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# Accountable for a Lifetime: Reforms in Prosecutorial Accountability in China

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## Abstract

The judicial accountability reform in China introduced the concept of lifelong accountability, which requires prosecutors to be responsible for the cases they handle by tying their reputation and career prospects to the quality of the cases, regardless of whether they still hold those positions. To explain this lifelong accountability, this article analyzes key issues surrounding prosecutorial accountability in the Chinese context, critically examining the accountability system before the reform and the transformations brought about by the new accountability regime. It argues that although lifelong accountability is expected to be a deterrent to prosecutorial misconduct, the feasibility of the accountability mechanism is subject to doubt. The reform tries to form collective responsibility, enabling frontline prosecutors to exercise greater autonomy. However, it has not led to a paradigm shift from the predominantly bureaucratic model to prosecutorial professionalism, which demonstrates profound distrust in the prosecutor's judgment at a fundamental level.

## Keywords

China – lifelong accountability – prosecutorial accountability – prosecutorial misconduct procedures– reform

## Introduction

Over the past few years, the people's procuratorate in China has undergone a substantial transformation. In 2017, a quota system [*yuan'ezhi* 员额制] was

introduced to divide the staff working at the procuratorate into three categories: quota prosecutors, auxiliary prosecutors, and administrative staff (Legal Daily 2017; Procuratorate Daily 2017). Only a small fixed number of quota prosecutors [*yuan'ezhi jianchaguan* 员额制检察官]<sup>1</sup> are now recognized as professional prosecutors, who are expected to lead criminal prosecutions (Huang 2018; Peng 2019; Wang 2020). In 2019, the departments within the procuratorate formerly in charge of various facets of criminal procedure, in particular the Department of Public Prosecution and the Department of Investigative Supervision, were merged, with prosecutors grouped into new cohorts and assigned to handling specific types of cases from investigation to trial (Guo 2019; SPP 2019). This reconfiguration also led to devolution within the procuratorate. Although the chief prosecutor is still required to sign off on the resolution of some cases or it must be discussed by the prosecutorial committee, the internal hierarchical reviews previously required for the final decision-making appear to be low key, and a majority of the time, quota prosecutors have more autonomy (Cui et al. 2017; Gao 2019; Xie 2017). This process of debureaucratization has undergirded the frontline role of quota prosecutors who are entrusted with leading the prosecution team. Proceeding at multiple levels, these measures were all considered under the umbrella of judicial accountability reform [*sifa zerenzhi* 司法责任制], with the aim of preventing professional misconduct.

Revolutionary as these new measures seem to be for restructuring of the procuratorate, a more far-reaching, and yet controversial, transformation of the procuratorate was brought by the accountability principle, known as a prosecutor's lifetime accountability [*zhongshen zerenzhi* 终身责任制]. This lifelong accountability requires prosecutors to commit to the cases that they handle by yoking their reputation and career prospects to the quality of the cases, regardless of whether they still hold those positions. Given the nature of prosecutorial powers, attention should be paid to the link between prosecutorial misconduct and false convictions (Li G 2016; Li Y 2016). Since its very inception, managing prosecutorial misconduct has gone hand in hand with the miscarriages of justice, which are at the heart of prosecutorial accountability. The first time that lifelong accountability was mentioned was in the Regulations on Resolutely Preventing Miscarriages of Justice [*Guanyu qieshi*

<sup>1</sup> The term “quota prosecutor” is a literal translation of *yuan'ezhi jianchaguan* 员额制检察官, which is a privileged title of the small number of prosecutors who have qualified as lead prosecutors and take charge of frontline prosecution activities. According to the judicial quota system reform, the proportion of quota prosecutors and judges is no more than 39% of the entire public servants on the judicial payroll (Legal Daily 2017).

*fangzhi yuanjia cuo'an de guiding* 《关于切实防止冤假错案的规定》] issued by the Central Political-Legal Committee in 2013. This regulation proposed that judges, prosecutors, and police be responsible for the quality of cases that they handled and that the liability incurred should last for a lifetime. The concept of lifelong liability was later incorporated into the Supreme People's Procuratorate's (SPP) Directive on Resolutely Implementing the Prosecutorial Functions in Preventing and Correcting Miscarriages of Justice [*Guanyu qieshi lyxing jiancha zhineng fanzhi he jiuzheng yuanjia cuo'an de ruogan yijian* 《关于切实履行检察职能防止和纠正冤假错案的若干意见》]. In this directive, the SPP emphasized the importance of setting up a new system of lifelong accountability, so it declared that a holistic reform was needed to change how prosecutors process criminal cases. In the Resolution on Major Issues in Relation to the Promotion of Rule of Law by the CCP [*Zhonggong zhongyang guanyu quanmian tuiding yifazhiguo ruogan zhongda wenti de jueding* 《中共中央关于全面推进依法治国若干重大问题的决定》] passed by the fourteenth plenary session of the eighteenth Central Committee of the Chinese Communist Party in 2014, lifelong accountability was enshrined in the Party's political statement as a way to address the perennial problem of wrongful convictions.

Miscarriages of justice can have damaging implications for a political system (Huff and Killias 2010). This has been the case in China, where a large number of wrongful convictions came to light over the past three decades, and a high proportion of them carry a death sentence (Jiang 2016; Xiong and Miao 2018). These wrongful convictions have far-reaching repercussions on the Party-state, which claims and retains its legitimacy by and large through its performance in achieving social goals. Miscarriages of justice undermine public confidence in the administration of justice and affect the attitudes of legal practitioners (Jiang 2016; Mou 2020: 3). Lifelong accountability, in this regard, serves as an antidote to misconduct by the procuratorate and prevents future wrongful convictions. However, this mechanism of lifelong accountability is peculiar and seems to be designed to make prosecutorial responsibility excessively onerous. Indeed, Chinese prosecutors see lifetime accountability as "a sword of Damocles" that hangs over them (Chen 2013). Why did the Party-state choose such a radical method for holding prosecutorial power to account? How can we understand prosecutorial accountability in the Chinese context? How can we ensure that prosecutors are held accountable for their lifetime?

I divide my answers to these questions into three sections. Section 1 introduces some of the central issues in prosecutorial accountability in China. It focuses on two critical questions about socialist accountability: to whom are prosecutors accountable and how accountability operate in China's constitutional

framework. Answers to these questions are not as straightforward as they may first appear. It is necessary to trace the power base of the prosecutorial authority and dissect the supreme role of the Party in the constitutional order. Within the normative constitutional structure, the procuratorate's dual subordination and the paradoxical principle of *edinonachalie*,<sup>2</sup> or one-man management principle, added challenges to the mechanism of prosecutorial accountability in China. Section 2 traces the prosecutorial accountability system before the reform. By analyzing the limitations in how prosecutorial misconduct was defined and flaws in the SPP regulations on misconduct proceedings, it reveals the deep-seated prosecutorial culture cemented by collective responsibility. Section 3 looks at the existing accountability reform, by first explaining why a comprehensive reform was initiated. To a large extent, this is a response to the evolving role of public prosecutors. As a radical solution to miscarriages of justice, the analysis leads to the feasibility of lifelong accountability, considering the statutory limitations, the agency principle, and the Party sanctions. The dissection of lifelong liability casts doubt on the concept of accountability for a lifetime, followed by the discussion of the wider political and legal reasons for the unusual reform measures. Prosecutorial accountability reform is still ongoing, with updates of the new measures and adjustment in existing policies (Legal Daily 2021). Although it might still be too early to evaluate the effectiveness of the reform, lifelong accountability has topical, practical importance, which merits scholarly discussion. Until now, the reform has received little attention from academics in China or elsewhere. This article therefore fills that gap by systematically analyzing the issues surrounding prosecutorial accountability in the Chinese context, critically examining the accountability system before the reform, and the transformations it caused.

### Some Basic Issues regarding Prosecutorial Accountability in China

Accountability, beloved in Western politics, seems to be "a term of art" with a semblance of meaning that suggests castigating government agents for their failures (Harlow 2002: 7). Often referred to as a framework of political responsibility and a precondition for all democratic rules, democratic accountability ensures that the terms on which political power is authorized are duly observed (Bovens et al. 2014; Harlow 2002: 8). Democratic accountability

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<sup>2</sup> *Edinonachalie* (Russian: единоначалие), or one-man management, is a term from the Soviet system, which means that the head of each administrative unit issued all directives and took full responsibility for the results by the organization.

requires elements of democracy to be embodied in the role of prosecutors, and democratic values have an impact on how prosecutors approach their work (Langer and Sklansky 2017). Prosecutorial accountability, in this sense, is a way to incentivize prosecutors to be responsive to the public (Harlow 2002: 8).

As a term, accountability has no exact equivalent in Chinese administrative law. Despite being a preferred translation, the Chinese term *zerenzhi* 责任制 does not carry the rhetorical overtones of the concept in English. As a mechanism, prosecutorial accountability allows the principal (or “the account holder” as described by Mulgan), to investigate and scrutinize the actions of the prosecutor, seeking explanations and imposing sanctions if necessary (Mulgan 2003: 10). In this respect, the institutional framework in China has some commonalities with liberal democracies, in which certain forms of “retributive justice,” should be deployed in the event of misfeasance by the prosecutor to make the “bad apple” pay for their wrongdoing. The political differences, however, should not be overlooked, because, at a fundamental level, they determine the accountability relationship; as China is an authoritarian state, its constitution entrenches and perpetuates the leadership of the Chinese Communist Party (CCP), which is unchallengeable and nonjusticiable (Fu and Zhai 2018). The constitutional discourse in China is less concerned with disseminating democratic values than with prioritizing and rationalizing the supremacy of the rule of the CCP. This constitutional reality in many ways shapes the *sui generis* paradigm of prosecutorial accountability in China. To that end, two basic but tricky questions about prosecutorial accountability need to be addressed: to whom the account is owed; and how the accountability operates in China’s constitutional framework.

