

# Comparisons and References: What Can Chinese and the US Prosecutors Learn from Each Other?

Jiabo Lv<sup>1</sup>

<sup>1</sup> Inner Mongolia University, China

Correspondence: Jiabo Lv, Inner Mongolia University, China.

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## Abstract

With the rapid development of the economic society, prosecutors from both China and the United States have problems that troubles themselves. For Chinese prosecutors, they are in “the era of minor crimes” in social governance, and their power seems to be limited, making it difficult to make appropriate judgments regarding individual situations. For the US prosecutors, they are not trusted due to their wide discretion and are even seen as “Leviathans” in the criminal justice system. Through comparative research, it can be found that Chinese and the US prosecutors have a broad space for mutual learning and reference. China can moderately relax the restrictions on the discretion of prosecutors and establish pre-trial diversion plans to prevent minor criminals from being punished. The United States can reform its selection system by using fair exams to prevent prosecutors from being influenced by political tendencies, racism, and other factors, so that the prosecutors can exercise their power more focused and trusted.

**Keywords:** prosecutor, litigation discretion, elections, judicial system

## 1. Introduction

In fact, both Chinese prosecutors and the US prosecutors are “heterogeneous” within their respective legal systems. The procuratorial system in China originated in the late Qing Dynasty. At that time, five Ministers examined the legal systems of various countries and believed that the systems of Germany and Japan were the most suitable for China. Under the guidance of the policy of “imitating Germany and Japan”, in 1906, “prosecutor’s offices” were established in various levels of courtrooms as procuratorial organs, with functions almost

identical to those of other civil law countries.<sup>1</sup> After the establishment of the People’s Republic of China, influenced by the Soviet Union, China’s procuratorial organs began to implement a “vertical leadership system”, which all levels of procuratorial organs were not subject to local interference and were uniformly led by the Supreme Procuratorate. At the same time, due to inheriting Lenin’s “legal supervision” ideology, procuratorial organs began to exercise legal supervision function,

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<sup>1</sup> Sun Qian. (2022, January 13). The Development History and Mission of the People’s Procuratorate. The Supreme People’s Procuratorate Website. [https://www.spp.gov.cn/spp/zdgz/202201/t20220113\\_541583.shtml](https://www.spp.gov.cn/spp/zdgz/202201/t20220113_541583.shtml).

thus having an independent position in the political system.<sup>1</sup> Today, the Supreme People's Procuratorate of China, along with the State Council, the Supreme People's Court, and the State Supervision Commission, belong to the same central state organ sequence.<sup>2</sup> In addition to the traditional role of "prosecutor" in civil law countries, Chinese prosecutors are also "legal supervisors." This is the difference in role positioning compared to peers in other civil law countries.

As a former colony of Britain, the United States is generally believed to have inherited the legal tradition of Britain, but this is not the case in the prosecutorial system. In Britain, the power to accuse, collect evidence, and manage prosecutions has always belonged to individuals and police. Historical data shows that there were traces of prosecutor activities in the United States in the 18th century or even earlier, which is in line with the characteristics of criminal prosecution in the civil law system.<sup>3</sup> Pennsylvania, Connecticut, New York, and New Jersey were once Dutch colonies. A reliable theory is that after the British occupied them in 1644, the sheriff continued to perform Dutch style prosecutor duties. Therefore, the American prosecution system was actually inherited from the Dutch civil law tradition. This is where the origin of the system differs from that of common law countries.<sup>4</sup> Today, US prosecutors have powers that are unimaginable to their peers in other common law countries. As Robert Jackson once said, "Prosecutors have more control over life, freedom, and reputation than anyone else in

the United States."<sup>5</sup> Josh Gupta Kagan even compared prosecutors to the criminal justice system's "Leviathans". Undoubtedly, there are many reasons for the formation of "Leviathan",<sup>6</sup> which involves various aspects such as drug control, racism, and elections. However, there is no doubt that the power of US prosecutors is extremely excessive in common law countries,<sup>7</sup> which is also one of the reasons why I refer to them as "heterogeneous".

Now, Chinese prosecutors, who are considered as "heterogeneous" in the civil law system, and US prosecutors, who are considered as "heterogeneous" in the common law system, both face their own troubles. Fortunately, we can find ways and ideas to solve our respective problems through comparison and reference, which is also the meaning of this paper.

## 2. Problems that Plague Chinese and the US Prosecutors Respectively

Chinese prosecutors are more inclined towards the role of judges in the criminal classical school. They are good at strictly enforcing the law, but have little discretion. US prosecutors, on the other hand, are officials who adhere to the new criminal ideology and have wide discretion to choose appropriate handling methods for each individual's situation. In fact, the problems faced by prosecutors in China and the United States are symmetrical. Chinese prosecutors, due to being subject to too many restrictions, are often too mechanical and unable to respond reasonably to individual changes. US prosecutors, on the other hand, have too broad powers and too many factors to consider. Guided by a vague sense of justice, they may make many imbalanced decisions, which also raises doubts about the legitimacy of their power.

### 2.1 Chinese Prosecutors' Strictly Restricted Powers

On the surface, Chinese prosecutors are not only "prosecutors", but also "legal supervisors", and

<sup>1</sup> Wang Kai. (2024). Analysis of the system of legal supervision of the people's procuratorate. *Chinese Journal of Law*, 46(1), 40–41.

<sup>2</sup> According to the Constitution of the People's Republic of China, the Supreme People's Procuratorate is the highest procuratorial organ; the Supreme People's Procuratorate leads the work of local people's procuratorates at all levels and specialized people's procuratorates, while the higher-level people's procuratorates lead the work of lower level people's procuratorates. The Supreme People's Procuratorate is responsible to the National People's Congress and the Standing Committee of the National People's Congress. Local people's procuratorates at all levels are responsible to the national power organs that produce it and higher-level people's procuratorates. Constitution of the People's Republic of China. (2018, March 22). China National People's Congress Website. [http://www.npc.gov.cn/c2/c30834/201905/t20190521\\_281393.html](http://www.npc.gov.cn/c2/c30834/201905/t20190521_281393.html).

<sup>3</sup> Gilliéron, G. (2014). *Public prosecutors in the United States and Europe*. Cham: Springer.

<sup>4</sup> Van Alstyne Jr, W. S. (1952). The District Attorney-A Historical Puzzle. *Wisconsin Law Review*, (1), 125-138.

<sup>5</sup> Jackson, R. H. (1940). The Federal Prosecutor. *Criminal Law and Criminology*, 31(1), 3.

