this will help reduce the degree of corruption among government officials throughout the country, which has been an issue of significant concern for some time.

While a number of issues mentioned in this section are useful in helping to understand China's approach to criminal justice, none is more important than how law has been viewed in the establishment and development of the People's Republic of China. People from the West take for granted that a country's legal system profoundly influences the criminal justice system, for it is law that is at the heart of the justice process. In the case of China, however, the context is significantly different. Law and the various components of the criminal justice system have been viewed in a strikingly different fashion.

It is important to remember that when the People's Republic of China was established in 1949 the leaders of the Communist Party abolished the laws that had been established by the Kuomintang Party during the period of the Republic of China (1912–1949). The Communists intended to create a new government that would be based on a socialist legal system. While some law was passed during the early years of the new government, most notably the 1954 Constitution of the People's Republic of China, a good deal of legislation languished in draft form (for example, criminal law and criminal procedural law). The activities of the Cultural Revolution (1966–1976) halted all efforts to enact legislation and even attacked those components of the justice system that were responsible for maintaining law and order.

The attitude toward law changed markedly following the death of Mao Zedong and the emergence of Deng Xiaoping as leader. Since the late 1970s, law has been viewed as a vehicle that could enhance and stabilize the country's efforts at creating a socialist democracy. With the enactment of a criminal law and a criminal procedural law in 1979, the People's Republic of China established the first criminal justice legal standard in its 30-year history.

Finally, in studying the Chinese justice system, it is important to remember that China has essentially two kinds of justice systems. One is the formal system, which is the creation of the government and will be the principal focus of attention in this chapter. The other is the informal system, which is essentially part of the cultural tradition of the country that dates back to ancient times. It is reflected in communities taking an active role in assuring that social order is maintained locally and in the preference of citizens to utilize mediation rather than allow the courts to resolve disputes. As China has become a more market-oriented economy and embraced modernization in a variety of ways, aspects of the informal system are at risk of declining in significance and may eventually be eliminated altogether.

POLICE

As was suggested earlier, the considerable interest in China over the last two decades of the twentieth century was prompted by its emergence from a period of prolonged, self-imposed isolation from the rest of the world and the establishment of an open-door policy, in particular toward the West. This change in attitude was initiated by the government's desire to modernize the country through economic development. Over the course of the initial phase of this economic transformation, the country witnessed a significant increase

in crime. Initially, the increase was most pronounced in the special economic zones that were established by the government to experiment with and promote economic development, but the problem has since spread to other parts of the country as well.

Crime statistics collected by the police are frequently flawed irrespective of the country being studied. Victim surveys often illustrate that crime is a more serious and common problem than the police data suggest. In the Chinese context, the problem of underrecording crime has long been associated with the lack of transparency in the methods employed in collecting the data. More recently it has also been associated with the social and organizational pressures that the police have had to confront as a result of the changes in the economy (Yu and Zhang, 1999). With this caution in mind, one scholar cited data from the Institute of Public Security, which is part of the Ministry of Public Security. It estimated that the national crime rate had risen 7.3 percent between 1978 and 1982, that it had grown 11.5 percent between 1984 and 1988, and that it had increased to 45.1 percent between 1989 and 1991 (Dai, 1994). Another study, also based on official data, suggested that the overall crime rate increased by 160 percent between 1980 and 1990 (Ma, 1997).

More recently, the Ministry of Public Security provided nationwide data on criminal cases that were reported. The number of cases reported to the police in 2000 was 3,637,307. This figure rose to 4,337,036 in 2002 and continued to increase to 4,648,401 by 2005 (Ministry of Public Security, 2005 and 2006). In 2008, the number of cases reached 4,884,960, which was an increase from 4,807,517 reported in 2007 (Ministry of Public Security, 2009). Scholars have argued for some time now that the increased level of crime across China can be attributed directly to the inequalities that have emerged as a result of the economic reforms. This has led to serious disparities of income that were unheard of until Deng Xiaoping introduced his economic reform initiative (see Cao and Dai, in Liu, Zhang, and Messner, 1994; Friday, 1998).

Data from the ministry appear to support this position. In 2008, the largest volume of cases among the most serious offenses was for the most part associated with crimes against property: theft (3,399,600), burglary (1,095,785), auto theft (641,490), and robbery (276,372). Crimes against the person tend to attract the headlines in the Western media and cause the most alarm among the public. In 2008, the number of these offenses reported in China was very small: homicide (14,811), rape (30,248), and assault (160,429). Moreover, there was a decline in the reporting of each of these offenses from the previous year.

More recently, cases reported to the police in 2013 indicate both some decreases and increases from the 2008 figures. For example, the more serious cases of crimes against property were as follows: theft (2,557,662), burglary (1,357,600), auto theft (645,152), and robbery (146,193). Figures for crimes against the person indicate a reduction in homicide (10,640), but increases in rape (34,102) and assault (161,910). The total number of cases reported for the year was 6,598,247 (Law Year Book of China, 2014).

It is important to keep in mind that the total rate of crime in China is not reflected in the official published rates. One reason was mentioned briefly in the introduction, which pointed out that China has an informal justice system in addition to the formal system. The informal system is part of the country's cultural tradition that dates back to ancient times. The informal system encourages people to settle disputes privately, in part because the Chinese have historically tended to avoid formal legal procedures. In addition, neighborhood

committees established with the Communist regime frequently served as a mechanism to reduce conflicts between neighbors and domestic tensions between parents or parents and children.

A final reason for examining the official crime statistics with caution is that there is a group of offenses for which data is collected but does not become part of the statistics on criminal cases. These are the public order offenses that are handled exclusively by the police. Although now written as administrative regulations, this is also part of the informal justice system. It allows the police to arrest, detain, try, and impose sanctions on people who have committed public order violations. Thus, there is no formal prosecution or trial.

More will be said about police powers and the administrative regulations in other sections of this chapter. For our present purposes, it is important to note that public order cases include disturbing the peace, gang fights, carrying a weapon or explosives, minor assault, minor thefts, vandalism, prostitution, gambling offenses, and not complying with the household registration system. In 2000, the nationwide total of public order cases reported was 4,437,417. In 2004, this figure rose to 6,647,724, and in 2008, it had reached 9,411,956. Among the most frequently reported public order offenses were battering other persons (2,917,872), minor theft (2,022,238), disturbing the peace (449,972), and gambling (344,218). By way of comparison, in 2013, the figure for battering other persons (4,119,105) increased significantly, while more modest rises occurred with numbers for minor theft (2,161,720), disturbing the peace (464,682), and gambling (393,829).

When crime has increased in the West, the police have often been criticized for allowing the situation to arise in the first place, and they have been blamed for not expeditiously bringing the problem under control. The Chinese police have not escaped the same criticism. For their part, the police have made concerted efforts to address the problem, particularly in the special economic zones. For example, they have initiated campaigns that target criminal gangs; they have been especially attentive to the security needs of foreign businesses; and they have enhanced border security (Zhihua, 1993). In spite of these efforts, however, there appears to be a general agreement that the police need to adapt, both organizationally and individually, to the social and economic circumstances that are changing the country in such a dramatic fashion. To appreciate the dilemma confronting law enforcement in this regard, it is useful to consider briefly the historical development of the police.

Throughout its history, China has experienced periods of order and profound periods of disorder. Each period has obviously had an impact on how the state defined public security, how society perceived the need for social order, and how the police implemented their law enforcement and order maintenance functions. During the twentieth century, periods of order had been marked by the state's attempt to stress the significant role of law in the maintenance of political, social, and economic order. Periods of disorder had been noted for an absence of law and the ascendance of ideology serving a dominant role in state governance.

To illustrate, at the conclusion of World War II, China was subjected to civil war between two rival factions for control of the country. The Kuomintang (or Nationalist Party) espoused the democratic ideals that helped establish the Republic of China in 1912, while the Chinese Communist Party sought to introduce a socialist agenda that was based on the

principles of Marx and Lenin. Throughout the civil war (1945–1949), the Communists established large base areas that were beyond the control of the Kuomintang. Amid the disorder of civil war, the Communists developed a system of government at the base areas that included creating laws and establishing a system of police.

Policing tended to be the responsibility of three groups. Public security forces were responsible for basic police functions in the secure base areas, which included the detection of those in opposition to the Communist agenda. Militia groups monitored the border regions of the territories occupied by the Communists, which included the identification and pursuit of spies. Finally, the Communists could turn to the People's Liberation Army (PLA), which was the military wing of the Chinese Communist Party, as an additional method of assuring public order. It is important to note that the public security forces established at base areas were primarily composed of people recruited from either the PLA or militia groups.

Another significant issue that emerged at this time and had implications for public security was the importance that Mao Zedong placed on the "mass line." The mass line was a theoretical perspective espoused by Mao that was based on the premise that the role of bureaucratic elites in government decision making should be reduced significantly and at times replaced by the direct involvement of the people. Thus, government officials, as servants of the people, should be guided by the public because the people are the true supervisors of the officials. For this perspective to work in any practical manner, officials had to collect and interpret the views of the people and then synthesize them into a coherent policy.

The mass line is an important concept for understanding how China approached public security, particularly under Mao's leadership. During periods of order, the police were able for the most part to control the mass line process by determining what the wishes of the people were. In times of disorder, however, the mass line enhanced considerably the notion of an arbitrary "popular" justice at the expense of a more predictable "bureaucratic" form of justice. As a result, more excessive applications of the mass line often perpetuated imbalance and increased disorder in the country. Mao considered this a positive feature of his approach to establishing a communist society (see Bracey, in Troyer, Clark, and Rojek, 1989; Brewer et al., 1996).

Following the Communists' victory over the Kuomintang in 1949, the People's Republic of China was established. During the following four years, there was a good deal of turmoil throughout the country. Supporters of the Kuomintang attempted to resist the new government. Groups that were not necessarily opposed to the Communists rioted in protest over some of the policies the government was attempting to implement. China's involvement in the Korean War caused others to raise doubts about the permanency of the Communist government.

Because of the level of dissent and the degree of disturbance, the public security forces continued to rely on the assistance and support of the militia and the PLA. This period of disorder prevented the public security forces from establishing an organizational structure for police that was independent from other government entities. It also inhibited the development of policies for an effective and efficient management of the police organization. Moreover, the mass line played a prominent role at the time in compounding the problems

of order maintenance. As the Communists exercised their newly won political power, they used the mass line to determine those who were criminals and those who were counter-revolutionaries.

From a law enforcement perspective, the period between 1954 and 1966 was characterized as fairly stable and orderly. Of course, there were some exceptions. For example, the Anti-Rightist Campaign (1957–1958) disrupted the lives of China's intellectuals, and the Great Leap Forward (1958–1960) created economic disorder and chaos in the lives of large sectors of the population. Nevertheless, several factors helped to foster a somewhat tranquil time for the police. They included a considerable reduction in internal dissent, an end to the Korean War, and the introduction of the First Five-Year Economic Plan (1953), which was designed not only to improve the economy but also to assure social stability.

For criminal justice in general and policing in particular, this period was marked by the government acknowledging the significant role that the codification of law could have in establishing a stable society. The aim was to create standard predictable policies and practices. To illustrate, the first constitution of the People's Republic of China was approved in 1954. It would influence the creation and application of police procedures. With regard to criminal procedures in general, a clear division of responsibility was emerging among police, procurators, and the courts. While the Communist Party wielded the ultimate authority, an attempt was made to establish order within a legal context, rather than permit ideological whims of the moment to control the development of policies.

In light of the emergence of these formal standards, there was less emphasis placed on the role of the informal mass line approach for assuring justice. In addition, there was a recognition not only of the importance placed on recruiting people to perform public security work but also in training them. Thus, an effort was made to establish a professional group of public security officers. As a result, the PLA's role in law enforcement and order maintenance declined significantly during this period.

This time of relative calm ended with the inception of the Cultural Revolution (1966–1976), one of the most horrendous periods in recent Chinese history. As mentioned earlier, the Cultural Revolution was Mao Zedong's radical attempt to reform the Chinese Communist Party. He wanted to destroy old ideas, customs, and habits. His method of achieving this was to create a state of disorder throughout the country by mobilizing young activists, known as Red Guards, to support revolution and the class struggle within Chinese society.

During the early phase of the Revolution (1966–1969), which is generally considered the most destructive, government officials were attacked, relieved of their duties, and sent to work on farms or in factories. The goal was to eradicate their bourgeois attitudes through manual labor. Senior police officials were among the government officials attacked and exiled; police stations and courts were taken over by the Red Guards. Law and order was replaced by ideology and disorder, which was reflected in a total allegiance to Mao Zedong and his pronouncements. Local police were placed under even closer scrutiny by local Communist Party officials, and the significance of the mass line was renewed, which further eroded the sense of order.

The Cultural Revolution caused chaos within the ranks of the Communist Party and throughout various levels of government, in part because veteran government officials were

sent to the countryside to perform manual labor. The state of disorder escalated further because some of the activities of the Red Guards were not unlike those of gangs of street thugs. By 1967, it was clear that something had to be done to address the problem. Mao Zedong called upon the People's Liberation Army (PLA) to reinstate some sense of order. They provided this kind of service until the end of the Cultural Revolution, at which time they resumed their military role on a full-time basis.

The Cultural Revolution came to an end in 1976 with the death of Mao Zedong. The "Gang of Four," the principal leaders of the Cultural Revolution, were arrested and subsequently tried and convicted for many of the atrocities committed during the Revolution. With Deng Xiaoping's ascendance to power, China embarked upon a new era that was considerably different from the previous period of turmoil. Deng's goal was to modernize Chinese society by abandoning its isolationist policy and opening its doors to the West so it could acquire the requisite knowledge and technology to transform China into a modern country.

In order to achieve his objective, Deng recognized the need to establish a stable society. He began by making distinctions between the role of the Communist Party and that of the state. Although ideology was important to perpetuate the communist cause, it was being displaced from the center stage by pragmatic views regarding how best to modernize Chinese society. Deng further admitted that the rule of law had a central role to play in the modernization process, and he introduced initiatives to reform China's legal system. He also acknowledged the importance of maintaining good public order. As such, the police were brought back, with their responsibilities enhanced and their expertise acknowledged as playing a vital role in assuring the success of China's transformation into a modern society.

As a result of Deng's initiative, the police have entered a phase in which law and order has superseded ideology and disorder. Moreover, the police have had to adapt to the changing social and economic circumstances of the country. One practical example of this was the passage of the Police Law 1995, which explains the organization, duties, and authority of the principal police agencies in China. The distinctions of authority among the principal police agencies and the specialized police forces is another illustration that stability and order are being achieved through the maintenance of distinct organizations with expertise in and responsibility for specific aspects of policing. In addition, since the late 1970s, the police have had to become more accountable to procurators when detaining people for serious crimes. In cases of less serious offenses, however, the police are given a good deal of authority that is independent from the formal legal system.

Organization and Administration of the Chinese Police

The Chinese have established five distinct police organizations. They include public security, state security, judicial police for the people's procurator, judicial police in the people's courts, and prison police. The public security police receive the greatest focus of attention in this chapter because the breadth and depth of their law enforcement and order maintenance responsibilities mirror those found in traditional police forces throughout the world. From an organizational perspective, one of the more interesting features about the Chinese police

is that they are administered at times by more than one government authority. For example, some police forces are responsible to more than one government ministry, while other police forces may be accountable to directives from both central and local governments.

Ministry of Public Security

The Ministry of Public Security is one of the most important ministries within the State Council. It is headed by a civilian politician. The Ministry is ultimately responsible for approximately 1.4 million police personnel, of which roughly one-half are armed. Police responsibilities were reorganized in 1984 to improve efficiency and effectiveness. At the time, the Ministry of Public Security was charged with law and order, traffic safety, and fire control. The Ministry's responsibilities have been refined further under the Police Law 1995. By examining the operational divisions in the organizational chart (see Figure 6.2), the reader is provided some understanding of the breadth of the responsibilities assigned to the Ministry of Public Security.

The uniformed patrol division provides basic police services. These officers are found throughout the country and are most visible in large and medium-size cities. These patrol units are used to maintain daily public order, to assist with crime-prevention measures, to control parades and demonstrations, and to supervise certain businesses and industries in order to control and prevent specific kinds of criminal activities. The businesses singled out for such attention include car rental companies, hotels, pawn shops, printing companies, and scrap metal dealers. While uniformed police patrol on foot, they also have mobile patrol units that improve the response time to certain calls. This has become more important as China has introduced a 110 emergency phone-call service.

While many uniformed patrol officers do not carry a firearm, more officers are being armed in recent years, mainly in response to instances in which citizens have been attacked

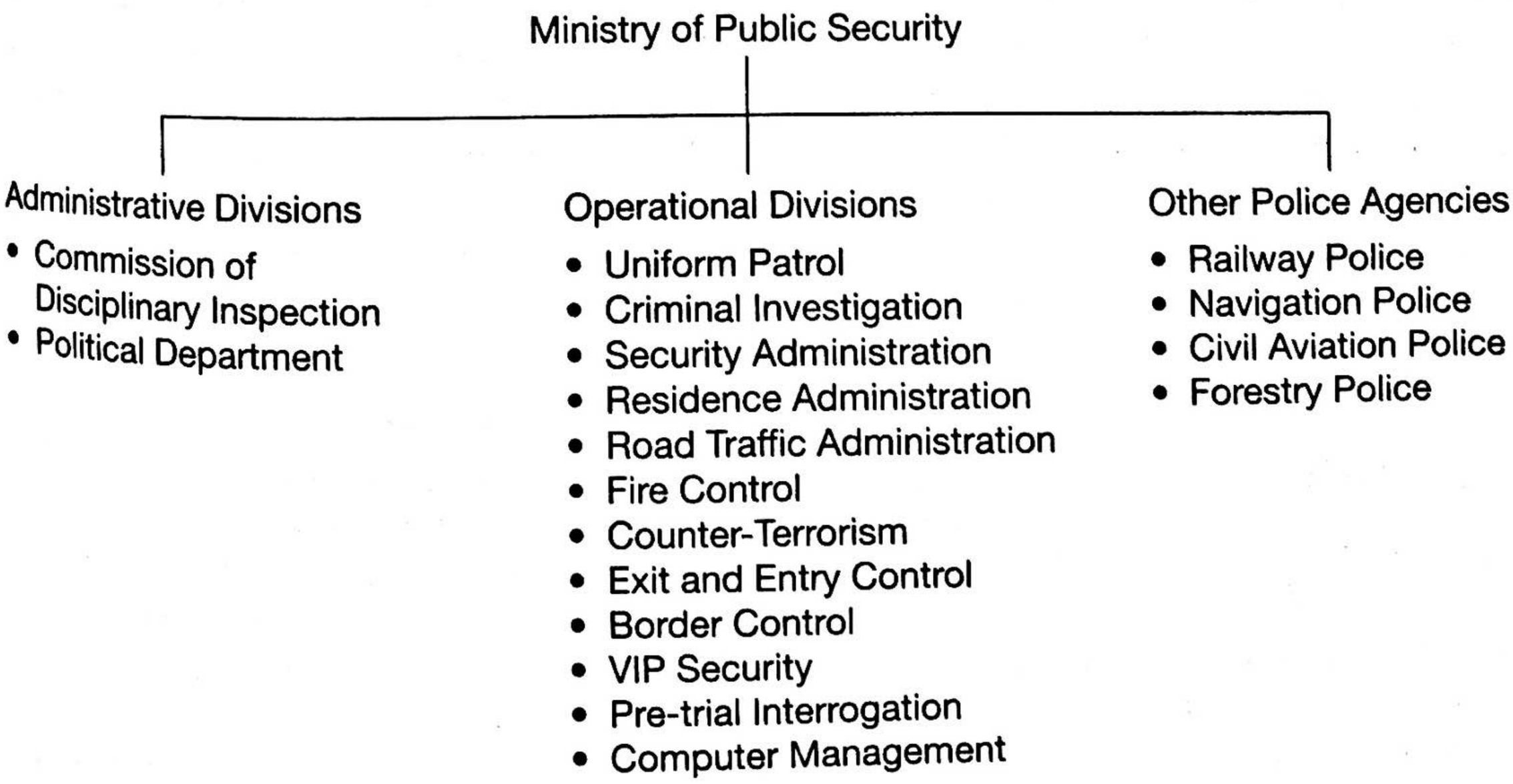

FIGURE 6.2 | Organization of the Public Security Police

in public spaces, and in some instances killed, by knife-wielding attackers, which the government has labeled as terrorists. While armed police are called to the scene of such incidents, they often respond after the incident is over. Civilians are not allowed to have guns. Two concerns are raised in light of these developments: (1) whether the officers have been adequately trained in the use of their firearms and (2) the possibility of police abuse with their weapons.

The criminal investigation division is responsible for the investigation of all serious crimes. These units have long been responsive to needs such as pursuing fugitives and eliminating criminal gangs. In light of the rapid development of the economy, these units have had to increase attention to types of criminal behavior that were not as prevalent before the social and economic changes. Theft has become a particular problem, including bank robberies, car thefts, and various kinds of fraud. Public security agencies throughout the country have targeted counterfeiters, underground banks, and tax-related criminal activities. Also receiving special attention are smugglers in general and drug traffickers in particular.

Security administration is involved with a host of preventive policing issues. One mandate is directed at combating economic crime. This has taken the form of providing security at financial institutions and other state enterprises involved with the economy. The security police also address the law enforcement and order maintenance needs of various cultural and educational institutions. Finally, security police are responsible for establishing Community Service Commissions (CSCs). The CSCs are groups composed of citizens who assist police in crime, fire, and accident prevention. More will be said about the role of CSCs later in this section.

The residence administration division is responsible for maintaining the household registration system. This system has been in place for a long time as a method of taking the census. It was designed to control the population by requiring that people stay in the place where their household registration is held. Under this scheme, everyone is expected to register their place of residence with the local police. Neighborhood committees, an earlier version of the CSCs, assisted police in monitoring the registration system. For many years, this system assisted the police in controlling the activities of criminals, in particular, criminal gangs. It also prevented people in rural areas from moving to urban areas.

In light of the recent economic changes that China has experienced, many people who lived in rural areas have started to move to urban areas in search of employment. As a result, a transient or floating unregistered population has developed that complicates the work of police involved with residence administration. Estimates of the size of the floating population have ranged from 50 million to 100 million people. Obviously, a transient population of this size poses social instability concerns for the government. The household registration system and the neighborhood committees were central features of the Chinese approach to maintaining public order and security. With this traditional approach breaking down, the government adopted reforms that targeted the problem of the floating population in particular. Personal identification cards were introduced that enabled people moving from rural to urban areas to secure temporary residence permits legitimately. Landlords and employers of these people are expected to assist public security agencies with monitoring this population.

Presently, 54 percent of China's population live in cities, but only 36 percent qualify as legal residences under the household registration system, which is based on where a person is born. The government estimates that by 2020, cities will house 60 percent of the country's population because this is where the jobs are. In light of this, they recently announced a plan to grant 100 million rural migrants permanent residency status. This will raise to 45 percent the number of urban dwellers who have the appropriate household registration document, which is referred to as a *hukou.* The significance of this change is that migrants who are issued a hukou will be able to avail themselves of social services in their urban areas.

Road traffic administration has become a particularly acute concern in recent years. Before the introduction of policies to modernize the economy, the principal methods of transportation in urban areas of China were public transportation, bicycles, or walking. While these modes of transportation remain important, improved economic conditions have created a significant growth in the taxi industry and in the number of privately owned automobiles. This has led, in turn, to a significant increase in the number of traffic accidents. The road traffic administration has attempted to address some of the issues associated with this problem. They have standardized the enforcement of traffic laws to assure a uniform policy, improved the quality of traffic signals to reduce congestion and the quantity of road markings to improve safety, and introduced a campaign to encourage the public to adhere to traffic laws. They have focused attention on overloaded commercial vehicles, because of the dangers they pose on the highways. They have also become more aggressive at suspending or revoking the driver's licenses of habitual violators of the traffic laws. In addition, more examiners are now available to train and assess the skills of people seeking a driver's license.

