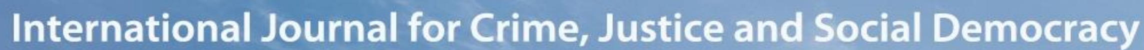

Community Corrections Under the Principal Sources of Sentencing Decisions in China: The Challenges in Sentencing Practice

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Abstract

This article provides an overview of community corrections under the principal sources of sentencing decisions in China. It finds some disparities between the initial design and the actual rules on sentencing, which reflect some deep and abiding underlying issues of the penal system. In turn, these restrict further expansion of community corrections.

Keywords

Community corrections; sentencing practice; China's legal reform; China's criminal policy.

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Introduction

On 28 December 2019, China's top legislating body, the Standing Committee of the National People's Congress (NPC), adopted a law on community corrections, set to take effect on 1 July 2020. It is China's first law to provide for community corrections in detail.

China initiated reform of community corrections in 2003. The project set two goals—the first regards their expansion as an alternative to imprisonment, and the second sets to improve their effectiveness by developing new offender management and corrections programs (Article 1 of the Announcements on the Development of Pilot Locations for Community Corrections; hereafter 'Announcements').[1] In the reform project's official rhetoric, Chinese community corrections share similar goals with those in the West. The programs can be applied to existing community-based punishments (i.e., public surveillance [PS], suspended sentences, parole, temporarily serving a sentence outside prison and deprivation of political rights)[2] under the Criminal Law and the Criminal Procedure Law of the People's Republic of China (Article 2 of the Announcements). Criminals in community corrections programs receive assistance to address their respective mental and behavioural problems and are reintegrated into society by specialised state organs, with the help of non-government organisations and volunteers (Article 1 of the Announcements). The idea of community corrections was introduced into China's Criminal Law in 2011 and in Criminal Procedure Law in 2012.

Thus far, the system has instead been managed with several terse joint statements on community corrections formulated by the Supreme People's Court (SPC), the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice (MJ). As some officials find hotchpotch of regulations confusing and lacking in legal weight (The Economist 2019), the Law on Community Corrections was drafted to remedy this. Article 1 aims specifically at instructing practitioners on how to carry out community corrections following sentencing decisions. However, it does not elaborate in detail how to determine eligibility. As such, the SPC sets forth detailed interpretations guiding community corrections sentencing, which not only reiterate the overt rationale alleged by central authorities, but also manifest the covert rules within the bureaucracy. Thus, inconsistencies between the official statements and the detailed regulations can reveal the actual rationale underlying community corrections.

After initiating a pilot program, community corrections became subject to intense debate in China. Many Chinese articles reviewed the program from both theoretical and empirical perspectives, but only several English-language journal publications covered China's community corrections in detail. Jiang et al. (2014) provided an account of the evolution and challenges of China's community corrections, while S.D. Li (2014) reviewed the objectives and scope of implementation, and the potential barriers faced. Jiang et al. (2015) analysed the data of 764 Chinese citizens and found that most respondents supported community corrections. Meanwhile, Jiang, Lambert et al. (2016) and Jiang, Jin et al. (2016) evaluated data from a survey of 225 community corrections officers in a Chinese province. Jiang, Lambert et al. (2016) inferred that the majority were satisfied with their jobs, while Jiang, Jin et al. (2016) found that officers integrated punishment and rehabilitation orientations. Elsewhere, E. Li (2015) explored the link between community corrections in practice and a theoretical model from Western criminal justice systems (notably actuarial justice), and Li (2016) analysed the gap between the rhetoric and actual operation.

In contrast, Western literature tends to focus on the operation of China's community corrections, introducing them in theory through literature reviews and examining them in practice through interviews with officers and social workers. Many scholars pointed out that the ambivalent legal requirement on community corrections hampered its effective operation. However, few studies explored the programs in terms of their adjudication and sentencing.

The legal terms on who is eligible for corrections in the Criminal Law and the Criminal Procedural Law are equivocal and provide only the scaffolding. It is the judicial interpretations, the Sentencing Guidelines and the Guiding Cases that flesh out these vague legal terms: they are necessary complements to the legal provisions. In particular, Article 4 of the Legislation Law provides that the SPC has competency over

interpretations on the specific application of law, and often loosely interprets the Criminal Law to meet the present issues in a rapidly changing society. Application of the SPC's judicial interpretations provides the NPC and its Standing Committee an opportunity to test the waters before amending the Criminal Law. Ensuing amendments often incorporate the contents of judicial interpretations. Therefore, the SPC has factual lawmaking power, and its judicial interpretations are usually recognised as quasi-legislation (Ahl 2019).

Ahl (2019) draws attention to the SPC's active legislative function, which actively distinguishes it from that of the constitutional courts in liberal constitutional systems. Whereas the SPC's judicial interpretations have factual binding effect, the Sentencing Guidelines and Guiding Cases are not law. The use of both items is a relatively recent innovation in China's judicial reform. They are expected to alleviate the problems of interpretive ambiguity and adjudicative consistency, but lacking issuance and usage of Guiding Cases renders their function in judicial practice obscure (Ahl 2019; Jia 2016).

