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A Path to Standardizing Material Evidence Collection in Chinese Criminal Justice*

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Abstract

An analysis of detailed police dossiers and participant interviews in two urban districts reveals that, in the field of criminal justice in China, the process of collection, circulation, and disposal of material evidence has been highly problematic. Even though the process appears to adhere to a legal framework most of the time, its failures can be readily seen in the absence or violation of norms. For example, procedures have routinely been mixed together or invented; the use of warrants has been limited or avoided; the approval process has frequently been circumvented; the management of the criminal property has been slipshod. Exploring the structural contradictions of the evidence collection process and the behavior of police officers and their motivations can help clarify the factors that shape the process as it exists today, the presence or absence of norms that guide evidence collection behavior, and the mechanisms that govern the actual practices of evidence collection. The current dominant approach to reforms in this field is legal transplantation. However, this approach may fail to respond

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to local practices or may fail to take into account participants' mentalities. In order to find norms that are suitable for China's circumstances, future standardization reforms of material evidence collection should take both transplanted experience and actual operations into consideration.

Keywords
material evidence, evidence collection, norms, legal transplantation

Evidence—that is, any information used to support the existence of a factual proposition—can be divided into verbal evidence and material evidence. The latter refers to traces of facts retained in the shape of materials (Taguchi, 2019: 106, 438). In China's evidence classification system, these traces consist of "physical evidence, documentary evidence, audiovisual materials, electronic evidence, etc.—are all material evidence" (Chen Ruihua, 2011: 127). Material evidence is complicated,[1] not only because it involves complex meanings, but also because guaranteeing its legitimacy and authenticity in practice involves many steps, departments and organs, and criminal justice personnel. For example, the collection of material evidence involves crime scene investigation, searches, seizures, evidence acquisition, and other measures. In addition, material evidence bears on citizens' property rights and privacy rights (Yan and Zhang, 2013: 71). Its use and regulation have thus always been a battleground over ideas and values. Yet, compared with the long-standing and widespread interest in the exclusionary rule prohibiting the use of illegally obtained verbal evidence, there has been very little consideration of material evidence in research in Chinese, not to mention in English. As for legislative and judicial practice in this field, it is impossible to avoid the conclusion that it has tended to avoid the question, or has sometimes simply been negligent (Chen Ruihua, 2011: 127).

Questions

In recent years, the exposure of wrongful convictions has brought the troubling role of problematic material evidence to light.[2] The academic community has had to respond, to some extent, to problems in the field of material evidence. This has led to a handful of studies, most of which have followed one or another of two main approaches. The first approach, which begins with the proposition that the legality of evidence must be assured, has focused on procedural sanctions for illegally obtained material evidence. Specifically, it has questioned the use of material evidence obtained in violation of the law as a basis for final decisions. It is this issue that prompted the exclusionary

rule in the United States: that rule mainly aims at protecting citizens' constitutional rights by ruling out material evidence obtained through illegal searches and seizures and requiring law enforcement agencies to follow due process (Lin, 2009). In China, however, the exclusionary rule mainly addresses the problem of wrongful convictions based on evidence obtained by torture. Its essential purpose is to curb illegally obtained confessions. Nonetheless, the authorities in China are not willing to sacrifice to any great extent their role as crime busters when facing illegal material evidence. Instead, investigation and prosecution agencies are expected to remedy defective material evidence.[3] In the end, the rule excluding illegal material evidence has been "superseded or overridden by the rule for correcting defective evidence" (Wan, 2014: 127). In view of this, previous research has been critical of China's exclusionary rule and proposed the use of the discourse of rights and "foreign experience" as a guiding principle (Guo, 2014; Chen Lei, 2014; Wan, 2014).

The other approach, taking the guarantee of the authenticity of material evidence as its starting point, has focused on issues surrounding the chain of custody. For material evidence "to play a substantive and direct role in the fact that leads to trial or transaction" and for fact finders to extract relevant information from an item, requires an internal logic or a basic test—namely, that an item presented in court must be one that was actually involved in the event (Strong, 2004 [1954]: 453, 436, 438). Therefore, the authenticity of material evidence lies not only in the evidential information recorded in items that reflect facts, but also in the identity of the evidence carried from the stage of collection to the stage of presentation (Chen Ruihua, 2011: 130). In this regard, studies have emphasized that opening the evidence circulation process to the courts is a good way to guarantee the identity of material evidence. They have proposed establishing a chain of custody system in China drawing on the U.S. experience (Chen Yongsheng, 2014; Chen Ruihua, 2011).

In short, both approaches use normative research in an attempt to establish procedural requirements for the evidence collection process. Nonetheless, while these analyses have focused on evidence itself, they have paid little attention to the people who collect evidence, to the process of collection, and to the system with regard to the allocation, operation, and regulation of police powers. While some research on material evidence has included the local institutional environment along with scattered descriptions of individual issues, this hardly reflects the full picture of institutional practices. In addition, concentrating on the differences between one country and another may blind one to the intricate relationships among participants in practice and the underlying logic that is spontaneously generated during the operation of the current system.

In this article, I combine methods of normative research and empirical research following the path of "from experience to idea/theory to experience" blazed by Philip C. C. Huang (Huang, 2015: 17). I begin by delving into the "field" of material evidence collection, transfer, and storage to analyze relevant phenomena and problems in the application of material evidence collection measures in China.[4] Then, I turn to the factors that guide participants' actions and thinking to explore the causes of these phenomena and the problems in the institutionalized structure. At the same time, I examine the limitations of the old normative research approach to legal transplantation.

Data and Methods

The data used in this study were collected in early and mid-2016 and in mid-2017 from the police in District N in D City and District Z in S City. Both districts are located in a province in western China.[5] Dossiers of sixteen fatal cases (twenty-four defendants) in N and Z districts in 2015 constitute the sample of this research (see Table 1).[6]

I use fatal cases 命案 as a sample for several reasons. First, the number of such cases is small, thus making feasible detailed analysis of cases and statistics. Second, the interests involved in fatal cases are by virtually any measure the very greatest, including the victim's right to life and the potential death penalty for the suspect, as well as the great interest the police have in such cases. Third, such cases are prone to wrongful convictions or to investigative officers illegally obtaining evidence. Fourth, almost all types of evidence can be found in fatal cases, especially a wealth of verbal and material evidence. Fifth, facing subsequent rigorous scrutiny, local police departments invest most of their resources in fatal cases. The quality of evidence can reflect the highest level of the work of local police. Sixth, because of the relatively fixed elements of serious crimes, the means and procedures for obtaining evidence can easily form a set of fixed-action patterns that may reflect investigative officers' motives and the influence they receive from organizational factors. Seventh, fatal cases always involve defense counsel.

Aside from reading dossiers, I also reviewed the management of documents related to investigation and evidence collection, including policy interpretative files, operation manuals, official statistical reports, annual or quarterly reports, performance evaluation data, as well as related memos and briefs. These documents can aid in the analysis of dossiers by providing information on the working environment, work arrangements, and various requirements that the officers encounter in their daily work.

This study is mainly a qualitative analysis. Due to the nature of the dossiers and their role in the Chinese criminal justice system, textual analysis of fatal cases can identify a wide range of problems. First, researchers are able

Table 1. Fatal Cases Sample.

District	Case name	Number of suspects	Details of case
Z	Huang homicide	1	Suspect Huang went to his paramour's home and had a dispute with her. After the victim cut Huang's knee, Huang killed her and her granddaughter and placed the bodies of both in a septic tank.
	Su homicide	1	Suspect Su and the victim had a dispute over the purchase of some fruit. Su got angry and went to a nearby vendor. When the victim chatted with a passerby, Su thought that he was being abused. So Su stabbed the victim with a dagger and killed him.
	Xing injury	1	Suspect Xing and others had a dispute with the patron of a teahouse, and forced the victim out of the teahouse and to a riverbank. Xing beat the victim's legs with a wooden pole and a steel pipe, and then dragged him to a quiet place. The victim died of traumatic shock.
	Zheng homicide	1	Suspect Zheng went to a barbecue shop with an axe. He struck the victim, with whom he had a dispute, and fled. The victim died after rescue.
N	Tang homicide	2	Suspect Tang and another killed their colleague at the carwash where he worked and dumped the corpse.
	Zhang kidnap	2	Suspect Zhang and others kidnapped and strangled a little girl fifteen years earlier.
	Peng robbery	2	Suspects Peng and Li robbed an electric tricycle driver. Because the victim resisted, they slashed his head with a knife, killing him.
	Zeng robbery	2	Suspect Zeng and another rode motorcycles to snatch handbags. They caused the death of a victim by dragging the victim on the ground.
	Li injury	1	Suspect Li, a security guard, quarreled and fought with the victim, who was also a security guard in the community. During the fight, Li stabbed the victim in the abdomen and chest with a knife. The victim died after rescue.
	Wa homicide	3	Suspect Wa and a group of people had a dispute with another while eating, and the two groups had a group fight. In the process, Wa killed the victim with a knife.
	Luo robbery	1	Suspect Luo planned and robbed an Uber driver with a knife. The victim resisted and Luo strangled the victim with a wire and disposed of the corpse. He fled the scene and left the vehicle on the roadside.
	Luo homicide	1	Suspect Luo had a quarrel with the person in charge of a construction site over a labor dispute. After quarrelling twice, a fight broke out. Luo stabbed the victim in the chest and abdomen several times. The victim died after rescue.
	Cai homicide	1	Suspect Cai had a fight with the victim in a rented house over a relationship. He strangled the victim. Cai left the scene and attempted suicide by drinking pesticide.
	Xu robbery	1	Suspect Xu had asked the victim, who lived in another bedroom in their temporary residence, for drugs, but was refused. He stabbed the victim in the abdomen several times with a knife, and the victim died after rescue.

