

CHINESE JUVENILE JUSTICE REFORM

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INTRODUCTION

China is not known for a strong compliance with international law.¹ This is particularly true in regard to international laws regarding human rights.² In at least one area, however, China is making impressive gains. In 2012, China passed a newly amended version of its Criminal Procedure Law.³ These amendments included a brand new chapter on the treatment of juveniles.⁴ The chapter was remarkable for just how closely its reforms line up with international laws on children's rights and juvenile justice. Even more notably, in the years since the passage of the bill, China appears to be making tremendous strides towards applying these legal reforms in practice — not only enforcing these standards, but proudly modeling them as “best practices.”⁵

Why is such progressive legal reform occurring in the field of juvenile justice, in a country which is often considered resistant at best towards implementing human rights reforms?⁶ Why does China appear to be complying so well with international standards on human rights in one area of law, when it has not in many others?⁷

Understanding how this process of reform has occurred requires looking at both the social and political pressures that motivated the

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¹ Jacques deLisle, *China's Approach to International Law: A Historical Perspective*, 94 AM. SOC'Y INT'L L. PROC. 267, 267 (2000).

² See Camila Ruz, *Human rights: What Is China Accused of?*, BBC NEWS (Oct. 21, 2015), <http://www.bbc.com/news/magazine-34592336>.

³ Wendy Zeldin, *China: Amendment of Criminal Procedure Law*, LIBR. CONGRESS: GLOBAL LEGAL MONITOR (Apr. 9, 2012), <http://www.loc.gov/law/foreign-news/article/china-amendment-of-criminal-procedure-law/>.

⁴ *Id.*

⁵ See John Kamm, *Trying Juveniles*, N.Y. TIMES (Nov. 29, 2012), <http://www.nytimes.com/2012/11/30/opinion/global/trying-juveniles.html>.

⁶ THOMAS LUM, CONG. RESEARCH SERV., RL34729, HUMAN RIGHTS IN CHINA AND U.S. POLICY 1–3 (2011).

⁷ Kamm, *supra* note 5.

reform efforts, as well as the normative process through which they occurred. This process has been heavily influenced by an openness to legal experimentation and to the role of a variety of actors, including non-state actors, in introducing new concepts and models of dealing with juvenile crime. The juvenile justice system therefore provides a particularly interesting case study through which to explore modes by which the China implements legal reform.

I. THE 2012 CRIMINAL PROCEDURE LAW AND INTERNATIONAL LAW

On March 14, 2012, the Chinese People's Congress adopted an amended version of the Chinese Criminal Procedure Law, which went into effect January 1, 2013.⁸ Unlike previous versions of the Criminal Procedure Law, the amended version of the law has an entirely new section pertaining to juvenile defendants and how juveniles should be treated within the criminal justice system.⁹ The chapter is remarkable for how well the requirements outlined align with the requirements on juvenile justice as prescribed in international law.

The chapter includes eleven articles, each delineating specific requirements for how juveniles should be handled in the criminal justice system.¹⁰ Nearly all theories, language, and specific requirements set out in the chapter have been previously codified in international laws and

⁸ Zeldin, *supra* note 3.

⁹ *Id.*

¹⁰ Zhonghua Renmin Gongheguo Xingshi Susong Fa (中华人民共和国刑事诉讼法) [Criminal Procedure Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 14, 2012, effective Jan. 1, 2013) pt. 5, ch. 1, *translated in* UN TREATY BODY DATABASE, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_ADR_CHN_20050_E.doc (last visited Mar. 3, 2017) [hereinafter Criminal Procedure Law].

guidelines on juvenile justice.¹¹

The chapter sets out a theory of juvenile justice that promotes rehabilitation and reintegration with society. Article 1 of the amended Criminal Procedure Law (CPL) explains that officials should “[i]mplement the directive of education, reform, and rescue for juveniles committing crimes, and continue the principle of education first with punishment as a supplement.”¹² This aligns with the theories expressed in both the Convention on the Rights of the Child (CRC) and International Covenant on Civil and Political Rights (ICCPR) that the underlying theory of juvenile justice should be rehabilitative, rather than punitive.¹³ The new chapter then proceeds to set out specific requirements regarding the treatment of juveniles, nearly all of which are required by international instruments such as the CRC, ICCPR, or U.N. guidelines.

¹¹ There are eight documents which set out the majority of the international laws and standards on juvenile justice. Two of these are binding international treaties. These are the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR). Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3; International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171. China has signed both of these documents and ratified the CRC. TREATY SECTION, OFFICE OF LEGAL AFFAIRS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, at 204, 389, U.N. Sales No. E.09.V.3 (2009). There are also five relevant United Nations rules and guidelines that provide countries with further standards on developing their juvenile justice systems. See High Comm’r for Human Rights, *Rep. of the High Commissioner for Human Rights on the Protection of Human Rights of Juveniles Deprived of Their Liberty*, ¶ 5, U.N. Doc. A/HRC/21/26 (Aug. 3, 2012) (collecting the five sets of rules and guidelines). Although these guidelines are not binding, they can be seen as interacting with, and sometimes clarifying, the rights described in the CRC and ICCPR. Additionally, the Committee on the Rights of the Child, the body charged with monitoring compliance with the Convention on the Rights of the Child (CRC), has issued a variety of general comments, which provide greater clarity on how the Convention on the Rights of the Child should be interpreted. In particular, General Comment No. 10 provides on how to interpret the CRC’s requirements on juvenile justice. Comm. on the Rights of the Child, General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, ¶ 4, CRC/C/GC/10 (Apr. 25, 2007) [hereinafter General Comment No. 10].

¹² Criminal Procedure Law, *supra* note 10, art. 266.

¹³ The Convention on the Rights of the Child (CRC) states that juveniles accused of violating criminal law should be treated in a way that promotes the child’s reintegration and productive role in society, as well as promoting “the child’s sense of dignity and worth.” Convention on the Rights of the Child, *supra* note 11, art. 40(1). The ICCPR requires that states should “take account of . . . the desirability of promoting [the] rehabilitation” of children in conflict with the law. International Covenant on Civil and Political Rights, *supra* note 11, art. 14(4). General Comment No. 10 says “[t]his principle reflects the fundamental human right . . . in article 1 of [the Universal Declaration of Human Rights].” General Comment No. 10, *supra* note 11, ¶ 13.

The new chapter requires, for example, that all juveniles be given access to legal counsel, a key procedural right expressed by both the CRC and ICCPR.¹⁴ While this was previously set out in Chinese law, the effectiveness of this requirement was limited.¹⁵ The new law now explicitly places the onus on public officials such as the courts, procuratorate, or other public security officials to ensure that juveniles are, in fact, represented by counsel in criminal cases.¹⁶ It also requires that juveniles should be given special treatment throughout the criminal justice process to protect their unique vulnerabilities. For example, the law suggests that officials working with children should be specially

¹⁴ Article 267 of the Criminal Procedure Law states “[w]here a minor criminal suspect or defendant has not entrusted a defender, the people’s court, people’s procuratorate or public security organ concerned shall notify a legal aid agency to assign a lawyer as the defender of the minor.” Criminal Procedure Law, *supra* note 10, art. 276. The Convention on the Rights of the Child requires that “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance,” and “to have legal or other appropriate assistance in the preparation and presentation of his or her defense.” Convention on the Rights of the Child, *supra* note 11, arts. 37(d), 40(2)(b)(ii). General Comment No. 10 clarifies that when interpreting “[l]egal or other appropriate assistance,” legal assistance should not be denied simply because other assistance is available. General Comment No. 10, *supra* note 11, ¶ 49. The right to counsel and free legal aid is also required by both the ICCPR and the Beijing Rules. International Convention on Civil and Political Rights, *supra* note 11, art. 14(3)(d); G.A. Res. 40/33, annex, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), rs. 7.1, 15.1 (Nov. 29, 1985) [hereinafter Beijing Rules]. Although international law imposes no direct duty on any specific actors to ensure a juvenile’s access to counsel, best practice guides have recommended that legislation or guidelines for police or prosecutors “should impose a duty on [them] . . . to assist the child in obtaining legal [assistance].” CAROLYN HAMILTON, UNICEF, GUIDANCE FOR LEGISLATIVE REFORM ON JUVENILE JUSTICE 45–46 (2011).