<sup>6</sup> Gupta-Kagan, J. (2018). Rethinking family-court prosecutors: Elected and agency prosecutors and prosecutorial discretion in juvenile delinquency and child protection cases. *The University of Chicago Law Review*, 85(3), 743, 757.

<sup>7</sup> William J. Stuntz once famously stated that "prosecutors are the true legislators in the judicial system," and today, no one is surprised by the academic assertion that "prosecutors rule the judicial system." Stuntz, W. J. (2004). Plea bargaining and criminal law's disappearing shadow. *Harvard Law Review*, 117(8), 2549.

their power should be great, at least greater than that of prosecutors in other typical civil law countries. However, in practice, the power of Chinese prosecutors is subject to many restrictions. If prosecutors want to exercise their discretion, they must consider the procedural costs that should be paid. The power restrictions on Chinese prosecutors come from two aspects: external restrictions and internal restrictions.

From the external perspective, China doesn't have pre-trial judges like other civil law countries, and approving arrests is the responsibility of prosecutors, which is also one of the connotations of "legal supervision right".<sup>1</sup> In order to better fulfill the duties of a pre-trial judge, it is necessary to make the prosecutor objective and neutral, and the only way is to decouple him from the police. So unlike the "police prosecution integration" in other civil law countries, Chinese prosecutors cannot directly command or lead the investigation behavior of the police. They have a "relay baton" style cooperative relationship with the criminal police, and most of the time, prosecutors can only issue "prosecutorial suggestions".<sup>2</sup> When the case came to the stage of "review and prosecution", the prosecutor really became the leader of the case, but he found that "there are not many cards to play". The prosecutor should first review the evidence and legal issues. The evidence is only sufficient or insufficient, and when the evidence is not sufficient, prosecutors cannot conduct "defense

transactions" like their US peers.<sup>3</sup> Only when the facts of the case are clear, the evidence is true, and sufficient (China's highest standard of evidence, similar to "excluding reasonable suspicion"), can the prosecutor negotiate with the accused to discuss whether the leniency system for admitting guilt and punishment (China's negotiation diversion system) can be applied. Prosecutors have very few chips in their hands, either offering preferential sentencing recommendations or not prosecuting, and there is no pre-trial diversion plan to choose from like US prosecutors.<sup>4</sup> Even when prosecutors sympathize with the situation of the accused and prepare to make a non-prosecution decision, they will bear an additional procedural burden, that is, holding a hearing for discussion.<sup>5</sup> When the case reaches the trial stage, due to the lack of a "reason for

<sup>1</sup> For example, in criminal investigations in Germany, the review of warrants is the responsibility of judges, and pre-trial judges even have the power to command investigations to a certain extent; The pre-trial judges in France have dual functions as investigators and judges, and are considered a major feature of the country's criminal justice system.

<sup>2</sup> *The Criminal Procedure Law of the People's Republic of China* stipulates that the relationship between the People's Procuratorate, the People's Court, and the public security organs is "mutual division of labor", "Mutual cooperation and mutual restraint", it can be seen that the three have independent status and there is no subordinate relationship. In the past few years, the three organs emphasized too much cooperation in the process of cracking down on crime, resulting in hasty convictions. Therefore, Chinese scholar Chen Ruihua referred to this judicial model as the administrative "assembly line operation model". Chen Ruihua. (2017). On investigative centrism. *Tribune of Political Science and Law*, 35(2), 3-4.

<sup>3</sup> The Supreme People's Procuratorate of China pointed out that in handling cases of confession and punishment, we should take the facts as the basis, the law as the criterion, and strictly comply with the requirements of evidence and judgment, comprehensively collect, fix, review, and determine evidence. We should adhere to the legal standard of proof, and make sure that the facts of the crime are clear, the evidence is reliable and sufficient, so as to prevent the suspect and the defendant from reducing the evidence requirements and standards of proof due to their confession. Guidance on the Application of the Plea and Penalty Leniency System. (2019, October 24). Supreme People's Procuratorate Website. [https://www.spp.gov.cn/spp/xwfbh/wsfbh/201910/t20191024\\_435829.shtml](https://www.spp.gov.cn/spp/xwfbh/wsfbh/201910/t20191024_435829.shtml); In practice, there are also some prosecutors who handle cases, through consultation with defense lawyers, advise the accused to plead guilty and accept punishment, so as to obtain "confessions of suspect and defendants", which can supplement the evidence standard. Zhang, Chaoxia, Ma, Tianbo, & Wu, Chunmei (Eds.). (2020). *Practice and exploration of misdemeanor prosecution in the capital city*. China Procuratorate Press.

<sup>4</sup> In China, defendants who are intended to be sentenced to control, probation, or temporary execution outside of prison also receive community correction education. However, unlike the pre-trial diversion plan in the United States, community correction here is already a consequence of punishment, and relevant personnel are still inevitably labeled as criminals.

<sup>5</sup> The Supreme People's Procuratorate of China proposed the reform goal of "holding a hearing for all cases that should be held" in the "14th Five Year Plan" for the development of prosecutorial work. Subsequently, the hearing rate for non-prosecution cases has been increasing year by year. On the one hand, this has made the procedures more open and transparent, which is conducive to the supervision of the people. On the other hand, this has also brought procedural burden to prosecutors, forcing them to directly sue some controversial cases, thus avoiding the test of the hearing and avoiding public questioning of their professional abilities. Focus on the Development Plan of Procuratorial Work in the 14th Five-Year Plan Period. (2021, April 16). Supreme People's Procuratorate website. [https://www.spp.gov.cn/spp/xwfbh/wsfbt/202104/t20210416\\_515886.shtml#2](https://www.spp.gov.cn/spp/xwfbh/wsfbt/202104/t20210416_515886.shtml#2).

prosecution system” in China, judges are generally not bound by the prosecutor’s request for conviction and sentencing recommendations. In some cases, the prosecutor and defendant had already reached an agreement, but could not implement it due to the judge’s disapproval. After the verdict of the case was pronounced, the prosecutor filed a protest, and at this time, a strange scene emerged where the prosecutor and the defendant joined forces to deal with the judge.<sup>1</sup>

Looking at internal restrictions, in order to ensure the legality and accuracy of the exercise of prosecutorial power, there are actually many internal restrictive measures within the procuratorial organs. For example, Article 285 (3) of the *Criminal Procedure Rules of the People’s Procuratorate* stipulates that decisions on not arresting innocent individuals or not supplementing evidence with insufficient evidence need to be approved by the procurator general; According to Article 367 and Article 370, the decision not to prosecute due to minor plot and insufficient evidence also needs to be approved by the Prosecutor General before it can be made. In addition, there are many documents and forms within the procuratorial organs that need to be filled out by the prosecutors, and many assessment standards need to be followed by the prosecutors.<sup>2</sup> Therefore, Chinese prosecutors often exercise their powers with caution, afraid of adverse effects on their career development.

