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## **Book Notes: Criminal Justice in China: A History, by Klaus Muhlhahn**

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Book Note

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## Book Note

### CRIMINAL JUSTICE IN CHINA: A HISTORY, by Klaus Mühlhahn<sup>1</sup>

DANIEL HOHNSTEIN

KLAUS MÜHLHAHN WAS EDUCATED in Germany at the Freie Universität Berlin and completed much of the manuscript for *Criminal Justice in China: A History* during a research stay in the United States at the University of California, Berkeley. Despite his Western roots, Mühlhahn makes it a point to expressly reject, on the first page of his book, the negative, critical bias of the typical Western response to criminal justice in China. His comprehensive historical analysis of the evolution of criminal justice in China is refreshingly objective; Mühlhahn discusses Chinese norms, practices, and institutions, and ultimately assesses their efficacies, on their own terms and merits, rather than through a lens of Western values. This approach best serves his goal, which is not to argue a particular thesis with respect to China's historical or modern systems of criminal justice, but rather to achieve what has not yet been accomplished "in any [W]estern language": a broad and thoroughly inclusive overview that tracks the development of the various criminal justice and, in particular, penal sanction systems throughout China's modern history (*i.e.*, from the end of the Qing dynasty at the turn of the twentieth century to the last vestiges of Chairman Mao Zedong's Cultural Revolution in 1978).<sup>2</sup>

The six chapters of the book can be divided into three overarching parts. The Introduction and chapter one in part I establish, respectively, the conceptual and contextual foundations upon which the core study is then built. Part II tracks the evolution of China's various rules and mechanisms for criminal punishment in overlapping historical periods that roughly equate to: first, the rise of the

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1. (Cambridge: Harvard University Press, 2009) 365 pages.

2. *Ibid.* at 9.

Guomindang<sup>3</sup> (GMD) government of Republican China, during which prisons, incarceration, and forced labour first appeared under modernizing reforms intended to end the extraterritoriality imposed by Western powers; second, the Communist Revolution, during which the rule of law was subverted, and prisons evolved into expansive labour camps under the parallel mandates of the GMD and the Chinese Communist Party (CCP); and, finally, the rule of the CCP under Mao, during which criminal justice was transformed into an instrument of the “people’s democratic dictatorship” and wielded to eliminate “enemies of the people.” The latter features the evolutionary culmination of Chinese incarceration: the *Laogai* (“reform through labour”) camps.<sup>4</sup>

Throughout these core chapters, Mühlhahn weaves the debates of reformist and revolutionary theorists, and the personal experiences of individual inmates, into detailed matrices of historical fact that include such diverse foci as: legislative reforms; sentencing systems; prison architecture, construction, and logistics; administrative bodies and hierarchies; inmate demography; control and “rehabilitation” measures (including fascinating methods by which an inmate’s previous identity would be ritually stripped and destroyed upon incarceration in order to facilitate reinvention through labour reform and political indoctrination<sup>5</sup>); the leverage wielded by inmate fraternities to resist such methods of control; encapsulated accounts of pertinent Chinese and Soviet political history; and detailed case studies. This layered, comprehensive approach allows Mühlhahn ultimately to demonstrate how a multitude of social, economic, and political factors served to derail the various theories of criminal justice with realities that, in practice, fell far short of the GMD and the CCP’s respective ideological visions and goals for incarceration.

Part III serves as a denouement, closing the book with a brief comparison of criminal justice among the historical eras of the preceding analyses and also against the current situation in China. Mühlhahn finishes by surveying Mao’s legacy in the CCP’s contemporary approach to criminal justice, noting the persistence of forced labour as a mechanism of punishment and the lack of an independent judiciary.

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3. Although the Chinese National People’s Party of the Republic of China is also commonly translated as “Kuomintang” (KMT), Mühlhahn adheres exclusively to the Pinyin romanization of “Guomindang.”

4. *Ibid.* at 269-70.

5. See *ibid.* at 90-91, 101.