

## The Idea of Terrorism in China

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### **Abstract:**

This research investigated an old political problem in a new cultural context: what is the idea of terrorism in China? Specifically, this research posed two inter-related research questions in search of an understanding of terrorism on Chinese soil: how did China conceive of terrorism in the imperial past? What is China's conception of terrorism in the communist present? A review of literature informs that there is very little research into and discussion of the historical roots or indigenous conceptualization of terrorism in China. This research is a first and tentative step to fill the literature gap. The research found that while the idea of "terrorism" (as understood in western terms) has no counterpart in China's past, China has treated "terrorist" activities as political violence, i.e. challenged to the ruler's mandate from heaven and disruption of cosmic order. It also finds that the contemporary PRC understanding of and attitude toward terrorism exhibited a remarkable continuity with the past, i.e. until very recently there was no terrorism law but counter-revolutionary crimes. Thus observed China, old and new, preferred to think about terrorism in more generic terms of political criminality, i.e. violent posing challenges to prevailing authority or dominant ideology; disrupting "mandate from heaven" of old and undermining "Marxism – Leninism – Maoism – Dengism" of new.

### **Keywords:**

Terrorism, Idea of Terrorism, Chinese Terrorism, Political Violence, Luan in China, Counter-Terrorism

"There has never been any consensus definition of terrorism."

Richard Betts

Director, Institute of War and Peace Studies

Columbia University (2001)

"That is to say when we look at terrorism as a problem we should be looking at it historically, dialectically and not be satisfied with "general concept" ("fanhau gainian") based on formal logic ("xingshi luoji").

Rong Hanxsong (翁寒松) (2004)

"China scholars should have their own definition for terrorism"

Wang (王逸舟 2002/01/23)

## Introduction

Terrorism is an aged old social problem and perennial political phenomenon. Some observed that the practice of terror is as old as civilization itself.<sup>4</sup> In the west, Greek historian Xenophon (cir. 431 – 350 BC) espoused the use of psychological warfare and employment of terror to intimidate the enemy populations and Roman emperors, such as Tiberius and Caligula, have used terror measures, such as banishment and execution, to discourage opposition to their rule.<sup>5</sup> In the east, Chin Shih Huang (259 - 210 B C.), first Emperor of China, has used draconian measures and collective punishment to instill discipline and secure his rule.<sup>6</sup> Michael Foucault lends his insight in explaining the effectiveness of specter of torture in inducing fear to discipline the body and control the mind:

On 2 March 1757 Damiens the regicide condemned 'to make the amende honorable before the main door of the Church of Paris', where he was to be 'taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds'; then, 'in the said cart, to the place de Greve, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds' (Pieces originales . . . , 372-4).<sup>7</sup>

Terrorism becomes a global phenomenon, international problem and public concerns only in the twentieth century, around 1960 with the rise of the IRA and PLA. The 9/11 terrorist attacked on United States was successful in making terrorism a global problem and public menace to be eradicated at all cause.<sup>8</sup> As declared by President Bush, a global war on terror has began:

"The attack took place on American soil, but it was an attack on the heart and soul of the civilized world. And the world has come together to fight a new and different war, the first, and we hope the only one, of the 21st century. A war against all those who seek to export terror, and a war against those governments that support or shelter them."<sup>9</sup>

Thus far the effort to rein in terrorism has suffered from a lack of common understanding of its nature and characteristics, causes and remedies.<sup>10</sup> International community lacks consensus as to what constituted terrorism, thus inhibiting sustain and effective international cooperation. The following dialogue by various U.N. representatives on international nuclear terrorism cooperation clearly and fully demonstrated the nature of the problem:<sup>11</sup>

ARIM MEDREK (Morocco): “In an attempt to complete the international legal framework against terrorism, the General Assembly had adopted resolution 59/46 aimed at pursuing negotiations on a draft comprehensive convention on international terrorism and on the suppression of nuclear terrorism. Regrettably, a lack of “authentic political resolve” had prevented the attainment of the necessary compromise on the two instruments....A main problem had been the issue of the definition of terrorism.”

ARÍA ÁNGELA HOLGUÍN (Colombia): “To achieve agreement on a universal concept of terrorism, it was necessary to focus on the purpose of the act and not to concentrate on the definition or description of its authors, who must be subject to punishment by law.”

EMINE GÖKÇEN TUĞRAL (Turkey): “speaking on behalf of the Organization of the Islamic Conference (OIC)...While terrorism could not be tolerated under any pretext, it was important not to lose sight of the moral duty to address the legitimate grievances caused by despair, resentment, ignorance and poverty...”

AILA TAJ EL DINE (Venezuela): “Three fundamental elements were necessary for completing work on a text, including a definition of State terrorism ...State terrorism undermined tolerance between peoples and nations and impeded the peaceful conflict resolution. It was necessary to distinguish between the legitimate struggle against foreign occupation and the right of people to self determination.”

MOHAMMED HAJ IBRAHIM (Syria): “The draft comprehensive treaty should fill the gaps left by previous treaties and should specify a clear definition of terrorism which distinguished terrorism from the legitimate struggle of peoples. No exceptions must be taken for military troops in the treaty, unless such actions were legitimate in accordance with the Charter and international law.”

CARL PEERSMAN (Netherlands): “on behalf of the European Union...It was high time to set aside debates on so-called State terrorism...The Union also agreed with the Secretary-General that the use of force by States was already thoroughly regulated under international law. In addition, the true meaning of the right to resist occupation must be understood; that could not include the right to spread terror in a population by deliberately killing or maiming them. The Union endorsed the Secretary-General's call for a definition of terrorism.”

A GOPINATHAN (India): “There could not be any justification for any act of terrorism. Despite the various measures, it had not been possible to stop the spread of terrorist networks around the world. ..The perceived differences and difficulties in arriving at a consensus definition should not be used as an excuse to delay or postpone a decision on the comprehensive anti-terrorism convention.”

From the above U.N. discussion, it is obvious that there is no universal definition of terrorism,<sup>12</sup> and the prospect of arriving at a consensus is slim. It vindicated the oft cited comment that “One man's terrorist is another man's freedom fighter.” Such a critique is best summed up by Noam Chomsky:

“It is important to bear in mind that the term “terrorism” is commonly used as a term of abuse, not accurate description. It is close to a historical universal that our terrorism against them is right and just (whoever we happen to be), while their terrorism against us is an outrage. As long as that practice is adopted, discussion of terrorism is not serious. It is no more than a form of propaganda and apologetics.”<sup>13</sup>

This saying while often denied as a cliché<sup>14</sup> and rejected as being too post-modernist;<sup>15</sup> is nevertheless well supported by history.<sup>16</sup> For example:

During the civil war, John Brown<sup>17</sup> murdered unarmed men in Kansas to avenge the killing of Northerners and killed innocent civilians at Harper's Ferry to arm the slaves.<sup>18</sup> He has this to say about fighting and dying for a cause:

“I believe to have interfered as I have done . . . in behalf of His despised poor, was not wrong, but right. Now, if it be deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children, and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I submit: so let it be done.”<sup>19</sup>

Brown was convicted of treason and hanged by the state of Virginia, but was later memorialized and immortalized by a grateful nation in an epic poem on the

Civil War by Stephen Vincent Benet: "John Brown's Body." The Union army soldiers of yesteryears and local boy scouts of today joined in chorus by campfires everywhere, centuries apart, and singing to the top of the lung and from the bottom of the heart: "John Brown's body lies a-mouldering in the grave, but his soul goes marching on. Glory, glory hallelujah."

Yasser Arafat,<sup>20</sup> the putative father of PLO, a terrorist organization, was charged with the cold-blooded assassination of U.S. Ambassador Cleo Noel. Salah Khalef (Abu Iyad), Yasser Arafat's deputy, responsible for the 1972 Munich Olympics rationalized such violent actions and terrorist tactics thusly:

"By nature, and even on ideological grounds, I am firmly opposed to political murder and, more generally, to terrorism. Nevertheless, unlike many others, I do not confuse revolutionary violence with terrorism, or operations that constitute political acts with others that do not."<sup>21</sup>

Arafat won a Nobel Prize award for peace in 1995.

Nelson Mandela<sup>22</sup> promoted the use of force to overthrow the apartheid South African government and was convicted of treason to be imprisoned for life on June 12, 1964. However, in 1993, Mandela was awarded the Nobel Peace Prize for, according to Mandela:

"We stand here today as nothing more than a representative of the millions of our people who dared to rise up against a social system whose very essence is war, violence, racism, oppression, repression and the impoverishment of an entire people."<sup>23</sup>

More recently, "The Taliban and Osama bin Laden were once called freedom fighters (mujahideen) and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists."<sup>24</sup>

Lastly, in the context of China, Mao Zedong used "guerrilla warfare" to topple the Nationalist (KMT) government<sup>25</sup> and established the People's Republic of China.<sup>26</sup> Mao legitimized the use of force and violence to achieve political – ideological end.<sup>27</sup> It was Mao who said: "The revolution is not a tea party."<sup>28</sup> In saying so, he made clear that the only determinant of political legitimacy is one of ultimate success or "survival of the fittest."<sup>29</sup> This is evident by the fact that U.N. reluctantly and belatedly came to accept China as the proper political sovereign of China, a full U.N. member, notwithstanding her blatant violation of U.N. charter.<sup>30</sup>

If we were to consult terrorism literature, we will find many definitions of terrorism.<sup>31</sup> There are as many terrorists groups<sup>32</sup> as there are explanations for their causes and justifications for their action in achieving statehood.<sup>33</sup>

For example, Schmidt and Youngman once cited 109 different academic definitions<sup>34</sup> of terrorism in their book *Political Terrorism*:<sup>35</sup> Brian Jenkins: "Terrorism is the use or threatened use of force designed to bring about political change."<sup>36</sup> Walter Laqueur: "Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted."<sup>37</sup> James M. Poland: "Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical."<sup>38</sup>

If the scholars, academicians and experts could not come up with a universally agreed and mutually accepted definition of terrorism<sup>39</sup> the policy, legislative, and administrative fellows could do no better, and certainly as confusing.<sup>40</sup>

Thus, the 1937 League of Nations Convention defined terrorism this way: "All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public."<sup>41</sup> The U.S. Code of Federal Regulations defined terrorism as "...the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives"<sup>42</sup> The United States Department of Defense defined terrorism as the "calculated use of unlawful violence to inculcate fear; intended to coerce or intimidate governments or societies in pursuit of goals that are generally political, religious, or ideological." The F.B.I. defined terrorism as: "Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." The British Terrorism Act 2000, defined terrorism so as to include not only attacks on military personnel, but also acts not usually considered violent, such as shutting down a website whose views one dislikes. The 1984 U.S. Army training manual defined terrorism as: "Terrorism is the calculated use of violence, or the threat of violence, to produce goals that are political or ideological in nature."<sup>44</sup>

It appears that thus far, all we can agree on is that the definition of terrorism shared some common features. According to Schmidt and Youngman, they found

that the list of 109 definitions contained many recurring elements and repeated key words/phrases: Violence, force (in 83.5% of the definitions); political (65%); fear, terror (51%); threats (47%); psychological effects, anticipated reactions (41.5%); victims not target of violence (37.5%); intentional, planned, systematic, organized (32%); methods, strategy, tactics (30.5%).<sup>45</sup>

As observed, arriving at a shared understanding of terrorism is an impossible task.<sup>46</sup> As Walter Laqueur observes, “Even if there were an objective, value-free definition of terrorism, covering all its important aspects and features, it would still be rejected by some for ideological reasons.” It is difficult to define terrorism for a number of reasons: First, there are many parties who have a vested interest to either condemn or embrace the use of political violence to their advantage. There are weak states who are interested in suppressing political violence. There are strong states who wanted to purge political oppositions. There are emerging insurgency groups who promoted their brand of political ideology. There are established radical organizations that fought for universal human rights. Second, there are many different ideological schools and philosophical traditions, and still more competing political thoughts and moral perspectives which argued for the legitimacy and propriety of the use of violence to maintain order or promote justice.<sup>47</sup> All claimed “might makes right” or “end justifies mean”.

In the end, people who have come to embrace terrorism with certitude or fight it with conviction have to accept the fact that their views are never going to command respect by each other, as with the case of Palestine and Israel.<sup>48</sup> In this regard, they are very much like the blind people in John Godfrey Saxe (1816-1887)'s “The Blind Men and the Elephant”:<sup>49</sup>

It was six men of Indostan  
To learning much inclined,  
Who went to see the Elephant  
(Though all of them were blind),  
That each by observation  
Might satisfy his mind

...

And so these men of Indostan  
Disputed loud and long,  
Each in his own opinion

Exceeding stiff and strong,  
Though each was partly in the right,  
And all were in the wrong!  
(Emphasis provided)

John Godfrey Saxe insightful observation and perceptive comments at the end of the poem - “each was partly in the right, And all were in the wrong!” – cautioned against premature closure of the mind and blind rush to judgment. Instead it suggests the need for double up effort to investigate into different conceptions of and experiences with terrorism; preferably in different time, at different place and with different people.<sup>50</sup> The more elephant parts we touch and feel, the closer we are to “sensing” the truth.

