

## The Demand of Ordinary People for Justice in Early China\*

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In early China, ordinary people had a “right” to demand for justice and they often exerted that “right”. Due to the nature of our sources, which are preoccupied with the concerns of the governing elite, the ordinary people’s voices are often lost, but even the scanty evidence that we have suggests that ordinary people did not always passively wait for justice to be delivered to them by the authorities. On one hand, the elites recognized that all human being had the sense of justice and its expression was a natural tendency, on the other hand, ordinary people and elites actively demanded justice at least in three ways: they cried out to redress the injustices they had encountered; they honored the impartial judges for their honesty and fairness; and they protested against injustices through collective actions.

*Keywords:* early China, justice, ordinary people, right

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The members of the governing elites clearly recognized that the all human being had the basic sense of justice and its expression was a natural tendency, as can be seen from the following speech ascribed to Zhang Huan (張奐, A.D.103-181):

凡人之情，冤則呼天，窮則叩心。今呼天不聞，叩心無益，誠自傷痛。

In all cases, it is human feeling that when we feel aggrieved, we cry out to Heaven, and when we feel pushed to the limit and at our wit’s end, we beat our breasts. Now, I cry out to Heaven, but I have not been heard. I beat my breast, but to no avail. This truly harms and afflicts me.<sup>1</sup>

Aside from discussing the many commonalities between the feelings of members of the governing elite and the lowest-status commoners, our sources also show ordinary people and members of the elite demanding justice at least in three ways:<sup>2</sup> they cried out to redress the injustices they had encountered, commoners and members of the elite alike; they honored the impartial judges for their honesty and fairness (going so far as to dedicate shrines to them even while the officials were living!); and they protested against injustices through collective actions.

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<sup>1</sup> Fan Ye (范曄), *後漢書* (Hou Hanshu), Beijing: Zhonghua Book Company, 1965, p. 2142.

<sup>2</sup> Here I do not discuss the appeal process, since that process depended upon trust in the justice system. Instead, I speak of the people’s demand for justice by other means, which itself constituted a judgment about the performance of the justice system.

In the first situation, people cried out to redress the injustices that they witnessed, including the suffering of righteous officials. According to the *Hanshu*, during the early reign of Emperor Zhao (r.86-74 B.C.), the magistrate of Weicheng (渭城), Hu Jian (胡建) was forced to commit suicide, because he refused to bend to the will of those who wanted him to wrongly charge his subordinates with crimes, after the arrest of a guest of the powerful princess Gai (蓋, d.80 B.C.) in her palace.<sup>3</sup> The ordinary people treated Hu Jian as a hero, and, in partial requital for the injustice he had suffered, they dedicated a shrine to him, which Ban Gu said was still standing 150 years later:

建自殺。吏民稱冤，至今渭城立其祠。

[Hu] Jian committed suicide. The county officials and people all claimed that he had suffered an injustice. They set up a shrine to him that even today is in Weicheng.<sup>4</sup>

Similarly, in 6 B.C., people cried for redressing the injustices that Empress Dowager Feng suffered from Empress Dowager Fu (傅) and Emperor Ai (哀, r.6-1 B.C.). The public outcry encouraged principled officials to challenge Empress Dowager Fu and Emperor Ai three times. The story goes like this:

初，傅太后與中山孝王母馮太后俱事元帝，有卻，傅太后使有司考馮太后，令自殺，眾庶冤之。[司隸] [劉]寶奏請覆治，傅太后大怒，曰：「帝置司隸，主使察我？馮氏反事明白，故欲撻缺以揚我惡。我當坐之。」

上乃順指下寶獄。尚書僕射唐林爭之，上以林朋黨比周，左遷敦煌魚澤障候。大司馬傅喜，光祿大夫龔勝固爭，上為言太后，出寶復官。

Earlier on, Empress Dowager Fu and Empress Dowager Feng, who was the mother of the Filial King of Zhongshan, both serve (i.e., were married to) Emperor Yuan, and there were conflicts between them. [When Emperor Ai 哀 ascended the throne], Empress Dowager Fu ordered official(s) to investigate Empress Dowager Feng and then order her to commit suicide. The commoners thought this unjust. [Director of Internal Security] Liu Bao sent a memorial asking to review the case. Empress Dowager Fu flew into a rage and said: “The emperor appointed the internal security mainly to inspect me? Feng’s treason case was very clear. You deliberately find fault with me in order to blacken my name. I shall see that you are charged with a crime.”

