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**Re-education through labour in China: beyond an
administrative punishment**

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Resumen / Resum / Abstract

Esta investigación se centra en el análisis del sistema de reeducación por el trabajo (lao jiao) de China y su contraparte, la reforma por el trabajo (laogai), con el objetivo de comprender su legitimación y cómo ha evolucionado su aplicación hasta la actualidad. Para ello, se presentan los fundamentos del derecho chino, para luego analizar en profundidad los dos sistemas de lao jiao y laogai, y cómo interactúan entre ellos.

Aquesta investigació se centra en l'anàlisi del sistema de reeducació pel treball (lao jiao) de la Xina i la seva contrapart, la reforma pel treball (laogai), amb l'objectiu de comprendre'n la legitimació i com ha evolucionat la seva aplicació fins a l'actualitat. Per això, es presenten els fonaments del dret xinès, per després analitzar en profunditat els dos sistemes de lao jiao i laogai, i com interactuen entre ells.

This research focuses on the analysis of the system of re-education through labor (lao jiao) in China and its counterpart, the reform through labor (laogai), with the aim of understanding its legitimacy and how its application has evolved to the present. To do this, the fundamentals of Chinese law are presented, to then analyze in depth the two systems of lao jiao and laogai, and how they interact with each other.

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Re-education through labour: beyond an administrative punishment

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Introduction

The growth of China during the last decades, both financially and internationally, has affected the attention that the country has received from the rest of the world, concerning not only its actions towards the exterior, but also placing the focus on China's internal policies, although they do not affect, at least directly, the rest of international actors. This is what happened recently in relation to the controversies regarding the Uyghur ethnicity and the re-education centres that exist in Xinjiang. The main problem around this kind of controversies that not only affects China, but the whole world, and having been intensified by the process of globalization, is the lack of knowledge and understanding of other cultures and their historical backgrounds. Nowadays, globalization has created a double process in which it is getting apparently easier to know the "others" and learn about them, but at the same time, this approach creates more opportunities for differences and disputes to arise. To reduce to the maximum these type of obstacles, it is necessary to learn, to read, or even to contribute to extend knowledge. For that reason, this study aims to go through a specific phenomenon of China's history, as it is the re-education through labour (*laojiao*), to better know its origin, its evolution, its conception, and its use today.

The decision to focus on this particular topic is to know more about Chinese law, and the social and cultural characteristics of China related to it, since re-education through labour is a special form of administrative punishment that originated in China in the 1950s', but it was based on very deep and rooted thoughts and social structures. To understand why re-education through labour in China emerged and evolved as it did, a prior analysis of the principles of the Chinese law is necessary, to comprehend the foundation of the punishment in China, specifically in the case the *laojiao*. The analysis also reviews some traits subject to controversy, as its legal nature or its scope of application have presented some problems of ambiguity. In order to do that, another form of criminal punishment will be also discussed: the reform through labour (*laogai*), for being similar in some aspects to the re-education through labour process, but different in many others. The decision to compare these two punishments are based on the fact that overtime, they have overlapped each other, placing even more in the spotlight the accusations of unlawfulness of the *laojiao*.

Taking the main subject of study into account, the hypothesis of this investigation is the following: "The application of re-education through labour in China was unlawfully

applied beyond its administrative scope during its period of enforcement, leading to a series of legal inconsistencies”. According to the hypothesis, the main objective of this research is to determine to what extent the re-education through labour was implemented inside the limits of the administrative legal system, or if it went beyond them. Some more general objectives are derived from the main one, and those are: to analyze to which degree the administrative and criminal law overlapped in China, to examine how the general development of the law has affected the conformation of the *laojiao*; and to investigate which is the current situation of the *laojiao* and its consequences.

In order to develop this research, the main body of the investigation will be divided into two parts. The first chapter will overview in general terms the evolution of the law in China, presenting the main schools of thought that have shaped the fundamental principles of the Chinese law overtime, to later expose a chronological evolution of the law and the punishment in the most significant stages of Chinese history, which is divided in three parts: pre-Maoist, Maoist, and post-Maoist period. During the Maoist regime the *laojiao* was officially enacted. In pre-Maoist period is taken into account the evolution of law in imperial and nationalist eras. This part has the objective to contextualize under which circumstances the re-education through labour system was configured, with which precedents and how the political situation influenced its nature.

Thereafter, the second part properly focuses on the study of the re-education through labour and is divided in four main chapters: *laojiao*, *laogai*, the comparison of both, and economic development. For both of them, there is an explanation of its evolution and legal framework, the application of its scope, and finally some specific and more relevant cases in which they are applied. The comparison between *laojiao* and *laogai* determines their limits by defining its characteristics, and discloses if its application in practice conforms to what it is established in the law. In addition, it has been considered pertinent to add a fragment in relation to economic development, because the nature of the *laojiao* includes the performance of different types of labour, which indirectly contributed to the development of China’s economy, because people complying with *laojiao* were part of the labour force. Finally, the main conclusions of the research will be exposed in the final part.

As it has been already mentioned, the main object of study is re-education through labour in China, its precedents, its evolution and its current situation, including a general review of the Chinese law and another form of punishment, as it is the reform through labour.

Due to the nature of the subject of study and its historical perspective, this research will be based mainly on a bibliographical analysis of different articles and books, developed by authors that centered their studies on Chinese law and re-education through labour. Furthermore, although there is a lot of research on the evolution of the law in China because of its long history, it is something to note that the information available regarding re-education through labour, and also reform through labour, has its limitations, since official information has always been very restricted. Most of the articles used in this study are based on old documentation from re-education centres, interviews with some of the people who served a period of *laojiao* or the limited official information the government has provided through time, for that reason it is important to take into account that everything presented will always have a part of biased information.

Regarding precedent bibliography, some authors from different parts of the world have written widely about the evolution of the law in China from very ancient times, for instance Hegel and Carlitz in their edited volume *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment* (2007), offer an overview of different aspects of imperial law, being one of them a comparison between oral and writing law, as informal law was very present in Chinese society for a longer period than in other societies. Børge Bakken (2004, 2005), has developed the topic of crime and punishment in China, specially giving relevance to the question of morality in Chinese society and its connection to exemplar punishment, which is closely related to the re-education through labour and its objective to achieve a harmonious society. Other authors, such as Jerome Alan Cohen (1977) or Jianfu Chen (2008, 2013) have developed over many years bibliography on the criminal process in China. Cohen has also been an advocate for human rights in China, being some of his publications *The Criminal Process in the People's Republic of China, 1949–63: An Introduction* (1968) or *Reflections on the criminal process in China* (1977); and in the case of Chen, with titles such as *Chinese Law: Context and Transformation* (2008) or *Criminal Law and Criminal Procedure Law in the People's Republic of China* (2013).

In an area more focused on re-education through labour, Sarah Biddulph (2018) is also an expert in Chinese law who has a lot of work on legal and administrative detention, specifically on *laojiao* and its evolution, including analysis after its abolition in 2013. From a more historical and sociological perspective, Aminda M. Smith (2012, 2013) has focused in the re-education and reform process of those groups of Chinese society that

were considered dangerous classes for social stability, and were mainly subject to the re-education through labour system and the thought reform campaigns. And Frank Dikötter (1997, 2002, 2005) has investigations on Chinese prisons and punishment. In this part, a book written by Hongda Harry Wu (1992) has been also consulted, as he was in a *laogai* center for twenty years, and later he spreads information of this system, even creating the Laogai Research Foundation¹. Apart from these authors, there are many more who have written about Chinese law and re-education through labour that have also been consulted for writing this thesis, for that reason, the main source of information for this investigation is based on the literature of these authors, taking into account that some of them have done field work in China.

Regarding the fact, that the re-education through labour in China has been abolished since 2013, some articles have discussed the relevance of the *laojiao* after its abolition, as some questions have aired in relation to whether an alternative system is necessary to penalize those behaviours that previously fell within the *laojiao* scope, or if they are included in the behaviours typified in the criminal and administrative laws already existent. This has led to other doubts as to how this re-education process is being carried out now, since many controversies have arisen regarding the re-education centres in Xinjiang. Some experts, said that processes of re-education have been carried out in this and other areas in the same conditions as before, even though the re-education through labour does not exist anymore. In this case, the bibliography available is very limited and little contrasted.