This article took up John Godfrey Saxe's challenge in investigating into the idea of terrorism in China, past and present.

One clarification before we start. “Sensing” is used here out of respect to the origin text of John Godfrey Saxe. “Sensing” is also used because “terrorism” – as in killing of innocent people and striking up of fear – touched all of us as humans, whichever side of the debate we are on. Witness the noble cause state terrorism that was to be Hiroshima and Nagasaki.<sup>51</sup> Most, if not all of us, have “feelings” about terrorism before we start “thinking” about it. If asked, most people will reluctantly attest if not readily admit that their understanding of terrorism is underscored more by strong “feeling” than sharp “cognition” or cold “logic”. Thus, the saying: “I cannot tell you what terrorism is, but I know one when I see one.” It is important to recognize that as intellectuals or academics we are hardly beyond interests and certainly not without prejudice, still less emotion and feelings of one form or another. Here I do not mean that intellectuals are necessarily disposed to material interests (reflection requires stability and security), but they are certainly moved by more basic constitutional and visceral forces, e.g. truth, justice and betterment of human kind. Human beings are made up of hearts (feelings - sensation) and mind (logic - reason). Intellectuals are blessed with logical ability and trained in cognitive skills. They are less sure footed when coming to feeling or emotions, the “fussy” stuff. In the ultimately analysis, intellectuals “thinks”<sup>52</sup> not “feel” their way out of problems. The common people are different, they feel, not think into an issue. I thus use “feeling” to remind my “thinking” colleagues and “feeling” readers that there is a need to freely mix feelings with reasons in giving meaning to “terrorism”, or at

the very least take “feelings” into account when attempting a definition.<sup>53</sup> This approach to social inquiry vindicates claims of “insider” research (e.g. Convict Criminologists)<sup>54</sup> and “identity” scholarship (e.g. feminism) that research (findings) has more to do with the heart (feeling - values) than the mind (rationality - logic) and play into the welcoming arms of the post modernists, who championed individual and personal narratives in truth seeking than collective and objective understanding of the world we live. Simply put, true understanding of human affairs requires identification, motivation and interpretation, not logic alone.<sup>55</sup>

This article is divided into the following sections. After this brief “Introduction”, section II “Research Focus” states the questions posed by this research. Section III provides a comprehensive review of literature on terrorism in China. The review informs that while China of late and especially after 9/11 is very much interested in terrorism study, the corpus of research findings have focused mostly on how to deal with (international) terrorism, esp. separatist movement in Xinjiang. There is very little research into the conceptual roots and intellectual history of terrorism in China. This unexpected finding provides justification for this research. Section IV explains and expounds upon the “Research Approach” taken. It argues for the need to study terrorism in China from a local perspective and with indigenous conception. This approach necessitates the investigation into the origin, history and development of idea of terrorism in China; an approach adopted by this study. Section V: “Terrorism in Imperial China” offers a first of a kind historical look at how terrorism was conceived and received in China. It observes that while the idea “terrorism” (as understood in the west today) has no counterpart in China's past, China has treated “terrorist” (like) activities and criminality (with political overtone) most severely, as challenging to “heavenly mandate” (“tianming”) and disruption of “cosmic order” (“dao”). Section VI: “Terrorism in Communist China” explores PRC's thinking about terrorism since 1949. It found that PRC understanding has exhibited a remarkable continuity with the past, i.e. until very recently there was no terrorism law but counter-revolutionary crimes, suggesting China, old and new, preferred to think about terrorism in more generic terms of political criminality, i.e. violent challenges to dominant ideology, i.e. “mandate from heaven” of old and “Marxism – Leninism - Maoism – Dengism” of new.<sup>56</sup> The last section, Section VII: “Conclusion” offers a reflection on what have been learned and achieved with this investigation into China's conception, perception and reception with “terrorism”. It affirms the fact that a people's reception of and reaction to crime is very much determined by past history and influence by

current ideology. Terrorism as an anti-state political offence has long existed in China. Only that they were looked upon and dealt with differently.

### **Research Focus**

This research takes up the Saxe's challenge to investigate into China's conception of and experience with terrorism. It also addresses U.N. General Assembly Resolution 42/159 of December 7, 1987 standing concern: "the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism."

This research poses two inter-related research questions in searching for idea terrorism on Chinese soil: how does China conceive of terrorism in the past? What has China's idea with terrorism in the present? More simply, is it possible to develop an indigenous notion of terrorism in China,<sup>57</sup> or terrorism with Chinese characteristics.

### **Literature Review**

There is very little published research – in criminal justice, Asian studies, political science and law - over the subject matter of terrorism in China, and virtually none on conceptual definition and historical development.

A key word search (China, terrorism) of criminal justice electronic search engines<sup>58</sup> turned up three relevant items.<sup>59</sup>

In 2002, an anonymous author wrote about the up surge of terrorism and related arrests in Xinjiang China after 9/11: "Chinese police in the capital of the far western region of Xinjiang arrested 166 violent terrorists and other criminals in a crackdown on crime. The arrests were made between Sep 20 and Nov 30 in a three-month push to crack cases in the predominantly Muslim region."<sup>60</sup>

The next year, John Z. Wang published an article describing terrorism in Xinjiang China in more details:

"The Eastern Turkistan Islamic Movement (ETIM) was designated a terrorist organization by Afghanistan, Kyrgyzstan, China, the United States, and the United Nations in 2002. However, no systematic studies have been published on the new terrorist organization in Xinjiang, China. Using a case-study approach and interviews, this article attempts to provide information in terms of its historical evolution, related religious and ethnic issues, organizational agenda, activities, and role in the current international terrorist network. This article argues that better international cooperation

and the improvement of social and religious policies will help curtail activities of the ETIM.”<sup>61</sup>

Finally, in 2005, Mabrey confirmed the obvious – China was no longer insulated from terrorism, especially from separatists' attacks at high profile international events:

“The People's Republic of China has been well-insulated from the threat of terrorism, with less than 300 official terrorism-related casualties recorded in the last 10 years. However, the rise of religious separatist extremism in western China and China's role as host of the 2008 Summer Olympics in Beijing are making counter-terrorism a new priority for the Chinese security forces.”<sup>62</sup>

A key word electronic search (China, terrorism) of political science – Asian studies journals<sup>63</sup> turned up 566 articles. Very few of them are directly related to terrorism in China. A detail examination of these literature shows that the term “terrorism” started to appear with some frequency at the end of 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century, a time of great social turmoil<sup>64</sup> and political upheaval for China.<sup>65</sup> The subject matter of terrorism was brought up in relationship with dynastic rebellion, e.g. 1911 revolution,<sup>66</sup> domestic strives, e.g. banditry<sup>67</sup> and warlords,<sup>68</sup> civil wars, e.g. KMT vs. CCP,<sup>69</sup> anti-foreignism, struggles, e.g. Boxer rebellion,<sup>70</sup> and external wars, e.g. war of resistant against Japan.<sup>71</sup>

More recently, research in terrorism has shifted to exploring internal unrest, e.g. Xinjiang separatist movement,<sup>72</sup> international terrorism, i.e. multilateral approach (including China) in fight terrorism,<sup>73</sup> and global human rights issues, i.e. how terrorism fight raised human rights concerns.<sup>74</sup>

Finally, a key word (China, terrorism) search<sup>75</sup> of legal journals search turned up 256 articles of interest.<sup>76</sup> A careful examination of this corpus of legal writings turned up two articles that discussed in some length recent development of terrorism in China. Both articles were written by Matthew D. Moneyhon, a law student then (2002 - 2003). Both of them were devoted to the reporting of political development in Xinjiang, and with it the necessity to touch upon separatists' terrorist activities.

With “RECENT DEVELOPMENT: Controlling Xinjiang: Autonomy on China's "NEW Frontier," Moneyhon discussed terrorism in the context of independence and succession movement in Xinjiang. He observed that

notwithstanding violence acts and terrorism activities by Xinjiang separatists - terrorists, the only political settlement that was acceptable to China would be Constitutional "autonomy", not separate statehood, for the Uighurs which will eventually mean "modernization, sinification, and ultimately, integration into the greater Han framework."<sup>77</sup>

In "CHINA'S GREAT WESTERN DEVELOPMENT PROJECT IN XINJIANG: ECONOMIC PALLIATIVE, OR POLITICAL TROJAN HORSE?"(2003) Moneyhon set out to show that the PRC has been using economic development as a means to incorporate Xinjiang within its political fold:

"Viewed within the context of China's evolving minority policy, Go West looks more like the latest incarnation of Beijing's strategy to integrate and assimilate ethnic minorities into the fabric of greater China, than it does a serious economic development and poverty alleviation plan."<sup>78</sup>

All the above studies adopted a conventional (western) definition of terrorism in investigating terrorism in China. If we were to take up the added challenge of investigating China terrorism indigenously, i.e. infusing terrorism idea with local content and engaging in terrorism discourse within local context, we need to broaden the scope and deepen the reach of the literature search. Instead of basing the search for "terrorism" predominantly on pre-conceived conceptual categories and commonly accepted experiential labels, we need to branch out and dig deeper to look at "terrorism" from a Chinese indigenous perspective and as revealed by local grounded empirical data.<sup>79</sup> For example, how did the state, government, officials and public reacted to armed group challenges (bandits) and secretly organized criminality (secret societies) in imperial China.<sup>80</sup> This search strategy turned out to be much more fruitful and far more interesting.

Banditry was a serious social qua political problem in China.<sup>81</sup> Banditry took on political character when they directly challenged state authority in seeking political concession or indirectly questioned government legitimacy in seeking to restore cosmic order.<sup>82</sup> For example, in a May 1468 edict, the emperor wrote indignantly about the open challenge to his rule:

"Recently banditry in and around the capital has become rampant. Openly riding their horses in gangs of several dozen, at night they set fires, brandish their weapons, and plunder residents' goods. During the day, [they] intercept

the carts of those people who pass by, seizing their donkeys and mules. They even go so far as to take people's lives. Even though there are intendants charged with apprehending bandits, imperial soldiers from the warden's offices of the five wards, and patrolmen, they do not really try to capture the bandits; so that now they are totally unrestrained by fear and act outrageously.”<sup>83</sup>

Bandits (of all ages) in China were akin – in purpose, constitution, organization, methods - to modern day terrorism: they were oppressed by the government; they were anti-establishment (e.g. local gentry) and against government (e.g. local magistrate or emperor); they sought political change by violent means, e.g. redistribute wealth or return to Confucius state; they used terror tactics to induce fear, e.g. making traveling unsafe;<sup>84</sup> they were well organized, e.g. charismatic leadership with loyal followings.

In imperial China, secret societies were conspiring and organized groups that openly contested political legitimacy and secretly undermined government authority, with the use of violence and terror at the turn of the 20<sup>th</sup> century.<sup>85</sup> The most famous one was the Triad Society (or “Triads”) which was formed to “resist Qing, and return to Ming” (“fan Qing, fu Ming”). By conventional standard, secret societies were consummate terrorist groups. Indeed, they were enlisted by both Sun to sabotage the Qing dynasty and used by Chairman Mao to subvert the Nationalist government.<sup>86</sup>

What have we learned from this literature search about for conception of terrorism in China?

There was very little serious research into terrorism in China as a domestic problem and domesticated concept.<sup>87</sup>

To look at terrorism as a domestic problem is to recognize that terrorism, as an existential<sup>88</sup> phenomenon<sup>89</sup> and socially constructed<sup>90</sup> experience, is to observe that terrorism is experienced subjectively and conceived collectively. It cautions against taking for granted how (Chinese) people think, feel, believe and act towards terrorism, still less its history, culture and conditions.

To investigate terrorism as a domesticated issue is to research into how terrorism, as an imported idea, is given meaning anew in China. China “terrorism” research to date has not seen fit to question the appropriateness and utility of applying conventional (western) idea of terrorism to understand associative terrorism experience in China.

