

中加矫正制度比较研究

A Comparative Study of the Chinese and the Canadian Correctional Systems

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加方主编：杨 诚

中 国 监 狱 学 会 合著
加拿大刑法改革与刑事政策国际中心

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王增铎

《中加矫正制度比较研究》一书,在中国监狱学会金鉴会长、王明迪副会长、张金桑秘书长的指导、支持下,经过近一年的筹划和编撰现已出版问世了。它的出版问世是加拿大刑法改革与刑事政策国际中心和中国监狱学会开展罪犯矫正改造理论交流合作的一项重要成果,也是寻求更有效地交流形式的一次尝试,它的出版将成为连结中加矫正界友谊的象征和纽带,为今后进一步发展双方在罪犯矫正改造领域的合作开辟更加广阔的前景,产生更为广泛的影响。为此,我代表中方编者对此项目加方的积极倡导者杨诚博士、加方供稿者、组织者布朗·塔克切克先生和为本书的出版给以慷慨资助的加拿大国际发展署以及为提供重要加方资料的加拿大矫正局表示诚挚的谢意!

众所周知,监狱是国家机器的重要组成部分,一个国家对待罪犯的惩罚与矫正改造状况是与本国社会制度、经济发展和法制建设相同步、互为因果和表里的。监狱管理的状况也是该国社会文明进步的窗口与标志,“观其监狱之实况可测其国程度之文野。”监狱在中国渊源流长,随着社会的发展,监狱也在不断演进。在绵延数千年的封建王朝统治下,监狱对犯人实行的是镇压、威吓政策,采取

的是惩罚主义、报复主义的治狱方针。1949年中华人民共和国成立,使中国进入了一个新的历史时代。建国以来,中国政府对旧监狱进行了彻底的变革,从改造社会的历史重任和维护广大人民的根本利益出发,对罪犯实行了人道主义政策,采取了惩罚与改造相结合的方针,彻底废除了法西斯式的审查方法和各种肉刑、体罚、打骂与人格的污辱,开创了监狱史的新篇章。

新中国的监狱工作在毛泽东主席及老一辈领导人的亲切关怀下有了长足的发展,进入80年代改革开放以来又有了新的突破。中国监狱充分发挥了作为国家刑罚执行部门改造罪犯的作用,50年累计关押改造包括日本战犯、伪满战犯、国民党战犯在内的数以千万计的各类犯罪分子,重新犯罪率处于较低水平。随着中国政治、经济形势的发展,监狱立法逐步完善,已经初步形成了具有中国特色的社会主义法律体系和比较科学完整的监狱学理论。

《中加矫正制度比较研究》一书中的“中国部分”,对中国现行的监狱立法、矫正制度、监狱任务、指导原则、狱政管理和狱内矫正以及刑满释放人员的社会保护做了比较系统的论述。它既是新中国监狱史的缩写,也是新中国监狱工作50年基本做法与经验的总结和概括。为便于同行与专家、学者以管窥豹,探讨新中国监狱形成的特点、基本脉络及其内在规律与联系,在此我对中国社会主义监狱的特色做一简要的提示,以引发大家的研究思考。这些特色可概括为:

——以改造人为宗旨,坚持惩罚与改造相结合,立足于改造。把罪犯改造成守法公民,作为监狱一切工作的出发点和落脚点,是中国监狱执行刑罚的基本指导思想。

——注重对罪犯进行系统的、正规的政治法律教育和文化技术教育,并把对罪犯的政治法律教育放在首位。使监狱由过去的单纯监禁惩罚场所变成改造罪犯的专门机关。

——坚持实行教育和劳动相结合的原则。组织有劳动能力的罪犯进行劳动,通过劳动改造罪犯,这是中国监狱改造罪犯的基本手段。

——发挥管理的矫治、养成功能,坚持管教结合,寓教于管,管中有教。通过依法、严格、科学、文明管理,矫治罪犯不良的思想品德和行为习惯,使之逐渐养成良好的思想品德和习惯。

——激励罪犯在希望中改造。坚持实行“惩办与宽大相结合”和“给出路”的政策,引进激励机制,充分调动罪犯的改造积极性,促使他们由强迫改造逐步转变为自觉改造。

——对罪犯实行人道主义,严格保障罪犯的各项法定权利。坚持把罪犯当人看,尊重他们的人格,废除酷刑,严禁侮辱、打骂、体罚、虐待罪犯,保证罪犯的生活、卫生、医疗、教育、学习、劳动的基本条件,切实维护罪犯的合法权益。

