Stability and the Law in China
An international workshop

Australian Centre on China in the World
The Australian National University

8 – 9 November 2012

The two-day workshop explores the relationship between law and stability in contemporary China. It focuses on the impact of stability rationales on legal reforms, handling legal disputes and criminal justice operations. Areas that will be examined include criminal law and criminal procedure law reform, labour law, policing and surveillance, and anti-corruption drives. The workshop will also explore theoretical issues relating to how ‘stability’ and ‘social management’ is rationalized in the political-legal sphere and how these rationalizations inform politico-legal practices. The central thread running through all the workshop papers will be the question of how the imperative of social stability has undergirded key party-state responses to crime, legal disputes and social unrest over the last decade in China.

Schedule

Day One: 8 November 2012 (Thursday)
Sparke Helmore Law Theatre 1 (Bldg 6a), Fellows Road, The Australian National University

8.45am – 9am  Registration

9.00 – 9.15am  Welcoming remarks

9.15 – 11.15am  Session One
Managing Populations

The invisible hand of government
Speaker: Flora Sapiro (The Chinese University of Hong Kong)

The rationality of surveillance in China
Speaker: Borge Bakken (The University of Hong Kong)

The Peoples Armed Police Law and its impact on control of the police
Speaker: Murray Scot Tanner (CNA)

Commentator: Richard Rigby (CIW, ANU)
11.15 – 11.40am  Morning Tea

11.40 – 1.00pm  Session Two

Creating Legal Frameworks
Mediating state and society: social stability and administrative suits in the PRC
*Speaker: Michael Palmer (Shantou University)*

Exemplifying justice: stability-related cases from SPC and SPP
*Speaker: Sue Trevaskes (Griffith University; CIW, ANU)*

*Commentator: Fu Hualing (The University of Hong Kong)*

1.00 – 2.00pm  Lunch

2.00 – 2.30pm  Publication discussion

2.30 – 4.30pm  Session Three

Managing Criminal Justice and Procedures
Criminal procedure, law reform and stability
*Speaker: Guo Zhiyuan (China University of Politics and Law, Peking)*

The sentencing defence in criminal proceedings
*Speaker: Chen Ruihua (Peking University)*

Detention, stability and ‘social management innovation’
*Speaker: Elisa Nesossi (CIW, ANU)*

*Commentator: Sarah Biddulph (The University of Melbourne)*

6.30pm  Dinner at La Bicicletta, Diamant Hotel (by invitation only)
1/15 Edinburgh Avenue, Acton, ACT 2601
Tel: (02) 6262 8683

**Day Two: 9 November 2012 (Friday)**
Sparke Helmore Law Theatre 2 (Bldg 6a), Fellows Road, The Australian National University

9.00 – 10.20am  Session One

Managing Corruption and Organised Crime
Anti-corruption initiatives and stability
*Speaker: Fu Hualing (The University of Hong Kong)*
The suppression of black societies in China  
*Speaker: Roderic Broadhurst (Regulatory Institutions Network, ANU)*  
*Commentator: Flora Sapio (The Chinese University of Hong Kong)*

**10.20 – 10.40pm**  
**Morning Tea**

**10.40 – 1.00pm**  
**Session Two**

**Managing Disputes**

“If We Award this Case for You, All the Chinese People Would Come to Us for Justice!” Land Taking Cases in the Shadow of Social Stability  
*Speaker: He Xin (City University of Hong Kong)*

Legal action in China’s countryside and stability  
*Speaker: Zhang Wanhong (Wuhan University)*

The relationship between stability and rights in the regulation of labour protests in China  
*Speaker: Sarah Biddulph (The University of Melbourne)*  
*Commentator: Luigi Tomba (CIW; ANU)*

**1.00 – 1.45pm**  
**Lunch**

**Free afternoon/ Canberra sightseeing**

**6:30pm**  
**Dinner at Spicy Ginger (by invitation only)**  
2/25 Childers Street. Tel. (02) 6162 1708
Speakers Biographical Details

BORGE BAKKEN
Borge Bakken researches and teaches in the Department of Sociology at Hong Kong University. His main research interests are social problems, crime and punishment in China. In particular, his work looks at punishment in cultural and comparative contexts, deviance and social control, and the history of crime and punishment. He has written books on PRC educational reforms and one on migration in China and he is the author of *The Exemplary Society. Human Improvement, Social Control, and the Dangers of Modernity in China* (2000). He has co-edited a number of books including *Crime, Punishment and Policing in China* (2005) and has published many journal articles in the area of policing and punishment.

