

# Advancements and controversies in China's recent sentencing reforms

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## Abstract

This article discusses in detail the content and context of China's recent sentencing reform and its social, political, and criminal justice implications, as well as its limitations. The focus of China's criminal justice reforms over the past 37 years has been predominantly on the trial process; the sentencing process has been largely neglected. Revelations of widespread sentencing inconsistency led the Supreme People's Court (SPC) to initiate sentencing reform in 2005. The intent of the reform was to promote transparency in the sentencing process, ensure consistency in sentencing dispositions, and guard against inappropriate judicial leniency and severity via new sentencing procedural rules and guidelines limiting judges' sentencing discretion. In addition to discussing the new sentencing procedures and guidelines, this article also examines some hotly debated issues, including whether China's sentencing process should be completely separate from the trial process; the meaning of 'sentencing consistency' in the context of China's social and political development; and China's unique sentencing principles in comparison with the practice of some English-speaking jurisdictions.

## Keywords

criminal justice system, sentencing reform, judges' sentencing discretion, sentencing guidelines

The promulgation of the Chinese Criminal Law and Criminal Procedure Law in 1979 was an important first step in the long process of China's criminal justice reform. During the past 37 years, both laws have been revised repeatedly with the intention of bringing China's criminal justice system in line with international standards of due process and

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human rights protection, and with 'a long-term goal' of achieving the rule of law.<sup>1</sup> However, some Western observers are critical of the reforms, arguing that despite what is written on paper, little has changed in practice. They are concerned with China's instrumentalist approach to criminal justice where the criminal process has been used first and foremost as a tool for the politics of maintaining social stability and harmony at the expense of due process and human rights protection.<sup>2</sup> For instance, Stanley Lubman critically assessed China's criminal process reforms in 1999, stating that the Chinese criminal process remains dominated not only by the police but also by a blatant instrumentalism that puts it at the service of the Chinese Communist Party (CCP) and political leaders when they wish to use it. Reforms both in substantive criminal law and criminal procedure have edged the system toward greater tolerance for the rights of criminal defendants, but have not adequately institutionalized protection for those rights.<sup>3</sup> Benjamin Liebman in 2009 continued to criticize the instrumentalist approach to law in China's legal reforms by noting that 'an instrumentalist approach to law continues to dominate, with law often following, rather than leading, changes in state policy'.<sup>4</sup>

The Chinese instrumentalist approach to criminal justice profoundly affected past reforms of the criminal process. Criminal processes in most jurisdictions consist primarily of two related but somewhat separate processes: a trial process for determining whether the defendant is guilty of the charged offence, and a sentencing process for determining a fit punishment for the convicted offender.<sup>5</sup> One of the major flaws of China's criminal process reform in the past decades was that the reform focused exclusively on the trial process; the sentencing process was completely overlooked until very recently. The instrumentalist nature of the Chinese criminal justice system persistently emphasized the importance of securing criminal convictions over the protection of rights of the accused and gave sentencing judges flexibility in meting out criminal sanctions purposely for the maintenance of public order and social stability. As a result, sentencing was treated as a minor part of the trial process; the independent and transparent procedures for sentencing were completely lacking, and sentencing dispositions were often grossly inconsistent, unfair, and unjustifiable.<sup>6</sup>

In recent years, widespread inconsistencies in sentencing dispositions have been revealed. This systemic sentencing problem has been regarded by Chinese jurists as one of the main sources of unfairness, injustice and corruption in the criminal process. The problem is so pervasive and detrimental that the public has questioned the legitimacy of China's judicial system and the rule of law reforms; dissatisfaction with sentencing dispositions has even been considered a possible source of social instability.<sup>7</sup> As a result, in recent years, the Chinese judicial authorities have been forced to reform the sentencing practices. Chinese jurists see the current sentencing reform initiative as a positive response to China's sentencing problems, while Western scholars on Chinese criminal justice have thus far paid little attention to the ongoing reform. This article examines the content and context of the recent sentencing reform and discusses its social, political, and criminal justice implications, as well as its limitations.

In the late 1990s, Chinese jurists began to realize that the unbridled sentencing discretion of judges and the lack of transparency in the sentencing process were directly responsible for widespread inconsistency and unfairness in sentencing dispositions across the country. Empirical studies repeatedly revealed that some minor offenders were

punished heavily while serious offenders were punished leniently. At the same time, different offenders who committed similar offences in similar circumstances were often punished differently, even when those offenders were sentenced in the same city, and occasionally by the same judge in the same court.<sup>8</sup>

The well-publicized 'Xu Ting case' is a good illustration of the severity of the sentencing problem. In 2006, Xu Ting, a migrant worker in Guangzhou, unlawfully took RMB 175,000 (about US\$24,300) from a malfunctioning automatic teller machine (ATM). Xu Ting was later charged and convicted of stealing money from a financial institution and received a sentence of life imprisonment. Around the same time, a senior government official, who misappropriated and embezzled RMB 2.4 billion (about US\$350 million), received a sentence of eight years' imprisonment. The striking contrast between the two sentences infuriated the public. Under intense public scrutiny and pressure, the appellate court reduced Xu Ting's life sentence to five years' imprisonment. It has been reported that many similar cases exist.<sup>9</sup> The inconsistent sentencing dispositions have had serious social and political repercussions. The public suspect judges of not only abusing their sentencing power but of wider judicial corruption as well.<sup>10</sup>

According to Chen Ruihua, sentencing problems are primarily due to the Chinese criminal justice system's overemphasis on its function of 'securing criminal convictions over sentencing' (重定罪轻量刑) for the purpose of social protection.<sup>11</sup> For this same reason, the 1996 Criminal Procedure Law and the 1997 Criminal Law, and their subsequent revisions, outline relatively developed procedures for the trial process for criminal conviction but hardly any rules for the sentencing process.<sup>12</sup> The absence of guidelines for judges on the use of their discretionary sentencing power combined with a secretive sentencing process has led to inconsistencies in sentencing dispositions.

