

With the purpose of improving the Chinese legislation, and by comparing the legal regimes in China and England and Wales, this study focuses on various types of agreement reached between suspects, defendants or offenders, and criminal justice authorities, where the former agrees to implement certain forms of cooperation in exchange for lenient treatment from the latter. This mutually beneficial cooperation, entitled 'criminal procedural agreements' (CPAs), is the subject of this research. In this study, 'offender' is generally used to describe a person who is accused, charged or convicted of committing certain crimes in criminal proceedings, while 'criminal justice authorities' mainly refers to police, public prosecutors, and judges. According to the content of the cooperation offered by the offender, three main types of CPAs are studied: plea agreement, assistance agreement, and restoration agreement.

Irrespective of the differences in legal traditions, systematic models and organic structures in criminal justice, China and England and Wales have both developed practices where criminal cases are disposed of by informal, negotiable and mutually beneficial state-citizen cooperation. However, these approaches do not represent ideal solutions to crimes but areas of tension where the integrity of the criminal justice system is under challenge. Looking at the overall trend of CPAs and their involvement in the two specific legal systems, a key question emerges: what is the position of CPAs in criminal justice? It contains three sub-questions: (1) what is CPA? (2) What is the current status of CPAs as well as their relationship with ordinary procedure in China and England and Wales? And (3) how and to what extent can the tension areas between CPAs and ordinary procedure be managed? To answer these questions, this study begins with conceptualizing CPA (Chapter II). A pure model is established to facilitate the systematic analysis of various types of agreements. However, grey areas exist in criminal proceedings and they are crucial in understanding not only the nature of the cooperation in the form of agreement, but also the evolution of CPAs. Therefore the relevant variants of the pure model are also covered in this study. Furthermore, the three groups of conditions for the existence of CPAs are analyzed to reveal the nature of such mutually beneficial cooperation. Based on the model, the current statuses of CPAs in the Chinese and English legal systems are examined in the following two chapters (Chapters III and IV). In each chapter, plea agreement, assistance agreement and restoration agreement in the specific legal system are examined respectively from the perspectives of historical involvement, current legal regimes, legislative motivations and tension areas. Following that, the characteristics and the overall trends of CPAs are analyzed. Given the observations drawn in the former chapters, this study moves on to explore how and to what extent China can benefit from the experience of England and Wales in coordinating the relationship between CPAs and ordinary procedure (Chapter V). By referring to David Garland's 'penal state' theory, the foundation and boundaries for comparison are established. Within this framework, three types of CPAs are examined comparatively to uncover the main tension areas between CPAs and ordinary procedure. The coordination of their relationship depends on the objectives that a state expects to achieve through criminal procedures. Correspondingly, four principles are proposed based on the common objectives in the two criminal justice systems to manage those tension areas.

Through four chapters' exploration, in the concluding chapter answers are provided to the questions of what CPA is, and what the status of CPAs is in each criminal justice system. For the first question, this study emphasizes that a pure model of CPAs is an agreement embedded in the administration of criminal justice with offenders and criminal justice authorities as its main contractual parties, and the mutually-beneficial exchange between offender's cooperation and legal concession as its content. The evolution of CPAs is correlated with the civilization of criminal procedure, and the well-functioning of former relies on the fundamental values and principles respected and guaranteed in the latter.

Despite the theoretical pure model, in reality the negotiation process may involve more than two parties, the bargaining chips may be pre-fixed, the presumption of equality between negotiating parties can be transformed into a top-down reward, and more importantly, some variants may gradually evolve into the pure model, and *vice versa*. The exchange of the offender's cooperation and legal concessions may have originated from case by case negotiation. However, bargaining costs, requirements on predictability, and the principle of legality make such a strategy not always desirable. When the contents of cooperation and legal concession are relatively simple, direct and explicit, such as in the case of plea agreement, the pure model of CPA is likely to be transformed into a 'standard agreement'. In the situations where the benefits for parties are implicit or indirect, such as restoration agreement, the negotiation in individual cases is also likely to be transformed into a top-down reward. As to the second question, in China a rough legal framework for the *quid-pro-quo* relationship between offenders and criminal justice agencies has been gradually developed. However, the procedural rules that regulate the negotiation process are vague. In addition, some fundamental principles such as the right to remain silent have not been fully acknowledged in the Chinese criminal justice system, increasing the risk of miscarriages of justice when using CPAs. While in England and Wales, what can be observed is fine tuning rather than great leaps in both CPAs and ordinary procedure during the past a few years. The patterns of negotiation process have been constantly formalized with relatively fixed terms and conditions. Every reform of CPAs is always attached with detailed conditions, and a system of 'exception of exception' is gradually developing.

Despite these differences, the comparison on the five dimensions of penal state in the two legal systems also shows a trend of convergence. In fact, the current status of CPAs in China more or less reflects the past of that in England and Wales. During the past decades the Chinese criminal procedure has been reformed consciously, though stumblingly, towards civilization. Ups and downs in Chinese legal reforms are a process of upward spiral, reflecting the on-going power competition and

re-allocation among different stakeholders – horizontally among the Party, government, the judicial system and the public, and vertically between central and local – in transforming and civilizing criminal justice. With this trend, the convergence between the two legal systems is likely to be strengthened instead of weakened.

Following the answers to these two questions, policy recommendations are provided to the Chinese legislator on situating CPAs into the current criminal justice system. Firstly, at the current stage the scope of CPAs should be restricted due to the limited civilization in ordinary procedure, and the four principles established in Chapter V should be complied with. Secondly, the legislator should pay more attention to the procedural issues in CPAs, especially with respect to enhancing the transparency and formalization of the bargaining process, revising Article 118 of the 2012 CPL to guarantee the offender's right to know, revising the 2012 PSAPL to safeguard the offender's right to a fair trial, reflecting the credits for cooperation in the legal decisions, giving reasons if the normal credits are rejected, and providing remedies when either party refuses or fails to fulfill contractual obligations. Thirdly, for each type of CPAs, the legislator should reconsider its actual goals and functions in the current legal context, and based on that, establish corresponding criteria for filtering offenders and cases and build the detailed proceedings.