

# ECONOMIC CHALLENGES AND PRISON RENOVATION IN REFORM CHINA

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## ABSTRACT

This article discusses the embeddedness of penal control in communist China against a broader economic structure beginning with the era of economic reform in the late 1970s till the Chinese government's decision to renovate the prison system thoroughly in 2003. It focuses readers on the institutional changes of the prison system in response to the macroeconomic changes during this period when the planned economy was transformed into a market economy. While the traditional mode of prison-enterprise combination had a period of prosperity when the economic transition was in its early stage in the 1980s, as the new economic system developed, the inherent weakness of the prison-enterprise combination and the conflicting organizational settings made the prison system incapable of competing with other business units, causing it to suffer economic difficulties since the late 1980s. In response, the Chinese government decided to terminate the combination mode and singled out the enterprise side from the prison system in 2003. These institutional changes in the prison design have unraveled the sensitivity of the traditional mode of prison-enterprise combination to the economic changes and unfolded the flexible nature of the prison-labor complex in communist China.

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## I. INTRODUCTION

The Chinese government kickstarted a project to overhaul its prison system in January 2003.<sup>2</sup> This project was developed as an experiment in six cities and provinces, including Heilongjiang, Shanghai, Jiangxi, Hubei, Chongqing, and Shanxi. It was subsequently expanded to eight other provinces in 2005, and eventually became a nationwide policy in 2008. This prison renovation project aimed to revamp the prison system by dividing the “prison-enterprise combination” into two separate entities: the prison administration side and the prison enterprise side, with the goal of operating them through their own legal and financial structures.

This project of prison reform reflects the Chinese government’s intention to deal with the deep-rooted issue of profit-seeking ideas in the prison system. As explored in detail in subsequent sections, during the era of economic reform in the late 1970s, the imbalance between the prison system’s heavy financial

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<sup>2</sup> Sifabu Guanyu Jianyu Tizhi Gaige Shidian Gongzuo Zhidao Yijian de Tongzhi (司法部关于监狱体制改革试点工作指导意见的通知) [Notification from the Ministry of Justice on the Instructions for the Works of the Pilot Program of Prison System Renovation] (Promulgated by the Ministry of Justice, Dec. 1, 2004) CLI.4.162705 (Lawinfochina).

burden from its personnel and operating expenses, and the limited government financial support, caused this prison-enterprise combination to be riddled with corruption and misconduct among prison officials. The system's focus on profits, also called into question its efficacy at reforming inmates, and the deterioration of prison finances and carceral environment.

There have been some Western case studies on the profit-seeking nature of the Chinese prison system during the age of economic reform. Mosher's work presents the economic output of labor camps and its substantial role in the national economic plan in reform China.<sup>3</sup> On the contrary, Tanner's article denies the contribution by Chinese prisons to the state economy during the 1980s through 1990s due to the system's economic vulnerability.<sup>4</sup> Seymour and Anderson provides us with their investigation into the labor camps in Northwest China in the 1990s.<sup>5</sup> Seymour also elucidates that macroeconomic challenges from the move towards marketization in the 1980s have aggravated the penal economy and caused a decline in prison production.<sup>6</sup> Moreover, by inspecting China's carceral practice from a politico-economic standpoint, Fu argues that macroeconomic changes since the early 1980s have impacted not only ordinary citizens but also those behind bars, due to the detrimental effect it had on prison security and inmate rehabilitation.<sup>7</sup>

This article moves beyond the debate over whether prison production contributed to economic development in China during the era of economic reform. Instead, it places the focus on the institutional changes of the prison system itself in response to the external economic challenges. This article looks back in history and aims to explore what happened to the prison system when it was

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<sup>3</sup> Steven W. Mosher, *Chinese Prison Labor*, 29 SOC'Y ABROAD 49, 49–59 (1991).

<sup>4</sup> Harold Tanner, *China's "Gulag" Reconsidered: Labor Reform in the 1980s and 1990s*, 9 CHINA INFO. 40, 56–63 (1994).

<sup>5</sup> JAMES D. SEYMOUR & RICHARD ANDERSON, *NEW GHOSTS, OLD GHOSTS: PRISONS AND LABOR REFORM CAMPS IN CHINA* (1998).

<sup>6</sup> James D. Seymour, *Sizing Up China's Prisons*, in *CRIME, PUNISHMENT, AND POLICING IN CHINA* 141, 141–70 (Børge Bakken ed., 2005); James D. Seymour, *Profit and Loss in China's Contemporary Prison System*, in *REMODELING AND RESISTANCE AMONG WRITERS OF THE CHINESE PRISON CAMP* 157, 157–73 (Philip F. Williams & Yenna Wu eds., 2006).

<sup>7</sup> Hualing Fu, *Punishing for Profit: Profitability and Rehabilitation in a Laojiao Institution*, in *ENGAGING THE L. IN CHINA: ST., SOC'Y, AND POSSIBILITIES FOR JUST.* 213, 213–29 (Neil J. Diamant et al. eds., 2005).

confronted with economic reforms beginning in the late 1970s. In addition, by analyzing the government archives of administrative orders, this article further investigates the political and legal strategies adopted by the Chinese government to adjust and revise the traditional framework of prison-enterprise combination in response to economic challenges, until the government ultimately decided to separate the combination mode from the enterprise side in 2003.

## II. PRISON-ENTERPRISE COMBINATION IN THE PRE-REFORM ERA

China has been well-known for its statewide use of labor camps to accommodate prisoners after the Chinese Communist Party (CCP) took control of China in 1949. The CCP positioned labor camps as a special type of state-owned enterprise since their inception in communist China.<sup>8</sup> There were two kinds of labor camps in communist China: labor reform (劳改) camps and labor reeducation (劳教) camps. Labor reform camps were for criminal offenders who had gone through the formal judicial process. Labor reeducation camps were seen as administrative detention, operated by public security agencies without trial for deviant behavior, such as begging or prostitution.<sup>9</sup> These two types of labor camps were the most seminal parts of the Chinese prison system. Through large-scale and intensive labor work, thought reform and profit-seeking became the two primary goals of the Chinese socialist prison.

Prison-enterprise combination aims to combine prison administration and prison enterprise in a single entity. It is a byproduct of the planned economy in China. During the era of planned economy from the 1940s to the 1970s, the Chinese government applied an economic policy called “unified purchase and sale,” by which local governments purchased all surplus grain and edible oil from households in the summer and autumn at prices

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<sup>8</sup> Mao-hong Lin, *Carceral Strategy and the Social Structure in Maoist China*, 38 UCLA PAC. BASIN L.J. 33, 42–43 (2021).

<sup>9</sup> Hualing Fu, *Dissolving Laojiao*, CHINA RTS. F. (Apr. 1, 2009), <https://www.hrichina.org/en/content/3701> [https://perma.cc/62NC-U723].

set by the state and resold them to households in the spring.<sup>10</sup> The same economic policy of unified purchase and sale was also applied to prison production. Every single labor camp was treated as a profit-seeking entity as well as a penal facility, and the penal administrative side and the penal profit-seeking side were therefore inevitably linked.<sup>11</sup>

The peculiar penal-economic convergence worked relatively well under the planned economic scheme. It came to be operated in the style of people's commune, and it organized prisoners in a collective way to work on farms, mines, and other infrastructure construction sites to improve the state's economy, as well as to remold the prisoners themselves.<sup>12</sup> When the country moved towards a socialist market economy around the late 1970s, however, problems like corruption and misconduct among prison officials, inefficacy of inmate reform, and the deterioration of prison finances and carceral environment gradually surfaced. Therefore, the traditional mode of prison-enterprise combination was inevitably restructured in the context of a market economy, and a separation mode was put on the table.<sup>13</sup>

### III. ECONOMIC CHANGES IN THE REFORM ERA

#### A. *Outset of the Economic Reform*

The Cultural Revolution began in 1966 and incurred dreadful influence on every aspect of Chinese society, particularly on its already weakened economy after the widespread famine, which lasted from 1959 until 1961. The development in science and technology and the enhancement of quality of human capital were both encumbered with massive chaos and riots, too.<sup>14</sup> Mao

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<sup>10</sup> Huanyin Li, *The First Encounter: Peasant Resistance to State Control of Grain in East China in the Mid-1950s*, 185 CHINA Q. 145, 145 (2006).

<sup>11</sup> Zhang Fusheng (张福森), *Sifabu Buzhang Tan Jianyu Tizhi Gaige Rang Jianyu Gaobie Yingli* (司法部部长谈监狱体制改革：让监狱告别营利) [*Minister of Justice on Prison System Innovation: Let Prison Say Goodbye to Profit Seeking*], XINLANGWANG (新浪网) [SINA] (Dec. 6, 2003), <http://news.sina.com.cn/c/2003-12-05/05401260529s.shtml> [https://perma.cc/25GJ-M83Q].

<sup>12</sup> Lin, *supra* note 8, at 42–53.

<sup>13</sup> Zhang, *supra* note 11.

<sup>14</sup> XIAO GUOLIANG (萧国亮) & SUI FUMIN (隋福民), ZHONGHUA RENMIN G HEGUO JINGJISHI, 1949–2010 (中华人民共和国经济史, 1949–2010) [ECONOMIC HISTORY OF THE PEOPLE'S REPUBLIC OF CHINA, 1949–2010] 170 (2011).

Zedong's death in September 1976 brought an end to the Cultural Revolution, and the downfall of the Gang of Four in October 1976. After this unprecedented period of social turmoil came to an end, China's economy has gone through a slow process of recovery since then.

The Third Plenary Session of the Eleventh Central Committee of the CCP was held in Beijing in December 1978, during which Deng Xiaoping, leader of the CCP, redirected the country's focus to economics rather than politics. Consequently, an economic policy of reform and opening-up was adopted. Economic reform meant transitioning from a planned economy to a socialist market economy and opening up entailed actively engaging in foreign trade with other countries.<sup>15</sup> Deng's famous saying: "it does not matter whether a cat is white or black; as long as it catches mice, it is a good cat," being the pragmatic guiding principle of the Chinese government's major policies in the post-1978 era.

The main economic framework that the CCP administration learned from other countries, particularly the socialist ones in Eastern Europe during the mid-twentieth century, was market socialism.<sup>16</sup> It was believed that the economic performance of enterprises could be greatly improved by setting up a market as a mediator between the state and enterprises. Therefore, in the late 1970s, the central government selected a few state-owned industrial enterprises to implement the pilot reform program by expanding their autonomy in areas such as production, sale, finance, and personnel management, and increasing accountability for fiscal performance. The program was extended to other types of industries and departments in the early 1980s.<sup>17</sup> The process was described as "crossing the river by feeling the stones" because it involved the country going through a series of trial and error to find the most appropriate method for economic modification.<sup>18</sup>

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<sup>15</sup> *Id.* at 183–84.

<sup>16</sup> Jinglian Wu & Shitao Fan, *China's Economic Reform: Processes, Issues, and Prospects (1978–2012)*, in ROUTLEDGE HANDBOOK OF THE CHINESE ECON. 55, 56 (Gregory C. Chow & Dwight H. Perkins eds., 2014).

<sup>17</sup> XIAO & SUI, *supra* note 14, at 191–92.

<sup>18</sup> Wu & Fan, *supra* note 16, at 57.

