

Between Reality and Idea: Is the Socialization of Chinese Administrative Offenders Realizable?

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INTRODUCTION	164
I. COMMUNITY CORRECTION: A SUBSTITUTE FOR ADMINISTRATIVE DETENTION.....	170
II. PRACTICAL OBSTACLES: IS PLACING ADMINISTRATIVE OFFENDERS UNDER THE COMMUNITY CORRECTION FEASIBLE?	175
A. <i>Criminal Nature of Community Corrections</i>	175
B. <i>Institutional Deficiencies and Limits</i>	182
1. The Conflict with the Hukou System	182
2. Inapplicability of Community Corrections in Rural Society.....	190
C. <i>Social Rejection and Discrimination</i>	199
CONCLUSION.....	208

INTRODUCTION

The regulation and exercise of administrative detention have been among the most problematic areas in the process of building a Chinese justice system in the reform era. In contrast to the Chinese criminal justice system, which was designed to serve the purpose of crime control and to punish criminality,¹ the Chinese administrative justice system is largely designed to deal with minor offenders—those who commit “deviant” acts, such as prostitution, drug abuse and public order offences. These offenders are handled by the administrative apparatus through administrative procedures and sanctioned by administrative regulations.² In the structure

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¹ CHEN RUIHUA, WENTI YU ZHUYI ZHIJIAN [BETWEEN PROBLEMS AND PRINCIPLES] 166-209 (2d ed., 2008)

² The administrative justice system refers to the regulatory framework in which the Chinese authorities, particularly the police, incarcerate minor offenders without trial. This is done under a variety of administrative detentions to maintain public order and social and political stability. For a detailed discussion of the Chinese administrative justice system, see Li Enshen, *Chinese Administrative Justice System: Its Malpractice and Possible Reform*, 4 FRONTIERS OF LAW IN CHINA 548, 548-579 (2010).

of this framework, administrative detention is the most effective means frequently used by the authorities to target minor offenders. Due to its wide scope, administrative offenses are divided into four specific punishments: public order detention,³ detention for education,⁴ coercive drug rehabilitation,⁵ and reeducation through labour.⁶ While public order

³ See *Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Fa* (中华人民共和国治安管理处罚法) [PRC Public Order Administrative Punishment Law] (promulgated by the Standing Comm. of the Nat'l People's Cong., Aug. 28, 2005, effective Mar. 1, 2006), art. XVI, available at <http://www.gov.cn> (last visited Mar. 1, 2012) [hereinafter *POAPL*]. Public Order Detention is the most lenient administrative detention prescribed under the PRC Security Administrative Punishment Law, targeting minor offenders, drug addicts and prostitutes. Under Article XVI, the maximum detention period is twenty days for a number of the covered offenses.

⁴ Detention for Education is an administrative detention recognized by three underlying legislative documents aimed at prostitutes and their clients. See *Maiyin Piaochang Renyuan Shourong Jiaoyu Banfa* (卖淫嫖娼人员收容教育办法) [Measures for Detention for Education of Prostitutes and Clients of Prostitutes] (promulgated by the State Council, Sept. 4, 1993, effective Sept. 4, 1993), art. IX, available at <http://www.law-lib.com> (last visited Mar. 1, 2012); *Guanyu Yangge Zhixing Quanguo Renda Changweihui 'Guanyu Yanjin Maiyin Piaochang de Jueding'* (严格执行全国人大常委会'关于严禁卖淫嫖娼的决定') [Notice on Implementing the NCPSC 'Decision on Strictly Prohibiting Prostitution and Using Prostitutes'] (promulgated by the Ministry of Pub. Sec., Nov. 23, 1991, effective Nov. 23, 1991), available at <http://www.kdgaj.gov.cn> (last visited Mar. 1, 2012); *Guanyu Yanjin Maiyin Piaochang de Jueding* (关于严谨卖淫嫖娼的决定) [Decision on Strictly Prohibiting Prostitution and Using Prostitutes] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 4, 1991, effective Sept. 4, 1991), art. V, available at <http://www.lawinfochina.com> (last visited Mar. 1, 2012).

⁵ Coercive Drug Rehabilitation is the administrative custodial measure deployed to help drug users detoxify during incarceration. Its use is justified by three drug-related normative directives. See *Zhonghua Renmin Gongheguo Jindu Fa* (中华人民共和国禁毒法) [PRC Anti-Drug Law] (promulgated by the Standing Comm. of the Nat'l People's Cong., Dec. 29, 2007, effective June 1, 2008), art. XXXIII, available at <http://www.gov.cn> (last visited Mar. 1, 2012); *Qiangzhi Jiedu Banfa* (强制戒毒办法) [Measures on Coercive Drug Rehabilitation] (promulgated by the State Council, Jan. 12, 1995, effective Jan. 12, 1995), available at <http://gkml.liyang.gov.cn> (last visited Mar. 1, 2012); *Guanyu Jindu de Jueding* (关于禁毒的决定) [Decision on the Prohibition of Drugs] (promulgated by the Standing Comm. of the Nat'l People's Cong., Dec. 28, 1990, effective Dec. 28, 1990), art. VIII, available at <http://www.china.com.cn> (P.R.C.).

⁶ Reeducation through Labour, which offers one to three years of incarceration with a possible one-year extension, is the most severe administrative detention in China today. Reeducation through labour targets socially harmful acts and minor offenses, including drug addiction and prostitution. See *Guowuyuan guanyu laodong jiaoyang wenti de jueding* (国务院关于劳动教养问题的决定) [Temporary Methods on Reeducation through Labor] (promulgated by the State Council, Jan. 21, 1982, effective

detention applies to those who commit public order offences with minimal harms to society, the three remaining punishments are mainly employed to handle prostitutes, drug users, and those who commit serious administrative offences when public order penalties are too lenient and criminal punishments are too harsh.

Many legal scholars and human rights activists and organizations have recommended that the Chinese authorities eliminate all administrative detention due to its shaky legal basis for depriving offenders' freedom as well as the blatant violation of detainees' human rights during incarceration.⁷ The maladministration of these custodial measures are diverse, including the arbitrary deprivation of offenders' liberty,⁸ the use of administrative detention to bypass the procedural requirements of the Criminal Procedure Law,⁹ and the denial of offenders' rights to seek redress from the courts.¹⁰ In respect to the alternatives, most

Jan. 21, 1982), available at <http://www.xgsfj.gov.cn> (last visited Mar. 1, 2012); Guanyu Gongbu 'Guowuyuan Guanyu Laodong Jiaoyang de Buchong Jueding' (关于公布'国务院关于劳动教养的补充决定') [Notice Promulgating the 'Supplementary Regulations of the State Council on Re-education through Labor'] (promulgated by the State Council, Dec. 5, 1979, effective Dec. 5, 1979), art. III, available at <http://zfhfrx.shaanxi.gov.cn> (last visited Mar. 1, 2012); Guowuyuan Guanyu Laodong Jiaoyang Wenti de Jueding (国务院关于劳动教养问题的决定) [Decision of the State Council on the Question of Re-education through Labor] (promulgated by the Standing Comm. of the Nat'l People's Cong., Aug. 3, 1957, effective Aug. 3, 1957), art. II, available at <http://ga.chinawuxi.gov.cn> (last visited Mar. 1, 2012).

⁷ See generally AMNESTY INTERNATIONAL, CHINA, PUNISHMENT WITHOUT CRIME: ADMINISTRATIVE DETENTION (1991); CHINA HUMAN RIGHTS STRATEGY STUDY GROUP, HUMAN RIGHTS IN CHINA, PROMOTING HUMAN RIGHTS IN CHINA 8-11 (2001), available at <http://hrichina.org/public/PDFs/Reports/HRIC-Strategy.pdf>; HUMAN RIGHTS IN CHINA, REEDUCATION THROUGH LABOR (RTL): A SUMMARY OF REGULATORY ISSUES AND CONCERNS 3-5 (2001), available at <http://hrichina.org/public/PDFs/Reports/HRIC-RTL.pdf>; Qu Xuewu, *Baoan Chufen he Xingfa Gaige* [Policing Measures and Chinese Criminal Law Reform], 5 FAXUE YANJIU [CHINESE J. L.] 55, 56-68 (1996); Shen Fujun, *Guanyu Feichu Laodong Jiaoyang Zhidu de Sikao* [The Thinking of Abolishing Reeducation Through Labor], 7 FAXUE [LEGAL SCI.] 17-19 (1999); Peng Zehu, *Shourong Jiaoyu Weifaxing Yanjiu* [The Study of Illegality of Detention for Education], 11 XINAN MINGZU XUEYUANXUEBAO [J. SW. INST. NAT'LS] 72, 72-74 (2002).

⁸ AMNESTY INTERNATIONAL, CHINA: NO ONE IS SAFE: POLITICAL REPRESSION & ABUSE OF POWER IN THE 1990'S 3 (1996), available at <http://www.amnesty.org/en/library/asset/ASA17/027/1991/en/6ec5f3dd-f941-11dd-92e7-c59f81373cf2/asa170271991en.pdf>.

⁹ See generally LAWYERS' COMMITTEE FOR HUMAN RIGHTS, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS: CHINA'S CRIMINAL PROCESS AND VIOLATIONS OF HUMAN RIGHTS (1993).

¹⁰ Dong Baigao, *Woguo Sifa Jiguan Duochong Zhineng Gaige zhi Sikao* [Thoughts on Reforming the Multiple Responsibilities System of China's Judicial Organs], 4 ZHONGGUO FAXUE [CHINA LEGAL SCI.] 24, 24-26 (1997).

arguments call for an incorporation of administrative minor offences into the formal criminal justice system.¹¹ By doing so, it is said that defaulters that are presently subjected to administrative detention would have procedural protections set out under the Criminal Procedure Law, and the legal foundation for depriving citizens' liberties would be justified by the Criminal Procedure Law.¹²

There are, however, also opposing views. Randall Peerenboom, an influential Chinese law expert, claims that there are a number of good reasons for retaining administrative detention. The most compelling of these is that "eliminating administrative detentions and subjecting minor offenders to criminal sanctions will push them into the harsh and decidedly unfriendly penal system, force them to live with hardened criminals, and result in their being forever stigmatized as convicts."¹³ This perception is echoed by another scholar of Chinese law, who perceives Chinese administrative detention as the product of the "second line of defense" of police administrative powers.¹⁴ The author argues that the use of police administrative powers is more formal and effective than the "first line of defense" in preventing bad conduct from further deteriorating into crime.¹⁵ In addition, administrative detention has been heavily relied upon and used as an adjunct to enforcement of the criminal law¹⁶ during the "Strike Hard" campaigns that have been periodically launched across China since the 1980s.¹⁷ Therefore, the author believes that "the police

¹¹ See generally Zhang Shaoyan, *Lun Laodong Jiaoyang Lifa de Jige Jichuxing Wenti—Jianli Woguo Qingzui Chufa Zhidu de Lilun Chuangxin* [The Basic Issues of Legalizing Re-education through Labour—The Theoretical Innovation of Establishing Minor Punishments in China], 2 FAXUE PINGLUN [L. REV.] 23, 23-30 (2003); Chu Kuizhi, *Yilun Laodong Jiaoyang Zhidu Gaige* [The Discussion of Re-education through Labour Reform], 5 ZHONGGUO SIFA [JUST. CHINA] 27, 27-29 (2005).

¹² Zhang, *supra* note 11, at 29.

¹³ Randall Peerenboom, *Out of the Pan and Into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China*, 98 (3) NW. U. L. REV. 991, 993-94 (2004). Apart from the likely harsher penalties, minor offences may receive under the criminal justice system, the author also extensively analyses the existing legal and philosophical shortcomings of the Chinese criminal justice system, which leads to the conclusion that the criminalization of minor offences will lead to a worse situation than the administrative justice system.

¹⁴ SARAH BIDDULPH, LEGAL REFORM AND ADMINISTRATIVE DETENTION POWERS IN CHINA 120-22 (2007).

¹⁵ *Id.* In her book, the author considers regulation and education based on the community organization and mass-line policing the "first line of defense" serving the prevention of criminality in China. When this first line of defense fails, the coercive police powers that serve as the "second line of defense" take over and function as the stiffer measures to prevent criminality.

¹⁶ *Id.* at 123-48.

¹⁷ For detailed accounts of Chinese 'Hard Strike' policies and practices, see

administrative detention powers in China will continue to form an integral and distinctive part of social order, which facilitates flexibility in dealing with changing problems of social order.”¹⁸

In response to the advocacy for retaining administrative detentions, the legalization and rationalization of their use has elicited a broad range of proposals. Some legal professionals take the view that administrative detention is in urgent need of a legal foundation.¹⁹ They argue that most forms of administrative detention governed either by administrative regulations passed by the State Council or by departmental directives fail to comply with the stipulation of the Administrative Punishment Law.²⁰ Therefore, a specific law is needed to legitimize the deprivation of the individual’s liberty under administrative detention and formalize practical implementation.²¹ However, given the reality that the drafting of a reeducation through labour law is cumbersome and time-consuming, some experts suggest an alternative idea that the administrative detention power can also be transferred from the police to the judiciary in order to meet the requirements of impartiality and neutrality.²² More interestingly, a number

HAROLD TANNER, STRIKE HARD! ANTI-CRIME CAMPAIGNS AND CHINESE CRIMINAL JUSTICE 1979-1985 (1999); Murray Scott Tanner, *State Coercion and the Balance of Awe: The 1983-1986 ‘Stern Blows’ Anti-Crime Campaign*, 44 CHINA J. 93, 93-125 (2000); Bin Liang, *Severe Strike Campaign in Transitional China*, 33 J. CRIM. JUST. 387, 387-99 (2005).

¹⁸ Sarah Biddulph, *The Production of Legal Norms: A Case Study of Administrative Detention in China*, 20 UCLA PAC. BASIN L. J. 217, 276 (2004).

¹⁹ Chen Xinliang, *Zhongguo Laodong Jiaoyang Zhidu Yanjiu—Yi Xingshi Fazhi wei Shijiao [Research on Chinese Reeducation Through Labor—From the Perspective of Rule of Criminal Justice]*, 13 ZHONGWAI FAXUE [PEKING U. L. J.] 670 (2001); Chen Zexian, *Zhongguo Laodong Jiaoyang Zhidu Jiqi Gaige [Chinese Reeducation Through Labor System and Its Reform]*, 129 HUANGQI FALÜ PINLUN [GLOBAL L. REV.] 400 (2003); Peng Zehu, *Shourong Jiaoyu Weifaxing Yanjiu [The Study on Unlawfulness of Detention for Education]*, 11 XINAN MINZU XUEYUAN XUEBAO [J. SW. U. FOR NATIONALITIES] 72 (2002).

²⁰ Art. IX of the Administrative Punishment Law says: “All deprivations of personal freedom under administrative punishments should be based on law.” See Peerenboom, *supra* note 13, at 1043-44. *Zhonghua Renmin Gongheguo Xingzheng Chufafa (中华人民共和国行政处罚法)* [The Administrative Punishment Law of the People’s Republic of China] (promulgated by the Standing Comm. of the Nat’l People’s Cong., Mar. 17, 1996, effective Mar. 17, 1996), available at http://www.law-lib.com/law/law_view.asp?id=307 (last visited Mar. 1, 2012).

²¹ See generally WANG ZHONGFAN, *ZHONGGUO SHEHUI ZHIAN ZONGHE ZHILI DE LILUN YU SHIJIAN [THEORY AND PRACTICE OF COMPREHENSIVE MANAGEMENT OF PUBLIC ORDER IN CHINA]* 280 (1992); Zhang Shaoyan, *Guanyu Laodong Jiaoyang Lifa de Jichu Wenti Sikao [The Thinking of Basic Issues of Legislating the Re-education through Labour]*, 3 FAXUE [LEGAL SCI.] 40, 40-44 (2001).

²² Chu Kuizhi, *Lun Jiaoyang Chuyu de Helixing [The Rationality of Re-education Treatment]*, FAZHI RIBAO [LEGAL DAILY], June 3, 1999, at 6.

of Chinese scholars are inclined to borrow notions from European Security Defence Punishment to regulate administrative detention as a whole.²³ They believe that Chinese minor offenders subjected to administrative detention share the same characteristics of those in the security defense system, and thus need to be treated under a system other than administrative incarceration or criminal sanctions.²⁴

Nevertheless, the ideas of both the retention and reform of administrative detention only focus on the justification of the practice but largely overlook its practical effectiveness. By examining the attributes and recidivism rates of administrative offenders, especially drug addicts and prostitutes, it becomes clear that the imposition of administrative detention does not effectively eradicate drug addiction or prostitution, or correct people's socially harmful behaviors.²⁵ Rather, incarceration of administrative offenders alienates them from their society, community, and family, thereby hampering the social forces that may help them suspend their misbehavior. On the other hand, education, rehabilitation, and persuasion are the most effective methods for reducing recidivism.²⁶ Therefore, my previous study suggests that whereas administrative detention represents a punishment-oriented rhetoric, a community-based correctional system is more likely to prevent offending behavior.²⁷

Whether or not this hypothesis is theoretically feasible, the argument raises some immediate questions as to the practicality of placing administrative offenders into a community-based correction system, given the uniqueness of the contemporary Chinese legal and social culture. More

²³ See Wang Yanlin, *Shilun Jianli Bing Wanshan Juyou Zhongguo Tese de Bao'an Chufen Zhidu* [Tentative Discussion of Establishing and Perfecting Security Defense Punishment with Chinese Particularities], 5 XINGDAI FAXUE [MOD. L. SCI.] 109, 109-11 (1996); Fang Qingxia, *Goujian Woguo Wanzheng de Bao'an Chufen Zhidu de Shexiang* [Envisaging Constructing China's Integrated Security Defense Punishment System], 20 HEIBEI FAXUE [HEIBEI L. SCI.] 13, 13-7 (2002); Chen Kang, *Woguo Bao'an Chufen Lifahua de Genju* [The Basis of Legislation of Security Defense Punishment in China], 5 HEIBEI FAXUE [HEIBEI L. SCI.] 91, 93 (2004).