Public security police are also responsible for fire control. The police fire brigade is responsible for fire supervision, firefighting, and rescue in times of disaster. They oversee the construction of high-rise buildings, hotels, markets, places for public entertainment, and warehouses storing dangerous materials in order to assure that they are up to code. They also inspect these facilities in order to ensure that they adhere to fire prevention laws and participate in campaigns to improve fire safety.

The exit and entry control division is responsible for matters related to immigration and the issuance of passports and visas. Methods have been introduced to streamline the process for Chinese citizens attempting to go abroad and for foreigners seeking to enter the country as visitors.

The border control division has an important role to play in the overall security needs of the country. China shares land borders with 14 countries and has an extensive coastline along the Yellow Sea, East China Sea, and South China Sea. The border control inspects all vehicles, vessels, planes, and trains that enter Chinese territory. They also guard the borders, frontiers, and coastlines and develop specific operations to target illegal activities, such as drug and gun trafficking. Other illegal operations dealt with include smuggling CDs, car parts, and cigarettes. The border control also responds to emergency calls from fishermen.

The counterterrorism division has been upgraded in recent years. There has been a concerted effort to improve the capabilities to prevent terrorist incidents and the capacity

to respond in an effective manner within the country. Moreover, China is participating in efforts to establish cooperative ventures in dealing with this problem throughout the international community.

The VIP Security Bureau is responsible for the protection of officials of the Chinese Communist Party and the government, as well as for the security needs of foreign guests. The Bureau also handles security matters for significant meetings and important international conferences.

The Pre-trial Interrogation Bureau has two general kinds of responsibilities. The Chinese Procedural Code limits to 24 hours the length of time a person can be held in custody prior to the start of an interrogation; it also indicates that a decision to arrest a person who is being detained must be made within three days. In these circumstances, the Pre-trial Interrogation Bureau is concerned with determining if the criminal case is of sufficient quality to bind it over to a procurator. The Bureau is also responsible for the welfare of those detained in police custody.

In addition to developing the computer network utilized by the police, the Computer Management Bureau is charged with the security of computer information systems throughout the country. In recent years, they have made advances with improving information security protection. They have apprised the public of the need to protect themselves from Internet fraud. China's cyber police have focused a good deal of attention on pornographic web sites, Internet fraud, and Internet businesses. Within the Bureau is the China Criminal Information Center (CCIC), which stores information about criminals, stolen cars, and firearms.

Finally, there are four more police forces with specialized law enforcement tasks. Railway Police handle security matters at railway stations and on trains, with special attention to passenger trains. The Navigation Police are responsible for the security of coastal areas and inland waterways. The Civil Aviation Police handle security at airports and airline companies; they are also charged with other security issues related to civil aviation, such as the transportation of dangerous objects. The Forestry Police are concerned with protecting forests and wildlife. What is somewhat unique about these four police forces is that they are not only accountable to the Ministry of Public Security but also to other ministries: respectively, the Ministry of Railway, the Ministry of Transportation, the Civil Aviation Administration of China, and the Ministry of Forestry.

Public security police exist throughout the country and are organized accordingly. There are public security departments found in provinces and autonomous regions. Public security bureaus are established in municipalities that come under the direct control of the central government. Public security bureaus are also found in prefectures and counties, while subbureaus are created in urban districts. Bureaus are further divided into police stations and substations. The size of a geographical area, the population density, and the diverse characteristics of a specific area being policed determine the extent to which the various operational divisions would be a part of a local public security police agency. It is important to note that the public security police are financed by the local governments for the most part. Inadequate funding has often led the local security police to enter into money-making enterprises (see Tanner and Green in Clarke, 2008). The public security police are not unique in this regard. The People's Liberation Army has been involved in money-making ventures

for a number of years. For some time now, this has led to allegations of corruption within the police and the military. Both have been identified as targets of the government's anti-corruption campaign.

Other Police Organizations

As was mentioned, there are five kinds of police organizations in China. The extensive responsibilities of the public security agencies have been explained. Prior to 1983, the Ministry of Public Security was responsible for collecting various kinds of intelligence, but in that year the duties of foreign and domestic intelligence were transferred to the newly created Ministry of State Security and its police organization. State security police constitute an armed force with a special mandate to prevent conspiracy, espionage, and sabotage. They are also responsible for the protection of government buildings, embassies, and other facilities deemed important by the government. State security police are found in provinces, autonomous regions, municipalities that are under the direct control of the central government, and other areas that require this kind of enforcement capability. It has been suggested that with the establishment of the state security police a clear distinction is made between political security and social policing. While social policing refers to the traditional tasks of police—law enforcement, order maintenance, and social service—political security has a particular focus on protecting the interests of the Communist Party (Wong, 2009).

The judicial police work either for the people's procurators or in the people's courts. They function as security guards, they serve legal papers authorized by a procurator or a court, and they are responsible for assisting in the execution of court orders. This includes the administration of the death penalty. The judicial police for the people's procurators are ultimately responsible to the Supreme People's Procurator, while the judicial police in the people's courts are accountable to the Supreme People's Court. Finally, prison police are responsible for guarding people serving time in prison. The prison police are accountable to the Ministry of Justice, because the Chinese correctional system is the responsibility of that ministry.

Residents' Committees

Under a political system that espouses the principles of communism, the social structure is designed, at least in theory, to include the participation of the citizens. The ultimate authority rests with the Communist Party, but a basic social objective of communism is to encourage citizen involvement in his or her community. The People's Republic of China adhered to this idea from the start. Committees were formed in residential neighborhoods, at factories and schools, within occupational units, and throughout the countryside among various rural production teams.

One of the primary purposes of the residents' committees was to assist police in maintaining public order. Thus, local public security units coordinated the work of their local citizens' committees. In reference to their mandate to assist with the maintenance of public order, these committees were assigned specific responsibilities, which included mediating disputes, patrolling streets, assisting with traffic control, inspecting the sanitation

conditions of neighborhood residences, distributing information about health and community issues, organizing political meetings, and educating people about crime prevention and the legal system.

This committee system served as the conduit in which the mass line was able to function at the grassroots level. During periods of disorder, when ideology supplanted any attempt at the rule of law, people were often abused under this system. Neighborhood watch became neighborhood surveillance. During periods of order, when law has a role to play in regulating society, the system had assisted police in solving crimes.

Many of the neighborhood committees have been composed of retired people who serve as the eyes and ears of police. They monitor the activities of residents, observe visitors or strangers in the neighborhood, and assist police with maintaining the household registration system. As such, this method is often characterized as a form of community policing that has existed in China since the early 1950s. The Community Service Commissions (CSCs)—mentioned earlier in the context of the role of the security administration division of the Ministry of Public Security—are simply the latest version of China's efforts to organize citizens for practical involvement in public security matters.

One of the serious problems confronting China in general and its criminal justice system in particular is that the old social infrastructure that was based on Communist ideology has been weakened considerably by the move toward a market economy. In the past, people were willing to perform their social duty, such as serving on a neighborhood committee to assist the local public security officers with maintaining social order. Today, this attitude is not as prevalent, especially among the younger generations. People have embraced the work ethic of the market economy; they want to make money, and they are interested in their individual welfare. As such, there has been a decline in the number of people willing to perform their social duty. With regard to public security, the police have had to become more personally proactive in matters of public order and security.

Police Accountability

The government has acknowledged a concern for the degree of corruption among government officials throughout the country. While this concern has existed for some time, only recently has a strategy been adopted to help rectify some forms of the problem. For example, a new civil service system is being introduced that is based on rules and regulations, competitive entrance and promotional examinations, and a competitive wage scale. It is hoped that this kind of strategy will improve the level of accountability among government employees.

Given the nature of basic police work, there is always a concern about potential police abuse of power, especially with the infringement of citizens' rights. Like other police forces around the world, the police of China have not escaped this charge. Since the introduction of economic reforms, there has also developed a more pronounced concern about police corruption, particularly regarding an increase in the number of opportunities for such behavior and the monetary value associated with the criminal enterprise. The government has acknowledged that corruption is a problem, particularly with officials of the criminal justice system. Moreover, the citizens are aware of the problem to varying degrees.

Corruption among the police tends to occur in three ways: some officers develop an arrangement with organized crime; individual officers may be bribed by suspects; and some officers use their position of authority to demand gifts.

The Police Law 1995 introduced a four-pronged approach designed to inhibit police abuse and corruption in its various forms. While some of these methods existed before the passage of this legislation, greater attention is presently being directed at police accountability. Under this new scheme, the police are subject to four different kinds of supervision. Procurator supervision is primarily concerned with assuring that the police perform their functions within the law. Three of the most common situations in which this kind of supervision is performed are determining the legality of an arrest, deciding if sufficient grounds exist to prosecute a case, and overseeing the investigation of cases for possible abuse.

Another form of accountability is provided through the Ministry of Supervision. This kind of ministry is common in a country that recognizes the legitimacy of only one political party, in this case the Communist Party. It has administrative supervisory authority over all government agencies; therefore, it is not limited to police. While its primary responsibility is to monitor agencies to determine if they are in compliance with laws and regulations in the performance of their duties, it can provide direction and influence in areas of political ideology, policy, and personnel matters. It also can receive complaints from citizens and conduct investigations into allegations of misconduct.

A third form of supervision is internal to the police organization. Within each police bureau at the prefectural level, there is an internal supervisory committee that is responsible for ensuring that the bureau is in compliance with all laws and regulations and that the officers comply with the law in the exercise of their duties. Like the Ministry of Supervision, this type of committee enables the local Communist Party to provide direction and influence in areas of ideology, policy, and personnel. This internal supervisory committee is also responsible for receiving citizen complaints about alleged police abuse. In such instances, the committee has the authority to investigate the matter and to impose sanctions upon officers found guilty of misconduct.

A final method of monitoring the police is citizen supervision. This is a practical illustration of the continued use of the mass line policy in present-day China. Essentially, citizen supervision takes one of three forms. Citizens have the right to make recommendations to public security agencies, which is clearly in keeping with the intent of the mass line policy. Second, citizens can file complaints against the police through the procurator, the Ministry of Supervision, or the internal supervisory committee at the local public security agency. Although rarely used, a final example of citizen supervision is that citizens can bring lawsuits against the police. Two of the more common methods are through the Administrative Litigation Law 1989, which enables citizens to sue a government agency, and through the State Compensation Law 1994, which permits citizens to seek monetary damages for losses suffered as a result of police misconduct. In the event a citizen is awarded damages by a court, it is the responsibility of the police to reimburse the citizen. Ideally, the damages should be paid by the offending officer. The manner in which this law is enforced encourages public security agencies to demand that officers comply with the various laws and regulations in the exercise of their duties (Ma, 1997).

Police Functions

The primary duties and powers of the police are explained in the Police Law 1995. Article 6 of the legislation specifically lists the variety of duties and notes that are to be carried out according to law. The responsibilities include:

1. to prevent, stop and investigate illegal and criminal activities;
2. to maintain public order and stop acts that endanger public order;
3. to ensure traffic safety, maintain traffic order and deal with traffic accidents;
4. to organize and carry out fire prevention and control and supervise routine fire protection;
5. to control firearms and ammunition, and keep under surveillance knives, inflammables, explosives, deadly poisons, radioactive materials and other dangerous articles;
6. to administer special trades and professions as provided by laws and regulations;
7. to serve as bodyguards for persons specially designated by the State and protect important places and installations;
8. to keep under control assemblies, processions and demonstrations;
9. to administer affairs of household registration, citizens' nationality, and entry into and exit from the territory, and handle matters concerning aliens' residence and travel within the territory of China;
10. to maintain public order along the border (frontier) areas;
11. to execute criminal punishments with respect to criminals sentenced to public surveillance, criminal detention, or deprived of political rights and criminals serving sentences outside prison, and to exercise supervision over and inspection of criminals who are granted suspension of execution or parole;
12. to supervise and administer the work of protecting the computer information system;
13. to guide and supervise the work of security in State organs, public organizations, enterprises, institutions, and major construction projects; and guide mass organizations such as public security committees in their work of maintaining public order and preventing crime; and
14. other duties as stipulated by laws and regulations.

Legal Status

The Constitution of the People's Republic of China and the Criminal Procedure Law of the People's Republic of China are two of the principal sources that explain the legal status of police. The constitution has been discussed in this chapter in the section on government, while the Criminal Procedure Law will be explained in some detail in the section on law. The legal status of police, however, is also gleaned from other sources, particularly from regulations and other laws, such as the Police Law 1995. These regulations and laws are considered in compliance with the constitution.

According to the Regulations of Police of the People's Republic of China, the police are charged with two types of responsibilities. One is enforcing laws against criminal activities. This essentially involves the prevention, enforcement, and investigation of serious

crimes or felony offenses. In these instances, the police utilize their regular police powers of arrest and detention as explained in the Criminal Procedural Law. The adjudication and correctional process would include a procurator and court.

The other type of responsibility is referred to as the enforcement of laws concerning administrative affairs. These laws address less serious behavior that would often be classified in the West as ranging from gross misdemeanors to ordinance violations. What is striking about this responsibility is that a procurator and court are not involved in the adjudication or correctional process. The Security Administration Punishment Act, which was initially enacted in 1957 and has since been amended, authorizes police not only to apprehend but also to adjudicate the case. Obviously, the discretionary authority of police is enhanced considerably in such cases, as is the potential for abuse of authority.

As was mentioned previously, the police undergo four kinds of supervision designed to control or reduce police abuse. Another feature that has gained considerable popularity is the establishment of a legal affairs unit within many of the public security agencies across the country. The growth of such units is an indication that the government is attempting to place greater emphasis on the importance of the rule by law. (Although the government uses the term "rule of law," it is more appropriate to refer to their efforts as "rule by law." The distinction between the two terms was explained in the introductory chapter to this text.) The units tend to focus their attention on three specific objectives. The first is training their officers in understanding the rule by law and the changes that occur with the passage of various legal regulations. The second is to provide guidance in difficult or dubious cases in order to improve the quality of cases brought to a procurator. The final objective is an attempt to educate citizens about the renewed importance that has been placed on the rule by law within society.

Unfortunately, it has been suggested that it has been difficult to see both practitioners within the justice system and citizens embrace the significance of the rule by law. Part of the reason for this failure is the result of the past. Historically, the general public has not had much confidence in the legal system, because law was viewed as being imposed from above and employed as a means to punish. Moreover, the public did not view law as a preferred method of social control or a means to resolve disputes. The lack of a legal culture continued under communism. The notion that law is designed to protect rights and equality is greeted with skepticism. Party cadres are usually treated with greater deference when found guilty or accused of wrongdoing, and aggrieved citizens often see a legal system that is unresponsive to their complaints (Wong, 2009).

The Police and the Public

The tradition of policing in China since 1949 can be characterized as a cooperative participatory endeavor on the part of the public security agencies and various groups within society. The groups include different levels of local government and the many committees formed in residential neighborhoods, at factories and schools, within occupational units, and throughout the countryside among the various rural production teams. All have had a role to play in assisting police with the maintenance of public order.

Over the years, especially during periods of order when the significance of the rule by law has been stressed, neighborhood committees work very closely with local public security officers to improve crime prevention, public safety, and an understanding of the role of law in society. In fact, these committees are often in a position to act in ways that police are legally prohibited from pursuing. This includes entering and searching private areas and property, as well as questioning people about personal matters. During periods of disorder in which ideology dominated government policy, police were often feared and the system of committees was usually distrusted. In such circumstances, the neighborhood committees that looked out for one another for crime-prevention purposes often became neighborhood surveillance committees in the cause of ideological purity.

It should also be pointed out that, irrespective of whether the country was experiencing a period of order or disorder, the system of policing in China had not been noted for its professionalism. For many years, there were no formal standards for recruiting or training officers; there were no regulations imposed to control police in the exercise of their authority; and there were no credible methods, either internal or external, to assure police accountability.

The consequences of this inaction have been acknowledged only in recent years. For example, a 1988 survey of Beijing residents examined the prestige associated with different occupations and found that police were rated lower in China than in Japan, Taiwan, or the United States. This was attributed at least in part to the role that police played in events such as the Cultural Revolution. People who were too young to remember the periods of disorder in China's past offered a more positive view of the police (see Bracey, in Troyer, Clark, and Rojek, 1989). A national survey in the late 1990s suggested that the public view the police in a positive manner and have expressed confidence in them (Ma, 1997). The change in the results of these kinds of surveys can be attributed in large part to the concerted effort to professionalize the Chinese police service. This strategy was first initiated in the late 1970s, at the same time the country started its program to modernize its economy.

There has been a concerted effort to improve the overall quality of the security forces throughout the country. First, a new code dealing with the organization and management of the public security agencies had been drafted. Second, there has been a campaign to standardize the recruitment and training of officers. This standardization process has been extended to include the design of uniforms, types of police vehicles, and uniformity in the appearance of police stations. Third, there is a serious effort to improve service to the public, which includes protecting the legal and human rights of people. This is being accomplished through three strategies. One is the selection and training across the country of effective police spokespersons. This is designed to enhance public awareness. Another strategy is the dissemination of information on laws, public safety, traffic safety, fire safety, and drug-prevention programs. These efforts improve the public's understanding and support for the police. The third strategy is to utilize the discipline inspection departments to conduct more planned and unplanned inspections of police stations. These inspection departments also receive and investigate citizen complaints. A final effort to improve the overall quality of the security forces involves a campaign to eliminate corruption within the public security agencies. What follows are two illustrations of China's attempt to professionalize its police. One deals with recruitment and training; the other addresses efforts at crime prevention.

Recruitment and Training

For many years, the source of police recruits was primarily the People's Liberation Army (PLA). Moreover, there was a minimal amount of training because it was assumed that the military experience was sufficient to prepare a person for police work. During the Cultural Revolution, all institutes and colleges that trained police were closed, on orders from Mao Zedong.

In the late 1970s, the training academies were reopened, and the curricula were revised to prepare people to function as professional police officers in a society that was attempting to become more modern through economic development. The Ministry of Public Security is given the responsibility to plan, coordinate, oversee, and inspect all police training facilities throughout the country. Course offerings vary, depending upon the purpose of the particular education or training program, but may include Chinese literature, foreign languages, public speaking, political theory, political economy, psychology, history of the Chinese Communist Party, police science, criminal investigation, security, communications, legal principles, constitutional law, criminal law and procedure, weapons training, driving police vehicles, physical training, boxing, and drill (Bracey, in Troyer, Clark, and Rojek, 1989).

Today, candidates who wish to join the public security police as a basic uniformed officer must be at least 18 years of age, be of good character, be in excellent physical condition, and be a high school graduate. In recent years, college graduates with no work experience and those with work experience and a particular skill have been recruited. In order to apply for important leadership positions within public security, a candidate must have practical experience in police work, hold a college degree, possess the requisite knowledge in law, have both administrative talent and managerial skills, and have successfully completed training at a police college or university.

There are almost 300 educational institutions for police throughout China. Police universities and institutes offer undergraduate college courses, two-year training programs, correspondence courses, and night courses. Graduates of police universities and institutes either work in public security departments throughout the country or are employed in research institutes or police universities. Professional training colleges offer a course of study that lasts three years. Graduates receive a college diploma and are then assigned to work in a public security department. These colleges also offer a two-year program for in-service officers. Police administration colleges also offer a two-year program for in-service officers who are under 40 years of age, and secondary police schools offer a two-year course of training that leads to a secondary school diploma. Police schools are training schools that offer short-term programs for in-service officers. Finally, the armed police command schools train junior command officers and technical personnel for the armed police through programs that take two years to complete. The command schools also offer short-term training courses for other officers in the armed police (Zikang, 1993).

The leaders of the Chinese justice system have long appreciated the value of science and technology in the work of public security agencies. In more recent years, they have begun to embrace the importance of law and rules of procedure. One of the most important educational institutions that combines the study of forensic science and law is the China Criminal Police

University in Shenyang. Students and officers come from across China to study in one of the many specialized programs dealing with criminal investigation. Among the investigative programs offered are computer crime, commercial crime, document examination, financial crime, forensic chemistry, forensic medicine, and the science of narcotics.

Special institutes also have been established to promote the use of science and technology in police work. These efforts include the production of equipment to carry out scientific investigations associated with criminal investigations, crime prevention, fire supervision, and road traffic control. There are also research institutes across the country that assist public security officers at the local level. The emphasis placed on the importance of science and technology has enabled public security police to improve the national police communications network, the national police computer-based information system, the national criminal evidence and identification network, and the urban traffic control systems (Yuzhen, 1993).

Crime Prevention

As was mentioned earlier, the crime rate in China has escalated significantly. Much of this change is attributed to the pursuit of a new economic policy throughout the country and the transformation that this has caused within society. The public security police are attempting to address this problem by rethinking and evaluating their methods of policing. In some instances, they are introducing new approaches to law enforcement and order maintenance.

One of the most basic methods of policing is patrol. This was one of the police strategies made subject to evaluation. Much has been said about the role that the neighborhood committees have played in patrolling residences in the name of crime prevention. Many scholars have suggested that this Chinese method of community policing was often the only kind of patrol that was performed on a regular basis or in a routine manner. Foot or bicycle patrols by public security police were carried out infrequently. With the increase in crime, the police discovered that they had depended too much on these committees for patrol. The police were practicing a form of reactive policing, in which they waited for an event to occur or a request for assistance before they mobilized themselves into action.

As previously mentioned, the neighborhood committees have been in decline in urban areas in particular, because younger generations have been focusing on the work ethic of the market economy rather than viewing public order and security as a social duty requiring the participation of all citizens. A decline in the working relationship between the police and people has also been influenced by the extent to which allegations of police corruption have been revealed. With the increase in public protests over a host of issues, there have been heightened tensions between the police and citizenry that contributed to this strained relationship (Sun and Wu, 2010). As an aside, it is important to note that concerns about corruption are not limited to the public sector in general or agents of the criminal justice system in particular; cases of corruption in the private sector are receiving a good deal of attention (Transparency International, 2009).

In the 1980s, the police introduced a more proactive strategy toward patrol, especially in urban areas, which was designed to maintain order and social stability and to reduce

crime in the long run. The police have learned several things after shifting from a reactive to a proactive method of patrol. First, the reaction time in arriving at crime scenes has been reduced. Second, the street environment in reference to order maintenance has improved significantly, which has had a positive impact on crime-prevention efforts. Third, police officers find themselves assisting people in a number of situations that have brought the police closer to the citizens and further enhanced the citizens' sense of security. Finally, a new or renewed sense of awareness that public security means serving the community has led police to make a more concerted effort to improve their image as professionals (Qinzhang, 1993).

The Chinese have acknowledged that drug abuse is becoming a serious problem in their country and that it is a factor in the increase in various kinds of crime. A White Paper on Narcotics Control illustrated this concern by pointing out that the number of registered addicts rose dramatically from 148,000 in 1991 to 681,000 in 1999. By 2003, the figure had reached 1 million (Chang, 2004). The government established a three-pronged strategy to address the problem. The first stage has involved a massive publicity campaign that educates people about the danger of drugs. Second, a legislative strategy has enhanced the penalties for drug-related crimes. Finally, attention is directed at the rehabilitation of both criminal and noncriminal drug users (Li, 1998). For their part, public security agencies in general and some of the more specialized operational divisions discussed earlier have made joint efforts to intercept illegal drugs entering the country. The government is also attempting to curb illegal poppy and marijuana cultivation within the country.

