grown steadily ever since. It now serves multiple functions, including crime control, drug rehabilitation, investigative detention and political control. It enjoys different degrees of legitimacy and justification. Any substantive discussion on the future of *laojiao* has to be offence and offender specific.

*Laodong jiaoyang* or *laojiao* for short<sup>1</sup> (re-education through labour, hereafter *laojiao*) is an administrative punishment imposed by the police according to laws, regulations or policies, under which the police can bypass the criminal process and summarily subject a person guilty of "minor offences" to a maximum of three years' incarceration. *Laojiao* was created in 1955 in response to the campaign to suppress counterrevolutionaries hidden in government departments. As a result of the cumulative effect of the political and social control in China, *laojiao* has over the decades become a convenient instrument for the government to deal with whatever crisis it faces.

Punishment in China has generally received little academic attention. According to the Chinese orthodox penology, punishment transforms prisoners, and thus is a means to achieve the reform and rehabilitation of offenders. The reform process takes place through collective labour, by which the planned penal economy makes a significant contribution to the state economy.<sup>2</sup> For critics of the Chinese government, such punishment is as politically repressive as it is financially lucrative, and is a means by which the state silences dissenting voices and extracts surplus for its

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1. There are two principal types of imprisonment in China: *laogai* and *laojiao*. *Laogai*, or *laodong gaizao* (reform through labour), is a punishment rendered by a court after trial according to provisions of the Criminal Law. *Laojiao* on the contrary is an administrative punishment rendered by the police.

2. Yang Diansheng and Zhang Jinsang (eds.), *Zhongguo tese jianyu zhidu yanjiu* (*Research on the Prison System with Chinese Characteristics*) (Beijing: Law Press, 1999).

economic development. Punishment is thus little more than state repression.<sup>3</sup> Increasingly, researchers take a more nuanced approach to punishment in China. While taking the rehabilitative ideology seriously in assessing punishment in China,<sup>4</sup> they nevertheless put the ideology into the political, financial and institutional context, and try to examine how political and financial constraints effectively defeat the reformist agenda.<sup>5</sup> They point to the multiple functions punishment serves in China.

Since the mid-1990s, *laojiao* has attracted serious attention from Chinese legal academics, government officials and international human rights organizations.<sup>6</sup> But in the debate over its future, *laojiao* is generally treated as a single unit, an overarching category, with its internal complexity often overlooked. This article therefore calls for a nuanced approach to *laojiao* and its possible future reform. The principal arguments of the article are, first, that the primary function of *laojiao* has shifted from political control to the prevention and punishment of minor offences, and secondly, that *laojiao* serves multiple functions, with varying degrees of legitimacy and justification. As it punishes a variety of people on different legal and moral grounds, any substantive discussion on its future has to be offence and offender specific.

This article is divided into two parts. The first part is a narrative account of the historical development of *laojiao*, including its primary target, scope of application, and underlying social and political context, followed by an illustration of how *laojiao* has grown in size since its establishment. The second part examines in some detail the four functions *laojiao* serves: crime control, political control, investigative detention and drug rehabilitation.<sup>7</sup>

3. Harry Wu and Carolyn Wakeman, *Bitter Winds: A Memoir of My Years in China's Gulag* (New York: John Wiley and Sons Inc., 1994).

4. Michael R. Dutton, *Policing and Punishment in China: From Patriarchy to "the People"* (New York: Cambridge University Press, 1992).

5. James D. Seymour and Richard Anderson, *New Ghosts and Old Ghosts: Prisons and Labor Reform Camps in China* (New York & London: M.E. Sharpe, 1998); and Fu Hualing "Punishing for profit: profitability and rehabilitation in a *laojiao* institution," in Neil J. Diamond, Stanley B. Lubman and Kevin J. O'Brien (eds.), *Engaging the Law in China: State, Society and Possibilities for Justice* (Stanford: Stanford University Press, 2005).

6. Chu Huaizhi, Chen Xinliang and Zhang Shaoyan (eds.), *Lixing yu zhixu: Zhongguo laodong jiaoyang zhidu yanjiu (Rationality and Order: Research on the Laojiao System in China)* (Beijing: Law Press, 2002); Xia Zongsu (ed.), *Laodong jiaoyang zhidu gaige wenti yanjiu (Research on Reform of the Laojiao System)* (Beijing: Law Press, 2001).

7. The article relies principally on Chinese published sources. Some are first-hand, particularly direct data from *laojiao* institutions; and others are secondary, including investigative reports by practitioners and academics. Of special interest is the official journal of the Crime Prevention Research Institute of the Ministry of Justice (MoJ), *Fanzui yu gaizao yanjiu (Studies on Crime and Reform)*. Most of its articles are by officers working in penal institutions in China, thus providing the most detailed (and often critical) comments of their institutions. I tried to verify the credibility of the sources: first, I cross-checked by comparing publications by practitioners and academics, and publications from different institutions; secondly, I interviewed police officers in charge of *laojiao* intake, procurators with a supervisory role during the process and *laojiao* officers who manage *laojiao* institutions; finally, I compared the secondary sources with data from my field studies in a *laojiao* institution in Southern China (see Fu Hualing, "Punishing for profit"). I don't take the reports and commentaries from China at their face value. But a more serious problem is the lack of systemic information on this unique aspect of China's criminal justice system.

### *The Development of Laojiao*

*A period of formation and expansion.* In 1955, the Chinese Communist Party (CCP) started a campaign to uncover hidden counterrevolutionaries within the Party and government institutions, state enterprises, schools and urban communities. A mandatory quota of 5 per cent of government employees were set to be purged in the campaign.<sup>8</sup> After the campaign, which lasted for more than a year, about 100,000 hidden counterrevolutionaries and “bad elements” were identified.<sup>9</sup>

The CCP employed a number of methods of dealing with the people purged in the campaign, including *laojiao*. According to the 1955 CCP Directive<sup>10</sup>:

The counterrevolutionaries and other bad elements who are uncovered during this campaign, except those who were sentenced to death and those who retain their posts because of the minor nature of their offence, complete confession or meritorious performance, will be handled in one of two ways. One method is reform through labour after their conviction. The other method is re-education through labour which should be applied to those who cannot be convicted and sentenced, who are not politically reliable and thus cannot retain their posts, and who would increase the burden of unemployment if released to society ... They should be gathered together to work for the state and be paid by the state.

This 1955 Directive clearly limited the application of *laojiao* to those people who were not convicted of a criminal offence, because their offence was so minor that it did not warrant a criminal penalty. But in 1956, the CCP issued a more detailed guideline for the establishment of *laojiao*,<sup>11</sup> which said that it could also be applied to those who had committed minor criminal offences and had been sentenced to control (*guan zhi*), that is, police supervision in the community.

*Laojiao* was punitive from the beginning. Under it, offenders were gathered together and sent to designated places to work. While the government tried to argue that it was a form of penal welfarism, as each offender received a salary from the state and was only partially deprived of freedom, *laojiao* was commonly referred to as “quasi-imprisonment,” and in practice treated by the government as imprisonment. In some provinces, *laojiao* offenders were attached to prisons in sub-units. Even in provinces where separate *laojiao* institutions existed, they could not

8. Chinese Communist Party Central Committee, “Guanyu chedi suqing ancang de fangeming fenzi de zhishi” (“Directive on the thorough elimination of hidden counterrevolutionaries”) (25 August 1955) (hereafter “the 1955 Directive”) (on file with the author).