²⁴ Fang, *supra* note 23, at 17; Chen, *supra* note 23, at 97.

²⁵ For a detailed discussion, see Li Enshen, *Prisonization or Socialization? Social Factors Associated with Chinese Administrative Offenses*, 27 UCLA PAC. BASIN L. J. 213, 213-59 (2010).

²⁶ For example, the Chinese community correctional system focuses mainly on education and rehabilitation of minor criminals to help them reenter the society. According to one national statistical survey conducted on 50,083 offenders who received community corrections in eighteen Chinese cities and provinces in the year of 2005, the recidivism rate is around one percent during the period 2004-2005. See Li Bing, *Zhongguo Shequ Jiaozheng Shidian* [Summary of Community Correctional Experimental Work in China], in *SHEQU JIAOZHENG—2006 BEIJING GUOJI LUNTAN* [COMMUNITY CORRECTION—2006 BEIJING INTERNATIONAL FORUM] 4 (Beijing Justice Bureau ed. 2006)

²⁷ Li, *supra* note 25, at 213-59.

specifically, is the Chinese community correction system now comprehensive and mature enough to incorporate minor offenders into its jurisdiction? Are social resources and forces in the Chinese neighborhood adequate to provide what administrative offenders need for their rehabilitation and remolding? Is the Chinese community culture receptive enough to embrace prostitutes and drug abusers who might still pose a threat to the safety of the community? More importantly, is the full enforcement of this system contradictory with any legal or institutional mechanisms in force?

This article examines the legal, institutional, and philosophical impediments that Chinese community corrections may have to face in the process of incorporating administrative offenders into its system. It argues that while the insufficient legal justification for community corrections serves as a general factor of marginalizing it in the Chinese penal system, more disturbing factors lie outside the scope of legality. Specifically, by reviewing the requisites of community correctional programs, this article concludes that inconsistency with the Hukou system, inadequacies of social correctional resources, and lack of public support greatly impede the effectuation of this reform in contemporary China.

I. COMMUNITY CORRECTION: A SUBSTITUTE FOR ADMINISTRATIVE DETENTION

The Chinese administrative justice system has developed alongside the Chinese criminal justice system since the founding of the People's Republic of China.²⁸ Although some scholars call for integration of criminal justice system with administrative justice system, due mainly to the difficulty of distinguishing the two systems,²⁹ more legal professionals are inclined to retain this two-tier legal system. They hold the view that, unlike criminal procedure, whose administration of justice is slow and

²⁸ For detailed discussions of the development and practice of Chinese criminal justice system, *see generally* JEROME ALAN COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963: AN INTRODUCTION* (1968); SHAO-CHUAN LENG & HUNGDAH CHUI, *CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS* (1985); STANLEY LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* 138-73 (1999); CHEN JIANFU, *CHINESE LAW: CONTEXT AND TRANSFORMATION* 299-322 (2008); Daniel C. Turack, *The New Chinese Criminal Justice System*, 49 *CARDOZO J. INT'L & COMP. L.* 49, 49-72 (1999).

²⁹ Zhang Kai & Zhang Jianbin, *Zhi'an Guanli Chufa Fa yu Xingfa Fatiao Chongtu Wenti Tanxi [Exploring the Conflicts between the Public Order Administrative Punishment Law and the Criminal Law]*, 12 *FAXUE ZAZHI [L. SCI. MAG.]* 108, 108-11 (2009); Le Jungang, *Zhi'an Chufa de Xingfahua—Chonggou Woguo Zhi'an Chufa Zhidu de Yizhong Silu [Penalization of Public Order Offence—A Thought to Reconstruct China's Public Order Punishment System]*, 5 *GUANGXI ZHENGFA GUANLI GANBU XUEYAN XUEBAO [J. GUANGXI ADMIN. CADRE INST. POL. & L.]* 98, 98-102 (2009).

costly, the administrative justice system is more flexible and efficient, allowing it to respond more quickly to social danger.³⁰ This quicker response in turn leads to heightened authority and deterrence.³¹ As economic reform progresses, the primacy of social stability and order has been repeatedly articulated, and the authorities have underscored the centrality of stability to the development of the nation's economy.³² Realization of this goal of stability and order, however, has become increasingly complex and difficult to achieve. In recent years, the number of drug users has dramatically risen among different classes of Chinese people,³³ while prostitution has gradually become a stable profession for urban and rural women who lack income resources and education. Socially disruptive conduct that takes the form of mass petitions and protests or conduct considered to be anti-state has increased considerably.³⁴ Mass incidents organized to confront abuses of the state's powers are widely reported.³⁵

Functionally, the Chinese government tends to utilize administrative detention as the "second line of defense" in crime prevention and reintegration of offenders into society.³⁶ The administrative justice system requires that detainees receive moral and legal education, conduct productive labour, and learn vocational skills to facilitate their

³⁰ Biddulph, *supra* note 18, at 276-77 (2003); Wang Lirong, *Laodong Jiaoyang Zhixing yu Guanli de Ruogan Wenti* [Several Issues on the Enforcement and Management of Reeducation Through Labour], 6 FAXUE [LEGAL SCI.] 23 (2001).

³¹ Dai Yuzhong & Liu Mingxiang, FANZUI YU XINGZHENG WEIFA XINGWEI DE JIEXIAN JI CHENGFA JIZHI DE XIETIAO [THE BOUNDARIES BETWEEN CRIME AND ADMINISTRATIVE OFFENSE AND COORDINATION OF THE PUNISHMENT SYSTEM] 26 (2008); Feng Jiangju, *Xingzheng Weifa yu Fanzui de Jiexian* [The Borderline Between Administrative Offence and Crime—Discussion on the Vague Distinction Between Administrative and Criminal Power], 1 XINGZHENG FAXUE YANJIU [ADMIN. L. REV.] 66 (2009).

³² Sarah Biddulph, *Prospects for Procedural Justice in Reforms to Public Order Regulations in China*, 10 AUS. J. ASIAN L. 50 (2008).

³³ In 2001, there were 900,000 registered drug addicts, increasing by forty percent compared to 540,000 in 1995. See He Zhixiong, Luo Weidao, Qiu Zhiwen & Qiu Hongzhong, *Dui Xidu Yuanyin de Diaocha yu Fenxi* [The Survey and Analysis of the Cause of Drug Abuse], 10 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE J. OF DRUG ABUSE PREVENTION & TREATMENT] 20 (2004).

³⁴ Dali L. Yang, *Economic Transformation and Its Political Discontents in China: Authoritarianism, Unequal Growth, and the Dilemmas of Political Development*, 9 ANN. REV. POLITICAL SCI. 152 (2006).

³⁵ Biddulph, *supra* note 32, at 51.

³⁶ ZHI'AN GUAN LI CHU FA TIAO LI JIAO CHENG [TEACHING MATERIALS ON THE SECURITY ADMINISTRATIVE PUNISHMENT REGULATIONS] 3 (Pingshan Zhu ed., 1991); ZHONGGUO XIAN JIE DUAN FAN ZUI WEN TI YAN JIU [THE STUDY OF CRIME PROBLEMS IN CHINA'S NEW ERA] 239 (Lei Yu ed., 1993).

reentry into society.³⁷ Despite these stated objectives, administrative detention seldom serves an educative and corrective purpose.³⁸ Rather, the government employs administrative detention largely as punitive instruments for maintaining social order.³⁹ Recidivism rates of administrative offenses affirm the ineffectiveness of administrative detention in preventing misconduct. For example, estimates based on statistical surveys from the 1990s place prostitute recidivism following release from detention for education or reeducation through labour between fifty to sixty percent nationwide.⁴⁰ According to one study, “a large number of prostitutes go straight back to the game once completing their compulsory education at reformatories.”⁴¹ Likewise, the recidivism of drug addicts is troubling. One recent report revealed that an estimated sixty to ninety-five percent of detoxicated patients in China relapse within one year.⁴²

Western recidivist literature shows that the recidivism is affected by variables ranging from personal characteristics to cultural and social conditions.⁴³ Among these factors, social capital is one of the most

³⁷ Victor N. Shaw, *Productive Labor and Thought Reform in Chinese Corrections: A Historical and Comparative Analysis*, 78 PRISON J. 186, 194-95 (1998).

³⁸ Reviewing the characteristics of administrative detention reveals that this instrument is very similar to criminal imprisonment, which is largely carried out in the form of mandatory productive labour, which promotes the exploration of the individual’s ideological outlook and personal faults that lead to repentance and reform. See Li, *supra* note 25, at 229; Wang, *supra* note 30, at 23-24; Zhu Tong, *Guanyu Dangqian Piaochang Xianxiang Jiqi Shourong Jiaoyu Gongzuo de Sikao [The Thinking of the Current Phenomenon of Visiting Prostitutes and the Practice of Detention for Education]*, 1 GONG’AN LILUN YU SHIJIAN [J. SHANGHAI PUB. SEC. ACAD.] 56 (1995).

³⁹ BIDDULPH, *supra* note 14, at 139.

⁴⁰ Vincent E. Gil, Marco Wang, Allen F. Anderson & Guao Matthew Lin, *Plum Blossoms and Pheasants: Prostitutes, Prostitution, and Social Control Measures in Contemporary China*, 38 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 319, 331 (1994). It is noted that the latest recidivism rates of prostitution are lacking due to the secrecy and fluidity of prostitutes in China.

⁴¹ Allen F. Anderson & Vincent E. Gil, *China’s Modernization and the Decline of Communitarianism: The Control of Sex Crimes and Implications for the Fate of Informal Social Control*, 14 J. CONTEMP. CRIM. JUST. 248, 255 (1998).

⁴² Lu Lin & Wang Xi, *Drug Addiction in China*, 1141 ANNALS N.Y. ACAD. SCI. 304, 311 (2008).

⁴³ There are numerous articles and books concerning criminals’ recidivism and its causes. See generally GEORGE K. BROWN, *RECIDIVISM: A SOCIAL-LEGAL SURVEY OF ITS DEFINITION, INCIDENCE AND TREATMENT IN THE UNITED STATES* (1947); PETER SCHMIDT & ANN DRYDEN WITTE, *PREDICTING RECIDIVISM USING SURVIVAL MODELS* (1988); EDWARD ZAMBLE & VERNON L. QUINSEY, *THE CRIMINAL RECIDIVISM PROCESS* (2001); Howard Kitchener, Annesley K. Schmidt & Daniel Glaser, *How Persistent is Post-Prison Success?*, 41 FED. PROBATION 9, (1977); James S. Coleman, *Social Capital in the Creation of Human Capital*, 48 AM. J. SOC. REV. 95 (1988); Paul Gendreau, Tracy Little & Claire Goggin, *A Meta-Analysis of the Predictors of Adult Offender Recidivism:*

important theoretical concepts.⁴⁴ Fueled by studies based largely on Western experiences, Chinese law specialists have conducted analogous studies of recidivism variables in the context of Chinese criminology. Their studies indicate that ties with offenders' families, community support, and employment are the most effective factors in preventing recidivism.⁴⁵ These factors would also be effective in combating recidivism among administrative offenders. Multiple studies demonstrate that, other than physiological difficulties, the inadequacy of social and familial attention,⁴⁶ unemployment, and lack of education increase the risk of relapse among drug addicts.⁴⁷ In the meantime, the high rates of re-entry into prostitution are attributed to employment, financial hardship, and monetary stimulus, which have arisen since the economic reforms initiated in the late 1970s.⁴⁸ Administrative detention favors punishment, deterrence, and retribution and fails to provide the sources of social capital

What Works!, 34 CRIMINOLOGY 575 (1996).

⁴⁴ Social capital is defined as resources existing in social structures and relationships that facilitate social action. Western criminologists first applied this theory to analyze the re-offending of individuals released from prison. Their analytical models present two levels of social capital: the resources that exist in interpersonal relationships and the social resources that exist in a community. According to this categorization, signs of a high level of social capital include mentoring, job networking, marriage and mutual support in the community, which are all associated with self-reliant economic development without need for government interference. See JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 301-2 (1994); Glenn C. Loury, *A Dynamic Theory of Racial Income Difference*, in WOMEN, MINORITIES AND EMP. DISCRIMINATION 160 (Phyllis A. Wallace & Annette M. LaMond eds., 1977); Mark H. Smith, Lionel J. Beaulieu & Ann Seraphine, *Social Capital, Place of Residence, and College Attendance*, 60 RURAL SOC. 363, 366 (1995); John H. Laub, Daniel S. Nagin & Robert J. Sampson, *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63 AM. SOC. REV. 225 (1998).

⁴⁵ Xiaogang Deng, Lening Zhang & Ann Cordilia, *Social Control and Recidivism in China*, 14 J. CONTEMP. CRIM. JUST. 281, 291-92 (1998). The study employed four predictors to examine the effectiveness of an informal social control approach in preventing recidivism. These four predictors are previous offenses, the rehabilitation rating before release, employment status after release, and whether offenders needed a community-based rehabilitation program.

⁴⁶ Wang Xiaohong, *Yufang Jieduzhe Fuxi de Xinli Zhiliao [Psychotherapy for Preventing Relapse in Drug Rehabilitants]*, 48 ZHONGGUO LINCHUANG KANGFU [CHINESE J. CLINICAL REHAB.] 139 (2005).

⁴⁷ Wang Zhenbao, *Fuxi Wenti de Shehuixue Fenxi [Sociological Analysis of Relapse]*, 8 SHEHUI [SOC'Y] 42, 44 (2003).

⁴⁸ Zhu Xudong, *Gaige Kaifang Yilai Maiyin Piaochang Wenti Yanjiu Zhongshu [Summary of Prostitution Situation after Economic Reform and Openness]*, 4 GONG'AN YANJIU [POLICING STUD.] 93-94 (2001); Xin Ren, *Prostitution and Economic Modernization in China*, 5 VIOLENCE AGAINST WOMEN 1411, 1424 (1999); Xiao Yi, *Maiyin Piaochang de Shehui Yuanyin he Kongzhi [Social Reasons and Control of Prostitution]*, 5 DANGDAI FAXUE [CONTEMP. L. REV.] 70-1 (1999).

to genuinely help offenders. Community corrections, however, relies heavily upon community resources and social forces can produce the positive social capital for offenders' rehabilitation and reentry into society.

China's use of community corrections emerged in 2003 with the issuance of the *Notice on Implementing Experimental Work of Community Corrections*.⁴⁹ This directive set forth the theoretical basis of community corrections, its goals, and its legal obligations.⁵⁰ The Chinese government commenced this pilot project in six modern cities and provinces in 2003.⁵¹ The tentative use in these regions was intended to explore and advance a socialist community corrections model commensurate with the Chinese legal system.⁵² In 2004, the Ministry of Justice issued the *Provisional Measures of Judicial and Administrative Organs in Administering Community Correction Work* in an attempt to institutionalize the implementation of community corrections in the context of the Chinese system.⁵³ Analogous to their Western counterparts, Chinese community corrections programs are designed initially for criminal offenders whose crimes are minor and have caused only minimal social harm, as well as those who have repented after incarceration and have expressed no further intention to harm society.⁵⁴ Although on paper the scope of application of community corrections focuses only on specified criminals, community-based practices are thought to be more suitable to administrative offenders because they are able to take use of social resources and forces to provide educative and rehabilitative functions to administrative offenders. This argument can be particularly demonstrated in the case of Shanghai

⁴⁹ This notice was passed by the Supreme Court, the Supreme Procuratorate, the Ministry of Public Order, and the Ministry of Justice on July 10, 2003. Guanyu Kaizhan Sheque Jiaozheng Shidian Gongzuo de Tongzhi (关于开展社区矫正试点工作的通知) [The Notice on Implementing Experimental Work of Community Corrections] (issued by the Sup. Ct., the Sup. Procuratorate, the Ministry of Pub. Order and the Ministry of Just., effective July 10, 2003), available at http://www.law-lib.com/law/law_view.asp?id=81163 (last visited Mar. 1, 2012) [hereinafter *Community Corrections Notice*].