[Emperor Ai] then followed her will and put Liu Bao in jail. Deputy Director of the Secretariat Tang Lin contested the decision. Emperor Ai charged Tang Lin with “to forming partisan units for selfish ends” and demoted him to serve as a *zhanghou* [commander] at Yuze in Dunhuang commandery. Marshal of State Fu Xi and Counsellor of the Palace Gong Sheng really challenged that decision. So the emperor informed the Empress Dowager to release Liu Bao and reinstall him in his post.<sup>5</sup>

In another case reported in the *Records of the States South of Mt. Hua* (Huayang guo zhi, 華陽國志, comp. ca. 314), in A.D. 3, the famous minister He Wu was forced to commit suicide by Wang Mang, who thought He Wu to be an obstacle to Wang’s achieving his ambition of usurping the throne. However,

眾咸冤之，莽欲厭眾心，賜武曰刺侯，子況嗣。

The multitude all thought [the pressure on He] unjust. In order to satisfy the hearts of the multitude, Wang Mang posthumously enfeoffed He Wu as Marquis of Ci, and let his son He Kuang succeed to the noble title.<sup>6</sup>

<sup>3</sup> Princess Gai (蓋) was the elder sister of Emperor Zhao (昭, r. 86-74 B.C.).

<sup>4</sup> Ban Gu (班固), *Hanshu* (Hanshu), Beijing: Zhonghua Book Company, 1982, p. 2914.

<sup>5</sup> *Hanshu*, p. 3261.

<sup>6</sup> Chang Qu (常璩), *華陽國志* (Huayang guozhi), Beijing: Zhonghua Book Company, 1985, Juan 10a, p. 4.

As noted above, some people dedicated shrines or temples to fair officials to praise them, even if they did not wish to indirectly criticize the throne or its representatives.<sup>7</sup> For instance, the *Hanji* (漢紀, comp. ca. A.D. 200) biography of Luan Bu (樂布, d. 154 B.C.) reports,

樂布有功封歙侯，為燕相，有治，民為之立生祠。

Luan Bu had merits and so he was enfeoffed as Marquis of Xi. He served as chancellor of Yan, which was well-ruled. The local people dedicated a shrine to him when he was alive.<sup>8</sup>

This case only speaks of Luan's excellent administration (which presumably included his decisions as judge), but other instances directly speak of erecting shrines and a temple to honor the achievements of fair judges. The *Shuoyuan* says, for example,

丞相西平侯于定國者，東海下邳人也。其父號曰于公，為縣獄吏決曹掾，決獄平法，未嘗有所冤……東海郡中為于公生立祠，命曰于公祠。

Yu Dingguo, Chancellor and Marquis of Xiping, was a native of Xiapi, in Donghai commandery. His father was honored as "Lord Yu" [by the local people]. When he was a junior judge in the criminal division of the county court, he judged criminal cases fairly according to the laws and he never inflicted an injustice [on anyone]... The people in Donghai commandery dedicated a shrine to him when he was still alive and they called it "the Shrine of Lord Yu".<sup>9</sup>

The *River Classic Commentary* (Shuijingzhu 水經注, comp. ca. 525) reports the existence of a shrine dedicated to Zhuo Mao (卓茂, fl. 1st century A.D.) in Mi (密) county,

恭而有禮。人有認其馬者，茂與之曰：若非公馬，幸至丞相府歸我。<sup>10</sup> 遂挽車而去，後馬主得馬，謝而還之。任漢黃門郎，遷密令。舉善而教，口無惡言，教化大行，道不拾遺，蝗不入境<sup>11</sup> 百姓為之立祠，享祀不輟矣。

[Zhuo Mao] was respectful and courteous. A certain person once lost his horse. Zhuo Mao said to him that if his horse was not the man's horse, he should do him the favor of coming to the offices of the chancellor to return the horse to him. Then he [gave the man the horse, then] pulled his carriage with his own hands and left. Later on, the man found his own horse, and so he apologized and returned Zhuo Mao's horse.

Zhuo Mao was appointed as the gentlemen of the yellow gate of the Han and then he was transferred to serve as the magistrate of Mi county. He raised the good persons and propagated moral teachings. Never once did he speak ill or wrongly, so the moral teachings of the dynasty were carried out on a large scale. No one picked up lost items on the road, and locusts did not invade the county. The ordinary people dedicated a shrine to him, and offerings have never been interrupted down to today.<sup>12</sup>

The image of Zhuo Mao here is that of a typical benevolent judge, such as we have encountered earlier. His story first occurs in the *Dongguan Hanji* and then in the *Hou Hanshu*, but both texts fail to mention the shrine.<sup>13</sup> If we believe the report by Li Daoyuan (酈道元, d. 527), Zhuo Mao's shrine had continuously received offerings for at least half a millennium.