In 1990, the government established the National Narcotics Control Commission. From the start, the Chinese have viewed drug abuse from a systems perspective. It was never considered the sole responsibility of the Ministry of Public Security. As a result, local government agencies and public health officials are involved in the compulsory treatment and education programs that are imposed on drug abusers. In the early 1990s, more than 250 drug treatment centers had been established across the country, but these were not sufficient to handle the volume of drug abusers. Moreover, it was estimated that 80 percent of addicts who enter and complete a treatment program are unsuccessful at controlling their addiction upon release (Fang, 1993). The number of treatment facilities has risen dramatically since that time. By 2001, there were 746 compulsory rehabilitation centers and 168 treatment and reeducation-through-labor centers (White Paper on Narcotics Control, 2001).

There are several current strategies directed at China's drug problem in which public security police are playing an active role. They include the allocation of more resources to the specialized public security squads that deal with the drug problem, the identification and elimination of distribution centers and underground markets for illegal drugs, the tightening of controls on legal drugs that may be used or altered for illegal use, the imposition of tougher import and export regulations on chemicals that are used to manufacture drugs, the registration of all drug addicts at the provincial level, the development of an improved antidrug education campaign throughout the country, and the continued strengthening of international cooperation for the control of illegal drugs (Chang, 2004; Fang, 1993).

According to the White Paper on Narcotics Control, the antidrug campaign that was implemented by the National Narcotics Control Commission in 1997 has brought significant results in solving major drug cases and the arrest of drug traffickers. Between 1991 and 1999, more than 800,000 drug cases were solved, and tons of heroin, opium, marijuana, and methamphetamine confiscated. The National Narcotics Control Commission has established an antidrug education campaign specifically directed at young people. It is a comprehensive effort that begins in primary schools and continues through colleges and universities.

Finally, the Anti-Drug Law of the People's Republic of China went into effect in 2008. It is the government's comprehensive strategy to address the country's drug problems. In some respects, this legislation codifies several initiatives that have already been developed. The legislation speaks, among other things, to the specific tasks assigned to police. In the strategy to educate the public about the campaign against drugs, the police are called to provide assistance to schools and to seek the help of the various residents committees.

A key responsibility of the police is directed at controlling the cultivation and distribution of illegal drugs. Article 26 of the act speaks to both of these responsibilities.

> The public security organs may, in light of the need for investigating and suppressing narcotic drugs inspect the incoming and outgoing persons, articles, goods and means of transportation at border areas, vital communication lines and ports and at airports, railway stations, long-distance bus stations and wharves to see whether there are narcotic drugs or the chemical material that can easily be transformed into narcotic drugs.

Article 27 identifies a specific proactive strategy to curtail distribution: "A patrol system shall be set up for recreation centers, under which criminal offences related to narcotic drugs, once discovered, shall be reported to public security organs without delay."

In 2008, the government reported that various police agencies had handled 61,000 drug-related criminal cases. This led to 73,400 suspects arrested, with 50,307 of them eventually charged and prosecuted. In the course of these efforts, 1,565 drug trafficking groups were identified, 244 drug labs destroyed, and 17.13 tons of various drugs confiscated. Also in that year, 264,000 drug addicts received compulsory drug treatment or labor reeducation treatment.

Furthermore, the National Narcotics Control Commission indicated that there had been an increase in the number of drug users. While 955,000 were identified in 2007, this figure rose to 1,126,700 in 2009. Some officials are of the opinion that the figure is much higher and could reach 15 million. In addition, the government reported that 77 percent of registered drug users are addicted to heroin and that people under the age of 35 represent 60 percent of the registered users. Finally, in the 2012 China Narcotics Report, the National Narcotics Control Commission indicated that they registered 101,700 drug-related criminal cases for the year and that 112,106 drug suspects were arrested. In addition, 21.4 tons of various drugs were confiscated.

Finally, it should be noted that the illegal use and trafficking in drugs is always included in the government's strike-hard campaigns that were mentioned earlier. The

sanctions imposed on drug offenders are significant. To illustrate, in the late 1980s and on into the twenty-first century more than 20 percent of traffickers were sentenced either to death or life imprisonment. Moreover, it is not uncommon for a drug user to receive a sentence of over five years in prison (see Liang in Cao, Sun, and Hebenton, 2014).

The legal authority of the police is also spelled out in the legislation. For example, Article 32 states: "Public security organs may conduct the necessary test on persons suspected of using narcotic drugs, and the persons subjected to such test shall cooperate; a person who refuses to undergo the test may be subjected to compulsory test upon approval by the leading person of a public security organ . . ." Moreover, Article 33 indicates "The public security organ may order a drug addict to receive treatment of drug addiction in the community, and shall, at the same time, notify the neighborhood office in the urban area or the township or town people's government of the place where the residence of the drug addict is registered or he is actually residing." The police are authorized to require compulsory isolation for rehabilitation in some instances. Article 38 identifies the circumstances that could lead to compulsory isolation and includes refusing treatment, ingesting or injecting drugs during treatment in the community, seriously violating the community treatment agreement, or seriously relapsing in the use of drugs. Finally, Article 42 indicates that "The period of compulsory isolation for drug rehabilitation shall be two years." This period can be shortened after one year, if the rehabilitation center deems that the treatment is succeeding and isolation is no longer necessary. Various human rights groups, such as Human Rights Watch, are highly critical of the breadth of authority given police in this legislation, but such responsibility is not new. For decades public security agencies have been accorded wide-ranging powers to enforce laws and maintain order through administrative regulations. These regulations enable the police to impose punishments on suspected law violators without benefit of a trial. The administrative regulations are explained in greater detail in the section of this chapter devoted to law.

Another concern focuses on economic crime. As China attempts to create its market economy, there is a need to establish a modern financial system that includes laws and regulations designed to facilitate the development of legitimate businesses. A central feature of this effort is the creation of a security infrastructure for the emerging financial institutions that is vigilant in both a proactive and reactive manner to the many forms that economic crimes may take. While financial fraud is an international problem, it is particularly troubling to the Chinese who have not, until recently, been accustomed to dealing with bank, credit card, insurance, and securities fraud; counterfeit checks; faulty contracts, drafts, deposit receipts, and mortgage loans; and various scams, such as pyramid schemes. In 2007, the number of fraud cases rose significantly to 239,698 from the 127,884 reported in 2006. In 2013, the figure had reached 676,771.

A final issue that has attracted a good deal of attention from the police is road traffic accidents. While it is not so much a crime-prevention issue, it is an order-maintenance concern of significant proportions. As was pointed out earlier, the number of motor vehicles has increased considerably in China, especially during this current phase of economic development. The increase in vehicles has led to a rise in the number of traffic accidents. Over the course of a 15-year period beginning in 1978—the start of the modernization

movement—and ending in 1992, there were a total of 2,866,828 traffic accidents that resulted in 568,709 deaths and 1,850,936 injuries (Zhengchang, 1993).

Chinese officials have identified several reasons for the number of accidents. First, most people do not have an understanding of the traffic laws, and this includes pedestrians. Second, many drivers have not developed the requisite basic skills to drive successfully. Of particular concern are transportation companies that employ drivers who lack these basic skills. Third, the increase in road traffic has outpaced the development of roads and other issues related to the transportation infrastructure, such as improving existing roads and the production and distribution of better road signs. Finally, the traffic management and accident prevention system that is in place often cannot keep pace with the rapidly changing nature of the problem, especially in urban areas. This is coupled with a shortage of equipment, funds, and human resources needed to address the problem in a comprehensive manner.

In 1986, the government authorized the Ministry of Public Security to assume responsibility for national road traffic control. While the traffic police have attempted to address the problems and have undertaken some successful initiatives, limited resources hinder their efforts as the problem continues to grow. Specifically, it was estimated that the number of motor vehicles will increase annually at a rate of 15 percent. Moreover, it was expected that the number of motor vehicles would exceed 20 million and bicycles would increase to 400 million by the end of the century (Zhengchang, 1993).

The Ministry of Public Security has identified several objectives that it is attempting to implement in order to prevent and reduce traffic accidents. They include conducting research into the prevention of accidents, assessing in a comprehensive manner the present traffic engineering management system, educating people about traffic safety, enforcing and improving traffic laws and regulations, reducing major accidents by the identification and control of dangerous sections of roads, and increasing the number of officers assigned to the traffic police. As a result of these efforts, traffic safety has improved significantly by establishing uniform traffic laws, improving both the quality and quantity of traffic signals and road markings, upgrading roads to handle the volume of traffic, and educating the public with brochures about traffic safety. These efforts have led to a significant reduction in serious traffic accidents. In 2008, there were 265,204 traffic accidents that resulted in 73,484 deaths and 304,919 injuries (Ministry of Public Security, 2009). This is a significant improvement over the earlier data mentioned previously. The 2008 decline is in part attributed to a traffic safety campaign initiated before and during the Beijing Olympics. Finally, there continues to be a decline in the number of traffic accidents causing either death or injury In 2013, accidents causing death numbered 58,539, while those causing injury were 213,724 (Law Year Book of China, 2014).

Critical Issue

In spite of the efforts to improve recruitment and training and to establish special institutes that focus on the use of science and technology with criminal investigations, the standard approach that the Chinese police have employed to solve crime has been roundly criticized. The criticisms have not only come from the international community (Amnesty International

and Human Rights Watch are but two examples), but also recently from within the government (Anonymous, 2012).

In the introductory chapter to this text, Herbert Packer's crime control and due process models were sketched out. It was pointed out that each model represented a separate value system in the operation of the criminal process in the United States. Moreover, it was mentioned that these models could be employed as a tool in the comparative analysis of other justice systems. At issue in the Chinese context is Packer's crime control model. The crime control model's emphasis was on efficiency at controlling crime. The aim was to employ speed and finality of judgment throughout a process that ultimately presumed the accused guilty.

Throughout China, the police are under a good deal of pressure to enforce the law and maintain order. The ability to reduce crime and to solve crime expeditiously is a key objective of the police, in part because it is a prime goal of the Communist Party and the government, in order to ensure a stable society. To achieve this end, police employ extralegal measures. The principal tactic is to employ criminal detention. Criminal detention enables the police to hold a suspect for up to 30 days before officially arresting the person. Suspects are not allowed to see their families. They are held in a state of isolation, which leads to a good deal of mental pressure. In addition to this psychological torture, there are allegations of other forms of physical abuse. Thus, this has become a cost-effective method of not only solving the specific crime in question but usually leads to the resolution of some unsolved criminal activity.

While this strategy is often employed on political dissidents, it is used on other criminal suspects as well. Research in various public security bureaus estimates that between 75 and 90 percent of suspects are placed in criminal detention. It is important to note that this process is not considered a form of punishment by the authorities; rather, it is a key method of investigation. What has led to the government acknowledging this problem is that in recent years various miscarriages of justice have been identified, including wrongful convictions. A central reason for these miscarriages was the mistreatment of suspects while in criminal detention (Dui Hua, 2013; Dui Hua, 2014; Anonymous, 2012). Thus, criminal detention, and the tools employed for it, makes for a practical illustration of a crime control model within the Chinese context.

Also regarding the issue of detention, it was mentioned earlier that Xi Jinping has undertaken an anti-corruption campaign that includes high-ranking officials of the Communist Party. Party discipline committees are actively involved in this process of identifying and investigating such offenders. Those officials suspected of corruption have imposed on them *shuanggui* detention, which is an extralegal measure designed to encourage compliance with the investigation. Similar to criminal detention, the suspect is placed in an isolated environment for questioning. For the most part, suspects tend to cooperate in the hope that they will be spared a death sentence.

JUDICIARY

Although China has a long tradition that dates back to ancient times, the role of law in the development of the country and its civilization is clearly lacking in prominence when

compared with that found in the West. The concept of law and the manner in which it has emerged in China will be the subject of the next section of this chapter. What is of interest at this time is a consideration of how justice is administered in China. A brief introduction is provided, regarding the manner in which a judicial system was established and operated in a country that was not dependent upon law as the principal method of regulating society.

The period between the Xia Dynasty of 2205–1766 BCE and the Qing Dynasty of 1644–1911 CE is referred to as imperial China. Over that extremely long period, successive emperors established an elaborate, and often quite sophisticated, hierarchy of institutions that were responsible for the administration of government. From both a geographical and an organizational perspective, the bottom of this administrative hierarchy consisted of districts followed by departments, prefectures, provinces, and finally, the central administration. Government bureaucrats were found at each level of the hierarchy. At the district level, the head of local government was the magistrate. One of the magistrate's many administrative responsibilities was dispensing justice, and this was done in his capacity as police chief, prosecutor, and judge.

It is important to remember that the purpose of justice in this context was to assert the authority and power of the emperor by punishing people who violated the order of the state. The person accused of violating the good order was placed at a significant disadvantage. To illustrate, the accused was presumed guilty rather than innocent. Defense attorneys did not exist. Torture was an acceptable method of extracting confessions. Further, judges occasionally applied the penal code by analogy. This meant that a penalty could be imposed for an act that was not specifically prohibited in the code but was analogous to an act that was prohibited.

In imperial China, all government officials, including magistrates at the district level, belonged to a single civil service. They were appointed and promoted by the central government. Most entered the civil service first by pursuing an education, and second, by passing a series of examinations. Although magistrates were educated individuals, they were not trained in law. Because magistrates had to prepare cases for trial and submit legal reports to higher authorities, they employed legal secretaries to assist them in their judicial work.

Although people functioned as legal advisers during the imperial era, it was not until the late Qing dynasty that they began to study law formally. The first people to do this usually pursued their legal studies abroad. To illustrate the lack of interest in pursuing a career in law, it is estimated that during the first half of the twentieth century, there were only a few thousand lawyers in China. Many limited the practice of law to the major port cities of the country. While a few bar associations were founded in some large cities, they were not very successful at improving the standing of lawyers in comparison with other professionals.

It is important to remember that for centuries China has had two kinds of justice systems. One is a formal system created by government that is bureaucratic, hierarchical, and designed to enforce and interpret a codified set of laws and regulations. The other kind of justice system is informal and based on the country's cultural traditions that date back to ancient times. It is essentially administered at the local grassroots level and is extrajudicial in nature. Originally, this informal system had its basis in Confucian thought. Such a system

was directed by a set of broad moral principals. These principals, in turn, led to the establishment of socially approved norms and values that required enforcement.

One could characterize this informal system as an early form of the alternative dispute resolution technique that has become popular in the West. Because China has been a peasant society for most of its history, the vast majority of its people had little need for a formal legal system in their daily lives. Conflicts continued to be resolved as they had for centuries—through an informal justice system. One of the principal changes that took place in the informal justice system after the Communists assumed power was that the socially approved norms and values that were enforced were based on the ideology of the Communist Party rather than the teachings of Confucius.

When the People's Republic of China was founded in 1949, one of the first things that the victorious Communist Party did was abolish the laws enacted under the Kuomintang and eliminate the legal system and profession designed to make those laws operational. The government essentially relied on an informal system for the administration of justice that was based on the political ideology of the Chinese Communist Party. The purpose was to eliminate bourgeois elements, counterrevolutionaries, and other unsavory vestiges of the previous regime. Thus, the period from 1949 to 1953 marked a time when a good deal of political consolidation and economic transformation was going on throughout the country. It is interesting to note that many of the characteristics of this period were strikingly similar to those experienced in the Soviet Union following the October Revolution of 1917.

Following the introduction in 1953 of the first Five-Year Plan that was designed to develop the country's national economy, the Chinese turned their attention to establishing a more formal legal system. They essentially modeled many of their efforts after the justice system that was operating in the Soviet Union. A particularly eventful year in the creation of this new justice system was 1954. In that year, the first Constitution of the People's Republic of China was approved. Other pieces of legislation that were enacted at that time were the Organic Law for the People's Courts of the People's Republic of China, the Organic Law of People's Procuratorates of the People's Republic of China, and Regulations for Arrest and Detention. Plans were also initiated to draft a criminal code and a procedural code. Neither code, however, came to fruition during this period.

The effort to establish a more formal legal system for the administration of justice began to unravel with the Anti-Rightist Campaign (1957–1958) and then during the Cultural Revolution (1966–1976). Many party leaders were skeptical about importing the Soviet judicial model because of cultural and political differences. Some legal critics were concerned that the Soviet model was too Western. The Soviet codes were, after all, basically the civil law system of the West, which had incorporated socialist ideology as interpreted during Joseph Stalin's tenure in power. Moreover, the Soviets had started to revise their own criminal and procedural codes as part of their de-Stalinization campaign. The adoption of these revisions make the Soviet codes appear even more Western, which simply heightened the alarm of some of the Chinese critics. The critics, for example, considered ideas such as legality, equality before the law, and an independent judiciary as bourgeois concepts that should be rejected.

Finally, Mao Zedong clearly preferred an informal method for the administration of justice over that of a more formal system. During his long tenure as leader (1949–1976),

he permitted the adoption of or experimentation with a formal method for the administration of justice, but for only a relatively brief period of time. For the most part, Mao favored the role of party policy over that of law in regulating society. As a result of his position, law was either abolished or ignored. The judicial system was seriously injured during the Anti-Rightist Campaign and virtually destroyed during the Cultural Revolution. This was accomplished by attacking the legal profession and exiling judges, procurators, and lawyers to the countryside.

Following Mao's death, the Chinese again commenced to experiment with a formal method for administering justice. The 1978 Constitution of the People's Republic of China reintroduced some basic rights in the administration of justice. For example, the accused had a right to a defense and an open trial; the procuratorate was reestablished, and police had to receive approval from a court or a procurator to arrest a suspect. The 1982 Constitution expanded individual rights further, at least in theory.

In 1979, the National People's Congress approved the Criminal Law of the People's Republic of China and the Criminal Procedure Law of the People's Republic of China. Both went into effect in 1980. Thus, the creation of criminal and procedural codes, which were initially discussed and drafted 25 years earlier, finally placed China's justice system on a legal footing. Since that time, a number of other laws have been enacted and decisions adopted that further illustrate the newfound importance of law in the governance of the country.

Legislation was also approved that established a judicial system throughout the country. Three pieces of legislation were of particular significance. The Organic Law of the People's Courts of the People's Republic of China (1980) and the Organic Law of the People's Procuratorates of the People's Republic of China (1980) created a court hierarchy and a system of prosecutors. The Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China (1980) was also significant. It applied the principle of dual leadership, which had a long-standing tradition in the People's Republic of China. Essentially, the principle states that local courts and procurators are not only accountable to a court or procurator that is at a higher level within their respective organizational hierarchies, but also to the local people's congress and its standing committee. The congresses and standing committees have the authority to elect, appoint, and remove from office members of the judiciary. All the aforementioned legislative activity was designed to abandon Mao's informal or populist approach to the administration of justice to one favored by Deng Xiaoping that had its basis in law (Trevaskes, 2007).

Organization and Administration of the Courts

The Chinese courts are organized into two categories: people's courts and special people's courts. The people's courts consist of a four-tiered hierarchy, with five courts or tribunals responsible for the bulk of cases associated with the administration of criminal justice (see Figure 6.3). Before the court system is explained, it is important to mention briefly the responsibilities of the Ministry of Justice as they pertain to courts and judicial personnel.

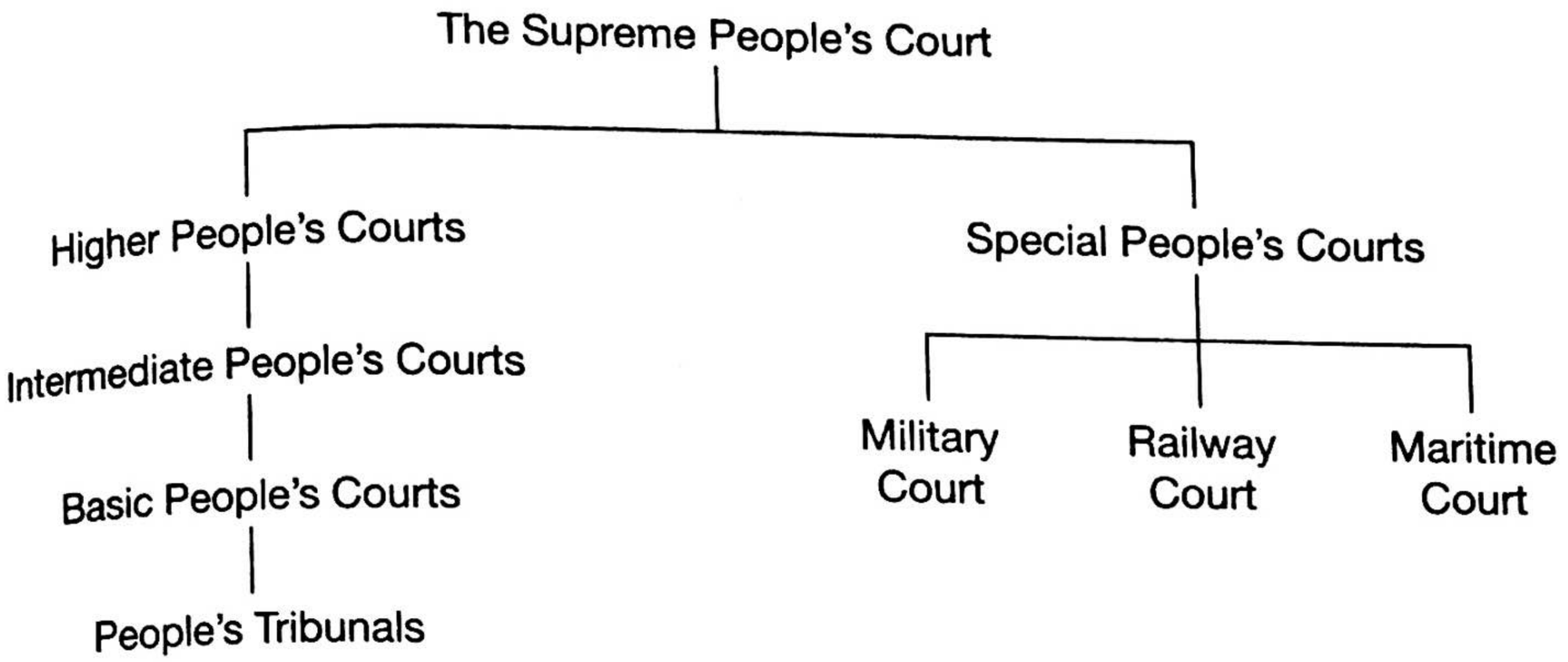

FIGURE 6.3 | Organization of the Chinese Courts

Ministry of Justice

The Ministry of Justice has had a checkered history since the founding of the People's Republic of China. Throughout much of the 1950s, the ministry was responsible for the administration of courts. In 1959, the ministry was abolished as a result of the Anti-Rightist Campaign (1957–1958). Many judges, procurators, and other people trained in law were sent to the countryside for purposes of rehabilitation. This also happened during the Cultural Revolution (1966–1976). With the demise of the ministry, the Supreme People's Court assumed responsibility for the administration of the courts.

With the government acknowledging the important role that law would play in the development of contemporary Chinese society, the Ministry of Justice was reestablished in 1979. Its principal responsibilities include training legal personnel, improving legal education, supervising lawyers, overseeing the mediation system, conducting legal research, compiling laws and decrees, publishing materials on law, and disseminating legal information to the public.

