

**CONTESTED CHILDHOODS:  
LAW AND SOCIAL DEVIANCE IN WARTIME CHINA, 1937-1945**

Submitted in partial fulfilment of the requirements for a  
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## SHORT THESIS ABSTRACT

...

“Contested Childhoods” links together three major areas of historical inquiry: war and criminality, law and social change, and the law as it relates to children, in the first half of twentieth-century China. The founding of the People’s Republic of China (PRC) in 1949 has eclipsed the historical significance of Chiang Kai-shek’s Nationalist Government and the importance of its role during the wartime period. This study examines how the outbreak of China’s War of Resistance against Japan (1937-1945) served as a crucial catalyst to an increase in criminality that appeared within Chinese society. It emphasises the actions taken by Chiang Kai-shek’s Nationalist Government (1928-1948) in its handling of criminal offences involving juveniles, and argues that an increase in criminality during the wartime period prompted the construction of a new judicial and legal framework, which was aimed at delineating the boundaries between childhood and adulthood. The study seeks to locate the changing meanings of children and childhood by placing it within the social conditions of wartime China that served to generate these meanings. The overall goal of the study is to demonstrate how the outbreak of the war brought about a distinct shift in ideas and meanings of children and criminality within the judicial and legal spheres in areas under both Chiang Kai-shek’s Nationalist Government and the Japanese-collaborationist regime led by Wang Jingwei.

## ACKNOWLEDGEMENTS

...

On my flight back from Nanjing, where I had spent a year in China on fieldwork, I sat next to a three year old child. Within the first ten minutes of an eleven hour flight, he asked me what my “job” was. After attempting to explain to him that I was studying for a PhD (you stay in school for a very, very long time and read many books), he turned over to his mother and said: “Mummy, I don’t want to do a PhD. There’s no snack time, naptime, or playtime.” And so for the next ten hours and fifty minutes of the flight, I could not help but wonder what had compelled me to embark on this very journey.

This thesis represents first, what in hindsight, was a very happy childhood but in which the less-than-sheltered childhood of having grown up New York City could have very well put me on a different course; and secondly, my decision to forgo attending law school, after having been given multiple opportunities to do so at three different stages in my life. It therefore encapsulates the roads not taken in my life and out of that, a desire to not only give a voice to a part of myself that I feared would become lost but also to the lives and experiences of those examined here.

This body of work would not have been possible without the continual support, patience, and enthusiasm of Rana Mitter. I am deeply indebted to him for his mentorship, encouragement, and generosity with his time throughout the years. Well before I arrived at Oxford on a rainy autumnal day, Rana relentlessly supported my academic endeavours as first, a naïve undergraduate student at Oberlin, to my early years of graduate studies at Harvard. Throughout my studies, he continued to inspire me with academic rigor and creativity, whilst still providing me with the intellectual space to develop my own ideas (all and any errors are of course mine). Having had the opportunity to work with him has been a privilege and humbling experience for which no amount of thanks would be sufficient enough to convey my utmost gratitude.

Karl Gerth’s unfailing support and acumen helped me to clarify my ideas from the inception of this project to the actual submission of the thesis. His constant enthusiasm and honesty about the quality of my work encouraged me to persistently hold myself to a higher standard as I considered the wider implications of my research. I am also very much in debt to Karl, and am deeply grateful for his time and patience with me throughout all these years.

At Oxford, I have had the privilege to be part of a group of scholars, who not only shared a similar interest in the wartime period but whose enthusiasm and support of me and my work have also been invaluable. As part of “China’s War with Japan” programme, members of “Team War” offered their time, patience, and insights at various stages of my research. They included Federica Ferlanti, Aaron William Moore, James Reilly, Matthew Johnson, Tehyun Ma, Helen Schneider, Sherman Lai, Hongping Annie Nie, Amy King, Elina Sinkonnen, and Sha Hua. Akiko Frellesvig was not only the administrator that kept the project and team running but a friend whose moral support deserves more than a simple thank you. It has been a complete joy and pleasure to have been a part of this group.

Sheila Miyoshi Jager served as a model teacher and scholar, whose support and friendship have been invaluable to me for the last decade. Without her encouragement

during my days at Oberlin, I would not have embarked on what became one of the most rewarding times of my life. Words of thanks are insufficient to convey all these years of encouragement I received from her.

In the final years before his retirement, Philip A. Kuhn graciously showed me the true value of what it meant to aspire to become a scholar in this field. All these years, I carried with me his sagely advice: “Read. Read as much and as broadly as you can. Never stop reading, so that you will always remain inspired (but also that you can also pass your comps).”

Throughout my graduate studies, I also benefited tremendously from discussions with many scholars. In particular, I wish to thank Hans van de Ven for generously giving me his time and commenting on my research during its formative stages at various conferences and graduate student workshops. Barak Kushner patiently supported the direction of my research and shared with me his own research interests in childhood studies, and the intersections between law and society. Timothy J. Brook was instrumental in the formation of my ideas in the early stages of this thesis. Anne Deighton’s enthusiasm and support opened me up to considering my research and its impact beyond the East Asian context.

Words also cannot express my gratitude for the support I received from other faculty members at Oxford. They include Patricia Thornton, Hilde de Weerd, Vivienne Shue, Rosemary Foot, Judith Brown, Dirk Myer, Laura Newby, and Rachel Murphy. I thank them all for their support and encouragement. I also wish to thank senior scholars in the field for taking an interest in my work and patiently listening to my ideas as they took form throughout various stages of my research. They included Wen-hsin Yeh, Akira Iriye, Robert Bickers, Parks Coble, Christopher Goto-Jones, Henrietta Harrison, and Cynthia Brown. Chris in particular, inspired me to think beyond the confines of the historical discipline and the challenges that accompanied the construction of boundaries. I thank them all for their expertise, kindness, and patience. Many parts of this thesis were also presented at various graduate student workshops and academic conferences throughout the course of my studies, and benefited greatly from the comments and feedback that I received from fellow colleagues.

My interest in the study of the history of children and childhood was stimulated by Laurence Brockliss and George Rousseau through their enthusiasm for the subject matter at the Centre for Childhood Studies at Oxford. There, I was fortunate enough to have been surrounded by an intellectually stimulating group of scholars and in particular, I wish to thank Heather Montgomery, Rosemary Peacock, Heather Ellis, and Clare Rose, for their scholarly insights.

On fieldwork in China, various members of the staff at the Nanjing-Hopkins Centre assisted me in locating materials for my research. Many thanks go to Jan Kiely, Jonathan Keller, and the head librarian Yu Xiaoxia for their time and assistance. In Nanjing, Ma Zhendu and his team at the Second Historical Archives kindly gave me access to many materials and assisted me in navigating the difficulties of archival work. The entire research staff of the Ancient Documents and Periodicals Collection at Nanjing University Library also worked relentlessly to locate numerous materials. I also wish to thank the archival staff at the Shanghai Municipal Archives.

In Taiwan, I wish to thank Luo Jourong, Huang Ke-wu, and Hsiung Ping-chen at the Institute for Modern History of Academia Sinica for their assistance in facilitating my stay there. The staff at the Kuomintang (Nationalist) Party Archives, as well as those at Academia Historica (*Guoshiguan*) in both Taipei and Xindian deserves a big thanks for assisting me with countless requests for original files under extreme time pressure without complaint and always in good grace.

My studies at Oxford would not have been possible without the generous financial support I received from various funding bodies. In particular, a full three-year doctoral scholarship from the Leverhulme Trust-funded China's War with Japan programme through the History Faculty at Oxford enabled me to complete the degree with a peace of mind that I would not go cold or hungry. My first year of studies at Oxford was generously supported by the Clarendon Fund, which was underwritten by Oxford University Press, and a Senior Scholarship awarded by University College. Fieldwork in China and Taiwan would not have been possible without the financial support from the Universities' China Committee of London, the Gilchrist Educational Trust, Oberlin College's Gilchrist Potter Graduate Fellowship for Alumni, as well as Oxford's China Centre, the School for Interdisciplinary & Area Studies, and St. Cross College. Furthermore, a Florence Tam Moeson Fellowship from the Library of Congress was instrumental to the shaping of this thesis in its early stages, and a library research grant from the Costen Children's Library underwritten by Princeton University was crucial to the completion of it.

My sincerest thanks also go to the kindness of the staff at various libraries around the world. They include Oxford's Bodleian Library, Cambridge University's Library, the Harvard-Yenching Library, Columbia University's C.V. Starr East Asian Library, the Cotsen Children's Library at Princeton University, the Library of Congress, the Nanjing and Shanghai Municipal Libraries, the National Central Library in Taiwan, and the International Children's Library in Tokyo. Special thanks go to Andrea Immel and Aaron Pickett at the Costen Children's Library, as well as the staff at the Department of Rare Books and Manuscripts at Princeton University, who always showed great enthusiasm for my research. Anchi Hoh and the research staff of the Asian Division at the Library of Congress were invaluable as I navigated the materials in their holdings. The research staff at the Harvard-Yenching Library was also instrumental in helping me to locate various sources buried deep in the compact shelving of 2 Divinity Avenue and off-site.

The pursuit of a doctoral degree is both an exciting and isolating experience. However, throughout this process, I have been incredibly fortunate to have been surrounded by many friends and colleagues who supported my endeavours and shared their lives with me. Andres Rodriguez shared his quiet confidence in all things mystical, as he assured me that even as madness descended upon my life, there is much peace that can be found amidst the chaos. Amy King and I shared many laughs, frustrations, and cups of tea together, as we underwent the trials and tribulations of navigating the complexities of Oxford. Toby Lincoln was always happy to share his passion on urban history and Wuxi to his knowledge of British society. Felix Boecking reminded the importance of the economic aspect of my research. Many thanks also go to Chin-Yin Tseng, Lianbin Dai, Liaoyin Wang, Jerry Chih-Yuh Chang, Gordon Barrett, Larson DiFiori, Thu Phuong Nguyen, Qu Jun, and Nadine Willems, as we laughed, cried, and stumbled our way through Oxford at different points of our lives.

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SHORT THESIS ABSTRACT (Bodleian Library) .....	
ACKNOWLEDGEMENTS .....	
TABLE OF CONTENTS .....	I-V
LONG THESIS ABSTRACT (History Faculty).....	VI-VIII
NAMES AND ABBREVIATIONS .....	IX
TERMINOLOGY AND NOTES.....	X
LIST OF CHARTS, TABLES, AND FIGURES .....	XI-XII

...  
**TABLE OF CONTENTS**  
(Abridged version)  
...

**INTRODUCTION**

Problematizing Children, Law, and War: Towards a New Framework.....	1-35
---	------

**SECTION I: CONTESTED CHILDHOODS: LOCATING CHILDREN IN HISTORY AND LAW**

Chapter 1: The History of Children and Childhood in Republican China .....	36-60
Chapter 2: The Legal Treatment of the Young: Negotiating Legal and Moral Ambiguities.....	61-87

**SECTION II: WAR AS A CATALYST: DISCOURSES AND PERCEPTIONS IN WARTIME**

Chapter 3: Representations of Children in Wartime Discourse .....	88-109
Chapter 4: Perceptions: Fearing Social Instability .....	110-122

**SECTION III: HANDLING CRIMINAL OFFENDERS: RECOGNISING CRIMINALITY AS A  
PRAGMATIC PROBLEM IN WARTIME**

Chapter 5: Documenting an Empirical Rise in Criminality .....	123-148
Chapter 6: Tracing its Evolution: The 9 September 1939 Legal Statute .....	149-175

**SECTION IV: TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD: ADJUDICATING  
JUVENILE OFFENDERS IN JAPANESE-OCCUPIED SHANGHAI, A CASE STUDY**

Chapter 7: Reading Legal Archives .....	176-195
Chapter 8: Analysing the Legal Reasoning of the Japanese-Collaborationist District Court in Wartime (1940-1941) .....	196-219

**CONCLUSION**

Re-Envisioning Children and Childhood in Post-War China .....	220-225
---	---------

APPENDICES .....	Appendices (i-v)
------------------	------------------

BIBLIOGRAPHY .....	226-252
--------------------	---------

## TABLE OF CONTENTS

...

### INTRODUCTION PROBLEMATISING CHILDREN, LAW, AND WAR: TOWARDS A NEW FRAMEWORK

...

OUTLINE OF CHAPTERS .....	3
DEFINITIONS .....	8
The Wartime Period .....	8
Juveniles.....	9
Criminal Offenders .....	12
Criminal Offences .....	13
SOURCES.....	14
HISTORIOGRAPHY .....	16
Reinterpreting China's War of Resistance Against Japan .....	16
Collaboration in Wartime .....	19
The Public Sphere .....	24
LOCATING THE HISTORICAL NARRATIVE .....	26
Chiang Kai-shek's Nationalist Government.....	26
The Nanjing Decade .....	26
The New School of Penology .....	28
The Outbreak of Total War.....	30
The Reorganised National Government of China under Wang Jingwei.....	32
TOWARDS A NEW FRAMEWORK.....	35

...

### SECTION ONE CONTESTED CHILDHOODS: LOCATING CHILDREN IN HISTORY AND LAW

...

<b>CHAPTER 1: THE HISTORY OF CHILDREN AND CHILDHOOD IN REPUBLICAN CHINA.....</b>	<b>36</b>
LOCATING THE PLACE OF CHILDREN WITHIN CHINESE SOCIETY.....	37
THE MAY FOURTH PERIOD .....	40
CULTIVATING THE IDEAL CHILD .....	43
Problematising the Ideal Child.....	45
COMPETING UNDERSTANDINGS OF CHILDREN: RECOGNISING ANTI-SOCIAL BEHAVIOUR .....	48
Acknowledging Juvenile Delinquency as a Social Problem.....	49
Explaining the Problem Child.....	53
Fearing Socially Displaced Children .....	56

...

**CHAPTER 2: THE LEGAL TREATMENT OF THE YOUNG:  
NEGOTIATING LEGAL AND MORAL AMBIGUITIES..... 61**

LOCATING THE PLACE OF LAW IN CHINESE SOCIETY .....	61
RE-LOCATING THE PLACE OF LAW IN REPUBLICAN CHINA.....	63
Positioning the Importance of Law During the Wartime Period .....	66
RE-EXAMINING THE CRIMINAL JUSTICE PROCESS .....	67
War as a Catalyst for Legal Change .....	70
THE LEGAL TREATMENT OF THE YOUNG IN IMPERIAL TIMES .....	73
The Introduction of Special Legal Privileges for the Young.....	75
Philosophical Interpretations of the Developmental Cycle .....	77
DELINEATING THE BOUNDARIES OF CHILDHOOD AND ADULTHOOD IN THE 1935 REVISED CRIMINAL CODE .....	79
NEGOTIATING LEGAL AND MORAL AMBIGUITIES: THE LIMINAL SPACE OF RELATIVE RESPONSIBILITY .....	82
BEYOND AGE .....	86

...

**SECTION TWO  
WAR AS A CATALYST:  
REPRESENTATIONS AND PERCEPTIONS IN WARTIME**

...

**CHAPTER 3: REPRESENTATIONS OF CHILDREN IN WARTIME  
DISCOURSE ..... 88**

RE-IMAGINING THE WARTIME CHILD .....	88
The Militarisation of Children .....	91
The Motherless Child.....	98
“Mother” Soldier Li .....	100
The Plight of Genzi.....	103
LOCATING LOST CHILDREN .....	104
BEYOND THE PUBLIC SPHERE .....	107

...

**CHAPTER FOUR: PERCEPTIONS: FEARING SOCIAL INSTABILITY ..... 110**

FEAR OF INTERNAL DISORDER: ON RUMOUR AND THE SUPERNATURAL.....	111
The Function of Rumour with Chinese Society.....	116
FEARING THE INEXPLICABLE.....	119
Psychological Illnesses .....	119
Addressing Perceived Realities.....	122

...

**SECTION III**  
**HANDLING CRIMINAL OFFENDERS: RECOGNISING**  
**CRIMINALITY AS A PRAGMATIC PROBLEM IN WARTIME**

...

**CHAPTER FIVE: DOCUMENTING AN EMPIRICAL RISE IN CRIMINALITY.... 123**

STATISTICAL DATA: CHALLENGES AND CAVEATS .....	124
The Loss of Legal Personnel.....	126
The Population of China .....	130
ACCOUNTING FOR THE NUMBER OF CRIMINAL OFFENDERS .....	132
ACCOUNTING FOR THE NUMBER OF CRIMINAL OFFENCES .....	134
DOCUMENTING A RISE IN THE NUMBER OF JUVENILE OFFENDERS .....	138
The Nanjing Decade .....	139
The Wartime Period.....	144
BEYOND NUMBERS .....	147

...

**CHAPTER SIX: TRACING ITS EVOLUTION: THE 9 SEPTEMBER 1939**  
**LEGAL STATUTE ..... 149**

LOCATING THE MINISTRY OF JUSTICE.....	152
RECOGNISING CRIMINALITY AS A PRAGMATIC PROBLEM .....	156
THE 9 SEPTEMBER 1939 STATUTE .....	160
Its Origins.....	162
Article 3: The Prohibition of Select Types of Prisoners .....	163
DISTINGUISHING JUVENILE OFFENDERS.....	166
RECOGNISING THE VALUE OF JUVENILE OFFENDERS .....	170
LOCATING CHILDREN IN THE SOCIAL AND POLITICAL ORDER .....	174

...

**SECTION IV**  
**TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD:**  
**ADJUDICATING JUVENILE OFENDERS IN JAPANESE-**  
**OCCUPIED SHANGHAI, A CASE STUDY**

...

**CHAPTER 7: READING LEGAL ARCHIVES ..... 176**

SITE OF INTERACTION: JAPANESE-OCCUPIED SHANGHAI.....	177
The Significance of the Japanese-Collaborationist District Court	
in Wartime Shanghai.....	178
METHODOLOGY: LEGAL CASE RECORDS FROM THE WARTIME PERIOD.....	182
Selection of Cases .....	183
Issues Regarding Privacy .....	186
The Application of Special Legal Privileges .....	188

A MUTUAL SPACE: MEDIATING THE VOICE OF A CHILD .....	191
TOWARDS A LEGAL CONSTRUCTION OF CHILDREN.....	195

**CHAPTER 8: ANALYSING THE LEGAL REASONING OF THE JAPANESE-COLLABORATIONIST DISTRICT COURT IN WARTIME (1940-1941) ..... 196**

TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD.....	199
Severe Offences .....	205
LEGAL REASONING UNDER COLLABORATIONIST CONDITIONS.....	206
NEGOTIATING THE BOUNDARIES OF CHILDHOOD AND ADULTHOOD: DETERMINING RELATIVE RESPONSIBILITY.....	209
The Importance of Criminal Intent .....	210
The Problem with Recidivism .....	212
LEGAL CONTINUITIES: THE LEGAL AND MORAL STATUS OF CHILDREN.....	214
RE-ENVISIONING CHILDREN AND CHILDHOOD .....	219

...

**CONCLUSION  
RE-ENVISIONING CHILDREN AND CHILDHOOD IN POST-WAR CHINA**

...

<b>APPENDICES .....</b>	<b>Appendices (i-v)</b>
APPENDIX A: ARCHIVES AND LIBRARIES CONSULTED.....	i-ii
APPENDIX B: ABBREVIATIONS FOR MAJOR PRIMARY AND ARCHIVAL SOURCES.....	iii-v

...

<b>BIBLIOGRAPHY .....</b>	<b>226-252</b>
PRIMARY SOURCES .....	226
Books and Articles.....	226
Published Compilations .....	228
Newspapers.....	229
Periodicals.....	230
Children’s Periodicals.....	230
SECONDARY SOURCES .....	231
Chinese-Language.....	231
Japanese-Language .....	232
English-Language .....	232

## LONG THESIS ABSTRACT

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“Contested Childhoods” links together three major areas of historical inquiry: war and criminality, law and social change, and the law as it relates to children, in the first half of twentieth-century China. The founding of the People’s Republic of China (PRC) in 1949 has eclipsed the historical significance of Chiang Kai-shek’s Nationalist Government and the importance of its role during the wartime period. This study examines how the outbreak of China’s War of Resistance against Japan (1937-1945) served as a crucial catalyst to an increase in criminality that appeared within Chinese society. It emphasises the actions taken by Chiang Kai-shek’s Nationalist Government (1928-1949) in its handling of criminal offences involving juveniles, and argues that an increase in criminality during the wartime period prompted the construction of a new judicial and legal framework that was aimed at delineating the boundaries between childhood and adulthood.

In order to understand the importance of law in Republican China, and its relationship to the ideological and practical needs of wartime society, the main research question underlining this study is: what actions did the Nationalist Government employ in order to address an increase in criminality, especially amongst juveniles, during the wartime period? In considering this question, this study places children rather than adults, at the centre of this inquiry. This is because despite the amount of scholarship that has been produced in the field of Chinese studies, as Hsiung Ping-chen has noted, “the concept of ‘children and childhood’ has hardly been an issue in Chinese history, as the main forces in modern Chinese historiography have thus far been preoccupied with quite different sets of problems.”<sup>1</sup>

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<sup>1</sup> Ping-chen Hsiung, *A Tender Voyage: Children and Childhood in Late Imperial China* (Stanford: Stanford University Press, 2005), 5.

An examination of shifts in ideas about children and criminality during the wartime period is important because before the outbreak of war, children were not recognised as a distinct legal entity; rather, they were grouped together with the aged and infirm as “non-able bodied” persons in the eyes of the law.<sup>2</sup> Even though children were viewed as a social group within domestic society in Republican China, they were still largely perceived as appendages to their families, and lacked autonomy and independence from such kinship relations. However, the outbreak of the war destabilised domestic society and changed the way in which children were regarded by government officials and within Chinese society.<sup>3</sup>

This study therefore demonstrates how the outbreak of China’s War of Resistance against Japan crystallised ideas and meanings about children and criminality within the judicial and legal settings of wartime China. It is grounded in an analysis of the changing meanings of children and childhood in wartime discourse, and the social conditions of Nationalist China that served to generate these meanings. In addition, the study traces the legal reasoning of a Japanese-collaborationist court located in occupied Shanghai as a case study to contrast with the findings from the remainder of the study. The case study of collaborationist China aims to demonstrate how shifts in ideas and meanings of children and criminality during the wartime period was not limited to only areas under the purview of Chiang Kai-shek’s Nationalist Government but rather, these changes were also evidenced under collaborationist conditions.

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<sup>2</sup> Ann Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” *Social Research* 53, no. 4 (1986): 667-87.

<sup>3</sup> Fei Zhenqiu, “兒童犯罪和家庭” [Children’s Offences and Family], 甘肅教育 [Gansu Educational Weekly], vol. 9-10 (1945): 4-6; Liu Zhenrui, “中國家庭與犯罪少年” [Chinese Families and Juvenile Offenders], 家 [Family], vol. 20 (1947): 307-08. As Susan Glosser has argued, wartime conditions dramatically altered prevailing notions of the nuclear family (*xiao jiating* 小家庭) and the big family (*da jiating* 大家庭) within Chinese society, and brought a redefinition of not only how kinship relations were understood, but also the way in which Chinese society understood ideas of criminality and social deviance.<sup>3</sup>

The overall goal of the study is to therefore underscore the importance of the outbreak of war in bringing about a distinct shift in ideas and meanings of children and criminality within the judicial and legal spheres in areas under both Chiang Kai-shek's Nationalist Government and the Japanese-collaborationist regime led by Wang Jingwei.

## NAMES AND ABBREVIATIONS

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### POLITICAL FIGURES

蔣介石	Chiang Kai-shek (Jiang Jieshi)
汪精衛	Wang Jingwei (born: Wang Zhaoming)

### INSTITUTIONS

國民政府	Nationalist Government (1928 to 1949)
汪精衛政權/南京國民政府	Reorganised National Government of China (March 1940 to 1945)
司法院/司法行政院	Ministry of Justice
國防部	Ministry of Defence
內政部	Ministry for Internal Affairs
社會部	Ministry for Social Affairs
中央委員會	Central Committee
軍事委員會	Committee on Military Affairs

### CHINESE LEGAL SCHOLARS (NEW SCHOOL OF PENOLOGY 新刑事派)

趙琛	Zhao Chen
張少微	Zhang Shaowei
張知本	Zhang Zhiben

### ARCHIVES

KMT	Kuomintang Party Archives (Taipei, Taiwan)
SHAC	Second Historical Archives of China (Nanjing, China)
SMA	Shanghai Municipal Archives (Shanghai, China)
AHA	Academia Historica Archives (Xindian/Taipei, Taiwan)

## TERMINOLOGY AND NOTES

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### FREQUENTLY USED CHINESE TERMS

- li* (里) a unit of distance, about half a kilometre or roughly a 1/3 mile
- sui* (歲) is a year of age, counted as one at birth and two at the next lunar new year, thus it is one year greater than the Western age.
- yuan* (元) is the base unit of a number in modern Chinese currency. The distinction between *yuan* and *renminbi* (which is the term used for currency in present day China) is analogous to that between the pound and sterling; the pound (*yuan*) is the unit of account, whilst sterling (*renminbi*) is the actual currency. A *yuan* is also known colloquially as *kuai* (塊). One *yuan* 元 is divided into 10 *jiao* (角) or colloquially as *mao* (毛). One *jiao* (角) is equivalent to a hundred *fen* (分) or *zhi* (只) for copper *yuan*.

### ROMANISATION AND CONVENTIONS

All Chinese names, locations, administrative departments, and other Chinese characters have been romanised in standard pinyin throughout the study. Out of convention, the only exceptions are Chiang Kai-shek instead of Jiang Jieshi, and the Nationalists as the Kuomintang, rather than Guomindang.

References to dates and years from the Republican period (1912-1948) have been converted to the equivalent year according to the Western calendar.

**LIST OF CHARTS, TABLES, AND FIGURES<sup>1</sup>**  
(organised by chapter)

**CHAPTER ONE: THE HISTORY OF CHILDREN AND CHILDHOOD**

Figure 1: 有禮貌的張小敏 [Polite Zhang Xiaomin] and 幫助老婆婆 [Assisting an Old Lady] .....	44
Figure 2: 伸出“援助”的手來! [Lend a Helping Hand!] .....	55
Chart 1: Number of Orphanages and Refugee Children under the Care of the National Relief Commission .....	58

...

**CHAPTER TWO: THE LEGAL TREATMENT OF THE YOUNG: NEGOTIATING LEGAL AND MORAL AMBIGUITIES**

Table A: Type One (All Types: No, Relatively No, Lesser and Full Responsibility) .....	84
Table B: Type Two (No, Relatively No, and Full Responsibility Only) .....	84
Table C: Type Three (No and Full Responsibility Only) .....	84
Table D: Type Four (Relatively No and Full Responsibility Only) .....	85

...

**CHAPTER THREE: REPRESENTATIONS OF CHILDREN IN WARTIME DISCOURSE**

Figure 1: The Pillar of the Nation .....	89
Figure 2: 有力出力 [Those Who Have Strength Can Give Strength] .....	90
Figure 3: 請馬上記下我的名字[Please Take Down My Name Immediately] .....	91
Figure 4: 新少年[New Youth] .....	96

...

**CHAPTER FIVE: DOCUMENT AN EMPIRICAL RISE IN CRIMINALITY**

Chart 1: Total Number of Legal Personnel who Withdrew from their Registered Posts in War-Stricken Areas (until October 1941) .....	129
Chart 2: Total Number of Legal Personnel Needed to Fill Vacancies of Those who Withdrew from their Registered Posts in War-Stricken Areas (until October 1941) .....	129
Chart 3: Population of China (1935-1946) .....	131

---

<sup>1</sup> For consistency purposes, all charts and figures have been denoted alphanumerically, whereas tables have been denoted alphabetically.

Chart 4: Total Number of Criminal Offenders Recorded by the Ministry of Justice (1932-1941).....	133
Chart 5: Total Number of Criminal Cases Investigated by Local Courts (1936-1939) (By Year) .....	135
Chart 6: Total Number of Criminal Cases Investigated by Local Courts (1936-1939) (By Province) .....	136
Chart 7: Total Number of Criminal Cases Accepted and Adjudicated by All Provincial Courts (1937-1943).....	137
Table A: Percentage Ratio of the Total Number of Criminal Cases to Cases Adjudicated by All Provincial Courts (1936-1939) .....	138
Chart 8: Total Number of Juvenile Offenders Recorded by the Ministry of Justice (1931-1934) - By Year.....	139
Chart 9: Total Number of Juvenile Offenders Recorded by the Ministry of Justice (1931-1934) - By Age and Gender .....	140
Chart 10: Total Number of Juvenile Offenders Recorded by the Ministry of Justice (1931-1942).....	144
Chart 11: Percentage of Juvenile Offenders to Criminal Offenders (1931-1942) .....	146

...

## CONCLUSION

Chart 1: Total Number of Newly Established Courts and Prisons (1938-1947) .....	224
Chart 2: Ten Year Plan for Establishing New Youth Prisons .....	224

*“What do you suppose is the use of a child without any meaning?  
Even a joke should have some meaning — and a child’s more important than a joke, I hope.”  
~ Alice’s Adventures in Wonderland*

**INTRODUCTION**  
**PROBLEMATISING CHILDREN, LAW, AND WAR:**  
**TOWARDS A NEW FRAMEWORK**

## **PROBLEMATISING CHILDREN, LAW, AND WAR: TOWARDS A NEW FRAMEWORK**

...

“Contested Childhoods” links together three major areas of historical inquiry: war and criminality, law and social change, and the law as it relates to children, in the first half of twentieth-century China. The founding of the People’s Republic of China (PRC) in 1949 has eclipsed the historical significance of Chiang Kai-shek’s Nationalist Government and the importance of its role during the wartime period. This study examines how the outbreak of China’s War of Resistance against Japan (1937-1945) served as a crucial catalyst to an increase in criminality that appeared within Chinese society. It emphasises the actions taken by Chiang Kai-shek’s Nationalist Government (1928-1949) in its handling of criminal offences involving juveniles, and argues that an increase in criminality during the wartime period prompted the construction of a new judicial and legal framework that was aimed at delineating the boundaries between childhood and adulthood.

In order to understand the importance of law in Republican China, and its relationship to the ideological and practical needs of wartime society, the main research question underlining this study is: what actions did the Nationalist Government employ in order to address an increase in criminality, especially amongst juveniles, during the wartime period? In considering this question, this study places children rather than adults, at the centre of this inquiry. This is because despite the amount of scholarship that has been produced in the field of Chinese studies, as Hsiung Ping-chen has noted, “the concept of ‘children and childhood’ has hardly been an issue in Chinese history, as the main forces in modern Chinese historiography have thus far been preoccupied with quite different sets of problems.”<sup>1</sup>

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<sup>1</sup> Ping-chen Hsiung, *A Tender Voyage: Children and Childhood in Late Imperial China* (Stanford: Stanford

An examination of shifts in ideas about children and criminality during the wartime period is important because before the outbreak of war, children were not recognised as a distinct legal entity; rather, they were grouped together with the aged and infirm as “non-able bodied” persons in the eyes of the law.<sup>2</sup> Even though children were viewed as a social group within domestic society in Republican China, they were still largely perceived as appendages to their families, and lacked autonomy and independence from such kinship relations. However, the outbreak of the war destabilised domestic society and changed the way in which children were regarded by government officials and within Chinese society.<sup>3</sup>

This study therefore demonstrates how the outbreak of China’s War of Resistance against Japan crystallised ideas and meanings about children and criminality within the judicial and legal settings of wartime China. It is grounded in an analysis of the changing meanings of children and childhood in wartime discourse, and the social conditions of Nationalist China that served to generate these meanings. In addition, the study traces the legal reasoning of a Japanese-collaborationist court located in occupied Shanghai as a case study to contrast with the findings from the remainder of the study. The case study of collaborationist China aims to demonstrate how shifts in ideas and meanings of children and criminality during the wartime period was not limited to only areas under the purview of Chiang Kai-shek’s Nationalist Government but rather, these changes were also evidenced under collaborationist conditions.

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University Press, 2005), 5.

<sup>2</sup> Ann Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” *Social Research* 53, no. 4 (1986): 667-87.

<sup>3</sup> Fei Zhenqiu, “兒童犯罪和家庭” [Children’s Offences and Family,” 甘肅教育 [Gansu Educational Weekly], vol. 9-10 (1945): 4-6; Liu Zhenrui, “中國家庭與犯罪少年” [Chinese Families and Juvenile Offenders], 家 [Family], vol. 20 (1947): 307-08. As Susan Glosser has argued, wartime conditions dramatically altered prevailing notions of the nuclear family (*xiao jiating* 小家庭) and the big family (*da jiating* 大家庭) within Chinese society, and brought a redefinition of not only how kinship relations were understood, but also the way in which Chinese society understood ideas of criminality and social deviance.<sup>3</sup>

The overall goal of the study is to therefore underscore the importance of the outbreak of war in bringing about a distinct shift in ideas and meanings of children and criminality within the judicial and legal spheres in areas under both Chiang Kai-shek's Nationalist Government and the Japanese-collaborationist regime led by Wang Jingwei.

...  
**OUTLINE OF CHAPTERS**  
....

As this study will demonstrate, the outbreak of war served as a crucial catalyst to the construction of a new framework in wartime China for the judicial and legal treatment of the young. It focuses on the relationships between children, criminality, and the law, as located in the context of the social changes that took place during the wartime period. These linkages cast new light on the fluid nature of law and society, at a time when stability and structure were constantly undermined by the circumstances of war. Together, they serve as valuable focal points to glean information about the lived experiences of ordinary civilians under wartime conditions. To reflect each of these relationships, the study is organised into four sections.

**Section I**  
**Contested Childhoods: Locating Children in History and Law**

The first section is made up of two chapters that seek to situate the study of children and criminality within the context of history and law in the first half of the twentieth century. The goal is to locate the importance of children within the wider discursive, social, and political contexts, which served to shape many of the ideas and paradigms about children and criminality that existed within Chinese society in the years prior to the outbreak of total war.

Chapter one opens with a discussion on the history of children and childhood in Republican China and examines how the figure of the child was deployed as a critical site for the expression of social and intellectual concerns within Chinese society. Starting with

the May Fourth period, this chapter demonstrates how adults discussed, represented, and conceptualised the figure of the child in a number of different ways within Chinese society. This is important because it demonstrates that there was no uniform image of children present in Republican China but instead a number of competing images of children and childhood existed within public discourse before the outbreak of war.

Chapter two offers a historical analysis of the shifts in the Chinese legal system from imperial times to the Republican period. It focuses specifically on the legal and moral ambiguities within the 1935 revised Criminal Code for the legal treatment of the young. In order to understand how the outbreak of war served as a crucial catalyst to the construction of a new judicial and legal framework towards the young, the purpose of this chapter is to first locate the importance of juveniles in the context of law and the changes that were taking place within the criminal justice system during the Republican period.

## **Section II** **War as a Catalyst:** **Discourses and Perceptions in Wartime**

Two chapters comprise section two of this study. Each chapter aims to demonstrate how the outbreak of war served as a crucial catalyst to precipitating a shift in public understandings about children and criminality within domestic society. The goal of this section is to show how wartime conditions prompted changes in discourse and perceptions about children and criminality in the public and social spheres of wartime society.

Chapter three demonstrates how the outbreak of total war in 1937 prompted a re-imagining of the figure of the child in public discourse. In particular, it concentrates on how wartime conditions led to the militarisation of children and the recasting of motherless children within the broader wartime narrative. An examination of representations of children in wartime discourse is important because it not only reflects

the social and cultural norms about children and childhood within the public sphere at the time, but it also captures how wartime conditions prompted a distinct and traceable shift of the ways in which the figure of the child was deployed and appropriated by adults within wartime print media.

The goal of chapter four is to demonstrate how perceptions and ordinary understandings about the war amongst the civilian population were shaped by the domestic conditions that surrounded it. Through an analysis of actions taken by Chiang Kai-shek's Nationalist Government in response to the spread of rumours, beliefs in the supernatural, and the inexplicability of psychological illnesses, this chapter seeks to demonstrate how the conflation between public perceptions about the war and a rise in criminality that appeared within domestic society, prompted widespread fears over the threat of a breakdown in civil and social order.

### **Section III Handling Criminal Offenders: Recognising Criminality as a Pragmatic Problem in Wartime**

The goal of section three is to demonstrate how Chiang Kai-shek's Nationalist Government attempted to handle and address a rise in criminality as a pragmatic problem under wartime conditions. The earlier section demonstrates how the outbreak of war brought about changes in the way in which ideas of children and criminality manifested within the public and social spheres during the wartime period. This section aims to contrast that by concentrating on the measures and policy initiatives put forward by the Ministry of Justice of Chiang Kai-shek's Nationalist Government, of which were intended to address the growing number of criminal offenders and offences that appeared within wartime society.

Chapter five focuses on an analysis of an empirical rise in criminality during the wartime period. Drawing upon statistical data from Chiang Kai-shek's Nationalist

Government, the purpose of this chapter is to demonstrate how an empirical rise in the number of criminal offenders and offences that appeared within wartime society became more than a perceived problem but it was also a pragmatic one that deserved national attention. In particular, the rise in the number of criminal offenders was not only limited to the adult offending population but in the years leading up to and including the wartime period, statistical data gathered by the Ministry of Justice had pointed to an unprecedented rise in the number of juvenile offenders.

In order to demonstrate how the Ministry of Justice attempted to handle a rise in the number of criminal offenders that appeared within wartime society, chapter six traces the enactment and revision process of the 9 September 1939 legal statute across the duration of the war years. The goal of this chapter is to analyse how through one legal statute, the Ministry of Justice sought to separate juvenile offenders from the remainder of the adult offending population during the wartime period. An examination of this legal statute is important because it demonstrates the way in which wartime conditions served as a crystallisation process to the recognition of juveniles as a separate category within the judicial setting.

**Section IV**  
**Towards a Legal Construction of Childhood:**  
**Adjudicating Juvenile Offenders in Japanese-Occupied Shanghai, A Case Study**

As a point of contrast to the findings from the remainder of the study, the last section stresses the importance of the role of the Japanese-collaborationist regime under Wang Jingwei (the Reorganised National Government of China from March 1940 to 1945) to the wartime period. It analyses how shifts in ideas and meanings of children and criminality during the wartime period were not limited to only areas under the purview of Chiang Kai-shek's Nationalist Government but such changes were also evidenced under collaborationist conditions.

Chapter seven begins with a methodological analysis to reading legal archives from the Republican period, with particular emphasis on children as actors within the legal setting. This is important because the use of legal case records as a primary source of historical veracity posed significant challenges for offenders who were not officially recognised as adults within the eyes of the law. This chapter therefore discusses those challenges in the context of wartime China. It moreover, offers a historical background on the Japanese-collaborationist district court in occupied Shanghai and locates its importance as a legal institution during the wartime period.

Chapter eight draws upon a series of penal case files from 1940 to 1941, which involved juvenile offenders who were adjudicated by the Japanese-collaborationist district level court in occupied Shanghai (*Jiangsu shanghai diyi tequ defang fayuan* 江蘇上海第一特區地方法院). The chapter traces the legal reasoning of this court during the early stages of collaborationist conditions, and demonstrates how the court attempted to construct a new framework for how the law should treat the young through its adjudication of juvenile offenders. This case study is important because it not only serves as a point of comparison to the remainder of the study, but also because it demonstrates how the court considered the circumstances of war in its legal treatment of the young during the wartime period. Moreover, despite having operated under collaborationist conditions, the court was able to establish its own autonomy and voice in the construction of a new legal understanding of children and childhood during the wartime period.

### **Conclusion**

The study concludes with a discussion on how shifts in understandings about children and criminality under wartime conditions led to the recognition of juveniles as a distinct judicial and legal category within Chinese society in the post-war period. This crystallisation process was evidenced in the actions taken by Chiang Kai-shek's

Nationalist Government in the post-war period towards the recognition of children as distinct social and legal entities within Chinese society. This is of great significance because as the four sections will have demonstrated, without the outbreak of war, the construction of a new framework for the judicial and legal treatment of the young in China would not have come about. This newly founded understanding of children forged during the wartime period thus subsequently served as the fundamental basis for which ideas of juvenile justice was later built upon in post-war China.

...  
**DEFINITIONS**

....

**THE WARTIME PERIOD**

To date, there still remains much to be explored surrounding the historical complexities of China's War of Resistance against Japan. Some scholars in the field have chosen to regard the war as beginning in 1931 and thus treat it as a fifteen year war fought between the two nations; whereas others have considered the years between 1931 and 1937 as a period of "conflict," and the Marco Polo Bridge Incident, which occurred on 7 July 1937, as the date that marks the official outbreak of total war between China and Japan.

Although the implications surrounding this debate are understandable, its ideological significance is not the intended purpose of this study. Owing to the importance of the outbreak of conflict on Chinese soil in 1931, in which intellectuals, legal scholars, and government officials at the time argued was critical in precipitating the rise in criminal activities that appeared within domestic society, this study regards the conflict between China and Japan as having begun on 18 September 1931 with Japan's

invasion of Manchuria, but 7 July 1937, as marking the official outbreak of total war between the two countries.<sup>4</sup>

All references throughout the study to the wartime period will therefore specifically refer to the period between 1937 and 1945. In addition to drawing upon materials from the wartime period, this study also uses a large number of very rich archival sources from the Nanjing decade (1927-1937), particularly the 1930s. This was mainly driven by the fruitfulness of sources found in the years leading up to the outbreak of total war. In this regard, taking this longer perspective of Chinese society allows for a broader and more nuanced analysis of the changes that took place across a continuous fifteen year period.

## JUVENILES

One of the goals of this study is to understand children as a cultural and legal concept, as well as a product of social formation. Juveniles differ from adults, and recognising how much they differ and how, varies with time and place. As Anna Davin has noted, “there is no absolute definition of childhood, whether subjective or official, because it is always lived and defined in cultural and economic contexts.”<sup>5</sup>

In Republican China, ordinary children were most often referred to as *ertong* 兒童, a neutral term that applied to all children, which was generally synonymous with the term *haizi* 孩子. The terms *ernü* 兒女 and *zinü* 子女, meaning sons and daughters, or children, were also interchangeably used during this period. Other commonly used terms included

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<sup>4</sup> The use of the term “total war” is understood by Hew Strachan’s definition in “Total War: The Conduct of War, 1939-1945,” in *A World at Total War: Global Conflict and Politics of Destruction, 1937-1945* Eds. Roger Chickering, Stig Förster, and Bernd Greiner (Cambridge: Cambridge University Press, 2005), 33-52.

<sup>5</sup> Anna Davin, “What is a Child?,” in Anthony Fletcher and Stephen Hussey, eds. *Childhood in Question: Children, Parents, and the State* (Manchester: University of Manchester Press, 1999), 14.

*younian* 幼年 or *youer* 幼兒, for someone who was of a young age, or *younü* 幼女, for a young girl.

During the wartime period, socially displaced children were clearly distinguished from ordinary children and specifically referred to as either *nantong* 難童 or *naner* 難兒. Its literal definition meant “a child in difficulty or distress” but in wartime discourse, the term was also reserved for refugee children (with or without parents), who were displaced as a result of the outbreak of war.<sup>6</sup> Refugee or socially displaced children however, differed from street children, who may or may not have been displaced due to wartime conditions. These children were more commonly known as *liulang er* 流浪兒 - “homeless or wandering children,” but the use of this term often bore a negative connotation.<sup>7</sup> Orphans or *gu'er* 孤兒 however, seldom appeared in wartime discourse.<sup>8</sup>

Adolescents or young adults, who were not yet perceived as fully grown adults, were more commonly referred to as *qingnian* 青年 or *shaonian* 少年. Even though both terms were gender neutral, adolescent girls were more often referred to as *shaonü* 少女. The terms *nanzi* 男子 or *nüzi* 女子, which generally referred to grown men or women, could also be used for young adults.

An increasing number of scholars in the broader field of childhood studies have sought to distinguish the study of children from the study of youth or adolescence. The rationale for making this distinction comes from the recognition that adolescence is a unique period in a person’s development and should therefore be treated as a separate phase in an individual’s developmental cycle rather than as merely a “transitional” period between childhood and adulthood. This study recognises the merits of making this

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<sup>6</sup> M. Colette Plum, “Unlikely Heirs: War Orphans During the Second Sino-Japanese War, 1937-1945,” PhD Diss., Stanford University, 2006.

<sup>7</sup> KMT 548.1305/6670 - 戰時兒童保育年刊 [Welfare for Wartime Children Annual] (October 1939)

<sup>8</sup> Plum, “Unlikely Heirs: War Orphans During the Second Sino-Japanese War, 1937-1945,” pp. 6-7.

linguistic distinction but for the purposes of clarity and consistency, it does not separate children from adolescents or youth. This is because the study rests on the understanding that no such conceptual or legal distinction between children and adolescents was actually made in Republican China.

Although the terms “youth” or “adolescent” (*qingnian/shaonian/shaonü* 青年/少年/少女) could be found in wartime discourse and archival documents from the Republican period, the use of such terms however, was not a widely accepted practice that reflected the social, cultural, and political norms of Chinese society at the time. In this regard, the study subscribes to and maintains this conventional understanding and the English-language terms “juveniles” and “children” will therefore be used interchangeably to refer to all persons who have not reached eighteen *sui* – the legal age of adulthood as defined in the 1935 revised Criminal Code that was used in Republican China.<sup>9</sup>

Officially, the 1935 revised Criminal Code defined the legal age of criminal liability (*fanzui zeren* 犯罪責任) as fourteen *sui*.<sup>10</sup> Individuals who had not reached fourteen *sui* were believed to have incomplete moral faculties and underdeveloped physical traits, although they were not automatically regarded as “children.”<sup>11</sup> In contrast, any person who had reached fourteen *sui* was deemed to be cognisant of his or her actions and believed to have attained a sufficient understanding of a concept of responsibility (*zeren* 責任). In this respect, any individual who had reached fourteen *sui* could be held legally answerable and morally accountable for his or her actions, although this was not legally enforced and was solely at the discretion of the courts.

On the other end of the spectrum, the 1935 revised Criminal Code defined

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<sup>9</sup> Article 18, “1935 Revised Criminal Code” 中國國民刑法[The Criminal Code of the Republic of China], in 民國叢書[Collection of Books from Republican China] Compilation 3, Vol. 28: 立法全書 [Complete Book of the Six Laws], ed. Committee on the Publication of Legal Statutes for China (Shanghai, Shanghai Bookstore, 1928) Hereafter abbreviated as the “1935 revised Criminal Code.”

<sup>10</sup> Ibid.

<sup>11</sup> Article 14, “1935 revised Criminal Code.”

eighteen *sui* as the legal age of responsibility or when an individual became a “complete person” (*chengren* 成人) in the eyes of the law.<sup>12</sup> Because certain areas within the Criminal Code permitted legal institutions to exercise judicial discretion, the lack of legal precedence or guidelines on how the law should treat the young thus created a legally and morally ambiguous area for offenders who fell between fourteen and eighteen *sui*. The remainder of the study will demonstrate how under wartime conditions, the Ministry of Justice and legal institutions sought to construct a new framework for how the law should treat those who occupied this liminal space.

### **CRIMINAL OFFENDERS**

In Republican China, the difference between criminal offenders (*renfan* 人犯) and prisoners (*jianfan* 監犯) were distinguished on the basis of their offences and the sentences (*tuxing* 徒刑) that an individual received for it. Those who engaged in acts that were punishable under the Criminal Code were generally considered as criminal offenders, and those who have previously served or were serving out a prison term were referred to as prisoners. However, the distinction between criminal offenders and prisoners was often blurred in both wartime discourse and official documents because of the sweeping nature in which the subject of criminality was regarded and discussed during the Republican period. References to offenders (*fan* 犯) that appeared in Republican-era texts, unless otherwise specified, would therefore have included both criminal offenders and prisoners. In this respect, this study maintains this understanding and references to offenders will therefore refer to any or all persons who have engaged in a criminal or socially deviant act that was punishable under the 1935 revised Criminal Code.

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<sup>12</sup> Ibid., Article 18

## CRIMINAL OFFENCES

According to the 1935 revised Criminal Code, criminal offences included activities ranging from smoking opium (*yapian* 鴉片), gambling (*dubuo* 賭博), falsely accusing someone or defamation (*wugao* 誣告), harming or damaging something (*huisun* 毀損), threatening or intimating someone (*konghe* 恐嚇), burglary or theft (*qiedao* 竊盜), robbery or banditry (*qiangdao* 強盜), and plundering or pillaging something (*qiangduo* 搶奪), to more serious offences such as committing bodily harm to another (*shanghai* 傷害), kidnapping (*bangjia* 綁架), rape (*jianyin* 姦姪), and homicide (*sharen* 殺人). This study focuses on offences and offenders who committed misdemeanours such as petty theft, robbery, or burglary, of which warranted a sentence of less than five years in prison. These offences were specifically chosen for this study because they made up the vast majority of offences that occurred within wartime society.

In addition to criminal offences committed by civilians, many special laws and provisions, which specifically applied to Chinese collaborators, military personnel, and foreigners who engaged in criminal activities, were also implemented or amended during the wartime period.<sup>13</sup> The offences referenced in this study however, include only criminal offences committed by ordinary Chinese civilians against other Chinese civilians that were punishable under the 1935 revised Criminal Code. The study does not consider or include offences committed by collaborators, military personnel, or foreigners, of which were held to a different set of standards either under military law or special laws enacted in response to wartime conditions.<sup>14</sup>

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<sup>13</sup> See 抗戰與司法 [The War of Resistance and Justice]. Compilation of Books on the War of Resistance: Vol., 4 (Duli Publishers, 1939) for an explanation of these laws.

<sup>14</sup> Ibid.

## ••• SOURCES •••

The principal sources for this study are mainly archival. Over three quarters of the entire study is based on previously unexamined and handwritten archival materials, which have been gathered from four different Chinese archives located in both the PRC and Taiwan. They include: the Kuomintang (Nationalist) Party Archives, the legal archives and judicial files from the Republican period located in Academia Historica, the Second Historical Archives of China, and the Shanghai Municipal Archives (see Appendix A).

A combination of official and unofficial sources that include documents from both Chiang Kai-shek's Nationalist Government and the Japanese-collaborationist regime led by Wang Jingwei (*Wang Zhaoming shiliao* 汪兆銘史料) comprise the collection of archival materials referenced in this study. The types of materials include work/progress reports, memorandums, intelligence reports, prison records, telegrams, drafts of legal statutes, and social surveys, of which a majority were penned by the various branches of Chiang Kai-shek's Nationalist Government, such as: the administration of the Republican Government (*guomin xingzhengfu* 國民國民政府), the Ministry of Justice (*sifa xingzheng yuan* 司法部), the Ministry for Internal Affairs (*neizheng bu* 內政部), the Ministry for Social Affairs (*shehui bu* 社會部), the Bureau of Public Safety (*gongan ju* 公安局), and the Bureau of Investigation (*jiancha ju* 檢查局).

This study also references a range of statistical data compiled by the Office of Statistics for the Ministry of Justice (*sifa xingzheng tongji shi* 司法行政部統計室), the Bureau of Statistics for the General-Directorate of Budgets, Accounts, and Statistics for the Nationalist Government (*guomin zhengfu zhu ji chu tongji ju* 國民政府主計處統計局), and statistics drawn from other provincial and municipal government bureaus. These

materials generated a wide range of data that documented an empirical rise in criminality during the Nanjing decade and the wartime period.

Moreover, the study draws upon over four hundred previously unexamined archival legal case records of criminal offences, many of which remain inaccessible to scholars out of privacy concerns. These files include criminal cases from the Supreme Court (*zuigao fayuan* 最高法院), the Jiangsu Provincial High Court (*Jiangsu zuigao fayuan* 江蘇最高法院), and the Shanghai District Court for the First Special Area (*Jiangsu Shanghai diyi tequ difang fayuan* 江蘇上海第一特區地方法院). The cases presented in the last section of this study represents mainly the very bottom of the judicial hierarchy (the district level court in Japanese-occupied Shanghai), as the offences that came before this court best captured the plight of ordinary offenders and their experiences of daily life under wartime conditions. These legal case records are important because first, they serve as a valuable entry point into understanding the legal reasoning of the Court under wartime conditions and secondly, it captured the complexities that legal institutions faced in its adjudication of offenders who fell between fourteen and eighteen *sui*, for which no legal precedence or guidelines existed for in the Republican period.

In addition to archival materials and legal case records, the study also draws upon print materials from the wartime period written by academics, legal scholars, and intellectuals. These included books, articles, newspaper reports, editorials, and social commentaries printed in both official sources (circulars, pamphlets, and educational guides, and newspapers published by Chiang Kai-shek's Nationalist Government), and unofficial sources (newspapers intended for a mass audience, mosquito presses, and specialised periodicals aimed at women, children, academics, and the legal community).

Although some of the materials that this study references are non-archival, they are rare and valuable primary sources that never found its way to the archives for

preservation but in which no more than one or two copies exist to this day. For instance, unpublished manuscripts, drafts of memorandums, and many of the children's and legal periodicals referenced in this study, were located in private collections of individuals or in the special collections of various university and public libraries in China and Taiwan. Together with the use of archival materials and legal cases records as the basis for this study, the range of materials consulted for this study provides a rich set of empirical information that captured more than faceless statistics or official views found and limited to only those in official and elite circles. Rather, the combination of these materials offers a kaleidoscope of perspectives into the lived experiences and social conditions of ordinary Chinese civilians during the wartime period.

...  
**HISTORIOGRAPHY**  
...

This study sits at the intersections of four fields of study: the history of warfare during World War II, modern Chinese history, childhood studies, and the sociology of law (or socio-legal studies).

### **REINTERPRETING CHINA'S WAR OF RESISTANCE AGAINST JAPAN**

Scholarly works produced on the war have largely concentrated on conflict-centred narratives that focused on ideas of state-building, nationalism, or war-related atrocities such as the Nanjing Massacre, Unit 731, and issues surrounding the use of comfort women.<sup>15</sup> More recent scholarship has sought to challenge these existing

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<sup>15</sup> Mark Peattie, Edward Drea, and Hans van de Ven, eds. *The Battle for China: Essays on the Military History of the Sino-Japanese War of 1937-1945* (Stanford: Stanford University Press, 2010); Hans van de Ven, *War and Nationalism in China, 1925-1945* (London: RoutledgeCurzon, 2003); Joshua A. Fogel, *The Nanjing Massacre in History and Historiography* (Berkeley: University of California Press, 2000); Daqing Yang, "Convergence or Divergence?: Recent Historical Writings on the Rape of Nanjing," *The American Historical Review* 104, no. 3 (Jun., 1999): 842-65; Choi Chungmoo, ed. *positions: East Asia Cultures Critique*, Special issue: "The Comfort Women: Colonialism, War and Sex" 5, no. 1 (Spring 1997); Mariko Asano Tamanoi, "War Responsibility and Japanese Civilian Victims of Japanese Biological Warfare in China," *Bulletin of Concerned Asian Scholars* 32, no. 3 (2000): 13-22; Arthur

paradigms by emphasising the importance in the variation of regional experiences to understanding the cultural and social impact of war on the civilian population.<sup>16</sup> Despite the plethora of literature produced on the wartime period, this study aims to offer a social history of the lived experiences of ordinary children - an important stratum of society who has been overlooked within the current body of scholarship.

Moving away from nation-centred narratives of the war, recent scholarly attention to localised histories of the wartime experience has added a new dimension to discussions about the similarities and disparities in people's lived experiences during this period. By detailing the economic and social disintegration of towns and villages, Diana Lary's recent study emphasised the social history of victimisation under wartime conditions by focusing on the levels of human suffering that was created by the outbreak of war.<sup>17</sup> Stephen MacKinnon's work on Wuhan has also demonstrated that despite having been in the same city, there was a range in how different social groups experienced the war, especially refugees.<sup>18</sup> Moreover, Janet Chen's study on the criminalisation of poverty has showed how wartime experiences of the urban poor varied significantly between Beijing and Shanghai - highlighting the disparate treatment and perceptions that they received from the public and government at the time.<sup>19</sup> All of these works underscored the importance of the lived experiences of ordinary civilians under wartime conditions and adds a much needed dimension to the social history of the wartime period.

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Waldron, "War and the Rise of Nationalism in Twentieth-Century China," *The Journal of Military History* 57, no. 5 (Oct., 1993): 87-104.

<sup>16</sup> Stephen MacKinnon, Diana Lary, and Ezra Vogel, eds., *China at War: Regions of China, 1937-45* (Stanford: Stanford University Press, 2007).

<sup>17</sup> Diana Lary, *The Chinese People at War: Human Suffering and Social Transformation, 1937-1945* (Cambridge: Cambridge University Press, 2010). See also: *Beyond Suffering: Recounting War in Modern China*. Eds. James Flath and Norman Smith (Vancouver: University of British Columbia Press, 2011); Keith R. Schoppa, R., *In the Sea of Bitterness: Refugees During the Sino-Japanese War* (Cambridge, MA: Harvard University Press, 2011)

<sup>18</sup> Stephen MacKinnon, *Wuhan, 1938: War, Refugees, and the Making of Modern China* (Berkeley: University of California Press, 2008)

<sup>19</sup> Janet Chen, *Guilty of Indigence: The Urban Poor in China, 1900-1953* (Princeton: Princeton University Press, 2012, forthcoming).