### B. *The Wide Use of Contract-Responsibility System*

Deng encouraged rural families to adopt the program of “Household Contract-Responsibility System” instead of the traditional collective manner of agricultural production.<sup>19</sup> In this system, every family served as a contractor and was responsible for their own profits and losses from farming based on contracts.<sup>20</sup> There were two major types of household farming contracts: Contracting Output to the Household (包产到户) and Contracting Work to the Household (包干到户). Under the scheme of Contracting Output to the Household, each family needed to negotiate with production teams how much of their crops would be resold to the government. After meeting their output target, families were permitted to retain their surplus crops for their own use or sale.<sup>21</sup> Under Contracting Work to the Household, in addition to an output target, families were authorized to manage their plots of farm.<sup>22</sup>

This contract-responsibility system had already been in use as a method of production on some farms after the end of the Cultural Revolution. A notification was spread out by the CCP in September 1980,<sup>23</sup> which further encouraged the contract-responsibility system to be used in rural areas. The CCP administration also emphasized that this system could have different types based upon local circumstances in official minutes in 1982,<sup>24</sup>

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<sup>19</sup> See Jonathan Unger, *The Decollectivization of the Chinese Countryside: A Survey of Twenty-eight Villages*, 58 PAC. AFFS. 585, 585–95 (1985) (detailing the history of de-collectivization in rural areas in communist China).

<sup>20</sup> *Jiating Lianchan Chengbao Zerenzhi* (家庭联产承包责任制) [Household Contract-Responsibility System], RENMINWANG (人民网) [PEOPLE.CN] (Oct. 17, 2014), <http://politics.people.com.cn/n/2014/1017/c70731-25854199.html> [https://perma.cc/J8JP-5RGN]

<sup>21</sup> Frederick W. Crook, *The Baogan Daohu Incentive System: Translation and Analysis of a Model Contract*, 102 CHINA Q. 291, 291 (1985); Unger, *supra* note 19, at 590.

<sup>22</sup> Peter Nolan & Suzanne Paine, *Towards an Appraisal of the Impact of Rural Reform in China*, 10 CAMBRIDGE J. ECONS. 83, 84 (1986).

<sup>23</sup> Guanyu Jinyibu Jiaqiang he Wanshan Nongye Shengchan Zerenzhi de Jige Wenti (关于进一步加强和完善农业生产责任制的几个问题) [A Few Questions about Moving Further to Strengthen and Perfect the Responsibility System of Agricultural Production] (promulgated by the Central Committee of the Communist Party of China, Sep. 27, 1980) (China).

<sup>24</sup> Quanguo Nongcun Gongzuo Huiyi Jiyao (全国农村工作会议纪要) [Minutes of National Meeting of Rural Tasks] (promulgated by the Central Committee of the Communist Party of China, Jan. 1, 1982) CLI.16.109228 (Lawinfochina).

in which all types of contract-responsibility schemes were recognized. The difference between each type was based only on the size or mode of a certain labor organization and had nothing to do with the advantages or defects in its production mode. Therefore, the contract-responsibility system was soon spread throughout rural China. By 1983, 98% of rural farms utilized this system of production.<sup>25</sup>

The widespread use of contract-responsibility system in rural areas manifested the transition from the collective economics to household farming on the contracted farmlands. It not only changed the farming style, but also extended to the forestry, fishery, and livestock husbandry. Under the household-based system, the duties of production plans, farming activities, and cost accounting have been transferred from production teams of people's communes to each household. Similarly, the traditional way of collective use of land and production materials was also changed into distributed use and hand-over to each household. This was an institutional change in the agricultural production, during which the productive force was successfully liberated and hence stimulated the gigantic growth in the agricultural production. The quantity of food production in 1984 was 400 billion kilograms, which was 100 billion kilograms more than the quantity in 1978; the total agricultural output increased by 68%, and the income of peasants also increased by 166%.<sup>26</sup>

The state also extended the use of contract-responsibility system to urban cities at some pilot spots in 1984. State-owned enterprises were allowed to sign contracts with other persons and legal entities based on their own decisions. Thus, they had to assume the responsibility based on contracts for their own profits and losses. After a couple of years' pilot program and learning from the experience, the State Council decided to promote the contract-responsibility system of variety in 1986 for enhancing enterprises' autonomy,<sup>27</sup> and later the State Council expanded the use of the

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<sup>25</sup> Hayden Windrow & Anik Guha, *The Hukou System, Migrant Workers, & State Power in the People's Republic of China*, 3 NW. J. INT'L HUM. RTS. 1, 5 (2005).

<sup>26</sup> XIAO & SUI, *supra* note 14, at 188–91.

<sup>27</sup> Guanyu Shenhua Qiye Gaige Zengqiang Qiye Huoli de Ruogan Guiding (关于深化改革增强企业活力的若干规定) [Some Provisions on Deepening the Reform of Enterprises and Augmenting Their Vitality] (promulgated by the State Council, Dec. 5, 1986) CLI.2.3070 (Lawinfochina).



system to other kinds of enterprises in 1988.<sup>28</sup> As of 1992, vast majority of all state-owned enterprises had applied the system of contract-responsibility in different types, and the application of the system assisted those enterprises to greatly enhance their productivity.<sup>29</sup>

#### IV. THE EVOLVING PRISON-ENTERPRISE COMBINATION IN THE REFORM ERA

##### A. *Reorientation of the Prison System*

The central government lost its control of the prison system to the military and local governments when the Cultural Revolution was in progress and prisons were almost shut down during that period. Besides, the related central government sections, like the Supreme People's Procuratorate, the Supreme People's Court, and the Central Police Agency, were viewed as socially bad influencers, so their members were either dismissed or incarcerated. Therefore, when the Cultural Revolution came to an end in 1976, it took several years for the central government to regain the control of the entire prison system and restore it. Moreover, the prison system was at the command of the police agency for its political use during the time before the Cultural Revolution, but after retrieving the system, the CCP administration decided to place it under the oversight of the Ministry of Justice instead of the police for assuring that the police agencies were able to focus on maintaining the social order.<sup>30</sup>

During the Eighth National Conference of Labor Reform Works in 1981, prison labor camps were criticized for their low productivity and deficits, and the Chinese government required

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<sup>28</sup> Quanmin Suoyouzhong Gongye Qiye Chengbao Jingying Zerenzhi Zanxing Tiaoli (全民所有制工业企业承包经营责任制暂行条例) [Interim Regulations on the System of Contract Responsibility for Industrial Enterprises in Public Ownership] (promulgated by the State Council, Feb. 27, 1988, effective Mar. 1, 1988) CLI.2.3729 (Lawinfochina).

<sup>29</sup> XIAO & SUI, *supra* note 14, at 210–11.

<sup>30</sup> Guanyu Guanche Zhixing Zhongyang Jiang Laogai Laojiao Gongzuo Yijiao Gei Sifa Xingzheng Bumeng Guanli de Ruogan Guiding (关于贯彻执行中央将劳改、劳教工作移交给司法行政部门管理的若干规定) [Some Provisions on Carrying through the Central Committee's Decision to Transfer the Administration of Labor Reform and Labor Reeducation Works to Ministry of Justice] (promulgated by the Ministry of Public Security and Ministry of Justice, June 9, 1983) CLI.4.161884 (Lawinfochina).

every labor camp to follow the national economic policy. The camps had to engage in the rectification of their business administration to increase prison production. They were also required to improve and strengthen the training of leaders and cadres of prison production teams, for the quality of cadres was falling for their corruption, inefficiency, and aging. After the conference, the Ministry of Public Security drew up three administrative regulations and circulated to all public security agencies and labor reform units for improvements.<sup>31</sup>

After the “strike-hard” campaign against high crime rate in 1983, which had contributed to the prison overcrowding, the old and shabby nature of the infrastructure of prison labor camps needed to be improved.<sup>32</sup> In 1989, the Ministry of Justice laid down some important instructions on the administration of labor camps, covering both prison administration and prison enterprise.<sup>33</sup> By following the instructions, labor camps had to undergo the process of legalization, standardization, and scientization of their works, to enhance the quality of prison cadres, and to adapt their production to the contract-responsibility system.

#### *B. Adjusting the Production Model into Contract-Responsibility System*

After the termination of the Cultural Revolution, prison production was in the process of restoration and adjustment from

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<sup>31</sup> Jianyu Laogaidui Guanjiao Gongzuo Xize (监狱、劳改队管教工作细则) [Details for the Administration of Prison and Labor Reform Battalion] (promulgated by the Ministry of Public Security, Feb. 18, 1982) CLI.4.9358 (Lawinfochina); Dui Zuifan Jiaoyu Gaizao Gongzuo de Sannian Guihua (对罪犯教育改造工作的三年规划) [Three-Year Plan for the Works of Reeducation and Reform of Prisoners] (promulgated by the Ministry of Public Security, Feb. 18, 1982) CLI.4.9358 (Lawinfochina); Fanren Shenghuo Weisheng Guanli Banfa (犯人生活卫生管理办法) [Regulations for the Management of the Wellbeing of Prisoners] (promulgated by the Ministry of Public Security, Feb. 18, 1982) CLI.4.9358 (Lawinfochina).

<sup>32</sup> Guanyu Jiaqiang Laogai Laojiao Danwei Yuzheng Jingjie Sheshi ji Sifa Yewu Yongfang Jianshe de Qingshi (关于加强劳改劳教单位狱政警戒设施及司法业务用房建设的请示) [Asking for Instructions on Strengthening the Construction of Equipment of Prison Guarding and Rooms for Justice Activities in Labor Reform and Labor Reeducation Units] (promulgated by the State Council, Sept. 3, 1989) CLI.2.151864 (Lawinfochina).

<sup>33</sup> Guanyu Jiaqing Jianguan Gaizao Gongzuo de Ruogan Guiding (关于加强监管改造工作的若干规定) [A Few Provisions on Strengthening the Tasks of Supervision and Reform] (promulgated by the Ministry of Justice, Oct. 20, 1989) CLI.4.9323 (Lawinfochina).

1976 to the early 1980s. Agricultural production from the labor reform farms focused on grain in company with other farm commodities; on the other hand, industrial production focused on the light industry products, fuel material, and raw materials. Taken as a whole, prison production in the period of restoration and adjustment gave priority to agricultural production; it was gradually recovering from the collapse resulted from the Cultural Revolution and moving forward to a prosperous enterprise. Since the second half of the 1980s, prison production shifted its priority from agriculture to industry gradually.

Following the trend of wide use of contract-responsibility system in rural areas in the early 1980s, several labor camps also adopted the same production mode. In Shandong Province, for example, there had been some labor camps applying the contract-responsibility system around 1981 or 1982; labor camps in Guangdong Province also designated and completed the responsibilities of reform and production through contracts since 1983. Later in June 1984, to improve the success rate in prisoner reform and heighten the efficiency of prison production, the central government reached a conclusion in the National Conference of Labor Reform and Labor Reeducation Works to apply the institution of contract-responsibility to the entire prison-labor system to promote its two important works: prisoner reform and prison production. The use of dual contract-responsibility system was also expanded to the labor reeducation camps.<sup>34</sup>

Prisoner reform and prison production were the two most crucial tasks of the dual contract-responsibility system, and every labor camp had to set up several indicators for achieving the two goals. For assessing the result of prisoner reform, the indicators were the numbers of prisoner escape and recapture, crime rate within a carceral unit and the release rate, premature death of prisoners, infractions of prison rules, the recidivist rate, the admission rate in prisoners' application for skill training and cultural education, the rate of attendance of daily labor, etc. For evaluating the efficiency of prison production, the indicators were

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<sup>34</sup> Guanyu Laojiao Danwei Tuixing Guanjiao Shengchan Shuang Chengbao Zerenzhi de Yijian (关于劳教单位推行管教、生产双承包责任制的意见) [Opinion on Carrying out the Dual Contract-Responsibility System of Reeducation and Production in Labor Reeducation Units] (promulgated by the Ministry of Justice, Apr. 15, 1985) CLI.4.162102 (Lawinfochina).

the output value, quantity of output, quality of output, cost, profit, etc. Since there were some special inherent limitations on prison enterprise, such as the quality of workers, working hours, and locations, the expected output of prison enterprise was usually set at 20% lower than the state-owned enterprise of the same industry. The adoption of contract-responsibility system in the labor camps helped to adjust their economic structure from focusing solely on grain production to developing sidelines such as industries of dairy, brickmaking, winemaking, wooden articles, or aquaculture.