### *Prosecutorial Accountability: To Whom, and How?*

The first question is more political than legal and is at the core of China’s polity, that is, the people’s democratic dictatorship. In liberal democratic states, prosecutors are delegated by the public to make decisions on how best to serve them by performing prosecutorial tasks, therefore, they are answerable to the public. The situation is rather different in China. According to the constitution, all powers come from the people<sup>3</sup>, to whom the procuratorate is accountable. However, in China “the people” [*renmin* 人民] is a politically fluid notion. Mao Zedong’s (1957) theory of the people’s democratic dictatorship distinguishes between “the people” and “non-people.” Those who are classified as “non-people” (e.g., those labeled as reactionary forces or enemies) are subjected to political marginalization and excluded from the

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<sup>3</sup> See Article 2 of the constitution of 2018.

people's democratic dictatorship (see also Knight 1990; Wang 1994). In order to preserve the people's dictatorship, the state possesses and may use revolutionary powers against "non-people." The concept of "the people" is constantly adjusted, contingent on specific political circumstances.<sup>4</sup> Those who determine the shifting boundary between the two and possess "revolutionary power" clearly have wider prerogative authority than the purported power base stipulated by the constitution. This understanding is important, as the accountability relationship is about the delegation of power and the identification of original authority is necessary, especially as regards who controls nonnegotiable coercive power. In China, the CCP retains the power to use "revolutionary force" and represents the people's dictatorship (Xinhua Net 2021). This mapping of power demonstrates that, first and foremost, prosecutors are accountable to the CCP.

The question as to how prosecutors can be held to account presents a greater challenge. Notably, the Party-state, or the "people's sovereignty," has two bodies: the Party and the people's congresses, which represent different but interlinked constitutional orders (Chen 2008; Hand 2012; Jiang 2010; Qin and Ye 2017). Understanding how these two systems communicate and interact in the constitutional framework is central to the mechanism of prosecutorial accountability, considering that the procuratorate is beholden to the Party as well as the people. Over time, the dialectics of the two orders have been a point of debate, which concerns how political power, manifested in the form of Party supremacy, coexists and engages with the normative constitutional structure. The views expressed by Jiang (2010) and Qin and Ye (2017), respectively, are relevant to prosecutorial accountability. Jiang (2010) observes that the function of the people's congresses, as a legitimate avatar, translates the Party's political decision into formal laws. This is readily achieved because the people's congresses and the Party are unified, which is evidenced by the fact that Party members constitute the vast majority of representatives in the congresses, and both represent "the fundamental interests of the overwhelming majority of the Chinese people."<sup>5</sup> Although this seems to infer that the procuratorate only has to answer to the relevant congress (the people's congress at the level corresponding to the administrative rank of the procuratorate),<sup>6</sup> Jiang

<sup>4</sup> For example, the people labeled as leftists during the 'Four Cleans political campaign' [*siqing yundong* 四清运动] were listed as among "the people" in the 1940s but were no longer recognized as such in the 1950s (Schonenhals 1994).

<sup>5</sup> This ideological platform is highlighted in Jiang Zemin's "Three Represents" theory, which is written into the preamble to the constitution of 2018. See also *Guangming Daily* (2020) and *People's Daily* (2020).

<sup>6</sup> See Article 18 of the Public Prosecutor Law of 2019.

reminds us that this is only part of the story: beyond the written constitution, China's political sovereignty is defined by an unwritten constitution based on the CCP charter. This unwritten constitution and the way in which it operates, Jiang writes, is a better reflection of the political reality in China, which is characterized by the Party leadership and China's socialist identity. According to this concept of an unwritten constitution, the procuratorate must prioritize Party rule and is called to account primarily by the Party.

Jiang's interpretation of political constitutionalism was challenged by Qin and Ye (2017). Although they acknowledge the supreme power of the Party, Qin and Ye argue that by designing and maintaining constitutional mechanisms to consolidate its absolute leadership, the Party is inevitably caged in by the rules and legal rhetoric of its own making (Fu and Zhai 2018). They acknowledge that the Party has not been entirely tamed by the constitutional framework and can exercise its power in an extralegal manner. However, in legitimating its authority as a form of state sovereignty, the Party has to abide by its own laws, and its political power must be regularized and controlled by the normative legal system. Based on this concept, the accountability mechanism operates principally in accordance with the normative constitutional discourse. Prosecutorial accountability overlaps with the accountability mechanism as set up in the structure of socialist legality. They do not deny that the Party can discipline its members pursuant to its charter.<sup>7</sup> But prosecutors, as agents of the state, are not required to be accountable to the Party separately, even though it is the ultimate entity to which the prosecutors are accountable. Does this mean that prosecutors' accountability to the Party is no longer relevant? The answer is no, because the Party as the ultimate principal, or account holder, is a defining characteristic of socialist accountability. Qin and Ye (2017) explain that socialist accountability is different from democratic accountability because the ruling Party has a "moral commitment" to its laws and to delivering "prosperity, liberty, and equality to its people" in exchange for its monopoly on political power (Fu and Zhai 2018). Rather than hinging on democratic principles, such as participation through elections, socialist accountability has an alternative value system, which is akin to benevolent paternalism. In this socialist system, liberty, equality, and human dignity, and so forth, are regarded in a substantive sense, and, consequently, procedural justice is marginalized. Qin and Ye's theorization of the Party's supremacy is more convincing than Jiang's (2010) analysis in explicating prosecutorial accountability in the constitutional discourse. Not only do their descriptions of the inner workings of the political system resolve the challenging issues between the Party and the state, but they

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<sup>7</sup> As explained below, most Chinese prosecutors are Party members.

also offer insights into a crucial but often-neglected question: what makes the Chinese constitution socialist? Their explanation is helpful in dissecting the mechanism of prosecutorial accountability in China, shedding light on the circumstances under which prosecutors can be called to account in the event of a miscarriage of justice, discussed below.

### *Prosecutorial Accountability in the Constitutional Framework*

According to Article 138 in the constitution of 2018, the SPP is accountable to the National People's Congress and its Standing Committee; the local people's procuratorate is answerable to the local people's congress at a corresponding level and, at the same time, reports to the procuratorate at the next higher level. This system of subordination at two levels is a political adaptation of the Soviet procuracy, the most authoritative institution in the Soviet legal system after which the procuratorate is modeled (Ginsburgs 1959; Oda 1986; Smith 1978, 1984). The Soviet procuracy was a centralized, hierarchical apparatus that maintained organizational independence from other state institutions and was well known for its supervisory function to oversee the observance of laws by all ministries, government agencies, enterprises, social organizations, and individuals (general supervision), as well as the application of the law in criminal processes (special supervision) (Ginsburgs and Stahnke 1968; Hanson and Thompson-Brusstar 2021; Morgan 1960). Prosecutorial accountability in the Soviet system is manifested in the vertical system organized on the principles of independence, uniformity, and centralization, with prosecutors responsible only to the Supreme Soviet of the USSR (Loeber 1986; Smith 1978: 14). With respect to the transplanting of the Soviet-style procuracy in China in the 1950s, views about the organizational structure among the political leaders (the legislators) were deeply divided, and a debate took place as to whether the Chinese procuratorate should mirror the Soviet procuracy or be tailored to China's socioeconomic conditions (Ginsburgs and Stahnke 1964; Xie and Ren 2010). The prevailing opinion about the organizational design was reflected in the Organic Law of the Procuratorate (and the constitution to some extent), which from 1949 to 1979 swung between a unitary independent body, on the one hand, and the system of dual subordination, on the other.<sup>8</sup> The many rounds

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8 A centralized body from center to localities was initially adopted by the Common Programme of the People's Political Consultative Conference in 1949 (Ginsburgs and Stahnke 1964). A new regulation in 1951 changed it, and the structure of the procuratorate was redefined to be subordinate to a dual leadership, accountable to the local Party committee and the procuratorate at a higher level (Xie and Ren 2010). In 1954, the procuratorate switched back to a unified administration with the passage of the 1954 Organic Law of the Procuratorate and the 1954 constitution (Ginsburgs and Stahnke 1968).

of political debate and revisions eventuated in a preference for the system of dual subordination by the political leaders. Some elements of the Soviet legacy were retained, but it was decided that the procuratorate should be accountable to the people's congresses as well as the procuratorate at a higher level. Thus, instead of being defined as an independent organization that consists mainly of legal professionals, prosecutors are defined as representing the will of the sovereign.<sup>9</sup>

This system of dual subordination—vertical and horizontal accountability—is consistent with the principle of democratic centralism, which attempts to combine socialist democracy and centralism in the structure of the state.<sup>10</sup> Horizontally, this is a solution to ensure that the procuratorate maintains a clear link to the people's congresses and is responsive to the concerns of the people.<sup>11</sup> Hierarchically, the procuratorate is led by the procuratorate at the next higher level.<sup>12</sup> Somewhat paradoxically, this vertical control of the procuratorate retains the doctrine of *ednonachalie* [*jiancha yiti* 检察一体], or one-man management, from the Soviet system, meaning that the head of each administrative unit issued all directives and took full responsibility for the results the organization achieved. As a key feature of the Soviet procuracy system, every prosecutor's power was delegated by the ultimate authority of the procurator-general and *ednonachalie* made the procurator-general and chief prosecutors responsible for the collective of prosecutors and the outcome of the cases processed. (Ginsburgs 1959; Morgan 1960; Smith 1984). Recall that the procurator-general of the USSR, as the head of the monolithic pyramid of the procuracy, was a commanding figure in Soviet politics, exercising the highest

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The procuratorate, as an institution, was sabotaged during the Big Leap Forward and the Anti-rightist Movement, when first it was merged with the police and then it was brought under the overall leadership of command posts to jointly handle criminal cases [*heshu bangong*] and eventually was abolished during the Cultural Revolution. The structure of the organization was finally settled in the 1979 Organic Law of the Procuratorates, in which the dual subordination was preferred, with local procuratorates placed under the authority of the corresponding congresses as well as their higher-level procuratorates (Wang 2013).

9 For the sake of clarity, it is useful to briefly explain the principle of democratic centralism enshrined in Article 3 of the constitution, which in turn determines the scope of operation for the people's congresses. Democratic centralism has a combination of vertical and horizontal mechanisms. Horizontally, the people's congresses are supposed to be platforms for incorporating popular views, which can be fed into the centralized decision-making process. Through this centralized process, policy and law guided by public views are then given to the people (Biddulph 2018: 200).