(continued)

Table 1. (continued)

District	Case name	Number of suspects	Details of case
	Xie injury	1	Suspect Xie and the victim scuffled over moving a vehicle. Shortly after, the victim suddenly died of a heart attack.
	Zheng injury	3	Suspect Zheng and others cheated in a game of chess on the street. The victim asked him for his money back. After the victim was knocked to the ground, Zheng stomped on his head, and the victim died after rescue.

to see materials in the dossier just like every participant in the entire criminal litigation process, as well as analyze what can be personally sensed or validated by criminal participants. Second, the weak position of the defense in investigating and obtaining evidence means that the evidence contained in the investigative dossier represents almost all the evidence in a case. Third, the large volume of evidence contained in dossiers can reflect a closed procedure. Investigative confidentiality and temporal uncertainty preclude optimal field observations. The suboptimal option is reading the specific records in the dossier. Fourth, since the final appearance of the transcript 笔录 cannot be completely controlled by a single investigative officer or reviewer—unless it is totally overridden—analysis of transcripts can accurately reflect the evidence-handling process involved. For instance, conflicts in the text may even reveal that some participants attempted to manipulate the process.

The empirical research in this study also includes ethnographic methods. I interviewed more than thirty police officers to find the motivations behind their investigation and evidence collection behavioral patterns. All of the interviewed officers were involved in the production of dossiers in different ways and to different extents (interrogation, witness visits and interviews, on-site inspection, physical evidence collection, and so on). Furthermore, I took up a desk in an open office of the legal affairs division in each police department I studied and engaged in on-site observation for an extended time, following the police officers' work and rest schedule and witnessing the whole process from case assignment, to review, and finally to transfer.

Findings

Measures: Mixed and Invented

First, concepts that are separate in the law and regulations are sometimes mixed together in practice. In a criminal procedure, inquest 勘验 and examination 检查 are two separate but connected concepts. Article 128 of the Criminal Procedure Law (hereinafter referred to as the CPL) stipulates that

"investigators shall inquest or examine places, articles, persons and corpses related to the crime," and an inquest transcript and an examination transcript are always treated as being in the same category. However, scholars have long agreed that inquest and examination are different investigative measures. An inquest is the investigation of "all objects except persons" (Chen Gang, 2006: 73–74). By contrast, an examination is an investigation of a person, either a victim or a suspect.[7] Normally, the boundary between inquest and examination is observed in practice. An on-site inquest transcript is produced after technicians process the crime scene, and an examination transcript is prepared after victims or suspects are checked. This practice cannot completely bridge the gap between the two concepts, though, because, when special situations emerge, investigative officers can maneuver the distinction at will.

In the first of my fatal case samples, the Huang case, the bodies of the victims and a cell phone were found in a septic tank in the backyard of the victims' house. The investigative officers made an examination transcript recording the process of checking the identification number and SIM card of this refloated phone. At the same time, this eight minute and seven second process was video recorded. Obviously, this examination was inconsistent with the general use of the examination for the inspection of persons. This misuse cannot be called wrongful, though, at least not in terms of existing norms. Since Article 128 of the CPL can be read in isolation, investigative officers are certainly authorized to "inquest or examine" any "objects" related to a crime.

From another angle, however, using examination rather than inquest—even though the investigative officers apparently knew the difference—demonstrates the lack of options in the current rigid system. The parameters of on-site inquest have been firmly fixed and limited to three vital tasks: collecting trace and physical evidence from the scene, making sketches of the scene, and photographing the scene. Therefore, once conducted outside the boundaries of real-time crime scene investigation, the inquest of objects cannot be included in the inquest transcript nor any other kind of transcript and thus cannot be used as evidence in subsequent proceedings. The mobile phone in the Huang case was checked one month after the on-site inquest. At that time, the phone could not be added to the existing transcripts as evidence. But this had to be fixed. A discerning person could easily figure out that, in order to get the job done, the investigative officers exploited a loophole in the system. They intentionally "misused" the examination procedure to achieve their goal.

Second, measures have been coined or invented. Along with the top-down process of rules elaboration, the police have gradually self-authorized a new approach, termed "extraction" 提取, to collect evidence. The word

"extraction" does not appear in the CPL, but it has found its way into the *Procedures for Handling Criminal Cases by Public Security Bureaus* 公安机关办理刑事案件程序规定 (PHCC) proposed by the Ministry of Public Security in 2012 and has become a norm guiding daily work (PHCC, 2012). The *Crime Scene Investigation Procedures of Public Security Bureaus* 公安机关刑事案件现场勘验检查规则 (CSIP), proposed by the Ministry of Public Security in 2015, even includes a clause to clarify that "discovering, fixing, and extracting crime-related trace evidence, physical evidence and other information is one of the tasks of the crime scene investigation" (CSIP, 2015: Arts. 52–62).

Since the scope of extraction is wider than the scope of seizure and since extraction is less regulated than seizure, by using extraction the requirements of seizure can be avoided. In comparison to the procedure of seizure, which is clearly spelled out in the CPL and the CSIP, the process of extraction is merely recorded on a form called "Trace Extraction and Objects Registration Form," which cannot be found in the CPL or other relevant regulations. The practice in District Z shows that this registration form is not required to be shown on the spot, no higher authorities need to approve it, and the person from whose possession the objects or documents are taken (the "holder") does not need to sign it. Therefore, investigative officers can simply "extract" everything on the spot and take it all back with them instead of arduously screening out things that need to be seized. They consider the invented practice of extraction as necessary for their work. As an investigative officer in District Z stated,

> Extraction doesn't have any legal status. I know it's supposed to be stipulated by law. But honestly, we need to take advantage of extraction, especially at the crime scene of a murder. You see, where can we find the holder at the crime scene in a murder case? What can we do when we need to bring items back? To seize them is not useful at this time; instead, to directly extract them is better. (Interview 3)

Extraction is not the only measure that has been invented to evade the strictures of seizure. "Evidence acquisition" 调取证据 is also a measure based on a manipulation of the CPL. The emergence of evidence acquisition has historical origins. In the past, seizure as an investigative measure could only be applied in "investigations and searches." If investigative officers needed to obtain an item from other investigation activities, they could only resort to, or "develop" as Ai Ming (2016) has put it, the measure of evidence acquisition to collect it. In 2012, after the CPL changed the scope of seizure to encompass "all investigation activity," the practice has more or less spontaneously adjusted itself. Space for the application of evidence acquisition

has been compressed. Currently, both District N and District Z limit the use of evidence acquisition to documentary evidence, audiovisual recordings, and electronic evidence. As long as physical evidence is involved, seizure is used. Nevertheless, evidence acquisition remains an important technique because of long-term working inertia. The impact of a series of discourses associated with it could not be quickly eliminated. Both investigative officers and case reviewers believe that seizure is a compulsory investigative measure, one mainly used when dealing with criminal suspects; evidence acquisition is an optional investigative measure that carries weak coercive power, and is thus suitable for dealing with third parties. The notion behind this misleading discourse has been refuted and, moreover, this discourse contradicts the norm that evidence acquisition entails stricter approval protocols than seizure, but it is still influential in practice.[8] Since the internal approval process is perfunctory—an issue discussed in later sections—the distinction between strict procedures has not brought about actual differences in effects.

In short, I found that when investigators collect material evidence, they mix some measures together to avoid the strictures of a rigid system. And they have invented some measures that are not stipulated in the CPL, such as evidence extraction and evidence acquisition, because they consider these measures as necessary to get their work done. In other words, if norms require that procedures in any particular instance strictly adhere to set forms and formats, once a situation arises in actual action where the conditions contemplated in the norms are not present, the norms might not be complied with to the letter. Even though actions that do not strictly follow the rules and regulations are troubling, one must recognize that investigators do not perform their duties arbitrarily. They still follow rules. It is just that they do not always follow formal norms.