## Research Approach

Comparative legal scholars and cultural anthropologists have long observed and frequently suggested that in comparing phenomenon across culture there is a need to be sensitive to temporal-cultural-contextual differences between conceptual categories for comparative purposes.<sup>91</sup> Contemporary (western) concepts<sup>92</sup> have very little utility in describing and understanding traditional (non-westernized) society.<sup>93</sup> As one African legal scholar observe:

To the extent that legal positivism claims to be a universally valid and applicable theory, no doubt, its credibility would be substantially diminished, if it can be shown to be either incapable of providing an adequate description of, or of responding adequately to, the peculiar jurisprudential experiences and needs of certain cultures, or, to be peculiarly susceptible to morally undesirable consequences, when put into practice in certain cultural milieu.<sup>94</sup>

The first challenge in any comparative study is to answer the most basic and first order question; i.e. what to compare or finding a comparable “unit of analysis”. This entails the breaking down of conceptual boundary of subject matter to be compared, here deconstructing idea of terrorism into its constitutive parts in order to understand its reach and scope as a logical construct and denotation and connotation as an experiential label.<sup>95</sup> Take the idea of comparative law as an example. The modern idea of law – positive, written, formal, coercive, political - has no counter-part in primitive society.<sup>96</sup> For example, Austinian concept of law found different expression in historical Indian<sup>97</sup> and practice of law manifested differently in traditional Chinese culture.<sup>98</sup>

Terrorism as a manifestation of political violence in different time and place adopts different names, takes on various shapes, evokes distinctive sentiments, attracts disparate reactions, elicits divergent responses, and results in differentiated assessment in different culture and times. As comparative scholars we are interested in finding functional equivalences<sup>99</sup> of the western concept of terrorism in China context. Professor Igor Stramignoni observed thusly:

The basic methodological principle of all comparative law is that of functionality. .. the legal system of every society faces essentially the same problems, and solves these problems by quite different means though very often with similar results. The question to which any comparative study is

devoted must be posed in purely functional terms; the problem must be stated without any reference to the concepts of one's own legal system.”<sup>100</sup>

While all agreed that the term “terrorism” is new to China and imported from abroad, there is a great debate on whether there were “terrorism” (or terrorism like) activities in China, as we come to know the idea in the west and in the 20<sup>th</sup> century. This line of research requires us to deconstruct the concept of “terrorism” as a social construct and experiential label into its essential elements. What makes for “terrorism” and why is it important? If one were to pursue this line of inquiry, one invariably come to the inevitable conclusion that terrorism is objectionable because it is challenging to a political order, with terrorists demanding to speak to the political authority as equal sovereign, not subjugated citizens; with the use of force but not by appealing to (“authoritative”) reason. Indeed more often than not meaningful dialogue is not possible due to differences in values and divergent of interests, as reflecting completing paradigm and conflicting of ideology. Violence and terror was used as an instrumentality to resolve such irreconcilable conflicts in values and interests.<sup>101</sup>

### **Terrorism in Imperial China**

Until very recently, the term terrorism did not exist in China. Currently, the investigation, analysis, discussion and debate over terrorism has been pre-occupied with a contemporary and international terms of reference.<sup>102</sup>

This is not the case in historical China:

“Historical terrorist activities are not strictly speaking terrorism, and more appropriately not fitting with modern definition of terrorism. That is because at that time modern nation states has yet to appear. Thus it was impossible to concretely differentiate between organized “state” violence vs. terrorism. “The assassination of Qin emperor by Jing Ke”<sup>103</sup> is a good example. This kind of terrorist activities has clear political objective. But whether it was a government conduct or a “martyr”<sup>104</sup> kind of conspiracy, is very hard to decide. Due to the fact that at that time the people's object of loyalty could easily be changed, there was not strong and focused idea of nationalism. Nationalism was rarely the roots of terrorism. Except of religious violent activities, there was very few ideological<sup>105</sup> driven terrorism. The most common form (of terrorism) was for the princes and dukes<sup>106</sup> and ministers<sup>107</sup> to cultivate assassins to achieve the purpose of power struggle in attacking the opponents. There was a heavy dosage of

personal vendetta and very little political purpose. Also at that time the communication technology was very primitive and the status of the public was very low, except in cases of mass “clan” confrontation, there were very few terrorist activities directed at the common people. This is because it was much easier to cultivate terrorist atmosphere by assassinating the official and dignitaries.<sup>108</sup>

In order to understanding terrorism in China, we must first understand China's view on (gratuitous) violence and (cosmic) order in the way of things “dao”. In imperial China, all forms of gratuitous violence were frowned upon as immoral and destructive, i.e. unnatural and dysfunctional.<sup>109</sup> Violence was considered as contrary to human nature<sup>110</sup> and disruptive of the cosmic order.<sup>111</sup> Furthermore, the use of violence to challenge the Emperor regime, destabilize the state, harm the citizens, and disrupt social order was punished in the most serious manner. The emperor has an affirmative duty to restore the cosmic order (“tianming”) and in accordance with rule of nature (“dao”).<sup>112</sup> Conducts seeking to undermine the legitimacy or authority of the emperor, e.g. individual assassination, or disrupt the stability of the state, e.g. collective violence, were strictly prohibited, resolutely deterred, and severely punished.<sup>113</sup> This is particularly the case with alien governance and under barbarian rulers, e.g. Northern Wei, Northern Zhou, Liao, Jurchen Chin (1115 – 1231),<sup>114</sup> Yuan and Qing dynasty.

As crime against the state, terrorism as political violence took on radically different meaning in imperial China. In imperial China, political criminality (*zhengzhi fenzui*) was violence directed against the emperor, inducing fear and causing “chaos” (*luan*). Such kinds of violence were much feared by the emperors as being secretive and unpredictable. Emperor of Sung, Taizhong was reported to have said:

“ If there is no external threat (*waiyou*), the state must have internal trouble (*neihuan*). External threats are only at the border and can be protected against. However those who are treacherous (*jianxie*) have no form, as internal threats, they are much to be feared! The emperor should always pay attention and be aware of this possibility.”<sup>115</sup>

State historian, Au Yangxiu, who has written the an authoritative historical account of China – *Shiji* - after traveling cross the country twice has equated external threat by barbarians as those afflicting the skins and internal attacks by the hoodlums and traitors (terrorists) as those corrupting the internal organs (*fuxin zhi huan*)<sup>116</sup>.<sup>117</sup>

Throughout the centuries, Chinese emperors have spared no effort to prevent such fear:

“During the *Qin* dynasty, those who committed political crimes (*zhengzi fanzui*) against the emperor was punished at the minimum with death, most of them were punished with purging the clan. According to historical account, those who engaged in “wei luan”<sup>118</sup> (creating disorder) and “wei ni” (creating dissent)<sup>119</sup> are often torn apart by vehicles, before death they are subjected to “five punishment”<sup>120</sup>, then “yi san zu” (termination of three clan),<sup>121</sup> “mei qizong” (extermination of the ancestor), this often implicates thousands of households and tens of thousands of people. People who engaged in crimes of slandering (*feibang*) and heresy (*yaoyan*) against the emperor, must be punished with the most heavy penalty. Even those who disclosed the where about of the emperor must be severely punished with death.”<sup>122</sup>

Through the centuries and dynasties, political violence against the emperor took many forms, e.g. from regal assassination to civil uprising to destruction of royal temples, and comes from still many quarters, e.g. from deprived citizens to disaffected public to disillusioned intellectuals.<sup>123</sup>

However, the use of political violence against the emperor and officials while considered illegal and generated apprehension in the ruled, might be undertaken for justifiable reason and under the most exceptional circumstances, e.g. “guan bi min fan” (people rebel as a result of oppressive officials).<sup>124</sup> Thus, while official history might condemn individual assassins and collective violence, contemporary unofficial history and later historical records often lauded such acts as heroic and necessary, in disposing a tyrant, in venting anger of the people, in doing heaven's justice.<sup>125</sup> The issue of benevolence vs. malevolence of “terror” was ever present but rarely discussed in official history of the time.<sup>126</sup>

As to response to political violence, as early as the Spring and Autumn (*Chunqiu* 770-475 BC) and Warring States (*Zhan guo* 475-221 BC) periods, historical records described early form of specialized violence suppression officials called “jin bu shi” (violence suppression officials) whose functions are much like our anti-terrorists units today, i.e. control of violence, broadly defined.<sup>127</sup> Emperors took extensive precautions against assassinations and adopt draconian measures against collective violence, of one form or another. The imperial security system at the capital, much like that of the secret service today, made sure the emperor was well protected.<sup>128</sup> The comprehensive *baojia* system of the *Qin* dynasty and

the elaborate spy system during the Sung era made sure that the emperor was well informed of every plot against him.<sup>129</sup> Spy system in Nationalist government and National security office in ORC helped to keep the nation harmless by perpetrating their own brand of state terrorism.<sup>130</sup>

After this brief discussion of terrorism like political violent in imperial China, three challenging intellectual issues present themselves.

First, can “terrorism” as we come to know it be perpetrated by the state<sup>131</sup> in China?<sup>132</sup>

In China, “punishment” and “terror” was extended beyond the individual body to the corporate body, the blood family. This state sponsored terror was openly conducted and explicitly endorsed, and are most rational in design and functional in operations. The emperor wanted to punish and terrorize the family because: First, geographically (isolated villages separated by great distance), organizationally (agriculture society), socially (insularity of self-sufficiency) and morally (Confucianism), China practiced collective responsibility, with family, clan, community and nation as respective unit of accountability. Second, functionally, the family has been made the site of *de jure* and *de facto* site of education, supervision and control. Third, both moral and practical reason suggested that clan and family “deserve” to be punished for collective guilt; treacherous acts seldom went unnoticed and without support from intimate others living in close quarters with social and moral obligations to support each other. Fourth, revenge was expected and demanded of family members whose family members were aggrieved. Total annihilation of the blood family was considered prudent and necessary to lay to rest future threats to the emperor.

Second, can terrorism be perpetrated by “pure”<sup>133</sup> speech alone?<sup>134</sup> This line of inquiry suggested itself when we consider that in a learned society that was imperial China, the power of the pen and impact of the words on the people was enormous. Speech was strictly controlled and words were meticulously vetted. *Qin* burned all the books, while *Qing* prosecuted people for speech crime. Intellectuals were viewed with much suspicion. To the emperors dissenting intellectuals with a pen were as dangerous as a terrorists with a gun, and treated no less resolutely and severely, as annals of history clearly documented and research of today amply suggested.<sup>135</sup>

“The court, ever so sensitive to slights and expression of hostility to Manchu rule, decided to deal harshly with offenders. The purported author, Chuang

T'ing-lung, was dead, and so his father was arrested and thrown into a Peking jail, where he later died. When the case was closed in 1663, the father's and son's body was disinterred and mutilated, their families were bound over to Manchus as slaves, and their possessions were confiscated. A similar fate lay in store for all the scholars involved in preparing the history, the printer, and even some of the purchasers. Altogether seventy men were executed.”<sup>136</sup>

Third, the remaining theoretical – conceptual issue to discuss is whether all forms of violent challenge to state authority, directly or by proxy, were deemed to be “terrorist” in nature? In as much as the China emperor ruled his empire and govern his citizens by proxy and through the family, the family head assumes the honorific role and real functions of state, any challenge to the family head is a challenge to the emperor, symbolically and indirectly. Philip Kuhn has called this as “third realm”.<sup>137</sup> Another scholar has described it as “more or less government.”<sup>138</sup> They amounted to the same thing: government has cooped local community to rule themselves. Assault on or threat to the family power structure is treated every bit as serious as challenging the authority of the state, i.e. consider the ten most serious crimes.<sup>139</sup> By this logic, terrorist acts are not only those that threatened the state – emperor but also those who intimidated the clan - family - heads. Any disobedience to parents were severely dealt with by state law, family rules and social norms, and made an absolute offense.

### **Terrorism in Communist China**

As observed, the concept of “terrorism” is new to China, but the experience with “terror” is not. “Terrorism” as we come to know it in the West, as a discrete intellectual idea, scholarly concept, legal classification, cultural label or conventional referent, was alien to China. However, the use of “terror” as a political instrumentality was never questioned by the Party and the experience with “terror” is never too far from China consciousness as a nation and personal experience as collectives. Ever since the formation of the Communist Party in 1920s, CCP members were perpetrators and recipients of political terrors. KMT used terror tactics to purge the ranks of CCP. CCP resorted to terrorism – assassination and bombing – to intimidate KMT officials and destabilize the KMT government. More recently, the cultural revolution recalled French terror and “strike-hard” campaign qualified as state sponsored terrorism, in theory and practice.