In the late 1990s many local courts, seriously troubled by the lack of legislative guidance in sentencing and the widespread public accusations of judicial incompetence and corruption, began to search for solutions to the sentencing problems.<sup>13</sup> As a result, some local courts, such as Jiangyan City Intermediate Court in Jiangsu Province and Ningde City Intermediate Court in Fujian Province, created in-house sentencing guidelines.<sup>14</sup> At the same time, many prosecutors also made efforts to hold judges accountable for their sentencing decisions; they frequently made sentencing recommendations to sentencing judges and asked the judges to provide explanations in those cases where the recommendations were not adopted.<sup>15</sup>

Aware of initiatives by local courts to address deficiencies in sentencing, during the period of 2004 to 2010 the Supreme People's Court of the PRC (SPC) organized a series of sentencing research projects and pilot programmes that began the current sentencing reform. In 2004, the SPC proposed to reform the sentencing process in the Second Five-Year People's Court Reform Outline.<sup>16</sup> The SPC produced a draft of sentencing guidelines in 2005, and 12 local courts in different regions were assigned to test them during 2008 and 2009. From 2009 to 2010, 120 courts across China were added to the experiment. Given the positive results of this endeavour, and with the approval of the Politico-Legal Committee under the Central Committee of the Chinese Communist Party (then headed by recently disgraced Zhou Yongkang), the SPC, along with other government ministries, issued two key sentencing reform documents in July 2010: Opinions on Several Issues Concerning Standardization of the Sentencing Procedures (trial implementation) (关于规范量刑程序

若干问题的意见 (试行)) and Opinions on People's Court Sentencing Guidelines (trial implementation) (人民法院量刑指导意见 (试行)).<sup>17</sup> The former document provides new procedural rules for sentencing and the latter document sets sentencing guidelines. Both documents were issued as judicial interpretations and were implemented on a trial basis during the period of 2010–13.<sup>18</sup> In late 2013, the SPC reissued the sentencing guidelines and instructed courts at all levels to implement them nationally on a permanent basis, effective 1 January 2014.<sup>19</sup> These sentencing procedures have retained their status as trial-implementation procedures up to the present day. In order to fully appreciate the significance of the current sentencing reforms, it is necessary to discuss briefly the sentencing practices that preceded them.

### Secretive sentencing process before the reforms

Before the 2010 sentencing reform, one of the major problems associated with the sentencing process was that defendants and prosecutors were not allowed to participate in sentencing decision-making. Sentencing was a closed and secretive process. The 1996 Criminal Procedure Law and its 2012 revisions contain relatively detailed stipulations for both first and second instance trial procedures, but hardly any rules or procedures for the sentencing process.

Before the reforms, sentencing in China was routinely carried out as a minor part of the trial process.<sup>20</sup> Normally, in a first instance trial for a relatively serious offence, the trial court would be adjourned after the open court investigations and the arguments concerning criminal charges had concluded. The collegial panel would then convene in a private office to decide whether the defendant was guilty or not.<sup>21</sup> In a case where the defendant was found guilty, the collegial panel would immediately proceed to determine punishment without any involvement of the parties concerned. After making a preliminary sentencing decision, the presiding judge of the panel would then submit the sentencing decision to the divisional chief judge or the adjudication committee of the criminal division of the court, or both. If the case were important and complex, the preliminary sentencing decision would have to be submitted to the adjudication committee of the court for discussion and a final decision. Upon final approval of the sentencing decision by the court president and/or the adjudication committee of the court, the collegial panel would reconvene the court and announce the guilty verdict and the sentencing decision at the same time, but would not normally provide any explanation of why the sentence imposed had been chosen.<sup>22</sup>

Chinese jurists criticized this closed and secretive sentencing process and its lack of judicial independence;<sup>23</sup> the final sentencing decision was not decided by a presiding judge or the collegial panel, but by the court president and/or the adjudication committee of the court. Many Chinese jurists went further in their criticisms; they argued that the previous sentencing process was 'administrative' rather than judicial in nature.<sup>24</sup> This is because there were no sentencing hearings and no participation of defendants, prosecutors and victims in sentencing decision-making. In fact, the only opportunity that defendants had to make their arguments on sentencing heard was during the trial process for criminal convictions. This placed many defendants in a compromising position as they were compelled to make arguments on sentencing while still in the process of arguing a

case with a not-guilty plea. Such a situation clearly contradicts the principle of the presumption of innocence in the trial process, and it fails to protect the basic rights and interests of the defendants. Furthermore, because the sentencing process is opaque at best, it is susceptible to judicial abuse of sentencing discretion and other forms of judicial malfeasance.<sup>25</sup> As a result, Chinese jurists have opined that non-transparency has produced a sentencing process that is devoid of due process and procedural fairness. Indeed, since the sentencing outcomes of this process were rendered with little judicial opinion, they were inexplicable to both defendants and the wider public. Collectively, these deficiencies undermined popular confidence in China's criminal justice system, which the current reforms have been designed to restore through the establishment of a transparent sentencing process that is open to all-party participation.<sup>26</sup>

### **Inadequate sentencing guidance before the reforms**

For many Chinese jurists, Chinese criminal legislation also fails to provide sentencing judges with the guidance they need to mete out just and consistent sanctions.<sup>27</sup> In the Chinese Criminal Law, there are eight punishment options that cover the gamut of criminal offences.<sup>28</sup> The sentencing problems that have arisen are primarily those concerned with fixed-term imprisonment, life imprisonment, and the death penalty. Based on the Chinese Criminal Law, many serious offences are punishable by any one of these three penalties. Article 232, for example, states that 'whoever intentionally kills another is to be sentenced to death, life imprisonment or no less than ten years' imprisonment; when the circumstances are relatively minor, he is to be sentenced to no less than three years and no more than ten years' imprisonment'. Though this article lists three punishments for homicide – the death penalty, life imprisonment, and fixed-term imprisonment – it is clear that the article provides little guidance to help sentencing judges decide which penalty to impose. This lack of legislative guidance in sentencing, coupled with an inadequately trained judiciary in local courts, has obstructed the ability of judges to dispense sentences that are consistent, justifiable, and fair. As a result, offenders committing similar offences in similar circumstances have often been sentenced differently.

Moreover, Chinese jurists argue that such parsimonious stipulations, which tend to be more comprehensible to the public, have encouraged a number of judges to determine sentences on the basis of 'gross estimations' rather than quantifiable criteria. Ma Xiujuan points out that a gross estimations approach is too flexible as it has permitted the routine use of severe punishment primarily as a political expediency to maintain social order, stability and public support.<sup>29</sup> At the same time, the use of gross estimations has also led to overly lenient punishments, which might be the result of judicial corruption.<sup>30</sup> Dissatisfied defendants, angry crime victims, and prosecutors fed up with inconsistent penalties imposed by a secretive sentencing process have launched a large number of appeals against sentencing decisions. Even after the sentencing verdicts took effect, many defendants and victims still filed their letter of complaints (信访) with appellate courts to protest what they viewed as unjustifiable and inexplicable sentences.

