Criminal Case Dispositions through Pleas in Greater China

Conception, Operation and Contradiction

Edited by
Enshen Li · Xiaoyu Yuan · Yan Zhang

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"This book stands as a joint enterprise by Chinese scholars in engaging with international dialogue on plea-based case disposition. It represents a unique and genuine contribution from a group of young and talented researchers, and a must-read for anyone interested in understanding criminal justice systems in Greater China. This compilation truly exemplifies the commitment and effort of Asian criminology in enriching the body of knowledge in criminology and criminal justice."

—Jianhong Liu, *Founder of the Asian Journal of Criminology and Asian Criminological Society Distinguished Professor, University of Macau*

"This fine collection deftly navigates the diversity of how plea bargaining reforms have been received across Greater China. It assembles distinguished authors. They reveal how path dependant legal institutions can be. The way plea negotiation reforms are actually received in Mainland China, Hong Kong, Macao and Taiwan are differently shaped by local legal cultures. The book tells a powerful story of the resilience and distinctiveness of local professional cultures. It is revealing on how they fail and succeed in allowing defendants to tell their side of the story. This is an important contribution that greatly advances our knowledge of new criminal justice trends in Greater China."

—John Braithwaite, *Emeritus Professor, Australian National University*

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Preface

In many jurisdictions around the world, criminal convictions are becoming no longer a product of fair (contested) trials but an object in plea bargaining and related trial-avoiding mechanisms. Increasingly, a defendant's guilt is determined by non-judicial officials through streamlined, routinized and managerial proceedings. This approach to case dispositions is, more often than not, associated with the neglect of defendants' procedural rights and real checks and balances aimed at curtailing the miscarriage of justice. The plea bargaining system in the US is the most prominent illustration, but many similar initiatives—though termed differently (e.g., charge negotiation, resolution discussion or plea resolution)—have developed exponentially in the European, Latin American and Asian criminal law regimes. This edited volume is motivated by an emerging international research interest in plea-based case dispositions and their implications for the criminal justice system. A particular aim of this book is to speak to the cultural distinctiveness of plea bargaining and related mechanism given that the local context of law and culture plays a vital role in shaping the on-the-ground law enforcement and justice administration.

The idea of this edited collection can be traced back to 2016 when Mainland China piloted the 'Admission of Guilt and Acceptance of Punishment' system (known as 'plea leniency'). Following this, all four entities of the Greater China region (Mainland China, Taiwan, Hong

Kong and Macau) have adopted certain forms of trial-avoiding mechanisms in their criminal proceedings. Gathering scholars, practitioners and policy watchers with different perspectives, this book intends to provide fresh and pioneering perspectives on plea-based case dispositions in Greater China as a lens to examine their idiosyncratic roots, contours and patterns at the local level. The proposed volume is the product of a common aspiration of the editors and contributors to showcase research that explores the indigenous forms and characteristics of criminal case dispositions through guilty pleas in jurisdictions that are not so familiar to Western audiences engaged in the study of crime, criminal justice and criminology. The existence of culturally different Chinese-speaking societies presents a unique opportunity to create new knowledge in the field of comparative criminal justice and criminology. Chapters included in this book are therefore to examine important legal, social and cultural issues found throughout plea-based case dispositions in Greater China, but in a geographically specific manner—providing an in-depth view of issues that can help forge connections and inspire creative solutions for scholars gaining understanding of common problems across the societies in question. At the same time, this book seeks to unfold Western influences on developments of plea-based initiatives in Greater China while placing the lessons learned in this region into a larger global comparative context.

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Judicial Paternalism and the Stagnant Bargaining Process in Taiwan

Introduction

Enshen Li, Xiaoyu Yuan, and Yan Zhang

> Plea bargaining…is not some adjunct to the criminal justice system; it is the criminal justice system.
>
> –Justice Anthony Kennedy[1]

The Motivation of the Book

Over the past decades, plea bargains or mechanisms that avoid trial and result in conviction have become an essential part of criminal justice systems around the globe (Langer, 2021; Turner, 2017). Based on the idea that the defendant pleads guilty in exchange for a concession on

[1] From Missouri v. Frye, quoted in Scott and Stuntz (1992).

