

# REASSESSING REEDUCATION THROUGH LABOR

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The Chinese government is considering addressing some of the shortcomings of the reeducation through labor ("RTL") system, a prevalent administrative sanction and a mechanism for punishing "minor crimes" in China. Veron Hung argues that the government should consider abolishing RTL as it moves toward establishing a legal system ruled by law.<sup>1</sup>

The system of reeducation through labor ("RTL") (*laodong jiaoyang* or *laojiao*) is an important but poorly understood problem in Chinese human rights. A prevalent administrative sanction and a mechanism for punishing "minor crimes," RTL has come under increasing debate in China.

Since its establishment in the 1950s, RTL has sent about 3.5 million people to labor camps.<sup>2</sup> At present, approximately 300,000 people are being "reeducated" in nearly 300 camps nationwide.<sup>3</sup> A third of these inmates are drug addicts, prostitutes, or brothel visitors, while another third are perpetrators of minor crimes such as larceny, fraud, or assault. The remainder consists of other types of inmates,<sup>4</sup> including more than a thousand followers of Falungong,<sup>5</sup> a spiritual movement banned as a cult by the Chinese government since 1999. Human rights groups estimate that as many as twenty thousand Falungong followers have been reeducated in these camps.<sup>6</sup> Torture<sup>7</sup> and other maltreatment, such as barring of family visits and censoring of inmates' personal correspondence,<sup>8</sup> are alleged to be common practice in RTL camps.

RTL was one of the issues that the Office of the United Nations High Commissioner for Human Rights ("UNHCHR") targeted when it signed the Memorandum of Understanding on the Development and Implementation of Human Rights Technical Cooperation Programs<sup>9</sup> with China in November 2000. In February 2001, the UNHCHR and the Chinese government jointly organized a seminar on the punishment of minor crimes, at which international experts, myself among

them, discussed the RTL system with Chinese officials and scholars. Since then, there have been more debates about the future of this mechanism, including a recent roundtable discussion organized by the U.S. Congressional Executive Commission on China.<sup>10</sup> The Chinese government is also considering whether to enact a law to remedy some of the system's shortcomings. The government's recognition of the problem offers an important opportunity for improving human rights in China.

In this review of the RTL system I will draw on empirical research that I have conducted on emergent judicial practices as reflected in administrative litigation since 1998, including observation of eight administrative trials, and interviews with over 140 judges, law professors, lawyers, administrative officials and litigants in Guangdong province, Chongqing, Wuhan and Beijing.<sup>11</sup> I chose the interviewees randomly, but all have either had personal experience in administrative litigation or worked in related areas. Most of them granted the interviews only upon the promise of anonymity.

My research concentrated on Guangdong, a neighbor of Hong Kong and the epitome of China's current reform era, and Chongqing, China's largest municipality directly under the Central Government and an important political and economic center in southwest China. Despite Chongqing's leading role in southwest China, its development lags far behind Guangdong in the east. Research indicates that this difference contributes to further differences in the resultant judicial practices in the two locations.

All of the eight administrative trials I observed took place in courts that I visited in Guangdong and Chongqing. In order to minimize the likelihood that the courts might seek to specially arrange trials for my benefit, I gave them as little notice of my visits as possible. The notice ranged from half an hour to a week, depending on the circumstances.

## The Legal Basis of RTL

In Chinese criminal law, the criminality and punishment of a particular act depends on whether the "circumstances" of the act are "serious" or "minor."<sup>12</sup> The Criminal Law, however, defines neither "minor crimes" nor "serious crimes" clearly, and the distinction relies on the guidance of numerous judicial interpretations.



Falungong practitioners undergoing “reprogramming” in an RTL camp in Liaoning. Photo: AP Wide World Photos.

While judicial interpretations have been hailed as “indispensable” in clarifying the Criminal Law,<sup>13</sup> the broad and indeterminate language found in these interpretations results in a wide scope of discretion in application.<sup>14</sup> In many cases “minor” is effectively defined as “minor,” and the resulting tautology fails to provide genuine clarification and guidance to the courts and to administrative agencies.

Generally speaking, those acts regarded as too minor to be considered a crime, and those crimes considered too minor to merit criminal punishment, may be subject to administrative sanctions. One type of administrative sanction is prescribed by the Security Administration Punishment Regulations (“SAPR”),<sup>15</sup> which provide for penalties ranging from a warning to a fine of up to 5000 yuan, or administrative detention for not more than fifteen days.<sup>16</sup>

The other type of administrative sanction, RTL, is imposed on people whose acts are not serious enough to warrant criminal punishment, but which are too serious to be dealt with under the SAPR.