To overcome these sentencing problems, Chinese jurists argue that sentencing guidelines are needed to help judges make sentencing decisions.<sup>31</sup> Hu Yunteng, a director of the SPC Research Office, suggests that the UK's sentencing guidelines could be used as

a model for China as they possess flexibilities in sentencing sufficient to accommodate China's regionally uneven social and economic development.<sup>32</sup> In comparison, the United States' federal and state sentencing guidelines are variegated and somewhat convoluted for Chinese jurists.<sup>33</sup> In an effort to address the deficiencies in both the sentencing process and the dispositions produced by the sentencing process, the SPC issued provisional sentencing procedural rules in 2010 and sentencing guidelines in 2013.<sup>34</sup> These will now be examined in turn.

## **The 2010 sentencing procedures**

The SPC's new sentencing procedures consist of 16 articles that are designed to promote transparency and procedural fairness in the sentencing process. Under the new procedures, sentencing shall be conducted as a relatively separate process from the trial process; all parties involved are provided with opportunities to participate in sentencing decision-making. Sentencing judges are also required to articulate their sentencing decisions.<sup>35</sup> However, there are several controversial questions concerning the new procedures, such as whether the sentencing process should be partially or completely separate from the trial process and what role, if any, crime victims and state prosecutors should play in the sentencing process.

### *Debates about a 'relatively' versus 'completely' separated sentencing process*

Whether China should have a separate sentencing process from the trial process is one of the most debated questions among Chinese jurists. Some jurists argue that China's sentencing process should be separated completely from the trial process, as in Canada and the United States. Chen Ruihua, for example, contends that a completely separate sentencing process is needed because the facts and evidence presented at a sentencing hearing differ from those presented in a trial process; a completely separate sentencing process, with the participation of all parties involved, could help structure and restrain judges' sentencing discretion and ensure the transparency and fairness of the sentencing process.<sup>36</sup>

Conversely, jurists affiliated with the SPC argue for a 'relatively separate sentencing process', which was adopted by the SPC in its newly issued sentencing procedures.<sup>37</sup> The problem associated with the relatively separate sentencing process is primarily concerned with the case where a not-guilty plea is entered. According to the SPC's newly issued sentencing procedures, after the trial to determine if the defendant is guilty of the charged offence and without rendering a guilty or innocent verdict, the court should immediately proceed to collect the facts and evidence. The relatively separate sentencing process clearly places the defendant in a difficult catch-22 situation. If the defendant chooses to participate in the process of collecting sentencing-related facts and evidence immediately after the trial, this participation could be construed as an admission of guilt and potentially bias the judge's decision. On the other hand, if the defendant chooses not to participate in the process, he/she would forego the opportunity to participate in sentencing decision-making and risk having non-participation interpreted as a reluctance or refusal to

cooperate with the court.<sup>38</sup> It is clear that, compared to past practice, the introduction of this relatively separate sentencing process clearly makes no improvement in terms of the defendants' right to participate in the sentencing process. Moreover, the sentencing process continues to be in conflict with the operation of the presumption of innocence.<sup>39</sup>

### *Controversies surrounding crime victims' participation in the sentencing process*

The new sentencing procedures allow judges to invite crime victims to submit to the court both their impact statements and opinions on sentencing. However, victim participation in the sentencing process is not without controversy. Hu Yunteng, for one, is wary of such participation. He cautions that victims of crime are often revenge-seeking and that their participation in the sentencing process could introduce biases that compromise the fairness of sentencing outcomes.<sup>40</sup> Hu urges, therefore, that victim participation be channelled to advance justice in the sentencing process and not be used to quench the desire for retribution against offenders. Furthermore, Hu raises the concern that victims could incur additional pain and suffering, as well as unnecessary financial hardship, through their participation in the sentencing process.<sup>41</sup> However, Chen Ruihua counters that victim participation is critically important to a fair sentencing process because, without it, judges will not be able to appreciate fully the extent to which victims have been harmed by offenders.<sup>42</sup>

### *The roles of state prosecutors in the sentencing process*

The new sentencing procedures also permit prosecutors to make sentencing submissions and sentencing recommendations to the court.<sup>43</sup> Prosecutors' sentencing recommendations are permissible in many English-speaking jurisdictions, although not in England. In China, it is argued that prosecutors' sentencing recommendations could help improve transparency and fairness in meting out sentences, limit judges' sentencing discretion, and promote public trust in the sentencing process.<sup>44</sup>

However, it is clear that some government agencies and Chinese jurists wish to set limits. In the process of testing the new sentencing procedures in 2011, the SPC, the Ministry of Public Security, and other government ministries jointly issued a notice cautioning prosecutors against making sentencing recommendations in publicly sensitive and complicated cases, and in cases concerning national security or regional social order and stability.<sup>45</sup> In addition, some jurists argue that prosecutors' sentencing recommendations could interfere with judges' sentencing authority and unbalance the distribution of power that exists between the prosecution and defence in the sentencing process.<sup>46</sup> Although, on paper, defendants and prosecutors enjoy similar rights in the sentencing process, in reality many defendants are disadvantaged because they cannot obtain adequate legal representation given the shortage of criminal defence attorneys in some regions and/or the heavy financial costs they incur in cases where they could hire a legal attorney.<sup>47</sup>

The above suggests that, while there is a consensus about the necessity of reforming the sentencing process, there are disagreements as to which specific reforms should be adopted. China is wrestling currently with many of the same questions that have faced

several English-speaking jurisdictions, namely, what is the relationship between fairness and efficiency in the sentencing process? Whose interests are more important in the relationships between defendants and victims, and defendants and state prosecutors? How should these competing interests be represented in the sentencing process?<sup>48</sup>

## The 2014 sentencing guidelines

The SPC recognizes that the dispensing of fair and justifiable punishments is important for maintaining ‘social stability and promoting social harmony’.<sup>49</sup> For this reason, the current sentencing reform is also tasked with achieving consistency in sentencing dispositions. Consistency requires that offenders who commit similar offences in similar circumstances should be punished similarly. To achieve proportionality and consistency in sentencing, in 2013 the SPC issued Opinions Concerning Sentencing Guidelines for Frequently Committed Offences (关于常见犯罪的量刑指导意见; hereafter referred to as the guidelines).<sup>50</sup> The guidelines consist of four sections: the guiding principles of sentencing; basic sentencing methodology; applications of common mitigating and aggravating factors; and sentences for common offences.