¹ The Laogai Research Foundation: <https://laogairesearch.org/>

I. *Law in China*

The Chinese civilization is one of the oldest in the world and therefore its criminal justice system, which has been carrying old influences as it has developed over time. To understand why the Chinese criminal justice system is the way it is nowadays, it is important to understand how it was years ago and how different social, political and cultural contexts in China have influenced the criminal law and its punishment system to conform the current one. This is an important exercise to do in today's global society, as many different cultures from many different parts of the world are converging in a common one, most of the time not being able to understand each other due to a lack of knowledge, specially a historical knowledge.

This research aims to focus on a specific element of the punitive system in China that has a long history, but it is still relevant today. This is the re-education through labour, a very specific form of punishment that has been used in China for a long time, even though its objectives, ways of application and target groups have been varying. One of the main characteristics of the re-education through labour is the administrative nature of this sanction, as it creates a lot of controversy regarding its similarities to the reform through labour, considered as a criminal sanction. To know how these two forms of punishments are integrated into the criminal and administrative Chinese systems, it is also important to know how they have evolved along the history.

1.1. *Legalist thought vs. Confucian thought*

There are three main traditions of thought that are considered to be the most influential in the development of punishment in China, those are the Cosmological tradition, the Confucian tradition and the Legalist tradition. The level of influence of each one of these has been varying depending on the social context of the moment, but while the Confucian and Legalist traditions have been battling until recent days, the cosmological tradition, more focused on the natural order and corporal punishment, has been less and less taken into account. In the context of the cosmological tradition, around the Western Zhou Dynasty (1046-771 BCE), corporal punishment was gradually replaced by other types of punishment, such as fines, imprisonment, or a labour service system with the main purpose of shaming criminals. Later, the Confucian tradition was introduced stating that people should follow the law from their hearts by education and not by external pressure, in

contrast with the third tradition, the Legalist, which stated that law is the main tool to exercise control, and harsh punishment the most effective means to achieve it (Zhang et al., 2017).

Regarding the Confucian thought, Confucius (551-479 BCE) thought that people are inner-directed, good is inherent to human nature, and is reached through the cultivation of the self and a suppression of natural desires for the common interest. Apart from the three traditions mentioned before, the Chinese society has also had the influence of another tradition, Daoism that centered its attention on acting according to the universe, not doing anything unnatural, emphasizing harmony and nature. Then, Daoism served as a complement to the Confucian thought for the Chinese society and culture to be directed in the sense of social order and harmony (Rojek, 2001). Confucianism stated that people were educable and that an ideal social order could be based on virtue (*de*) and morality (*li*)², referring to the idea that only a government based on these concepts and benevolence would arrive to the hearts of the people, instead of applying punishment and make them flee. These concepts are to be taken into account as the principal foundation of the Confucian thought, as they serve as a reference for people's behaviour in society beyond formal law and are used as a tool to make people comply with social conventions. Therefore, concepts such as *de* or *li* are one of the main reasons why Chinese society could be governed by informal control for so long, and although to a lesser extent, continues today.

The word *li* refers to a broad set of ideas not only referring to morality, but also to rituals, ceremonies, regulations of social relations or moral habits; *li* was not a set of detailed and specific rules applicable to every situation, instead it was general instrument to educate that could vary depending on the status, whether in society or inside the family. In Confucianism, the concept of the state was an extension of the concept of the family that was fundamental in the structure of Chinese society, as individuals were only important as a part of the family, but not separately, and also as a part of a hierarchical system inside that family. However, the application of *li* in Confucian thought did not completely oppose to the application of formal laws or punishment, but what it really did oppose was the application of harsh punishment as the main tool, as moral education was

² "The many facets of *li* are translatable in English as "principle," "pattern," "reason," or "law." Sometimes it was used as synonymous with *dao*, which means the path. When so used, it referred to the path one should follow from the moral point of view. Understood as such, *li* plays an action-guiding role similar to that of moral laws. Apart from the moral sense, *li* also signifies the ultimate ground for all existence.(...) human nature shows the different aspects of *li* — namely, humanity (*ren*), righteousness (*yi*), propriety (*li*), wisdom (*qi*), and trustworthiness (*xin*)" (Wong, 2009).

considered the first priority (Chen, 2008).

On the other hand, Legalism has been the other main school of thought in Chinese society, which considers that human beings are inherently evil, so it relies on the law to face evil behaviour through severe punishment. The principal difference with Confucianism, is that Legalism focus on punishment to avoid bad and immoral behaviour, while Confucianism aims to encourage good behaviour. Legalists do not believe on the virtue of the ruler as a main asset to govern, they think the government should evaluate everyone by the law, supporting the “rule of law” instead of the “rule by man”. In Legalism, the law can have different definitions, such as rules, measures, detailed regulations or codified bodies, but in every definition the central similarity is to have severe punishment as a consequence of breaking the law. This premise is based on the fact that no virtue or morality can put an end to violence and evil behaviour, and it is necessary to use the force and power, because it is the nature of human beings to look for their own profit, and so, the role of the state to suppress those behaviours by means of the law (Chen, 2008).

Finally, a mix of both the Confucian and Legalist traditions was considered to be the most convenient for the Chinese state, where both power and the legitimacy of this power were needed to govern. Later in time, dynasties such as the Han (202 BC-220 AC) or Qing (1644-1912) based their social systems on moral education, but still being punitive. After the overthrow of the Qing Dynasty (1911) and the consequent establishment of the Republic of China, significant reforms in the criminal justice system were made. Some examples are the equality before the law, the introduction of a prison system, the conformity with Western standards or a penal system where criminals would reflect on their actions (Zhang et al., 2017).

1.2. Evolution of the law in China

1.2.1. Development of law in Imperial China

Since the beginning of the Chinese society, informal social control has been more important than formal control, and consequently there was no much development of formal laws or enforcement mechanisms until recent days. This was mainly because of the importance given to the family and the community which led to more interconnected and face-to-face relationships and a stronger social control; one of the methods used as punishment for those who committed crimes was to shame the offenders to later reintegrate them in society. These processes are only possible where the community has a

notable place in society, whereas the individual is relegated to a secondary position. This lack of formal laws was also very influenced by Confucianism that focused more on an internal sense of virtue and righteousness in people rather than an external imposition of it. There was a development of the *li* (informal laws, custom, “morality”) instead of the *fa* (formal laws, legal codes) where local committees were created to solve local conflicts before they escalated, mostly through mediation and negotiation. The social control applied was usually preventive, reacting to bad behaviours before crimes happened, and making the whole family, or even the community, responsible for the crimes committed by one of its members (Rojek, 2001; Bakken, 2005).

During the Chinese imperial regime brutal punishments were applied, including the capital punishment that was integrated in the criminal justice system at least in the Qin Dynasty (221-207 BCE), but on the other side, as Bakken (2004) says, there was some kind of compassion and flexibility thanks to the Confucian tradition that gave a form of legal humanism to the punishment system, although this has always been challenged by the legalist tradition. Already during the Tang Dynasty (618-907) there was a promulgated code, the Tang Code, but there have been discoveries even from before the Qin Dynasty (221-206 BCE) of written law in China. These traditional legal systems continued from dynasty to dynasty, and the legal codes were cumulative throughout the last dynasties, from Song (960-1279) and Yuan (1279- 1368) to Ming (1368-1644), and then to Qing, and did not completely change from one ruler to another (Hegel, 2007, p. 11). This is what made easier to keep tradition as a constant and thus, determined aspects of the traditional legal culture, despite interpretations changed over time. Confucianism was the main influence over the legal system from the Han Dynasty (206 BCE-220 CE) onwards. Traditional Chinese law has been used as a political tool to protect state interests and not to defend individual rights, also as an administrative tool focused on punishment that did not allow any separation of powers. As already mentioned, even formal laws or *fa* existed, they were considered as a secondary tool, giving priority to informal laws or *li*. It was common to let claims between citizens left to custom laws and focus state laws only on the avoidance of the breakdown of the established social order (Chen, 2008).

