

China's Hidden Children: Negotiating Documentation Denial and its Impact on a
Population at Risk of Statelessness

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The definition and problematisation of statelessness has been widely debated by scholars, who contemplate the distinction between legal (*de jure*) and effective (*de facto*) statelessness. Recent attention to the denial of documentation which affirms nationality in creating the 'risk of statelessness' goes some way to bridging these two conceptions, as documents both attest nationality internationally and grant access to rights reserved for citizens domestically. However, scholarship on statelessness has yet to adequately explore the effects of documentation denial on the enjoyment of rights associated with one's nationality and legal personhood, explain why denial of documentation towards individual members within a particular group can be uneven, and the very process of negotiating documentation. This thesis addresses these issues, focusing on agency over the documentation process.

Based on interviews and an online participant observation, the thesis looks at a population of roughly 30 million children who are at risk of statelessness in China due to denial of the *hukou*, the document that affirms nationality. I discuss how China's fragmented, ambivalent state generates spaces for uneven documentation denial and negotiations over the *hukou*. These negotiations by citizens in China can be understood through Scott's concept of 'everyday resistance' as parents respond to the birthing, adoption and immigration policies which underlie documentation denial. When 'everyday resistance' fails, 'rightful resistance' (O'Brien and Li) illustrates how some parents obtain documentation for their children, and through the internet can mobilise other families in similar circumstances. I argue that spaces of ambiguity can also be appropriated by individual government officials and citizens in the context of these negotiations. The thesis offers a case study in a previously unexplored group. Taken as a whole it contributes to statelessness scholarship and in particular to our understanding of agency and negotiation in the denial and acquisition of nationality documents.

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Introduction

i. Preview

Perched on a child-sized chair, I sat in a makeshift pre-school classroom situated on the ground floor of an apartment complex on the outskirts of Beijing. I was discussing with Ms. Cheng (Interview 24a), the situation faced by a single mother in Beijing. Next to Ms. Cheng sat her four-and-a-half-year-old daughter, Xiao Cheng. Ms. Cheng was worried because her daughter was approaching six years, the time to enter primary education, and Xiao Cheng lacked the documents necessary to enter a school in Beijing. Xiao Cheng looked on as we discussed her situation, not understanding as yet the situation into which she had been born, nor what the lack of a *hukou* (household registration), the topic of our conversation, really meant. Her mother, however, was all too aware of the difficulties her youngest child would face in the absence of China's primary legal identity documentation. Ms. Cheng explained that she had never married Xiao Cheng's father; his family did not approve of this divorced woman with two children. The father had furthermore refused to be put on the *hukou* booklet as the father and was now married to another woman with whom he had a child. Without his co-operation Xiao Cheng's birth could not be registered, and thus the proof of birth registration - the *hukou* - could not be granted.

In 2010, the census data confirmed that at least 13 million children were affected by lack of *hukou* (People, 2011), which serves as birth registration and affirms nationality. As I will discuss in this thesis, the true number might be closer to 30 million. My research found that, as a consequence, many of these children could be denied access to education and other state resources, and later to a recognised political voice. Without the *hukou* they had no documented formal relationship with the Chinese state. If these children reached adulthood without the *hukou* they would be unable to work legally, get

married, travel on planes, trains or long distance buses, open a bank account or access other rights dependent on having proof of legal personhood.

Complications associated with the absence of *hukou* extend beyond the domestic sphere. Under any reading of the nationality law these children should be Chinese nationals, since they are born in China to Chinese parents. Yet not only did they lack the rights of citizenship seemingly accorded to other Chinese persons, they even lacked proof they were Chinese. Thus, for example, if they crossed a nation state border they would not necessarily be allowed to re-enter China. Outside of China they most likely would neither be recognised nor offered diplomatic protection.

Much of the work I have done over the last few years, alongside my Ph.D., has been with Chinese persons seeking asylum in the UK. Many have travelled through irregular channels, mostly smuggled by groups called ‘snakeheads’. These smuggled persons would travel on stolen passports through a number of countries before reaching the United Kingdom. Upon arrival the smugglers, who travelled together with them, would confiscate their fake documents. Often these irregular migrants had never owned a valid Chinese passport. Their personal identification consisted of a Chinese *hukou* and, for those with the *hukou*, an ID card acquired at the age of 16. If these people’s claim to asylum in the UK failed, they would be taken to the Chinese embassy to be issued with Emergency Travel Documentation. Over the years I learned that issue of this documentation was often dependent on the person’s ‘co-operation’. Failed asylum seekers would need to provide in full their last known address as it appeared on the Chinese *Hukou* Register, a 15 or 18 digit ID card number issued to all those aged over 16 (given only to persons with a *hukou*), the address of the police station in China to which they had registered their home address, and contact details of a relative or friend in China. Those who were unable to provide this information would not be granted Emergency Travel Documentation by the Chinese state. Without valid travel documentation they could not re-enter China. Some failed asylum seekers were even being detained in detention facilities, fighting unlawful detention cases, while others would simply ‘disappear’ to work in the informal economy. Periodically – such as 2005, under Operation Elucidate when 172 Chinese nationals were removed from the UK (Parliament, 2006) – the UK Home Office conducted interviews on behalf of the Chinese embassy to speed up this process. However, when failed asylum seekers

claimed they no longer had an address in China, (for example if their home had been demolished), or that they never had, or renewed, an ID card, or that they simple never had a *hukou*, it appears as if most were denied permission to return to China.

Against this background, Xiao Cheng and others without a *hukou* face difficulties not only at a domestic level. Since they were never recorded in the Chinese civil registration system, upon crossing into another country there is high risk of not being recognised as Chinese citizens. While in practice, few do cross into other countries, it should be noted that they risk *de jure* statelessness – where the person is not considered a national by any state under the operation of its law. In China, recognition of nationality is not only a matter of legislation; it is also a question of documentation. Those denied a *hukou* might be deemed ‘at risk of statelessness.’ The term ‘at risk of statelessness’ refers to persons either without the documentation that could prove their nationality, or denied documentation that proves their nationality, which is how I focus this thesis (for example see Manly, 2012, p.272; Pudar, 2011, p.6; Bhabha, 2011, p.7; UNHCR, 2011, p.23; Praxis, 2011 p.25). The term can also refer to a general situation whereby nationality laws could result in retraction of their nationality, or could give rise to the possibility of children being born without nationality.

In exploring the vulnerabilities China’s hidden children face, it is not to say that they are hidden within their communities, or that they are hidden within their daily lives. They should not be characterised, as Allerton (2014, p.26) points out of other children in literature on statelessness, as “‘lost,’ ‘lacking an identity’ or ‘a place in the world’.” They have friends, families, identities and live within communities. As Staples (2012, p.5) suggests, close personal relationships give reason to reject an overly bleak outlook for stateless person, and I would argue that this is true in the case for China’s hidden children. Rather, these children are hidden from the state, and often from the researcher too. Lacking proof of a legal identity, they are hidden in a *bureaucratic* sense. They, or more often their parents, can negotiate their situation, and even seek publicity to ensure they are not hidden in a societal sense.

Ms. Cheng and her daughter epitomise the story at the heart of this thesis, and the concerns they face raise numerous questions that must be addressed: what is the relationship between documentation and nationality and what is at stake when

documentation proving nationality is denied? What are the ensuing consequences on daily life? What is the role of those such as Ms. Cheng, fighting for documentation, when it is the state that has control over who is accorded these documents? Under what circumstances can these children become documented? In addition, how much latitude is accorded to the role of individual street-level bureaucrats (Lipsky, 1980) or government officials operating outside formal legislative confines? Why and how do only some persons in an ‘at-risk’ population become documented while others are unsuccessful?

In short, the thesis is concerned with how becoming documented connects to the risk of statelessness. While the thesis explores the impact of being denied documentation affirming nationality, it also makes the process of becoming documented itself the object of exploration. This exploration can be distilled into three research questions: 1. How does denial of civil documentation that affirms nationality impact the enjoyment of rights associated with one’s nationality and legal personhood? 2. Why are populations unevenly impacted by documentation denial? 3. What can we learn about the process of becoming documented, in particular where it involves negotiation over documentation?

The thesis thus empirically exploring a population ‘at risk of statelessness’ in a Chinese context. This investigation illuminates how documentation (or lack of it) can act as a mechanism for nationality to be affirmed (or denied), and the repercussions that may flow from documentation denial. It generates an understanding of the risk of statelessness as well as negotiation over documentation, which remains underexplored in scholarship on statelessness. Specifically, negotiation over documentation pertains to the role of individual government officials and bureaucrats who grant documentation using discretionary power, but also refers to persons or their families denied documentation. I argue, through my research on the Chinese case, that negotiations by those denied documents and bureaucrats’ agency over documentation, underlie the risk of statelessness. I suggest that by examining the spaces of contestation around becoming documented in China, within the context of nationality law and central government policy, it can be demonstrated that spaces of ambiguity between policies and implementation can be appropriated by bureaucrats and citizens. Although examining the Chinese state is not the core objective of the thesis, the byproduct of

these questions illuminates how the Chinese state operates through the frame of street-level bureaucrats and documentation in China. This understanding reflects back onto discussions on statelessness which concentrate on the state.

In summary this thesis connects, through a detailed examination of a Chinese case study, the work on statelessness with work on being at risk of statelessness and negotiation over documentation. It unites the themes of document negotiation and populations at risk of statelessness living *in-situ* (within a single country). Empirically I am driven to explore Chinese *heihu* (people without a *hukou*), as a population within the burgeoning field of statelessness, by focusing on what we can learn from the practical implications of this case. Empirical work on statelessness has increased significantly over the last few years (Balaton-Chrimes, 2015; Allerton, 2014; Blitz, 2014; Kingston, 2014; Redclift, 2013; Staples, 2012; Belton, 2011; Bhabha, 2011; Blitz and Lynch, 2011; Sawyer and Blitz, 2011; Van Waas, 2008; Blitz, 2006; Goldston, 2006). These scholars have been working during a time when statelessness has also become increasingly important to the UNHCR agenda and thus to the international community. However, scholarship specifically addressing populations at risk of statelessness is largely absent from this body of literature.

In part this dearth of attention can be attributed to current trends in the study of statelessness. Increasingly, statelessness is dominated by a legal focus, in line with UNHCR objectives. The exception to this trend is an emerging body of work focusing on the lived experiences of stateless persons (Balaton-Chrimes, 2014; Allerton, 2014; Redclift, 2013). Also valuable is work that questions the benefits of obtaining nationality (Blitz and Lynch, 2011) and the work of others, who focus instead on how individuals can be incorporated in the ‘character of citizenship,’ outside a state-citizen relationship (Staples, 2012). I believe using legal definitions to define statelessness has clear advantages, allowing scholars to speak in a shared language. However, there is a risk that nationality and statelessness are viewed in binaries equated to inclusion and exclusion from a society. The work mentioned above has already demonstrated that the practical realities are often more complicated. Existing literature allow us to expand our understanding of statelessness, but this does not pinpoint satisfactorily the role of documentation in creating the risk of statelessness.

By contrast, I explore a population ‘at risk’ of becoming stateless, where nationality exists but proof of this nationality does not. This approach allows us to build on work mentioned above on legally defined statelessness, as well as the critical work emphasising that nationality does not neatly translate into inclusion as a full citizen. This work is founded on the assertion that documentation affirming nationality has a unique and vital role in bridging statelessness and nationality. This argument is informed by the theoretical commitment that nationality is not always a ‘true’ status to be uncovered, but a status one claims and that is recognised in some way that renders it meaningful (Staples, 2015, p.57). Documentation from civil registration – particularly birth registration, is thought to be of vital importance to nationality. UNHCR (2010, quoted from Manly, 2012, p.272), states that birth registration establishes the ‘legal terms the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents’ nationality (*jus sanguinis*), or the nationality of the State based on where the child is born (*jus soli*). Thus, while nationality is normally acquired independently and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration does constitute a key form of proof of the link between an individual and a State and thereby serves to prevent statelessness.’

Exploration of how documentation affirming nationality is obtained links state level legislation on nationality to the human level of interaction between government officials or bureaucrats and those seeking documentation. Understanding the risk of statelessness demands an understanding of negotiation over documentation. The manner in which people negotiate their situation can have a very real impact on when the individual may become documented. This enhances our understanding statelessness because it deepens our understanding of how the state operates. While looking at the actions of bureaucrats, particularly how divergent these decisions can be, this gives insight into the Chinese state itself, as it portrays a state that is in some ways seemingly ambivalent (Stern, 2013). It also affirms that in practice, which is documented as a national does not necessarily square with who should be entitled to nationality under law. It is for this reason that exploring the category of people ‘at risk of statelessness’ is so vital to an understanding of statelessness itself.

This thesis offers four contributions to scholarly knowledge. Firstly, this thesis theoretically intervenes in conversations on statelessness, exploring the term ‘at risk of statelessness’ and the relevance of documents. It argues the term ‘at risk of statelessness’ bridges legally defined statelessness and critical work emphasising that nationality does not neatly translate into inclusion as a full citizen. Secondly, empirically this thesis presents unique in-depth primary research on the roughly 30 million children who were denied the *hukou* in China, during the time where many parents were restricted to having one child. Although many children were affected, this group previously have not been previously the focus of academic research. Thirdly, methodologically the thesis presents data gathered through one of China’s most popular Chinese instant messaging software (QQ), used by 800 million users. This platform has not been previously exploited by academic researchers in any known publications. Fourthly, while the thesis focuses on China, it offers findings that could be generative to understanding other jurisdictions where nationality and statelessness cannot be understood without thinking through the role of documents affirming nationality.

ii. Chinese case study

Why a Chinese case study? The Chinese case offers a fresh understanding compared with other stateless populations and populations at risk of statelessness. Until now, the broad topic of statelessness has not really been discussed with reference to China, apart from some tenuous discussions on domestic migrants (Di Martino, 2011). Understandably China has been overlooked, as stateless populations are commonly associated with other factors, such as the emergence of new states and changes in borders (particularly in the case of minorities), denial of nationality through legislative changes that leave whole populations stateless using discriminatory criteria like ethnicity or race, or gender discrimination against mothers passing on their nationality (UNHCR, 2016a).

More thoroughly studied stateless communities illustrate the component of discrimination prevalent in these communities. The Rohingya community in Myanmar, for example, number nearly one million, mostly concentrated in Rakhine State. A religious and ethnic minority in Myanmar, they are a practicing Sunni Muslim community, related ethnically to the Bengali people of Bangladesh. As a result of prevalent discrimination, the Rohingya community was deprived of citizenship in the

1982 Citizenship Law and are now referred to as illegal immigrants from Bangladesh. They are subject to restrictions on domestic movement, access to education and ability to marry, and encounter barriers to employment. (Open Society Institute, 2011, p. 19).

Likewise, there is research into statelessness stemming from discriminatory laws that limit the right of females to pass on their nationality. In the Middle East and North Africa, this phenomenon is in part a result of the idea that all members of a family should hold the same nationality that runs from the male members (Van Waas, 2010b). Thus the father should transmit nationality. There are 27 countries in which it is difficult or impossible for a child to acquire his or her mother's nationality (Albarazi and Van Waas, 2014). One argument is that allowing women to transfer their nationality to their children might allow the children to acquire two nationalities at birth, which is prohibited by some states (Albarazi and Van Waas, 2014).

By contrast, denial of documentation to children in China seems to be mostly punitive, and is thus a reaction to what their parents have done rather than who their parents are, or as a result of changes to state borders. In particular, as will be explored in the thesis, this is related to state birthing restrictions, as well as touching on the ensuing policies on adoption and limitations on migration from North Korea. The children are indistinguishable on the street. They are mostly indistinguishable in class, gender or ethnicity. Rather it is bureaucratic persecution being faced. No single segment of the Chinese population is impacted, not exclusively any ethnic minority group or gender. Nor does it disproportionately impact minority groups; in fact, minority ethnic groups were largely either exempt from birthing restrictions, or had much more relaxed conditions. Punishment represents the common thread in these cases.

The Chinese case study is also not unique in highlighting the link between punishment and statelessness. Although seldom studied, punitive retraction of nationality has been seen elsewhere (Macklin, 2015; Gibney, 2011; Van Waas, 2010b), as I discuss in the following chapter. The Chinese case study, however, involves punitive denial of documents attesting nationality where, although the documents are denied, the Chinese nationality of those affected is never directly in question.

The Chinese case study brings to light new ways to consider punitive denial of documentation and its link to statelessness, and in particular the condition of being at risk of statelessness. This study looks at China's birthing policies which have restricted childbirth to married couples, allowing them one or two children depending on their situation. This was also known as the 'one child policy', which in October 2015 became a two-child restriction. As these birthing restrictions were difficult to implement over the years, one way to ensure parents' obedience to policies, or to ensure they paid heavy fines when they breached regulations, was to deny the child's *hukou* until fines had been paid in full. While not the empirical focus, two other circumstances are acknowledged as also creating risk of statelessness in China. A second cause involves cases of unauthorised adoption, something that was heavily regulated to ensure parents could not circumvent policies by 'adopting' their own child or that of a relative or friend. In so doing, the policies unwittingly created more undocumented children. This is because neither the guardians of adopted children nor non-state orphanages (which are considered illegal but allowed to operate to fill a gap in state resources) have a legal route to registration of these children. The final cause relates to children of North Korean mothers who crossed into China and were sold, to or chose to live with, a Chinese partner. Although Chinese by law, the children are denied a *hukou* unless proof of the mother's deportation or death can be provided.

To understand these three groups, the actions and choices of the people involved must be studied in detail. Why did some families face *hukou* denial where others did not? Why did some families easily remedy their situation, while others were left for years without documents? In this thesis I will show that in the process of negotiation over documentation, resistance to policies surface in numerous ways, both in hidden 'everyday' resistance (Scott, 1985) and open 'rightful' resistance, O'Brien and Li (2006). This reveals a form of negotiation over documentation unique to China – how political resistance, hidden and overt, dictates who becomes documented.

While this thesis seeks to investigate the position of those at risk of statelessness as it impacts the nationality situation of themselves or their children, it also makes the Chinese state a subject of enquiry. Through exploring the messy and contested role of state agents who implement policies at local level, it allows us to unpack the Chinese state and to acknowledge that state agents have the ability to decide how policies are

implemented, and even to simultaneously distort and create policies through their actions. This gives fresh insight into the Chinese state itself. In particular, the state will be conceptualised as seemingly ambivalent (Stern, 2013), illuminating her argument through a new empirical application.

My empirical research was carried out in 2014, and my thesis is reflective of the situation in China until October 2015. This was a period when on-going restrictions over birthing meant that many children were still denied the *hukou*, while at the same time the political situation hinted at a change, which duly appeared in October 2015, allowing all parents to have two children. Given the rumours that birthing restrictions would be relaxed, this arguably allowed parents and guardians of undocumented children more opportunity than ever to impact and negotiate the situation their children faced. In other words, officials would be more willing to bargain in the (correct) belief that in a few years they would no longer have influence over parents who had breached birthing policies. At the time, however, this relaxation was not assured, nor had any guarantee been given that it would have retroactive effect.

In other words, in order to fully grasp the lived implications of being at risk of statelessness we must also consider the role of state officials in this negotiation process, and how this reflects on the Chinese state. By conducting interviews and online research from persons dispersed across China, I found no single ‘one child policy’ but thousands of local varieties, which left parents or guardians with varying degrees of clout to contest their position. This would be expected with a seemingly ambivalent state, where cadres had latitude over how the policy was implemented. It follows that any study of the role of negotiation over documentation necessitates an understanding of how the various state bureaucracies in each location applied the policies in question differently. It warrants some discussion of the position of those employed by the state at grassroots level.

iii. Overview

Chapter One introduces the key concepts and research questions within this thesis. It addresses the lack of attention within scholarship to the link between statelessness and denial of documentation that affirms nationality. I claim that many people fall into the

category increasingly found in statelessness literature: ‘at risk of statelessness’, where their nationality status is undermined because they lack the proof to affirm it. To make this argument, I explore how we can define statelessness. I suggest a *de jure* reading of statelessness because alternative definitions are often too broad and used without consensus. Moreover, studying denial of documentation bridges the concerns raised in discussions over alternative statelessness definition. However, I do propose a reading of statelessness where any relevant authority within a government can render a person stateless (Open Society Institute, 2011, p.4). I draw on Lipsky’s (1980) work on street-level bureaucrats to expand on this argument. I hold, furthermore, that denial of documentation affirming nationality can, in some cases, render persons and populations *de jure* stateless. Nonetheless, most people denied documentation affirming their nationality should be deemed at risk of statelessness. I then propose the three research question that warrant additional exploration.

Chapter Two introduces the case study of this thesis – persons in China denied documentation proof of nationality and legal personhood- the *hukou* - and therefore at risk of statelessness. I present an overview of the Chinese *hukou* system and explore the utility of this civil document in daily life. By introducing China’s *hukou* system and its three core functions, Chapter Two makes initial observations on how those denied the *hukou* might be affected in their daily experience of accessing state rights and resources, and how it affects them attesting their legal personhood. The chapter demonstrates that lacking documents can impact the lives of Chinese citizens both because they lack proof of Chinese nationality, and more generally because they lack documented legal personhood. Lacking documents is found to be particularly problematic in China because the *hukou* system has been constructed to control domestic migration, thus constituting a formative strategy of the Chinese government’s political regime. As a cornerstone of political control, the *hukou* system is intertwined with many aspects of daily life in China. At the same time, the *hukou* institutionalises categorisations over citizenship.

Chapter Three explores a paradox: why would China purposefully deny the *hukou*, to over 13 million children when the *hukou* has been vital to the Chinese government’s governance? By introducing the central policies associated with *hukou* denial, I argue that persons without a *hukou* can be understood as a manifestation of tensions – and at

times contradictions – between central and local government priorities. Moreover, street-level bureaucrats (Lipsky, 1980) can use discretion to deny documents, resulting in uneven denial of documents to a population. I argue that the state is *seemingly ambivalent* (Stern, 2013) as the result of the diverse goals of those implementing state policy, as well as difficulties in reading political signals. In so doing, I find explore the Chinese state itself, to understand how it can be conceptualised, to better understand its role in creating the risk of statelessness. I extend discussions on risk of statelessness, by posing the question as to why the population is unevenly impacted by documentation denial. Through our understanding of the Chinese state, in so far as the existence of spaces for negotiation between street-level bureaucrats and families or parents seeking documentation, we can better understand why not everyone will be impacted evenly by birthing, adoption and immigration policies.

Chapter Four covers the methodological approach to the thesis. The chapter serves two purposes: the first is to explain the research methods and analysis used in the study of the segment of China's population without legal identity documentation. I discuss the use of in-depth semi-structured interviews and an online participant observation, as well as how I analysed my data. The second is to reflect on the challenges of researching on and in China, including ethical dilemmas inherent in studying a politically sensitive topic.

Chapters Five and Six focus on the empirical aspect of the thesis, which finds that, specifically in China, resistance is central to how documentation is negotiated. With regard to resistance I ask what types of resistance families choose to employ, and examine what constitutes 'political resistance'.

In Chapter Five, the focus is placed on understanding how it is that some persons end up being denied documentation in China, and therefore became at risk of statelessness. I draw on Scott's (1985) work *Weapons of the Weak*, in which he describes everyday resistance as hidden, passive anonymous resistance. This resistance is prevalent in opposition to state restrictions on birthing, adoption and immigration regulations, although my data focuses on resistance to birthing policies. The aim is not to imply that all unregulated pregnancies are acts of resistance to the state, but to highlight that in the Chinese context the choices made upon pregnancy are considered highly political, and

people can resist state quotas over their birthing choices. This cannot be divorced from their political context. A person's way of negotiating documentation for their children is often found embedded in everyday resistance. I also use Scott's (1990) work on 'hidden transcripts' by exploring how these families discuss their situation online. Scott (1990, p.xi) defines hidden transcripts as those subjected to state repression giving 'offstage' criticisms power relations. I argue that hidden transcripts can be found in online discussions among families facing *hukou* denial towards their children. This novel focus on resistance in the context of literature on statelessness urges us to broaden our conception of how being at risk of statelessness can come about, and its consequences on the lives of those affected. It opens space for discussions on negotiation between persons or families denied documentation and those who deny documentation, and their agency over documentation. It also highlights that in many cases documentation denial is more accurately seen as documentation at a price, and thus being at risk of statelessness in China can be a transient category.

Extending my review of why documentation denial is found unevenly in China, I explore how, when everyday resistance is insufficient to overcome state pressure, it can escalate into Rightful Resistance; open and collective resistance seeking redress on an issue at hand, rather than being revolutionary in nature (O'Brien and Li, 2006). This topic is the focus of Chapter Six. The resistance is mobilised through the Internet, particularly in chats on an instant messaging service called QQ. Thus, I found becoming documented in China does not always happen at a precise moment, but is sometimes a space of contention and an outcome of negotiations. I develop two interconnected arguments in this chapter. First, that negotiation - in particular, through rightful resistance via the Internet- is a vital factor in determining who becomes documented, both individually and for the undocumented population as a whole. I explore how Internet chatrooms give rise to political resistance, and mobilise groups to resist birthing restrictions. Second, it brings everyday and rightful resistance into the same analytical framework, where people can move between or simultaneously operate both forms of resistance. This is vital to an understanding of why some people escape being at risk of statelessness, and for better understanding of how agency over documentation manifests in the Chinese context.

Chapter 1. At Risk of Statelessness

1.1 Introduction

Statelessness is a field which has been receiving growing attention from scholars, particularly over the last decade (Balaton-Chrimes, 2015; Belton, 2015; Allerton, 2014; Blitz, 2014; Kingston, 2014; Redclift, 2013; Staples, 2012; Belton, 2011; Bhabha, 2011; Blitz and Lynch, 2011; Sawyer and Blitz, 2011; Van Waas, 2008; Blitz, 2006; Goldston, 2006) building on seminal work in legal and political fields (Weis, 1979; Arendt, 1951). Likewise, bodies such as non-governmental organisations (NGOs) European Network on Statelessness, The Equal Rights Trust, The International Observatory on Statelessness, The Open Society Institute's Justice Initiative; Praxis, The Institute of Statelessness and Inclusion, as well as the United Nations High Commissioner for Refugees (UNHCR), have increasingly focused on the subject. Nevertheless, it remains a fairly self-contained field and it is therefore puzzling that the the definition of statelessness remains contentious.

In the broadest terms, definitions of statelessness can be divided into those pertaining to *de jure* stateless (a lack of legal nationality) on the one hand, (Massey, 2010; Mandal, 2010, Van Waas, 2008) and *de facto* stateless (ineffective nationality) on the other, (Van Waas, 2008, p.45). These definitions are not simply of theoretical concern; they have significant implications for how statelessness should be tackled. If statelessness is construed as a 'lack' of nationality, the acquisition of nationality is deemed to be the natural solution to statelessness (Eliassi, 2015, p.2). However, the right to a nationality is not the same as the rights attached to a nationality. Addressing *de facto* statelessness, by contrast, necessitates more sophisticated solutions, such as addressing the lack of rights associated with nationality.

More puzzling still is that within scholarly work on statelessness, its link with civil documentation affirming nationality has received only fairly superficial attention in discourse on the subject; particularly given that birth registration is an area of focus from NGOs and UNHCR (Plan, 2014; UNHCR, 2013; UNICEF, 2013; Heap and Cody, 2009, p.20) From the perspective of problematising statelessness, lacking documentation that affirms nationality can be problematic to people for three reasons.

Firstly, when civil documentation confirming nationality is denied, one might be *de jure* stateless (Open Society Initiative, 2011). Secondly, without civil documentation, a person might be unable to access the essential resources, services and protection to which they are entitled as a national (Bhabha 2011, p.2-3) or as a person with proof of legal personhood. Thirdly, for those lacking civil documentation, it is difficult to even establish whether a person is *de jure* stateless, since recognition of statelessness depends on the decisions made on statelessness determination (Staples, 2015, p.57). Determination of statelessness – by governments, NGOs and UNHCR, - is always based on the evidence available, and existence of this link is only established by seeking recognition of nationality (Staples, 2015, p.57). Thus, determination of statelessness can depend on the lack of civil registration, and in particular birth registration. Persons refused or without this documentation should be considered at a heightened risk of statelessness (Manly, 2012, p.272). Yet existing literature devotes insufficient attention to the role of documents and to the consequences, from the perspective of statelessness, of lacking such documents. This theme, namely the risk of statelessness due to lack of civil documentation, is at the heart of the thesis.

This first chapter addresses the lack of attention to civil documentation in the statelessness field in two ways. Firstly, I argue that while the definition of statelessness should be limited to a *de jure* understanding, studying denial of documentation bridges the concerns raised in discussions over *de jure* and *de facto* statelessness. I focus on a *de jure* statelessness definition that takes into account the impact of denial of documentation that affirms nationality. An understanding of this is vital to the overall understanding of statelessness put forward in this thesis.

Secondly, I would like to expand the focus to include to the many people who fall into the category at risk of statelessness, where their nationality status is undetermined. They are at risk of *de jure* statelessness. This ‘at risk’ category is generative for thinking through how lack of documentation affects both nationality and access to rights and resources since documentation confirms nationality while allowing an identified national to enjoy the rights that are associated with ‘legal personhood’ (Szreter and Breckenridge, 2012, p.22). Persons who are at risk of statelessness can simultaneously face daily exclusion (sometimes discussed as *de facto* statelessness) as well as broader questions over their nationality. The former might well be an overriding concern in a

person's daily life – lack of rights that are given to both nationals, as well as those with legal recognition of personhood. The latter, meanwhile, carries the overarching risk that persons in this category can be faced with non-recognition of nationality.

The chapter proceeds as follows: Section Two explores the legal definition of statelessness and the critiques of its definition. I argue that despite concerns surrounding the *de jure* definition of statelessness, alternative explanations are often too broad and used without consensus. The remainder of this section illuminates the current concerns over defining statelessness in the field today. In Section Three I propose a reading of the legal definition of statelessness that is in line with the argument raised by Open Society Institute (2011). The first element is that any relevant authority within a government can render a person stateless. I draw on Lipsky's (1980) work on street-level bureaucrats to expand on this argument. I argue secondly, that denial of documentation affirming nationality can, in some cases, render persons and populations stateless. Given that statelessness is a status dependent on determination and recognition, in many instances persons refused or without documents should be considered at risk of statelessness until their nationality is clarified or they obtain proof of their nationality. In this section, in which my key terms around the 'risk' of statelessness are defined, I make clear that 'risk' in this sense pertains to risk of *de jure* statelessness. Section Four elucidates the three research questions central to this thesis. Firstly, how does denial of civil documentation that affirms nationality impact the enjoyment of rights that are associated with one's nationality and legal personhood? Secondly, why are populations unevenly impacted by documentation denial? Thirdly, what can we learn about the process of becoming documented, and in particular, negotiation over documentation? In my conclusion I summarise the arguments in the chapter, namely that a broader *de jure* definition of statelessness has much to offer the field of statelessness today, as well as providing a focus on the role of documentation in understanding the risk of statelessness.

Within this thesis I use the term nationality to denote the formal status of membership devoid of content such as the domestic rights and obligations associated with that membership (Gosewinkler, 2001, p.25). Nationality signifies membership of a state bounded community in an international context (Weis 1979). I also use the term citizenship with reference to the domestic context of membership within a state. Citizenship usually signifies discourse on 'rights, duties and identity' (Staples, 2012,

p.2) and obligations of members, as well as legal membership status (Gosewinkler, 2001, p.25-27). In international law, nationality (not citizenship) is the concern of statelessness legislation. However, I note that some relevant literature uses the two terms interchangeably, for example, *Nationality and Statelessness: A Handbook for Parliamentarians* (2005, p.3).

1.2 Defining statelessness

Over the last decade, with statelessness receiving renewed attention both within academia and beyond, the question of how to define statelessness has recurred, based on categorizations of statelessness created in 1954. In this section, I will discuss the primary definitions of statelessness, and the critiques of these definitions, in moving towards my own understanding of statelessness by the end of Section Two. The definition of statelessness is vital to my discussion, particularly in order to make sense of the term that is central to the thesis: at risk of statelessness.

1.2.1 Backdrop to statelessness discussions

A shared understanding of statelessness is no trivial matter. It is estimated by UNHCR that statelessness affects ten million people. This body was given a formal mandate by the United Nations (UN) to prevent and reduce statelessness, as well as to protect the rights of stateless people (UNHCR, 2016a). According to legal understandings, statelessness can arise from a multitude of factors such as: state succession, discriminatory and arbitrary deprivation of nationality - particularly pertaining to nationalistic, ethnic or gender discrimination; and conflicting nationality legislation between states (Blitz and Lynch, 2011, p.5-10). In addition, ‘new’ causes of statelessness include lack of birth registration, and migration (Van Waas, 2008, p.152). Looking at the global situation, most people who can be categorised as stateless are part of an *in situ* stateless population (Belton, 2015, p.907), meaning that they are tied to a country through birth, long-term residence, or social and economic integration (Gyulai, 2012, p.280). In the European context, statelessness is also a consequence of state succession (Blitz and de Chickera, 2012, p.240) and a migratory phenomenon (Gyulai, 2012), as well, to a much lesser extent, deriving from gaps in from nationality laws (Manly, 2012, p.267).

Defining statelessness also shapes how statelessness is problematised. The dominant discourse on statelessness has highlighted that it is an exceptional form of exclusion and a uniquely negative phenomenon (Eliassi, 2015, p.10), as theorised in the work of Agamben (1998) and Arendt (1951). Arendt (1951, p.296) claimed that ‘the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective’. Without a political voice, she argued, stateless persons lose ‘essential characteristics of human life’ (Arendt, 1951, p.297) because they have nowhere for their voices to be heard or their actions to be significant. Accordingly, Arendt (1951, p.297) claims they live in the state of nature, without access to participation in a public political sphere. This bleak understanding of statelessness has increasingly been challenged by contemporary scholars who seek more nuanced conceptions of what statelessness means (Eliassi, 2015; Staples, 2012).

Meanwhile, empirical studies have found this legal definition of statelessness to be reductive. Social exclusion that can underlie statelessness may continue, even when formerly stateless communities obtain a legal nationality (Redclift, 2013; Balaton-Chrimes, 2015; Blitz and Lynch, 2011). Additionally, parallels between persons without nationality, and those without effective nationality, have been found (The Equal Rights Trust, 2010). Thus, focusing exclusively on the legal right of nationality “...under conditions that make it impossible for people to exercise those rights effectively tells us little about the lived experience of ‘statelessness’” (Redclift, 2013, p.5). This body of empirical work points towards broader vulnerability in the lives of stateless persons than simply a lack of nationality. Yet it is less clear why lack of nationality should lead at times to situations of such extreme vulnerability, given that human rights law protects the rights of all persons, regardless of their nationality. To understand this, and why documentation might be so central to understanding statelessness, I examine first the key discussions around definitions of statelessness.

1.2.2 *De jure* statelessness

The traditional understanding of statelessness in international law emerged first in post-war Europe. Today’s conceptions of statelessness are overwhelmingly in conversation with this understanding. The *de jure* definition is appealing because it delimits who

should be protected, and this definition governs UNHCR policy. It is thus a common currency to facilitate discussion on statelessness.

The first international law on statelessness was promulgated to tackle the populations of stateless people after the two world wars. World War I created large-scale population displacement and statelessness, and so the 1930 Hague Convention on Certain Questions Relating to the Conflicts of Nationality Laws addressed statelessness in international law. Then, following World War II, statelessness became an issue on the agenda of the newly formed UN. This is not to say that statelessness did not exist prior to the twentieth century, but rather it was not a concern under international law or to the European community (Van Waas, 2008, p.37).

Against this backdrop, the UN promulgated their first law on statelessness. Legal writings since 1954 use the statelessness definition presented in Article 1 of the 1954 *Convention Relating to the Status of Stateless Persons*, commonly referred to as ‘*de jure* statelessness’: “For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any state under the operation of its law”. Accordingly, this has been the starting point for most discussions on the definition of statelessness.

No discussion on the definition of statelessness can exclude a brief analysis of the *de jure* definition, which dictates who is protected under international law. This has already been written elsewhere, but it is worth summarising here since my argument utilises this definition as the starting point. One of the most comprehensive reviews of how the Convention is understood by legal scholars is found in Mandal’s (2010) paper on ‘The definition of “Stateless Person” in the 1954 Convention relating to the Status of Stateless Persons: Article 1(1) – The Inclusion Clause’. This paper, together with that of Massey (2010), informed recent discussions in the Expert meeting organised by the Office of the United Nations High Commissioner for Refugees, Prato (2010), known as the *Prato Conclusions*. The discussions can be said, broadly speaking, to reflect current legal understanding of statelessness (UNHCR, 2010).

Central to the legal understanding of statelessness is the legal meaning of nationality, and what the lack of nationality can entail. Nationality should be seen as a status of

membership on the international stage. Mandal (2010, p.10) emphasises that whether or not the person in question can access the rights that usually flow from having nationality is irrelevant. In other words, 'states have discretion to determine the content of their nationality laws and policies' (Mandal, 2010, p.12). While Mandal acknowledges there might be a minimum content to nationality, what this entails is, as yet, undefined. Massey (2010, p.38) also points out that 'under human rights law, the right to a nationality is distinct from the rights attached to nationality...the violation of one does not necessarily entail a violation of the other.' In summary, a person who has a nationality, even if they lack all or any associated rights from this nationality, is not *stateless*. *De jure* statelessness can be viewed as the lack of a nationality from any state. In other words, it is a lack of membership status, not a lack of rights *per se*.

Of course, ascertaining whether one has nationality is not as straightforward in practice. Open Society Institute (2011, p.4) point out that most stateless populations only have links to one state through economic and social ties, where they were born or currently reside. Hence the second question arises as to what counts as lacking nationality? In other words, we should ascertain the meaning of who is not a national 'under the operation of its law' in the *de jure* definition. Law varies from country to country, as Mandal (2010, p.30) discusses with reference to the definition of statelessness. Law is not confined to legislation within a country; it can also encompass case law (in countries with common law systems), a constitution, regulations and decrees. Moreover, within the European Union, law can even include the European Convention on Nationality, which "has a broad definition of law along the lines indicated, also including 'customary rules and practice'" (Mandal, 2010, p.30). Operation of law can also encompass discretion and implementation. What counts as law can vary from state to state. For example, Mandal (2010, p.32-33) acknowledges that what counts as law depends on how authorities within a state apply domestic law. In cases where state officials unlawfully deny nationality, the person affected should still be considered stateless.

In summary, *de jure* statelessness is understood by legal scholars as lacking a nationality in any country under the operation of the law. It is not concerned with the rights that might be attached to nationality. The term *de jure* statelessness is vital to understanding who falls under UNHCR protection, as well as its currency for shared

understanding on statelessness. However, this definition could be problematic, in that it provides little scope for protecting persons whose nationality does not function in practice – a concept I will discuss below. Nor does it explain why statelessness should be associated with such vulnerability, since it is unconcerned with rights associated with nationality. Moreover, to determine who counts as *de jure* stateless can be more challenging than meets the eye, given the latitude available in understanding over what counts as ‘law’. This ambiguity will be discussed later in the chapter.

1.2.3 *De facto* statelessness and alternative definitions

While many studies of statelessness depart from the understanding of *de jure* statelessness, there is a significant body of work that uses the term *de facto* statelessness, as well as other similar labels. Here I review work that deconstructs the purely legal definition of how statelessness can be defined, which I argue should push scholars to acknowledge a more nuanced understanding of nationality denial. As will be illustrated, I find this body of work exhibits little consensus as to what alternative definitions of statelessness should incorporate.

In international law, Van Waas (2008, p.45) states, the term *de facto* statelessness implies a degree of ‘ineffective’ nationality. Although undefined, it is usually deemed that *de facto* stateless persons are those who have a nationality, are outside the state of their nationality, and have been refused diplomatic and consular protection by their state:

‘*De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Persons who have more than one nationality are *de facto* stateless only if they are outside all the countries of their nationality and are unable, or for valid reasons, are unwilling to avail themselves of the protection of any of those countries.’ (Massey, 2010, p.61)

The prominent use in recent literature on statelessness of the *de facto* definition of statelessness can also be traced back to when the 1954 *Convention to the Status of Stateless Persons* was promulgated. During the conference at which this Convention was agreed upon, the term *de facto* statelessness made an appearance in Resolution No. I of the Final Act of the Conference (Van Waas, 2008, p.44-45). The resolution

recommends that ‘...persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.’ In practice, the concept of *de facto* statelessness was relegated to a footnote in international law (Lee, 2005, p.7).

The mention of *de facto* statelessness in international law was fashioned by historical events, in particular the desire to protect refugees after the two world wars. It was assumed that *de facto* stateless persons would be protected under the 1951 Refugee Convention (Massey, 2010, p.19). This reflects the assumptions made by delegates at the 1951 Refugee Convention and the 1954 Statelessness Convention - that *de facto* stateless persons would be always be outside their countries of habitual residence, and so necessarily would be considered refugees (Goldston, 2006). However, at the time the 1954 Convention was drawn up, driven by the concern of the Belgian delegate who insisted that some states might ratify the Statelessness Convention without also ratifying the Refugee Convention, thus creating a protection gap. Thus, *de facto* statelessness was mentioned in the last article of the 1954 convention to avoid this situation (Massey, 2010 p.19-20).

In recent years, the use of *de facto* statelessness has evolved. It can include certain persons who are within the state of their nationality (Massey, 2010, p.iii). It can refer to persons who do not enjoy the rights attached to their nationality (Massey, 2010, p.iii) or ‘when individuals cannot call on the state to which they may be formally attached by means of nationality’ (Blitz 2006, p.455). It has also been used to encompass persons who are unable to establish their nationality (Massey, 2010, p.iii) or unwilling to go to their home country and thus ‘remain *de facto* stateless in a country that regards them as an unwanted foreigner’ (Sawyer and Blitz, 2011, p.70). State succession can also create *de facto* statelessness when persons hold the nationality of a state that is no longer of their habitual residence (Massey, 2010, p.iii). *De facto* statelessness can be a term for ‘people who have a nationality but whose status where they reside is not legal because they are illegal, irregular, or undocumented migrants in their current location’ (Bhabha, 2011, p.1). This definition is used within the empirical work such as in seminal work ‘Children without a State’ (Bhabha, 2011). In unison, this literature provides a nuanced understanding of statelessness. However, this diverse range of terms does not bring us closer to a unified understanding of statelessness.

What is particularly important to a broader definitions of statelessness is the acknowledgement that lived realities of stateless persons are not defined by legal exclusion and inclusion alone; for most people, nationality is much more than a formal status. It is possible to hold legal nationality but be unable to access the full range of privileges inherent to citizenship (Kingston, 2014, p.128). For example, Bhabha's (2004) article discussing children who have nationality yet lack the citizen rights granted to adults who hold the same nationality, illustrates the limits of this nationality. As an example, children cannot vote or stand for public office (Bhabha, 2004, p.95). In particular, children are not usually entitled to reside in their birth country indefinitely without fear of deportation nor can they use their nationality to block the deportation of their parents (Bhabha, 2004, p.95-96). Bhabha's work illustrates that obtaining nationality does not necessarily bring all the benefits associated with citizenship.

Statelessness is then rarely a simple case of lacking membership while other rights remain intact. It also cannot necessarily be fixed by granting stateless persons nationality. This has been empirically researched: Blitz and Lynch's (2011, p.204) pivotal work on the benefits to formerly stateless populations of obtaining nationality confirms that when formerly stateless populations acquire a nationality they also attain numerous important benefits. However, Blitz and Lynch found that nationality alone does not ensure the protection of human rights and social integration. In particular, whether the formerly stateless population shared the same ethno-national identity with the rest of the population was a key factor in determining how well integrated the population could become once they obtain nationality (Blitz and Lynch, 2011, p.206). So, the appeal of a *de facto* definition is clear. Statelessness through a legal definition does not allow us to fully understand the lived situations of stateless persons. Hence scholars searched for a definition of statelessness that reflects the difficulties stateless persons might face in their daily lives, while also being sufficiently contained to allow a shared meaning.

One reaction to this problematic element of looking at statelessness as an issue of nationality alone has been for scholars and NGOs to create new definitions for vulnerable people without an effective nationality. These approaches share the common concern that sometimes persons in stateless situations cannot fit into neat legal binaries

of *de facto* and *de jure* statelessness. Hence different terminology must be used to address this problem. Bhabha (2011, p.2), in *Children Without a State*, employs the term ‘effective statelessness’ referring to persons who possess a nationality, but lack documentary proof. She argues that while the conception and practicalities of this situation are different to the situation faced by *de jure* stateless persons, effective statelessness can cause vulnerability of the same magnitude because it jeopardises claims to inclusion. In other words, persons who are effectively stateless face the same barriers as *de jure* stateless persons to accessing rights from a state. Allerton’s (2014, p.31) work on Children of Migrants in Sabah, East Malaysia, takes a similar line of reasoning, looking at effective statelessness when ‘in practice most [children], such as children of migrants with Filipino or Indonesian nationality are unable to make...a claim to their nationality’. For example, the undocumented children might be unable to travel to the embassy for financial reasons or due to lack of documents - particularly as the Philippines does not have a consulate on the island of Borneo but in Kuala Lumpur, on peninsular Malaysia. Yet neither scholar explicitly draws out the relationship documentation has with nationality.

Kingston (2014), by contrast, favours the term ‘functioning citizenship’, placing all citizens on a spectrum of membership. She argues that functioning citizenship is an ‘active and mutually-beneficial relationship between the state and the individual’ which goes beyond categories of *de jure* and *de facto* stateless persons (Kingston, 2014, p.127). Because membership exists along a spectrum, gaining formal nationality does not necessarily equate to functioning citizenship. Kingston’s work is thus useful in acknowledging that statelessness and nationality are not neat binaries. Likewise, the Equal Rights Trust (2010) argues that some communities – such as Kenyan Somalis - do not necessarily fit into *de jure* or *de facto* categories and so their protection is at risk. They point out that a more inclusive definition of statelessness could circumvent the problem of protection hierarchy associated with the *de jure/de facto* divide. Instead, they recommend anyone with ‘ineffective nationality’ – *de jure* or *de facto* – should be considered stateless. Staples (2012, p.2) explores membership to denote the relationship of inclusion and exclusion, so as to avoid some foundational assumptions about nationality. While vital in pointing out aspects of statelessness not included in *de jure* understandings, these approaches focus on their own definitions. This means that the

variety of terminology used to define statelessness can undermine a shared understandings of what statelessness entails.

One way around this problem is to consider both *de facto* and *de jure* statelessness together. This does have certain advantages. For example, aside from the term ‘effective’ statelessness, Bhabha (2011, p.3) also considers the shared vulnerabilities faced by both *de jure* and *de facto* stateless groups. In *Statelessness, Human Rights and Gender*, Lee (2005) attends to the developing relationship between statelessness and migration. She focuses both on *de jure* and *de facto* stateless persons to draw parallels between the two groups in a migratory situation. So too, Sigona (2016, p.275) favours sociological analysis of the social condition of statelessness, which transcends the distinction between *de jure* and *de facto* statelessness. Redclift (2013, p.6) sidesteps the divide in a slightly different way, by arguing that statelessness ‘cannot be reduced to a singular or discrete, legal or social form’. All the above authors understand statelessness in terms of a broader definition, encompassing the lived realities in a way that goes beyond a formal legal definition. This allows us to understand how, in everyday life, the challenges faced by stateless persons is not necessarily unique, overlapping with the challenges faced by *de facto* statelessness. Still, this does not bring us closer to a clear and shared understanding of statelessness.

In sum, there is an argument that statelessness cannot be confined to the traditional *de jure* understanding. The result has been a plethora of terms, in particular multiple uses of the term *de facto* stateless. With these differing approaches, as Redclift (2013, p.1) states, scholars are faced with the dilemma over what it means to be stateless. Is it reducible to proof of belonging or identity? Is it a held status defined by international law or lived process? Does it matter if one crosses a nation state border? While helpful, the variance in terms and ideas of statelessness hinders comparative work and shared understanding.