SARAH BIDDULPH
Sarah Biddulph is Associate Professor and Reader at The University of Melbourne Law School, specialising in the research and teaching Chinese law. Her academic career builds on extensive experience of Chinese related legal practice obtained whilst working as a lawyer in both Australia and China. Professor Biddulph 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 the book *Legal Reform and Administrative Detention Powers in China*, published by Cambridge University Press in 2007.

RODERIC BROADHURST
Roderic Broadhurst is Chief Investigator Australian Research Council Centre of Excellence in Policing and Security, College of Asia and the Pacific, Australian National University. He has extensive experience in criminal justice, as a practitioner and researcher. His research has included studies of lethal violence, victimization and cyber crime, and has involved longitudinal research applying risk analysis methodologies to problems of recidivism, persistent offending, sex offending and dangerous offending. His current research focuses on crime and modernization in Cambodia and China, monitoring serious crime in cyberspace and organized crime. He currently leads an ARC linkage grant with the Australian Federal Police on criminal services, and leads ARC Discovery grants on cybercrime as well as violence in Cambodia. He is an Associate Fellow of the Australian Institute of Criminology, and was formerly Associate Professor, the University of Hong Kong, and Head of the School of Justice Queensland University of Technology. He was also the foundation editor of the *Asian Journal of Criminology* (2005).

CHEN RUIHUA
Chen Ruihua is a Professor of Law at Peking University Law School. His current research focuses on criminal justice and, in particular, comparative criminal procedures, the law of
evidence, procedural jurisprudence and juvenile justice. He has published numerous books and articles on main Chinese academic journals. In 2010, Professor Chen was specially-appointed Professor for the “Chanjiang Scholar Award Scheme” and in 2004, he was selected as one of the ‘Top Ten Excellent Young Jurists’ in China. He is a serving member of the Advisory Consultant Committee of China’s Supreme People’s Procuratorate and of the Lawyer Notarization Advisory Consultant Committee of the Department of Justice. He serves also as legal consultant of the Lawyers Rights Committee of the All China Lawyers Association.

FU HUALING
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 Politics and Law in Chongqing and received post-graduate degrees in Canada. His research interest includes human rights and legal institutions in China and has published widely in those areas. His most recent publication is Liu Xiaobo, Charter 08 and the Limits of China’s Political Reform (Hong Kong University Press, 2012, co-edited with Jean Philippe Beja and Eva Pils).

GUO ZHIYUAN
Guo Zhiyuan is an Associate Professor at the China University of Political Science and Law (CUPL) in Beijing, where she specializes in Criminal Procedure, Evidence, International Human Rights Law and Law and Society Studies. She is also a pioneer in empirical research in China. She is Deputy Director of the Center for Criminal Law and Justice, CUPL and a Non-resident Senior Research Fellow at US-Asia Law Institute, New York University School of Law. Guo was appointed as Guanghua Visiting Scholar at NYU School of Law from 2008-2009 and as Sohmen Visiting Scholar at Faculty of Law, Hong Kong University in 2011. She has published several books in Chinese and also published extensively on academic journals in both Chinese and English languages.

HE XIN
Xin HE is Associate Professor at School of Law, City University of Hong Kong. He studies Chinese legal systems from a perspective of law and society.

ELISA NESOSSEI
Elisa Nesossi is a Post-doctoral Fellow at the Australian Centre on China in the World (CIW). She graduated from the Department of Oriental Languages and Civilizations in Venice (Italy) and obtained her post-graduate qualifications from the School of Oriental and African Studies (SOAS), University of London. Her research interests include Chinese law and institutions, comparative criminal justice and human rights law. She has extensive experience working for NGOs developing projects on criminal justice and human rights within China. She is the author of the book China’s Pre-Trial Justice. Criminal Justice, human rights and legal reforms in contemporary China.
MICHAEL PALMER
Michael Palmer is Dean and Professor of Law at the Shantou University Law School in Shantou, China. He is a former Chair of the Centre of Chinese Studies (CCS) and Chair of the Centre of East Asian Law (CEAL) at the School of Oriental and African Studies, and a former chair of the SOAS Law School. He is now Emeritus Professor of Law at the University of London, a Research Professor in both the CCS and the Law School at SOAS and a Senior Associate Research Fellow of the Institute of Advanced Legal Studies (School of Advanced Studies), at the University of London. Within China, he is also visiting Professor of Law at Renmin Daxue (People’s University, Beijing) Xinan Zhengfa Daxue (Southwest Institute of Political Science and Law, Chongqing), and Xiamen University Law School. He is joint editor of the Journal of Comparative Law, and a barrister practising at Serle Court Chambers in Lincoln’s Inn, London and McNair Chambers, Doha. He has in the past served as special advisor to the Attorney-General of Hong Kong, and he is currently a special advisor to the Shanghai Commercial Mediation Centre and to the Shenzhen Court of International Arbitration. He is the author of numerous publications, including (with Simon Roberts) Dispute Processes: ADR and the Primary Forms of Decision Making, published by Cambridge University Press in 2005, and translated into Chinese and published by Peking University Press in 2011.

