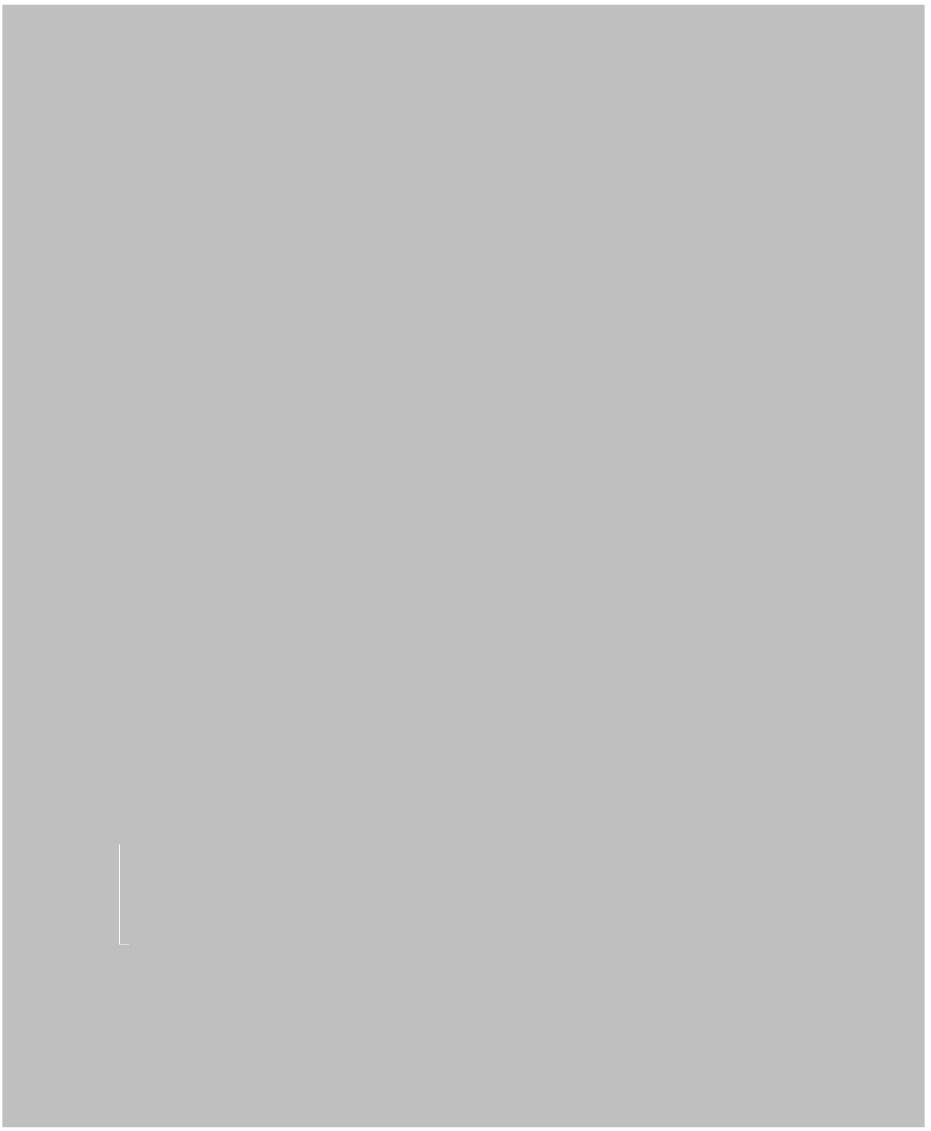

New Crime in China: Public Order and Human Rights
RONALD KEITH AND ZHIQIU LIN
London and New York: Routledge, 2006
xii + 221 pp. £65.00
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This book is the third by these authors looking at different aspects of legal reform and "China's modern struggle for the rule of law." This book examines reform to the legislative framework for criminal justice since 1996, focussing on major reforms to the Criminal Procedure Law in 1996 and the Criminal Law in 1997. It is particularly interested in what the authors describe as "new crime." They include a consideration

of the criminal justice treatment of *falun gong* adherents; family violence including domestic violence and trafficking in women and children; organized crime including terrorist organizations, drug trafficking and smuggling illegal emigrants; and cyber crime including crimes relating to network security and internet crime.

In examining these crimes, the authors focus on the arguments made by China's "jurists," an amorphous category of legal reform advocates comprising legal academics and some judges, procurators and legislators. According to these reform jurists, the revised Criminal Law and Criminal Procedure Law "entrenched three key principles relating to the punishment that must fit the crime, equality before the law, and no crime without a law" (p. 3). Keith and Lin identify as a corollary to this principle of "legality" the important shift in the criminal law at that time to "comprehensive and specific stipulation" of offences in contrast to the former preference for "flexibility," which "had been used to justify casual and unqualified, state-directed analogy in law and the opportunistic substitution of state policy for law" (p. 3). Another conceptual tool employed by the authors to examine the legal treatment of crime since 1997 is the interaction between rule of law and rule of virtue.

