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Qi Chen

Governance, Social Control and Legal Reform in China

Community Sanctions and Measures

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Dedicated to my families and a special friend K.S.

Foreword

Comparative penology has shown that similar forms of punishment are found in most contemporary societies. All modern states use imprisonment as a punishment. Most states have the power to impose fines on the growing number of their citizens who are involved in the cash economy. Now it seems that there is a growing movement to extend the power to impose community sanctions and measures throughout the world too.

Are we heading towards a situation where not only the form but also the substance of punishments will be largely similar everywhere? This question can only be answered by studies that look beyond penal forms and ask how they operate in practice in systems other than those in which they were conceived and first introduced.

In examining the introduction and operation of community sanctions and measures in China, Qi Chen has conducted just such a study. Her work initially took the form of a doctoral thesis, which I had the privilege to supervise together with my colleague, Róisín Mulgrew. In 2016 Qi Chen won the David Harris Prize for the best thesis produced in the School of Law at the University of Nottingham in the previous year. It is a great pleasure for me to introduce this book, which is based on her thesis.

A feature of Qi Chen's work is that it does not draw simplistic comparisons between community sanctions in China and jurisdictions in the West where modern community sanctions originated. Instead, she focuses

on sophisticated theories developed by leading scholars, such as Stan Cohen and David Garland, about why community sanctions emerged in western penal systems and about how they now operate. She asks whether the preconditions exist in China for these sanctions to work in the same way as they do in most western societies. In the West they are important tools of social control. Their impact is moderated, however, by the fact that they are imposed by independent judges and implemented by specialists, who have their own professional commitment to the achievement of rehabilitative welfare goals through these sanctions.

China, this book demonstrates, is fundamentally different. In particular, the *danwei* system (an alternative hierarchy within the civil service) limits judicial independence and the relative autonomy of other criminal justice professionals. The result is that the introduction of community sanctions and measures in the same legal form as in the West has produced very different outcomes. In China the repressive force of such sanctions is greater. This is because the undermining of effective checks and balances by the *danwei* system means that they are more easily used as a tool of disciplinary governance, thus increasing the control exercised by the ruling party through the state apparatus.

A great strength of the book is that its theoretical insights are underpinned by ground-breaking empirical research. In the course of doing her fieldwork in China, Qi Chen interviewed a wide range of participants in the emerging community justice system. In the process she made effective use of scenarios in which problem cases were sketched and respondents, for this purpose mostly judges, were asked how they would deal with them. Their responses provide a fascinating insight into how cases as different as robbery and corruption by a party official are likely to be dealt with. Follow-up interviews with some of the respondents reveal the constraints that they were subject to in coming to such decisions in practice.

Qi Chen's book can also be read as a warning to penal reformers. Before introducing changes, reformers should research the social context in which the changes are supposed to work, as Qi has done so well. A clear understanding of the dynamics of Chinese society shows that more than legal changes are needed if an innovation is to achieve sufficient legitimacy to be effective. In this instance problems raised by the *danwei*

system would need to be addressed before community sanctions could become widely accepted as fair and could play their intended role in the criminal justice process.

In sum, this book is a model of comparative criminological scholarship. I recommend it strongly to readers with a specific interest in China. Beyond that, it will be of great value to penologists and indeed to all other social scientists. It is a model of how comparative research into a global social phenomenon, such as the rise of community sanctions, can provide fresh insights in wider questions of punishment and social control.

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Dirk Van Zyl Smit
21 November 2017

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Abbreviations

CALE	City Administration and Law Enforcement
CCCPC	Central Committee of the Communist Party of China
CPC	Communist Party of China
CPL	Criminal Procedural Law
CRUV	Custody and Repatriation of Urban Vagrants
CSM	Community Sanctions and Measures
CTS	Community Treatment Schemes
CYL	Communist Youth League
Decision 2014	Decision on Reinforcing the Rule of Law (2014)
EM	Electronic Monitoring
ER CSM 1992	European Rules on Community Sanctions and Measures 1992
FRS	Follow-up Rehabilitation Schemes
GONGO	Government-Organised NGO
Guidelines 2012	Guidelines on the Enforcement of CSM (2012)
IDC	Inspection and Discipline Committee
LHS	Low-rent Housing Subsidy
MLSS	Minimum Living Standard Subsidy
MOJ	Ministry of Justice
MPS	Ministry of Public Security
MSGC	Minnesota Sentencing Guidelines Commission
NEEC	Not in Education, Employment or the Custody of a reliable guardian

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NOMS	National Offender Management Service
Notification 2003	Notification about the Pilot Projects of CSM (2003)
NPC	National People's Congress
PLC	Politics and Law Committee
Regulation 2015	Regulation on the Circuit Courts (2015)
SCEW	Sentencing Council of England and Wales
SCNPC	Standing Committee of the National People's Congress
SGCEW	Sentencing Guidelines Council of England and Wales
SMA	Social Management Assistant
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
SSGMP	Special Social Groups Management Panel

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