From a gendered perspective, Danke Li's study documented the personal stories of Chinese women who lived in the wartime capital of Chongqing and fills a lacuna about the interplay between oral history and traditional historical narratives. Her work gives ordinary women in particular a voice and public face that has been missing from the scholarship on the war up until this point.<sup>20</sup> Nicole Huang and Norman Smith's works have also shown the importance of writings penned by women as a form of resistance in the Japanese-occupied areas of wartime China.<sup>21</sup>

The wartime period is also important as not only a subject of historical analysis. In the post-war period, the memory and legacy of the war has also garnered significant scholarly and public interest. Rana Mitter and Parks M. Coble have respectively argued for the importance of historical memory in their assessments of how the war has been reinterpreted, re-remembered, and appropriated for various purposes in the post-war period.<sup>22</sup> Previous scholarship, particularly in the field of modern Japanese history, has largely concentrated on portraying the legacy of the war in binary terms, with an emphasis on debates pertaining to the Tokyo War Crimes Trials, Japan's war and post-war responsibility, and the textbook controversy.<sup>23</sup> More recently, scholars of East Asia have begun to move towards a more transnational approach that underscores the

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<sup>20</sup> Danke Li, *Echoes of Chongqing: Women in Wartime China* (Bloomington, IN: University of Illinois Press, 2009).

<sup>21</sup> Norman Smith, *Resisting Manchukuo: Chinese Women Writers and the Japanese Occupation* (Vancouver: UBC Press, 2008); Nicole Huang, *Women, War, Domesticity: Shanghai Literature and Popular Culture of the 1940s* (Leiden: Brill, 2005).

<sup>22</sup> See articles in *Modern Asian Studies* 45, Special Issue 2: "China in World War II, 1937-1945: Experience, Memory, and Legacy" (March 2011); Parks M. Coble, "The Legacy of China's Wartime Reporting, 1937-1945: Can the Past Serve the Present?," *Modern China* 20, no. 2 (May 2010): 1-26; Sheila Miyoshi Jager and Rana Mitter, eds. *Ruptured Histories: War and Memory in Post-Cold War Asia* (Cambridge: Harvard University Press, 2007); Parks M. Coble, "China's 'New Remembering' of the Anti-Japanese War of Resistance, 1937-1945," *The China Quarterly* 190 (2007): 394-410; Rana Mitter, "Old Ghosts, New Memories: China's Changing War History in the Era of Post-Mao Politics," *Journal of Contemporary History* 38, no. 1, Redesigning the Past (Jan., 2003): 117-131.

<sup>23</sup> Timothy Brook, "The Tokyo Judgment and the Rape of Nanking," *The Journal of Asian Studies* 60, no. 3 (Aug., 2001): 673-700; Hebert P. Bix, *Hirohito and the Making of Modern Japan* (New York: HarperCollins Publishers, 2000); Laura Hein and Mark Selden, eds. *Censoring History: Citizenship and Memory in Japan, Germany, and the United States* (New York: East Gate Book, 2000).

importance of dialogue and reconciliation between not only China and Japan but also amongst other state actors across the East Asian region.<sup>24</sup>

Together, all of these scholarly developments have served as important contributions to shaping the current historiography on how the outbreak of war transformed the cultural, political, economic, and social landscapes of twentieth-century China.

### **COLLABORATION IN WARTIME**

This study aims to further contribute to our understanding of the complex nature of a period when Chiang Kai-shek's Nationalist Government was viewed as the sole legitimate government of China, both domestically and abroad. In recent years, more scholarly attention has been paid to the significance of collaborationist activities with the Japanese, and historical understandings about the role of the Reorganised National Government of China under Wang Jingwei during the wartime period.<sup>25</sup> For example, Timothy Brook, Margherita Zanasi, and other scholars have begun to offer a more nuanced understanding of collaborationist activities from the political, economic, social and personal dimensions.<sup>26</sup> Marjorie Dryburgh and Brian G. Martin have also

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<sup>24</sup> Daqing Yang, Hiroshi Mitani, and Andrew Gordon, eds. *Toward a History Beyond Borders: Contentious Issues in Sino-Japanese Relations* (Cambridge, MA: Harvard University Press, 2011); Prasenjit Duara, "Asia Redux: Conceptualizing a Region for Our Times," *The Journal of Asian Studies* 69, no. 4 (Nov., 2010): 963-83; Mark Selden, "Nation, Region, and the Global in East Asia: Conflict and Cooperation," (presentation, University of Oxford, UK, 15 November 2010); Adam Cathcart and Patricia Nash, "War Criminals and the Road to Sino-Japanese Normalization: Zhou Enlai and the Shenyang Trials, 1954-1956," *Twentieth-Century China* 34, no. 2 (Apr., 2008): 89-111; Eri Hotta, *Pan-Asianism and Japan's War, 1931-1945* (New York: Palgrave MacMillan, 2007).

<sup>25</sup> Timothy J. Brook, *Collaboration: Japanese Agents and Local Elites in Wartime China* (Cambridge: Harvard University Press, 2005); John Hunter Boyle, *China and Japan at War, 1937-1945: The Politics of Collaboration* (Stanford: Stanford University Press, 1972); Gerald Bunker, *Peace Conspiracy: Wang Ching-wei and the China War, 1937-1941* (Cambridge: Harvard University Press, 1972).

<sup>26</sup> Margherita Zanasi, *Saving the Nation: Economic Modernity in Republican China* (Chicago: University of Chicago Press, 2006); Parks M. Coble, *Chinese Capitalists in Japan's New Order: The Occupied Lower Yangzi, 1937-1945* (Berkeley: University of California Press, 2003); Prasenjit Duara, *Sovereignty and Authenticity: Manchukuo and the East Asian Modern* (Lanham, Md.: Rowman & Littlefield, 2003); Rana Mitter, *Manchurian Myth: Nationalism, Resistance, and Collaboration in Modern China* (Berkeley: University of California Press, 2000).

respectively shown how collaborationist activities under wartime conditions can be read as more than a form of resistance but often times, as an acceptable option.<sup>27</sup> Developments in this area of scholarship have been instrumental to casting new light on not only the complexities that local Chinese elites faced in their engagement of collaborationist activities with the Japanese but also the multifaceted nature of Japanese influence during the wartime period.<sup>28</sup>

Chinese-language scholarship on the subject of collaboration was once dominated by rigid orthodoxies that trumpeted China's official narrative of the war - as one of Japanese aggression and Chinese resistance.<sup>29</sup> In recent years however, Chinese scholars have been more willing to consider the variations in focus and approaches to understanding the role of the Reorganised National Government of China led by Wang Jingwei, and the objectives of those who chose to collaborate with the Japanese under wartime conditions.<sup>30</sup> However, a prolonged suppression of memories from the wartime

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<sup>27</sup> Marjorie Dryburgh, "Rewriting Collaboration: China, Japan, and the Self in the Diaries of Bai Jianwu," *The Journal of Asian Studies* 68, no. 3 (Aug., 2009): 689-714; Brian G. Martin, "Collaboration within Collaboration: Zhou Fohai's Relations with the Chongqing Government, 1942 - 1945," *Twentieth-Century China* 34, no. 2 (Apr., 2009): 55-88.

<sup>28</sup> Emer O'Dwyer, "People's Empire: Democratic Imperialism in Japanese Manchuria," PhD Diss., Harvard University (2007); Louise Young, *Japan's Total Empire: Manchuria and the Culture of Wartime Imperialism* (Berkeley: University of California Press, 1998); Peter Duus, Ramon H. Myers, and Mark R. Peattie, eds., *The Japanese Informal Empire in China, 1895-1937* (Princeton: Princeton University Press, 1989).

<sup>29</sup> A major single-volume history of the war is Zhang, X., ed., (2001). 中國抗日戰爭史 (1931-1945) [History of the War of Resistance to Japan, 1931-1945], Nanjing daxue chubanshe, Nanjing. The key journal is: 抗日戰爭研究 [The Journal of Studies of China's War of Resistance against Japan], Institute of Modern History, Chinese Academy of Social Sciences, Beijing. Updates on research in English, Chinese, and Japanese on the Sino-Japanese War are regularly posted by Harvard University's Joint Study of the Sino-Japanese War, led by Ezra Vogel, on the following website: <http://www.fas.harvard.edu/yasiactr/sino-japanese/>

<sup>30</sup> Pan Min, 汪偽政權財政研究 [Research on the Fiscal Administration of the Wang Jingwei Regime] (Beijing: Chinese Academy of Social Sciences, 2009); Zhang Sheng, "論汪偽對國民黨政治符號的爭奪" [On Wang's Collaborationist Regime's Struggle over KMT Political Symbols], 抗日戰爭史研究 [Research on the History of the War of Resistance Against Japan], no. 2 (2005): 1- 33; Wang Kewen, 汪精衛 - 國民黨- 南京政權 [Wang Jingwei - The Guomindang - The Nanjing Regime] (Taipei: Academia Sinica, 2001).

period after the founding of the PRC in 1949 has rendered the subject of collaboration a difficult concept for many Chinese to acknowledge.<sup>31</sup>

Collaborationist activities under wartime conditions were laden with not only political implications but also moral ones. More specifically, it was seen as a moral failure on both the personal and political levels, which was diametrically opposed to the construction of a national identity. In this regard, it is therefore difficult for many Chinese to comprehend how collaborationist activities could have served as a reasonable alternative to patriotism, or how an individual could collaborate with the Japanese whilst maintaining one's Chinese identity, as this would simply go against the dominant historical narrative of this period.<sup>32</sup>

This is because Chinese collective memory has recalled the wartime period as one of Japanese aggression and Chinese suffering - reinforcing the binary view that the war was made up of only the victorious and the victimised.<sup>33</sup> Studies within the field of modern Chinese history has largely discussed and characterised wartime society in Nationalist China as a period in which areas were either "free" under Chiang Kai-shek, or "occupied" under the Japanese authorities. In this regard, the Japanese-collaborationist regime led by Wang Jingwei has most commonly been portrayed as a struggle for political power and individual authority by Wang, leaving very little room for institutional autonomy.<sup>34</sup> However, as Timothy Brook has suggested, it might be better to understand collaboration in the Chinese sense,

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<sup>31</sup> Brook, *Collaboration: Japanese Agents and Local Elites in Wartime China*, pp. 1-13.

<sup>32</sup> Margherita Zanasi, "New Perspectives on Chinese Collaboration," *The Asia Pacific Journal: Japan Focus* (July 2008) [http://japanfocus.org/-Margherita\\_Zanasi/2828](http://japanfocus.org/-Margherita_Zanasi/2828) (accessed 27 April 2010)

<sup>33</sup> Arthur Waldron, "China's New Remembering of World War II: The Case of Zhang Zizhong," *Modern Asian Studies* 30, no. 4 (1996): 945-78.

<sup>34</sup> Yu Zidao, Cao Zhenwei, and Shi Yuanhua, 汪偽政權全史 [The Complete History of the Collaborationist-Wang Regime] 2 vols. (Shanghai: Shanghai renmin chubanshe, 2006); Barrett, "Introduction," in *Chinese Collaboration with Japan, 1932-1945: The Limits of Accommodation*, pp. 12-17.

within the plastic sphere of complicity with state power in the very broadest sense; that is, regardless of whether that power is foreign or domestic. The creation and reproduction of a state under occupation is something more convoluted than a handful of morally aberrant puppets facilitating the imposition of an external authority. Its intellectual foundations lie deeper, in the understanding Chinese have developed over at least a millennium about how local authority and elite representation are constrained by, but must also coexist interactively with, state authority.<sup>35</sup>

For historians of Europe and in particular, those of World War II, the subject of collaboration is not a new concept. As the circumstances of collaboration were different for every country, a direct comparison cannot be made between the Japanese-collaborationist regime under Wang Jingwei and other collaborationist regimes in Europe during World War II, most notably, that of Vichy France (July 1940 to August 1944).<sup>36</sup> However, parallels between the Chinese case and those in Europe can offer historians more broadly, a fuller understanding of the role and impact that collaborationist activities had on the lives of ordinary civilians coping with the effects of war.<sup>37</sup>

Official and unofficial concerns over the engagement of criminal and socially deviant acts amongst juveniles remained a fundamental and widespread social problem for all nations during World War II, irrespective of cultural or social differences. However, the disparate treatment of juvenile offenders under different collaborationist regimes underscored the importance of understanding the Chinese case in light of other European examples. For instance, in the case of Vichy France, W. D. Halls has examined the implementation of social and political measures intended to assist French youth with adjusting to the realities of defeat and cooperation with the Nazis. However, Sarah Fishman has taken a more sanguine view of the same period and has argued that wartime

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<sup>35</sup> Timothy Brook, "Collaboration in the History of Wartime East Asia," *The Asia Pacific Journal: Japan Focus* (July 2008) <http://www.japanfocus.org/-Timothy-Brook/2798>

<sup>36</sup> Robert Gildea, *Marianne in Chains: Daily Life in the Heart of France During the German Occupation* (New York: Picador, 2004); Megan Koreman, *The Expectation of Justice: France, 1944-1946* (Durham: Duke University Press, 1999)

<sup>37</sup> Margherita Zanasi, "Globalizing Hanjian: The Suzhou Trials and the Post-World War II Discourse on Collaboration," *The American Historical Review* 113, no. 3 (Jun., 2008): 731-51.

conditions led officials in the Vichy criminal justice system to see juvenile delinquents as victims rather than criminals, which in turn inspired a change to a therapeutic rather than punitive model for the handling of their offences.<sup>38</sup>

In the Chinese case, rather than subsuming offenders under a universal bureaucratic model, legal institutions that were operating under Japanese-collaborationist conditions institutionally dealt with individual differences present amongst juvenile offenders who warranted special consideration under the law. Moreover, despite having been under the purview of the Japanese authorities throughout the wartime period, legal institutions continued with the use of the 1935 revised Criminal Code that was enacted by Chiang Kai-shek's Nationalist Government.

This specific finding is significant because it not only demonstrates the continuities present across the dividing line of war but it also shows how the criminal justice process during the Republican period was not merely an extension of the imperial legal system. As the sources revealed, legal institutions in Republican China did not continue to holistically subscribe to ideas rooted in Confucian teachings that had once dominated the imperial legal system. Instead, during the wartime period, offenders were treated as individuals with varying social circumstances rather than as a collective body based on social status, rank, or familial background, which had previously been the basis that individuals were judged during the imperial period.

Although many of the administrative structures and policies of the Reorganised National Government of China were set up to mirror and rival that of Chiang Kai-shek's Nationalist Government during the wartime period, the lack of scholarship that specifically examines the role of legal institutions under collaborationist conditions is

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<sup>38</sup> W.D. Halls, *The Youth of Vichy France* (Oxford: Oxford University Press, 1981); Sarah Fishman, *The Battle for Children: World War II, Youth Crime, and Juvenile Justice in Twentieth-Century France* (Cambridge: Harvard University Press, 2002).

pertinent to understanding the complexities faced by a collaborationist regime during a politically and socially volatile period.

An examination of the changes in ideas of children and criminality under collaborationist conditions is important because the political allegiances of juveniles could be easily moulded and manipulated, as their lack of independence and recognisable social status left them susceptible to adult appropriation. Criminals were further stigmatised as social outcasts who had failed to adhere to the basic morals and proper norms of social behaviour expected within Chinese society. In spite of this, juveniles and criminals were positioned to yield the greatest political advantage for both Chiang Kai-shek's Nationalist Government and the Japanese authorities.<sup>39</sup> Moreover, despite widespread discussions about children and criminality during the wartime period, there is also relatively little understanding about how Chiang Kai-shek's Nationalist Government and the Japanese-collaborationist regime perceived juveniles and criminals within their visions of social and political order during this time.

## **THE PUBLIC SPHERE**

The Republican period also witnessed the flourishing of a print culture that spread beyond scholars and elites. The rise of public intellectuals in urban areas gave way to the importance of discourse within Chinese society and the print media in particular, served as an important outlet for the dissemination of information to the general public during this time.<sup>40</sup> Wen-hsin Yeh's work on the burgeoning of the publishing industry in

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<sup>39</sup> Susan L. Glosser's work has demonstrated how the link between family order and national salvation affected state-building efforts in twentieth-century China, arguing that Chinese intellectuals held competing visions of the notion of "family" (*jia* 家).<sup>39</sup> However, her study on family reform did not include discourses about children or how they were viewed by the two Nationalist regimes during the war years. Susan L. Glosser, *Chinese Visions of Family and State, 1915-1953* (Berkeley: University of California Press, 2003).

<sup>40</sup> Wen-hsin Yeh, "Progressive Journalism and Shanghai's Petty Urbanites: Zou Taofen and the Shenghuo Enterprise, 1926-1945," in Frederic Wakeman, Jr., and Wen-hsin Yeh, eds. *Shanghai Sojourners*

Republican China has demonstrated how print media contributed to the spread and shaping of a new urban culture in Shanghai.<sup>41</sup> Increased accessibility to newspapers and periodicals also contributed to the spread of literacy, in turn creating a public sphere for which discussions about various political and social matters took place during the Republican period.<sup>42</sup> Eugenia Lean's work has also shown how coverage on the trial of Shi Jianqiao in 1930s print media motivated a rise in public sympathy, demonstrating the intricacies in which moral concepts were entangled and negotiated in both the public and legal spheres.<sup>43</sup> In this respect, print culture specifically served to attribute various meanings during the wartime period - most notably, it provided a sense of stability and structure to a life that was constantly undermined by the circumstances of war.

Despite the growing number of social problems that afflicted wartime society, issues concerning criminality and juvenile delinquency garnered widespread attention in wartime discourse as a potent subject of discussion amongst educators, legal scholars, intellectuals, and government officials. Writings that appeared in wartime print media offered analyses on the causes of criminality as well as, descriptive and prescriptive commentaries on solutions in the handling of its impending rise. Even though a direct

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(Berkeley: Institute of East Asian Studies, University of California Press, 1992): 186-238.

<sup>41</sup> Wen-hsin Yeh, *Shanghai Splendor: Economic Sentiments and the Making of Modern China, 1843-1949* (Berkeley: University of California Press, 2007); Bryna Goodman, "The New Woman Commits Suicide: The Press, Cultural Memory, and the New Republic," *The Journal of Asian Studies* 64, no. 1 (Feb., 2005): 67-101. See also the April 2006 special issue in *Twentieth-Century China* 31, no. 2: "Studying the Daily Medium: Newspapers as Subject and Source in Republican China, 1911-1949;" Haiyan Lee, "All the Feelings that are Fit to Print: The Community of Sentiment and the Literary Public Sphere in China, 1900-1918," *Modern China* 27, no. 3 (Jul., 2001): 291-327.

<sup>42</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Trans. Thomas Burger. (Cambridge: Polity, 1989). For debates on the existence of a public sphere/civil society in China, see the 1993 special issue in *Modern China* 19, no. 2 Symposium: "Public Sphere"/"Civil Society" in China? Paradigmatic Issues in Chinese Studies, III (Apr., 1993); Rudolf Wagner, "The Early Chinese Newspapers and the Chinese Public Sphere," *European Journal for East Asian Studies* 1, no. 1 (Jun., 2002): 1-33; Joan Judge, "The Power of Print? Print Capitalism and the News Media in Late Qing and Republican China," *Harvard Journal of Asiatic Studies* 66, no. 1 (Jun., 2006): 233-54. For a discussion on the existence of a public sphere in rural China, see Henrietta Harrison, "Newspapers and Nationalism in Rural China, 1890-1919," *Past and Present* 66 (Feb., 2000): 181-204.

<sup>43</sup> Eugenia Lean, *Public Passions: The Trial of Shi Jianqiao and the Rise of Popular Sympathy in Republican China* (Berkeley: University of California Press, 2007).

relationship between discourse and behaviour cannot be drawn, an examination of wartime discourse can provide insights into the nature of human values and social behaviour at the time. In this regard, editorials, social commentaries, and newspaper reportage serve to provide an alternative perspective to the official views put forward by government officials during the wartime period.

Although these additional perspectives cannot fully capture the views of Chinese society as a whole at the time, they were no less important than the official views documented in the archival documents of either Chiang Kai-shek's Nationalist Government or the Japanese-collaborationist regime under Wang Jingwei. The multivocality provided by the print media during the Nanjing decade and wartime period therefore offer an important context for locating the multifaceted nature of ideas pertaining to criminality, children, and the law as understood within the wider social and cultural contexts of Chinese society.

...  
**LOCATING THE HISTORICAL NARRATIVE**  
...

## **CHIANG KAI-SHEK'S NATIONALIST GOVERNMENT**

### **The Nanjing Decade**

Beginning in the 1920s, Chiang Kai-shek's Nationalist Government initiated a social engineering and modernisation project in the city of Nanjing, which was serving as the capital of China at the time. The goal of the project was to create an image of Nanjing that would become the model of Chinese modernisation and comparable to other global cities like London, Paris, and New York.<sup>44</sup> Its aim was to socially engineer a modern,

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<sup>44</sup> Charles Musgrove, "Building a Dream: Constructing a National Capital in Nanjing, 1927-1937," in Joseph W. Esherick, ed. *Remaking the Chinese City: Modernity and National Identity, 1900-1950* (Honolulu: University of Hawaii Press, 2000), 139-60.

educated, and industrially advanced city, whilst shielding the public from the various social ills of prostitution, poverty, and beggary that had long pervaded Chinese society.<sup>45</sup>

As part of China's quest towards modernity, the Nanjing decade reflected a period when the country and its people were keen to embrace the importation of new ideas and concepts from abroad. Government officials, intellectuals, educators, and legal scholars thus drew upon ideas and theories espoused in the fields of criminology, anthropology, sociology, and psychology to guide them towards the building of a modernised society. Many of these ideas were novel and untested concepts that were only beginning to enter Chinese consciousness at the time.<sup>46</sup> The introduction of Western ideas in penology, child development, and psychology in particular brought about competing ideas about children and criminality in the social, legal, and political spheres of Republican China.

More specifically, in the years leading up to the outbreak of war, one of the greatest challenges that China faced in the area of law was how to negotiate the tensions present between efforts towards the adoption of westernised legal reforms and pre-existing notions of what constituted as the proper norms of social behaviour grounded within Chinese custom and society.<sup>47</sup> The fall of the Qing dynasty in 1911 and change from an imperial legal system brought to light the need to develop and reform the existing legal structure in light of the various changes taking place in the new Republic. The 1920s and 30s therefore represented a period when attempts to locate the importance of law within domestic society became folded into broader efforts to modernise the nation and its people. In particular, this was a period that witnessed the emergence of new group of

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<sup>45</sup> Zwia Lipkin, *Useless to the State: 'Social Problems' and Social Engineering in Nationalist China, 1927-1937* (Cambridge: Harvard University Press, 2006).

<sup>46</sup> Michael Tsin, "Overlapping Histories: Writing Prisons and Penal Practices in Late Imperial and Early Republican Period," *Journal of World History* 20, no. 1 (Mar., 2009): 69-97; Frank Dikötter, *Crime, Punishment and the Prison in Modern China, 1895-1945* (New York: Columbia University Press, 2002), 34-53.

<sup>47</sup> Philip C.C. Huang, *Code, Custom, and Legal Practice in China: The Qing and Republic Compared* (Stanford: Stanford University Press, 2001); Jennifer Neighbors, "The Long Arm of Qing Law? Qing Dynasty Homicide Rulings in Republican Courts," *Modern China* 35, no. 3 (Jan., 2009): 3-37.

Chinese legal scholars, who had returned to China from abroad and brought back with them a new set of ideas about law and criminology.

### **The New School of Penology**

In the early 1930s, China witnessed the return of a group of Chinese legal scholars known as the “New School of Penology” (*xin xingshi pai* 新刑事派). Having been primarily trained in Japan during the interwar years, upon their return, a large number of them were appointed to advise members of Chiang Kai-shek’s Nationalist Government on a range of judicial matters. Although several of them also held official government positions at the time, it was their publications during the wartime period that renders their importance to this study.

Many of the writings of those who belonged to the New School of Penology that appeared within wartime discourse concentrated on the subject of criminality and juvenile delinquency. Having returned to China during the Nanjing decade, when active efforts were made to shield many of the social ills that were taking place within domestic society, many of these legal scholars saw criminality as a growing social problem that had largely gone unaddressed within Chinese society. However, despite their respective legal expertise in the areas of criminology, penology, and juvenile delinquency, more pressing concerns faced the nation at the time and the resources of Chiang Kai-shek’s Nationalist Government were diverted toward other uses rather than to addressing domestic problems.

As a result, many of these legal scholars publicly expressed their views in newspapers and periodicals instead, and through their writings, they produced an alternative yet powerful public discourse that sought to underscore and publicise the problem of criminality within Chinese society during the Nanjing decade and wartime period. For instance, in 1936, one of the legal scholars who belonged to the New School

of Penology, Zhang Shaowei, contended that a rapid rise in the number of criminal activities and offenders that appeared within Chinese society was a “social phenomenon that was the product of factors associated with an individual’s environment.”<sup>48</sup> Zhang argued that the issue of juvenile offenders was one of Chinese society’s most serious social problems, which had largely gone unaddressed but required immediate attention. In particular, he noted that

in recent years, scholars who have researched on the problem of crime in various countries, have all reached the same conclusion - there has been a proliferation of criminal activities amongst two types of people: the young, and the poor. That is to say, prisons in all countries are full of juveniles and poor people.<sup>49</sup>

Although Zhang contended that those who were young or poor were more likely to commit criminal activities due to difficult socio-economic conditions, he did not argue that a direct correlation existed between poverty and criminality. Instead, he concluded that children from poorer families, who were both young and poor, were more likely to commit criminal offences at a younger age. Yet, despite growing public concerns about criminality within Chinese society, issues regarding poverty and criminality remained unaddressed.

This study thus also draws upon the writings of various Chinese legal scholars who belonged to the New School of Penology, which were published during the Nanjing decade and wartime period. These writings can be read as complementary to the official narrative espoused by Chiang Kai-shek’s Nationalist Government at the time, and reflected the wider social, public, and political contexts in which ideas of children, criminality, and the law were understood during the Republican period.

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<sup>48</sup> Zhang Shaowei, 大家庭與犯罪 [Big Family and Crime], 東方雜誌 [Eastern Miscellany] vol. 33, no.17 (November 1936): 273.

<sup>49</sup> Ibid.

## The Outbreak of Total War

The outbreak of total war between China and Japan in 1937 however, disrupted the ambitions of Chiang Kai-shek's Nationalist Government in Nanjing, and the modernisation project, which they so desperately sought to fashion, remained unfinished. Attempts to regularise and modernise Chinese society during the Nanjing decade had proven to be ineffective and their visions of creating a modernised society never materialised as planned. Even though Chiang Kai-shek's Nationalist Government was successful at executing many elements of its modernisation project, namely, the rural reconstruction movement, the building of railways, hospitals, restructuring of schools and other administrative bureaus – the area of law remained in a state of flux, especially with respect to executing legal reforms toward the criminal justice system.<sup>50</sup>

As the war progressed, the problem of criminality only worsened. Statistics recorded during the war years showed that there was a documented empirical rise in the number of criminal offences and offenders that appeared within domestic society. Even though a direct causation between an increase in criminality and the outbreak of war cannot be made, the visible rise in the number of criminal offenders and offences brought about widespread public fears over the gravity of the problem. Fears over the possibility of a breakdown in civil and social order underscored the issue of criminality as not only a pragmatic problem for Chiang Kai-shek's Nationalist Government but public perceptions associated with wartime conditions also had broader implications for domestic society.<sup>51</sup>

Tensions between official discourses espoused by Chiang Kai-shek's Nationalist

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<sup>50</sup> Charles Hayford, *To the People: James Yen and Village China* (New York: Columbia University Press, 1990); Guy Alitto, *The Last Confucian: Liang Shu-Ming and the Chinese Dilemma of Modernity* (Berkeley: University of California Press, 1979).

<sup>51</sup> Zhang Ziben, “戰時犯罪的原因及其對策之研究,” [Research on the Causes of Wartime Crime and Countermeasures], *中華法學雜誌* [Chinese Legal Studies Periodical], vol. 3 (1940): 1-8. For a sociological analysis of childhood criminality in Western societies, see: Allison James and Chris Jenks, “Public Perceptions of Childhood Criminality,” *The British Journal of Sociology* 47, no. 2 (Jun., 1996): 315-31.

Government and that of the Chinese public thus subsequently became conflated with how ideas on and about children and criminality were perceived, discussed, and narrated during the wartime period.

In this regard, the outbreak of the war thus served as a crucial catalyst for transforming how society-at-large perceived criminal offenders, particularly with respect to offences involving juveniles. Moreover, an increase in coverage within the print media about criminal offences and the plight of children under wartime conditions further fuelled beliefs that other social problems such as poverty, beggary, unemployment, and the refugee crisis were linked to the rise in criminality that appeared within domestic society. For example, one editorial wrote:

in the midst of war, Chinese children are suffering the most due to the loss of employment by their parents, which has resulted in poor economic conditions for the entire family. In turn, these children are suffering in the cold, hungry, separated from one another, dying, unemployed, and there are plenty of other worries!<sup>52</sup>

During the Nanjing decade, officials in Chiang Kai-shek's Nationalist Government had largely disregarded the seriousness of the problem of criminality within domestic society. This was the case because criminal offences were severely underreported at the time. The disjuncture between an actual increase in the number of criminal offenders during the wartime period, and a perceived rise in criminality within public discourse, brought to light the weaknesses and limited reach of Chiang Kai-shek's Nationalist Government in quelling the effects that widespread criminality would have on society at large. Moreover, the day-to-day experiences of those on the ground level could not be fully understood or easily addressed by those on the national level. The issue of criminality thus became magnified as not only a growing social problem within domestic society but as the war intensified, it also became a political problem that challenged the

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<sup>52</sup> “貧苦兒童宣言” [Declaration for Poverty-stricken Children], 永生 [Forever Life] vol. 1, no. 6 (11 Apr., 1936): 150.

authority and legitimacy of Chiang Kai-shek's Nationalist Government in the eyes of the Chinese public.

On the administrative level, the Ministry of Justice of Chiang Kai-shek's Nationalist Government was responsible for overseeing legal institutions and prisons in Republican China. However, as the problem of criminality worsened during the war years, the Ministry of Justice's inability to effectively handle the rapid rise in criminal offences and offenders that appeared within wartime society weakened its authority on the national level and further challenged their ability to control the problem on the ground level. By the early 1940s, the visible increase in the number of criminal offences and offenders within wartime society had become a critical social issue, which the existing judicial infrastructure was ill equipped to cope with. As the war waged on, Chiang Kai-shek's Nationalist Government faced a fiscal crisis and a significant shortage in human and material resources. In turn, the overall lack of stability within domestic society thus left the Ministry of Justice to shoulder the burden of handling a countless number of criminal offenders, for which there was no adequate infrastructure or polices in place to handle the problem.

### **THE REORGANISED NATIONAL GOVERNMENT OF CHINA UNDER WANG JINGWEI**

Whilst Chiang Kai-shek's Nationalist Government was preoccupied with fighting a war against the Japanese, a competing Japanese-collaborationist regime led by Wang Jingwei was set up by the Japanese authorities to rival its political legitimacy.<sup>53</sup> Wang Jingwei (born Wang Zhaoming) was originally a member of the left wing in Chiang Kai-shek's Nationalist Party and held prominent posts within the Nationalist Government. In light of several defeats against the Japanese in the early years of the war, Wang became

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<sup>53</sup> John H. Boyle, *China and Japan at War, 1937–1945: The Politics of Collaboration* (Cambridge: Harvard University Press, 1972); Gerald Bunker, *Peace Conspiracy: Wang Ching-wei and the China War, 1937–1941* (Cambridge: Harvard University Press, 1972).

increasingly doubtful of China's chances to win the war. In March 1940, he broke away from the Nationalist Party to ally with the Japanese, where he was installed as the head of the Reorganised National Government of China in Nanjing until his death in November 1944.<sup>54</sup>

The Reorganised National Government of China was the name given to the Japanese-collaborationist regime that was established on 30 March 1940 in Nanjing. The regime remained under the protection of the Japanese authorities for the duration of the wartime period. Claiming to be the rightful government of China, the Reorganised National Government of China was a reintegration of several entities that had been previously established by the Japanese authorities to oversee their occupied territories in northern and Central China. These entities included the Reformed Government of the Republic of China of eastern China (1938-1940), the Provisional Government of the Republic of China of northern China, and the Mengjiang government in Inner Mongolia, although northern China and Inner Mongolia remained relatively free from its influence.<sup>55</sup>

The establishment of the Reorganised National Government of China in March 1940 put into play a number of different factors during the wartime period, of which most notably included a battle for political legitimacy with Chiang Kai-shek's Nationalist Government. Although the duration of the Japanese-collaborationist regime was brief, its perceived threat to the weakening state of Chiang Kai-shek's Nationalist Government was immeasurable. The depletion of human and material resources, in combination with a lack of social stability within domestic society and an unprecedented rise in the number of

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<sup>54</sup> David P. Barrett, "Introduction," in *Chinese Collaboration with Japan, 1932-1945: The Limits of Accommodation*, eds. David P. Barrett and Larry N. Shyu (Stanford: Stanford University Press, 2001), 4-8.

<sup>55</sup> For an analysis on the origins of the Reform Government from 1938 to 1940, see: Timothy Brook, "The Creation of the Reformed Government in Central China, 1938," in David P. Barrett and Larry N. Shyu, eds. *Chinese Collaboration with Japan, 1932-1945: The Limits of Accommodation* (Stanford: Stanford University Press, 2001), 79-101. See also: Pan Min, 江蘇日偽基層政權研究 (1937-1945) [Research on the Basic Level of the Japanese-occupied Jiangsu Regime (1937-1945)] (Shanghai: Shanghai renmin chubanshe, 2006).

criminal offences and offenders that appeared within wartime society, called into question the ability of Chiang Kai-shek's Nationalist Government to combat the external threat posed by the Japanese, whilst maintaining order and stability on the ground level.

Despite the social and political circumstances at the time, attempts to maintain a criminal justice process on the local level were still carried out in both Japanese-occupied and non-Japanese occupied areas of wartime China.<sup>56</sup> This is important because although Chiang Kai-shek's Nationalist Government attempted to uphold the political allegiance of the judiciary in their favour during the wartime period, legal institutions were not completely immune from the political or social conditions brought on by the outbreak of total war. Particularly in Japanese-occupied areas, the limited reach of Japanese authorities to wield significant influence during the wartime period meant that legal institutions, which formally resided under the political purview of the Reorganised National Government of China, were still able to operate relatively independent and free from the constrictions of being under occupation.

This finding is critical because the last chapter of this study draws upon legal case records from collaborationist district level court in Japanese-occupied Shanghai as a case study to demonstrate how it was precisely because of their unique political position during the wartime period, this thus allowed for the court to construct a new legal framework towards the treatment of the young.

Although the court examined in the case study was deemed as a Japanese-collaborationist court in the eyes of Chiang Kai-shek's Nationalist Government and Japanese authorities at the time, it referenced the same 1935 revised Criminal Code that had been used by legal institutions formerly under Chiang Kai-shek's Nationalist

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<sup>56</sup> William C. Johnstone, *The Shanghai Problem* (Stanford: Stanford University Press, 1937), 166.

Government. In this regard, the Court's use of and legal reasoning under collaborationist conditions thus reflected many continuities from the period before Japanese occupation.

The findings suggest that despite having operated under Japanese occupation, the function and identity of the court was neither usurped by its collaborationist status nor employed as a political tool by the Japanese authorities. On the one hand, a measureable degree of change under collaborationist conditions was not widely noticeable, as daily life carried on and the social conditions of the outbreak of war affected ordinary civilians unabated. On the other hand, within the legal sphere, the legal reasoning of this specific court revealed that it sought to establish its own legal autonomy and an independent voice amidst the social and political turmoil that surrounded it during the wartime period.

...  
**TOWARDS A NEW FRAMEWORK**  
...

This study therefore endeavours to move toward a new framework for understanding the intricacies, challenges, and complexities of China's War of Resistance against Japan. It teases out and builds upon the intersections found in the changing ideas and meanings of children, criminality, and the law in the context of China's wartime experience during World War II. It therefore attempts to put forward a new paradigm that underscores the importance of how the outbreak of war served as a crucial catalyst to the construction of judicial and legal understandings towards the young during the wartime period.

**SECTION I**  
**CONTESTED CHILDHOODS:**  
**LOCATING CHILDREN IN HISTORY AND LAW**

*This section seeks to situate the study of children and criminality within the context of history and law in the first half of the twentieth century. The goal is to locate the importance of children within the wider discursive, social, and political contexts, which served to shape many of the ideas and paradigms about children and childhood that existed within Chinese society in the years prior to the outbreak of total war.*

**CHAPTER ONE**  
**THE HISTORY OF CHILDREN AND CHILDHOOD**  
**IN REPUBLICAN CHINA**

...

Even though it has been argued that the “discovery of childhood” in China can be traced back to the pre-Qin period, Anne Behnke Kinney contended that it was the Han court’s intellectual focus on the place of children in various political, philosophical, cosmological, and social contexts that made children an important topic of intellectual inquiry.<sup>1</sup> Since the Song period, Neo-Confucian scholars have emphasised the importance of instilling Confucian values in children. Such attention to the moral and intellectual development of children subsequently carried into the Ming and Qing periods, and became highly influential in setting the moral standards later prescribed for children in the Republican period.<sup>2</sup> Unlike studies conducted on children in other countries such as Japan, Germany, Great Britain, and the former Soviet Union, the study of children and the construction of childhood in twentieth-century China, particularly under wartime conditions, have received very little scholarly attention.<sup>3</sup>

Since the publication of Philippe Ariès’ landmark study on childhood and the social history of family life, historians have been careful to distinguish between the construction of childhood by adult belief and the lived worlds of children.<sup>4</sup> In particular, the importance of Ariès’ work has alerted us to “the historical contingency of the ways in which childhood is imagined and deployed as a functional social and ideological

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<sup>1</sup> Anne Behnke Kinney, *Representations of Childhood and Youth in Early China* (Stanford: Stanford University Press, 2004), 8-32.

<sup>2</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” p. 673.

<sup>3</sup> Olga Kucherenko, *Little Soldiers: How Soviet Children Went to War, 1931-1945*. (Oxford: Oxford University Press, 2011); Catriona Kelly, *Children’s World: Growing Up in Russia, 1890-1991* (New Haven: Yale University Press, 2008); Janice Henderson, *Children of the War Years: Childhood in Britain During 1939-1945* (London: Futura Publications, 2008); Nicholas Stargardt, *Witnesses of War: Children’s Lives Under the Nazis* (London: Jonathan Cape, 2005); Owen Griffiths, “Militarizing Japan: Patriotism, Profit, and Children’s Print Media, 1894-1925,” *The Asia-Pacific Journal: Japan Focus* (September 2007) <http://www.japanfocus.org/-Owen-Griffiths/2528> (Accessed February 2010).

<sup>4</sup> Philippe Ariès, *Centuries of Childhood: A Social History of Family Life*. Trans. Robert Baldick (New York: Vintage, 1962)

category,” which provides us with useful ways of thinking about the characterisation of and discourse on children.<sup>5</sup> What then does the figure of the child and the way in which it was perceived, imagined, and appropriated by adults, reveal to us about the social and cultural milieu of Republican China?

The aim of this chapter is to trace the historical trajectory of ideas about children and childhood from the late imperial period into Republican China. It centres on an examination of how the figure of the child was deployed as a critical site for the expression of social and intellectual concerns within Chinese society. Through an analysis of the different ways in which adults discussed, represented, and appropriated the figure of the child, the chapter aims to demonstrate that there was no uniform image of children present in Republican China. Instead, a number of competing ideas of children and childhood existed within public discourse before the outbreak of war and many of these ideas prevailed into the wartime period.

...  
**LOCATING THE IMPORTANCE OF  
CHILDREN WITHIN CHINESE SOCIETY**  
....

In recent years, scholars have increasingly occupied themselves with understanding children as a distinct social group, and the impact that social and cultural conditions have had on a child’s development and worldview. In particular, scholarly attempts to understand the evolution of attitudes toward children and childhood and its representations throughout the centuries have garnered significant interest. Moreover, studies about children’s own experiences of everyday life, the way they perceived their milieu, and the roles they played in it have increasingly become more important to the study of children and childhood.<sup>6</sup>

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<sup>5</sup> Andrew F. Jones, “The Child as History in Republican China: A Discourse on Development,” *positions: east asia cultures critique* 10, no. 3 (Winter 2002): 709.

<sup>6</sup> Allison James and Adrian James, *Key Concepts in Childhood Studies* (London: Sage Publications, 2008)

Culturally and historically, children in China occupied a specific place on the social and familial ladder - most often, at the bottom of a patriarch. Traditionally, such conceptions of the status of children were linked to socio-cultural notions associated with motherhood, pregnancy, childbirth, and infanticide.<sup>7</sup> Imperial Chinese society has conventionally emphasised the philosophical or abstract meaning of the child - as the embodiment of virtue who bears a quality of innocence and uncultivated potential.

However, at the turn of the twentieth century, with increased attention to the role of women within the family and society, conceptions of children and childhood began to change within China. This is because the history of children and childhood in China has been complicated by paradigms that originated in the West. Despite this, it is difficult to divorce these widely accepted characterisations of children apart from their social and historical contexts.

Originally derived from the Freudian psychological scheme and also rooted in the Enlightenment tradition of rational and linear progression, one approach used by scholars has been to examine children in the biophysical sense - as the youngest members of humanity who are experiencing the earliest stage of human life. In this approach, the history of childhood merges with the history of motherhood, in which the emphasis is on the importance of an irreplaceable biological connection between mother and child.<sup>8</sup>

The current body of literature that examines the role of children within Chinese society has largely been in this area of scholarship, and in which ideas about children

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<sup>7</sup> Charlotte Furth, "Concepts of Pregnancy, Childbirth, and Infancy in Ch'ing Dynasty China," *The Journal of Asian Studies* 46 (February 1987): 7-35; Jen-der Lee, "Childbirth in Early Imperial China," *Nan Nü [Genders]* 7, no. 2 (2005): 216-86; Ann Waltner, "Infanticide and Dowry in Ming and Early Qing China," in *Chinese Views of Childhood*, ed. Anne Behnke Kinney (Honolulu: University of Hawai'i Press, 1995), 193-218; Susan, Mann, "Grooming a Daughter for Marriage: Brides and Wives in the Mid-Ch'ing Period," in Rubie S. Watson and Patricia Buckley Ebrey, eds. *Marriage and Inequality in Chinese Society* (Berkeley: University of California Press, 1991): 204-30.

<sup>8</sup> Linda A. Pollock, *Forgotten Children: Parent-Child Relations from 1500 to 1900* (Cambridge: Cambridge University Press, 1983); Michael Roper, *The Secret Battle: Emotional Survival in the Great War* (Manchester: University of Manchester Press, 2009).

have been linked to notions of maternity, reproduction, and public health.<sup>9</sup> Yet, to date, there is no study that specifically examines the role of children in wartime China from a legal perspective.

The widespread influence of Jean Piaget's theory of cognitive and moral development in child psychology and early education in the twentieth century also prompted the development of other methodological approaches to the study of children and childhood.<sup>10</sup> Anthropologists and sociologists have tried to stress the importance of social and cultural contexts in the construction of ideas about children and childhood. Their goal has been to alert us to the role of children as agents, who should not be deployed by adults for their own purposes. In this regard, historians of childhood are often criticised for neglecting the voices of children because in actuality, it is adults who construct such ideas about children and never children themselves.<sup>11</sup>

One of the main weaknesses in the wider body of scholarship on children and childhood in any country has been the overwhelming emphasis on children from families of wealth, nobility, or elite circles.<sup>12</sup> This is unsurprising because families of higher social standing were more likely to have kept records of their children than those coming from ordinary or poor families. For a select number of scholars who have attempted to study

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<sup>9</sup> Ping-Chen Hsiung, "Constructed Emotions: The Bond Between Mothers and Sons in Late Imperial China," *Late Imperial China* 15, no. 1 (June 1994): 87-117 and "Female Gentility in Transition and Transmission: Mother-Daughter Ties in Ming/Qing China," in Daria Berg and Cholë Starr, eds. *The Quest for Gentility in China: Negotiations Between Gender and Class* (London: Routledge, 2008), 97-116; Yi-Li Wu, *Reproducing Women: Medicine, Metaphor, and Childbirth in Late Imperial China* (Los Angeles: University of California Press, 2010); Angela Ki Che Leung and Charlotte Furth, eds. *Health and Hygiene in Chinese East Asia: Policies and Publics in the Long Twentieth Century* (Durham: Duke University Press, 2011); Tina Phillips Johnson, *Childbirth in Republican China: Delivering Modernity* (Lanham, MD: Lexington Books, 2011)

<sup>10</sup> Jean Piaget, *The Psychology of the Child* (New York: Basic Books, 2000) and *The Origins of Intelligence in Children* (New York: International University Press, 1952).

<sup>11</sup> Allison James and Alan Prout, eds., *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (London: Routledge, 1990).

<sup>12</sup> Mark Jones, *Children as Treasures: Childhood and the Middle Class in Early Twentieth Century Japan* (Cambridge: Harvard University Asia Center, 2010); Takie Sugiyama Lebra, "The Socialization of Aristocratic Children by Commoners: Recalled Experiences of the Hereditary Elite in Modern Japan," *Cultural Anthropology* 5, no. 1 (Feb., 1990): 78-100; Anthony L. Cardoza, *Aristocrats in Bourgeois Italy: The Piedmontese Nobility, 1861-1930* (Cambridge: University of Cambridge Press, 1997): 139.

the conditions of poor children, these studies have been located within a “family strategy” approach, which has stressed the importance of kinship patterns and children’s roles within the family.<sup>13</sup>

Although studying economic conditions, such as labour and poverty through the family strategy approach has allowed scholars to consider the lives of children where records may be sparse, this approach can sometimes marginalise the actual role of children, as the emphasis is often on adult decision-making and the norms of the adult world. However, as children from lower socio-economic backgrounds tend to be less well-educated, this approach has been effective in enabling historians to evaluate children at the level of mass society and not just merely the elite.

#### **THE MAY FOURTH PERIOD**

At the turn of the twentieth century, influences from the May Fourth movement gave way to a number of different conceptions of the figure of the child.<sup>14</sup> Within literary discourse, May Fourth intellectuals saw children as a means to counter prevailing ideas from the Confucian canon. In particular, they sought to challenge traditional modes of thinking that were rooted in the norms of the Confucian moral discourse as backward and hindering the development of Chinese society.<sup>15</sup> Children’s literature and other writings produced during the May Fourth period thus served as a means for intellectuals to express their ideas of modernity, national salvation, and emancipation for all levels of society.<sup>16</sup>

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<sup>13</sup> Lydia Murdoch, *Imagined Orphans: Poor Families, Child Welfare, and Contested Citizenship in London* (Piscataway, NJ: Rutgers University Press, 2006)

<sup>14</sup> The broader use of the term May Fourth Movement here also includes the period of the New Culture Movement (1915-1921).

<sup>15</sup> Vera Schwarcz, *The Chinese Enlightenment: Intellectuals and the Legacy of the May Fourth Movement of 1919* (Berkeley: University of California Press, 1986).

<sup>16</sup> Mary Ann Farquhar, *Children’s Literature in China: From Lu Xun to Mao Zedong* (London: M.E. Sharpe, 1999); Tani Barlow, “Theorizing Woman: Funü, Guojia, Jiating,” *Genders* 10 (Spring 1991): 132-60; Rey Chow, *Woman and Chinese Modernity: The Politics of Reading between East and West* (Minneapolis: University of Minnesota Press, 1991).

The phase of childhood in particular, became no longer viewed as merely preparation for adulthood. Instead, as Chang-tai Hung has noted, “it had its own boundaries, free from adults of that period, who, in the view of modern Chinese intellectuals, had been corrupted culturally and morally by old society.”<sup>17</sup> As intellectuals increasingly propagated the view that children should no longer be perceived as blank slates, who could be moulded for the betterment of society, this prompted the emergence of a number of competing discourses on and about children within Chinese public discourse.<sup>18</sup> For instance, Lu Xun and other intellectuals of the May Fourth Movement argued that children could not escape from having culture inscribed on them through the very process of biological and social reproduction.<sup>19</sup> In other words, childhood was still very much seen as a phase of vulnerability and children could easily be manipulated and appropriated by adults for different agendas.

As a result, the May Fourth period prompted a burgeoning of discourses on and about children and childhood that sought to challenge the way in which children were viewed within domestic society. The outbreak of total war in 1937 thus served as a crucial catalyst to underscoring the importance of children to the Chinese nation and its wartime efforts. Prior to the outbreak of war, conceptions of the figure of the child in the 1920s and 30s had given way to the deployment of children and youth as a vehicle for social and intellectual change. In particular, efforts toward modernisation during the Nanjing decade further ushered in the recognition of new academic disciplines such as child and educational psychology, as well as the wide circulation of medical, scientific, and practical knowledge on children’s development and child rearing aimed at women and

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<sup>17</sup> Chang-tai Hung, *Going to the People: Chinese Intellectuals and Folk Literature, 1918-1937* (Cambridge: Harvard University Press, 1985), 107.

<sup>18</sup> Farquhar, *Children’s Literature in China: From Lu Xun to Mao Zedong*, p. 56.

<sup>19</sup> 鲁迅 [Lu Xun], “我們現在怎麼做父親?” [How Are We to Be Fathers Now?], *新青年* [New Youth] 6, no. 6 (January 1919): 555-57.

mothers – all of which generated increased attention towards recognising the importance of children within Chinese society.<sup>20</sup>

Books and periodicals intended for all social classes of women encouraged mothers to not only teach their children proper etiquette and socially accepted moral values on a daily basis, but it also emphasised the importance of nurturing a child's potential and to recognise the signs that indicated problems with a child's moral and physical development.<sup>21</sup> In this regard, the emergence of competing ideas about children and childhood in Republican China brought about an acute social awareness for the importance of considering juveniles as an independent social and legal category - one that could be treated as detached from the Chinese familial hierarchy and traditional notions of kinship relations.

This is important because authors of children's stories believed that if children stopped reading politically and morally didactic materials composed by adults, it would give children more space to explore their creative imaginations.<sup>22</sup> The introduction of children's literature at the turn of the twentieth century in China therefore challenged intellectuals to question the meaning of "development" as the very basis of China's historical trajectory, which had led to the creation and shaping of institutions and various forms of cultural production during this period.<sup>23</sup>

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<sup>20</sup> 江蘇省教育部[Department of Education for Jiangsu Province], 兒童心理學 [Child Psychology] (Nanjing: Kaihua Bookstore, 1936); Xiao Xiaorong, 兒童心理學 [Child Psychology] (Shanghai: Shangwu Publishing, 1938); Helen Schneider, *Keeping the Nation's House: Domestic Management and the Making of Modern China* (Vancouver: UBC Press, 2011).

<sup>21</sup> Xiao Xiaorong, 心理問題 [Psychological Problems] (Beijing: Zhonghua Bookstore, 1936), 299-454; “怎麼訓練孩子?” [How Do You Train Children?], 玲瓏 [Elegance] vol. 7.1, no. 268 (1 Jun., 1937): 48-49; No author, “母親須知道的：怎樣教養孩子” [What Mothers Should Know: How to Nurture Children], 玲瓏 [Elegance] vol. 7.30, no. 297 (4 Aug., 1937): 2368-39.

<sup>22</sup> 周作人[Zhou Zuoren], “兒童的文學” [Children's Literature], 新青年 [New Youth] Vol. 8, no. 4 (1 December 1920): 1-7.

<sup>23</sup> Andrew F. Jones, *Developmental Fairytales: Evolutionary Thinking and Modern Chinese Culture* (Cambridge: Harvard University Press, 2011).

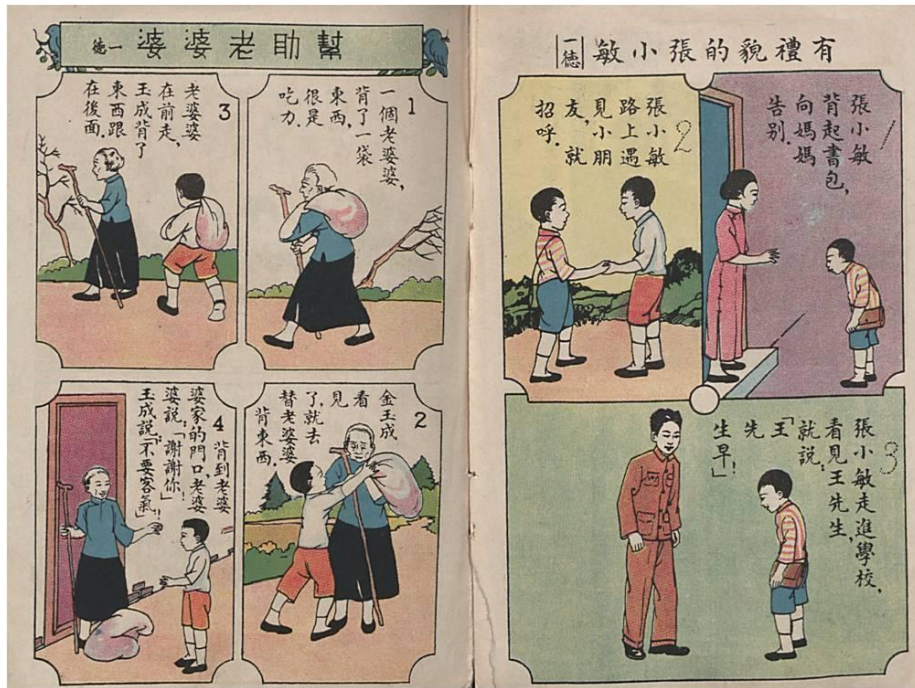
As different ideas on and about children and childhood began to appear in Republican China, precedence set from the May Fourth period inspired new ways for adults to deploy, re-imagine, and appropriate the figure of the child to serve their own needs. Although the image of the ideal child was the most paradigmatic representation of the figure of the child in Chinese society, continued to define ideas about children and childhood in Republican China, the outbreak of war created a unique discursive space within public discourse for the contestation of childhood and its meanings.

•••  
**CULTIVATING THE IDEAL CHILD**  
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Up until this point, the prevailing image of children within Chinese society had rested on the idyllic conception of the “ideal child” (*lixiang ertong* 理想兒童). This portrayal of the figure of the child was originally derived from the Confucian moral discourse that was drawn from the virtues espoused in the Four Books and Five Classics. The ideal child was expected to embody virtues such as benevolence, obedience, piety, loyalty, and the ability to practice self-cultivating techniques - all of which were emphasised to children through proper moral instruction and the learning of good manners.<sup>24</sup> For instance, the following sketch in a children’s periodical was intended to teach children how to observe the proprieties that would be expected of them in Chinese society. (Figure 1) The sketch shows how a young boy practices good manners towards his mother, friend, teacher, and the elderly – reinforcing the virtues expected of children in their basic understanding of the five levels of social hierarchy (*wulun* 五倫) that were based in Confucian social thinking.

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<sup>24</sup> Limin Bai, “Children at Play: A Childhood Beyond the Confucian Shadow,” *Childhood* 12, no. 2 (2005): 9.



**FIGURE 1**  
**有禮貌的張小敏 [Polite Zhang Xiaomin]**  
**and 幫助老婆婆 [Assisting an Old Lady]**

兒童雜誌 [Children's Periodical]  
 (20 August 1933)<sup>25</sup>

Throughout Chinese history, Chinese intellectuals believed that emphasising traditional moral values would lead to the formation of a harmonious society. Such values would therefore serve to shape ordinary children in accordance with the Confucian image of an “ideal child,” who through the learning of proper social etiquette and manners would exemplify the virtues of self-restraint, altruism, and discriminating moral judgment.<sup>26</sup> Moreover, moral training for children was to be extended beyond formal educational settings.<sup>27</sup> This included the belief in children’s human potential to blossom,

<sup>25</sup> 兒童雜誌 [Children's Periodical] Vol. 20 (20 August 1933), n.p.

<sup>26</sup> “孔子” [Confucius], 中國兒童 [Chinese Children] vol. 3 (10 October 1942): 6-13; See also issue 4 (25 October 1942) and issue 5 (10 November 1942) of 中國兒童 [Chinese Children]; “孔子” [Confucius], 申報 [Shanghai Daily] (23 April 1939).

