

Discourse Study of Prison Counseling

罪犯心理咨询话语研究

郭晶英 著

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Abstract

This book investigates into how counseling is done in the context of China's prisons in which security is the priority and reforming inmates into law-abiding citizens is the overall goal of inmate correction and rehabilitation. A principal concern is how participants organize their speech to validate their accounts and attribute responsibilities. The individual talk between custodial officials and inmates, a more traditional method to educate and reform inmates in China's prisons, is provided to offer a comparative study. The present study is intended to help police counselors and prison administrators reflect on the counseling claimed to be and counseling done to be and to evaluate prison counseling from a more dialectic viewpoint. The ultimate goal of this study is to enhance our understanding of what is going on in China's prisons.

This book combines the theoretical and methodological principles of discursive psychology and Shi-xu's cultural approach to discourse. The concept of discourse evidence is proposed for the evaluation of the operation and outcome of offender treatment programs including prison counseling. The discourse data consists of 9 counseling sessions and 10 individual talks obtained from three prisons in southern China. It is argued in this study that both police counselors and inmate clients employ different discursive devices to attribute responsibilities for inmate clients' problems and solution to these problems while at the same time managing the interests that they are personally involved in. The findings of the comparative study between prison counseling and individual talk indicate that from a dialectic viewpoint, prison counseling provides a new communication channel through which inmates share their experiences and feelings. Implications from this book could be applied to the training of frontline police counselors, professional development and future prison studies in China.

Key words: discourse analysis; discourse evidence; discursive device; responsibility attribution; advice delivery; interest managing

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1 Introduction

1.1 Background to the study

The prison is a judicial institution that enforces punishment. The earliest prison of China dates back to more than 4,000 years ago and China's approaches to working with inmates have changed as our understanding of crime and punishment develops. Since 1949, "the general philosophy of contemporary China holds that people can be changed, and the great majority of prisoners can be reformed" (Wu, 2003:94). The three well-recognized traditional methods to reform inmates at present are education, labor and prison administration. Inspired by Western correctional philosophy and practices, varieties of rehabilitation programs from other fields and countries have been introduced into China's criminal justice system. The ultimate goal is that inmates could be transformed into law-abiding citizens. However, changing inmates is not so simple and even considered a fantasy, for "the fox may grow grey, but never good". In addition, change is most likely to occur only when inmates want to change out of their own will. Proponents of treatment programs state that "... rehabilitation introduces empathy into the corrections system, commensurate with public desire to help offenders, and can be more beneficial to society than correctional punishment" (Spiropoulos, 2007:10), while critics of rehabilitative function of the prison have made the conclusion that "nothing works" (e.g., Lipton et al., 1975; Martinson, 1979). In particular, China's prisons have been criticized by the West of trying to change not only the body but the mind of inmates, and therefore inhumane (Zhang, 2008). The efficacy and necessity of treatment programs are open to suspicion, and there are doubts about why China has been so enthusiastic about bringing about a change in inmates.

At the end of 2011, China had nearly 1.64 million people incarcerated in about 700 prisons. Despite the fact that the number of inmates is relatively low compared to that in Western countries such as America or Russia and that inmates have enjoyed more rights than ever before, a general skepticism about China's prisons is widely shared and the achievements made in prison reform have neither won recognition from Chinese people nor favorable international comments. Human Rights Report focusing on tortures and abuses taking place in China's criminal justice system was released by America once a year. Muhlhahn (2009) used words of anger, disgust and fear to describe the reactions of the majority of Americans and Europeans when they heard about criminal justice in China. In Wu (1992)'s monograph, prisons in China were depicted as places in which people were arbitrarily persecuted and the labor reform system as a means of suppression to "radically change a person's consciousness, political views, religious beliefs, and moral values" (p. 28). Rarely do the public in China go inside the institutions of the prisons, and their attitudes toward prison and inmates tend to be polarized or blurred. They sympathize with inmates when they learn unnatural deaths taking place in detention centers and prisons (such as the case of death while playing hide-and-seek in the detention center of Jinning county, Yunnan Province in 2009), but seem to be averse to humane measures taken in prisons. For example, Tilanqiao Prison in Shanghai held hearings to seek opinions from inmates in July, 2004 and 15 proposals including extension of visit hours were discussed in the hearing, which was supposed to be regarded as a great leap forward in prison management. However, this program was soon cancelled about one month later due to pressures from different sides. In Jialing Prison in Sichuan, the first prison wedding ceremony in China was held in 2009 with 7 couples legally married. This wedding ceremony was one of the prison programs to assist and educate inmates. Some people expressed their support while more accused the prison of being too tolerant to inmates. Western criticisms call into question the legitimacy of punishments in China's prisons and the ambivalent feelings of China's public toward prison programs embody the persistent tension between the desire to punish and the hope for rehabilitation.

