

The Transplanted Appropriate Adult Scheme in China

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Abstract: Borrowed from England and Wales, the Chinese Appropriate Adult Scheme involves a dynamic of selective adaptation. This article analyses two salient features of the appropriate adult scheme within the Chinese context, in comparison with its counterpart in England and Wales: its complementarity of the juvenile's parent, and the passive role that appropriate adults play during pretrial interrogations. Drawing upon empirical evidence, the article argues that the transplanted Chinese appropriate adult scheme has failed to oversee the legality of interrogations, nor does it provide adequate safeguards for juvenile suspects. The concept of vulnerability that lies at the heart of the appropriate adult safeguard in England and Wales appears to be lost in translation. Rather than providing a safeguard for juveniles at their most vulnerable, the appropriate adult is more concerned with indulging the needs of the interrogators in China.

Keywords: appropriate adult; China; juvenile criminal justice; legal transplant

The significance of legal transplants in many parts of the world is indisputable (Watson 1993), but the process of transplantation is so capricious that the end result is somewhat unpredictable. In this respect, law is like a language – the environment to which the language is attached invests it with meaning that can be lost in translation, and the original purpose of a grafted law may become elusive when set into a new legal infrastructure (Clarke 2006; Langer 2004). In this article, I shall explore this intricate relationship of transplanted law and its local context, by focusing on the example of China's appropriate adult scheme and its outworked effect, specifically how it diverges from its original counterpart.

The appropriate adult scheme in China was borrowed from England and Wales. The project was initiated from the collaboration between the charity Save the Children UK and several selected local Chinese juvenile justice institutions in 2002, and a series of China-EU dialogues on juvenile justice in 2003 (Liu and Hao 2011; Yu 2012). Importing the appropriate adult safeguard into Chinese juvenile justice was deemed to be necessary at the time. The Chinese Criminal Procedure Law and its relevant regulations specifically required an adult to be present

during the interrogation of young persons,¹ but these requirements were unenforceable because no operational model was in place to ensure the supply of adults (Lin 2003; Liu 2003). Against this backdrop, juvenile justice experts in China took a great interest in the appropriate adult scheme. It was believed that the appropriate adult not only ‘matches perfectly’ with the Chinese law, but ‘represents the future of juvenile justice’, that is the due process (Liu 2003). Following initial success in early pilot projects, this scheme was endorsed by Chinese legal communities and was officially rolled out in 2010. Differing from England and Wales, the application of the appropriate adult scheme in China does not extend to vulnerable adult suspects (Police and Criminal Evidence Act 1984 (PACE), Code C; Home Office 2018). Identifying adult suspects who fall within the category of ‘vulnerable person’² begets enormous challenges in England and Wales, as police officers, who are not medically trained, cannot always recognise mental vulnerability (Dehaghani 2019, p.156; Medford, Gudjonsson and Pearse 2003; Pearse and Gudjonsson 1996). The appropriate adult scheme being confined to juvenile suspects certainly makes its application much easier.

Straightforward as it may be, this by no means makes the operation of the scheme less problematic. In England and Wales, appropriate adults were introduced to reduce the risk of miscarriages of justice as a result of evidence being obtained from vulnerable suspects which, by virtue of their vulnerability, led to unsafe and unjust convictions (Royal Commission on Criminal Justice 1981). The concept of vulnerability lies at the heart of the safeguarding mechanism, which defines who is qualified to have the entitlement. This concept, however, has no counterpart in China’s juvenile justice. In analysing tensions that arise in the course of law reform, Potter (2004) has noted that, when China adopts overseas models, the process entails a dynamic of selective adaption by which the foreign institutional forms are mediated by local norms and practices. As a coping strategy for balancing the endogenic interests and imported norms, selective adaptation is contingent on three key factors: *perception*, *complementarity* and *legitimacy*. *Perception* involves the understanding of ‘purpose, content and effect of foreign and local institutional arrangements affecting the process and resulting in selective adaption’. *Complementarity* is concerned with the reconciliation of local needs and imposed expectations from the legal transplant. *Legitimacy* seeks support from communities of the recipient jurisdiction (Potter 2004). The appropriate adult scheme, as a product of selective adaptation, has illustrated these aspects in the process that the Chinese juvenile justice system attempts to reflect and modify. In light of this process, this study provides an empirical account of China’s appropriate adult scheme. The rest of this article proceeds as follows. The next section provides a brief summary of the data collection from which the findings of this study derive. The section following contextualises the study, offering an overview of the wider problems associated with the ‘appropriate adult’ safeguard in England and Wales, while the following section analyses the role of the appropriate adult, and the priority of

the parental rights enshrined in Chinese law. The penultimate section moves on to consider the power relationship between the appropriate adult and state officials in Chinese criminal proceedings, and the final section discusses and draws conclusions on the nature of the transplanted appropriate adult scheme as a product of adaptive selection.

Methods and Methodology

The article was based on empirical data collected ‘incidentally’ during the fieldwork of an empirical project on the Chinese prosecution in a large city in west China (referred to as site A) for six months between 2012 and 2013. As part of the research, I was given access to a local people’s procuratorate – the prosecution service – to observe their daily practice, which included prosecutorial interrogations conducted by the Juvenile Prosecution Team (*weichengnianren jianchake*). The procuratorate was actively engaged with (and championed) the appropriate adult scheme at the time, which offered me a rare opportunity to witness the establishment of the appropriate adult programme from its very inception. Following the lead of the interrogations of juveniles, I consciously followed those cases thereafter, speaking with the appropriate adults and their programme managers whenever the situation permitted.

