

LAW'S LOCATION IN CHINA'S COUNTRYSIDE

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ABSTRACT

The following article traces the steps taken by Chinese rural residents in one lawsuit and analyses how the choices made were dictated both by the constraints of market legal reforms and the resilience of customary norms. It posits that while the language of rights is easy to transport, the process of rights assertion is less so. Rather, efforts to establish legal formality in China may have led to the dominance of technocracy and a continuing reliance on the developmental state for resolution.

The response from the Chinese state is the development of a multi-tracked civil dispute resolution system, with the Chinese state heavily involved in major litigation apart from the litigants' preferences, formal procedures and party autonomy working in the "run of the mill" commercial litigation, but simplified procedures, informal mediation and petitioning the government as the preferred methods for residents in the countryside. Such a multi-tracked system, while borne of necessity, will instead serve to diffuse the potential of courts to serve democratic reforms.

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INTRODUCTION

Traditional modernization theories posit the progressive movement of societies from agrarian to industrial, rural to urban, and informal to formal justice. Rule of law programs go hand in hand with economic reforms in the belief that law and development will bring in higher productivity as well as democratic changes. Law and, in particular, independent court systems are said to have a variety of benefits that can aid economic development and in turn, lead to the development of participatory democracy.

The possibilities of law and courts are several. For one, in rendering decisions, courts can give operational meaning to top-down principles that would otherwise remain abstract, rhetorical, and elusive. In applying legal principles to concrete disputes, courts adjust rigid legality to messy facts, restate law into more tangible form, and enable individuals and institutions to adapt legal principles and their underlying values into everyday life. When courts expound on legal provisions, they restate legality in terms of a concrete, understandable set of facts, enabling individuals and institutions to incorporate legal principles into their conduct.¹ In the process, courts can be a “subversive site” in which top-down norms are adjusted by “bottom up” reality, a site that can provide opportunities for ordinary citizens to have a say reshaping these top-down norms. The parameters of such a legal culture and the existence of these “law” sites reflect the possibilities of resistance through law for ordinary citizens against authoritarianism.

Second, in the process of participating in the public arena of the courts, citizens can learn the language of rights and equal justice, the “grammar of justice” so to speak, language critical to the democracy project.² As citizens in a democracy, individuals need to think of themselves as equal to others, with their rights protected by law, and able to claim such rights against others.³ Thus, the use of courts is a vehicle through which a culture more conducive to the assertion of rights is nurtured, with the micro-assertion of rights in the courts as one of the first steps in democratic development. Even in the early days of communist China when there was a brief period of formal legality, any rights once granted were not easily taken away or forgotten. This shows

¹ Girardeau A. Spann, *Expository Justice*, 131 U. PA. L. REV. 585, 598 (1983).

² See generally ELIZABETH H. WOLGAST, *THE GRAMMAR OF JUSTICE* (1987), for a discussion of the origins of the term “grammar of justice.”

³ *Id.* at 31.

that, rights language once learned, even among illiterates, can become “part of a repertoire of skills used, either individually or collectively, as a weapon against recalcitrant husbands, in-laws or officials.”⁴

Third, the process of claiming these entitlements itself can have an empowering value of its own. “The activity of claiming . . . as much as any other thing, makes for self-respect and respect for others [and] gives a sense to the notion of personal dignity.”⁵ A system based on law “can provide opportunities for participation and control in a political system.”⁶ The availability and the exercise of that process can make individuals fuller members of society.⁷ Denial of this participation can “cause[] alienation and a loss of that dignity and self-respect that society properly deems independently valuable.”⁸ In this view, courts can be the loci for resistance, a reshaping of the legal culture, as well as a source of dignity and route for participation in the political system.

Of course, this picture of courts represents the ideal. Courts and rights assertion can be taken to the other extreme, as excess litigiousness can change the very meaning of justice and increase social fragmentation.⁹ Formal procedures do not always mean justice. Without access to legal assistance, legal formality can be a barrier to justice.¹⁰ Excessive rights assertion, meanwhile, can elevate personal greed above mutual need and cause fragmentation of society. Courts provide protection from individual aggression or state intrusion, but used in excess they also encourage the fragmentation that makes protection necessary in the first place.¹¹ Thus, even in the United States, there are competing forces that urge the return to informal community processes for dispute resolution.¹² They criticize courts

⁴ NEIL J. DIAMANT, *REVOLUTIONIZING THE FAMILY: POLITICS, LOVE, AND DIVORCE IN URBAN AND RURAL CHINA, 1949–1968*, at 12 (2000).

⁵ Joel Feinberg, *The Nature and Value of Rights*, in *RIGHTS* 78, 91 (David Lyons ed., 1979).

⁶ H. RICHARD HARTZLER, *JUSTICE, LEGAL SYSTEMS, AND SOCIAL STRUCTURE* 15 (1976).

⁷ See, e.g., Frank L. Michelman, *The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights –Part I*, 1973 *DUKE L.J.* 1153 (1973); Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 *U. CHI. L. REV.* 28, 50 (1976).

⁸ Mashaw, *supra* note 7, at 50.

⁹ JEROLD S. AUERBACH, *JUSTICE WITHOUT LAW?* 13 (1983) (“[W]ithout the universalist content it possessed when community members share a common value system, it fragments into a set of procedures.”).

