This is the accepted version of the chapter published in:
F Sapio, S Trevaskes, S Biddulph and E Nesossi (eds), *Justice: The China Experience*, Cambridge University Press (2017)

Chapter 14

Of ceremonial columns

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In China a *huabiao* is a column made of white marble carved with images of dragons and clouds erected at the gates of places of power – palaces and tombs. Two pairs of 500-years old *huabiao* columns grace the entrance and the inner gate to the Forbidden City, facing Tian'an Men Square. *Huabiao*s guard the sides of the spirit way of imperial tombs, or watch the entrance to the burial sites of marqueses, dukes and princes. More than existing for mere aesthetic appeal, their value is iconic: the *huabiao* pillar is a heavily stylized representation of a dagger-axe. The placement of a dagger-axe at the gates of palaces of power – be it the power of the living emperor, or the one of his ancestors – is a potent visual reminder of the power to take life, or allow life to be lived. Until the birth of the modern nation-state, such a prerogative was vested in the mystical body of emperors and kings. Then, it became an attribute of the leviathanic body of the state. The story of the *huabiao* highlights a number of important questions about justice explored in this volume; the symbols of justice, changes over time in these symbols and what they symbolise, and the question of agency- in whose hands lies the doing or delivery of justice, who controls the language of justice.

We know that symbols do not stay the same over time and that changes in their shape and meaning are contingent upon the cultural, political and historical context within which they are created, and used. The dagger-axe was originally a weapon planted in the ground, used both to mark the direction towards which armies marched and to signal military power. In imperial China, as well as all ancient civilizations, military power was not entirely distinct from what, today, we conceive of as the power to rule. The *huabiao* symbolized the power of the sovereign, a power which was, at once, civil and military. By the Han Dynasty (206 BC – 220 AD), the dagger-axe had become a wooden column first, and finally a marble pillar with two stylized wings (Ren 1996). Until then, people had attached their petitions, inscribed their opinions and grievances on two wooden boards that hung from the sides of the wooden *huabiao* column. This way, the *huabiao* began to be associated with a concept of justice. It became a means by which king and his officials surveyed and reacted to popular sentiment and grievances. The act of petitioning the king was inherently powerful as it meant appealing to a higher, supernatural force which could maintain cosmic equilibrium (Zito 1998). Voicing a call for justice consisted, as Eva Pils illustrates in her chapter, of an ethical and moral feat and amounting to nothing less than attempting to repair the natural order – *tikkun olam*. Those who lent their force to

repair the broken frame of the natural order, whether they voiced such a call or responded to it, then rose above narrower conceptions of good and evil. In so doing they partook of the power of the Emperor and their acts were therefore legitimate and could not be punished. Those who allied themselves to the Son of Heaven to maintain the balance between Heaven and Earth performed a meritorious act. The *huabiao* stood for the moral duty to pursue the higher value of justice, a duty shared between the Emperor and his subjects. It also warned the ruler and the ruled about their moral responsibilities and conveyed the idea that government officials could and should be held accountable.

By the time China had become unified under the Han emperors, however, the meaning and the function of the *huabiao* underwent a radical change. No longer seen as an act necessary to restore the lost cosmic balance, criticism came to be perceived as an act of rebellion. Once the wooden column had become a marble pillar, decorated with intricate carvings of clouds and the imperial dragon, the wooden tables were removed, and replaced by two stylized wings placed at the top of the column. Carving or pasting a petition on the pillar was no longer possible. Anyone who carved an inscription on the elaborate decorations of the *huabiao* would have defaced it. Stylistic changes in the *huabiao* reflected changes in how justice was perceived, and in the ways in which it could be acted upon. The columns were removed from a realm which was public, accessible to everyone and open to everyone's use, to be placed in a sacred space accessible only to the Emperor and his minister. The power of life and death once – to a limited extent – accessible to commoners, had become a prerogative of the Emperor and a harsh reminder and a warning to the ruled (Barmé 1999).

Today, the *huabiao* – as with the Temple of Heaven or Tian'an Men Square - has become one of the global logos for China. Critics have equated the *huabiao* with “the tears of China” (Barmé and Jaivin 1992), while others use the *huabiao* to market commodities ranging from cigarettes to guided tours of Tian'an Men Square. Stories about how emperor-sages Yao and Shun used the dagger-axe-turned-*huabiao* as a barometer of public opinion are narrated to celebrate China's cultural and historical heritage. The *huabiao*, however, maintains its earlier connection to ideas about justice and, in particular, to the idea of using a means to achieve an end: righting what has been wronged. From a state-centred perspective, the pursuit of such an end may be of broader political significance: redressing wrongs is one of the means through which political legitimacy – the cosmic order of the moderns – is maintained and enhanced.