Warrants: Avoiding and Limiting

In Western discourse, "search" is the most aggressive evidence collection measure and is regulated by warrants. In China, the story is very different. Chinese law leaves only a narrow window for the application of what is termed "search." In other words, search may be used only under certain limited conditions. Furthermore, although Chinese law requires that searches be conducted under warrant, it is the Public Security Bureau itself that issues warrants, and the warrants themselves fail to fulfill their raison d'être—rights protection (as discussed below). However, in practice "the Public Security Bureau tends to take advantage of measures that are not labeled 'search' but are in fact substantially search procedures, such as safety inquest and on-site inquest, to circumvent or substitute for search" (Zuo, 2007: 117). I have

found that formal searches are not used frequently. The search procedure was applied in four of the twelve fatal cases in District N and in one of the four cases in District Z. This kind of low frequency is also seen in other criminal cases. For instance, the Public Security Bureau (PSB) in District N had only forty-four search warrants issued in 2015, accounting for only 4.2 percent of 1,036 criminal detention cases. The PSB in District Z had only eighty-eight search warrants issued, accounting for 16.4 percent of 537 criminal detention cases in 2015.

Several patterns of application of the search procedure can be found in my sample cases (see Table 2). First, its use is obviously clustered in certain categories of cases. It is commonly used in robbery. Almost every robbery (including looting) case involves at least one search. The purpose of the search is often to look for objects that the suspects mentioned in their confession. These objects usually include, but are not limited to, the clothing the suspects wore when they committed the crime and the communication devices they used, especially phones. In contrast, homicide or injury cases do not often call for searches. Second, the search procedure tends to focus on residential places. Although the relevant provisions of the CPL stipulate a wide coverage for searches—including places, objects, bodies, etc.—this study finds that all searches in the sample cases were limited to only one kind: the search of a suspect's residence (including homes and temporary hiding places). Third, searches concentrated on evidence collection rather than case resolution. In four of the five cases with a search, the search was conducted either immediately after the suspect was caught or after the suspect confessed and stated where physical evidence could be found.

The Huang case was the only exception. The search was made before Huang was brought into the case. Since the suspect was still at large at the time of the search, there was no confession to guide the search; the investigative officers must have used the search to confirm their guesses concerning a potential suspect. They seized three pairs of shoes in the search. Given that some footprints were found at the crime scene, the purpose of this search and seizure was clear: the investigative officers wanted to compare the footprints with the shoes of a potential suspect.

Despite the narrow scope of a search, as we have noted, this does not necessarily affect the acquisition of evidence in practice because a search is easily replaced by other evidence collection measures. The most common alternative measure is on-site inspection, although under certain conditions investigative officers prefer other measures. In the sample cases, most searches were not conducted at the place where the crime was committed because, when the crime scene is also the suspect's home, the effect of processing the crime scene is equivalent to that of a search. That is why a search

Table 2. Statistics of Sample Cases Regarding Searches.

District	Case	Location	Search	When	Why	Range	Same place as CSI?	Duration	Warrant read to	Seized objects
Z	Huang homicide	Indoors	Yes	Before suspect went to case[a]	Unstated	Apartment of suspect	No	26 mins	Not suspect	Phone, 3 pairs of shoes, cup, tissues
	Su homicide	Outdoors	No	—	—	—	—	—	—	—
	Xing injury	Outdoors	No	—	—	—	—	—	—	—
	Zheng homicide	Outdoors	No	—	—	—	—	—	—	—
N	Tang homicide	Indoors	No	—	—	—	—	—	—	—
	Zhang kidnap	Outdoors	No	—	—	—	—	—	—	—
	Peng robbery	Outdoors	Yes	After suspect went to case	Suspect stated the clothing was there	Rented apartment	No	24 mins	Not suspect	Clothing, shoes
	Zeng robbery	Outdoors	Yes	After suspect went to case	Look for relevant objects			47 mins	Not suspect	Clothing, phone, and SIM card
	Li injury	Outdoors	No	—	—	—	—	—	—	—
	Wa homicide	Indoors	Yes	On capturing suspect	Look for evidence at residence	Hotel	No	35 mins	Suspect	Knife, clothing, shoes
	Luo robbery	Outdoors	Yes	On capturing suspect	Look for evidence at hideout	Apartment of suspect	No	43 mins	Suspect	Phone, clothing
	Luo homicide	Outdoors	No	—	—	—	—	—	—	—
	Cai homicide	Outdoors	No	—	—	—	—	—	—	—
	Xu robbery	Indoors	No	—	—	—	—	—	—	—
	Xie injury	Outdoors	No							
	Zheng injury	Outdoors		—	—	—	—	—	—	—

[a]In the initial stage of a criminal investigation, a suspect can be called or summoned to the police station. This phase is entirely different from the arrest phase in Western countries. A Western-style arrest is an action authorized by a magistrate and enforced by police officers. After the arrest, the typical requirement is that the suspect shall be brought before the magistrate within forty-eight hours. In contrast, suspects in China are called to the police station voluntarily or are summoned, or even compulsorily made to go to the police station. When summoned, they will be given a subpoena issued by police. The duration of the summons may not exceed twelve hours. In cases with particularly serious or complicated circumstances, the duration of the summons may be extended, but may not exceed twenty-four hours. This entire process is called the "go to case" 到案 phase.

is little used in indoor homicide cases. Unlike the United States, where investigation of a homicide crime scene is subject to the strictures of the Fourth Amendment and therefore requires a warrant,[9] in China no warrant is needed if investigative officers wish to enter a location where a homicide has been recently committed in order to process the crime scene. This is because the crime scene investigation and the search are stipulated in the CPL as entirely different measures. In the Tang case in District N, the crime scene was where the suspect lived. Thus, three rounds of crime scene investigation were carried out and a large number of items were seized. No search warrant was found in the dossier.

In the Zheng case, the use of crime scene investigation in lieu of a search is even more obvious. Around midnight on September 17, 2015, investigative officers processed the crime scene (a restaurant) where a body was found. After nine hours, at 9:55 a.m. on September 17, the investigative officers conducted another crime scene investigation of the suspect's home and his vehicle. The purpose of this investigation was recorded in the transcript: "the suspect fled the scene by car, and escaped after returning home; please send an officer to investigate the suspect's residence and vehicles."[10] In the second crime scene investigation, almost all of the physical evidence required for prosecution was found: the suspect's jacket, underwear, jeans; suspicious blood on the steering wheel, door, gearshift lever, and driver's seat of the vehicle; and an axe that had been placed in the car. These items are listed in "Trace Extraction and Objects Registration Form."

In practice, the warrant, which authorizes a search, is merely a template "for investigating crimes." This is too general and is insufficient for justifying the necessity of the search or for judging the specific scope of the search based on the principle of proportionality. Furthermore, the coverage of the search, both in time and space, is extensive. Investigative officers can, for instance, search through all the items in a house. And when a house or other residence is shared, there is no distinction made between a third person and the suspect or between the suspect's space and that of other households. In addition, searches are not subject to specific time limits. For example, the search in the Luo robbery case was carried out between 12:04 a.m. and 12:47 a.m.

If one's concept of the "search" is based on the Western experience, then the "search" mechanism in China must be considered incomplete. Its scope of action is limited and the warrant that authorizes the application is problematic. However, this has not stymied the collection of material evidence because alternative measures, such as the crime scene investigation, are available. Given that rights protection has been hampered by crippled norms, another practical need of the investigation—to collect as much evidence as

possible—will prevail. Investigators take advantage of existing norms and form their own logic of action whereby the search measure is applied only when a suspect's residence is involved.

Approval: Bypassing and Issuing Post Hoc

The problem with the search measure is not only that warrants do not ensure the protection of rights, but also that the internal approval process for search warrants fails to fulfill the function of power restriction. Search warrants can be issued after the fact, and an outside reviewer has no way to tell from the dossiers whether they were issued before or after the search. Interviews in this study have provided some clues. The police officers I spoke with had little regard for the search procedure. One officer stated, "I don't know what's the value of doing research on the search procedure [since] the warrant and other materials can be made up afterward. Investigative officers are not at all concerned about the search procedure" (Interview 5). Another officer admitted that "sometimes issuing a search warrant is just a matter of cleaning up the appearance of a dossier afterward, making it look more standardized. For the reviewer, we just need to see a set of materials when a residence is involved" (Interview 2). Through post hoc warrants a crucial function of the approval process—to restrict discretion—is basically lost.

The seizure of property has similar problems. The practice of seeking a post hoc seizure order is widespread. The legislative intention of a seizure order is to protect the property rights of the defendant and other parties. However, the reality is that, when there are items to be seized during an investigation or search, it is often too late or inconvenient to go back to the legal affairs division to request a seizure order. This barrier can only be formally overcome through a post hoc action. For example, the procuratorate in District Z asked that a seizure order be obtained in advance whenever property and documents need to be seized during a crime scene investigation or search. This requirement indicates that the procuratorate wanted the seizure procedure to satisfy the PSB rather than be left up to individual investigative officers. If this were achieved, the procuratorate would be relieved of responsibility (Interview 6). However, in actual practice, nothing changed. After the officer in charge at the scene decides to seize some items, a seizure order is drawn up afterward in order to meet the procuratorate's requirements.