Under the combined effect of external and internal restrictions, Chinese prosecutors have to exercise their power with great caution. Many defendants believe that prosecutors are too harsh and insist on prosecuting even if it is a small mistake. However, in reality, they do not have many choices. Perhaps they know that prosecuting is not the best way to deal with it,

but in many cases, it is the safest way and they do not have to bear too much professional risk.

## 2.2 The US Prosecutors’ Overinflated Powers

According to the *Justice Manual*, US prosecutors have the power to investigate crimes and charges, refuse prosecution, authorize prosecution, decide on the mode of prosecution and trial related issues, recommend whether to appeal against adverse rulings and decisions, and handle related civil affairs.<sup>3</sup> This allows prosecutors to do many things, and they can make a decisive decision on whether to file a criminal lawsuit, what kind of accusations are being made, what punishment to seek, and whether to agree to a defense transaction. There are very few legal restrictions on such a wide range of powers. The most famous claim so far is in the *Berger v. United States* case, which states that “the prosecutor’s obligation in criminal prosecution is not to win the case, but to seek justice.” This may seem to point the way for prosecutors to exercise their power<sup>4</sup>, but in reality, it brings about even greater problems. Due to personal biases in understanding justice, everyone can define the justice, or in other words, no one can define justice. Even philosophers are unable to reach an accurate consensus on this abstract concept, let alone prosecutors themselves.<sup>5</sup> Scholars have attempted to constrain the power of prosecutors

<sup>3</sup> According to the *Justice Manual*: Investigating suspected or alleged offenses against the United States; Causing investigations to be conducted by the appropriate federal law enforcement agencies; Declining prosecution; Authorizing prosecution; Determining the manner of prosecuting and deciding trial related questions; Recommending whether to appeal or not to appeal from an adverse ruling or decision; Dismissing prosecutions; and Handling civil matters related thereto which are under the supervision of the Criminal Division. *Justice Manual*. (2021, January). U.S. Department of JUSTICE. <https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals>.

<sup>4</sup> In the process of fulfilling their duties, American prosecutors often cite many justice themes, such as “public safety” (strict justice), “serving voters” (public justice), and “ending mass imprisonment” (social justice). However, these themes are only abstract expressions and cannot provide prosecutors with clear performance standards. Although some prosecutor’s offices have developed their own prosecution guidelines, they are still insufficient to change the status quo on a societal scale. Bellin, J. (2020). Theories of Prosecution. *California Law Review*, 108(4), 1211.

<sup>5</sup> As Erik Luna said, compared to prosecutors, only Plato’s philosopher kings do not need to consider the theory of justice, because they themselves represent virtues, and virtues will make their actions conform to the requirements of justice. Luna, E. (2013). Prosecutor King. *Stanford Journal of Criminal Law & Policy*, 1(48), 51.

<sup>1</sup> In the traffic accident case of Yu, under the leniency procedure for pleading guilty and accepting punishment, the prosecutor had reached a consensus with the defendant. The prosecutor proposed a sentencing recommendation of probation, but the court did not listen to the suggestion and still sentenced the defendant to actual sentence. Procuratorate then filed a protest and requested the second instance court to change the verdict. Nowadays, although the adoption rate of sentencing recommendations in pleading guilty and accepting punishment cases is relatively high, but has not achieved full coverage, and the court still reserves the power to overturn the negotiated agreement.

<sup>2</sup> Zhao Kainian. (2010). Discussion on the regulation of criminal prosecution authority: Internal supervision and control as a perspective. *Criminal Science*, (09), 95-102.



by setting uniform prosecution standards<sup>1</sup>, but as David Sklansky said, “Unless they are co-authors, no two scholars will propose the same standards of prosecution effectiveness.”<sup>2</sup>

If you believe that the prosecutor is only facing the problem of being unable to choose due to broad power, you are wrong. In fact, it is more complex because the power of prosecutors comes from the constitutional political structure of separation of powers. He must play the role of a mediator and bridge the theoretical and institutional differences in criminal justice. This makes him both an enthusiastic defender and a fair fact examiner, both a criminal fighter and a compassionate tool, both a leader in law enforcement and an official in the judiciary, both a loyal public servant and an independent professional, and both a supporter of community values and a defender of the rule of law. <sup>3</sup>So many characters will gradually lead prosecutors into a “personality split”, and ultimately, they can only rely on a vague sense of justice in their minds, but this feeling is difficult to have a sense of boundaries, so it has been criticized by many people. Nowadays, if it is proposed within the legal community of the United States that “prosecutors are the kings of criminal justice,” no one would find it strange, and even this viewpoint can be accepted without argumentation. Although there are also people who defend prosecutors, such as Jeffrey Bellin, who believes that the power of prosecutors does not actually conform to Max Weber’s definition of power, and prosecutors can only exert a certain influence on the outcome at best. Police and judges seem to be

able to do these things as well.<sup>4</sup> But the cost of reversing the already formed concepts is enormous. People are more receptive to the former Minister of Justice, Robert Jackson’s statement that “the prosecutors gathered in this room are one of the most powerful people known in our country during peacetime.”<sup>5</sup>

Prosecutors are the gatekeepers of criminal justice. On the one hand, he cooperates with the police to investigate crimes, and on the other hand, he receives professional training like a judge. He must communicate well with the two worlds, so he has power that is broad and hard to determine boundaries. Meantime, he is also an individual in society, possessing interests and values. Now, he must think about how to exercise the power in order to satisfy everyone.

### 3. Causes of the Problem

The differences between Chinese and the US prosecutors are caused by multiple reasons. If attempting to reveal the parts that we can learn from each other, firstly, it is necessary to analyze the reasons that lead to the current situation. Next, I will make some preliminary analysis.

#### 3.1 The Reasons for the Limited Power of Chinese Prosecutors

China is a collectivist country, and crime is considered a harm to the collective and society. Therefore, when a criminal action occurs, individual citizens, as a member of the collective, emotionally hate the crime. They expect prosecutors to uphold the values of collectivism and uphold justice as state officials. If the offender escapes legal sanctions through a trial that is even just in procedure, the harm to the

<sup>1</sup> Friedman, M. (1978). The Prosecutor: A Model for Role and Function. *Washington University Law Quarterly*, 109, 113-115.