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criminal charges and/or sentences (Alschuler, 1979), plea bargaining and related mechanisms work to resolve the case quickly by skipping over trials, hence reducing costs associated with prosecution and court proceedings (Galanter, 2004; McConville & Mirsky, 2005; Soubise, 2018). As many have asserted (Bushway et al., 2014; Feeley, 2017; Lynch, 1998; Mather, 1978), plea bargaining and related mechanisms are vital to today's criminal justice system because they help to alleviate pressure on prosecutors who often handle overwhelming caseloads in 'an era of overcriminalisation' (Husak, 2023, p. 271). The United States is a towering county in this trend. In 1839, around 25% of all felony convictions in New York involved plea bargaining (Moley, 1928), and this figure skyrocketed to 75% one and half century later alongside 'tough on crime' policies that prevailed the administration of criminal justice (McConville & Mirsky, 1995). Now, more than 95% of criminal cases are handled through plea bargaining in the US over-burdened criminal justice system (Cohen & Kyckelhahn, 2012). Likewise, plea-based initiatives have emerged in many civil law jurisdictions (Ma, 2002). The apparent influence of the 'Americanisation' of legal systems has arguably driven this development (Langer, 2004). However, the introduction of plea bargaining or comparable trial-avoiding mechanisms in countries such as Germany, Italy, and France reveals a very different path of prosecutor-defendant interactions that aligns with local circumstances of inquisitorial criminal proceedings (Langer, 2021).

The plea-based system of criminal justice is, of course, not without criticism. Plea bargaining, for example, while streamlining the criminal procedure, is seen as compromising the integrity of the criminal justice system. It requires defendants to waive their fundamental rights enshrined in the constitutional law, including the right to a fair trial, the privilege against self-incrimination, and the presumption of innocence, among many others (Alkon, 2010; Cheng, 2023; Heumann, 1981). In that, defendants—including innocent defendants—can be induced or coerced to take pleas for various reasons, some of which have little or nothing to do with factual and legal guilt (Lynch, 1994; Nash et al., 2023; O'Hear, 2008). More markedly, the overreliance on plea bargaining as a primary way to resolve criminal cases gives rise to the strong leverage the prosecution wields in pursuing confessions and guilty pleas. Understanding and exploiting the defendants' fears of facing more severe consequences if the case goes to trial, the prosecution enjoys a paramount role in the determination of one's guilt, which renders wrongful convictions not only

possible but also inevitable (Bibas, 2004; Hamin et al., 2019; O'Hear, 2008; Stemen & Escobar, 2018).

Although plea bargaining and related mechanisms have been criticised on various grounds, they have over time morphed into 'a necessary evil' in the criminal justice system (McDonough, 1979). Reflecting what Máximo Langer (2021, p. 378) calls the 'administratisation of criminal convictions', the advent of plea bargaining and related mechanisms has seemingly turned criminal convictions into an object in assembly-line justice dominated by nonjudicature officials as opposed to a product of a fair (contested) legal hearing (Langer, 2021; Lynch, 1998; Matheny, 1980; Soubise, 2018). According to the US-based criminal lawyer, such transformation has taken place 'in many corners of the world' (Langer, 2021, p. 386). This edited book is therefore motivated by an emerging global research interest in plea-based programs and schemes and their implications for the criminal justice system. While the majority of such scholarship is Euro and Anglo-centric, this volume is prepared to offer fresh and cutting-edge perspectives on plea-driven case dispositions in a non-Western context, namely Greater China. One particular objective of this book is to foster our understanding of the cultural distinctiveness of plea-based case dispositions in relation to their idiosyncratic theories and practices across societies that are less familiar to global audiences engaged in comparative criminal justice and criminology.