<sup>27</sup> On the education of children in formal and informal settings in imperial times, see Pei-Yi Wu, “Education of Children in the Sung,” in *Neo-Confucian Education: The Formative Stage*, eds. Wm. Theodore de Bary and John W. Chaffee (Berkeley: University of California Press, 1989), 307-24; Angela Ki Che Leung, “Elementary Education in the Lower Yangtze Region in the Seventeenth and Eighteenth Centuries,” in Benjamin A. Elman and Alexander Woodside, eds. *Education and Society in Late Imperial China, 1600-1900* (Berkeley: University of California Press, 1994), 381-416; **Liu Yongcong**, 中國古代的幼兒 [The Children of Traditional China] (Beijing: Shangwu yinshuguan guoji youxian

given proper social environments, and the notion of knowing how to relate to others through the formation of relationships by children to family members and other children.<sup>28</sup>

A child's social and familial environment was therefore believed to be the most important form of socialisation. The agencies of socialisation for Chinese children ranged anywhere from daily activities such as practicing good personal hygiene and waking up early in the morning, to educational settings such as being a good student and learning the value of science and technology in order to contribute to the advancement of the Chinese nation.<sup>29</sup> Intellectuals, educators, and parents thus believed that if one educated and nurtured children in accordance to the norms of the ideal child, this would naturally lead to the creation of an "ideal adult" and the sustainment of a harmonious society.<sup>30</sup>

### **PROBLEMATISING THE IDEAL CHILD**

The overwhelming influence of the ideal child within Chinese society therefore served as the paradigmatic representation of Chinese children throughout the centuries. In this regard, scholars rested their understanding about children and childhood in China on this portrayal of children without problematising the broader social and political implications that accompanied it. Valentina Boretti in particular, contended that it was the prevailing image of the ideal child that allowed intellectuals and government officials to deploy children as ideological representations of the nation state in Republican

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gongsi, 1997).

<sup>28</sup> “人不可以無恥” [People Cannot Be Shameless], 申報 [Shanghai Daily] (26 Feb., 1939); “交朋友” [Making Friends], 申報 [Shanghai Daily] (27 November 1938); “談交朋友” [Discussion About Making Friends], 申報 [Shanghai Daily] (3 March 1940).

<sup>29</sup> “科學救國” [Save the Nation With Science], 申報 [Shanghai Daily] (30 October 1938); “談談讀書的態度” [A Discussion on Attitudes About Studying], 戰時中學生 [Middle School Wartime Children] vol. 1, no. 4 (May 1939): 64-68; “如何養成自修的習慣” [How to Develop Self-Cultivating Habits], 申報 [Shanghai Daily] (21 January 1940); “學和問得重要” [The Importance of Learning and Questioning], 申報 [Shanghai Daily] (17 March 1940)

<sup>30</sup> Bai, *Shaping the Ideal Child: Children and Their Primers in Late Imperial China*, p. 209.

China.<sup>31</sup> She has argued that in the 1930s, manufacturers and educators capitalised on the image of the ideal child in order to promote, brand, and gender material objects aimed at the Chinese public, which at the time was folded into the wider culture of China's National Goods Movement.<sup>32</sup>

According to Boretti, the goal of branding and gendering toys according to a child's sex was intended to promote ideas of patriotism in an effort to create "ideal" children, who would later become good citizens of the Chinese nation.<sup>33</sup> She concluded that manufacturers, educators, and parents saw the need to "gender" toys for children in order to encourage the proper gender roles that would eventually be expected of them as adults. Thus, girls were encouraged to play with dolls so as to help them learn early on how to become good wives and mothers and boys played with guns, so that they would be inspired to someday serve the nation as soldiers.

The concept that children could be mobilised and appropriated according to one's gender in China however, is not new. For instance, William Rowe, Susan Mann, and Dorothy Ko, have all shown that gender roles were clearly defined since imperial times and therefore boys and girls have traditionally been viewed and treated differently.<sup>34</sup> Even though the image of the ideal child has been perceptibly male within Chinese society, it

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<sup>31</sup> Ann Anagnost, "Children and National Transcendence in China," in Kenneth G. Lieberthal, Shuen-Fu Lin, and Ernest P. Young, eds. *Constructing China: The Interaction of Culture and Economics* (Ann Arbor: Center for Chinese Studies at the University of Michigan, 1997), 201–12; Jones, "The Child as History in Republican China: A Discourse on Development," p. 702.

<sup>32</sup> "Toyland on Shanghai's Nanking Road," 遠東童報 [Far Eastern Children's Newspaper] Vol. 2, no. 21 (10 Nov., 1941): 26-27; Valentina Boretti, "Playing for Keeps: The Toy Culture in China, 1895-1949," PhD Diss. University of London – School of Oriental and African Studies, 2007. For a study on the national goods movement in 1930s China, see: Karl Gerth, *China Made: Consumer Culture and the Creation of the Nation* (Cambridge, Mass.: Harvard University Asia Center, 2003).

<sup>33</sup> Valentina Boretti, "Purposeful Leisure: Aspects of Toy Discourse in Republican China," *Princeton University Library Chronicle* 68, no. 3 (2007): 881-908.

<sup>34</sup> Hsiung, *A Tender Voyage: Children and Childhood in Late Imperial China*, pp. 183-219; William T. Rowe, "Women and the Family in Mid-Qing Social Thought: The Case of Chen Hongmu," *Late Imperial China* 13, no. 2 (December 1992): 1-41; Susan Mann, "Grooming a Daughter for Marriage: Brides and Wives in the Mid-Ch'ing Period," in Rubie S. Watson and Patricia Buckley Ebrey, eds. *Marriage and Inequality in Chinese Society* (Berkeley: University of California Press, 1991): 204-30; Dorothy Ko, *Teachers of the Inner Chambers: Women and Culture in Seventeenth-Century China* (Stanford: Stanford University Press, 1994).

was not the actual sex of the child that served to underline the discourse of the ideal child. Instead, it was the philosophical and moral attributes, which the child embodied that was highly valued within Chinese society.<sup>35</sup> As marked by the works of Elisabeth Croll, Margery Wolf, and Hsiung Ping-chen, the assumption that a discriminate treatment of girls was due to a patriarchal society that favoured sons over daughters is an oversimplification to understanding the wider implications of changing kinship and gender relations in Republican China.<sup>36</sup>

Although Chinese society has traditionally emphasised the importance of male offspring over females, the image of the ideal child was intended to serve as a model of what *every* parent should strive for *every* child to become.<sup>37</sup> Limin Bai has shown that in late imperial China, even the peasantry aspired to raise their children in accordance with the image of the ideal child, as much as those who belonged to the gentry-elite.<sup>38</sup> In this regard, the issue of social class was not central to the formation of the ideal child in Chinese society. This stands in contrast to the body of scholarship that has examined the rearing practices of children in western societies, for which scholars have found that differentiations about children and childhood were very much divided along social classes.<sup>39</sup>

Although poor children were often deprived of their childhoods and expected to work from a young age, the image of the ideal child transcended characterisations of gender and social class within Chinese society, even during the imperial period when such distinctions were heavily ingrained in the social fabric of daily life.<sup>40</sup> As Hsiung

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<sup>35</sup> Hsiung, *A Tender Voyage: Children and Childhood in Late Imperial China*, pp. 194-95.

<sup>36</sup> Elisabeth J. Croll, *Feminism and Socialism in China* (London: Routledge, 1978); Margery Wolf, *Woman and the Family in Rural Taiwan* (Stanford: Stanford University Press, 1972)

<sup>37</sup> Bai, *Shaping the Ideal Child: Children and Their Primers in Late Imperial China*, p. 160.

<sup>38</sup> *Ibid.*

<sup>39</sup> John Henderson and Richard Wall, eds. *Poor Women and Children in the European Past* (London: Routledge, 1994); Anna Davin, *Growing Up Poor: Home, School and Street in London, 1870-1914* (London: Rivers Oram Press, 1995).

<sup>40</sup> *Ibid.*, p. 172.

Ping-chen has further noted, “the moral character and the real identity of an ideal child defined along gender lines appeared very much blurred.”<sup>41</sup> In this respect, it was not the sex of the child that determined whether or not a child was “ideal” but rather the morals and virtues that the figure of the child embodied that made him or her “ideal.”<sup>42</sup>

...  
**COMPETING UNDERSTANDINGS OF CHILDREN:  
RECOGNISING ANTI-SOCIAL BEHAVIOUR**  
....

Despite efforts during the May Fourth period to re-envision the figure of the child and its significance in a number of different ways, the image of the ideal child nevertheless prevailed into the Nanjing decade and wartime period. For instance, an article published on 11 August 1937 in the women’s periodical *Ling Long* 玲瓏 [Elegance] wrote:

Children love toys because their desires are born purely out of the innocence and childishness in their minds, from their soul’s openheartedness - what is spoken of as naiveté (*tianzhen xing* 天真性) is precisely this point. They are exactly like a piece of white paper that has yet to take on colour, if you add any bit of colour to it, what the child feels is a form of novelty. Therefore, how children react towards external influences is very important...There are numerous types of toys for modern children but we cannot line them up one by one to select them. The basis of such decision-making will have to depend on the child’s environment and what parents desire in their ideal child (*lixiang de ertong* 理想的兒童).<sup>43</sup>

Although these comments were published after the outbreak of war, it reflected the evolution in ideas of children and childhood within public discourse across the wartime divide. In particular, the 1930s witnessed the recognition of anti-social behaviour amongst children as a growing social problem that had up until this point gone largely

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<sup>41</sup> Hsiung, *A Tender Voyage: Children and Childhood in Late Imperial China*, p. 191.

<sup>42</sup> *Ibid.*, pp. 235-38.

<sup>43</sup> No author, “怎麼為兒童選擇玩具” [How to Select Toys for Children], 玲瓏 [Elegance] Vol. 7.31, no. 298 (11 Aug., 1937): 2449-50.

unaddressed within Chinese society. The recognition of juvenile delinquents, problem children, and socially displaced children within Chinese society during the Nanjing decade and wartime period is important because it directly challenged the image of the ideal child as paradigmatic of Chinese children.

On the one hand, as the next section will demonstrate, the outbreak of war served as a crucial catalyst to a re-imagination of the figure of the child under wartime conditions. On the other hand, the Nanjing decade and wartime period also witnessed the emergence of other competing ideas about children and childhood, which was a conflation of both earlier representations of about children with those prompted by the outbreak of war. In this regard, although wartime conditions brought about a particular conception of children, it was not the only representation of children that appeared within Chinese society at the time. Rather, competing representations of children and childhood appeared within multiple discourses during the wartime period. As the remainder of the chapter will demonstrate, the outbreak of war in 1937 did not serve as a clear dividing boundary for the way in which ideas of children and childhood were formed. Instead, such ideas flowed across time and remained contested throughout the Republican period.

#### **ACKNOWLEDGING THE PROBLEM OF JUVENILE DELINQUENCY**

As the problem of criminality became more widely recognised within domestic society, its rise was attributed to a myriad of external and internal factors that ranged from the biological (nature versus nurture) and economical (poor social and economic conditions), to the social (the lack of agencies of socialisation and proper schooling) and familial (poor parenting and upbringing). In particular, an unprecedented rise in the number of criminal offences involving juveniles and public recognition of juvenile

delinquency as a new social problem during the Nanjing decade brought to surface a number of different competing theories, which sought to explain its possible causes.<sup>44</sup>

One of the most prominent debates about criminality espoused within Chinese society in Republican period was the contestation between nature versus nurture. At the heart of the biological debate was Cesare Lombroso's theory of anthropological criminology, which argued that criminality was an inherited trait and a "born criminal" could be identified by physical anomalies.<sup>45</sup> Drawing upon concepts in psychiatry, social Darwinism, and physiognomy, Lombroso rejected the theory established in the Classical School, which held that crime was a characteristic trait of human nature. Instead, Lombroso postulated that criminals represented a reversion to a primitive or subhuman type of man, and socially deviant behaviour constituted as a form of opposition to the rules and expectations of modern civilised society.<sup>46</sup>

However, as new intellectual frameworks and ideas about criminality and childhood were transmitted into China during Nanjing decade, Lombroso's theory no longer stood as the sole explanation for the rise in the number of criminal offences and offenders that appeared within domestic society. Instead, government officials, educators, intellectuals, and legal experts largely attributed the rise in criminality to the lack of a stable and cohesive family structure to debates about an individual's social environment. In particular, they emphasised that the outbreak of war had ruptured the stability and structure that had traditionally been offered through family life as the root cause of social

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<sup>44</sup> 張少微 [Zhang Shaowei], "童犯查驗制度研究" [Research on the Investigation System of Child Offenders], 光華大學半月刊 [Guanghua University Bi-Monthly], vol. 7 (1937): 45-49; "兒童犯罪問題" [The Problem With Child Offenders], 申報 [Shanghai Daily] (10 December 1939); Yong Zebang and He Mingjie, "少年犯罪的原因與對策" [Causes of Youth Crime and Countermeasures], 天下事 [Matters Under Heaven], vols. 3-6 (1940): 247-48.

<sup>45</sup> Cesare Lombroso, *L'Uomo Delinquente* [The Criminal Man] (Milan: Hoepli, 1876) and *Crime, causes et remèdes* [Crime and its Causes] Trans. Henry P. Horton (Montclair, NJ: Patterson Smith, 1911).

<sup>46</sup> *Ibid.*

deviance. The outbreak of the war further reinforced this theory as wartime conditions caused children to lose their conventional agencies of socialisation early on in their lives.

Educators strongly believed that a stable familial structure was the key to preventing children from engaging in morally transgressive and socially deviant behaviour. Without a healthy familial structure, it would be difficult for children to learn the proper social norms of behaviour that would be expected of them within Chinese society.<sup>47</sup>

Wartime conditions thus dramatically altered many of the prevailing notions of the nuclear family (*xiao jiating* 小家庭) and the big family (*da jiating* 大家庭) that had existed in Chinese society up until this point. Shifts in the overall structure and composition of families brought about a reassessment of how kinship relations had been understood during the Republican period and also in the way in which criminality and anti-social behaviour became seen as cause for moral concern.<sup>48</sup>

For instance, less than a year after the outbreak of total war, Zhao Chen 趙琛, one of the founding fathers of the New School of Penology, contended that an unprecedented rise in the number of criminal and juvenile offenders during the wartime period was due to the deterioration of social conditions found in China.<sup>49</sup> He wrote:

Ever since the end of World War I, due to rapid socio-economic changes, social panic (*shehui konghuang* 社會恐慌), and a rise in unemployment, the number of juveniles who have committed crimes has steadily increased. [...] After World War I, we can see a significant rise in the number of criminal offenders in every country. Yet, juveniles who are neither being educated nor nurtured are in danger of falling between the cracks and forced into a life of crime.<sup>50</sup>

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<sup>47</sup> Fei Zhenqiu, “兒童犯罪與家庭” [Children’s Offences and Family], 教戰 [Teaching War], vol. 5-6 (1941): 4-6.

<sup>48</sup> Liu Zhenrui, “中國家庭與犯罪少年” [Chinese Families and Juvenile Offenders], 家 [Family], vol. 20 (1947): 307-08

<sup>49</sup> 趙琛 [Zhao Chen], “少年犯罪之刑事政策” [A Criminal Policy for Youth Offenders] (Shanghai: Shangwu Publishing, 1938), 5.

<sup>50</sup> *Ibid.*, pp. 6 and 10.

Zhao Chen was a pioneer of criminal law and arguably the first Chinese legal expert on juvenile delinquency in China.<sup>51</sup> Educated in China and later Japan, he obtained a masters degree in law from Meiji University in 1923 and was widely recognised as one of the founding fathers of China's New School of Penology. In 1924, he joined Chiang Kai-shek's Nationalist Party as a full member and in 1933, Zhao's legal expertise in criminal justice led him to be appointed as a member of the Committee on Criminal Law (*xingfa weiyuan hui* 刑法委員會) for the Legislative Yuan (*lifayuan* 立法院) of Chiang Kai-shek's Nationalist Government.<sup>52</sup>

Although Zhao's comments in this 1938 article, did not garner significant attention at the time it was published, it was later recognised as one of the seminal pieces on the formation and development of a criminal policy towards juvenile offenders in Chinese society in Republican China.<sup>53</sup> In particular, because many of the views espoused by those who belonged to the New School of Penology reflected the personal experiences of Chinese legal scholars with government officials, their writings thus captured the gravity of the problem of criminality, especially with respect to the problem of juvenile delinquency, which had long pervaded Chinese society.<sup>54</sup>

The range in ideas about children and criminality during the Nanjing decade, coupled with the disruptive nature of war, therefore prompted the appearance of new characters associated with the figure of the child. In particular, widespread recognition of juvenile delinquency as a new social problem was no longer associated with poor parenting or an unstable familial environment.<sup>55</sup> In this regard, the years leading up to the outbreak of total war was also important to bringing about shifts in conceptions and ideas

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<sup>51</sup> AHA 1280018800001A – 個人史料: 趙琛 [Personal Files of Zhao Chen]

<sup>52</sup> Zhao's appointment was made by Yun Yi (韻逸) of Changxia. See: 趙琛法學論著選 [Selections from Zhao Chen's Writings on Legal Studies]. He Donghua and Yao Jianlong, eds. (Beijing: China University of Political Science and Law University Press, 2006), 1.

<sup>53</sup> Ibid., pp. 2-3.

<sup>54</sup> AHA 1280018800001A – 個人史料: 趙琛 [Personal Files of Zhao Chen]

<sup>55</sup> Zhou Han, 問題兒童研究 [Research on Problem Children] (Beijing: Zhonghua shuju, 1938).

about children and childhood as well as, the way in which the Chinese public had envisioned the place of children within society.

### **EXPLAINING THE PROBLEM CHILD**

As the number of criminal and socially deviant acts involving juveniles began to increase within domestic society, this rise became tied to a series of “crime waves” (*fanzui bolang* 犯罪波浪) that appeared during the end of the Nanjing decade and into the wartime period.<sup>56</sup> A proliferation in public discussions about criminality and acts of social deviance involving children during this period produced a space for the recognition of behavioural, social, and learning problems in children, which subsequently gave rise to the importation of the term “problem child” (*wenti ertong* 問題兒童) within Chinese discourse.<sup>57</sup>

Generally speaking, problem children were believed to be those who opposed the rules of social conduct that determined the social and cultural norms of behaviour for children within society. The Chinese believed that anti-social behaviour seen within children were considered “unnatural” (*bu ziran* 不自然) and acts such as hysteria, temper tantrums, childish behaviour, and defiance against authority, were all indications of behavioural problems that were characteristic of a “problem child.”<sup>58</sup> After the outbreak of war, parents, educators, and intellectuals began to appropriate the term “problem child” throughout public discourse as a means to characterise children who did not fit the mould of the “ideal child.”<sup>59</sup> Inexplicable behavioural problems, which went beyond those that

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<sup>56</sup> Yin Peizheng, 問題兒童之心理衛生 [The Mental Hygiene of Problem Children] (Shanghai: Shangwu Publishing House, 1942): 4.

<sup>57</sup> Ibid., pp. 6-7.

<sup>58</sup> Ibid., pp. 7-8.

<sup>59</sup> Zhu Jingjian and Zhang Dashan, 問題兒童善導法 [A Positive Way to Guiding Problem Children] (Beijing: Zhengzong Bookstore, 1938).

were characteristic of a problem child, were regarded as “psychological illnesses” that would not be tolerated within Chinese society.<sup>60</sup>

As Vivienne Ng has shown, attempts to regulate social behaviour within Chinese society were not a new phenomenon. The Qing government had previously sought to regulate anti-social behaviour and criminalise mental illness as a form of social deviance and social control during the imperial period, and such beliefs and practices carried into the Republican period.<sup>61</sup> Moreover, through an analysis of the criminalisation of various social problems such as sex, poverty, or prostitution, many scholarly works on the Republican period have also sought to demonstrate how late imperial to early twentieth-century China was a period for which the state actively played a role in regulating social behavior amongst civilians.<sup>62</sup>

The act of labelling children with behavioural problems as “problem children” in Republican China lent itself to further stratifications within the broader category of juvenile delinquency. As a result, the emergence of terms such as “child offender” (*tongfan* 童犯) and “youth offender” (*shaonian fan* 少年犯) became widely used and appropriated within public discourse during the wartime period, which further underscored the issue of criminality as a pervasive problem within Chinese society. However, it was not only these various forms of juvenile delinquency that became a cause for concern within Chinese society; rather, the widespread appearance of anti-social behaviour amongst Chinese children became seen as a bigger “social problem” (*shehui*

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<sup>60</sup> Ibid., p. 9.

<sup>61</sup> Vivienne Ng, *Madness in Late Imperial China: From Illness to Deviance* (Norman, OU: University of Oklahoma Press, 1990).

<sup>62</sup> Gail Hershatter, *Dangerous Pleasures: Prostitution and Modernity in 20th-Century Shanghai*; Sommer, *Sex, Law, and Society in Late Imperial China* (Berkeley: University of California Press, 1999); Janet Chen, *Guilty of Indigence: The Urban Poor in China, 1900-1953* (Princeton: Princeton University Press, 2012, forthcoming) Frederic E. Wakeman, Jr., *Policing Shanghai, 1927-1937* (Berkeley: University of California Press, 1996) and “Urban Controls in Urban Shanghai,” in Wen-hsin Yeh, ed. *Wartime Shanghai* (New York: Routledge, 1998), 139-60.

wenti 社會問題) within wartime society.<sup>63</sup> For instance, in order to mobilise the civilian population to care for children who had been socially displaced as a result of the outbreak of war, the following image was circulated by Chiang Kai-shek's Nationalist Government to the general public. (Figure 2) The text accompanying this image had stated that if socially displaced children were not helped, they would engage in harmful behaviour (*buliang xingwei* 不良行爲) and thus threaten the overall stability of domestic society.



**FIGURE 2**  
**伸出“援助”的手来! [Lend a Helping Hand!]**  
抗戰漫畫 [War of Resistance Cartoons] Vol. 9 (1 May 1938)

As the outbreak of the war threatened to further destabilise domestic society, parents, educators, and intellectuals began to also call into question the concept of “mental hygiene” (*xinli weisheng* 心理衛生) within children. Ideas about mental hygiene were originally derived from such notions put forward during the New Life Movement and seen as the fundamental basis for the construction of a harmonious society. Such ideas about one's “spirit” (*jingshen* 精神) or its contamination were be deployed in the 1940s by Chiang Kai-shek's Nationalist Government in their spiritual civilisation

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<sup>63</sup> Xu Shilian, 國內幾個社會問題 [On Several Domestic Social Problems]. (Beijing: Pushe, 1929)

movement (*jingshen yundong* 精神運動).<sup>64</sup> However, within public discourse, concerns over a child's "mental hygiene" was more commonly understood as the contamination or corruption of moral virtues within children, which was widely believed at the time to be one the contributing factors that led to an unprecedented increase in the number of juvenile offenders that appeared within wartime society.<sup>65</sup>

### FEARING SOCIALLY DISPLACED CHILDREN

As these ideas about juvenile delinquency and anti-social behavior began to dominate discussions about children within public discourse, the appearance of socially displaced children within domestic society after the outbreak of war became another way in which ideas and representations of children were contested. As reflected in the image above, socially displaced children in particular, incited grave concerns for both Chiang Kai-shek's Nationalist Government and the wider Chinese public. This is because it was believed that their lack of social and familial ties left them more vulnerable to exploitation and social deviance.<sup>66</sup> Moreover, as M. Colette Plum has argued that socially displaced children were also feared by the public and officials because they were seen to pose a potential threat to the stability and future of the Chinese nation.<sup>67</sup>

However, she contended that despite these concerns, childhood was also "celebrated in a laudatory way, and children were held as ideal leaders" during the wartime period.<sup>68</sup> More specifically, the representational value of socially displaced children became an important rallying point for both the Nationalists and Communists

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<sup>64</sup> Sun Qi, "問題兒童的心理衛生問題" [The Mental Hygiene Problem of Problem Children], 現代讀物 [Modern Reading Materials], vol. 3-4 (1943): 10-14; Zhang Shaowei, 兒童社會問題 [The Social Problem of Children] (Dongbei: Wentong Bookstore, 1941).

<sup>65</sup> Wang Zhenhui, 國民戰時心理衛生 [The Mental Hygiene of People in Wartime] (Shanghai: Shangwu Publishing, 1946): 28-45; 56-69.

<sup>66</sup> "兒童的犯罪問題" [The Problem of Children's Crimes], 申報 [Shanghai Daily] (10 December 1939)

<sup>67</sup> Plum, "Unlikely Heirs: War Orphans During the Second Sino-Japanese War, 1937-1945."

<sup>68</sup> *Ibid.*, p. 5.

during the wartime period, and served to redefine refugee children (*nantong* 難童) into “a potent cultural symbol as they were granted their own distinctive clarion infused within nationalist ideology.”<sup>69</sup> As Plum further noted:

The reality was that most child refugees did not know whether or not they had surviving parents, because they were often abandoned or separated from their parents, and were uncertain about the fate of their families. As such, they were treated as orphans, without the care or influence of their parents or families in need of replacement caregivers, and perhaps most importantly, available for appropriation by others.<sup>70</sup>

It is difficult to determine exactly how many socially displaced children there were during the wartime period. Refugee children were especially difficult to account for under wartime conditions because they were treated as part of a transient population that also included beggars, the homeless, prostitutes, adult refugees, and criminal offenders. This transient population was often ignored by government officials or deemed as social outcasts by the public because of their lack of social standing.<sup>71</sup> The following is one set of statistics that documented the number of refugee children from 1939 to 1944. These statistics were released by the National Relief Commission to the Statistical Bureau of the General Accounting Bureau of the National Government (*guomin zhengfu zhu ji chu tongji ju* 國民政府主計處統計局).<sup>72</sup> (Chart 1)

**CHART 1:  
NUMBER OF REFUGEE CHILDREN UNDER THE CARE OF THE  
NATIONAL RELIEF COMMISSION (IN ORPHANAGES) (1939-1944)**<sup>73</sup>

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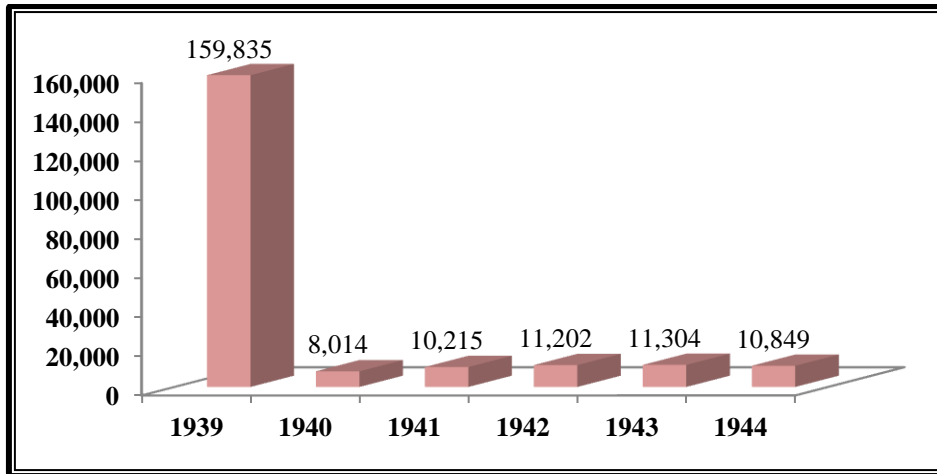
<sup>69</sup> Ibid., p. 15.

<sup>70</sup> Ibid., p. 6.

<sup>71</sup> For representations on the trope of homeless children, see: Weimin Mo and Wenju Shen, “Sanmao, the Vagrant: Homeless Children of Yesterday and Today,” *Children’s Literature Education* 37, (2006): 267-85.

<sup>72</sup> 中華民國統計提要：三十四年度 [Summary of Statistics for the Republic of China: 1945] Compiled by 國民政府主計處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 126. Hereafter abbreviated as “1945 National Statistics.”

<sup>73</sup> Ibid.



The above chart reflects the official statistics for the number of refugee children under the care of the National Relief Commission from 1939 to 1944, which were recorded and circulated amongst the various administrative bureaus within Chiang Kai-Shek's Nationalist Government at the time. The chart shows a significant decline in the number of refugee children under the care of the National Relief Commission after 1939 but it is difficult to ascertain the exact cause for this decline. However, it has been suggested that these were also the years that witnessed an increase in the number of welfare services provided by foreign organisations and missionaries.<sup>74</sup>

The statistics presented here however are not representative of the exceedingly large number of socially displaced children unaccounted for in wartime China. Instead, they merely reflected one set of statistics that were recorded during the wartime period. The numbers moreover, do not account for the large number of socially displaced children who did not receive any form of care or assistance from government-sponsored orphanages or relief institutions. Despite its possible inaccuracies, these were the approved figures that high-level officials within Chiang Kai-shek's Nationalist Government saw and believed at the time were the number of refugee children present within domestic society during the wartime period.

<sup>74</sup> Norman D. Apter, "From Charity to Welfare: Restructuring Child Relief in the Early People's Republic of China," Presented at the Association for Asian Studies Annual Meeting, Chicago, IL, March 2009.

In response to concerns over anti-social behaviour that appeared within domestic society, Chiang Kai-shek's Nationalist Government implemented several welfare measures to prevent "the occurrence of harmful behaviour from appearing" (*buliang de xianxiang fasheng* 不良的現象發生) during the wartime period.<sup>75</sup> These measures included provisions to establish more orphanages and child relief centres, which were a reflection of early efforts by government officials in Chiang Kai-shek's Nationalist Government to develop social policies that were aimed at addressing some of broader issues that affected children.

Despite these measures, the relative ease in the dissemination of information within the public sphere in Republican China was also responsible for propagating the image that socially displaced children were morally corrupt and more likely to engage in socially deviant activities. For instance, such perceptions were not limited to only newspapers that operated in Nationalist-controlled areas. For example, the Communist newspaper, the *New Chinese Daily* (新中華日報) wrote:

Children, who were socially-displaced as a result of the war roamed around the streets of Shanghai, stealing from shops on Nanjing Road, and were then sent to court. This is not to mention those children who were neither caught nor punished for their actions, or those acting outside the purview of the law. Oh, what heinous crimes they may have committed!<sup>76</sup>

As this chapter has shown, the figure of the child was discussed, represented, and appropriated in a number of different ways in Republican China. Ideas and representations of children were not consistent during the Republican period and although the outbreak of total war in 1937 prompted a re-imagining of the figure of the child, many of the ideas associated with juvenile delinquency and anti-social behaviour co-existed alongside other representations of children throughout the Republican period.

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<sup>75</sup> KMT 507/191 - 戰時兒童保育 [Welfare for Wartime Children] (28 February 1939), p. 17.

<sup>76</sup> No author, "保育我們後代的戰士" [Protect Our Next Generation's Fighters], 新中華日報 [New Chinese Daily] (5 October 1939)

The next section will situate how the figure of the child was re-imagined in different strands of wartime discourse whilst also locating its importance in the range of representations and ideas of children and children presented here. This is important because together, they captured the wider discursive, social, and political contexts of Republican China that served to generate and shape such ideas and norms about children and childhood within Chinese society.

**CHAPTER TWO**  
**THE LEGAL TREATMENT OF THE YOUNG:**  
**NEGOTIATING LEGAL AND MORAL AMBIGUITIES**

...

As the previous chapter has shown, the wider discursive, social, and political contexts of Republican China were highly significant to the shaping of ideas about children and criminality during this period. The recognition of juvenile delinquency, in the form of various types of anti-social behaviour, drew attention to the range of ideas associated with children and criminality in the years leading up to the outbreak of war and during the wartime period.

Before proceeding to an analysis of how ideas of children and criminality were reshaped under wartime conditions, this chapter offers a historical analysis of the changes that took place within the legal system from the imperial to the Republican periods. In particular, it focuses on the legal and moral ambiguities within the 1935 revised Criminal Code for the treatment of the young. This is necessary because in order to understand how the outbreak of war served as a crucial catalyst to the construction of a new judicial and legal framework towards children, the importance of juveniles must first be located within the context of law and the changes that were taking place within the criminal justice system at the time.

...

**LOCATING THE PLACE OF LAW IN CHINESE SOCIETY**

....

Since imperial times, many have believed that Confucian values such as filial piety, respect for the aged, and female chastity were necessary to the creation and maintenance of a stable and authority-abiding society. Although the contention between the “rule of law” (*fazhi* 法制) and the “rule of man” (*renzhi* 人治) dated back to the fourth century BCE, these were commonly invoked categories within Chinese political

discourse in early Republican China.<sup>1</sup> The belief in the longstanding tradition of the “Confucianisation of law” contended that if law is employed by the state, then it should be used to promote Confucian values, as well as maintain order.<sup>2</sup>

On the one hand, such ideas about law and morality became expressly linked to the hierarchal structure of the Chinese family, especially with regards to the social status of children.<sup>3</sup> On the other hand, Legalists insisted that the proper function of a ruler was not to serve his people but to create and maintain a strong state. Toward this end, it was the responsibility of the governing authorities to rely on a rule of law to handle its people.<sup>4</sup>

The combining of both schools of thought in late imperial China resulted in the use of law to promote ideas of morality rooted in the Confucian discourse but a subsequent adoption of the Legalist position meant that punishment was also used to discourage and penalise deviant behaviour. Elements of the modernisation project implemented by Chiang Kai-shek’s Nationalist Government during the Nanjing decade therefore reflected a combination of both traditions, as law became recognised as not only a potent tool for social engineering but also as a means to instil normative values that would reflect a modernised and orderly society. As Chiang Kai-shek’s Nationalist Government wrestled with the tensions between what was necessary for a successful legal and political regime in the 1920s and 30s - good men or good laws - the outbreak of total war only further challenged efforts toward maintaining this balance.

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<sup>1</sup> Leigh K. Jenco, “Rule by Man” and “Rule by Law” in Early Republican China: Contributions to a Theoretical Debate,” *The Journal of Asian Studies* 69, no. 1 (February 2010): 181-203.

<sup>2</sup> Randall Peerenboom, *China’s Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2000), 27-125.

<sup>3</sup> Richard J. Smith, *China’s Cultural Heritage: The Ch’ing Dynasty, 1644-1912* (Boulder, CO: Westview Press, 1983), 65-67.

<sup>4</sup> Fu-mei Chang Chen, “On Analogy in Ch’ing Law,” *Harvard Journal of Asiatic Studies* 30 (1970): 213.

•••  
**RE-LOCATING THE PLACE OF LAW IN REPUBLICAN CHINA**  
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In order to underscore the significance of the outbreak of war to the development of law within Chinese society during the Republican period, one of the goals of this study is to challenge the ways in which the Chinese legal system and criminal justice process has thus far been most commonly portrayed in the West and understood by scholars. The current body of scholarship in the field of modern Chinese studies has largely dismissed the importance of history in China's legal trajectory.<sup>5</sup> Although some of the literature that examine criminal law and ideas of juvenile justice in China after 1949 has attempted to take into account the significance of historical developments over time, particularly with reference to the Ming and Qing Codes, there is still very limited understanding about the intersections between law and society in Republican China, which specifically focuses on the wartime period.<sup>6</sup> Yet, without the outbreak of the war, which fundamentally re-shaped the political, judicial, economic, and social landscapes of twentieth-century China, the country's legal system would not have taken its current form.

Western legal scholarship that examine the development of juvenile justice in the twentieth century has largely disregarded the significance of China, mainly because it is still widely believed to be a country without a Western-based rule of law.<sup>7</sup> However, as some of the leading scholars of the American and European legal systems have noted,

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<sup>5</sup> Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien, eds. *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005); See Special Issue: "Crime and Criminal Justice in China: The Current Knowledge Base and Prospects for Future Research," *Crime, Law and Social Change* 50, no. 3 (Oct., 2008).

<sup>6</sup> William Alford, "Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China," *California Law Review* 72, no. 6 (Dec., 1984): 1180-1256; Klaus Mühlhahn, *Criminal Justice: A History in China* (Cambridge: Harvard University Press, 2009); William P. Alford and Shen Yuanyuan, "Law, Law, What Law? Why Western Scholars of Chinese History and Society Have Not Had More to Say About Its Law," *Modern China* 23, no. 4 (Oct., 1997): 298-319; Hsia Tao-tai, "Wartime Judicial Reform in China," in *China's Bitter Victory: The War with Japan, 1947-1945*. Eds. James C. Hsing and Steven I. Levine, (New York: ME Sharpe, 1992): 275-94.

<sup>7</sup> Rosenheim, Zimring, Tanenhaus, and Dohm, eds. *A Century of Juvenile Justice*; Elizabeth Scott and Laurence Steinberg, *Rethinking Juvenile Justice* (Cambridge, Mass.: Harvard University Press, 2010).

“one cannot have a comprehensive knowledge of juvenile justice without some awareness of how different nations and cultures have adopted the juvenile court and its auxiliary institutions.”<sup>8</sup> However, such efforts to attain a comparative understanding of juvenile justice have not yet materialised and knowledge of the Chinese judicial system therefore continues to be relegated within this scholarly preconception.

Despite historical influences from the United States, France, Germany, and Japan at the turn of the twentieth century, much of the scholarship on Chinese legal history has focused on the development of law in contemporary China (post-1978).<sup>9</sup> Although the PRC did not develop a formal juvenile justice system until after the country’s reform and opening in 1978, this study underscores the importance of the wartime period in shaping the development of China’s juvenile justice law within its criminal justice system in the contemporary period.

As the findings suggest, continuities from the Republican period in the transmission of ideas about law and children were evidenced in the PRC’s adoption of several key elements after 1949. This ranged from the preservation of several articles and provisions from the 1935 revised Criminal Code to the borrowing of several policy initiatives for the handling of criminal offenders from the wartime period.<sup>10</sup> Archival materials from the wartime and post-war periods of Chiang Kai-shek’s Nationalist Government outlined substantial plans for the country’s movement towards a rule of law and the gradual formation of a juvenile justice system. In particular, these plans included measures to construct a youth prison in every province, increase the number of reform

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<sup>8</sup> Ibid., p. xv.

<sup>9</sup> Lening Zhang, “Juvenile Delinquency and Justice in Contemporary China: A Critical Review of the Literature over 15 Years,” *Crime, Law and Social Change* 50, no. 3 Special Issue: “Crime and Criminal Justice in China: The Current Knowledge Base and Prospects for Future Research” (Oct., 2008): 149-60.

<sup>10</sup> Guolin Zhao, “The Recent Development of Juvenile Justice in China,” in Jianhong Liu, Lening Zhang, and Steven F. Messner, eds. *Crime and Social Control in a Changing China*. Westport, CT: Westport (2001): 177-88.

institutions specifically tailored for juveniles, and the establishment of China's first juvenile court.<sup>11</sup> Efforts towards the establishment of a Western-based rule of law in China after 1978 can therefore be traced back to many of the measures and policy initiatives that were put forward during the wartime period.

Although the plans set out by Chiang Kai-shek's Nationalist Government never came into fruition because of the outcome of the Civil War between the Nationalists and Communists, the war years marked an important period of transition and transformation for China's judicial landscape, as new legal norms were formed and ideas of social justice were being tested. The end of the Civil War resulted in the retreat of Chiang Kai-shek's Nationalist Party to Taiwan, coupled with the rise of the Communist Party and the formation of the PRC in 1949. As a result, China's historical trajectory was interrupted and the presumed linearity in the country's path towards legal reform and the development of a western-influenced legal system never came about.

From the national to the local levels, the judicial landscape of Republican China was slowly being reshaped through changes that were embodied in the fabric of everyday social and cultural practices of Chinese society. The disruptive nature of wartime conditions not only brought about new ways to understand ideas of children and criminality but it also changed the place and function of law within Chinese society. The sources referenced in this study therefore captured many of the intricacies and judicial challenges that confronted China in the first half of the twentieth century. In particular, it revealed that the criminal justice process in the years leading up to and including the wartime period was a dynamic work in progress and not a frozen idea or practice limited by the constraints and biases that had been passed down from legal practices used during the imperial period.

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<sup>11</sup> KMT 000/143, pp. 7, 15, and 17 and KMT 512/24 – 戰時司法紀要 [Summary of Judicature in Wartime], Section 15, pp. 2-5.

The findings therefore suggest that during the war years, the Chinese judicial system was a structure not only capable of growth and modification, as it adapted to new challenges and emerging norms but it also displayed a significant degree of legal elasticity. Within this newly founded sphere of judicial transition – from the former imperial legal system to the introduction of Westernised legal reforms into Republican China - the outbreak of the war served as a crucial catalyst for the construction of a new judicial and legal framework towards the treatment of the young.

### **POSITIONING THE IMPORTANCE OF LAW DURING THE WARTIME PERIOD**

In considering the place of law within wartime Chinese society, this study draws upon legal and archival materials from all levels to gain a wider picture of the issue of criminality and the place of law under wartime conditions. Even though official perceptions of wartime domestic society may not have been perfectly accurate, these documents captured how the problem of criminality was represented to high-level government officials - as reported to them from those on the provincial and local levels, which were based on *their* perceptions and encounters with society on the local level. In this regard, if we understand how government officials in Chiang Kai-shek's Nationalist Government sought to handle criminal offenders and their offences on the national level, as well as the judicial process by which these criminal offenders underwent, it is then possible to read many of these documents for insight into far more than the official categories of law.

An analysis of the ways in which the Ministry of Justice of Chiang Kai-shek's Nationalist Government and the Japanese-collaborationist court in wartime Shanghai regarded the problem of criminality thus revealed that during the wartime period, these institutions operated in a state of equilibrium and control. In other words, legal

institutions were able to operate independently from the judiciary and without much political interference. This is important because this particular state of balance, between the judiciary and legal institutions, demonstrated that social changes neither affected the abilities of legal institutions to maintain an adjudication process at the ground level nor did wartime conditions prevent the judiciary from abandoning efforts towards maintaining a criminal justice process.

...  
**RE-EXAMINING THE CRIMINAL JUSTICE PROCESS**  
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Studies based on the Chinese Civil Code (revised from the Qing Code and re-drafted in 1929-1930) have shown that the development of civil law was crucial in reshaping the judicial landscape of Republican China. For instance, Philip C.C. Huang and Kathryn Bernhardt have demonstrated how Chinese society embraced the functions and benefits of civil law, utilising it to make certain gains, especially with respect to giving women greater freedom in the form of marriages, divorces, and property rights.<sup>12</sup> Legal reforms and the drafting of new provisions to the Chinese Civil Code in the Republican period therefore brought about new ways in which law interacted with domestic society, and how it would be used by the civilian population to serve individual purposes.<sup>13</sup>

The evolution of the Criminal Code however, was different from the Civil Code. Although the Criminal Code was promulgated in March 1928 and subsequently revised in 1935, the task and process of reforming China's judicial system in the first half of the twentieth century was slow, arduous, and overly bureaucratic.<sup>14</sup> The Provisional Criminal

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<sup>12</sup> Kathryn Bernhardt and Philip C.C. Huang, eds. *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 2002); Kathryn Bernhardt, *Women and Property in China, 960-1949* (Stanford: Stanford University Press, 1999).

<sup>13</sup> Huang, *Code, Custom, and Legal Practice in China: The Qing and Republic Compared*, p. 213.

<sup>14</sup> Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-century China, 1901-1937*, pp. 4- 5.

Code for the Republic of China was officially promulgated on 10 March 1912. The 1928 Code had been based on the 1912 Provisional Code with comparatively few changes, and was highly influenced by the codifications completed or undertaken in Italy, Spain, the former Soviet Union, France, and the new States created after World War I. After the establishment of Chiang Kai-shek's Nationalist Government, it promulgated the Organic Law of 4 October 1928, in which a considerable number of additional laws were compiled to complement the existing criminal code, with the expressed intention of instilling some degree of consistency that would align with the ideas and principles of the Nationalist Party.

Of the revisions and modifications that Chiang Kai-shek's Nationalist Government made to the 1912 Provisional Code and the 1928 Code, only two articles – 34 and 239 – were the subject of potent debate. Article 34 enumerated accessory punishments, and the Legislative Yuan subsequently readopted the provision in the 1928 Code by “making the deprivation of civil rights an accessory punishment and defined it as disqualification from exercising the four fundamentals of the four fundamental civic rights of Sun Yat-sen's political system, namely, election, recall, initiative, and referendum.”<sup>15</sup> The other revision was to Article 239, which pertained directly to the offence of adultery. In the 1928 Code, adultery of only the wife was punishable. Initially, the Criminal Codification Commission proposed placing both sexes on equal footing and punishing them with the same penalty. However, after much discussion, the Legislative Yuan decided to reintroduce the provision from the 1928 Code and chose to punish only the adultery of the wife and not the husband.<sup>16</sup>

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<sup>15</sup> Introduction, “1935 revised Criminal Code”

<sup>16</sup> Lisa Tran, “Sex and Equality in Republican China: The Debate Over the Adultery Law,” *Modern China* 35, no. 2 (March 2009): 191-223.

The Code was finalised and promulgated by the Legislative Yuan on 1 January 1935, and came into force six months later in July 1935. Because there were not many changes from the 1928 Code to the 1935 revised Criminal Code, the latter stood as the formal criminal code of laws used by all legal institutions after 1935 and through the wartime period. In this regard, this study has therefore used the 1935 revised Criminal Code instead of the 1928 Criminal Code as its legal reference.

Despite new developments in both the Civil and Criminal Codes during the Republican period, China was still a country that was undergoing a series of judicial reforms at the time. The guiding principles of this process included efforts toward the establishment of a rule of law, judicial independence, and the recognition of due process.<sup>17</sup> The process of judicial reforms during the Republican period is best explored by Xiaoqun Xu, in which he has attempted to show how efforts to integrate westernised legal reforms into the judicial system, such as the adoption of a jury trial, legal representation by counsel, and the separation between judicial adjudication (*sifa xingzheng* 司法行政) and judicial administration (*sifa shenpan* 司法審判), took place before and during the Nanjing decade.<sup>18</sup> Although Xu has successfully demonstrated how these reforms led China to embark on a quest towards “judicial modernity” during the Republican period, his research however, stops at 1937.<sup>19</sup> Xu’s work therefore neglects to take into account not only the continuity of how such efforts toward judicial reforms played out under wartime conditions but it also fails to consider the broader implications that judicial reforms had on ordinary civilians who were subjected to such changes after the outbreak of war.

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<sup>17</sup> Ibid., p. 3.

<sup>18</sup> Xu Xiaoqun, “The Fate of Judicial Independence,” *The China Quarterly* 149 (Mar., 1997): 3.

<sup>19</sup> Ibid.

## WAR AS A CATALYST FOR LEGAL CHANGE

Despite the tensions present in the introduction of judicial reforms during the Nanjing decade, the outbreak of war served as a crucial catalyst to changing the way in which legal concepts and ideas were presented to the general Chinese public. In particular, it brought to surface the changing functions and purposes of law within domestic society and for ordinary civilians. For instance, the bi-weekly legal journal, *Faling zhoubao* 法令周報 [Weekly Report on Decrees], which was published out of the wartime capital of Chongqing from 8 July 1937 to 30 June 1943, was founded “to educate the Chinese masses about the place of law within society.”<sup>20</sup> Written and edited by legal experts with close ties to Chiang Kai-shek’s Nationalist Government (although none of whom belonged to the New School of Penology), the purpose of the journal was to provide legal information to the general Chinese public. This included offering legal advice and information about revisions to existing laws, and introducing the general public to the enactment of new legal statutes that were put into place in response to wartime conditions (such as defining military crimes or punishment for Chinese traitors who collaborated with the Japanese).<sup>21</sup>

The production and distribution of legal journals like *Faling zhoubao* 法令周報 [Weekly Report on Decrees] was intended to introduce and educate the general Chinese public to the rule of law as a part of daily life - offering them a form of protection that had previously been denied to ordinary Chinese civilians. In an effort to reach a wider reading public and communicate the function of law to ordinary civilians, the journal devoted an entire section to “explaining legal issues” (*falü wenti jieda* 法律問題解答), which was

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<sup>20</sup> 法令周報 [Weekly Report on Decrees] (Chongqing: Dadong Bookstore, 1944-1945)

<sup>21</sup> “非常時期刑事訴訟補充條例” [Supplementary Statutes to Criminal Matters in Extraordinary Times], 法令周報 [Weekly Report on Decrees], vol. 1, no. 17 (July 1944): 1-6.

aimed at answering legal queries from the general public.<sup>22</sup> This was the only section in the entire journal that was published entirely in vernacular Chinese - a noticeable departure from the usual blend of legalese and classical Chinese verbiage that one normally found in the remainder of the journal or other publications intended for the legal community during the Republican period.

Although many of the queries featured in this section of the journal pertained to civil matters such as divorces, remarriage, and adultery, one volume concentrated on the connection between mental illness and criminal responsibility as outlined in the 1935 revised Criminal Code, and another focused on explicating the criminal appellate code.<sup>23</sup> The first volume that was published in 1944 offered an eighty-seven page explanation outlining the role and functions of the Ministry of Justice.<sup>24</sup> In the same issue, the journal also invited readers to participate in the formation of constitutional law in China. It wrote:

The Central Government has determined that from January to May of this year, this will be the period to discuss the establishment of constitutional law (*xianfa* 憲法). The People's Political Council (*guomin canzheng hui* 國民參政會) will assist the government in discussing matters regarding the implementation of a Constitution. The voices of all of the people (*quanguo renmin zhi sheng* 全國人民之聲) will be heard and asked to participate in this process.<sup>25</sup>

These efforts reflected how the war years not only served as an important period for the introduction of new legal ideas within the criminal justice system but it also marked the early stages for the development of Constitutional Law in China. The development of China's Constitution was a task that Zhang Ziben, one of Chinese legal scholars who

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<sup>22</sup> “法律問題解答” [Explanations of Legal Issues] in 法令周報 [Weekly Report on Decrees] (Chongqing: Dadong Bookstore, 1935 to 1945) See also, 戰時法規及新頒重要法規合編 [Collection of Wartime Statutes and Newly Promulgated Statutes of Importance]. Edited by Guo Wei and Ministry of Justice (1938).

<sup>23</sup> For civil matters, see: “法律問題解答” [Explanations of Legal Issues] in 法令周報 [Weekly Report on Decrees], vol. 1, no. 1 (March 1944): 27-28 and vol. 1, no. 23 (July 1944): 28-30. For matters relating to mental illness, see: vol., 16, no. 1 (month unknown, 1938): 3-4 and vol. 30, no. 2 (month unknown, 1938): 1-2.

<sup>24</sup> *Ibid.*, vol. 1, no. 1 (January 1944): 1-87.

<sup>25</sup> 法令周報：特種刑事法令傳號 [Weekly Report on Decrees: Special Issue on Particular Criminal Matters], vol. 1, no. 1 (January 1944): 1.

belonged to the New School of Penology, would later play a crucial role in the formation and execution of in the post-war period.<sup>26</sup>

It is difficult to measure to what extent such ideas espoused in the journal reached ordinary civilians. However, it would be fair to say that at a time of growing Japanese military presence and intense fighting across several regions of China, the implementation of a rule of law was favoured by not only officials in Chiang Kai-shek's Nationalist Government but also by many public intellectuals and legal experts during this period. For instance, this is evidenced in the re-publication during the wartime period of several of Hu Shih's essays, in which he had publicly advocated for the endorsement of legal reforms in China.<sup>27</sup>

Up until the founding of the new Republic, the notion that law could serve to benefit the common person was foreign to many ordinary civilians because of the way in which the law had been used by the state during the imperial period. The legal systems of the Ming and the Qing dynasties were not interested in protecting individual rights rather, they were interested in producing order. Prior to the revolution of 1911, law differentiated its treatment of people according to individual rank, relationships, and specific circumstances. Entire social groups, notably the officials, enjoyed special legal privileges differentiating these groups from commoners.<sup>28</sup> Abuse of special legal privileges under the imperial legal system led to widespread distrust and apprehension about the function of law within Chinese society. As such, an ordinary person's misgivings about the legal system in Republican China were therefore not unfounded.

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<sup>26</sup> Stéphanie Balme and Michael W. Dowdle, *Building Constitutionalism in China* (Basingstoke: Palgrave Macmillan, 2009).

<sup>27</sup> Hu Shih, "人權與約法" [Human Rights and the Provisional Constitution], in Liang Shiqiu, et al, eds., 人權論集 [Essays on Human Rights] (Shanghai, 1930). Wen-hsin Yeh, "Discourses of Dissent in Post-Imperial China," in William C. Kirby, ed., *Realms of Freedom in Modern China* (Stanford: Stanford University Press, 2004): 165-97.

<sup>28</sup> Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Philadelphia: University of Pennsylvania Press, 1973).

The remainder of the chapter will discuss how the change from an imperial penal system to a revised Criminal Code in the new Republic brought about changes in not only how law interacted with domestic society but also the way in which the roles of the judiciary and legal institutions became viewed in the eyes of the public; namely, that law could further the interests of individuals, rather than that of only the state. In particular, the latter half of this chapter concentrates on how the young were regarded under the imperial legal codes and the 1935 revised Criminal Code, respectively. Such an analysis is important because in order to understand the relationship between codified law and law in practice, it is necessary to examine the intersections between how legal systems, ethical systems, and daily life intertwined in Republican China.

...  
**THE LEGAL TREATMENT OF THE YOUNG  
IN IMPERIAL TIMES**  
....

Despite the various conceptions of children and childhood that appeared during imperial and Republican periods, in the eyes of the law, the path from childhood to adulthood had conventionally been treated as a process - a transitional period of becoming rather than a state of being. Under the imperial legal system, children did not form a legal class of their own.<sup>29</sup> In imperial China, the young, aged, and infirm shared the same legal status: they were “non-able-bodied persons” in the eyes of the law. This was because it was believed that the moral and intellectual abilities of the child were not yet fully formed and those of the aged and the infirm had deteriorated.<sup>30</sup>

In imperial times, there was no official legal age of adulthood. However, according to the Ming and Tang Codes, moral culpability began at fifteen *sui*, which

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<sup>29</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” p. 682.

<sup>30</sup> *Ibid.* On similar grounds, the *raison d’être* of Article 18 in the 1935 revised Criminal Code, which stipulated the legal age of adulthood as eighteen *sui*, also specified that any person over eighty *sui* could not be held legally responsible for his or her actions. Moreover, Articles 19 and 20 were reserved to protect the infirm, which included those who were deemed insane, feeble-minded, deaf, or dumb, and could petition for a reduction in sentence or nullification of punishment.

signified the attainment of adulthood, and seven, ten, and fifteen *sui* represented the three major transitions of childhood.<sup>31</sup> Legally under the Tang Code, any person who had not reached seven *sui* could not be executed regardless of the offence.<sup>32</sup> Any person who was over eight *sui* but had not reached ten *sui*, and committed an offence that would normally have warranted the death penalty could petition for a remission of the sentence.<sup>33</sup> Offenders between eleven and fifteen *sui* were held to stricter standards than those who were younger because it was believed that they would have a firmer understanding of moral values, although judicial discretion could still also be exercised. Once an individual reached fifteen *sui*, he or she would be held to morally culpable for any offences without consideration for petition of a remission of sentence.

Despite differences in beliefs and conceptions over how the law should treat the young under the imperial legal system, the Ming and Qing Codes preserved many of these distinctions in their general legal structure. Certain offences were particularly difficult for courts to consider and the offence of homicide was perhaps one of the most problematic for judges in imperial China to adjudicate. For the offence of homicide, the Ming Code explicitly stated that any individual between eleven and fifteen *sui*, who had committed the offence of murder, would be tried under the same statutes that pertained to an adult.<sup>34</sup> However, under the Qing Code, this provision was revised so that any person who had not reached seven *sui* at the time of the offence could petition for remission of punishment for committing an act of murder.

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<sup>31</sup> Waltner, "The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law," pp. 681-82.

<sup>32</sup> Wallace Johnson, *The T'ang Code* (Princeton: Princeton University Press, 1979), 1: 175.

<sup>33</sup> Ernest Alabaster, *Notes and Commentaries in Chinese Criminal Law* [1899] (Taipei: Chengwen Publishing Co., 1968), pp. 99-103.

<sup>34</sup> 大明律 [The Code of the Great Ming Dynasty] (Beijing: Falu kuan, 1908), 1/55b.

## THE INTRODUCTION OF SPECIAL LEGAL PRIVILEGES FOR THE YOUNG

Under the imperial legal system, the adjudication of criminal cases involving juveniles was largely predicated on an overwhelming emphasis of hierarchical differentiations, which had largely been characterised by an adherence to Confucian social thinking. As Derk Bodde wrote,

Probably, the most conspicuous single Confucian influence on imperial Chinese law is the principle of legalised inequality. [...] Nowhere as much as in pre-republican China, however, has the principle of legalised differentiation according to rank, relationship, and specific circumstance been so deliberately, systematically, and conspicuously enshrined.<sup>35</sup>

In imperial times, punishments for individuals graduated according to the social status of the wrongdoer and his or her victim, where social and familial hierarchy was heavily stressed.<sup>36</sup>

However, changes from the Ming to the Qing Codes in determining the age of criminal liability for offences prompted the introduction of “special legal privileges” for the young within the imperial legal system. The application of special legal privileges had not been widely exercised before the Qing period. Under the Qing Code, a person between eight and ten *sui* could claim “special legal privileges” for remission of punishment for having committed a criminal offence. However, this remission could be requested only if the victim was four or more years older than the offender and if the act occurred in the course of an affray.<sup>37</sup> If the difference in age was of three years or less, the offender could be executed regardless of his or her privileged status as a juvenile.