<sup>2</sup> Sklansky, D. A. (2016). The nature and function of prosecutorial power. *Journal of Criminal Law and Criminology*, 106(3), 516. Some scholars fundamentally oppose the existence of prosecution standards, believing that linking the prosecutor’s prosecution discretion with substantive law would lead to dull formalism and unnecessary harshness. Cassidy, R. M. (2006). Character and Context: What Virtue Theory can teach us about a Prosecutor’s Ethical Duty to seek Justice. *Notre Dame Law Review*, 82(2), 640.

<sup>3</sup> Sklansky, D. A. (2016). The nature and function of prosecutorial power. *Journal of Criminal Law and Criminology*, 106(3), 577.

<sup>4</sup> Jeffrey Bellin pointed out that there is indeed a lack of restricted discretionary power among prosecutors, but discretionary power does not equate to power. There are also many judicial personnel who have great discretionary power but little power. For example, court clerks have great discretionary power in the order of summoning cases on the schedule, but no one claims that their power is inflated. In my opinion, this statement is appropriate. From the perspective of the structure of criminal proceedings in the United States, prosecutors are indeed not the most powerful individuals. Their power is actually a substantive influence that can be achieved through other roles such as a “gentle” grand jury and a “loyal” police officer. However, in any case, we need to limit this influence, otherwise the desire for mutual restraint in justice will fall through. Bellin, J. (2019). The power of prosecutors. *New York University Law Review*, 94(2), 179-180.

<sup>5</sup> Jackson, R. H. (1940). The Federal Prosecutor. *Criminal Law and Criminology*, 31(1), 3.

public's emotions is also enormous. <sup>1</sup>This is fundamentally different from how citizens in individualistic countries view criminal proceedings from the perspective of defendants and emphasize procedural justice. <sup>2</sup>Therefore, the procuratorial organs supported by this desire must respond to public expectations. They must both crack down severely on crime and not swing the whip of punishment towards innocent people. So it is necessary to strictly limit the personal power of prosecutors. It would be dangerous to allow them to have considerable discretion, as there may be crimes that escape legal sanctions, while virtuous individuals face trial. At this point, a relatively strict strategy of statutory prosecution is appropriate. By managing the prosecution of prosecutors through numerous written documents, the decisions made by multiple prosecutors appear to be made by one person, which is more conducive to achieving the judicial goal of "not being wronged or indulged". This is also due to the collectivist social form, where the public has a relatively consistent social value orientation and can jointly pursue a relatively clear view of justice. When these prosecution standards are publicly announced in advance, the public can accept them well, and when these standards are enforced, the public will not be surprised.

Secondly, before 2013, China actually had three levels of punishment measures: administrative punishment, reeducation through labor, and criminal punishment. After the Central Committee of the Communist Party of China issued the *Decision on Several Major Issues Concerning Comprehensively Deepening Reform in 2013*, reeducation through labor became a thing of the past, and its regulated persons were

respectively included in administrative and criminal punishment. <sup>3</sup> Although this has expanded the scope of criminal punishment, overall, it is still very cautious. Administrative punishment in China do not belong to criminal punishment, and the punished person does not need to be prosecuted by a prosecutor, nor will they bear a criminal record. Therefore, overall, the criminal acts covered by criminal substantive law are still very limited compared to some foreign countries. Therefore, Chinese prosecutors do not need to be the "regulator" of excessive criminalization, and a portion of cases are reduced during the prosecution stage. Meanwhile, due to the relatively cautious regulatory scope of criminal substantive law, behaviors that can become regulated objects often have considerable social harm, which also lays the foundation for the strict prosecution of statutory prosecutorial power model.

Finally, Chinese prosecutors are recruited through exams. According to the *Announcement on the Public Recruitment of Staff for Institutions Directly under the Supreme People's Procuratorate in 2023*<sup>4</sup>, candidates who intend to become prosecutors first need to meet the requirements of nationality, ideology, age, professional skills, physical and psychological qualities, and then participate in unified written tests and interviews for selection and employment. After entering the workforce, young people need to undergo continuous practice and learning, participate in post selection exams, in order to become formal prosecutors under the post system. The recruitment method of Chinese prosecutors allows newcomers to have astonishing consistency in career experience, professional quality, and other aspects. They then go through unified training and the same promotion path, so their exercise of power after becoming prosecutors will also tend to be consistent. The cautious professional personality often spreads to each other, making the decisions of multiple prosecutors seem like they are made by one person. The tradition of "cautious prosecutors" is gradually passed

<sup>1</sup> Nie Youlun. (2023). Plea and punishment leniency: A negotiated justice in China?. *Journal of Shanghai Institute of Political Science and Law*, 38(5), 57–58.

<sup>2</sup> A study shows that the values of collectivism and nationalism have a lower tolerance for crime, and only judgments made after investigating the crime using all means permitted by the law are considered to be substantially fair. King, M. T. (2001). Security, scale, form, and function: The search for truth and the exclusion of evidence in adversarial and inquisitorial justice Systems. *Int'l Legal Persp.*, 12, 193. Another survey shows that the majority of Chinese people hold a view of substantive justice, which places greater emphasis on the rationality of distribution results rather than the rationality of distribution processes in real life. Ma Baobin, Qian Huahua, & Du Ping. (2016). Prioritizing fairness over justice: An empirical analysis of Chinese people's perception of social justice. *Jilin University Journal Social Sciences Edition*, 56(2), 80-81.

<sup>3</sup> Gao Yong. (2019). *The construction of China's misdemeanor legal system*. Law Press-China.

<sup>4</sup> Announcement of 2023 public recruitment of staff for institutions directly under the Supreme People's Procuratorate. (2023, February 9). Supreme People's Procuratorate website. [https://www.spp.gov.cn/spp/tzgg/1/202302/t20230210\\_600736.shtml](https://www.spp.gov.cn/spp/tzgg/1/202302/t20230210_600736.shtml).

down.<sup>1</sup>

### 3.2 The Reasons for the Expansion of the Power of the US Prosecutors

Objectively speaking, the broad discretion possessed by US prosecutors is not necessarily a bad thing. They can choose to exercise this power very cautiously or abuse it. How to do depends on the social environment, so we must analyze the social reasons that lead to the current situation. In 1961, the United States launched the “Anti-Drug War”, and President Nixon declared drug use as the “first public enemy”.<sup>2</sup> In addition, with the increase of foreign immigrants and the intensification of domestic racial conflicts, in order to maintain social security, Congress and state legislatures expanded their criminal codes, and more and more acts were declared crimes and punished. As a result, the United States began to move towards the era of large-scale imprisonment.<sup>3</sup> According to relevant data, the imprisonment rate in the United States is 7 times higher than the average imprisonment rate in other Western European democratic countries, with approximately 665 people being imprisoned for every 100000 people.<sup>4</sup> If the country’s judiciary is compared to a precision machine, it can ensure that high-quality production of goods is limited. Once these limitations are exceeded, the only option is to reduce product quality or consider rejecting some processing requirements.

