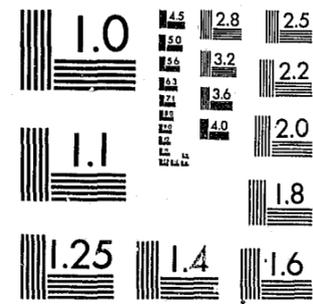


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

08/04/82

81493

LAW LIBRARY PUBLICATIONS

A major responsibility of the Law Library of Congress is the preparation of reports on various topics in foreign, comparative, and international law in response to requests from the Members and Committees of Congress, the executive and judicial branches of the Federal Government, and others. Although the focus of many of these legal studies is so specific as to make them of use only to the requester, a number will appeal to a broader audience. With the approval of the original requester, such reports are reissued and made available for general distribution.

The Law Library also prepares a number of other publications, such as: a series of guides to the law and legal literature of nations, extensive bibliographies, indexes, and contributions to scholarly journals.

The principal resources of all Law Library publications are its collection and research staff. The Law Library's holdings of over 1.6 million volumes constitute the world's largest and most comprehensive legal collection. Its staff of over forty-five legal specialists, researchers, and librarians--competent in more than fifty languages--can provide research and reference information on all of the major legal systems of the world, contemporary and historical.

Notice of all Law Library publications appears in the Library of Congress Information Bulletin. Specific inquiries or requests for copies may be addressed to the Law Librarian, Law Library, Library of Congress, Washington, D.C. 20540.

THE RE-EMERGENCE OF THE PROCURATORIAL SYSTEM
IN THE PEOPLE'S REPUBLIC OF CHINA

by Tao-tai Hsia and Kathryn A. Haun

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain
Library of Congress

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

NCJRS

OCT 7 1981

ACQUISITIONS

Law Library
Library of Congress
Washington, D.C.
reprinted 1980



CONTENTS

Introduction	1
The Procuracy in the People's Republic of China, 1949-1978	4
	5
	9
	18
	20
	27
Conclusions and Speculations	33

The Pre-Constitutional Period

The Procuracy in the 1954 Constitution

The Procuracy in the Cultural Revolution Period

The Disappearance of the Procuracy

The Current Situation

THE RE-EMERGENCE OF THE PROCURATORIAL SYSTEM

IN THE PEOPLE'S REPUBLIC OF CHINA

Introduction

In their pursuit of an egalitarian communist society and their political enemies through the protracted process of intensified struggle referred to as "continued revolution under the dictatorship of the proletariat," Mao Tsetung and his radical followers purposefully kept Chinese society in varying degrees of disorder and upheaval throughout much of the last two decades of Mao's life. After the death of Mao on September 9, 1976, and, in the following month, the purge of his chief radical followers, dubbed the "gang of four,"^{1/} the moderate post-Mao leadership that has coalesced behind Hua Kuo-feng has set about an across-the-board reorientation of policies in an attempt to bring conditions in China into line with the realization of its guiding objective of making China a strong country with modern

^{1/} The members of the gang of four, in the order of their rank within the Party at the time of the purge, were Wang Hung-wen, who was a Vice Chairman of the Central Committee and a member of the Standing Committee of the Politburo of the Chinese Communist Party (CCP); Chang Ch'un-ch'iao, Vice Premier of the State Council and member of the Standing Committee of the Politburo of the CCP; Chiang Ch'ing, widow of Mao Tsetung and a member of the Politburo of the CCP; and Yao Wen-yüan, a skillful ideologue and propagandist who also was a member of the Politburo of the CCP. All four rose to prominence during the Cultural Revolution (1966-1969).

industry, agriculture, science and technology, and national defense by the year 2000. One area in which policy is being altered is law.

Since its earliest days, the post-Mao leadership has placed a great emphasis upon order in an attempt to end the unrest and lack of respect for or defiance of authority that it sees as having done great damage to China's economic development. By the time of the First Session of the Fifth National People's Congress, which met in Peking between February 26 and March 5, 1978, the emphasis on order had grown to become as well a call for legality, that is, the observance of the law by state organs, state and Party cadres, and ordinary citizens. Also ultimately aimed at increasing production, the regime's call for legality seems to be based on its perception of the need to improve public morale and bolster the confidence of the people in the leadership by creating a more secure, as well as more orderly, environment.

An outgrowth of this call for increased legality is the provision for the existence of a hierarchy of people's procuratorates in the Constitution adopted by the Fifth National People's Congress on March 5, 1978.^{2/} Given important powers as the supervisor of

^{2/} The text of the 1978 Constitution of the People's Republic of China appears in English in Peking Review, No. 11, March 17, 1978, p. 5-14. The Chinese text appears in Jen min jih pao [People's Daily], March 8, 1978, p. 1-4.

legality in the People's Republic of China (PRC) under basic legislation of 1954, the people's procuratorates came under bitter attack by the radicals during the Cultural Revolution period (1966-1969). In the revised Constitution of the People's Republic of China adopted by the First Session of the Fourth National People's Congress on January 17, 1975,^{3/} the powers and functions of the procuratorial organs were turned over to the public security organs that formerly were supposed to be one of the chief objects of procuratorial supervision. In light of this background, the restitution of the people's procuratorates is of great significance to the future of law, legality, and the legal system in the post-Mao period. This study examines the historical background and significance of the re-emergence of the people's procuratorates.

^{3/} An English text of the 1975 Constitution of the People's Republic of China was published by the Foreign Languages Press, Peking, 1975. The Chinese text was published by the People's Press, Peking, 1975.

The Procuracy in the PRC, 1949-1978

The Procuracy in the 1978 Constitution

Section V of Chapter Two of the 1978 Constitution of the PRC, covering Articles 41 through 43, is devoted to the people's courts and the people's procuratorates. Article 43's restitution of the people's procuratorates is the provision of the 1978 Constitution that potentially is of the greatest significance to legal development under the Hua administration.

Article 43 states:

Article 43. The Supreme People's Procuratorate exercises procuratorial authority to ensure observance of the Constitution and the law by all the departments under the State Council, the local organs of state at various levels, the personnel of organs of state and the citizens. Local people's procuratorates and special people's procuratorates exercise procuratorial authority within the limits prescribed by law. The people's procuratorates are formed as prescribed by law.

The Supreme People's Procuratorate supervises the work of local people's procuratorates at various levels and of special people's procuratorates; people's procuratorates at the higher levels supervise the work of those at the lower levels.

The Supreme People's Procuratorate is responsible and accountable to the National People's Congress and its Standing Committee. Local people's procuratorates at various levels are responsible and accountable to people's congresses at the corresponding levels.