This article aims to approach a comprehensive understanding of who is eligible for community corrections. It examines the principal sources for sentencing decisions on community corrections under China's legal and judicial systems, including not only the legal requirements on community corrections under the Criminal Law, but also detailed instructions published by the SPC guiding how to determine *who* is eligible for community corrections (i.e., the judicial interpretations, the Sentencing Guidelines and the Guiding Cases). The article also examines nationwide statistics from the SPC and MJ on community corrections. The instructions set forth by the former not only reiterate the overt rationale alleged by central authorities, but also manifest the covert rules within Chinese bureaucracy. Thus, any inconsistencies between the initial design and the detailed regulations can reveal why the role of community corrections in China has changed.

The Conditions of Community Corrections Under the Criminal Law

Public Surveillance

Under the Criminal Law, PS, independent fines or independent deprivation of political rights is typically issued in conjunction with imprisonment of less than three years or criminal detention for certain crimes. However, all three elements are rarely given in practice. As Table 1 illustrates, only 7,372 offenders were sentenced to PS in 2017, accounting for 0.59% of all criminal punishments issued that year. The number of offenders under PS is otherwise decreasing.

Table 1: Number of different punishments in criminal sentences nationwide, 1999–2017

	Offenders issued independent fines, independent deprivation of political rights of a fixed term, or deportation	Offenders under public surveillance	Offenders with suspended sentences	Offenders under criminal detention, imprisonment and/or the death penalty	Total offenders issued criminal punishments
1999		7,515	90,387		608,269
2000		7,822	102,459		646,431
2001		9,481	110,494		751,146
2002	12,121	9,994	117,278	551,213	690,606
2003	14,275	11,508	135,927	569,645	733,358
2004	17,611	12,553	154,429	568,731	753,324
2005	19,575	14,604	184,366	610,693	829,238
2006	32,054	16,166	206,541	629,085	883,846
2007	24,675	15,882	227,959	648,094	916,610
2008	27,447	18,065	249,111	695,369	989,992
2009	23,554	16,833	250,635	688,421	979,443
2010	22,430	16,171	265,230	684,632	988,463
2011	22,125	14,829	309,297	686,215	1,032,466
2012	23,602	12,853	355,302	762,675	1,154,432
2013	24,819	14,641	356,523	742,570	1,138,553
2014	23,951	12,226	368,129	760,225	1,164,531
2015	23,059	11,768	363,517	815,292	1,213,636
2016	23,859	9,463	366,321	799,960	1,199,603
2017	22,997	7,372	347,989	869,465	1,247,823

Source: Data sourced from the *Law Yearbooks of China* (The Editing Committee of the Law Yearbook of China, 2003: 1320; 2004: 1054; 2005: 1065; 2006: 988; 2007: 1065; 2008: 1106; 2009: 1000; 2010: 919; 2011: 1051; 2012: 1065; 2013: 1210; 2014: 1033; 2015: 1071; 2016: 1121; 2017: 1099; 2018: 1185)

PS was, in part, politically driven during the Mao era and primarily imposed on previous class enemies during the class struggle, rather than on normal criminals who committed minor offences. 'The masses' (*qunzhong*, 群众) played a vital role in this struggle. Reclaimable class enemies were not only supervised by the police but also by the masses, including their neighbourhoods and colleagues. After the 1990s, it was widely accepted, both in academic and practical circles, that the Criminal Law should be depoliticised (Chen 2010b; Ouyang 2013; Zhang 2014). This is evident in the revised Criminal Law in 1997 and its subsequent amendments. Compared with the Criminal Law issued in 1979, many politically driven terms were deleted or modified in subsequent publications. However, when PS was written into legislation, the political overtones remained. The provisions on surveillance remain among the very few articles in the shadow of outdated political concepts (Ouyang 2013; Wang 2010). The deprivation of some political rights for offenders who commit minor offences unrelated to political rights indicates that under PS one is still deemed a reclaimable enemy. Indeed, all criminals in the Mao era were labelled as 'enemies', but this is no longer the case for minor offenders now. Announcing the termination of one's PS to colleagues and neighbours, therefore, signals that the public should still be involved in supervising offenders. Indeed, mobilisation of mass supervision was a key attribute of Mao's penal system, but this tradition has since weakened. Now, the task of surveying criminals demands increased professionalism.