The way of contract-responsibility implementation was to assign the expected production through a hierarchy. A subordinate was responsible to the authority at higher level; every individual, squad, detachment, and battalion had its own responsibility for production. The profits, after paying taxes, were allocated in the following manner: 30% went to reinvestment in technology and facilities; 30% to improvement of the infrastructure; and the remaining 40% were reserved for rewards, mostly for prison cadres and a small portion for prisoners. Therefore, the profits were directly associated with prison cadres' material benefits, which motivate the cadres to work hard in the reform era. This type of prison organization was dubbed "same staff under two titles," which denotes the dual identities of prison cadres and officials.

To enhance the efficiency of prison production, the Ministry of Justice in 1984 issued a directive requiring all labor camps to improve their infrastructure, team organization, and financial system to increase output.<sup>35</sup> To motivate prisoners to work hard and produce more, the Ministry of Justice also approved prisoners' rewards on the principle of "more work, more reward."<sup>36</sup> Due to the direct connection between the benefits of prison cadres and the profits of labor camps, there were several cases that prison cadres ordered prisoners to labor for other production plans which were not affiliated with any prisoner reform programs. After noticing the

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<sup>35</sup> Guanyu Jiaqiang Laogai Laojiao Danwei Jiben Jianshe Guanli Gongzuo de Yijian (关于加强劳改、劳教单位基本建设管理工作的意见) [Opinion on Strengthening the Administration of Infrastructure of Labor Reform and Labor Reeducation Units] (promulgated by the Ministry of Justice, Aug. 11, 1984) CLI.4.151858 (Lawinfochina).

<sup>36</sup> Guanyu Dui Fanren Fafang Jiangjin Wenti de Tongzhi (关于对犯人发放奖金问题的通知) [Notification on the Question about Offering Rewards to Prisoners] (promulgated by the Ministry of Justice and Ministry of Finance, Dec. 18, 1984) CLI.4.151859 (Lawinfochina).

issue, the Ministry of Justice released an announcement in 1985, requiring all penal labor units not to abuse prison labor for their own material benefits.<sup>37</sup>

As the contract-responsibility system was applied to the prison system, it also built up the connection with the township enterprise. Township enterprise, which had been dubbed “commune and brigade enterprise” before 1984, was a unique form of quasi-private enterprise composed of peasants in the rural areas, and it prospered since the economic reform kicked off in the late 1970s.<sup>38</sup> Commune and brigade enterprise, as its name has showed, was under the control and management of people’s commune and brigade. In the pre-reform era, commune and brigade enterprise was a way to utilize the agricultural surplus labor; peasant households teamed up to engage in some sidelines, such as handicraft or small factories of fertilizer, cement, or machinery. Nevertheless, the CCP administration changed its policy in 1962 and disallowed communes and brigades to run enterprises.<sup>39</sup> During the Cultural Revolution, this type of enterprise was considered as a form of capitalism for its nature of commodity trade, so it was completely stopped.

When the economic reform commenced, however, this form of collective yet private enterprise was revived by the central government’s promotion of private enterprises and contract-responsibility system, and in 1979 the State Council released a set of ordinances to encourage its development.<sup>40</sup> The enterprise of commune and brigade boomed when the contract-responsibility

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<sup>37</sup> Guanyu Yanjin Lanyong Fanren he Laojiao Renyuan Waichu Gao Shengchan Jingying de Tongbao (关于严禁滥用犯人和劳教人员外出搞生产经营的通报) [Announcement of the Strict Prohibition against the Abuse of Prison Labor for Production outside Labor reform and Labor Reeducation Units] (promulgated by the Ministry of Justice, Apr. 30, 1985) CLI.4.151857 (China).

<sup>38</sup> See Zhang Y. Zhou, John L. Dillon & Guang H. Wan, *Development of Township Enterprise and Alleviation of the Employment Problem in Rural China*, 6 AGRIC. ECONS. 201, 202–10 (1992) (outlining the history of township enterprises and the reasons for their development).

<sup>39</sup> Guanyu Fazhan Nongcun Fuye Shengchan de Jueding (关于发展农村副业生产的决定) [Resolution on the Development of Rural Subsidiary Production] (promulgated by the Central Committee of the Communist Party of China and State Council, Nov. 22, 1962) (Lawinfochina).

<sup>40</sup> Guanyu Fazhan Shedui Qiye Ruogan Wenti de Guiding Shixing Caoan (关于发展社队企业若干问题的规定 (试行草案)) [Pilot Provisions on A Few Questions about the Development of Commune and Brigade Enterprise] (promulgated by the State Council, July 3, 1979) CLI.2.555 (Lawinfochina).

system was thoroughly adopted in the rural areas during the early 1980s because the contract-responsibility system greatly helped to free surplus labor which had been limited to farms for a long period. In March 1984, the CCP administration changed the name of the enterprise to "township enterprise."<sup>41</sup> Thereafter, township enterprise has kept playing an important role in the economic development in rural areas and has its own statute since 1997.<sup>42</sup>

Consequently, some labor camps were operated in the manner of township enterprises or had a strong cooperation with the local township enterprises. In the Shandong Province, for example, there has been a graphite pit managed by a local prison enterprise since 1972. The Ministry of Justice also laid down some stipulations in 1986 about the administration of prison coal mines which were directly run by the Ministry or in a joint operation by the Ministry and other enterprises, requiring prison coal mines to be self-operated with local prisoners and not to outsource to other enterprises unless the works required high skilled labor and with the approval of the central government.<sup>43</sup>

To be adapted to the new economic system of the market, prison enterprises needed to increase the quality of their products so that prison enterprises could catch up with the pace of the development of the national economy. Consequently, the Ministry of Justice set up numerous types of prizes and awards to enhance the quality of prison products through competition.<sup>44</sup> Even though the central government repeatedly denied accusations that it was

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<sup>41</sup> Guanyu Kaichuang Shedui Qiye Xinjumian de Baogao (关于开创社队企业新局面的报告) [Report on Starting a New Stage of Commune and Brigade Enterprise] (promulgated by the Central Committee of the Communist Party of China and State Council, Mar. 1, 1984) CLI.16.1932 (Lawinfochina).

<sup>42</sup> Zhonghua Renmin Gongheguo Xiangzhen Qiye Fa (中华人民共和国乡镇企业法) [Law of the People's Republic of China on Township Enterprises] (promulgated by the Standing Committee of the National People's Congress, Oct. 29, 1996, effective Jan. 1, 1997) CLI.1.15413 (Lawinfochina).

<sup>43</sup> Sifabu Zhishu Lianying Laogai Meikuang Jiben Jianshe Shigong Guanli de Jixiang Guiding (司法部直属、联营劳改煤矿基本建设施工管理的几项规定) [Some Provisions on the Administration of Infrastructure Construction in Labor reform Coal Mines Run or in Joint Operation by Ministry of Justice] (promulgated by the Ministry of Justice, May 20, 1986) CLI.4.74916 (Lawinfochina).

<sup>44</sup> Sifabu Laogai Gongye Qiye Zhiliang Guanli Jiang Youxiu Zhiliang Guanli Xiaozu Pingshen Shixing Banfa (司法部劳改工业企业质量管理奖、优秀质量管理小组评审试行办法) [Provisional Measures for Labor Reform Industrial Enterprises about Appraising the Administration Quality Award and the Outstanding Squad of Administration Quality] (promulgated by the Ministry of Justice, Dec. 4, 1986) CLI.4.72771 (Lawinfochina).

exporting prison products, based on some research, Chinese prison products were sometimes exported and have contributed some revenue to the country, but not as high as it was expected to be.<sup>45</sup>

### C. *Changes in the Financial Infrastructure*

On account of the application of contract-responsibility systems to the labor camps in the early 1980s, there were also some changes made in the financial infrastructure of the prison enterprise to the use of administration expenses by the central government. To adapt to the changes in the economic structure of prison system, the Ministry of Public Security and the Ministry of Finance published a joint notification in 1980 about the allocation of prison enterprise's administration expenses.<sup>46</sup> The prison administration expenses were independent from the prison enterprise; the budget for administration expenses came from the assumed wages of inmates and could be solely used on prisoner reform. Following the demands of contract-responsibility, the guiding principle for the distribution of prison administration expenses was "setting off receipts against expenditures, transferring a fixed number of profits to government, keeping the balance, and no allowances for overspending," with which prison administration expenses were expected to strike a balance between revenue and expenditure. As the guideline simply purported to keep the balance and left the question open on how to spend the balance, the Ministry of Public Security later published an additional note on how to allocate the balance of administration expenditure.<sup>47</sup>

Due to the heavy-handed campaign against a perceived high crime rate in 1983, the prison population increased substantially, raising the question of how to deal with the huge amount of prison labor. Furthermore, the infrastructure of labor camps was also in

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<sup>45</sup> SEYMOUR & ANDERSON, *supra* note 5, at 110–11, 211–12.

<sup>46</sup> Guanyu Banfa Laogai Yewufei de Guanli Guiding de Tongzhi (关于颁发劳改业务费的管理规定的通知) [Notification on the Issuance of Regulations on the Operating Expenses of Labor Reform] (promulgated by the Ministry of Public Security and Ministry of Finance, Sep. 10, 1980) (China).

<sup>47</sup> Guanyu Laogai Yewufei Caiwu Baogan Jieyu Shiyong Fanwei he Guanli Banfa de Tongzhi (关于劳改业务费财务包干结余使用范围和管理办法的通知) [Notification on the Use and Management of the Balance of the Operating Expenses of Labor Reform] (promulgated by the Ministry of Public Security, Dec. 30, 1982) (China).

need of an overhaul.<sup>48</sup> Consequently, the central government decided to organize the surplus labor to excavate coal mines or engage in other local infrastructure construction.<sup>49</sup> The People's Bank of China was responsible for offering loans at low-interest rates to the labor camps, and the interests would be paid by the central budget. The People's Construction Bank of China was responsible for reviewing construction plans and deciding the amount of each loan. The Central Bureau of Labor Reform would sign loan contracts with the People's Construction Bank of China and arrange matters concerned. The allocation of money to the labor camps and reimbursement of loans would be done solely by the Central Bureau of Labor Reform. The interest rate was set at 5.04% per annum, and the interest would be paid by the Ministry of Finance and local departments and bureaus of finance.<sup>50</sup> The Ministry of Justice encouraged broadly assigning all kinds of construction responsibility to contractors, such as construction works, materials, term of construction, quality of construction, etc. In addition, to cope with the forthcoming economic challenges from the seventh five-year plan from 1986 to 1990, every labor camp was responsible for enhancing its production efficiency and improving the infrastructure of labor reform equipment.<sup>51</sup>

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<sup>48</sup> Guanyu Jiaqiang Laogai Laojiao Danwei Jiben Jianshe Guanli Gongzuo de Yijian (关于加强劳改、劳教单位基本建设管理工作的意见) [Opinion on Strengthening the Administration of Infrastructure of Labor Reform and Labor Reeducation Units] (promulgated by the Ministry of Justice, Aug. 11, 1984) CLI.4.151858 (Lawinfochina).