RTL is governed mainly by three legislative documents. The first is the 1957 Decision of the State Council Regarding the Question of Reeducation Through Labor (“1957 Decision”),<sup>17</sup> which allowed RTL to be imposed for an indefinite time period for the following purposes: (1) “to reform into self-supporting new persons those persons who are able to work but insist on leading an idle life, violate law and discipline, or do not engage in honest pursuits”; and (2) “to further maintain public order, thus facilitating socialist construction.” The 1957 Decision imposes RTL sanctions on the following four categories of individuals:

those who do not engage in honest pursuits, involve themselves in hooliganism, commit larceny, fraud or other acts for which

they are not criminally liable, or violate public security rules and refuse to mend their ways despite repeated admonition;

counterrevolutionaries and anti-socialist reactionaries who commit minor crimes and are not criminally liable and who have been given sanctions of expulsion by government organs, organizations, enterprises or schools, and as a result have difficulty in making a living;<sup>18</sup>

employees of government organs, organizations, enterprises and schools who are able-bodied, but have refused to work for a long period, violated discipline or jeopardized public order, and have been given sanctions of expulsion, and as a result have difficulty in making a living; or

those who refuse to accept the work assigned to them or the arrangement made for their employment or who decline to take part in manual labor and production despite persuasion, keep behaving disruptively on purpose, obstruct public officials from performing their duties and refuse to mend their ways despite repeated admonition.

Among the bodies that may apply to impose RTL on such persons are “civil affairs and public security departments or the government organ, organization, enterprise, school or other units to which the person belongs; or his or her parents or guardians.” The applications must be approved by the “people’s committees of provinces, autonomous regions, and municipalities directly under the Central Government or by organs authorized by these people’s committees.”

A second legislative document governing RTL, the Supplementary Decision of The State Council For Reeducation Through Labor, was issued by the State Council in 1979

(“1979 Decision”) in order to provide more information on the specifics of RTL.<sup>19</sup> The 1979 Decision clarifies that RTL Administrative Committees composed of “persons who are in charge of civil affairs, public security and labor departments” are to be responsible for directing and managing the work of RTL and for examining and approving those who require such reeducation. The 1979 Decision further states that RTL may be imposed for only one to three years, with a one-year extension “whenever it is necessary,” and only on “those people in large and medium-sized cities who need to be reeducated through labor,” in effect excluding the rural populace.

The third legislative document governing RTL, the Trial Methods for the Implementation of Reeducation Through Labor, was passed in 1982 by the Ministry of Public Security with the approval of the State Council (“1982 Trial Methods”).<sup>20</sup> This document extends RTL to anyone who “joined others to commit a crime such as murder, robbery, rape, and arson,” or who “abetted others to commit a crime” where the circumstances surrounding such crimes are not serious enough for criminal punishments. The 1982 Trial Methods also makes RTL applicable to the rural populace if an individual commits crimes “in cities, along railways, and in large-scale factories and mines.”

#### Legal and Human Rights Problems of RTL

RTL is coming under increasing criticism because of excessive use, the severity of sentencing, inconsistency with Administrative Punishment Law, and lack of effective supervision.

Chinese legal scholars have criticized conflicts in the scopes provided for RTL in the 1957 Decision, the 1979 Decision and the 1982 Trial Methods.<sup>21</sup> There is also concern that the public security organs have turned RTL into a “crime control mechanism,”<sup>22</sup> which differs from the legislative intent stipulated in the 1957 Decision.

Numerous reports regarding the extensive use of the system have led to widespread human rights concerns. RTL Administrative Committees are dominated by public security organs,<sup>23</sup> which have reportedly used the RTL system as a means to avoid procedural requirements or supervisory mechanisms presented under the Criminal Procedure Law.<sup>24</sup> In particular, it has been reported that public security organs have used RTL to punish suspects against whom they lack sufficient evidence to support a criminal charge.<sup>25</sup>

Even though the system is supposed to be applied to cases that do not merit criminal punishment, the 1979 Decision and the 1982 Trial Methods provide for detention in a labor camp for up to four years, a punishment much harsher than criminal punishments such as fines, surveillance, and criminal detention of one to six months.<sup>26</sup>

The conflict of the RTL system with the Administrative Punishment Law arises from the requirement that administrative punishments restricting personal freedom can only be prescribed by “laws” promulgated by the National People’s Congress and its Standing Committee.<sup>27</sup> RTL, which is a type of administrative punishment that restricts personal freedom,<sup>28</sup> is not prescribed by a “law,” but by decisions made by

the State Council or by the Ministry of Public Security. Therefore, the legality of this system is questionable.<sup>29</sup>

Supporters of RTL may argue that approval by the Standing Committee of the National People’s Congress has effectively transformed the 1957 and 1979 Decisions into “laws.”<sup>30</sup> This view, however, is debatable, and in any case the Standing Committee of the National People’s Congress has never approved the 1982 Trial Methods, which has the most extensive and most controversial coverage of the three documents.