1.2.4 Critique of *de facto* statelessness

As seen above, the numerous definitions of *de facto* statelessness do not allow scholars to discuss the phenomenon in an easily comparable way. As we will see below, the legal community has forcefully argued that most persons given the label of *de facto* statelessness are either *de jure* stateless, or suffer human rights abuses that should not

be attributed to nationality deprivation. Legal literature on statelessness argues that *de facto* statelessness is ‘a catch-all category by publicists for people who were deemed to have some nationality “problem”’ (Manly, 2012, p.265). I will summarise their arguments below, in order to illustrate why this thesis focuses on a *de jure* statelessness definition rather than a *de facto* definition of statelessness.

In recent years, the legal community has called into question the utility of the distinction between *de jure* and *de facto* statelessness. A glance at UNHCR literature confirms that the term *de facto* statelessness seems to have been quietly abandoned over the last decade (also see Manby (2016)). This is because the legal community argue that the term *de facto* stateless is usually unhelpful (Massey, 2010; Van Waa 2008; Tucker, 2014).

The primary criticism, from the legal field, of the term *de facto* statelessness (that apply equally to many alternative definitions of statelessness) is found in Massey’s (2010) paper on *UNHCR and De Facto Statelessness*, Mandal’s (2010) paper discussed above, and Van Waas’s (2008) doctoral thesis *Nationality Matters*. Van Waas (2008, p.24) argues that three groups of persons are frequently incorrectly labelled *de facto* stateless: firstly, persons deprived of the enjoyment of human rights that are generally attached to nationality under domestic laws; secondly, persons whose nationality is contested or disputed by one or more states; and thirdly, persons unable to establish or prove their nationality.

The first argument strikes at the heart of the *de facto* statelessness approach – that nationality is not membership alone. The legal approach argues that *de facto* statelessness is often confused with ‘ineffective citizenship’. As I have already stated, nationality is viewed as the international legal component of membership, and citizenship as the domestic aspect of membership (Weis, 1979). Such an understanding asserts that at an international level there is no compulsory component to nationality. Rather, each state determines the rights and responsibilities that are tied to citizenship. In cases of ineffective citizenship, people should still be protected under a broad range of international human rights laws (Van Waas, 2008, p.24-25). In such cases, labelling these persons as ‘stateless’ is not useful from a legal perspective since their problem is actually unconnected to nationality. Likewise, Tucker (2014) argues that ineffective

citizenship should be discussed separately to statelessness as there is no specific 'content' to nationality inscribed into international law. By 'content' he refers to the bundle of obligations and rights usually attached to citizenship. Mandal (2010, p.16) argues that while nationality is commonly associated with re-admittance to a country and diplomatic protection, international law does not stipulate a minimum content to nationality. She claims that the right to vote, the right of re-entry into one's country, or the right to diplomatic protection would not, by being denied, automatically render a person stateless. Furthermore, if a country refuses re-admittance or diplomatic protection to a person, but still believes the person in question to be a national, the person is not stateless. Mandal (2010, p.18) concludes if we accept there is no minimum content to nationality, then nationality is purely the 'identification of categories of people over which the state feels entitled to assert its jurisdiction, including in terms of representations to other states'. If there is a minimum content, what that might entail is unclear.

The approach thus presents an understanding which acknowledges that human rights abuses often operate in tandem with denial of nationality, but are not caused by such denial. It denies the logic of an 'effective' statelessness. Mandal elucidates that when addressing statelessness, we should not be concerned about how a country acts towards a person, but how the country regards that person. Massey (2010, p.38) echoes that 'the right to a nationality is distinct from the rights attached to a nationality'. For this reason, Weis (1979, p.164) argues the term *de facto* statelessness is better described by the term '*de facto* unprotected person'. It is not a denial of vulnerability faced by stateless persons, but rather a statement that people can suffer human rights abuses without this calling into question their nationality, which is simply a legal membership. Hindess (2000 p.1495) summarises the sentiment by saying this means nationality should be understood as a '...marker of identification, advising state and non-state agencies of the particular state to which an individual belongs'. It necessitates finding solutions for human rights abuses which are separate from those addressing lack of nationality. Yet this does not explain why the legal community then find statelessness so straightforward. If statelessness is simply the lack of membership, granting nationality will not help people who are stateless and also facing extreme human rights abuses.

The second argument is that *de facto* statelessness is often used to refer to persons whose nationality is contested or disputed by one or more states (Van Waas, 2008, p.24). The fact that one's nationality is called into question does not mean they do not have a nationality or that the nationality will not be discovered (Massey, 2010, p.40). Rather, it means the person in question is either *de jure* stateless or has a nationality that has yet to be discovered. In practice, however, one might be recognised as stateless because a nationality cannot be established.

The third argument is that *de facto* statelessness is used when a person is unable to establish or prove his or her nationality. However, being unable to establish a nationality only renders someone *de jure* stateless if the authorities of all state(s) with whom they have factual links claim the person lacks documentation because he or she is not a national (Massey, 2010, p.50). Otherwise, the problem is deemed to be one of documentation rather than nationality.

Again, this issue is less clear cut than acknowledged in legal literature. For example, legal scholar Van Waas (2008, p.151-152) points out that weak civil registration systems, in particular birth registration, have been included in discussions on statelessness. She argues that while in some cases lack of birth registration is not problematic for a child in the long run, in some circumstances this is not true. Yet Van Waas (2008, p.155) also points out, in situations where governments purposefully deny birth registration, non-registration and statelessness overlap. So too, migration and state succession can heighten the risk of statelessness. Van Waas (2008, p.156) in summary states that 'the registration of births is vital for the protection against statelessness'. In her writing she mentions the term 'risk of statelessness' in reference to those persons without documentation who might become stateless.

I would argue that in practice claims for protection for stateless persons do depend on determination. Documents are usually a crucial form of evidence of nationality. If a state denies documents affirming nationality the situation is more ambiguous. Moreover, documents are often the link between nationality and a functioning nationality, or the rights and services that are linked to nationality. This area warrants further explanation that explicitly addresses the link between documents and statelessness, which this thesis will explore in a Chinese context.

1.2.5 Summary

This section has outlined some points of contention regarding how statelessness should be defined. To summarise, we have seen strengths and weaknesses in different approaches to definitions of statelessness. The legal definition separates right abuses and nationality, yet in practice people without nationality might face similar situations to person who lack effective nationality. Moreover, the legal approach to documentation and determination of statelessness is less clear. Meanwhile, alternative approaches offer nuanced understandings of statelessness, but lack a definition that is clear, bounded and shared in literature. Some work explicitly looks at the role of documentation, yet lacks empirical and theoretical depth. In the next section I will work towards reconciling some of these differences.

1.3 Bridging the definitional gap

Given that statelessness is a field of concern to NGOs, legal experts and policy makers, as well as scholars conducting empirical studies, a shared definition of statelessness would be particularly valuable when approaching the subject. As stated, a mutual understanding of statelessness would pre-empt how statelessness is problematised and tackled. The aim is not to dismiss conversations that advance different understandings of statelessness, which potentially encourage broader protection of vulnerable people. Nevertheless, I find that with numerous terms depicting statelessness, and a variety of interpretations of *de facto* statelessness, no term is comparable to the term *de jure* statelessness in its currency because it allows for broad comparative work and shared dialogue. It is worth returning to the legal definition to see whether the term *de jure* stateless might be broader than initially apparent, particularly when looking at the role of documentation.

1.3.1 Documents and statelessness

As I have noted, the connection between documentation and statelessness has been a recurring but under-explored theme connected with statelessness in academic literature. Legal scholars tend to pay insufficient attention to the fact that nationality determination can be particularly challenging when a person lacks documentation to affirm their claim. While they might well hold nationality according to the nation's legislation, what

happens when this state refuses not only to accord them the rights of other nationals, but moreover, refuses them recognition of their nationality in the form of civil documents? In such circumstances, how can their nationality be determined at all?

There are two notable exceptions, where a scholar moves beyond a brief mention of the importance of documents to an exploration of the link between statelessness and documentation. The first is the already mentioned Bhabha (2011), who argues that children without documentation face a comparable situation to *de jure* stateless children. This work pioneered the focus on documents in scholarly work on statelessness. While Bhabha's approach is ground-breaking, it does not actually delve deeply into the relationship between documentation and statelessness. Nor is there sustained empirical research in her edited volume on this facet of the argument, apart from in Vandenabeele's chapter (2011), where Vandenbeeel found that civil documentation in Nepal is actually of quite limited use. Vandenbeeel's work is valuable when in looking at countries with undeveloped civil registration systems. While I will discuss this later in the chapter. However, it provides only a limited view of a broader topic that warrants additional research in countries where civil registration systems are more developed.

The second piece of literature capable of generating understanding of the link between documentation and statelessness is the work of the Open Society Institute. The argument presented by them on *de jure* statelessness is particularly informative in analysing the link between documentation and statelessness. Open Society Institute's report focuses on Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, as interpreted by the Prato Conclusions, which found that the state alone determines whom they recognise as a national. This does not necessarily mean the state must be asked their opinion (which anyway might not be given); their view can also come from identifying which authorities are competent to establish/confirm nationality for the purposes of Article 1(1). A broad reading of national law must be taken into account, including customary practice. Open Society Institute (2011, p.4) argues that most stateless populations only have links to one state. They find that:

‘In order for the Prato Conclusions to be meaningful in practice...two principles in particular require focused attention: a. The precise meaning of “competent authority” in the context of nationality determination must be clearly and broadly defined in

order to establish the viewpoint of the state with respect to the legal status of an individual; and b. Prima facie [legally sufficient] evidence of the viewpoint of the state may give rise to a presumption of *de jure* statelessness with respect to either an individual or an entire population.’

Their argument holds that in order to determine if a person is a national, the actions of the ‘competent authority’ should be assessed. When they refer to a competent authority, they mean actors at every level of the government within the state (Open Society Institute, 2011, p.5). In other words, if a bureaucrat in a town where the person resides deems someone not to be a national, this can be as significant as if it was deemed the case by the head of a ministry, according to their argument. Hence when people are deemed not to be a national by low-level government bureaucrats (within the state which whom they have ties), according to Open Society Institute, the person should qualify for protection as a *de jure* stateless person until they are found to be a national.

The second component of their argument is that ‘discriminatory impediments to securing proof of citizenship should give rise to a presumption that the state does not consider individuals affected by such measures to be nationals’ (Open Society Institute, 2011, p.5). Without documents persons cannot prove they are a national, and denial of these documents should be a reflection of the state’s view on their nationality. This ties into the first argument, because it is often the case that ‘relatively low-level and/or local authorities examine the proof presented and handle the issuance or denial of documents recognising an individual’s citizenship’ (Open Society Institute, 2011, p.5). This shifts our focus away from seeing statelessness rendered by the ‘state’ as a unified whole, towards the actions and decisions of authorities within the state, particularly those at ground level.

Open Society Institute call on us to explicitly recognise that statelessness is linked to denial of documents affirming nationality, which can derive from decisions of local authorities. It is instructive because denial of documentation is a mechanism to create statelessness. It also explains why people who never cross a national border can be so vulnerable, because lacking documentation undermines not only their nationality. It also prevents access to rights both as a national of a country and as a documented person

with a legal identity. I will expand below on how denial of documents at the hands of local authorities can underlie statelessness.

1.3.2 Competent authority and ‘under the operation of its law’

Understanding what constitutes ‘law’ is vital to the definition of who is protected under the *de jure* stateless definition. Whether someone is recognised as a national ‘under the operation of its law’, is in practice dependent upon on the judgment of an authority implementing this law. It is worth reiterating that the working of the law is not only about legislation and formal policy, but that law refers to everyday practice of state officials. When we review the *de jure* stateless definition, the clause ‘under the operation of its law’ can refer to persons denied nationality even when this is unlawful (under municipal law) deprivation (Mandal, 2010, p.33). As Mandal argues, unless the actual application of the law is considered, the purpose of the convention itself, which is to protect those denied a nationality, would be ineffective. UNHCR’s 2012 (a) guidelines now make this understanding explicit, stating that, ‘The reference to “law” in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice’ (UNHCR, 2012a, paragraph 15). Determining the state’s view on who is a national, when there are a number of domestic authorities involved in determining nationality, can be difficult to ascertain (Mandal, 2010, p.34). UNHCR (2012a, paragraph 21) acknowledge that the authority need not be a central state body, also stating:

‘A local or regional administrative body can be a competent authority as can a consular official and in many cases low-level local government officials will constitute the competent authority. The mere possibility that the decision of such an official can later be overridden by a senior official does not in itself exclude the former from being treated as a competent authority for the purposes of an Article 1(1) analysis’.

Thus the implications of this clause open the door to a broader definition of *de jure* statelessness. This is vital because, as UNHCR (2012a, paragraph 302) state, the position of officials and not the law itself determines who is considered a national. In particular, it means that when considering law we must consider the actions of those

who implement the law. The problem is that, in many circumstances, a level of discrepancy can be found in how laws are implemented. Policies and laws are usually implemented by state bureaucrats, who might even work in isolation of each other (Lipsky, 1980).

Perhaps the best-known work on the autonomy of government bureaucrats is that of Michael Lipsky (1980) who was a founder of literature on how ‘the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out’ (Lipsky 1980, p.xii). His seminal work has been instructive on bottom up policy analysis in the USA (Hupe and Buffat, 2014). Lipsky’s main contribution to policy literature was to contend that most citizens encounter government through their agents known as ‘street-level bureaucrats’. His work focused on employees in the US working in schools, police and welfare departments, lower courts, legal services offices, and other agencies whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions (Lipsky, 2010, p.xi). They are public service employees who interact with the public and are trained in a particular specific area (Hupe and Buffat, 2014). Lipsky argues that street level bureaucrats form a citizen’s experience of the state, while the state requires these actors to use discretion and autonomy due to the complex human demands in each situation (Hupe and Buffat, 2014).

These agents have a considerable impact on people’s lives and how the government is encountered. This can be understood if we build on the concept that Mitchell (2006) calls the ‘effect of the state’, where the state is constituted through everyday social practices. Bureaucrats link state and non-state realms through their encounters with both domains, and the state depends on the bureaucrat to be its everyday face. It is these everyday workings of bureaucracies and mundane practices that dictate how people conceive the state. Concurrently, through bureaucrats, individuals have an opportunity to subvert state action:

‘Those who are the subjects or targets of state programs, and thus ‘outside’ bureaucracies, learn to use the very same techniques that lower-level state agents use to sabotage official mandates and

orders. They learn about paper pushing, leaving paper trails, and adopting official mannerisms. They use these practices in their everyday interactions with officials to gain institutional access or to subvert official scrutiny; they also use them when interacting with non-officials in order to establish their authority over others.’

(Sharma and Gupta, 2006, p.17)

In part, Lipsky’s account of the policy distortion through street-level bureaucrats is attributed to coping strategies – ways to work under budget and resource constraints. Given the constraints on government resources, street-level bureaucrats often make choices that balance the government’s political priorities and economic realities. Additionally, the situation, political context and institution would radically impact the degree of autonomy given to street-level bureaucrats. This is because their work is embedded in a ‘web’ of vertical and horizontal, relations (Hupe and Hill, 2007, p.284). With this in mind, Lipsky argues that street-level bureaucrats exercise wide discretion due to their autonomy from organisational authorities. Their individual actions, on an aggregate level, amount to divergent behaviour and outcomes. Maynard-Moody et al., (1990), and Musheno (2003) build on Lipsky’s work, arguing that street-level bureaucrats can even make policies because they have discretion and autonomy in how policies are implemented. Their job role is so complex that rules and regulations cannot overcome the necessity for discretion at this level of governance. If we, for example, apply Lipsky’s work to China, in rural areas the state is unable to fully supervise local officials, so accountability is often weak (Tsai, 2007). Sometimes local government is based in communities with strong moral obligations based on religion and lineage, where social and political boundaries overlap with their official duties (Tsai, 2007). Likewise, policies can also be distorted due to self-serving interests (Maynard-Moody, et al., 1990).

The implications of Lipsky’s work, in the context of a broad definition of statelessness are, as yet, underexplored. His work will be utilised to explore the role of bureaucrats at street-level bureaucrats to understand how civil documents are granted or denied. Through this lens, we can disaggregate the state, and political actions therein, to explain why there can be a mismatch between the policy and practice of documenting. When viewing state action, with particular attention to fractures therein, we can employ

Lipsky's work on street-level bureaucrats to highlight why some people can obtain documentation with relative ease, while others encounter higher hurdles within the same policy context. Rather than simply viewing the risk statelessness a consequence of the state action, observation at street-level dispels conceptions of a homogenous state approach to documenting citizens. For instance, we can also shed light on sympathetic bureaucrats within the state, or corrupt bureaucrats using their position of power to withhold documents.

1.3.3 Civil documentation

As Open Society Institute points out, nationality and documentation is interlinked as documents indicate the view of a state. It is the mechanism that allows nationality to be realised in practice. The relevance of documents has been raised repeatedly in literature on statelessness (Massey, 2010, p.53; Mandal, 2010, p.34-35; Bhabha, 2011, p.2; Blitz, and Lynch, 2011, p.204; Van Waas, 2008, p.26). Van Waas (2008, p.26) argues that that when a state disputes the nationality of an individual who is '...unable to produce or acquire confirmation of his status as a national from the authorities of any country with which he has some factual connection...' that person might be considered *de jure* stateless. However, this link has yet to be empirically explored in depth. This line of argument holds that when documentation is denied it could render persons *de jure* stateless, but this is subject to a determination process, which I will expand upon below.

Documentation that affirms nationality usually refers to civil documents. Civil documentation systems are defined by the United Nations Statistics Division (1993) as:

'...the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population as provided through decree or regulation in accordance with the legal requirements of a country. Civil registration is carried out primarily for the purpose of establishing the legal documents provided by the law. These records are also a main source of vital statistics.'

Legal identity is intertwined with documentation. Of course, legal identity cannot be reduced to a document, because legal identity is a status ascribing rights and duties that

people and organisations have based on their characteristics (Brewer et al., 2015, p.2). While legal identity exists whether or not one is registered, it is affirmed by documentation (Brewer et al., 2015 p.2). Brewer et al (2015, p.2) remind us that legal identity arises from multiple legal sources, but often there are rights attached to being a person that exist independently of documentation. For example, being a criminal suspect does not depend on documentation to enable the right to silence (Brewer et al., 2015, p.2). Nevertheless, certificates of vital events such as birth, death and marriage usually affirm legal identity (Jewkes and Wood, 1998, p.1044). These certificates are often then used to apply for ID cards and passports, which can serve to establish nationality.

The role of documentation goes beyond affirming nationality. When nationality documents are denied, they create daily forms of exclusion and vulnerability. In each nation state the rights and resources that stem from nationality, or simply from having a legal identity, are different, and the extent to which documents are needed to access these rights depends on domestic practice. Cahn (2012, p.308) points out that some Roma, particularly in Central and Southeastern Europe, lack civil documents, sometimes leading to inter-generations of persons without documents. Although they do not lack nationality, they are 'administratively non-existent'. In turn, this affects their ability to access rights associated being documented, including the right to vote, the right to social assistance, and the right to education. Generally speaking, documents enable the state to link documented identity with the right to employment, education and to inherit property (Jewkes and Wood, 1998, p.1044). In many countries with a single registration system, rights are granted through state identity documentation (Jewkes & Wood, 1998). Thus, these rights can also be restricted to persons who are documented as nationals. Szreter and Breckenridge (2012, p.22) go so far as to argue that given the dependency of human rights on the state, human rights mean little in practice unless they are conferred on identified individuals.

On the other hand, countries with less sophisticated civil registration systems might have few rights attached to documentation. For example, Vandenabeele (2011) explains that in Nepal, birth registration is not necessarily relevant for accessing rights. She argues that the relationship between birth registration and access to goods and services is complex in developing countries without a unified civil registration system in place.

Moreover, in Nepal one's birth record does not enable a national to make demands on the state. In countries such as China, with a relatively high birth registration rate by adulthood, denial of documentation will probably be most problematic, as I will make clear in later chapters.

Civil documentation such as birth registration, is usually necessary when applying for a passport. A passport is an internationally accepted document demonstrating nationality and the promise, by one sovereign state to another, of protection for the bearer of that documentation (Salter, 2004). As Salter (2004, p.72) observes, 'while initially designed to signify the sovereign's dominance over the space and population...the passport has emerged as a vital instrument of individual international mobility.' In international travel, proof of documentation – usually the passport - is vital to establishing nationality. In turn, a passport opens the door to international protection. Staples (2012, p.100) points out that, at an individual level, the political value of nationality is the ability to be identified and recognised outside one's country of residence. Passports typically are considered the identification necessary at border crossings and they are used to disaggregate potential border crossers 'as desirable/undesirable and safe/dangerous or low-risk/high-risk' (Salter, 2004, p.72).

In sum, civil documents are proof of nationality. Their denial can block recognition of nationality, and block acquisition of documents attesting nationality, such as passports. Their denial can also prevent access to domestic rights reserved for citizens, as well as for persons who have a proven legal identity. As UNHCR (2016a) highlights, stateless persons often struggle to get an ID card, a bank account without an ID card, to board a flight without a passport, and to enrol in university without proof of nationality. Thus documents serve a dual purpose of verifying nationality and granting access to rights reserved for nationals.

So far Section Three has worked through some of the problems with the definition of *de jure* statelessness that I raised in Section One. The aim was to clarify the definition of statelessness used within this thesis, which is a *de jure* statelessness definition that takes into account the impact of denial of documentation affirming nationality.

1.3.4 Risk of statelessness

Up until this point I have attempted to make clear exactly what is meant by statelessness, and thus what being at ‘risk of’ statelessness pertains to. In this section I explore how, in practice, nationality or statelessness depends on recognition. I will recommend that until someone is recognised as *de jure* stateless, a more appropriate term to recognise such persons would be to describe them as ‘at risk of statelessness’. I argue this key term is understudied and warrants further investigation, as does the process of becoming documented.

As we have found, incorporating the issue of documentation denial into a definition of *de jure* statelessness acknowledges both the legal and critical definitions of statelessness. The problem is that, in many cases, people are not easily identifiable as stateless – even with the broadened definition of statelessness that I described above. In practice, determining if a person is stateless depends on an identification process, particularly in cases where the person in question is undocumented. An understanding of statelessness is thus incomplete without factoring in the ambiguity of statelessness recognition. As Staples (2015, p.57) discusses, statelessness is difficult to establish, so the ‘decision-aspect of statelessness-determination’ warrants acknowledgement. That is to say, the conclusion as to whether a person is stateless is always based on the evidence available, only through seeking recognition of nationality a person establishes if this link exists (Staples, 2015, p.57).

This determination procedure is made explicit by UNHCR. UNHCR (2012b, p.2) guidelines give examples of when the determination procedure might arise, stating:

‘...consideration of nationality status is relevant when individuals apply for passports or identity documents, seek legal residence or employment in the public sector, want to exercise their voting rights, perform military service, or attempt to access government services. The issue of nationality and statelessness may arise when an individual’s right to be in a country is challenged in removal procedures...An assessment of statelessness will be necessary where an individual seeks the application of the safeguards set out in the 1961 Convention on the Reduction of Statelessness (1961 Convention).’

As UNHCR (2012b, p.3) makes explicit, *in situ* populations usually do not need to go through a determination procedure as they usually have long-standing ties with a country. Yet, in practice, not all people within a population are denied documents. There are communities – such as in China, who are not uniformly denied documents. Without documents their access to rights associated with citizenship are jeopardized. These people best fit the description of ‘at risk of statelessness’ because they might need to undergo a determination procedure. This may be within a migratory context, or simply because within their own country they cannot prove their legal status.

Although rarely explicitly defined in usage, the term ‘at risk of statelessness’ can be used in a general sense to denote persons or communities who face losing their nationality, or not obtaining nationality, due to laws or legal practice, for example as a consequence of denationalisation, gender biased nationality laws, or events that could impact upon nationality (Open Society Justice Initiative, 2011, p.10; Park, 2011, p.3-4). This risk is addressed in *The 1961 Convention on the Reduction of Statelessness*, which addresses the role of nationality laws in creating or exacerbating statelessness.

The term ‘at risk of statelessness’ can also refer to persons either without documentation that could prove their nationality, or denied documentation that proves their nationality (for example see Manly, 2012, p.272; Pudar, 2011, p.6; Bhabha, 2011, p.7; UNHCR, 2011, p.23; Praxis, 2011 p.25; Van Waas, 2008, p.156). For example, in the former Yugoslavia Roma have difficulty obtaining documentation that confirms their nationality in one of the successor states, ‘because of bureaucratic hurdles to late birth registration and acquisition of identity documentation coupled with discrimination and the complications caused by state succession, conflict, forced displacement and in some cases destruction of civil registries’ (Manly, 2012, p.266-267). ‘Documentation’ could refer to birth registration documents, ID cards or passports. As Manly (2012, p.272) points out: ‘When other factors exist, lack of this key form of proof leads, at a minimum, to a heightened risk of statelessness.’ While birth registration might open the door to other civil documents, this is not necessarily the case.

Thus, the term ‘at risk of statelessness’ refers both to people who might be stateless in the future as well as to people without documents affirming nationality. Within this

thesis I focus on the term to refer to persons lacking documentation that confirms their nationality. The risk they face is the *de jure* situation that I have defined in this section. Lacking documentation does not put people at an equal risk of statelessness. I believe the term is particularly useful to understand cases where documents are denied, leaving the person in question with no recourse to obtaining documents, rather than those instances where documents have yet to be applied for. As Van Waas (2008, p.155) points out with reference to the Dominican Republic, ‘where government policy is to purposely deny certain persons access to birth registration, we see just how much overlap there can be between the issue of non-registration and the problem of statelessness’.

Lack of civil registration and documents attesting identity and nationality might not render persons stateless (Manly, 2012, p.272). Indeed, globally only 65 per cent of children under the age of five have had their births recorded, leaving nearly 230 million children under age five without birth registration (UNICEF, 2013, p.14). Of these children, in the case of 70 million births that were registered by the state, families were not given documentation (Dunning, et al., 2014, p.2). This particularly affected children in in sub-Saharan Africa (UNICEF, 2013, p.16). As Staples (2015, 57) points out, authorities usually recognise a claim to nationality through documentation. Documents such as birth registration attest the place of birth and parents of a child, and this proof underpins claims to recognition of nationality. The label at risk of statelessness allows space for the gap between whether one possesses nationality and the recognition of statelessness or nationality. This space can also encompass the gap between a right to a nationality and the rights attached to nationality, a central contention in earlier debates over the definition of statelessness, as highlighted above.

This term at risk of statelessness is also beneficial because it shifts the focus away from the notion of *de jure/de facto* divide when discussing statelessness. Exploring denial of documentation can bridge the gap between why persons without nationality and persons without documentation face similar situations of exclusion. This is not a novel argument. As already stated Bhabha (2011) makes the argument that children without documentation face comparable situations to *de jure* stateless children. At a domestic level their access to rights and resources is curtailed. I go one step further arguing that documentation denial might eventually render a person *de jure* stateless. At the very

least they are put at risk of *de jure* statelessness. Looking at the idea of being at risk of statelessness captures the issue of how people in a non-migratory context can be in an ambiguous situation regarding their nationality. They can have social capital within their state, yet face daily exclusion from normal citizenship rights accessed through documentation. As Szreter and Breckenridge (2012, p.19) point out, registration - and thus documentation- is usually a two-way process that is in the interest of persons being registered. Therefore, focusing on the risk of statelessness is valuable because it illuminates how documentation denial is a mechanism that creates heightened vulnerability and daily exclusion.

Throughout the course of the research presented, looking at individual actions was relevant to elaborating on the risk of statelessness. How people addressed their situation, the ways in which they sought to become documented, and whether or not they migrated, all impacted the risk of statelessness. It seems the ‘risk’ of statelessness is considered greater when persons cross national borders as they are then less likely to be recognised as a national than when they live permanently within a given state. For example, Van Waas (2010a, p.3), using the example of children of Philippine and Indonesian migrant workers in Sabah, Malaysia, affirms that ‘where migrants are or have become undocumented, the risk of statelessness is heightened because it can become very difficult to establish a tie with any state...’. However, the risk in each case is context specific. This label explicitly allows space to acknowledge the individual and their possibilities to exercise agency in their situation of vulnerability. As Redclift (2013, p.170) points out, inclusion and exclusion are often subtle and shifting.

My use of the term at risk of statelessness does not imply that being documented should or would be an end goal, or a solution to situations that are complex and often embedded in systematic forms of unequal rights and treatment by a state. It simply confirms that documentation can be vitally important in creating statelessness and situations of exclusion. I also acknowledge that documents such as birth registration, ID cards and passports are frequently interlinked. A marriage certificate is usually needed in Indonesia to register a child’s birth, while in Bhutan a child whose father is unknown cannot be registered in the civil registry (UNICEF, 2013, p.12). Meanwhile, in Eritrea, to obtain a birth certificate 90 days after a child’s birth requires a government-issued clearance paper to confirm parenthood and date of birth (UNICEF, 2013, p.12).

Separating or finding one defining document that affirms nationality is not always possible. Nonetheless, birth registration has been usually regarded as the most critical paper, as ‘the first step in securing their recognition before the law’ (UNICEF, 2013, p.6). However, the term requires a context specific understanding of documents and civil documentation systems. Clearly our understanding would change depending on what documents are important within a country, the coverage rate of civil registration, and the availability of forgeries. My main focus in later chapters will be on China.

In order to understand the link between nationality, statelessness and documentation, there is a need to devote empirical study to persons and populations who are at risk of statelessness.

1.4. Focusing on the risk of statelessness

To date, although literature points out the link between documentation and statelessness, it is without either sustained empirical or theoretical focus. This study redirects us to critically explore the role of documentation as a mechanism to create exclusion. As Redclift (2013, p.5) urges: we must look to the lived experience of statelessness rather than formal legal rights; ‘If we do not understand the problem, we cannot begin to address it.’ I propose that empirical study of persons and populations who are at risk of statelessness is needed in three areas. Firstly, how denial of civil documentation that affirms nationality impacts the enjoyment of rights that are associated with one’s nationality and legal personhood. Secondly, why populations are unevenly impacted by documentation denial. Thirdly, what can be learnt about the process of becoming documented, and in particular, negotiation over documentation?

1.4.1 Impact of documentation denial

I have argued that looking at the risk of statelessness, particularly when documents are denied, links discussions of *de jure* and *de facto* statelessness by broadening the *de jure* stateless definition. I have not yet, however, clarified the way in which lacking civil documentation that affirm nationality impacts the enjoyment of rights that are associated with nationality and ‘legal personhood’ (Szreter and Breckenridge, 2012, p.22). This varies from country to country, and the Chinese context will be explored in later chapters. This section summarises, more broadly, literature on the impact of lacking birth registration or civil registration from a statelessness perspective.

From a legal perspective of statelessness, while human rights violations and statelessness can take place concurrently, human rights and nationality are delinked. Nevertheless, in practice human rights can also be denied ‘as a result of problems relating to overall lack of documentation’ (Van Waas, 2011, p.41). As Blitz and Lynch’s (2011, p.204) empirical study on formerly stateless populations found that ‘documentation is essential to the realisation of human rights’. As Van Waas (2010a, p.17) summarises, denial of documentation obstructs ‘access to other rights and facilities both in law and in practice’. Therefore, there is strong reason to expect that lacking documentation will have an impact on access to rights in general, and rights reserved for nationals in particular.

Moreover, empirical studies on statelessness indicate that documentation is a key area of concern to those who are stateless. Allerton (2014) found that documentation and illegality were central to the lived experiences of stateless persons. Allerton (2014, p.26) argues that it was ‘illegality’, and in particular owning the Malaysian documents that concerned the participants in her study, stateless children in East Malaysia. Both studies found that lacking documentation has implications for travel, education, the right to work, as well as obtaining marriage certificates.

Birth registration can be the most vital document with regard to recognition of nationality, as well as accessing other rights. Plan International (2014) empirically explore the effects of birth registration and how it benefits children in four countries. Their work confirms that birth certificates may serve as proof of legal identity, and legal documents are often required to claim a rights, access services or complete an administrative procedure (Plan, 2014, p.8). A birth certificate can also give access to other identity documents and a passport. However, different types of documents were found to be attached to particular administrative functions and benefits depending on the country (Plan, 2014, p.9). Plan International conclude birth registration might not directly open doors to education and healthcare. In fact, making rights dependent on birth registration can preclude children from accessing services and rights. However, in the case where countries already have a strong registration system, their study affirms that of lack documents can inadvertently erect significant barriers between children and certain rights. As I will explore denial of documentation in China, a country with a strong birth registration system. Plan’s research indicates that denial of documents

might have significant negative implications for accessing rights and services that depend on proof of nationality or legal personhood more generally.

Within this thesis I will explore the ways in which lack of civil documentation that affirm nationality impacts the enjoyment of rights that are associated with their nationality and legal personhood, particularly in a Chinese context.

1.4.2 Uneven denial of documentation

A second research question is: why are populations unevenly impacted by documentation denial? In other words, why do some people within a population come to be at risk of statelessness while others do not? In this section I introduce some themes that are recurrent within the thesis.

We know that when civil documents are denied, they are not always denied to all members of a population. For example, Redclift found that the majority of these ‘camp-based’ residents had acquired ID cards, and even passports, prior to the landmark ruling recognising their citizenship in 2008 (Redclift, 2013, p.313). Likewise, an analysis of the Nubian Tribe in Kenya shows that in 2011, 87 per cent of Nubians above 18 held an ID card (Balaton-Chrimes, 2014) while the rest had been denied ID documentation.

We also know that *de jure* statelessness tends to arise from deeper socio-political issues. As Bhabha (2011) explains, stateless persons are not ‘invisible’ as their presence in a country is usually anything but invisible. This is because their exclusion is usually purposefully manufactured by the state with regard to large populations living *in situ*. Thus statelessness cannot exist within a ‘political vacuum’ (Tucker, 2013, p.4)

The link between statelessness and discrimination dates from the works of Arendt (1951). De Chickera (2014, p.1) has pointed out that problems caused by statelessness are rooted in a deeper problem of discrimination. Social and political factors underlying discrimination can pose a barrier to identification, assistance, protection and reduction of statelessness (Tucker, 2013, p.4). Discrimination is a loosely used term in writing on statelessness. Usually it pertains to, as UNHCR (2016b) states, persons who are rendered stateless ‘...because of their ethnicity or because of their religion. Hence,

generally speaking, statelessness tends to reflect discriminatory deprivation of nationality towards a population. Because in some countries women cannot pass their nationality on to their children.’ Gender based statelessness derives from *jus sanguinis* nationality laws – where nationality is passed on by the nationality of birth parents regardless where the child is born. In some cases, such as in some countries in North-Africa, the Middle East and Asia, nationality only is transmitted from the father to the child, not the mother (Van Waas, 2008, p.59). If the child is ‘...illegitimate, or the father unknown, stateless, deceased or unwilling to take the necessary steps to ensure that the child acquires a nationality, statelessness is inevitable unless there are special provisions in place to prevent it’ (Van Waas, 2008, p.59).

Punishment is also a factor behind denial. Although less frequently studied, punitive retraction of nationality has been seen elsewhere to underlie *de jure* statelessness. For example, nationality retraction has been seen in certain countries, targeted towards those whose loyalty to the state has come into question. Van Waas (2010b) found that in Qatar, a family had their nationality revoked in October 2002 after two of the men within the family were sentenced to prison following a dispute with another individual. Also in Qatar, Van Waas found that in April 2005 some 6,000 members of the Al Murra tribe had their nationality revoked. This was based on a claim that the tribe had been hiding their dual nationality – contrary to their presumed duty of loyalty to the state (Van Waas, 2010b). Likewise, in Libya in 2007, some members of the Tabu tribe had their citizenship revoked for perceived support of Chad, a political rival at the time. Political activists in Libya have also purportedly had their nationality withdrawn (Van Waas, 2010b). Punitive retraction of nationality is seen in the UK too; at least 53 Britons have lost citizenship since 2002, over half on national security grounds (Macklin, 2015, p.2). This is permissible even when it renders the person in question stateless, although ‘officials have shown some reluctance to recommend denationalisation when statelessness would result’ (Gibney, 2011, p.14). The result is that deprivation of nationality is becoming more common in connection with security issues and terrorism charges. As will be introduced in Chapters Two and Three, the Chinese case study also involves a population who are at risk of statelessness due to punitive denial of documents attesting nationality.

Given the clear overlap between *de jure* statelessness and discrimination or punishment,

however, we must avoid the temptation, when discussing the risk of statelessness, to reduce documentation denial to a question of discrimination alone. While discrimination and punishment are vital in explaining documentation denial, this explanation alone does not explain why many populations denied documentation are not treated in an even handed manner, with only some members of the population denied documentation. To make such assumptions implies social divisions that can somehow be mapped onto who is a national and who is documented and that excluded groups are coherent units, excluded in a uniform manner. Rather, we should question the ways in which documentation denial, when resulting from the actions of street-level bureaucrats, intersects with negotiations over punishment – as will be explored in this thesis. This is not to deny the on-going cases of discrimination or punishment, but rather to delve deeper into an understanding of how this manifests in a non-uniform way with respect to the risk of statelessness.

1.4.3 Negotiating documents

If the aim is to understand why some members of a population are denied documents and others are not, we must turn to an empirical understanding of how documents are obtained. As Szreter and Breckenridge (2012, p.18) point out, registration has an ‘irreducible performative and dialectic element’. We also know that street-level bureaucrats have flexibility as to whom they accord documentation. Thus the third research objective is to assess how we can understand negotiations over documentation, particularly the performative and dialectic element, encompassing street-level bureaucrats as well as those persons or families seeking documentation. The question propels this thesis by exploring the way in which agency over documentation interplays with the risk of statelessness.

This approach marks a departure from mainstream literature on statelessness. I argue that generally literature talks *about* stateless persons rather than *to* them; literature in the stateless field as a whole is inclined to focus on the situation that stateless people face, but accords limited agency to those who become stateless. As Redclift (2013, p.50) found, stateless persons are conceptualised as ‘divested of agency, and representations of the “passive victim” are commonplace.’ Nonetheless, this shortcoming in traditional literature on statelessness has been increasingly recognised in scholarship, I will explore

literature which will be a foundation of my approach below.

The question in this thesis on how documents are negotiated is partly informed by a body of literature on Nubians who seek to become documented. The Nubian community was brought to Kenya around the turn of the twentieth century by the British Army, who had recruited them in what is known today as Sudan (McKenzie, 2010). Fighting for the British in both world wars, the veterans were rewarded with land in Kibr (now Kibera) near Nairobi, many of them living there still (McKenzie, 2010). Today this is Kenya's largest slum. At the time of Kenya's independence in 1963, Nubians were considered to be 'aliens' (Open Society Justice Initiative, 2010, p.4). Nonetheless, Nubians are entitled to Kenyan nationality according to Kenyan law under the 1963 and 2010 Kenyan constitutions which entitles Nubians to Kenyan nationality (Balaton-Chrimes, 2011, p.63). Their situation is quite different from the Chinese *heihu* in that, as a minority group, they are a somewhat more identifiable population.

Despite being nationals by law, the Nubian community has suffered severe discrimination in obtaining an ID card, particularly from the mid-1990s to the late 2000s (Balaton-Chrimes, 2011, p. 73). The card is usually given at age 18 in Kenya to nationals of the country and is a necessary document for daily life (Open Society Justice Initiative, 2010, p.4). Although incidences of ID card denial to the Nubians are now less common than in the 1990s it remains a barrier faced by this community. The situation for many Nubian parents attempting to register the birth of a child is compounded because some public hospital officials refuse to issue birth certificates to Nubian children (IHRDA, 2011, p.7; Open Society Justice Initiative, 2010, p.12). The Nubians in Kenya have a theoretical right to nationality but in practice many have been denied the civil documentation commonly accepted as affirming this right, thus leaving them at risk of statelessness. While to most Kenyans the ID card is proof of nationality, this is in fact not the case as no single document serves the purpose (Balaton-Chrimes, 2014, p.19). Like the Chinese *hukou*, it is needed to obtain a passport and to access employment, tertiary education, and voting rights (Balaton-Chrimes, 2014, p.19). Nevertheless, as in China the ID card serves as proof of nationality in a functional sense and is said to reflect the state's judgement on who is a national (Open Society Institute, 2011, p.11). In 2011, the African Committee of Experts on the Rights and Welfare of

the Child found Kenya to be in violation of the rights of Nubian children to non-discrimination, nationality, and protection against statelessness.

In part this denial of documentation reflects the lack of recognition within Kenya of Nubians as nationals. The consideration of Nubians as ‘foreigners’, as in many stateless or at risk of statelessness populations, is one component of their exclusion. The other component is that they are Muslim, which ties into broader prejudice against religious and ethnic groups. This has risen as US-led counter-terrorism campaigns have caused them to be increasingly framed as religious threats (Balaton-Chrimes, 2011, p.23). The same can be seen with other Muslim groups, such as Somali refugees, facing similar discrimination in Kenya (Open Society Institute, 2010, p.12). Muslims in the coastal region have also faced statelessness, with their applications for ID cards coming under high scrutiny (Institute of Statelessness and Inclusion, 2014, p.64). This is exemplified by the fact that most Kenyans need only to produce the ID card of one parent and a (Christian) baptismal certificate from the church to be issued with identification documents (Kenya National Commission on Human Rights, 2007, p.11). Discrimination has been fuelled by other pertinent societal factors such as tension in the allocation of land. Furthermore, Balaton-Chrimes, (2014, p.24) argues that ‘...any seemingly legitimate reason to exclude others is too easily seized upon, and like in many other African countries, non-indigenous status stands out in this regard’ (Balaton-Chrimes, 2014, p.24). In the case of Nubians this additional factor stems from their military role during colonial times. In 1992 when multiparty democracy returned to Kenya, the makeup of constituencies became more significant. ID card denial meant certain groups were excluded from the vote (Balaton-Chrimes, 2014).

By 2011, 87 per cent of Nubians above the age of 18 held an ID card, meaning that in some way or another most did become documented and thus recognised as Kenyan (Balaton-Chrimes, 2015). Hence, while discrimination in the denial of ID cards is clearly a factor, so too is the importance of negotiations between those seeking and denying documents. The root cause of documentation denial is specific to Kenya, but I believe we can find important understanding by studying the processes of negotiation over documentation.

For instance, the on-going cases of document denial are testament to the enduring power of street-level bureaucrats in their discrimination towards Nubians in Kenya. This can be seen at hospitals where denial of birth registration is the first step in bureaucratic arbitrary decisions over who can receive documentation (IHRDA, 2011, p.7; Open Society Justice Initiative, 2010, p.12). Thereafter, 44 per cent of Nubians have had to pass an administrative vetting process to obtain an ID card (Balaton-Chrimes, 2014, p.21). There is a great deal of discretion around who is involved in the negotiation process to obtain the ID card at the age of 18. This is allowed by law to permit registration officials the discretion to mandate an applicant to produce additional evidence of eligibility for nationality in a vetting committee (Balaton-Chrimes, 2014, p.21). However, not all citizens are required to face this hurdle. The complex procedure is usually targeted towards Nubians and the other Muslim ethnic groups mentioned above who live on the border region (Open Society Institute, 2011, p.11). Thus street-level bureaucrats who have discretion in local branches of the National Registration Bureau determine who will be vetted (Balaton-Chrimes, 2014, p.21). It is evident that much rests on the discretion of the registration officer as to whether the Nubians in question are requested to attend a Committee under the responsibility of Provincial Administration (Balaton-Chrimes, 2014, p.21).

The procedure of the vetting committees also affirms the spaces for street-level bureaucrats to apply discretion over documentation. As the Kenya National Commission on Human Rights (2007, p.22) points out: ‘Lack of uniform guidelines and approved methods of identification gives the elders even greater powers...The vetting process therefore risks becoming a subjective assessment and not an objective process of identifying who is Kenyan...’ These committees are generally comprised of a district officer (as chair and convener), a registration officer (as secretary), chiefs, village elders, and intelligence officers. The candidate must swear an oath before a Magistrate and subsequently pay a fee (Open Society Justice Initiative, 2010, p.12). Applicants for ID cards are also required to produce a letter of recommendation from their area chief or their assistant. The letter verifies that the applicant lives in that location and describes how the chief knows the applicant – although in reality the chief might not know the person in question (Abuya, 2010, p.16). If the area chief vouches for the applicant then the chance of passing the Vetting Committee is greater as the area chief himself is often a member of the Vetting Committee (Abuya, 2010, p.16). Checks are carried out on

parents and on authenticity of documents; sometimes even grandparents' birth certificates are required. Again, these additional requirements seem to be at the discretion of the Committee. Finally, throughout the process the Committee had total discretion as to who should be granted the ID card, without the need to give an explanation (Balaton-Chrimes, 2014, p.21). In sum, obtaining an ID card is a process that allows for significant discretion.

These spaces are negotiated between bureaucrats and Nubians. For example, in such circumstances corruption has a very real opportunity to manifest and committees have been accused of 'exacting brazen bribery' (Sing'Oei, 2011, p.48). This is not only because fees are required to conduct the vetting process but also because a number of persons can ask for bribes to pass the applicant. Abuya (2010, p.16) notes that because emphasis is placed on the letter of recommendation, these are sometimes sold for a fee. Conversely, the letter itself is no guarantee an ID will be given because burden of proof remains in the hands of the applicants (Abuya, 2010, p.16). Other members of the panel can also demand a bribe. As noted by the Kenya National Commission on Human Rights (2007, p.22):

'Some residents in Wajir, for example, thought that the role of the vetting committee was to collect money for the chiefs. In Turkana, applicants talked of paying "pesa ya wazee" (elders' fee) to the vetting committee. Some had been discouraged to apply for ID cards because they could not afford to pay the money.'

Therefore recommendation letters and Vetting Committees may have less to do with nationality and more to do with corrupt fees being processed –itself allowed because of systematic discrimination against Nubians at a national level of governance (although this discrimination was not what determined who would be granted an ID card). Although candidates could appeal the decision of the Vetting Committee to an appellate body established at the provincial level, few were made aware of this right (Abuya, 2010, p.19).

One strategy to negotiate these conditions is that as vetting committees become decentralised they are getting 'their own people' onto district committees to vouch for identity and Kenyan nationality (Balaton-Chrimes, 2014, p.212). Another Nubian

strategy is to avoid the vetting process all together. Some, for example, submit their ID card application under a recognised tribal code or give the code of one of their non-Nubian parents if that tribe is recognised by the state. (The Nubian tribe is not recognised and thus not given a code for the ID application form) (Abuya, 2010, p.18). Likewise, those of foreign descent can alter biographical details of their ancestry (Abuya, 2010, p.18). Those with Islamic-sounding names will sometimes change their name to a more Anglicised one so that their applications pass with less scrutiny (Abuya, 2010, p.18). Still others buy fake ID cards and reap the benefits of citizenship thereafter (Open Society Justice Initiative, 2011). Of course, these strategies pose risks and if discovered applicants face prison but seem nevertheless to be prevalent. While the spaces for agency are narrow, Nubians have also found strategies to mitigate their vulnerability.

While becoming documented is generally positive for the recipient, documents can also serve to institutionalise disadvantages. Independently of their nationality status, Nubians face on-going discrimination (Sing'Oei, 2011). So, when Nubians obtain ID cards they attain inclusion at a national level while simultaneously having discrimination inscribed into their documents. Although ID cards do not display tribe or ethnicity they do display the district of origin, which is highly connected to identifying tribes in Kenya – particularly as many Nubians live in Kibera (Balaton-Chrimes 2014, p.68). In this way ID cards can be special markers connoting ethnic identity and so continue to be a tool of exclusion.

The Kenyan case study indicates there are varying degrees of autonomy in the hands of government officials and those seeking documents. At street-level, granting documentation can be an outcome of negotiations founded on discrimination and power imbalances. The considerable autonomy held by street-level bureaucrats such as described in the work of Lipsky (1980) is also noteworthy. This enables latitude within the state where negotiation and arbitrary denial of documentation can be found. This could be systematically explored in depth in China.