¹⁵ The right to counsel had actually already been specified in Chinese law in 2006. Zhonghua Renmin Gongheguo Wei Chengnian Ren Baohu Fa (中华人民共和国未成年人保护法) [Law of the People’s Republic of China on the Protection of Minors] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2006, effective June 1, 2007), art. 51, translated in *Law of the People’s Republic of China on the Protection of Minors (2006 Revision) [Revised]*, PKULAW.CN (last visited Mar. 4, 2017) [hereinafter Law on the Protection of Minors]. That law, however, stated that should a minor be in need of legal aid, a legal aid institution should provide it to him. *Id.* The burden therefore lay on the legal aid institutions (who are themselves a relatively new and problematic institution in China and who often have little power in the system) and put no direct burden on any of the actual key players in the criminal process. *Legal Aid*, CONG.-EXECUTIVE COMMISSION ON CHINA, <https://www.cecc.gov/legal-aid> (last visited Feb. 3, 2017).

¹⁶ Criminal Procedure Law, *supra* note 10, art. 267.

trained to handle such cases¹⁷ and that juveniles who are detained must be separated from adult offenders.¹⁸ The law also requires that all court records must be sealed in juvenile cases to protect the privacy of the juvenile defendant.¹⁹

Additionally, the law supports a preference for limited arrests and

¹⁷ Article 266 of the Criminal Procedure Law specifies that officials working in the juvenile justice system should be “familiar with the physical and mental characteristics of minors.” *Id.* art. 266. This echoes language in the U.N. Guidelines that “[l]aw enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons,” G.A. Res. 45/112, annex, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), ¶ 58 (Dec. 14, 1990) [hereinafter Riyadh Guidelines], and that “police officers who frequently . . . deal with juveniles” should be “specially instructed and trained,” Beijing Rules, *supra* note 14, r. 12.1.

¹⁸ Article 269 of the Criminal Procedure Law requires that juveniles “held in custody or arrested or who are serving sentences . . . [should be held] separately from adults.” Criminal Procedure Law, *supra* note 10, art. 269. The CRC in Article 37(c) states that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.” Convention on the Rights of the Child, *supra* note 11, art. 37(c); *see also, e.g.*, International Covenant on Civil and Political Rights, *supra* note 11, art. 10(2)(b) (requiring that juveniles accused of crimes be kept separate from adults).

¹⁹ The Criminal Procedure Law requires that juvenile records be sealed. Criminal Procedure Law, *supra* note 10, art. 275. The Chinese Law on the Protection of Minors previously required that public sources such as the news or “computer network[s]” should not share information about juvenile defendants. Law on the Protection of Minors, *supra* note 15, art. 58. However, the amended Criminal Procedure Law now requires that all juveniles under the age of 18 who are sentenced to five years or less shall have their criminal records sealed, and only court officials will be able to access these documents. Criminal Procedure Law, *supra* note 10, art. 275. Such a requirement for privacy is expressed in the CRC in Article 40(2)(b)(vii), which states that a juvenile defendant has a right “[t]o have his or her privacy fully respected at all stages of the proceedings.” Convention on the Rights of the Child, *supra* note 11, art. 40(2)(b)(vii). This vague language has been clarified by the Committee in General Comment No. 10, explaining that “[a]ll stages of the proceedings” starts at the point of “initial contact with law enforcement” bodies and extends until either a “final decision” or “release from supervision.” General Comment No. 10, *supra* note 11, ¶ 64. General Comment No. 10 further clarifies that there should be some form of domestic legislation requiring trials to occur “behind closed doors” and that records should be kept “strictly confidential.” *Id.* at ¶¶ 64–66. The Beijing Rules similarly specify the juvenile’s “right to privacy” so as to “avoid harm being caused to her or him by undue publicity or by the process of labeling” and that “[i]n principle, no information that may lead to the identification of a juvenile offender shall be published.” Beijing Rules, *supra* note 14, rs. 8.1–2. “Records of juvenile offenders shall be kept strictly confidential . . .” *Id.* r. 21.1.

prosecutions for juveniles, particularly in the case of minor crimes.²⁰ This is a concept which has strong support within international law. The CRC, for example, requires states to develop procedures that allow children to be diverted without resorting to judicial proceedings whenever appropriate.²¹

Some of the articles in the new Criminal Procedure Law are quite

²⁰ The new Criminal Procedure Law requires that “application of arrest to minor criminal suspects and defendants shall be strictly restricted.” Criminal Procedure Law, *supra* note 10, art. 269. Article 271 of the new law allows a procuratorate to issue a “conditional non-prosecution decision” on a juvenile who “is suspected of crimes provided for in Chapter 4, Chapter 5, or Chapter 6” that have punishments of up to a year if he or she shows repentance. *Id.* art. 271. The requirements of such agreements are further clarified in Articles 272 and 273. *Id.* arts. 272–73.

²¹ Article 40(3)(b) requires member states to promote laws that include, “[w]henver appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.” Convention on the Rights of the Child, *supra* note 11, art. 40(3)(b). A preference for non-prosecution is endorsed in Rule 11.1 of the Beijing Rules, which states that “[c]onsideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial.” Beijing Rules, *supra* note 14, r. 11.1. Rule 11.2 further clarifies that “police, the prosecution or other agencies . . . shall be empowered to dispose of . . . cases . . . without recourse to formal hearings.” *Id.* r. 11.2. The commentary notes that diversion “serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence).” *Id.* r. 11 cmt. The Tokyo Rules also suggest that

Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.

G.A. Res. 45/110, annex, United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), r. 5.1 (Dec. 14, 1990). The Riyadh Guidelines similarly suggest “[l]aw enforcement and other relevant personnel . . . should be familiar with . . . possibilities [of] diversion . . . from the justice system.” Riyadh Guidelines, *supra* note 17, art. 58.

International law is somewhat more specific than the Chinese requirement, however. The Committee on the Rights of the Child, for example, in General Comment No. 10, recommends that “specific provisions” should be developed to decide when “diversion is possible” and who has the power to make these decisions. General Comment No. 10, *supra* note 11, ¶ 27. The CRC provides that diversionary measures may include “care, guidance and supervision . . . counselling[,] probation,” etc. Convention on the Rights of the Child, *supra* note 11, art. 40(4).

International law is also quite cautious over making sure children’s procedural rights are still protected in the diversion process. Diversionary measures should only be included “when there is compelling evidence” that the juvenile actually committed the crime, and the child must consent to the diversionary measure freely. General Comment No. 10, *supra* note 11, ¶ 27. States should also establish safeguards that “minimize the potential for coercion and intimidation” in “consenting to diversion [programs].” Beijing Rules, *supra* note 14, r. 11 cmt. The new language of the CPL is notably lacking in language which safeguards the juveniles from potential pressures in the diversion process. *See* Criminal Procedure Law, *supra* note 10, art. 271.

progressive and go beyond the basic requirements of international law. Article 268, for example, provides that a “social background investigation” should be done in juvenile cases, requiring courts and prosecutors to look into the background and family history of juvenile defendants in order to better understand the totality of their circumstances when determining how the case should be appropriately handled.²² While this is promoted in the Beijing Rules and in many foreign juvenile justice systems, it is not required by international law.²³ Similarly, Article 270 of the Criminal Procedure Law surpasses international guidelines that promote the rights of parental involvement in the judicial process, allowing for the possibility that not only parents, but other adults may be present during certain procedures in order to protect the juvenile’s rights.²⁴ It also requires that during the interrogation or trial of a juvenile, their legal representative should be notified.²⁵ If their legal representative is not able to be present, for any reason, another adult may be notified and can attend instead.²⁶ This person, termed a “[l]egal representative[],” can be “parent[], foster

²² Article 268 of the amended Criminal Procedure Law allows courts, prosecutors, and police to investigate the “growing up experience, reasons for committing crimes and education and guardianship conditions of the minor criminal suspects or defendants.” Criminal Procedure Law, *supra* note 10, art. 268. The language of the statute says only that judicial officials “may” (可以) investigate a juvenile’s background. *Id.* However, that article has gained significant power through its interpretation and inclusion in other minor laws and regulations, such as those of the police, prosecutors, and courts. *See infra* notes 33–34 and accompanying text. This requirement that a juvenile’s background should be investigated echoes language in the Beijing Rules; Rule 16.1 states that, except in minor offenses, “prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated.” Beijing Rules, *supra* note 14, r. 16.1.

