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Outsourcing the State Power: Extrajudicial Incarceration during the Cultural Revolution

WU Guo

This article reconstructs the origins, typology and implications of extrajudicial incarceration as a political phenomenon during the Cultural Revolution. It analyses the “cowshed” based on its various founders and functions at different stages of the Cultural Revolution, and argues that the Party committees, the People’s Liberation Army (PLA) and the revolutionary committees, i.e. the arms of the state, played a role no less significant than student Red Guards in confining and torturing innocent people. The article emphasises that the cowshed was distinct for its pervasive, decentred, arbitrary and spontaneous characteristics; however, the exertion of direct popular justice without formal intermediation in China was an alternative form of state violence through outsourcing the state power.

INTRODUCTION

This article attempts to examine the establishment and functioning of makeshift jails, represented by the “cowshed” (*niupeng*), during the Cultural Revolution, 1966–1976. These jails were neither authorised by state law enforcement organisations, which were under attack during the mass-based revolts, nor were they private confinements. The various forms of extrajudicial detention locked up and tortured many innocent people who were deemed politically susceptible. There are very few studies on the forms of imprisonment during the Cultural Revolution. Research on the Cultural Revolution also often fails to differentiate jail and prison from other mass-based or state-delegated detention sites established under various circumstances for different purposes.¹

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¹ Some recent research works on the Cultural Revolution focus on the Red Guard movement, see Andrew G. Walder, *The Beijing Red Guard Movement: Fractured Rebellion* (Cambridge, MA: Harvard University Press, 2009), or on rural violence, see Su Yang, *Collective Killings in Rural China during the Cultural Revolution* (Cambridge: Cambridge University Press, 2011). Other research continues the interest in the Mao cult and also examines its international influence; see Daniel Leese, *Mao Cult: Rhetoric and Ritual in China’s Cultural Revolution* (Cambridge: Cambridge University Press, 2001); and Alexander Cook, ed., *Mao’s Little Red Book: A Global History* (Cambridge: Cambridge University Press, 2014). Some scholars focus on the cultural and artistic forms during the Cultural Revolution, see Barbara Mittler, *A Continuous Revolution: Making Sense of Cultural Revolution Culture* (Cambridge, MA: Harvard University Asia Center,

Since the early years of the People's Republic of China (PRC), legal pretrial detention included jails (*kanshousuo*), shelter for investigation centres (*shourong shencha suo*) and police lockups (*juliusuo*) at various levels.² Even during the Cultural Revolution, these institutions continued to jail common criminals.³ Whereas past studies on the Chinese law enforcement system paid more attention to the institutionalised Chinese incarceration and the system of *laogai*, i.e. “reform through labour”, this study aims to focus on the makeshift and extrajudicial nature of confinement, its founders, management, the use of violence, the experience of the detainees, and the contextual meaning of the Chinese socialist political apparatus and revolutionary/military ideology.⁴ To this author, temporary imprisonment in Maoist China was also different from the Soviet Gulag, for the former was less institutionalised and bureaucratised, more ad hoc and on-site, and also the cowshed, in particular, lacked obvious economic purposes.⁵ Temporary imprisonment was also different from the May Seventh Cadre School established in the late 1960s—another Chinese form of penalising and re-educating cadres and intellectuals—in that the former emphasised compassionate social relief

2012). For public security work and internal surveillance before and right after the outbreak of the Cultural Revolution, see Michael Schoenhals, *Spying for the People: Mao's Secret Agents, 1949–1967* (Cambridge: Cambridge University Press, 2013). In *Mao's Last Revolution*, for example, Roderick MacFarquar and Michael Schoenhals focus more on beating, murder and mass killing as manifestations of the Red Terror than detaining and confinement. When the two authors refer to the internment in the cowshed, they use the word “arrest” and sometimes “detain”, while arrest or *daibu* in Chinese is used only as an act of the government. See Roderick MacFarquar and Michael Schoenhals, *Mao's Last Revolution* (Cambridge, MA: Harvard University Press, 2006), p. 257.

² Kate Saunders, *Eighteenth Layers of Hell: Stories from the Chinese Gulag* (London and New York: Cassel, 1996), pp. 1–2. In China, the place that holds people who are convicted of crimes by the court is called *jianyu* (prison).

³ Wang Xuetai mentioned that he was taken into a jail (*kanshou suo*) as a counter-revolutionary in 1975, but most of the inmates he saw were common criminals. See Wang Xuetai, *Jianyu suoji* (Reminiscence of Prisons) (Beijing: Sanlian shudian, 2013), p. 56.

⁴ For studies on Chinese prison in the first half of the 20th century, see Frank Dikötter, *Crime, Punishment and Prison in Modern China* (New York: Columbia University Press, 2002). For the post-1949 system of punishment, see Frank Dikötter, “Crime and Punishment in Post-Liberation China: The Prisoners of a Beijing Gaol in the 1950s”, *The China Quarterly*, no. 149 (March 1997): 147–59. Hongda Harry Wu provides a very detailed examination of the *Laogai* system of China in his *Laogai—The Chinese Gulag*, trans. Ted Slingerland (Boulder, CO: Westview Press, 1992). For a systemic inquiry into the pre-Cultural Revolution Chinese judiciary system, see Jerome Alan Cohen, *The Criminal Process in the People's Republic of China, 1949–1963* (Cambridge, MA: Harvard University Press, 1968). For post-Mao Chinese Criminal Justice, see Leng Shao-Chuan and Chiu Hungdah, *Criminal Justice in Post-Mao China: Analysis and Documents* (Albany, NY: State University of New York Press, 1985). It should be noted that it was lawful in early American history to confine a person convicted of a crime and put him to hard labour. See Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (Cambridge, MA: Harvard University Press, 2008), p. 41.

⁵ For the economic goal of the Soviet political camps, see Anne Applebaum, *Gulag: A History* (New York: Doubleday, 2003), p. 55. Hongda Harry Wu also mentioned in his book, *Laogai—The Chinese Gulag*, how the labour camps in China were disguised as “farms” and “factories”, where prisoners engaged in production.

and re-education while the latter stressed the integrating of intellectuals with workers and peasants through engagement in hard labour.⁶ The innovative forms of incarceration during the Cultural Revolution were characterised by politicisation, multiple founders, various objectives, denial of personal freedom, arbitrary sentences and extensive use of violence.

This article thus calls for an alternative approach to study the mechanism of disciplinary penalty during the Cultural Revolution, which complemented the existing judiciary and prison apparatus in a decentred way.⁷ There are two forms of law enforcement in China. One is the jural (formal) model of codified rules, and the other is socially approved norms and values.⁸ This article focuses on the working mechanism of the latter by examining state agents' use of discretionary power to purge politically undesirable or suspicious elements. As an outgrowth of Mao Zedong's contempt for a formal legal system, his instrumentation with the laws, his preference for informality in imposing sanctions and for confinement demonstrated more populist, spontaneous and decentred characteristics of mass politics.⁹ Michel Foucault in fact conceptualised

⁶ For a study of the detention-re-education centres for vagabonds and prostitutes in Beijing in the 1950s, see Aminda M. Smith, *Thought Reform and China's Dangerous Classes: Reeducation, Resistance, and the People* (Lanham, MD: Rowman & Littlefield, 2013). Often, the May Seventh Cadre School which sent officials and intellectuals down to the countryside to do hard labour, was also loosely called the cowshed, see Zhao Feng, *Hongse niupeng: Wuqi ganxiao jishi (Red Cowsheds: Facts in May Seventh Cadre Schools)* (Xining: Qinghai renmin chubanshe, 1999). The author would like to argue that there was a major difference between the cowshed and the May Seventh Cadre Schools. According to Yang Jiang, she still received a "high salary" in the May Seventh Cadre School, where she was "re-educated" (cowshed internees were usually only allocated a minimum stipend for food). Yang also mentioned that some scholars were sent down to the cadre school in the rural area after they were released from the cowshed in the academy. See Yang Jiang, *Ganxiao liuji (Six Chapters about My Life in Cadre School)* (Beijing: Zhongguo shehui kexue chubanshe, 1991), pp. 3, 35. At a cadre school set up in Jiangxi province after 1969 for about 2,000 Beida faculty and staff, the professors lived together with peasants and engaged in farming, building, popularising agricultural mechanisation, and recruiting and educating local students. Some faculty members lived and worked in the cadre school with their spouse and children. Beida faculty in the cadre school continued to receive their normal paycheques. See Chen Pingyuan, ed., *Liyuzhou jishi (Chronicle of Liyuzhou)* (Beijing: Beijing daxue chubanshe, 2012), pp. 35–6, 93, 167–90.