Building on above literature, I am interested in understanding the spaces for negotiations, specifically around documentation, that are found by both sides of the process of becoming documented. In other words, the spaces for negotiation both by

state agents and undocumented persons or their families. I refer to ‘agency’ drawing on Long’s (2001) influential work, who points out that agency is possible when an actor could have taken an alternative path, or acted in a different way even in extreme circumstances. In this light, even in restrictive situations actors are capable of processing their experiences and responding to them. This approach emphasises that even in situations of vulnerability, people are active subjects, focusing on their capacity to react and make decisions, while acknowledging the structures in which they operate within.

A term that will be instructive for thinking through the documentation process is ‘negotiating documentation’. As will be apparent in the empirical findings, this term ‘negotiating documentation’ allows us to analyse why some persons or parents obtain documents for their children and others do not, in an environment where all parents face the same national legal framework. Implicit in this term is a form of agency over documentation, or even discretionary denial of documentation. This agency is not necessarily of one person; it could describe the agency of parents in negotiating the documents of their child, or even a family or community. As Sigona (2016, p.273) argues, lack of citizenship affects individuals and their families in multiple ways. His study of Roma found that ‘the condition of statelessness is rarely the result of an individual’s set of circumstances; more often it is produced by complex family histories that unfold against the background of major historical events.’ I further explore discretionary power over documentation among street-level bureaucrats. They might draw on discretionary power, or perhaps a more sympathetic and relational process of negotiation.

These negotiations over documentation can be linked to broader work on documentation and migration. Existing studies have found that migrants can manoeuvre within documentation regimes used to classify ‘legal’ and illegal migration. It is useful for thinking about populations at risk of statelessness who also must clarify their identity and nationality status through their documentation. This line of thinking is beneficial because it empirically illustrates that state laws and procedures are dependent on the implementation by street-level bureaucrats and their negotiations with migrants.

One example of such findings is Reddy’s (2015) work on identity papers in Mae Sot, Thailand involving migrant workers from Burma. Reddy finds that state officials use

documents at checkpoints and in encounters with migrants. Reddy argues the ‘very instruments that are issued to prove legal personhood are the same instruments that, in circulation, unmake legal status’ (Reddy, 2015, p.252). Reddy explains that identity documents are put into question when migrants are identified, because the process is inconsistent and ambiguous. As in many countries, where identity documents can be inaccurate or fraudulently used, being identified depends on the discretion of the person doing the identifying. The migrants must convince them that their documents are legitimate. The legal status of a migrant, through the documentary information, is weighted and valued by the government official who decides what counts as genuine documentation. The documents, and performance of legality, overlook the gravitas accorded to legal status. This is because, Reddy (2015, p.251) argues, ‘modes of documentary practice’, such as the tangible documents are dependent on the patterns of ‘filling in, wielding, explaining, and referencing a variety of print matter’. For Burmese people in Mae Sot legal status is – in some ways – irrelevant, because legal practice is based on stereotyping and arbitrary decision-making. Individual migrants are identified within a broader group and not, as identity documentation should imply, based on individual identity. This work illustrates the negotiations and performative elements that can be found when documents affirm the right of migrants to work or travel.

In a similar vein, Reeves (2013), in her work on Kyrgyzstani workers in Russia, argues that documentation tends to create spaces of ambiguity for law. This allows government officials to have more latitude over who they recognise as a legal migrant. Reeves (2013, p.509) explores how migrants show ‘productive performance of law’. She found that monetary negotiations and corruption mediate encounters as much as documents in their own right. Moreover, Reeve (2013, p.520) argues that binaries of ‘legal’ and ‘illegal’, ‘documented’ and ‘undocumented’ ignore that migrants must convince officials that their documents are legitimate. While this work focuses on migrants, it also could resonate with groups seeking documentation.

Krause (2008), is another researcher who has looked at undocumented migrants. Her work attempts to understand the politically right-less *sans papiers*, people without rights of residence or employment in Western Europe. In fact, through their collective demonstrations, this group of supposedly right-less immigrants ‘translate their status into political terms’ (Krause, 2008, p.342) towards authorities. Krause (2008) shows *san papiers* use action to create a space for public participation, creating a democratic

appropriation of public space. They derive power from acting together and entering the public domain.

In some circumstances fake documentation might be used by persons to circumvent street-level bureaucrats altogether. For example, Sadiq's (2008) work on *Paper Citizens* is particularly instructive in understanding how nationality processes can be circumvented by appropriation of fake, (or fraudulent acquisition of genuine), documentation. Sadiq's emphasis on citizenship being commonly expressed through documentation is of value in grasping how states view their citizens. Sadiq argues that at times, documents (not states) create citizens, because citizenship is indistinguishable from documentation at a state level. Sadiq's study concentrates on migrants in India, Malaysia and Pakistan, where they live in a state of 'blurred' membership. That is to say, they move into communities with both migrants and nationals, all of whom have a variety of documents. Migrants obtain documents fraudulently, either fake or authentic, and thus can be indistinguishable from their legally settled counterparts in the state. Over time one document will allow access to another, and migrants become recognised as nationals as they obtain passports and the right to vote. This circumvention of legalised channels of nationality questions the monopoly of the state over nationality, and also highlights the broad spaces within which migrants can work.

Redclift's (2013) work on political spaces in Bangladesh highlights performative and dialectic element' of statelessness, suggests how negotiations can be understood. She argues that citizenship and statelessness should not be viewed as binaries but fluid intersections produced 'socially, spatially and temporally' (Redclift, 2013, p.2). Her concept of political spaces advances a theoretical framework on statelessness, as she pays attention to historical factors and political discourse in shaping identities. Persons excluded by history, society and power must *negotiate* their relationships with the state. In these negotiations, excluded individuals generate political subjectivity, challenging conceptions of political community based on formal membership. This political identity, which can be more nuanced than categories of statelessness and citizenship allow, means that individuals '...through creativity and strategic calculation, occupy or negotiate that space.' (Redclift, 2013, p.7) Therefore, labels of statelessness and citizenship are undone through the political actions of excluded persons.

Given the above literature, I argue that negotiation over documentation deserves greater empirical attention in populations at risk of statelessness, acknowledging the impact of both street-level bureaucrats as well as those persons or families seeking documentation.

1.5 Discussion

This chapter explores both the *de jure* and *de facto* definitions of statelessness, and the strengths and weaknesses of each definition. By analysing the various definitions of statelessness I find that a broad reading of *de jure* statelessness can connect statelessness with the role of documentation affirming nationality, thus reducing the need for an alternative definition of statelessness. Yet most literature only skims the surface when considering how documentation denial can be not only a mechanism for not only creating statelessness, but also for creating daily forms of exclusion and vulnerability. Persons without civil documents, particularly when documents have been denied, cannot always be identified as nationals. In such cases they can be deemed at risk of statelessness. This is not a new definition, but it is certainly was previously under-developed. It gives space for recognition that documentation, or lack thereof, means that statelessness and nationality are not necessarily, in practice, the only two categories of existence. There are intermediate states even within the legal framework. Those at risk of statelessness may lack access to rights and resource reserved for nationals, as well as more broadly for persons with a documented legal identity.

With an empirical investigation in mind, I present three areas that deserve further research to understand the risk of statelessness. Firstly, the impact on statelessness arising from a lack of documents that affirm nationality. This can pertain to nationality status, as well as their daily experiences in attempting to access rights and services available to those with documented legal personhood. Secondly, a need to better understand why documentation is not uniformly denied, in particular an understanding of the process of becoming documented and the role of street-level bureaucrats, where the contribution of Lipsky (1980) is useful in addressing the problem. Finally, exploring spaces of agency, both of government officials and those seeking documentation, where examination of negotiation over documentation will be particularly instructive. This exploration offers a fresh insight into the relationship between documentation and the risk of statelessness. It will intervene in discussions surrounding statelessness with

empirically grounded observations of how documentation denial comes about, and how it can jeopardise both the right to nationality and the right to an effective nationality.

So far the discussion has been purposely removed from empirical examples, to focus on stateless literature and current understanding within the field. The subsequent chapters will draw on this framework and understanding of the risk of statelessness, to focus on the main empirical case study: Chinese persons denied legal documentation affirming their identity and nationality.

The Chinese case study is particularly interesting because denial of documentation results from punitive state actions, rather than discrimination or poor documentary infrastructures. Like many *in situ* stateless populations they rarely cross a nation-state border. Yet they face similar challenges in so far as the lack of documents affects how they can travel, work and live.

2. Documents and Impact of Denial

2.1 Introduction

In Chapter One I explored the definitions of statelessness, and argued for the value of a closer empirical inspection of populations or persons at risk of statelessness. This chapter will introduce the case study of this thesis – persons in China denied documentation, known as the *hukou* (household registration), attesting to their legal identity and thus providing proof of nationality. In other words, the case study will empirically investigate a population at risk of statelessness in China.

The aim of this chapter and the next is to inspect the circumstances – legal, political, historical, bureaucratic, that have shaped denial of documentation, and in particular the role of the state. In so doing, this information revealed is foundational to understanding what spaces between policies and implementation can be appropriated by bureaucrats in the documentation process.

This chapter explores the first research question, making initial observations on how those denied China's proof of nationality and legal personhood, the *hukou*, might be affected accessing rights and services. I argue that lack of documents can negatively impact the lives of Chinese citizens both because they lack proof of Chinese citizenship, and more generally because they lack documented legal personhood. I find that exclusion from the *hukou* system impacts birth registration and consequently access to civil documents such as the ID cards and passports, leaving undocumented persons at risk of statelessness. Lacking documents presents particular difficulties in China because the *hukou* system, formative in the Chinese government's political regime, has been designed to control domestic migration. As a cornerstone of political control, the *hukou* system is intertwined with many aspects of daily life in China. This chapter also serves to lay the foundations for my argument within this thesis that negotiations over documents by those denied documents and bureaucrats' agency over documentation both have a part to play in determining who is at risk of statelessness. The chapter highlights those Chinese officials with powers of discretion and the documents over which this discretion can be exercised, with later chapters explaining circumstances in which negotiations over documentation can take place.

To advance this argument, Section Two gives an overview of how denial of the *hukou* might impact the enjoyment of rights that are associated with one's nationality and legal personhood. I build on work of Chinese Studies scholars to introduce China's civil documentation system– the *hukou* system. I outline both its role and relevance in Chinese society, and the rights which are connected to being documented in China. I also outline the process whereby the *hukou* is obtained and the bureaucracy involved. I explore the *hukou*'s three different roles to illustrate why lacking documentation can significantly impact a Chinese citizen. In Section Three, I introduce the population within China denied the *hukou* and therefore at risk of statelessness, describing the profile and size of this population group. In Section Four I discuss the possible implications of being undocumented, in order to illustrate how the ways in which nationality and legal personhood are tied to documentation within China are relevant to scholarly conversations on statelessness. In addition I discuss the ways in which being documented also institutionalises exclusion by inscribing different categorisations of citizenship. That is to say, the *hukou* documents institutionalize access to vastly different opportunities for different citizens.

2.2 The Chinese *hukou* system

China's civil registration system is built primarily on the *hukou* system (Zhu, 2003, p.519). This section explores how and why the *hukou*, which affirms nationality (Wang, 2005, p.23), impacts the enjoyment of rights that are associated with one's nationality and legal personhood. As I will explore below, in one booklet, China's *hukou* amalgamates three functions. Firstly, it attests birth registration (Li et al., 2010; Keane, 2006, p.216); secondly, it serves as the primary document confirming legal identity (Wang, 2005, p.23), and only with this document can one apply for an ID card (Keane, 2006, p.228); thirdly, it confirms the location in the country which a person is registered (Wang, 2005, p.22). While migration is not a central factor in creating the population at risk of statelessness, I will briefly explain the connection between the *hukou* and migration in order to clarify why civil registration in China accorded such a high priority by the state as China developed and why this has continued to the present day. This also elucidates how the *hukou* inscribes different privileges into the documentation of different citizens, which has already been most articulately argued by Wang (2005).

Since it serves as birth registration, day-to-day documentation, and categorisation of citizenship, lacking the *hukou* should certainly be an obstacle to functioning in daily life in China. Lacking documentation would also put one at risk of statelessness, particularly if one crossed a national border.

2.2.1 Introduction to the *hukou* system

The Chinese *hukou* system comprises a digital record, accessible in every local police station, as well as a corresponding *hukou* booklet with the same information kept by each 'household' (Wang, 2005, p.54). A household can be a family (related by blood or cohabitation), an individual, or a collective unit, such as a work unit, dorm, military unit, or religious entity such as a temple (Keane, 2006, p.215). Each member of the household is recorded, including their name, age, date of birth, address and gender (Whyte and Parish, 1985). The *hukou* system also connects a person to an identity card number, driver's license and border control information (Lyons, 2009, p.3). Over a person's lifetime their *hukou* file expands to include additional information such as personal data, family relations, and location of migration (Keane, 2006, p.216). Other information, such as political attitude, personal financial status, personal friends, love relations, physical features personal character and hobbies, are also reportedly included (Keane, 2006, p.215). It is unlikely that in reality this type of personal information would be comprehensively collected. There are constraints on resources and personnel who maintain the *hukou* records, given that one *hukou* police officer often has to work on eight hundred to a thousand households (Wang, 2005, p.69). In some rural areas, one officer may be responsible for as many as twenty-five hundred (Wang, 2005, p.69). Again, the detail might depend on street-level bureaucrats and how they balance their time and ability to monitor Chinese citizens. Nonetheless, the *hukou* is a fairly comprehensive system in so far as that most citizens are registered, and certainly it includes their basic details, ID card, driver's license and border control information.

Figure 1 A *hukou* booklet

Before I explore the *hukou*'s three main roles in society, I provide a brief explanation of the historical context of the *hukou* system in order to contextualise its relevance today to a Chinese population categorised by civil documents.

2.2.2 Historical evolution of the *hukou*

The *hukou* system is founded on a history dating back to the Xia Dynasty's (circa 2070 -1600 BC) community census and household tax registers (Wang, 2005; Young, 2013). It has a long history of use in state building, centralisation of power and restriction over spatial and social mobility (Young, 2013, p.27). The *hukou* was adapted in 1949 when the Chinese Communist Party CCP came to power, because of the role it was given under the rule of Mao Zedong (1949-1976) and his goals of a planned economy and socialism (Young, 2013, p.27). Initially, the CCP introduced reforms based on the Soviet Union's *propiska*, which connected peasants to a fixed location, and so limited internal migration (Young, 2013; Dutton, 1992). The *propiska* played a vital role in the Soviet Union's planned economy because the state used it to dictate where people could live and work. Stalin used the *propiska* to facilitate industrialisation and collectivisation (Blitz, 2007). Unlike the *propiska*, which registers an individual, the *hukou* booklet is usually a group document. Nevertheless, the similarities between the *hukou* and the *propiska* indicate the aim of the CCP to imitate the Soviet Union's economic success by using the *hukou* to control migration according to the needs of a planned economy (Jakimów, 2012, p.661).

To this end, the *hukou* was progressively used through the 1950s to facilitate Stalinist economic planning by dividing the citizens along a rural-urban divide. Initially, under Mao's rule, the CCP took resources from the countryside to fuel the city (Chan, 2009, p.200). Urban citizens had access to a larger grain allowance than their rural counterparts, and – unlike those in the countryside – they had social welfare and free education. Rural citizens were allocated agricultural land to use and were expected to be self-sufficient (Brown, 2014; Leung, 2006, p.189). Rural citizens thus subsidised the urban elite, who numbered only 15 per cent of the population (Chan, 2009, p.200). Initially the divide was artificially created for national reconstruction against the backdrop of a bloody civil war; jobless citizens migrated to large cities such as Beijing, where the CCP bore responsibility for feeding urban populations (Cheng and Selden, 1994, p.651). The CCP realised they needed to contain the growth of the urban population (Cheng and Selden, 1994, p.651). While the CCP allowed freedom of movement, they encouraged the unemployed to move to the countryside. In 1951, the Ministry of Public Security issued the *Provisional Regulations on Urban Hukou Management*, requiring urban residents to obtain permission to migrate. The *hukou* came to serve as proof of their urban status (Cheng and Selden, 1994, p.644). The following year, the *Decision on Labour Employment Problems Regulation* drew the distinction between rural and urban residents' right to employment (Cheng and Selden, 1994, p.650). One year later, the CCP introduced the rural *hukou*, and by 1955 the *hukou* was a nationwide system. Simultaneously, the CCP distributed land and state subsidies to rural residents, which encouraged voluntary urban to rural migration (Cheng and Selden, 1994, p.648). As time went on, the rural-urban divide needed to be sustained for the state to continue its unequal allocation of resources.

This economic division was perpetuated by the *hukou* system, mirroring the Soviet Union, by linking rations and social entitlements (such as education and healthcare), to the *hukou* (Dutton, 1992). The CCP only allowed citizens access to these entitlements in the location where their *hukou* was registered. By 1956, the CCP took control of all national resources for a planned economy, such as by legalising their state monopoly over the grain market (Dutton, 1992). Thereafter, this grain was given as a food ration to all residents at a fixed price (Wang, 2005, p.51). The state could now enforce the *Joint Directive to Control Blind Influx of Peasants into Cities*, the first legal limitations on freedom of movement (Cheng and Selden, 1994, p.654). With state control over

grain and employment, it soon became almost impossible for a person to survive outside the place where their *hukou* was registered. The CCP explicitly categorised citizens with either an ‘agricultural’ or ‘non-agricultural’ status on their *hukou* (Wu, 2010; Von Glahn, 2012). The *hukou* system developed through the early 1950s, progressively becoming more restrictive, culminating in the strongest restrictions around the time of the Great Leap Forward famine (Brown, 2014). The foundations laid in the 1950s were fortified by the famine through the grain quotas and industrialisation that took place at this time. Thus, the current version of the *hukou* system has been developed over the last 65 years. The pertinence of being documented today is, in many ways, a by-product of control over migration to sustain economic growth.

The historical context explains how the *hukou* came to be foundational in the CCP rule, and why the system was used to inscribe different privileges to different citizens. With this as background, I will explore the continued relevance of the *hukou* in China in order to illuminate how those without the *hukou* might be impacted.

2.2.3 The role of the *hukou* in curtailing migration

The *hukou* system has continued to be ubiquitous as a tool for managing domestic migration (Windrow and Guha, 2005). Unlike in numerous economically developing countries, where a significant percentage of their population is without legal documentation (Oomman et al., 2013, p.1336), China has a well-developed, functioning civil registration system. The main reason is that rights and resources are linked to the *hukou* booklet, which states the place in China one has citizenship, and the corresponding rights accorded to locally registered residents. This booklet dictates where people can live and work, and the benefits to which they are entitled (Chan and Buckingham, 2008, p.538). I argue, given the system’s importance, that the lack of documents has a profound impact on daily life. Understanding the role of the *hukou* in curtailing migration is crucial to understanding its relevance in China, and thus the repercussions of being undocumented.

In addition, I will revisit literature that demonstrates how the *hukou* booklet also institutionalises categorisation of citizens according to where they live - their province, city, town or village. This enables the exclusion of rural citizens from benefits to which

urban citizens are entitled. Thus while lacking documents can give rise to exclusion, through the ‘immutable, hereditary nature of the *hukou* classifications’ the system of urban privilege became self-perpetuating (Chan, 2009), giving rise to a different form of exclusion.

As mentioned in the previous sub-section, the origins of the *hukou* system in its current form derive from its use under Mao Zedong. The Chinese state has focused on registering as many citizens as possible because the *hukou* system has allowed the government to control and limit domestic migration – particularly from countryside to city (Windrow and Guha, 2005). It has done so by restricting citizens’ access to state resources, such as welfare or education to within the locality in which they are registered (Cai, 2011; Wang, 2005).

In contemporary China the *hukou* system has been particularly useful in supporting a new era of migration control and the opening up of the economy. Deng Xiaoping’s rise to power upon Mao’s death in 1976 harnessed the artificial rural-urban divide through this opening up of the economy (Greenhalgh and Winckler, 2005, p.34). Deng welcomed economic ‘reform and opening’, guiding a transition from a centrally planned economy to a market-led one (Wang, 2005, p.49). This underpinned rapid economic growth following years of rural economic stagnation (Raymond et al., 2000, p.6). As the economy blossomed, the demand for labour in cities also grew (Kane and Choi, 1999, p.993). The CCP reduced restrictions over resources as the economy became market led, and subsequently there was less control over migration as labourers moved to employment in urban areas (Chan, 2009, p.205). But the *hukou* continued to be a vital tool of governance. China needed a cheap workforce for its economic growth, and with its unequal wealth distribution—partitioned by the *hukou* system—China had the conditions for cheap labour (Chan, 2009, p.359).

This meant the government has had every incentive to maintain a comprehensive *hukou*, using control over migration to facilitate the economic transition. As informal migration took place, the central government created laws to allow regulated, temporary, rural-to-urban migration. In 1985, the government legalised temporary residence of citizens outside their location of *hukou* registration, but they were denied the rights and benefits of local citizens such as state education (Chan and Zhang, 1999, p.832). The

legalisation of temporary rural-to-urban migration encouraged increased migration between provinces and from the country to the city, as peasants could now earn a relatively high wage by working in urban factories. The CCP required migrant workers to register their temporary urban residence with the Public Security Bureau (Chan and Zhang, 1999, p.823). At first, migration was regulated by central quotas, but as provincial governments gained control over *hukou* regulations within their jurisdiction they made decisions over migration with increased relaxation (Chan, and Buckingham, 2008, p.594). Decollectivisation of farming, state sector reform, and the rise of regional planning all fuelled rural to urban migration (Young, 2013). Finally, the demise of grain rations in 1992 disempowered the *hukou*'s all-encompassing control over migration (Chan, and Buckingham, 2008, p.593).

By the time Hu Jintao (2003-2013) came to power, the *hukou* had continued to maintain the rural-urban divide. Increasingly the CCP saw 'advance' beyond purely economic terms, and refocused on social objectives (Greenhalgh and Winckler, 2005). Nonetheless, the perpetuation of disproportionate privilege established under Mao was vital to the economic privilege of urban residents. Temporary rural-to-urban migrants numbered 261 million by 2010, but many who resided in cities lived on the margins of society (Cai, 2013, p.291).

At the time of Hu's rule, urban residents, affluent local government, and central economic planners all had a stake to lose if the *hukou* system was abolished. Given the economic inequality between cities and countryside, the *hukou* system allowed the urban elite to sustain perpetuation of privilege, funded by dividing geographic economic growth through control of migration (Chan, and Buckingham, 2008, p.605). The system embedded urban economic privilege and extension to rural counterparts was unaffordable. Thus the Hu administration focused on maintaining a sturdy *hukou* system and slowly improving the lives of rural citizens. For example, agricultural taxes were eliminated nationwide in 2006, the *dibao* (rural welfare system) was implemented nationwide in 2007, and the Rural Cooperative Medical Insurance was implemented in 2008 (Gao et al., 2013, p.759). This reduced the economic burden on rural citizens and created the foundations of a more equitable social welfare system. The government also piloted a rural pensions program 2009-2011 (Gao, et al., 2013, p.759). Meanwhile, some provinces eliminated the 'agricultural' and 'non-agricultural' distinction

altogether for those who held a *hukou* from that particular province (Chan, and Buckingham, 2008, p.584). It became then that the location or address of a permanent *hukou* registration was the important factor for citizens within the province. In sum, reforms have been significant, but have not eradicate the significant disparity between the resources and entitlements available to different citizens.

This pattern of controlling migration to stimulate economic growth appeared again when Xi Jinping became the leader of China in 2012-2013, particularly because it was a time of profound economic change. The demise of China's export economy in 2008 during the world credit crisis led to the state stimulating the Chinese economy through high rates of lending and big infrastructural projects (Wong, 2009, p.951). Concurrently, China was heading towards an aging population profile exacerbated by birthing policies, with fewer workers to support a sizable elderly demographic (Jiang et al., 2011, p.633). Maintaining stability, which had been based on economic growth, became a primary concern of the CCP. The CCP focused on stimulating domestic consumption through a policy encouraging controlled urbanisation to smaller cities (Gransow, 2010). By relaxing laws regarding migration to certain places and tightening restrictions on migration to larger cities, the state continues to use the *hukou* as a tool for controlling migration and encouraging urbanisation in smaller cities (Gransow, 2010, p.14). The tightening of migration regulations through the *hukou* appropriated control over informal migration. This created a gap between formal regulations and their enforcement, increasing the pressure on the state to relax regulations (Young, 2013). Meanwhile, to avoid overpopulation of first-tier cities, the state is making migration to cities such as Beijing and Shanghai difficult, with local governments increasing restrictions over who could obtain local *hukous*.

The relevance of the *hukou* in creating the rural-urban divide is evident in the lives of Chinese citizens today. The *hukou* one holds is considered one of the most important markers of one's life trajectory (see Chan, 2009; Chan and Buckingham, 2008; Wang, 2005; Chan and Zhang, 1999; and Cheng and Selden, 1994). It is unsurprising that those who have benefited from the system – the urban elite – have vested interests in sustaining a strong *hukou* system. For example, Solinger (1999) found rural residents in cities live as second-class citizens. This divide is the product of a conscious political strategy to develop the cities before the countryside. By compartmentalising

development, the semi-fixed exclusion of rural citizens from the cities is ‘...stable, consistent, and systematic, and is often written into the law of the land and enforced by the state...’ (Wang, 2005, p.4). Undoubtedly, a decline in the importance of the *hukou* system in China would result in citizenship being less compartmentalised and hierarchical. This has been exacerbated because local governments are responsible for their constituents, but not necessarily for resident migrants.

Although the situation has been improved for migrant workers by safeguards such as the 2008 Labour Contract Law, increased minimum wage and enhanced coverage of migrant workers in basic social insurance programs (Cai, 2011, p.41), this has not erased the pertinence of the *hukou* in day-to-day life. A migrant worker’s social category is thus inscribed on his *hukou*. The *hukou* booklet, or more often the ID card that can be obtained by having a *hukou*, governs one’s social entitlements (Cai, 2011, p.38). The more popular a location, such as Beijing or Shanghai, the more difficult it is to move your *hukou* to this location (Chan, 2009, p.214). Essentially, each province has its own criteria determining what a migrant worker can access in terms of education, social welfare and citizen rights, and determined by those provincial criteria, whether migrants can obtain a local *hukou* (Chan, 2009, p.205; Tsui and Wang, 2004). In this sense, the detailed decisions regarding state limitation on migration is delegated to provincial governments. Rural residents are reluctant to live in a different location indefinitely and so, when migrating for work reasons, many choose to leave their child behind to obtain an education and live with its grandparents (Gao, 2013). Formally changing the location of one’s *hukou* is a difficult process favouring the rich and educated (Chan and Buckingham, 2008, p.603). Thus, the *hukou* guarantees very different rights to different citizens.

In sum, the *hukou* system today maintains its importance through control over domestic migration, which in turn leads to classification of citizenship and their corresponding entitlements. This underlies why documents have become vital in China, and why lacking documents can be particularly problematic. At the same time, the *hukou* is a marker of citizenship and as illustrated above, perhaps one of the most important factors dictating opportunities afforded to Chinese citizens is where they are registered. This divide is the product of a conscious political strategy to develop the cities before the countryside. By compartmentalising development, the semi-fixed exclusion of rural

citizens from the cities has created a binary of citizens which has been inscribed into Chinese documents.

2.2.4 The role of *hukou* in birth registration

The previous section explained why documents are vital in daily life; this section turns to an exploration of how, at the outset, the *hukou* is obtained or denied. The *hukou*'s initial function in a person's life is affirming registration of birth. The first impact of *hukou* denial is thus lack of an initial record of legal identity. In order to facilitate a better understanding in the empirical chapters I will briefly discuss how, bureaucratically, this can come about.

The birth registration process is complex, bureaucratic and depends on multiple actors and authorities. While in practice, during national and local censuses, the process is simplified (Li et al., 2010, p.307), as the government values accurate demographic data, this only occurs every ten years. Also, in rural areas the process is less standardised than in urban areas due to lower operational capability of registry departments (Li et al., 2010, p.307). Within each department involved in the process there are competing administrative objectives, since each department is concerned with different – sometimes mutually exclusive – policy directions. In the following chapter I will explain in depth the birthing policies that impact this process, but here I will deal with the birth registration process itself.

The system is characterised by 'multiple and independent registration procedures for different certificates, isolated registry sites, and independent administration of different registry departments' (Li et al., 2010, p.307). Each administration provides a separate certificate; these various certificates are all necessary for birth registration to be completed. Three administrations are responsible for birth registration: The Population and Family Planning Commission, the Public Health Department and the Public Security Bureau. The Population and Family Planning Commission merged with the Public Health Department in November 2013 (forming the National Health and Family Planning Commission). However, at local level, the two departments remain separate. The administrative merge at central levels was in response to relaxations over birth restrictions, which will be explained in the next chapter.

The process of birth registration comprises of three steps. Li Shuzhuo, the most prominent Chinese scholar on birth registration, describes the process in Li et al. (2010). Couples must first apply for a birth certificate from the Population and Family Planning Commission, usually when the mother is pregnant, although this can take place afterwards. Unlike birth certificates elsewhere, which indicate birth registration has taken place, in China this certificate means that the state authorises a birth. The Population and Family Planning Commission will issue a birth certificate when the child was born with their permission, or if the parents paid a fine, formally called a 'social compensation fee' or 'social support fee', for having a child without permission (Li et al, 2010, p.306). Otherwise the birth is unauthorised and labelled 'out of plan'. The mother or couple can apply for a medical birth certificate from the Public Health Department after the baby is born (Li et al, 2010, p.308). The first certificate is only given according to strict regulations, while the second is fairly easily obtained. Thus, when couples do not comply with state birthing policies, the Population and Family Planning Commission is the *de facto* guardian of full birth registration and the child's legal identity – the *hukou* (Li et al., 2010). Only with these two certificates, can the mother or parents then apply for their child's *hukou* from the Public Security Bureau at their local police station (*paichusuo*). The child must be registered in the police station where one of the parents is registered (Keane, 2006, p.216). Usually parents must also provide their *hukous* or ID cards and marriage certificate. It should be noted that parents must apply for the *hukou* in the location where they are registered – so domestic migrants cannot register in a different city. For an adopted child, the parents must also provide adoption documentation following a strict adopting procedure (Li et al., 2010). In practice the process can be more complex, depending on whether the child lives in an urban or rural area. Although there are local variations, this process describes the general national conditions for birth registration.

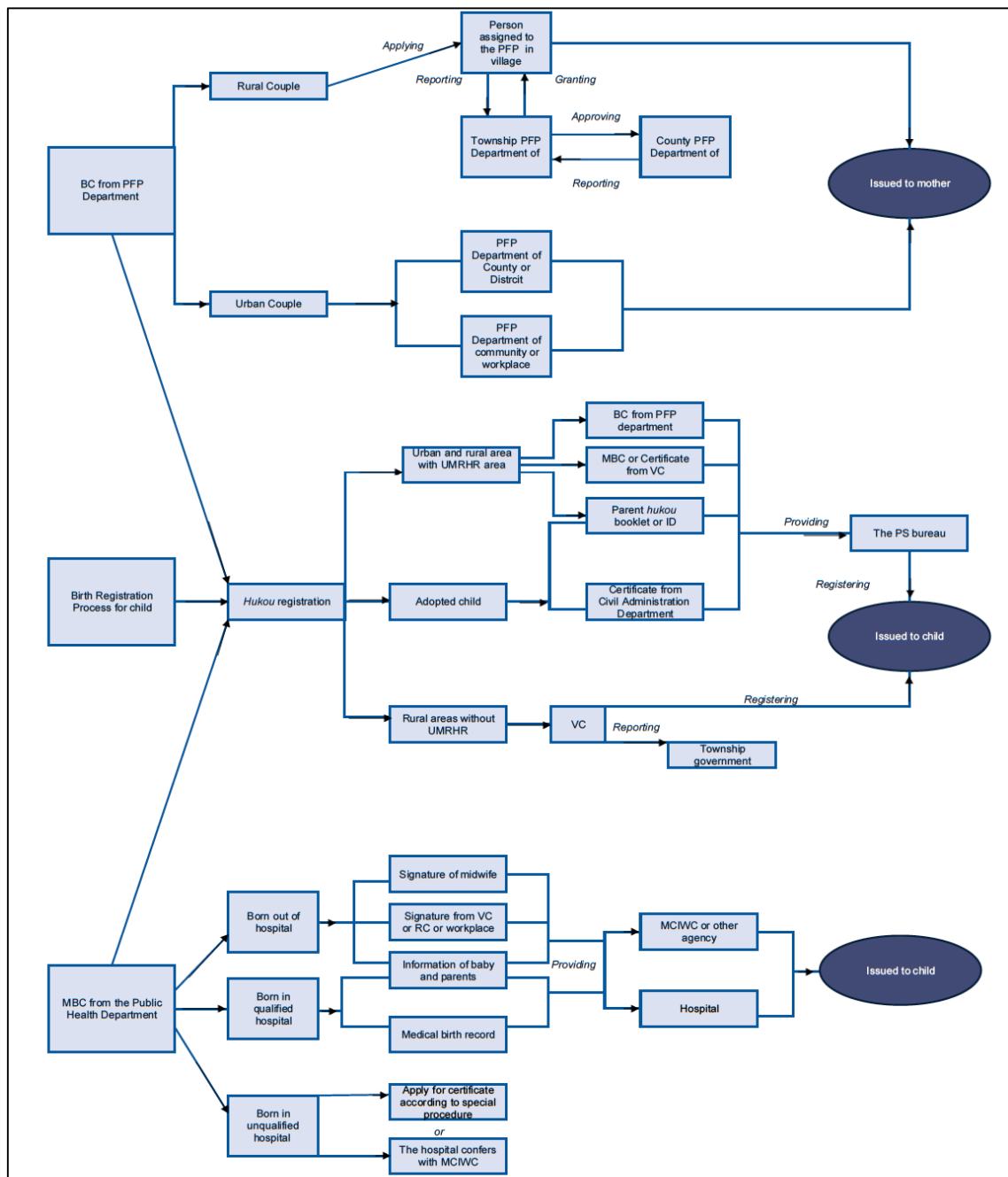


Figure 2 Birth registration adapted from Li et al., 2010, p. 308

BC: Birth Certificate, MBC: Medical Birth Certificate, PFP: Population and Family Planning, PS: Public Security, PH: Public Health, VC: Village Committee, RC: Residence Committee, UMRHR: Urbanised Management of Rural Hukou Register, MCIWC: Medical Care Institution for Women and Children registration.

Neither the birth certificate from the Population and Family Planning Commission nor the Medical Birth Certificate are in themselves, functional civil documents with any role beyond the birth registration process. In other words, they cannot attest legal

identity or nationality. Birth registration is only complete upon the registration in the *paichusuo*, and the *hukou* is the only documentary evidence to attest birth registration. Birth registration in China does not rest on a single moment in time; rather it is a process and series of interactions and documents that allow a child to obtain birth registration. The process is therefore subject to the administrative decisions of multiple actors. Without all necessary documents, a child may not be registered. In such cases, each ministry and bureaucrat therein can use discretionary power in deciding whether to give a certificate, while police in the Public Security Bureau would decide whether to register the child without certificates. Parents who have a child without permission also face the choice of whether to pay a fee or not register the child.

It should be noted that in China, all children have the right by law to birth registration regardless of whether their birth was approved by the family planning officials or whether the parents are married (Li et al., 2010, p.305). Thus deprivation of the *hukou* is technically illegal, but as we will see, this is common practice. The law is thus subverted at local levels, as birthing policies supersede the legal right to birth registration.

In summary, the *hukou* has an important role in affirming birth registration and legal personhood. Denial can result from the highly bureaucratic process, fragmented by different bureaucracies, and can be dependent on time, location and whether parents have state permission to have the child. Becoming documented depends on a series of encounters with different bureaucrats. While the birth registration process depends on multiple documents from the various bureaucracies, without complete birth registration the initial registration of personhood is denied. This has knock on consequences, as I will explore in the next subsection.

2.2.5 *Hukou* when used in daily life as a civil document

The *hukou* not only attests birth registration, but serves also as a civil document in daily life, and is the prerequisite to obtaining other civil documents. The *hukou*, as with other civil registration systems, has two functions. The first is to record vital events for statistical purposes. Like most states, the Chinese government uses this civil registration system in conjunction with national census and surveys to amalgamate data on their

1.35 billion person population. The second is to provide citizens with legal documents such as to affirmation of identity or nationality. Lacking the *hukou* thus means lacking all civil documentation necessary in daily life in China and for affirming Chinese nationality if leaving the country. Within the *hukou*'s capacity as a civil document, the *hukou* has significance domestically and internationally. As Li et al., (2010, p.311) states, without birth registration 'children cannot obtain nationality and citizenship, be independent as individuals, and receive protection by the state and its laws.' In China, the *hukou* is a marker of nationality because it is necessary to obtain other documents. Legally speaking, it is the identity card and not the *hukou* booklet which is reserved for Chinese citizens. Hence, denial of 'proof of nationality' is denial of an ID card. Chinese nationals should obtain an ID card by the age of sixteen years old. However, according to the *Chinese Law on Resident Identity Cards, 2003, Article 10*, application for this card requires the *hukou* booklet. When the *hukou* is denied, the person is question is unable to obtain an ID card and prove their nationality. They are also unable to apply for a passport, proof of nationality for Chinese citizens abroad.

The *hukou*, as well as being necessary to attest legal identity more generally, is also required for accessing state rights and resources reserved for citizens, such as social welfare, health insurance, entering military service and education (Li et al., 2010, p.311). Documents attesting legal identity are also vital for employment, marriage, domestic and international migration. The private sector may also require proof of legal identity, such as when opening a bank account, staying in a hotel, and registering accounts with companies and email providers online.

Access to the welfare system is also dependent on the *hukou*, an important example of how lacking this document can impact on access to resources reserved for citizens. To help residents living in absolute poverty, the social welfare known as *wubao* in rural areas and *dibao* in urban areas is available to documented citizens. Shang et.al, (2005) explored access to the *wubao* for abandoned children. They found that as the *wubao* is a community-based system, once people move away from their birthplace they are no longer entitled to the benefits. Abandoned children are not entitled to the *wubao*. In villages the logic of care dictates that if the parents are known, their children are not entitled to *wubao* because their parents continue to be responsible for them. If the parents are unknown, the orphans are not local and hence not entitled to *wubao*, as it is

a community-based system which provides protection only to orphans from the relevant community (Shang et.al, 2005, p.127). Without the *hukou*, access to social welfare is usually not possible as it proves entitlement from the local governments who are responsible for allocating social welfare. Again, this illustrates how both the right to a nationality and the rights attached to nationality can be jeopardised by documentation denial. This reinforces the role of the *hukou* in creating divides in citizenship, inscribing exclusion as well as entitlement. The state resources available to Chinese citizens depend on one's location of *hukou* registration. The *hukou* allows citizens to lay claim to resources within their local area. As Woodman (2016, p.2) points out, entitlements are often based on neighbourhoods or villages of formal residence rather than according to a rural-urban divide. To some, the documents will be more intrinsically valuable than to others. The necessity of documentation is reproduced through social and commercial organisations that demand documents and evidence of legal personhood.

2.2.6 Summary

The *hukou* booklet intertwines policies and functions that categorise China's citizens. Therefore, while denial of the *hukou* is independent of its function in mediating migration, migration underlies the importance of documentation denial. Its role in controlling migration serves to categorise citizens while the state imposed near-universal coverage of civil registration. This underscores that documents and the rights associated with them are dynamic, politically contingent, and dependent on who holds them. As Balaton-Chrimes (2014, p.20) points out in a Kenyan context, documents have 'both emancipatory and repressive potential'.

Examination of the various capacities of the *hukou* system also reveals a paradox. The evolution of the *hukou* has made it an integral tool in Chinese economic development, primarily through controlling the migration of citizens, but also for monitoring them. For the central government, it allows central planning of migration. For provincial governments, it dictates who will be educated and allocated welfare. For the people, the document is vital for everyday life, classifying their citizenship, and their link to the state. And yet some people have been excluded from the very system that delivers these multiple benefits. On the one hand, by using the threat of exclusion, *hukou* denial is an excellent way to ensure that citizens comply with political policies. On the other, denial

of documents undermines a fundamental state system since, (as mentioned above), many facets of state control rest on having a documented population to mediate interactions between citizens and the state. To unpick this conflict, I will first introduce, in this chapter, the people denied documents and in the next chapter explore the evolution of the seemingly conflicting policies.

2.3 China's population denied the *hukou*

In May 2014, both Chinese and international newspapers and websites broke the story of Wang Guangrong, 37, a Chinese farmer and father of four from Guizhou province who had committed suicide. The London Daily Mail picked up on the viral story - their headlines announcing that he killed himself because he had been fined for breaching the country's strict one-child policy. This was not quite the case, with the article going on to explain that Wang's real objection was not the fines levied against him, which in any case he could not afford to pay. Rather, he was upset because his inability to pay these fines meant that his children could not receive identity documentation, and thus were denied access to a state education. 'He couldn't take it,' said his widow Wu Jinmin, 36. 'He said to me before he cut his wrists: "What did we bring them into the world for, to be as dumb as cattle? I cannot see my children grow up uneducated".' (Pleasance, 2014)

The tragedy was remarkable precisely because it was considered so remarkable; few stories such as this surface in China these days. What the headlines missed, and arguably the most intriguing part of the story, was buried halfway down the Daily Mail's article: 'Like many poor farmers in Wantun township in southwest China's Guizhou province, he saw the children as an asset and decided to flout the policy. However, unlike the other labourers he was determined to give his children an education' (Pleasance, 2014). The question arises: Who are these other children without documentation and do they live without papers because education is not a priority? Little is known about the lives and situations of children without documentation outside of the stories that grab international and domestic Chinese press attention. Stories such as this hint at a population of children without documentation in China, a population that has received little attention in academic circles or beyond. In common Chinese vernacular this population is labelled '*heihu*', literally translated as 'black households',

or those without the *hukou*, despite the term being ‘expunged’ from state sanctioned vocabulary (Greenhalgh, 2003, p.199).

2.3.1 Introducing *heihu*

Little can be found about *heihu* in existing literature, although attention to this group could provide input into broader conversations on the risk of statelessness. *Heihu* are arguably China’s least studied population. Apart from one article by a political anthropologist, Susan Greenhalgh (2003), who gives a broad introduction to the group without empirical research, they have not received serious academic attention. Their population size, however, has been discussed in demographic articles looking at the gender ratio imbalance, a point I will address later in this section. Other than that, literature on the *hukou* and ‘one child’ policy only mentions *heihu* in passing (for example Cai, 2013; High, 2013; White, 2006; Greenhalgh and Winckler, 2005; Wang, 2005; Scharping, 2003; and Johnson, 2003).

Most children without a *hukou* are born to parents who did not have the necessary permission because they exceeded the one or two children allowed. Thus the child would be considered a *chaosheng* – born in addition to their quota of allowed children, or as previously mentioned, also called born ‘out of plan’, ‘excess’ or ‘above quota’ (Greenhalgh, 2003, p.205). Greenhalgh (2003) describes how parents are unable to register their child’s birth as a result of the ‘family planning’ policies that came into force in 1979. Restrictive birthing quotas remain a significant factor responsible for creating unregistered children. My own research found that children remain unregistered for numerous reasons, the most typical being that parents cannot pay the fines for having an unauthorised children. As a result, they are denied a birth certificate by the Population and Family Planning Commission, and thus the *hukou* by their *paichusuo*, until they can meet this obligation. As the fine is set as a percentage of the individual family’s income, the impact of the financial burden is in all cases proportional to their income –and can represent up to eight times their annual disposable income, depending on provincial laws, as well as the discretion of street-level bureaucrats. The problem affects persons of every class in all locations in China. In other cases, mothers who refuse to undergo surgical sterilisation are denied their child’s *hukou* until they relent. As birth control is readily available, and the family

planning regulations have been rigorously enforced for over 35 years, having a child without permission is considered by the state to be a choice and not an accident.

With reference to the above group, while statistics (discussed below) indicate *hukou* has denial disproportionately affects females, the extent of the imbalance is less clear. Studies indicate that China's skewed gender ratios are caused not by hidden unregistered girls, but primarily through sex-selective abortions (Banister, 2004, p. 19) or child abandonment Johnson (2016, p.3). Thus it is possible that those who want sons tend to have sex selective abortions or abandoned their daughters, while not necessarily leave their daughter unregistered. It also could be that prior to sex selective abortion becoming widely available, daughters tended to be hidden, which might no-longer be the case. Johnson (2016, p.2), who founded work on Chinese adoption, argues that while much is written about the ideal of a male offspring, 'we find strong desires among many families to also have or obtain daughters, often above and beyond what was allowed by the state. Families resisted not only for the sake of a son but also for a widespread two child-two gender ideal...'. Thus families will struggle to have two children, and will not necessarily leave their daughters unregistered. Indeed, Ebenstein (2010, p.96) finds that parents with sons prefer their second child to be a daughters. For these reasons, I am reluctant to label *heihu* as a phenomenon confined to affecting only female children. Although not a representative sample, there was nothing in my own research to indicate that females were significantly disproportionately affected with regard to this first group. It appears to affect second children regardless of gender.

Two other groups that must be noted when discussing *heihu*. However, these two groups will only be touched upon in the empirical chapters and will not feature in the main empirical focus of the thesis. This is because they have a significantly smaller impact on the *heihu* population, and also for ethical reasons, as I will discuss in Chapter Four. The first group can be attributed to birthing restrictions giving rise to an increase in informal adoptions. In China orphans are defined as children whose parents have both died, or where one parent died and the other could not be found for more than two years (Shang et al., 2005, p.122). In some rural parts of China, when the father dies the child is treated as an orphan (Shang, 2007, p.205). This is because China's rural areas are still patriarchal and upon marriage a woman leaves her family to join her husband's (Shang and Fisher, 2013, p.107). If the father of the child then dies, this tie is dissolved.

Mothers in impoverished areas are under extra pressure to leave, as they are not entitled to their husband's land or assets upon his death (Shang and Fisher, 2013, p.107). Also, farming land and taking care of young children is usually too difficult (Shang and Fisher, 2013, p.107). The paternal family typically then cares for the children - particularly sons. Mothers are expected to leave and remarry to avoid living in poverty (Shang and Fisher, 2013, p.108). When the mother dies, by contrast, usually the father will continue to raise the child with the support of his family

There were 573,000 orphans in China in 2005 (16 in every 10,000 children), according to the first national census on orphans (Shang and Fisher, 2013, p.35). This is probably underreported as many children are cared for informally by kinship, and 86.3 per cent of orphans live in rural areas (Shang and Fisher, 2013, p.36). Within this group, children who are abandoned and are informally adopted face difficulties accessing the *hukou*. Child abandonment is attributed to four main, often-interrelated causes: poverty, birthing policies, gender discrimination and disability related abandonment (Shang and Fisher, 2013).

Girls and disabled children are particularly likely to be in this situation. Foremost, limits on birth restrictions exacerbate ideals for a family which includes a son (Johnson, 2003, p.86). Some parents prefer a male child over a female child as males carry the family surname. More importantly, however, male children look after their parents in old age, while females live with their husband's family, and disabled children, unable to care for their elderly parents, could be considered a financially unaffordable. Many orphanages almost exclusively house female children, a large number of whom are also disabled (High, 2013, p.136). Thus, having a male child not only continues the family lineage, but is also effectively a pension for many rural citizens (Johnson, 2003, p.37). Hence, for parents faced with restricted birthing choices, having only daughters was considered a risk. For rural parents, whose first child is a girl, and who are permitted to have a second child, the stakes associated with having a second daughter are even higher. Disabled children are also abandoned, despite the fact that parents are allowed to have another child if the first is disabled. Yet there is an on-going lack of community-based family support and social services for parents with disabled children (Human Rights Watch, 2013).

By law ‘true’ orphans are the legal responsibility of their grandparents, and if the grandparents are unable to fulfill their duty it is passed to the orphan’s uncles and aunts (Shang et al., 2005, p.127). However, once the child becomes an adult they are expected to repay their carer (Shang and Fisher, 2013, p.146). For example, if they can afford it, the orphan is expected to take care of grandparents whose children are dead or cannot afford to support them (Shang and Fisher, 2013, p.146). Only when a family is completely unable to afford the care for orphans do residual social policies on income support for rural residents come into action (Shang and Fisher, 2013, p.148). Children with no parents often need the resources of the government, particularly as many require specialised care and, according to Shang and Fisher (2013, p.149), as many as 90 per cent of children in institutional care, such as orphanages, are disabled. Child welfare institutions frequently lack staff qualified to support the development of children with disabilities (Human Rights Watch, 2013). Furthermore, local health care workers (particularly in rural areas) are often not qualified to provide rehabilitation services, and teachers may lack training in special needs education.