"Punishments are socially sanctioned forms of violence, and they tell us about the dynamics of social inhibitions regarding violence and death" (Muhlhahn, 2009:9). The historical development of China's prisons that are roughly divided

into the following five stages could reveal why China's prisons are controversy-plagued.

1.1.1 Prisons in slave society

The first prison in China came into being in the Xia Dynasty when prisons mainly served as places for holding people waiting for trial. Punishment from the Xia dynasty onward consisted of corporeal and capital punishments, and the forms of punishment have been cruel including tattooing and amputation of the nose or legs. In the Shang Dynasty, because there were more and more war captives and slaves who were regarded as labor forces, doing forced labor became one major form of punishment. From the Western Zhou Dynasty, prisons began to hold criminals who had been sentenced. In order to legitimize punishment, emperors always declared that they were executing punishment by the virtue of a mandate of heaven. During this period, Confucianism has guided the governing of the society and people were expected to observe the rites (*li*). The penal thought was the combination of moral enlightenment and prudent punishment. In result, more importance was placed on making criminals repent and have a sense of shame. If a criminal repented and reformed himself, he could be redeemed. In this way, punishments were both punitive and preventive.

1.1.2 Prisons in feudal society

Since the Warring States period (475 BC—221 BC), legalism has become a dominant school of thought. Li Li, one representative of legalist thinkers, promoted severe punishments. Likewise, Shang Yang who publicized the law among the public advocated controlling the society through stern and heavy punishments. Emperor Ying Zheng defeated the other six states and established the first unified and centralized state in 221 BC. During his reign, more inhumane and cruel punishments were enforced such as *lianzuo* (to punish people for being related to or friendly with a criminal) and *zhuzu* (to punish the whole clan to which a criminal belongs). Stern punishments acted as a deterrent against crimes, as well as a means of incapacitating those who committed crimes. Prisons during this period have been classified into places for holding people waiting for trial, doing forced labor and already sentenced respectively. In the Han Dynasty, the harsher aspects of punishment were

modified in line with the Confucian philosophy of social control by moral and ethical persuasion and education. Policies of emphasizing both punishment and moral education were adopted. The old, pregnant and female criminals were treated with mercy. The reform in the Western Han Dynasty is of historic significance in China's punishment history. Corporeal punishment that had existed for 2,000 years was gradually replaced by less cruel forms of punishment. It is worth noting that since the Han dynasty, death penalty has been executed at the end of autumn. Such a practice was guided by the cosmological philosophy that proper punishments helped maintain heavenly harmony. Emperors in the Song Dynasty promoted Confucianism and valued moral education, but they also favored severe punishments in order to consolidate their rule and maintain control. Afterwards, dynasties such as the Yuan, Ming, and early Qing all adopted policies of heavy punishment and varieties of brutal punishments were inflicted on criminals. It was not until early Qing Dynasty that Emperor Kangxi required the abolishment of cruel punishments except to criminals who resisted his power or infringed on his interests.