Moreover, computer-based process control has been eroded or circumvented by a range of techniques. In District Z, the petition for a seizure order must go through an online approval system, which was designed for the purpose of process control. Once the contents have been in the system for three days or more, operators are no longer able to change them.

Theoretically, this prevents officers from altering materials after the fact. However, the case-handling officers could obtain a paper version of the seizure order from the legal affairs division if they were to make an error during the online process. In 2015, decisions on paper in District Z included five filing decisions, three search warrants, forty-one notices of assets being frozen, a hundred and twenty-five notices of evidence submission, and seventy-seven notices of a record search. As an observer sitting in an office in the legal affairs division in District Z, the author often heard legal reviewers in telephone conversations with the case-handling officers say things such as, "The seizure decision in your case is not correct, the items were seized yesterday, but the time you wrote on the seizure decision was today. Hurry up and withdraw it from the computer system, revise it to the current date, and then resubmit it."

Another issue is that the rule of relevance for seizure is often twisted to some degree. The problem is that the criteria of relevance are unclear and, in addition, a seizure order is easy to justify after the fact, which of course is substantively a reversal of the operational process. Investigative officers tend to seize all relevant items—as well as many that turn out to be irrelevant—on the spot, and then draw up a seizure list, or "Trace Extraction and Objects Registration Form," only later, according to whatever is needed to complete the dossier. Materials that turn out to be useful for the case in follow-up proceedings are recorded on the list or registration form; otherwise, they are not recorded at all, as though they had never been seized in the first place. "Sometimes I have to extract more than a hundred items on the spot. Who knows which ones are useful and which are useless? It's too cumbersome to list all the items in the registration form" (Interview 4). Obviously, this kind of thinking is based on the logic of case handling rather than the logic of protecting the rights of the parties involved. As discussed in the next section, it is difficult to trace seized items that are not included on the list or registration form. Although the law clearly requires that seized goods unrelated to the case be released, there is no enforcement mechanism. In our sample cases, it is impossible to know if they were promptly released. In any event, the dossiers rarely contained the document that is supposed to be issued when seized items are released.

Undoubtedly, the aim of the approval process is to restrict the discretion that is inseparable from the work of criminal investigation and evidence collection. However, the current norms in this area do not seem to be designed well. One of the greatest loopholes is the widespread use of post hoc warrants and orders, which may partly derive from the self-authorization system within the police department.

Management: Chaos and Burdens

Generally, there is a conceptual crossover between material evidence and criminal property.[11] Criminal property involved in a case is a general designation for all property and articles that enter the process of handling a criminal case.[12] Some items may be used as material evidence, some may not be. Given that not all seized property may be found relevant to the case and not all relevant property may be used as evidence for one reason or another, criminal property has a larger conceptual scope than that of material evidence.[13] In the past, because of certain backward ideas of law enforcement,[14] economic interests, departmental protectionism, and inconsistent judicial interpretations, criminal property management was chaotic. Although the 2015 revision of the *Regulations on Property Management in Public Security Bureaus* 公安机关涉案财物管理若干规定 (RPM), issued by the Ministry of Public Security, responded to several concerns (RPM, 2015),[15] this field remains problematic, especially in terms of the custody, transfer, and disposal of material evidence.

First, requirements for custody of material evidence are broad and sketchy. The CPL only sets forth the principles, while normative documents from earlier years, which stipulated the methods for collecting and packaging items, emphasized their economic rather than evidential value. Many important issues such as where items in custody were to be stored, the conditions under which they were to be kept, the mechanism governing custody, and who was responsible for items in custody were ignored. As a result, a large number of seized articles were collected without being handled properly. Some of them were damaged or even switched (Ye, 2004).

Nearly two years after the implementation of the RPM, these problems still plagued the districts I studied. The detective division in District Z set up a small compartment (about five square meters) in the interrogation room of the centralized case handling area to store seized property, including jewels and jade, calligraphy and paintings, porcelain, postage stamp albums, commemorative coins, and so on. The items were simply piled up—finding a specific item was difficult. And occasionally property was damaged. “For example, antique vases are easily broken. Sometimes, it’s inevitable they’ll get bumped when they’re being carried” (Interview 3). Most items in the compartment were not directly used as evidence since they had been photographed or described in written materials and included in dossiers. However, when it became necessary to look at a physical object for verification or to search for specific missing items, the haphazard custody conditions became a problem.

Second, the process of evidence transfer is replete with what might be called the duplication of material evidence. According to current laws, regulations, and relevant normative documents, the transfer of evidence and the

transfer of property are subject to different requirements. If not used as evidence, "property shall be kept properly for verification, and a list shall be produced and transferred with the case" (CPL, Art. 234). If used as evidence, "property shall be transferred with the case, and if it is not suitable for transfer, the list, photographs, or other supporting documents shall be transferred with the case" (CPL, Art. 234). Because the list, photos, or documents may be used in lieu of the actual objects when those objects are "not suitable for transfer,"[16] physical objects are rarely transferred. This phenomenon is fully displayed in the sample cases. In the dossiers of those sixteen fatal cases, the crime tools were presented in the form of photos attached to CSI (crime scene investigation) transcripts or identification transcripts. Not a single physical object was transferred.

On the one hand, no practical or standard guidance results from the arbitrary interpretation of the exception for transfers.[17] On the other hand, the use of written materials as material evidence is convenient. For instance, photos of an item can be used as material evidence as long as it can be verified that they reflect the original item, or their authenticity can be confirmed by forensics or other means. These photos have the same evidentiary status and effect as the original material. Moreover, distinguishing evidence from property depends on the discretion of the case handlers. If they think the line distinguishing the two is hard to draw and they fear being held responsible for a wrong decision, they may choose to transform all property into written materials. Once the transformation is completed, the case handlers are no longer interested in the physical objects, and no one cares how or where they are kept.

Third, disposing of criminal property is burdensome. Although the RPM requires the court, in its effective judgment, to deal with criminal property,[18] difficulties emerge in practice. Some studies have pointed out that there is often little to no mention in the main text of the court's judgment on how to deal with returning criminal property, especially property that was not officially seized or was disposed of in advance: "There are cases where the ownership of property is not clear or the legal relationship is complex. Some can neither be identified as illegal gains (to be forfeited), nor be identified as the property of the victim (to be returned). As for how to deal with such property, the various agencies have different understandings and often they conflict with each other" (Research Group, 2014: 93).

Lastly, in the past the courts did not address the issue of disposing of criminal property. Such items were kept in the PSB after trial. No specific path was laid out for the parties to ask for the return of their property, and in any case the PSB had no authority to dispose of criminal property. The head of the legal affairs division in District N felt helpless to deal with the huge

inventory of criminal property. "Clearing and dealing with the inventory from closed cases is difficult, or even impossible" (Interview 1). By the time the items had been put in the warehouse, the records were already a mess. Imagine a scenario where ten pieces of property were seized, three of which were registered and transferred to the court. Even if the court made it clear how those three items were to be disposed of, the remaining seven items remained stacked in an unknown corner of the PSB, damaged, lost, or even destroyed.[19] In addition, poor communication between departments can increase the problems surrounding disposal:

> Even if the judgment states how the property is to be handled, dealing with it is still troublesome since there is no clear channel for communicating the court's instructions. We don't know when the court has rendered a judgment, and we just copy a series of judgments from the court for a period of time. It's annoying that we have to depend on judges' whims. (Interview 8)

As discussed earlier in this article, the management of collected material evidence matters because it involves the authenticity of evidence. Yet, I found that there has been little regulation of this area. Sketchy norms have led to chaos, and poor communication between departments worsened the situation. Under these circumstances, practices that make work convenient become dominant.

Norms and Behaviors

The findings in the areas I studied reveal that the process of collection, circulation, and disposal of material evidence has been far from well regulated. Even though the process appears to adhere to a legal framework most of the time, its failures can be readily seen in the absence of norms or the presence of contradictory norms, or in situations where evidence collection deviates from or directly violates the current norms. As past research has long pointed out, "ruled but disordered" is the biggest problem in police law (Jiang, 2017). In this context, although the writ doctrine in the Western sense has been introduced for evidence collection measures such as search and seizure, its substantial restrictive effect has been completely eliminated in practice.

In fact, many police behaviors "seem to go beyond the legal/illegal dualistic rules of conduct" (Ruskola, 2016: 219). The PSBs and the individuals responsible for specific implementation have made every effort to manipulate, circumvent, and bend the norms in their daily work—a pattern close to "formalism" in the sense of Robert C. Merton. That is, although participants do not approve of the normative goal, they have to accept it, and passively or

flexibly use the methods confirmed by those norms (Zhu, 2007: 136, 143). Therefore, a large number of informal actions have flooded the police system. The field of investigation and evidence collection has witnessed the emergence of the phenomenon of "rules usurpation," in which "lower rules," such as informal rules, soft rules, non-institutional rules, and hidden rules, transcend "upper rules," such as formal rules, hard rules, institutional rules, and explicit rules (Guo and Zhou, 2013: 62).