Therefore, although it had already existed in the judiciary before, the Supreme Court ultimately approved the practice of plea bargaining in 1971, affirming the legal status of prosecution defense negotiation<sup>5</sup>, and the ultimate executor of this system is the prosecutor. Meantime, prosecutors are also more actively using their non-prosecution power to exclude some cases from criminal proceedings. According to empirical rules, 25%-50% of cases will be handled without prosecution.<sup>6</sup>

Nowadays, prosecutors are both the main actors in defense transactions and the decision-makers in entering criminal proceedings. He has a wide range of power, but exercising it perfectly is actually difficult.<sup>7</sup> Firstly, prosecutors must spend time reading and screening case files, as they need to spend a long time contemplating or analyzing the necessity of prosecution. As a prosecutor once said, “I see the volume of cases as a burden, and I yearn for the freedom to prosecute every case as if it were my only obligation.”<sup>8</sup> So, the time that the US prosecutors can spend on meaningful cases is

<sup>1</sup> According to the *Guidelines for the Assessment of Prosecutors*, Chinese prosecutors adopt a combination of basic scores, target performance evaluation, piece by piece scoring, and comprehensive evaluation models for assessment. Among them, case quality, efficiency, and social impact are important assessment standards. Once a prosecutor is rated as “incompetent”, it will be difficult for them to obtain promotion opportunities in their future career development, and they may even be dismissed from their position. Therefore, Chinese prosecutors should be very careful in the process of handling cases, and breaking through traditional innovation is a risky behavior. *Guidelines for Procuratorial Staff Assessment*. (2021, December 6). Supreme People’s Procuratorate website. [https://www.spp.gov.cn/spp/xwfbh/wsfbt/202112/t20211206\\_538030.shtml#1](https://www.spp.gov.cn/spp/xwfbh/wsfbt/202112/t20211206_538030.shtml#1).

<sup>2</sup> Frontline, P. B. S. (2000). Thirty Years of America’s Drug War: a Chronology. FRONTLINE. <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/>.

<sup>3</sup> Newell, W. (2013). The legacy of Nixon, Reagan, and Horton: How the tough on crime movement enabled a new regime of race-influenced employment discrimination. *Berkeley Journal of African-American Law & Policy*, 15(1), 21-22.

<sup>4</sup> This figure is approximately 284 in Iran, 402 in Russia, and 197 in Saudi Arabia. *Correctional Populations in the United States, 2016*. (2016, April). U.S. DEPT. OF JUSTICE. <https://perma.cc/Q5HX-6RS3>.

<sup>5</sup> Barkow, R. E. (2019). *Prisoners of politics: Breaking the cycle of mass incarceration*. Harvard University Press.

<sup>6</sup> Wright, R., & Miller, M. (2002). The screening/bargaining tradeoff. *Stanford Law Review*, 55(29), 75.

<sup>7</sup> In 2017, the U.S. criminal legal system handled approximately 5 million felony cases and 12 million misdemeanor cases each year. The Conference of State Court Administrators and the National Center for State Courts. (2017). STATE COURT CASELOAD DIGEST 2017 DATA. Court Statistics Project. [https://www.courtstatistics.org/\\_data/assets/pdf\\_file/0011/24014/csp-2017-data-spreads-for-viewing.pdf](https://www.courtstatistics.org/_data/assets/pdf_file/0011/24014/csp-2017-data-spreads-for-viewing.pdf). These cases are in the hands of one criminal justice actor: the prosecutor. None of these arrests will become cases unless prosecutors decide to prosecute. Prosecutors decide whether to initiate criminal proceedings, what charges to bring, what penalties to seek and when a plea bargain is appropriate. Because 94 percent of criminal convictions are resolved through plea bargains, prosecutors, not judges, decide the fate of defendants in the vast majority of cases. U.S. DEPT OF JUST (2010, November 22). *Felony Sentences in State Courts, 2006 – Statistical Tables*. U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/fssc06st.pdf>.

<sup>8</sup> Uviller, H. R. (1999). Poorer but wiser: The Bar looks back at its contribution to the impeachment spectacle. *Fordham Law Review*, 68(3), 899-901.

limited, which will inevitably affect the quality.<sup>1</sup> Secondly, in individualistic societies, individuals often have a multi-directional perception of justice, which includes factors such as racism, emotional differences, and even demands from sexual minorities, partisan political tendencies, and so on. Prosecutors must consider values and social influence. In my opinion, it is inevitable for US prosecutors to become “Leviathan” because the outcome of a case cannot be liked by everyone like the US dollar.

Another reason for the power characteristics of US prosecutors is the selection system. The United States is the only country in the world that elects prosecutors. At first, prosecutors, like many government officials in the United States, were appointed, but soon after, the public began to be dissatisfied with the system of appointing prosecutors, as they discovered that political parties began to use appointments to reward allies and punish enemies. In 1832, Mississippi was the first state to elect prosecutors. In 1833, Ohio implemented a prosecutor’s election system, and other states followed suit and began electing prosecutors.<sup>2</sup> The implementation of the electoral system allows the public to supervise prosecutors through democratic accountability, but it also brings new problems, namely that prosecutors are beginning to face political pressure. Regardless of whether prosecutors face challengers in elections, changes in election years always affect their behavior, indicating that political pressure overwhelms professional judgment. Many prosecutors have started shouting slogans of “cracking down on crime severely”, attracting their supporters by treating low-level criminals

harshly.<sup>3</sup> In addition, the experience of prosecutors in fulfilling their duties is also a good political capital. Therefore, prosecutors do not refuse to express their political pursuits and opinions in their speech and work, which often benefits their political career after leaving office.<sup>4</sup> In recent years, in order to oppose the large-scale imprisonment promoted by prosecutors, reformers have come up with the idea of “joining if you can’t win” and have launched the “Progressive Prosecutors Movement” in the United States. The movement aims to oppose excessive criminalization and use the power of prosecutors to end large-scale imprisonment<sup>5</sup>, giving rise to a group of progressive prosecutors such as Kim Foxx<sup>6</sup> and Larry Krasner<sup>7</sup>. They significantly reduced the number of prison personnel in their location. The new issue is that if I were a criminal, my fate would not depend on the law, but on what kind of prosecutor I would encounter. If I encounter a traditional prosecutor, I will be imprisoned, and if I am fortunate enough to meet Sarah George<sup>8</sup>, a progressive prosecutor, I will have my charges dropped. This stimulating lottery undoubtedly challenges the authority of the law, because my fate is not determined by

<sup>1</sup> In the United States, prisons are managed by the government, and prosecutors are responsible for managing the offices that execute non-custodial sentences. If there are many cases and the workload is heavy, prosecution will be a trouble-free method, even if the person being prosecuted may have the potential to receive non-custodial treatment space, as John Pfaff said: “Leniency is actually more expensive for prosecutors than severity, and severity is actually free.” Pfaff, J. (2017). *Locked in: The true causes of mass incarceration and how to achieve real reform*. Basic Books.