10 Article 3 of the Constitutional Law of 2018.

11 See Article 18 of the Public Prosecutor Law of 2019.

12 See Article 24 of the Organic Law of the Procuratorate of 2018.

degree of control over the accurate execution of laws and guarding against interference in prosecutorial matters from other political quarters (Smith 1978: 15). “Prosecutorial integration,” as a critical component of the centralized structure, was designed to safeguard the independence of the procuracy and to ensure consistency and uniformity of prosecutorial policies. In this sense, transplanting this principle to China seems misplaced. The Chinese procuratorate is not an insulated central apparatus that has a comprehensive general supervisory function, and the procurator-general is not a political leader responsible for the systematization and coordination of prosecutorial supervision at all levels. Why does the procuratorate still adhere to this principle?

Chen Weidong and Li Xunhu (2006) observed that prosecutorial integration is the antithesis of prosecutorial independence: it emphasizes the chain of command within the hierarchical structure, which allows higher procuratorates—in particular, the SPP—to be in charge of the entire procuracy by issuing mandates and directives. It also justifies and legitimizes the internal bureaucratic approval mechanism within each procuratorate (Gu and Zhang 2020). Because the operational functions exercised by the prosecutor are delegated by the chief prosecutor at the procuratorate in which she works (whose power is considered to be entrusted by the procurator-general), her power to handle criminal cases is deemed incomplete until the decisions are duly reviewed and authorized, following internal reporting and approval procedures up the bureaucratic ranks of leaders all the way until the top echelon (Qin 2015; Xie 2017). This mechanism, known as three-tiered review, was designed as a coordinated *ex ante* way to justify firm control by the chief prosecutor. As part of implementing the bureaucratic system, prosecutorial discretions are regimented and constrained in compliance with the central policy set by the SPP. The unified top-down approach enforces vertical accountability and enables the hierarchical order of the procuratorate to take priority over the local people’s congresses. The hierarchical accountability within the procuratorate has been a substantive undertaking, dominating prosecutors’ daily work and characterizing their collective decision-making. In contrast, accountability to the people’s congresses is symbolic in nature, mostly embodied in the chief prosecutor’s delivery of the standardized annual work report to the people’s congress.<sup>13</sup> In many ways, this is characteristic of the operations of democratic centralism. As Biddulph (2018: 201) noted, the problem of governance based on democratic centralism has been excessive centralism at the expense of democracy. In the following section, I explain how the accountability mechanism

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<sup>13</sup> See Article 9 of the Organic Law of the Procuratorate of 2018.

operated before the accountability reform and the technical problems that have failed to prevent misconduct.

### *Prosecutorial Accountability 1.0*

Given the entrenched internal review system and the regular SPP directives that trickle down to the procuratorates, one might surmise that Chinese prosecutors are well regulated, if not overregulated. Chinese prosecutors are certainly not freewheeling legal actors exercising unfettered discretion. They are well known (or even receive sympathy from their Western peers) for being straitjacketed by regimented rules that permit little professional autonomy (Mou 2017). Notably, they are subjected to the performance evaluation system, which has long guided prosecutors' work and is the basis for their bonuses, promotions, and disciplinary regime. Prosecutors with a record of high conviction rates, for instance, are more likely to benefit internally in the next round of tenure grants, whereas those whose clients are acquitted by the court are marked by demerits and subsequently lose their advantageous position in the next round of competitions for prizes and promotions (Li 2010; Zhu 2009). Precisely because of the hierarchically promulgated regulations *ex ante*, the accountability mechanisms were rudimentary and ad hoc, failing to effectively identify "bad apples" (Fan and Liu 2015). Prosecutors were generally expected to be honest, law abiding, and incorruptible. Like other state agents, those who become involved in corruption, such as bribery, have been disciplined or subject to criminal sanctions, especially in campaigns against corruption.<sup>14</sup> As for professional misconduct, the system has shown tremendous tolerance. Over the years, hardly any prosecutors who presented cases of wrongful conviction with weak evidence are reported to have been disciplined (Hu and Zheng 2013; Su 2015; Yang 2017; Zhou 2020). What was the reason for pursuing the inquiry and holding them accountable? To answer this question, we start by identifying wrongdoing.

### *Prosecutorial Misconduct*

Prosecutorial misconduct was first defined in the SPP's Provisional Ordinance on Accountability and Internal Inquiry into Wrongful Convictions 1998 [Renmin jianchayuan cuoan zeren zhuijiu tiaoli (shixing) 人民检察院错案责任追究条例(试行)] (hereafter, the Provisional Ordinance), the first nationwide ordinance to address prosecutorial misconduct in relation to wrongful convictions. It referred to prosecutorial misconduct as wrongdoing that involves bending the law for selfish ends in order to

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<sup>14</sup> See Article 33 of the Public Prosecutor Law of 1995.

subject innocent people to criminal prosecution or to protect guilty individuals from criminal responsibility (Article 6). The concept was narrowly constructed and outcome oriented. For example, wrongful conviction here refers exclusively to the conviction of people for crimes that they never committed, the details of which must be verified and affirmed by a final court judgment (Article 19). Hence, a case in which a guilty defendant is deprived of a fair trial, convicted of a disproportionately serious crime, or the subject of harsh punishment does not qualify as a wrongful conviction.<sup>15</sup>

In addition to the narrow interpretation, this notion of misconduct, by and large, overlaps with the offense in which judicial officers bend the law for selfish reasons [*xunsi wangfa*] as described in criminal law.<sup>16</sup> Because the unlawful action in question was already criminalized, the Provisional Ordinance carried little significance, if it was not entirely irrelevant. Furthermore, the types of misconduct enumerated in the Provisional Ordinance were far from adequate to hold rogue prosecutors to account. To be specific, it stipulated that wrongful convictions might be caused intentionally or because of gross negligence by the prosecutor (Article 2), and the misfeasance identified as misconduct consists of (1) extracting confessions by torture or extorting witness testimony through violence; (2) concealing the truth; forging, destroying, and concealing evidence or assisting any of the parties to destroy or forge evidence; and other misconduct that results in serious consequences.<sup>17</sup> Prosecutorial misconduct comes in many forms. It is true that it was important to list these forms of misconduct in the Provisional Ordinance, such as forging, concealing, or destroying evidence and extracting confessions through torture in particular, in order to prevent prosecutors from engaging in malicious prosecution or falsification of evidence against suspects. But because prosecutors are more concerned about reviewing a case and assessing the strength and persuasiveness of evidence gathered by the police, rather than gathering evidence directly, the misconduct should be geared toward their role. In reality, misconduct is more likely to occur when a prosecutor knowingly uses perjured witness statements to secure the conviction of a defendant,<sup>18</sup> even though the evidence is gathered by someone else.

<sup>15</sup> For a comparison between the use of miscarriages of justice in China and Western countries, see Mou (2020: 4–6).

<sup>16</sup> See Article 398 of the Criminal Law of 1997.

<sup>17</sup> The other types of misconduct are fraudulently implementing compulsory measures; fraudulently using weapons in a way that results in bodily injury or death; fraudulently freezing, confiscating, or embezzling private property; and performing a fraudulent search that results in property damage.

<sup>18</sup> In my empirical research at a prosecutor's office, I found that prosecutors were fully aware of the way in which evidence was collected through their regular communication

The issue also applies to confessions extorted through torture—a prosecutor who has knowledge of police using violent methods of investigation might still use such confessions against a defendant. In a recent study on the construction of a prosecution, I encountered situations in which the suspect reported the use of torture but was simply dismissed or treated with outrageous distrust by the prosecutor. Their reports of police misconduct were rarely taken seriously by the prosecutor, notwithstanding the fact that they are entrusted with supervising police investigations (Mou 2020: 115–18). It is perhaps more important that compromised professional integrity or abuse of prosecutorial position, such as subornation of perjury (including using testimony that the prosecutor knows to be false and incorrect) and suppression of exculpatory evidence, are recognized as basic forms of prosecutorial misconduct, which is also critical in preventing miscarriages of justice. These elements, however, were not part of the loosely defined concept of prosecutorial misconduct, which is focused on consequences. In fact, an investigation of an alleged case of misconduct can be initiated only if a negative result is deemed “serious” (Article 6).<sup>19</sup> All the challenges in defining misconduct were therefore sufficient to prevent an inquiry, not to mention holding anyone accountable.

Apparently aware of the limitations of the Provisional Ordinance, the SPP modified the notion of misconduct in Prosecutorial Accountability Inquiry Ordinance 2007 [Jiancha renyuan zhifa guocuo zeren zhuijiu tiaoli (《检察人员执法过错责任追究条例》)] (hereafter, 2007 Ordinance), in which prosecutorial misconduct was revised as “any unlawful or irresponsible wrongdoing during the case handling process that has resulted in substantive wrongful outcomes, procedural irregularities or other serious consequences” (Article 2). The 2007 Ordinance incorporated the types of misconduct in the Provisional Ordinance and added a list of other type of professional malfeasance, which included but was not limited to wrongful ascertainment of facts or application of law (Article 7). The 2007 Ordinance, like the Provisional Ordinance (but contrary to the new definition), took an outcome-based approach that emphasized the degree of “serious consequence” in evaluating misconduct. What actually constituted “serious consequence,” however, was left undefined. Many of the types of misconduct listed (e.g., failing to raise all relevant criminal charges or to list all codefendants in an indictment), clearly part of crime control, would have been better recognized as relevant to police/

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with the investigating officer or through the interrogation of a suspect or interview with victims (see Mou 2020: 103–21).