In terms of supervision, as an administrative sanction RTL is not subject to even those limited human rights safeguards contained in the Criminal Law and the Criminal Procedure Law, and aggrieved parties may resort only to protections granted under the Administrative Litigation Law.<sup>31</sup> This statute stipulates that anyone who believes that his or her legitimate rights and interests have been infringed upon by administrative acts such as administrative sanctions may bring a lawsuit. Should a court find the challenged administrative act illegal, it may revoke (*chexiao*) the act. Based on documentary sources and empirical research, this author has noted some improvements in administrative litigation, such as a growing respect for procedural requirements.<sup>32</sup> However, a number of factors, in particular fear, lack of access to legal counsel and interference by public officials or organs, appear to have limited the courts’ role in reviewing the legality of administrative sanctions such as RTL.<sup>33</sup>

According to people I have interviewed, aggrieved parties are often too intimidated by the fear of reprisals to sue administrative organs, especially public security organs, which have wielded extensive power over the populace for decades in China. Nevertheless, official statistics show that during the years between 1991 and 2000, a significant proportion (ranging from fifteen to thirty percent) of administrative cases accepted by first-instance courts were “public security” (*gongan*) cases, which include “social order” (*zhian*) cases, RTL (*laojiao*) cases, and “others” (*qita*).<sup>34</sup> (See Table below).

Number of First-Instance Administrative Cases Accepted in China, 1991-2000<sup>35</sup>

	Administrative Cases	Public Security Cases	Percentage Public Security
1991	25,667	[ ]	[ ]
1992	27,125	7,863	28.99
1993	27,911	7,018	25.14
1994	35,083	8,624	24.58
1995	52,596	11,633	22.12
1996	79,966	15,090	18.87
1997	90,557	14,171	15.65
1998	98,350	14,288	14.53
1999	97,569	14,611	14.98
2000	85,760	13,173	15.36

Interviewees explained that the relatively high percentage of “public security” administrative cases simply reflected the public security organs’ enormous power to influence a wide range of citizens’ daily activities. In a survey conducted in 1992, fifty-one out of ninety plaintiffs interviewed stated that they had filed suits under the Administrative Litigation Law because they believed that this was their last resort.<sup>37</sup>

Anecdotal evidence indicates why administrative litigation remains a last resort. In 1993, an abstract painter reportedly sued Beijing’s Haidian District Police after three officers beat him for arguing with a bus conductor. The painter won his case. However, the police arrested him two weeks later and charged him with a trumped-up bicycle theft. He was then sent, without trial, to two years in a labor camp. When interviewed in 1997, the painter recalled, “My vision was too optimistic. From now on, I’ll express myself through my art.” In December 1996, then-President of the Supreme People’s Court, Ren Jianxin, considered police misconduct to be a “grave” problem and criticized law-enforcement officials “[who] have taken advantage of legal loop-holes, intentionally misinterpreted the law, distorted evidence and broken the law they enforce.”<sup>38</sup>

Lack of access to legal counsel is another impediment to court oversight of the RTL process. Lawyers’ fees average from a minimum of 2000-3000 yuan (\$250 to \$375) for a case tried by a basic level court to 5000 yuan (\$625) for one tried by an intermediate level court. In comparison, the average monthly income of an ordinary worker is less than 1000 yuan (\$125).<sup>39</sup>

Free legal service is available, but income limits of 200-400 yuan (\$25 to \$50) per month limit recipients to the unemployed or those living below the poverty line.<sup>40</sup> In addition, priority for legal aid is given to criminal defendants facing the death penalty, and to the handicapped, aged and minors claiming compensation in personal injury cases.<sup>41</sup> Administrative cases do not seem to have attracted legal aid providers’ attention. From its opening in 1995 to January 1999, the Guangzhou Legal Aid Center has handled only two administrative cases, while handling 700 criminal and economic cases in 1998 alone.<sup>42</sup> Legal aid centers in Chongqing handled approximately 2400 criminal cases and 3500 civil cases in 1999. Only about ten cases were administrative cases.<sup>43</sup>

Even if aggrieved parties can afford to retain legal counsel, they often encounter a lack of enthusiasm from lawyers, who are unable to charge high fees for the low amounts at dispute in administrative cases.<sup>44</sup> Most lawyers are also reluctant to oppose the government, which has the power to decide whether to renew a lawyer’s license.<sup>45</sup>

The majority of people I interviewed identified interference by administrative organs and by the Chinese Communist Party as the greatest difficulty encountered in administrative litigation. Such interference may occur throughout the course of an administrative case, but it is especially common before the case is accepted. At subsequent stages, judges may be pressured to uphold the administrative act, and aggrieved parties may be pressured to withdraw the case.