In line with the restitution of the procuracy in this article, Article 47 of the 1978 Constitution reaffirms that no

citizen may be arrested except by decision of a people's court or with the sanction of a people's procuratorate. While an identical provision appeared in the 1954 Constitution of the PRC, Article 28 of the 1975 Constitution, in line with the latter's transfer of the powers and functions of the procuratorial organs to the public security organs, had provided that no citizen could be arrested except by decision of a people's court or with the approval of a public security organ.

To understand the significance of the restitution of the procuracy, it is helpful to explore its historical background in the PRC.

The Pre-Constitutional Period

Prior to the establishment of the PRC, individual procurators were attached to the courts maintained by the Chinese Communists in the areas under their control, but there was no procuratorial system as a separate and distinct institution.^{4/} With the establishment of the People's Republic of China in 1949, provision was made for the creation of the procuracy. The Organic Law of the Central People's Government adopted on September 29, 1949, gave to the People's Procurator-General's Office "the supreme supervisory power to ensure the strict observance of the law by all

^{4/} For a discussion of procurators in Communist Chinese areas prior to the establishment of the PRC on October 1, 1949, see Shao-chuan Leng, Justice in Communist China, Dobbs Ferry, New York, Oceana Publications, Inc., 1967, p. 102-103.

government institutions and public functionaries as well as by nationals of the country."^{5/} Under this organic law the People's Procurator-General's Office, the Supreme People's Court, the People's Revolutionary Military Council, and the Government Administration Council were given co-equal status under the Central People's Government Council as, respectively, the highest supervisory body of the country, the highest judicial body of the country, the supreme military command of the state, and the highest executive body for state administration.^{6/}

Two provisional statutes governing respectively the organization of the Supreme People's Procuracy and that of local people's procuracies at all levels were promulgated by the Central People's Government on September 4, 1951.^{7/} These two organic

^{5/} An English translation of the text of the Organic Law of the Central People's Government appears in Fundamental Legal Documents of Communist China, edited by Albert P. Blaustein, South Hackensack, New Jersey, Fred B. Rothman & Co., 1962, p. 104-114. Definition of the tasks of the People's Procurator-General's Office appears in Article 28, p. 114.

^{6/} See the Organic Law of the Central People's Government, Article 5, ibid., p. 105.

^{7/} These two regulations were the Provisional Regulations Governing the Organization of the Office of the People's Procurator-General and the General Regulations Governing Organization of Offices of People's Procurators of Various Levels. For the Chinese text of these regulations, see Chung yang jen min cheng fu fa ling hui pien [Compilation of Laws and Decrees of the Central People's Government], vol. 2 (1951), Peking, People's Press, 1953, p. 86-89. An English translation of both appears in U. S. Consulate General, Hong Kong, Current Background, No. 183, May 26, 1952.

enactments, using identical phraseology, outlined the functions and powers of the procuratorial organs as follows: 1) to see that the Common Program of the Chinese People's Political Consultative Conference^{8/} and the policies, directives, laws, and decrees of the People's Government were strictly observed by government organs of all levels, by persons in government service, and by all citizens; 2) to investigate and prosecute counterrevolutionary and other criminal cases; 3) to protest illegal or improper judgments rendered by the trial organs at various levels; 4) to see that the prisons, detention houses, and labor reform organs did not take illegal measures; 5) when warranted, to take the necessary steps to bring about the reconsideration of cases submitted by those who were dissatisfied with the decision of "no prosecution" made by the procuratorial organs of lower levels; 6) representing the public interest of the state, to intervene in legal actions concerning weighty civil cases which affected the interest of the state and the working people and in administrative legal actions.^{9/}

^{8/} Although it is not termed a "constitution," the Common Program of the Chinese People's Political Consultative Conference was the first basic law of the PRC. It was adopted on September 29, 1949. Its Chinese text appears in Chung yang jen min cheng fu fa ling hui pien [Compilation of Laws and Decrees of the Central People's Government], vol. 1 (1949-1950), Peking, People's Press, 1952, p. 16-25. An English translation appears in Fundamental Legal Documents of Communist China, op. cit., p. 34-53.

^{9/} See Article 3 of the Provisional Regulations Governing the Organization of the Office of the People's Procurator-General of the Central People's Government and Article 2 of the General Regulations Governing the Organization of Offices of People's Procurators of Various Levels in the sources given in footnote ^{7/} above.

Under the system known as "dual control," a local people's procuratorate at a particular level in the pre-constitutional period was responsible both to the people's procuratorate at the next higher level and to the people's government council at its own level.^{10/} Making the local people's procuratorates responsible to the people's government council at the corresponding level limited the potential effectiveness of the procuracy in the discharge of its responsibilities since one of its duties was to see that government organs at all levels, including the local people's government councils, strictly observed the Common Program and the policies, directives, laws, and decrees of the Central People's Government. The leadership's subordination of the local people's procuratorates to the people's government councils at the corresponding levels was a sign that its commitment to the procuracy was less than full.

The local people's procuratorates were only gradually established throughout China after the promulgation of these regulations.^{11/} Foreseeing that certain areas would be without

^{10/} See Article 6 of the General Regulations Governing Organization of Offices of People's Procurators of Various Levels in the sources cited in footnote 7/ above.

^{11/} On the establishment of the offices of people's procurators throughout China in the period before the adoption of the 1954 Constitution, see Leng, *op. cit.*, p. 104, where the author states that "up to early 1954 only one third of the administrative units on or above the county level had established People's Procuratorates."

a procuratorate for some time, the regulations "provisionally entrusted" responsibility for prosecuting crimes and opposing wrong judgments to public security organs, under the leadership of the procuratorates of higher levels, in these areas.^{12/}

The Procuracy in the 1954 Constitution

In the Constitution of the People's Republic of China adopted on September 20, 1954, by the First Session of the First National People's Congress,^{13/} the powers of the procuratorates remained essentially the same as those outlined in the 1951 regulations, but the procuratorates were greatly strengthened by provision for "vertical leadership" instead of "dual control." In the system of "vertical leadership," a local people's procuratorate was no longer responsible to both the procuratorate of the next higher level and the people's government of the corresponding level; instead, a local people's procuratorate was to work only under the leadership of people's procuratorates at higher levels, and all local people's procuratorates were to work under the

^{12/} See Article 3 of the Provisional Regulations Governing the Organization of the Office of the People's Procurator-General of the Central People's Government in the sources cited in footnote 7/ above.

