

treaty-making. And the chapter by James Claxton, Luke Nottage, and Nobumichi Teramura on Japan's international dispute-resolution services (mentioned above) explores the extent to which theoretical accounts of Japanese disputing behaviour explain and predict Japan's approach to international arbitration and mediation. These chapters offer a lively departure from the more doctrinal approaches in many of the other chapters.

*New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution* is both a wide-ranging and in-depth analysis and critique of the role of international law and legal institutions in investment and trade in the Asian century. It is sure to encourage future Asia-focused international and comparative work in international commercial dispute resolution.

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## Reference

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## China's criminal justice institutions

*Construction of Guilt: An Empirical Account of Routine Chinese Injustice* By Yu MOU Oxford, Hart Publishing, 2020. 280 pp. Hardcover, \$79.00  
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This is a fascinating, powerfully argued, and meticulously written book that draws on a wealth of field research to provide a vivid portrait and critical analysis of the “routine injustice” (p. 11) of the criminal process in the “iron triangle” of the Chinese criminal justice system (police, prosecutors, and courts) (p. 19). Although conducting empirical research on criminal justice in China is particularly challenging due to the difficulty in accessing the data and the sensitivity of them, Professor Yu Mou has conducted thorough, in-depth empirical fieldwork utilizing diverse approaches on the three core phases of the criminal justice process: police investigation, review by the prosecution, and the trial and resolution of cases. Specifically, Mou's fieldwork involves direct observation of prosecutorial hearings, formal and informal interviews with various legal actors—including police officers, prosecutors, defence attorneys, judges, victims, and witnesses—in ten geographic regions, and content analysis of hundreds of pieces of evidence produced by police agencies. Based on such rich and valuable qualitative data, Mou paints a vivid, tangible picture of China's criminal conviction process.

The book is started by depicting several high-profile cases involving people who were wrongfully convicted in China and then turns the attention to a far less sensational and visible issue—the seemingly “trivial” everyday practice of criminal justice. Mou argues that, despite scant public or academic attention, the miscarriages of justice in the criminal process on a daily basis can actually reveal how the malpractice has become normalized, and invisibly and profoundly ingrained into the system. The rhetoric of institutions and rules in China, Mou critically states, is divorced from fact, as the “official version of truth” is often a deliberately made product of “institutional interests, practices, and values” (p. 18). Such deliberate practices are presented routinely in the police department, the prosecutor's office, and the courts.

Mou introduces and analyzes suspects' social composition in the second chapter to provide readers with context. The composition of suspects in China, on the one hand, indicates the degree of social deprivation. Poverty, lack of social welfare, lack of civic organizations or informal networks, widespread discrimination between regions and industries, and low levels of trust within society lead to a criminal population concentrated in the poor, uneducated lower classes. On the other hand, the make-up of suspects is also a product of conscious policing. Individuals with case records are subject to stricter police enforcement standards and become predetermined targets for police investigations, resembling the "permanently suspect" and "police property."

In Chapter Three, Mou examines the construction of police cases and the credibility of official statements in investigative dossiers, noting that the actual role of the police in China contradicts their legal rhetorical positioning. From Mou's observations, rather than conducting impartial investigations to discover the truth, as the legal rhetoric prescribes, the role of the police is more about pre-constructing the official truth in a criminal case and improving a suspect's chances of conviction in criminal proceedings. The predetermined truth in a case needs the recognition and confirmation of ideal investigative dossiers, which requires the police to extend their autonomy throughout the interrogation process and to construct or even fabricate the desired version of the testimony and evidence. This includes intervening in the construction of the suspect's confession; selectively assessing and choosing evidence, including witness testimony and the information provided at the crime scene; as well as restricting the role of defence lawyers. As Mou precisely states: "the seeds of injustice are sown from the inception of the investigation and thrive as the following phases unfold" (p. 83).