### *Sentencing principles with Chinese characteristics*

The guidelines contain sentencing principles that China shares with other jurisdictions, such as sentencing according to the facts and laws, the maintenance of proportionality, and the punishment of criminals and the prevention of crime. However, the guidelines also contain several sentencing principles that are specific to China, including the principle of combining positive legal outcomes and social effectiveness of punishment, the use of social harmfulness of an offence as a sentencing criterion, and the balancing of leniency and severity in punishment.<sup>51</sup>

According to the guidelines, it is imperative that sentencing dispositions obtain the approval of the general public and serve to protect society. This is reflected in the principle of ‘combining positive legal outcomes and social effectiveness of punishment’ (惩罚的法律效果与社会效果相结合), which implies that the dispositions should not only engender a positive perception of the sentencing process and the criminal justice system as a whole, but also require public support and be conducive to the maintenance of social order and stability. Chinese emphasis on the social effectiveness of punishment in the sentencing process is compatible with penal populism in English-speaking jurisdictions.<sup>52</sup> This is also consistent with the Chinese criminal justice tendency to place substantive results over procedural justice.<sup>53</sup> This principle could help explain why the Chinese judiciary routinely takes into account public opinion, local public order, and social stability conditions in their sentencing decision-making, and sometimes even uses public opinion as the foremost justification for unusually onerous punishments, such as the death penalty.<sup>54</sup>

The Chinese legal system also uses ‘the social harmfulness of an offence’ (犯罪的社会危害程度) as a principle to guide sentencing decisions. The concept of ‘social harmfulness of an offence’ (which was written into both the 1979 and 1997 Criminal Laws) has been used in China’s criminal process as a key criterion in differentiating a criminal



conduct from a non-criminal one, and a serious offence from a minor one, and in determining the severity of punishment in the criminal process, at least since 1979.<sup>55</sup> According to Nie Huiping, the concept was originally borrowed from the 1922 Criminal Code of the Russian Soviet Federated Socialist Republic and used for the first time in the 1950 draft outline of the PRC Criminal Law.<sup>56</sup>

In recent years, Chinese jurists have started to question the validity of this principle, doubting if it meets the test of the principle of legality and suggesting that its primary function is to serve as a possible source of flexibility in applying the law in the sentencing process. They argue that the concept of social harmfulness is very subjective, difficult to define and measure. Determining the social harmfulness of offences has often been subject to the influence of government policy expediency, and the national and regional social and political contexts.<sup>57</sup> Therefore, such a criterion is not conducive to the establishment of sentencing fairness, consistency and uniformity.

'Balancing leniency and severity' (宽严相济) is another principle that informs sentencing in China. This principle first appeared in a 2006 report by the SPC and Supreme People's Procuratorate.<sup>58</sup> The essence of the policy is concerned with formulating differential punishments for crimes of different severities rather than to offer lenient criminal justice treatment to all offenders. The policy directs sentencing courts to punish those who commit 'serious crimes' heavily while lenient treatment should be applied only to those who commit 'minor offences'.<sup>59</sup> However, serious crimes and minor crimes associated with the policy are not legally defined concepts in the Chinese Criminal Law, leaving the meaning and interpretation unclear. In fact, China's changing social and political context often plays a decisive role in determining the seriousness of a criminal offence. For this reason, the severity of a crime has often been defined and redefined in the past to meet public expectations, changing social and political climates and party-state policies.<sup>60</sup> These problems associated with the policy lead one to question whether the renewed emphasis of the principle of balancing leniency with severity in the recent sentencing reforms is really all that helpful in reducing judges' sentencing discretion and promoting sentencing consistency. More likely it is just another flexible device for Chinese authorities to use to expediently apply the sentencing guidelines and adjust the scale of punishment to the state of public order and social stability.

Sentencing principles are important guides to sentencing practice. Though the sentencing guidelines introduce the principles that are unique to China, they provide no information on how these principles should be used in the sentencing decision-making process, nor do they specify the relationship between the different principles. At the same time, the principles are ambiguous in meaning and highly susceptible to contextual interpretation, and therefore create flexibility in determining punishment. Thus, in the current stage of China's reform, the consistent and unambiguous application of these principles may be difficult to accomplish under social, economic, and political conditions that are constantly in flux.

### *The new sentence calculation methodology*

The new sentence calculation method is a central component of the guidelines. The method highlights quantification of various sentencing-related factors and calculation of three

interrelated sentencing components: a sentencing starting point, a baseline sentence, and a final sentence. Based on a sentencing starting point, a baseline sentence shall be calculated, and then a final sentence would be derived from an adjusted baseline sentence.

*Deciding a sentencing starting point.* The intent of calculating the ‘sentencing starting point’ in the guidelines is to give sentencing judges a point of departure from which to begin deriving a fit punishment.<sup>61</sup> According to the guidelines, a sentencing starting point needs to be within the ranges of penalties enumerated in the Criminal Law and decided based on ‘the primary constituent facts of a crime’.<sup>62</sup> Where the primary constituent facts of a crime are concerned, the SPC refers specifically to both physical and mental aspects of a crime (i.e. actus reus and mens rea) that are explicitly stipulated in the Criminal Law. Having realized the difficulties in deciding a sentencing starting point, the guidelines provide sentencing starting points for 15 frequently committed criminal offences. They include traffic offences, assault causing bodily harm, rape, unlawful confinement, robbery, theft, and extortion. Most sentencing starting points for the 15 offences are set close to the minimum penalties stipulated in the Criminal Law. However, the SPC is quick to point out that a sentencing starting point is not and should not be the statutory minimum sentence of an offence.<sup>63</sup>

*Calculating a baseline sentence.* After having determined a sentencing starting point, the next critical step in a sentencing process is to decide a baseline sentence.<sup>64</sup> According to the guidelines, based on a sentencing starting point, a baseline sentence should be established by considering ‘the secondary or derived constituent facts of a crime’. These are the facts of a crime that are related to the constituent facts of a crime, but not explicitly prescribed in the Criminal Law. To facilitate judges in deciding baseline sentences, the SPC also describes usual secondary constituent facts for the 15 frequently committed criminal offences. For instance, for a traffic offence, factors such as the extent of culpability of an offender, the number of persons injured or killed, or fleeing from the scene of an accident could be used to determine a baseline sentence.<sup>65</sup>

*Determining a final sentence.* Working from a baseline sentence, a final sentence is then derived. According to the guidelines, a baseline sentence, either within or below statutory ranges in the Criminal Law, could be used directly as a final sentence.<sup>66</sup> However, to determine a final sentence, a sentencing judge usually has to make adjustments to a baseline sentence by considering a variety of mitigating and aggravating factors or circumstances. The guidelines quantify 14 common mitigating and aggravating factors. The mitigating factors include being underage, voluntarily returning stolen property, voluntarily recompensing victims for their lost and damaged property, voluntarily surrendering to police authorities, having obtained forgiveness from crime victims, and admitting a criminal offence during a trial. The aggravating factors are being a repeat offender, previously having a criminal record, the victim of the crime being an elderly person, a disabled person, or a pregnant woman, and committing a crime during a period of natural disaster and outbreak of disease.<sup>67</sup>

According to the guidelines, the presence of one or more of these mitigating or aggravating factors would result in the quantum of a baseline sentence being reduced or

increased.<sup>68</sup> However, the SPC indicates that the presence of mitigating factors does not automatically lead to a sentence reduction for serious offences that are punishable by life imprisonment or the death penalty, such as organized criminal activity and serious violent crimes.<sup>69</sup> This suggests that less serious offenders may benefit more from the presence of the mitigating factors than serious offenders would.

