

## China's Gang of Four Trial

### *The Law v. The Laws of History*

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The most famous trial in Chinese history took place in Beijing in the winter of 1980–1981, four years after the death of Chairman Mao. Ten recently deposed leaders stood before a special tribunal, indicted on charges of orchestrating a counterrevolutionary conspiracy to seize control of the Chinese Communist Party (CCP); its state apparatus, the People's Republic of China (PRC); and its military force, the People's Liberation Army (PLA). The ten defendants had carried out the radical politics of Chairman Mao's Great Proletarian Cultural Revolution (CR) (1966–1976), and now stood accused of hijacking the movement as a vehicle to persecute rivals and usurp power.

Among the accused were five military officers implicated in an alleged coup d'état and assassination attempt against Chairman Mao in 1971. The leader of the plot was Lin Biao, then the supreme commander of China's military and Mao's designated successor. (Lin, along with his wife and grown son, died in a plane crash allegedly fleeing the country after the plot was hastily aborted.) Also on trial was Mao's former political secretary, Chen Boda, who had been purged in a leadership struggle between radical factions in 1970. Most notorious of all, however, was the "Gang of Four," a clique of radical cultural revolutionaries that fell from power shortly after Mao's death in 1976. It was this small but extraordinary clique – led by Mao's then wife (now widow) Jiang Qing – that gave the trial of the Lin Biao and Jiang Qing Counterrevolutionary Groups its colloquial misnomer: the Gang of Four trial. Absent from the dock of course was the late Chairman Mao himself, whose legacy soon would be dealt with in a separate but related CCP resolution on the history of the party.

The basic facts about the Gang of Four trial were well publicized in China at the time, and are available to Western readers in the Chinese-produced propaganda work *A Great Trial in Chinese History*.<sup>1</sup> The lengthy indictment,

<sup>1</sup> *A Great Trial in Chinese History* (Beijing: New World Press; distributed by New York: Pergamon Press, 1981); English reprint edition (Honolulu: University Press of the Pacific, 2003). Versions were also published in French, German, and Spanish.

prepared by a special prosecutor, listed forty-eight charges in four categories: (1) the systematic framing and purging of party, state, and military leaders up to the very highest levels; (2) the persecution of more than 700,000 lower-level party cadres and regular citizens, resulting in the unlawful death of nearly 35,000 people; (3) the unconsummated assassination and military coup (in which the Gang of Four proper was not involved); and (4) the Gang of Four's failed plan to stage an armed rebellion in Shanghai during the succession crisis that followed Mao's death. The case was tried by a special court, established under the auspices of the Supreme People's Court.

The court worked six days a week for six weeks, from late November to late December, examining the ten accused, hearing testimony from forty-nine witnesses, and weighing 651 items of evidence.<sup>2</sup> The defendants were generally compliant, with the notable exception of Mao's widow Jiang Qing, who defended herself vigorously. "To rebel is justified!" she announced in open court, arguing that her actions had taken place in a heroic revolutionary context beyond the reach of legal codes. She also provided the trial's most memorable moments, summoning the ghost of Mao in her defense: "I was Mao's dog. What he said to bite, I bit!" she proclaimed, and "To vilify me is to vilify Mao!" The verdict, issued in late January following four weeks of deliberations, found all ten defendants guilty. The court imposed sentences ranging from sixteen years' imprisonment to death, though the two death sentences (including one for Jiang Qing) were immediately suspended and later commuted to life imprisonment.

From beginning to end, daily broadcast and print coverage brought the legal drama to a mass audience, providing a curious Chinese public with the most detailed picture yet glimpsed of the destructive political intrigues of the Cultural Revolution.<sup>3</sup> Outside the courtroom, this spectacular legal event became the focal point for a larger cultural conversation about history, justice, and the fate of Chinese socialism.

The present chapter aims to analyze China's Gang of Four trial in light of some issues raised in the introduction to this volume.<sup>4</sup> The chapter will first

<sup>2</sup> "Zuigao renmin fayuan tebie fating guanyu shenpan Lin Biao, Jiang Qing fangeming jituan an zhufan de xiaojie" [Brief summary of the trial of the main culprits in the Lin Biao and Jiang Qing counterrevolutionary groups by the Special Court under the Supreme People's Court], February 9, 1981, in *Zhonghua renmin gongheguo zuigao renmin fayuan tebie fating shenpan Lin Biao, Jiang Qing fangeming jituan an zhufan jishi* [Records of the Special Court of the Supreme People's Court of the PRC trial of the main culprits in the Lin Biao and Jiang Qing counterrevolutionary groups] [henceforth abbreviated *TBFTJS*] (Beijing: Falü chubanshe, 1982), pp. 480–492.

<sup>3</sup> English translations of select Chinese media coverage can be found in the Foreign Broadcast Information Service (Daily Report) for China (FBIS-CHI).

<sup>4</sup> Jens Meierhenrich and Devin O. Pendas, "The Justice of My Cause Is Clear, But There's Politics to Fear": Political Trials in Theory and History," in this volume. For a broader discussion of this complicated event, of the official discourse that interpreted the trial to the public, and of alternate discourses of justice that emerged contemporaneously in the cultural realm, please see Alexander

introduce the historical background to China's Cultural Revolution and its aftermath. Knowledge of this background is essential to understanding the political significance of the Gang of Four trial. Following these preliminaries, the chapter will classify the Gang of Four trial within the proposed typology of didactic, destructive, and decisive political trials. The Gang of Four trial was primarily a didactic trial, and its main lesson was that the unaccountable political violence of the Cultural Revolution was to be replaced by socialist law and order. Although the Gang of Four trial has usually been dismissed as a political "show" trial, the content of its didactic show makes it more useful to think of the trial as an example of transitional justice in a uniquely Chinese and socialist context.

The chapter will then turn to the interrelation of power, procedure, and performance in the Gang of Four trial. The concept of socialist legality emerging in post-Mao China unabashedly presented legal procedure as an instrument of state power. Next we will introduce the element of performance, showing how the post-Mao political transition was staged and enacted (and mediated to the public) on the very first day of the trial. In the last part of this chapter we will examine the connection between the legal verdict and the historical resolution on Mao, and the resulting claim about the connection between the law and the so-called laws of history.

#### THE CULTURAL REVOLUTION: AN INTRODUCTION

In October 1949 the Chinese Communist Party (CCP) founded the People's Republic of China (PRC). The end of a long civil war marked the victorious conclusion of the socialist revolution as a political revolution. In other ways, it was only the beginning of the struggle. CCP Chairman Mao Zedong accepted Lenin's prediction that the socialist era, the era of transition to communism, would be "a period of unusually violent class struggles in their sharpest possible forms."<sup>5</sup> This meant that under socialism the revolutionary classes must exercise strict dictatorship over the enemies of the people. Thus, on the eve of founding the socialist state, Mao cautioned his comrades against complacency in victory:

The imperialists and domestic reactionaries will certainly not take their defeat lying down and they will struggle to the last ditch. After there is peace and order throughout the country, they will still engage in sabotage and create disturbances in various ways

C. Cook, *The Cultural Revolution on Trial: Mao and the Gang of Four* (New York: Cambridge University Press, 2016).

<sup>5</sup> Vladimir Ilyich Lenin, "The State and Revolution," in Henry M. Christman, ed., *Essential Works of Lenin: "What Is to Be Done?" and Other Writings* (New York: Dover, 1987), p. 295.

and will try every day and every minute to stage a comeback. This is inevitable, beyond all doubt, and under no circumstances must we relax our vigilance.<sup>6</sup>

The revolution, if not secured, could be reversed. In the decades that followed, Mao took an increasingly pessimistic view of China's prospects for completing the revolution in his lifetime. Instead Mao came to view revolution as a continuous struggle to be fought again and again over a long period of time.<sup>7</sup>

In the years leading up to the Cultural Revolution, Mao perceived the specters of "revisionism" and "capitalist restoration" materializing within the socialist camp, both domestically and overseas. He pointed with alarm to de-Stalinization in the Soviet Union and the retrenchment of agricultural collectivization after the Great Leap Forward in China.<sup>8</sup> Mao suspected that the old guard of Chinese revolutionaries was degenerating into a new privileged class of bureaucrats, and he warned of this danger in a high-level party document issued in January 1965: "[A]fter the socialist transformation of ownership has been basically completed, the class enemies of socialism will use the means of 'peaceful evolution' to seek the restoration of capitalism. This sort of class struggle inevitably will be reflected in the Party."<sup>9</sup> The urgent task, he concluded, was to "grasp the struggle between the two roads of socialism and capitalism" and identify "those in positions of authority in the Party taking the capitalist road."<sup>10</sup> This task – the political and cultural struggle against the restoration of capitalism from within the communist party – was the basic program of the Cultural Revolution.

The Cultural Revolution spanned the decade from 1966 to 1976.<sup>11</sup> The first couple of years was the most active period, including phases of mass mobilization, the purge of existing leadership structures, the creation of new structures, armed factional clashes, and demobilization. This active period was followed by a new round of conflicts among the radicals over the spoils of victory. Through these struggles the Gang of Four precipitated the downfall of fellow Special Court defendants Chen Boda and the Lin Biao group, and

<sup>6</sup> Mao Zedong, "The Chinese People Have Stood Up!" (Opening address at the First Plenary Session of the Chinese People's Political Consultative Conference), September 21, 1949, available at [www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5\\_01.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_01.htm).

<sup>7</sup> Nick Knight, *Rethinking Mao: Explorations in Mao Zedong's Thought* (New York: Lexington Books, 2007), pp. 249–269.

<sup>8</sup> Roderick MacFarquhar, *Origins of the Chinese Cultural Revolution*, 3 vols. (New York: Columbia University Press for the Royal Institute of International Affairs, the East Asian Institute of Columbia University, and the Research Institute on Communist Affairs of Columbia University, 1974–1983).

<sup>9</sup> CCP Central Committee, "Nongcun shehuizhuyi jiaoyu yundong zhong muqian de yixie wenti" [Some current problems in the rural socialist education movement], January 14, 1965, available at [http://news.xinhuanet.com/ziliao/2005-02/02/content\\_2539348.htm](http://news.xinhuanet.com/ziliao/2005-02/02/content_2539348.htm).

<sup>10</sup> CCP Central Committee, "Nongcun shehuizhuyi jiaoyu yundong zhong muqian de yixie wenti."

<sup>11</sup> For a fuller history of the Cultural Revolution, see Roderick MacFarquhar and Michael Schoenhals, *Mao's Last Revolution* (Cambridge: Belknap Press of Harvard University Press, 2008).

themselves emerged as the standard bearers of the radical line in Chinese politics.

A party circular dated May 16, 1966 initiated the Cultural Revolution. The circular took aim at the Group of Five, an informal panel appointed by the Central Committee in 1964 to oversee the revolution in culture. The group of establishment politicians and intellectuals, headed by Beijing mayor Peng Zhen, was exposed an “anti-Party clique” and summarily dissolved. It was replaced by a more powerful and far more radical body, a Central Cultural Revolution Group (CCRG) to be convened by Premier Zhou Enlai and reporting directly to the Politburo’s Standing Committee. Mao’s former political secretary Chen Boda headed the new group, whose roster counted Mao’s wife Jiang Qing, radical Shanghai politician Zhang Chunqiao, and chief of the national intelligence apparatus Kang Sheng, among others. A June 1 editorial in *People’s Daily* called on the Chinese people to “sweep away all monsters.”<sup>12</sup> From there, the situation escalated rapidly.