FLORA SAPIO
Flora Sapio is a Research Assistant Professor at the Chinese University of Hong Kong. Her main research interests include Chinese criminal justice, administrative detention, extra-legal violence and coercion. Her book Sovereign Power and the Law in China was published in 2011 by Brill. She has recently been a Visiting Researcher at the Centre for Rights and Justice at the Chinese University of Hong Kong, Research Fellow at the Centre for Advanced Studies on Contemporary China (Turin, Italy), Visiting Scholar at the New York University School of Law, and an Assistant Professor at the Julius-Maximilians Universität, Würzburg, Germany. She is among the founding members of the European China Law Studies Association.

MURRAY SCOT TANNER
Murray Scot Tanner is a China security analyst at the CNA Corporation. Before his appointment at CNA, he was a researcher at RAND Corporation. Prior to this time, Tanner served for 13 years as Professor of Political Science at Western Michigan University. He has written extensively on Chinese criminal justice and politics, in particular on policing and internal security, political instability and unrest, the dilemmas of building the rule of law, human rights, lawmaking, leadership politics, and China-Taiwan relations.

SUE TREVASKES
Sue Trevaskes is an Australian Research Council QEII Research Fellow in the Griffith Asia Institute at Griffith University. She is also currently an Associate Investigator in the ARC Centre of Excellence in Policing and Security (CEPS) and an Adjunct Director of the Centre for China in the World (CIW) at ANU. Her main research interests are in the areas of criminal justice, punishment and courts in China. Her recent books include Courts and Criminal Justice
in China (2007), Policing Serious Crime in China (2010) and The Death Penalty in Contemporary China (2012). These studies examine the impact of severe and swift punishment on China's criminal justice system and prospects for reform. She has also published a number of papers on anti-crime campaigns, private security, public security, drug crime, public shaming events, and death penalty reform. As part of her Australian Research Council fellowship, she is currently examining serious drug crime and the death penalty in China.

ZHANG WANHONG

Zhang Wanhong is an Associate Professor at the School of Law of Wuhan University and 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 also the founder of the Access to Justice Project in Rural China in 2006. Professor Zhang has been recently awarded an LLM from Columbia University Law School. In 2009, he was Visiting Researcher at the Danish Centre for Human Rights and in 2005 Edwards Fellow at Columbia University School of Law, New York, USA. In the summer of the same year, he visited and lectured at the Norwegian Centre for Human Rights, Oslo, Norway, and 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 (2009-2010).
**Paper Abstracts (in order of presentation)**

**Thursday, 8 November 2012**

**Flora Sapio, The Invisible Hand of Government**
Social management innovation (*shehuì guānli chuàngxīn*) involves an adaptation of neo-liberal governmental mechanisms to Chinese society. Remedying social dislocations and preserving stability are the most immediate reasons behind the state’s transformation into an entity that steers society without ruling it. Public management, sociology, political science and legal studies are the channels through which governance mechanisms have been chosen and adapted. The rationale of social management innovation and its birth do not explain why neo-liberal technologies of government could take roots in China.

The paper holds that the PRC shares two core ideas about politics with systems seemingly posited at opposite ends of the ideological spectrum. This common conceptual ground has allowed the use of neo-liberal technologies of government. The debate on social management innovation has however focused on an entirely different set of questions, overlooking the existence of these commonalities and the risks they posed.

The result has been an only partial innovation of governmental mechanisms. Over the medium term, this partial innovation may not necessarily yield the desired results in terms of social stability.