²³ *See, e.g.*, Beijing Rules, *supra* note 14, r. 16.1 (promoting but not requiring such investigations).

²⁴ Criminal Procedure Law, *supra* note 10, art. 270. Under international law, there is a strong emphasis on parent inclusion in the judicial process. General Comment No. 10 on the CRC, for example, requires that states provide for “the maximum possible involvement of parents or legal guardians.” General Comment No. 10, *supra* note 11, ¶ 54. Parental presence is seen as an important part of the judicial process, as they are able to provide “emotional support” in a “stressful situation,” “ensure that the child understands” what is happening, and ensure that the child is able to express themselves clearly and is not coerced. HAMILTON, *supra* note 14, at 43–44. The Beijing Rules also express the right of the juveniles to have their parents present as a “[b]asic procedural safeguard[]”, that parents should be “immediately notified” after the juveniles’ apprehension, and that they are “entitled to participate in the proceedings.” Beijing Rules, *supra* note 14, rs. 7.1, 10.1, 15.2.

²⁵ Criminal Procedure Law, *supra* note 10, art. 270.

²⁶ *Id.*

parent[] or guardian[] of a person being represented [or a representative[] of the State organ or public organization responsible for that person's protection."²⁷ The adult in attendance may then exercise procedural rights on behalf of the juvenile and may "offer their opinion[]" if they feel the juvenile's rights have been infringed on.²⁸ They also have a right to review the interrogation and court transcripts, and have a right to make a closing statement on behalf of the juvenile.²⁹ While similar requirements have been instituted in places like the U.K., Australia, and certain U.S. states,³⁰ they are not a binding international requirement and indeed are more progressive than the requirements that exist in many States.³¹

II. IMPLEMENTATION AND ENFORCEMENT OF JUVENILE JUSTICE REFORM

Since the release of the amended criminal procedure law in 2012, there have been further steps taken, at both national and local levels, to implement the reforms and requirements included in the new law. The Standing People's Congress began by releasing a document providing

²⁷ *Id.* art. 106(3).

²⁸ *Id.* art. 270.

²⁹ *Id.*

³⁰ See, e.g., Police and Criminal Evidence Act 1984 (PACE) Code C (2014), ¶ 3.13 (Eng.); *Children (Criminal Proceedings) Act 1987* (N.S.W.) s 13 (Austl.); ME. REV. STAT. ANN. tit. 15, § 3203-A(2-A)(A)–(C) (2016).

³¹ As described in note 24, Article 270 of the Criminal Procedure Law lines up with international guidelines that states should allow for parental presence and participation in the judicial process. *Supra* note 24. Article 270, however, goes beyond this requirement and includes language that makes it possible for other adults to be present during police interrogations and other procedures. Criminal Procedure Law, *supra* note 10, art. 270. Many nation states have requirements that an adult be present when juveniles are questioned by police. HAMILTON, *supra* note 14, at 43. If a parent cannot attend the interrogation, an alternative adult must be present. *Id.* In some states, such as the United Kingdom, there are groups of trained people to do this task termed "appropriate adult[s]" or "responsible adult[s]." THE NAT'L APPROPRIATE ADULT NETWORK & THE ROYAL COLL. OF NURSING, THE PROVISION OF APPROPRIATE ADULT SERVICES IN ENGLAND AND WALES 1 (Feb. 2013),

https://www2.rcn.org.uk/__data/assets/pdf_file/0006/513087/AA_leaflet_for_custody_nurses_and_HCPs_final_Feb_13.pdf. None of this is required under international law, however. China's move to allow such "appropriate adults" is therefore highly progressive and beyond basic treaty requirements or even international guidelines.

The Law on Protection of Minors had previously required that guardians should be notified if minors (whether defendants, witnesses, or victims) were to be interrogated. The Law on Protection of Minors, *supra* note 15, art. 56. It did not make any requirements beyond that they be notified, however, and gave them no procedural rights; moreover, it did not allow for any individuals other than the children's guardians to be present if such persons were unavailable. *Id.* The new language in the Criminal Procedure Law is therefore really quite a remarkable change.

clarification on how the new law should be interpreted.³² This interpretation went beyond the text of the law in providing even greater procedural protections for juvenile defendants. For example, Section 467 of the interpretation ordinance requires a “strict understanding” of how the “social background investigation” of juveniles is to be conducted.³³

Additionally, the requirements of the Criminal Procedure law have been reiterated and reinforced in more specific interpretations and regulations intended for police, prosecutors, and the lower courts.³⁴ Local governments have also taken the requirements from the amended law and included them into local laws and regulations.³⁵

Perhaps more importantly, the law seems to be having very real effects on outcomes for juvenile detainees and defendants. For example, the number of juvenile arrests and indictments that are approved appears to be dropping. The Supreme People’s Procuratorate released statistics in May 2016 indicating that around “30 percent of juvenile arrests and over eight percent of juvenile indictments . . . were not

³² Zuigao Renmin Fayuan Guanyu Shiyong “Zhonghua Renmin Gongheguo Xingshi Susong Fa” De Jieshi (最高人民法院关于适用《中华人民共和国刑事诉讼法》的解释) [Interpretation of the Supreme People’s Court on the Application of the Criminal Procedural Law of the People’s Republic of China] (promulgated by the Sup. People’s Ct., Nov. 5, 2012, effective Jan. 1, 2013) [hereinafter Interpretation of the Criminal Procedure Law].

³³ *Id.* art. 476.

³⁴ *See, e.g.*, Interpretation of the Criminal Procedure Law, *supra* note 32; Gong’an Jiguan Banli Xingshi Anjian Chengxu Guiding (公安机关办理刑事案件程序规定(2012修订)) [Provisions on the Procedures for Handling Criminal Cases by Public Security Organs (2012 Revision)] (promulgated by the Ministry of Public Security, Dec. 13, 2012, effective Jan. 1, 2013), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=191739; Zuigao Renmin Jianchayuan Guanyu Jing Yibu Jiaqiang Wei Chengnian Ren Xingshi Jiancha Gongzuo de Guiding (最高人民法院关于进一步加强未成年人刑事检察工作的规定) [Decision of the Supreme People’s Procuratorate on Further Strengthening Criminal Procuratorial Work on Minors] (promulgated by the Supreme People’s Procuratorate, Oct. 22, 2012, effective Oct. 22, 2012) art. 1, http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=187259.

³⁵ *See, e.g.*, Fushan Shi Guanyu Heshi Chengnian Ren Shen Yu Xingshi Susong De Guiding (佛山市关于合适成年人参与刑事诉讼的规定) [Provisions of Foshan Municipality on Appropriate Adults’ Participation in Criminal Proceedings] (promulgated by Foshan Mun. Bureau of Just., Oct. 10, 2012), http://www.fswccw.gov.cn/flfg/dfflg/201212/t20121206_4210807.htm; Gaomi Shi “Heshi Chengnianren He Shehui Diaochayuan Shishi Yijian” (高密市《合适成年人和社会调查员实施意见》)[Gaomi Cities’ “Opinions of the Implementation of Appropriate Adults and Social Investigators”], <http://www.gaominews.com/news/20130712/n024043401.html> (implementing aspects of the Criminal Procedure Law).

approved in 2015.”³⁶ This is a significant improvement from the years immediately prior to the release of the amended Criminal Procedure Law. In 2012 only 18 percent of arrests and 5 percent of indictments were rejected.³⁷ In addition, courts seem to be taking the ideas expressed in the Criminal Procedure Law to heart in their sentencing, particularly its emphasis on education and rehabilitation. For example, there has been a significant increase in the number of cases in which courts ordered non-custodial sentences or exemptions to punishments.³⁸ In 2010 only 35.5% of juvenile cases resulted in these types of sentences. By 2015 it had increased to nearly half of all cases.³⁹ There has also been increasing interest in the use of new and innovative methods of dealing with juvenile crime, for example mediation or restorative justice programs.⁴⁰

High level judicial officials also appear to have embraced the reforms. In a 2015 lecture at the University of Hong Kong, Huang Yongwei, the current President of National Judges College and a former Vice President of the Supreme People’s Court, explained the reforms and improvements made to the Chinese juvenile justice system in recent years, noting the ways in which some of the most progressive aspects of the law are being embraced and implemented.⁴¹

III. HISTORY OF JUVENILE JUSTICE IN CHINA

The development of the Chinese juvenile justice system has been a relatively recent phenomenon, and one that tracks closely with social, legal, and judicial developments that have occurred in China more generally.