In reference to the Chinese courts, the principal pieces of legislation governing the judicial authority of the courts are the Constitution of the People's Republic of China and the Organic Law of the People's Courts of the People's Republic of China. Several principles that relate to the courts are enunciated in Section VII of the Constitution of the People's Republic of China. They are as follows: (1) judicial proceedings are conducted in a manner designed to assure that all people are equal before the law; (2) trials are open to the public, unless special circumstances warrant a closed trial (such as cases involving state secrets and crimes committed by a minor); (3) an accused has a right to a defense; (4) the courts' judicial power is exercised independently and not subject to the interference of other institutions or individuals; and (5) citizens of all nationalities have a right to use their own spoken or written languages in court.

The Organic Law of the People's Courts not only reiterates these constitutional principles but also offers additional provisions that explain the general administration of the court system. First, the courts have adopted a collegial system toward the administration

of justice. This means that first-instance cases are tried before a panel of judges or a panel of judges and people's assessors. Only in minor criminal cases does the law provide for a trial before a single judge. In all appellate matters, the court would be composed of a three- to five-judge panel. Second, judgments and orders at first instance from a local people's court can be appealed to the next court in the hierarchy and a procurator can present a protest to the next court in the hierarchy. The appellate judgment or orders from the second instance court are final. Third, cases involving the death sentence must be approved by the Supreme People's Court or a court that has been authorized by the Supreme People's Court to handle such matters. Fourth, if a court judgment or order is legally effective but an error in fact or law is subsequently determined, the Supreme People's Court may review the case or authorize a retrial in a lower court. If a procurator discovers a definite error, the procurator can lodge a protest, which can also trigger a rehearing of the case. Fifth, if a trial court decides that the procurator has initiated a prosecution in which the evidence is insufficient or not clear or that there are other possible illegalities, the court can return the case to the procurator for further investigation. Finally, a member of a judicial panel can be asked to withdraw from a case if a party in the case is of the opinion that the member of the panel may have an interest in the case or cannot be impartial. The president of the court decides if the member must withdraw from the case.

The Organic Law also indicates an established and ongoing method of monitoring and influencing the work of courts on a regular basis. Article 11 states: "people's courts at all levels set up adjudication committees which practice democratic centralism. The task of the adjudication committees is to sum up judicial experience and to discuss important or difficult cases and other issues relating to the judicial work." Thus, adjudication committees are often the most important decision-making authority within a court. The committee is composed of the president and vice presidents of the court, heads and deputy heads of various divisions, as well as some additional judges. While chief procurators are invited to attend the meetings of adjudication committees, they do not have the right to vote.

Adjudication committees have the authority to decide individual cases and are often given the responsibility of handling particularly difficult cases. They can override the decision of a judge and direct the judge to determine a case in a specific manner. It should be pointed out that this specific kind of influence is not unique to China. It is a natural feature of a judicial system that operates within a communist political context, and it has been common in other countries that have subscribed to the communist ideology in the recent past. While many legal scholars oppose the use of such committees, it has been suggested that in light of questions surrounding the competence of some trial judges and concerns over corruption at the trial level, adjudication committees might serve a useful purpose for the near future (Peerenboom, 2008).

It has been suggested that the involvement in criminal cases by adjudication committees has declined somewhat, but such involvement has increased in civil and economic cases (see Peerenboom in Peerenboom, 2010). Moreover, it was recently noted that criminal cases represent less than 10 percent of the total court caseload (see Fu in Cao, Sun, and Hebenton, 2014). This also reflects another significant change with China's new economy. As mentioned earlier, for centuries China's peasant society relied upon an informal system of dispute resolution to settle disagreements rather than go to court. Today, there is a greater

need, especially in urban areas but not limited to them, for the expertise found in a more formal legal system (see Landry in Ginsburg and Moustafa, 2008).

The Supreme People's Court

The Supreme People's Court is not only the highest court in the judicial hierarchy, but it is also constitutionally responsible for the administration of all lower courts. The court is organized into seven permanent divisions. These include two criminal divisions and single divisions for administrative, civil, communications and transport, complaints and petitions, and economic matters. Other divisions can be created if necessary.

The Supreme People's Court is accountable to the National People's Congress and to the Standing Committee. The President of the Supreme People's Court is elected by the National People's Congress to a five-year term that can be renewed once. The vice presidents, chief judges of divisions, associate chief judges, and judges are appointed by the Standing Committee and can be removed by that committee.

It is important to note that the Supreme People's Court does not have the authority to invalidate a law that has been passed by the National People's Congress. The court is responsible for the following kinds of judicial matters: first-instance cases assigned by law or decree to its jurisdiction or cases that the court decides to hear (which are extremely rare); cases on appeal or protest from higher people's courts or special people's courts; cases of protest from the Supreme People's Procurator; and the approval of death penalty cases. It is interesting to note that the court has been called upon to assist in the drafting of legislation for the National People's Congress.

Moreover, judges are appointed and can be removed by the Standing Committee. This is also the case with judges at the other levels within the court hierarchy, which would be appointed or removed by a local standing committee. These standing committees are advised on such personnel matters by the corresponding political-legal committee, which is accountable to the Communist Party. The committees are ultimately responsible for all legal institutions, and their principal mandate is to protect the authority of the Party and to assist in maintaining the social stability of the country. As such, they are not dictating how the typical cases before a court should be adjudicated, but they undoubtedly influence the outcome of a case deemed a threat to national security.

The Higher People's Courts

There are 30 Higher People's Courts, and they are found in provinces, autonomous regions, and municipalities that are directly under the central government. These courts are organized into three permanent divisions—civil, criminal, and economic; other divisions can be established if needed. These courts handle the following kinds of judicial matters: first-instance cases originally assigned by law or decree or cases transferred from a lower court, appeals of and protests against judgments and orders from lower courts, and protests lodged by a procurator.

While the Higher People's Courts are supervised by the Supreme People's Court, they are also accountable to the appropriate people's congress in the geographical region in which

they are located. For example, if a Higher People's Court handles judicial matters for a specific province, then it is accountable to the people's congress of that province. The presidents of Higher People's Courts are elected by the local people's congress. The other judges are appointed by the standing committee of the local people's congress; they can also be removed by this standing committee.

The Intermediate People's Courts

The Intermediate People's Courts are found in prefectures and municipalities that are under the direct control of either a province, autonomous region, or the central government. There are 381 Intermediate People's Courts; these courts each contain civil, criminal, and economic divisions and can establish other divisions if necessary. The courts handle the following kinds of judicial matters: first-instance cases assigned by law or decree or cases transferred from a lower court, appeals of and protests against judgments and orders from lower courts, and protests lodged by a procurator. The Criminal Procedure Law (1996) is quite specific on the kinds of first-instance cases assigned to intermediate people's courts. They include state security endangerment cases, criminal cases punishable by life imprisonment or the death penalty, and criminal cases involving foreign nationals.

The Intermediate People's Courts are ultimately responsible to the Supreme People's Court, but they are also accountable to the people's congress in the local prefecture or municipality. The presidents of Intermediate People's Courts are elected by the local prefectural or municipal congress. The other judges assigned to the court are appointed and removed by the standing committee of the local people's congress.

The Basic People's Courts

The Basic People's Courts are generally responsible for a county, municipality, or municipal district. There are approximately 3,000 of these courts, and they may also be organized into the three traditional divisions—civil, criminal, and economic. These courts essentially handle the typical or ordinary criminal cases. If a court is of the opinion that it is about to preside over a significant criminal or civil case, it can request that the case be transferred to a court at a higher level. Basic People's Courts can establish people's tribunals in rural areas, and they serve as a branch of the Basic People's Court. More than 18,000 tribunals have been established throughout the country. Basic People's Courts are also authorized to handle minor criminal matters informally, to settle civil disputes, and to coordinate people's mediation committees.

As was the case with other courts in the hierarchy, the president of a Basic People's Court is elected by the local people's congress. All the other judges associated with the court are appointed and can be removed by the standing committee of the local people's congress.

Special People's Courts

Both the Constitution and the Organic Law authorize the creation of Special People's Courts. It is the responsibility of the Standing Committee of the National People's Congress to

establish such courts. Presently, these include military courts, railway courts, and maritime courts. The military courts are a fairly closed system within the People's Liberation Army and are essentially responsible for handling criminal cases of military personnel. The railway courts are responsible for criminal cases involving the railway system and economic disputes pertaining to railways. The maritime courts deal exclusively with maritime law and maritime trade matters.

The Legal Profession

In the first half of the 1950s, there were approximately 3,000 lawyers throughout China. They were organized into 800 legal advisory offices and were considered legal workers for the state. With the Anti-Rightist Campaign and then the Cultural Revolution, the legal profession ceased to exist (Leng and Chiu, 1985).

The government reestablished the legal profession in 1982. Initially, the Provisional Regulations of the Peoples Republic of China on Lawyers explained the responsibilities and qualifications of lawyers. Chinese lawyers were viewed as legal workers for the state. The requirements for practicing law in China were Chinese citizenship, support for the socialism system, having the political rights that enable a person to elect or be elected to various positions within government or society, and possessing the requisite educational qualifications. At the time, a person's political connections were more important than formal education. Moreover, there was no requirement to pass a bar examination. Although bar associations were established, they did not have any authority to regulate the profession; that was the responsibility of the government.

Under these circumstances, the legal profession was viewed essentially as a tool of the government. The Lawyers Law of 1996 was passed to change that perception and to illustrate a modest degree of independence from the government for the profession. Lawyers were no longer considered legal workers for the state, but rather as professionals providing legal services to society. In some areas of legal practice, lawyers are asserting their professional rights and obligations. This implies a degree of independence from government control. Unfortunately, lawyers who practice criminal law often remain constrained by procurators and police from exercising any significant level of professional independence (Peerenboom, 2002).

Throughout the 1980s and early 1990s, it was acknowledged that the minimal educational requirements to practice law were having an adverse impact on the legal profession. People were complaining about the level of incompetence and degree of unethical behavior. As a result, a greater emphasis was placed on enhancing and enforcing the educational requirements of graduating from a university law department or a political-legal institute and by being employed in judicial work for at least two years. Another way of satisfying the educational requirement was to have graduated from a higher education institute; have an understanding of law in a particular area of expertise, such as economics or business; or have some formal training in law. In 2001, the Lawyers Law was amended to require that a person have a college degree as a basic prerequisite to sit for the bar examination.

To practice law a person's qualifications are scrutinized at the provincial level of government. It is the judicial department of a province that issues the certificate that enables

a person to practice law. The person must then register with the Ministry of Justice. Once approved, lawyers are expected to uphold the socialist legal system by protecting not only the rights of an individual client but also by providing a service to society. According to legislation approved by the National People's Congress, lawyers are responsible for performing a number of tasks that include acting as legal advisors to state agencies and groups, serving as agents to litigants in civil suits, defending people accused of crime, taking part in litigation for a party who has initiated a private prosecution or an injured party involved in a public prosecution, furnishing legal advice in nonlitigious matters, acting on behalf of a party involved in mediation or arbitration, answering questions on law, and drafting documents related to legal issues.

The growth in the legal profession has been significant. In 1981, there were about 4,800 lawyers in the country, and this increased to 12,000 by 1983. By 1990, it was estimated that the profession had increased further to 34,000 (Gelatt, 1991; Leng and Chiu, 1985). It should be pointed out that approximately one-half of these people are considered part-time lawyers. Part-time lawyers are people who are employed full-time as law teachers or legal researchers. The educational institutions in which they are employed have established legal consultancy offices. They are available to consult on legal questions and do not charge fees. By 1998, the profession had experienced another significant growth spurt with more than 110,000 lawyers registered (Peerenboom, 2002). It is estimated that the number is now approaching 230,000.

Recently, the Criminal Procedure Law was amended. According to the White Paper on the Judicial System and Reform Process, these changes in procedures were designed to address human rights concerns: to prohibit torture or other illegal measures, to stop self-incrimination, to exclude illegally obtained evidence, and to improve the rules associated with detention (Anonymous, 2012). While the amended changes in the law will be addressed in the section on the law, it is important at this time to identify how the amended law is designed to impact members of the judiciary.

Judges

Prior to 1979, the legal system was either weak or nonexistent in the People's Republic of China. Throughout most of the period, law was viewed in a negative context, and the judiciary was without any real authority in light of the political climate. Courts tended to focus almost exclusively on criminal matters, with many cases being decided on the basis of party policy rather than law. As a result, judges were selected on the basis of their political qualifications rather than an understanding of or training in law. From 1949 to 1979, particularly during periods of crisis, military officers were frequently recruited to serve as judges throughout the court hierarchy. They were selected because of their proven political allegiance.

Since the early 1980s, the government has stressed the importance of law in economic development. The leaders acknowledge the need to develop a socialist legal system and a judiciary that can deal with technical legal issues. The government made a concerted effort to introduce significant incremental changes in the judiciary. For example, according to

Article 34 of the Organic Law of the People's Courts (1980) "citizens who have the right to vote and to stand for election and have reached the age of 23 are eligible to be elected presidents of people's courts or appointed vice-presidents of people's courts, chief judges or associate chief judges of divisions, judges or assistant judges; but people who have ever been deprived of political rights are excluded." Added to these criteria in 1983 was that "judicial personnel of people's courts must have an adequate knowledge of the law."

In 1995, the Judges Law of the People's Republic of China took effect. Article 9 of the Judges Law lists the qualifications that a judge must possess:

1. to be of the nationality of the People's Republic of China;
2. to have reached the age of 23;
3. to endorse the Constitution of the People's Republic of China;
4. to have fine political and professional quality and to be good in conduct;
5. to be in good health; and
6. to have worked for at least two years in the case of graduates from law specialties of colleges or universities or from non-law specialties of colleges or universities but possessing the professional knowledge of law; or to have worked for at least one year in the case of Bachelor of Law; those who have Master's Degree of Law or Doctor's Degree of Law may be not subject to the above mentioned requirements for the number of years set for work. The judicial personnel who do not possess the qualifications as provided by sub-paragraph (6) of the preceding paragraph prior to the implementation of this Law shall receive training so as to meet the qualifications as provided by the Law within a prescribed time limit. The specific measures shall be laid down by the Supreme People's Court.

These qualifications illustrate the attempts that the government has made to enhance the quality of candidates for the judiciary.

To facilitate the efforts at educating judges and other court personnel, the government commissioned law institutes and law departments of universities to provide training in basic legal subjects. It was reported that 17 percent of all judges had received some law training at a university by 1987 and that this figure had risen to 66 percent by 1993. The significant jump was apparently due to a large number of judges completing a three-year night school program in law. Advanced training is also now available for senior judges and those judges who have completed a university education (Finder, 1993). The availability of such training will continue in light of the aforementioned judicial requirements that are spelled out in the Judges Law 1995.

Irrespective of these efforts to improve the qualifications of the judiciary, there continues to be a shortage of technically competent judges. To illustrate, only 5 percent of judges had a bachelor's degree in law in 1995. By 2000, 19 percent of presidents and vice presidents and 15 percent of the other judges of the basic people's courts had a bachelor's degree. The degree, however, was not necessarily in law (Peerenboom, 2002). According to Transparency International, 51 percent of judges had a college degree by 2007 (Transparency International, 2007). As a result of this change, the government is no longer

relying on a pool of former military officers to fill judicial vacancies in most parts of the country. The exception is in western China, where they have been unable to attract law school graduates.

The Judges Law has been amended to enhance judicial qualifications. All new judges must have a bachelor's degree in law or a bachelor's degree and knowledge of law. In addition, two years of legal work experience is required. Judges are also required to take a national examination. After passing the examination, the judicial candidates participate in three months of training before assuming their duties as a judge.

A study that interviewed 88 judges from 13 areas of China provides further insight, albeit limited, regarding a judicial profile. In this study, 60 percent of the participants were male and 40 percent female. In addition, 60 percent indicated that they were under the age of 40. Among these participants, 77 percent said that they were graduates. Of these, 27 percent noted that they either had completed a postgraduate degree or were pursuing one. The researchers cautioned about the nature and quality of education that some participants had achieved, with some acknowledging that it was through self-study, corresponding, or a Communist Party school. With regard to the participants' work experience prior to becoming a judge, 67 percent had been employed in courts often as clerks. Finally, 53 percent had more than 10 years of experience as a judge and 44 percent less than 10 years of experience (McConville and Choongh, 2011).

In reference to selecting people for judicial appointments, presidents of the people's court at a specific level within the court hierarchy are elected by the corresponding people's congress. For example, the President of the Supreme People's Court is elected by the National People's Congress, while the president of a basic people's court that is serving a municipality is elected by the people's congress for that municipality. Thus, presidents of courts at all levels are selected because of their political career rather than a career or significant knowledge in the law.

The term of office of a court president is five years, the same as that for deputies serving in a people's congress. A people's congress also has the authority to remove from office a president that it elected. All the other judges that are working within a specific court are appointed by the corresponding standing committee of that particular court. To illustrate, the judges working in an intermediate people's court for a prefecture would have received their appointment through the standing committee for that prefecture. Standing committees also have the authority to remove a judge from office. At all levels within the judicial hierarchy, people's courts can appoint assistant judges to aid the regular judges with their work and may grant them the authority to function as a judge for a period of time. These assistant judges also can be removed from service by the court.

In 2001, new efforts were initiated to improve further the selection of judges. Presidents of the basic people's courts were to be selected based on merit associated with their judicial work. Presiding judges of trial courts would be selected on a competitive basis. All judges were also expected to improve the quality and quantity of their work. Moreover, in 1998 a five-year plan was announced that required all existing judges to meet the new educational and work product standards. Failure to comply could lead to termination or a transfer to another type of position within the court system. In light of the method of selection, appointment, and promotion, the Chinese judiciary is not viewed as a separate governmental

power from the executive or legislature, but rather as a division within the state's bureaucracy. Moreover, judges are more apt to view themselves as civil servants rather than independent professionals (see Peerenboom in Peerenboom, 2010; see Sali in Peerenboom, 2010; Trevaskes, 2007).

In addition to improving the educational standards of judges, the other major problem is the level of corruption associated with the judiciary. The major cause for this corruption is associated with inadequate salaries that are less than those paid to lawyers and in some cases below that of police officers. While judges are supposed to receive raises, many local governments have failed to implement the increases. While the principal form of judicial corruption is associated with bribery, there remains the problem of government interference, especially local party officials abusing their authority. To address this problem, the Supreme Court issued a code of ethics for judges in 2003. The following year, the procuratorate focused increased attention on corruption enterprises involving law enforcement and judicial personnel. It has also been suggested that the judicial process should be made more transparent by permitting the general public to observe trials (Transparency International, 2007).

Since 2002, all judges, procurators, and lawyers must pass a national judicial examination in order to qualify as a legal professional. At the end of 2011, almost 500,000 people had passed and were deemed qualified to work in the field of law. In light of the amendments made to the Criminal Procedure Law, the White Paper on the Judiciary stressed that courts must function fairly, impartially, and independently. Their purpose is to ensure that the rights of people are protected and that equity and justice is achieved. Their efforts are designed to enhance national stability.

To instill these professional judicial values in judges, special trial management institutes have been established as a form of a continuing education program. A further aid in this endeavor has been implemented by the Supreme People's Court. The Court has introduced a somewhat novel program referred to as the case guidance system. Here, the Court has identified specific real cases that have been adjudicated and deemed worthy as models of how a statute should be interpreted and its appropriate application in the model case. While these cases in the guidance system are not binding on the lower courts, they are used to illustrate how the quality of the judicial process can be improved. The cases identified in this guidance system cover virtually all aspects of law and are not limited to criminal law (Anonymous, 2012).

Procuratorate

Within the context of the judicial system and possibly beyond it, the procuratorate is one of the most powerful components within the criminal justice system of the People's Republic of China. The procuratorate is governed essentially by two pieces of law: the Constitution of the People's Republic of China and the Public Procurators Law of the People's Republic of China 1995. According to the constitution, the procuratorate is responsible for "legal supervision," and it exercises this authority "independently and are not subject to interference by administrative organs, public organizations, or individuals."

As is the case with other components of the government, the procuratorate is a large hierarchical bureaucracy in which various levels correspond to many administrative divisions of the central government. The Supreme People's Procuratorate is at the top of the organizational pyramid. This is followed by people's procuratorates established in provinces, autonomous regions, and municipalities directly under the control of the central government. Branches of these procuratorates are located in provinces, autonomous regions, municipalities directly under the control of the central government, autonomous prefectures, cities under the control of provincial governments, counties, cities, autonomous counties, and municipal districts. In some instances, a procuratorate might be established for an industrial, mining, or agricultural area or a forestry zone. In order to become a public procurator, a person must possess the requisite qualifications that are spelled out in the Procurators Law 1995. The qualifications are identical to those of a judge (listed earlier).

Like the courts, the procuratorate is influenced in a special manner by the political system through the existence of procuratorial committees. According to Article 3 of the 1980 Organic Law of the People's Procuratorate, "people's procuratorates at all levels shall each set up a procuratorial committee. The procuratorial committee shall apply the system of democratic centralism and, under the direction of the chief procurator, hold discussions and make decisions on important cases and other major issues." As was the case with the courts, this committee system is not unique to China. It is a natural feature of a judicial system that is operating within the communist political context, and it was common in other countries that subscribed to the ideology of communism in the recent past.

While the constitutional purpose of the procuratorate is "legal supervision," the breadth and depth of this responsibility are explained in greater detail in the Procurators Law 1995. According to Article 6, the functions of the public procurator are: "(1) to supervise the enforcement of laws according to law; (2) to make public prosecution on behalf of the State; (3) to investigate criminal cases directly accepted by the People's Procuratorates as provided by law; and (4) other functions and duties as provided by law." Article 7 also states that "Chief procurators, deputy chief procurators and members of procuratorial committees shall, in addition to the procuratorial functions and duties, perform other functions and duties commensurate with their posts."

Article 8 goes on to explain specific obligations associated with the procuratorate. These include:

1. to strictly observe the Constitution and law;
2. to take facts as the basis and law as the criterion, to enforce laws impartially and not to bend law for personal gain when exercising their functions and duties;
3. to safeguard the State interests and public interests, and to safeguard the lawful rights and interests of citizens, legal persons and other organizations;
4. to be honest and clean, faithful in the discharge of their duties, and to abide by discipline;
5. to keep State secrets and the secrets of procuratorial work; and
6. to accept legal supervision and supervision by the masses.

This list reflects the government's attempt to retain its commitment to its socialist legal principles while also acknowledging the importance of principles associated with the rule of law. Throughout the Chinese criminal justice system, the power and authority of the procuratorate are considerable.

As was indicated earlier, the procuratorate is a large bureaucracy. At the top of the organizational pyramid is the Procurator-General, who administers the Supreme People's Procuratorate. The Procurator-General is elected and removed by the National People's Congress. The deputy procurators-general, members of the procuratorial committee, and other procurators are all appointed and removed by the Standing Committee of the National People's Congress upon the recommendation of the Procurator-General. The chief procurators at the provincial, regional, and municipal levels are elected and removed by the corresponding people's congresses. The term of office for a chief procurator is the same as that for deputies of the local people's congress. The deputy procurators and procurators are appointed and removed by the standing committee of the people's congress for the province, region, or municipality.

Like the courts, procurators have been the subject of a good deal of criticism in recent years. The public, in particular, have been outraged at the reports of miscarriages of justice, including wrongful convictions (Dui Hua, 2012; Dui Hua, 2014). As such, the White Paper has also singled out the procuratorate for criticism and admonished them for not ensuring that the rights of people were protected and that equity and justice were at least attempted. Once again, an agency of the government that was supposed to be in the business of protecting the social stability of the nation was actually endangering it. To help correct such deficiencies, special management institutes have been established to address these problems. It is important to note that the report on the procuratorate was not all bad. From 2008 to 2011, it was reported that they had conducted supervisions at various detention facilities and corrected 5,473 cases of illegal detention. The use of detention facilities by police before a suspect is arrested was explained earlier (Anonymous, 2012).

