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Contesting Crimmigration in Post-hukou China

by
Tian Ma

Thesis submitted to the School of
Social Policy, Sociology and Social Research at University of Kent
and Willem Pompe Institute of Criminal Law and Criminology
at Utrecht University

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Professor Dina Siegel

Professor Roger Matthews

Doctor Phil Carney

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Finally, the thesis is dedicated to everyone who was ever made to be 'undocumented,' live 'elsewhere,' feel as if they did not 'belong' or have experienced 'othering.' Whatever those mean.

Statements

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own.

Signature: **MA Tian**

Publications and conference presentations based on this thesis

Publications:

- Ma, T. (2019). The surveillance myth: (In)securitization of migration in post-hukou China. In Klara, K. and Nagy, V. (Ed.) *New perspectives in post-traditional policing studies*. Eleven international publishing: the Netherlands.
- Ma, T. (2017). Migrants, mass arrest, and resistance in contemporary China. In *Made in China Quarterly*, 2(4), 12–15.
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- Ma, T. (2016). Migrant resistance: Against hukou disparities in policing. The Common Study Programme in Critical Criminology conference, Porto, Portugal.
- Ma, T. (2015). Individual urbanization process: Migration and crime in contemporary China. The Association of American Geographers (AAG) Annual Meeting, Chicago, U.S.

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Abstract

In Chinese society today, internal migrants are commonly perceived as criminals. Flawed official statistics feed this perception. I sought to understand why this perception persists and how it affects migrants to China's urban cities. My investigation into how migration has been constructed into the concept of Crimmigration strikes at the core of the ultimate questions of this research: who is being criminalized, how does the political-economic-cultural institution known as 'hukou' shape the process, and how has the role of hukou changed over time? Both my theoretical framework and my analysis comprise unique contributions to the criminological literature.

Drawing on six months of field work in Yangtze River Delta, China, this research reflects on a historical development on hukou and its function in social control. My novel concept, 'post-hukou China', is introduced in this study as a means to analyse the declining disciplinary role of hukous in both mobility and social control. The research moves beyond the narrow scope of relying on the centrality of hukou in the systems of criminal justice, focusing instead on the flow between the abated hukou system as well as a system of negotiated regulatory regimes. Therefore, centre stage is given to the daily social reproduction of 'migrant criminality' via legal practices.

Systematic fieldwork comprised sixty-one interviews with legal professionals, including police, protectorates, criminal judges, criminal lawyers and the staff from prisons and jails, was conducted in Shanghai, Hangzhou and Ningbo, China. Four interviews were conducted with migrant leaders in the same region. This supports an extended analysis of pragmatic aspects of each decision-making moment in the criminal justice system. These moments are central to my full explanation of how and why the hukou status of the criminal offender shapes sentencing outcomes in China.

Against this background, this dissertation argues that: 1) Cumulative discrimination against the migrant population exists at every juncture of the criminal justice system. Decisions taken at one point in the system often affect what occurs at another. This can be found in various mechanisms of the crime control regime, with the non-local-hukou registered (NLHR) population being stop-and-searched more frequently than local-hukou-registered (LHR) population and experiencing a disproportionately high rate of police arrests and pre-trial incarceration. NLHRs are also more likely to receive longer sentences, to be denied parole and probation, and to receive discriminatory treatment in prison. 2) Decisions that are presented and

believed to be individually and independently made are actually made institutionally and systematically. The cyclical nature of criminal justice processing is enshrined in routine everyday practice on the basis of an index-oriented evaluation system of the criminal justice apparatus. 3) The way in which the system is designed and functions renders NLHRs into vulnerable targets of legal bureaucrats who are under great pressure to fulfil indexes, improve performance statistics, comply with evaluation criteria and demonstrate their membership in the collective that matters most to them: China's legal system. 4) In the criminalization process in the post-hukou era, resource-rich and wealthy NLHRs enjoy various levels of impunity. Legal instruments function for the reproduction of a hierarchical division, define and re-define the notions of who may be mobile and what may be mobilized. 5) Crimmigration in post hukou China suggested that the decline in hukou competence does not suggest a loosening of mobility control in today's China. Rather, the de-bordering process claimed by 'hukou reform' comes hand-in-hand with a re-bordering process, through everyday law enforcement, that includes pre-ordained 'deserving citizens' and excludes the rest – the 'unwanted'.

Samenvatting

Heden ten dage worden in China binnenlandse migranten doorgaans als criminelen gezien. Aan dit beeld liggen ondeugdelijke officiële statistieken ten grondslag. Door middel van dit proefschrift tracht ik te doorgronden waarom dit beeld zo hardnekkig is, en wat de gevolgen ervan zijn voor mensen die van het Chinese platteland naar de stad verhuizen. Mijn onderzoek naar de manier waarop migratie is geconstrueerd tot het concept ‘crimmigratie’ raakt direct aan de uiteindelijke vraagstellingen van dit onderzoek, te weten: wie wordt er gecriminaliseerd, op welke wijze geeft het politiek-economisch-culturele instituut dat bekend staat onder de naam ‘hukou’ (het Chinese persoonsregistratiesysteem) vorm aan dit proces, en hoe is de rol van hukou in de loop der tijd veranderd? Zowel mijn theoretische kader als mijn analyse behelzen unieke bijdragen aan de criminologische literatuur.

In dit proefschrift, dat gebaseerd is op etnografisch veldwerk dat gedurende een half jaar verricht is in de delta van de rivier de Jangtse in China, wordt ingegaan op de historische ontwikkeling van hukou en de functie ervan bij maatschappelijke controle. Het door mij bedachte concept ‘post-hukou China’ wordt daarin geïntroduceerd als manier om de afnemende disciplinaire rol van hukous bij zowel mobiliteit als maatschappelijke controle te analyseren. Het betreffende onderzoek gaat verder dan exclusief het bestuderen van hukou als centraal uitgangspunt in het strafrechtstelsel, maar richt zich in plaats daarvan op de interactie tussen de afgezwakte rol van het hukousysteem en een systeem van overeengekomen regelgeving. De kwestie van de dagelijkse maatschappelijke reproductie van ‘migrantencriminaliteit’ via de rechtspraak staat daarin dan ook centraal.

Het systematische veldwerk, dat in Shanghai, Hangzhou en Ningbo (China) is verricht, bestond uit 61 interviews met juridische beroepsbeoefenaren, waaronder politiemedewerkers, protectoraten, strafrechters, strafrechtjuristen en gevangenismedewerkers. Er zijn binnen dezelfde regio vier interviews met migrantenleiders gehouden. Dit leverde het materiaal op voor een uitvoerige analyse van de pragmatische aspecten van ieder beslismoment in het strafrechtstelsel. Deze momenten staan centraal in mijn uitputtende verklaring ten aanzien van hoe en waarom de hukoustatus van de misdadiger de strafoplegging in China beïnvloedt.

Tegen deze achtergrond wordt in deze dissertatie het volgende betoogd. 1) Er is ten aanzien van elk onderdeel van het strafrechtstelsel sprake van cumulatieve discriminatie van de migrantenbevolking. In een bepaalde fase van dat systeem genomen beslissingen zijn dikwijls van invloed op wat er in een andere fase gebeurt. Dit is evident in de verschillende mechanismen

van het misdaadbestrijdingsregime, waarbij mensen met een niet-lokale hukouregistratie (nlhr's) vaker worden aangehouden en gefouilleerd, en zich een disproportioneel groot aantal gevallen van politiearrestaties en voorlopige hechtenis moet laten welgevallen, dan degenen met een lokale hukouregistratie (lhr's). Daarnaast lopen nlhr's een groter risico om langere straffen opgelegd te krijgen, en is voor hen de kans op voorwaardelijke invrijheidstelling en een proeftijd kleiner, en de kans op een discriminerende behandeling in de gevangenis groter. 2) Beslissingen die als individueel en onafhankelijk genomen besluiten worden gepresenteerd en beschouwd, worden in werkelijkheid op institutionele en stelselmatige basis genomen. De cyclische aard van de strafrechtelijke afhandeling is verankerd in routinematige, dagelijkse praktijken, die gebaseerd zijn op een indexgericht beoordelingssysteem van het strafrechtapparaat. 3) Door de manier waarop het systeem is ontworpen en functioneert, worden nlhr's kwetsbare doelen voor juridische bureaucraten die onder zware druk staan om aan de indices tegemoet te komen, de prestatiecijfers te verbeteren, aan de evaluatiecriteria te voldoen en hun lidmaatschap van het collectief aan te tonen dat het belangrijkste voor hen is: het Chinese rechtstelsel. 4) In het criminaliseringsproces van het post-hukoutijdperk genieten bemiddelde en vermogende nlhr's uiteenlopende niveaus van onschendbaarheid. Juridische instrumenten worden ingezet voor een nieuw te creëren hiërarchische indeling, waarbij via deze instrumenten vervolgens de opvattingen over wie zich vrij mag bewegen en wat kan worden gemobiliseerd, worden gedefinieerd en geherdefinieerd. 5) Door de crimmigratie in post-hukou China werd de indruk gewekt dat de afname van de (toepassings)mogelijkheden van hukou niet tot versoepeling van de mobiliteitscontrole leidt in het huidige China. Het door de 'hukouhervorming' beweerdelijk in gang gezette proces van het opheffen van onderscheid gaat, via de dagelijkse wetshandhaving, eerder hand in hand met een proces van het maken van een nieuw soort onderscheid, dat van toepassing is op vooraf aangewezen, 'gerechtigde burgers', maar niet op de rest – de 'ongewensten'.

Abbreviations and Acronyms

BPS	Bureau of Public Security (Gong'an Ju)
CCP	Chinese Communist Party
CNY	China Yuan Renminbi
FPM	Focal population management
LHR	Local-hukou registered
MAP	Management of staff working in amusement places (yule changsuo congye renyuan guanli)
MM	Migrant management (Waikou guanli)
MPS	Ministry of Public Security (Gong'an Bu)
NFA	No fixed abode
NLHR	Non-local hukou registered
PRC	People's Republic of China
PRD	Pearl River Delta
PSP	Prisoners in special positions
RP	Residence Permit (Juzhu zheng)
TRP	Temporary residence permit (Zanzhu Zheng)
YRD	Yangtze River Delta

Chapter 1: Introduction

1.1 The History: A system projecting immobility

In 1949, when the People's Republic of China (PRC) was established, it adopted a Soviet-style economy that focused on industrialization and urbanization (Fan, 2008). The living essentials were allocated by the state; i.e., food, housing, clothing and so forth were rationed by the state. Without liberal markets for commodities and labour, the Chinese Communist Party (CCP) regime took strong measures to assign specific tasks to peasants and workers, and thus also to tie them to particular localities. Population and labour movement are controlled by the state.

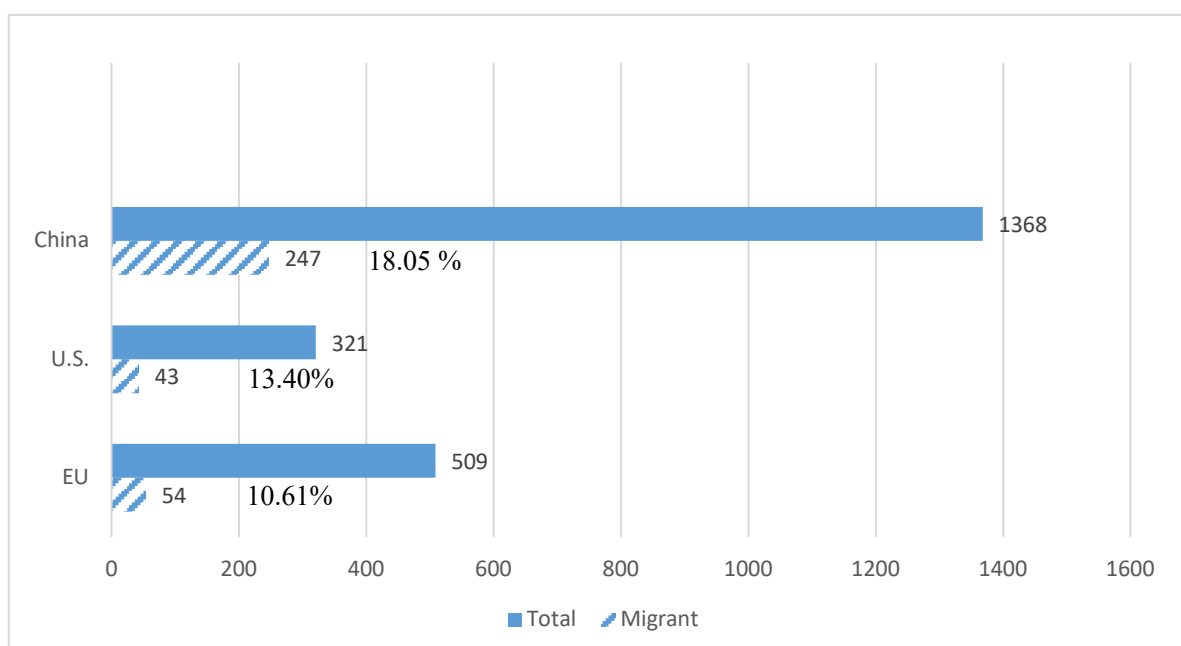
Compatible with this planned economy, in 1958 China launched the hukou system, also known as the household registration system.¹ It functions as the 'basis of welfare allocation' (Dutton, 1992: 12). Every Chinese citizen must be registered under one unit and one unit only – and in one place and one place only. Benefits under this rigid hukou system are reserved for registered members, from cradle to grave.

Parents are required to register their new-born children to their hukou. You need hukou to enter kindergarten, to enter primary school, and to take high school and college entrance examinations. And you need a local hukou to be hired as an employee. When you date, you should know the other person's hukou. All kinds of permits can only be processed with hukou information, and all kinds of benefits depend on your hukou ... Your hukou is a part of you until you die. (Depeng Yu, 2002: 12)

From 1949 until shortly after Mao's death, hukou by and large imposed immobility on the population. In the late 1970s, China started its economic transition from its planned economy towards a market-oriented economy. Workers were not where they were needed, which engendered widening income gaps between rural and urban areas as well as between regions. People started to leave their hukou and move to cities or other more developed regions that offered the possibility of a higher salary, more opportunities and access to better facilities. The allocation system of basic living essentials gradually become irrelevant and, later on, was fully-abolished in urban areas. People could purchase commodities with money and were therefore no longer effectively chained to their registered hukou places. The great migration in China had begun.

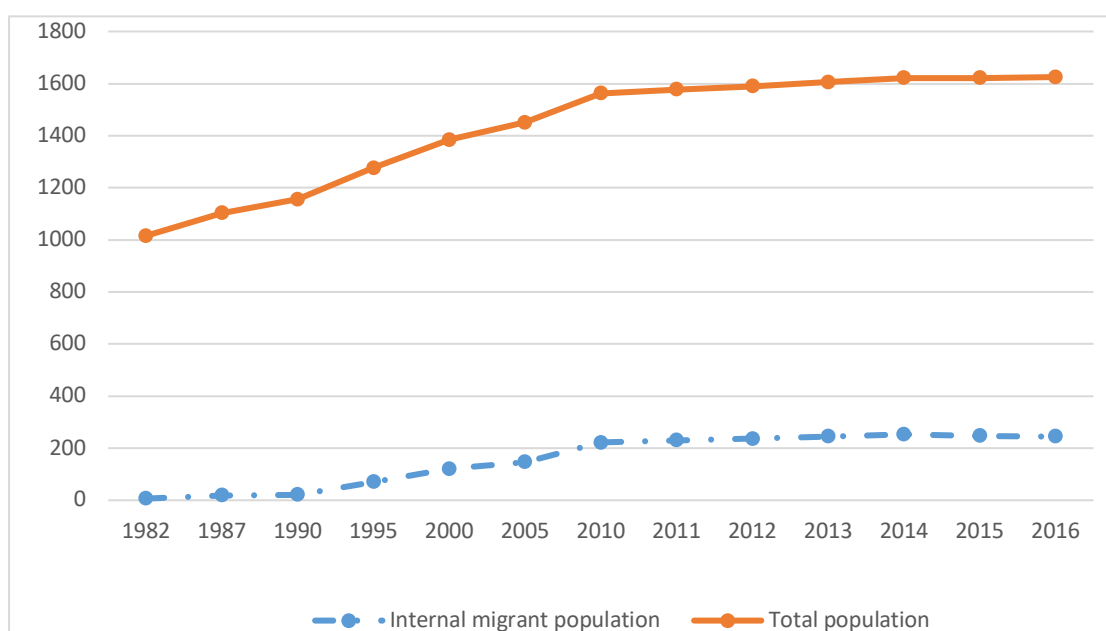
¹ 1958 'PRC Regulations on Household Registration' (Zhonghua renmin gongheguo hukou dengji tiaoli).

Figure 1.1 Total Population and Migrant population in the EU, US and China by the end of 2015 or the beginning of 2016 (in millions)



Source: US data retrieved from migrationpolicy.com; EU data retrieved from Eurostat; Chinese data retrieved from the National Health and Family Planning Commission Report 2016 and the Bureau of Statistics, 2017.

Figure 1.2 Total population and Internal migrant population in China 1982–2016 (in millions)



Source: Total population retrieved from National Bureau of Statistics China (2018), 1982–2017; Statistics on internal migrants from 1982 to 2005 retrieved from the UNICEF (2014); Statistics on internal migrants from 2010 to 2016 retrieved from *China Internal Migrant Development Report 2011–2017* (National Health and Family Planning Commission, 2017).

1.2 The Scale: The great migration

By the end of 2016, the internal migrant population in China had surged to 245 million (National Health and Family Planning Commission, 2017). Although the estimates vary, the existing statistics suggest that China is experiencing the largest human movement in human history. 35.1 million non-EU migrants and 19.3 million intra-EU migrants were living in the EU by Jan 2016 (Eurosata, 2017). More than 43.3 million migrants were living in the U.S. by the end of 2015 (Zong and Batalova, 2018). Around the same time, the internal migrants in China numbered 247 million, accounting for 18.05 per cent of the total population. Even after accommodating for inconsistent definitions of ‘migrant’ in different statistical polls, the variation between China and everywhere else remains dramatic in relation to both the absolute number of migrants as well as their proportion of the total population (see Figure 1.1). The scale of internal mobility in China is unparalleled globally.

Despite its enormous population base, China has also been marked by the surging of the migrant population compared to its former period, alone its history. The trend of mass internal migration has only been proliferated since the last decade (see Figure 1.2). In 1987, internal migrants numbered 19.1 million, constituted not even two per cent of the total population. Three decades later, in 2014, the number of people migrating domestically has reached an unprecedented height of 253 million, which accounts for 18.50 per cent of the total population. That means that, for every six Chinese, one is an internal migrant.

1.3 The Concept: Revisiting hukou

Against this background, the functions and roles of hukou in social control are under constant change. To study hukou is to study the politics, society, economy and modern history of China. It is inevitable and essential in all Chinese studies. Moreover, hukou plays a central role in several theories that aim to explain a range of phenomena in Chinese societies. It is also highlighted as the major or fundamental element that underlies China’s uniqueness. Hukou, a political concept by its nature, has been studied mainly from the following perspectives.

1.3.1 Citizenship: Foreigners in their own country

In the late 1990s, Solinger (1999) suggested that hukou is parallel to the concept of citizenship in Western societies. By determining ‘a person’s entire life chances, including social rank, wage, welfare, food rations and housing’ (Solinger, 1999: 6), hukou, like citizenship, confers social membership as well as the right to an allocation of resources (Turner, 1990). Solinger (1999) argues that the hukou system prevented migrants from exercising their franchise in their new

city of residence (Ibid: 7). From this perspective, people without local hukou are ‘noncitizens’ or ‘second-class citizens’: ‘virtual foreigners within the cities of their own country’ (Ibid: 4). ‘The policies promulgated by officialdom, the cumbersome and well-entrenched bureaucracy, and the urban rationing regime worked together to shore up citizenship’ (Ibid: 278).

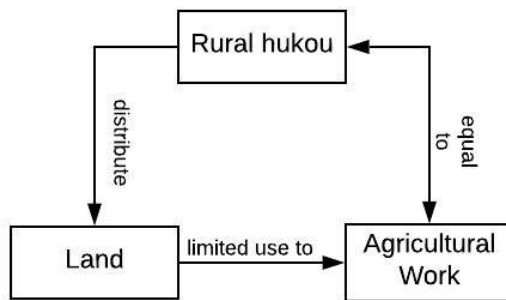
However, using the political theory of citizenship to explain the hukou system yields inaccurate conclusions. Firstly, such conclusions clash with the experiences of international migrants who live in China. Although they are non-Chinese citizens, international migrants sometimes enjoy more benefits than the Chinese. Secondly, marketization and hence the commodification of previously state-allocated public goods and services has rendered largely irrelevant the entitlements that had been based on citizenship. Despite this newly created individual freedom, the hukou system continued to constrain labour mobility, to retain a significant role in wage discrimination, and to deny enrolment in public schools and public health care. However, purchasable alternatives in all of these areas are beginning to undermine these constraints. For example, people with sufficient cash can send their children to private international schools, where they receive bilingual education. Without registration at a local hukou, public education services are not available; nor are they desired by this group, which has access to a superior alternative – an alternative that is inaccessible for economically disadvantaged local hukou members. Thirdly, citizenship as a concept is usually tightly linked with suffrage and other voting rights, which are inapplicable to the Chinese society. No citizen in China, at any level, regardless of hukou status, has an entitlement to political participation. All in all, without universal suffrage, citizenship-theoretical concepts throw little light on hukou.

1.3.2 Apartheid: Jim Crow law and racialization

Citizenship theory focuses on the local vs non-local, the insider vs the outsider (Bendi vs Waidi) paradoxes, whereas the racialization theory argues that hukou projecting a hierarchical framework of a superior urban hukou vs an inferior rural hukou, as well as the segregation process in between.

Tracing back to the ‘New Culture Movement’ (Xinwenhua Yundong, 1915–1921), the peasantry and rural areas generally were disdained for the first time in a long imperial history that traditionally had lauded the glory and greatness of farming and the farmer. Rural vs urban, together with two other pairs of contradictions – new vs old and Western vs Chinese – formed the basis for new cultural values that urged China and the Chinese to abandon their ‘traditional cultures’ (Zhongguo chuantong wenhua) and learn from the west. The new cultural movement labelled the rural, the traditional and the Chinese as backward, whereas the urban, the new and the Western indicated modernity (Rošker and Suhadolnik, 2013). Fast-forward 100 years and we

Figure 1.3 Triangle Relation of Rural hukou, land and agricultural work



see that the same pejorative labels have been extended to rural migrants. In a job reputation survey, rural–urban migrant businessman and rural–urban migrant worker is listed as 92nd and 94th among all 100 occupations (Li, 2006: 180). Nearly all of the ten least reputable occupations are dominated by migrants: nanny, security guard, delivery man, garbage collector (Li, 2006). The idea that rural migrants comprise an underclass in current Chinese society is also supported by Lu’s (2002) ranking analysis, which identifies political, educational and economic resources as the key factors that influence the future career of each individual.

The hukou system is built upon a pre-existing hierarchical classification. Peasants and urbanites were differentiated via hukou as ‘a nation along rural–urban lines’ in the late 1950s (Sun, 2014). Qin (2010), a historian exposed regularly on Chinese media, compares the hukou system with institutional apartheid in South Africa and concludes that the hukou system enforced apartheid between the rural hukou migrant and the local hukou residents in urban China. He suggests that hukou engenders three fundamental inequalities: 1) Inequality of human rights, especially for those denied residential right: Shenzhen’s urban villages are comparable with the Soweto community in Johannesburg; 2) Inequality of property rights: land distributed by a rural hukou is not really the property of the peasants. The entitlements associated with using a certain scope of distributed land for farming (*tudi shiyong quan*) are non-tradable; and 3) Inequality in social welfare: members of rural hukous are denied access to entitlements commonly available in urban hukous: social welfare, health care, and some social rights (*ibid*). From the racialization perspective, hukous put an institutional barrier in the way of a migrant integrating into the city she/he resides in. These three features have created a triangular shackle: rural hukou, land, and agricultural work (see Figure 1.3).

However, the racialization perspective does not reflect contemporary circumstances. The rural–urban dichotomy has gradually blurred during recent decades. Former farmlands are used for industrial and residential purposes, and former farmers are no longer engaged in agriculture.

The expansion of cities has included myriad adjacent rural areas into its urban scope. Factories and apartments have been built on what had been farmland.

Rural-hukou residents living near Shanghai have become ‘defarmerized’ and enriched during the booming urbanization trend. Requisition and reallocation sometimes offer an unconditional change to an urban hukou and can bring millions in compensation to the rural-hukou resident who owns the use rights for a specific piece of property. Therefore, nowadays, re-registering with an urban hukou is not necessarily viewed as an upgrade, and re-registering is not so attractive or desirable. In fact, many rural residents have protested to keep their rural hukou and land against unfair requisition.

Also, similar to citizenship theory’s confounding of the study of international and internal migrants, racialization theory misleadingly conceals ethnicity issues in China. Analysis of the daily encounters of Tibetans, Uyghur and other minority ethnicities in China could provide a non-Western angle to discuss race and racialization theory. Conceptual ambiguity is the result of putting ethnic minorities and rural-hukou residents into the same category.

Moreover, borrowing racial theories to explain the hukou disparities in China has trapped itself in a tautological descriptive explanation. The othering consequence of hukou is taken for granted, whereas the exclusion process itself is overlooked. Again, it fails to see beyond the changing patterns in the everyday reproduction of the internal migrant population and fails to capture the complexities of hukou in contemporary China.

In 2017, the Chinese government announced that the distinction between rural and urban hukous would be removed. This lifted the barrier on land trade, a continuation of previous land deprivation practices, akin to the enclosure movement in 14–15-century U.K. being retold with a Chinese accent. The officially and socially constructed rural–urban dichotomy is gradually dissolving as farmland is capitalized and real estate marketized. It leads to a disentangling of the triangular relationship of rural hukou, land, and agricultural work (see Figure 1.3). Consequently, the ‘rural hukou’ is becoming detached from labels like ‘uncivilized’, ‘barbaric’ and ‘impoverished’.

1.3.3 Baojia: Feudal past and the commoners

Hukou has both domestic and international precedents. The Baojia system, established during the Han Dynasty (207 BC), was a registration system that administered the empire’s taxation and conscription practices. Commoners were registered in household units, and every ten or twenty households comprised a team. Wittfogel and Feng (1970) suggest that ancient China can be seen as a registration society. Its rigid organization linked the emperor to subordinate commoners by expanding governing power to the furthest regions and the lowest social groups. This can be

understood as a response to its agriculturally based economy in the face of relentless natural disasters. The country was heavily dependent on baojia to deal collectively with floods and droughts. Dutton (1992: 84) argues that hukou is a successor of the Baojia system, which is 'covered by a thick feudal cloud'.

The idea of historical continuity is supported by the existence of similar registration systems, based on family units, which can be found today in Hong Kong, Macau, Taiwan, Vietnam and Japan. South Korea banished its household registration system in 2008. These registration systems allow individuals to move freely and serve mainly for census and data management purposes (Juneja, 2017).

However, the claim that hukou has a historical link with Baojia and other systems overstates these systems' historical influence and overlooks the revolutionary changes in governance that accompanied the establishment of the PRC. For these reasons, tracing the history of hukou to ancient China has limited application to what is happening in the PRC today. The original system has changed its face in different contexts throughout history.

1.3.4 The propiska system: A Soviet legacy

Another perspective sees hukou as the institutional adaptation of a Soviet socialist system. 'Hukou, to some scholars, is based on the Soviet Union's kolkhoz system...The farmers in Soviet Union, that is the members of the kolkhoz population, could live in the cities only temporarily or illegally, although they were allowed, after 1961, to perform seasonal or permanent work there as long as they first received the permission of their kolkhoz' (Solinger, 1999: 35). Further, only those urban residents who possessed a 'propiska', a residential registration certificate, were allowed to remain permanently (Frolic, 1976). Dutton (1992) has noted a major difference underneath the apparently homogenous, socialism-supporting statisms in the Soviet Union and China. China is not seen as a 'communist neo-traditionalism'. Also, propiska registration can be traced back to Peter the Great, which shows that such identification and registration systems are not unique to communism. Similarly, this view neglects the complex and changing patterns of hukou and mobility in China.

1.3.5 De-hukou-zation

China has been talking about 'orderly reform' of the hukou system for more than two decades. The state's urbanization policy, to 'strictly control the growth of the large cities, rationally develop the medium size cities and actively promote the small cities' (Chinadaily, 2016), is in line with the hukou policy. In first-tier cities like Beijing, Shanghai, Guangzhou and Shenzhen, point-based hukou policies are prevalent. Depending on how many points they have, migrants

can access public education, health care and social benefits, as well as purchase local property – possibilities that had been the exclusive right of local hukou members (Chinadaily, 2016). With regard to pension reform, for example, cities such as Shenzhen have included migrants in its pension programs (Ma, 2010).

The official media claimed that ‘the system has proved to be fair and effective in satisfying the demand for personnel flow while limiting rapid growth in the permanent population’ (Xinhua, 2018). China’s State Council has proposed that hukou registration in townships and small cities should be fully liberalized. At the local level, to gain an advantage in China’s ‘battle for bright minds’, second-tier cities have made membership in their hukou not only possible but extremely easy, ‘with just a student card and a national ID’ (SixthTone, 2018). Local hukou membership is offered as a strategy to lure fresh graduates ‘away from larger urban hubs like Beijing and Shanghai’ (SixthTone, 2018; Yicaiglobal, 2018; Chinadaily, 2018). In May 2018, Tianjin, a second-tier city close to Beijing, eased its local hukou rules, for the first-time accepting bachelor’s and master’s degree-holders up to the ages of 40 and 45, respectively; doctorate holders of any age became eligible for immediate registration (Yicaiglobal, 2018). On the following day, more than 300, 000 applicants were granted Tianjin hukou membership (Chinadaily, 2018). However, in the meantime, a university survey showed that hukou is not among the key elements when students choose their jobs. 61 per cent of students prioritizes the development potential and employment opportunities, whereas only 18 per cent caring about whether they can re-register their hukou at their job location (University of International Business and Economics employment and student development office, 2018).

Based on the various moves taking place throughout China, some academics are beginning to envision the ‘de-hukou-zation’ in China: 1) China is abolishing hukou; at least, these initiatives suggest that hukou is set to be abolished (Chan and Buckingham, 2008; Zhang, 2015); and 2) Full abolishment of hukou will help promote the goal of equality in China’ (Xu, 2014). However, other scholars disagree. In her 2004 book, *Organizing through Division and Exclusion: China’s hukou system*, Wang concludes that ‘despite reform and public outcry, this omnipresent and powerful, albeit adapted and adjusted, system hukou is alive and well’ (Wang, 2005: 112). In an interview in 2017, she stated clearly that she believes her diagnosis still holds true (Juneja, 2017). Wallis (2015: 278) observes in his book, *Techno-mobility in China: Young migrant women and mobile phones*, that ‘after 2005, every couple of years more pronouncements on hukou reform followed, with little radical reform’. These scholars believe that hukous have retained their key role in the CCP’s project to safely rule a massive 1.3 billion population in a vast and rapidly changing land.

In fact, both views privilege the role of hukou in Chinese society today. Against the background of changing hukou policies in different regions and different tiers of cities, ‘de-hukou-zation’ has not led to a utopian society with decreased social inequality and discrimination. If hukou has become a loose-knit basis of socio-political control, why do we witness enhancements in mobility control in mega cities? If hukou remained its rigidity, why its function, structure, composition and values in social control have become less and less visible? The question of whether China is abolishing hukou and what the changes mean to the society must be prefaced by asking what hukou is in Chinese society today.

1.3.6 Studying hukou as an institutional process

Citizenship theory, racialization approaches and historical reviews that trace back either to the ancient Baojia system or to the Soviet propiska system not only offer a limited contribution to our understanding of the hukou system in China today, but also can be heavily misleading and restraining upon our imagination. On the other hand, it is fruitless to take hukou for granted, especially its former fundamental role in governance, or to talk about hukou reform or abolishment without analysing its current bearing. This approach also leads nowhere.

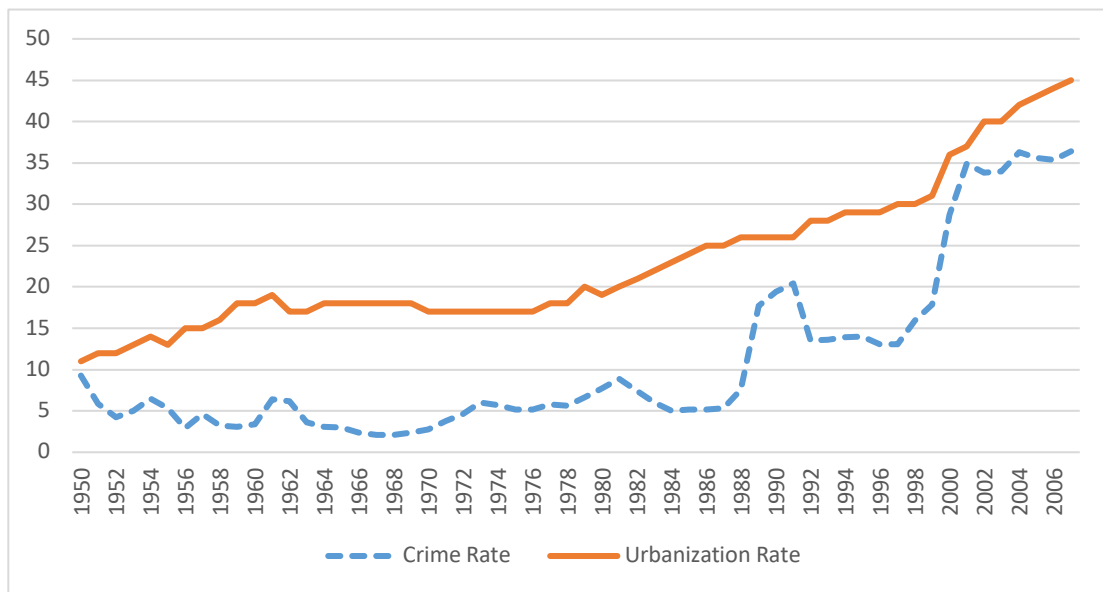
To study hukou is to engage in a battle of narratives that are as paradoxical as they are revealing. Since the preoccupation with the social dimensions of hukou is changing, the study of hukou has to look beyond hukou policies and directly into hukou as an institution embedded with political and cultural meaning. Hukou should not be seen as a form of institutional segregation, nor as an identification of citizen rights, nor as a rationalisation of the past. Research presented here supports my argument that the object of study should be the process by which hukou becomes meaningful. The process of making ‘hukou’ relevant to a particular situation or context requires an examination of the precise circumstances in which this occurs. That is to say, one must study hukou as a process. This research looks into perhaps the most prevailing and most understudied relationship in contemporary China: that between hukou and crime.

1.4 The Relation: Hukou and crime

1.4.1 Hukou and China’s crime rate

Crime in China is widely, yet inappropriately understood to be highly correlated with urbanization and internal migration (Liu, 2005; Liu, Travers and Chang, 2017; Xu, 2013, 2014). Data like that presented in Figure 1.4 appear to support this claim. The urbanization rate describes the percentage of the total population living within the urbanized areas. Figure 1.4

Figure 1.4 Crime and urbanization rates in China, 1950–2006



Note: The urbanization rate is the percentage of the Chinese population living in urban areas; the statistic is retrieved from the national bureau of statistics of the PRC. The crime rate refers to the crimes per one million people as per the latest official Census over a selected time period, the data is retrieved from a police officer from internal database.

shows the increase of urban population, which is mainly the result of immigration by the non-local hukou residents, has paralleled the Chinese crime rate for at least the past sixty years.

Classic criminological theories, including routine activity theory, anomie theory and social organization theory, have been used, without great success, to explain the correlation. Urbanization engenders accumulation of more portable goods that are more easily stolen, which results in an increase especially in property crime rates, as Cohen and Felson explain (1979). Anomie theory (building on Durkheim, 1893, 1933 and 1951) and social organization theory (e.g., Park, Burgess and McKenzie, 1925) explain the rise in crime with reference to a breakdown in traditional norms during a social transition.

In 2006, internal migrants accounted for 67.2 per cent of the defendants in criminal cases in Beijing (China Youth Daily, 2006). A later report claims that a ‘majority of the crimes were committed by the migrants’; the same report states that, in 2013, 82.1 per cent of the defendants in criminal court in Fengtai District, Beijing, were from the migrant population (Liu and Chang, 2013). In 2009, 77 per cent of the criminal offenders in Changpin District, Beijing were migrant residents (Beijing news, 2010). In 2008, 77 out of 99 inmates in one Beijing juvenile prison were registered in non-Beijing hukou (Wang, 2009). Migrants comprised 71 per cent of all criminal offenders in Yinchuan, an inland city, in 2004 (Legal Daily, 2007). Regardless of how the data

Table 1.1 Percentage of migrants in police arrests in selected cities, 1988–2007

Year	Guangzhou	Shanghai	Shenyang	Xiamen	Chengdu	Wuxi	Zhangjiagang
1988	58						
1991	63	39	33	51	26	31	22
1992	67	45	25	55	25	34	21
1993	69	54	25	59	17	35	28
1994	71	58	30	61	42	41	31
1995	74	56	33	66	43	39	33
1996	73	56	32	68	45	44	32
1997	81	59	39	74	47	45	34
1998	85	59	37	72	57	51	43
1999	87	55	38	79	61	51	45
2000	91	51	45	77	56	55	47
2001		50					
2002		52					
2003		60					
2004		66					
2005		70					
2006		73					
2007		76					

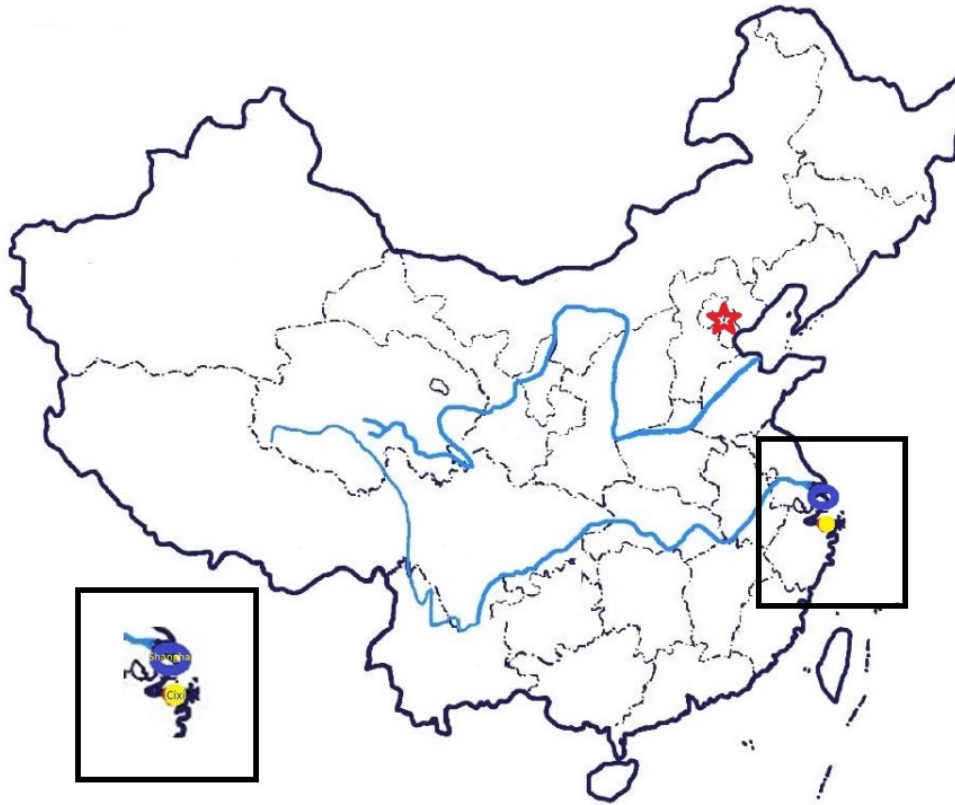
Source: Xu (2014: 211).

is sorted – various tiers of cities, from costal to inland, from north to south – the conclusion is that China has witnessed a growing percentage of migrants in official crime rates appears to be inescapable (See Table 1.1).

Property crime is the major part of the crimes (the special case of sex-related crimes will be discussed in section 3.2.2 below). In 2004, migrants accounted for 46.1 per cent, 59.2 per cent and 42.1 per cent respectively of convictions in two major crime categories: theft, and forcible seizure and robbery in China (Lei, 2011).² Among the 230 migrant prisoners in one prison in Beijing, 93 per cent had been convicted for property crimes (65 per cent for theft; 20.8 per cent for forcible seizure and robbery) (Xu, 2004). And in Wuhan, theft (23 per cent) and forcible

² ‘Theft’ involves taking property, but without violence against people; in ‘forcible seizure and robbery’ a component of human violence accompanies the taking of property. See Criminal Law of the PRC, Articles 263 and 264.

Figure 1.5 The location of Cixi in China



Source: map.com, edited by researcher.

seizure and robbery (40 per cent) were also the top two among all the crimes that involved the floating population (Guangzhou Floating Population Research Centre, 2003). We observe that thefts and robberies/forcible seizures are becoming a smaller proportion of the total crime cases committed by migrants. For example, the proportion decreased from 52.3 per cent to 37.5 per cent between 2008 and 2010 in Jiangxi Province (the Legal daily, 2011). Nonetheless, thefts, and forcible seizures and robberies (known as ‘Two qiang One dao’) are highly linked with migrants, and crime from every perspective is related: 1) A greater proportion of migrants than non-migrants have committed property crimes; and 2) Migrants commit mostly property crimes (notably theft and forcible seizure and robbery), compared with other crimes.

1.4.2 A case study of Cixi

Taking the city of Cixi for example, it is located on the south of the economic circle of Yangtze River Delta (YRD). At the centre of the Shanghai, Hangzhou and Ningbo Economic Golden Triangle, Cixi is 60 km from Ningbo in the east, 148 km from Shanghai in the north and 138 km from Hangzhou in the west (see Figure 1.5).

Table 1.2 Registration of migrants in Cixi from 2006 to 2008

Year	2006	2007	2008
All residents	1,716,235	1,858,877	1,848,500
Migrants	695,435	831,677	817,300
	41%	45%	44%

Source: Retrieved by the researcher from an internal Cixi government report, 2015.

Table 1.3 Criminal offences (based on prosecution rates) in Cixi, 2006 – 2008

Year	2006	2007	2008
All Cases	1,912	2,111	2,141
Cases with at least one migrant offenders	1,302 68.0%	1,518 71.9%	1,551 72.4%
All Offenders	3,361	3,289	3,504
Migrant Offenders	2,329 69.2%	2,374 72.2%	2,582 73.7%

Source: Retrieved by the researcher from an internal Cixi government report, 2015.

In 2013, Cixi included 1.04 million local hukou residents and 0.99 million registered migrants. Cixi's GDP (gross domestic product) 2013 was 103 billion CNY (£10 billion). According to the Statistic Office of Cixi, the average income of a non-agricultural Cixi hukou resident was 41,254 CNY (£4,100) of 2013, while Cixi agricultural-hukou resident earned an average of 22,702 CNY (£2,270). Compared with the average income of non-agricultural hukou residents in mainland China, which is 26,955 CNY (£2,690) and 8,896 CNY (£889) for non-agricultural hukou residents of the year, Cixi is relatively rich. This could explain why it has attracted a large number of migrants for several decades.

As shown in Tables 1.2 and 1.3, migrants accounted for approximately 41–45 per cent of the population in 2006, 2007 and 2008. During these years, migrants were responsible for around 70 per cent of all crimes: the migrant population was overrepresented in the offender population and local residents were underrepresented. A simplistic comparison of the number of crimes committed by migrants with the size of the migrant population leads to an equally simplistic conclusion: migrants are much more likely to engage in criminal behaviour than local residents.

Table 1.4 Home province of migrant offenders

Home Province	2006	2007	2008
Guizhou	690	789	851
Anhui	461	371	380
Sichuan	336	348	398
Jiangxi	236	208	241
Henan	166	171	183

Source: Retrieved by the researcher from an internal Cixi government report, 2015.

Table 1.5 Crime type related to migrant crimes in Cixi, China, 2006–2008.

Year	2006	2007	2008
Theft	436	563	574
Robbery and forcible seizure	194	201	247
Drug trafficking	122	131	145
Common assault	88	92	57
Public order crimes	95	96	98

Source: Retrieved by the researcher from an internal Cixi government report, 2015.

Table 1.4 shows the five major home provinces of migrant offenders. Guizhou, Anhui and Sichuan, at the top of the list of home provinces of migrant offenders in Cixi, are all located in inland China. Compared with Cixi, economic development in these provinces is fairly low. The choice of migration destination depends mainly on the higher economic development levels, but the presence of friends or relatives there makes a location more attractive (Shi, 2008). Both contribute to an explanation for why Cixi has such a big migrant population.

Though migrants from Anhui comprise a plurality of Cixi's migrant population (Cixi Office of Statistics, 2015), migrants from Guizhou account for the most migrant offenders (See Table 1.4). Officer Zhao explained Guizhou's overrepresentation with reference to what he described as the violent cultural tradition of that province. Zhao, now a middle level cadre in the Cixi migrant population office (liudong renkou bangongshi), confirmed that factories and companies are reluctant to hire migrant workers from Guizhou 'to avoid troublemakers', and perceived Guizhou migrants as 'more likely to get involved in crime'.

Table 1.5 shows the five crimes most often committed by migrant offenders. Theft is the most common, followed by forcible seizure and robbery, drug trafficking, assault and public order crimes (undermining public order with provocative and disturbing behaviour).

Table 1.6 Major crime types of migrant offenders in Cixi 2006

Crime	Case Number	Percentage
Property crimes	833	55.7%
Theft	513	34.3% *
Robbery and forcible seizure	209	14.0% *
Blackmail	47	3.1%
Crimes against Social Administration order	373	24.9%
Drug trafficking	125	8.4% *
Undermines public order with provocative and disturbing behaviours	107	7.2% *
Fence	73	4.9% *
Crimes of infringing upon the rights of the person	181	12.1%
Common assault	96	6.4% *
Rape	28	1.9%
Unlawful detain	23	1.5%
Crimes of Endangering Public Security	92	6.1%
Causing traffic casualties	69	4.6% *

Source: Retrieved by the researcher from an internal Cixi prosecutor's report, 2015.

Theft, forcible seizure and robbery are the most three common types of crimes committed by migrants. Using a sample of 50 cases with 74 offenders in 2006, Tables 1.6 and 1.7 document in further detail the crime types as well as the basic demographic features of the migrant offenders.

Table 1.7 shows that Guizhou migrants account for a plurality of theft crimes committed by migrants. 94 per cent of migrant offenders are male, 59.5 per cent of are between age 18–30, and 97 per cent did not finish their high school education. These statistics are in line with the stereotype: a violent migrant from an underdeveloped, inland province. Young, under-educated and under- or unemployed males, as stereotypically expected world-wide, committed the majority of Cixi's theft crimes.

More crime cases were documented as happening on the street and in private residences, in the evening and at night, and notably during the months of January, February and March, as will be explained in section 3.2.1 below. 66 per cent of the offenders conducted theft with a migrant accomplice. These features further assist the construction of a concrete picture of migrant criminality.

Table 1.7 Migrant offenders involved in Theft cases in Cixi, 2006

Home Province	Offenders	Per cent
Guizhou	24	32.5
Anhui	9	12.2
Yunnan	8	10.8
Henan	7	9.5
Others	26	35

Gender	Offenders	Per cent
Male	70	94.6
Female	4	5.4

Age	Offenders	Per cent
Under 18	7	9.5
18–30	44	59.5
over 30	23	31.0

Education Level	Offenders	Per cent
Illiteracy	3	4.1
Primary school	33	44.6
Secondary school	36	48.6
High school and above	2	2.7

Occupation	Offenders	Per cent
Without a stable job	69	93.2
With a stable job	5	6.8

Month distribution of the crime offences

Month	Offenders	Per cent
Jan–Mar	26	52
Apr–Jun	6	12
Jul–Sep	9	18
Oct–Dec	9	18

Time distribution of the crime offences

Time	Offenders	Per cent
am	6	12
pm	14	28
Before midnight	11	22
After midnight	19	38

Crime Scene

Scene	Offenders	Per cent
Company	11	22
Private residence	18	36
Street	21	42

Multiple Offenders

Number of offenders	Offenders	Per cent
More than one offender	33	66
Single offender	17	34

Source: Retrieved by the researcher from an internal Cixi prosecutor's report, 2015.

The entire discussion, presented above, says much about how a portrait of migrant criminality is painted, but it says virtually nothing about the criminal proclivities of migrants (or anybody else) in China. Data from Tables 1.2 and 1.3 also show that, in these three years, a maximum of 0.31 per cent of migrants were criminals. That is, 99.69 per cent were not. In a meaningful way, this entire discussion of migrant criminality based on the official statistics is highly problematic. When data like that presented here appears in headlines, it must surely create an inaccurate impression. And, as already shown, this impression has already affected the employment prospects for the overwhelmingly law-abiding migrants from Guizhou. The problem, however, goes deeper than this. In the next section I will show that the idea of migrant criminality has been framed by the media and constructed as a conscious government policy.

1.4.3 Non-local-hukou and constructed criminality

The overrepresentation of people who are not registered in local hukous in official crime statistics of the host urban society (see Tables 1.1 and 1.3) has been interpreted as evidence of a causal link between migrants and urban criminality (Xu, 2014). It is suggested that this 'pest-like' population group is deteriorating public security (Gu, Zheng and Yi, 2007; Guan and Liu, 2014;

Sigley, 2013) and jeopardizing social stability (Chou and Dongen, 2014). In Chinese society today, ‘massive and restive’ internal migrants are commonly perceived as criminals. They are denigrated as a ‘dangerous class’ (Keith and Lin, 2006: 93; see also Friedmann, 2005) that commits ‘all kinds of crimes’ (Solinger, 1999).

The dramatically higher proportion of the migrant population in crime statistics is tagged in media reports as evidence of an ‘urban disease’ (Gu, Zhang and Yi, 2007: 19). Most of the blame for the rising crime wave in urban China – a phenomenon that resonates more in newspaper headlines than in government statistics which identify no such wave – is pinned on migrants (Wong, 1979; Wong, 1994; Gu, Zheng and Yi, 2007). The titles of the reports are not subtle: ‘Migrant problem and crime cannot be ignored’ (Justice Daily, 1999), ‘Floating population: the high-risk population of crime’ (The Beijing Night News, 2001) and ‘Floating population: the majority of criminals’ (The beijingnews, 2015). ‘It is a well-known fact that the increasingly booming crime of floating population highly threatens the safety and stability of our society’ (Jie Fang Daily, 2015).

This rhetoric has exacerbated urban fear of this mobile and ostensibly criminal class (Dutton, 2005, 2012). Previous empirical studies show a significant correlation between the proportion of migrants living in a neighbourhood and public perceptions of criminality there (Liu, Messner, Zhang and Zhuo, 2009; Solinger 1999; Nielsen, Smyth and Zhang, 2005; Nielsen, Smyth and Zhai, 2010). A mid-1990s opinion poll of residents in Beijing, Shanghai and Guangzhou found that poor social order had become the number one public enemy. Respondents identified non-local hukou residents as the ‘root cause of their feeling of insecurity’ (Mingpao, 1995). On the other side of the same coin, another survey reported that local residents who have a negative perception of migrants also have a poor perception of public security (Nielsen and Smyth, 2005). Migrant-concentrated neighbourhoods are described as being filled with filth and mire (Hao, 1992), and being ‘dirty, chaotic and indecent’ (zang, luan, cha) (Zhang, 2001a: 68), which thus increases the potential for social unrest (Ma, 2010). I argue that the social construction of migrant criminality is a consequence of an ostensibly common-sense discourse that identifies the presence of internal migrant in urban China as associated with problems that represent a threat to be warned about publicly (see Figure 1.6).

1.4.3.1 Migration, property crime and the Chinese New Year

Figure 1.6 is an example of how the warning was made: specifically, vividly and openly against the migrant in urban China. The banner says: ‘Police notice: migrants increased in number

Figure 1.6 Police notice on migrant crime



Source: (Ma, 2010; 132).

before the Chinese New Year, so please be aware of property thefts such as external parts of the air-conditioners. Please report to the police when you notice anyone’.

The high crime rate during January, February and March (See Table 1.7) has transformed the narrative into a rationalized, discriminatory warning that targets migrants. ‘Migrant’, ‘theft’ and ‘Chinese New Year’ (which usually falls in January or February) have been combined to construct a moral panic in urban China. Stereotypically, migrants travel to their home towns for family reunions before New Year’s Eve. That is, they are expected to leave their host city during this period and might not come back to this particular city afterwards. This narrative contributes to an image of a willing criminal who is relatively unlikely to get caught.

The narrative continues. According to the story, migrants feel pressed by unusually high consumption requirements during the New Year’s season. In preparation for family reunions and other celebrations, they need money for winter clothes, food, presents, and travel expenses. In Chinese culture, the inability to afford a decent New Year’s dinner is humiliating; it causes a loss of face (*Mianzi*). Similar thinking also emphasizes traditional aphorisms like ‘to stand out among their peers’ (*churen toudi*) and ‘not returning to one’s hometown after having won high honours and social recognition is like wearing silken and embroidered clothes whilst walking in the dark’ (*fugue bu huanxiang, ru jinyi ye xing*). These old Chinese sayings are used to explain the migrants’ need to impress their relatives and friends upon returning to their hometown for the Chinese New Year – and their motive for turning toward crime. It thus tightens the conflicts between migrant and urbanite by furthering the idea that migrants are more dangerous around

this time, since they are going to do anything they can – including theft and robbery – to avoid losing face in front of their relatives.

1.4.3.2 Migration, sexual crimes and ‘pathways’

‘The pathway to master’s programme admission without an exam’ (Baoyan lu) is a commonplace term in many Chinese universities (Zhihu³ users, 2013; Zhihu users, 2018; baozi, 2009; baidu user, 2015; Douban user, 2011). This urban myth consists of three stories: 1) The developing and building of new university towns in many cities have led to surging numbers of construction sites on campus in recent decades. 2) Female college students walk past the construction sites during the evening, usually after class or study. ‘Desperate migrant workers pulled the poor young innocent girl to the roadside and raped her’ (renren user, 2010). 3) The school hushed the rape victim by offering her admission to a master’s programme without an exam (Douban user, 2011; baozi, 2009).

A ‘sex-starved migrant worker’, a ‘young innocent college girl’ and a ‘savage rape’ at a construction site; all is sorted out in a scandalous reconciliation. These elements fulfil the criteria of sensational and eye-catching news. The anecdotes and warnings therefore constantly pop up and are shared widely on China’s social media. Wang (2015) discusses the urban legend from the perspective of sexism, shaming and school power. Here, shared baoyan lu folklore frames the migrant group as both criminal and barbaric. The image of a ‘migrant perp’ spread over websites and especially on social media platforms including Zhihu, tianya, baidu BBS, and douban. Fictional documentaries about the sex life of the migrant workers began to appear, filled with filthy stereotypes and vile logic (Li, 2014; Wang, 2011), and even the more conventional media produced hot takes on how to release the unfulfilled sexual desire of the migrants, in order to minimize their proclivity to rape (Phtv, 2013). These visualizations of migrants through the media has created a culture that understands them to be potential rapists who are predisposed to ‘horrible things’.

1.4.4 Non-local-hukou and criminal justice

‘Why are migrant workers overrepresented in crime figures?’ ‘Why are migrant workers more likely to commit crimes?’ When I posed these questions to legal professionals and practitioners, in order to understand how they perceive the issue, I was usually confronted with a confused reaction:

‘why do you ask the same question twice?’

³ Zhihu is a question-and-answer site where questions are asked, answered, edited and organized by its community of users in China. It is equivalent to Quora.com, which is blocked in China.

‘Aren’t they the same?’

I asked again:

‘Are they?’

‘What do you think?’

‘To me, they are exactly the same,’ replied Wang, a criminal judge in Shanghai with 10 years of experience.

The same scene is documented in Solinger’s book, written in the 1990s. When she asked a criminal law professor in Wuhan why he thought migrants account for the majority of the city’s crime, the professor pointed toward the official crime figures taped on his office wall and replied without hesitation: ‘because the figure says so’.