In Delia Lin's chapter we see how in ancient times the power to rule stemmed from a ruler's intrinsic “moral virtue”, or *de* (德). The power to rule over humans was justified because the ruler embodied

this moral force, that allowed him to exist in perfect alignment with the entire cosmos, and to re-align the ruled to the cosmic order, should they have committed acts believed to introduce disharmony. As it appears from the substantive content of imperial codes, the perfect ruler had to deliver justice, sustain harmony and guarantee longlasting stability to society to prove his moral authority to rule/govern.

'Justice' has now been installed as one of Xi Jinping's Twelve Socialist Core Values (Renmin Ribao 2014; Xi 2014). It is perhaps not surprising that Xi Jinping has chosen justice as a core value since, as, Joshua Rosenzweig observed in his chapter, this traditional idea of justice as "a product of moral-political order embodied in the ruler" has endured into the 20th century. The idea of justice "as the product of a strong political authority in synchrony with the values and interests of society" was what legitimised the Party in the revolutionary era and beyond. The advent of the People's Republic of China did not bring about a revolution in the way of thinking about justice. Coherent with the historical and political context in which Mao and other revolutionary leaders were born, the idea that the ruler had an inherent moral authority to govern remained. At this point in time, the ruler's moral authority, as the basis of their political legitimacy, stemmed from the fact they had taken upon themselves the task to fight for the rest of society, and that their armed struggle had been successful.

In the post-Mao era both codified law and moral virtue have been explicitly associated with the delivery of justice and have become integral to the structures and discourses of governance in China. Law thus becomes an important site where official visions of justice are articulated as well as acting as an instrument of Party rule. Both Nesossi and Trevaskes point out that law has long been characterized as a tool of Party leadership, but the Fourth Plenum of 18th Party Congress has sharpened the idea of law as a tool to an even greater degree. The Resolution of the Fourth Plenum of the 18th Party Congress stated that 'Party leadership and socialist rule of law are identical.' Identical or not, the justice system in the PRC continues to serve as a mechanism for protecting the people's democratic dictatorship, with rule of law, stability and economic prosperity the pillars upon which the party-state's political legitimacy is based. It is no wonder that criminal and civil law are used instrumentally to maintain social stability and so to further the political power of the Party. As Margaret Woo has observed, a key function of civil law in China is 'to stabilise society rather than to clarify social norms, and to legitimise the government rather than to support challenges to the state.' And as Sarah Biddulph's chapter demonstrates, the law itself often does not express a coherent vision of justice, which whilst serving pragmatic ends of administration, at the same time erodes the party-state's claim to the moral high ground. Nevertheless, Party rhetoric continues to insist that the interests of the people and the party are identical, even as the social transformations of the last three

decades have driven pluralisation of interests and enfeebled the historical notion of the Chinese state as a collection of moral institutions capable of delivering justice.

The party-state seeks to dominate and jealously guards its own political logic about justice. It claims to be the key, if not sole, authority in determining what justice is and what justice is 'due' to the people. In doing so it denies the agency of individuals to make and pursue claims based on their own vision of justice. The authority to create its own narratives to justify the choices it makes in defining the scope and ways it exercises its role of 'protecting' society has been an important prerogative of the party. The party seeks both to set and limit discourse on justice and attaches certain conditions to people's access to justice. The chapters of this volume have illustrated the ways in which the party-state insists that it is owed duties and obligations from citizens and where citizens fail to fulfil these obligations, their rights are in turn prejudiced. According to this logic, the party-state demands the right to govern in a socially stable environment as its due and so can withhold rights of people when they fail to give the Party-state this due. Creating social disorder, disrupting the moral order, or failing to respect the authority of the Party-state justifies withholding the rights and the justice otherwise owed to individuals. The party-state in Xi Jinping's China today continues to dictate who is due what by developing notions of justice that help to shape and sustain particular political and legal values.

But we have also seen in this volume that, despite its overwhelming reach and power, the party-state does not control all discourses of justice. Challenges to this dominant discourse might be framed by reaching back into China's history for alternative moral values expressed in concepts such as *yuan* (冤). Calls for individual justice may also re-appropriate the party-state's own language of justice, fairness, equality and good faith (sincerity). Therefore, a theme developed in the chapters in this book is that the vocabulary of justice in China is much broader than that confined to Party-state slogans, it is used to articulate myriad moral intuitions which work through and against officially sanctioned concepts and boundaries.