In order to prevent adoption being used to circumvent birthing restrictions, only adoptions through government facilities are legal, which lead to the abandonment both of unwanted children and disabled children, increasing the numbers of *heihu*. Traditionally, adoption in China has taken place outside the state, and many adoptions are still done this way (Johnson, 2003, p.119). Hence, children are either adopted outside government institutions, or cared for in unauthorised orphanages, and cannot be registered with a *hukou* (High, 2013, p.163). NGOs, churches, enterprises and individuals have to a significant extent met the gap in care of vulnerable children (High, 2013). However, these forms of care nearly always lack legal status because local government does not have the power to register non-government organisations to operate children’s institutions, and it is illegal for individuals and private organisations to do so (High, 2013). The result is that these children also lack a *hukou* (Shang et al., 2005, p.131). Even on reaching adulthood many cannot normalise their status unless they are adopted. Thus, even when receiving local government finance and tacit support, the coverage of NGO care is unknown because in a legal sense it is an ‘underground’ operation. Local governments cannot or will not close the institution and provide care themselves, but nor will they leave the children to starve (Shang et al., 2005, p.132). This also makes it difficult for the government to address the quality of care, even if the

care is substandard. Local governments do not support most of the NGOs providing care within their province (Shang et al., 2005, p.132). Also, it is illegal for these NGOs to formally raise funds themselves and so they rely on resources from churches and their community (Shang et al., 2005, p.133). This can cause delays, or prevent altogether, children from attending school and receiving surgery or medical care (Shang et al., 2005, p.133).

Until the turn of the century, the Adoption Law restricted domestic adoption (except in the case of disabled children and ‘true orphans’) by parents who are childless and over the age of thirty-five. In 1998, the Adoption Law was amended to allow ‘orphans, disabled children, or abandoned infants and children whose parents cannot be ascertained or found and who are under the care of a social welfare institution’ to be adopted irrespective of whether the adopter is childless, although the adopter must have reached the age of 30. People who adopt children without permission or in contravention of the Adoption Law (for example, people who already have a child), receive the same birth-planning penalties as if they had given birth to them. This includes stiff fines and mandatory sterilisation for the parents (Johnson, 2003, p.91).

Finally, children of a North Korean mother and Chinese father can be included in this group. The children should be considered citizens of China under the *Nationality Law of the People's Republic of China*, but in practice are denied documentation proving their citizenship. According to a Human Rights Watch (2008, p.4) report, they are estimated to number between several thousand and tens of thousands, most of them living in Jilin where there is a large Chinese-Korean minority (*chaoxianzu*). As North Koreans are usually in the country illegally and some are sold into marriage, they do not have a *hukou* or permission to reside in China (Committee for Human Rights in North Korea, 2009, p.23). The result is that the child, who is Chinese, cannot in the absence of the mother’s *hukou*, or death certificate.

In the following chapter I will discuss the policies that have shaped the creation of *heihu*. It is important to keep in mind that *heihu* are a multifaceted group that extend across many areas and classes of China. Since there is such latitude for discretionary documentation denial, no one social group or class is uniquely impacted, the influence being felt by citizens ranging from government officials to farmers in rural areas.

Despite their differences, they have in common their exclusion and inability to access Chinese citizenship rights. Indeed, as with other groups impacted by statelessness, the ‘contours and intersections among and between them are contingent and infused with power relations...’ (Redclift, 2013, p.25). In the case of China, the power relations are between families of those denied documentation, local cadres, and central government, as will be seen in the empirical findings presented in Chapters Four and Five.

2.3.2 Counting *heihu*

Heihu are a population in the loosest sense as they have no unique shared identity as a group, but rather a shared exclusion. As birth registration is the gaining of a *hukou*, we can ascertain some figures from measures of the *hukou* or birth registration in the national census that takes place every ten years. The broadest current *heihu* count can be derived from the last Chinese census in 2010. By the Chinese government’s own estimate there were around 13 million unregistered children as a result of family planning policies (People, 2011). As was the case with Wang and his children, parents typically had additional children without state authorisation, and were unable to pay the fee for this violation. The figure itself is derived from families that admitted to state employees conducting the census that they had an unregistered family member, or that they themselves were unregistered (People, 2011), although we have reason to assume the figure is higher.

Analysis of the 2000 census – which did not officially count those without a *hukou* – determined around 37 million children to be missing (Goodkind, 2004, p.281). This included more than a quarter of all children under age five, and an eighth of children between the ages five and nine. Goodkind drew this conclusion by comparing projections for 2000 from the 1990 census of children to the actual number of recorded births in 2000. This is supported by evidence from Zhang and Cui (2003) who found that school enrolments (up to 2002) exceeded the figures of reported children between the ages four to nine in the 2000 census, as in some rural areas the *hukou* is only needed to enter middle school and above. Their analysis suggested that 30.1 million children under age ten were missing from China’s 2000 census. Recent census analysis supports these findings. The 2010 census counted about 13.9 million more females born between 1971 and 2000 than registered in previous censuses, and about 4.6 million more males

(Cai, 2013, p.385). Taking into account mortality, 10 million ‘missing’ girls between 1981 and 2000 were discovered (Cai, 2013, p.385). However, the extent to which females have been disproportionately affected by being unregistered is still unclear, as earlier demographic studies indicate that both genders have been affected by *hukou* denial (See Banister, 2004, p.20). Moreover, the nature of how the data is collected leaves the census open to political manipulation at grassroots level. My colleagues in China confirmed to me that it is widely known within China’s demographic community that local cadres are given census data to fill in. Local cadres are also evaluated according to their ability to control birth levels within their jurisdiction and thus have reason to modify local statistics.

We also have reason to assume these figures reflect only the children denied documents. Between censuses not all children without a birth registration are undocumented as a result of state denial of documentation. According to Li et al. (2010, p.307), in the years 1991 to 1999, only 60 to 80 per cent of children were registered within a year of their birth. Li et al. (2010, p.311) estimated that only 20 per cent of rural children are registered within one month of the birth, and less than 50 per cent of children within one year. In urban areas, *hukou* holders have a higher birth registration rate, but urban citizens account for a smaller percentage of the Chinese population. However, the fact that the registration process is simplified during the times of a census (Li et al., 2010, p.315) so that the central government can obtain more accurate demographic statistics, leads to higher birth registration rates at that time. In 2010 the government allowed parents to confidentially admit that their child was not registered (People, 2013). It is possible that in the years preceding a census the rate of unregistered children rises, with parents awaiting the census and its more simplified registration process, and then subsequently falls around the time of a census. Therefore, we are able to say with some confidence that those without birth registration around the time of the census are in this situation because they are unable to secure it.

2.4 Discussion

As exploratory research, this chapter first gives an overview of persons who have been denied or are unable to access the *hukou*, the document affirming Chinese nationality. The population is diverse, drawn from different social, economic and geographic

backgrounds. Despite the *hukou*'s relevance in curtailing migration and hence its position of political importance in China, the population denied documents is not connected to migration. Persons are always denied the *hukou* in their own location of registration, as registration must take place in the location of one parent. The population of *heihu* is varied and indicates the extent to which *hukou* denial can be used as a targeted punitive tool of control, rather than a blanket discrimination that is so seen in discussions on statelessness.

This chapter makes initial observations on how denial of the *hukou*, which affirms nationality, impacts the enjoyment of rights associated with one's nationality and legal personhood in China. The *hukou* opens the door to recognition of legal personhood by private organisations, as well as a plethora of rights reserved for nationals such as state education. The *hukou* holds particular pertinence in China, a highly documented population, as it acquired its importance from economic development that rested on control over domestic migration. Therefore, denial of the *hukou* had broad implications for recognition of nationality and how citizens function in daily life. Yet the same documents that are vital for daily life should be viewed in the context of the three roles of the *hukou* system: controlling domestic migration, affirming birth registration, and for use in daily life as civil documentation. The entangled purpose of China's civil registration system, mixing benign functions and extreme politicisation, to control population growth and domestic migration, underlies this documented population. On the one hand, the *hukou* bridges nationality and rights associated with citizenship and legally attested personhood more generally. On the other, there are unequal benefits of documents that ascribe unequal access to social rights dependent on location of registration, age and location of residence, thus inscribing categorisation of citizenship and inequality.

The chapter also illustrates the process of becoming documented in China. The birth registration process is complex, bureaucratic and depends on multiple actors and authorities, depending on the broader circumstances. Discussing this process serves to propel the broader argument in this thesis, as developed in my empirical chapters, that negotiations over documents by those denied documents and bureaucrats' agency over documentation can have a part to play in determining who becomes at risk of

statelessness. The laws and policies pertaining to obtaining the *hukou* described in this chapter illustrate the framework in which bureaucrats are able to operate their discretion.

On a final note, reveals a paradox: *hukou* denial undermines the very system of control over migration that makes the *hukou* so vital to CCP control. Within this system lies the categorisation of citizens and their rights. The consequence of lacking a *hukou* is severe because so many facets of daily life depend on this identification document. Why would the government deny the *hukou*, and thus weaken a system that facilitates social control? This conundrum will be explored in the following chapter, where I will review the policies pertaining to *hukou* denial and how we can best conceptualise the Chinese state.

3. The Paradox of Uneven Documentation Denial

3.1 Introduction

In the previous chapter I discussed the *hukou* system and the value of Chinese documents in daily life. Inspection of the Chinese *hukou* system illuminated a conundrum: the CCP often deliberately denies a child a document that is central to its process of maintaining control of society's movements through a highly bureaucratised system of documenting people. When the birth of a new-born child is successfully registered, the name is added to a police database. The child's name is also added to a *hukou* booklet, which serves as both the baby's first civil registration documentation and the child's proof of legal identity. The booklet is required by the state at every stage of a person's life, dictating the state resources such as education which they can access. This binds access to some state resources to the location where a person is registered and restricts their ability to migrate domestically. The *hukou* system's role in controlling migration has underpinned China's economic growth and the evolution of the *hukou* has thus been a central aspect of the CCP rule.

As discussed in the previous chapter, scholars of Chinese Studies have documented at length the importance of the *hukou* system to the ruling regime (Chan and Buckingham, 2008; Wang, 2005; Solinger, 1999). It has allowed the state to control migration, in turn allowing cities to develop with a limited populace, and then limiting migration between cities and the countryside. This has created a privileged class of urban citizens whose offspring inherit their urban status by birth via the *hukou* system, and underpins a system of inequality. In addition, the *hukou* system has become a tool to monitor citizens who pose a threat to the CCP. Wang (2005, p.62) points out that the government uses the *hukou* to monitor certain 'targeted' citizens, called *zhongdian renkou* (targeted people). Wang found the *zhongdian renkou* are openly and secretly monitored, their cases regularly reviewed by the police. This practice has continued throughout the CCP's time in power, particularly since 2000, although increased population mobility and lack of police resources have both made such monitoring more problematic. The *hukou* is an instrument to supervise those who pose a serious threat to the CCP, such as members of the illegal *Falun Gong* sect or the Muslim separatists in Xinjiang. Wang (2005, p.111) describes how *Falun Gong* members in major cities are

usually only monitored during times of national sensitivity when, for example, police officers could be posted at their door to prevent them from leaving their home. In this way, dissenters are listed, classified and monitored through the system of documentation.

Why, then, would China purposefully deny the *hukou*, to at least 13 million children, concurrently putting them at risk of statelessness? Documentation denial undermines the system of documentation that the government has carefully built, by allowing or forcing persons to go off the bureaucratic radar. It means a person no longer has a documentary link to the state.

In this chapter I make the state a site of enquiry, arguing that persons without a *hukou* can be understood as a manifestation of tensions – and at times contradictions – between central and local government priorities. The reason that not everyone is denied documents, however, goes beyond these divides, illustrating the discretionary nature of documentation denial. The broader purpose of the chapter is thus to extend discussions on risk of statelessness, by posing the question as to why populations are unevenly impacted by documentation denial through examining the state. The divides in the state open spaces for individual bureaucrats to decide whom to document, thus underlying who becomes at risk of statelessness. This chapter explores the spaces available to bureaucrats, driving my argument in the following chapters that spaces of contestation around becoming documented can be appropriated by bureaucrats and citizens.

In this chapter I find that *hukou* denial in China is, for the most part, an unintended consequence of policy making, a by-product of intersecting governmental interests. The central government prioritises economic de-centralisation, a documented population and manageable population growth. Meanwhile, local governments tend to prioritise the meeting of birthing targets (rather than birthing management per se), and generating revenue to meet the shortfall in central government financial allocations. The local government must manage multiple competing and entangled demands from the centre and documentation denial can be a means to this end. Specifically, local governments must both enforce birth registration policies and birthing restriction fines, which is problematic because officials use denial of the *hukou* to enforce payment of fines. This is the broad political situation in which street-level bureaucrats operate. The

contradictions between central and local government priorities open spaces for discretionary policy implementation that vary from locality to locality, government cadre to government cadre. While some officials might have empathy for parents, and even help them to avoid certain restrictions, others might wish to enforce policies. The consequence is a seemingly ambivalent state (Stern, 2013).

More pertinent to discussions on the risk of statelessness is that fractures in the state allow spaces for street-level bureaucrats to use discretion to deny documents, resulting in uneven denial of documents to a population. This emphasises that the risk of statelessness is not dictated by legislation and central state policies alone. It is often a combination of broader political factors, which accord spaces for discretion among low-level bureaucrats and is not necessarily a reflection of formal legislation.

To understand uneven documentation denial, Section Two of the thesis discusses why the Chinese state is best understood from the *state reflected in society* approach (Stern and O'Brien, 2012), where we see the state as it is experienced by those who interact with it. To persons seeking political change, the Chinese state is experienced as *seemingly ambivalent* (Stern, 2013) due to the diverse goals of different agents implementing policy. I argue that the concept of the Chinese state's apparent political ambivalence is central to an understanding of why government officials deny documents to some persons who violate their policies and not to others. The struggle for power between bureaucracies, factions and interest groups all distort policies. Section Three sketches the divides within the Chinese state at provincial and local levels. I illustrate how the state is divided in order to locate the spaces for policies to be subverted between street-level bureaucrats and higher echelons of government. Section Four highlights the economic priorities of local governments who must balance these priorities when deciding how to implement a range of laws coming down from the centre. Again, this illustrates why local bureaucrats prioritise different policies and why some deny the *hukou*. Section Five maps the policies that underlie *hukou* denial – policies dealing with birthing restrictions, adoption, and controls over North Korean migration. These three areas provide an illustration of competing political priorities which may result in some street-level bureaucrats denying the *hukou* in order to force compliance with these policies. This latitude becomes available because of the fractured nature of the state which I outline in previous sections.

3.2 Theorising the Chinese state

As yet there is no adequate theoretical model of the Chinese state, particularly as the CCP is a regime that limits information as to its working (Stern and O'Brien, 2012, p.175). I will use two interrelated concepts are particularly helpful in making sense of the Chinese state: the *state reflected in society* approach (Stern and O'Brien, 2012) and the *seemingly ambivalent state* (Stern, 2013). These help to explain why there are spaces for negotiation between the Chinese state and those seeking documentation, and what freedom street-level bureaucrats have to deny documents unevenly, thus creating a population at risk of statelessness. The result is the subversion of the *hukou* policy – a central component of political control in China.

The state reflected in society approach advocates that we make sense of the Chinese state with a view 'from below', from the view of people pushing for political change (Stern and O'Brien, 2012, p.174). In the state reflected in society, Stern and O'Brien encourage scholars to look at the state as it is experienced by those seeking political change. They draw on a range of case studies, paying attention to experiences of NGOs, lawyers and journalists. While Stern and O'Brien acknowledge the dynamics of state decision making, they focus on the perspective of those who view the outcome of the political process. They therefore understand the state through what is politically permissible to Chinese authorities, from the perspective of those seeking political change such as NGOs, journalists and lawyers. In other words, they understand the state through the varied tolerance for activism between the 'uncontroversial and unacceptable' (Stern and O'Brien, 2012, p.174).

Stern and O'Brien (2012, p.175) argue that understanding the limits of what is permissible to the Chinese state reflects a grounded approach to understanding the state through how state power is experienced and where tolerances lie. From the experience of political activists they question which state signals indicate whether an issue is considered transgressive or tolerable. Stern and O'Brien argue that signals from the state are usually ambivalent and often difficult to interpret (other than clearly forbidden issues such as the *Falun Gong*). This is because individual state officials, in assessing how they should implement policy and what is permissible, will interpret signs from the central government differently. Signals can be information derived from direct interactions with state officials or indirect communications such as speeches,

regulations and media stories (Stern and O'Brien, 2012, p.177). Their reflection is thus that the Chinese state, seen from below, is one with limited and fluctuating scope for participation, based on choices of local officials (Stern and O'Brien, 2012, p.188). O'Brien and Stern (2012, p.186) acknowledge that mixed signals are present in any bureaucracy, particularly those with numerous levels of hierarchy. Unique to China is the size and decentralisation of governance which promotes state ambivalence. Moreover, as I will explore in Section Three, the latitude accorded to provincial and local governments exacerbates the spaces for divergence in policy between geographic regions. Stern and O'Brien (2012, p.187) suggest the CCP exploits mixed signals to their benefit, allowing the leadership to crackdown as and when they please on different groups without the same degree of expectations regarding their actions.

Using the idea of state reflected in society is helpful within this thesis as it allows us to focus on people's lived experiences, which are 'at the heart of generalisations about the "state of the state"' (Stern and O'Brien, p.175). The state's denial of documents is based on decisions of individual government cadre who are reading a broader political situation. As each cadre might have a different interpretation as to what is politically permissible, they will make different decisions on documentation. For this reason, the state might appear to be ambivalent, undermining the *hukou* system in order to enforce other policies. The approach does not limit us to seeing the state as the driver behind change and political advocates as passive recipients (Stern and O'Brien, 2012, p.189). Rather, it requires that when studying resistance to certain state policies, the Chinese state is explicitly addressed.

Stern's (2013) concept of the seemingly ambivalent state develops the idea of why the Chinese state can appear ambivalent. She argues that actors at various levels of governance within the Chinese state send mixed messages about numerous issues. Stern (2013, p.231) explores mixed signals and political state ambivalence in her analysis of environmental litigation. Enriching her 2012 work, she focuses on the state specifically as seen by stake holders in the environmental litigation process. Her work examines how plaintiffs, lawyers and low ranking judges try to ascertain the general political 'winds' (Stern, 2013, p.109). For example, the central government might both wish to stop pollution and empower courts, but also avoid large-scale litigation against the state. This makes political signals difficult to read for those involved in the environmental

litigation. Signals are derived from multiple sources and in the case of environmental litigation could be legal speeches, court rulings elsewhere and support from the political elite. Stern's findings are based on legal litigation, but she (2013, p.231) makes clear the *ambivalent state* can be seen in many areas of political control, such as the Internet or free trade. As Stern points out, ambivalence should be unsurprising as China is a state of contradictions, economically, politically and legally.

Stern maintains that the state's seeming ambivalence derives from its conflicting core values and pressures. The struggle for power between bureaucracies, factions and interest groups all distort policies (Stern, 2013, p.99). The state appears ambivalent from the outside because it is an organisation of many parts behind a unified front, rather than one with a coherent strategy. While central leaders drive policy, other factors shape specific policies, such as political apathy distorting central policies as they are implemented.

I argue that the concept of the Chinese state's apparent political ambivalence is central to an understanding of why government officials deny documents to only some of the persons who violate their policies. Stern's argument on the seemingly ambivalent state enriches the theory proposed by Lipsky (1980) on street-level bureaucracy, which I discussed in Chapter One. Stern eschews the general conception of the Chinese state in Chinese Studies literature that views the primary divide as being between central and local government, recognising this as overly simplistic. Government officials do not act uniformly and different actors within local government can have quite separate goals. As mentioned in Chapter One, I believe this confirms the relevance of viewing the actions of street-level bureaucrats through the lens of Lipsky's writing. In the case of *hukou* denial it suggests that actors involved in the documentation process will not act homogeneously. As Stern points out, the CCP wanted to portray China as a 'well-governed, modern state' where modern has become synonymous with reaching international legal standards (Stern, 2013, p.100). Yet when environmental litigation takes place at local levels, courts can both enhance and diffuse central power. She concludes that the state must appear ambivalent to allow legal reforms, while stemming the threat of broader political challenges. Likewise, while the state wishes to create a documented population, denying documentation is a good way to force citizens to comply with policies. Persons without documents will be unable to access the rights and

resources accorded to citizens as easily as those with legal documentation. In this way the state must be ambivalent as to how citizens are documented.

Thus the question as to why the state might create a strong registration system while concurrently undermining it by creating documentless children can be explained by theories of a seemingly ambivalent state. The *hukou* facilitates government control by enabling the state to monitor citizens as well as sustaining the privileges of the urban elite. Meanwhile, there is a political priority to restrict births, adoptions and illegalised migration. Street-level bureaucrats must then decide the priority – to register citizens with a *hukou*, or to deny the *hukou* with a view to using the document as leverage to make citizens comply with the other policies. Officials can make different decisions based on their own priorities and a reading of the broader political situation. Their actions thus might not only be influenced by economic considerations or feelings of empathy for those affected, but by political signals such as legal speeches, new targets for sterilisation or even media coverage of the issue in state press. The result is a seemingly ambivalent state because the state is a sum of many parts, each with competing interests. This gives us our first insight into how spaces for negotiation over documentation can vary, and why denial of *hukou* can be uneven.

3.3 Chinese state structure

The latitude for political discretion, which contributes to the seemingly ambivalent state, is facilitated by the layers of central, provincial and local government and the bureaucracies that penetrate through. While O'Brien and Li (2006, p.113) advocate that we look within the state to inspect the decisions of local civil servants, their decisions are shaped by their place within this hierarchy. It is in this context that we can understand the spaces in which street-level bureaucrats operate, and begin to understand why only some people are impacted by *hukou* denial.

While the Chinese government is dominated by the CCP, the CCP is comprised of numerous competing factions. Unlike in a liberal democracy, conflicts are played out behind the veneer of a one-party state. The divides among political elite are evident. The Chinese elite roughly divides into two coalitions or factions (Li, 2012; Lam, 2006; Tsou, 1995; Dittmer and Wu, 1995; Nathan, 1973). One side, the 'elitist coalition',

includes ‘princelings’ (children of high-ranking officials), and the ‘Shanghai gang’ – leaders in Shanghai around the time Jiang Zemin was the Party chief in the 1980s (Li, 2012). On the other side stand the ‘populist coalition’, comprised of former Chinese Communist Youth League officials (Brown, 2014). To a lesser extent, other groups hold influence over the running of the government, for example the so-called ‘oil faction’, and the ‘Qinghua University’ faction (Brown, 2014). Behind the scenes, retired political leaders from each faction also continue to exert informal authority over policy direction (Hamrin and Zhao, 1995). The central government is a sum of many parts, united in ‘fidelity to the Party and in defense of its monopoly over power’ (Brown, 2014, p.21). For this reason, the CCP has been broadly labelled ‘one Party, two coalitions’ (Li, 2012, p.609).

Divides are not only to be found within central government; they also exist between the central and provincial governments. China has always struggled to ensure central government policies are implemented by provincial and local governments, termed the problem of ‘reach of the state’ (Shue, 1988; Oi et al., 2012, p.652). Since the Yuan dynasty (1271-1368), the phrase ‘heaven is high and the emperor is far away’ has described the central government’s weakness in ruling the provinces of China, and the expression endures in current Chinese vernacular. China remains ‘...a multi layered state that has grand aspirations but formidable principal-agent problems...’ (O’Brien and Li, 2006, p.65). This is to say, the central government (principal) entrusts the local governments (agents) with implementation of their carefully constructed laws. In fact, O’Brien and Li (2006, p.14) claim Chinese state power ‘is both fragmented and divided against itself.’ Even within ministries the centrally directed policies are less potent as they are further away from the source of power.

There are plenty of opportunities for laws and policies to become distorted as they are passed down the political hierarchy. Provincial leaders write national policies into provincial legislation, while government cadres implement local legislation in cities, towns and villages. As outlined by Saich (2011, p.179-181), there are four administrative levels of governance under the central government in China. The first is the 34 provincial-level governments, made up of 23 provinces (China includes Taiwan in this figure, although it has no direct governance control over the island), five autonomous regions, four municipalities that report directly to the central government,

and the two special administrative regions, Hong Kong and Macau. (Mainland Chinese policies do not apply in Hong Kong and Macau). The second level is the over 300 prefectural-level administrative units. The third level of administration includes the 3,000 counties and county-level cities and the fourth is comprised of roughly 40,000 townships and towns. Central governance structure, broadly speaking, is mirrored in each level of administration. China's one million villages are separate from the formal administrative structure of governance, considered rather as self-governing units which have enjoyed 'grassroots democracy' since 1987 (O'Brien and Han, 2009, p. 259). Villages have both an elected leader and an unelected party branch secretary appointed from above and the two figures sometimes overlap (Paik and Baum, 2014, Tsai, 2007). Real power often is based in the hands of township officials, again unelected, who oversee the villages and control village finances (Paik and Baum, 2014). So while law and policy should be implemented from the centre down through to village level, they pass through many layers of governance.

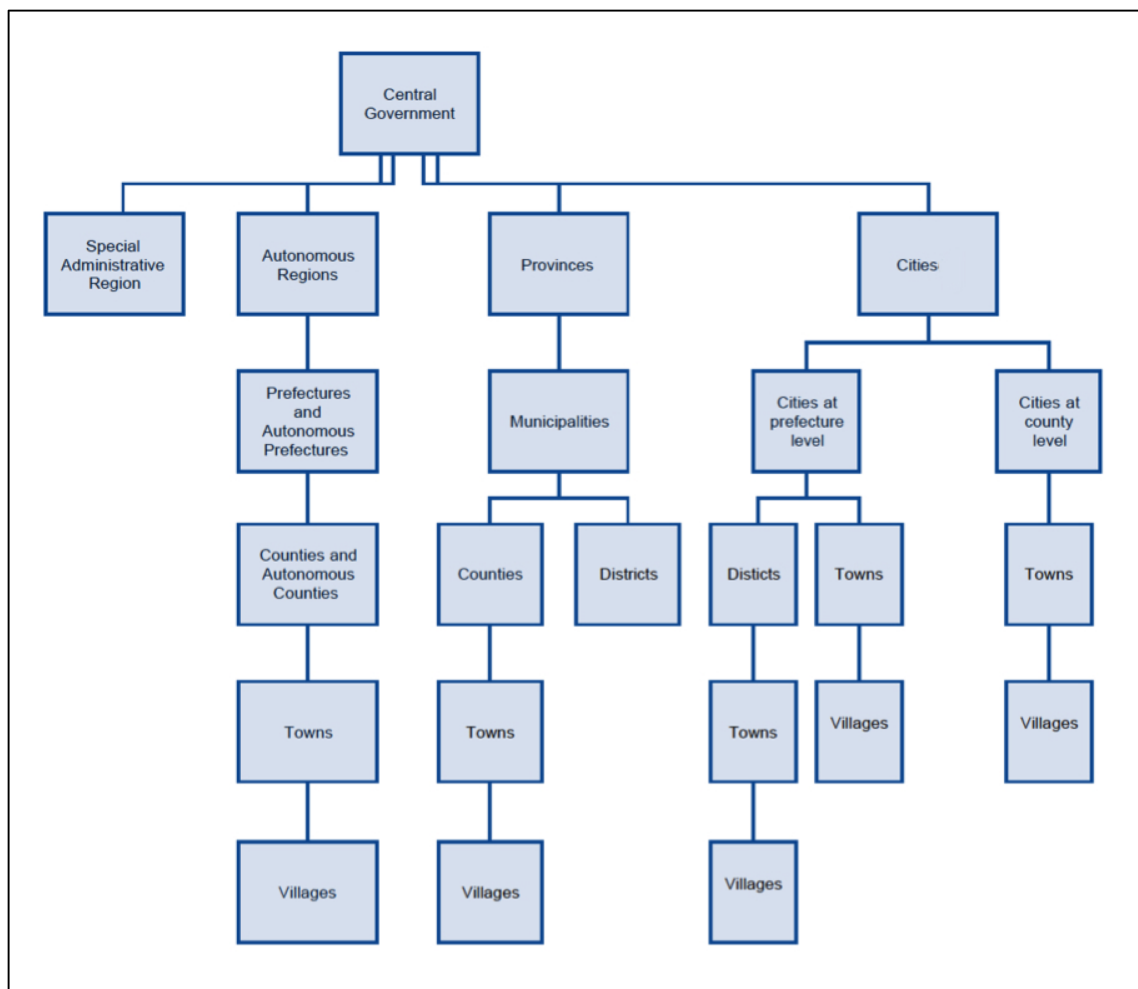


Figure 3 Chinese levels of political administration

As we move away from the centre, at each level of governance there is a high risk of policies being distorted or even ignored. Provincial governments are most successful at implementing laws in urban areas, where people are connected to work units and the state (Greenhalgh and Winckler, 2005, p.51). The control of provincial governments becomes weaker in less urbanised areas. The central state and provincial government have only a limited capacity to ensure government cadres within its organisation follows orders. In recent years, local governments have been increasingly held accountable for the disjuncture between legislation and implementation. The central government has a commitment to 'ruling the country in accordance with law' so local governments can increasingly be held accountable to this law (Woodman, 2011, p.291). In rural areas the local level government personnel come from within their communities. The state treats them as they would the general public - as subjects for education and propaganda '...explaining to basic-level cadres and the public what is in their best interest.' (Greenhalgh and Winckler, 2005, p.52).

In discussing implementation of laws and policies, it should be noted that the Chinese legislative system is complex and does not easily translate into a Western equivalent. It is a fairly new system, construction beginning in 1978 after the death of Mao Zedong as a reaction to the chaos of the Cultural Revolution (Peerenboom, 2002, p.498). There is still a lack of legal expertise, training and efficiency in the legislative process (Lu, 2005, p.189). Law has a broad meaning in China; it can refer to legislation approved by the central government, or to administrative regulations. Law also could refer to local laws and regulations passed at a provincial level – although these are usually repetitions of national laws which are written into provincial law (Lu, 2005, p.189). It can also refer to 'Rules' passed by provincial governments. Law does not usually refer to the constitution, because there are no legal mechanisms to uphold the Chinese constitution. Nor do laws derive from judicial precedent, although the central government does publish interpretations of the law and judicial interpretations to guide how legislation should be read and how judicial cases might guide others. The plethora of terms referring to the laws should not obscure the central point in the context of this research, which is that there remains a chasm between law, as promulgated by the central government, and how it is ultimately implemented. Likewise, government policies that

are never officially passed into law can, in practice, be rigorously enforced – as we will see with birthing restrictions.¹

The Chinese state is divided, both centrally among coalitions, and vertically in the layers of governance. As we saw in the previous chapter, policies implemented by bureaucracies can also overlap in the case of birth registration. This sketch of the Chinese state gives an idea of how complex policy implementation can be and why the *hukou* system might be jeopardised by street-level bureaucrats, with different political priorities, who are far from the political centre. The result can be a seemingly ambivalent state.

3.4 Considerations in policy implementation

As summarised by O'Brien and Li (2006, p.56) '...particularly in far-flung, many-layered bureaucracies, officials at different places in the hierarchy often have diverging interests and are subject to different constraints and incentives.' Local officers, with possibly little power or willingness to implement all central government policies in unison, must make decisions as to which policies to implement. This notion underlies Lipsky's idea of how street-level bureaucrats operate and Stern's argument on why we see a seemingly ambivalent state. When assessing the reasons why some people are denied the *hukou*, I believe one vital consideration in determining policy implementation is the economic factor.

Economic constraint is one component helping to explain the decisions of low-level cadres; the central government creates legislation but local governments foot the bill. To be precise, local governments generate four fifths of all expenditure within a province, but only half of this amount is received in tax, allocated by the central and then provincial governments (The Economist, 2012). Reforms in the early 2000s saw the central government abolish a plethora of locally created 'fees', 'fines' and 'quotas', replacing them with a single agricultural tax of no more than 8.4 per cent of a farmer's net income (Mushtaq at al., 2008, p.577). This represented a step towards easing the burden on farmers but increased the onus on local governments. In 2006 the central

¹ This can be related to a broader debate on whether the CCP is moving towards a 'rule of law' or 'rule by law'. This debate pertains to whether the government will be accountable to the law. A full discussion can be found in Peerenboom (2002).

government abolished agricultural tax in an attempt to pacify growing rural unrest, but this was the death knell of the township and villages' primary revenue. Aside from the central government's tax allocation, township and village level governments had no source of income. The result was that provincial governments relied on land sales revenue and small taxes, including those coming from the 'family planning' policies, which I will describe in the following section. Hence, lower level state representatives often choose to implement affordable policies that are financially lucrative.

This is not to say that economic interest is the sole determiner of which policies are implemented, but it is a vital consideration. This economic understanding illuminates why *hukou* registration is deemed less important than fees when parents violate the one child policy, or why an impoverished local government would illegally allow NGOs or churches to operate orphanages. Given the conflicting constraints on the state, provincial and local governments focus on policies within their financial restrictions, distorting or ignoring other policies altogether (Shen and Papanicolaou, 2013, p.44). When lower level officials wish to ignore certain policies, officials at each level of government can hide this lack of implementation (Shen and Papanicolaou, 2013, p.44). Nevertheless, as will be explored in the empirical chapters, there is a great divergence in policy implementation on the ground. Some officers take bribes while some lower social compensation fees. Others look the other way and allow peasants to have numerous children. The chosen course depends both on individual decision-making government officials, and local economic, social and political circumstances.

Against this background I will explore the specific policies pertaining to documentation denial in China, illustrating how economic considerations can factor into documentation denial.

3.5 Competing policies

In the previous section I described the tensions arising between the priorities of the central and local governments. In this section I explore why some bureaucrats deny a document within the birth registration process, using it as leverage to enforce policy compliance. This leads to denial of the *hukou*. The threat of withholding the *hukou*, provides greater scope for government cadres to ensure compliance. In other cases, the

hukou denial allows local cadres to avoid involvement in the care of orphans or children born to North Korean mothers.

3.5.1 Birthing Policies

The policy that underlies most *hukou* denial is the birthing policy, also known as the ‘one-child policy’. Birthing restrictions that have limited families to one child, or two at most, have come to symbolise Chinese families. Beyond their association with coercive implementation, and less known, is their impact on birth registration and documentation. In the previous chapter I explored how the policy is bureaucratically linked to the birth registration process. In this section I will outline the political and social link between *hukou* denial and birthing restrictions.

Birthing policies date back to Mao Zedong’s era. It was thought that with a smaller population, economic growth would flow through to a more significant benefit for individual citizens. Hence throughout the 1950s, birth planning was encouraged (Greenhalgh and Winckler, 2005, p.55). In 1973 restrictions on births become a political priority, when the national *wan, xi, shao* campaign -later marriage, longer spacing, and fewer children’- was formalised. The state encouraged two children per couple; the policy relied on education, propaganda, and accessible birth control (Greenhalgh and Winckler, 2005, p.76). The concern over population growth mirrored broader international concern at the time over an increasing global population (Greenhalgh and Winckler, 2005, p.97). The motivation to implement even more stringent birthing policies arose once Deng came to power. As the economy developed, leaders believed that sustainable economic growth depended on limiting population growth (White, 1994, p.233). The idea to restrict families to one child each was originally conceived by a group of Chinese rocket scientists (Greenhalgh and Winckler, 2005, p.328). It was a reactionary policy based on the Chinese government’s fear of an exploding population that would slow down economic advances, very much echoing – although not explicitly acknowledging - Malthusian projections of human over-population in China. In June 1978, the state encouraged couples to have only one child, or at most two (Feng et al., 2013, p.118). Predicting deep-seated societal resistance, the policy was announced as ‘advocacy’ rather than law, although it was rigorously enforced (Feng et al., 2013), p.120). As this policy was not officially inscribed into law, let alone criminal law, it was

dependent on local officials finding ways to enforce the policy without being able to imprison those who dissented.

Initially, resistance to the policy was rife, making a full one-child policy impossible to fully implement without coercion. In rural China emphasis is placed on the continuation of the family line, which could only be achieved through the son, as well as the care of elderly, traditionally by the son and his family (White, 1994, p.4). When birthing policies were strictly implemented, harrowing accounts of coercion in the enforcement of birthing restrictions have been recorded (see White, 2006; Scharping, 2003, p.117; Arid, 1990; Hardee-Cleaveland and Banister, 1988; Banister, 1987, p.192-215). This led to a widespread, open, backlash from rural residents (Zhang, 2007, p.862). From 1984 onwards, rural couples whose first child was a girl were allowed to conceive a second child (White, 1994, p.4). Provincial legislation set out a plethora of local exceptions given to families of coal miners, those with disabled children, or those from China ethnic groups. This was in part due to widespread rural rejection of the policy. Given that the CCP governance in rural areas was weak, with the rise of free markets undermining the role of rural cadres, full implementation of a one child policy was unachievable (White, 1994, p.4-5). Resistance has been intertwined with the enforcement of birthing restrictions, which leads into discussions in later chapters surrounding *hukou* denial. This policy concession is illuminative of a state with only partial ability to implement birthing restrictions.

It was later, as coercion was phased out, that street-level bureaucrats would require another way to enforce birthing restrictions. During Jiang's and Hu's ruling periods, the central government moved to consolidation of the policy and the clamping down on overly coercive implementation with the state's formal promulgation of the *Population and Family Planning Law* in 2002 (Winckler, 2002, p.379). In particular, China sought to eliminate overtly coercive elements of the population and family planning policies such as forced abortions and sterilisations (Greenhalgh and Winckler, 2005, p.136). Over time provinces translated state requirements into concrete policy, which varied from province to province. Still, birthing restrictions were never translated into criminal law, so that those who flouted policy could not be arrested and prosecuted.

Denial of the *hukou* was initially a way to hide all of the unauthorised births from the central government when cadres could not enforce birthing restrictions. As the central government under Jiang's and Hu's rules encouraged a shift away from restrictive birthing policies, local officials needed to use ingenuity to limit births. This put many cadres under intense pressure. How could they prevent parents from breaching birthing policies? The reality was that many could not. So instead the cadres responsible eradicated the proof of their failure to prevent the unauthorised birth (Scharping, 2001, 325). Denying *hukous* to children resulted in them being omitted from civil registration records, which enabled cadres to hide births. In this way, the child did not exist in government records or population statistics. Of course, at village level the birth would be known – and it may have even been eventually discovered by superiors – but there was little incentive for these births to be revealed (Scharping 2003, p.204). Even children born with permission might have faced delayed birth registration in order to lower birth figures (Banister, 1987, p.45). The parents themselves might prefer to lose out on their child's *hukou* to being punished for their unauthorised child, as negotiations take place as a family unit (Banister, 1987, p.45). Particularly in the late 1980s and early 1990s, when the CCP introduced the family planning responsibility system, the *hukou* was denied by cadres afraid to admit to issues with the birth statistics within their jurisdiction. Local officials were given targets and those who did not meet the targets faced the denial of their bonuses, demotion, or even discharge (Scharping, 2003;). The dwindling acceptance of outright coercion, combined with little recourse for controlling parental behaviour, made hiding a child's existence the procedure of choice for officials (Banister, 1987, p.44-45).

In recent times, with China's birth rate decelerating, local governments worry less about fulfilling birthing targets. Instead, they charge parents fines called 'social compensation fees' for having unauthorised children, and deny the *hukou* until these 'social compensation fees' are paid. While the label implies this money covers the costs of extra children to society, some journalists suggest the fees are spent on 'office maintenance, personnel, sometimes entertainment expenses, or funneled to other departments. A detailed accounting is almost impossible.' (Fong, 2016, p.79). As explained in the previous chapter, forced payment is achieved, bureaucratically, by denial of a 'birth certificate', the proof of Population and Family Planning

Commission's approval, which is required to register the child's *hukou*. As I mentioned, although called a birth registration certificate, it is actually the *hukou* that attests to birth registration and serves as a functioning civil document and proof of personhood. In his review of the Chinese 2010 national census, China demographer Cai (2013, p.372) states:

“...the government has relied heavily on the *hukou* system to implement the one-child policy...to punish families with children born outside of official quotas. Such children are routinely denied registration and thus denied access to many government benefits”.

The social compensation fee can be anywhere from half to ten times a rural couple's annual income or equal to an urban couple's annual disposable income, depending on the provincial law and local implementation. As I found in my research, in some provinces such as Guangdong these fines have been recently reduced to a symbolic slap on the wrist, amounting to only a few hundred pounds (Interview 35). In many other provinces such as Beijing, however, the fines remain hefty (Interview 35). In this way the *hukou* is no longer denied outright, but withheld rather until a parent can afford the exorbitant fine. The government is then able to say that parents chose not to register the birth of their children, while in reality many parents did not have the means to pay the penalty involved.

Given the income derived from social compensation fees, livelihoods and careers become reliant on unauthorised children and *hukou* denial thus became economically motivated from the 1990s onwards. The huge revenue it brings local governments is one significant factor. Some estimates place the revenue derived by local government at two trillion yuan (£206bn) (The Economist, 2012). Another factor is the number of jobs dependent on fines. For example, in Henan alone the Population and Family Planning Commission employed 17,000 administrators and 22,000 nursing and technical staff (Watts, 2011). In addition, support organisations claimed a combined membership of 9,600,000 volunteers, engaged in work as diverse as spreading propaganda and keeping account of menstruation cycles – something that even in 2011 was still common in villages, though rare in cities (Watts, 2011). With so many people's livelihoods markedly affected by the control of reproduction and the financial income from social compensation fees, there has been considerable incentive to ensure parents' compliance

in paying the fee. *Hukou* denial is continually used by officials within the Population and Family Planning Commission as a tool to encourage parents to pay.

Hukou denial is not only financially motivated. It is still linked to the career progression of local government officials, and not only those working in the Population and Family Planning Commission. Since 2000, particularly, there has been an emphasis at the level of municipal government and above to evaluate, reward, or punish lower level officials (Lee and Zhang, 2013, p.1483). The pressure on officials to implement birthing policies (in particular) was emphasised by the ‘one veto rule’, meaning that failure in one policy area will negate all other accomplishments by government cadres, denying officials bonuses, promotion, and prestige (Lee and Zhang, 2013, p.1483). Emphasis was strongly placed on rural township and urban street officials to implement government work.

Since 2010, evidence of the damage caused by birthing restrictions has become increasingly apparent, which has in turn affected the prevalence of *hukou* denial. For example, in recent years the relationship between the *hukou* and birthing policies weakened as increasing awareness of worrying demographic trends, exacerbated by birthing restrictions, surfaced. Without state intervention in birthing limits, the natural birth ratio should be around 105.5 boys for every 100 girls. By the 1990 census it was reported that only six provinces had normal gender ratios at birth, while some, such as Zhejiang Province, reported ratios as high as 117 boys to 100 girls (Li and Peng, 2000, p.172). In some cases, these findings were in part due to underreporting of female births so that parents could continue to have a son without being detected. More generally it reflected a trend of sex selective abortions and abandonment. The sex ratio of children born after the 2000 census is around 118 boys for every 100 girls (Cai, 2013, p.388), although this does not take into account those without a *hukou*. This gender disparity has led to a disproportionate number of unmarried men unable to find partners, colloquially known as ‘bare branches’, although their population numbers are unclear (Greenhalgh, 2013, p.137). Moreover, birthing restrictions were so successful that population was below replacement level at around 1.5 children per woman in the 2000 census (Cai, 2013, p.371). The consequence is an aging population, with citizens over 60 years old accounting for 13 per cent of China’s population in 2010 (Cai, 2013, p.371).

In recognition of these demographic concerns, families were given additional encouragement to register their children in a nationwide relaxation by the Ministry of Public Security, the government agency in charge of the *hukou* system. It seems there was an increasing recognition of the pertinence of accurate demographic data, as well as rumours the one child policy might be abandoned. However, this did not necessarily translate into reduced fines by street-level bureaucrats, although some families could obtain the *hukou* before paying fines for having children without state permission (Cai, 2013, p.373). Still, in 2010, 13 million children were publicly recorded in the 2010 census as being without a *hukou* as a result of family planning policies (People, 2012). Parents had been asked to anonymously admit if their children were not registered, most having been born without permission (Cai, 2013, p.373). Publication of this figure was one of the first open acknowledgements by the state of undocumented children, and signalled that the central government was open to political change over birthing policies. The National Health and Population and Family Planning Commission were merged in 2013. This was followed by the pronouncement on 11 November 2013 that citizens would be permitted to have two children should either member of the couple be an only child themselves. The state thereafter ordered that the *hukou* be uncoupled from the birthing policy, allowing children to be registered without any certificate from the Family Planning Commission. However, this was only implemented in a few cities.

Despite the central governments relaxation on the link between birthing policies and the *hukou* in some areas, not all parents were willing to register their children. I found that parents who had not yet settled an outstanding fine to the Family Planning Commission upon *hukou* registration were being hounded for payment (Interview 9). As I found across my interviews and QQ chats (Interview 9, QQ Chat 2), assets could be seized, bank accounts frozen, or a parent detained for 15 days at a time and taken to court. The result was a system which appeared to allow free and open birth registration, but actually was one where registration came at a price to parents. Unsurprisingly, in areas where the low level bureaucrats implemented the policy to delink birthing policies and the *hukou*, this did not necessarily lead to a surge in parents registering their children (Interview 9). Thus, street-level bureaucrats within the Population and Family Planning Commission remain the *de facto* guardians of the *hukou*.

It is worth noting that while birthing policies framed who could gain access to a *hukou*, the nature of the *hukou* system also provided strong indications of who would comply with birthing policies. Birthing policies had an uneven impact along the rural-urban *hukou* divide. Originally, in the 1960s, birth control was available in urban areas but less so in the countryside (Greenhalgh and Winckler, 2005, p.83). Not only did urban residents have greater access to birth control, their relative economic security perhaps inspired many to want less children (Greenhalgh and Winckler, 2005, p.221). When birthing policies were enforced in 1979, rural citizens had the most to lose. They were self-reliant for food, and children provided much needed labour (Greenhalgh and Winckler, 2005, p.221). Urban citizens, by contrast, had less need of more than one child as the state provides pensions to all urban citizens. There was also tighter control over urban citizens. As my research found, parents from all parts of China and all economic backgrounds have been affected, as fines are proportional to income, but in cities illicit children find it more difficult to access state education as the bureaucratic requirements are more rigorously enforced.

In sum, birthing policies have been the single most important factor behind why children are denied the *hukou*. While other policies have led to *hukou* denial, birthing policies alone account for the vast majority of the *heihu* population. Birthing restrictions have had a significant financial benefit to local governments, who have tended to prioritise enforcing birthing restriction so as to collect fines, to the detriment of birth registration and thus the *hukou* system

3.5.2 Adoptions and orphanages

As with children born without permission, children adopted or cared for without state authorisation can also face *hukou* denial. As I explained in the previous chapter, bureaucratically, adoptions must be documented by the government. In this section I explore the social and political factors underlying adoption.

Adoption policies were a natural offshoot of birthing policies, as policy makers tried to prevent parents from using adoption to circumvent birthing restrictions. Birthing policies initially led to high levels of child abandonment, particularly of female and disabled children (High, 2013, p.131-136). Particularly before sex-selective abortions became available in mid-1980s, some parents who gave birth to a female abandoned

their child (Johansson and Nygren, 1991). With many children abandoned, some parents would home the unwanted children, particularly if they were unable to conceive (Johnson, 2003, p.23). Others would pretend their child was an adopted or abandoned child in the hope they could circumvent birthing restrictions (White, 2006, p.30). There were many reasons why a demand for informal adoption came about. One, was with numerous state restrictions on adoption, informal adoption became prevalent, particularly among couples unwilling to wait until they were 30 years old – a requirement stipulated by the adoption regulations (Johnson, 2003, p.111; Zhang, 2006, p.312). Moreover, it was not until 1998 that adoption laws were altered to allow couples to adopt a child even if they already have children, but this had to be through state institutions rather than informally. Adopted children were hidden because until 1998, parents who had adopted would be charged fines in the same way as if they had given birth to too many children, which many parents sought to avoid (Zhang, 2006, p.312). It is not a legal channel to adopt at this time.