It is generally assumed that the criminal justice system is not only a legal process whereby violators of the criminal law are tried and sanctioned in accordance with specified legal categories and procedures, but also a social process whereby criminal justice ideologies and practices are informed by indigenous social development and cultural dimension (Garland, 2000). Plea bargaining and related mechanisms are no exception. In propositioning this thesis of a universal 'administratisation of criminal convictions', Langer (2021) acknowledges that there is incongruity in the form and manifestation of plea-based dispositional measures in different jurisdictions, considering the divergence in the way the criminal justice system plays out across varied legal and social conditions. While this cultural significance has been looked at in the US, European and Latin American context, there is a lack of cross-cultural inquiries into how plea-based case dispositions have arisen and unfurled in Greater China, a region that has yet to pique enough scholarly attention in sociolegal and comparative criminology studies.

To be sure, 'Greater China' is a term not without controversy. Despite being widely applied to narrate the system of interactions among Chinese-speaking societies, the concept of Greater China has been laden with the criticism on lacking an unequivocal and uniformly accepted conceptual framework. There are indeed powerful drivers for regional interaction and integration: mostly a common ethnic heritage that links Chinese communities across the Taiwan Strait, and a natural economic complementarity among the four economies (Shambaugh, 1993). What makes 'Greater China' a contentious lexicon perhaps lies in the fact that each entity of this Eastern region tends to encompass different systems, dimensions, and processes. Not only are there are variances in the choice of polity, the model of the economic system, and in the recognition of cultural identity, but each entity strives to maintain its local ethos of social control and governance, which has enabled different groups of Chinese people to approach Greater China with different views, attitudes, and emotions. Absent a better terminology to categorise Chinese-speaking societies, 'Greater China' in this book hence refers to a geographical area sharing cultural and economic ties with the Chinese people, including Mainland China, Taiwan, Hong Kong, and Macau.

The idea of this book emanates from Mainland China implementing the 'Admission of Guilt and Acceptance of Punishment' system (known as 'plea leniency') in 2016 as part of its ongoing criminal justice reform. Following this, all four entities of the Greater China region have adopted certain forms of trial-avoiding mechanisms in their criminal proceedings. One explicit purpose of this book, therefore, is to clearly map out the trajectories, models, and characteristics of plea-based cased dispositions as they are rationalised, conceptualised, and operationalised in the local criminal justice system of Greater China. Our chapters will attempt to answer questions relevant to legal scholars, criminologists, sociologists, and the like, using methods and approaches from a wide range of disciplines. Topics covered in this book will represent an array of important issues to highlight the discursive and practical traits of plea-based case dispositions based on a diverse range of first-hand or secondary empirical data. In particular, analysis will explore, *inter alia*, how law enforcement agencies carry out plea-driven practices on the ground, how judges act upon plea deals in the sentencing stage, how defendants interact with the prosecution when negotiating pleas, and how lawyers perform their legal work in this compressed process. To this end, the edited volume gathers scholars with different perspectives that work at different levels of analysis:

from practitioners unfolding the way in which plea-based justice administration is (re)produced in daily interactions to policy watchers explaining the extent to which guilty pleas are shaped by institutional reforms in alignment with the government's discourse of crime control. With these multiangle viewpoints and insights, this book would as well attract interest as a preliminary collection of materials that can gain new knowledge about and prompt further research on the system of plea-based case dispositions in Chinese-speaking societies, and more broadly, between the Eastern and the Western worlds.

Contours of the Book

The book is structured around the four Chinese-speaking jurisdictions to reveal the cultural distinctiveness of their approaches to criminal case dispositions through pleas. It will include an introduction and conclusion with other chapters covering Mainland China, Taiwan, Hong Kong, and Macau, respectively. To categorise the chapters according to the geographic region as opposed to the research theme is to enable a high degree of intellectual creativity and to advance the broadest spectrum of perspectives from the contributors in their area of expertise.