The emphasis on equal pay for equal work in providing PS is another lasting trait from the Maoist penal system. The most frequently imposed punishment was reform through labour (*lao dong gai zao*, 劳动改造). Offenders serving this sentence could receive only a very low salary, with 'equal pay for equal work' deemed a privilege that individuals under PS could enjoy. After the 1997 Criminal Law endorsed *nulla poena sine lege* ('no punishment without law'), most scholars and practitioners insisted that there was no justifiable reason to reduce offenders' salaries under community-based sanctions—even if, in practice, the Criminal Law makes no provision against discriminatory payments for those under community corrections (Zheng 2013). Now, the provisions on PS are inconsistent with some principles of the current Criminal Law; thus, they become impractical and are rarely applied.

Suspended Sentences

More than 88% of people in community corrections programs in 2015 were convicts serving suspended sentences (see Table 2). However, the number has been rising since 1999. The obligations under a suspended sentence and under PS are similar. Compared with PS, a suspended sentence has two additional features: it does not have political overtones and it has the backup of imprisonment.

Table 2: Number of offenders in community corrections programs, 2007–2015[3]

	Offenders under pubic surveillance	Offenders with suspended sentences	Offenders under parole	Offenders temporarily serving sentences outside prison	Total offenders in community corrections programs
2007	3,631	76,185	9,076	12,903	104,840
2008	4,535	112,504	12,699	4,199	149,713
2009	5,922	150,894	21,707	7,157	204,599
2010	8,184	203,739	33,373	9,894	277,897
2011	10,612	296,928	49,306	29,541	400,382
2012	13,003	444,496	64,129	20,030	564,046
2013	15,546	563,195	74,268	22,388	681,001
2014	14,743	629,201	65,316	22,104	732,202
2015	11,865	619,441	47,398	18,886	697,946

Source: Data collected by the Community Corrections Bureau of the MJ (2017)

The Criminal Law stipulates that suspended sentences may be granted where a convict sentenced to criminal detention or imprisonment of no more than three years meets three conditions. The first factor considers whether 'the circumstances of the crime are minor', but there remains no definite standard for such a judgement. The vague parameters on the circumstances of individual crimes inevitably confuse judges.

The second factor is 'the demonstration of repentance'. For suspended sentences, judges emphasise the repentance of criminals or other factors that indicate diminished culpability. As Ren (1997: 6) articulated, social conformity in the Chinese vocabulary is not limited to behavioural conformity with the rule of law but always moralistically identifies with the officially endorsed beliefs of social standards and behavioural norms. Criminal justice work in China is perceived as a didactic interpreter of both social conduct and public morality (Trevaskes et al. 2014). Demonstrating repentance embodies an achievement in the moral education of criminal justice work. Further, active repentance is lively teaching material for shaping citizens' values and understandings of criminal justice.

Nonetheless, there are no clear criteria for judging remorse. Among the statutory mitigating factors, several factors—including desistance from crimes, turning oneself in, providing a confession and assisting in prosecuting other criminals—may indicate a criminal's repentance. Otherwise, the Criminal Law provides no further guidance on how to measure whether and to what degree individuals show remorse. The abstract rules on repentance have left judges with broad and unstructured discretion. Without any authoritative interpretation, many practitioners and professionals have attempted to interpret independently the criteria for demonstrated repentance. A survey on judges' interpretations in this context illustrates that, upon deliberating the degree of personal repentance, most consider whether a criminal pleads guilty, makes a confession, expresses regret about his or her crimes, promises to commit no further offences, apologises to the victims and their relatives, and provides compensation (Wang, Ma and Ma 2008; Xuan 2014; Ying 2000).

Overemphasis on repentance and its ambiguous indications have become obstructions to the legal defence. In the West, one's defence is viewed as an important procedural protection for individuals against arbitrary state actions. In China, this may otherwise be confused with lack of repentance. Legal defence in the communitarian context of traditional China could reflect negatively on an individual, as it signifies one's refusal to take responsibility (Lu and Miethe 2002: 268). Today, this tradition still influences the country's legal system. As Bracey (1989: 160) points out, Chinese law 'rewards confession at all points in the process and regards denial of guilt or insincere confession as resistance to the help that is being offered'. When a defence lawyer makes a plea for his or her client's acquittal or mitigation, a court may judge that as lacking repentance and refuse to grant a suspended sentence. Lu and Miethe (2002: 271) found that the stronger the defence, the greater the likelihood a punishment is more severe.

The third factor to consider for a suspended sentence is that 'the criminal has no risk of recidivism' and 'the suspended sentence has no major adverse impact on the community where the criminal lives'. Obviously, in Amendment VIII of the Criminal Law, the concern for protecting a (potential) victim was more specifically addressed than in previous iterations. It is necessary to assess a criminal's risk of recidivism before a court makes a sentencing decision, but it is not possible for judges to predict that certain criminals pose *no* risk of reoffending. Although some factors associated with recidivism can be identified, the ability to predict it is limited. In fact, no authority has ever provided a nationwide system to assess the recidivism risk and the effect that community-based sanctions have on the public. Some local bureaus of justice, such as those in Beijing and Zhejiang, have experimented with assessment systems on recidivism but have never reported the validity and reliability of their measuring instruments. These systems are far from fully fledged, and none have found general public acceptance (Kong and Huang 2011; Li, Shao and Yu 2013; Zeng 2012). In general, even though a suspended sentence is the most widely applied community-based sanction, the criteria for determining suitability under the Criminal Law remain ambiguous and infeasible.