According to the official and authoritative PRC “police encyclopedia”, the *Gongan baike quanshu*,<sup>140</sup> counter-revolutionary crime (*fan geming zui*)<sup>141</sup> is defined as: “Conduct which harmed the People's Republic of China with the purpose of over-throwing people's proletarian dictatorship and socialist system.”<sup>142</sup>

The PRC Criminal Law (1979) provides in Article 90 that “Conduct which is harmful to the People's Republic of China and done with the purpose of over-throwing the proletarian dictatorship and socialist system are all counter-revolutionary crimes.” Counter-revolutionary crimes include crime involving: (1) inciting people to resist and harm the implementation of state law and order and (2) use counter-revolutionary slogans, pamphlets and other means to incite others to over-throw the proletarian dictatorship and socialist system. (The PRC Criminal Law (1979) Article 102.)<sup>143</sup>

A exhaustive review of prior and existing counter-revolutionary laws, regulations, and directives is not informative on what constitute counter-revolutionary conduct beyond the fact it refers to speech or conduct which is intended to or in effect was harmful to the state's political order or challenge the established government, what terrorism is all about

As the police definition intimates, legal literature confirms and case studies<sup>144</sup> borne out, counter-revolutionary crimes are “intent” (in China “purpose”)<sup>145</sup> more so than a “conduct”<sup>146</sup> and “result” crime.<sup>147</sup> Thus, for the same harmful conduct, e.g. personal or property damage, the existence of counter-revolutionary purpose (*mudi*)<sup>148</sup> separates the crime vs. non-crime (*zui yu fei zui*<sup>149</sup>).<sup>150</sup> Collaterally, harmful conduct is used to demonstrate and prove the existence of counter-revolutionary motive (*dongji*) and purpose (*mudi*).<sup>151</sup>

For purposes of terrorism crime vs. non-crime analysis, counter-revolutionary crime covers more than conventional terrorist conducts when ALL criminal activities, not only violent ones, in pursue of counter-revolutionary purpose, e.g. distribution of anti-revolutionary propaganda materials, are covered. This literal and analytical “over-coverage” should not detain us for long. It is likely that as applied, most if not all counter-revolutionary crimes in China are covered as terrorist conduct. First, by law in order for a prosecution under counter-revolutionary law to be successful it must be proven that the impact of such conduct on the social (e.g. socialist economy) and political order (e.g. proletarian dictatorship) is other than *de minis*, i.e. there must be substantial harm. In such cases, the conduct being prosecuted is more likely to be disruptive and threatening. If not

if not even violent or damaging.<sup>152</sup> Second, proving a counter-revolutionary crime requires the demonstration of “harmful” purpose and intent. In most cases only violent conduct is likely to be prosecuted and convicted.<sup>153</sup> In fact, a comprehensive review of pertinent PRC Criminal Law provisions covering counter-revolutionary crimes show that most of them required the use of force to bring about damage to property, disruption to services, and harm to people.

Counter-revolutionary crime is covering less than conventional terrorist conduct since ONLY conduct with counter-revolutionary purpose, not all political crimes are covered. Take the case of holding a hostage to make a demand on the PRC government to purge corruption falls squarely within the ambit of contemporary definition of terrorist acts, i.e. using violence to change government policy and not topple the government. Thus, only SOME but not violent acts are deemed to be carried out against the state.<sup>154</sup>

Doctrinally, the most authoritative statement of the nature and treatment of political violence – from revolution to terrorism – can be found in an essay written by Mao:<sup>155</sup> ON THE CORRECT HANDLING OF CONTRADICTIONS AMONG THE PEOPLE.<sup>156</sup> The intellectual foundation of the “on contradiction” doctrine was that of Hegel's dialectics.<sup>157</sup> The doctrine has been applied to justified government draconian anti-crime measures at the expense of human rights concerns.<sup>158</sup> In “On Contradiction” Mao taught that are two kinds of contradictions (conflicts), one within the ranks of the people and the other between the people and the class enemy. The former can be resolved peacefully, i.e. education and punishment, the later cannot be resolved amicably without resort to force, i.e. war. Terrorism belongs to the second type of contradiction.

## **Conclusion**

This research began with an observation that the effort to treat terrorism as a uniform set of human experiences and a universal conceptual category ill serves the purpose of academic research in understanding terrorism – origin and development, causation and remedy, impact and implications - on foreign soil, here China.<sup>159</sup> In order to understand terrorism in China on its own terms, there is a need to investigate “terrorism” (like activities) in local (historical) context and with an indigenous cultural perspective. In practical terms, how “terrorism” originated indigenously and developed historically in imperial China. This entails the study of history, culture and above all else philosophy and in the case of

China, Confucius ideas and ideal; specifically, how China viewed order, violence and control? This has been the research focus and investigation approach of this first of a kind study.

This investigation shows that the concept of terrorism, as conventionally understood in the west, did not exist in imperial China. Western concept of terrorism was not able to adequately capture the essence and characteristics, fully account for the experience and discourse, and accurately communicate the specificity and nuance of “terrorism” like “political violence” in historical China. The idea of “terrorism” included more, e.g. state terrorism, and less, e.g. clan violence, it accentuate some aspects, e.g. terror on innocence, at the expense of others, e.g. terror on parents, and finally it is understood analytically and logically, i.e. the constitution of the violent act, more so than being appreciated intuitively and emotively, i.e. the total effect of the phenomenon on people, society, cosmos.<sup>160</sup>

Some of the inadequacies of conventional terrorism label in capturing China experience are summarized below:

First, as an agriculture society China sough order, stability and continuity, and above all else harmony.<sup>161</sup> Thus, Confucius ethics taught that conflicts are to be avoided and violence, condemned.<sup>162</sup> The former is a precursor of the second. The second is a consequence, re-enforcer and regenerator of the first. Both have a tendency of disturbing established social relationships (“wunlun”)<sup>163</sup> and if left unchecked rupture (“luan”) pre-ordained cosmic order (“dao”), which take years to established and still more time to rehabilitate. Thousand years of Confucius education was successful in fostering a culture, creating a custom and developing a personality that equate conflicts as “bad” and violence are “evil”, at a cognitive and emotive level. Thus, people were taught to avoid conflicts at all cost, even if they were in the right. Violence was found to be objectionable, however it was prosecuted (violence vs. threat vs. terror), whoever it was directed again (emperor, officials, parents, peers); whatever the impact (physical injury vs. psychological harm). There were few attempts to discriminate one type of conflict and violence from another. There was very effort to avoid conflict and suppress violence, individually, collectively and nationally. The focus is on maintain peace and order, not discriminating causes, e.g. for judging the state of “cosmic order”<sup>164</sup> and entitlement to “mandate of heaven”. Thus, emperor and officials were equally to be blamed for natural disasters as with human upheaval.

Second, like all other countries, old and new, east and west, political violence, of which “terrorism” is a species, did exist in China and in abundance,<sup>165</sup> i.e. assassination, banditry,<sup>166</sup> secret society activities<sup>167</sup> and peasant rebellion.<sup>168</sup> These

violent acts were found to be particularly odious because they were secretly organized and openly challenged the emperor's authority and legitimacy. To a Confucius scholar and by extension the sage ruler, they were acts of disloyalty and signs of chaos (“luan”); both affronts to the emperor's mandate to rule. Here again, it matters not how political violence was perpetrated, e.g. slandering vs. assassinating vs. rebellion. What matters was that the emperor's authority must be re-established, “luan” quelled and mandate from heaven restored.

Third, terrorism is the instrumental use and strategic employment of threat, violence or terror to achieve political – regime change or policy reform – objectives. Terrorism, as instrumental use of violence, has no place in Chinese ethical and jurisprudential thought. (1) The instrumental use of violence is frowned upon, thus treated as barbaric and animalistic, i.e. Chinese ethics has no principles of end justifying means.<sup>169</sup> The use of violence means to achieve political ends, make the perpetrator as morally apprehensible as the oppressive government, one attempts to remove. (2) The strategy use of violence will likely fail, in principle, if not in practice. The way to reform government and change policy is through adherence to Confucius ethic and with the use of moral reasoning, starting with appealing to higher moral principles and setting a good personal example. Fighting violence with violence is not recommended,<sup>170</sup> and not likely to succeed or prevail. People were taught not to bend to raw power but succumbed to sound reasons.

Fourth, one of the characteristics of terrorism is the indiscriminate killing of innocent people to promote fear and terror. This would not happen in imperial China for two reasons, one philosophical, the other practical. (1) Philosophically, killing indiscriminately or terrorizing innocent people was *ipso facto* not reasonable, however noble the cause, i.e. against “qing” and “li” in China.<sup>171</sup> (2) Practically, China was a non-democratic (autocratic) country,<sup>172</sup> there was no point in attacking civilians, since they have no say over the conduct of the emperor. Nor would the emperor yield in the face of slaughtering or terrorizing of his civilians for three reasons. It is morally wrong to negotiate on matters of governance principle. It is also morally wrong for the learned and educated (“zhunzi”) to defer to and make concession with the not cultivated and uneducated (“xiaoren”).<sup>173</sup> It is also unimaginable for the emperor – parent to negotiate with citizens – subordinate.

Fifth, there was no state terrorism in paternalistic China.<sup>174</sup> In accordance with Confucius teachings the state is build upon a family model.<sup>175</sup> The relationship between emperor/office and citizens/charges was, and still is, that existed between father and sons. Sons have to show respect and demonstrate loyalty to familial authority figures, from parents to officials to emperor. The family authority figures have a moral duty to take care of the best interest of the children, e.g. food, shelter and education. Thus when citizens challenge the state – from dissenting to resisting to rebelling – the state has the authority and duty to react in a most violent manner. This is not considered as state terrorism. This is viewed as state performing its moral duty. If the citizens misbehaved they can hardly blame the state for acting “violently” against their misconduct, seeking a return to the right path or “dao”.

Sixth, the concept of terrorism was also not able to make allowance for good “political violence”.<sup>176</sup> The only proper course of act and effective measure by the oppressed people against the abusive state (or none benevolence (buren) emperor) was to engage in righteous political resistance, from assassination to rebellion, in a last ditch effort to return to the country to the prescribed and preordained heavenly way. The aim was never to overthrow the emperor but to return the throne to proper “heavenly” authority. View in this light, there is righteous, if done right, acts of violence to correct violation of heavenly mandate and no illegal, still less immoral, terrorism act to disturb the cosmic order.<sup>177</sup> The “terrorist” act that challenges the emperor resulting in cosmic disorder is brought on by the emperor, manifesting heavenly displeasure and a sure sign the emperor having lost his mandate from heaven, in modern term denial of political legitimacy. In order for such resistance be recognized as legitimate, the resisters must be righteous in its cause and proper with means. Conversely, violence used to press the rulers to conform to the cosmic order and return to heavenly (benevolent) rule is deemed as understandable, if not indeed justifiable<sup>178</sup> and necessary.<sup>179</sup> Years later, Mao has justified such grassroots - peasant rebellions as examples of class wars; present day freedom fighters not terrorists. In the ultimate analysis, the use of violence for or against the emperor in China must be evaluated against a fix moral universe and universal ethical percepts, espoused by Confucian and enshrined within Confucian teachings.



interests and advance world peace.) Available at “Introduction to international politics” – Reading materials (《Guoji zhengzhi gailun》 Yuedu cailiao- 《国际政治概论》 阅读材料 <http://www.sis.pku.edu.cn/wanglian/reading/reading.htm>

<sup>4</sup> “HISTORY OF TERRORISM,” *terrorism files* [http://www.terrorismfiles.org/encyclopaedia/history\\_of\\_terrorism.html](http://www.terrorismfiles.org/encyclopaedia/history_of_terrorism.html)

<sup>5</sup>*Id.*

<sup>6</sup>**Zhu Shaohou, *Zhongguo gudai zhian zhidu shi*** (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.93.

<sup>7</sup>*Id.* p. 3.

<sup>8</sup>“The Global War on Terrorism: The First 100 Days” White House. <http://www.whitehouse.gov/news/releases/2001/12/100dayreport.html>

<sup>9</sup>*President George W. Bush, 10/11/01. Id.*

<sup>10</sup>David Trimble – Nobel Lecture, Oslo, December 10, 1998 (Human conflicts in general and terrorism in particular cannot be dealt with effectively until and unless people start to look at them realistically, not with an eye towards Platonic perfectibility and in pursuit of abstract values. Burke observed: "Circumstances give in reality to every political principle, its distinguishing colour, and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.")

<sup>11</sup>See Action Needed on Two Draft Conventions this Year, Ad Hoc Committee on Terrorism Told, as It Begins Current Session, L/3081, 29 March 2005. United Nations, the Ad Hoc Committee on International Convention for the Suppression of Terrorist Bombings, adopted by the Assembly in 1997; and the International Convention for the Suppression of the Financing of Terrorism, adopted in 1999. <http://www.unis.unvienna.org/unis/pressrels/2005/l3081.html>.

<sup>12</sup>Kevin J. Greene, Terrorism as Impermissible Political Violence: An International Law Framework, 16 *Vt. L. Rev.* 461 (1992) ("Terrorism has 'no precise or widely accepted definition.'")

<sup>13</sup>Noam Chomsky was interviewed by Sabahattin Atas. Znet (October 1, 2003)

<sup>14</sup>TOM SCHNEIDE, “Is One Man's Terrorist Really Just Another Man's Freedom Fighter? *RightTurn* February 15, 2002 (“Or is it just simply another leftist assumption taken for granted in academia and the media that puts us on the slippery slope to anti-Americanism?”); Patrick J. Buchanan, “One man's terrorist is another

man's freedom fighter," *Information Clearing House* March 16, 2004 ("One man's terrorist is another man's freedom fighter. Or so it would seem.") George Cantor, "When is one man's terrorist another's freedom fighter?" *The Detroit News* February 16, 2002 ("So there are cases in which one man's terrorist may be another man's freedom fighter. But only when the freedom is real and not just a rhetorical lie.")