⁵⁰ *Id.*, art. 1-3; WANG SHUN'AN, SHEQU JIAOZHENG YANJIU [THE STUDY OF COMMUNITY CORRECTIONS] 87 (2008).

⁵¹ The Notice on Implementing Experimental Work of Community Corrections set up six tentative areas nationwide for the practice of community corrections, which are Beijing, Tianjin, Shanghai, Jiansu, Zhejiang and Shandong. Community Corrections Notice, *supra* note 49, § 4.

⁵² Wu Yuhua, *Shequ Jiaozheng Gongzuo Chutan* [Preliminary Exploration of Community Corrections], 5 FAXUE ZAZHI [L. SCI. MAG.] 19 (2003).

⁵³ WANG, *supra* note 50.

⁵⁴ Community Corrections Notice, *supra* note 49, preface.

community correction system by looking at how it uses well-designed and effective educational programs to successfully re-socialize offenders.⁵⁵

II. PRACTICAL OBSTACLES: IS PLACING ADMINISTRATIVE OFFENDERS UNDER THE COMMUNITY CORRECTION FEASIBLE?

The predicted success in an exceptional case, however, does not rule out the question of whether community corrections can be really used as a regular measure on administrative offenders regardless of cultural, economic, and social diversity in different locales in China. As a new form of penal instrument, Chinese community corrections are still at the preliminary stage, following the operational patterns of Western counterparts. Therefore, its practical implementation shows that this system is a far cry from a sophisticated legal mechanism and alienates it from the deeply-rooted Chinese legal and social contexts. To understand the difficulty of embracing administrative offenders in the current Chinese community corrections, one needs to carefully look into the factors that impede this proposition in an interdisciplinary perspective, spanning from the socio-legal to eco-cultural aspects.

A. *Criminal Nature of Community Corrections*

Chinese officials commenced their tentative practice of community corrections in six prefectures in 2003, and soon expanded its use on a national scale in 2005, covering twelve other provinces and cities in China's central and western regions.⁵⁶ Although community corrections are mainly perceived as a Western import, Chinese officials introduced this approach into the existing penal system law to build a "Chinese socialist democracy and legal system."⁵⁷ Thus, community correctional programs are implemented in a way that is largely conventional in a traditionally Chinese context.⁵⁸ Although some scholars tend to highlight the educative and corrective functions of China's community corrections,⁵⁹ the official rhetoric characterizes it as a tool of administering

⁵⁵ For a detailed account of how Shanghai's community correctional system maximizes the use of social capital in treating administrative offenders in the community, see Li, *supra* note 25, at 248-54.

⁵⁶ WANG, *supra* note 53, at 98.

⁵⁷ Community Corrections Notice, *supra* note 49, art.I.

⁵⁸ In implementing community corrections, authorities focus on preserving social order and serving social control in lieu of actually educating and rehabilitating offenders in the practice of community correction. Liu Qiang, *Zhongwai Sheiqu Jiaozheng zhi Qubie yu Sikao* [Differences of Community Corrections between China and Foreign Countries and Its Thinking], 4 ZHONGGUO SIFA [JUST. CHINA] 58 (2004).

⁵⁹ For example, Professor Kang Shuhua asserts that community corrections is a

criminal justice, emphasizing the criminal punishment of people for minor offences.⁶⁰ In an attempt to remain consistent with their foreign counterparts, the Chinese government has decided to require community treatment for probationers, parolees, and those sentenced to control and permitted to temporarily serve their sentences outside prison.⁶¹

The regulations underlying community correction first conceptualize China's community correction as a non-custodial criminal sanction.⁶² The primary task of this instrument is to handle minor criminal offenders in lieu of imprisonment and ensure that punishment is smoothly implemented through community corrections in light of the Chinese Criminal Law, Criminal Procedure Law and other relevant laws.⁶³ The directives authorize the judicial and administrative organs to direct and regulate the practice of community corrections in collaboration with the law apparatus, namely police, procuratorates, and courts.⁶⁴ Those who create serious consequences through their resistance to community management and education should be sent to the police for further

correctional measure to remold criminals by not isolating them from society and making use of social resources. See Kang Shuhua, *Shequ Jiaozheng de Lishi, Xianzhuang he Zhongda Yiyi* [The History, Current Situation and Great Theoretical Values of Community Corrections], 5 FAXUE ZAZHI [L. SCI. MAG.] 21-23 (2003); Professor Wang Lirong points out that community correction consists of social activities conducted by relevant authorities as well as social organizations and volunteers to socialize offenders and help them with their daily lives. See Wang Lirong, *Cong Sifa Yufang Shijiao Tan Shequ Jiaozheng Zhidu de Fazhan Silu* [Development of Community-Based Correction System from the Perspective of Justice Prevention], 2 SHANGHAI ZHENGFA XUEYUAN XUEBAO [L. J. SHANGHAI ADMIN. CADRE INST. POL. & L.] 3-7 (2004).

⁶⁰ Community Corrections Notice, *supra* note 49, preface.

⁶¹ Control was arguably deployed as a criminal justice measure for mass supervision by local communities, schools, and work units. Article 214 of the 1996 Criminal Procedure Law stipulates that "[a] criminal sentenced to fixed-term imprisonment or criminal detention, under either of the following conditions, may be permitted to temporarily serve his sentence outside prison: (1) If the criminal is seriously ill and needs to be released on parole for medical treatment; or (2) If the criminal is pregnant or is breast-feeding her own baby." Zhonghua Renmin Gongheguo Xingshi Susongfa (中华人民共和国刑事诉讼法) [The Criminal Procedure Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 17, 1996, effective Mar. 17, 1996), art. 214, available at http://www.law-lib.com/law/law_view.asp?id=321 (last visited Mar. 1, 2012).

⁶² Community Corrections Notice, *supra* note 49, preface.

⁶³ *Id.*, pt. 2-2(1).

⁶⁴ Sifa Xingzheng Jiguan Shequ Jiaozheng Gongzuo Zanzheng Banfa (司法行政机关社区矫正工作暂行办法) [The Provisional Measures of Judicial and Administrative Organs in Administering Community Correction] (promulgated by the Dep't of Just., effective May 9, 2004), art. X [hereinafter *Provisional Measures*]

criminal prosecution.⁶⁵ In the meantime, social organizations and volunteers are deployed.⁶⁶ These actors are only viewed as supplementary forces, however, undertaking the mental, legal, and moral education to help offenders become law-abiding citizens after release.⁶⁷

Such characterizations reveal that China is expecting to adopt community corrections as an auxiliary measure to dispense criminal justice on specific types of criminal offenders. This perception clearly rules out the likelihood of handling administrative offenders under the community treatment on a legislative basis. This is because, unlike most modern countries where deviant behavior that violates prevailing norms is punished by the criminal code, China's legal context classifies illegal conduct into two categories, namely criminality and minor offence. They are, in practice, handled separately by the different and independent justice systems, which constitute a two-layer social control scheme in the Chinese crime prevention strategy. Article thirteen of the Chinese Criminal Law 1996 ("CCL 1996") characterizes crimes as all acts that:

[E]ndanger the sovereignty, territorial integrity, and security of the state; split the state; subvert the political power of the people's democratic dictatorship and overthrow the socialist system; undermine social and economic order; violate property owned by the state or property collectively owned by the labo[u]ring masses; violate citizens' privately owned property; infringe upon citizens' rights of the person, democratic rights, and other rights; and other acts that endanger society, are crimes if according to law they should be criminally punished. However, if the circumstances are clearly minor and the harm is not great, they are not to be deemed as crimes.⁶⁸

Clearly, criminality appears to be a combination of "criminal characterization" and "criminal quantity."⁶⁹ Terminologically, "criminal characterization" concerns the nature of illegal conduct, whereas the

⁶⁵ *Id.*

⁶⁶ Community Corrections Notice, *supra* note 49, art. 3.

⁶⁷ *Id.*, art. IX(4).

⁶⁸ Zhonghua Renmin Gongheguo Xingfa (中华人民共和国刑法) [The Criminal Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., effective Mar. 14, 1997), art. XIII, available at http://www.law-lib.com/law/law_view.asp?id=327 (last visited Mar. 1, 2012) [hereinafter *CCL 1996*].

⁶⁹ Chu Kuizhi & Wang Yongle, *Zailun Woguo Xingfazhong Fanzui Gainian de Dingliang Yingsu* [The Further Review of Quantity Factor of the Criminality in Chinese Criminal Law], 2 FAXUE YANJIU [CHINESE J. L.] 34, 36 (2000).

“criminal quantity” refers to the degree of severity of a particular act.⁷⁰ Many Chinese scholars thus characterize the assessment of criminal quantity as the vital factor in determining whether the offender should be sanctioned criminally or administratively.⁷¹ Unlike the specified stipulation of a criminal act, minor offences lack a clear definition in the CCL 1996.⁷² Instead, the Public Order Administration Punishments Law of the People’s Republic of China (“POAPL”) sets forth several categories of infringement that are considered as minor offences.⁷³

With regard to an act of disrupting public order, encroaching upon the right of the person, the right of property or impairing social administration, if it is of social harmfulness and constitutes any crime as provided for in the Criminal Law of the People’s Republic of China, it shall be subject to criminal liabilities. If it is not serious enough to be subject to a criminal punishment, it shall, in accordance with this law, be subject to public security punishment by the public security organ.⁷⁴

⁷⁰ Article 384 of the CCL 1996 provides: “Any state functionary who, by taking advantage of his position . . . misappropriates a relatively large amount of public funds for profit-making . . . shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention” Since the term “relatively large amount” is vaguely defined in the CCL 1996, *The Supreme People’s Court’s Interpretation on Several Questions Concerning the Concrete Application of Laws in Adjudicating Misappropriation of Public Funds* (a judicial interpretation) was issued in 1998. It defined “relatively large amount” as one of between RMB 10,000–30,000. Zuigao Renmin Fayuan Guanyu Shenli Nuoyong Gongkuan Anjian Juti Yingyong Falü Ruogan Wenti de Jieshi (最高人民法院于审理挪用公款案件具体应用法律若干问题的解释) [The Supreme People’s Court’s Interpretation on Several Questions Concerning the Concrete Application of Laws in Adjudicating Misappropriation of Public Funds] (issued by the Chinese Sup. Ct., effective May 9, 1998), available at http://www.law-lib.com/law/law_view.asp?id=13926 (last visited Mar. 1, 2012).

⁷¹ Pei Zhaobin, *Zhian Guanli Chufafa yu Xingfa de Xianjie yu Chongtu* [The Connection and Conflict of POAPL and CCL], 10 GONG’AN YANJIU [POLICING STUD.] 58, 58-9, 61-2 (2007).

⁷² Veron Mei-Ying Hung, *Improving Human Rights in China: Should Re-education through Labour Be Abolished?*, 41 COLUM. J. TRANSNAT’L 303, 308 (2003).

⁷³ The People’s Republic of China on Public Order Administrative Punishment Law superseded the Law of the People’s Republic of China on Public Order Administration Punishments Act, which was adopted in 1986 and amended in 1994. POAPL, *supra* note 3.

⁷⁴ *Id.*, art. II.

Yet, Chinese legal professionals seem to have reached a consensus that minor offence refers to behaviour conducted with minor criminal intention, resulting in petty socially damaging consequences.⁷⁵ Therefore, such transgression is supposed to be handled outside the criminal regime, as it is not serious enough to warrant criminal prosecution.⁷⁶ This legal categorization has led to two parallel and self-governing regulatory frameworks within the Chinese legal system: the criminal and administrative justice systems. Drug use, prostitution, and social order infringements are considered minor offences subject to administrative detention, as their social damages are less than criminal acts. This places prostitutes, drug addicts, and social order offenders outside the scope of community corrections.

The criminal nature of China's community correction also shows in the ways in which community correctional programs are carried out by authorities. In the institutional structure of Chinese community correction, local judicial and administrative organs are assigned to undertake correctional and educational activities.⁷⁷ These organs work in collaboration with public security organs, which are responsible for the supervision and examination on offenders' behaviors.⁷⁸ Although the 2003 Notice illustrates that community corrections aim to correct offenders' criminal mind and misconduct and help them reenter into society, the actual implementation focuses more on control and punishment than rehabilitation and persuasion due to a wide range of realistic factors.⁷⁹ For example, many community correction enforcers concede that the Chinese neighborhood is neither well prepared nor equipped to carry out this approach, given the practical conditions of most Chinese communities.⁸⁰ Given their heavy daily workload,⁸¹ community-level judicial and

⁷⁵ Chen Xingliang, *Lun Xingzheng Chufa yu Xingfa Chufa de Guanxi* [Discussion of the Relativity of Administrative Punishment and Criminal Punishment], 4 ZHONGGUO FAXUE [CHINESE L. SCI.] 25, 30-1 (1992).

⁷⁶ Wu Jianwei, *Weifa Xingwei yu Fanzui* [Unlawful Behaviors and Criminality], Jiefangjun Bao [PLA Daily], Dec. 28, 1985.

⁷⁷ Provisional Measures, *supra* note 64, art. IX.

⁷⁸ Community Corrections, *supra* note 49, pt. 4.

⁷⁹ Wen Li, *Zhongmei Shequ Jiaozheng Lilun yu Shiwu Bijiao Yanjiu* [The Comparison Study on Theory and Practice of Community Correction Between China and US], 37 ZHEJIANG DAXUE XUEBAO [J. ZHEJIANG U.] 64, 68-70 (2007).

⁸⁰ WANG, *supra* note 53, at 297.

⁸¹ The duties of judicial and administrative organs at the community level encompass the guidance of mediation, the regulation of grassroots legal issues, the carrying out of legal education, the participation of public order management, and the social management of released criminals and administrative offenders under Baojiao system. WANG YONG, JICENG SIFA XINGZHENG GONGZUO SHIWU [THE OPERATIONAL GUIDES OF GRASSROOTS ADMINISTRATIVE AND LEGAL WORK, ch. 1 (2011).

administrative organs are mostly incapable of mobilizing required social resources to organize systematic educational and correctional programs. In order to make their jobs easier, they tend to simply follow the existing working models of implementing non-custodial criminal punishments set out in the CCL 1996, namely bail and residential surveillance.⁸² Therefore, many operational similarities can be identified in the management of community corrections and non-custodial criminal instruments, including: (1) Requiring the regular attendance of offenders to report their correctional progress; (2) Requiring the submission of periodical reports on offenders' mental and behavioral correction; (3) Restricting the range of certain offenders' activities; and (4) Organizing offenders to assume productive labour and community service.⁸³ Even though some educational schemes in big pilot cities, such as Shanghai and Beijing, are designed to meet the formality requirements of community corrections, they are aimed more at general legal education and vocational skills training than psychological and behavioral remolding.⁸⁴ This pattern is more in line with the long-existing Bangjiao system in the Chinese social control system.⁸⁵

Furthermore, it is relatively common for prison police and officers from local police stations to largely control community corrections in

⁸² Article LI of the CPL 1996 provides that the authorities may place suspects under residential surveillance or on bail if their sentences are likely to be light, or they may be sentenced to the fix-term imprisonment but would not endanger society if they are allowed to obtain the non-custodial measures.

⁸³ DAN WEILI, SHEQU JIAOZHENG: LILUN JICHU YU ZHIDU GOUJIAN [COMMUNITY CORRECTION: ITS THEORETICAL BASIS AND INSTITUTIONAL CONSTRUCTION] 179-80 (2007).

⁸⁴ WANG, *supra* note 53, at 98-99.

⁸⁵ The Bangjiao system is a means of community crime prevention, which assists and guides those who have misbehaved. The aim of the Bangjiao program is to help and direct offenders by accepting them back into the community and by providing them with various services. This strategy encompasses a wide range of schemes that cover almost every prominent aspect of social capital. The routine events in the Bangjiao system are legal education and job arrangement. Legal education is assumed by the community in conjunction with the participation of offenders' parents, relatives, friends and even neighbours. It attempts to make use of parental love and sincerity to prevent offenders' re-offending and alienation from society. Simultaneously, the system is also expected to arrange employment for offenders released from correctional facilities after they have served their sentence. The invention of this approach is attributed to China's far-reaching belief that unemployment constitutes a major source of crime production and recidivism, which is commensurate with the Western research findings that stable employment reduces the risk of recidivism. See Mok B., *Community Care for Delinquent Youth: The Chinese Approach of Rehabilitating the Youth Offenders*, 2 J. OFFENDER COUNSELLING, SERVS. & REHAB. 6 (1990); Laub J.H and Sampson R. J, *Turning Point in the Life Course: Why Change Matters to the Study of Crime*, 31 CRIMINOLOGY 311 (1993).

many under-developed locales.⁸⁶ Some local governments are inclined to deploy experienced, retired public security personnel to handle offenders in the community in order to relieve judicial and administrative agencies of the heavy burden of oversight. More importantly, this action ensures that placing offenders under community treatment will not cause social instability.⁸⁷ These governments believe that the police's special knowledge, expertise, and skills in controlling and managing offenders in prisons and detention centers will transfer effectively to community corrections.⁸⁸ In particular, prison officers experienced in educating inmates using reform through labour (劳改 *laogai*) are considered the ideal enforcement staff to realize the educative purpose of community corrections.⁸⁹ However, the dominance of police in community corrections necessarily leads to the increasing of control-oriented nature of this instrument and the lowering of educative and rehabilitative elements in implementation. Due to the far-reaching rhetoric of crime control in Chinese police practice, the goals of police enforcement of community corrections are merely to make sure that offenders will not get into trouble, be involved with accidents, or lose contact with authorities.⁹⁰ The fundamental aspects of education and correction that requires more professional capability and understanding are mostly neglected. These working patterns reveal that community corrections in China are no more than a hybrid created by both western and Chinese legal contexts. More precisely, the Chinese authorities tend to view community corrections as one of the non-custodial crime control devices that rely partially on rehabilitation and correction to prevent further crime.⁹¹

⁸⁶ Wang Qi, *Lun Woguo Shequ Jiaozheng de Zhixing Zhuti* [The Enforcement Body of China's Community Correction], 2 ZHONGGUO SIFA [JUST. CHINA] 56 (2007).