<sup>2</sup> Ellis, M. J. (2011). The origins of the elected prosecutor. *The Yale Law Journal*, 121(6), 1528. At present, the selection system of prosecutors in the United States coexists with the election system and the appointment system. Federal prosecutors adopt the appointment system, and state prosecutors adopt the election system. Since state prosecutors have an advantage in the number of cases handled and the number of people, this article focuses on the prosecutor election system.

<sup>3</sup> During the election, prosecutors will not be forced by current prosecutors to give any public explanations for their work and practices. At the same time, candidates talk more about specific past cases rather than general information that reflects values. Wright, R. F. (2008). How prosecutor elections fail us. *Ohio State Journal of Criminal Law*, 6(2), 583.

<sup>4</sup> Some federal prosecutors hope to continue running for political office after serving as federal prosecutors, while others aspire to federal judgeships, which require running on different types of campaigns, and some return to private practice. However, all It’s a politician. Perry Jr, H. W. (1998). United States Attorneys-Whom Shall They Serve. *Law and Contemp. Probs.*, 61(1), 142.

<sup>5</sup> Covert, D. (2021). Transforming the progressive prosecutor movement. *Wisconsin Law Review*, 18(1), 188.

<sup>6</sup> This prosecutor reduced Philadelphia’s prison population by 30% in his first year in office. Democratic Cook County State’s Attorney Kim Foxx Wins Second Term, Defeating GOP Challenger Pat O’Brien. (2020, November 3). CBS NEWS. <https://www.cbsnews.com/chicago/news/democratic-cook-county-states-attorney-kim-foxx-holds-double-digit-lead-over-gop-challenger-pat-obrien/>.

<sup>7</sup> He asked prosecutors to push for I-Bonds to reduce Cook County’s jail population. Lozano, alicia victoria. (2018, February 21). Philadelphia District Attorney Larry Krasner Ends Cash Bail for Low-Level Offenses. NBC10 Philadelphia – Philadelphia News. <https://www.nbcphiladelphia.com/news/local/the-end-of-cash-bail-in-philadelphia-district-attorney-to-issue-policy-change/176941/>.

<sup>8</sup> This prosecutor dropped charges in several cases. Quigley, aidan. (2019, July 7). Amid a New Generation of Prosecutors, Sarah George Stands Out. CRIME AND JUSTICE. <https://perma.cc/H8CW-FHU6>.



the law, but by the progress of the prosecutor. So, the “Progressive Prosecutor Movement” is actually a violation of legislative power by judicial power. The cause of this movement can be understood, but if it continues in the long term, it will have adverse effects on the structure of separation of powers.

#### 4. Mutual Learning and Reference

Through the above discussion, we can find that many of the issues faced by Chinese and the US prosecutors are symmetrical. For example, the examination and admission format for Chinese prosecutors easily inherits the tradition of “cautious prosecutors”, while the election of US prosecutors provides a tendency and motivation for the widespread use of power, shaping a distinctive “positive prosecutor.” Therefore, we can try to look at the problem from both sides of the scale, adjusting the weights on both sides to keep the lever balanced and not completely tilted towards the extreme side. This is also the significance and value of mutual learning and reference.

##### 4.1 Chinese Prosecutors Should Be as Positive as the US Prosecutors

In recent years, despite rapid socio-economic development, cybercrime has spread and China’s crime pattern has shown a “double decline” and “double rise” situation. Among them, “double decline” refers to a decrease in the crime rate of serious violent crimes and a decrease in the severe punishment rate, while “double rise” refers to an increase in the crime rate of minor crimes and a rise in the leniency rate.<sup>1</sup> Many Chinese scholars believe that China has entered the era of minor crimes.<sup>2</sup> In this situation, traditional punishment treatment appears too harsh, because in collectivist societies, the cost of punishment is higher than imagined. If a person has received punishment, not only will he face discrimination, but he will also lose opportunities to take the civil service exam, pursue higher education, and find employment, and even affect the future

development of his children.<sup>3</sup> Once a person is convicted, even if he doesn’t actually receive punishment, it is difficult to change his fate as long as he has a criminal record. In the era of minor crimes, many crimes do not actually have much serious social harm, and the accompanying consequences of punishment are often disproportionate to personal danger. Therefore, Chinese prosecutors need to learn from the practices of their US peers, so that some minor crimes can be eliminated in advance and avoid laying deeper hidden dangers for society.

The first attempt I want to make is to moderately expand the prosecutor’s non-prosecution discretion. US prosecutors can refuse to file a case or withdraw the charges at the beginning of the lawsuit. He can choose to accuse either a minor crime or a serious crime. In addition, he can also approve the plea bargaining and choose the trial venue. This broad discretion is frightening on the one hand, but on the other hand, it can provide prosecutors and defendants with ample room for choice and bargaining chips. Prosecutors can develop an appropriate plan for the accused based on their specific situation, taking into account their social and personal hazards. For Chinese prosecutors, although the existence of non-prosecution discretion is also recognized by law, there are many limitations. If prosecutors want to not prosecute a case, they must obtain approval from the prosecutor general; For those who intend not to prosecute crimes related to official duties, approval must be obtained from the higher-level People’s Procuratorate; Special non-prosecution cases can only be approved by the Supreme People’s Procuratorate.<sup>4</sup> Once a decision is made not to prosecute, the prosecutor’s office will hold a hearing and the final decision can only be made through open

<sup>1</sup> Lu Jianping. (2022). Strategies for crime management in the era of misdemeanors. *Political Science and Law*, (1), 51-55.

<sup>2</sup> Yang Ning. & Feng, Yuechao. (2023). Reconstruction of the exemption from criminal punishment system in the era of misdemeanor. *Tsinghua Law Review*, 11(1), 126.

<sup>3</sup> Xinluo District, Longyan City, Fujian Province has issued the “Ten Ones” policy, which restricts the education rights of children of persons involved in new types of telecommunications network crimes and prohibits relevant persons from attending high-quality public middle schools. “Ten One Laws” to crack down on new types of telecommunication network crimes. (2018, November 5). Ping’an Xinluo. <https://mp.weixin.qq.com/s/hPyFEUENepnQo0dc4ULkCw>.