In some administrative cases where public security organs

have been named as defendants, the organs have reportedly manipulated the ambiguity of their dual roles of conducting criminal investigations and imposing administrative sanctions. Public security organs can bypass human rights protections provided under the criminal justice system by claiming that sanctions they impose on suspects are administrative in nature. Conversely, public security organs can also claim immunity from administrative litigation on the basis that their sanctions are part of criminal investigations, not administrative acts.<sup>46</sup> In addition, Chinese judges, whose appointment, dismissal and salaries are ultimately controlled by local party committees, are susceptible to pressure exerted by administrative organs and the Chinese Communist Party.<sup>47</sup>

### **The Case for Abolishing RTL**

In light of the legal and human rights problems attached to RTL, many scholars have called for the abolition or fundamental reform of the system.<sup>48</sup> Some who support the abolition of RTL suggest an amendment to increase the maximum period of administrative detention under the SAPR from fifteen days to one month. With offenders of “minor crimes” facing a maximum of one month of detention under the SAPR, and offenders punished under the Criminal Law facing criminal detentions of one to six months, RTL would lose its current function of filling the gap between the two.<sup>49</sup>

Others in favor of fundamental reform call for the maximum detention period to be reduced from four years to one or two years.<sup>50</sup> In addition, punishments should be imposed not by public security organs but by courts whose decisions are subject to appeal.<sup>51</sup> If possible, the system should be incorporated into the Criminal Law by the establishment of a new type of punishment called “police orders” or “public safety orders” that is similar to community-based orders in Western countries. Integration of RTL into the Criminal Law would have the additional advantage of subjecting RTL to human rights protections already provided for in the Criminal Procedure Law.<sup>52</sup>

Although such reform measures would alleviate some of the problems of the current system, they would not effectively resolve three major human rights dilemmas posed by RTL. First, Chinese courts are not independent enough to serve as an effective alternative to public security organs in imposing punishments under RTL. Although Chinese courts are undergoing a five-year reform program, fundamental changes in the political system and Chinese legal culture will be needed to resolve the problem of interference in the judicial process.<sup>53</sup>

Second, although revisions in the Criminal Law and the Criminal Procedure Law mark the continual maturation of Chinese legality to reflect changes in social and economic conditions, the incorporation of RTL into the Criminal Law would only provide minimal human rights protections. A new regulation in Liaoning Province recognizing criminal suspects’ right to silence raises hopes of a trend towards increased incorporation of international human rights norms into the Chinese criminal justice system.<sup>54</sup> It remains to be seen, however, when the Chinese Law as a whole might sufficiently meet international standards.



Men sentenced for up to two years of RTL for stealing bicycles in Beijing. Photo: AP Wide World Photos.

Third, even if RTL were incorporated into the Criminal Law, such limited human rights protections as currently exist would be subject to the discretion of law enforcers. After extensive investigations in six selected provinces, autonomous regions, and cities—namely, Tianjin, Inner Mongolia, Heilongjiang, Zhejiang, Shaanxi and Hubei—the National People’s Congress Standing Committee concluded that the Criminal Procedure Law has not been fully implemented since its revision in 1996.<sup>55</sup> Over-extended detention of criminal suspects and forced confession are still “salient problem[s]” in much of the country. Judges, Procuratorates and public security organs restrict defense lawyers’ activities by obstructing the lawyers’ abilities to meet with their clients and to access court files relating to their cases. The National People’s Congress Standing Committee attributed this unsatisfactory implementation to law enforcers’ “erroneous understanding” of the law, which they regard as “too advanced” for China.<sup>56</sup>

Because RTL is a major anomaly in the legal system, and the suggested measures for reforming RTL would not effectively resolve the problems it presents, the best solution is to abolish the mechanism altogether. The Chinese government is considering whether to enact a law to improve RTL’s targets and implementation mechanisms, as well as to change its name.<sup>57</sup> At this point, however, it appears to have ruled out abolition as an option. Wang Yunsheng, Director of the Ministry of Justice Bureau of Reeducation Through Labor, explained, “[f]or such a populous nation as China, [RTL], which aims at stopping those on the verge of committing serious crimes, is an effective [system] for reducing crime.”<sup>58</sup>

The Chinese government’s determination to improve the

RTL system is welcome. But a premature delimitation of the scope of discussion only discourages in-depth and thorough examination of potentially more favorable measures. Through further study, the Chinese government and scholars could learn how foreign countries handle drug addicts, prostitutes, brothel visitors and those who commit minor crimes such as larceny, fraud and assault—groups that constitute two-thirds of the current RTL inmate population in China. They may discover foreign countries’ mechanisms to be more effective than RTL. Unless and until this type of study is completed, the Chinese government should not rule out the option of abolition. A leading law professor’s remark on RTL is worth noting: “When facing a type of unjust system and practice, why are we always willing to incorporate it into the formal legal structure through legislation, instead of abolishing the system?”<sup>59</sup> The Chinese government should understand that failure to address the problems of RTL will impede any efforts to establish a just legal system based on the rule of law.