The logic of using crime data to justify criminality is problematic and misleading. A great number of studies in Western contexts have found that defendants accused of similar crimes are treated differently because they differ on some extra-legal variable, such as race (Holdaway, 1995; Konell, 2016; Riley, Ridgeway, Stokes and Macdonald, 2007; Smuel and Faustino, 1991; Sampson, Robert and Wilson, 1995) or socioeconomic status (Chamlin and Liska, 1984; Chermak and Riksheim, 1993). However, the potential contribution of hukou status to statistical disparities regarding crime, as well as the impact of hukou status on key areas of the criminal legal system – namely, arrest decisions, bail setting, prosecutorial decision making, sentencing and parole against the migrant – are overlooked in everyday discussions on migrant criminality. Against this background, the perception that internal migrants are criminals has become ‘common sense’: a naturalized form of ideology, the validity of which people only question at their own peril (Hall, 1985; Gramsci, 1971; Comaroff 1991).

In this hegemonic narrative, there a disproportionate number of people from the non-local hukou population appear in official crime statics. Crime is one of the most prevailing and evident fields in which hukou disparities surge. Instead of tracing the factors that explain the overrepresentation, which themselves mostly resulted in using criminological theories to apologize for the migrant’s criminality, this research investigates how hukou is made more (or less) relevant through criminal justice procedures and within the criminal legal system: How has the hukou system affected migrants’ encounters with criminal justice institutions?

1.5 The question: Who is a migrant in China?

Supported by seemingly solid official figures, twisted media reports and a sensational urban myth, non-local hukou residents are painted as criminals. The ‘migrant problem’ has been

tagged as an urban illness (chenshi bin) or an urban cancer (chenshi ai) (Hao, 1992) to be cured. The group is presented as the source of potentially large-scale social turmoil, the avoidance of which demands urgent governmental intervention. On this basis, specific terminologies have to be invented for the group to make its members identifiable, distinguishable and classifiable. Since the entire enterprise is a construction, it is unsurprising that the chosen labels do not quite make sense.

‘Who is a migrant’ constantly appears in public debates. The definition varies in relation with their changing status of nationality as well as residence, i.e. foreign-born, foreign citizen, or people who have lived in their new location for a statutory period of time. These disputable elements all demonstrate that ‘who a migrant is’ is a complex set of actions and statuses that go against an established order that suppresses certain types of mobility. Therefore, ‘who a migrant is’ is also the first, foremost and even ultimate question researchers aim to answer in any migration study, together with its entangled linkages to concepts like border, citizenship, legality, circularity, and so on. In other words, conceptualizing migrant – a socially constructed, media-exploited and politically oriented term – is contentious by its very nature.

1.5.1 Who are we talking about when we talk about ‘Crimmigration’?

We firstly should reject the weak forms of conceptualisation, where terms are taken for granted at face value (Matthews, 2014). Crimmigration, which stands for the increasing merging of migration policy and criminal law and policy, is now labelled and noted as such across the globe. However, it is a loaded concept that causes people to ask what kind of migrants and under what circumstances they are criminalized. The core question remains: who are we talking about when we talk about ‘crimmigrants’?

The major empirical research question herein is: who are the migrants when we talk about migration and crime in China?

1.5.2 Are they the same: ‘rural–urban migrant’, ‘peasant worker’, ‘rural migrant’, ‘floating population’ and ‘internal migrant’?

So far, this research has not made clear who is included in the ‘migrant’ category, except that is somehow related to non-local hukou status. Floating population (liudong renkou), rural–urban migrant (nongcun dao chenshi yimin, Chui, 2011), peasant worker (nongmin gong), outsider (waidi ren); migrant worker (wailai wugong renyuan), and so on appear in various shapes in everyday conversation and media representations, as well as in official documents (Solinger, 1999; Sun, 2014; Zhang, 2002). At first glance, people may think they are indicating the same group of population. When given a second thought, however, the situation appears to be much more confusing and complex. Are they referring to the same population group and, if so, does

anything distinguish one expression from the others? For example, a ‘migrant worker’ apparently is a worker, whereas the occupation or employment status of a member of the ‘floating population’ is ambiguous. If these terms in fact do refer to different groups of people, why they are used almost interchangeably? So far, no attempt has been made to address this confusing situation. I do so now.

1.5.2.1 Rural–urban migrant

The term rural–urban migrant is ‘loosely applied to anyone of rural residential status who has left the countryside to live in the city and suburban areas’ (Sun, 2014: 69). The concept has been widely adopted in quantitative research, because it is simple and straightforward to sum the number of the people registered with a rural hukou and is fully distinguishable from those with an urban hukou registration. However, this approach is incorrect and highly misguided, for three reasons. Firstly, as mentioned above, the quality of the rural–urban dichotomy in China has changed during recent decades. Its format also varies from different regions and cities. Secondly, urban–urban migrants, that is, people who move from one city to another, comprise a large proportion of the migrant population, but they are excluded from statistical analyses based on counting the rural hukou registrants. Thirdly, rural-hukou local residents are sometimes mistaken as migrants (Sun, 2014). This is because, Shanghai, Beijing or Guangzhou, though normally perceived as megacities, they all contain villages and farmland and, therefore, rural-hukou residents as well. For example, Damang is a village located in the south of Shanghai. A Damang villager – who is not a migrant by any criteria – will be mistakenly coded as a migrant in statistical studies, just because s/he holds a rural hukou.

1.5.2.2 Peasant labour, peasant worker, outside worker and migrant worker

In 2006, the State council defined the category of peasant labour or peasant worker (nongming gong) as ‘workers who hold rural hukou but migrate to cities or towns to be employed to do non-agricultural work’ (Xinhuashe, 2006). On the same basis, the terms ‘temporary working sister’ (dagong mei) and ‘temporary working brother’ (dagong zai) refer to part-time low-wage labour, in contrast to permanent and more secure employment (Pun, 2005; Tamara, 2006: 44). The term ‘outsider worker’ (wailai wugong renyuan) most obviously indicates an outsider status. The term points to the fact that the person so labelled comes from a different place. It also blatantly shows the inhospitality of the city. Further, ‘worker’ is an inaccurate description, because it neglects the complexities of various employment forms pursued by migrants. Lo and Jiang (2006) find that migrants typically have to choose physically demanding occupations that can be divided into three categories: (1) temporary workers, who provide labour for construction sites and factories; (2) casual labourers, such as housemaids and porters; (3)

self-employed workers, such as fruit or vegetable sellers and cobblers. In practice, they also have to face considerable uncertainty and inequality in respect of employment positions, income, unemployment insurance, and pension (Shi, 2008).

1.5.2.3 Floating population (liudong renkou)

Floating population means ‘temporary dwellers’ (Solinger, 1999: 22). It describes the status of the person who lives anywhere other than her/his hukou registered address. The term is widely used at the managerial level in government document. Each city and district have set up their own floating population management office (liudong renkou guanli bangong shi). The Chinese statistical bureau pointed out that the separation status of a resident from her/his hukou registration (renhu fenli) for more than six months is the key element in determining whether s/he is a member of the floating population (National bureau of statistics of PRC, 2018). Solinger (1999: 15) points out that the floating population ‘consists of people who have in fact not ‘migrated’. She argues that some people who lack a hukou can be described as being ‘engaged in partial temporary relocation’ and yet ‘maintain their ties with their original place of abode, where their permanent registration stays’. Poetically, they are facing the situation of being separated both from ‘the city whose doors are shut and the hometown of no return’ (huibuqu de guxiang, jinbuqu de chen). The hukou system has prevented them from legal migration whilst their hometown has few opportunities. Circumstances have ‘forced them to become floaters’ (Solinger, 1999: 16).

1.5.2.4 Non-local hukou registered (NLHR) population and internal migrants

As a result, there is a need for concepts to help understand the ‘ambiguity and volatility in people’s movements’ (Chapman, 1978: 563). ‘Internal migrant’ refers to the population on the move within a country, usually from a less developed to a more developed area (Kleiman and Smith, 2014). It is a broader, more general and more neutral-sounding term. On the other hand, the common terms ‘floating’ (liudong), ‘outsider’ (waidi), and ‘temporary worker’ (dagong) better capture some features of the precarity and ‘otheringness’ of this group. My use of inverted commas around these words indicates that I am dealing with a category of official discourse. When referring to the ‘people categorized by these labels but alluding to realities beyond classification’ (Ashworth 1990: 12) I use the term non-local hukou registered (NLHR), internal migrant and migrant without inverted commas. On the other hand, I use the term local hukou registered (LHR), localities to refer to their counterparts.

1.6 The Goal: Studying hukou in criminalization

To study hukou as a process in criminalization helps one to understand the ‘migrant problem’ in urban China, and vice-versa. The rest of the research seeks to make sense of this double-direction confusion. This research will comprehensively unpack China’s official crime figures regarding the overrepresented migrant population as well as provide an up-to-date review of the role of hukou in the criminal procedure. Research questions are as follows:

- 1) Is the criminalization process of internal migrants exaggerated? To what extent does the representation of internal migrants in China’s criminal legal system reflect the actual criminality of that group?
- 2) How does the process of criminalization operate? How do decisions taken at one point in time affect later decisions, or how do these decisions perpetuate the cyclical nature of criminal justice processing? And by the end of the process, how does all of this affect the conditions of life inside prison?
- 3) Which level of analysis offers the most compelling explanation of hukou disparities, where they occur, in the criminal legal system: the prejudiced, stereotyping and discriminatory acts of individual criminal justice practitioners; the cultures of criminal justice organisations; or institutional discrimination?
- 4) To what extent is discrimination against the migrant population systemic, cumulative or context-dependent? The yet-to-be-answered question then becomes not how much of the disparity is caused by individual legal practitioners’ decisions, but rather, how do criminal justice strategies and organizational practices, even when applied by unbiased practitioners, create hukou-disparate outcomes?
- 5) To what extent hukou status influence differential treatments in the criminal legal systems? To what extent a non-local hukou status justifies a migrant identity? If not all non-local-hukou residents are migrant, who are mistreated because of their non-local hukou, and who are not affected by their non-local hukou?

1.7 The Structure: Organization of the Thesis

Chapter One provides an historical context and cultural background for the study. It introduces ‘hukou’ and describes how this powerful institution has influenced the great migration phenomenon, migration policy and practices towards the migrant in urban China in the twenty-first century. Official crime statistics related to hukou and migrant are also presented, along with an analysis of how these data are interpreted by criminologists. I also aim to clarify

several key terms – migrant, LHR and NLHR – and set out my legal and conceptual bases for analysis. In the thesis, I use some pinyin to contribute to bridging both to non-Chinese speaking criminological scholars who wish to investigate China, and to Chinese scholars seeking to engage with the English-speaking world. Chapter Two explores criminological debates on migration and crime in China. Theoretical approaches from differential offending theory and differential processing theory are summarized and contested. In particular, I argue that notions of hukou, guanxi, suzhi and socialist Chinese principles under the ‘rule of law’ (jianshe shehui zhuyi fazhi guojia) have been used, inappropriately, to explain the overrepresentation of NLHRs in crime statistics. In Chapter Three, I outline the methodology employed in this research, with a focus on challenges encountered and overcome during the fieldwork and my reflections on these. The following three chapters (Chapters Four, Five and Six) analyse the divergent experiences of NLHRs and LHRs in the criminal-legal process in microscopic detail. I present my empirical data and findings on policing, prosecution, sentencing and prison, and assess the extent to which discrimination contributes to the skewed data. More importantly, I present my argument that a quagmire of institutional incentives that, in practice, are unrelated to meaningful goals related to crime and stability, nonetheless powerfully influence the decision-making processes of legal practitioners throughout the system. Chapter Seven summarizes the highlights of the research and returns to the questions raised in this introduction. In an epilogue, I point towards an empirically grounded theory of hukou and criminal justice and raise and respond to questions about post hukou society.

Chapter 2 Theoretical Approaches

The introductory chapter demonstrated that the questions, ‘who counts as an internal migrant China?’ and ‘what does hukou mean to Chinese people today’ can best be explored and analysed in concrete contexts and as continuing processes. In this way, ‘migrant criminality’ offers a pathway to the conceptualisation of the words ‘migrant’ and ‘hukou’.

‘Migrant criminality’ is first and foremost among many constructed migrant problems. It is a highly contentious issue in contemporary urban China, which has attracted increasing scholarly attention. This chapter outlines the state of the art of scholarly research on migrant criminality in the context of China. The official statistics and media reports presented in the previous chapter support the claim that Non-local Hukou Residents (hereafter NLHR; and LHR for local-hukou registered) appear to be more likely than LHRs to be sanctioned for criminal behaviour and, through them, the public is invited to imagine that migrants are responsible for the majority of criminal activity in China. However, careful investigation reveals that the official data present an inaccurate picture of what crimes are committed and who commits them. Researchers have attempted to explain why these disparities exist and how society comes to understand what is framed as migrant criminality.

This chapter outlines the state of the art regarding scholarly research of the migrant criminality in the context of China. Academic debates centre on two major categories of theories: differential offending theory and differential processing theory. As the terms suggest, the former explains the disparities of migrant and non-migrant in the crime rate data as the difference in the offending behaviours per se. Scholars held the later position begin with a presumption that the migrant criminality presented at each stage of the criminal legal system is not motivated by the disparities in criminal behaviours but are the outcome of the problematic legal resolution. Although such core debates have been fairly standard for migration studies in the West, mine is the first systematic review related to migrant criminality in China. This chapter will identify weaknesses and blind spots in the existing research and show how these leads directly to the formulation of the research questions that have guided this project.

2.1 Differential Offending Theory

Differential offending theory begins with the presumption that criminal behaviour is not evenly spread across populations and that criminal legal systems tend to be fair, that is, they intervene whenever they detect criminal behaviour, regardless of a suspect’s other characteristics or

associations. Data that shows the disproportional representation of migrants as criminals is regarded as solid proof that certifies the existence of migrant criminality. The questions become, 'why is this true' and 'what should be done'. From this starting point, strain theory, control theory, social disorganization theory and subculture theory are invoked to explain the disparity between LHR and NLHR criminal behaviour – at least as described in crime statistics.

2.1.1 Strain theory: The unfulfilled Chinese dream

Strain theory is engraved in an unfulfilled Chinese dream to explain migrant criminality. Research points out that, prior to the economic reform and 'one-step ahead' policies that were initiated in 1979, the PRC was in a condition of pre-reform stratification that precedes a classless society (Lo and Jiang, 2006). Its population was horizontally divided among four sectors: cadres, workers, peasants and intellectuals (Kraus, 1981). However, after the 'low growth and equality' period ended in 1984, income differences between peasants and the other sectors started to grow rapidly again (Lo and Jiang, 2006). On the basis of this empirical finding, researchers claimed that China was repeating a historical dynamic also seen in the United States in the 1930s (Bakken, 2005, 2018; Bracken, 2012; Bary, 2009; Cai, 1993; Crowther, 2000). Classical strain and anomie theoretical frameworks were applied without amendment explain why greater economic inequality in China is correlated with a greater diffusion of crimes against property: the basic argument is that rapid social and cultural change generates an uncontrolled and society-induced expansion of migrant aspirations; these aspirations are not met; deprived of a legitimate means to achieve economic success, underprivileged groups seek advancement via a greater propensity to commit crime (Ehrlich, 1974; Cloward and Ohlin 1960, Cohen 1955; Cohen and Felson, 1979; Blau and Blau, 1982).

To apply the strain theory in the context of China, scholars classify the internal migrant population as a truly disadvantaged, socially marginalized and alienated 'underclass' (Wilson, 1987, Ma, 2006). Quantified by various statistics – the national Gini coefficient, income disparity between local and non-local hukou residents, inequality of consumption and employment between the rural and urban sectors, and regional disparities (some scholars use the Theil index of China's eastern, central and western zones to show intra-provincial regional inequality; see for example: Cheong and Wu, 2015) – the level of inequality is found to be positively and significantly linked with the level of crime in China (Cheong and Wu, 2015, Cao and Dai, 2001).

Such inequality at the beginning of the economic reform period is seen to be rooted in differences of rural and urban, worker and peasant, and white-collar and blue-collar work (Whyte, 1981, Feng, Zuo and Ruan, 2002). Against this background, rigid control of hukou policy is identified as among the central contributing factors to such inequalities (Fan, 2001;

2008). The main political contest is between what I will call ‘urbanites’ – people of all income levels with deep personal and social roots in the local community – and migrants. Numerous empirical studies have found that, due to their non-local hukou status, migrants are not included in the equal social welfare system and hence excluded in reality from urban life (Solinger, 1999; Demurger, Gurgand, Li and Yue, 2009). In terms of employment, local officials give local employers incentives like assistant funding to assist unemployed urbanites; they also create and enforce bans on migrants from working in certain occupations (Nielsen, Smyth and Zhang, 2005; 2010). Internal migrants are thus hindered from gaining employment even when they are qualified (Meng and Zhang, 2001; Zhang, 2010). Consequently, compared with the local hukou employee, migrants tend to have lower allocation to sectors, lower pay, lower chances for job mobility, less job stability, longer working times (Demurger, Gurgand, Li, Yue, 2009, Zhao, Qu, Liao and Zhang, 2010, Zhang, 2010, Whalley and Zhang, 2007, Knight and Yueh, 2004, Dong and Bowles, 2002, Lu and Song, 2006). The lack of education and employment skills further limit their bargaining positions in the job market (Deng and Cordilia, 1999). As for education, children of the internal migrants have to turn to certain unqualified schools in the city, because they have been excluded from the public urban education system (Knight and Yueh, 2004). Cai (2003) argues that without a systematic plan to educate the migrant’s children, they will repeat the route of the marginalized, ‘creating a vicious intergenerational cycle’. Inaccessibility to local hukou benefits denies the migrant population equal access to employment, pay, child education (Liu, 2008; Lu and Song, 2006), quality of life (Liu, 2005), health insurance, retirement pension, social insurance and other public goods, welfare, and benefits with the urbanites (Zhao, Kang, Liu, Li, Shi, Shen, Yong, Zhang, Zhou and Wang, 2014). Most internal migrants have experienced some form of discrimination (Zhang, Li, Fang and Xiong, 2009; Wang, Cui, Cui, Wei et. al, 2010). Internal migrants see that locals think they are superior, keep a distance from the migrants, and often nastily abuse migrants (Wang, Cui, Cui, Wei et. al, 2010; Li, 2006). In such a harsh environment of exclusion and segregation, migrants tend to develop a negative evaluation of other city dwellers and defensively promote idealistic images of the rural, as well as express feelings of dissatisfaction and low self-esteem (Gui, Berry and Zheng, 2012).

Zhang, Li, Fang and Xiong (2009) using QOL (quality of life) data on the population of internal migrants in China found a significant difference between pre-migratory expectations and post-migratory reality (i.e., expectation-reality discrepancy), which indicates that it is hard for migrants to fulfil their ‘urban dreams’. To put it in another way, according to the survey, less than 8% of China’s internal migrants were satisfied with their lives and most complain of discrimination, overwork and low wages (Agency France Press, 2008). In a series of

psychological studies, the so-called 'happiness level' of rural–urban migrants are lower not only than of those who live in the city, but also of those who remain in the countryside (Nielsen, Smyth and Zhang, 2005; 2010, Guo and Smyth, 2011). This happiness index is assessed in relation to future expectations, especially the expected level of income. After noticing their disadvantages compared with the urbanites (Lo and Jiang, 2006), a series of relative deprivation often leads to strong feelings of inequality and strain. 'Once inequality is perceived, some individuals respond by resorting to property crime to address their grievances, while other people develop a deep anger, which can be manifested in violent ways,' according to Lo and Jiang (2006: 87), who stated internal migrants commit crimes in order to 'relieve their deprivation derived from socially and structurally constructed inequality.' Bakken's 2018 book, *Crime and the Chinese Dream*, 'revived' and tested Mertonian strain theory (1938) on today's Chinese society. Bakken argues that the Chinese dream is essentially a state capitalist dream, a dream ends up in exclusion. Like those 'excluded by the American Dream back in the late 1930s' (Bakken, 2017, 39), migrants, who 'fall outside the dream with no chance to "get rich"', have turned to illegal means as the only way. He specifically analyses criminals, who 'emerged as people on the margins' and live in what he calls 'criminal villages' (fanzui cun) and towns, where they are engaged in a diversity of criminal activities that include 'fraud, organized large-scale shoplifting, car theft and burglary' (ibid., 39).

However, it is a remaining task for Mertonian sociologists and yet to be satisfactorily completed. On the one hand, these arguments constantly avoid the empirical facts of disengagement of inequality, strain and relative deprivation. Migrants who face the most intense institutional exclusion and marginalization may not experience the highest level of inequality nor strain. In terms of the feeling of income disparity, urbanites were the most sensitive and impacted groups compared with the internal migrants and rural population (Wang, 2010) partly because they resented their failure relative to the newly rich and powerful people with whom they compared themselves (Han and Whyte, 2009). Hence, among the three groups, internal migrants were more optimistic about the future because they had already experienced huge improvements in quality of life, compared to their own more disadvantaged past in the village (Wang, 2010). As Han and Whyte (2009) state, 'feelings of distributive injustice are not well mapped by assuming that low status and disadvantage automatically produce anger and discontent', social alienation experienced by internal migrants does not mean they feel the kinds of strain that theoretically, are expected to incline them toward acts of deviance and crime. Moreover, all these studies overlook the inequality among migrants. This intra-group inequality – those migrants with millions in cash and recognized exceptional talents which may grant them

residential right and decent pay jobs and those without – both groups exist, and both are expanding (Kanbur and Riskin, 2008). Intra-group inequality, and its influence on crime and criminal justice processes that affect internal migrants, demands further analysis. Finally, while we cannot make sense of crime without analysing structures of inequality, we cannot make sense of crime only by analysing these structures. Rehashing strain theory cannot show the bigger picture of migrant criminality of China today.

2.1.2 Control theory: Rootlessness

Control theorists (eg., Hirschi, 1969) argue that anyone may find her/himself in conditions of strain and, even under normal circumstances, have the potential to commit crimes. This potential can only be allayed or reduced by controls: internal controls that relate to the interiorization of sound moral values and the individual's commitment to the pursuit of conformist objectives (education); and external controls that relate to links with the family, neighbourhood, working environment and so on. Control theory is adopted to explain crime patterns in China as a result of the absence of both internal and external control. Regarding external control, the argument runs, individuals with tighter bonds of family, school, peers and other social institutions or groups are less likely to commit delinquent acts. The most essential element in such social bonds is the attachment of belongingness to the residential community, and this element is missing in the migrant experience. Labelling migrants as 'floating' suggests that: 1) they float from the countryside to the city; 2) they might float to another urban city, or 3) float back to their hometown (Sun, Hu, Wong, He and Li, 2013). As Solinger (1999, 37) describes:

appearing to urbanites as aimless and ominous as errant waters, China's sojourning peasant transients in the cities are outsiders, out of place. In their millions, they seem to be streaming in, as if incessantly, out of control. In the minds of their metropolitan detractors, they are aptly labelled: they are unrooted noncitizens, wanderers.

Scholars have generally highlighted the effects of this increasingly 'rootless' population's mobility. To them, it seems that 'rootlessness' naturally leads to crime, since it removes a sense of moral and social responsibility to the local urban community, among the migrants. Bracken's (2012) study shows that criminal organization membership is composed largely of internal migrants since 'rootlessness' significantly decreases their 'crime cost' and disintegrates the communities where they live, which perpetuates a cycle that includes crime and other deviant behaviours. Being 'rootlessness' removes migrants' moral constraints and concerns about saving face, since they are strangers in the city, and nobody cares about their face. 'No one wants to do dirty things in his or her own locality because there are friends and acquaintances around.

But outside of one's hometown, face is not much of a concern.' Hence, the 'outsider' has 'nothing to commit to, and has no bonds to lose, even if they commit a crime' (Legal Daily, 2007). Other studies show that a lack of 'belonging' and of 'any strong sense of ownership towards local affairs' are also related to other 'migrant problems', such a higher risk of acquiring or transmitting HIV/STDs (Yang, Derlega and Luo, 2007) and irresponsible behaviour that exacerbates pollution and other environmental issues (Gu and Ma, 2013). Newspaper stories recount the experiences of many migrants who began to be criminals after they arrived in the city: the migrants thought no one in their hometown would find out what they now were doing, and that is how they developed low self-control and turned toward a deviant lifestyle (Legal Daily, 2011). After being denied hukou status – and hence losing social status, the need for reputation, chances for social relations, and work opportunities – the cost of crime fell even more.

'Rootlessness' as a population characteristic is mostly attributed to those who do not have access to the local hukou. Hukou denial hinders migrant efforts to settle down, to become assimilated and integrated; according to some studies, denial of hukou opportunities 'forces' them to be 'rootless'. Given the rigid hukou system regulations, changing one's status from one hukou to another requires approval by public security authorities (i.e. the police) of both the origin and destination hukous. Changing from rural to urban hukous also involves a change of hukou type, which is even more strictly controlled. Hukou approval is even harder to get in large cities than in towns and small cities (Cao and Dai, 2001).

However, partly due to a recent loosening of the hukou control system, rootlessness does not necessarily remain as the essential characteristic of internal migrants. In the 1990s, most Chinese rural families had at least one family member in the city, seeking a fortune that would help to support their families, but permanent migrants were rare (Friedmann, 2005). During this period, settling was not even an option; migrants were forced to be 'rootless' (Chen and Hu, 2003). A migrant relied on his home village for long-term reproduction and hoped only to make a short-term material gain from his trip (Guldin, 1997). They spent most of their lives farming back in the rural area and came to the city expecting only to make some quick money and go back. However, in today's China, more and more migrants tend to live for longer periods within a city, and often expect to raise a family in this new community (Jian and Huang, 2007). This situation could be deduced from the changing terminology used in relation to migrants. Those who come with money and talent, usually supported by an extensive resumé are described as 'potential settlers' rather than 'temporary floaters' (Zhu, 2007). Some urban governments use

the term ‘new urban residents’ (New Beijinger, New Shanghaier) to create a seemingly welcoming atmosphere.

2.1.3 Social disorganization theory: The migrant ghetto?

Social disorganisation theory moved from the individual level of external control to the general level of formal and informal control within certain communities or neighbourhoods. It was developed in the context of a case study of Polish peasant migration to the US in the early 20th century (Thomas and Znaniecki, 1918). The alienation and deviance of these migrants is explained by the situation of social disorganization in which they found themselves: ‘the old system that controlled more or less effectively the behaviour of members of the group disintegrated so rapidly that the development of a new social system fails to keep step with the process of disintegration’ (Thomas and Znaniecki, 1918: 192; Park 1928; Park, Burgess and McKenzie, 1925). ‘Moral dichotomy and conflict are probably characteristic of every immigrant during the transition period, when old habits are being discarded but new ones are not yet formed. It is inevitably a period of inner turmoil and intense self-consciousness’ (Park, 1928). He identifies two consequences of this dynamic: the emergence of ‘spiritual instability, restlessness and malaise’; and ‘a transformation of culture from a type characterized by homogeneity and integration to one characterized by heterogeneity and lack of integration.’ ‘Significant changes have also loosened the ability of the informal structure to control behaviour in China’, argue Deng and Cordilia (1999). The formal system of party and state control in pre-reform China, ‘coordinated with an informal structure of control by friends, neighbours, and co-workers’, is ‘less likely to restrain deviance’ in today’s China (Deng and Cordilia, 1999). The work unit (danwei), a socio-special unit organizing workplace and housing, is a brainchild of the early 1950s Communist era (Bjorklund, 1986; Lu, 1997; Chen and Liu, 2013).

The Chinese system in the 1950s planned for each enterprise to provide for housing as well as social and cultural facilities of its employees making these units self-sufficient entities. Regardless of their size any enterprise was obliged to supply a full set of facilities including housing, schools, a canteen medical care, etc. For this reason, very often smaller neighbouring enterprises shared ‘a common set of facilities. (Chen and Liu, 2013: 117)

The work unit enforced a permanent ‘membership’ of workers with lifetime employment (Lu, 1997). In developed market economies, it has retreated from its original functions due to the increased precarity of jobs.

A handful of related studies have assessed residential stability at the community level (Jiang, Lamber and Wang 2007; Jiang and Lamber, 2009). Consistent with the Western theory of control and social disorganization theory (Silver and Miller, 2004; Warner, 2003), research into the Chinese case has found that residential stability increased the perceived likelihood of

informal social control at the neighbourhood level. Regardless of the longer or shorter living duration of particular residents, people who live in more stable neighbourhoods are more willing to act to prevent deviant behaviour in the Chinese context as well (Jiang, Wang and Lambert, 2010). However, neighbourhood attachment is not the only mediator between residential stability and informal social control. This finding is inconsistent with research in the US (Jiang, Wang and Lambert, 2010), and is partly related to Chinese people's traditional inner circle, comprised of their family members and friends. Chinese people can take care of people within this circle very well, but pay little attention to outsiders (Fei, 1985; Yang, 2008). That is to say, social ties are an insignificant means of informal social control of migrants in China. Jiang, Land and Wang (2013) found that poorer or more chaotic communities were irrelevant to lower levels of formal or informal control, even though such elements are often correlated in the US (Jiang, Land and Wang, 2013). In summary, external control or social control in China might function in a totally different or even opposite ways from Western societies. Moreover, even though they are excluded from the urban housing system, internal migrants in China – unlike migrant minorities in the US – do not necessarily have a higher chance of living in a slum compared to the local population (Jiang, 2006) due to the strict government control of urban planning. The recent urban beatification and gentrification also demonstrate the determination of the government to eliminate ghettos in China, which involves the forced eviction of the internal migrant (*The South China Morning Post*, 2017). In fact, on the contrary, empirical studies show that a higher proportion of local agricultural urban hukous are slums and have worse housing facilities (Jiang, 2006).

2.1.4 Crime opportunity theory: More migrants, more crime

Crime opportunity theory, also known as the routine activity theory (Cohen and Felson, 1979) states that some developed societies, particularly their cities, have a higher level of property crime in large part because there are more goods that can be easily stolen. Economic development increases the volume of valuable, often portable, property, and modern merchandising make this property readily accessible to the general public (Neapolitan, 1997; LaFree and Kick, 1986). Increasing opportunities for theft reinforce a form of societal development in which social interactions decrease, which thus increases the propensity for crime. Modern activity patterns draw people away from households and neighbourhoods, and thus reduce the frequency of contacts among intimates and close acquaintances – the prime setting for interpersonal conflict. In this way, 'frustration and misdirected anger created by deprivation and demoralizing living conditions' (Neapolitan, 1997), leads to higher rates of

crime through a combination of enhanced criminal motivations, weakened traditional social controls, and expanded opportunities for selected forms of criminal activity.

Classic modernization theory argues that weakened controls and elevated criminal motivations can explain rising crime rates. Some scholars have applied routine activity theory to explain the rapid social change in contemporary China. After economic reform, urban prosperity provided bait for a large pool of rural migrants, who became ‘motivated offenders’, who availed themselves of the increase in ‘suitable targets’ of urban wealth and property (Liu, 2004). General critics of routine activity theory can be applied to the Chinese case. The theory is more a ‘description of crime than an explanation’ (Jeffery and Bray, 2009: 492), which neglects to address social aspects of crime and criminality.

2.1.5 Subculture theory: Low suzhi

Feelings associated with the term ‘internal migrants’ have become increasingly negative (Wu and Ning, 2007). The population is subject to a wide range of prejudices in terms of their ‘recognizable features’: ‘ill-dressed, ungroomed, speaking mandarin with an accent, drudge, manual work, low-educated’, ‘unclean, dirty and dorky’ (Zhou, 1997; Solinger, 1999). An emblem of citizenship (Solinger, 1999), a sense of insecurity and discrimination against outsiders prevail amongst the urbanites, who have been accustomed to the ‘urban public goods regime’ (Solinger, 1999). On the contrary, some scholarship claims that internal migrants bring traditions of violence associated with rural life when they encounter problems after they migrate into the city. Violence is used as a mean to survive and adjust to urban life (Messner, Liu and Karstedt, 2008). Their conflicting value and lifestyle contracts social control agencies and creates crime (Solinger, 1999).

They are portrayed as ‘filthy, ignorant, simple-minded, hot-tempered’ and ‘impulsive, disrespectful of the law’, ‘having lower moral standards’ (Huang and Shu, 2009: 53; Zhou, 1997: 107). They are ‘lagging behind in the nation’s march to modernity’ (Cohen, 1993), primitive or unenlightened (*yumei*), ignorant (*wuzhi*), and backward (*luohou*) (Wu and Ning, 2007). When facing confrontation, they act without regard for the consequences (*buji houguo*), are impertinent, and try to solve everything via violence (Huang and Shu, 2009). Xin and Lu (2009) move from general characteristics to certain specific psychological traits to explain their violence: migrants experienced the pain of leaving home and scarred dignity caused by daily discrimination in the city. Such stress made them aggressive and prone to use violence. In this way, this group is labelled as the source of a form of social pollution and a source of illegalities (Zhang, 2001).

Framed as forms of explanation or equations to the ‘migrant problem’ or migrant criminality, the broad range of opinions and stereotypes are combined and presented in the Chinese term, *Suzhi*. It literally refers to ‘quality’ (Jeffery and Bray, 2009; Jeffery and Sigley, 2009; Yan, 2009; Zhao and Kipnis, 2000) or ‘habitus’ (Bourdieu, 1977). Poor *suzhi* is attributed with but not constrained to the lack of formal education, associated with inferior lifestyle and cultural values, ignorant, primitive, unenlightened and backward (Bourdieu, 1977). It is a quintessential form of othering the migrant group from the local urban residents in official reports, media and everyday conversations. For example, ‘poorly dressed’, a sign of low *suzhi*, could be improved by acquiring an appreciation for and following the latest fashions (Kipnis, 2006; Yan, 2008). Low *suzhi* among migrants has been further described as including a lack of legal awareness, an incapacity to differentiate crime from non-crime, and thus an inability of the law to be used to restrain migrant behaviour (*Justice Daily*, 1999; Jia and Zheng, 2012). Migrants with low *suzhi* tend to take advantage of their mobility to engage in illegal activities (Zhang and Wang, 1991). Local urbanites are citizens of high *suzhi*; they are generally considered to be well educated, law abiding, and healthy/hygienic. By contrast, citizens of low *suzhi* – often the rural migrant, the criminal element, the uneducated, and so forth – are seen to be in need of observation and management (Jeffery and Bray, 2009; Jeffery and Sigley, 2009; Sigley, 2009, 2013).

By stigmatizing internal migrants as a social group with low *suzhi*, Zhang (2001) argues, the meaning of *suzhi* is manipulated to serve the political and economic interests of the socially powerful. Zheng’s (2007) fieldwork in red light districts in China shows how discourse among the state, the market, and intellectuals constructs the sexually promiscuous, dangerous, and threatening migrant woman as dirty, licentious, and shameless, in opposition to the civilized, demure, decent and moral city ‘lady’. The migrant women who work as migrant hostesses are seen represent the crisis of national morality by destabilizing social order and wrecking urban families (Zheng, 2007). The hierarchical power relationship between the ‘self’ (urban) and the ‘other’ (rural) is thus manifested ‘not only through administrative regulations and policies, but also through cultural representations’ (Zheng, 2007). Urbanites perceive migrants as the ‘dangerous class’, yet in fact, urbanites and migrants rarely encounter each other (Friedmann, 2005). Hence, a huge and irreconcilable cultural gap between rural and urban has been constructed and then used as a justification for extra management of the migrant population by urban governments.

Suzhi functions as the new calculations constituting values for social stratification of contemporary China (Anagnost, 2004). ‘The high *suzhi* subject of the emerging urban middle-class is the apple of the Party’s eye, as far as the capacity of self-govern is concerned; by

contrast, the low *suzhi* of the migrant necessarily implies that the State and other agencies must play a greater role in disciplining and civilizing their conduct' (Anagnost, 2004: 89). For instance, the internal migrants could not fit in with the urban life and bring no more than social problems and ought to be back to their home town (Huang and Ning, 1987). They carried their traditions of violence associated with rural life to the city (Liu, 2005). They were in need of observation and management (Sigley, 2013), which implied intense formal control, tough policing and strict governance. When a Beijing government official identified internal migrants as the target group for a legal education campaign that would include five programs in five years (*Wuwu jihua*) the newspaper supported the officer's declaration that targeting the migrants does not mean discrimination; it is just because they have low *suzhi* (Sheng, 2006).

In summary, *suzhi* has been widely studied, as has its social construction. It can be contained in the traditional media analysis framework of a constructed subculture of low *suzhi* and represented as the moral panic of Chinese society. However, one key overlooked aspect is the migrants' challenge to the prevailing, imagined, culturally absolutist vision of the urban–rural contrast: the rural framed as either backwards or idyllic and the urban framed as modernized or chaos-filled. Such impressions resonate with the symptomatic contradictions in racism, discrimination, and other forms of splitting or othering. Zizek (2008: 14) described the clashing imagination.

When the anti-Semite claims that the Jews are both arch-capitalist exploiters and Bolshevik subversives, that they are both excessively tied to their overly particular tradition and deracinated cosmopolitans undercutting national traditions. In the Jim Crow South, blacks were presented simultaneously as childlike innocents needing the guidance of whites and as brutal sexual predators. In contemporary America, Mexican immigrants are viewed at once as lay-about burdening our social welfare system and as relentless workaholics who are stealing all our jobs.

Similar conflicts can be identified within media framing choices and culturally produced imaginations in China. Apart from being constantly viewed as potential criminals, they are also considered to be the 'silent contributor to the city', 'hardworking' and 'selfless', and 'not afraid of dirt and exhaustion' (Yicaglobal, 2018; China Youth Daily, 2006).

2.2 Differential Processing Theory

Differential processing theorists start from a radically different perspective. In the U.K., the Stephen Lawrence Inquiry (Macpherson, 1999) confirmed that bias in the legal system can explain racial disparities in crime rate data. It concludes that the institutions of criminal justice in the U.K. had 'collectively failed' to 'provide an appropriate and professional service to people

because of their colour, culture or ethnic origin' (Macpherson 1999: 6, 34). 'There is sufficient evidence of wrongdoing to justify official action and that the ethnic origin of the subject has been accurately recorded. The major weakness of these data for this purpose is that they are accounts of decisions taken by criminal justice officials rather than evidence of offending per se (Bowling and Philips, 2002: 375).'

The biases towards a particular population group are often explained by different levels of discretion: they are individually, collectively or even institutionalized within the judicial system and manifest themselves throughout the judicial process. First, individual police are biased; discrimination is not system-wide or department wide but caused by a few 'bad apples' and/or 'rotten orchards' (Newburn, 2015). Second, the legal profession is biased; primarily as a result of unconscious social conditioning and stereotyping influences (Smith and Alpert, 2007; Parker, Karen, Brian and Rice, 2005; Tomaskovic-Devey, Mason, and Zingra, 2004). Social psychological models develop stereotypes based on repeated exposure to negative social stimuli involving the marginalized group and that such stereotypes can influence officer behaviour (Smith and Alpert, 2007). And third, institution-centric models deal specifically with the institutional aspects of the social construction of crime; these models analyse criminal processes such as policing, prosecution, plea bargaining, trial, sentencing and punishment, and engage with normative questions about the principles around which a criminal legal system worthy of the name ought to be organized (Robert, Morgan, Maguire, Young and Hayward, 2012).

Recall that migrant criminality in China is connected with the unfulfilled Chinese dream, loosened social control, rootlessness and constructed low *suzhi*. This research argues that scholars who use these kinds of explanation for migrant criminality simply take the phenomenon as given and then use criminological theories to apologize for it. There is a chronic failure to investigate the criminality production process. Any discrimination, intentional or otherwise, in the process of criminal justice contributes to the creation of a skewed picture.

2.2.1 The migration-crime nexus is wrong from the beginning

If the official statistical 'evidence' on crime patterns among the migrant population is inconclusive, what justification is there for attempting to develop specific explanations on crime among the group? Scholars who have adopted a critical stance begin by questioning the validity of crime rate data.

Data often are statistically manipulated and exaggerated (Zhao and Kipnis, 1999; Zhang, 2001; Sigley, 2013). A simple but often ignored point is that white-collar crimes, especially corruption or embezzlement crimes committed by government officials, are first handled directly by the Communist Party committee and only then processed by prosecutors. As these

criminals are not arrested or documented by the police, the data regarding police arrests is skewed, resulting in a higher percentage of internal migrant arrests among all urban crimes (Zhao and Kipnis, 1999), and a correspondingly lower-than-accurate crime rate for the urbanites.

Many official sources calculate and report on criminological data, most notably the police, the procuratorate and the courts. All of these sources identically, unambiguously and dramatically show that the migrant population is overrepresented (See Table 1.1-1.7 in Chapter One). However, these crime statistics include only the cases reported to and documented by the official institutions, and thus exclude cases that are not included in the database. These cases, overwhelmingly, involve criminal behaviour by the non-migrant population. Further, crime data as presented can be misleading because legal actions affect the crime data. Therefore, in criminology research, self-report surveys provide a meaningful complement to the official database. They aim to include underreported and undocumented crimes in the research, in order to show another version of the picture.

Empirical research using independently collected self-report data shows that the migrant population has had no significant effect on burglary risk (Burglary victimization survey in Tianjin in 2008 for urbanites; see Liu, Messner, Zhang and Zhuo, 2009). More generally, statistics from non-official sources show the mirror image of the picture painted by official China: immigration does not directly relate to the increase in crime in China. Indeed, migrants perceived their neighbourhoods to be safe and their neighbours trustworthy (Cheng and Wang, 2013). Zhang (2001) observes that migrants in Beijing's Zhejiangcun neighbourhood actually perceived urbanites as untrustworthy and possibly dangerous.

2.2.2 Criminalization

Keith and Murji (1990) start by demonstrating that the criminal legal system dominates the process by which a migrant criminality imaginary is constructed. More specifically, they focus on the way crime is defined and handled in different jurisdictions by legislatures, criminal justice agencies, the media and others. The richness of their findings underscores yet again the crucial need to relate the study of crime to that of criminal justice. In this view, data showing a disproportionate representation of migrants at every stage of the judicial process is viewed as a puzzling outcome of criminalization processes, and this puzzle should be investigated.

Using 2000–2011 sentencing data from all over China, Lao (2016) uncovers disparities in sentencing between people who are registered with a local hukou, compared with people who are not. Instead of constituting proof of migrant criminality, official data show that the internal migrants tend to receive higher rates of conviction and harsher sentences. Misrepresentation

and confusion of data help to create ignorance as to the actual extent to which ordinary internal migrants commit infractions. This research claims to describe the internal migrant population and observe that migrants are seen differently and treated unequally in the process of data collection.

2.2.3 Guanxi

In the context of China, *guanxi* is used as a mediating factor to explain the disparities in treatment. Zhang (2002) argues that officials and local residents, who benefit from long-established social networks and connections with urban authority, are less likely to be monitored, exposed, reported, and punished than migrant newcomers. This differential treatment of local resident offenders and migrant offenders within in criminal legal system as mentioned in section 2.2 might be explained with reference to a Chinese social-cultural variable: *guanxi*. This term refers to personal connections in Chinese societies (Xin, 1996), partially understood as social networks or social capital. People with stronger *guanxi*, typically urbanites and officials, are entitled; they are less likely to be arrested and, if convicted, more likely to get a relatively mild punishment. On the contrary, people without *guanxi* or with weak *guanxi*, like migrants, might become the victims of human rights violations, such as the use of torture to extort confessions while in police custody (Zhong, 2009). Therefore, *guanxi* could be a vital component of an explanation for the over-representation of migrants in crime data. Since local urban residents have more *guanxi* with the problematic criminal legal system and other authorities, they can decrease their possibility of being monitored, exposed, reported and punished (Zhong, 2009). In other words, even if official data accurately reports how many people have been arrested, and for which crimes, these figures do not report on arrests-not-made due to *guanxi*-influenced non-intervention. The relationship between ‘crimes committed’ and ‘criminal convictions’ can be very distant, indeed.

2.2.4 Racialization and discrimination

Disparities in treatment of NLHR and LHR populations has also been discussed in the following sections: abuses of power by criminal justice practitioners (for example, deaths in custody), judicial decision making (to shed light on well-documented disparities in sentencing) and probation practice with the NLHR offenders. Zhao and Kipnis (2000) observe that the police have adopted a variety of approaches to supervise and regulate migrants. Han (2009) points out that risk assessment in China is directly in line with the local/non-local hukou discourse. He argues that in China, policing tends to ‘racialize’ internal migrant workers in a way that resonates with the experiences of ethnic minorities in the US (Han, 2010). That is to say,

there is the tendency of racialization towards the internal migrants in Chinese policing. For instance, hot spots policing is found to be focused on the internal migrant population and their concentration neighbourhood (Han, 2009). Similarly, Jones (2005: 201) suggests that police roundups and anti-crime campaigns have become normalized measures for controlling a mix of undesirable groups in urban China: street children, runaways, the mentally ill, unemployed migrants, petitioners, beggars and others who apparently were simply in the wrong place at the wrong time. Wang (2004) argues that the hukou system continues to be the primary internal migration control mechanism; it functions as a citizenship sorting tool that identifies recent migrants and shares this information with police as they engage in targeted policing practices. Further, Wang identifies internal migrants as a group of targeted people, even though they are not included as such in the police system list (Wang, 2004: 128).

In 2001, Guangdong launched a campaign of '100 Township Projects', which aimed to establish safe and civilized neighbourhoods by setting up residents' security guard teams, residents committees on public security, and patrol teams. 'Strike hard' community crime prevention programs (Building Little Safe and Civilized Communities) target the 'three-no tribe' (no valid legal documents, no legitimate job and no legal residence), to which many internal migrants belong (Zhong, 2007). Further discrimination is reflected the courts' inclination to come to speedy verdicts and the ready tendency of biased police to arrest people who, in their view, are obviously out of place in the urban setting where they have been found (Zhao, 1999).

In this way, migrant criminality is regarded as an outcome of legislative, judicial, prosecutorial and punishment processes. This discrimination is presented as one among many reasons for the overrepresentation of internal migrants in China's criminal legal system. Different actors are assigned responsibility for producing legislation, policing, prosecution, trial, and adjudication. As a practice, our attention is directed to the creative, interpretive, or enforcement activities of specific actors such as legislators, judges, police officers, and members of the public. In the fields of research, legal scholarship describes the technical powers and responsibilities of the various actors, whose decision-making constitutes the practice of criminalization. Criminology and criminal justice scholarship seek to explain how these powers are exercised and how these roles are understood and fulfilled in practice, and in broader social and institutional contexts. Normative legal theorizing offers descriptive, analytical, and explanatory approaches to criminalization.

However, there is no systematic exploration of the day-to-day decisions of the police, judges, prosecutors, probation officers, criminal lawyers and prison officers in the context of

China. This urges scholars to produce far more details about the daily functions of judicial institutions that are performed by key actors in the criminal legal system.

2.2.5 Social control

Furthermore, researchers encourage recognition of the deeply political nature of crime policies, and how such policies both reflect and distribute power in society (Gottschalk, 2006). Garland (2014) has approached punishment from the point of view of economic relations, juridical-ideological forms, and political manipulation, each developing a crucial dimension of the punishment-society relationship. That is, 'crime control strategies and criminological ideas are not adopted because they are known to solve crime issues but rather because they characterize problems and identify solutions in ways that fit with the dominant culture and the power structure on which it rests' (Garland, 2001: 26). As Foucault (1972) points out, the criminalization of migrants is related to the state's strategies to regulate migrants.

Crime control has also been reckoned as becoming more and more expressive and instrumental in the context of China (Xu, 2018). When an economic recession occurs, internal migrants are almost always the first made to be redundant and deported (Jiang and Kuijsten, 2003). It is also called slum control, which can be very coercive, violent, and even unlawful, not to mention a violation of human rights obligations (Jiang, 2006).

In a society divided by class, gender and ethnicity, law perpetuates inequalities. When the struggle becomes acute, the law acts as a repressive force (Bierne and Messerschmidt, 1995). As Dowdle (2006, 2016) argued, even though China's failure to construct a (mature) legal system has always led the country to be regarded as a regulatory laggard to the idealism of the 'rule of law' in the so-called 'West' (the US and the EU), China is a world leader in the development of social control mechanisms. When taken into the big picture, China is a distinctly post-Fordist economic entity compared to the still largely 'Fordist' West. In this sense, China is a 'regulatory pioneer'.

Controlling and regulating migrant workers is claimed to be the most crucial work of local government and especially the police, and a variety of approaches to surveilling and regulating migrants have been adopted (Zhao and Kipnis, 2000). Government officials tend to believe that the general public does not consider unofficial residents to be their responsibility. Rather, the responsibility lies with these residents' home hukou and danwei. As a result, pinning the majority of an ever-increasing urban crime rate on migrants includes an implicit disclaimer for responsibility for dealing with this change (Zhang, 2001). By pinning crime on migration and urbanization, the features linked with marketization and capitalism, the manifesto aimed to make up for the 'superiority of socialism' (Trevaskes, 2004). The official discourse in China

explains crime rate increases as a result of the 'evil nature' of mass migration; the ultimate culprit is the capitalist free market (Nielsen and Smyth, 2008). Criminal justice institutions serve to legitimize the constructed deteriorated social order at the state level as well at the local government level.

Bakken and Dutton's analysis includes discussions of how political and social volatility related to the question of hukou differences in the level of involvement in criminal activity have shaped both public and scholarly discourse on the subject. Criminalization processes are proposed as one of the state's means of managing the central contradictions of capitalism. Punitive policies against migrants in the public consciousness and the role of stereotypes in shaping public attitudes toward crime control, politics, and social policy all serve as the foundation for various forms of social control.

The index of fear related to crime and public safety could partly reflect the labelling of certain groups. 'This view ... is itself a form of social ordering, with real political consequences ... The migrant population is being subjected to arbitrary official campaigns of cleaning and reordering' (Zhang, 2002: 68). Surveys show that such demographic features as age, gender, marital status, occupation, and hukou status have negligible effects on perceptions of public safety (Nielsen and Smyth, 2005). A mid-1990s opinion poll of residents in Beijing, Shanghai and Guangzhou found that poor social order had become the 'number one public enemy' as respondents held the non-local hukou residents to be the 'root cause of their feeling of insecurity' (Mei and Wang, 2007: 15). However, their attitudes towards migrants played an essential role in influencing urbanites' perception of public security. That is to say, individuals whose perception of internal migrants is negative tend to be more worried about public safety (Nielsen and Smyth, 2005; 2008). And therefore, they show the hostility towards internal migrants (Nielsen and Smyth, 2009). Interpretations of this phenomenon seem to parallel the interpretations of minorities and crime in the US, where fear and concern about public safety are often rooted in certain stereotypes of particular ethnicities (Nielsen and Smyth, 2005).

In summary, the rhetoric on targeting migrants may serve to increase the popularity among the citizens as well as a way of performing legitimacy. This has been shown in some studies on citizens' attitudes of police trust and fear of crime in China (Dutton, 2005; Zhang, Messner, Liu and Zhuo, 2009; Solinger 1999, Chai and Chai, 1997; Nielsen and Smyth, 2008). Moreover, public trust in police, which is confirmed by empirical studies, is further presented as a symbolic index for the legitimacy of the government and the CCP (Sun, Hu, Wong, He and Li, 2013; Sun, Hu and Wu, 2012). For instance, respondents in coastal cities that had been exposed to constant 'get-tough' manifestos were less likely to be satisfied with current public security compared to

inland Chinese regions (Nielsen, Smyth, 2005), but higher satisfaction towards crime control. The criminalization of migrants serves the increasingly punitive immigration control regime, which aims to stimulate public concern as well as increase trust in and satisfaction with the criminal legal system, especially the police, and by implication, to further increase the legitimacy of the government and CPC (Communist Party of China) (Bakken, 2005, Zhou and Cai, 2008, Zhuo, 2012). Bakken (2005: 8) argues that Chinese police made migrants ‘the scapegoats of all Chinese crime problems’; through targeting, the police gained popularity by using strategies that are similar to the practices of the nineteenth-century London police force. However, the comparison is not completely fair, especially as details of how the targeting was done and its effects in China are lacking. Xu (2017) demonstrates that the manufacture of crime statistics in China should be understood as a legitimization apparatus. Still, details of the process are yet to be assessed systematically.

2.2.6 Southern Criminology

This literature review has blended criminological theories developed in the West with arguments raised by the sinologists and local Chinese scholars. As it shows, some scholars adopted Western-developed theoretical frameworks without amendment, while others claimed that these frameworks are ‘completely’ inapplicable within the ‘entirely’ different Chinese context. Hence, to study any criminal phenomena in China, the topic of southern or post-colonial criminology should not be avoided, it need not be engaged with at length. In his *Policing and Punishment in China: From Patriarchy to ‘the People’*. Dutton (1992) reviews the ‘genealogy’ of Chinese approaches to the definition, control, and punishment of crime. In this book, Dutton argues that Foucault’s theory on punishment cannot be applied to Chinese society because Foucault’s disciplinary subject must be fully individualized in the society and this is not the case in China. Later scholars have wondered whether the Chinese case can be regarded as disconfirming evidence against Foucault, or whether, following Dutton, the Chinese case helps to clarify the subsets of human societies that Foucault’s analysis is capable of illuminating (Dutton, 2012). Or as John Braithwaite (2017: 1512) once asked: ‘could this story be told in Chinese society?’

Friedmann (2005) counts Chinese society as a case of exceptionalism: ‘China must be understood on its own terms, viewed, to the extent that it is possible for a foreign observer to do so, from the inside, judged by its own standards rather than by standards that are largely irrelevant to its history.’ On the other hand, as Bakken (2011) puts it, ‘there is no need to see this fact in terms of Chinese culture’. In the late decades, ideas like ‘China as a method’ (Mizoguchi, 2016), ‘Southern Criminology’ (Carrington, Hogg and Sozzo, 2015), ‘Asian Criminology’ (Liu,

2014) aimed to challenge the dominant role of general theories that have been mostly developed in the context of understanding 'Western' society. Still, the work produced in these fields is taken as 'Western' theories synthesized into an ad hoc framework to identify and justify the significance of the Chinese case. Dutton (2005: 89) makes a powerful enquiry of into this endless dispute: 'why is it that, when it comes to Asian area studies, whenever 'theory' is invoked, it is invariably understood to mean 'applied theory' and assumed to be of value only insofar as it helps tell the story of the 'real' in a more compelling way?'

The relevance of differences encountered in the Chinese example should be avoided to make China into something inscrutable, impenetrable and exotic. At the same time, assuming the cultural context of revolts in China was different thus denies being assimilated into a broader picture is equally innocent of objecting any validity of a general theory of the migrant criminality via not complying with any set of categories that universal at a certain scope. The debate will only be terminated via more empirical studies with proper methods rather than focused on an opposition between the West and the East. Moreover, Chinese society must be regarded as heterogeneous rather than homogeneous. In this sense, the research presented here aims to generate 'a project to write a Chinese story of migrant criminality', instead of a 'story of migrant criminality in China'.

2.3 Summary

We have found a tension between empiricism (which assumes the existence of an 'essence' of migration and crime) and social constructionism (which conceptualizes both as dynamic social processes). It is entirely possible that these two broad views are both accurate. But firstly, the criminality of the internal migrants needs to be reassessed; a more balanced intellectual discussion is urgently required in contemporary China. Furthermore, the extent of criminalization should not be taken not as the outcome of a specific set of ideological and material processes, but as an index of produced criminality. Therefore, we need to analyze how hukou shaped law and social control in China, and vice-versa. The politics of law enforcement has yet to be factored into the study of crime ethnology in China. Helping the public to reassess their impression of criminal risk, both in amount and in kind, may also be an important part of tempering the public appetite for severe forms of punishment, including the use of imprisonment and the death penalty (Hagan, Gillis and Brownfield, 1996). The main goal is to make explicit how through discourse, this new knowledge of migrants defined as a security threat to the urban social body, has led to the creation of new exclusionary immigration legislation in the big context of loosening hukou policy. It calls for a detailed review of the

evidence on hukou disparities across various coercive outcomes. These outcomes include arrests, use of force, traffic and pedestrian stops, and searches and seizures.

On the other hand, talking about migrant criminality without conceptualizing it would lead nowhere. Crimmigration is a confusing and loaded notion which forbids us from asking under what conditions and what type of immigration is criminalized. That is, going back to the beginning, the ultimate inquiry is about ‘what hukou is’ and ‘who an internal migrant is’. In a way, ‘hukou’ and ‘migrant’ are not even ‘real’ outside the migrant-local ideologies and discriminatory practices which brought hukou into being. The approach is to reject migrant and criminological essentialism while retaining hukou categories in order to illuminate the hukou disparities, both visible and invisible, of everyday experience. It is crucial to subject the social construction of hukou and migrant to critical analysis because legal policy and practice are influenced by these categorisations, and they inform the media and public consciousness.