1.1.3 Prisons after Opium War

In late Qing Dynasty, due to mass civil disorders and invasion of Western powers, China became a semi-colonial state. The traditional political and legal system was fast descending into a crisis. Driven by reformists in the Qing Court, criticized by the Western powers and guided by the principle of Chinese learning for the essence and Western learning for utility, the prison system underwent a huge change. Capital punishment, corporeal punishment and punishment of exile were gradually replaced by institutional confinement. One of the most famous reformists in the Qing Dynasty is Shen Jiaben who introduced Western ideas and thoughts into China, set up skill learning places in which inmates could grasp skills, improved the quality of prison guards by changing ways of recruitment and treatment, and drafted and promulgated prison rules and regulations. After the bourgeois democratic revolution in 1911, prison studies began to prosper and international conferences on prison were held. During the period of Beiyang government from 1912 to 1928, more prison rules and regulations were made. It is worth mentioning that in 1915, the Ministry of Justice ordered that religious instructions could be practiced in

prisons. Nanjing civil government followed prison legislations of the Beiyang government with a few modifications. Drawing on Western legal thoughts and practices such as Japanese and German models, prisons classified inmates in light of gender and age. Inmates were also divided into different categories with differential treatment in accordance with their crime type, performance and prison term. Programs for education and thought reformation of inmates were given more importance to.

After Chinese Soviet Republic was established in 1931, the Communist Party set up prisons in revolutionary base areas. Criminal justice was understood as an instrument of class struggle. The distinction between general crime and the crime of counterrevolution was made. Criminals who committed general crime and who were willing to repent would receive light punishments, but criminals such as resistant traitors or counter-revolutionists were treated with harsh punishments. Soviet conceptions of punishment and notions of labor had great influences on the design and operation of prison regime. Penal philosophy of transformation reigned over punishment and inmates were expected to be reformed through prison labor.

1.1.4 Prison after the founding of the People's Republic of China

After the People's Republic of China was founded in 1949, China experienced pervasive transformation in its criminal justice system. In accordance with prison policies adopted, the development of prison after liberation could be further divided into three stages:

Policies of "three fors" and "two combinations"

Chairman Mao Zedong held the view that people could be reformed and labor was a necessity. In 1951, Chairman Mao Zedong made the comment that criminals who should be sentenced to imprisonment were huge labor forces. For reforming them, for relieving financial difficulties of prisons and for stopping counter-revolutionists from sitting idle, criminals were required to engage in labor. Following this guiding thought, prison labor began to be launched on a large-scale. In 1952, the principle of "combining strict management and

frequent education” was put forth on the Sixth National Laogai Conference. Criminals began to be treated differently according to crime type, nature of crime, prison term, work performance, etc. In 1954, the Statue on Laogai was promulgated. The term *Laogai* means reform-through-labor and has become the underlying core concept China’s penal system until 1994.

During this period, the administration of justice has been based on Marxist theories and mostly drawing on Soviet experiences. The policies of “three fors” and “two combinations” were compatible with the economic and political environment in China. Inmates were expected to be reformed through labor so they could become productive citizens. China has boasted of its achievements made in reforming the last feudal emperor, Aisin Giorro Pu Yi, and war criminals into law-abiding citizens. However, the implementation of the policy of “three fors” has made prisons more interested in manufacturing and setting up enterprises for benefits, resulting in contradiction between prison reform and production.

Policy of “reform as primary and production secondary”

In 1964, the prison policy of “reform as primary and production secondary” was promulgated on the Sixth National Laogai Conference. In accordance with this policy, inmates were required to be treated on the basis of combining class struggle and humanism. Under ideal conditions, efforts will be made to combat crime and inmates should fulfill their obligations on the one hand, and on the other, inmates will be treated in a humane way with their dignity respected. However, in the period between 1966 and 1976, China has undergone Cultural Revolution. Prison work was disturbed, programs of education and reform were dealt a harsh blow, and the living standard of inmates was drastically lowered. After the Third Plenary Session of the 11th CPC Central Committee was held in 1978, China turned its attention to economic development. It was not until the 1980s that criminals were not regarded as enemies any more. In 1981, the prison policy of “reform as primary and production secondary” was re-confirmed on the Eighth National Laogai Conference. The penal thought during this period has been more rehabilitative oriented. However, in actual practices there have been long-lasting confusions about how to prioritize education when the operation of the prison depended heavily on economic benefits gained from inmates’ work.