1. A longer version of this article appeared in the *Columbia Journal Of Transnational Law*, 41:2003.
2. See “Beijing to Introduce Reeducation-Through-Labour Law This Year,” *Zhongguo Tongxun She News Agency*, BBC Summary Of World Broadcasts, Feb. 19, 2001; “China—Government Reeducation System on Legal Basis,” *China Daily*, Nov. 2, 1998.
3. See John Leicester, “China Gives Reporters Glimpse of Labor Camp Dubbed ‘Living Hell’ by Critics,” *Associated Press*, May 23, 2001; “Minister Says 1.7 Million Held In Prisons, Labour Camps,” *Xinhua News Agency*, BBC Summary Of World Broadcasts, May 22, 2000. According to one recent report, China’s Ministry of Justice said that the

- current RTL inmate population was about 260,000. See “A Jail by Another Name,” *The Economist* (U.S. Edition), Dec. 21, 2002.
4. See Chen Xingliang, “Zhongguo Laodong Jiaoyang Zhidu Yanjiu: Yi Xingshi Fazhi Wei Shijiao” [Research on China’s Reeducation Through Labor System: From the Perspective of Rule of Criminal Law], 13 *Zhongwai Faxue* [Peking University Law Journal] 689, 694 (2001). According to a recent report, of the 900–odd inmates in a female RTL camp in Beijing, approximately 40 percent are drug addicts, approximately 10 percent are prostitutes, and 28 percent are Falungong followers. See “A Jail by Another Name,” *supra* note 3.
  5. China has not disclosed the exact number of Falungong followers held in RTL camps; however, it confirmed in Jan. 2001, that at least 470 followers were held at the Masanjia Education-Through-Labour Education Institution in the Liaoning province and the official media reported in August 2001 that “[this] camp has also succeeded in ‘re-educating’ more than 90% of the 1,000 female Falungong members housed there.” See “China Rejects Report of Hunger Strike by Jailed Falungong Members,” *Agence France Presse*, Aug. 30, 2001; “Forty-Seven Former Female Falungong Followers Released After Reform,” *Xinhua News Agency*, BBC Summary Of World Broadcasts, Jan. 27, 2001.
  6. The Hong Kong-based Information Center for Human Rights and Democracy estimated that about ten thousand Falungong followers had been sent to these camps since the Falungong movement was banned in July 1999. See “Nearly 500 Falungong Were Held at Just One Labour Camp: China,” *Agence France Presse*, Jan. 18, 2000. In a report submitted to the United Nations General Assembly, Abdelfattah Amor, the United Nations Special Rapporteur on Human Rights, alleged that the number was more than twenty thousand. See Thalif Deen, “Rights: U.N. Asks 16 States to Probe Religious Intolerance,” *Inter Press Service*, Oct. 23, 2002.
  7. See Amnesty International, “China—Torture in China under the Spotlight at the UN,” M2 Presswire, May 5, 2000, available at <http://web.amnesty.org>; “Released Chinese Dissident Speaks of Horrors of Labor Camp Life,” *Agence France Presse*, Feb. 15, 2002.
  8. See Fong Tak-Ho, “Dissident Threatens Legal Action,” *Hong Kong Standard*, July 10, 1997. See also Human Rights Watch, “Reeducation through Labor in China,” at <http://www.hrw.org/campaigns/china-98/lao-jiao.htm>.
  9. Memorandum of Understanding between the United Nations Office of the High Commissioner for Human Rights and the Ministry of Foreign Affairs of the People’s Republic of China on the Mutual Agreement to Cooperate in the Development and Implementation of Technical Cooperation Programs, signed on Nov. 29, 2000, by the High Commissioner and the Chinese Vice Foreign Minister.
  10. Roundtable Discussion on Challenges for Criminal Justice in China, organized by the U.S. Congressional Executive Commission on China, July 26, 2002.
  11. In total, I interviewed sixty-three judges, thirty-one professors, twelve attorneys, twenty-three officials, and twelve others, including litigants and directors of legal aid centers. The interviews took place in Guangdong (Dec. 28, 1998–Jan. 19, 1999), Wuhan (June 9–29, 1999), Beijing (Aug. 2–19, 1999), and Chongqing (Dec. 13, 1999–Jan. 14, 2000). I interviewed some professors multiple times during Aug. 1999, and from Sept. 2001 to June 2002.
 