<sup>19</sup> Like some other terms deliberately left unclear in order to allow for discretion, “seriousness” is also left unclear in the Provisional Ordinance.

investigatory misconduct, as they were more likely to be investigatory issues, rather than matters pertaining to prosecution. Although these omissions may well be caused by negligence on the part of the prosecutor, her responsibility could be easily attenuated, given the distance between the identified “dereliction of duty” and the outcome. Aside from these two SPP accountability ordinances, a number of higher-level people’s procuratorates promulgated similar guidelines to address prosecutorial misconduct that resulted in undesirable outcomes.<sup>20</sup> These local ordinances, following the examples set by the SPP, framed prosecutorial misconduct in the same limited manner.

### *Internal Misconduct Procedures*

The narrow construction of prosecutorial misconduct was accompanied by the ambiguous internal misconduct procedures, which may not be used in the first place. Neither the Provisional Ordinance nor the 2007 Ordinance clarified the precise point or way in which a misconduct inquiry should be triggered. The Provisional Ordinance stated that culpable and harmful misconduct “should be investigated” (Article 6). Similarly, the 2007 Ordinance stipulated that the prosecutor responsible for the misconduct “should be held accountable” (Article 8), adding that “chief prosecutors, deputy prosecutor chiefs, or division leaders who find prosecutorial misconduct in their work remit and consider that there is a necessity to further investigate the culpability in issue, should promptly refer the case to the relevant department” (Article 16). The

<sup>20</sup> These guidelines include: Hebei Province Accountability Ordinance on Wrongfully Handled Cases and Law Enforcement Accountability [*Hebei sheng cuan he zhifa guocuo Zeren zhuijiu tiaoli* 《河北省错案和执法过错责任追究条例》], the Provisional Prosecutorial Accountability Ordinance on Inquiry into Wrongfully Handled Cases in Hubei Province [*Hebeisheng jiancha jiguan banan guocuo zeren zhuijiu banfa (shixing)* 《湖北省检察机关办案过错责任追究办法(试行)》], the Judicial Accountability Ordinance on Inquiry into Wrongful Handled Cases in Jiangxi Province [*Jiangxisheng sifa jiguan cuoan zeren zhuijiu tiaoli* 《江西省司法机关错案责任追究条例》], the Judicial Accountability Ordinance on Inquiry into Wrongfully Handled Cases in the Inner Mongolian Autonomous Region [*Neimengguo zizhiqu sifa gongzuo renyuan weifa banan zeren zhuijiu tiaoli* 《内蒙古自治区司法工作人员违法办案责任追究条例》], the Judicial Accountability Ordinance on Inquiry into Wrongfully Handled Cases in Shandong Province [*Shandongsheng sifa gongzuo renyuan weifa banan zeren zhuijiu tiaoli* 《山东省司法工作人员违法办案责任追究条例》], the Accountability Regulation on in Jinan City [*Jinanshi zhifa weifa zeren zhuijiu banfa* 《济南市执法违法责任追究办法》], and Accountability Ordinance on Wrongfully Handled Cases in Hangzhou City [*Hangzhoushi yuanan cuoan zeren zhuijiu jiandu banfa* 《杭州市冤案错案责任追究监督办法》]. These local ordinances or regulations are enacted to address wrongfully handled cases, which are not limited to wrongful convictions.

relevant authority in a misconduct investigation in both ordinances apparently has considerable latitude in deciding whether to employ the procedures in the first place. Despite the strong rhetoric underscoring prosecutorial accountability, at no point do the ordinances specify the circumstances in which alleged misconduct has to be investigated (Fan and Liu 2015).

The difficulty in initiating a misconduct inquiry is somehow intertwined with the investigating authority. The appropriate authority for undertaking an internal investigation in both ordinances is a department within the same procuratorate at which the prosecutor who allegedly committed misconduct works. In the Provisional Ordinance, the investigation is within the jurisdiction of the supervisory department [*jiancha bumen*] or a different department appointed by the chief prosecutor (Article 20). The relevant authority in the 2007 Ordinance is not clear: the person or the department responsible for conducting the inquiry is difficult to determine. The Provisional Ordinance maintained that the allegation against an ordinary prosecutor and misconduct evidence should be managed [*guanli*] by the supervisory department (Article 14). In the event of allegations against the chief prosecutor, deputy prosecutor chiefs, or members of a prosecutorial committee, misconduct proceedings are to be referred to the procuratorate at the next higher level, which has to decide whether to initiate the inquiry (Article 15). Nevertheless, which department of the procuratorate at a higher level, who should lead the investigation, and which procedures are to be used were all unspecified (Zhang 2019). Locating the delegated authority within the same procuratorate as the one in which the prosecutor who is the subject of allegations works is problematic. It is tricky to conduct misconduct proceedings without prejudice if the members chairing the investigation panel are colleagues of the prosecutor.

Following the principle of *ednonachalie*, especially based on the three-tiered review system, prosecutorial decisions are undertaken collectively, including those that turned out to be problematic. Thus, a decision to charge someone who later turned out to be innocent could have been reached through an internal hierarchical review, meaning that the divisional leader, one of the deputy chiefs, the chief prosecutor, or the prosecutorial committee might all have had a share of responsibility in reaching that decision. The prosecutor in charge of the case might have a particular view as to how the case should proceed; but her view might be influenced, altered, or supplanted by different opinions of those who are higher up in the internal hierarchy. Moreover, collective decision-making is not limited to one procuratorate. The principle of *ednonachalie* suggests that a procuratorate acts as an inseparable entity, which means that the procuratorate must follow the advice of the procuratorate at

a higher level if the chief prosecutor,<sup>21</sup> or the prosecutorial committee considers a case with higher-level colleagues (Chu and Shao 2013; Zhang and Zhang 2020).<sup>22</sup> Under these circumstances, it is not merely the procuratorate, but the relevant procuratorate at a higher level that is also involved if the decision is deemed to be wrongful.

In light of the collective mechanism, the 2007 Ordinance adopted a fault-based system, which can be summarized simply as: wherever the fault lies, the person responsible for it must be held accountable. Hence, if a higher-level procuratorate reverses a lower procuratorate's suggestion that later turned out to be correct, the higher-level procuratorate prosecutors are liable (Article 11). Likewise, if a case is briefed to the prosecutorial committee, which reaches a conclusion that diverges from the initial decision of the prosecutor, and the decision of the committee is later found to be wrong, the chair of the prosecutorial committee and the specific committee members who contributed to the inaccurate outcome are held liable (Article 12). Similar principles also apply to the internal hierarchical review. The fault is distributed. Therefore, if an untenable prosecutorial decision to prosecute someone who turns out to be innocent is approved by the department leader and one of the deputy chiefs, all parties involved are jointly liable, though their degree of responsibility is determined in proportion to the fault imputed to the individuals concerned (Article 10). In a bureaucratic system in which the vast majority of decisions are documented and filed, the procuratorate has the advantage of tracing the relevant blameworthiness in the process, although occasional verbal communications devoid of written documents do exist, which makes investigation more difficult.

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<sup>21</sup> See Articles 20 and 21 of the Provisional Regulation on the People's Procuratorate Reporting and Consulting Cases, promulgated by the SPP on December 16, 2015, [https://www.spp.gov.cn/spp/nbgz/201802/t20180201\\_363709.shtml](https://www.spp.gov.cn/spp/nbgz/201802/t20180201_363709.shtml).

<sup>22</sup> These types of cases are complex and serious; have a wider social, economic, or moral impact; and involve novel situations. A higher procuratorate provides guidance to lower procuratorates through various channels: (1) formal reporting and briefing by the lower procuratorate; (2) individual case assessment and evaluation by a higher-level procuratorate; (3) the higher procuratorate readjusting and coordinating the jurisdiction of a particular case; (4) the higher procuratorate issuing mandates to correct errors it identifies; (5) the higher procuratorate issuing special mandates to take over a particular case or ask a different prosecutor to take over a particular case; (6) the higher procuratorate filing a record of a particular case; (7) the higher procuratorate approving a suggestion by a lower procuratorate; and (8) the higher procuratorate supervising and providing specific guidelines about certain major, complex, or influential cases (Li 2016; Peng and Lyu 2013: 88–89).

### *A Proceeding to Blame or to Protect?*

The definition of prosecutorial misconduct and internal inquiries therefore both took a hindsight approach to framing and disciplining prosecutorial wrongdoing. Errors of judgment, however, do not always amount to blame-worthy misdeeds. Acknowledging this, the 2007 Ordinance incorporated immunity clauses and stipulated that if no fault existed on the part of a prosecutor, allegations will not be raised (Article 13). The fault referred to here is “willful action” or “gross negligence” that has serious consequences (Article 2). In light of the stratified three-tiered review, a prosecutor would be unlikely to exercise her power in “a wanton” or “arbitrary manner” with no heed to her experienced superiors. This is, of course, not to suggest that the collective mechanism is risk free or immunized from responsibility. Quite the opposite: rather than revealing and correcting problems that lead to misconduct, the collective mechanism can systematically consolidate and perpetuate wrongful decisions.

On the one hand, the internal review system depends on the specific account provided by the prosecutor, which may not be completely objective. On the other hand, people within the system, from the rank and file to the chief prosecutor, are aware of the challenges that the prosecutor faces when dealing with a specific case. The dilemmas they face often consist of a choice between dealing with a case in accordance with the law and attending to other considerations associated with their institutional interests, such as meeting the performance targets set by the appraisal system, maintaining good relations with the police by “helping” them move a case to the next stage, and so on.<sup>23</sup> Prosecutors regularly seek advice from their supervisors. In so doing the pressure to make the decision is transferred and spread to the upper echelon of the procuratorate. In this process, the interests of the prosecutor are bound together with those of the senior prosecutors to whom the communication was sent and, ultimately, those of the institution. The interwoven interests between the individual and the organization, over time, nurture the prosecutor’s sense of identity. As a member of a hierarchically organized bureaucracy, the prosecutor’s allegiance to the law is subject to organizational priorities and incentives. When repeated practices are systematically transformed into an organizational culture, there will be clear resistance from within to pursuing an investigation of alleged misconduct.

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<sup>23</sup> Police officers, like others in the procuratorate, are subject to an appraisal evaluation system. Therefore, whether a case can be successfully charged and prosecuted can affect their performance (see Li 2010; Mou 2020: 22; Zhu 2009).