Conversely, because philosophically it was believed that any individual between eleven and fifteen *sui* would have developed some degree of moral cognisance, an offender who fell between this age range could also claim “special legal privilege,” only if he or she was four or more years younger than the victim and if the victim had

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<sup>35</sup> Bodde, “Age, Youth, and Infirmary in the Law of Ch’ing China,” p. 437.

<sup>36</sup> Ibid.

<sup>37</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” p. 681.

provoked him.<sup>38</sup> Despite this legal provision, as Ernest Alabaster has noted, petitions for remission of sentences were seldom granted. Instead, Alabaster found that during the Qing period, the crucial determinant of whether or not petitions for remission of sentences were granted was based on “common sense,” as determined by the judges, and not necessarily contingent upon a rigid formula of legal standards.<sup>39</sup>

In this regard, because petitions for remission of sentences or clemency for the young were not strictly based on the benevolence of the court or the presumption of innocence for children, this would suggest that even under the imperial legal system, mitigating circumstances were taken into serious consideration in rendering an offender’s sentence. For instance, as Nancy Park has noted in her study on the law of torture in imperial China, special legal treatment was shown for the aged, young, and the infirm out of humanitarian concern for the weaker members of society.<sup>40</sup> This was a sign of the Qing Code’s consideration of their privileged status under law, and emphasis on clemency and compassion within the law therefore reflected the judicial objectives of the Qing lawmakers.

Despite provisions within the imperial legal codes for the young, as Ann Waltner has noted, it was widely believed during the imperial period that children were not innocent, they were simply uninformed.<sup>41</sup> In this regard, despite differences within the imperial legal codes on the treatment of offenders, which were highly based on an individual’s social status, family background, or wealth at the time, from a legal perspective, these codes remained consistent in their overall treatment of the young. Children were granted special legal privileges, even if the application of such privileges

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<sup>38</sup> Bodde, “Age, Youth, and Infirmary in the Law of Ch’ing China,” p. 449.

<sup>39</sup> Alabaster, *Notes and Commentaries in Chinese Criminal Law* [1899], p. 101.

<sup>40</sup> Nancy Park, “Imperial Chinese Justice and the Law of Torture,” *Late Imperial China* 29, no. 2 (Dec., 2008): 49.

<sup>41</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” pp. 681-82.

was not explicitly stated. Punishment for their offences would therefore commensurate with their degree of moral formation. In this regard, the moral status of a child during the imperial period was not legally determined by his or her presumed “innocence;” rather the development of an individual’s physical and mental faculties served as the determining criteria when judging the actions of the young.<sup>42</sup>

### **PHILOSOPHICAL INTERPRETATIONS OF THE DEVELOPMENTAL CYCLE**

An analysis of the Tang, Ming, and Qing codes offered a legal reading of the how the young were to be treated under the imperial legal system. However, cultural and philosophical interpretations of a person’s developmental cycle were no less important in informing legal decisions and special considerations towards the young during the imperial period. Such interpretations by philosophers and intellectuals in imperial times demonstrated that despite stipulations in the legal codes, no actual consensus or clear standard for where childhood ended and adulthood began, existed within the philosophical, moral, or social spheres. This was because many of the ideas about the phases of development about children and childhood were rooted in the cultural and social beliefs of the Confucian thinking. The lack of consensus amongst intellectuals and legal scholars over a child’s moral and legal status in imperial China therefore reflected the range in attitudes and interpretations over the different stages of moral development.

For instance, Zhang Lu Xiong, a conservative Confucian scholar argued that seven *sui* was the age when children developed a conscience and are to be taught the rudiments of the ethics of human nature.<sup>43</sup> According to this conception, a child who had not reached seven *sui* at the time of offence could not be held morally responsible for his

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<sup>42</sup> Ibid.

<sup>43</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” p. 686.

or her actions.<sup>44</sup> Ten *sui* was believed to be the point for when a child reached puberty and was therefore the age when gender roles for boys and girls could be distinguished and formalised. Fifteen *sui* was when a person's nature and inclination was clear. Even though an individual was not legally or physiologically considered as a complete person (*chengren* 成人) at fifteen *sui*, select intellectuals and legal experts during the imperial period believed that the groundwork had been laid by that age, and children could therefore be held morally responsible for one's actions.<sup>45</sup>

However, Zhang's conception of the life cycle of human development for determining the stages of childhood was not universal and contending views about the phases of human development were espoused by other intellectuals and philosophers in the imperial period as well. For instance, Huo Tao, an imperial official and Confucian moralist of the Qing period, contended that socio-moral instruction should begin as early as possible. He believed that as soon as a child could walk, the child should be taught the rudiments of filial piety, as knowing one's status and social position within the family was considered to be a fundamental principle in learning how to become a proper adult.<sup>46</sup>

The fall of the Qing dynasty and change from an imperial rule to a Republic did not change many of the legal provisions that had pertained to the young. Although the imperial penal codes had heavily favoured an individual's social status, family background, and wealth, the 1935 revised Criminal Code preserved many of the elements from the imperial codes, which had granted special legal consideration towards the young. One example of legal continuity from the imperial period into Republican China, which pertained directly to children, was the preservation of the legal provision that prohibited

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<sup>44</sup> Thomas H.C. Lee, *Education in Traditional China: A History*. Leiden: Brill (2000): 508.

<sup>45</sup> Waltner, "The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law," p. 687.

<sup>46</sup> John Dardess, "Childhood in Pre-Modern China," in *Children in Historical and Comparative Perspective: An International Handbook and Research Guide*. Eds. Joseph M. Hawes and N. Ray Hiner. New York: Greenwood (1991): 76 – 77.

the execution of the young (and the aged). Article 63 of the 1935 revised Criminal Code stated:

Sentence of death or of imprisonment for life shall not be given to an offender who has not completed the eighteenth year of his age or who has completed the eightieth year of his age. If the punishment prescribed for the offence is death or imprisonment for life, it shall be reduced.<sup>47</sup>

Despite continuities between the legal codes in the imperial and Republican periods, the issue of how to delineate the boundaries of childhood and adulthood created an area of legal and moral ambiguity within the 1935 revised Criminal Code. This is because the 1935 revised Criminal Code introduced an upper age limit for determining the legal responsibility that had not previously existed in the imperial codes.

. . .  
**DELINEATING THE BOUNDARIES OF CHILDHOOD AND ADULTHOOD  
IN THE 1935 REVISED CRIMINAL CODE**  
. . . .

According to Article 18 of the 1935 revised Criminal Code, fourteen *sui* was set as the legal age of criminal liability (*fanzui zeren* 犯罪責任) and eighteen *sui* marked the age of legal responsibility or when an individual became a “complete person” (*chengren* 成人).<sup>48</sup> Article 18 stated:

An act done by a person who has not completed the fourteenth year of his age shall not be punishable. Where the offender has completed the fourteenth year and has not completed the eighteenth year of his age, the punishment may be reduced. Where the offender has completed the eightieth year of his age, the punishment may be reduced.<sup>49</sup>

The draft criminal code had initially stipulated that criminal liability began at sixteen *sui*.<sup>50</sup> However, in the 1935 revised Criminal Code, this was lowered to fourteen *sui*.<sup>51</sup>

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<sup>47</sup> Article 63, “1935 revised Criminal Code”

<sup>48</sup> Ibid. See also, Xu Biyuan, 刑法義例總則 [Collection of Judicial Examples] (Shanghai: Zhonghua Bookstore, 1932), 70-84.

<sup>49</sup> Article 18, “1935 revised Criminal Code”

<sup>50</sup> Marinus J. Meijer, *The Introduction of Modern Criminal Law in China* (Arlington, VA: University Publications of America, 1976): 66-76.

<sup>51</sup> Article 18, “1935 revised Criminal Code.”

The lowering in the age of criminal liability was not the only change made to the 1935 revised Criminal Code, as it subsequently introduced eighteen *sui* as the age of legal responsibility. This new provision in Article 18, which stipulated eighteen *sui* as the legal standard of adulthood, had not previously existed in any of the imperial legal codes but its introduction would become an important element for the legal treatment of the young during the Republican period.

The establishment of eighteen *sui* within the 1935 revised Criminal Code as the standard of legal responsibility is highly significant because up until this point, there was no clear legal standard for determining the boundaries for when childhood ended and adulthood began. The attainment of a legal status of adulthood in Republican China however, did not necessarily imply cultural or social independence from family authority.<sup>52</sup> Culturally and socially, children were still seen as appendages of their parents and families even after they attained adulthood. Under the Qing Code, there was no legal standard for the legal age of responsibility but only guidance for how to treat the young who committed an offence, where the punishment was deemed to be death or imprisonment for life. Beyond this provision, the Qing Code did not offer any other guidance for the official treatment of the young.

The subsequent introduction of eighteen *sui* as an upper age limit to delineate the boundaries between childhood and adulthood was therefore a new addition to the 1935 revised Criminal Code, and posed new challenges for legal institutions.

The origins for using eighteen *sui* as the threshold for the age of legal responsibility within the 1935 revised Criminal Code can be traced to Japan's establishment of the Taisho Juvenile Law of 1922.<sup>53</sup> In 1890, after the promulgation of

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<sup>52</sup> Waltner, "The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law," p. 679.

<sup>53</sup> Akira Morita, "我が国に置ける少年補正の形成と転換 - 保護と責任" [The Formation and Development of Juvenile in Japan: Protection and Responsibility], in 未成年者保護法と現代社会 [Juvenile and Children's Law and Modern Society] (Tokyo: Yuhikaku, 1999): 199.

the Meiji Constitution, which provided for the separation of powers in Japan, a separate law relative to the constitution of the judiciary was enacted. Japan's previous penal code had relied heavily on the German code of 1877 and draft codes of 1908 and 1920. Although Japan's Code of Criminal Procedure of 1922 reflected its German influence, especially in its organisation, the content of the code however, retained much of its original French influence. In particular, the new 1922 code gave more rights to the accused.<sup>54</sup> It was from this revision process that Japan enacted the Juvenile Law of 1922. The law was transplanted from the United States with the passing of the 1899 Illinois Juvenile Court Act, and this created America's first juvenile court and became the model within a generation for the establishment of juvenile justice systems around the world.<sup>55</sup>

Whereas the 1935 revised Criminal Code observed the introduction of eighteen *sui* as the age for when an individual was legally regarded as an adult; conversely, the Chinese Civil Code considered twenty *sui* as the legal age of consent.<sup>56</sup> The threshold of twenty *sui* was especially important for cases involving sexual offences against girls. Defendants who were accused of having committed a sexual offence would often challenge the charges by arguing that the sexual act in question was consensual and not coerced, and therefore the offence should be treated as a civil and not criminal matter. As Philip Huang has noted, within Chinese civil law, the actions of a female could be construed as adultery, seduction, or luring, if she was unable to prove that an act of forcible rape took place.<sup>57</sup> Therefore, age became an important factor for determining legal responsibility.

In this regard, legal institutions in Republican China were charged with not only carrying out a process of adjudication for criminal offences but they were also expected to

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<sup>54</sup> Ibid.

<sup>55</sup> David S. Tanenhaus, *Juvenile Justice in the Making* (Oxford: Oxford University Press, 2004), xxiv.

<sup>56</sup> Article 20, "Chinese Civil Code"

<sup>57</sup> Huang, *Code, Custom, and Legal Practice in China: The Qing and Republic Compared*, p. 214.

uphold the standards of public morality through the defining of the legal parameters of sexual misconduct. Although the use of the threshold of twenty *sui* mainly applied to civil matters, it was not uncommon for defendants or victims to argue in criminal cases that judicial discretion be granted to anyone who had not reached twenty *sui*. This was especially the case for criminal matters that also included a civil component to it. Despite the discrepancy between the Civil and Criminal codes in Republican China, the legal age of responsibility remained as eighteen *sui* for all criminal matters and judicial discretion was seldom practiced for those between eighteen and twenty *sui*.

...  
**NEGOTIATING LEGAL AND MORAL AMBIGUITIES:  
THE LIMINAL SPACE OF RELATIVE RESPONSIBILITY**  
....

As this chapter has shown, the lack of a formal standard for the legal age of responsibility under the imperial legal system meant that in Republican China, the traditional system of “age reckoning” continued to serve as the measure for determining the legal age of responsibility. However, with the introduction of eighteen *sui* as the age of legal responsibility in the 1935 revised Criminal Code along with the pre-existing standard of fourteen *sui* as the legal age of criminal liability, offenders who fell between fourteen and eighteen *sui* thus created an area of moral and legal ambiguity for legal institutions in Republican China.

On the one hand, offenders who had already reached fourteen *sui* could not be legally treated as simply “children,” who lacked any capacity to bear moral culpability for their actions and therefore, because of their underdeveloped mental faculties and physical abilities, full deniability of any form of legal responsibility. On the other hand, the law could not regard offenders who fell between fourteen and eighteen *sui* as “adults” either, who could be expected to be fully conscious of their actions and therefore held to a specific standard of legal and moral responsibility as outlined in the law. As a result,

offenders who fell between this liminal space thus challenged the ability of the courts to determine how the law should treat the young.

Although age was still regarded as the most rudimentary way to separate children from adults during Republican period, an individual's physical development (*xingwei nengli* 行爲能力) and development of one's mental faculties (*yishi nengli* 意識能力) for determining criminal intent or motive (*fanyi* 犯意) were equally as important before the law. Concerns over the mental development of individuals in the law was exemplified in Article 19 of the 1935 revised Criminal Code, which specifically allowed a provision for clemency towards those who were deemed insane or feebleminded.<sup>58</sup>

In an effort to address the lack of clarity within the 1935 revised Criminal Code for how the law should treat the young, individuals between fourteen and eighteen *sui* therefore fell under an ambiguous category known as "relative responsibility." The concept of "relative responsibility" (*xiangdui zeren* 相對責任) was however, neither a legal concept nor legal category that was formally recognised in the 1935 revised Criminal Code. Instead, this was a concept that Chinese legal scholars and experts had borrowed and constructed based on the criminal codes of other countries around the world during this time. The construction of this legal concept could be regarded as an early attempt by Chinese scholars to demonstrate that a concept of juvenile justice existed within China's criminal justice system during the Republican period. In this respect, despite the lack of its official recognition within the 1935 revised Criminal Code, the concept of relative responsibility stood as an important legal construction that would inform the practices of the Ministry of Justice and legal institutions under Chiang Kai-shek's Nationalist Government during the Nanjing decade and the wartime period.

At the turn of the twentieth-century, the issue of how the law should treat the

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<sup>58</sup> Article 19, "1935 revised Criminal Code"

young remained a grey area for many different countries. The following four tables below outline and compare the standard of legal responsibility for juveniles in seventeen countries in the first half of the twentieth century. Due to the legal ambiguities present in Republican China, the tables do not include China at all, as it did not fit into any specific type during this period.

**TABLE A:  
TYPE 1 (ALL TYPES: NO, RELATIVELY NO, LESSER AND FULL RESPONSIBILITY)<sup>59</sup>**

Country	No Responsibility 絕對無責任	Relatively No Responsibility 相對無責任	Lesser Responsibility 減輕責任	Full Responsibility 全負責任
Russia	Under 7	7 to 14	14 to 21	Over 21
Portugal	Under 7	7 to 14	14 to 20	Over 20
Spain	Under 9	9 to 15	15 to 18	Over 18
Austria	Under 10	10 to 14	14 to 20	Over 20
Romania	Under 8	8 to 15	15 to 20	Over 20
Feudal Japan	Under 12	12 to 16	16 to 20	Over 20

**TABLE B:  
TYPE 2 (NO, RELATIVELY, AND FULL RESPONSIBILITY ONLY)<sup>60</sup>**

Country	No Responsibility 絕對無責任	Relatively No Responsibility 相對無責任	Lesser Responsibility 減輕責任	Full Responsibility 全負責任
Mexico	Under 9	9 to 14	Not Applicable	Over 14
Greece	Under 10	10 to 14	Not Applicable	Over 14
Poland	Under 10	10 to 16	Not Applicable	Over 16
Hungary	Under 12	12 to 18	Not Applicable	Over 18
Germany	Under 14	14 to 18	Not Applicable	Over 18

**TABLE C:  
TYPE 3 (NO AND FULL RESPONSIBILITY ONLY)<sup>61</sup>**

Country	No Responsibility 絕對無責任	Relatively No Responsibility 相對無責任	Lesser Responsibility 減輕責任	Full Responsibility 全負責任
Norway	Under 14	Not Applicable	Not Applicable	Over 14
Japan	Under 14	Not Applicable	Not Applicable	Over 14
Australia	Under 14	Not Applicable	Not Applicable	Over 14

<sup>59</sup> Xu Biyuan, 刑法义例总则 [Collection of Judicial Examples], pp. 74-75

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

**TABLE D:**  
**TYPE 4 (RELATIVELY NO AND FULL RESPONSIBILITY ONLY)<sup>62</sup>**

<b>Country</b>	<b>No Responsibility</b> 絕對無責任	<b>Relatively No Responsibility</b> 相對無責任	<b>Lesser Responsibility</b> 減輕責任	<b>Full Responsibility</b> 全負責任
Belgium	Not Applicable	Under 16	Not Applicable	Over 16
Luxembourg	Not Applicable	Under 16	Not Applicable	Over 16
Turkey	Not Applicable	Under 15	Not Applicable	Over 15

As illustrated in the four tables above, during the first half of the twentieth century, there was neither a universal nor clear legal standard for how the law should treat the young in judicial systems throughout the world. In comparison to how other countries attempted to understand the concept of legal responsibility, Republican China in particular, stood out as an exception.

This was because on the one hand, the existence of previous imperial codes continued to exert a significant degree of influence in China at the turn of the twentieth century, as government officials and legal scholars attempted to determine how much of the pre-existing code it wished to preserve from the imperial period. On the other hand, influences from the introduction of Westernised legal reforms into China during the Republican period meant that for certain areas within the law, which had been neglected or were non-existent up until this point. This thus opened up a new space for legal developments. The combination of this phenomenon created an opportunity for China to consider different ways to include, exclude, and revise additional laws in the 1935 revised Criminal Code to fit the needs of a developing legal system.

As this chapter has attempted to show, the China's judicial system during the Republican period was in a transitional phase lodged somewhere between the old imperial system and the introduction of legal ideas and reforms imported from the West. Although this created a unique set of circumstances and a newly founded space for legal institutions to conceptualise and shape how the law should treat the young. Because there was no

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<sup>62</sup> Ibid.

legal precedence or a clear approach to how the law should treat those who fell between fourteen and eighteen *sui* during this period, legal institutions were responsible for determining what constituted as “relative” along the spectrum of “relative responsibility” for those who occupied this liminal space.

...  
**BEYOND AGE**  
...

Although the 1935 revised Criminal Code clearly stipulated that the legal age of responsibility began at eighteen *sui*, the issue of determining legal responsibility for offenders remained ambiguous in both concept and practice. Although the question of age could be viewed as simply a form of measurement that people measure their years of life, it could also be treated as a fluid parameter by which the stages of physical, psychological, and moral development were determined.

Legally, the law defined and held an individual accountable for an offence based on a myriad of factors, of which the age of the offender was only one element taken into consideration. However, in the case of offenders who fell between fourteen and eighteen *sui*, age became one of the few objective standards by which an individual could be judged within the eyes of the law. It was therefore implied in Republican China and the 1935 revised Criminal Code that despite the unreliability of age as a determining factor for criminal offences, it would remain as a significant criterion for defining an individual’s ability to act, commit, recognise, acknowledge, and bear responsibility for any offence.

The use of age however, was not only strictly based on a conceptual understanding of the phases of development. Given the circumstances of wartime conditions it also served as a way for legal institutions to define the boundaries of childhood and adulthood in their adjudication process. Provisions within the 1935 revised Criminal Code also

allowed for the practice of judicial discretion for cases that warranted extenuating circumstances or exercise of clemency. In this regard, despite the moral and legal ambiguities present in how the law should treat those who occupied this liminal space, the law also allowed for the consideration of other factors beyond an individual's moral and psychological competency based on the developmental life cycle.

As the war intensified, concepts and standards for the legal treatment of the young began to fade into the background as other more pressing political, economic, and social issues in wartime society took precedence. However, this was not to say that juveniles were no longer engaged in criminal and socially deviant activities within domestic society during the wartime period. Instead, the way in which the law attempted to treat the young brought to light not only the fluidities between law and society under wartime conditions but it also reflected the way in which ideas and norms about children and childhood were negotiated and contested in the legal and social spheres of Republican China.

**SECTION II**  
**WAR AS A CATALYST:**  
**DISCOURSES AND PERCEPTIONS IN WARTIME**

*This section aims demonstrate how the outbreak of war served as a crucial catalyst to precipitating a shift in public understandings about children and criminality within domestic society. The goal of it is to show how wartime conditions prompted changes in discourse and perceptions on children and criminality in the public and social spheres of wartime society.*

### CHAPTER THREE REPRESENTATIONS OF CHILDREN IN WARTIME DISCOURSE

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As demonstrated in chapter one on the history of children and childhood in China, the appearance of competing ideas on and about children from the May Fourth period to the Nanjing decade demonstrated that not all discourses on and about children was or needed to be inherently pre-circumscribed within the paradigmatic image of the ideal child within Chinese society. Instead, competing understandings about children within public discourse captured the range in ideas about children and childhood that existed in Republican China and demonstrated that there was no single, definitive image that was representative of all children during this period.

This aim of this chapter is to demonstrate how the outbreak of total war in 1937 prompted a re-imagining of the figure of the child in wartime discourse. Drawing mainly upon representations of children from newspapers and periodicals in areas under the control of Chiang Kai-shek's Nationalist Government, this chapter focuses on how wartime conditions led to the militarisation of children and the recasting of motherless children within the broader wartime narrative. An examination of representations of children in Nationalist wartime discourse is important because it not only reflects the social and cultural norms of children and childhood within the public sphere at the time but it also captures how wartime conditions prompted a distinct and traceable shift of the ways in which the figure of the child was deployed and appropriated by adults within wartime print media.

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#### RE-IMAGINING THE WARTIME CHILD

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On 2 April 1939, *Shenbao* 申報 [Shanghai Daily] printed the following image in the weekly children's section of its newspaper. Upon first glance, there does not appear to

be a political message represented in this image. However, upon closer examination, the image is of two children who are dressed in military uniforms, with each holding a rifle in their hands and positioned in a combative pose. (Figure 1)



**FIGURE 1: THE PILLAR OF THE NATION**

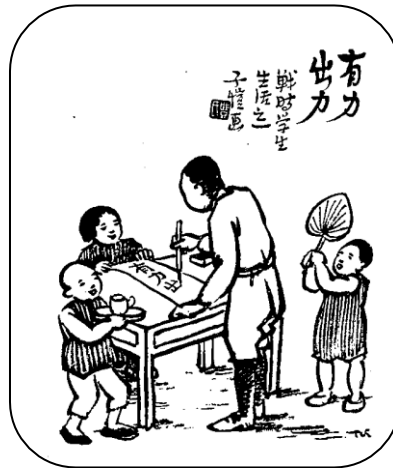
Caption: “國之棟樑” [The Pillar of the Nation]  
申報 [Shanghai Daily] (2 April 1939)<sup>1</sup>

This image captured how the outbreak of war brought about a shift in the way in which ideas on and about children became discussed, imagined, and appropriated within wartime discourse. Under wartime conditions, children became viewed as more than miniature adults, who could be moulded and appropriated to fit the needs of the nation. Instead, to adults, the outbreak of war not only robbed children of their childhoods but it also symbolically represented a loss of innocence and purity for the nation as a whole. The vulnerability that had most often been associated with children in Chinese society was now serving as a metaphor for a nation that was unable to protect its young. Representations of children in wartime print media therefore served to refract how adults saw the world surrounding them and in turn, became a screen for which adults could project the effects of war onto the figure of the child.

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<sup>1</sup> In the Hankou edition of *Shenbao* [Shanghai Daily]. For the origins and uses of 申報 [Shanghai Daily], see Barbara Mittler, *A Newspaper for China? Power, Identity, and Change in Shanghai's News Media, 1872-1912* (Cambridge, Mass.: Harvard University Asia Center, 2004).

The discursive use of the figure of the child during the wartime period also had broader implications for the way in which children were envisioned within the social and political order. Ordinary children growing up under wartime conditions began to take on new symbolic meanings, both culturally and socially. For example, the figure of the child began to serve as a recurring site for adults to express their concerns about the wider politics of culture and society. One example of this is illustrated by the following sketch that was featured in the periodical *Wartime Middle School Children* (戰時中學生 *Zhanshi zhongxuesheng*) (Figure 2).



**FIGURE 2: 有力出力 [Those Who Have Strength Can Give Strength]**

Caption: 戰時學生生活之一子懂畫 [Pictorial of What is Understood in the Life of a Wartime Student]  
 戰時中學生 [Wartime Middle School Children]  
 Vol. 1, no. 7/8 (August 1939)<sup>2</sup>

The outbreak of the war therefore provided the circumstances for the creation of a unique discursive space that adults could use to re-imagine the roles and status of children within Chinese society, applying expectations onto them that reflected their own moral imperatives and responsibilities as adults.<sup>3</sup>

<sup>2</sup> 戰時中學生 [Wartime Middle School Children] Vol. 1, no. 7/8 (August 1939)

<sup>3</sup> “非常時期兒童應用的責任” [The Responsibilities Children Should Have in these Extraordinary Times] 申報 [Shanghai Daily] (1 August 1937)

## THE MILITARISATION OF CHILDREN

As illustrated in Figure 1, the militarisation of the figure of the child in wartime discourse reflected the social conditions of the country at the time. By 1938, a discursive and linguistic shift in the way in which children were referred to in wartime discourse could be located within wartime print media. Rather than referring to children as “children” (*ertong* 兒童) in the conventional sense, newspapers and periodicals began to refer to them more broadly as “wartime children” (*zhanshi ertong* 戰時兒童) or other variations that suggested an increasingly militarised society. For instance, the following image accompanied a children’s story about a “little combatant” (*xiao zhanshi* 小戰士), who was enlisting in the military to assist with the war effort.<sup>4</sup> (Figure 3)



**FIGURE 3: 請馬上記下我的名字**

[Please Take Down My Name Immediately]

兒童知識 [Children’s Knowledge] Vol. 2, no. 15 (22 May 1938)

The outbreak of the war and an increasingly militarised Chinese society thus led to a reinterpretation of the role and functions of children during the wartime period. In particular, children were expected to not only embody the Confucian moral principles found in an ideal child but to also endure the hardships of coping with the challenges of

<sup>4</sup> “小戰士” [Little Combatants], 兒童知識 [Children’s Knowledge] Vol. 2, no. 15 (22 May 1938)

growing up under wartime conditions. The widespread appearance of terms such as little soldiers (*xiaobing* 小兵), children of the war of resistance (*kangzhan ertong* 抗戰兒童), or future combatants (*weilai de zhanshi* 未來的戰士) within wartime discourse, suggested that all children could be prepared and mobilised towards the war effort.<sup>5</sup> For instance, the following editorial was published on 4 April 1939 in the widely circulated newspaper, *Dagong bao* 大公報 [L'Impartial]:

Wartime children are growing up day by day in a new China...they must use their lives to fight - this is what is meant by the seed of new China's War of Resistance. Since the start of the War of Resistance in these past two years, children can no longer count how far they have come. Some of them have lost their homes and loved ones, cried for a thousand miles, educated themselves amidst the artillery fires and trained themselves...Despite their young age, they have already experienced the pains of life, are wise beyond their years, and have carried themselves through such difficulties.<sup>6</sup>

The appearance of a discursive shift - from ordinary children to militarised depictions of them - is important because it demonstrates how ideas about children and childhood were socially and discursively constructed during the wartime period. Not only did these discursive representations of children serve as normative examples of the ways in which the figure of the child was deployed and appropriated in wartime discourse but it also represents the wider concerns of the social and political milieu of the Chinese nation at the time. The re-imagining of an ordinary child growing up under wartime conditions into a militarised version reflected a fundamental shift in attitudes toward children within Chinese society: children were no longer idealised as vulnerable and morally untainted; instead, they were now expected to be contributory members of a society engaged in total war. In particular, such rhetoric and overly militarised representations of children in wartime discourse served to remind the public of the roles of ordinary children as “the

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<sup>5</sup> “小小兵” [Little, Little Soldiers], 抗戰兒童 [Children for the War of Resistance] Vol. 1 (January 1938): 21-22; “記小戰士” [Remembering Little Combatants], 大公報 [L'Impartial] (14 March 1939)

<sup>6</sup> “慶祝兒童節” [Celebrating Children's Day], 大公報 [L'Impartial] (4 April 1939)

future leaders of China, who were expected to carry on their backs the responsibility to transform the nation (*minzu* 民族).”<sup>7</sup>

As the figure of the child was appropriated to serve the circumstances of war, societal expectations imposed onto adults during this period became refracted through earlier ideas associated with the image of the ideal child. More specifically, the image of the wartime child was envisioned by adults who sought to create an “ideal citizen” for a new China during a time of war.<sup>8</sup> Such ideas about cultivating the young in order to create a vision of participatory government - in which ordinary civilians would be motivated to contribute towards the greater good rather than out of a narrow concern for the well being of family or lineage - aligned with how the figure of the child was appropriated as a vehicle for wartime mobilisation.

For example, a short story published in *Kangzhan ertong* 抗戰兒童 [Children for the War of Resistance], a periodical born out of the mobilisation effort, not only captured the way in which ordinary Chinese children became “militarised” as a result of the outbreak of war but it also supports the contention that this discursive shift reflected broader normative changes seen during the wartime period. In the story, two boys are engaged in the following conversation:

“Have you seen you a Japanese devil (*riben guizi* 日本鬼子)?”

“I have most definitely not seen a Japanese devil but my father did indeed see those Japanese devils. He said that it was at the battle of Taierzhuang - all five of those devils.”

“Wow, your father is great!” [...]

“When you grow up, will you become a soldier (*zhanshi* 戰士)?”

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<sup>7</sup> “兒童們的抗敵運動” [Children’s Anti-Resistance Movement], 申報 [Shanghai Daily] (8 August 1937).

<sup>8</sup> For studies on how citizenship was conceptualised in Republican China, see: Robert Culp, *Articulating Citizenship: Civic Education and Student Politics in Southeastern China, 1912-1940* (Cambridge, Mass.: Harvard University Press, 2007); Henrietta Harrison, *The Making of the Republican Citizen: Political Ceremonies and Symbols in China, 1911-1929* (Oxford: Oxford University Press, 2000); Merle Goldman, and Elizabeth J. Perry, eds. *Changing Meanings of Citizenship in Modern China* (Cambridge: Harvard University Press, 2002).

“I will become a soldier - not to become a one is not human (*bushiren* 不是人!)”  
“Yes! Fight! Fight to the end! Fight to the end! One, two, three!”<sup>9</sup>

Although the image of the wartime child drew upon ideas previously espoused in the discourse of the ideal child, it is important to note that this re-imagination and militarisation of the figure of an ordinary child into a wartime child was unique to the war years. This was the first instance in Chinese history in which the value of ordinary children en masse became the primary focus of public discussion. Before the founding of the Republic, discussions on and about children were largely limited to those from families of wealth, status, and nobility. Even though parents, poor and wealthy alike, aspired to the image of the ideal child as a model for raising their own children, idealised representations of children were nevertheless intended for well-to-do families, who had the luxury and resources to cultivate their children to fit the model of what was expected of an ideal child.<sup>10</sup>

However, with the outbreak of war, children lost their status of presumed innocence and privileged position within the public’s eye and wartime print media emphasised their roles and responsibilities as contributing members of society. Although adults continued to regard and treasure children as distinct from the remainder of the population during the wartime period, this was not because they were believed to be weak and vulnerable but rather because children were now seen as the future defenders of the nation. The idea that children would serve as the pillars of the nation, as they drew upon their strength, youth, and vitality, was clearly evidenced in the narratives espoused during the wartime period. For instance, drawing upon the teachings of Confucius to locate the importance of the place of children in the nation and its wartime efforts, a children’s periodical published the following excerpt:

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<sup>9</sup> “小小兵” [Little, Little Soldiers], 抗戰兒童 [Children for the War of Resistance] Vol. 1 (January 1938): 21-22.

<sup>10</sup> Bai, *Shaping the Ideal Child*, p. 161.

Confucius believed that managing troops was not easy, [one must be] absolutely cautious when engaged in war. The purpose of managing troops or engaging in a war is exactly like what we face today. We did not ask for war, but are at war. “We” [the country], who did not initiate an invasion must defend ourselves from those who have invaded us. We are the children who must defend the nation.<sup>11</sup>

The militarisation of children appeared both visually and discursively in all forms of wartime print media. For example, the provisional children’s welfare committee that Chiang Kai-shek’s Nationalist Government had set up underscored children’s abilities and agency as participatory members of society, emphasising that: “We [children] are not parasites; we must be the little heroes of the War of Resistance! (*women bushi jishengchong, yao zuo kangzhan de xiao yingxiong* 我們不是寄生蟲，要做抗戰的小英雄!)<sup>12</sup> The widely circulated newspaper at the time, *Dagong bao* 大公報[L’Impartial], published an article featuring the accomplishments of a “little soldier” (*xiao bing* 小兵) who was only six years old, as representative of a new and stronger China to come.<sup>13</sup>

Moreover, these militarised representations of children also extended to the Communist newspaper *Xin zhonghua ribao* 新中華日報 [New Chinese Daily], which wrote that “we must educate our next generation, for a time will come when they will become part of the greater plan to build a new China and a group of new troops (*shengli jun* 生力軍).”<sup>14</sup> And the Japanese collaborationist-based periodical *Xin shaonian* 新少年 [New Youth] featured the following on its cover (Figure 4):

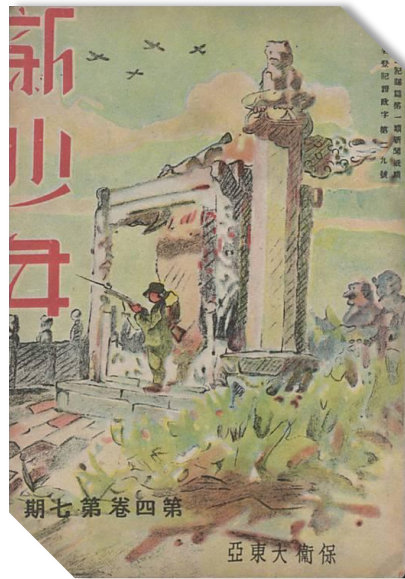
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<sup>11</sup> 孔子的軍事學及其預報的精神[The Military Teachings of Confucius’ Spirit of Urgent Resistance], 戰時中學生[Middle School Wartime Children] Vol. 1, no. 9 (1 September 1939), p. 17

<sup>12</sup> KMT 507/73 - 戰時兒童保育年刊 [Welfare for Wartime Children Annual] (October 1939), p. 9.

<sup>13</sup> “一個小兵的的歡喜” [One Little Soldier’s Delight], 大公報 [L’Impartial] (14 June 1940)

<sup>14</sup> “保育我們後代的戰士” [Protect Our Next Generation’s Combatants], 新中華日報 [New Chinese Daily] (5 October 1939)



**FIGURE 4**  
**新少年 [New Youth], Vol. 4, no. 7 (1 July 1944)**

As these examples illustrated, such discursive constructions and representations of the figure of the child were widespread across China, suggesting that it inevitably had a profound impact on the daily lives of Chinese civilians, especially the literate public. The shift from representations of children as ideal to militarised depictions of them as little soldiers and combatants reflected not only the vulnerabilities of adults but also their subjectivities about the war. Studies on adult belief as refracted through the figure of the child have suggested that the superimposition of adult values onto children was not unique to Chinese society, as it has been widely examined in other societies and historical contexts as well.<sup>15</sup>

For instance, Carolyn Steedman has argued that one of the earliest attempts to understand how adults developed a sense of interiority was in Victorian England, in which the self was conceptualised as an individual's own lost past or childhood.<sup>16</sup> In this

<sup>15</sup> On visual representations of children, see: Irving E. Siegel, et al., "Disciplinary Approaches to Images of Childhood: Religion, History, Anthropology, and Psychology," in Philip C.C. Hwang, Michael E. Lamb, Irving E. Siegel, eds. *Images of Childhood* (New Jersey: Lawrence Erlbaum Associates Publishers, 1996), 1-13; Huang Yi, 兒童繪畫心理學 [The Psychology of Children's Drawings] (Shanghai: Shangwu Publishing, 1938).

<sup>16</sup> Carolyn Steedman, *Strange Dislocations: Childhood and the Idea of Human Interiority, 1780-1930*

regard, in order to locate the child within an adult world, “Victorians granted the child a new interiority, a complex subjectivity...a mind that needed to be understood.”<sup>17</sup> In other words, the importance of narratives and stories about children at a specific point in time served as a medium for capturing the subjectivities of adults and the social milieu that surrounded them. Moreover, the use of the figure of the child to represent adult concerns implied a psychological complexity in which an adult’s investment in children was seen as the displacement of a desire unobtainable to the adult self.<sup>18</sup> For instance, this is reflected in the enduring yet timeless nature of children’s stories, particularly fairytales, from the Canterbury Tales and Grimms’ fairytales to *Alice’s Adventures in Wonderland* and *Peter Pan*. Although no universal claim can be made between the interrelationship of childhood and how an adult understands one’s interiority, the place of discourse does offer a medium by which multiple subjectivities and voices can come together.

In the Chinese case, the emergence of competing representations of the figure of the child in Republican China challenged the way in which ideas on and about children was defined within public discourse. The outbreak of the war led to the deployment of the figure of the child as a potent cultural and national symbol that became inscribed within a new set of social conditions. Children, who had previously been perceived of as blank canvas of unfulfilled dreams had now come to represent the reality of what had become of Chinese society - they were now part of a nation engaged in total war. This is further illustrated in the way in which the mother and child relationship was altered and represented during the wartime period.

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(London: 1995), 7.

<sup>17</sup> Sally Shuttleworth, *The Mind of the Child: Child Development in Literature, Science and Medicine, 1840-1900* (Oxford: Oxford University Press, 2010), 359-60.

<sup>18</sup> Jacqueline Rose, *The Case of Peter Pan: Or the Impossibility of Children’s Fiction* (Philadelphia, PA: University of Pennsylvania Press, 1993), 8-9.

## THE MOTHERLESS CHILD

Despite changing kinship relations during the Republican period, the longstanding belief that a mother and child shared an unbreakable bond prevailed into the wartime period. This was evidenced in the emergence of the figure of the “motherless child” as a constant trope in public discourse. Regardless of what their circumstances were, these were children “who had lost their roots” (*shiqu genzi de haizi* 失去根子的孩子) and the loss of a maternal bond featured prominently into the formation of this particular narrative within wartime discourse.<sup>19</sup> Motherless children included refugee children, those with absent fathers, or simply ordinary children who were displaced and orphaned by the circumstances of war.

In order to garner support for the war (mostly from women and children who remained on the home front), wartime discourse reconfigured the necessity of a maternal figure by linking the significance of the universality and naturalness of a mother’s love with the importance of winning the war. For example, in a story published in the widely read children’s periodical, *Ertong shijie* 兒童世界 [Children’s World], a mother’s love is described as a form of primitive and instinctual response that is shared by both humans and animals.<sup>20</sup>

A mother’s love stems from nature, every mother loves her own children. Let’s talk about chickens! A hen brings ten chicks eating rice. If we were to go over there, the hen would peck us. This is precisely an expression of protecting one’s own child. Let’s also talk about sparrows. A sparrow gives birth to four little sparrows. The mother sparrow flies out every day to search for worms to give to her children to eat. Until the little sparrows are grown, there is not a single day that the mother sparrow does not go out to look for worms. When people try to catch the little sparrows, the

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<sup>19</sup> Zhan Yi, “失去爹媽的根子” [Genzi, [Who] Lost His Father and Mother], 烽火 [Beacon of Fire] 3 (9 September 1937): 34-36; Lu Yan, “炮火下的孩子” [Children Under Fire], 抗戰文藝 [War of Resistance Literature] 1, no. 2 (7 May 1938): 19-22; Chen Bo Chui, 火綫上的孩子 [Children in the Line of Fire] (Shanghai: Shanghai Youth Publishing House, 1934); Xu Ci, “戰爭” [War], 大風 [Typhoon] Vol. 26 (5 May 1939): 2251.

<sup>20</sup> “母子之愛” [A Mother and Child’s Love], 兒童世界 [Children’s World], vol. 1, no. 5 (1 January 1945): 210.

mother sparrow becomes sad. If we were to speak about the capacity of love, mothers can be likened to people, children can be likened to soldiers, and love can be likened to cooperation. We can only be victorious over the enemy by cooperating with the military and civilians.<sup>21</sup>

Since the May Fourth period, this social Darwinist conception of the mother and child relationship was indicative of broader tropes and ideas present within Chinese society at the time.<sup>22</sup> The idealisation of the maternal figure in early Republican China had been a familiar literary trope that served as “a deliberate and collective effort by intellectuals to discover a genuine human nature that could serve as the basis for more humane social relations in a future modern society.”<sup>23</sup> The universal bond shared between mother and child therefore pointed to the symbolic uses and meanings that underlined how ideas about childhood and motherhood were culturally and socially constructed within Chinese society.

For instance, in the January 1942 issue of *Wartime Boy Scouts* [*Zhanshi tongzi jun* 戰時童子軍], a children’s story defined a mother’s love as a universal bond that was shared by all of humanity.<sup>24</sup> The story began with the following passage:

When a person leaves his mother or if his mother is deceased, that is the saddest thing because to have the love of a compassionate mother (慈母 *cimu*) is above everything else. To not have a mother is to not have humankind. When a person is born, everything from cold, warmth, food, and shelter, all must be provided by a mother. If a child is ill, his mother suffers more than the child, [she] carefully looks after you [...] I hope that every person in all of humanity and in the entire world can always have a mother, so that everyone can be the happiest people! But, I moreover, hope that all those who are sons in this world can all be pious towards their mothers, so as to repay their mother’s love for them.<sup>25</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Kathryn Edgerton-Tarpley, *Tears From Iron: Cultural Responses to Famine in Nineteenth-Century China* (Los Angeles: University of California Press, 2008), 161-210; David Der-Wei Wang, *The Monster that is History: History, Violence, and Fictional Writing in Twentieth-Century China* (Los Angeles: University of California Press, 2004), 117-47; Rey Chow, *Woman and Chinese Modernity: The Politics of Reading between East and West* (Minneapolis, MN: University of Minnesota, 1991)

<sup>23</sup> Sally Taylor Lieberman, *The Mother and Narrative Politics in Modern China*. Charlottesville: University of Virginia Press (1998): 19-20.

<sup>24</sup> “母愛” [A Mother’s Love], 戰時童子軍 [Wartime Boy Scouts] (August 1942): 12

<sup>25</sup> Ibid., For a history on the origins of Boy Scouts in Republican China, see: Zhang Xiaohui and Rong Zhihan, “民國時期的童子軍的中國化及影響” [The Sinicization and Influence of Boy Scouts in the

The outbreak of total war in 1937 however prompted a shift in focus - from depicting the universality and invaluable nature of a mother's love to the great loss and fear that a child experiences after losing her love. As illustrated in the passage above, emphasis on the experiential aspect of the child, as a state of being, was emphasised as part of the broader wartime narrative. In other words, the implication was that the wartime experiences of children were no less important than that of adults.

### **“Mother” Soldier Li**

For instance, in a short story featured in the May 1938 issue of *Kangzhan wenyi* 抗戰文藝 [War of Resistance Literature], readers are introduced to the plight of Chen Yuhua.<sup>26</sup> Chen is an eight year old boy who is lost and roaming about in the battlefields by himself when he is discovered by a soldier. The story opens with a description of soldier Li Jiming, who is caught in the midst of artillery fire and exhibits all of the symptoms of someone who had been out on the battlefield for a prolonged period of time, as he is fatigued, hungry, angry, vengeful, and keen to kill.<sup>27</sup> In the beginning of the story, the narrative appears to suggest that the war had robbed Soldier Li of his compassion and benevolence but that is until he meets the little boy, who in turn restores his faith in humanity and shows him the significance of the bond between a mother and child.

One night, Soldier Li finds a child in the battlefields, who was alone and confused about his surroundings. The boy refused to say anything at first because he was too frightened by the “bombs falling from the sky.”<sup>28</sup> However, at the soldier's urging, he finally says:

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Republican Period], 廣西社會科學 [Guangxi Social Sciences] no. 2 (2005): 123-35.

<sup>26</sup> Lu Yan, “炮火下的孩子” [Children Under Fire], 抗戰文藝 [War of Resistance Literature] vol. 1, no. 2 (7 May 1938): 19-22. See also: “傷兵摯友與小朋友” [Friends of Injured Soldiers and Children], 申報 [Shanghai Daily] (4 April 1940).

<sup>27</sup> Ibid., p. 19.

<sup>28</sup> Ibid.

“Me? My surname is Chen, my name is Yuhua, eight years old...live in Chenjia village....they slapped me on my face, kicked my back, and burned my mother’s room...”

“Good boy, you are a smart child. What about your father?”

“I do not have a father...I only have a mother...mama...mama...wah!”

[The child cries again sorrowfully.]

[The soldier thinks to himself]: A child without a father, who has also lost his mother now. Oh, how tragic that this child has been anxiously looking for them [his parents] in the dead of the night but instead has ended up on this dangerous battlefield!<sup>29</sup>

The sun was due to rise shortly and Soldier Li was afraid that the Japanese soldiers would soon come and attack them so he tried to persuade the child to go with him. However, the child refused to get up from the ground, only saying: “I want to look for my mother here.’ As the child continued to cry, he said: “I will not flee. I want my mother.” Then in a moment of realisation, he asks: “will the Japanese devils really come?”<sup>30</sup> The soldier and the child suddenly find themselves caught in the midst of artillery fire and Soldier Li quickly grabs the child and runs. When it appears as if the bombings have halted, the soldier gives the child his canteen of water and the remaining two steamed buns from his rucksack. But at that moment, bombs begin to fall from the sky again and Soldier Li observed that “the child was now truly afraid. He was crying and was only crying out for his mother.”<sup>31</sup>

The story continues on to follow Soldier Li and the child’s flight through enemy fire, until one of the bombs injures them. They are then rescued by Soldier Li’s comrades, who bring them to a nearby army hospital full of other wounded Chinese soldiers. At the hospital, the boy wakes up from his wounds and asks if it was true that they were attacked by Japanese troops. The child then looks for Soldier Li, who he now had come to trust and understand as the person who protected and saved him. When the child locates

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<sup>29</sup> Ibid., p. 20.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid., pp. 21-22.

Soldier Li's bed, he asks him: "How will you thank me?" So the child stood by his bedside and sang him a song.<sup>32</sup>

Then the child leapt up onto the bed, and hugged and kissed him. In the end, he fell into the embrace of Li Jiming's arms, intimately looking at his face and said: "What do I owe you? You are truly kind, like my mother. How about I just call you mother?" The entire room full of soldiers applauded and shouted out loud, "such fortune!" Li Jiming was so happy that his eyes were filled with tears, as he said: "you are the future of our nation."<sup>33</sup>

The child's poignant expression of love and compassion toward Soldier Li at the conclusion of the story symbolises the fundamental importance of the mother and child bond to both the child and Soldier Li. As a result of enemy fire, the child has come to understand that Soldier Li's actions were something that could only truly come from a mother's love. The child's recognition of Soldier Li as representative of a maternal (rather than paternal) figure captured the way in which adults perceived children as vehicles by which ideals associated with motherhood could be deployed and linked together with the circumstances of war and loss.

Although the story attempts to convey the emotional experience of wartime conditions to a child reader, its significance is found in the way in which the story is narrated - after the child's initial introduction of himself to the soldier, Chen Yuhua is never again referred to by his name but only as "the child" (*ertong* 兒童) throughout the remainder of the story. The narrator is careful to remind readers of the importance that the boy retains his status as "a child," who is devoid of any markers of identity or particular characteristics that would individualise him as anyone else other than that of a child. His namelessness throughout the story would therefore suggest that the plight and experiences of this child could also be universalised and applied to all wartime children.

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<sup>32</sup> Ibid., p. 22.

<sup>33</sup> Ibid.

## The Plight of Genzi

Similarly, in another story published in *Fenghuo* 烽火 [Beacon of Fire], a widely circulated literary periodical during the wartime period, readers are introduced to the wartime experiences of Genzi. Genzi is a six year old boy, who is fleeing from the Japanese with his father, mother, and two year old sister.<sup>34</sup> In the depths of the night, Genzi is woken up by his mother because they have been attacked by the Japanese devils. At first, Genzi is naïve and confused about why they are fleeing, as he continuously riddles his parents with questions whilst they run through the fields. Despite his seemingly childish nature at first, the narrator purposely points out that Genzi is acutely aware of his mother's love for him and his younger sister because he observes how "mother embraced my two year old sister and as we were walking, she opened her shirt to let my sister suck on her nipple."<sup>35</sup>

At first, the family manages to escape several bombs falling from the sky but in one instance, as they are running to find shelter, the sky suddenly turns black and smoke rises from below. The conclusion of the story is told through the voice of the narrator but through the eyes of Genzi:

[...] and then no one answered him. Not only could father no longer open his mouth, I also did not know where his head even flew to. Mother's other arm was gone and the bones on her back were all exposed. Father and mother were holding onto my two hands, still refusing to let go...<sup>36</sup>

As a result of this experience, Genzi's initial naiveté and childishness throughout the story is suddenly replaced by a new sense of loss, as he realises that the circumstances of war have now rendered him alone in this world (since there is no mention of his sister).

A narrator's commentary is appended to the conclusion of the story:

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<sup>34</sup> Zhan Yi, "失去爹媽的梗子" [Genzi, Who Lost His Father and Mother], 烽火 [Beacon of Fire] 3 (9 September 1937): 34-36.

<sup>35</sup> Ibid., p. 34.

<sup>36</sup> Ibid., p. 36.

Just like that, six year old Genzi lost his father and mother forever. The account given in the newspapers said that he was fortunate survivor. To go on living like this is perhaps unfortunate. He must remember his enemy, who killed his father and mother. When he grows up and understands that, he must avenge their deaths, and only then will he truly be a fortunate survivor.<sup>37</sup>

The narrator's commentary at the end of the story suggests that the plight of Genzi was based on a true event reported in newspapers at the time, although it is quite possible that the storyline was fictionalised or sensationalised in order to garner the attention of readers. Putting aside the actual origins of this story, the storyline is intended to capture the difficulties of growing up under wartime conditions as a child alone in this world. The story suggests that although Genzi's loss of his parents may have been specific to him, his lived experience of the war was not unique. In this regard, the lives experiences of war were a shared national experience that transcended age, gender, social class, and familial background.

...  
**LOCATING LOST CHILDREN**  
....

Together, these various discursive and visual representations of children demonstrated the different ways in which the figure of the child was depicted and appropriated by adults in wartime print media. Although these stories were by no means representative of the plethora of wartime stories that appeared during this period, the underlining thread that they all shared was the way in which the experience of "loss" was refracted onto the figure of the child, thus casting the child protagonist as a casualty of war.<sup>38</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> Many children's stories during this period followed a similar trope to the story of Genzi. See: "泡火中生長的孩子" [Children Growing Up in the Midst of Fire], 戰時兒童 [Wartime Children], vol. 1, no. 1 (16 April 1940) and "小寶: 年輕的流亡者" [Precious Little One: The Young Wanderer], 戰時兒童 [Wartime Children], vol. 1, no. 1 (16 April 1940).

The casting of the figure of the child as protagonists in both stories is highly significant because of the implications that were echoed in the storylines to the broader narrative of the war. The stories suggested that the outbreak of war robbed children of their childhoods and in turn, it is the child's inexperience in life that has come to symbolically represent the greatest moral edification of a new China.<sup>39</sup> The deployment and recasting of children in this way is a distinct shift away from the way in which children were previously viewed within Chinese society prior to the outbreak of total war. The once idyllic representation of children as innocent, naïve, and deployed as a site for creativity and imagination, was replaced by the realities of a war that neither adults nor children could escape from. Embedded in the discourse of both stories is the use of motherless children to represent a notion of “loss” and pain (both psychological and physical) that was explicitly linked with the outbreak of total war.

Although the children in these stories may have been “lost” or socially displaced by the outbreak of war, it is important to note that wartime print media did not specifically refer to them as orphans or socially displaced children in need of public assistance. Instead, they were casted as “children who have lost their roots” (*shiqu genzi de haizi* 失去根子的孩子). Not only have these children lost their parents under wartime conditions but they have also lost their familial and geographical “roots” - an implication that it is the Chinese nation that must now serve as the mother of *all* lost children. This is most explicitly demonstrated in the deliberate use of the characters *genzi* 根子 as the name for the child protagonist.

Whilst much of the literature that appeared within wartime print media was mainly intended for adults and the literate Chinese public at the time, the stories

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<sup>39</sup> This sense of moral edification can also be seen in several other children's stories about absent fathers who are away fighting on the frontline. See: “我的爸爸” [My Father], 兒童世界 [Children's World] vol. 1, no. 6 (1 February 1945): 258 and “爸爸死了” [Father's Dead], 兒童世界 [Children's World] vol. 1, no. 7 (1 Mar., 1945): 274.

themselves suggest that a true mother's love can neither be replaced nor compensated for after it has been lost. Moreover, maternal love was still of utmost importance in the formation of a childhood experience, and particularly in stories about motherless children, it is only after a child has experienced the reality of being "orphaned" by the war could "lost children" truly find their place within the Chinese nation.

Motherless children were expected to find their "place" within the Chinese nation along the continuum of the wartime period and in particular, this reflected a distinct departure from earlier representations of the universality and naturalness of a mother's love. "Belonging" to the Chinese nation had superseded the importance of family within Chinese society. More simply put, a child was to be a citizen of the nation first and foremost, before he or she was a son or a daughter. For instance, in August 1938, the front page of *Dagong bao* 大公報 [L'Impartial] published the following:

People have a natural ability to make self-sacrifices and to come together for the nation...it is the virtue of being a person (*rende* 人德)...whether that is the desire of our parents, the wish of our sons and daughters or the entire country's children...we are all one big family.<sup>40</sup>

On the one hand, this shift in discursive representations of children – from idealised images to militarised depictions and social displacement – may not come as a complete surprise, as war is a time of violence, devastation, and destruction. On the other hand, as more children and women were mobilised as part of the war effort, their changing roles within society greatly altered the way in which kinship relations evolved during the wartime period. Both stories underscored how the realities and fears of wartime conditions penetrated domestic society, and the degree of devastation, hardship, and human suffering extended to all levels.

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<sup>40</sup> “抗戰建國與道德” [Nation-building During the War of Resistance and Morality], 大公報 [L'Impartial] (8 August 1938)

A child's yearning for nothing more than a mother's love in these stories thus produced a reversal to the trope of the mother and child bond in Chinese society, which had conventionally hailed mothers and children as the epitome of social and moral order within domestic society to one where children were given full agency.<sup>41</sup> This reversal is particularly important because it challenged idealised representations of a universal and natural bond between mother and child by replacing it with the reality and conditions of what Chinese society had become – a nation that had become robbed of its fundamental forms of attachment and community as it is engaged in total war.

...  
**BEYOND THE PUBLIC SPHERE**  
...

Many of the stories referenced in this chapter attempted to capture the fears, pains, anger, and confusion of wartime conditions from a child's point of view (even if such stories were being written by and for adults). The borrowing of a child's view of the adult world reflected two main features of the wartime experience - first, it showed the endless vulnerability of children to adult appropriation and manipulation and secondly, these stories demonstrated the importance of how adults attempted to envision and situate children's experiences of daily life into the broader wartime narrative.

These stories can also be read as not only a vehicle for the refraction of adult experiences but it also brought to light what adults believed were the most important elements of a child's wartime experience – in turn, reflecting the normative values of how children and childhood were perceived at the time. In this regard, these competing discourses on and about children reflected the daily social conditions by which civilians internalised and coped with a war that they had little control over. It moreover captured the unsettling nature of children's displacement from their families, communities, and

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<sup>41</sup> Susan Mann, "Presidential Address: Myths of Asian Womanhood," *The Journal of Asian Studies* 59, no. 4 (November 2000): 835-62.

other agencies of socialisation, which had traditionally served as markers of one's identity or attachments for the young.