According to the guidelines, in order to find a fitting final sentence, a presiding judge could also, based on 'local conditions or specific circumstance', make adjustments in either reducing or increasing a baseline sentence up to 20 percent. The local specific circumstance could include the concerns of public safety conditions, social stability, and the extent of social harmfulness of the offences.<sup>70</sup> However, after the adjustments, if a baseline sentence is still disproportional to the offence, the adjudication committee of the court shall decide the final sentence.<sup>71</sup> This indicates that a presiding judge may not have complete autonomy in determining a final sentence.

## Discussion and conclusion

The SPC and many local courts found that the implementation of the new sentencing procedures and guidelines did not significantly reduce the severity of punishments imposed by the judges (a fear of the SPC). At the same time, both transparency in the sentencing process and consistency in sentencing dispositions have significantly improved as the sentences imposed by judges are now more likely to be accepted by defendants and the public. This positive assessment of the new procedures and guidelines is supported by a significant decline in the number of appeals against the sentences imposed.<sup>72</sup> Although the new sentencing procedures and guidelines could entail some improvements in China's sentencing practice, there are a number of serious problems with the current sentencing reforms.

In terms of the sentencing process, the new sentencing procedures introduce some degree of transparency and procedural fairness into the process by granting defendants, prosecutors, and crime victims the right to participate in sentencing decision-making and by requiring the sentencing judges to justify the sentences imposed.<sup>73</sup> This being said, there are still several concerns about the sentencing process in China: (1) the new sentencing process is not completely separated from the trial process, which implies that the defendants could be forced to provide sentencing-related information in the trial process while arguing a case with a not-guilty plea; (2) judges do not have judicial independence to determine final sentences; rather, the judicative committee of a court and the court president decide final sentences; (3) prosecutors may play a more significant role than the defendant in the sentencing decision-making process; and (4) the sentencing principles encourage judges to take into consideration public opinion and local social and political situations in their sentencing decision-making. This may subject the sentencing process to political expediency.

Concerning the sentencing guidelines, the new methodology for sentence calculation and the starting-point approach may help structure judges' sentencing discretion and therefore achieve greater consistency in sentencing dispositions. However, one must bear in mind that reforming China's sentence calculation is a complex undertaking whose outcomes remain to be accurately reported and empirically assessed. On the one hand,

sentencing judges will probably benefit from the specific guidance on calculations of various sentencing components leading to a final sentence, and from detailed quantification of various related factors. On the other hand, given the extremely broad ranges of penalties prescribed for various offences in the Criminal Law, sentencing judges may continue to face difficulties in meting out just and consistent sentences.

It is important to stress consistency in sentencing dispositions in the interest of justice in any jurisdiction, especially in the Chinese context of fighting against pervasive local protectionism and judicial corruption. However, for Chinese judicial authority, sentencing consistency is relative, not absolute. This implies that sentencing consistency could be upheld only in a given region and at a given time period, not across different regions and at different time periods. In this way, sentencing consistency would reflect local social and economic realities; the sentences imposed on the offenders could be more readily justified to the local public, and punishing criminals could be conducive to local social harmony and stability, as well as economic development.<sup>74</sup> This partially explains why China has some extremely flexible sentencing principles, which allow judges to take into account local social and economic conditions in sentencing decision-making. This flexible local-specific definition of sentencing consistency serves the politics of stability at the expense of developing nationwide criteria for sentencing consistency and uniformity. In the long run, it may also undermine the confidence of the public in the criminal process. Due to the close connection between sentencing consistency and local realities, the SPC indicates that the sentencing guidelines provide only 'general' guidance in determining sentences. Based on local social and economic conditions, High People's Courts in various provinces and regions should develop their own more detailed and location-specific sentencing guidelines. Nevertheless, localized sentencing guidelines developed by provincial higher courts must be filed with the SPC.<sup>75</sup> Following this SPC directive, almost all provincial High People's Courts in China have drafted their own sentencing guidelines for their local courts.

It also has to be pointed out that the new sentence calculation methods tend to focus on meting out sentences for the purpose of protecting society, instead of punishing offenders by taking into consideration the characteristics of the offenders and the circumstances of the offences. Some Chinese jurists are concerned that the guidelines may leave judges too little sentencing discretion. As a result, no principled approach in sentencing is possible and sentencing outcomes are more likely to be generalized sentences rather than individualized punishment. The latter is important for achieving specific justice and rehabilitation of offenders, and for reducing recidivism.<sup>76</sup>

It is important to note that the sentencing procedural rules and guidelines issued by the SPC are judicial directives, not statutory legislation; but in practice, it is mandatory for local courts to implement these procedural rules and guidelines in the sentencing process. This is consistent with the SPC's usual practice of using its power of judicial directives or interpretations to provide what the National People's Congress (NPC), China's national legislature, is either too slow or incapable of providing: timely legal changes in response to China's fast-changing social and economic conditions.<sup>77</sup> Chinese jurists have long recognized this problem of the SPC's constitutionally dubious practice, and in this case they characterize the SPC's sentencing procedures and guidelines as 'quasi-legislation' or 'judicial legislation or lawmaking'.<sup>78</sup> Some jurists have rightly

pointed out that the SPC has stepped outside the realm of judicial interpretation in its sentencing reforms and has infringed upon the legislative authority of the NPC.<sup>79</sup> Nevertheless, many Chinese jurists express their willingness to accept the SPC's exercise of legislative power in this case, even though it is constitutionally illegitimate. For them, the new sentencing procedures and guidelines have advanced China's sentencing practice in a positive direction. One jurist pragmatically explains that, in an ideal situation, sentencing reforms as such should be conducted by the NPC. But the NPC probably does not possess the expertise and resources required for the reforms. Therefore, it is acceptable for the SPC to establish the sentencing procedures and guidelines through judicial interpretations.<sup>80</sup>