Although there were some ancient legal traditions (some dating as far back as the Zhou Dynasty) that eliminated criminal responsibility for children under a certain age, a juvenile justice system in the modern

³⁶ Dui Hua Found., *Chinese Officials Struggle to Counter Juvenile Crime Without Relying on Harsh Punishment*, DUI HUA: HUM. RTS. J. (Aug. 24, 2016), <http://www.duihuahrjournal.org/2016/08/chinese-officials-struggle-to-counter.html>.

³⁷ *Id.* (graphing information from the Supreme People’s Procuratorate on the percentage of arrests and indictments not approved in 2012).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Dennis Sing-wing Wong & Louis Wai-yin Mok, *Restorative Justice and Practices in China*, BRIT. J. COMMUNITY JUST., Winter 2010/2011, at 23, 30 (collecting examples of restorative justice in the Chinese juvenile justice system); Xiaoyu Yuan & Xiaohua Di, *Harmonizing or Restoring Justice? A Study of Victims’ Experiences Meeting with Their Young Offenders in China*, REVISTA DE ASISTENȚĂ SOCIALĂ, Oct. 2015, at 75, 76 (discussing the use of mediation and restorative justice for juvenile offenses).

⁴¹ Judge Huang Yongwei, President, Nat’l Judges Coll. of China, Hochelaga Lectures 2015 Second Lecture: Legislation and Adjudication of Juvenile Crimes in Mainland China (Oct. 30, 2015).

sense did not really exist in China until the 1980s.⁴² Traditional Chinese methods of dealing with juvenile crime relied heavily on informal modes of control. During the Mao era, juvenile crimes were often dealt with by local committees, such as mediation committees, who would resolve the case without resorting to formal legal processes.⁴³ These methods reflected traditional Confucian notions of dealing with crime through a net of relationships.⁴⁴ During this early Communist era, juvenile crime rates were low and juvenile delinquency tended to be viewed primarily as a welfare problem, rather than a criminal problem.⁴⁵

During the late 1970s and 1980s, after the Cultural Revolution, China began to experience an upsurge in crime generally.⁴⁶ Compared to the period just before the Cultural Revolution, crime rates had more than doubled.⁴⁷ Crime rates among juveniles rose particularly quickly.⁴⁸ From 1980 to 1989, the number of offenses “per 1,000 persons under the age of 25,” rose from 14.9 to 27.4.⁴⁹ Chinese officials began to see juvenile crime as a serious problem requiring immediate attention.⁵⁰

China held its first conference on juvenile delinquency in 1982.⁵¹ The conference was quite progressive, rejecting traditional Maoist ideas that crime was a result of class struggle and instead discussing the possibility that juvenile crime was largely a “result [of] defects in . . . social systems.”⁵² More radically, the conference also discussed the merits of using western legal theories to deal with juvenile crime.⁵³ This progressive beginning set the stage for a relative openness to reform in the juvenile justice system and to foreign influence in creating that reform.

⁴² Guoling Zhao, *The Recent Development of Juvenile Justice in China*, in CRIME AND SOCIAL CONTROL IN A CHANGING CHINA 177, 178, 183–84 (Jianhong Liu et al. eds., 2001).

⁴³ Dennis S.W. Wong, *Changes in Juvenile Justice in China*, 32 YOUTH & SOC'Y 492, 498–99 (2001).

⁴⁴ *Id.* at 498.

⁴⁵ Xin Ren, *People's Republic of China*, in INTERNATIONAL HANDBOOK ON JUVENILE JUSTICE 57, 58–59 (Donald J. Shoemaker ed., 1996).

⁴⁶ Dennis S.W. Wong, *Juvenile Protection and Delinquency Prevention Policies in China*, 37 AUSTL. & N.Z. J. CRIMINOLOGY (SUPPLEMENT) 52, 56 (2004).

⁴⁷ Xin Ren, *supra* note 45, at 59.

⁴⁸ *See id.*

⁴⁹ *Id.* at 60 tbl.4.1.

⁵⁰ *See id.* at 60.

⁵¹ Wong, *supra* note 43, at 497.

⁵² *Id.*

⁵³ *Id.*

Following the conference, China gradually began to create and reform laws and legal structures aimed at juveniles. The first major step occurred in 1984 with the creation of China's "first juvenile [tribunal]."⁵⁴ The tribunal was set up in Shanghai and was the first court aimed specifically at hearing juvenile cases.⁵⁵ The Shanghai tribunal received wide attention and acclaim from both the media and political leadership, and was later explicitly endorsed by the Supreme People's Court.⁵⁶ The concept of a juvenile tribunal quickly spread, and eventually thousands of other panels and tribunals were set up throughout China to hear juvenile cases.⁵⁷ Unlike some of their western counterparts, these courts have often had wide jurisdiction, dealing with a variety of both criminal and non-criminal cases involving children, where the child can be either victim or defendant.⁵⁸

The success of the juvenile tribunals was followed by the creation of several pieces of legislation regarding juvenile justice which were enacted throughout the 1990s.⁵⁹ The first such law was the Law on the Protection of Minors, passed in 1991 and revised in 2006.⁶⁰ This law developed an initial framework for a juvenile justice system and promoted better treatment of juveniles within the criminal justice system.⁶¹ The Juvenile Delinquency Protection Law, passed in 1999, expanded the framework created by the Law on the Protection of Minors by creating measures to control potential delinquents, i.e. youth who had not yet committed a crime, but were seen to be at risk of doing so.⁶² The Juvenile Delinquency Protection Law calls for a comprehensive and systematic strategy of dealing with delinquency. This includes engagement by a variety of actors, with a "focus[] on education as . . .

⁵⁴ Lening Zhang & Jianhong Liu, *China's Juvenile Delinquency Prevention Law*, INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 541, 544 (2007).

⁵⁵ Guoling Zhao, *supra* note 42, at 183–84; Xin Ren, *supra* note 45, at 60.

⁵⁶ Weijian Gao, *The Development and Prospect of Juvenile Justice in the People's Republic of China*, in JUVENILE JUSTICE IN GLOBAL PERSPECTIVE 121, 125 (Franklin E. Zimring et al. eds., 2015).

⁵⁷ *Id.* at 126–27.

⁵⁸ Ruohui Zhao et al., *China's Juvenile Justice: A System in Transition*, in JUVENILE JUSTICE 137, 152–53 (John A. Winterdyk, ed., 2015).

⁵⁹ These included the Regulations on Juvenile Criminal Case Procedures (Trial Implementation) (enacted Jan. 1991); Joint Regulations on Jurors in Juvenile Criminal Cases (enacted Apr. 1991); Regulations on Forming Juvenile Criminal Case Processing Systems (enacted June 1991); and Juvenile Protection Law (enacted Sept. 1991). Weijian Gao, *supra* note 56, at 127.

⁶⁰ Guoling Zhao, *supra* note 42, at 179–80; LANEY ZHANG, LAW LIBRARY OF CONG., CHINA: CHILDREN'S RIGHTS 61 (Aug. 2007), <https://www.loc.gov/law/help/child-rights/pdfs/Children's%20Rights-China.pdf>.

⁶¹ Guoling Zhao, *supra* note 42, at 180–81.

⁶² Wong, *supra* note 46, at 54–55.