During the last years of the Qing Dynasty (1644-1911), when foreign powers were already in Chinese territory, it started a promotion to establish characteristics from the European model of the judicial administration by the Qing, followed by a series of pressures of other foreign powers which supported the abolition of corporal punishment and the introduction of a modern prison system, in order to achieve the so wanted

abolition of extraterritoriality in China. At that point, China copied what Japan did in the nineteenth century to end extraterritoriality, by modernizing the legal system and adapting it to western standards (Dikötter, 2002, p. 46; Cohen, 1977, p. 324). In 1910, the Great Qing Code had been completely revised to make it compatible with Western laws renaming it as the “Current Criminal Code” in which the first separation between civil and criminal law was made in China; the draft of the civil code was completed the next year. In this process of “westernization” of traditional Chinese law some of the traditional social structures and values were endangered, thus it was a huge opposition for those who thought that the importance of *li* was being undermined. In spite of all these reforms, the Qing Dynasty did not manage to survive and a Republic was established by 1912, although imperial law was generally maintained unless it was specifically modified. When the nationalist government was established in 1927 by the Guomindang (GMD)³, the laws established during the Qing Dynasty were revised and adapted to the GMD ideology, however the process of “westernization” continued according to the principles of nationalism and according to Sun Yatsen thought, the leader of the GMD. The main object of protection were national and social interests as a whole, in place of the family system, being the individuals the basic unit of reference and modernization a principal goal to achieve (Chen, 2008).

In Imperial China, the emperor was considered to be the “Son of Heaven” and had unlimited power to determine the law, the figure of the emperor was even above the law. Thus, the justice system was conformed according to the emperor and his interest, there was no separation of powers and magistrates were also appointed by him. This authoritarian system was later transferred to the Nationalist Party, and to the Communist Party adopted the model of the Soviet Union in 1949 to establish its legal system, centered in protecting national security and economic development. Mao Zedong adapted this model to Chinese society in which formal law was not as important as informal law, and this led to an ignorance of the law in favour to the Party’s interests. After Mao’s death in 1976, Deng Xiaoping took the leadership of the Communist Party and started a profound reform of the country, from economic reforms to modernize industry, technology and agriculture, which also included a reform of the legal system (Liu and Situ, 2001). This process will be further developed in the following sections.

With regard to punishment, during the last years of Imperial China, it was the first time that civil law was

³ Refers to the Chinese Nationalist Party, it can also be found as Kuomintang (KMT).

separated from criminal law as a consequence of the introduction of “western” standards into traditional Chinese law. These changes gave rise to a series of reforms that aimed to adopt a modern penal system, as the prior one had been criticized for being cruel, filthy and disease- infested, and this change of direction into a modern penal system lasted until the republican period. Another idea became relevant at that point, in which prisons would not only serve as a means to give vocational training to prisoners, but would also become financially self-sufficient. There was also a shift in the conception of punishment, leaving aside the Legalist focus on body punishment to center the attention on Confucian ethical norms and European models of punishment. According to Confucianism, punishment in China was meant to educate, the term *ganhua* was used to refer to the change of someone for the better and by setting example, and it later evolved into a political concept not only used in penology, but generally. A main example of the *ganhua* are the prisons in China that focused its action on the re-education of the prisoners, but also act as a mechanism to impose respect on the others and make them comply with the norms. Therefore, prisons became more relevant in this period as punishments should be largely based on custodial sentences and rehabilitation, and the thought coming from Confucianism that everyone could change by education gained importance again in Chinese society and continues until present days (Dikötter, 2002).

After the Qing Dynasty was overthrown in 1912 there were many continuities until the foundation of the People’s Republic of China (RPC), so the penal system reforms according to international standards kept developing during the following years after the fall of imperialism. Other institutions such as the judiciary system also conserved its nature from imperial times as it had favorable reputation due to its stability. Nevertheless, some reforms were still carried out as a form of achieving equal status with foreign powers, for instance, there was an interest for standardization and centralization of the prison system and codified prison statutes were promulgated with specific regulations in how prisons had to be structured, including a single-cell system or how prisoners should behave, among others. The term *ganhua* kept relevant and it was considered to be composed of three components that were forced labour, moral instruction and basic education (Dikötter, 2002, pp. 61-66).

1.2.2. Development of law during Maoist era

When Mao Zedong was leading China from 1949 until the end of the 1970s, many social changes took place within this period. The main priority of the state was class struggle and creating an equal society, but also change the family and its role in the society to occupy a secondary position. Mao Zedong rejected Confucianism thought which

considered family one of the most important elements of society, but other Confucian aspects were maintained, for example, the idea that individuals were good and could be led to righteousness and virtue by education (Rojek, 2001, p. 95).

At the moment the PRC was established, it was determined to end the previous legal system of the GMD. The PRC stated that GMD laws could not make everyone equal before the law, as there cannot be real equal rights for the different social classes if they do not share the same interests. Not only the GMD laws were rejected, but also other bourgeois- considered laws such as those of Europe, America or Japan, in favour of Marxism, Leninism and Mao Zedong Thought. At that point, the Communist Party of China provisionally implemented a document titled the “Common Program of the Chinese People’s Political Consultative Conference” that served as a constitution until 1954 in which the first constitution of the PRC was promulgated. It is relevant to mention that after the abolition of the GMD previous laws, there was a legal vacuum that was not urgently resolved, as the CCP did not consider it as a priority, taking the example of previous years in which law was used as a threat and political weapon, following a Legalist approach. Thus, during the first years of the PRC only a few laws were developed needed for the political transformation and most of the fundamental principles of law that are nowadays considered essential in every legal system, such as the equality before the law, independence of the judiciary system or the *nullum crimen sine lege* were left out (Chen, 2008).

In the Eighth National Congress of the Chinese Communist Party (CCP) in 1956 a report⁴ was issued which claimed that the revolutionary era has passed, therefore it was the moment to seek for a complete legal system. This report, as an example of Mao’s use of some aspects of Confucianism, also claimed for a gradual abolishment of the death penalty as it was seen as a cruel punishment, but it has not been yet abolished as it is considered necessary in times of chaos or to be used against counterrevolutionaries. With these claims, Mao Zedong resorted to the right of the people to take revenge against those who exploited them, and this argument is still used nowadays in China. Although the existence of some laws, during Mao’s leadership, mainly during what could be called the “revolutionary era” in which the CCP first priority was to establish and strengthen itself as a government, the informal law was much more important than formal law, even abolishing or ignoring the existing ones. Later a new priority was set, the main goal was to develop productive forces and economy and to a complete legal system was needed. In

⁴ Report to the Eighth National Congress of the CPC in 1956

the process of building a comprehensive legal system, the socialist Soviet Union legal system was used as the main reference, taking into account that this system was influenced by the inquisitorial system, in which the criminal procedure is based on an extensive pre-trial investigation to avoid any innocent person going to trial, making almost certain that the person going to trial will be declared guilty. At that time the main functions of the law were to preserve national security, drive economic development and educate citizens. The law was made by the Party which had influences in judges' decisions (Liu and Situ, 2001, pp. 134-135).

This process of intensive legislation in the 1950s was called the "golden period", as some regulations such as organic laws, specific regulation on some topics such as detention and arrest, or even the Constitution of 1954 were adopted, while drafts on civil and criminal codes and other regulations, were developed. After this push forward, some years of stagnation came as a consequence of a revival of revolutionary thoughts, including anti-rightist movements and the "Great Leap Forward" at the end of the 50s. But this movement soon faded, seeking again for a social order through law, and again interrupted by the Cultural Revolution when all the progress was left aside and all the developed laws, destroyed, until Mao's death in 1976 (Chen, 2008, pp. 49-50).

All these changes in legislation also reflected in the form of punishment applied since then: the main objectives were counterrevolutionaries, enemies of the Party and bad elements for the new society. At first there were not enough prisons for all the people who was detained, instead they were sent to labour camps. Those who were accused of any political charges did not usually had a legal procedure according to the law, as there were not permanent courts or experienced judges to guarantee this process, neither a criminal code or an established criminal procedure, moreover, the accused by political reasons did not receive a specific sentence, but they were kept under detention until they were considered to be sufficiently reformed. There was also another issue concerning those people who were waiting for their sentences, because they were sent to detention camps during these periods, which used to be lengthy, with no proper sentence (Dikötter, 1997, pp. 148-150).