⁸⁷ DAN, *supra* note 83, at 225.

⁸⁸ Yang Fangquan, *Shequ Jiaozhen Bentuhua Wenti de Sikao* [The Thinking of Localization of Community Correction], 2 ZHONGSHAN DAXUE XUEBAO SHEHUI KEXUEBAN [J. SUN YATSEN U.] 71 (2005).

⁸⁹ Reform through labour is the governmental underpinning of directing the regulation and reform of criminals in prison. The Chinese authorities believe that through manual labour, offenders "can gradually establish a sense of self-reliance through work, learn necessary skills to become productive citizens after leaving prison, and forsake the selfish, parasitic habit of reaping without sowing." See R. J Troyer, *Chinese Thinking About Crime and Social Control*, in SOCIAL CONTROL IN THE PEOPLE'S REPUBLIC (R.J Troyer, J. P. Clark & D. G. Rojek eds., 1989); Xu Jun, *Mao Zedong Lilun Zhong de Laodong Gaizao* [On Mao Zedong's Theory of Offender Reform through Manual Labour], in LAODONG GAIZAOXUE CAIKAO ZILIAO [REFERENCE MATERIALS ON THE SCIENCE OF REFORM THROUGH LABOUR] 9-10 (Shao Ming & Zhou Min eds., 1990).

⁹⁰ DAN, *supra* note 83, at 180.

⁹¹ Provisional Measures, *supra* note 64, art. II.

B. *Institutional Deficiencies and Limits*

Currently, community corrections are widely used in the majority of Chinese provinces and municipalities, including both the developed and undeveloped localities. The operations thus vary significantly from place to place in accordance with different local conditions and cultural characteristics. Some earlier pilot cities such as Beijing and Shanghai have developed a set of original educational programs that fit well with their own community cultures and gained a wealth of experience in how to maximize the effects of social capital in correcting offenders.⁹² Other follow-up locales have borrowed the pioneers' experiences in designing their own community correctional programs and are carrying them out in accordance with their regional advantages.⁹³ Zhejiang Province, for example, takes advantage of its prosperous culture of private entrepreneurs in establishing a number of semi-commercial community agencies, practically implementing community corrections as the enforcement body in lieu of the formal legal apparatuses.⁹⁴ However, despite the fact that the community corrections system has begun to play a role in the Chinese penal system, its practice in each locale shares some common institutional deficiencies and procedural limits. These weaknesses not only impact the balanced growth of this mechanism in China, but more importantly, augment the difficulty of incorporating administrative offenders into this system at the current stage.

1. The Conflict with the Hukou System

The Hukou (户口) household registration system was first implemented in Chinese cities in 1951, with the officially stated purpose of maintaining social peace and order, safeguarding the people's security, and protecting their freedom of residence and movement.⁹⁵ Having been in place in China for more than half century, the Hukou system has affected many fundamental aspects of life for hundreds of millions of Chinese⁹⁶

⁹² For detailed accounts of the implementation of community correction in Beijing and Shanghai, see WANG, *supra* note 53, at 96-112.

⁹³ *Id.*, at 112-19 (2008).

⁹⁴ *Id.*, at 118.

⁹⁵ A Hukou identifies a Chinese person as a resident of an area with other identifying information such as name, parents, spouse and date of birth. The Household Registration Regulations of the People's Republic of China, *Zhonghua Renmin Gongheguo Hukou Dengji Tiaoli* (中华人民共和国户口登记条例) [PRC The Household Registration Regulations] (promulgated by the Standing Comm. of the Nat'l People's Cong., effective Jan. 9, 1958), art. I, available at <http://www.jincao.com/fa/04/law04.55.htm> (last visited Mar. 1, 2012); Zhiqiang Liu, *Institution and Inequality: The Hukou System in China*, 33 J. COMP. ECON. 133, 135 (2005).

⁹⁶ Kam Wing Chan & Will Buckingham, *Is China Abolishing the Hukou System?*,

and is also intrinsically related to China's economic development over the last six decades.⁹⁷ All Chinese nationals' personal Hukou are classified as either urban (non-agricultural) or rural (agricultural), which pertain to urban and rural population respectively. Each individual is required to register one and only one place of residence.⁹⁸ For urban residents, the unit of registration is a household, while the unit of registration for rural people can be commune, village, or state farm.⁹⁹ Only through proper government authorization, the Hukou conversion process, can one permanently change his Hukou location or his categorization from rural type to the urban.¹⁰⁰

The criteria for obtaining rural-urban migration (农转非 *nongzhuanfei*), however, are very high, and only a very selective group could possibly qualify.¹⁰¹ The conditions are usually stipulated by local governments to meet the needs of the locales.¹⁰² It is observed that many local governments have taken advantage of this discretion by "selling" local Hukou as a way of raising revenue.¹⁰³ Many scholars, both inside and outside China, argue that the Hukou system is a major source of injustice and inequality because it renders millions of rural residents second-class citizens by depriving them of the right to mobility and access to state-sponsored benefits.¹⁰⁴ Nevertheless, some of them concede that "this omnipresent and powerful, albeit adapted and adjusted, system is alive and

195 CHINA Q. 582 (2008).

⁹⁷ Kam Wing Chan, *The Chinese Hukou System at 50*, 50 EURASIAN GEO. & ECON. 197, 198 (2009); Fei-Ling Wang, *Between Tensions While Maintaining Stabilities: the Dual Role of the Hukou System in Contemporary China*, 29 ASIAN PERSP. 85, 86 (2005).

⁹⁸ Liu, *supra* note 95, at 135.

⁹⁹ Xia Xianliang & Wang Yingxin, *Zhongguo Hukou Zhidu Gaige de Lilun Fenxi* [*The Theoretical Analysis of China's Hukou System*], 4 CHENGSHI FAZHAN YANJIU [URBAN STUD.] 15, 17 (2002).

¹⁰⁰ For a detailed discussion of obtaining *nongzhuanfei*, see Kam Wing Chan & Li Zhang, *The Hukou System and Rural-Urban Migration in China: Processes and Changes*, 160 CHINA Q. 818, 818-55 (1999).

¹⁰¹ Chan, *supra* note 97, at 205.

¹⁰² For example, *nongzhuanfei* was conferred mainly on: those recruited as permanent employees by a state-owned enterprise; those displaced due to state-initiated land expropriation; those recruited for enrolment in an institution of higher education; and those promoted to administrative positions. See Chan & Buckingham, *supra* note 96, at 590.

¹⁰³ *Id.*, at 591-2.

¹⁰⁴ *Id.*, at 582-83; Yu Depeng, *Woguo Xianxing Hukou Zhidu de Qida Biduan* [*Seven Deficiencies of China's Current Hukou System*], 6 GAIGE YU ZHANLÜ [REFORMATION & STRATEGY] 56, 56-59 (1994).

well,” despite a variety of reforms instituted to it by the Chinese government.¹⁰⁵

A general consensus among both legal and sociological scholars is that the Hukou system has long served as an important mechanism in distributing resources and determining life chances in China.¹⁰⁶ The designation of non-agricultural status entitles the bearer to enjoy the state-provided welfare, including permanent employment, medical insurance, housing, pensions, and educational opportunities for children.¹⁰⁷ Agricultural status, however, denies residents access to most state benefits, in particular urban community and social resources.¹⁰⁸ Many professionals therefore point out that “the Hukou system possesses the discriminatory features against the rural population and places temporary rural migrants in a disadvantaged position in social and economic terms.”¹⁰⁹

Although community corrections regulations do not illustrate eligibility in terms of offenders’ Hukou and residential status, most pilot cities and provinces choose only to receive offenders who have the local Hukou and residential location in the consideration of effective management. Beijing, for example, specifically instructs that community correctional programs are only available to criminal offenders who hold Beijing Hukou, and non-Beijing Hukou offenders should return to their registered residences for serving their community sentences.¹¹⁰ Likewise, Hunan Province expressly states that those who are eligible to be placed

¹⁰⁵ Fei-Ling Wang, *Reformed Migration Control and New Targeted People: China’s Hukou System in the 2000s*, 177 CHINA Q. 129 (2004).

¹⁰⁶ Xiaogang Wu & Donald J. Treiman, *The Household Registration System and Social Stratification in China, 1955–1996*, 41 DEMOGRAPHY 363, 364 (2004); Cheng Tiejun & Mark Sleden, *The Origin and Social Consequences of China’s Hukou System*, 139 CHINA Q. 644, 644-45 (1994); Liu, *supra* note 95, at 136; Li Lin, *Towards a More Civil Society: Mingong and Expanding Social Space in Reform-Era China*, 149 COLUM. HUM. RTS. L. REV. 149, 156 (2001).

¹⁰⁷ Hayden Windrow & Anik Guha, *The Hukou System, Migrant Workers, & State Power in the People’s Republic of China*, 3 NW. U. J. INT’L HUM. RTS. 4 (2005); Xiaogang Wu & Donald J. Treiman, *Inequality and Equality under Chinese Socialism: The Hukou System and Intergenerational Occupational Mobility*, 113 AM. J. SOC. 418 (2007).

¹⁰⁸ Chan & Buckingham, *supra* note 96, at 588.

¹⁰⁹ Chan, Kam Wing, *Post-Mao China: A Two-class Urban Society in the Making*, 20 INT’L J. URBAN & REG’L RESEARCH 134, 138-43 (1996); Gao Qiang & Tian Lei, *Woguo Huji Zhidu Biduan ji Chuangxin Yanjiu [The Deficiencies and Innovative Study of China’s Hukou System]*, 2 KAIFA YANJIU [RESEARCH & DEV.] 11 (2006).

¹¹⁰ Tang Xiaotian, *Shequ Jiaozheng Shidian yu Jiaozheng Zhiliang de Tigao [The Pilot of Community Correction and the Improvement of Correctional Quality]*, 18 DANGDAI FAXUE [CONTEMP. L. REV.] 13, 16 (2004).

under community correction must have Hunan Hukou or have resided in Hunan permanently or for a long period of time.¹¹¹

Indeed, as far as the implementation of community corrections is concerned, determining the offender's eligibility standard according to Hukou status is of benefit to the smooth practice of this instrument. This is because those with local Hukou are considered convenient to manage and controllable due to their life-long familial and social ties in the local neighborhood. Meanwhile, given the limited resources of local governments, it is understandable that local Hukou offenders would be favored to receive community corrections prior to migrants or temporary residents from outside regions. This entry standard, however, creates another critical obstacle to placing administrative offenders in the community corrections system, particularly in some modern and big cities where community correctional schemes are properly developed and operated. Much evidence shows that prescribed administrative perpetrators in China, namely prostitutes, drug addicts, and social-order breakers, are mostly "floating population" that lack local Hukou.¹¹² This "floating population" largely moves from the countryside to the city, from underdeveloped economic areas to developed areas, and from the central and western regions to the eastern coastal region.

Since 1978, economic reform has encouraged large-scale population mobility nationwide.¹¹³ With under-employment in the rural labour force, farmers have been motivated to seek jobs outside the agricultural sector.¹¹⁴ The enormous number of agricultural workers that have moved to cities and towns has created a new migrant class, rural labourers (农民工 *nongmingong*), pursuing better employment

¹¹¹ Hunan Shen Shishi Shequ Jiaozheng Shehui Diaocha Pinggu Zanxing Banfa (湖南省实行社区矫正社会调查评估暂行办法) [The Temporary Measures on Evaluating Targets of Community Correction in Hunan Province], (issued by the Sup. Ct. of Human Prov., effective Nov. 1, 2011), art. II., available at <http://www.lsf.com.cn/sfxsfzxw/shequjiaozheng/2012031322950.html> (last visited Mar. 18, 2012).

¹¹² Anonymous, *Beijing Qian Wugeyue Faxian 1374 Min Xiduzhe, Waidi Huji Zhan 63%* [63% of Drug Users Found in the First Five Months in Beijing are Non-Beijing Hukou Citizens], ZHONGGUO XINWENWANG [CHINESE NEWS DAILY], June 25, 2009, available at <http://news.qq.com/a/20090625/001277.htm>; Bai Junwei, Shiwenya & Qu Youming, *Beijingshi Fengtaiqu 120 li Zaiya Xidu Renyuan Aizibing Xiangguan Xingwei Diaocha* [Research on AIDS-Related Behaviors of 120 Drug Abusers in Beijing Fengtai District], 24 ZHONGGUO JIANKANG JIAOYU [CHINESE HEALTH EDUC.] 194 (2008).

¹¹³ Harry X. Wu & Li Zhou, *Rural-to-Urban Migration in China*, 10 ASIAN-PAC. ECON. LIT. 54 (1996).

¹¹⁴ Lavelly W., *Demographic and Social Change in China*, in ASIA-PACIFIC REPORT 1989, FOCUS: CHINA IN THE REFORM ERA 65 (Morrison C. E. & Dernberger R. F. eds., 1989).

opportunities and fortunes in the urban communities.¹¹⁵ Geographically, the coastal regions (i.e., Guangdong Province), municipalities (i.e., Beijing and Shanghai) and capitals of provinces (i.e., Chengdu and Shenyang) have become the welcomed areas for the migration of rural workers.¹¹⁶ However, Hukou status represents a critical predictor of labour market outcomes. Many studies reveal that rural labourers with agricultural Hukou have diminished chances of holding a job in the state sector and are more likely to be self-employed or experiencing unemployment spells.¹¹⁷ Even if they are temporarily employed, they normally undertake heavy and cheap labour work as their daily job, such as those in the field of house construction, sales, cleaning, or other infrastructural works.¹¹⁸ It is in part because rural labourers acquire lower-level education attainment than their urban counterparts.¹¹⁹ More importantly, the lack of advanced skills and human capital produces the major impediment to the advancement of rural labourers in the urban labour market.

The difficulty of finding stable, well-paying employment, coupled with the tension resulting from increasing urban-rural income inequality, contribute heavily to commission of administrative offences and crimes by rural labourers in China. It is documented that many female rural labourers, motivated by the need to find employment, choose to sell sex to earn money in cities.¹²⁰ For example, a statistical survey conducted in a Chinese medium-size city shows that more than fifty percent of prostitutes

¹¹⁵ For detailed insight of Chinese rural laborers, see Zai Liang & Zhongdong Ma, *China's Floating Population: New Evidence from the 2000 Census*, 30 POPULATION & DEV. REV. 467, 467-88 (2004); Zhu Li, *Nongmingong Jiecheng de Tezheng yu Shehui Diwei* [The Characteristics and Social Status of Rural Laborer Class], 6 NANJING DAXUE XUEBAO [J. NANJING U.] 41-50 (2003).

¹¹⁶ Joseph C. H. Chai & B. Karin Chai, *China's Floating Population and Its Implications*, 24 INT'L J. SOC. ECON. 1038 (1997).

¹¹⁷ Lin Shuangchuan, *Nongmingong Jiuyenan Tanxi* [Exploring the Employment Difficulties of Rural Laborers], 4 RENMIN LUNTAN [PEOPLE'S POLITICAL SCI.] 26-7 (2009); Liu, *supra* note 95, at 143.

¹¹⁸ Zhu, *supra* note 114, at 44; Kam Wing Chan, Ta Liu & Yunyan Yang, *Hukou and Non-Hukou Migrations in China: Comparisons and Contrasts*, 5 INT'L J. POPULATION GEO. 425 (1999).

¹¹⁹ Zhang Linxiu, Huang Jikun & Scott D. Rozelle, *Employment, Emerging Labor Markets, and the Role of Education in Rural China*, AGRIC. & RESOURCES ECON. WORKING PAPERS 9 (2002).