^{13/} The Chinese text of the 1954 Constitution of the People's Republic of China appears in Chung hua jen min kung ho kuo fa kuei hui pien [Compilation of Laws and Regulations of the People's Republic of China], vol. 1 (September 1954 to June 1955), Peking, Legal Press, 1956, p. 4-31. An English translation appears in Fundamental Legal Documents of Communist China, *op. cit.*, p. 1-33.

coordinating direction of the Supreme People's Procuratorate.^{14/}

The Supreme People's Procuratorate itself was to be responsible only to the National People's Congress or its Standing Committee.^{15/}

Article 83 of the Constitution explicitly provided that

[i]n the exercise of their authority local organs of the people's procuratorates are independent and are not subject to interference by local organs of state.

Under the Organic Law of the People's Procuratorates of the People's Republic of China adopted on September 21, 1954,^{16/} the major functions and powers of the procuratorates still were 1) investigating and prosecuting criminal cases, 2) exercising general supervision over the legality of the acts and activities of state organs, state cadres, and citizens, and 3) exercising judicial supervision over the investigatory, trial, and penal activities of the public security organs and courts.^{17/} The

^{14/} See Article 81 of the 1954 Constitution in the sources given in footnote ^{13/} above.

^{15/} See Article 84 of the 1954 Constitution in the sources given in footnote ^{13/} above.

^{16/} The Chinese text of the Organic Law of the People's Procuratorates of the People's Republic of China appears in Chung hua jen min kung ho kuo fa kwei hui pien [Compilation of Laws and Regulations of the People's Republic of China], vol. 1, op. cit., p. 133-138. An English translation appears in Fundamental Legal Documents of Communist China, op. cit., p. 144-152.

^{17/} The functions and powers of the Supreme People's Procuratorate and the local people's procuratorates are spelled out in Articles 3 and 4 of the Organic Law of the People's Procuratorates of the People's Republic of China in the sources given in footnote ^{16/} above.

procuratorates' ability to carry out these responsibilities was bolstered, however, by provisions spelling out what specific powers these responsibilities entailed in greater detail than had been given in the 1951 regulations. Thus, Article 8 added muscle to the power of general supervision by providing that the Supreme People's Procuratorate had the right to protest any issuance or action of any department of the State Council or of any local organ of state which it found to be illegal; similarly, a local people's procuratorate had the right to demand the rectification of any issuance or action of an organ of state at the corresponding level which it found to be illegal. While the procuratorates were not given the power directly to annul, modify, or suspend the execution of the enactment or action found to be illegal, the organs of state involved were given the responsibility of considering and answering the demands or protests.^{18/} Another important provision (Article 19) gave the procurators the right to attend and to participate in meetings of organs, enterprises, co-operatives or social organizations and to read their relevant resolutions, orders, files and other documents. The procuracy was made a vital part of the pre-trial

^{18/} See Article 8 of the Organic Law of the People's Procuratorates of the People's Republic of China in the sources given in footnote ^{16/} above.

stages of the criminal process by Article 11's provision that a recommendation to prosecute made by a public security organ must be approved by the appropriate people's procuratorate, and by Article 12's similar provision that the arrest of any citizen by a public security organ must be approved by the people's procuratorate, except for cases in which the arrest had been authorized by a people's court.^{19/} At a trial, the people's procurator, in addition to acting as state prosecutor, was to see "that the judicial process conforms to the law."^{20/} The people's procuratorates were also given the power to lodge protests against judgments of people's courts in which they found errors^{21/}; in addition, they were to supervise the execution of judgments and to supervise the activities of organs of reform through labor.^{22/}

^{19/} The powers of the procuratorate with respect to approval of recommendations to arrest were elaborated upon in the Regulations of the People's Republic of China Governing Arrest and Detention, adopted by the Standing Committee of the First National People's Congress on December 20, 1954. The Chinese text of these regulations appears in Chung hua jen min kung ho kuo fa kuei hui pien, vol. 1, op. cit., p. 239-242. An English translation appears in U. S. Consulate General, Hong Kong, Survey of China Mainland Press, No. 953 (December 22, 1954), p. 9-11.

^{20/} See Article 14 of the Organic Law of the People's Procuratorates of the People's Republic of China in the sources given in footnote ^{16/} above.

^{21/} See Article 15 of the Organic Law of the People's Procuratorates of the People's Republic of China in the sources given in footnote ^{16/} above.

^{22/} See Article 18 of the Organic Law of the People's Procuratorates of the People's Republic of China in the sources given in footnote ^{16/} above.

The 1954 Constitution and the 1954 Organic Law of the People's Procuratorates gave the procuracy the potential of becoming a significant force in the PRC. This potential had a dual nature. On the one hand, the procuracy might have become a force promoting centralization by scrutinizing the legislative output and actions of organs below the highest organs at the central level to insure their uniformity throughout the country and their conformity with the desires of the central authorities. In the period following the adoption of the Constitution and other basic legislation of 1954, the PRC was attempting to adopt and adapt many institutions and principles modeled on those of the Soviet Union. The procuracy theoretically could have been of great assistance in this period of development by supervising the initial efforts of government organs and citizens to implement the new legislation. In 1954 the leadership's awareness that assigning such a role to the procuracy placed it in potential conflict with the elaborate control network of the Communist Party of China (CCP) seemed to be at its lowest. To the extent that the central authorities relied on Party institutions and mechanisms to exercise control and to insure uniformity throughout the PRC, the procuracy was a redundant institution.

The procuracy had a potential other than that for being a force assisting with the establishment and exertion of central control. It also potentially could have become a force promoting legality in the PRC in the sense of helping to insure that Chinese

citizens did not suffer from violation of the law by other citizens, state cadres or state organs. While the relatively democratic spirit and extensive statement of citizens' rights in the 1954 Constitution in theory provided a legislative basis for the procuracy's acting as a champion of the rights of citizens against encroachment by state cadres and government organs in violation of the law, it would have been unrealistic at any point in the history of the procuracy in the PRC to have expected it to become in fact a champion of the rights of the individual in the Western sense of this phrase, given the PRC's clear commitment to the superiority of the interests of the society over those of the individual. It would not have been unrealistic, however, to expect that the procuracy could have acted to protect citizens against abuse arising from bureaucratic error or corruption or arbitrariness on the part of state organs or officials. The potential powers of the procuracy become more problematic, however, when one considers the relationship between the procuracy and the CCP.

Unlike the 1975 Constitution and the 1978 Constitution of the PRC, the 1954 state Constitution did not recognize the CCP's authority over state organs, nor did it obligate citizens to support the leadership of the CCP. By giving the procuracy the power to challenge the legality of the actions of government organs without at the same time recognizing the Party's superiority to these government organs, the 1954 legislation created the potential for conflict

arising between the procuracy and the CCP in instances in which the procuracy challenged the legality of an action of a government organ that had been carried out at the direction of the Party. Such challenges would implicitly call for a decision on whether a static piece of legislation of which the Party was the ultimate source would be supreme or whether the Party policy or decision of the moment would be supreme. In the anti-rightist movement that began in mid-1957,^{23/} the resounding answer to this question was that Party policy and decisions under any and all circumstances would be supreme.