<sup>15</sup>Jonah Goldberg "A welcome blow for ineffective intellectuals," *Jewish World Review* April 25, 2003 ("One man's terrorist is another man's freedom fighter"; "it depends on the meaning of 'is'" ... These are the barnacles that build up on a society which takes postmodern thought seriously."). Stanley Fish, "Don't Blame Relativism CAN POSTMODERNISTS CONDEMN TERRORISM?" *The Communitarian Network* Volume 12, Issue 3, Summer 2002 (Postmodernists cannot explained the reality of 9/11 – senseless death and destruction – away, on account of different perception or relative value.) <http://www.gwu.edu/~ccps/rcq/Fish.pdf>

<sup>16</sup>See Peter Weiss "Terrorism, Counterterrorism and International Law," *Arab Studies Quarterly* 29 March 2002 ("What do Nelson Mandela, Menachem Begin, Gerry Adams and Yasir Arafat have in common? They all made the transition from being regarded as terrorists to being recognized as statesmen and peacemakers.")

<sup>17</sup>John Brown was an anti-slave activist who resorted to violence and perpetrated murders to achieve his goals. He participated in the Underground Railroad and established the League of Gileadites in 1851. The league protected escaped slaves from slave catchers.

<sup>18</sup>On October 16, 1859, John Brown raided the federal arsenal at Harpers Ferry, Virginia to arm the slaves.

<sup>19</sup>"John Brown" PBS

<http://www.pbs.org/wgbh/amex/brown/peopleevents/pande01.html> (Visited September 1, 2005)

<sup>20</sup>Arafat (Mohammed Abdel-Raouf Arafat As Qudwa al-Hussaeini) was born on August 24, 1929 to Palestinian parents. His mother died when he was five. He lived with his maternal uncle in Jerusalem, the capital of Palestine, then under British rule. While there he experienced first hand the oppressiveness and abusiveness of British rule. At seventeen Arafat started to smuggle arms to repel the British. At nineteen, he quitted the University of Faud I to fight the Jews. In 1964 Arafat became a full-

time revolutionary. The same year Palestine Liberation Organisation (PLO) was established. It was sponsored by the Arab States to free Palestine for the Palestinians. In 1969 Arafat took over the PLO and turned it into a radical and militarized organization. In 1988, at a special United Nations session held in Geneva, Switzerland, Arafat declared to the world that the PLO denounced violence, renounced terrorism and supported "the right of all parties concerned in the Middle East conflict to live in peace and security, including the state of Palestine, Israel and other neighbours. See "Yasser Arafat – Biography," <http://nobelprize.org/peace/laureates/1994/arafat-bio.html> (Visited September 1, 2005).

<sup>21</sup> Abu Iyad, *Without a Homeland* (Tel-Aviv: Mifras, 1983)

<sup>22</sup> Mandela (Nelson Rolihlahla Mandela) was on July 18, 1918 to Henry Mandela, Chief of the Tembu Tribe. Mandela qualified in law in 1942 and joined the African National Congress (ANC) in 1944. He has been fighting the ruling National Party's apartheid policies since then. The ANC was banned in 1960. In 1961, Nelson Mandela established Umkhonto we Sizwe, an armed wing of ANC to struggle against the government. On June 12, 1964, Madela and eight others were convicted attempting to overthrow the government and was sentenced to life imprisonment. "Nelson Mandela – Biography," <http://nobelprize.org/peace/laureates/1993/mandela-bio.html> (Visited September 1 2005)

<sup>23</sup> More recently and closer to home, President Bush embraced the Northern Afghanistan alliance as "our friends" in November of 2001 when only a decade ago (1992), they were killing thousands of civilians; raping and torturing still more. See "Bush's Definition of Terrorism Fits Northern Alliance Like a Glove; TV Interviewers Don't Notice," <http://www.commondreams.org/views01/1123-05.htm> (Visited September 1 2005).

<sup>24</sup> Sami Zeidan, "Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism," 36 *Cornell Int'l L.J.* 491, 492 (2004)

<sup>25</sup> Howard L. Boorman; Scott A. Boorman, "Chinese Communist Insurgent Warfare, 1935-49," *Political Science Quarterly*, Vol. 81 (2): 171-195 (1966).

<sup>26</sup> Allen Finn, "Distinguishing terrorism from guerrilla warfare," Queen's University – The Journal FRIDAY, NOVEMBER 21, 2003 - ISSUE 22, VOLUME 131. <http://www.queensjournal.ca/article.php?point=vol131/issue22/features/lead3>

<sup>27</sup>H. Edward Price Jr., "The Strategy and Tactics of Revolutionary Terrorism," *Comparative Studies in Society and History* Vol. 19 (1): 52-66 (1977); Andrew C. Janos, "Unconventional Warfare: Framework and Analysis," *World Politics*. Vol. 15 (4): 636-646 (1963). (China was accused of shooting here way to the U.N.)

<sup>28</sup>He also said: "Politics is war without bloodshed while war is politics with bloodshed."

<sup>29</sup>HARUN YAHYA, "The Real Ideological Root of Terrorism - DARWINISM AND MATERIALISM," ('Chinese socialism is founded upon Darwin and the theory of evolution.')

[http://www.islamdenounceterrorism.com/darwinism\\_materialism.html](http://www.islamdenounceterrorism.com/darwinism_materialism.html)

<sup>30</sup>C. G. Fenwick, "The Recognition of the Communist Government of China," *The American Journal of International Law* Vol. 47, No. 4 (Oct., 1953), pp. 658-661

<sup>31</sup>For an excellent discussion of the difficulties and issues with defining terrorism from a western perspective, see Steve Best and Anthony J. Nocella II, "Defining Terrorism." *Animal Liberation Philosophy and Policy Journal*, Volume 2 (1) (2004). For a discussion of definitional issues from an Islamic perspective, see *Ayatullah Shaykh Muhammad 'Ali Taskhiri* "Towards a Definition of Terrorism," *Al-Tawhid (A Quarterly Journal of Islamic Thought & Culture)*, Vol. V, No. 1 (Muharram 1408 AH/1987 CE). For a U.N. approach, see "Definitions of Terrorism," United Nations Office for Drug Control and Crime Prevention. For a discussion of the problems and impact of defining terrorism in the international arena, see Peter Weise, "Terrorism, counterterrorism and international law," *Arab Studies Quarterly (ASQ)* (Spring-Summer, 2002).

<sup>32</sup>The American Ku Klux Klan (founded in 1865), the Irish Republican Army (founded 1919), the Pakistani Lashkar-e-Toiba and Jaish-e-Mohammad, two pre-state Zionist groups: Irgun (founded 1931) and Lehi (founded 1940), the Basque ETA located in Spain and France (founded 1959), the Canadian Front de Libération du Québec (founded 1963), the Palestine Liberation Organization (founded 1964), the German Red Army Faction (also known as the Baader-Meinhof Gang, founded 1967), the Italian Red Brigade (founded 1969), the American Weathermen (founded in 1969), the Peruvian Shining Path (active since the late 1960s), the Palestinian Black September (founded 1970), the Ulster Defence Association (founded 1971), the Puerto Rico's Los Macheteros (founded 1976), Hezbollah (founded 1982), the Islamic Jihad (active in Egypt and Palestine since the late 1970s), the Hamas (founded 1987), Al-Qaeda (founded in 1988) and the Kosovo Liberation Army - (KLA). See *FBI Terrorism Report* (1993 – 1998), (1996), (1997), (1998).

<sup>33</sup>MATTHEW J. MORGAN, "The Origins of the New Terrorism," *Parameters*, Spring 2004, pp. 29-43. (The manifestation of terrorism and its conduct might be attributable to cultural, political and technological factors.)

<sup>34</sup>A 1988 Army report came up with 100 definitions for terrorism.

<sup>35</sup>Alex P. Schmidt and Albert I. Jongman et al., *Political Terrorism* (SWIDOC, Amsterdam and Transaction Books, 1988). "Encyclopedia: Definition of terrorism," <http://www.nationmaster.com/>

<sup>36</sup>Encyclopedia/Definition-of-terrorism (Visited September 1, 2005).

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* See also Steve Best and Anthony J. Nocella II, "Defining Terrorism." *Animal Liberation Philosophy and Policy Journal*, Volume 2, No. 1, 2004.

<sup>39</sup>At least one scholar thought that not all is well when we relegate our moral responsibility and withhold our judgment in confronting terrorism. Ruth W. Grant, "Moral Judgment in Crisis, "Forum: Faculty Viewpoint." Duke University <http://www.duke.edu/web/forums/grant.html> (Visited September 1, 2005).

<sup>40</sup>For a partial list of U.S. government definitions, see "Terrorism" Definitions, Center for Arms Control and Non-Proliferation. <http://www.armscontrolcenter.org/terrorism/101/definitions.html> (Visited September 1, 2005).

<sup>41</sup>"Definitions of Terrorism" United Nation: Office on Drugs and Control. [http://www.unodc.org/unodc/terrorism\\_definitions.html](http://www.unodc.org/unodc/terrorism_definitions.html)

<sup>42</sup>28 C.F.R. Section 0.85

<sup>43</sup>"Definition of terrorism" <http://www.answers.com/topic/definition-of-terrorism>

<sup>44</sup>Boaz Ganor, "Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?" <http://www.ict.org.il/articles/define.htm>

<sup>45</sup>John Dugard, "International Terrorism: Problems of Definition," *International Affairs (Royal Institute of International Affairs 1944-)* Vol. 50 (1): 67-81 (1974).

<sup>46</sup>Terrorism Research Center (Visited March 10, 2002). <http://www.terrorism.com/terrorism/def.shtml>

<sup>47</sup>Bilal al-Hasan, "Who has the Right to Condemn Terrorism?" *Journal of Palestine Studies*, Vol. 15 (3): 150-151 (1986)

<sup>48</sup>John Godfrey Saxe (1816-1887), "The Blind Men and the Elephant"

<sup>49</sup>Defining Terrorism & its Root Causes: references to the definition of terrorism and the root causes as discussed in the UNGA debate "Measures to eliminate international terrorism", October 1-5, 2001, United Nations, New York *available at* <http://www.reachingcriticalwill.org/political/1com/terror.html> (last visited March 8, 2005)

<sup>50</sup>Patrick Buchanan, "Hiroshima, Nagasaki & Christian morality," *World Net daily* August 10, 2005.

[http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=45692](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=45692); Anthony Gregory, "Targeting Civilians at Hiroshima and Nagasaki," " August 6, 2004, *The Future of Freedom Foundation* <http://www.fff.org/comment/com0408b.asp>

<sup>51</sup>This I true at least in the West and certainly in post industrial age, with the verdict on post-modern era hanging in the balance but leaning distinctively to a "back to the future" kind of romanticism.

<sup>52</sup>This is to suggest that more primitive and non- western people, e.g. Chinese, "think" differently. "Comparative Philosophy: Chinese and Western," Stanford Encyclopedia of Philosophy <http://plato.stanford.edu/entries/comparphil-chiwes/> ("Chinese philosophy is "wisdom" literature, composed primarily of stories and sayings designed to move the audience to adopt a way of life or to confirm its adoption of that way of life. Western philosophy is systematic argumentation and theory." In order to move people to do the right thing, Confucius moral principles are rarely analytical and argumentative, still less stand alone ethical rules, detached from the real life and embraced as absolute propositions. Instead, moral principles and reasoning is applied in context to solve concrete life problems in the form of stories, making it realistic and pragmatic, the two characteristics of Confucius teachings. Confucius teachings were espoused to address real life human situations, e.g. should son avenge the father's death at the hand of the corrupt officials. In so doing, they have to come to terms with multitudinous considerations and myriad of concerns, in an interactive, dialectic and dynamic process, which inform all life – situational decision making, to come up with a best fit solution. No one principle dominates and controls, all considerations plays a part, if only considered and

rejected. Consideration of “feelings” and “emotions” are part and partial of the process, and never rejected outright as irrelevant. This makes Confucius principles take on a contingent quality and relative gloss. But as instructed by Wittgenstein language game [Ludwig Wittgenstein, *Philosophical Investigations*, tr. by G. E. M. Anscombe (Prentice Hall, 1999)], the contingency and relativity of Chinese “ethical rule games” are never too contingent or relative after all. At the end of the day and given sufficient practice, Chinese people know right from wrong and in turn what to do in like circumstances and similar situation.)

<sup>53</sup>In another context (debating right to die), the author concluded an essay with this observation: “When I look back, I still feel ambivalence; sometimes guilt. My human emotions drive me one way and my rationality takes me to another. Schooling has given me an analytical mind and critical spirit, but has taken away my innocence and makes me uncomfortable of emotions...Still in all, during these tormenting moments, I am glad to be able to find some genuine, if fleeing, solace. I am able to feel the pain of my mother and suffering endured by my fellow human beings. I am glad that I am a human being; living the vagaries of my feelings!!” “A Matter of Life and Death: A Very Personal Discourse,” *Georgetown Journal of Law and Public Policy* Vol. 1 (2): 339–361, 361 (2003).

<sup>54</sup>Jeffrey Ian Ross and Stephen C. Richards (Ed.). *Convict Criminology*. (Belmont, CA, Wadsworth, 2003. (Convict criminology assessment prison conditions and evince reform policy from an experiential point of view and with “feelings” and “emotion” to match.) “Reality” is never objective, still less without personal attachment - feelings. Stephen Richards, “Convict Criminology,” Faculty Lunch Seminar, December 7, 2005. College of Letters and Science, University of Wisconsin (Oshkosh).