This internal solidarity within the procuratorate thus makes it averse to discerning and separating individual responsibility. Prosecutors confirmed to have committed misconduct could be admonished [*piping jiaoyu* 批评教育], disciplined [*jilü chufen* 纪律处分], or subjected to criminal investigation, depending on the circumstances (Article 23). In any case, merely ascertaining prosecutorial misconduct would create reputational damage for the individual prosecutor as well as the procuratorate as a whole to the extent that everyone in it is adversely affected. As such, there is a lack of incentive for initiating an inquiry in the first place even in the event of serious consequences. Given the leeway in initiating a misconduct inquiry and the ample space for avoiding liability, it is not surprising that allegations are seldom investigated (Chen Dongchao 2000; Lan 2017; Li 2000; Xie and Zeng 2021). Among the aborted internal misconduct investigations are high-profile miscarriages of justice in which the prosecutor had charged someone with murder in the knowledge, or with a strong suspicion, that confessions had been extracted through torture (China News Weekly 2020). In their study of misconduct inquiries within the judiciary, Wang and Liu (2016) examined the internal records of an adjudicative committee between 2003 and 2012 and found that only 14.29 percent ( $n = 11$ ) of the cases of alleged judicial misconduct ( $n = 74$ ) were held to be wrongfully adjudicated. They noted that there was a manifest reluctance on the part of the investigating panel about pursuing the allegations vigorously; even regarding the handful of cases eventually confirmed as having involved “obvious” or “egregious” procedural irregularities, the investigating officers had attempted and exhausted all legally permitted means of downplaying or minimizing the problem before the unpleasant conclusion was reached. A finding of prosecutorial misconduct is more difficult than a judicial misconduct inquiry, in that responsibility for it can be assigned to other legal actors in the criminal process, either the police who failed to investigate thoroughly or the judge who failed to acquit an innocent person. As in judicial misconduct proceedings, a clear reluctance emerges from the entrenched culture of collectivism, which takes advantage of porous ordinances and prevents inquiries from being launched or reaching a substantive conclusion.

### A New Solution to Prosecutorial Misconduct: Lifelong Accountability

Over time, some voices have questioned the need to investigate prosecutorial misconduct. On the one hand, those with skeptical views focus on the negative impact of misconduct proceedings on prosecutors. Liang Chengang (2017),

for example, expressed concern that misconduct proceedings could expose prosecutors to professional risks, dampen their work enthusiasm, and undermine their self-esteem. Xie and Zeng (2021) noted that misconduct procedures could compromise their independent status and drive them to seek constant protection from their superiors to evade responsibility.<sup>24</sup> On the other hand, legal scholars such as Liang Huixing (2003) have proposed impeachment by the people's congresses in lieu of the existing flawed misconduct procedures. His suggestion was based on China's constitutional discourse, with an attempt to forge a link between deterring professional misconduct and prosecutorial accountability to the people's congresses. This proposal, *inter alia*, however, was rejected and replaced with an enhanced prosecutorial accountability scheme that stresses the individual responsibility of frontline prosecutors and their lifelong accountability.

This new accountability framework comprises a series of regulations and supporting announcements under the umbrella of prosecutorial accountability reform.<sup>25</sup> Based on the 2007 Ordinance, one key regulation is titled Several Opinions on Perfecting the Judicial Accountability of the People's Procuratorate [Guanyu wanshan renmin jianchayuan sifa zerenzhi de ruogan yijian 《关于完善人民检察院司法责任制的若干意见》], promulgated by the SPP in 2015 (hereafter, the 2015 Directive). The 2015 Directive seems to be an embellished version of the 2007 Ordinance, which inherited the same definition of prosecutor misconduct and the fault-based system. It stipulates that prosecutors are liable if they intentionally engage in activities that contravene judicial regulations that have serious consequences, such as intentionally

<sup>24</sup> For similar views, see Wang 2011; Wei 2012; Xie and Cui 2005. Although some of the arguments focus on judicial accountability, they can be extended to prosecutorial accountability.

<sup>25</sup> Other relevant SPP regulations are the SPP Provisional Regulation on Case Teamwork Arrangements and Operational Methods [Zuigaorenminjianchajiguan sifa banan zuzhi shezhi ji yunxing banfa shixing], the SPP Provisional Regulation on Assessment of the Prosecutor Appraisals [Zuigao renmin jianchayuan jiguan jianchaguan yeji kaohe banfa], Several Regulations on Implementing the Prosecutor's Appraisal Assessments [Guanyu kaizhan jianchaguan yejie kaoping gongzuo de ruogan guiding], and the Regulation on Reporting the Work within the People's Procuratorate [Renmin jianchayuan anjian qingshi banli gongzuo guiding].

<sup>26</sup> Article 34 of the 2015 Directive specifically states that prosecutors will be held accountable if they intentionally engage in activities that (1) bend the law for selfish ends or twist the law for a favor to subject an innocent person to criminal investigation and prosecution; (2) destroy, fabricate, forge, or conceal evidence; (3) extort confessions from a suspect by torture or extort testimony from a witness by violence or other illegal means; (4) deprive an interested party or a witness of or restrict their personal freedom in violation of the regulation; (5) restrict the procedural rights of a litigation participant, which results in

abusing their power in investigating and prosecuting someone innocent, forging or concealing evidence, or extorting confessions using torture.<sup>26</sup> Gross negligence that has serious consequences, such as wrongful conviction, false imprisonment, and the death or injury of interested parties, constitutes prosecutorial misconduct.<sup>27</sup> Senior leaders on the procuratorate who are entrusted with supervising the work of frontline prosecutors can be held accountable if they fail to exercise their managerial power to effectively avoid serious consequences (Article 36). Nonetheless, the 2015 Directive assuringly confirms that, in the event of a miscarriage of justice, a prosecutor will not be liable as long as she has discharged her duty and the outcome is not intentional or due to gross negligence (Article 33). In line with the previous ordinances and regulations, the purview of the 2015 Directive is broad enough to capture wrongfully handled cases of different kinds (e.g., failure to bring major suspects to justice), which are not confined to wrongful convictions. It remains the case that, given the nature of prosecutorial tasks, the most likely category of misconduct committed by prosecutors is forging or concealing evidence. The low transparency in handling prosecution evidence and the difficulty of preserving evidence, however, make it challenging to raise an allegation against the prosecutor. The 2015 Directive introduced two bold measures to the accountability system. The first is carving out individual responsibility by the prosecutor, and the second is underscoring the personal, lifelong liability of frontline prosecutors. The following sections analyze these two measures in turn.

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serious consequences; (6) conduct a preliminary investigation or file a criminal case beyond criminal jurisdiction; (7) illegally search the personal belongings of an interested party; (8) illegally seize, freeze, manage, or dispose of evidence in a criminal case; (9) refuse or postpone criminal compensation in accordance with final judgments; (10) illegally use a weapon or coercive equipment; and (11) violate other judicial regulations, resulting in serious consequences. Category 3 overlaps with Article 247, category 2 overlaps with Article 307, and category 10 overlaps with Article 128 of the Criminal Law of 1997.

<sup>27</sup> See Article 35 of the 2015 Directive, which states that prosecutors who commit gross negligence or misfeasance that results in one of the following serious consequences shall assume responsibility: (1) a major judicial error or wrongful conviction based on ascertainment of the facts or application of the law; (2) an omission in prosecuting a key suspect or major crime; (3) wrongful imprisonment or detention beyond the legally prescribed limits; (4) suicide and self-harm of a party involved or attack of others by the party; (5) working in collusion with the suspect, which resulted in the destruction of evidence by the suspect who absconded; (6) a loss of allegation evidence, other case evidence or seized property or serious damage of these materials or/and property; (7) divulging allegation reports or secret information in a criminal case; and (8) other serious consequence or negative social influence.

### *Individual Responsibility and the Changing Shape of the Prosecutor's Role*

By any measure, the accountability reform has been an ambitious undertaking, which entails and implicates a series of adjustments and a reshaping of institutions. At the core of these institutional changes is the expanded role of prosecutors on which the new accountability system is conditioned. The expansion of the prosecutor's role is embodied in two dimensions. At the organizational level, the internal departments of the procuratorate have been reshuffled, and procedures for internal operations have been modified. Before 2018, a typical criminal case transferred to the procuratorate would have been passed to and processed by different departments, prosecutors' offices, and pairs of hands before it was decided whether the case would proceed to the next stage.<sup>28</sup> Following the reform known as the integration of arrest approval and prosecution [*pusu yiti* 捕诉一体] in 2018, the prosecutorial functions scattered across different departments were merged (SPP 2019). Rather than having separate departments to deal with certain facets of criminal procedure, prosecutors have been reorganized into teams in charge of all aspects of a criminal proceeding. These new teams are designated to handle certain types of cases, making critical decisions ranging from arrest approvals and court advocacy, to monitoring enforcement of court judgments.<sup>29</sup>

This amalgamation of prosecutorial functions is coupled with the empowerment of prosecutors in the criminal process, which emerges from the evolving roles of the prosecutor. Prosecutors are no longer constrained by their traditional role in reviewing investigations *ex post facto*; their territory has expanded to encompass police investigations. Under the SPP's Rules of Criminal Procedure 2019 [Renmin jianchayuan xingshi susong guize 《人民检察院刑事诉讼规则》] (hereafter, the SPP Rules), prosecutors are now

<sup>28</sup> Specifically, a case would at least have been examined by the prosecutor from the department of supervision of police investigation, who decides whether a suspect should be arrested and placed in custody, then by the prosecutor from the department of public prosecution, which, by carrying out a range of activities to assess the strength of a case, determines whether the case should be prosecuted. According to Article 171 of the Criminal Procedure Law 2018, these activities include reviewing the investigation file, interrogating the suspect, deciding whether the evidence is sufficient or more is required, and whether the case is persuasive enough to be prosecuted.

