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Swearing down the Law – A Debate (continued)

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Swearing down the Law – A Debate (continued)

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By Jérôme Bourgon and Paul R. Katz

Part II

Read Part I of this debate [here](#).

The continuum continued

PK: The key difference in our views lies in the way we define the term “continuum”. This can be seen in the following two statements: a) “The term continuum causes us to believe that there is something like a continuity between earthly and underworld justice, or at least that both were included in a coherent framework”; b) “Continuum leads one to expect not mere co-existence but a real coherence or a continuous sequence in which adjacent elements are not perceptibly different from each other, although the extremes are quite distinct”. If I understand you correctly, you seem to be arguing in favour of identity transcending differentiation, while I am stressing continuity amidst difference. I think my definition better reflects the term’s etymology, including the Latin *continuus*. The Latin term can mean both “continuous and uninterrupted” and “following one after another, successive, continuous”, including days, consulships, battles, itineraries, labours. In my book, I use the term to describe a continuous spectrum of judicial beliefs and practices, linked by the overarching “ideology of justice” but differing in time, agent, and intent. To me, the fact that the adjective describes very different consulships, battles, itineraries, and even days as successively linked (continuous) would seem to support my usage.



Torture implements

One example of what I am talking about may be found in your observation that, “In practice, repeated pressure tend to blur the difference, all the more so since there was no clear distinction between ‘sin’, ‘crime’, and ‘fault’ (all were *zui* 罪)”. This is exactly my point: the blurring you refer to represents the results of overlap, and shows the existence of the

continuum. I appreciate that you go on to point out that, "However the code and judicial decision show that the legal system resisted to pressure, and reinforced the differences between breaches of moral-religious duties and crimes against the law. This is the place where law institutionalizes a breaking point between religious and secular conception —a break in the 'continuum', precisely". I agree that differences existed, and that each conception had its own unique features, but the interaction between these elements suggests that a continuum did exist. Also, are differences and breaks identical phenomena? And, conceptually speaking, if you are indeed arguing in favour of a "break", then aren't you conceding the continuum's existence, as only something continuous can be broken?

I also concur with the statement "...when you consider Chinese judicial practice of say the Ming and Qing, supernatural interferences are strikingly scant when compared to Christian Europe", but how does this disprove the existence of a continuum? I am also a bit wary of measuring China against the West in order to prove a point (the old question of "Why didn't China develop according to Western models?")

You then proceed to argue that "The popular religious vision certainly must be taken into account, all the more since it was reckoned and used (manipulated?) by sensible magistrates. But the official vision should not be overlooked". I totally agree, but what's really interesting is how and why officials chose to use (or modify) the popular vision.



Judgment after death: A view of the Department of suffering and misery 苦楚司 in the Eastern Peak temple (Dongyuemiao) of Beijing

Exhuming executions

JB: The expression "hermetic separation" applies to executions. It stems from the statement of fact that Chinese executions were secularized when compared to Western executions, which were manned and frequently staged by Christian priests, and were conferred soteriological functions (a criminal could gain salvation via good Christian behavior during execution). The torture of the Chinese underworld belongs to a karmic economy, which is not linked to human justice. This is a point where the "continuum" seems hard to evidence: if "continuum" there

was, did Buddhist or Taoist priests pray for those condemned by manly justice? Were there special rituals for convicts condemned to death? Was there some link between human punishments (say *lingchi* 凌遲), and the tortures inflicted (or spared) on the dead in underworld prisons? Was there balance, compensation, or any link? Did a criminal's attrition and contrition during execution help his/her future fate in the underworld, not to mention future reincarnation?



Religious commitment and staging in Western execution vs. Mundanity and matter-of-factness of Chinese executions: On the execution field in France, 1766
For now, I have more secular than religious signs of the humanitarian treatment of the condemned (i.e. meals or drinks offered to them by state institutions, as opposed to civil-religious associations), but this point would need more research.



Religious commitment and staging in Western execution vs. Mundanity and matter-of-factness of Chinese executions: Chinese representation of a public execution, c. 1880

PK: You argue that, "China was this civilization where the executions of the living, though ubiquitous in public places, were no matter to narrative, pictures, or memory of any kind; and where torture and executions were reserved for the dead, as far as imagery, narratives, and vivid memory are concerned". I largely agree, especially in terms of the "imbalance between under-represented real executions and over-represented hell tortures". Nonetheless, the claim that such acts "were no matter to...memory of any kind" seems a bit too strong. There are scenes of these deeds in novels like the *Shuihu zhuan* 水滸傳, as well as the late Qing illustrations presented in *Death by a Thousand Cuts*.

I am also curious about the assertion that "criminals who were publicly executed...were not granted any religious assistance". While one would hardly expect to find records of Buddhist or Taoist religious specialists performing the last rites, some works of fiction indicate that the condemned were taken to underworld deity temples before being executed. This is still done in Taiwan today, with non-Christian condemned criminals worshipping images of the Bodhisattva Dizang 地藏 placed outside the execution site (see the [here](#), [here](#), and [here](#), as well as the photo below), but perhaps this is partly a result of Japanese or Christian influence?



Regarding the argument that executions were events "...where the 'continuum' between human and divine realms is the most questionable", I did not discuss executions in my book, which was clearly a significant oversight. You make some excellent points here, and I especially appreciate the exciting new data on prison temples. However, my interpretation of this data seems to differ from yours, while also being inspired by your observation that, "...at the very core of the penal machinery wherefrom capital criminals were sent to their death, we find an intense religious activity aimed at purifying the place of the vengeful miasma that may have been left behind. A highly significant cult, indeed, but a private one, so to say, practiced by the officials isolated in the prison precincts". In other words, what is most important here is not that Chinese executions lacked religion, but that religion was observed in a private setting (this is also the case in Taiwan today, as can be seen from the news stories I sent you previously), as opposed to the very public way religion figured into Western executions.

Parting shots

PK: It is clear that we still differ on the relationship between different forms of judicial practice, as can be seen by your statement that, "...received knowledge as well as our sources at the moment force us to set apart human and divine justice". My book acknowledges that human and divine justice differed, yet also tries to show that the entirety of Chinese legal culture featured a coherent framework whereby human and religious conceptions of justice not only coexisted but interacted in terms of both belief and practice. The human and religious realms had their own unique features, yet they also shaped each other. That's why I argue for the existence of a continuum. In other words, we can recognize the differences and integral elements of each form of justice without arbitrarily separating them.

"For the legal historian, the great question is how far all this procedural intercourse with the underworld influenced justice in this world". This is indeed the great question. I tried to provide some answers in my book, but am far from satisfied. Any further insights would be most appreciated!

JB: To wrap up my point of view at the present moment, I would say that Chinese religion replicates justice in the imaginary underworld: ritual indictments emulate judicial decisions and compensate miscarriages of justice, while underworld torments replicate and exaggerate legal punishments, and complement the idea that no crime will escape its necessary and legitimate punishment. But Chinese religion seems unconcerned by the passage from this world to the other when justice is at stake. The judiciary and indictment rituals, legal punishments, and hell torments appear more like mirrored representations than as a "continuum". More research and exchange between religious and legal historians will be

needed to ascertain your highly stimulating hypothesis regarding the judicial continuum, but I am eager to learn more and change my mind, just like my perception of justice has changed after reading your *Divine Justice*.