In Guangdong, I carried out field research in Guangzhou and Guangdong’s three Special Economic Zones—Shenzhen, Shantou, and Zhuhai. In addition to the provincial high court, I visited the intermediate court and one basic court of these four cities. In Chongqing, I visited Chongqing High Level People’s Court, First and Third Intermediate Level People’s Courts and Basic Level People’s Court of the Yuzhong, Beibei, Jiangjin, and Fuling districts. All of the judges whom I interviewed in Guangdong and Chongqing presided at the administrative divisions of

these courts. I also interviewed some attorneys, litigants, professors, and administrative officials in these places.

Additionally, I attended a judicial training program in Wuhan, where I interviewed judges from the Anhui, Hubei, and Jiangsu provinces and from Chongqing. In Beijing, I also interviewed leading Chinese scholars and judges of the Supreme People’s Court and Beijing High Level People’s Court.

This research will be presented in greater detail in a forthcoming book.
  12. See *Zhongguo Renmin Gongheguo Xingfa* [Criminal Law of the People’s Republic of China] (1979) (latest revision 2002) [hereinafter *Criminal Law*].
  13. Shizhou Wang, “The Judicial Explanation in Chinese Criminal Law,” 43 *AM.J. COMP. L.* 569 (1995). Wang writes that judicial interpretations play an important role in the Chinese criminal justice system because they have six functions: (1) “indicating how to correctly understand the meaning of the law”; (2) “explaining the issues of the law”; (3) “indicating the concrete standard of sentencing within the statutory punishments”; (4) “clarifying the guilty line and line for giving a heavier punishment when the law requires ‘serious circumstances’ or ‘especially serious circumstances’”; (5) “clarifying the limitation of time for a particular law”; and (6) “explaining how to implement laws.” *Id.* at 572–77.
  14. For a detailed discussion of Chinese legislative drafting, see Peter Howard Corne, *Foreign Investment In China: The Administrative Legal System* 95–104 (1997); Peter Howard Corne, “Creation and Application of Law in the PRC,” 50 *Am. J. Comp. L.* 369 (2002); Perry Keller, “Legislation in the People’s Republic of China,” 23 *U. Brit. Colum. L. Rev.* 653 (1989); Claudia Ross & Lester Ross, “Language and Law: Sources of Systemic Vagueness and Ambiguous Authority in Chinese Statutory Language,” in *The Limits Of The Rule Of Law* 221 (Karen G. Turner et. al eds. 2000).
  15. *Zhongguo Renmin Gongheguo Zhian Guanli Chufa Tiaoli* [Security Administration Punishment Regulations] (1986) (latest revision 1994) [hereinafter *SAPR*].
  16. *SAPR*, *supra* note 15, art. 6.
  17. *Guowuyuan Guanyu Laodong Jiaoyang Wenti De Jueding* [Decision of the State Council Regarding the Question of Reeducation Through Labor] (1957) [hereinafter *1957 Decision*].
  18. When the Criminal Law was revised in 1997, the term “counterrevolutionary” was replaced with the phrase, “crimes against state security.” The term “counterrevolutionary” found in the 1957 Decision has not been amended accordingly.
  19. *Guowuyuan Guanyu Laodong Jiaoyang De Buchong Jueding* [Supplementary Decision of the State Council for Reeducation Through Labor] (1979).
  20. *Guowuyuan Guanyu Zhanfa Gonganbu Zhiding De Laodong Jiaoyang Shixing Banfa De Tongzhi* [Notice of the State Council on Re-Issuing the Ministry of Public Security’s Trial Methods for the Implementation of Reeducation Through Labor] (1982).
  21. See Chen Ruihua, “Laodong Jiaoyang De Lishi Kaocha Yu Fansi” [Historical Examination and Reflections on Reeducation Through Labor], 13 *Zhongwai Faxue* [Peking University Law Journal] 657 (2001); Chen, *supra* note 4, at 693–94; Shen Fujun, “Guanyu Feichu Laodong Jiaoyang Zhidu De Sikao” [Some Thoughts about the Abolition of Reeducation Through Labor System], 7 *Faxue* [Jurisprudence] 18, 18 (1999).
  22. Fu Hualing, “Criminal Procedure Law,” in *Introduction to Chinese Law* 129, 134 (Wang Chengguang & Zhang Xianchu eds., 1997). See also Chen, *supra* note 4, at 694.
  23. See Chen, *supra* note 21, at 668; Chen Xingliang, “Laodong jiaoyang: genju guoji renquan gongyue zhi fenxi” [Reeducation Through Labor: Analysis Based on International Bill of Human Rights], 10 *Faxue* [Jurisprudence] 49, 51–52 (2001). See also Ma Kechang, [Strengthen the Reform Force, Revise and Perfect the Criminal Law], 5 *Faxue* [Jurisprudence] 1, 7–8 (1996), cited in Jianfu Chen, *Chinese Law: Towards an Understanding of Chinese Law, its Nature, and Development* 193 n.169 (1999); Tao Jigang, [Some Thoughts on Laws Relating to Reeducation Through Labor], 3 *Zhongguo*

