



Edited by
Susan Trevaskes • Elisa Nesossi
Flora Sapio • Sarah Biddulph

THE POLITICS OF LAW AND STABILITY IN CHINA

Susan Trevaskes

THE POLITICS OF



The Politics of Law and Stability in China

Edited by

Susan Trevaskes

Griffith University, Australia

Elisa Nesossi

Australian National University, Australia

Flora Sapio

The Chinese University of Hong Kong

Sarah Biddulph

University of Melbourne, Australia

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Contributors

Sarah Biddulph is a Professor at The University of Melbourne Law School, specializing in researching and teaching Chinese law. Her academic career builds on extensive experience of Chinese-related legal practice obtained whilst working as a lawyer in Australia and in China. Professor Biddulph's research focuses on the Chinese legal system with an emphasis on legal policy, law making and enforcement as they affect the administration of justice in China. Her particular areas of research are contemporary Chinese administrative law, criminal procedure, labour, comparative law and the law regulating social and economic rights. She is the author of *Legal Reform and Administrative Detention Powers in China* (Cambridge University Press 2007).

Ding Peng is a researcher and programme coordinator of the Wuhan University Public Interest and Development Law Institute (PIDLI). His research areas include human rights, access to justice and legal empowerment. He is the co-author of several papers on legal aid in the annual *Blue Book of China's Human Rights* and other publications on multi-disciplinary human rights research.

Xin He is a Professor at the School of Law, City University of Hong Kong. He has published widely in the leading journals in the fields of law and society, and the Chinese legal system. His recent articles are 'Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics among Wage Claimants in China' (with Lungang Wang and Yang Su 2013), 'Pragmatic Discourse and Gender Inequality in China' (with Kwai Ng 2013), 'Black Hole of Responsibility: The Role of Adjudication Committee in a Chinese Court' (2012), all in *Law & Society Review*, and 'Do the Haves Come out Ahead in Shanghai Courts' (with Yang Su 2013), in *Journal of Empirical Legal Studies*. His previous Visiting Professorships include those at New York University School of Law, University of Illinois College of Law, and Southwestern University of Finance and Economics, China.

Fu Hualing is a Professor of Law in the Faculty of Law of the University of Hong Kong. He graduated from the Southwestern University of

Research Council fellowship, she is currently examining serious drug crime and the death penalty in China.

Benjamin van Rooij is the John S. and Marilyn Long Professor of US-China Business and Law and academic director of the John S. and Marilyn Long US-China Institute for Business and Law. By affiliation he is Professor of Chinese Law and Regulation at the Faculty of Law at Amsterdam University and director of the Netherlands China Law Centre. Also he is honorary professor at Wuhan University School of Law and long-term Visiting Professor at Yunnan University School of Law. He obtained his PhD with honours in 2006 in Leiden, with his dissertation 'Regulating Land and Pollution in China: Lawmaking, Compliance and Enforcement, Theory and Cases'. His research focuses on processes of lawmaking and implementation of law, with a particular focus on compliance and enforcement. Areas of research include land management and zoning, pollution regulation, labour law, tax collection, and food safety.

Zhang Wanhong is an Associate Professor at the School of Law in Wuhan University, where he is also the Director of Wuhan University Public Interest and Development Law Institute (PIDLI). His research areas include human rights, public interest law, access to justice and civil society. He is the founder of the Access to Justice Project in Rural China (2006). Professor Zhang has recently been awarded an LLM from Columbia University Law School. In 2009 he was Visiting Researcher at the Danish Centre for Human Rights and in 2005 he was the Edwards Fellow at Columbia University School of Law, New York. In the summer of that year, he visited and lectured at the Norwegian Centre for Human Rights in Oslo, Norway, and at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund, Sweden. He is the author and translator of a number of books, and has published articles in both international and Chinese publications. Zhang was one of the main drafters of China's first National Human Rights Action Plan (2009–10).

Preface*

A functioning system of law whose independence from the state is upheld and respected by both the state and citizens is widely recognized as intrinsic to a strong and stable nation. Law and stability are seen to be not simply coexistent but interdependent; stability is an outcome of a system of law working effectively in a relatively stable society. In contemporary China, however, this law–stability nexus is complicated by Communist Party politics and the political priorities of state development. As we will see throughout this book, in the era of Harmonious Society and Stability Maintenance, Party-state actions have given China's legal institutions an activist role in the pursuit of national stability, a role that stretches the institutions' legal actors into responsibilities that entangle their interests in legal and political outcomes.