**Borge Bakken, The Rationality of Surveillance in China**
This paper will discuss the rapidly growing surveillance industry and the CCTV surveillance camera craze observed in China over the last years. Guangzhou is now the surveillance capital of the world with an even denser network of surveillance cameras than London – the city that has up to now held this dubious "record". I will aim at explaining what drives this surveillance craze, and the answer lies as much in Adam Smith as it lies in George Orwell or Mao Zedong. There are vast capital gains in the industry, and we might talk about a Chinese surveillance industry driven by harsh capitalist market rationality. Such rationality lies at the core of the surveillance craze and the slogans of "social stability" and "social management". We might also see the surveillance craze driven by an equally harsh administrative rationality based on cadre incentive systems and strict performance criteria. In combination we see an explosion of what I will term the Chinese “surveillance state”.

**Murray Scot Tanner, The Peoples Armed Police Law and its Impact on Control of the Police**
The 2009 People's Armed Police Law was designed to legalize organizational control over China’s paramilitary police forces, which previously had been governed primarily by military
and police regulations. But the law's text, which was extensively debated within the National People’s Congress Standing Committee, ultimately raised as many questions about control of paramilitary forces as it answered. This paper examines the prior organization of control over the PAP, the debates over the 2009 Law and its final text, and subsequent practices regarding mobilization and activation of these forces which play an increasingly important role in China's internal security.

Michael Palmer, Mediating State and Society: Social Stability and Administrative Suits in the PRC

In post-Mao China's legal development, one of the most serious difficulties remains the need for legal controls over the administrative powers of the state. The traditional authority of the state has been reinforced by coercive socialist dictatorship and the perceived need to protect rapid economic growth by ensuring a stable socio-political environment, so that China retains a very strong executive, albeit one still at the call of the Chinese Communist Party (CCP).

At the constitutional level, a greater emphasis on the need for a regular legal framework for the exercise of authority has encouraged the introduction of important new values and rights but the impact of such progress is muted by the fact that constitutional rights are not justiciable. Moreover, the system of administrative litigation (xingzheng susong) that was experimented with in the 1980s and then introduced in the form of a national code in 1990 as means of which the citizen (and other actors in civil society) might more effectively challenge state (mis)conduct has been transformed by judicial practice favouring mediation. The process of administrative litigation is seen by many observers within and outside China as a critically important 'access to administrative justice' avenue which could also promote lawful conduct and good governance by the Chinese executive. The transformation of the meaning of administrative litigation – and the relationship between this transformation and official policies favouring socio-political stability and 'harmonious society’ – is both a very significant and an ongoing story.

Accordingly, this paper will explore the questions: what is the nature and significance of the role of mediation in administrative litigation in the PRC, and what are the most salient current developments in this unfolding tale.

Sue Trevaskes, Exemplifying Best Practice in Death Sentencing: stability-related cases from SPC and SPP

This paper examines how China's Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP) articulate their role in maintaining stability through "exemplar" cases (dianxing anli) and "guiding cases" (zhidao anli). The cases discussed in this paper relate to the handling of "lenient" death sentencing since 2007. By examining the medium and message of exemplar cases and guiding cases, we can see how the socio-political role of punishment is articulated from top down from the SPP and SPC, to prosecutors and judges in local jurisdictions. These cases are a key means that the SPC and SPP employ to advertise correct practice in responding to imperative of stability maintenance and harmonious
society-building. They are also an example of how judges and prosecutors are encouraged to reconcile positive “legal outcomes” and positive “social outcomes” of homicide cases.

Guo Zhiyuan, Criminal Procedure, Law Reform and Stability
Being the mini-constitution or the constitution in action, the Criminal Procedure Law is nearly as important as the constitution for each jurisdiction. China has enacted her first Criminal Procedure Law in 1979, and greatly revised it in 1996. After 16 years of implementation, China conducted the second overhaul to the Criminal Procedure Law in 2012, which has caught great attention, interest and concern from home and abroad. In Part I the author will introduce the background and process of law reforms on criminal procedure in recent years. In Part II the author will list and comment on some key changes in the new CPL. And in Part III, the author will explore the underlying reasons for these reforms, pointing out that stability is the most important goal in the criminal procedure law reform of this round. In conclusion, the author will anticipate the challenges China will confront in implementing the new CPL.

Elisa Nesossi, Detention, stability and “social management innovation”
In contemporary China, criminal justice is one of the instruments used to preserve social stability – a tool to a precise end – as well as one of the social fields in which experiments in ‘social management innovation’ are carried out.