<sup>4</sup> Criminal Procedure Rules of the People’s Procuratorate. (2019, December 30). Supreme People’s Procuratorate website. [https://www.spp.gov.cn/spp/xwfbh/wsfbh/201912/t20191230\\_451490.shtml#1](https://www.spp.gov.cn/spp/xwfbh/wsfbh/201912/t20191230_451490.shtml#1).

discussions.<sup>1</sup> You can imagine that in China, exercising the right of non-prosecution means increasing the procedural burden for prosecutors. Prosecutors need to undergo more scrutiny and spend a lot of time on their work, but such assessments cannot bring professional benefits. Why do Chinese prosecutors choose to do so? Therefore, I propose that Chinese prosecutors should be “unbound” and given independent discretion to not prosecute certain cases, similar to their peers in the United States. I don’t want to shape the “Leviathan” in Chinese justice. This independent discretion should only be directed at suspect who will be sentenced to less than certain penalties. The *Criminal Law of the People’s Republic of China* stipulates that for criminals who are sentenced to criminal detention or fixed-term imprisonment of not more than three years and meet certain conditions, probation can be declared.<sup>2</sup> Therefore, we can follow this format by setting a maximum penalty limit, and the punishment below the limit can be independently decided by the prosecutor not to prosecute. If the limit is exceeded, the prosecutor general’s approval or a hearing is required. Considering the number of crimes, I believe that imprisonment for less than one year is appropriate as this standard.

Like the United States, if China wants to free some people from the troubles of punishment, it

can only choose to give up punishing them or find a suitable way to educate and reform them. The author has already discussed the former, and now we need to come up with a solution for the latter. I think China can set up a prosecutor led diversion procedure like the United States. I believe China can set up a prosecutor led diversion procedure like the United States. The pre-trial diversion program in the United States began in the 1970s, aiming to provide participants with an alternative to imprisonment, prevent the negative impact of conviction on them, and reduce the number of cases handled by criminal justice personnel.<sup>3</sup> For example, the Philadelphia Accelerated Rehabilitation Program allows participants to choose to take courses on driving safety or substance abuse, and their case will be revoked after the course ends. US prosecutors often assign tasks or force defendants to participate in certain projects, and can only exercise the right of non-prosecution and withdraw charges against them after the project is completed. This not only avoids non-prosecuted individuals from being labeled as criminals, but also allows them to change their bad habits, which is a compromise approach.<sup>4</sup> I believe that China should also adopt a pre-trial diversion plan. Firstly, Chinese prosecutors are “legal supervisors” with the status of judicial officers, and it is legitimate for them to lead the pre-trial diversion process; Secondly, it can fill the gap in punishment after the abolition of reeducation through labor. Secondly, it can fill the gap in punishment after the abolition of reeducation through labor. Using pre-trial diversion plans to regulate those prosecuted for minor offenses can not only prevent them from carrying criminal records, but also eliminate their criminal genes through corrective measures, promoting social harmony and stability.

#### 4.2 The US Prosecutors Should Be as Focused as Chinese Prosecutors

The main problem faced by US prosecutors is “how to achieve justice”. Undoubtedly, no matter what advice I give, the US prosecutors

<sup>1</sup> According to empirical research, most of the cases in which prosecutors decide not to prosecute must meet the conditions of “application of plea and punishment procedures” + “reconciliation” + “return of stolen goods and compensation”. Prosecutors have a lot of room for discretion in this. Xie Xiaojian. (2023). The development and improvement of the application of discretionary non-prosecution in the context of fewer arrests and prudent prosecution and detention. *Criminal Science*, (01), 72-88.

<sup>2</sup> Article 72 of The *Criminal Law of the People’s Republic of China* stipulates that criminals who are sentenced to criminal detention or fixed-term imprisonment of not more than three years and meet the following conditions may be suspended. Those who are under the age of 18, pregnant women and a person who has reached the age of seventy-five shall be declared on probation: (1) The crime is relatively minor; (2) Repentance has been shown; (3) There is no risk of committing another crime; (4) The suspended sentence will not have a major adverse impact on the community where he or she lives. When a suspended sentence is announced, the criminal may be prohibited from engaging in specific activities, entering specific areas and places, and coming into contact with specific people during the probation period based on the circumstances of the crime. If a criminal who has been sentenced to probation is sentenced to an additional penalty, the additional penalty must still be executed. Criminal law of the People’s Republic of China. (2020, December 26). Beihang University Law Information Network. <https://pkulaw.com/chl/39c1b78830b970eabdfb.html>.

<sup>3</sup> Rempel, M., Labriola, M., Hunt, P., Davis, R. C., Reich, W. A., & Cherney, S. (2018, April). NIJ’s Multisite Evaluation of Prosecutor-Led Diversion Programs. Center for Court Innovation. <https://www.ojp.gov/pdffiles1/nij/grants/251665.pdf>.

<sup>4</sup> Johnson, K. C., Davis, R. C., Labriola, M., Rempel, M., & Reich, W. A. (2020). An overview of prosecutor-led diversion programs: A new incarnation of an old idea. *Justice System Journal*, 41(1), 11-12.

will not improve much in substantive justice. However, this does not mean that we should do nothing. If we shift our perspective to procedural justice, there is still much we can do. John Bordeley Rawls once famously stated that programs have a third independent value, which is pure procedural justice. This means that once a fair program is followed and executed, the result is also fairness. John Bordeley Rawls also used gambling as an example, believing that the reason why the results of gambling are acceptable to people is because its procedures are fair, and even if the gambler loses all, it is in accordance with the principle of justice.<sup>1</sup> In the United States, procedural justice has a broad soil and cultural atmosphere.<sup>2</sup> The triangular relationship in judicial proceedings makes judges neutral, so their decisions can be accepted by people, even if some results do not fully conform to substantive justice.<sup>3</sup>

We can observe the identity background of US prosecutors and find that no matter what decisions they make, it is easy to cause misunderstandings among people. For example, US prosecutors are elected and need to fulfill

their election promises.<sup>4</sup> They usually participate in local political organizations, so their way of handling cases is easily labeled as political; For another example, a 2019 study found that 95% of prosecutors are white, of which 73% are white men.<sup>5</sup> When they handle cases, they may be suspected of racial or gender discrimination.<sup>6</sup> Even if they handle cases fairly, there will still be doubts about whether minority or female individuals will face lighter charges. Therefore, it is necessary for us to strive to eliminate the factor of distrust among prosecutors and establish an image of integrity and fairness in the role of prosecutors. As stated in the *Criminal Justice Standards Prosecution Function*, efforts should be made to shape the image of prosecutors as “judicial administrators, enthusiastic defenders, and court officials”, so that the public believes that their duties are “seeking justice within the legal framework, not just conviction.”<sup>7</sup> Only fair criminal procedures led by impartial prosecutors can truly conform to the concept of procedural justice. Therefore, it is necessary to start with the selection of prosecutors. Like many American scholars, I also do not believe that the electoral system is the best way to appoint prosecutors, but this does not mean that we need to revert back to the appointment system. Perhaps China’s