Parole

Similar to revisions of the provisions for probation, Amendment VIII of the Criminal Law (issued in 2011) deletes the requirement of 'posing no threat to society' and adds two new considerations. The first is that 'the criminal has no risk of recidivism' and the second is 'the impact of parole on the community where the criminal lives shall be considered when a parole decision is made'. These modifications to Chinese legislation narrow rather than broaden the scope of cases under which parole can be granted.

Other considerations for parole—including 'showing repentance', that 'the criminal has no risks of recidivism' and 'considering the impact on the community where the criminal lives'—are akin to those for granting a suspended sentence. The considerations for parole also share similar problems facing suspended sentences.

That said, there is one major difference between considerations for commutation and considerations for parole (i.e., an offender's risk of recidivism). Judges can only assess information about an offender through recommendations made by prison officials. It is beyond their ability to judge whether offenders pose no

risk of recidivism, but they must take responsibility if individuals reoffend in the future. Therefore, many judges prefer to issue commutations rather than parole to avoid the risk of liability. The Research Group on Community Corrections of the MJ (2003) suggests transferring the power of deciding parole from the courts to a parole board or other committee operated by the respective bureau of justice. These bodies oversee prisons as well as the community corrections programs within their jurisdiction. If a parole board operated by the bureau has authority to make parole decisions, it can coordinate the duties of prison officials and in community corrections programs to comprehensively and continuously evaluate offenders. The board can consider both the performance of an offender in prison and the effect of parole on the community, including the respective capacity of prison facilities and community corrections programs. The Research Group on Community Corrections of the MJ (2003) also recommends broadening the scope of parole and changing the phrase, 'posing no threat to society', to include concrete and feasible requirements. However, none of these suggestions were adopted in Amendment VIII of the Criminal Law or in recent judicial interpretations. The number of offenders granted parole continues to decrease, especially after the 2014 release of two documents on commutation, parole and temporarily serving a sentence outside of prison. Nationally, the number of parole cases in 2014 was only 37,254, which is 23.81% lower than the number of cases in 2013 (W. Li 2015).

Temporarily Serving a Sentence Outside of Prison

Data on temporarily serving a sentence outside of prison are not publicly transparent. This punishment is similar to compassionate release or medical parole in some Western countries.

To shorten the imprisonment period, offenders and their relatives always aim to obtain the right to temporarily serve a sentence outside of prison, as it is formally included in the imprisonment term. Some offenders who are not eligible for this may attempt to obtain permission through illegal means. Moreover, the final decision on temporarily serving a sentence outside of prison can be made by a court, a bureau of prisons (or other administrative bodies[4])or a public security organ, but their standards may have subtle differences. For example, the prison or house of detention may not agree with the court-ordered imprisonment sentence, but they can make recommendations to either the respective bureau of prisons or the public security organ to approve a temporary sentence elsewhere. This may result in the executive power meddling in the affairs of the judicial power, and lack of dimensional homogeneity may invite more opportunities for corruption.

The Conditions of Community Corrections Under Judicial Interpretations, the Sentencing Guidelines and in Guiding Criminal Judgements

The Range of Crimes Eligible for Community Corrections Under Judicial Interpretation on the Criminal Policy of Balancing Leniency and Severity

In 2006, balancing leniency and severity became the new mantra under China's criminal policy. Although this requires severe punishment for serious crimes, it also requires reformation of the legal system on juvenile delinquency and petty offences, as well as establishing community corrections (Article 6.6 of the Resolution on Major Issues Regarding the Building of a Harmonious Socialist Society).[5] According to this criminal policy, leniency implies that courts throughout the nation should sentence to community corrections a broader range of criminals who perpetrate minor offences.

Subsequently, the SPC published its judicial interpretation to illustrate the types of cases that were applicable to lenient sanctions and severe sanctions (respectively) under the criminal policy of balancing leniency and severity. To carry out 'leniency' in the criminal policy—that is, in cases in which a conviction is recorded but where a criminal offence does not automatically incur a custodial sentence—courts can give a suspended sentence or sentence an offender to PS, or issue an independent fine (Article 14 of the Authoritative Opinions on Implementing the Criminal Policy of Balancing Leniency and Severity; hereafter 'Opinions').[6]

Then, the detailed articles explain that courts can pass a relatively lenient sentence prescribed by the law, give a suspended sentence or sentence offenders to PS, or issue an independent fine. These apply for cases in which the harm or the foreseeable intended harm caused by an offender is also insignificant, where the danger manifested by a defendant in perpetrating his or her crime is slight, where a defendant confesses in a manner that indicates considerable remorse, and where a defendant has low criminal tendency (Article 16 of the Opinions). Notably, for cases involving juveniles, first-time offenders or casual offenders, and where the offence is minor, courts can give a suspended sentence or sentence individuals to PS, or issue an independent fine (Articles 19 and 20 of the Opinions).