<sup>55</sup>See author: “Peer Review of Academic Journals Revisited” (August 2005) (under review and on file.)

<sup>56</sup>Michael Lindsay, “Contradictions in a Totalitarian Society,” *The China Quarterly* No. 39 (Jul., 1969), pp. 30-40

<sup>57</sup>陶世龙, (需要认清具有中国特色的恐怖主义) <http://www3.nbnet.nb.ca/stao/sles143.htm>; 警惕中国特色的恐怖主义现代化) <http://www3.nbnet.nb.ca/stao/sles143.htm>

<sup>58</sup>ProQuest (August 25, 2005) - Criminal Justice data set. A confirmation with A web search of Wilson Web with keywords: China, terrorism yield 130 items, only 1 is a peer reviewed article related to China terrorism, i.e. John Z Wang, "Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China" (see above).

<sup>59</sup>Daniel Mabrey "Counterterrorism efforts in China," *Crime & Justice International* Vol. 20 (84): 29 (2005); John Z Wang, "Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China," *International Journal of Offender Therapy and Comparative Criminology*. Vol. 47 (5): 568 (2003); Anonymous, "166 terrorists nabbed," *Crime & Justice International*. Vol. 18 (59): 16 (2002).

<sup>60</sup>"166 terrorists nabbed," *Crime & Justice International*. Vol. 18 (59):16 (2002).

<sup>61</sup>"Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China," *International Journal of Offender Therapy and Comparative Criminology*. Vol. 47 (5): 568 (2003).

<sup>62</sup>*Id.* Abstract.

<sup>63</sup>Project Muse Political Science Journals (October 5, 2005).

<sup>64</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society* Vol. 13 (3): 427-454 (1984).

<sup>65</sup>Ward Perkins, "The Failure of Civil Control in Occupied China," *Pacific Affairs* Vol. 12 (2): 149-156 (1939)

<sup>66</sup>Young-Tsu Wong, "Popular Unrest and the 1911 Revolution in Jiangsu," *Modern China* Vol. 3 (3): 321-344 (1977).

<sup>67</sup>R. G. Tiedemann, "The Persistence of Banditry: North China Plain," *Modern China* Vol. 8(4): 395-433 (1982)

<sup>68</sup>Diana Lary, "Warlord Studies," *Modern China* Vol. 6 (4): 439-470 (1980).

<sup>69</sup>Howard L. Boorman; Scott A. Boorman, "Chinese Communist Insurgent Warfare, 1935-49," *Political Science Quarterly* Vol. 81 (2): 171-195 (1966).

<sup>70</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society* Vol. 13 (3): 427-454 (1984).

<sup>71</sup>Ralph Thaxton, "On Peasant Revolution and National Resistance: Toward a Theory of Peasant Mobilization and Revolutionary War with Special Reference to Modern China," *World Politics* Vol. 30 (1):24-57, 55 (1977).

<sup>72</sup>Tanner, Murray Scot, "China Rethinks Unrest," *The Washington Quarterly* - Volume 27, Number 3, Summer 2004, pp. 137-156

<sup>73</sup>David M. Lampton and Richard Daniel Ewing, *The U.S.-China Relationship Facing International Security Crises: Three Case Studies in Post-9/11 Bilateral Relations* (Washington, D.C.: Nixon Center, 2003), p. v, <http://www.nixoncenter.org/publications/monographs/US-ChinaRelations2003Intro.pdf> (accessed July 12, 2004). Cited at note 6, Wu, Xinbo "The Promise and Limitations of a Sino-U.S. Partnership," *The Washington Quarterly* - Volume 27, Number 4, Autumn 2004, pp. 115-126.

<sup>74</sup>Hoffman, Paul, "Human Rights and Terrorism," *Human Rights Quarterly* - Volume 26 (4): 932-955 (2004). (9/11 allowed PRC to suppress Xinjiang separatist aspirations of the Xinjiang-Uighur Autonomous Region (XUAR) and independence claims of ethnic Uighur community in the name fighting terrorism.)

<sup>75</sup>Lexis Nexis Academic Universe (October 7, 2005).

<sup>76</sup>Search function adjusted to China and terrorism appearing within same paragraph.

<sup>77</sup>Matthew Moneyhon, "RECENT DEVELOPMENT: Controlling Xinjiang: Autonomy on China'S "NEW Frontier," 3 *Asian-Pacific L. & Pol'y J.* 4 (2002)

<sup>78</sup>"Conclusion." In Matthew D. Moneyhon, "CHINA'S GREAT WESTERN DEVELOPMENT PROJECT IN XINJIANG: ECONOMIC PALLIATIVE, OR POLITICAL TROJAN HORSE?" 31 *Denv. J. Int'l L. & Pol'y* 491 (2003).

<sup>79</sup>H. Edward Price Jr., "The Strategy and Tactics of Revolutionary Terrorism," *Comparative Studies in Society and History* Vol. 19 (1): 52–66 (1977).

<sup>80</sup>Bandits were variously called *dao* and *zei*, see *Hanyu dacidian*, Vol. 7, pp. 1431-32 and vol. 10, p. 183 respectively.

<sup>81</sup>James W. Tong. *Disorder Under Heaven: Collective Violence in the Ming Dynasty* (CA, Stanford: Stanford University Press, 1991) and Elizabeth Perry, *Rebellion and Revolution in North China, 1845-1945* (CA, Stanford: Stanford University Press, 1980) and Esherick, *The Origins of the Boxer Uprising* (Berkeley, 1987), chapter 2.

<sup>82</sup>Martha Crenshaw, "The Causes of Terrorism," *Comparative Politics* Vol. 13 (4): 379 - 399 (1981) (Terrorism is the pre-meditated use pr threat of symbolic and low

level violence by conspiratorial group for political purpose against the state (p. 379))

<sup>83</sup>David M. Robinson, "Banditry and the Subversion of State Authority in China: The Capital Region During the Middle Ming Period (1450-1525)," *Journal of Social History* - Volume 33(3): 527-563, 529 (2000).

<sup>84</sup>The pirates in the 17<sup>th</sup> century use flags to announce their presence and induce fear in their victim, so that they can achieve their piracy without a fight (<http://www.kipar.org/piratical-resources/pirate-flags.html>). 1400s the bandits in China build up a reputation of ruthlessness to effectual their exploits. For example, the "whistling arrow bandits" (*xiangmazi*, commonly abbreviated to *xiangma*) attached bells to their mounts or using whistling arrows when they raided. Id. 529.

<sup>85</sup>Owby, David, "Recent Chinese Scholarship on the History of Chinese Secret Societies," *Late Imperial China* - Volume 22, Number 1, June 2001, pp. 139-158. David Owby, *Brotherhoods and Secret Societies in Early Qing China: The Formation of a Tradition*. (Stanford: Stanford University Press, 1996). Jean Chesneaux. *Secret Societies in China in the Nineteenth and Twentieth Centuries*, tr. Gillian Nettle. (Ann Arbor: University of Michigan Press, 1971); and Jean Chesneaux, ed., *Popular Movements and Secret Societies in China, 1840-1950*. (Stanford: Stanford University Press, 1972.)

<sup>86</sup>John C. DeKorne, "Sun Yat-Sen and the Secret Societies," *Pacific Affairs* Vol. 7 (4): 425-433 (1934); Stuart R. Schram, "Mao Tse-tung and Secret Societies," *The China Quarterly* No. 27: 1-13 (1966).

<sup>87</sup>Ever since the door of imperial China was plied open by foreign powers in the late 19<sup>th</sup> and early 20<sup>th</sup> century, Chinese people – from emperor to intellectuals to the public has find ways to come to terms with western technology, ideas and culture. Most of the efforts have been devoted to selective borrowing of useful foreign technology, without also wholesale importation of corrupting barbarian culture. Thus the idea that "foreign" ideas and "foreign" culture, which are not as advanced as the Chinese, must be domesticated and make to fit for Chinese use.

<sup>88</sup>A philosophy that emphasizes the uniqueness and isolation of the individual experience in a hostile or indifferent universe, regards human existence as unexplainable, and stresses freedom of choice and responsibility for the consequences of one's acts. *American Heritage Dictionary of the English Language, Third Edition* © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation.

<sup>89</sup>“Phenomenology: modern school of philosophy founded by Edmund Husserl. Its influence extended throughout Europe and was particularly important to the early development of existentialism. Husserl attempted to develop a universal philosophic method, devoid of presuppositions, by focusing purely on phenomena and describing them; anything that could not be seen, and thus was not immediately given to the consciousness, was excluded. The concern was with what is known, not how it is known. The phenomenological method is thus neither the deductive method of logic nor the empirical method of the natural sciences; instead it consists in realizing the presence of an object and elucidating its meaning through intuition.” *The Columbia Encyclopedia, Sixth Edition*. © 2002 by Columbia University Press

<sup>90</sup>Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. (Garden City, New York: Anchor Books, 1996) pp. 51-55, 59-61.

<sup>91</sup>See “3. How (and What) to Compare?” In MATHIAS REIMANN, “The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century,” 50 *Am. J. Comp. L.* 671, 689 - 690 (2002). See also RAN HIRSCHL, “The Question of Case Selection in Comparative Constitutional Law,” 53 *Am. J. Comp. L.* 125 (2005)

<sup>92</sup>The term “western” is not a scientific concept, capable of particular referent, without anchor, perspective, background and context. This does not deny the fact that “western” has received meaning, such as “occidental” or those of European abstraction and origin, i.e. Greek. The term “western” is not a geographic concept as much as it is a cultural, e.g. Greek civilization vs. barbarian culture, and economic, one, e.g. industrial national vs. developed countries. See “Western world” in *Wikipedia Encyclopedia* [http://en.wikipedia.org/wiki/Western\\_world](http://en.wikipedia.org/wiki/Western_world) The western influence on the world is un-mistakenly Greek, from philosophy of government (Plato, Aristotle), to science, e.g. mathematics, architecture (physics and geometry), astronomy and theoretical science.

<sup>93</sup>Friedrich Carl Von Savigny, *The Vocation of Our Time for Legislation and Jurisprudence* (tr. 1831). (He observed that legal institutions like art or music are an indigenous expression of a people's culture, and cannot be externally imposed or selectively transplanted.). P.C. Huang, "Theory and the Study of Modern Chinese History: Four Traps and a Question," *Modern China* Vol. 24 (2): 183-208 (1988).

<sup>94</sup>Jare Oladosu, "CHOOSING A LEGAL THEORY ON CULTURAL GROUNDS: AN AFRICAN CASE FOR LEGAL POSITIVISM," *West Africa Review* (2001) <http://www.westafricareview.com/vol2.2/oladosu.html>

<sup>95</sup>Susan Tiefenbrun, "Legal Semiotics," 5 (1) *Cardozo Arts & Ent. L. J.* 89-156 (1986) (discussing the application of semiotics to the law and the meaning of "deconstruction").

<sup>96</sup>Karl N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict in Case Law in Primitive Jurisprudence* (Norman, OK: University of Oklahoma Press, 1941).

<sup>97</sup>Oriental jurisprudence is build upon natural law foundation and thus cannot be compared with positivistic legal system. CATHERINE VALCKE, "Comparative Law as Comparative Jurisprudence - The Comparability of Legal Systems," *52 Am. J. Comp. L.* 713 (2004).

<sup>98</sup>William P. Alford, "Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law," *Modern China* Vol. 23 (4): 398-419 (1997).

<sup>99</sup>Ralf Michaels, "The Functional Method of Comparative Law," *Duke Law School Legal Studies Paper No. 87.* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=839826](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=839826)

<sup>100</sup>Igor Stramignoni, "The King's One Too Many Eyes: Language, Thought, and Comparative Law," 2 *Utah L. Rev.* 739, 750 (2002)

<sup>101</sup>Gary Gilley, "Postmodernism - Part 3," *Think on These Things* December 2002 - Volume 8, Issue 9 [http://www.svchapel.org/Resources/Articles/read\\_articles.asp?id=44](http://www.svchapel.org/Resources/Articles/read_articles.asp?id=44)

<sup>102</sup>"Literature review" Hu Lianhe (ed.), *Contemporary terrorism and response* (Dangdai shijia kongbu zhuyi yu duice) (Beijing: Dongfang Chubanshe, 2001), pp. 2 – 11.

<sup>103</sup>"Jing ke ci Qin Huang""荆轲刺秦王" Chinese folklore stories (Zhongguo mingjian gushi - 中国民间故事) <http://www.6mj.com/2004-1/2004115171547.htm>

<sup>104</sup>“sishi” “死士”

<sup>105</sup>“Yishi xingtai” 意识形态 PYCED 824R.

<sup>106</sup>“wanggong” 王公 PYCED 711R.

<sup>107</sup>“Dachen” 大臣 PYCED 124R.