One of the most disappointing aspects of the current sentencing reforms is that the new sentencing guidelines can be applied only to less serious offences, not to the serious crimes punishable by life imprisonment or the death penalty.<sup>81</sup> Currently, the use of the capital punishment in China is still the most controversial issue concerning sentencing reforms, especially in light of the recent revelation that some defendants were wrongfully convicted of capital offences. The use of the death penalty urgently needs guidance.<sup>82</sup> In fact, sentencing guidelines for capital offences could be helpful in restricting and reducing the use of death punishment. Researchers in the SPC indicate that the sentencing guidelines for life imprisonment and the death penalty will be developed and provided when the SPC acquires more experience in composing sentencing guidelines.<sup>83</sup>

The preceding discussions suggest that the current sentencing reform has many limitations: it is incomplete, tentative, experimental in nature, and has only limited application. These limitations are primarily due to the SPC's competing priorities for sentencing justice and for social stability maintenance. On the one hand, the SPC realizes the necessity and urgency to reform the sentencing process, and to set limits in the sentencing guidelines for judges' sentencing discretion. On the other hand, the SPC's political mandate as set forth by the party-state requires that sentencing reform must be carried out in a manner that is conducive to maintaining social stability. In fact, the SPC's concern with social stability has created obstacles for the sentencing justice reform and impaired its outcomes.

Some Western scholars are critical of the restricted effects of China's political environment on criminal justice reforms.<sup>84</sup> Susan Trevaskes and others express concerns with the overwhelming role played by 'the political imperative of social stability' in China's legal reforms in the recent decade and that 'the stability agenda of politics overtake routine law and justice concerns'.<sup>85</sup> In the current sentencing reform, the politics of stability maintenance partially helped initiate the reforms. It was the SPC and the party-state's concerns with inconsistent sentencing outcomes and non-transparent sentencing process (causing popular discontent with the criminal justice and judicial system) that first gave the SPC the impetus to start the sentencing reform.<sup>86</sup> However, the SPC's concerns with politics in turn sets a limit on the extent of the reform. Regardless of sentencing reforms, the criminal process must remain effective in the crackdown on serious offenders whose criminal activities could undermine social stability. Accordingly, the sentencing guidelines contain vague and ambiguous sentencing principles and are only applicable to less serious crimes. The limited applicability of the guidelines suggests that the SPC is reluctant to set definite parameters and limits that may tie its hands in punishing serious

offenders. The ambiguous sentencing principles also allow the courts flexibility in using punishment for social stability.

The current sentencing reform sets another example whereby criminal justice reform in China continues to be restricted by China's instrumentalist approach to law and by the politics of stability.<sup>87</sup> There is still much that needs to be done before China can boast of a sentencing process that is fair, transparent, and consistent in its sentencing dispositions. Nevertheless, China's current efforts to develop and use sentencing procedural rules and the guidelines constitute a significant first step in its quest for fair, just, and consistent sentencing outcomes.

## Notes

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1. See Ira Belkin, China's criminal justice system: A work in progress, *Washington Journal of Modern China* 6(2), 2000: 61–86; Jonathan Hecht, *Opening to Reform?: An Analysis of China's Revised Criminal Procedure Law*, New York: Lawyers Committee for Human Rights, 1996; Mike McConville, Comparative empirical co-ordinates and the dynamics of criminal justice in China and the West, in Mike McConville and Eva Pils (eds) *Comparative Perspectives on Criminal Justice in China*, Cheltenham, UK and Northampton, MA: Edward Elgar, 2013, 13–72; Joshua D. Rosenzweig et al., Comments on the 2012 revisions of the Chinese Criminal Procedure Law, in McConville and Pils (eds), *Comparative Perspectives on Criminal Justice in China*, 455–502; and Ronald C. Keith and Zhiqiu Lin, *Law and Justice in China's New Marketplace*, New York: Palgrave, 2001, 178–231.
2. See Belkin, China's criminal justice system, 61–86; McConville, Comparative empirical co-ordinates and the dynamics of criminal justice; Neil Diamant, Stanley B. Lubman, and Kevin J. O'Brien (eds), *Engaging the Law in China: State, Society, and Possibility for Justice*, Stanford, CA: Stanford University Press, 2005, 3–27; Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao*, Stanford, CA: Stanford University Press, 1999, 138–72; Ronald C. Keith and Zhiqiu Lin, *New Crime in China: Public Order and Human Rights*, London and New York: Routledge, 2006, 37–62; Susan Trevaskes et al., Stability and the law, in Susan Trevaskes et al. (eds) *The Politics of Law and Stability in China*, Cheltenham, UK and Northampton, MA: Edward Elgar, 2014, 1–17; and Stanley B. Lubman, Concluding observations, in McConville and Pils (eds), *Comparative Perspectives on Criminal Justice in China*, 447–54.
3. Lubman, *Bird in a Cage*, 171.
4. Benjamin J. Liebman, Assessing China's legal reforms, *Columbia Journal of Asian Law* 23(1), 2009: 20.
5. Allan Manson, *The Law of Sentencing*, Toronto: Irwin Law, 2001.
6. Randall Peerenboom, *China's Long March toward Rule of Law*, Cambridge: Cambridge University Press, 2002, 91.
7. Chen Ruihua, Lun liangxing chengxu de dulixing (On the independent sentencing processes), *Zhongguo faxue* (China legal science), no. 1, 2009: 3; Zhu Jianhua, Liangxing de lilun yu shijian yanjiu (Studies of sentencing theories and practices), *Hebei faxue* (Hebei law science), no. 12, 2006: 19–20; and Wang Enhai, Lun liangxing jizhun de queding (On the establishment of sentencing criteria), *Faxue* (Legal science monthly), no. 11, 2006: 28–9.
8. Ibid.
9. Zhu Yuan, Xu Ting and the era of judicial discretion, *China Daily*, 10 May 2008, [http://www.chinadaily.com.cn/cndy/2008-05/10/content\\_6674712.htm](http://www.chinadaily.com.cn/cndy/2008-05/10/content_6674712.htm), accessed 3 May 2015. Zhu