In the period between the promulgation of the basic legislation of 1954 and the appearance of the anti-rightist movement in mid-1957, the procuratorates enjoyed the period of their greatest promise. During this period the procuratorates did not necessarily exercise the independence and range of powers that legislation authorized for them, and they certainly did not become champions of human rights. However, they did become at times and in certain places more than a source of rubber-stamp approval of the actions of government agencies. For example, Chang Ting-cheng when Procurator-General once reported that of the 1,400 court decisions protested by the procuracy in 1956, 1,159 were either overruled or sent back for new trials.^{24/} Similarly, it was reported that in 1955 the procuratorates

^{23/} On the anti-rightist movement, see Roderick Macfarquhar, The Origins of the Cultural Revolution, vol. 1 (Contradictions Among the People, 1956-1957), New York, Columbia University Press, 1974, p. 261-310.

^{24/} Leng, op. cit., p. 111.

in Chekiang province granted only 64 percent of the police demands for warrants, refused 22 percent, and held 14 percent up for further investigation.^{25/} Such figures indicate that the procuracy clearly was acting as a further check against arbitrariness and error in the decisions of government organs. Much more detailed and extensive evidence would be required, however, before one could conclude that the procuratorates had in any instance pitted themselves against the Party.

In the first half of 1957 the liberal spirit of the Chinese leadership reached its peak in the Hundred Flowers movement in which the central leaders, particularly Mao, encouraged critics of the regime to voice their views.^{26/} The leadership was taken aback by the amount and vehemence of the criticism that resulted and deeply disturbed by unrest among students, who always have been a significant force in revolution in China. In the criticism the authority and control of the CCP were called into question. Mao had initiated the Hundred Flowers period in a mood of great confidence in the people's support of communist rule; as a result of the attitudes that issued once the lid had been lifted on criticism, he perceived Party control as much more tenuous than he had believed it to be. In response to this perception, the CCP strongly reasserted its authority and

^{25/} Ibid.

^{26/} On the Hundred Flowers campaign, see Macfarquhar, *op. cit.*, p. 184-257. See also his *The Hundred Flowers Campaign and the Chinese Intellectuals*, New York, Praeger, 1960, and Mu Fu-sheng (pseud.), *The Wilting of the Hundred Flowers; the Chinese Intelligentsia under Mao*, New York, Praeger, 1963.

control over all institutions and individuals in Chinese government and society in the anti-rightist movement that started in mid-1957.^{27/} Thereafter, the climate for legal development was never as favorable as it had been in the interlude between the promulgation of the 1954 Constitution and the opening of the anti-rightist movement. In this movement spokesmen for the official view emphasized the subordination of the procuracy to the leadership of the Party and excoriated the notion of the procuracy's independence.^{28/}

After the anti-rightist movement, the procuracy never again showed signs of strength as great as it had shown before, although there were periods during which it was given greater latitude than in others in the exercise of its powers. One interesting development during the "great leap forward" campaign of 1958 was a period during which in some areas the chiefs of the public security organs, procuratorates, and courts jointly disposed of business so as to, it was maintained, best facilitate their cooperation in the common struggle against class enemies under the leadership of the Party.^{29/} Espousal of such cooperation reappeared in the early 1960s.

^{27/} See above, footnote 23/;

^{28/} On the necessity of Party leadership of the procuratorates, see Cheng Chao-ming, "The Struggle Between the Two Lines in the Battle Line of Procuratorial Work," *Cheng fa yen chiu* [Political-Legal Research], No. 1, 1958, p. 36.

^{29/} On the joint conducting of business, see *Lun jen min min chu chuan cheng ho jen min min chu fa chih* [On the people's democratic dictatorship and the people's democratic legal system], Peking, Chinese People's University Press, 1958, p. 206.

While it generally had less than enthusiastic backing, the institution of the procuracy yet survived the anti-rightist movement and the various policy shifts of the 1960s. In the 1975 Constitution, however, the procuracy disappeared; to understand this development, it is necessary to recall the Cultural Revolution years (1966-1969).

The Procuracy in the Cultural Revolution Period

Prior to the Cultural Revolution years, the official attacks on the procuratorial system derived from the manifest clash between Party supremacy and the nominal independence of the procuracy. While the radical attacks on the procuracy during the Cultural Revolution often echoed this theme, somewhat different bases of objection sometimes appeared to the extent that the radicals identified themselves not with the now tainted and suspect Party, but instead with Mao, the proletariat, and the revolutionary pursuit of egalitarianism through class struggle.

Attacks on the procuracy appeared during the Cultural Revolution both in the form of generalized attacks upon law and the legal system and in the form of specific attacks on the procuratorial system. At the height of the Cultural Revolution the radicals rejected not only legality but law itself as a bourgeois form of restraint upon proletarian revolutionary forces.^{30/} The basic legislation of 1954 setting up the

^{30/} See "In Praise of Lawlessness," People's Daily, January 31, 1967. An English translation appears in Survey of China Mainland Press, op. cit., No. 3879, February 14, 1967, p. 13.

Chinese legal system was disavowed for having been authored by those that the radicals believed to be capitalist roaders within the Party, notably Liu Shao-ch'i and P'eng Chen, who were also alleged to have derived their inspiration from their fellow revisionists in the Soviet Union.^{31/} The radicals denounced all the legal organs for supposedly having been under the leadership of the bourgeoisie.^{32/} In addition, the already beleaguered legal organs further aroused the ire of the radicals by allegedly continuing to protect capitalist roaders and to suppress the revolutionary masses even amidst the throes of the Cultural Revolution.^{33/} They further were accused of having spied on Mao himself.^{34/} The radical hostility also stemmed from their view that the legal organs had a bourgeois preoccupation with

^{31/} See "Completely Smash the Feudal, Capitalist and Revisionist Legal Systems," Canton Fan P'eng-Lo Hei-hsien [Anti-P'eng and Lo's Black Line], No. 2, July 1968. An English translation appears in U. S. Consulate General, Hong Kong, Selections from China Mainland Magazines, No. 625, September 3, 1968, p. 23-28.

^{32/} Ibid.

^{33/} See "Comrade Hsieh Fu-chih's Important Speech (excerpts)," Canton Chiu-P'eng-Lo Chan-pao [Drag-out P'eng-Lo Combat News], No. 3, February 1968. An English translation appears in Survey of China Mainland Press, No. 4139, p. 5, March 15, 1968.