1.2.3. Development of law after economic reforms

At the end of the 70s and the beginning of economic reforms led by Deng Xiaoping, there was a significant growth in crime rates, which led to a harsh anticrime campaign focused on juvenile crime rather than corruption. As a consequence, crime rates went to

the lowest in the world mainly due to the fact that the legal reforms established by Deng Xiaoping were introduced from a legalist point of view, which implies a severe punishment system that includes death penalty (Bakken, 2004). Deng Xiaoping encouraged the use of the death penalty as a mean to educate the masses and accused the criminal system of being too soft on criminals. Furthermore, some studies have shown that a high support exists to the use of the death penalty among people, as a consequence of the fear they have to chaos in society (Bakken, 2004).

Different anticrime campaigns took place targeting specific categories of crime during a fixed term, implying an intense police activity and arbitrariness in the criminal justice system (Tanner, 2005). In 1979, when the first comprehensive Criminal Law of the People's Republic of China was promulgated in 1979⁵. The first drafts of the Criminal Law were made during the 50's with a major Soviet influence that emphasized social stability and economic development. The provisions were too ambiguous and did not cover some crimes, mainly economics crimes, resulting from the economic reforms that took place at the same time of promulgation. For that reason, provisional and supplementary regulations were issued (Chen, 2008).

Some other problematic issues were detected in the new regulation, for example when the accused of a specific crime was considered from the first moment an enemy and most of their rights were affected by it. There was also different system and procedure for those loyal to the Party which led to the exemption of punishment in most of the cases. The judge was involved in the finding process of evidence and was responsible of presenting them apart from questioning the defendant, fact that made judges' impartiality almost inexistent. All these issues had to be changed after the opening door policy followed by economic reforms, as a fair legal system was necessary to interact internationally with other nations (Liu and Situ, 2001, pp. 136-137).

Despite the fact that a typified list of criminal punishments exists in the Chinese Criminal Law, there has always been problems to differentiate criminal punishments from administrative sanctions, due to arbitrary distinctions between them. Criticism and protests emerged regarding violation of human rights because of this ambiguity, as administrative sanctions were applied with the control of the judicial system but having the same consequences of criminal sanctions. Two of the most relevant administrative sanctions were the "shelter and investigation" and the "re-education through labour" that

⁵ Before that, there were various separated criminal regulations, such as the "Instruction on Suppressing Counter-Revolutionary Activities".

will be further analyzed (Chen, 2008, p. 290). Currently both of these institutions have been formally abolished, even though there is criticism of using other administrative sanctions in the same way as those abolished.

It was not until 1997 that the Chinese Criminal Act promulgated in 1979 was revised, including as a crime any act that endangers the Chinese society. It is very focused on the endangerment of the state sovereignty and the social order. There are three main characteristics that an action must comply with to be considered a crime: the endangerment of the society, a violation of the criminal law and the fact that the action is considered a crime in the law. There must also be an intention or criminal negligence to commit the crime, if not, then is not considered a criminal offence. After the revision of the law new typologies of crime were established, so there are ten different typologies⁶ of crime further broken down into supplementary provisions. On the other hand, there was no added criminal punishment to the five established in 1979: 1) Control and supervision; 2) criminal detention; 3) fixed term imprisonment; 4) life imprisonment; and 5) death penalty⁷, plus the three supplementary punishments consisting on fines, deprivations of political rights and confiscation of property (Chen, 2008, pp. 280-283).

This revision also implied a revision of the legal process and the establishment of a professional policing. Before there was an analogous application of the law for the crimes not included in the Criminal Code to those most similar, applying the same punishment for crimes despite the fact that they were much less serious. This change in the Chinese law was barely reflected on the Chinese police force, as they kept taking care of the moral order instead of the law (Bakken, 2005; Dikötter, 2005). Some fundamental principles such as the equity before law, proportionality, or the abolition of the already mentioned analogy, were included for the first time. The use of analogy was first introduced in the Han Dynasty (206-8 BCE) and was later sanctioned in the Sui Dynasty (589-618), but it might have started earlier; during the Qing Dynasty the principle of *nullum crimen, nulla poena sine lege*⁸ abolishing analogy, but this was not accepted during the Maoist regime, that justified analogy as a temporary measure for a lack of comprehensive regulations (Chen, 2008). On the other hand, there were changes

⁶ (1) Crime endangering state security; (2) Crime endangering public security; (3) Crime undermining the socialist market economic order; (4) Crime infringing the personal rights or democratic rights of citizens; (5) Crime encroaching upon property; (6) Crime disrupting social order and its administration; (7) Crime endangering the interests of national defence; (8) Crime of bribery and embezzlement; (9) Crime of malfeasance; and (10) Crime in violation of military duties.

⁸ There is no crime and no punishment without law.

regarding the role of the judges, some of them are that they do not participate anymore in the process of finding evidence; it is the procurator instead of the judge the one presenting evidence; and the defending attorney has an active role in the process. Another relevant fact of the Chinese criminal process is that the procurator still has a superior status, not under the court, which leads to the idea that criminal justice system remains under the control of the Communist Party (Liu and Situ, 2001, pp. 144- 145). Regarding another general principle, equality before the law, was not introduced in 1979, as the Criminal Law of that moment followed Mao's thought who emphasized the law as a means for class struggle, implying a differentiation in the punishment of "enemies", mainly counterrevolutionaries, and the punishment of "people". After the 1997 revision, it was incorporated into the Criminal Law, dropping Mao's thought. The same happened with the proportionality principle that established heavier punishments for more serious crimes, although there is still a lack of detailed provisions of aggravating and mitigating circumstances in order to properly apply the proportionality principle (Chen, 2008).

After 1997 reforms, the debate regarding the death penalty continued, but far from reducing its application, it was increased after some anticrime campaigns were promulgated. The debate kept alive because its application was not following a strict control, as it was established that the Supreme People's Court had to review each case, however this was relegated to court at a provincial level, until 2006 when Supreme People's Court reclaimed back its power (Chen, 2013).

II. *Laojiao vs. Laogai*

After reviewing in a very limited way the evolution of law and punishment in China, the second part of this study aims to focus on a very specific and characteristic phenomenon of the Chinese punishment system, which is the re-education through labor, as it has been an important form of correction in Chinese society along the history, but it has also received a lot of attention recently, in relation to some controversies regarding the conditions of its application in current times. The first part serves as a contextualization of the re-education through labour system in China, to understand its evolution and conformation inside the whole legal system, but also to acknowledge which are the main motivations to apply certain punishments to people instead of others, considering social conventions and understandings of what it is a good and moral behaviour. During Imperial China there was a system of rewarding good actions and punishing bad behaviour, this was later reflected in modern China. The system mainly wanted to discourage bad behaviour and promote the compliance with social and moral rules. The great influence that Confucianism has had over the time on the Chinese society also reflects on the way that punishment is seen. In China the main objective of the punishment is education, and law is used as a means to achieve this moral education and virtue. It was responsibility of the state to provide the rules to follow for the society to comply with (Dikötter, 2005).

As re-education through labour affects some human rights and liberties, it is essential to know its legal provisions and its limits of application. Moreover, considering the existence of the reform through labour, that shares some similarities with the re-education through labour, even though, they are two different types of detention established in two separated systems: the administrative system and the criminal system. Thus, in this part it would be explained both systems of detention, its legal framework and its relevance in Chinese history to the present days. And it would be also analyzed, its main differences and to which point they have been overlapped in its application.

2.1. Re-education through labour (*laojiao*)

*Laojiao*⁹ is the term used in Chinese to refer to the re-education through labor system, an administrative punishment that was officially created in 1955 as a response to counterrevolutionaries during the Maoist regime. Later, was used to counteract other types of behaviours, such as minor offences as prostitution or drug abuse that were considered to be a threat for social stability. This system in which people were detained for re-education, using the method of working, was very convenient for the state, as it isolate unwanted individuals from society without being a burden, as they kept labouring under detention (Noakes, 2018, p. 199).