Johansson and Nygren (1991, p.45) estimate there were half a million informal adoptions a year by 1987. It is possible that with easier access to selective abortions abandonment rates have decreased over recent years. As abandonment of children is not legal, some parents feared being caught, preferring to leave their children outside non-state orphanages to state ones (High, 2013, p.163). So, birthing policies both exacerbated child abandonment and placed restrictions on who could adopt an abandoned child.

The central state's response to informal adoption was to equate it with human trafficking and to declare that the *hukou* could only be obtained when parents had documents to prove it was a state approved adoption. According to Zhang (2006, p.219), in a study conducted in 2001, less than one per cent of adoptions took place through state institutions. Moreover, 50 per cent of adopters would adopt a child through an intermediary, most paying a fee of several thousand RMB (several hundred pounds) or upwards, and these parents faced penalties for illegal adoption (Zhang, 2006, p.319). As a result, at least initially, many adopted children did not have *hukou*, since parents, fearing the consequence of breaching adoption policies, hid the child. Others were unable to afford fines, the child considered to be a *chaosheng* (child born without state permission). On the one hand, many local state officials welcomed informal

adoption as it eased the burden on social welfare. They also sympathised with the affected citizens. They would create ‘room for maneuver by lessening punishments, looking the other way, or accepting bribes in lieu of enforcement, thereby making the system more flexible and humane at times’ (Johnson, 2016, p.19). On the other hand, many street-level bureaucrats still denied the *hukou* to adoptive parents because officially informal adoption was illegal (Johnson, 2003, p.178). Village leaders also faced punishment for non-compliance with regulations (Johnson, 2016, p.19). So parents could not obtain permission from the state to adopt, and so the practice became undocumented.

With government policies both aggravating abandonment and restricting adoption, numerous non-state orphanages sprung up to house those parentless children who could also not obtain the *hukou*. As Shang, et al. (2005, p.125) point out: the state should protect vulnerable children, as only state-run institutions are legally allowed to be guardians of abandoned children. State-funded children’s welfare institutions provide care almost exclusively to orphans only in urban areas (High, 2013, p.166). Even among children in state care, 30 per cent live with disabled, elderly, and mentally ill adults in social welfare institutes (High, 2013, p.150). In these areas welfare institutions are sometimes run by NGOs and often this is without legal permission. In 2013 the Chinese government promulgated a policy prohibiting any individual or organisation from accepting abandoned children, stipulating that the local Civil Affairs office must be notified. Yet in practice, non-state orphanages in China are prevalent, and even work in informal partnership with local officials (High, 2013, p.163). Because the orphanages are officially illegal, even when tolerated or encouraged, the children in the orphanages are not given the *hukou*. In contrast with orphans in state care, without the *hukou* these children neither have access to medical insurance nor state education, nor receive state welfare such as the *wubao* (High, 2013, p.162).

To summarise, the central state policy was to deny the shortfall in government care and illegalise informal adoption processes and orphanages. Local cadres would in some cases know and welcome this care, yet did not always have the power or will to legally authorise these adoptions. Returning to the seemingly ambivalent state, it could be that, bureaucratically, officials who were in charge of creating orphanages could not circumvent the bureaucracies of birth registration, particularly in the remit of the

Population and Family Planning Commission. As a result, the *hukou* was denied by those government bureaucrats when they deemed policies restricting informal adoption to be more pertinent than allowing the child a *hukou*.

3.5.3 North Koreans in China

The final policy linked to *hukou* denial is the illegalisation of migration from North Korea into China. Those who have children – usually North Korean mothers with Chinese fathers - have children who are at risk of statelessness. It is worth noting that the North Koreans are not stateless, and their children do have the right to Chinese nationality under domestic law. Thus documentation denial is not about considering the children foreign so much as the state punishing mothers for illegal migration. As with the other policies, the children are held accountable for their parent's actions, and are fully documented once parents comply with government policies.

Undocumented North Korean migrants usually reside in China's north-eastern provinces particularly, Jilin and within that Yanbian Korean Autonomous Prefecture (Human Rights Watch, 2008, p.2). Children of North Korean (usually) mothers and Chinese (usually) fathers have been denied the *hukou*, as the mother is not legally within the country. Without the mother's *hukou* the child should not be registered (Southwick and Lynch, 2009, p.35; Committee for Human Rights in North Korea, 2009, p.24; Human Rights Watch, 2008, p.2). Once again, we see a disparity between central state goals and those of street-level bureaucrats giving rise to a seemingly ambivalent state where children of some North Korean mothers are registered although many are not.

During most of Deng's rule, North Korean illegal migrants in China were few and far between. In part, this is because the skewed gender ratio had not yet impacted adults looking to marry, and in part because there were few North Koreans willing to cross over the border into China. Only a mere 607 North Koreans arrived in South Korea (the trip to South Korea from North Korea requires migrants to pass through China) between 1953 and 1989 (less than 20 a year), indicative of a low level of so-called 'defectors' passing through China (Lankov, 2014a). Then, in the early 1990s, North Korea's economy started to falter and women were usually the first to be laid off (United

Nations Human Rights Council, 2014, p.168). Extreme rainfall in 1995 coupled with poor political policies and economic mismanagement led to mass starvation in the country, known as the 'Arduous March' (United Nations Human Rights Council, 2014, p.39). Between 1996 and 1999, an estimated 450,000 to 2 million people starved to death (United Nations Human Rights Council, 2014, p.39). This resulted in an increased number of migrants, particularly female, crossing into China, despite high risk to those caught in China and returned.

Although there are no definitive statistics on North Korean migrants, other figures imply the rate of migration out of the country. For example, in the first half of 1998, the number of North Koreans arrested each week averaged 100; after July 1998, the number rose to 300-400 a week (Lee, 2006, p.41). Between 2006 and 2010 the number of North Koreans defecting to South Korea was around 2,500 per year (Lankov, 2014b). Continued migration was exacerbated by food shortages in 2006-2007. In 2009, the North Korean government exchanged its old currency for a new one worth one per cent of the former's value. A wave of protests reportedly took place during these times, which were responded to by the state implementing public executions of protestors (United Nations Human Rights Council, 2014, p.67). The rate of North Koreans crossing into China peaked at this time, which was subsequently followed by harsher punishments against 'defectors' (Lee, 2011, p.3). The measures taken seemed to have had an effect, as North Koreans reaching South Korea dropped to 1,516 in 2013 (Lankov, 2014c).

The risks to women returned to North Korea underlies one reason why their children are not documented. North Koreans who are forcibly returned are interrogated, often sent to labour camps, tortured, and even killed (Lee, 2006). Others face prison sentences of up to five years, with some reports of beatings, forced labour, and starvation (Human Rights Watch, 2007, p.1). After Kim Jong-Il's death in 2011, when Kim Jong-un became the leader of North Korea, restrictions were further intensified. There were bed-check inspections, and families from the border region were mandated to stand guard against people trying to escape. Land mines were installed along the border to supplement the barbed wire fences, and cameras were set up along major defection routes, as well as spiked panels with four-inch nails along the banks of the Tumen River (UN, 2014, p.112). Kim Jong-un ordered the capture—without exception—of all defectors

to China, threatening to ‘exterminate three generations’ of any family with a member caught defecting from North Korea during the 100-day mourning period for the late Kim Jong-Il (CECC, 2012, p.108). For this reason, North Korean women are cautious about registering their children for fear of being discovered in the process.

Considering the state as ambivalent helps to explain why North Korean migrants are both illegalised and accommodated within China. The central Chinese state has a stake in the stability of North Korea, and this is incompatible with mass migration from North Korea into China (Peerenboom, 2005, p.141). China’s motivation to exclude immigrants from Chinese society is in part to avoid conflict with North Korea, particularly as North Korea develops nuclear weapons (Peerenboom, 2005, p.141). A collapsed North Korean economy could increase the number of North Korean migrants into China (Albert and Xu, 2016), which could harm Chinese economic growth. As such, China has maintained a policy of cooperation with North Korea in order to maintain influence over North Korea (Park, 2010, p.6). The Chinese government has thus supported North Korean economic growth, through means such as trade, investment, and financial support (Park, 2010, p.6). Yet local governments have seen benefits from migration and crackdowns by local governments on migration have been balanced with Chinese economic interests. For example, in agricultural regions, raids on North Koreans were enforced only after peak summer season, but before wages were paid (Lee, 2006, p.42). Within local villages, some officials are aware (and even sympathetic) to North Koreans informally married to Chinese citizens. In some cases, local cadres and police prefer to accept bribes rather than to deport the North Korean wives of local residents (Interview 29). Broadly speaking, ‘accommodation’ has been offered in the prostitution industry, and by males seeking informal marriages – with a strong overlap from human traffickers - to North Korean women (Lee, 2006, p.27). In all cases much has been implicitly allowed by local governments.

I argue, at least in a limited capacity, that restrictive birthing policies increased the number of Chinese men seeking to marry North Korean women. By the mid-1980s, when birthing policies were implemented, sex-selective abortions were increasingly utilised. As already discussed, this distorted the gender ratio, resulting in fewer women than men. Birthing restrictions are not the only factor responsible for sex ratio imbalance, and indeed nowadays birthing preferences, rather than birthing restrictions,

contribute to sex selection abortions (Goodkind, 2015, p.264). Nevertheless, at the time of implementation, birthing policies seemed to correlate with a sharp increase in sex selective abortions. Birthing policies were only implemented in 1979 and so marriageable females were not in short supply until the late 1980s. Moreover, some men might not have been able to secure a wife regardless of a gender imbalance. Nonetheless, some impact on migration should be accorded to the birthing policies.

The *hukou* system had the opposite effect; it enforced the exclusion from Chinese society of North Korean women as well as their Chinese children. I argue that the pervasive exercising of the *hukou* in China has been the single most effective tool in the Chinese state's attempt to make it difficult for North Korean migrants to live in China. During this period, the *hukou* was useful to the CCP in two ways. Firstly, North Koreans could not easily move around China without a Chinese civil document. They were more likely to be caught, even in the provinces that are home to individuals of Chinese and Korean descent, because they lacked a valid *hukou* and ID card. Secondly, their children (Chinese citizens under nationality law if the father is Chinese) were also often unable to gain a *hukou*, as the Korean mother did not have a valid right to remain in China.

Yet state's ambivalence can be seen in its upholding of both the *hukou* policy and immigration policies. Without a mother's *hukou* to present at birth registration, the child could theoretically not be registered. Due to the birthing policies that created stringent criteria for birth registration, the mother's *hukou* is usually essential for registering a child. Officially, the policy was that the state would register children without a mother's *hukou*, but only upon the deportation of their North Korean mother. Yet street-level bureaucrats would accept bribes to not only turn a blind eye, but even register the child formally, or illegally find a way to allow them to be registered in someone else's name (such as the name of a child who had died) (Interviews 29 and 32).

To summarise, we have seen North Koreans migration into China despite such movement being illegal. The *hukou* and birth policies create an antagonistic relationship of demand for, and exclusion of, North Korean migrants in China. To many communities, North Korean migrants have had a positive effect through marriage, in other cases the migrants have been a product of trafficking and forced marriage.

Whether voluntary or involuntary, the lack of documentation both for North Korean women, but also for their Chinese children, exacerbates their vulnerability. As the *hukou* is often only granted to children upon the return of mothers to North Korea, the enforcement of migration policy serves to hold children's legal identity to ransom.

3.6 Discussion

At the beginning of this chapter I poised the question: why are millions of children denied the *hukou*, a document that affirms nationality and legal personhood, in a country that documents, classifies, and monitors her citizens through a documentary system? Building on O'Brien and Stern's (2012) suggestion of the state in society approach, we can view the phenomenon from the perspective of those seeking political change and documentation. From this standpoint, we see a seemingly ambivalent Chinese state (Stern, 2013), one which prioritises documents and concurrently denies them as punishment. The different factions within the state send different messages depending on how they read broader political signals.

I find that by making the state a site of enquiry, we can better understand how this paradox surrounding documentation denial is – broadly speaking – unintended. This is not to say that central leadership has been unaware of *hukou* denial. Rather, *hukou* denial has never been a formal state policy—it is something that has been tolerated by the centre. Street-level bureaucrats are able to exercise discretion over documentation because of divides within the Chinese state, when bureaucrats within local governments must priorities multiple competing and entangled demands from the centre. These include economic income for local governments, meeting birth targets, and controlling adoption and illegalised migration.

To make this argument, I first explored the Chinese state structure, investigating where spaces for discretion over documentation lie, particularly between central, provincial and local governments. This is in addition to the fractures between government departments that permeate each layer of governance. An example was offered in the last chapter when discussing the three departments involved in birth registration. This is the broad political structure in which street-level bureaucrats operate. Herein, street-level

bureaucrats have autonomy to decide whether to deny documents – creating uneven denial of the *hukou*.

Within this structure of governance, disjuncture between central and local government priorities also encourages divergent policy implementation that varies from locality to locality, government cadre to government cadre. Central policy planning assumes policy compliance, even with unpopular policies such as birthing restrictions. This, however, is not the case. It seems that local governments must balance their responsibility towards that *hukou* registration with other priorities such as collecting fines from birthing policies, denying the *hukou* to encourage policy compliance. With cadre unwilling or unable to ensure compliance by force, the *hukou* is held to ransom to incentivise parents to comply. While some officials might have empathy for parents, and even help them to avoid certain restrictions, others might wish to enforce birthing, adoption and immigration policies. There is an interplay of local government interests and individual decisions by officials in each bureaucracy. Therefore, we see through these policies that leaving people without a documented link to their nationality is a tolerated product of fractures within the state.

This chapter can offer a broader reflection on why populations are unevenly impacted by documentation denial. This chapter illuminates a scope for discretion over documents which is unique – China's size and governance complexity cannot be likened to another country. Nonetheless, China can be instructive in considering how we conceptualise the state when discussing statelessness. The implication is that when we discuss statelessness 'under the operation of law', we are again reminded that law is dependent on implementation rather than legislation alone. In this chapter, we see how individual actors can find space to exercise discretion over documentation, thus interpreting laws on documenting of citizens in China. Documentation denial can take place when fairly junior bureaucrats handle claims. As I quoted in Chapter One, Open Society Institute (2011, p.5) assert that 'relatively low-level and/or local authorities examine the proof presented and handle the issuance or denial of documents recognising an individual's citizenship'. I hope to have illustrated how spaces in the government can manifest themselves, allowing for discretionary documentation denial by individual bureaucrats, whether this comes with implicit or explicit acceptance from higher levels of governance. While in China this agency over documentation surfaces in

the context of birthing, adoption and migratory policies, it might be found elsewhere when bureaucrats grant nationality affirming documentation in a broader context of gender or ethnic discrimination. Disaggregating the state and locating spaces for discretion over documentation lays the foundations for my argument that spaces of contestation around becoming documented can be appropriated by bureaucrats and citizens.

4. Introducing the Case Study and Fieldwork

4.1 Introduction

This thesis explores populations at risk of statelessness. In particular, I question how denial of civil documentation that affirms nationality impacts the enjoyment of rights that are associated with one's nationality and legal personhood and why populations are unevenly impacted. I also examine the process of becoming documented, in particular negotiation over documentation. These issues arise in an iterative manner, drawn from literature and redefined during the empirical data collection.

The empirical data is taken from a case study on documentation denial in China; the population in question is one 'at risk of statelessness'. China offers insight into a group of people who are denied documents not because their nationality is in question but because they transgress policies which touch upon them becoming documented. The value of this case study is to enhance understanding of the effects of documentation denial on recognition of nationality and the rights attached to having a documented nationality. The case study is particularly instructive because there is no discrimination against those denied documents and because, outside of the bureaucratic impact, their transgression is not evident in daily life – unlike the case of minority populations who are at risk of statelessness. This means we can understand the impact of documentation denial without conflating it with the impact of broader societal discrimination. Moreover, it demonstrates how, even unwittingly, states can jeopardise nationality and create domestic experiences of vulnerability by denial of documents. Exploratory research combines many sources of data, from primary research to literature such as articles, blogs and other research as background information, as well as looking at laws and policies to understand the legislative boundaries of nationality and documentation.

In this study I identify three groups affected by the denial: those impacted by birthing policies, adoption policies, and policies on North Korean immigration. Members of each group can legally be considered nationals of China. In each case they were denied documentation due to the illegalisation of their parents' or guardians' actions. In many cases, particularly pertaining to birthing policies, the documentation denial would be rectified several years or even decades later. Becoming documented often results from a

series of interactions and negotiations between those seeking civil documentation for their children, or themselves, and low-level officials. China is a case study in a loose sense, as the internal diversity of people affected prevents many broad-brush generalisations about such a varied group of people.

Researching this population is particularly challenging as it is difficult to find people who will readily admit to their own, or their child's undocumented status. Studying a population that is 'hidden' to researchers poses methodological challenges. Not only is conducting fieldwork on politically sensitive topics in China 'walking in the footsteps of the Chinese Communist Party' (Hansen, 2006, p.81), but attempting to draw on literature in a Chinese context requires challenging analysis, literature and theories that are 'developed to study very different sorts of places' (O'Brien, 2006, p.31). This chapter, therefore, has two purposes. The first is to explain the research methods and analysis used in this study of China's undocumented population. I highlight my online research is unique in so far as the use of an online messaging service called QQ has not previously been used in any published study known to me. The second is to reflect on the challenges of conducting research in China, including the ethical dilemmas.

4.2 Research design and data collection

I collected data in two parts. The first stage was a series of interviews, conducted while I was based at a university in China over six months from April to September 2014. This was at a time when rumours were circulating in China that restrictive birthing policies would be scrapped, although no political changes had yet been announced. My interviews took place in Beijing, Shanghai, and via phone, QQ (an instant messaging software popular within China, similar to Skype in the West) and Skype itself. The second part was conducted online from the UK, taking the form of a four month online participant observation using QQ groups.

As the research was exploratory, it collected descriptive data while making sense of the 'lived experiences' of those affected by documentation denial. So, interviews were instrumental in exploring my research questions. Meanwhile the online participant observation allowed me to gain in-depth understanding of the negotiations of those parents fighting to obtain documents for their children, enabling me to observe without taking a central role in the conversations. In other words, I could see how people

discussed the issues without framing it for a researcher. For example, online they would focus on strategies to both address their current predicament and avoid further hardship in a way that contextualised their response to documentation denial. In interviews, by contrast, those strategies challenging the hardships they faced tended to be minimised. Moreover, I could collate data gathered across China from a geographically fragmented group.

I conducted 38 in-depth interviews, ranging from semi-structured to relatively unstructured. Given that my interviews took place both across China and internationally, resourcefulness was required in my interviewing techniques. Some interviews I held face-to-face, others I conducted over Skype or by 'phone, lasting, when verbally transmitted, between half an hour and three hours. 18 interviews were in the form of written exchanges that lasted days, weeks or months via QQ. The last two methods were in some ways less than ideal, since face-to-face meetings would have allowed me to establish a deeper rapport with the participant. On the other hand, interviewing from behind a 'phone or a computer screen perhaps allowed people to feel anonymous and thus open up to a greater extent. Discussions stretched over a considerable time and written exchanges allowed me to revisit topics, such as negotiation over documentation, whereas prior to the interviewing process I had little information on this facet of their situation. My research was an iterative process, with many core themes arising from my empirical work. Most oral interviews were recorded and subsequently transcribed in Chinese, although I took detailed notes on those conducted over the phone. The interactions conducted online, and therefore being typed, were automatically transcribed in Chinese.

The sample size was to a large degree dictated by the availability of participants. The number of interviews that should be conducted in qualitative research depends on the particular requirements of the study, and more so when other sources of data are necessary to supplement the primary research. I favoured the approach of theoretical saturation, whereby empirical data collection ends when there are no new theoretical contributions from each additional piece of empirical data (Gibson and Hartman, 2014). I therefore concentrated on collecting data that added fresh understanding and contributed new information. Ultimately I stopped when the empirical data became repetitive, at which stage I found the number of interviews, when combined with other

data, to be sufficient. As with most qualitative exploratory studies, the samples used in my interviews were neither statistically significant nor necessarily an accurate reflection of the entire population.

I found my interviewees predominantly through a snowballing sample technique, which is a non-probability technique. This is preferable when members of a population are small and so well integrated into a community that it is challenging to identify individual members (Sadler et al., 2010, p.370), or ‘hard to reach’ populations (Atkinson and Flint, 2001). The idea is to collect data from a few members of the target population, then ask these individuals to direct me to other members of the target population. Snowballing can be problematic as it can result in interviews coming from within a community of people who have similar knowledge and viewpoints, although I did not find this to be the case. The key source of interviewees was a grassroots Chinese non-governmental organisation (NGO) that provided me with a database of potential contacts. The database had been compiled from the people with whom the NGO had spoken or helped, many of them through the NGO’s online QQ groups. The people I interviewed were spread across 12 of China’s provinces or municipalities, and all had gone online or made contact with the NGO to ask questions about how to deal with the situation of their unregistered child. While they all had access to the Internet – which is not unusual even in rural China, as people access the Internet through mobile telephones – they did not all share the same socio-economic background. I found that they did not have identical views, and few knew each other despite their shared contact with the NGO. Those participants who agreed to talk to me sometimes introduced me to other people to interview on QQ. The geographic spread of participants helped me to gain a better picture of the commonalities and differences in their situation across various provinces. I supplemented my knowledge by interviewing ‘specialists’ whom I met through various contacts or by directly contacting their organisation. These additional interviews added another layer of data from unrelated sources.

My interviews targeted two groups. The first comprised those persons affected by *hukou* denial (26 in total). These individuals were usually parents of children that were, or had been, affected by denial of documentation. It also included one 21-year-old woman who still had no *hukou*. In the cases where children were affected, I considered it preferable that parents speak on their behalf as it was the parents who negotiated

documents for their children. Usually the children were very young, sometimes under five, and it was the parents who negotiated the problems associated with the children not having the *hukou*. Moreover, as mentioned in the previous chapter, risk of statelessness can be viewed not as an individual problem but as a problem facing the entire family. Of these interviews the majority were with females; I spoke with only one father face to face and a further seven online. In some cases, this was because the women were single mothers. In other cases, it might have been because the mothers take a stronger role in this aspect of the child's upbringing. All the parents were between their mid-twenties and early forties in age and came from locations across China.

The second, smaller group (12 in total) were 'specialists' such as journalists, persons working for NGOs, and academics. They had experience in dealing with issues of China's undocumented population and could contribute an understanding of the situation based on their interactions with a broad population. In these interviews I could explore the social, political and legal mechanisms which established the background to the circumstances in which these parents of undocumented children operated. I was unable to interview government officials, however, because most officials are unwilling to discuss politically sensitive topics with researchers and most will only speak with those they have *guanxi* (with whom they have a personal relationship or are within their social network). Throughout the time I conducted my research, the political climate was particularly tense, with a crackdown on corruption. I was, however, able to obtain the 'official' state perspective from government publications, laws and regulations and government released newspaper articles. Thus my interviews connected, corroborated and clarified the research.

One aim of the interviews conducted with affected persons was to ascertain the impact of documentation denial on their enjoyment of rights. I also wanted to understand why these individuals were affected, while others who had breached government policies were not. Finally, I sought their perspective on whether, and how, they could negotiate over documents. I began the interviews by collecting basic data pertaining to the situation, their family, age, background, place of birth and residence, and to their children. I was careful to allow the interviews to remain relatively unstructured, leaving the participant to determine the extent to which she or he would take the lead. Often I

found participants had a story to tell and wanted to communicate this independently of the questions I had planned to ask. This allowed me to gain a deeper insight into their situation and often brought up unexpected issues. For example, when one participant spoke about being a single mother she mentioned difficulties stemming from the father's refusal to participate in the birth registration process, something I had not previously considered. When appropriate, I interjected with questions, either prepared or which came to mind in response to their stories, so that I could gently guide the conversation as necessary. Thus the interviews allowed me to understand the perspective of those directly affected through their lived experiences. It also allowed me to cross-check data from multiple sources, such as articles and existing research, against the experiences of those on the ground. In this way the interviews were composed partly of factual questions such as 'why their child's *hukou* was denied.' I was also interested, however, in their thoughts on the situation, such as 'who is to 'blame' for *heihu*, the central or local government?' as well as wanting to discuss interactions with local officials, and how they found coping strategies, such as 'are there ways to avoid paying fines?' Most people were less than forthcoming about their political views and the ways they avoided state penalties. They seemed to emphasise their vulnerability, which was indeed a very real factor. I could understand how they wanted to be portrayed and found they could mediate their vulnerability by choosing what to reveal in their narratives. As I discuss in Chapter Five, this decision regarding what to reveal can be related to Scott's (1990) idea of hidden transcripts, or private transcripts that subvert state control. However, I found that in framing their situation to me, the researcher, they also tailored the information they disclosed about their situation to fit this narrative, which posed a limitation to my research. One way to overcome the limitation was to employ a broad range of data (including newspaper articles, NGO reports, and academic research and the online participant observation). Any narrowness in data from interviews was balanced with other sources of empirical information.

Interviews with 'specialists' allowed me to view different perspectives of the undocumented persons through the lens of their professional experiences. In this way, I would gather broader descriptive data and more than one interpretation of the situation. In these interviews I probed both for descriptive information such as the social and political mechanisms causing this population to be undocumented, and their perception of the choices made by those they had encountered. I questioned how parents of

undocumented children negotiated their situation, why only some people were affected by documentation denial, and probed the general implications of lacking documentation. I found that some were more willing than others to discuss the negotiation aspect of documentation denial. Some people working for NGOs emphasised the vulnerability of those they helped, while journalists tended to be more balanced in their evaluation. This is not to imply that those seeking documentation are not vulnerable, but rather that they positively sought to find ways around their exclusion, something that tended to be played down by the NGOs with whom I spoke.

I utilised the help of an interpreter in interviews conducted in Mandarin. Even though I speak Mandarin, Chinese language can be highly variable due to regional dialects. Any decision here must weigh up two considerations: on the one hand, local assistants are believed to ‘be in a better position to recognise and understand culturally biased strategies and provide appropriate analysis’ and ‘do their research less obtrusively’ (Vincent and Sorensen, 2001, p.13). On the other, there is a risk of partial responses resulting from the use of translators or local research assistants (Jacobsen and Landau, 2003, p.190). With these two considerations in mind, and because I could understand most of the interview without the help of the interpreter, I felt the downside of using an interpreter was minimal compared with conducting interviews alone in English. The role of the interpreter was therefore to clarify my understanding and allow interviews to flow without language difficulties impinging the dialogue. The chosen interpreter was a friend of a friend, a well-educated woman in her mid-twenties who spoke a good level of English and who was part of the English speaking community in Beijing.

I found that data elicited through interviews was vital, but did have two limitations. Firstly, interviews were difficult to obtain because of the sensitive political nature of the topic in a country infamous for its stranglehold on political freedom of speech. In the case of North Koreans particularly, information from interviews was extremely limited and sufficient data could not be gathered from this source alone. Secondly, as I will analyse in Chapters Five and Six, interviews only offered limited insight because people wanted to be portrayed in a certain light. As O’Brien (2006, p.33) states, interviews must be heavily supplemented with citations to fill in the ‘missing links in an argument and identifying frameworks that fit are inevitably partial’. Hence interviews, while used

to lead the topic's research, were supplemented by existing research on overlapping topics, as well as my data collected online.

The interviews were conducted in conjunction with the study of legislation on impacting policies, looking at existing analysis of census for a rough estimation of the size of the population, and collection of newspaper articles and blogs reflecting different perspectives on the issue. Thus, as advocated by Glaser (2002), my study utilises everything from analysis of journal articles and academic books, census data, to legal analysis, blog updates, NGO and government reports and newspaper articles. These were used to both develop theory and to give a descriptive base, in the spirit of openness and exploration (Gibson and Hartman, 2014). What was considered data was led by a pragmatic approach that places the research topic at the centre. This supplementary input confirmed the descriptive data that otherwise might be anecdotal. It also allowed me to understand why interview feedback varied from province to province, with a rough understanding of trends in multiple provinces. However, after collecting this data I still felt that I had a constrained view of what was 'really' going on. As a researcher I knew this would always be the case, as I would mediate my research through my understanding. Nonetheless, I could only see what was presented to me in very narrow conversations, with the danger of missing those facets of their situations that did not fit the dialogue framed to an outsider. By outsider I do not only mean a non-Chinese person, although this certainly was one factor, but also someone unaffected by documentation denial, as I will explore in Chapter Six.

By a stroke of luck, I obtained another source of data – perhaps the most fruitful, and even innovative, aspect of my research. This other primary source of data was collected through an online participant observation in QQ. QQ allows live group chats that are created by someone with a name and number that are publically searchable (something not available in the West on Skype). One then usually applies to join the chat and will be accepted or rejected by the administrator. Not all chats are searchable, some are by invitation only, but these were not the focus of the study. Although I had been using QQ for some time, I first encountered a QQ group in September 2014. This was particularly fortunate because I know of no other research project or academic paper that has used this bountiful data source. Rather, research has been centred on chatrooms and bulletin boards in China and beyond (Han, 2015; Shen, 2011; Hockx, 2005). QQ, by contrast, is

an instant messaging service akin to Skype. Initially, one of the mothers that I had interviewed introduced me to four groups by writing a summary of my research, photographing it, and then posting this picture onto the chat group. I presume she did so to prevent the information from being picked up by keyword software that the Chinese government uses to monitor the online sphere. I then introduced myself, together with the research and the participant information forms.

Ethically I was in new research territory, and my initial concern was to make my presence transparent to all participants, particularly given the simultaneously private and political nature of the research. I was transparent to participants and the chat conveners regarding the purpose of study and opt-out policy. My profile included a picture of myself (not usual in China where people prefer to use a celebrity photo or other image), and information on my gender, age and location. My research information was automatically saved to the group's shared file area for people to access at a later date. To ensure there was on-going awareness of my presence, I would pose questions to the group from time to time or interact with certain members, clearly delineating myself as a Western researcher. During September I joined four other QQ groups and thereafter created my group in 2015, thus monitoring six chats in total. I gave the same introduction in each chat and the administrator allowed me to join and continue as a member of each group. At first many people doubted I was really a foreigner, since few foreigners speak fluent Chinese and use QQ. But as time progressed, they would, during these conversations, spot my language errors and relative lack of understanding on particular topics and slang. Apart from an overtly hostile reaction from one participant, I found that most people were either warmly welcoming or completely indifferent to my presence.

From September to the end of December 2014, I monitored each group and immersed myself in the conversations. Those with numerous active participants would be harder to follow and contain more fragmented interactions, while those with fewer members would tend to have more in-depth relationships between participants. Most groups had over one hundred participants, (some numbering many hundreds), with varying levels of participation in the groups. Subsequently, I created a small group for those with whom I interacted most frequently. Thereafter, through 2015 I followed my group and several others on an infrequent basis.

Participation in the QQ groups gave me a radically different perspective on the *heihu* situation. Rather than receiving a dialogue tailored for me, I heard hundreds of fragments, stories and narratives transmitted to people in a similar situation. I could see how a person, surrounded by those facing similar dilemmas, formulated a perspective on their own circumstances. Not only problems were discussed in the conversations. Solutions too were offered and legal advice shared. Groups offered support and comfort and formulated plans to overcome the challenges that confronted them. Telephone and face-to-face conversations with government cadre were recorded, uploaded, and then mocked by participants. Most of all, these conversations allowed information from hundreds of people across China to be channelled into one virtual space. This forum was valuable too because it allowed me to map the spread of ideas, pictures, jokes and conversations across chat rooms, in order to track the diffusion of ideas in the virtual realm. Thus, I could simultaneously gather vast quantities of descriptive data and information I could not obtain in interviews – what people thought and how they portrayed their situation when not interacting directly with a researcher. While neither narrative should be categorised as ‘real’ or ‘fake’, it gave me more confidence in understanding certain aspects and thoughts not yielded by interviews.

Being a visiting academic based in a Chinese University had both advantages and shortcomings. One benefit was that I was exposed first-hand to the political climate within China. I could conduct participant observation on how academics approached the issue of what my colleagues labelled a problem of ‘birth registration’, without directly confronting the political pressures and birthing policies that inhibited birth registration. This approach highlighted the political pressure on academics, who are funded by the state. Thus contributory political factors surrounding birth registration were often sidestepped in conversation or referred to in a cryptic roundabout way. In many ways I could see how academics, working from the inside of systems, try to change policy by working within political narratives of ‘problem’ populations. Although they did not necessarily confront these issues with me, this did not mean they were unaware of the realities on the ground. Most approached the issue of *heihu* by framing their discourse in narratives by Plan International (who work in China). They cited problems of poverty and locally ‘backward’ traditions to explain lack of birth registration. In this way, academics would recommend some bureaucratic governmental changes without

challenging the government itself. However, this also limited my position and as an independent academic researcher and visiting academic I was forced to walk a tightrope.

These multiple experiences and methods of gathering data were valuable as a whole to mediate different perspectives, narratives and descriptions. I could triangulate my data to come closer to ‘reality’, although validity and reliability are not directly in the remit of qualitative research, which is inherently subjective. In sum, I took a critical view of the information gathered in interviews and online, as well as looking carefully, when gathering descriptive data, at the ways in which people portrayed themselves and their situations. Of course, all people that I spoke with had access to the Internet, while not everyone affected in China would or could necessarily go online. However, when contextualised with data collected in villages on birthing policies by other academics, individual patterns seemed to be replicated and amplified in an era where almost half the population are virtually connected (CNNIC, 2015). Indeed, 80 per cent are using smartphones and tablets, thus allowing rural citizens online access (CNNIC, 2015).

4.3 Challenges in data collection: working in China

Conducting research in China offers the opportunity to explore uncharted territory. This thesis uses China’s undocumented population for a case study of a population ‘at risk of statelessness’. While generalisations cannot be drawn from a single case, one ‘critical’ case can be considered a ‘black swan’ that could disprove some theoretical assumptions (Flyvbjerg, 2007, p.394). As this case study shows, China’s undocumented population results from the punitive denial of identity documentation rather than from gender, ethnic, or nationalistic discrimination – the typical causes of statelessness and populations at risk of statelessness. Unlike the history of many other such groups, which have their roots in a weak civil registration system, China has a highly developed civil registration system. Studying China allows us to explore an atypical, undocumented population. Moreover, at around an estimated 30 million, the population of this group at risk of statelessness is sizeable. This case study does, therefore, offer something different to other empirical studies of statelessness.

Working within China also posed numerous challenges. On a practical level, it is difficult for researchers to gain access to the field and such access often depends on a

university host. During my time there I was assigned two students, both members of the Communist Party, to ‘look after me’ during my stay.

Given the particularly politically sensitive nature of my topic, the most difficult part of the research project entailed finding people willing to participate in the study. Political constraints, rather than methodological aversion, meant any type of survey or quantitative data collection was out of the question. Given that most parents would not advertise their identity or the fact that their child was without documentation, it was incredibly difficult to find people to interview. In the end luck again played its part, with a chance meeting at a BBQ in Beijing leading to a friend of a friend introducing me to a person working in a grassroots NGO based in Southern China. This NGO worked essentially with migrant workers but dealing with undocumented persons had become an aspect of their overall work. They gave legal support and advice to migrant workers and had collected a database of people they had worked with either in person or online. Their help in connecting me with families with undocumented children enabled me to conduct my research.

A further constraint arose out of the fact that, due to their wish to remain anonymous, many people were concerned about participating in interviews. I discuss below how I offered anonymity, but this also depended on their trust in me, which in many cases I had limited opportunity to build. Fewer than half of the people in the data base I was given replied to my emails and messages and of these only a fraction was willing to be interviewed. Additionally, most people were busy because they worked five to seven days a week and those who lived in rural areas accessed the Internet through their mobile phone. Many were migrant workers, could only speak between work shifts and could not give up the time for a face-to-face interview. Although those willing to talk to me welcomed the attention brought to their situation, it was at the same only one of many problems they faced. The bulk of face-to-face interviews were conducted with the wealthier residents of Beijing, who had more time available for this purpose.

Finally, as I did my research, I was reminded that statelessness as a topic is often explored within a European democratic or legal context. It stands to reason that those at risk of statelessness in China offer different insights. To find these insights requires approaches developed by scholars of China. O’Brien (2006, p.29) states that ‘we ought

to arrive in the field with an area of interest and some hunches about how a social process is unfolding, but then be ready (and eager!) to let our informants redirect us by telling us what concerns them most'. As a result of there being little empirical or theoretical knowledge on my studied topic, it was necessary to combine existing literature with fieldwork (He, 2006; O'Brien, 2006 and Yeh, 2006).

4.4 Data analysis

I drew heavily on the advice of Kevin O'Brien, a key scholar in Chinese studies and a leader in research on political resistance. O'Brien (2006, p.29) advocates an approach to research design that emphasises space for unforeseen ideas to emerge as interviews take place. He pushes for exploratory research that allows researchers to fit appropriate theories to their findings. In this way O'Brien urges scholars to recognise subjectivity in interviews and to avoid theoretical preconceptions overriding what arises in the field. O'Brien rejects the necessity for formal coding, the use of case studies, small-n comparison, hypothesis testing, or confirmatory analysis. Finally, O'Brien advocates theorising that is intimately connected to empirical findings. As suggested by O'Brien, I took a grounded approach that allows ideas and topics to emerge and then shape the study. Yet this does not mean that the field should be approached without any preconceptions. As Burawoy (1998, p.5) points out, we begin with theories—cognitive maps of the world—that are inextricable from our approach to research.

My analysis was characterised by on-going comparison between the data and theory discussed in Chapter One as well as in other literature, a process suggested by Glaser and Strauss (1967). As is the custom with exploratory research, I sought to collect data starting with a description of the topic, followed by progressive assembly of the collected data, finally moving to adjoining data with theoretical literature. I analysed my data through a process of loose coding with two aims. Firstly, to create theoretical categories from the data (Gibson and Hartman, 2014); secondly to incorporate this into literature on how the risk of statelessness can be conceptualised. As I continued to collect and analyse my data, I constructed analytical codes and categories from this data. The coding was performed on an on-going basis to allow comparison with new information. Thus, new data could provide feedback, shaping codes (Charmaz, 2006). O'Brien (2006 p.35) suggests his interviews were of value because he 'did not attempt

to code informants' answers or treat them in any formal way...[he] simply tried to squeeze all the meaning out of whatever information his interviewees chose to share'. While I did not ignore the coding process, I applied a more fluid process, finding that the coding process could be better served by looking for meaning without necessarily fragmenting information piece by piece. Moreover, as the people within the Chinese case study are highly diverse, I was looking for broad commonalities. I focused on drawing out key codes rather than attempting to code each piece of data I had acquired.

Taking this approach, I read through all my interview transcripts and QQ conversations. I then picked up key words such as birth registration, fine, and so forth and highlighted in different colours the parts of the conversation mentioning these aspects. Since I had data in English and Chinese and software such as Nvivo does not operate in both simultaneously, I performed this task using Microsoft Word. The words built into analytical categories, many that I foresaw intuitively. As I read through the conversations that I had highlighted, I would sometimes add keywords and again search through the texts, (e.g. 'sterilisation' and the synonymously used 'surgery'). Over time I could build knowledge of the terms in which people would frame these issues, or the way they would narrate the approach they took to tackling certain circumstances that touched upon these issues.

While the coding process was helpful, in many ways it was only useful as an additional aid to thoroughly understand conversations on QQ groups as a whole. I found the stories that developed over time in some QQ groups too complex to be reducible to just one code. From the start of the interviewing process to the last moments of online QQ chats, I encountered the issue summarised by O'Brien (2006, p.27), who noted the '... challenge to adapt the freewheeling stories that interviews elicit to the demands of theorizing'. In some circumstances language would be ambiguous, touching on many categories simultaneously. My attempt to make sense of these stories has been described in over-arching themes in Chapters Five and Six.

4.5 Reflections

Going into the field, even with a Chinese studies background and competence in the language, I could not escape the divide between myself and those I was studying. Yet,

at the same time this confirms the problematic binary that assumes a two-dimensional relationship between researchers and researched highlighted by Merriam et al., (2001). After all, 'all cultures (including subcultures) are characterised by internal variation' (Aguilar, 1981, p.25). Nonetheless, it was unsurprising that many took part in my study because – despite my protests to the contrary – they thought I could help them in some way. One mother sent me on-going emails asking if I could help her find someone to adopt her child, or present her story to the UN. However, at the same time I needed their help to complete my research and to access participants. Those involved in the research consciously mediated the extent to which I could see their lives: whether I could know or use their names, whether they would divulge their informal strategies to negotiate the state, how and when we could interact, what they expected, implicitly or explicitly in return. As Nencel (2001, p.112) reminds us, 'vulnerable people are continuously protecting themselves' so that power is never a simple binary.

Interviewees sought to have their situations portrayed in a certain way, and in particular wanted their helplessness vis-à-vis the Chinese government to be highlighted. For example, when we discussed potential solutions most interviewees would reject these alternatives out of hand. Yet my conversations on QQ, (and broader literature), did confirm possibilities for getting around fines, or at least negotiating the amount. The desire of those I interviewed to gain publicity suggested that on some level they did have limited agency over their situation. Drawing on Horst (2006), Jansen (2008, p.576) argues that if we acknowledge that refugees have a certain level of power and choice in determining their lives, including creating knowledge and meaning out of their situation, 'this also includes creating representations of vulnerability or special needs, or belonging to a certain persecuted group'. Likewise, I found that through the vulnerability of being denied birth registration, families could construct an identity and meaning to their situation. Jansen (2008, p.576) focuses on the necessity of representing vulnerability in a refugee camp to access opportunities. I came to understand that people believed that speaking with me and expressing their vulnerability could provide opportunities to access international media spotlight, which in turn might help them to avoid paying fines.

4.6 Ethics

Ethics is central to research design, but is even more relevant in situations where persons taking part might be put at risk. As leading NGO Amnesty International (2015, p.107) states, China in 2014 could be described as a country where ‘the authorities continued to severely restrict the right to freedom of expression. Activists and human rights defenders risked harassment and arbitrary detention. Torture and other ill-treatment remained widespread and access to justice was elusive for many.’ The on-going crackdowns against those who challenge the government was therefore a key consideration while conducting of my research.

Given these ethical dilemmas, I had to carefully weigh up the avenues that merited exploration. One outcome of this deliberation was that I chose not to go to the border of China and North Korea. Any contact with mothers of half-North Korean children could put them at risk of being returned to North Korea. Furthermore, I decided that in-depth research on the strategies of those Chinese people seeking to hide from authorities would not justify the risk it posed to those involved. For this reason I chose to look at very broad data on these population groups. Chinese parents who broke birthing policies to have children were generally less at risk than their North Korean counterparts. So, I decided that those asked to take part could make an informed decision themselves as to whether they thought the study to be worthwhile. For the most part I found that those who took part were not, or were no longer employed, by the government, so that their job was not dependent on following birthing policies. Often, their aim was to draw international attention to the issue because they perceived the situation to be unjust. Some of them even sought media attention, using it as leverage against their local cadres, as I discuss in Chapter Five. On the other hand, some with whom I spoke explained they could not take part because they were employed by the state. The risk for them was too high if they were discovered.

Another ethical consideration was that full disclosure of the research to participants was crucial. Throughout the study I was conscious that my role was to facilitate the transmission of people’s stories. They wanted to speak to me because they cannot speak English, and feared that as a result their situation would be overlooked by the international community. It was also my role as a researcher to maintain my own voice, and to develop my analysis of the situation beyond their perspective.

One way to ensure participants were aware of my objectives was to obtain freely given and fully informed consent from all participants before the interview. I informed research subjects of the purpose, methods, and intended use of my research, and of their role within this research (their position being voluntary). Certain research norms practised and applicable in the UK were not suitable in the Chinese context. For example, consent forms are not used by Chinese researchers, nor widely understood by research participants. Such forms are widely viewed with suspicion, especially where people seek to remain anonymous. To overcome this hurdle, I developed a way to both share information about my study with research participants and obtain their oral consent. Where possible I asked for written consent, but otherwise I achieved verbal consent to an interview. By including informed consent, I was aware that this is a process whereby participants are free to ask for more information and I could also explain potential risks or costs to them. At any point during the interview participants had the option of stopping the discussion. They could also choose not to answer a question and could withdraw their information at any future stage.

Obtaining formal, written ‘consent’ from all participants in research conducted on QQ proved more difficult. While I had explicit permission from the administrators to be part of the chat rooms, there was a risk that some people might join thereafter and be unaware of my presence. In each QQ group I explained in Chinese that I would be collecting data from the chats, and that if anyone wanted me to exclude their conversations from the study they could inform me at any point during those four months. I informed all participants that I would record their interactions going forward and if they decided later not to be included, I could, up until the end of 2014, delete the information. Of course, since the QQ groups contained hundreds of people, making it impossible to gain informed consent from each member, I chose instead an opt-out policy. To ensure the information was accessible to anyone not checking the QQ chat at that moment, I had also put up information about the study onto the shared folder. This information document was derived from the information sheet previously approved in the ethical review for interviews. All but one of the groups was run by an NGO working with me who had given me contacts for my interviews, and so I informed that NGO too that I was collecting data in order to ensure that it had no issues. I guaranteed all information would be used anonymously and advised that it would be used for my

doctoral research as well as for various types of publications, both academic and non-academic.

On reflection, I think this elicited few questions because the groups are public, even though moderators must approve entry into the group. As such they are open and hundreds of people participate in each group. Being open to public discussions, there is therefore no sense of privacy in these groups. I also took into account the cultural context of the online sphere. In China it is well known by all citizens that the Internet is monitored, that political keywords are blocked, and people can be prosecuted for online activities. For example, in 2015, 15,000 people were arrested for ‘Internet crimes’, which included political crimes (Reuters, 2015). Moreover, the *wu mao dang* - ‘fifty cent group’ are infamous in China. They are paid fifty cents every time they post a pro-CCP message online. Additionally, there is a self-termed ‘voluntary fifty-cent army’ who seek to defend the CCP on an unpaid basis (Han, 2015). So it would be unusual if participants in these chats expected their conversations to be unmonitored. Given the information explicitly provided by me to chat administrators and participants, and because of openly sharing my identity, I believe that I went to sufficient lengths to ensure my presence was known.

As I conducted my research I could not guarantee total confidentiality. As an example, I was subject to legal requirements by the Chinese government (although these were opaque.) Aside from this, I strived to maintain, to the best of my ability, the confidentiality of all research undertaken. I tried to ensure that the boundaries of confidentiality were made clear from the beginning of the research, so that participants could make an informed decision about whether and how they wished to participate. For this reason, all data collected was saved on password-protected files and stored on my laptop and a USB drive, to which only I had access. As the data was password protected it could not be breached in the event of the laptop or USB drive being mislaid or stolen. Furthermore, details such as names, addresses, or organisation names were not stored with the empirical content, so that this information was made anonymous when saved. However, I found anonymisation of qualitative data more problematic, since mere removal of names and contact details cannot alone ensure that data is untraceable. I had to balance the need to maintain the integrity of the data with the need for anonymity.

Thus, I removed names and references to organisations and protected the used content with passwords.

4.7 Discussion

This thesis explores the impact of documentation denial, as well as agency over documentations. In so doing, I used interviews to understand the subjective experiences of those affected by documentation denial. In particular, interviews allowed me to ascertain whether in practice, documents were vital to everyday experiences of citizenship, and the extent to which it is necessary to have a documented legal identity in China. Moreover, I could investigate how those affected had broader issues with their children's nationality, including international travel and obtaining a passport. By interviewing specialists, I could triangulate data, receiving broad overviews as well as in-depth insights.