Policy of “combining punishment with reform for the purpose of transforming criminals into law-abiding citizens”

In answer to criticisms both at home and abroad about prison labor, the term *laogai* was officially abandoned and replaced by the term prison in 1990, especially after the promulgation of the Prison Law. The Prison Law of the People's Republic of China adopted at the 11th Meeting of the Standing Committee of the Eighth National People's Congress on 29 December, 1994 has been the first legal code concerning prison administration since the founding of the People's Republic of China, which is regarded as a milestone in China's prison history. The prison law provides legal, social, cultural, political and economic rights to which inmates are entitled. For example, the law specifies inmates' right to appeal, personal safety, civil rights, including property and inheritance rights, and believing in a religion, and that inmates who are juvenile, female, elderly, infirm and disabled, minority nationality Chinese or foreign nationality will be given special treatment considering their physical and psychological conditions and customs. Since 1995, prisons all over China have begun to implement the policy of “combining punishment with reform for the purpose of transforming criminals into law-abiding citizens”. This policy defines and emphasizes the basic function of prison and purpose of punishment. At present, 100-check-point-system is the most widely used evaluation system in China's prisons. Points that are closely connected to inmates' privileges such as material rewards, commutation of sentence or parole are mainly evaluated in four aspects. To begin with, inmates should acknowledge guilt and show repentance. After an inmate enters the prison, he is required to write an autobiography about his criminal history and engage in self-criticism of his crime. The logic behind is that only when inmates realize the severity of their crime and the harm done to the victims, their family members and the society, will they begin to change. Next, inmates should comply with laws and prison regulations. Inmates are also expected to show their submission to prison management and allegiance to the government. In addition, inmates should take an active part in education programs. Education which entails ideological, cultural and technical education is considered an essential part of prison life and is expected to compensate for inadequate education and social skills that many inmates lack. Finally, inmates should participate actively in work and

accomplish their work assignment. Work is considered to help inmates kill time in prisons and learn productive skills as well, enabling them to a better chance of making a living after release. When assigning work, prison officials are required to take into consideration a number of factors such as the age, crime type, length of prison term and physical conditions of inmates. As an important part of education and reform, inmates have the right to contact their family members and other relatives regularly by correspondence or visits. If inmates are found to have either mental or physical problems, family members are encouraged to write to and visit inmates not only for displaying family support but building up inmates' confidence in reform. In order to guarantee the rights of inmates, the people's procuratorates stationed at prisons are responsible for supervising prison administration and dealing with inmates' complaints, accusations and petitions. Supervisors chosen from society are also invited to oversee the operation of the prisons. Since 2008, the recidivism rate of criminals has been proposed to be the primary standard for measuring and quantifying prison work. On the whole, China is trying to build up a more professionalized, legalized, humane and transparent prison system.

The roles and functions of prisons have been grounded on certain theoretical premises about the purposes of punishments. Seen from the historical development of China's prisons, there has been a dominant concept of punishment as being both retributive and educational, which could explain why prisons in China are plagued with controversies. First and foremost, China has been adopting a severe-punishment philosophy. The infliction of brutal and cruel punishments on criminals for thousands of years are so deeply rooted in the public's mind that the word "prison" usually evokes unpleasant images: wired walls, watchtowers with armed guards, prison officials patrolling with serious and suspicious eyes, and inmates living in misery, disease, anger, fear, mistrust, pain and death. Besides, books about China's criminal justice system written in Western languages, either from objective or subjective perspective, all revolve around the key term *laogai* (e. g., Dutton, 1992; Wu, 1992; Seymour & Anderson, 1998; Williams & Wu, 2006; Muhlhahn, 2009). These works are of little help to people's proper understanding of the prison reform and treatment of inmates in today's China, for discourses about the purposes of punishment in China have changed from *laogai*, *gaizao* (education and reform) to correction