This work, this stretching of the cultural perspective of criminalization and punishment, is less discussed, especially in a more narrative way. This research targets the gap between criminalization and the reproduction of ‘criminality’ to explore hukou at a micro level.

Having outlined the literature, Chapter Three will address the general methodological issues and particular methodologies I use to engage with these questions. I will also address ethical, logistical and legal hurdles encountered during the fieldwork, as well as my coping strategies and reflections.

Chapter 3 Methodology

This chapter first examines the research methods used by other scholars who have addressed similar topics from disciplines ranging from anthropology, economic, criminology, law, political science, sociology, urban planning, and human geography to criminology and media studies. By exploring the process by which they defined questions and selected, applied and implemented methods to investigate them, and then showing how my own process overlaps, extends or challenges theirs, light is shed on the methodological design of the current research. The second section introduces the background and the context of this research, while reflecting on the challenges of doing criminological fieldwork among the powerful in China.

3.1 Methodological Review of Selected Studies

3.1.1 Dark figures, voodoo criminology and the bogus of positivism

Criminologists are well aware that the official crime rates, particularly as documented and reported by criminal institutions (the police, the prosecutor and the court), only reflect a tip of the iceberg of offences that actually occur. That is, crimes are undoubtedly underreported in every corner of the world (Maguire, 1994). This universal defect is also seen in Chinese crime statistics, in a way that sometimes is even more serious and complicated than elsewhere (Dutton, 2005; Bakken, 2004; Xu, 2017). A nationwide survey, quoted by Dutton (2005) and Bakken (2004), found that although 80 per cent of cases were reported to the police in China, only 30 per cent of those were actually recorded and filed. Unlike in the West, where police and victim inactivity (Loftin, McDowall and Xie, 2017) are associated with the escalating rate of unreported crime, the crime figures in China are intentionally and systematically adjusted (Bakken, 2004). Crimes that are not included in China's statistics, sometimes known as dark figures (*heishu*), are affected by several internal factors (Bakken, 2004). With its intricate relation to the Party committees, the police bureaucracy (Tanner, 1999; 2007) and commercialized 'contract policing' provide the police with clear incentives to fabricate positive reports and 'improve' the crime rates (Bakken, 2004, Dutton, 2005 and Xu, 2017). Such adjusted statistics have served to meet three key goals: lowering the overall number of criminal cases, increasing the ratio of arrests to cases filed, and increasing the percentage of officially opened case files that are solved, that is, the famous 'case-cracking rate' (Bakken, 2004). For instance, one effective way to increase the case-cracking rate is to ignore people who report cases that are not easy to solve.

The institutional incentives behind these inaccurate reports are not hard to find. Documentation, even if fraudulent, is used to support claims of improved social security, order and efficiency in solving cases, all of which are criteria used to determine police salaries, bonuses, budgets, personnel hiring and promotion (Xu, 2017). That is to say, such hidden agendas are based on politics as well as police practices. Studies that code such flawed data as ‘objective’ independent variables might actually hinder progress in investigations of the interrelation between migration and crime in China. The current study, by contrast, has identified the hidden agendas, more than the statistics that mask them, as its *de facto* analytical base.

This work thus diverges from quantitative studies involving regression analysis, which aim to unpack correlations between internal migration and the crime rate. These studies, the vast majority of which are by economists or sociologists, typically conclude that a high crime rate is positively associated with higher levels of inequality, inflation and unemployment (Cheong and Wu, 2015; Cao and Dai, 2001).

These claims are made in studies that focus on the Gini coefficient (Dong and Bowles, 2002; Farmer, Liu and Sun, 2016), a statistical measure of income distribution among a population in macro-economic analysis. The Gini coefficient is also seen in studies that focus on trends in various types of inequality, such as individual and inter-household inequality. Other indexes are used to measure urban–rural inequality and regional inequality. The level of inequality is weighted from the income disparity between the rural and urban residents; inequality of consumption and employment between the rural and urban sectors; inequality of regional disparity by using the Theil index of China’s three economic zones (eastern, central and western) as well as intra-provincial regional inequality (Cheong and Wu, 2015; Cao and Dai, 2001). Within discussions on social inequality, a distinction has also been made between inequality and perceived inequality. The latter is vaguely defined and measured via unprofessionally designed psychological scales (Cao and Dai, 2001). All these indexes may reflect the trend of rising inequality in China but with limited accountability. The correlation drew upon these indexes and the problematic crime rate alone cannot assure causality. As Young (2004: 18) stated, ‘only the narratives which link factors to outcomes can do this’. That is, to move from these abstract numbers, we need narratives.

Furthermore, researchers should acknowledge that the context breeding quantitative analysis in criminology today is no longer exists: rapid social change renders studies based on comparative statics invalid. ‘The causes of crime become loosened from their fixed structural moorings’ and ‘the “same” circumstances become imbued with different meanings’ (Young, 2004: 8). Young uses the term ‘voodoo criminology’ to criticize the trend of applying natural

scientific methods to study human action in criminological theory (Ibid., 7). He argues that in late modernity, 'the positivist dream of a scientific sociology of crime, which attempts to objectively relate cause and effect' has been destroyed by the 'loosening of moorings in late modernity' and 'multiple problematisation consequent on pluralism' (Ibid., 7). This is because that 'both the causes of crime and the definitions of crime, that is the outcome or effects, become problematized' (Ibid., 18). To put it in Young's terms, there are no fixed categories, agreed measurements, or objective and uncontested figures that could cultivate more plausible quantitative studies (Ibid., 17). Young's concerns are especially applicable to examinations of the 'migrant criminality' in Chinese society today.

3.1.2 Into the field: Narratives and qualitative research in China

Clearly, official statistical data can only take us so far. Qualitative studies tell the narratives of the 'migrant problem' from more useful and therefore fruitful perspectives. Many scholars have conducted rich ethnographic studies that document and analyse the life of the internal migrant in China. The contribution is from various backgrounds including anthropology, politics, public policy, human geography and sociology (Solinger, 1999; Cho, 2013; Chou and Dongen, 2013; Guldin, 1997, 2001, 2001; Li, 2001; Xiang, 2005; Chan, 2010).

Unfortunately, though sociology as a subject of study emerged in China in the 1920s, it was officially banned from university courses and scholarly research in 1952 (Caira, 2008). This decision, taken by Chairman Mao himself, was inspired by Vladimir Lenin's comment that 'Auguste Comte's sociology is bourgeois' (Bian and Zhang, 2008: 21). The rebirth of sociology in China in the late 1970s is heavily hindered by the fracture of the discipline, due to the lack of professional training and empirical research experience for the previous thirty years (Kleinman and Kleinman, 1994; Lee, 1998). Even in the 1980s, sociological research that involved any cooperation with foreign institutions was prohibited (Wong, 2006).

As a result, one approach that emerged and continues to the present focuses on legislation and policy debates on social control (Jiang and Kuang, 2018; Wang, 2005). This perspective, often informed by legal studies, tends to be constrained by a lack of empirical evidence and sociological analysis. Therefore, it usually offers limited help in our understanding of the problem.

In the 1990s, during the Chairman Jiang era, the restriction on social science studies was loosened after the highly restricted and repressed Mao era. Solinger (1999) and Guldin (1997, 2001) conducted a series of studies about internal migrants in urban China. The studies were conducted in a team that adopted combined research methods including formal and non-formal interviews, secondary data analysis, observation and so on. However, only providing a brief

description and thin analysis of the urbanization and population mobility processes of random towns and cities, this research has also been entrapped in an over-generalization problem. Without any systematic research design, these studies are mostly based on non-structured and sometimes even unplanned interviews with random people encountered during the fieldwork, and spontaneous observation at some random settings. Furthermore, the studies have also misrepresented China as a homogeneous society as the scholars tried to grasp some form of the essence of the society deduced from differing data, unprofessionally gathered.

The young generation of Chinese sociologists has made a significant contribution to the understanding of contemporary Chinese society. During the 1990s, two anthropological ethnographies focused on the same 'infamous' neighbourhood in Beijing, known as Zhejiang Cun, or Zhejiang village (Li, 2001; Xiang, 2005). They drew a vivid life portrait of migrant lives in this migrant-rich neighbourhood. These migrants originally came from Zhejiang province, which provided an alternative to the mainstream discourse which always looks at the migrant and urban village as the 'other'. Xiang (2005) and Li (2001) used Zhejiang village to illustrate how the urban village can be a positive source of growth for the city as a whole, rather than a blight of chaos and disorder, as so commonly portrayed in the media. Xiang spent six years, 1992–1997, in fieldwork for the book *Transcending Boundaries: Zhejiangcun—the Story of a Migrant Village in Beijing*. He largely adopted the methodology used in *Street Corner Society* (Whyte, 1943), that is, he lived and shared in the daily life of the community. He was also inspired by Lewis's (1959) *Five Families: Mexican case studies in the culture of Poverty*. Using a similar method to that adopted in *One day in Zhou's family*, Xiang describes the normal life of every family member in a normal day in Zhejiang village. He revisited and documented another day in this family two years later. At the time, Xiang was an undergraduate student without any professional methodological training. We can see the effort that he put into his fieldwork, but his book is descriptive and journalistic. Now a professor at Oxford University and one of the most influential scholars on migration study today, he himself has publicly acknowledged that book was immature and unprofessional.

Zhang (2001) located her research on exactly the same site but also expanded her purview to include Zhejiang Province, where the migrants originally came from. She travelled to the migrants' home towns and stayed with them for the Chinese New Year, observing what kind of social and economic ties they maintained there. During her sixteen months' of fieldwork (1994–1995), Zhang interviewed 110 migrants from seventy households and had informal conversations with these and many others. Zhang's ethnography deals with the topic of crime and touches on the topic of how migrants perceive their community in terms of crime and

public security, including their daily interaction with the 'hooligans' and their perception of police. However, she failed to conduct systematic, comprehensive and structured research on topics related to crime. As a result, she is unable to explain the institutional and cultural mechanisms that drive the criminalization process of the internal migrant population.

Cho (2013), a South Korean anthropologist, spent twenty-six months in a rustbelt city in Northeast China, conducting an ethnography with officials there from 2006–2008 (Cho, 2013). She spent most her time in street-level government offices and the local residential areas to observe the daily interactions among laid-off urbanites (*xiagang zhigong*), rural–urban migrants and government cadres. However, her correspondents were mostly introduced by government and officials, which undermines the reliability of her description of the migrants' lives. More recently, Jianhua Xu (2012) is the first to conduct a criminological ethnography study in China. His two projects, both on the policy to ban motorcycle in Guangzhou, focus on the relationship between the migrants and the police in an attempt to clarify how police implementation of policies and protocols function to reduce crime and enhance police legitimacy in Guangzhou and Tianzhi. Xu's method combines a content analysis of newspaper articles with 76 in-depth interviews with motorcycle taxi drivers (36), other migrant workers (32), and police officers (8). A shortcoming in his method, as with Cho's, is an unbalanced approach to selecting interview subjects. As a result, his study presents an incomplete and even biased picture of police and migrants in China.

To explore the gangs within in a community, Xiang (2005), Zhang (2001) and Chan (2010) share accounts collected from the gangster's acquaintances – but not from gangsters themselves (Xiang had a brief dinner with a gangster; Chan and Zhang had no direct contact at all). Without direct interaction with the research object, the absence of any 'deviant' migrants undermines the credibility of the research. In addition, all of this ethnographic research was either conducted in a neighbourhood involving migrants or in a factory-based living situation, neither of which are representative of the broader migrant experience in China. These contexts in particular deepen the sense of a presumed 'otherness'. The government and the local population were mostly ignored in these studies.

The perception of a deviant migrant is not analysed in terms of its formation. Presenting their lives without addressing their framing and social construction has sometimes resulted in further stereotyping and demoralization. Until recently, few studies have systematically addressed the perceptions of and reactions towards the migration population in China from the viewpoint of the host population, governing institutions and, especially, the local judicial system.

3.2 Research Methods

Qualitative research should be ‘grounded’, which means that any presupposed method would affect the ‘sociological imagination’ and therefore its creativity, and shape the way data is interpreted (Kunz, 2013). However, Mile and Huberman (1994) warn that, such a ‘non-method’ method, which abandons any existing mythological knowledge, is dangerous and can sometimes lead to highly inaccurate conclusions and skewed interpretations. To avoid this pitfall, this research established a detailed methodology plan in advance and implemented it rigorously while in the field.

This research adopts a mixed qualitative research strategy that combines content analysis, legal methods and secondary data analysis with in-depth interviews and contextual inquiry. Secondary data were collected and analysed in order to understand and document how reports emanating from government agencies, the media and academia affect how the ‘migrant criminality’ trope is perceived in Chinese society today. Moreover, the research employed in-depth interviews as well as contextual inquiry in order to demonstrate how the law and criminal justice contexts play a pivotal role in shaping understandings of ‘migrant criminality’. Contextual inquiry is a type of qualitative research method that combines directed one-on-one in-depth interviews with immersive observation. When interviews are conducted at the police station, the prosecutor’s office or the court, contextual inquiries can probe not only the legal practitioners’ opinions and experiences, but also their motivations and feelings and context at that very moment. Qualitative data thus facilitates an exploration of whether and to what extent the uncritical adoption of hukou-based risk instruments in legal practices have contributed to responses to the perceptions of a skewed crime rate among the police, migrants, academics and others inside and outside of the legal system. Moreover, these data deepen understandings of how the criminalization process is performed and the effect of institutional agendas on this performance. These questions will be answered through the analysis of the qualitative data that describe legal practitioners. The conceptualization of hukou, the deconstruction of the perception of a criminal migrant, unpacking the criminalization process and the review of the political regime will be a major focus of the fieldwork.

3.2.1 Legal methods, content analysis and secondary data analysis

This research draws on extensive archival research on Chinese laws as reflected in legal and semi-legal documents, governmental reports and documents, media reports including newspaper and TV news and academic publications in both Chinese and English. The latter provide both qualitative and statistical, survey-based data. To maximize the validity and

reliability of my conclusions, I present statistics drawn from a wide variety of sources, including many confidential and internal reports from the Chinese government.

3.2.1.1 Legal methods

This research aims to provide a historical review of the law directly and indirectly addressing issues related to mobility control of the migrant population. The law reviewed here includes statutory law and also other legal documents, semi-legal documents and administrative regulations and policy statements. The Criminal Law (1997) and the Criminal Procedure Law (1979) are the fundamental legal documents in terms of penal principles, rules and procedures in China. An evaluation of these formal documents is reinforced by fieldwork that yielded both interview and secondary data, including references to everyday work at these criminal justice institutions, annual and seasonal evaluation and job assessment criteria, and jointly issued guidelines for potential inter-institution cooperation.

Qualitative methods also enabled documentation of unwritten routines throughout the criminal legal system. These decision-influencing routines profoundly influence judicial outcomes at both the individual and group levels. While in the field, I discovered that unwritten rules and procedures actually have a more profound impact on everyday legal practices than black letter law has. Via close reading, analysing and comparing the language, the terminology and the discourse used in each legal document, the research raises potential issues and hypothesis.

3.2.1.2 Content analysis and secondary data analysis

Social sciences research continues to face data distortions in the Chinese context due to the government's constraints and even persistent pursuit of ideological indoctrination and political propaganda (Bian and Zhang, 2008). Scholars are denied access to most official databases, and this and other restrictions on data collection have precluded meaningful quantitative analysis.

The materials in this research are drawn from two major categories of sources: 1) published statistics quoted in the Yearbook (*nianjian*), which is fully accessible in the Shanghai public library; and 2) unpublished data retrieved from reports composed by the criminal justice institutions and government. Access to these highly restricted data was made possible through the assistance of the researcher's personal and professional networks.

National, provincial and city-level data in the Yearbook are too vague for most research purposes. Categories are left unexplained and terms are undefined, which makes it impossible to interpret data related for example to the labelled but undefined 'floating population' (*liudong renkou*) or the similarly ambiguous 'permanent residents' (*changzhu renkou*). I called the Shanghai statistical bureau to inquire about the criteria they adopted in the Yearbook, asking

how they identify who belongs to these groups. Unsurprisingly, like contacting other Chinese public sectors in most cases, they refused to provide any useful explanation. In recent years, the Shanghai Yearbook has even removed these two columns from their tables. One might lament the inability to compare data from one year to the next, but since the categories and terms were undefined, this additional weakness had no impact on the research. This data yielded no useful knowledge on internal migration in China.

The police, procuratorate and courts sort out crime data based on cases filed with them. The floating population management office (liudong renkou guanli bangongshi), under the local government, also produces monthly, quarterly and annual reports on administrative data on the migrant population. These statistics are used for job assessment and also circulated within government departments for policy evaluation and future policymaking. However, these first-hand data, collected and calculated by the frontline criminal justice institutions and administrative organizations, are not published and therefore normally inaccessible to the researcher or the general public. I gained access to these reports during 2013–2014, before I started my PhD, while I worked for the Chinese government. (As I describe below, this experience at the Chinese Party School also opened many doors during my fieldwork period.) Some other documents, guidelines, work routines, inter- and intra-institutional documents and reports have been provided, sometimes in confidence, by interviewees and others during the course of fieldwork.

Though these statistics are more detailed and carefully presented than those in the yearbook in terms of time, numbers, and categorizations, a disturbing number of errors and inconsistencies were detected. Reports composed by different departments and institutions conflicted with each other, and sometimes tables within the same report presented incompatible data. One explanation for these discrepancies is that the reports were carelessly calculated, formulated and proofread. However, I also suspect that the data were manipulated to be intentionally chaotic in order to prevent any deep reading into them. In any case, even bogus descriptive statistics must be included here, for two reasons. First, they show the official view (or, better, plural views) regarding crimes related to the internal migrants. Second, their presentation enables scholarly engagement with questions of their accuracy and internal inconsistency. These kinds of engagement with the data can lead to meaningful insights.

3.2.2 In-depth interviews and contextual inquiry

In order to demonstrate the ongoing criminalization process of migrants – with special attention to different rates of criminal allegation, arrest, detainment, conviction and length of sentence for people registered to different hukous – the data must be unpacked carefully and systematically.

That's why we need qualitative information to facilitate a thorough understanding of the criminal justice process. The entire process must be disaggregated into each decision-making point, and then relinked. This task demands that we redirect our focus away from the result of the decision-making (that is, the numerical and quantified judicial outcomes) and toward the way these factors – legal and extra-legal, discretionary and in-discretionary, custom and non-custom – are woven into the process.

In particular, this research aims to use insights gained via in-depth interviews and contextual inquiry to unpack the data collected through the above-described methods. This approach is pursued in order to get behind the appearances, to explain how these data are constituted, and to find out what is actually going on in reality. In other words, how do we arrive at these issues?

Legal practices bridge the law and legal outcomes. That is to say, in everyday law enforcement and judicial operation, humans with a huge variety of interests and pressures produce the crime figures. The law is one factor that shapes these people's behaviour, but it is far from the only one. Criminalization keeps the close relationship between legal documents and the criminal justice practices in view, while avoiding a synthesis that would obscure the specific contributions of specific individuals, agencies and institutions. Therefore, in-depth interviews with frontline bureaucrats throughout the criminal legal system contribute to an investigation of how the regulatory framework is implemented and functions in practice. The subjects raised during interviews focused on everyday practices based on their work related to migrants and crime, as well as personal views and personal encounters with the migration group.

In previous studies, Zhang (2001: 165) and Chan (2010: 67) reported that some migrant leaders act like local bosses or political brokers to regulate communal life, while negotiating with the police, the factory, the company and the government for migrant's rights to live, work, and trade in the city, even including some crime related issues, such as crime confessing and assisting investigation. This insight struck the researcher as intuitively meaningful and worthy of deeper investigation. Hence, migrants in mediating or managerial positions were specifically sought out to be interlocutors.

Therefore, this research applies a thorough qualitative approach that focuses on all stakeholders to the criminal legal system: the police, prosecutors, judges, criminal lawyers, government officials and 'migrant leaders'. This research brings together all of these vastly different roles into one coherent study. As a result of my interviews and analysis of other data, I have come to envision these elite and migrant mediators as actors whose status, position, and practices are shaped by power configurations that have developed over time. As a result of my

new understanding of these actors and their actions, through institutions and both formal and informal networks, I have come to realize that the idea of ‘migrant criminality’ is a politically motivated frame that must be discarded.

Interviewees were asked questions about their work as well as their life, their behaviours and their attitudes. Interviews with elites and experts usually took an open-ended and semi-structured format, which enabled the interviewee to volunteer detailed information that went beyond the scope of the initial questions asked (Aberbach and Rockman, 2002). This is possible because the format leaves ample space for the interviewees to interpret the question based on their own understanding and guide the direction of the interview toward the issues they perceived as significant or more relevant. It offers the opportunity for the interviewee to contextualize and represent her/himself as much as possible, to throw off the shackles of narrow definitions and outsider’s misunderstandings (Aberbach and Rockman, 2002). Engaging with the interviewee as an equal partner during the interview improved the value of their responses. Hence, the interview design adopted a flexible approach; follow-up questions were improvised according to the information received earlier in the interview. For example, when a police officer was asked about contacts with migrants when off-duty, an interviewee showed his understanding of what constitutes a ‘contact’:

Do you have any contact with the migrants in your daily life? I mean off-work.

Migrants? Em...No...No...

How about the delivery guy, the waiter/waitress in a restaurant or something?

Ah, sure, if you call those as contacts.

Migrants? How dare I have contacts with them?? ... No, I also tell my family members not to. We would rather pay extra money if some conflicts arose. If something happens, they will go back to their hometown, but my family and home are here. (The researcher and Cai)

In this way, concepts are interpreted and negotiated, and refined both by different interviewees and over the course of a single interview. The openness stimulates meaningful dialogue and leaves ample space for contextual analysis.

In terms of the structure of the interview, I began by introducing a topic by showing graphic representations such as crime rate pie and bar charts of proportions and trends regarding the relationship between migration and crime in recent years, as well as government reports highlighting this particular issue, all with the objective to direct the attention of the interviewee toward ‘migrant criminality’, via a subtle presentation within a more overt frame of governance and legal practice. The interview outline included topics focused on different perspectives of working-life experience: both on- and off-duty roles and role-playing, work encounters and their views. The topic list is presented in the Box, below.

Interview topic list

Role

- What is your current role? How long have you been taking this role?
- What is your relationship and what interaction do you have with the internal migrant in your current role?

Life

- Are you identifying yourself as a local/non-local/migrant/...?
- Do you have any form of contact with them in your daily life?
- What is your image of them/how do you see them?
- Do you know the news that in 2011, seventeen Guizhou students were forced to form a separated class from the local students due to the tense objection from the local parents at Yucai high school, Cixi? And what do you think about all of these?

Implementation of the recent reform

- What do you understand the recent reforms, in relation to the 'equal application of legal rules to rural–urban migrant suspects', in your jurisdiction to be?
- How was your practice changed in response to the changed reforms? What has enabled you to implement the reforms? What barriers have hindered implementation of the reforms?
- What do you think the overall impact of the reforms on migrant suspects has been?
- How well do the reforms address the problem of migration and crime?

Current practice

- How is your practice with migrant suspects or criminal cases involved migrant suspects in the justice process?
- Are there any gaps in your practices (migrant and local urban citizens; within the migrants)? And how those gaps implemented?

Attitudes

- What do you think about 'migrant criminality'?
- Has your role impacted/affected/changed any of your attitudes towards the migrant population? How so?
- What measures do you think would solve the problem of the overrepresentation of migrants in criminal legal system? And what would be needed to implement these suggestions?

3.3 Research Sites

3.3.1 The Yangtze River Delta region

To establish the validity of this approach, the project focused on Yangze River Delta (YRD) areas (Shanghai, South Jiangsu and East Zhejiang) that had the most significant representation and profound impact on the course of ‘migrant criminality’. The detailed statistics quoted Chapter One show that this geographic area of China experiencing the criminalization of the migrants.

China’s manufacturing geography directs internal migrants toward two major economic strongholds: the Yangze River Delta (YRD) and the Pearl River Delta (PRD) (See Figure 3.1).

These twin business deltas host China’s largest megalopolises and are also home to the highest population of migrant workers (Haas and Ban, 2014). Previous research on internal migrants has been conducted in the PRD region (Chan, 2010; Xu, 2011; Pun, 2016). Long known as the factory to the world, the PRD has long been associated with a large flow of internal migrant workers and factory kingdoms (*The Economist*, 2002; *the South China Morning Post*, 2015). The region is reported and branded as the quintessential experimenting field with capitalism open market systems in China. This has drawn extensive attention from social science researchers (Lin, 2011; Smart and Lin, 2007). Most of this research is carried out by academics based in Hong Kong and Macau, or by overseas scholars connected through institutions in Hong Kong and Macau. Such geographic proximity and existing academic connections help to explain the concentration of social science fieldwork in the PRD region. By contrast, the YRD is far less covered in academic studies and media reports. The current research explores China’s relatively neglected and under-studied internal-migration concentration region: the YRD.

Among the YRD, Shanghai and Zhejiang are specially analysed here because they are stereotyped as exclusionary and rich in comparison with other Chinese regions (See Figure 3.2, even it is ‘just’ a map by stereotype nodes). On the one hand, this has brought both regions millions of internal migration population. On the other hand, the stereotype of these areas as the most exclusive in China is also to be unpacked and discussed in the research.

Figure 3.1 YRD and PRD in China

Sources:



Figure 3.2 A map of China by stereotype nodes



3.1: Research frontiers newsletter of the research grants council of Hong Kong, China. Retrieved from https://www.ugc.edu.hk/minisite/rgc_newsletter/rgcnews11/Pages/4b%20Deltas

3.2: foreignpolicy.com, 2014

3.3.2 Multi-sited fieldwork

3.3.2.1 From local to central

The mid-1990s witnessed the emergence of ‘multi-sited ethnography’ (Marcus, 1995), which provided a new impetus to migration studies by developing a broader scale and framework. Multi-sited fieldwork aims to stimulate ‘a rich set of critical reflections and practical examples for researching social formations spanning numerous localities’ in a globalized world (Falzon, 2009: 91). The current research applies innovative features of multi-sited fieldwork to the study of migration in China. That is, instead of limiting the research to one particular city or administrative district in China, fieldwork is extended to include a wide range of institutions throughout a vast landscape of east coastal China. In this bounded region, I looked at nested political-geographic entities within this region. Each of these has its own set of institutions, but in both theory and practice, their actions are intertwined.

As mentioned above, the YRD (Yangze River Delta) is the main geographical focus of this research. Shanghai, Hangzhou, Ningbo and Cixi are the four administrative regions selected for the fieldwork. They represent different administrative divisions and levels of local government in urban China. Administrative units in China are currently based on a three-tier system: the

Table 3.1 Administrative divisions and selected cities of the research

Level	Administrative unit	City
Provincial	Municipality (zhixia shi)	Shanghai; Zhejiang
Prefectural	Provincial capital and sub provincial city (shenghui and fusheng ji)	Hangzhou
	Sub provincial city (fusheng ji)	Ningbo
County	County-level city (xianji shi)	Cixi

Source: Administrative division of the state council, the People's Republic of China, retrieved Aug 26, 2014 http://english.gov.cn/archive/china_abc/2014/08/27/content_281474983873401.htm.

Table 3.2 Residential population and proportion of LHR and NLHR populations of Shanghai, Hangzhou, Ningbo and Cixi, 2013

City	Residential Population (10 thousands)		
	Total	LHR population	NLHR population
Shanghai	2, 415	1, 425	990; 41%
Hangzhou	884	707	178; 20%
Ningbo	766	580	186; 24%
Cixi	204	104	99; 49%

Source: Data retrieved from Shanghai, Hangzhou, Ningbo and Cixi Statistic Bureau.

provincial level, prefectural level and county level. Shanghai is a provincial level city; Hangzhou is the provincial capital of Zhejiang province; Ningbo is sub-provincial city and Cixi is a county level city under the governance of Ningbo (see Table 3.1, above).

In this way, the selected units cover all levels of the country's administrative divisions. Unlike research that draws general conclusions of the complex and changing Chinese society based on fieldwork in Shanghai or Beijing, which are actually the exceptional cases, this research allows a thorough understanding of urban China by taking the fieldwork in the YRD region. It connects different aspects of the issue into one coherent study from every level of the governments of the region, from local to central, from coastal to inland, from county to mega-city. Moreover, Shanghai, Hangzhou, Ningbo and Cixi are also on the top lists of migration destinations and therefore contain large internal migrant populations (See Table 3.2, above).

Table 3.3 Summary of interviewees by gender, city and institution

Role	Total	Sex		City			
		Female	Male	Shanghai	Hangzhou	Ningbo	Cixi
Police	13	1	12	4	3	3	3
Prosecutor	12	2	10	2	4	3	3
Judge	12	5	7	5	0	2	5
Lawyer	12	5	7	2	4	3	3
Prison	12	1	11	6	3	3	0
Migrant leader ⁴		3	1	2	1	0	1

Taking the year of 2013 for example, Cixi had a migrant population of almost one million, who accounted for nearly half of the city's residents. On the contrary, in the city of Hangzhou, the capital of Zhejiang province, only 20 per cent of its residents were migrants. This means the vast majority of the residents in Hangzhou are registered with a local hukou. Many factors affect the choice of migration destination. While some of these are briefly addressed in the chapters that follow, they are not the object of rigorous analysis. Nonetheless, the diversity of fieldwork sites visited, in terms of their administration level and the proportion of the migrant population, provides multiple angles to explore the criminalization process in various situations.

As shown in Table 3.3, sixty-one interviews were conducted with legal practitioners, including approximately twelve people per category and evenly spread among the four cities and institutional levels (the zero-judge-response-rate in Hangzhou will be explained later in this chapter); four interviews were conducted with migrant leaders. In this way, the project challenges the migrant-centred and PRD-based approach that has dominated the migrant study literature in China during the past two decades. The key issue that the research addresses is breaking through existing limits of access to knowledge of legal practices that are embedded in complex and confidential sources and transforming that knowledge into systematic data for contemporary and future study of legal systems and migrant control in urban China.

3.3.2.2 From police to prison

Unlike most ethnographic fieldwork on migration in China, which have been conducted in specific factories in Shenzhen (eg., Chan, 2013) or Guangzhou (eg., Pun, 2010), this research extends the site to include a variety of institutions related to the process of the criminalization of migrants. Every institution involved in the legal process is examined vertically as well as horizontally: from the police at the initial stage to incarceration in and finally release from prison; from the local district courtroom to the supreme court, from the community police station to the central Shanghai police bureau.

3.4 Data Analysis

To integrate qualitative data into the research, data should be analysed shortly after it has been collected, while nuances of tone and emphasis are fresh in the ethnographer's mind (Coffey and Atkinson, 1996; 1996). Accordingly, recorded interviews were transcribed right after the interview. Notes were taken during interviews that were not recorded, and these were refined immediately afterwards. A research diary was also kept as a repository of feelings, thoughts and mental notes, in order to refresh memories later. I also designed and implemented a coding scheme. The final draft of the coding manual was set up after all data was collected. Data were coded, re-coded, and analysed by NVivo 10, a qualitative statistical software package. The coding scheme was also refined and revised throughout the coding process.

3.5 Practical and Ethical Issues

3.5.1 Background: doing criminological fieldwork in China

Social sciences research is distorted in the Chinese context due to the government's resistance, persistent ideological indoctrination and political propaganda. It is still concentrated on applied, policy-oriented, empirical work intended to offer the public further justifications for the continued support of both state and Party (Zhou and Pei, 1997; Zhong, 2009). Any consideration of developments in the discipline of social science needs to acknowledge the role of political power under the regime. Within the context of persistent ideological indoctrination and political propaganda, crime research in China is considered to be particularly sensitive and therefore strictly controlled (Zhong, 2009).

One aspect of this oppressive political environment is the regular denial of access to databases related to governance or government institutions. All published data are manipulated. This seemingly bold claim will be elaborated and documented in the following chapters. Furthermore, the restriction on data collection hindered many meaningful lines of sociological and criminological enquiry.

3.5.2 Accessing the inaccessible

I did not attempt to use official channels to reach out for potential interviewees who work in the police department, judicial institutions or correctional services. If my 'cultural knowledge' of Chinese society and working experience in government taught me one thing, the response to any extra-work request to the public sectors in China is always a consistent and non-negotiable 'no.' I did not see any hope of getting a response from the criminal justice institutions by calling their public relations phone numbers or knocking on their doors and asking for assistance in

research. In fact, contacting prospective interviewees via official means would likely have led only to trouble and danger for the researcher as well as anyone who agreed to be interviewed. At the beginning of my research, several Chinese scholars warned me that the legal system in China is inaccessible and therefore my research is almost a ‘mission impossible’.

All of these create a tense atmosphere that restricts social science research involving government or related to governance, especially on crime matters. Interviewing police, prosecutors, judges and prisoners entails the following two risks: 1) the researcher might be accused of studying ‘sensitive issues’ and accused of collecting intelligence for ‘the West’; and 2) the interviewee might face penalties and sanctions for ‘breaching their legal and ethical duties’. More concerning than the difficulties which might befall a self-aware researcher are those which collaborators may face. Either prior to or during the interview, many interviewees expressed their fears and worries, including losing their jobs, receiving warnings, public condemnations or even being charged with criminal offences against national security such as national secret leakage or treason. I will outline the steps taken to ensure the safety of these people later in this chapter.

3.5.2.1 ‘Chinese student studying overseas asking sensitive questions’

In 2014, under Chinese president Xi Jinping’s anti-corruption campaign, by central commission for Discipline Inspection of CCP accused the Chinese Academy of Social Science (CASS, the most significant government think tank and academic research organization) of ‘being infiltrated by foreign forces’ and engaging in ‘illegal collusion’ that threatened public security and social order. CASS was criticized of its failure to get tough and take effective action in ideology promotion, media control, internet management, and especially unsuccessful in boycott negative influences from overseas universities and research institutions (Gan, 2016). Following this event, CASS was warned to ‘remain alert to some politically sensitive issues’ by the official force (*the South China Morning Post*, 2014). The atmosphere thus created haunts to this day.

At the time I began my fieldwork in 2015, China was celebrating the one-year anniversary of its counterespionage law. Propaganda slogans, hanging over the main entrance of hospitals, banks, and government buildings, left an unambiguous message to all who passed by. Figure 3.3 below gives an example of how the warning to fight against espionage in urban China was made openly and specifically. The banner says, ‘Promotion of one-year adoption on counterespionage law’.

Figure 3.3 Counterespionage sign in a commercial area in Ningbo



Source: taken by the researcher in Ningbo in Nov 2015.

In November 2015, China established a dedicated hotline number, ‘12339’, for citizens to report any suspicious espionage around them. Civil servants’ regulations stipulate that ‘If any overseas scholar requests a call, mail, interview, photo, or videofilm, or asks for any documents, the public servant should reject and report the event to the Institute.’ There has always been a streak of xenophobia in Chinese communism, and that too is creeping back. A cartoon poster warns female government officers of ‘dangerous love’ with foreign spies, as illustrated by the naive ‘Little Li,’ who hands over government secrets to a red-haired ‘David’ (see Figure 3.4, *The Guardian*, 2016). China increasingly sees itself in ideological confrontation with the West. The party magazine *Qiushi* quoted Xi Jinping’s charge that some Chinese have ‘unwittingly become trumpeters of Western capitalistic ideology’ (Browne, 2016).

Similarly, an article titled ‘How to spot a secret agent around you’ (*jiaoni shipo qianfu zai ni shenbian de jiandiemen*), widely retweeted in Chinese social media platforms such as Weibo and Wechat, shows how to spot a spy (Safe Nanyue, 2017). ‘Chinese student studying overseas... and asking sensitive questions’ is one of the suspicious features (Safe Nanyue, 2017). My identity as a PhD student in Europe studying ‘social order, criminal legal system and crime’ made me an object of suspicion in such an atmosphere. Repression hanged heavily over the entire process of the fieldwork, and my work was restricted accordingly.

Figure 3.4 A poster in Beijing warning against foreign spies—‘Dangerous Love’



Source: *The Guardian*, 2016.

For instance, in the city Hangzhou, every judge I contacted refused to be interviewed. Each offered the same reason: they were forbidden to interview because of a previous experience with a ‘spy scholar’. I was told that in 2012, a U.S. scholar came to Hangzhou court and delivered a lecture on judicial reform. She discussed the topic with a few judges in the Q&A period. After she returned to the U.S., she published extracts from the conversation on the Epoch Times, which the Chinese government regards as anti-China media (Huffingtonpost, 2014). The scholar was accused of ‘shaming the international image of China’ and conducting ‘intelligence work’ for the U.S, and the judges who had spoken with her almost lost their jobs. The authenticity of the story is undisputable, as is the genuineness of the intense fear it created and continues to create. As a result, the path toward interviews with judges in Hangzhou was fully blocked.

Some people who agreed to be interviewed were nonetheless cautious and circumspect. Hu, a police officer in Shanghai, pulled a long face and offered little. Even by not responding, he provided valuable data for the project:

I did not mean I would reject your invitation for an interview, I am here because I chose to come. But I can only tell you superficial and general things, things you can find exactly the same on our website. I don’t want to do that. You are Wen’s friend, and I don’t want to trick you and not tell you the whole story. But I can’t tell you the whole story, so it is totally meaningless for you to interview me. (Hu)

Figure 3.5 A screen saver in a Ningbo prosecutor's office



Source: taken by the researcher in Ningbo in Nov 2015.

Another case happened in a prosecutor's office. I was waiting to meet an informant while her computer screensaver kept rolling 'do not accept media interview or meet anyone from overseas without permission' (See Figure 3.5). This is one of series of screen savers – 'National Security Rules' – adopted uniformly by government agencies. The informant walked in and glanced at the screen. Then she turned and looked at me up and down. She paused and then asked, 'are you a spy?'

During my fieldwork, several informants, interviewees and potential interviewees openly addressed such concerns. After I introduced my research context on migration and crime, Ju, a Shanghai prison officer interrupted me and raved:

These are national secrets! We, China have the National Statistical Bureau and the Chinese Academy of Social Science to study this topic. ... I am thinking about why they (universities and research institutions in the West) recruit a lot of Chinese students? My cousin is doing her PhD in the U.S. Her supervisor asked her to conduct research about rural China. What do you think the reason can be? Now they are relying on people like you to conduct the intelligence work. (Ju)

I tried to calm him down and explained that I was only finishing my PhD thesis. He shouted 'You don't think so? You pay the tuition fee, and you need to collect the information for them. How funny!'

3.5.2.2 Competing credentials: The Party School vs Western universities

I reached out directly to people who work in judicial institutions instead of going through formal institutional channels. Based on my social network with friends, former classmates and

colleagues, I was connected with informants and interviewees. The choice of method was accepted by the interviewees as workable and proved to be effective. As Ying, a policeman in Shanghai straightforwardly put it:

I doubt who is going to come and talk to you? (contemptuous laughing) I accept your interview only because you are Li's friend. If you ever come to our department, no one would talk to you. No one would even look at you. No way! Never!

I adopted the snowball strategy to extend the sample pool and recruit additional interviewees. That is, the interviewees introduced me to their colleagues, families and friends who work (or had worked) at my targeted institutions. Building trust between the interviewee and the researcher is the key to getting the snowball rolling. Still, the process was stuck sometimes, and it was never as easy as the metaphor sounds.

During my fieldwork, I came to believe that my 'Western' affiliations, with the University of Kent and Utrecht University, were more of a hindrance than a benefit to my fieldwork. To persuade potential interviewees to take part in the interview and speak as openly as they possibly could about their daily encounter and work related to the topic, I had to navigate a way to earn and build their trust. Explaining the rigid ethical review procedures which I had developed at the University of Kent did not help to ease their anxiety, and even casual mentions of 'the West' sometimes reinforced that anxiety. I gradually learned that I had a credential my interviewees respected and trusted: I worked for the Party School before I started my PhD. When I mentioned this, I could see and feel the doubts and suspicions in their eyes or and voices dissipate. They became more open to speaking about their work and thoughts. During the snowball process, some described me as 'one of them', as 'harmless' and as 'non-dangerous'. Hence, my hard-core brand 'the former party school faculty' countered my disadvantageous name tag as the 'potential spy from a Western university' and paved my way to access the otherwise inaccessible. The data thus collected are hoped to make significant contributions to this area of inquiry.

3.5.3 Confidentiality

More than half of the interviews took place in cafés (Starbucks, mostly) and restaurants. Most of the others were conducted in the interviewee's office, the police station, the court room during office hours. Each interview lasted between half an hour and two hours. I recorded 90 per cent of the interviews.

All of my interviewees are private Chinese citizens, and ensuring their privacy is first and foremost among ethical concerns as related to this research. All the participants are treated anonymously, and names used in the thesis are pseudonymized. Further, when narratives

included unique details that might possibly allow for identities to be deduced, these details were expunged from my presentation, even when the details might have strengthened my analysis. Interviewee privacy comes first. To deal with the vulnerability of the interviewees, all audio records and transcripts are kept in a separate removable storage unit and disconnected from the internet while in use. All data was destroyed after the project was completed. Participant profiles are numbered, instead of named. These profiles were destroyed immediately after analysis was completed. In addition to these technical measures, I have made every effort to protect the confidentiality of those who participated in this project. For example, I switched my cell phone numbers and WeChat accounts regularly during the fieldwork.

By accessing the inaccessible, while protecting the confidentiality of the informants and interviewees, the research has gathered rich data from the police, the prosecutor, the criminal lawyers and the migrant leaders, as well as employees who worked in the jail and prison. I will present and analysis the data on policing, prosecuting and sentencing and prison, in turn, in the following three chapters.

Chapter 4 Policing

Police departments, as the institutional gatekeepers of the criminal legal system and typically the initiator of judicial processes, have a fundamental impact on the overrepresentation of non-local hukou registered population (hereafter NLHR; and LHR for local-hukou registered) throughout the criminal legal process. This chapter examines the interactions between the police and the NLHR population. China's police system consists of the Ministry of Public Security (MPS, Gong'an Bu) at the central level, the Bureau of Public Security (BPS, Gong'an Ju) at the city level, and local police stations (Paichu Suo) at the community level. Reflections presented here on historical and contemporary accounts of policing internal migration are based on interviews with BPS police officers as well as frontline officers at local stations. Several officers willingly shared their insights regarding surveillance, profiling and index policing, with a special focus on the policing of the NLHR population.

4.1 Surveillance

Scholars continue to identify hukou as the centre of police surveillance in contemporary China (Light, Prado and Wang, 2015, Zhong and Broadhurst, 2007; Han, 2010; Wang, 2004; Xu, 2014). Indeed, during the Maoist era and beyond, most surveillance was conducted by the hukou. As the most present administrative element in every Chinese citizen's life, the hukou chained people to their location, wherever that might be. Under this rigid system, 'benefits' related to employment, health, education and basic needs are reserved for registered residents (Solinger, 1999; Dutton, 1992). The combination of hukou coercion (e.g., enforcement of residence requirements) and hukou benefits limited mobility. Surveillance on migrants has expanded to include corporation between the police and businesses. Palmer (2011: 73) claims that 'the local police stations (paichu suo) and their close ties with neighbourhood committees (juweihui)', effectively and comprehensively manage public security at the local level. However, Palmer does not present concrete evidence in support of his claim about 'effectiveness.' While evidence of surveillance effectiveness is scarce, Zhang's (2002) case study of in Zhejiang Village in Beijing in 1990s documents the negative effects of post-Mao policing practices, including local police corruption and ineffective preservation of order.

Despite little evidence of any kind, surveillance on internal migrants in China is still mainly understood as occurring primarily within a hukou context. Data presented below will demonstrate that this perspective no longer reflects reality, yet theoretical guidance related to

institutional changes in the policing system, as well as the high-tech and political technologies that drive these changes, is lacking. An even greater shortcoming of the literature is the absence of concrete data regarding policing in practice, as distinguished from proposed laws and guidelines regarding how policing ought to be carried out. As a consequence, precisely how surveillance is incorporated into everyday routines, and the extent of its ‘effectiveness’ or ‘ineffectiveness,’ remain unexplored, and the relationship between surveillance and criminal activities is unclear.

During my interviews with the local police, it became clear that social sorting and proactively selective risk management are central aspects of surveillance. Four major surveillance mechanisms are used: population management, migrant management, focal population management and management of staff working in amusement places. Population management has largely withdrawn its role in surveillance. The latter three are stipulated in law and legal documents as surveillance mechanisms and continue to be enforced as such. However, to reveal the myth of Chinese surveillance, this chapter argues that their functions are invalidated at both institutional and individual levels.

4.1.1 Surveillance mechanisms

4.1.1.1 Population management

The ‘hukou registration guideline of P.R. China’ (1958) is the legal foundation of the population management system (Renkou Guanli, hereafter PM)). It stipulates that the police institution is the ‘sole governmental organ’ authorized to manage the system (Han, 2010: 594). The guidelines require registration with the local police of any birth and immigration, and accordingly deregistration for death and emigration (Articles 9, 10, 13). As mentioned, ever since hukou lost its practical authority to allocate many benefits, citizens were no longer effectively chained to their hukou registration places.

In 1982, China set up a temporary registration permit process to regulate the growing population of internal migrants (Fan, 2008). In addition to people who were born into a hukou or were formally transferred from one to another hukou, it became possible for individuals to apply for and be granted a residence permit (Juzhuzheng, hereafter RP) or, possibly as a step toward gaining RP status, a temporary residence permit (Zanzhuzheng, hereafter TRP). The power to enforce the TRP and RP registration system and its legal consequences was assigned to the police, as usual. Custody and repatriation institution and procedures were introduced in each local police bureau in the same year, and local police in every city built and managed removal centres. This regulatory system focused on the homeless and beggars at first, and then expanded in 1990 to include a wide range of internal migrants. A new term, ‘triple without’ (sanwu) has

been brought into this regulatory framework. It refers to those without a local ID card, without TRP or without proof of employment. Rather than a personal status, 'triple without' de facto comes into effect at the moment one is stopped by the police on the streets. Without one of the three documents, the person can be detained and, 'if applicable, be sent back to their hukou' (Han, 2010: 599). In other words, the violators of migration policies are prone to incarceration and deportation. The infamous death of Sun Zhigang removed the veil of arbitrary detention, police abuse and violence within the custody and repatriation system. Sun Zhigang was a migrant worker who died from physical abuse while being detained by the police in 2003 (Biao, 2013). As a result of the public outcry, police detention centres were replaced by a non-compulsory social service procedure for homeless people, still implemented by the local police.

At the time, it represented a radical change: Possession of an RP or TRP is no longer compulsory in Shanghai, but registration for them remains open as these permits continue to offer access to benefits such as access to education, health care, and social welfare, and the right to purchase property. Though haven't been officially revoked, the law of 'registration with the local police within 10 days arriving Shanghai'⁴ has no teeth. As Guo, a woman police officer responsible for paperwork, explained,

Today, registering for TRP and RP is voluntary ... It is not something you have to have. The RP and TRP are about their (the migrant's) need and their ability. It depends on whether they need it or not. Also, they have to meet certain criteria to apply for the permit. It is not like everyone can have it if they apply. (Guo)

Since relatively few people apply for RP and TRP, their ability to serve as the basis for surveillance functions also has declined. As a result, the PM system, fully housed in the hukou system and supplemented with RP and TRP, has gradually lost its original role.

4.1.1.2 Migrant management

Over time, the hukou's involvement in adjudicating residence decisions has become more distant. After RP and TPR were made optional, migrant management (Waikou Guanli, hereafter MM) became the primary migrant surveillance strategy, which is enforced mainly in urban neighborhoods where migrants are concentrated. Migrant mobility software (Wailai renkou dongtai guanli yingyong ruanjian) has been developed to conduct this surveillance (see Figure 4.1).

⁴ 'Shanghai regulations on migrant management' (Shanghai wailai liudong ren yuan guanli tiaoli) 1997-1-1

Figure 4.1 A screenshot of information on migrant mobility management application software

南都周刊 外來人口動態管理應用軟件

外來人口動態管理應用軟件

縣城分局南都派出所 南科比對結果預警 人員分類: 全部 Go

比對時間	暫住證號	姓名	性別	出生日期	戶籍地	社
25 200704231700		男	19841207	湖北咸丰县	地政村	暫住村
26 200704231010		女	19701010	安徽阜阳市颍泉区	地政村	地政村
27 200704191059		男	19780826	浙江庆元县	地政村	地政村
28 200704181440						

Source: ndweekly.com (Nan du zhoukan), 2014.

MM consists of two kinds of work: A) Information gathering by the frontline non-official police officers; and B) transferring the information gathered into the database. In MM, these two tasks are completely separated. Category A work is performed by Baoan: officers who are recruited and paid differently from regular police officers (bianzhi⁵) and therefore are not considered ‘formal’ police (Bakken, 2001, Shambaugh, 2009). Baoan are usually lay-people with limited training and qualifications. By choosing to entrust surveillance tasks to this group of officers, the government is ensuring that more errors will be made during the data collection stage of the operation.

These Baoan are supposed to go door to door to collect the required information from each migrant: name, local address, national identity number, and workplace. Although not required by the enabling legislation, and possibly illegal, Baoan also seek the national identity number and contact information of each migrant’s landlord/landlady. They sometimes explain that ‘*if something happens, the police can contact him/her.*’ Practically speaking, the ability to collaborate with property owners and managers facilitates the data collection process, but might also introduce a new layer where false, misleading or simply mistaken information is entered into the system. Every one to three months, Baoan are expected to visit each registered address to confirm that the registered person still lives there and that all other information continues to be correct. If new faces have moved in, their information must be gathered.

⁵ Bianzhi refers to the authorization of personnel, as well as their duties and functions in government administrative organs, state enterprises, and service organisations. The bianzhi usually covers those with permanent and formal employment in these organisations. See Shambaugh, 2009.

By contrast, the Category B job is usually the responsibility of female police officers, one of whom explained that an impression remains that *'no direct encounter with the real criminals is suitable for a female police officer.'* In addition to providing stark data regarding gender relations within the Chinese police force, this officer also highlighted a weakness in the system: misinterpretations are almost guaranteed. The police officer in charge of the data entry said she had never visited migrant-intensive communities: *'I am not responsible for the community work.'*

While MM envelopes the most broadly defined population under its umbrella, it is possible for its officers to use the same infrastructure to surveil more precisely demarcated population groups. Migrants with a criminal record or periods of unemployment are identified as being of higher risk and put under extra monitoring. *'Then we need to know: is s/he at home during the day? If so, does s/he go out during the night? If so, then, it gets suspicious. We must go and check on someone like this, right? What s/he is doing every day, where did he work, and so on.'* Theoretically, potential trouble-makers will be monitored through frequent checks, which can contribute to a solid crime prevention mechanism.

The MM system seems to be a rigorous way to implement surveillance and security policies. However, in practice, according to interviewed police personnel, the information collected is incomplete and inaccurate. Furthermore, the repeated checking process is unreliable and, in some cases, is not performed at all. Police admit that

the information we collected is totally a mess. The room registered under the name Wang is actually occupied by Li, Zhang, He and Bai. Four people living in a tiny room registered for one person. And they do not even know who Wang is. Some migrant used a counterfeit national identity card. Then the information we have is totally wrong. It is totally a mess, there is no way to fix it ... Someone told me he has a job. We found out later that he is jobless. The information is not reliable if you just learn it from asking, right? He may say he has a job, but how can you confirm it? (Hai)

The transmission of flawed information into less than perfect databases only exacerbates the problem. Inadequately trained staff and undisciplined working procedures have led many of the records to be inaccurate, and as it is impossible to know which data is accurate and which is not, the entire regime is functionally worthless.

4.1.1.3 Focal Population Management (FPM)

Focal population management (Zhongdian renkou guanli, hereafter FPM) is the surveillance mechanism that sorts and monitors the people on the official list of individuals who may be specifically targeted for surveillance. The list, regulated by the terms of the PRC Regulation on management of targeted people (1998), includes five categories of residents:

- 1) Residents suspected of threatening national security;

- 2) Residents suspected of serious criminal activities;
- 3) Residents who, due to the intensification of various conflicts, have shown early signs of violent revenge, making trouble and other violent acts;
- 4) Residents were convicted of 'purposeful crimes' and released from prison within the last five years; and
- 5) Narcotics users.

The law requires that all information related to listed residents shall be entered into the FPM monitoring platform, which serves to locate and preserve any traceable records of the mobility and activity of the population.

For example, when she is checking in a hotel room, logging in a computer in the internet café (wangba),⁶ etc ... all the information will immediately pop up on our screen ... This platform is interconnected with every hotel, internet café, and other place that requires her to use her national identity card to get access ... Of course, we also have access to her calls, messages and WeChat chatting histories ... Whatever information it is, we know every detail. (Qung)

Wang (2004: 128) argues that the migrant population is 'commonly' included as 'an extra group of focal population' even though it is 'not included in the official list' (the five categories mentioned above). Data presented below will demonstrate that, in practice, Wang's claim diverges from reality. Through my extensive interviews, I have found no substantial evidence to support the claim that migrants who do not fit into the five listed categories have been included on the monitoring platform, even though I was consciously keeping my eyes open for such evidence. Rather, I found that residents who are targeted for FPM surveillance are targeted for a reason that is on the list (although the relationship between that reason and the target's actual behaviour might have little to do with one another). An officer showed me the platform as she explained, 'Nothing was specifically related to their hukou status. For instance, as an ex-offender, regardless of whether s/he is local hukou or non-local hukou, his/her name will be on the focal population list.'

Moreover, it is impossible to monitor millions of migrants with such overburdened police.

We have a database for the focal population. We call it a "blacklist" and it has different levels of intensity. When seeing the basic information on our mobile database (jinwu tong). We need to go door to door to check. Go there, knock on the door, see them and ask about their current situation. However, as you can imagine, some people have moved to another address, some people are not at home during our checks ... We were asked to run the checking procedure at least once a month. But it is just me to deal with all these! It is mission impossible! Normally I just go there once every two or three months. I just go to the neighbourhood committee. Do you know the neighbourhood committee? How can they know everyone, everything happened

⁶ An internet café is a café format space that provides consumers access to computers and internet.

in their community? There are so many residents. The neighbourhood committee is cluttered with trivial things. It is also impossible. What happens is, I just go to the committee to drink tea and smoke with the staffs there. Whatever I ask about the focal population, they simply answer “he is fine” or “he is ok.” (Li)

Apart from the intelligence work, physical security controls are also used as a means of MM in urban villages. The entrance security system is designed and implemented as a safeguard to the people who live within and outside the urban village. Ou, a new police officer, recalled enforcing the entrance and exit control of the urban village, while he was an intern:

When I was doing the internship in the police station, my everyday work was to distribute entrance cards in that urban village (chengzhong cun) ... People who live there are migrants. Theft, robbery, all kinds of crime are very common. We (the police) enforced a centralized control. We have established several entrance and exit controls at the urban village. People who enter and leave the neighbourhood need to use their entrance card. This entrance card system is a very convenient way for us to manage them. One card for each resident. There are more than 3,000 residents in the urban village. Every day I went there to distribute cards and collect the corresponding information. If s/he is not there, I have to find landlord/landlady and give the card to her. Then she is supposed to pass the card to her tenants. (Ou)

4.1.1.4 Management of staff working in amusement places

Those who work in an ‘amusement place’ (yule changsuo) are subject to a special surveillance mechanism, known as management of staff working in amusement places (Shanghai yule changsuo congye renyuan guanli, hereafter MAP). This mechanism is used to keep track of staff at dance halls, sauna and massage parlours, karaoke bars, and other entertainment venues where there are suspicions that illegal sexual activities take place. The amusement place staff registration card (Shanghai yule changsuo yikatong, see Figure 4.2) is a permit to work in these enterprises. The IC card may be granted to anyone over age 18 who does not have a criminal conviction or a history of drug use. Information useful for individual monitoring must be provided before the card is issued. Further, cardholders are required to punch in and out with the card before and after work, which allows for limited real-time tracking of a person’s movement. Working without a valid IC card at these amusement places is prohibited.

There are five registration categories, corresponding to the five kinds of jobs in amusement places: A) The legal person of the enterprise, usually the owner; B) Managers of the enterprise; C) People who are responsible, to put it delicately, for recruiting and training teams of models and

Figure 4.2 IC card for Shanghai Amusement Place Staff



Translation: Notice: 1) This is the IC card for amusement place staff members, it can be only used by the user; 2) the user should carry this card during his/her working time; 3) the user should punch the card when work time starts and ends; 4) Failure to punch the card for 30 days will lead to invalidation of the card. The user needs to go to the registration office to renew it; 5) The card is valid for one year after registration. During the last month of the duration, the user should bring his/her valid ID to the registration office to renew it; 6) The user should take good care of the card: no damage, contamination or tampering.