Though Mao had his critics among the top leadership, he enjoyed great prestige among the Chinese people, owing in part to a cult of personality fostered by PLA leader Lin Biao.<sup>13</sup> Thus Mao was able to rally a coalition of revolutionary forces from outside the party-state apparatus to assail the revolution’s enemies, real or perceived. He hailed the younger generation as “revolutionary successors” and over the coming months throngs of students were encouraged to challenge authority at higher and higher levels. Numerous officials were dragged from their homes and paraded before jeering crowds. Eventually the two biggest “capitalist roaders” would be revealed as State Council President Liu Shaoqi and Party Vice-Chairman Deng Xiaoping. In January 1967, a clash between labor organizations brought down the Shanghai municipal government. Mao praised this “January Storm” as a seizure of power by the masses, and urged the military to support similar seizures of power elsewhere across the country.

Violent skirmishes became endemic, and it was not always clear to the military brass which among the many competing rebel groups deserved their backing. Local armed conflicts grew in intensity, sometimes even pitting military units against each other. By the summer of 1967, China teetered on the brink of civil war. It was time to consolidate gains, declare victory, and bring the active phase of the Cultural Revolution to a close. The consolidation would take another year and a half of struggle and bloodshed. Zhou initiated an open-ended campaign to root out troublemakers and “purify the class ranks.” The campaign would drag on for years, implicating millions of people. By the end of the summer of 1968, the new Revolutionary Committees were in place in

<sup>12</sup> Chen Boda, “Hengsao yiqie niugui sheshen” [Sweep away all ox-ghosts and snake-spirits], *Renmin Ribao* [People’s Daily] [hereafter abbreviated as *RMRB*], June 1, 1966.

<sup>13</sup> Daniel Leese, *Mao Cult: Rhetoric and Ritual in China’s Cultural Revolution* (New York: Cambridge University Press, 2013).

every province of China, and normalcy had been restored under de facto martial law.<sup>14</sup> Millions of radical students and intellectuals were demobilized – exiled to the countryside, not knowing when they might return. The purge of party leadership was confirmed in October 1968, when a skeletal party plenum formally expelled Liu Shaoqi, dismissed Deng Xiaoping from office, and designated Lin Biao as Mao's future successor.

In his summary report at the opening of the Ninth Central Committee in April 1969, Lin Biao declared that although “a great victory has been won in the Great Proletarian Cultural Revolution,” it was “too soon to speak of final victory.” He urged that the study and dissemination of the basic lessons of the Great Proletarian Cultural Revolution, of the history of the struggle between two lines [capitalism and socialism], and of Chairman Mao's theory of continuing the revolution under the dictatorship of the proletariat were lessons that would have to be relearned and repeated “every year, every month, and every day.”<sup>15</sup>

Almost as soon as victory had been claimed, the radical coalition began to turn against itself. Chen Boda, the head of the Central Cultural Revolution Group, was the first to fall. The presidency had remained vacant since the purge of Liu Shaoqi. Chen Boda and Lin Biao insisted that Mao should resume the office, which he had held before, while Mao proposed that the post be eliminated. In any case, Mao did not want the largely ceremonial role, which he considered tiresome. Mao resented the hectoring. Lin Biao also wanted to add to the party constitution a phrase from his Foreword to *Quotations from Chairman Mao*, in which he asserted that Mao had developed Marxism-Leninism “with genius, creatively, and comprehensively.”<sup>16</sup> Mao countered that genius was a bourgeois concept, and Chen Boda was dismissed as a “phoney Marxist.”<sup>17</sup>

It was Lin Biao who had put up Chen Boda to pester Mao, and now Mao grew distant from his erstwhile “closest comrade-in-arms.” This was a fatal mistake for Lin, who had lost the Chairman's trust and confidence. The split between Lin Biao and Mao Zedong set in motion the mysterious events of September 1971, in which Lin died in a plane crash after discovery of an aborted assassination plot against Mao. After his death, Lin Biao was exposed as one half of the “Lin and Chen [Boda] Anti-Party Clique” and later became the central target of the Gang of Four's stultifying campaign to “Criticize Lin and Confucius.”<sup>18</sup> In the final years of the Cultural Revolution, the Gang of Four – Jiang Qing, Zhang Chunqiao, Yao Wenyuan, and Wang Hongwen –

<sup>14</sup> MacFarquhar and Schoenhals, *Mao's Last Revolution*, pp. 245–246.

<sup>15</sup> Lin Biao, “Report to the Ninth National Congress of the Communist Party of China,” April 1, 1969, available at [www.marxists.org/reference/archive/lin-biao/1969/04/01.htm](http://www.marxists.org/reference/archive/lin-biao/1969/04/01.htm).

<sup>16</sup> Lin Biao, “Foreword to the Second Edition of Quotations of Chairman Mao Tse-tung,” December 16, 1966, available at [www.marxists.org/reference/archive/lin-biao/1966/12/16.htm](http://www.marxists.org/reference/archive/lin-biao/1966/12/16.htm).

<sup>17</sup> Quoted in MacFarquhar and Schoenhals, *Mao's Last Revolution*, p. 356.

<sup>18</sup> “Circular and Materials of the CCP CC on Organizing the Distribution and Discussion of *The Struggle to Smash the Lin-Chen Anti-Party Clique's Counterrevolutionary Coup* (Materials, Part 1),” December 11, 1971 [Zhongfa #77 (1971)]; Tien-wei Wu, *Lin Biao and*

held firm control of the radical wing of the party, and Wang Hongwen was put forward as a candidate to succeed Mao.

Though Mao became increasingly frail and isolated in his old age, he continued to maintain among the top leadership a delicate balance of power that he could tip to meet his purposes. Thus the Gang of Four was held in check by other factions: by other senior cadres who had benefited from the turnover in leadership in the late 1960s, by supporters of the elder statesman Zhou Enlai, by entrenched interests in strategic economic sectors like the petroleum industry, and even by periodically rehabilitated moderates such as Deng Xiaoping.

A few months before his death, a frail and ailing Chairman Mao reflected back on his life and counted two great accomplishments. His first great accomplishment, he said, had been to beat back the Japanese invaders and defeat Chiang Kai-shek's Nationalist regime in the subsequent civil war. The second great accomplishment had been to launch the Cultural Revolution. Mao had initiated this second (cultural) revolution in order to safeguard the first, but he had to concede that its greatness was not widely recognized: "Not many people support this thing, and more than a few oppose it. The matter is not yet resolved. It is a legacy to be handed down to the next generation – if not in peace, then in turmoil."<sup>19</sup> Thus Mao went to his deathbed fearing a "reversal of correct verdicts" and an end to continuous revolution. His fear proved prescient.

When Mao died, power initially passed to the capable but colorless Hua Guofeng, a doctrinaire Maoist who represented the senior beneficiaries of the Cultural Revolution. One of Hua's first actions, just weeks after Mao's death, was to "smash" the Gang of Four. The radicals were placed under house arrest and subjected to criticism in a series of political campaigns. Hua Guofeng did not criticize the Cultural Revolution, however. That would be left to the regime of Deng Xiaoping, who outmaneuvered Hua to take control of the party in late 1978. Deng Xiaoping had a reputation as a pragmatist, as well as the résumé of a Long March veteran, deep connections in the military, and the support of other senior leaders who had survived the purges of the past decade. Now the party declared the class struggle over and turned to the business of "socialist construction" – the development of productive forces and the social accumulation of material wealth.

Confronting the legacy of the Cultural Revolution, the new regime undertook a comprehensive "reversal of false, unjust, and incorrect verdicts." Whereas Mao had believed such a reversal would be a betrayal of the socialist

*the Gang of Four: Contra-Confucianism in Historical and Intellectual Perspective* (Carbondale: Southern Illinois University Press, 1983).

<sup>19</sup> This anecdote is oft repeated but not well documented. On attribution of this quote, see Jiang Yihua, "Perspective 1: On Mao Zedong," in Timothy Cheek, ed., *A Critical Introduction to Mao* (New York: Cambridge University Press, 2010), p. 342; and Frederick Teiwes and Warren Sun, *The End of the Maoist Era: Chinese Politics During the Twilight of the Cultural Revolution, 1972–1976* (London: Routledge, 2007), p. 595.



project, the post-Mao reformers claimed the reversal to be a redemption of it. At the center of the reversal of verdicts was the courtroom trial that brought a legal verdict against the most notorious leaders of the Cultural Revolution – and set the stage for a final, historical verdict on Mao.

The Special Court faced enormous challenges. The trial was expected to model a new political culture, to triage open wounds and mend a tattered social fabric, to assign meaning to dimly understood historical events, to determine personal liability for mass harm, and to usher in a new era of sober rationality. The political challenges alone were formidable. It was easy enough to shield Mao from a posthumous legal reckoning, since the late Chairman could not be called to testify in court about the events that he had set in motion. But it was impossible to separate the Cultural Revolution from Mao, or Mao from the larger history of Chinese socialism. (A subversive joke from the time of the trial referred to the Gang of Four with four fingers held up and a wiggling thumb outstretched.) The floodgates of violence had been opened in the name of “continuing the revolution” and the resulting ruin left the legitimacy of Chinese socialism badly damaged. It was imperative now for Chinese socialism to offer justice.

Inevitably, the trial that ensued was inadequate to meet all of these challenges. Nevertheless, the court’s orderly legal proceedings posed a stark contrast to the rough, summary justice handed out by unruly mobs during the Cultural Revolution. As such, the trial announced a new political culture and a new way of dealing with the sharpest contradictions in society.

#### THE GANG OF FOUR TRIAL AS TRANSITIONAL JUSTICE

The Gang of Four trial was both the most important legal case and the most memorable cultural event of the post-Mao transition. Nevertheless, our view of the trial so far has been narrowly limited to the show trial interpretation. In China, politics made it all but impossible to express any view divergent from the official interpretation of the trial’s meaning. More surprising perhaps is the scant attention paid to the trial in Western scholarship. Despite its symbolic significance for the fate of Chinese socialism, and for the actual lives of millions of Chinese, the Gang of Four trial has been mostly overlooked.<sup>20</sup> In the absence of scholarly work on the trial in both China and the West, the images crafted by popular media accounts have framed our perception of the

<sup>20</sup> The main scholarly works on the trial appeared shortly after the event. These include the essays in James C. Hsiung, ed., *Symposium: The Trial of the “Gang of Four” and its Implication in China*, Occasional Papers/Reprints Series in Contemporary Asian Studies 40 (Baltimore: University of Maryland, 1981); Ross Terrill, *Madame Mao: The White-Boned Demon*, Revised and expanded edition (Stanford: Stanford University Press, 1999), pp. 13–19, 374–394; David Bonavia, *Verdict in Peking: The Trial of the Gang of Four* (London: Burnett, 1984). More recently, several Chinese participants in the trial have published personal, retrospective accounts.



trial. Now, more than three decades later, it is time to re-examine our assumptions.