- Jianhua also lists a number of similarly sentenced cases published in Chinese newspapers; see Zhu Jianhua, *Liangxing de lilun yu shijian yanjiu*, 19–20.
10. Chen, Lun *liangxing chengxu de dulixing*, 3; Zhu Jianhua, *Liangxing de lilun yu shijian yanjiu*, 19–20; and Wang, Lun *liangxing jizhunde queding*, 28–9.
  11. See Chen, Lun *liangxing chengxu de dulixing*, 3.
  12. For an introduction to the 1996 Chinese Criminal Law and Criminal Procedure Law, see Keith and Lin, *Law and Justice in China's New Marketplace*, 178–228.
  13. Ma Xiujuan, *Liangxing chengxu yanjiu* (Studies of sentencing procedures), Beijing: Law Press China, 2012, 4.
  14. *Ibid.*
  15. *Ibid.*
  16. For the SPC's role in China's legal reforms, see Ronald C. Keith, Zhiqiu Lin, and Shumei Hou, *China's Supreme Court*, London and New York: Routledge, 2013.
  17. Xie Shenghua, *Liangxing guifanhua gaige de yiyi, liangdian yu renshi bianwu* (The significance, highlights, and identifications of misperceptions concerning sentencing standardization reforms), *Renmin Fayuanbao* (People's Court daily), 18 September 2010, 1, [http://rmfyb.chinacourt.org/paper/html/2010-09/18/content\\_15768.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2010-09/18/content_15768.htm?div=-1), accessed 21 September 2016.
  18. *Ibid.*; and Chen, Lun *liangxing chengxu de dulixing*, 3.
  19. Zuigao Renmin Fayuan 'Guanyu changjian fanzui de liangxing zhidao yijian' (2014) (The Supreme People's Court 'Opinions on sentencing guidelines for frequently committed offences' (2014)), 14 December 2015, <http://www.66law.cn/laws/113111.aspx>, accessed 28 April 2015. Please note that the newly issued sentencing guidelines are substantively little different from the 2010 guidelines. But in the title of the document, the phrase 'for frequently committed crime' has been inserted to show that the guidelines have limited application. Also see Guanyu guifan liangxing chengxu ruogan wenti de yijian (shixing) (Opinions on several issues concerning standardization of sentencing procedures (trial implementation)), 2 October 2010, <http://china.findlaw.cn/bianhu/xingshifagui/sifajieshi/105255.html>, accessed 21 September 2016; and Chen, Lun *liangxing chengxu de dulixing*, 3.
  20. Hu Yunteng, Goujian woguo liangxing chengxu de jige zhengyi wenti (The controversies in establishing our country's sentencing procedures), 27 July 2008, [http://www.legaldaily.com.cn/fxy/content/2008-07/27/content\\_910162.htm](http://www.legaldaily.com.cn/fxy/content/2008-07/27/content_910162.htm), accessed 21 April 2016.
  21. A collegial panel, which tries most criminal cases in local basic courts, consists of a presiding judge and two people's assessors, or three judges if the offences are serious. However, in a less serious case, the trial is often presided over by a single judge only. In the cases where a collegial panel consists of a judge and two people's assessors, preliminary sentencing decisions are made primarily by the judge alone because the people's assessors are not legally trained judiciary.
  22. Chen, Lun *liangxing chengxu de dulixing*, 4.
  23. *Ibid.*, 3; Zhu Jianhua, *Liangxing de lilun yu shijian yanjiu*, 19–20.
  24. Chen, Lun *liangxing chengxu de dulixing*, 4; Stanley Lubman also observed that there is lack of differentiation between the Chinese judicial system and the rest of the governmental bureaucratic organizations; see Lubman, *Bird in a Cage*, 317.
  25. Chen, Lun *liangxing chengxu de dulixing*, 4.
  26. Xie Shenghua, *Liangxing guifanhua gaige de yiyi, liangdian yu renshi bianwu*.
  27. Ma, *Liangxing chengxu yanjiu*, 124.
  28. These are deprivation of political rights, confiscation of property, fines, surveillance by public security organizations and the public, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty.

29. Ma, *Liangxing chengxu yanjiu*, 124.
30. *Ibid.*
31. Hu, Goujian woguo liangxing chengxu de jige zhengyi wenti.
32. *Ibid.*
33. *Ibid.*
34. Xie Shenghua, *Liangxing guifanhua gaige de yiye, liangdian yu renshi bianwu*. Similar to the new sentencing procedure, the sentencing guidelines were issued in 2014 by the Supreme People's Court in the form of a judicial interpretation titled *Opinions Concerning Sentencing Guidelines for Frequently Committed Offences*.
35. *Liangxing chengxu de qida shiming* (The seven missions of sentencing procedures), 2 September 2008, [http://www.52sikao.com/sjhh\\_news\\_view.asp?d\\_id=5084&sort1=77&sort2=136](http://www.52sikao.com/sjhh_news_view.asp?d_id=5084&sort1=77&sort2=136), accessed 21 April 2016.
36. Chen, *Lun liangxing chengxu de dulixing*, 4 and 8.
37. Zhu Xiaoqing, *Lun liangxing jianyi* (On sentencing recommendations), *Zhongguo faxue* (China legal science), no. 3, 2010: 17.
38. Xiong Xuanguo (ed.), *Liangxing guifanhua banan zhinan* (Guides to sentencing standardization in processing cases), Beijing: Law Press China, 2011, 252–4; also see Articles 9, 10, and 13 of *Ganyu guifan liangxing chengxu ruogan wenti de yijian* (shixing).
39. Article 193, the only article that is concerned with the sentencing process in the Chinese Criminal Procedure Law, states that 'during the trial process, all the facts and evidence concerning criminal conviction and sentencing should be investigated and debated'.
40. Hu, Goujian woguo liangxing chengxu de jige zhengyi wenti.
41. *Ibid.*
42. Chen, *Lun liangxing chengxu de dulixing*, 15.
43. Articles 3, 4, and 14 of *Guanyu guifan liangxing chengxu ruogan wenti de yijian* (shixing).
44. Zhu Xiaoqing, *Lun liangxing jianyi*, 7–8.
45. Article 6 of *Zuigao Renmin Fayuan, Zuigao Renmin Jianchayuan, Gong'anbu, Guojia Anquanbu, Sifabu guanyu jiaqiang xietiao peihe jiji tuidong liangxing guifanhua gaige de tongzhi*' (Notice on strengthening the cooperation in actively promoting the reforms on sentencing standardization issued jointly by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of National Security, and Ministry of Justice), 24 August 2011, <http://www.chinalaw.gov.cn/article/fgkd/xfj/sfwj/201108/20110800347998.shtml>, accessed 21 September 2016.
46. Ke Gezhuang and Wei Rensi, *Liangxing jianyi de shijian kunjing yu jiejie tujing* (The practical difficulties regarding sentencing recommendations and their solutions), *Zhengzhi yu falü* (Political science and law), no. 9, 2009: 22.
47. Zhu Xiaoqing, *Lun liangxing jianyi*, 20.
48. *Ibid.*
49. Xiong (ed.), *Liangxing guifanhua banan zhinan*, 1; *Zuigao Renmin Fayuan 'Guanyu changjian fanzui de liangxing zhidao yijian'* (2014). The SPC's emphasis on the sentencing reform for maintaining social stability is another indication of the close connection between politics and the criminal process in China. For an insightful discussion of China's death sentence reforms and the politics of social stability, see Susan Trevaskes, *Death sentencing for stability and harmony*, in Trevaskes et al. (eds), *The Politics of Law and Stability in China*, 127–52.
50. *Zuigao Renmin Fayuan, 'Guanyu changjian fanzui de liangxing zhidao yijian'* (2014).
51. *Ibid.*, section 1.
52. John Pratt, *Penal Populism*, London and New York: Routledge, 2007.
53. Stanley Lubman also discussed the attitude of Chinese judicial authorities toward procedural versus substantive justice; see Lubman, *Bird in a Cage*, 271.