Mainland China: Plea Leniency and the Institutional Power Shifts

In Mainland China, the past decades have witnessed this socialist regime striving to optimise the court process (Papagianneas, 2022). Such attempt has ebbed and flowed, yet it reached new heights when the plea leniency system was formulated in 2016. The tenet of plea leniency is clear: it calls for the imposition of lighter punishment on those accused who voluntarily confess, admit the alleged criminal facts, and accept the sentence recommended by the procuratorate (Li, 2022b).[2] To distinguish from the Western plea bargain process where justice is accused of 'being malleable and negotiable' (Schulhofer, 1984), plea leniency is adapted to 'stick to finding the objective truth' by refraining the accused from negotiating with procuratorates (He, 2023). At its core, plea leniency entails not only the accused's acknowledgement of guilt and criminal facts, but also the accused's consent to the recommended sentencing

[2] *The CPL (2018)*, Article 15.

range, type of punishment, or even the means of implementation (Li, 2022a). Following two rounds of the pilot project in 18 localities, plea leniency was formally established by the 2018 Criminal Procedure Law as a fundamental principle and practice of criminal justice.

Yuguang Lu, Xifen Lin, and Enshen Li's chapter draws an overarching picture of the plea leniency system in Mainland China. This chapter teases out a theoretical and practical trajectory of plea leniency and how this dispositional measure has become the norm of seeking convictions in today's criminal justice system. The authors submit that the large-scale implementation of plea leniency is by and large attributed to the urgency to address an intensive concern for efficiency in criminal proceedings. However, a particular concern is raised over the increasing concentration of power in the hands of procurators over the course of the plea leniency practice. As they maintain, the emergence of plea leniency has enabled procuratorates to function as the de facto arbitrator of conviction with police and courts playing a passive role in the process. The chapter concludes that the supervisory power should be reserved for the judiciary which is capable of preventing the abuse of power by prosecutors through routinely questioning the guilty pleas, setting up procedures for evaluating the procurators' offers of unofficial immunity to defendants, and demanding criteria for judicial oversight of the procurators' decision-making.

The chapter contributed by Xin He further addresses the issue of a prosecutor-led plea leniency system dominating the Chinese criminal justice system. He characterises such domination as 'prosecution centeredness', which has replaced the 'investigation centeredness' that once shaped and underpinned the administration of criminal justice in China for decades (Mou, 2020). This chapter explores the operations and consequences of plea leniency and reveals that the procuratorates have outshone the police and further sidelined the courts in the process of plea leniency. In addition, defendants have little hope of being acquitted and legal representatives can offer little defence. It is contended that this paradigm shift indicates more leniency in the criminal justice system, albeit at the expense of rights protection in exchange for efficiency and crime control.

Yu Mou and Hui Chen's chapter turns to an empirical account of plea leniency by examining the role of criminal defence lawyers in China's new plea leniency system. Drawing from first-hand resources in 15 plea leniency defence cases, their chapter unravels the obstacles that have

emerged in plea leniency, designed without incorporating the defence voice. They delineate defence lawyers' initial struggles, their gradual adaptation to the fast-paced, increasingly opaque process of handling criminal cases, and the uncertainties associated with prosecutorial and judicial practices that have made them more vulnerable. These difficulties highlight the systematic disadvantages and state-induced coercion that further undermine the criminal defence under this new scheme, largely driven by cost-effectiveness and increasingly punitive measures.

By investigating the decision-making process and its impact on case outcomes in plea leniency, Yuhao Wu's chapter advances our empirical comprehension of the inner workings of plea leniency from the perspective of defendants. Wu's study aims to address two questions: what factors influence the choice between pleading guilty and going to trial, and how does pleading guilty affect the sentencing results. The author analysed the data on DUI (driving under the influence) cases handled by the courts in six cities where the plea leniency program has been implemented. By exploring the legal and extralegal factors affecting the disposition of cases by plea or trial, the results indicate that the defendants who tended to plead guilty were those who had no previous criminal record, a lower Blood Alcohol Concentrations (BACs) level, or had admitted their guilt. The findings also suggest that the defendants who did not pay the victims were more inclined to plead guilty. The findings further provide that in Mainland China where the conviction rate at trial is almost 100% (Liang & Hu, 2023), a guilty plea could still lead to relatively better case outcomes from judges' sentencing decisions.