Western media coverage of the trial was generally good, both in quality and quantity, but the reports were also tinged with condescension. This postscript to the trial from the pages of *Newsweek* is typical:

To no one's surprise Jiang Qing . . . and the other three were convicted. After all, the Chinese are still running a dictatorship. But the trial was a signal that the legal system is important, a reminder that perhaps in China the law can evolve, guaranteeing a modicum of liberty for its citizens. It's not Jeffersonian democracy, but for the people who live there it's no small accomplishment.<sup>21</sup>

Seeing a socialist court press former socialist leaders on charges of counterrevolution recalled for many the notorious Moscow trials of the 1930s and other such kangaroo courts. Without a second thought, critics in the Western media wrote off the trial as a crude Stalinist farce adapted to the Chinese stage – a show trial. This interpretation was and is entirely reasonable. The Gang of Four trial was a purge of disgraced political leaders, a legal spectacle staged by an authoritarian state with a well-deserved reputation for grand political theater. The selective prosecution of politically palatable defendants, the retroactive application of laws, the numerous procedural irregularities, the widespread assumption of guilt, the limited opportunities for defense, the strongly pedagogical tone – all of these elements rightly contributed to the impression that the Gang of Four trial used the barest of legal trappings to conceal a raw demonstration of political power. Hindsight further confirms the suspicion of contemporary observers that the trial was far less important legally than it was politically. The trial failed to establish a robust and lasting precedent for socialist rule of law, as proponents claimed it would, and criminal prosecution continues to be used in the PRC today as an instrument to suppress political opposition.

Nevertheless, the standard interpretation of the Gang of Four trial as a show trial, correct as far as it goes, is also severely limited. The pejorative term “show trial” deems whatever the trial purported to show as unworthy of serious consideration. Calling the trial “just a show” implies that it was not a *real* historical event but merely a staged pseudo-event, a performance “staged or managed (or co-opted) by an existing configuration of power or authority, rather than spontaneously generating any new such configuration.”<sup>22</sup> But the event was no less real for being staged. If we are to learn anything of historical value from a history of this trial, then we need to take the “show” seriously.<sup>23</sup>

<sup>21</sup> ARIC Press, “China Lays Down the Law,” *Newsweek*, September 7, 1981, p. 47.

<sup>22</sup> Scott Newton, “Post-war to New World Order and Post-socialist Transition: 1989 as Pseudo-Event,” in Fleur Johns, Richard Joyce, and Sundhya Pahuja, eds., *Events: The Force of International Law* (London: Routledge, 2011), pp. 106–107.

<sup>23</sup> This is also true of the original Soviet show trials. See Elizabeth A. Wood, *Performing Justice: Agitation Trials in Early Soviet Russia* (Ithaca: Cornell University Press, 2005), pp. 193–207.

Unlike the worst of the Soviet show trials, the Gang of Four trial was not “just a show” in the sense of a mere fiction spun by the state. Although the continued inaccessibility of archival sources prevents a full and independent assessment of the case, our knowledge so far confirms the initial impression of David Bonavia, a Western journalist who followed the proceedings closely: The trial was “[not] even remotely a fair one,” he concedes, but still the show seemed to be “only to some extent stage-managed” and it was “rooted in fact, even if tendentiously presented.”<sup>24</sup> The Gang of Four trial was a show trial to be sure, but we must take this fact as the impetus for further inquiry and not as the final judgment. To press forward, we need to find a more capacious interpretive framework – one that allows us to understand the greater significance of the event in its cultural and historical contexts. That framework is transitional justice.

Transitional justice “focuse[s] on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future.”<sup>25</sup> It refers to both a field of activity – that is, to a range of political and cultural practices – and to a field of scholarly inquiry. As a field of scholarly inquiry, transitional justice is relatively new.<sup>26</sup> The term first gained currency in the early 1990s, as governments and scholars inquired into the process of de-communization in Eastern Europe, often in direct comparison with the collapse of authoritarian regimes in Latin America over the previous decade. It entered common usage in the 2000s in connection with the work of the South African Truth and Reconciliation Commission. Due to the political orientation of the transitions under way when the field took shape, early studies often embraced normative assumptions about liberal democracy, human rights, and the rule of law as the desirable outcomes of transition.<sup>27</sup>

As the field of transitional justice has developed, scholars have begun to resist this overly narrow approach.<sup>28</sup> More recent analytical works have used the conceptual framework of transitional justice to inquire retrospectively into a broader field of activity promoting post-conflict transitions in many times

<sup>24</sup> Bonavia, *Verdict in Peking*, p. 12.

<sup>25</sup> *The Encyclopedia of Genocide and Crimes against Humanity*, vol. 3 (New York: Macmillan Reference, 2004), p. 1045.

<sup>26</sup> The field of inquiry coalesced quickly. An important milestone was publication of Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vols. (Washington: United States Institute of Peace Press, 1995).

<sup>27</sup> For a normative statement of this type, see Charles D. Smith, “Introduction,” to Kritz, *Transitional Justice*, vol. 1, p. xv.

<sup>28</sup> David A. Crocker, “Reckoning with Past Wrongs: A Normative Framework,” *Ethics & International Affairs*, Vol. 13 (1999), pp. 43–64. For more recent critical perspectives, see Phil Clark and Nicola Palmer, “Challenging Transitional Justice,” in Nicola Palmer, Phil Clark, and Danielle Granville, eds., *Critical Perspectives on Transitional Justice* (Cambridge: Intersentia, 2012), pp. 5–8; Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly*, Vol. 31 (2009), pp. 321–367.

and places.<sup>29</sup> Jon Elster, a leading scholar in the field, has stated flatly that transitional justice “is *not* limited to modern regimes or to democratic regimes.”<sup>30</sup> Expansion of this very recent field of inquiry into a much older and richer field of transitional justice activity has produced the crucial insight that “the particular histories, social norms and cultural practices of affected communities must shape how transitional justice is conceived and will inevitably determine its impact” in real circumstances in specific, diverse, and culturally contingent ways.<sup>31</sup>

The Gang of Four trial was presented, understood, and evaluated in China as transitional justice, even if commentators of the time did not use that precise term. Not only was the trial consistently depicted as a way to address the abuses of the violent past so as to build a more just and peaceful future, but also the trial was even claimed to inherit the legacy of the post–World War II war crimes tribunals at Nuremberg and Tokyo.<sup>32</sup> The language of transition filled the air, albeit inflected with the accents of Chinese socialism. In an editorial published in *People's Daily* just days after the verdict, a judge on the tribunal reflected on the spirit of the moment:

From a historical perspective, this trial signals the ending of a truly unfortunate period in the history of socialist China. When the Gang of Four was smashed in October 1976, the decade of catastrophe ended, as well, but the trial and sentencing of the accused may be seen as the formal ending to that period. In its wake a new period has appeared, a period marked by stability and unity, by democracy and the rule of law, a period in which the nation works together heart and soul for the realization of socialist modernization. We explore and strive so that China's one billion people might build a better society.<sup>33</sup>

<sup>29</sup> See Neil J. Kritz, ed., *Transitional Justice*, vol. 2: *Country Studies* (Washington: United States Institute of Peace Press, 1995). For examples in a broader temporal range, see Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004); and Carla Hesse and Robert Post, eds., *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York: Zone Books, 1999).

<sup>30</sup> Elster, *Closing the Books*, p. 1, emphasis added.

<sup>31</sup> Clark and Palmer, “Challenging Transitional Justice,” p. 8.

<sup>32</sup> The Republic of China (ROC) and PRC states both prosecuted cases against alleged Japanese war criminals in the decade following World War II. China's Nationalist ROC regime sent delegates to the International Military Tribunal of the Far East at Tokyo, then later conducted its own national trials under the auspices of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission; see Chang Cai, *Trials of Sovereignty: Chinese Nationalist Trials of Japanese War Criminals, 1946–1949*, Undergraduate honors thesis, University of California, Berkeley, 2010. Likewise, the nascent PRC conducted numerous trials of Japanese war criminals in the 1950s; see Adam Cathcart and Patricia Nash, “War Criminals and the Road to Sino-Japanese Normalization: Zhou Enlai and the Shenyang Trials, 1954–1956,” *Twentieth Century China*, Vol. 34 (2009), pp. 89–111. For two examples of explicit comparisons of the Gang of Four trial to the Nuremberg and Tokyo trials, see *Zhongguo qingnianbao*, November 11, 1980; and Fei Xiaotong, “Yi ge shenpanyuan de ganshou” [Impressions of a judge], *RMRB*, January 30, 1981.

<sup>33</sup> Xiaotong, “Yi ge shenpanyuan de ganshou.”

These sentiments very clearly express the core ideals of transitional justice: transition to a new era, punishment of wrongdoers, reconciliation and social stability, democracy and the rule of law, and hopes for creating the good society.

It must be emphasized that the transitional justice framework can accommodate and by no means excludes the show trial interpretation. Because transitional justice trials aim to make a strong social impact, they necessarily involve politically charged public performance. Therefore, we should avoid the pitfall of reserving transitional justice as a positively connoted label for show trials whose political ideologies we find palatable and whose legal outcomes we find agreeable.<sup>34</sup>

The Gang of Four trial was part of the Chinese party-state's larger efforts to confront the harmful legacies of the Cultural Revolution.<sup>35</sup> These efforts included a more comprehensive campaign to re-assert legal normalcy under a reformed legal system; criminal trials of scores of Gang of Four accomplices; and lustration, meaning the exclusion from office of political radicals from the government, the military, and the communist party. The official reassessment of the past entailed the review of nearly 3 million "false, incorrect, and unjust cases." This review resulted in the (sometimes posthumous) nullification of penalties handed down by the previous regime, as well as the provision of various kinds of reparations to exonerated victims and their families.<sup>36</sup> As for the assessment of perpetrators, Deng Xiaoping cautioned that the party should not get bogged down in retribution: "Our ideal is that every wrong should be righted, [. . . but] we cannot possibly achieve – and should not expect – a perfect settlement of every case. We should have the major aspect of each problem in mind and solve it in broad outline; to go into every detail is neither possible nor necessary."<sup>37</sup> The basic principles, he said, should be leniency for past mistakes

<sup>34</sup> On "trials by fiat of successor regimes" as a variety of political trial, see Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1961), pp. 304–347. For a sympathetic but critical discussion of the liberal political ideology underpinning transitional justice, see Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1986).

<sup>35</sup> For previous scholarship on transitional justice after the Cultural Revolution, see Alexander Cook, "Settling Accounts: Law as History in the Trial of the Gang of Four," in Andrew Lewis and Michael Lobban, eds., *Law and History* (Oxford: Oxford University Press, 2003), pp. 413–432; Susanne Weigelin-Schweidrzik, "Coping with the Cultural Revolution: Competing Interpretations," in Agnes Schick-Chen and Astrid Lipinsky, eds., *Justice Restored?: Between Rehabilitation and Reconciliation in China and Taiwan* (Frankfurt: Peter Lang, 2012); Sue Trevaskes, "People's Justice and Injustice: Courts and The Redressing of Cultural Revolution Cases," *China Information*, Vol. 16 (2002), pp. 1–26. Amnesty International, *China's Ultra-Left on Trial: Unfair Legal Procedure and Political Imprisonment in the Anti-Gang of Four Purge, 1976–1987*, pp. 25–30 and Appendix 2, pp. 58–60.