⁷ Even during the Cultural Revolution, Chinese prisons were still functioning, and criminals and counter-revolutionaries were still being tried and sentenced. For an account of the imprisonment during the Cultural Revolution by the late economist Yang Xiguang (also known as Yang Xiaokai), who was sentenced to 10 years in a labour camp, see Yang Xiguang and Susan McFadden, *Captive Spirits: Prisoners of the Cultural Revolution* (Oxford: Oxford University Press, 1997). Also, see Kang Zhengguo, *Confessions: An Innocent Life in Communist China*, trans. Susan Wilf (New York: W.W. Norton & Company; reprint ed., 2008). Lu Li'an, a college student and founder of the North Star Study Society (*Beidouxing xuehui*) was accused of being an "acting counter-revolutionary who viciously attacked Chairman Mao" and was formally arrested by the Hubei Provincial Revolutionary Committee. His cell in the prison was about 12 square metres large, accommodating three to four prisoners. See Lu Li'an, *Yangtian changxiao: yige danjian shiyi nian de hongweibing yuzhong yu tian lu (Outcry from a Red Guard Imprisoned during the Cultural Revolution)*, e-book (Hong Kong: Chinese University Press, 2005).

⁸ Leng and Chiu, *Criminal Justice in Post-Mao China: Analysis and Documents*, p. 7.

⁹ For Mao's attitude towards the law, see Leng and Chiu, *Criminal Justice in Post-Mao China*, pp. 9–10.

this Maoist practice. In the early 1970s, Foucault delegitimised the people's court as "petty bourgeois", praising the September 1792 massacre and applauding the proletariat's direct exercise of dictatorial power in removing any "intermediary" and "mediator".¹⁰ In Foucault's view, the people's court was not a natural expression of people's justice, which should be sought from "among the masses". He also rejected the concept of "state apparatus" under proletarian dictatorship, for it divided the masses.¹¹

During the Cultural Revolution, as Foucault hypothesised, the Public Security Bureau, the People's Procuratorate and the People's Court were all considered superfluous intermediaries between the masses and the enemy, and should thus be "smashed" (*zalan*) with Mao's approval.¹² Two catchphrases emerged: "mass dictatorship" (*qunzhong zhuanzheng*) and "case handling by the masses" (*qunzhong ban'an*). Similar to any revolution, the Cultural Revolution epitomised "a rapid, discontinuous, violent change that burst the bonds of the legal system".¹³ While the French Revolution also witnessed massacres during the early stages, they were limited in number, and from 1789 to 1790, there indeed emerged "a conciliatory and indulgent justice that reflected the humanitarian assumptions of the pre-revolutionary judicial reform movement".¹⁴

This article provides a new methodology for studying the unlawful deprivation of citizens' physical freedom in Maoist China based on the agents and functions typology, which will deepen our understanding of the phenomenon. It also analyses the shared features of the detention sites founded by different political actors. The author argues that the permeation of mass incarceration was an implicit implementation of a Foucauldian alternative, direct and mediator-free penal system with neither the French-style humanitarian assumptions, nor the Soviet institutionalism. In spite of the spontaneous and decentralised character and the newly emerging political actors such as workers and students, the Communist Party of China (CPC) still loomed large in the mass participatory execution of the state power, assuming the forms of the Party, the army and the "masses" who were *de facto* agents of state ideology and power. The Party merely "rearranged the power to punish", to quote from Foucault, but never relinquished the centralised power.¹⁵ Rather, the CPC "chose to outsource"

¹⁰ Richard Wolin, *The Wind from the East: French Intellectuals, the Cultural Revolution, and the Legacy of the 1960s* (Princeton, NJ: Princeton University Press, 2010), pp. 323–5.

¹¹ Foucault expresses his opinion in his debate with a French Maoist leader Victor in 1972. See David Macey, *The Lives of Michel Foucault: A Biography* (New York: Pantheon Books, 1993), pp. 299–300. For the full transcript of the conversation, see Michel Foucault, "On Popular Justice: A Discussion with Maoists" in Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (New York: Pantheon Books, 1977), pp. 1–36.

¹² Bu Weihua, *Zalan jiu shijie: wenhua dageming de dongluan yu haojie (Smashing the Old World: Havoc of the Cultural Revolution)* (Hong Kong: The Chinese University Press, 2008), p. 599, fn 131.

¹³ Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), p. 21.

¹⁴ Barry Shapiro, *Revolutionary Justice in Paris, 1789–1790* (New York: Cambridge University Press, 1993), pp. 35–43.

¹⁵ For the ideas that the power to punish may have been rearranged or shifted, and that the French monarch is a "super-power", see Michel Foucault, *Discipline and Punish* (New York: Vintage Press, 1977),

or delegate the task to the masses.¹⁶ Therefore, pervasive spontaneous arrests and unlawful deprivation of personal freedom manifested the contradiction between the Chinese communist revolutionary ideology and its formal socialist legality, represented by the socialist state and the budding legal apparatus.¹⁷

As most detention sites were unofficial and mass-based, there were few official records in government documents, speeches and minutes of meeting, let alone accounts of personal experiences of inmates, thus posing challenges in terms of methodology of research. Contemporary provincial gazetteers provide vague accounts of the paralysis of the police and judicial organs, and of the arbitrary arrests and internments that “caused a large number of wrong cases and persecutions of many cadres and the masses” during the Cultural Revolution.¹⁸ To reconstruct the narrative of internal management and daily life, this research also draws upon memoirs published in mainland China, Hong Kong and Taiwan, in addition to available official documents, speeches and local histories.

ORIGINS AND A TENTATIVE TYPOLOGY OF THE EXTRALEGAL INCARCERATION

The Chinese communist practice of confinement for investigation purposes may have begun with the Yan’an Rectification, particularly its radical scrutiny of cadres in 1943 when hundreds of officials and intellectuals were interned, tortured and forced to “confess” to spying.¹⁹ There was also a trend towards “simplifying” and “innovating”

pp. 80–2. For the contradiction between the CPC’s emphasis on centralisation and its reliance on the mass line, see Stuart Schram, *The Political Thought of Mao Zedong* (Cambridge: Cambridge University Press, 1989), pp. 97–8. It is noted that Michel Foucault went as far as to anticipate and sanction the proletariat’s exertion of its power “that is violent, dictatorial and even bloody over the class it has supplanted”. See Wolin, *The Wind from the East*, p. 324.

¹⁶ Michael Schoenhals, “Outsourcing the Inquisition: Mass Dictatorship in China’s Cultural Revolution”, *Totalitarian Movements and Political Religions* 9, no.1, (2008): 5.

¹⁷ The contradiction between the Party and the state was pinpointed by Zheng Shiping; see Zheng Shiping, *Party vs State in Post-1949 China: The Institutional Dilemma* (Cambridge: Cambridge University Press, 1997).