Taiwan: The Bargaining Process and Judicial Domination

The approach to plea-based case dispositions in Taiwan shows a rather different (somewhat 'deviant') landscape. *Taiwan* implemented the *plea bargain* system in 2004 with a view to optimise judicial resources and alleviate pressure from heavy workloads in the criminal justice system. It is reported that in 2008 there were 12,132 cases finalised without trial but instead by means of a bargaining agreement between the prosecution and defendants (Wang, 2011). Although this number only represented a small fraction of the handled criminal cases in that year, there has been a slow but sure decline in the use of plea bargaining ever since. As of 2019, the application rate of plea bargaining dropped to the lowest level at 2.9% (Lin, Chapter 7). Mong-hwa Chin's and Mao-hong Lin's chapters

are aimed at expounding on the legal, social, and cultural factors that have engendered the stagnation of plea bargaining in Taiwan.

Chin's chapter probes into why Taiwanese prosecutors are discouraged from launching the plea bargaining process. Three reasons stand out. First, the judiciary still plays a dominate role in Taiwan's criminal justice system, which controls the narrative of case management. Second, there is a cultural resistance to plea bargains. Third, there has been various summary procedures at work in Taiwan, which appear to be less resource-demanding than plea bargaining. The author goes on to point out that the general public's lack of trust in the judiciary has impeded a widespread use of plea bargaining as judges are seen as lacking sufficient legitimacy. This is particularly the case when the new citizen judge system was recently introduced to include lay people as the decision-makers in the trial process. It is concluded that consensus among legal practitioners should be reached before plea bargaining can gain traction in Taiwan's criminal proceedings.

Lin's chapter continues to tease out the structural imbalance between the prosecution and the judiciary in the application of plea bargaining. In particular, prosecutors in Taiwan are not keen to finalise cases through guilty pleas because they perceive plea bargaining as poorly designed, cost-ineffective, and procedurally illegitimate. While judges have a different view, Lin argues that the reluctance of prosecutors to employ plea bargaining stems from the court-centric logic of criminal justice in Taiwan. This long-standing legal culture enables the judiciary to adopt a paternalistic approach, allowing judges to interfere in the plea bargaining process with little regard to the defendant-prosecutor agreement. This chapter also describes two types of the court's paternalistic role in Taiwan's plea bargaining system: the court as a protector of the defendant and the court as a promoter of moral discipline. The former is meant to safeguard defendants' rights despite their willingness to relinquish these procedural protections for entering in the plea agreement. The latter is to ensure that defendants accept their criminal responsibility and show remorse over their actions. Lastly, this chapter traces the origin of judicial paternalism to the inquisitorial legacy and civilising function of criminal courts in Taiwan's century-long civil law system.

Hong Kong and Macau: Plea Bargaining and Colonial Legal Heritage

Hong Kong and Macau are the two special administrative regions (SARs) of the People's Republic of China, which follow the principle of 'one country, two systems'. For more than a century, their special colonial legacy, cultural histories, and political conditions have shaped a unique framework of local criminal justice; hence the divergent way cases are disposed of through guilty pleas in criminal proceedings. The legal system of Hong Kong was inherited from British colonial rule, which has remained largely intact since its return to China. This distinguishes Hong Kong from its neighbouring regimes, making it the only common law jurisdiction in Greater China. Kevin Kwok-yin Cheng's chapter argues that despite the emphasis on the presumption of innocence and adversarialism, guilty pleas are significant in Hong Kong's criminal justice system. Despite twenty-five years after the handover, Hong Kong has continued to follow, although not entirely, developments of plea-based case dispositions in England and Wales. With only minor variations in practice, Hong Kong's plea bargaining system is laden with a set of general challenges as facing its common law counterparts. In a nutshell, plea bargaining gives the courts, the prosecution, and defence lawyers leverage over defendants to plead guilty and to plead guilty as early as possible, despite the law's protection on the voluntariness of plea decisions. Although it may seem to speed up the legal process, plea bargaining tends to undermine the presumption of innocence and the adversarial system that Hong Kong upholds.