<sup>36</sup> He Zai, ed., *Yuan jia cuo an shi zheyang pingfande* [This is how unjust, false, and wrong cases were reversed] (Beijing: Zhonggong zhongyang dangxiao chubanshe, 1999), p. 3.

<sup>37</sup> Deng Xiaoping, *Deng Xiaoping Wenxuan (1975–1982)* [Selected works of Deng Xiaoping], vol. 2 (Beijing: Renmin chubanshe, 1983), pp. 140–153.

and severity for recidivism, leniency toward the rank and file and severity toward the ringleaders. The Gang of Four trial was only the most visible aspect of transitional justice in post-Mao China. The Gang of Four trial was a discrete historical event that became the focal point on which the issues of transition were momentarily concentrated. However, the actual (as opposed to merely judicial) resolution of those issues was a complex and protracted process that played out across society over a long period of time.<sup>38</sup> A history of this kind could not be, and was not, confined to the courtroom.

As far as the regime was concerned, the most important contribution of the trial was the lessons it could convey to the public. According to the typology of didactic, destructive, and decisive political trials, the Gang of Four trial was primarily a didactic trial. The Gang of Four trial marked a change in the normative order, but not in the decisive sense of mediating between two possible competing visions. Rather, the trial was a demonstration and endorsement of a decision already taken: the Cultural Revolution was over and the transition to a new political order well under way. Likewise, the trial's purpose was not primarily destructive, since the defendants had already been destroyed politically. The Gang of Four had been removed from power four years prior, and during that interval they were subjected to indefinite incarceration, removal of official titles and party membership, systematic criticism, as well as vicious public calumny and private innuendo. Elimination of the Gang of Four from the political scene was now entirely redundant, and could have been demonstrated with more finality and less expense by simply killing them. This trial consolidated victory in a battle already won. Its significance lay in the public performance of state power and legal procedure.

#### POWER AND PROCEDURE

Marxist-Leninist regimes regard law as an instrument of state power. According to this view, law is the codification and institutionalization of the self-serving norms that the dominant class uses to justify its repression of the dominated class, and it must be used as such by the proletariat. Mao shared this view, unapologetically describing the law as a tool of the socialist dictatorship: "The state apparatus, including the army, the police, and the courts, is the instrument by which one class oppresses another. It is an instrument for the oppression of antagonistic classes. It is violence and not 'benevolence.'" <sup>39</sup>

<sup>38</sup> Daniel Leese of the Institute of Sinology at the University of Freiburg is presently conducting a major research project funded by the European Research Commission called "The Maoist Legacy: Party Dictatorship, Transitional Justice and the Politics of Truth, 1978–1987."

<sup>39</sup> Mao Zedong, "On the People's Democratic Dictatorship" (1949), available at [www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4\\_65.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4_65.htm).

Since laws existed as instruments for practical use, piecemeal codes and ad hoc institutions were made to order as needed – and just as quickly discarded. Moreover, the state did not exercise monopoly over the legitimate use of violence; the party, the military, and the masses all actively participated in the maintenance of social order following a bewildering and often inconsistent array of laws, codes, rules, regulations, directives, and customs. This meant that law was not the only means for justice. The regime also relied on social practices such as mediation, mutual surveillance, organizational discipline, struggle sessions, and reform through labor, as well as techniques for education, indoctrination, and persuasion. This informal, societal approach was especially useful for handling non-antagonistic contradictions among the people.<sup>40</sup>

As part of its post-Mao reassessment of the Cultural Revolution, the Deng Xiaoping regime looked to strengthen and rationalize formal legal institutions. An official party communiqué announced the regime's renewed commitment to socialist legality:

In order to safeguard people's democracy, it is imperative that we strengthen the socialist legal system so that democracy is systematized and codified, and that these democratic institutions and laws possess stability, continuity, and great authority. We must have laws to follow; the laws that we have must be obeyed; enforcement of the laws must be strict; and violations of the law must be investigated. From now on, legislative work should be high on the agenda of the National People's Congress and its standing committees. Prosecutorial and judicial organs must maintain proper independence; they must be faithful to laws and institutions, to the interests of the people, and to the truth; and they must ensure that the people enjoy equality before their laws, and that no person enjoys special authority above the law.<sup>41</sup>

The agenda outlined here meets the essential criteria for what is sometimes called the “thin” definition of the rule of law: Law is systematized in codes and institutions, made transparent and accessible to the public, administered and adjudicated by trained professionals, and applied equally and universally to all citizens of the state.

China's post-Mao legal reform belonged to a larger process of bureaucratic rationalization. This meant the institution of a well-ordered hierarchy of offices, staffed by skilled technocrats capable of efficiently and impersonally executing specialized tasks. China's post-Mao reformers considered rationalization so important because it called for the replacement of arbitrary, charismatic authority with regular, rule-based authority. The Deng Xiaoping regime

<sup>40</sup> Mao Zedong, “On the Correct Handling of Contradictions among the People,” February 27, 1957, available at [www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5\\_58.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_58.htm).

<sup>41</sup> “Zhongguo gongchandang di shiyi jie zhongyang weiyuanhui di san ci quanti huiyi gongbao” [Communiqué of the Third Plenum of the Eleventh Central Committee of the Chinese Communist Party], December 22, 1978, available at <http://cpc.people.com.cn/GB/64162/64168/64563/65371/4441902.html>.

viewed a functional and efficient legal system as a cornerstone of a rational, prosperous, and modern society. Therefore, restoration of the formal legal system that had been criticized, neglected, and dismantled during the Cultural Revolution period was an integral part of the post-Mao agenda.

Responsibility for legal reform was placed in the hands of Peng Zhen, an early victim of the Cultural Revolution. Undertaken with breathtaking urgency and speed, legal reform provided the institutional and structural prerequisites for the Gang of Four trial. Thoroughgoing legal reform entailed revision of the state and party constitutions; the rebuilding of basic legal institutions such as courts; rehabilitation of dismissed legal personnel and training of new personnel, from lawyers and judges to police and prosecutors; as well as the drafting and promulgation of the first comprehensive criminal code and criminal procedure code in the history of the People's Republic. The new criminal code contained statutes specifically prohibiting crimes characteristic of the Cultural Revolution period, such as mob activity, incitement of violence, unlawful detention, torture, and frame-ups.<sup>42</sup> Likewise, the new criminal procedure code set limits on evidence collection, stressed the reliability of material evidence over personal accusations, and carefully qualified the use of confessions. Together, the new laws narrowed the scope of political activity that could be criminalized, and also rationalized the standards for establishing legal facts.

The criminal code set the normative standard of behavior against which the Gang of Four would be judged. Just as important, the criminal procedure code enabled the regular and systematic exercise of state power in its formulation of legal truth. Formal legal processes shape the ways that trials may interpret the past. As Christopher P. Gilkerson explains, legal codes and procedures tend to structure and determine acts of "legal storytelling": "[T]he law and its institutions establish form and substance requirements for stories that claim rights and express needs. Elements include a specified vocabulary for invoking claims, a paradigm of argumentation, formulae for proof, and narrative conventions for reconstructing individual and collective stories."<sup>43</sup> Moreover, legal truths enjoy an authoritative status that other stories do not; to reiterate: legal truths are built on the discovery and interpretation of facts whose ostensible facticity is backed by the power of the state.

The Deng Xiaoping regime took preparations for the trial very seriously. In March 1980, the Secretariat of the CCP formally recommended a closed trial with results to be publicized at its conclusion.<sup>44</sup> The case would be tried

<sup>42</sup> Harold M. Tanner, *Strike Hard! Anti-Crime Campaigns and Chinese Criminal Justice, 1979–1985* (Ithaca: Cornell University East Asia Program, 1999), pp. 14–19.

<sup>43</sup> Christopher P. Gilkerson, "Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Stories," *Hastings Law Journal*, Vol. 43 (1992), pp. 861–945.

<sup>44</sup> Xiao Sike, *Chaoji shenpan: Tu Men jiangjun canyu shenli Lin Biao fangeming jituan qin liji* [Super trial: a personal account of the trial of the Lin Biao counter-revolutionary group], vol. 1, 2 vols. (Jinan: Jinan chubanshe, 1992), pp. 197–199; Tumen and Xiao Sike, *Tebie shenpan: Lin Biao, Jiang Qing fangeming jituan shoushen shilu* [Special trial: True account of the trial of the



according to the new legal codes.<sup>45</sup> The Secretariat's proposal emphasized that the trial must not be a Stalinist farce:

The case – indictment and evidence and such – must be irrefutable and stand firmly on its own feet, so it can be passed on to posterity and never be toppled. If done in this way, the trial will have a positive effect on strengthening government unity and implementing the Four Modernizations with one heart and one mind. It will also have a good influence on our international standing.<sup>46</sup>

In April 1980, as a matter of procedural regularity, the case files were transferred from the party's Central Commission for Discipline Inspection to the state's Ministry of Public Security and the Supreme People's Procuratorate for pre-trial investigation.<sup>47</sup> Thus far, investigators had collected evidence from more than 1 million documents and 178,000 persons, and had whittled down a list of 500 suspects to just eleven names.<sup>48</sup> The Ministry of Public Security concluded its own investigation in September 1980 and formally recommended prosecution of the ten living main conspirators, including the Gang of Four.<sup>49</sup> On September 29, 1980, the National People's Congress established a Special Procuratorate to prosecute the case and a Special Court to try the defendants publicly.<sup>50</sup> Thus the trial would be staged for maximum didactic effect. We turn now to the stage and its performers.

#### THE PERFORMANCE OF LEGAL TRUTH

The Special Court was meant to be broadly representative of society so that the case could be judged symbolically by the whole of the people. As a result, the

Lin Biao and Jiang Qing counterrevolutionary groups] (Beijing: Zhongyang wenxian chubanshe, 2003), pp. 135–136.

<sup>45</sup> Wu Jianfan and Ouyang Tao, "Lun shenpan Lin Biao, Jiang Qing fangeming jituan de jige falü wenti," [Discussion of a few legal questions in the trial of Lin Biao and Jiang Qing counter revolution groups], *Faxue yanjiu* [Research in jurisprudence] June 1980, pp. 4–5.

<sup>46</sup> Quoted in Tumen and Sike, *Tebie shenpan*, p. 135.

<sup>47</sup> Li Haiwen and Wang Yanling, eds., *Shiji duihua: yi Xin Zhongguo fazhi zunjiren Peng Zhen* [A century of conversations: remembering Peng Zhen, the key figure in New China's legal system] (Beijing: Qunzhong chubanshe, 2002), p. 90.

<sup>48</sup> Wang Wenfeng, *Dou Mo: Mian dui mian shencha Jiang Qing fangeming jituan qin liji* [Battling demons: personal memoirs of investigating the Jiang Qing counter-revolutionary group face-to-face] (Beijing: Zhongguo shehui kexue chubanshe, 2000), pp. 96–97 and 88.

<sup>49</sup> *Law Annual Report of China 1982/3* (Hong Kong: Kingsway International, 1982), p. 179; *TBFTJS*, p. 70.