For example, the conflation between human interiority and the external world was illustrated in another wartime story featured in *Fenghuo* 烽火 [Beacon of Fire]. A strange sound was coming from outside of the door, and two young boys were frightened by the sound but did not know what is causing it. "Perhaps it is thunder? Perhaps it is a mouse?"<sup>42</sup> The two brothers decide to leave their cottage to find out where the sound was coming from. As they are about to leave, the boys say to their grandfather, "you don't think we are still afraid of the countless number of Japanese devils out there, do you?"<sup>43</sup> Their grandfather responded by saying, "go quick!"<sup>44</sup> As the boys seek to find out what is causing the unidentifiable noise, the story continues on for two pages with references to a range of possibilities, all of which were linked to the outbreak of war. The conclusion of the story informs the reader that the unidentifiable noise turns out to be thunder and lightning but it inherently plays on the boys' fears of the war.

The metaphor of linking the unidentifiable sound with wartime conditions and mother nature (thunder and lightning), suggests the conflation and perhaps confusion, between reality and people's unbounded fears about the war. Such stories were commonplace during the wartime period as they served to underline a blurring between one's actual lived experiences with the imagined reality of life under wartime conditions.

Wartime children's stories thus became a means to challenge prevailing ideas and images of children as miniature adults, which reinforced the antagonistic attitude towards traditional moral teachings that had dominated public discourse since the May Fourth

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<sup>42</sup> “决心” [Determination], 烽火 [Beacon of Fire] Vol. 1 (15 September 1937): 14-16.

<sup>43</sup> Ibid., p. 16.

<sup>44</sup> Ibid.

period.<sup>45</sup> As these representations of children have shown, the changing attitudes of adults toward children revealed that the realities of the war had penetrated domestic society on a level that reached everyone, adults and children alike. In this regard, even if the figure of the child was only being used as a screen onto which adults could project their own views and experiences of the war, these depictions of children showed that there was no coherent understanding of children at the time as multiple discourses about children and childhood emerged, co-existed, and were contested within the broader wartime narrative.

As the next chapter will demonstrate, the effects of wartime conditions brought about a clear shift in the way in which ordinary civilians attempted to understand the world them around them. Fears of social instability and internal disorder reflected how the outbreak of war penetrated into the throes of domestic society and in turn, altering their perceptions of the social and cultural milieu of the wartime period.

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<sup>45</sup> Zi Yu “基本兒童雜誌” [On Several Children’s Magazines], 文學 [Literature] Vol. 4, no. 3 (1 March 1935): 510-17; Shi Xin, “談談兒童雜誌” [A Discussion on Children’s Magazines], 開明 [Light] Vol. 1, no. 8 (Fall 1928): 443-45.

## CHAPTER FOUR PERCEPTIONS: FEARING SOCIAL INSTABILITY

...

In November 1936, the widely circulated periodical *Eastern Miscellany* [*Dongfang Zazhi* 東方雜誌] published an article by the Chinese legal scholar, Zhang Shaowei. Although it was published before the outbreak of total war in 1937, Zhang's comments reflected widespread attitudes and fears at a time when the volatility of social conditions was already seen to be threatening the overall stability and structure of Chinese society. He wrote:

Crime is one of the most serious problems afflicting people within society. Ever since humankind discovered collective living, crime has always existed. Its seriousness lies in the harmful yet fashionable nature of it. The actions of criminals can destroy the foundations of society, disrupt social order, resist society's ability to govern, and limit social thinking.<sup>1</sup>

The writings of Zhang, who was also identified with the New School of Penology and recognised as a leading expert on criminal law and juvenile delinquency, captured not only the daily challenges that civilians faced but his views about criminality also reflected how changes, which were taking place within the social and cultural milieu at the time were increasingly informing perceptions about the war within domestic society. As the wider population attempted to make sense of the world around them on a day-to-day basis, the volatility of wartime conditions further contributed to the anxieties of the Chinese public of the unknown and inexplicable.

As the previous chapter has demonstrated, the outbreak of the war brought about a re-imagining of the figure of the child in wartime discourse. The goal of this chapter is to demonstrate how wartime conditions brought about a shift in public perceptions about the growing problem of criminality within domestic society. After the fall of Wuhan in October 1938, Chiang Kai-shek's Nationalist Government retreated inland to Chongqing,

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<sup>1</sup> Zhang Shaowei, 大家庭與犯罪 [Big Family and Crime], 東方雜誌 [Eastern Miscellany] vol. 33, no.17 (Nov., 1936): 273.

where they remained until the end of the war. This chapter therefore concentrates on the actions taken by Chiang Kai-shek's Nationalist Government in Chongqing in response to the spread of rumours, beliefs in the supernatural, and the inexplicability of psychological illnesses during the wartime period. It seeks to demonstrate how perceptions held by ordinary civilians about the war were shaped by the social conditions that surrounded it. This is important because the conflation between public perceptions about the war and a rise in criminality that appeared within wartime society, prompted public fears over the threat of a breakdown in civil and social order, which increasingly threatened the authority and ability of Chiang Kai-shek's Nationalist Government to govern its people.

...  
**FEAR OF INTERNAL DISORDER:  
RUMOURS AND THE SUPERNATURAL**  
...

In April 1939, the Central Committee issued a firmly worded circular to all provincial and local officials ordering that “from this point forward, beliefs in superstition (*mixin* 迷信), rumours (*yaoyan* 謠言), and religious authorities would be strictly forbidden.”<sup>2</sup> Penned by the Highest Committee of the Ministry of Defence, the circular, which was included as part of a new wartime educational curriculum in 1939, stated that

since the presence of the Japanese on Chinese soil [in 1931], a noticeable rise in harmful behaviour (*buliang xingwei* 不良行爲) have appeared within wartime society. [...] We believe that the outbreak of the war was responsible for contributing to a rise in the number of banditry-related activities (such as thefts, robberies, and burglaries) amongst the civilian population.<sup>3</sup>

This circular reflected the “uneasiness” (*buan* 不安) of government officials in the Chongqing government over fears of a breakdown in civil and social order. In this regard, the circular further stated that

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<sup>2</sup> KMT 003/0135 - 利用戰時教育文化法令迷信宣報 [Taking Advantage of Wartime Educational Culture to Order a Report on Superstition] (April 1939), pp. 2-4.

<sup>3</sup> *Ibid.*, p. 3

superstitious (or unfounded) beliefs deriving from the public's belief in religious authorities and deities reflected a society with low standards in culture and intelligence. This level of ignorance, especially among those residing in the great interior (*houfang* 后方) would need to be eradicated in order to bring about a more knowledgeable society. More specifically, it would not depend on superstitions to offer answers to the unknown.<sup>4</sup>

Even though it is difficult to ascertain whether or not this circular brought about any actual changes in curbing the spread of rumours and superstitious beliefs within domestic society at the time, the wording on the circular reflected a significant degree of apprehension amongst government officials who were concerned about the ways in which the civilian population reacted to the outbreak of war.

This circular was not the first of its kind to be issued to the public. In fact, throughout the course of the war, Chiang Kai-shek's Nationalist Government became increasingly uneasy with the public's adherence to local customs, deities, and superstitious beliefs, believing that it would threaten their authority and legitimacy to govern the nation and its people.<sup>5</sup> As Rebecca Nedostup has shown, during the Nanjing decade, Chiang Kai-shek's Nationalist Government attempted to recategorise religious practices and people in order assert influence over the religious lives and physical order of local communities in a time when authority was meant to have been derived from popular sovereignty. Her findings suggest that the strategy of mobilisation politics prompted the Nationalists to conceive the world of religious association as a dangerous realm of "superstition" that would ultimately destroy the nation.<sup>6</sup>

Within this historical context, the issuing of such circulars under wartime conditions could be viewed as an extension of the policies and practices put forward by

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<sup>4</sup> Ibid., p. 4.

<sup>5</sup> AHA 01400003527A – 強加查禁社會群像神權迷信辦法 [Solutions to Strictly Investigate and Prohibit the Power of Deities and Superstitions among Social Groups] (1939); AHA 02600012613A – 查禁社會群像神權迷信工作報告 [Work Reports on the Investigation and Prohibition of the Power of Deities and Superstitions among Social Groups] (1940-1942)

<sup>6</sup> Rebecca Nedostup, *Superstitious Regimes: Religion and the Politics of Chinese Modernity* (Cambridge: Harvard East Asian Monographs, 2010).

Chiang Kai-shek's Nationalist Government during the Nanjing decade. In this regard, such actions during the wartime period would therefore appear to have been an artificial attempt by government officials to suppress beliefs that were outside of their direct control. However, the dissemination of similar types of orders, like this circular, to all provincial and local government officials during the wartime period reflected more deeply rooted issues about the reach of Chiang Kai-shek's Nationalist Government and the state of social and political order within wartime Chinese society at the time.<sup>7</sup>

As the war intensified, the threat of national legitimacy and social instability became even more pressing and palpable for Chiang Kai-shek's Nationalist Government, especially with regards to the spread of rumours amongst the civilian population. For instance, this sense of urgency was reflected in a telegram sent on 17 May 1940 from the vice-chairman of Shaanxi province, Jiang Dingwen, directly to Chiang Kai-shek in Chongqing.<sup>8</sup> In the telegram, Jiang reported of a rumour that had been circulating amongst locals about how the Communists had sent a large number of people to scatter and hide in the countryside as secret agents, in order to spy on the activities of the Nationalists.<sup>9</sup> In the telegram, Jiang stated,

Yours humbly, is very concerned that the rumour (*yaoyan* 謠言) that has spread about the presence of Communist spies may begin to cause panic (*konghuang* 恐慌) and unrest (*buan* 不安) amongst the people of Shaanxi province. Thefts, robberies, burglaries, and banditry-related activities are already widespread within the province. I fear that if more people learned of this information by word of mouth, this rumour may spread to other provinces and cause further panic.<sup>10</sup>

During the wartime period, rumours about the involvement of Communists in secret activities were not uncommon. However, the content of Jiang's telegram prompted

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<sup>7</sup> AHA F001000006126A – 教育改進建議 (二) [Recommendations for Educational Improvements, part 2] (20 January 1942 – 25 October 1946)

<sup>8</sup> KMT 9/24.78 - 陝西省副主席蔣丁文上蔣委員長長電 [Telegram from the vice-chairman of Shaanxi Province, Jiang Dingwen to Chairman Chiang] (17 May 1940), p. 3.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

high-level officials within Chiang Kai-shek's Nationalist Government to discuss the potential problems that rumours and superstitious beliefs were believed to have to threatening the overall stability of wartime Chinese society. These discussions were evidenced in a series of drafts and memorandums penned by members of the Central Committee, which yielded a memorandum drafted by all of the members of the Central Committee in 1942.<sup>11</sup>

In 1942, Chiang Kai-shek ordered the Central Committee to “investigate and bring to his attention any critical issues (social, administrative, or political) that had arisen as a result of the outbreak of war.”<sup>12</sup> In a preliminary draft of their findings, the Central Committee listed seven problems that required immediate attention by the Nationalist Government in their memorandum to Chiang Kai-shek.<sup>13</sup> The memorandum had largely focused on domestic matters that reflected the current political situation, with particular emphasis on maintaining public order (*gongan* 公安) under unstable conditions.<sup>14</sup> The most serious issues highlighted in the memorandum were a rise in banditry-related activities, Chinese collaborators (*hanjian* 漢奸), and rumours against Chiang Kai-shek's Nationalist Government.<sup>15</sup> On the problem of banditry, the Central Committee referenced the Ministry of Justice's October 1941 work report, which had suggested that the appearance of a rise in banditry-related activities within domestic society was associated with wartime conditions and an overall rise in criminality.<sup>16</sup>

Despite the range of domestic issues that the Central Committee put forward as requiring immediate attention, it was the subject of rumour that incited a lengthy

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<sup>11</sup> KMT 27/1- 中常會個委員關於時局之間問題及簽擬意見 [Suggestions of the Members of the Central Committee Meeting Regarding Problems with the Current Political Situation (bearing signatures)] (1942), pp. 1-6.

<sup>12</sup> Ibid., p.1.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., p. 2.

<sup>15</sup> Ibid., p. 3.

<sup>16</sup> KMT 5.2/8/11 - 司法院工作報告 [Ministry of Justice Work Report] (October 1941). Hereafter abbreviated as “MOJ Work Report: October 1941.”

assessment in the memorandum. The memorandum outlined suggestions by members of the Central Committee on how to handle the potential threat of social instability in light of the spread of rumours within the civilian population. In the page long explanation, it stated:

Rumours are a matter that involves people expressing their aspirations. Therefore, this issue qualifies as a problem of governance among the people (*minzhi wenti* 民治問題), which falls under the purview of the Ministry of Internal Affairs. It is thus the responsibility of the Ministry of Internal Affairs to address these problems before they arise and cause further instability to the interests of society. Internal disorder (*neiluan* 內亂) and social panic (*shehui konghuang* 恐慌) must be prevented at all costs.<sup>17</sup>

These words captured the official attitudes of government officials at the time. In particular, the threat of internal disorder had consistently been cited in various orders and memorandums issued by Chiang Kai-shek's Nationalist Government during the wartime period as the primary reason for launching investigations into the daily practices of the civilian population. As evidenced by Nedostup's research, efforts by the Nationalist Government to suppress the spread of rumours and superstitious beliefs within domestic society during the Nanjing decade were also intricately linked to the social and cultural norms of behaviour at the time.

This link was also reflected in the writings of Zhang Ziben, another Chinese legal scholar who belonged to the New School of Penology. His writings in particular, focused on the need to implement new laws in wartime society as a means to influence the public's understanding about the social and cultural norms of behaviour.<sup>18</sup> In particular, he pointed out that

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<sup>17</sup> KMT 27/1 - 中常會個委員關於時局之間問題已潛匿意見 [Suggestions of the Members of the Central Committee Meeting Regarding Problems with the Current Political Situation (bearing signatures)] (1942), p. 5.

<sup>18</sup> Zhang Ziben, “戰時犯罪的原因及其對策之研究” [Research on the Causes of Crime in Wartime and Other Countermeasures], 中華法學雜誌 [Journal of Chinese Legal Studies], Vol. 3 (1940): 1-20.

in times of war, the distinction between what is considered as a violation against a set of laws (*weifan falü* 違反法律) and a violation against social morals (*weibei shehui daode* 違背社會道德) becomes blurred. Without the implementation of new laws to handle and halt the growth of criminal activities, the number of people who violate the law will only steadily increase within society. In other words, law is the product of one's environment (*falü wei huanjing de shengchanwu* 法律為環境的生產物).<sup>19</sup>

In light of the instability brought on by the outbreak of war, controlling the public's adherence to local customs and superstitious beliefs became a key priority for Chiang Kai-shek's Nationalist Government, as government officials were acutely aware of the detrimental effects that it could have on its political legitimacy and authority if it was not contained.<sup>20</sup> So between 1940 and 1942, the Nationalist Government officially sanctioned at least ten investigations on local practices and customs in order to prepare for the possibility of internal disorder.<sup>21</sup>

### **THE FUNCTION OF RUMOUR WITHIN CHINESE SOCIETY**

Up until this point, the function of rumour had primarily served as a medium of communication for uneducated and illiterate people in Chinese society. Similar to how children's stories served as a medium to refract the experiences of adults during the wartime period, rumour served a means for ordinary civilians to understand and make sense of the world around them. For instance, in an article that problematised how the transmission of ideas about the war had failed to align with official accounts published in newspapers, Wu Wo argued that not only was the information reported about the war in the print media inconsistent with what had been circulating amongst locals by word of

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<sup>19</sup> Ibid., p. 3.

<sup>20</sup> AHA 026000013243A – 抗戰時期強查禁社會群象神權迷信辦法 [Solutions to Strictly Investigate and Prohibit the Power of Deities and Superstitions among Social Groups During the Period of the War of Resistance] (1940)

<sup>21</sup> AHA 026000012613A; 026000012637A; 0260000012694A; 026000012706A; 026000012794A; 026000012940A; 026000012952A; 0260000013078A; 026000013079A; 026000013181A - 查禁社會群象神權迷信工作報告 [Work Reports on the Investigation and Prohibition of the Power of Deities and Superstitions among Social Groups] (1940-1942) [Same title for all files]

mouth but he also contended that the majority of the population did not know how to make sense of the war on their own terms.<sup>22</sup> In other words, the circulation of rumours, like other forms of discourses that appeared during the wartime period, could be seen as another medium that served to refract the lived wartime experiences of ordinary civilians.

Ralph L. Rosnow has argued that rumours “give vent or expression to anxieties and uncertainties as to how people attempt to make sense of the world in which they live.”<sup>23</sup> Wu’s article therefore brought to light a very important question during this period - what was the significance of fighting this war if the ordinary Chinese person could not understand its purpose or meaning?<sup>24</sup> Moreover, was the rapid transmission of rumours amongst people reflective of a society with low standards in culture and intelligence that required educating, or did rumours, especially in wartime, serve another function? In this regard, the concerns voiced by Wu in his article about the incongruities between reality and perception underlined larger issues within wartime Chinese society.

Studies on the spread of rumour have shown that rumour is present in all societies, namely, to function as a source of “improvised news” for people to comment upon the events taking place around them.<sup>25</sup> Much of the sociological literature on the role of rumour has suggested that rumour serves as a way for people to respond to situations of crisis or uncertainty. As S.A. Smith has noted:

On the one hand, such stories represent responses to the social and political milieu, which refract in a culturally specific idiom the conscious and unconscious concerns of those who retail them; on the other, they intervene in that social and political milieu by investing it with new meanings, and thus potentially have the capacity to change it.<sup>26</sup>

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<sup>22</sup> Wu Wo, “謠言與事實” [Rumour and Reality] 學習半月刊 [Learning Bi-Monthly] vol. 6, no.4 (1941): 140-41.

<sup>23</sup> Ralph L. Rosnow, “Inside Rumor: A Personal Journey,” *American Psychologist* 46, no. 5 (1991): 488.

<sup>24</sup> Wu, “謠言與事實” [Rumour and Reality], p. 140.

<sup>25</sup> Tamotsu Shibutani, *Improvised News: A Sociological Study of Rumor* (Indianapolis, IN: Irvington Publishers, 1966)

<sup>26</sup> S.A. Smith, “Talking Toads and Chinless Ghosts: The Politics of ‘Superstitious’ Rumors in the People’s Republic of China, 1961-1965,” *American Historical Review* 112, no. 2 (Apr., 2006): 406.

Especially in times of war, people shared in rumours as a way of garnering the support of others in determining the meaning of uncertain, ambivalent, or fear-inducing events.<sup>27</sup>

With the outbreak of war, rumour became seen as more than a means to transmit information. Instead, similar to the way in which the figure of the child was re-imagined and deployed as a recurring site for social and political concerns during the wartime period, rumour served to refract the public's fears, anger, or confusion about conditions of war.

Efforts exhibited by Chiang Kai-shek's Nationalist Government during the wartime period thus reflected not only attempts by the state to manage ideological understandings of the war amongst ordinary civilians but it also demonstrated how civilians attempted to convey their comprehension of the war in a language that was accessible to all levels of society. For instance, an editorial published in *Shenbao* 申報 [Shanghai Daily] in August 1937 wrote:

War is scary (*kongbu* 恐怖), it is most hated by humankind. Fertile plains turn into empty seas, flesh and blood turn into skeletal bones, flowing rivers turn into trodden land, stones turn into sand, and sand turns into ashes... ah! How is this not scary and cruel (*canku* 殘酷)?<sup>28</sup>

The prevalence of rumours within Chinese society further shaped the way in which Chiang Kai-shek's Nationalist Government viewed civilians within their vision of social and political order during this period. Unfounded fears, which could not be fully explained within the domestic population also featured prominently during the wartime period.

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<sup>27</sup> Ibid., pp. 17 and 164.

<sup>28</sup> “戰爭” [War], 申報 [Shanghai Daily] (2 August 1937)

•••  
**FEARING THE INEXPLICABLE**

•••

**PSYCHOLOGICAL ILLNESSES**

In August 1937, the literary intellectual, Mao Dun, warned the Chinese public about an illness called “fear of the Japanese” (*kong ri bing* 恐日病).<sup>29</sup> He contended that this inexplicable illness had already plagued the psyches of Chinese traitors (*hanjian* 漢奸) for the last five to six years (or since the Manchurian Incident).<sup>30</sup> According to him, the people who were most affected by this illness were not those who collaborated with the Japanese but “in general, the common people who have a rudimentary understanding of politics and the war...and whose mindsets can be easily swayed and manipulated.”<sup>31</sup>

The appearance of inexplicable psychological illnesses associated with the outbreak of war further invigorated the spread of rumours and superstitious beliefs within Chinese society during the wartime period. In particular, the appearance of unexplainable psychological illnesses during this time led many to increasingly link their fears of the unknown with the outbreak of war. For instance, on 18 December 1938, another editorial published in 申報 [Shanghai Daily] warned people not to let the outbreak of war scare them into “terror” (*kongxia* 恐嚇).<sup>32</sup> The editorial referred to it as “an illness of being terrorised” (*kongxia bing* 恐嚇病) and inferred that people were afraid to support the war because they equated fearing the war with a type of psychological illness.<sup>33</sup> In both examples, the onset of the war evoked people’s fear of the unknown, for which Mao Dun described as, “a toxic psychological illness that needs to be extinguished by artillery fire

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<sup>29</sup> Mao Dun, “‘恐日病’時不已斷根” [The Times of the ‘Illness of Fearing the Japanese’ Will Not Be Easily Broken], 吶喊 [Shout] Vol. 2 (29 August 1937), p. 32. The periodical was later renamed 烽火 [Beacon of Fire].

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> “恐嚇病” [An Illness of Being Terrorized], 申報 [Shanghai Daily] (18 December 1938)

<sup>33</sup> Ibid.

over an extended period of time, in order to remove the poison it had instilled in people's minds."<sup>34</sup>

In order to address the growing number of social problems and fears present within wartime society, the Ministry of Internal Affairs (*neizheng bu* 內政部) drew up a plan of action in 1941 to combat widespread fears about the unknown. The Ministry of Internal Affairs was the main body of Chiang Kai-shek's Nationalist Government that was responsible for handling all domestic matters, including law enforcement and maintaining public order. In the plan of action, it stated that starting in 1942, the Ministry of Internal Affairs would focus on "investigating customs" (*diaocha fengsu* 調查風俗) and "examining local order" (*cha difang zhian* 查地方治安) across all provinces of China. In order to execute this, the Ministry of Internal Affairs would draw upon additional police forces and maximise the number of law enforcement personnel on the ground level.<sup>35</sup> It would also involve the use of the *baojia* system (household registration) to keep track of the movements and flow of the civilian population and if necessary, utilise military forces to assist local police in maintaining social order within domestic society.<sup>36</sup>

Even though the Ministry of Internal Affairs did not explicitly draw a direct correlation between threats to social stability with a rise in criminality that appeared within wartime society, the plan however, stated that:

We are taking extra precautions against those who may 'arouse suspicion' (*yinqi xianyi de ren* 引起嫌疑的人) and possibly cause internal disorder during these extraordinary times. [...] We are recommending that supervision (*jiandu* 監督) be increased so as to prevent social panic (*shehui konghuang* 社會恐慌). As such, we are considering the possibility of moving people from urban areas to more rural areas for reasons having to do with ensuring civil order.<sup>37</sup>

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<sup>34</sup> Mao Dun, "‘恐日病’時不已斷根" [The Times of the 'Illness of Fearing the Japanese' Will Not Be Easily Broken], p. 32.

<sup>35</sup> SHAC Section 2, File: 9652 - 內政部 1942 年度普通政務計劃 [The Ministry for Internal Affairs Plan for Governmental Affairs for 1942] (1942), pp. 002703-04.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

The suggestion to move civilians out of urban areas and disperse them throughout the countryside reflected a similar approach that the Ministry of Justice had attempted with prisoners and criminal offenders during the wartime period.<sup>38</sup> As chapter six will demonstrate, this approach proved to be wholly ineffective for the Ministry of Justice. In spite of this, the Ministry of Affairs was nevertheless ordered by the Central Committee to carry out the same measures that it had applied for the handling of prisoners to the civilian population.<sup>39</sup> As reflected in the Ministry of Justice's January 1939 work report, Chiang Kai-shek's Nationalist Government strongly believed that a reduction in the number of people concentrated in urban areas would ease the pressures of governance.<sup>40</sup> Therefore, if there was ever a breakdown in social order within domestic society, it would also be easier to contain if it was isolated on the local level.

By 1943, the Ministry of Internal Affairs announced that their earlier plans to investigate customs and practices across all of the provinces would be put into full effect by June 1944. The report stated that they would

investigate the foundations of rumours and superstitious beliefs present among the people and their families in local society. Practices which have been deeply rooted within society, such as the way in which children are raised (*tongyang* 童養), abortion (*duotai* 墮胎), infanticide (*xuanyin* 選姪), and other harmful customs practiced among locals, must be thoroughly investigated (*chading* 查定) and reformed (*gaige* 改革).<sup>41</sup>

In light of wartime conditions, criminal and socially deviant behaviour became increasingly linked to the spread of rumours and superstitious beliefs - many of which were deeply rooted within local customs and practices of Chinese society. The Ministry of Internal Affairs in conjunction with the Ministry of Social Affairs, the Ministry of

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<sup>38</sup> KMT 5.2/33.9 - 司法院工作報告 [MOJ Work Report] (16 January 1939), p. 9. Hereafter abbreviated as "MOJ Work Report: 16 January 1939."

<sup>39</sup> SHAC Section 2, File: 9652 - 內政部 1942 年度普通政務計劃 [The Ministry for Internal Affairs Plan for Ordinary Governmental Affairs for 1942], p. 002703.

<sup>40</sup> "MOJ Work Report: 16 January 1939," pp. 7-8.

<sup>41</sup> SHAC Section 2, File: 9653 - 內政部 1943 年度政務計劃 [The Ministry for Internal Affairs Plan for Governmental Affairs for 1943], p. 002794.

Justice, and the Central Committee, concurred in the belief that “harmful or unhealthy actions exhibited by people in local society could lead to widespread deviant behaviour (*yichang de xingwei* 異常的行爲) and internal disorder among the people.”<sup>42</sup>

#### **ADDRESSING PERCEIVED REALITIES**

As this chapter has demonstrated, the rise in criminality within wartime society brought about a number of different responses from the civilian population. Although Chiang Kai-shek’s Nationalist Government attempted to address many of the issues that arose from perceived realities about the war and its apparent relationship to a rise in criminality, these measures were still unable to prevent the spread of rumours, superstitious beliefs, and public fears about the war. These beliefs and fears had already become deeply entrenched and embedded in the social fabric of daily life. As the next section will demonstrate, the rise in the number of criminal offenders and offences that appeared within wartime society posed a number of pragmatic problems for Chiang Kai-shek’s Nationalist Government. Many of these problems extended beyond perceived realities and fears over the possibility of a breakdown in civil and social order within domestic society.

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<sup>42</sup> Ibid.

**SECTION III**  
**HANDLING CRIMINAL OFFENDERS:**  
**RECOGNISING CRIMINALITY AS A PRAGMATIC**  
**PROBLEM IN WARTIME**

*The goal of this section is to demonstrate how Chiang Kai-shek's Nationalist Government attempted to handle and address a rise in criminality as a pragmatic problem under wartime conditions. This section aims to contrast the earlier section by concentrating on the measures and policy initiatives put forward by the Ministry of Justice of Chiang Kai-shek's Nationalist Government, of which were intended to address the growing number of criminal offenders and offences that appeared within wartime society.*

## CHAPTER FIVE DOCUMENTING AN EMPIRICAL RISE IN CRIMINALITY

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Changes in representations of children and perceptions associated with a rise in criminal offences brought about a number of different responses in the years leading up to and including the wartime period. As the earlier chapters have shown, shifts in terminology, discourse, perceptions, and beliefs associated with the outbreak of total war reflected a period of instability for Chinese society. However, how well founded were such fears over the rise in criminality, which appeared to have been threatening the overall welfare of Chinese society at the time?

Following on the findings of the preceding section, the goal of the this chapter and the next is to demonstrate how Chiang Kai-shek's Nationalist Government attempted to handle and address a rise in criminality as a pragmatic problem during the wartime period. Whereas the earlier chapters showed how the outbreak of war served as a crucial catalyst to bringing about shifts in ideas about criminality and childhood within discourse and the general Chinese public, this chapter is grounded in an analysis of an empirical rise in criminality during the wartime period.

Drawing upon statistical data compiled by the Office of Statistics for the Ministry of Justice (*sifa xingzheng tongji shi* 司法行政部統計室), the Bureau of Statistics for the General-Directorate of Budgets, Accounts, and Statistics for the Nationalist Government (*guomin zhengfu zhujichu tongji ju* 國民政府主計處統計局), and statistics drawn from other provincial and municipal government bureaus, the purpose of this chapter is to demonstrate how an empirical rise in the number of criminal offenders and offences was more than a perceived problem but it was also a pragmatic one that deserved national attention. In particular, the rise in the number of criminal offenders was not only limited to the adult offending population; rather, in the years leading up to and including the

wartime period, statistical data gathered by the Ministry of Justice had pointed to an unprecedented increase in the number of juvenile offenders that appeared within Chinese society.

...  
**STATISTICAL DATA: CHALLENGES AND CAVEATS**  
...

Due to the availability of materials, the sources that underline the statistical data that this chapter draws upon reflect only those that were collected by Chiang Kai-shek's Nationalist Government (mainly in Chongqing) and do not include information gathered by the Japanese authorities or the Reorganised National Government of China under Wang Jingwei. Although this chapter does not explicitly draw upon materials that reflected the conditions of Japanese-occupied areas, it offers a statistical analysis based on what government officials in Chiang Kai-shek's Nationalist Government observed and used as a reference point at the time.

This analysis is important because as the earlier chapters have demonstrated, a number of competing ideas on and about children and criminality emerged within public discourse during the Nanjing decade and wartime period. These contesting views were influential to shaping perceptions and attitudes within public discourse about daily life under wartime conditions and served to reflect the social and political milieu at the time. However, these shifts did not reflect the actual reality of criminality as a pragmatic problem during the wartime period. This chapter therefore attempts to offer another avenue into understanding the realities of criminality as a growing social problem within the context of wartime conditions.

In order to offer an empirical basis for the rise in criminal offences and offenders within wartime society, this chapter draws upon a number of different types of statistical data compiled on the national, provincial, and municipal levels as evidence of this rise.

Statistical data were not always accurate during the wartime period and due to intense fighting across many areas of China, there was also a clear lack of comprehensive data recorded on the national level after 1937. Therefore, many of statistics cited in this chapter, which cover the years between 1937 and 1945, were fragmented and limited as most of the data were collected on the regional or provincial levels. In an effort to offer as complete and wide-ranging of a view as possible, this chapter uses multiple data sets from the national, provincial, and local levels in order to compile and account for an increase in levels of criminality during the wartime period.

Despite possible inaccuracies, the statistics referenced in this chapter reflect only a portion of the actual number of criminal offences that occurred within wartime society, namely, those that were officially reported or offenders who were apprehended. Even though there were problems with underreporting and statistical inaccuracies, the data does offer a “quantifiable” reference point for documenting the actual volume of offences and offenders that appeared in wartime China. These statistics are important because they reflected what government officials observed and based their allocation of material, human, and economic resources on at a specific point in time during the wartime period.

In this regard, this data reflected how those on the national level empirically understood the problem of criminality in wartime China, even if it was detached from the realities of what was actually occurring on the ground level. Moreover, the statistics demonstrated how different bureaus within the Nationalist Government interacted with one another in order to handle the growing problem of criminality under wartime conditions. It revealed the intricacies and tensions present between the various social, administrative, and political policies that were implemented and carried out in response to growing concerns over the rise in criminality.

One example of underreporting and statistical inaccuracy with criminal offences

was reflected in the internal documentation by the Ministry of Internal Affairs. In 1941, the Ministry of Internal Affairs reported that 170,245 people (147,232 men and 22,690 women) were officially reprimanded for “disobedience” (*weijing* 違警).<sup>1</sup> An act of disobedience ranged anywhere from refusing to follow instructions when crossing the street to a more serious offence that was punishable under the 1935 revised Criminal Code. Out of the 170,245 people who were officially reprimanded, 20,099 of those arrested (17,495 men and 2,604 women) were in Jiangsu province. Out of the 20,099 people arrested in Jiangsu province, 12,002 of them (9591 male and 2411 female) were reported as having not reached twenty *sui* at the time of the offence.<sup>2</sup>

In this regard, the number of individuals who had not reached twenty *sui* who were arrested therefore accounted for 60% of the total number of people in Jiangsu province who were recorded for having committed an act of disobedience.<sup>3</sup> However, out of the total number of initial 170,245 people recorded, only 720 were officially reported to the Bureau of Public Safety (*gongan ju* 公安局) for further investigation. The internal files of the Ministry of Internal Affairs noted that the 720 people reported for further investigation was a “rough estimate because [we] were pressed to give an actual number to the Ministry of Justice for record-keeping purposes.”<sup>4</sup>

## THE LOSS OF LEGAL PERSONNEL

Even though the Ministry of Justice and the Bureau of Statistics for the General-Directorate of Budgets, Accounts, and Statistics (*guomin zhengfu zhu ji chu tongji ju* 國民政府主計處統計局) - the two official departments within Chiang Kai-shek’s

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<sup>1</sup> SHAC Section 2, File No.: 9654 - 內政部 [Ministry for Internal Affairs] 內政部民國三十三年報告 [Report by the Ministry for Internal Affairs: 1945], p. 400.

<sup>2</sup> Ibid.

<sup>3</sup> 1945 National Statistics, p. 407.

<sup>4</sup> Ibid.

Nationalist Government responsible for collecting statistical data pertaining to criminality during the Republican period – acknowledged that the official statistics reported by them were not entirely accurate during the wartime period, attempts were still made to gather statistical data on a regular basis. However, the loss of legal personnel under wartime conditions reflected many of the difficulties faced by the Ministry of Justice in carrying out efforts to gather statistical information during the wartime period. Even though the Ministry of Justice desperately sought to adhere to the directives ordered by the Central Committee in continuing to collect data even after the outbreak of total war, by 1943, the Central Committee was very much aware that a massive loss in the number of legal personnel, particularly in war-stricken areas, prevented the Ministry of Justice from collecting detailed statistical information.<sup>5</sup>

Early indications of this were documented in the Ministry of Justice's March 1938 work report, which had cited that a large number of legal personnel unexpectedly withdrew from their postings in war-stricken areas.<sup>6</sup> According to the Ministry of Justice's Plan to Improve the Nation's Judicial System drafted in March 1943, the ministry expressed that due to a loss of legal personnel, it was difficult to maintain accurate records of criminal offenders and offences.<sup>7</sup> As a result, the Ministry of Justice was forced to draw on additional staff from the Office of the Procuratorate (*jianchaju* 檢查局) to assist them in non-war-stricken areas. This was so that the ministry could send their remaining legal personnel to war-stricken areas to monitor and compile information about the conditions in those places.<sup>8</sup>

However, the potential loss of legal personnel in war-stricken areas was not

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<sup>5</sup> KMT 5.2/105/2 – 司法行政部份起改進全國司法計劃 [Plan to Improve the Nation's Judicial System by the Ministry of Justice Administration] (March 11, 1943) (10 pages) Written for the Tenth Session of the Eleventh Grand Meeting, p., 6.

<sup>6</sup> Ibid., pp. 3-4.

<sup>7</sup> Ibid., p. 3

<sup>8</sup> Ibid.

unforeseeable in the early years of the war. In anticipation of this problem, as of February 1938, the Ministry of Justice stipulated in article six of its regulations that all legal personnel who were working for the Ministry of Justice, would be required to serve in a war-stricken area for a set amount of time.<sup>9</sup> As an incentive, they would be provided with an extra cost of living allowance during their tenure in a war-stricken area, in addition to receiving their normal salary.<sup>10</sup> The regulation also stated that all legal personnel could be ordered at anytime to fill vacancies in prisons and holding facilities in order to maintain domestic order.<sup>11</sup>

After the fall of Wuhan in October 1938, intense fighting across areas of China led to a further exodus in the number of legal personnel who withdrew from their registered posts in areas engaged in full-scale war.<sup>12</sup> By January 1939, despite the economic incentives provided by the Ministry of Justice, it became increasingly more difficult to enforce this regulation as fewer legal personnel were willing to serve in war-stricken areas. As noted by the Ministry of Justice's January 1939 work report, the loss of legal personnel on the provincial and county levels exacerbated the problem of criminality within domestic society.<sup>13</sup> Chart 1 below shows the total number of legal personnel until October 1941, who withdrew from their postings in war-stricken areas as organised according to their official positions. Chart 2 shows the number of legal personnel needed to fill these vacancies during the same period.

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<sup>9</sup> Ibid.

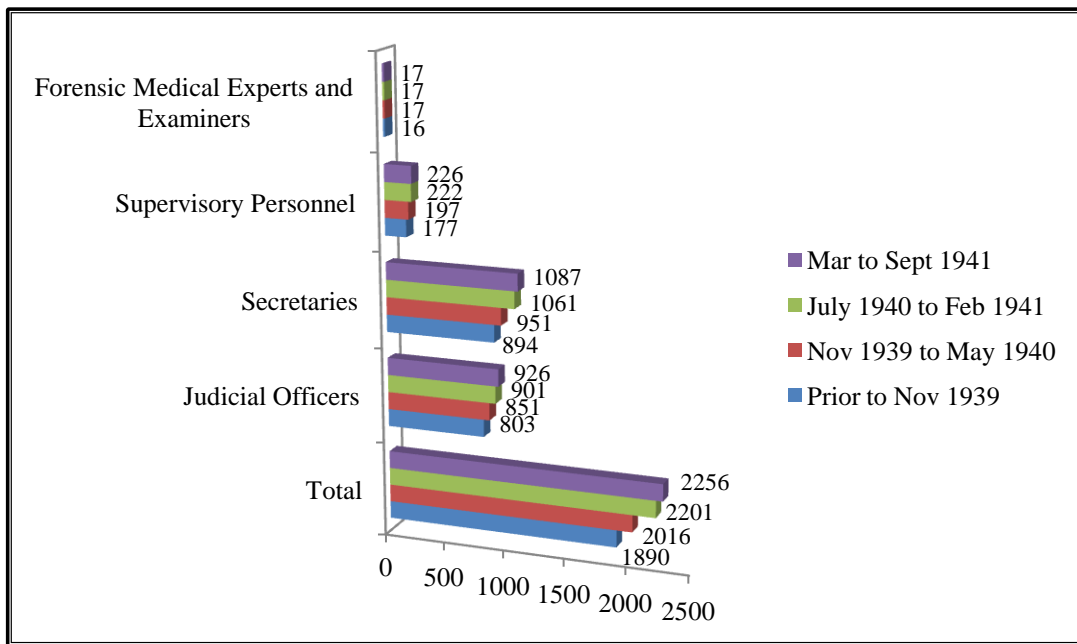
<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

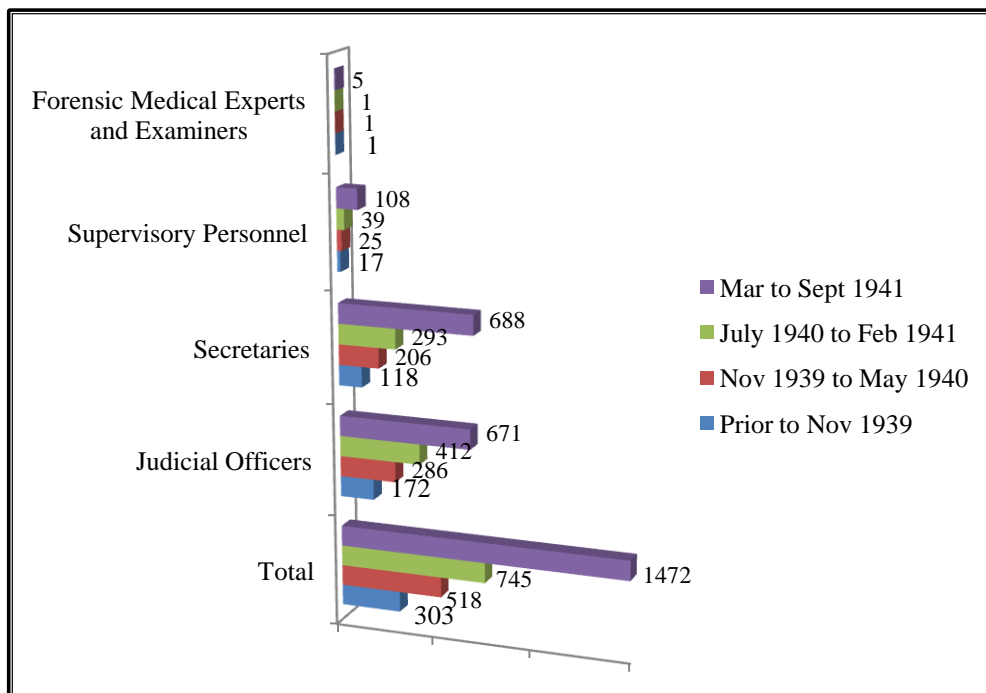
<sup>12</sup> "MOJ Work Report: January 1939," pp. 6-7.

<sup>13</sup> Ibid., pp. 11-12.

**CHART 1:  
TOTAL NUMBER OF LEGAL PERSONNEL WHO WITHDREW FROM THEIR REGISTERED  
POSTS IN WAR-STRICKEN AREAS (UNTIL OCTOBER 1941)<sup>14</sup>**



**CHART 2:  
TOTAL NUMBER OF LEGAL PERSONNEL NEEDED TO FILL VACANCIES OF THOSE WHO  
WITHDREW FROM THEIR REGISTERED POSTS IN WAR-STRICKEN AREAS  
(UNTIL OCTOBER 1941)<sup>15</sup>**



<sup>14</sup> “MOJ Work Report: November 1939” (Attachment 3), “MOJ Work Report: June 1940 (Attachment 2);  
MOJ Work Report: March 1941 (Attachment 4), MOJ Work Report: October 1941 (Attachment 3)

<sup>15</sup> Ibid.

As charts 1 and 2 have suggested, this failed regulation stipulated by the Ministry of Justice was an early indication from those working on the national level of the weaknesses of the Ministry of Justice. Moreover, it reflected the limitations of the judicial infrastructure in coping with the strains of wartime conditions. Although legal personnel were not responsible for law enforcement, they were however, responsible for keeping records of criminal offences, offenders, courts, prisons, and holding facilities. The loss of legal personnel during the wartime period was one example of a hollowing out of authority and capability from within the Ministry of Justice, which would have broader implications for the ministry's role during the wartime period. The next chapter will discuss in greater detail the pragmatic challenges that the Ministry of Justice faced in an effort to handle the growing problem of criminality within domestic society.

## **THE POPULATION OF CHINA**

According to the Bureau of Statistics for the General-Directorate of Budgets, Accounts, and Statistics for Chiang Kai-shek's Nationalist Government, in 1935, the population for the whole of China was estimated to be 450 million.<sup>16</sup> By 1937, the national population rose by more than 35 million - a 7% increase in less than two years.<sup>17</sup> Although statistics could not be located for the years between 1937 and 1944, when many areas across China were engaged in periods of intense fighting, by the time another national census was formally conducted in 1944, the population of China had declined to 454,615,734.<sup>18</sup> (Chart 3)

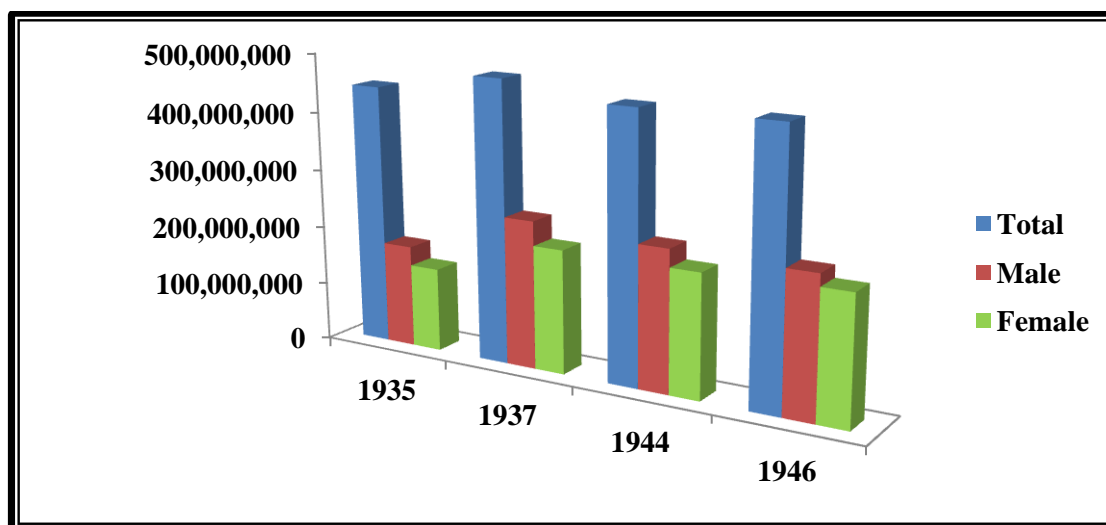
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<sup>16</sup> 中華民國統計提要：二十四年度 [Summary of Statistics for the Republic of China: 1935] Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 226. Hereafter abbreviated as "1935 National Statistics."

<sup>17</sup> 中華民國統計提要：二十九年度 [Summary of Statistics for the Republic of China: 1940] Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 49. Hereafter abbreviated as "1940 National Statistics."

<sup>18</sup> 中華民國統計提要：三十四年度 [Summary of Statistics for the Republic of China: 1945] Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 6.

**CHART 3:  
POPULATION OF CHINA (1935-1946)**<sup>19</sup>



Year	Total	Male	Female	Male to Female Ratio (%)
1935	444,486,537	174,320,382	142,359,895	122.45
1937	479,084,651	251,101,729	210,261,917	119.42
1944	454,615,734	239,528,481	209,287,570	114.11
1946	455,592,065	236,297,608	215,572,306	109.61

Based on these statistics, the decline in China’s population rates between 1935 and 1946 was most noticeable in the ratio of men to women, where the difference in gender disparity had dropped by as much as 10% between the years before the outbreak of total war in 1937 and the post-war period. One possible explanation for this decline was that the majority of Chinese men were serving in the military, and the population figures therefore reflected the high number of wartime casualties.

If we take any of the official statistics recorded by the Ministry of Justice or the Bureau of Statistics and measure it against the population of China during this period, the total number of criminal offenders recorded would not be statistically significant. However, the problem that criminality presented for wartime society was simply more than a matter of percentage increases. As the earlier chapter has show, a rise in the

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Hereafter abbreviated as “1945 National Statistics.”  
<sup>19</sup> 中華民國統計提要 [Summary of Statistics for the Republic of China] for 1935, 1940, 1945 and 1947. Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government].

number of criminal activities and offenders that appeared within society incited profound fears over the threat of social instability.

Was the problem of criminality simply a perceptual one that was exaggerated by people's fears of the unknown, or how much of it was it an actual problem that Chiang Kai-shek's Nationalist Government should and could have addressed more astutely earlier on in the war? Official statistics recorded by the Ministry of Justice and the Bureau of Statistics documented an empirical rise in the overall number of criminal offenders during the wartime period. These statistics also showed that the number of criminal offences adjudicated by local courts (*difang fayuan* 地方法院), provincial high courts (*gaodeng fayuan* 高等法院), and the Supreme Court (*zuigao fayuan* 最高法院) rose steadily alongside the rise in the number of criminal offenders during this period.

•••  
**ACCOUNTING FOR THE NUMBER OF  
CRIMINAL OFFENDERS**  
••••

According to the Ministry of Justice, the total number of criminal offenders in 1932 was estimated to be fewer than one hundred thousand.<sup>20</sup> As shown in the chart below, in 1934, the total number of criminal offenders recorded was 126,881.<sup>21</sup> By June 1936, that number rose by 26,198 - amounting to a total of approximately over 150,000.<sup>22</sup> By November 1939, the number of criminal offenders had increased by 41,998 - a 37% increase from 1936 - bringing the total number of criminal offenders to 153,079.<sup>23</sup> As of October 1941, the Ministry of Justice reported that the number of criminal offenders had

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<sup>20</sup> "1932 MOJ Statistics," pp. 770-77.

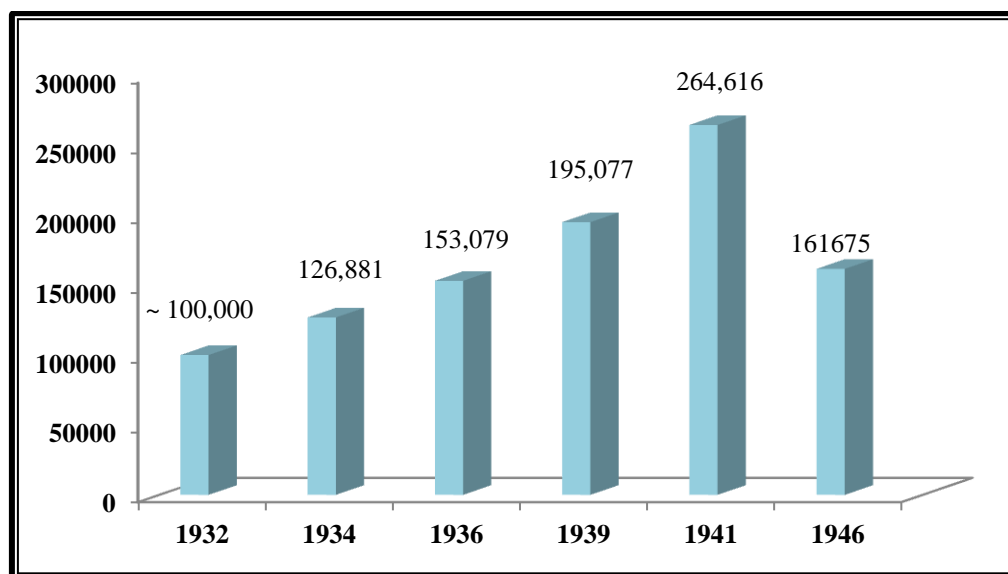
<sup>21</sup> "1936 MOJ Statistics," pp. 88-96.

<sup>22</sup> 入監人犯統計 [Statistics of Criminal Offenders Who Entered Prison], Compiled by 國民政府主計處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], Vol. 12 (Jun., 1936): 2.

<sup>23</sup> KMT 5.2/48 - 司法院 [MOJ], 司法院工作報告 [MOJ Work Report] (November 1939) (Attachment 5). Hereafter abbreviated as "MOJ Work Report: November 1939."

risen again by 69,539, a 40% increase in less than two years.<sup>24</sup> Chart 4 below shows the total number of criminal offenders recorded by the Ministry of Justice between 1932 and 1946.

**CHART 4:  
TOTAL NUMBER OF CRIMINAL OFFENDERS RECORDED  
BY THE MINISTRY OF JUSTICE (1932-1946)<sup>25</sup>**



However, these numbers are not representative of the whole of China but instead reflect the number of criminal offenders that were officially recorded by the Ministry of Justice at the time. By 1944, Chiang Kai-shek's Nationalist Government had exhausted the majority of its human, economic, and material resources towards the war effort. According to the Ministry of Justice's May 1944 work report, the overall number of criminal offenders was believed to have more than doubled since 1932, and the fastest rate of increase appeared during the war years.<sup>26</sup> By the end of the war, figures taken in 1946 showed that the number of offenders had dropped significantly. However, this was

<sup>24</sup> KMT 5.2/8/11- 司法院 [MOJ], 司法院工作報告 [MOJ Work Report] (October 1941) (Attachment 4). Hereafter abbreviated as "MOJ Work Report: October 1941."

<sup>25</sup> "1932 MOJ Statistics," pp. 770-77; "1936 MOJ Statistics," pp. 88-96; 入監人犯統計 [Statistics of Criminal Offenders Who Entered Prison], Compiled by 國民政府主計處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], Vol. 12 (Jun., 1936): 2; "MOJ Work Report: November 1939" (Attachment 5); "MOJ Work Report: October 1941" (Attachment 4)

<sup>26</sup> KMT 5.2/146.15 - 司法院 [MOJ], 司法院工作報告 [MOJ Work Report] (May 1944), p.3. Hereafter abbreviated as "MOJ Work Report: May 1944."

most likely due to poor data collection by the Ministry of Justice, rather than an actual decline in the number of criminal offenders present within Chinese society in the post-war period.

On the one hand, an empirical rise in the number of criminal activities and offenders that appeared within wartime society tested the abilities Chiang Kai-shek's Nationalist Government to maintain its authority on both the national and local levels. On the other hand, because of the instability of wartime conditions, the boundaries between law and society thus became more fluid. Public fears associated with the increase in the number of criminal offenders and a breakdown in social order was therefore not completely unfounded.

...  
**ACCOUNTING FOR THE NUMBER OF  
CRIMINAL OFFENCES**

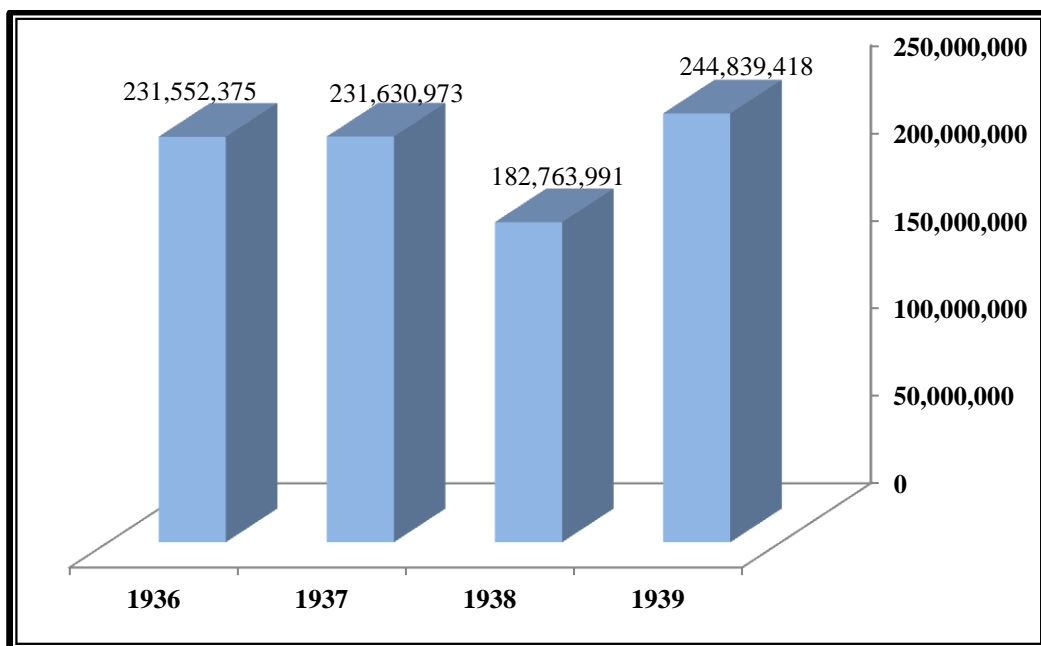
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As demonstrated by the preceding statistics and charts, the Ministry of Justice documented an empirical rise in the total number of criminal offenders that was officially recorded during the wartime period. To corroborate this rise, the following documents an empirical rise in the number of criminal offences that was also recorded by the Ministry of Justice during the wartime period. Chart 5 below shows the number of criminal cases that were officially recorded and investigated (*zhencha* 偵查) by the Ministry of Justice from 1936 to 1939.<sup>27</sup>

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<sup>27</sup> Statistics for 1936 were drawn from "1936 MOJ Statistics," p. 88. Statistics for 1937 to 1939 were drawn from 民國二十六, 七, 八年度司法統計 [Judicial Statistics for 1937, 1938, and 1939] 司法行政部 [Office of Statistics for the Ministry of Justice] Xie Guangsheng, ed., p. 88. Hereafter abbreviated as "1937-1939 MOJ Statistics."