¹⁸ “Sichuan sheng difangzhi bianzuan weiyuanhui, *Sichuan sheng zhibingong’an sifa zhi*” (*Provincial Gazetteer of Sichuan/Public Security and Judiciary*) (Chengdu: Sichuan renmin chubanshe, 1997), p. 6.

¹⁹ Shi Zhe, *Wo de yisheng: Shi Zhe zishu (My Whole Life: Self-Portrait of Shi Zhe)* (Beijing: Renmin chubanshe, 2001), pp. 162–4, 168; Hu Qiaomu, *Hu Qiaomu huiyi Mao Zedong (Hu Qiaomu Reminiscing about Mao Zedong)* (Beijing: Renmin chubanshe, 2003), pp. 275–6. While Shi Zhe and Hu Qiaomu both emphasised the role of Kang Sheng in the purge, Chen Yung-fa pointed out that Mao merely shrewdly detached himself from Kang Sheng’s concrete deeds while stressing his opposition to confinement and forced confession. See Chen Yung-fa, *Zhongguo gongchan geming qishinian, xiuding ban shang (Seventy Years of the Chinese Communist Revolution)*, Revised Ed., vol. 1) (Taipei: Lianjing chuban gongsi, 2001), p. 395. In fact, Hu Qiaomu also mentioned that it was Mao who proposed the purge of “counter-revolutionaries” and “spies” during the Rectification. See Hu, *Hu Qiaomu huiyi Mao Zedong*, p. 274. Chen Yung-fa highlighted that Mao already knew his own order would inevitably lead to an “excess” but he still connived with Kang Sheng, see Chen, *Zhongguo gongchan geming qishinian (Seventy Years of the*

rules and legal procedures in the 1950s and early 1960s.²⁰ The establishment of the Supreme People's Court of the Poor and Lower-Middle Peasants (*pinxia zhongnong zuigao renmin fayuan*)—also known as a Chinese “kangaroo court”, in Daoxian county of Hunan province in August 1967—was another simplified form of the judiciary system during the Cultural Revolution. In a rural commune, these supreme courts at commune and brigade levels sentenced 128 people to death within two weeks.²¹ In the following discussion, the author outlines several types of extralegal and pretrial incarcerations during the Cultural Revolution based on the founder, the purpose and the identity of the victims, in chronological order.

Confinement under the Work Team (gongzuo zu)

In 1966, after the publication of the CPC Centre's Decision Concerning the Cultural Revolution, i.e. the May 16th Notice, Mao Zedong left Beijing and toured the south. Liu Shaoqi and Deng Xiaoping were entrusted to handle the movement. Liu and Deng despatched many work teams to take charge of the college campuses where Party secretaries and presidents were purged after Mao endorsed the big-character posters created by Nie Yuanzi et al. that accused Lu Ping, Song Shuo and Peng Peiyun, who were leaders of Peking University. At the initial phase spanning from May to July 1966, the Cultural Revolution was steered by work teams or existing Party committees that led the campaigns to purge “black gangs” and “ox ghosts and snake spirits”.²² The work teams used illegal confinement at this stage to deal with rebellious students.

Kuai Dafu, a student rebel accused as a “counter-revolutionary”, challenged the authority of the work team and was locked up at Tsinghua University by Wang Guangmei, wife of Liu Shaoqi and a work team leader on 4 July. On that same day, Kuai staged a hunger strike to protest the persecution, asserting that the personal freedom of citizens of the PRC is inviolable, as stipulated by the constitution. Kuai was later transferred to another university building where he was closely monitored by 24 people standing guard on four shifts until he was released on 22 July 1966, two days after Mao criticised the work teams.²³ These purges and confinements of

Chinese Communist Revolution), p. 394. For similarities between the internment during the Yan'an Rectification and the confinement at the grassroots level during the Cultural Revolution, see Chen, *Zhongguo gongchangeming qishinian*, p. 812.

²⁰ For information about “simplifying” the system of mutual restraints among the police, the procurator and the court from 1957 to 1963, also see Cohen, *The Criminal Process in the People's Republic of China, 1949–1963*, p. 17.

²¹ Tan Hecheng, *Xue de shenhua: gongyuan 1967nian Hunan Daoxian wenge datusha jishi (The Myth of Blood: An Account of the Massacre in the Daoxian County, Hunan Province in 1967)* (Hong Kong: Tianxingjian chubanshe, 2010), p. 259.

²² Yin Hongbiao, “Pipan zichan jieji fandong luxian: zaofang yundong de xingqi” (Criticize Criticising the Bourgeoisie Reactionary Line: The Rise of the Movement of Mass Rebellion), *Ersbiyi shiji (The 21st Century)*, no. 31 (October 1995): 61.

²³ Xu Aijing, *Qinghua Kuai Dafu (Kuai Dafu of Tsinghua)* (Hong Kong: Zhongguo wenge lishi chubanshe, 2011), p. 77.

radical students by the work teams from May through July, however, constituted serious crimes repudiated by the masses between August and September as evidence of “bourgeoisie reactionary line” (*zichan jieji fandong luxian*).²⁴ There were more than 800 students who were labelled counter-revolutionaries by the work team due to their support for Kuai, who for being “crowned” with the counter-revolutionary “cap”, lost his freedom and was confined and kept under guard day and night.²⁵ In restoring order and meting out punishment, the work team at Tsinghua University deprived Kuai Dafu and his sympathisers’ of their personal freedoms, while neglecting the fact that it violated the right to personal freedom of PRC citizens, as Kuai had correctly pointed out.

In some cases, work teams sent down by the higher authorities targeted politically suspicious and vulnerable people, such as teachers, who were usually considered intellectuals in China’s Maoist parlance. In Baishui county, Shaanxi province, the work teams despatched by the county’s Party committee intruded into local middle schools and assigned some of the teachers to the “teacher’s team of concentrated training” (*jiaoshi jixun du*). This detention centre, being maintained from 2 September 1966 to 2 January 1967, first confined a total of 109 teachers in a local theatre and then in a government shelter. During the four months of incarceration, the detained teachers were all denied their personal freedom. They had to engage in hard manual labour in the daytime and write confessions at night, and also report to the guards before using the restrooms. Their families were allowed to visit them and bring them things, which however had to be thoroughly checked. A male teacher, who was less fit and exhausted from the heavy labour of transporting rocks to a quarry, ended up taking his own life.²⁶

Incarceration by the Party Committee

When the work teams on college campuses withdrew after Mao’s intervention in July 1966, most local Party committees and their secretaries did not fall—rather, they actively suppressed the rebellious mass organisations that challenged them, although Mao already issued the Communist Party of China Central Committee’s (CPCCC’s) Decision Concerning the Cultural Revolution on 8 August 1966, i.e. the “sixteen points”.²⁷ Under the rule of Li Jingquan, south-west regional Party leader in Sichuan,

²⁴ Yin Hongbiao, “Pipan zichan jieji fandong luxian: zaofang yundong de xingqi” (Criticising the Bourgeoisie Reactionary Line: The Rise of the Movement of Mass Rebellion), p. 65.

²⁵ William Hinton, *Hundred Days War: The Cultural Revolution at Tsinghua University* (New York and London: Monthly Review Press, 1972), p. 55.

²⁶ Du Junfu, “Wenge chuqi de zhongxiaoxue jiaoshi jixun” (Concentrated Training of Middle School and Elementary School Teachers in Shaanxi during the Early Years of the Cultural Revolution), *Zuotian* (*Yesterday*) online journal, no. 11 (November 2012), at <<http://prchistory.org/wp-content/uploads/2014/08/2012%E5%B9%B4-11%E6%9C%88-30%E6%97%A5%E7%AC%AC-11%E6%9C%9F.pdf>> [27 August 2014].