<sup>50</sup> "Di wu jie quanguo renmin daibiao hui changwu weiyuanhui guanyu chengli zuigao renmin jianchayuan tebie jianchating he zuigao renmin fayuan tebie fating jiancha, shenpan Lin Biao, Jiang Qing fangeming jituan an zhufan de jue ding," September 29, 1980 [Resolution of the Standing Committee of the Fifth National People's Congress Regarding Establishment of the Special Procuratorate of the Supreme People's Procuratorate and the Special Court of the Supreme People's Court to Investigate and Try the Main Culprits of the Lin Biao and Jiang Qing Counterrevolutionary Groups] *TBFTJS*, p. 1.

Special Court's panel of judges was unusually large. Under the socialist legal system, a typical case would be tried by one to three judges and audited by two to four common people called assessors, but the Special Court had a president, three vice-presidents, and a blue-ribbon panel of thirty-one lay judges selected from diverse backgrounds.<sup>51</sup> The Special Court divided into two tribunals: the First Tribunal to try the five civilian defendants, and the Second Tribunal to try the five military defendants. Presiding over the full court was Jiang Hua, who was concurrently Chief Justice of the Supreme People's Court. He was assisted by three vice-presidents: Huang Yukun, concurrently Major General and Deputy Director of the Political Department of the PLA; Zeng Hanzhou, concurrently Associate Justice of the Supreme People's Court, who would serve as chief judge of the First Tribunal; and Wu Xiuquan, concurrently Deputy Chief of Staff of the PLA, who would serve as chief judge of the Second Tribunal. Two to five of the lay judges were assigned to focus on each defendant, with the two female judges among the five assigned to the only female defendant, Jiang Qing.<sup>52</sup> Unlike the assessors found in the regular people's courts, the lay judges of the Special Court could actively participate in and even lead court inquiry.<sup>53</sup>

The panel of judges included representatives from all eight minority political parties, as well as diplomats, jurists, and experts on party and military discipline. Scientists, industrialists, agriculture experts, and military personnel personified the regime's commitment to the Four Modernizations. Though it is obvious the panel was chosen to be representative, the NPC offered no explanation of how it selected the individual judges. Some of the judges were fairly prominent in their fields, and others seem to have been more or less common people. One of the more prominent judges, who emerged to become a sort of informal public spokesman for the court, was Fei Xiaotong, a leading sociologist and legal theorist. Like several other judges on the Special Court, he

<sup>51</sup> "Quanguo renda changweihui guanyu chengli tebie fating gei zuigao renmin fayuan de tong zhi" [Notification by the Standing Committee of the National People's Congress Given to the Supreme People's Court Regarding Establishment of the Special Court] [Standing Committee of the National People's Congress Document No. 27] September 29, 1980 *TBFTJS*, p. 433.

<sup>52</sup> "Zuigao renmin fayuan tebie fating guanyu shenpan ren yuan fengong de yijian" [Suggestions of the Special Court of the Supreme People's Court Regarding Division of Work among Judges (Passed by the First Meeting of the Special Court of the Supreme People's Court, dated November 6, 1980)] *TBFTJS*, pp. 455–456. Gan Ying and Liu Liying were both members of the Central Commission for Discipline Inspection. Liu Liying went on to become a famous jurist. See Haiwen and Yanling, *Shiji duihua*, p. 94; Liu Guohang, "Yu Jiang Qing da san nian jiaodao 'nü baogong' Liu Liying chenzhuo yingdui feibang" [Three years of dealings with Jiang Qing, female "Judge Bao" Liu Liying handled slander with calm], December 11, 2002, available at <http://news.tom.com/Archive/1002/2002/12/11-38889.html>.

<sup>53</sup> The Special Court held its first organizational meeting on November 6, where it established the special rules and procedures by which the indictment would be examined and adjudicated. "Zhonghua renmin gongheguo zuigao renmin fayuan tebie fating shenpan Lin Biao, Jiang Qing fangeming jituan an zhufan jishi," pp. 70–73.

had been branded a “Rightist” in the late 1950s and then persecuted during the Cultural Revolution. Similarly, the president of the Special Court was a victim named in the indictment, and his wife had died from mistreatment at the hands of her political persecutors. One of the vice presidents of the court had spent seven years as a political prisoner. These judges were not recused, on the logic that nearly everyone had suffered during the Cultural Revolution; on the contrary, the inclusion of these judges seemed that much more just, since through them other victims could vicariously fulfill their desire to condemn their tormentors. This inclusiveness was important symbolically: the Special Court would be a court of the people.

Even the address of the Special Court was symbolic: No. 1 Justice Road. The building that housed the courtroom was actually the Ministry of Public Security’s Ceremonial Hall, located on the grounds of the police headquarters in a restricted-access area just east of Tiananmen Square. This large hall had more suitable facilities than the nearby Supreme People’s Court building; however, Peng Zhen was concerned that using a police building might compromise the appearance of judicial autonomy. He suggested therefore that the location simply be described as “Justice Road,” since a service entrance to the building did in fact open onto that street. Ren Lingyun, Deputy Chief of the Ministry of Public Security, also a lay judge on the Special Court, erroneously reported the address to the media as No. 1 Justice Road (the service entrance was actually at No. 7).<sup>54</sup> Once reported, the name stuck in the public imagination: “What profound significance!” observed *People’s Daily* reporter Hu Sisheng, “We have taken many twists and turns; now at last we walk the road of upholding justice!”<sup>55</sup>

The courtroom’s interior was a symbolic space for China’s transition to legal modernity. The courtroom was designed by special legal advisor to the court Qiu Shaoheng (Henry Chiu), who held degrees in both law and literature and served as a delegate to the Far Eastern War Crimes Tribunal in Tokyo in April 1946.<sup>56</sup> Reporter Wu Kailiu described the impressive effect of the room. He wrote,

The first thing to catch your eye was, in the very center of the bar, a brightly colored national emblem hanging high upon the curtain. Below the national emblem was the bench, formed of a stepped platform arrayed with two sets of crimson upholstered seats . . . Red carpeting adorned the aisles of the bench, and the entire bar looked particularly solemn and imposing in the brilliant lights.<sup>57</sup>

<sup>54</sup> Ren Lingyun as quoted in Haiwen and Yanling, “Shiji duihua,” p. 94.

<sup>55</sup> Hu Sisheng, “Kaiting zhi ri” [Opening day of court], *RMRB*, November 21, 1980.

<sup>56</sup> Qiu Shaoheng was brought on as an advisor in mid-September 1980. See Ma Lingguo, “Tebie Fating de falü guwen Qiu Shaoheng” [Special Court legal consultant Henry Chiu], *Shiji* [Century] (September 1999), pp. 18–21.

<sup>57</sup> Wu Kailiu, “Renmin de shenpan, lishi de shenpan” [The people’s trial, history’s trial], *Guangming ribao* [Guangming Daily], November 21, 1980.

A deep red velvet curtain, interwoven with golden thread, set the backdrop to the bar.<sup>58</sup> This sea of red and velvet conveyed the majesty of the Special Court in the symbolic color of Communism. The national emblem heralded the power of the state.

Like the stylized performance of Chinese opera, each role on the stage had a conventional costume and place. Members of the Special Court and the Special Procuratorate addressed the audience and defendants from the authority of a raised dais. An aisle divided the platform, with Chief Justice Jiang Hua flanked by the three associate justices and Chief Procurator Huang Huoqing by his two deputy chiefs. The remaining judges and procurators were arrayed in rows behind them. A metal-railed dock for the defendants sat recessed in the orchestra pit, divided into ten stalls and furnished with wooden chairs and green carpeting. Thus defendants occupied the lowest position in the Special Court, with their backs turned to the people assembled in the gallery. Wooden placards with black lettering designated their seating areas within the courtroom. In this staging, the inclusion of the procurators on the platform with the judges signaled their close relationship as unified representatives of the people and the state. By contrast, locating the defense on a lower level and off to the side set them apart. The clothing worn by the court personnel and the accused established similar distinctions. The judges wore black uniforms, the clerks and procurators dark gray, and the defense light gray. The defendants wore clothes of their own choosing. In the weeks leading up to the trial, the Special Court had held several dress rehearsals, sometimes with mock defendants. Through these practice sessions, the judges learned to anticipate and handle many situations that might arise during this unprecedented trial.<sup>59</sup> Now the real trial was set to begin.

On November 20, 1980, the courtroom was ready to open with real defendants in the dock. In mid-afternoon, ticketed audience members and reporters filed into the courtroom gallery, which could accommodate more than 880 spectators at a sitting. The spectators were carefully selected and included representatives from every province, provincial-level municipality, autonomous region, political party, people's organization, CCP Central Committee organ, national-level state organ, and the People's Liberation

<sup>58</sup> Lingguo, "Tebie Fating de falü guwen Qiu Shaoheng," p. 19. The curtain is described as silver-gray in Sun Haogang and Qian Gang, "Kaiting di yi tian" [First day of trial], *Jiefang junbao* [Liberation Army News], November 21, 1980; perhaps this report is based on a black and white photograph? Most Chinese would have viewed the trial on black and white television sets and in black and white print news. However, the events were filmed and photographed in color, and print reports did take care to describe colors when significant. Seating layout based on photographs and video and descriptions in Sisheng, "Kaiting zhi ri"; and "Lishi de shenpan, renmin de shengli" [History's trial, the people's victory], *Beijing ribao* [Beijing Daily], November 21, 1980.

<sup>59</sup> Lu Hong, *Zhonggong zhengzhi wutai shang de "Fu Jiang": Wu Xiuquan chuanqi* ["Lucky General" on the government stage: the legend of Wu Xiuquan] (Beijing: Zhongguo qingnian chubanshe, 2000), pp. 215–216.

Army. Also present were the widows of prominent Cultural Revolution victims such as Premier Liu Shaoqi and Vice Premiers He Long and Luo Ruiqing.<sup>60</sup> Shortly before 3:00 p.m., a series of electronic bells toned, alerting the audience to take their seats in silence and signaling court personnel to take their positions. Court police in smart blue uniforms took their positions at either side of the dock. The clerks of the court entered, followed by the prosecution and the acting counsel for the defense. When all had been seated, Clerk Guo Zhiwen read aloud the regulations of the Special Court. Finally, the justices and judges were announced by name as they entered. The clerk notified the chief justice that the Special Procuratorate was on hand to initiate public prosecution against the ten defendants held in custody.<sup>61</sup> The trial was about to begin.