The detailed articles seem to narrow the literal meaning of the corresponding articles on community-based punishments in the Criminal Law. The conditions of cases for which lenient sentences were eligible were almost identical to those of suspended sentences, prescribed by the Criminal Law. However, here, the judicial interpretation provides that cases eligible for a suspended sentence can only be punished in some instances. In addition, the judicial interpretation restricts the types of cases for which community-based punishments were eligible. Thus, it did not fulfil what the new criminal policy promised in terms of community corrections.

The Absence of Community Corrections Under the Sentencing Guidelines

Current Criminal Law is quite indeterminate in sentencing scale and provides little further guidance; thus, it fails to satisfy sentencing needs (Chen 2010a). Using the same scale in the Criminal Law and the judicial interpretations results in wide sentencing variations in different jurisdictions. Recently, the SPC in 2010 attempted to consolidate judicial standards by floating a trial balloon in the form of sentencing guidelines.[7] These ensure that criminal cases from the same regions involving similar circumstances are treated in a consistent manner. The SPC also issued guidelines on 15 types of common crimes that are punishable by fixed-term imprisonment or criminal detention (see Article 5.1 of the Notice on Implementing the Standardisation of Sentence).[8]

However, the Sentencing Guidelines only focus on criminal detention and fixed-term imprisonment. For cases in which criminals must serve a suspended sentence, undergo PS, pay an independent fine or receive independent deprivation of political rights, the local judges also retain full discretion. Nonetheless, the Guidelines do not clarify how to link fixed-term imprisonment and criminal detention to either items. Given that the sentencing standards for both decrees are clear but those for suspended sentences, PS, independent fines and independent deprivation of political rights remain obscure, non-custodial sentences inevitably suffer from 'lack of credibility'. To avoid victims questioning their adjudications, many judges prefer to impose short-term imprisonment for minor offences, which significantly contributes to the overly liberal use of prison terms (Hao 2011; Zhang 2006).

The Narrow Targets of Community Corrections Under Guiding Criminal Cases

The Guiding Cases are expected to alleviate the problems of interpretive ambiguity and adjudicative consistency (Ahl 2019; Jia 2016). Since 2010, the SPC has endeavoured to improve the transparency of court judgements issued at different levels. The Court decided to increase in its bulletin the publication of selected judgements from every three months in 1985 to every month in 2004. Courts at various levels can consult the case examples but they do not have a statutory duty to refer to them. To guide the courts on a case-by-case basis and achieve consistency in national sentencing practices, the SPC began in 2010 to publish guiding criminal judgements as precedents. Pursuant to Article 7 of the Regulations on Guiding Judgements, the courts at various levels have a duty to refer to the Guiding Cases for similar judgements.[9] To date, 21 guiding criminal cases have been promulgated, though this is far from sufficient—given that 1.16 million criminal cases are heard annually.[10] Thus, the small number of Guiding Cases renders their function in judicial practice obscure (Ahl 2019; Jia 2016).

This article attempts to analyse how these judicial cases clarify possible ambiguity around the rules determining eligibility for community corrections. In terms of the sentences dealt in the 21 criminal cases,

20 end in a conviction. Among these, the defendants in five cases were issued suspended sentences (Case No. 13, Case No. 14, Case No. 32, Case No. 87 and Case No. 102) and in seven were sentenced to immediate fixed-term imprisonment spanning less than three years (Case No. 11, Case No. 27, Case No. 28, Case No. 61, Case No. 103, Case No. 104 and Case No. 106). The remaining cases saw the defendants sentenced to either imprisonment of more than three years or death. Excluding suspended sentences, non-custodial sentences were clearly not the focus of the guiding criminal judgements.

Evidently, a suspended sentence may be granted when a person is given criminal detention or imprisonment of no more than three years. Here, the article compares cases in which offenders were granted a suspended sentence to those dealt immediate fixed-term imprisonment of less than three years or criminal detention. As such, the purpose is to analyse how the Guiding Cases interpret the three considerations for a suspended sentence (i.e., 'the circumstances are minor', 'showing repentance' and 'no risk of recidivism').

As the current data are too small to conduct meaningful systematic analysis, this paper reviews the reasons for the judgements, especially their syllogistic application of the rules on deciding whether defendants are eligible for a suspended sentence. This can shed light on the connotations that all three considerations for a suspended sentence present in judicial practice.