For the purpose of cross-checking the observational data and to expand my knowledge of appropriate adult schemes in other parts of China, I decided to conduct further interviews with prosecutors specialised in juvenile cases. Up until July 2019, I interviewed 49 prosecutors who worked in Juvenile Prosecution Teams from three different sites located on the east coast of China (sites B, C, D). The interviews lasted 35 minutes on average. These interviews were recorded and subsequently transcribed, with the data coded and analysed using NVivo 10, based on themes which emerged during the conversations. Western-style access negotiation was simply unworkable in China: much data that would be of interest to the topic were treated as sensitive by the authorities. As a result, the selection of field sites and interviewees was largely based on personal contacts. Of these field sites, sites B and C are two geographically linked large cities on the east coast of China. In site B, 17 prosecutors, with experiences ranging from three to 40 years were interviewed; and in site C, the 18 interviewees were prosecutors with a work experience ranging from three to 22 years. In contrast, site D is located in a less-developed rural area in the west part of China, where, from 2018 to 2019, I interviewed 14 prosecutors with an average prosecution experience of over ten years. All the interviewees had consented to the recording of the interviews and cautious steps were taken to ensure that any institutional and personal details were recorded anonymously. All empirical data were assigned an identification code based upon the resource from which they were collected. Data were drawn either from field notes recorded during the observation in site A, which are given the code initiated with field notes A[n], or from interviews coded with BP[n], CP[n], and DP[n]. Although there has been a growing body of Chinese literature on appropriate adults in China, this article provides one of the very first

empirical examinations to review the role of the appropriate adult from a comparative perspective.

Vulnerable Suspects and Appropriate Adults in England and Wales

The rationale of the appropriate adult in England and Wales pivots on the understanding of vulnerability. Stipulated by PACE and its Codes of Practice (Codes C, D, E, F, H), vulnerable suspects are referred to those who may ‘without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading, or self-incriminating’ (PACE, Code C, Note 11C). The criteria of a vulnerable suspect have been amended and adjusted over the years. In the latest version of the Codes of Practice, the categories of vulnerable suspects encompass juveniles under the age of 18 years and adult suspects who are described as a ‘vulnerable person’ subject to a functional test introduced in 2018 (Dehaghani and Bath 2019; Home Office 2019, Code C). These criteria reflect the conceptualisation of vulnerability in the existing legal framework which is perceived from the perspective of psychology and evidence law: what makes someone a vulnerable suspect in criminal justice essentially depends on his or her ‘psychological characteristics or mental states’ (Dehaghani 2020; Gudjonsson 2006, p.68). Suspects who manifest identified psychological risk factors, such as mental disorders and mental vulnerability, may have difficulty in comprehending what is happening to them and/or in appreciating the consequence of their answers in police questioning. Such circumstances not only undermine the welfare of these individuals but also put them at risk of miscarriages of justice (National Appropriate Adult Network 2019).

One major challenge of appropriate adult schemes in England and Wales is identifying whether a suspect is vulnerable. Those claiming or appearing to be juveniles are perhaps the least problematic, but recognising those with psychological risk factors (such as mental disorders and mental vulnerability) is rather difficult (Dehaghani 2019; Dehaghani and Bath 2019; Gudjonsson 1993; Hodgson 1997). The proportion of people who have mental disorders and mental vulnerability is significantly higher (11% to 22%) within the criminal justice system than within society in general (National Appropriate Adult Network 2015). Various studies have reported that the vulnerability, of suspects with mental health conditions and learning disabilities, frequently goes unrecognised, with identification rates between 52% and 63% (McKinnon and Grubin 2013; Rapley and Sandberg 2011). The latest report on the appropriate adult scheme shows that recorded demand for an appropriate adult pertaining to detained vulnerable adults rose from 3.1% to 5.9%, but that requests were variable and remained low compared with the indicated average (that is, 11% to 22%) (National Appropriate Adult Network 2019).

In the recently introduced ‘vulnerable person’ functional test, the list of risk factors has extended to adult suspects who, due to their mental health condition or mental disorder: (i) may not comprehend the implications of criminal procedures, or their rights or entitlements; (ii) do not appear to

understand the significance of what they are told, questions asked or their replies; and/or (iii) may be particularly prone in certain circumstances to give unreliable, misleading or incriminating evidence (Home Office 2018, section 1.13d). Despite the expanded scope of vulnerability, Dehaghani (2020) argues that the functional test is inadequate in capturing the essence of vulnerability in the existing legal framework, which could be better understood as ‘depletion or reduction of resilience’ (p.3). The revised test still envisages vulnerability from the lens of physical and/or personal manifestation of innate or natural deficits. In so doing, situational factors (such as bereavement and seriousness of the offence) and individual factors (such as personal experience) that may equally lead to the production of unreliable and self-incriminating information have, thus, been missed out (p.4).

The identification of juveniles is relatively easy: they are either under the age of 18 years or they are not. Children and young people are marked as vulnerable because of their age and limited maturity (Vanderhallen *et al.* 2016, p.2). In line with PACE’s law and psychology approach, juveniles are deemed as vulnerable due to their sensitive response to negative feedback and higher risk of suggestibility which may render them to give unreliable evidence (Gudjonsson 2003, p.381). The intricate relationship between youth and vulnerability is further explored in Dehaghani’s (2017) study, in which she noticed a ‘precarious space’ where children are recognised as people who are not fully developed (hence need safeguarding) and autonomous free-willed agents who are capable of committing crimes (therefore need punishment). While some juvenile suspects may demonstrate precocious experiences (such as being streetwise) and do not adequately ‘perform’ innate vulnerability, they remain vulnerable in being criminalised and disadvantaged due to their unequal power relation within police custody as a result of their age and relative immaturity (Dehaghani 2017).