<sup>49</sup> Guanyu Xinjian Kuojian Laogai Laojiao Danwei Jijian Touzi Daikuan Xiangmu Guanli Banfa de Tongzhi (关于新建、扩建劳改、劳教单位基建投资贷款项目管理方法的通知) [Notification on the Management of Loan Projects on Investments in the Construction and Extension of the Infrastructure of Labor Reform and Labor Reeducation Units] (promulgated by the State Planning Commission, State Economic Commission, and Ministry of Finance, Nov. 15, 1984) CLI.4.162080 (Lawinfochina).

<sup>50</sup> Guanyu Laogai Laojiao Danwei Jijian Daikuan Lilv he Caizheng Tiexi Wenti de Lianhe Tongzhi (关于劳改、劳教单位基建贷款利率和财政贴息问题的联合通知) [Joint Notification on the Interest Rate of Loans for Infrastructure Construction in Labor Reform and Labor Reeducation Units and on the Question about the Financial Discount for the Interest Rate] (promulgated by the State Planning Commission, Ministry of Finance, Ministry of Justice, People's Bank of China, and People's Construction Bank of China, Jan. 21, 1986) CLI.4.88024 (Lawinfochina).

<sup>51</sup> Guanyu Yinfa Quanguo Laogai Laojiao Jihua Huiyi Wenjian de Tongzhi (关于印发全国劳改、劳教计划会议文件的通知) [Notification on Publishing and Circulating the Documents of the National Conference on the Plan of Labor Reform and Labor Reeducation] (promulgated by the Ministry of Justice, Apr. 19, 1986) CLI.4.74800 (Lawinfochina).



As the prison system, i.e. labor camps, was framed as a special state-owned enterprise, it bore some special costs of policy or social expenditure that common enterprises would not bear, such as prison cadres' unit allowances and uniform, wages for personnel in the affiliated organizations, life and medical expenses for retired or disabled workers in the program of forced job placement, and allowances for small-scale irrigation facilities.<sup>52</sup> All of this needed to be reimbursed from the profits of prison enterprises so that the spirit of contract-responsibility could not be thoroughly carried out and the performance of prison enterprise would not be able to correctly reviewed. This also created some difficulties for the financial management of this system. To address these problems, the central government decided to pay those expenditures by government budget since 1987.<sup>53</sup>

As an impetus to all industrial enterprises to improve their business administration to fulfill the goals set by the seventh five-year plan, the State Council issued a scale of levels for all industrial enterprises: national best level, national first level, national second level, and provincial advanced level, and after attaining or failing to attain necessary requirements, an industrial enterprise would move up or down in the scale.<sup>54</sup> Therefore, prison industrial enterprises were also graded and classified by the scale since 1987 and, as pointed out by the Departmental Team of Strengthening Business Administration and Leadership, quality of products, consumption of raw materials, and economic profits were the three main indicators for deciding the level of a labor reform for an industrial enterprise.<sup>55</sup> Furthermore, the resolution addressed some inadequacies in the

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<sup>52</sup> The program of forced job placement will be discussed in the following sections.

<sup>53</sup> Guanyu Jiang Laogai Qiye Ruogan Shehuixing Zhengcexing Kaizhi Gaiwei Yusaun Bokaun Guanli de Shixing Banfa (关于将劳改企业若干社会性、政策性开支改为预算拨款管理的试行办法) [Provisional Measures for the Payment of Some Social and Policy Expenses of Labor Reform Enterprise Instead by Government Budget] (promulgated by the Ministry of Finance and Ministry of Justice, Dec. 31, 1986, effective Jan. 1, 1987) CLI.4.72826 (Lawinfochina).

<sup>54</sup> Guanyu Jiaqiang Gongye Qiye Guanli Ruogan Wenti de Jueding (关于加强工业企业管理若干问题的决定) [Resolution on Some Questions about Augmenting the Administration of Industrial Business] (promulgated by the State Council, July 4, 1986) CLI.2.2890 (Lawinfochina).

<sup>55</sup> Guanyu Laogai Gongye Qiye Shengji Gongzuo Youguan Wenti de Jueding (关于劳改工业企业升级工作有关问题的决定) [Resolution on the Relevant Questions about the Upgrading Works of Industrial Enterprises of Labor Reform] (promulgated by the Ministry of Justice, Jan. 27, 1988) CLI.4.87801 (Lawinfochina).

prison system. The resolution required prison industrial enterprises, for example, to legalize, institutionalize, and operationalize the works of prison administration because prisoner reform was quite important to the prison business; every prison enterprise had to propose its scheme for enterprise upgrade exerted during the period of the seventh five-year plan.

After deciding to establish a “socialist” market economy, the CCP Administration began a round of wage system reform in 1993, which implicated wages for penal workers. Workers were classified into two groups: government workers and enterprise workers. Workers who labored in the field of prison administration would enjoy the same wage as ordinary government workers; workers who labored in the field of prison enterprise would be expected to enjoy the same treatments as ordinary enterprise workers. Workers in the level of management or who were specialists were allowed to enjoy the same wage as those who were in similar positions in ordinary enterprises.<sup>56</sup> Since the Eighth National Conference of Labor Reform Works required to strengthen the skills and cultural education of prisoners, labor camps were inevitably confronted with the budget problem for adding such educational programs. For addressing this issue, the Ministry of Public Security and Finance allowed labor camps to withdraw 1.5% of assumed wages of inmates’ for setting up these programs and listed the expense into the cost of prison enterprise.<sup>57</sup>

#### D. *Making Prisoners into Qualified Workers*

Public health had been an important problem for a long time since the years when labor reform camps were just established. In 1957, terrible prison condition led to rampant epidemic diseases spreading through several prison camps and the death of many prisoners, prompting the Ministry of Health and the Ministry of

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<sup>56</sup> Guanyu Laogai Laojiao Xitong Gongren Gongzi Zhidu Gaige Ruogan Wenti de Yijian (关于劳改劳教系统工人工资制度改革若干问题的意见) [Opinion on Some Questions about the Improvement of the Wage System of Labor Reform and Labor Reeducation] (promulgated by the Ministry of Justice, Jan. 22, 1994) CLI4.86574 (Lawinfochina).

<sup>57</sup> Guanyu Jiejue Fanren Wenhua Jishu Jiaoyu Jingfei de Tongzhi (关于解决犯人文化技术教育经费的通知) [Notification on Addressing the Budget for the Cultural and Skill Education of Prisoners] (promulgated by the Ministry of Public Security and Ministry of Finance, Jun. 23, 1982) (China).

Public Security to publish a joint notification ordering labor camps to follow the policies and directives from the local departments of public health in their public health administration.<sup>58</sup> Nevertheless, due to the devastation in the Cultural Revolution, public health works were completely shut down. Therefore, after termination of the Cultural Revolution, the two Ministries requested all labor reform camps to restore the cooperation with local public health departments. In addition, the Ministry of Justice published three in the early 1990s to set up the standards for the maintenance of prison sanitation and prisoners' health in labor reform camps<sup>59</sup> and labor reeducation camps.<sup>60</sup>

To quarantine unhealthy prisoners from the entire prison population, the central government sought to reduce the number of prisoners who were old, weak, sick, or disabled, as well as those with mental diseases, through a combination of early release, release on medical probation, or confinement outside the prison.<sup>61</sup>

In addition to the traditional criteria for job classification, the CCP Administration began to include criteria focusing on science, technology, and foreign language skills as part of its development of prison production. For example, the Ministry of Public Security sent a plan in December 1978 to the State Council regarding the full utilization of prisoners and workers in the program of forced job placement who had specialties in high-energy physics, electric engineering, ceramic engineering, soil science, animal husbandry, parasitology, human anatomy and

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<sup>58</sup> Guanyu Jiaqiang Laogai Danwei Weisheng Gongzuo Lingdao de Lianhe Zhishi (关于加强劳改单位卫生工作领导的联合指示) [Joint Instruction for Strengthening the Guiding Works of Public Health in Labor Reform Units] (promulgated by the Ministry of Health and Ministry of Public Security, Jan. 24, 1957) (China).

<sup>59</sup> Zuifan Gaizao xingwei Guifan (罪犯改造行为规范) [Rules for Prisoner's Behavior under Reform] (promulgated by the Ministry of Justice, Nov. 6, 1990) CLI.4.9346 (China) and Jianguan Gaizao Huanjing Guifan (监管改造环境规范) [Rules for Prison Environment] (promulgated by the Ministry of Justice, Nov. 6, 1990) CLI.4.9345 (Lawinfochina).

<sup>60</sup> Laodong Jiaoyang Renyuan Shenghuo Weisheng Guanli Banfa (劳动教养人员生活卫生管理办法) [Regulations for Management of the Hygiene of Labor Reeducation Inmates] (promulgated by the Ministry of Justice, Aug. 12, 1991) CLI.4.5327 (Lawinfochina).

<sup>61</sup> Guanyu Qingli Lao Ruo Bing Can Fan he Jingshen Bingfan de Lianhe Tongzhi (关于清理老弱病残犯和精神病犯的联合通知) [Joint Notification on Clean-Up of Prisoners Who Were Old, Weak, Sick, and Disabled, as Well as Those with Mental Diseases] (promulgated by the Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security, Apr. 16, 1979) CLI.3.11606 (Lawinfochina).

pathology, as well as those prisoners with language proficiency in English, French, Japanese, or German.<sup>62</sup> In March 1979, the State Council approved this plan and instructed prisons to give subsidies to those prisoners and workers in the program of forced job placement with specialties. In addition, for petty offenders between sixteen and eighteen years old who were supposed to be sent to juvenile corrective facilities, the Ministry of Public Security lowered the upper age limit of age for juvenile corrective facilities from eighteen to sixteen in 1981. Therefore, petty offenders over sixteen years old were no longer eligible for juvenile corrective treatments and had to be sent to labor camps instead.<sup>63</sup>

As for the daily goods prisoners needed like clothes and food, the principle of less eligibility was not held in the reform era. In 1980, the Ministry of Commerce and the Ministry of Public Security sought to calibrate the distribution of prisoner clothing using the same standard it used for ordinary citizens.<sup>64</sup> Later, the central government made differential distributions for cotton: prisoners in areas with hot weather would receive 8.5 catties per person, those in areas with mild weather would receive 11.5 catties per person, those in areas with cold weather would receive 14 catties per person, and all other prisoners would receive their rations according to the standards set by the local administration.<sup>65</sup> In

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<sup>62</sup> Guanyu Laogai Fan Laojiao Fenzi Liuchang Jiuye Renyuan Zhong Keji Waiyu Renyuan Chuli Wenti Gei Guowuyuan de Qingshi Baogao (关于劳改犯、劳教分子、留场就业人员中科技、外语人员处理问题给国务院的请示报告) [Report of Requesting Instructions to the State Council for the Question about the Management of Labor Reform and Labor Reeducation Inmates and Workers in the Program of Forced Job Placement with Specialties in Science, Technology, and Foreign Languages] (promulgated by the Supreme People's Court, State Scientific and Technological Commission, State Planning Commission, Ministry of Affairs, State Bureau of Labor, and Ministry of Public Security, Mar. 24, 1979), LAW-LIB, [http://www.law-lib.com/Law/law\\_view.asp?id=1910](http://www.law-lib.com/Law/law_view.asp?id=1910) [<https://perma.cc/E3UD-XLSY>] (China).