¹²⁰ Jianfa Shen, *A Study of the Temporary Population in Chinese Cities*, 26 HABITAT INT'L 363, 365-6 (2002); Wang Gang & Wang Yuanxin, *Lun Maiyin Piaochang de Xianzhuang he Duice* [Current Situation and Resolution of Prostitution], 53 GANSU ZHENGFA CHENGREN JIAOYU XUEYUAN XUEBAO [J. ADULT EDUC. OF GANSU POL. SCI. & L. INST.] 98 (2004).

are migrants and temporary residents from the inland provinces.¹²¹ The situation is even worse in large cities. According to one research study on the crime committed by the floating population in Shanghai, more than seventy-one percent of prostitutes are rural women.¹²² The regions prostitutes come from are poor, overpopulated, or remote and mountainous, such as Sichuan and Hunan.¹²³ Therefore, they either suffer individually from economic difficulty or come from very poor families.¹²⁴ Most prostitutes have either only completed middle school or dropped out of school in their adolescence.¹²⁵ These characterizations make them a far cry from the local criteria for rural-to urban migration Hukou conversion, despite the fact that they might have long-resided in cities and towns.

Although there is no official record of a link between drug abuse and prostitution in China, many general features are shared by drug addicts and prostitutes in terms of their social and behavioral profiles. Beginning in the early 1990s, drug abuse spread rapidly in China.¹²⁶ The number of registered drug abusers increased from 70,000 in 1990 to more than three million by the end of 2006,¹²⁷ covering 72.7 percent of Chinese counties/cities.¹²⁸ The real number is undoubtedly far greater than the statistics report. Unlike the pre-reform period, most drug users in contemporary China are of the younger generation, with low educational levels and limited job skills.¹²⁹ The vast majority of surveyed drug abusers

¹²¹ Zhao Jun, *Guanyu Woguo Muqian Changji Wenti de Diaocha Baogao* [Research Report on Prostitution in China], 1 ZHONGGUO QINGNIAN YANJIU [CHINA YOUTH STUDY] 13, 14 (2001).

¹²² Wang Wuding, *Wailai Liudong Renkou Guanli he Shehui Wending* [The Management of Floating Population and Social Security], 5 SHANGHAI GONG'AN GAODENG ZHUANKE XUEXIAO XUEBAO [J. SHANGHAI PUB. SEC. ACAD.] 4-5 (1999).

¹²³ Ren, *supra* note 48, at 1413.

¹²⁴ Huang Yinyin & Pan Suiming, *Zhongguo Dongbei Diqu Liaodongli Shichangzhong de Nuxing Xing Gongzuoze* [The Female Sex Workers in the Labor Market Field in Three Cities of Northeast China], 3 SHEHUIXUE YANJIU [SOC. RESEARCH] 58-61 (2003).

¹²⁵ Editorial, *Improvement of Women's Human Rights Condition in China*, RENMIN RIBAO HAIWAI BAN [PEOPLE'S DAILY OVERSEAS EDITION], 2 Nov. 1998, at 4; Vincent E. Gil, Marco S. Wang, Allen f. Anderson, Guo Matthew Lin & Zongjian Oliver Wu, *Prostitutes, Prostitution and STD/HIV Transmission in Mainland China*, 42 SOC. SCI. & MED. 141, 144 (1996).

¹²⁶ Yu-xia Fang, Yan-bo Wang, Jie Shi, Zhi-min Liu & Lin Lu, *Recent Trends in Drug Abuse in China*, 27 ACTA PHARMACOLOGIC SINICA 140 (2006).

¹²⁷ Zhao Chengzheng et al., *Drug Abuse in China*, 1025 ANN N.Y. ACAD. SCI. 439, 440 (2004).

¹²⁸ Lu & Wang, *supra* note 42, at 306.

¹²⁹ Zhao et al., *supra* note 127, at 441.

remain jobless for lengthy periods.¹³⁰ Lengthy unemployment makes their life vacuous, boring, and lonely, discouraging them from starting a normal life and tempting them to use drugs for the pursuit of ecstasy and excitement.¹³¹ Educational status of drug users determines the likelihood of drug abuse. Different evaluations seem to show an identical finding that, in general, more than three-quarter of drug addicts are only preliminary or middle school graduates.¹³² More notably, most detained drug abusers in cities are rural labour workers with low wages.¹³³ Prior to being detained in compulsory rehabilitation, they have never had legal and scientific education with respect to the dangerousness of drugs, nor have they received guidance on how to avoid possible drug interactions.¹³⁴ One statistical study conducted in Beijing in 2007 in which 598 samples collected, 64.7 percent of drug users are rural labourers with low education attainment, whereas only 35.3 percent are urban residents holding local Beijing Hukou.¹³⁵

Apart from drug abusers and prostitutes, public order offenders handled under the POAPL constitute the rest of administrative offenders. A review of the literature indicates that very few previous statistical studies have been done dealing specifically with public order transgressions by rural labourers or their background variables.¹³⁶ Yet,

¹³⁰ Sun Buqin, Ye Yugao & Tai Linjun, *615 li Hailuoyin Yilaizhe Fuxi Yuanyin Diaocha yu Fenxi* [Researching and Analyzing Reasons of Relapse of 615 Heroin Re-Abusers], 3 ZHONGGUO YAOWU YILAIXING ZAZHI [CHINESE J. DRUG DEPENDENCE] 214, 215 (2001).

¹³¹ Wang, *supra* note 46, at 44.

¹³² Liu Wei, Jie Jihua & Guo Benyu, *104 Li Hailuoyin Yilaizhe Fuxi Yuanyin Diaocha* [Analysis on Reasons of 104 Heroin Dependents Relapse], 4 LINCHUANG XINSHEN JIBING ZAZHA [J. CLINICAL PSYCHOSOMATIC DISEASE] 148, 151 (2004).

¹³³ Bai Junwei, Shiwenya & Qu Youming, *Beijingshi Fengtaiqu 120 li Zaiya Xidu Renyuan Aizibing Xiangguan Xingwei Diaocha* [Research on AIDS-related Behaviors of 120 Drug Abusers in Beijing Fengtai District], 24 ZHONGGUO JIANKANG JIAOYU [CHINESE HEALTH EDUC.] 192 (2008).

¹³⁴ Tang Xinghui, *Nongming Xidu Burong Hushi* [Drug Use by Rural Population Should not be Ignored], 2 ZHONGGUO YAOWU LANRONG FANGZHI [CHINESE J. DRUG ABUSE PREVENTION & TREATMENT] 25, 25-26 (2001).

¹³⁵ Yang Hui, *Wailai Zaijin yu Beijingji Xidu Renyuan Qingkuang Duizhao Fenxi* [The Comparison Analysis between Drug Users with Beijing Hukou and Without Beijing Hukou], 4 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE REV. ON DRUG ABUSE PREVENTION] 190, 192 (2010).

¹³⁶ However, there are a large number of research articles focusing on how to maintain social order and security by effectively managing the “floating population.” See generally Chen Zhen, *Lun Dangdai Zhongguo Shehui Maodun yu Liudong Renkou Zhi'an Wenti* [Discussing Social Conflicts in Contemporary China and Social Order of Floating Population], 2 ZHENFA XUEKAN [J. POL. SCI. L.] 74, 74-77 (1999); Liu Donghua, *Liudong Renkou Fenxi ji Zhi'an Guanli Duice Yanjiu* [The Analysis of Floating Population and Study on Social Order Measures], 6 HENAN GONG'AN GAODENG

some scholars unanimously claim that the high rates of public order offences in cities can be attributed to the large number of rural labourers who do not possess adequate labour skills, struggle to find stable jobs, and fail to adjust to urban living and social environments.¹³⁷

This hypothesis is supported by a survey undertaken on the issue of crime committed by the floating population in Beijing.¹³⁸ This research focuses on the behavioral and social characteristics of rural migrants who committed crime in Beijing during the period of 1996-2005. The study tends to rely on the empirical and statistical analysis to explore the deeper socio-legal factors that trigger migrants' intention of criminality. The findings of this study show that the percentage of the floating population committing crimes had been ascending since the mid-1990s, reaching the pinnacle of sixty one percent in 2005.¹³⁹ Most criminals held agricultural Hukou, and had remained either unemployed or transiently employed since they migrated to Beijing.¹⁴⁰ Although the report does not provide the precise percentage of floaters who were involved in public order offences, it states that the number of rural labourers detained for public order transgressions is way higher than the number of those detained for criminal activities and other local public order breakers who had the Beijing Hukou.

Table 1: Statistical Summary of Administrative Offences and Crimes Committed by Floating People in Beijing

	1996 (Year)	2005 (Year)	Increasing Rate
Administrative Offences	9725 (Person)	47648 (Person)	4.9
Committed Crimes	8025 (Person)	17104 (Person)	2.1

Source: Wang, Cai, Zhang & Guo (2007) p.10.

ZHUANKE XUEBAO [J. HUMAN PUB. SEC. COLL.] 47, 47-50 (2006).

¹³⁷ Chen, *supra* note 136, at 75-77; Daniel J. Curran, *Economic Reform, the Floating Population, and Crime: The Transformation of Social Control in China*, 14 J. CONTEMP. CRIM. JUST. 262, 267 (1998).

¹³⁸ Wang Dazhong, Cai Yanru, Zhang Xiaodong & Guo Bing, *Beijingshi Liudong Renkou Fanzui Wenti Diaocha Baogao* [The Survey Report on the Issue of Crime Committed by the Floating Population in Beijing], 2 ZHONGGUO RENMIN GONG'AN DAXUE [J. CHINESE PEOPLE'S PUB. SEC. U.] 9, 9-15 (2007).

¹³⁹ *Id.*, at 9.

¹⁴⁰ *Id.*, at 10.

Akin to prostitutes and drug abusers, rural public order offenders serve largely as a surplus labour force, who are the least likely to be hired in the urban labour market due to lack of education and skill.¹⁴¹ It is not uncommon that education attainment with this group is low, usually only primary and middle school level.¹⁴² Before migrating to cities, most rural workers do not have adequate opportunities for systematic legal and moral education and occupation training during schooling.¹⁴³ As a result, the majority possess a low level of occupational skills and legal consciousness, which most likely leads to unlawfully harmful conduct when their adaptation to the novel urban environment encounters challenges. Meanwhile, due to the rapid development of urbanization, the floaters' rural traditions and behavioral patterns are no longer compatible with city lifestyles, social networking, cultural surroundings, and management system. The inconsistency thus creates exterior factors that exacerbate the instability and frustration of rural population in the new environment, increasing the likelihood of them committing minor offences such as shoplifting, gambling, and fighting when they are psychologically and financially pressured.¹⁴⁴

2. Inapplicability of Community Corrections in Rural Society

Clearly, the above description of China's administrative offenders reduces the possibility of placing most prostitutes, drug abusers, and public order breakers under the urban community correction system. The current practice is most likely to send floating offenders back to their hometowns for treatment, in an attempt to preserve limited community resources for urban citizens. However, as community correction in China has a very short history and relies heavily on community resources in implementation, it gives rise to the concern that the most rural communities in contemporary China may not be capable of handling returned offenders properly in the context of its unique cultural and traditional environments.

Compared to the advantages of financial and resource supports in promoting educational programs in the urban communities, the rural community is usually ill-developed and equipped with fewer social forces in its implementation. As such, the rural regions that take up eighty percent of the country's territory are barely covered by the operational framework of community corrections, which is most likely to leave rural

¹⁴¹ Chan, Liu & Yang, *supra* note 118, at 425.

¹⁴² Xu Ming, GUANJIAN SHIKE—DANGDAI ZHONGGUO JIDAI JIEJUE DE 27 GE WENTI [CRITICAL MOMENT—27 ISSUES THAT NEED TO BE URGENTLY SOLVED IN CONTEMPORARY CHINA 230 (1997).

¹⁴³ Liu, *supra* note 95, at 155.

¹⁴⁴ Chen, *supra* note 136, at 76-77.

offenders uncared for and unsupervised when they are forced to return back to their registered residences.

Although the implementation of community correction has been greatly encouraged by the government since its commencement in 2003, its use, in practice, has been largely limited to cities and towns where social and human resources are sufficient to bolster the execution of correctional programs. Shanghai, for example, has shaped a relatively sophisticated community correction system. Its rapid success, however, derives from its well-structured and organized working model, in which a government-financed service station is deployed to mainly carry out correctional programs in collaboration with community volunteers.¹⁴⁵ This community-based semi-commercial incorporation has a large number of well-trained social workers, who actively undertake correctional programs by offering their professional and specialized services.¹⁴⁶ These community workers are recruited by the service station, but largely paid by the government.¹⁴⁷ It thus raises the question of whether this centrally-planned model is workable in China's rural community.

In fact, while the urban community is often fostered in perfecting the effectiveness of correctional schemes by strong government support, many rural communities have difficulty formally initiating this mechanism. The reasons are multifaceted. First, rural community corrections suffer significantly from the lack of human resources, including professional workers and law enforcement personnel.¹⁴⁸ Article 9 of the *Provisional Measure of Judicial and Administrative Organs in Administering Community Correction Work* states that local administrative and justice offices are responsible for the implementation of community corrections in rural towns and villages.¹⁴⁹ But, in actuality, most Chinese rural administrative and justice departments are only armed with a small number of government-employed administrative staff together with some

¹⁴⁵ 'Xinhang Community Service Station' was established in 2003, signaling that Shanghai is the first city in China bringing professionalism and commercialism into the practice of community corrections. See ZHU JIUWEI, WEILE HEXIE—WO SUO JINGLI DE SHANGHAI SHEQU JIAOZHENG SHIDIAN GONGZUO [FOR HARMONY—EXPERIMENTAL WORK OF SHANGHAI COMMUNITY CORRECTIONS I EXPERIENCED] 6 (2008) (unpublished report).

¹⁴⁶ WANG, *supra* note 53, at 110-11.

¹⁴⁷ Zhang Chuanwei, *Woguo Shequ Jiaozheng Jinghu Moshi de Bijiao Fenxi yu Xuanze* [The Comparative Analysis and Selection of the Community Correction Model Between Beijing and Shanghai], 1 BEIJING SHEHUI KEXUE [SOC. SCI. OF BEIJING] 58 (2009).

¹⁴⁸ Tang Xiaotian, *Shequ Jiaozheng Shidian yu Jiaozheng Zhiliang de Tigao* [Community Correction Pilot and the Improvement of Community Correction Quality], 18 DANGDAI FAXUE [CONTEMP. L. REV.] 18 (2004).

¹⁴⁹ Provisional Measures, *supra* note 64, art. IX.

part-time social workers.¹⁵⁰ Apart from the exercise of community correction, they are required to undertake considerable legal service activities and neighboring mediation everyday.¹⁵¹ Fengqiao town, the first village to experiment community corrections in China's rural society, has drawn scholarly attention and illustrated this dilemma. Despite the successful implementation of correctional programs based on the system of autonomous regulation,¹⁵² only two officially employed justice workers and fourteen casual officers are assigned to specifically carry out community corrections in this village.¹⁵³ Faced by more than thirty community correction targets in this spacious neighborhood, they are often frustrated with the helpless situation in which they find it impossible to keep up with daily management and time-consuming educational activities.¹⁵⁴

Secondly, scarce funds to perform correctional programs greatly discourage this tool from being widely used in China's countryside. As a new and experimental instrument of administering justice, the cost of implementing community corrections has not yet been officially included in the governments' systematic budgets.¹⁵⁵ Therefore, the practice of educational programs in China's designated locales are mostly financed by temporary and residual funds allocated by the local Justice of Bureau (司法局 *sifaju*).¹⁵⁶ The distribution of capital, however, is discretionary and random in light of the varied needs of implementation.¹⁵⁷ If the authorities are willing to reserve some amount of money for urban community corrections, given the sound city infrastructures and facilities, rural towns

¹⁵⁰ Beijing Fengtai Justice Bureau, *Nongcun Diqu Kaizan Shequ Jiaozheng Gongzuo de Diaocha* [Research on Implementing Community Correction in the Rural Areas], 11 DIAOCHA YU YANJIU [INVESTIGATION & RES.] 34 (2011).

¹⁵¹ *Id.*, at 34-35.

¹⁵² Zeng Yun, *Lun Zhongguo Nongcun Shequ Jiaozheng zhi Moshi yu Lujin* [The Pattern and Path of China's Rural Community Correction—Fengqiao Case], 5 ZHEJIANG SHEJUI KEXUE [ZHEJIANG SOC. SCI.] 41-42 (2006). The system of autonomous regulation refers to the framework in which the town independently manages the village issues and matters and resolves the legal disputes in the context of tribal and familial ties.

¹⁵³ Kong Yi, *Zhongguo Nongcun Shequ Jiaozheng de Kunhuo—Yi Fengqiao Weili* [The Plight of China's Rural Community Correction—Fengqiao Case], 5 JIANXI GONG'AN ZHUANKE XUEXIAO XUEBAO [J. JIANXI PUB. SEC. COLL.] 85 (2005).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Feng Weiguo, Wei Hua & Liu Yanling, *Shequ Jiaozheng de Zhongguo Shijian: Xianzhuang, Wenti yu Duice* [The Chinese Practice of Community Correction: Current Situation, Problems and Resolutions], 2 ZHONGGUO JIANYU ZAZHI [CHINA PRISON J.] 140 (2006).