The concept of vulnerability and the rationale for providing appropriate adults to juveniles are also connected with the wider youth justice system. The provision of appropriate adults could be seen as a practical dimension of conforming to the international standards of the rights of children in criminal justice controlled by adults. International conventions, such as the Convention on the Rights of the Child of 1989 (hereafter cited as CRC) and UN Standard Minimum Rule for the Administration of Juveniles Deprived of their Liberty of 1990 (hereafter cited as Beijing Rules), have set out general principles to protect the best interests of children, improving their experience in police custody and ensuring that every child is treated fairly and with dignity (for example, CRC, Articles 3, 37; Beijing Rules, Article 10). At the domestic level, these principles are embodied in juvenile related statutes and case law (Kemp and Hodgson 2016, p.132). For example, the Crime and Disorder Act 1998 (CDA) places a duty on local authorities to ensure the provision of appropriate adults for juveniles detained or questioned by police officers (CDA, s. 38(4)(a)). In *R (HC) v. Secretary of State for the Home Department* ([2013] EWHC 982 (Admin)), Moses LJ decided that detainees aged under 18 years should be treated as juveniles and entitled to an appropriate adult (in this case, the

suspect's mother) under Article 8 of the European Convention on Human Rights, 'in the face of an intimidating criminal justice system' (para. 93).

According to Code C, the duties of the appropriate adult include giving advice and assistance, observing how an interview is conducted, facilitating communication with suspects and ensuring that they understand their rights and entitlements (PACE, paras 1.7A, 11.17). Despite being comprehensive, this definition of the role of appropriate adults is arguably vague, susceptible to different constructions by various legal actors in the system (Pierpoint 2006, 2011). For example, the role of appropriate adults interpreted by case law vacillated between models of crime control (such as *R v. Jefferson* ([1994] 1 All ER 270)) and due process (such as *Francis v. DPP* ([1996] 36 BMLR 180); *DPP v. Blake* ([1989] 1 WLR 432)). As for the CDA, it entails a mixed appropriate adult function of welfare and crime prevention (Pierpoint 2006; Williams, 2000). Parents or other relatives, social workers and volunteers can act as appropriate adults (Code C, para. 1.7 (iii)), yet none of these types is problem free. Parents, on the one hand, may act as passive observers reluctant to intervene in situations where the police were 'haranguing, belittling or threatening' the suspect (Evans 1993, p.46; Evans and Puech 2001). On the other hand, they can be too emotionally involved to fulfil the communicative and supportive role needed in the PACE process (Pierpoint 2001, p.257; Quinn and Jackson 2007). They may be 'overawed by the authority of the police and the whole experience of being in an environment of police detention', which results in their inadvertently assisting the police in extracting a confession, even to the extent of chastising their children (Evans 1993; Hodgson 1997; Littlechild 1995, p.542). Or, they may be hostile towards the police, ultimately leading to greater marginalisation during police interviews (Bucke and Brown 1997, pp.10–15; Pierpoint 2001, p.258; Quinn and Jackson 2007, pp.245–6). The interactions between the police, the (parent) appropriate adult and the young person have an implication of how the suspect is treated: respect and remorse (from the appropriate adult and the suspect) are rewarded with more sympathy and less condemnation from the police (Evans and Puech 2001). Compared with parents, social workers understand their function better, but still, ambiguity of their role occasionally occurs (Pierpoint 2001, p.258). Studies have found that some social workers have clear crime control tendencies, in that young people see them as instruments of control or punishment (Brown 1997; Pierpoint 2000, 2006). Volunteers are relatively costless but may not be available at key times (Pierpoint 2000, 2008). Perhaps more problematic is their lack of representation in terms of ethnicity, age, and gender of the suspect population. Likewise, they may be pro-police, unqualified, or show reluctance to intervene (Littlechild 1995; Pierpoint 2000).

Legal Representatives and Appropriate Adults in Chinese Juvenile Justice

When the appropriate adult was transplanted into the Chinese juvenile system, the essential concept of vulnerability was left behind. There is no

notion of vulnerability in Chinese criminal justice. Although juveniles are entitled to additional protection according to the law, the rationale is not based on the understanding that they might produce unreliable evidence and become victims of wrongful convictions, but rather derived from a different consideration, for example, a lack of full legal capacity. Article 14 of the Chinese Criminal Procedure Law 1996 (CPL 1996) had allowed juveniles' legal representatives (*fading dairen*) to be present in the course of interrogation and trial. The concept of legal representative here refers specifically to the juvenile's parents or guardians, who assume the *carte blanche* responsibility of dealing with legal issues in relation to the child. This term – legal representative – should be distinguished from 'defence lawyer' as normally used in Western legal contexts. Chinese Criminal Procedure Law 2018 (CPL 2018) forbids defence lawyers from participating in this crucial point of criminal process (Qu 2011; Zhu 2008). In theory, a defence lawyer can act as an appropriate adult to be present during interrogation, but in reality, this is highly unlikely for two specific reasons. First, there is a deep-seated antagonistic culture against defence lawyers within the Chinese criminal justice system, which has excluded the participation of defence lawyers from critical stages, including interrogations (Fu 2007; Liu and Halliday 2016; McConville *et al.* 2011; Mou 2020). For this reason, defence lawyers who undertake the role of appropriate adult may be forced to discontinue this representation by the criminal justice institutions (including the police, the procuratorate and the courts) (interviews CP2, BP4, 6). Second, the service of appropriate adults is often paid by the criminal justice institutions through a limited local government budget, which is unattractive to defence lawyers who charge high legal fees (interviews AP1, 2, 3, BP2, CP7). Thus, while there is a genuine debate on whether lawyers can be, or should be considered to be, appropriate adults in the UK, such debate has no foundation in the context of China (see Dehaghani and Newman 2019; Quinn and Jackson 2007).