As found, the interpretations did not provide coherent guidance on 'the circumstances are minor' clause. It is noteworthy that Cases No. 61 and No. 102 conflict one another regarding whether the same mitigating factor can substantiate a reduced sentence to three years or less and further support consideration of 'the circumstances are minor' clause for a suspended sentence. For Case No. 61, the SPC requires extra mitigating factor(s) to support this clause. The sentence in the first trial was suspended, considering the defendant turned himself in, pled guilty, returned illegal acquisitions and had no major adverse effect on the community where the criminal lived (see Table 5). Further, the procuratorate asserted that the first trial was inappropriate. They also determined the statuary sentencing range was between five and 10 years' imprisonment and that the court could reduce the sentence to three years due to the defendant's admission of guilt; however, the court had no reason to do so due to the same mitigating factor. After two rounds of appeal at three procuratorate levels, the SPC changed the suspended three-year imprisonment term to three years' immediate imprisonment. However, in Case No. 102, the defendant's sentence was commuted from more than five years to three, and suspended due to the same discretionary mitigating factor (i.e., admission of guilt). Moreover, crimes in which the statutory sentencing range is three years or less are widely acknowledged as minor offences in China. Table 3 shows that for cases in which the statutory sentencing range is three years or less and the defendant has statutory or discretionary mitigating factors, the sentence can still be immediate (see Cases No. 28 and No. 104). These judgements corroborate that the courts need to find extra extenuating circumstance(s) to justify that 'the circumstances are minor' and suspend the sentence when the *actual* sentence can be three years or less. Evident in Table 5, 'no actual loss or devastation' is a common extenuating circumstance to support that 'the circumstances are minor'. As mentioned, despite that defence strategies are factually determined, Chinese defence lawyers usually make pleas based on extenuating circumstances related to *repentance* for his or her client's acquittal or mitigation. Table 5 also shows that in both immediate and suspended sentence cases, judgements are inclined to recognise extenuating circumstances related to repentance, including turning oneself in, confessing, pleading guilty and/or demonstrating repentance.

Table 3: Original sentence and mitigating factors for individuals sentenced to criminal detention or imprisonment of no more than three years under the Guiding Cases system

	Immediate detention/imprisonment	Suspended sentence
Original sentence ≤ three years with statutory mitigating factor(s)		
Original sentence ≤ three years with a discretionary mitigating factor	Case No. 104	Case No. 32
Original sentence ≤ three years with discretionary mitigating factors		
Original sentence ≤ three years without mitigating factor(s)	Case No. 27, No. 28	
Original sentence ≥ three years with a statutory mitigating factor	Case No. 11	Case No. 14, No. 87
Original sentence > three years with statutory mitigating factor(s)		
Original sentence > three years with a discretionary mitigating factor	Case No. 61, No. 103	Case No. 102
Original sentence > three years with discretionary mitigating factor		
Original sentence ≥ three years with a discretionary mitigating factor	Case No. 106	
Original sentence ≥ three years with discretionary mitigating factors		
Original sentence ≥ three years without mitigating factor(s)		Case No. 13

Table 4: Statutory and discretionary mitigating factors for individuals sentenced to criminal detention or imprisonment of no more than three years under the Guiding Cases system

Statutory mitigating factor	Immediate detention/imprisonment	Suspended sentence
Juvenile delinquency		Case No. 14
Accessary	Case No. 11, No. 28	Case No. 87
Discretionary mitigating factor	Immediate detention/imprisonment	Suspended sentence
Turn himself/herself in	Case No. 61, No. 103, No. 106	Case No. 102
Confession	Case No. 104	Case No. 32

Table 5: Extenuating circumstances for individuals sentenced to criminal detention or imprisonment of no more than three years under the Guiding Cases system

	Immediate detention/imprisonment	Suspended sentence
No actual loss or devastation		Case No. 13, No. 32, No. 102
Return illegal acquisitions	Case No. 61, No. 103, No. 106	Case No. 102
Turn himself/herself in	Case No. 61, No. 103, No. 106	Case No. 102
Confession	Case No. 104	Case No. 32
Plead guilty	Case No. 28, No. 61, No. 104, No. 106	Case No. 14, No. 32
Demonstrate repentance	Case No. 103, No. 104	Case No. 13, No. 14, No. 32
First-time offenders		Case No. 14, No. 102
Juvenile delinquency		Case No. 14
Accessary	Case No. 11, No. 28	Case No. 87

Importantly, none of the judgements mentioned whether the accused had 'no risk of recidivism', but instead provided evidence for their low risk of reoffending, especially for first-time offenders (see Table 5). As there is no assessment system on which to measure the risk of recidivism, courts must independently determine individuals' likelihood to commit another offence. Thus, courts are more inclined to issue a higher number of suspended sentences for certain types of crimes (notably criminally negligent crimes and certain types of property crimes) in which the offenders are obviously less likely to reoffend. For the latter cases, in which offenders obtain illegal gains by virtue of their posts in agencies or through sheer disregard for commercial integrity, offenders will have few opportunities to reoffend because they will lose their job or damage their commercial reputations by accruing a criminal record. There remain little data on the ratio of suspended sentences to immediate imprisonment in relation to different types of crimes. However, one empirical study conducted by a provincial procuratorate showed that from 1998 to 2000, for those issued a suspended sentence, 40.72% committed property crimes and 23.76% endangered public security (Ying 2000).