[the primary means of] delinquency prevention.”⁶³

Some scholars have argued that the Juvenile Delinquency Protection Law reflected the continued presence of traditional Chinese values in the juvenile justice reform efforts.⁶⁴ First, the law’s emphasis on the prevention of delinquency reflects a traditional idea of “[n]ipping crime in the bud,” in contrast to the western paradigm of dealing with crime *ex post facto*.⁶⁵ Second, the law’s focus on providing a “healthy environment” for children to “grow and develop,” as well as its focus on the importance of education as a tool of reform, arguably reflect traditional Chinese values.⁶⁶ Finally, the idea of a “total-society” strategy for crime prevention is derivative of “Mao’s earl[y] . . . [techniques] for social control.”⁶⁷

As the juvenile justice system has developed into the 21st century, it has retained some distinctly Chinese characteristics, however it has also increasingly introduced procedural protections more in line with western criminal justice systems. For example, the police in China continue to play a critical role in the juvenile justice system that is distinctly different than their role in many western systems. Many low level crimes are under the purview of the police rather than the court system, including crimes that would be considered “status offenses” in many western jurisdictions.⁶⁸ These crimes are therefore never elevated to the level of criminal prosecution, but remain within the police powers under their “rehabilitation” role.⁶⁹ Increasingly, however, as seen through legislation introduced throughout the 1990s and highlighted by the 2012 amendments to the Criminal Procedure Law, there has been an emphasis on western style procedural protections, such as right to counsel or protections for juveniles during police interrogations.⁷⁰ This appears to indicate movement away from traditional, informal social control over juvenile crime, towards a model that provides more formal procedural protections for juvenile defendants.

⁶³ Lening Zhang & Jianhong Liu, *supra* note 54, at 542.

⁶⁴ *Id.* at 541.

⁶⁵ *Id.* at 549.

⁶⁶ *Id.* at 549–50.

⁶⁷ *Id.* at 551.

⁶⁸ Ruohui Zhao et al., *supra* note 58, at 143, 149.

⁶⁹ *See id.* at 152.

⁷⁰ *See supra* notes 14, 31.

IV. WHAT HAS MOTIVATED REFORM EFFORTS?

The creation and reform of China's juvenile justice system coincided with a rising juvenile crime rate, as well as growing domestic awareness of and dissatisfaction with the criminal justice system.⁷¹ While crime rates during the Mao era were extremely low,⁷² during the Cultural Revolution and immediately after these rates began to rise,⁷³ with a particular "boom" in juvenile crime occurring in the 1980s.⁷⁴ Scholars have tied these rising crime rates to China's "rapid social [and economic] changes," correlating them with "increased inequality, changing cultural beliefs and norms . . . decreased social integration, massive migration [from] rural . . . into urban areas, [and the] altered age structure of the population."⁷⁵

Internal migration in particular seems to be a major factor causing increased juvenile crime. In many cities, over 80% of juvenile crime is committed by migrant children.⁷⁶ As China's market economy has expanded and an increasing amount of wealth and jobs are being created in urban areas, a large number of China's rural poor have begun to migrate into urban areas.⁷⁷ It is estimated that "between 1990 and 2005, 103 million Chinese" immigrated "from rural to urban areas," with "60% of [these] migrant workers . . . now mov[ing] with their children."⁷⁸ "[A]pproximately 19 million migrant children . . . currently liv[e] in China's cities."⁷⁹ There is a clear correlation between this rising

⁷¹ See Lening Zhang & Jianhong Liu, *supra* note 54, at 543–44.

⁷² Dean G. Rojek, *Chinese Social Control*, in *CRIME AND SOCIAL CONTROL IN A CHANGING CHINA*, *supra* note 42, at 89, 96.

⁷³ Wong, *supra* note 43, at 493.

⁷⁴ Børge Bakken, *Moral Panics, Crime Rates, and Harsh Punishment in China*, 37 *AUSTL. & N.Z. J. CRIMINOLOGY (SUPPLEMENT)* 67, 67 (2004).

⁷⁵ Lening Zhang & Jianhong Liu, *supra* note 54, at 542 (citations omitted).

⁷⁶ Xie Chuanjiao & Zhan Lisheng, *Juvenile Crime Up Among Migrants*, *CHINA DAILY*, http://www.chinadaily.com.cn/china/200812/30/content_7352008.htm (last updated Dec. 30, 2008, 7:35 AM); *Rural Youth Crime Rate Increasing Alarmingly*, *CHINA LAB. BULL.* (Sept. 21, 2007), <http://www.clb.org.hk/en/content/rural-youth-crime-rate-increasing-alarmingly> [hereinafter *CHINA LAB. BULL.*]; see *Hard Times: How Young Criminals Are Treated Says Much About the Urban-Rural Gap*, *THE ECONOMIST* (Oct. 26, 2013), <http://www.economist.com/news/china/21588402-how-young-criminals-are-treated-says-much-about-urban-rural-gap-hard-times>.

⁷⁷ Jessica L. Montgomery, Comment, *The Inheritance of Inequality: Hukou and Related Barriers to Compulsory Education for China's Migrant Children*, 21 *PAC. RIM L. & POL'Y J.* 591, 591 (2012).

⁷⁸ *Id.* at 594–95.

⁷⁹ *Id.* at 597.

migration rate and the rising juvenile crime rate.⁸⁰

As the juvenile crime rate, as well as the general crime rate, has risen, the Chinese government has faced increasing pressure to deal with this problem.⁸¹ The domestic pressure caused by these rising crime rates has been exacerbated by growing awareness and dissatisfaction by China's domestic population.⁸² "Over the past 16 years since the last

⁸⁰ See Xi Chen & Hua Zhong, *Delinquency and Crime Among Immigrant Youth: An Integrative Review of Theoretical Explanations*, 2 LAWS 210, 225 (2013). There are a variety of reasons why migrant children may be especially likely to engage in crime. *Id.* With the new migration patterns, informal social controls are largely disrupted. See Lening Zhang & Jianhong Liu, *supra* note 54, at 542. Most migrants are largely un-documented, lack social support, and lack the kinds of informal social policing which would have helped to catch and control unwanted behavior in the past. *Id.* at 543; see Jianhua Xu, *Urbanization and Inevitable Migration: Crime and Migrant Workers*, in THE ROUTLEDGE HANDBOOK OF CHINESE CRIMINOLOGY 209, 217 (Liquan Cao et al. eds., 2014) (discussing migrant workers facing discrimination). In addition, migrants to the cities often lack access to basic social services. Montgomery, *supra* note 77, at 597 (discussing the restrictions "rural hukou" face). This is largely the result of China's "hukou" system. *See id.* at 591. "The hukou system . . . [is a] 'household registration' system by which Chinese citizens [are registered to a specific city or location, as well as a type of residency] (i.e. urban or rural)." *See id.* "China implemented [the] modern hukou system in the 1950s . . . [in order to] control[] rural [to] urban migration[,] and determin[e] access to . . . services." *Id.* at 592. Unfortunately, the system "is increasingly out of touch with the . . . current sociopolitical structure." *Id.* Of particular concern for migrant children is the fact that access to public education is often tied to having the right hukou. *See id.* at 597, 599. A study done in 2000 by scholars at Beijing Normal University found that only 40% of migrant children were attending school. Dandan Zhang, Xin Li, & Jinjun Xue, *Education Inequality Between Rural and Urban Areas of the People's Republic of China, Migrants' Children Education, and Some Implications*, 32 ASIAN DEV. REV. 196, 222 (2015). In addition, access to health care, job trainings, and other important services are often denied to migrant children. Montgomery, *supra* note 77, at 597. These problems are directly linked to many of the common causes of juvenile delinquency. "[R]esearch suggests that the causes of delinquency [in China] are to be found in factors [such as]: poverty, social alienation, lack of skilled training, limited employment opportunities, increasing corruption, and the spread of criminal gangs." Wong, *supra* note 46, at 62. China's growing delinquency problem is therefore deeply connected to its rapidly changing society and domestic social phenomenon such as the problem of internal migration.

⁸¹ See Jianhua Xu, *supra* note 80, at 212 (attributing an increase in crime since 1980s to "rural-urban migrants"); Guoling Zhao, *Juvenile Criminal Justice System in China*, in THE ROUTLEDGE HANDBOOK OF CHINESE CRIMINOLOGY, *supra* note 80, at 103, 110 (discussing juvenile justice reform in response to rising juvenile crime); CHINA LAB. BULL., *supra* note 76 (reporting a thirteen percent average increase of youth crime since 2000).