Chengchen He and Jingwei Liu's chapter conducts a comparative analysis of plea-based justice in Mainland China and Hong Kong. Through a legal and policy analysis, the chapter argues that although there are different rationales behind plea bargaining in Hong Kong and plea leniency in Mainland China, the norms of due process and fairness are comprised and the punitive nature of criminal justice in effect pressures defendants to admit guilt in both jurisdictions. The authors also contend that achieving judicial efficiency and protecting defendants' rights are conflicting values and cannot be properly balanced in the plea-seeking processes.

Like Hong Kong, Macau also returned to China from the Portuguese rule only 20 years ago. However, Macau stands out as an anomaly in the prevalent adoption of plea-based case dispositions around the globe.

Rather than establishing a particular plea bargaining mechanism, Macau sticks to its entrenched simplified procedures as a main way of handling criminal cases with lesser culpability and damage. In their chapter, Zhe Li, Xueke Fan, and Heng Ut Wong introduce reconciliation as part of trial-avoiding case dispositions in Macau. They focus particularly on the suspension of criminal proceedings and complaint withdrawal by examining their legislative settings, discursive dimensions, and practical features. Their analysis revolves around the challenges facing the process of perpetrator-victim reconciliation in these programs. It indicates that among the identifiable issues, the lack of communication channels is most detrimental to meaningful and effective negotiation between the parties affected by the offence. The authors suggest that a formal mediation system presided over by prosecutors be constructed in Macau to widen the scope of criminal cases settled through reconciliation. It is because doing so would likely improve judicial efficiency and better assist the accused with their acceptance of fault and reparation of harm, as well as reintegration into society.

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Plea Leniency in Mainland China: Legislation, Characteristics and Effects

Yuguang Lu, Xifen Lin, and Enshen Li

Introduction

The criminal procedure of Plea Leniency was formally legalized in the People's Republic of China (China) in 2018. It is aimed at encouraging the defendant to admit guilt and accept the punishment recommended by the procuratorate in exchange for procedural and substantive leniency. Here, procedural leniency refers to the use of simplified criminal proceedings to finalize guilty plea cases, whereas substantive leniency refers to the imposition of a lenient sentence for consenting to enter into the plea agreement. As of 2022, Plea Leniency has reached an application rate of around 90% nationwide.[1] In addition, across all Plea Leniency cases, the courts' approval rate of sentencing recommendations by procuratorates

[1] The Supreme People's Procuratorate, 'The Application of Plea Leniency at the Prosecutorial Stage is over 90%'. Available at https://www.spp.gov.cn/spp/2023qglh/202303/t20230308_606847.shtml.

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reached 98.3%.[2] Of particular note is the rate of appeals in Plea Leniency cases being recorded as low as 3%, compared to 68% of non-Plea Leniency cases.[3] Official government data have indicated that Plea Leniency applies predominately to minor criminal offences (punishable by a sentence of imprisonment for 3 years or less).[4] This seems to be consistent with the recent trend of criminality in China as there has been a spike in minor criminal offences. The annual report of the Supreme People's Procuratorate (SPP) showed that minor crimes took up 78.7% of all criminal cases in 2019 (Han, 2021). It increased to 85.5% in 2022 and slightly dropped to 82.8% in 2023 (Jan. to Sep.) (Han, 2021; Jin et al., 2023). On the contrary, serious criminal offences have flown under the radar of this new criminal justice scheme (Jiang, 2023).

The advent of Plea Leniency is no surprise. It represents an example of China's ongoing law reform to improve efficiency, quality and accountability of criminal justice in line with the country's call for 'Ruling the Country according to Law with Chinese Characteristics'. As such, the official rationales of Plea Leniency are clear. It seeks, *inter alia*, to reduce the judicial expenditure on processing criminal cases; to offer better protection of the defendants' rights in the criminal procedure; to rebuild the relationship between procuratorates and defendants; and to reinforce China's transformed culture of penality toward softness and humanity (Shi & Li, 2016). While making significant changes to the administration of criminal justice, Plea Leniency is exposed to challenges and criticisms. Many suggest that the Plea Leniency is discursively, legally and procedurally flawed. Among those identifiable problems appears to be the lack of procedural justice in the application of this new dispositional measure (Li, 2022a; Shi & Li, 2016); the absence of professional practice guidelines to inform its principled and consistent use; the conflict of power

[2] Ibid.