9. According to the speech of the Minister of Public Security, Luo Riqing, in September 1955, bad elements included “trouble makers” in government departments, schools and factories. Cited in Guo Jianan, *et al.*, “Zhongguo laodong jiaoyang zhidu de lishi kaocha” (“Historical review of the *laojiao* system in China”), *Fanzui yu gaizao yanjiu*, Vol. 168, No. 8 (2003), p. 1.

10. The 1955 Directive.

11. Chinese Communist Party Central Committee, “Guanyu ge sheng, shi ying liji chouban laodong jiaoyang jigou de zhishi” (“Directive on the immediate establishment of *laojiao* institutions in provinces and cities”) (10 January 1956), cited in Xia Zongsu, “Laodong jiaoyang xingzhi bianxi” (“An analysis on the nature of *laojiao*”), in Xia Zongsu, *Research on Reform of the Laojiao System*, ch. 3, p. 59.

effectively be distinguished from imprisonment. Both were built in remote rural areas and offenders were required to reclaim land and work on farmland under the close supervision of the police.<sup>12</sup> Notwithstanding the CCP's efforts to distinguish *laojiao* from criminal punishment, the *laojiao* population and convicted criminal offenders were incarcerated and treated in the same way.<sup>13</sup> The history of *laojiao* therefore reflects the historical development of criminal punishment in China in general.<sup>14</sup>

The year 1957 was important in the history of *laojiao*. The State Council enacted the Decision on *Laojiao* (1957 Decision),<sup>15</sup> which remains the principal authorizing legal document. The 1957 Decision was based on two recommendations made by the Ministry of Public Security (MPS) to the CCP Central Committee to enlarge the scope of *laojiao*,<sup>16</sup> and both laid the foundation for *laojiao* and clarified its scope of application. The State Council Decision coincided with one of the largest political campaigns in the history of the People's Republic of China (PRC), the anti-rightist campaign, which used *laojiao* extensively against intellectuals who aired opinions critical of the CCP. The 1957 Decision expanded the categories of eligible offenders to those who, without proper employment, repeatedly engaged in minor offences; minor counter-revolutionaries; former state employees who were expelled and could not make a living; and employees who did not obey job assignments and repeatedly caused disturbance at work places.<sup>17</sup>

In addition to these four types of persons, the MPS, with the endorsement of the CCP Central Committee, extended *laojiao* to habitual offenders who were released from imprisonment and who had committed "activities endangering public order," and prostitutes who refused to mend their ways after repeated admonition or who were homeless.<sup>18</sup>

Under the 1957 Decision and police internal rules, the focus was shifting from suppressing the regime's actual or perceived enemies to disciplining the work force and creating docile workers. The Decision clearly provided that *laojiao*, as a "mechanism for employment arrangement" is "to reform those persons with the capacity to labour, who loaf, violate law and discipline, or who do not engage in proper employment,

12. Xia Zongsu, "The development and historical achievement of the *laojiao* system," *Fanzui yu gaizao yanjiu*, No. 1 (2001), p. 15.

13. Guo Jianan, *et al.*, "Historical review," p. 6.

14. Wang Mingdi and Guo Jianan (eds.), *Suiyue mingji: xin Zhongguo jianyu gongzuo wushinian* (*History Remembers: 50 Years of Prison Work in New China*) (Beijing: Law Press, 2000).

15. State Council, "Guowuyuan guanyu laodong jiaoyang wenti de jue ding" ("Decision of the State Council concerning the question of *laojiao*") (3 August 1957) (hereafter "the 1957 Decision"), in Editorial Committee of the Collection of Laws on Public Security in the People's Republic of China (Editorial Committee), *Zhonghua renmin gongheguo falü quanshu* (*Collection of Laws on Public Security*) (Jilin: Jilin People's Press, 1995), pp. 1321–22.

16. Guo Jianan, *et al.*, "Historical review," pp. 5–6.

17. The 1957 Decision, s. 1, as translated in Edward J. Epstein (ed.), "Legal documents and materials on administrative detention in the People's Republic of China," *Chinese Law & Government*, Vol. 27, No. 5 (September–October 1994), p. 61.

18. Si Jiao, "Zhongguo laodong jiaoyang gongzuo de licheng" ("History of *laojiao* work in China"), *Fanzui yu gaizao yanjiu*, Vol. 110, No. 10 (1998), p. 6.

into self-supporting new persons.”<sup>19</sup> While the target population might have shifted from hidden counterrevolutionaries in 1955 to idlers in 1957, the underlying rationale remained to remove them from the rest of the society and force them to live by their own labour.<sup>20</sup> As an editorial in *Renmin ribao* (*People’s Daily*) stated at the time, the anti-socialist and anti-social elements would be forced both to make a living and to reform themselves through their own labour.<sup>21</sup>

Nevertheless, *laojiao* continued to target political offenders. The enactment of the 1957 Decision was immediately followed by the launching of the anti-rightist campaign. This campaign targeted intellectuals in academic institutions in particular, and it is estimated that more than half a million individuals, mostly intellectuals, were purged. Again, people were subjected to different treatment according to the severity of their “mistakes,” with *laojiao* as the most severe form of punishment.<sup>22</sup>

Statistics from the Shandong First *Laojiao* Institution reflected the mixture of offenders in *laojiao* from 1957 to 1960, as shown in Table 1. Given the high percentage of rightists among the new *laojiao* population, it is not surprising that 10,351 offenders (or 62 per cent) were employed before the penalty was applied, and were comparatively old: 12,138

**Table 1: Inmates in Shandong First *Laojiao* Institution 1957–1960**

<i>Categories of offenders</i>	<i>No. of offenders</i>	<i>Percentage</i>
Political offenders	9,858	59
Counterrevolutionaries	4,878	–
Rightists	2,517	–
Reactionaries	392	–
Ordinary offenders	5,479	33
Theft	3,346	–
Deception	195	–
Hooliganism	1,938	–
Others	1,358	8
Total offenders	16,695	100

*Note:*

All political offenders were incarcerated in the Shandong First *Laojiao* Institution. Since the total *laojiao* population was 22,784 at that time in the province, the percentage of political offenders in the total *laojiao* population was 44%. Ministry of Justice Project on the Nature of *laojiao*, “Lun laodong jiaoyang de xingzhi wenti” (“On the nature of *laojiao*”), *Fanzui yu gaizao yanjiu*, Vol. 23, No. 1 (1990), p. 11.

19. The 1957 Decision.

20. Xia Zongsu, “An analysis of the nature of *laojiao*”; Chen Ruihua, “Laodong jiaoyang de lishi kaocha yu fansi” (“Historical exploration and reflection of *laojiao*”), in Chu, Chen and Zhang, *Rationality and Order*, p. 2.

21. Editorial, “Weishenme yao shixing laodong jiaoyang” (“Why is *laojiao* necessary”), *Renmin ribao* (*People’s Daily*), 4 August 1957.