In China, parents' legal responsibility to handle issues in relation to their child is deeply entrenched in the culture of filial piety. According to the conventional ideology of *Li*, a core doctrine embodied in Confucianism, the emperor was regarded as the patriarch of the nation who had a supreme authority over his subjects (MacCormack 1996; Weatherly 1999); in just the same way, parents (especially the father) had complete power over their children. In light of this Confucius tradition, Chinese academics, such as Yao Jianlong, have argued that juveniles' procedural rights should automatically be transferred to their parents (or guardians) once they intervene in the criminal process. In their view, juveniles are not fully-fledged autonomous agents eligible to make decisions on their own (Yao 2010, p.149).

The presumption that juveniles are not capable of appreciating the nature and significance of legal decisions concerning their own rights is not consistent with criminal justice practices. Despite the law that encourages juveniles' parents to be present during interrogations and trials, their absence incurs no legal censure or legal consequences (CPL 1996, Article 14). With no parent being present, juveniles' confessions have consistently been

admitted as inculpatory evidence, and their guilty pleas accepted to secure convictions.³ In the event that the juvenile has an estranged parent who does not care about the interests of the child, allowing the parent to supersede the rights of the suspect is simply irresponsible and unjust. After all, it is juvenile suspects, rather than their parents, who ultimately bear the legal consequence for decisions made in the process. Denying their procedural rights is incongruent with the principle of individual responsibility that underpins criminal law and the right to a fair trial.

The parents' monopoly of juvenile rights is not restricted to theoretical debate, but is also framed in the appropriate adult scheme in CPL 2018.⁴ Pursuant to Article 281 of CPL 2018, only when the juvenile's legal representative is not available or is an accomplice to the crime in question should the appropriate adult be sought. Hence, parental rights are prioritised in the criminal process. Appropriate adults are therefore designed to be substitutes for parents or guardians. As legal representatives of juvenile suspects, parents or guardians are not, by legal definition, appropriate adults. In practice, appropriate adults have been referred to as 'the temporary guardian (*linshi jianhuren*)' (field notes A14, 15, 17; Wang and Ding 2016). Certain Chinese academics, such as Gao Weijian and Yang Xinhui, have argued that appropriate adults as stand-in guardians should be formalised in law, compensating for the deficit in the legal capacity of young people (Gao and Yang 2019).

Parents' performances in the British context make it doubtful whether parents truly appreciate the role of appropriate adult or/and understand whether an interview is being fairly conducted. Quite often, they were more of a hindrance than a help (Dehaghani 2019, p.17; Evans 1993; Evans and Puech 2001; Littlechild 1995; Pierpoint 2000; Quinn and Jackson 2007). China is not immune to such a tendency. Despite being independent from the officer, it does not necessarily mean that appropriate adults should be 'on the side' of the suspect (Kemp and Hodgson 2016, p.142; Pierpoint 2000). Nevertheless, openly cajoling parents into joining the prosecution camp certainly goes too far to sustain the integrity of the interrogation process. A prosecutor suggested:

Parents can be helpful in educating their child – that is what a parent can do. There are parents who are working out excuses to exculpating their child of course. But we can inform them of the legal consequences, lecturing them and letting them know that the child can be saved and can be released soon if he pleads guilty. Parents need education too. They don't want to get into trouble either. Most of them are ashamed to be in the police station. They chastised their child a lot. (interview BP8)

Social stigma plays an important part in this context. The feeling of having let down their family has often driven juveniles to conceal their parents' contact details. Of 13 interrogations I observed, only five juveniles agreed to inform their parents of the interrogation:

Juvenile suspect 1: My father will do nothing but scold me and beat me to death if he knows where we are. I already suffer a lot and I don't want to have another blame. They (my parents) will have a hard time with neighbours and relatives if

they know that I am in prison. I don't want to go home and don't want them to get involved in the case. (field notes A14)

Juvenile suspect 2: What I have done is not something to glory in. It is a shame. I don't want to tell my parents. I don't have the contact details of my parents. The temporary guardian is fine. (field notes A25)

These young people tended to isolate themselves in protecting their family from being stigmatised and alienated by their local community. Rather than facing their parents in detention centres, juveniles opt for appropriate adults in many instances. Despite the patriarchal tradition, familial bonds do not always translate into relationships supporting juveniles at their most vulnerable. Prosecutors were aware of their mindset and promoted their choice of appropriate adults in lieu of their parents (interviews BP1, 2, 3, 6, 7, 18, 20). One prosecutor commented:

The unpredictability of parents causes strain on us and our normal work flow. (interview BP2)

Parents are not appropriate adults and are not trained to assist their children in interrogations. Most parents are confused with the entire process – their emotional attachment may possibly be a disservice. Prosecutors vividly recall instances in which the interrogations were transformed into 'family melodramas', with parents defending their children, dwelling on family hardship, shedding tears and pleading for mercy (interviews BP1, 3, 6, 20). Such beseeching, from the prosecutor's perspective, constitutes nothing but obstructions and delays. Like their counterparts in England and Wales, there are meek and co-operative parents who were ready to join the line of prosecution (interviews BP3, 6, 7). They 'scolded their children for being troublemakers' and pressurised them to make confessions (interviews BP1, 6). Prosecutors welcomed this 'assistance', but this came with a cost: parents' preaching, mixed with pleas for mercy, is always excessive, and took a lot of time.