Source: Nightlife in Shanghai website (<http://www.shzyboke.com>).

other staff in Category E; D) Waiters, cleaning staff, accountants and private security workers; E) Cocktail waitresses, models (beauty, *jia ren/ li ren*) and karaoke bar hostesses. Among these categories, staff members in Category E, still mainly female migrants in Shanghai (Kong, 2016; Zheng, 2009), are the main targets of police surveillance. Though the legislation makes no allusion to sex work, Category E staff are put under surveillance on suspicion that they might engage in prostitution. As Police Officer Duan explained, giggling,

of course, the registration is in the name of “model” and “hostess.” Because there are no prostitutes in China! (Duan)

Therefore,

if a Category E girl checks into a hotel room ... we are most likely to knock on her door and search the room ... I mean, with a high probability, this could be prostitution. (Duan)

According to Police Officer Tang, the addresses listed as home addresses are subject to frequent raids, as are the hotel rooms of people who check in using names that appear on IC cards. The Shanghai police department describes the surveillance on amusement place staff as a great success.

Since 2005, as the first city in China to introduce this “Amusement place staff Card,” Shanghai has successfully filed information on about 200,000 staff in amusement places. Through implementing this comprehensive surveillance mechanism, the Shanghai police have successfully prevented potential crimes, and have maintained stability and social harmony (Sina news, 2010).

The surveillance seems to function as a rigid control on Category E people, who are identified and monitored due to their pursuit of ‘*high risk occupations*.’ While the police paint a picture of firm control that suppresses the transgressive activities of Category E people, the stories told by karaoke bar personnel revealed the complete opposite. Li is a director of a model team that works in a popular karaoke bar in Shanghai. The models refer to Li as ‘*the pimp*,’ and he is registered as a Category C MAP staff member. He responded straightforwardly to my inquiries about the registration process:

what type of IC card are you applying for? No worries, we’ll take care of it! We are going to apply at the local police for you. 200 yuan if you are using your real personal info; 2000 yuan if not For the 2000 yuan one, it is not your name on the card In fact, apart from the profile photo, nothing on the card is about you. It is a forged name, a fake birth certificate and a made-up national ID number. The person on the card does not even exist. (Li)

Karaoke bars have developed an effective protocol to deal with the registration and management of amusement staff. Instead of requiring each individual hostess to go to the police to register, the registration and information collection process has become a collaboration between the amusement place and the local police department. In many cases, these collaborative relationships are established even before the karaoke bar opens for business. In other words, to establish an amusement place in China, one needs to have pre-existing connections with the local police. Otherwise, the karaoke bar’s application for a business license will not be granted. This tacit collusion is built and maintained through longstanding bribery and other forms of corruption. For instance, the owner of the karaoke bar may be a relative of a local police officer, or the police chief might be a silent partner in the karaoke business. Police Officer Chang talked openly about how he invested in a local karaoke bar in his jurisdiction. As a major shareholder, he receives an annual bonus and dividend distributions from the bar. In return, he provides ‘*conveniences*’ (fangbian) to the bar, which include advance warnings about police raids and ‘*sorting out*’ IC card registrations. Under long-term collusion between the karaoke bar owner and the police, the counterfeit registration process operates on a regular basis.

4.1.2 The surveillance myth

The above portrayal of four population management systems tells us how major surveillance mechanisms operate in China. People are sorted into categories and then become the objects of

pecially designed monitoring mechanisms. Table 4.1 lists the main features of PM, MM, FPM and MAP.

4.1.2.1 Surveillance and securitization in the post-hukou regime

Here I address some common misunderstandings in terms of how surveillance systems are designed and operated in China. Studies have inaccurately described the functions and overestimated the impact of hukou (Wang, 2004, Han, 2010). Broadly speaking, the academic literature is concerned with hukou disparities in surveillance deployment. Some scholars simply claim that the surveillance system in China is file-based and divided via hukou (Wang, 2004). As I have shown, however, surveillance has moved far beyond the description provided by Wang years ago.

To be sure, PM once was centred in hukou-led surveillance, which included mandatory registration for every resident. In the late 1980s and early 1990s, the TRP system required all NLHRs to register. Those who were not registered risked being incarcerated and returned to their original hukou. Today, the RP and TRP system has become a voluntary registration system that no longer serves as a rigid mobility control mechanism. Together with hukou, the RP and TRP system has gradually been transformed into a subtler population management mechanism. It now mainly serves to reproduce the hierarchical division between ‘deserving’ and ‘unwanted’ citizens. Under these circumstances, when the population management navigates itself to a form of management to include the ‘wanted’ population, new surveillance mechanisms are developed to target the newly-excluded, or rather the further-excluded – the ‘unwanted population.’

The definitions of ‘wanted’ and ‘unwanted’ people are constantly changing according to who and what is considered to be ‘beneficial’ to urban development. Migrants with rare credentials and abundant funds are welcomed to the city with open arms. In any case, the relevance of hukou, both to potential migrant decisions to relocate and to police approaches to monitor these people, has declined dramatically.

Contrary to findings in the literature, research presented here supports the claim that sorting out unwanted migrants from the mass migrant population is the most significant feature in contemporary Chinese surveillance. In other words, surveillance in China has entered a post-hukou era. The choice of scholars to emphasize the role of hukou in today’s surveillance system prevents them from asking what kinds of people, and under what circumstances, are put under surveillance.

Table 4.1 Summary of China's four types of surveillance mechanisms on identifying, sorting and managing citizens

Categories	Object	Executive Body	Mechanisms	Political technologies	Enforcement
Population Management (Renkou guanli)	All population	Police - hukou police officers; Special division at local government	Hukou; TRP (Temporary residence permit); RP (Residence permit)	Deserving citizenship for beneficial distribution	Applied by the individual/ employer; Retreating its role in social control
Migrant Management (Waikou guanli)	NLHRs living in urban villages (cheng zhong cun)	Police - Baoan; Female police officers responsible for the paperwork	Information collected and filed, leading to targeting of specific individuals; Other security mechanisms. e.g. entrance card.	Risk management on crime and social control	Police door-to-door check, landlord's report; Inaccurate data and loose surveillance
Targeted-population Management (Zhongdian-renkou guanli)	Suspected of threatening national security; suspected of serious criminal activities; shown early signs of violent revenge, making trouble and other violent acts; formerly convicted of 'purposeful crimes' and released from prison within the last five years; and Narcotics users.	Police - Interns, new police officers; Baoan	Monitoring platform based on the 'black lists'	Risk management on crime and social control	Police door-to-door check; Inaccurate data and loose surveillance
Management of Staff Working in Amusement places (Yule-congye-renyuan guanli)	'Amusement place' working staff (karaoke bars mostly); five categories based on types of work	Police - Police officers	Compulsory registration; police monitoring and targeting based on the lists	Risk management on crime and social control	Applied by the amusement entrepreneur; Ineffective due to police corruption

Source: Based on data collected and analysed by the author, 2017.

As the column of objects in Table 4.1 shows, nobody is targeted as for surveillance simply because they are a migrant, nor is non-local hukou status an independent criterion for risk assessment. MM targets only the migrants who live in urban villages or other areas with a concentrated migrant population, all of which are recognized as urban China's ghettos. FPM surveils those with suspicious patterns or criminal histories. The management of amusement place staff filters the targets based on occupation. Therefore, though the majority of targets in all three management systems are non-local hukou residents, this research looks beyond hukou and focuses on the intersectionality of the surveilled population, which consists of three major dimensions: address, previous offences and occupation. Surveillance in post-hukou China can be understood as a response to the declining disciplinary role of hukous themselves. Monitoring is based on existing constructed criminality discourses: living in 'ghetto' areas, having criminal histories, or working in the sex industry. Claims of mutually reinforcing relationships among the three are used to support the argument that a particular non-local hukou resident is in need of extra monitoring and should be put on a surveillance list.

In summary, hukou status is not the determining factor for risk assessment in China. Large numbers of the NLHR population have not been targeted by the current surveillance mechanisms. For example, despite its misleading name, the migrant population management system does not target the migrant population domain purely based hukou status. Rather, this system targets the 'ghetto underclass,' or, as Wilson (1987) put it, the 'truly disadvantaged.' It exerts control by using a space-based risk assessment that intersects with migrant status. In this sense, it is not merely about hot-spot policing of urban villages. The neighbourhood is seen as a container that seems to 'preserve what has been put in it' (Nicholson and Lefebvre, 1991: 87). Urban villages are framed as high-risk communities that in need of special management and extra surveillance. Yet MM implementation via monitoring entrances and exits enables a new type of governing mobility that aims to channel the unwanted individuals towards spaces where they are seen as harmless to outsiders. In a sense, surveillance achieves a new kind of segregation, building physical and psychological walls around certain communities. Instead of 'drive-away policing' that aims to evict the unwanted, such surveillance mechanisms seek to restrain the mobility of high-risk NLHRs and hold them in their high-risk container: the urban village.

4.1.2.2 Liquid surveillance and data-doubles in China

The regulatory regime has reconstructed the local/non-local hukou classification in a way that enables the surveillance regime to enter the post-hukou era. Also, surveillance as now implemented uses bureaucratic procedures to select and assess individuals based on their digital identities. Against this background, liquid surveillance as a theoretical framework can be

employed in the context of China. Liquid surveillance captures the reduction of a human body into data (Lyon, 2010; Bauman and Lyon, 2013). In addition, surveillance flows between the police and other business sectors by connecting the surveillance platform with the hotel check-in system, the internet bar log-in system, the WeChat background database, and so on. Police promotion of its the new digitalized surveillance system, which makes record-keeping easier and information more transferable, leaves out crucial aspects of data leakage: police abuse and corruption. It must be reported that the most grotesque data-doubles – a situation where the person and the data associated with him/her have no relationship with each other – are commonplace in Chinese surveillance mechanisms in the digitalized age.

In China's police system, police officers have USB sticks (U-Keys) that provide access to the surveillance platforms' databases. The extent of database access depends on the police officer's rank. A basic police officer has access to all 'lay people' (laobai xing), but not to the information regarding higher-ranking officers or Chinese government cadres outside the police department. This design can thus shield privileged police officers and CCP members. Their information is locked up and kept confidential from everyday policing. In the meantime, the powerless masses, the 'lay people,' and especially the surveillance targets whose information has been specifically collected and preserved are at high risk of having their personal information leaked.

Hotel check-in records, working experience in karaoke bars, and similar information might be released to anyone. The most severe form of corrupt police abuse happens when police sell information in the surveillance database to the general public (*People's Daily*, 2012; Sina news, 2016; Jiaojiang news, 2017). By using the search engine and the U-key, the surveillance system has turned into a money-making business in China. Not knowing what data has been preserved, under what circumstances, or to whom it is accessible makes the surveillance vulnerable. Chaotic data protection, lost data, failed IT systems, and especially intelligence sales by corrupt officers all lead individuals to live in constant fear that their personal details will be exposed.

Because Chinese society today always equates karaoke bar hostesses with prostitutes (Zheng, 2009), many hostesses are worried someone will find out they are or have been engaging in sex work. As for MAP, many hostesses explained that data leaking is a greater concern with IC card registration; the threat of constant police harassment, although serious, is secondary. *'If I find someone nice to marry later, he will know this ... I worked in karaoke bars before. He will know all about it.'* Their reluctance of having their names and personal information preserved in the police database is directly in line with the major negative impact on their prospects of future romantic relationships and marriage that might follow from this information

falling into the wrong hands. Therefore, coping strategies are generated. The reduction of humans into data in liquid surveillance provides an alternative for data protection in China: the counterfeit registration.

4.1.2.3 The surveillance myth and securitization

Lyon and Bauman (2013) argue that, in practice, confidence in the impersonal, data-driven process has resulted in a lack of sympathy for data-doubles in the West. This misplaced confidence, which also exists in China, fuels even more direct fiascos in surveillance in China. In all three surveillance mechanisms discussed above, documented information was often found to be outdated, inaccurate or even completely forged. MAPs surveillance targets are merely forged names that exist only in police files. How could such a surveillance database locate any real people accurately and efficiently?

The bizarre result is that surveillance in China has turned out to be draconian and at the same time loose and unreliable. Further, police corruption and police abuse, mostly interconnected and sometimes institutionally supported, appear throughout the process, and especially in MAP. Hierarchical access to information based on police rank silences the surveillance on the powerful. One might argue that the surveillance system serves to disguise information rather than disclose it.

In this way, China is rather less rational and effective than the Foucauldian would expect, even as it is a less authoritarian police state than some Western media has portrayed (Rajagopalan, 2017; Phillips, 2017; Shih, 2017). When looking into how surveillance is implemented in practice, the situation gets rather complicated and messy. Police reports claim that MM, FPM and MAP have contributed significantly to comprehensive surveillance and effective crime prevention (Shanghai Police, 2013, 2014, 2015). For instance,

since 2005, Shanghai, the first city in China to introduce this “Amusement place staff Card,” has successfully filed information on over 20,000 employees in amusement places ... Through enforcing this mechanism, the Shanghai police has successfully prevented potential crimes and maintained the stability and social harmony from the root. (Sina News, 2010)

However, as mentioned above, successful social control is only a manifesto, and information contained in the reports is too unreliable to be acted upon. The surveillance myth is only fed with and for the securitization of certain groups of the migrants.

On the first layer, as inadequately staffed and generally ineffectual, the goal of maximizing intelligence to enhance social control is compromised. The police are pragmatic about the limits of the veracity of the information they possess. Furthermore, my data supports the conclusion that, *by design*, these surveillance systems cannot be pragmatically implemented or effectively enforced. Police Officer Tang, Fang and Wang said that when they go door-to-door, they just

'let people write a name; if they write a fake name, that's okay. The police job is to get the form filled out, not to verify the responses. This is also true of the MPA, etc.'

This leads to my second argument: local government and police usually adopt harsh rhetoric about migrant control for social well-being, but in practice their actions also often reduce their workload and maybe pocket some benefit. They accept the limits of their capacity to control migration, regardless of what kind of information is gathered – no matter whether there is a real person attached to the registered name or not.

The image of a controlling surveillance state amplifies a pre-existing social obsession over migrant criminality; police use this obsession to boost their own popularity among local urbanites. This has been shown in some studies on citizens' attitudes of police trust and fear of crime in China (Dutton, 2005; Zhang, Messner, Liu, and Zhuo, 2009; Solinger 1999, Chai and Chai, 1997; Nielsen and Smyth, 2008). A mid-1990s opinion poll of residents in Beijing, Shanghai and Guangzhou found that poor social order had become the 'number one public enemy' as respondents held the NLHR population to be the 'root cause of their feeling of insecurity' (The Legal Daily, 2007). Migrant as a special category in policing is understood to be a response to urban fear of this mobile and ostensibly criminal class. By performing legitimacy, the rhetoric on surveillance migrants may serve to increase the popularity among the citizens. Against this background, the power-knowledge nexus (Foucault, 1977) of the criminal migrant is shaped by and also shapes shifts in the rationalities of the overarching political programme.

As the final layer, loosened monitoring in turn normalizes the failed intelligence. The surveillance system is normalized (or hyper-normalized). The data-double facilitates the covert, messy and disjointed digital citizenship information, which also reinforces the fabrication of files, the accuracy of which is simply impossible to verify and unnecessary to justify.

In summary, surveillance in China today securitizes the migrant population with limited actual effective surveillance. But rather than reveal this, technocrats are trying to pretend that all is still going according to plan. What emerges instead is a fake version of surveillance: as long as information is in the database; the surveillance keeps running. So-called surveillance in China is not even a program; it is a mirage.

4.2 Stop and search

To supplement the management system for surveillance, stop and search for pedestrians and automobiles is employed through police patrols. The Police Law (1995) designates four kinds of suspects as appropriate targets of 'stop and search': those who have been accused of a crime; those who are suspected of recent criminal conduct (zuo'an); those who are suspected of

criminal conduct and whose identity is unknown; those who are suspected of carrying stolen property (Sapio, 2010: 116). However, these vague principles fail to provide any practical instructions for implementing ‘stop and search.’ Police officers including Ke talked openly about their selection criteria in stop and search practices:

We will never stop someone like you (the researcher). We normally skip the females. Stop and search is mostly about young male, ages 17– 45, when two or more of them walking together. Sometimes we also check people walking along, if he seems to be in a hurry or something. We also need to focus on those who look like a migrant. (Ke)

Police officers Zheng and Qian also commented on the process:

normally we start with please stop, stop for a while. It depends. If he looks very young, like an adolescent, we start the question of how old you are. If someone seems in a hurry, we will begin with “why you are in such a hurry? where are you heading?” Something like this. If someone is carrying a big bag. We will start the conversation about the bag – “what is in the bag?” What you need to do here is to spot the suspicious character ... I never experienced anyone who is reluctant to cooperate. ... (Zheng)

We will profile the pedestrians. Anyway, the people I stop are majority all migrants... It is not that hard to tell who the migrants are. The migrants are different in accent, transportation, and dressing. They ride mopeds. They are slovenly and shabby. Their clothes aren’t necessary in tatters, but definitely unfashionable and un-urban. After we stop them, we often get our assumption confirmed by his/her heavy accent, far from proper mandarin (pu tong hua). (Qian)

Interviewees were quick and casual about identifying some of the features they use to justify a stop-and-search in China, like young and male. Clearly migrant-like appearance and heavy accent are determining factors. Figures 4.2 and 4.3 show moments in Shanghai Metro stations where young men, dressed in unfashionable and un-urban clothes, frequently attract police who enforce stop-and-search.

Stop and search’ of automobiles is also disproportionately conducted on the migrant population. In China, the first character on a car’s license plate indicates where the car was registered, like *hu* for Shanghai and *Jing* for Beijing. Each province is represented by its own Chinese character. Non-local cars can therefore be easily identified. According to police officers, certain provinces are labelled with higher risk and consequently targeted in stops and searches of vehicles.

Car profiling is mostly run during the night, with a focus on non-local cars (*waidi che*). Indeed, we have to pay more attention to them. (Tong)

Figure 4.3 and 4.4 Police Stop and Search in Shanghai Metro Stations, December 2015



Source: Photo taken by the researcher (in Dec, 2015 Shanghai Metro station, *Xu jia hui*).

Police officer Liu, who has been working at the local police station for more than ten years, added

As for the vehicles, well... It could be discrimination. I don't know, anyway, this is what I was taught by my master, we always stop and search the car with the plate begin with "Wan"⁷... Yes, vehicles from Anhui province is our target, especially the minivan... (Liu)

There are quotas for evaluation. For everyday patrols, each police officer needs to profile ten pedestrians. As for the on-site stop and search, the quota could be as many as two hundred per night per police officer. Liu further described the details of the profiling:

For example, we set temporary checkpoints to stop and search the migrants, all of the migrants. During the Chinese New Year, there is a huge migrant population in our jurisdiction. This requires us to go to the migrant neighbourhood and set up temporary checkpoints. We park the police cars there and divide into several squads, each with 2–3 police officers. We stop and search the pedestrians ... Four hours, from 8 pm until midnight. We have a task. Each officer has to profile 200 people per night. That's the aim, we have to hit it. (Liu)

Nevertheless, all police officers interviewed reckoned that they have never encountered anyone who 'has issues' with stop and search. In other words, no suspects were identified in the process. McConville (2011: 31) found the situation to be similar in 2010, when he conducted his research: 'it is very unlikely to have suspects who were first identified through police stop and search.' Beyond this, I discovered the 'police profiling myth' in China: it is not only ineffective but also, sometimes, not implemented at all. Lao, a police officer who recently left the local station following his promotion to the economic division of MPS, illustrated the everyday coping strategies used to top off a quota: *'Honestly, we let the Baoan write down some ID information from our earlier stops. I am sleeping in the car for the whole night. That's it.'*

In sum, there is clearly a tendency to profile migrants, including a disproportionate number of stop and search sites in urban villages. These have led to an overwhelmingly high impact on the migrant population in this focused yet abundant use of this flawed policy. If nothing else, the policy constitutes harassment. The police can stop and search the migrants 'whenever they like, without a reason' and without 'any respect' to them (Pai, 2012: 59). However, in the meantime, suspects are rarely identified and caught through stop and search, due to unenforcement as well as ineffectiveness. Since very few suspects of any kind are arrested during stop and search, this policy is largely unrelated to the overrepresentation of migrants among arrestees; the policy has a similarly limited effect on any later process. Thus, here come the questions: how *do* the police ascertain and arrest people who have committed crimes? Why is the NLHR population arrested

⁷ 'Wan' refers to Anhui Province. It is a less developed province in China stigmatized with poverty, rural and less civilization.

out of all proportion to their statistically limited role in criminality? Or, shall we say, are NLHRs essentially recruited in order to present higher arrest rates to a concerned broader public?

4.3 'Index Orientation' Policing

Facing constant critics about police power abuse, human-rights violations and lack of the rule of law, the Chinese police system has been 'reformed' a lot over the past decades to establish its professionalism. One of the biggest 'accomplishments' is the system developed for the comprehensive assessment of police work. In 2001, the MPS introduced the 'Regulations on Policing Quality Assessment Criteria' (Gongan jiguan zhifa zhiliang kaohe pingyi guiding, MPS NO. 60 Order), set the criteria and procedures for policing work evaluation.

Subordinate police institutions refined such uniform rules based on the regulations. Divergent indexes have been adopted at various level and various jurisdictions (e.g., varying from 50 to more than 200 for each index). The most common indexes are: filed criminal cases, arrest population, arrest rate, prosecuted population, prosecution rate, filed public order cases (Nanan District Prosecutorate, 2016).

Among these, the most significant indexes in the assessment are 'arrest population' and 'prosecuted population,' which are also known as 'poll indexes' (or 'head index,' rentou shu) in everyday conversation. They are aggregated through different levels in the police system. For instance, the 'poll index' of the police bureau of Xuhui District in Shanghai is calculated based on the indexes of all its subordinate local police stations. As police officer Wan introduced,

The Index is the evaluation criteria of our performance. It runs every year, every month, every season within the police system. We need to meet the index requirements for property crimes, drug crimes, etc. There is a precise number of how many offenders we need to catch in a particular period of time. If you gather the right number, you pass the evaluation. (Wan)

The index is often an explicit number regarding cases filed, the populations caught, arrested and prosecuted, etc. It can also refer to a proportion of the cases successfully brought to the next step in the judicial procedure, such as the arrest rates or prosecution rates. Quotas and standards are often set by a superior police institution for its subordinates, and assessed monthly, seasonally and, most significantly, annually. The assessment year starts on 1 Nov and ends on 31 Oct of the following year. According to officer Wang, *'the irregular calendar of policing annual assessment is designed to keep the police from focusing on the indexes before the Chinese New Year.'* This is because, *'for the Chinese New Year, stability maintenance is our number one priority'* (Wang). Different institutional levels are supposed to meet their own minimum index bars within a certain period of time. Police officer Liu, who worked in a local police station in Shanghai, gave explicit information about index requirements in his workplace.

For a third-level police institution⁸ like us, we are required to catch and detain 12 suspects each season, every three months. This is the index we have to meet. We need to meet the index of arrest after detainment. The arrest rate must be at least 60%. It means, say, if we caught 12 suspects, 8 must go for arrest, as it is the rule. (Liu)

4.3.1 ‘Our work is all about fulfilling the quota’

According to the ‘Regulations on Policing Quality Assessment Criteria’ (2001), the outcomes of this annual assessment have a major effect on each police institution as well as each individual police officer – from the chief of police to every frontline officer.

The policing quality assessment outcome is the most significant index in the evaluation of the policing in police institutions. Honourable MERIT prizes will be awarded to higher ranking institutions. For police bureaus that have been awarded a MERIT for three years, its chief director will be presented with a personal reward. MERIT success is also a basic criterion for the honour of being named a National Merit Police Institution.

A public warning will be issued for the police institutions which fail to meet such index requirements. Rectifications must be made within a certain period of time. This will also lead to disqualification for any prize or honour of the year. The director chief of the police institution shall be resigned if his institute failed to meet the index standards for two successive years.

(Article 22, “Regulations on Policing Quality Assessment Criteria”, 2001)

This code is rigidly enforced in the policing system as a criterion promotion and demotion. Indexes have been put at the forefront of policing. Police Officers Shen, Liu and Cai offered their views on the index.

All in all, there are four seasons each year, correspondingly, four evaluations. Frankly speaking, our work is all about fulfilling the quota (wancheng zhibiao). (Shen)

Every police station and every police officer are ranked by this index. It is like the sales, the bankers. Nowadays all of society is verified by its index. (Liu)

Failing to meet such requirements can lead to various consequences such as: bonus reduction, postponed promotion, demotion, or even dismissal. (Cai)

4.3.2 ‘To improve the data quality, at every level, at any cost’

Policing and police officers under such circumstances are concentrating on meeting the index requirements. Strategies and mechanisms are adopted, ‘to improve the data quality, at every level, at any cost’ (Wang). Indeed, ‘Before the annual evaluation, sometimes a police station that has yet not fulfilled their quota brought solved criminal cases from other departments.’ (Jin).

⁸ The levels of police institutions in China are categorized by their jurisdiction and size. Different quotas and indexes are applied according to the institution’s levels. The third level (San lei suo in Chinese) is the most basic institution in police organizations in Shanghai.

4.3.2.1 'We don't file the unsolvable'

Improving data quality here, apart from fulfilling the quota, means focusing attention on three of the key indexes that set the goals: 1) lowering overall numbers of criminal cases; 2) increasing arrest rate and; 3) increasing the percentage of officially opened case files that are solved, known as the 'case-cracking rate' (po'an lv). One effective way to increase the case-cracking rate is of course not to open cases that are not easily solved. It turns out that this approach is common: in practice, the crime rate (fanzuily) seems to be very closely linked to the case-cracking rate; in fact, in many ways it is directly constructed by the latter. Police officer Shen was straightforward: *'Our murder case cracking rate is 100%. It is fabricated. Of course, it is. We just don't file the unsolvable cases.'*

A nationwide study of the problem undertaken in 1997 (see Dutton, 1997) showed that only 30% of the cases reported to the police were actually recorded and filed (li an). Police officer Jin commented on the relationship between case filing and crack rate, based on his practice: *'If I file a case which cannot be solved, I would rather not take it.'*

4.3.2.2 'Stitching the NLHRs into the index'

Nevertheless, in terms of statistical manipulation, underreporting only accounts for the tip of the iceberg when it comes to the detrimental effects of China's quota system on effective law enforcement. Police officers are also led to look for the 'easy-to-crack and catch' cases and have been found to use a variety of strategies to inflate arrest rates artificially.

The overrepresentation of NLHRs of the criminal legal system starts from the moment of arrest. As shown in Chapter One, they are highly over-represented. Taking arrest populations, for instance in Cixi, the NLHR population accounts for 70–80 per cent of the arrested population annually in the first decades of the 2000s. The following discussion provides an initial answer to the question of how policing disparities criminalized the migrants. In fact, instead of asking how the discriminative criminal legal system constructed the idea of migrant criminality, I investigate the opposite, which is also the prior question: how does migrant criminality contribute to the practice of index-oriented policing?

Migrancy plays a crucial role in index policing. Being the most vulnerable and marginalized group in urban China, NLHRs are often used to fulfil and inflate indexes such as arrest rate and the case-cracking rate. Some basic techniques and mechanisms both encourage and enable police *'to stitch the NLHRs into the data'* (Shen): 1) Hukou disparities consistently feed the arrest population and arrest rate with a highly disproportionate NLHR population; 2) Deception and coercion are used in the interrogation process to secure arrest of the stitched NLHRs; and 3)

Criminal law and criminal procedural law are manipulated to twist a single act into multiple crime cases, or into crimes that an index focuses more attentively on.

4.4 Hukou Disparities as '*Regulated Discretion*'

As the primary evaluation indexes, arrest population and arrest rate play central roles in everyday policing. As Police Officer Liu reckoned, *'Of course, the arrest decision made by the procuratorate has a huge impact on us. Say, if they reluctant to arrest the suspect, it means we failed the case. It means we didn't do it right.'* Wang, graduated from the top policing university of China, joined the police bureau three years ago, further commented *'Arrest rate is one of our key assessment indexes. We won't send the suspect to the procuratorate if we are not sure whether the arrest decision will be made. Say, if we send 100 suspects, the procuratorate only approved 80 for arrestment. We will get a 20% apprehending-rejection rate. This will lead to a serious deduction from our indexes.'*

Both interviewees suggested that prosecutorial disapproval of an arrest application is interpreted as police officer failure: Responsibility, blame and punishment for failing will be laid on the police officer. This is because *'to produce desirable arrest statistics is the priority mission of policing'* (Shen).

4.4.1 '*No bail for migrants*'

As the gatekeeper of the entire system, the police make the decision to select who should go further. A decision of an arrest is usually based on the standard legal factors of the case, but race, ethnicity, gender and socioeconomic status are well-known as the extra-legal factors that condition police decisions (Sherman, 1980; Riksheim and Chermak, 1993). Thus, the poor and powerless are selectively arrested and prosecuted (Crank, 1990; Langworthy, 1985; Liska and Chamlin, 1984; Mastrofski, 1988; Smith and Klein, 1984; Macdonald, Ridgeway and Riley, 2007). In China, hukou status almost determines whether an arrest or a bail decision will be made. This stipulation has legitimized the index production and manipulation. Police officer Liu stated his view on granting bailing to migrant suspects:

The migrant suspects, you bail her/him today. S/he goes back to her/his hometown tomorrow. How can we process the case? At least, the local people have their homes here. (Liu)

Police Officer Chang, who has been working on the front lines for seven years, talked about why he has never bailed a migrant:

Bail? No bail for them (the migrants). He is a migrant, which means he is non-fixed abode, without a stable job, certainly I could not bail him/her. I feel it is not right to bail the migrants. I mean s/he might have somewhere to live... yeah, s/he might have a relatively stable job, even

so, he buys an air ticket, a train ticket, s/he can just leave without a word. Then the whole situation gets very complicated for us. (Chang)

Police Officer Liu added:

As for the non-local hukou resident, we could not surveil him/her for 24/7. How can we? S/he can leave at any minute. But for the locals, her/his home is here. S/he has a family here. S/he won't just run away. (Liu)

The police officers' logic here is tautological. Legally, 'non-local hukou' is understood to mean no fixed abode, and this is used to justify an arrest application. In practice, of course, NLHRs live somewhere, and some have lived at the same address for decades. All interviewed police officers are rather assertive about what they describe as the high possibility, or even certainty, that an NLHR who is granted bail will fail to show up in court. The research has repeatedly been confronted with this and similarly problematic logic from the police, the procuratorate and judges. This is just a sneak peek at how legal professionals embrace hukou-mobility-instability discourse. As social divisions penetrated into the arrest and bail decision-making processes, LHR and NLHR suspects are wrenched apart at the gate of the legal process. Stability, as always, first appears in China's criminal legal system in China in the form of a guarantee for the defendants' appearance at future proceedings.

Contradictions in law have further hindered the ability of NLHRs to be granted bail. The Criminal Procedural Law set the rules for bail. On the one hand it forbids the suspect from leaving the district of residence, whereas on the other hand it requires the arrested's hukou-registered police station to enforce the supervision. The law creates a legal vacuum for NLHRs. They simply cannot be bailed under the rule. As Police Officer Yu pointed out:

Say, her/his hukou is in Anhui, s/he committed the crime here in Cixi. If we bail her/him, s/he should go to Anhui for supervision. But now s/he lives in Cixi, and s/he is not allowed to leave here according to the bail regulation. The law is contradictory. There is no feasibility in practice. That's why we never bail them.

No bail for migrant suspects. This is a common policing practice. '*It is extremely hard to bail the migrant workers, whereas the for the locals are quite easy, like a piece of cake,*' Police Officer Lu added as a comparison. Apart from the legal barriers, lack of the right connections is actually the fundamental reason negated the rights to bail. Police Officer Wang commented on how social resources mediated between bribery and the decision on bail:

... you need to have the connection for bail. Few migrants nowadays also have it, but most don't. The right connection can bridge their way to bribe a "right" police officer. Without guanxi, you have the money but no one to give it to. Which means, still zero chance to get bailed. (Wang)

Though the barriers sometimes can be opened by the NLHR 'haves' with the right connections, hukou status is still the key legal factor in decisions regarding arrest and bail. It is

stipulated by criminal procedure law and other decision guidelines, and thereby embedded in legal practices that justify a pre-trial release or detention decision made for the LHR or NLHR suspects. This serves to legitimate the mass arrest of NLHR population, which further facilitates the inflated arrest rate: more police applications for NLHR arrests leads directly to more arrests, which leads directly to a higher overall arrest rate. These all contribute to a better index, even though their impact on genuine criminal activity is indirect at best. In sum, our discussion of decisions regarding arrest and bail decisions shows how legalized arrest disparities between LHR and NLHR populations have facilitated the manipulation of the index.

4.4.2 Shelved reform: ‘*One city, one treatment*’

The hukou division in arrest and bail rate has drawn attention from the legal enforcement institutions since the 2010s. On the local level, reforms have been initiated on equal application of pre-trial legislation on migrant workers which is also known as the promotion of ‘one city, one treatment’ (Tongcheng daiyu). The procuratorate and the police institutions at the local level are expected to collaborate and ensure the same treatment for local hukou and non-local hukou suspects by setting a series of legal and administrative requirements (a detailed list of the released documents is presented in the next chapter). In Cixi, Ningbo, the document was presented in 2013. However, few of the police interviewed have heard of the document. The researcher gained access to this internal document from Police Officer Ding in 2014. A year later, during an interview, Ding acknowledged that he could not recall the document:

I did not look into the document I sent you. We’ve never use it in our arrest or bail process. As you know, most of the documents in China are bullshit, totally useless. Those who write them are sitting in the office all day and don’t do anything. Those who actually do the job, like us, we do not have time for any documents. (Ding)

Two other police officers, Hu and Jin, said, ‘*I’ve never heard about the document*’ and ‘*I worked in this department for years. I’ve never known such a document.*’

The principle and promise of equal application has therefore had limited benefit for the majority of NLHRs. The principle of affirmative action will be discussed more in detail in the next chapter, because the decision to approve an arrest is made by the prosecution. For present purposes, as long as the index requirement prioritizes the arrest of migrants and the arrest rate in general, the legal documents on equal arrest are kept on the shelves and not deployed in policing.

4.4.3 Arrest approvals: Police–prosecutorate collaboration

The Criminal Procedure Law of the People’s Republic of China (issued July 1, 1979, latest amended March 14, 2012) set responsibility of the police in such legal process as follows:

Article 85. Public security authority⁹ shall prepare a written request for approval of arrest of a criminal suspect, which shall be submitted along with the case file and evidence to the people's procuratorate at the same level for examination and approval...

Accordingly, an arrest application should be 'prepared' by the police and 'submitted' to the procuratorate. In legal practice, 'preparation' and 'submission' are terms of art. Police Officer Wang disclosed that, to avoid subsequent disapproval, police first subject the arrest application to a systematic internal review. The process includes four reviews after the 'responsible police officer (s)' (wuji sisheng zhi):

- 6) the police officer who directly responsible for the case;
- 7) the legal officer at the police institution;
- 8) the chief director at the institute;
- 9) the legal officer of the superior police bureau;
- 10) the chief director of the superior police bureau.

After the final review by the Chief Director of the Superior Police Bureau, the final request is sent to the procuratorate. The bureaucratic reviewing routine is designed to secure the approval of the request and, more significantly, to spread the risk of failure throughout the system. In fact, 'failure' here does not indicate a fear that an innocent person might be arrested but refers to disapproval from the procuratorate.

Police Officer Lu spoke up about the hidden routine within the review process. In order to obtain a high arrest rate, requests are usually made upon a foreseeable result of approval. As Lu and Zhang described, while the arrest decision is supposed to be made individually by the prosecutor, it is more of a mutual consent collaboration with the police. The legal officer at the police station usually calls the prosecutor before officially submitting the application. This working routine is intended to guarantee a later approval. Without such an informal guarantee, the application will not be filed. Police officers Lu and Zhang explained precisely how arrest approvals are crafted via dialogue between the police and the procuratorate.

If I think it (the arrest) seems unlikely to be approved, we will look for other opportunities for case dismissal or degrading. Like sending the suspects to criminal detention or bail. Or we downgrade the criminal case to a public order case, or we just withdraw the case. Normally we won't drag the suspects to arrest assessment if we feel it is very unlikely to be approved. If I am not sure, I will contact the prosecutor. The arrest criteria for Cixi is 4000, and for Yingzhou is 6000.¹⁰ The difference is quite big. I called the prosecutor. He told me to go with 6000, so the

⁹ As pointed out in the beginning of this research, public security (Gong'an) authority equals the policing institution in China.

¹⁰ Cixi and Yingzhou are two districts (counties) in Ningbo.

case did not meet the arrestment criteria. He asked me not to apply for an arrest of this suspect.(Lu)

Ninety per cent of our arrest applications are approved. There are quite a few reasons for disapproval here, such as unapprehended conviction, insufficient evidence, etc...However, these are not the real reasons. It is about the politics between the police and procuratorate. Legal police officers have reviewed the cases; the chief directors of the police have signed his/her name on the application. Disapproval means the chief police is wrong. The prosecutor has to be cautious when making that decision. (Zhang)

Therefore, the arrest examination process leads to an agreement, or not, in a way that leaves no trace of the process. It is reached through consultation and negotiation that largely depends on the relationship between the police and procuratorate. As a result of consensual commitments in advance, the mass arrest of NLHRs is endorsed by the procuratorate. This will be further discussed in the next chapter. Now let's move on in the policing investigation process. This research found that data manipulation also includes the manipulation of NLHR suspects, in order to secure the improved index ratings that follow from successful arrests.

4.5 'Those who confess stay in jail and prison forever; those who resist go home and celebrate New Year'

Western media portrays police brutality and repression as emblematic of the Chinese police and policing (Wu and Bakken, 2010). Extorting confessions by torture – using violence or coerce in interrogation to force the suspects to confess to crimes they did not commit – are regarded as operating in China on a daily basis (Bakken, 2003).

This research, however, found that police torture is becoming less of a problem. This can be partly attributed to the police reform which has set a series of rigid rules regarding the procedure of investigation. Also, the index requires us, during the investigation process, to minimize whatever happened. Evidence that grievous bodily harm or death occurred, but nobody was arrested for it, would degrade the police and the institution hugely in evaluation. Therefore, to stay away from trouble and to keep a good index, physical torture is seldom adopted in the Yangtze River Delta today.

Instead, compliance and confession from the suspect in policing interrogation are gained via alternative means. Coercion and control formerly enforced through violence have been replaced by subtler and less identifiable strategies such as deception and threat. It is widely believed that migrant suspects are especially gullible and deceivable. That is, '*they are easy to manipulate*' (Wan). 'Those exposed to coercive interrogation tend to be of low status, the poorer and weaker members of the community and those legally unrepresented' (McConville, 2013: 17) While eyes laughing at their stupid '*honesty*' and simple '*ignorance*,' police officers spoke of how

Figure 4.5 Slogan ‘Leniency to those who confess; severity to those who resist’ (Tanbai congkuan, Kangju congyan) on the wall of an interrogation room



Source: sinanews . (<http://news.sina.com.cn/o/2010-09-01/060718049175s.shtml>).

manipulation in interrogation successfully stitched the migrant suspect to feed their success further, as measured by the crime indexes. In fact, the outcome should not suggest more or less gullibility of migrants; it shows only that interrogation tactics more commonly used against migrants than local residents generated the results sought by the police. One might celebrate the fact that at least some people, LHRs, were not subjected to manipulation and bullying. Not me. I do not celebrate discriminatory police bullying. I do not celebrate anyone's bullying.

4.5.1 Manipulate the ‘manipulable’

‘Leniency to those who confess; severity to those who resist’ (Tanbai congkuan, Kangju congyan) is a fundamental criminal legal policy, and also the principle for police interrogation in China. The slogan and hangs on every wall of every interrogation room (see Figure 4.5).

It goes without saying that the slogan is intended to promote honesty and compliance in interrogation. It aims to encourage suspects to speak out about their criminal behaviour in exchange for a swifter and gentler punishment. However, in practice, this principle is constantly used for manipulation, rather than for purposes like efficiency or saving legal resources.

As Police Officer Sun described,

we told them (the suspect) our principle: “leniency to those who confess; severity to those who resist.” It seems that a harsher punishment will be imposed on them if they don’t confess. It is not! Actually, if s/he does not tell us, s/he won’t even get arrested. It is very hard to make arrests nowadays if we don’t have an explicit confession. (Sun)

Wan added: *'we have very limited investigation methods, which still mainly depend on confession testimony. As long as s/he confessed, s/he did it, we almost sure we can arrest and detain her/him.'*

In this way, confession-centralism requires police to obtain the confession in order in order to crack the case and facilitate a successful arrest application, which makes the principle functions exactly the opposite of the promise. Xu introduced the revised version of the principle, according to the police practice: *'those who confess stay in jail and prison forever; those who resist go home and celebrate new year'* (Tanbai congkuan, laodi zuochuan; kangju congyan; huijia guonian). This slogan describes the factual situation vividly in rhyme: those who confess do not get leniency in return; they face arrest, accusation, trial, and most likely, custody. In practice, the misleading policy tricks migrants into giving up their right to remain silent and other protections that are formally available but not advertised. Instead, they become unwitting participants in what essentially is a game that ends in police claims to have produced *'results.'* Police Officer Wang shared his experience of interrogating the young migrants.

Migrants are kinda goofy, soft touch ... Especially the younger migrants, 18 or 19 years old ... They are quite naive. First offense, without any experience, they tell you whatever you ask... I will show them the costs and benefits, what you will get if you tell us and what is gonna happen if you won't. That's it. Simple. (Wang)

Liu, another experienced officer, shared his view on *'honesty'* in a pitiful tone:

The overrepresentation of migrants in prison is related to their honesty. Honesty leads to harsher punishment. The migrant workers with low education ... some are ignorant and poor psychological conditions are especially common. this kind of person faces interrogation, s/he confesses the crime and makes a clean breast of everything. ... I caught someone yesterday. He is from Anhui province, stole cell phones. This is what I said to him: "if you confess your crime, I will save you, I will inform the judge to be merciful on you; if you do not confess, I will send you to jail. The consequences can be much more severe." (Liu)

Liu winkled his eyes and added, *'He told me everything, much more than what I know. We both know what is going to happen to him later.'*

Thus honesty, a valuable character trait, becomes an interrogation tool used to manipulate, sway, influence and ultimately swindle the suspect.

4.5.2 Trick with *'ignorance'*

Apart from honesty, ignorance is another continually mentioned feature of police interrogations. Police Officer Gao works at the Shanghai police bureau. He is specialized and responsible for handling internal complaints in the police system. Gao acknowledged that in his work, he has never received any complaints from any migrants, nor heard rumours of any. *'Normally they (the migrants) don't know anything. S/he would be so happy if the police let her/him go. That's it.'*

Such a description may reflect that; indeed, the migrants lack legal knowledge and are unaware of their rights in criminal legal processes. However, rather than informing them about due process, such ignorance is actively used, abused rather, by police who are in pursuit of goals that have nothing to do with safer communities. They deliberately hide this information from the migrant suspect in order to evade responsibility, escape obligation and most significantly, enforce, coerce and control.

For instance, criminal law stipulates universal access to criminal defence services. Everyone caught by the police should be clearly informed about their rights before the interrogation begins. These include the right to hire a solicitor and their right to free legal advice. However, their right to know is commonly violated by the police. Police Officer Huang explains how the notification about legal representation is given in practice. *'The migrant normally won't go for a lawyer. They don't have the money to hire one. Besides, they don't really know about this, about hiring a lawyer for a legal matter... I mean, what is that to them? Yes, the procedure requires us to inform her/him before the interrogation.'* Huang recited mechanically, in a fairly bored tone, *'You have the right to a lawyer. If you cannot afford one, we can provide legal aid.'* He paused and laughed cynically, *'I speak this line really, really, really fast. They normally won't pay attention.... If s/he happens to ask, I explained that it is meaningless to hire a lawyer. It is totally a waste of your money... If s/he insists on having a solicitor, I just tell them to ask the prison officers. Of course, the prison officer won't bother, either.'* Huang concluded that *'It is nothing more than a protocol. We just need to inform them of this line. Nothing more than that.'*

This statement is further confirmed by the interviewed solicitors. They sensed that generally migrant suspects and their relatives are somehow reluctant to seek or receive help from them. As Lawyer Zhou put it, the migrants *'don't want to have us. They don't trust us. In jail, there are rumours about if you are hiring a lawyer you will be sent for more severe punishment and longer sentencing.'* The conclusion is inescapable: 'ignorance' has little to do with either knowledge or intelligence. Rather, the word is repurposed to justify rampant systematic manipulation. False information intentionally misleads the suspect and keeps them under-informed. Without meaningful access to professional legal support, the manipulation continues, pure and simple.

In the meantime, the police are constantly complaining about how the 'overly protective rules' hamper them during interrogations. The police believe that local people as well as some cultured (you wenhua de) migrants have a greater awareness of the importance of having a legal representative when they are in trouble. As Police Officer Liu put it, *'the migrant suspects are very easy to deal with. The Shanghai locals and the cultured migrants are way too smart and too professional.'*

Therefore, in order to obtain a confession and to facilitate an arrest, interrogation is mainly directed against the undereducated migrant suspects.

4.6 Police Campaigns: Intense index policing

Police campaigns are launched by MPS or BPS to the local frontline police stations. Often targeting a special type of crime, such as property crime, robbery and forcible seizure or drug crimes. The campaigns are, among other things, marketing efforts with catchy slogans: ‘Organized crime big movement’ (Saohei chue da xingdong), ‘Property crime big movement’ (qingcai da xingdong), ‘War on drugs in 100 cities’ (Baicheng jindu da huizhan), etc. Each campaign establishes indexes and quota requirements focusing on the campaign’s target population. Results from all participating police stations are ranked and publicized every week, month, and season in an effort to urge the police to fight for the campaign. In the general annual evaluation, indexes accumulated from campaigns have a more significant role than indexes related to everyday policing. Therefore, each department realizes that success as measured by indexed factors is crucial to all that is most important, namely, departmental stability and career advancement. The previous two sections show how statutory discrimination and manipulation are enforced against migrant suspects in order to boost index results as related to everyday practices. Now, it will be shown that, due to unending attention to indexes, use of coercive and provocative tactics are even more intensively deployed during police campaigns. Sometimes, data that appear in campaign indexes are forged from nothing: no crime, no suspect, no victim.

This, exactly this, happened in 2016 in Heilongjiang Province. The index in this case was a sheer fabrication. Police Officer Liu explains the stress and pressure during police campaigns:

We are notified about the campaign from our superior police institution: what crime the campaign focuses; how long it will last, etc. Then we need to go and catch the suspects accordingly. What is its difference from everyday policing? We need to take the lead, to make proactive investigations. We need to put more effort into catching the suspects. I mean, as much as we can. To aim to get as high as we can in the ranking of the campaign. (Liu)

The specific incident was reported by *Legal Evening Paper* (Fawan) on 4 Feb 2017:

The police chief shall be prosecuted for abuse of power. He is charged with fabricating cases on drug use to fulfil the index requirement... One newspaper reported that the “arrests of drug-using deviants in the jurisdiction of Keshan police bureau are inadequate. When compared with other police institutions in Keng district, Heilongjiang province, Keshan is far behind.” This is not the first such report. The director of Keshan bureau, Police Chief Li, has been scolded many times by his superiors for the low ranking of his police bureau in [the annual] assessment. For this reason, it is alleged, Chief Li ordered the police to find non-drug using citizens to simulate drug users, so he could fulfil the index requirement. Some police and other

security officers paid commission fees to innocent citizens, who then acted as drug users. Twenty-six cases were fabricated during the process. (Fawan, 2017)

Police Officer Wan described the effort he and his colleagues put into a campaign called ‘The war on drugs in 100 cities’ (Baicheng jindu da huizhan):

... from November 2014 to March 2015. Four months of campaigning. Our police station is only a third-level police institution, but we accomplished all the quotas, and ranked Number One in the campaign index in the whole police system of our region. ... I still remember, I did not go home for ten days in the last stage of the campaign. I made two cases per day, on average. (Wan)

In Heilongjiang, innocent people were swept into jail, only to feed the index during a police campaign on drugs. Similar anecdotes were repeated throughout interviews with police officers, who confirmed that such methods commonly feed drug crime indexes in Shanghai, Hangzhou and Ningbo. During a separate drug crime (jindu xindong), the police exploited a variety of techniques to inflate the index. It is highly possible that such practices are used as coping strategies for police the campaigns all over China. Two main approaches are believed to be widely adopted in police campaign: using informants as pimps to recruit ‘criminals’; and using legal loopholes to create multiple index entries for a single event.

4.6.1 Informants: Pimp for index policing

Informants (also known as snitches and called Xianren by the police) play a central role in policing. The utilization of informants has gained attention both in legal practice and by scholars worldwide. Cooperation between informants and police officers is usually based on mutual benefits: informants provide information that assists the police in exchange for considerations regarding past, present and future (Natapoff, 2009; Bloom, 2002). As Police Officer Jin reveals:

I built my relationship with informants based on interests. I didn’t arrest him/her last time when s/he was using drugs. S/he owes me. Next time s/he needs to pay me back, right? Last time s/he fought with someone, I helped to arrange him/her going through the conciliation proceedings. S/he did not go behind bars. I say, “You need to be my informants. Every month you have to hand some suspects to me.” I didn’t even care that he almost beat to death the guy he fought. ‘We have some interests together, I helped you, right? You need to pay me back.’ You can use the informants, but you need to be cautious ... I tolerated him selling drugs here. One or two grams, ice or something like that. I don’t care, I allowed him to do that in my jurisdiction. I even gave him money to buy drugs. Honestly, I don’t care. But he must hand some suspects to me every month from his “friends.” If not, I know all the things he had done. They are all in my hand. (Jin)

Informants here are controlled and often blackmailed by the police, and it is becoming more of a business. Nonetheless, the informant’s role often involves more than information. In order to produce the desirable outcomes for the police campaign, they have been forced to

participate in a different campaign: the index fulfilment movement. Informants are ‘pimps’ who help the police ‘recruit’ suspects for the campaign. Jin continued:

We, the police have some campaigns now and then. Say, today we go for property crimes campaign. We are required to catch a certain number of suspects. If we did not meet the requirements, we have to buy some suspects from our informants. We just go and find the informants, and ask: “How much per suspect? I will give you the money.” That’s it. (Jin)

Informants are used to identify a potential suspect, cast her/him for the campaign and negotiated a price for the police. Under these circumstances, entrapment and perjury are commonly adopted. Police Officer Wang talked about how much they pay informants: 300 CNY each (around 36 GBP) to ‘*buy the suspects*.’ Index policing and police campaigns have transformed informants and the index fulfilment movement into a business. Informants connect the dots between alleged (or manufactured) criminals and the police.

4.6.2 Play with the legal loophole: ‘*Make it into a crime*’

Crackdowns on drug-use are among the most common campaigns. These require the police to arrest and file as many criminal cases related to drug offence as they can. However, drug usage itself is not regulated under the criminal law,¹¹ which focuses on drug selling, drug trafficking and sheltering others who use drugs (rong liu xi du, or rongxi). From the perspective of jurisprudence, sheltering others who use drugs leads to greater social harm, because it involves a party in addition to the drug user her/himself. This provides the legal ground for imposition of harsher punishments for this crime. In practice, this criminal offence is used to criminalize drug use itself, and it is a common strategy for inflating and multiplying the criminal relevance of a single offence.

Do you know how to turn a drug usage into a criminal case? Firstly, you get the drug from the drug dealer. And then? They are going to ask others to join them, to take drugs together. People don’t take drugs alone. If someone is using drugs, s/he usually shares them with others. That is very common. Sometimes two. Sometimes three. Sometimes four. Sometimes, a bunch of people. Three people taking drugs together is ‘sheltering others to use drugs.’ This is a crime written in criminal law [(said enthusiastically)]. This makes it way much better for our index than drug usage. (Shan)

Police Officer Shan explained that several sections of the legal code are relevant in this connection:

¹¹ Drug use is a contravention of the ‘Punishment regulations on public management’ (Zhian guanli chufa tiaoli). Its Article 24.3 stipulates the punishment of drug using as ‘15 days detention, supplemented with 200-yuan-fine or legal warning’.

Article 354 of Criminal Law: “sheltering others for the use of injected drugs shall be sentenced to fixed-term imprisonment of no more than three years, detention or control, and shall also, or shall only, be fined”.

Article 11 of “Regulation on the case filing criteria of the police by Supreme Procuratorate (III)”: Cases meet the following criteria on sheltering other for use or inject drugs should be filed:

11.1 Sheltering other to use or inject drugs for more than two times;

11.2 Sheltering more than three people to take and inject drugs. ...

Police Officer Hai further interpreted the law in terms of its implications for campaigns on drug offences:

The criteria are rather simple: more than three are sheltered once or sheltering one for more than two times. How to stitch together a ‘sheltering others to use drug’ case? Normally, a drug user will be involved in some drug selling or sheltering behaviour. If the sheltering behaviour only happened once, then it needs to have more than three people on-site. The guideline does not specify the place of sheltering. It can be someone’s home, or it can be a hotel room, a car or anywhere. If more than three people are found under one roof using drugs, it officially is a “sheltering others to use drug” offence. Say, if the case is only about you and me. I need to ask you to come to my place to use drugs twice. Then I am officially qualified for the offence. (Hai)

In this way, a drug using behaviour is made into a crime, and aggressive interrogation techniques yield results. The manipulable are coaxed to ‘confess’ they have been controlled and coerced to shelter others who use drugs. The legal loopholes, the ambiguity and grey areas of legal articles leave ample space for fabrication, manipulation and falsification. Fictitious information and false claims are standard features of policing, and migrants pay the price during police campaigns.

Previous research has systematically failed to explain both hukou disparities in arrest population and the crime statistics as a whole. Instead of attributing such disparities to the justice of the law, which regulates discretion for lawful discrimination against NLHR suspects, the influence of index-based pressures on everyday policing is the key element for the discussion.

Increasingly, quota requirements in policing are raising concerns in Chinese police studies (Scoggins and O’Brien, 2016; Xu, 2017). Xu (2017) also has discovered that official statistics are manipulated to meet performance evaluation index requirements. Dutton (2012) argues that when police are paid by the rate of solved cases, massive under-filing of crime is a rational response closely linked to the maximization of wages and bonuses. The reason for such a low rate of filing relates principally to the performance criteria of the security responsibility system. Police are in danger of missing out on their bonuses and even incurring a penalty if assigned targets are missed. As a result, they deal with reports on crime in inventive ways and gain their financial bonuses because under- and non-filing means higher case-cracking rates. However, the

details are still unclear and remain in dispute. This research firstly revealed the verities and vagaries in index-based policing in China by showing how the migrant population is being stitched in to feed the index. During the police campaigns in particular, the same population group is cast, bought and manipulated by the police to inflate the index.

4.7 Resistance from the Migrants

When suspected of a crime, migrants often found themselves stuck in the Kafkaesque position of being subjected to relentless interrogations and arrests due to their hukou status and socially inferior status, rather than evidence of actual misbehaviour. In such recurring circumstances, I find that migrants have no choice but to cope strategically with the police.

Article 10 of the Regulations on detention centres of the People's Republic of China stipulates that criminals have to go through a health check prior to detention, and lists three medical conditions under which they cannot be detained: a) mental illness or acute infectious disease; b) other serious illnesses that may be life-threatening while in custody or for which they can not take care of themselves (this does not apply to those who are extremely dangerous to society); and c) pregnancy or breastfeeding of children less than one year old. Taking advantage of these legal guarantees, many NLHR suspects attempt to place themselves into these scenarios in order to evade detention. The most common coping strategies include male migrants putting themselves in life-threatening situations, and pregnancy or simply cuddling a baby for female migrants.

4.7.1 *'Carrying nails with him at all times'*

Since last year (2003), in the city of Yuci, 32 drug crime suspects ate metal products in order to avoid punishment, accounting for 4.9% of the drug crime suspects of the year. Blades, nails, coins, keys, zippers, screws and other metal things were found in their stomach during the check... The self-harmed suspects with metal things in their stomach are unsuitable for detention in the jail; the police cannot hold them longer than the legal process allowed. The suspects were released afterwards... (Shanxi news, 29 Nov 2004)

...Police Zhengbing Ma met this kind of suspect almost every week. The suspect tried to eat abnormal things to avoid incarceration, zippers, nail clippers, blades, nails and paper knives, all kinds of things..." (Beijing Night News, 28 Jan 2016)

Someone swallowed eleven sausages with the plastic packages, another ate seventeen saws. Would you believe that? These seemingly absurd behaviours, are actually quite common to find in our police bureau supervisory and detention department (shiju jianguan zhidui) ... Sun told the journalist that this is his sixth time in jail... In his first time, cellmate told him this strategy to escape detention ... At first, he only ate two saw blades. Later on, he ate more, "otherwise, the police won't be afraid." (Dongbei News, 26 Apr 2016)

These appalling and upsetting news reports are regularly confirmed in my research. Interviewed police officers continually complained about how ‘crafty’ (jiaohua) migrant suspects are nowadays. They vividly described their encounters with migrants who, in order to avoid arrest, swallowed blades, coins, keys, zippers, screws, nails, nails, clippers, and even saw blades. These occurrences were as complicated and difficult to resolve as they were common.