<sup>29</sup> For example, the Yuecheng District procuratorate in Zhejiang Province regrouped its frontline prosecutors into eight professional teams, which are responsible for eight types of cases, including violent crimes (including gambling and prostitution), offenses against the person (including rape), environmental crime, cybercrime, public disorder and traffic crime, drug-related crime, white collar offenses, and economic crime (Yang and Fan 2020).

encouraged to “offer opinions and suggestions on issues in relation to evidence gathering, fact ascertainment, application of law and investigative activity of the police in cases considered to be major, difficult and complex” (Article 256). Chinese scholars had long been supported having prosecutors direct the police in carrying out investigations, in the belief that this could be a breakthrough in regulating police investigations (Chen 1999; Chen 2005; Chen and Hao 1999; Chen and Liu 2001; Liu 2013; Yang 2019). To some extent, the SPP Rules delivered on this expectation, although the prosecutor’s early intervention might not be considered as a radical paradigm shift in police investigation, as the scope is limited to “major, difficult, and complex” cases. Nevertheless, early intervention can take place on the initiative of the prosecutor, and it is up to the procuratorate to assess the nature of the cases in which to intervened (Lu 2021). Given the ample discretion afforded by the SPP Rules, in the future, prosecutors might intervene in police investigations more frequently.<sup>30</sup>

The expansion of the role of prosecutors does not stop there. Driven principally by the impetus to speed up the process of case disposition, prosecutors have gained greater influence through managing the system known as “admission of guilt and acceptance of punishment” [*renzui renfa*; hereafter, “plea leniency”]. Plea leniency enables the accused to receive a sentence reduction in exchange for a guilty plea, regardless of the type of case or the stage of criminal proceedings (Criminal Procedure Law 2018, Articles 15 and 201). Plea leniency is a systematic project that requires seamless coordination of different stages of the criminal process in expediting the disposition of a case. The prosecutor acts as the manager of the plea leniency system, with functions including but not limited to obtaining a guilty plea from the accused (which means that the accused enters an agreement to admit guilt and accept the penalty in the presence of her own defense lawyer or a assigned duty lawyer), determining the charges in the indictment, the mode of trial (the simplified or the expedited trial procedure), and the appropriate sentence to recommend.<sup>31</sup> Of particular note here is the prosecutor’s power to determine the charge based on the facts ascertained as well as the recommendation of a precise sentence that takes

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<sup>30</sup> In recent years, a growing number of prosecutor-led investigations have been reported by the media, particularly during the Sweep Away Black and Evil Forces campaigns between 2018 and 2020; see [http://www.xinhuanet.com/2018-09/05/c\\_1123380129.htm](http://www.xinhuanet.com/2018-09/05/c_1123380129.htm); [https://www.sohu.com/a/393589444\\_114988](https://www.sohu.com/a/393589444_114988); [http://news.jcrb.com/jxsw/201908/t20190813\\_2035083.html](http://news.jcrb.com/jxsw/201908/t20190813_2035083.html).

<sup>31</sup> See the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and Ministry of National Security and the Ministry of Justice, Guiding Notice in Relation to the Application of Admitting Guilt and Accepting Punishment 2019 (hereafter, Guiding Notice 2019).

the guilty plea into consideration (Chen 2019, 2020; Xiong 2020).<sup>32</sup> In accommodating these procedural demands, prosecutors have taken on a role as policy maker, case manager, adjudicator, and sentencer. Accompanying their expanded role is a concern that the judicial function has been accordingly diminished and encroached on. Judicial tasks have been reduced to official certification of a guilty plea, assessing its voluntariness, and formal approval of the sentence recommended by the prosecutor.

In 2020, the number of applications for plea leniency surged, and the proportion of criminal cases with these applications increased from 20.9 percent in January 2019 to 83.1 percent in August 2020 (SPP 2020b). This was largely a result of a tireless campaign by procuratorates for plea leniency, which included, *inter alia*, repeatedly airing programs on television to promote the benefits of guilty pleas in detention centers throughout the country and setting performance targets for local procuratorates (SPP 2020c). The courts' approval rates of sentence recommendations also increased: as of 2020, 90.7 percent of the sentence proposals advanced by prosecutors were endorsed by the courts (SPP 2020a). As plea leniency becomes dominant in criminal justice, the dividing line between judges and prosecutors is less clear, as the center of gravity in criminal procedure shifts away from trials.

What does the expansion of prosecutorial roles signify? It is clear that there has been a remarkable concentration of powers in the hands of front-line prosecutors, making it more difficult to review all their decision-making in the traditional bureaucratic fashion (Yang 2020; Zhang 2019). What is also evident is that the power redistribution—whether the remolding of the internal departments, early intervention in police investigations, or the propaganda employed in promoting plea leniency—was deliberately engineered by the SPP. The driving force behind these changes is procedural economy and the rise of managerialism in Chinese criminal justice, which propelled the rolling

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<sup>32</sup> According to Guiding Notice 2019, the prosecution should make precise recommendations as to the principal punishment and supplementary punishment as well as whether the defendant is eligible for a suspended sentence. In proposing the sentences, the procuratorate should take into consideration the views of the suspect and defense lawyers (or duty lawyers). For novel crimes or cases involving complex factors, the prosecutor can suggest a sentencing range, rather than a precise sentence. All the sentence recommendations should provide justifications. Since the pilot project on plea leniency was launched in 2016, the procuratorate's sentencing recommendation have been an essential component of the reform. Judges are expected to accept the sentence proposals offered by the prosecution. Only in legally prescribed situations can they refuse to follow the recommendation. In that case, they can ask the procuratorate to adjust the suggestion. If the prosecution's sentence recommendation is not accepted by the court, the court must give its reasons.

out of plea leniency within a short period (Cao 2020; SPP 2019).<sup>33</sup> The SPP's report on the implementation of plea leniency shows a significant increase in low-level crime, which grew as a share of all crimes from 54.4 percent in 1999 to 83.2 percent in 2019. At the same time, over the same period, the number of major and violent crimes dropped from 162,000 to 60,000 (SPP 2020b). The structural changes in the types of crime, as the SPP explained, dictated the redistribution of internal functions and devolution within the procuratorate (SPP 2020b). Since the 2015 Directive, prosecution teams or quota prosecutors have enjoyed greater autonomy to make prosecutorial decisions with less regard to administrative hierarchy within the procuratorate (Article 5). The chief prosecutor and the deputy prosecutor chiefs who signed off on official documents on behalf of the procuratorate no longer take responsibility for decisions made by the frontline prosecutor unless they have intervened in the decision-making process and made substantive changes in the initial decision (Article 10). Although the prosecutorial committee, the chief prosecutor, and the deputy prosecutor chiefs retain the power to influence individual prosecutors and make final decisions, under the new accountability regime, the decision-making process must be maintained in written records to ensure that liability can be determined and apportioned commensurate with their respective obligations in the event of an internal inquiry (Article 37).

The new accountability system thus can be seen as a paradigm shift in the sense that, for the first time, it endeavors to crack the longstanding collective responsibility of the procuratorate. In this process, prosecutors are accorded greater autonomy and authority to make critical decisions without the need to seek approval from senior prosecutors or the prosecutorial committee a majority of the time. Whereas the 2015 Directive seemingly decluttered the bureaucracy, the principle of *edinonachalie* and the three-tiered framework remain in place and the internal workings of the procuratorate are largely intact. In fact, according to the People's Procuratorate Measures on the Oversight and Management of the Handling of Plea Leniency Cases [Renmin jianchayuan banli renzui renfa anjian jiandu guanli banfa 《人民检察院办理认罪认罚案件监督管理办法》] promulgated in 2020, the principle of *edinonachalie* is reinforced and the three-tiered review reincarnated into a case-monitoring mechanism that allows departmental leaders to scrutinize prosecutors' work, analyze the overall handling of cases, oversee decision-making, submit selected cases to the prosecutorial committee, and report relevant issues to the chief prosecutor or the deputy prosecutor chiefs

<sup>33</sup> Procedural economy is often euphemized as efficiency in Chinese terms. Managerialism in this context refers to the emphasis on performance in the criminal justice system.

(Articles 12 and 13). Despite the elimination of the approval procedures, prosecutors' work is still closely monitored or pored over, with the departmental leaders prepared to intervene whenever a situation requires. There is apparently profound distrust in the prosecutor's judgment at a fundamental level, which sets great store by having a regimented bureaucracy. At any rate, the accountability reform does not advance prosecutorial independence in a meaningful way. This is particularly the case as prosecutors are put under a new system of lifelong accountability.

### *Prosecutorial Accountability as a Lifelong Liability*

As a means of holding prosecutors accountable, lifelong liability is a highly unusual measure for addressing prosecutorial misconduct. Prosecutorial liability is not a type of liability unto itself—it should be framed within the existing sanctions in a legal framework afforded by a given jurisdiction. In US federal law, for example, the types of sanctions employed to prevent prosecutors from abusing the rights of criminal defendants encompass criminal prosecutions, employment and legal license sanctions, shaming in the media, and civil liability (in particular, vicarious liability) (Weiss 2011). What is the nature of liability concerning prosecutorial misconduct in China? Article 32 of the 2015 Directive stipulates that "prosecutors shall be liable for breaching judicial obligations and held accountable for their lifetime for the quality of the cases they have processed." Then, Article 44 lists three ways to discipline or punish prosecutors who intentionally or negligently breach their obligation: criminal sanctions, internal disciplinary sanctions based on the Public Prosecutor Law, and Party disciplinary sanctions. These three routes are reflected in the Public Prosecutor Law of 2019. In the same way, Articles 47 and 48 of the Public Prosecutor Law of 2019 outlines three disciplinary channels for punishing misbehavior by prosecutors: criminal prosecution, Party discipline, and professional demotion. These provisions show that criminal liability, statutory liability (in relation to their status as public prosecutors), and the Party sanctions are the three devices currently used to deter prosecutorial misconduct.