⁸² See Dui Hua Found., *Bullying Ignites Calls to Lower Age of Criminal Responsibility in China*, DUI HUA: HUM. RTS. J. (Dec. 21, 2016), <http://www.duihuahrjournal.org/2016/12/bullying-ignites-calls-to-lower-age-of.html> [hereinafter *Bullying*].

revision, China's economy and society have developed rapidly and new situations have emerged in regard to criminal offenses," stated Wang Zhaoguo, Vice Chairman of the National People's Congress Standing Committee, when explaining the reasons for amending the Criminal Procedure Law, "[t]he development of democracy and the legal system in China and people's increased . . . awareness have placed higher demands on safeguarding justice and protecting citizens' rights."⁸³

The increasing juvenile crime rate also coincided with a period in which the central Chinese government increasingly viewed legal reform as a mechanism to deal with social developments and instabilities.⁸⁴ The 1980s and 1990s in particular were eras in which China focused significant resources on developing their formal legal system and developing their legal procedures and professional capacity, in order to both expand their economic development, but also to deal with a range of social issues.⁸⁵

These social phenomena help explain China's interest in reforming its juvenile justice system, but do not adequately explain the process through which reform occurred. Why do China's amended laws so closely track the requirements of international law? Why did China implement greater procedural reform, rather than utilizing more traditional social methods of dealing with juvenile crime? In order to fully answer these questions, it is necessary to turn to more normative explanations regarding the process of reform.

V. EXPERIMENTATION, TRANSPLANTATIONS, AND BORROWING FOREIGN MODELS

There is strong evidence that the juvenile justice system in China has been heavily influenced by foreign models and by international laws and standards on children's rights. The amendments to the 2012 Criminal Procedure Law themselves heavily draw on language and concepts utilized in international conventions and guidelines, as well as model "best practices" from other jurisdictions.⁸⁶ This explicit influence of international law on the juvenile justice system has been noted by a

⁸³ *China Highlights Human Rights in Criminal Procedure Law Revision*, XINHUA (Mar. 8, 2012, 09:51:52 AM), http://news.xinhuanet.com/english/china/2012-03/08/c_131453966.htm.

⁸⁴ See Benjamin L. Liebman, *Assessing China's Legal Reforms*, 23 COLUM. J. ASIAN L. 17, 18 (2009); Lening Zhang & Jianhong Liu, *supra* note 54, at 541, 543–45 (referring to China's response to rising juvenile delinquency includes juvenile justice reform, efficiency in the juvenile justice system, and delinquency prevention).

⁸⁵ See Benjamin L. Liebman, *Legal Reform: China's Law-Stability Paradox* 96 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Grp., Paper No. 14-408, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2491899.

⁸⁶ Kamm, *supra* note 5; Ruohui Zhao et al., *supra* note 58, at 148, 149–50.

variety of scholars and judicial figures.⁸⁷ What was the means by which these laws, norms, and guidelines were adopted into the Chinese legal system? The answer is a system that has been surprisingly open to learning and borrowing from outside models, as well as to experimentation and adaptation, often beginning at the grassroots level.

The creation of the juvenile justice system in China has relied heavily on experimentation, transplantation, and adoption of foreign models.⁸⁸ These strategies are not unique to the juvenile system, but can be seen as hallmarks of Chinese legal reform in general.⁸⁹ Liebman, has argued that the “success of . . . legal reforms [in China] has been,” at least in part, due to experimentation, as well as an “ability to select and adapt foreign models.”⁹⁰

The word “adapt,” however, is key. Foreign legal norms are rarely imported into the Chinese system without adaptation.⁹¹ Scholars have described foreign legal transplants in China as “X . . . with Chinese characteristics,” suggesting laws which embrace “Chinese substance . . . [by] western means.”⁹² Importation of foreign legal norms into China is, in other words, a negotiation between foreign practices and the existing needs and values.⁹³ As Pitman Potter has described, “the reception of imported legal norms by individual specialists and by groups in China depends in large part on the extent to which they resonate with existing values.”⁹⁴ The give and take between China’s values and outside legal methods and norms suggests a dialogue, in which there is a constant defining and re-defining of Chinese values and legal identity.

This experimentation and adaptation has occurred not only at the national level, but also at a more local level.⁹⁵ Three groups in particular

⁸⁷ Xin Ren, *supra* note 45, at 60–61 (noting the influence of the United Nations to China’s juvenile justice system in its beginning stages); Liebman, *supra* note 84, at 22–23 (citing Chinese legal academics influenced by international legal systems and their influence on China’s legal system as judges and officials).

⁸⁸ Liebman, *supra* note 84, at 19–22.

⁸⁹ *See id.* at 20.

⁹⁰ *Id.* at 21, 30.

⁹¹ *Id.* at 30–31.

⁹² Randall Peerenboom, *What Have We Learned About Law and Development? Describing, Predicting, and Assessing Legal Reforms in China*, 27 MICH. J. INT’L L. 823, 825–26 (2006) (emphasis omitted).

⁹³ *See* Pitman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465, 478 (2004) (book review).

⁹⁴ *Id.* at 475 (citation omitted).

⁹⁵ *See id.* at 475–76 (explaining the interplay between Chinese local norms and global norms).

have been vital in the transformation of China's juvenile justice system: courts, NGOs, and legal scholars.⁹⁶

At the "top" of the system, the Supreme People's Court has played the primary role in the development of the juvenile justice system in China.⁹⁷ From early on, the Court was the body which advocated for, and advanced, the early juvenile tribunals, issuing juvenile courts "first normative document[s], . . . set[ting] out the basic principles and procedures," and later developing "a juvenile tribunals steering group" (currently the "Juvenile Tribunal Work Office").⁹⁸ More recently, the Court has supported "a pilot program to establish independent juvenile courts" in various locations around the country.⁹⁹ In fact, the Supreme People's Court seems to have adopted juvenile crime as an important issue facing China and a key area to focus reforms.¹⁰⁰ Wang Shenjun, the President of the Supreme People's Court, has explicitly noted the need for greater research and reform on the area of juvenile delinquency.¹⁰¹ As the body which advises the legislature on the drafting of key pieces of legislation, including the new Criminal Procedure Law, and which issues the official judicial interpretations of these laws, the Supreme People's Court exerts significant influence over juvenile justice reform.¹⁰² The Court has continued to encourage local jurisdictions to experiment with ways of dealing with juvenile crime.¹⁰³

Many of the reforms that have taken place in the juvenile justice system have also occurred due to the actions of local activist courts, as noted by Chinese juvenile justice scholar Guoling Zhao: "[J]uvenile criminal justice . . . reform in China is a bottom-up effort starting from local judicial agencies."¹⁰⁴ "Most juvenile criminal justice innovations come from local courts rather than national [legislation]."¹⁰⁵

This claim is well substantiated. Indeed, the first step in the juvenile justice reform process, the creation of the juvenile tribunals,

⁹⁶ See, e.g., *Expert Exchanges*, DUI HUA FOUND., http://duihua.org/wp/?page_id=901 (last visited Feb. 6, 2017).

⁹⁷ See Guoling Zhao, *supra* note 81, at 105–06 (referencing the Supreme People's Court influence in the direction and reformation of the juvenile justice system).

⁹⁸ See *id.* at 105; *China Law Center Hosts Conference on Juvenile Justice*, YALE L. SCH.: YLS TODAY (Aug. 31, 2010), <https://law.yale.edu/yls-today/news/china-law-center-hosts-conference-juvenile-justice>.

⁹⁹ Kamm, *supra* note 5.

¹⁰⁰ See Guoling Zhao, *supra* note 81, at 109 (citing the Supreme People's Court's increased attention towards juvenile justice reform).

¹⁰¹ *Id.*

¹⁰² *Id.* at 109.

¹⁰³ See Kamm, *supra* note 5.

¹⁰⁴ Guoling Zhao, *supra* note 81, at 109.

¹⁰⁵ *Id.*

was started by one particularly activist judge in Shanghai.¹⁰⁶ Since then, local courts have championed a variety of other reforms, such as the introduction of Social Background Investigations by the Southern District Court in Qingdao in 2004.¹⁰⁷ These are now codified in Article 268 of the new Criminal Procedure Law.¹⁰⁸ “Conditional non-prosecution[s]” were initially used in a pilot program by a Shandong court in 2007–2008¹⁰⁹ and are now promoted in Articles 271–274 of the juvenile chapter of the Criminal Procedure Law. Sealed juvenile record were first explored by the Changan District Court in Hebei.¹¹⁰ These are now codified in Article 275 of the Criminal Procedure Law.¹¹¹

Similar trial programs have also been run by NGOs.¹¹² In the early 2000s, Save the Children, in partnership with local officials, helped to sponsor a trial program in the southern Chinese city of Kunming.¹¹³ This trial program was based around the British model of “Appropriate Adults,” in which adults other than the juvenile’s parents, often volunteers or professionals, were required to be present during the interrogation of juveniles.¹¹⁴ This program was tremendously successful and received a lot of acclaim in juvenile justice reform circles.¹¹⁵ A second

¹⁰⁶ *See id.* at 105.