The Role of Community Corrections Under China's Penal System

The limited scope of community corrections largely reflects the distinct definitions of crime and criminal punishment in China, leaving little room for community corrections. After several rounds of legal reform, traditional understanding of the law in China is gradually changing but also experiencing some inertia, thus, shaping the role of community corrections.

The Limited Scope of Criminal Punishments

The concept of crime in Mao's China was founded on Karl Marx's theories on class conflict and struggle. Based on Marx and Engels's (1939) belief that crime was the struggle of isolated individuals against the predominant relations between state and power, Mao (1937, 1949, 1957) regarded criminals as enemies of socialist China. As such, criminality was considered an extremely small subset of socially disruptive conduct. Pragmatically, among criminal punishments, reform through labour was widely imposed on the accused, with community-based punishments rarely used. Most socially disruptive conduct should not be treated as crimes but as violations of the public order.

Under Mao's (1937, 1949, 1957) interpretation, the reach of crime was narrow but its boundaries were fluid. Reform through labour (*lao dong gai zao*, 劳动改造), re-education through labour (RTL) (*lao dong jiao yang*, 劳动教养) as well as administrative sanctions were designed to tackle socially disruptive conduct at varying severity: that is, reform through labour was imposed on criminals, while RTL and other administrative sanctions were granted to those who committed socially disruptive conduct.[11] Despite their differences in theory, they were in practice represented by the extent to which they restricted individual liberty (Biddulph 2015; Liu 2001; Yu 2009).

The fluid concept of crime had the inherent potential to induce human rights violations. Their lessons led to China's gradual movement after 1978 towards a 'rule by law' in terms of criminal punishment. Of particular distinction is the range of conduct that has fallen under the scope of such sentencing. If or when a socially disruptive conduct becomes detrimental to society and/or reaches a high level of seriousness, it is constituted as a crime. The 'seriousness' depends on 'the circumstances of the crime' and 'the amount of illegal acquisitions', but China's Criminal Law does not clarify the standard for such a judgement. The SPC's judicial interpretations provide some guidance, yet, according to Lewis (2014), do not fully alleviate the concerns raised by the vague terms outlined in national legislation.

The initial legal reform creates a considerable number of grey areas in which the RTL could survive. Deng (1993) stressed that preserving the social order should be a key preoccupation of the CCP. It was believed that the penal system's grey areas could strengthen the state's capability to flexibly tackle any conduct that disturbs society. However, such handling resulted in the expansion of policing power. For example, the Law on Public Security Administration of Punishments conferred great authority on police to decide administrative punishments, despite actually wielding much wider power than the authorisation of law in

the name of RTL. After 1995, The China Law Yearbook (1999) ceased reporting data on RTL. Elsewhere, one Bureau of the RTL (1999) report revealed about 310,000 persons under the RTL system and about 500,000 others were sentenced in 1999 to imprisonment. Meanwhile, The China Law Yearbook (1999) shows that only 7,515 people were sentenced to PS, while 90,387 received suspended sentences that same year.

The broad application of RTL meant that minor criminal penalties were rarely enforced. Many cases that resembled criminal cases were instead diverted to RTL, which could be stricter than some criminal punishments, but with fewer legal safeguards. They created more social disruption than they resolved and flagrantly violated the intentions behind separating criminal punishments and non-criminal punishments. In the 2000s, China continued to stress the imperative of preserving social order. Many observers both in and outside the country have advocated for consolidating long-term social stability by building a robust legal system that respects and protects individual rights (Biddulph 2015; Trevaskes et al. 2014; Yu 2009). The CCP is gradually recognising the value of one's voice, as reflected (on paper at least) in its newest strategy. The decision of the Third Plenary Session of the Eighteenth CCP Central Committee proposes the abolition of RTL and the promotion of community corrections in Chapter 9, 'Moving the Construction of the Rule of Law'.[12] The new strategy points the way forward to penal reform, and punishments and measures without firm legal basis are expected to gradually cease. Therefore, the role of community corrections in China's penal system is distinctive. Although they are initiated as alternatives to imprisonment in most jurisdictions, their development is preconditioned by the abolition of RTL (Yang 2018).

Since the CCP's reform agenda juxtaposed the end of RTL to favour community corrections, there were concerns that one might replace the other (Liu 2015; Williams 2014). However, the MJ announced that this was not the case. Jiang Aidong, director of the Community Corrections Bureau of the MJ, claimed that community corrections and RTL were two distinctive systems of dissimilar nature, whereby the former would only be applied to adjudicated criminals rather than to administrative wrongdoers (Cui and Yang 2014). Obviously, despite promoting corrections orders, the MJ is careful about the expansion of adjudicated criminals. Correspondingly, the legislative and judicial bodies do so with understandable caution.