Compared with the sentimental parents, appropriate adults who just 'punch the clock' are easier to manage. The contrasted experiences have instilled a sense among prosecutors that parents should be marginalised as much as possible:

Prosecutor 1: Professionally, I think the appropriate adult is useless. They just attend the interrogation sessions and sign their names. They do not take any responsibility. But for us prosecutors, that is what we want. Suspects' parents argue with us and make our work difficult. They are difficult to deal with. None of us want to inform the parents to attend. Questioning in the presence of parents is excessively long. With an appropriate adult, I can interrogate four cases in a row. But if parents attend, it would be lucky if I have one done! (interview CP3)

Prosecutor 2: No one in the procuratorate likes parents to be present in the interrogation. Indeed, some of them were quite nice and polite, but there were nasty cases. Some of them vented their grievances on us as if we were petitioning offices. Some of them shouted at their children as if it was at their home. Some of them argued and defended their child, and even threatened us if we charge them. There were so many melodramas. If you were lucky enough to get one of these, you can

guarantee that your interrogation was out of the window. Our time was limited. We have so many cases and we don't have the energy to argue with the parents. I think the appropriate adult was the best solution for us. They are not trouble makers and we can get our work done quickly. (interview BP20)

Although Article 281 of CPL 2018 states that a juvenile's parent or guardian should be informed in the first place, no formalised legal procedure exists to guarantee this priority. There is no surprise that appropriate adults became the first contact point for prosecutors in facilitating a trouble-free interrogation. Despite the sense of shame, some juveniles did ask to inform their parents to be present at interrogation; however, their requests were disregarded. In speaking to a juvenile suspect, it was clear that such a request was deliberately suppressed:

Juvenile: I haven't seen my parents for a long time since I was put in jail three months ago. I don't know why they did not come to visit me, but I want to see and speak to my mum.

Researcher: Did the police not ask for your parents' contact details?

Juvenile: No. They didn't. They said that they will arrange a temporary guardian for me. I don't need the temporary guardian. I want to see my parents. (field notes A15)

Appropriate adults were hence invited to be present during the interrogations in lieu of the legal representatives (field notes A15). A prosecutor reported that 90% of the juvenile cases were processed with the assistance of appropriate adults (field notes A20). Such practice is not confined to one site. Wang and Ding (2016), for example, observed in their study that the police and prosecutors refused to notify juveniles' parents, and use appropriate adults to 'streamline their workload'.

It is to be noted that roles and procedural rights of legal representative and the appropriate adult are dissimilar in Chinese criminal justice. As noted earlier, legal representatives are not limited to advising and assisting juvenile suspects – technically, they can exercise the suspects' rights on their behalf. On the other hand, the role that the appropriate adult is allowed to play at interrogation or trial is much more limited and somewhat ambiguous. Article 281 of CPL 2018 touches lightly on the fact that appropriate adults *may* (*keyi*) present an opinion, if they believe that the juvenile suspect's rights have been infringed. The hesitant use of 'may' lacks a robustness needed in the legislative footing, to properly safeguard the rights of the juvenile in police or prosecutorial questioning. Moreover, the consequence of the appropriate adult presenting an opinion is far from clear either. Should such a view be presented in an oral form or in writing? If provided orally, is the interrogation officer expected to accept that view, make an apology, and rectify his interrogation approach? What will happen if the officer ignores the opinion and carries on the interrogation in the same inappropriate manner? So far, the law provides no remedy either for the appropriate adult or for the suspect. If a critical view expressed by the appropriate adult is presented in writing, should the opinion be included

in the criminal case dossier, thereby being used to exclude police interrogation evidence? It is to be noted that criminal case dossiers containing evidence of the police case are unilaterally constructed by the police (Mou 2017). The Chinese criminal justice system has no independent oversight of criminal case dossier formation. It is hard to imagine that an interrogation record with negative comments will be used to suppress evidence collected by the police themselves. Even if the critical view is accepted by the police or prosecutors, they may choose to withdraw the disputed evidence altogether. In the event that a confession had already been elicited, the police may persuade the juvenile suspect to repeat the confession and secure it again in writing. In either way, the critical opinion expressed by the appropriate adult can hardly ensure a fair treatment of suspects or protect their interests.

Appropriate Adults as Disempowered Participants and the Functional-System Model of Chinese Criminal Justice

Not all appropriate adults in England and Wales are trained, but volunteers and employees who join the appropriate adult scheme are required to undertake training which focuses on the designated role and practicalities in working with vulnerable suspects (National Appropriate Adult Network 2019). The operation of the scheme in China, by contrast, is a mixed picture. In many areas, the scheme runs on an ad hoc basis, poorly funded, and heavily relying on volunteers who have had little professional training (Xian 2013). To date, no unified organisations are in place to provide quality control of the supply of appropriate adults. In many other regions of China, including site A, appropriate adults were drawn from social workers affiliated to public service centres. Studies in England and Wales have identified that appropriate adults are not always sufficiently independent of State officials; their independence can be undermined by their motivations, training (or lack thereof) or/and the funding source (Dehaghani 2019, p.17; Pierpoint 2000, 2006). The same issue also occurs in China. The appropriate adult scheme in site A, for example, was funded through the government, and the centres were contracted to supply competent social workers to assist state officials in fulfilling juvenile-related tasks. These social workers were engaged with various juvenile-related work, a good proportion of which concerns crime prevention, such as conducting social investigations and providing individual assessments. These social workers had been accustomed to working alongside prosecutors before the scheme was introduced – their assistant role and affiliated employment status require them to maintain a good relationship with state officials:

Appropriate adult manager: We have to have a good relationship with the state officials. We have been working with the procuratorate for a few years and our model has become much more mature. We are helping the juveniles. We just want to keep this going ... There is no torture any more. Sometimes the officers are angry. But that is entirely understandable and reasonable. We are not trouble makers. We cannot cause any disruption as to their work. (field notes A17)

He's empirical research based on questionnaires for interrogators shows that 71.6% of officers were politer towards the juveniles in the presence of the appropriate adult (He 2012a). My own observation of prosecutorial interrogations partly confirms this finding. Prosecutors at site A became ostensibly well mannered for the first few weeks after the appropriate adult scheme was introduced (field notes A13–15). However, this modified attitude did not last long, as the prosecutors soon noticed that appropriate adults were 'docile' – they remained silent, neither engaging with the prosecutor nor the juvenile (field notes A13–19, 22, 28). On one occasion, an appropriate adult was late for the interrogation. He rushed into the interrogation room, signed his name and left without providing any explanation (field notes A15). One prosecutor referred to the appropriate adult as 'an ornament in the room (*baishe*)', whose sole purpose was 'to sign the interrogation record' (interviews AP2, 8). Studies conducted in different parts of China had all confirmed the same phenomenon (Gao and Yang 2019; He 2012a, 2012b; Li and Li 2014). Some juveniles, for instance, had no recollection of appropriate adults during interrogations, still less any advice they received from them (He 2012b). Some appropriate adults assumed that they were neutral players (He 2012a, 2012b), thereby not engaging with juveniles at all.

Of all the possible factors that contributed to the passive role of appropriate adults, the interrogating officer's control of the entire interrogation process was the key. Specifically, three aspects of control eroded the involvement of appropriate adults. First, the prosecutor controlled the initial contact between the appropriate adult and the juvenile suspect. Research indicates that a private conversation between the appropriate adult and the juvenile is crucial for building trust, which lays the foundation for effective communication between the two former strangers (Allen *et al.* 2001). The introduction is particularly necessary because appropriate adults in China were not assigned to a specific juvenile case, and a juvenile suspect might encounter different appropriate adults at each interrogation. At site A, the introduction process was monopolised by the prosecutors, who first introduced themselves and the reason why the juvenile was questioned, and then explained that the appropriate adult was a 'temporary guardian', without detailing their role. No space was left for the appropriate adult to introduce him/herself. There were a few appropriate adults who briefly addressed the juveniles, to the effect that 'they are helping them'; but these words were curtailed by the body language of the prosecutors, who rushed to start the interrogation (field notes A19, 24, 25). Having spotted these signs from the prosecutor, appropriate adults became visibly cautious, reluctant to reach out to the juvenile suspect.

Second, the way in which the interrogation was conducted posed obstacles for appropriate adults in carrying out their work. Even if appropriate adults were aware of their role in safeguarding the rights of the juvenile suspect, intervention rarely happened, for fear that they might 'interrupt the normal interrogation procedure' (field notes A15, 17). The manner in which interrogations were carried out suggested that prosecutors were loath to be held up by appropriate adults (field notes A18, 20). Prosecutors

were eager to complete the interrogations for various reasons, including, but not limited to, the prosecutor's workload and deadlines of cases; tight interrogation slots subject to the administration of the detention centre; rush-hour traffic between the prosecution office and the detention centre where interrogations took place; and the unsatisfactory hygiene conditions in the detention centre, which female prosecutors endeavoured to avoid (field notes A18, 19, 20, 23). Aside from complex and major cases, most of the prosecutorial interrogations were confirming basic facts recorded in the police case dossier (field notes A19, 20). To maximise the number of cases processed, the prosecutors made time pressure perceptibly obvious. For example, one of the prosecutors emphasised her work target while speaking to the appropriate adult:

Prosecutor: I have such a busy time this month. I just came back from my maternity leave and they immediately allocated 20 cases to me. It is really hard to keep up with my work while my baby needs so much attention. I am going to question six juvenile suspects today. ... I am sure you are busy too. You have to fill out the reports? Just sign your name at end of each session. It will be quick. We are both busy people. (interview DP3)

Third, in certain situations, state officials gave instructions to silence the appropriate adult. Appropriate adults working at site A suggested that certain prosecutors asked them 'not to interrupt'. This kind of demand was not merely a 'preventive measure' to hasten the process, but a declaration of ownership of the interrogation, telling them who was in charge (field notes A19):

Appropriate adult: I just want to do my work and keep the [appropriate adult] programme going. I don't want to be the trouble-maker. ... Sometimes the prosecutors said to me that 'it will be quick, you don't have to say anything; all you have to do is to sign'. I understand that. Everyone is busy and I don't want to waste their time. After all, I am working on their turf and I don't have much say in the business. (field notes A21)

Appropriate adult: Sometimes I was reluctant to speak to the juvenile during the interrogation because I could sense that the prosecutors were very busy. I did not want to cause any trouble to the case-handling people and create difficulties. When I started to act as an appropriate adult, I did what I thought was right and spoke at length to a juvenile. Then I noticed that the prosecutor looked at me in a strange way and I understood that I should not be too overzealous. It was true that if a case only lasts ten minutes and I spent five or ten minutes speaking to the juvenile, that doubled their work time. This was wasting their time. Obviously, they are not happy. They are in charge of the situation and I am only working for them. (field notes A17)