^{34/} See Chiang Ch'ing's accusations in "Important Speeches by Central Leaders on March 18," published in a Red Guard tabloid in Kwangtung on April 13, 1968. An English translation appears in Survey of China Mainland Press, No. 4182, May 21, 1968, p. 4.

adherence to prescribed procedures that hampered the efficiency of the state in its fight against class enemies. The views of the radicals with regard to the legal system are perhaps best captured in the rallying cry they shouted often during the Cultural Revolution — "Smash the public security organs, procuratorates, and the courts!"^{35/}

In addition to repeating these themes, the radical attacks that isolated the procuracy for denunciation focused on the principle of "vertical leadership" that expressed the procuratorates' nominal independence. To denounce this principle, the radicals dug up and published numerous statements from the 1950s in which various figures supported the system of vertical leadership.^{36/} While it is clear that they thereby intended to damn the speakers with their own words, they seem usually to have limited themselves to the quotations and not to have verbalized a developed argument against the procuracy.

The Disappearance of the Procuracy

It is not clear at what point the procuratorial system disappeared. In a talk at the Supreme People's Court on February 16,

^{35/} Ibid., p. 7.

^{36/} See Cheng fa hung ch'i, no. 3/4, October 17, 1967, p. 5 ff. This Red Guard document is among those collected by the Center for Chinese Research Materials and bound in two massive volumes constituting part of the collection of the Far Eastern Law Division, Law Library, Library of Congress.

1968, Vice Premier Hsieh Fu-chih, who also was a member of the inner circle of radical leadership during the Cultural Revolution, stated that the Supreme People's Court must survive, but went on to imply that the Supreme People's Procuratorate might be abolished in the interest of streamlining state organs; Hsieh did not clearly call for its abolition, however.^{37/} In the Draft of the Revised Constitution adopted at the Second Plenary Session of the Ninth Central Committee of the CCP on September 6, 1970, it apparently was provided that "the procuratorial power is exercised by the public security organs of various levels."^{38/} The text of the Draft of the Revised Constitution, however, was not made public, and no other document or action indicated that the procuratorial power was to be turned over to the public security organs. In a report in the New York Times on November 25, 1973, Charles Sulzburger mentioned that the procuracy was abolished in the 1960s; while not accurate, the report may have had some basis in the abolition of the procuracy

^{37/} See Hung tien hsin [Red Telegraphic Information], no. 3, March 27, 1968. This document appears in the source described above in footnote ^{36/}. It also was published as "Vice Premier Hsieh Fu-chih's Talk at the Supreme People's Court (excerpts)," in Survey of China Mainland Press, No. 4139, p. 5. In the Survey of China Mainland Press translation, however, it is stated that Hsieh spoke of retrenching the staff of the Supreme People's Procuratorate rather than abolishing the Supreme People's Procuratorate. The Chinese term used, ching chien [精简], can be translated as "streamline" or "simplify" as well as "retrench the staff" and thus admits of both the possibility of abolishing the Supreme People's Procuratorate and the possibility of retrenching its staff.

^{38/} A text of the Draft of the Revised Constitution of 1970 was reprinted by the Center for Chinese Research Materials. Unlike some other versions of this document, the Center for Chinese Research Materials text does include the provision on the exercise of the procuratorial power by the public security organs.

in certain areas, for in a 1974 interview with Franklin P. Lamb, some Chinese jurists stated:

We have not abolished the system of the procuracy, but in the process of struggle, criticism and transformation, some local areas have abolished the procuracy, but it is not abolished nationally. ^{39/}

In the Constitution of the People's Republic of China adopted by the First Session of the Fourth National People's Congress on January 17, 1975, it was provided in the second paragraph of Article 26:

The functions and powers of procuratorial organs are exercised by the organs of public security at various levels. ^{40/}

This phrasing of the provision is formulated in a way which subtly suggests that it represents a compromise between the radicals' desire to "smash" the procuracy and the desire of the moderates to retain it. It will be recalled that the 1970 Draft of the Revised Constitution stated that "the procuratorial power is exercised by the public security organs of various levels." This formulation seems to indicate that the procuratorial organs themselves would no longer exist, as the radicals wished. The 1975 formulation, by using the phrase "the functions and powers of procuratorial organs" instead of simply

^{39/} Franklin P. Lamb, "An Interview with Chinese Legal Officials," The China Quarterly, No. 66 (June 1976), p. 327.

^{40/} See above, footnote 3/.

"the procuratorial power," subtly implies that there should be procuratorial organs, but that, perhaps temporarily, these powers and functions are to be exercised by the public security organs. This interpretation of the significance of the choice of words in Article 26 of the 1975 Constitution is perhaps bolstered by the fact that the drafters of the 1975 Constitution chose to entitle the section of the Constitution in which Article 26 appears "Trial Organs and Procuratorial Organs." This section heading appeared as well in the 1970 draft constitution. Again, this heading subtly implies that there should be procuratorial organs; the section, however, paradoxically does not go on to indicate the existence of procuratorial organs in the PRC.

The formulation of the section heading and the second paragraph of Article 26 in the 1975 Constitution may be an indication that in 1970 and 1975 the moderates did not accept the total and final abolition of the procuratorial organs. One can only speculate about whether the moderates went so far as to concede the transfer of the functions and powers of the procuratorial organs to the public security organs because the radicals would accept no less or because they themselves did not assign a high priority to the preservation of the procuratorial organs. In the many exposés of the activities and influence of the gang of four

that have been issued since the October 1976 purge, there has been no discussion of the background to the demise of the procuracy in the 1975 Constitution, although the radicals' influence over the courts and public security organs has been discussed.