This paper examines ‘innovations’ in the Chinese criminal justice system to assess how the Party-State is able to sustain a neoliberal rhetoric on rights and justice without weakening the emphasis on its leading and paternalistic role in society. It looks at the way in which typically Western concepts like transparency and accountability have been coopted within the Chinese lego-political discourse on ‘social management’ and ‘criminal justice socialization’ for the sake of stability and legitimacy maintenance. Specifically, the paper takes the enhanced supervisory role of the procuratorate within places of detention as an example of such process.

Friday, 9 November 2012

Fu Hualing, Anti-Corruption Initiatives and Stability
Since acceding to the United Nations Convention against Corruption (UNCAC) in 2003, China has implemented a series of anti-corruption initiatives to prevent and reduce corruption and to punish corrupt officials. This article introduces, in broad strokes, those initiatives and assessing their success and limits in containing the spread of corruption and regaining public trust. This article argues that, for the time being, the implementation of the UNCAC-based international best practices in China has contributed to its political stability and authoritarian
resilience. But in the long term, however, the one party state may not be able to offer a resolution to the prevalent and deeply entrenched corruption.

**Roderic Broadhurst, The Suppression of Black Societies**
Recent events have shifted the way the Chinese state responds to organized crime and corruption. The re-definition of organized crime, improved judicial oversight and the reassessment of ‘strike-hard’ style police campaigns are key reforms. This paper discusses the recent changes in law, practice and oversight in the context of a brief overview of criminal groups in China and the Chongqing policing model. Revisions to the criminal law are described and the likely outcomes are assessed in the context of the key struggle to contain corruption and organized crime.

**He Xin, “If We Award this Case for You, All the Chinese People Would Come to Us for Justice!” Land Taking Cases in the Shadow of Social Stability**
Land taking is probably the most important source of social conflicts in contemporary China. The chapter explores how the concern of social stability has factored in the decision-making process of land taking cases in the Chinese court. It argues that the courts are largely held hostage by the social stability concern. Faced with the pressures brought with land taking cases, the procedures are changed to allow for cautiousness; the outcomes are skewed to avoid further exacerbation of the situation of social stability, regardless the legal merit of the cases. Although this approach may resolve some cases, in the long run it weakens the institutional capacity of the courts and results in more petitions and resistances. Through illustrating how this extra-legal element has trumped legal considerations, the chapter questions the sustainability of such an approach. It also compels us to reconsider the relationship between law and politics, and state and society in China.

**Zhang Wanhong, Legal Action in China’s Countryside and Stability**
Law in China almost penetrates into every aspect of social life with its comprehensiveness and huge volume. Having gone through the efforts of legal popularization and “sending law to the countryside (song fa xiaxiang)”, the rural area in China, which was traditionally beyond the reach of law, has been overspread under the vast net of justice. Villagers generally are not unknown to law and they take legal actions to protect their rights and interests when necessary. However, whether legal actions are taken or to what extent villagers use law or lawyers’ service vary in different types of disputes. Forums of legal action that available to villagers are very limited in cases such as pollution, land-taking and forced eviction. Failed in seeking remedies through formal justice, villagers are forced to take “extrajudicial” collective actions — the so-called “mass incidents” that are considered as threats to the social stability. This paper presents how lack of legal remedies relate to petition (shang fang) and further violent actions in the water pollution incident happened in a county of Hubei Province, in an attempt to illustrate the awkwardness of “less stability resulting from stronger stabilization.
efforts” occurring in the Chinese government’s practice of stability maintenance. The paper will point out that the foundations of stability are effective judicial remedy and the protection and realization of rights.

Sarah Biddulph, The relationship between stability and rights in the regulation of labour protests in China

The problem of increasingly severe labour unrest since the 1990s has posed a dilemma for the Chinese Party/state. The dilemma lies in the fact that the increase in labour disputes, especially large, public protests, not only signals systemic problems with China’s industrial relations system, but also raises fears about the potential for this unrest to lead to broader social and political instability. This paper examines the multi-pronged approach adopted to deal with the problem of industrial unrest. One approach has been to adopt both short and longer term measures intended to rectify the worst abuses, with ‘rights protection’ a means of promoting social stability. However, when confronted with a perceived crisis, we see deployment of another mode, the management of stability, which involves mobilisation of Party, state and other agencies to implement a range of administrative measures to address the crisis. Finally, where a protest has become large and violent, a punitive approach is taken to suppress it and punish its leaders. In this situation, rights are largely absent.