¹⁵⁷ Kong, *supra* note 153.

and villages are basically treated as the abandoned sectors that are given very little attention to its development of community corrections. This shows in the fact that many rural towns do not have separate and furnished offices for community workers to carry out their legal duties.¹⁵⁸ The grass-roots officials are usually not equipped with the same uniform, working license, or relevant identification or badges for undertaking community corrections.¹⁵⁹ This phenomenon is not unique. Although China has sought to promote the rural society economically and politically over last few decades,¹⁶⁰ a strong urban-biased development policy through various implicit and explicit transfer programs has overridden the entire process of China's economic and social transformation.¹⁶¹ This trend remains strong today.¹⁶² Over time, the rural-urban divide is increasing, including the worsening inequality in income, which is widening regional disparities and allowing less access to state resources by rural people.¹⁶³ In particular, most rural areas in west China are still struggling to fight poverty. The statistics specify that the total population under the poverty-line in China's

¹⁵⁸ Wu Yuedong & Ma Yanli, *Shequ Jiaozheng Zhidu zai Nongcun Diqu de Jiangou* [The Construction of Community Correction System in the Rural Area], 2 RENMIN LUNTAN [PEOPLE'S TRIB.] 118, 119 (2011).

¹⁵⁹ *Id.*

¹⁶⁰ For example, China has made great effort to reduce rural poverty since the rural reform in 1978. For detailed discussions, see Shengen Fan, Linxiu Zhang & Xiaobo Zhang, *Reforms, Investment and Poverty in Rural China*, 52 ECON. DEV. & CULTURAL CHANGE 395-421 (2004); Cheng Fang, Xiaobo Zhang & Shenggen Fan, *Emergence of Urban Poverty and Inequality in China: Evidence from Household Survey*, 13 CHINA ECON. REV. 430-43 (2002).

¹⁶¹ Chan, *supra* note 97, at 209.

¹⁶² Lamia Kamal-Chaoui, Edward Leman & Zhang Rufei, *Urban Trends and Policy in China*, in OECD REGIONAL DEVELOPMENT WORKING PAPER, 7-11 (2009), available at http://www.google.com.au/url?sa=t&source=web&cd=7&ved=0CEUQFjAG&url=http%3A%2F%2Fwww.oecd-ilibrary.org%2Furban-trends-and-policy-in-china_5ksm2qsv7k37.pdf%3Bjsessionid%3D2nacg0edak8qx.delta%3FcontentType%3D%2Fns%2FWorkingPaper%26itemId%3D%2Fcontent%2Fworkingpaper%2F225205036417%26containerItemId%3D%2Fcontent%2Fworkingpaperseries%2F20737009%26accessItemIds%3D%26mimeType%3Dapplication%2Fpdf&ei=JiQhTs2FL-iJmQWI18SWAw&usg=AFQjCNF5FpWU0Ly-fhLsYyMfL8gCFNqfhQ&sig2=gZBAvMBKf9j57-ub25--kQ.

¹⁶³ Shaohua Chen and Yan Wang, *China's Growth and Poverty Reduction: Recent Trends between 1990 and 1999*, in WORLD BANK POLICY RESEARCH WORKING PAPER 3 (2001), available at http://www.google.com.au/url?sa=t&source=web&cd=10&sqi=2&ved=0CHQQFjAJ&url=http%3A%2F%2Fciteseerx.ist.psu.edu%2Fviewdoc%2Fdownload%3Fdoi%3D10.1.1.18.772%26rep1%26type%3Dpdf&rc=tj&q=China's%20Growth%20and%20Poverty%20Reduction%3A&ei=ZiYhTqfLHYT3mAWm8aywAw&usg=AFQjCNFxfk50ZQKzfwBFRJBU5SiNldlp-w&sig2=yIzI6_9-4tQZqDH99WQOlw.

western rural areas is 65.1 percent.¹⁶⁴ They are not only economically poor, but also poor in cultural and social services. According to a research study conducted in 637 western counties in 2000, about 18.3 percent of the total communities cannot connect to the outside by roads, 16.5 percent do not have electricity, 56.5 percent do not have tap water and 57 percent have no telephone equipment to use.¹⁶⁵

As demonstrated above, a large part of migrated minor offenders are believed to be originally from China's poorest prefectures. Handling them in their registered communities will certainly create a huge financial burden on their local rural economy. The rural society will have to upgrade community facilities and resources to meet the needs of implementing community corrections. Operationally, local justice departments will have to increase their recruitment budgets to employ many professional workers and well-trained implementers in order to practically initiate correctional programs. This difficulty further explains the lack of enthusiasm of authorities for spreading community corrections in the countryside and appropriating already limited money towards programs. In effect, when many rural villages still lack basic supplies and have residents living in poverty, it is an extravagant hope to expect them to take on extra demanding legal and social duties of executing community corrections. Therefore, returning migrant offenders back to their Hukou residences essentially means putting them back in society without any social treatment, which will not be beneficial to their correction and re-socialization but instead poses a predictable threat to the stability of their rural neighborhoods.

Thirdly, the cultural and environmental contexts in contemporary rural China are likely to serve as the main hindrances to the successful implanting of community corrections in the countryside. It is clear that the modern Chinese rural sector can no longer be referred to as an agricultural society merely bound by blood and familial ties, functioning based on family unit with a simple communal structure.¹⁶⁶ Since the late 1970s, China's economic reforms have dramatically impacted the social, economic and political aspects of the rural regime.¹⁶⁷ In particular,

¹⁶⁴ Household Survey Office of National Bureau of Statistics of China, 2010 NIAN WOGUO NONGCUN PINKUN RENKOU 2688 WAN [THE POPULATION IN WEST CHINA UNDER THE POVERTY LINE IS 26.88 MILLION IN 2010] (2011), available at http://www.stats.gov.cn/tjfx/fxbg/t20110310_402710030.htm.

¹⁶⁵ Shen Maoying, *Poverty and Anti-Poverty in China Mountain Region*, WORLD FORESTRY CONG. (Conference Paper) (2003), available at <http://www.fao.org/DOCREP/ARTICLE/WFC/XII/0510-A3.HTM>.

¹⁶⁶ Xu Yong & Xu Zengyang, *Zhongguo Nongcun he Nongming Wenti Yanjiu de Bainian Buigu* [The Historical Review of Studies in Last 100 Years on China's Rural Areas and Farmers], 6 HUAZHONG SHIFAN DAXUE XUEBAO [J. OF CENT. CHINA NORMAL U.] 6-8 (1999).

¹⁶⁷ See generally Jean C. Oi, *Two Decades of Rural Reform in China: An*

industrialization, urbanization, and transformation from the collective system to the household-responsibility system have created a dynamic and multi-cultural rural world.¹⁶⁸ This new world has gradually shaped a new social stratification and a multi-level structure of ownership.¹⁶⁹

Despite the spectacular developments of China's rural sector at the economic and social level, however, some far-reaching ideological roots have remained intact. Having been influenced by the Confucian ideals for thousands of years, rural society in China functions based more on customary standards and traditional moral values than law.¹⁷⁰ Some experts point out that if the order and system of China's urban society is theoretically ruled by law, then the rural society is mostly regulated by virtue, morality, and tribal rules that have long been the foundations of Confucian traditions.¹⁷¹ As traditional customs work more effectively than law in rural China, peasants adopt a plain version of standards to discern "good and bad" and deeply believe that "bad people" should be severely punished to serve the purposes of retribution and deterrence.¹⁷²

Such a philosophy is clearly inconsistent with the spirit of community corrections. As a newly adopted means of administering justice in the Chinese penal framework, community corrections advocate education, rehabilitation and rescuing. It emphasizes remolding offenders in order to help them reintegrate into society rather than punishing them to serve the goal of crime control. Therefore, the exercise of this tool requires a relaxing and forgiving environment, as well as participants who possess high levels of legal understanding and consciousness so that they may appreciate the significance of this social treatment. Yet, the current state of rural education indicates that the number of well-educated people in China's rural population is comparatively low, and fewer people have received formal, quality legal education. It is true that, along with rural reforms initiated in 1978, China has made great progress in building the

Overview and Assessment, 159 CHINA Q. 616-28 (1999).

¹⁶⁸ Zhou Lingliang, *Woguo Nongye Jiating Chengbaozhi Lilun he Zhengce de Yanjing Guiji* [The Development Trajectories of the Theories and Policies of Household Responsibility System in China], 4 XUESHU LUNTAN [ACAD. FORUM] 62 (2004).

¹⁶⁹ For a detailed account, see JIE FAN, THOMAS HERBERER & WOLFGANG TAUBMANN, RURAL CHINA: ECONOMIC AND SOCIAL CHANGE IN THE LATE TWENTIETH CENTURY 65-138, 215-36 (2006).

¹⁷⁰ Liu Zuoxiang, *Zhuanxing Shiqi de Zhongguo Shehui Cixu Jiaogou Jiqi Moshi Xuanze* [The Social Control Structure and the Choice of Pattern of the Chinese Society in the Era of Transmission], 5 FALÜ Pinglun [L. Rev.] 38-39 (1998).

¹⁷¹ FEI XIAOTONG, XIONGTU ZHONGGUO [RURAL CHINA] 48-51, 52-3 (1985); Tian Youcheng, *Zhongguo Nongcun Congzhu Wenti yu Xiandai fa zai Nongcun de Mingyun* [The Problem of Rural Clan in China and the Fate of Modern Law in the Rural Society] 2 FALÜ KAXUE [SCI. L.] 3-9 (1996).

¹⁷² Wu and Ma, *supra* note 158, at 119.

rural educational system, such as the establishment and enforcement of nine-year compulsory education in the countryside.¹⁷³ However, the availability and affordability of educational attainment have always been challenged by rural poverty and low educational investment.¹⁷⁴ Some specialists argue that provincial and county economic indicators were closely linked to educational investments, per-pupil spending and school availability.¹⁷⁵ Since the late 1980s, market reforms intensified the relative economic disadvantage of more rural, interior provinces, and interprovincial income inequality increased markedly through the 1990s.¹⁷⁶ Experts claim that “for many poor rural areas, the lack of local government revenues or subsidies from upper levels of government precluded local governments from meeting salary obligations to teachers and from providing a high-quality education system.”¹⁷⁷ As a result, low literacy levels in rural China are still appalling. A Chinese publication illustrates that in the total employed rural population in 2004, 35.9 percent are illiterate or semi-illiterate and 37.2 percent have only completed primary school.¹⁷⁸

Interestingly, apart from basic scientific education, China has long propagated public legal education.¹⁷⁹ In an attempt to consolidate the building of a socialist legal system, China has launched a wide-scale legal education campaign after the smashing of “Gang of Four.”¹⁸⁰ Both urban and rural communities are required to carry out universal legal education to strengthen their residents’ legal consciousness and improve their grasp

¹⁷³ Emily Hannum, *Political Change and the Urban-Rural Gap in Basic Education in China, 1949-1990*, 43 COMP. EDUC. REV. 200-01 (1999).

¹⁷⁴ Tan Songhua, *Nongcun Jiaoyu: Xianzhuang, Kunnan yu Duice* [Rural Education: Current Situation, Difficulties and Solutions], 1 BEIJING DAXUE JIAOYU PINGLUN [PEKING U. EDUC. REV.] 99 (2003).

¹⁷⁵ Loraine A. West & Christine P. W. Wong, *Fiscal Decentralization and Growing Regional Disparities in Rural China: Some Evidence in the Provision of Social Services*, 11 OXFORD REV. ECON. POL. 70-85 (1995); Philip H. Brown & Albert Park, *Education and Poverty in Rural China* 21 ECON. EDUC. REV. 523, 537-8 (2002).

¹⁷⁶ Azizur Rahman Khan & Carl Riskin, *Income and Inequality in China: Composition, Distribution and Growth of Household Income, 1988 to 1995*, 154 CHINA Q. 221-53 (1998).

¹⁷⁷ Mun C. Tsang, *Financing Compulsory Education in China: Establishing a Substantial and Regularized Scheme of Intergovernmental Grants*, 3 HARV. CHINA REV. 1, 15-20 (2002).

¹⁷⁸ Tian Gen & Wang Lihui, *Zhongguo Nongcun Jiaoyu de Xianzhuang Fenxi ji Yingdui Cuoshi* [The Analysis of Current Situation of Rural Education and Resolution], 12 GANSU NONGYE [GANSU AGRIC.] 68 (2005).

¹⁷⁹ Zeng Xianyi, *Legal Education in China*, 43 S. TEX. L. REV. 709 (2001).

¹⁸⁰ Han Depei & Stephen Kanter, *Legal Education in China*, 32 AM. J. COMP. L. 543, 554-55 (1984).

of legal knowledge.¹⁸¹ Given that China is a rurally-dominated country, the authorities have long paid special attention to the enforcement of legal education in rural society.¹⁸² Over last few decades, a series of effective measures have been adapted to strengthen rural legal education, ranging from distribution and explanation of teaching materials to the organization of legal seminars, which study practical cases related to peasant production and life.¹⁸³ Nevertheless, as discussed above, if the institutionalization of fundamental education in rural China is encountering considerable obstacles, then legal education seems unlikely to succeed in raising legal awareness of rural inhabitants as expected. Naturally, legal education in rural China is still a central policy without legislative or regulative grounds.¹⁸⁴ To maintain the basic operation of grass-roots facilities, many rural governments have to carefully consider how to efficiently allocate their tight budgets. Therefore, most villages and towns, especially in some interior and poor locales, are afforded minimal and spontaneous funds to undertake legal educational activities.¹⁸⁵ With legal study organized occasionally and irregularly, rural legal officials have gradually shaped an indifferent and careless attitude to carrying out their assigned obligations.¹⁸⁶

Furthermore, strongly influenced by the ideology of “rule of person,” Chinese rural society maintains an informal social control system built upon social ties and clan’s interferences. When involved in legal issues and disputes, peasants are more inclined to rely on social networks to solve the problem than formal legal procedures.¹⁸⁷ It is in part because

¹⁸¹ Ren Baojin & Wang Qiong, *Jiceng Falü Fuwusuo Fazhan Quxiang yu Nongcun Jiben Falü Fuwu zhi Goujian* [The Direction of Developing Grassroots Legal Service Institution and the Construction of the Basic Legal Service System in Rural China], 11 ZHONGGUO SIFA [JUST. CHINA] 68 (2006).

¹⁸² Chen Zhuangzhi & Xiao Zhonghua, *Xin Xingshixia Nongcun Fazhi Xuanchuan Gongzuo de Xianzhuang, Wenti ji Duice* [The Current Situation, Problems and Resolutions of Rural Legal Education in the Context of New Policy], 8 ZHONGGUO SIFA [JUST. CHINA] 77 (2008).

¹⁸³ *Id.*

¹⁸⁴ Xu Liying & Yuan Guilin, *Nongcun Jiaoyu Ziyuan Peizhi Xianzhuang Diaocha yu Youhua Duice Yanjiu* [The Research on the Current Situation of the Distribution of Resources in Rural Education and Improvement Resolution], 6 JIAOYU FAZHAN YANJIU [EDUC. DEV. RES.] 61 (2006).

¹⁸⁵ Wang Tingyong, *Nongcun Pufa Jiaoyu Cunzai de zhuyao Wenti ji Duice* [Main Problems and Resolutions of Rural Legal Education], 3 LIAONING XINZHENG XUEYUAN XUEBAO [J. LIAONING ADMIN. C.] 37-38 (2004).

¹⁸⁶ Jing Kaiyou, *Nongcun Shequ Jiaozheng Guanli Moshi zhi Tanxi* [The Exploration on the Management System of Rural Community Correction], DONGFANG FAYAN [ORIENTAL LEGAL EYE], Mar. 12, 2012, http://www.dffy.com/faxuejieti/ss/201103/21901_4.html.

¹⁸⁷ Bao Shanhu, *Lun Woguo Nongmin Falü Yishi Tezheng* [The Characteristics of

they concerned that bringing a legal action may be too time-consuming and troublesome, and the result is usually unsatisfactory.¹⁸⁸ More importantly, the deep-rooted system of informal, socially-enforced control causes rural residents to seek and trust help from unofficial controlling groups or individuals, who possess dominant power in the management of local affairs, such as clan leaders and village cadres.¹⁸⁹ In a word, the scholarly community has reached a general consensus that the universality of poverty, the lack of an operational mechanism and the villagers' negative attitude towards participation of legal study serve as three biggest factors hindering legal education in contemporary rural China.¹⁹⁰

From the economic, social, and cultural perspectives, the current Chinese rural community is not nearly capable of incorporating administrative offenders into its social treatment system. Labour mobility, rural poverty, and low literacy brought about by rapid urbanization and economic reform have made most rural regions socially dysfunctional. Furthermore, the economic dependence of these communities to the cities has created significant social and regional disparities between rural and urban sectors.¹⁹¹ Uneven economic growth has led to the deployment and distribution of most social and human resources for the benefit of urban developments.¹⁹² In the meantime, rural residents are qualitatively excluded the access to economic and social opportunities, activities and benefits. Such inequality directly results in inadequacies of infrastructural facilities and resources in rural surroundings, thus leaving the rural community unprepared for returned administrative offenders. Moreover, low educational attainment does not allow rural residents and officials to correctly face and properly handle the physical and psychological characteristics of minor offenders.