In the period between the promulgation of the 1975 Constitution and the purge of the gang of four, there was no mention of the procuratorial system in the Chinese media; indeed, there was almost complete silence about the legal system as a whole. Foreigners who visited China during this period and were given information about the legal system do not report having been told anything about the manner in which the public security organs were exercising the functions and powers of the procuratorial organs.^{41/} Thus, it was

^{41/} Some of these reports of visitors include verbatim transcripts of interview with Chinese jurists and legal officials. Among the visitors' reports are the following: Richard P. Brown, Jr., "Present-day Law in the People's Republic of China," 61 American Bar Association Journal 474-479 (1975); Jerome Alan Cohen, "Chinese Law: At the Crossroads," 59 American Bar Association Journal 42-44 (1973); George W. Crockett, Jr., "Criminal Justice in China," 59 Judicature 240-247 (December 1975); George W. Crockett, Jr., and Morris Gleicher, "Teaching Criminals a Lesson: A Report on Justice in China," 61 Judicature 278-288 (December-January 1978); Martin Garbus, "Justice Without Courts: A Report on China Today," 6 Judicature 395-402 (March 1977); Andrew W. Gayle, "Law and Lawyers in China," 64 American Bar Association Journal 348-353 (March 1978); Franklin P. Lamb, "An Interview with Chinese Legal Officials," The China Quarterly, No. 66, June 1976, p. 323-327; and Gerd Ruge, "An Interview with Chinese Legal Officials," The China Quarterly, March 1975, p. 118-126.

never made clear which of the powers and functions of the procuratorial organs were exercised by the public security organs in the interlude between the promulgation of the 1975 Constitution and the promulgation of the 1978 Constitution. One can easily imagine public security cadres acting as prosecutors in trials; it is more difficult to imagine, however, that the public security organs could successfully exercise the powers of general and judicial supervision. With respect to the latter, it would seem difficult for public security organs to supervise the legality of a criminal process in which they themselves were a central actor. With respect to the former, it is difficult to imagine that the moderates would have permitted the public security organs to supervise the legality of acts and actions of government organs. Giving such powers to the public security organs would summon up fears that the public security organs would thus become a power in China even stronger than the public security organs were in the Soviet Union at the height of Stalin's purges. Some evidence suggests that the radicals, however, favored using the public security organs against their opponents within the Party.^{42/}

Silence with respect to the procuracy persisted for some time after the purge of the gang of four in October 1976. Three major articles in Chinese publications that appeared prior to the

^{42/} See, for example, "The Spearhead of the Dictatorship of the Proletariat Is Absolutely Not Allowed To Turn the Other Way Round," by the Mass Criticism Group of the Ministry of Public Security, Survey of People's Republic of China Press, No. 6259, January 14, 1977, p. 239.

time of the Fifth National People's Congress denounced the interference of the gang of four with the legal organs, and one of these even mentioned that the gang had wanted "to smash the public security organs, the procuracy, and the courts."^{43/} But while the articles went on to develop an argument for the strengthening of the public security and judicial organs, no articles in the Chinese press speaking favorably of or calling for the restitution of the procuracy preceded the actual re-emergence of the hierarchy of procuratorates in the Constitution adopted by the Fifth National People's Congress on March 5, 1978.^{44/}

While one can only speculate about the reasons for the silence,

^{43/} See "The Revolutionary Legal System Must Be Strengthened," by the Theory Section of the Higher People's Court of Shanghai Municipality, People's Daily, July 15, 1977, p. 3; Theoretical Section of the Supreme People's Court, "Strengthen the Socialist Legal System," Hung ch'i [Red Flag], No. 10, 1977, p. 81-84; and "Adhere to Chairman Mao's Line on Public Security Work and Strengthen Our Dictatorship Over Class Enemies," by the Theoretical Study Group of the Ministry of Public Security, People's Daily, November 28, 1977, p. 1. The reference to "smashing" the legal organs appears in the last of these three. An English translation of this last article may be found in Central Intelligence Agency, Foreign Broadcast Information Service Daily Report, People's Republic of China, November 29, 1977, p. E1-E11.

^{44/} It should be noted, however, that in the Communist Chinese-oriented Chinese-language newspaper published in New York, Mei chou hua ch'iao jih pao [China Daily News], February 14, 1978, an interview with a prospective deputy to the Fifth National People's Congress was reported. In this interview, the prospective deputy indicated that he thought that the abolition of the procuracy in the 1975 Constitution was unwise; he goes on to indicate that he thought that the procuracy should be revived. It seems likely that this man already had seen drafts of the documents that were to be approved by the Fifth National People's Congress. Thus, it would seem that the restoration of the procuracy was under consideration for some time before the Fifth National People's Congress.

it would seem that an important factor might be doubts among some moderates about whether there really was a need for the procuracy in view of the existence of the Party network.

The Current Situation

Whatever the doubts among the moderates, the hierarchy of procuratorates was restored in Article 43 of the 1978 Constitution. It must be underlined that while the hierarchy of procuratorates has been restored, the significance of this restoration is altered by the fact that the potential for conflict between the procuracy and the Party has been removed by the Constitution's provision for the CCP's leadership of state organs and citizens. Article 2 of the 1978 Constitution provides that "the working class exercises leadership over the state through its vanguard, the Communist Party of China." Further, Article 56 obligates citizens to "support the leadership of the Communist Party of China." Article 14 of the Constitution of the Communist Party of China adopted by the Eleventh National Congress of the Communist Party of China on August 18, 1977, also clearly provides that

[s]tate organs, the People's Liberation Army and the militia and revolutionary mass organizations, such as trade unions, the Communist Youth League, poor and lower-middle peasant associations and women's federations, must all accept the absolute leadership of the Party.

Article 43 of the 1978 Constitution of the PRC also alters the system of "vertical leadership" that gave expression

to the procuratorates' nominal independence under the 1954 Constitution. It was the nominal independence of the procuracy that was clearly unacceptable to the radicals and probably objectionable as well to the moderates. The 1978 Constitution provides for the continued responsibility and accountability of the Supreme People's Procuratorates to the National People's Congress, but rather than subordinating the local people's procuratorates only to higher levels of the procuratorial hierarchy, it makes them also responsible and accountable to the people's congresses at the corresponding levels. While on the surface this may seem to be an attempt to enhance the power of the people over the procuracy, one should be aware that the local people's congresses normally have been mere creatures of the local executive organs, known since the Cultural Revolution as "revolutionary committees." It thus is possible that the 1978 Constitution actually will result in the reappearance of the pre-1954 system of dual control in which the local people's procuratorates were responsible to the local executives as well as to higher levels in the procuratorial system. To the extent that the procuratorates are subject to the control of the local executives, their powers of general supervision will be weakened.