Defense Counsel

A defendant has the right either to defend himself or herself or to entrust that responsibility to another. Legal representation can be provided by a lawyer, by an organization of which the defendant is a member, or by the defendant's relatives, guardians, or friends. The principal objective of defense counsel is to prove that the defendant is innocent. As is the case in most trials, especially following civil law procedures, the defense will present an argument that emphasizes the mitigating or extenuating circumstances of the defendant's responsibility, in the hope of securing a reduced sentence.

In order to practice law in China and use the professional title of lawyer, a person must acquire both the educational qualifications and a certificate of practice. Article 6 of the Lawyers Law 1996 explains the options that a person has to obtain the educational qualifications that could be met with "three years legal education in an institution of higher learning, or higher qualification or attained an equivalent professional level, or has acquired an undergraduate education in another major in an institution of higher learning, or higher

qualification, and has passed the examination for qualification as a lawyer." The practice certificate is granted once the person shows proof that he or she passed the examination for qualification as a lawyer, served a year in training with a law firm, and is of good character and conduct.

Until recently, any attempt at serious legal representation of a defendant in China was highly unlikely because of procedural law prohibitions. The Chinese Criminal Procedure Law formerly stated:

> After a people's court has decided to open a court session, it shall proceed with the following work. . . to deliver to the defendant a copy of the bill of prosecution of the people's procuratorate no later than seven days before the opening of the court session and inform the defendant that he may appoint a defender or, when necessary, designate a defender for him.

This seven-day rule excluded the defense from any involvement in the investigative stage of a case. It also severely limited the amount of time that a defense could be prepared for a defendant before the trial started. In fact, it was reported that in 30 percent of the cases, the trial had already started before a lawyer received notice (Chenguang and Xianchu, 1997).

The Chinese procedural system was essentially adopted from the former Soviet Union; it is, therefore, based on the civil or inquisitorial legal tradition. For students of the common law or adversarial tradition, it is important to note that in the civil law context, a defense attorney does not conduct an independent investigation into a client's case. In the civil law system, the investigative stage in a criminal case is the responsibility of the procurator. This includes the collection of evidence and the identification and interviewing of witnesses. Under this method, it is assumed at the outset that the procurator will carry out an objective investigation. Unfortunately, serious questions have been raised about the extent to which procurators have been objective in their investigations.

While the defense does not conduct an independent investigation, the defense in many civil law countries has been permitted to influence the final investigative report. For example, the defense is permitted to request the inclusion of certain kinds of evidence that are favorable to a defendant. The defense might also suggest to the procurator that a specific line of questioning be put to particular witnesses during the investigative phase. This line of questioning might influence the decision to send the case to trial or at least alter the nature of the charges against a defendant.

The revised Criminal Procedure Law (1996) attempted to correct several of these concerns. The time frame in which a suspect may have access to a lawyer has been advanced considerably. According to Article 96, the accused could now consult with a lawyer "after the criminal suspect is interrogated by an investigative organ for the first time or from the day on which compulsory measures are adopted against him. . . ." The rights of the lawyer were also expanded at this initial stage in the process. Article 96 stated in part that a suspect "may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the crime suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial." Article 96 also indicated:

The appointed lawyer shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to enquire about the case. When the lawyer meets with the criminal suspect in custody, the investigation organ may, in light of the seriousness of the crime and where it deems it necessary, send its people to be present at the meeting. If a case involves State secrets, before the lawyer meets with the criminal suspect, he shall have to obtain the approval of the investigation organ.

Although these changes in rights of Chinese defense lawyers were clearly improvements over the previous procedural law, significant restrictions still existed.

The initial stage in the legal process represents the time when a defense counsel's client is a mere suspect and possibly one of many. As a result of recent procedural amendments, once the procurator decides to examine a case and a specific suspect with the objective of initiating a prosecution, the defense counsel of that suspect is extended some additional rights. For example, Article 36 stated: "Defence lawyers may, from the date on which the People's Procuratorate begins to examine a case for prosecution, consult, extract and duplicate the judicial documents pertaining to the current case and the technical verification material, and may meet and correspond with the criminal suspect in custody." Thus, defense counsel began to have access to the evidence at the investigatory stage of the process.

Article 37 pointed out that: "Defence lawyers may, with the consent of the witnesses or other units and individuals concerned, collect information pertaining to the current case from them and they may apply to the People's Procuratorate or the People's Court for the collection and obtaining of evidence, or request the People's Court to inform the witnesses to appear in court and give testimony." The article went on to state that: "With the permission of the People's Procuratorate or People's Court and with the consent of the victim, his near relatives, or witnesses provided by the victim, defence lawyers may collect information pertaining to the current case from them." Some of these provisions were in keeping with modern versions of civil procedural methods found in democratic countries, but it has been suggested that some adversarial elements may be entering into the Chinese procedural system. The initial view was that these provisions, if actually implemented, could enhance defense counsels' efforts and place a greater burden on the procurator to prove guilt.

These amendments to the Criminal Procedure Law presuppose that the defendant had identified a person to serve as defense counsel. What about the defendant who had not entrusted his or her defense to counsel because of indigence, ignorance, or some other reason? The law addressed these circumstances in Article 34:

> If a case is to be brought in court by a public procurator and the defendant involved has not entrusted anyone to be his defender due to financial difficulties or other reasons, the People's Court may designate a lawyer that is obligated to provide legal aid to serve as a defender.
>
> If the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

> If there is the possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

According to this article, an indigent defendant "may" be given legal counsel, whereas a defendant who has a physical disability, is a minor, or is facing the death penalty "shall" be granted counsel. These defendants would not have benefited from the expanded rights associated with Articles 36, 37, and 96 of the amended Criminal Procedure Law (1996).

Although changes in the 1996 Criminal Procedure Law as it relates to the expanded role of defense counsel were welcome, there was a degree of skepticism on the part of some comparative scholars. One concern focused on whether the spirit or only the letter of the law would be followed by agents of the justice system. A natural comparison was drawn in this regard between the changes in China's procedures with those that occurred in the Soviet Union. Before 1958, defense counsel in the Soviet Union was not involved in a case until it went to trial.

After that date, the law gradually changed to permit counsel greater access to clients at progressively earlier stages in the investigative process. In the Soviet context, it was not uncommon for investigators either not to tell a suspect of his or her right to legal assistance or to discourage a suspect from exercising that right. In other cases, investigators attempted to block defense counsel's access to clients. When these injustices were occurring, the Soviet police and procurators were extremely powerful. It was difficult to check their authority within the Soviet justice system. At the core of the skepticism was the strikingly similar circumstances of present-day China and the Soviet Union then.

It had been suggested that while changes in procedures had been introduced in the law to benefit defense counsel, they had not necessarily been implemented in practice. The police and procuratorate had opposed and often resisted adopting many of the amendments to the Criminal Procedure Law. As such, defense counsel was denied access to their clients and to exculpatory evidence. They had also been prevented from interviewing key witnesses. Because of the increase in crime, the public was not sympathetic to reforms of the criminal law that appear to assist defendants (Peerenboom, 2008).

Another concern from some critics was that the amendments to the Criminal Procedure Law did not go far enough. In reference to the provisions in Article 96, for example, some critics were of the opinion that defense counsel should have access to the client before the first interrogation, rather than after it. In addition, at this stage of the process, defense counsel did not have access to the information the investigators had collected. He or she received only the information provided by the client. Of particular concern was the fact that the suspect could be denied any privacy when conferring with defense counsel. The authority to decide this issue rested with the organization investigating the case—often a public security agency or a procurator.

Until fairly recently, defendants were not assured assistance from defense counsel unless they had a specific physical disability (blind, deaf, or mute), were a minor, or were facing the death penalty. According to the Lawyers Law 1996, legal aid was now provided to indigent defendants involved in criminal cases. Such aid could also be sought by people

in need of legal assistance for other matters, such as workers' compensation, claims for State compensation, and pension disputes for the disabled or families of the deceased. If an indigent defendant was granted assistance, defense counsel was available at the start of the trial.

Finally, in cases involving state secrets, a suspect would seek the permission of the investigators not only to secure a lawyer but also to speak with the lawyer. At issue were two concerns. One involved providing a clear definition or legal standard for what constituted a state secret. The other involved the possible denial of access to legal counsel in a high-profile case. At a time when China was attempting to show that it embraced the rule of law, the use of this procedure would likely raise concerns over the denial of a person's due process rights.

In light of the criticisms directed at judges and procurators over the miscarriages of justice that were occurring in the courts, attention was also focused on the barriers preventing defense lawyers from attempting to protect the rights of clients and to provide adequate assistance at trial (Dui Hua, 2013; Dui Hua, 2014; Anonymous, 2012). The White Paper noted that the use of defense counsel was becoming a notable feature within the courtroom work group in China. To illustrate, from 2006–2011, lawyers assisted in the defense of clients in 2,454,222 cases, which was a 54.6 percent increase from the 2001–2005 reporting period.

The 2012 amendments to the Criminal Procedure Law have attempted to enhance the role of defense lawyers in addition to improving the professionalism and independence of judges and procurators. Specifically, legal aid is now available at the pretrial investigative stage and at trial. Legal aid, however, is not available during a death penalty appeal. With the exception of a few cases, according to the White Paper, defense lawyers can meet with their detained clients and should not be monitored. In addition, once a procurator begins to review a case, defense counsel has the right to access the materials in the file. It should be noted that the Supreme People's Court has ruled that a lawyer's access to the case file must be kept confidential. This means that they cannot share the information with the defendant's relatives or copy the file. The purpose of this rule is to prevent the lawyer from using the media or Internet from gaining sympathy for his case. The threat of suspending the lawyer's license to practice is employed to discourage testing this rule. Finally, if a lawyer feels he is being hindered by the police or procurator from carrying out his duties, he can file a petition either with the procuratorate at the same level or the next level in the hierarchy (Anonymous, 2012).

Unfortunately, recent criticisms continue to be leveled at the inability of Chinese defense lawyers to exercise their procedural rights on behalf of their clients. Specific concerns have been raised by both international groups (Amnesty International and Human Rights Watch) and scholarly researchers (see McConville and Fu in Cao, Sun, and Heberton, 2014). Among the issues frequently cited as a concern are: either the delay in access or the inability of the lawyer to see his client; the lack of access to the procurator's case file and evidence; the limited right of the lawyer to collect evidence on behalf of his client; and the harassment of defense lawyers by government officials and the threat, at times, to take away the person's license to practice law.

People's Assessors

The Organic Law of the People's Courts explains the requirements and duties for serving as a people's assessor. People who have voting rights and have reached the age of 23 are eligible to elect and be elected to serve as a people's assessor. If people have been deprived of their political rights, they are excluded from serving. While serving as an assessor, a person continues to receive wages from his or her place of employment. If a person is not employed, he or she would receive a stipend for his or her services.

A typical first-instance case heard in either a basic or intermediate people's court would utilize two assessors. Generally, one assessor would be elected from the neighborhood in which the defendant lives, while the other would be elected from the defendant's place of employment. From the Chinese perspective, the use of assessors has two objectives that are central to the communist philosophy. People's assessors are another illustration of the mass line in practice; that is, courts should consider the views of ordinary citizens when conducting judicial business. The other objective is to educate citizens about the work of courts. When assessors return to their neighborhood or work unit, they are expected to talk about their experience with the legal process. While the law indicates that assessors enjoy the same rights as judges, deference tends to be paid to the judge who obviously has judicial experience.

Legal Education

From the founding of the People's Republic of China in 1949 to the beginning of the Cultural Revolution in 1966, approximately 19,000 students had studied law in China. During that period, there were only six universities that had law departments and four political-legal institutes that provided legal training (Leng and Chiu, 1985). All of these institutions for legal study were forced to close during the Cultural Revolution. In 1977, one year following the conclusion of the Cultural Revolution, two institutions reopened. It was reported that in 1983 only 3 percent of judges, procurators, and other judiciary officials had either a junior college or college degree in law. By 1995, any new hire as a judge or procurator was required to have a degree from an institution of higher education. (Minzner, 2013). By the middle of the 1980s, there were 29 law departments or law schools established; this figure rose to more than 80 by the middle of the 1990s (Chenguang and Xianchu, 1997; Leng and Chiu, 1985). Between 1990 and 2000, the number of first-year students in higher educational institutions studying law went from 1 million to 2 million. At the end of 2006, there were 603 institutions of higher learning offering a bachelor's degree in law, 333 authorized to provide a master's program, and 29 entitled to offer doctorates in law.

In China, legal education is the responsibility of both the Ministry of Justice and the Ministry of Education. In light of the growing importance that is being placed on law in the transformation of the society, law has become an important field of study. Students study it in high school and can pursue a two-year course in college. There are also short-term training courses in law.

The most prestigious places to study law are in a law department that is associated with a university or at a political-legal institute. Students must take a national examination

to enter either type of legal training. Both offer undergraduate and graduate programs. Undergraduate programs last four years, while graduate programs are usually three years. An undergraduate program consists of the following kinds of courses: Marxism and Leninism, history of the Communist Party, political theory, political philosophy, political economy, logic, foreign language, theories of law and the state, Chinese legal history, foreign legal history, administrative law, civil law and procedure, constitutional law, criminal investigation, criminal law and procedure, economic law, marriage law, and public and private international law.

The political-legal institutes are designed for people who want a practical orientation to the law. Institutes also offer courses in evidence, investigation, and forensic medicine. While law departments have a more academic orientation, most graduates enter a practical career in law by working for courts, procurators, or public security. As part of their legal education, students of both law departments and legal institutes are required to participate in some clinical training with either a judicial department (court or procurator) or a public security agency.

In 1986, the Ministry of Justice introduced a national bar examination to determine if candidates were qualified to practice law. The examination is offered twice a year. In order to be eligible to take the exam, a person must complete his or her legal education program and have completed two years of either judicial or other legal work. The percentage of people who successfully pass the examination has increased over the years. For example, only 8 percent passed in 2002, while 22 percent of 420,000 candidates were successful in 2009.

What had initially sparked the interest in law and legal studies was Deng Xiaoping's effort to transform China into a viable modern society. As mentioned earlier, Deng recognized that law would have a critical role to play in this process. Unfortunately, it was acknowledged that China's laws were weak, and its judiciary lacked any standing as a legal authority. Thus, a critical part of Deng's reform efforts included legal education because the country would need people with a background in legal studies. With the country in a hurry to transform itself, it undoubtedly moved too quickly in trying to equip enough people with training in law. Various organizations, from universities to junior colleges, secondary technical schools, and political-legal institutes, began to offer programs in legal education. Legal education became a big business, a growth industry.

Questions have been raised in recent years about the reforms in legal education during the 1980s and 1990s. In early 2000, the job market began to collapse for recent law graduates. Issues were raised about the poor quality of education offered at some institutions. Moreover, criticisms were leveled at law schools for being too theoretical and not offering practical skills that might enhance students' job prospects.

In 2011, the political-legal authorities announced that there would be reforms in legal education. A central feature of the reform efforts was to move away from the uniform course offering and to permit greater diversity in the selection of courses. The objective was to allow institutions of higher legal education to elect one of the three approaches identified to transform legal education. One approach would focus on students who essentially planned to practice law by integrating practical training into their course of study. As such, clinical training, internships, and moot court would become an important feature of their curriculum. Another approach would focus on training elite students to work in the global

economy. The third approach would be designed for students to acquire basic legal knowledge that would enable them to work in courts or government agencies. The political-legal committees had been critical of the Chinese legal programs borrowing extensively from Western concepts of law; as such, another aim in the reform efforts is to integrate Chinese socialist law in the political context of the country (Minzner, 2013).

LAW

The historical development of law in China was dominated by two schools of thought: Confucian and Legalist. The Confucians were followers of the philosophical and political ideas of Confucius (551–479 BCE). While Confucius acknowledged that positive or written law (*fa*) had a role to play in state governance, he maintained that moral virtue or a moral code (*li*) was far superior. Confucius stated his position clearly in this oft-quoted passage from the Analects:

> Lead the people with governmental measures and regulate them by law (*fa*) and punishment, and they will avoid wrongdoing but will have no sense of honor and shame. Lead them with virtue and regulate them by the rules of propriety (*li*), and they will have a sense of shame and, moreover, set themselves right.

The Confucians favored relying upon *li* as the source for regulating human behavior and social order. The Confucian position was based on the following arguments. Humankind is either basically good or is capable of learning goodness. The study of *li* shapes a person into an acceptable human being, because *li* is in conformity with human nature and the cosmic order. When a government is based on *li*, it operates harmoniously. Because *li* is unwritten, it has the flexibility to be interpreted to meet the needs of a particular situation.

It is important to stress the context in which these arguments were played out. The early development of *li* occurred when China was a feudal society. Society was highly stratified, and hierarchical differences were emphasized and considered very important. The emphasis placed on social stratification would continue into the twentieth century, even after the demise of the Qing dynasty in 1911.

The other school of thought was the Legalist perspective. The Legalists were pragmatic government bureaucrats for the most part. Their goal was to expand and secure the authority of the state or empire. For them, law (*fa*) was a written standard imposed by a superior upon an inferior. It was viewed essentially as a method of controlling people in a highly stratified society within the jurisdictional boundaries of the empire.

The position of the Legalists was based on the following rationale. Humans act out of self-interest. Law is used to control and punish selfish motives. The basis of a stable government can be law, as long as it is impartially applied to all and is publicized. The existence of harsh laws serves to deter people from committing wrong. In the long run, the existence of strict laws will enable society to be free from conflict.

The Legalist position was successful at helping the Qin dynasty (221–206 BCE) establish the first unified empire in China. During the Han dynasty (206 BCE–220 CE), however, the Confucian view was in the ascendancy. Throughout the long imperial period (2205

BCE–1911 CE), both schools of thought would influence how law was perceived and utilized in China, and thus the basis for traditional Chinese law was formed (Bodde and Morris, 1967).

The characteristics of traditional Chinese law distinguish it from legal systems that emerged in the West. The traditional law was developed when the country was a feudal society with a patriarchal system that recognized and protected the hierarchical status of people. Thus, equal rights before the law was not recognized as a viable legal principle. The traditional legal system was founded on totalitarian rather than democratic political principles. Therefore, it followed the dictum of government by rule of humans rather than government by rule of law. The traditional law included an extensive legal code that was primarily devoted to criminal law. In this context, law was meant to be viewed as a vehicle for suppression. Under traditional law, government officials functioned as both administrators and adjudicators of the legal system. Thus, a distinct judicial branch with separate powers was absent. It also followed that there was no need for a separate legal profession. Finally, the specific purpose of the traditional law was to protect the government and its interests rather than those of a private individual.

As China began to open up to the rest of the world during the Qing dynasty, it recognized the need to modernize its legal system. In the middle of the nineteenth century, it sought the assistance of Japanese legal scholars to advise on law reform. Although these efforts were not successful, China was introduced to Western legal concepts. During the second half of the nineteenth century and the first half of the twentieth century, China was exposed to other aspects of the civil law and common law systems. With the founding of the People's Republic of China in 1949, China turned to the Soviet Union and its socialist legal system for guidance in determining the role that law should play in a socialist society. To understand the purpose of law in China today, in particular as it relates to criminal justice, one must be attentive to the manner in which law was perceived and utilized throughout China's past.

Criminal Law

Since the founding of the People's Republic of China in 1949, the country functioned without a codified version of its criminal law until 1980. In that year, the Criminal Law of the People's Republic of China took effect. The law was revised in 1997 to further reflect the country's efforts to establish a society that acknowledged the importance of the rule of law. The Criminal Law is divided into two parts, subdivided into 16 chapters, and consists of 452 articles. The section on general provisions is subdivided into five chapters that include basic principles and scope of application, crimes, punishments, concrete application of punishments, and other provisions.

Clearly the 1997 law is a more mature form than that of the 1980 version. It attempts to spell out legal principles and has reduced significantly the ideological flourishes found in the 1980 version. To illustrate, Article 1 of the 1980 version of the law stated:

> The Criminal Law of the People's Republic of China, which takes Marxism-Leninism-Mao Zedong Thought as its guide and the Constitution as its basis, is formulated in

> accordance with the policy of combining punishment with leniency and in light of actual circumstances and the concrete experiences of all of our country's ethnic groups in carrying out the people's democratic dictatorship led by the proletariat and based on the worker-peasant alliance, that is, the dictatorship of the proletariat, and in conducting socialist revolution and socialist construction.

In the 1997 version, Article 1 is free of political commentary. It reads: "In order to punish crimes and protect the people, this Law is enacted on the basis of the Constitution and in light of the concrete experiences and actual circumstances in China's fight against crimes." Moreover, the term "counterrevolutionary crime," which was associated with political crime, has been deleted from the 1997 version. This change may appease some of China's human rights critics, but it does not mean that political crime has been completely eliminated. The word "counterrevolutionary" may have been deleted, but it was replaced with "crimes that endanger national security."

Of particular interest is the definition of crime that is found in Article 13:

> A crime refers to an act that endangers the sovereignty, territorial integrity and security of the State, splits the State, subverts the State power of the people's democratic dictatorship and overthrows the socialist system, undermines the public and economic order, violates State-owned property, property collectively owned by the working people, or property privately owned by citizens, infringes on the citizens' rights of the person, their democratic or other rights, and any other act that endangers society and is subject to punishment according to law. However, if the circumstances are obviously minor and the harm done is not serious, the act shall not be considered a crime.

While the Chinese have specifically described certain kinds of criminal behavior elsewhere in the law, they have retained this rather vague and therefore flexible notion of declaring certain behavior as criminal because it is a danger to society. Critics suggest that this broad definition enables the authorities to conduct arbitrary investigations that can lead to questionable convictions. Some of these concerns may be reduced by the addition of a new principle in the 1997 version of the law. Article 3 states: "For acts that are explicitly defined as criminal acts in law, the offenders shall be convicted and punished in accordance with law; otherwise, they shall not be convicted or punished."

Another change in the 1997 version of the law was the repeal of the principle of analogy, which had long been a part of the Chinese legal tradition. This principle was explained in Article 79 of the 1980 version of the Criminal Law: "Crimes that are not expressly defined in the Special Provisions of this Law may be determined and punished in according to whichever article in the Specific Provisions of this Law that covers the most closely analogous crime,. . . ." This principle inhibited the establishment of formal criteria for criminal liability. It also enabled the authorities to interpret an accused's conduct with a tremendous amount of discretion that enhanced further the likelihood of abuse. In addition to being a part of the Chinese legal tradition, this principle was for many years a standard feature of socialist law; and it was accepted by those countries that subscribed to the socialist

legal system. The principle was simply no longer compatible with China's efforts to acknowledge the importance of the rule of law.

Issues of intent and negligence are also considered in this law. According to Article 14, "an intentional crime refers to an act committed by a person who clearly knows that his act will entail harmful consequences to society but who wishes or allows such consequences to occur, thus constituting a crime." Article 15 states that "a negligent crime refers to an act committed by a person who should have foreseen that his act would possibly entail harmful consequences to society but who fails to do so through his negligence or, having foreseen the consequences, readily believes that they can be avoided, so that the consequences do occur. Criminal responsibility shall be borne for negligent crimes only when the law so provides."

A person is generally responsible for his or her criminal actions upon reaching the age of 16. The law, however, offers some exceptions for young people who attain the age of 14. Article 17 states, in part: "a person who has reached the age of 14 but not the age of 16 commits intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug-trafficking, arson, explosion or poisoning, he shall bear criminal responsibility."