<sup>63</sup> Guanyu Shourong Laodong Jiaoyang Renyuan Nianling Wenti de Tongzhi (关于收容劳动教养人员年龄问题的通知) [Notification on Question about the Age Limits for Accommodating Labor Reeducation Inmates] (promulgated by the Ministry of Public Security, Nov. 30, 1981) Golden Education, <https://www.gaodun.com/guoshui/685160.html> [<https://perma.cc/6CSV-NMZE>] (China).

<sup>64</sup> Guanyu Tongyi Guiding Laogai Fanren Yongbu Gongying Biaozhun he Shiyong Wenti de Lianhe Tongzhi (关于统一规定劳改犯人用布供应标准和使用问题的联合通知) [Joint Notification on the Unified Standard for the Cloth Supply for Labor Reform Prisoners and on the Problem of Its Use] (promulgated by the Ministry of Commerce and Ministry of Public Security, Apr. 12, 1980) (China).

<sup>65</sup> Guanyu Laogai Fanren Xumian Gongying Biaozhun de Tongzhi (关于劳改犯人絮棉供应标准的通知) [Notification on the Standard of Cotton Wad Supply for Labor

addition, grain and cooking oil supply for prison workers would follow the same standards as workers in state-owned enterprises if prisoners labored inside camps; while prisoners who did no labor would have the same grain and cooking oil allocation standard as ordinary citizens.<sup>66</sup> As the government's control over the economy loosened and the development of a market economy gradually progressed, the price of daily goods fluctuated, prompting the central government to increase the allowances for prisoner's supplementary food in 1979<sup>67</sup> and daily goods in 1985 to cope with inflation.<sup>68</sup>

Aside from the changes in the daily goods supply, there were also shifts in prisoners' education. In the pre-reform era, prisoners were expected to learn by doing. Nevertheless, following the instructions from the National Conference on Justice Administration, all carceral apparatuses had to reinvent themselves into school-like correctional facilities so as to achieve the goal of "reform first and production second." Hence, the CCP administration in 1985 required all labor camps to install and prepare necessary teaching equipment and staff. Moreover, those prison workers who finished required courses were eligible to participate in tests on cultural knowledge or certain skills; if they passed the tests, they would receive certificates as proof.<sup>69</sup>

Augmenting the skill training for a couple of years resulted in remarkable advancement in prison workers' skills. Traditional

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Reform Prisoners] (promulgated by the Ministry of Public Security and All-China Federation of Supply and Marketing Cooperatives, Feb. 2, 1982) (China).

<sup>66</sup> Guanyu Laogai Fan Shaonian Fan Liang You Gongying Wenti de Tongzhi (关于劳改犯、少年犯粮、油供应问题的通知) [Notification on the Supply of Grain and Food Oil for Labor Reform Prisoners and Juvenile Criminals] (promulgated by the Ministry of Public Security and Ministry of Food, Jul. 18, 1981) (China).

<sup>67</sup> Guanyu Fanren Laojiao Renyuan Fushipin Jiage Butie de Tongzhi (关于犯人、劳教人员副食品价格补贴的通知) [Notification on Subsidies for the Supplementary Food of Inmates of Labor Reform and Labor Reeducation] (promulgated by the Ministry of Public Security and Ministry of Commerce, Nov. 3, 1979) (China).

<sup>68</sup> Guanyu Jiejue Fanren Shenghuofei Biaozhun Piandi Wenti de Tongzhi (关于解决犯人生活费标准偏低问题的通知) [Notification on Solving the Problem that the Standard for Prisoner Living Expenses was on the Low Side] (promulgated by the Ministry of Finance and Ministry of Justice, Sept. 10, 1985) CLI4.162266 (Lawinfochina).

<sup>69</sup> Guanyu Jiaqiang Dui Laogai Laojiao Renyuan Wenhua Jishu Jiaoyu de Tongzhi (关于加强对劳改、劳教人员文化、技术教育的通知) [Notification on Enhancing Cultural and Skill Education for Labor Reform and Labor Reeducation Inmates] (promulgated by the Ministry of Justice, Ministry of Education, and Ministry of Labor and Personnel, Jun. 11, 1985) CLI4.162165 (Lawinfochina).

prisoner education transformed from an apprenticeship model into a technical and vocational education. The CCP administration in 1987 began a new round of reform in prisoner education to build a complete system of technical and vocational education. It attempted to connect the system with the needs of other work units for improving the technology that was crucial to nation's economic development.<sup>70</sup>

### *E. Cadres Quality Enhancement*

In addition to the quality of prison workers, the quality of prison cadres also became an issue in the Reform Era. As advocated in the Eighth National Conference of Labor Reform Works in 1981, the central government decided that it needs to build high quality cadre teams who were energetic, united, and revolutionary with professional knowledge and skills to prepare for the forthcoming era of economic reform. In the same year, a regulation on the uniform for cadres was released.<sup>71</sup> According to the regulation, most cadres in the penal camps were required to wear the same apparel as the civil police unless they had any disabilities or they worked in the facilities which affiliated to labor camps, such as kindergarten, research centers, hospitals, or stores, and the cost for their apparel should be borne by cadres themselves.

In regard to prison cadres' salary and benefits, since prison cadres were treated as one type of civilian police force since the early 1980s, they could enjoy the same level of wages as civilian police in other government agencies.<sup>72</sup> Apart from the regular

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<sup>70</sup> Guanyu Jinyibu Zuohao Dui Fanren Zhiye Jishu Jiaoyu de Tongzhi (关于进一步做好对犯人职业技术教育的通知) [Notification on Moving Forward to Improve the Technological and Vocational Education for Prisoners] (promulgated by the State Scientific and Technological Commission and Ministry of Justice, Aug. 31, 1987) CLI.4.72636 (Lawinfochina).

<sup>71</sup> Guanyu Laojiao Laogai Gongzuo Ganbu Zhuo Minjing Fuzhuang Wenti de Tongzhi (关于劳教、劳改工作干部着民警服装问题的通知) [Notification on the Question about Labor Reform and Labor Reeducation Cadres Who Wearing the Apparel for Civil Police] (promulgated by the Ministry of Public Security and Ministry of Finance, Feb. 30, 1981) (China).

<sup>72</sup> Guanyu Dui Sichuansheng Sifating Qingshi Laogai Danwei Lieru Xingzheng Shiye Danwei Gongzi Gaige Fanwei Wenti de Dafu (关于对四川省司法厅请示劳改单位列入行政事业单位工资改革范围问题的答复) [Response to the Question from the Department of Justice of Sichuan Province about Including Labor Reform Units into the Scope of Wage Reform in the Administrative Business Units] (promulgated by the Ministry of Justice, Sept. 9, 1985) CLI.4.162265 (Lawinfochina).

wages, the central government commenced a pilot program in 1981 to give allowances to cadres who worked in the labor reform teams. Those cadres who worked in the affiliated institutions were not eligible for such subsidies.<sup>73</sup> The pilot program of allowances had a shift in 1987, when the central government decided to disburse allowances on a day-to-day basis instead of the prior monthly basis; in other words, prison cadres would receive thirty to fifty cents each day they were on duty.<sup>74</sup>

Later in 1986, the Ministry of Justice proposed a plan for the prison cadres training through which it was expected that 20% of all prison cadres would be able to receive a college degree or equivalent and 40% would be able to receive a high school degree or equivalent by the end of 1990; for those cadres members whose ages were under forty five, it was expected that one third of them would have a college degree or higher by the end of 1990, and the rest would all receive a high school degree or equivalent level of senior high school; for cadres who were sectional leaders, it was expected that two thirds of them would receive a college degree; and for cadres who were divisional leaders, half of them would receive a college degree.<sup>75</sup>

In addition, for enhancing the professional knowledge of prison cadres, the Ministry of Justice also set up professional class sessions in 1989. Those prison cadres who finished the coursework and passed exams would receive a certificate in that subject.<sup>76</sup> The

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<sup>73</sup> Guanyu Laojiao Laogai Gongzuo Ganbu Shixing Gangwei Butie de Tongzhi (关于劳教、劳改工作干部试行岗位补贴的通知) [Notification on the Pilot Program to Give Post Subsidies to Labor Reform and Labor Reeducation Cadres] (promulgated by the Ministry of Public Security, Ministry of Finance, and State Bureau of Labor, July 7, 1981) CLI.4.28907 (Lawinfochina).

<sup>74</sup> Guanyu Gongan Ganjing Shixing Zhiqin Gangwei Jintie Wenti de Tongzhi (关于公安干警实行执勤岗位津贴问题的通知) [Notification on the Question about the Post Allowances for Public Security Cadres on Duty] (promulgated by the Salary Reform Group of the State Council, Ministry of Labor and Personnel, Ministry of Finance, Feb. 5, 1987) CLI.4.241168 (Lawinfochina).

<sup>75</sup> Yi Jiu Ba Liu Nian Zhi Yi Jiu Jiu Ling Nian Quanguo Laogai Gongzuo Ganjing Jiaoyu Xunlian Guihua, 1986–1990 (一九八六年至一九九〇年全国劳改工作干警教育培训规划, 1986–1990) [National Education and Training Plan for Labor Reform Cadres, 1986–1990] (promulgated by the Ministry of Justice, Mar. 3, 1986), 110.com, [https://www.110.com/fagui/law\\_161951.html](https://www.110.com/fagui/law_161951.html) [<https://perma.cc/AC72-U23C>] (China).

<sup>76</sup> Guanyu Zai Quanguo Laogai Laojiao Xitong Kaizhan Zhuanye Zhengshu Jiaoyu de Tongzhi (关于在全国劳改劳教系统开展专业证书教育的通知) [Notification on the Statewide Implementation of Professional Education and Certification in Labor Reform

central government also paid attention to the prison cadres' political orientation and faith and ordered every prison to submit the regular reports on the cadres' political thoughts as well as their work performance.<sup>77</sup>

#### *F. Management of Released Population*

The CCP administration applied a "keeping many and freeing few" principle to dealing with the released population from labor reform camps since 1953, which was the outset of the program of forced job placement (FJP). The purposes of the program were to protect the society from possible criminal threats and to improve the economy of the country, so a prisoner who had completed his sentences had to stay in the labor camps and became a member of forced-job-placement team.<sup>78</sup> However, things began to change after the Cultural Revolution. First, since 1979 prisoners who finished their sentence would not be kept in the penal camps forcefully; instead, the government would release them to their hometown, restore their household registrations, and permit them to settle down.<sup>79</sup> Second, for the FJP workers' health care, the Ministry of Public Security allowed them to enjoy the same benefits as ordinary workers. For example, if FJP workers were infected with silicosis, which is an occupational disease of miners, during the process of their work and were not disfranchised, they would receive the same treatment, including medical care and wages, as ordinary workers with silicosis; if disfranchised, their affiliated work units had to provide necessary medical care and life support allowances.<sup>80</sup> Furthermore, the coverage of labor insurance was

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and Labor Reeducation Systems] (promulgated by the Ministry of Justice, Apr. 20, 1989) CLI.4.87725 (Lawinfochina).

<sup>77</sup> Guanyu Laogai Zhengzhi Gongzuo Baogao Zhidu de Zhanxing Guiding (关于劳改政治工作报告制度的暂行规定) [Interim Provisions on the Institution of Reports on Political Works in Labor Reform Units] (promulgated by the Ministry of Justice, Mar. 3, 1986), 110.com, [https://www.110.com/fagui/law\\_161951.html](https://www.110.com/fagui/law_161951.html) [<https://perma.cc/AC72-U23C>] (China).