2.1.1. Evolution and legal framework

The re-education through labour was officially established in 1955 and as Su (2016) mentions, it was imported from the Soviet Union and adapted to comply with Chinese characteristics, such as it happened with the main body of the Chinese legal system. On the other side, despite the general thought that *laojiao* has its origins in the PRC, prison labour was already used during the Qin Dynasty and following regimes incorporated heavy labour as part of the punishment to build public infrastructures, and the integration of education as part of the correction process was already considered the basis since the emergence of Confucian thought (Zhang et al., 2017, p.1214).

In 1955, a Directive¹⁰ was issued by the CCP to uncover counterrevolutionaries through a campaign that lasted more than a year. Firstly, *laojiao* had a clear political intention to persecute counterrevolutionaries during Mao's mandate, aiming to reform and rehabilitate them through labor, evolving later on into a system to punish minor offences. Fu (2005, p. 813) refers to the fact that *laojiao* was called a "quasi- imprisonment", even though in practice there was no difference of treatment with a proper imprisonment. The next important reform of *laojiao* was made in 1957, with the Decision on Laojiao¹¹ that enlarged and clarified the scope of the *laojiao*, adding other types of persons subject to this detention, including those who have committed minor offences or do not behave, in order to maintain a proper employment. This enlargement of the scope came with the

⁹ The characters in Chinese are 劳教, meaning "to work/to labor" and "to teach", respectively, an abbreviation of 劳动教养 (laodong jiaoyang).

¹⁰ The characters in Chinese are 劳教, meaning "to work/to labor" and "to teach", respectively, an abbreviation of 劳动教养 (laodong jiaoyang).

¹¹ Decision of the State Council concerning the question of lao jiao (1957).

idea of forcing people to make a living and reform them through labour, but it also came with an abuse of the use of the *laojiao*, because some decisions of detentions were made by local governments without any authorization, or some industrial companies sent undisciplined workers (Fu, 2005, p. 815-816; Noakes, 2018, p. 202).

The main problem at that time was that the period of detention applied had no limitation, which made people complying with *laojiao* increase exponentially and creating a system impossible to manage by the early 1960s. For that reason, the government decided to limit its application conducting some actions which reduced detained population, such as limiting the establishment of *laojiao* institutions to county level; forced companies to maintain the positions for those undisciplined workers open for their return; and limited detention period of *laojiao* to two or three years. *Laojiao* suffered a decline in its use during the Cultural Revolution (1966-1976) for being considered that rehabilitation was a soft form of punishment and it was not until the end of the 1970s, after Mao's death, that it regained its force, when a new Decision¹² was approved in 1979 and some other changes, including institutional changes, were introduced the following years with the intention avoid, or at least, reduce its arbitrariness (Noakes, 2018, p. 204). A major institutional change took place in 1988, when the *laojiao* system was detached for the first time from the prison administration, enhancing new policies to distinct *laojiao* from criminal punishment (Fu, 2005). All these changes were a consequence of the increase of formal legislation that were developed after 1979, creating a huge number of regulations regarding *laojiao* that made most of the offences eligible for it. As Noakes (2018, p. 200) mentions, there is even a saying in Chinese that state that "Re-education- through-labor is a basket and everything can be put into".

During the last years, re-education through labour has gained attention in the international community but also inside China, because of the allegations of abuses regarding the application of *laojiao*. Therefore, the decision to abolish the re-education through labour system was approved in November 2013 by the Third Plenary Session of the 18th CPC Central Committee, releasing those people under detention by the *laojiao* system, without having to enforce the remaining time of the sentence. The abolition of the *laojiao* system was due to the public anger with regard to the abuses of its application, on the grounds of some scandal cases that grew a sense of empathy among citizens, which made increase the support of the top Party officials for its abolition. Another reason that has been

¹² Decision approving the State Council supplementary rules on *laojiao* (1979).

pointed out is its unlawfulness, as the deprivation of the personal freedom should only be established in national laws enacted by the National People's Congress or its Standing Committee, not by administrative regulations developed by the State Council, as it was the case of the re-education through labour provisions. Furthermore, it served as a political strategy for the president Xi Jinping to show his commitment to eradicate corruption, given that *laojiao* was seen as a tool for fight corruption for some officials (Noakes, 2018).

2.1.2. Characteristics and scope of *laojiao*

Since the *laojiao* system was officially established in the 1950s', it has been considered one of the most severe forms of administrative punishments in China, taking into account that punishments such as fines, warnings or short periods of administrative detention would be the ones on the minor offences category, while the application of the *laojiao* could lead to a detention of up to 3 years, with a one year extension, being one of the harshest. The nature of its existence was based on the need of a penalization for those offences considered to be socially harming and disturbing, but not serious enough to be considered a criminal penalty (Biddulph, 2018). But this is difficult to establish, as *laojiao* is considered very flexible in terms of its scope, changing according to social and political changes. Albeit some arbitrariness was involved with *laojiao*, from the very beginning was clear the objective of re-education for those people, whether considered counter-revolutionaries or the so-called vagrants, to make them socially productive and ideal citizens, even though, the official discourse of this idealization has been changing as the time has passed (Smith, 2012, p. 454).

During the first stages of the PRC, anti-revolutionary, anti-social and anti-labour behaviours were considered holdovers of the pre-revolutionary society, counteracted by the CCP through a campaign of thought reform at the end of the 1950s composed by two fundamental elements, education and physical labour. Later on, by 1957 the CCP proclaimed that almost everyone had been re-educated and that crime, prostitution and drug addiction, among others, had been eradicated, and it changed its perspective on those who were not reformed after re-education. They were not considered subjugated anymore, instead they were separated from society after various opportunities to reform, and this discourse was maintained until the beginning of the twenty-first century, when the discourse of internees as victims was resumed. By 2008, the reform through education was centered in a personal and intimate reform rather than the massive re-education

process that took place in the 1950s, however some similarities from Mao era maintained during the whole process (Smith, 2012).

In relation to the re-education process as such, apart from the labouring, detainees had to go to class and work in study groups in order to develop different types of activities. One of them was to recount personal experiences to reflect on why they ended up carrying out those immoral actions. These activities could also be performed using different methods, because there were collective and individual classes. The content taught was about legal and moral education, through seminars, discussions, speeches, etc., because of the high rate of illiteracy among administrative offenders (Smith, 2012; Li, 2010). Smith (2006) use the terms of “classroom instructions and textual study” to refer to the methods that re-educators considered most useful to achieve ideological change during the first years of the PRC, by which internees were persuaded to withdraw immoral behaviours, many times using the experiences of other detainees to show the rest and exemplify their experiences. Even though, these re-education methods were also used with all of the Chinese people during mass education campaigns to encourage them to end the old society.

Fu (2005) classifies *laojiao* functions into four categories: 1) political control, 2) crime control, 3) drug control measure, and 4) a form of investigative detention. The first one was the main reason for its creation as a way to control counter-revolutionaries once the PRC was established. Anyway, has been also used over time for political reasons, in student mobilizations in 1989 Tian'anmen movement or in campaigns against terrorism in Xinjiang after September 11 attacks in the USA. Other social changes have affected the scope of the *laojiao*, being the increase of minor crimes committed by rural population one of them. It was also centered on arresting habitual minor offenders and prostitutes during the 1970s and 1980s, taking a shift at the end of the 1990s that reduced prostitutes in *laojiao* centres, when a campaign to place prostitutes in re-education centres brought out the female prostitutes from the *laojiao* system. At that time, homosexuality, even not being criminalized, was considered as a form of hooliganism and disorder, commonly associated to immorality (Worth et al, 2019, p. 40). Another specific type of offenders that raised its numbers in *laojiao* institutions during the 1990s were drugusers, as drug addiction became one of the most important problems in Chinese society at that time, and *laojiao* was seen as the most effective form of ending drug dependency given that the lengthy term of detention could help drug users to overcome their addictions. Finally, *laojiao* has been used as a tool to extend detention period during police

investigations for those people suspect of having committed a crime, but this use was considered by some scholars to be contrary to the Criminal Procedure Law of 1996.