**CHART 5:  
TOTAL NUMBER OF CRIMINAL CASES INVESTIGATED  
BY ALL LOCAL COURTS (1936-1939) (BY YEAR)<sup>28</sup>**



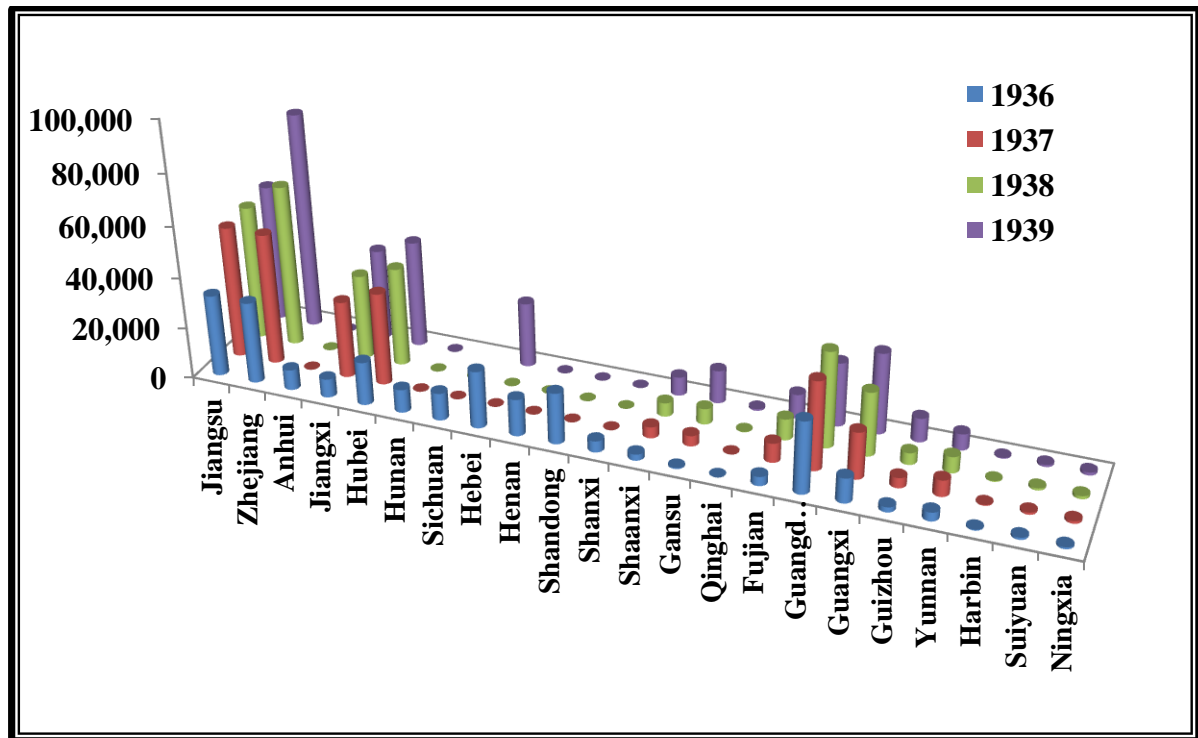
It is important to note that the figures detailed in the above chart were rather low, as an overwhelming majority of criminal offences were not officially reported during the wartime period. According to Chart 5, the total number of criminal cases investigated by all local courts between 1936 and 1939 showed that there was also a steady increase in the overall number of criminal offences recorded by the Ministry of Justice. However, that number dropped significantly in 1938. Although an explanation was not offered by the Ministry of Justice for this decline, one possible explanation could be that a large number of men were conscripted into or voluntarily joined the military immediately after the outbreak of total war in 1937. In this regard, statistically, they were no longer considered as civilians.

Chart 6 and the accompanying table below, documents a provincial breakdown of the same criminal cases referenced in Chart 5 for the same four year period (1936-1939). It should be noted that the chart reflects statistics collected from all provinces but where

<sup>28</sup> “1937-1939 MOJ Statistics,” p. 88.

there is no numerical value, this was not because criminal offences had not occurred in these areas but rather, many areas were engaged in intense fighting during this period and statistics were unavailable.

**CHART 6:  
TOTAL NUMBER OF CRIMINAL CASES INVESTIGATED  
BY LOCAL COURTS (1936-1939) (BY PROVINCE)<sup>29</sup>**



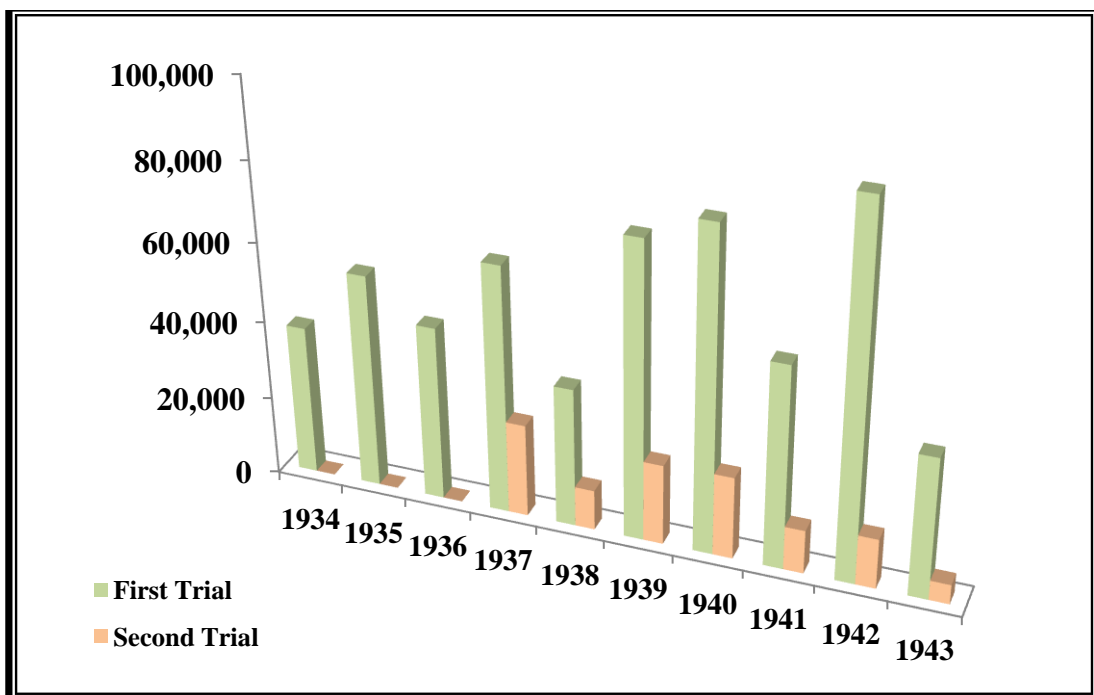
Province	1936	1937	1938	1939	Province	1936	1937	1938	1939
Jiangsu	31,918	51,362	52,274	53,613	Shaanxi	2,415	4,360	5,356	7,307
Zhejiang	31,838	51,159	62,883	84,358	Gansu	426	4,060	6,146	12,921
Anhui	7,936	N/A	N/A	N/A	Qinghai	N/A	N/A	173	655
Jiangxi	7,230	30,079	32,908	35,636	Fujian	3,574	7,531	8,285	9,472
Hubei	16,914	36,173	38,435	41,632	Guangdong	28,195	34,807	37,686	25,010
Hunan	9,081	N/A	N/A	N/A	Guangxi	9,688	18,327	25,042	31,787
Sichuan	10,668	N/A	N/A	N/A	Guizhou	1,983	3,984	4,609	9,379
Hebei	22,358	N/A	N/A	25,356	Yunnan	3,439	6,388	N/A	N/A
Henan	14,447	N/A	N/A	N/A	Harbin	345	N/A	N/A	N/A
Shandong	20,007	N/A	N/A	N/A	Suiyuan	847	N/A	N/A	N/A
Shanxi	4,386	N/A	N/A	N/A	Ningxia	740	1,037	1,172	N/A

Charts 5 and 6 documented a rise in the number of criminal cases investigated on the local levels. If a criminal case could not be resolved at the initial court hearing on the local level, the case would be sent to the provincial high court for further review. If the

<sup>29</sup> Statistics for 1936 were drawn from “1936 MOJ Statistics,” p. 88. Statistics for 1937 to 1939 were drawn from “1937 -1939 MOJ Statistics,” pp. 88-105.

case warranted an additional hearing after the first trial whilst it was still on appeal, a second court hearing (second trial) could be carried out by the provincial high court before it was sent to the Supreme Court for further review. Chart 7 below therefore shows the total number of criminal cases that were accepted and adjudicated by all provincial courts in China from 1937 to 1943.

**CHART 7:  
TOTAL NUMBER OF CRIMINAL CASES ACCEPTED AND ADJUDICATED  
BY ALL PROVINCIAL COURTS (1937-1943)<sup>30</sup>**



Year	First Trial	Second Trial
1934	37,984	N/A
1935	54,362	N/A
1936	44,368	N/A
1937	62,970	23,712
1938	35,438	10,236
1939	75,269	20,519
1940	81,765	21,056
1941	51,622	11,145
1942	93,457	12,785
1943	36,019	5,023

<sup>30</sup> Statistics from 1937 to 1943 were drawn from 中華民國統計提要：三十四年度年度 [Summary of Statistics for the Republic of China: 1945] Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 128. Hereafter abbreviated as “1945 National Statistics.” Statistics for 1934 to 1936 were drawn from “1936 MOJ Statistics,” pp. 88-96.

Drawing on the statistics referenced in the above chart, Table A below shows the percentage ratio of the total number of criminal cases that received an additional hearing before the provincial high court. As shown in the table, the number of criminal cases that received a second trial was marginal, suggesting that the majority of offences were adjudicated by district-level courts.

**TABLE A:**  
**PERCENTAGE RATIO OF THE TOTAL NUMBER OF CRIMINAL CASES TO CASES**  
**ADJUDICATED BY ALL PROVINCIAL COURTS (1936-1939)<sup>31</sup>**

Year	Total No. of Criminal Offences	Adjudicated by Provincial Courts		Percentage of Total No. of Criminal Offences Handled by Provincial Courts	
		First Trial	Second Trial	First Trial	Second Trial
1936	231,552,375	44,368	N/A	0.00191%	N/A
1937	231,630,973	62,970	23,712	0.00272%	0.00102%
1938	182,763,991	35,438	10,236	0.00194%	0.00560%
1939	244,839,418	75,269	20,519	0.00307%	0.00838%

...  
**DOCUMENTING A RISE IN THE NUMBER OF JUVENILE OFFENDERS**

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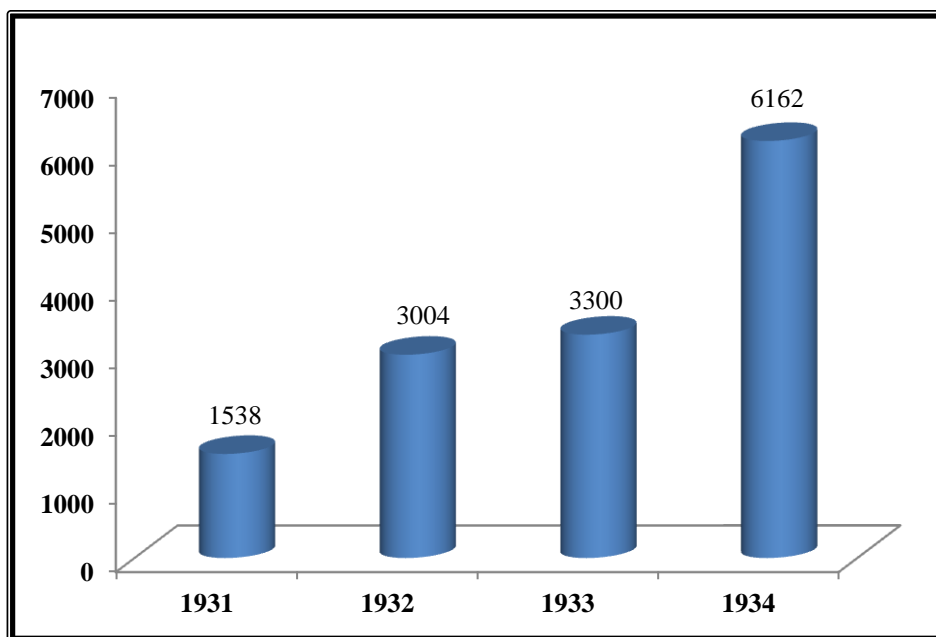
As the first half of this chapter has shown, a rise in the number of criminal offences and offenders could be empirically documented during the wartime period. Increased levels of criminality were however, not only limited to the adult offending population. Instead, an unprecedented increase in the number of juvenile offenders appeared in the years leading up to the outbreak of total war and during the wartime period. Because statistical data on juvenile offenders were sparse during the wartime period, and in an effort to account for the empirical rise in juvenile offenders across a continuous period, this section of the chapter will first begin with statistical findings from 1931 before moving back into the wartime period.

<sup>31</sup> Statistics from 1937 to 1943 were drawn from 中華民國統計提要：三十四年度年度 [Summary of Statistics for the Republic of China: 1945] Compiled by 國民政府主處計統計局 [Main Office of the Bureau of Statistics for the Nationalist Government], p. 128. Hereafter abbreviated as “1945 National Statistics.” Statistics for 1934 to 1936 were drawn from “1936 MOJ Statistics,” pp. 88-96.

## THE NANJING DECADE

Beginning in 1931, the Ministry of Justice officially reported that there were 1,538 offenders who had not reached twenty *sui* and were currently serving prison sentences.<sup>32</sup> In 1932, that number rose to 3,004 and to 3,300, one year later.<sup>33</sup> However, by 1934, the number of juvenile offenders recorded across China had nearly doubled to 6,162.<sup>34</sup> (Chart 8) The following chart comparatively shows a further breakdown of juvenile offenders based on age and gender for the same period. (Chart 9) A statistical breakdown for 1931 could not be located.

**CHART 8:  
TOTAL NUMBER OF JUVENILE OFFENDERS RECORDED  
BY THE MINISTRY OF JUSTICE (1931-1934) – BY YEAR<sup>35</sup>**



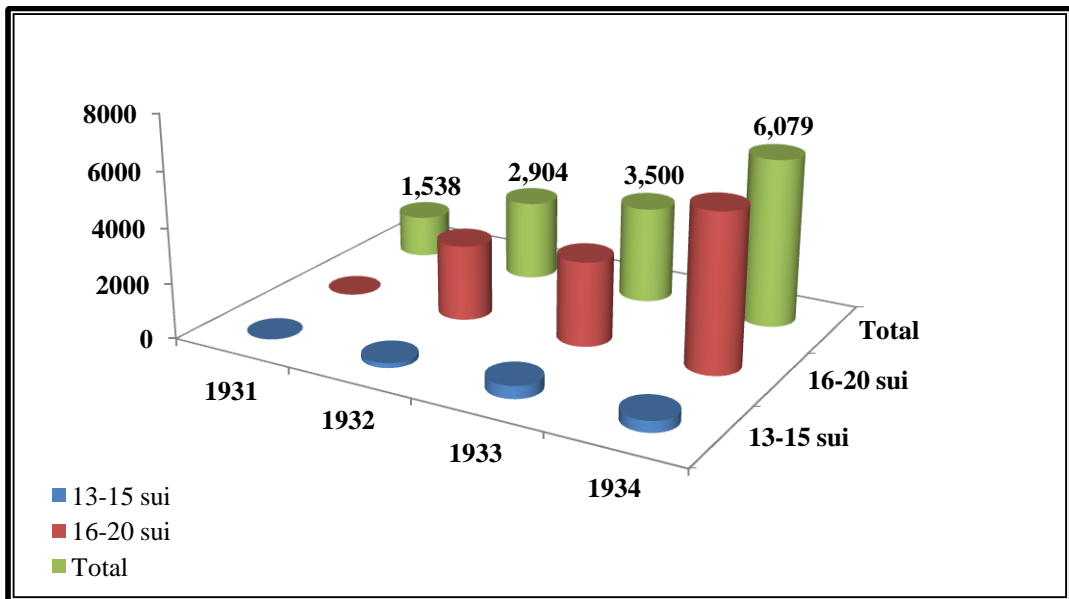
<sup>32</sup> “1931 MOJ Statistics,” p. 118.

<sup>33</sup> “1932 MOJ Statistics,” p. 207.

<sup>34</sup> “1933 MOJ Statistics,” p. 108 and “1936 MOJ Statistics,” p. 121-27.

<sup>35</sup> “1931 MOJ Statistics,” p. 118; “1932 MOJ Statistics,” p. 207; “1933 Statistics,” p. 108; “1934 MOJ Statistics,” p. 192.

**CHART 9:  
TOTAL NUMBER OF JUVENILE OFFENDERS RECORDED  
BY THE MINISTRY OF JUSTICE (1931-1934) – BY AGE AND GENDER<sup>36</sup>**



Year	13 – 15 sui			16 – 20 sui			Total
	Subtotal	Male	Female	Subtotal	Male	Female	
1931	N/A	N/A	N/A	N/A	N/A	N/A	1,538
1932	170	166	4	2734	2577	157	2,904
1933	452	175	277	3048	2680	368	3,500
1934	405	385	20	5674	5216	458	6,079

Although the number of juvenile offenders that were officially recorded by the Ministry of Justice had gradually increased between 1931 and 1933, the doubling in the overall number of juvenile offenders in 1934 brought the issue of juvenile criminality to the forefront of the public's attention, as well as that of Chiang Kai-shek's Nationalist Government. As the charts above have shown, twenty *sui* instead of eighteen *sui*, was used as the cut-off point for statistical collection during this period. For purposes of consistency and clarity, statistical data reported by the Ministry of Justice and the Bureau of Statistics in Republican China was therefore generally broken down in five year increments. Although it is difficult to know from these statistics, the precise figures for the number of offenders who had not reached eighteen *sui* to qualify as juvenile offenders

<sup>36</sup> 1931 MOJ Statistics," p. 118; "1932 MOJ Statistics," p. 207; "1933 Statistics," p. 108; "1934 MOJ Statistics," p. 192.

in the eyes of the law, these statistics nevertheless demonstrated that wartime society witnessed a steady rise in the number of young offenders. The discrepancy in the statistical use of twenty *sui* instead of eighteen *sui* further underscores the ambiguities beyond the legal and judicial spheres for demarcating the boundaries between childhood and adulthood.

In response to the growing social problem of criminality, in 1935 and 1939, Jinling College conducted two sociological surveys that specifically focused on juvenile offenders in the cities of Nanjing and Chengdu.<sup>37</sup> The findings from these two surveys emphasised that the issue of juvenile offenders was a much neglected social problem within Chinese society but it had largely gone unnoticed for the years leading up to the outbreak of total war. Because the surveys were conducted between 1935 and 1939 respectively, the findings crossed the wartime divide and captured a period of volatility brought on by the outbreak of total war in 1937.

To corroborate these findings, in November 1936, the Chinese legal scholar, Zhang Shaowei argued that a rise in the number of juvenile offenders within Chinese society could be attributed to a number of different factors. Drawing upon the findings from a sociological survey conducted in the early 1930s on self-reflection institutions (*fanshengyuan* 反省院), he argued that the outbreak of the war destabilised families and their abilities to provide for their children. In addition, wartime conditions brought about

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<sup>37</sup> 金陵女子文理學院社會學係 [Department of Sociology, Jinling Women's College], “南京 49 個兒童小販” [Nanjing's 49 Juvenile Petty Offenders], in 民國時期社會調查叢編：底邊社會卷（上冊） [Collection of Social Surveys from the Republican Period: On the Fringes of Society (vol., 1)], ed. Li Wenhai (Fujian: Fujian Educational Publishing House, 2005): 1-5; Lu Baoyuan, “成都 30 個犯罪兒童的研究” [Research on 30 Child Offenders in Chengdu], in 民國時期社會調查叢編：底邊社會卷（上冊） [Collection of Social Surveys from the Republican Period: On the Fringes of Society (vol., 1)], ed. Li Wenhai (Fujian: Fujian Educational Publishing House, 2005): 145-81. Jinling College was an all women's Christian college founded by Western missionaries, most notably Minnie Vautrin, which became the first university to grant bachelor's degrees to female students in China. Minnie Vautrin was an American missionary most renowned for saving the lives of many women during the Nanjing Massacre in 1937. For a history of the university, see: Jin Feng, *The Making of a Family Saga: Ginling College* (New York: SUNY Press, 2009); see also: Suping Lu, ed. *Terror in Minnie Vautrin's Nanjing: Diaries and Correspondence, 1937-1938* (Champaign, IL: University of Illinois Press, 2008).

difficult economic conditions for domestic society, and a breakdown in support structure for families.<sup>38</sup> Zhang predicated his argument on a sample of four thousand criminal offenders, who averaged twenty three *sui*, and amongst those serving time in the self-reflection institutes, 25% of them had not reached nineteen *sui*.<sup>39</sup> Moreover, an overwhelming 97% of them were first time offenders and 43% of these offenders had not reached fifteen *sui* at the time they committed their offence.<sup>40</sup>

In the same survey, it was reported that of the 43% of juveniles, who had not reached fifteen *sui*, the majority of them had either suspended their studies or stopped going to school (*chuo xue* 輟學) indefinitely, so as to alleviate the burden of additional expenses for their families. In the case of older children, the survey found that they had suspended their studies in order to allow for their younger brothers or sisters to attend school instead of them. The breakdown in the agencies of socialisation for children such as those who were no longer enrolled in school or involved in other activities, further contributed to concerns about juvenile delinquency as a growing social problem during the wartime period.

At the heart of Zhang's argument was that large families were more prone to produce delinquent children due to difficult economic conditions brought on as a result of the outbreak of war. Because larger families had more children to care for, it was more likely that the welfare of older children would be sacrificed in favour of the younger ones. Based on these sociological findings, Zhang concluded that a rise in the number of juvenile offenders that appeared within wartime society could be easily resolved if the government allocated additional resources to caring for the livelihoods of the poor and young. Zhang specifically argued for an increase in national support for the young-poor,

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<sup>38</sup> Zhang Shaowei, 大家庭與犯罪 [Big Family and Crime], 東方雜誌 [Eastern Miscellany] vol. 33, no.17 (November 1936): 274.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

and not the poor and the young as two separate social groups. He argued that the issue of juvenile offenders, particularly in relation to poverty and criminality, could no longer be ignored within Chinese society.

Zhang's article, which was widely circulated in the periodical *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌), advocated for the recognition of criminality as a social problem that was afflicting domestic society rather than as a penal or judicial issue.<sup>41</sup> Although Zhang had advocated for a social welfare approach, the judicial apparatus in place as of 1936 was not equipped to cope with an unprecedented rise in the number of juvenile offenders. Moreover, statistical figures from this period also showed that although Chiang Kai-shek's Nationalist Government and the Ministry of Justice recognised the issue of juvenile delinquency as a social problem within domestic society, it did not have the resources or manpower to effectively contain or handle the problem. Social conditions therefore played a large part in the proliferation of criminal offences involving juveniles that appeared within domestic society.<sup>42</sup>

Fears associated with the rise in criminality, especially amongst juveniles, further prompted moral and social panic within wartime society. As another editorial in *Eastern Miscellany* noted, the overall rise in the number of criminal offences within society "threatened the country's ability to manage the people, especially on the provincial and municipal levels."<sup>43</sup> Empirically, Charts 8 and 9 showed that an overwhelming majority of juvenile offenders recorded between 1931 and 1934 were between sixteen and twenty *sui*, and the number of offenders who were between thirteen and fifteen *sui* were minimal.

According to the earlier statistics reflected in Chart 5, in 1934, the total number of

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<sup>41</sup> Ibid.

<sup>42</sup> Chen Haihan, "青年犯罪心理之研究" [Research on the Mentality of Youth Crime], 大夏期刊 [Daxia Weekly] Vol. 1 (December 1930): 114.

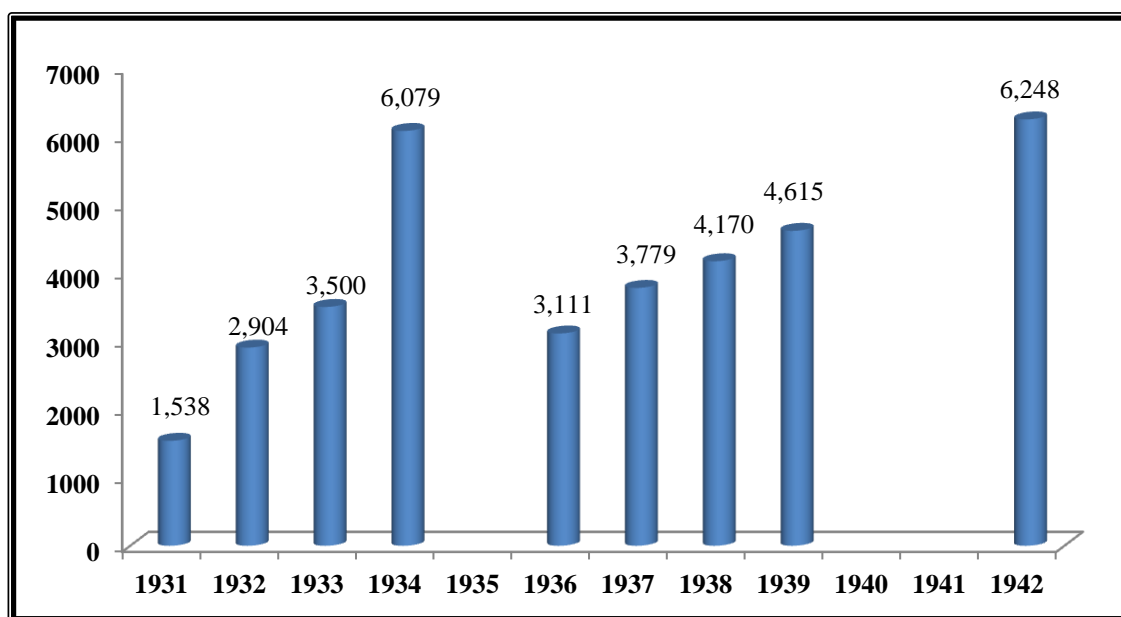
<sup>43</sup> Hao Lun, "犯罪與社會" [Criminal Offences and Society], 東方雜誌 [Eastern Miscellany], vol. 32, no. 1 (1 November 1934): 61.

criminal offenders recorded was 126,881, of which 6,079 were juvenile offenders.<sup>44</sup> Juvenile offenders therefore accounted for nearly 5% of the overall population of criminal offenders in 1934 alone. Even though the highest proportion of juvenile offenders officially recorded between 1931 and 1942 was in the year 1934, this was unsurprising as the early 1930s witnessed a period of strong social regulation and control by the government, which was reflected in the Nationalist Government's efforts toward modernisation during the New Life Movement.

### THE WARTIME PERIOD

In the years leading up the outbreak of war, the number of juvenile offenders that appeared within domestic society rose steadily. The number of juvenile offenders continued to rise throughout the wartime period. As Chart 10 below shows, the number of offenders who had not reached twenty *sui* between 1936 and 1942.

**CHART 10:  
TOTAL NUMBER OF JUVENILE OFFENDERS RECORDED  
BY THE MINISTRY OF JUSTICE (1931-1942)<sup>45</sup>**



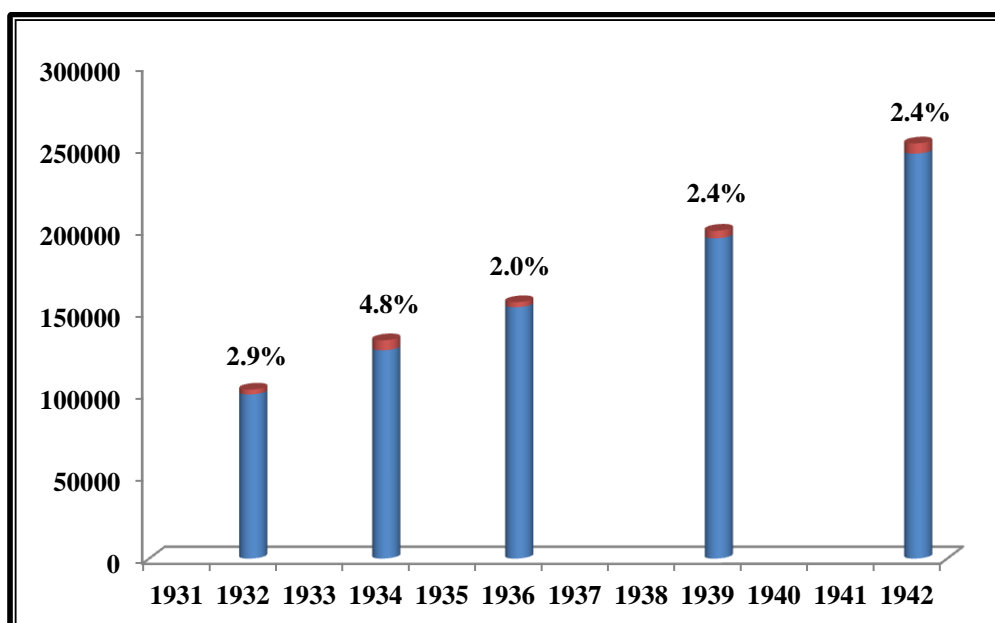
<sup>44</sup> "1936 MOJ Statistics," pp. 88-96.

<sup>45</sup> "1931 MOJ Statistics," p. 118; "1932 MOJ Statistics," p. 207; "1933 Statistics," p. 108; "1934 MOJ Statistics," p. 192.

<b>Year</b>	<b>Total # of Juvenile Criminal Offenders under 20 <i>sui</i></b>	<b>Annual Percentage Increase</b>
1931	1,538	---
1932	2,904	88%
1933	3,500	21%
1934	6,079	74%
1935	---	---
1936	3,111	- 49%
1937	3,779	22%
1938	4,170	10%
1939	4,615	10%
1940	---	---
1941	---	---
1942	6,248	35%

Even though 1934 marked the year in which the highest number of juvenile offenders were recorded by the Ministry of Justice between 1931 and 1942, it is important to note that many criminal offences, especially amongst the young, went largely unreported during the wartime period. Therefore, it is likely that the statistical data officially reported by the Ministry of Justice was significantly lower than the actual number of offenders. Where possible, Chart 11 and the accompanying table compares the percentage of juvenile offenders in relation to the total number of adult criminal offenders recorded by the Ministry of Justice from 1931 to 1942.

**CHART 11:  
PERCENTAGE OF JUVENILE OFFENDERS TO CRIMINAL OFFENDERS  
AS RECORDED BY THE MINISTRY OF JUSTICE (1931-1942)**



Year	Total # of Criminal Offenders	Total # of Juvenile Criminal Offenders under 20 <i>sui</i>	Percentage of Juvenile Offenders to Total # of Criminal Offenders
1931	---	1,538	---
1932	~ 100,000	2,904	2.9%
1933	---	3,500	---
1934	126,881	6,079	4.8%
1935	---	---	---
1936	153,079	3,111	2.0%
1937	---	3,779	---
1938	---	4,170	---
1939	195,077	4,615	2.4%
1940	---	---	---
1941	---	---	---
1942	264,616	6,248	2.4%

If one compared the total number of adult criminal offenders to the entire population of China at the time, and then delineated the number of juvenile offenders recorded during the war years in relation to it, the number of juvenile offenders recorded during the war years was not statistically significant. However, the conflation between the Chinese public's perceptions versus the actual reality of a rise in the number of juvenile offenders underscored the gravity of the problem within wartime society.

As statistics in this chapter have attempted to show, an empirical rise in the number of criminal offences as well as, adult and juvenile offenders, could clearly be accounted for in the years leading up to and including the wartime period. In addition to the problem of volume, as the war intensified, the steady rise in the number of juvenile offenders caused an undue strain on the judicial system, as courts were burdened with the difficulties of navigating the moral and legal ambiguities present in the 1935 revised Criminal Code for how the law should treat the young. Moreover, the lack of facilities available for juvenile offenders created additional problems for the prison system.

...  
**BEYOND NUMBERS**  
....

What then do these statistics signify? The rise in criminality in the years leading up to and including the wartime period amongst adults and juveniles were not only a perceptual problem that prompted widespread public fears and instability amongst the civilian population but it was also a serious problem that expended the resources of Chiang Kai-shek's Nationalist Government. As the problem of criminality worsened, this only further threatened the government's authority and legitimacy in the eyes of the people.

As this chapter has shown, an empirical rise in the number of criminal offences and offenders could be seen during the wartime period, adding to the number of domestic problems that contributed to the collapse of Chiang Kai-shek's Nationalist Government. Despite the prevalence of criminal offences and offenders that appeared within wartime society, Chiang Kai-shek's Nationalist Government did not treat the problem with urgency until it had continued to worsen and the judicial infrastructure in place was no longer capable of coping with an increase in the number of criminal offenders as a pragmatic problem.

The next chapter will demonstrate how Chiang Kai-shek's Nationalist Government attempted to handle and address a rise in criminality as a pragmatic problem under wartime conditions. The earlier section has shown how the outbreak of war brought about changes in the way in which ideas of children and criminality manifested within the public and social spheres during the wartime period. The next chapter therefore aims to contrast that by concentrating on the measures and policy initiatives put forward by the Ministry of Justice, of which were intended to address the growing number of criminal offenders and offences that appeared within wartime society.

**CHAPTER SIX**  
**TRACING ITS EVOLUTION:**  
**THE 9 SEPTEMBER 1939 LEGAL STATUTE**

...

As the earlier chapters have shown, by the time Chiang Kai-shek's Nationalist Government had retreated to Chongqing after the fall of Wuhan in October 1938, the number of domestic problems that had gone unaddressed by the government was clearly evident. In particular, an empirically documented rise in levels of criminality could be accounted for within Chinese society, and official statistics recorded by the Ministry of Justice showed that a steady increase in the number of criminal offences and offenders continued to rise steadily from 1931 and into the wartime period.<sup>1</sup>

Between July 1935 and September 1937, the Ministry of Justice and the Central Committee of Chiang Kai-shek's Nationalist Government exchanged several memorandums, which acknowledged that an increase in criminal activities had become a pressing domestic problem.<sup>2</sup> However, these memorandums recommended that further attention though not immediate action should be directed towards the handling of criminal offenders within Chinese society.<sup>3</sup> Even though the rise in levels of criminality posed a potential threat to the overall stability of domestic society, it was neither met with urgency nor recognised as a priority by government officials within Chiang Kai-shek's Nationalist Government at the time.

Following on the earlier chapters, the aim of this chapter is to trace the evolution and revision process of the 9 September 1939 legal statute across the duration of the wartime period. This key policy measure was implemented by the Ministry of Justice and pertained directly to the handling of criminal offenders during the wartime period. The

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<sup>1</sup> 民國二十一年度司法統計 [Judicial Statistics for 1932] 司法行政部統計室 [Office of Statistics for the Ministry of Justice] Xie Guangsheng, ed., pp. 770-77.

<sup>2</sup> AHA 001012034A – 非常時期監所刑人犯臨時處置辦法 [Provisional Method of Handling Criminal Offenders during Extraordinary Times] (15 July 1935), pp. 18-20 and (24 September 1937), pp. 2058-76

<sup>3</sup> *Ibid.*, p. 2059

goal of this chapter is to analyse through one legal statute how the Ministry of Justice sought to separate juvenile offenders from the remainder of the adult offending population. It attempts to show how wartime conditions served as a crystallisation process to the recognition of juveniles as a separate category within the judicial setting.

The legal statute at the core of analysis in this chapter was officially passed into law as the “Statute for the Transfer of Prisoners into Military Service in Extraordinary Times” (*feichang shiqi jianfan diaofu junyi tiaoli* 非常時期監犯調服軍役條例) but it was more widely referred to as the 9 September 1939 Statute, the date that it was ratified.<sup>4</sup> The purpose of the 9 September 1939 Statute was to stipulate the specific types of prisoners who were prohibited from being transferred into the military to work as labourers or sent into the countryside to open uncultivated land.<sup>5</sup> It was an ambitious attempt by the Ministry of Justice to address the growing problem of criminality within domestic society under wartime conditions.

Although the chapter draws on the measures and initiatives put forward by the Ministry of Justice, it does not attempt to offer an analysis of the institutional history of the Ministry of Justice. Instead, through an analysis of the revision process of the 9 September 1939 Statute, the purpose of this chapter is to demonstrate how a rise in the number of criminal offenders during the wartime period prompted a shift in the way in which the Ministry of Justice sought to develop a policy that sought to address a rise in criminality as a pragmatic problem. In particular, the chapter focuses on how the Ministry of Justice attempted to conceptualise and utilise the offending population within a judicial setting, as evidenced in the ministry’s efforts to distinguish juvenile offenders (*shaonian*

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<sup>4</sup> KMT 501/212 – 非常時期監犯調服軍役條例 [Statute for the Transfer of Prisoners into Military Service in Extraordinary Times] (9 September 1939).

<sup>5</sup> *Ibid.*

*fan* 少年犯) as a separate judicial category from the remainder of the adult offending population.

As the earlier chapters have shown, the problem of criminality was not an isolated problem, as it extended beyond an empirical rise in the number of offenders that appeared within domestic society. However, despite many of the discussions surrounding the issue of criminality amongst high-level government officials within Chiang Kai-shek's Nationalist Government, efforts to contain the problem remained as "paper policies" that had limited influence beyond the institutional setting. The primary objective of the 9 September 1939 Statute was therefore intended to offer a pragmatic approach to the problem of criminality by joining the efforts of the Ministry of Justice with that of the military. However, despite these efforts, the statute failed to have any measurable impact.

Despite the overall ineffectiveness of the statute, influences from shifts in ideas about children and childhood, which were evident in other spheres during the wartime period, was also evidenced in the Ministry of Justice's handling of criminal offenders and recognition of juvenile offenders from the remainder of the adult offending population during the wartime period. An examination of the statute within the wider framework of wartime Chinese society is therefore important because it contributes to our understanding of the changing meanings of children and childhood in Republican China.

In this regard, this chapter endeavours to contribute to and engage with the current scholarship that has assessed the strengths, weaknesses, and causes for the collapse of Chiang Kai-shek's Nationalist Government during the war years. It underscores the importance of the judiciary under wartime conditions rather than concentrating on the political, economic, or military aspects of the war that have largely dominated the historiography of this period.<sup>6</sup> This is important because although children were not

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<sup>6</sup> Hans van de Ven, "The Sino-Japanese War in History," in *The Battle for China: Essays on the Military*

regarded as a priority at the time, an analysis of the evolution of the 9 September 1939 Statute revealed the underlining importance of children to the broader vision of social and political order for Chiang Kai-shek's Nationalist Government during the wartime period.<sup>7</sup> It further supports the contention that the outbreak of the war served as a crucial catalyst to bringing about a shift in the function and role of Chinese children – as appendages of their families to the legal and judicial recognition of them as an autonomous group.<sup>8</sup>

### LOCATING THE MINISTRY OF JUSTICE

In order to understand the significance of the 9 September 1939 Statute in relation to the wider discussions on criminality, children, and the law that were taking place during the wartime period, a brief discussion on the Ministry of Justice is first warranted. As the earlier chapters have shown, judicial reforms in the new Republic posed many difficulties for Chiang Kai-shek's Nationalist Government as a modernising state during the Nanjing decade.<sup>9</sup> Under wartime conditions, efforts to execute many of these reforms became even more challenging and as a result, judicial reform was never fully carried out

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*History of the Sino-Japanese War of 1937-1945*. Edited by Mark Peattie, Edward J. Drea, and Hans van de Ven (Stanford: Stanford University Press, 2011): 446-66; Felix Boecking, "Unmaking the Chinese Nationalist State: Administrative Reform among Fiscal Collapse, 1937-1945," *Modern Asian Studies* 45, Special Issue 02: China in World War II, 1937-1945: Experience, Memory, and Legacy (2011): 277-301; Lloyd E. Eastman, *Seeds of Destruction: Nationalist China in War and Revolution, 1937-1949* (Stanford: Stanford University Press, 2002); James C. Hsiung and Steven I. Levine, *China's Bitter Victory: The War with Japan, 1947-1945* (New York: ME Sharpe, 1992); Lloyd E. Eastman, Jerome Ch'en, Suzanne Pepper, and Lyman P. Van Slyke, *The Nationalist Era in China, 1927-1949* (Cambridge: Cambridge University Press, 1991); Suzanne Pepper, *Civil War in China: The Political Struggle, 1945-1949* (Berkeley: University of California Press, 1978)

<sup>7</sup> AHA 001000012034A, p. 2060.

<sup>8</sup> Although Wang Jingwei's Reorganised National Government of China also attempted to put forward a number of different policy initiatives during the wartime period, this chapter does not directly engage with those measures. This is because many of the changes proposed by the Reorganised National Government during the same period had not been fully developed. See: SHAC Section 2, File: 9967 – 汪偽組織 [Organisation of the Collaborationist-regime of Wang], pp. 2043-44; SHAC Section 2, File: 11261 – 偽司法行政院 1940 年度工作或讀考察報告 [1940 Annual Work or Investigative Report on the Ministry of Justice for the Collaborationist Government]; SHAC Section 2, File: 11258 – 偽中央政務 1940 年度報告 [1940 Annual Report on Central Government Affairs for the Collaborationist Government], pp. 002260 - 67 and 002365 - 87; 中央政治委員會秘書廳 [Secretariat of the Central Political Committee], 中央政治委員會政治報告 [Political Report for the Central Political Committee] (1 April 1940 to 10 October 1940), Section 7 of report.

<sup>9</sup> Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901-1937*, p. 18.

to the extent that the Ministry of Justice enjoyed full institutional authority within Chiang Kai-shek's Nationalist Government.

Compared to other institutions like the Ministry of Finance (*caizhengbu* 財政部) or the Ministry of Defence (*guofangbu* 國防部), whose importance and institutional status became elevated as a result of the outbreak of war, the Ministry of Justice's position within Chiang Kai-shek's Nationalist Government was comparatively weaker and more vulnerable in relation to several of the other ministries during the wartime period.<sup>10</sup> As the earlier chapter has demonstrated, the outbreak of the war brought to light many of the underlying weaknesses that were present in the Ministry of Justice since its inception, which had largely gone unnoticed until the strains of wartime conditions revealed such fissures.<sup>11</sup>

By 1940, the intensity and impact of the war had not only exposed many of the weaknesses in the overall infrastructure of Chiang Kai-shek's Nationalist Government but the lack of social welfare services available to ordinary civilians, most notably, in the protection of women and children was clearly visible.<sup>12</sup> As noted by the Ministry of Justice in their March 1940 progress report, the increase in the number of criminal offences and offenders that appeared within wartime society underscored the importance of social conditions during this period.<sup>13</sup>

The establishment of the Ministry for Social Affairs (*shehui bu* 社會部) in September 1941 reflected an increase in the level of attention and unease over social

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<sup>10</sup> Hsia Tao-tai, "Wartime Judicial Reform in China," in *China's Bitter Victory: The War with Japan, 1947-1945*. Eds. James C. Hsing and Steven I. Levine, (New York: ME Sharpe, 1992): 275-94.

<sup>11</sup> For a discussion on the strength of institutions in Chiang Kai-shek's Nationalist Government, see: Julia Strauss, *Strong Institutions in Weak Politics: State Building in Republican China, 1927-1940* (Oxford: Oxford University Press, 1998)

<sup>12</sup> KMT 512/11.4 – 司法院 [Ministry of Justice], 司法院工作報告二十九年度三月 [Ministry of Justice Work Report: March 1940] Hereafter abbreviated as "MOJ Work Report: March 1940," SHAC Section 2, File: 9652 – 社會部 1941 年行政計劃 [Administrative Plan for the Ministry of Social Affairs for 1942].

<sup>13</sup> "MOJ Work Report: March 1940," parts 6 and 7.

problems that appeared during the wartime period. Initially, the goal of implementing social relief and welfare programmes was initially intended to alleviate some of the pressures of everyday life for ordinary civilians.<sup>14</sup> However, the intensity of wartime conditions prevented these efforts from gaining full traction. For instance, in the 1941 administrative plan written by the Ministry of Social Affairs, the report stated that “priority would be placed on educating and nurturing the elderly and the young (*nianyou* 年幼), so that they may have healthy bodies to assist (*xiezhu* 協助) the nation during these extraordinary times (*feichang shiqi* 非常時期).”<sup>15</sup> A similar sentiment was also echoed in the 1941 final work performance report drafted by the Ministry of Social Affairs and sent to the Central Committee.<sup>16</sup> Despite efforts to support the young, these measures failed to have any noticeable impact on the civilian population.

The lack of social relief services available on the provincial and local levels to serve as a safety net for civilians, combined with fiscal problems that resulted in a rapid reduction of funds allocated for the judiciary, thus reflected many of the weaknesses that were internal to the Ministry of Justice during the wartime period. However, the instability and turmoil of wartime conditions created a set of circumstances that made it nearly impossible for the Ministry of Justice to successfully carry out any of the policy initiatives that were intended to address and control the rise in levels of criminality that appeared within domestic society during this time. For example, as early as 1939, the Ministry of Justice stated in a memorandum to the Central Committee stating that:

during these extraordinary times, the capacity of temporary prisons and holding facilities are limited. Therefore, offenders who have served more than six months of their sentence, been sentenced to a prison term of less

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<sup>14</sup> SHAC, Section 2, File: 6511 - 各省成立社會部 [The Establishment of a Ministry for Social Affairs in Each Province], pp. 00304-311.

<sup>15</sup> SHAC, Section 2, File: 6513 - 社會部 1941 年度行政計劃 [1941 Administrative Plan for the Ministry for Social Affairs], p. 00514.

<sup>16</sup> KMT 493/226.1 - 社會部 30 年度工作成績考察報告總評 [Main Assessment of an Investigative Report of the Work Performance of the Ministry for Social Affairs in 1942]

than five years, and women, will be sent to a separate facility in the great interior (*houfang* 後方) where they will be monitored by officials until they no longer posed a threat (*weixian* 危險) to society; only then will they be subsequently released into the countryside to work as labourers.<sup>17</sup>

As the war intensified, the Ministry of Justice's institutional authority became slowly eroded, as it found itself undermined by the immediate interests of the Ministry of Finance and the Ministry of Defence in its efforts to win the war against Japan. This was most visibly evidenced by their joint decisions to substantially reduce the amount of funds allocated for the judiciary and consistent rejection of several policy measures put forward by the Ministry of Justice during the wartime period. At the heart of these tensions was the continual contestation for financial resources. However, despite the bureaucratic in-fighting that took place during this time, the Ministry of Justice was instrumental to upholding a vision of social and political order that was espoused by Chiang Kai-shek's Nationalist Government, at a time when the outbreak of the war threatened to undermine the overall stability of the nation and the government's authority in the eyes of its people. Underlining this chapter is therefore the contestation that the role of the Ministry of Justice was no less important than other institutions within Chiang Kai-shek's Nationalist Government during the wartime period.

Despite efforts by the Ministry of Justice to address the problem of criminality within domestic society, the initial proposal for the 9 September 1939 Statute was merely looked upon as a domestic policy, which was not highly regarded because it could not be seen as having a direct impact to securing a victory for Chiang Kai-shek's Nationalist Government in the war against Japan at the time. However, an analysis of revisions to the 9 September 1939 Statute revealed the importance of criminality and children on two levels. Conceptually, it captured how Chiang Kai-shek's Nationalist Government

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<sup>17</sup> KMT 512/5 – 戰時司法改革情形 1938-1939 [Situation Regarding Judicial Reforms in Wartime 1938-1939], p. 5.

attempted to shape their broader vision of social and political order during the wartime period, especially with regards to locating the place of children within Chinese society. In reality, the challenges associated with the handling of criminal offenders as a pragmatic problem under wartime conditions demonstrated the difficulties of successfully putting a policy into practice during the wartime period. The remainder of the chapter will discuss how the Ministry of Justice attempted to handle the rise in the number of criminal offenders as a pragmatic problem under wartime conditions.

...  
**RECOGNISING CRIMINALITY AS A PRAGMATIC PROBLEM**

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In July 1938, the Ministry of Justice decided that as part of its newly implemented policy to reform and rehabilitate prisoners, it would transfer five hundred criminal offenders from the Wuhan municipal prison into the countryside to open uncultivated land.<sup>18</sup> However, in the first work report to be sent from Chongqing since the retreat of Chiang Kai-shek's Nationalist Government inland, the Ministry of Justice expressed "concerns" (*guanxin* 關心) over having lost track of the whereabouts of these criminal offenders when the city fell into the hands of the Japanese in October 1938.<sup>19</sup> In the same report, the Ministry of Justice wrote:

Since the outbreak of total war in July 1937, it has become increasingly more difficult to keep watch (*kanshou* 看守) of criminal offenders in war-stricken areas, and many of them have become dispersed (*liusan* 流散) throughout. In the interest of safety, we [the Ministry of Justice] are requesting that the Central Committee of the Nationalist Government consider ways (*banfa* 辦法) to manage (*guanli* 管理) and control (*zhi* 治) the rise in the number of criminal offenders that has appeared within society, which we stress has become a major problem (*wenti* 問題) since February 1938.<sup>20</sup>

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<sup>18</sup> KMT 5.2/33.9 - 司法院 [Ministry of Justice], 司法工作報告二十八年一月十六日 [Ministry of Justice Work Report: 16 January 1939]. Hereafter abbreviated as "MOJ Work Report: 16 January 1939."

<sup>19</sup> Ibid.

<sup>20</sup> Ibid., p. 9

This report dated 16 January 1939, underscored the seriousness of criminality as not only a domestic issue confined to the local level but also a national problem that had not been fully recognised until this point.<sup>21</sup> Under wartime conditions, negligence in recognising the cumulative effects and actual gravity of the problem of criminality by Chiang Kai-shek's Nationalist Government was evidenced by the way in which policies toward the handling of criminal offenders were hastily put together and executed on the national level in the earlier years of the war. In the Ministry of Justice's January 1939 work report, it stressed that a rise in the number of criminal offenders and former prisoners who re-entered society had become a major factor in contributing to widespread fears amongst the Chinese public over the possibility of a breakdown in civil and social order.<sup>22</sup>

As the previous chapter has shown, widespread anxiety over a possible threat of internal disorder (*neiluan* 內亂) began to quickly spread throughout wartime society in the form of not only superstitions and rumour but such public fears were also becoming increasingly linked to the rise in criminality. In order to alleviate some of these fears, Chiang Kai-shek's Nationalist Government issued a number of different memorandums and circulars to provincial and local government officials, which were aimed at addressing these concerns. Such fears were also echoed in the judicial context through a series of memorandums exchanged between the Ministry of Justice and the Central Committee between January 1938 and March 1940, of which included an outline from the Central Committee that detailed the responsibilities of the Ministry of Justice in the event of domestic instability.<sup>23</sup>

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<sup>21</sup> Ibid,

<sup>22</sup> "MOJ Work Report: 16 January 1939," p. 7.

<sup>23</sup> AHA 00100006327A – 司法制度改進規劃 [Plan to Improve the Judicial System] (19 June 1929 to 18 August 1941) See specifically, documents from wartime period, n.p.

In the outline, the Central Committee stipulated that under unstable conditions, one of the Ministry of Justice's primary responsibilities would involve "managing (*guanli* 管理) the prison population and ensuring that prisoners were swiftly transported from their prisons to rural areas, so as to keep them away from the general public."<sup>24</sup> However, the question of how to transport large numbers of criminal offenders under wartime conditions brought to light not only the issue of how increased levels of criminality would affect the public's confidence in the government's abilities to manage domestic issues under unstable conditions but more importantly, it also underscored a practical problem for Chiang Kai-shek's Nationalist Government.<sup>25</sup>

By the time Chiang Kai-shek's Nationalist Government had retreated to Chongqing, the lack of available human capital and material resources that could be diverted towards the management of criminal offenders was clearly evident. For instance, the Ministry of Justice wrote to the Central Committee stating that:

because the War of Resistance had brought about an increase in criminal offenders and prisoners, prisons do not currently have the capacity to house all of them. After the Marco Polo Bridge incident, we [the Ministry of Justice] are building temporary facilities to house prisoners and have ordered all provinces to follow suit. However, these measures alone will not be sufficient (*buzu* 不足).<sup>26</sup>

These carefully chosen words by the Ministry of Justice would suggest that ever since the outbreak of total war, the ministry had recognised that the problem of criminality called for attention on the national level.<sup>27</sup> However, it was not until 1942, when the intensity of fighting had reached its peak, that the Ministry of Justice explicitly stated to the Central Committee that a rapid increase in the number of criminal offenders

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<sup>24</sup> Ibid.

<sup>25</sup> AHA 00100000517A – 人犯接送辦法 [Ways of Transporting Criminal Offenders] (31 January 1938 to 1 April 1948)

<sup>26</sup> KMT 000/143, p. 1.

<sup>27</sup> Ibid., pp. 1-4.

was a cause for wider concern.<sup>28</sup> This was because although the rise in levels of criminality posed unduly and unexpected difficulties for a government whose resources were already limited due to the growing intensity of the war, the issue of handling criminal offenders had always been folded into the wider discussion of how to ensure domestic stability under wartime conditions.

From the perspective of the Ministry of Justice, the problem of criminality was multifaceted. On the one hand, financial constraints due to wartime conditions prevented the ministry from allocating additional resources towards the handling of criminal offenders. On the other hand, despite the rise in criminal offences and offenders during the wartime period, the ministry was unable to divert their existing resources towards controlling the problem. Challenges associated with prison reforms during this same period also contributed to growing concerns over how to handle the issue of criminality as a pragmatic problem. This was most clearly evidenced in the earlier discussion from the previous chapter about the loss of legal personnel during the wartime period. For instance, the Ministry of Justice further voiced their concerns to the Central Committee stating that:

Ever since 1931, there have been concerted efforts made toward prison reform, such as establishing prison regulations and other matters related to reforming prisons. Prison reforms have proven to be an arduous task. Because finances are shouldered by and drawn from all provinces, this has resulted in internal conflicts (factionalism) and a hollowing of fiscal resources. The general disorganisation on the local level has also led to an overall increase in the number of criminal offenders. It may be challenging to maintain the holding facilities but establishing other means of management (*guanli* 管理) have also proven to be difficult.<sup>29</sup>

As a result, the sentences of many criminal offenders were simply commuted without reason or additional review because the Ministry of Justice was unable to keep them in prison due to the lack of facilities. Moreover, efforts to implement additional contingency measures, which would allow the ministry to monitor the movements of

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<sup>28</sup> Ibid., p. 1.

<sup>29</sup> Ibid.

criminal offenders once they were released from prison, proved to be difficult. In this regard, the lack of specific measures in place to ensure accountability for the actions of criminal offenders meant that offenders could easily commit a recidivist act once they re-entered society. As the abovementioned incident from the Ministry of Justice's January 1939 work report indicated, it was not uncommon for prisoners to escape whilst they were in transit from one location to the next.<sup>30</sup>

Under these circumstances, even though the Ministry of Justice was expected to be fiscally responsible to Chiang Kai-shek's Nationalist Government during a time of war, and ensure public safety. This proved to be an arduous task and from the beginning to the end of the war, the Ministry of Justice could not effectively achieve the former or latter of these responsibilities.

...  
**THE 9 SEPTEMBER 1939 STATUTE**  
....

In August 1937, in response to a rise in the number of criminal offenders who populated local prisons, the Ministry of Justice decided that it would begin to transfer criminal offenders out of the prisons and into the military to work as labourers or send them to rural areas to open uncultivated land.<sup>31</sup> The notion that offenders could be reformed through a process of labour and learning was not a new concept in China. As Klaus Mühlhahn has noted, "labour was valued as part of a larger concept of *social order* in which each group had to fulfil its duties according to its origins, place in society, and education."<sup>32</sup> The passing of the 9 September 1939 Statute into law therefore reflected many of the core ideas that had been deeply entrenched in the cultural beliefs of Chinese society. In particular, it was widely believed that through labour and learning, criminal offenders could be taught the value of serving the nation and contributing towards

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<sup>30</sup> KMT 5.2/33.9, p. 9.

<sup>31</sup> "MOJ Work Report: November 1939," p. 6.

<sup>32</sup> Mühlhahn, *Criminal Justice: A History in China*, p. 151.

wartime efforts as able-bodied citizens. The enactment of the 9 September 1939 Statute was therefore founded on the belief that every person could and should contribute to the greater good.

On 9 September 1939, the Ministry of Justice announced from Chongqing, a legal statute that specifically stipulated the types of prisoners who were prohibited from being transferred into the military to work as labourers or sent into the countryside to open uncultivated land.<sup>33</sup> The statute contained a total of eleven articles and was arguably one of the most important legal statutes sanctioned during the wartime period, which was specifically aimed at addressing the problem of criminal offenders. The statute outlined the Ministry of Justice's plan to maximise the utility of criminal offenders toward the war effort and provided a platform for which the unprecedented rise in the number of juvenile offenders that appeared within wartime society could also be addressed.<sup>34</sup> The impetus for drafting the 9 September 1939 Statute was predicated on the belief that if criminal offenders were provided with adequate training and guidance, this would serve as both a rehabilitative and preventative measure for preparing criminal offenders to re-enter society and contribute to domestic society.<sup>35</sup>

Although many legal statutes were passed into law by Chiang Kai-shek's Nationalist Government during the war years, the 9 September 1939 Statute was the only legal statute that pertained directly to the treatment of criminal offenders where its revision process spanned the entirety of the wartime period. In this regard, this statute is highly significant because it provided a means to trace and locate the changing meanings of children and childhood in relation to the issue of criminality along the timeline of the war. In particular, revisions to the statute throughout different points of the wartime period

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<sup>33</sup> KMT 501/212 – 非常時期監犯調服軍役條例 [Statute for the Transferring of Prisoners into Military Service in Extraordinary Times] (9 September 1939).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

captured how the Ministry of Justice modified and adapted their approaches and attitudes towards criminal offenders in response to the circumstances of war. An analysis of the revision process thus revealed insights into the push and pulls present between not only the various institutions within Chiang Kai-shek's Nationalist Government but also the tensions between what law was envisaged to achieve on a conceptual level and the actual difficulties of application on the ground level.