Families denied documents are vulnerable and usually need help to remedy their situation. While it is vital to understand their subjective experiences, their narratives framed towards the researcher cannot be imported uncritically. Moreover, participants themselves do not necessarily consciously perceive their own ability to negotiate over documents and how – even in limited ways – to impact the documentation process. This posed a problem because understanding their latitude for agency over documentation was central to the study. Hence it was important to supplement data through an online participant observation to better understand the subjective experiences of those affected, but as framed towards others' parents in a similar position. I gained an understanding of how parents believed others might learn from their experiences to better negotiate their own documentation denial situation. This thesis has thus combined an innovative method using QQ, which has not been previously used in any published study known to me, combined with traditional methods such as interviews, to seek an understanding of this undocumented population.

5. Becoming ‘At Risk’: Everyday Forms of Resistance

5.1 Introduction

In this chapter I address the question of what can we learn about the process of becoming documented and in particular the process of negotiation over the *hukou*. Secondly, I ask why different members of the Chinese population, all of whom are contravening certain policies, are unevenly impacted by documentation denial. I explore the empirical reality of negotiating documents in China. In particular, this chapter draws out the role of parents and guardians in negotiating with street-level bureaucrats in the documentation process. The outcome of their negotiations and resistance to certain birthing policies determines the ability to document their children. I examine the types of resistance parents employ and assess what constitutes ‘political resistance’ in the negotiation process. Specifically, political resistance can be ‘everyday’ resistance (Scott, 1985), occupying unseen spaces and hidden transcripts (Scott, 1990). While not revolutionary, agents of change such as activists, lawyers and journalists can seek change within the political system by reading political winds and working within the grey area between permissible and off-limits (Stern and O’Brien, 2012). Putting political resistance into conversation with literature on the risk of statelessness is useful in understanding why some persons are denied documentation in China and thus become at risk of statelessness. This enables an expanded analysis of how being at risk of statelessness can come about, because it opens space for discussions on agency among both for those persons or families denied documentation and the street level bureaucrats engaged in denial.

This chapter will make two concrete interventions into discussions on the risk of statelessness. Firstly, in the empirical section I will illustrate how, in the context of contemporary China, documentation denial can arise as a punitive state response to perceived political resistance and is used as leverage to ensure compliance by citizens. I contend that there is a case to be made for literature to reference not only the role of the ‘state’ but more specifically the roles of persons seeking documentation and of street-level bureaucrats. Secondly, if we situate discussions on the risk of statelessness with reference to political resistance, then work on everyday hidden resistances and hidden transcripts (Scott, 1985, 1990) is particularly instructive for conceptualising the specific form of negotiations over documentation that can be found in this case study of China.

This empirical case study is vital to an understanding of how the risk of statelessness is experienced. Redclift (2013, p.7) aptly explains that research on citizenship is usually divided “between those who look at what has been termed the ‘soft inside’ of citizens, and those who focus on the ‘excluded hard outside’ faced by those who lack it (Somers, 2008)” (also see Bosniak, 2006, p.4). She advocates that both must be explored in order to understand either and ‘begin to comprehend the messy in-between.’ In this spirit, the following chapters provide an analysis of my research into social tensions surrounding the quest to become documented in China and the impact on the daily realities of the ‘soft inside’ of citizenship. As might be expected, parents I spoke with rarely questioned their child’s nationality, focusing rather on cases of *hukou* denial as it pertained to the citizen such as accessing state education, and rights of legal personhood, such as opening a bank account. They recognised that documents were not intrinsically valuable, but rather were tools with which to connect to the state and access resources. As numerous parents told me: ‘you only need the *hukou* when the child is six years old and needs to attend school’ (for example Interview 3). Yet, as I highlighted in Chapter One, lacking documents also has strong implications for their nationality (or the ‘hard outside’). This is because most people who can be categorised as stateless are part of an *in situ* stateless population (Belton, 2015, p.907). The risk of statelessness usually results from lacking documents within one’s own country. Documents link nationality, a status under international law, with access to rights and resources connected with citizenship, a status under municipal law. Therefore, empirical investigation of the denial of documentation in China and the impact lack of documentation has on their access to rights associated with citizenship and legal personhood, tells us about consequences in the daily lives of those ‘at risk of statelessness’. To reiterate the point made in Chapter Two, without birth registration there is a common perception that ‘children cannot obtain nationality and citizenship, be independent as individuals, and receive protection by the state and its laws.’ (Li et al., 2010, p.311).

The chapter proceeds as follows: Section Two reviews literature on political resistance in China. Section Three and Four discuss empirical findings of everyday resistance and hidden transcripts to birthing policies. Section Five comments on why parents contravene birthing restrictions. Section Six discusses the findings in relation to

questions around the risk of statelessness, arguing that populations the uneven denial of documentation in China comes about through the negotiations over documentation.

5.2 Negotiating documents through political resistance

In China, negotiation of documents is bound to political resistance. If work on resistance in China was once focused on ‘big revolutions’ and rural rebellions, the opening of China has brought a new era of scholarly focus (Tarrow, 2008, p.3). Since the 1990s increasing protests and collective action brought scholars to focus on resistance somewhere between the hidden and the openly revolutionary (Cai, 2010; O’Brien and Li, 2006). This has created a following of ‘rightful resistance’ (O’Brien and Li, 2006). Access to China has increased, allowing Western-centric theories to be adapted to China. To name but a few, studies have focused on the creation of contention using social networks (Shi and Cai, 2006; Deng and O’Brien, 2014), and protests utilizing the central-local divide (Bernstein and Lü, 2000; Cai, 2006; O’Brien and Li, 2006). Areas of study range from tax riots (Bernstein & Lü, 2000), strikes by laid-off workers (Lee, 2007) and resistance to land seizure (Cai, 2003), to middle class contention towards industrial projects within one’s locality (without demanding participation in governance), termed ‘not in my backyard’ contention (Wasserstrom, 2009). Additionally, legal challenges through litigation have been developed, such as those seen in Sten’s (2013) work on the environment. In short, the study of contemporary Chinese political resistance has typically been focused on the vocal, overtly political, mobilised resistance. This resistance merits attention and in the following chapter we will see how it builds on everyday forms of resistance, rather than pre-empting it.

The majority of resistance I saw, however, could less frequently be categorised as organised collective action, something that is not appreciated in current literature. Without first understanding this resistance, we cannot make sense of how more vocal organised rightful resistance comes about with regard to the *heihu* population. Nor, therefore, can we understand negotiations over documentation as it pertains to the risk of statelessness. The resistance I observed tended to be quieter, more hidden, low-level and fragmented. Indeed, the conception of rightful resistance meaningfully positions itself in opposition to hidden subtle resistance.

I propose that many forms of resistance were more akin to 'Everyday Forms of Resistance' (1989). In his influential work 'Weapons of the Weak' (Scott, 1985), Scott explores subtler forms of resistance than revolutions and 'rightful' resistance. In brief, Scott bases his ethnographic work on a Malaysian village he named 'Sedaka' during the Green Revolution, where he discovered hidden forms of peasant resistance. These acts were rarely collective or open and Scott (1985, 1989) decouples the idea of resistance equating to collective resistance. In his later work (1989) Scott builds a comparative study of resistance employed in situations where peasants have few options to openly resist injustices. Instead they can fall back onto acts of clandestine subversion such as 'foot dragging' or 'pilfering'; in other words, small acts of insubordination including theft, or failure to work hard. Scott (1989) acknowledges that political resistance is not typically considered to be unorganised, opportunistic, unsystematic with no revolutionary consequences and certainly is not usually understood to include accommodating domination. But Scott (1989) rejects the notion that political resistance must be equated with actions of short-term sacrifice in order to achieve long-term objectives. In times of scarce resources, Scott (1989) contends that self-interest can drive resistance as long as it impedes those in the state or superior class from extracting material benefits. Scott (1989, p.35) claims this is a form of resistance open to all peasants in conditions of dispersion and fragmentation, separated from open resistance by 'tactical wisdom' – working the system to minimise their disadvantage.

As the vast majority of resistance that I saw constituted low-level, unorganised, leaderless resistance, Scott's experience can help to navigate these findings. Scott's conception of everyday resistance, though, does not mention childbirth. In China there is a system whereby children are linked to fines, material extraction and forced sterilisation. Birthing restrictions and *hukou* denial certainly do not only affect only one class. As I will present in this chapter, affluent and less affluent alike have been affected. Fines based on a proportion of one's family income ensure that they are burdensome for everyone charged. Everyday resistance has positioned rural and urban residents against local street-level bureaucrats, and lower government cadres against their superiors. Moreover, this resistance has been effective to a degree, in so far as some parents and guardians have managed to avoid state control over reproduction and guardianship, even if they do face penalties. In other words, while reproduction is not targeted

resistance to the state, eschewing state controls over birthing choices can be construed as such. Scott's work has, however, left a legacy of examining unconventional forms of resistance and in doing so, widened the definition of what counts as 'political' resistance (Abu-Lughod, 1990, p.41).

To further explore the question of what counts as 'political' I draw on the field of the politics of reproduction. In China, under state policy, when parents continue with the pregnancy of an unauthorised child, it is considered by the state to be a choice, a choice of resistance. Nowadays, Chinese mothers who do not want another child tend to have an abortion, abortions often being free or cheap, accessible and socially unproblematic. Literature on reproduction focusing on liberal democracies acknowledges that global forms of power have shaped reproduction and thus reproduction is inherently political (Ginsburg and Rapp, 1991, p.313). This literature is based on the presumption of a political public and 'masculine' realm that is explicitly political and employment related, and the private more stereotypically 'feminine' domain of household and family. This has been developed by Johnson (2008) who unpicks the public - private distinction of North American society which has led to expectations that women have different identities and serve different functions within the public and private spheres. Specifically, women no longer continue the role of 'domestic servitude' (p. 906) without political rights and social status, and so have two roles – one of public participation and another in the private sphere. Johnson (2008) explores political resistance by privileged North American women in relation to childbirth choices. She points out that there is a less distinct cleavage between public and private spheres in developing countries. As Johnson (2008) claims, in an economically developing country (such as China) the private - public divide of reproduction is less distinct than in North America. Building on Johnson's analysis, we can see that in China, because reproduction is an explicit area of political concern for the CCP, the body is politicised. Indeed, the Chinese policies described in Chapter Three are testament to the politicisation of reproduction. As I pointed out, one aspect of China's trajectory for modernisation has resulted in their preoccupation with controlling reproduction. In attempting to avert projections of human over-population in China, population scientists were instrumental in creating a new conception of modernity. The difference between the political position of reproduction in China and the West reminds us that the '...body is politically significant and reflects the power dynamics of different cultures...'

(Johnson, 2008, p.896). Thus within the Chinese context, resistance to birthing policies should be seen as political.

Everyday resistance also has implications for how we perceive political awareness of resisters. In discussions with some Chinese academics I found this was overlooked in their articulation of their views on the population. Many attributed widespread lack of documentation to lack of education, cultural backwardness and patriarchy. I do not find this assessment to be accurate, as will be elucidated in the following sections. Saliently, a central component of Scott's (1985, p.304) everyday resistance is that peasants' resistance can be more ideological than action based. This is of importance because he refutes that workers are ideologically dominated by the political elite. Scott (1985) claims rather that peasants are structurally constrained by the state and the elite in their actions. Scott (1985, p.305) goes further, claiming that in situations of uneven power it is peasants' actions that are dominated, but ideology is rarely incorporated wholesale into people's beliefs; nor is it necessary for the continuation of an ideological system. Lack of open resistance is a reflection of the capacity for action rather than the desire to resist.

As we look beyond the interviews to data from the online participant observation in later sections, Scott's work continues to yield a vital framework for empirical understanding, particularly his 1985 work on transcripts in 'Domination and the Arts of Resistance: Hidden Transcripts' (1990). While in public peasants are seemingly deferential to the powerful in 'the open interaction between subordinates and those who dominate' (1990, p.2), in private these scripts are subverted. Rather, 'hidden transcripts' are 'discourse that takes place 'offstage,' beyond direct observation by power holders' (1990, p.4). These two transcripts are sharply juxtaposed, revealing the inner working of the seemingly dominated, revealing their true intentions. These hidden transcripts are formed of 'rumour, gossip, disguises, linguistic tricks, metaphors, euphemisms, folktales, ritual gestures, anonymity' (1985, p.137). They allow peasants to subvert power so that 'ideological resistance is disguised, muted and veiled for safety's sake' (1985, p.137). Meanwhile peasants can feign obedience through symbolic and ritual performance in front of the powerful. Thus peasants' use of transcripts can even manipulate and subvert dominant ideology (Hart, 1991, p.93) because they twist state

rhetoric in self-serving ways. This is central to understanding low-level political resistance in China.

Yet Scott's work was written in a place very different from persons in China. Literature on everyday resistance has been founded on Scott's work, but as the field grew, scholarship became dissatisfied with the way in which subordinate groups were traditionally portrayed to respond to their situation (Abu-Lughod, 1990, p. 41). New definitions arose. Everyday resistance can nowadays refer to transformative actions one person makes in relation to another (Riessman, 2000) or 'subtle, indirect and non-confrontational acts that make life more sustainable under a strong centralised state power' (Thompson, 2011, p.8). It is also a crucial concept because it is a reflection of the nature and latitude of power in some relationships (Thompson, 2011, p.8), honing in on those that are perceived to most lack power. This literature, with varying degrees of success, has thus focused on broad policy change catalysed by low-level political resistance. This will be vital to a reading of the following empirical analysis.

Literature on contemporary China which considers hidden forms of resistance of the type described by Scott, particularly resistance to birthing policies, is sparse. Unlike the main body of work on resistance, 'everyday resistance' in China received greater focus in the 1980s. In particular, authors were concerned with how everyday resistance could create a net political effect. Scott (1989, p.49) draws the following analogy:

“...just as millions of anthozoan polyps create, willy-nilly, a coral reef, thousands upon thousands of petty acts of insubordination and evasion create a political and economic barrier reef of their own. And whenever...the ship of state runs aground on such a reef, attention is typically directed to the shipwreck itself and not the vast aggregation of actions which make it possible.”

For example, Kelliher (1992) has described how widespread low-level resistance in China has managed to have widespread political impact. Describing peasants' roles in creating de-collectivisation in the late 1970s and early 1980s, Kelliher claims that through unorganised but widespread peasant resistance, peasants fueled a move back to family farming and away from farming in collectives under Mao. Zhou (1993), on the

other hand, attempts to explore collective inaction as a form of collective action. This can include lack of enthusiasm for participation in state campaigns, inefficiency in the workplace and so forth. Zhou argues this collective action (and inaction), has weakened the state's capacity to implement policies, 'forcing' the CCP to reform in the 1980s. Likewise, Raymond et al. (2000) build on Scott's work looking at de-collectivization of agriculture in China and Vietnam. While they acknowledge the impact of the ruling elite, they focus on the aggregated effect of rural resistance that undermines state control over institutions upholding collectivisation. Raymond et al. argue that social change is a result of the meeting of the state, party and resistance from below. In various degrees, the authors draw out past implications of everyday resistance, giving clues to what could be expected in the future when everyday resistance becomes widespread in homogeneous forms, as it did during de-collectivisation. The implication is that everyday resistance, through mass non-compliance with policies, can force the state into accepting policy modifications or changes.

This theme is replicated in Zhou's focus on birthing policies in her brief but important 1996 work, where in her chapter on 'Farmers Engulf the One-Child Family Policy'. Zhou's (1996) core argument is that resistance to birthing policies spurred the 1984 concession allowing rural citizens to have two children if their first was a girl. Since rural citizens, unlike their urban counterparts, were not provided with state support in old age, the male child served as a pension fund in the patriarchal system of sons living with their parents, whereas women move in with partners upon marriage. Zhou focused on how they evaded policy by hiding children, migrating domestically, through bribery or payment of fines, or where necessary, through violent actions. She argues, as discussed in Chapter Three, that rural citizens were able to do so because the state lacked the same control over rural citizens that it maintained over urban ones. Moreover, rural cadres would lie about birthing rates to avoid sanctions and fines from their own superiors. This important literature helps make sense of the policies discussed in the last chapter and the implications of the everyday resistance discussed in this chapter. Zhou's work provides background to what we see today, indicating that resistance to birthing restrictions dates back to policy conception. It provided a forecast of how everyday resistance manifests itself today. Yet, a policy change of the same magnitude as the 1984 concession was not repeated until 2013, when the state allowed many more parents to have two children. At this time the policy change undoubtedly resulted more

from its success and the resultant aging Chinese population rather than from non-compliance. Thus her arguments cannot be recycled to provide an understanding of current policy changes. Accordingly, Zhou's focus on the role of everyday resistance in driving broad political changes is more pertinent than its value in understanding the effect of resistance on power relations within China and how this can affect policies in a subtler way.

Despite this attention, the literature on hidden, widespread, unorganised resistance has only a very limited place in current literature on resistance in China. As Scott argues, academics tend to favour concentrating on resistance that shakes the foundation of power, rather than on groups who leave little trace of their presence in historical records (Scott, 1989). Nevertheless, I found that everyday resistance feeds into rightful resistance. I propose that everyday resistance is also important because it illuminates agency over documentation that is vital to understanding risk of statelessness. This agency over documentation, often overlooked in discussions within the broader statelessness field, is empirically highly noteworthy.

When considering political resistance within China, two inferences can be drawn from this insight into the politics of reproduction. Firstly, what 'counts' as resistance is, by its nature, a fragmented, leaderless, low-level process that is almost indiscernible to the political elite. It is concerned with self-interest, but illustrates power relations on an uneven playing field. 'Everyday' resistance is a set of tools, varying in form according to the problem, used not only by parents and guardians but also by low-level cadres who are concurrently within the state and who, by resisting higher levels, contribute to the 'seemingly ambivalent' state that I discussed in the previous chapter. Resistance, both overt and covert is constantly negotiated in a 'mutualistic, dialectic process' because it inherently involves dialogue between the state and those outside the state (Sivaramakrishnan, 2005, p.351). As O'Brien and Li (2006) and Sivaramakrishnan remind us, resisters must also negotiate with various levels of the state, favouring one level and working against another level or bureaucracy. In this case, protesters who feel the law has been manipulated might appeal to the provincial level Population and Family Planning Commission to mediate in a dispute with their local department. This reflects the divides at different levels of the state, even within bureaucracies. Looking back to the state in society approach, we can see that different actors within a

bureaucracy might have different priorities and have a different understanding of the political priority at that time – to enforce birthing restrictions or to ensure fines are collected.

The second inference that may be drawn regarding political resistance in China is that reproductive resistance is made ‘political’ by both policies and by social relationships and attitudes. Where actions cannot be coordinated, there must be a social climate that connects people in what they deem to be socially acceptable resistance. In this case, given the number of persons having two children without permission there is societal acceptance that some people will resist the abortion option encouraged by government cadres and have two children anyway. At a societal level – particularly in rural areas - there is clearly a tacit acceptance of the existence of *heihu*. With this theoretical framework in mind, I turn to the empirical findings of my research.

5.3 Disaggregating everyday forms of resistance

Abu-Lughod (1990, p.42) warns that scholars lean towards romanticising resistance and the resilience of a human spirit refusing to be dominated. In doing so, scholars ‘collapse distinctions between forms of resistance and foreclose certain questions about the working of power’ (Abu-Lughod 1990, p.42). She frames her work around resistance as a diagnostic of power. The starting point in this section is thus the disaggregation of various forms of everyday political resistance. This section emphasises the finding in the previous chapter that the state is seemingly ambivalent, as much depends on the decisions of street-level bureaucrats in implementing the law. Exploring everyday resistance has provided a first step in understanding statelessness in a way that explains why some people become documented and others do not.

The resistance that I explore is in dialogue with the areas of policy and their application. By focusing on its ‘everyday’ elements, I suggest that various forms of the tools of resistance can be observed, loosely based on White’s (2006) categorisation of resistance to birthing policies: evading, colluding, covering up, accommodating and disregarding the state. The second area I explore is based on Scott’s work on hidden transcripts (1990) and everyday resistance (1985). I identify how jokes, parents’ subversion of the state’s narrative, are symbols that stimulated widespread acceptance of everyday resistance

5.3.1 Evasion

Evasion would usually be the first tactic for resisters of birthing policies, resulting directly in *heihu*. From the commencement of the birthing policies, women in villages would seek ways to avoid their pregnancy being detected. A common strategy was to conceive in August or September, hiding the growing pregnancy by wearing more clothes as the weather grew colder (White, 2006, p.173). Others moved to another village, feigning long-term illness, colluding with a doctor or midwife and after birth simply not reporting the child's existence (White, 2006, p.175-180). Another tactic was to flee the village and on return claim to have adopted a child, such as that of a dead relative, in another village (White, 2006, p.175). The children would then be without the *hukou* but parents would have managed to have a second child while avoiding pressure to have an abortion. Similar tactics are still used and with the reduced restrictions on temporary domestic migration this has become increasingly possible. As one father confided, he and his wife had migrated in order to have an illicit second child, fearing that in the event of caesarean section the hospital would be instructed by the Health Department to sterilise the woman (Interview 10). Although without her consent this would be illegal, he claimed that the hospital would afterwards attempt to 'educate you and try to persuade you to sign consent, so the illegal becomes legal'. In the other location, the Health Department would not be concerned with migrant parents. I was informed that no matter where you reside within China, the Health, Population and Family Planning Commission where the *hukou* of each parent is permanently registered has responsibility for the children of these parents (Interview 3), but not for children who temporarily reside in the location. Thus migration could facilitate evasion up until the point where the child would need to be registered.

In cities, non-state employees are able to conceive with fewer obstacles and private companies do not need to monitor their employees. In the climate of gradual policy relaxation (in tandem with China's aging population), most parents who do not work for a state organisation are by and large more easily able to evade birthing policies, at least until their child is born. That said, one single mother called Ms. Qi (Interview 23), confided that during late pregnancy she hid herself away in her home, rarely leaving the apartment until after dark. Although self-employed, she lived in Beijing and her *hukou*

was registered there. While migrants would be relatively anonymous in Beijing, far away from their place of *hukou* registration and the bureaucrats responsible for their birthing restrictions, she as a local resident could be easily reported by an acquaintance to the local Population and Family Planning Commission and perhaps ‘pressured’ into having an abortion.

Those employed in state-owned companies, face higher barriers to having illicit children, because it is easier to monitor persons within tightknit work units that are answerable to the government. Those not employed by the state have less to lose (Interview 8). This would also apply to persons with a relative working in government, who too could be fired as a result of a family member breaching birthing policies (Interview 10). Those with fewest professional links to the state had the least to lose, in so far as the state could do little to take away their employment. As stated by the respondent in Interview 13, ‘I’m self-employed making crafts...[and] I opened a small repair shop... my parents are farmers...so the government cannot influence my job opportunities’.

Evasion could, however, be only a temporary respite since the child would eventually need *hukou* registration. One common way to register a child at a reduced rate is for parents to wait until the census. As one woman from Beijing confided, her friend had registered a child for the bargain price of 180,000 RMB (£18,000). Given the price would now be around 400,000 RMB (£44,000) the group agreed the woman has done well (QQ chat 3). Although bargaining during national censuses - every ten years – yields the best discounts, smaller population surveys are sometimes associated with reduced birth registration fees (QQ chat 3) since local governments give discounts to ensure population counts are accurate. However, the bargaining process will always be dependent on the incentive of each party to compromise. Local government, on the one hand, see a gradual policy relaxation and want to cash-in before birthing policies are abolished. Parents by contrast cannot await a hoped for birthing policy change indefinitely, particularly once their child reaches six years old and must attend school.

Evasion can be multi-layered, cases of evasion from a village cadre being a well-known example. However, it can be from a neighbourhood volunteer who is an informal state informant. In these cases, a member of the community may report an illicit pregnancy to

the work unit and thus expose it to authorities. It might also be from work units who, by extension, self-police to ensure protection of their own interests, in this case the work unit's bonus. This situation surfaced in quite a few interviews. For example, Mr. Han (Interview 14), related how his second child cost him his job at the Population and Family Planning local office and later another job in his hometown. He believes an acquaintance reported his prohibited child to the local Population and Family Planning Commission and was rewarded for informing on him. In cases such as this, street-level bureaucrats can themselves be subject to inspection by their colleagues, again highlighting the role of individual bureaucrats in creating a seemingly ambivalent state. Evasion is rarely a long term solution. Rather it serves to buy time for parents hoping to avoid penalties until their child attains the age where identity documents become essential.

5.3.2 Collusion

Collusion with local cadre is another tactic used by parents and guardians. This includes securing cadre's sympathy or exploiting their self-interest or corruption (White, 2006). White (2006, p.195) describes how, in the countryside, cadre would often allow children to be sent to a neighbouring village to be 'adopted' so parents could have more children. In other cases, bribery would be used to allow parents to falsify a divorce. Divorced couples are allowed to carry the pregnancy without a penalty (White, 2006, p.179) and the parents would thereafter 'remarry'. This is still a common tactic today, as fines are significantly reduced for divorced mothers (QQ chat 2). Doctors could be bribed to remove IUDs or tie only one fallopian tube, or to falsely certify a child as having been born with a defect so another child could be conceived. Sympathetic cadre would also sometimes lower fines, particularly to households without a son (White, 2006, p.183). In some cases, they were embedded in the community and had personal relationships with those who contravened policy. They understood the implications for families who did not have a son. In other cases, they were unwilling or simply unable to enforce policies (Greenhalgh, 2003, p.206).

There is ubiquitous awareness among parents of *chaosheng* that bargaining is part of the process if one wants to register a child for the least amount of money, premised upon the knowledge that each family must pay a different fine according to their income and

presumably the staff with whom they interact. One woman informed the group on a (QQ chat 1) that she was required to pay 12,000 RMB (£1,200) for her illicit pregnancy. She was warned that unless she paid immediately, the following month prices would go up and from October 2014 onwards the cost would be 15,000 RMB. If she had not paid the fine by the time of the birth, the fine would become 20,000 RMB (£2,000), or more. She and her husband discussed divorce, which she was sure would result in a penalty of only 6,000 RMB (£600) (fines being lower for divorced women). Either way she was hopeful of a more favourable outcome as she had two or three years until her first child went to school. Clearly collusion with cadres can yield a discount on early payment of the fine, but parents may still look to other more beneficial outcomes outside of this type of collusion’

Collusion in China often depends on personal relationships called *guanxi*, something which came up repeatedly in interviews (Interviews 4, 14, 18, 20, 21, 22, 23, 24). *Guanxi* is often easily accessible in the countryside, where people live in villages. A lady from Shenzhen confided to a group in a QQ chat room that with the right *guanxi* one could evade fines by registering two children as twins, either at the hospital or Population and Family Planning Commission (QQ chat 4). In towns and cities, however, it is becoming increasingly more difficult to use *guanxi*. Corruption, no matter how lucrative to state officials, is rarely conducted in the absence of a personal relationship between the individuals. A person with no connections might look to a friend or acquaintance to introduce them to one of their own contacts, but individuals within social circles tend to have similar backgrounds. Those with little money, education or power tend to lack *guanxi* (Interview 22). For example, one high-ranking government official I heard of had two children, both of whom he would bring to state functions. Many people within his social circle knew he had breached birthing policies but on paper his second child was recorded as the offspring of an acquaintance. His peers accommodated the open secret, and indeed only when an official family photograph was taken did his son stand to one side (Interview 38). In this way members of the state elite would collude, pretending to follow policies in accordance with protocol and higher echelons of authority. So while those with no connection to the state could avoid punishment as they had little money and no career path to lose, those with strong connections could use their network to attempt to circumvent punishment.

The larger the city, for example Beijing or Shanghai, the better connected one must be in order to exploit opportunities associated with corruption and collusion (Interviews 21, 23). With the right *guanxi*, hefty bribes would be paid to local cadres, who in turn would then reduce the social compensation fee, with a net resultant benefit to offending parents (Interviews 4, 14, 18, 20, 21, 22, 23, 24). Parents would then be able to register their children with a *hukou*. This avenue, however, was out of reach for most of Beijing's 21 million or so official residents. Particularly during the clampdowns on corruption led by Xi Jinping in his 'tiger and fly' campaign in 2013 and 2014, there was an increasing reluctance at all levels of government to accept bribes from anyone they did not know (Interview 21).

To make use of their *guanxi*, some parents living in larger cities would return to the small home towns where they had previously formed close friendships with people now in positions of power. For example, a state official can be an informal ally when parents seek help and advice, reminding us that the fragmentation in China's seemingly ambivalent state was utilised by those seeking documentation. Indeed Mr. Hong, a resident of Beijing who originated from a smaller inland city. Mr. Hong found an old school friend working in the Population and Family Planning Commission in that city, and after negotiating a bribe, the social compensation fee charged to Mr. Hong was significantly lowered, with a significant net saving to Mr. Hong. However, this accommodation resulted in a different problem, since Mr. Hong's child's *hukou* is now registered in another city and he is thus ineligible for education in Beijing (Interview 21).

Collusion, like evasion, is testament to the fragmented and sometimes seemingly ambivalent state discussed in Chapter Three. It highlights the on-going problems with corruption that the central government faces within the state. At the same time, it highlights the sometimes unachievable goals forced upon local governments by the central government.

5.3.3 Cover-up

If collusion was out of the question, cadres would tend to cover-up the transgressions within their jurisdiction to avoid punishment from higher levels of the state. When local

cadres were unable to implement centrally promulgated birthing policies, they would engage in statistical fiddling. For example, they would hide or embellish the truth when reporting family planning results to higher authorities. Data would usually be gathered in a census, or the *hukou* files. Thus, officials had an incentive to avoid registering children in situations where they had too many unauthorised births. Indeed, the stricter the restrictions on birth, the greater the falsification of numbers of births (Sharping, 2003, p.204). Statistical falsification in the birthing policy generally has already been researched in depth (Sharping, 2003, p.202). It is sufficient to say here that the trickle back of children into the statistics allows us to see who accessed the *hukou* later in life and in this way confirm cover-up of births as clearly a problem in China (Cai, 2013, p.385). In other cases, parents would be unwilling to reveal their children in census questionnaires, as seen in 2010, although the government claimed the census for the first time included some children without a *hukou* (People, 2013). In short, those who never enter the system cannot be quantified.

The dynamics of local cadre's resistance to central policy is also instructive in understanding the fluidity of negotiations over policies that takes place at various levels of the state. Cover-up extends not only to statistical deception, but also to how policy is implemented. In the late 1970s and 1980s local officials were also highly dependent on the successful implementation of birthing policies. Their promotion depended on their ability to limit births. Some denied the *hukou* to facilitate statistical misreporting of an area's birthing rates (Banister, 1987, p.238). Some police stations ignored their duty to register birth (Banister, 1987, p.239). Local officials could refuse to register 'illegal' births – even going so far as harassing those who attempted to register their children (Banister, 1987, p.239). Others simply delayed the registration by 100 days, assuming some babies would die within this period (Banister, 1987, p.428). These days I find no instances of cadre at the Public Security Bureau unwilling to register illicit children once a fine had been paid to the Population and Family Planning Commission. This is officially illegal, as all children have the legal right to birth registration regardless of whether their birth was approved by family planning cadre. Nonetheless, although the central state has moved away from strict implementation of birthing policies, local institutions still regard the social compensation fees as a vital source of funding for their operations. Moreover, there is an on-going lack of transparency over how the Population and Family Planning Commission and Local Governments distribute the

financial revenue from these fees, meaning that revenue is allotted to certain people and institutions who will oppose reform (Xinhua, 2013). Thus we can see the livelihoods of many people are still linked to the continuation of birthing policies. So street-level bureaucrats, in their own interests, can resist central policies to register all children regardless of the fines. One example that surfaced in QQ chats was how many officials within Zhejiang Province refused to implement the dispensation allowing parents to have second children under new policy relaxation (QQ chat 1 and 2).

5.3.4 Accommodation

Accommodation could be forced upon a low-level official as a result of intense pressure. Ms. Qi (Interview 23), the single mother from Beijing, sought extensive media coverage when she was hit with a fine for £30,000. Even if she paid, local officials said they would still refuse her child's *hukou* because the father could not be found. Ms. Qi, outraged but with no *guanxi* to draw upon, sought instead to shame her local officials through intense domestic and international media coverage. Media attention, she believed, would embarrass local Population and Family Planning bureaucrats, whose actions were strictly speaking illegal. The central government also sought to downplay negative stories surfacing about birthing restrictions, particularly since denial of the *hukou* is technically illegal. Prominent media discourse on the issue would indicate that local officials had been unable to implement birthing restrictions without resorting to illegal denial of documents. Although the practice was well known in China, media attention would force its embarrassing admission. She spoke to 12 different reporters, making sure her name and photograph would be used in all publications. The bureaucrats in the Population and Family Planning Commission, fearing bad press, offered to register the child provided her fine was paid in full. Ms. Qi, however, decided to wait until her child could be registered for free, realising that by continuing to speak out her resistance could be used as leverage to facilitate a better deal for how and when her child would be registered. This is an example of how resistance takes multiple forms; here giving birth out of wedlock without permission and then bargaining to avoid payment of the fine. The bureaucrats acquiesced when it became clear their position was not as strong as Ms. Qi's. Their fear of negative publicity was sufficient to persuade them to view documentation and the fine as negotiable. Other mothers who were less successful at leveraging negative media coverage had less opportunity to

create a bargaining position with the bureaucrats in the Population and Family Planning Commission.

However, accommodation can also be forced upon resisters. Mrs. Chen (Interview 3) pointed out that once a birth is unauthorised, the child will always be considered ‘born out of plan’. Given this, she preferred to fight back and sue her local government for refusing to give her child a *hukou*. Mrs. Chen stated:

‘My husband and I were not willing to contribute to the social compensation fee, no matter how much. Because it’s not reasonable...my husband and I planned to protect ourselves through legal means, that’s the road of litigation. But many friends... persuaded us, if the social compensation fee is bearable, we might as well pay the compensation and give our child the *hukou*... In China activism is too difficult, it’s too expensive, the success rate is too low, personal power is so weak, so often we have to compromise. But, my husband and I reserve the right to sue the local government.’

This illustrates the intense social pressure parents face from the state and their social circle. Accommodation would ultimately secure the *hukou*, while litigation has little chance of achieving this. While Mrs. Chen would like to have made a prominent claim against the state, ultimately accommodation to policies coupled with everyday resistance to the state’s right to control reproductive domain allowed Mrs. Chen to have, and register, her second child. Others had little alternative. For example, Mrs. Zhong (Interview 5) from Sichuan province could not afford the fine imposed for having a second child. Her husband, unemployed and unable to pay the fines, was temporarily held in detention. Fearing continued harassment, she considered selling her home or finding a loan shark from whom to borrow money.

Accommodation can also come voluntarily from local cadres, particularly in times of legal change or legal ambiguity. Note Mr. Li (Interview 7) from Guangdong, whose second child was born in 2012 and who faced a fine of 300,000 RMB (£30,000) – 4.5 times his family’s annual income. In March 2014 Guangdong changed its provincial regulations to allow parents with no siblings to have two children. As a consequence of

the aging population and gender ratio imbalance, some provinces were willing to exercise greater leniency, pre-empting the shift from a one-child policy to a two-child policy. As Mr. Li's wife was an only child they were theoretically allowed two children, but only if the second was born after the regulatory change. Following a bargaining process his fines were reduced to 1,200 RMB (£120). In this case the local Population and Family Planning bureaucrats were willing to accommodate Mr. Li's past transgressions. As parents with two children discovered, at least in more lenient provinces, those entitled to two children after the 2013 policy change had a bargaining tool. While their children were born without authorisation, some local cadre empathised with them and significantly reduced the fines. In such instances the negotiations were propelled not only by resistance, but also by empathy, looser provincial regulations and different local economic conditions. Likewise, when payment of token fees was offered, most parents felt this to be a relative bargain and would accept the offer –forsaking their previously principled resistance.

5.3.5 Disregard

Other parents who disagreed with the local implementation of birthing policies would simply ignore the government altogether and try to raise their children without state help. Mrs. Qiu (Interview 1) from Sichuan province was so angry about the £9,000 fine imposed upon her family that she said she would rather hide the child from her husband's work unit (which was connected to the state) and raise the child herself. Her sentiments reflected a common discontent – that birthing policies nowadays are simply a tool for local government to make money, particularly after the 2013 policy change. Ignoring the state is a final tactic to avoid fines. However, I found this view tended to change as the implications of being without documents became more and more apparent with each year the child grew older.

There was an almost ubiquitous feeling that local government would misuse birthing restrictions. The extent to which they would blame the central state varied significantly. One respondent claimed that the problem lay with those who initiated the policy. 'Those people who developed it are sons of bitches' (Interview 9). Another parent complained that 'there is a big difference between central government policy and that passed by the process to local government. They change the policy. The central government knows

about this, but they just keep one eye open, one eye closed. In many places the Population and Family Planning Commission does illegal things, but the central government has done nothing' (Interview 10), a similar view to that expressed in Interview 12). Others believed that the Provincial governments charged unfair fines (Interview 14) thereby corrupting reasonably fair central policy on birthing restrictions.

Disregarding the state, as in the case of evasion, would normally only be a temporary measure for parents of *chaosheng*. I met Ms. Cheng (Interview 24), a single mother from Beijing, with her third child approaching the age of five. She had not informed the authorities about the existence of her child because she was aware that the fines she faced would probably exceed £80,000. Her inactivity was born of a sense of futility. Not only were the fines unaffordable but also the child's father refused to be linked to the registration, which could prevent the daughter from obtaining *hukou*. She connected with other mothers in a similar situation and guided by Ms. Qi's activism was looking for media interviews. In this way, Ms. Cheng was in waiting and seemed willing to reengage with the state once she was in a relatively more powerful position. So, turning their back on the government seemed to deliver partial success, particularly for groups with few alternatives.

5.3.6 Mr Gao's resistance

While the above tactics can be disaggregated, in practice I found that it is common for people to switch between tactics, or use a range. Mr. Gao was one person who I met who described this when we met.

It was early September in Beijing when we met. After work on Wednesday evening, white-collar workers swarmed into small 'home style cooking' restaurants and street-side food stalls. I, on the other hand, picked my way through the crowd to meet Mr. Gao in a 'Mexican' restaurant located on the ground floor of a central Beijing shopping mall, filled with 'Western' brands suspiciously unheard of outside China. Unlike many other parents that I had interviewed Mr. Gao (Interview 21) was smartly dressed in grey suit trousers and a light blue shirt. His softly spoken *Putonghua* (standard Mandarin) gave away his university education; not a trace of his home Shanxi provinces accent could be discerned. He seemed at ease, sprinkling his limited English vernacular into conversation.

Mr. Gao explained that he continued to live in the apartment he owns in central Beijing, while his wife and children live on the outskirts of the city. His wife struggled for years to fall pregnant, eventually conceiving their first child with the aid of IVF treatment. Then a few years later their second child was conceived accidentally; they had seen little need for contraception. As urban citizens the couple were only allowed one child and their second is thus considered to be a '*chaosheng*' – a child born without state permission. His daughter was difficult to hide, even in Beijing's concrete metropolis, because Mr. Gao and his wife resided in an apartment complex reserved for his now ex-work unit, bought when he was still a researcher in a prestigious institute. Housing was provided at a subsidised rate, a common perk for state employees. All staff in his work unit were given a bonus for compliance with birthing policies, dependent on the entire unit's obedience to the policy. Hence the employees kept a close watch on each other. Mr. Gao tried to ensure no one would discover his wife's second pregnancy, attempting to conceal his wife's ever-growing bump. But an intrusive elderly lady who volunteered as the 'building monitor' quickly spotted his wife's condition. Excuses about 'putting on a few pounds' were to no avail. The neighbour informed Mr. Gao's superiors of his wife's suspected pregnancy.

After Mr. Gao's wife fled Beijing he was forced to quit his job, taking a junior position in a tech firm. He had attempted to deceive his work unit with the results of a negative pregnancy test procured at a hospital, but the work unit would accept nothing other than the return of his wife to undertake the test in person. Moreover, Mr. Gao still faced the challenge of registering his child's birth and securing her hukou. He would be expected to pay a fine to his local Population and Family Planning Commission, somewhere between 400,000-800,000 RMB (£40,000-80,000). Pending a decision on his best course of action and to ensure both children could receive an education, the family moved to the countryside outside of Beijing where no questions would be asked. Unlike in Beijing centre, village schools rarely bother to check documents. Mr. Gao visited his family on weekends. There were (ultimately accurate) online rumours that the one-child policy would soon be relaxed. As Mr. Gao said: "I'm not a *dingzihu*, if I can avoid being a *dingzihu* I will. I don't want to be a hero. I'll wait for change." *Dingzihu*, literally meaning 'nail house', refers to situations where the state requisitions land and some citizens refuse to move. As other houses are knocked down around them, their

homes stand out on the landscape like a nail. It serves as a modern day symbol of Chinese resistance and is now used to describe ‘shrewd and unyielding people’ who start protests and overthrow local leaders (O'Brien and Li, 1995, p.756).

Remove for copyright

Figure 4 A nail house, Wikipedia (2016)

Despite his repudiation, Mr. Gao had already forged a path of political resistance by choosing to keep his second child. It was, however, a path he sought to obscure from the government. Although he distances himself from *dingzihu* – overt political resistance – he epitomises the prevalent but hidden resistance of many parents with whom I spoke. Their resistance was not directed against the political regime as such but against the restrictions on their birthing rights. Their concern was never framed in terms of nationality or directed against central government itself. Rather it was around issues such as their children’s schooling, the fine they might face or avoidance of sterilization, as well as perceived corruption and a pervasive sense of unfairness about how their transgressions are punished. As Mr. Gao’s comment implied, the parents and guardians were fully aware of the continuum of political resistance that linked them and *dingzihu*. Their resistance, however, was positioned around avoiding street-level bureaucrats, using fractures in the seemingly ambivalent state while awaiting central government policy change.

Political resistance in relation to birthing choices in China is not always immediately observable to Western spectators lacking an understanding of the political nature of reproduction in China. The policies discussed in Chapter Three were implemented on the ground in a variety of ways. Birthing policies, for example, have impacted the greatest number of children, but implementation was shaped by local governments. So parents not only resist the policy itself, but also create a dynamic repertoire of resistance

according to policy implementation at the time and place of implementation. Thus until the 1990s the state created mass ‘mobilizations’ for sterilization and abortion to ensure compliance with birthing policies (Arid, 1990, p.16). Parents would resist ‘heart-to-heart talks,’ where cadres commonly encouraged non-compliant women to insert an IUD, to submit to sterilization or abort their pregnancy (Arid, 1990, p.17). Nowadays, as China has moved away from coercive implementation, the system is predominantly based around ‘normative, remunerative and administrative coercion’ (Scharping, 2003, p.8). This transition is aptly summarized by Scharping:

‘In former times it may have been zealots demolishing the houses of pregnant women and their families - today it may be the marshal who...will knock politely yet commandingly at the door to present the writ of execution and to confiscate personal belongings of families violating birth-control norms.’

Thus in Mr. Gao’s case, resistance would be take many forms: against the street-level bureaucrats whose bonuses were linked to birthing restrictions, as well as against the self-policing within the work unit carried out by employees and their family members - the elderly lady who monitors his wife’s expanding stomach, a work unit that demands a pregnancy test and the bureaucrat who collects fines.

Thus we observe a multitude of ways in which people attempt to manoeuvre around state policies. Resisting with accommodation, negotiation and strategies of evasion, collusion, cover up, accommodation, even complete disregard of the policy and its consequences. All operate within the politicised realm of reproduction yet illustrate a performance of political voice through resistance. Mr. Gao’s response is evasion, while Ms. Qi demands state accommodation. Others collude with the state, cover up their transgression or disavow the state. Nowadays, documentation denial is also not absolute, but dependent rather on the payment of a monetary sum which parents must themselves decide to pay, thereby acquiring partial responsibility for creating a risk of statelessness. Indeed some are unable afford the fine, but many make a conscious decision that the economic burden is not a worthwhile sacrifice.

5.4 Hidden transcripts

The various forms of resistance together allude to a shared discontent. Each is a manifestation that follows a deep pattern of questioning over the entire process of the state's right to control reproduction, or more often local bureaucrats' right to enforce penalties over perceived transgressions. Since the enforcement of policies is seemingly arbitrarily applied, resistance is targeted towards the local government while simultaneously positioned against national policies. The problem of enforcement was a recurrent topic in conversations with parents, yet when speaking amongst each other on QQ they probed more deeply the concepts of birthing policies themselves. This points to diverging narratives for multiple audiences and deeper group led narratives of conceptual resistance. It led me to question how groups performed their narratives for various audiences and what shared resistance could be identified in the various dialogues. In this way, I believe, we can contextualise how negotiations over documentation take place.

Scott's (1990, p.4) work on hidden transcripts – speeches gestures and a range of practices - is instructive to understanding this 'offstage' discourse. Scott describes how (1990, p.2.) public transcripts – open interactions between elites and those they dominate – are used as a result of their fear, caution or self-interest. Scott (1990, p.19) shows how hidden transcripts can be disguised with double meaning, cloaked in government rhetoric and able to subvert state discourse. The subversion is a tacit societal endorsement of the various forms of everyday resistance that I discussed above. I found these online dialogues in chat rooms devoted to discussing birthing politics, employing state rhetoric and twisting discontent into jokes. It became difficult to identify the originator of the jokes as they were rapidly shared by numerous people across the Internet in different chats. Pictures were used, since they would not be flagged up in government key word searches, allowing illicit information to circulate freely. Common identity could be formed between participants without revealing personal identities. In one way this confirms Scott's conception of everyday resistance. At the same time, the web of contacts through an online community hints that resistance is no longer necessarily fragmented. It was also revealing that state employees who themselves had broken birthing regulations were among the participants within the forums. Tellingly, those who work for the state were sometimes involved in discourse that mocked the 'state' and 'birthing policies.'

Some forms of mockery of state policies could be quite sophisticated, designed to capture the imagination and to be shared. They employed state ideals to undermine state actions. Take the following example: the poem of symmetrical form mirrors classic poetry; the author plays with form and words to make a scathing attack on birthing policies:

家里只有一个娃，出了事故绝后啦。要是多生几个娃，长大还能养爸妈。
娃娃长大又生娃，传宗接代不愁啦！要是家里多娃娃，没人欺负咱们家。
多生几个男娃娃，送去当兵保国家。要是没人生娃娃，谁来保卫咱国家？
要是国内太多娃，送去国外就行啦！到了国外再生娃，中华势力扩大啦！
贫穷不把经济抓，却不让人生娃娃。拉动内需靠娃娃，工厂停工怨谁家。
民工荒归咎娃娃少，计划生育还在抓。教师也都失业啦，因为学校没娃娃！
每家只有一个娃，老了只能靠国家。没有娃娃养国家，国家怎养老人家？
一对夫妇一个娃，每代减少一倍娃。好像温水煮青蛙，汉族快要灭绝啦！
不让国人生娃娃，工厂招不到人啦。无计可施问专家。专家说请外劳啦。
非洲黑人来安家，生下许多黑娃娃。还有白种洋娃娃，印度阿三也来啦，
合伙欺负咱家娃，五胡乱华重演啦！引狼入室害大家，后悔已经太迟啦。
家家只有一个娃，谁敢当兵保国家？丢了果敢丢南沙，国土资源更少啦。
放弃领土不生娃，快要亡国灭种啦！为了保住咱国家，计划生育别搞啦！
谁嫌中国太多娃，请你别生一个娃。若说人少利国家，快快毒死你家娃

(QQ chat 3)

Roughly translated the poem satirically argues that more children mean parents will be supported in old age; more boys supply more soldiers to protect China; more children grow more workers; more children mean more money spent and benefit to the economy. If the population reduces sharply in one generation, while the populations of other races grow faster, China will be weakened. The humour of the subversive poem is particularly biting because it lampoons China's initial use of birth limitation as part of its own state policies to develop the economy. As Scott (1990) predicted, state discourse – on economic and military strength - was used to undermine their own (birthing) policies.

Others would share photographs, not only to evade censorship of key words, but also to illustrate a striking point. For example, Figure 2 demonstrates international opposition to Chinese birthing policies, depicting an American ‘pro-life’ protest against Chinese forced abortions. These pictures serve to flag international support for their cause, emphasising what the sharers believe to be the unscrupulous nature of some acts perpetrated against Chinese citizens. It suggests their resistance is part of a ‘shared community’ of those who believe in human rights.