Finally, the power dynamic was not confined to curtailing appropriate adults' work remit, and appropriate adults acquiesced during the interrogation. State officials were able to select social workers who were co-operative and obedient. Appropriate adults who were keen to make a contribution at interrogation were likely to be alienated, and eventually banned from performing the role:

Appropriate adult: We are working primarily for the service centre. But we are contracted with the procuratorate and at the workplace, detention centres etc. There is a hierarchy. We have to act in a way that can be approved by our partners. I understand that we should be independent and maybe help with the juveniles. But things in practice are much more complicated. Sometimes idealistic people will get hurt. For example, a colleague of mine was really passionate about juveniles and would do everything she could to help them. I think that many people in the centre think she went too far. During an interview, she had an altercation with an officer who wasn't happy with her intervention. After that, our leader received complaints from the institution. She had a conversation with our leader and was disciplined. We are certainly inferior to the interrogating officers and they can decide our fate. Sometimes I also agree that they are a bit brutal to the juveniles. What can I do? We are in a disadvantaged group too. (field notes A18)

Thus, while appropriate adults were initially designed as a safeguard for juvenile suspects, the service of the appropriate adult is chiefly to facilitate the work of state officials and to validate the process. In this process, appropriate adults gradually lose their status as independent legal participants, becoming auxiliaries to interrogating officers. This 'partnership' therefore was built upon a power-dependence relationship in which one party can, 'in a position, to some degree, grant or deny, facilitate or hinder, the other's goal or gratification' (Emerson 1962, p.32). In this unequal relationship, power resided in the service centres' reliance on the procuratorate to purchase the service. This dependence placed the service centre in a vulnerable position and enabled prosecutors to enforce their goals without encountering any resistance or counterbalance.

It is worth noting that interrogation is not an impartial search for the truth, in which officers exercise their inquisitorial powers to gather information which flows in a unidirectional manner from the suspect to officers (McConville, Sanders and Leng 1991, pp.78–9). Given the function of investigation, interrogating officers in any country always welcome the appropriate adult who, for whatever reason, decides to join them in a united front (see, for example, Evans 1993, p.47; Quinn and Jackson 2007, p.245). Appreciation of the co-operation is one thing, proactively marginalising appropriate adults and consciously exploiting their vulnerable position is another. As we have seen, the way the interrogation was managed in China, prosecutors' control and domination of the process may not be the only factor, but the most direct and crucial one that systematically cultivates the appropriate adult to be a passive observer.

Feeley (1973) has identified two models of administration of criminal justice in terms of the theory of large-scale organisations. The first one, known as the rational goal model, is characterised with Weber's (1954) depersonalisation, rule-bound bureaucratisation that emphasises one set of goals as defined by rules. The functional-systems model – the second model – by contrast, acknowledges different types of goals that shaped the behaviour of the actors. The goals pursued by legal actors in the functional-systems model are likely to be 'personal or sub-group goals' and informal rules that truly govern the system (Feeley 1973, p.413). Applying the functional-systems model to the Chinese juvenile justice context,

prosecutors clearly know the safeguarding function of appropriate adults but they are also aware that without appropriate adults' advice and assistance, guilty pleas can be better secured and the process done in an expeditious manner. Both the social workers and prosecutors are aware that the informal organisational practices which they employ to this end and to which a blind eye may be turned, are necessarily subterranean in character and in no sense represented in the real 'law'.

Prosecutors' manipulative behaviours should be further considered against the backdrop of features of Chinese criminal justice and the institutional culture therein. The Chinese criminal justice system is dominated by the police, the procuratorate and the courts, which are known as 'the same family' (McConville *et al.* 2011, p.15; Mou 2020, p.19). Their coalition is defined by the concept of the Iron Triangle, with police, prosecutors, and judges identifying themselves as working on the same battlefield against the common enemy of crime (Tanner 1999, p.32). Their dominance substantially undermines the counterbalance or safeguards of the accused. For example, defence lawyers have complained vehemently for decades about the difficulties encountered in meeting suspects, collecting evidence and accessing official case files; most notoriously the crime of lawyer's perjury (Criminal Law, Article 306) has been constantly abused by police and prosecutors to constrain, arrest, and punish active defence lawyers who engage with active defence practice (Liu and Halliday 2016, pp.44–64; McConville *et al.* 2011, pp.165–90; Mou 2020, pp.71–81). In such a crime control system, it is difficult to envision the appropriate adult scheme being capable of making a meaningful impact on the behaviours of interrogating officers. Having successfully disabled the function of appropriate adults, state officials now utilise the scheme to prevent parents from participating in the process.

Discussion and Conclusion

In bringing its legal system in line with international practice, China has looked to overseas examples, and propelled reforms by selectively adapting foreign models to its domestic conditions (Liebman 2009). The three aspects of selective adaptation, namely *perceptions*, *complementarity* and *legitimacy*, were made possible by the ways in which criminal justice institutions and the legal community express their own preferences. Focusing on *perceptions* for a moment, we see that the purpose of the appropriate adult as it is interpreted in the Chinese context certainly influences how the scheme will operate. The very concept of vulnerability, which lies at the heart of the 'appropriate adult' concept in England and Wales, bears no counterpart in Chinese law. The idea that certain suspects who are particularly susceptible to false confessions require extra safeguards to prevent unsafe convictions simply does not resonate in the Chinese criminal justice system. Research on miscarriages of justice in China seldom recognises the connection between the vulnerability of suspects and wrongful convictions. This may be due to the fact that high-profile miscarriage of justice cases in China, in which false confessions are elicited, do not point specifically

to certain identified groups who are marked as vulnerable (Mou 2020, p.4). Reported cases of justice miscarriage, which are newsworthy and sensational in nature, are usually concerned with the death penalty (Xiong and Miao 2018). Since people with mental disabilities or those who are underage are duly exempted from capital punishment according to Chinese criminal law, this group – despite the potential unsafe convictions – is usually devoid of public attention and thus recognition of the necessity of additional safeguards remains suppressed. In China, juvenile suspects had never been deemed to be vulnerable, other than their lack of legal capacity. The appropriate adult scheme reflects this presumption in the somewhat unexpected sense that appropriate adults serve mainly as temporary guardians.