High Expectations for Community Corrections in Reducing Reoffending

Expectations that community corrections successfully reduce reoffending restricts further expansion of such sentences. Mao's interpretation of crime and punishment embodied an unrelenting faith in the malleability of petty offenders. This creed remains a constant and contributes to China's preoccupation with achieving no recidivism. According to Bracey (1989: 159):

> no giving up on anyone—regardless of offense or record—is part of the correctional professional's code in China. Even the recidivism figures—low by the standards of most countries—are discussed as failures of the correctional system, not as instances of individual intractability on the part of certain offenders.

In 2008, the Political and Judiciary Commission under the Central Committee of the CCP made reducing the recidivism rate a primary standard for measuring China's correctional system (Wu, Xu and Ren 2013). Since then, all bureaus of justice developed their own methods to cater to this requirement. In the pilot community corrections programs, the Beijing Bureau of Justice pursued the goal of 'no offender convicts a subsequent crime and no offender jeopardizes the social order' (Zhang 2013: 82). When community corrections programs eventually spread nationwide, local bureaus of justice strove to demonstrate an extremely low recidivism rate. The published data show that the rate of reoffending under community corrections was extremely low, at 0.22% in 2011 and under 0.2% in 2013 (Xin 2014). One bureau of justice even reported that recidivism of criminals serving corrections was just 0.015% locally (Wang and Li 2014). However, the MJ never explained how the statistics were collected, leading many scholars to question the reliability of official Chinese data on crime (Yu and Zhang 1999; Zhang et al. 2013). Under China's regime

of multi-agency cooperation, the legislative and judicial bodies inevitably follow a strategy of limiting offenders sentenced to community corrections to those who commit very petty offences. The risk of reoffending and its consequent effect on persons in these categories are low.

Concluding Remarks

Since the Research Group on Community Corrections of the MJ decided to broaden the scope for offenders eligible for community corrections, Chinese courts have handed down more community corrections orders than ever before. However, further expanding these sentences remains a long-term task. The conditions for community corrections required by the Criminal Law are either vague or unfeasible. Indeed, judicial interpretations of China's new criminal policy further narrow the literal meaning of articles concerning the types of crimes eligible for corrections under the Criminal Law. In addition, the Sentencing Guidelines exclude community corrections orders from the extent of their practical application, and the guiding criminal cases strictly limit community corrections target groups. There are also disparities between the political rhetoric and the actual scope of criminals who deserve these sentencing orders.

Evidently, community corrections have inflamed conflict between the legal reform of and the general mindsets around crime and criminal punishment in China—and this continues to shape their role in sentencing practices. In practice, these corrections reflect a deep and abiding issue underlying the penal system—that precaution around expanding criminal punishments and preoccupation with an extremely low recidivism rate restrict the scope of non-custodial punishments.

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[1] The Announcements were issued on 10 July 2003 by the Supreme People's Court (SPC), the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice.

[2] Under Amendment VIII of the Criminal Law and the revised Criminal Procedure Law of the People's Republic of China, deprivation of political rights is excluded from community corrections programs.

[3] The total number of offenders in community corrections programs includes offenders under public surveillance, suspended sentences, parole, as well as deprivation of political rights. Since Amendment VIII of the Criminal Law (issued in 2011) and the revised Criminal Procedure Law (issued in 2012) exclude deprivation of political rights from community corrections programs, this table omits the number of offenders under deprivation of political rights.

[4] Normally, a prison is supervised by local bureau of prisons of different levels, contingent on its security level. Several prisons are directly regulated by the Ministry of Justice or the Ministry of Public Security. These authorities can decide a temporarily serving a sentence outside of prison according to a prison's recommendation.

[5] Issued by the Central Committee of the Chinese Communist Party (CCP) on 11 October 2006.

[6] Issued by the SPC on 8 February 2010.

[7] The formal Sentencing Guidelines was not handed down until 2014, but they are similar to the trial version.

[8] Issued by the SPC on 23 December 2013.

[9] Issued by the SPC on 26 November 2010.

[10] Based on data from the Annual Report of the People Courts in 2014 (issued by the SPC on 18 March 2015).

[11] See the Regulation on Public Security Administration of Punishments (*Zhi an guan li chu fa tiao li*), issued by the Standing Committee of the National People's Congress (NPC) on 22 August 1957, and the Decision on Re-education through Labour (*Guan yu lao dong jiao yang wen ti de jue ding*), approved by the Standing Committee of the NPC and issued by the SPC on 3 August 1957.

[12] See Article 34 of the Resolution Concerning Some Major Issues in Comprehensively Deepening Reform (*Guan yu quan mian shen hua gai ge ruo gan zhong da wen ti de jue ding*), issued by the Central Committee of the CCP on 15 November 2013.

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