——运用社会各方面力量参与对罪犯进行感化和帮教活动。坚持国家专门机关与群众路线相结合的原则,动员国家机关、社会团体、部队、企业事业单位和社会各界人士及罪犯的亲属,参与对罪犯的感化、帮教活动。让罪犯与社会保持较多的联系,树立其重新做人的信心。

——重视监狱人民警察队伍建设。坚持从严治警,严格教育,严格要求,培养和锻炼出一支政治坚定、业务精通、作风过硬、纪律严明的监狱人民警察队伍。

——保护刑满释放人员的公民权利。中国监狱配合政府

有关部门努力作好帮助刑满释放人员的就业安置和社会保护工作,为他们提供学习、工作、劳动的机会,使他们依法享有与其他公民平等的权利,能够自立于社会。

中国监狱工作虽然总结形成了一套比较完整的刑罚执行和矫正制度及其理论,但也还存在一些不尽完善之处。这不仅需要我们努力探索适合中国国情的监狱工作新思路、新途径,更要注意学习借鉴别国的好的管理办法与经验。《中加矫正制度比较研究》一书的“加拿大部分”给我们作了全面展示,将为我们从中学习、研究与借鉴,提供有益的启示与营养。

矫正罪犯工作是当今国际社会有效地解决犯罪问题、促进社会发展与保持社会稳定的重要环节。加强矫正罪犯的理论研究和国际间的交流合作,相互借鉴,取长补短,对于促进各国的刑罚执行工作,使之更加科学规范和文明,具有重要的意义。中国国家主席江泽民曾指出:世界是丰富多彩的,各国人民走过了不同的历史发展道路,有着不同的文化背景、社会制度和价值观念,延续着不同的生活方式。这种多样性正是世界充满竞争和创新的根本原因。尊重和发展世界文明的多样性,在这种多样性中找到共同利益之所在,是人类社会向前发展的伟大动力。我们将遵循他的这一指导思想,进一步扩大对外学术交流与合作。

中加两国矫正学术界这次成功的合作,是一个良好的开端。谨祝在此基础上继续加强中加友好往来,探讨更深层次的研究领域与交流形式、渠道,为加深我们两国人民友谊、为促进我们共同的矫正事业的发展而作出新的努力。

向为此书编辑出版付出艰辛劳动给予支持帮助者特别鸣谢:

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2000年12月

Foreword

Wang Zengduo

The publication of *A Comparative Study of the Chinese and the Canadian Correctional Systems* is the result of one-year joint preparation, research, compilation and editing. In China, this was accomplished under the guidance and with the support of President Jin Jian, Vice President Wang Mingdi and Secretary-General Zhang Jinsang of China Prison Society.

The book is an important achievement of cooperative exchanges and joint research in the field of corrections between the International Centre for Criminal Law Reform and Criminal Justice Policy in Canada and the China Prison Society. It also demonstrates an effort in seeking for more effective cooperation in the future. The publication will serve as a symbol of the friendship between Canada and China in corrections. It has far-reaching impact, opening the door for more cooperation in the field of the corrections.

On behalf of the Chinese editors and participants,

I want to express sincere gratitude to our colleagues in Canada. I thank Dr. Vincent Cheng Yang for taking the initiative in promoting and editing this publication, Mr. Brian Tkachuk for organizing the preparation of the chapters in Canada, the Canadian contributors, the Canadian International Development Agency for its generous funding support, and the Correctional Service of Canada for the provision of important materials.

Prisons are known as an important component of the state system. Punishment and corrections reflect the nature of, and interact with, the framework of the society, economic development and legal system in the country. The prison system is a window and symbol whereby the level of civilization and social progress in a country can be assessed. As it is known in Chinese, "weather a country is civilized or barbarous can be judged by looking at its prison administration."

China has a long history in prison service. Prisons have evolved along with the development of the Chinese society. During the thousands of years of feudalism, Chinese prisons were oppressive and intimidating, applying the policy of retribution. The People's Republic of China was founded in 1949, which was the beginning of a new era in Chinese history. Since then, the Chinese government has completely reconstructed the old prison system. The historical mission is to reform the society, and the goal is to protect the ultimate

interest of the people. The Chinese government has adopted the policy of humanism and combining punishment with reform, abolished the fascist methods of investigation, prohibited the use of torture, corporal punishment and humiliation. This is a new chapter of prison history in China.

Prison service developed rapidly in China, when Mao Zedong and other former leaders paid great attention to its growth. It has entered into a new phase of ground-breaking development since the introduction of the open-door policy in the 1980s. Prisons in China have played important roles in executing sentences and reforming offenders. Tens of millions of various types of offenders were reformed in prisons during the past fifty years, including Japanese war criminals, Manchurian and KMT war criminals. The rate of recidivism in China is relatively low. With the political and economical development in China, prison legislation has been improved. A legal system and theoretical framework for corrections of socialist nature and Chinese characteristics have come into being.