At 3:00 p.m. sharp the bell toned again and the room was flooded with lights. Reporters Sun Haogang and Qing Gang described the moment for readers of the *Liberation Army News* as if it were a theatrical production:

Suddenly the mercury-vapor stage lamps were illuminated and the atmosphere turned solemn. The movie and television cameras hissed and hummed in unison. With this dazzling flash of light, the ten defendants of the Lin Biao and Jiang Qing counterrevolutionary groups were led in custody onto the scene of this historic trial, and one by one they came into focus.<sup>62</sup>

In the glow of the lights, Chief Justice Jiang Hua called the Special Court into session. The Chief Justice summoned defendant Wang Hongwen, handing a billet to the Clerk of Court. This was passed to an officer of the court police, who went to the holding room to fetch this disgraced former Vice Chairman of the CCP. At 3:03 p.m. the court police returned and led the first defendant down the middle aisle of the gallery. It had been more than four years since the Gang of Four had appeared in public, and even longer for Chen Boda and the Lin Biao group. Everyone was curious to see them. In a hush, the spectators craned to look.<sup>63</sup>

One at a time, ten former Party leaders and military officials were called by the Chief Justice and paraded into the courtroom in manacles. First Wang Hongwen and Yao Wenyuan were summoned, followed by each of the five Lin Biao defendants and Mao's personal secretary Chen Boda. Finally the Chief Justice called the two most important defendants, Zhang Chunqiao and Jiang Qing. One of the few ways the defendants had to present themselves was through their personal bearing and dress. However, the state had the advantage of interpreting the scene to the public. The official papers glommed

<sup>60</sup> Kailiu, "Renmin de shenpan, lishi de shenpan."

<sup>61</sup> "Zhonghua renmin gongheguo zuigao renmin fayuan tebie fating shenpan Lin Biao, Jiang Qing fangeming jituan an zhufan jishi," pp. 79–80.

<sup>62</sup> Haogang and Gang, "Kaiting di yi tian."

<sup>63</sup> Composite description based on reports from Sisheng, "Kaiting zhi ri"; Haogang and Gang, "Kaiting di yi tian"; and Kailiu, "Renmin de shenpan, lishi de shenpan."

onto every detail of each the defendant's appearance, never shying away from using figurative descriptions to editorialize on their characters.

The youngest defendant, Wang Hongwen, entered first. As a factory worker, Wang had led his peers to overthrow bureaucratic managers and eventually the whole Shanghai Party apparatus. He had come to represent the young upstart faction of the CCP. On this day he was visibly thinner, looking humbled and forlorn. The once energetic Wang sat motionless in his chair for the reading of the indictment.<sup>64</sup> Reporters Sun Haogang and Qing Gang captured the contrast between "Wang Hongwen, rebel" and "Wang Hongwen, defendant" in their description. They wrote, "Wang Hongwen wore a grey pantsuit with crew-cut hair and a jaundiced complexion, his two listless eyes blinking mechanically. The confident swagger of the Shanghai Bund's erstwhile 'Rebel Commander' had dissipated, leaving only the residue of his native mediocrity."<sup>65</sup> By exposing Wang Hongwen's illusory swagger, the description implied he was part of a dysfunctional political system that had failed to nurture real talent and instead promoted criminals.

Propagandist Yao Wenyuan entered next. Presentation did not work in his favor. If the vicissitudes of time revealed a telling change in Wang Hongwen's outward appearance, Yao looked much the same as always: toady and squat, with large watery eyes. The papers took pains to note that Yao had lived well off the fruits of his writings, which had caused suffering and starvation for so many others. Only since receiving the indictment had his hearty appetite for sleep and food finally waned.<sup>66</sup> Again, *Liberation Army News* provided a particularly colorful description, noting, "Yao Wenyuan was bald as ever, and fat made his fish-eyes seem to bulge out even more. He could be seen to put on a sanctimonious and dignified appearance, even remembering to clip a fountain pen into his shirt pocket when in court. But his eyes revealed trepidation and dejection."<sup>67</sup> Perhaps the pen was intended to remind us that whatever his crimes, the wordsmith had never wielded an actual sword. But the newspapers played up his haughty carriage, stout frame, and ridiculous visage.

The military defendants, all now elderly, wore close-cropped hair and one of them, Huang Yongsheng, wore a green military-style uniform stripped of insignia. Mao's former political secretary Chen Boda looked weak and ashen, needing assistance to walk to the dock. Grizzled old theoretician Zhang Chunqiao shuffled into the courtroom wearing a grimy shirt hanging loose at the collar. Throughout the session he sat silent and despondent, his unshaven jaw and sagging eyelids betraying impatience, boredom, or annoyance in turn. *People's Daily* described his bizarre behavior:

Zhang Chunqiao, who plotted all sorts of tricks during the ten years of chaos, today continually bobbed his head about – if not to this side, then to that – never once keeping

<sup>64</sup> Sisheng, "Kaiting zhi ri." <sup>65</sup> Haogang and Gang, "Kaiting di yi tian."

<sup>66</sup> Sisheng, "Kaiting zhi ri." <sup>67</sup> Haogang and Gang, "Kaiting di yi tian."

still. His lips curled downward, eyes darting left and right, [he looked] the very image of the masses' epithet: "the traitorous official" . . . Several times he supported his body with the back of the chair, dumbstruck as a wooden chicken, . . . and though he wore only a thin Chinese-style placard shirt with the collar hanging open, sweat gathered continuously on his face.<sup>68</sup>

His attitude would be interpreted later as an act of defiance, but at this stage in the trial the media saw Zhang Chunqiao as defeated and disengaged.

Finally, at 3:15 p.m., the star of the show made her much anticipated entry. Chairman Mao's widow and alleged Gang of Four ringleader Jiang Qing wore a conservative, ankle-length, and long-sleeved dress, rather than her jaunty trademark cap and scarf. She declined to appear in the elaborate Tang Dynasty finery of the "female emperor" Empress Wu Zetian, whose style she was said to have admired, nor in her own special "Jiang Qing shirt," which she had supposedly commissioned in imitation of the Sun Yat-sen jacket or Mao suit.<sup>69</sup> Nevertheless, the newspapers persisted in describing her as a conniving female usurper, writing, "Two female court police brought into the courtroom the fanatic Jiang Qing, in her own mind a 'female emperor.' Today she wore a black outer-garment and black cotton-upper flats. Her hair as always was combed to glossy sheen, and on the bridge of her nose sat a colorful pair of wide-rimmed tortoise-shell glasses."<sup>70</sup> The *People's Daily* emphasized Jiang Qing's careful accoutrement, including expensive eyewear and carefully coifed hair. This description was typical in its insistent reminder that Jiang Qing was above all else an *actress* – spry and wily, and in her younger days even charming enough to beguile the Chairman. But today in court, her affected manner held no charms. The report continues, "With her every movement she maintained her customary arrogant posture. Still employing performance techniques from her time as a movie actress, she deliberately cocked her head and advanced with slow paces under everyone's eyes, in a manner that made you sick."<sup>71</sup> Reporter Shi Hongdao of the *Beijing Daily* echoed this crude reaction to Jiang Qing's insincerity, "Seeing her performance really made you want to vomit."<sup>72</sup>

By 3:17 p.m. all ten defendants were standing in the dock, separated from the gallery by a cordon of court police. Jiang Qing put in a hearing aid and listened intently. Chief Justice Jiang Hua, with his close attention to procedure, instructed the defendants to be seated and informed them that the trial would begin. After calling the roll of court personnel, the chief justice invited the chief

<sup>68</sup> Sisheng, "Kaiting zhi ri."

<sup>69</sup> Jiang Qing's sartorial tastes were much criticized in the years leading up to trial. Her alleged sketch of a model "Jiang Qing shirt" (in the spirit of Sun Yat-sen's Zhongshan jacket or its progeny, the Mao jacket) was seen as presumptuous in the extreme. Furthermore, her alleged adoration of capable Chinese empresses was taken to reveal her autocratic imperial ambitions. See *Liang Xiao zuizheng cailiao* [Material on the crimes of the Liang Xiao group] (Beijing: Liang Xiao Special Case Group, unpublished, 1978), pp. 116–118.

<sup>70</sup> Sisheng, "Kaiting zhi ri." <sup>71</sup> Sisheng, "Kaiting zhi ri."

<sup>72</sup> "Lishi de shenpan, renmin de shengli."



procurator to read the indictment aloud. It took three hours to read the document in its entirety, and at 5:20 p.m. court was adjourned. This public reading of the indictment added nothing from a textual standpoint, but the performance and especially the media coverage of it created an audience and a model response. The next morning's newspapers ran several reaction pieces featuring prominent victims' family members, including an interview with the widow of Marshal Peng Dehuai – the modern paragon of the virtuous official, who had earned Mao's wrath by speaking out against the Great Leap Forward, and who was the subject of the historical allegory that set off the Cultural Revolution. "This is a trial by the people, history's trial," reported Marshal Peng's widow, "I'm thrilled to see [the defendants] with my own eyes being led in shackles to the dock, and now I can console Old Peng's spirit in heaven."<sup>73</sup>

The performance also engaged the desire for justice of those assembled outside the courtroom, according to *People's Daily* reader Li Demin. He watched the opening session of the trial from the packed television lounge at his office and described the reactions of his fellow viewers in a "Daily Chat" column called "In Front of the Television Set, Viewing the People's Hearts." "See! The wicked Jiang Qing is a shameless actress.' Zhang Chunqiao looks like he's been exhumed from a tomb.' Look at that Wang Hongwen – where is the authoritative air of the Rebel Commander?"<sup>74</sup> These published responses modeled judgments for other members. "In front of that glowing screen, we felt like we ourselves were sitting on the judges' bench."<sup>75</sup> As *Liberation Daily* reported, in that moment the people began to form their own verdict. "History has firmly nailed [the defendants] into the pillory; no matter how they dissemble and connive, they will never be set free."<sup>76</sup>

The reading of the indictment provided the script for the opening act of the dramatic trial. Media coverage of the indictment seems to have prejudged the case and short-circuited the ability of the public to give a fair hearing. It is also clear that even for the court, the guilt of the defendants was largely a foregone conclusion.

The state used mass media to project the symbolic courtroom drama to reach the largest possible audience, which extended far beyond the Special Court's gallery. Those who could not pack into the courtroom followed the trial through every form of mass media at the state's disposal, including posters, print, radio, and broadcast television. Among these forms, television deserves

<sup>73</sup> "Lishi de shenpan, renmin de shengli."

<sup>74</sup> "Dianshiji qian kan minxin" (In front of the television set, watching the people's heart), *RMRB*, November 23, 1980.

<sup>75</sup> "Dianshiji qian kan minxin."

<sup>76</sup> Haogang and Gang, "Kaiting di yi tian." Similar rhetoric is repeated in Social Commentary editorials for November 21, 1980, such as: "Renmin de shenpan, lishi de shenpan" [The people's trial, history's trial], *Gongmin ribao* [Workers' Daily]; "Zhengyi de shenpan, renmin de xinyuan" [Justice's trial, the people's aspiration], *Jiefang junbao* [Liberation Army News]; and "Jiuyi renmin de shenpan" [900,000 people's trial], *Renmin ribao* [People's Daily].

special attention. The Gang of Four trial, in addition to being an unprecedented legal event, was also a pioneering media event: coverage of the proceedings might rightly be considered the first Chinese-produced television serial.<sup>77</sup> Every night throughout the trial, Central China Television's (CCTV) *Network News* program featured six minutes of highlights from that day's testimony and an hour-long *Special Report* covering of the previous day's events.<sup>78</sup> The official Xinhua News Agency even arranged satellite television programming for foreigners and overseas Chinese. As a tool for propaganda (or for advertising), television is a major advance over print and sound media. Television provides unparalleled audiovisual verisimilitude: the combination of sound and image makes for a more vivid and immediate experience. The small screen's simulacrum of "real-life" social interactions is said to exert a strong normative influence on viewers. In this case, viewers received constant cues from the interactions of the judges, the prosecution, the defense, the live courtroom audience, and a chorus of news commentators. In China at the time, this normative influence would have been amplified by group viewing habits. Watching the trial unfold on television each night was an important social occasion. In 1980 the family television set remained a novelty outside the most prosperous urban areas; more often the members of a work unit would watch together on a common set.<sup>79</sup> Thus we have no figures to reliably gauge audience size over the course of the proceedings, but the anecdotal evidence is clear: ask any Chinese of age at the time and they are likely to remember viewing at least some portion of the trial.<sup>80</sup>

Though we have no space here to detail the long courtroom drama that unfolded, it is useful to consider the defendants' various strategies for defense. Only a few of the defendants availed their right to legal counsel, either because legal defense seemed pointless or in order to appear more compliant. (Chinese culture traditionally takes a dim view of lawyering.) Defense options were

<sup>77</sup> China's first domestically produced drama series, *Eighteen Years of Disguisement in the Enemy Camp*, debuted in May 1981, several months after the trial's conclusion. See also Mary Farquhar and Chris Berry, "Speaking Bitterness: History, Media, and Nation in Twentieth Century China," *Historiography East and West*, Vol. 2 (2004), pp. 116–143, 129.