<sup>7</sup> There were many shrines and temples dedicated to benevolent officials. Here I will just give a few examples to illustrate my point. Of course, these shrines and temples were not merely to appraise the fairness of those officials in administrating justice, but justice was an important factor that motivated the local people to praise those officials.

<sup>8</sup> Xun Yue (荀悅), *漢紀* (Hanji), Beijing: Zhonghua Book Company, 2002, p. 140.

<sup>9</sup> Xiang Zonglu (向宗魯) (Ed.), *說苑校正* (Shuoyuan jiaozheng), Beijing: Zhonghua Book Company, 1987, pp. 108-109; cf. *Hanshu*, p. 3041.

<sup>10</sup> Zhuo Mao worked as a clerk in Chancellor Kong Guang's bureau at that time.

<sup>11</sup> This is a conventional phrase in describing a benevolent official's achievement. We need not take it too literally.

<sup>12</sup> Chen Qiaoyi (陳橋驛) annot., *水經注校釋* (Shuijingzhu jiaoshi), Hangzhou: Hangzhou University Press, 1999, p. 391.

<sup>13</sup> Liu Zhen (劉珍), *東觀漢記* (Dongguan Hanji), Beijing: Zhonghua Book Company, 1985, pp. 471-473; *Hou Hanshu*, pp. 871-872.

Other accounts put other people building temples and erecting commemorative stele for benevolent judges. For instance, during the reign of Emperor He (r. A.D. 89-106), “[When Xu Jin died], local people at Guiyang 桂陽 built a temple and planted one or more steles to commemorate him” (桂陽人爲立廟樹碑).<sup>14</sup>

Dedicating shrines or temples to fair judges confirms what Ban Gu said, “They passed away but they have left their kindnesses behind. People have lingering thoughts about them and they long for them.” At the same time, this sort of activity could also be viewed as the local people’s constructive effort to reward officials who embodied justice for them. That did not mean that the people always employed constructive means; sometimes, when they confronted what they regarded as an extreme injustice, they responded with violence. The *Shiji* recounts a story in which the local people who suffered under an abusive judge Yin Qi (尹齐, fl. 2nd century B.C.) in Huaiyang (淮陽) commandery planned to burn his corpse.<sup>15</sup> This story also occurs in the *Lunheng* with a bit more elaboration: Wang Chong comments that the Yin family had to resort to extraordinary measures to preserve the integrity of the corpse.

淮陽都尉尹齊，爲吏酷虐，及死，怨家欲燒其尸，（尸）亡去歸葬……曰：尹齊亡，神也，有所應……或時吏知怨家之謀，竊舉持亡，懼怨家怨己，云自去。

The Commandant of Huaiyang, Yin Qi, was cruel and abusive. When he died, the families who had suffered injustices from him planned to burn his corpse. However, the corpse disappeared and was buried ... [The family of Yin Qi] said: “That Yin Qi’s corpse has disappeared testifies to a miracle.” ... Perhaps the officials at the time knew of the plan of those resentment-filled families, so the officials secretly carried the corpse away. Because they were terrified that those families would then resent *them*, they said that the corpse had disappeared on its own.<sup>16</sup>

The *Hanshu* supplies an even more striking story, where the authorities admitted that a major rebellion in Haiqu (海曲) county during the reign of Wang Mang (王莽, r. A.D. 9-23) was caused by a grave injustice, with the result that the participants were pardoned:

初，呂母子爲縣吏，爲宰所冤殺。母散家財，以酤酒買兵弩，陰厚貧窮少年，得百餘人，遂攻海曲縣，殺其宰以祭子墓。引兵入海，其眾浸多，後皆萬數。

莽遣使者即赦盜賊，還言「盜賊解，輒復合。問其故，皆曰愁法禁煩苛，不得舉手。」

Earlier on, the son of Mother Lü was a county official who was wrongly killed by the magistrate. She spent her wealth to buy wine and weapons and crossbows, and she secretly treated hundreds of poor youths, and enlisted them in her army, and then she attacked Haiqu county. She killed the magistrate and offered him in sacrifice to her son. She then led her army to the sea, [where they lived on islands], and her followers grew more numerous day by day, till she had several tens of thousands followers.