What has caused this situation? To analyze the structure of the evidence collection process, as well as the behavior and motivation of the participants, it is necessary to search for factors that shape the status quo and are also likely to reveal whether certain norms work upon evidence collection behaviors and how this mechanism operates in practice.

Structural Contradictions

The practice of material evidence collection is embedded in three major structural contradictions: between investigative power and power constraints, resources and workloads, and the flexibility required to deal with the complex situation of a transitional society and the rigidity implicit in complying with laws and procedures. These contradictions have led to a defective system of norms characterized not only by a low density of legislation, but also laws that are poorly formulated, vaguely worded, and lack punitive provisions. The lag or absence of legislation in the fields of seizure, property management, and so on has resulted in long-term disarray whereby various measures have been mixed together or invented. The expression of norms is often vague, leaving space for exploitation and manipulation. District Z's practice of property custody is an example. Article 8 of the RPM requires property to be kept in custody in a centralized location, but allows local authorities to determine the scope of custody. As a result, the seemingly appalling practice in District Z cannot be considered illegal. Furthermore, some norms lack legal endorsement or "otherwise" clauses, which has led to a gradual loss of the Ministry of Public Security's ability to control grassroots police stations (Scoggins and O'Brien, 2016).

In a context where the exercise of public security bureaus' administrative power and investigative power are mismatched, the PSBs have relied on administrative regulations that authorize them to accomplish the work with which they are tasked through their investigative powers (Jiang, 2017). Furthermore, the National People's Congress has not adequately formulated corresponding rules in the areas of criminal procedure and administrative law but instead has gone overboard in authorizing the PSBs to "legislate" on their own. Because the PSBs themselves are in charge, they are free to prioritize

their role as an operations manager rather than as a supervisory monitor (Jiang, 2017). Many regulations created by internal rule makers naturally tend to protect the interests of the organization. The rule makers are often too conservative or too weak to make "self-denial" rules. And ultimately, they countenance compromises in actual practices.

The contradiction between workloads and resources makes it difficult to incorporate clear punitive provisions in relevant regulations. The tension between workloads and resources is common in the police system throughout China.[20] With regard to criminal cases, there long has been a shortage of labor, including a shortage of professional case-handling personnel, an insufficiency of professional training, and unguaranteed time by police who are temporarily deployed.[21] For line officers at the police station who are also responsible for investigating and collecting evidence, the contradictions are even more prominent.[22] If work were to be carried out in strict accordance with normative and procedural requirements, the available resources would be insufficient. The flexibility necessary to maintain social stability is also inconsistent with rigid law enforcement regulations.

In a context where maintaining stability trumps all else, PSBs directly face a large number of social conflicts that not only greatly increase the difficulty and complexity of law enforcement but also greatly degrade law enforcement norms. Internal rule makers need to tackle the task of preventing the violation of laws and abuse of power during any law enforcement action, but this is only one of many tasks they face. Once a clash of values occurs, the legitimate goal of "strictly complying with law and procedures" may be temporarily abandoned.

The result is a dynamic mechanism whereby organizations unfettered by strictly applied rules imposed from outside formulate norms that benefit themselves. Given the fact that China's PSBs are hobbled by constraints on their resources, combined with the fact that they have been granted leeway in dealing with complex situations, they have responded by formulating exculpatory norms. In this environment, some evidence collection actions have become purely discretionary. These actions are under the control of small groups only, which share information and experience, and often serve their own interests. Officers' discretionary actions have grown into collective strategies, and these collective strategies have been absorbed and transformed into self-made norms. As long as individual behaviors follow collective strategies, the individual's perception of responsibility is diluted. At the same time, the logic of collective action and collective responsibility contained in collective strategy undercuts any effort to control the distribution of power.

Additionally, the combined effect of the three major structural contradictions has been reflected in the discourse—without changing the old model of

power control—in an effort to deal with the growing crisis of police power. In recent years, news of wrongful convictions and abuses of police power have repeatedly been brought to the public's attention. To counter the crisis in the legitimacy of police power and the erosion of the authority of the police, the state launched a reform to standardize police work (Wu, 2006; Zhang and Li, 2015: 120). As a symbolic strategy, the rhetoric of the standardization of law enforcement can make the PSBs appear proactive. The revision or development of new law enforcement norms has been used as a means of bolstering the legitimacy of police power (Jiang, 2016: 101). Yet, some norms and regulations issued in recent years have not fully considered the reality of how the collection, custody, and transfer of real evidence work in practice. Rather than being systematically designed and organized on the basis of searching for the root of problems, many norms have been borrowed from foreign experience and patched layer-by-layer on top of problems. "A large number of law enforcement normative texts bring only a more comprehensive index system that judges performance, coupled with a complex assessment mechanism" (Jiang, 2016: 101).

From the perspective of guaranteeing resources, the operation of norms calls for the allocation of resources in a way that can meet the normative content. "In reality, the rule adjustment model is still unstable" (Chen Baifeng, 2017: 193), and many problems cannot be solved by law enforcement agencies on their own. Solutions often require inputs from the Communist Party and the government in the form of coordination, promotion, and resources (Chen Baifeng, 2017: 193). Once the investment of resources lags or is even absent, norms that have been established to maintain the image can easily become mirages.

From the perspective of flexibility, all police decisions are made situationally on the basis of common sense and discretion rather than any abstract theory of policing, the law, or police regulations. Situationally justified actions, however, separate form from substance,[23] thus clashing with China's performance evaluation system (PES).[24] It is difficult for the PES to control the process of evidence collection. Instead, it relies on the indexing of results. In the end, norms that cannot be implemented by the PES have been reduced to clauses with mere decorative effects.

Individual Rationality

The police are not robots that mechanically enforce the law. Their behavior can only be the result of the individual's tendency to make choices after taking stock of the existing norms and interests of the relevant parties, including themselves. The behaviors of investigators and case reviewers in the

collection of material evidence and the follow-up process can only be understood through an analysis of the possibility and costs-benefits of compliance with norms. According to Peter K. Manning, the meanings of an individual's "self" and an organization's "goals" can never be considered separately when studying lower-level participants (Manning, 1977: 132).

First, because of legislative deficiencies or defects, investigators can hardly comply with the state's norms. In any event, even if the norms are not strictly followed, there are no serious consequences. For example, the indicators concerning criminal technology adopted by the PSBs I studied had operational difficulties. In order to promote the collection of material evidence, the PSBs set the rate of on-site inquests at a hundred percent, and required that material evidence be extracted from more than eighty percent of criminal cases. The rate of effective material evidence extraction had to reach ten percent, twenty percent, and fifty percent, respectively, depending on the type of police station. The arbitrariness in these indicators is obvious.[25] Whether a piece of material evidence is useful is affected by many factors beyond the control of investigators, such as technical conditions or the specific circumstances of the case. In this regard, the compulsory rate would force investigators to pretend to comply with norms or to take alternate measures. In addition, norms without clear consequences for noncompliance will not be taken seriously. Investigators generally only pay attention to a few "red lines" rather than to all requirements.[26]

Second, the cost of strictly abiding by the rules is very high, while the benefit of not abiding by them is immediate. As discussed above, the dichotomy between police workloads and resources is particularly prominent in China today. Under such immense pressure, investigators attach great importance to making their work manageable. If they are given the chance to do one less thing or complete one less step in the process, they will take it. As the sociologist Jerome H. Skolnick pointed out, individuals in an organization tend to cope with the most current and pressing demands at work or perform to specifically meet the requirements of their intermediate supervisors, rather than to achieve the ultimate goals of the undertaking. They may break minor rules or reshape, reinterpret, or even ignore formal rules to give the best possible appearance to their handling of the tasks at hand (Skolnick, 2011 [1966]: 149–62). Examples from my fieldwork are abundant. Since transferring written materials is much easier than transferring physical items, investigators are motivated to make no distinction at the scene when seizing items, take all items back to the case-handling unit, and then draw up the list of items according to the needs of the case. The extraction procedure, rather than seizure, is widely used since the approval process is quicker and less paperwork is needed.