- Renmin Jingcha Daxue Xuebao [Journal Of The China University Of People's Police] 12, 12 (1995), cited in Jianfu Chen, *Chinese Law: Towards an Understanding of Chinese Law, its Nature, and Development* 193 n.169 (1999).
24. *Zhongguo Renmin Gongheguo Xingshi Susong Fa* [Criminal Procedure Law of the People's Republic of China] (1979) (latest revision 1996) [hereinafter *Criminal Procedure Law*]. See Lawyers Committee for Human Rights, *Criminal Justice with Chinese Characteristics: China's Criminal Process and Violations of Human Rights* 69–79 (1993); Amnesty International, "Open Letter to the President of the People's Republic of China" M2 Presswire, Sept. 28, 1999.
  25. See Chen, supra note 23, at 52; Fu, supra note 22, at 134.
  26. See Chen, supra note 21, at 669; Chen Zexian, *Zhongguo de laodong jiaoyang zhidu yu zuifan de jiaoyu gaizao* [Reeducation Through Labor System and Educational Reform of Prisoners in China], in *Renquan Yu Sifa* [Human Rights And Administration Of Justice] 30, 33–34 (Liu Hainian et al., eds., 1999); Chen, supra note 3, at 694.
  27. *Zhongguo Renmin Gongheguo Xingzheng Chufa Fa* [Administrative Punishment Law of the People's Republic of China] (1996), arts. 8, 9, 10, 11; Xianfa, supra note 20, arts. 62(3), 67(2); *Zhonghua Renmin Gongheguo Lifu Fa* [The Law-making Law of the People's Republic of China] art. 7 (2000).
  28. This point was once in dispute. See Chen, supra note 21, at 669; Chen, supra note 23; Jiang Jinfang, *Laodong Jiaoyang Zhidu De Fazhi Licheng Ji Xianshi Wenti* [Legal Developments of Reeducation Through Labor System and Practical Problems], 13 *Zhongwai Faxue* [Peking University Law Journal] 674, 682 (2001).
  29. See Chen, supra note 26, at 34–35; Chen, supra note 23, at 193; Shen, supra note 21, at 19.
  30. See supra notes 17, 19. Chen Xingliang argues that they are not "laws," but "quasi-laws" (*zhun falu*), at most. See Chen, supra note 4, at 689, 692.
  31. *Zhongguo Renmin Gongheguo Xingzheng Susong Fa* [Administrative Litigation Law of the People's Republic of China] (1989).
  32. See supra note 11.
  33. See also Chen, supra note 21, at 671; Chen, supra note 4, at 695–96.
  34. In China, administrative cases are classified into about thirty categories including: public security (*gongan*); industry and commerce (*gongshang*); land use (*tudi*); forestry (*linye*); city construction (*chengjian*); customs (*haiguan*); environmental protection (*huanbao*); patent (*zhuanli*); and tax (*shuiwu*) cases. Public security cases are further categorized as: social order (*zhian*); reeducation through labor (*luojiao*); or "others" (*qita*). Interviews with two judges from Guangdong High Level People's Court in Guangdong (Jan. 13, 1999).
  35. *Zhongguo Falu Nianjian* [China Law Yearbook] 1992–2001.
  36. No data could be found to indicate the number of public security cases accepted in 1991. However, it was reported in *China Law Yearbook* 1992 that 7,720 "social order" (*zhian*) cases were accepted, accounting for 30.08 % of all first-instance administrative cases accepted in 1991.
  37. *Fazhi De Lixiang Yu Xianshi* [The Ideal and Reality of the Rule of Law] 322 (Gong Xiangrui et al. eds., 1993).
  38. Interview by George Wehrfritz with Michael Laris, "Rulers Are the Law," *Newsweek* (Atlantic Ed.), Sept. 29, 1997, at 47.
  39. Interviews in Guangdong (Dec. 28, 1998–Jan. 19, 1999) and Chongqing (Dec. 13, 1999–Jan. 14, 2000).
  40. Interview with Director, Guangzhou Legal Aid Center (Jan. 12, 1999), and Directors, Chongqing Legal Aid Center (Dec. 29, 2000). The Guangzhou Legal Aid Center adopted 340 to 380 yuan as the standard. For a discussion of legal aid practices in China, see generally David Lee, "Legal Reform in China: A Role for Nongovernmental Organizations," 25 *Yale J. Int'l L.* 363 (2000); Benjamin L. Liebman, "Legal Aid and Public Interest Law in China," 34 *Tex. Int'l L.J.* 211 (1999). According to China's Ministry of Justice, there are more than 2,300 legal aid institutions in the country, and over 300,000 people received legal aid in 2001. See "Chinese Colleges Offer Legal Aid Services," *Xinhua General News Service*, Nov. 28, 2002.