2.1.3. Specific cases of application of *laojiao*

Notwithstanding the fact that the scope of application of re-education through labour was very wide, there are studies on specific cases in which its application seems to bring some controversy, for instance, some prostitution, drug addiction, homosexuality, or even the criminalization of poverty, which were considered to be very serious social problems. On this issue, one of the main aspects discussed is if the *laojiao* was the best option for these people to be re-educated and placed back on society or if it was carried out in the most appropriate way.

Henriot (1995) focused on the re-education of prostitutes since the beginning of the PRC, when the party already took a lot of efforts to eliminate prostitution for being considered one of the worst forms of exploitation of women and it was considered a class phenomenon that affected the proletariat. The Party was entailed to assist those women for being victims and not criminals. Some of the first actions taken to abolish prostitution was to close all brothels and send prostitutes to re-education centres to learn productive crafts and receive political and psychological training. The conditions were mainly austere and routines very strict, but they also received medical examinations, as prostitutes' health was one of the main priority to achieve. But these conditions were not accepted by most detainees as it was difficult to adapt so suddenly and some of them were addicted to drugs or alcohol without receiving any special treatment, even so most of them ended following the rules established. The specific process of re-education with prostitutes was centered in studying, self-criticism and manual labour that was later changed into industrial production, because some of them were not enough able to perform them, and for their work they received a symbolic salary. The situation in those centres changed after 1951, when numbers of women in these facilities increased and were sent to work facilities leaving completely aside the education part or there were not enough resources, changing also the perception of those women as it has been mentioned in previous sections, not being considered victims anymore, but socially disturbing elements for society (Ruan, 2010, p 484).

Laojiao has also been used as a drug control measure, drug treatment in China was considered mandatory and do not only include medical treatment and education, but also labour, given that manual labour was considered as an effective tool to change bad

thoughts and habits in people. Even though, some authors such as Liu and Situ (2001, 49-50) consider that its effectiveness is questionable due to the lack of resources, the low quality of the programs of rehabilitation and the data of recidivism that exists. They consider that the main objective of these anti-drug campaigns focus more on the control of unlawful and immoral behaviours to maintain social order, instead of focusing on properly treating and solving drug addictions. As it happened with re-education centres for prostitutes, there were also specific re-education centres for drug users and also mix centres, and the same thought of prostitutes as victims applied for drug users, applying the *laojiao* sentences that were up to three years for its convenient length in drug addiction treatment (Fu, 2005, pp.824-825).

In the case of homosexuality, it was never considered a crime in itself in China, but a form of hooliganism and immoral behaviour, following that established in the Qing period with continuity after post-liberation period, when connections between sexuality and hooliganism were made. It was thought that education through labour and ideological education were needed to eradicate homosexual behaviours and to restore social order (Worth et al, 2019, pp. 39-42). Regarding poverty, after 1949, impoverished people were considered to be forced to perform certain behaviours, such as begging, prostitution or committing crime for economic necessities, hence *laojiao* was seen again as the most fruitful solution to this problem, to give those people the necessary skills to have a proper job and at the same time to give them proper moral education to be able to overcome the possibility of relapse into bad behaviours. Smith (2013) refers to the “dual nature” sometimes attributed to these people, as both victims and part of the proletarian class, but also as criminals and disrupters in need of re-education.

2.2. Reform through labour (*laogai*)

The reform through labour, or in its Chinese form: *laogai*¹³, is a different form of punishment from the re-education through labour, since the first one is a criminal sanction and the second one is administrative. This means that the entity of the behaviour punished by the reform through labour is more serious than those behaviours punished by the re-education through labour and they are also regulated by different laws. The debate on *laogai* emerges at the moment when similar actions are punished by both types of sanctions, because there is always an area of ambiguity to distinguish them, and to know

¹³ The characters in Chinese are 劳改, meaning “to work/to labor” and “to change”, respectively, an abbreviation of 劳动改造 (*laodong gaizao*).

until which point applies one or the other. This section would analyze how *laogai* is established in the law and under which circumstances.

2.2.1. Evolution and legal framework

One of the most significant tools to re-educate people in China, but also in other countries around the world, are prisons, even though its purposes have changed over time. A fundamental idea of this system is to use prisons to inculcate ethical norms, using the law as an intermediate means designed to consolidate the link between the individual and the collective, either the family or the community (Dikötter, 2005). Noakes (2018, p. 200) refers to reform through labour centres as “prison farms or work camps in which hard labor is used strictly as a form of punishment”, and even though *laogai* and *laojiao* are sometimes used indistinctly, they have jurisprudential distinctions originated in Maoist thought, as the first one was considered appropriate to solve irreconcilable contradictions while the second one, to solve reconcilable contradictions.

Wu (1992) compared Nazis concentrations camps with forced labour in camps in China, to highlight that the first ones did not imply any sort of mind reform neither were based on any political theories as it happened with the second ones, because they were not interested in “long-term productive tools”. He also compares them with Soviet labour camps which were created in 1917 and officially codified in 1933, strengthening the system in 1961, in the same way that happened in China, but despite the fact they were addressed to suppression, neither was the systematic thought reform that took place in China. The labour reform camps were an instrument to maintain order and harmony in Chinese society, and to punish criminals who committed any crime, but it was also a safeguard to protect the authoritarian regime in its first stages. Furthermore, this system was used even before the establishment of the PCR during the revolution as part of the strategy to defeat the GMD.

The reform through labour system was the prison system of the CCP and an essential tool for the PRC as an authoritarian state. Its regulation is based on three main legal documents: the “Labour Reform Policies” approved in 1954 by the State Council, “Temporary Disciplinary Methods for the Release of Criminals Completing Their Terms and for the Implementation of Forced Job Placement” approved on the same year by the Government Administration System, and “Re-education Through Labour Policies” approved by the National People’s Congress in 1957, amended in 1979 by the “Supplementary Re- education Through Labor Regulations”. All these regulations were

developed during the Maoist era, although they remained almost unchanged after economic reforms and the process of opening-up at the end of the 1970s' with Deng Xiaoping. In 1949, when the PRC was established, it was considered that the class struggle was the main problem in Chinese society, therefore, the establishment of the *laogai* system was seen as a solution to eliminate all "class enemies" by engaging them in labour to transform them. The same discourse remained during Deng Xiaoping's mandate, although the class struggle had ended (Wu, 1992).

Even though, the Chinese labour system analyzed in this section is mainly referred to the one developed during the PRC, the use of labour as punishment in China had been common in imperial China. Already in the Western Zhou Dynasty, but also in the Qin, Sui, Tang or Song Dynasties, a labour system was established with the main objective of shaming criminals, seeing this method as a form of deterrence. The structure of the society had its main focus on the family, so being separated from it was seen as a severe form of punishment. It was when the CCP came to power in 1949, the principal use of labour was a punishment for those who did not follow the official political ideology, but also to create a self-financing system. One of the main hindrances of this system has always been the living conditions of the prisoners. Zhang et al (2017, pp. 1213) mentioned that during the Great Leap Forward and the Great Famine, it is suspected that more than a half of the prisoners died because of starvation. The living conditions in *laogai* centres improved during the economic reforms after 1978 and the system was absorbed in 1994 by the prison system, so the *laogai* system as such ceased to exist (Zhang et al, 2017, pp. 1195). Nevertheless, it has been claimed that this was the response of the Chinese government to international pressures and criticisms. This change only meant a replacement in of the name of the centres, from labour camps to prisons, but the situation has remained the same (Laogai Research Foundation, 2022).

2.2.2. Characteristics and scope of *laogai*

As in the case of the *laojiao*, the object of the reform through labour changed over the years, being at the beginning the prosecution, specifically military and leaders from the Nationalist Party, but also rich people or landlords, what has been called "exploiting classes". The following decades, during the 1960s and 1970s, those detained to comply with a *laogai* sentence were active counter-revolutionaries, mostly during the Cultural Revolution, but from the 1990s, most of the arrested were criminals who had committed any type of crime, while the population arrested because of counter-revolution was

minimum. Since the 1950s the CCP used a specific method to arrest people during major political movements, beginning with the Agrarian Revolution Movement in 1950, to the Four-Clean-Ups Movement in 1964 or the Tian'anmen Movements of 1989, and those arrested did not go through any legal process before being placed in reform labour camps, and received their sentences much more later. There was also a smaller proportion of the arrested that went through a legal procedure. In addition, in some moments of the year, coinciding with national holidays, arrests campaigns were carried out in order to show the stability of the Chinese society, sending people to *laogai* in the case of being suspect for any reason. In these cases, only a few part of the total arrested before national holidays were released again, while the other were sent to prisons o labour camps (Wu, 1992, pp. 62-64).