22. Chen Ruihua, “Historical exploration.”

(or 70.3 per cent) were over the age of 26 (5,503 between 26 and 35 and 5,635 over 36).<sup>23</sup>

The expanded use of *laojiao* and the anti-rightist campaign contributed to the increasing abuse of *laojiao*. *Laojiao* institutions were extended to the local level of government. In rural areas, for example, counties and communes started to set up their own *laojiao* institutions to incarcerate people the local authorities regarded as deviants, loafers in particular.<sup>24</sup> Many of the efforts were results of local initiatives (*minban*), without government authorization or sponsorship.<sup>25</sup> The expansion of *laojiao* must be seen in the larger context of socio-economic change during the Great Leap Forward, which affected not only industry and agriculture but also the penal sector. In Xinjian Uighur Autonomous Region, for example, there were only 12 penal institutions in 1952, but 152 by the end of 1958.<sup>26</sup>

Industrial enterprises also abused the system by sending unwanted workers to *laojiao*, and effectively made *laojiao* a place where factories could dump undisciplined workers.<sup>27</sup> Because it was not regarded as a punishment, applications could be made by government departments, employers, heads of family or guardians.<sup>28</sup>

The period of incarceration for *laojiao* was indefinite, and inmates naturally accumulated in the institutions. In Anhui province, for example, about 14,000 persons were incarcerated in *laojiao* institutions in 1957 and the number soared to 51,000 by the end of 1960.<sup>29</sup> At the national level, the *laojiao* population reached 499,523.<sup>30</sup>

*A period of caution and decline.* Abuse of *laojiao* following the anti-rightist movement appears to have reached such a level that it became impossible to manage the system. As a result, in the early 1960s the government started to control the expansion of *laojiao*. In 1961, the MPS, with the approval of the CCP Central Committee, passed new rules to limit the use of *laojiao*, prohibiting its use for workers who merely refused to work.<sup>31</sup> *Laojiao* was no longer designed to prepare

23. MoJ Project on the Nature of *Laojiao*, "Lun laodong jiaoyang de xingzhi wenti" ("On the nature of *laojiao*"), *Fanzui yu gaizao yanjiu*, Vol. 23, No. 1 (1990), p. 9. This is said to be the only local *laojiao* data known to the MoJ researchers.

24. For a detailed description of a rural *laojiao* institution, see "How the Chuangtzu'ing (Kansu) Cooperative carries out experiments in labor custody [rehabilitation through labor]," *Kansu Daily*, 20 July 1958, in Jerome Cohen (ed.) *The Criminal Process in the People's Republic of China 1949–1963: An Introduction* (Cambridge, MA: Harvard University Press, 1968), pp. 251–54.

25. Xinjiang *Laojiao* Bureau, "Xinjiang *laojiao* gongzuo de lichang" ("History of *laojiao* work in Xinjiang"), *Fanzui yu gaizao yanjiu*, Vol. 125, No. 1 (2000), pp. 21–24.

26. Prison Administration of XUAR, "The design and adjustment of prisons in XUAR," *Fanzui yu gaizao yanjiu*, No. 3 (2001), p. 40.

27. MoJ Project on the Nature of *Laojiao*, "On the nature of *laojiao*," p. 12.

28. The 1957 Decision, s. 3.

29. Anhui *Laojiao* Administration, "Reflections and perspectives on *laojiao* work in Anhui province," *Fanzui yu gaizao yanjiu*, No. 9 (1999), p. 17.

30. Guo Jianan, *et al.*, "Historical review," p. 9.

31. MPS, "Guanyu dangqian gong'an gongzuo shi ge juti zhengce wenti de buchong guiding" ("Supplementary measures on the ten concrete policy questions in contemporary

“undesirables” for employment and to provide social welfare. In particular, the new rules were aimed at restraining government departments or enterprises from abusing the system by sending undisciplined or otherwise unwanted workers to *laojiao* institutions. It was now required that any government department, institute or factory that sent one of its employees to *laojiao* was obliged to keep the employee’s position open, pay the salary during the period of incarceration and take back that individual as an employee after release. As Ministry of Justice (MoJ) researchers noted, the restrictions significantly reduced the number of *laojiao* offenders coming from government institutions.<sup>32</sup> Procedurally, the MPS expressly prohibited the establishment of any *laojiao* institutions at or below the county level.<sup>33</sup>

Another significant development limited the term of *laojiao* to between two and three years. The decision regarding the term of punishment was announced only to the offenders and their families, not publicly. Offenders with good performance during incarceration might have their term shortened while those with unsatisfactory performance might have it extended. The police continued to be responsible for job placement for those released from *laojiao*, and to provide employment opportunities within the *laojiao* institutions where no job opportunities were available and where the offenders agreed.<sup>34</sup> The combined effect of the normative change and the winding up of the anti-rightist campaign naturally led to a decline in the intake number, the *laojiao* population and *laojiao* institutions.<sup>35</sup> The percentage of political offenders declined, accompanied by a surge of inmates who had committed ordinary criminal offences. The type of offenders in the Shandong First *Laojiao* Institution from 1961 to 1965 reflected the result of the policy changes (see Table 2).<sup>36</sup>

**Table 2: Inmates in Shandong First *Laojiao* Institution 1961–1965**

<i>Categories of offenders</i>	<i>No. of offenders</i>	<i>Percentage</i>
Political offenders	821	11
Ordinary offenders	5,763	77.4
Others	855	11.6
Total Offenders	7,439	100

*footnote continued*

public security work”) (20 April 1961), cited in Yun Shancheng, “Laodong jiaoyang lifa chuyi” (“Preliminary analysis of *laojiao* legislation”), *Fanzui yu gaizao yanjiu*, Vol. 131, No. 7 (2000), p. 24. See also Guo Jianan, *et al.*, “Historical review.”

32. MoJ Project on the Nature of *Laojiao*, “On the nature of *laojiao*,” p. 12.

33. Si Jiao, “History of *laojiao* work in China,” p. 7.

34. According to my interviews with *laojiao* offenders in Changsha in 2003, they were often not released in time.

35. Xinjiang *Laojiao* Bureau, “History of *laojiao* work in Xinjiang.”

36. MoJ Project on the Nature of *Laojiao*, “On the nature of *laojiao*,” p. 12.

The information available on the operation of *laojiao* during the Cultural Revolution tends to claim that it was in a status of near suspension, largely because its rehabilitation ideology was criticized as being soft on the enemy or even “aiding the enemy.”<sup>37</sup> By 1969, there were only about 5,000 *laojiao* inmates left in the whole country, and redundant *laojiao* officers had to be transferred to other institutions. *Laojiao* only entered into a new era after 1978.<sup>38</sup>

Studies on local *laojiao* portray a more complicated picture, although these studies confirm the overall declining use of *laojiao* during the Cultural Revolution. In 1971, the central government started to restore order in Chinese cities. One of the measures taken was to restore *laojiao*. In Tianjin city, for example, the government enacted a provisional rule on *laojiao*, converting a farm into its No. 1 *Laojiao* Institution in 1971, and a cadre-training school into its No. 2 *Laojiao* Institution in 1972.<sup>39</sup>

*A period of restoration, growth and rationalization.* The first official sign of the restoration of *laojiao* was an enactment of the Standing Committee of the National People’s Congress (NPC) in 1979 approving the State Council Supplementary Rules on *Laojiao*.<sup>40</sup> These rules provided that:

- a. A *laojiao* administration was to be set up in governments at the provincial level or governments of large or medium sized cities;
- b. The *laojiao* administration was to be composed of members from the civil administration, police and labour department;
- c. *Laojiao* was to apply to people from “large and medium sized cities”; and
- d. The time of incarceration was limited to three years, with a possible one-year extension.