Remove for copyright

Figure 5 Americans protesting forced abortions in China, shared on QQ chat 3 and 4

Other pictures are used to mock political leaders. Below is an image of prominent politicians involved with birthing control policies. The poster labels them as dogs and is accordingly decorated along the bottom with images of dog faeces.

Remove for copyright

Figure 6 Political satire of Population and Family Planning Commission's leaders, shared on QQ chat 4

Further pictures seek to shock and undermine public opinion of birthing policies. The picture below, depicting a woman eating a baby, is symbolic of political-led violence and forced abortions. Its meaning is linked to a common Internet joke: the central government eats taxes, the provincial government eats land and the local government eats babies. This refers to the way in which different administrative levels of governance derive their revenue. Local governments derive revenue from social compensation fees.

Remove for copyright

Figure 7 Picture depicting the local government eating a baby, shared on QQ chat

4

I found that many parents and guardians were aware of how to best present their respective situations within different narratives, depending on their audience (e.g. their contemporaries, or myself). For example, in our interviews, Ms. Qi's eyes were filled with tears of rage as she emphasised the hardship she had faced through denial of documents (Interview 23). Yet she hid from me the fact that the local government had offered her a bargain, namely that she could register her child on condition she paid her fine, something I was told by her friend in another interview (Interview 22). Amongst others in chat rooms she tried to mobilise resistance and encouraged other mothers to fight for their rights (QQ 2). In collection this illustrates their hardship and the vulnerability, but also the potential for agency. By way of further example, in my interviews most parents would focus on their objection to local government's implementation of the law. Yet QQ chats showed the overwhelming disgust with national laws and local implementation alike. Mr. Wei, with whom I talked privately (Interview 6), told me it was impossible for him to register his child, yet in a group chat he advised a man struggling to obtain a *hukou* for his child that with the right contacts the *hukou* could be bought and gave advice on how effect this. Thus everyday resisters could frame their rhetoric according to different objectives.

As well as propagating broader everyday resistance, these discourses themselves illuminate hidden transcripts. The 'discursive affirmation' of resistance further undermines the state's policies (Scott, 1989, p.56). In forums where their identity is submerged, everyday resisters can make use of potent symbolism to undermine the state. When they are discussing issues one-on-one, they might deploy different narratives to different audiences. To a researcher they highlight their helplessness, to the state they may feign deference and to each other they can stimulate resistance.

The online communities also hinted that, with the aid of the Internet, everyday resistance could become mobilised and unified through imagined communities. Although leaderless, the group discussions were formed around a common theme or topic. In this way there was already a set of likeminded people. While anonymous, they had a sense of interconnectedness. I will draw out this potential in the next chapter.

5.5 Why parents have children without permission

When discussing *chaosheng* or *heihu*, the enduring explanation has been that the birth of a male child, which is desired for parents to continue the family name, is still of utmost importance in the countryside. More generally, having children was seen as a defense against weakness, bullying and abuse by more powerful families (White, 2006, p.199). Traditionally China was (and in many places still is) a patriarchal society. While childbearing is considered to be a female domain, the children are seen to give continuation to the male bloodline. Thus there remains the motto ‘bringing up sons to support parents in old age’ and ‘carrying on the family line’. Traditionally, having no heir is the gravest offense against filial piety, while continuing the family line is a mandatory responsibility.

Male children not only carry the family name; they are still seen as providers in old age for the family in many rural areas. Even as the government pushes a new pension to cover rural citizens, it is far from adequate to cover their needs (Tao, 2016). Consequently, the burden of elderly care is legally and socially placed onto a child or children. A reading of the 1996 law on the Protection of the Rights and Interests of the Elderly indicates in Article 10 that ‘The elderly shall be provided for mainly by their families, and their family members shall care for and look after them’. Article 12 purports that ‘The supporters shall pay medical expenses for the elderly suffering from illnesses and provide them with nursing care.’ In Article 13, ‘The supporters shall properly arrange for the housing of the elderly and shall not compel the latter to move to inferior houses.’ Thus the children, by Chinese law, are compelled to look after their parents’ medical, financial and care needs. Following a series of reports about elderly parents being neglected by their children, this law was amended in 2013 in order to strengthen the obligations required by children, stating in Article 15 that ‘the supporters shall not refuse to perform their duties of providing for the elderly on the ground that they will give up their right of inheritance or for any other reasons’.

These arguments are indeed compelling, but reductive. My own findings presented a more complex overview of the motivations involved. This research indicated that people also did not believe government policies and rhetoric to be correct. Some parents did not want to have an abortion, or their children had not been planned. Others were divorced and the child remained with the father. For them having a second child was a

second chance. In some cases, people believed they had the right to make their own birthing choices. Many did not realise the extent of the hardships they would face by choosing to have a second or third child. With sex-selective abortions more prevalent, the desire for a male child was not the sole driving force of *chaosheng*. As Johnson (2003) states, parents adopt for various reasons, often desiring a girl and a boy, while children could be a source of comfort or necessity for North Korean women living in rural China. Orphanages could be run with a great deal of compassion and even spiritual belief. For as many girls were abandoned, many were illicitly adopted, indicating there were those who attached importance to having a daughter. My findings were that *heihu* could not be solely attributed to parents' desire for male offspring. Rather, their resistance was founded on the belief they should be entitled to have more than one or two children, regardless of state regulations. In so doing, they implicitly rejected the notion that the state should have the right to punish them for their actions with such a heavy hand, if indeed at all.

The complex and varied reasons that give rise to parents having children without permission shows the limits imposed on their scope for agency over birthing choices. Often parents or guardians felt vulnerable and, like Mr. Gao, tried to avoid being seen as political resisters. Nonetheless, the political context in which they became embedded lead them to be categorised as such.

5.6 Discussion

What can we export from this detailed case study to a broader discussion on the risk of statelessness? Chinese *heihu*, as a population at risk of statelessness is unique insofar as it represents a connection between nationality and documentation issues and the society's 'rationalized governance of its own reproduction' (Greenhalgh and Winckler, 2005, p. 19), through legacies of population policies. China's exceptionality was recognised by many Chinese people that I spoke to online, who would question whether I could understand the complexity of the Chinese case study and would preface explanations with *Zai women Zhongguo*.... "In our China...." ...things are like this.

Mr. Gao's assessment of his political resistance illuminates a specific form of documentation denial based on punishment. Yet his story exposes a broader finding:

that being at risk of statelessness and becoming documented is not only concerned with state legislation. It is derived from dialogue, dissidence and resistance in spaces of legal uncertainty with street-level bureaucrats, embedded in regulations from local and provincial governments. In China, this was perpetuated by self-policing from those around him. For this reason we find uneven denial of documentation in China. Mr. Gao's story exposes the relationship between documentation and negotiation with a seemingly Chinese ambivalent state in which some people are denied documents, some charged high fines, others low ones. Some people find ways to document their children and others struggle unsuccessfully to do so. In an iterative relationship, parents' attempts to obtain documentation can entail quite different strategies, only some of which are successful.

Perhaps unique to China, then, was the form of negotiations founded on resistance. Negotiation over documents was facilitated by connections between parents across China, but remained quite 'hidden' (Scott, 1985) in many cases. Groups where parents could seek advice or information and subvert state rhetoric underscored acceptance of everyday forms of resistance and cultivation of hidden transcripts (Scott, 1990). The transcripts between parents without a *hukou* allowed us to glimpse an adamant resistance to the 'dogs' that attempt to restrict their birthing choices. Playful, and less playful, subversion of state rhetoric nourishes what could become an 'imagined community' of online resisters across China. While everyday resistance would once have been based on whether it was accepted by your neighbours or your village, it can now be compared to actions by people millions of miles apart. In this sense everyday resistance is hidden, but can stretch beyond Scott's original conceptions because citizens who are geographically fragmented can now overcome this fragmentation. Yet spaces for negotiation and the role of street-level bureaucrats are not a uniquely Chinese phenomenon, as literature in Chapter One indicated.

The chapter reminds us that documents are only as important as the system of documentation and the doors the documents are capable of opening. In China, parents do not need to document their children immediately; it becomes more urgent as the child grows older. This reconfirms the point that resolving situations where people are undocumented becomes most urgent when documents open access to rights and resources, either for citizen or someone with proof of legal personhood. Other studies

have confirmed documents are not an end goal, but a means to realise other ambitions. Allerton (2014, p. 26), for example, has argued that stateless children in Sabah who could be recognised as citizens by a parental country of origin prefer to remain undocumented and to wait (perhaps indefinitely) for the Malaysian citizenship they perceive as rightfully theirs. We see that ‘documents become embodied in forms of life through which ideas of subjects and citizens come to circulate among those who use these documents’ (Das and Poole, 2004, p.16). It is illuminative that documents and being ‘at risk of statelessness’ seem to matter the most in a system heavily dependent on a well-oiled civil documentation system. Vulnerability is created through being in a minority of undocumented persons. Their concern is greatest when documentation is most needed for everyday life. This goes some way to explaining why the Chinese population is unevenly impacted by documentation denial. One facet is that documents become more urgent as the child grows up.

The other facet is that, as in many other cases of stateless populations, being at risk of statelessness is one manifestation of a broader problem. As discussed previously, in other countries this might result from society wide discrimination; in China it is due to state politicisation of birthing, adoption and immigration. Becoming documented is only one concern for people facing restrictive controls over their birthing choices. Thus parents take different routes to becoming documented, with varying results. The role of family rather than individuals in addressing documentation denial is particularly salient in China.

Finally, the chapter illustrated that exclusion is not a fixed category. Parents of *heihu* negotiate, bargain and collude with state officials. While documentation is sometimes denied, more often it is set at an exorbitant price, forcing us to rethink what ‘denial’ of documentation really means, or where the threshold is established. It points to a process where negotiations strongly factor in the considerations of both government and parents.

6. Becoming Documented: Rightful Resistance and Virtual Networks

6.1 Introduction

In this chapter I explore what happens when everyday resistance does not succeed in documenting a child in China. How do parents then proceed in their attempts to negotiate documentation? Drawing on my interviews and online participant observation, I put the literature on Chinese political ‘rightful resistance’ introduced in the last chapter (O’Brien and Li, 2006) and Internet activism (Bennett and Segerberg, 2012) into conversation with literature on statelessness. In doing so, I explore a Chinese case study of how some parents secure documents for their children through rightful resistance and how this mobilisation is facilitated by the Internet. This intersects with broader scholarly conversations surrounding the concept of being ‘at risk of statelessness’. In particular, it expands our understanding of the types of document negotiations that can take place and why only some people succeed in becoming documented, thus creating an unevenly documented population. Becoming documented is not a moment in time, but rather a space of contention and an outcome of negotiations. This argument is informed by the theoretical commitment that nationality is not always a ‘true’ status to be uncovered, but a status one claims and which is recognised in some way that renders it meaningful (Staples, 2015, p.57). When discussing populations at risk of statelessness, understanding the process of becoming documented is as crucial as understanding nationality laws. In this chapter I will explore the concept of ‘becoming documented’, emphasising the process of becoming recognised as a national rather than any particular moment in time when a document is obtained. I will illuminate how becoming documented is a site of performance, contestation, a vehicle for making claims, or a means of eluding the state.

My aim when studying statelessness is to look beyond policy and legislative barriers. This chapter focuses therefore on what people *do* to become documented or avoid being documented, rather than conceptualizing them as recipients awaiting documentation. In this way I provide a more nuanced understanding of what separates persons in China with documentation from those who are without. As discussed in Chapter One, Redclift (2013, p.7) proposes that citizenship is not a fixed category, but rather can be found in ‘political spaces’ which are claimed in everyday life. Likewise, ‘statelessness’ is a

constructed status which in reality is ‘varied and unstable ... it cannot be fixed as a condition of marginality. It is a social and political space which has at its core not only subordination and control, but also ambivalence, contestation and resistance.’ In China too, overt resistance to denial of documentation challenges the marginality of those facing the risk of statelessness. It claims political spaces in the form of ‘rightful resistance’.

My approach builds on scholarship within the fields of human geography and sociology which have already highlighted the agency involved in ‘becoming’ documented. While political and legal statelessness studies tend to view people without nationality as unable also to influence their nationality, some studies lead us to challenge these assumptions. To briefly reiterate the literature covered in chapter one, Sadiq’s (2008) work on ‘paper citizens’ in particular is illuminative of how migrants illegally obtain paperwork that can confer citizenship on illegal immigrants. By appropriating these papers, becoming documented provides a path to citizenship. This approach highlights the manipulation of paperwork which gives agency to non-citizens. In a similar vein, Reeves’s (2013) work on clandestine migration from Kyrgyzstan to Russia highlights the fact that use of fake documentation depends not only on the document’s appearance but also on how ‘bodies’ are scrutinised as trustworthy, with migrants having to perform credibly in order to convince government officials that their papers are indeed genuine. Finally, while choosing to be undocumented might seem counterintuitive, we are reminded that for those in question ‘resolving’ situations of being undocumented entails a series of considerations. Allerton (2015, p.1), in her reflections on statelessness in Malaysia points out that ‘membership of a state entails risks as well as possible benefits’ and even ‘stateless people may exercise agency in ways that prolong rather than resolve their situation.’ Focusing on stateless persons in Sabah, Allerton notes that becoming documented as a non-Malaysian could lead to lifelong denial of Malaysian documentation, which undermines a family’s goal to become Malaysian citizens. Collectively, this literature highlights how non-citizens can also exercise agency around documentation and spaces of legal uncertainty. Extending this logic to China, I suggest that the strategic value of becoming documented leads some to employ rightful resistance to secure documentation, while others hold out for certain conditions before accepting documentation. The focus is from the perspective of those who are denied

documents but implicitly builds on the relationship and interactions between the people in question and the government officials with whom they interact.

I develop two interconnected arguments in this chapter. First, I argue for the need to attend empirically to negotiation over documents as a crucial factor in determining who becomes recognised as a documented national. I do not only mean by this that parents use rightful resistance to facilitate their child being documented, although this is one facet of the argument. It is equally important to examine the way in which the rightful resistance of one person can have a knock-on effect on other families through the internet and how rightful resistance, in symbolically leading others to fight the government, can be as important as the registration of their own child. Within this argument is recognition that the Internet is continuous with other social spaces, as well as a part of life (Miller and Slater, 2000, p.4-7). Second, when taken in the broad context of the previous chapter, it brings everyday and rightful resistance into the same analytical framework. A person can operate both forms of resistance in their lifetime and the two types can operate simultaneously. This goes beyond previous work, such as that of Walker (2008), who questions why societal resistance in China has shifted from everyday, hidden actions to overt resistance. Rather, I suggest that both continue to exist at a personal and societal level. Not everyone does manage to become documented, so who can exercise agency over documentation does depend on broader policy constraints.

This chapter proceeds as follows: In Section Two I review rightful resistance and how empirically this surfaced in negotiations over who became documented. Section Three moves towards understanding how the internet has facilitated rightful resistance through What Yang (2006) disaggregates as information, symbolic, leverage and accountability politics, as well as reviewing how this manifests empirically. Section Four examines what happens when people cannot obtain documentation. Section Five discusses the broader implications for discussion pertaining to the risk of statelessness.

6.2 Overt ‘rightful’ resistance

Ms. Pan found Lili on the doorstep of her home close to Guangzhou maternity hospital (Interview 26). She decided to take in this abandoned baby of half African, half Chinese descent. Perhaps the biological mother thought that someone would take pity on Lili

and probably chose to leave her where she did because Ms. Pan resided in a decent neighbourhood. After making inquiries at the nearby hospital, Ms. Pan discovered that Lili's biological mother was single and perhaps therefore did not want to raise a child alone, nor face the inevitable fines for having given birth out of wedlock. For the first few years of her life, Lili was undocumented. Ms. Pan, using *guanxi* (personal relationships), in the central Chinese hometown where she used to be registered, eventually succeeded in registering Lili's birth. Although years previously she had transferred her *hukou* to Guangzhou, it was her only option to register the adopted child. So finally, at the age of three, Lili had a *hukou*. However, Lili's *hukou* was not registered in Guangzhou nor connected to Ms. Pan's own. This meant that Lili could only access healthcare and education in the town where Ms. Pan was registered. Ms. Pan thus needed a way to relocate Lili's *hukou* to Guangzhou order for her daughter to enter the education system.

Despite these challenges, Lili's is in many ways a success story. Through a mixture of chance, luck and bribery Ms. Pan succeeded in having her documented. What happens though when negotiations fails to yield documentation? In the previous chapter I discussed the relationship between statelessness and everyday resistance. However, some of the stories that I collected were without a satisfactory conclusion; the children were still left without documentation. We know statistically that many children eventually do obtain documentation since they reappear in the census ten or 20 years later (Cai, 2013, p.385), I was still unclear as to what strategies parents used when their localised, everyday resistance failed. While in some circumstances families saw no option other than to wait, others would take the situation into their own hands.

While most of the individuals or families I met resolved documentation through everyday resistance, some were perpetually unsuccessful. These families suffered as their children continued to be undocumented and thus at risk of statelessness. I found that after a period of covert attempts to document their child, some would turn to noisier forms of protest. They might be labelled '*dingzi hu*', the status from which Mr. Gao in the previous chapter sought to distance himself. It became clear to me that resistance lay within a spectrum where escalation of tactics largely depended on both the ability to voice discontent and the perceived benefit to the resister. All rightful resisters or '*dingzi hu*' that I met began with a strategy of everyday resistance.

‘Rightful resistance’ is a concept developed by Kevin O’Brien and Lianjiang Li (2006). It typically focuses on peasants who mobilise against local authorities in a specific geographic area on issues such as official corruption, environmental pollution, predatory taxes and economic misappropriation. Rightful resistance attempts to explain on-going rural protest in China that, although at times violent and explosive, has done little to cause instability to the CCP centrally. O’Brien and Li (2006) theorised ‘rightful resistance’ as noisier than the everyday resistance (O’Brien and Li, 2006, p.xii), occurring when peasants collectively make demands on their local government by citing central laws and policies which they believe are ignored by their local leaders. O’Brien and Li (2006, p.27) claim that rightful resistance is a consequence of China being a multi-layered state, whereby local level officials can choose whether or not to implement higher level commands. This confirms the limits of CCP power in implementing policies through China because leaders in Beijing rely on lower level officials to implement their policies. Their theory speaks to the seeming ambivalence of the state as well as the spaces for negotiation that street-level bureaucrats can offer. While the seemingly ambivalent state can constrain policy implementation, resisters can harness the fragmented state for their own agenda. Protesters often seek the attention of higher echelons of power to impose order in their locality (O’Brien and Li, 2006, p.68). In other words, the seemingly ambivalent state gives rise to the conditions for rightful resistance. In this way, we see the use of legal channels to oppose the state. When legal forms of resistance fail, violent clashes can ensue (O’Brien and Li, 2006, p.3, footnote 1).

I first encountered an example of what I later recognised as rightful resistance, following a two-hour journey into the suburbs of Beijing to meet Ms. Huang (Interview 22). I arrived around 11:30 am, lunchtime. After a warm greeting she disappeared into the kitchen to cook a six-dish lunch. Over the course of the meal, Ms. Huang explained her situation. She had a daughter from a previous marriage that had ended in divorce, who in accordance with patriarchal tradition had remained with the father when the couple split up. Sometime later Ms. Huang met her most recent partner, with whom she had a child. Although they too split up after their son’s birth, they remained on good terms up until the time the father became ill and passed away, a year prior to our meeting.

Ms. Huang had faced a large fine for having a child out of wedlock, and also because both she and the father had a child from previous relationships. Her son was considered *chaosheng* ('over quota' birth) and the fine of 330,000 RMB (£33,000) dwarfed her monthly salary of 3,000 RMB (£300). Ms. Huang had unsuccessfully tried over the years to register the child, her attempts to bargain with the Population and Family Planning Commission and the Security Bureau yielding no result. She had met with the family planning authorities, provided material such as the death certificate of the father and requested a reduced fine, but met with refusal. As Ms. Huang had little money and did not own a house, the authorities could do nothing to collect the fine, but continued to deny her son the *hukou*

Ms. Huang's desperation was palpable. She would never be able to afford the fines and her partner was deceased. Her son, at that time eight years old, was attending a local school that overlooked his lack of documentation. Street-level bureaucrats such as teachers and educators do have the ability to overlook absence of *hukou* registration and in places where migrant workers live, or places under less scrutiny from the local government such as the poor fringes of Beijing, open spaces exist within which the seemingly ambivalent state can operate. In order to enter secondary school, though, her son would probably need to show documentation. Any school that did not request documentation would not prepare him for high school leaving examinations, called the *gaokao*, the prerequisite for attending university. Yet the authorities, she said, insisted that this was the minimum fine they could charge. Even her attempts to sell her kidney in order to raise money were unsuccessful, she claimed, as she was too old.

Ms. Huang decided to sue her local Population and Family Planning Commission branch within Beijing. Not only did she lose, the court ordered that Ms. Huang pay the fine within two months. Again this could not be enforced as Ms. Huang had neither money nor assets Finder (1989, p.10) draws the analogy that administrative litigation in China is akin to 'throwing an egg against a stone.' At the time of our meeting, Ms. Huang was preparing to take her local police station (*paichusuo*) to court for refusing to register her child since birth registration should, by law, operate without reference to birthing policies. O'Brien and Li (2004, p.78) point out that officials often undermine cases before they can reach the court. Despite the apparent weakness of Ms. Huang's

situation, she set a course of resistance through legal channels, supported by on-going international and some domestic media attention that she had garnered. Ms. Huang had moved from anonymous hidden resistance of the everyday to resistance that seeks publicity, although clearly still far from being revolutionary. She sought to hold officials at Population and Family Planning Commission and the local police station accountable to national laws on birth registration.

China's legal institutions have mostly been constructed since 1978, as the economy started to open and China began to repair the damage of rule under Mao, in what has been termed a 'legal renaissance' (Zhu, 2011, p.1). Yet concurrently, legal changes were based on domination by the CCP leaders (Dicks, 1989, p.542), while superficially borrowing from the Western legal system without the underlying principles (Foster, 1982, p. 428). It is thus unsurprising that Chinese law cannot be understood through a liberal democratic framework and should be understood rather in a Chinese context (Peerenboom, 2002, p.4).

Broadly speaking, scholars agree that in China there is a rule of law that at least imposes meaningful limits on state actors (Peerenboom, 2002, p.5). Law is dominated by the CCP, as the legal system does not separate legislative, administrative and judicial powers. Yet, over the years, party leadership's control over law has become less centralised. At the same time CCP leaders have been more ambiguous in their wishes, allowing greater latitude for legal interpretation (Tanner, 1994, p.403). This is very much in line with Stern's (2013) findings on environmental litigation. Hence the model of the ambivalent state, because as legal control became decentralised interpretation over CCP leaders' aims came to be based on conflicting signals, particularly as different factions and bureaucracies might have different views. This ambivalence was not seen in cases of *heihu*, and those few such as Ms. Huang who tried to sue their local government were unsuccessful.

As noted by O'Brien and Li (2006, p.4), 'Rightful resisters aim to mitigate the risks of confrontation by proclaiming their allegiance to core values [of the state] rather than by opting for disguised dissent.' In this case Ms. Huang claimed the supposed right of all children to be registered at birth, something inscribed into Chinese law. If this law were indeed followed it would undermine the ability of the Population and Family Planning

Commission to impose birthing fines, especially when *hukou* denial is the main bargaining chip to enforce payment. Thus the legal theory and practice were not aligned, which gave Ms. Huang a space in which to pursue legal action. This reaffirms the spaces within an ambivalent state that can be appropriated with legal backing.

Rightful resistance is said to occupy a space near the boundary of authorised channels of resistance, at times overstepping what is permitted – known as boundary-spanning (O'Brien and Li, 2006, p.49 and 51; O'Brien, 2003). Ms. Huang, using legal channels as well as employing media attention to protest against her treatment, could be one such example. In general resisters walk a tightrope, using state rhetoric against the state itself. Unlike in countries with developed rules of law where there is a clear separation between legal and illegal, in China the permissible is contested and 'contention over what is contentious reaches deep into the state' (O'Brien, 2003, p.53). When provinces promulgate different laws and street-level bureaucrats interpret laws and policies in different ways, legal channels offer a less certain path than would be the case in the West. Resistance thus contrasts with the traditional view of collective revolutionary action (O'Brien and Li, 2006, p. xii). In this way rightful resistance challenges political practice, but without challenging the legitimacy of the CCP. The central government tolerates the low level subordination because it allows the central state to keep watch over any local authorities that misuse state power or ignore central policy (O'Brien and Li, 2006, p.32). Rightful resistance is a rudimentary feedback mechanism for the central government on local governments.

Yet rightful resistance is usually associated with collective action and Ms. Huang's case could hardly be called 'collective', even if an NGO did provide her with legal advice. Yet several parents that I interviewed in Beijing were awaiting the outcome of their cases (Interviews 21, 23 and 24). The belief was that if she could win, then they could also try to fight. Word of 'mouth' through QQ and WeChat groups had put Ms. Huang into contact with other Beijing mothers with whom she shared tactical wisdom, while media attention had made her case known nationwide. In fact, one of the reasons some people agreed to talk with me was because they saw the benefit of Ms. Huang's media attention. In this case, talking with researchers like me as well as international media is an example the ambiguity of rightful resisters using authorised and unauthorised channels to resist. Ms. Huang had become a symbol not only in the media, but among

those I interviewed, of the perceived injustices of fines. Some would refer to her as ‘33 wan’ (330,000 RMB), referring to the amount of her fine.

Yet rightful resistance is usually associated with collective action and Ms. Huang’s case could hardly be called ‘collective’, even if an NGO did provide her with legal advice. Nevertheless several parents that I interviewed in Beijing were awaiting the outcome of their cases (Interviews 21, 23 and 24). A victory on her part would encourage them to fight on. Word of ‘mouth’ through QQ and WeChat groups had put Ms. Huang into contact with other Beijing mothers with whom she shared tactical wisdom, while media attention had made her case known nationwide. In fact, one of the reasons some people agreed to talk with me was because they saw the benefit of Ms. Huang’s media attention. In this case, talking with researchers like me as well as international media is an example the ambiguity of rightful resisters using authorised and unauthorised channels of resistance. Ms. Huang had become a symbol, not only in the media but also among those I interviewed, of the perceived injustices of fines. Some would refer to her as ‘33 wan’ (330,000 RMB), referring to the amount of her fine.

Legal action was taken not only when the *hukou* was unaffordable. Ms. Xue (Interview 20), already 21 years old and still without a *hukou* when we met, was in the midst of a legal battle. I entered the sparsely filled living room of the small bungalow where she lived with her parents, furnished with a large refrigerator and widescreen TV. While the family were relatively poor by Western standards, it seemed incomprehensible that the family were unable to pay the 5,000 RMB (£500) fine that had left Ms. Xue without documentation for so many years. Initially the family tried to sue the Population and Family Planning Commission for a wrong interpretation of the law that limited them to only one child. When this failed, they sought to take legal action against their local police station for illegally refusing to register her birth. Although neither was successful, she had attempted to hold local bureaucrats accountable to their own laws.

Ms. Xue’s parents were disabled and believed they were legally entitled to bear a second child, as national law allows disabled persons such dispensation. The state disagreed and the parents were fired from their work unit in a factory for violating the one-child policy. Not only did the punishment make it difficult for Ms. Xue’s parents to pay the fine, exclusion from the workplace also created a long-term barrier to payment.

The only documentation Ms. Xue possessed to affirm her existence was a medical birth certificate, a document posing little significance with respect to proof of identity. During the initial years of Ms. Xue's childhood, before China's economic development, the 5,000 RMB would have presented an insurmountable barrier to a *hukou*, but in the time she grew up the increasing affluence of Beijing and its inhabitants had made the fine relatively affordable. Today even those earning a very low wage in Beijing, such as her parents, are able to accumulate an amount such as this.

In our conversations it became clear that the *hukou* dispute was not about the money so much as the principle. The family wanted someone from the government to admit to having unfairly fined Ms. Xue's parents. They insisted the government take responsibility for *hukou* denial since as a result Ms. Xue's had received no education. This sense of injustice, and seeking to dictate the terms upon which the *hukou* should be granted, is significant in understanding a form of agency in becoming documented. It spurred Ms. Xue's family's public battle to obtain her *hukou* without a fine. From vocal protests at their police station to talking with media, even holding signs in Tiananmen Square, the family had sought to bring attention to their situation. In response, the family were monitored for a number of years by their local police station and three video cameras had been placed around the entrance of her home. On national holidays they were told to remain in their house and a police official stood next to their front door to ensure no one left the building. In fact, the family even found a roster at the local community centre which designated the schedule of police who would monitor their home. In this way the fight to become documented goes hand in hand with a willingness to accept the consequences flowing therefrom. In Ms. Xue's case they were unwilling to admit fault, accepting delay in becoming documented and the associated difficulties. This was done apparently for the compensation they might later win, although where the compensation would be derived from was unclear.

Ms. Xue's situation also forces us to pose the question: if documentation is what Ms. Xue is seeking, why do her family choose to fight and spend the money instead on a widescreen T.V.? Why would Ms. Xue reject the documentation which can make her a recognised citizen and press a case for compensation? Ms. Xue case illuminates that becoming documented might not be perceived to be in the primary interest of the

undocumented person. While Ms. Xue wanted to be documented, she had an even greater desire to hold to account the local bureaucrats with whom she interacted. Ms. Xue did not wish to obtain a 'political voice' by becoming a recognised citizen. Her protests are intensely political because, aside from the perceived injustice of the fines, she was fighting for the conditions attached to her citizenship. In doing so she referenced laws, regulations and, though not formally educated, became conversant in the laws that governed her exclusion. Rightful resistance is an ideal lens to understand why in the case of extreme laws, Ms. Xue, believing strongly that her parents did not transgress the law, chose rather to engage with the legal barriers that excluded her. It seems she took the view that she had the ability to win her case without a need to change the laws in a broader sense. She did not directly question the logic of birthing restrictions themselves, but the local bureaucrat's interpretation of how they were implemented in her family.

The impact of Ms. Huang and Ms. Xue became apparent a few days later when I met with Ms. Cheng, whom I mentioned in the previous chapter. This mother had not informed the local police station of her daughter's existence because she first needed a certificate from the Population and Family Planning Commission verifying she has paid a fine for having a child without permission. From her interactions with other mothers she was aware that the fines she would face might well exceed £80,000. Encouraged by the example set by others, Ms. Cheng was looking for media interviews to publicise her case. She recognised that she could follow the same path to avoid unaffordable fines. I was interested in discovering the extent to which other parents had been similarly influenced.

Rightful resistance typically focuses on peasants who mobilise against local authorities in a specific geographic area. I however was interested in resistance that extends beyond specific geographic areas. The aforementioned acts of rightful resistance described in my research, while noteworthy, show little in the way of a unified resistance across socio-economic and geographic boundaries. Rightful resistance is typically studied in the context of villages but to a lesser extent in urban contexts or in nationwide studies. No collective base of resistance was established in any of the above three cases. Ms. Xue's legal activism, for example, involved the family going to the state organisation that assisted the disabled, the Federation for Women and the Population and Family

Planning Commission and Security Bureau, all of whom refused them support. Moreover, they had no overt collective identity with others being refused documentation.

Still, I did find signs of dependence on networks. The family applied in 1998 to take the case to court but the application was rejected. Chinese courts have a procedure called ‘docketing’, a gate keeping procedure determined by a separate administrative division giving judge’s discretion over which to accept (Liu and Liu, 2011, p.284). The process lacks transparency and there is no obligation to state the rationale behind its decision (Liu and Liu, 2011, p.290). Despite reforms in May 2015, docketing can still be used to keep certain cases keep out of court. This is particularly true for politically sensitive cases. Usually the most difficult aspect of bringing a case to court is acceptance by the court in the first place (O’Brien and Li, 2004, p.80). In some instances the Party forbids the courts to accept a case, including issues such as those pertaining to birthing policies (O’Brien and Li, 2004, p.80). Ms. Xue also tried to sue the Public Security Bureau in 2004 for refusing to process their *hukou* because she did not have the documents from the Population and Family Planning Commission. Subsequently, in 2014 they similarly attempted to sue their local station— *paichusuo*, and at the time we met had been waiting four months for a decision. (Later I found they had been unable to take the case to court). Their legal claim to the *hukou* – both because the parents should have been allowed to bear a second child, but also on the grounds that the *hukou* should not be connected to birthing policies – underlies their resistance. Thus they might be better described as a family unit of rightful resisters. Moreover, like Ms. Huang they had become symbolic, both as a result of media attention and through the stories they shared on various QQ groups.

Moreover, they acted within the context of other legal cases. The QQ groups were filled with articles concerning ‘Lawyer Wu’, Wu Youshui based in Hangzhou, Zhejiang Province. For some his influence stemmed from the pro-bono work he did supporting clients, but for many others, I found, he was a symbol of legalistic resistance that guided others. Almost two thirds of his legal cases concerned children denied *hukous* or people who had lost their job by violating birthing restrictions, although most never were accepted by the courts (Fong, 2016, p.80). It was reported that in a 2013 case Shandong and Jiangxi Provinces ruled that the *hukou* could not be denied (Fong, 2016, p.80),

although my own research did not find this to be implemented. The mothers who rightfully resisted had followed, in many ways, in the footsteps of figureheads such as Lawyer Wu and a broader community of rightful resisters across the country who sought to hold local governments accountable to the law.

All three women made use of social media to advertise their situations and their battles. They employed digital networks to extend their contact base. They confirm Bennett and Segerberg's (2012) argument that collective action is based upon a social network. Digital networks facilitate collective action, enabling participation beyond geographical constraints (Bennett and Segerberg, 2012). My analysis likewise brings to light the increasing influence of technology in resistance mediation. In the same way as O'Brien and Li focus on localised resistance, I found networks to be broader than those revolving around a geographic centre, more fluid than those of fixed location. Instead, I observed networks comprising hundreds of participants, only some of whom are concerned with rightful resistance. In order to envisage rightful resistance in a broader manner we must turn to the role of the Internet in connecting these families.

Attention to the impact of the Internet in China has concentrated on debates surrounding the Internet's ability to facilitate democracy (Cooper, 2000; Zheng, 2008), (or not) (Kalathil and Boas, 2003, MacKinnon, 2007; Abbott, 2001), whether the Internet can be used to sustain the CCP (MacKinnon, 2011, Shie, 2004), the scope of the 'Great firewall of China' in maintaining the CCP's political control (Lacharite, 2002, Taubman 1998), the role the Internet can play in freedom of speech particularly in online chatrooms (Li et al. 2003, p.143) and whether the Internet creates a public sphere or civil society (Latham, 2012, Yang, 2010, Tai, 2006). Literature also questions the Internet's role in facilitating political activism and whether political activism is limited to the Internet (Yang, 2009). Yet little has been said about the connection between the Internet and rightful resistance.

I argue that Internet networks allow for dissemination of symbolic resistance as well as sharing information that inspires and facilitates resistance. Here I draw upon Moore's (2004) work on 'Media and Places'. The Internet necessitates that we expand our notions of 'space', a term that encompasses physical and virtual, where flow and synthesis emerge. The Internet, then, is not a separate sphere but one that co-created by

the 'offline' world. While I draw this distinction, I recognise the fluidity of these two 'places'. This is because the members in my study did not know most members of their group offline. Some would come and go depending on their situation. Notwithstanding differences in location, wealth and situation, comradeship underlies the community despite the fact that only a small percentage of the people, even those based in the same city, would ever meet. Some would be members of the group without actually participating.

In his theoretical analysis of Internet-mediated activism, leading scholar Guobin Yang (2006) focuses on examples of intense online activism linked to national scandals. Through online attention the public became aware of cases of injustice such as the murder of disempowered citizens. Yang (2006) claims that the Internet created a bridge between people who would never otherwise be able to meet, allowing them to mobilise across offline and online spaces. Yang suggests that online information is organised through websites, bulletin board systems, newsgroups and mailing lists, while offline groups could be voluntary groups and formal or informal organizations. Based on the work of Keck and Sikkink (1998) in their study of transnational advocacy networks, Yang creates a model of Internet-mediated networks. Yang claims that the Internet allows for information politics, information pertaining to usable topics relevant to other users, including both testimonial information and technical information. Yang argues that this influences Chinese governance through engaging symbolic, leverage and accountability politics. 'Symbolic politics' are symbols and stories to frame a situation, particularly graphic symbols which can evade state censors (Yang, 2006). 'Leverage politics' describe situations where weak actors call upon powerful actors to help them, as well as to call on the Internet at large, i.e. the broad users, to publicise their case (Yang, 2006). 'Accountability politics' means holding powerful actors accountable for their previously stated policies or principles, much akin to rightful resistance but with a focus online (Yang, 2006). Thus, as the Chinese state uses social and political control to manipulate technology, blocking certain information online and exerting psychosocial control by arresting some internet users who are critical of the CCP, Internet-mediated networks contribute particularly to the rise of information politics and users can find means to share information that the state suppresses. From this we can understand that the political element of Yang's model is targeted towards China, a nation state, although not confined to China.

Yang's model goes a long way to explaining how information can be transmitted to effect change while also creating networks that bring together individuals in activism. Empirically Yang's work is supported by Hassid (2012) who also highlights the role of bloggers as 'pressure cookers' on issues in China shunned by mainstream media spotlight. It says more, however, about general online activism than it does about the relationship between rightful resistance and the Internet, relegating the 'political' to an online only sphere. In this section, I am concerned not so much with general activism – such as the push against birthing policies – as with how this can become constituted in offline acts of rightful resistance through online feedback to encourage others. Indeed, there is a foundation for this approach, such as empirical work on the study of environmental activism by Sullivan and Xie (2009) who map the links between websites on environmental topics, finding there is a network of online environmental activism. They found that the Internet and social networks influence the evolution of offline environmental activism in China. While not substantial, the study points to the need for further exploration of the links.

To bridge this gap, I draw a key insight from related literature on online activism, which has gone further in drawing out the relationship between online and offline collective action. Attention has been given to the Internet's role in a variety of political movements (Best and Kellner, 2001; Couldry and Curran, 2003), its role in creating spaces of dissent politically and in corporate agendas (Kahn and Kellner, 2004), how we conceptualise its role in collective action (Earl et al., 2010), definitions of cyber activism (Illia, 2003), the role of the Internet in engaging lay activists (Tatarchevskiy, 2010), the connection between online and offline political mobilisation (Christensen, 2011) and how social movements mobilise through the internet (Carty and Onyett, 2006). Particularly helpful, in their study of large-scale, sustained protests, is Bennett and Segerberg's (2012) disaggregation of various forms of collective action based around the online sphere, in order to differentiate the roles played by bricks and mortar organisations and online activism. Looking at important collective action movements, Bennett and Segerberg (2012, p.739) articulate the ways in which the Internet has constituted collective action based on personalised content sharing across media networks. By personalised communications they mean political content in the form of easily personalised ideas or personal communications such as tweets, texts and so forth shared across media networks (Bennett and Segerberg, 2012, p.744). Personal stories,

such as those spread from the US occupy movement, can travel around the world and go beyond centralised political protest, allowing social causes to take on an aggregate life of their own through these personal frames of reference. Through the spread of personal content, the Internet goes beyond a mere online meeting place, enabling the coordination of offline activities and becoming a means to create trust. Participants can share ‘...highly personalised, socially mediated communication processes fundamental to structuring elements in the organisation of many forms of connective action’ (p.753). While not all of these personalised actions create impact, some do spur others to replicate or respond online and offline, creating communicative and dynamic protest. Thus a decentralised form of protest could emerge whereby the action of one person in one location can spur into action another person in another location.

Taking this into account, we can understand how online personalised frames of resistance can lead to offline acts of resistance by unrelated network members. In China, as we will see, parents can utilise information politics spread by their network and adapt this to their own situation. By feeding back their success or failure they add to a pool of information contained within the network. As different actors form relationships crossing the offline and online landscape, some can initiate rightful resistance and so impact others within their networks.

It was during the time I was conducting my interviews that Ms. Qi introduced me to the various QQ groups patronized by her. During my time in these QQ chats I found a plethora of images and conversations that could be relegated to ‘everyday resistance’, as I discussed at length in the previous chapter. However, I found something stronger bubbling underneath. I came to understand that although acts of rightful resistance could happen in isolation, they had an impact on other users in the group. Firstly, different users could gain practical information on ways to resist fines by authorised and non-authorised means. From protests in Beijing to group bargaining in a Province to detailed strategies for dealing with cadre in a village, a wealth of information could be useful in facilitating resistance offline. Secondly, the symbolic photos and stories of personally framed stories influenced other users who would in turn share similar photographs and stories or, inspired by a protest, would organise their own protest in another location. Thus we see how, through the medium of Internet, rightful resistance can grow into a leaderless movement. I take the following categories from Yang (2006).

6.3.2 Information politics

Chats would usually be dominated by anywhere from a handful to around twenty of the participants, despite membership numbering into the hundreds. These members guided the topics being discussed, acted to provide any necessary clarification to newcomers with questions and seemed to acquire the status of informal leaders. When one of these key participants was not active for several days, other members of the group would enquire as to their whereabouts (QQ groups 1, 3, 4). While these leaders never tried to mobilise overt resistance, they shaped and led discourse which encouraged other parents to either accept or fight against their situation. For example, in QQ group 4, a participant was advised, ‘when the child is six or seven years old, to pay the fine and undergo sterilisation, allowing the child to then enter school. I think there is freedom of choice, but it can also be understood as having no choice.’ This was from the moderator of the group to a parent struggling to register her child. As he worked for a Chinese NGO, the moderator tended to take a pragmatic approach to becoming documented and sought to help parents find practical strategies to overcome the problem.

By contrast, in QQ group 1, which focused exclusively on problems concerning birthing policies in a central Chinese province, Ms. Zhun, the member perceived by the group as key, would organise monthly physical meetings where parents accompanied by their children could collectively bargain with the provincial Population and Family Planning Commission. She actively encouraged all members to attend, bringing not only their children, but grandparents, friends and whoever else they could find. In this way the resistance could transform itself from one person into a group connected by geographic and political ties. These political ties encouraged parents working in other provinces, but whose *hukou* was registered in that province, to make the long journey back to negotiate their child’s *hukou* (as a reminder, something that can only be completed in the same location as the parent’s *hukou*). Although not a protest *per se*, Ms. Zhun encouraged collective action to put pressure on authorities. Ms. Zhun would contact the Commission director prior to meetings and encourage the Provincial level authorities to crack down on what the parents perceived to be unfair fines charged by local level family planning cadre. Ms. Zhun highlighted how, in legally ambiguous situations such as when fines are charged, resisters could exploit gaps within the law in order to try and secure the bargain they desired.

Although I did not encounter this directly, the string of protests in various Chinese cities were said to be coordinated through QQ and WeChat (QQ groups 1, 2, 3, 4 and 5), and thus overtly rightful resistance and collective action could be not only coordinated, but planted and nurtured in these online forums.

As Yang (2006) suggests, information politics play a significant role in internet-mediated networks. The Chinese state is adept at controlling the flow of information both online and offline through what is commonly called the 'Great Firewall of China'. Yet the sheer mass of information and its ambiguity around political sensitivity makes it impossible to censor, as I found out during my study. In each QQ forum there is an area for members to upload files, which are then accessible to all group members. In each QQ group chat I found information ranging from instructive data on dealing with the various government bureaucracies to how to bargain for a better fine. National and local laws are shared so that parents can at least hold their local cadre accountable to the law. Newspaper articles or blogs that support the ending of birthing policies are shared daily. Covertly collected voice recordings of conversations between participants and government officials from the police station of Family Planning Organisation are also uploaded and were available for all members, including myself, to access. Thus, despite state controls over the Internet, there was significant room for political engagement through these forums. Furthermore, I found that users are aware of government-paid imposters, (it seemed to me that government-paid participants would use overtly pro-government rhetoric) and moderators would quickly block them out of the chat.

Many people shared past experiences and traumas; others discussed the weaknesses of the policy (QQ chat 4). One woman of unknown provenance said:

“I remember when I was young, in my parent’s work unit there were many only children; we all lived together in a community. Later, maybe it was because of government regulations to make the *hukou* free from penalty, every family basically brought back a little child; some were already seven years old. Those who had not secretly gone to give birth watched helplessly in regret.”

The QQ groups also served as a platform to coordinate meetings as well as to provide feedback on results of protests which could encourage others to act. For example, the pictures of protests were symbolic to other network members – they too could demonstrate their frustration with birthing policies, fines and *hukou* denial. The protests seemed to originate from online networks. Likewise, an NGO based in Guangzhou used the forums to reach out to those most affected by birthing policies. They organised and invited certain participants to meetings, training the participants in their legal rights regarding birthing policies (Interview 7). Their situation illustrates how becoming documented is not simply a moment, but a space of contention and an outcome of negotiations.

6.3.3 Symbolic politics

In the context of symbolic politics, protest seems to beget protest. Chinese QQ groups are sites for organising meetings and protests and sharing photographs of their activities. Photographs would be shared with relish by online participants who, it seemed to me, were then encouraged to go on to organise similar protests. These would then go viral and be shared across the chats; in this way various QQ groups with similar topic areas would see the content.

This could be seen in the proliferation of pictures of offline protests in places such as Beijing and Zhejiang province. Importantly, these protests were organised online and facilitated through being shared across forums, with participants representing that particular geographic location and beyond. More importantly, perhaps, the pictures taken would later go back online, serving as a symbolic reminder of the possibility of protest as a means to fight for child registration.

Below are a small selection of the numerous photographs shared over a roughly six-month period on the QQ chats. Multiple contributors would duplicate pictures in QQ chats with overlapping interests and some participants would in addition resend them directly to me. In 2014 multiple locations groups campaigned vocally against a range of birthing restriction related issues. Some campaigned to allow parents to have a second child without a fine, others to be allowed to register their child. Some could register their children outside Beijing if their partner was registered elsewhere but they wanted to be registered together so the children could access education within Beijing.

Remove for copyright

Figure 8 Picture of a protest in Zhejiang Province

Remove for copyright

Figure 9 Picture of a protest in Zhejiang Province

The Zhejiang protest preceded another protest, shown below, in Beijing in June 2015. Note the similarities in the posters; both are outside government buildings, seemingly

the Population and Family Planning Commission. Again these were shared across the QQ groups

Remove for copyright

Figure 10 Picture of a protest in Beijing campaigning for their children to be registered in Beijing

Figure 11 Picture of a protest in Beijing campaigning for relaxation of fines

The two photograph from Beijing were taken over two days, showing a group of parents in June 2015. I was told by Ms. Qi that the protest on the first day had provoked more parents to go on the following day (Interview 23). She explained that many Beijing parents objecting to high fines imposed for having a second child before the 2013 policy relaxation. Under new regulations they would not be fined, but as they had the child prior to the policy change they faced these high outstanding fines (Interview 23). As the fines were unpaid the children were not registered. Others had registered their children in accordance with birthing policies in other provinces where a spouse was registered, but they could not register their child in Beijing as it was born without permission and the fines would have been much higher in Beijing.

Likewise, photographs six and seven taken later in 2015 show protests against fines held in Chongqing, West China. The signs are similar to the other protests, but here they all wear white caps, pointing again to fairly sophisticated levels of coordination that took place on WeChat and QQ (their photographs were shared on QQ chats 1, 2, 3 and 4).

Remove for copyright

Figure 12 Picture of a protest in Chongqing

Remove for copyright

Figure 13 Picture of a protest in Chongqing

Symbolic politics, of course, stretches beyond protests against hukou registration and fines. Protests were melting pots of resistance to various facets of birthing restriction related grievances. As mentioned before, sharing of photos by individuals and groups led to others mirroring these photographs in their actions. Frames of individual resistance were commonly employed to engage with other members. For example, at one stage it was popular to take a picture with a sign asking for policy change allowing women who were born in the 1970s to have more than one child. As this was a popular cause more people became engaged, adding their face to the campaign. Below is one of many similar collages shared across the QQ chats:

Remove for copyright

Figure 14 Collage of women asking for policy change to allow women who were born in the 1970s to have more than one child

Some cover their faces while others do not but even through the photograph is symbolic, the personalised posters and emphasis on the individuals involved seems to have advanced everyday resistance to a more open symbolic resistance, inciting others

into action. Whether the same people later attended a Beijing protest for second children is unclear, but the aggregate effect of the movement, which was given space to grow and interact through separate personal frames, is born of the meeting together. As the symbols proliferated and grew into a body of collective symbols the political value became increasingly evident. The cases were not isolated but constituted a leaderless movement where symbols made the protest cohesive.