Third, from the perspective of extrinsic benefits, that is, an external evaluation of evidence collection behavior, complying with evidence collection norms carries few benefits. When time becomes a scarce resource, it will be used on the cutting edge and flow to places with the highest input-output ratio. To judge the external benefits of evidence collection in compliance with norms, we need to turn to the PES, in which compliance with norms yields few benefits. The current design of the grading system gives more weight to the mere completion of a task than to the quality of the work. When a police station makes work arrangements, it is very likely to prioritize work that can be quantified, such as the number of cases solved. Because quantifiable indicators must be completed, there is no room for negotiation. By contrast, case quality is a flexible and relatively insignificant indicator that can only affect results in two scenarios. One is that the case is not prosecuted because of insufficient evidence or lack of criminal facts. In practice, such cases are very rare. Even if such a unusual scenario were to occur, only 0.05 points would be deducted. In contrast, in instances where a certain number of assigned cases must be solved, 0.1 points would be deducted for any one incomplete case. The other scenario involves quarterly reviews of case quality, which account for two points of the entire 130-point grading system. The already minor importance of case quality review can be further undermined by the fact that reviewers tend to be perfunctory.[27]

Fourth, from the perspective of intrinsic benefits, that is, the internal evaluation of evidence collection behavior, the police consider complying with evidence collection norms not only a nuisance but also an insignificant matter. When investigators have discretion or discretionary space deriving from legislative authorization or negligence, the subjective intrinsic value they assign to actions or outcomes—which may be positive or negative (e.g., pleasure, shame, regret, guilt)—will affect their choice of behavior as a part of the costs or benefits. They may ask whether the behaviors and results are meaningful, whether they bring them a sense of achievement, or whether they are beneficial to society. Because Chinese culture emphasizes substantive justice, police officers are motivated by a strong sense of social justice to pursue case investigations and they readily think of themselves as guardians standing on a moral high ground. They strain every nerve to solve cases, something they consider of utmost importance. Their attitude smacks of heroism.

> Fresh recruits in their early 20s typically start out full of hope, imagining that they are taking positions as brave law enforcers who will command prestige, get to wear a sharp uniform, and maybe, if they are lucky, fire a gun. (Scoggins and O'Brien, 2016: 232)

Trivial, tedious, repetitive tasks designed to regulate evidence collection behavior are far from such heroes' notion of importance. Grassroots officers in China express strong dissatisfaction with having to deal with numerous reports, documents, and transcripts—all these they consider stifling. They believe that endless paperwork draws them away from true and meaningful work (Scoggins and O'Brien, 2016: 232). In addition, viewing themselves as craftsmen of their trade, the police have developed their own mean-ends rationality for justifying their actions (Leo, 2008: 20–25). They tend to "emphasize their own expertness and specialized abilities to make judgments about the measures to be applied to apprehended 'criminals' as well as their ability to estimate accurately the guilt or innocence of suspects" (Skolnick, 2011 [1966]: 176). As a result of their confidence, they feel that their work has been impeded by "seemingly irrational requirements and procedural delays" (Skolnick, 2011 [1966]: 178).

Fifth, investigators' perceptions of benefits are also affected by deeper power structures. The police department, Manning has argued, is close to a paternalistic bureaucracy in which the style and preferences of the leader will greatly affect the performance of the organization (Manning, 1977: 138). If the leader does not understand criminal investigation or the legal profession, the phenomenon of "the layman guiding the insider" will emerge. One interviewed officer provided an insightful view: "Leaders without professional knowledge are inclined to be bold. They're ambitious to score political points and ignore the rest. Generally, as long as the suspect is caught, this kind of leader is busy doing nothing but getting publicity" (Interview 3). Investigators believe that good performance in complying with norms does not bring obvious benefits when it comes to promotion. "I'd better be good about publicity. If I cracked a big case and leaders knew it, I might immediately get an opportunity of being rewarded or promoted" (Interview 3). Whether evidence collection is done according to the standardized requirements is hidden and difficult to view from the outside—thus leaders do not pay much attention.

The top-down management model also means that many officials in Beijing or provincial capital cities rarely experience direct contact with grassroots officers. The laws and regulations enacted by the National People's Congress and the Ministry of Public Security have often been criticized for failing to take local conditions into consideration when they were passed on to municipal and county PSBs. In the course of rule formation, feedback channels are so narrow that it is very difficult for the views of grassroots officers to get though (Scoggins and O'Brien, 2016: 225). In this context, grassroots officers may not only implicitly reject due process because of their craftsman's bias, but they may also disagree with the power control regulations proposed by high-level officials because they generally believe that

such officials tend to make rules based on their political interests. In this view, that completely divorces such rules from the reality experienced by police officers. Furthermore, the opportunity for vertical mobility is minimal and morale at the grassroots level is low. Grassroots officers who see little chance of promotion can become "dead from the neck up" (Manning, 1977: 142). Certainly, they will resist any change of the regulations given that this may upset their work habits.

Legal Transplantation

If one scrutinizes the activities surrounding evidence collection, the deviations, the violations, the formalism, and even "rules usurpation" become understandable. Nonetheless, the question remains as to whether the current approach of the rule makers and academia will lead to improvement in this problematic field.

The field of criminal procedure law in China has long been under the influence of legal transplantation and immersed in a self-Orientalized discourse, as Teemu Ruskola puts it (Ruskola, 2016; Zuo, 2012). This tendency regards law as universal knowledge, tries to use or becomes accustomed to using propositions proposed by Western scholars to regulate life, and ignores the behavior patterns of Chinese people as they go about their daily lives (Su, 2015). Mirjan Damaška has pointed out that it is difficult to transfer procedural laws between countries with different institutional backgrounds (Damaška, 2006: 231–32; Damaška, 2004). During a long seesaw struggle over methods of transplantation and institutional background transplantation, the default solution to problems is often incomplete and inadequate reforms. At the beginning of this article, I mentioned that existing research approaches to material evidence mainly point to transplanting imported methods and, ideally, reforming the institutional environment of Chinese criminal justice system so that illegal material evidence will be excluded and an effective chain of custody system can be established. It is this path—the discourse set in the West, especially in the American legal system—that its proponents would directly apply in the Chinese legal system.

However, legal transplantation may give rise to "an embedded conflicting rule system" (Damaška, 2006: 231–32). The "upper rules" in China that guide investigation and evidence collection are mainly transplanted from the West, but the "lower" rules are still based on local culture. When legal transplantation approaches dominate the upper rules, rule makers' vision is easily obscured by the Western knowledge discourse, which can prevent them from searching out and responding to true needs in local practice in a timely and judicious manner. Empirical findings have revealed that setting upper

rules on the basis of Western discourse is not always reasonable. Some of these rules are impracticable because of the felt need to highlight the image of law enforcement and to align with the notion of the modern rule-of-law state. Others show that weakness and compromise have been due to the way power is distributed, which has hindered the goals of transplantation. The weakness in the rationality of upper rules provides moral protection and operational space for manipulation, as well as cover for various deviations, openly and publicly.

Since it is closely linked to the local system, cultural structure, and even the professional characteristics of the police, unreasonable upper rules can hardly be improved by simply increasing the introduction and transplantation of methods from outside. On the contrary, without changing the institutional background of the lower rules, the idea of incorporating Western practices into China's upper rules system may even increase the gap between discourse and practice. The divide has led to widespread disregard of the law by law enforcers, or, more precisely, the habit of "formalism."

For example, China's search measure reveals obvious signs of transplantation. Although it is undoubtedly an incomplete transplant from the perspective of limiting the abuse of power because existing regulations on search targets, scope, time, and so on, are unknown, the search measure in China is still marginalized. Investigators are not enthusiastic about using the search procedure; when it is used, it has been limited to extremely narrow areas; and, with rare exceptions, it has effectively been replaced by other, more convenient measures. As far as the investigator's motivation is concerned, search is just like other measures: a tool to ensure the successful completion of the job. When it makes the investigator's job harder, and incurs no penalties if not used, it will be circumvented or even abandoned. Similarly, requiring investigators to protect the rights of the subject of a search is tantamount to "asking a tiger for its pelt." No matter from which perspective, the protection of rights complicates the daily work of the investigation. It may increase the difficulty of the work (by making it harder to solve a case or obtain evidence) or it may increase its complexity (by requiring more procedures).

It is doubtful that, in the current institutional environment, the two main approaches to reforming the evidence collection process—adopting the exclusionary rule and the chain of custody system as practiced in the United States—can have a significant impact. Theoretically, these approaches could be put into practice, but the cost would be that some police work would be invalidated (since illegally obtained evidence must be excluded) or would be made more complicated (e.g., by requiring the police to testify in court). However, the calculation cannot be done in a vacuum. The exclusionary rule, especially regarding illegal material evidence, does not necessarily

have a substantial impact on police work. The feedback mechanism from the court decision to exclude the evidence back to the relevant police officer is roughly as follows: illegally obtained material evidence is excluded, the exclusion directly or indirectly leads to an acquittal, the acquittal leads to liability, and the liability is borne by the individual police officer, which generates a deterrent to the illegal conduct. If any of these steps are absent, the feedback chain will break. Given the extremely low acquittal rate in China, even if one or a few pieces of material evidence are excluded and even if the exclusion has an impact on conviction and sentencing, this feedback is probably not passed back to the police as long as the trial does not end in an acquittal. The criminal property management system has shown that the PSBs do not track judgments, let alone use the results of judgments as a basis for evaluating police behaviors.