  41. See "Backgrounder: Qualifications for Chinese Citizens to Receive Legal Aid," *Xinhua General News Service*, June 16, 2000.
  42. Interview with Director, Guangzhou Legal Aid Center (Jan. 12, 1999).
  43. Interview with Directors, Chongqing Legal Aid Center (Dec. 29, 1999).
  44. Lawyers in China are also reluctant to accept criminal cases. See Jerome Cohen, "The Plight of Criminal Defense Lawyers," Testimony Presented at the Roundtable Discussion on Challenges for Criminal Justice in China, organized by the U.S. Congressional Executive Commission on China (July 26, 2002), at <http://www.cecc.gov/pages/roundtables/072602/cohen.php>; John Pomfret, "Defense Lawyers in China Find State is Judge and Jury," *The Washington Post*, Dec. 31, 2002. Pomfret reported that on average, each lawyer in Beijing handled 2.64 criminal cases in 1999 and less than one in 2000.
  45. Interviews in Guangdong (Dec. 28, 1998–Jan. 19, 1999) and Chongqing (Dec. 13, 1999–Jan. 14, 2000).
  46. Dong Hao, *Woguo sifa jiguan duochong zhineng gaige zhi sikao* [Thoughts on Reforming the Multiple Responsibilities System of China's Judicial Organs], 4 *Zhongguo Faxue* [China's Legal Studies] 24, 26 (1997).
  47. For a discussion of constraints on judicial autonomy, see Stanley Lubman, *Bird In A Cage: Legal Reform In China After Mao*, Ch. 9 (1999); He Weifang, *Tongguo sifa shixian shehui zhengyi: Dui zhongguo faquan xianzhuang de yige toushi* [The Realization of Social Justice Through Judicature: A Look at the Current Situation of Chinese Judges], in *Zou Xiang Quanli De Shidai: Zhongguo Gongmin Quanli Fazhan Yanjiu* [Toward An Era Of Rights: Research On The Civil Rights Development In China] 209 (Xia Yong ed., 1995).
  48. See, e.g., Chen Guangzhong & Zhang Jianwei, Lianheguo "Gongmin quanli he zhengzhi quanli guoji gongyue yu woguo xingshi susong" [The UN's International Covenant on Civil and Political Rights and Our Country's Criminal Litigation], 6 *Zhongguo Faxue* [China's Legal Studies] 98, 108 (1998); Chen, supra note 21, at 669–73; Chen, supra note 26; Chen Xingliang, [Dual Tasks for Criminal Revision: Change of Value and Adjustment of Structure], 1 *Zhongwai Faxue* [Peking University Law Journal] 55, 56–60 (1997), Cited in Chen, *Chinese Law*, supra note 23, at 193 n.166 (1999); Shen, supra note 21; Ma, supra note 23, at 7–8; Tao, supra note 23, at 12.
  49. See Chen & Zhang, supra note 48, at 108; Chen, supra note 26, at 36; Shen, supra note 21, at 19. See also Chen, supra note 4, at 700.
  50. See Chen & Zhang, supra note 48, at 108; Chen, supra note 71, at 35.
  51. See Chen & Zhang, supra note 48, at 108.
  52. See Chen & Zhang, supra note 48, at 108; Chen, supra note 23, at 193; Chen, supra note 23, at 56–60; Ma, supra note 23, at 7–8.
  53. The Supreme People's Court launched a Five-Year Court Reform Plan in Oct. 1999. See "China's Supreme Court Plans Greater Autonomy for Judges," *Chinaonline*, Oct. 26, 1999.
  54. See "China: New Regulation Sees Introduction of Criminal Suspects' Right to Silence," *Xinhua News Agency, BBC Worldwide Monitoring*, Nov. 22, 2000.
  55. See "Official Admits Detention, Forced Confessions a Major Problem", *Xinhua News Agency, BBC Summary of World Broadcasts*, Dec. 30, 2000.
  56. See *id.*
  57. See "Speed Urged for Judicial System Laws," *China Daily*, Dec. 24, 2001; "Beijing to Introduce Reeducation-Through-Labour Law This Year," supra note 1.
  58. "China Reviews Reeducation Through Labour System," *Deutsche Press-Agentur*, Feb. 5, 2001.
  59. Chen, supra note 21, at 672.