[3] The Supreme People's Procuratorate, 'For the year of 2022, the rate of appeals in Plea Leniency cases was 3%, while the rate of non-Plea Leniency cases was 31.2%'. Available at https://www.spp.gov.cn/zdgz/202302/t20230209_600560.shtml, Publish date 02-09-2023.

[4] The Supreme People's Procuratorate detailed that the proportion of heavier criminal offences (more than 3 years of imprisonment) in January to September 2023 has dropped to 17.2%, compared to 1999's proportion of 45.4%. Meanwhile, Plea Leniency has been applied in more than 90% of all criminal cases. Average case duration has dropped from 47.8 days (2022) to 44.6 days (January to September 2023). Available at https://baijiahao.baidu.com/s?id=1780694622859057807&wfr=spider&for=pc.

between procuratorates and courts in terms of conviction and sentencing (He, 2023; Long, 2020); and the disconnection between guilty pleas and lenient sentences (Wu, 2020). This chapter does not intend to engage in a comprehensive critical analysis of Plea Leniency. As an opening chapter, it aims to provide an introductory and descriptive account of Plea Leniency praxis to understand its structure, form and spirit. One particular purpose of this chapter is to shed light on how Plea Leniency has come to acquire its characteristics in China, with an examination of its benefits and drawbacks within the country's broader criminal justice system.

The Legislative Formation of the Plea Leniency Procedure in China

In comparison with plea bargaining or other comparable initiatives in the West (especially the US), Plea Leniency in China is still a relatively recent product of China's criminal justice reform. Some core ideas that give rise to plea bargaining, such as interest swap, consensus, negotiations of charges and legal adversarialism, are largely absent from Chinese legal culture and policy (Zhang, 2005). In particular, criminal justice in this socialist regime originated from an ideology based on a completely *ex-officio* principle (Sun, 2002, p. 45).[5] This essentially inhibited the plea-base criminal process from finding its footing in China. Until the early 2000s, the concerns of judicial efficiency and expenditure control that became prominent in the 1970s across many Anglo-Saxon and European countries had yet to loom large in the Chinese criminal process.

Still, criminal justice in China had long been trial-oriented. Often referred to as the 'Iron Triangle' (Liang et al., 2014), the criminal process is played out in an operational framework where the relationship among police, procuratorates and courts is coordinative for the collective purpose of combating crime. During this process, police are empowered to investigate the case, before handing inculpatory evidence over to procuratorates who then prepare a formal criminal charge, with the person on trial being finally convicted by courts. In 2002, there was a case which marked a

[5] *Ex-officio* principle mainly reflects in Civil Law countries' criminal procedure. During the investigation stage, police and procurators exercise their powers by strictly following legal rules. During the trial stage, judges play the role as the interrogator. Across the whole procedure, the defendants' litigation capabilities are relatively restricted, and they play a passive role on most occasions. *See* Sun (2002).

turning point and paved the way for officials to seriously contemplate the likelihood of introducing plea-based proceedings into the criminal justice system. In that case, the local procuratorate and the defense reached for the first time a 'plea agreement'.[6] The defendant admitted his guilt while showing a strong willingness to compensate the victim. It followed that the defense lawyer abstained from challenging the prosecution's case which seemed weak and tenuous. Instead, the defendant requested that his offending behavior be dealt with leniently. The procurator agreed and suggested that probation be imposed as the sentence. Upon receiving the case, the court organized a collegial panel to examine the legitimacy of the plea agreement and ultimately accepted it on the basis that the agreement was entered by the defendant voluntarily and freely. This was accompanied by a compensation agreement signed by the defendant and the victim in the view of repairing the harm caused by the crime. Following the negotiation, the court hearing only lasted 25 minutes (Ma, 2003).