Police Officer Wang told me a story about a migrant who used to carry nails with him at all times. *‘After we caught him, he swallowed the nails instantly. The detention centre (kanshousuo) carries out X-ray checks for all incoming detainees before taking them into custody. If they see things like these in their stomach, they will not accept them.’* Under these circumstances, he continued, *‘We had to let him go... After being released, he continued to steal. Then he went through prosecution and trial. Although the court sentenced him to prison, the jail still did not want to take him. What can we do? He continues to steal, but our hands are tied. There is nothing we can do.’*

This repeated othering during encounters between police and suspects enhanced the discursive framing of migrants as having violent and irrational tendencies. In some cases, this discourse overlaps with other narratives and concerns related to specific minorities. For instance, Muslims from Xinjiang are often marked out for their ‘savageness and aggression.’ As Police Officer Dong told me: *‘We caught several Uyghurs from Xinjiang. One put some blades into his mouth, and then chewed the blades. Lots of blood came out of his mouth, I was frightened to death, we just let him go.’*

4.7.2 ‘You are pregnant. What a pity if you don’t do this!’

Female migrants use motherhood to avoid arrest. In his master’s dissertation, Li Weiming (2015) found that in Shanghai, numerous organized crime groups from Hunan province recruit women who are pregnant or have a small baby. A woman told Li how she came to join the group: *‘My townsfolk told me that nowadays pregnant women are all doing this. They said: “You are pregnant. What a pity if you don’t do this!”’* Sometimes, women have abortions after months of pregnancy, and then get pregnant again just to stay out of jail. Protection of female victims of human trafficking, modern slavery and sex exploitation is not discussed extensively in Li’s thesis, but he essentially blames their condition on their ‘craftiness’.

4.7.3 Blurred Morality and Resistance

This thesis certainly does not intend to glorify migrant coping strategies or suggest that migrant suspects are activists leading a non-violent life in a context of hukou apartheid. However, their actions can be more understood as more complicated than Li (Ibid) and some news media suggest. From feigning illness to skip a class to soldiers deliberately harming themselves in order

to escape the war; from espionage agents taking a cyanide pill to avoid torture to people grabbing a baby at the very last minute to gain a seat on a lifeboat, the distinction between ‘*courageous acts*’ and ‘*irresponsible cowardice*’ often depends on who draws the line. These examples all demonstrate that resistance is a complex set of actions that go against an established order. In other words, resistance – or the act of saying no – is, by its very nature, contentious.

Facing the real possibility of arrest and pretrial incarceration, migrant suspects look for alternative paths to self-redemption. There are two layers of resistance in the coping strategies outlined in this thesis. The first layer lies within the offender’s noncompliant behaviours during his or her interactions with the police. In this case, rather than being verbally or physically aggressive, the resistance is actually non-violent. It is a tangible, subtle, even silent act. The second layer resonates with the idea of resistance or rebellion in cultural criminology.

As Jock Young (2011) points out in *The Criminological Imagination*, resistance is always there. Self-harm and pregnancy should also be seen as forms of resistance against discriminative policing. At a disadvantage in the criminal legal system, migrant suspects change their own bodies to resist the asymmetrical power relationships between themselves and those administering ‘*justice*.’ For these subversive migrants, nails in the stomach and foetuses in the womb become a type of protection from discriminatory incarceration.

4.8 Policing Stability Maintenance

At the micro level, the previous section presented the exercise of resistance by migrants who experience discriminatory injustice. On the macro level, challenges to the inequalities that are rooted in the political economy are policed under the discourse of ‘stability maintenance (weiwen).’

The aphorism that ‘stability is the core concern’ (wending Yadao yiqie) shows that stability maintenance (wei wen) has become a top priority in China since the mid-2000s (Sun, 2013). The police are taking the role and responsibility for quelling social conflicts. Special squads have been set up in every police station to enforce stability. Accordingly, indexes are developed and deployed for the purpose of the annual evaluation. Index algorithms generate major deductions, leading to a lower rank for the affected police station, for any ‘unsolved’ event that was tied to ‘instability’.

Media and government reports spread fears that ‘the social instability caused by 200 million migrants would be a horrible nightmare’ (Lan, 2010: 74). Conflicts on dismissal, redundancy, work injury, salary and other labour disputes between the worker and the factory are regarded as

the main instability-related incidents that are triggered. Being viewed as the element most likely to generate instability, the migrant population sits at the centre of this aspect of policing in China.

When conflicts between migrant groups and employers become acute and agitated, police are supposed to remain neutral and mediate the conflicts toward a peaceful conclusion. In practice, however, migrants who gather to fight for their own rights are labelled as ‘forces of instability’ and hence suppressed by the police.

4.8.1 ‘Violent Pay Talks’

With limited labour protection and no meaningful labour rights, migrant workers sometimes find themselves in desperate situations. Workers are sometimes unpaid or underpaid for months and years on end. In most cases, migrant workers have no formal work contract, so legal remedies can hardly help. When they present their claims in the street, which they see as the only remaining self-preservation strategy, their actions are demonized as ‘violent pay talks’ (Baoli taoxin). The term is mostly associated with the migrant and came up frequently during interviews.

... A bunch of migrant workers wants to go home for the Chinese New Year. Their boss did not pay them any salary and left. They felt that they did not get their money for Chinese New Year was because the boss did not pay them anything... They hung out a big banner trying to grab attention and sympathy from society. They thought this action was appropriate, and I understand their point, I mean, “an eye for an eye,” right? (sharen changming, qianzhai huanqian). Still, they didn’t care about public interests, social order, etc. They blocked the road and did not realize the seriousness of their behaviour. Their eyes can only see that “the boss did not pay me, I need my money back.” ... We must police them! ... The drivers called us to report the clogged road. We went there and took their banners. When they resisted us, we called for back-up – the special squads. They came and dispersed the migrant group. We took those who resisted back to our police station. They felt they had been wronged: their boss ran away and did not pay them; the police did not help them to solve the problem but took their things and detained them. In our police station, we told them to go to court for help. They don’t know anything. We detained and fined those who still resisted. Several days after they were released, they went for protest again! What can we do about that! (Zhang)

Police Officer Liu gave an anecdote of a migrant who ended up in jail after going to the police station seeking help to solve a labour dispute ending up in jail.

...A bunch of migrant rioters attacked our police station. The leader’s father was an electrician. He lost his life in a fatal electric shock during work. The apartment in which he was doing his wiring jobs was owned by a Shanghai local resident. The issue was about compensation for the incident at work; they could not reach an agreement. The son called people in Shanghai who, like them, had migrated from Anhui Province. They came to the Shanghai’s home together. He asked for two million yuan (about £225,000). It is outrageous. And especially, the guy who died in the accident, he did not follow the code of conduct. He touched the live line himself ... The owner was willing to pay some compensation, but two million yuan is outrageous. Finally,

the son brought thirty Anhui people to the police station. It was a riot! They overturned police cars! It was a very serious riot, but the police were prepared; we arrested a lot of them. You have read the “Outlaws of the Marsh” (Shui Hu Zhuan)? Everyone put in jail was Chi Zhang¹² 100 times. This is the rule. We have to teach them a lesson through this. The leaders were prosecuted for crimes against public order... These three leaders of the riot group, their *suzhi* is very low. They make trouble when they face difficulties. Shanghai is a civilized city. Law is respected here. We must not allow such riots to happen. Maybe they can try elsewhere (laugh). We won’t be easy on them! (Liu)

In this case, the crime is pinned on the migrant worker as they are carrying out ‘pay-talks’ in an uncivilized, irrational, illegal way. Without addressing the payment issue, the exploited migrant is first demonized as selfish and then suppressed.

In policing the worker’s ‘violent pay talks,’ the police and the special squad were well prepared. They used body fences and water cannons to drive the workers away; gave false promises to persuade them to leave; and sent plainclothesmen to mix with the resisters to undermine the protest. The hard-core resisters were arrested and detained under the crimes against public order. ‘In the face of the emergence of large-scale workplace protests, the police, which had tended to be neutral in the 1980s, were then more active in cracking down on worker activism’ (Chan, 2008). Between 2002–2005, 21 incidents were reported as worker’s collective action resulted in physical conflicts with police in China’s Pearl River Delta (Chan, 2008). Police Officer Wan shared the experience he was taking part in policing the ‘violent pay talks’ in 2014. He demonstrated how manipulation and discrimination are deployed:

It was in February. The boss did not pay salaries to the migrant workers. Holding shovels and sticks, workers stood by outside the building of the boss’s office. Around 40–50 people. It was not in our jurisdiction, but we and another squad were asked to provide back up. I felt it was not right. Our chief shouted to the migrants, “Drop the shovels and sticks, and come with us to the police station. We will arrest the boss, you can make the pay talk in the police station.” Another chief said, “I will guarantee if you come with me to the police station, I will help you out with the delayed salary payment.” Then they (the migrants) believed, and we brought several leaders back to our police station. Well, after they entered the police station, things totally changed. They were directly sent to detention. My job was to watch over them during the night. That night, some of their families came to our police station, cried and wanted the detainees released. A senior police officer told them if they kept acting like that, they would be arrested well... (Wan)

In the name of policing stability, migrant workers are further suppressed from forming any independent working union, which in turn leaves them in an even more excluded, unequal and powerless place.

¹² An ancient judicial punishment in Chinese society, normally carried out with a light bamboo or rattan stick on the buttocks of the offender. Similar to the traditional British-style canings or hard spanking.

The evidence presented and reviewed here confirms a widespread tendency for the NLHR population, especially those who are disadvantaged in ways of living community, occupation and education receive inferior treatment by the police. In general terms, regardless of other social or economic markers, the NLHR population is considered to be ‘suspect’ in the eyes of the police. Moreover, police manipulation and abuse are disproportionately used on members of this population group in order to stitch them into the indexes. The result of systematically biased gatekeeper will be vividly presented in the next chapter.

Chapter 5 Prosecution and Sentencing

Upon the police drawing members of the non-local-hukou registered (hereafter NLHR, and LHR for local-hukou-registered) population in through the ‘gates’ of the criminal legal system – disproportionately, as we have seen – systematic discrimination becomes even more intense. It is so pervasive and so powerful that the end result can be predicted with near certainty once an individual has been brought in for questioning. In this chapter, I turn to analyze the treatment of NLHRs in the prosecution and sentencing processes. I seek to build up a picture of the differential experiences of LHRs and NLHRs as I explain how the basis of the system contributes to their disparate treatments within the criminal legal process as a whole.

Research indicates that the NLHR population is over-represented in prison. Jiang and Kuang (2018) analysed criminal case data derived from judicial documents of intermediate criminal courts in 25 large Chinese cities. They found that ‘net of other case, offender and city characteristics’, being a rural–urban migrant is associated consistently and significantly with ‘an increased likelihood of receiving a sentence of imprisonment’ (Jiang and Kuang, 2018: 207). As presented in their analysis, hukou status and criminal history weigh the most in predicting how a convict will be sentenced, compared with other legal and extra-legal factors (see Table 5.1).

Others have also studied the correlations between prior offences and hukou status on criminal sentencing. Lao (2016) uses an unofficial criminal data set of criminal verdicts from different levels of courts in China between 2000 to 2011, collected by Peking University’s Institute for Empirical Legal Study. The sample includes criminal cases of three most common crimes: ‘a collection of 52,717 sentencing events associated with all larceny convictions, a collection of 20,355 sentencing events associated with all robbery convictions and a collection of 26,563 sentencing events associated with all assault convictions’, from all over China. Regressions performed on this large national sample reveal similar correlations between the hukou status and imprisonment as Jiang and Kuang (2018). Compared with the offenders with a local hukou, non-local counterparts with similar criminal histories, in almost all scenerios, have a strikingly higher possibility of being sent to prison (See Table 5.2).

Table 5.1 Multilevel Models of Sentence Outcomes Regressed on Being a Rural–urban migrant and City context.

Variables	Model 1		Model 2		Model 3		Model 4	
	b	SE	b	SE	b	SE	b	SE
Intercept	0.487**	1.923	0.479**	1.782	0.485**	1.257	0.365**	1.79
Focal Predictor Variable								
Being a rural-to-urban migrant	0.189**	0.246	0.127**	0.255	0.078**	0.361	0.066**	0.571
Controls								
Case Characteristics								
Violent offense			1.245*	0.576	1.033*	0.874	1.012*	0.923
Property offense			0.876*	0.356	0.543*	0.487	0.476*	0.873
Other offense			0.578	0.451	0.276	0.591	0.255	0.763
Victims			0.984	0.285	0.742	0.431	0.687	0.571
Conviction mode			0.076	0.126	0.045	0.299	0.033	0.472
Offender Characteristics								
Age			0.629	0.249	0.562	0.345	0.472	0.556
Male			0.083	0.125	0.055	0.259	0.034	0.458
Married			0.231	0.112	0.153	0.457	0.146	0.648
Educational level			0.438	0.672	0.219	0.893	0.202	0.992
Years in the city			0.671	0.923	0.466	0.989	0.387	0.996
Income level			0.462	0.168	0.177	0.364	0.126	0.478
Occupation			0.349	0.447	0.252	0.782	0.247	0.873
Criminal history			0.169***	0.269	0.197***	0.563	0.177***	0.778
City Characteristics								
Gross domestic product					0.182	0.178	0.171	0.455
Population density					0.107	0.365	0.097	0.568
Percentage of migrants					0.126**	0.288	0.118**	0.566
Violent crime rates					0.279	0.748	0.259	0.899
Interaction Term								
Being a Rural-to-Urban Migrant × Percentage of Migrants							0.024*	0.069
Random Effects								
Variance components					3.57		4.66	
Chi-square					1320.491**		1762.242**	
Level 1 (case-level) sample size	1050		1050		1050		1050	
Level 2 (city-level) sample size					25		25	

ABBREVIATION: SE = standard error

*** $p < 0.001$; ** $p < 0.05$; * $p < 0.1$ (two-tailed tests)

Source: Jiang and Kuang (2018: 206), ‘Hukou Status and Sentencing in the Wake of Internal Migration: The Penalty Effect of Being Rural-to-Urban Migrants in China’.

Across all three offense types, a higher proportion of offenders who are not registered with a local hukou are sent to prison. Lao’s (2016) research further confirms the existence of a positive relationship between non-local hukou status and incarceration decisions. Moreover, using the same database, she finds that NLHR individuals are also more likely to receive longer sentences than their LHR counterparts (See Table 5.3).

Table 5.2 Interactive Effects of Prior Conviction, Current Offense Type and Hukou status

Number of prior convictions	Proportion Sent to Prison (per cent)					
	LHR Convicts			NLHR Convicts		
	Larceny (N=39868)	Robbery (N=14722)	Assault (N=22727)	Larceny (N=8397)	Robbery (N=4157)	Assault (N=2456)
None	79.2% (N=31274)	92.0% (N=13204)	53.1% (N=20928)	95% (N=6908)	99% (N=3812)	80.4% (N=2253)
One	97.9% (N=5930)	99.3% (N=1228)	86.8% (N=1488)	99.1% (N=1206)	99.7% (N=319)	96.9% (N=176)
Two	99.6% (N=1704)	100% (N=219)	94.5% (N=237)	100% (N=212)	100% (N=22)	100% (N=21)
Three or more	100% (N=960)	100% (N=71)	98.6% (N=74)	100% (N=71)	100% (N=4)	100% (N=6)

Source: Lao (2016: 138–139) The complexities of prior record, current crime type, and hukou status in China: interactive effects in sentencing.

Table 5.3 Interactive Effects of Prior Conviction, Current Offense Type and hukou Status on Sentence Severity

Current Crime	Sentence Length (months)					
	LHR Convicts			NLHR Convicts		
	Repeat Convicts	Non-repeat Convicts with Priors	First Time Convict	Repeated Convicts	Non-repeated Convicts with Priors	First Time Convict
Larceny	36.78 (N=4578)	32.79 (N=4081)	32.22 (N=31257)	41.74 (N=939)	37.39 (N=547)	35.10 (N=6897)
Robbery	89.17 (N=664)	81.01 (N=851)	69.37 (N=13197)	89.98 (N=211)	85.73 (N=130)	76.42 (N=3800)
Assault	41.26 (N=663)	39.07 (N=1134)	35.67 (N=20913)	55.40 (N=91)	53.09 (N=112)	44.04 (N=2253)

Source: Lao (2016: 141) The complexities of prior record, current crime type, and hukou status in China: interactive effects in sentencing.

For instance, as shown in Table 5.3, NLHR first-time assault offenders are sentenced on average approximately ten months longer than LHRs. The gap of the average sentence length enlarged to fourteen months for NLHR convicts with prior crime histories, compared with similar LHR convicts. Regardless of other impacts, such as the severity of the crime and other legal and extra-legal factors, the NLHR offenders typically receive longer sentences, sometimes strikingly so.

In summary, non-local hukou status correlates with harsh consequences at the end point of the criminal justice process. NLHRs are disproportionately likely both to be sentenced to prison and to remain there for a longer time. Some evidence that enables us to explain the disparity was presented in the previous chapter on policing, as the ‘gates’ of the criminal legal system. There, I explained why a disproportionately high proportion of cases are filed and arrests made against members of this specific population: perverted incentives related to professional advancement turn out to play a major role. In this chapter, attention is turned to a series of questions that have been raised about the treatment of NLHRs in the prosecution and sentencing process.

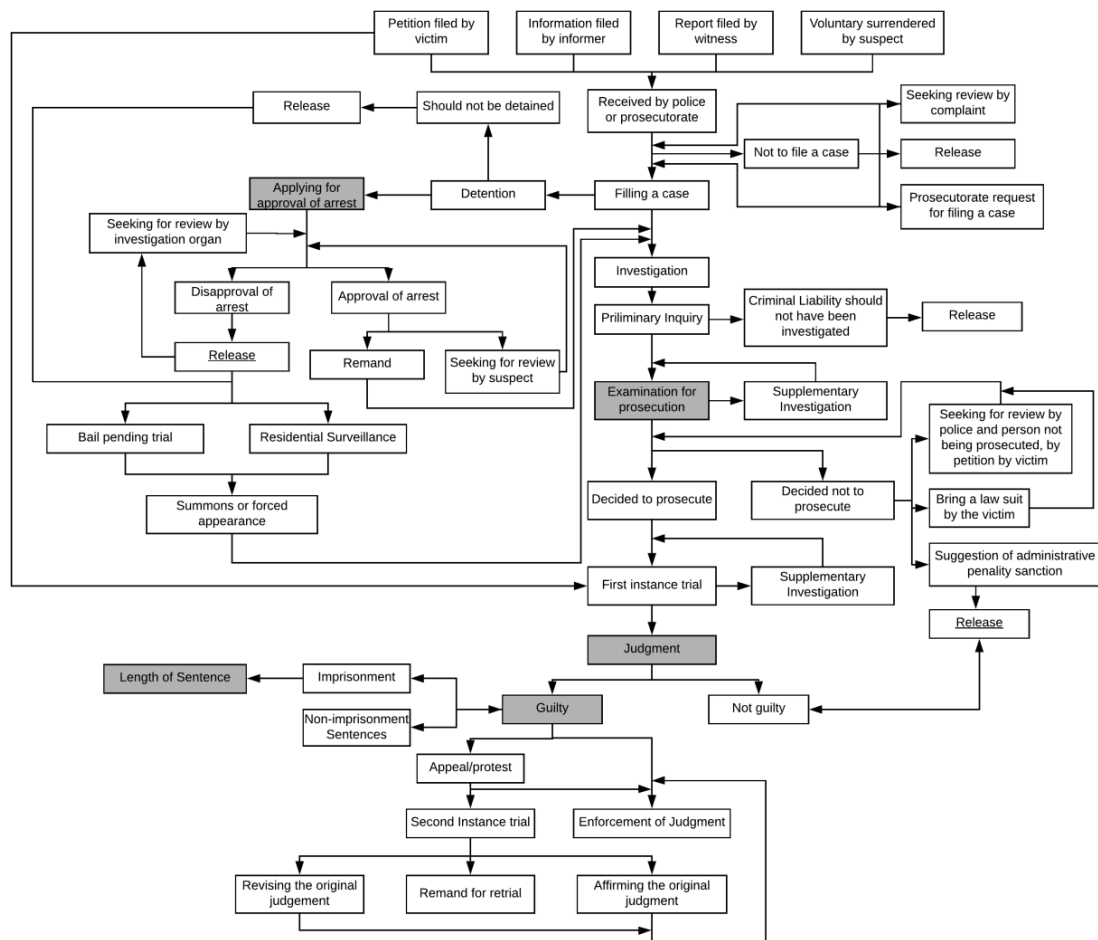
5.1 Major Decision Points in Criminal Procedure

Given the criminological facts presented above, we need to ask whether the empirical evidence indicates direct or indirect, individual or institutional discrimination against NLHRs in the practices of prosecutors and judges. Five critical junctures are identified as the major influential points during the process. Decisions during these five moments determine the flow of the case and therefore the likely end disposition of the case.

The five critical decision-making points are shown in Figure 5.1: 1) to approve or disapprove the arrest; 2) to prosecute or terminate the case; 3) judgement of ‘guilty’ or ‘not guilty’; 4) sentencing (imprisonment or alternatives); and finally, 5) if sentenced to imprisonment, the length of the sentence. Formally, the first two decisions are accessed and decided within power the prosecutorate, whereas the later three are exercised by the court. Disapproval of an arrest warrant, deciding not to prosecute the case, and a judgement of not guilty negates previous positive decisions and leads either to discharge or to instant release (see Figure 5.1). Hence, they are crucial in terms of the freedom of the suspects as well as the continuity of the process.

In this chapter, empirical data are presented to unpack the decision-making process. Further discussions are opened on the inter-linkage between these five decisions; these inter-linkages help to explain how institutional incentives embedded in China’s criminal legal system promote consistently discriminatory treatment against the NLHR population. Each

Figure 5.1 Chinese Criminal procedure flowchart and critical decision points



Source: This procedural flowchart is based on McConville, 2011: 159. My revision also highlights five critical decision points.

decision-making point is examined both individually and collectively, in order to find out how and why the hukou status of the criminal offender shapes sentencing outcomes in China. I seek to build up a picture of divergent NLHR and LHR experiences in an attempt to show how differences at one decision point contribute to varying treatment later in the judicial process.

Organizational policies and practices of the criminal justice actors – the police, the prosecutorate, the court and the defence lawyer – are accordingly demonstrated and analysed. I highlight the sophisticated nature of the legal system: the quality of the interactions between the police, the prosecutorate, the court and the lawyer are the root cause for the long-lasting and significant disparities presented in the tables above.

Table 5.4 Arrest rates in Cixi, Ningbo, 2006

Population & per cent	Registered Population	Arrest Population	Arrest Rate
Total	1,716,235	3,072	0.17%
LHR	1,020,800	513	0.05%
	59.8%	16.7%	
NLHR	695,435	2,559	0.37%
	40.2%	83.3%	

Source: Derived from an internal Cixi government document.

5.2 The Decision to Approve or Disapprove an Arrest

In 2008, the procuratorate's division of arrest approval (pibu ke) was renamed as the division of investigation and supervision (zhencha jiandu ke, also known as zhenjian ke). Prosecutors in this division are responsible for approving, or not, police-submitted applications for arrest.¹³ The decision regarding arrest is the first crucial decision point in the prosecutorial process because it places the suspected criminal on a path with a series of nearly certain legal consequences, of which decisions regarding bail and remand decisions. Figure 5.4 demonstrates that upon approval to arrest, before the suspect is tried in court, s/he should be remanded into custody; whereas disapproval of the arrest leaves the police with a few options: releasing the suspect be on bail pending trial (qubao housheng), implementing a residential surveillance program (jianzhi juzhu), imposing no restrictions on the suspect while the investigation continues, or simply closing the investigation.

It is a fact that prosecutors in China are more prone to approve an arrest warrant for an NLHR suspect. Therefore, an NLHR suspect is more likely to be remanded into custody, that is, s/he is less likely to be released on bail or into an alternative non-custodial arrangement. For instance, according to internal documents from Cixi procuratorates (see Table 5.2), NLHR population account for only 40.2 per cent of the registered population, yet in 2010 they

¹³ 'Criminal Procedure Law' Article 88. After examining a case where a public security authority has filed a request for approval of arrest, a people's procuratorate shall, according to the actual circumstances of the case, make a decision to approve or disapprove the arrest. If the people's procuratorate decides to approve the arrest, the public security authority shall execute the decision immediately and notify the people's procuratorate regarding execution in a timely manner. If the people's procuratorate decides to disapprove the arrest, it shall explain the reasons for disapproval and, when necessary, notify at the same time the public security authority to conduct a supplementary investigation.

comprised 83.3 per cent of people arrested. The arrest rate for the NLHR population was 368 arrests per 100,000 people, 7.36 times higher than the rate for LHR.

In the previous chapter on policing, we explicitly demonstrated discrimination in the decision processes that lead to a disproportionate number of applications for arrest of NLHRs in practice: 1) arrestment population and arrest rate (approved arrest/ arrest applications) are the main criteria in assessment, evaluation and competition in police institutions; 2) prosecutorates are prone to approve arrestment on migrant suspects; 3) hence, the NLHR population begins with a significantly higher risk that observed suspicious behaviour will lead to arrest applications submitted to the prosecutorate, because, in addition to serving the public interest, police departments have an institutional interest in generating both a higher arrest number and a higher proportion of successful arrest applications. In other words, the prosecutorate's inclination to approve the arrest of NLHR suspects serves as an incentive for a mass of applications filed on the NLHR population. The prosecutorate's parallel disinclination to approve arrest applications of LHR suspects leads police to dedicate fewer resources to these suspects, all else being equal. On the one hand, an excessive number of arrest applications against the migrant suspect population resulted in an excessive number of arrest decisions against the same group. On the other, this mass arrest of the migrant population cannot be fully explained without concretely addressing the mechanisms that underlie arrest decisions.

5.2.1 '*Arrest all* [migrant suspects]'

Interviewed prosecutors explicitly acknowledged that in their daily work, they simply follow the principle of '*arrest all*' (yilv shiyong jiyaxing qiangzhi cuoshi) NLHR suspects. Prosecutor Ma and Fang could not recall '*a single case where an arrest request regarding an NLHR suspect had been disapproved*'. As mentioned above, the police have an institutional interest in targeting the NLHR population, as their arrest is more likely to be officially sanctioned and thus their crime fighting data bolstered. Prosecutors who are responsible for arrest approval/disapproval described the logic behind their decisions as follows.

An arrest examination is all about the pragmatic reasons. For those who are on the border between bail and arrest, a local resident is less likely to try to escape and less likely to succeed. But the migrants don't have lots of friends here. They are more likely to escape. Then our case proceeding would be terminated. (Chen)

... Yeah, it's kind of a contradiction. Most of the crimes here are misdemeanours, right? If he/she is a local resident, we could avoid arrest. For the migrant, we have to think that s/he might be a runner. We have to take that into consideration when it comes to migrant suspects. If such a thing happened, it would terminate the entire judicial process. So ... we make a positive decision here: arresting the suspects. Well, the ultimate goal is to save legal costs, whatsoever the circumstance. (Shang)

Generally speaking, migrants lack integrity. The locals are rational. The locals weigh the costs and benefits related to running away. “We will still have cyber pursuit against us. And travel costs. It’s not worth it.” How about the migrants? The majority of them do not have this kind of thinking. If we bail him/her, let him/her go, then we won’t contact them for a while. And then he/she thinks that’s it and goes back to his/her hometown. (Ou)

Bail is not pricey these days, right? Really not much. The costs of violating the bail is rather low to them, but pretty high to us. We have to put in a lot of effort and make lots of phone calls to try to reach them if they escape. (Chen)

We are more rigorous on arresting migrants. Of course, we are. We should be. If we disapproved the arrest and release him/her, there will be risks of collusion, maybe destruction of evidence. They might run away. Migrants don’t have a stable address here. How can we contact him afterwards? (Xiao)

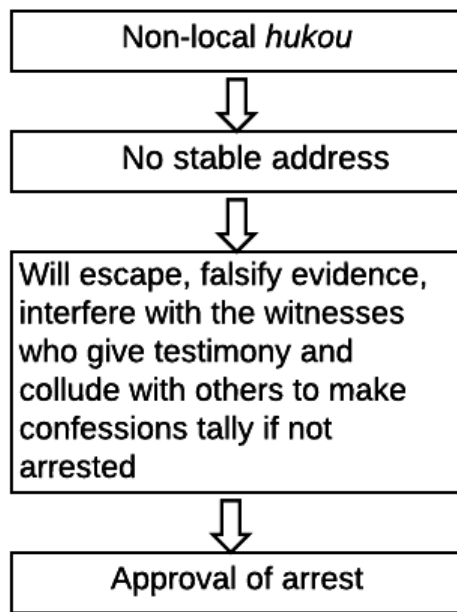
A causal link between the migrant and criminality has resulted in a major bias in the approval rate of arrest warrants for members of the NLHR population. This logic is enshrined in routine, everyday practices. Migrants are discursively equated with crime, and thus with instability and danger. Given the risk that migrants could ‘*leg it*’ (Zhang), positive arrest decisions targeting this kind of suspect are justified as essential to ensure the defendant’s return for subsequent proceedings. However, this apparent necessity is, in actuality, based on the illogical assumption formalised through the law, as I introduce immediately below.

5.2.2 Legitimizing inequality: NFA = arrest approval

Article 5.6 of the *Quality Standards for the Examination of Arrest Requests by People’s Procuratorate*¹⁴ provides specific procedural instructions to legal professionals, including a mandate that, if ‘the criminal suspect registered non-fixed abode (NFA) or commits crimes from place to place or in different places, and does not possess the conditions for bail or residential surveillance’, s/he shall be arrested. Rather than the *Criminal Procedural Law of the P.R.China* (1979, hereafter CPL), the working guideline for decision making is ‘Quality Standards for the Examination of Arrest Requests by the People’s Procuratorate’. Therefore, the prosecutors are making their decisions and exercising their discretion on arrest approval based on an evaluation ‘manual’ instead of the ‘real law’. Further, and parallel to the pressures faced by police officers discussed in the previous chapter, the pressure to produce a favourable evaluation powerfully influences priorities in everyday arrest examination routines. These include the pursuit of a quality arrest approval/disapproval ratio, and hence avoidance applications that might be disqualified decision, in the same way as the policing practices discussed in the previous chapter.

¹⁴ ‘Quality Standards for the Examination of Arrest Requests by People’s Procuratorates’ (*Renmin Jianchayuan shencha daibu zhiliang biaoqizhun*) Adopted at the 41st session of the Eleventh Procuratorial Committee of the Supreme People’s Procuratorate on August 25, 2010).

Figure 5.2 Legal Logic of hukou status and arrest



Source: Based on information collected and analysed by the researcher, 2017.

One of my interviewees, Zhang, a prosecutor from a district procuratorate in Shanghai, confirmed that the near-perfect overlap between the Quality Standards ‘NFA’ and their own understanding of a non-local hukou resulted in the establishment of standardized arrest guidelines in China (see Figure 5.2). In this way, discriminatory criteria that are embedded in the *Quality Standards* provide an additional layer to our understanding of why the procuratorate itself discriminates against NLHRs.

In this way, even though most prosecutors openly recognize the disparities in arrest decisions between NLHRs and LHRs, they simply do not link such disparities with ‘inequality’ or ‘unfairness’. As for the prosecutors, the criminal legal system is responsible for nothing more or less than procedural equality (*xingshi gongpin*), which implies sticking with the discriminatory legal logic shown in Figure 5.2 in the decision-making process. As long as it is the same arrest criteria applies to all the suspects in arrest examinations, the decisions should be regarded as equal, regardless of the unequal implications of these discriminatory and twisted criteria. As Prosecutor Shan put it, ‘*the unfairness is simply not our concern*’. They had fulfilled their duty to enforce procedural equality (*chengxu gongping*). Substantive equality (*shiti gongping*) is ‘*only another matter*’.

The migrant suspect here did not meet our unarresting criteria. To my understanding, we are applying the arresting rules equally here, to the migrants and the locals, but the migrant suspect did not meet the legal requirements. (Duan)

I applied the law equally. But the migrant suspect is unqualified to be released. Well, it is apparently very obvious that there are far more migrant suspects kept in jail. But the law has stipulated that clearly. “You (the migrant suspects) don’t have a stable accommodation? There is no way for us to grant you exemption from arrest.” (Zhang)

Far from being simply the result of the personal preferences of individual police officers, this bias has been systematized, rationalized, and legalized.

5.2.3 Ineffective bail system: A mere decoration

Bail and residential surveillance are categorized as coercion measures outside custody, which suggests that suspects whose arrest warrants have not been approved cannot expect a totally unsupervised status upon release. Despite compelling evidence to the contrary, prosecutors continue to believe that NLHR suspects are less likely than LHRs to appear in court, so letting them walk freely on the streets before trial would be dangerous for others. Thus, decision-makers who chose not to approve a suspect’s arrest warrant expect to encounter discontent from the police if that suspect fails to turn up in court. This expectation leads to the conservative routine of focusing on detaining all suspected NLHR offenders, which seems ‘rational’, given the information available to them, and the pre-trial coercive mechanisms they can choose from have little if any effect on the criminal activity. They believe their best option is to prevent possible future crime by detaining present NLHR suspects. In this way, the failure of the bail system in securing the appearance of the suspect in court is, in the end, counterproductive. The invalidation of the bail system *de facto* empowers the over-arrest response, particularly against the NLHR population.

The bail system in China is just a decoration. It’s unenforceable. Technically speaking, the enforcing institute should be the victim’s corresponding police station (that is, the station closest to where the crime occurred and where the suspect was picked up by the police). But in practice, the enforcer is the institute associated with a suspect’s registered hukou address. That police station should take the full responsibility to check on the suspects now and then. Now it has these following problems: Firstly, the community police are far from enough to meet the needs of the huge population in their jurisdictions. It’s almost impossible for them to know every suspect in the community. As long as the suspects do not leave the country, they are relatively free to go anywhere. There is no restraint put on buying flight or train tickets. So, every year we encounter one or two bailed suspects who have escaped. (Teng)

5.2.4 Invalidating legal reform: A clumsy denial resulting in self-exposure

Between 2011 and 2015, to address the existing evident biases in the arrest rate of migrant suspects, more than twenty migrant concentration cities in China initiated legal reforms. At the end of 2010, the Beijing prosecutorate and police department jointly issued the document about the process and criteria on how to conditionally bail NLHR suspects. Later on, Xaimen, Quanzhou, Ningbo, Cixi released similar documents. Such regulations aim to lower the arrest

rate of migrant suspects by equal application of the related regulations to migrants and urbanites. However, this claim is difficult to assess because the public cannot access these documents. It is impossible to find even a summary of the regulation online, much less the full text. Interviewed prosecutors explained that these documents are internal and confidential, and limited to people within the judicial system. One from Ningbo kindly shared some of the materials. Ningbo started its legal reform in 2013, when it launched ‘some suggestions on arresting migrants’:

Some Suggestions on Arresting Migrants (Trial)

Ningbo People’s Prosecutor and Ningbo Police 11 Jan 2013

(Translated by the researcher, 2017)

To enforce the criminal justice policy of balancing leniency and severity, to correctly apply arrest, protect the legal rights of migrant suspects, ensure the fairness of law enforcement, and better serve the building of a harmonious Ningbo; according to the “Criminal Law of the People’s Republic of China”, “Criminal Procedure Law of the People’s Republic of China” and other related laws and regulations, in combination with other legal practices, we suggest:

1. When applying coercive measures to migrant suspects, one should dispense criminal procedure law strictly, implement the criminal justice policy of balancing leniency and severity thoroughly, uphold equality before the law; treat every suspect with different social and hukou status indiscriminately; set up an equal system for migrant suspects; and guarantee the fairness and impartiality in law enforcement.
2. Migrant suspects whose actions comply with Article 79 ‘Criminal Procedure Law of the People’s Republic of China’ shall be arrested.
3. Migrant suspects whose actions comply with Article 65 and 72 shall be granted bailed or held under residential surveillance.

Migrants suspected of engaging misdemeanours, who have not previously been arrested for a major crime, and complying with any of the following terms, may be exempted from arrest:

- 3.1 Preparatory crime; discontinued crime; imperfect self-defence; Excessive risk aversion;
 - 3.2 First offender; accessory with lower culpability in a joint offense; surrendered voluntarily; relinquished illicitly gained profits; meritorious performance; victim losses offset; repentance shown.
 - 3.3 Migrant suspected of a crime of negligence, shows repentance; confirmed that victim was compensated quickly.
 - 3.4 Migrant suspects who have reached reconciliation with the victim; the reconciliation has been verified as voluntary and legal upon review; and the reconciliation has been fulfilled or guaranteed.
 - 3.5 More than 75 years old.
4. Migrant suspects who comply with any following terms, is eligible for bail:

- 4.1 Has relatively fixed work or a stable address (continuously lives at the presented address for more than one year after being registered with a residential permit or a TRP (Temporary Residential Permit)), can afford the bail or present a qualified guarantor.
- 4.2 Underage migrant suspects whose parent has fixed work or stable address and can afford the bail or is qualified to be his/her guarantor.

Any family member, friend, colleague, employer, teacher, or legal representative of his/her employed company, community or other legal organizations, who meets with the criteria as a guarantor, is eligible to be the guarantor.
- 4.3 The police applying to the prosecutor for approval to arrest a migrant suspect who is likely to be sentenced for less than 10 years; for a crime clearly identified as unintentional; in addition to submitting related evidence and documents, should list the reasons supporting the “necessity of the arrest” against the migrant suspect in the “Application of approval of arrest” form, which should be submitted along with the following supporting documents:
 - 4.4 Details of work, residence, family members and income of the migrant suspect.
 - 4.5 Evaluations of the migrant suspects’ performance at work, school and temporary residence.
 - 4.6 Report on voluntary surrender, meritorious performance relinquishment of illicitly gained profits, victim compensation, and showing repentance situation of the migrant suspect.
 - 4.7 Other related factors that indicate the “necessity of the arrest”
5. In the examination of the approval of arrest on migrant suspect, the procuratorate should consider the case and the specific situation of the migrant suspect, set up a systematic “Evaluation on the feasibility of non-arrest”; study comprehensively social harm and personal risk, and evaluate the feasibility of coercive measures other than incarceration, in order to reference the “necessity of the arrest.”
6. The procuratorate shall present reasons for a disapproved arrest in written format. The procuratorate shall listen to the police’s opinions related to the disapproval of arrest warrant applications regarding crimes with greater social impact.
7. Migrant suspects whose arrest warrant applications were disapproved for “unnecessity of the arrest”, the police shall apply for bail, residential surveillance or other coercive measures, and inform themselves of related law and regulations that enable them to enforce the supervision properly, and to ensure the legal process will proceed.
8. The division of investigation and supervision in the procuratorate (zhenchajianduke) and legal office of the police (fazhiban) shall enforce the supervision of cases disapproved due to “unnecessity of the arrest”, to prevent the case from becoming protracted.
9. If evidence shows that the migrant suspect disapproved of arrest for “unnecessity of the arrest” is suspected for other, more severe crimes, and meets the arrest criteria for these crimes, the police shall re-apply for arrest approval. If the police do not apply in a timely fashion, the procuratorate shall remind the police to resubmit the application.
10. The procuratorate shall enforce residential supervision on migrant suspects who have been granted bail.

11. If a migrant suspect violates bail or residential supervisory regulations, with serious circumstances, the police shall apply for approval of arrest from the procuratorate. The procuratorate shall approve the application.
12. “Migrant suspects” in this regulation refers to residents whose hukou is not registered in the Greater Ningbo region.

As discussed in the previous chapter, the newly issued regulation related to ‘equal application of the arrest of migrant workers’ was shelved in most cities. The police were either unaware of the regulation or had never considered including it in their everyday policing practices. As for the prosecutors who were expected to enforce the regulation and promote equality in arrests, they complained it’s the legal document’s infeasibility in practice. They charge that the regulation is not only being a blatant deviation from the principle of ‘equality before the law’, but also ‘*absurdly idealistic*’:

The regulation? (Laugh) It is unenforceable. It’s infeasible. Think about it! We bail a migrant suspect, what if s/he runs away? What can we do? Right? Think about it! (Qian)

Apparently, the ambitious reform programme outlined in official legal documents had essentially come to naught. Another prosecutor put it frankly: ‘*The regulation is totally infeasible, contradictory, and utterly ridiculous. I was treating them equally. What does this law mean? Why you issued this? Does it mean we were not equal to the migrant suspects before? Isn’t that ‘a clumsy denial resulting in self-exposure’ (cidi wuyin sanbai liang)*¹⁵?

Some Suggestions on Arresting Migrants (Trial) can best be understood as a clumsy denial. Articles 1 and 2, referring to the general principal articles in the CPL – which address arrest approval and disapproval of warrants for migrant suspects – reveal the underlying absurdity: the suggestions basically insist that applications for arrest, bail and residential surveillance stipulated in the CPL shall be applied in legal practice to all suspects, including NLHRs. Strictly speaking, the document alleges that the CPL, as the central rule of criminal procedure, is pertinent to migrant suspects as well. Such absurdness naturally reminds some readers of the story of ‘a clumsy denial resulting in self-exposure (cidi wuyin sanbai liang)’.

Nevertheless, apart from its reiteration of the CPL’s validity for migrant suspects, *Some Suggestions on Arresting Migrants (Trial)* made a limited contribution to the equality in the arrest decision-making process. The adjustment of the ongoing protocols of the *Quality Standards for*

¹⁵ *Cidi wuyin sanbai liang* is a Chinese proverb. It literally means ‘there is no three hundred taels silver buried here’. The story is about someone buried his silver in the ground and put up a sign: ‘three hundred taels of silver are not buried here. The next day his neighbour *A Er* stole the silver and posted another sign: ‘Your neighbour *A Er* did not steal it’. This proverb and the story are to tease those who say or do blatantly self-contradictory things and consequently become an object of ridicule, like a guilty person who gives himself away by consciously protesting his innocence (digchinese, 2017).

the Examination of Arrest Requests by People's Procuratorates might have the intention but could barely be counted on as an example of 'justice and fairness', because it has hardly benefited the entire migrant suspect population. The documentation expands the interpretation of 'fixed abode' by adjusting its narratives on LHR. Given such exemptions, bail shall be applied to NLHR suspects if he/she 'continuously lives at the presented address for more than one year after being registered with a RP or TRP' (Article 4.1). Registered migrants who meet certain address criteria are upgraded and thus included in the regular law, whereas the unregistered migrants continue to be left behind.

We always treat them equally in our work. But substantive equality is not for us to deal with. It's not our job in the criminal legal system. For instance, bail requires a guarantor or a fixed abode. Local suspects meet with one of these requirements more often. Migrant suspects who have bought property here will be bailed. We won't treat him/her differently only because he/she is a migrant. (Liang)

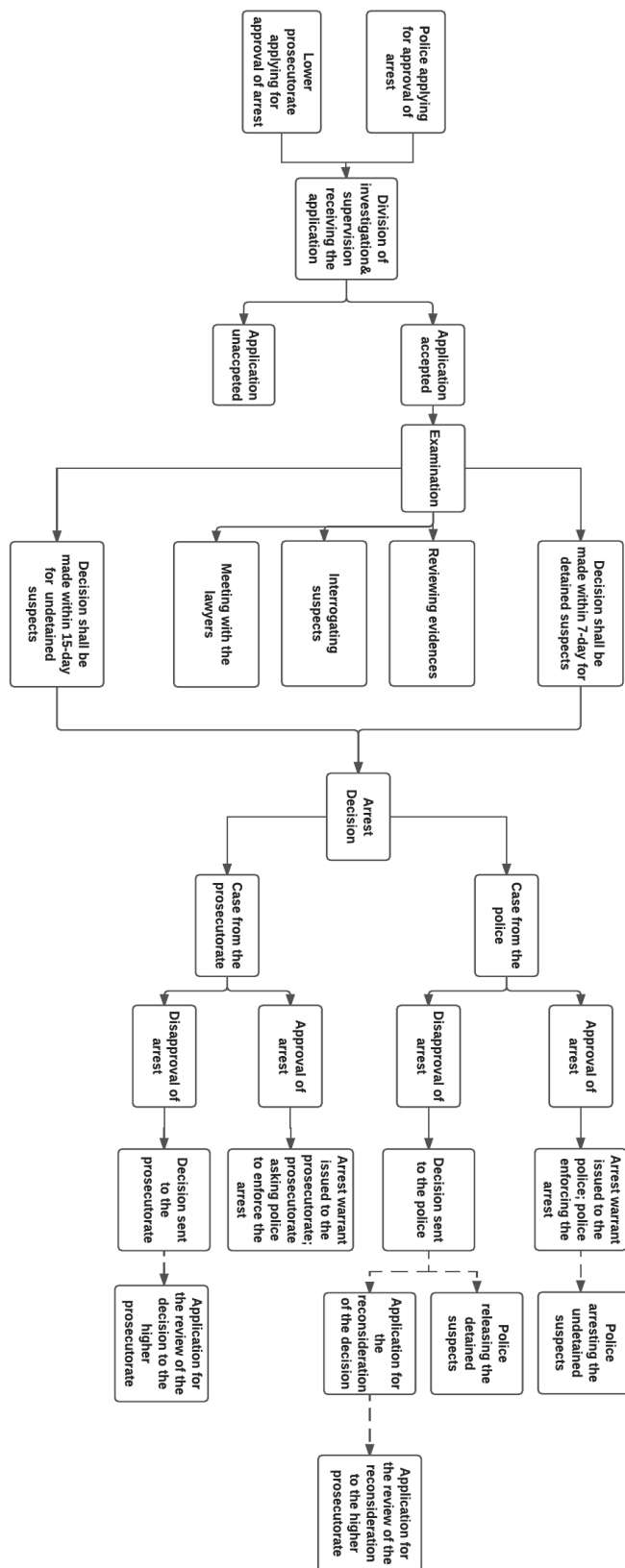
Thus, an NLHR who has bought a local property can be granted bail. The bail criterion is not localness; it is landedness. Initiatives like the Ningbo guidance analysed here use the face of inclusion to retain the criminal legal system's exclusionary activities against the migrant. 'The equal application to arrest of migrant workers' never aspired to 'equal treatment' or 'equal application' of migrant suspects. The conclusion that it is no more than a hypocritical manifesto is clearly supported by the comments of both police and prosecutors.

5.2.5 Institutionalizing selectiveness: Mutual agreement between the police and the prosecution

The Quality Standards for the Examination of Arrest Requests by People's Prosecution can be taken as the law that governs particular decision-making point, whereas the flowchart of the 'application-decision-ramification' process shows how both procedural law and customs restrained and shaped arresting decisions (See Figure 5.3).

Two main phases in the procedure for approving an arrest are identified in Figure 5.3: the arrest examination and the follow-up proceedings. Far from preventing discrimination, seemingly universal legal procedures are embedded everyday selective customs, navigating a path that had been determined at the moment the police decided to detain a person of interest. Step away from the mendacities in the prosecutors' allegation of their conformity with the law in practice; the details of the follow-up proceedings reveal how ostensibly-trivial bureaucracies influence the arrest decision.

Figure 5.3 Approval of arrest procedure flowchart



Source: Based on information collected and analysed by the researcher, 2019.

Police officers explained that the arrest warrant decision was usually made in advance by way of an informal contact, typically a telephone call, between the police chief and the prosecutor. Thus, often, the decision was made before the official application had reached the prosecutorate in official proceedings. Because of this routine collaboration between the police and the prosecution, approval-seeking applications can be approved without the use of much time or resources.

In practice, a detained suspect will be remanded into custody upon approval of the arrest warrant and will remain in jail until the end of the trial providing the judgement of sentencing is made. This is not true of those suspects, soon to be defendants, who are bailed or placed under residential surveillance at the investigation phase. After a warrant decision has been made, it is rarely reversed (see Figure 5.3): situations such as police arresting a non-detained suspect or releasing a detained suspect are highly exceptional. I argue that the explanation for these divergent paths is at least partly workload-related. Changing a defendant's status (in remand, or not) requires effort; it is easier for the police simply to let defendants remain where they are – wherever that may be.

Technically, although reversals are highly infrequent, judicial practices allow for them to occur. The prosecutorate's division of investigation and supervision is mandated to supervise remand/bail/residential surveillance decisions made during the investigation phase. The prosecutor is entitled to approve or disapprove applications for arrest, as well as invoke and correct police decisions regarding bail or detention that are deemed wrongful. However, the mutual negotiation routine restricts the independence of the prosecution. Disapproving an arrest of a detained suspect or approving an arrest of a non-detained suspect are made to be difficult in practice.

The limited legal resources have tied our hands. We invite trouble if we arrest someone who is already bailed. We cannot arrest anyone. That's fully in the scope of police powers ... If we want to arrest someone, we have to ask the police to cooperate with us. Sometimes the police perhaps won't assist us. It's a lot of trouble ... The interrogation of non-detained suspects takes place in our "talking room" (Tanhua shi¹⁶). We make decisions on arresting or not right after the interrogation. If the decision is positive, we need to keep the suspect in our "talking room" and call the police. We cannot arrest anyone on our own. The police are really busy, and this is not a favourable decision for them of course, because changing a defendant's status requires paperwork so basically, we have to wait for a long time until they come. For instance, once I made an appointment with the police at 8 pm. I assumed he would come no later than 8.30 and then take the suspects off to jail. You know what? I waited there for almost three hours. The police came at 11pm, almost midnight. The suspect was kept in the "talking room", I could not go anywhere. I was there, waiting with the suspect ... (Bai)

¹⁶ located within the same building as the prosecutorate.

This story clearly conveys aggressively passive resistance from the police when the prosecutor tried to revamp a police decision about detention.

On the other hand, a detained offender should be released after the prosecutor disapproves the arrest application against her/him. As discussed in section 5.1.1.1, prosecutors tried to justify their over-arrest decisions against migrant suspects by referring back to their established prejudices regarding NLHR dangerousness and especially the potential risk of escape. Prosecutors disclose further details regarding the issue when they respond to the question: what would happen if an unarrested, pre-detained offender fled?

We don't really have to take any direct responsibility for the escaped suspects. But as for the police, it is their responsibility to catch them again. If the suspect runs back to his/her hometown, another province, another city. It's the police who need to go there and bring him/her back to trial. We have to be considerate. How to say that? To reduce their stress and workloads. (Jia)

I don't bear any personal responsibility. If the suspect legs it, the police will complain. Of course, they will ... (Ren)

The prosecutor acknowledged receipt of complaints from the police and police department when these scenarios played out, and such complaints function as a deterrent against disapproving a warrant application regarding already-detained suspects, and the extra workload these disapprovals entail for the police. Here, the motivation of securing the continuity of the subsequent judicial process is relatively less relevant than a more practical concern: relieving a potential burden on an already overworked police force.

Clearly, the procedures do not ensure even procedural justice based on clearly defined roles and hierarchies; rather, procedures in practice reproduce the same decisions at every point. Interest in avoiding complaints and resentment from the police confines the prosecutors' independence and discretionary authority. In practice, prosecutors are forced to keep suspects on the same paths they were placed upon when the police decided to detain them, or not. As Prosecutor Wang put it, '*the formalities and proceedings are well-designed to prevent any disconformities from happening.*'

5.3 The Decision to Prosecute or Terminate Cases

Between 2013 and 2016, the nationwide non-prosecution (*nolle prosequi*) rate for the arrested suspects is only 1.4 per cent. As this figure shows, at the prosecution stage of the judicial process, decisions proceed with a high degree of conformity with the arrest status of the suspects. The selective prosecution decisions regarding NLHR suspects is 99 per cent in line with the prior arrest decisions. That is to say, NLHR offenders accordingly experience over-prosecution. The

fundamental issue that underlies this outcome is the internal organizational policy and structure of the prosecution.

The power of arrest and prosecution was separated into two different divisions in prosecutorate: the division of investigation and supervision (zhencha jiandu ke/chu, also known as zhenjian ke/chu, formerly known as pibu ke/chu) and the division of prosecution (gongsu ke/chu). The latter is in charge of making decisions about prosecution/non-prosecution. As the following Supreme Court interpretation shows, non-prosecution constitutes evidence of wrongful arrest:

... If the prosecutorate does not prosecute the case (*nolle prosequi*) due to “unclear facts and insufficient evidence”, the unprosecuted suspect is legally not guilty. This *nolle prosequi* decision shall confirm that the previous arrest decision is wrongful. National compensation for the abovementioned situation shall be made to the wrongfully arrested suspect. ... (Supreme Court, 2003)

In legal practice, this interpretation functions as follows:

Wrongful arrest is our responsibility; it also leads to national compensation. Someone should have to take responsibility for making that wrongful decision. It might not be a legal responsibility. But that person definitely is going to be penalized within the internal disciplinary system. This would result in huge damage to his/her reputation as a prosecutor. They will face difficulties in your later career. They won't get promoted. Frankly speaking, it means you caught the wrong man, an innocent man. You put someone in jail who should not be there. (Guan)

Accordingly, the division of prosecution assumes this enormous power over the division of investigation and supervision, along with the prosecutor who is in charge of the arrest approval. The division of investigation and supervision non-prosecution will avoid a (*nolle prosequi*) decision any cost. Otherwise it would lead to national compensation, taken away from the budget of the prosecutorate, as well as affect the individual prosecutor's evaluation outcome and concomitant penalization and reputation damage. These ramifications are endured by the prosecutorate institution as well as the division of investigation and supervision.

To evade the disadvantageous consequences mentioned above, the individual prosecutor, supported by the division of prosecution as an institution, rarely chooses the non-prosecution (*nolle prosequi*) option. This conformity in decision making first and foremost impacts the population that comprises the highest proportion of arrests: NLHR offenders. The legacy of over-arrest of NLHR offenders continues to cast its shadow over prosecution and later proceedings.

5.4 Committals

In China, all most all criminal trials end with convictions. To put it in another way, once a case goes to trial, an acquittal is virtually impossible. As national statistics confirm, between 2013–2016, the national acquittal rate is 0.016 per cent.¹⁷ For every 100,000 cases in court, only sixteen defendants are declared not guilty. Incredibly low acquittal rates can also be found in regional data from the Yangtze River Delta (see Table 5.5).

Acquittal (not guilty) verdicts rarely happen in Chinese courts. This result has an institutional motivation: just as a non-prosecution (*nolle prosequi*) decision renders the prior arrest as wrongful, and acquittal casts a reputational shadow on the prosecutor who chose to take the case to trial. This is an unacceptable outcome for the prosecutors. During interviews, prosecutors and judges affirmed that ‘*not guilty would be a dire catastrophe*’. According to Prosecutor Ye, not only would national compensation be required in this situation, ‘*an acquittal could upend our institute, undo everything they have done for the entire year in evaluation.*’ The real catastrophe, of course, is hidden beneath the near non-existence acquittal verdicts: innocent people and those who commit misdemeanors are sent to jail and, due to the paths placed upon much earlier in the process, a disproportionate number of these people are likely to be NLHRs. None of the judges or prosecutors interviewed even mentioned how selectiveness against the migrant group at the prosecution stage penetrated thoroughly and ‘naturally’ into the verdicts.

While the prosecution system celebrates its low acquittal rate as a totem of ‘justice’, legal professionals excuses the peculiar number by telling another version of the story. They link the outcome to the Chinese character (Zhongguo tese¹⁸) and try to assure the researcher (and probably also to themselves) that ‘*it’s no big deal*’. They explain that innocent people are not wrongly convicted or end up in prison, because the prosecution would be terminated if an acquittal is imminent. Any acquittal, which is regarded as a prosecution failure, should be avoided at an earlier stage, via dismissal. As Judge Yin put it, ‘*If we are about to acquit a defendant, we just let the prosecutor drop the charge. Why would we bother to inconvenience them? We (the court and the prosecutor) are friends.*’ However, such statements cannot be supported. Nationally,

¹⁷ The acquittal rate published from the court system is slightly higher, around 0.066 – 0.075%. This is because 80% of the acquittal are self-prosecuted crime cases (Fenghuangnet, 2016), which excluded from the prosecutorate’s data.