²⁷ Tong Xiaoxi, *Jiduan niandai de gongmin zhengzhi* (*Civic Politics in an Era of Extremities*) (Hong Kong: Zhongguo wenhua chuanbo chubanshe, 2011), pp. 111–2.

216 teachers at the Chengdu Institute of Technology were purged in August 1966, excluding those who were previously designated as bad elements. Detained inside the college, these ousted teachers were forced to engage in hard labour and write up a “reform-through-labour plan” and a “reform-through-labour journal”.²⁸ Zhang Pinghua, Hunan provincial Party secretary, launched a campaign called “capture black ghosts” in September 1966, aiming to purge and detain workers and non-student masses, since it was stated explicitly in the “sixteen points” to protect students.²⁹ Purges of rebels by incumbent Party secretaries continued in waves until they themselves were attacked and locked up for being representatives of the bourgeoisie reactionary line in early October 1966.³⁰ For repudiating the Party secretary at his work unit, a 23-year-old man named Guo Jiahong, who was a team leader in a sericulture farm in Jiangsu province, was branded as an “ox ghost and snake spirit” and locked up by Zhenjiang municipal Party committee for four months from 17 June to 12 October 1966. Guo’s basic civil rights of correspondence during confinement was denied, and all his personal letters, whether outgoing or incoming, were confiscated and checked. In order to regain freedom, and also due to repeated interrogations and coercions, Guo eventually relented and confessed that he was a counter-revolutionary. In a letter of accusation, Guo also mentioned that he overheard mention of “sixteen points” on radio broadcasts, but the Party committee personnel denied him the access to information by turning off the radio.³¹

In October 1967, the Party centre called for restoration of the Party’s centralised leadership.³² After the CPC’s Ninth National Congress in 1969, the Party committees at different levels, which had been sidelined since October 1966, were re-established. From April 1970 to early 1973, Wu Dasheng, Party Secretary of Jiangsu province, organised the province’s “dig deeply (*shenwa*) for the May 16 elements” campaign. Wu defined the “May 16” elements as criminals who opposed the red flag and targeted Chairman Mao while raising the red flag. During those three years, 260,000 “May 16” elements were purged and 130,000 were thrown into extralegal, makeshift jails, known as “study classes” at the time. A total of 2,540 people died in confinement.³³ Beginning in February 1971, the “dig deeply for the May 16 elements” campaign in

²⁸ Ibid., p. 143.

²⁹ Ibid., p. 153.

³⁰ Ibid., pp. 169–70.

³¹ Guo Jiahong, “Kongsu shu: fennu kongsu Zhenjiang shiwei gongzuozu dui wo jianjin sigе yue de zhengzhi pohai” (Letter of Accusation: An Angry Accusation of Zhenjiang Municipal Party Committee’s Four-Month Confinement and Persecution of Me), 12 October 1966, in *Zhongguo wenhua dageming wenku* (*Chinese Cultural Revolution Database, CD-ROM*), ed. Song Yongyi et al.

³² Elizabeth J. Perry and Li Xun, *Proletarian Power: Shanghai in the Cultural Revolution* (Boulder, CO: Westview, 1997), p. 158.

³³ Wang Chunnan, “Wen’ge zhong pipan qingcha wuyiliu yundong” (The Campaign of Purging the “May Sixteenth” during the Cultural Revolution), *Chinese News Digest*, at <<http://hx.cnd.org/2015/02/02/>> [6 February 2015].

Suzhou University, Jiangsu province, labelled 396 out its 688 faculty members as May 16 elements. One female teacher was raped by an investigator during the interrogation.³⁴

“Cowshed” Founded by Red Guards

Student Red Guards played a major role in setting up unofficial confinement sites. Since the work team dispatched to Peking University by the Beijing Municipal Party Committee was disbanded in late July 1966, the Peking University Cultural Revolutionary Committee took over the campus. Nie Yuanzi, well known for her poster that attacked the Peking University’s senior leaders, became the head of the committee. All of the departments also set up their own departmental Cultural Revolution committees. Hao Bin, a young assistant professor of the history department, was alleged a counter-revolutionary and was openly humiliated and tortured in July 1966. On 27 September 1966, Hao, along with 23 other faculty members, was sent by the department’s Cultural Revolution committee to Taipingzhuang, a village in Beijing’s suburban Changping district, where they were deprived of personal freedom and placed under round-the-clock surveillance. As Hao reminisced in his memoir 40 years later, the “concentration camp” was officially called a “reform-through-labour team” (*laogaodui*) by student Red Guards. Inside the camp, the confined professors followed a daily routine: wake up at 6 a.m.; assemble for roll call; read for an hour before breakfast; and engage in manual labour for four hours in the morning and another four in the afternoon. After dinner, they were required to study the *Selected Works of Mao Zedong* and then write their confessions. Only Sunday afternoons were designated for attending to personal matters such as having a haircut, doing laundry or sending letters. As a form of soul-cleansing rite, the Red Guards ordered the professors in daily discussion sessions to plead guilty in front of Mao’s portrait before mealtimes, and to avow before the Red Guards, who were their former students, that they would reform themselves thoroughly.³⁵

According to Ji Xianlin, a leading scholar of South Asian languages and member of the rebellious “Jinggang Mountain Corps”, the detainees at Peking University were treated like real criminals. The “Rules for Criminals under Labour Reform” (*laogai zuifan shouze*) hanging on the wall were reminders of their status; labelled as “black gangsters”, they had to get up at 6 a.m. and run in the courtyard before breakfast; copying and memorising Mao’s most recent “supreme directives” was mandatory before they began their day of hard physical labour, which were tasks of former university blue-collar workers but assigned to reformed intellectuals. The Red Guards, most of whom were Peking University students, might summon a prisoner randomly anytime

³⁴ Zhu Zinan, “Yisuo gaoxiao qingchao wuyiliu de beiju” (Tragedies at an Institution of Higher Education during the Movement of Cleansing the May 16th Elements), at <<http://hx.cnd.org/2015/04/20/>> [28 April 2015].

³⁵ Hao Bin, *Liushui beceng xi shifei: Beida niupeng yijiao* (*The Past Has Not Been Washed Away: A Glimpse of the Cowshed at Beida*) (Taipei: Dakuai wenhua chubanshe youxian gongsi, 2014), pp. 73–6.

and anywhere to recite the directives of Mao. If the professor failed to recite accurately, he or she would be slapped in the face. These professors were sent down to factories to carry bricks, rocks, coal or sand. They were not allowed to have eye contact with the guards and were required to lower their heads when the student guards showed up. Worst of all, the student guards even appointed informers to spy on other inmates.³⁶

In the aforementioned cases, these confinement sites were best known as “cowsheds” (*niupeng*) among the victims. *The History of Xiamen University* defines *niupeng* as a site for “concentrated (*jizhong*) study under supervision and reform through labour”.³⁷ Both Hao Bin and Ji Xianlin used the term *niupeng* in the title of their memoirs. Hao said he first heard of the word in 1969 from a student, after his release from the three-year off-campus internment. To him, *niupeng* aptly encapsulated the meaning since it confined “ox ghosts and snake spirits” (*niu gui she shen*), the Chinese terminology for cadres, intellectuals and other targets of political purge.³⁸ Wang Youqin highlighted that “cowshed” was an unofficial name given to these detention houses set up after 1968 by “units” (*danwei*) across the country following the launch of “cleansing the class ranks” (*qingli jieji duiwu*) campaign. Wang also pointed out the purpose attributed to the origin of the name “cowshed” because it locked up “ox ghosts and snake spirits”.³⁹ Both Wang and Hao agreed that the name “cowshed” had an underlying dehumanising tone in its objective to reform and deprive social elites of personal freedom. The term “ox ghosts and snake spirits” had its origin in Buddhism and was first coined by Tang dynasty poet Du Mu.⁴⁰ As some scholars had noticed, the tendency to designate political enemies as evil demons demonstrated the persistence of the demonological paradigm in modern Chinese political culture that began in the Taiping Rebellion.⁴¹ In 1955, Mao used “ox ghosts and snake spirits” with a derogatory connotation to indicate unwanted images in Chinese theatre. By 1965, Mao had already used the term to refer to potential enemies in his precautionary warning to internal security personnel that they should be watchful that “ox ghosts and snake spirits will come out to sabotage the state when it is at war”.⁴² In 1966, it

³⁶ Ji Xianlin, *Niupeng zayi (Reminiscences in the Cowshed)* (Beijing: Sanlian shudian, 1999), pp. 138–79.