¹⁰⁷ *Id.* at 106–07.

¹⁰⁸ Criminal Procedure Law, *supra* note 10, art. 268.

¹⁰⁹ Guoling Zhao, *supra* note 81, at 107; Criminal Procedure Law, *supra* note 10, arts. 271–274.

¹¹⁰ Guoling Zhao, *supra* note 81, at 108.

¹¹¹ Criminal Procedure Law, *supra* note 10, art. 275.

¹¹² United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Thirteenth United Nations Congress on Crime Prevention & Criminal Justice, *Role of the United Nations Standards and Norms in Crime Prevention and Criminal Justice in Support of Effective, Fair, Human, and Accountable Criminal Justice Systems: Experiences and Lessons Learned in Meeting the Unique Needs of Women and Children, in Particular the Treatment and Social Reintegration of Offenders*, 110–11, (Mar. 2016), http://www.unafei.or.jp/english/pdf/13th_Congress/22_CCLS.pdf [hereinafter *UNAFEI*].

¹¹³ *Yunnan Province, China Promotes Juvenile Justice Protection Throughout the Province Based on Save The Children’s Successful Experience*, SAVE CHILDREN (Sept. 29, 2014), <https://china.savethechildren.net/news/yunnan-province-china-promotes-juvenile-justice-protection-throughout-province-based-save> (explaining Save The Children’s the start of a pilot project in Panlong District).

¹¹⁴ *See* Nick Young, *Youth Justice: Piloting Rights Based Approaches*, CHINA DEV. BRIEF (Jan. 25, 2006, 21:59 PM), <http://www.chinadevelopmentbrief.com/node/429> [<http://archive.is/V4l6>] (explaining the adoption of “Appropriate Adult” scheme from the United Kingdom).

¹¹⁵ *See, e.g., UNAFEI, supra* note 112, at 110.

trial program was started in the Haidian district in Beijing.¹¹⁶ This practice and its requirements are reflected in Article 270 of the Criminal Procedure Law, which allows for an “appropriate adult,” to be present during interrogations and other official procedures.¹¹⁷

Domestic NGOs have also been active in lobbying and pressuring the government on juvenile justice issues.¹¹⁸ One Beijing organization, for example, has played a key role behind the scenes in helping to promote specific changes in the laws regarding juveniles.¹¹⁹ Some sources indicate that this organization actually helped to draft parts of the language that were included in the newly added juvenile chapter of the Criminal Procedure Law.¹²⁰

Another key way in which legal reform has occurred is through academic scholarship. Scholars often use “comparative” or “normative approach[es],” which draw heavily on foreign models, to contribute to new ways of thinking about criminal laws and procedure.¹²¹ This has occurred both through theoretical writings as well as through “demonstration projects,” in which academics “collaborat[e] with criminal justice institutions . . . to test potential reform[]” efforts on small scale “test” groups.¹²²

By looking at the work of these non-state actors, it becomes clear that the process by which international legal norms on juvenile justice have been adopted into the Chinese domestic legal system has not occurred solely because of official state action. The amended Criminal Procedure Law owes much to the work of other, often local, actors who laid the groundwork for the reforms laid out in the new law.

The juvenile justice field is also one in which transnational dialogue and exchange appears to have played an important role. The Chinese Supreme People’s Court in particular has gone out of its way to engage

¹¹⁶ See *id.* at 111 (citing a Swedish NGO and its partnership with the People’s Procuratorat in Haidian District); Cecilia Magnusson Ljungman & Mark Sidel, MID-TERM REVIEW OF THE RAOUL WALLENBERG INSTITUTE’S PROGRAMME IN CHINA 22–24 (2016), <http://www.sida.se/contentassets/435343a112fe4975a12cbc1243dd3bc9/cbca57ed-b0a8-4163-b52a-ac9323b0880e.pdf> (referencing the “Appropriate Adult” program in Haidian and its implementation in the entire Beijing area).

¹¹⁷ Criminal Procedure Law, *supra* note 10, art. 270.

¹¹⁸ See Dui Hua Found., *Fewer Juvenile Arrests Approved; Migrants Bear Brunt of Charges*, DUI HUA: HUM. RTS. J. (July 28, 2015), <http://www.duihuahrj.org/2015/07/fewerjuvenilearrestsapproved.html> (citing the influence of domestic and international NGOs).

¹¹⁹ Interview with employee of Chinese public interest organization (Oct. 2013). Interview notes on file with author.

¹²⁰ *Id.*

¹²¹ Thomas Stutsman, *The Use of Demonstration Projects to Advance Criminal Procedure Reform in China*, 24 COLUM. J. ASIAN L. 333, 341 (2011).

¹²² *Id.* at 342–343.

in discussions regarding foreign and international standards on juvenile justice.¹²³ The Court has engaged in “study tours” of juvenile justice systems in Canada, Australia, the U.K., and the U.S.¹²⁴ Members of the court and other Chinese officials have visited the U.S. multiple times as part of “Juvenile Justice Expert Exchanges.”¹²⁵ These officials met with U.S. experts, including representatives from leading NGOs, “the U[.]S[.] Department of State’s Bureau of Democracy, Rights[,] and Labor[, and] the US Department of Justice’s Office of Juvenile Justice and Delinquency Prevention,” as well as Justice Kennedy (the author of the majority decision in the landmark U.S. juvenile justice case *Roper v. Simmons*, 543 U.S. 551 (2005)).¹²⁶ The American NGO which sponsored these exchanges explicitly claimed that “[our] Juvenile Justice Expert Exchanges in 2008 and 2010 contributed to the drafting of the juvenile criminal procedures that were introduced in recent revisions to China’s Criminal Procedure Law.”¹²⁷

VI. WHAT DOES THIS MEAN FOR THEORIES ON INTERNATIONAL LAW AND HUMAN RIGHTS?

International legal theorists have a variety of explanations for why countries might accept or comply with international law. Traditional theorists see compliance as occurring purely out of state interests.¹²⁸ More contemporary scholars have increasingly turned to more normative explanations of state behavior.¹²⁹ Both provide a lens through which to

¹²³ See Kamm, *supra* note 5.

¹²⁴ *Dui Hua Hosts Juvenile Justice Delegation from China*, DUI HUA FOUND. (Oct. 23, 2008), http://duihua.org/wp/?page_id=1848.

¹²⁵ See *Expert Exchanges*, *supra* note 96. Participants in these exchanges included members of the Supreme People’s Court Research Office (the office charged with writing the judicial interpretation of laws such as the Criminal Procedure Law), judges from the Supreme People’s Court, members of the Political-Legal Institute of the Central Committee of the CCP, and judges from the Beijing High People’s Court. *Dui Hua Hosts Juvenile Justice Delegation from China*, *supra* note 124.

¹²⁶ *Dui Hua Hosts Juvenile Justice Delegation from China*, *supra* note 124; Kamm, *supra* note 5; see *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005).

¹²⁷ *Upcoming Event: Reforming China’s Juvenile Justice System*, DUI HUA FOUND. (Aug. 9, 2012), http://duihua.org/wp/?page_id=6448.

¹²⁸ See Fiona B. Adamson & Chandra Lekha Sriram, *Perspectives on International Law in International Relations*, in INTERNATIONAL LAW FOR INTERNATIONAL RELATIONS 25, 29, 36 (Basak Cali ed., 2010); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823, 1830–31 (2002).

¹²⁹ See Heath Pickering, *Why Do States Mostly Obey International Law?*, E-INT’L REL. (Feb. 4, 2014), <http://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/> (citing growing research using normative explanations for state behavior).

understand Chinese compliance with international laws on juvenile justice.