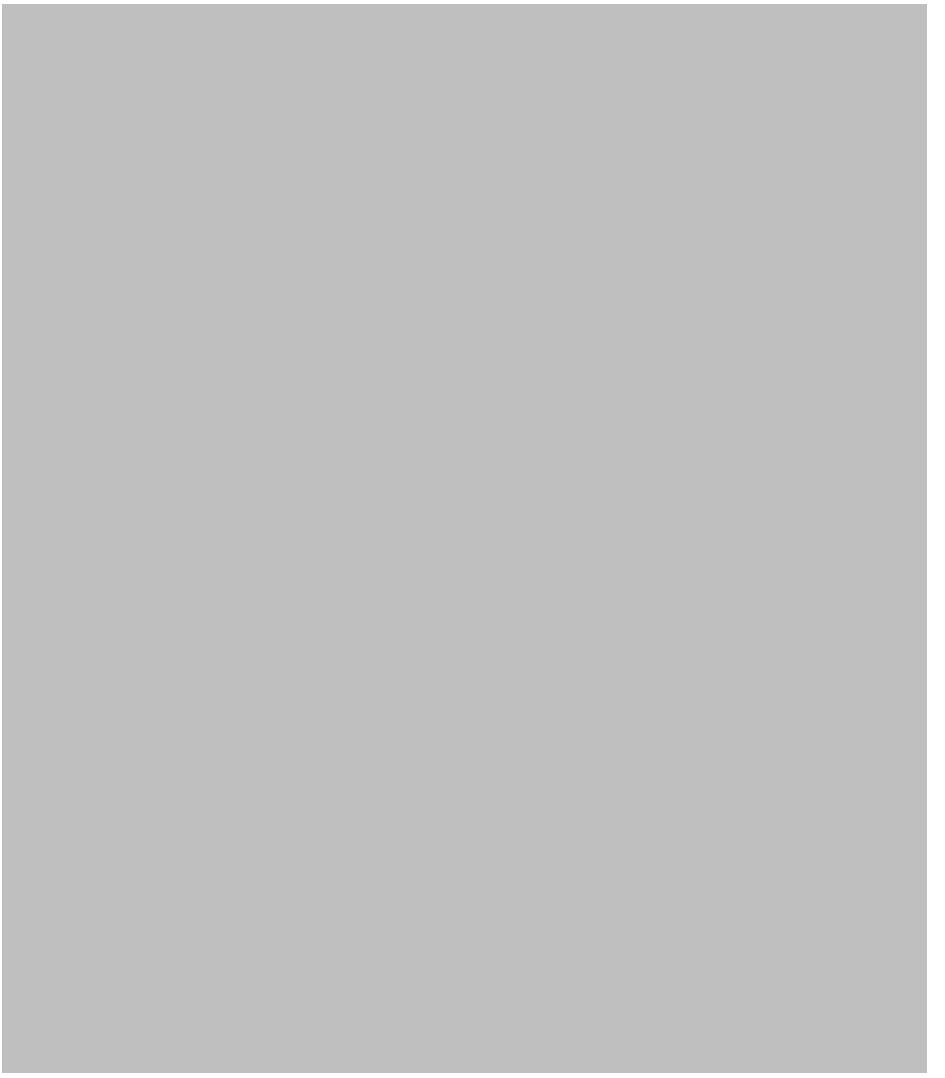
The authors argue that at the time the Criminal Law and Criminal Procedure Law were passed there was great optimism within Chinese legal circles that the laws represented a "balance of values" between the protection of individual human rights and maintenance of social order (p. 15). The chapters dealing with specific crimes go on to explore how this balance has been struck (or not) with reference to the dyads comprehensive stipulation/flexibility and rule of law/rule of virtue. The legal treatment of *falun gong* and cyber crime are examples of areas both where the demands of public order and social control greatly outweigh competing human rights claims and where the form of regulation demonstrates the triumph of flexibility over comprehensive stipulation. They cite the legal treatment of *falun gong* (p. 61) and crimes related to marriage and the family, especially those relating to the definition of domestic violence set out in the 2001 amendments to the Marriage Law (pp. 71–72) as reflecting the continuing influence that ideas of rule by virtue have over the rule of law.

Throughout the book the authors point to the continuing influence of the political-legal apparatus (*zhengfa xitong*) as one of the main hindrances to the development of a more human rights-oriented criminal justice system in favouring flexibility over comprehensive stipulation and in steering enforcement practice toward being severely punitive. Indeed, the periodic "hard strikes" since 1983 have not only shaped enforcement practices and preferences; they have also shaped the law itself, both criminal and administrative. Since the 1980s the "hard strikes" have provided an impetus to the expansion of the scope and number of administrative detention powers, for prostitutes and their clients, for drug addicts, for minor offenders, hooligans and latterly for members of *falun gong*. Any consideration of criminal justice reforms needs to bear in mind the legal developments with respect to administrative powers which intersect and even overlap with the criminal justice system. This overlap is particularly apparent in the case of *falun gong*.

The large number and the disparate nature of the crimes discussed necessarily affect the depth with which each crime and its particular context are discussed. The authors have chosen to provide a detailed discussion of the debates surrounding the drafting of the legislation and particular provisions of legislation which define and criminalize conduct, such as the definition of organized crime (pp. 94–105). This choice has limited the depth of their discussion of broader social, institutional and political factors that influence the state's construction of, and response to, these crimes.

The authors acknowledge that the processes of legal reform are dynamic. In their conclusion, they note that "reform alliances seem opportunistic depending on the nature of the issue, and the prevailing politics at the time" (p. 146). This is a point worth exploring further. One question we may wish to consider is the extent to which these shifting alliances might function to enable reforms to be initiated or supported by different actors within the *zhengfa* system itself, as well as by those from outside it. The principles of criminal and administrative justice are constantly contested. Whilst Keith and Lin emphasize the "important victories" for reform advocates in 1996–97 (p. 167), they are just one skirmish in a battle that will continue for many years to come.

SARAH BIDDULPH



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