³⁷ Xiamen daxue dang’anguan, ed., *Xiamen daxue xiaoshi (The History of Xiamen University)*, vol. 2 (Xiamen: Xiamen daxuechubanshe, 2006), pp. 161–5.

³⁸ Hao, *Liushui heceng xi shifei: Beida niupeng yijiao (The Past Has Not Been Washed Away: A Glimpse of the Cowshed at Beida)*, p. 23.

³⁹ Wang Youqin, *Wenge shounanzhe (Victims of the Cultural Revolution)* (Hong Kong: Kaifan zaizhi chubanshe, 2004), p. 14.

⁴⁰ “Fo jiao qutan: jiemi niu gui sheshen de zhenshi laili” (*Anecdotes about Buddhism: True Story of Ox Ghosts and Snakes Spirits*), at <<http://www.emsfj.com/ptjl/ShowArticle.asp?ArticleID=2960>> [12 August 2014].

⁴¹ Berend J. ter Haar, “China’s Inner Demons: The Political Impact of the Demonological Paradigm”, in *China’s Great Proletarian Cultural Revolution: Master Narratives and Post-Mao Counternarratives*, ed. Chong Woei Lien (Lanham, MD: Rowman & Littlefield Publishers, 2002), pp. 27–60.

⁴² Anonymous, ed., *Mao Zedong sixiang shengli wansui (Long Live Mao Zedong Thought)* (Beijing, 1969), p. 54. This is a compilation of Mao Zedong and Lin Biao’s quotations published in 1969 for “internal study”.

became a label for all anti-Party and anti-socialist elements in society.⁴³ On 1 June 1966, the *People's Daily* published an editorial titled "Sweeping Over (*hengsao*) All Ox Ghosts and Snake Spirits", calling for old thoughts, old culture, old customs and old habits, i.e. the "four olds" to be smashed. Therefore, this figurative term implicitly demonised and criminalised the subjects under investigation, reducing them to the subhuman level, and justifying violence and torture.

The Role of the People's Liberation Army in Confinement of Rebels

During the Cultural Revolution, the People's Liberation Army (PLA) also played a leading role in confinement and punishment of rebels starting from 1967, when it assumed the judicial role. On 21 January 1967, Mao ordered the PLA's intervention of rebellion and power seizure by supporting the leftist revolutionary masses, known as the "three supports and two militaries" (*sanzhi liangjun*).⁴⁴ On 19 March 1967, the CPC Central Military Commission (CMC) issued a formal directive on supporting agriculture and industry, and implementing military training and military control.⁴⁵ Most provinces were put under military control prior to the establishment of the revolutionary committee, which was completed by 5 September 1968, and the military control commission nationwide thus "replaced the police, the legal apparatus, and the People's courts during the Cultural Revolution".⁴⁶ In Nanning, capital of Guangxi Zhuang Minority Autonomous Region, the military region replaced the judicial apparatus on 23 January 1967, and in June 1968, the military control commission jailed 975 rebels, among whom 37 were beaten to death and 29 committed suicide.⁴⁷ In February 1967, the PLA confined over 10,000 Xiang River and Red Flag Army activists in Changsha, Hunan province.⁴⁸ In the spring of 1967, the Chengdu Military Region detained close to 100,000 rebels for about two months in Sichuan. The detainees were locked up in temporary confinement facilities where 12 people were squeezed within a nine-square-metre space, and had to share a chamber pot and another pot for washing rice bowls. "Some were locked in underground cells without any

⁴³ Mao Zedong "Zai Zhongguo gongchandang quanguo xuanchuan gongzuo huiyi shang de jianghua" (Speech given to the CPC National Propaganda Work Conference), March 1955, in *Mao Zedong xuanji di qu juan* (*Selected Works of Mao Zedong*), vol. 5 (Beijing: Renmin chubanshe, 1977), p. 416; *The People's Daily* on 1 June 1966 carried an editorial calling the masses to "sweep over all kinds of ox ghosts and snake spirits".

⁴⁴ Mao Zedong, *Jianguo yilai Mao Zedong wengao* (Remarks and Speeches of Mao Zedong after the Founding of the PRC), vol. 12 (Beijing: Zhongyang wenxian chubanshe, 1998), p. 197.

⁴⁵ Bu, *Zalan jiushijie* (*Smashing the Old World*), p. 410.

⁴⁶ Feng Jikai, *Voices from the Whirlwind: An Oral History of the Chinese Cultural Revolution* (New York: Random House, 1991), p. 53.

⁴⁷ Zhonggong Guangxi quwei zhengdang bangongshi (CPC Guangxi Party Rectification Committee), *Wenge jimi dang'an: Guangxi baogao* (Confidential Archives of the Cultural Revolution: Reports from Guangxi) (Hong Kong: Mirror Books, 2014), pp. 55, 205.

⁴⁸ Wu Yiching, *The Cultural Revolution at the Margins: Chinese Socialism at Crisis* (Cambridge, MA: Harvard University Press, 2014), p. 152.

sunlight and without being able to move at all”.⁴⁹ In March 1967, Generals Xu Shiyou and Du Ping, two chief leaders of the Nanjing Military Region, founded the Jiangsu Provincial Military Control Committee in Jiangsu province to stop factional conflicts and to restore social order after the downfall of the old Provincial Party Committee. The military control commission placed Jiangsu province under martial law, and imprisoned hundreds of rebels, whom it labelled as counter-revolutionaries.⁵⁰ In fact, the PLA played a leading role in jailing people in Jiangsu when students left the cities to take up assigned jobs or went to the countryside in the second half of 1968.⁵¹

Mass Dictatorship under the Revolutionary Committee

The revolutionary committee, which had its origin in Heilongjiang province in 1967 and was later promoted nationwide by the Party centre as the ideal form of local power, adopted the “three-in-one” combination of revolutionary cadres, the masses and PLA representatives to replace the old, parallel dual-power organisations of the Party and government.

Within this power structure, however, army representatives still played a major role.⁵² In March 1968, Jiangsu founded its own revolutionary committee, led by General Xu Shiyou, who continued to be trusted by Mao. In August 1968, the Jiangsu revolutionary committee convened its “Mao Zedong thought study class” (*Mao Zedong sixiang xuexiban*) to repudiate and reform those anti-revolutionary committee rebel faction members.⁵³ The “Mao Zedong thought study class”, which Mao himself personally endorsed as a “good method” to solve “many problems”, was actually a temporary detention facility.⁵⁴

The revolutionary committee was directly responsible for implementing the “cleansing the class ranks” (*qingli jieji duiwu*) policy in May 1968, although Jiang Qing first mooted the idea in November 1967.⁵⁵ In Changchun, capital of Jilin province, the cleansing campaign officially kicked off in May 1968, three months after the founding of the provincial revolutionary committee. A Mao Zedong thought propaganda team run by the army entered a small company affiliated with Changchun Agricultural Machinery Company to help build the company revolutionary committee

⁴⁹ MacFarquhar and Schoenhals, *Mao's Last Revolution*, p. 178.