It is clear that the central Chinese government has faced increasing domestic pressures to reform the criminal justice system and the juvenile justice system in particular.¹³⁰ It has therefore been in the government's interest to find solutions to deal with the problem of juvenile crime.¹³¹ In this sense, the reform of the juvenile justice system fits neatly within the requirements espoused by traditional utilitarian theorists, such as neo-realists or neo-liberalists, who believe that states only act in their own self-interest.¹³² The development of the juvenile justice system is not remarkable in this sense.

What is more remarkable, however, is the process by which the Chinese government came to adopt and implement methods of juvenile justice aligned so closely with international human rights law and foreign legal norms. This normative, often de-centralized process, can be better explained through more modern "Constructivist" theories of international law.

Emerging towards the end of the 20th century, as a reaction to the interest based theories of neo-realism and neo-liberalism, a new set of scholars, often referred to collectively as Constructivists, began to question whether these interests were not themselves socially created.¹³³ Constructivist scholars rejected the idea that "interests" were somehow formed apart from a state's social interactions and argued that these interests are socially created through norms, ideas, and relationships.¹³⁴ Constructivist thinkers focused on how these "ideas, . . . discourse[s], and social norms" shaped a state's identity and saw this identity as being a key aspect of the way a state formulates its interests.¹³⁵ Constructivists do not see ideas or norms as causing action; instead, they see them as

¹³⁰ See *Bullying*, *supra* note 82.

¹³¹ See Ruohui Zhao et al., *supra* note 58, at 147–48 (discussing the rise of juvenile crime starting in the 1980s and the legislative and judicial responses).

¹³² See Adamson & Sriram, *supra* note 128, at 27–29 (explaining the realist approach to International Law); Jack Donnelly, *The Ethics of Realism*, in THE OXFORD HANDBOOK OF INTERNATIONAL RELATIONS 150, 154 (Christian Reus-Smit & Duncan Snidal eds., 2008) (examining the realist argument regarding state interests with reference to international relations); William Bradford, *In the Minds of Men: A Theory of Compliance with the Laws of War*, 36 ARIZ. ST. L. J. 1243, 1258 (2004) (positing that "state decisions are egoistic choices"); David Sloss, *Do International Norms Influence State Behavior?*, 38 GEO. WASH. INT'L L. REV. 159, 159 (2006) (book review) (differentiating between neorealists and neoliberals).

¹³³ See Jutta Brunnée & Stephen J. Toope, *Constructivism and International Law*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 119, 119 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013) (citing the emergence of Constructivism in international relations theories).

¹³⁴ See *id.* at 121.

¹³⁵ *Id.*

forces that shape or constrain the process through which these actions are taken.¹³⁶

As Constructivist scholars predict, the development of the juvenile justice system in China cannot be fully explained through an “interest based” lens.¹³⁷ Instead, the gradual adoption and adaptation of various international and comparative legal norms into the Chinese juvenile justice system point to a more complex social process. One in which views of juvenile delinquency and the values underlying the juvenile justice system have gradually shifted over time.

Moreover, one of the key elements of Constructivist theories is that such theories allow for the influence and actions of non-state actors.¹³⁸ These actors can range from institutions to individuals.¹³⁹ Risse, Ropp, and Sikkink’s work documenting the ways in which authoritarian regimes have come to adopt international human rights norms has, for example, shown how states’ identities change over time, as they gradually internalize the values expressed in international human rights regimes.¹⁴⁰ Their “spiral model” projects that domestic and transnational actors can cause a state to internalize international “human rights norms” through the establishment and sustainability of networks among these actors and international regimes.¹⁴¹ State socialization, according to this theory, occurs when “principled ideas held by individuals become norms” of appropriate behavior.¹⁴²

Harold Koh’s theory of “transnational legal process” similarly describes the ways in which normative values can become internalized

¹³⁶ See Jutta Brunnée & Stephen J. Toope, *Constructivism and International Law*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 8 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2088132.

¹³⁷ See Brunnée & Toope, *supra* note 133, at 120 (discussing difference between Realist and Constructivist approaches); Anne-Marie Slaughter, *International Relations, Principal Theories*, in MAX PLANCK ENCYCLOPEDIA PUB. INT’L L. (R. Wolfrum ed., 2011), https://www.princeton.edu/~slaughtr/Articles/722_IntlRelPrincipalTheories_Slaughter_20110509zG.pdf.

¹³⁸ See Slaughter, *supra* note 137.

¹³⁹ See Brunnée & Toope, *supra* note 133, at 133–34, 136 (discussing roles of international social interaction and the interplay between actors and norms).

¹⁴⁰ See Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 2, 5, 10 (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).

¹⁴¹ *Id.* at 6.

¹⁴² *Id.* at 11.

into a domestic legal system.¹⁴³ Koh's theory argues that interactions and dialogue between actors at a variety of levels can impact state behavior, by "creat[ing] patterns of behavior[s] and generat[ing] norms of external conduct[,] which they in turn internalize."¹⁴⁴ Individual actors can therefore lead to a state internalizing "international norms."¹⁴⁵

As these theories predict, the adaptation of international laws and practices into the Chinese juvenile justice system has been a complex process in which many individual actors, including non-state actors, appear to have played a critical role.¹⁴⁶ The paths that these ideas have traveled are in fact deeply social. They have included grassroots NGOs, pioneering judges, and international exchanges between juvenile justice and judicial professionals from around the world.¹⁴⁷ These concepts have then gone on to become key parts of statewide reforms.¹⁴⁸

In this sense, the example of juvenile justice reform seems to provide strong support for the works of modern constructivist scholars who argue that social relationships and interactions between players at a variety of levels can lead to the adoption and implementation of certain structures or norms.¹⁴⁹

CONCLUSION

China's progressive reforms in juvenile justice have led it to a remarkable level of compliance with international laws and standards in this field, in stark contrast to much of its other record on human rights issues. Why has China been so open to the use of international and foreign laws and concepts in the reform of its juvenile justice system?

Partly, it is an area in which it was already in the Chinese central government's best interests to seek reform. In this sense, perhaps the juvenile justice space is unique. Similar adoption of international laws and norms, particularly those focused on human rights issues, might not be as successful in more politically fraught arenas.

Moreover, some of China's more progressive reforms around leniency, education, and rehabilitation of juvenile offenders fit with China's historical view of juvenile crime as a primarily social, rather than criminal, problem. Perhaps then the adoption of what are

¹⁴³ Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 183–84 (1996).

¹⁴⁴ *Id.* at 204.

¹⁴⁵ *Id.*

¹⁴⁶ See Liebman, *supra* note 84, at 30, 32–33.

¹⁴⁷ See *Dui Hua Hosts Juvenile Justice Delegation from China's Supreme People's Court*, DUI HUA FOUND. (Oct. 29, 2008), <http://duihua.org/wp/?p=2921>; *Juvenile Justice*, DUI HUA FOUND. http://duihua.org/wp/?page_id=131#exchange (last visited Feb. 5, 2017).

¹⁴⁸ See *Juvenile Justice*, *supra* note 147.

¹⁴⁹ See Koh, *supra* note 143, at 184, 204.

considered “foreign” legal conceptions of juvenile justice were not in fact, a significant leap for China’s society and legal system.

Despite this, the juvenile justice system provides an interesting window into the process of legal reform in China. In particular, it demonstrates a relative openness to trying new ideas, to innovation, experimentation, and exchange with comparative legal systems. It also provides significant support for arguments put forth by constructivist-leaning scholars of international law, who propose that change in legal systems can be deeply influenced by the social interactions of individuals at a variety of levels of society and that these interactions can be catalysts for larger norm adaptation and legal evolution.

Whether these channels of dialogue, exchange, and reform continue to stay open remains a pending question. In recent years, China appears to be retreating on its legal reform and rule of law efforts.¹⁵⁰ Additionally, recent changes such as the Law on the Management of Foreign Non-Governmental Organizations’ Activities, which will go into effect January 1, 2017, will make it increasingly difficult for foreign organizations, including academically-affiliated organizations, to operate within China.¹⁵¹ The extent to which China continues to remain open to the influence of dialogue and exchange on international laws and legal reform therefore remains to be seen.

¹⁵⁰ See Edward Wong, *Clampdown in China Restricts 7,000 Foreign Organizations*, N.Y. TIMES (Apr. 28, 2016), https://www.nytimes.com/2016/04/29/world/asia/china-foreign-ngo-law.html?_r=0.

¹⁵¹ *Id.*