Chapter Four discusses the role of the procuratorate in reviewing police cases. By reviewing the supervisory function of the Chinese procuratorate and its Soviet prototype, Mou demonstrates that the modern Chinese procuratorate is constructed on a paradoxical vision—being called upon to not only prosecute and supervise the administrative and law-enforcement agencies of the state, but also endowed with the mission of guaranteeing the stability and concentration of the state power. This "dual subordination" results in the weak position of the procuratorate when supervising the political branches, such as the police. Additionally, the obligation of the procuratorate to maintain the legality and fairness of the judicial proceeding is subject to the criteria of a bureaucratic performance-appraisal system, which aligns prosecutors and the police on the shared objective of obtaining high conviction rates. Keeping this objective in mind, the prosecutors' oversight of cases against the police is often limited to monitoring merely the superficial format of investigative dossiers, rather than the legality and integrity of their content. In several instances, the prosecutor even covers up police misconduct or collaborates in the creation of evidence where there is an absence of evidence.

The subsequent chapter explores the role of prosecutors as decision-makers, delving into prosecutorial discretion and the circumstances under which prosecutors decide not to prosecute. The prosecutors' decisions not to prosecute, Mou notes, are largely limited compared to their expansive powers to prosecute. Non-prosecution is governed by several implicit rules, which may take into account factors that deviate from legal norms. Since courts deal with many cases with insufficient evidence, prosecutors normally conduct trials according to the principle of so-called "leniency for pleading guilty and accepting punishment." Therefore, inducing and persuading the suspect to plead guilty becomes critical to the case's accelerated resolution. In addition, defence counsels are often subjected to certain institutional restrictions at the pre-trial stage, as they are usually excluded from the prosecution's interrogations, which hinders their understanding of the case and thus makes it difficult for the defence to construct arguments and gather evidence.

Lastly, Mou analyzes the role of the case dossier in a criminal trial and the relationship between judges and prosecutors. The criminal case dossier is central both pre-trial and to

the trial. Mou begins by recalling the “hollow” period of Chinese criminal trials in the late 1970s, when judges predetermined the outcomes solely by consulting case dossiers. It was not until the 1990s that court trials gradually became more substantive, but judges could still read the case files in advance, and the close connection between pre-trial investigations and court trials still existed. In addition, the relationship between judges and prosecutors is nuanced. In legal discourse, judges are supposed to have a supervisory relationship over prosecutors, with judges providing critical feedback on prosecutors’ case dossiers. However, the courts and prosecutors are allied in their shared pursuit of “crime control” and in their common bureaucratic interests; judges are uncritical and highly dependent on prosecutors’ case-file choices. Compared to case dossiers’ centrality, witnesses, who are expected to provide critical evidence at trial, are often absent. Mou points out that witnesses often refuse to appear in court for fear of intimidation, a lack of defence, or, in some instances, because the courts deliberately exclude witnesses in the interests of the procuratorate. Finally, Mou points out that criminal trials are heavily influenced by managerialism, “simplified procedures,” and “expedited procedures.” She notes that “these fast-tracked procedures accelerate the progression of criminal cases towards the final conviction” (p. 217).

The book examines in detail how the “iron triangle” system, which is dominated by three core institutions, controls and predetermines convictions while prioritizing their own interests and relationships with each other. The consequence is further to exacerbate the deep-seated ills in China’s criminal justice system. These ills are difficult to cure because of the close relationship between the iron triangle, their mutual purpose of social control, and the central role of the party-state will in the judicial process. Remarkably, the claims of the book are all supported by a great number of detailed excerpts of case dossiers, interviews, and ethnographic notes, all of which are presented in a rigorous, rather than sensational, manner. The qualitative data provided in the book are priceless for their richness and profundity, as well as for the degree of detail they depict about the inner workings of the criminal justice system. Equally brilliant is the author’s argumentation; the precise use of data and the masterful analysis make the conclusion particularly punchy. The empirical findings of the book set an outstanding example for scholars conducting legal ethnographic research. This is a book that cannot be missed by criminal justice scholars, law and public policy-makers, and scholars interested in China’s justice system.

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