The Chinese part of this book systematically addresses the current laws, systems, tasks, guiding principles and administration of Chinese prisons, institutional corrections and social protection of released offenders. It provides a review of prison history, correctional service and experience in new China in the past fifty years. To assist our

colleagues and scholars in their discussion of the features of Chinese prisons, its evolution and rules, I offer a brief introduction to the following characteristics of the socialist prison system in China:

1. Insist on combining punishment and correction and focus on transforming offenders to law-abiding citizens as a basic guiding principle of corrections.

2. Focus on systematical and standard political, legal and cultural education, with political and legal education as priority, to turn the prison from a place of simple incarceration into a special institution for the correction and education of offenders.

3. Implement the principle of combining education with labor, by organizing the offenders who are capable to work to participate in work, and reforming them through the process thereof, which is the basic measure of corrections in Chinese prisons.

4. Give the reforming and cultivating functions of prison administration into full play, persist on combining control with education, change the unhealthy ideological characters and bad habits of inmates, develop a healthy mentality and good habits through legal, strict, rational and civilized administration.

5. Inspire the offenders to reform themselves with hope, persist in implementing the policy of "combining

punishment with leniency, and giving way-outs", and introduce mechanisms to encourage the inmates and turn gradually from forced reform to conscious reform.

6. Carry out the policy of humanism and protect the legal rights of offenders, treat them as human being, respect their personalities, prohibit torture and abusive treatment of inmates, guarantee basic conditions of living, sanitation, medical care, education, and work for offenders, safeguard their lawful rights.

7. Mobilize all walks of life of the society to participate in the activities to influence and assist the prisoners, and implement the principle of combining state organs with the masses, so that governmental departments, social organizations, the army, enterprises, people from all social circles, and families of the prisoners are inspired to take part in correctional activities, and the offenders are encouraged to keep in touch with the society as much as possible and impelled to have confidence to be a new man.

8. Pay attention to the building of the people's prison police and keep rigorous management and education of the prison police, so that they will be honest and efficient in their work, follow high political standards and strict and impartial disciplines.

9. Protect the civil rights of the released

offenders. Prisons in China help released prisoners with their employment and promote social protection in cooperation with other governmental departments. We provide the released offenders with opportunities to study and work, so that they can enjoy the same lawful rights as other citizens in the community.

There are still some shortcomings in the Chinese prison service, although we have developed an integrated system and penal theories for corrections. We should not only explore new ideas and ways that are suitable to the situation in China, but also share the good experience of other countries. The Canadian part of A Comparative Study of the Chinese and the Canadian Correctional Systems has provided us with some useful leads for this purpose.

The correction of offenders is an important part of the international effort in dealing with the problems of crime effectively in order to promote development and maintain stability in the society. It is of great significance to the reform and improvement of corrections in various countries to strengthen the theoretical research and international coordination, to share experiences from each other, to learn from each other and address the weaknesses. The President of China, Jiang Zemin, once pointed out:

“The world is rich and colorful. The

people from various countries have different historical and cultural backgrounds, social systems and concepts of value. And they are following different ways of life.”

Diversity leads to competition and invention in the world. The world progresses with enhanced respect to the diversified civilizations and through the sharing of common interests. We will continue to implement this concept and further develop our exchanges and cooperation with other countries.

The successful collaboration between China and Canada in producing this book is only a good beginning. I wish that the friendship between Canada and China will develop on this basis. We will work together to explore new areas and new forms of cooperation. Let us continue the effort in promoting the improvement and development of corrections.

I sincerely thank the following people in China for their support and participation in the production of this book:

Zhou Yong, Zhao Youfang, and Chen Min as translators;

Liu Hailou, Sun Guixiang, and Zhang Ying of the China Prison Society;

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Publishing House of Law of China.

December 2000

Introduction :
**The Study and Comparisons of Chinese and
Canadian Correctional Systems**

Vincent Cheng Yang (Canada)

A Comparative Study of the Chinese and the Canadian Correctional Systems, jointly produced by correctional experts in China and Canada, is an important result of the cooperation launched by the China Prison Society (the “Society”) and the International Centre for Criminal Law Reform and Criminal Justice Policy (the “Centre”) in Canada for the promotion of a constructive dialogue in criminal justice between the two countries. This publication is important in the history of cultural exchange and friendly cooperation between China and Canada, because it is the first book that the two countries have jointly published in the field of corrections, and it is the first time that Canadian and Chinese experts have systematically introduced the main aspects and features of their systems to each other. I would like to take this opportunity to pass on our warm regards from the