Since Maoist era there has been a connection between the reform of the mind and the physical labour in the context of the PRC penal policies as it was considered that labour was glorious. As Smith (2013) refers the essential element of the reform through labour was not the performance of labour per se, but the willing to carry it out and the transformative quality that had in itself. It was thought that labour had the capacity to withdraw the most profound set of beliefs to achieve a labour perspective, shaping the mind of the person into the mind of a worker, and understand the conditions of the proletarian class. It has been questioned how it was really performed, but in theory this system should be able to mould every mind. Due to the importance of labour as an instrument to achieve thought reform, it was not only considered relevant in the criminal justice system, but also in the entire process of socialism in China.

In 1997, the PCR redrafted the criminal code including a set of undefined situations which were considered to be counterrevolutionary, as those acts “endangering state security” without any specification. In 1998, the PRC approved some regulations regarding the right of association established in art. 35 of the Constitution that made enlarge the scope of application of the *laogai*, which is said to have been done under unconstitutional terms. At the same time has been accusations of violations of human rights for the living conditions of the prisoners in reform through labour centres (Pejan, 2000). The situation in relation to the freedom of expression and association have been hardening during the last decade since Xi Jinping became the President of the PRC, as a process of control of the public opinion and social stability.

2.3. *Laogai vs. laojiao*: comparison and current application

As Biddulph (2018) points out, the decision of abolishing the re-education through labour system led to bigger consequences regarding the whole system of punishment in China and its scope. There was a need to substitute the *laojiao* or at least, to fill the gap left by its abolition. There are different opinions, as some scholars consider that there was no need for an intermediate power between the administrative and the criminal, because all the offences were already covered by one or the other; while others consider that there are some aspects that remain unresolved, for instance, with regard to some minor crimes that could be included under the *laojiao*, an administrative punishment or a criminal punishment. One of the reasons that could be referred to as the cause of this ambiguity is the vagueness of the law, as each offence typified was broadly described for, leading to a wide discretion for the police to decide whether an action was an administrative or a criminal offence. According to Biddulph (2018), there is a tendency since 2011 for filing cases under the criminal system that were previously under the *laojiao* scope, lowering the threshold for some offences such as disturbing social order, theft, bribery, fraud or corruption. The situation worsened in 2015 when the scope for criminal sentences was broadened again regarding the spreading of false information and disrupting social order. Even though, some other new administrative regulations have covered some behaviours that were previously under the threshold of the *laojiao*, for instance, detention for drug dependents and sex workers. On the other side of this overlapping, there is also the problem of those behaviours that do not fall under any kind of punishment system once the *laojiao* was abolished.

Since the beginning of the codification of the re-education through labour, it was seen as different but related to the reform through labour, basically as a lighter version of it, but maintaining labour as the core element in both cases. Although, this did not mean that *laojiao* was not coercive, since it should be applied by force in case the detainees were not willing to labour. Another fact is the promulgation of the Decision on *Laojiao* (1957). In some reform through labour centres there was no spatial separation anymore, because *laojiao* and *laogai* units were placed in the same centres and, even though, they were separated in organization and departmental terms depending on if they were complying with one type of punishment or the other. They were living and working together, and *laojiao* centres, according to Fu (2005, pp. 813-814) “could not be effectively distinguished”. This kind of practices point to the fact that in practice there was no distinction between the application of *laojiao* and *laogai*. Smith (2013, p. 176) refers to

the testimony of a former camp prisoner which pointed out that the only relevant differences between them were the fact that *laogai* inmates had their heads shaved and did not receive any salary, even if it was symbolic, while *laojiao* inmates did not have their heads shaved and received a small salary (Smith, 2013).

This objective of re-education of people kept alive and aligned with the Party's ideals after the abolition of the re-education through labour system happened in 2013. Even that might seem to have provoked a loose in political and legal control, has happened the opposite and as a consequence, has been an increase of the use of alternative administrative forms of detention. Noakes (2018) referred to the "black jails" that are unofficial detention centres placed in different infrastructures such as mental hospitals, drug rehabilitation centres or abandoned buildings, among others, and he mentions a Report by Amnesty International, which states that the abolition of the re-education through labour centres has served for other educational centres to be opened as the substitutes of *laojiao* centres, having little difference in the treatment applied. In all cases, the existence of them has always been denied by the Government. Other facilities have also appeared after the abolition of the *laojiao*, renaming old re-education through labour facilities into drug rehabilitation centres having the same treatment as before. Another type of post-*laojiao* facilities have been called "Custody and Education Centres" intended to reform sex workers.

Despite the fact that there was no distinction in practice between reform through labour and re-education through labour, or almost none, the objective of both of them was significantly different since the beginning, and the government tried to make that difference clear. Whereas the first one was aimed to use hard labour as punishment to achieve a reform in the thought of those who were convicted for committing a crime established in the criminal laws, having the performance of labour as the basis; the second one had a more complex ambition, as the government entitled administrative authorities to confine people who did not commit any type of crime, to reshape their minds. In this second case, they were confined under a re-education through labour sentence for having carried out a set of actions or behaviours that were considered to go against the regime of the CCP, although these actions were not considered a proper crime, and make them change their thoughts to mould them to those of the party: that is, to have a socialist ideology and to be one subject of the working class (Noakes, 2018, pp. 200-201).

Chen (2008, pp. 292-293) referred to the distinction between administrative sanctions and

criminal punishments as an “artificial and arbitrary distinction”, arguing that *laojiao* is out of control of the proper process and beyond judiciary’s supervision, bringing out human rights protection problems. In 1996, a debate arose in relation to the legality of the *laojiao*, because the Law on Administrative Penalties provided that personal freedom must be prescribed by law and that administrative regulations cannot restrain personal freedoms as it happens with *laojiao*. At that time, it was suggested either its abolition or its absorption into the Criminal Law, but it was not until the 2013 that the abolition took place.

Regarding a more current question, the *recent* controversies in relation to the re-education centres in Xinjiang have its origins after the September 11 terrorist attack in the USA. After that incident, the Chinese government enhanced a campaign against terrorism in Xinjiang to deal with domestic terrorism, changing its strategy from dealing with it secretly to doing it openly and showing the dangers that it supposes. This strategy served to the government to justify taking tough measures against terrorism and any action related to it. Terrorism has been considered as one of the three dangers to national security, along with ethnical separatism and religion fundamentalism (Fu, 2005, p. 828). Under this precedent the Chinese government has placed under the scope of terrorism many political offences, for example, what was before punished as secession and sedition in the case of the practice of a religion considered unlawful, was considered as terrorism after the campaigns against terrorism. This approach was very focused on the region of Xinjiang and its Muslim population, since religious fanaticism has also been treated as terrorism and as a form of separatism. *Laojiao* was used to detain people based in Xinjiang who were considered dissidents or protesters to be re-educated, while those accused of terrorist activities were sentenced to criminal penalties (Fu, 2005, pp. 827-828).

Years after the abolition of the *laojiao* system, around 2017 some controversial reports spread on the interments of a large population of Muslim people from the Uyghur ethnicity, which was referred to as “occupational education programs”, but also making reference to the imprisonment of those who have been named as religious extremists. In any case the government has spoken about the existence of a detention system for education or indoctrination. For that reason, there has been accusations during the recent years of massive detentions of Muslim people for re-education without due process. This process of re-education in the area of Xinjiang has also been referred to as “transformation through education” in relation to a political re-education of the general population in what

could be analogous to *laojiao*. The term used sometimes for an equivalent of *laogai*, has been de-extremification, although the more common name is reform through labour. In regard to the naming of the infrastructures where it is developed, for *laogai* is prisons, while for the rest to the people interned under a process of re-education, they have been called transformation through education centres or schools. These campaigns have suffered an evolution along time at the beginning the process was implemented to specific focus persons and there were not interment facilities, but vocational training centres (Zenz, 2018).