The next question is whether it is appropriate and necessary to make the liability lifelong. For criminal liability, this question is less controversial: it is not uncommon for a prosecutor who has, willfully (maliciously) or negligently, committed a grave misdeed that amounts to a criminal offense, to be brought to justice, even though the misconduct in question was a historic one. An issue arises, however, with regard to statutory limitations, which can prevent the pursuit of criminal liability. Article 87 of the Criminal Law of 1997 states that crimes should not be prosecuted if the prescribed limitation period, which is based on the maximum punishment, has elapsed, the only exception being if

the crime in question carries a death penalty or life sentence, in which event the SPP can exercise discretion to pursue the case. Chinese laws and regulations are ranked hierarchically (Chen J 2000: 245).<sup>34</sup> Criminal Law, as a basic law promulgated by the National People's Congress, undoubtedly takes precedence over the 2015 Directive issued by the SPP. Exception can be made if serious crimes are committed by a prosecutor, who, for instance, tortures the accused or a witness and causes grave bodily damage or death. Serious circumstances like these are likely to be rare. In the majority of prosecutorial misfeasance, such as suborning perjury or destroying or forging evidence that leads to a wrongful conviction, prosecution is, pursuant to Article 307 of the Criminal Law of 1997, forbidden if the offense did not come to light within three years of the commission of crime, let alone a lifetime. Lifelong criminal liability, in this respect, applies only to a small share of extremely serious cases.

With regard to liability that arises from breaches of statutory duties (in particular of the Public Prosecutor Law), the application of lifelong accountability poses theoretical challenges. Prosecutors are public office holders, chiefly governed by the Public Prosecutor Law of 2019, unlike common employees, who are regulated by the Labor Law (Guang and Zhou 2004; Zhou 2007). As stated in the Opinions on Building Judges and Prosecutors' Disciplinary System [Guanyu jianli faguan jianchaguan chengjie zhidu de yijian 《关于建立法官、检察官惩戒制度的意见 (试行)》], depending on the gravity of the misconduct and the specific internal management procedure, sanctions in formal disciplinary actions against prosecutors include suspension, delayed promotion, dismissal, forced resignation, and forced retirement.<sup>35</sup> It is true that the prosecutor's judicial status, which is invariably concerns the public interest, requires different treatment from that of ordinary civil servants, necessitating strict enforcement of disciplinary action in the event of misconduct. Despite the difference, prosecutors are public servants on the government payroll and are covered by the Public Servants Law of 2018,<sup>36</sup>

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34 See Law on Legislation of 2015, Articles 87–97. The legislative hierarchy principle laid down by the Law on Legislation 2015 for dealing with conflicts and inconsistencies of laws see Chen J (2000).

35 See Article 10 of the Opinions on Building Judges and Prosecutors' Disciplinary System, issued by the Supreme People's Court and the SPP. According to the 2015 Directive issued by the SPP, the Provisional Prosecutorial Disciplinary Regulation 2004 applies to prosecutorial misconduct that is not related to a criminal case handled by the prosecutor. The disciplinary measures laid down by the Provisional Prosecutorial Disciplinary Regulation 2004 comprise warnings, demerits, major demerits, demotions, suspensions, and dismissal (Article 6).

36 Article 3 of the Civil Servants Law of 2018 states that if the laws on judges and prosecutors provide other arrangements as to the creation, appointment, and supervision of their

and their relationship to the state is the same as that of civil servants. Although civil servants are commonly considered public employees in Western jurisdictions (Blair 1958; Hemmer 2014), the relationship between civil servants and the state in China is categorized as one of agency, that is, public servants representing the state exercise public power and perform designated functions (Guang and Zhou 2004).<sup>37</sup> This legal position, in many ways, overlaps with and correlates with the accountability relationship, both of which are based on the delegation principle—that is, the prosecutor acts on behalf of the people, the principal. This relationship dictates that the liability entailed by statutory obligations cannot be lifelong, given that a prosecutor, the agent, may resign, retire, take on, or be transferred to other duties, resulting in the end of the agency relationship. The fact that prosecutors must take responsibility for their decisions does not change the nature of the agency relationship. It can be argued that while the prosecutor was in charge of the case in question, liability is attached; and this particular prosecutor should still be held accountable for decision made at the time even if she was no longer in that position when an allegation of some kind of misconduct is made. Cogent as this argument may be, it does not take into account the types of sanctions associated with the prosecutor's position, rank, and professional welfare (e.g., pensions) within the procuratorate. For people who have already left the procuratorate, the misconduct procedure and the sanctions would have no teeth, carrying little impact on their future life. The same is true of retired prosecutors, on whom the impact of a sanction may be minimal. In this respect, lifelong liability has no legal foundation unless the text of the law states otherwise in the future.

As far as the CCP disciplinary sanctions are concerned, lifelong accountability is feasible provided that the prosecutors who were found to have committed misconduct are CCP members. The judicial institutions, including the procuratorate, have a wide distribution of Party members.<sup>38</sup> Although the precise number or proportion of prosecutors who are CCP members is unpublished, it is estimated that they make up a majority of overall prosecutorial officers,<sup>39</sup> considering that the CCP consciously recruits among the well-educated and

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roles as well as their relevant rights, obligations, and management, these special laws prevail. This implies that the Civil Servants Law (issued by the Supreme People's Court and SPP) applies to judges and prosecutors.

<sup>37</sup> In certain countries, following the inquisitorial tradition, prosecutors are part of the judiciary, which is different from the arrangements in China.

<sup>38</sup> According to CCP statistics, as of June 2021, 7,773,000 Party members are government officials, including the judicial staff; <https://www.12371.cn/2021/06/30/ARTI1625029938331844.shtml>, accessed August 31, 2021.

<sup>39</sup> Some local procuratorates have reported fluctuation in the number of Party members in recent years in response to tighter rules for admission. Based on these reports, it can be

promotes intellectuals to elite positions in key state institutions, such as procuratorates (Bian et al. 2001). Signing up with the Party is, by all means, a serious commitment. Party membership enables access to economic and professional advantages in the CCP-monopolized political system. At the same time, the Party's emphasis on political loyalty means that allegiance is a lifetime pledge; termination of membership is often associated with political disgrace<sup>40</sup> and accompanied by public shaming and other damage to a person's career (Dickson and Rublee 2000).

The specific sanctions listed in the Chinese Communist Party Disciplinary Regulations of 2018 consist of warnings, major warnings, removal from internal Party positions, placement on probation in Party membership, and expulsion from the Party (Article 8). As discussed earlier, the Party permeates the political-legal system in China. It is embedded in all state institutions such that the Party has direct access to important decision-making and mandates on issues from within. In particular, a regimented interlock exists between the internal personnel structure at state institutions (including procuratorates) and the Party system through the appointment of Party officials to key institutional positions (Li 2015). This integrated mechanism enables disciplinary measures to be enforced via a centralized chain of command and the record is maintained in the person's political files, with a negative impact on the person's future career development.

In light of the CCP-based political order, Party disciplinary sanctions certainly carry substantial weight and constitute a potent device for deterring and penalizing prosecutorial misconduct. In order for them to be used as a mechanism of lifelong accountability, the disciplinary measures are necessarily limited to prosecutors who are Party members. The scope of application might therefore have detrimental consequences and prejudice prosecutors who are members of the Party. Even among Party members, lifelong accountability is not a level playing field, as the disciplinary options that apply to retired prosecutors are significantly narrower, which inevitably blunts the effect of the sanctions. Taking into account all these limitations, it seems that hurdles and loopholes in various places will need to be cleared or filled before lifelong accountability can be taken seriously.

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estimated that Party members comprise more than 80% of the frontline prosecutors. See, e.g., [http://www.handan.jcy.gov.cn/dwjs/201410/t20141020\\_1483718.shtml](http://www.handan.jcy.gov.cn/dwjs/201410/t20141020_1483718.shtml), accessed August 31, 2021.

<sup>40</sup> Most of the time this is done involuntarily.

### *A Solution to Prosecutorial Misconduct?*

In view of the feasibility of the accountability mechanism as analyzed above, one might wonder why lifelong accountability is stressed. To be sure, it is necessary to ensure that sanctions for prosecutorial misconduct are sufficient to deter future violations. Notably, in the US, a campaign to raise “the standards” in sanctions for prosecutorial misconduct was initiated in reaction to the decision in *Connick v Thompson*, in which the prosecutor was found to have suppressed evidence that was favorable to the defendant (Block 2018; Floyd 2015).<sup>41</sup> American prosecutors are vested with tremendous power and wide discretion about whether to bring criminal charges against an individual. Their constitutional obligation to safeguard the due process rights of a defendant makes it critical that prosecutors refrain from intentionally breaking the law or transgressing the code of professional ethics when prosecuting a case (Bibas 2009; Green and Yaroshefsky 2016; Weiss 2011; Womack 2019). The need for prosecutors to avoid breaching their legal duty and enable a miscarriage of justice for someone accused of a crime is perhaps more urgent in China than the US, considering the tripartite relationship among the Chinese police, procuratorate, and courts. These three criminal justice institutions, commonly known as the Iron Triangle, watch one another’s backs by evaluating, selecting, editing, and rejecting evidence or information to produce a version of the facts conducive to conviction (McConville et al. 2011:377–424; Mou 2020: 15). In particular, empirical evidence has shown that the performance evaluations to which Chinese prosecutors are subject often drive them to team up with the police, helping them to manipulate flawed evidence in order to secure high conviction rates (Mou 2020: 220). Policy makers are apparently aware of prosecutors’ partisan approach in helping the police in case construction in China; some studies have analyzed the shortcomings in the role of prosecutors that have contributed to wrongful convictions (Dong 2014; Hu 2014; Ruijin Procuratorate Research Team 2015). In response, the Prosecutors Law of 2019 requires prosecutors to be bound by the facts and the law and adhere to an objective and lawful position [*bingchi keguan gongzheng de lichang* 秉持客观公正的立场] in performing their functions.<sup>42</sup> The overarching principle of objectivity is expected to redirect the institutional culture, which militates against the postulated impartiality; the principle is also of paramount importance for addressing problems such as the system’s inefficiency in excluding illegally obtained

<sup>41</sup> *Connick v Thompson* 563 US 51 (2011). The issue here is known as a “Brady violation,” deriving from the case *Brady v Maryland*, 373 US 83 (1963), in which the prosecutor suppressed exculpatory evidence, which resulted in a wrongful conviction.