¹⁸ The Chinese character (Zhongguo tese) is linked with sinicization. It is firstly and most commonly found in the phrase ‘socialism with Chinese characteristics’ (Zhongguo tese shehuizhuyi). Later on, it has been widely applied to social political phenomena in China seemingly to differentiate them from similar but apparently not identical Western versions.

Table 5.5 Acquittal population and rate in Shanghai and Jiangsu, China (2015)

City	Total defendants	Number acquitted	Convicted population	Acquittal rate
Shanghai	84, 651	51	84, 600	0.06%
Jiangsu	37, 709	9	37, 700	0.02%

Acquittal rate = acquittal population/ total defendant population

Source: Based on information collected and analysed by the researcher, 2017.

between 2013–2016, the proportion of cases dropped after a suspect is arrested was 0.0007 per cent, which shows the slightest nuance of change in the big picture of conformity during the processes of prosecution and judgement.

Institutional perversions that result from informal collaboration appear yet again. Just like the decision of arrest is determined mutually by the police and the prosecutor, a conviction decision is almost predetermined before the trial, via dialogue between the prosecutor and the judge. In order to reduce the acquittal rate to zero, which improves everybody's performance review, selectiveness against NLHR offenders is reiterated. Over-conviction is a continuation and development of previous decisions, which themselves led to over-arrest and over-prosecution. So far, over-arrest and over-prosecution have been shown to be prevalent, and here they are shown to be linked to the disproportionate conviction of NLHR offenders.

5.5 Sentencing Decisions

Once an individual has been convicted of an offence, the court decides on an appropriate sentence. Formally, sentences are to be determined on the basis of the facts of the case, which are to be interpreted in the context of the statutory framework established in the Criminal Law of P.R.China (1979). Judges have a duty to take into account aggravating circumstances (which may increase the severity of the sentence) and mitigating factors (which may reduce the severity of the sentence), and impose a sentence taking facts as the basis and the law as criterion (*yi shishi wei yiju, yi falv wei zhunshen*) (Supreme Court, 2018).

Once convicted, the judge must make three decisions: 1) the type of sentence: control (*guanzhi*), criminal detention (*juyi*), fixed-term imprisonment, open-term imprisonment (life sentence) or death; 2) whether to suspend the sentence; 3) if fixed-term imprisonment, the length of the sentence.

The data presented at the beginning of this chapter shows clearly that non-local hukou status correlates strongly with harsher sentences. The following data derived from an internal government report provides more details about sentences the NLHR convicts received.

Table 5.6 Judicial Outcome of NLHR convicts in Cixi from 2005–2008

Judicial outcome	2005	2006	2007	2008	Average
Total	2,067	2,130	2,212	2,316	8,725
Control	2	1	2	1	6
	0.09%	0.05%	0.09%	0.04%	0.07%
Criminal	471	407	455	398	1731
Detention	22.79%	19.10%	20.57%	17.18%	19.84%
Imprisonment	970	984	1,021	1,161	4,136
(≤3 years)	46.93%	46.20%	46.16%	50.13	47.40%
Imprisonment	605	709	689	699	2,702
(>3 years)	29.27%	33.29%	31.15%	30.18%	30.96%
Suspended sentence	19	29	45	57	150
	0.92%	1.36%	2.03%	2.46%	1.72%

Source: Based on information collected and analysed by the researcher, 2017.

Table. 5.7 Sentencing of robbery and forcible seizure cases with NLHR convicts in 2006 Cixi (forcible seizure population =45; robbery population =162)

Forcible Seizure 45	Control or criminal detention	Imprisonment				
		≤6 months	6–9 months	9–12 months	1–2 years	2–3 years
	0	14	10	4	12	5
	0%	31.1%	22.2%	8.9%	26.7%	11.1%
Robbery 162	mitigated punishment	Imprisonment				
		3 years	3–4 years	4–5 years	5–6 years	> 6 years
	53	19	59	12	8	11
	32.7%	11.7%	36.4%	7.4%	4.9%	6.8%

Source: Based on information collected and analysed by the researcher, 2017.

Table 5.6 reflects the major features and trends of the sentencing outcomes imposed on NLHR offenders: 1) As much as 98.2 per cent of NLHR offenders receives custodial sentences (Criminal detention and imprisonment). Among these, 78.36 per cent are incarcerated in prison and 19.84 per cent are kept in jail; 2) 67.24 per cent, that is, more than two-thirds of NLHR offenders are imprisoned for short-term sentences of less than three years; 3) On the contrary, only 0.07 per cent of NLHR offenders are sentenced to control, and 1.72 per cent have their sentences suspended; 4) Though the sentence suspension rate for NLHR offenders is strikingly

low, we still witness that a growing number became entitled to this ‘privilege’ between 2005 and 2008.

Theft, robbery and forced seizure are the most common offences NLHR offenders are charged with. Table 5.7 provides further details of the sentencing of those convicted of robbery and forcible seizure (qiang duo and qiang jie, also known as liangqiang). Analysed with the related legal sections outlines the sentencing range, Table 5.7 draws a full picture in terms of the judgement outcomes experienced by NLHR offenders. Criminal Law of the P.R.China, Articles 263 and 267, stipulate the sentencing ranges and aggravating factors of these offences:

Article 267. Whoever seizes public and private property, and the amount involved is quite large, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control; and may also be sentenced to a fine, additionally or exclusively. When involving high value items or the aggravating factors, the sentencing range is three to ten years imprisonment in addition to a fine. When the amount involved is considered to be extremely high value and the other circumstances are particularly serious, the sentence is to be not less than ten years of fixed-term imprisonment, or life imprisonment, in addition to a fine or confiscation of property. Whoever commits a crime with a lethal weapon is to be convicted and punished according to the regulations in Article 263 of this law.

Article 263. Those robbing public or private property using force, coercion, or other methods are to be sentenced to three to ten years in prison in addition to a fine. Those falling in one or more of the following cases are to be sentenced to ten years or more in prison, given life sentences, or sentenced to death, in addition to fines or confiscation of property:

- 1) those intruding into others’ houses to rob;
- 2) those committing robbery on public transportation vehicles;
- 3) those robbing banks or other financial institutions;
- 4) those committing several robberies or robbing large amounts of money or other properties;
- 5) those causing serious injuries to or death while robbing;
- 6) those committing robbery posing as servicemen or policemen;
- 7) those committing robbery using guns;
- 8) those robbing materials for military use, or materials for fighting disasters or relieving disaster victims.

Article 267 divides forcible seizure into lesser, medium and high severity, and accordingly establishes sentence ranges of less than three years, three to ten years and more than ten years fixed-term imprisonment. In the same way, convicts less-severe robberies face three to ten years; while convicts of more serious cases face more than ten years, life sentences, or even the death penalty. In practice, NLHRs who are convicted of these two types of crimes are sentenced as follows (see also Table 5.6 and 5.7).

The data presented shows that all NLHR convicts of forcible seizure were sentenced to less than three years; and all NLHR convicts of robbery were sentenced less than six years, which

four years less than the minimum sentencing range. That is to say, in 2006, all NLHRs who were charged with forcible seizure and robbery were eventually found to have lesser culpability in the final verdicts. This finding should have been followed with a suspended sentence, but in practice was followed with harsher measures. In fact, 32.7 per cent of robbery offenders received mitigated punishment, which means that due to certain mitigating factors, the judges downgraded their sentence.

This data actually shows that the majority of the offences are less severe regarding the severity and harm associated with the criminal behaviour. Sometimes the value of a stolen item can be extremely low in the eyes of the judge. One judge spoke about a migrant offender who robbed ten CNY (about one GBP) in an assault under a bridge. Another judge laughed as he recalled an offender who forcibly seized an empty, worthless purse. In summary, the sentencing figures imply that, even though the offences are not so serious according to legal criteria, and thus usually also associated with less physical harm, NLHR offenders still receive custodial sentences, instead of any non-custodial alternatives. However, since sentencing criteria defines the offenses as non-severe, the majority of NLHR offenders receive short-term imprisonment: 62.2 per cent of NLHR offenders charged for forcible seizure are sentenced to less than one year behind bars.

Similar patterns are found in Beijing, where 70 per cent of NLHR offenders were sentenced to fixed-term imprisonment of no more than three years, whereas only 15 per cent had their sentence suspended (Beijing, Huairou district, 2008–2010). The same report also demonstrates that among the 70 per cent of NLHR offenders who received short-term sentences, 90 per cent were first offenses or situational offences, which are linked with lower recidivism (Song and Lieb, 1993; Ministry of Justice, 2011). The first offender philosophy, which generally encourages lower sentences and non-custodial sentences in sentencing guidelines, seems not to apply to NLHR offenders in China. Reviewing the law and the data, it seems that judges are reluctant to grant non-custodial sentences to NLHR offenders, however minor their criminal offense, limited awareness or understanding of the offense, little planning was involved or how clean their prior criminal histories is. Why?

5.5.1 Arrest = prison; bail = suspended sentence

Such reluctance has been confirmed by the judges. According to Judge Yang, they are required to be ‘*extremely cautious when imposing a non-custodial sentence on a migrant*’. This can be seen as the final outcome of the previous selectiveness in arrest decisions. In this way, disproportionate NLHR arrests, prosecutions, and convictions are reflected in sentencing decisions as well. The linkage between arrest approval, remand and incarceration is addressed as follows:

Jurisprudentially, arrest status shall not be tied to the substantial punishment (shizhixin chenfa). However, in legal practice, they are interconnected. Normally, anyway, in our everyday work ... arrested suspects are sent to prison, and those given bail are granted suspended sentences ... It is very hard to tell why and how; it has become an unspoken normative standard. (Feng)

This informal, non-statutory sentencing guideline is widely known in the criminal legal system. Police Officer Yan summarised the disparities in the outcomes of NLHRs and LHRs who are both convicted of a similar minor injury case.

Bail? No bail for them (the migrant) ...Frankly speaking, as for the same minor injury cases, if the suspect is a local, he/she will be sentenced to 3 or 4 months and then receive a suspended sentence. The migrant offender will be sent to prison for 5 or 6 months ... (Yan)

When the researcher asked this officer how he could be so sure about the entire process, he flung out ‘*well, I have done so many cases, I just know it*’.

5.5.2 ‘Sentence inversely determined by the pre-trial detention period’

According to Article 47 of the CPL, ‘A fixed-term imprisonment shall be counted from the day the sentence is imposed. However, if the offender was held in pre-trial custody before the imposition of imprisonment, one day in remand custody shall be considered as equal to one day of the fixed-term sentence.’ This law stipulates that the duration of pre-trial custody must be deducted from post-conviction time to be served in prison. The law intends to ensure that the offender does not spend more time in prison than the final judgement demands. However, in practice, this law inversely limits judicial discretion on the length of the sentence; it also effectively removes non-custodial options, as will be shown below. A judge in Ningbo court explained explicitly and vividly how the mass arrest decisions against NLHR offenders led directly to mass incarceration.

“Sentence inversely determined by the pre-trial detention” (Xingqi daogua). This is an outstanding problem for migrant suspects. Everyone in legal practice is aware of this ... This defendant was supposed to be sentenced to three months. That’s enough. However, by the time of sentencing, s/he has already been in jail for five months. We cannot help ... S/he is so unlucky (laugh). S/he has been there for five months already, and then we sentence her/him for three months? It’s nonsense. How do you deduct five from three? It’s indeductable. What can we do? (laugh) We can do nothing. We will send him for five months ... Such things mostly happen to migrant suspects on minor crimes. Migrant, minor crimes and arrest lead to “sentencing inversely determined by the pre-trial detention”, that is, short-term fixed imprisonment. Less than three-month, six-month, a year? These are inversely framed by the pre-trial detention. (Chang)

The non-statutory sentencing principle ‘*sentence inversely determined by the pre-trial detention*’ self-evidently shows its internal contradictions: 1) Sentencing decisions are determined by previous decisions, rather than made independently based on the trial with reference to statutory guidelines; 2) Minimum sentence is set by the duration of the pre-trial incarceration.

Similar lines repeated in the interview with another more direct and colloquial judge, Wu: *'How long s/he was held in custody so far, how long are we going to sentenced her/him to (guan duo jiu, pan duo jiu) The sentence needs to be deductible, according to the law. The sentence exceeds the pre-trial detention, normally one/two months longer...'* On the other hand, another judge, Hao talks about his decision to suspend a sentence: *'If you (the police and the prosecutor) give bail, then I will grant a suspended sentence.'*

These statements illustrate the continuity between pre-trial detention and imprisonment; bail and suspended sentence. In the interviews, no legal practitioners repudiated this unspoken rule or its associated practices. Guided by this principle and following customary procedures transcend the formal legal process and results in sentencing convicts who had been arrested to prison a those who had been granted bail to suspended or non-custodial terms; the length of the sentence imposed on the former must be longer than the pre-trial custody period.

5.5.3 Reasoning mass incarceration

Judges justify their selectiveness in decisions by emphasizing the various layers of examination in the previous proceedings.

The examination of arrest in the procuratorate is pretty rigid. The approval of arrest means the evidence has already passed the exam (the examination of arrest). If they arrest them, we must apply imprisonment. To my understanding, as for those suspects are approved for arrest, I don't see any serious issues regarding evidence later on. (Gu)

... if the police grant bail, the case must be really minor. If the police take it as minor, and the prosecutor takes it as minor, why do we want to delve too deep into this? This is minor to us as well. (He)

Thus, the judges shielded the continuity and conformity from charges of unfairness and shrouded their own partiality to the outcomes of previous proceedings. At this moment in the process, as with many of the other moments, legal customs transcend written laws and selectiveness channels through the whole. Informal contact is presented by the judges to show the remedy for any prolonged cases and custody offenders and hence to ensure justice under the law and the integrity of the legal process.

If s/he is in remand for four months, well, the discretionary extent of sentencing falls between three to six months. Then, he/she has to be sentenced for five months. It's the only solution ... But it rarely happens. When the minor case reached us, if we are going to sentence the suspect for five months, and he/she was in jail for four months and a couple of days, we will contact the prosecutor and the police to put him on bail. Or even it's the last day of the fifth month, we'll still direct the police and prosecutor to bail the suspect. Then we sentence him to five months. Now it's deductible and sentencable. No worries, we have smooth contact with the police and the prosecutor. Everything is under our rigid control. (Ouyang)

The judge knows. S/he shall look into how long this suspect has been incarcerated. S/he made contact with us (the prosecutor) first. If the suspect has already been arrested for a while, the judge will ask us to prosecute the case ASAP, also arrange the trial at a closer date. (Chen)

Interviewed judges claimed that the deductibility of the sentence in relation to the pre-trial detention had been determined beforehand. Prosecutors and judges reassured the researcher during interviews that these informal contacts ensure that justice is served. However, when a case reached the trial stage, it usually involves three to four months of waiting. And this duration is highly disproportionately experienced by NLHR offenders. At the moment of sentencing, the disadvantageous path has already been set upon. In the meantime, an LHR offender is more likely to be on bail during this process, and thus more likely to avoid prison entirely.

In practice, the internal organization system of the court and the external supervision from the prosecutor reinforces rigid conformity in sentencing. As discussed in Section 5, disapproving an arrest warrant for a detained suspect or approving a warrant for an undetained suspect are designed to be difficult in practice. Similarly, extensive proceedings are required before a sentence can be revised, that is, to send a bailed suspect to imprisonment or to suspend the sentence of an arrested one.

For a bailed suspect, to sentence her/him to a suspended sentence, the judgement only needs to be approved by the presiding judge (ting zhang/ fenguan lingdao); however, if the suspect had been arrested, the probation should be approved via the judicial committee. (Wang)

It's also about our internal proceedings. Suspending the sentence of an arrested suspect? It's not my say. The discretionary power is not in each judge's hands ... It lies in the hands of the judicial committee (shenwei hui). If we suggest a suspended the sentence of an arrested offender, we have to submit a proposal to the committee. It means you release someone. The committee must formally organize a seminar regarding the case. If they reach an agreement, the suspended sentence can be enacted. To be honest, when I am facing a case it could be sent either to a suspended sentence or substantial sentence, if s/he was arrested, if it's ok to send her/him to prison, from the point of working convenience, I just give her/him the substantial imprisonment. (Ding)

The decision is not made by a single judge, but by an administrative judicial committee (shenwei hui), which exposed the problem of red tape. The excessive bureaucracy and adherence to statutory rules hinder the last chance to correct the previous discriminatory decisions. The judge complained that the internal approval process is '*excessively complicated and troublesome*' (He and Di). Oppressive complexity places an obstacle on judges' discretion, and therefore fails to protect NLHR suspects from the discrimination of the final verdict.

Ironically, the seemingly redundant committees and the related extravagant proceedings are not to create trouble, but to eliminate the possibility of the future troubles from occurring. From the perspective of the prosecutor, the verdicts of placing an arrested suspect on suspended sentence or shortening the predetermined 'mutually agreed' sentence nullifies the previous

decisions. Suspending the sentence of an offender in remand means that the approval of arrest against her/him was wrong, and the prosecution has failed. In this situation, the procuratorate will be irritated and possibly impose their supervisory power upon the court.

If he/she (the judge) dared to sentence the suspect shorter (to less than the remand period), we would appeal against them! (Xiang)

If we affirm that a sentence is abnormally short or long (jiquing jizhong), we can file an appeal against the court. This is our restricting power against the court. The judge will have to take serious responsibility if the appeals court makes any change on the original sentence. The judge will be degraded in the annual evaluation ... This is the balance of power between us (the prosecutor and the court/ the procuratorate and the judge). (Wang)

Confronted with the threat of prosecutorial appeals against ‘improper’ and ‘abnormal’ sentences, the court typically complies with the prosecutor’s sentencing recommendation. Evaluation of the individual judge as well as the court is based on the satisfaction with the judgements of both the offender and the prosecutor. The appeals rate is the major index to quantify this satisfaction. Moreover, verdict-changing by a superior court suggests that the former judge’s decision was wrong, which leads to further points deducted in evaluation. Thus, the court silences appeal via compromise with the prosecution. At this final stage of the judicial process, the constant discrimination against the migrant offenders is institutionalized, normalized, legalized and rationalized.

5.6 Legal Representation

Li (1978) compares the role of lawyers in China and the US, and concludes that the impact of defence attorneys is so minimal in China that the country is ‘a law without lawyers’. The Chinese defence system and the position of a defence lawyer in the criminal process is considered to be less active and meaningful (Fu, 1998; Yu, 2002; Jiang, 2016). Data shows that legal representation has little net impact on case outcomes in China (Hong and Miethe, 2002).

Though the role of the defence lawyer is weak, and the impact is limited, migrant offenders still experiencing disadvantages when it comes to legal representation. Underprivileged defendants, including the majority of migrant offenders, have access to free, independent legal aid. However, the quality and quantity of this aid are not ‘aidful’.

Firstly, legal aid lawyers are first introduced to the defendant when the case goes to court, whereas legal representation starts at a much earlier stage in regular cases. As I have shown, by the trial stage, the outcome is overwhelmingly determined. A legal representative is usually present at police interviews during the investigation stage, but, as shown in Chapter Four, the role of the lawyer seems to be limited during the interaction between the police and migrant

suspects; at this stage, no legal professionals serve to prevent any abuse or tricks by the police during the interview. In this way, migrant offenders suffer from a lack of legal protection.

Secondly, interviewed lawyers openly acknowledged that they treat regular cases differently from legal aid cases: they invest less time and fewer resources in legal aid cases.

Generally speaking, however, for legal aid cases, to tell you the truth, we don't see the offenders much. We don't really make an effort to contact the prosecutor and the police to talk about the case. In court, we speak less, show less evident. Yeah ... considerably less. This is a legal aid case, we don't have a choice. (Fang)

I spend more time, more energy on regular cases, compared with the legal aid ones. For regular cases, I will use my personal connections. I need to reach out to the police and the prosecutor, to coordinate their relations, things like these. I only deal with the fact part of the legal aid cases. (An)

The budget for legal aid is limited. I have to lower our expenditure, don't I? So I cut down the meeting time. (Sun)

Though it is difficult to estimate the extent to which a well-formed mitigation speech can change the judge's decision, we do know that a poorly prepared defence will not provide the defendant the support and help s/he should be entitled to. Therefore, the divergent quality of legal representation for NLHR defendants must affect the sentencing outcome.

One proof can be deduced from the underrepresentation of NLHR defendants in appeal cases. After the first verdict and sentence are made, the defence lawyer always provides suggestions and advice to the defendant about appeal. Only 8.9 per cent of NLHR convicts appeal their sentences, compared with the average appeal rate of 14.5 per cent (derived from an internal report of Ningbo court of 2011). Interviewed lawyers insist that the disparity is mainly caused by differences in money and connections, instead of the hukou status.

Non-local? They have the money; they have the connections. (Ouyang)

Some locals, they do not necessarily have guanxi. Instead, some non-local hukou residents, if he can stay here for a long time, run a business, a Karaoke bar, a pharmacy. They must have connections. (Wu)

I don't treat non-local and local differently. In my eyes, I only see different of the cases I charged for ten thousand yuan or one hundred thousand yuan. (An)

5.7 The Cyclical Nature of the Processing

5.7.1 Legal inertia

The mass arrest of NLHR offenders leads to mass pre-trial detention, which is directly linked to judicial rulings and, finally, to a sentencing outcome of mass incarceration. Thus, the sentencing outcome of a case is largely determined by the bail/remand decision, since the sentences imposed on some offenders who had been remanded into pretrial custody will be extended to

ensure that they are longer than the pretrial incarceration period; this is especially true of NLHR defendants, who always find themselves in this Kafkaesque position. A migrant and a non-migrant offender are charged with similar cases. When they were parted at the detention and arrest-application decision junctures, each was set upon a different path through the entire judicial process was. The urbanite defendant who had been on bail is granted a suspended sentence, whereas a custodial sentence is imposed on the pre-trial incarcerated migrant, at least partly to tidy up accounting regarding incarceration (See Figure 5.4, below)

Figure 5.4 reveals the process by which former critical decisions affect the later ones, and how the final court outcomes are predetermined at the entry point. The prosecutor and the judge followed the non-statutory conventional procedure: arrest the detained offender, prosecute the arrested, convict the prosecuted, imprison the remanded defendant, and impose the sentence with reference to the length of the pretrial incarceration period. The intangible fluidity in the decision-making process and the prevailing leavening influence can be seen as a form of legal inertia. The decision to arrest dominated all other criteria when decisions in the subsequent judicial processes were made: prosecution, judgement, and sentencing. Due to this legal inertia, NLHRs are much more likely than LHRs to be arrested, prosecuted, imprisoned, and receiving more severe sanctions.

5.7.2 Cumulative discrimination

The selectiveness against NLHR offenders evinced at the earlier decision points affects selectiveness during the later ones. This phenomenon has been labelled ‘cumulative discrimination’ in the context of explanations of racial disparities in various social processes, especially in the criminal legal system (Stolzenber, Alessio, Eitle, 2013; Blank, 2005; Wilbanks, 1987; DiPrete and Eirich, 2006). These scholars argue that a myopic focus on what can be termed episodic discrimination is problematic. Hence, these analysts typically use statistical inference methods to quantify the potential impact of cumulative effects operating over time. Models were developed to identify and measure the ‘interaction between effects of discrimination experienced in one domain and at one point in time and events that occur in other domains and at other points in time’ (Wilbanks, 1987: 69). Statistically insignificant discrimination at certain points in time can cumulate into substantial differences. This has been documented in numerous quantitative studies (Ronald, 1996; Stolzenber, Alessio, Eitle, 2013).

Source: Based on the information collected and analysed by the researcher, 2017.



However, the legal inertia shown in Figure 5.4 should not be seen merely as a similar result of cumulative discrimination. ‘Western theories’ developed in the context of racial disparity in criminal justice usually analyse each decision separately and see the cumulative process as a linear, one-way path (Stolzenberg, Alessio, Eitle, 2013). In the case of hukou disparities in Chinese criminal justice outcomes, the discrimination is not cumulated in linearity, that is, in an earlier domain influencing a subsequent one. Applying cumulative discrimination to the Chinese case minimizes the importance of holistic contemplation. A decision made at a later point sometimes is determined in an informal contact in advance, restricted by a bureaucratic internal supervisory system, and limited according to some evaluation requirement. That is to say, the rigid linear route outlined in China’s criminal procedure law is not executed and followed in practice. Legal inertia defies chronological order. Instead, the discrimination against NLHR offenders is blended and mixed in the mess of the criminal legal system in China.

5.7.3 Chop-suey justice

‘The police, the judge and the prosecutor in China are in one family’ (McConville, 2013: 382). This line epitomizes the essence of Chop-suey Justice (yi guo zhu)— the decisions were made collectively and collaboratively.

But you should know that, in our country, though the procuratorate is the supervision institute of the police, we also work together. The legal principle said, “coordinate with and restrict each other”. But it’s more about coordination, less on restricting ... (Peng)

The judicial independence underlined in the constitution and other legal principles is undermined in practice. Because the courses judicial proceedings do not follow an unswerving course, the discrimination becomes intractable in a cumulative sense. The ambiguous amalgamation of judicial power in China was first documented and named as ‘the Chop-suey Justice’ by Trevaskes (2007). The effect has presented and represented itself relentlessly in decision making and formed constant continuity.

5.7.3.1 Informal contact

Co-determination within the criminal legal system was reached by various forms of informal contact. In the 1960s, ‘the procuratorate and courts generally negotiated informally with the police rather than return a case for insufficient evidence’ (Lubman, 1969: 563). Still today, ‘the prosecutor and the judges continue to deal with the police in private and seek to persuade the police to take a particular course of action rather than mandating them to do so.’ (McConville, 2013: 386). The judges ‘feel free to consult with prosecutors before the trial’ (McConville, 2013: 388). Previous studies of the Chinese judicial system have documented the prevalence of

informal contact. In fact, informal contact has replaced the formal criminal procedures, and are now the foundations of the main working routines in judicial decision-making processes.

As discussed in the previous sections, the decision of arrest approval/disapproval is often made via a phone call between the police chief and the prosecutor, long before an official application is submitted. Likewise, an informal negotiation and arrangement process between prosecutors and judges can explain the consistency in prosecution and conviction, pre-trial custody and custodial sentences. The collegial criminal legal system generates a high level of conformity of discrimination against the NLHR population. To the prosecutors and the judges, such informal contact is a conventional practice that contributes to favourable annual reviews, complete with attractive rates and indexes. They showed no concern for the effect of these practices on the NLHRs they sent to prison.

5.7.3.2 Internal supervision

There is an absurdly over-simplified logic in performance reviews. Any negation of a former judgement is seen as a major failure of the undertaker, the institute, and the division, not to mention the individual decision maker. The disapproval of an arrest application suggests that it had been wrong to submit an application; non-prosecution (*nolle prosequi*) affirms a wrongful arrest; acquittal (non-guilty judgement) confirms a wrongful prosecution; a sentence consistent with legal guidelines might leave the prosecutorate open to charges of wrongful pre-trial incarceration. Further complicating the pursuit of genuine justice is the requirement that any rectification of a prior judgement must be made through a committee or an institute leader: 1) Disapproving an arrest application submitted by police shall be approved by the prosecution's committee; 2) non-prosecution (*nolle prosequi*) shall be approved by the prosecution's committee; 3) Acquittals shall be approved by the judges' committee 4) Prosecutorial appeals shall be approved by a prosecutorial committee. The collegiality in decision-making processes promotes the inertia, projects the conformity, lowers the risk and, most significantly, secures a desirable performance review, all with the sacrifice of justice, which bears on the migrant suspects.

5.7.3.3 Index orientation

Numerous indexes have been adopted in policing evaluations, and among these, arrest population and arrest rate are the key assessments for the police. Likewise, the conviction rate and a conformity rate between the sentencing and the pre-trial incarceration are key criteria during annual reviews in the prosecutorate. An index is composed in order to evaluate the work of the prosecutorate and each individual prosecutor. Appeal rate (Shangsu lv), the rate of case returning (fahui lv) and the rate of revised judgements (gaipan lv) are the three most significant

indexes for the courts' evaluation (my summary of an internal court document; there are thirty-one indexes in the evaluation criteria). The vice-chief judge of the supreme court, Deyong Sheng, proudly announced in a press briefing during the CCP's annual conference,¹⁹ 'in 2011, the rate for revising the original judgement is only 0.14 per cent nationwide. We can tell from this statistic that our legal system is justice and fair. More than 99 per cent of the parties are satisfied or at least basically satisfying with our judgement' (Beijing News, 2012). Other indexes such as the protest rate (*kangsu lv*) and petition rate (*Shangfang lv*) are also used to assess the success and rightfulness of a judge and her/his judgements. Protest and petition mean the judgement failed to settle the conflict and left the related parties unsatisfied. The 'worst scenario' for judges is realised when a petition reaches Beijing (*jinjing shangfang*). Judge Cai emphasising the stress caused by the rigid evaluation process, referred to 'the rate of petition to Beijing as the sword of Damocles hanging over every judge.'

It's hard to tell who did a better job this year by looking at how many cases were judged. It's our job. Also, it doesn't mean you did a better job just because you got a difficult case. Everyone thinks differently. It's subjective. The case you think is hard maybe is as easy as a piece of cake to other judges. So, the leader and the evaluation look at the ratios of remanding of cases and changing of original judgements. The leader looks for whether the victim, victim's family and the offender's family will petition for appeal. If they do, the judge's index falls. Our job is not easy ... Every day, I am working really hard, like a cow. And all my work is about and for the index, totally useless. It's a pragmatic era. (Cai)

My job is to raise the positive index and lower the negative index. I don't care about anything else. I don't care if the case is just or unjust, fair or not fair, as long as I can produce the nice indexes. I can improve my performance and raise my ranking... The index forces us to lie. (Li)

The courts and the judges work assiduously to improve their indexes. The index evaluation guides everyday legal practices. It acts as the baton in a symphony performance of the legal practices, and the spoon that stirs the chop-suey justice. Systemic factors impose pressures that shape the interest of individual judicial actors: maximising the positive index, minimizing the negative index, decreasing workloads, shortening work hours. The index evaluation system fosters greater connectivity between the police, the procuratorate and the judge. This is because the evaluations are heavily reliant on each other. These shared institutional interests pave the path toward the collective discriminatory treatment of NLHR offenders, because index production relies heavily on the NLHR population. Therefore, the overrepresentation of the NLHR population at every juncture of the criminal legal system must be understood with reference to evaluation indexes.

¹⁹ The press briefing of 18th conference of the CPC in 2012 (*shiba da*)

While most legal practitioners claim they have never ‘*discriminated against any migrant offenders*’, they are nonetheless dealing every day with an eye on their upcoming performance review. ‘*We are equal to everyone. It’s the index evaluation system, we have to give them (the migrant offender) custodial sentence*’ (Shao and Fang).

In sum, when a decision-making analysis is applied to key decisions within the criminal legal system, e.g. arrest approval/disapproval, prosecute/terminate, guilty/not guilty, imprisonment/non-custody sentences, sentence length, a wide range of evidence suggests that decision makers believe their approach is consistent with conventional customs and widely used procedures that involve only a few decision factors. This is true. However, in practice, the pressure to secure superior evaluation results has led these customs to become systematically discriminatory, and have hollowed out the judicial system, to the point that it has become a loop of legal inertia that preserves the maladministration and undermines the supervisory and restricting powers that are supposed to keep the system in balance.

5.8 Restorative Justice: ‘*Money or freedom? Surely money is way more important for him!*’

Restorative justice, a traditional alternative that focuses on acknowledgement, compensation, and forgiveness, has been introduced into the Chinese judicial framework. NLHR offenders also experience disadvantages in this process, which contributes to their overrepresentation in the prison population, and harsher sentencing rate.

The procedure of restorative justice is carried out by the same legal practitioners (the police, the prosecutor and the judges) and follows the same trajectory; it is accessible from the time an investigation begins until the trial stage. This victim-offender reconciliation procedure (xingshi hejie chengxu, thus commonly known as VOR; see Wong and Mok, 2010; Shi, 2008), facilitates the negotiation of an alternative settlement, outside the official legal judgement, between the offender and the victim/victim’s family. A VOR agreement is built upon the deep remorse, apology, and compensation made by the offender and the forgiveness offered by the victim and the victim’s family. The essence of the agreement is the forgiveness, and successful processes end with the victim/victim’s family signing a ‘forgiving statement’ (liangjie shu).

The Supreme People’s Procuratorate sets rigid criteria regarding when VOR can be initiated. It may not be used with reference to any highly serious offences extensive damage (see Box).

Notice of the Supreme People's Prosecutorate on Issuing the Several Opinions of the Supreme People's Prosecutorate on Handling Petty Criminal Cases Where the Parties Have Reached Reconciliation' (Jan ,2011)

Article 2.1 These Opinions may apply to a criminal case in public prosecution where the accused is likely to be sentenced to imprisonment of not more than three years, criminal detention, public surveillance or a fine only. A criminal case within the aforesaid scope must satisfy all of the following conditions:

2.1.1 It is an intentional crime with a specific victim or a negligent crime with a direct victim;

2.1.2 The case facts are clear, and the evidence is hard and sufficient;

2.1.3 The criminal suspect or defendant honestly pleads guilty, and has effectively performed the reconciliation agreement; or the criminal suspect or defendant has provided a valid guaranty; or the mediation agreement has been confirmed by the people's court, if the reconciliation agreement cannot be performed instantly;

2.1.4 The parties have reached reconciliation on such matters as compensation for losses, restitution, apology, and relief of mental distress; and the victim and the legal representative or close relative thereof have explicitly expressed their forgiveness of the criminal suspect or defendant and requested or agreed to a lenient punishment for the criminal suspect or defendant in accordance with law.

Article 2.2 These Opinions do not apply to the following cases:

2.2.1. A criminal case where the accused has seriously damaged the national or public interests, endangered the public security or disrupted the public order;

2.2.2 A case about malfeasance of a state functionary;

2.2.3 A criminal case where the accused has damaged the lawful rights and interests of an unspecific majority of people.

In practice, however, VOR negotiations have been initiated for almost all types of offences in legal practice, including minor, misdemeanour, felony and even capital offences. The successful conclusion of a death penalty criminal reconciliation process (DPCR), that is, if the victim/victim's family signs a 'forgiving statement', the offender's death sentence will be commuted in favour of life in prison (Weatherley and Pittam, 2015).

Legal consequences such as imprisonment, the death penalty, fine or compensation are rooted in jurisprudence theories. That is, legal monetizing of damage or loss is made via deprivation of freedom, life, and property. As the general principle in English law states, courts are normally required to ensure that fines and compensation orders are adjusted to the means of

offenders, to prevent situations where ‘the offender would be likely to be sent to prison for non-payment’ (Ashworth, 1993). In the same way, reconciliation VOR offers an offender two options: pay off the victim in exchange for freedom or stay in prison. Interviewed judges confirm that satisfactory compensation is the key to obtaining a forgiving statement from the victim/victim’s family. Following this logic, the reconciliation can be seen as a form of trading justice for money. In death penalty cases, offenders can even trade money for their lives.

However, ‘money or freedom’ is not an equal choice for all. ‘Most defendants can avoid imprisonment by offering their own savings or enlisting the help of their families. But migrant defendants who do not even want their criminal predicament known to their families are literally and figuratively imprisoned’ (Ng and He, 2017: 1138). The consideration, the weighing of costs and benefits varies through the social-economic situations and experiences. Interviewed judges and prosecutors claimed that most migrant defendants who face imprisonment choose money over freedom.

Today I was in the trial of a traffic accident case. The compensation was about a million yuan (CNY). I talked to him. He even refused my suggestion on payment in instalments. He said he knew the consequences, and anyway he still needed to make the payment, which is unaffordable to him. He would rather stay in prison ... To him, money or freedom? Surely money is way more important! (laugh) ... He was born in 1992, only 24. (Huang)

Ng and He (2017) also claim that migrant defendants consciously place familial welfare over freedom. ‘The migrants would rather go to jail than give up their own money and ask their families to help raise money’ (Ng and He, 2017: 1130). The migrant defendant asked the judge, ‘why don’t you sentence me to jail?’ (Ng and He, 2017: 1130)

Since reparations in VOR are still mainly based on financial compensation, the ability to gain forgiveness is mainly based on the compensation capability of the offender. Thus, the reconciliation process only benefits economically advantaged defendants. Money vs freedom it is not a choice for most NLHR defendants. Hence, their only ‘real’ option is prison. Individuals with limited financial resources don’t calculate because the result is crystal clear.

5.8.1 *‘Settling the case is the first priority’*

It is about the index again. The reconciliation rate (tiaojie lv) and the rate for force-enforcement of the reconciliation (tiaojie anjian shenqing zhixing lv) weigh heavily in indexes and therefore play significant roles in judicial performance reviews. The reconciliation rate is the proportion of cases in which reconciliations have been successfully negotiated, vs total cases. If the offender fails to meet his reconciliation obligations, then enforcement proceedings are initiated. The proportion of such proceedings vs all reconciliation agreements is compiled in order to assess the effectiveness of the reconciliation program. The need for enforcement proceedings suggests

that the reconciliation process is not always smooth, indeed, it is common for full compensation not to be paid without judicial encouragement. Therefore, the assessment aims to evaluate both the quantity and quality of the reconciliation comprehensively.

In order to achieve a higher reconciliation rate, judges choose to push their cases into the reconciliation process and facilitate the negotiation. This practice also helps to reduce court workloads and lowers the rates of petitions and appeals from both victims and offenders, by entirely avoiding an initial trial. However, reconciliation has a down-side: it is preferable for the judges only when it could be enforced smoothly, that is, the case is settled for both parties. In the reconciliation process, the judges act as brokers to ‘facilitate the offer and acceptance of blood money’ and to ‘reach a deal with the defendants and victims’ (Ng and He, 2013; 2017).

Hence, in practice, when the VOR parties are irreconcilable, for example, in most cases, when the offender claimed s/he cannot afford the compensation (*meiyou peichang nengli*), the judges usually impose the defendant to the maximum of the sentencing range. This is intended to comfort the victim and their family and thus reduce the risk of a future appeal or petition. The harsher punishment is to satisfy the victim and secure the finality of the settlement.

If the case is not too serious, just a minor injury without any deliberate intention, if the victim also did something wrong to provoke the violence, we sometimes give the offender a chance. It won’t be good to put a criminal record into his file, nothing good for him/her ... But if he cannot afford the compensation, he cannot even pay back to the victim of the loss he caused, how can we put him into the reconciliation process? There are lots of migrant offenders like this, what can we do? Those people don’t own any property here. What’s more, you cannot trace the property (they sometimes claim to have “back home”). It’s extremely difficult. The house he used to live in belongs to his parents, it’s not even his ... They would just speak out that the compensation is unaffordable to them. They are usually very honestly about this. What else can we do? Only prosecute the case. Say we put them in reconciliation, what are we going to tell those victims? How can we face them? (Li)

... The victim said, “I already agreed to go through the reconciliation, I am not asking for more compensation or fees. This is the receipt for medication, at least you have to recompense this part of my loss.” The offender claimed there is not a single chance for him to make the payment. The medication consumption is way beyond his means. He said he was willing to pay back later through wages after release ... Of course, the victim refused the proposal of the postponed payment. He was uncertain about how long he is going to wait, even where the offender will be after released from jail, etc. There is another case, the medication expense is about forty to fifty thousand yuan (approximately £ 4,000–5,000). According to the offender, he has tried his best and was only able to raise twenty to thirty thousand. The victim thought he has already experienced the loss and suffering in crime and won’t even get medical compensation. So, he refused to accept the reconciliation. We prosecuted the case afterwards. Likewise, many poor offenders are denied a reconciliation process in these circumstances ... Compensation means a greater chance for probation. As for the less serious cases, if you pay the compensation agreed in the forgiving statement, we will give you probation. (Qian)

The reconciliation process challenges the notion of “equality before the law,” because this is obviously related to one’s economic situation and family background. Someone is richer, then we go for reconciliation and drop off the prosecution; someone is poor, we prosecute them. Especially, someone who is incapable of providing compensation normally won’t even be considered for probation during judgement. (Jia)

In legal practice, *‘settling the case is the first priority for pragmatic index reason’*. Judges capitalize their sentencing discretion to secure the settlement. The defendants are informed of how their sentencing outcome will be affected by their compensation to the victim: a suspended sentence may be granted, provided a generous compensation was made to gratify the victim; and on the other hand, if the victim is discontent about the proposed compensation, the maximum sentence will be imposed. Indigent defendants are limited by their financial means. As a result, NLHRs more frequently have been over-imprisoned, and more harshly sentenced.

5.9 Scapegoats under Financialization

The state-owned or partly state-owned banks amid China’s ailing economy in the past few years, have tightened their criteria for small loans and investments. Turned away from these official financial institutions, small- and medium-sized businesses have come to depend on the private financial sector for lending and borrowing. Loan sharks and Ponzi schemes are thriving in the underground financial market, which is also among the least-regulated fields of criminal legal practice in today’s China. Even here, NLHR offenders have been over-detained, -arrested, -charged, -prosecuted, -judged, and -sentenced.

5.9.1 The loan shark

Loan sharks in China charge exorbitant interest rates: seventy per cent or even higher (Barboza, 2011). To avoid arrest, contracts (jie tiao) usually indicate an artificially high amount loaned and correspondingly low interest rate. For example, a loan of 500,000 yuan with an annual interest rate of 100 per cent will be shown in the contract as a loan of 800, 000 yuan with annual interest of 25 per cent. The borrower will only receive 500,000 yuan but must return 1,000,000 to the loan shark company within the year. In this way, loan companies and their managers avoid indictment for criminal offences. Prosecutor Lin describes how a loan shark works in China:

This guy has some money and hires two migrants. These two loan money to other migrants. If someone cannot pay back the amount in time, the guy will ask his migrant employees to collect the debts ... The migrant dons find the borrower and bring him to the seaside. It’s all about threatening. They take him to the depopulated seaside, make him sweat for a while, beat him up, and then force him to sign a new loan contract, of course with an increased debt amount ... (Lin)

In a loan shark company, the actual business executor is rarely caught. As Prosecutor Jia explained, *‘It’s really hard to make the boss responsible for the kidnapping in most cases. I mean, the boss did not make any direct contact with the borrowers or the debt contract. Needless to say, s/he won’t leave any evidence to show that it is her/him who asked the dons to kidnap the borrower ...’* Judge Hong concurred *‘The loan shark is not a criminal in China. Kidnapping and unlawful detention are. That’s how the migrants are led to us (the court).’*

5.9.2 Ponzi schemes

The peer to peer (P2P) lending sector has mushroomed in China since 2014 (Lufax.com and Boao Review, 2014). A number of interviewed lawyers, prosecutors and judges referred to numerous cases in which migrant CFOs (chief financial officer) have been trapped into taking all the legal responsibilities of the Ponzi scheme business, whereas the real business directors escape the charge and stay out of jail.

Now I am handling a case. The offender graduated from college, came to Hangzhou, and joined this P2P company. The boss spoke very highly of her and later promoted her to a very significant position. Why do I refer to this position as significant? She is the CFO, the legal representative of the company. She did not have any real power but had to take all the legal responsibilities. The CFO is only a name. Everything was decided by the boss. Now the company was found to be fraudulent and she was sentenced to 10 years. 10 years! When the girl is released, she will be over 40 ... For me, this is a conspiracy to tell a lie. The real operator is the boss, but it is not easy for the police and prosecutor to prove it. The boss never signed anything. His name didn’t even show in any company documents ... I have dealt with lots of cases like this, a local boss sets a migrant as a scapegoat (ding bao), we cannot prove it. (Li)

5.9.3 The scapegoats

In both situations, the legal responsibility and punishment of the detrimental business were shifted from the real boss to the migrant employers. The loan shark hired the migrants to handle the violent, threatening, coercive work of debt collection, whereas migrants in P2P companies were employed as puppets to take the risk of any criminal charges for the fraudulent money-raising schemes.

In recent years, lawyers and judges have noticed that some NLHRs are genuinely running illegal businesses. They either hire migrants onsite or, in most cases, recruit from their hometown. A prosecutor from Ningbo referred to a case he had dealt with:

It was organized prostitution. We cannot find the boss. The police arrested four pimps, a lookout and a security guard, all migrants from Liaoning. But the police did not hand over a boss to us. We had to do the investigation by ourselves. There is no bank account, all transactions are via cash ... Finally, we went through the security camera record, and found that a slim guy often showed up. We showed his photo the pimps and the security, but they claimed not to know him ... How can we prove it? You know, the back-stage boss, he has connections with the police and the gangs. He has arranged everything. He is also from Liaoning. He threatened the pimps, lookout and security not to turn him in to the police. Not to mention a single word about

him to the police. And if they can keep the promise, he will take care of their families and children back in Liaoning. (Pan)

By using their advantages of financial means and *guanxi*, NLHR directors also manage to avoid criminal punishment. The 'haves' stay ahead of the law, while underprivileged migrant employers are arrested, prosecuted, jailed and imprisoned. They are exploited not only by the unfair legal system, as are the NLHRs discussed throughout this chapter, but also by their back-stage bosses.

The empirical evidence indicates the pervasiveness of institutional and systematic discrimination against the NLHR population in the organizational policies and practices of the prosecutorate and the courts. By the end point of the criminal legal process, non-local hukou registered (NLHR) convicts are strikingly over-represented in prison population. In the next chapter, we look at the final stage of this criminal legal process: imprisonment.

Chapter 6 Prison

Previous chapters have documented systematic discrimination against the non-local-hukou registered (hereafter NLHR; and LHR for local-hukou registered) population during the policing, arresting, prosecution and sentencing portions of the criminal legal system. The final step is imprisonment, and the discrimination continues. Inmates' lives behind bars are pretty much hidden from public scrutiny and academic study, as is the disproportionate number of NLHRs detained in China's prisons. This chapter will demonstrate that NLHRs are more likely not only to receive prison sentences than LHRs, but also to remain behind bars longer than LHRs convicted of similar offenses that were committed under similar circumstances. The current chapter follows the treatment of migrants once they are in the prison system. Like the overt and covert discrimination policies and practices discussed previously, migrants are more likely than local inmates to be given inferior treatment and less pleasant jobs, are prone to be abused by staff and other inmates, and tend to have less access to everything from basic humane care and treatment to commutation, parole, probation, and family reunion or other opportunities that are available to the LHR prisoners and the NLHR 'haves'.

6.1 Hukou Monitoring of the Prison Population

In many ways, the demographic features of the Shanghai prison population, including citizenship, education and employment, are parallel to those of prisons in the United States and Britain. Non-local hukou status, underemployed, and lack of education are all found in greater proportions in prisons than in the Shanghai population as a whole. Among these factors, non-Shanghai hukou status is the most prevailing and significant. Over half of all prisoners in Shanghai are NLHRs, even though migrants represent only twenty per cent of the Shanghai residential population (see Table 6.1). For every 100K of the Shanghai population, about 70 LHRs and 320 NLHRs are incarcerated. The gap shows that a resident who is registered with a non-Shanghai hukou is nearly five times more likely to be imprisoned than a Shanghai hukou resident.

Unfortunately, beginning in 2007, the Shanghai Prison Yearbook stopped publishing hukou-related statistics (maybe because of the astonishingly disproportionate number of migrants in prison). Fortunately, some staff from individual prisons provided the data to the researcher. Table 6.2 compares the residential demographic ratios of the prison population

Table 6.1 Residential and all-prison populations in Shanghai, 2004–2006, by hukou status and nationality

	Residential Population (thousands)				Prison Population			
	Total	LHR	NLHR	Foreign Origin	Total	LHR	NLHR	Foreign Origin
2004	18,350	13,530	4,060; 22%	90	22,397	9,570	12,706; 56%	121
2005	18,900	13,600	4,380; 23%	100	23,374	9,315	13,886; 59%	173
2006	19,640	13,680	4,670; 24%	110	24,848	9,566	15,085; 61%	197

*LHR: people registered to a Shanghai hukou

**NLHR: people who have lived in Shanghai for more than six months but are registered to a non-Shanghai hukou.

***Foreigner here includes Hong Kong and Macau citizens.

Source: Data on Residential Population Data retrieved from Shanghai Statistic Bureau and data on prison population retrieved from Shanghai Prison Year Book; consolidated and analysed by the researcher, 2016.

monitored by hukou status in Prison X, Shanghai. What is seen immediately is that the total prison population in Shanghai has declined since 2007. This is due to the prison transfer programme (discussed below), which involves sending some NLHR convicts to prisons outside of Shanghai. When taking these transferred NLHR prisoners into account, the proportion of the NLHR convicts of crimes committed in Shanghai is even higher. In recent years, while NLHRs have accounted for around forty per cent of the residential population, they occupy more than sixty-five per cent of the prison population. The data in Table 6.2 reflect the relentlessly proliferating over-representation of the migrant population in Shanghai prisons.

6.2 The Policy Context

The bureau of prison administration is a subsidiary of the Ministry of Justice. It is the administrative apparatus for all prisons in China except Beijing's Qincheng Prison, which is directly supervised by the Ministry of Public Security. Every region has its own prisons, which are under the control of the local Bureau of Justice. Thus, the penal apparatus in China is organized and administered regionally. Every prison contains prisoners convicted of crimes ranging from petty theft, to white-collar crimes, to the most violent rapes and murders.

Table 6.2 Shanghai and Prison X populations, 2013–2015, by hukou status

	Residential Population (thousands)			Prison			
	Total	LHR	NLHR	Population Total	Prison Population Total	LHR	NLHR
2013	24,150	14,320	9,900; 41%	NA	2,085	637	1,382; 66%
2014	24,260	14,390	9,960; 41%	19,073	1,785	646	1,139; 64%
2015	24,150	14,430	9,820; 41%	NA	1,931	673	1,258; 65%

*LHR: people registered to a Shanghai hukou

**NLHR: people who have lived in Shanghai for more than six months but are registered to a non-Shanghai hukou.

Source: Data on Residential Population Data retrieved from Shanghai Statistic Bureau; data on Prison X retrieved from confidential documents provided by an insider interviewee; consolidated and analysed by the researcher, 2016.

6.2.1 No ‘high-to-low’ security categories

Qincheng Prison is similar to those ‘club feds’ in America; it provides a luxury life, mainly for the ‘fallen party elites’ who comprise its population.²⁰ With this single exception, the security enforcement and managerial criteria for China’s other prisons are largely similar. In 2005, seeking to modernize its correctional institutions by adopting a western security model, China began to assign prisoners to higher- or lower- security prisons, based on their convicted crime and history of violence (Daily Legal, 2005). Yet as of this writing, security categories have not been ranked systematically, institutionally or nationally. Some prisons that hold convicts with longer sentences have been ‘upgraded’ to high-security prisons, and some that held shorter-sentence prisoners have been accordingly categorized as middle-security prisons. (As of 2017, no prisons have been classified as ‘low-security’ prisons.) However, beyond these new classifications, no changes to prison structures or protocols within them have been made. All have the same physical security infrastructure, the same surveillance equipment and protocols,

²⁰ Qincheng prison is largely reserved for high ranking officials, including former inmate Jiang Qing, the wife of Mao Zedong; Bo Xilai, former mayor of Chongqing, was imprisoned here in 2013; Zhou Yongkang, the former Secretary of the Central Political and Legal Affairs Commission, arrived in 2015, and so on. According to some reports, these ‘fallen elites of the party’ live in well-furnished ‘cells’, are well-fed, and enjoy more freedom than their counterparts in all of China’s other prisons. The quality of food that inmates receive is dependent on their age, crime, social status and job prior to entry. (‘10 questions about China’s ‘luxury’ Qincheng Prison answered’, 29 January 2016. <http://www.straitstimes.com/asia/10-questions-about-chinas-luxury-qincheng-prison-answered>. Retrieved October 10, 2017.

the same staff-prisoner ratios, and the same management practices (Wang, 2016). Thus, despite new labels, prison practices in China security practices continue to be largely the same from one institution to the next. And yet, a different kind of inter-prison variation exists. For example, in addition to Shanghai's eight standard prisons, six special prisons have been established: for women, juveniles under 18, elderly inmates (men over 60 and women over 55), inmates with special needs, and new prisoners (where they are introduced to prison life before being transferred), and a prison for convicts whose release date is approaching.²¹

6.2.2 Treatment levels (chuyu) in Chinese prisons

This apparently horizontal prison structure does not mean that each prisoner in China has the same incarceration experience. On the contrary, a rigid hierarchy is established within each prison and, while each prisoner is subject to the same security protocols, their placement in the hierarchy determines which one among many social protocols is relevant to the individual prisoner, and the effect on their overall living condition can be dramatic. These protocols underlie decisions regarding access to study, sports, recreational activities, family calls, visits, rewards and food consumption. A prisoner's access in each of these areas is determined by his treatment category (see Table 6.3).

The inmates are classified into five treatment levels (chuyu). As shown in Table 6.3, a more privileged level can mean five extra minutes on family calls, 10 CNY (1 GBP) extra rewards, half a chocolate bar, a cup of instant noodles or even a softer roll of toilet paper, all of which further skew in-cell treatment and reinforces the rigid hierarchy. Amongst the treatment disparities, the supplementary food quota is rarely found elsewhere in the world. Whereas most countries put no limitation on inmates' spending of their own money, Chinese prisons enforce a series of regulations on consumption. In practice, inmates have two accounts: financial assistance received from family members, and payment for the labour they perform in prison. Financial assistance from the family is strictly controlled and intended to be used for special purposes, like paying for tuition fees for in-cell education programme. All other consumption in prison must be paid for with labour-earned income. In principle, the amount each prisoner may spend every month depends on: 1) how much they earn and 2) how much they are allowed to spend on food.

²¹ Qingpu Prison is the only prison in Shanghai that holds foreign male convicts. Female foreign nationals are imprisoned in the female prison. Special treatment of foreign prisoners is not discussed in this research.

Table 6.3 Treatment Levels in Shanghai Prisons

Treatment Levels	A	B	C	D	E
Access to study, sports and recreational activities	Priority to study and to participate in sports and recreational activities	Priority to study and to participate in sports and recreational activities	Allowed to study and participate in sports and recreational activities	Allowed to study and participate in sports and recreational activities	All E prisoners held only with other E prisoners; Compulsory participation in intense special study and training programmes for more than two hours every week
Access to family calls: times and length per month	Twice, longer than five minutes each, or once, no longer than ten minutes	Once, no longer than 10 minutes	Once, no longer than 5 minutes	Once, no longer than five minutes	No calls allowed
Prison Visits: number, length and criteria, per month	Once, no longer than one hour; only loose surveillance if certain requirements are met	Once, no longer than 45 min; loose surveillance if certain requirements are met	Once, no longer than 30 min	One phone meeting, no longer than 30 min	One phone meeting, no longer than 30 min; No access if the prisoner is under strict surveillance and in quarantine therapy
Rewards per month	Material rewards, no more than 40 CNY (4.5 GBP)	Material rewards, no more than 20 CNY (2.2 GBP)	Material rewards, no more than 10 CNY (1.1 GBP)	NO rewards	NO rewards
Supplementary food rights	Quota A 250 CNY (28 GBP)	Quota B 180 CNY (20 GBP)	Quota C 140 CNY (16 GBP)	Quota D 100 CNY (11GBP)	Quota E 60 CNY (7 GBP)

* 1 CNY is approximately 0.11 GBP, currency exchange rates retrieved from HSBC, Sep 2017.

** Upon finishing all concentration training programmes and passing all tests, new E category prisoners in Prison X in shall be upgraded to D treatment (equal to D treatment, but would be still categorized in E level).

Data source: Inside data retrieved, collected and triangulated by the researcher, 2015.

This might sound like moral superiority from the world outside the bar. Even by looking at the policies for A-category prisoners, it is hard to imagine how a ten-minute family call and one or two prison visits per month could make a major contribution to rebuilding and maintaining outside social networks, or how a reward worth £ 4.50 could motivate prisoners to be more obedient and hard-working. This basic reality can be hard to grasp for those more attuned to prison conditions in the US or UK. Yet prison officers confirm that, by linking rewards and food rights to everyday inmate performance, the prison retains stringent control.

Disparities in treatment are described as the main strategic policy to ensure labour participation and working efficiency, while reducing the inequality caused by the inmates' disparate family backgrounds. However, under certain circumstances, new forms of inequality are created. As a thought experiment, one could ask: 'what would happen if the UK system were placed in China?' In this event, one would expect to see a disproportionate representation of the NLHR prisoners in 'high risk' or 'exceptional risk' categories. In reality, these categories do not exist in China. Instead, we see an overrepresentation of NLHR in the lower treatment categories, which places them in disadvantaged positions.