The law also authorizes assessing a lighter sentence for people between the ages of 14 and 18. If punishment is not given to a young person because he or she has not attained the age of 16, the law calls upon the family to provide appropriate discipline and education needed to correct the behavior. The law further states that, if it becomes necessary, the government might take control of a young person for purposes of rehabilitation.

For those claiming mental incapacity or intoxication, the issue of criminal responsibility is addressed in Article 18. It states:

> If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment.
>
> Any person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state.
>
> If a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he shall bear criminal responsibility; however, he may be given a lighter or mitigated punishment. Any intoxicated person who commits a crime shall bear criminal responsibility.

Finally, the General Provisions section includes a chapter on the kinds of punishments that are available. They are grouped as principal and supplementary punishments. The principal punishments consist of public surveillance, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty. The supplementary punishments include fines, deprivation of political rights, and confiscation of property.

The Specific Provisions section consists of a series of chapters devoted to the major crime groups. They include crimes of endangering national security; crimes of endangering public security; crimes of disrupting the order of the socialist market economy; crimes of producing and marketing fake or substandard commodities; crimes of smuggling; crimes of disrupting the order of administration of companies and enterprises; crimes of disrupting the order of financial administration; crimes of financial fraud; crimes of jeopardizing administration of tax collection; crimes of infringing on intellectual property rights; crimes infringing upon citizens' right of the person and democratic rights; crimes of property violation; crimes of obstructing the administration of public order; crimes of impairing judicial administration; crimes against control of national border; crimes against control of cultural relics; crimes of impairing public health; crimes of impairing the protection of environment and resources; crimes of smuggling, trafficking in, transporting, and manufacturing narcotic drugs; crimes of organizing, forcing, luring, sheltering, or procuring another person to engage in prostitution; crimes of producing, selling, or disseminating pornographic materials; crimes of impairing the interests of national defense; crimes of embezzlement and bribery; crimes of dereliction of duty; and crimes of servicemen's transgression of duties.

This list of the various major crime groups in the 1997 edition of the Criminal Law is significantly different from the categories found in the 1980 edition. Specific chapters devoted to various forms of economic crime and the attention directed at illicit drugs illustrate that China is attempting to grapple with a host of new forms of deviancy that did not exist in the country, at least to any significant degree, only two decades earlier. The emergence of these types of crime is a result of the country's efforts to modernize its economy by embarking on a plan to create a socialist market economy.

Criminal Procedure

For our purposes, the examination of China's criminal procedure is divided into two categories. The first includes the preliminary investigation, which involves an examination of police powers and other pertinent pretrial procedural issues. The second category is concerned with the trial process, which consists of the main hearing and appellate review procedures. The legal document that explains the manner in which these procedures are executed is the Criminal Procedure Law of the People's Republic of China. Like the Criminal Law, the Criminal Procedure Law took effect for the first time in 1980. The law was revised in 1996 with the new version becoming effective in 1997. The law is divided into four parts, subdivided into 17 chapters, and consists of 225 articles.

In 2003, a number of legal experts were petitioning the government for further reforms of the Criminal Procedure Law. While this led to a committee formed to look into the concerns, the investigation, however, was stopped in 2007. What prompted the most recent amendments to the Criminal Procedural Law in 2012, which became effective in 2013, were two notable cases: the *She Xianglin case* and the *Zhao Zuoha case*. She Xianglin was sentenced to prison for murdering his wife. After serving 11 years of the sentence, his wife appeared very much alive. Zhao Zuoha was sentenced to death for killing his neighbor.

Before the sentence was carried out, the neighbor was discovered alive. In both cases, torture was employed to get the confessions from the accused. Cases such as these and other miscarriages of justice led to public outcries domestically and concerns expressed by international organizations over the inability of the agents of the judiciary to provide fair, equitable justice through the courts. The government then initiated another examination into reforming the rules of criminal procedure, which led to the amended Criminal Procedure Law of 2012. A central feature of this reform effort was to protect human rights (Yanyou, 2012).

Chapter One of Part One deals with basic principles. It is useful to draw attention to some of these principles for comparative purposes, because they point out not only substantive philosophical differences but also similarities in which legal ideas and concepts are expressed. For example, Article 1 states: "This Law is enacted in accordance with the Constitution and for the purpose of ensuring correct enforcement of the Criminal Law, punishing crimes, protecting the people, safeguarding State and public security and maintaining socialist public order." This statement highlights a basic distinction between the ideals of the judicial process in China with those found in many democratic countries in the West. The modern judicial process in many Western countries has a tendency either to emphasize or be highly sensitive to protecting individual rights and interests. In China, the judicial process is primarily concerned with the protection of the public interest. The idea of the public interest taking precedent over that of the individual's interest has a long tradition in Chinese history. It has assumed a modern rationale with the establishment of a socialist system of governance in 1949. Moreover, this is another illustration of the emphasis placed on the social stability of the country, which is a specific mandate of agents of the criminal justice system, and has been alluded to throughout this chapter.

This is not to suggest that the position of the individual is ignored by this process. To illustrate, Article 2 indicates:

> The purposes of the Criminal Procedural Law of the People's Republic of China are as follows: to ensure that the fact of crimes are ascertained in an accurate and timely manner, that the law is correctly applied, that criminals are punished and innocent people are protected from criminal prosecution, and that citizens are educated to abide by the law and vigorously fight against criminal acts, so as to maintain the socialist legal system, respect and protect human rights, safeguard citizens' personal rights, property rights, democratic rights and other rights, and ensure the smooth progress of the socialist cause.

Note that property rights were mentioned for the first time in the 1996 version of the law, reflecting the changing nature of the economic system in the country, and now human rights have been added in this 2012 version.

The basic principles also provide several fundamental procedural assurances for citizens involved in the judicial process. Article 3 spells out the division of labor among public security agencies, procuratorates, and courts, and indicates that "Except as otherwise provided by law, no other organs, organizations or individuals shall have the authority to exercise such powers." When conducting a criminal proceeding, it also points out that police,

procurators, and courts "must strictly observe this Law and any other relevant stipulations of other laws."

The issue of independence was mentioned rather prominently in the 1996 procedural law. For example, it states in Article 5: "The People's Courts shall exercise judicial power independently in accordance with law, and the People's Procuratorates shall exercise procuratorial power independently in accordance with law, and they shall be free from interference by any administrative organ, public organization or individual." It is important to point out that the use of the word "independent" should not be equated with a form of separation of power. The Organic Law of the People's Courts and the Organic Law of the People's Procuratorates also speak of the independence of these two components of the justice system. Other legislation clearly indicates that courts and procuratorates are similar to other administrative agencies of the state. To illustrate, Article 3 of the Constitution of the People's Republic of China states, in part: "All administrative, judicial, and procuratorial organs of the state are created by the people's congresses to which they are responsible and under whose supervision they operate." Case studies confirm that courts and procurators are subject to the policies of the Chinese Communist Party and the dictates of political authorities.

Here, the principle of dual leadership is more prominent than efforts to allow courts and procurators to function in an independent fashion. Dual leadership means that local courts and procurators are not only accountable to the court or procurator that is at a higher level within their respective organizational hierarchies, but that courts and procurators are also responsible to the local people's congress and its standing committee. As was mentioned in the previous section, local congresses and standing committees have the authority to elect, appoint, and remove from office members of the judiciary.

Some of the rights mentioned in the Constitution of the People's Republic of China are reiterated in Article 11 of the Criminal Procedure Law. For example, a trial is heard in public unless otherwise prohibited by law, and a defendant has a right to a defense. Article 10 states that "the People's Courts shall apply the system whereby the second instance is final." This means that after a case is tried in first instance, there is a right to appeal the case to the next level in the court hierarchy, but this can only be exercised once.

Article 9 addresses the issue of language. Although Mandarin is the official Chinese dialect, local dialects are used in some regions of the country. Moreover, there are various minority ethnic groups living in the country. In an attempt to address potential conflicts over the language of choice in the courtroom, Article 9 states:

> Citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings. The People's Court, the People's Procuratorates and the public security organs shall provide translations for any party to the court proceedings who is not familiar with the spoken or written language commonly used in the locality.
>
> Where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, court hearings shall be conducted in the spoken language commonly used in the locality, and judgments, notices and other documents shall be issued in the written language commonly used in the locality.

Another feature of the 1996 Criminal Procedure Law that was absent from the 1980 version is found in Article 12: "No person shall be found guilty without being judged as such by a People's Court according to law." Previously, it was often assumed that a suspect was guilty. This perspective had its roots in traditional Chinese law. It is too early to determine if this principle of presuming the person not to be guilty will be taken seriously in the Chinese context. In light of the government's serious attempts and early successes at improving the judiciary's basic educational level and technical sophistication with legal materials, there is probably room for cautious optimism—particularly in cases that are clearly criminal and have nothing to do with political issues.

Preliminary Issues

Once a crime is committed or alleged, the matter can be reported to a public security agency, procurator, or court. Following a preliminary examination of the evidence, if it is determined that the matter should be investigated, then a case would be filed. Either a public security agency or procurator would initiate an investigation. If the evidence is insufficient to warrant an investigation, a case would not be filed. The agency receiving the initial report from the complainant would report its decision to the complainant.

In the event that the police are unwilling to file a case, the law offers remedies. Article 87 states:

> Where a People's Procuratorate considers that a case should be filed for investigation by a public security organ but the latter has not done so, or where a victim considers that a case should be filed for investigation by a public security organ but the latter has not done so and the victim has brought the matter to a People's Procuratorate, the People's Procuratorate shall request the public security organ to state the reasons for not filing the case. If the People's Procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case, and upon receiving the notification, the public security organ shall file the case.

If none of the agencies of the justice system are inclined to pursue an allegation, the victim can elect a private prosecution. According to Article 88, "the victim shall have the right to bring suit directly to a People's Court. If the victim is dead or has lost his ability of conduct, his legal representatives and near relatives shall have the right to bring suit to a People's Court. The People's Courts shall accept it according to law."

Power to Detain and Arrest

A public security agency can detain a suspect initially under the following circumstances:

1. if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;
2. if he is identified as having committed a crime by a victim or an eyewitness;
3. if criminal evidence is found on his body or at his residence;

4. if he attempts to commit suicide or escapes after committing the crime, or he is a fugitive;
5. if there is likelihood of his destroying or falsifying evidence or tallying confessions;
6. if he does not tell his true name and address and his identity is unknown; or
7. if he is strongly suspected of committing crimes from one place to another, repeatedly, or in a gang.

The public security agency is expected to secure a detention warrant from the local procurator. The public security agency is supposed to inform the suspect's family of the reason for the detention and the whereabouts of the person detained. This should be done within 24 hours of the suspect's detention, unless notification would hinder the investigation. Moreover, public security is expected to interrogate the detainee within 24 hours of detention.

In order to arrest a suspect who is not in custody, a public security agency must submit a request for a warrant to the local procurator. The request would include the case file and evidence. In major cases, the procurator might send his or her own personnel to participate with public security in the investigation of the case. If a person is already being detained, public security must submit a request for an arrest to the procurator within three days of the initial detention. Where a person is strongly suspected of committing crimes at multiple scenes or is a member of a criminal gang, the time limit for submitting the request may be extended to 30 days.

The procurator is expected to make a decision regarding a request for an arrest warrant within seven days. In the event it is approved, the public security agency must produce a warrant when making the arrest. The public security agency is expected to notify the suspect's family of the reasons for the arrest and where the person is being held. This should be done within 24 hours of an arrest, unless notification would hinder the investigation.

According to article 154, the time period in which a suspect may be held during an investigation is not to exceed two months. A one-month extension can be granted if circumstances justify delay. The approval for an extension would come from a procurator at the next level in the procuratorate hierarchy from that of the procurator who is involved in the case.

The recent revisions of the Criminal Procedure Law have expanded the ability to extend the life of an investigation further. For example, Article 156 states:

> [I]f investigation cannot be concluded within the time limit specified in Article 154 of this Law, an extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government:
>
> 1. grave and complex cases in outlying areas where traffic is most inconvenient;
> 2. grave cases that involve criminal gangs;
> 3. grave and complex cases that involve people who commit crimes from one place to another; and
> 4. grave and complex cases that involve various quarters and from which it is difficult to obtain evidence.

An additional two-month extension of an investigation can be granted under Article 157 if a suspect in one of the aforementioned cases could be sentenced to 10 or more years of imprisonment. After an investigation is completed by a public security agency and if the facts and evidence are sufficient, public security would submit a written recommendation to a procurator to initiate a prosecution.

Interrogation

A person must be interrogated within the initial 24-hour period of custody following arrest. The people conducting an investigation should be members of the investigative staff of either the procuratorate or public security agency. The law requires that at least two investigators be present during an interrogation. When the interrogation is completed, Article 120 mandates:

> The record of an interrogation shall be shown to the criminal suspect for checking; if the criminal suspect cannot read, the record shall be read to him. If there are omissions or errors in the record, the criminal suspect may make additions or corrections. When the criminal suspect acknowledges that the record is free from error, he shall sign or affix his seal to it. The investigators shall also sign the record. If the criminal suspect requests to write a personal statement, he shall be permitted to do so. When necessary, the investigators may also ask the criminal suspect to write a personal statement.

In light of the miscarriages of justice and allegations of torture by agents of the justice system, article 50 of the amended Law addresses the issue of self-incrimination and illustrates the new sensitivity in the document regarding human rights. Article 50 states:

> Judges, procuratorial personnel and investigators shall adhere to statutory procedures when gathering and obtaining evidence that may prove whether criminal suspects or defendants are guilty or innocent, or whether cases involve serious criminal offenses or not. They are strictly prohibited from extorting confessions by torture, collecting evidence through threats, enticement, deception or other unlawful means, or forcing anyone to provide evidence proving his/her own guilt. They shall ensure that all citizens who are involved in a case or who have information about the circumstances of a case can furnish all available evidence in an objective manner and, except under special circumstances, may ask such citizens to provide assistance in investigation.

Moreover, article 54 also indicates: "All cases shall be judged according to the principles that emphasis shall be laid on evidence, investigation and research, while credence shall not be readily given to oral statements."

According to article 33, upon the completion of the first investigation, the suspect must be informed of his or her right to seek counsel. After the procurator receives the case file, but before prosecution, the suspect would again be informed of the right to secure counsel. Finally, the court that receives the case for trial would also inform the accused of the right to secure counsel.

Other procedural improvements for the defendant in the 2012 law include the following. In the event a defendant cannot afford to have a lawyer, article 34 enables the person to petition with a legal aid agency for assistance. This could be granted if the person meets the conditions of the agency. In one reference to conditions, if the defendant is charged with an offense that could lead to life imprisonment or the death penalty, and does not have a lawyer, either the court, procurator, or police would notify legal aid of the need to secure a lawyer for the accused.

Article 37 indicates that all requests of the lawyer to meet with a client should be arranged within 48 hours of the receipt of the request. In cases involving state secrets, however, a lawyer must seek the permission of investigators in order to meet with a client. This could be delayed in light of the circumstances of the case. Moreover, the meeting between the lawyer and defendant should not be monitored.

Finally, according to article 46, the "defense lawyer shall be entitled to keep confidential the information about their client that comes into their knowledge. . ." The exception to this rule involves state or public security matters. Obviously, agents of the state determine what is a security matter, rather than an independent, disinterested entity. In such cases considered a security issue, the lawyer must inform the judicial authority of the information.

Power to Search and Seize

Investigative personnel are authorized to search persons, places, and things of a defendant, as well as other appropriate places. According to Article 135, "Any entity or individual shall have the obligation to submit the physical evidence, documentary evidence, audio-visual materials and other evidence that may serve as the evidence of guilt or innocence for a criminal suspect as required by a people's procuratorate or public security organ." A search should be conducted with a warrant, but this requirement is waived in the event of an emergency.

When a search is conducted, according to Article 137, "the person to be searched or his family members, neighbors or other eyewitnesses shall be present at the scene. Searches of the persons of women shall be conducted by female officers." A record of a search is maintained by the authorities and is signed and sealed by investigative personnel and by the person searched or his or her family members or other eyewitnesses.

According to Article 141, investigators have the authority "to seize the mail or telegrams of a criminal suspect." In the course of an investigation, it might be necessary to conduct a physical examination of victims or defendants. If a defendant refuses to cooperate with an examination, Article 130 authorizes investigators to conduct a compulsory examination when they deem it necessary. Moreover, investigative experiments may be conducted if approved by the director of a public security bureau. In the course of conducting such experiments, Article 133 states: "It shall be forbidden to take any action which is hazardous, humiliating to anyone, or offensive to public morals."

Compulsory Measures

If a defendant is awaiting trial but is not in custody, the people's courts, procuratorates, and public security agencies can issue compulsory measures that impose restrictions on the

defendant. These generally include compelling the defendant to appear before one of the aforementioned authorities, securing a guarantor before the trial, or subjecting the person to a residential surveillance. Defendants and suspects under custody have a right to obtain a guarantee or bail to await trial out of custody. The period of a guarantee pending trial cannot exceed 12 months, and a residential surveillance cannot exceed six months. Guarantors must be able to meet certain requirements that include not being involved in the case, being able to fulfill the guaranty obligation, enjoying political rights and freedoms, and having a stable residence and income.

Defendants awaiting trial out of custody are subject to the following regulations, according to Article 69. They cannot leave the city or county of residence without permission, they must be present in court when summoned, they cannot interfere with witnesses, and they may not destroy evidence or collude with others to devise a consistent account. The article also indicates that if there is a failure to comply with these requirements, "part or all of the bail bond paid shall be forfeited, and depending on the specific circumstances, the criminal suspect or defendant shall be ordered to write a recognizance of repentance, pay bail bond again or provide a guarantor, or be placed under residential surveillance and be arrested."

Guarantors are expected to monitor the activities of the defendant and report any conduct that violates the requirements explained in Article 69. Failure to comply could lead either to a fine or a criminal investigation into their behavior. If the defendant fulfills the obligations, bail would be refunded.

Defendants who are subject to residential surveillance must abide by the following requirements, according to Article 75:

1. Not to leave the domicile or place of residence under residential surveillance without the permission of the executing organ;
2. Not to meet or correspond with any one without permission of the executing organ;
3. To appear before a court in time when summoned;
4. Not to interfere, in any form, with the witnesses who give testimony;
5. Not to destroy or falsify evidence or collude with others to make confessions tally; and
6. To surrender his/her passport and other travel documents, identity certificate and driver's license to the executing organ for safekeeping.

If the original charges against the defendant are serious and the defendant violates the conditions of residential surveillance, he or she may be subject to arrest. The decision to arrest is made by either a procurator or court, with the actual arrest being carried out by a public security agency.

Initiation of a Public Prosecution

It is the responsibility of the people's procuratorate to determine if a case should be prosecuted. Once a public security agency has transferred a case to a procurator recommending that a prosecution be undertaken, the procurator is given one month to concur or oppose the recommendation. Additional time may be granted to decide the matter if the

case is either significant or complex. During this time, the procurator can interrogate the defendant, interview the victim, speak with defense counsel, and examine the evidence.

The procurator may request a supplementary investigation be undertaken by a public security agency or decide to conduct an investigation on his or her own. According to the law, supplementary investigations should be completed within a month. Moreover, the number of supplementary investigations should be limited to two. If the evidence remains insufficient following a supplementary investigation, the procurator may decide not to initiate a prosecution.

If the evidence is reliable and sufficient, the procurator will usually initiate a prosecution unless the case conforms to Article 15 of the Criminal Procedure Law. According to this article, a prosecution shall not be initiated under the following circumstances:

1. if an act is obviously minor, causing no serious harm, and is therefore not deemed a crime;
2. if the limitation period for criminal prosecution has expired;
3. if an exemption of criminal punishment has been granted in a special amnesty decree;
4. if the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint has been withdrawn;
5. if the criminal suspect or defendant is deceased; or
6. if other laws provide an exemption from investigation of criminal responsibility.

Article 173 of the Criminal Procedure Law indicates that the procurator has an option not to initiate a prosecution if criminal punishment is not warranted because the issue involves a minor crime. The article also states that while an individual might not be prosecuted, he or she could be subject to administrative punishment and sanction. If that is the case, the procurator would transfer the matter to the appropriate public security agency. Administrative punishments and sanctions will be explained later in this section.

If a procurator decides not to prosecute, this decision must be delivered in writing to the defendant and to his or her work unit. In this case, a defendant in custody would be released immediately. The public security agency that initially requested the prosecution would also receive written notice. The public security agency can request that the procurator reconsider the matter. If this request is rejected, the public security agency could request that a procurator at the next level within the hierarchy of the procuratorate review the matter. The victim must be notified of the procurator's decision not to prosecute. If the victim disagrees with this decision, he or she can petition a procurator at the next level within the hierarchy of the procuratorate to review the case. If the victim's petition is rejected at this higher level, the victim could engage in a private prosecution of the case, which would occur in a people's court.

Trial

Once a procurator decides to initiate a prosecution, a trial would be scheduled in a court with the appropriate jurisdiction. The court would determine the composition of the

collegial panel hearing the case. Cases of first instance that are heard in basic and intermediate people's courts are conducted by a collegial panel composed of three judges or a judge and two people's assessors. If the nature of the case is such that simplified procedures can be employed, then basic people's courts may utilize a single judge alone. First-instance trials in the higher people's courts or the Supreme People's Court are conducted by a collegial panel composed of three to seven judges or a combination of three to seven judges and people's assessors. While performing their duties, people's assessors enjoy equal rights with the judges.

Trials that are held because of an appeal or protest are conducted by a collegial panel composed of three to five judges. The president of the people's court or the chief judge of a division designates one judge to serve as the presiding judge of the panel. If the president of the court or the chief judge of a division participates, they would serve as the presiding judge.

Judicial decisions are based on majority rule. If a minority opinion exists, it would be entered into the record. The record of the deliberations is signed by all members of the collegial panel. In the event that a panel cannot reach a decision, it would report to the president of the court, who would decide if the case should be submitted to the judicial committee of the court. In such cases, the collegial panel that originally heard the case would execute the decision that was handed down by the judicial committee.

In trials of first instance, in which the case is a public prosecution, the court would first examine the case that was initiated by the procuratorate. If a decision was made to open a court session, several administrative matters would be addressed. These are noted in Article 182 of the Criminal Procedure Law and include:

1. to determine the members of the collegial panel;
2. to deliver to the defendant a copy of the bill of prosecution of the People's Procuratorate no later than ten days before the opening of the court session. If the defendant has not appointed a defender, he shall be informed that he may appoint a defender or, when necessary, designate a lawyer that is obliged to provide legal aid to serve as a defender for him;
3. to notify the People's Procuratorate of the time and place of the court session three days before the opening of the session;
4. to summon the parties and notify the defenders, agents ad litem, witnesses, expert witnesses and interpreters, and deliver the summons and notices no later than three days before the opening of the court session; and
5. to announce, three days before the opening of the session, the subject matter of the case to be heard in public, the name of the defendant and the time and place of the court session.

Although cases of first instance are heard in public, there are exceptions to this general rule that include state secrets or private matters pertaining to individuals. Article 183 also states that "except for the cases involving State secrets or personal privacy, cases involving trade secrets may be tried in closed court sessions if the parties concerned so applied." When a case is not heard in public, a reason is provided and announced in court.

When a court session opens, the presiding judge determines if all the parties are present. The judge informs the people of the issue that is being presented in the case. Next, he or she announces the names of the members of the collegial panel, the court clerk, the public procurator, the defender, the expert witnesses, and the interpreter. The presiding judge also advises the parties of their right to ask any member of the collegial panel, the court clerk, the public procurator, any expert witnesses, or the interpreter to withdraw from the case. Finally, the presiding judge informs the defendant of his or her right to a defense.