This first ever 'plea negotiation' case provoked a hot debate as to whether China should introduce an American-style plea bargaining process. Although the SPC subsequently disapproved of the use of plea bargaining in criminal cases, the idea of forming a certain type of plea mechanism has begun to take root (Ma, 2003, p. 68). The legal community at the time was divided. Opponents argued that plea bargaining does not conform to a socialist concept of the rule of law, calling for the rejection of the word 'bargain' or 'trade' in the context of criminal justice. More specifically, it is contended that plea bargaining is at odds with core judicial principles, including the concept of *due process* (Sun, 2002, p. 45)

[6] In Heilongjiang, a gang of people severely injured a man by beating him up. The case was prosecuted as intentional injury, but the police only arrested the principal criminal, Meng. According to Meng's defense counsel, it could not be ascertained as to which person made the specific blows that caused the victim's serious injury and thus, the facts were unclear. The handling procurator held the view that the principal offender, Meng, should be held responsible. The defense attorney, with the oral consent of Meng, the accused criminal, negotiated with the procurator. Meng admitted his guilt and showed his willingness to compensate the victim. The defense lawyer gave up his claim that the facts were unclear and that there was insufficient evidence and requested the case to be dealt leniently. The procurator proposed leniency and probation to the court. After receiving the proposal, the court organized a collegial panel to examine the procedural legitimacy of the plea negotiation and agreement, then the court decided to sanction the agreement. Meng received a relatively light sentence, and probation was imposed as the sentence. In addition, through a process of civil mediation, the compensation agreement was entered by the offender and the victim.

and the principles of *legality* and *suiting responsibility and punishment to crime* (Sun, 2002, p. 48). Therefore, the defendant is deemed in no position to 'bargain' or 'negotiate' with the procurator under the *ex-officio* doctrine (Sun, 2002). Contrarily, supporters of plea bargaining held that the plea-based practice can be incorporated into the Chinese criminal justice system, albeit in a limited way (Chen, 2002). This is mainly because the discourse around plea bargaining tends to be conducive to the State's deep-rooted practice of 'leniency to those who confess, severity to those who resist' (*Tanbai Congkuan, Kangju Congyan* 坦白从宽，抗拒从严). Sanctioned as the 'golden thread' running through the criminal process, it has cultivated a culture which encourages defendants to confess to a crime in exchange for sentencing concessions (Li, 2022b).

Yet, like many Western counterparts, efficiency has over time morphed into a primary concern of Chinese criminal justice authorities. Two contributing reasons stand out. First, China is arguably following the road of 'overcriminalization' as a new mode of social governance (Wang, 2019b). Since the Second Amendment to the Criminal Law (CL) in 1997, about every two years there has been a new amendment introduced by the government to extend the reach of criminal jurisdiction. Consequently, the number of criminal offences increased from 412 in the Second Amendment to 483 in the Eleventh Amendment as of 2020 and the overwhelming majority of the newly prescribed crimes are *non-violent* in nature. The annual reports of the Supreme People's Procuratorate (SPP) revealed almost a twofold increase in the number of individuals charged in 2014 and 2023 (139 million v 210 million) (Cao, 2015; Zhang, 2023). With caseloads skyrocketing as a result of state resources being more thinly spread across a larger number of cases, judicial capacity to diligently handle every single case is seriously impaired.

Second, the number of judges has increased moderately but has lagged behind a drastic increase in reported criminal cases. This expansion of personnel within the judiciary may be attributed generally to the State's relatively slow pace of institutional development, but the introduction of the Judge Quota Scheme has also impacted the proportion of judges to other court personnel across the country (He, 2021). Formally implemented in 2015, the Judge Quota Scheme is driven by the vision that 'unqualified and incompetent judges' should be removed from courts. In doing so, it re-calculates the ratio of judges to judicial assistants and administrative staff to ensure that the position of judge is filled by those