54. Børge Bakken, Capital punishment reform, public opinion, and penal elitism in the People's Republic of China, in Roger Hood and Surya Deva (eds) *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, Oxford: Oxford University Press, 2013, 187–204.
55. See Articles 10 and 57 of the 1979 Criminal Law and Articles 13 and 61 of the 1997 Criminal Law.
56. Nie Huiping, *Xingfa zhong shehui weihaixing lilun de yingyong yanjiu* (Studies in the applications of social harmfulness theory in criminal law), Beijing: Law Press China, 2013, 21.
57. Wang, Lun liangxing jizhun de queding, 28–9. For extensive discussions on the pros and cons of using social harmfulness as a sentencing criterion, see also Sun Guoxiang, *Shehui weihaixing de xingfa diwei chuyi* (Preliminary discussions on the role of social harmfulness in criminal law), *Jianghai xuekan* (Jianghai academic journal), no. 4, 2008: 120–6.
58. Lu Jianping, *Xingshi zhengce yu xingfa biange* (Criminal justice policies and criminal law reforms), Beijing: Chinese People's Security University Publishing House, 2011, 217.
59. Susan Trevaskes, The shifting sands of punishment in China in the era of 'harmonious society', *Law & Policy* 32(3), 2010: 345; Zhou Daoluan, Woguo xingfa xiuzheng de zhongda tupo (A significant breakthrough in the amendment of our country's criminal law), *Renmin Fayuanbao* (People's Court daily), 13 April 2011, 6, [http://rmfyb.chinacourt.org/paper/html/2011-04/13/content\\_25710.htm](http://rmfyb.chinacourt.org/paper/html/2011-04/13/content_25710.htm), accessed 14 May 2015.
60. Trevaskes, The shifting sands of punishment in China, 345; Keith and Lin, *New Crime in China*, 146–8.
61. This approach is similar to the one used by some appellate courts in Canada; see Manson, *The Law of Sentencing*, 56–82.
62. Zuigao Renmin Fayuan, 'Guanyu changjian fanzui de liangxing zhidao yijian' (2014), section 2.1(1).
63. Xiong (ed.), *Liangxing guifanhua banan zhinan*, 39.
64. Xu Ga, Lun liangxing jizhun (On baseline sentences), in Hu Yunteng (ed.) *Zhong Mei liangxing gaige* (Sentencing reforms in China and the United States), Beijing: China Legal System Publishing House, 2009: 157–77.
65. Zuigao Renmin Fayuan, Guanyu changjian fanzui de liangxing zhidao yijian (2014), section 4.
66. *Ibid.*, section 2.3.
67. *Ibid.*, section 3.
68. *Ibid.*, section 4.
69. *Ibid.*, section 5.2.
70. Xiong (ed.), *Liangxing guifanhua banan zhinan*, 37–47.
71. Zuigao Renmin Fayuan, Guanyu changjian fanzui de liangxing zhidao yijian (2014), section 2.3 (4).
72. Wu Fanmin et al., Liangxing guifanhua shidian gongzuo de diaocha yu sikao (Findings and reflections from sentencing standardization pilot projects), *Fazhi yanjiu* (Studies of the rule of law), no. 5, 2011: 104–7.
73. Li Shenglong, Chen Yuanping, and Shi Jinghai, Guifan liangxing ziyou cailiangquan de jiben fangshi (The basic methods of structuring judges' sentencing discretion), *Renmin sifa (yingyong)* (People's judiciary (application)), no. 15, 2011: 22.
74. Shi Jinghai, Liangxing guifanhua jiedu (Understanding sentencing standardization), *Xiandai faxue* (Modern law science), no. 3: 29–36.
75. Zuigao Renmin Fayuan, Guanyu changjian fanzui de liangxing zhidao yijian (2014), section 5.1.
76. Xie Pengcheng, Lun liangxing chengxu de zhangli (On the strength of the sentencing procedures), *Zhongguo faxue* (China legal science), no. 1, 2011: 48.

77. For a detailed discussion on the SPC's practice of using various types of judicial interpretations and their legal and political implications, see Ronald C. Keith and Zhiqiu Lin, Judicial interpretation of China's Supreme People's Court as 'secondary law' with special reference to criminal law, *China Information* 23(2), 2009: 223–55.
78. You Wei, Liangxing guifanhua bie hulüe le minzhu gongkai (Do not overlook democracy and openness in the process of standardizing the sentencing procedures), 22 December 2009, <http://news.sohu.com/20091222/n269127180.shtml>, accessed 21 April 2016.
79. Liangxing chengxu de qida shiming.
80. Zhu Jianhua, Liangxing de lilun yu shijian yanjiu, 25.
81. Wu et al., Liangxing guifanhua shidian gongzuo de diaocha yu sikao, 105.
82. Zhou Changjun, Liangxing zhili de moshi zhizheng (Debates on different approaches to sentencing reforms), *Zhongguo faxue* (Chinese legal science), no. 1, 2011: 66.
83. Gao Jinghong, Dai Changlin, and Huang Yingsheng, Lun woguo liangxing zhidu gaige de jiben silu (On basic ideas of reforming our country's sentencing system), *Renmin sifa (yingyong)* (People's judiciary (application)), no. 3, 2009: 5.
84. McConville, Comparative empirical co-ordinates and the dynamics of criminal justice; and Lubman, Concluding observations.
85. Trevaske et al., Stability and the law, in Trevaske et al. (eds), *The Politics of Law and Stability in China*, 2.
86. Another important sentencing-related system that has been established recently in Chinese criminal justice process is 'the system of using previous cases as guidance'. See Shen Deyong (ed.), *Zhongguo tese anli zhidao zhidu yanjiu* (Studies of the Chinese system of using previous cases as guidance), Beijing: People's Court Publishing House, 2009.
87. Stanley Lubman and others also discuss the effects of the close relationship between the CCP and the state and how the relationship has limited major legal reforms in China; see Lubman, Concluding observations, 447–8.

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