After these preliminary matters have been attended to, the court is ready to conduct the main hearing of the trial. What follows are the various steps in a standard trial:

1. The procurator reads the bill of prosecution in court.
2. The defendant can make a statement about the charges in the bill of prosecution.
3. The victim can make a statement about the charges in the bill of prosecution.
4. The procurator can interrogate the defendant.
5. With the permission of the presiding judge, the victim, as well as the plaintiff and defender in an incidental civil action, can question the defendant.
6. Judges can interrogate the defendant.
7. With the permission of the presiding judge, witnesses and then expert witnesses are questioned by the procurator, parties, defendants, or defense counsel. The presiding judge may halt the line of questioning if he or she deems it irrelevant to the case. The parties and defendant have the right to request that new witnesses be summoned to the session, that new material evidence be collected, that a new expert evaluation be conducted, or that another inquest be held. The collegial panel would rule on the merits of each request. If the request is granted and the hearing postponed, the procurator would be granted one month to complete the supplementary investigation.
8. Judges can question witnesses and expert witnesses.
9. Procurators and defendants can present material evidence in the court for parties to identify.
10. The records of the testimony of witnesses who are not present in court, the conclusions of the expert witnesses, the records of inquests, and other documents serving as evidence are read out in court. In the event the collegial panel has questions about the evidence presented, it can adjourn the session in order to verify the evidence.
11. The opinions of the procurator, parties, defendant, or defense counsel are heard by the judges. They can debate the quality of the evidence and facts in the case.
12. After the presiding judge has declared the debate concluded, the defendant has a right to present a final statement.
13. The presiding judge announces an adjournment, and the collegial panel begins its deliberations with the goal of making the following decisions:

    a. If the facts are clear, the evidence adequate, and the defendant guilty by law, the court should pronounce a verdict of guilty.
    b. If the defendant is found not guilty by law, the court should pronounce a verdict of not guilty.

c. If the evidence is insufficient, the defendant cannot be found guilty. The court would pronounce a verdict of not guilty on the grounds of a lack of evidence or that the charges were not substantiated.

14. Judgments are pronounced publicly in court. A written copy of the judgment is delivered to the parties and to the procuratorate that initiated the prosecution. The written judgment is signed by all the members of the collegial panel and the clerk of the court. The judgment indicates the time limit for appealing the decision and the appellate court to which the appeal should be directed.

For a case to proceed as a private prosecution in a trial of first instance, it must meet the following criteria. There must be a complainant; the victim in a minor criminal case must have evidence; the victim's evidence must prove that the defendant violated his or her personal or property rights; the defendant ought to be investigated for criminal responsibility; and the public security agencies or the people's procuratorate must not have investigated the defendant for criminal responsibility.

The people's court can conduct a trial for a private prosecution if the facts of a crime are clear and the evidence is sufficient. In the event the evidence is not adequate to proceed, the court would advise the private procurator to withdraw the prosecution or order its rejection. The court can also conduct a mediation in a case of private prosecution. Before the court pronounces a judgment, the private procurator has the option of arranging a settlement with the defendant or withdrawing the prosecution. Finally, during the course of the proceeding in a private prosecution, the defendant can raise a counterclaim. The rules governing a private prosecution would apply to a counterclaim.

While cases of first instance are heard by collegial panels of judges or judges and people's assessors, some cases are adjudicated by a single judge in the basic people's court. The 1996 Criminal Procedure Law offered greater detail as to when a single judge might preside over such cases and the procedures involved. Cases that can be entertained by a single judge included minor criminal cases in which a private prosecution had been initiated and the victim had evidence of an alleged crime. Publicly prosecuted cases could still be handled in this simplified manner, provided they meet the following criteria: (1) the procurator recommends or agrees to the simplified procedure; (2) it is clear that a crime occurred and that the evidence is sufficient; and (3) if found guilty, the defendant's sanction would be limited to either less than three years' imprisonment, criminal detention, public surveillance, or a fine.

The simplified procedure calls for a reading of the bill of prosecution, which is followed by the introduction of evidence and a discussion or debate by the parties involved. These cases can be handled rather informally, and this process is explained in articles 210–214. The judge examines the defendant on the facts of the charges, informs him or her of the procedures, and confirms if the accused agrees to this summary procedure. The defendant has the right to debate the public procurator or the private prosecutor. The entire process should conclude within a 20-day period. Cases of this kind can be utilized with the understanding, in particular on the part of the defendant, that a finding of guilt can lead to a fixed term of imprisonment for no more than three years. It should also be pointed out that, according to article 215, if in the course of this summary trial it is determined that

the summary procedures are inappropriate for the case, the proceedings would cease and the case would be transferred for a regular trial.

The defendant and a private procurator can appeal based on a judgment or order. If a civil action has been part of the adjudication process, a party to the civil action can file an appeal against the judgment or order that deals with the civil action. In the event a procurator identifies an error in the judgment or order, he or she would present a protest to the people's court at the next higher level. A victim who does not accept the judgment or order can request that the procurator file a protest on his or her behalf. The ultimate decision to file such a protest rests with the procurator. It should be pointed out that a protest from a procurator can be withdrawn by the procuratorate at the next level within the hierarchy if it finds the protest inappropriate.

A people's court would form a collegial panel to handle an appeal. The panel would read the file, interrogate the defendant, and listen to the opinions of the parties involved. If the facts in the case are clear, the panel may decide not to hold a hearing. In the event the case is entertained because of a protest from the procurator, then the people's court would hold a hearing.

A court essentially handles an appeal or protest in one of three ways. First, if the original judgment was correct based on the facts, the law, and the appropriate punishment, the original judgment would be affirmed by the court, and the appeal or protest would be rejected. Second, if there was no error in fact but the problem of the original judgment centered either on an incorrect application of the law or an inappropriate punishment, the court would revise the judgment. According to Article 226 of the Criminal Procedure Law: "When trying an appeal case filed by the defendant or his/her statutory representative, defender or close relative, a people's court of second instance shall not aggravate the punishments on the defendant." This provision does not apply to cases appealed by private procurators or protests lodged by the procuratorate. Third, if the facts in the original judgment are unclear or the evidence insufficient, the court could revise the judgment after the facts are discovered, or it could remand the case for retrial to the people's court that originally tried the case. Finally, according to Article 233 of the procedural law, the appeal process is limited, because "All judgments and orders of second instance and all judgments and orders of the Supreme People's Court are final."

It should be noted that in cases in which the death penalty is imposed there is an automatic review of the sentence. A collegial panel of three judges reviews the case. In the event that an intermediate people's court imposes the death sentence and the defendant does not appeal, then a higher people's court reviews the case. If the higher people's court disagrees with the original sentence, it can try the case or remand it for retrial. If a higher people's court serves as the court of first instance and imposes a death sentence, the Supreme People's Court reviews the case.

Finally, there are procedures designed to reopen a case if new evidence is discovered. According to Article 242, the case would have to conform to one of the following situations in order to secure a retrial:

1. Where there is new evidence to prove the errors in the facts ascertained in the original judgment or ruling, which may affect case conviction and sentencing;

2. Where the evidence that serves the basis of the conviction and sentencing is unreliable and insufficient, or shall be excluded in accordance with the law, or where the main evidence establishing the facts of the case contradict with each other;
3. Where the original judgment or ruling is erroneous in the application of law;
4. Where the case is tried in violation of statutory proceedings, which may affect the impartiality of the trial; or
5. Where the judge committed bribery and corruption, practiced favoritism for personnel gains or bended the law in the trial of the case.

If an error in a legally effective judgment or order is brought to the attention of the president of a people's court at any level, the president would refer the matter to the judicial committee of the court. If a people's court at a higher level finds an error in a judgment or order of a people's court at a lower level, it has the authority to try the case itself or to direct a people's court at a lower level to conduct a retrial. If a people's procuratorate at a higher level finds any error in a legally effective judgment or order of a people's court at a lower level, it has the authority to protest the judgment or order.

In commenting on the level of reform efforts, one scholar pointed out that "the main change is more one of tone" (Peerenboom, 2014). The reforms are more or less warnings to agents of the justice system and politicians that egregious abuses will not be tolerated. As a result, there will still be room for ignoring the law and the Supreme People's Court's interpretative rules for the judiciary. In addition, another scholar has indicated that the "political system is still not accustomed to abiding by the written laws" (Yanyou, 2012). Agents have ignored the spirit and letter of the law in the past. As such, there is little reason to think that some of the abuses will not continue, in particular if the claim is made that the specific tactics employed were designed to maintain the social stability of the nation.

Finally, it should be noted that in recent years China has turned its attention to the victims of crime by providing a degree of assistance. From 2009–2011, it was reported that 25,996 victims received financial assistance and 11,593 secured legal assistance (Anonymous, 2012).

Administrative Regulations

The preceding description provided a brief orientation to the pretrial, trial, and posttrial phases of the criminal process. It included a consideration of the role of the police and their powers, especially in the investigative process. Most of this process has its basis in the revised Criminal Procedure Law that went into effect in 2013. It is important to caution the reader, however, that this is not the only method by which a person can be found guilty and sanctioned by the authorities.

Reference was made previously to the extrajudicial nature of the Chinese justice system. It was also pointed out that the People's Republic of China was without a formally approved Criminal Law or Criminal Procedure Law until 1980. From 1949 to 1979, the administration of criminal justice was often controlled or dominated by public security agencies. As was mentioned in the section on police, public security agencies were often

accorded wide-ranging powers to enforce laws and to maintain public order. They were given the obvious powers to arrest, detain, and investigate suspected criminals. Their authority was expanded further and given legal force with two pieces of legislation. The Act for Security Administration Punishment (1957) enabled public security agencies to impose fines and detain people. The Decision of the State Council Relating to Problems of Reeducation Through Labor (1957) authorized public security agencies to send people to labor camps for up to four years without a trial.

In spite of the fact that the Criminal Law and the Criminal Procedure Law have been enacted, public security agencies retained extensive administrative powers that they acquired in the 1950s. In China, the Criminal Law is limited to the more serious criminal offenses. The less serious offenses against public order are covered by administrative regulations. Thus, public security agencies have the authority to impose administrative punishments on people who violate rules and regulations against less serious forms of public order. This authority is based on the current legislation within the Regulations of the People's Republic of China on Administrative Penalties for Public Security.

The context in which this legislation is available to public security agencies is explained in Article 2 of the Regulations:

> Whoever disturbs social order, endangers public safety, infringes upon a citizen's rights of the person or encroaches upon public or private property, if such an act constitutes a crime according to the Criminal Law of the PRC, shall be investigated for criminal responsibility; if such an act is not serious enough for criminal punishment but should be given administrative penalties for public security, penalties shall be given according to these regulations.

There is a fairly long list of social order offenses that fall under the jurisdiction of this legislation. The general kinds of offenses include disturbing public order; carrying or manufacturing firearms or dangerous objects; minor assaults; breaking and entering; theft of property in small amounts; purchasing stolen goods; violating drug laws; damaging or destroying property; disturbing the peace; violating fire safety regulations; violating motor vehicle regulations; violating the resident control system; producing narcotics; and cases involving prostitution, pornography, and gambling.

When imposing a sanction on a person who has violated some aspect of the regulations, three kinds of penalties are available to public security agencies. They include a warning, a fine of up to 2,000 yuan, or detention up to a maximum of 15 days. The manner in which a sanction is imposed under the Regulations is as follows. If the violation calls for a warning, a maximum fine of 50 yuan, or a fine above 50 yuan to which the offender does not object, then the matter can be handled immediately by the public security officials. If the violation calls for a fine larger than 50 yuan or a period of detention, then the public security agency would issue a summons to the offender. The offender would be interrogated and evidence collected. The public security agency would issue a written ruling in the matter. If the sanction includes a fine, the regulations call for it to be paid within five days. An offender or a victim has the right to protest the ruling made by the public security agency. Within five days of the initial ruling, the person can petition the public security agency at the next

level within the hierarchy. Because such cases are handled through the administrative regulation process, the offender does not have any right of appeal through the regular courts.

CORRECTIONS

In the previous section, brief mention was made of the important role that two schools of thought—the Confucians and the Legalists—played in the evolution of law in China. The philosophical position of both schools also influenced Chinese attitudes about the purpose of sanctions and the development of a penal system. The Confucians espoused a belief that humankind was essentially good or capable of becoming good. Thus, humans are malleable and have the capacity to reform their own behavior. The Legalists were of the opinion that harsh laws were necessary in order to deter people from committing wrong, which was likely because humans basically act out of self-interest. For those who transgressed the law, punishment was an appropriate consequence. Throughout the long history of the country, the notions of rehabilitation and punishment played dominant roles in Chinese penology.

From ancient times through most of the imperial age, the "five punishments" were employed as the principal legal sanctions. The first and second punishments were a beating with light bamboo and a beating with heavy bamboo. A beating was administered on the buttocks. The seriousness of the offense determined the number of blows, which were administered in units of 10. The third punishment was penal servitude, which called for the convicted person to be removed from the community and transported to another province where he or she would perform hard labor for a fixed period of time. The range of time was generally one to five years. This sanction also included several blows with heavy bamboo. The fourth sanction was exile for life. The length of the distance that the person was exiled from his or her family and community determined the severity of the sanction. Like people sentenced to a period of penal servitude, those in exile were required to work. It should be noted that there was also a punishment known as military exile. It was initially used to punish soldiers found guilty of crime. They would be sent to a distant military base for a lifetime of military service. Eventually, this form of exile was imposed on civilians as well. The fifth punishment was death, which was administered either by strangulation or decapitation.

It should be pointed out that while prisons existed in China during ancient times, they were not used for imposing punishment in the strict legal sense. Instead, prisons were utilized for holding people who were either being detained before trial or were awaiting the final execution of their sentence. Although a fine could be imposed, and often was, it did not constitute a punishment in its own right. Rather it was considered a substitute punishment. Fines were frequently employed for certain types of offenders, including women, people over 70 years of age, children under 15 years of age, government officials, and a select group of other people. Fines were often used for certain kinds of offenses, in particular accidental injury or death (Bodde and Morris, 1967).

With the demise of the imperial era, contemporary ideas about prisons were introduced in the early twentieth century. When the Chinese Communists introduced a socialist ideology and practices to the country, the influence of the Soviet Union became evident.

Nevertheless, the link with the past was not broken. Whereas criminal justice agents of previous eras punished transgressors of the ancient legal order established by the Legalists, agents of the modern justice system punished transgressors of the new legal order that was being created by the Chinese Communist Party.

At the heart of socialist ideology is the goal to transform the very structure of society into a socialist democracy. Within that context, elements of the Confucian philosophy remained evident and in some cases complemented the socialist agenda. For the Confucians, individuals had an obligation to their family and community; they were expected to assist in maintaining social harmony for the good of the cosmic order. With the advent of the People's Republic of China, people were expected to assist in the creation of the dictatorship of the proletariat. Those who declined to support the socialist agenda or attempted to wreak havoc on the social fabric were labeled either deviant or counterrevolutionary.

Sentencing Philosophy

Since ancient times, Chinese penology emphasized rehabilitation and punishment as rationales for sanctioning offenders. These two objectives continue to dominate the approach to sentencing under the government of the People's Republic of China. To understand this policy in action, it is important to appreciate how deviance is perceived and addressed. The primary goal of the Chinese Communist Party is to maintain the present social order and the Party's place as the principal source of power. Any attempt—be it political, social, or economic—to alter the status quo is considered a form of social deviance unless it has been authorized by the Party. This position is clearly stated in Article 2 of the Criminal Law.

> The aim of the Criminal Law of the People's Republic of China is to use criminal punishments to fight against all criminal acts in order to safeguard security of the State, to defend the State power of the people's democratic dictatorship and the socialist system, to protect property owned by the State, and property collectively owned by the working people and property privately owned by citizens, to protect citizens' rights of the person and their democratic and other rights, to maintain public and economic order, and to ensure the smooth progress of socialist construction.

Deviant behavior has often been attributed to limited educational opportunities or to an inadequate appreciation of the dangers to the socialist agenda that are posed by nonconformist behavior. As such, a sentence that includes a period of incarceration automatically requires that the offender work, if the person is able. Traditionally, forced labor has been viewed from the Chinese perspective as helping the socialist society with some of its production goals. It is also based on the belief that deviant behavior can be curbed if the offender accepts education and reform through labor. In this context, deviant behavior is distinguished from counterrevolutionary behavior (or endangering state security, the term that recently replaced it). The latter form of behavior is usually associated with political crimes against the socialist system. One generally cannot characterize these offenders as having been deprived of educational opportunities.

In the section of the Criminal Law devoted to sentencing, the issue of leniency is rather prominent. The section begins with Article 61 stating: "a punishment shall be meted out on the basis of the facts, nature and circumstances of the crime, the degree of harm done to society and the relevant provisions of this Law." Article 63, however, authorizes two approaches in which the offender could receive a milder sentence.

> In cases where the circumstances of a crime call for a mitigated punishment under the provisions of this Law, the criminal shall be sentenced to a punishment less than the prescribed punishment.
>
> In cases where circumstances of a crime do not warrant a mitigated punishment under the provisions of this Law, however, in light of the special circumstances of the case, and upon verification and approval of the Supreme People's Court, the criminal may still be sentenced to a punishment less than the prescribed punishment.

These passages were designed to encourage the offender to embrace the rehabilitative regimen that the court imposes at sentencing. Moreover, the development of labor reform institutions and the creation of policies of reeducation through labor were intended not only to punish but also to reform individuals who were at odds with the socialist agenda.

The Chinese have established two categories of sanctions: principal punishments and supplementary punishments. Principal punishments include public surveillance, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty. Public surveillance will be discussed in the subsection devoted to noninstitutional sanctions. Criminal detention is a period of incarceration for not less than one month but no more than six months. Criminal detention centers are similar to jails in that they are found at the local level and are administered by local public security agencies. A fixed-term imprisonment is for a period between six months and 15 years. Fixed-term and life imprisonment are served in correctional facilities that are administered by the Ministry of Justice. Finally, the death penalty can be ordered in two ways. One calls for the immediate execution of the judgment; the other permits a two-year suspension of the sentence. The death penalty will be a topic of discussion in the subsection titled "Critical Issues."

Supplementary punishments consist of fines, the deprivation of political rights, and the confiscation of property. These sanctions can be imposed independently of the principal punishments. Moreover, an offender could receive a civil compensation order from the court. Article 99 of the Criminal Procedural Law indicates: "A victim who suffers from property losses due to the defendant's criminal offenses shall be entitled to bring an incidental civil action during the criminal proceedings."

Article 101 further states: "A people's court, in hearing an incidental case, may conduct mediation or make a ruling or judgment according to property losses." It should be noted that the mediation process has long been a feature for resolving disputes in China. It was particularly useful during those periods when the formal justice system was not functioning. Today, there are 811,000 mediation organizations in China. In 2011, they resolved more than 8.9 million conflicts (Anonymous, 2012).

Organization and Administration of the Correctional System

Ministry of Justice

A Bureau of Prisons was established in 1949 and placed under the administrative control of the Ministry of Justice. In 1951, however, this responsibility shifted to the Ministry of Public Security. The Ministry of Justice renewed its authority over the correctional system in 1983. The ministry is assisted in this endeavor by other government departments, such as civil affairs, education, labor, and public security. The minister of justice is a member of the State Council. The actual construction of a correctional facility is the responsibility of local government at the provincial and municipal level and is based on need.

According to the International Center for Prison Studies, China's prison population was 1,701,344 by the middle of 2013, based on information provided by the Ministry of Justice. Of these, 5.9 percent were female. It was further reported that around 250,000 people were classified as pretrial or remand prisoners held in detention centers.

Procuratorate

Previous sections have pointed out the important role that the procuratorate plays in the administration of criminal justice in China. The authority of the procuratorate does not end with the prosecution of offenders. According to the Organic Law of the People's Procuratorate of the People's Republic of China, the procuratorate exercises "supervision over the execution of judgments and orders in criminal cases and over the activities of prisons, detention houses and organs in charge of reform through labor, to determine whether such execution and activities conform to the law." In the event that the procuratorate identifies an error in the execution of a judgment, it notifies the appropriate agency so the problem can be corrected. If a correctional facility is in violation of a law, it is the responsibility of the procuratorate to inform the facility of the matter and oversee its efforts to comply with the rules and regulations.

Types of Institutions

There are four kinds of correctional facilities for adult offenders, but only two of them are the responsibility of the Ministry of Justice (see Figure 6.4). Prisons are used to hold the more dangerous inmates, which include people with a suspended death sentence, a life term, or a fixed term of more than 10 years. These inmates are not considered suitable for work outside a closed facility. Offenders who have been found guilty of endangering state security (the political prisoners) may also be sent to prison. The number of people housed at each prison varies depending on the size of the complex and where the facility is located in the country (Seymour and Anderson, 1999).

The other type of correctional facility that is the responsibility of the Ministry of Justice is the reform-through-labor institution. These institutions are designed for inmates who are not considered a risk outside the facility and who have been sentenced to at least one year of imprisonment. Political prisoners may also be a part of the population of this kind of institution. Between 3,000 and 5,000 inmates are housed at this type of facility.

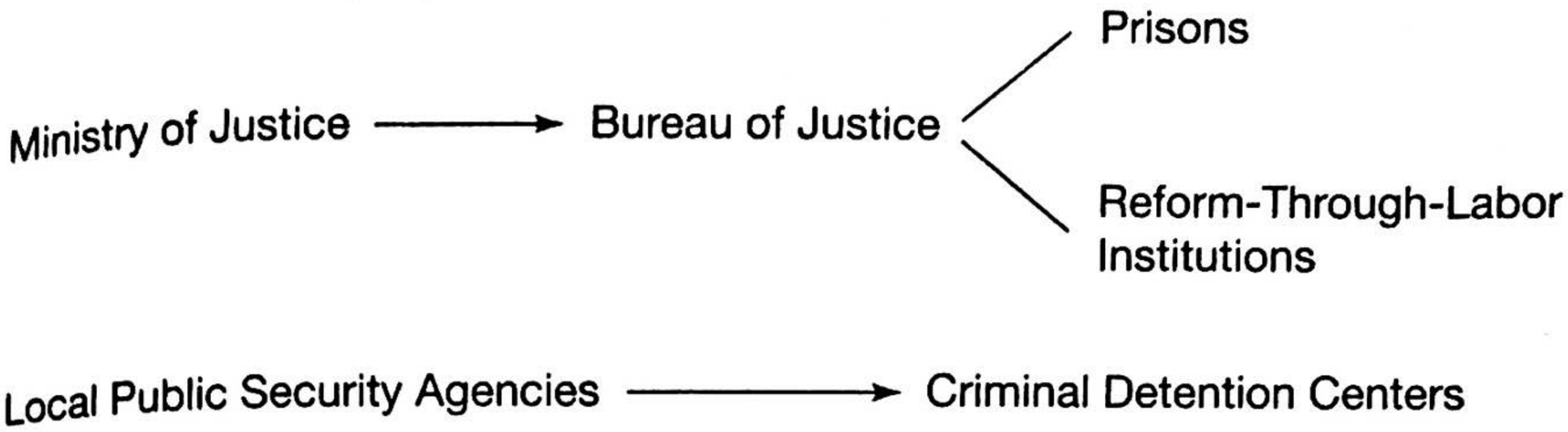

FIGURE 6.4 | Organization of Chinese Correctional Facilities

Criminal detention centers are the administrative responsibility of local public security agencies. These facilities are similar to jails. They house people who are awaiting the sentence of a court or who have been imprisoned for less than two years. Reeducation-through-labor camps make up the fourth kind of correctional facility for adults. They are administered jointly at the local level by a commission represented by the department of civil affairs, the department of labor, and the public security agency. The role of these institutions in the Chinese justice system will be explained in the subsection on administrative penalties.