⁵⁰ Dong Guoqiang and Andrew G. Walder, “Local Politics in the Chinese Cultural Revolution: Nanjing under Military Control”, *The Journal of Asian Studies* 70, no. 2 (May 2002): 430.

⁵¹ Dong Guoqiang and Andrew G. Walder, “From Truce to Dictatorship: Creating a Revolutionary Committee in Jiangsu”, *The China Journal*, no. 68 (July 2012): 27.

⁵² In Hubei province, the ratio of army representation within the revolutionary committee was as high as 98 per cent. See Bu, *Zalan jiushijie (Smashing the Old World)*, p. 728.

⁵³ Dong and Walder, “From Truce to Dictatorship”, p. 27.

⁵⁴ Wang, *Jianyu suoji*, p. 184.

⁵⁵ Bu, *Zalan jiushijie (Smashing the Old World)*, pp. 673–6. To further understand the close relationship between the Revolutionary Committees and the campaign of cleansing the class ranks, also see MacFarquhar and Schoenhals, *Mao's Last Revolution*, p. 254.

and at the same time select members to work in “Mass Dictatorship Corps” (*qunzhong zhuanzheng dui*). They declassified all personal documents to purge staff that had questionable personal history. The Mass Dictatorship Corps detained 64 staff (out of 230) in its improvised cells for background screening. One of the victims received eight months of incarceration, and most received terms ranging from 20 days to three months. Inside the cowshed, the “masses” resorted to rampant use of torture, including beating, kicking and forced kneeling.⁵⁶ Guangxi Regional Revolutionary Committee established a “political work group” (*zhenggongzu*) on 20 September 1968 to supervise the detention of higher-level officials under investigation in “custody houses” (*jianhusuo*), and of middle-level officials and intellectuals in “Mao Zedong thought study classes” (*Mao Zedong sixiang xuexi ban*), which served as interrogation facilities.⁵⁷

During the cleansing campaign, which screened all people without fixed criteria such as background or current status, many workers were also detained in the cowshed because of their alleged past problems that were as petty as complaints or some casual remarks made before 1949. For instance, a worker from a factory in Henan province liked to use English words such as “ok” and “hello” to others, and during the campaign, the English words were regarded as codes for clandestine communication, and he was locked up by the factory revolutionary committee, after the “masses” reported on him. Another worker was shown to the factory’s detention room when he joked in a cafeteria about tasting the “Khrushchev-style” beef and potato stew and then comparing that with the vegetable soup he had during the Great Famine in 1960. For people who had more serious historical problems and had launched more vicious attacks on Mao and the Cultural Revolution, the factory’s special case group, i.e. the detainees’ colleagues, would be responsible for investigation, public denunciation and torturing, as well as the daily management of the incarceration.⁵⁸

Workers who had been rebels before were likely to be victims of the cowshed set up under the revolutionary committee’s rules. For Chen Yinan, a young worker–rebel leader in Hunan province, the nightmare began at the Ninth Party Congress in 1969 and particularly the launch of “one strike, three-anti” (*yida sanfan*) campaign beginning in February 1970. The company that Chen was affiliated with was overseen by an army representative, while officers of the 47th Corps, who were despatched to support the left and to stabilise the situation of the province, largely dominated the

⁵⁶ Jiang Dongping, “Qingli jieji duiwu, weizui zisha zhe tiebie duo” (So Many Took Their Lives during the Cleansing the Class Ranks Campaign) *Wenshi jinghua* (journal title in English), no. 12 (2004), at <http://news.china.com/zh_cn/history/all/11025807/20050526/12345384_3.html> [18 August 2014]. In Beijing, the cleansing campaign under the revolutionary committee detained 80 to 100 “class enemies” from May through mid November 1968, and 430 people were beaten to death in July and August. See Bu, *Zalan jiushijie* (*Smashing the Old World*), p. 677.

⁵⁷ Zhonggong Guangxi quwei zhengdang bangongshi (CPC Guangxi Party Rectification Committee), *Wenge jimi dangan: Guangxi baogao* (*Confidential Archives of the Cultural Revolution: Reports from Guangxi*), pp. 326–60.

⁵⁸ Yang Qichu, *Fafeng de daqiang* (*The Insane High Walls*) (Hong Kong: Wuqi xueshe chubangongsi, 2013), pp. 61, 88–90.

Hunan Provincial Revolutionary Committee. According to Chen, the company set up “rooms for repentance” (*fanxing shi*) in an abandoned hotel that used to be run by the company. There were 15 rebel workers who were suspended from work and subject to self-examination. Each of them was assigned a room equipped with a bed and a desk, and they were closely monitored by the company security staff. No rebel worker could leave the room without the permission of the company’s special office in charge of the “one strike, three-anti” campaign. All they could do was to confess and wait to be scrutinised by case managers. They were not permitted to communicate with each other either.⁵⁹ Two weeks later, Chen and his colleagues, along with about 100 other people, were transferred to a “Mao Zedong thought study class” where they were forced to study Mao’s quotations and the Party centre’s policies. The detention period in study class ranged from two months to one year, and the objective was to repudiate and screen former rebels. Anyone found guilty of intentional jury or homicide in their past armed struggles would be sentenced and thrown into formal prison. In addition, those detained in the study class were not permitted to go out or home, nor could they make phone calls. Detainees were subject to round-the-clock coerced confessions until some detainees broke down and gave false confessions. Detainees who refused to give in as well as those without any evidence of misconduct would finally be released after the class was disbanded.⁶⁰

During the cleansing campaign under the revolutionary committee, the state’s mobilising power, the PLA’s efficiency and the masses’ enthusiasm were factors that had driven greater participation in the incarceration, which also resulted in the prevalence of unofficial detention sites in work units. Investigations were usually carried out by a team called the “special case groups” (*zhuan’an zu*).⁶¹ First set up by the Ministry of Public Security in the 1950s as ad hoc operational task forces, special case groups were charged with the function of investigating political cases.⁶² During the Cultural Revolution, special case groups proliferated to all units and became so effective in detaining any suspects because they were empowered by the masses.

EXTRALEGAL INCARCERATION AND THE MAOIST PARTY-STATE

The extralegal incarceration sites, as epitomised by the cowsheds, share some commonalities despite their varying purposes and agents: (i) the detention sites, although known by different names, were all highly politicised. The objectives were to punish, investigate, screen or control political deviants and suspects, not common

⁵⁹ Chen Yinan, *Qingchun wuhun: yige zaofanpai gongren de shinian wenge* (A Rebel Worker’s Life during the Cultural Revolution) (Hong Kong: Chinese University Press, 2012), pp. 387–8.

⁶⁰ *Ibid.*, pp. 392–7.

⁶¹ Wang, *Wenge shounanzhe shounanzhe* (*Victims of the Cultural Revolution*), pp. 14, 140–55.