In 1980, a State Council Notice incorporated both “forced labour”<sup>41</sup> and “shelter and interrogation”<sup>42</sup> into *laojiao*, introducing a preventative

37. For a similar attack on the imprisonment during the same period, see Wang Mingdi and Guo Jianan, *History Remembers*.

38. MoJ Project on the Nature of *Laojiao*, “On the nature of *laojiao*,” p. 12.

39. Tianjin *Laojiao* Administration, “The history of *laojiao* work in Tianjin city,” *Fanzui yu gaizao yanjiu*, No. 2 (1999), p. 9.

40. National People’s Congress Standing Committee, “Pizhun ‘Guowuyuan guanyu laodong jiaoyang de buchong guiding’ de jueyi” (“Decision approving the State Council supplementary rules on *laojiao*”) (29 November 1979).

41. This was created by the police in the early 1960s to deal with minor offenders. Instead of sending a minor offender to a *laojiao* institution, a police station might set up a separate forced labour brigade, in which suspects were gathered to work. China *Laogai* Research Committee, *Zhongguo laogaixue da cidian (Dictionary of Laogai)* (Beijing: Social Science Literature Press, 1993), p. 674.

42. This began as a police initiative for the control of urban transients. By the mid-1970s, the police declared that it would become a crime control mechanism involving compulsory examination of certain suspects. The police resorted to shelter and interrogation to circumvent regular criminal procedures. It was abolished in 1996 when the Criminal Procedure Law (CPL) was amended. See K C Wong, “Police powers and control in the People’s Republic of China: the history of *shoushen*,” *Columbia Journal of Asian Law*, Vol. 10 (1996), p. 367–390.



element into the punitive instrument to apply to persons who were suspected of having committed certain offences.<sup>43</sup> In 1982, the MPS further shifted the focus of *laojiao* to offenders who committed minor criminal offences. As a result, its punitive nature became more expressed: *laojiao* was to provide a compulsory measure of education and reform (as in the 1957 Decision), and a measure to handle “contradictions among the people.” It was no longer regarded as “a measure for employment arrangement.”

The government used *laojiao* to target a new group of offenders. The figures from Shandong First *Laojiao* Institution are again illustrative of this trend. In 1980, there were 1,215 offenders. Only one was classified as a political offender and vast majority (90 per cent) had committed the offences of theft, fighting in public or deception. The new *laojiao* population was also much younger. Among these 1,215 offenders, 917 were between 17 and 25, 233 were between 25 and 36 and only 36 were over the age of 36. Finally, the vast majority of the *laojiao* population was of urban residence: only 37 out of the 1,215 were classified as peasants.<sup>44</sup>

Yet despite the change toward using *laojiao* as a punitive measure against juvenile and young offenders, the ideology of penal welfarism was not abandoned in the early 1980s. The rehabilitative ideology was even reinforced precisely because the new *laojiao* offenders were from a working class background, and could and should be re-educated and saved. It was indeed a shock to the CCP leaders that their prisons were not filled with their “enemy” but with their own people. Given the change of the target population, from 1980 to 1982 the CCP initiated a series of rehabilitative policies and programmes in both the reform through labour and *laojiao* institutions to educate, reform and rescue juvenile offenders. One of most popular policies was the “three likes.”<sup>45</sup>

Since 1983, the government has also rationalized the management of *laojiao* by creating institutional checks and balances. The police came out of the Cultural Revolution as an extremely powerful institution, and the central government was determined to weaken that power.<sup>46</sup> In May 1983,

43. State Council, “Guanyu jiang qiangzhi laodong he shourong shencha liangxiang cuoshi tongyi yu laodong jiaoyang de tongzhi” (“Notice on incorporation of two measures ‘compulsory labour’ and ‘shelter and investigation’ into *laojiao*”) (29 February 1980) (on file with the author).

44. MoJ Project on the Nature of *Laojiao*, “On the nature of *laojiao*,” p. 13.

45. In re-educating juvenile offenders, the police officers should treat them like parents treating their children, like doctors treating their patients, and like teachers treating their students. See Zhang Wenbang and Shen Jinchu, “Ba jianyu bancheng tishu xuexiao” (“Turning prisons into special schools”), in Yang and Zhang, *Research on the Prison System*, ch. 11.

46. Fu Hualing, “After dictatorship: the nature and function of the police in post-Mao China,” in Menachem Amir and Stanley Einstein (eds.), *Policing, Security and Democracy: Theory and Practice* (Huntville, Texas: Office of International Criminal Justice, 2001), pp. 259-284.

penal institutions, including *laojiao*, were separated from the police and transferred to the MoJ. The police continued to be in charge of *laojiao* intake,<sup>47</sup> but the operation of the institutions became the responsibility of MoJ or its subordinate departments at the provincial or sub-provincial levels.<sup>48</sup> Another important institutional change occurred in 1988 when *laojiao* was finally separated from the prison administration at the provincial level.<sup>49</sup> This separation gave *laojiao* a distinct identity for the first time, which was enhanced when the MoJ initiated a series of rehabilitative policies and programmes to distinguish *laojiao* from criminal punishment.

There were indications in the late 1990s that the government's determination to reform *laojiao* was substantially a result of domestic and international pressure. China's decision to participate in the international community of human rights (indicated by its accession to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) has also invited more international scrutiny of its human rights performance. China signed an agreement with the UN Human Rights Commission on improving human rights, with a focus on the future of *laojiao*.

*The lao jiao expansion.* The explosive growth of legislation in China since 1979 has included a steady increase in eligible *laojiao* offences. Throughout the 1980s, various law-making bodies at the central and regional levels have authorized the further use of *laojiao* for numerous offences, including: contacting intelligence agencies in Taiwan (1981); unauthorized removal of IUD for profit (1983); unlawful cohabitation by a married person (1983); membership in cults or secret societies (1983); illegal deforestation (1985); repeated ticket scalping (1986); repeated prostitution and gambling (1986); publishing obscene and indecent materials (1986); unlawful purchase, smuggling or selling gold (1987); barricading railways (1989); and drug-taking (1991).<sup>50</sup> Apparently none of the latter regulations, rules or

47. This police power is delegated by the provincial *laojiao* administrations. MPS and MoJ, "Guanyu laodong jiaoyang he zhuxiao lao jiao renyuan chengshi hukou wenti de tongzhi" ("Notice on *laojiao* and the cancellation of urban registration of *laojiao* offenders") (26 March 1984), in Editorial Committee, *Collection of Laws on Public Security*, p. 1331.

48. This power sharing arrangement was made in a 1984 Notice jointly issued by the MPS and MoJ. Cited in Hu Yuehong, "Laodong jiaoyang shenpi zhidu gaige shexiang" ("Reform proposal of *laojiao* approval"), *Fanzui yu gaizao yanjiu*, Vol. 130, No. 6 (2000), pp. 25–26.