### **ITS ORIGINS**

The origins of the 9 September 1939 Statute can be traced back to a provisional plan that was drafted on 16 August 1937 by the Committee on Military Affairs (*junshi weiyuan hui* 軍事委員會) in response to an increase in the number of criminal offenders that appeared in wartime society after the Marco Polo Bridge incident.<sup>36</sup> In the provisional plan, the Committee on Military Affairs noted that a stronger labour force would be beneficial to contributing to the wartime efforts of Chiang Kai-shek's Nationalist Government. The Committee on Military Affairs therefore urged that the plan be immediately passed into law in order to serve this purpose.<sup>37</sup>

Approximately a month after the initial provisional plan was drafted, on 27 September 1937, additional revisions were considered and following on the advice of the Committee of Military Affairs, the Ministry of Justice announced that “in order to reduce the burden that prisoners were having on prisons, all able-bodied men would therefore be transferred into the military to work as labourers and assist with wartime efforts.”<sup>38</sup> Although the Ministry of Justice acknowledged that it would be an arduous process to

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<sup>36</sup> KMT 538/35 – Committee on Military Affairs, 戰時監犯調服軍役辦法 [Method of Transferring Prisoners into Military Service in Wartime] (16 August 1937)

<sup>37</sup> Ibid.

<sup>38</sup> KMT 573/4 – 非常時期監所人犯臨時處置辦法 [Provisional Method to Handling Prisoners during these Extraordinary Times] (27 September 1937)

successfully execute this provisional plan, the ministry recognised the benefits that the plan would have to offering the military additional manpower at a time when they were faced with a clear labour shortage due to the intensity of fighting that was taking place across many areas of China.<sup>39</sup> After several minor revisions between 16 August 1937 and September 1939, the plan to transfer prisoners out of prisons and into the military to work as labourers, was officially enacted on 9 September 1939. Two months later, according to the Ministry of Justice's November 1939 work report, the Central Committee decided that prisoners housed in the Sichuan provincial prison would serve as test subjects for this plan and if the trial run proved to be effective, the plan would later be expanded to other prisons in China.<sup>40</sup>

### **ARTICLE 3: THE PROHIBITION OF SELECT TYPES OF PRISONERS**

Of the eleven articles outlined in the 9 September 1939, Article 3 in particular, remained as one of the most important provisions within the statute. Article 3 is highly significant because it specified the types of prisoners who were prohibited from being transferred into the military to work as labourers or sent into rural areas to open uncultivated land.<sup>41</sup> The key provisions that underlined Article 3 were formed in the drafts exchanged between the Ministry of Justice and the Committee on Military Affairs between August 1937 and September 1939, although additional revisions were made after the statute was officially ratified. Moreover, Article 3 was the only article in the entire

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<sup>39</sup> Ibid.

<sup>40</sup> "MOJ Work Report: November 1939," p. 6. Although it is difficult to measure the efficacy of the 9 September 1939 Statute, the haste implementation of this plan led to unpredictable difficulties for the Ministry of Justice. This is evidenced in a report sent from the Sichuan Provincial High Court in December 1942 to the Ministry of Justice indicating that it was experiencing an increase in the number of criminal cases, many of which had involved recidivist acts committed by former prisoners who had escaped from the military after having been transferred there to work as labourers. See: AHA 022000002013A, p. 6.

<sup>41</sup> KMT 501/212, Article 3

statute that underwent several revisions throughout the course of the war, whilst the other articles in the statute remained unchanged.<sup>42</sup>

According to the 16 August 1938 provisional plan for the statute, Article 3 stated that the following four types of prisoners were prohibited from being transferred into the military to work as labourers or be sent into rural areas to open uncultivated land:

- 1) Those who have directly conspired (*zhijie chuantong* 直接傳通), communicated (*sheji tongdi* 涉及通敵), or assisted the enemy (*lidi* 利敵)<sup>43</sup>
- 2) Prisoners who have committed the crime of inhaling (*xishi* 吸食) or smoking opium (*yandu* 煙毒)<sup>44</sup>
- 3) Those who are fifty *sui* or older<sup>45</sup>
- 4) Those who have confirmed illnesses and are unsuitable to work<sup>46</sup>

Between 16 August 1937, the date the provisional plan was drafted, and 28 April 1938, the Committee on Military Affairs proposed that two additional types of prisoners be included to this article. These included: 1) individuals who have been sentenced to life in prison (*wuqi tuqi* 無期徒刑) or more than ten years in prison and 2) recidivists (*leifan zhe* 累犯者).<sup>47</sup> Provision one of Article 3 was also revised to further include individuals who have “directly passed on information for an assassination (*ansha* 暗殺).”<sup>48</sup> It is unclear what the impetus for these revisions was at the time but subsequent amendments made after August 1937 appeared to suggest that the progression of the war contributed to the Ministry of Justice’s re-evaluation in the types of prisoners that would make for good labourers in the military.

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<sup>42</sup> KMT 538/34 – Committee on Military Affairs, 修正戰時監犯調服軍役辦法 [Revising the Method of Transferring Prisoners into Military Service in Wartime] (April 28, 1938) [In response to 16 August 1937 announcement]; AHA File: 022000001948A – 非常時期監犯調服軍役條例第四條酌定補充辦法 [Order to Supplement Statute 4 of Methods to Transfer Prisoners into the Military as Labourers During these Extraordinary Times (1940)].

<sup>43</sup> KMT 538/35, p. 1.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> KMT 538/34, p. 1.

<sup>48</sup> Ibid.

Even though several revisions were made to Article 3 in the provisional plans, when 9 September 1939 Statute was ratified, the Ministry of Justice omitted all of the earlier revisions proposed to Article 3.<sup>49</sup> In particular, the omission of offenders sentenced to life or ten years or more in prison, recidivists, or those who passed on information for an assassination from the final statute – all of which were highlighted in the previous drafts – were specifically omitted from the final version. The omission of these revisions would therefore suggest that by 1939, the Ministry of Justice had no longer considered these types of offenders to pose a major threat to the overall morale within the military. A possible breakdown in military morale had previously been cited in the 28 April 1938 draft as the primary reason for excluding these types of criminal offenders from being transferred into the military to work as labourers in the first place.<sup>50</sup>

An analysis of the revision process and evolution in the development of the 9 September 1939 Statute therefore captured the volatility of wartime conditions, as changes made to the statute were highly dependent on the trajectory and developments of the war. Several minor revisions were made after the April 1938 draft of the provision plan, which were reflected in three separate reports drafted by the Committee on Military Affairs.<sup>51</sup>

After several exchanges between the Committee on Military Affairs and the Ministry of Justice, the final version of Article 3, which appeared in the 9 September 1939 Statute that was officially passed into law, stipulated that the following types of prisoners were prohibited from being transferred into the military to work as labourers or into the countryside to open uncultivated land.

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<sup>49</sup> KMT 501/212

<sup>50</sup> Ibid.

<sup>51</sup> KMT 11/69 and 11/69/1- 非常時期監守人犯處置辦法 [Method of Handling Criminal Offenders in Prison in Extraordinary Times] (20 September 1937), p. 5; KMT 512/19 -非常時期監守人犯處置辦法 [Method on Provisionally Handling Criminal Offenders in Prison in Extraordinary Times] Nanjing (27 September 1937), pp. 1-2; KMT 573/4 -非常時期監守人犯臨時處置辦法[Method on Provisionally Handling Criminal Offenders in Prison in Extraordinary Times] (27 September 1938), p. 2

- 1) Those who have been sentenced to less than five years in prison or those in military service (*junyi* 軍役)<sup>52</sup>
- 2) Those with less than three years remaining on their prison sentences<sup>53</sup>
- 3) Those who are over forty-five *sui*<sup>54</sup>
- 4) Those who have confirmed illnesses<sup>55</sup>
- 5) Women (*funü* 婦女)<sup>56</sup>

Compared to the earlier draft of Article 3, the stipulations reflected in this final version, reflected how wartime conditions forced the Ministry of Justice to modify and revise its criteria for handling criminal offenders in response to the social changes that were taking place at the time. This institutional response was most clearly demonstrated in the additional inclusion of female offenders (*nüfan* 女犯) as the last type of prisoner in the final version of Article 3.<sup>57</sup>

The inclusion of female offenders had originally appeared in the very early drafts of the provisional plans for the statute.<sup>58</sup> However, as the war progressed and the overall number of criminal offenders increased, the comparatively low number of female offenders in relation to the remainder of the offending population, did not warrant a full discussion of their inclusion or exclusion as part of the Ministry of Justice's wartime agenda. Moreover, concerns about the lack of facilities available in the military to accommodate women and fears over sexual offences against female offenders by soldiers led the Ministry of Justice to exclude them entirely as a social group.<sup>59</sup>

...  
**DISTINGUISHING JUVENILE OFFENDERS**  
 ....

Several revisions to Article 3 of the 9 September 1939 Statute demonstrated that the Ministry of Justice was responding to the needs of the military during the wartime

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<sup>52</sup> KMT 501/212

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> KMT 573/4, p. 2-3.

<sup>58</sup> KMT 538/35

<sup>59</sup> KMT 573/4, p. 3.

period. In addition to the other provisions outlined in Article 3, the use of age as a rudimentary standard for separating juvenile offenders from the remainder of the offending population became a point for contestation. In the final version of the 9 September 1939 Statute, provision 3 of Article 3, stipulated that only prisoners who had not reached forty-five *sui* would be permitted to be transferred into the military to work as labourers.<sup>60</sup> Via a series of memorandums that were sent to the Central Committee from senior prison officials, the Ministry of Justice indicated that the stipulation of an upper age limit for prisoners was necessary because they wanted a strong and healthy labour force in the military.<sup>61</sup> Despite the unprecedented increase in the number of criminal offences involving juveniles, up until 1939, only the stipulation for an upper age limit had been established.

On 15 April 1940, the Committee on Military Affairs sent a memorandum to the Ministry of Justice requesting for the removal of the upper age limit completely from Article 3 of the statute.<sup>62</sup> There was no specific rationale provided in the memorandum for this request at the time but the timing of it would suggest that concerns over a depleting military force and increased domestic instability associated with wartime conditions influenced this recommendation.<sup>63</sup> However, instead of approving the request from the Committee on Military Affairs, in an act of what could be interpreted as a form of institutional assertion, the Ministry of Justice announced on 3 May 1940 that the statute had been revised to include a lower age limit. In the newly amended statute, “individuals who have not reached eighteen *sui*” (*weiman shiba sui* 未滿十八歲) was added to provision 3 of Article 3. The newly revised provision of the Article thus read: “Those

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<sup>60</sup> KMT 501/212, Article 3.

<sup>61</sup> AHA 022000001942 – 監獄長官送報調服軍役人犯名冊注意事項案 [Memorandum Sent from the Senior Official of Prisons of List of Offenders and Matters to Take Note of Regarding those Transferred into the Military as Labourers (1939-1940)]

<sup>62</sup> AHA 022000001949A – 非常時期監犯調服軍役調撥管訓辦法 [Method of Management of Transfer of Prisoners into the Military as Labourers During these Extraordinary Times (May 1940)]

<sup>63</sup> *Ibid.*

who are over forty-five *sui* or have not reached eighteen *sui*” would be prohibited from being transferred into the military to work as labourers or into the countryside to open uncultivated land.<sup>64</sup>

According to the archival records, there were no known reasons for the Ministry of Justice’s decision to specifically override the request from the Committee on Military Affair or any specific catalyst that could be identified as to why the Ministry of Justice decided to include this additional provision less than a year after the statute was officially passed into law. In over a hundred archival files that documented the evolutionary process of this statute, there were no previous references to eighteen *sui* as a legal or judicial standard for the separation of prisoners or criminal offenders, which had appeared in any of the earlier drafts or memorandums. However, the subsequent inclusion of this provision in Article 3 of the statute would strongly suggest that by May 1940, a clear shift could be identified in the way in which juveniles were increasingly being recognised as a distinct social category within the judicial setting.

Between May 1940 and May 1943, the Ministry of Justice revised the statute further to reflect a number of other amendments that pertained to the handling of criminal offenders. This included commuting the sentences of offenders sent to the countryside to open uncultivated land, and making adjustments to how prisoners would be trained as labourers after they had been transferred into the military.<sup>65</sup> These additional revisions were relatively minor and did not affect the overall intention of the statute.

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<sup>64</sup> AHA 022000001949A, Article 3

<sup>65</sup> AHA 022000001951A – 徒刑人犯移墾實施辦法移墾累進辦法移墾人犯縮減刑期辦法 [Method of Carrying out Sentencing and Reduction of Prison Terms of Criminal Offenders to be Moved into Rural Areas to Open Uncultivated Land (23 July 1940)]; AHA 022000001957A – 關於調服軍役事項之適用案 [Record of Applicability Regarding the Transfer of Prisoners into the Military as Labourers (1940-1941)]; AHA 022000001966A - 關於調服軍役事項之適用案 [Record of Applicability Regarding the Transfer of Prisoners into the Military as Labourers (1941-1942)]

However, in May 1943, the Committee on Military Affairs once again requested to the Ministry of Justice that Article 3 be completely removed from the statute.<sup>66</sup> This time, the Committee on Military Affairs noted in their memorandum that when the statute was initially proposed in the earlier years of the war, its goal was to assist the military with its labour shortage. However, an unprecedented rise in the number of criminal offenders that appeared within wartime society led to an influx in the number of prisoners that were being sent into the military to work as labourers.<sup>67</sup> Growing demands due to wartime conditions were therefore unduly straining the capabilities of the military and as a result, the military was incapable of coping with the additional responsibility of having to train and integrate former prisoners into the labour force of the military.

As a result, on 18 May 1943, the Ministry of Justice approved this request and officially removed Article 3 from the statute.<sup>68</sup> According to this memorandum and other corroborating documents, it would therefore appear that by May 1943, the Committee on Military Affairs recognised that the original intention of having Article 3 in the statute was no longer effective in serving the nation's needs or at addressing the problem of criminality.

The removal of Article 3 from the statute in May 1943 is highly significant because as the war intensified, many of the revisions requested by the Committee on Military Affairs had broader implications for determining the overall treatment of criminal offenders within the judicial system. In particular, revisions surrounding the use of age as a rudimentary standard for separating adult criminal offenders from offenders who had not reached eighteen *sui* reflected underlying efforts by the Ministry of Justice to distinguish juveniles as a separate category within the judicial setting during the wartime

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<sup>66</sup> AHA 022000002012A – 修正非常時期監犯調服軍役調撥管訓辦法[Amendments to the Method of Management of Transfer of Prisoners into the Military as Labourers During these Extraordinary Times (1943)]

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

period. As the next section will demonstrate, such efforts could also be seen in the way in which legal institutions attempted to negotiate the ambiguities of how the law should treat the young during the wartime period.

The significance of children to the broader vision of social and political order as envisaged by Chiang Kai-shek's Nationalist Government's therefore rested in this fine detail found in Article 3 of the 9 September 1939 statute. Through revisions to Article 3, the Ministry of Justice attempted to construct a judicial understanding of childhood on the national level, which was embedded within the wider social problem of criminality under wartime conditions. This is a clear example of how the Ministry of Justice made a prudent attempt at separating juveniles from the remainder of the offending population. As the last chapter of this study shows, it was also around this same time that legal institutions sought to distinguish children as a separate children as a separate social group within the eyes of the law.

...  
**RECOGNISING THE VALUE OF JUVENILE OFFENDERS**  
....

Although the legal treatment of the young had been considered since imperial times, as chapter two has shown, these discussions were mainly limited to a conceptual understanding of the law and had not been based on previous experiences, which offered specific guidelines on the practicalities of how to handle juvenile offenders as an actual problem.<sup>69</sup> Despite the legal and moral ambiguities that pertained to determining the moral and psychological development of offenders who fell between fourteen and eighteen *sui*, the Ministry of Justice openly recognised that the lack of clear boundaries for juvenile offenders would serve as a clear advantage that could be exploited to its full advantage during the war years.

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<sup>69</sup> Marinus J. Meijer, *The Introduction of Modern Criminal Law in China* (Batavia, Indonesia: De Unie, 1950), 66-76.

As chapter 3 has shown, the 1935 revised Criminal Code stipulated the age of criminal liability as fourteen *sui* and eighteen *sui* marked the legal age of responsibility. Given this set of parameters, juveniles who were incarcerated could therefore not have been any younger than fourteen *sui* or older than eighteen *sui*. In this regard, the liminal space occupied by juvenile offenders guaranteed that they would be of a specific age.

Within the judicial setting, the Ministry of Justice recognised any offenders who had reached fourteen *sui* as physically-developed persons. This was however, in stark contrast to the way in which juvenile offenders were understood and treated by legal institutions during the same period. As chapter two has shown, for offenders who had not reached eighteen *sui* at the time of their offence, legal institutions were responsible for assessing the development of an offender's mental faculties (*yishi nengli* 意識能力) and actual physical ability to commit an action (*xingwei nengli* 行爲能力). This however, was not an issue for the Ministry of Justice with respect to juvenile offenders.

Contrary to focusing on the legal and moral issues that plagued legal institutions in their adjudication of offenders who fell between fourteen and eighteen *sui*, the Ministry of Justice viewed the vulnerabilities of juveniles as a viable asset to their vision of maintaining social and political order during the wartime period. From the standpoint of the Ministry of Justice, not only were juvenile offenders young but they also possessed the physical attributes of strength, vitality, and vigour that were needed to advance the wartime agenda. Unlike courts, the fact that the development of the psychological and moral faculties of individuals who had not reached eighteen *sui* could be contested did not pose any legal or moral quandaries for the Ministry of Justice. Instead, this grey area served to the advantage of the Ministry of Justice because it meant that these offenders could be easily reformed and rehabilitated to assist in the war against Japan. The Ministry of Justice simply viewed it as a pragmatic solution to a difficult problem.

Having recognised that an increase in juvenile offenders could serve as an advantage rather than a disadvantage to the wartime agenda, the Ministry of Justice actively pushed for the establishment of additional youth prisons in order to cultivate and train juvenile offenders as labourers for the military. For instance, this was reflected in the Central Committee's outline of the annual agenda for the Ministry of Justice in 1940.<sup>70</sup> The agenda included establishing more local courts and reform facilities to meet the demands of a growing prisoner population, a review of judicial expenses, follow-up on cases that were on appeal or have been repealed, monitoring the transfer of prisoners into the military, and the management of legal personnel.<sup>71</sup> The agenda highlighted the lack of facilities available for criminal offenders who had not reached eighteen *sui*, and underscored that efforts to increase the number of facilities for offenders who had not reached eighteen *sui* should be prioritised.<sup>72</sup>

The report also detailed plans to establish additional prisons nationwide in every province, with the capacity to hold between two and four thousand offenders within a seven year period.<sup>73</sup> New prisons would also be built to accommodate five different types of offenders: ordinary adults, juveniles (any person who had not reached eighteen *sui*), foreigners, those with tuberculosis or other illnesses, and the mentally ill.<sup>74</sup> Interestingly enough, there was no mention of a plan to build a separate prison or wing within current prisons solely for female offenders.

Another example of the Ministry of Justice's partiality and deliberate attempt to separate juvenile offenders from the remainder of the offending population was evidenced

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<sup>70</sup> KMT 006/56(1-2) – 中央政務機關 29 年度工作成績考核總報告 [1940 Annual Report on the Work Performance for Central Government Affairs]: Section 14.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> KMT 512/5, p. 11-12.

<sup>74</sup> Ibid.

in their treatment of juveniles within prisons. In 1942, the Central Committee and the Ministry of Justice issued the following report with regards to prisoners:

All provincial high courts, holding facilities, and prisons, whether in the cities or countryside are advised to limit the prison terms of offenders sent to them. Because the majority of prisoners in wartime are located in the countryside, we [the Ministry of Justice] are concerned (*guanxin* 關心) about the health, medical treatment, and the livelihoods of criminal offenders. As such, we are paying particular attention to such matters starting now.<sup>75</sup>

Such matters included food, health, and the physical living conditions of criminal offenders housed in prisons.<sup>76</sup> The problem of food supply was serious during the wartime period and therefore food for prisoners was strictly rationed according to an offender's body weight, height, and age.<sup>77</sup> According to prison guidelines, adult prisoners were given a rationed amount of food for each meal, which depended on the type of labour they performed. However, increases to a prisoner's food allowance could also be made based on one's work performance.<sup>78</sup> If a prisoner worked hard and displayed a considerable degree of strength, vitality, and effort in carrying out the assigned duties, prison officials were permitted, at their discretion, to give more food to him as a "reward" (*jiangli* 獎勵) for his contribution to wartime efforts.<sup>79</sup>

Prisoners who had not reached eighteen *sui* were not only given priority for food but they were also to be served first during meal times, the first to receive medical treatment, and to be rewarded with additional incentives from their adult counterparts if they were seen to be exceeding in their work performance.<sup>80</sup> Moreover, the disparate treatment of juvenile offenders from ordinary adult offenders was further reinforced in an order that came from the Ministry of Justice in 1943 for the improvement of hygienic

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<sup>75</sup> KMT 000/143, pp. 3-4

<sup>76</sup> *Ibid.*, p. 4.

<sup>77</sup> KMT 512/24 – 戰時司法紀要 [Summary of Judicature in Wartime], Section 15, p. 14.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, pp. 4-6

conditions in prisons and living conditions for all prisoners.<sup>81</sup> This order specifically stipulated that the living conditions for prisoners who had not reached eighteen *sui* be improved upon first.

...  
**LOCATING CHILDREN IN THE SOCIAL AND POLITICAL ORDER**  
....

Although it was difficult to predict at this time when the war would come to an end, even as late as May 1944, the Ministry of Justice reiterated with even greater urgency their longstanding fears over the social threat posed by criminal offenders in wartime society.<sup>82</sup> The rapid increase in the number of criminal offenders that appeared within wartime society strained a judicial system that was poorly planned from inception and as a result, was subsequently ill equipped to cope with the strains and growing number of problems that appeared as a result of the outbreak of war. Prisons in wartime China found it particularly problematic to handle juvenile offenders because there was no infrastructure, precedence, or specialised prisons specifically designed to accommodate offenders who had not reached eighteen *sui*.<sup>83</sup>

Although the implementation of the 9 September 1939 Statute was clearly regarded as a domestic policy during the war years, concerted efforts were put into trying to couch it as part of the broader wartime agenda. What is particularly striking about the statute was not its failure as a wartime policy in itself but rather, an analysis of the revision process revealed the internal workings of Chiang Kai-shek's Nationalist Government and many of its fissures. In particular, attempts to implement and put a concept into practice proved to wholly ineffective. Even though the Ministry of Justice attempted to contribute to and assert its influence, the ministry never received the

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<sup>81</sup> AHA 02200002020A – 改良監獄衛生通令案 [Record of Decree Ordering Reform of Hygienic Conditions in Prisons (1943)]

<sup>82</sup> KMT 5.2/146.15 - 司法院 [MOJ], 司法院工作報告 [MOJ Work Report] (May 1944), pp. 2-3.

<sup>83</sup> KMT File: 000/143, p. 7

recognition or funds to effectively carry out any of its intended objectives. Attempts to construct boundaries, however artificial, for the separation of juveniles from the remainder of the adult offending population revealed that the Ministry of Justice was fully aware of the problem of criminality in relation to children during the wartime period but a limitation of sources combined with institutional politics prevented the ministry from handling the rise in criminality as a pragmatic problem earlier on in the war. Even though children were not the main priority on the wartime agenda of Chiang Kai-shek's Nationalist Government, it is clear that the liminal space that juveniles occupied was central to the way in which government officials envisioned their role within Chinese society.

**SECTION IV**  
**TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD:**  
**ADJUDICATING JUVENILE OFFENDERS IN JAPANESE-OCCUPIED**  
**SHANGHAI, A CASE STUDY**

*As a point of contrast to the findings from the remainder of the study, the last section stresses the importance of the Japanese-collaborationist regime under Wang Jingwei (the Reorganised National Government of China from March 1940 to 1945) to the wartime period. It analyses how shifts in ideas and meanings of children and criminality during the war years were not limited to only areas under the purview of Chiang Kai-shek's Nationalist Government but such changes were also evidenced under collaborationist conditions.*

**CHAPTER SEVEN**  
**READING LEGAL ARCHIVES**

...

Up until this point, the wider body of scholarship on the legal history, judicial system, or place of law in twentieth-century China has been predisposed to overlook the significance of the wider context of social history - reducing the study of law to its origins and evolution, or concentrating on the organisational, procedural, or administrative aspects of the Chinese legal system.<sup>1</sup> This study has endeavoured to move away from approaching the history of law specifically as an analysis of how and why laws have evolved and changed over time. Instead, it locates the history of law within a judicial system, which embodied an elastic yet complex set of rules, players, and boundaries that was set in the wider context of the social history of wartime Chinese society. As revealed by the legal case records that this section draws upon, despite the social and infrastructural instabilities of wartime conditions, legal institutions interacted with Chinese society and changed, adapted, and resisted according to external circumstances.

This chapter begins with a historical background on the Japanese-collaborationist district court in occupied Shanghai and locates its importance as a legal institution during the wartime period. This is important because in order to understand how the outbreak of war served as a catalyst to the formation of a new legal framework towards the young under wartime conditions, an analysis of the historical background of the court in question and the significance of the legal case records used in this case study is necessary. Moreover, the use of penal case files as a primary source of historical veracity poses significant challenges for offenders who were not officially recognised as adults within

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<sup>1</sup> Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-century China, 1901-1937*; Wejen Chang, "Law Enforcement and Pretrial Procedure in China under the Ch'ing," SJD diss. Harvard Law School, 1988; Jonathan Ocko, "I'll Take it All the Way to Beijing: Capital Appeals in the Qing, *The Journal of Asian Studies* 47, no. 2 (May 1988): 291-315; William Jones, "Studying the Ch'ing Code: The 'Ta Ch'ing Li Li'," *American Journal of Comparative Law* 22, no. 2 (1974): 330-64; Thomas Metzger, *The Internal Organization of the Ch'ing Bureaucracy* (Cambridge: Harvard University Press, 1973).

the eyes of the law at the time. The second half of the chapter will therefore discuss the methodological analysis to reading legal archives from the Republican period, with a particular emphasis on children as actors within the legal setting.

...  
**SITE OF INTERACTION:  
JAPANESE-OCCUPIED SHANGHAI**  
...

In order to illuminate the intricacies and complexities of governance that shaped the concepts of law and childhood under wartime conditions, the city of Shanghai serves as the anchor for this case study. Shanghai was not only China's largest and most complex metropolises in Republican China at the time but it was also one of the earliest cities to experience the onslaught of Japanese troops after the outbreak of total war in 1937.<sup>2</sup> Although the importance of Shanghai and its experience during the wartime period has already been well-documented by many scholars, the city's unique status in wartime China continues to inspire new approaches to view this complex and multifaceted city.<sup>3</sup>

As China's most famous treaty port, it had two foreign zones, the French Concession and the International Settlement (primarily British).<sup>4</sup> Although many scholarly works have been produced on the International Settlement and its foreign influence in Shanghai at the turn of the twentieth century, the complexities present in the Chinese legal system in this area remains unexplored. Because of the geographical boundaries of the International Settlement, the role that legal institutions played under the

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<sup>2</sup> Wen-hsin Yeh, *Wartime Shanghai* (New York: Routledge, 1998); Donald A. Jordan, *China's Trial by Fire: The Shanghai War of 1932* (Ann Arbor: University of Michigan Press, 2001); Marie-Claire Bergère, *Histoire de Shanghai* (In French: *Historie des grandes villes du monde*) (Fayard, 2002).

<sup>3</sup> Frederic E. Wakeman, Jr., *The Shanghai Badlands: Wartime Terrorism and Urban Crime, 1937-1941* (Cambridge: Cambridge University Press, 2002), *Policing Shanghai, 1927-1937* (Berkeley: University of California Press, 1996), and "Urban Controls in Urban Shanghai," in *Wartime Shanghai*. Wen-hsin Yeh, ed. New York: Routledge (1998): 139-60; Brian G. Martin, *The Shanghai Green Gang: Politics and Organized Crime, 1931-1937* (Berkeley: University of California Press, 1996); Wen-hsin Yeh and Christian Henriot, eds. *In the Shadow of the Rising Sun: Shanghai Under Japanese Occupation* (Cambridge: Cambridge University Press, 2004).

<sup>4</sup> Robert Bickers, *Empire Made Me: An Englishman Adrift in Shanghai* (New York: Columbia University Press, 2004).

Reorganised National Government of China under the Japanese authorities, serve as an important lens to understanding the intersections between law and society under collaborationist conditions. Wartime Shanghai therefore provides the most ideal means to capturing the lived experiences of ordinary civilians, especially through the prism of children.

#### **THE SIGNIFICANCE OF THE JAPANESE-COLLABORATIONIST DISTRICT COURT IN WARTIME SHANGHAI**

As the earlier sections have shown, changes in ideas about children and criminality could be seen in public discourse and the actions of Chiang Kai-shek's Nationalist Government. Wartime print media in Nationalist-controlled areas under Chiang Kai-shek witnessed the emergence of a number of competing ideas on and about children and childhood. Moreover, the various actions taken by Chiang Kai-shek's Nationalist Government during the wartime period, in response to a rise in criminality and juvenile offenders, also led to shifts in the way in which children and ideas of childhood were conceptualised. This chapter therefore seeks to complement the earlier findings by examining how the outbreak of war prompted a shift in ideas about children and childhood in areas under Japanese collaboration. In this regard, wartime Shanghai was further selected for this case study because of its significance to the Reorganised National Government of China (the Japanese-collaborationist regime under Wang Jingwei) from March 1940 to 1945.

Although the official establishment of Wang Jingwei's Reorganised National Government of China was in Nanjing, Shanghai served as an important site for understanding civilian life under Japanese occupation, as it was the only city that witnessed the entanglement of political interests and social conditions with the law. Moreover, for the majority of civilians left behind in occupied Shanghai, life became a

series of calamities and criminal activity was seen as a means to one's survival.<sup>5</sup> Wartime conditions therefore had far reaching effects beyond the political, economic, social, and cultural realms - it was also evidenced in the legal sphere.

A key element of this case study is to therefore demonstrate the autonomy of legal institutions under wartime conditions, particularly in Japanese-occupied Shanghai. More specifically, it aims to cast light on the importance of law under collaborative conditions and attempts to move away from assessing the Reorganised National Government of China purely in terms of its political implications but considers the social aspect of daily life under collaborationist conditions during the wartime period.

Located on North Zhejiang Road in the International Settlement near the French Concession, the Japanese-collaborationist district court in the special area of Shanghai (*Jiangsu shanghai diyi tequ defang fayuan* 江蘇上海第一特區地方法院) was Chinese in its genesis and later became only one of two legal institutions to be physically based within the International Settlement during the wartime period, which was not controlled by a Western power. Instead, the court in question remained within the purview of the Japanese authorities from March 1940 to 1945.<sup>6</sup>

After a period of intense negotiation for the formation of Mixed Courts of the International Settlement, temporary provisional courts were established to replace the Mixed Courts in 1926 before the court in question was restored to the control of the Nationalist Party in 1930.<sup>7</sup> However, in 1937, the area of Shanghai that was governed by Chiang Kai-shek's Nationalist Government fell into the hands of the Japanese authorities and legal institutions that were formerly under the political purview of the Nationalists

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<sup>5</sup> Jing Yue, "上海的犯罪問題" [Shanghai's Crime Problem], 上海周報 [Shanghai Weekly], vol. 7 (1941); Frederic E. Wakeman, Jr., "Urban Controls in Urban Shanghai," in *Wartime Shanghai*. Wen-hsin Yeh, ed. New York: Routledge (1998): 139-60; Brian G. Martin, *The Shanghai Green Gang: Politics and Organized Crime, 1931-1937* (Berkeley: University of California Press, 1996).

<sup>6</sup> *Ibid.*, p. 118.

<sup>7</sup> William Crane Johnstone, Jr., *The Shanghai Problem*. Stanford: Stanford University Press (1937): 158-63

remained alongside various other foreign presences in the International Settlement. Despite efforts by Chiang Kai-shek's Nationalist Government to maintain control of this area within the International Settlement, by March 1940, the area that was formerly under their political purview had officially been transferred to the authority of the Reorganised National Government of China led by Wang Jingwei.

As a low-level district court, it was legally responsible for adjudicating offences committed by and against only Chinese civilians. Located in one of the most war-trodden areas, the court was expected to shoulder the burden of adjudicating a countless number of criminal offences. Due to the various political changes that took place during the wartime period, it is difficult to determine the exact number of cases that this court adjudicated.

Despite this, the available legal case records that this case study draws upon are important because it captured how a collaborationist court in wartime Shanghai attempted to negotiate the complexities of governance during the early stages of collaboration with Japan before the United States' entry into World War II. This window in time (1940-1941) is highly significant because it marked a transitional period when the Reorganised National Government of China under Wang Jingwei had just only been established by the Japanese in an effort to rival the political legitimacy of Chiang Kai-shek's Nationalist Government. In this regard, the authority and legitimacy of the Japanese-collaborationist regime were still very much in question at the time.<sup>8</sup> An analysis of the legal reasoning of criminal cases from this specific court therefore captured the significance of an important period to understanding how legal institutions operated under Japanese collaboration. In

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<sup>8</sup> KMT 9/41.4 - 汪偽機密情報 [Classified Intelligence Report Pertaining to Wang's Occupied Area] (13 September 1939). See also, Pan Min, 江蘇日偽基層政權研究 (1937-1945) [Research on the Basic Level of the Japanese-occupied Jiangsu Regime (1937-1945)] (Shanghai: Shanghai renmin chubanshe, 2006). Frederic Wakeman, Jr., "Hanjian (Traitor)! Collaboration and Retribution in Wartime Shanghai," in Wen-hsin Yeh, ed. *Becoming Chinese Passages to Modernity and Beyond* (Berkeley: University of California Press, 2000): 298-341; William C. Johnstone, Jr., *The Shanghai Problem* (Stanford: Stanford University Press, 1937): 158-68.

particular, the legal case records reflected early shifts in how the Court engaged with domestic society on a daily basis and documented the process in which ideas of law and social justice were shaped under sensitive political circumstances.

As the earlier chapters have shown, the judicial reform process that took place during the Nanjing decade was complex and not wholly successful. Legal concepts such as judicial independence, legal representation by attorneys, and the separation of judicial administration (*sifa xingzheng* 司法行政) and adjudication (*sifa shenpan* 司法審判) were never fully carried out.<sup>9</sup> The outbreak of total war further truncated many of the plans put forward by Chiang Kai-shek's Nationalist Government and as a result, China's judicial system remained in a state of perpetual change.

Historically, all of the judges serving on this court were originally appointed by Chiang Kai-shek's Nationalist Government. Although efforts were made to discredit them during the years when they were under the collaborationist regime, virtually all of the judges remained loyal to Chiang Kai-shek's Nationalist Government, even after the wartime capital had moved to Chongqing after the fall of Wuhan in October 1938.<sup>10</sup> Based on the complex history of the court and the background of its judges, it would therefore appear as if the Court's findings and legal reasoning would have remained consistent with the official party line of the Nationalist Party, or been heavily subjected to political and legal scrutiny by the Japanese authorities. However, an analysis of the legal case records of juvenile offenders from the period between 1940 and 1941, revealed that the Court made considerable efforts to not only sustain a criminal justice process on the local level in wartime Shanghai but it also sought to form an independent voice as a legal institution that was operating under collaborationist conditions.

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<sup>9</sup> Department of Internal Affairs of the Provisional Government [of Nanjing], 臨時政府內務行政紀要 [Summary of Meeting Minutes on the Administration of Internal Affairs of the Provisional Government (of Nanjing)] (Nanjing: Department of Internal Affairs, 1941), 105-07. See also: Xu Xiaoqun, "The Fate of Judicial Independence in Republican China, 1912-1937," *The China Quarterly* 149 (1997): 3 and 5.

<sup>10</sup> Wakeman, Jr., *The Shanghai Badlands: Wartime Terrorism and Urban Crime, 1937-1941*, p. 117.

An analysis of a body of legal case records therefore provides an opportunity to continuously trace the judicial behaviour and legal reasoning of this court in the early years of Japanese collaboration under wartime conditions. Moreover, the court in question examined in this case study was located at a critical site of intersection between the two competing Nationalist regimes during the wartime period.

...  
**METHODOLOGY:**  
**LEGAL CASE RECORDS FROM THE WARTIME PERIOD**

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In addition to the archival materials and print sources that the earlier sections have drawn upon, this study is also based on a broad reading of over four hundred previously unexamined archival legal case records that specifically documented criminal activities involving juveniles as offenders or accomplices with adults. Legal case records from the Republican period are particularly valuable not only because they are difficult to obtain from the archives due to issues of privacy but also because they have been underutilised as a resource by scholars.

As such, legal case records from the Republican period were not ordered or catalogued in any organised manner in the archives and the labour-intensive and time-consuming task of locating and analysing them in detail adds to the indispensable value of it as a primary source. The collection of penal case files involving juveniles that were consulted and referenced in this study were collated after I personally went through thousands of archival legal case records (both criminal and civil) and separated out the criminal cases where the defendant had not reached eighteen *sui* at the time of the offence.<sup>11</sup>

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<sup>11</sup> This study does not and cannot cite every one of the volume of cases or does it attempt to offer a quantifiable analysis of a breakdown of all of these legal case records but I have drawn on the knowledge that I have acquired from a wide reading of these cases.

## SELECTION OF CASES

Despite the large number of cases that were consulted, the case study selectively focuses on legal case records that involved criminal offences committed by individuals who had not reached eighteen *sui* at the time of the offence, and who also received a sentence of less than five years in prison. Because the 1935 revised Criminal Code defined eighteen *sui* as the legal threshold for when an individual could be expected to bear full legal responsibility and moral culpability for his or her actions, age therefore served as the legal standard and criterion for determining who constituted as a “juvenile” in a court of law during the wartime period.<sup>12</sup>

In spite of having operated under collaborationist conditions, the court in question continued with the use of the 1935 revised Criminal Code. Although the study has attempted to problematise many of the complexities of using age as a rudimentary standard for delineating the boundaries between childhood and adulthood within the judicial and legal settings, the study acknowledges that despite its shortcomings, age was the only systematic method to separate out the cases, which involved offences committed by juveniles. However, because twenty *sui* was regarded as the age of consent in civil law, throughout the filtering process, cases that involved offenders between eighteen and twenty *sui* were also consulted. The filtering process revealed that in the penal case files of offenders between eighteen and twenty *sui*, they were not given any special consideration or granted judicial discretion. In this regard, these cases were not included within the sample of legal case records used in this study.

This case study specifically focuses on the legal case records of offenders who have not reached eighteen *sui* for three main reasons. First, offences committed by children reflected a particular social condition that was distinctively linked to the

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<sup>12</sup> Article 18, “1935 revised Criminal Code”

outbreak of war - that is, they brought about a specific change in people's attitudes and perceptions about the relationship between children and criminality within wartime Chinese society. Secondly, offences committed by juveniles became expressly linked to other social problems that appeared within domestic society during the wartime period; namely, poverty, social displacement, and the lack of agencies of socialisation for children. Lastly and most importantly, due to the lack of legal precedence or guidelines in the 1935 revised Criminal Code for how the law should treat offenders who fell between fourteen and eighteen *sui*, criminal cases of offenders who occupied this liminal space therefore captured how acts of clemency and judicial discretion were exercised by legal institutions towards an entire social group.

The social composition of the cases that the case study draws upon only includes offences committed by and against ordinary Chinese civilians within the city of Shanghai. It does not include crimes involving juveniles in which government officials, civil servants, foreigners, or military personnel had a role in or any offences that would have fallen under the scope of military law, special laws for collaborators, or foreigners.<sup>13</sup> The rationale for the placement of this specific set of restrictions was intended to eliminate potential biases that may have arisen during an analysis of the legal reasoning and judicial behaviour of the court. This is because previously under the imperial legal system, courts would judge offenders on the basis of an individual's rank, affiliation, background, or social standing. The case study attempts to eliminate the possibility of these potential biases as much as possible.

Unlike studies that have focused on the Qing period, where its law can be checked

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<sup>13</sup> Military personnel and family members of the military personnel who commit a criminal offence are punished according to military. Military law also applied to all persons enlisted in the air force, navy, army, and those subjected to martial law (*jiēyán fǎ* 戒嚴法). For an explanation on military law in wartime China, see: 戰時司法 [Administration of Justice in Wartime] Shanghai: Shangwu Publishing House, 1939. Commissioned by the Chongqing Municipal Library Periodical Section's Investigative Committee, no. 464

against a large body of actual cases in casebooks, most notably in the *Xingan huilan* (刑案匯覽) or *Conspectus of Penal Cases*, there is almost no way to authenticate the veracity of many of the legal case records from the Republican period.<sup>14</sup> Although there are some casebooks available that documented criminal cases recorded from the Republican period, these have largely been limited to Supreme Court level cases that were for the most part selected to serve as legal precedents.<sup>15</sup> The cases that were selected for these casebooks were therefore generally cases that were unique at the time or challenged the legality of a certain article or provision within the Criminal or Civil Codes. In this regard, the findings presented in the cases of these casebooks were not representative of the way in which ordinary criminal offences were adjudicated during the Republican period. The majority of these casebooks also maintained their imperial origins and therefore, the majority of cases involved officials, elites, or those of high social standing. Due to the high volume of criminal offences that came before legal institutions during the wartime period, these casebooks also stopped at 1937.

The cases referenced in this case study however, are intended to offer insights into the actions of an ordinary person, who engaged in an ordinary criminal offence, and the legal reasoning of the court in its adjudication process of the offence. As such, there was nothing special about these criminals or their offences because their actions seldom warranted any form of special legal attention. However, it is precisely due to the widespread and prosaic nature of these offences and offenders that captured the lived experiences of daily life under collaborationist conditions during the wartime period.

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<sup>14</sup> 刑案匯覽 [*Conspectus of Penal Cases*] 88 vols. This collection includes 5,640 legal case records from 1736-1834. These cases are analyzed in Bodde and Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases*, pp. 144-59. It also includes a translation of 190 of these cases, pp. 203-489.

<sup>15</sup> 最高法院刑事判例匯刊 [Collection of Verdicts on Penal Matters from the Supreme Court], 14 vols. Guo Wei and Zhou Dingmei, eds. (Shanghai: Faxue Bookstore, 1934); 最高法院刑事判例匯編 [Collection of Verdicts on Penal Matters from the Supreme Court], 28 vols. (1911-1934) Guo Wei and Zhou Dingmei, eds. (Shanghai: Faxue Bookstore, 1934).

Employing a methodological approach that is centred on legal case records calls for not only a close textual reading of the legal case files but it also demands a level of rigour and precision in analysing the interconnectedness between law and society. In order to interpret the legal reasoning and judicial behaviour of a specific court, one must first understand not only the body of laws that a specific court drew upon but also the social and political milieu that the court was operating within at that precise point in time. From this, the question of determining the impact value and legitimacy of the court's decisions would need to be traced and further assessed over a body of cases rendered by the same court over a set period of time.

An examination of the adjudication of petty offences by juvenile offenders allowed for one to trace the legal reasoning of the court on the lowest level but it cannot provide insight into the weight and credence of the court's decisions because these cases never went beyond the district-level court. Despite this limitation, as the next chapter will show, the findings from the legal case records demonstrated that even under collaborationist conditions, the court still revealed itself as an autonomous judicial body capable of rendering its own decisions during the wartime period.

### **ISSUES REGARDING INDIVIDUAL PRIVACY**

Before proceeding, it is important to address the issue of “individual privacy” or *geren yinsi* (個人隱私). This is because the subject matter is particularly relevant to the obtainment of legal case records from the Chinese archives of offenders and victims who have not reached eighteen *sui* at the time of the offence. Criminal offences committed by individuals were considered “personal matters” that go to the privacy of that person. In the twentieth century, the character *si* 私 has come to be used to represent the imported concept of “private.” However, as Matthew Sommer explained in his work on the

regulation of sexuality in late imperial China,

*si* carries a strongly pejorative connotation, and in most traditional texts, it might be more accurately translated as ‘illicit,’ ‘unauthorized,’ or ‘selfish’; it is the opposite of the adjective *gong* (now used for ‘public’), which refers to all that conforms to common interests and public order. Classical moral discourse held that the proliferation of ‘private ways’ (*sidao*) - idiosyncratic standards of right and wrong that vary from individual to individual - leads to social and political chaos (*luan*).<sup>16</sup>

Modern usage for the first character *yin* 隱, meaning “secret, hidden, or concealed,” in the term *yinsi* 隱私, is also interchangeable with another character by the same sound, *yin* 陰. The latter character *yin* 陰 is the character that represents the feminine or negative element of the balance between yin and yang but when used together, *yinsi* 陰私 connotes a “shameful secret.” In this regard, the homonymous nature and interplay in the characters for *yin*, which make up the word for the modern usage of the term “privacy,” is worth noting here because of its significance to the protection of juveniles within the legal sphere.

With few exceptions, concerns about individual privacy did not reflect the actual practices or jurisprudence of courts in Republican China, as this is a modern concept imported from Western law. Instead, access to individual penal case files in the present day are regulated and monitored by archivists. A recently enacted stipulation set by the Bureau of Archives (*dangan ju* 檔案局), which oversees all of the archives in the PRC, prohibited any and all legal case records from being photographed or photocopied by readers at the time of consultation, and any notes was subsequently reviewed by the archivists upon departure.<sup>17</sup> This stipulation applied to all legal case records and was strictly enforced for records that documented criminal offences, which involved

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<sup>16</sup> Matthew Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 31.

<sup>17</sup> Ma Zhendu, Director of the Second National Historical Archives. Interview by author. Nanjing, China (2 March 2010).

individuals who had not reached eighteen *sui* at the time of the offence. In the case of children, the issue of individual privacy is considered to be highly pertinent because it is possible that the victim, offender, or other family members may still be alive. With the passage of time, it is therefore likely that more archival legal case records from the Republican period will become available to researchers.

Although the notion of “privacy” was an imported concept in Republican China, legal institutions during the Republican period did however recognise the sensitivity and implications of naming individuals who had not reached eighteen *sui* in its legal case records. For example, many of the penal case files from the wartime period that documented offences involving juveniles used pseudonyms to identify the defendants or victims. Where this has been the case, the study has denoted it in the footnotes and maintained the convention used by the court. In particular, in February 1934, the Supreme Court upheld the concealment of the identities of minors who were victims of sexual offences to an even higher standard.<sup>18</sup> This was due to pre-existing notions of female virtue and chastity that were embedded within Chinese thought, and the continuation of a practice that had mainly been passed down from the Qing period.<sup>19</sup>

## THE APPLICATION OF SPECIAL LEGAL PRIVILEGES

As chapter two has shown, under the imperial legal system, special legal privileges were granted to specific social groups such as the young, aged, and infirm.<sup>20</sup>

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<sup>18</sup> Q181-2-248 – 江蘇高等法院第二分院關於訴杜來福姦姪未滿十六歲之女子案的文件 [Documents from the Second Branch of Jiangsu Provincial High Court Regarding the Case of the Rape of a Girl Who Had Not Reached Sixteen *sui* by Du Laifu], p. 1 of Supreme Court verdict (February 1934)

<sup>19</sup> Vivienne Ng, “Ideology and Sexuality: Rape Laws in Qing China,” *The Journal of Asian Studies* 26, no. 1 (February 1987): 57-70.

<sup>20</sup> Derk Bodde, “Age, Youth, and Infirmary in the Law of Ch’ing China,” *University of Pennsylvania Law Review* 121, no. 3 (Jan., 1973): 444. Reprinted in Jerome Cohen, Randle Edwards, and Fu-mei Chen, eds. *Essays on China’s Legal Tradition* (Princeton: Princeton University Press, 1980), 137-69. Page references will refer to the *University of Pennsylvania Law Review* publication. For a study on special legal provisions for the treatment of the aged and the young prior to the Tang and Qing Codes, see: Anthony François Paulus Hulswé, *Remnants of Han Law* (Leiden: Brill, 1955), 298-302.

The extent of privilege granted to an offender varied not only according to one's age and social status but it was also based on the seriousness of the offence.<sup>21</sup> The practice of extending special legal privileges to juveniles continued into the Republican period but the extent of privilege and preferential treatment was not nearly as transparent as it was during the imperial period.

In Republican China, legal institutions continued the tradition of granting special legal privileges to juveniles based on their age and social status. However, the case study aims to show that the extension of these privileges went beyond more than just a differentiation in legal treatment according to one's age, social status, or seriousness of the offence. Instead, the findings suggest that the court in question exercised a significant degree of judicial discretion toward offenders who occupied the liminal space between fourteen and eighteen *sui*. Acts of judicial discretion in particular, reflected efforts by the court to construct a new framework for the legal treatment of the young.

Based on these legal case records, it would appear as if the Court went beyond simply using age as the rudimentary standard for determining an individual's status within the eyes of the law. Instead, the case files captured concerted efforts by the court to define a standard of public morality and proper conduct aimed at the young, specifically for those who occupied the liminal space where childhood and adulthood intersected. This is of important because the legal case records revealed that despite the instability brought on by the outbreak of war, courts continued to handle the adjudication process of offenders on a case-by-case basis by institutionally dealing with individual differences rather than subsuming them under a universal bureaucratic model.

The specific findings of this court therefore support the underlining argument that the outbreak of war served as a crucial catalyst to the recognition of children as a distinct

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<sup>21</sup> Bodde, "Age, Youth, and Infirmity in the Law of Ch'ing China," p. 449.

group within the legal setting. The judicial treatment of juvenile offenders from the wartime period therefore challenges the assumption that legal institutions in China had holistically subscribed to ideas rooted in Confucian teachings by treating offenders uniformly on a collective basis, and without much regard for the individual.

Although there were a large number of other types of criminal cases involving juveniles that occurred in Republican China, such as kidnapping, homicide, and the buying and selling of children, legal institutions did not attempt to define the parameters of childhood in their adjudication of these other types of cases.<sup>22</sup> Cases that involved acts of kidnapping or the buying and selling of children centred less on recognising the agency of children as autonomous individuals or as a well-defined social or legal category. Instead, in these types of cases, children were largely viewed as a commodity that was part of a financial transaction, and therefore they who could be bartered or sold at the will of their parents or guardians.

Even though Confucian influence on ideas of social hierarchy was still very much present during the Republican period, especially in the area of law, legal institutions in Republican China were granted much more legal elasticity and autonomy to render their own decisions than in imperial times. In this regard, the other types of criminal offences that involved juveniles in Republican China did not directly challenge the existing norms and ideas about children and childhood within Chinese society. Instead, these cases simply reinforced the idea that children lacked any form of independence, autonomy, or agency during this period.

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<sup>22</sup> On the buying and selling of people (including children), see: Johanna Sierra Ransmeier, "No Other Choice: The Sale of People in Late Qing and Republican Beijing, 1870-1935," PhD Diss, Yale University (2008).

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**A MUTUAL SPACE:  
MEDIATING THE VOICE OF A CHILD**

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Even though several conceptions of children existed within Republican China, this study is mainly concerned with the socio-legal construction of ideas on and about children and childhood during the wartime period. Although the study has employed a combination of several methodological approaches, this last section emphasises the role of legal institutions in its shaping of ideas about children and childhood in relation to criminality during the wartime period.

From an institutional perspective, a court's level of engagement with juveniles would be top-down and this approach cannot necessarily capture the voices or agency of children. However, this study attempts to move away from strictly understanding how ideas about children and childhood were constructed by only adult belief, which completely denies children of their agency. Instead, one of the advantages of drawing on legal case records is the ability to capture the "voice" of a child, as he or she allocuted the details of their offence before the court.

One issue that has constantly challenged historians of childhood is determining the voice of the child and more importantly, and finding a means to access it. As chapter three has shown, wartime discourses on children and childhood reflected mainly adult thinking of the world that surrounded them. Such discourses cannot offer insight into how a child's mind possibly operates, and in this regard, it is therefore unable to fully capture the authentic voice or an accurate reflection of the complex subjectivities of an actual child. However, the level of insight that legal case records can offer for understanding and locating the changing meanings of children and childhood under wartime conditions is different from scholars who draw on children's diaries or sketches in an attempt to

understand how children viewed the adult world.<sup>23</sup>

This study therefore attempts to combine these two approaches – to examine how the figure of the child was deployed by adults as a site of intellectual and social concern, and to draw upon transcripts from legal case records that capture the voice of a child as an independent agent. In this regard, these penal case files are of particular importance because they reflected how the court engaged with a child within a protected environment. The setting of the courtroom served as an arbitrator and unique space for children under wartime conditions - a mutual space that allowed children to narrate their stories before the court, leaving behind a paper trail, which showed how the court recorded such narrations of their stories.

Transcripts from court hearings provide evidence of how children expressed themselves, and especially in cases where the verdict was appealed, testimonies can capture linguistic shifts in an individual's testimony as the child matured with the passage of time. The transcription process however, is not an authentic representation of children's voices. This is because these records invariably required some degree of editing by court officials, whether that was to improve internal consistency amongst court records or to enhance the impression that the "truth" of an offence had been uncovered.

One example of this was the inclusion of a document in the legal case file, which contained questions and answers recorded by the police at the time of the initial interrogation. In some cases, the police interrogation log would later be used as a powerful legal tool during court hearings to discredit the testimony and credibility of an offender or victim, or used as a basis for establishing a timeline for the course of events.

For instance, in one case, on 7 May 1942, the court analysed in this case study sentenced forty year old Fan Linsheng to five years in prison for consecutively raping

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<sup>23</sup> Aaron W. Moore, "What Can Be Said: A Transnational Examination of Children's Diaries, 1925-1955," (presentation, Association for Asian Studies Annual Meeting, Philadelphia, PA) (March 2010); Nicholas Stargardt, "Children's Art of the Holocaust," *Past and Present* 161, no. 1 (Nov., 1998): 192-235.

thirteen year old, Lu Qiaoyun, on four occasions.<sup>24</sup> Fan was tried on multiple counts of statutory rape because Lu had not reached fourteen *sui* at the time the rapes occurred.<sup>25</sup> On appeal, citing Article 268 of the Criminal Appellate Law, Fan argued that the district court had misinterpreted the evidence presented before the court and therefore justice was not served.<sup>26</sup>

As a result, on 14 August 1942, the collaborationist-Jiangsu Provincial High Court overturned the district court's verdict and dismissed Fan's sentence.<sup>27</sup> The High Court stated that this was because Lu's testimony before the district court about the course of events was inconsistent with the original timeline of events, which she had initially been provided to the police when she was first questioned about the rapes.<sup>28</sup> Even though Fan's sentence was dismissed on the basis of legal technicalities (Article 361: Section 1, Article 356, and Article 293: Section 1, of the Criminal Appellate Law), the High Court justified their decision to overturn the district court's verdict in favour of dismissing Fan's sentence because "the district court had failed to probe the inconsistencies in Lu's court testimony against what was initially recorded in the police interrogation log."<sup>29</sup>

On the one hand, this case demonstrated the role of the Jiangsu Provincial High Court as an appellate system, which was charged with rectifying legal and factual errors made on the local level so as to prevent a miscarriage of justice. On the other hand, it also showed how the High Court attempted to ensure that some degree of oversight was put into place in order to maintain a level of internal consistency within the legal system at the time.

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<sup>24</sup> SMA File: R41-2-5774 – 日偽江蘇上海等二特區地方法院關於范林生強姦案 [The Rape Case Concerning Fan Linsheng in the District Court for the Second Special Area in Japanese-Occupied Shanghai] (3 vols.) (1942).

<sup>25</sup> *Ibid.*, vol. 2.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, vol. 3.

<sup>28</sup> *Ibid.*, vol. 3.

<sup>29</sup> *Ibid.*

Upon further review of the initial police interrogation log and transcripts from both court hearings, the district court did in fact neglect to follow-up on the inconsistencies presented in Lu's testimony before the court.<sup>30</sup> However, were these in actuality, inconsistencies in the victim's original statements to the police and subsequent testimony before the district court? Or was it simply an attempt by the court to artificially manufacture some degree of internal consistency within their legal case records and the testimonies of rape victims? If it was the latter, what was the court's intentions and why?

This case is one example of the filtering process of legal case records that took place during the Republican period. Testimonies and confessions by and against juveniles were preserved in police and legal case files from court hearings during the wartime period. What was written down in these files was not an exact transcription of the testimonies but instead, a record of what court officials believed were the central facts surrounding a case at the time. Despite this intermediary element, these legal case records are one of the few sources that documented the "voices" of ordinary children in wartime China, as it was highly unlikely that children themselves would have recorded their own offences or offences committed against them during the wartime period.

In spite of the fruitfulness found in these legal case records, the study however, recognises the potential weaknesses of using it as a source base. It acknowledges that legal case records cannot fully capture the "voice" of a child and that these records still represent an "official" perspective about the particular offences in question. Therefore, these files are not accurate statements of an offender's story. However, because there are few records remaining from the wartime period that documented the voices of ordinary children and adults, which were not subjected to any form of censorship, whether official/public (government or print media) or by an individual (interviews, memoirs,

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<sup>30</sup> Ibid., vols. 1 and 2.

autobiographies, or oral histories), legal transcripts of testimonies of children are especially valuable because they captured both official and unofficial voices. In this regard, despite the “filtering” process that may have taken place, legal case records provide an important entry point into understanding the lived experiences of ordinary civilians, especially children, under wartime conditions.