<sup>42</sup> Article 5 of the Prosecutor Law of 2019.

evidence, inadequate protection of defendants' rights, unnecessary pretrial incarceration, and failure to disclose the prosecution's evidence and to prevent miscarriages of justice (Han 2019; Hou 2015; Long 2016, 2020; Wang 2014).

An ancient Chinese saying is: "Laws do not implement themselves" [*Tufa buzuo yizixing* 徒法不足以自行]. It is one thing for the principle of objectivity to be acknowledged in the law; it is quite another for the principle to be carried out as expected in reality. As a concept, the obligation to be objective seems to be laden with great expectations. Whether and to what extent this legal obligation can actually shape the prosecutor's role seem open to serious doubt. In this regard, the accent on lifelong accountability seems, first and foremost, to be a tactic aimed at balancing the partisan role of the prosecutor and preventing misconduct, regardless of its feasibility. Buttressing the threat of lifelong liability are the newly formed Prosecutorial Disciplinary Committees, which have been designated to investigate allegations of prosecutorial misconduct from a neutral and professional perspective (Article 49 of the Public Prosecutor Law of 2019). Established at the provincial level, the Prosecutorial Disciplinary Committees consist of representatives of the prosecutor, other legal professionals, and other parties that are involved in misconduct proceedings. They are an attempt by the SPP to influence the mindset of frontline prosecutors in promoting fairness in criminal justice. However, the ability to remain even-handed is also largely dependent on the performance indicators and pressure from the top to crack down on crime, such as politically motivated campaigns to combat crime, which can be strong enough to override due process considerations (Lin and Chen 2020; Wang 2020).

As a novel solution to prosecutorial misconduct, the accountability reform begs another question that goes to the heart of authoritarian accountability—that is, what is the implication of holding prosecutors accountable for a lifetime from the perspective of the principal (the account holder)? To answer this question, it is worthwhile to trace the origin of the reform. Although it has been implemented by the SPP, the political roots are found in Xi Jinping's instruction to "unswervingly advance judicial reform," which encouraged criminal justice institutions to take on challenges and to complete unfinished reforms (Xinhua Net 2017). As reported by Cao Jianming, a former procurator-general, the accountability reform is embedded in the political mandate to "take comprehensive measures to deepen judicial reform" [*quanmian shenhua sifa gaige* 全面深化司法改革] and to pursue socialist rule of law with Chinese characteristics (Cao 2017). Endorsed by the top levels of the Party-state, a road map was drawn for updating the accountability mechanism and systematically transforming the procuratorate (Reuters 2017). In this sense, the reform was in response to a call by the account holder, the Party, even though the mandate is

reflected in and transmitted through the regular governance system of procuratorates. This also explains why lifelong accountability was a central issue brought up at the fourteenth plenary session of the eighteenth CCP Central Committee in 2014 and consolidated in the Party resolution that resulted.<sup>43</sup> The prompt rolling out of the blueprint (spp 2015) and the comprehensive transformation quickly carried out by procuratorates subsequently indicate that the Party is firmly reining in procuratorates and holding them accountable. The high number of miscarriages of justice that have come to light in the past few decades is detrimental to the legitimacy of the Party-state (Jiang 2016). Under Xi's leadership, a coordinated approach by the central political power has been taken to identify avenues for tackling systemic issues in criminal justice, including ascertaining individual responsibility by prosecutors (Biddulph et al. 2017; Nesossi and Trevaskes 2017). By the same token, the accountability reform is just another example of maintaining the stability of the Party-state through legal reform to legitimize the law and law enforcement agencies (Trevaskes et al. 2014: 268).

## Conclusion

This article traces the development of the prosecutorial accountability system in China with respect to ongoing prosecutorial accountability reform. As severe measures for holding prosecutors accountable, lifelong accountability and individual responsibility have been introduced by the new accountability regime to deter prosecutorial misconduct. But the issues regarding the paradigm shift following the assignment of individual responsibility and the feasibility of lifelong accountability are far from settled. It is still too soon to comprehensively assess the efficacy of the new system and its effect on the prevention of miscarriages of justice. Nevertheless, the accountability reform has radically transformed procuratorates in China. The quota prosecutor system, the relaxed internal controls within the procuratorate, and the integration of prosecutorial functions are all conducive to greater prosecutorial autonomy. In the Procuratorate's Five-Year Work Plan for Reform (2018–2022), the turn toward prosecutorial accountability has become a request for prosecutorial professionalism. In most Western societies, prosecutorial professionalism

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43 As noted earlier, lifelong accountability was highlighted in the Party's political statement in the Resolution on Major Issues in Relation to the Promotion of Rule of Law by the CCP passed by the fourteenth plenary session of the eighteenth Chinese Communist Party Central Committee in 2014.

operates on the assumption that prosecutors handle criminal cases independently. This is often supported through licensing, relaxed supervision, and error detection and correction initiated by complaints (Simon 2017). As we have seen, distrust in the judgment of prosecutors is still manifested in the day-to-day inner workings of the Chinese procuratorate. The concern that prosecutors are incapable of handling cases independently is still ever-present. The principle of *ed non a chalie* and the internal review structure for monitoring their work remain intact. Other than reshaping the institution, little has been done to cultivate professional integrity, which lies at the heart of minimizing miscarriages of justice.

Clearly a core issue exists in the search for a system of personal liability within an institutional setting that is conditioned on hierarchical responsibility and anchored in collective culture. To prevent miscarriages of justice, it is necessary to review the operation of criminal justice holistically, identify the procedural issues, and find solutions (Mou 2020: 219). This might require strengthening due process protections not only to ensure that the prosecutor is neutral and objective but also to proactively safeguard defendants' procedural rights. Prosecutors have been observed to be partisan and have long failed to fulfill their supervisory responsibilities dedicated to justice. To remedy the situation, the system should be adjusted to reduce the incentives that give rise to potential prosecutorial misconduct or to install oversight to correct the problems. So far, no systematic review of criminal justice has taken place. Judging from the ongoing procuratorate reform, eliminating institutional vulnerabilities has not been the path chosen. The question is, how can we make sense of the lifelong accountability reform? As a constituent pillar of judicial reforms initiated in recent years, this reform should be understood against the wider sociolegal backdrop of the Party-state. This new wave of lifelong accountability reforms is not limited to the procuratorate but, rather, extends to the judiciary and the police, triggering a cascade of internal transformations at these institutions. The judicial accountability reform imposes greater responsibility on the responsible judges, who now have to cope with increasing caseloads (He 2021). Likewise, the lifelong accountability mechanism applied to the police has subjected the frontline police officers to greater occupational stress in detecting and investigating crimes (Jiang and Gong 2017; Liu 2018; Peng 2017).<sup>44</sup> The Party-state seems to assume that wrongful convictions are the product of isolated individual misconduct, in a system that is sound and

<sup>44</sup> The Regulations on Inquiry into Misconduct by the People's Police of Public Security Bureau during Law Enforcement [*Gonganjianquan renminjingcha zhifa guocuo zeren zhuijiu guiding* 公安机关人民警察过错责任追究规定] issued by the Ministry of Public

fair as long as the few “bad apples” are eliminated. Based on this assumption, the blanket application of the lifelong accountability to criminal justice institutions is sufficient for deterring individual misdeeds and preventing miscarriages of justice. Instead of considering that the system should be accountable for mistakes and injustice, the preferred approach is to shift responsibility for wrongful convictions to the rank and file.

The logic behind this choice comes from the emphasis on substantive justice, which is an endogenous feature of socialist accountability. As noted by Qin and Ye (2017), the legitimacy of the Party-state derives from its normative commitment to the interest of the people in paternalistically offering substantive equality and fairness. Substantive justice determines the outcome-based approach to handling prosecutorial wrongdoing. Rather than fixing the system to strengthen its ability to combat crime, the accountability reforms are designed to foreground the criminal justice institutions’ commitment to substantive justice. The value of procedures, however, is pertinent only to the extent that it contributes to the pursuit of the correct outcome. The introduction of lifelong liability might not be able to respond to the organizational problem, but it demonstrates that the Party-state is capable of reining in prosecutors, at least at an ideological level. At any rate, the personal liability approach means little if a wrongful conviction comes to light only years later. At the same time, if the mechanism of lifelong accountability is truly to be taken seriously, it must govern the day-to-day work of those affected, which would probably lead to inaction, lassitude, and a failure to reach any of the departmental goals set for handling cases.

The acknowledgment of the prosecutorial principle of objectivity in the Public Prosecutor Law of 2019 represents an advance. At the same time, however, the law prioritizes procedural economy at the expense of the rights of the accused as well as political pressure to reinforce the punitive nature of the public prosecution’s crime control. The SPP repeatedly emphasizes that the procuratorate, first and foremost, should be weaponized as the “dagger”

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Security in 2016 adopted a fault-based system to pin down liabilities by police officers who engage in misconduct, such as torture, forging and fabricating evidence, irregularities for selfish ends, and conducting malicious investigation for revenge. Unlike the reforms in the procuratorate and the judiciary, in which the lifelong liability is designed to be compatible with lead prosecutors’ or judges’ exalted status and autonomy, the lack of a similar quota system within the Public Security Bureau (PSB) has created a disproportionately onerous responsibility for the frontline police. Because it lacks a corresponding mechanism to compensate frontline officers for the gap in occupational status, discretionary power, and financial rewards, the PSB encounters greater obstacles and shows slow progress in implementing the reform (Jiang and Gong 2017; Liu 2018; Peng 2017; Wang 2017).

[*daobazi* 刀把子] in maintaining security in the communist regime (Qiu 2020). In the Chinese context, the accountability relationship—that is, prosecutors are principally accountable to the Party in exercising prosecutorial power and performing delegated functions—undoubtedly adds complexity to their work agenda. The motivation for prosecutors to engage in misconduct, such as concealing exculpatory evidence and forging other evidence or suborning perjury, originates in their fervent desire to win a case. The advent of the accountability reform has not diminished this motivation. On the contrary, the incentive to avoid an acquittal is still driven by their performance evaluations and emboldened by the current sociopolitical context.

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