6.3 Hukou Disparities in Prison

6.3.1 Prisoners in Special Positions: Treatments and Privileges

Some prisoners '*assist prison officers in prison management*' (Wan) and are described here as prisoners in special positions (PSPs; the common Chinese description, *te gang fan*, is short for *teding gangwei zuifan*). Special positions are designed and assigned to selected prisoners in order to assist officers during both of every prison's two major daily routines: living and producing (*shenghuo* and *shengchan*). PSPs might serve as: 1) cell leaders (*jian zu zhang*), who are in charge of assisting prison officer management of other cellmates; 2) food distributors and other managers; or 3) administrators or supervisors in the prison factory, such as Quality Control Supervisor (*zhijian zuzhang*), Production Line Leader (*banzhang*) and Production Manager (*da zu zhang*). As Li, a young prison officer put it, '*PSPs are the bosses of the prisoners.*'

Table 6.4 PSP to Prison population* ratio in Prison X in Shanghai by Shanghai non-Shanghai hukou status (2015, 2014, 2013)

Year	Total		LHR		NLHR	
	Prison Population	PSP population	Prison Population	PSP population	Prison population	PSP population
2015	1931	289 14.97%	673	128 19.02% **	1258	161 12.80%
2014	1785	255 14.29%	646	117 18.11% **	1139	138 12.12%
2013	2019	262 12.98%	637	128 20.09% **	1382	134 9.67%

* PSP and Prison population is documented by the end of the year

** Significantly higher than the PSP/Prison population

Source: based on the researcher's fieldwork, including access to confidential documents from Prison X, Shanghai, 2015; original data with the details of non-Shanghai hukou regions is presented in Appendix 1.

Table 6.4 shows that in recent years, between 13–15 per cent of inmates, disproportionately LHRs, have been selected and granted PSP status in Prison X, Shanghai. In 2013, 262 out of the 2019 prisoners were PSPs, some 13 per cent of the total prison population. This ratio is much higher for the LHR population for the same year, where PSPs comprised about 20 per cent of the LHR prison population, as compared with the NLHR PSPs: prisoners' ratio of 9.67 per cent. This huge gap narrowed slightly in 2014 and 2015, yet remained highly skewed against NLHR prisoners.

The contrasting proportions indicate that LHR prisoners are more likely to be put in charge and NLHR prisoners are more prone to be the subalterns. Moreover, most PSPs are drawn from A and B categories (see Table 6.4), thus adding additional priorities, advantages and benefits in almost every aspect of their prison life. Almost one-fifth of the LHR prisoners are assigned to these categories; and about two-thirds of these positions are filled by LHR prisoners. Thus, while LHR prisoners are reaping additional benefits, prisoners in Category C are struggling with life in prison, and those in D and E are suffering under disciplinary surveillance and more.

6.3.1.1 Food and diet

Inmates in Categories C, D and E are allowed few or no material rewards, and their food consumption quotas are limited. Thus, the migrant inmates who are overrepresented in these categories are more dependent on prison-supplied food than are LHR prisoners. People talk about prison food (laofan) as if it was the major deterrent against committing crimes. An

infamous urban myth claims that the menu includes ‘rotten vegetables, decayed rice and stinky meat made of dead cats and rats.’ Interviews revealed that, though this might not quite be the case, the shortage of food supplies in prison is rather severe. Wan, a prison officer, while describing the shabbiness of the prison-supplied daily diet, used his fingers to demonstrate vividly how small the portion sizes are: steamed bread (mantou) and rice congee for breakfast; one dish and one soup each for lunch and dinner, normally cooked with vegetables like potatoes, carrots and greens. This is just because they are cheaper. Once or twice a week, the prison provides a dish containing some meat or other form of protein. Hence, insufficient quantities, shortage of nutrition, and lack of flavour combine to whet the inmates’ craving for personally purchased food.

In the everyday struggles around hunger and malnutrition, PSPs are responsible for food distribution; their friends (who mostly are also PSPs and others in A and B treatment categories) are given ‘*enormous privileges*’ and ‘*huge powers*’ (Wang). Di, a former prison officer who now has left the ‘*boring useless place*’ (the prison) told the story, ‘*one more piece of meat, or one less piece of meat, it’s all his (the PSP’s) say. He fed himself plump and chubby. Once a month we provide some nice food for a change. Say, braised pork with Chinese vermicelli. The PSP will distribute the food. Some inmates get the braised pork; some only get vermicelli. This is like a world of difference to them.*’ Clearly, most of those who got the pork are PSPs.

How the power of food distribution benefited the PSPs has also been described by Wei, an experienced prison officer who worked in Prison X for ten years, ‘*A big bowl of food, after distribution, if there is some left, ha-ha, they always left some. Then the leftovers can be all his. That’s his privilege.*’ The food distributors and other PSPs, who are in power and in charge of every detail of prison life, have access to more and better food. As a matter of fact, Zhang, a recently hired prison officer, pointed out the black-humorous fact that the PSPs, mainly LHR prisoners, are easy to spot among the inmates because they are physically distinguishable: ‘*they look ruddy and cherubic*’.

6.3.1.2 Work and labour

Media reports published outside China continue to allege that Chinese prisons are labour camps (*Prison Legal News*, 2016). Many prisons and detention facilities are really vast factories unto themselves, with a variety of products being manufactured throughout. ‘Made in China’ is regularly linked with the exploitation of forced prison labour. In principle, labour serves

primarily to assist in re-education²² and rehabilitation; the idea that work plays an essential role in the process of turning a bad person to a good one has ancient roots. Confucian ‘philosophy’ and reconstructed Chinese Marxism combine to rationalize and justify the system. Even a misinterpretation and distortion of Engels is brought into play: ‘labour created the human being.’ Historically, the central role of labour in the Chinese penal system was borrowed from the Gulag in the Soviet Union. Later on, it was increasingly associated with the ‘prison economy’ or ‘prison entrepreneur’. In a word, prisons are making a profit from forced, nearly-free labour in the name of ‘re-education and rehabilitation’.

Prison X has both fixed-term and continuing contracts with many kinds of businesses. Like other prisons in China, Prison X is paired for production with some ‘prison sister factories’ (jiemei gongchang). Products like stuffed toys, volleyballs, clothes, paper supplies, and even screws and nails are produced in Prison X. Prisoners work eight hours every day. Sometimes, they are required to work overtime. Di, a former officer at Prison X, quit his job in 2015 and currently is pursuing his PhD overseas. Compared with other interviewees, he was much more open to talking about ‘scandals’ inside prison. According to Di, each prison officer was stressed out about how to fulfil the assigned production quota. Violence and abuse were constantly applied to the prisoner-labourers to ensure that tasks were accomplished. He debunked the notion of prison labour being part of a ‘boost your potential’ programme:

... I asked him to make 1000 stuffed toys. If he only made 900, I would beat him up. The next day; 900 again; beat him up again. The third day, the same; 900 and another beat-up. Continuously beating him for three days, and if he still could only manage to make 900, it means 900 is his limit. We can’t do more but accept the fact that he has already tried his best. Well, of course, it also means that we have waste our energy of beating him for three days! Ha-ha. (Di)

The burden of immensely heavy workloads and high labour intensity is placed largely on the NLHR prisoners, as they are exceedingly underrepresented in PSPs. Xiao shared his understanding of the PSPs he works with: *‘as long as he doesn’t need to do any regular labour work, he is a PSP. They are supervisors; they themselves don’t need to work; they supervise others and then report to us.’* Xiao is responsible for budgetary control in the prison factory. He insisted that he is just *‘a normal accountant’* and has *‘nothing to do with prison management, except that I work there.’* *‘A Shanghai prisoner has just been promoted to the PSP. He notes who goes and how many times they go to the toilet at work.’* *‘It’s a great position!’* Xiao added.

²² Shamed into a response by international accusations of basic human rights violations, the Chinese government announced the abolition of its notorious re-education-through-labour camps in 2013. However, the re-education-through-labour model is still prevalent in the prison system.

6.3.1.3 Earnings and pay

Prison factory workers are divided into three categories, depending on the nature of their work. Twenty per cent are first class workers (see Table 6.5). Their monthly salary is 120 CNY, which is 150 per cent of the salary paid to the third-class workers.

Table 6.5 Proportion and monthly salary of prison labour populations in Prison X, Shanghai by classification

Prison Labour	First Class	Second Class	Third Class
Proportion of the Population	20%	30%	50%
Monthly Salary	120 CNY (13.7 GBP)	100 CNY (11.4 GBP)	80 CNY (9.14 GBP)

Source: based on the researcher's fieldwork and confidential documents from Prison X, Shanghai, 2015.

Let's resist the temptation to talk about modern slavery and focus instead on inter-group inequalities. Most First-Class workers are also PSPs, so there is a complete overlap between First Class and A and B treatment categories. A disproportionate number of LHR prisoners are thus paid higher salaries due to their status as a First-Class worker; on top of this, they are granted higher-value rewards as A or B prisoners (See Table 6.5). All of these are inaccessible for C, D and E prisoners. At the same time, First Class workers enjoy much lighter workloads and more flexible working hours. The prison factory is a quintessential example of the aphorism, 'work less, earn more' (shaolao, duode).

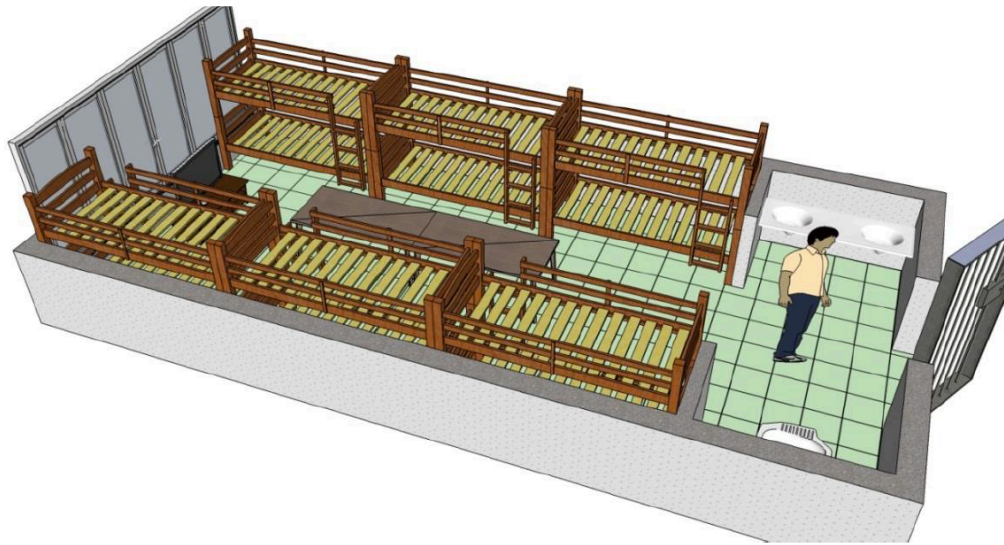
6.3.1.4 Authority and Power

The vested interests of PSPs, first-class workers and inmates who are placed in the privileged A and B categories are dramatically overrepresented by LHR prisoners. They eat better, work less and earn more, which is only the tip of the iceberg in terms of their in-prison privileges. The power of their special positions is derived from their institutionalized superiority and control over other prisoners. This control includes the ability to report (or not) rule violations, slip a favoured prisoner (or deny an unfavoured one) a piece of pork or a spoonful of vermicelli, or place (or not) a 'qualified' stamp on a course application. These day-to-day entitlements secure and perpetuate these privileges.

Power is derived not only from their positions *per se*, but even more so via their trusting relationship with prison officers and, most significantly, from their collective power in every aspect of life and factory in prison. In other words, the PSP group is calibrated to benefit its members. All of this is woven into a network that governs behind bars. For example, the food distributor bribes the production manager with a piece meat per week, in exchange for better

reports on his working performance; the quality control supervisor and his cell leader file desirable reports for each other to their authorities, of course in exchange for a favour. Moreover, power – including the power to serve retribution for disobedience – leads to obedience from the subaltern prisoners. Power in prison, like elsewhere, is associated with corruption and misuse. Compared with NLHR prisoners, LHR prisoners have a higher

Figure 6.1 Sketch of a regular cell room in Prison X, Shanghai



* 12-person cell

Furniture: six 0.8m bunk beds, one long table; two sinks; one built-in open squat toilet.

Source: Report on Shanghai and Jiangsu prison visits by Taiwan Bureau of Justice, Correction Dept., 2015.

possibility of perpetrating rather than being the victims of prison abuse. Every detail in this paragraph, indeed in this chapter, was mentioned during interviews.

Take for example the cell leader. More than half of all PSPs serve this role. One such leader is appointed for each of a prison's 12-person cells. In 2015, presuming that Prison X cells were strictly assigned and arranged, there were 161 cell leaders, which comprises 56 per cent of the prison's PSPs. As the name itself indicates, cell leaders are responsible for assisting the staff with management of the leader's cellmates. Figure 6.1 is a sketch of a regular cell room in Prison X, Shanghai. Twelve inmates are confined per cell, one cell leader for each cell.

Cell leaders have the power to report misbehaviour as well as to make some basic arrangements in relation to living and working: who sleeps close to the toilet, who cleans the room, etc. Sometimes, other cellmates obsequiously offer the cell leader extra food or snacks or share his work. This is called 'paying tribute to a sovereign' (jin gong). Prison employee Zhang spoke about a case that happened on the day of the interview:

I told the cell leader to find a couple of inmates to do some cleaning today. This means they do not need to go to work (factory). Cleaning is considered to be an easier job. He went and brought up some inmates with him. Of course, he brought those who are close to him. (Zhang)

In situations like this, cell leaders enjoy benefits by working less and lighter, but most significantly, they benefit from the material and non-material ingratiation received from other cellmates.

6.3.2 Categorizing treatment and becoming a PSP

As mentioned above, A and B treatment level prisoners, and especially PSPs, have lower workloads, easier jobs, more sufficient and nutritious food supplies, and access to all kinds of benefits and advantages. Naturally, competition for selection as a PSP is highly competitive. A and B treatment groups account for 10 per cent and 20–30 per cent of the prison population, respectively, whereas PSPs are around 12–15 per cent. Since these two categories overlap completely, a total of 20–30 per cent of the prison population is entitled to a comparably ‘enjoyable’ incarceration life. LHR prisoners are overrepresented in this group. On the contrary, the NLHR prisoners are the main components of the remaining 70–80 per cent of the prison population, which struggles with the inhumane conditions and is suppressed at the bottom of the inmate hierarchy.

Selection of PSPs and placement in a treatment level is first proposed by a prison officer and later ratified by the prison warden. Though the positions have an enormous impact on the inmates’ lives in confinement, the process and the criteria of promotion and demotion are by and large carried out on an inconsistent, unclear and haphazard basis.

6.3.3 Rehabilitation performance and productivity

In contrast to the security levels in the United States and the UK, inmate categorization in China relates neither to convictions nor to violent histories. Rather, the existence of treatment levels as well as the ability to move from one to another are designed as a part of the systematic review of each inmate’s rehabilitation performance (gaizao biao xian) once they are in the prison system.

All prisoners begin their incarceration at the level of D. Some are upgraded to C level if they behave well during their first three months; violation of regulations and other misbehaviours can lead to deductions. Prisoners are evaluated every three months, and their credits and debits during the period are assessed. *‘Those with demerits in the past three months will be excluded from any promotion; they might be demoted, actually,’* Chen explained the criteria and process of treatment categorization, *‘We (the prison officers) compare those who have not lost any points in these three months and discuss who did what and how. Then we select some prisoners and give them a promotion in recognition of their good behaviour and as an incentive to other prisoners’*. Demerits are given for a wide range of ‘misbehaviours’, from *‘going to the toilet too often in a*

Table 6.6 Treatment Levels and performance credits in a Shanghai prison

Treatment Level	A	B	C	D	E
Performance Credits earned per month	10	8.5	6.5	5.5	0

Data source: Internal confidential data retrieved, collected and triangulated by the researcher, 2015.

factory’ or *‘standing up when the prison warden is giving a speech’* to *‘consistently low production output’*. In point of fact, the so-called ‘rehabilitation performance’ evaluation should rather be seen as an evaluation of ‘labour performance’.

The evaluation encompasses a wide range of elements: integrity, morality, soul-searching, remorse for their wrongdoings, so on and so forth... But what we focused most on is their proficiencies. Good evaluations always go to those with the highest productivity and the most work enthusiasm. (Wan)

Seemingly absolute obedience and high productivity play a fundamental role in earning and losing credits. More desirable rehabilitation performances enrich credits, which leads to further promotion in treatment levels; the reverse also occurs. Table 6.6 shows the performance credits earned per month for prisoners at each treatment level. Category A inmates earn almost as twice as many every month as category D inmates. Prisoners in A and B treatment many more credits than those in C and D treatment levels.

A higher level of treatment yields more credits, and vice versa. They reproduce each other in a cumulative way. Nothing generates additional credit more efficiently than a higher rating. The mobility intended by the system’s rationale does not exist in practice. Consequently, LHR prisoners, who are overrepresented in A and B treatment levels, also tend to stay in these positions, occupying the limited quotas continuously, whereas the NLHR prisoners who, disproportionately, suffer in the lower treatment levels, are essentially stuck there.

6.3.4 Corruption: ‘*Greasing the palm*’ of the prison governor

Bribing the prison warden in exchange for being assigned to a better treatment level or appointment as a PSP is much less laborious. Upon receipt of sufficient incentives from a prisoner’s family, the prison governor sometimes chooses to provide protective cover for the prisoner, whose unlawful or rule-violating behaviours are shielded accordingly. Officer Di complains about how this form of corruption situation tied his hands *‘I was going to issue a demerit to him, but the prison governor said I should not do it. ‘You can’t do that to him!’ ‘Why?’ The prison governor wouldn’t tell me that the inmate’s family greased his palm, but I knew it.’* The most desirable goal of such corruption is parole and commutation. This will be discussed in the following section.

6.3.5 Reasoning from the staff: '*LHR prisoners are smarter and fiercer*'

'PSPs are not related to their hukou status, theoretically. We do not look into their hukou status.' Wan said, *'However, to be a PSP, you have to have some credentials. You have to be smart and preferably have some proper education ... Migrants, mostly are not well-educated, so not very helpful in assisting us in prison management. Shanghai prisoners generally have received a better education. They have wider fields of vision. They know more and better, they won't quibble over every detail.'* Wong, who has served as an officer in Prison X for more than ten years, took the stance that a PSP has to be fierce: *'we choose those fierce persons. You cannot manage others if you are not fierce enough. Other inmates won't listen to you.'* In their description and explanation, '*smartness*' and '*fierceness*' are framed as the natural features tautologically linked with LHR prisoners.

Surely, LHR and NLHR prisoners are not distinguished to a great extent by educational background or '*fierceness*', so one must look elsewhere to understand how LHR have been disproportionately appointed as PSPs. *'Shanghai hukou prisoners won't listen to you if you don't have a Shanghai hukou,'* Wong observed, and he used this claim to justify his decision never to choose *'an NLHR prisoner over an LHR prisoner to be the cell leader'*. It reveals the living conditions and power structure in cells, which replicate the structure of the outside world: an exclusive society in an exclusive city in an even more exclusive prison.

In Prison X, like other prisons in Shanghai, the number of non-Shanghai hukou employees is limited. *'You have to admit, they (the Shanghai prisoners) are easier to talk with and mingle with. They can be used as PSPs (Chan).'* Moreover, this researcher observed that many prison officer interviewees spoke with the Shanghai dialect,²³ which is the everyday working language in the prison – even though prison rules state that both officers and prisoners shall speak mandarin. The Shanghai dialect, which is completely strange to non-speakers, leads to the imposition of stereotypes and exceptions that hinder the promotion pathway of NLHR prisoners and facilitate LHR prisoners to gang up together against their NLHR counterparts. In a way, creating and keeping a good relationship with the prison officers, and especially with the prison warden, is the key to an easier prison life. And this is one of the most enviable skills possessed by LHR prisoners.

Wu, Huang and Zhang (2008: 78) find that in Nanjing Female prisons, most perpetrators of white collar crime are allocated PSP positions, especially if they are well-educated and have management experience. Former civil servants in particular *'can easily win the trust of the prison officer. They do not need to take any hard-labour work while enjoying more freedom in*

²³ Shanghai dialect is lexically distant from mandarin. Without systematic learning, people from most other parts of China cannot understand, much less communicate via this dialect.

everyday life.’ A similar situation was observed in Shanghai’s Prison X. All in all, PSPs are chosen for the following reasons. Knowledge of the local Shanghai dialect facilitates communication and community, both of which make it easier to identify ‘others’ and to gang up with the prison officers and current PSPs against them. Further, LHRs’ better in-prison economic conditions make additional options like bribery of officers and the prison governor affordable. In all, the local hukou status paves the way to a higher social-legally constructed power position within the cell blocks.

A Case of a Shanghai cell leader, as told by Wan, a Shanghai Prison Employee: ‘He is a gifted PSP’

This current cell leader is from Shanghai. He got into some trouble before. We call it “underground trafficking” (Dixia Hangxian). He smuggled something into the prison: (Wan lowered his voice) Drugs. He had to be transferred and came to live in the cell I oversee. He does have a lot of managing experience. I have to say he is really good at it. He is a gifted PSP! He is around 40. Personally, he is delightful. He is in prison because of drug trafficking. With Japanese! (sounds impressed and excited). He studied in Japan before. During that time, he trafficked drugs from Japan to China. Anyway, he is talented. I intentionally neglected him for about half a year, to suppress him of his previous misbehaviours. Recently the former cell leader was released. The position was vacant. I promoted him as the new cell leader. (Wan)

In this case, the cell leader has violated a significant prison rule: he trafficked drugs into the prison. Nonetheless, he was promoted to PSP after only six months. The case shows that mobility within the prisoner hierarchy is rather low. Scoring well on ‘obedient rehabilitation performance’ and ‘hard-work in the factory’ might pull a new prisoner from treatment level E up to C, the regular one, but promotion to A or B treatment levels, not to mention promotion to a competitive PSP position, is virtually impossible.

6.4 Disparities in Parole and Commutation

Parole and commutation have central roles in the correctional process in China, and each has its advantages and disadvantages. A commutation reduces the length of the sentence. Sometimes, commutation is granted near the end of the sentence and the prisoner leaves the hearing as a free man, but commutation can be granted repeatedly during the course of incarceration. Every time a prisoner meets certain criteria, often but not always related to the accumulation of credits, his sentence can be shortened, so the total reduction in prison time can be substantial. Upon commutation, a prisoner is released not only from prison, but also from all forms of surveillance or control. As will be shown, a form of institutionalized discrimination leads the panel to deny a disproportionate number of commutation applications from NLHR prisoners.

Table 6.7 Commutation and Parole Population of Shanghai Prison System, 2004–2014

Year	Total population by the end of the Year	Commutation	Parole
2004	22397	7318	606
2005	23374	6773	569
2006	24651	6315	1093
2007	25688	5930	1196
2008	26295	5752	1355
2009	24218	5790	1670
2010	21326	5097	1051
2011	20125	4785	1675
2012	21303	4820	1998
2013	NA	NA	NA
2014	19073	3975	1814

Source: Retrieved from Shanghai Prison Year Book 2006–2014, reorganized by the researcher, 2015.

Unlike commutation, parole becomes an option near the end of a prison term. Parole allows the prisoner to serve the rest of the sentence outside the prison, and prisoners can apply to serve the final two years of their sentence under parole. Although they remain under community surveillance during this period, the chance to leave prison sooner is appealing to most prisoners. Unfortunately for NLHR prisoners, a second set of institutional factors leads nearly all of their parole applications to be rejected.

The possibility of early release via both commutation and parole serves as a major motivator for obedient in-cell behaviour by inmates. They are the major instruments used by prison management to maintain firm control over the prisoners, and particularly for maintaining the productivity of these forced labourers. Table 6.7 shows that a large proportion of prisoners are judged worthy of one or both of these sentencing revisions every year. In 2014, 30 per cent of prisoners had their sentences reduced via commutation (21 %) or were granted parole (10 %).

As shown in Table 6.7, though the commutation decisions have decreased significantly from 2004 to 2014, they still comprise the bulk of the work performed by the panel. In the meantime, parole decisions have increased significantly, from two per cent (606/22, 397) in 2004 to nearly ten per cent (1, 814/19, 073) in 2014. In an ideal world, with a well-designed parole system of effective and inclusive programme that smooths re-entry into society, will benefit all ex-prisoners. However, as will be explained below, existing and expected programmes in China do not serve the needs of any prisoners, and especially excludes the NLHR prisoners.

6.4.1 Limited access to parole

During the past fifteen years, higher authorities have sought to ‘balance’ the parole-commutation ratio. According to policy, prisoners who meet the basic requirements of both parole and commutation will be examined first for parole and, if denied, then for commutation and other alternatives.

However, for the same reason that explains the relentless denial of bail for migrant offenders discussed in Chapter Four – the inflexibility and bureaucracy of community correction policies – NLHR prisoners are constantly denied parole as well. Hukou status plays a large role in the determination of which local justice institute will be authorized to supervise the prisoners on parole. In principle, the justice institutes associated with a person’s registered hukou are responsible for this function. Thus, the Shanghai A-District Justice Institute (Sifa Ju) supervises Shanghai A-district hukou parolees, the Shandong C village justice institute supervises C village-hukou parolees, and justice institutes associated with a migrant’s registered hukou supervise these people, while they are on parole. However, these latter institutes are often – and reasonably – unwilling to take responsibility for supervising a migrant who is on parole. After all, the migrant has already demonstrated his ability to evade detection and local control. Wang, a prison officer, paraphrased the response he usually receives: *‘He hasn’t been living here for ten years, we can’t take him in.’* and *‘If the local correctional office says: “no”, we have to drop the parole case.’* Wang claimed this is one of the commonest excuses for parole rejection he encounters. Compared with LHR prisoners who were granted parole and released as much as two years early, NLHR sentences are essentially prolonged. Recall that institutional dynamics during the prosecutorial phase had already led these sentences to be longer than those of LHRs convicted of the same crime. The principle of a ‘common punishment for common crime’ is undermined, yet again.

Moreover, as a community-based sanction, parole is designed to ensure that released prisoners remain under another format of control, which supposed to be less restrictive and institutional. Community surveillance aims to facilitate rehabilitation and reintegration during this transition period. As discussed in the previous chapter, control by China’s community-based institutions (juwei hui) is loose and ineffective, and the same patterns can be found in parole practices. *‘They did nothing more than forge reports and drink tea’*, in Wang’s words.

In terms of the limited function in assisting the early released prisoners to ‘return to society’, neither parole nor commutation leads to effective monitoring of newly released prisoners. Under proposed reforms, however, even this limited option is becoming more circumscribed.

The advantage of the reforms, more paroles earlier in a prison term, benefits only LHR prisoners; this option has been and remains closed to the NLHR prison population.

6.4.2 Disadvantaged access to commutation

In the Shanghai prison system, parole becomes an option up to two years prior to the end of the sentence, whereas each commutation application can request a shortening of the sentence by a maximum of ten months. Both applications are reviewed according to similar criteria, including recidivism risk, accumulated credits and meritorious behaviour. Prisoners of course prefer to get out as soon as possible and thus would prefer parole. However, the logic of applying for commutation is completely different and thus the applications for commutation are more competitive: 1) prisoners who are not eligible to apply for parole (because more than two years remain on their sentence) are eligible to apply for commutation; 2) those who were precluded from the parole option; and 3) those whose parole applications were rejected. Indeed, some parole-denied LHR prisoners are adjusted to commutation.

In line with the legal reform, prison management institutions are aiming to establish a community sentencing system in China and therefore launched a promotion of parole. In practice, they enforce promotion of a balanced ratio between commutation and parole rendering a decrease in the commutation quota and a corresponding increase in parole quotas to each prison. The latter benefits the Shanghai-hukou prisoner nearly exclusively, as nearly all NLHR parole applications are rejected. Reducing the former, quota further tightens the only real option a disadvantaged NLHR has for realising a shorter sentence, that is, commutation. Even so, when compared with Shanghai-hukou and other privileged prisoners, NLHR prisoners are again more likely to be excluded from the commutation process.

As mentioned, commutation shortens the initial sentence and, upon release, the prisoner is subjected to fewer restrictions than parole. The initial punishment, based on judicial interpretation of the criminal behaviour and guided by standards set out in the Criminal Laws (1992), is adjustable according to behaviour during the period of imprisonment. Legislatively, commutation may be granted to prisoners who meet one of the following requirements: 1) absolute obedience to the prison rules; 2) successful completion of education and rehabilitation training; 3) demonstration of true repentance; or 4) the rendering of meritorious service. In practice, these four requirements are interpreted through the following ‘quantifiable’ and ‘objective’ criteria: 1) being a PSP; 2) lower recidivism risk; 3) having been granted patents or performed other meritorious services.

Table 6.8 Commutation Population in Prison X in Shanghai by PSP and Prison population (2015, 2014, 2013)

Year	Population	Total	Population granted commutation	Population granted commutation more than once
2015	Prison	2070	809	539
			39%	26%
	PSPs	302	244	190
2014			81%	63%
	Non-PSPs	1768	565	349
			32%	20%
2013	Prison	1927	811	523
			42%	27%
	PSPs	266	222	162
2013			83%	61%
	Non-PSPs	1661	589	361
			35%	22%
2013	Prison	2151	971	587
			45%	27%
	PSPs	271	241	169
2013			89%	70%
	Non-PSPs	1880	730	418
			39%	22%

Source: based on the researcher's analysis of confidential documents from Prison X, Shanghai, 2015.

6.4.2.1 PSPs, Prisoners in A and B Treatment Categories and Commutation

Better food supply, less hard labour, and more authority and power are among the privileges of being a PSP. However, an earlier release is the most desirable, most rewarding and ultimate goal for a prisoner. Table 6.7 shows that the commutation rate for PSPs is dramatically higher than the average commutation rate of the prison population. 80–90 per cent of PSPs are granted commutations, which is around double or triple the commutation rate for non-PSPs.

As shown in Table 6.8, the imbalanced ratio remained and proliferated as related to applications for a second (or third, or fourth) commutation of the same sentence. PSPs and prisoners in A and B treatment, as with all other aspects of prison life, are given priority when it comes to decisions about commutation. In fact, the sentences of Shanghai-hukou prisoners, who are highly overrepresented as PSPs and in the A-level treatment category, are commuted more often, earlier and for a longer length of the sentence, compared with their disadvantaged,

migrant cellmates. Based on interviews with Lu, Du, Wang and Chan, this phenomenon can be attributed to the following four factors:

- 1) PSP privileges include earlier access to commutation. Prisoners who have served a certain percentage of their sentence and fulfil certain requirements are eligible to apply for commutation. For example, prisoners sentenced for a fixed-term longer than five years may apply for commutation after eighteen months of imprisonment; prisoners serving a life sentence may apply for commutation after twenty-four months of imprisonment; the duration of each commutation shall not be shorter than twelve months. Prisoners with major meritorious service are not bound by the abovementioned durations.²⁴ In commutation practice, this exemption benefits PSPs and other prisoners in A and B treatment level categories. It legally codifies their priority for commutation.
- 2) Meritorious services are quantified in credits (see Table 6.5). One major meritorious service allows her/him to apply the commutation formula earlier than the time in a legal proceeding (18–24 months). 140 credits are considered as one major meritorious service. Prisoners in A level treatment category earn 10 credits per month. A PSP also gets some extra credits in everyday managerial work, 35 credits per time for a commendation. It usually takes a year for a PSP prisoner to become eligible for a commutation.
- 3) Commutation hearings are held in court every month. As ‘the quota is limited’ (Chan), and the PSPs and prisoners in categories of A and B levels have absolute supremacy in the competition when competing with non-PSPs and prisoners in lower treatment categories. Du, a new officer who has worked in Prison X for less than a year, added, *‘of course we considered the PSPs first. If this month the number of inmates who have met the criteria of commutation exceeds the quota, we must give priority to those in the treatment categories of A and B levels. This month we can send 10 commutation applications. Fifteen inmates are eligible (to apply). We put the PSPs and the prisoners in A and B-level treatment categories in the list first. After that, then we consider those in the C-level treatment category.’*
- 4) Applications regarding PSPs and the prisoners in A and B are also submitted sooner after their sentences were imposed and thus, if successful, these prisoners benefit most from commutation. Measured from the end of the initial sentence, the length of commutations varies. In Prison X, commutation typically cuts between four to eight months off of the initial

²⁴ Article 6 and 7 in ‘Regulations on the issues of application law for parole and commutation cases’ issued by the Supreme Court on 21 Nov 2011.

sentence. Those in the privileged positions are normally given the maximum benefit. *‘People in A and B can have an eight-month commutation, you are in C you will get six months. That’s it.’* (Zeng)

6.4.2.2 Predicting recidivism

The recidivism rate in China has always remained a mystery as the accessible data is limited, outdated and infrequently published. In the 1990s, a series of reports conducted nationwide and regionally claimed that the recidivism rate of Chinese prisoners is between three and eight per cent (Liang and Wilson, 2008). Yu (2008), a judge at Beijing High People’s court, cited an internal investigation on recidivism conducted in 2002 by the Zhejiang Province Prison Administration Bureau, which found that 13.27 per cent of the prison population had been sentenced more than twice in the past four years. While this is a peculiar way to calculate the recidivism rate, the number still seems implausibly low compared with all parallel data in the UK and United States, where recidivism is normally higher than 50 per cent. Yet, supported by these unconvincing statistics, the national government and the penal institutions boast of their remarkable achievement in turning criminals into good citizens via productive labour and education.

Recidivism prediction as a major feature of modern prison management was introduced in China late in the 20th century. China’s Recidivism Possibility Predicting Evaluation System (Chongfanlv Yuce), like risk assessment models elsewhere, is a ‘strategic, administrative population management approach that relies on actuarial techniques of quantifying and assessing the “risk” of certain prisoners’ (Feeley and Simon, 1992). It aims to efficiently identify a person who is more likely to reoffend, via a measurement instrument that consists of more than twenty variables. These factors are believed to contribute – positively, negatively and with varying intensity – to the final ‘recidivism possibility’. The evaluation is compulsory before each parole or commutation application is adjudicated, as well as before regular release upon a fully served sentence.

At Prison X, Zhang is responsible for operating the evaluation – *‘inputting the numbers’*, as he says. He has a master’s degree in politics from a well-known university in Shanghai, and now his daily work is dominated by mechanical keystrokes. Zhang expressed his confusion about the Recidivism Possibility Predicting Evaluation System *‘I always ask myself, what is the real meaning of this evaluation system? If he (the releasing prisoner) is so dangerous; I mean, if we are so sure he is going to commit a crime again, why do we still let him out?’*

The prison does not rely exclusively on the results of Recidivism Possibility Predicting Evaluation System to decide who can be let out and who shall stay in. The system’s predictions

only affect decisions regarding who is *eligible* to come out ahead of schedule, and who is not. This evaluation, based on actuarial risk, plays a fundamental role in the commutation vetting process. The recidivism possibility is assessed on the basis of a series of demographic and fixed factors including age, family annual income, hukou status, and so on. The theoretical foundation, such as it is, of this ostensibly objective actuarial procedure is comprised of institutional ideologies and discourses known by scholars to have limited relevance to the real world: younger, higher family income, urban hukou, Shanghai hukou and others indicate characters and virtues of ‘civilization’, ‘cultivation’ and ‘harmlessness’; on the contrary, younger, lower family income, rural hukou and non-Shanghai hukou equate with ‘barbarian’, ‘ignorant’ and ‘dangerousness’. Again, non-Shanghai hukou is framed into an ingrained criminal discourse and understood to be ‘*a feature that inexorably engenders potential crimes*’ (Lu).

Since the recidivism rate is one of the major elements of prison evaluation, decisions about both how to deflect responsibility for re-offenders – considered a failure of rehabilitation and prison management – and how to present data on the subject are priorities in everyday prison work. Just as police focusing on the policing index and judicial institutes try to pad judicial indexes, the correctional system regularly forges data that supports an imagined low recidivism rate, by emphasising the disproportionate influence on the data of prisoners deemed incapable of rehabilitation. Evaluating authorities are invited to imagine that migrant inmates are ‘*untameable*’ and shall ‘*take their own plight*’ when they re-offend, says Dum, whose words mirror a ‘central feature of neoliberalism and its emphasis on prudence and characterizes of individuals as rational subjects who ought to be responsible for their own welfare’ (Moore and Hannah-Moffat, 2005: 130). China’s NLHR prisoners bear the brunt of the trend in risk assessment management.

6.4.2.3 Commutations for sale

Lin and Shen (2017) investigate the legal inequality in commutation practice in China and have drawn the conclusion that the ‘haves’, which include those criminals convicted for duty crime, financial crime and gangland crime’ come out ahead in commutation procedures. In their research, the intersections of hukou status and socio-economic status were found to be consistent with their general conclusion: PSPs are the major intermediate factor in the correlation of criminals convicted for ‘duty crime, financial crime and gangland crime’. The authors found the financial privileges of the prisoners gained preferential commutation treatment through: 1) completed payment of fine/ criminal’s property penalty and supplementary civil compensation; 2) favourable (sometimes fabricated) reports; and 3)

subjective credits earned in prison via power and money. In line with these findings, the present research documents, in vivid detail, how power and money can buy freedom.

Corruption is the most straightforward way to purchase a commutation. *‘50 grand or 80 grand (CNY) is barely anything! They have to pay more than 100 or 200 grand. That’s the proper market rate for a commutation.’* Di revealed that the price for commutation in Prison A in Jiangsu Province is around 100 000 to 200 000 CNY. *‘The prison warden’s annual income is about 100 000 CNY, now he is being offered 200 000 CNY. If it is me, I will also do it.’* In 2014, the Central Politics and Law Commission of the Chinese Communist Party issued *Opinions on the Strict Regulation of Commutation, Parole and Temporary Execution outside Prisons to Prevent Judicial Corruption*, which aims to ‘eliminate the phenomena of ‘paying for commutation’ and ‘gaining freedom by power’ (the phrase rhymes in Chinese, *huaqian maixin yiquan shushen*). However, the document is more symbolic than efficacious. As evident from Table 6.8, PSPs, who are mainly rich, powerful, and from the Shanghai-hukou enjoy a disproportionately high proportion of successful commutation applications and a correspondingly shorter term of actual imprisonment.

Other means are used to fabricate ‘meritorious services’ in order to gain an earlier and longer commutation. For example, both publications and patents can be purchased and then presented as ‘meritorious services’ before a commutation review board (Zhao, 2014). Some prisoners pay someone to write an article and then bribe a newspaper or magazine to publish it. Others have bought an invention design and registered its national patent in their own name. Gao (2015) demonstrates that the invention racket in prison operates at an industrial level. The rich and powerful suddenly turn into Dr. Whos and prison Edisons. In 2014, the sentence of a former vice-president of the Chinese football association, Nan Yong, was commuted by a full year, based on four patents registered while in prison; Liang Zhejiang, the former chief of the Fenghua Health Bureau, registered eleven patents while in prison and he was a free man fully fifteen months prior to his scheduled release date. Because it guarantees a commutation and most significantly, it is legal, prison patenting has become a business chain that involves specialized agencies as well as prison officers. This is yet another way that China’s prison system, like elsewhere, constantly rewards the ‘haves’ and overwhelmingly penalizes the ‘have-nots’.

6.5 Prisoner Transfers: A mass internal criminal deportation

Prisons in China’s big cities, coastal cities and megacities are packed, and their populations are soaring. Massive prison overcrowding is largely linked with the mass incarceration of migrant offenders, for reasons explained in the previous two chapters. Prison wardens in these regions, where overcrowded cells and a relentless shortage of prison officers are commonplace, struggle

to comply with international and state criteria on incarceration conditions, including prisoners per cell and prisoner-staff ratios.

In the meantime, unlike the booming prison economy that includes established private prison systems in the United States and the UK, there is no sign that China will set up private prison institutions. This is not to say that prisons in China are separate from the private sector: the ongoing mass production in state prisons, and the framework of long-term contract-based cooperation and sister companies, indicates a certain extent of privatization of the penal system in China. However, prison management itself is a fully public enterprise. Thus, distribution and redistribution of prisoners are negotiated between state prisons throughout China. *‘Our incarcerating capability is saturated; we could not take any more.’* Shao, an employee at Shanghai’s female prison, talked about prison transfers, *‘Some prisons in the inland mountain regions, they’ve got enough space, enough cell rooms and staff.’* Hence, NLHR prisoners are transferred from overcrowded prisons to those with empty cells.

6.5.1 Beijing prisons for Beijing prisoners

Though data presented here by and large are based on fieldwork conducted in the Yangtze River Delta, which includes Jiangsu, Zhejiang province and Shanghai), it is noteworthy to point out that not every prison in China confines both local-hukou and non-local hukou prisoners. The Beijing system only imprisons (or, in the perverted lingo of Beijing prison administrators, *‘serves’*) Beijing-hukou prisoners. This is seen as one of the numerous benefits and privileges of registering with a Beijing hukou: lower interest rates on Beijing property mortgages, priority and lower-cost enrolment in public schools, well-covered social care and health insurance, and seemingly preposterously, *‘serving’* in a local Beijing prison upon conviction. On the contrary, non-Beijing hukou prisoners who go through the criminal justice process and are convicted by courts in Beijing are deported to their hukou registration regions, and those regions are obligated to accept these prisoners. Exemptions apply for those few NLHR prisoners who can prove they have a solid social network in Beijing, which is essentially infeasible in practice. Legally, all non-Beijing hukou convicts sentenced to more than one year of incarceration shall be sent away.

This is parallel to the international justice norm of deporting fugitives who cross national borders. While this international norm is evolving (the UK Supreme Court ruled in 2017 that deporting foreign criminals can be a violation of human rights, *The Guardian*, 2017), Beijing continues and intensifies its policy of mass internal deportation, straight after the verdicts, of NLHR prisoners to correctional institutions in their hukou registration regions. The *‘non-local prisoner removal centre’* (this phrase may sound shockingly familiar to people who are familiar

with immigrant removal centres in Europe), also known as the Beijing Tianhe Prison, is where non-Beijing-hukou prisoners are held prior to deportation. From there, they are removed from Beijing.

'It is nothing about discrimination. This is determined by the objective conditions. If we do not send them back, we have to build ten more prisons in Beijing. No place and no money for that.' This is an explanation and comment given by Prison Officer Cang, in terms of the hukou disparities in prison transfer. Here *'sending them back'* refers to relocating NLHR prisoners to their hukou/registered regions for incarceration.

6.5.2 Prisoner transfers in Shanghai

Beijing is the strictest city in terms of applying the hukou rules and deporting prisoners. In Shanghai, prison transfers typically are not entangled with hukou status. Liu told me that, for example, *'If Nanchang (the capital city of Jiangxi Province) prison is open to transfers, we will send some prisoners to them. They don't have to be Jiangxi or Nanchang people.'* The explanation might be that, authority over all the other correction institutions in China, Beijing prisons are capable of removing and deporting everyone regardless of the ability of the receiving prison to accommodate the extra prisoners, whereas Shanghai prison authorities do not have such authority. They must wait for notice of vacancies before they unburden themselves of their overloaded prison population. Shanghai's NLHR prisoners are primarily relocated to inland prisons via transfers. Prison Officer Zhang explained that hukou remains as the predominant factor in decision-making about transfers. *'Hukou is the foremost factor that influences our decisions on who goes for the transition and who doesn't. Preferably one shall go back to his hukou registration regions. Another factor is disobedience. Those rebels, troublemakers, we are eager to kick them out.'* Prison transfers are usually carried out once or twice a year. It helps to abate Shanghai's overcrowded conditions by diverting non-local prisoners to any prison, anywhere, that will accept them.

6.5.3 Leap at the opportunity for a prison transfer

Prison transfers are not seen adversely by the prisoners. Unable to secure parole or commutation in Shanghai prisons, many NLHR prisoners hope that an inland prison might grant them an earlier release.

As the transfer quotas are limited and prisoner interest is high, being deported is rather competitive in Shanghai. Wan talked about a case that illustrates the desirability of prison transfers: *'Last year (2014) Ganzhou (in Jiangxi province) prison opened 1000 spaces for Shanghai*

prisons. Prison X got a quota, which it distributed to each incarcerated team. About 10 spaces were allocated to each team. In the team I supervised, over 40 prisoners competed for these spaces.'

The living standards in prisons in Shanghai are higher and the treatment is less brutal compared to prisons elsewhere, mainly referring to inland locations. *'We are much more humanized here (in Shanghai). Every day the work ends at 8 pm. This is not the case outside of Shanghai. They have to work for a very long time.'* Song praised Shanghai's humane prison management. On the other hand, rules regarding commutation and parole are much tighter in Shanghai compared to prisons elsewhere. *'For commutation, here, we can commute a maximum of six to eight months. Those inland prisons can do more than a year. If they work harder there (in prison factories), they can get quite a good deal.'* As Li said, a markedly improved prospect for commutation is the major reason NLHR prisoners express such strong interest in transfers.

Li continued to explain that, in order to gain access to parole and commutation opportunities they have been denied in Shanghai, NLHR prisoners are willingly relocated to shabbier cells and possibly more abusive environments, fed with worse food, and suffer under heavier workloads, hunger and prison brutality.

6.6 Rehabilitation Programmes

Though rehabilitation in Chinese prisons is designed to be achieved via labour, this principle has been misused and abused as the prisons pursue profit. Some more genuinely rehabilitative programmes are provided in Shanghai prisons. Unfortunately, yet unsurprisingly, these are open only to Shanghai-hukou prisoners.

6.6.1 A special prison: Wujiaochang Prison

Wujiaochang prison is a special prison designed for Shanghai-hukou prisoners who are expected to be released in the next three months. In Wujiaochang prison, labour is not a priority; instead, the prisoner is provided with a lot of free time. Mock-police stations, banks, and registration offices are set up inside the prison to help the prisoner get familiar with their processes beforehand. It also offers training on cooking, auto-repair, plumbing and other craftsman occupations. The courses last three full months and are conducted by professionals (Zheng, 2014). Though there are no confirmed statistics of how these initiatives have smoothed these prisoners' re-entry into society, this seemingly positive opportunity completely shuts the NLHR prisoners away.

6.6.2 Local services and the Bureau of Justice

The local justice office is responsible for helping the prisoners to return smoothly into society. The authorization is like parole and probation; the responsibility is assigned by hukou registration. For example, the Shanghai Jin'an District Justice Office provides jobs to released Jing'an-hukou prisoners. Most of the jobs are as cleaners and not a very attractive introduction to life in freedom. Wang recalled a reluctant prisoner who quit the allocated job shortly afterwards and returned to a life of crime.

Stealing over China

They asked him to clean the street. He didn't want to. He swept two days and then ran away ... He told me he likes to travel. His dream is to travel around China. To my understanding, he wants to "steal over China". He told me he has never stolen twice in the same city. He jumped on the train after stealing in City A. Then he stole in Cities B, C, D ... (Wang)

We can conclude generally that provision of such jobs is not effective in assisting former inmates' rehabilitation and re-entrance into society. In reality, NLHRs who are released from penal institutions are excluded yet again.

6.7 The Female Prison

Women represent a small proportion of the prison inhabitants. In 2014, the Shanghai female prison confined 137 inmates. In the same year, 33 female inmates were incarcerated in Shanghai juvenile institutes and 281 in Nanhui prison.²⁵ Overall, female inmates account for 9 per cent of the total prison population. Among these, around half are NLHRs (quoted from Liu, a prison officer at Shanghai female prison). However, the treatment of female NLHR prisoners raises questions about 'intersectionality'. The issues of labour exploitation, unpleasant living conditions and other unfair treatment weigh more on them. For instance, sanitary towels must be purchased. Females have to buy living essentials like these via their labour earnings inside the prison. One can imagine the extra suffering of disadvantaged prisoners.

Apart from the material shortage, female NLHR prisoners experience depression and anxiety from being separated from their family. Liu described a female NLHR prisoner with no family visits: *'The family visit is mostly only accessible for the Shanghai prisoners. Those who have visits and those who do not, there are differences of course. They felt the comfort of being cared for and loved. ...She (a migrant prisoner) knew about her family conditions. She knew her home is far away. She*

²⁵ Nanhui prison is for older inmates and inmates with special needs (males older than 60 and females older than 55).

has psychologically prepared for this. She did not even fill out the family visit form. She knew they (the family) are not likely to come to visit her. She could only ring them once or twice a month.'

The documentary and interview evidence presented and reviewed in this chapter points to hukou disparities in the prison system. Elements from both legal and extra-legal areas clearly affect the treatment of the NLHR population at the end of the criminal legal process. Time served is highly related to hukou status. Such discrimination, as in policing, prosecuting and sentencing, is embedded in the operation of prison disciplinary procedures. Institutional discrimination, power abuse and corruption are evident in PSP allocation, where prison officers recruit inmates according to 'personal preference,' which implicitly and directly discriminated against the NLHR. Often finding themselves on 'the wrong side of the law', the absent of justice is an account of the broader social, economic and political contexts in which the people are 'unwanted' in today's society live. In Chapter Seven, I consider the influence of hukou on criminal legal process as a whole and examines the discourse beyond in conceptualizing 'Crimmigration' in post-hukou China.

Chapter 7 Discussion

This research has explored the ways that one's hukou status influences the criminal justice process and shapes patterns of crime in China. I was not guided in this task by a pre-existing, over-arching theoretical framework but defined a clear methodology before setting out to conduct research. Thus, the findings from field research I have presented might be patchy and sometimes contradictory.

I have documented the non-local-hukou registered (NLHR, and LHR for local-hukou registered) population's experience of more frequent stop-and-searches, arrests and pre-trial incarceration, in comparison with members of the local population. I have also confirmed that, once in the system, NLHRs are also more likely to receive longer sentences, be denied parole and commutation, and receive discriminatory treatment in the correctional system. Criminal legal practice in China is institutionally biased and systematically discriminates against NLHRs, which leads to a consistently dramatic overrepresentation of the NLHR population at all decision points in criminal legal proceedings. The construction and reproduction of the 'criminal migrant' has resulted in a further 'rational discrimination' throughout the crime control regime (Ma, 2018). In this way, Crimmigration, a global term that communicates the convergence of the criminal legal system and the immigration enforcement system, manifests itself in China's hukou-based criminal legal system.

I have also documented the decomposition of today's hukou system into a seemingly never-ending stream of bureaucratic and sometimes contradictory regulations. The linkages between the hukou system and its original social control functions have become fractured. Scattered by the changes in the economy, we see a linear decentralization of power from the centre to the cities; from state-controlled hukou registration to a city-negotiated documentation and credit system; from a state-centred, hierarchical, command-and-control model to cities that launch schemes and compete with one another to attract 'high-end migrants' (gaoduan rencai). Citizenship, social welfare and benefits that used to be defined and allocated by a local hukou are now accessible to NLHRs, but only to the NLHR 'haves' among them who can use alternative routes to become 'naturalized' city residents. In the meantime, new forms of values as to which factors are associated with criminality and what is considered to be the 'dangerous class' have arisen: this class no longer comprises the whole NLHR population, but rather that portion which is also characterized by inner-city poverty. This discourse is produced by the crime control community and conveyed to a broader audience through the language of 'instability'.

Unevenness in punishment is performed via legislative means fed with, by and for the legitimacy and the neopolitical economy.

The aim of this chapter is to look at the linkages between patterns of crime and criminal legal practices, and their effects on selectiveness and disparities in broader political, social and economic spheres. I first examine the problem of superimposing the ‘rule of law’ and critical racial theories to explain the hukou disparities in the criminal legal system in China. Their misapplication has not only limited our horizon in understanding the unfairness of the Chinese legal system, but also hindered our deconstruction the ‘hukou myth.’ The fact that sometimes it is difficult to identify who is behind the NLHR label suggests that the doctrinal entanglement that is hukou is a longstanding feature of Chinese jurisprudence. It is not. Instead, I contest the concept of Crimmigration in the context of post-hukou China.

Thus, I investigate how the concept of Crimmigration can be applied to the Chinese context. This investigation, which traces the ultimate questions of this research – who is being criminalized, how does the political-economic-cultural institution known as ‘hukou’ shape the process, and how has the role of hukou changed over time – is a unique contribution to the criminological literature. By relocating the concept of class in the analysis of hukou-moderated Crimmigration, I examine how the changes in the economy led criminal law and punishment to become a complex combination of universal social interests on the one hand, and specific class interests on the other. This approach enables me to address the anomalies of Chinese criminal legal work without creating a theoretical schism between the internal nature of law and the political ideology of the system, and without entirely reducing examination of the social control mechanisms to the ‘surface’.

Next, via an inquiry into migration politics in a strong authoritarian state like China, I examine the discourses of ‘stability maintenance’ and ‘mobility control’. By introducing the idea of post-hukou into this discussion, I acknowledge that changes in China’s socio-political environment are abating or entirely removing the hukou system’s ability to control internal migration, not to mention its ability to exercise broader controls over society as a whole. However, the decline in hukou competences does not suggest a loosening of mobility control in today’s China. Rather, the de-bordering process claimed by ‘hukou reform’ comes hand-in-hand with a re-bordering process through everyday law enforcement, including pre-ordained ‘deserving citizens’ and excluding the rest—the ‘unwanted’. This reality, however, lurks below the surface of the newly formed discourse of de-bordering, mobility and stability that burnishes what the Chinese Communist Party (CCP) wishes to believe is a sterling reputation.

Finally, I place the problem into the context of globalization and call for its study from the perspective of core and periphery.

7.1 A Critique of the Rule of Law: What can be adjusted?

7.1.1 The absence of the rule of law

Western media reports have long framed Chinese criminal legal systems as oppressive (McConville, 2009; Potter, 2013). However, ‘on the basis of that deceptive and narrow presupposition, although theoretically idealized as a universal standard, the rule of law is actually a system-dependent (or jurisdiction-dependent) notion’ (Palombella, 2009: 447). Many legal scholars imagine a Chinese legal system that features the rule *by* law and not the rule *of* law (Peerenboom, 2001; Keith, 1994; Trevaskes, 2013; Wang and Madson, 2013; Bell, 2014; Li, 2013; Minzner, 2011; Minzner, 2012; Wang and Minzner, 2015). The former ‘merely invoke[s] the existence of law within the state’s governing process’, while the latter implies ‘more progressively the supremacy of law and the curtailment of arbitrary government by law’ (Keith, 1994: 1). Relying on Dicey’s conception – 1) the supremacy of law, 2) equality before the law and 3) the predominance of legal spirit – the rule of law in China must still be reckoned as a distant prospect (Trevaskes, 2013). The law appears to pose little restraint on state power, and the CCP retains a great deal of control over the police and legal system’ (Wang and Madson, 2013; Tanner and Green, 2007). Law in China remains dependent on the regime’s policy goals, and its political culture is yet supported by legal and judicial power (Wang and Madson, 2013; *The Australian*, 2017).

Miscarriages of justice and inequality in legal processing, especially the bias against the NLHR population, are portrayed as evidence of China’s failure to establish the rule of law, which itself is a result of the party-state’s ‘tremendous power over the police and judiciary’ (Jiang, 2018; Li, 2013). Wong (2006) attributed the police power abuse in China to the ‘lack of an entrenched legal culture in the rule of law and the absence of an ingrained constitutional spirit in limited government.’ Following this logic, legal reform in China is seen as a struggle to incorporate the rule of law into its domestic policies (Keith and Lin, 2006). For example, police reform is addressed as having put the institution in an interstitial position,

sandwiched between on the one hand general developmental goals which reflect increasing commitment to a “rule of law state”, human rights protection, as well as market forces and private property and so on, and on the other, persisting authoritarian norms, institutions and values, many of which retain something of a “socialist” imprint. (Palmer, 2011: 67)

Similarly, while judicial reform is hoped to balance the asymmetrical power dynamic between the prosecution and the criminal defence lawyer (Lum, 2008), much must change before weaknesses in the current, non-adversarial judicial structure, where ‘the effectiveness of [criminal defence] legal representation is questionable and their work bears little substantive impact on the final outcomes of the criminal trials’ (Liang, He and Lu, 2014: 585) are overcome. Scholars suggest that empowering grossly outmatched criminal defence attorneys is a necessary first step toward fair judgments for NLHR defendants (Liang, He and Lu, 2014).

In general, only a thorough and in-depth legal reform could move the system toward meeting the requirements of proceduralism and the rule of law. Implementation of the rule of law would ideologically revolutionize China’s legal system, since it is the key push factor to enhanced equality in legal processing. This would facilitate justice for marginalized populations including NLHRs. However, we have seen that the rule of law by itself can neither explain nor repair the current disparities in the Chinese legal system. We need to see the over-representation of NLHR population in every corner of the system not as an extension of dispossession and the abuse of human rights, but a matter of crime and punishment rooted in structural inequality. No single factor can explain this disproportionate judicial outcome to suggest otherwise ignore the social and political construction of ‘Crimmigration’ in China. Indeed, the system is much more broken and problematic than simply the absence of the rule of law. In fact, by interpreting such a narrow association as causal, the rule of law has itself become an abused concept in China’s official discourse.