All these debates, not only regarding the re-education campaigns in Xinjiang, but referring to the whole system of re-education through labour were even more relevant when China signed two international treaties, which are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights at the end of the 1990s, because they establish that no person should perform forced or compulsory labour, the arrest should be done according to the law, the person should know the reason of detention, and have a prompt trial if anyone detained on criminal charges; also the Universal Declaration of Human Rights establish that no person should be subject to arbitrary arrest or detention. In regard with the re-education through labour, some problems arose, since the detentions were made under administrative provisions and there were circumstances where detainees were sent to *laojiao* without a trial. Rojek (2001, p. 100) points out that human rights are undermined in order to eliminate crime, and this has been happening since the first anticrime campaigns in the 1950s. It is also relevant that people arrested under *laojiao* were not really prisoners but received the same or almost the same treatment. This is related to the accusations of bad conditions in the centres of re-education that do not comply with international standards set by the United Nations (Zou, 2001). Moreover, an amendment of the Criminal Code took place in 2015, in which some forms of conduct were criminalized, being before under the scope of the *laojiao*. This means that a toughening of the law was produced, and a wider range of conducts were criminalized, giving rise to the situation in which much more serious actions are punished in the same way as much lesser serious actions (Su, 2016, p.77).

2.4. Punishment and economic development

Finally, due to the nature of both the re-education through labour and reform through labour systems, it is important to analyze the relations between this kind of punishment that implies the performance of manual or hard labour and the economic consequences that it entails. In this case, the utilization of labour as a mean to reform people, especially through collective labour, has the secondary consequence of economically contribute to state economy. The Chinese government has been criticized for taking advantage of silencing and repressing political voices, and also taking advantage of this circumstance to obtain financial benefits, by creating docile workers and self-supporting persons. Also, many industries also tried to obtain profit by sending those workers who were not profitable or willing enough to work to re-education centres. This later changed since some reforms were applied to establish a series of requisites to send workers by industries to *laojiao* centres (Fu, 2005).

Since the first stages of the re-education through labour, education was the fundamental objective to encourage social and moral behaviours, but another part of this process was to establish a labour perspective and comprehend the point of view of the proletarian class, not only regarding *laojiao* and *laogai*, everyone should acquire a labour perspective and have a labourer point of view, to help the country recover economically after years of foreign invasions, wars and revolution. Smith (2013) mentions how some cities were referred to as “non-productive and parasitic cities”, as it was claimed that before revolution, cities were consumptive not productive, where most of the non-productive population was part of the masses, for instance, people who came from rural areas that ended unemployed, but also imperial aristocrats and bureaucrats from other regimes. Labour was considered the foundation of human society and its development. This situation was solved by deporting people and creating the *hukou* registration system to identify those non-productive people in the cities, in which only a limited number of people could have an employment. For these reasons, one of the advantages created as a result of the *laojiao* and *laogai* centres, besides the political and ideological education, was to create self-financed centres with the work of the detainees, being the system of labour crucial for “major national development projects” (Zhang et al, 2017, p. 1213).

Wu (1992) explains that labour reform camps usually had two names: the name referred to the facilities as prisons, that was used internally, such as re-education through labour camps, labor reform camps, etc.; and the name that was publicly known, such as farm,

coal mine or tea factory, depending on their production. Rojek (2001) expose they were usually similar to high-production factories where workers laboured for six days a week. They were referred as “special state-run enterprises” with the statement of “reform first, production second”, and were dependent both on the Public Security and Judicial bureaus and the Bureau of Production. They were an important part of the socialist construction of the CCP, even though there are not any reliable data to know to which extend the labour performed in labour reform camps contributed to the PRC’s economy.

Also, in these centres, at least in *laogai* centres, there was no salary for the workers apart from the basic food and place to sleep, and in the case of *laojiao*, the salaries were much less than regular workers, making them even more profitable for the State. Wu claims that these systems were so extended nationally that its disappearance not only would have affected the political control of the Communist Party, but it would have also affected significantly national economy. Even though, Wu’s statement is based on the reality of 1992 and despite the fact that the performance of labour was a subsequent result of the nature of the *laojiao* and *laogai*, the core objective of these both forms of discipline was always kept in the process of re-education of people from the inside, to re-shape unlawful and immoral thoughts and behaviours into something adequate according to social standards.

Conclusions

As a consequence of globalization and the innovation of the technologies of information and communication in recent times, there are much more information than ever before. This has caused that very different cultures and societies are in constant interconnection, even more, when things that happen in the other side of the world affect directly or indirectly our lives. This new situation of the world has caused a great number of benefits, mostly economic, but also some misunderstandings, mostly related to a lack of knowledge of the others. For instance, the controversies in the Xinjiang region in China in relation to the origin of the products made there and their relationship with the re-education centres, or more recently with the war between Russia and Ukraine. When these cases arise, most people talk about it and the media reporting on it extensively, but in fact there is a knowledge gap. This research has analyzed one phenomenon of the Chinese society which came to be very relevant internationally, because of the controversies in Xinjiang, and this is the re-education through labour.

Re-education through labour was an administrative form of punishment that officially emerged in the 1950s when the PRC was first established, to be applied on those considered counterrevolutionaries, or those against the Party's ideals, and those who have committed immoral behaviours not enough serious to be considered crimes. The use of education to reform those who have committed crimes or merely had immoral behaviours was already used in imperial times. The reform through labour, is a parallel punishment to be applied on those whose actions have been considered a crime punishable by criminal law.

The importance of morality and social conventions in Chinese society since imperial times is key to understand the evolution of the law and punishment, Confucian thought advocated that human nature is good and people should be educated on the grounds of morality instead of being punished for bad behaviours. And so, it exists a connection between Confucian thought and re-education through labour, since the core foundation of both is education and the need for a second chance for those who have not behaved well. Legalism thought, consider that evil is inherent in people and hard punishment is needed to control them. In this regard, re-education through labour during the PRC also has aspects in common with Legalism, as it is a punishment applied forcefully on those who disagree with the Party's ideology, although it does not have, at least formally, the form of corporal punishment as defended by legalists. Therefore, a mix of both schools of

thought is relevant to the interests of the Party. In more general terms, corporal punishment in China has been less and less used in favour of confinement or exemplar punishment, more focused on morality and the objective of reintegrate people into society.

Re-education through labour system has been discussed for its administrative nature and capacity to arrest and detain people, which means that its lawfulness, has been questioned, the law who covered the re-education through labour was not approved by the competent body and the legal system in which it was placed was not the proper one, as the criminal system is the one entailed for it. Complaints for these motives were one of the reasons by which the *laojiao* system was abolished. There are more ambiguity and vagueness of the law, principally, regarding its scope, and almost every conduct could be included in the codified actions, and has been changing through time, according to political and social changes. The actual application of re-education through labour and reform through labour is almost the same, with just a few differences between *laojiao* and *laogai* detainees. This closeness between the two systems has been highlighted when the re-education through labour was abolished in 2013, mainly because similar conducts could be punished by the administrative or criminal system depending on their degree of seriousness, but once the *laojiao* system was abolished, there has been a tendency to penalize by criminal laws conducts that were previously regulated by administrative. The abolition of the *laojiao* has not served to relax the system of punishment in China, but a hardening is taking place. A consequence conducts with very different ranges of seriousness are being punished in the same way, what it goes against the principle of proportionality.

Finally, regarding the abovementioned cases of re-education centres in the region of Xinjiang, there has also been accusation of having reshaped the re-education through labour system into different forms, but maintaining the same nature. There are complaints about education centres opened in the area by justifying that it is a campaign against terrorism. Even though, all the information on this topic is very limited and unknown, so it is difficult to know if these education centres function as former re-education through labour centres. Although, could be confirmed that since the election of Xi Jinping as the President of China in 2013, coinciding with the abolition of the re-education through labour, there has been a toughening of the policies in relation to freedom of expression and access to information, as a new method of controlling public discourse and social stability.

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