<sup>78</sup> Lin, *supra* note 8, at 53–56.

<sup>79</sup> Guanyu Chuli Liuchang Jiuye Wenti de Jixiang Tongzhi (关于处理留场就业问题的几项通知) [Some Notifications on the Question about the Management of Forced Job Placement] (promulgated by the Ministry of Public Security, Mar. 5, 1979) (China).

<sup>80</sup> Guanyu Huanyou Xifeibing de Xingman Jiuye Renyuan Nengfou Xiangshou Xifeibing Daiyu de Wenti (关于患有矽肺病的刑满就业人员能否享受矽肺病待遇的问题) [Question about Whether FJP Workers with Silicosis Are Eligible for the Same



extended to FJP workers in 1980 if they were not disentitled of their political rights.<sup>81</sup>

Since there were numerous wrongful convictions during the period of the Cultural Revolution and many innocent persons were forced to stay and work inside penal camps, the CCP administration sought to provide redress and released a vast majority of them from labor reform camps. Ironically, those innocent persons had a job and basic life support in the labor camps but faced unemployment after release. To address this issue, the central government decided in 1980 to keep those released innocent persons working in the labor camps as ordinary workers if they were homeless, able to work, and willing to stay; if they were not able to work labor, then local governments were responsible for their settlement.<sup>82</sup> In addition, if an ex-prisoner had a special skill which was needed by the state, the ex-prisoner was allowed to work in the original labor camps if he or she voluntarily chose to do so.<sup>83</sup>

Later in 1981, the CCP administration ordered that the program of forced job placement would only be applicable to prisoners who escaped during their sentence or committed an offence after release<sup>84</sup> and to petty offenders who lost their

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Treatments for Silicosis as Ordinary Workers with Silicosis] (promulgated by the State Bureau of Labor, June 6, 1978) CLI.4.30379 (Lawinfochina).

<sup>81</sup> Guanyu Xingman Jiuye Renyuan Nengfou Shixing Laodong Baoxian Tiaoli Wenti Dui Guojia Laodong Zongju de Dafu (关于刑满就业人员能否实行《劳动保险条例》问题对国家劳动总局的答复) [Response to the State Bureau of Labor on the Question about Whether the Regulation of Labor Insurance is Applicable to Workers in the Program of Forced Job Placement] (promulgated by the Ministry of Public Security, June 24, 1980) (China).

<sup>82</sup> Guanyu Anzhi Pingfan Shifang Hou Wujia Kegui Renyuan de Tongzhi (关于安置平反释放后无家可归人员的通知) [Notification on Settling the Homeless Persons Whose Convictions Were Redressed] (promulgated by the Supreme People's Court, Ministry of Public Security, Ministry of Civil Affairs, and State Bureau of Labor, Mar. 29, 1980) CLI.3.690 (Lawinfochina).

<sup>83</sup> Guanyu Zuifan Jiashi Hou Liudui Shengchan de Zhengzhi Wuzhi Daiyu Wenti de Pifu (关于罪犯假释后留队生产的政治、物质待遇问题的批复) [Response to the Question about the Political Rights of and Material Benefits for Prisoners Who Stay and Work in Labor Teams After Release on Parole] (promulgated by the Ministry of Public Security, Mar. 7, 1981) CLI.4.195425 (Lawinfochina).

<sup>84</sup> Guanyu Chuli Taopao Huozhe Xin Fanzui de Laogai Fan he Laojiao Renyuan de Jueding (关于处理逃跑或者新犯罪的劳改犯和劳教人员的决定) [Resolution on the Management of Labor Reform and Labor Reeducation Inmates Who Escape or Recommit Crimes] (promulgated by the Standing Committee of the National People's Congress, June 10, 1981, effective July 10, 1981) CLI.1.1009 (Lawinfochina).

household registration in an urban area.<sup>85</sup> Losing household registration in an urban area usually meant the loss of any chance of finding a job in towns or cities.<sup>86</sup>

Learning from the experience of FJP programs of past decades, the CCP administration determined in the Eighth National Conference of Labor Reform Works in 1981 to formally adjust the policy of forced job placements. First, prisoners who finished their sentences would be, in principle, released to their original residences or the residences of their relatives. Second, for current FJP workers, if they were old, weak, sick, or disabled, they would be phased out of the FJP units. Third, newly retained FJP workers would be treated as ordinary workers or peasants and entitled to the same wages and benefits. Later in 1983, the Ministry of Public Security and the Ministry of Labor Personnel started a program to reassign current FJP workers into regular workers if they matched certain criteria, such as being of adequate health, supporting the CCP leadership, ability to carry out physical labor, and being in the FJP program for more than five years.<sup>87</sup>

With the goal of transferring all FJP workers into regular workers, the Ministry of Justice and Ministry of Labor jointly determined in 1988 that FJP workers could be transferred to regular workers under the contract labor system if their skills were needed

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<sup>85</sup> Guanyu Guanche Zhixing Quanguo Renda Changweihui Jueding Zhong Youguan Laojiao Fangmian Jige Juti Wenti de Tongzhi (关于贯彻执行全国人大常委会《决定》中有关劳教方面几个具体问题的通知) [Notification on a Few Specific Issues Concerning Reeducation Through Labor in the "Resolution" of the Standing Committee of the National People's Congress] (promulgated by the Ministry of Public Security, Dec. 9, 1981) Findlaw.cn, [https://china.findlaw.cn/fagui/p\\_1/67246.html](https://china.findlaw.cn/fagui/p_1/67246.html) [<https://perma.cc/4TEV-R93D>] (China).

<sup>86</sup> Guanyu Dui Zhigong Zhong Bei Shourong Laodong Jiaoyang Bing Zhuxiao Chengshi Hukou de Renyuan Shifou Kaichu Gongzhi Wenti de Dafu (关于对职工中被收容劳动教养并注销城市户口的人员是否开除公职问题的答复) [Response to the Question about Whether to Discharge Labor Reeducation Inmates' from Their Work Units If Their Urban Household Registration Have Been Cancelled] (promulgated by the Ministry of Public Security, Ministry of Justice, and Ministry of Labor and Personnel, Dec. 23, 1983) CLI4.43243 (Lawinfochina). For a plenary analysis of the connection between household registration and work permission in urban areas in communist China, see Xiaogang Wu, *Work Units and Income Inequality: The Effect of Market Transition in Urban China*, 80 SOC. FORCES 1069, 1070–99 (2002).

<sup>87</sup> Guanyu Xingman Liuchang Jiuye Renyuan Youguan Daiyu Wenti de Tongzhi (关于刑满留场(厂)就业人员有关待遇问题的通知) [Notification on the Question about the Material Benefits for Workers in the Program of Forced Job Placement] (promulgated by the Ministry of Public Security and Ministry of Labor and Personnel, May 4, 1983, effective May 4, 1983) CLI4.235571 (Lawinfochina).

by the state and they had attained the middle level or higher. The goal of completing this transfer was to be reached by the end of March 1989.<sup>88</sup> When the program of forced job placement officially came to an end in 1989, the management of released prisoners was carried out by two new measures: “settling down (安置)” for ex-prisoners and “reeducation assistance (帮教)” for petty offenders.

The guiding principle of the policy of settling down required government departments to help ex-prisoners find a way out of being the socially detrimental elements and return to the correct path.<sup>89</sup> Thus, under the settling down approach, if an ex-prisoner’s positions in their original work unit was still retained, the prisoner would be able to return to the position or work in other positions in the same work unit. Prisoners whose positions were revoked or who became jobless since their arrest, would be managed by local governments and await new job assignments. Lastly, prisoners who were peasants when they were placed under arrest would be sent back to rural areas and engage in agricultural production.<sup>90</sup>

However, after employing the new post-release policy of settling down for a few years, the policy was ultimately unable to address changes brought about by the move to a market economy in the early 1990s, such as an increasing floating population and the boom in private enterprises. As a result, a new policy was enacted in 1994.<sup>91</sup> In addition to emphasizing the importance of original

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<sup>88</sup> Guanyu Xingman Liuchang Jiuye Renyuan Youguan Daiyu Wenti de Buchong Tongzhi (关于刑满留场 (厂) 就业人员有关待遇问题的补充通知) [Additional Notification on the Question about the Material Benefits for Workers in the Program of Forced Job Placement] (promulgated by the Ministry of Justice and Ministry of Labor, July 27, 1988, effective July 27, 1988) CLI.4.30419 (Lawinfochina).

<sup>89</sup> Guanyu Zuohao Fanren Xingman Shifang Hou Luohu he Anzhi Gongzuo de Tongzhi (关于做好犯人刑满释放后落户和安置工作的通知) [Notification on Performing Well in Restoring Household Registration of Ex-Prisoners Who Have Completed Their Sentence and Settling Them Down] (promulgated by the General Office of the State Council, July 16, 1984, effective July 16, 1984) CLI.2.2053 (Lawinfochina).

<sup>90</sup> Guanyu Xingman Shifang Renyuan Jiuye Anzhi Wenti Gei Guizhousheng Laodongju de Fuhan (关于刑满释放人员就业安置问题给贵州省劳动局的复函) [Response Letter to the Bureau of Labor of Guizhou Province on the Question about Settling Down Ex-Prisoners Who Have Completed Their Sentence] (promulgated by the State Bureau of Labor, May 10, 1982) CLI.4.30257 (Lawinfochina).

<sup>91</sup> Guanyu Jinyibu Jiaqiang Dui Xingman Shifang Jiechu Laojiao Renyuan Anzhi he Bangjiao Gongzuo de Yijian (关于进一步加强对刑满释放、解除劳教人员安置和帮教工作的意见) [Opinion on Moving Forward to Strengthen the Settling Down and Reeducation Assistance Works on Ex-Inmates Who Have Completed Their Sentence or Were Discharged from Labor Reeducation] (promulgated by the Central Public Security

settling down measures, the central government required competent authorities to pay more attention to the reeducating the released population, particularly if they showed signs of recidivism. Moreover, the new strategy also sought to change the traditional means of settling down and reeducation from administrative ones to legal and economic ones, as well as to transfer the duty from local sectors to the central government. The CCP administration also highlighted the need for the content of settling down and reeducation assistance measures to keep pace with the market economy.

Before the end of the 20<sup>th</sup> century, there was a change in the competent authorities of post-release management. The Coordination Group on the Works of Settling Down and Reeducation Assistance was established in 1997, and the works of settling down and reeducation assistance, which were originally handled by the Prison Administration Bureau of the Ministry of Justice, were transferred to the scope of the Department of Grass-Root Work of Ministry of Justice. The Department of Grass-Root Work operated under the guidance of the Coordination Group on the Works of Settling down and Reeducation Assistance, instructing local agencies of justice administration to carry on the post-release management works.<sup>92</sup> The Ministry of Justice conducted studies on the statistics of the works of settling down and reeducation assistance in 1999 to better understand the effects of those works and then to adjust forthcoming policies.<sup>93</sup>

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Comprehensive Management Commission, Ministry of Public Security, Ministry of Justice, Ministry of Labor, Ministry of Civil Affairs, and National General Administration for Industry and Commerce, Feb. 14, 1994, effective Feb. 14, 1994) CLI.4.15897 (Lawinfochina).

<sup>92</sup> Guanyu Jianyu Guanliju Fuze de Xingshi Jiejiao Renyuan Anzhi Bangjiao Gongzuo Yijiao Bu Jiceng Gongzuosi de Tongzhi (关于监狱管理局负责的刑释解教人员安置帮教工作移交司法部基层工作司的通知) [Notification on the Bureau of Prison Administration's Settling Down and Reeducation Assistance Works on Ex-Inmates Who Were Released or Discharged Were Transferred to the Department of Grass-Root Work] (promulgated by the Ministry of Justice, Oct. 21, 1997, effective Oct. 21, 1997) CLI.4.71496 (Lawinfochina).