⁶² Michael Schoenhals, *Spying for the People: Mao’s Secret Agents, 1949–1967* (Cambridge: Cambridge University Press, 2013), pp. 71–2. While Schoenhals uses “case groups” to translate the Chinese term *zhuan’an zu*, this author prefers a more literal translation, “special case groups” to reflect the ad hoc characteristic and individualised connotation.

criminals such as thieves or rapists; (ii) the sites of confinement were arbitrarily chosen, contingent on the available space locally; (iii) most, but not all detention sites meted out forced labour as punishment to inmates or detainees, while others only curtailed detainees' movements and deprived them of freedom and communication. Accounts of sudden and arbitrary arrest, brutal treatment and rigidly routine life were corroborated by official records as well as personal experiences of victims like Ji Xianlin, Hao Bin and Nie Yuanzi, etc., who belonged to different factional affiliations or were in conflict; (iv) as these extrajudicial detention sites did not impose fixed prison terms because of the temporary, investigative and punitive nature of the facilities, a change in the political climate and dominant political force or in investigation result could be pivotal to the release of detainees; (v) state ideology loomed large even though the incarceration was not subject to the judicial system. It should be noted that work teams, local Party committees, the army, the worker/army propaganda teams and the revolutionary committees were all agents and arms of the Party-state, although the confinement of professors and other political deviants by Red Guards and the masses were seemingly outside the state apparatus. That said, the internalisation of the Party's violent and populist ideology spawned the aforementioned forms of arrest and detention that often mimicked a real prison in practice. In other words, the Party, in endorsing extrajudicial confinement and use of violence, had outsourced the penalising power to the politically empowered students and masses, which became an alternative source of authority.

The state's mixed official responses to the massive incarceration, however, revealed the existence of serious tensions and contradictions between societal norms and codified rules in Maoist China, manifesting an inherent schism between a revolutionary party's idealist need to carry out revolutionary popular justice and a socialist state's duty to maintain formal legality. Following the founding of the PRC, direct Party interference in mass justice and people's tribunal, ranging from the "suppress the counter-revolutionaries" campaign to the "five-anti" movement, was already evident from 1951 to 1953.⁶³ The CPC had implicitly permitted extrajudicial penalties because in 1957, it openly violated the legal principles in the 1954 Constitution, which had won wide appeal from the masses by purging rightists. As is evident in Kuai Dafu's protest on 4 July 1966, college students were clearly aware of the Constitution and basic civil liberty, yet the entire political climate had impeded the respect for and compliance with them. On 8 August 1966, the CPC issued the "Decision Concerning the Great Proletarian Cultural Revolution", which encouraged the masses to "educate themselves", the Party officials to "respect [the] initiatives", and the masses to "distinguish between right and wrong and between correct and incorrect ways of doing things".⁶⁴ These directives not only gave "mass dictatorship" a free hand but also legitimatised the trial-and-error process. The Beijing Municipal Military Control Committee for Public Security cited Mao Zedong's sanction that authorised the Red Guards' purge

⁶³ Zheng, *Party vs State in Post-1949 China: The Institutional Dilemma*, pp. 56–7.

⁶⁴ Michael Schoenhals, ed., *China's Cultural Revolution, 1966–1969, Not a Dinner Party* (Armonk, NY: M.E. Sharpe, 1996), p. 36.

of the unwanted elements in Beijing: “Our great leader Mao Zedong teaches us that to reactionaries we must exercise dictatorship, and we must suppress them. We only allow them to be well-disciplined, not to act at will. If they act at will, then we must stop them immediately and penalize them”.⁶⁵ Hence, the Maoist acquiescence in mass-based immediate punishment justified all illegal detentions and tortures, and effectively nullified any attempts to regulate the arbitrary arrest and incarceration operations. Even the Party’s own documents contained contradictory provisions. An article in the “Directive of the Central Committee on the Great Proletarian Culture Revolution in Rural District (Draft)” issued in December 1966 attempted to protect dissident views, stipulating that anyone labelled “counter-revolutionary” or “saboteur” for expressing such views should be vindicated; but the document, at the same time, listed five personality types that were targets of mass dictatorship: landlords, rich peasants, counter-revolutionaries, bad elements and rightists. The two provisions contradicted each other to the extent that any dissidents could be easily purged and labelled as one of the five undesirable elements for expressing dissident views.⁶⁶

Nevertheless, during its early founding years of the PRC, China did make some progress in normalising and institutionalising its legal work prior to 1966, and the leaders paid lip service to the protection of personal rights. The 1954 Constitution of the PRC, a promising landmark of socialist legality, provided protection against arbitrary arrests and imprisonment, which Kuai Dafu cited to protect himself. By 1957, a complete judicial system was established, and criminal law and criminal procedure law were being drafted in the same year.⁶⁷ Mao hardly mentioned or commented on the extrajudicial confinement phenomenon except to articulate his general support for the enthusiasm of the Red Guards and the “masses”. At an enlarged central work conference in 1962, Mao emphasised in his speech that although “a few people have to be arrested and executed...we must not arrest people lightly, and we must especially not execute people lightly”.⁶⁸ On 18 November 1966, the CPC Beijing Municipal Committee issued an “Important Notice” emphasising that “[n]o factory, mine, school, organization or other unit is allowed to set up houses of detention without authorization, to set up courts of trial without authorization, or to arrest and torture people without authorization”.⁶⁹ Two days later, the Party centre endorsed the notice and circulated it to all local Party committees. At a speech on 27 November 1966, Premier Zhou Enlai stressed that the purpose of the notice was to protect the people’s freedom, and that unauthorised detention was wrong because it “took [the] place of the dictatorial

⁶⁵ Cited in Wang, *Wenge shounanzhe (Victims of the Cultural Revolution)*, p. 153.

⁶⁶ William Hinton, *Shenfan* (New York: Random House, 1983), p. 513.

⁶⁷ Zheng, *Party vs State in Post-1949 China*, p. 60.

⁶⁸ Mao Zedong, “Talk at an Enlarged Central Work Conference”, in *Chairman Mao Talks to the People: Talks and Letters: 1956–1971*, ed. Stuart Schram (New York: Pantheon Books, 1974), p. 184.

⁶⁹ “Important Notice”, appendix to “Circular of the CCP Central Committee Concerning the Transmission of Important Notice of the CCP Peking Municipal Committee of November 18”, in Union Research Institute, ed., *CCP Documents of the Great Proletarian Cultural Revolution 1966–1967* (Hong Kong: Union Research Institute, 1968), p. 122.

power”.⁷⁰ In February 1967, Zhou ordered the mass organisations in Inner Mongolia “not to engage in armed struggle, not to beat, smash and loot, and not to carry out any arbitrary confinement”.⁷¹ On 6 June 1967, the CPCCC, the State Council, CMC and the Central Cultural Revolution Group (CCRG) issued a joint circular order, in which the highest authorities of China stipulated that “[a]part from organs of dictatorship of the State which may carry out their duty of making necessary arrests and detentions according to orders and law, nobody or individual is allowed to make arrests, to set up courts or a disguised form of private courts”.⁷² Many rebel groups echoed the directive by issuing their own declarations that avowed to “firmly safeguard the Circular Order issued on 6 June”.⁷³ A CPC Centre Circular, dated 24 June 1967, reiterated that “[n]o arrests or detentions are to be made” to the mass rebellion factions that were expected to hold a meeting in Beijing.⁷⁴

Military control during the Cultural Revolution also overruled the formal procedures. While individuals were forbidden from carrying out arrests and detentions, the PLA, or any “organs of dictatorship” (*zhuanzheng jigou*) were explicitly authorised to do it, as the highest authorities were constantly cautioning about the existence of counter-revolutionaries. On 6 April 1967, Mao endorsed an order of the CMC, which stated that “[a]rbitrary arrests are forbidden, particularly large scale arrests. Counter-revolutionary elements, against which conclusive evidence has been found, should be arrested. But the evidence must be conclusive, and the arrests must first be approved”.⁷⁵ That said, the authorisation and restriction of arrests were articulated in vague language and left to the discretion of the PLA. On 10 July 1968, Zhou Enlai made a comment on a report about the beating and death of Professor He Sijing, chair of the Department of Law at Zhongguo renmin daxue (Renmin University of China):

“I suggest the Ministry of Public Security tell the Beijing Municipal Military Control Committee for Public Security (Beijing shi gonganju junshi guanzhi weiyuanhui) to form a special institution to follow such cases. They need to be checked thoroughly. Otherwise, any mass organisation is able to exercise

⁷⁰ Ibid., p. 187.