This adapted purpose of appropriate adults has a direct effect on *complementarity*, which signifies that selective adaptation is possible because certain characteristics of each component are able to operate together in a mutually reinforcing manner (Potter 2004). A good example for complementarity of legal transplant is the Hong Kong legal system. As a former British colony, Hong Kong is governed by the English common law ‘modified slightly by traditional Chinese laws and customs’ (Chui and Lo 2017). Despite the cultural difference, the interaction between the importation of English law and indigenous customs had not been as strenuous as would have been expected: the common law’s stress on the rule of law provided much-needed security and certainty for the residents, protected the interests of the business and, therefore, was well received and respected (Jones and Vagg 2016, p.17). Meanwhile, Chinese law and custom was retained and was allowed to prevail in dealing with established practices which ‘had won acceptance among people of a locality and over many years had been enforced at need by local leaders with the approval of the inhabitants’ (Wesley-Smith 1994, p.210). The Hong Kong legal system demonstrates that English law has the capacity to accommodate distinctive cultural values and foster them to develop in a mutually compatible manner. In the same vein, the transplanted appropriate adult scheme can serve as a complementary mechanism to the legal representative system. The reason why the appropriate adult scheme was welcomed by the Chinese legal community was partly because the shortage of parents’ participation gave rise to the request of the company of appropriate adults. As has been seen, the scheme has been reincarnated to embrace parent-reverenced tradition, making legal adjustments to satisfy expectations that are derived from this cultural paradigm.

It is worth noting that a significant number of legal transplants have been proposed to the Chinese criminal justice system. However, those that eventually materialised were few and far between. Among the rejected proposals are the right to silence and right to lawyer-client consultation at interrogation. Important as they are, pressure from within the system eventually blocked further consideration of these rights (see, for example, Long 2000; Qu 2011; Zhu 2008). These proposed transplants failed, mostly due to the lack of *legitimacy*. The criminal justice institutions were persistently hostile to the idea that the interrogation should be constrained and

to allow the suspect to withhold information, or to be challenged by an outsider, that is, the defence lawyer, who can hold them to account with regards to the way confession evidence is extracted (Wu and Beken 2010, p.558).

With regard to the appropriate adult scheme, the antagonism mysteriously disappeared. State officials, prosecutors at least, warmly welcomed the outsider, that is, appropriate adult, in joining the critical process. It is with the support from such key personnel within the system that the scheme was given the green light and rapidly rolled out across China. This prompts the next question – why is the appropriate adult approved by state officials, whereas defence lawyers have been vehemently opposed? As analysed in the preceding section, the dependent power relationship between appropriate adults and state officials reduces the role of the supposed safeguard of the juvenile to a ‘trivial’ and ‘harmless’ presence (field notes A18). The appropriate adult, unlike a defence lawyer, has neither interest nor potency in vigorously monitoring the regularity of interrogatory procedures. Their indifferent attitude towards interrogation proceedings, contrasted with some parents who genuinely cared about the welfare of their children, has rendered state officials with ample freedom to continue their interrogatory practices almost entirely unchecked. The limited contribution made by them during the pretrial questionings constitutes the final ingredient of selective adaptation.

Compared with England and Wales, the implementation of the appropriate adult scheme in China has demonstrated the dilemma of legal transplant: legal transplant entails interactions between people with a concrete set of individual dispositions, and how legal actors understand the procedural structures and meaning of the imported practice through a number of socialisation processes becomes crucial (Langer 2004). China introduced the appropriate adult scheme. Yet the safeguard has been reshaped and disabled to facilitate investigation and prosecution. As a result, a mechanism that aims to protect suspects at their most vulnerable has departed from its original purpose and served to facilitate the interests of those who are in power.

Notes

- 1 For example, Article 11 of the Regulations on Public Security Bureau Dealing with Juvenile Delinquencies stipulates that: ‘unless the notification is impossible or constitutes impediments to the investigation, the juvenile’s parent/guardian or teacher must be informed to participate in the interrogation with a juvenile’. Similarly, the interrogating prosecutor may ‘notify the juvenile suspect’s legal representative (parent or guardian) to attend the interrogation’ according to the Supreme Procuratorate’s Case Handling Regulations 2002.
- 2 Code C, pre-2018, recognised vulnerability to include mental vulnerability and mental disorder (see, for example, Home Office 2017, Note 1G).
- 3 Examples of this can be found in the published criminal judgments on ‘China Judgements Online’. Available at: <http://wenshu.court.gov.cn/website/wenshu/181217BMTKHNT2W0/index.html?pageId=9c15dac7297d014b6beea2d85270e40&s8=02> (accessed 20 April 2020).
- 4 The appropriate adult was introduced by Chinese Criminal Procedure Law 2012 (CPL 2012), and remained intact in CPL 2018. The term ‘appropriate adults’ has not been formally adopted by law, but is described as ‘any other adult relatives or

representatives of the juvenile's school or employer, a community organisation at the place of the juvenile's residence, or a juvenile protection organisation' (CPL 2018, Article 281). In legal practice, the term 'appropriate adult' (*heshi chennianren*) is widely used.

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