Interestingly, in his Report on the Work of the Government at the Fifth National People's Congress, Hua Kuo-feng did not elaborate upon the restoration of the procuracy, even though he did call for a strengthening of the legal system and for obedience

to the law on the part of cadres.^{45/} Yeh Chien-ying, however, discussed the procuracy as follows:

In view of the extreme importance of fighting against violations of the law and discipline, the draft requires that people's procuratorates be set up. Procuratorial organs at various levels of the state exercise their authority, within the limits prescribed by the Constitution and the law, over state organs, state personnel and all citizens, to ensure their observance of the Constitution and the law. While strengthening the unified leadership of the Party and relying on the masses, it is necessary to give full scope to the role of such specialized bodies as the public security organs, procuratorial organs and people's courts. These should complement and restrict each other. This is very important for protecting the people and dealing blows to the enemy. The "gang of four" raved about "smashing the public security organs, procuratorial organs and people's courts" and put their words into action, seriously undermining the state apparatus of the dictatorship of the proletariat. They went so far as to exercise dictatorship within the Party and the ranks of the people. We must thoroughly expose and condemn the gang's crimes in undermining our public security and procuratorial organs and the people's courts, sum up experience, draw lessons, and strengthen our socialist legal system. Acts of smashing and grabbing are strictly forbidden. Detention and arrests must follow legal procedures and the system of checking and approval must be strictly observed in this regard. In the trial of cases, stress must be laid on the weight of evidence and on investigations and study. To obtain confessions by compulsion and then give them credence is strictly forbidden. Only thus will it be possible to protect the people effectively and strike sure, accurate and relentless blows at the enemy, with the stress on accuracy.^{46/}

^{45/} Hua's Report on the Work of the Government appears in English in Peking Review, No. 10, March 10, 1978, p. 7-40. He touches upon the legal system at various points throughout the speech, but especially on p. 33-34.

^{46/} Yeh's Report on the Revision of the Constitution appears in English in Peking Review, No. 11, March 17, 1978, p. 15-28. He too deals with the legal system at various points throughout the speech. See especially, however, p. 22 and p. 27; the quotation given above appears on p. 22.

It is interesting to note that in this statement Yeh gives support to a system in which the public security organs, procuratorial organs, and people's courts "complement and restrict each other." This pattern of interaction among legal organs resembles the Western concept of checks and balances, and it nominally was the guiding principle of the relationship among legal organs in the basic legislation of 1954. In this legislation the procuracy was the linchpin of the system by which the legal organs complemented and restricted each other, for it was empowered to supervise the actions and decisions of both the public security organs and the courts. By giving the procuracy these powers, the leadership added the procurator to the number of bureaucratic officials whose approval had to be obtained before a final action could be taken or a final decision made; the procurator thus served as a further check on the possibility of administrative error or arbitrariness. Problems arose with respect to the basic legislation of 1954 because the leadership went beyond simply providing that the procurator have a role; much to their later regret, the leaders gave both the courts and the procuracy nominal independence. As stated above, starting as early as 1958, official statements emphasized cooperation among the courts, procuracy, and the public security organs more than they emphasized checks and balances.

Article 43 of the 1978 Constitution makes the hierarchy of

procuratorates again the supervisor of legality in the PRC. The powers that the leadership envisions the procuracy exercising are not known in any detail, however. Interestingly, no article has appeared in the Chinese media after the Fifth National People's Congress that goes beyond the statements made in the 1978 Constitution and by Yeh Chien-ying in discussing the powers of the procuratorates. While the current status of the 1954 Organic Law of the People's Procuratorates is unclear, one suspects that it is unacceptable, not only because of its provision for the nominal independence of the procuracy, but also because of its Article 5, which calls for the application of the law by the procuratorates equally to all citizens. The leadership of the CCP has long reserved the right to disregard state law in its struggle against those that it regards as enemies of the people. It further has maintained that it is its right to let an individual's class background be a factor in the handling of incidents in which he is involved, and it also has varied the punishment given to different individuals for essentially the same offense so as to make allowance for factors such as current official policy. Since the anti-rightist movement, "equality before the law" has been as repugnant to the leadership as the nominal independence of the courts and the procuracy. The leadership's current support of legality in the PRC is to be interpreted as support for the notion that all individuals are equally obligated to observe the law, be they private citizens

or officials. More problematic is the matter of whether all institutions, particularly Party organs, are equally obligated to observe the law.

While the leadership has long maintained that it may disregard the law in punishing enemies and protecting the interests of the people, it must be noted that in his Report on the Revision of the Constitution at the Fifth National People's Congress, Yeh Chien-ying gave a somewhat ambiguous and hence very cautious endorsement to the notion that the law must be observed even in the struggle against the enemy. Yeh stated:

In handling both contradictions among the people and contradictions between the enemy and ourselves we should act according to the provisions of the Constitution and guard the sanctity of the law. Speaking of eliminating counterrevolutionaries, Chairman Mao said, "The legal system must be respected. Acting in accordance with the law does not mean being bound hand and foot." We should mobilize the people and struggle against the enemy in accordance with the law, with our hands and feet unfettered, so that all class enemies will realize their only way out is to behave themselves and obey the law of the state. 48/

In considering these statements, one must, of course, take into account the fact that the CCP's authority over state organs and citizens is now a part of the basic law of the state; it hence is much easier for the leadership to suggest that it will be bound by the law even in its struggle against enemies than it was before when there was no legislative basis for Party supremacy.

48/
Yeh, op. cit., p. 27.

Conclusions and Speculations

In assessing the prospects for the development of the procuracy under the post-Mao leadership, one must recall that under the 1954 legislation the procuracy had the potential for becoming the ally of the central authorities by assisting them with the promotion of centralization and uniformity throughout the country and 2) by helping them to guard against bureaucratic arbitrariness, corruption, and error, as well as the potential for coming into conflict with the Party by 3) championing the supremacy of individual pieces of past legislation over the current policy of the Party.

While one must be guarded in predictions because of the apparent existence of different attitudes toward the procuracy within the current leadership, the prospects for the development of the procuracy in the post-Mao era seem rather good, provided the leadership configuration remains essentially the same, because the first two of the purposes of the procuracy are compatible with the goals of the current leadership, while the potential for conflict with the Party has been removed by writing Party supremacy into the 1978 Constitution, as well as deleting therein the description of the procuracy as "independent."

In a sense, the current period in the PRC greatly resembles that following the promulgation of the 1954 Constitution.

As during the latter period, the leadership is now attempting to implant systems and institutions designed for the permanent governance of the PRC. Both the speech of Hua Kuo-feng at the Fifth National People's Congress and articles in the Chinese media contain statements indicating that the leadership intends to elaborate the body of legislation of the PRC, and one article even suggests that legal codes may be drafted and adopted.^{49/} Most prominent of the advocates of systems, rules, and regulations is Teng Hsiao-p'ing, who now stands vindicated in his support of regularization of institutions, economic activity, and rules and regulations. As in 1954, the procuracy is potentially the ally of the leadership in implanting these systems, institutions, and rules and regulations. Because the leadership views these systems, institutions, and rules and regulations as necessary to economic development, one would expect that it would support the development of the procuracy as an institution promoting centralization and uniformity.