In the Han dynasty, the act of defacing the *huabiao* pillar posed a direct and unavoidable challenge to the Son of Heaven. The *huabiao* pillar was a malleable structure – the materials with which it was made, its shape and its meaning have changed over time. As the *huabiao* still symbolically supports the palaces of power, the party-state's utilitarian conceptions of justice cast light on official views of the basic values and organisational principles of social organisation. In China today, understandings of justice are becoming increasingly pluralistic, as many of the chapters in this volume have shown. The existence of a plurality of views about what justice means or what justice ought to mean does

not, in and of itself, pose a challenge to the party-state's world-view. However, they could easily be seen as such in an environment where parameters for acceptable thought, speech and conduct are increasingly tightly patrolled. In China, voicing a call for justice remains an ethical and moral imperative for those in society who seek it. There are still many who are willing to frame and call for justice in their own terms, to their own peril.

Justice as spectacle and text

We return, finally, to the two main themes of this volume; justice as spectacle and justice as text. As we have discussed in the introduction to this volume, performance pervades the entire legal system, since it is through performance that justice is brought from the realm of legal concepts into everyday social experience. Performance also plays a political function. State-sponsored judicial, prosecutorial and policing performances are the pillars that sustain the political-legal culture of the PRC. They not only act as the cement that binds together law and politics, they literally *enact* and thus, make and remake the meaning of justice. When justice is experienced through state action, the political intentions that undergird these practices are cemented. Therefore juridical actors make claims that a certain act – a decision in the courtroom, an arrest at a police station, a civil mediation process at local government office and or an interrogation at a detention facility –are constitutive of a certain understanding of socialist justice which exists to advance the cause of socialism, to guard the people's democratic dictatorship and to proserve stability in order to promote economic modernisation. Rights lawyers, by insisting on a different interpretation of what the law requires of official performances; in court, in the detention centre and beyond, challenge this dominant construction of justice, as explained in Joshua Rosenzweig's chapter. It is in this sense that we can claim that there are myriad ways in which justice is a spectacle.

Each chapter in this volume in different ways reflects the idea that text and language, be it the language of the law or the language of politics, and performance are crucial to how justice is understood and practiced. While some chapters have focused on state-organised justice practices, others have concentrated on justice-related response of civil society to these practices. For the party-state, the language through which the idea of justice is articulated and conveyed, comprises a vocablary that is intended to produce a certain way of thinking amongst the citizenry about state-society relations. As Biddulph's chapter explores, nowhere is the language of justice more apparent, even where it is contradictory and ambiguous, than in the text of the law itself. More often than not, the vocabulary of justice comes wrapped in the language of politics as a way of framing current political intentions in traditional socialist language. Ideological slogans such as Hu Jintao's

‘Harmonious Society’ and Xi Jinping’s ‘Ruling the Nation According to the Law’ convey political intentions related to the idea of justice: as giving to state or individual what is ‘due’ and as an expression of its power to set the agenda for what is deemed just in society. Justice functionaries are not merely tangentially complicit in the party’s political ambitions but active in fullfilling them. As Xi Jinping unapologetically stated in 2014, functionaries in the justice system are duty-bound to ‘unify’ their thinking, that is to align their thinking with the Party’s ideologies, and to use that thinking to guide their justice practice to improve the political capacity of their work. [1]

Even though the party-state exercises quite pervasive power to define the meaning and ends of justice, the chapters in this book show that this power is not monolithic, nor is it absolute. Civil society–centred practices share with the state-centred ones two main assumptions about how justice is communicated and performed through legal rhetoric and process. The first is that justice is performative in nature. The second is that the language in which justice is communicated is important because it frames certain moral values that more often than not feature what are articulated as traditional values. Concepts such as *yuan* (冤) frame the response of individuals or groups of individuals to state-sanctioned decisions that they perceive to impede their right to obtain what is due to them (either in terms of material goods or human dignity). Therefore, as we have observed throughout the book, the vocabulary of justice in China is much broader than that confined to party-state slogans, and broader than the text of the law. The use of traditional discourse by disaffected individuals in society such as *yuan* discursively frame moral claims that individuals have a moral duty to follow their quest for justice.

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[1] “Use the spirit of the important speech of General Secretary Xi Jinping to unify ideology, guide practice, raise the professional capability of political-legal cadres and the overall level of political-legal work”, (*Yong Xijinping zongshuji zhongyao jianghua jingshen tongyi sixiang zhidao shijian tigao zhengfa lingdao ganbu lüzhi nengli he zhengfa gongzuo zhengti shuiping*), Legal Daily (*Fazhi Ribao*), 23 March 2014, http://www.legaldaily.com.cn/index_article/content/2014-04/23/content_5471583.htm?node=6148

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Title:
Of Ceremonial Columns

Date:
2017

Citation:
Sapio, F., Trevaskes, S., Biddulph, S. & Nesossi, E. (2017). Of Ceremonial Columns. Sapio, F (Ed.). Trevaskes, S (Ed.). Biddulph, S (Ed.). Nesossi, E (Ed.). Justice: The China Experience, Justice: The China Experience, (1), pp.379-386. Cambridge University Press.

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