6.3.4 Leverage politics

Leverage politics was difficult to observe, as it could involve private relationships outside group chats and interviews. In one way I recognised that my own study provided some participants with hope of international recognition of their situation (despite my protests that I could offer little in return). My presence also tended to encourage participants to offer a certain type of narrative and information. As I discussed in the previous chapter, some participants would highlight or focus on narratives emphasising their victimhood. In these cases their more radical actions and interactions would be obscured from my gaze. In QQ group chats the participants tended to be less helpless and more disdainful of birthing policies than in in-depth interviews. In particular, they would proactively offer solutions to other group members, encouraging bargaining and negotiation.

Although this was predominantly beyond the scope of my findings, I can identify numerous hints and examples of leverage politics sprinkled through my findings. For example, the NGO that provided me with the contacts for interviews also created and moderated some of the QQ chats (2, 3 and 4). They used this not only to identify new people requiring their help, but to compile databases such as one they sent to me. Mr. Han, one of the previously mentioned interviewees (Interview 14), told me he that went to a *jihua juhui*, literally translated as Family Planning gathering. This confused me somewhat, until I found out that the NGO ran a workshop over several days educating certain people about their legal rights with regard to the policy. I also learned that this NGO provided the legal support - including paying for a lawyer for Ms. Huang (also known as 33 *wan*) whom I mentioned earlier in this chapter.

Government officials were deemed to be strong allies for leverage politics. Ms. Zhun, mentioned earlier in this chapter in the QQ chat 1 based in central China, also discussed

political allies within her province. She would frequently refer to Mr. San, an official within the Provincial Population and Family Planning Commission. When parents struggled they would be urged to contact Mr. San, as he was ‘the first stop’. There was a higher official above Mr. San, but according to the group he was difficult to contact. At one point the QQ group had decided to organise a collective group to meet with Mr. San in order to negotiate the documentation of their child. Initially when Ms. Zhun called the Commission she was informed that Mr. San was on a work trip and to call back the following week. They delayed their trip, awaiting his return, but Mr. San became increasingly elusive. Eventually they decided to go regardless of whether Mr. San was there and instead they decided to seek Mr. Hei, his superior. Ms. Zhun reported that she had ultimately spoken to Mr. San, saying that “this time his attitude has changed; maybe he had been pressured from above [referring to high level government within the commission]. When I asked him whom I should contact, he said: ‘I don’t know; you will say again I told you to look for so and so.’ Maybe ‘above’ [his superiors] thought he’d helped us with what to say.” Thus the leverage they employed was fragile and in the end proved of little help to the group.

All chats (particularly chats 1 and 3) referenced *guanxi*, or the lack thereof. For instance, in QQ chat 1 one woman complained that she had a colleague who had had a child without permission (*chaosheng*) in 2008. ‘She found *guanxi* and only paid 10,000 RMB’ (£1,000). Another conversation in QQ chat 1 discussed the problem: When one woman complained her unpaid fine was calculated at 70,000 RMB (£7,000), the participants advised: ‘you already recognise the best way is to see if you can find *guanxi*’. Another added, ‘Find *guanxi* to fight for the lightest handling.’ Unfortunately, the woman lamented, she had no *guanxi*.

6.3.5 Accountability politics

As mentioned, QQ chats operate as information hubs where links to alternative blogs and websites can be shared. Files could be uploaded with information spanning the mundane, the political and the overtly resistant, for the benefit of other parents or would-be parents. Information would often be re-shared across the various chat rooms in which I participated. Accountability politics would be manifested where participants tried to hold officials accountable to the law, for example using a voice recorded conversation. One recording that I have translated and transcribed below serves as an

example. The person in the dialogue is a woman questioning a male policeman over the phone. The woman seeks not only to undermine the police officer, whom she sees as lying, but also highlights the illegality of hukou denial. I found many such recordings, indicating that parents would use this in an attempt to not only hold government officials accountable, but instruct others on how to do so (from shared folder in QQ chat 2).

Woman: We are from (name of city deleted for data protection) city, my child is the second born; now we want to make the *hukou*, what certificates do I need?

Man: An ID card and *hukou* book.

Woman: ID card, *hukou* book?

Man: Yeah.

Woman: Anything else?

Man: Yes, how old are you? That way I will know.

Woman: I'm 35 years old.

Man: 35 years old...normally nothing else is needed. The important thing is your ID card and *hukou* book.

Woman: My ID card and my *hukou* book.

Man: Mm, from the Health, Population and Family Planning Commission I'm not sure.

Woman: For my child to make the *hukou*, you don't need anything from the Health, Population and Family Planning Commission

Man: Oh, to make the *hukou* you also need that. Is it [the child] within the family planning regulations? If you want to talk about that we can talk about that.

Woman: My child is legitimate; I'm from the countryside.

Man: Oh, then you...to make the *hukou*...then just proceed according to the various steps, they can tell you what to do.

Woman: So just the ID and *hukou* book is ok right?

Man: To make the *hukou*?

Woman: I know, I want to prepare what documents I need and then I will finally go to make it

Man: Then your *hukou* book and ID card are definitely needed, then you make the *hukou*, if you don't make the *hukou*, just need birth certificate.

Woman: Ah, a birth certificate [medical birth certificate].

Man: Where did you give birth? Normally you need to approve if it is within family planning regulations or not, you go to the Health, Population and Family Planning Commission to get it approved,

Woman: I just need birth certificate right?

Man: Just to make register someone, on the inside have a form to give to you, for the child just fill in the father's name, mother's name, finish filling this in go to the local police station and it will be ok.

Woman: I know, but last year I went to the local police, they said I need to show a sterilisation certificate.

Man: Then go to the office.

Woman: Do I still need it?

Man: I don't make *hukous*, I'm not sure.

Woman: Then why are you at the police station? Giving you a call and you don't know?

Man: I am the police officer. I'm an outside personnel, not back office [administrative] personnel.

Woman: Then what's the number of the office for the city?

Man: The back office [administration] still hasn't installed a phone.

Woman: Back office still hasn't installed a phone? That's to say, the numbers of those who make *hukou*, the local police number, all these numbers you all don't know?

Man: I know, I'm telling you, for your child to make the *hukou*, you need the *hukou* booklet and ID card, then go to the health, population and family planning office and fill in a form, they can ratify if the child is born within the regulations or not. You don't believe me?!

Woman: To make the *hukou* then why do I need to go to the Health, Population and Family Planning Commission?

The conversation ended with the man hanging up the phone. This excerpt of dialogue shows the contempt shared by chat room participants as they seek to undermine the credibility of the personnel and to highlight the disparity between laws and their implementation. The woman is mocking the officer, as he is unwilling to openly admit they will not register the child without any proof the child was born in plan, or unless the fine is paid. It seems that through this string of questions the woman hopes to make clear that there is a gap between the law and how it is implemented. Moreover, addressing grievances is a difficult process – as in this case where the woman could not

obtain the telephone number and was given the excuse that a telephone had not yet been installed. As noted by O'Brien and Li (2004, p.78) local officials may use the police to limit popular knowledge of regulations that might cause instability. They found even the act of publicising laws could lead to detention and arrest. Thus the uploading of national laws onto the QQ shared document areas underlies a determination to spread knowledge of laws that would have been difficult to access less than a decade ago before the prevalence of Internet access via mobile phones in rural areas.

The laws and regulations to hold officials accountable would also be shared so that other participants could go on to do their own recording, or use the information to strengthen their position when negotiating with officials. The police officer's unwillingness to admit to the laws illustrates how this information can become symbolic of China's fragmented state structure.

6.3 The undocumented

Not everyone could become documented. As rightful resistance is a site where the tension between agency over documentation and the seemingly ambivalent state play out, it is not an arena open to all. In other words, rightful resistance is not an available nor a certain strategy for everybody. There were also children who remained undocumented as a result of 'everyday resistance' – those unwilling to become documented with the associated problems documentation would bring. Some do not become documented because they make a choice to evade state control. Those seeking documentation might find everyday solutions to becoming documented; while others might find no opportunity to do so.

The first group among those unable to become documented are children residing in non-state orphanages. The person in the dialogue is a woman questioning a male policeman over the phone. In a similar manner to the natural parents described in Chapter Three, many parents like Lili eventually find a way to register their adopted child. When a couple adopts or cares for an abandoned child, local governments tend to turn a blind eye (High, 2013, p.149). My guess is that non-state orphanages, by contrast, cannot so easily find ways to register their children, because the number of children is such that the (covert) ways used by parents may not be available to them. For adoption to be

legal, a state-run orphanage must mediate the adoption, or it must be approved by a government official. As the CCP have tried to restrain parents from circumventing birthing policies, adoption is a highly politicised process, which erects high barriers between prospective parents and abandoned children (Johnson, 2016, p.12).

Some local governments gain by allowing the non-state orphanages to run since it alleviates pressure on their resources - non-state orphanages usually arising out of necessity (High, 2013, p.161). The prevalence of non-state orphanages must be strong, especially considering only 64 of China's 2,853 counties have child welfare homes (Branigan, 2013). Thus, local governments depend upon adoption and non-state orphanages to provide social care for abandoned children. Of course this care is technically illegal; children should (by law) be placed in the (limited) state-run orphanages. Since, in the absence of a link to an address and work unit there is no possibility the children can be registered, the children will not usually be granted a *hukou* (High, 2013, p.163). In such circumstances, the organizations would be allowed to operate, with implicit or explicit local government support but without legal recognition for the organization or children. Police *hukou* denial takes place while unauthorised orphanages are left untouched, concurrently concealing local government complicity with these institutions. The role of street-level bureaucrats in this case is to turn a blind eye to children in non-state care.

This uneasy complicity between non-state orphanages and local governments does not necessarily indicate strong ties between them. Sometimes the relationship simply suggests apathy on the part of one or both parties, it is usually a relationship of shifting alliances. One recent high profile story illustrates this point. In Rongcheng, southern Guangdong province, when a higher level of government decided to inspect their orphanage, the local government attempted to 'borrow' a dozen orphans being cared for by a nearby Buddhist temple (Branigan, 2013). The local government had been using the orphanage for offices, while a monastery cared for the local orphans (Branigan, 2013). The temple refused, leaving the local government to face punishment from the higher-level government inspection team. Another story that shocked China was that of a fire which killed seven children in an informal orphanage. Although the orphanage was illegal the woman in charge was given a small grant from the government and sold

products on the street to help supplement the cost of raising the children (Yu, 2013). After the fire, the local government charged the owner with manslaughter.

Furthermore, while non-state orphanages provide relief to overstretched local governments, their presence is a testament to state failure to provide care for abandoned children. Particularly because faith-based organizations run some non-state orphanages, the government's political sensitivity to their existence is exacerbated. One orphanage that I spoke with was never approved by the Chinese government because it was led by a Catholic priest with connections to Rome (Interview 34). For over twenty years the orphanage accepted abandoned children, mostly disabled, ignored by the state. The orphanage was not hidden from official view so evasion was unnecessary, but engagement with the authorities rarely took place. When the state tried to take over the orphanage in 2012 the nuns and priest opposed the government and fought to keep control, since they offered the children specialised care which the local government might overlook. It would have taken a great deal of available local government to take over the orphanage, so when met with resistance the local government had little appetite to pursue the conflict. These children were not registered, nor would the *hukou* immediately benefit them since the orphanage, in caring for them, had assumed the role of the state.

In short, I found indications that non-state orphanages did not register the children in their care simply because, for the most part, the *hukou* has little bearing on the children's situation nor delivers a perceived benefit. The state cannot, or will not, offer support and care for these children, and so other organisations have assumed the responsibility. Moreover, any attempt to register them would be met with resistance from street-level bureaucrats because the existence of these orphans would illuminate the local government's negligence in failing to provide care. The *hukou* could give little benefit to children abandoned by their families and local governments because the government already refused to care for them. The existence of non-state orphanages was testament to the absence of a state role in the children's lives. Elements of the community in which the orphans resided had taken over that role. In some cases, the *hukou* were not considered valuable because they would offer little in the way of tangible benefits. It could be that not all local governments would provide support such as social welfare or specialised education if they would not care for orphans. Some

found ways to allow their children to access primary school education without the *hukou* (High, 2013, p.164). In other cases, the lack of documentation can preclude children from certain government initiatives and international adoption (High, 2013, p.163-164).

Another group to be considered is the children of North Korean mothers and Chinese fathers. They highlight a number of problems, not only the border control issue associated with the women's entry into China, but also the complicity of Chinese fathers unable or unwilling to marry a local wife and the communities and local cadre that turn a blind eye. As I mentioned in Chapter Three, government officials embedded within communities sometimes ignore North Koreans migrants, welcomed or trafficked into communities not only as wives but also into the prostitution industry. Their migration confirms the pressures put onto Chinese communities by birthing restrictions. As mentioned in Chapter Three, birthing restrictions are an underlying cause of sex selective abortions, the dearth of local women contributing towards the demand for wives from North Korea. The presence of these women is not hidden to local officials (Interview 32). Indeed, while many remain, many women have been returned to North Korea -although official figures are unknown (Interview 33). The fragmentation within the state means that officials who should implement the removal of North Koreans may choose not to do so. Great discretion resides with street-level bureaucrats, once again testifying to China's seemingly ambivalent state.

For the women to stay requires the help of Chinese officials within villages and the wider community. It is worth reiterating that many North Korean migrants live in areas which are ethnically Korean, and so, speaking the same language and having some cultural overlaps, they would not necessarily stand out. Nonetheless, the consequence of legal restrictions on migration is that not only their survival but also the survival of their children depends on the support of the community. Regular small bribes could be paid to local police who would otherwise deport the women back to North Korea (Interview 29). The local cadre not only financially benefited from the arrangement, but many also saw the necessity of North Korean brides within their community (Interview 29). Husbands had often struggled to find a wife elsewhere and families paid substantial amounts to buy the women. The wives were also the ones taking responsibility for raising their children, if they left this would fall onto the father and his family

(Interview 29 and 32). Again, street-level bureaucrats within the community have a great deal of discretion over the lives of North Korean women and so their treatment varied significantly from places to place (Human Rights Watch, 2008, p.3). It seems that government officials at higher levels of governance, who were removed from the communities, would be more concerned with enforcing border control.

Whether the children became registered was also highly dependent on local cadre. Children with one North Korean parent might be well known to local cadres within a village (Interview 29 and 32). However, without a mother's *hukou*, some officials within the police station preferred to ignore their presence rather than find a way to register these children and deport the mothers (Interview 27). In other villages, bribery could ensure local cadre's collusion with parents, and even the child's registration if they felt sympathy for the father (Interview 29). That said, the bribe for a child to be registered could represent a larger amount than the father was willing or able to pay (Interview 27). In some cases, North Korean mothers and their Chinese husbands hide their children, at least from higher state officials, to conceal the North Korean wife herself, testifying to the variation in stance of government officials towards illegal North Korean migrants.

The paths available to these parents to obtain state documentation for their Chinese born children reinforces their dependency on state-authorised documentation. As I explored in Chapter Three, these children are, in principle, automatically Chinese nationals. Yet in practice, recognition of this nationality is frequently denied pending the repatriation of the mothers back to North Korea (Human Rights Watch, 2008, p.2). Holding them to ransom through their identity documents puts both the mothers – who face persecution on their return to North Korea – and their Chinese children, in a precarious situation. The process to becoming documented would highlight their illegality. As many children of North Koreans could never secure the *hukou* (Interview 39), some parents look for alternative routes to engage with the state. One such way was to buy fake documentation; others would wait for a person to die and then buy their *hukou* (Interviews 29 and 32). That said, many parents saw little incentive to buy fake documentation as they were not always of high quality (Interview 32). Fake documentation would be a last resort for people who could not bribe or accommodate the state. Appropriation of state documentation, however, strengthened the state's claim

to dominance over a bureaucratic system that could exclude people. This antagonistic relationship with the state's documentation reinforces the limited options open to these Korean women, precluding protests or rightful resistance and limiting negotiations.

In summary, both groups are testament to the fragmented, seemingly ambivalent state discussed in Chapter Three. The undocumented existence of these children highlights the on-going problems of corruption at a local level. It also sheds light on the at times unachievable goals which the central government forces on local governments. The existence of undocumented children demonstrates a rudimentary form of everyday resistance, their very presence illustrating the lack of efficiency of state control over people's lives. Their on-going, undocumented status, hidden from the central state, attests to their (very limited) space for rightful resistance.

6.4 Discussion

Through this research we can move beyond binary notions of citizen and state to understand a more nuanced depiction of street-level bureaucrats and belligerent citizens, all of whom shape the outcome of negotiations in a country where the rule of law is still developing. The varied experiences of Ms. Huang, orphans and Lili point towards a variety of outcomes for those seeking to become documented. Who becomes documented is particularly dependent on the actions of caregivers and sometimes those without documentation themselves. Contestation and negotiation thus differentiates who is at risk of statelessness from who is not, going some way to explaining why China's population is unevenly documented. Some families and caregivers have significantly more scope than others to impact their situation. Indeed, the process of becoming documented is not a moment in time, but can be a process of negotiation, resistance, pleas and demands. The discussions and sharing of tactics between parents indicate they themselves understood documentation to be a process. The group bargaining led by Ms. Zhun and her group of resisters epitomises how families themselves saw this as a process, even a battle, to obtain documentation. By honing in on the verb 'becoming' documented, I have attempted to focus on documentation as a process involving decisions of street-level bureaucrats rather than a moment in time determined by legislation.

This is not a new observation. Redclift (2013, p.108) also found that stateless residents living in the camp would use the address of relatives outside to acquire ID cards, bribe officials to obtain passports, or move out of the camp. She labelled these ‘acts of citizenship’ by stateless persons, challenging the assumption that citizenship is only dependent on the law. In the context of this chapter, where Chinese nationals are denied documents affirming their link to the state, I think another useful way to describe the actions portrayed in this chapter is to see the situation as families embarking on ‘rightful resistance’ against decisions of street-level bureaucrats. In some cases, this even includes trying to bring attention to their resistance and engaging higher levels of the state to intervene, as theorised by O’Brien and Li (2006).

In China, this process often involves the Internet, which not only facilitates individuals’ engagement in rightful resistance but also seems to spur on others to resist. The Internet offers virtually limitless possibilities to engage with others. Importantly, parents and guardians can obtain vital information from other users on strategies and movements to become documented. Acts of defiance in one part of the country become symbols with the ability to ignite similar resistance in other parts of the country. Information is shared so that learned experiences of people in shared geographic locations can be passed along. Thus, rightful resistance can have an added component of online networks and offline relationships which seamlessly merge. For this reason, when everyday resistance withers it can leave fertile soil from which noisier resistance can grow. On the other hand, those who have the least to gain by overt resistance might decide to live without documentation, or accept the inability to impact their situation. Resistance therefore operates not in binaries but on a spectrum. Everyday resistance can shift to rightful resistance, as some parents move in this direction when other attempts to register their children fail.

The value of considering rightful resistance is in conceptualising how agency manifests among parents seeking to document their children. The process whereby performance and contestation is linked to social networks informs strategies and encourages those who might otherwise be isolated and unsure as to whether to push back on government officials. By creating information, symbolism, leverage and accountability politics, rightful resistance can exercise agency in spaces of legal uncertainty. The tactic is often to hold government officials accountable to China’s own laws rather than challenging

unfair policies wholesale. This demonstrates how families escape being at risk of statelessness so they can obtain the documents and therefore rights to which they are legally entitled.

This leads us to attend to the category of being at risk of statelessness. As I argue in Chapter One, statelessness is often conceived as a category bereft of agency. Yet carers of those at risk of statelessness very often do hold the potential to determine their situation and actively employ techniques to address lack of documentation. We can see that everyday and rightful resistance fall into the same analytical framework as a spectrum of agency in negotiating over documents. While some groups clearly have more room to manoeuvre, there is a tension between the perceptions of, and the agency of stateless persons. In empirically focusing on China, this work supplements work such as Allerton (2015) and Redclift (2013) in acknowledging the role of agency over documentation, adding a new facet to research by looking at the role of Internet in resistance.

i. Summary

The thesis began by exploring definitions of statelessness and exploring how these impact our problematisation of the issue. While UNHCR and legal scholars might perceive statelessness as an issue of nationality, scholars taking a critical view have argued that the daily experience of lacking an effective nationality should be at the forefront when we problematise statelessness. Documentation serves as a bridge between these two forms of vulnerability and documentation is vital to being recognised, at an international level, as a member of a nation state. For many people, however, in daily life documentation is most vital in the domestic realm when accessing rights and resources which could be reserved for nationals or simply depend on proof of legal personhood in the public or private sectors. Thus documentation that affirms nationality can be vital in explaining both how nationality is recognised by the state and how nationality is experienced in practice. Those without documents affirming nationality are ‘at risk of statelessness’

The risk of statelessness can have a broad definition. In a general sense the term denotes persons or communities who face losing their nationality due to laws or legal practice. I focused on a specific subsection of people who are either without documentation that could prove their nationality or denied such documentation. In particular, looking at denial of civil documents is crucial to understanding why being at risk of statelessness can be so problematic. This means we must focus not only on legislation, as many scholars on statelessness have done, but on the practice of becoming documented, which depends on how policies are (or are not) implemented.

One of the main contributions of this thesis to the existing literature on statelessness is to make the state a site of investigation, investigating the spaces where contestation can surface within the context of the documentation process. There is a disjuncture in China between bureaucracies as well as between central and local governments. These divides in the state create spaces for discretionary interpretation and implementation of policy, particularly at ground-level. This enhances our understandings of Stern’s (2013) work on the ambivalent state, confirming that the state operates not as a single entity, but one with conflicting core values and pressures. The struggle for power between

bureaucracies, factions and interest groups all distort policies (Stern, 2013, p.99). The thesis couples her work with Lipsky's (1980) work on 'street-level bureaucrats', supplementing our understanding by focusing on the role of individual bureaucrats who choose between competing values and pressures.

I argue, furthermore, that the spaces of ambiguity between policies and implementation can be appropriated by both bureaucrats and citizens. This thesis has shown how street-level bureaucrats and those seeking documentation have a significant part to play in negotiating documented. In China, negotiations are best understood through the lens of resistance. This means that resistance, both covert and overt, by those seeking documentation is employed to navigate governmental policies over birthing, adoption and migration. The Internet facilitates this process by propagating 'hidden transcripts' (Scott, 1990) subverting state rhetoric and spurring others to undertake rightful resistance (O'Brien and Li, 2006). By disaggregating the state and investigating possibilities for agency over documentation the thesis highlights the shortcomings of existing literature on statelessness.

This thesis has offered multiple contributions to academic scholarship. Theoretically, it has explored the term 'at risk of statelessness', studying denial of documentation to bridge the *de jure* and *de facto* definitions of statelessness. Empirically this thesis presents the innovative primary research on the up to 30 million children denied the *hukou* in China while the so-called 'one child policy' was still in place. Methodologically using QQ to collect data, the thesis offers a first glimpse of how 800 million Chinese users could be accessible to researchers of China. The explorative findings presented herein could provide a foundation to research in other jurisdictions where nationality and statelessness cannot be understood without thinking through the role of documents affirming nationality.

To conclude the thesis, I will revisit the key themes related to the theoretical and political challenges posed by the risk of statelessness:

ii. Impact of documentation denial

The thesis has elucidated the link between the risk of statelessness and documentation. The Chinese case study illustrates the nature of the interdependence between nationality

and the documentation that corroborates nationality. Documents not only realise nationality in the legal sense but also the rights and resources that are associated with full citizenship. For this reason, investigating the impact of being documented and document denial encompasses concerns around both *de jure* and *de facto* statelessness.

While documents can be denied in circumstances of societal discrimination, denial in China is punitive. This means that children are bureaucratically persecuted without this persecution necessarily being obvious. As this example elucidates, exclusion from documentation does not signify exclusion from social networks. Sometimes impacted persons do not associate their exclusion with the state in general, or even with nationality, but rather as exclusion by street-level bureaucrats. These persons have locally established forms of belonging within the community and the family. These networks are drawn upon to help circumvent documentation denial. Their lack of documents would be most evident in circumstances where they were obliged to verify their nationality or legal personhood. This case study thus allows us to differentiate the impact of broad discrimination from the impact of documentation denial.

Documents open doors to rights while at the same time inscribing social inequality. Unequal benefits are derived from documents, ascribing in China imbalanced access to social rights that dependent predominately on location of registration and residence. I described how the Chinese *hukou* was used to impose a rural-urban divide that presented radically different life trajectories. Registration in Beijing, for example, offers many more opportunities than those available to a citizen of the less economically developed Province of Guizhou. The function of a document is not solely derived from the document itself but is determined by the rights accorded to the bearer. Thus while the *hukou* does bridge nationality and rights associated with personhood we cannot accept its role as unequivocally positive for the holders. In China, as discussed in Chapter Two, the *hukou* has served to categorise citizenship and the rights attached to citizenship in different ways across different provinces as well as across the rural/urban divide. This resonates with the findings in Kenya of Nubians, mentioned in Chapter One, who became documented. As Balaton-Chrimes (2014, p.20) argues, ‘Not only can ID cards in Kenya facilitate inter-ethnic divisions, they also serve to distinguish between which individuals are outsiders and which are ‘rightly’ Kenyan.’ This means the ID card concurrently has ‘both the emancipatory and repressive potentials’ for the

Nubian community.’ Documents are necessary for daily life yet are not unequivocally beneficial for the holder.

The findings also encourage us to inspect what being at risk of statelessness and documentation denial means to the lives of those affected. Attending to the role of documentation has meaningful inferences for how we approach ‘being at risk of statelessness’ as a category as well as the specific situation of Chinese *heihu*. Yet the assumption that obtaining documentation will, in the absence of broader political changes, remedy the situation of those at risk of statelessness can be problematic. Risk of statelessness is almost always embedded in multifaceted situations requiring complex solutions including situations of discrimination, punishment, or poor infrastructure. The consequences of lacking documentation are not limited to issues with attesting nationality.

A story that came to my attention later in my fieldwork elucidates this point. A colleague in China informed me that since 2014 some children in smaller Chinese cities have been able to register with the *hukou* without paying the fines for out of plan birth. I wondered how this could be so and subsequently learnt that it was a tactic to ensure parents could not circumvent payment of fines. The parents’ names would be disclosed to the Population and Family Planning Department and used to track down who had not paid. People who refused to pay could be detained for 15 days, taken to court, have their assets frozen, or have money taken from their bank accounts. They could be harassed until they paid. Unsurprisingly many parents decided to willingly postpone obtaining the *hukou* for their children rather than open themselves to these risks. Thus documentation denial must be contextualised. In some cases documentation has a price that persons are unwilling or unable to bear.

This story is also enlightening because it illustrates why broader inclusive documentation systems are not necessarily the perfect solution to redressing the issue of being at risk of statelessness. For those I spoke with, allowing their children access to education without documentation would have been a preferable solution, at least until the child was much older. While nationality and its recognition through documents can bring a unique set of benefits, the concerns of those affected often manifest into moments where they must engage with the state to access something tangible – the right

of abode, the right to education, or the right to employment. Documents bring benefits as well as negative implications.

The empirical findings indicate that creating a documented nation is more complex than benign commitment to birth registration for every child. Documenting citizens is intensely political. In China it cuts across policies of birthing, adoption, and immigration, the policies that dictate who is recognised as a Chinese national. While in many cases being at risk of statelessness can derive from being considered an ‘outsider’ we saw that it can also derive from being the wrong kind of ‘insider’. In this study documentation denial is not a declaration of exclusion so much as a declaration of the conditions for inclusion.

iii. Uneven documentation denial

Literature on statelessness will usually acknowledge that some form discrimination or punishment underlies the denial of nationality. Studies often approach stateless minority populations with the implicit assumption that the population is denied in a homogenous way. However, the Nubian example revealed that even when discrimination targeted towards a population underlies persecution, this does not necessarily mean there are no spaces for agency over the documentation.

This thesis points towards a contextualised approach to understanding populations at risk of statelessness. It has highlighted that the process of becoming at risk of statelessness is not a linear, uncontested process in China. Findings suggest that in this particular situation of punitive denial, documents are contingent on the interplay between the seemingly ambivalent Chinese state and resistance to it. These all factor into an understanding of why members of a population might face similar circumstances and yet receive different outcomes when seeking documentation.

Approaching the state as a site of enquiry, particularly its lower tiers is not the typical focus in statelessness literature. Although statelessness is ascribed to state actions there has been less attention to who within the state creates statelessness. When viewing the relationship between documentation and statelessness and being at risk of statelessness it is clear that the state demands scrutiny. The Chinese state is complex, with layers of governance and overlapping bureaucracies. The interpretation of laws is therefore open to subjectivity. The thesis found that directing attention to street-level bureaucrats adds

an additional layer of understanding of how documentation denial can come about. Documentation is manipulated by bureaucrats as the central government ‘keeps one eye open one eye closed’ (Interview 10).

At ground level, negotiations, corruption, and punishment point to a multifaceted situation where documentation is unevenly denied through negotiations between street-level bureaucrats and parents or guardians. Returning to the case study in Chapter One on the Kenyan Nubian community, we can find resonance with the findings in China. In Kenya, sites of politics exist not only in central government policies, but within the civil registries, hospitals, schools, and Vetting Committees. The pervasive uncertainty over the law and how it can be applied speaks as much about the state as about the risk of statelessness that Nubians face. Documentation denial can be a product not only of socio-political unease of the Nubian minority living within the borders of a nation state, but also the product of states with limited capacities and street-level bureaucrats with high levels of autonomy. These spaces can wax and wane in line with broader political change. Exploring the role of interactions between street-level bureaucrats and those who are at risk of statelessness allows us to probe the idea that statelessness follows a sharp divide of inclusion and exclusion within communities, and between majorities and minorities.

We move towards an understanding of how populations at risk of statelessness are formed but are not always impacted homogenously. While the conditions of becoming documented are in part derived from the negotiations between bureaucrats and parents, it is more equivocal than this, flowing not just from negotiating documents but also from the policy context in which they are embedded. Much rests on the latitude for policy interpretation given or taken by street-level bureaucrats. While Ms. Cheng’s appeals to her local bureaucrats in the Population and Family Planning Commission formed her encounters and experiences of the state, they did not embody the laws. Rather, the bureaucrats utilised their position to interpret law while parents called on laws in order to keep them in check. This interplay shapes who becomes documented, creating bureaucratic persecution. Uneven denial of documents creates an opaque form of persecution that intersects with, but does not map onto, other persecutions, whether discriminatory or punitive.

This speaks to our understanding of the ambivalent state (Stern's, 2013). The struggle for power between bureaucracies, factions and interest groups can all distort policies (Stern, 2013, p.99), which is channelled by individual street-level bureaucrats (Lipsky, 1980). Through exploring the messy and contested role of state agents who implement policies at the local level, it allows us to unpack the Chinese state and to acknowledge that state officials have the ability to decide how policies are implemented, and even to simultaneously distort and create policies through their actions. Thus by making the site of analysis, we have a better understanding of how the risk of statelessness comes about and why not everyone is denied documents homogenously.

The thesis also indicates that it is families rather than individuals or communities that are affected by denial of documentation and goes some way to explaining why some persons become documented. As the claim to nationality rests on parents, so too does becoming documented. In China, often it is the parent who must seek documentation on behalf of their children. Moreover, it is the child that is penalised for the decisions made by their parents. Two questions arise: How can negotiation over documentation be conceived when it is interlinked with family structures? Does this open new spaces for discussing both statelessness and the risk of statelessness? These deserve the focus of attention in other studies.

iv. Becoming documented and negotiating documentation

While literature tends to focus on state legislation in creating statelessness, those seeking documents are often not merely passive recipients. Parents of undocumented children use strategies to negotiate or circumvent the system and the bureaucrats who create their vulnerability. Arguing that parents have agency over documentation is not an original claim (Sadiq, 2008) This can build on other fields such as critical work that posits refugees are not inactive recipients but politicised agents (Nyers, 2006). As suggested by the Kenyan example in Chapter One, demarcating nationality along ethnic or national lines is a process that does not affect all members of a population equally. We saw in Kenya that at local levels, obtaining documentation can be an outcome of concession or co-operation based on self-serving interests. In these instances, central governments implicitly and explicitly allow a high level of discretion over who is denied proof of nationality. Concurrently, they empower bureaucrats to award

nationality documents, allowing opportunities for corruption within a system where multiple forms of discrimination or punishment are rampant.

Another area of agency is how stateless persons position themselves within the societies where they reside. Redclift's (2013) empirical work on statelessness and citizenship in Bangladesh is particularly important. She studied the stateless Urdu speaking population in Bangladesh, many of whom live in camps that function both as a social and political space as well as a geographic location. The community was accorded nationality in a High-Court ruling, yet their exclusion was ongoing (Redclift, 2013, p.173). She argues that the camps in which Urdu speakers dwell do not divorce the population from politics. Rather, citizenship is claimed in everyday life, in what she calls 'political spaces'. Her research therefore challenges assumptions of fixed, static exclusions stemming from statelessness. In so doing, Redclift (2013, p.172) argues that the population cannot be considered 'simply helpless pawns' because their acts bring to fruition new identities, through 'narrating themselves into the nation' (Redclift (2013, p.174). Agency over documentation within her study is particularly interesting, with some persons managing to obtain ID cards by using addresses outside their camp. Others obtained an ID card with the help of bribes. Sigona's (2016) briefer study of stateless Roma living in Italy also explores the ways in which, within the structures and spaces available, stateless Roma define their position within Italian society. His study concisely explores how Roma can move in and out of legal status, even travelling to other countries to become recognised. They challenged their exclusion and negotiated contingent forms of inclusion.

Nonetheless, it is worth reiterating in the context of statelessness that literature is still heavily dominated by international law (Mandal, 2010; Massey, 2010; Van Waas, 2008) particularly lead by UNHCR policy. This approach necessarily focuses on laws promulgated by the state. While this is valuable, I believe there is still a dearth of understanding about what takes place on the ground through negotiations of their situation - an approach advanced by Balaton-Chrimes (2015), Allerton (2014), and Redclift (2013). By exploring the strategies of people at risk of statelessness and to a lesser extent those of street-level bureaucrats, we have a more nuanced comprehension of strategies and situations that surround documentation denial. The case study enables us to think of divergent situations of becoming documented not as deviations or

anomalies, but evidence that vastly different circumstances can be found among at-risk-of-statelessness populations where local context also plays a part. While in most circumstances there is a notable power imbalance between street-level bureaucrats and those denied documentation, in many cases both parties have opportunities to impact process.

I empirically explored how negotiations in China play out. Everyday resistance is one form of agency over documentation. Parents and guardians were found evading, colluding, covering up, accommodating, and disregarding the state. They employed hidden transcripts – off-stage critiques of those in power (Scott, 1990), which underlie a societal acceptance of their transgressions. The Internet allowed them to share stories, jokes, poems, and pictures, becoming a place where an online community could come together yet stay hidden. This spectrum of resistance, when ineffective, can evolve into rightful resistance – open, overt resistance - that can use the state's rhetoric to hold it accountable to its own laws. I found that parents use rightful resistance to facilitate their child being documented, which through the Internet has a knock-on effect on other families, symbolically leading others to fight for documentation and against birthing restrictions.

An understanding of how being at risk of statelessness comes about often needs to address not only nationality legislation but also the negotiations between street-level bureaucrats and those seeking documentation. Bureaucrats in China could invoke both law and their embodiment of power over documents during negotiation as the central government has turned a blind eye to cadre working in the Population and Family Planning Commission or local police stations at town or city levels. These officials are part of the government, but a level of government that is fairly divorced from the central authorities. As I highlighted in Chapter Five, there was an almost ubiquitous feeling that local government would misuse birthing restrictions for their own gain. The existence of a seemingly ambivalent state is already a central assumption in the lives of Chinese people who implicitly understand that authority is in the hands of street-level bureaucrats. Bargaining and negotiation can in practice be as important as legislation and legislation can be interpreted in ways to support one's position.

This argument might appear limited in so far as it offers less opportunity for easy solutions to combat the risk of statelessness. It calls for contextualising local specificities and holds that purely legal solutions might not actually help the stateless persons in question. It has repercussions for top-down solutions addressing the risk of statelessness. Solutions often focus on the role of documentation and legislation in making clear who belongs where. This is inherently appealing when looking at the vulnerability of the people in this case study but these ‘solutions’ must be viewed with caution since they also narrow the allowances for the affected people to create their own solutions, choose their own nationality and appropriate their own documentation. It also disregards decisions made by state officials who implement policy. Their roles, actions, and incentives must be understood before a full understanding of documentation denial can be achieved.

The thesis began with the story of Ms. Cheng and her concerns over the future of her daughter Xiao Cheng. So in my final words of this thesis, it is to this story that I now return. In January 2016, more than one year after the period of my research, I spoke again with Ms. Cheng. Xiao Chen still had not obtained a *hukou* (interview 24b) Ms. Cheng believed that her fine would be between 800,000 to 1,200,000 RMB (£80,000-£120,000), a fee she could not afford. Ms. Cheng was planning to take a maternity test to prove the child is biologically her own and thus entitled to a Beijing education at primary school level. This alone, however, will not offset the lack of a father on the *hukou* registration, since both parents are usually required to make a *hukou*. Ms. Cheng wished to move to Canada, but without a child's *hukou* and thus a passport, Xiao Cheng could not be issued with a visa. Ms. Cheng told me she felt her daughter was in many ways stuck in Beijing. If she did manage to make the *hukou* for her daughter her intention was to leave China for good.

Meanwhile, the lives of Chinese people changed significantly in 2015, with October 29 marking the day when the central government committed to lay the controversial one-child limit to rest. After 35 years, the shift from a one-child to two-child restriction is only a partial victory, but for many whose lives have been radically affected by the policy, it was a victory worth savouring. Furthermore, the relaxation will not be implemented retroactively for those who have already been denied documentation. As Ms. Cheng said, 'although a new policy has now come out it has not mentioned our population or a real solution. I'm disappointed. We still have to fight; we still have to wait'. Protests, negotiations and virtual solidarity have continued, illustrated by the pictures below, circulating QQ groups in January 2016, which show protests in Guangdong. Parents were campaigning for fines to be retroactively dropped, maintaining that those who had a second child before the policy change should be exempt.

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Figure 15 Collage of pictures of a protest in Guangdong, shared on QQ group 2

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Figure 16 A picture of a protest in Guangdong Province, shared on QQ group 1

While birthing policies had not been forsaken, fewer people than ever will be restricted in their birthing options. However, many urban couples will not take up the new offer of a second child. This was already seen in November 2013 when the state announced that a couple was allowed to have two children if either member was an only child, a relaxation that affected mainly urban citizens. Despite estimates that the change would stimulate two million extra births a year, in 2014 only 700,000 couples applied to have a second child (Ma, 2015). In urban areas having a child is expensive, the norm of a one-child family had already influenced birthing desires. Yet the millions of rural citizens who are willing to breach policies to have two children will in the future be relieved of fines and the resulting hardships.

Then, in late April 2016, just months before the submission of this thesis, I received an email from a contact at Thompson Reuters Foundation who has been considering making a short documentary on Chinese children denied the *hukou*. Had I heard the news? She had recently spoken to Ms. Huang, the single mother in Beijing whose eight-

year-old boy had been denied the *hukou*. Ms. Huang had received good news – her son was finally registered. The local police had contacted her saying ‘there is a document from the municipal office,’ and according to this document, she would be allowed to register her son. The Chinese central government had decreed, in a new policy, that all police stations would henceforth be obliged to issue the *hukou* to all children in China. Ms. Huang’s son was to be one of the first to be registered.

What were my thoughts, she enquired in the email?

Logging into QQ instant messenger to speak to my other contacts whose children had been denied documents in China, I found them overjoyed at the new development. Their children already were, or soon would be, registered. With little fanfare, policy regulations had changed. Mr. Gao told me there was no official reports; ‘We all got the news from the website and informed each other on the Internet...’ I do not know the extent to which this is as yet being applied elsewhere, but as Mr. Gao said: ‘...once things change in Shanghai and Beijing, it means the country has been officially liberalised’. He sent me a picture of his child in front of the local police station, finally holding his *hukou* booklet. Whether Mr. Gao and other parents would have to pay the outstanding fines for violating birthing restrictions was not yet clear to him. What was certain, however, was that parents would be able to secure proof of legal identity for their children even if fines were not paid. The outcome has material consequences for the children affected. In Mr. Gao’s case, it means that both his children can attend a state school, and so the family can once again live together in central Beijing.

For the first time since birthing policies were introduced, a top-down initiative has provided parents with certainty as to their child’s right to be registered. Following on from the dismantling of birthing restrictions in 2015, the government has moved to standardise fines in all parts of China, which is significant as during my research in China Provinces had significant discretion over fines. Since street-level bureaucrats no longer have the same freedom of discretion over documentation, fines will be extremely difficult to collect. Now that the *hukou* cannot be denied until fines are paid, the situation in China is now markedly different from the time I conducted my research.

Despite the good news I remained uneasy. I reflected on how best to frame a reply to my contact's email. After all this change had long been in the pipeline. During the period in which I had been formulating this thesis, there were already trials in cities which allowed parents to register their child's *hukou*, even if the fines for violating birthing policies had not been paid. Uptake of this offer had been slow, however, with parents fearing that debt collectors might use registration as a way to find parents. Would things be different now?

I questioned how bureaucrats in far flung places would react. I doubted that full implementation of the policy providing a *hukou* for every child could be ensured. Moreover, restrictive policies over adoption and immigration remained in place. Children in unrecognised orphanages would still lack a recognised address with which they could be identified and children with North Korean mothers are surely still at risk, since registration of the child would surely result in identification of the mother. Their *hukou* seemed less guaranteed. I replied that the space for bureaucrats to exercise discretion over documents has significantly shrunk, although it has certainly not disappeared.

Moving forward, at the time of submitting this thesis, China remains in a state of flux. It will take years to fully determine how changes to the new *hukou* and birthing policies will play out. The number of children filtering back into the 2020 census will provide the real legacy of recent policy changes.

Appendix One Table of Interviews and QQ chats

Interviews with those affected by *hukou* denial

Interview Number	Pseudo-name (where used)	Province/place of origin	Interview medium
1	Mrs. Qiu	Sichuan Province	Online
2	N/A	Beijing (one of China's four direct-controlled municipalities)	Online
3	Mrs. Chen	Hubei Province, lives in Guangdong Province	Online
4	N/A	Not available	Online
5	Mrs. Zhong	Sichuan Province	Online
6	Mr. Wei	N/A	Online
7	Mr. Li	Guangdong Province	Online
8	N/A	Shandong Province	Online
9	N/A	Fujian Province	Online
10	N/A	Guizhou Province	Online
11	N/A	Chongqing (one of China's four direct- controlled municipalities)	Online
12	N/A	Jiangxi Province	Online
13	N/A	Jiangsu Province	Online
14	Mr. Han	Guangdong Province	Online
15	N/A	Shandong Province	Online
16	N/A	Jiangxi Province	Online
17	N/A	From Hunan Province, lives in Guangdong Province	Online
18	N/A	Hubei Province	Online
19	N/A	Shaanxi Province	Face-to- face
20	Ms. Xue	Beijing	Face-to-

			face
21	Mr. Gao	Beijing	Face-to-face
22	Ms. Huang	Beijing	Face-to-face
23	Ms. Qi	Beijing	Face-to-face
24 a	Ms. Cheng	Beijing	Face-to-face
24 b (follow up interview)	Ms. Cheng	Beijing	Online
25	N/A	Sichuan	Face-to-face
26	Ms. Pan	Beijing	Face-to-face

Interviews with experts

Interview number	Profession/area of expertise	Interview medium
27	Employee in an NGO working on North Korea	Telephone
28	Employee in an NGO working with Chinese orphans	Face-to-face
29	Journalist working on North Korea	Video chat
30	Employee in an NGO working on human rights in China and North Koreans in China	Online
31	Academic working on	Face-to-face

	street-children	
32	Employee in an NGO working on North Korea	Online
33	Employee in an NGO working on North Korea	Telephone
34	Employee in an NGO working with Chinese orphans	Telephone
35	Employee in an NGO working with <i>heihu</i>	Telephone and online
36	Journalist and film maker working on land issues in China	Telephone
37	Academic working on issues faced by Chinese orphans	Phone
38	China specialist	Face-to-face

QQ chats

QQ chat number	Theme of chat
1	Province level group on birthing restrictions
2	<i>Heihu</i> and birthing restrictions
3	Women's birthing rights
4	Group on parents who had a second child without permission
5	Province level group on birthing restrictions
6	<i>Heihu</i>

Appendix Two Map of China's Provinces

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Figure 17 Map of China's Provinces, Maps of China (2016)

<i>Pinyin/ Romanization</i>	中文	Definition	Language
<i>Chaosheng</i>	超生	Child born without state permission or called ‘over quota’ birth – as births are allowed according to quotas.	Chinese
<i>Chaoxianzu</i>	朝鲜族	A group of ethnic Koreans who live in China as one of China’s 55 ethnic minority groups.	Chinese
<i>Dibao</i>	低保	Rural welfare system , the rural <i>dibao</i> scheme financing is entirely a local responsibility. The rural <i>dibao</i> scheme is more recent than <i>wubao</i> , started in 2003 and is gradually being extended across the nation.	Chinese
<i>Dingzi hu</i>	钉子户	‘Nail house’, refers to situations where the state requisitions land and some citizens refuse to move. As other houses are knocked down around their house, their home stands out on the landscape like a nail. It serves as a modern day symbol of Chinese resistance and is now used to describe ‘shrewd and unyielding people’ who start protests and overthrow local leaders (Li & O'Brien, 1996, p. xi).	Chinese
<i>Gaokao</i>	高考	The National Higher Education Entrance Exam, which is held annually. All high school students who wish to attend a higher education institute at undergraduate level must sit this examination.	Chinese

<i>Guanxi</i>	关系	Denotes a relationship or system of social networks and influential relationships, which facilitate business and other dealings.	Chinese
<i>Hei haizi</i>	黑孩子	‘Black’ child, a term denoting a child who does not have a <i>hukou</i> .	Chinese
<i>Hei hu</i>	黑户	‘Black’ household, a term denoting a person who does not have a <i>hukou</i> .	Chinese
<i>Hukou</i>	户口	Household registration – China’s civil registration system.	Chinese
<i>Huji</i>	户籍	Formal name for the <i>hukou</i> .	Chinese
<i>Jihua juhui</i>	计划聚会	A get-together to discuss Family Planning Policies by citizens.	Chinese
<i>Paichusuo</i>	派出所	Local police station.	Chinese
<i>Proposka</i>	N/A	Russia’s residency permit and a migration recording tool, generally referred to as an internal passport.	Russian
<i>Putonghua</i>	普通话	Standard Mandarin Chinese.	Chinese
QQ	N/A	An instant messaging software service popular in China which allows voice and video chat as well as live group chat on public and private groups. Public groups are searchable by number or keywords.	English
<i>Sans papiers</i>	N/A	People without rights of residence or employment in Western Europe.	French
<i>Wan</i>	万	Ten thousand.	Chinese
<i>Wan Xi Shao</i>	晚稀少	Later marriage, longer spacing, and fewer	

		children' campaign.	
<i>Wubao</i>	五保	State-offered social security in rural areas of China. It was started in the 1950s and updated in 2006. The program's aim is to maintain the basic living standard of the elderly, the disabled and children. Benefits usually include food, clothing, medical care, housing and burial expenses, often referred to as the 'Five guarantees'.	Chinese
<i>Wu mao dang</i>	五毛党	The '50 cent party' is comprised of people paid to take part in online conversations by local and central government in China. They offer pro-CCP views in conversations online, comment sections on articles, in forums and even QQ chats. They are said to receive 50-cent RMB for every post	Chinese
<i>Zhongdian renkou</i>	重点人口	People targeted and monitored by the Chinese police – potential dissidents or criminals for examples.	Chinese

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