Compared to urban social and legal workers, who are professionally trained and have acquired relevant socio-legal knowledge, the rural society requires most rural legal personnel to engage more in handling trivial legal disputes and implementation of superior directions.¹⁹³ As a result, rural social workers lack the resources and

Legal Sense of China's Peasants], 33 NEI MENGGU SHIFAN DAXUE XUEBAO [J. INNER MONGALIA NORMAL U.] 54, 55 (2004).

¹⁸⁸ Chun & Xiao, *supra* note 182, at 78.

¹⁸⁹ Shanhe Jiang & Eric G. Lambert, *Views of Formal and Informal Crime Control and Their Correlates in China*, 19 INT'L CRIM. JUST. REV. 5, 8 (2009).

¹⁹⁰ See generally Chun & Xiao, *supra* note 182, 77-79; Liang Faxiang, *Nongcun Pufa Gongzuo Zhong Zu'ai Yinsu ji Duice Tantaosha* [The Disturbing Elements and Resolutions of Rural Legal Education], 5 GANSU NONGYE [GANSU AGRIC.] 44-45 (2003).

¹⁹¹ Dennis Tao Yang, *Urban-Biased Policies and Rising Income Inequality in China*, 89 AM. ECON. REV. 306, 308-309 (1999).

¹⁹² *Id.*, at 308.

¹⁹³ Cao Jianmin, *Zhongguo Nongcun Fazhi de Xuqiu yu Gongji—Yi Falü*

channels from which they may learn and acquire skills to work positively and cooperatively with offenders in order to stimulate, actively engage, and educate them at different levels.

C. *Social Rejection and Discrimination*

Another major obstacle of incorporating administrative offenders into the community lies in the rejection, discrimination, and fear of the general public against socially and morally harmful behaviours. In contemporary China, the public attitude towards drug use and prostitution is discriminatory and hostile.¹⁹⁴ Drug abusers and prostitutes are often deserted by their families and friends.¹⁹⁵ Even after ending their drug use and prostitution, they are still rejected and looked down upon by the community—a situation that might lead to relapse.¹⁹⁶ Thus, it is important to examine the social cognition framework of administrative offences in China. Based on much relevant empirical evidence, it has become clear that the general public attitudes have become the ideological barrier to the social handling of administrative offenders.

In contemporary Chinese society, drug addiction is widely characterized as a misdemeanour rather than a crime.¹⁹⁷ Abusing drugs,

Yuanzhu wei Shijiao [The Needs and Suppliances of Rule of Law in Chinese Rural Society—From the Perspective of Legal Aids], 12 ZHONGGUO SIFA [JUST. CHINA] 80 (2005).

¹⁹⁴ Liu Xinhui & Ma Li, *Wuhanshi Shehui Renqun dui Maiyin Piaochang Xianxiang Taidu de Diaocha [The Survey on Social Attitude towards Prostitution in Wuhan City]*, 9 ZHONGGUO JIANKANG JIAOYU [CHINESE J. HEALTH EDUC.] 39, 39-40 (1999); Yang Lin & Li Pengcheng, *Xiduzhe Huigui Shehui de Guocheng: Guishu yu Rentong de Boduo [The Process of Drug Abusers' Reintegration into Society: The Deprivation of Belonging and Cognition]*, 2 XINLIXUE TANXI [PSYCHOLOGICAL EXPLORATION] 91, 92-93 (2007).

¹⁹⁵ Yang Lin & Li Pengcheng, *Xiduzhe Huigui Shehui de Guocheng: Guishu yu Rentong de Boduo [The Process of Drug Abusers' Reintegration into Society: The Deprivation of Belonging and Cognition]*, 2 XINLIXUE TANXI [PSYCHOLOGICAL EXPLORATION] 91, 94 (2007); Huang Yingying, Gail E. Henderson, Pan Suiming & Myron S. Cohen, *HIV/AIDS Risk Among Brothel-Based Female Sex Workers in China: Assessing the Terms, Content, and Knowledge of Sex Work*, 31 SEXUALLY TRANSMITTED DISEASES 696 (2004).

¹⁹⁶ Fang Yuxia, Wang Yanbo, Shi Jie, Liu Zhimin & Lu Lin, *Recent Trends in Drug Abuse in China*, 27 ACTA PHARMACOLOGICA SINICA 140, 143 (2006); Liu & Ma, *supra* note 194, at 39-40; WEI MANHUA, *DANGDAI SHEHUI WENTI YU QINGSHAONIAN CHENGZHANG [CURRENT SOCIAL PROBLEMS AND GROWTH OF THE YOUTH]* 184, 190 (2005).

¹⁹⁷ Qing Boyi, *Jiedu Xianxiang Zhonghen Tan [Extensive Discussion of Detoxification Situation]* 8, ZHONGGUO YAOWU YILAI XING ZAZHI [CHINESE J. DRUG DEPENDENCE] 82 (1999).

from the perspective of the public, is an unethical form of behaviour that contradicts social values and morality. Rather than gaining sympathy, drug addicts more frequently face great hostility from the community and even their own families and friends.¹⁹⁸ One study conducted in Gansu Province shows that ninety two percent of residents feel very unsafe around drug addicts and are unwilling to make contact with them due to the fear of potential risk of contracting HIV/AIDS-related illnesses.¹⁹⁹ Indeed, many clinical researches both within and outside China demonstrate that drug addiction, especially injection drug use, accounts for the HIV/AIDS infection and even epidemics in some areas.²⁰⁰ Although these diseases are transmitted through certain specific paths, the Chinese public in general is frightened of the “high” contagiousness of HIV/AIDS due to its low level of medical knowledge and education.²⁰¹ A study regarding the social cognition of HIV/AIDS patients indicates that regardless of social class, the majority of Chinese people have failed to acquire correct information about HIV/AIDS and show fearful, abandoning, and discriminatory attitudes towards HIV/AIDS patients. For example, 42.3 percent of medical teachers in a Guangdong province medical school perceived that HIV virus can be contagious by simply sharing swimming pools, public toilet seats, and mosquito bites.²⁰² Likewise, only 21.28 percent of students in one of the universities located in Hunan Province believed that kissing, coughing, and sharing utensils will not cause the transmission of HIV/AIDS.²⁰³

¹⁹⁸ Anonymous, *Complex Attitudes of Shanghai Residents towards Drug Users, 30% Sympathetic and 40% Discriminatory*, YOUTH DAILY [QINGNIAN BAO] 26 June 2006, available at <http://news.sohu.com/20060626/n243929799.shtml>; Gregory M. Herek, John P. Capitanio & Kieth F. Widaman, *Stigma, Social Risk and Health Policy: Public Attitudes Toward HIV Surveillance Policies and the Social Construction of Illness*, 22 HEALTH PSYCHOLOGY 533 (2003); Yang Jimei, Zhen Lijun & Liu Li, *Xiduzhe Shehui Zhichi Xitong Diaocha Fenxi [Analysis of Drug Abusers' Social Support System Research]*, 3 ZHONGGUO YAOWU YILAI XING ZAZHI [CHINESE J. DRUG DEPENDENCE] 217, 217-220 (2008).

¹⁹⁹ Yang & Li, *supra* note 195, at 93.

²⁰⁰ Xiwen Zhang et al., *Injecting Drug Use and HIV Infection in Southwest China*, 8 AIDS 1141-47 (1994); DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE OF THE WORLD HEALTH ORGANIZATION, *TREATMENT OF INJECTING DRUG USERS WITH HIV/AIDS: PROMOTING ACCESS AND OPTIMIZING SERVICE DELIVERY 1* (2005).

²⁰¹ Zhang Yongzhong & Hong Qian, *HIV Ganran Xinli Fanying Jiqi Lilunxue Duice [Psychological Reaction on HIV Infectiousness and Its Ethical Resolution]*, 17 ZHONGGUO YIXUE LUNLIXUE [CHINESE MED. ETHICS] 9, 9-10 (2004).

²⁰² Wang Yongliang, *Zhongguo Gongzong dui HIV/AIDS Yuhuanzhe de Shehui Xinli Rongren, Zhichi he Guanhuai Chengdu de Yanjiu [The Study on the Chinese Public's Social Tolerance, Support and Care on HIV/AIDS Patients]*, 24 ZHONGGUO GUOJIN WEISHENG JIANYI ZAZHI [CHINESE J. FRONTIER HEALTH & QUARANTINE] 118, 119 (2001).

²⁰³ *Id.*

In addition to stigma stemming from perceived danger surrounding disease, drug addicts in China are usually considered a group, which represents moral degradation, physical laziness, and mental vacuousness.²⁰⁴ The Gansu-based study reveals that almost one hundred percent of community residents are reluctant to build deep and long-term relationships with drug abusers, such as loaning them money, creating romantic relationships, or getting married to them.²⁰⁵

These popular attitudes are further reflected in the relapse of drug abuse. Statistical surveys observe that the recidivism of drug addicts is appalling in China. One recent report illustrates that an estimated sixty to ninety five percent of detoxified patients in China relapse within one year.²⁰⁶ Most recidivists went through compulsory detoxification treatments in either a compulsory drug rehabilitation centre or a reeducation through labour camp,²⁰⁷ but neither exerts a positive effect on the eradication of drug addiction.²⁰⁸ By exploring the psychobiological and mental roots of drug recidivism, many scholars argue that the inadequacy of social and familial attention and care increases the risk of relapse.²⁰⁹ According to studies on the personality characteristics of different types of detoxified drug re-abusers, emotional disregard toward drug addicts is the factor most likely to induce mental depression and anxiety and result in a lack of confidence and pessimistic attitude. This, in turn, pushes the detoxified drug users back into drug abuse for relief from mental discomfort.²¹⁰

The public holds some similar attitudes towards prostitution. It is important to note that the expeditious economic growth in China has

²⁰⁴ Chen Yongsheng & Wang Yiqing, *Guanyu Qingshaonian Xidu de Ruogan Sikao [The Thinking of Drug Use by Young Adults]*, 32 NINGBO DAXUE XUEBAO [JOURNAL OF NINGBO UNIVERSITY] 33 (2010).

²⁰⁵ Yang & Li, *supra* note 195, at 92-93.

²⁰⁶ Lu & Wang, *supra* note 42, at 311.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Wang Xiaohong, *Yufang Jieduzhe Fuxi de Xinli Zhilia [Psychological Therapy to Prevent Relapse of Drug Users]*, 48 ZHONGGUO LINCHUANG KANGFU [CHINESE J. CLINICAL REHAB.] 138, 139 (2005).

²¹⁰ Wang Yaohua, Luo Ming and Chen Tingjin, *Hailuoyin Yilai zhe Renge Fenxi [Analysis on Personality Characteristics of Heroin Addicts]*, 2 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE J. DRUG ABUSE PREVENTION & TREATMENT] 14 (1998); Zhang Zhenyu, Tang Jian & Die Wenxiu, *Butong Tedian de Jiedu Laojiao Fuxi Renyuan Renge Tezhen Fenxi [Analysis on Personality Characteristics of Different Features of Rehabilitated Drug Re-Abusers after Re-education through Labour]*, 5 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE J. DRUG ABUSE PREVENTION & TREATMENT] 9, 11 (2002).

significantly affected this country's social ideology and culture.²¹¹ As part of the economic transformation, many people have accepted that "to be rich is glorious" and place making money as their highest priority.²¹² Meanwhile, an increasingly small group of upper-income earners now control a staggeringly large portion of China's wealth, while many citizens, especially rural people, live in poverty and hunger.²¹³ This has led to divided feelings in the public about women who provide sexual services. On one hand, some people recognize the necessity of prostitution in a modern society²¹⁴ and justify it as women's right to trade their own body for money in an effort to get rid of poverty, acquire resources for their future, and realize gender equality.²¹⁵ On the other hand, popular culture still portrays prostitutes as women who sell their souls for "dirty money," if they are not forced into prostitution.²¹⁶ A study designed to collect public attitudes toward prostitution in Wuhan City demonstrates this mainstream view. In this report, 91.3 percent of 159 interviewed residents characterize prostitution as a morally-unacceptable behavior.²¹⁷ Eighty seven percent of residents objected to proposals to decriminalize prostitution and establish red light district by arguing that the legalization of prostitution will exacerbate declining moral and social values.²¹⁸

The negative feedback on prostitution is also attributed to the concern over the potential contagiousness of sexually transmitted diseases. As sex workers in China are mostly from interior and ill-developed areas

²¹¹ For the detailed discussions, see Thomas G. Rawski, *Social Capabilities and Chinese Economic Growth* in SOCIAL CHANGE IN CONTEMPORARY CHINA (Tang Wenfang & Burkart Holzner eds., 2002) 89-103; Lin Yifu, *Jingji Fazhang yu Zhongguo Wenhua Fuxin [Economic Growth and Chinese Cultural Revival]*, 46 BEIJING DAXUE XUEBAO [J. PEKING U.] 5-10 (2009).

²¹² Dean G. Rojek, *Chinese Social Control: From Shaming and Reintegration to 'Getting Rich Is Glorious' in CRIME AND SOCIAL CONTROL IN A CHANGING CHINA* (Jianhong Liu, Lening Zhang & Steven F. Messner eds., 2001) 93-99; ORVILLE SCHELLO, *DISCOS AND DEMOCRACY: CHINA IN THE THROWS OF REFORM* 38 (1998).

²¹³ For a comprehensive insight into income distribution and disparity during the period of Chinese economic reform, see Azizur Rahman Khan, Keith Griffin & Carl Riskin, *Income Distribution in Urban China During the Period of Economic Reform and Globalization*, 89 AM. ECON. REV. 296, 296-300 (1999).

²¹⁴ Li Yinhe, *Maiyin Feizuihua [Non-Criminalization of Prostitution]*, 18 RENMIN GONG'AN [PEOPLE'S POLICE] 9 (2000); Zhu Qi, *Guanyu Kaishe Hongdengqu he Yufang Xingbing Aizhibing de Sikao [The Thinking of Establishing Red Light District and Preventing HIV and AIDS]*, 9 ZHONGGUO XING KEXUE [CHINESE J. HUMAN SEXUALITY] 1, 1-4 (2000).

²¹⁵ Li, *supra* note 214, at 9.

²¹⁶ Li, *supra* note 214, at 9.

²¹⁷ Liu & Ma, *supra* note 194, at 39.

²¹⁸ *Id.*, at 40.

where fundamental education is lacking, most of them have little knowledge of HIV/AIDS and their forms of transmission.²¹⁹ As a result, their widespread and unprotected sexual activities cause the spread of HIV in China. In one study of 701 prostitutes from a Shenzhen reeducation through labour centre, ten percent had never heard about AIDS, 21.7 percent perceived that AIDS is a disease confined to the homosexual population, and approximately thirty-five percent believed that AIDS is completely curable.²²⁰ Misconceptions about HIV infection determine the frequency of using condom by prostitutes.²²¹ Many relevant studies observe that condom use by Chinese sex workers is irregular and random, depending typically on the willingness of customers.²²² For example, a qualitative study carried out on commercial sex workers in Ji'nan city indicates that only fifty percent out of 158 prostitutes used condoms frequently, while about twenty seven percent barely or never used condom during their sex services.²²³ Furthermore, research findings articulate that prostitution and drug use are always closely tied.²²⁴ A large number of prostitutes are also drug addicts, abusing substance due mainly to their

²¹⁹ Lau J. T. & Thomas J., *Risk Behaviours of Hong Kong Male Residents Travelling to Mainland China: A Potential Bridge Population of HIV Infection*, 13 AIDS CARE 71, 73 (2001).

²²⁰ J. T. F. Lau, H. Y. Tsui, P. C. Siah & K. L. Zhang, *A Study of Female Sex Workers in Southern China (Shenzhen): HIV-Related Knowledge, Condom Use and STD History*, 14 AIDS CARE 219, 223 (2002).

²²¹ Zhou Jianfang, *Liudong Renkou AIDS Xiangguan Zhishi, Taidu he Xingwei Diaocha* [The Research on AIDS-Related Knowledge, Attitude and Behaviors of Floating Population], 11 ZHONGGUO GONGGONG WEISHEN [CHINESE J. PUB. HEALTH] 1296, 1296-1297 (2005); Sun Baoshan, Lin Peng, Wang Shenyong, Hequn & Xu Yaoheng, *Xing Wufu Xiaojie Xingbing Aizibing Zhishi Diaocha ji Anquantao Shiyong Yingxiang Yinsu Fenxi* [The Investigation on Prostitutes' Knowledge of HIV and AIDS and the Analysis of Influencing Factors on the Use of Condoms], 6 GUANGDONG YIXUE [GUANGDONG MED. J.] 709, 709-710 (2004).