The chain of custody system requires PSBs to open their evidence collection process to the court, which involves two measures: firmly controlling the custody chain and requiring investigators to testify in court. However, the reality is that although the RPM has established requirements for custody conditions and places, and appraisal of the value of property, implementing those requirements has been challenging. One difficulty springs from the diversity of seized articles, which makes it virtually impossible for the PSBs to establish their own vaults that meet a variety of custody conditions. In addition, the custody capacity of a PSB can easily be exceeded.[28] Entrusting custody to other organizations or units is also not easy. Here, questions such as whether qualified institutions can be found, whether they are willing to take on the task, and what costs are involved all need to be addressed. Another difficulty lies in the impracticality of appraising valuable properties. Officer X in District Z said, while pointing to the miscellaneous items in the small compartment,

> They were seized from a suspect in a theft case, including antiques, calligraphies, paintings, and jade stones. The suspect confessed. But only nine out of more than twenty victims were found. How can we return property to unknown victims? According to the requirement that we have to take all the items for appraisal, and the cost—a certain percentage of the value of the items appraised—is paid by the police, I dare say that if these items are valuable, my department will go bankrupt from paying the appraisal fee. (Interview 3)

If police testifying is made routine, the police labor shortage is bound to become more acute. At the same time, investigation closure still exists and the space available for investigators to operate is still large. And what if investigators who appear in court choose to lie?

Implications

Of course, this article by no means suggests that the transplantation approach be completely rejected. Instead, it merely seeks to demonstrate the multiple aspects of current practice in the microscopic field of criminal investigation and evidence collection, as well as the subtle interplay between transplantation and local response, while also recognizing the subjectivity of China. In addition, this article does not attempt to propose a comprehensive plan for future reforms. Instead, on the basis of its empirical study, it endeavors to present the limitations of the old normative approach and point to a new path that takes both Western experience and local knowledge into consideration. As Philip C. C. Huang has noted, only by starting from empirical/practical research can we avoid blindly cramming Chinese history and reality into a theoretical framework imported from the West (Huang, 2015: 34).

My empirical findings show that certain transplanted norms have not been fully assimilated. This is because normative transplantation, a highly idealized approach, deviates from reality in China with regard to the institutional background and participants' instrumentalist rationality. Efforts to standardize the evidence collection process have spawned a tendency toward formalism. Since these new norms are incompatible with reality, they have not been rigorously enforced. Research following the Western discourse with regard to due process contends that if the police must get approval before any intrusive action and if they stick to every step spelled out in the regulations, and, finally, if they record the whole process, everything would improve. These reform ideas have ignored substantive justice and pragmatism from the point of view of the participants. Grassroots officers value many things, but first in priority is getting their own work done and maintaining social order. This has been an extremely challenging task in "transitional" China, with police work hindered by the contradictions between workloads and resources, and between flexibility and rigidity. If a norm smoothes the process or comes with serious punitive consequences, the police follow it; otherwise, they may choose to ignore, manipulate, circumvent, or even directly violate it. If norms are absent or are contradictory, they make up their own rules. Thus collective strategies as well as work habits are gradually formed. Without recognizing this reality, drafting top-down regulations based on imported ideals will end up in vain, or even widen the gap between discourse and practice. That in itself will generate problems that are both more difficult to deal with and harder to recognize.

Moreover, transplantation implies "general praise for Western legal culture with a denial of its historical changes, fusions, variations, and fractures" (Su, 2015: 61). Simply transplanting some practices that have already been

questioned in the West without reflection may lead to imitating the wrong object and missing the latecomer advantage. For example, the United States, the source of the exclusionary rule, has not forthrightly addressed the question of whether that rule has an adequate effect on the police (Slobogin, 1999). Introducing the rule to China with no reflection amounts to simply ignoring the problem. Furthermore, in the United States, where police perjury is criminalized, cases of police giving false testimony are quite common (Slobogin, 1996: 1037, 1043). Since China has not yet made clear institutional arrangements for the punishment of police perjury, how can the chain of custody system be expected to run smoothly?

However, the convergence of transplanted ideas and practical logic has already sprouted shoots. In fact, some transplants that seem to be a compromise at first glance reveal a certain subjectivity, that is, one based on the inherent circumstances and needs of China. The adaption of discretionary exclusion of illegal material evidence and the rejection of the "fruit of the poisonous tree" are examples based on the actual needs of the investigating authorities (Zuo, 2012). If a piece of material evidence is illegally collected by seriously violating one's rights, the judge will exclude it. At the same time, some defective material evidence is remedied rather than simply excluded, and thus the relevant cases are able to go forward and be resolved. This defective evidence correction system does not mean investigators can do whatever they want. They are still under control of the PES, supervisions, and reviews. If all these function well, some defects in material evidence can be avoided. Another example is the introduction and restrictive application of searches. The search measure in China is clearly not a search in the American sense. Nonetheless, it still plays a role in preventing the police from entering a suspect's residence as long as it is not a crime scene. Frankly, this policy has been implemented fairly strictly. Exploring the subjectivity that emerges during the transplantation process and its coexistence and interaction with the institutional background and discovering practical logic based on the Chinese social context arising from wise or ill-considered choices, may help rule or policy makers trace the roots of various problems and help them explore an approach to reform that is more in line with China's actual situation.

With regard to subjectivity, this article has highlighted key issues that provide a few clues for future breakthroughs. The establishment of exclusionary rules on material evidence depends on a good mechanism of feedback from court decisions to police behaviors. The implementation of the chain of custody system requires that resources be guaranteed. To change the work habits of grassroots officers and readjust negative collective strategies requires comprehensive measures. For instance, more resources and reasonable performance evaluations might free officers from quota-oriented thinking and help them

focus on the quality of their work. A good accountability system within the police system could boost open and transparent decision-making, fair and balanced promotions, and respect and adoption of opinions from line officers at the grassroots level. The key opinion leader identified by an in-depth analysis of the interpersonal interactions in microenvironments should be well trained and should take responsibility for the whole team. Internal scrutiny such as an online system and interdepartmental supervision should be reinforced and loopholes should be closed. Magistrates or supervisors outside the police department should rule on warrants currently issued by the PSBs themselves.

In short, developing a new normative approach that draws on the Western experience but also is compatible with local knowledge calls for more consideration of participants' behaviors and motivations as well as the institutional environment in which those behaviors and motivations are embedded. As for how to build a concrete new criminal material evidence collection system that follows a path as close to the actual situation as possible, that must await further studies.

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Notes

1. Any discussion of material evidence should not be limited to "the thing" itself, but should also encompass the process of collection, transfer, custody, storage, forensics, and so forth, by which a series of evidence is produced. These bits of evidence need not be solely "physical objects," but can also be verbal. For example, because of the limitation of temporal and spatial conditions, not all material evidence can be properly presented or reproduced satisfactorily at trial. Therefore, transcripts as an official form of evidence are used to record the condition of the article in question. For instance, identification is a "confirmation" procedure that must be carried out to rivet together the material evidence and the facts of a case. However, identification transcripts are generally considered to be verbal evidence. Another example is forensics. To understand and interpret material evidence, judges frequently need information that can only be revealed by scientific and technological means. Hence they require the help of experts with specific knowledge and experience. But expert opinion is still subjective and belongs in the category of verbal evidence. See Taguchi, 2019: 119.

2. This is illustrated in a number of widely reported cases. For example, there was a fundamental error in the poison test in the infamous Nian Bin case of 2006. Some other examples were the difference between the height of the corpse and the "supposed" victim in the Zhao Zuohai case; the forged soil sample used to prove that the defendant had been at the scene of the crime in the Du Peiwu case; the "weapon" in the Chen Jinchang case, which was a hammer borrowed by investigators; the leather shoes left at the scene which were inconsistent with the suspect's foot size and were lost because of poor custody conditions in the Qin Junhu and Lan Yongkui case; and so on (see Liu and Lu, 2014; Du and Zeng, 2014; Chen Yongsheng, 2007).
3. Article 54 of the Criminal Procedure Law states: "The collection of physical evidence and documentary evidence that does not comply with legal procedures and may seriously affect judicial fairness, shall be corrected or reasonably explained; if it cannot be corrected or reasonably explained, the evidence shall be excluded."
4. On the concept of "field," see Bourdieu, 2003 [1980].
5. District N is the center of a large urban and densely populated area with a population over 1.2 million at the time of this study. The district's GDP in 2015 was more than 80 billion yuan. There are more than 1,200 officers in the police department—about ten per 10,000 of the total resident population in the area. Criminal detention cases in 2015 numbered 1,036; there were as well as 982 arrests and 776 prosecutions. District Z is the downtown area of a relatively small city, and had a GDP of more than 28 billion yuan and a resident population of 580,000 in 2015. The police department had 435 officers—less than ten per 10,000 of the area's population. The number of criminal detentions, arrests, and prosecuted cases in 2015 were, respectively, 537, 441, and 490. These two districts were chosen for several reasons. First and foremost, I had access to the police in these two districts. They agreed to my request to conduct fieldwork and interviews not because they were confident about their work, much less eager to brag about it, but because the research team of which I am a member has built a solid relationship with them on the basis of several research projects over the years. In addition, thanks to personal connections, some officers in these departments are familiar with my studies and me, and thus have shown their trust in me with their colleagues. Second, these two districts are representative. The police department in District N has a notable reputation for its achievements in standardization reforms within C province; it is safe to say it is "one of the best." The department in District Z, on the other hand, is an ordinary department, much like most in other cities and districts. Third, leaders of the legal affair division in the two districts care about their work and seek to improve it. They welcome advice or proposals from academics.
6. "Fatal case" is a widely used concept in China's criminal justice system. Any criminal case that involves a death—resulting from murder, homicide, robbery, kidnapping, or injury—is termed a "fatal case." The dossiers used in this study come from the police. Because my study involves the internal review and approval process and explores the interactive dynamics within the organization, it requires a certain level of comprehensive information—this can only come from investigative dossiers. In the past, investigative authorities did not keep