Wang Mang sent his envoy [to deal with the situation]. He immediately pardoned all the bandits. He returned and reported to [Wang Mang]: “The bandits melted away, but soon they gathered again. I asked them the reason, they all said that they were worried about the laws were too complicated and harsh, so they had nowhere to raise their hands [to make a living].”<sup>17</sup>

<sup>14</sup> *Hou Hanshu*, p. 2472. Xu Jin was famous for resolving a dispute between two brothers and thereby transforming the whole territory in his jurisdiction.

<sup>15</sup> Sima Qian (司馬遷), *史記* (Shiji), Beijing: Zhonghua Book Company, 1977, pp. 3151.

<sup>16</sup> Liu Pansui (劉盼遂) (Ed.), *論衡集解* (*Lunheng jijie*), Shanghai: Shanghai guji chubanshe, 1957, p. 21; cf., Paolo Santangelo, *Love, Hatred, and Other Passions, Questions and Themes on Emotions in Chinese Civilization*, Leiden and Boston: E. J. Brill, 2006, p. 350.

<sup>17</sup> *Hanshu*, pp. 4150-4151.

In the same manner, the *Huayang guozhi* recounts that in A.D.179, seven clans of the Banshun (板楯) tribe in Hanzhong (漢中) commandery rebelled, due to their sufferings at the hands of the local officials. The emperor initially wanted to send armies to put down the rebellion. However, a local official Cheng Bao (程包, fl. 2nd century) argued against taking that action:

板楯七姓，以射虎為業，立功先漢。本為義民……長吏鄉亭，更賦至重；僕役過於奴婢，箠楚過於囚虜；至乃嫁妻賣子，或自割割。陳冤州郡，牧守不理。去闕庭遙遠，不能自聞。含怨呼天，叩心窮谷。愁於賦役，困於刑酷……如臣愚見權之，遣軍不如任之州郡。

The seven clans of Banshun tribe make shooting tigers their occupation. They made contributions to Former Han. Originally they were dutiful people... The county and district officials burdened the Banshun tribe with heavy taxation. They forced them to work harder than slaves; they whipped and flogged them more harshly than they did criminals in jail. Hence, they had to marry off their wives and sell their children, or mutilate themselves [to avoid hard labor service]. They reported the injustice they suffered to the provincial and commandery officials, who did not set things aright. They were too far from the imperial court, so they have not found a way to let their voice be heard by Your Majesty. They cried out to Heaven for the grievances that they have suffered. They beat their breasts for their extreme hardships. They were worried about taxes and labor services; they were hindered by harsh penalties... According to my humble opinion, sending troops will be less effective than holding the provincial Pastor and commandery governor responsible for [redressing their grievances].<sup>18</sup>

The emperor was persuaded and he ordered the governor to pardon the rebels, at which point the rebellion was over.<sup>19</sup>

As a whole, these activities reflected the desires on the part of the people to encouragement improvements in the justice system through the praise and blame of specific local officers. The people's demand for justice caused the authorities to address the needs of the people and to make the justice system fairer. For instance, Emperor Yuan (元, r. 49-34 B.C.) once charged his chancellor and imperial counsellor with this:

惡吏負賊，妄意良民，至亡辜死。或盜賊發，吏不亟追而反繫亡家，後不敢復告。以故浸廣。民多冤結。州郡不理，連上書者交於闕廷……今丞相、御史將欲何施，以塞此咎？悉意條狀，陳朕過失。

Evil officials betray their duties and recklessly and with intent harm the people—so much so that the innocent even lose their lives. In some cases, when their destructive behavior is discovered, officials do not immediately pursue them. Instead, the officials arrest those who have fled. They dare not complain, so the injustice grows. The people are full of bursting with grievances. The regional and commandery courts do not redress their grievances; so the royal court is full of people who constantly submit appeals... Now, what are you, the chancellor and imperial counselor to do to prevent the blameworthy acts? You should thoughtfully and thoroughly draw up a list of the cases, and lay before me the mistakes.<sup>20</sup>

With this imperial edict the emperor hoped to stop widespread injustices, some of which could be traced to the very highest offices in the land. Moreover, the emperor was willing to admit his own responsibility in allowing gross injustices to happen. This leads us conclude that it was the people's "right" to demand for justice in early China.

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<sup>18</sup> *Huayang guozhi*, p. 7; cf. *Hou Hanshu*, p. 2843.

<sup>19</sup> *Huayang guozhi*, p. 7.

<sup>20</sup> *Hanshu*, pp. 3040-3041.

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