²²² William C. W. Wong, M. B. Ch. B. & Wang Yilin, *A Qualitative Study on HIV Risk Behaviors and Medical Needs of Sex Workers in a China/Myanmar Border Town*, 17 AIDS PATIENT CARE & STDS 417 (2003); Yingying Huang, Gail E. Henderson, Suiming Pan & Myron S. Cohen, *HIV/AIDS Risk Among Brothel-Based Female Sex Workers in China: Assessing the Terms, Content, and Knowledge of Sex Work*, 31 SEXUALLY TRANSMITTED DISEASES 695, 699 (2004).

²²³ Chen Shumin, Li Bing, Li Changling, Shi Benqing & Li Zhongwei, *Shangyexing Xingjiechu zhong Biyuntao Shiyong Pinglü ji Yingxiang Yinsu Diaocha* [The Survey of the Frequency of Using Condom in Commercial Sex and Its Influential Factors], 4 ZHONGGUO XINGBING ZIZIBING FANGZHI [CHINESE J. STDS & AIDS PREVENTION & CONTROL] 8, 9 (1998).

²²⁴ See generally, Silbert M. H., Pines A. M. & Lynch T., *Substance Abuse and Prostitution*, 14 J. PSYCHOACTIVE DRUGS 193-97 (1982); John J. Potterat, Richard B. Rothenberg, Stephen Q. Muth, William W. Darrow & Lynanne Phillips-Plummer, *Pathways to Prostitution: The Chronology of Sexual and Drug Abuse Milestones*, 35 J. SEX RESEARCH] 333-40 (1998).

sense of curiosity, negative self-concept and psychological paralysis.²²⁵ A survey undertaken to study HIV infection of prostitutes in Hainan Province reveals that in 593 rehabilitated female sex workers, 98.2 percent sold sex to earn money to purchase drugs.²²⁶

Compared to the highly negative social responses toward drug abusers and prostitutes, the general attitudes toward public order offenders are relatively mild. This is because public order breakers in China commit transgressions that are not serious enough to be criminalized. In response to their misconduct, only a short-term incarceration for a maximum period of twenty days is imposed on the most “severe” offenders.²²⁷ Moreover, minor wrongdoers break the law due mainly to their intuitive-impulsive consciousness or certain unexpected sporadic incidents.²²⁸ Most of them are later found to express shame and remorse for their past conduct and long for social forgiveness and acceptance.²²⁹

However, with enormous migration waves from rural areas to urban territories over last decades, the continuously increasing rates of public order offence have raised public concern over the issue of social security. A fieldwork study conducted in Beijing, Chongqin, and Guangzhou in 2000 shows that approximately seventy six percent of people considered conditions of social safety and order either average or poor.²³⁰ In terms of urban residents in particular, the finding reveals that the coefficient of sense of social security has dramatically dropped during the period of 1988-1998.²³¹ More specifically, around forty percent of interviewed residents or their relatives were reportedly victims of a crime or public order offence, and 23.2 percent witnessed the occurrence of a crime or a minor offence in their life.²³²

²²⁵ Yao Jianlong, *Dui Nvxing Xidu Wenti de Tanta*o [The Discussion on Drug Use by Females], 6 QINGSHAONIAN FANZUI WENTI [ISSUES ON JUV. & DELINQ.] 47, 48-51 (2001); WANG GANGFENG, ZOU XIANG HEXIE SHEHUI [WALKING TOWARD THE HARMONIOUS SOCIETY] 148-155 (2005).

²²⁶ Pei Dongnu & Yang Bing, *Hainansheng Xidu Anchang Xingweixue ji Meidu Ganran Diaocha* [The Behavior Pattern and HIV Infection of Prostitutes on Drugs in Hainan Province], 3 ZHONGGUO XINGBING AIZIBING FANGZHI [CHINESE J. STD & AIDS PREVENTION & CONTROL] 160 (2002).

²²⁷ POAPL, *supra* note 3, art. XVI.

²²⁸ Joan Petersilia, *When Prisoners Return to Communities: Political, Economic and Social Consequences*, 65 FED. PROBATION 5 (2001).

²²⁹ Susanne Karstedt, *Emotions and Criminal Justice*, 6 THEORETICAL CRIMINOLOGY 300 (2002).

²³⁰ Wang Dawei, Zhang Banshi & Wang Junxiu, *Zhongguo Jumin Shehui Anquangan Diaocha* [The Study on Sense of Social Security of Chinese Residents], 9 TONGJI YANJIU [STATISTICAL RESEARCH] 23, 26 (2002).

²³¹ *Id.*, at 28.

²³² *Id.*

As demonstrated earlier, inflowing rural labourers have contributed statistically to social unease in the form of committing crime and violating social order. As such, they are frequently portrayed negatively in the media and perceived as a direct threat to social stability.²³³ In effect, there is a tendency in some modern and large Chinese cities for local residents to blindly and willfully blame rural migrants for the worsening of public order and safety.²³⁴ To show their unwelcoming attitude, local residents have begun to make migrant workers experience unpleasant social encounters, such as verbal disrespect or deliberate avoidance.²³⁵ However, the discrimination, social isolation, and unjust treatment by urban residents in turn enhance rural migrants' sensitivity, desperation, and helplessness in the urban communities.²³⁶ They are more inclined to develop an antagonistic mentality against the social surroundings, being easily irritated and provoked to engage in serious public order offences, such as street fighting and public property damage.²³⁷

Not surprisingly, the behavioral patterns and socio-cultural attributes of drug abusers, prostitutes, and public order offenders produce the greatest social hindrance to achieving the proposed community socialization. It is most likely that local residents, especially urban inhabitants, would object to accept alien individuals and groups in their neighboring system to maintain purity and integrity of the community. Such opposition, however, is not totally unpredictable. Many legal practitioners have observed that effective implementation of current community corrections in China is challenged by a great deal of

²³³ Daniel Fu Keung Wong, Chang Yingli & He Xuesong, *Rural Migrant Workers in Urban China: Living a Marginalised Life*, 16 INT'L J. SOC. WELFARE 32, 36 (2007).

²³⁴ Wang Chunguang, *Xinshengdai Liudong Renkou de Shehui Rentong yu Chengxiang Ronghe de Guanxi* [The Relationship between Social Reorganization and Rural-Urban Assimilation of Floating Population in the New Generation], 3 SHEHUIXUE YANJIU [SOC. RES.] 70 (2001).

²³⁵ For example, in one of the most popular internet forums (宽带山 *kuandaishan*) in Shanghai, many local internet users humiliatingly call rural migrants hard disk (硬盘 *yingpan*) or. This term is derived from a well-know brand of computer hard disk, West Digital, the first letters of which coincide with Chinese Pinyin of rural regions (外地 *waidi*).

²³⁶ Pei Fei, *Shanghai Shimin Anquangan yu Wailai Renkou Erdai Fanzui Wenti Yanjiu* [The Study on Sense of Security of Shanghai Residents and Crimes Committed by the Second Generation of Rural Migrants], 6 DANGDAI QINGNIAN YANJIU [CONTEMP. YOUTH RES.] 64, 65-66 (2007).

²³⁷ Wei Hongxin, *Nongminggong Weifa Fanzui zhi Jiaose Fenxi* [The Role Analysis of Offences and Crimes by Rural Labourers], 6 ZHONGGUO RENMIN GONG'AN DAXUE XUEBAO [J. CHINESE PEOPLE'S PUB. SEC. U.] 78, 79-82 (2002).

ideological impediments from the public and community residents in particular.²³⁸

Although the use of community correctional programs are now widespread in China's three-tier institutional structure (city, district, and town), its enforcement is actually more order-driven than socially-needed. The prevailing rhetoric of criminality among Chinese ordinary citizens favors harsh punishment and lengthy incarceration.²³⁹ From the perspectives of criminology and victimology, most people are concerned that they could become victims if criminals are not heavily penalized and imprisoned to realize the ultimate goals of retribution and deterrence.²⁴⁰ This mentality is partially derived from the strong penal emphasis of the imperial law.²⁴¹ A common feature shared by penal codes of many ancient dynasties was the stipulation of harsh and precise punishments.²⁴² A system of brutal and inhuman punishments was extensively used in China's ancient times.²⁴³ Many corporal punishments and death penalties were carried out publicly, aiming at educating and deterring the general public into obedience and allegiance with the government.²⁴⁴

Although the socialist justice system has incorporated and gradually emphasized the elements of re-education and rehabilitation of offenders in its practice,²⁴⁵ the principle of severe punishment (重刑主义 *zhongxing zhuyi*) has not been eliminated. Instead, this principle has been reinforced in the Hard Strike campaigns since the 1980s. The Hard Strike campaigns were intermittent activities initiated by the government to stop

²³⁸ DAN, *supra* note 83, at 154; WANG, *supra* note 53, at 143; Ruan Chuanshen, *Woguo Shequ Jiaozheng Zhidu: Yuanqi, Wenti yu Wanshan* [The Chinese Community Correction System: Roots, Problems and Perfections], 1 BEIJING XINGZHENG XUEYUAN XUEBAO [J. BEIJING ADMIN. COLL.] 99 (2011).

²³⁹ Allan Y. Jiao, *Police and Culture: A Comparison between China and the United States*, 4 POL. Q. 160 (2001); Hu Xuexiang & Zhou Tingting, *Dui Woguo Zhongxing Zhuyi de Fansi* [The Rethinking of the Principle of Harsh Punishment in China], 8 FALÜ SHIYONG [LAW APPLICATION] 71 (2005).

²⁴⁰ LIN MAORONG & YANG SHIRONG, JIANYUXUE—FANZUI JIAOZHENG YUANLI HE SHIWU [PENOLOGY—THE PRINCIPLES AND PRACTICES OF CORRECTING CRIMINALS] 236 (1999).

²⁴¹ Hong Lu & Lening Zhang, *Death Penalty in China: The Law and the Practice*, 33 J. CRIM. JUST. 367 (2005).

²⁴² *Id.*

²⁴³ Børge Bakken, *China, A Punitive Society?*, 6 ASIAN CRIMINOLOGY 33, 36.

²⁴⁴ Lu & Zhang, *supra* note 241, at 367.

²⁴⁵ Wu Zongxian, *Western Prisons and Chinese Prisons: Focusing on Differences*, 11 EUR. J. CRIME, CRIM. L. & CRIM. JUST. 93, 94 (2003); Victor H. Li, *Law and Penology: Systems of Reform and Correction*, 31 PROCEEDINGS ACAD POL. SCI. 144, 152-5 (1973).

crime waves by swiftly and severely punishing serious criminals.²⁴⁶ Research into three large-scale rounds of severe strikes that were launched in 1983, 1996, and 2001 revealed that a wide range of specific crimes and administrative offences were speedily and harshly handled in those campaigns, in line with the political needs of each different phase.²⁴⁷ During these crackdowns, criminals were punished more severely than the penalties stipulated by the criminal laws.²⁴⁸ Statistical surveys show that death sentences and executions in such anti-crime campaigns were prevalent.²⁴⁹ At the same time, substantially stiffer fixed-term sentences were imposed on those who had committed administrative offences.²⁵⁰ According to one of Chinese law experts, the aim of Hard Strike is “to procure a reduction in the crime rate and to restore social order.”²⁵¹ This goal “is to be achieved both by a policy of ‘severity and swiftness’ in processing criminals in the judicial system and by uniting the work of the three arms of the criminal justice system—the public security bureau, the procuratorate and the courts—in an all-out attack on offenders who endanger the social order.”²⁵² As a result, the public has begun to attribute the recent deterioration of public order simply to light punishment and discontinuation of the Hard Strike movement.²⁵³ A reliance on grave punishment to solve the rising crimes and public order issues has now been deeply rooted in the Chinese society.²⁵⁴

The public preference of adopting a disciplinary and punitive society undoubtedly contradicts the ideological and constitutive nature of community corrections. Many residents address their concern that placing offenders under community treatment is too lenient to penalize their

²⁴⁶ Bin, *supra* note 17, at 391 (2005).

²⁴⁷ Susan Trevaskes, *Severe and Swift Justice in China*, 47 BRIT. J. CRIM. 23, 25 (2006).

²⁴⁸ Bin, *supra* note 17, at 392.

²⁴⁹ For example, the estimated number of death sentences and executions was 6,000 and 4,015 in 1996 and 2001 respectively. The figures for other years between 1995 to 2003 were around 1,500. For detailed information of death sentences and executions in the anti-crime campaigns, see AMNESTY INTERNATIONAL, DEATH PENALTY 3 (1996); AMNESTY INTERNATIONAL, ANNUAL REPORT ON CHINA (1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004).

²⁵⁰ TANNER, *supra* note 17, at 45.

²⁵¹ Susan Trevaskes, *Public Sentencing Rallies in China: The Symbolizing of Punishment and Justice in a Socialist State*, 39 CRIME L. & SOC. CHANGE 359 (2003).

²⁵² *Id.*

²⁵³ Feng Weiguo, *Lun Shequ Jiaozheng de Lilun Jichu yu Fazhan Gousi* [Theoretical Basis and Development Design of Community Correction], 5 ZHONGGUO JIANYU [CHINA PRISON J.] 24 (2004)

²⁵⁴ Bakken, *supra* note 243, at 44.

criminality.²⁵⁵ They are worried that the use of community corrections represents benevolence and kindness that will impinge on the authority and justice of law, hence giving offenders the second chance to commit further crimes.²⁵⁶ In addition, the extreme hatred, contempt, and avoidance of offenders enables the general public to believe that criminals deserve abandonment and humiliation rather than care and help. Many discontented residents further argue that the sharing of social resources by community corrections offenders is inappropriate and rather unfair to other law-abiding citizens.²⁵⁷ Clearly, social rejection and repulsion have had a chilling effect on re-socialization of offenders in China. Many offenders are sensitive to, or even ashamed of their identity as a law-breaker in the ways that they refuse to participate in legal education and community services and to accept social workers' visits.²⁵⁸ Over-suspicion and self-abandonment are also found in the psychological assessment of a substantial number of offenders.²⁵⁹ On one hand, offenders care about how families and friends think of them, and are easily affected by the negative responses by them. On the other hand, they fear to face their families and friends, and would rather stay alone to spare the foreseeable embarrassment.

CONCLUSION

Reforming China's administrative justice system is never limited in the legal sense. Although much literature has been introduced on how to rationalize or eliminate this legal scheme, the strong correlations of this system with socio-cultural contexts are largely overlooked. More specifically, Chinese prostitutes, drug abusers, and public order offenders, at the behavioural and psychological level, are more like a socially marginalized population excluded from the mainstream social culture than pure criminals. The desire to effectively remould and successfully help them integrate into conventional society should always outweigh the pursuit of justifying a corrupt legal system, which stresses compliance

²⁵⁵ DAN, *supra* note 83, at 156.

²⁵⁶ *Id.*, at 157.

²⁵⁷ A Mo, *Cong Gaoqiang Jianguan dao Jiazhong Fuxing* [From Incarceration inside the Wall to Serving Sentence at Home], MINZHU YU FAZHI [DEM. & L.], 31 Mar. 2011, available at <http://www.mzyfz.com/index.php/cms/item-view-id-49943?verified=1>.

²⁵⁸ Li Hong, *Shequ Fuxing Renyuan Buliang Xinli Fenxi yu Jiaozheng* [The Analysis and Correction of Unhealthy Psychological State of Offenders under Community Correction], 9 RENMIN TIAOJIE [PEOPLE'S MEDIATION] 35, 35-36 (2008).

²⁵⁹ Li Hong, *Shequ Fuxing Renyuan Buliang Xinli Fenxi yu Jiaozheng* [The Analysis and Correction of Negative Psychological Expressions of Community Correction Targets], 9 RENMIN TIAOJIE [PEOPLE'S MEDIATION] 35, 35-36 (2008).

with the rule of law principle with little regard to the practical effectiveness on preventing reoffending.

Indeed, from the correctional and educational perspectives, community corrections that abound with positive social factors and rich social resources may serve as a better substitute to the current administrative justice system. But the reality reveals that the practical operation of community corrections in the context of Chinese legal, economic, and social culture can hardly achieve this ultimate goal as planned, at least in a short run.

Other than the shaky legal foundations of the Chinese community corrections system, the most alarming factors in the practice of this instrument spring from institutional and social aspects. Foremost, the genuinely widespread use of community corrections will not be realizable without the eradication of social and spatial stratification, as well as rural-urban inequalities. More precisely, the Hukou system that divides Chinese people into two different categories—“the haves” and “the have-nots”—has formed an invisible wall, which limits most administrative offenders’ access to the services of community corrections. While a small number of urban offenders may be placed under community treatment, the substantial population of rural offenders are most likely to be left unsupervised and uncared for, due to the lack of the effective community correctional mechanisms in rural communities. In addition, social rejection and avoidance generates an environment where community corrections are functionally misunderstood and locally repulsed. Such general attitudes encompass not only the negative perception towards behaviours and individuals that endanger social order and morality, but also feelings of superiority and resentment felt by urban people towards the rural population, who are viewed as the potential lawbreakers and a drain on urban community resources.