<sup>1</sup> Criminal justice should belong to “imperfect procedural justice” in Rawls’s classification, that is, although there is an independent standard for judging the correct result, there is no procedure that can guarantee its achievement. Therefore, judicial deficiencies are inevitable, and “pure procedure” “Justice” can eliminate the harm of this omission. We can maintain the output of fair results to the greatest extent by setting up a judicial procedure that conforms to the principles of justice. Even if the final result is not satisfactory, this fair procedure can also eliminate people’s harm. The dissatisfaction in their hearts makes them accept the final result. Rawls, J. (1971). *A theory of justice*. Cambridge (Mass.).

<sup>2</sup> The “social contract” theory is widely accepted in the United States and Europe as a model for thinking about political power issues. Therefore, if society is regarded as a group formed by contractors based on a contract, then on legislative, political and judicial issues, there must be consistent the process of the concept of justice, otherwise even if it casts a “veil of ignorance” on people before society, they would not choose such a contract. For China, the concept of family and collective is fundamental. If fair procedures lead to unfair results, the impact on “family” and “collective interests” will not disappear, so even if we recognize fair procedures, it is impossible to “willing to accept defeat”, and it is important to take measures to obtain a result that is in line with substantive justice.

<sup>3</sup> The identity and background of judicial officers is an important part of procedural justice. On the one hand, people have high requirements for the ethics of judges, even in common law countries. On the other hand, judges must have no relevant interests in the case, there is no implicated relationship with the parties involved. Here you can refer to the judicial avoidance system of each country.

<sup>4</sup> For example, some candidates will publicize their conviction rate, felony rate after arrest and other data, and will also promise to severely crack down on certain crimes, and even lobby for new criminal legislation out of court. This will also be the target of prosecutor candidates. Promotional content. Wright, R. F. (2008). How prosecutor elections fail us. *Ohio State Journal of Criminal Law*, 6(2), 604-605.

<sup>5</sup> Thusi, I. (2022). The pathological whiteness of prosecution. *California Law Review*, 110(6), 804.

<sup>6</sup> Such suspicions are not unreasonable. Studies show that black defendants are more likely to be prosecuted for less serious crimes than white defendants, and white defendants are more likely to participate in pretrial diversion programs. Harcourt, B. E. (2015). Risk as a proxy for race: The dangers of risk assessment. *Federal Sentencing Reporter*, 27(4), 237.

<sup>7</sup> *Criminal Justice Standards Prosecution Function* 3-1.2: (a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor’s office should exercise sound discretion and independent judgment in the performance of the prosecution function; (b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

assessment system would be a good choice.

The system of selecting officials through exams originated in the Sui Dynasty of China. At that time, Emperor Yang of Sui established the highest imperial examination and selected Jinshi through exams. Subsequently, this system was inherited by various dynasties in China and has been used ever since.<sup>1</sup> The biggest characteristic of this system is that it is sufficiently fair. Candidates answer questions individually in a closed environment, and the examiners erase their names from the test papers and score them uniformly. Officials are selected based on their rankings, and Chinese prosecutors still use this form of selection. For the United States, if prosecutors can be selected through this form, it can ensure that these prosecutors have sufficient legal knowledge and a relatively peaceful political stance. Furthermore, we can set some other screening criteria, such as screening out those who discriminate against race or gender through interviews after written exams. Many enrollment or career selection exams in China provide preferential policies or set a lower score line for ethnic minority candidates, which can ensure that they can occupy a certain number of government officials and students in higher education institutions. The United States can also adopt this approach on minority issues by reserving some quotas for minority or sexual minority groups, and then these specialized candidates can compete to produce prosecutors. This may improve the issue of “white prosecutors” and maintain social fairness.

As for the “Progressive Prosecutors Movement”, my answer is “Let God’s return to God, Caesar’s return to Caesar.” Although progressive prosecutors have indeed played a significant role in opposing large-scale imprisonment, the usurped power will ultimately return to its original position. Excessive criminalization is ultimately a legislative issue that should be resolved by democratic legislative bodies. This does not mean that prosecutors cannot make a difference in politics. They can express their demands and wishes as professionals by lobbying the legislative body, which is also the basic way to exert political influence under the

structure of separation of powers.<sup>2</sup> As for prosecutors in the workplace, my opinion is that they must be sufficiently focused on facts and law, and become qualified legal “gatekeepers”. So far, I have attempted to portray prosecutors as decision-makers in procedural justice from the perspective of selection methods, but I have not changed the structure of criminal proceedings. It is this structure that makes prosecutors act as both “operators” and “referees”, making it difficult to meet the requirements of neutrality and fairness under the concept of procedural justice. However, this is the inevitable result of adversarial systems, just as we cannot destroy the entire mountain just to build a house. If my suggestion can improve the current situation a bit, it would be enough.

## 5. Conclusion

In this paper, I approach the issues faced by Chinese and the US prosecutors from an objective and neutral perspective, analyze the reasons for these problems, and try to find some useful parts from each other, hoping to be helpful in solving their respective problems. For a long time, we have inevitably been troubled by emotional factors in comparative law research, so I want to present the advantages and disadvantages of each system in a comparative way. When prosecutors in their respective systems were feeling distressed, they were surprised to find that there was a solution to the problem among their peers 14000 kilometers away. This would be such a wonderful experience.

As General Secretary Xi Jinping said, “Civilizations exchange because of diversity, mutual learning through exchange, and develop through mutual learning.” We must understand that every country in the world is no longer on anyone’s menu, and no one can order dishes. Not only in the legal field, but also in other areas, we have a broader foundation for cooperation and communication. *The Declaration of Independence* said that all men are created equal, and the *Bible* said that for this is the message that ye heard from the beginning, that we should love one another. I want to say that all countries and civilizations are equal and love each other. We grow together through exchange

<sup>1</sup> Liu Haifeng. (1995). The imperial examination system — China’s “fifth great invention”. *Exploration and Free Views*, (08), 41.

<sup>2</sup> Of course, they actually did that. Hessick, C. B., Wright, R. F., & Pishko, J. (2023). The prosecutor lobby. *Washington and Lee Law Review*, 80(1), 143-144.



and reference, and together create a “Utopia” that belongs to all humanity.

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