<sup>108</sup>“古代恐怖活动不是严格意义上的恐怖主义，或者说不一定符合现代人对恐怖主义的定义，因为那时现代意义上的国家还没有出现，现代社会行之有效的一些国际准则更没有诞生，所以我们无法具体地将“国家”有组织的暴力与恐怖活动区分开。“荆轲刺秦王”就是一个明显的例子，这一恐怖活动具有明显的政治目的，但是它属于政府行为还是一种“死士”的阴谋，却难下结论。由于当时民众的忠诚目标较易变化，没有形成一个巩固而有凝聚力的民族概念，民族因素很少是恐怖主义的根源。除了一些宗教原因的暴力活动外，很少因为意识形态发生恐怖活动。通常的形式是一些王公大臣培植杀手以达到争夺权力、打击对手的目的，带有浓厚的个人色彩，一般政治目的渺小。另外，由于当时传播技术极端落后，且民众地位十分低下，除了大规模的“民族”间冲突外，一般不从事直接针对平民的恐怖活动，因为这样不如杀害达官显贵更能渲染恐怖气氛” See Zhang Jia Dong (张家栋), “Analysis of terrorism concept” (“Kongbu zhuyi fenshi” - 恐怖主义的概念分析) *International politics and international relations* (“Guoji zhengzhi yu guoji guanxi - 国际政治与国际关系) Vol. 3 (2003), Section 1: “Terrorism was born to practice during the development process of human political society” (“Kongbu zhuyi shengyu renleizhengzhi shehui shenghuo de sjjian - 恐怖产生于人类政治社会生活的实践过程)

[http://www.iwep.org.cn/html/kongbuzhuyidgnfx\\_chenjiadong.htm](http://www.iwep.org.cn/html/kongbuzhuyidgnfx_chenjiadong.htm)

<sup>109</sup>Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 448 (1998).

<sup>110</sup>This is contra distinctive from Hobbes who assumed that the nature of man is self-interested and barbaric and the nature is chaotic and disorderly, where man eats man. Hobbes, *Leviathan* (1660), esp. Chapters XIII to XXIV. <http://www.orst.edu/instruct/phl302/texts/hobbes/leviathan-contents.html> In “Luxing”, it was said that people are born to peace only to have disorder imposed on them by evil doers. As a result the five punishments were established. *Book of History* (“Shangshu” (Henan Chubanshe, 1996), pp. 264 – 280 (“Minister Lu on Punishment”) See also Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 448 (1998).

<sup>111</sup>Karen Turner, "War, Punishment, and The Law of Nature in Early Chinese Concepts of The State," *Harvard Journal of Asiatic Studies* Vol. 53 (2): 285-324 (1993).

<sup>112</sup>M. H. van der Valk, "The Revolution in Chinese Legal Thought," *Pacific Affairs* Vol. 11 (1): 66-80 (1938).

<sup>113</sup>Michael Puett, "Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State," *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 438–440. (1998).

<sup>114</sup>Jing-shen Tao, "The Influence of Jurchen Rule on Chinese Political Institutions," *The Journal of Asian Studies* Vol. 30 (1): 121-130.(1970) (As alien rulers from a lesser (barbaric) culture, the Chin emperor has to walk on thin ice to come to terms with China's high culture and Confucius official doms. The Juren emperors have resorted to violence and terror to bring Chinese (Han) officials to their knee, e.g. in one case eight officials were executed and 34 were banished for engaging in factional activities.)

<sup>115</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.446.

<sup>116</sup>Literally, "disease in one's vital organ, i.e. serious hidden trouble. *The Pinyin Chinese-English Dictionary* (Hong Kong: Commercial Press, 1979) 766L.

<sup>117</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.447.

<sup>118</sup>“Luan” literally means public disorder or loss of control as a state of affair, both of which implicates the emperor's capacity and legitimacy to rule. *Hangyu Dacidian* (Shanghai: Hangyu Dacidian, 1994), Vol. 1:797R.

<sup>119</sup>“Ni” liberally means contrary, here being contrary to order and regulation. *Hangyu Dacidian* (Shanghai: Hangyu Dacidian, 1994), Vol. 10:823R.

<sup>120</sup>“Wun xing” are the five chief form of punishment, torture really, in ancient China, being tattooing of the face, cutting off the nose, cutting off the feet, castration, and decapitation. *The Pinyin Chinese-English Dictionary* (Hong Kong: Commercial Press, 1979) 731R. “Wuxing” is a serious punishment than not only because it is painful but also because it is humiliating to the person and loss of face to the family. In the text of <<Xiaojing. Kaizhong Mingyi” (Filial piety. Making clear the principle in the beginning”) it is said: “Shenti fafu, shou zhi fulwu, bugan huishang, yao zhi shi ya” (The body and its associates parts (hair and skin), is given by the parents, dare not harm, this is the beginning of filial piety.” In essence the body is a family trust. This conception of “body politics” is to have grave implications on Chinese social control strategy and policy.

<sup>121</sup>The three clans being the offender's family, his mother and wife.

<sup>122</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.93.

<sup>123</sup>Joseph W Esherick, "Symposium on Peasant Rebellions: Some Introductory Comments," *Modern China* Vol. 9 (3):275-284 (1983). (Throughout history, e.g. six dynasty, oppressed peasants, social bandits and powerful warlords, with legitimate grievances, challenged the central authority with all means at their disposal.)

<sup>124</sup>Frederick Wakeman, Jr., "Rebellion and Revolution: The Study of Popular Movements in Chinese History," *The Journal of Asian Studies* Vol. 36 (2): 201-237 (1977).

<sup>125</sup>Ching-Yueh Yen, "Crime in Relation to Social Change in China," *The American Journal of Sociology* Vol. 40 (3): 298-308 (1934) (Bandits organized themselves to "execute the will of God by killing the wicked rich and saving the honest poor." They were fighting the soldiers as "official "bandits".)

<sup>126</sup>R. G. Tiedemann, "," *Modern China* Vol. 8 (4): 395-433 (1982) (Banditry lived in the fringe of Chinese rural society and "exist at the fringe of history. (p 395) Local officials had little incentive to report such incidences which reflected poorly on their administration (p. 396)

<sup>127</sup>*Zhongguo Jinchu Zhidu Jianlun* (Beijing: Qunzhong chubanshe, 1985)

<sup>128</sup>Alison Dray-Novoy, "Spatial Order and Police in Imperial Beijing," *The Journal of Asian Studies* Vol. 52(4):885-922 (1993).

<sup>129</sup>*Baojia* system was used by Japanese during its colonization of Japan to spy on residents. Ching-Chih Chen, "The Japanese Adaptation of the Pao-Chia System in Taiwan, 1895-1945," *The Journal of Asian Studies* Vol. 34 (2): 391-416 (1975)

<sup>130</sup>Frederic Wakeman, Jr., "American Police Advisers and the Nationalist Chinese Secret Service, 1930-1937," *Modern China* Vol. 18 (2): 107-137 (1992).

<sup>131</sup>Conventional wisdom had it that state is as capable of instilling fear on unsuspecting civilians for political objectives as individuals. The term terrorism was traceable to French revolution when it was used to purge the counter-revolutionaries, and has been used since then by every government to intimate its political nemeses, with varying degree of success and complete sense of entitlement. To those who dared to oppose government, 'terror' is indiscriminate and real. Thus

its cope, degree and kind. First, whether it is discriminate in application, i.e. whether it reached beyond the targeted groups, such as terrorists who were Muslims to Muslims who might be terrorists. Second, whether it is total in operations, such as comprehensive and routine interference with privacy as with Total Awareness Program. Third, whether it is physical or psychological. Seldom discussed is the idea of how criminal punishment is designed and applied with “terror” in mind. Analytically, “deterrence”, a justification of punishment on utilitarian grounds, is a “terror” system. Literally and symbolically punishment strikes fear into the hearts of the criminal, e.g. scarlet letter effect, would be criminal, e.g. profiling, and general public, e.g. selective enforcement. Reformed criminals were scared straight and straight citizens were made out to be criminals, e.g. false negatives in profiling.

<sup>132</sup>From antiquity, the utility and legitimacy of the state to use violence to suppress violence – from punishment to warfare - has never been questioned, and in fact considered a duty of a sage emperor. The issue was on its proper – purpose and degree – use. Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2): 425-479, 443 – 444. (1998) (“What is the purpose of making armor, shields, and the five weapons? It is done in order to restrain robbers, disorderly elements, bandits, and thieves.” Citing Maozi.) It is important to note that Chinese considered state sponsored violence (or organized violence) as a continuum to be deployed as appropriate in response to challenges to authority or disruption of order. Emperor and officials were cautioned against arbitrary, gratuitous, and excessive use of violence, but never object to certain kind or degree as “cruel and unusual”. The idea of proportionality – an eye for an eye - was also missing. For example, Shangyang, putative father of legalist school, has proposed the use of heavy punishment for minor offense in order to hold off bigger harm to come. Cheng Liangshu, *Shangyang and his school of thought* (Shangyang ji qi Xuepei) (Taiwan, Taiwan Xuesheng shuju, 1988), p. 284. “Moreover, if you use war to get rid of war, even war is acceptable; if you use killing to get rid of war, even killing is acceptable; if you use punishment to get rid of (the need for) punishment, even punishing is acceptable.” (Shangjunshu, Huace)

<sup>133</sup>By “pure” I mean speech that does not advocate violence action, but suggestive of the legitimacy or desirability of violence as a cause of action. Lest western scholars and international activities should object to the treatment of “pure” speech as

terrorism and intellectual as terrorists in imperial China, they should be reminded that no one has a right to “yell fire in a crowded theatre” and “say that he has a handgun at an airport”. This suggested that whether speech is pure depends on context of time, place and manner of speech. If that should be true, “purity” of any speech must be assessed in regard to its potentiality – proximity and degree - of harm. In imperial China, Confucianism has a dominant and dominating influence on the public. The intellectuals have an exalted and influential status with the people. Lastly and perhaps most significantly, there is a belief in heavenly order as made clear by the sage- intellectuals. The common people were not able to and not in the position to take issue with the intellectuals. Taken together, intellectuals have powers to define issues and move people, much like the media today.

<sup>134</sup> It should be clear by now that all terrorism acts involve “speech” (making demand on TV) and “acts” (placing the bomb). In most instances, “speech” alone is enough to generate the desirable effect, i.e. terror, in achieving one’s objective, i.e. political demand. The question then is not whether “speech” can be a terrorism act when violent acts are threatened, i.e. speech as integral part of a terrorist act. The question is whether “pure” speech can be construed as a terrorists act when considered to be challenging the emperor’s mandate to rule, or more simply critical of the emperor’s person or deed.

<sup>135</sup> Lawrence D. Kessler, “Chinese Scholars and The Early Manchu State,” *Harvard Journal of Asiatic Studies* Vol. 31: 179-200 (1971) (In the Shun-chih period, the northern Chinese degree and office holder cooperated with the Qing emperor in purging the ranks of the southern intellectuals and scholars. For example, in 1661, Chuang T’ing-lung suffered the most egregious literary inquisition for having added to existing Mind history.)

<sup>136</sup> *Id.*

<sup>137</sup> Huang, Philip. “Public Sphere/Civil Society in China?: The Third Realm between State and Society,” *Modern China*, Vol. 19 (2): 216 – 240 (1993).

<sup>138</sup> Author, “Black’s Theory on the Behavior of Law Revisited II: A Restatement of Black’s Concept of Law,” *International Journal of the Sociology of Law* Vol. 26(1) (1998).

<sup>139</sup> Geoffrey MacCormack, “On the Pre-Tang Development of the Law of 'Treason': moufan, dani and pan,” (The three most heinous crimes, called abominable, in the Han Code were plotting rebellion (moufan), sedition (dani) and rebellion (pan). *Buxiao* (不孝 'lack of filial piety') made the list of ten most abominable crime, at least.) <http://jalh.ku.edu/article/maccormack2005.pdf>

<sup>140</sup>The newest edition is: Editorial committee, *Zhongguo gongan da baike quanshu* (China police large encyclopedia) (Two volumes) (Jinlin: Jilin Chubanshe, 2000).

<sup>141</sup>The idea of counter-revolutionary crime originated in Russia in 1911.

<sup>142</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 350R.