<sup>93</sup> Guanyu Dui Anzhi Bangjiao Gongzuo Qingkuang Jinxing Zhuanxiang Tongji de Tongzhi (关于对安置帮教工作情况进行专项统计的通知) [Notification on the Engagement in Statistics of Settling Down and Reeducation Assistance Works] (promulgated by the Ministry of Justice, July 27, 1999, effective July 27, 1997) CLI.4.36190 (Lawinfochina).

## V. CRISIS AND ADJUSTMENTS

Even though the prison enterprise welcomed the new age of economic reform by implementing the contract-responsibility system, it began to encounter economic difficulties in the late 1980s and the early 1990s. The prison enterprise had some inherent drawbacks that made it inadaptably to the market economy. For example, most of the penal labor camps were located in remote and desolate places, with limited access to outside information and skilled operating personnel. Furthermore, the penal labor camps had poor infrastructure and facilities, terrible traffic conditions, with a low quality yet highly mobile labor force, and an inadequate supply of raw materials. In addition to those innate defects, the prison enterprise acquired a heavy financial burden from taxes, loans, and social and policy expenses, which made the prison enterprise's problems even worse during the period of economic reform. The direct connection between prison cadres' benefits and the economic performance of prison enterprises, together with the inherent and acquired defects of prison enterprise, meant that cadres had no choice but to concentrate on production rather than prisoner reform. Consequently, the importance of prison enterprise outweighed that of prison administration; in fact, the combination of prison administration and prison enterprise began to tilt it toward the enterprise side.<sup>94</sup>

To alleviate the aggravation of prison economy, the central government started out on the task of tax.<sup>95</sup> As a result of the State Council's decision to grant some tax deductions for the prison system, the State Administration of Taxation laid down further

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<sup>94</sup> Jia Guanliang (贾关良), *Zai Shangpin Jingji Xingshi Xia Jianguan Gaizao Gongzuo Mianlin De Kunjing He Duice* (在商品经济形势下监管改造工作面临的困境和对策) [*The Problems Faced by Imprisonment, Management, and Reform Tasks under Commodity Economy and the Countermeasures*], in SIFABU 1990 NIANDU YUFANG FANZUI YU LAOGAI LAOJIAO YOUXIU LUNWENJI (司法部 1990 年度预防犯罪与劳改劳教优秀论文集) [OUTSTANDING ESSAYS ON CRIME PREVENTION, LAB. REFORM AND LAB. REEDUCATION BY THE MINISTRY OF JUST. IN 1990] 548, 552–53 (1991).

<sup>95</sup> Guanyu Jiejue Dangqian Laogai Laojiao Danwei Jingji Kunnan Qingshi de Tongzhi (关于解决当前劳改劳教单位经济困难请示的通知) [Notification on the Request for Instructions for Current Economic Difficulties in Labor Reform and Labor Reeduction Units] (promulgated by the Ministry of Justice and Forwarded by the State Council, Apr. 9, 1990, effective Apr. 9, 1990) (China).

details for the enforcement of a tax deduction policy.<sup>96</sup> Accordingly, labor camps with poor performance could apply for the deduction on their product tax, value added tax, and business tax, but factories affiliated to labor camps that were run by cadres' family members were not eligible for the tax deduction. In addition, some local tax agencies also granted tax exemptions to labor camps in their districts. For example, in the Wuhan City of Hubei Province, labor camps were not levied a usage tax on their cadre cars, prison vans and some of their construction sites.

Labor camps also enjoyed financial relief on their loans. The People's Bank of China set a fixed interest rate of 10.08% per annum in 1990 for labor camp construction loans despite their length and granted a one-year deduction of 2.16% per annum to the interest rate in 1990,<sup>97</sup> which was extended to subsequent years. The deductions were favorable to labor camps: for example, during the period between September 21, 1990 and April 20, 1991, with an interest rate of 10.08% per annum, and a 2.16% deduction, labor camps only needed to afford 0.88%, with the rest of the interest being paid by the financial departments and other government organs. Starting in April 21, 1991, the interest rate would be changed to 8.46%, the People's Bank of China would give a 0.9% deduction, and labor camps only needed to afford 0.52%, with the rest of the interest still paid by the financial departments and other government organs.<sup>98</sup> In 1996, the People's Bank of China changed the interest rate again to 11.52% per annum; 8.73% of the interest would be borne by prisons and rest of the interest would be paid by

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<sup>96</sup> Guanyu Guanche Guowuyuan Guofa 1990 20 Hao Wenjian Youguan Shuishou Guiding de Tongzhi (关于贯彻国务院国发〔1990〕20号文件有关税收规定的通知) [Notification on Carrying out the Order of No. Guofa-1990-20 on Taxation from State Council] (promulgated by the State Taxation Administration, May 23, 1990, effective May 23, 1990) CLI.4.6872 (Lawinfochina).

<sup>97</sup> Guanyu 1990 Nian Dui Laogai Laojiao Danwei Yinhang Jiben Jianshe Daikuan Yuyi Tiexi de Tongzhi (关于1990年对劳改劳教单位银行基本建设贷款予以贴息的通知) [Notification on a Discount for the Interest Rate for the Infrastructure Construction Loans of Labor Reform and Labor Reeducation Units in 1990] (promulgated by the People's Bank of China, Dec. 11, 1990, effective Dec. 11, 1990) (China).

<sup>98</sup> Guanyu Tiaozheng Laogai Laojiao Jiben Jianshe Daikuan Lilv Youguan Wenti de Tongzhi (关于调整劳改劳教基本建设贷款利率有关问题的通知) [Notification on the Questions about the Adjustments to the Interest Rate of Loans for Infrastructure Construction of Labor Reform and Labor Reeducation Units] (promulgated by China Construction Bank, Apr. 30, 1991, effective Apr. 30, 1991) CLI.6.86925 (Lawinfochina).

the central and local governments.<sup>99</sup> Moreover, the State Planning Commission and the Ministry of Justice jointly laid out provisions in 1997 for more effective management of the loans.<sup>100</sup>

The poor performance of prison enterprise also led to the deterioration of the quality of prisoners' lives, which in turn decreased the efficiency and economic performance of the prison enterprise. Prisoners working in the factories or mines encountered worse living conditions than before and prisoners who worked on the farms were confronted with even more terrible living conditions. In an effort to improve prisoners' lives, the Ministry of Justice required all labor camps to ensure that allowances for prisoner's daily life would not be diverted to other uses, to broaden sources of income and reduce expenditures, and to set up reasonable working hours per day.<sup>101</sup> With those measures, the Ministry of Justice expected to heighten the quality of prison life and thus to improve the performance of the prison enterprise.

The State Council granted several lenient measures to address prison enterprise's economic struggles in December 1993. In terms of addressing the expenditure of the prison administration, the State Council determined that prison cadres' wages and prisoners' daily expenses would be assured by the government; the former would be paid by the central or local governments and the latter would be paid solely by local governments. With regard to the outlays for the operation of prison enterprise, it decided to take steps to separate the income and expenses and put them on different tracks. As for the investments in prison infrastructure construction,

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<sup>99</sup> Guanyu Jianyu Laogai Laojiao Danwei Jiben Jianshe Daikuan Lilv ji Tiexi Wenti de Tongzhi (关于监狱劳改劳教单位基本建设贷款利率及贴息问题的通知) [Notification on the Questions about the Interest Rate of Loans for Infrastructure Construction of Prison, Labor Reform Units, and Labor Reeducation Units and the Interest Discount for the Loans] (promulgated by the People's Bank of China, Ministry of Justice, and Ministry of Finance, Oct. 16, 1996, effective Oct.16, 1996) CLI.4.152265 (Lawinfochina).

<sup>100</sup> Guanyu Jianyu Laojiao Xitong Jiben Jianshe Yinhang Daikuan Touzi Jihua Guanli Zanzing Guiding (关于监狱、劳教系统基本建设银行贷款投资计划管理暂行规定) [(Interim Provisions on the Management of Bank Loans and Investment Plans for Infrastructure Construction of Prison and Labor Reeducation Systems)] (promulgated by the State Planning Commission and Ministry of Justice, Oct. 22, 1997, effective Oct.22, 1997) CLI.4.151890 (Lawinfochina).

<sup>101</sup> Guanyu Jinyibu Jiaqiang Fanren Shenghuo Guanli de Tongzhi (关于进一步加强犯人们生活管理的通知) [Notification on Moving Ahead to Augment the Administration of Lives of Prisoners] (promulgated by the Ministry of Justice, Dec. 2, 1992, effective Dec. 2, 1992) CLI.4.12970 (Lawinfochina).

the amount would be increased from RMB 40 million, between 1994 and 1995, to RMB 70 million, and during the period of the ninth five-year plan from 1996 to 2000, the amount would be increased as well. With respect to the loan interest, the state would prepare RMB 1 billion in 1994 and 1995 to pay for the interest: 0.7 billion for infrastructure construction and 0.3 billion for mine construction. As to the tax deduction for prison enterprise, previous instructions shall be followed. Eventually, the State Council also planned to build a few model prisons with excellent equipment and improved administration. The State Council subsequently published a comprehensive notification in 1995 to all local governments and its subsidiaries, requiring them to strive for the modernization of prison and help to improve the production and management of the prison system.<sup>102</sup>

To make the financial system of prison administration and prison enterprise sound and steady, according to Article 8 of Prison Law of People's Republic of China, which was enacted in 1994 and officially replaced the term "labor reform" with "prison", the central government was required to ensure that the expenditures of a prison, including the expenditures for prison cadres, reform of prisoners, living expenses of prisoners, administration and installations of the prison, and other special expenses shall be included in the state budget; besides, the state also shall provide necessary production facilities and production expenses for prisoners to work. In addition to the general laws and regulations which were applicable to the finance and accounting of prison enterprises as well as ordinary enterprises, the Ministry of Finance released in 1997 two regulations for the finance and accounting of prison system as a supplement.<sup>103</sup>

In the beginning of the 21st century, the Ministry of Justice released a set of provisions to carry out an orderly system of prison

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<sup>102</sup> Guanyu Jinyibu Jiaqiang Jianyu Guanli he Laodong Jiaoyang Gongzuo de Tongzhi (关于进一步加强监狱管理和劳动教养工作的通知) [Notification on Moving forward to Strengthen the Administration of Prison System and Labor Reeducation Works] (promulgated by the State Council, Feb. 8, 1995, effective Feb. 8, 1995) CLI.2.151869 (China).

<sup>103</sup> Guanyu Jianyu Caiwu Kuaiji Zhidu Shishi Zhong Youguan Wenti de Tongzhi (关于监狱财务、会计制度实施中有关问题的通知) [Notification on the Questions about the Enforcement of the Institution of Prison Finance and the Institution of Prison Accounting] (promulgated by the Ministry of Finance, Feb. 21, 1997) CLI.4.151888 (Lawinfochina).



business administration.<sup>104</sup> According to the provisions, prison enterprises are defined as the enterprises which provide prisoners with the places and the means of production and set the objectives they are working for, and those enterprises are led and managed by local bureaus of prison administration. Prison enterprises are not allowed to use the terms or symbols of prison in their brand names, commercials, and business activities. Prisoners who work in those enterprises are still under the supervision of prison cadres and the cadres can't dress in the uniform when they engage in the business activities outside the prison space. Prison enterprises are required to be self-sufficient with an independent accounting institution and pay labor compensation (prisoners' wages) to prisons; their profits are to be used on the development and improvement of production and living equipment. Local governments and all departments concerned are required to support and assist prison enterprise by fulfilling their legal responsibilities, carrying out the preferential policies on finance, tax, investment, and loan, and preserving their land and other natural resources.