49. Xia Zongsu, "Laodong jiaoyang zhidu de lishi kaocha" ("A historical review of the *laojiao* system"), in Xia Zongsu, *Research on Reform of the Laojiao System*, pp. 22–23.

50. Liu Mei, "Laodong jiaoyang shiyong tiaojian" ("Conditions applying to *laojiao*"), in Xia Zongsu, *Research on Reform of the Laojiao System*, ch. 8. For the text of a provincial *laojiao* rule, see Chen Xinliang, "Laodong jiaoyang zhidu: yi ge wenben de yanjiu" ("The *laojiao* system: a textual analysis"), in Chu, Chen and Zhang, *Rationality and Order*, ch. 12.

notices overruled or replaced previous ones. To aggravate the situation, regional authorities also enacted local rules to expand the scope of offences eligible for *laojiao*. One province, for example, extended it to dumping rubbish on roads and even to transients without proper identification.<sup>51</sup>

The *laojiao* regulations accumulated and the categories of eligible offences and offenders naturally increased. Although there have been different estimates of the number of offences that are eligible for *laojiao*, the consensus among police researchers and officers is that *laojiao* is elastic enough to include most, if not all, offences. Given the lack of external accountability, nothing stops the police from imposing *laojiao* for an offence, even without clear legal authorization.<sup>52</sup> In 2002, the MPS enacted a new rule to regulate and rationalize the police use of *laojiao*.<sup>53</sup> Yet the new rule continues the application of *laojiao* to whatever eligible offences that have been authorized by laws, regulations and policies.

The geographical areas in which *laojiao* applies have also expanded once more. When it was created, *laojiao* applied only to people holding government posts in the cities. From 1957, it began to be applied in both cities and rural areas. In the late 1970s, *laojiao* was again limited to cities. But since then, it has gradually been extended to rural areas. *Laojiao* is generally applicable to all people, regardless of their residential status, who have committed prostitution, pornography and gambling related offences, all drug addicts, and habitual prostitutes. It is also applicable to “rural ruffians, hooligans and village rogues.”<sup>54</sup> There is no geographic limitation in the 2002 MPS rule on *laojiao*.<sup>55</sup> The annual *laojiao* population as a result has also expanded throughout the 1980s and 1990s (see Table 3).

51. See Liu Zhongfa, “Laodong jiaoyang shiyong duixiang zhi lifa pingxi yu lifa wanshan” (“Legislative comments on and improvement to the eligible *laojiao* targets”), *Fujian gong’an gaodeng zhuanke xuexiao xuebao: shehui gongong anquan yanjiu* (*Journal of the Fujian Public Security College: Social and Public Safety Research*), Vol. 14, No. 4 (2000), pp. 37–41. Of course, police in each province have made their own internal rules to guide the application of *laojiao*.

52. Zhang Xiaochuan, “Qiantan laodong jiaoyang de xianzhuang ji wanshan” (“Current status and improvement of *laojiao*”), *Hunan gong’an gaodeng zhuanke xuexiao xuebao* (*Journal of Hunan Public Security College*), Vol. 14, No. 1 (2001), p. 87. Interviews with a police officer (Chengdu, 2003).

53. MPS, “Gong’an jiguan banli laodong jiaoyang anjian guiding” (“Measures regarding the handling of *laojiao* cases by public security organs”) (12 April 2002) (hereafter “the 2002 Measures”) (on file with the author).

54. But *laojiao* is not applicable to “foreigners, overseas Chinese and compatriots from Hong Kong, Macau and Taiwan.” MPS, “Guanyu dui waiguoren he huaqiao, Gang Ao Tai tongbao bude shixing shourong shengcha he laodong jiaoyang tongzhi” (“Notice on prohibiting the use of shelter and interrogation and *laojiao* on foreigners, overseas Chinese, and compatriots from Hong Kong, Macau and Taiwan”) (27 May 1992), in Editorial Committee, *Collection of Laws on Public Security*, p. 1381. This prohibition is confirmed in the new 2002 Measures. The 2002 Measures, s. 12.

55. The new MPS rule does impose limitations on the use of *laojiao* on juveniles under 16 and first-time offenders. The 2002 Measures, ss. 9, 10 and 12.

Table 3: *Laojiao* Population from 1958 to 1999

Year	No. of <i>laojiao</i> institutions	No. of inmates	No. of newly admitted inmates
1958	–	355,777	–
1959	–	435,325	–
1960	–	499,523	–
1961	–	396,133	–
1962	–	186,765	–
1963	–	143,373	–
1964	–	100,566	–
1965	–	64,453	–
1966	–	39,616	–
1970	–	4,798	–
1971	–	6,623	–
1972	–	13,203	–
1976	–	37,083	–
1978	–	70,233	–
1983	–	220,000	–
1984	242	204,170	86,874
1985	245	163,574	54,756
1986	252	129,330	74,306
1987	237	139,412	80,875
1988	224	152,939	89,571
1989	232	165,071	99,997
1990	238	173,362	106,832
1991	238	144,585	73,331
1992	256	132,209	78,721
1993	265	153,526	99,693
1994	265	191,635	130,618
1995	283	206,888	133,000
1997	–	300,000	144,000
1998	–	300,000	–
1999	310	310,000	–

*Sources:*

1957–78: Guo Jiangan, *et al.*, “Zhongguo laodong jiaoyang zhidu de lishi kaocha” (“Historical review of the *laojiao* system in China”), *Fanzui yu gaizao yanjiu*, Vol. 168, No. 8 (2003), p. 3; 1983–84: Editorial Committee of the Yearbook of Judicial Administration of China, *Zhongguo sifa xingzheng nianjian 1995 (Yearbook of Judicial Administration in China 1995)* (Beijing: Law Press, 1996); 1995–2000: Law Yearbook of China Editorial Committee, *Zhongguo falü nianjian (Law Yearbook of China)* (Beijing: Press of Law Yearbook of China, 1996–2000). Also, 1999: *Zhongguo laodong jiaoyang (Chinese lao jiao)*, No. 3 (1999), p. 40, cited in Chen Zexian, *et al.*, “Guanyu gaige laodong jiaoyang zhidu de yanjiu baogao” (“Research report on improving *laojiao* system”), in Chu, Chen and Zhang, *Rationality and Order*, p. 332.

### *The Functions of Laojiao*

*Laojiao as crime control.* *Laojiao* has supplemented criminal sanctions by punishing minor offences, the consequences or the circumstances of which are not serious enough to trigger the criminal law. First, *laojiao* targets migrants, especially rural migrants, for minor violations of the law. Rural migrants commit the majority of the crimes in Chinese cities and have become an easy target for severe punishment. Secondly, *laojiao* targets habitual minor offenders.

The problem of targeting rural migrants in the city is aggravated by the extension of *laojiao* to rural areas. As mentioned above, since the mid-1980s, the law began to expand the use of *laojiao* to certain limited offences committed in rural areas, largely in response to the increase in crimes committed by rural populations in both urban and rural areas. The MPS has been cautious not to extend *laojiao* to rural areas and has actually turned down such requests from provincial police.<sup>56</sup> Since the late 1990s, however, *laojiao* no longer has any serious geographic limit. As a result, the rural population in *laojiao* institutions has soared, accounting for as much as 70 per cent of the total.