<sup>78</sup> As announced in a Xinhua wire report, November 19, 1980.

<sup>79</sup> In 1981, 57 percent of urban households had television sets, compared to less than 1 percent in rural areas. CCTV estimated a total television audience of 210 million in 1980 and 270 million in 1981, up from just 18 million in 1975. Figures cited in Jingyu Lu, "The Structure and Function of Chinese Television, 1979–1989," in Chin-chuan Lee, ed., *Voices of China: The Interplay of Politics and Journalism* (New York: Guilford Press, 1990), pp. 73–74.

<sup>80</sup> Television coverage of the trial exemplified the careful and extensive application of a mass medium just reaching huge new audiences. The trial aired at a unique moment, in the midst of Chinese television's initial growth spurt but before the commercialization and decentralization that soon ended the national government's monopoly over programming. See Hong Junhao, *The Internationalization of Television in China: The Evolution of Ideology, Society, and Media since the Reform* (Westport: Praeger, 1998), pp. 145–147; and Zhao Bin, "Greater China," in Anthony Smith and Richard Paterson, eds., *Television: An International History*, Second edition (Oxford: Oxford University Press, 1998), pp. 247–248.

severely limited, as well: defendants first saw the indictment just weeks before trial, there was no period of discovery, most evidence was introduced in written depositions, and those witnesses who did appear in person could not be properly cross-examined. Defendants had to rely on their responses to court inquisition and their closing statements. Within this narrow range of options, the defendants took different approaches. Wang Hongwen and the five Lin Biao group defendants submitted completely to the normative order of the law, freely confessing to their crimes, implicating others, and begging for leniency. Yao Wenyuan and Chen Boda mounted arguments against specific charges, attempting to use the legal codes to mount a legitimate defense. Zhang Chunqiao remained silent throughout the entire trial, refusing to answer questions or make statements. This was a total negation of the legal order. Jiang Qing's performance was most dramatic, invoking the abandoned normative order of the Cultural Revolution. She accused the judges of complicity in past violence, berated witnesses as bourgeois reactionaries, and repeated radical slogans that denounced the legal order of the state: "To rebel is justified!"

#### MAO AND THE VERDICT OF HISTORY

In late June 1981, six months after the Special Court verdict, the Chinese Communist Party (CCP) released its much anticipated "Resolution on Certain Questions in the History of the Party since the Founding of the People's Republic of China." The state's legal verdict and the party's party resolution were devised together as complementary parts of a coherent interpretation of the past. The public trial of Cultural Revolution leaders would become a showcase for the new socialist legal system, enabling the state to deliver legal retribution, create closure, and establish a factual record of past crimes. Likewise, the official reevaluation of history would provide an opportunity for the party to acknowledge its mistakes, control damage to its reputation, and put forward a vision for moving forward. In the wake of mass violence over which they themselves had presided, the state and party crafted these two narratives to re-establish their legitimacy to govern.

These two official interpretations of the Cultural Revolution were separate but related attempt to settle accounts, in the sense of establishing a definitive account of the violent and contested past. The two official accounts were complementary, issuing a binding and authoritative interpretation of the past in separate but related registers: the law, and the laws of history. The verdict provides an account of the Cultural Revolution in terms of crimes at the level of law. Meanwhile, the resolution analyzes the Cultural Revolution at the level of objective historical laws as a series of "errors" in revolutionary thought and practice. Taken together, the verdict and the resolution attempted to characterize the Cultural Revolution in such a way as to demonstrate that Chinese socialist law and historiography are capable of interpreting and

drawing lessons from the violent past and are just as worthy of leading the way to the future.

To succeed, the party's resolution on history would have to achieve a number of difficult goals. First, it would have to protect the historical legacy of the CCP without shirking responsibility for its failures. The good of the party's historical accomplishments would have to outweigh the bad of the "decade of disaster." Second, the party would have to analyze and explain the failures of the Cultural Revolution in socialist terms, in a theoretically coherent and defensible way. In other words, the interpretation would have to demonstrate that socialist ideology could provide solutions to its own problems. Third, the historical model would have to isolate and contain the failures of the Cultural Revolution era, putting brackets around the period as an aberration or rupture that has now ended. At the same time, it would have to provide continuity around that rupture, connecting the past glories of the CCP to the present. Finally, it would have to explain why Chinese socialism was the best option for moving forward into the future.

The basis for this double judgment was a distinction between crimes and errors. On December 22, 1980, as the Special Court concluded its inquiry in preparation for deliberations, the authoritative Special Commentator byline headed a major theoretical article in *People's Daily*, called "Milestone in Socialist Democracy and Legality."<sup>81</sup> The commentary reminded readers that the Special Court would only address the crimes of the Cultural Revolution and not non-criminal errors. The article explained that mistakes in revolutionary theory or strategy, even very grave errors with disastrous consequences, must be considered as fundamentally different in nature from crimes. In essence, a crime is "an action harmful to society that is subject to punishment under the law," while an error is "a discrepancy between the subjective and the objective, an action that does not conform to objective laws."<sup>82</sup> These parallel definitions refer to parallel normative standards: the statutory laws (*falü*) that govern a particular society, and the objective laws (*guilü*) that govern social and historical development in general.<sup>83</sup> Violations of the former are crimes, while violations of the latter are errors. The nature of this distinction would figure in several important projects: in the exculpation of Chairman Mao from legal responsibility, in the official condemnation of the Cultural Revolution as an erroneous disaster, and in the authorization of law as a valid tool for analysis under socialism.

<sup>81</sup> Special commentator, "Shehuizhuyi minzhu he fazhi de lichengpai: ping shenpan Lin Biao, Jiang Qing fangeming jituan" [Milestone in socialist democracy and legality: on the trial of the Lin Biao and Jiang Qing counterrevolutionary groups], *RMRB*, December 22, 1980.

<sup>82</sup> Special commentator, "Shehuizhuyi minzhu he fazhi."

<sup>83</sup> According to advisers to the Special Court Wu Jianfan and Ouyang Tao, errors are "mistakes in ideology"; see Jianfan and Tao, "Lun shenpan Lin Biao, Jiang Qing fangeming jituan de jige falü wenti," p. 2.

It is the system of Mao Zedong Thought that defines errors as violations of *guilü*, or the objective “laws of history.” In reviving the Maoist maxim, “seek truth from facts” (*shishi qiushi*), the post-CR reformers reaffirmed Mao Zedong Thought as a correct and scientific system, to be distinguished from its flawed and all-too-human progenitor. Basically, “seek truth from facts” describes the inductive process of social science, by which one studies specific examples in order to divine general principles. In Mao’s own explanation of “seek truth from facts,” he defines truths as expressions of *guilü*: “‘truth’ means the internal relations of objective things, namely their regularities (*guilüxing*) [i.e., their *guilü*-ness, or the extent to which their internal relations constitute *guilü*].”<sup>84</sup> By this definition, truths are those constant or regular principles (“laws”) that govern how society works: in Marxism, the law of class struggle; in liberal economics, the law of supply and demand; in Maoism, the law of the unity of opposites; and so on. Maoism is concerned in particular with discovering certain kind of laws, namely, the laws of historical development. Mao’s central project was the “Sinification of Marxism” – the application of abstract Marxist theories to concrete Chinese realities. Mao recognized that the complexity and contingency of history make it impossible to replicate and “mechanically apply” the laws induced from European history to other places and times.<sup>85</sup> Since the objective laws of history (*guilü*) are universal only to the degree that they are abstract and devoid of specific content, therefore the truth of abstract theories constantly must be tested in practical application. This is the meaning of the second important epistemological slogan of the post-Mao period: “practice is the sole criterion for testing truth.” Because it relies on practice to test inductive reasoning, Mao Zedong Thought is neither predictive nor infallible. Inevitably, errors will arise from imperfect knowledge or the misapprehension of true facts and conditions, leading to the subjective misinterpretation of objective laws. If crime and punishment was the central concern of the verdict, the Maoist understanding of error assumed paramount importance for the drafters of the resolution.

The verdict and resolution sought to mark with perfect clarity the relationship and distinction between crimes (violations of statutory laws) and errors (violations of objective laws). The Chinese character *lü*, common to the terms “statutory laws” (*falü*) and “objective laws” (*guilü*), links the two concepts. At the most basic etymological level, *lü* denotes a restraint; in classical usage, *lü* refers to the formal codification of abstract normative principles: most commonly legal codes, but also codified systems of pitch and tone in music, and rules of tone and rhyme in regulated verse. Correlating statutory law with the objective laws of history implicitly places both within a broader spectrum of normative orders or restraints: the self-discipline or

<sup>84</sup> Quoted in and translated by Nick Knight, “The Form of Mao’s ‘Sinification of Marxism,’” *Australian Journal of Chinese Affairs*, Vol. 9 (1983), p. 19.

<sup>85</sup> Mao Zedong’s phrase, quoted in Knight, “The Form of Mao’s ‘Sinification of Marxism,’” p. 20.

autonomy of the individual (*ziliü*), the group discipline of the Party or other social unit (*jiliü*), the legal discipline of society as a whole (*faliü*), the objective laws of history (*guiliü*), and finally the immutable laws of nature (*dingliü*). This correlative model, which has ample precedents in the long history of Chinese thought, lends socialist legal thought a moral authority similar to that of natural law.<sup>86</sup> Mao Zedong Thought provides that revelation of the higher order is accessible to human beings through practical experience and applied reason. The conceptual and etymological connection between law and restraint is not unique to the Chinese tradition. For example, St. Thomas Aquinas notes in the introduction to his “Treatise on Law” (1269–1270): “Law is a rule or measure for action by which one is led to action or restrained from acting. The word law (*lex*) is derived from *ligare*, to bind, because it binds one to act.”<sup>87</sup> It is the binding necessity of law that is normative or repressive.