## **VI. SEPARATION OF PRISON ADMINISTRATION AND PRISON ENTERPRISE**

2003 was a pivotal year for the prison system renovation in China. The State Council released the most influential decision in January 2003 to carry out a new style of prison system by separating the prison administration and the prison enterprise, and appointed some experimental locations to conduct a pilot program.<sup>105</sup> There were four substantial goals for this prison renovation project: budget for prison administration to be fully guaranteed (全额保障), prison administration and prison enterprise to be separated (监企分开), different financial schemes for prison administration and prison

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<sup>104</sup> Guanyu Yinfa Jianyu Laojiao Shengchan Qiye Guifan Guanli Banfa de Tongzhi (关于印发《监狱劳教生产企业规范管理办法》的通知) [Notification on the Publication of Measures for Regulating and Managing the Business of Prison and Labor Reeducation Production] (promulgated by the Ministry of Justice, Aug. 27, 2001) CLI.4.46539 (Lawinfochina).

<sup>105</sup> Sifabu Guanyu Jianyu Tizhi Gaige Shidian Gongzuo Zhidao Yijian de Tongzhi (司法部关于监狱体制改革试点工作指导意见的通知) [Notification from the Ministry of Justice on the Instructions for the Works of the Pilot Program of Prison System Renovation] Promulgated by the Ministry of Justice, Dec. 1, 2004) CLI.4.172705 (Lawinfochina).

enterprise (收支分开), and to operate the entire prison system through legal rules (规范运行).<sup>106</sup> Subsequently, the Ministry of Finance and Ministry of Justice issued the standards of basic expenses of prison administration on March 9, 2003 for preventing unnecessary expenses of prison administration so that its operational costs could be decreased, and required that the subsidies for prison administration from provincial governments shall meet this standard within two to five years.<sup>107</sup> Later in the same month, the State Council issued a guideline, demanding all prison enterprises to make improvements to their financial structure, production strategies, and internal management.<sup>108</sup>

The renovation project for prison system has moved further in the following years. The Ministry of Justice conducted an early inspection of the progress of the pilot program from prison renovation in December 2004,<sup>109</sup> and the central government in the same year allowed prison enterprises to declare bankruptcy and thus to be strategically closed.<sup>110</sup> Besides, in this new form of prison system, prison enterprise is separated from the traditional prison mechanism and thus lacks its own legal status. To address the issue, the State Council in 2006 ordered the Ministry of Justice and other related departments to figure out possible resolutions.<sup>111</sup> The

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<sup>106</sup> *Id.*

<sup>107</sup> Guanyu Yinfa Jianyu Jiben Zhichu Jingfei Biaozhun de Tongzhi (关于印发《监狱基本支出经费标准》的通知) [Notification on the Publication of the Budget Standards for Basic Prison Expenses] (promulgated by the Ministry of Finance and Ministry of Justice, Mar. 9, 2003) (China).

<sup>108</sup> Guanyu Jiejue Jianyu Qiye Kunnan Shishi Fangan de Tongzhi (关于解决监狱企业困难实施方案的通知) [Notification on the Enforcement of the Solution for the Financial Problems of Prison Enterprise] (promulgated by the State Council, Mar. 14, 2003) CLI.4.160817 (Lawinfochina).

<sup>109</sup> Guanyu Dui Jianyu Tizhi Gaige Shidian Gongzuo Jinxing Jiancha de Tongzhi (关于对监狱体制改革试点工作进行检查的通知) [Notification on the Inspection of the Works of the Pilot Program of Prison System Renovation] (promulgated by the Ministry of Justice, Dec. 1, 2004) CLI.4.162705 (Lawinfochina).

<sup>110</sup> Guanyu Jianyu Qiye Shishi Zhengce Xing Guanbi Pochan Youguan Wenti de Tongzhi (关于监狱企业实施政策性关闭破产有关问题的通知) [Notification on the Questions about the Policy For the Closure and Bankruptcy of Prison Enterprise] (promulgated by the Ministry of Justice, State-owned Assets Supervision and Administration Commission, Ministry of Finance, China Banking Regulatory Commission, and Ministry of Labor and Social Security, Feb. 6, 2004) CLI.4.52401 (Lawinfochina).

<sup>111</sup> Guanyu Yanju Jianyu Buju Tiaozheng he Jianyu Tizhi Gaige Shidian Youguan Wenti de Huiyi Jiyao (关于研究监狱布局调整和监狱体制改革试点有关问题的会议纪要) [Meeting Minutes for the Summary of the Research on the Problems of the

Ministry of Justice hence required the relevant organizations to provide legislative suggestion about the legal status of prison enterprise and expected to complete the renovation works by 2010.<sup>112</sup>

After six years since the pilot program started in 2003, the Ministry of Justice went on a journey to the fifteen experimental prisons in the six provinces of Shanxi, Jilin, Fujian, Hainan, Yunnan, and Shaanxi from October to November 2009 and reviewed the progress of the renovation works of the prison system. The Ministry of Justice summarized its observations from the inspection and released instructions about further works on this matter in March 2010.<sup>113</sup> In accordance with the instructions, the works for the next round of the prison system renovation were to accelerate the progress of prison renewal and construction, to ensure that the funds for prison construction would be distributed to every prison on time, and to conduct accurate supervision of every detail of the prison reform works for establishing an accountable, well-functioning, and easy-to-oversee working mechanism.

According to an official report from the State Council in 2012,<sup>114</sup> the goals of the renovation of prison system set in 2003 was declared substantially achieved, and a socialist prison system with Chinese characteristics has been therefore approximately established since then. Prisoner reform and production management are mutually independent now with their own operational apparatus and financial schemes, and the expenditure for prison administration now runs in different accounting track from the prison production

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Redeployment of Prison Units and Prison System Renovation at Certain Experimental Units] (promulgated by the State Council, Apr. 24, 2006) CLI.2.160893 (Lawinfochina).

<sup>112</sup> Guanyu Guanche Luoshi Yanju Jianyu Buju Tiaozheng he Jianyu Tizhi Gaige Shidian Youguan Wenti de Huiyi Jiyao de Yijian (关于贯彻落实《研究监狱布局调整和监狱体制改革试点有关问题的会议纪要》的意见) [Opinion on Implementing 'Meeting Minutes for the Summary of the Research on the Problems of the Redeployment of Prison Units and Prison System Renovation at Certain Experimental Units'] (promulgated by the Ministry of Justice, June 20, 2006) CLI.4.160885 (Lawinfochina).

<sup>113</sup> Guanyu Jinyibu Jiaqiang Jianyu Buju Tiaozheng Gongzuo de Tongzhi (关于进一步加强监狱布局调整工作的通知) [Notification on Moving Forward to Strengthen the Adjustments to the Redeployment of Prison Units] (promulgated by the Ministry of Justice, Mar. 10, 2010) CLI.4.159242 (Lawinfochina).

<sup>114</sup> Guanyu Jianyufa Shishi he Jianyu Gongzuo Qingkuang de Baogao (关于监狱法实施和监狱工作情况的报告) [Report on the Enforcement of Prison Law and the Situation of Prison Works] (promulgated by the State Council, Apr. 25, 2012) CLI.2.177358 (Lawinfochina).

income. In the year of 2011, for example, 87.9% of the prison expenditure were paid by government budget.<sup>115</sup> Besides, several laws and regulations based on the core idea of prisoner reform have been enacted and thus the functions of prison are expected to be correctly performed.

In sum, when in the traditional form of prison-enterprise combination, the prison system had one single governing authority over its daily operation, namely the prison administration bureau of the provincial government, which also had to serve as the parent company of prison enterprise at the same time. A warden, being the head of prison administration bureau, was also the CEO of a prison enterprise. Besides, even though the Article 8 of the Prison Law of People's Republic of China requires that the expenditure of prison shall be fully borne by the government budget, it did not attract any attention until the restructure of prison system kicked off in 2003. The connection between the profits from prison production and the expenditure of prison administration made the financial situation of the prison system in its combined form even worse despite the government kept granting financial relief to prisons. The financial difficulties were finally eased when prison's separated form was taken up in 2003 and expanded across the country in 2008.

## VII. CONCLUSION

As the Cultural Revolution came to an end and the era of economic reform rose in the second half of the 1970s, the tremendous shifts in the Chinese society also brought about the transformation of the prison system, particularly its economic role as a special state-owned enterprise in the macroeconomic settings. In the reform era, punitiveness was losing its importance and prisoner's labor was rather catching more attention, and this change possibly resulted from that the economic performance outweighed other concerns in the reform era. Consequently, the principle of less eligibility played an important role in the prison practice in the pre-reform era, but it has been no longer emphasized when the reform era began. As the general economic structure was redirected from the traditional planned economy to the contract-responsibility system in the late 1970s and early 1980s, prison production thus

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<sup>115</sup> *Id.*

modulated itself into the same direction to address the huge loss and collapse caused by the Cultural Revolution.

Prison in the style of people's commune in the pre-reform era and prison in the style of contract-responsibility in the reform era had different fates, even though they shared the same feature of prison-enterprise combination and were both required to be self-sufficient.<sup>116</sup> The former, existing in the period of planned economy, didn't encounter the challenge from the market because all business activities, including supply, transportation, marketing, and sales, were under the control of the state, and all the prisons had to do was to mobilize prisoners to produce.<sup>117</sup> On the contrary, the latter had a complicated role for it afforded several business activities since the economic reform was boosted. During the first a few years after adopting the contract-responsibility system, prison enterprise did acquire some profits, but as the new economic system kept moving farther, the inherent weakness of prison enterprise in a combined form and the mutually conflicting organizational settings made itself incapable of competing with other business units, and thus it began to suffer the economic difficulties since the late 1980s.

Moreover, in the pre-reform era, the focus of prison enterprise was put on the amount of production and the other parts of the entire prison system were rather left unattended.<sup>118</sup> Nevertheless, when coming into the reform age, the problems of the financial structure, prisoners' living conditions and education, and the training of prison cadres were all uncovered and came into the picture. As the state was lowering its appearance in the economic system during the process of economic reform and adjusting its control methods over the market into a more intricate manner, the program of forced job placement thus lost its economic importance and finally came to an end in 1989. Two more nuanced measures for the management of released population, "settling down" and "reeducation assistance," were applied and gradually adapted to the marketized economic framework.

Eventually, the deep-rooted inadaptability of prison-enterprise combination to the market economy led to the prison renovation in 2003, and the separation of prison and enterprise

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<sup>116</sup> Lin, *supra* note 8, at 44, 45.

<sup>117</sup> Lin, *supra* note 8, at 46.

<sup>118</sup> Lin, *supra* note 8, at 46.

became the task of top priority. When in the time of prison-enterprise combination, the most common organizational setting in the practice was “same staff under two titles,” where every member of prison cadres and prison officials was assigned various duties based on their duo roles in prisoner reform and prison production, and their benefits were directly connected with the profits of prison enterprise. This organizational setting performed well in the period of planned economy but was stumbling along in the reform period and eventually was replaced by the separation mode. It remains to be seen influence of this change on the entire prison system and the society, but it reveals the sensitivity of the Chinese prison system to the economic changes and presents the flexible nature of the prison-labor complex in communist China.