Secondly, *laojiao* also serves a crime control function by punishing habitual minor offenders, that is, offenders with a record of previous criminal convictions, *laojiao* or other administrative penalties. Such a record can prove to be crucial. A minor offence normally results in a fine or other lesser administrative penalty if committed by a person without a prior record, but if committed by a person with a record it may lead to a lengthy *laojiao* sanction. Officially, the average national percentage of repeat offenders in *laojiao* institutions is about 30 per cent; although it could be 50 or 60 per cent in some provinces.<sup>57</sup> Some local studies put habitual offenders as high as 75 per cent.<sup>58</sup>

Moreover, *laojiao* exerts a broader control by punishing harmful or immoral acts. For example, it enforces family planning by punishing doctors who remove IUDs without authorization; it reinforces certain family values by punishing adultery; it maintains order in penal institutions by punishing inmates who maim themselves; it maintains railway transportation by punishing people who walk or sit on railways or

56. For example, the MPS declined a request from Hainan police to impose *laojiao* on rural residents who repeatedly commit minor offences in rural areas. Legal Department of MPS, "Dui Hainansheng gonganting 'Guanyu jiaju, nongcun, duoci zuo'an, shangbugou zhuijiu xingshi zeren de weifa renyuan keyi shourong laodong jiaoyang de qingshi' de pufu" ("Reply to 'request by Hainan Police Department regarding the use of *laojiao* on persons of rural residents who have repeatedly committed offences which do not warrant criminal punishment'") (7 June 1990), in Editorial Committee, *Collection of Laws on Public Security*, p. 1351.

57. Ma Jianjun, "Laodong jiaoyang shengchan zhidu" ("*Laojiao* production system"), in Xia Zongsu, *Research on Reform of the Laojiao System*, ch. 14.

58. Yi Yongcai, Wang Yuzhong and Zhang Tong, "Dui laodong jiaoyang qixian de jidian sikao" ("Several considerations on the terms of *laojiao*"), *Renmin gong'an* (*People's Public Security*), No. 23 (1999), pp. 42–43. Liu Xilin, Yang Haichen and Lu Erfeng, "'Duojingong' laojiao renyuan zengzhang taishi fenxi yu sikao" ("An analysis and reflection on increase of 'multiple entry' *laojiao* population"), *Qingshaonian fazui wenti* (*Issues of Juvenile Delinquency*), No. 2 (2000), pp. 18–21.

otherwise interrupt the smooth passage of trains; and it punishes laid-off employees who repeatedly petition government officials in disruptive ways. In sum, it is used as a key device to maintain social order and stability.<sup>59</sup>

*Laojiao* targets primarily male offenders. Over the years, the absolute number and the percentage of females in the *laojiao* population have declined. Before 1999, most were incarcerated for prostitution, which had replaced fighting in public and theft which accounted for the highest number in the late 1970s and early 1980s.<sup>60</sup> An important change occurred in 1999 when the police took over the re-education of prostitutes by setting up women's shelters and education centres in large and medium sized cities. As a result prostitutes were diverted to the police-run shelters, and the percentage of prostitutes in *laojiao* declined.<sup>61</sup> After this, women in *laojiao* tended to be those who organized prostitution rather than those who were directly engaging in it.<sup>62</sup>

*Laojiao as a drug control measure.* *Laojiao* has been one of the principal ways of dealing with China's serious drug problem.<sup>63</sup> The 1990 Decision on the Prohibition of Drugs passed by the NPC Standing Committee authorizes the use of *laojiao* for addicts who continue to use drugs after being subjected to the police-run compulsory drug treatment programme. Since 1990, the number of drug addicts in *laojiao* institutions and their percentage in the total inmates have soared. According to a MoJ study of 21 provinces in 1997, drug users accounted for about 84 per cent of the *laojiao* population in Gansu, 71 per cent in Yunnan, 65 per cent in Qinghai, 63 per cent in Inner Mongolia, 59 per cent in Shanxi, 42 per cent in Guizhou and Xinjiang, 36 per cent in Sichuan and 30 per cent in Guangdong.<sup>64</sup>

The police run a compulsory drug treatment programme. Under the 1995 State Council Measures on Compulsory Drug Treatment, they set up treatment centres and are authorized to detain an addict for three to six months, with a possible extension to one year. By 2000, there were 746

59. Zhang Shiqi and Li Ping (eds.), *Xingshi zhixing, laodong gaizao, laodong jiaoyang* (*Criminal Enforcement, Laogai and Laojiao*) (Shenyang: Liaoning University Press, 1999).

60. Dong Guoqing, "Nü lao jiao renyuan qingkuang de bianhua gei jiaoyu gaizao dailai de xinwenti" ("New problems caused by the female *laojiao* population to education and reform"), *Fanzui yu gaizao yanjiu*, No. 4 (1988), pp. 47–49.

61. Fu Yiaojian, "Shichang jingji yu maiyin weifa fanzui xianxiang" ("Market economy and the unlawful act of prostitution"), *Fanzui yu gaizao yanjiu*, Vol. 135, No. 11 (2000), pp. 10–12.

62. Wang Lirong, "Shi lishi qingsuan, haishi fanshi zhuanhuan: zaitan laodong jiaoyang de zhidu mingyun" ("Historical rectification or normative transformation?"), in Chu, Chen and Zhang, *Rationality and Order*, p. 253.

63. According to the police, officially there were 850,000 registered drug addicts in China by the end of 2000. "Zuixiao de yinjunzi nianjin shisui, dupin zhengzai zoujin qingshaonian" ("The youngest drug addict is only ten years old, drugs become closer to teenagers"), Xinhua News Agency, 25 June 2001, available on <http://www.china.org.cn/chinese/kuaixun/41021.htm>.

64. Guo Jianan and Li Rongwen (eds.), *Xidu weifa xingwei de yufang yu jiaochi* (*Prevention and Treatment of Drug Abuse*) (Beijing: Law Press, 2000), p. 331.

such centres in China, which have treated more than 224,000 drug users.<sup>65</sup> The addicts (or normally their family) are required to pay for the cost involved,<sup>66</sup> although a large number of addicts cannot afford the fee.<sup>67</sup> However the police compulsory treatment is generally ineffective and the reported relapse rate is normally above 90 per cent.

Under Chinese law, a person who “re-takes” a dangerous drug can be sent for *laojiao* for further treatment. This is normally interpreted as taking drugs after being treated by the police. Some *laojiao* institutions are designed exclusively for drug users. For example, the *Laojiao* Drug Treatment Centre in Chongqing city holds more than 2,000 drug addicts.<sup>68</sup> The institution was initially the drug treatment unit of another *laojiao* institution, and became independent in 1998. By 2001, it had treated more than 6,500 addicts.<sup>69</sup> Others are mixed institutions that hold both drug addicts and other offenders. By 2000, there were 168 *laojiao* institutions or brigades for drug treatment. In 1999, there were 120,000 drug addicts among China’s *laojiao* populations.<sup>70</sup>

The use of *laojiao* on drug addicts presents difficult moral and legal issues. In Chinese law, the mere use of dangerous drugs is not a criminal offence, and drug addicts are regarded more as victims of China’s growing drug problem than its perpetrators. The main justification for lengthy incarceration is that it takes a minimum of three years to eliminate psychological dependence on drugs. Since the three-months-long police compulsory treatment is universally deemed to be a failure, the MoJ today is making the case that it takes years to toughen a drug addict psychologically against the temptation of drugs.<sup>71</sup> The *laojiao* is regarded as the best solution.