⁷¹ Gao Shuhua and Cheng Tiejun, *Neimeng wenge fengyun: yiwei zaofanpai linxiu de koushushi* (*Cultural Revolution in Inner Mongolia: Oral History of A Rebel Leader*) (Hong Kong: Mirror Books, 2007), p. 241.

⁷² “Circular Order of the CCP Central Committee, the State Council, the Central Military Commission and the Central Cultural Revolution Group Concerning the Strict Prohibition of Armed Struggle, Illegal Arrest and Looting and Sabotage”, issued on 6 June 1967, also known as *Liuliu tongling* (*6 June Circular Order*), at <<http://baike.sogou.com/h8041174.htm?sp=l8041175>> [27 August 2014]; also included in Union Research Institute, ed., *CCP Documents of the Great Proletarian Cultural Revolution 1966–1967*, (Hong Kong: Union Research Institute, 1968), pp. 461–4.

⁷³ A scanned copy of such a declaration can be found on Zhongguo wenge wang (*Chinese Cultural Revolution Research Network*), at <<http://www.wengewang.org/read.php?tid=33362>> [27 August 2014].

⁷⁴ “Circular of the CCP Central Committee, Chung-fa No. 199 (67)”, in Union Research Institute ed., *CCP Documents of the Great Proletarian Cultural Revolution 1966–1967*, p. 466.

⁷⁵ “Order of the Central Military Commission”, in Union Research Institute ed., *CCP Documents of the Great Proletarian Cultural Revolution 1966–1967* (Hong Kong: Union Research Institute, 1968), p. 409.

unauthorised arrest and interrogation, and to beat people to death. It is not a good policy for the dictatorship organs to just let it go.”⁷⁶

Zhou’s seemingly legalist and rational “suggestion”, however, demonstrated that all past notices against arbitrary arrest had fallen on deaf ears in practice. His current one was no exception either, at a time when the law was subordinate to the revolution and the “dictatorial power” had already been delegated to the masses. Further evidence of the contradiction came earlier in that same month, when the CPCCC, State Council, CMC and CCRG issued a joint notice, known as the “July 3rd Notice”, calling for “acting counter-revolutionaries to be penalised according to law” in Guangxi. The notice from the highest authority authorised revolutionary committees at all levels to conduct rampant arrests, confinements and abuse of suspects, causing the death of 85,000 people.⁷⁷ Between the Party apparatus’ “June 6th Circular Order” in 1967 and its “July 3rd Notice” in 1968 lie the fundamental ideological and institutional weaknesses that precipitated state-led mass incarceration, namely the constitutional protection and seemingly lenient expedient notices notwithstanding. Clearly, the Party’s revolutionary ideology conflicted with the rule of law and its own effort of rationalisation.

CONCLUSION

The extrajudicial incarceration, as a political phenomenon, epitomised the collaboration and mutual reinforcement of despotism of the state and the Chinese masses, despite the apparent breakdown of the formal state judicial apparatus. The long-held tradition of “populist legality” was the fundamental cause of the pervasive illegal deprivation of personal freedom regardless of its obvious violation of the codified rules and the follow-up legal constraints.⁷⁸ The revolutionary nature of the Chinese Party-state and its culture of operating with an informal, simplified style would easily “call for the participation and involvement of the masses in all aspects of government, including

⁷⁶ Zhonggong zhongyang wenxian yanjiushi (CPC Central Historical Materials Research Office), *Zhou Enlai nianpu* (A Chronicle of Zhou Enlai) (Beijing: Zhonggong zhongyang wenxian chubanshe, 2007), p.244.

⁷⁷ Zhonggong Guangxi quwei zhengdang bangongshi (CPC Guangxi Party Rectification Committee), *wenge jimi dang’an* (*Confidential Archives of the Cultural Revolution: Reports from Guangxi*), pp. 278–9, 317.

⁷⁸ Yang Su suggested that the collective killings occurring in Guangxi during the Cultural Revolution were not the consequence of direct state mobilisation but indirect influence of state ideology and its combination with temporary structural “failures”, “lapses” or “breakdowns”. See Yang Su, *Collective Killings in Rural China during the Cultural Revolution* (New York: Cambridge University Press, 2011), pp. 19–23. However, the author suggested that the Party-state never failed, but its self-contradiction and ambiguity left much space for the masses to manoeuvre the situation. For populist legality and its tension with professionalism under the CPC, see Benjamin L. Liebman, “A Return to Populist Legality? Historical Legacies and Legal Reform”, in *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China*, ed. Sebastian Heilmann and Elizabeth J. Perry (Cambridge, MA: Harvard University Press, 2011), pp. 165–88.

law”.⁷⁹ By bypassing the established and professional law enforcement organs of the state, or Foucauldian “mediator”, the Party became more pervasive through delegation of the discretionary power to the Party leaders, army, students and the masses.⁸⁰ During the process, new political actors emerged to forge alternative mechanisms of penalising and incarcerating. In this sense, as Michael Dutton pointed out, the “so-called ‘popular power’ and ‘bureaucratic’ power are deployed simultaneously”, and these two forms are only “alternative technologies”.⁸¹

In post-Mao China, a socialist legal order was re-established. The Party gradually retreated from the practice of radical legal populism and power outsourcing, and denied the masses the power of illegal confinement, e.g. in its own pursuit of legal professionalism, the state no longer delegated penalising and investigative powers to the people. However, the Party’s extrajudicial and pretrial arrests, segregations and investigations did not die out. The CPC Central Disciplinary and Inspection Commission, charged with the task of investigating and sanctioning political disciplinary violations and corruption of Party leaders, began to take coercive measures, including detention. The solitary confinement by Disciplinary and Inspection Commission, known as “double designations” (*shuanggui*), or “confession of problems in designated places within designated time” was not subject to due procedural process, making *shuanggui* an “authorized illegal practice” of confinement.⁸² The term of pretrial confinement, for the purpose of investigation before the convicted official was transferred to judicial organs, was not fixed. Nor was it regulated by any laws. It seems that this disciplinary and extrajudicial censure through incarceration and coerced confession was a modern, though more institutionalised and centralised, resurgence of the extrajudicial confinement during the Cultural Revolution, continuing to demonstrate the Party’s paramount status over the state legal apparatus. In the historical perspective, the radical popular justice and extrajudiciary mass incarceration during the Cultural Revolution was an excess of revolutionary ideology and aberration of socialist legality, which the Party later attempted to amend. However, what had happened was inevitable due to the intrinsic institutional contradictions and ambiguities in the relationship between the legal system of the PRC and the Party, with the residue of its revolutionary–military tradition and the largely non-legal background of its leaders.

⁷⁹ Victor H. Li, “The Role of Law in Communist China”, *The China Quarterly*, no. 44 (1970): 66–111.

⁸⁰ For the Party’s status above the apparatus of the state in China, see Franz Schurman, *Ideology and Organization in Communist China* (Berkeley and Los Angeles, CA: University of California Press, 1966), pp. 109–11.

⁸¹ Michael R. Dutton, *Policing and Punishment in China: From Patriarchy to the People* (Cambridge: Cambridge University Press, 1992), p. 266.

⁸² Li Ling, “The Rise of Discipline and Inspection Commission, 1927–2012: Anticorruption Investigation and Decision-Making in the Chinese Communist Party”, *Modern China* 42, no. 5 (2016): 22.