Regimen

Correctional facilities are organized for the most part along the lines of the military. Inmates are assigned to a squadron that consists of 10 people. The squadron works, sleeps, eats, and studies together. This approach is based in part on the view that inmates will monitor and control one another. Inmates are permitted short visits once a month from relatives; they also can send letters. Relatives may bring or send food and other items, but this is controlled by the authorities at the facility.

The principal piece of legislation that governs the correctional system is the Act of the People's Republic of China for Reform Through Labor (1954). The purpose of the correctional system is explained in Article 1: "This Act is adopted specially in order to punish all counterrevolutionary and other criminal offenders and to compel them to reform themselves through labor and become new persons." Thus, the two rationales of punishment and rehabilitation are placed in the context of work.

The nature of work performed by inmates is largely dependent on the location of the correctional facility. Agriculture and industry, along with the construction of railways, roads, and irrigation projects, have been utilized since the inception of the system. As was mentioned earlier, this system of forced labor is supposed to help society achieve various production goals, while reducing the cost to the country as a whole. It has been suggested that the economic output of the various prison industries does not make a significant contribution to the gross domestic product (Seymour and Anderson, 1999).

According to one source, certain general work principles apply to inmates sentenced to incarceration. They include: (1) that all inmates are expected to work, (2) that all inmates must meet or surpass production quotas, (3) that all inmates must obey orders, and (4) that those who fail to maintain or develop a proper work habit will be punished (Wu, 1992). Today, inmates work at least an eight-hour day and possibly longer, depending on the nature of the work or season of the year.

The country's move to a market economy had an adverse impact on the nature of work in prisons. The goods produced in prisons were long considered shoddy, and it was increasingly difficult to find markets for such products. The inmates' skills were often low-level or nonexistent, and the machinery was generally antiquated, which contributed to poor product quality. In addition, the government is no longer providing the raw materials for production. Thus, prisons must purchase the materials on the open market. Prison farms have lost the limited profitability that they once possessed. In addition, the number of jobs is smaller than the number of inmates seeking work. In the past, prisons were often able to assist inmates in securing employment upon release. This is increasingly difficult to accomplish as both the new private sector and the traditional public sector seek more skilled workers (see Dutton and Zhaugrun, in Bakken, 2005).

In the past, the three daily meals were often designed just to keep inmates alive. The diet was poor and reference was made to the similarities between it and that found in the gulag of the former Soviet Union. Breakfast was essentially corn gruel and a piece of salted carrot. Lunch and dinner consisted of cabbage soup, which sometimes included a meager portion of pork fat or vegetables cooked in water. The soup or vegetables would be accompanied by either corn bread or a small portion of steamed rice (Xiguang and McFadden, 1997; Zongren, 1995). It has been suggested that today the food is similar to that available at regular farms and factories. The difference is that the ration is decreased if the inmate fails to maintain an adequate production level (Wu, 1992). Moreover, important sources of protein, such as meat and eggs, are still not included in the regular diet of inmates. Such products are permitted in packages sent from relatives, however.

The daily schedule also calls for a specific period of time for study in the evening. Prisoners are expected to participate in the political education program at the facility. From the 1950s to the mid-1970s, this often consisted of studying the writings of Mao Zedong. Such activities are associated with rehabilitation. In order to become rehabilitated, the inmate must proceed through a three-step process that consists of acknowledging one's guilt for the offense committed; criticizing one's behavior as being antisocialistic, which is a form of repentance; and submitting to authority by obeying the rules and regulations of the correctional facility (Wu, 1992). Each correctional facility has at least one correctional officer who is trained to serve as a political instructor for the camp. It is the political instructor who usually determines if and when an inmate would be permitted an early release from the facility. The decision is generally based on the inmate's participation in the political education program and general work habits.

Under Deng Xiaoping's leadership, and because of the importance placed on economic development, vocational training was introduced in many correctional facilities as a method of not only providing labor but also of enhancing the offender's efforts at becoming a

productive member of society upon release. Unfortunately, many of the work skills acquired while incarcerated are not in demand outside the facility. Elementary- and high-school-level programs have also been introduced through the Ministry of Education, and some inmates have participated in correspondence courses with universities (Zhou, 1991).

Parole

Inmates have an opportunity to qualify for parole. Those serving a fixed term are generally eligible for release after serving one-half of the sentence. Those incarcerated for life are eligible after completing at least 10 years of the sentence. According to Article 81 of the Criminal Law, "No parole shall be granted to recidivists or criminals who are sentenced to more than 10 years of imprisonment or life imprisonment for crimes of violence such as homicide, explosion, robbery, rape and kidnap."

Eligibility for parole is based on an inmate's expression of repentance and the authorities' view that he or she is not a danger to society. The period of parole for a person serving a fixed term would equal the time not served in a correctional facility, while the period of parole for an inmate serving a life sentence is 10 years. Certain conditions can be placed on an inmate released on parole. They include observing laws and regulations, submitting to supervision, reporting on one's activities, observing the rules regarding contact with specific individuals, and obtaining permission to leave the immediate jurisdiction or to change one's residence. Failure to abide by these provisions can lead to a revocation of the parole. Inmates on parole are supervised by the local public security agency.

Noninstitutional Sanctions

Public surveillance is the Chinese version of probation; it is imposed on those offenders who do not require a period of incarceration. The terms of the sanction are similar to those imposed on inmates released on parole. The offender also reports to the local public security agency periodically. If an offender is employed, his or her work unit would be informed of the sanction and thereby expected to assist in monitoring the offender's activities. This sanction may be imposed from a period of three months up to two years.

A suspended sentence can be awarded to a defendant sentenced to a criminal detention or to a fixed sentence that does not exceed three years. This is contingent on the person demonstrating a sufficient degree of repentance and is not considered a risk. If the suspension is for a criminal detention, the term of the suspension is between two months and one year. If the suspension is for a fixed sentence, the term is from one to five years. Either the local public security agency or the offender's work unit would monitor the person's behavior while the suspension is in effect.

A fine is another noninstitutional sanction. Article 52 of the Criminal Law states that "The amount of any fine imposed shall be determined according to the circumstances of the crime." Fines can be paid in installments but must be paid within a specific time limit. Depending on the circumstances, the law permits a reduction or cancellation of a fine.

Depriving a person of their political rights refers to several rights. According to Article 54 of the Criminal Law, they include:

1. the right to vote and to stand for election;
2. the rights of freedom of speech, of the press, of assembly, of association, of procession and of demonstration;
3. the right to hold a position in a State organ; and
4. the right to hold a leading position in any State-owned company, enterprise, institution or people's organization.

Any person who is convicted of endangering national security or who is found guilty of seriously undermining public order offenses receives this sanction as a supplementary punishment. The period of time in which this sanction is enforced usually ranges from one to five years. If a person is sentenced to life imprisonment, he or she would be deprived of these political rights for life. In the event this sanction is imposed as a supplementary punishment to public surveillance, the time frame in which an offender could be deprived of his or her political rights would correspond to the period of public surveillance. Finally, confiscating an offender's property is limited to personal property. Courts generally honor the requests of creditors before executing this sanction.

Administrative Penalties

It was mentioned in the section on police that public order offenses are handled exclusively by the police. They are part of the informal justice system because these offenses are not part of the official crimes reported to the police and thus do not become part of the official criminal statistics, although data is collected on the volume of such offenses. The informal system allows the police to detain, arrest, and try and impose sanctions on people, and avoids the formal criminal procedural process of a prosecution and trial. This clearly illustrates the public security agencies' wide-ranging powers to enforce laws and maintain public order. As noted, this authority was given legal force initially in 1957 with two pieces of legislation.

The Act for Security Administration Punishment authorized public security agencies to impose fines and detain people without the benefit of a trial. This legislation is presently referred to as Regulations of the People's Republic of China on Administrative Penalties for Public Security.

The kinds of activities that are subject to these regulations include disturbing public order, carrying a dangerous weapon, violating safety regulations, minor assaults, breaking and entering, theft, violating traffic regulations, prostitution, gambling, drug violations, and the production and distribution of pornography. When imposing a sanction on a person who has violated some aspect of the regulations, three types of penalties are available to public security agencies. They include: (1) a warning, (2) a fine of up to 2,000 yuan, or (3) detention for up to 15 days. The objective of the sanction is to combine education with punishment, which has been a central feature of the Chinese correctional system for some time.

The regulations also call for the confiscation of items used in the commission of these activities. If the actions of an offender cause an injury, the offender is expected to compensate the victim or pay for any medical expenses. According to Article 8 of the regulations, "if the offender is not an able person or is a person of limited ability, unable to compensate for the loss or bear the medical expenses, his guardian shall make the compensation or bear the medical expenses according to law." Public security agencies are authorized to reduce the penalties if the person is between the ages of 14 and 18. Young people under 14 years of age are exempt from punishment but can be issued a reprimand. Moreover, the young person's guardian is expected to impose restrictions on the offender's daily activities.

The other piece of legislation enacted in 1957 was the Decision of the State Council Relating to Problems of Reeducation Through Labor. It was amended in 1979 with Supplementary Regulation on Reeducation Through Labor. The 1957 Decision had two purposes; it was "a measure of a coercive nature for carrying out the education and reform of persons receiving. It is also a method of arranging for their getting employment." The education and reform are carried out at labor camps. Like the previous legislation, the process of determining who needs education and reform is carried out without the benefit of a trial. In addition, like the correctional system, the establishment of labor camps is not the responsibility of the central government. Local government at the provincial or municipal level determines whether there is a need for such a facility.

According to the 1957 Decision, reeducation through labor was designed "to reform into self-supporting new persons those persons with the capacity to labor who loaf, who violate the law and discipline, or who do not engage in proper employment, and in order further to preserve public order and to benefit socialist construction." The legislation identified the categories of people for which it was intended. They included people not engaged in honest pursuits; hooligans; people who had committed larceny, fraud, or other acts for which they had not been held criminally liable; violators of public security rules; counterrevolutionaries and antisocialist reactionaries who commit minor offenses and were not held criminally liable, who had been excluded from an agency, organizations, enterprises, or schools, or who were having difficulty making a living; employees of the government or people's organizations who were able but refused to work; people who jeopardized public order; people who refused to accept the work assigned to them or the arrangement made for their employment; and people who behaved disruptively, obstructed officials, and refused to correct their behavior.

Under this legislation, public security agencies were authorized to send people to labor camps for a period of one to three years, with the option of adding an additional year if necessary. As mentioned earlier, local government determined the need to establish a labor camp. The management of a camp was the responsibility of a local commission represented by the departments of civil affairs and labor, along with the public security agency.

The labor camps utilized the same military style of administration as was found in the correctional system. People were organized into squadrons of 10 individuals, and they worked, slept, and ate together. The conditions of the labor camps were also similar to those found in correctional facilities. While at the labor camp, people received a wage that was

based on the work performed. Some money was either deducted to assist in the support of the person's dependents or set aside as a savings account for use upon release from the camp.

When discussing the Anti-Drug Law of the People's Republic of China (2008) in the section on police, it was mentioned that the police were given extensive legal authority to control the cultivation and distribution of drugs, to require people that refuse to cooperate to submit to drug tests, and to impose compulsory isolation for rehabilitation. All of this was permitted without going through the formal adjudication process. The wide-ranging powers granted the police to enforce this law are based, in part, on the administrative regulations and these administrative penalties.

Recently, data was collected that indicates the considerable differences in the volume of offenses handled as public security cases that are exclusively the responsibility of the police versus the criminal cases filed by the police along with the number of first-instance criminal cases received by the courts. In 2000, 4,437,417 public security cases were accepted by the police; 3,637,307 criminal cases were filed with the police; and 560,432 first-instance criminal cases were received by the courts. In 2005, those figures were respectively: 7,377,600; 4,648,401; and 684,897. In 2008, the last year citing these figures, they rose to 9,411,956; 4,884,960; and 767,842, respectively (McConville and Choongh, 2011). Thus, a considerable number of alleged offenses are handled without regard for the protections associated with the criminal procedure rules.

Furthermore, reeducation through labor has long been viewed as an effective and efficient method of reducing threats to public order. For several years now, arguments against this method of controlling some crimes or forms of deviant behavior have been questioned. Some critics argue that it violates article 37 of the Constitution that speaks of "the freedom of persons" and hampers efforts to embrace more fully the idea of rule by law. Such arguments illustrate a shift in public opinion over the past two decades regarding the importance of law and expectations for the police to function within legal rules. Criticism has also been directed at the fact that reeducation through labor has long emphasized labor with little meaningful regard for education.

In 2013, it was announced that the reeducation-through-labor facilities would cease to exist. Immediately, speculation developed regarding what would take their place, because most skeptics are of the opinion that the police will continue to utilize various means to maintain social order. A good deal of attention has focused on three probabilities. First, they will rename the facilities "compulsory drug treatment centers," as many of the residents are already there for compulsory drug treatment. Second, some will be referred to as "custody and education centers," which usually focus on sex workers and their clients. Finally, there are custody and rehabilitation centers designed for juvenile delinquents, so some could focus on those issues. The police could utilize criminal detention as yet another alternative for some people. This last strategy has already been explained earlier as a tool of the police. Whatever the eventual changes, there will be a need for oversight on the part of the procuratorate, media, and public opinion, for the police will seek ways to ensure the maintenance of social order and stability (Dui Hua, 2013; Dui Hua 2014).

Critical Issues

Human Rights

China has often been criticized for its record on human rights (Davis, 1995). The violation of those rights has frequently taken place within the context of the criminal justice system. A brief comment is presented here on the issues of rights in general and human rights in particular as they relate to criminal justice in China.

Throughout much of the contemporary Western world, rights and justice tend to focus on the individual's interest. Procedural rules are designed to assure that an individual's rights are protected and that an individual who is caught up in the criminal process will be guaranteed treatment associated with fundamental fairness and justice. It does not always work out that way, but that was the intent in the design of the process.

The Chinese offer a different approach to this issue, because they begin with a distinct set of assumptions. They acknowledge that individuals have rights, and this position has been given legal standing in various laws from the Constitution of the People's Republic of China to other legislation (e.g., the Criminal Procedure Law of the People's Republic of China). Despite this position, the Chinese tend to prioritize the public interest over that of an individual's interest. The roots of this attitude are found in the country's history, and those traditions have simply been modernized with the adoption of a socialist system.

As a result, when a crime is committed in China, the perpetrator is viewed first and foremost as having infringed on the collective human rights of all citizens and the individual rights of the victim. These rights take precedence over the perpetrator's claim to certain rights. Because the perpetrator is either directly or indirectly violating the collective rights of the people, his or her actions are considered a threat to the socialist system and socialist state. It is the responsibility of public security agencies to prevent and punish those who threaten or violate these collective rights. As has been suggested, punishment is accompanied by a regimen designed to educate and rehabilitate the perpetrator. Education orients the perpetrator to an understanding of and appreciation for the regulations and laws of the socialist system. Rehabilitation strongly encourages the perpetrator to acknowledge the error of infringing on the collective rights of the citizenry and the individual rights of the victim.

Over the course of the past decade, the Chinese have become more sensitive to the criticisms leveled against them regarding human rights. They have acknowledged the need to establish guidelines and criteria for enforcing law in order to assure citizens that agents of the justice system are not incorrectly interpreting regulations or laws. The revisions of the Criminal Procedure Law in 1996 and again in 2012 are an illustration of this change. Despite these efforts, one should not expect a radical change in this matter in light of the fact that the Chinese view the issue from a different set of assumptions.

It should be noted, however, that in 2009, the government announced the National Human Rights Action Plan (2009–2020), which identified a series of goals divided under five categories: guarantee of economic, social, and cultural rights; guarantee of civil and political rights; guarantee of the rights and interests of ethnic minorities, women, children, elderly people, and the disabled; education in human rights; and performing international

human rights duties and conducting exchanges and cooperation in the field of international human rights. In the introduction to the Plan the government stated:

> China is a developing country with a population of 1.3 billion, low per-capita share of resources, underdeveloped productivity and unbalanced economic and cultural development. Having just entered the stage of building a moderately prosperous society in an all-round way and accelerating socialist modernization, China is faced with the arduous tasks of reform, development and stabilization. Due to the influences and limitations of nature, history, culture, economic and social development level, and other factors, China still confronts many challenges and has a long road ahead in its efforts to improve its human rights situation.

Within the Plan, the right to a fair trial and the rights of detainees specifically targeted the justice system. In reference to a fair trial, the Plan maintains: "The state, in accordance with the law, guarantees the rights of litigants, especially those charged with criminal offences, to an impartial trial." Critics of China's human rights record, both within and outside the country, would take issue with this statement. One of the Plan's objectives to ensure the right to a fair trial does acknowledge the need to improve the legal aid system. On the matter of detainee rights, the Plan pledges to "improve the legislation concerning prison management and take effective measures to ensure detainees' rights and humanitarian treatment." Obviously, it is too soon even for the government to report on these efforts, let alone the various human rights groups that monitor the situation.

Nevertheless, while acknowledging the amendments to the Criminal Procedure Law of 2012 and the announced closure of reeducation-through-labor facilities, Human Rights Watch remains concerned about several issues. They singled out, in particular, the targeting of rights activists and their families with harassment, arbitrary detention, baseless imprisonment, and the denial of adequate medical treatment. They also cited ethnic discrimination; religious repression; and insufficient attention to the rights of women, migrants, and people with disabilities, which have all been long-standing concerns. Another issue is the use of the death penalty; China is alleged to lead the world in its use. Finally, criticism is raised over the restrictions placed on the press and more recently the Internet (Human Rights Watch, 2014; Human Rights Watch, 2015).

Death Penalty

China is one of the few major countries in the world that has retained the death penalty. This is the basis for some of the criticism leveled by various human rights groups. Like the United States, there does not appear to be an effective movement to have the sentence abolished. While a countrywide public opinion poll has not been conducted in China on the subject, it is presumed that most people favor the death penalty, especially for violent criminals. This is based on the fact that most Chinese have a strong aversion to chaos, because so many have experienced a good deal of it personally and would prefer a government that assures law and order.

According to the Criminal Law, the death penalty can be imposed only on "criminals who have committed extremely serious crimes." There have been 68 offenses that called for the death penalty. Of these, seven were associated with national security, 14 with endangering the public, 15 as undermining the socialist market economy, five with infringing on the rights of a person, two for crimes against personal property, eight with disturbing the social order, two with endangering the national defense, two with graft or bribery, and 13 crimes associated with military service. Specific crimes include: homicide, arson, explosion, inflicting serious injury or death on people or causing heavy losses of public or private property, sabotage, hijacking an aircraft, some rape cases, some cases of trafficking in human beings, some kidnapping cases, armed robbery, some cases of embezzlement, some drug trafficking, and some cases of impairing the national defense.

In 2011, the Criminal Law was amended. Thirteen offenses were removed from those eligible for the death sentence. Most of the crimes removed dealt with cases of smuggling and fraud, that is, they were nonviolent economic crimes. It should be noted that at the time of this amendment there was a good deal of opposition to this change, not only from the public but also from members of the Party (Trevaskes, 2012).

In order for the death penalty to be carried out, the offender must have reached the age of 18 at the time of the crime. As pointed out earlier, the death penalty can be imposed in one of two ways. The court can order the immediate execution of the judgment or permit a two-year suspension of the execution. It is estimated that about one-half of the sentences are ordered with the two-year suspension (Scobell, 1990).

If a person is sentenced to death with a two-year suspension, his or her punishment will be commuted to a life sentence as long as the person does not commit an intentional crime during the period of suspension of the sentence. A panel of three judges from the higher people's court reviews the record and formally approves the change in the sentence. If the person shows signs of repentance and is an excellent worker, the life sentence could be reduced to a 15- to 20-year term. If it is proven that the person committed an intentional crime during the period of suspension, then the death sentence is carried out. The higher people's court, however, must submit the matter to the Supreme People's Court for approval.

When a judgment calls for the immediate execution of the death penalty, it must first be approved by the Supreme People's Court. In the course of reviewing a case, members of the Court do not entertain oral or written arguments from defense counsel. However, article 240 indicates that while "reviewing a case involving capital punishment sentence, the Supreme People's Court shall interrogate the defendant, and consult with the defense lawyer if so requested by the defense lawyer." Once an order has been granted, the execution occurs within seven days, with a member of the procuratorate supervising the execution.

According to Article 252 of the Criminal Procedure Law, the sentence "shall be executed by such means as shooting or injection." While it is common for people condemned to death to be paraded through the streets on the back of a truck with a sign around them indicating their name, crime, and sentence, the actual execution is not supposed to be held in public. Nevertheless, it has been reported fairly widely that there have been public executions and that they have even appeared on television. Once the sentence has been carried out, the family of the prisoner is notified by the people's court that issued the judgment.

Part of the reason for the public executions over the course of the past three decades is related to the strike-hard campaigns that were briefly mentioned at the beginning of this chapter. Strike-hard campaigns were coordinated efforts by the government and agents of the criminal justice system to focus a good deal of attention and resources for a specific period of time on a particular crime problem. There have been three major strike-hard campaigns: 1983 to 1987, 1996 to 1997, and 2001 to 2003. The campaigns were directed at such groups as drug dealers, pornographers, and organized crime. All campaigns were noted for the objective of quickly and severely punishing criminals. As mentioned earlier, Xi Jinping's anti-corruption campaign is the latest in this long line of strike-hard campaigns.

The strike-hard campaigns were introduced at a time when China was attempting to transform its economic system to a market economy. Crime was viewed as a threat to this goal, for in order for a market economy to establish itself there was a need for a greater degree of social stability. At the time, agents of public security were only beginning to develop a strategy to enhance a degree of professionalism throughout the ranks. As such, the strike-hard campaigns offered an effective and efficient strategy to address some of the country's immediate concerns with crime. In some instances such campaigns had a significant impact on the extent to which capital punishment was employed.

When placed in the context of the strike-hard campaigns, the public executions illustrated not only the power of the state but also the public's opposition to crime in general and specific offenses in particular. It is interesting to note that in 1987 the strike-hard campaign focused on theft and smuggling of antiquities, prostitution, and trafficking in women and children. By 2000, prostitution and trafficking were still a concern, but added to the list for specific attention were counterfeit currency, counterfeit trademarks, tax evasion, and "Mafia-style" crime (Trevaskes, 2007).

Death penalty statistics are not readily available through the government. Nevertheless, it has been estimated that during the 1980s, at least 10,000 people and possibly as many as 30,000 were executed. The vast majority of these people were categorized as violent criminals who had committed nonpolitical crimes. Many were under 30 years of age (Scobell, 1990). Over the course of the past two decades, it was estimated that at least 90 percent of the executions in the world occurred in China (Johnson and Zimring, 2009). As such, it is unlikely that China will abolish its use. It has proven to be a valuable instrument in the Communist Party's arsenal for too long. One scholar has concluded: "The death penalty serves as a vital tool in the party-state's approach to not only regulating, stabilizing, and protecting society but also protecting the party's own place at the national helm" (Trevaskes, 2012).

JUVENILE JUSTICE

Mao Zedong likened deviant behavior to an illness. He maintained that society's response to this social disease should be to seek a cure by emphasizing a rehabilitative approach rather than a strict punitive method. The Chinese have tended to associate the causes of deviance with a general lack of education and an inadequate understanding of the socialist system. Therefore, patterns of bad behavior are a result of degrees of ignorance on the part of individual delinquents. In order to curb deviance, the principal objective has been to