*Laojiao as investigative detention.* *Laojiao* is also used to facilitate police investigations by prolonging detention beyond the period allowed by law. Where a person is suspected of having committed an offence, the police can send the person to *laojiao* for further investigation. Only after the facts are clarified and sufficient evidence gathered would the police take further action.

*Laojiao as investigative detention* has recently caused alarm among Chinese academic lawyers, who attribute its recent growth to the amendment in the Criminal Procedure Law (CPL) in 1996 and the enhanced

65. Information Office of the State Council of the People’s Republic of China, *Narcotics Control in China* (June 2000), <http://www.china.org.cn/e-white/1/index.htm>.

66. State Council, Compulsory Drug Treatment Measures, Art. 15. The actual costs vary from one place to another. In Changsha, the capital of Hunan province, the cost is about 4,000 *yuan* for three months. In a county in Hunan province, the cost was 2,000 *yuan* for three months.

67. Cui Min (ed.), *Dupin fanzui: fazhan qushi yu ezhi duice (Narcotic Crimes: Trend of Development and Strategies of Prohibition)* (Beijing: Police Education Press, 1999), p. 460.

68. Deng Li, “Xiduzhe zai zheli huode xinsheng” (“Drug addicts are reborn here”), *Zhongguo sifa*, No. 5 (2000), pp. 26–27.

69. Li Zhengkuan, “Jindu buru shiming” (“To fulfil the mission of drug prohibition”), *Zhongguo sifa*, No. 3 (2001), pp. 14–15.

70. State Council, *Narcotics Control in China*.

71. Guo and Li, *Prevention and Treatment*, p. 316.

evidential requirement in the criminal process. The reasoning goes as follows. Where there is a higher and more rigid evidential requirement because of the CPL reform, this will have an impact on all the criminal justice institutions. When a court gets tougher on evidence, a prosecutor will feel the pressure and in turn start to be more demanding of the police. The police, for one reason or another, find it difficult to meet the new legal requirements. A more rigorous scrutiny of evidence by the prosecution and the courts in the formal criminal process is forcing the police to seek alternatives in administrative penalties, including *laojiao*.<sup>72</sup>

Therefore, the improvement in case quality is fictitious and distorted. The quality of cases coming out of the criminal process may have improved because of the new requirement, but this is possibly because the prosecution has cherry-picked only the solid cases for criminal prosecution. Cases without sufficient evidence are either barred from entering the criminal process, or diverted from the formal process. The police and prosecution are working to “quarantine” the criminal process from administrative punishment so that the latter is prevented from “contaminating” the former. The most direct consequence of the CPL reform is that the Chinese police and prosecution are becoming more cautious about sloppy investigation and hasty prosecution, leaving badly prepared cases to other less visible mechanisms of control.

Of course, *laojiao* had served as an investigative tool in the past. The 1980 State Council Notice expressly provided that it was to be used to detain those who were suspected of having committed crimes. Zhang Xianglu, a *laojiao* officer from Qingdao Bureau of Justice, observed the informal practice between the police and the *laojiao* institution prior to 1996: “Where a principal offender in a criminal gang escaped and it is not possible to clarify the facts of a crime and determine criminal liability, [the accessories] would be sent to the *laojiao* on the basis of facts known [to the police]. The criminal liability would be further pursued once the principal is caught. In this type of *laojiao* case, the police would orally inform a *laojiao* institution [of the particular circumstance] when they send an offender to the institution.”<sup>73</sup>

The percentage of offenders serving *laojiao* as investigative detention is unknown because the police no longer inform *laojiao* institutions of such cases. According to sporadic statistics from *laojiao* institutions, the percentage is substantial and increasing. The national average is said to be 5 to 10 per cent. It was about 20 per cent in Guangdong province and as high as 37 per cent in Shandong province.<sup>74</sup>

72. Li Ling and Zhai Xiaomin, “Fuan lao jiao renyuan chansheng de yuanyin tezhang ji duice” (“The cause and characteristics of persons under investigative detention in *laojiao* and counter-measures”), *Fanzui yu gaizao yanjiu*, Vol. 104, No. 4 (1998), p. 19. Interviews with a police officer (Chengdu, 2003) and a procurator (Beijing, 2002).

73. Gong Xianzeng and Zhang Xianglu, “Dui ‘fu’an lao jiao’ wenti de tiaocha sikao” (“Reflection on the investigation of the problem of ‘having committed other crimes prior to the *laojiao*’”), *Zhongguo sifa*, No. 6 (2000), p. 18.

74. Ma Jianjun, “*Laojiao* production system.”



The MPS now expressly prohibits the use of *laojiao* to prolong the detention of criminal suspects.<sup>75</sup> Nevertheless, *laojiao* as investigative detention is likely to continue principally because the police can still use it *after* a procuratorate decides not to prosecute a suspect and *after* a court decides to exempt a defendant from criminal punishment on the ground that the consequences of the case are too minor.<sup>76</sup> Police can thus legitimately use *laojiao* in cases that are deemed as weak and insufficient by a procuratorate or a court.

*Laojiao as political control.* The percentage of political offenders under *laojiao* declined steadily from the 1950s to the early 1980s, reflecting the political and social changes occurring in Chinese society. But *laojiao* remains a useful instrument to punish the enemies of the state if need be. It was again extensively used in the early 1980s to punish people who were calling for further political liberalization and were critical of the government, either for having gone too far in changing the Maoist collective farming or not far enough in liberalizing the political system. People who posted anti-government posters, distributed pamphlets defaming senior CCP leaders or attempted to contact the Taiwan government and other “hostile” foreign governments frequently found their way to *laojiao* institutions.<sup>77</sup> *Laojiao* was also extensively used as a supplement to the suppression of the 1989 student movement. A large number of students and workers who supported or sympathized with the democratic movement were subjected to *laojiao* while the organizers were punished by lengthy imprisonment or forced into exile.

The effectiveness of *laojiao* was forcefully demonstrated during the campaign against terrorism in Xinjiang. The aftermath of the September 11 attacks in the United States brought about important changes in China’s strategy against domestic terrorism. Rather than de-emphasizing terrorist acts in the mainland while at the same time launching a secret war on terrorism, China after September 11 has played up the terrorist threats it faces. For the first time, the government itself actively revealed details of terrorist organizations and terrorist activities in China and spread the message that it is also a victim of terrorism,<sup>78</sup> arguing that it is thus justified in taking tough measures against domestic terrorists and terrorist organizations.<sup>79</sup>

China’s political response to the September 11 attacks has been firm and positive. On the domestic front, it seized the opportunity to publicize

75. The 2002 Measures, s. 4.

76. This is expressly authorized by s. 9 of the 2002 Measures.

77. Fu Hualing, “Sedition and political dissidence in China,” *Hong Kong Law Journal*, Vol. 26 (1996), pp. 210–233.

78. Xin Yan, “Dui dangqian Xinjiang fankongbu douzheng de jidian renshi he sikao” (“Several reflections and considerations on the anti-terrorism struggle”), *Gong’an yanjiu* (*Policing Studies*), No. 5 (2002), p. 47. Patrick E. Tyler, “In China’s far west, tensions with ethnic Muslims boil over in riots and bombings,” *The New York Times*, 28 February 1997.