<sup>143</sup>See for example “Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Ganlin (The Chinese People's Political Consultative Conference Common Program) (promulgated on September 29, 1949) Article 7; PRC Constitution (promulgated on September 20, 1954) Article 19; Zhengwuyuan, Zuigao Renmin Fayuan, “Guanyu Zhenya Fangeming Huodong de Zhishi” (Government Administrative Council and Supreme People's Court “Directive on the Suppression of Counter-revolutionaries”) (promulgated on July 23, 1950); Zhonghua Renmin Gongheguo Zhenzhi Fangemin Tiao Li (PRC Punishment of Counter-revolutionary Regulations) (promulgated on Feb. 20, 1951), Article 2.; Zhongyang Sifabu “Guanyu Eba, Guanfei, Bufa Dizhu Ruhe Shiyong Zhenzhi Fangemin Tiaoli Pifu” (Party Central Judicial Department “Reply Regarding How to Apply Punishment of Counter-revolutionary Regulations to Local Tyrant, Habitual Criminals, and Illegal Landlord”) (promulgated in 1951); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements (promulgated March 3, 1956); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee “Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated March 3, 1956); Zhonggong Zhongyang Xiren Xiaozu Dui “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” de Buchong (Communist Party Central Party of Ten Committee “Supplement to Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements (promulgated June 24, 1957) (Counter-revolutionary damages mean causing damage with counter-revolutionary intent and purpose); Renmin Gongan Pianweihui Guanyu Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” de Buchong Jieshi Zhong Yixie Wenti de Jieda (PRC

Organizing Committee “Answers to Certain Questions on Supplementary Explanation Regarding Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated 1957) (Contemporary counter-revolutionary elements means people who spread reactionary pamphlets with counter-revolutionary intent); Zhongyang Xiren Xiaozu “Guanyu Putong Fangemin Fenzi ji Qita Fandong Fenzi de Jieshi” (Committee of Ten from Party Central “Explanation Regarding Common Counter-revolutionary Elements and Other Reactionary Elements”) (November 1957) (Counter-revolutionary elements are people who insist upon their reactionary class viewpoint); Zhongyang Zhengfa Xiaozu “Guanyu Xinde Fangeming Fanzui Xingwei de Jiexian” (Party Central Political-legal Committee “Regarding the classification of Counter-revolutionary Elements”) (1962). (People who are merely critical of the party or government policy or implementation are not counter-revolutionary.) Zuigao Renmin Jianchayuan, *Xingshifanzui Anli Congshu (Fanfeminzui)* (Book on Criminal Cases) (Counter-revolutionary Crimes) (Beijing: Zhongguo Jiancha Chubanshe, 1990), pp.269-311.

<sup>144</sup>Zui gao renmin jiancha yuan <<xingshifanzui anli congshu>> bianwei hui (Supreme People’s Procuracy “Crime cases series” editorial committee, *Xingshifanzui anli congshu* (Crime cases series) (Beijing: Zhongguo jiancha chubanshe, 1990).

<sup>145</sup>A “purpose” (*mudi*) crime is one which punishes people for motive and purpose. It is similar to common law basic intent vs. ulterior intent distinction, e.g. burglary – breaking and entering of other’s premises at night with the intent committing a felony therein.

<sup>146</sup>A “conduct” (*xingwei*) crime is one which punishes certain conduct, irrespective of result intended, e.g. perjury.

<sup>147</sup>A “result” (*youguo*) crime is one which punished result, e.g. murder. However, the war separating “intent” and “result” crime is not as firm and insular as it might first appear. This is so far two reasons. First, since intention cannot be judged by once action, and action is most evident with its impact and consequences. The “result” of the action speaks to the intent of the actor, both as direct as well as circumstantial evidence. Direct because one is charge with the natural consequence of ones act. Word is not more than action. Circumstantial, because how might ones intent be explained given certain action. Words speak louder than words. Second, even if one does not intent ones action, the result of the act is all the same. People are responsible of serious harm to society, a reckless type of attribution of responsibility.

<sup>148</sup>The PRC criminal law jurisprudence does not draw a clear distinction between intent (*yitu* or *zuiyi*), purpose (*mudi*) and motive (*dongji*) in the finding of guilt and imposing of punishment. It is embraced by the term “*fanzui zhuguan*” (subjective mental condition (*xinli zhuangkuang*)). Editorial Committee, *Faguan shouce* (Judges handbook) (Shangxi: Shangxi renmin chubanshe, 1995), p. 51. PRC legal scholars do draw an analytical distinction between “*fanzui mudi*” (criminal purpose) and “*fanzui dongji*” in that “*dongji*” is *mudi* precipitated by *dongji*. Ibid. p. 55. In common law jurisdiction, only intent is the mental state (*mens rea*) that needs to be proven. Intent is usually defined as “knowingly” and “purposely.” Motive is considered as irrelevant as a legal principle or immaterial as evidentiary proof. However, increasingly and by statute, motive is being considered as important in the Anglo-American jurisprudence, e.g. hate crime with racial animus.

<sup>149</sup>The “*zui yu fei zui*” is an analytical, rhetorical and instructional device to highlight the main differences between one crime vs. another, especially as interpreted and applied. This is usually done by comparing two similar cases along critical dimensions, in counter-revolutionary crimes the issue of intent.

<sup>150</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “With the purpose of overthrowing people's proletarian dictatorship and socialist system, is an important element constituting counter-revolutionary crime, is a distinction between counter-revolutionary crime, counter-revolutionary and other crime.”

<sup>151</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “We can ascertain the purpose of perpetrator can by looking at the counter-revolutionary conduct and effect in practice.”

<sup>152</sup>Editorial Committee, *Gaguan shouce* (Judges handbook) (Shangxi: Shangxi renmin chubanshe, 1995), p. 75.

<sup>153</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “We can ascertain the purpose of perpetrator can by looking at the counter-revolutionary conduct and effect in practice.”

<sup>154</sup>In order for one to survive this argument, one can adopt a broader and more inclusive definition of counter-revolutionary crime in arguing that anytime violence is used contrary law in order to change state policy and practices, even if legitimate and ill advised, it is deemed to be ipso facto counter-revolution in effect. This argument stretches counter-revolutionary acts to include violent conduct seeking to change policy and practices that are themselves illegal, improper and otherwise disapproved by the PRC.

<sup>155</sup>Chalmers Johnson, "The Third Generation of Guerrilla Warfare," *Asian Survey* Vol. 8 (6): 435-447, esp. 435 – 440 (1968). (As a consummate military strategist in guerrilla warfare, Mao was the a quintessential terrorists par excellence; one who look upon violence as means not ends in service of larger cause.)

<sup>156</sup>From the *Selected Works of Mao Tse-tung*, (Peking: Foreign Languages Press, 1977). Vol. V, pp. 384-421

<sup>157</sup>"ON CONTRADICTION" (August 1937)

[http://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1\\_17.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1_17.htm)

<sup>158</sup>Donald C. Clarke and James V. Feinerman, "Antagonistic Contradictions: Criminal Law and Human Rights in China," *The China Quarterly* No. 141: 135-154 (1995)

<sup>159</sup>See "3. How (and What) to Compare?" In MATHIAS REIMANN, "The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century," 50 *Am. J. Comp. L.* 671, 689 - 690 (2002). See also RAN HIRSCHL, "The Question of Case Selection in Comparative Constitutional Law," 53 *Am. J. Comp. L.* 125 (2005)

<sup>160</sup>The investigation of idea of terrorism in China provided a rare opportunity to look into comparability of philosophy and allow us to look at how the two people think and act in processing information and articulating ideas. "Comparative Philosophy: Chinese and Western," *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/comparphil-chiwe/>; "Philosophy of Language in Classical China," Hong Kong University (Chinese language is a pictorial, prescriptive and action oriented language. English language is a symbolic, instrumental and analytical language. These linguistic properties separate, reflect and reinforce how the two people think.) <http://www.hku.hk/philodep/ch/lang.htm>

Alfred H. Bloom, "The Impact of Chinese Linguistic Structure on Cognitive Style," *Current Anthropology* Vol. 20(3):, 585-586 (1979) (Because of the structure of Chinese language, it moves away from speculative theory construction to actuate description of reality.)

<sup>161</sup>Arthur F. Wright, "Struggle vs. Harmony: Symbols of Competing Values in Modern China," *World Politics*, Vol. 6 (1): 31 – 44, 31 – 34 (1953).

<sup>162</sup>James Wall mad Michael Blum, "Community mediation in China," *The Journal of Conflict Resolution* Vol. 35(1): 3 – 20 (1999). (Confucius teachings and field research indicated it was better to endure suffering than to cause disputes and destroy relationship with others.) For a rejoinder, see Neil J. Diamant, "Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches," *The Journal of Conflict Resolution* Vol. 44 (4): 523-546(2000).

<sup>163</sup>The five relationships ("wulun") are ruler-subject, father-son, husband-wife, elder brother-younger brother, and friend-friend.

<sup>164</sup>Hsu Dau-lin, "Crime and Cosmic Order," *Harvard Journal of Asiatic Studies*, Vol. 30 : 111 – 125 (1970).

<sup>165</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society*, Vol. 13 (3): 427-454 (1984).

<sup>166</sup>R. G. Tiedemann, "The Persistence of Banditry: North China Plain," *Modern China* Vol. 8(4): 395-433 (1982); Phil Billingsley, "Bandits, Bosses, and Bare Sticks: Beneath the Surface of Local Control in Early Republican China," *Modern China* Vol. 7 (3), No. 3:235-288 (1981).

<sup>167</sup>James Polachek, "Review: Secret Societies in China and the Republican Revolution:

Reviewed Work(s): Secret Societies in China. In the Nineteenth and Twentieth Centuries. by Jean Chesneaux; Gillian Nettle and Popular Movements and Secret Societies in China, 1840-1950. by Jean Chesneaux) *The Journal of Asian Studies* Vol. 32(3): 483 – 487).

<sup>168</sup>James P. Harrison, "Communist Interpretations of the Chinese Peasant Wars," *The China Quarterly* No. 24 : 92-118 (1965)

<sup>169</sup>One possibility is to argue that Confucianism is not a set of ethic principles as much as it is a set of rules for practical reason to deal with life contingencies. *Zhang Rulun*,” Chapter VIII. Is an Ethics of Economic Activity Possible?” In Yu Xuanmeng, Lu Xiaohe, Liu Fangtong, Zhang Rulun & Georges Enderle (Eds.) *ECONOMIC ETHICS and CHINESE CULTURE - Chinese Philosophical Studies*, XIV (“For Confucius, *jen* is an all-encompassing ethical ideal... It is an existential goal which one must attempt to achieve for oneself through one's own self-cultivation. All the "worldly goods" are totally subordinate to the higher goal of *jen*. But this does not mean that people can do anything to achieve this goal.”) <http://www.crvp.org/book/Series03/III-14/contents.htm>

<sup>170</sup>This is not to deny to equally strong instinct and custom to seek revenge for ones family.

<sup>171</sup>The propriety of actions, including the use of violence, must be judged three independent but supplementary ideas and ideal, i.e. Qing” “Li” “Fa” (<<情理法 >>) (“QLF”) or “compassion”, “reason”, “law”. Thus one must not only act legally, but also morally and reasonable within given context and in light of evolving circumstances. Fan Zhong Xin (范忠信), *Qing Li Fa Yu Zhong Guo Ren* (*Compassion, reason, law and the Chinese people*) 《情理法與中國人》 (Beijing: Zhongguo renmin daixue chubanshe, 1992).

<sup>172</sup>Karl Wittfogel, *Oriental Despotism* (1957).

<sup>173</sup>The gentleman and based people lived in two distinctive world, separated by a great divide. The gentleman is regulated by principles of “li” and “ren”. The based people are moved by consideration of “li” (utility) and compelled by punishment (“xing”).

<sup>174</sup>L. H. M. Ling, "Rationalizations for State Violence in Chinese Politics: The Hegemony of Parental Governance," *Journal of Peace Research* Vol. 31, No. 4 (Nov., 1994), pp. 393-405

<sup>175</sup>Ch'u Tung-tsu, *Law and Society in Traditional China* (Mouton, Paris and The Hague, 1961)

<sup>176</sup>Gilbert Reid, "Revolution as Taught by Confucianism," *International Journal of Ethics* Vol. 33(2): 188–201 (1923). (As an establishment scholar, Confucius never always called for showing respect and loyalty to the ruled. But in describing roles and responsibilities of ruler vs. ruled, he made clear that bad rulers will naturally and inevitably be dethroned and replaced, intimating grassroots rebellions from below. For example: “The ruler is like a cup, and the people like water.” P. 193)

The cosmic order having been broken by the emperor, the citizens have a right to rebel. Just as the learned intellectuals have a duty to advise and correct the emperor when he ill spoke or misbehaved, as measured against the nature's "dao" as expressed in the Confucius classics. *Id.* p. 196.

William G. Crowell, "Social Unrest and Rebellion in Jiangnan during the Six Dynasties," *Modern China* Vol. 9 (3): 319-354, (1983). (During the Six dynasty, popular resistant to government oppression – excessive taxation, conscription and corruption – resulted in people escaping into the mountain to become bandits, pp. 323 – 325.) Since then, banditry has earned a good reputation as representing social conscience of the people and romanticized as heroes. Elizabeth J Perry, *Challenging the Mandate of Heaven: Social Protest and State Power in China* (Armonk: ME Sharpe, 2001)

Ralph Thaxton, "The World Turned Downside up: Three Orders of Meaning in the Peasants' Traditional Political World," *Modern China* Vol. 3 (2): 185-228 (1977) (Peasants rebelled not because they want to but because they have to. Peasants rebelled as a last resort traditional patron – client paternalistic – protective relationship, not to overthrow the government or disrupt the heavenly rule.)

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