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**TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD**

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As the previous three sections have shown, the views of government officials, legal scholars, intellectuals, philosophers, educators, and psychologists, indicated that there was a range of attitudes and perspectives about children and childhood in Republican China. In particular, the lack of consensus on how to measure the different stages of human development prompted a range of views and attitudes about children and criminality. Conceptually, legal interpretations of the developmental cycle mainly distinguished an individual’s biophysical traits and did not necessarily account for a child’s development on the psychological and moral levels. Although age remained as the most rudimentary way for determining how the law should treat an offender, age did not serve as the only standard used by courts during the wartime period. As the next chapter will demonstrate, through an examination of the adjudication process of juvenile offenders, the Japanese-collaborationist district level court in occupied Shanghai attempted to construct a new framework for how the law should treat the young, which went beyond using age as a rudimentary standard.

**CHAPTER EIGHT**  
**ANALYSING THE LEGAL REASONING OF THE JAPANESE-**  
**COLLABORATIONIST DISTRICT COURT IN WARTIME (1940-1941)**

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On the morning of 22 September 1941, Jiang Jinfeng, a seventeen year old boy entered a textile shop and stole a bundle of cloth.<sup>1</sup> Whilst trying to escape, he was caught red-handed by the shopkeeper. The offence took place in Japanese-occupied Shanghai during the height of the war. Jiang's case came before the Japanese-collaborationist Shanghai District Court for the First Special Area, which was responsible at the time for adjudicating offences committed by and against only Chinese civilians.

The Court charged him with theft (*qiedao* 窃盜) and sentenced him to six months in prison for his offence.<sup>2</sup> According to the legal case file, it had been less than five years since Jiang last committed his previous offence.<sup>3</sup> The court reasoned that because Jiang was a repeat offender (*leifan* 累犯), he was thereby already knowledgeable of the law and its consequences, so as further punishment for his actions, his sentence should have been increased by half.<sup>4</sup> However, the Court decided that because Jiang had not yet reached eighteen *sui* at the time of his offence, his mental faculties were therefore “comparatively weaker” (*qi zhishi jiaowei xunruo* 其知識較為溥弱) than someone who was legally recognised as an adult. In light of this reasoning, the court reduced his sentence by half. Although Jiang had committed a recidivist act, the court's exercise of judicial discretion in the reduction of his sentence would suggest that his status as a minor outweighed his previous criminal record.

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<sup>1</sup> SMA R39-1-104 - 江蘇上海第一特區地方法院-民國 30 年 10 月至 12 月份五年以下徒刑案件執行刑罰判決(五冊) [Verdicts from Criminal Cases with Sentences of Less than Five Years from the Jiangsu Shanghai District Court for the First Special Area (October to December 1941) (5 vols.)]: Vol. 1, p. 32.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid. Article 47, “1935 revised Criminal Code”

<sup>4</sup> Ibid.

The legal case records do not tell us what happened to Jiang after this incident but however truncated and sparse, the offence represented an ordinary case of petty theft that was widespread within wartime Chinese society. Although the court exercised judicial discretion in its show of leniency towards Jiang, their rationale for granting him clemency was not exclusively based on his status as a juvenile. Instead, an examination of penal case files of juvenile offenders who were adjudicated by this specific court over a two-year period (1940-1941), suggested that there was a shift in the legal reasoning and jurisprudence of this court toward children during the wartime period.

This chapter traces the legal reasoning of this specific court during the early stages of collaborationist conditions, and seeks to demonstrate how the social impact of war on urban juveniles in wartime Shanghai brought about changes in the legal and social understanding of children and childhood during a politically sensitive period. It aims to demonstrate how through an introduction of the process of a “legal construction of childhood,” the Court attempted to go beyond simply using age as a rudimentary standard as the determining factor of criminal liability for offenders who fell between fourteen and eighteen *sui*.<sup>5</sup>

For instance, in one case, sixteen year old Zhu Qisheng was charged with robbing a group of Japanese people on the streets of wartime Shanghai.<sup>6</sup> Even though the collaborationist Shanghai District Court had adjudicated countless cases of robbery involving juvenile offenders, the victims of Zhu’s crime were Japanese and not ordinary Chinese civilians, thus making the circumstances surrounding his offence more politically

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<sup>5</sup> Waltner, “The Moral Status of the Child in Late Imperial China: Childhood in Ritual and Law,” p. 681. This concept is borrowed from American lawmakers, who at the turn of the twentieth century, had relatively clear images about the boundaries between childhood and adulthood, and the legal regulation of children with respect to the exercising of certain rights and privileges that adults could enjoy. See: Elizabeth S. Scott, “The Legal Construction of Childhood,” in Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dohrn, eds. *A Century of Juvenile Justice*. Chicago: University of Chicago Press (2002): 113-41;

<sup>6</sup> SMA R39-1-104: Vol. 4, p. 102.

sensitive than others. Before the Court, Zhu stated that his actions were motivated out of economic necessity and desperation but he argued before the court that he did not intentionally target Japanese people except that they were simply indistinguishable from other civilians on the street.<sup>7</sup>

In determining Zhu's "criminal intent" (*fanyi* 犯意), the Court took into account extenuating circumstances associated with wartime conditions and as a result, the court reduced Zhu's initial sentence by more than half, and he was punished to three months in prison for his offence.<sup>8</sup> In its decision, the Court stated that a reduced sentence was warranted because the robbery was committed out of "a difficulty in one's livelihood and this begs for forgiveness" (*yin shenghuoji kunnan, yousuo qiang yuan qiu keshu* 因生計困難, 有所搶原求可恕) from the Court.<sup>9</sup>

As Zhu's case demonstrated, the Court took into account other factors that went beyond using an offender's age, background, and seriousness of the offence in their adjudication process. Although legal case records from the Qing period also showed that courts considered extenuating circumstances when determining an offender's sentence, as Derk Bodde has noted, this was most often a case of legalised differentiation that was strongly based on an individual's rank, relationship, and the specific circumstances, which had been deliberately and systematically enshrined within the pre-Republican legal system.<sup>10</sup> In this regard, courts in the Republican period differed from the imperial legal system because of the introduction of eighteen *sui* as the legal age of responsibility in the 1935 revised Criminal Code. Prior to the 1935 revised Criminal Code, the task of determining the issue of legal culpability and moral responsibility for those who fell between fourteen and eighteen *sui* did not create an area of legal and moral ambiguity for

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Bodde, "Age, Youth, and Infirmity in the Law of Ch'ing China," p. 437.

courts. This was unique to the Republican period and wartime conditions further contributed to the importance of the court's consideration of extenuating circumstances in their adjudication of individuals who occupied this liminal space.

The findings from the legal case records suggest that as a collective body, the Court's position on children could clearly be identified through its legal reasoning and sentencing towards juvenile offenders during this two-year window. As evidenced in the penal case files of juvenile offenders, an unexpected pattern of consistency and uniformity in the Court's legal reasoning of juvenile offenders emerged from the Court's verdicts toward those who occupied this liminal space. Despite the social and political circumstances of war and collaboration with the Japanese during this period, the Court was able to establish an independent voice and exercise a significant degree of judicial autonomy under wartime conditions.

In this regard, the legal case records revealed that the Court exhibited a significant degree of legal elasticity that was unusually dynamic during the war years and as a result, it gave way to the emergence of a new legal framework on how the law should treat the young. Together, these penal case files form a mosaic that paint a picture of the intricate relationship between law and society under collaborationist conditions in wartime China - an area within the current scholarship that has been overlooked but is critical in informing us about the role of legal institutions and the construction of ideas and concepts about children and childhood under collaborationist conditions during the wartime period.

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**TOWARDS A LEGAL CONSTRUCTION OF CHILDHOOD**

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On the morning of 10 August 1941, Zhang Huimin stole a wallet from another passenger on the bus. The Court charged him with the offence of theft (*qiedao* 窃盗), and

sentenced him to two months in prison.<sup>11</sup> Unlike Jiang, Zhang was not a repeat offender but was instead identified by the Court as a first time offender, who had “not reached eighteen *sui*” (*weiman shiba sui* 未滿十八歲) at the time of the offence.<sup>12</sup> The Court’s decision noted that Zhang had committed the offence “out of poverty and may therefore be forgiven” (*yinpin fanzui qingyou keshu* 因貧犯罪情有可恕).<sup>13</sup> As a result, the Court decided to reduce his sentence by half due to special consideration that warranted judicial discretion but stressed that a reduction in his sentence “was not solely based on his status as a juvenile but also because he did not have a previous criminal record.”<sup>14</sup>

Cases of petty theft like that of the abovementioned involving Jiang, Zhu, and Zhang’s were common during the war years. As shown in the earlier chapters, the outbreak of the war displaced many children from their families and homes, which led to high levels of attrition rates from schools. Moreover, the lack of social welfare services on the provincial and local levels to assist children, who were either socially displaced or orphaned, meant that particularly in urban areas, the rise in the number of criminal and socially deviant activities that appeared within wartime society became linked to a breakdown in the conventional agencies of socialisation (i.e.: schools, families, and public institutions or organisations).

As demonstrated by earlier chapters, the lack of clarity in how the law should treat those who fell between fourteen and eighteen *sui* created an area of moral and legal ambiguity for the court. This thus resulted in a highly subjective adjudication process in which the degree of judicial discretion exercised by courts varied significantly from case to case. The practice and exercise of judicial discretion was not specific to the Chinese

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<sup>11</sup> SMA Q180-1-55 - 江蘇上海第一特區地方法院 – 民國 30 年 7 月至 9 月份五年以下徒刑案件執行刑罰判決(五冊) [Verdicts from Criminal Cases with Sentences of Less than Five Years from the Jiangsu Shanghai District Court of the First Special Area (July to September 1941) (5 vols.)] Vol. 3, p. 160.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

legal system. However, in the Chinese case, two specific provisions in the 1935 revised Criminal Code took into account the importance of humanitarian considerations. Article 59 permitted courts to exercise judicial discretion in sentencing, if the circumstances surrounding the offence “warranted pity or forgiveness from the court.”<sup>15</sup> In addition, Article 60 stated that “discretionary reduction of punishment may still be made in accordance with the provisions of the preceding article notwithstanding that increase or reduction of punishment has (in such cases) been prescribed by law.”<sup>16</sup>

For example, on 5 July 1941, the Court sentenced seventeen year old Zhang Shunan to three months in prison for having robbed Mrs. Meng Qian on the street for nine *yuan*.<sup>17</sup> Instead of stating that Zhang had not reached eighteen *sui* at the time of the offence and a reduction in his sentence would be permitted at the discretion of the Court, the legal case file stressed that he was “merely seventeen *sui*” (*jin shiqi sui* 仅十岁), who was poor and hungry with nothing to eat (*yin pin'e bude shi* 因貧餓不得食).<sup>18</sup> Based on these extenuating circumstances, the Court reduced Zhang’s sentence by half, and further recommended that “if the case was to ever reach the provincial High Court, the state of Zhang’s economic and social conditions should be taken into consideration on appeal.”<sup>19</sup>

The inclusion of these provisions in the 1935 revised Criminal Code permitted courts to exercise any degree of judicial discretion in their sentencing of criminal offenders without much political or legal oversight. Especially for offenders who occupied this liminal space, the practice of judicial discretion became even more pertinent. In this regard, the Court had the authority to construct the parameters and shape the moral

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<sup>15</sup> Article 59, “1935 revised Criminal Code”

<sup>16</sup> Article 60, “1935 revised Criminal Code”

<sup>17</sup> SMA Q180-1-55: Vol. 2, p. 150.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

actions that children would be determined by within the eyes of the law. The absence of sentencing guidelines or legal precedence available for consultation with regards to the legal treatment of the young in up until this point, combined with the degree of judicial discretion granted to courts in the 1935 revised Criminal Code, allowed for the emergence of a unique space for legal institutions to introduce a process of a “legal construction of childhood.” This unique space allowed the court to construct a new framework for understanding children within the legal setting during the wartime period.

In this regard, the introduction of the process of a “legal construction of childhood” prompted a distinct and traceable shift in both discourse and practice – a recognition that the outbreak of the war had served as a catalyst to the crystallisation of changes in ideas and meanings about children and criminality within Chinese society. This shift in the legal and social understandings of children suggested that morally transgressive behaviour amongst Chinese children could no longer be strictly linked to poor parenting - an idea that challenged the prevailing belief that the actions of children reflected one’s familial environment. The appearance of discursive changes in ideas of children and childhood, alongside efforts to integrate Westernised concepts toward legal reforms, paved the way for the emergence of this new legal framework.

For example, Wang Abao (fifteen *sui*) and Wang Aliu (who had not yet reached eighteen *sui* at the time of the offence) were complicit with twenty year old Xu Yuzhang in carrying out a theft.<sup>20</sup> Even though the Court determined that Wang Aliu was complicit in the offence, due to his status as a first time offender who was experiencing economic difficulties beyond his control, the Court sentenced him to a prison term for his actions.<sup>21</sup> However, the Court’s handling of Wang Abao and Xu underscored the legal ambiguities present in the adjudication of juvenile offenders in wartime China.

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<sup>20</sup> SMA Q180-1-55: Vol. 4, p. 17.

<sup>21</sup> Ibid.

According to the legal case file, although Wang Abao and Xu had both been identified as repeat juvenile offenders, the Court reasoned that “owing to the circumstances of war that led to a difficult life for them” (*yin zhan er shenghuo jiannan* 因戰而生活艱難), their sentences would be increased by only a third instead of half.<sup>22</sup> Wang Abao was therefore given the same sentence as Xu, even though at the time of the offence, Wang had not reached eighteen *sui*.<sup>23</sup>

On the one hand, the Court’s decision to only increase Wang Abao’s sentence by a third instead of half, which was the legal norm at the time for those who committed recidivist acts reflected an act of clemency by the Court. On the other hand, this minor reduction in his sentence suggested that despite the social conditions of war, and his status as a juvenile, the Court did not go out of its way to apply special legal privileges toward him.<sup>24</sup> The Court had also determined that because Wang Abao had initiated the crime, in spite of his age, his actions reflected an offender whose mental faculties and physical abilities were fully developed and in this regard, he could therefore be treated as an adult before the eyes of the court.<sup>25</sup>

As the war intensified, many civilians, including children, were forced to engage in criminal offences out of poverty and undue hardship. Although a direct correlation between poverty and criminality cannot be drawn, the breakdown in the agencies of socialisation for children during the wartime period created an unstable environment in which socially deviant behaviour became more widespread and difficult to control. As these legal records indicated, social circumstances that grew out of wartime conditions were increasingly being linked to the problem of juvenile offenders.

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<sup>22</sup> Ibid.

<sup>23</sup> Article 18, “1935 revised Criminal Code”

<sup>24</sup> Article 47, “1935 revised Criminal Code”

<sup>25</sup> Ibid.

A memorandum dated 20 September 1943 composed by the police for the first special area in Shanghai noted that in the past three years, during the same period in which the legal case records in this chapter have been drawn from, there was a noticeable increase in the number of criminal activities amongst juveniles that appeared within wartime society.<sup>26</sup> A day later, the police force received an additional memorandum ordering them to actively pursue juvenile offenders who were seen to be committing socially deviant activities and bring them to court for adjudication.<sup>27</sup>

For example, this was reflected in a case involving sixteen year old Wang Ayou. Wang appeared before the Court for having stolen a bag of sweets from a little girl whilst she waited for the bus on the street.<sup>28</sup> He was caught in the act when the little girl, Chen Xiaomei, screamed out of fright as he snatched the bag away from her. When Wang appeared before the Court, he refused to admit his guilt for the offence, having insisted that he was hungry from the lack of food due to wartime conditions, and had seen that the little girl was holding a bag of sweets.<sup>29</sup> The legal case records indicated that despite Wang's lack of contrition, his sentence was still significantly reduced because his actions were pitiable and further justified by "poverty and may be forgiven" (*yin pin fanzui, qing you ke shu* 因貧犯罪, 請有可恕).<sup>30</sup>

In all of these cases of petty theft, the Court's decision to exercise varying degrees of judicial discretion in its adjudication of juvenile offenders suggested that the court was neither completely shielded from wartime conditions nor unsympathetic to the plight of ordinary children coping with the effects of war. The Court's show of mercy towards defendants citing difficult economic and social conditions extended to juvenile

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<sup>26</sup> SMA R33-1-271 – 日偽上海特別政府保甲委員會于舉為娛樂, 衛生, 失業及稿女子, 社會, 治安對兒童犯罪的處理等事項與關於單位來往文書 (1943-1945), p. 13

<sup>27</sup> Ibid., p. 14.

<sup>28</sup> SMA R39-1-104, Vol. 4, p. 41.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

offenders charged with more severe offences as well, and was not simply limited to those who only committed petty crimes

### SEVERE OFFENCES

At eight o'clock on the morning of 1 October 1941, defendants Chen Yirong (seventeen) and Liu Shigen (eighteen) saw forty bags of rice lying inside a rice shop and attempted to steal them.<sup>31</sup> While the shopkeeper was not paying attention, Chen and Liu used an iron pipe to forcibly pillage the bags of rice.<sup>32</sup>

The legal case records noted that because the shopkeeper had testified that Chen and Liu were in possession of a deadly weapon (*xiongqi* 凶器) when carrying out the offence, legally, the defendants should have been given a harsher sentence. However, the Court's show of leniency towards defendants in more severe offences demonstrated its authority to determine the weight of social circumstances in leading juveniles to commit an offence under difficult social conditions. In this regard, the Court sentenced both Chen and Liu to only three months in prison and confiscation of the iron pipe.<sup>33</sup> In issuing this rather lenient sentence, the Court chose to recognise Chen's status as a juvenile who had not reached eighteen *sui* and reduced his sentence by half. Although Liu was being tried as a full adult, his sentence was also reduced due to "difficult social circumstances in his life," although the Court did not explicate what those "circumstances" were.<sup>34</sup>

In another case, defendant Chen Lizhi, who was only identified as having not reached eighteen *sui*, was sentenced to three years in prison for carrying out a robbery with a deadly weapon.<sup>35</sup> On the morning of 4 August 1941, Chen went to the home of his cousin, Chen Yongye (age unknown) to retrieve a gun and together, they rode the bus to

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<sup>31</sup> SMA File No.: R39-1-104: Vol. 1, p. 49.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

SMA File No.: R39-1-104: Vol. 1, p. 135.

Washington Bank (*Huashengdun yinhang* 華盛頓銀行). Pretending to be customers, Chen and his cousin, approached the bank teller (Hong Zuodao) and threatened him with their gun, demanding that he hand over “any items of value.”<sup>36</sup>

Both defendants were charged with “successively committing a robbery with a deadly weapon” (*lianji xiedai xiongqi qiangdao* 連續攜帶兇器強盜), which comprised of possession of a deadly weapon, threat of using a deadly weapon, intimidation, putting the public in harm’s way, and robbery.<sup>37</sup> The Court reasoned that because Chen Lizhi had gone to his cousin’s house first to retrieve the gun and then boarded the bus for the bank, this signified an act of premeditation and his “intent to commit a crime” (*fanyi* 犯意). The Court also found that the weapon was military issued and did not belong to either of the two defendants.

Before the Court, Chen Lizhi stated that the reason he committed the crime was “due to a loss of employment and he was finding it difficult to get through daily life” (*yin shiye duri weinan* 因失業度日為難). The Court decided to reduce his sentence by half because his reason for committing the offence was compelling and supported by his admittance of guilt that he did “intend to harm.”<sup>38</sup> In justifying Chen’s sentence, the Court noted that because Chen was “forced by his livelihood, it was up to him to take risks” (*shengji suo bi, yizhi tinger zouxian* 生計所逼，以致鋌而險).<sup>39</sup>

...  
**LEGAL REASONING UNDER COLLABORATIONIST CONDITIONS**  
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Although the Court in question was not completely immune from the political effects of war, the findings suggest that it was able to extricate and shield itself from

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

becoming engaged in the battle for political legitimacy that took place during this period.<sup>40</sup> This is important because during this period of collaboration, although the Court was politically under the purview of the Japanese authorities and by extension the Japanese monarchy, the legal case records reflected a conscious attempt by the Court to maintain the integrity of its adjudication process through a rendering of impartial justice. In this regard, despite the judges' assertion of their individual political allegiances and its reputation as a "collaborationist court" - as deemed by Chiang Kai-shek's Nationalist Government and the Japanese authorities themselves - on the whole, the Court was able to remain relatively free from the political constrictions of Japanese occupation under wartime conditions.

As the cases have demonstrates, the voice of the Court and its judicial autonomy could clearly be identified in an analysis of the legal reasoning of the Court's decisions and sentences of juvenile offenders during this two year window. This is important because under sensitive political circumstances, the Court found a means to establish an independent position toward the issue of juvenile offenders without raising suspicion from either Chiang Kai-shek's Nationalist Government or the Japanese authorities.

Because the Court in question was a low level district court, whose responsibility was to adjudicate *any* criminal offence that warranted a prison term of less than five years, the number of judges who adjudicated these offences changed from case to case. It is therefore difficult to accurately trace whether the practice of judicial discretion or application of special legal provisions and consideration towards juvenile offenders was specific to a particular judge or group of judges who shared a similar judicial ideology during this period, especially since the legal case records did not specify which individual judge presided over each case. However, the political allegiances or particular judicial

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<sup>40</sup> J.H. Hahn, "Origin and Development of the Political System in the Shanghai International Settlement," *Journal of the Hong Kong Branch of the Royal Asiatic Society* 22 (1982): 31-64; Wakeman, Jr., *The Shanghai Badlands: Wartime Terrorism and Urban Crime, 1937-1941*, p. 118.

ideology of the sitting judges were not as important as the unexpected legal uniformity that collectively resulted from the Court's treatment of the young.

It would be easy to dismiss the Court's decisions towards juvenile offenders as an aberration from the norm due to extenuating circumstances brought on by wartime conditions. However, the legal case records reflected an unexpected degree of legal consistency, which was shaped under sensitive political circumstances. It is *this* particular level of uniformity as evidenced from the penal case files of juvenile offenders that demonstrated the Court's authority as an independent judicial body, despite it having been seen as a collaborationist court during the wartime period.

The degree of consistency displayed in the pattern of legal reasoning from this Court was unforeseeable not only because of the political circumstances surrounding the court at the time but also because of the competing demands placed on legal institutions and the judiciary during the wartime period. The findings revealed that the Court's position towards juvenile offenders under wartime conditions legitimated it as an autonomous legal institution and not simply a political tool of the Japanese authorities. In other words, the Court became independently recognised as a Chinese institution of the judiciary, which was able to command a sphere of legal authority despite being under Japanese occupation.

The moral and legal ambiguities present in the area of how the law should treat the young therefore allowed the Court to not only circumvent sensitive political matters, which might have otherwise drawn attention from the Japanese authorities in the early collaborationist period but it also allowed the Court to establish an independent yet collective voice as a legal body under wartime conditions. In order for the Court to demonstrate its judicial autonomy and authority, the Court placed significant weight on

the social circumstances of offenders as extenuating factors for the rise in criminal offences involving juveniles in wartime China.

In this respect, the Court appealed to the longstanding belief within Chinese society that the “rule of law” must also be for the betterment of “man,” and what is deemed as proper moral and legal behaviour must also fit with what was considered as the norms of acceptable social behaviour, which would be consistent and in harmony with the rules of moral and social conduct as grounded within Chinese culture and custom.<sup>41</sup> As the cases have shown, this was most clearly evident in the court’s show of mercy toward juvenile offenders who cited difficult social and economic conditions due to the outbreak of war.

...  
**NEGOTIATING THE BOUNDARIES OF CHILDHOOD AND ADULTHOOD:  
DETERMINING RELATIVE RESPONSIBILITY**

....

On the one hand, the intersections by which childhood and adulthood met posed unexpected difficulties for the Court as it attempted to negotiate the intricacies involved in determining the extent of legal responsibility versus moral culpability for juvenile offenders. By the 1940s, this line became increasingly blurred and complicated by the realities of the social and economic conditions of a nation engaged in total war. On the other hand, provisions within the 1935 revised Criminal Code granted legal institutions a considerable degree of judicial autonomy through the its exercise of judicial discretion toward offenders who cited extenuating circumstances.

The outbreak of the war prompted the emergence of a new framework for how the law should treat the young. Under wartime conditions, shifts in the legal and social meanings of children were embedded in the everyday social and cultural practices of

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<sup>41</sup> Jenco, “‘Rule by Man’ and ‘Rule by Law’ in Early Republican China: Contributions to a Theoretical Debate,” pp. 181-203.

Chinese society. The development, shaping, and transmission of ideas on law and children under wartime conditions thus brought about new ways to locate the changing social meanings of criminality and childhood within Chinese consciousness during and after the period of the war.

For instance, the question of how to determine relative responsibility for juvenile offenders was illustrated in the case of Wang Yumei (seventeen) and Zhou Shisheng (eighteen). On 7 July 1941, Wang and Zhou broke into the home of Baoyi at 3:30 in the morning and stole a pair of sunglasses and a set of keys.<sup>42</sup> When rendering their decision, the collaborationist Shanghai District Court cited poverty as the cause for Wang and Zhou's actions. The court therefore noted that the defendants should be pitied (*yin pin xing qie, qing ke min* 因貧刑竊, 請可憫) and as such, the sentences for both defendants were subsequently reduced by half, even though Zhou was no longer considered as a juvenile and was being tried as a full adult.<sup>43</sup> The court had decided to show further leniency towards Wang, who at the time of his offence had not reached eighteen *sui*, and stated that "because this is Wang's first offence, his sentence would be temporarily suspended and punishment would not be carried out until further efforts were made for individual prosecution of the defendant at a later time."<sup>44</sup>

## THE IMPORTANCE OF CRIMINAL INTENT

Despite competing understandings of the phases of human development from imperial times and into the Republican period, age was still used as a rudimentary standard for determining criminal liability in several cases involving juvenile offenders. For instance, seventeen year old Gu Zaozi, entered the home of Feng Fusheng through a

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<sup>42</sup> SMA Q180-1-55: Vol. 3, p. 141.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

window at four o'clock on the morning of 11 July 1941 and stole a coat.<sup>45</sup> Citing his status as a juvenile who had not reached eighteen *sui* at the time of the offence, the Court reduced his sentence by half and punished him to four months in prison.<sup>46</sup> Similarly, Yu Yongxing, also seventeen, robbed Chen Ruxing at 9.15 on an August morning.<sup>47</sup> The Court sentenced him to three months in prison, after having first reduced it by half because he had not reached the legal age of adulthood.<sup>48</sup>

The 1935 revised Criminal Code did not explicitly stipulate that any person who had not reached eighteen *sui* would automatically be granted clemency based on his/her status as a juvenile. Although Articles 59 and 60 of the 1935 revised Criminal Code permitted judicial discretion, Article 57 further allowed legal institutions to consider an offender's "motive for the offence," "living condition of the offender," "past conduct of the offender," and "the intelligence of the offender," as causes for exercising judicial discretion based on one or any combination of these considerations.<sup>49</sup>

However, acts of judicial discretion and clemency displayed toward juvenile offenders by virtue of one's age was not a given during this period, institutionally, the Court treated offenders as individuals, each with a different set of circumstances. For instance, seventeen year old Gao Jinkui stole thirteen *yuan* and one *jiao* from a passerby walking on the street.<sup>50</sup> Even though he had not reached eighteen *sui* at the time of the offence, the Court did not reduce his sentence on the basis of his status as a juvenile.<sup>51</sup> The legal case record indicated that Gao failed to provide the Court with an adequate "reason" (*yuanyin* 原因) of his "criminal intent" (*fanyi* 犯意) for having committed the offence. As a result, the Court issued him a four month prison sentence, which was

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<sup>45</sup> SMA R39-1-104: Vol. 1, p. 72.

<sup>46</sup> *Ibid.*

<sup>47</sup> SMA Q180-1-55: Vol. 4, p. 160.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, Article 57: Provisions 1, 5, 6, and 7.

<sup>50</sup> SMA File: R39-1-104: Vol. 1, p. 20

<sup>51</sup> *Ibid.*

significantly higher than the legal norm of increasing his sentence by half.<sup>52</sup> The Court's dissatisfaction with Gao's lack of a rationale for having committed the offence would suggest that the Court intended to exercise the full extent of the law in order to condemn Gao's actions as a juvenile offender.<sup>53</sup> The court's adjudication of juvenile offenders who committed recidivist acts most clearly underscored the court's position on this matter.

### **THE PROBLEM WITH RECIDIVISM**

On 21 July 1941, seventeen year old Xu Funiu completed a four month sentence for his previous crime of theft.<sup>54</sup> Less than two months after serving out his sentence, he committed the same offence again where he stole items from a shop. This time, the Court increased his punishment by half and sentenced him to eight months in prison.<sup>55</sup> Cases involving juvenile repeat offenders were quite common during this time.

Because juveniles found themselves without a social network or agencies of socialization to preoccupy them with their time, they were left to fend for themselves amidst the chaos of war. As boredom and restlessness began to set in, socially deviant acts became seen as an attractive outlet for juvenile angst.<sup>56</sup> For instance, Su Wenxi was a juvenile repeat offender who was charged with robbery.<sup>57</sup> He had only completed his previous sentence on 5 May 1941 for his earlier crime of theft but in less than two weeks time, he robbed a pedestrian on the street, claiming that he was bored and had "nothing to

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> SMA File No.: Q180-1-55: Vol. 5, p. 134.

<sup>55</sup> Ibid.

<sup>56</sup> Several entries by middle school students mentioned the appeal of committing socially deviant acts as a form of "entertainment," in 战时中学生日记 [Diary Entries of Wartime Middle School Students]. Ed. Chen Fuxi. Zhejiang zengzi shuju (1944): 6, 111 330, 343 and 395; "救济失学儿童案" [A Case of Economic Relief for Children who are Unable to Attend School], 南京市政府公报 [Nanjing Municipal Government Newspaper], no. 128 (1933): 41-44.

<sup>57</sup> SMA File No.: Q180-1-55: Vol. 1, p. 150.

do” (*meishi zuo* 没事做).<sup>58</sup> The Court increased his sentence by half because he was repeat offender but then reduced it by half because of his status as a juvenile. In the end, he received a sentence of five months in prison for his crime.<sup>59</sup> It is worth noting that Su’s sentence of five months was relatively higher than other similar cases involving juvenile offenders charged with the same crime. As such, the Court explained in their decision that “Su’s insufficient explanation for committing the crime therefore rendered a harsher sentence in order to punish him for his unjustified act of robbery.”<sup>60</sup>

Despite the court’s ability to exercise judicial discretion, it seldom granted any show of leniency towards juvenile repeat offenders like Xu or Su unless extenuating circumstances could be accounted for. As the Court clearly stated in their decision in the case of Su Wenxi, boredom and restlessness were considered to be insufficient reasons for justifying an offence.<sup>61</sup> Repeat offenders were therefore generally punished with a harsher sentence based on his or her intent to commit an offence. Moreover, the assumption was that because of one would be knowledgeable of the law from having previously committed an offence, repeating the same offence would be an indication that they were aware of the repercussions that their actions would yield.

One the ways in which the Court sought to define a standard of public morality for juveniles was deciding which actions would be held to a higher standard of legal and public scrutiny than others, thereby using the actions of juvenile offenders to set an example for other juveniles in wartime China.

For instance, sixteen year old Han Jinquan had previously been sentenced by this same court to three months in prison for theft. But on the morning of 23 September 1941,

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<sup>58</sup> Ibid.

<sup>59</sup> SMA File No.: Q180-1-55: Vol. 1, p. 150.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

he stole five *yuan* and six *jiao* from a pedestrian walking on the street.<sup>62</sup> The Court decided to increase his sentence by half for having committed a repeat offence – an offence which the Court reasoned he should have already known would be punishable by the law.<sup>63</sup> Similarly, the sentence for sixteen year old Lin Amao was also increased by half because not only was he a recidivist, the Court also noted that the shopkeeper had “bore witness to the actions of the thief,” when Lin was caught red-handed for stealing two articles of clothing and thirty *yuan* from a local pastry shop.<sup>64</sup>

Although each of these cases involved juvenile offenders who had not reached eighteen *sui*, the Court dismissed their status as juveniles in order to stress its intolerance for those who continuously engaged in recidivist offences. Instead, the Court chose to punish juveniles who knowingly broke the law again by increasing their sentences by half, in the hope that a longer prison sentence would be sufficient to dissuade them from committing future criminal offences. The sentencing standard of increasing a repeat offender’s sentence by half was initially established for adult recidivists but was later applied to juvenile offenders at the discretion of the courts.<sup>65</sup>

...  
**LEGAL CONTINUITIES:  
THE LEGAL AND MORAL STATUS OF CHILDREN**  
....

The origins of Articles 59 and 60 in the 1935 revised Criminal Code, which allowed legal institutions to exercise judicial discretion can be traced back to imperial China, where special legal privileges were granted to specific social groups, such as the young, aged, and infirm.<sup>66</sup> The extent of privilege granted to an offender varied not only

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<sup>62</sup> SMA File No.: R39-1-104: Vol. 1, p. 21.

<sup>63</sup> *Ibid.*

<sup>64</sup> SMA File No.: R39-1-104: Vol. 1, p. 102.

<sup>65</sup> Ministry of Justice, ed. 司法院解释丛编 [Collection of Explanations by the Ministry of Justice]. Published 1932-1933.

<sup>66</sup> Derk Bodde, “Age, Youth, and Infirmary in the Law of Ch’ing China,” *University of Pennsylvania Law Review* 121, no. 3 (Jan., 1973): 444. For a chapter on special legal provisions for the treatment of the

according to one's age and social status but also according to the seriousness of the offence.<sup>67</sup> This practice also continued into the Republican period, where juveniles were entitled to special legal privileges, although the extent of privilege and preferential treatment was not nearly as transparent as it was during the imperial period.<sup>68</sup>

As the legal case records demonstrated, legal institutions continued the tradition of granting special legal privileges to juveniles based on their age and social status in Republican China but the extension of these privileges went beyond more than just a differentiation in legal treatment according to one's age, social status, or seriousness of the offence. Through the application of legal provisions that permitted for acts of judicial discretion and clemency, it would therefore appear as if the intention of the Court was to construct a legal understanding of the parameters of childhood under wartime conditions.

Up until this point, age was the only standard by which the stage of "childhood" had been used within the legal setting.<sup>69</sup> However, an individual's age was often unreliable and contested before the court, especially in cases where birth records or witnesses were unavailable. Therefore, although age was still the most rudimentary way to determine an offender's status, especially for those who had not reached eighteen *sui*, assessing the development of an offender's mental faculties (*yishi nengli* 意識能力) and actual physical ability to commit an action (*xingwei nengli* 行爲能力) became more important for the court. Legal institutions therefore navigated this legally and morally ambiguous space in an effort to construct the boundaries for which children would subscribe to within the confines of the law.

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aged and the young prior to the Tang Code, which was the earliest surviving legal counterpart to the Qing Code, see: Anthony François Paulus Hulswé, *Remnants of Han Law* (Leiden: Brill, 1955), pp. 298-302

<sup>67</sup> Bodde, "Age, Youth, and Infirmity in the Law of Ch'ing China," p. 439.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, p. 444.

In this regard, although legal institutions were given more judicial autonomy in the Republican period, assessing an offence based on an individual's psychological and mental development against one's physical abilities proved to be more difficult during the wartime period. The following case underscored the Court's attempt to shape and construct the legal boundaries of childhood under wartime conditions. On 13 October 1941, the Court sentenced defendants Wang Alin (sixteen), Ding Qingfu (fourteen), Zhang Linlin (eighteen), and Zhong Quansheng (forty) for collectively robbing a shop.<sup>70</sup> Sixteen year old Wang, and Zhang, who had just recently turned eighteen *sui*, were both sentenced to three months in prison for having initiated the crime and led the remainder of the defendants in the robbery.<sup>71</sup>

Although Zhang was legally an adult at the time of the offence, the Court chose to treat him as a juvenile, whose mental faculties were compromised, and therefore issued him the same reduced sentence as Wang.<sup>72</sup> Zhong (forty *sui*) was however, given a heavier sentence of eight months in prison for not only committing a recidivist act, but also because he could clearly be identified as the adult within this group of individuals and should have “set a better example for those who were not full adults (*chengren* 成人).”<sup>73</sup>

Ding, the youngest defendant in the group was found not guilty on the basis that he was a juvenile, who was coerced and influenced by the other defendants to participate in the robbery.<sup>74</sup> In their ruling, the Court cited coercion as a special circumstance that warranted leniency from the Court. Moreover, the Court singled out Ding's juvenile status, stating that because his mental faculties were not yet fully developed, he was

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<sup>70</sup> SMA R39-1-104: Vol. 4, p. 98.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

therefore still “a ‘child’ (*youer* 幼兒), who was unable to fully comprehend the repercussions of participating in the offence with the other defendants.”<sup>75</sup>

It is worth noting that as a general rule, legal case records from this period would have referred to an individual as a “man” (*nanzhi* 男子), “woman,” (*niuzi* 女子) or “defendant” (*beigaoren* 被告人). However, in this particular case, it would appear as if the Court’s characterisation of Ding as a “*youer*” (幼兒) or “child,” reflected the Court’s intent on drawing the legal boundaries of childhood and adulthood. Not only was Ding clearly a “child” in the eyes of the Court, the deployment and appropriation of the term “*youer*” (幼兒) by the Court in the legal case file further called attention to the underdevelopment and vulnerabilities in Ding’s mental faculties and physical traits, of which was characteristic of children.

Similarly, in another case, Xu Gendai, a girl who was only identified as having not reached sixteen *sui* at the time of the offence, found herself as an accomplice with forty-eight year old Wu Yuting in committing a series of thefts.<sup>76</sup> As an adult repeat offender, the Court showed no leniency towards Wu and sentenced him to three months in prison for each offence of theft, amounting to a two year sentence to be served out consecutively.<sup>77</sup> In adjudicating Xu’s role in the thefts, the Court referred to her as a “young girl” (*younü* 幼女), “who had been taken advantage of by an adult (*yin shou ren liyong* 因受人利用).”<sup>78</sup> In light of these circumstances, the Court issued Xu a cumulative sentence of only three months for all of the offences that she was complicit in with Wu. The Court’s decision stated that this case exemplified the “vulnerability of children under

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<sup>75</sup> Ibid.

<sup>76</sup> SMA R39-1-104: Vol. 2, p. 84.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

current wartime economic and social conditions. Xu's plight was therefore the result of her being a child (*youer* 幼兒).<sup>79</sup>

Although boys made up the overwhelming majority of juvenile offenders and petty offences committed by children during this period, the Court was not unsympathetic towards the plight of female juvenile offenders. In one case, Kui Dabao, a sixteen year old girl attempted to steal a bag of rice from a passing rickshaw.<sup>80</sup> Although the rickshaw puller, Chen Daoxing testified before the Court that he had “borne witness to the crime,” Kui cited that she had been “forced by her environment” (*yin huanjing suo bi* 因環境所逼) to commit the theft, and as a result, the Court issued her a two month prison sentence after having first reduced it by half.<sup>81</sup> Kui stated before the Court that when the rickshaw puller caught her in the act, she pleaded with him to let her go because “life was difficult and she could no longer endure such hardship” (*yin shenghuo kunnan, wufa rennai* 因生活困難, 無法忍耐).<sup>82</sup>

Although the legal case records did not specifically use the term “child” (*youer* 幼兒) or “young girl” (*younü* 幼女) to refer to Kui in this particular case, the Court did however, recognise the vulnerability of children as a distinct social group within the eyes of the law that resulted from the circumstances of war. As reflected in the case of Xu Gendai, who was taken advantage of by an adult, the Court's diction choice in characterising Xu as a “young girl” (*younü* 幼女) rather than just an ordinary defendant, underscored not only her vulnerability as a “child” within the eyes of the law but also more poignantly, her gendered status as a “girl.” The Court's regard for Ding Qingfu and

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<sup>79</sup> Ibid.

<sup>80</sup> SMA Q180-1-55: Vol. 4, p. 141.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

Xu Gendai's legal and social status as distinctively "children" thus pointed to an effort to introduce the concept of a "legal construction of childhood" in wartime China.

•••  
**RE-ENVISIONING CHILDREN AND CHILDHOOD**  
•••

Through an analysis of the legal reasoning of the Japanese-collaborationist district level court for the first special area in occupied Shanghai (*Jiangsu shanghai diyi tequ defang fayuan* 江蘇上海第一特區地方法院) towards offenders who fell between fourteen and eighteen *sui*, this chapter has demonstrated how despite having operated under collaborationist conditions, the Court constructed a new framework for how the law should treat the young during the wartime period. This framework is important because as the earlier chapters have demonstrated, a range in views and attitudes about children and childhood existed in Republican China.

The introduction of the process of a "legal construction of childhood" underscored the Court's consideration for the circumstances of war in its adjudication process of juveniles who occupied this liminal space within the eyes of the law. The findings suggested that the Court exercised a significant degree of judicial discretion toward offenders who cited the difficulties of wartime conditions as the cause for their transgression. In this regard, although the Court officially operated under the purview of the Japanese authorities, through a rendering of its sentences toward the young, it was able to exercise its judicial autonomy and construct an independent voice amidst the social and political turmoil of wartime Shanghai.

**CONCLUSION**  
**RE-ENVISIONING CHILDREN AND CHILDHOOD**  
**IN POST-WAR CHINA**

Japan's surrender on 15 August 1945 led to the official end of China's War of Resistance against Japan. The end of the war also brought about the dissolution of the Reorganised National Government of China. Although China's war with Japan had officially, Chiang Kai-shek's Nationalist Government continued to engage in a separate Civil War with the Communists for the next four years, until its retreat to Taiwan in 1949. In spite of the many wider implications that these changes would have on China, Japan, and the remainder of the world, the outbreak of the war prompted a distinct shift in the way in which ideas and meanings about children and criminality were regarded by Chiang Kai-shek's Nationalist Government and the Chinese public.

The aim of this study was to demonstrate how the outbreak of China's War of Resistance against Japan crystallised ideas and meanings about children and criminality within the judicial and legal settings of wartime China in areas under the purview of Chiang Kai-shek's Nationalist Government, as well as Japanese-occupied Shanghai. Throughout the four sections, it has attempted link together how social changes brought on by wartime conditions led to a rise in criminality, which led to the construction of a new framework for the recognition of children as a distinct legal and judicial category in wartime China.

Prior to the war, there was no definitive understanding about the social, moral, and legal status of children in Republican China. This was evidenced in the range of ideas and representations of children and the law from imperial times to the Republican period, which were discussed in section one of this study. In particular, the lack of legal precedence or guidance in the law for the treatment of the young created a legally and morally ambiguous area within the criminal justice system.

However, wartime conditions brought about a distinct shift in the way in which children were discussed, represented, and negotiated in public discourse as well as, the judicial and legal settings. As sections two and three have shown, a rise in the number of criminal offences and offenders that appeared within wartime society became increasingly linked with ideas of juvenile delinquency and anti-social behaviour within public discourse, which further prompted widespread fears over a breakdown in civil and social order under wartime conditions. Although concerted efforts were taken by Chiang Kai-shek's Nationalist Government and the Ministry of Justice to address the issue of criminality as a pragmatic problem during the wartime period, these measures proved to be wholly ineffective.

Wartime conditions thus brought about a clear shift in the way in which the Chinese public, Chiang Kai-shek's Nationalist Government, and the Reorganised National Government of China regarded children within the social and legal spheres. Although the end of the war did not resolve the appearance of criminal offences and offenders within domestic society, the unprecedented rise in the number of juvenile offenders during the wartime period led the Chiang Kai-shek's Nationalist Government to recognise the gravity of the problem in the post-war period.

As a result, Chiang Kai-shek's Nationalist Government took active measures to address the needs of juveniles after the war. For instance, between August 1946 and February 1947, the Shanghai Representative Assembly announced plans for the establishment of China's first juvenile court and further plans for the construction of correctional facilities specifically for the juvenile offending population.<sup>1</sup>

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<sup>1</sup> Q109-1-965 – 上海市參議會關於建議建設少年法法庭及感化院的文件[Document on Suggestions for the Establishment of a Juvenile Court and Correctional Facility by the Shanghai Representative Assembly] (1947); Q109-1-965-1 – 上海市參議會關於建議建設少年法法庭及感化院的來往公函 (Publicly Available Draft of Correspondences on Suggestions for the Establishment of a Juvenile Court and Correctional Facility by the Shanghai Representative Assembly] (1947)

The recognition of juveniles as a distinct social group within the legal and judicial settings in the post-war period was further echoed in plans put forward by Chiang Kai-shek's Nationalist Government for the establishment of juvenile prisons. Archival sources showed that as of 1947, there were only three provinces in China, which specifically had prisons designed for juveniles.<sup>2</sup> These included Wuchang in Hubei, Huangquan in Chahaer, and Xinchu in Taiwan.<sup>3</sup> Chart 1 below shows the total number of newly established courts and prisons between 1938 and 1947, which included both the wartime and post-war periods. On 7 January 1948, the Ministry of Justice further put forth a ten year plan for the establishment of new youth prisons throughout China thereafter.<sup>4</sup> (Chart 2)

**CHART 1:  
TOTAL NUMBER OF NEWLY ESTABLISHED COURTS AND PRISONS  
(1938-1947)<sup>5</sup>**

Year	Total	COURTS				PRISONS		
		Subtotal	Provincial Court	High Court	Local Courts	Subtotal	Main	Branch
	1467	489	---	---	446	532	77	7
1938	20	10	1	2	10	10	---	---
1939	58	18	---	4	15	17	2	---
1940	84	18	---	4	14	31	17	---
1941	121	52	---	---	48	56	7	---
1942	37	7	---	---	7	10	3	---
1943	37	1	---	---	1	1	---	---
1944	89	28	---	10	18	20	2	---
1945	409	150	12	2	134	134	---	---
1946	472	145	---	2	143	192	43	6
1947	146	60	---	4	56	61	3	1

<sup>2</sup> KMT 000/143, pp. 7, 15, and 17.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> KMT 512/24 – 戰時司法紀要 [Summary of Judicature in Wartime], Section 15, p. 3.

**CHART 2:  
TEN YEAR PLAN FOR THE ESTABLISHMENT OF NEW YOUTH PRISONS  
(AS OF 17 JANUARY 1948)<sup>6</sup>**

Province	Year				Province	Year			
	1	2	3	4		1	2	3	4
Jiangsu		✓	✓		Gansu		✓	✓	
Zhejiang		✓	✓		Fujian		✓	✓	
Anhui		✓	✓		Guangdong		✓	✓	
Jiangxi		✓	✓		Guangxi		✓	✓	
Hubei		*			Guizhou		✓	✓	
Hunan		✓	✓		Yunnan		✓	✓	
Sichuan			✓	✓	Suiyuan		✓	✓	
Hebei		✓	✓		Harbin	✓	✓		
Shandong		✓	✓		Ningxia		✓	✓	
Henan		✓	✓		Xikang		✓	✓	
Shanxi		✓	✓		Qinghai	✓	✓		
Shaanxi			✓	✓	Xinjiang		✓	✓	

This is important because all of these measures taken by Chiang Kai-shek's Nationalist Government in the post-war period underscored the importance of the outbreak of war in bringing about a change for the treatment of the young within the legal and judicial settings – children were no longer considered as appendages to their parents, rather, they were now recognised as distinct legal and judicial categories.

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<sup>6</sup> Ibid., Section 15, pp. 2-5.

## **APPENDICES**

**APPENDIX A**  
**ARCHIVES AND LIBRARIES CONSULTED**

**ARCHIVES**

- KMT* Kuomintang (Nationalist) Party Archives 國民黨史館 (Taipei, Taiwan)  
會議 Meeting  
政治 Political Affairs  
一般 General
- SHAC* Second Historical Archives of China 中國第二歷史檔案館 (Nanjing, China)  
(02) 國民政府 Republican Government  
(01) 國民行政府 Administration of the Republican Government  
(07) 司法行政院 Ministry of Judicial Administration
- AHA* Academia Historica Archives 國史館 (Xindian/Taipei, Taiwan)  
(001) 國民政府 Republican Government  
(014) 行政部 Ministry of Administration  
(015) 司法院 Ministry of Justice  
(018) 財政部 Ministry of Finance  
(019) 教育部 Ministry of Education  
(022) 司法行政部 Ministry of Judicial Administration  
(026) 內政部 Ministry of Internal Affairs  
(118) 汪兆銘 Wang Zhaoming (Wang Jingwei) Historical Materials  
(128) 個人史料 Personal Historical Materials  
(131) 抗戰史料 Historical Materials from the War of Resistance
- SMA* Shanghai Municipal Archives 上海市檔案館 (Shanghai, China)  
(Q180) 江蘇上海第一特區地方法院  
District Court for the First Special Area in Shanghai (1930-1941)  
(Q181) 江蘇第二分區高等法院  
Jiangsu High Court No. 2 Division Court (1930-1941)  
(Q182) 江蘇上海第二特區地方法院  
District for the Second Special Area in Shanghai (1931-1940)  
(Q183) 江蘇第三分區高等法院  
Jiangsu High Court No. 3 Divisional Court (1931-1940)  
(R37) 日偽上海地方法院  
The Collaborationist Shanghai Prison under the Occupation of  
Japanese Troops (1935-1949)  
(R38) 日偽江蘇上海地方法院  
The Collaborationist District Court in Shanghai under the  
Occupation of Japanese Troops (1937-1943)  
(R39) 日偽江蘇上海第一特區地方法院

- The Collaborationist District Court for the First Special Area in Shanghai under the Occupation of Japanese Troops (1941-1943)
- (R40) 日偽江蘇第二分區高等法院  
The Second Branch Court of the Collaborationist Higher Court in Jiangsu under the Occupation Period of Japanese Troops (1940-1943)
- (R41) 日偽江蘇上海第二特區地方法院  
The Collaborationist District Court for the Second Special Area in Shanghai under the Occupation of Japanese Troops (1940-1943)
- (R42) 日偽江蘇第三分區高等法院  
The Third Branch Court of the Collaborationist Higher Court in Jiangsu under the Occupation Period of Japanese Troops (1940-1943)
- (R43) 日偽江蘇上海地方法院  
The Collaborationist Shanghai Local Court under the Occupation Period of Japanese Troops (1943-1945)

## LIBRARIES

### *China*

Shanghai Municipal Library (Shanghai)  
Nanjing Municipal Library (Nanjing)  
Nanjing University Library (Nanjing)  
Jinling Public Library (Nanjing)

### *Taiwan*

National Central Library (Taipei)  
Institute of Modern History Library, Academia Sinica (Nankang)

### *Japan*

The International Library of Children's Literature, National Diet Library (Tokyo)

### *United Kingdom*

Bodleian Library, University of Oxford (Oxford)  
Cambridge University Library, University of Cambridge (Cambridge)  
School of Oriental and Asian Studies Library, University of London (London)  
British Library (London)

### *United States*

Harvard-Yenching Library, Harvard University (Cambridge, MA)  
Columbia C.V. Starr East Asia Library, Columbia University (New York, NY)  
Sterling Library, Yale University (New Haven, CT)  
Cotsen Children's Library, Princeton University (Princeton, NJ)  
East Asian Library and Gest Collection, Princeton University (Princeton, NJ)  
Asian Division, Library of Congress (Washington, D.C.)

**APPENDIX B**  
**ABBREVIATIONS FOR MAJOR PRIMARY AND ARCHIVAL SOURCES<sup>1</sup>**

**STATISTICS**

1935 National Statistics	中華民國統計提要：二十四年度 [Summary of Statistics for the Republic of China: 1935] Compiled by 民國政府主處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government]
1940 National Statistics	中華民國統計提要：二十九年度 [Summary of Statistics for the Republic of China: 1940] Compiled by 民國政府主處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government]
1945 National Statistics	中華民國統計提要：三十四年度年度 [Summary of Statistics for the Republic of China: 1945] Compiled by 民國政府主處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government]
1947 National Statistics	中華民國統計提要：三十六年度年度 [Summary of Statistics for the Republic of China: 1947] Compiled by 民國政府主處統計局 [Main Office of the Bureau of Statistics for the Nationalist Government]
1932 MOJ Statistics	民國二十一年度司法統計 [Judicial Statistics for 1932] 司法行政部統計室 [Office of Statistics for the Ministry of Justice] Xie Guangsheng, ed.
1936 MOJ Statistics	SHAC Section 7(2), File No.: 7077 and 7078 民國二十五年司法統計 [Judicial Statistics for 1936] 司法行政部統計室 [Office of Statistics for the Ministry of Justice] 2 vols. Xie Guangsheng, ed.
1937-1939 MOJ Statistics	民國二十六，七，八年度司法統計 [Judicial Statistics for 1936] 司法行政部統計室 [Office of Statistics for the Ministry of Justice] Xie Guangsheng, ed.

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<sup>1</sup> Where there is no archival file noted, the materials were collected from the various libraries.

## MINISTRY OF JUSTICE WORK REPORTS

MOJ Work Report: 16 January 1939	KMT File No.: 5.2/33.9 司法院 [Ministry of Justice], 司法工作報告二十八年度 一月十六日 [Ministry of Justice Work Report: 16 January 1939]
MOJ Work Report: November 1939	KMT File No.: 5.2/48.6 司法院 [Ministry of Justice], 司法工作報告二十八年度 十一月 [Ministry of Justice Work Report: November 1939]
MOJ Work Report: March 1940	KMT File No.: 512/11.4 司法院 [Ministry of Justice], 司法工作報告二十九年度 三月 [Ministry of Justice Work Report: March 1940]
MOJ Work Report: March to September 1941	KMT File No.: 512/31.6 司法院 [Ministry of Justice], 司法工作報告三十年度 [Ministry of Justice Work Report: March to September 1941]
MOJ Work Report: October 1941 to March 1942	KMT File No.: 5.2/78.11 司法院 [Ministry of Justice], 司法工作報告三十, 一年 度 [Ministry of Justice Work Report: October 1941 to March 1942]
MOJ Work Report: September 1942 to June 1943	KMT File No.: 5.2/112.10 and 5.2/141.8 司法院 [Ministry of Justice], 司法工作報告三十一, 二 年度 [Ministry of Justice Work Report: September 1942 to June 1943]
MOJ Work Report: May 1944	KMT File No.: 5.2/146.15 司法院 [Ministry of Justice], 司法工作報告三十三年度 [Ministry of Justice Work Report: May 1944]
MOJ Work Report: July 1943 to July 1944	SHAC Section 7(2), File No.: 7006 司法院 [Ministry of Justice], 司法工作報告三十二, 三 年度 [Ministry of Justice Work Report: July 1943 to June 1944]
MOJ Work Plan: 1946 to 1947	SHAC Section 2, File No.: 6639 司法行政部 [Ministry of Justice], 司法行政部一九四 六, 七年度工作計劃 [Ministry of Justice Work Plan: 1946 to 1947]

**OTHER**

1935 revised Criminal Code

中國國民刑法 [The Criminal Code of the Republic of China], in 民國叢書 [Collection of Books from Republican China] Compilation 3, Vol. 28: 立法全書 [Complete Book of the Six Laws], ed. Committee on the Publication of Legal Statutes for China (Shanghai, Shanghai Bookstore, 1928)

Civil Code

中國國民民法 [The Civil Code of the Republic of China], in 民國叢書 [Collection of Books from Republican China] Compilation 3, Vol. 28: 六法全書 [Complete Book of the Six Laws], ed. Committee on the Publication of Legal Statutes for China. (Shanghai, Shanghai Bookstore, 1928)

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申報 [Shanghai News]

新中華日報 [New Chinese Daily]

大公報 [L'Impartial]

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## **PERIODICALS**

東方雜誌 [Eastern Miscellany]

烽火 [Beacon of Fire]

永生 [Forever Life]

玲瓏 [Elegance]

甘肅教育 [Gansu Educational Weekly]

家 [Family]

抗戰文藝 [War of Resistance Literature]

新生 [New Life]

法令周報 [Weekly Report on Decrees]

抗戰漫畫 [War of Resistance Cartoons]

大風 [Typhoon]

上海周報 [Shanghai Weekly]

天下事 [Matters Under Heaven]

光華大學半月刊 [Guanghua University Bi-Monthly]

新法學 [New Legal Studies]

法學雜誌 [Journal of Legal Studies]

...

## **CHILDREN'S PERIODICALS**

戰時中學生 [Middle School Wartime Children]

戰時兒童 [Wartime Children]

兒童世界 [Children's World]

新青年 [New Youth]

中國兒童 [Chinese Children]

教戰 [Teaching War]

兒童知識 [Children's Knowledge]

戰時童子軍 [Wartime Boy Scouts]

小兵 [Little Soldier]

兒童雜誌 [Children's Periodical]

遠東童報 [Far Eastern Children's Newspaper]

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