Just as the creation of a legal indictment against the Gang of Four elevated the violence of the CR from an issue of Party discipline (*jiliü*) to a matter of law (*faliü*), so too did the party’s resolution elevate the discussion of transgressions yet another level, from law (*faliü*) to the laws of history (*guiliü*). The conflation of human laws and scientific laws is a powerful ideological concept, which Northrup Frye has rightly called “a violent and foolish pun.”<sup>88</sup>

The Gang of Four trial and the historical resolution were planned simultaneously. Deng Xiaoping and his reformist protégé Hu Yaobang were put in charge of the project, while party veteran Hu Qiaomu and leading theoretician Deng Liqun were tasked with drafting the document. At the outset, Hu Qiaomu identified two major difficulties: on the one hand, to not only identify the errors of the Cultural Revolution but to explain why they occurred, and on the other hand, to define the [correct] essence of the party’s guiding ideology and its relationship to Mao Zedong Thought. In March 1980, in the same meeting at which the Secretariat approved plans to conduct the Gang of Four trial, party leaders also discussed the resolution. Deng Xiaoping suggested to Hu Qiaomu three basic principles to uphold in drafting the document: First, the resolution must acknowledge the historical importance of Mao Zedong Thought and reaffirm its value as an ideology to be adhered to

<sup>86</sup> According to Benjamin Schwartz, correlative cosmology was well established in Chinese thought by the third century BCE and reached its height in the Huang-Lao syncretism of the Han dynasty, “leaving its lasting mark on the entire subsequent development of the ‘philosophy of nature’ in China.” Schwartz notes that while correlative thinking is “considered by some to be a primordial and quintessential expression of the Chinese mind,” he agrees with A.C. Graham that correlative cosmology as an expression of general proto-scientific thinking along the lines of Levi-Strauss’ primitive “science of the concrete.” See Benjamin I. Schwartz, *The World of Thought in Ancient China* (Cambridge: Belknap Press of Harvard University Press, 1985), pp. 350–352.

<sup>87</sup> Compare St. Thomas Aquinas, *Summa Theologica*, electronic edition (e-artnow, 2013), Vols. I-II, Qu. 90, 1, Qu. 91, 3 and Qu. 93, 3.

<sup>88</sup> Northrup Frye, *Myth and Metaphor: Selected Essays, 1974–1988*, edited by Robert D. Denham (Charlottesville: University Press of Virginia, 1990), p. 265.

and developed. Second, the document must “seek truth from facts” to analyze the events of past thirty years, including a fair evaluation of correct and erroneous policies as well as the merits and demerits of responsible cadres. Third, the resolution must provide a basic but comprehensive summary of events, painted in broad strokes rather than close detail, in order to help people understand the past and “unite as one and look toward the future.” Deng Xiaoping also noted that the party leadership must accept some measure of collective responsibility for past errors, which were certainly not all the errors of a single person.

The complete text was publicized on July 6, 1981.<sup>89</sup> The new resolution was consciously patterned after the earlier “Resolution on Certain Historical Questions” passed by the Seventh Plenum of the Sixth CCP Central Committee in April 1945.<sup>90</sup> This original 1945 resolution, also drafted by Hu Qiaomu, was the first document of institutionalized party history and solidified the new orthodoxy of Maoist historiography. The resolution “shows that the [Central Committee] still conceived of itself as being the only source of authoritative interpretations of Party history.”<sup>91</sup> An important feature of party history or any kind of historical writing whatsoever is periodization. Periodization performs the basic narrative and interpretive function of setting beginnings, middles, and ends. In short, periodization marks ruptures and continuities. The periodization put forth in the resolution still dominates the study of party history today, both in China and the West, dividing the era of state socialism into smaller periods: “basic completion of the socialist transformation” (1949–1956), “beginning to build socialism in all spheres” (1956–1966), “the ten years of the ‘Cultural Revolution’ ” (1966–1976), and the present “great turning point in history” (1976–1981).

The feature of interest to us here is the decade of the Cultural Revolution, formally dated from May 1966 to October 1976 (§19), for it is the integrated narrative of the verdict and the resolution that holds together the complex

<sup>89</sup> The trial and the resolution were devised to be the final business of the Eleventh Central Committee. The first stable draft was dated November 22, 1980, coinciding precisely with the start of Gang of Four trial, with revisions to be postponed until conclusion of the trial. A revised draft was put before an enlarged session of the Politburo in late May 1980 and formally approved by the plenary session in late June of that year. For a recent account of the drafting process, see Huang Li, “Guanyu jianguo yilai dang de ruogan lishi wenti de jueyi” qicao taiqian muhou [Behind the scenes of the drafting of the “Resolution on Certain Questions in the History of Our Party since the Founding of the People’s Republic of China”] from Zhongguo Gongchandang xinwen wang [CCP News Network] April 2, 2009, available at <http://dangshi.people.com.cn/GB/85040/9070755.html>.

<sup>90</sup> See Tony Saich, “Writing or Rewriting History? The Construction of the Maoist Resolution on History,” in Tony Saich and Hans van de Ven, eds., *New Perspectives on the Chinese Communist Revolution* (London: M.E. Sharpe, 1995), pp. 299–338.

<sup>91</sup> Susanne Weigelin-Schwiedrzik, “Party Historiography,” in Jonathan Unger, ed., *Using the Past to Serve the Present: Historiography and Politics in Contemporary China* (London: M.E. Sharpe, 1993), p. 171.



decade of the Cultural Revolution as a single, coherent period of rupture between the early years of the People's Republic and the historical present. Recall that the crimes listed in the indictment fall into three categories: persecution of Party and state leaders and incitement of mass violence by the Gang of Four in 1966–1969; the attempted coup d'état and assassination of Chairman Mao by the Lin Biao group in 1971; and various moves to consolidate political power by the Gang of Four in 1974–1976 (slandering political rivals to Mao, suppression of popular expressions of grief for the late Zhou Enlai, amassing a cache of weapons in Shanghai). There are two major problems here: first, the connection between Gang of Four and the Lin Biao group was tenuous; and second, even in this official account there is a five-year gap in the criminal activities of the Gang of Four. However, the court case (and eventually the verdict) bridged all of these events into a single counterrevolutionary conspiracy. The narrative force of the resolution is attested by the fact that soon after it was issued, in official discourse the term “decade of internal chaos” supplanted the term “decade of catastrophe.”<sup>92</sup> The resolution completed the rhetorical work of positioning the chaotic Cultural Revolution as entirely erroneous in orientation. The resolution does not hold back in describing the magnitude of the disaster, calling the Cultural Revolution “a grave Left-deviation error comprehensive in nature and protracted in scope” (§ 22). Utterly unlike the truly progressive revolution of 1949, the Cultural Revolution was interpreted as a chaotic rupture in the history of socialism characterized by violations of both positive (statutory) and natural (objective) law. Such an abnormal and regressive “Left-deviation error” demanded explanation in terms of the socialist laws of history. Accordingly, the resolution's explanation of the Cultural Revolution rested on the concept of “error”:

Owing to our Party's meager experience in leading the cause of socialism and to subjectivist errors in the Party leadership's analysis of the situation and its understanding of Chinese conditions, prior to the Cultural Revolution there were mistakes of enlarging the scope of class struggle and of rash, premature development in economic construction. Afterwards, there occurred the comprehensive, protracted, and grave error of the Cultural Revolution. (§ 8)

<sup>92</sup> Based on frequency of usage in *RMRB*. The phrase *shinian haojie* (decade of catastrophe) first appeared June 8, 1979; usage peaked from July 1980 through June 1981 (more than twenty-five usages per month). However, the phrase *shinian neiluan* (decade of internal chaos) appeared with equal frequency in July 1981 and thereafter with much greater frequency. The phrase *shinian neiluan* (decade of internal chaos) became common only after mid-June 1981: there are only five examples prior to June 15, 1981, the earliest on October 28, 1980, compared to 137 examples from the latter half of 1981. “Decade of internal chaos” remained a common phrase throughout 1982–1983, before declining in 1984. Note that the term “catastrophe” (*haojie*) does not appear at all in the *Resolution* as adopted, while the term “internal chaos” (*neiluan*) does appear in the section on the CR period (see resolution, § 20).

The Party leadership's lack of practical experience, its limited knowledge of objective facts, and its mistaken analysis of the overall situation resulted in unintended violations of the objective laws governing historical development. Such violations could not but result in disaster. However, these errors were fundamentally different in nature from crimes, those violations of law described in the verdict.

The resolution characterized as the four erroneous theses that formed the general political theory of the CR. The four erroneous theses were: (1) The Cultural Revolution was a struggle against the revisionist line or the capitalist road. This had no grounding in fact, and many of the policies negated had been correct. (2) The confusion of right and wrong led to the confusion of friends and enemies. The facts show that many of the people attacked and persecuted had been wrongly labeled. (3) The Cultural Revolution was supposed to rely on the masses for support. In fact, the movement was divorced from Party organizations and the masses and even had been resisted or rejected by people at all levels. (4) The Cultural Revolution was said to be a revolution. Here the refutation is very strong: "Practice has shown that in fact the Cultural Revolution did not – and indeed *could not possibly have* – constituted a revolution or social progress *in any sense*" (§ 20). The errors made were contrary to fact, contrary to the objective laws of history, and contrary to the great tradition of Mao Zedong Thought.

Nor does the resolution stint in its criticism of Chairman Mao.<sup>93</sup> On the other hand, the resolution also stresses Mao's lasting and overwhelmingly positive contributions to the cause of Chinese socialism, even citing his good intentions in launching the Cultural Revolution. The resolution urged a balanced view of history, equally condemning those who supported or attacked Mao without qualification: "These two attitudes fail to draw a distinction between Mao Zedong Thought, a scientific theory formed and tested over a long period of time, and the errors made by Comrade Mao Zedong in his later years. Yet this distinction is absolutely necessary" (§ 31). This is to say that in evaluating history, the distinction must be drawn between the person and his thought, between the subjective and the objective; people's actions must be measured separately against the law and the objective laws of history.<sup>94</sup> The resolution affirms that the enduring historical philosophy of Mao Zedong Thought can and must be salvaged and applied to the challenges ahead: only through the guiding principles of Marxism-Leninism and Mao Zedong Thought – seeking truth

<sup>93</sup> Party leaders Ye Jianying, Deng Xiaoping, and Huang Kechang all provided critical evaluations of Mao Zedong that predated the Resolution; see Brantly Womack, "Where Mao Went Wrong: Epistemology and Ideology in Mao's Leftist Politics," *Australian Journal of Chinese Affairs*, Vol. 16 (1986), p. 25, n. 2.

<sup>94</sup> Haiyan Lee, "Mao's Two Bodies: On the Curious (Political) Art of Impersonating the Great Helmsman," Unpublished paper, applying the metaphor developed by Ernst Hartwig Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957).

from facts, and testing it through revolutionary practice – can the nation achieve unity, stability, and modernization as it moves forward. In summary, even as the resolution sharply criticized the later content of Mao Zedong Thought, it reaffirmed the ostensibly scientific method of socialist governance according to the laws of history.

From the ambition of the party's historical resolution, and from its direct and complementary relationship to the earlier legal verdict, it is clear that the Gang of Four trial aimed to achieve much more than a public shaming of Cultural Revolution leaders. The trial attempted to define the scope and function of law in socialist society, to demonstrate its proper exercise by state power, and to render a judgment on the past rooted in the ostensibly law-like and scientific regularities of human history.