This book is about judicial and governmental activism around the issue of managing social instability in China today. The studies in this volume examine the relationship between law and the political imperatives of state development and observe how the stability imperative shapes this interaction. The imposed activist disposition has enabled the Party-state to legitimize important changes in the practices and policies of courts, governments and security organs on the basis of a political narrative about the imperative of social stability. The Party-state in China has deployed this political narrative, expressed particularly through Harmonious Society and Stability Maintenance discourse, to reframe and reformulate justice and security practices to accommodate its own place leading the country through social upheaval that accompanies rapid economic growth and inspires political disaffection among citizens.

We will find in the chapters of this volume that at the local government level, Party and government involvement in achieving the stability imperative through adjudication and dispute resolution makes judicial fairness difficult to attain for many citizens who use the law to protest against land, labour and environmental decisions made by judicial and

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governmental authorities. This is because these authorities also often hold a vested financial interest in supporting the cause of local enterprises over the rights of local residents or transient workers. This is evident in cases of land, labour and environmental disputes discussed in this volume.

The legal measures to achieve stability make a life for law in China that is still at the firm hand of Party, politicians and national policy, and so have created a very potent politics of law and stability in the first decade of the 21st century. In the absence of structural reform that would improve government oversight at the local level, law and judicial activism have been deployed as mechanisms to enforce a political morality in China today that is premised on high-speed economic growth as the basis for continuity of the current political arrangements of power. This has been achieved by enhancing the 'combat power' of criminal trials, civil and criminal mediation, parapolicing operations and re-education through labour, which have been used as stop-gap mechanisms for containing social unrest.

The Party-state has articulated social conflicts as the result of 'contradictions among the people'. Yet rather than tackling social contradictions head on through structural reform, authorities have sought to counter areas of dispute and dissent by mounting Stability Maintenance operations to quell unrest and dispute. While this has proven to be effective in the short term in dealing with instability-inducing protests and disputes, it will have long-term repercussions for the prospects of a well-functioning and credible legal system. Rather than cultivating institutional arrangements that would sustain long-term stability by promoting the legitimacy of well-functioning and robust legal systems, authorities have kept law relating to social conflict and disputes in an elastic state, ready and able to respond to political sways.

As many of the studies in this volume make apparent, the political obsession with stability in the first decade of the 21st century has intensified tensions between the agendas of social order and social justice, bringing about a wider societal antipathy towards the prospects for genuine systemic reform. As is made apparent in the chapters that follow, this leads back to the wider issue of law's long-term prospects for delivering the kind of legitimacy that is essential for the future of Party rule.

Susan Trevaskes, Elisa Nesossi, Flora Sapio and Sarah Biddulph

1. Stability and the law

**Susan Trevaskes, Elisa Nesossi, Flora Sapio
and Sarah Biddulph**

INTRODUCTION

Social stability is a top national concern of Chinese authorities. Law is essential to achieving and maintaining stability, in the understanding of these authorities and in practice. This volume therefore explores the place of law in judicial and government activism around managing social instability in China today. In official circles, social stability is understood as the political and social security that accompanies orderly, conflict-free social relations. Instability is manifest in what the Communist Party-state deems unharmonious relations within communities and between individuals and the state, brought about by crime, dispute and protest. Disparity in income distribution,¹ the underdeveloped welfare system and weak governance oversight mechanisms in local areas are the root causes of festering social unrest that has swept the nation for at least the last 15 years. Well over 100,000 collective protests annually make stability a major political preoccupation. How local courts and governments marshal the forces of law to deter and punish crime, resolve disputes and manage protest has become a central socio-political concern for China's governing authorities. Social stability has become a defining socio-political goal because the Party-state sees social disorder as a threat to future prospects for economic growth, hence to its own future. The studies in this volume observe interactions between law and the stability imperative and how politics figures in these interactions.

These studies reach broadly across matters of law in China, including litigation and mediation practices, substantive law, procedural law reform, anti-corruption initiatives, detention centre operations, parapolicing law and administrative law. Running through these studies are two

¹ China's gini co-efficient was 0.474 in 2012.

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