dossiers after cases were transferred to the prosecution. When I conducted my fieldwork, the construction of an electronic dossier system in the two police departments had just started. Not all dossiers are contained in the electronic system. Nonetheless, I was able to collect detailed information on sixteen murder cases, which accounted for 62 percent of all fatal cases in the two regions in 2015. Although I did not carry out systematic sampling, the cases I collected can be considered representative of random sampling because the police did not deliberately exclude the missing cases.

7. Article 132 of the CPL stipulates, "To ascertain certain features, conditions of injuries, or physical condition of a victim or a criminal suspect, a physical examination may be conducted, and fingerprints, blood, urine and other biological samples may be collected."
8. Ai Ming (2016) has demonstrated that evidence acquisition is an obligatory intervening investigative measure. According to Article 59 of the PHCC, the obligatory notice of evidence acquisition requires the approval of the person in charge of the public security bureau at or above the county level; Article 223 requires that seizures be approved by the person in charge of the case-handling division (PHCC, 2012).
9. See Mincey v. Arizona (1978) 437 US 385; Thompson v. Louisiana (1984) 469 US 17; Flippo v. West Virginia (1999) 98 US 8770.
10. We may infer from this statement that the suspect's home and car became extended crime scenes because he was still at large and a threat to public security. Although this condition, which is similar to the hot pursuit principle in the United States, is not overtly expressed in CSI regulations in China, officers still apply it in practice according to their own understanding. However, the officers in the Zheng case exploited this application. According to the fact sheet, Zheng turned himself in at 9:40 a.m. on September 18, fifteen minutes before the second CSI. Therefore, the condition for a hot pursuit argument did not exist, and the suspect's home and car should have been searched instead of investigated as an extended crime scene.
11. What can be found in evidence dossiers is verbal evidence alone: "filing materials, suspect's confession, victim statement, evidence photos, written evidence, written record of the examination at the scene, as well as descriptive materials" (Zuo, 2017: 2). It is difficult to find the physical objects mentioned in the dossiers. I explore the problems in the custody and circulation of seized property mainly through a combination of in-depth interviews and on-the-spot observation.
12. According to Article 2 of the RPM, property involved in cases is "sealed, seized, frozen, detained, transferred, registered and preserved in advance, sampled for evidence collection, recovered and collected by PSBs in the process of handling criminal and administrative cases, and [includes] articles, documents, and payments relevant to cases received from other units and individuals."
13. At present, there is no clear criminal property preservation system in China, even though confiscation of property and fines are listed as penalties in the Code of Criminal Law. Therefore, how to temporarily "hold" property for further proceedings has long been in disorder.

14. The idea of "valuing the case over the object, and valuing the person over the object" has long been a tenet of China's criminal justice system. Thus, the PSB, the procuratorate, and the courts are not equally invested in the custody of property. As the first participant in collecting and keeping property, the PSB has to establish spaces (whether standardized or not) to store the property. When the property needs to be transferred to the procuratorate and the court, the latter usually refuse to accept it since they lack storage place.
15. The regulations require centralized or special safekeeping places to be set up, property to be promptly handed over for registration, and a centralized management information system to be established. The regulations also specify that the custody conditions should be set according to the characteristics of the property. Precious property, such as cultural relics, gold and silver, jewelry, famous calligraphy, and paintings, is to be photographed or videotaped, identified, and valued in a timely manner; when it is deemed necessary, such property is to be kept by two persons.
16. Article 363 of the Interpretation on the Application of the Criminal Procedure Law of the People's Republic of China further clarifies the items that are not suitable for transfer: mainly objects that are bulky and cannot be easily carried; objects that are perishable, moldy, and hard to preserve; guns and ammunition; highly toxic items; inflammable and explosive items and other contraband and dangerous goods.
17. The scope of the objects is not clearly defined in the exception. For example, no mention is made as to the dividing line between goods that are "bulky" and those that are not. As for objects that cannot be easily carried, this depends on the type of equipment available to transport these objects or the distance they are to be transported. As for "hard to keep" goods, apart from decay and deterioration, it is not clear what else might be included. Should items such as impounded vehicles, which require a large storage space and will depreciate rapidly with storage time, be treated as "hard to keep?"
18. Article 20, Paragraph 3 of the RPM stipulates: "If the people's court decides on conviction and the property involved in the case is managed by the PSB, the PSB shall deal with the property according to the effective judgment of the people's court. If the judgment of the people's court does not specify how to deal with the property involved in the case, the PSB shall seek the opinion of the people's court."
19. A number of police officers in District N told me that the the material evidence storeroom manager pulled two cartloads of articles out and burned them before he was transferred to a department in another region. Because it is impossible to verify the veracity of this story, I only mention it here as an anecdote.
20. In the detective division, the legal affairs division, and the police stations, most of the police officers work more than forty hours a week. Around half of them work forty to eighty hours and a fifth even work eighty to a hundred hours (Zhang and Li, 2015: 118).
21. "Fatal cases" routinely receive the most resources. Such cases are handled by professional teams. However, in the detective division in District Z, there are only four full-time investigative officers with eight or nine other officers who temporarily help. The four have to deal with more than 180 criminal cases a year,

including very difficult fatal cases as well as others, such as theft and robbery cases. When needed, manpower from the police stations is deployed to help. But for the line officers in police stations, a lack of training may be the last problem they consider, as they have other worries. For example, officers often begin conducting on-site inquests after only a half day of training; but what concerns them most is whether they can get their work done rather than getting it done correctly.

22. Of the thirty to forty officers in each police station in District N, fewer than ten are assigned to investigate criminal cases, which number around one or two hundred annually. They have to deal with a series of other tasks—such as maintaining stability, household registration, public security management and mediation, security inspection and supervision—which further dilute already strained resources.
23. For instance, patrol officers may make an arrest for one set of reasons, but later cite different or additional legal facts embedded in the ex post facto account as the justification for the arrest (see Manning, 1977: 132).
24. The performance evaluation system has replaced laws and regulations on the books and has been treated as one of the most important guidelines in practice by participants at different points in the Chinese criminal justice system. Almost all work requirements are organized into the performance evaluation system, which specifies a certain number of points to be awarded or deducted for each task and action. Through adding or deducting points, officers' performance in certain work is assessed, either positively or negatively. The assessment results are used as the most important evaluative criteria in the annual work review of groups and individuals. The lone exception is the "one-vote veto system" 一票否决制, which comes into play in the most serious violations. A veto means that in any case where a serious violation of the rules occurs, all the other work an officer does for the entire year will be negated.
25. Although a piece of physical evidence can be used to identify suspects, it is affected by many factors that cannot be controlled by investigative officers.
26. Investigators must avoid—or at least pretend to avoid—serious violations of rules during operations. According to Article 23 of the RPM: "Case-handling personnel who commit one of the following acts shall be criticized or punished pursuant to the relevant provisions according to the circumstances and consequences of their actions: (1) failing to issue legal documents; (2) failing to transfer the property involved in the case to the person responsible for management of the property without good reason within a certain time limit; (3) refusing to return the relevant property that should be returned to the parties in accordance with the law; (4) other violations." Article 25: "Relevant leaders and staff members who detain, spend, embezzle, exchange, damage, or dispose of the property involved in a case without authorization shall be punished in accordance with relevant regulations; those who commit a crime shall be investigated for criminal responsibility in accordance with law." Therefore, except for serious situations that can be treated as a crime, only three situations entail adverse consequences: failure to issue a document, untimely transfer, and refusal to return property.

27. The real struggle in the entire review process involves the relationship between departments and individual officers. Reviewers are loath to take issue with their own or their colleagues' work. "When conducting an evaluation, we always consider the feelings of the people who have reviewed the case before. We work together every day, and we have to show each other the necessary respect" (Interview 7).
28. In District N, vehicles seized over the past few years have been stored in the police department's parking lot. The lot has been upgraded many times. An electric lifting platform has even been installed to save ground space. But since seized vehicles "only come in but don't go out," the lot has become filled with vehicles.

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Interviews

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