One similarly must assess the prospects for the development of the procuracy as a further check against corruption, arbitrariness, and error as rather good. The post-Mao leadership, despite its

^{49/} See Han Yu-tung, "Smash Spiritual Shackles, Do Legal Research Well," People's Daily, March 16, 1978.

apparent reinterpretation of the Thought of Mao Tsetung in many areas, has retained Mao's concern with preventing the growth of an inflated, callous, and abusive bureaucracy. It is aware that bureaucratic abuse alienates the population and thereby both undermines Party and government authority and creates an environment that is unfavorable for economic growth. Hence, there is potential for the development of the procuracy as an ally of the Party in preventing bureaucratic and unlawful abuse of citizens. Westerners would be quite off base, however, in expecting the procuracy to be an institution championing the supremacy of the law and the rights of the individual in the Western sense of these terms. Party supremacy is the Communist Chinese reality. The post-Mao leadership has been able to reintroduce the procuracy in large part because it has rewritten the basic laws in such a fashion as to remove the ambivalence found in the Constitution and other basic laws of 1954 about whether the people, the Party, or legislation was supreme.

It also should be stressed that the activity of the procuracy will bear a direct relationship to the Party's desire to remove itself from the day-to-day conduct of the business of governing the country. In periods during which the Party emphasizes its concrete leadership of day-to-day affairs, the procuracy can be expected to wane. In other periods, when the Party emphasizes its role as the source of policy rather than the need for its involvement in the daily business of government organs, the procuracy can be expected to flourish

through its being given responsibility for the day-to-day conduct of certain concrete activities in order to relieve the burden on the Party.

While in the current period the Party seems to be placing emphasis upon its role as the source of policy to be implemented in large part by government organs, in practice one can find evidence that the Party itself is pre-empting the role of the legal organs in handling concrete cases involving legal issues.^{50/} It may be doing so temporarily in order to make certain that the lingering after effects of years of chaos are properly settled before it turns over such responsibilities to the legal organs, including the procuratorates. However, one should not discount the Party's

^{50/} See, for example, "Anhui CCP Responds to Letters, People's Visits," in U. S. Central Intelligence Agency, Foreign Broadcast Information Service, Daily Report, People's Republic of China, March 17, 1978, p. G1, reporting a Peking New China News Agency Domestic Service broadcast in Chinese 0709 GMT, March 15, 1978. In this item, it is stated:

Hsiao Yu-chu, an actress of the Huaimei Municipal Honan Opera Troupe, was cruelly and mercilessly attacked because she had written a letter to the higher level complaining about the principal leading person of the Huaimei Municipal Cultural Bureau for gross violation of law and discipline. She was persecuted to such extent that she became seriously ill and became completely disabled. On order of the provincial CCP Committee, the Huaimei Municipal CCP Committee conducted an investigation and verified the information in her letter. After mobilizing the masses to expose and criticize these people, it decided to mete out the following punishment to the chief culprit and those leading cadres and people's policemen who had attacked and persecuted Hsiao Yu-chu: Expulsion from the party, imprisonment as criminals, and removal from posts both inside and outside the party. [Emphasis added.]

willingness to involve itself in the business of government organs in times during which it senses that such matters are important. One must be aware that the Party always has reserved the right to assume concrete control of specific affairs when it deems it necessary.

Developments in the PRC in the Maoist era were pendulum-like. Periods of relaxation and bureaucratic regularization alternated with periods of ferment and heightened emphasis upon class struggle and ideological purity. It is most likely that the post-Mao leadership will also follow this pattern, although it seems probable that the swings of the pendulum will not be as extreme as they were under Mao. If the swings continue, there will be periods in which the leadership will be supportive to the efforts of the procuracy to exercise its powers, and periods in which the procuracy itself will be subjected to criticism, and Party leadership will take on more and more concrete forms. Similarly, it seems likely that there will be periods during which the discreteness of the legal organs and the necessity for their mutually checking and restraining each other will be emphasized, and periods during which the Party will instead emphasize cooperation among the legal organs under the leadership of the Party in the common struggle against counterrevolutionaries and other criminals.

The leadership currently seems to support an expansion of

the activities of the courts.^{51/} This support bodes well for the procuracy's reassertion of its role as the state prosecutor. This, indeed, seems the most acceptable and stable of the functions of the procuratorial organs in the PRC.

Despite these favorable signs, it still must be taken into account that some elements in the leadership apparently are opposed to or at least not firmly committed to the restitution of the procuracy. Evidence of this is 1) the fact that Teng Hsiao-p'ing did not call for legal reforms such as the re-emergence of the procuracy in his famous three documents of 1975,^{52/} 2) the fact that almost no mention was made of the procuracy in the Chinese media in the period between the purge of the gang of four and the adoption of the 1978 Constitution, and 3) the fact that the media have not elaborated on the re-emergence of the procuracy since the adoption of the 1978 Constitution. It is reasonable to assume that

^{51/} See "Strengthen the Socialist Legal System," in the source cited in footnote ^{43/} above. In this article it is stated that the gang of four had supported the "absurd" notion that the courts could only handle contradictions between the people and the enemy; in contrast, the article urges that the courts involve themselves in the settlement of contradictions within the people, thus presaging an expansion of the activities of the courts and a corresponding cutback in the activities of the extrajudicial institutions that involve themselves in the settlement of disputes and minor criminal cases.

^{52/} These documents were "On the General Program of Work for the Whole Party and the Whole Nation," "On Certain Problems in Speeding Up Industrial Development," and "Outline Report of Work in the Academy of Sciences." Their contents are discussed in John Gittings, "New Material on Teng Hsiao-p'ing," The China Quarterly, No. 67 (September 1976), p. 489-493.

this opposition to or lack of enthusiasm for the procuracy is based upon the belief that the leadership's espousal of legality and the related reappearance of the procuracy cannot help but pose a challenge in the long run to the authority and position of the Party. Some of those who do not support the procuracy might be of the view that it is a redundant institution in view of the elaborate network of Party units within government organs. Insofar as the radical opposition to the leadership has not been eliminated, there might still be those who favor simplification of bureaucratic structure and procedure by increasing the cooperation among the legal organs under the leadership of the Party, such as was done in the late 1950s and early 1960s; some radicals still may favor the abolition of the procuracy. One hence must be somewhat guarded in one's assessment of the future prospects of the procuracy. Its future is intimately related to the political fortunes of its strongest supporters.

One's assessment of the prospects for the development of the procuracy must be based upon a clearly defined perception of its role in the PRC. That the procuracy, even under the most favorable conditions, has only a carefully circumscribed role still should not be allowed to dim the significance of the fact that it has been restored after a long decline and temporary demise. In the coming months and years, Westerners can use the fortunes of the procuracy

-40-

as an instrument with which to gauge the state of health of the
legal system and legality as a whole.

END