79. For China’s official view on Xinjiang, see Information Office of the State Council of the People’s Republic of China, *History and Development of Xinjiang* (May 2003), <http://www.china.org.cn/e-white/20030526/index.htm>.

the danger of terrorism on the mainland, Xinjiang in particular, and has tightened the crackdown on what is referred to as the three types of threats to national security: violent terrorism, ethnical separatism and religious fundamentalism.<sup>80</sup> It is estimated that China may have arrested roughly 900 separatists – almost all from Xinjiang – for terrorist activities.<sup>81</sup>

The government is clearly placing many political offences under the umbrella of terrorism. Separatists and practitioners of “unlawful religions” were formerly punished as secessionists and subversives; they are now punished as terrorists. The government is treating religious practice as a cause of terrorism. Religious fanaticism is treated as the social foundation of terrorism in Xinjiang. But religious fanaticism is defined broadly, and Islam, in particular, is regarded as the breeding ground for militant Islam.<sup>82</sup>

In police operations, the crackdown is further extended to the so-called unlawful religious activities of preaching or teaching Islam without the authorization of the government. For the police, it is legitimate to crack down on religious practice because religion has become the underlying driving force of separatist and terrorist activities in China. On a more pragmatic ground, the police have pointed out that religious schools have been used to train future separatists and terrorists. Religion and religious schools have become suspects.<sup>83</sup>

Increasingly, the government is using *laojiao* to detain religion/ethnicity-based dissidents in Xinjiang.<sup>84</sup> While the organizers and principals of terrorist activities are subject to harsh criminal penalties, their followers and sympathizers are subject to *laojiao*. They tend to have been involved in unlawful organizations, unlawful publications and unlawful religion, commonly referred to as three types of *laojiao* subjects. A study in a *laojiao* institution in Xinjiang revealed that political offenders are punished because of their involvement in “unlawful organizations and religions” (46.4 per cent), “printing unlawful publications and unlawful propaganda” (27.2 per cent), “concealing criminals and weapons” or otherwise “aiding unlawful organizations” (19.3 per cent), “unlawful manufacturing of explosives” or “unlawful border crossing” (7.1 per cent). They are normally poorly educated (80 per cent had less than senior high school education) and young (85 per cent were between the ages of 18 and 30). They are highly religious, resisted education and

80. Amnesty International, “China’s anti-terrorism legislation and repression in the Xinjiang Uighur Autonomous Region,” 22 March 2002, <http://web.amnesty.org/library/Index/engasa170102002>.

81. “Separatism and terrorism,” *Ecologist*, No. 32(1) (February 2002), p. 13

82. Human Rights Watch, “In the name of counter-terrorism: human rights abuses worldwide,” <http://hrw.org/un/chr59/counter-terrorism-bck4.htm>.

83. Fu Hualing, “Counter-revolutionaries, subversives and terrorists: China’s evolving national security law,” in Fu Hualing, Carole Petersen and Simon N.M. Young (eds.), *National Security and Fundamental Freedoms: Hong Kong’s Article 23 Under Scrutiny* (Hong Kong: Hong Kong University Press, 2005), ch. 2.

84. According to one estimate, 8,000 people have been detained under *laojiao*. See “Separatism and terrorism,” p. 13.

labour in the institutions, and are said to be extremely difficult to manage. More and more of such “three types” persons are sent for *laojiao* and the number has been rising sharply.<sup>85</sup>

*Laojiao* has also played a crucial role in the government’s purge of *falun gong* practitioners. After *falun gong* was proscribed as an evil cult, the government launched a massive campaign against it and its believers. What characterizes the suppression of *falun gong* is the fact that criminal law has not been frequently used, and among the *falun gong* practitioners who have been punished by the criminal law, most are punished for the offence of illegal assemblies, sabotaging the implementation of law, disturbing public order, or other offences against property and persons. Instead, for most of the practitioners who actively petitioned against the government ban, administrative penalties, *laojiao* in particular, were the typical penalties that were used. It has been estimated that some 10,000 *falun gong* practitioners, normally the “low profile practitioners – rank and file followers – willing to publicly defend *falun gong*,” have been sent for different terms of *laojiao*.<sup>86</sup> As the case of the *falun gong* has shown, the use of lesser administrative penalties can prove to be an effective alternative to using national security offences in combating unlawful religious activities.

### Conclusion

*Laojiao* has been twisted and changed, often controversially, since its inception. As the direct result of a political campaign, *laojiao* in its early history served as a useful instrument for the CCP in suppressing and controlling people with dubious political backgrounds. *Laojiao*’s development largely followed the ebb and flow of the CCP’s political behaviour in the following decades. Created to effect a form of comparatively mild suppression of counterrevolutionary activities, *laojiao* then served as a useful instrument in meting out punishment against dissenting intellectuals in 1958. It was nearly phased out during the radical years of the Cultural Revolution but then expanded quickly as a result of the CCP’s anti-crime strategy after 1983. It has grown steadily ever since.

*Laojiao* remains faithful to its original purpose of suppressing dissidents, and has proved indispensable for maintaining the CCP’s political control, as demonstrated in campaigns against “rightists,” counterrevolutionaries, democracy activists, unionists, separatists, terrorists, and practitioners of *falun gong* and other cults. But at the same time, *laojiao* has grown and its function has been expanded to assist crime control,

85. Ren Jieling and Li Shulin, “Preliminary discussion in characteristics of ‘three types of persons’ and their management strategies,” *Fanzui yu gaizao yanjiu*, No. 4 (2001), pp. 18–21.

86. Human Rights Watch, *Dangerous Meditation: China’s Campaign Against Falun Gong* (January 2002), <http://hrw.org/report/2002/china>. For a government report on the use of *laojiao* on *falun gong*, see Pu Tianshi, Xiao Jinzhi and Sun Wei, “Chunfeng buran yimu xiu: juitai laojiaosuo jiaoyu zhuanhua falun gong chimizhe gongzuo jishi” (“Breeze of the spring will not allow wood to rot: report on the transformation of *falun gong* practitioners through education in Jiu Tai *Laojiao* Institution”), *Zhongguo sifa*, No. 10 (2001), p. 39.

targeting principally minor habitual offenders, especially migrants from rural areas.

The most important development of *laojiao* in the past two decades is its use in drug rehabilitation. The registered number of drug abusers has been steadily increasing and the short-term police compulsory drug treatment programme has proved ineffective. *Laojiao*, with its lengthy period of detention and flexibility in procedure, is regarded as a better alternative.

*Laojiao* thus serves multiple functions, with varying degree of legitimacy and justification. *Laojiao* as drug treatment is fundamentally different from *laojiao* as unlawful investigative detention; and *laojiao* as political control should be clearly distinguished from *laojiao* as a mechanism to punish habitual offenders. The lesson from this historical review is that *laojiao* serves multifold functions and punishes a variety of people. Any substantive discussion on its future has to be offence and offender specific.

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