7.1.2 The abuse of the rule of law

Official discourse has adopted a neo-liberal version of modernist theory: increasing crime rates are due to rapid and inadequately regulated social change (Liu, Zhang and Messner, 2001; Liu, 2004). The CCP’s identification of lawlessness and adverse socio-economic conditions as causes of crime highlights the political nature of these explanations (Liu, 2004). Moreover, further progress of socialist Chinese principles under the rule of law (*jianshe shehui zhuyi fazhi guojia*) is underlined as a core value in the crime fighting manifesto. Imported notions of the rule of law have been interpreted in ways that reveal the uncertainty surrounding the value of the concept for instrumental uses rather than as a component of universal constitutionalism.

The rule of law in Chinese official discourse has been twisted and manipulated by the government to support the regime’s punitive turn, including its so-called ‘strike hard’ campaigns (Trevaske, 2014). The terminology has explicitly weaponized the police and criminal legal system, thus facilitating their greater power to interfere in everyday life, including Crimmigration. Migrants in this context are increasingly linked with criminal activities whose containment and

cure are increasingly regarded as a proper purview of law enforcement and the judiciary. Moreover, the criminalization of the NLHR population is now seen as an implementation of the rule of law, as migration is controlled more through the criminal ‘due process’ legal system rather than through absolute hukou control via administrative protocols. In other words, migration control proceeds under the authority of the ‘rule of law’ and, as a result, not only misleads the public in China but, much more seriously, generates dangerous outcomes.

7.1.3 The adoption of the rule of law

Limited implementation and performative promotion of principles such as constitutionalism and proceduralism have led only to cosmetic changes. As Dexter (2014) concludes, ‘law in China is not for enforcing but for decoration or disbursement’.

The policing chapter shows that, ostensibly in order to address existing biases in the arrest rate of NLHR suspects, more than twenty first-tier cities in China initiated legal reforms between 2011–2015. Documents claim that regulations regarding arrest would be applied equally to migrant workers and members of the local population. Yet in 2015, when I was doing fieldwork in major cities in the Yangtze River Delta, prosecutors explicitly acknowledged they simply followed the principle of ‘*arresting all NLHR suspects*’ (yilv shiyong jiyaxing qiangzhi cuoshi) when they receive arrest applications from the police. In their opinion, the reforms were ‘*totally infeasible, contradictory, and utterly ridiculous.*’ Similarly, Ningbo policemen affirmed in interviews that they had never even heard of the new legislation. Apparently, the ambitious reform programme outlined in official legal documents had essentially come to naught. This failed reform highlights how hukou status still plays a fundamental role in determining how the police and judicial bodies in China deal with different types of suspects. In this particular case, anti-NLHR discrimination and bias remained untouched. What we learnt is that formal judicial reform is an inadequate weapon against ingrained inequality in legal practices.

Another example is the constitution of the People’s Republic of China (PRC). Back in 1954, Article 90 of the country’s first constitution entitled all citizens to free movement. However, a 1974 amendment removed the article and thereby denied this right, and subsequent amendments (1978 and 1982) failed to restore it. Today the basic human right of free movement continues to be unmentioned in the PRC constitution. Its absence has been interpreted as the fundamental barrier to abolishing hukou and moving toward equality between the LHR and NLHR populations.

Some scholars show nostalgia for the 1954 constitution and the free movement it allowed (Xu, 2014; Liu, 2004). However, my research demonstrates that a new and explicit constitutional recognition of this right would neither facilitate hukou reform nor eliminate hukou-generated

disparities in today's Chinese society. A simple historical reminder can make the point: in the same year the 1954 constitution was promulgated, the Ministry of the Interior and the Ministry of Labour jointly issued an administrative rule to 'control the blind influx of peasants into cities' (Friedmaan, 2005), which fundamentally – and officially – hindered freedom of movement in China, despite the constitutions explicit endorsement of the principle. Mobility controls have thus been enforced despite Article 90, subsequently without Article 90, most probably in the future as well, regardless of what rights a future constitution might 'guarantee'.

For these reasons, I conclude that these strands academic and media criticism of the current Chinese legal system are, in their way, based on a constructed liberal myth. They observe the absence of the rule of law and take it to be a pathogen in a regime that could do better. They observe discrimination against the NLHR population, criticize the judiciary only for its excesses in general terms. They see NLHR/LHR disparities as genuine, yet claim they exist because of the backwardness of the legal regime and are thus inappropriately optimistic that such prejudices can be erased by improved due process regulations and judicial independence. Structurally rooted systemic equality does not find a place in these critiques, and truth suffers as a result.

7.1.4 The rule of law won't save China

Acknowledging structurally-induced systemic biases is a necessary first step to progress, but such an acknowledgement is not visible even on the distant horizon. The blame ought to fall on the structure itself, and not only on unjust laws or the discriminative practices that are affected by the structure. The highly disproportionate number of NLHR defendants who are sentenced to criminal punishment, and the disproportionately harsh sentences imposed, are overdetermined outcomes of a judicial *system* in crisis.

The chapter on prosecution and sentencing documented pervasive anti-NLHR selection biases at every decision-making point of the entire process. Decisions that are presented and believed to be individually and independently made are actually made institutionally and systematically. For example, a decision to arrest comes full circle with 99% certainty: arrest → disproportionate NLHR likelihood of pre-trial incarceration; pre-trial incarceration → disproportionate NLHR likelihood for conviction, longer pre-trial incarceration → disproportionate NLHR likelihood of a longer prison sentence, and so on, all the way down the line. These biases shape the ways in which the system functions and practitioners' function on a daily basis. In fact, conformity with this selection bias in the decisions is a 'well-organized' legal inertia. The cyclical nature of criminal justice processing is enshrined in routine everyday practices on the basis of an index-oriented evaluation system of the criminal justice apparatus.

The absence of equality, the abuse of the rule of law and the resulting miscarriages of justice against the NLHR population are not ‘mistakes’ on the part of a confused regime. On the contrary, as Ringen (2016) puts it, ‘these practices are logical and necessary, given the regime as it is.’

Lastly, discrimination, prejudice and bias in a state’s criminal legal system ought to be separated from issues regarding measures related to commitment to the principle of the rule of law. The World Justice Project publishes an annual assessment of state conformity with rule of law practices as measured by eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice (Worldjusticeproject, 2018). In 2018, non-surprisingly, China ranked 75th out of the 113 countries assessed regarding its overall performance as related to the rule of law, and 54th regarding criminal justice performance. By comparison, the United States ranked 19th overall 20th regarding criminal justice. And yet, both countries scored similarly on the measure related to discriminatory practices in criminal justice: 0.37 for the United States and 0.36 for China. This similarity is surprising in a comparison between a beacon of liberalism and the rule *of* law and a totalitarian state under the rule *by* law.

In summary, the research shows how hukou disparities in the criminal legal process are routine – not exceptional – and thus support my rejection of narrow, liberal prescriptions regarding the implementation of narrow regulations that build up the rule of law. To the contrary, my findings support the argument that the analysis of judicial independence alone is inadequate to yield a meaningful understanding of the persistence and power of systemic discrimination against the NLHR population in China. It is time to stop pretending that criminal legal systems ought to be neutral and impartial. ‘The judiciary’s claim to be an apolitical manifestation of the famous image taken from the ideal, a blindfolded Lady Justice whose scales honestly weigh competing arguments, should not be taken for granted’ (Dakolias and Thachuk, 2000: 137). In a society divided by hukou, gender, ethnicity and class, law perpetuates injustice. Inequalities rooted in society are embedded within institutions of law and punishment. Therefore, one should not imagine that buttressing the rule of law can be a panacea for inequalities and unfairness. This brings us to critical racial theory.

7.2 A Critique of Critical Racial Theory: Who is being racialized?

7.2.1 Critical racial theory and differential racialization

Critical Racial Theory (CRT) first emerged in American legal scholarship in the 1980s and still comprises the most significant body of work on the racialization of crime and the

criminalization of race in the West. CRT proponents insist that race is a socially constructed category that is deeply implicated in the use and circulation of power in society. They suggest that the criminal legal system is not supposed to be ‘non-partisan in the political process’ and legal practitioners are never ‘free to make their decisions unhindered by the political influences of daily life’ (Dakolias and Thachuk, 2000: 137). Indeed, ‘legal and criminal systems are intentionally manipulated, oftentimes by political ideology and power, to maintain the subordination of certain racial and ethnic minority groups and the maintenance of white supremacy’ (Jordan, 2016: 97). By topping up with differential racialization theory, CRT sometimes acts as a theoretical foundation for investigations of judicial disparities among groups defined by factors other than the racial categories in the west.

7.2.2 Judicial discretion and institutional discrimination

Using the method of storytelling and narrative analysis, CRT deconstructs the racial prejudices in judicial decisions; for example, it assesses the extent to which judges and the lawyers are from a privileged background and hence share a set of moral values that contrasts with that of defendants and others in the system. CRT thus argues that it is impossible for judges to be racially blind or to remain neutral in orientation (Delgado and Stefancic, 2007).

A persistent theme emerged in our chapters on policing, prosecution, sentencing and correction: day-to-day discriminatory practices against the NLHR population. We saw how the police ‘under- and over- enforce’ the law vis-à-vis the LHR and NLHR communities, how prosecutors complied with positive arrest decision, and how pre-trial detention was rarely reversed, and how all of these decisions – plus additional sources of systemic bias built into later components of the process – compounded discriminatory outcomes at the stages of verdict, sentencing and (not) granting parole or commutation. Consistent with CRT expectations, it can be concluded that the discretionary nature of decision-making within the criminal legal system requires that decision-makers base their decisions on their own cognitively framed understandings of extra-legal factors like race and hukou status.

However, this research supports the proposition that hukou inequality should be understood as an abuse of discretionary judicial processes and a built-in feature of everyday legal practice. As documented in previous chapters, legal professionals spoke openly about hukou disparities in their decision-making process, making clear as they did so just how limited their own self-awareness is, as well as the limitations on their ability to identify their selective choices regarding prosecution, for example, as having roots in discrimination or bias. They reported that unfair decisions were neutralized and justified as ‘objective’ (keguan). ‘*Subjectively, we treat them equally,*’ said Prosecutor Kuo, ‘*but some objective differences exist.*’ This telling statement shows

that, from the view of the decision-making legal professionals, inequalities before the law are subjectively reconciled and due process is not seen to be sacrificed.

Each decision-making moment becomes a key ingredient for understanding the impact and consequence of being a person without a local hukou in a situation where social inequality has penetrated into the daily workings of the legal system. The way in which the system is designed, and functions renders NLHRs into vulnerable targets of legal bureaucrats who are under great pressure to fulfil indexes, improve performance statistics, comply with evaluation criteria and demonstrate their membership in the collective that matters most to them: China's legal system. Under these conditions, it is no surprise to observe a cyclical decision-making process that continuously replicates itself.

7.2.3 Hukou racialization revisited

Despite its potential, CRT is found to have limited analytic value with respect to the questions of interest in this thesis. However, in the meantime, awareness of CRT's limitations might contribute to some more specific discussions. I reject the blind application of racial terminology to explanations of inequalities associated with hukou status in the context of China, as briefly touched in Chapter One, for four reasons. Firstly, contemporary circumstances have partly changed the local/non-local and urban/rural hukou hierarchies, including a reversal of formerly predominant hierarchies in some of Zhejiang province's township cities. That is to say, land-rich rural hukous that offer property rights to their members have been seen to be much more favoured among the residents. Secondly, the sinicisation of Uyghurs in Xinjiang province can be understood with reference to Western concepts of race and racialization. Applying the same terminology in the context of China society on hukou disparities might thus lead to confusion and misinterpretation. Thirdly, I have argued that attempts to use CRT to explain the marginalization and exclusion of a population group that is not defined by traditionally race-based concepts always ended in descriptive and self-evident tautologies. Here I develop this last point. My documentation of the criminalization process against the NLHR population in the chapters on policing, prosecution, sentencing and correction reveals a clearer picture as to why and how CRT analysis of hukou disparities in China's legal system is unfruitful.

Around the world, one can see conceptual confusion arising in studies of 'race'. In America, one of the most ethnically diverse countries in the world, the bulk of criminological studies divide the population into 'blacks' and 'whites,' with little mention of 'Hispanics' or the plethora of other race-relevant communities (Thorny 1995; Wacquant 2009). Similarly, in the UK, which is also ethnically diverse, criminological studies also tend to break the population down into only three categories: 'black', 'white' and 'Asian'. Besides being too vague and too broad for

meaningful analysis, these categories are internally inconsistent, since ‘black’ and ‘white’ refer to skin colour, while ‘Asian’ refers to a geographical origin (Matthews, 2014: 31). To be sure, there was an era when race was cast as a nostalgic affliction, but even then, it could not be divorced from the political economy of the time (Matthews, 2014: 67). That is to say, if we claim that racism is separate from institutional instruments and capitalist exploitation (following this sloppy line of reasoning, some scholars describe the Clinton presidency as a paradox), hukou can never be fit into the same box. On the other hand, if we suggest that racism and economic inequality occupy intertwined terrains, then is it worth considering here the replacement of one term with another, regardless of their specific historical and political economic relations? I argue that no, it is not.

Cabrera (2018: 209) has pointed out that CRT ‘from its inception was not intended to be a theoretical framework, but a theorizing counterspace for scholars of colour to challenge and transform racial oppression.’ In this sense, the theory might possibly yield valuable insights regarding the social democratic movement in China. Even so, however, the route manoeuvred by CRT as formulated undermines both our ability to understand the causes of hukou equality in general and our ability to contribute recommendations that might lead to more equitable treatment in China’s criminal legal system. In summary, divorcing hukou inequality from CRT and differential racialization theory is the first and foremost step to be taken if the goal is a deeper understanding of hukou.

7.3 A Critique of Crimmigration: Who is being criminalized?

Estranged from differential racialization and CRT, I now return to the fundamental inquiry into hukou and migration. Neither ‘hukou’ nor ‘migrant’ should be seen merely as a demographic category, because migrant is a part of social framing while LHRs and NLHRs are institutional constructions. Pigeonholing people as migrants and non-migrants based on their hukou status is more difficult than most studies suggest. Too often, ‘monochromatic’ sociologists reduce humans to a single dimension: LHR/NLHR, migrant/non-migrant. This not only implies that the relationship between hukou and migration is permanently static – rather than a product of constantly changing political-economic relationships – but also reinforces rather than analyses the foundations of such ideologies. Changes in terminology over time reflects the changes in the way the broader society imagines its inclusion and exclusion of the NLHR population, as can be found in communicative artefacts, official discourses and everyday conversation.

7.3.1 From ‘mang liu’ (blind flow) to ‘low-end population’ (diduan renkou)

The term ‘mang liu’ literally means the blind (mang) influx (liu) of migrants. The term first appeared in a 1953 command document that ‘discouraged mang liu’ (Wang and Wang, 2001). ‘The command requires each local rural government and administrative committee to discourage its residents from immigrating to cities (Chan, 1994). Four years later, the word ‘discourage’ was replaced with ‘forbid’ and the document added ‘a series of rigid disincentives, including banning food supplies, welfare and other benefits to the NLHR population’ (Chan, 1988).

A pun-type relationship between mang liu (blind influx) and liu mang (hooligan) was made into an open joke on the main television station’s broadcast of its Chinese New Year Gala (Chun wan) in 1990.²⁶ Song Dandan, one of China’s best-known comedians, mocked NLHRs: ‘Do you hear how the police point at my nose and call me? Mang liu! Listen to it, Mang liu! Why not just call me liu mang!’ The term, taken at face value, not only demonized the nature of migration as ‘blind’ and ‘hooligan-like’; it also reinforced the tone of humiliation and public mocking that already could be seen in the street. By drawing a line directly from NLHRs to criminality, Song effectively endorsed public discourses that not only allow but also actively encourage discrimination, securitization and criminalization on the basis of hukou status. In this view, all NLHRs were both mang liu and liu mang, and the appropriateness of their criminalization was self-apparent.

Mang liu has gradually faded from everyday communication, and the unwanted population in urban China has been re-classified and re-named as the ‘low-end population’ (diduan renkou). The term was first introduced in 2016 by *People’s Daily*, the official CCP newspaper, in an article on population management. It also appeared in the 2016 annual report for Beijing’s Shijingshan district, which stated that it had ‘cleaned out 480 neighbourhoods with high concentrations of low-end population.’ In 2017, Beijing’s Haidian district also used the term in its population management plan’s announcement of the launch of ‘an overhaul of all housing that accommodates or is suitable to accommodate the low-end population by standardizing management and re-assigning the buildings to their original purposes’ (Mingpao, 2017). In this way, ‘low-end population’ is used to claim a non-prejudicial, functional judgement in a neo-liberal context. Lower social, cultural and economic production/consumption status justifies their residence status and, beyond this, their ‘right to the city’ (Harvey, 2008). Taken at face value, replacing ‘mang liu’ with ‘low-end population’ reflects a shift in state policy from

²⁶ With over 700 million viewers, the Chinese Spring Festival Gala (Chun wan) is the premier television event in China every year.

mobility control to population control. The removed and to-be-removed no longer comprise the entire NLHR population, but only the undesirables among them. The reformulation also opens the possibility that local residents who are properly registered with a local hukou might nonetheless be 'low end' people.

7.3.2 Back to basics: Class

Recently, scholars of criminological issues in China seem to have ignored or played down the significance of class, focusing instead on variables such as hukou and gender. 'Low-end population', stipulated in the government policy, points the finger at the bottom of the society without any subterfuge; it explicitly identifies the new urban poor as the problem. If we had not been not sensitive to the class-based nature of the origins and functions of law rooted in Marxist thought, we should be sensitive now.

Even though very few active criminologists specializing on penal theories identify themselves as Marxists (the majority are nonetheless concerned with class and how capitalism shapes crime, law, policy and social control), David Garland, Simon Johann and Roger Matthews are exceptions, and 'Marxism remains as relevant as ever for analysing crime, criminal justice and the role of the state' (Russell, 2002: 113). Garland (2014: 124) has approached punishment from the point of view of economic relations, juridical-ideological forms and political manipulation, each one developing a particular dimension of the punishment and society relationship.

A brief sojourn into Marxian analysis can help to untangle some of the confusion that surrounds the potentially loaded notions of 'mass incarceration' and 'Crimmigration' to be confusing and loaded; as formulated, one is forbidden from asking under what conditions NLHRs are criminalized and incarcerated in the context of contemporary Chinese society, and when, why and how the NLHR category can usefully be disaggregated. Resource-rich and wealthy NLHRs enjoy various levels of impunity: 1) When prosecution and policing apply the 'arrest all' principle to NLHR suspects, the rich are exempted. Even without a local hukou, a private-owned property in the city can paper over an otherwise painful world. Possession of a local title deed can help the NLHR owner to avoid the massively negative consequences faced by other NLHRs, including initial arrest and the series of negative decisions that typically follow. If arrested, property comprises collateral that can be used in a petition to grant bail, which enables the NLHR population to avoid jail and be given a suspended sentence. 2) Crime organizations often use poor NLHRs as scapegoats who bear legal liability and the resulting criminal punishment. These organizations, as documented in Chapter Four, are often also headed by wealthy NLHRs who use their less fortunate community members to evade legal

responsibility and enjoy impunity. 3) During the reconciliation process of a criminal case (see Chapter Five), a convict who can offer a more generous compensation package to the victim often receives a more lenient sentence. 4) During imprisonment, though privileged PSPs are mostly assigned to LHR inmates, well-connected and bribe-capable NLHRs can access the same privilege and therefore enjoy an easier life in prison, an earlier parole, an earlier commutation (see Chapter Six).

The above summary of arguments spanning this study makes clear that a comprehensive understanding of Crimmigration demands the relocation of class theory into the everyday criminalization process. By breaking down crime statistics to each decision-making point, the law and its enforcement are shown typically to favour and benefit the rich and the resourceful, as always. When it comes to the wealthy and powerful, the negativity associated with non-local hukou status is often overcome. It is primarily the socially and economically excluded who are criminalized (De Giorgi, 2008; Wacquant, 2009). As DeKeseredy (2011: 72) concludes, ‘those at the bottom of the socioeconomic ladder,’ which in this research comprises the truly disadvantaged, wasted, surplus population, ‘are more likely to be charged, convicted, and sent to prison.’

7.3.3 The truly disadvantaged and the wasted in China

The phrase ‘truly disadvantaged’ was coined by William Julius Wilson (1987) in his *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. It refers ‘a segment of the American population often referred to as the ‘underclass’ or the ‘ghetto underclass,’ predominantly Black, who often live in inner cities and urban areas stricken with poverty, family instability, unemployment, a poor educational system, and crime’ (Wilson, 1987: 11). Wilson (1987) employs this term to address the principal cause of a deteriorated inner city: the changes in the economy that have increased unemployment among young black men. While better educated, more advantaged blacks prospered and bolstered a growing black middle class, blacks with less education and skills fell farther behind.

Such an analysis can be extended to include Zygmunt Bauman’s concept of human waste, or the wasted lives in liquid modernity, which is his metaphor for outcasts society no longer has use for. These include, of course, ‘superfluous’ populations of migrants, refugees and other outcasts (Abrahamson, 2004: 171). Bauman (1998; 2003) stresses that consumer society is stratified and, while globalization allows for and even encourages increasing mobility by social elites, movement by the poor is becoming even more difficult. They are labelled as an underclass and viewed as useless and unwanted. Bauman further points out that the production of ‘human

waste' is part of a 'modern' quest for order and an unavoidable side-effect of economic progress.

In analyses across time, both Wilson (1987) and Bauman (2003) discern a growing polarization of migration tendencies among African Americans: social mobility has split the group into either deserving settlers or unwanted immigrants. Affirmative action and other education and training efforts reach only the very top of the targeted categories, which are already more educated, skilled and advantaged than the rest of that population (Wilson, 1987). Likewise, immigrants with millions in cash and one or another form of pedigree are invited with open arms, whereas the unwanted experience deteriorating living conditions and constantly fear deportation and relocation.

In today's China, the NLHR population is characterized by a similar stratification, which can also be observed in the selective criminalization process as related to NLHRs. On the one hand, citizenship, social welfare and benefits defined and allocated by a local hukou are becoming increasingly accessible to the NLHR 'haves' who are naturalized via alternative routes. On the other hand, new discourses about factors associated with criminality and what comprises the 'dangerous class', which is shifting from the NLHR to inner-city poverty, is reflected in new crime control protocols.

Therefore, it is necessary to see criminal law and punishment as a complex combination of universal social interests and specific class interests. The exact balance depends on specific laws and the social setting in which they operate (Garland, 2014). To deal with the problems of an enlarged new urban poor accompanied by changes in the economy, crime and social control is moving beyond the hukou, the traditional population control and management mechanism, into new institutions.

7.4 A Critique of the Politics of Migration: Where does legitimacy come from?

It is often heard that the hukou system, which has undergone a decades-long loosening transition, has by now dramatically reduced LHR/NLHR hukou disparities in their everyday life in China (Xu, 2009). Deportation has been abolished, detention centres have been razed, and the statutory obligation to register for a TRP (Temporary Residence Permit) has been lifted. All appear to be signs of a less rigid and less relevant hukou when it comes to migrants, as well as of less punitive mechanisms for mobility control and hukou management. These innovations, however, appear less sanguine once the existence of hukou disparities in legal processes, caused by institutional, interlinked, customary and in many cases statutory discrimination and bias

against the truly disadvantaged NLHRs, are taken into consideration. Moreover, I have clearly documented a trend of polarization and stratification within the NLHR population.

The criminal legal system continues to internalize the contradictions between identity-based hukou narrow-mindedness and class-based universalism. The power-knowledge nexus (Foucault, 1977) of a criminal migrant is shaped by and shaped shift in the overarching political programme and rationalities. Changes in China's socio-political environment in China, to its credit, is abating or eradicating the hukou system's ability to control internal migration and much else besides. However, the increasing irrelevance of hukou institutions does not suggest a loosening of mobility control in today's China. On the contrary, the de-bordering process declaimed by hukou reform has been accompanied with a re-bordering process through everyday law enforcement with biases of its own, most notably the accommodation of pre-defined deserving citizens and the exclusion of those determined in advance to be unwanted.

7.4.1 Beyond mobility control

The old hukou regime 'took strong measures to allocate peasants and workers to specific work assignments' and 'particular localities', which all served state planning in accordance with the needs of national economic development (Chan, 1994; Friedman, 2005). In the meantime, and in contrast with Stalin's urban-industrial bias, China's 'anti-urban' stance resettled urban residents in the countryside and restricted migration into cities (Chan, 1994; Frolic, 1972; Meisner, 1974). In the early 1980s, the prevailing interpretation of migration control concluded that such urbanization policies contributed significantly to 'slow urbanization, faster rural development and equalization of resources between the urban and rural sectors' (Chan, 1994). However, even under such heavy governmental intervention, rural-urban migration accounted for about half the urban population increase between 1949 and 1982 (Chan, 1988).

Known as employment hot hubs, Beijing, Shanghai and Guangzhou started to implement population caps into their management plans in 2014 (*The Guardian*, 2018; *The Global Times*, 2017). The quotas now leave little room for additional growth; Shanghai's plan limits the population to 25 million, Beijing to 23 million (*The Global Times*, 2017). In theory, removal of undesirables would make room for more desirables. However, in practice, local government policies have been ineffective both in removing the 'unwanted' and in reducing the total population. From 2015–2018, official statistics document a slowing pace of residential population growth and a continuous decline in the mega-city internal migrant population (*The Global Times*, 2018; *the South China Morning Post*, 2018; *ABC News*, 2019). However, statistics on electricity usage, kindergarten admission, postal usage and waste production show an opposite

picture (Soho news, 2018). In 2017, the residential population of Beijing ostensibly decreased by 22 thousand, however the gross electricity consumption of the year increased by 11.6 per cent and water consumption by 13.1 per cent (*Sohu News*, 2018). The residential populations in these cities are still growing tremendously.

Apparently, the mechanism of mobility control has had little effect on actually controlling mobility. Neither hukou legacy policies nor current Crimmigration policies seem to have had an effect on the size or demographics of urban populations, but they have given policymakers plenty of talking points for their discussions with the media and the general public. Clearly, mobility control policies have not done much to address the problems the ostensibly were created to tackle. This should not suggest, however, that the policies are worthless or meaningless. For politicians, the policies are worthwhile because they enable politicians to shift conversations away from genuine urban challenges and toward self-congratulatory announcements of policies implemented as promised. And the policies are not meaningless for ‘unwanted’ NLHRs who find themselves caught up in the system for decades when a rule of law analysis would suggest that their time without freedom should have been far shorter, if it was even warranted at all.

7.4.2 Beyond criminalization

The message is conveyed to the crime audiences to draw a line of the included and excluded; the deserved and the unwanted; the settler and the removable. In the early 1980s, expulsion from a Shanghai hukou and forceful relocation to remote regions in western China were widely adopted in order to deter LHRs from committing crimes (Shanghai, 2006). During this ‘strike hard’ period, LHR suspects were said to feel even more scared than NLHRs, because they faced the possibility of a uniquely unpleasant fate (Dutton, 2003; Faxue, 1983). At this time, institutional exclusion from urban China, enforced through the collaboration of penal policy and the hukou system, is said to have had a profound effect by drawing an indiscriminate line between the criminals and non-criminals. Regardless of hukou status, criminals, especially those who used to belong to a ‘civilized’ society like Shanghai, were excluded, removed and exiled from their community of origin.

Today, however, the interaction between the hukou system and penal policy shows the opposite face: 1) Beijing prisons house only Beijing hukou convicts, whereas non-Beijing hukou convicts are removed and imprisoned outside Beijing; 2) registration with a local urban hukou is (dubiously) claimed to correlate with much lower recidivism, leading to a policy that enables such convicts to have access to earlier parole and longer commutation; 3) near the end of their sentences, Shanghai hukou-registered prisoners are transferred to a separate prison, where they

are given training and guidance to help them make the transition to the outside world (this assistance is not offered to and non-Shanghai-registered prisoners); and 4) Shanghai hukou prisoners are also entitled to a series of additional rehabilitation programmes (which non-coincidentally *are* associated with lower recidivism) that are not available to NLHR prisoners.

In the 1980s, we saw draconian penal law enforcement in Shanghai. The dominant discourse had no faith in rehabilitation and no intention to welcome an ex-convict into society ever again. Thankfully, our analytical chapter on prisons draws a picture of a partly reformed penal system in which, today, LHRs and at least NLHR ‘haves’ can look forward to a post-prison life that at least is not wretched. LHR and NLHR ‘haves’ are now entitled to rehabilitation programmes and earlier release and, as such, are better prepared to re-enter society. Truly disadvantaged NLHRs, by contrast, are still kept outside the door of penal welfare. In this way, although penal policy in post-hukou society claims that ‘criminality’ no longer negates one’s mobility, mobility itself is used to identify ‘criminals’. The changing penal policy shows that the state is attempting to eliminate, restructure and reconstitute ‘mobility’ in the interests of governance; the effect on criminal justice *per se* is, at best, an afterthought.

7.4.3 Beyond social control

As Ghetti (2008: 65) suggests, as a result of the emphasis on economic growth, ‘waste loses its political nature and becomes a mere technical or economic problem – the technical problem of a surplus population, unnecessary or actually a hindrance to economic growth.’ Crimmigration in post-hukou China contributes to a new public discourse on migrant criminality that has transformed characterizations of NLHRs from demonization to dehumanisation, from demoralization to amorality. Mobility is presented less and less as a threat to the local, either in terms of crime or in terms of alienation cultural impositions upon the community’s internal character. Rather, Crimmigration is now presented as an unabashed instrumental judgement. We see institutional production and reproduction of mobility rooted in structures that are shifting away from upholding hukou power and toward celebrating the primacy of an individual’s power in the labour market.

7.4.3.1 Labour discipline and imprisonment

First and foremost, Crimmigration carries and conveys the discourse of labour discipline. In the post-hukou era, we see labour discipline and imprisonment as two sides of the same coin. The hukou system provisioned an instant and cheap labour supply to fuel industrialization. When the economy was booming labour shortages were endemic, NLHR labour bargaining capacity was relatively strong. It should be no surprise that as the economy turns down and

unemployment increases, the truly disadvantaged NLHR population are hurt the most. Around the world, prisons are ‘swallowing the growing number of people who do not compete in the regular labour market’ (Heliborne, 1980: 15). We see a similar trend in China: the majority of NLHR inmates had been unemployed or casually employed; they were imprisoned for petty crimes such as low-value theft, drug crimes and public order crimes. This makes a kind of sense: exclusion from the labour market left these men with few options beyond theft, drug and gang activities. Furthermore, the criminalization and therefore imprisonment for such ‘deviance’ serves the agenda of social removal and social dumping.

In the meantime, we see factory-like prisons and prison-like factories. As presented in Chapter Six, labour camps are established inside the prisons and inmates are forced to take intensive workloads in exchange for other in-prison inducements, like an additional five minutes of telephone time. Beyond the prison walls, more and more factories are organized and managed in a prison-like format that imposes rigid control on the NLHR workers. At Pegatron, a company that makes a significant proportion of the world’s iPhones,

stark dormitory rooms used by migrant workers are filled with cold steel bunk beds and metal lockers ... At the end of each long corridor of about 50 rooms are communal showers, where 20 people at a time would queue to wash side by side, using foot pedals to pump water, and rows of squatting toilets set above open drains running the length of the space. (Knoeles, 2016)

Moreover, prison-like control characterizes the lives of the low-end population where they live. China’s mega-cities are characterized by more and more gates and walls. Unlike many other parts of the world, where gated communities are designed to keep undesirables out, these gates and walls are designed to keep disadvantaged NLHRs in, or at least under effective surveillance and policing, or at least giving the impression that they are. At last, in the meantime, prisons are replicating the structure of the outside world: LHRs are overrepresented as PSPs, and this is just the beginning of the prison system’s separate and unequal access to penal welfare mechanisms.

Both inside and outside of prisons, we see a bulimic society where massive inclusion for labour needs is accompanied by systematic and structural mechanisms that both exclude and exploit: the unwanted are ‘included’ by rounding up them into prison-like urban ghettos or factory camps, and simultaneously ‘excluded’ from other regions of the city. In the prison system, those who are judged to be beyond rehabilitation are ‘included’ where they provide economically valuable labour, and ‘excluded’ from prison managerial positions, rehabilitation programmes and the right to parole and commutation. Such features resemble Jock Young’s

(1999) analysis: in his *The Exclusive Society*, the ‘wasted’ are ‘included’ in the labour market by placing them at the bottom.

For members of this group in China, there is no pretence of a plus side. We see that discipline at the margins of the labour force supports the neoliberal economic order’s increasing demands for exploitation, accompanied and achieved via disposing of the ‘wasted.’ Social dumping progresses and relentlessly exploits until the last minute, when the ‘subject’ has nothing left to exploit.

7.4.3.2 Mobility and stability

‘The right to the city’, a notion first raised by Lefebvre (1968), is constructed in line with capitalist values that highlight ‘conformal labour’ and the ‘rebellion migrant.’ In this research, Crimmigration redefines the discourse of mobility and stability. It shapes the mobility regime and underlines the fundamental ideological discourse: who are included and who are not. This authoritative discourse underwent a major internal normalization at the structural level, that is, at the level where it is decided who counts among ‘the people’ in the People’s Republic of China. Anyone who opposes the ongoing mobility regime is castigated an enemy of the great God ‘stability,’ as well as of the ‘people’.

Stability. The word is repeated again and again in official discourse until it echoes and tolls like a great bell, and its meaning seems to include everything that is most good and significant in Chinese society.

Yet, legislatively, the hukou system is still responsible for managing every Chinese resident’s mobility and firmly maintaining stability. However, Xu (2013) argues that by aiming to maintain stability, hukou in practice ends up stimulating crime. This argument resonates with Bakken’s (2011) statement about the stability maintenance in China governance: the more effort put into maintaining stability, the less stable society becomes (yue weiwen yueluan). Part of the answer is that the ‘instability’ crisis is self-generating. More than retaining an existing social order that may lead to perceivable stasis, stability maintenance is more about maintaining control over maintainable instabilities. That is to say, it internalizes the contradictions of controlocracy over both stability and instability.

Therefore, instead of tracing the materialist roots of stability maintenance, it should be noted that the process fundamentally defines and re-defines the notions of who may be mobile and what may be mobilized. In the denaturalisation process, mobility is constructed and reconstructed in terms of stability: stability-promoting mobility the stability-undermining mobility. Stability promotion justifies the mobility regime now under establishment in the

post-hukou era. In return, this regime seeks to promote stability maintenance and, thus, the legitimacy of overarching institutions of governance.

7.4.3.3 Legitimacy and performing legitimacy

In general, positivist approaches in criminology assume the legitimacy of the criminal legal system and seek to answer questions relating to frequency and causes of crime and the efficacy of criminal justice responses. China's style of criminal justice practices has frequently run counter to such globally accepted standards as accountability, transparency, and human rights, which is expected to cause an erosion of legitimacy (Sun and Wu, 2010). On the other hand, a postcolonial perspective starts by questioning these assumptions and analysing how criminal legal systems can have the effect of entrenching the marginalization of minority peoples. In the context of China, the criminal legal system is politicized in the service of the maintenance of the country's strong-state, authoritarian, bureaucratic, centralized system.

Politics and power enter every act of deciding what and whom to profile, prosecute and send to prison. To sustain and strengthen existing power relations, high arrest and imprisonment rates of the NLHR population occur. In fact, this enforced NLHR demobilization is, in a final hegemonic twist, used to support the ideology of stability maintenance. The widespread belief that mobility by intendedly non-mobile provokes instability is given legitimacy by official statistics that show that ostensibly non-mobile people are incarcerated (where they truly are non-mobile) at a higher rate. At the same time, people who are recognized as appropriately mobile enjoy effective legal impunity. In this way, the square of potential disparities in policing, prosecution, sentencing and correction between the mobile and non-mobile, which theoretically is supposed to undermine the legitimacy of the criminal legal system, is now circled in the discourse. Unevenness in punishment is performed as a legislative mean fed with and for the legitimacy.

Beyond the legitimacy of the criminal legal system is the single-party regime. A state-centred, hierarchical model of control, especially including command-and-control strategies, though resilient and robust since the PRC was established, is facing serious questions about its legitimacy (Wu, 2017). Linking back to the discussion at the beginning of this chapter, furthering the building of socialist Chinese principles under the 'rule of law' (*jianshe shehui zhuyi fazhi guojia*) was intended to enable a legalized bureaucratic form of social exclusion and marginalisation that would effectively compartmentalize individuals who were feared to be more likely to undermine governmental control of society. The discourse of the linkage between mobility and stability are both shaping and being shaped by ideas of legitimacy, which

themselves are rooted in the microcosms of societal power structures in within a China that is seeking deeper links to the world.

7.5 A Friendly Critique of ‘Asian Criminology’ and ‘Southern Criminology’: Who are the subalterns?

Whether or not this is explicitly discussed, postcolonial study is the main intellectual influence on ‘Asian Criminology’ and ‘Southern Criminology’ (Maia, 2014; Carrington, Hogg and Sozzo, 2016; Travers, 2019). One of the fundamental challenges to traditional criminological theoretical approaches is the need to raise academic awareness of ‘the different conceptions of crime, justice and forms of legality operating in different locations, and in particular the las of “fit” between the criminological realities of the “North” and the “South”’ (Matthews, 2017: 581). Southern criminology seeks to find new ways of thinking, so that South can be understood on its own terms (Brown, 2018).

Ironically, however, when examining discriminatory processing and treatment within the criminal legal system, all too many Southern/Asian Criminologists take what might be described as the ‘crimmigrant other’ – aboriginal Australians, Rohingyas, or the NLHR population in our case – at face value (Scott, Fa’avale and Thompson, 2018). Few Asian criminological theories that address the ‘crimmigrant other’ in China draw on stereotypical constructs of nationalism, framed cultures or traditions (Liu, Travers and Chang, 2017; Xu, 2007, 2013). Against this background, racialization is adopted by such scholars to extend racial meaning to ‘a relationship, identity, practice or group which was previously non-racially classified’ (Knepper, 2008: 39). The worst outcome is that race, as a political artifice of northern thinking, is reproduced and comes to reinforce the ‘othering’ schema in the South.

Inevitably, these studies reinforce boundaries between South and North, instead of recasting the problem in a way that transcends South and North and, most importantly, emphasizes the impacts of wider globalization trends. Rather than looking for an alternative construct of human difference in a non-Western context, the arguments always find themselves self-trapped in pursuit of evidence that aims to prove how criminological theories developed in the North cannot explain the crime phenomenon in the South, rather than actually investigating the crime problem *per se*. The worst example could be the attribution of current Chinese social problems – such as new forms of crime and increasing crime rates – to globalization via general claims that Chinese society traditionally does not generate such issues.

Contesting Crimmigration in post-hukou China therefore opens the floor to discussions of the problem outside the box of Chinese exceptionalism. It becomes meaningful in various contexts that have been overlooked by sinological or Southern criminological approaches.

This chapter has systematically shown that hukou disparities and, more significantly, disparities within the NLHR population, are new forms of social inequality that denote one's socioeconomic status as well as one's value: as a labourer, an investor or an end-user. Investigating the mobility discourse in China is a response that communicates to broader inequalities, both domestically and internationally. In this case, the research defence of a theoretical approach that emphasizes universal categories like class and labour, which call for awareness that why we can – and must – conceptualize China through the same analytical lens that we have used, and still use, to understand developments in the West.

In his frequent and robust defences of globalisation (e.g., World Economic Forum in Davos, 2017), Chinese president Xi Jinping notes that Shanghai has been increasingly competitive with Hong Kong and Singapore for the title of Asia's Best City. Beijing, Shanghai, Guangzhou and Shenzhen are now comparing themselves with world-class metropolises such as London and New York. Such rhetorical frames further alienate these 'Chinese success stories' from the the experience of people who live in the rural and underdeveloped regions of China.

Hence, we should see Crimmigration and other forms of social control, in both global North and South, as going beyond ideas of nation and national myth. This perspective opens the door to fascinating and highly relevant research opportunities. We should compare both the constructions of migration discourse and the associated policy responses to migration realities: are there meaningful differences in the approaches of democratic and non-democratic countries? Moreover, around the world, we see that policies at the core of capitalism, e.g. the World Bank, IMF, WTO and GATT all undermine financial stability, create massive exploitation of those on the periphery, and set one level of conditions that shape the plausibility of migration as a strategy for an individual who seeks a better life. These economic policies have pushed and continue to push migrants from impoverished regions toward their migration destinations. By managing the manageable through small-bore technocratic fixes of irreparably broken governance structures, we see that global institutions, deteriorating though they are, continue to reinforce norms of segregation and inequality. We need a different system, a system rooted not in constructed migration abstractions but in social justice frameworks that establish the parameters by which we judge a society's health.

This research has presented a contextual theory of discrimination in criminal legal processes in China. The next questions to be asked are two sides of the same coin. On the one

side, is it important to investigate how the criminal justice system affects the larger society they operate in? This requires thorough ethnographic research on and in the NLHR community, both among those who both stay and among those who have left the city, those who have been stitched into the crime figures, and those who have not (yet) been formally introduced into the system. On the other, how are NLHRs regulated through new means in the post-hukou era? The epilogue chapter will give some thoughts in these areas.

Finally, there is a pressing need for new thinking of migration and crime. Radical re-imagination of this topic should focus on the worldwide Crimmigration trends or, more interestingly, on varying national responses to migrants and migration – both internal and international.

7.6 Recommendations

Legal ‘reform’ cannot reverse the current trends in criminal legal practice. That is, truly disadvantaged NLHRs will be increasingly discriminated against, criminalized, marginalised and socially excluded in urban China, and ever more insidious means will be deployed for these purposes. These trends, which are exacerbated by bureaucratised and quota-driven mechanisms in policing and the criminal legal process, are now visible and seen as a great contributor to so-called ‘migrant criminality’. Fairness and justice are so unevenly distributed in the Chinese criminal legal system, and in the meantime are so normalized in the view of its practitioners. In too many places, and in too many ways, the justice system is falling short of its mandate to be ‘just’, and with devastating consequences.

As a policy response to this overwhelming evidence, practical solutions and communication tools are needed, in order to build a shared narrative around transforming the legal system. Among these tools must be a package of policies that promote community safety through alternatives to incarceration, create fair and inclusive policing practices, promote justice in pre-trial services and practices, enhance prosecutorial integrity, ensure fair trials and quality indigent defence, encourage equitable sentencing, ensure decent detention conditions, require equitable parole and probation, and foster successful reintegration. However, the aim of alleviating hukou imbalances in the legal system cannot be achieved without a thorough abolition of the quota-driven mechanism.

The even worse news is that under the current increasingly strongman and authoritarian regime of President Xi Jinping, economic growth is not going hand in hand with any meaningful political change. Instead, new government resources are being used to finance a strong backlash against civil society. Behind the so-called ‘China miracle’, worker solidarity is ever more

oppressed and marginalized (Brooks, 2018). On the one hand, we see a growing number of worker's collective actions in China, including strikes and other protests against layoffs, wage arrears and pay cuts, as well as new demands for operating rights.²⁷ On the other, the current leadership is so powerful that there is a multi-dimensional and multi-departmental effort, from the central to the grassroots level, to crack down on social movements and shut up discontents and critics.

Fundamentally, as Crothall (2018) points out, the fact of 'the lack of an effective trade union that could represent workers in collective bargaining with management and the absence of institutions or accepted practices that might help resolve collective labour disputes peacefully and constructively meant that workers had little option but to resort to strikes and other forms of collective action to air their grievances.' Indeed, when Cimmigration is considered as a practice of power, we seek to remove 'migration' from Cimmigration discourse. When the powerful incite the workers of one nation and region against those of another, we must see through the endeavour of keeping the worker disunited and calls for 'class-consciousness'.

In this pessimistic picture, the increasingly repressive research climate in China presents a barrier to the conduct of research; surveillance, potential intimidation, questioning and temporary detention are common among scholars who investigate sensitive topics (Greitens and Truex, 2019:3). Given the intensity of pressures facing researchers in China, it may seem to be somewhat cowardly to criticize a quasi-totalitarian regime as a citizen from afar, that is, without being subject to its rule. But it would be even more cowardly to be silent. In this way, this thesis speaks while knowing agonizingly well its limitations, the irony it contains.

²⁷ Obviously, there are no official statistics on the number of strikes or worker protests in China. The China Labour Bulletin's (CLB) Strike Map is currently the only publicly accessible database that contains detailed information on more than 10,000 workers' collective actions in China dating back to 2011. The headquarters of the CLB is in Hong Kong and the map is updated every week.

Epilogue: Governing mobility in the post-hukou era

The Great Leap Forward (Da yuejin) and the People's Commune Movement (Renmin gongshehua yundong) in 1958 brought huge damage to the Chinese economy and suffering to its people (Pi, 2009). From 1959–1961, a great famine killed millions and led countless millions more to move from rural to urban areas in search of food and survival.²⁸ They were not welcomed. 'They steal chickens, pigs, donkeys and sheep. They steal the growing wheat, sweat potato and lotus roots' (Xuzhou, 1960). In the city of Xuzhou, more than 100 incidents of food theft and robbery were recorded on each day from April to June 1960. 'Abandoning their own children was common among the migrant. They can barely find enough food to support themselves... In twenty days in March 1960, 452 infants and children were deserted in Xuzhou, left alone on the street, outside the government institutions, kindergartens, orphanages and shelters' (ibid). Under such desperate circumstances, Xuzhou government prohibited any organization or individual from taking any kids left by those desperate migrants (ibid), apparently in the belief that parents would leave the city with their children if they knew no other care would be provided. In all, 2,389 children were abandoned in 1960, and among those only 247 were saved (ibid).

This, China's most inhumane form of mobility control, is just a half-century past. Today, the targets of mobility control have changed alongside the construction and re-construction of terminology related to migrants as well as discourses of mobility. A well-heeled NLHR (non-local-hukou registered; and LHR for local-hukou registered) can use private resources to negate the otherwise disadvantageous 'migrant' label and access advantages previously limited to registrants of a local hukou. The weakening of institutional barriers like the hukou system is forcing the government to come up with new ways both to identify unwanted migrants and to govern them. Mobility governance has moved away from crude forms of command and control, like shutting the door of a nursery shelter, which had instantly and instinctively provoked a popular impression of unrepentant human injustice. And, social-political exclusion has been

²⁸ The death toll from the Great Famine from 1959 to 1961 remains as a myth in mainland China, since the government does not disclose the data. It was estimated to around 27–30 million by Hong Kong scholars (Chen, 2015). My great grandfather used to be a landlord in north Anhui. During the first half of his life, he collected tons of grains and food every year during the harvest season from the tenant peasants. He was starving to death in the Great Famine in 1960.

widened and deepened through the invention of newly legitimized means. Therefore, apart from the discussion of Crimmigration that comprises the centrepiece of this study, we need to take special care to demystify and re-politicize the mechanisms that govern mobility in post-hukou China.

8.1 Governing Mobility through Administration

8.1.1 Fire safety

On 18 November 2017, an accidental fire broke out in a dilapidated building in Daxin, Beijing, that housed primarily the most truly disadvantaged NLHRs. In the aftermath of the fire, the government offered no housing or other support to residents who literally had just lost their roof. Instead, it instantly launched a clean-up campaign. Blaming the fire on over-crowded living conditions as well as the poor condition of the building, Beijing government announced a fire safety scheme of the entire city as part of a campaign against ‘illegal structures’. A wave of demolitions and mass evictions swiftly followed, with residents often given only minutes to pack and leave their houses (*The Guardian*, 2017, 2018). On 1 December 2017, water and electricity were cut off, forcing tens of thousands of mostly poor internal migrant workers to move out amid a 40-day safety blitz geared to rid the city of ‘illegal structures’ (*South China Morning Post*, 2017).

8.1.2 Gentrification

Gentrification, better known as an upgrading (shengji) in Chinese official discourse, offers another motivation for moving the unwanted out. Under the guise of beautification (meihua) many cities have worked to rebuild grittier districts, round up street vendors, close or move open markets, and brick up unlicensed restaurants, bars and shops. All of these actions disproportionately affect NLHRs in the cities (*The Guardian*, 2018).

8.1.3 Green energy

At the same time, to show the determination of cracking down on the heavily polluted air and improving environmental quality, the central government has pushed for the use of cleaner fuel and initiated a coal ban in northern China (*The Straits Times*, 2017). ‘Banners put up around the city with slogans like ‘If the boiler’s coal-fired then get rid of it’ and ‘Anyone who sells or burns coal shall be arrested’ (BBC news, 2017). The halting coal to gas heating conversion was enforced rigidly in the city, whereas policy in the villages was more forgiving (BBC news, 2017; *Financial Times*, 2017). As a result, many poor migrant families in the cities had no warmth in

times of icy winds and minus 10 degrees. Reluctantly, most accepted a ride from the cold city back to their hometown in the countryside (Bloomberg, 2017; *The Straits Times*, 2017).

8.2 Governing Mobility through Education

Gradually, separate education based on the hukou system that divides LHRs and NLHRs is being superseded by more flexible and indistinct forms of segregation. Yet it is pretty clear that the rule of hukou in school admissions, which is regarded as the last and greatest among social rights attached to hukou (Chen, 2008), has experienced a decade of decline.

Today, education is more of a wealth-linked entitlement than a hukou-based right. NLHR 'haves', although denied access to hukou-based education, can send their children to posh private schools that provide the bi-lingual education so craved by upwardly mobile Chinese. Tuition at these international schools, more than ten times that of their hukou counterparts, once effectively limited access to Expats. Those days are long gone.

At the same time, good public schools are adding wealth factors to their admission requirements. In addition to the traditional residence requirement, the size of the residing house or flat is now taken into consideration as well. In 2018, Shenzhen Luoling school announced that would only accept students (a) registered at the local hukou; and who (b) resided in the local area; (c) in a property larger than 50 square meters (538 square feet) (Beijing youth newspaper, 2018). Anyone living in a smaller abode would be excluded. Thus, state-sanctioned segregation has moved beyond hukou, beyond property, to now include the size of the property. The equal right to public education, one of the most vital means for social mobility, has deteriorated in the post-hukou era.

8.3 Governing Mobility through Robotization

Technology reforms have a tremendous impact on the dynamics of mobility and mobility control in the post-hukou era. China is developing 'an army of robots to turbocharge its economy' (Bateman, 2018). Facing increasing human costs in manufacturing and labour shortages caused by an aging population, China is spending billions in robotization (ibid.). With no meaningful labour protection, limited labour rights, and no working union, robotization is developing more rapidly in China than anywhere else in the world (China Economy, 2018). While this development is intended to facilitate production in a future where human labour is insufficient, robots now deployed are causing real harm for the labourers they displace. Labourers at the social bottom now have less bargaining power than ever. Thanks to

robotization, social dumping is proceeding apace as the ultimate form of casualization and de-securitization of labour.

Moreover, the dumping process is facilitated by those who will be dumped. 'To remain the world leader in artificial intelligence, China relies on young 'data labellers' who work eight hours a day processing massive amounts of data to make computers smart' (Wu, 2018). These workers click dozens of photos and then outline backgrounds, foregrounds and specific objects in order to hasten their future displacement by newly intelligent robots. This work has limited location requirements and hence tends to be located in smaller cities, towns and rural areas outside the traditional employment hubs (Wu, 2018). Thus, young, 'low-end labours', who have been excluded from the employment opportunities in Beijing, Shanghai, Guangzhou and other megacities which today only welcome the 'talented', are themselves woven into the process of constructing 'human waste' that will soon require disposal. Immobile themselves and supporting technological revolution industry from a distance, they are effectively agents of their own exclusion from mobility.

8.4 A New Institutional Backlash

In today's China, mobility control targets the new urban poor and is achieved via non-hukou based governing mechanisms including fire safety, gentrification, green energy, education policy and technology reform. Deportability which is at the heart of defining who is able to move and what is able to move, is directly linked with how one's 'utility' can fit into the city's 'needs'. Each time utility decreases, deportability is enhanced.

At the front lines, mobility control is governed by administration orders that have been constructed and performed as if they are legitimate. This legitimacy infused into children's education, where past differences in social mobility separated the 'haves' and 'have-nots', which then blocked future social mobility for the 'have-nots'. Finally, robotization empowers the segregation programme in several ways: first by separating low-end AI developers from the metropolis; by creating enabling the infrastructure by which social dumping occurs; and ultimately by creating the rationale (AI-capable robots) for removal of still more undesirables from urban areas in China.

In the post-hukou era, mobility control is enforced in more subtle but effective ways; that is, it is enforced through legitimized means but with more brutal outcomes. Society under neo-liberal authoritarian management is more exclusive and discriminating than it had been in the old days. The primary erasure of rights and capabilities is actualized by the hukou institution and the subsequent erasure of any reference to the processes that facilitate new inequalities and

exclusions in the post-hukou era. Combatting poverty, the low-end thus permits the inclusion of social questions on the political agenda without having to fight against inequality and the structural mechanisms that produce it. Mobility control is now more detached from hukou, criminalisation and displacement, and is instead infused into every aspect of social life that, almost unobserved, renders the 'unwanted migrant' a segment that is more detached and irrelevant than ever.

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Appendix 1

Table 9.1 Prison population, PSP population and proportion by hukou location and national in Prison X in Shanghai (2013, 2014, 2015)

Hukou registration region/ national	2015				2014				2013			
	Prison Population (number and %)		PSP (number and %)		Prison Population (number and %)		PSP (number and %)		Prison Population (number and proportion)		PSP (number and %)	
Shanghai	673	32.51	128	42.38	646	33.52	117	43.98	637	29.63	128	47.23
Anhui	239	11.55	26	8.61	228	11.83	18	6.77	280	13.02	17	6.27
Jiangsu	153	7.39	29	9.6	146	7.58	23	8.65	167	7.77	25	9.23
Sichuan	100	4.83	12	3.97	98	5.09	17	6.39	123	5.72	12	4.43
Henan	97	4.69	5	1.66	71	3.68	3	1.13	102	4.74	7	2.58
Guizhou	76	3.67	13	4.3	71	3.68	9	3.38	81	3.77	11	4.06
Shandong	70	3.38	8	2.65	64	3.32	9	3.38	81	3.77	4	1.48
Fujian	67	3.24	12	3.97	54	2.8	9	3.38	67	3.12	10	3.69
Zhejiang	48	2.32	11	3.64	53	2.75	12	4.51	56	2.6	11	4.06
Chongqing	58	2.8	8	2.65	51	2.65	7	2.63	48	2.23	4	1.48

Hunan	54	2.61	2	0.66	46	2.39	2	0.75	54	2.51	2	0.74
Hubei	43	2.08	6	1.99	36	1.87	3	1.13	58	2.7	7	2.58
Jiangxi	38	1.84	6	1.99	32	1.66	4	1.5	55	2.56	2	0.74
Yunnan	32	1.55	1	0.33	27	1.4	3	1.13	24	1.12	2	0.74
Guangdong	31	1.5	4	1.32	23	1.19	4	1.5	28	1.3	3	1.11
Gansu	21	1.01	0	0	23	1.19	0	0	24	1.12	1	0.37
Heilongjiang	29	1.4	2	0.66	23	1.19	2	0.75	23	1.07	5	1.85
Jilin	19	0.92	3	0.99	22	1.14	4	1.5	19	0.88	2	0.74
Shaanxi	25	1.21	3	0.99	19	0.99	3	1.13	24	1.12	2	0.74
Guangxi	18	0.87	1	0.33	17	0.88	1	0.38	26	1.21	0	0
Hebei	12	0.58	2	0.66	9	0.47	0	0	9	0.42	1	0.37
Shanxi	7	0.34	2	0.66	7	0.36	2	0.75	9	0.42	2	0.74
Liaoning	5	0.24	0	0	4	0.21	0	0	8	0.37	1	0.37
Xinjiang	6	0.29	2	0.66	4	0.21	1	0.38	6	0.28	1	0.37
Neimenggu	1	0.05	1	0.33	4	0.21	1	0.38	1	0.05	1	0.37
Hainan	2	0.1	1	0.33	3	0.16	0	0	1	0.05	0	0
Beijing	1	0.05	1	0.33	2	0.1	1	0.38	4	0.19	1	0.37
Qinghai	4	0.19	0	0	1	0.05	0	0	2	0.09	0	0
Tianjin	2	0.1	0	0	1	0.05	0	0	1	0.05	0	0
Foreign National	139	6.71	13	4.3	142	7.37	11	4.14	132	6.14	9	3.32
Total	2070	100	302	100	1927	100	266	100	2151	100	271	100

Data source: Inside data retrieved by the researcher, 2017

