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Iron triangle of the *gong jian fa*: Lessons from wrongful convictions in capital cases?

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Abstract

This article examines the iron triangle of the *gong jian fa* (police, prosecutors and courts) in China, based on Chinese lessons from high-profile wrongful convictions in capital cases. It argues that the iron triangle acts as both an administrative and a political control on such cases, behind which lies overly close cooperation between the three state institutions. This cooperation often results from coordination by local political-legal committees (PLCs). Under this institutional environment, the police, prosecutors and courts have to work together and cooperate with combating crime, without necessary restricts to ensure criminal justice even in capital cases. Responding to repeated occurrences of such typical injustices, China has promoted several waves of justice reforms to prevent and reduce wrongful convictions over the last ten years, but has failed to make substantive progress without effectively addressing the iron triangle. This continued failure calls for a holistic approach to future systemic reform. Particularly, specific measures are required to enhance judicial independence and to reduce intervention from local PLCs during the handling of individual cases. Such reforms would greatly reduce the risk of wrongful convictions in capital cases. © 2014 Elsevier Ltd. All rights reserved.

Keywords: Iron triangle; The *gong jian fa*; Injustice; Wrongful conviction; Capital cases; Systemic reform in China

Wrongful convictions in capital cases are one of the greatest problems facing China's criminal justice system. Since 2005, there have been several waves of reforms to China's justice system, which were intended to prevent wrongful convictions in capital cases. These reforms

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occurred in response to several notorious erroneous convictions that resulted from ‘iron triangle’ of the “*gong jian fa*”. The term “iron triangle”¹ is generally used in geographic, military, political or media contexts to describe a close, mutually-reinforcing relationship between three entities. In this article, the informal term “iron triangle” is used to refer to the unduly close relationships between the police (*gong an*), procuracy (*jian cha yuan*) and courts (*fa yuan*) during the process of criminal trials. These relationships are not sanctioned by Chinese law and they frequently lead to unjust outcomes.

Unfortunately, the current justice reforms by the authoritarian state are more symbolic than substantive. This article will start by describing the nature of the ‘iron triangle’ in the criminal process of capital cases. Based on case studies, it will then demonstrate how the ‘iron triangle’ causes numerous wrongful convictions in China’s justice practice. Also, the specific relation between current reforms and the ‘iron triangle’ will be examined in detail, in order to explore problems and countermeasures on fundamental flaws, as lessons to be learnt from such wrongful convictions. The elimination of the “Iron Triangle” of *gong jian fa* will be suggested, as the improper relationship between the state actors contributes to wrongful convictions and paralyzes the mechanisms that should be available for the discovery and correction of such miscarriages of justice. Accordingly, this article will suggest the creation of an “ideal triangle” of criminal justice, which should be a relationship between the procuracy, the courts and the defence, excluding any other outside interference.

1. Iron triangle: the administrative or political control on capital cases?

Essentially, the ‘iron triangle’ describes a stable structure of relationships between three groups of people, namely, the police, who investigate cases, the procuracy, who prosecute the accused, and the courts that hear and decide cases. This relationship arose from a desire to expedite justice and enhance the criminal justice system. Unfortunately, all too often in China, justice expedited is justice denied. Often, members belonging to each party of the triangle know each other very well, and people at one corner of the triangle frequently coordinate with those at the others to ensure efficient cooperation, but not necessary restraint. Within the iron triangle, the three organs rationally work together to decide cases as a monolithic whole so as to efficiently solve cases in the name of serving public interests, such as crime control or social stability.² The iron triangle relationships first emerged as an aspect of the inquisitorial process that was established in the *Criminal Procedure Law of the PRC (CPL) adopted in 1979*, though the triangle was not an official set of relationships under the old law. The iron triangle was created as part of China’s post-1978 reforms to its criminal justice system, which were in turn tolerated as part of a broader programme of market-based economic reforms. In two later cycles of *CPL* reform, which occurred in 1996 and 2012 respectively, there have been basically no changes made to the ‘iron triangle’ relationships, even though China is transitioning towards the adversarial system of criminal justice. The endurance of the ‘iron triangle’ in practice results from deep institutional roots, extending through the administrative and institutional environment of China’s party-state system.

¹The term of “iron triangle” has been used in many fields. Here I refer it to the relationship between the *gong jian fa*, but that it is not yet a common term in the area of law.

²See Pitman Potter (1999), *The Chinese Legal System: Continuing Commitment to the Primacy of State Power*, *The Chinese Quarterly*, 159: 681.

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