¹⁰ Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFF. L. REV.* 1, 35–36 (1990).

¹¹ AUERBACH, *supra* note 9, at 13.

¹² See STEPHEN N. SUBRIN & MARGARET Y. K. WOO, *LITIGATING IN AMERICA: CIVIL PROCEDURE IN CONTEXT* 228–35 (2006), for a historical account of the pros and cons of the alternative dispute resolution movement in America.

as remote, inaccessible institutions that represent the interests of the state and the values of legal professionals, rather than the interests of ordinary citizens.¹³

In China, the critique that courts are remote and inaccessible is most acute among China's rural population. Indeed, there is perhaps no better place to examine "law's location" than in China's countryside. Law is at its most promising when it can give voice to a society's most vulnerable population. China's most vulnerable population was and remains its rural poor. Despite the astonishing annual 9 percent economic growth,¹⁴ China's economic reform has meant greater disparities for its citizens—between the coastal developed areas and the inner provinces—and between the rich urban areas and the rural poor. Estimates reveal that the average farm income lags behind per capita urban income by a ratio of 1:3.24.¹⁵ While officially, China's rural population constitutes some fifty-three percent of China's population nationwide, but some scholars conclude that as high as seventy percent of China's population still relies on agriculture for some or all of its income.¹⁶ For the Chinese government, then, resolving rural disputes has always been a critical service, and a basis for its legitimacy and stability.

The following article traces the steps taken by rural residents in one lawsuit and analyses how the choices made by these residents were dictated both by the constraints of market legal reforms and the resilience of customary norms. It posits that while the language of rights is easy to

¹³ See ROBERT A. KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* (2d prtg. 2003). Kagan's thesis is that the United States, in contrast to other advanced industrialized countries, is subject to adversarial legalism, or a "legal style" that emphasizes lawyer-dominated litigation in policy making, policy implementation, and dispute resolution. This legal style is also overly costly and leads to time delays, uncertainty and erosion of trust and good will.

¹⁴ See International Monetary Fund, *World Economic Outlook: Update* (Jun. 17, 2011), available at <http://www.imf.org/external/pubs/ft/weo/2011/update/02/pdf/0611.pdf>.

¹⁵ *Property Seizure in China: Roundtable Before the Cong.-Exec. Comm'n on China*, 108th Cong. 35 (2004) (statement of Roy L. Prosterman, President, Rural Dev. Inst.).

¹⁶ National Bureau of Statistics of China, *Zhonguo tongji nianjian 2010 中国统计年鉴 — 2010* [China's Statistical Almanac 2010], section 3-1 at <http://www.stats.gov.cn/tjsj/ndsj/2010/index.htm>. See also, Li Xiande, *Rethinking the Peasant Burden, Evidence from a Chinese Village*, in *RURAL DEVELOPMENT IN TRANSITIONAL CHINA: THE NEW AGRICULTURE* 49 (Peter Ho, Jacob Eyeferth, & Eduard B. Vermeer eds., 2004) (placing the proportion of rural population within the total population nationwide as 73 percent, as against 70 percent for Hubei and China). Officially, as of the end of 2005, China only has 23.65 million people living below China's poverty line of 680 RMB per capita net income per year, but according to one internationally adopted standard, there were actually 120 million to 130 million Chinese living below the poverty line in that year. *Official: China's Poverty Line Too Low*, CHINA DAILY (Aug. 23, 2006, 7:37 PM), http://www.chinadaily.com.cn/china/2006-08/23/content_672510.htm.

transport, the process of rights assertion is less so. Rather, efforts to establish legal formality in China may have led to the dominance of technocracy and a continuing reliance on the developmental state for resolution. The response from the Chinese state is the development of a multi-tracked civil dispute resolution system, with the Chinese state heavily involved in major litigation apart from the litigants' preferences, formal procedures and party autonomy working in "run of the mill" commercial litigation, but simplified procedures, informal mediation and petitioning the government as the preferred methods for residents in the countryside. Such a multi-tracked system, while borne of necessity, may also serve to diffuse the potential of courts to serve democratic reforms. Instead, the role for China's legal system will be one that is focused on efficiency rather than participation, preserving harmony rather than adjudicating right from wrong, dispute resolution rather than readjustment of norms.

I. CHINA'S RURAL JUSTICE SYSTEM

Despite efforts to bring "rule of law" to the countryside, the primary methods relied upon by rural residents continue today to be informal rather than formal processes.¹⁷ These informal processes include mediations, which are often conducted by neighborhood committees or other non-legal entities; administrative appeals, which do not involve courts nor even necessarily lawyers; and *xinfang* (letters and visits), which generally consist of letter petitions to high officials.¹⁸ As for more formal methods, such as the use of courts, empirical studies of rural residents have found some contradictory attitudes:¹⁹

¹⁷ Ethan Michelson, *Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China*, 72 AM. SOC. REV. 459, 459 (2007). Of 4,757 households with disputes, 46.8 percent preferred bilateral negotiations but only 1.8 percent preferred utilizing lawyers, courts or judicial office. *Id.* at 466–67. Michelson's data also suggests that dissatisfaction with village leadership is positively related with concrete grievances, and having an outside relative working in a higher level cadre is an indicator of likelihood of using formal legal channels. *Id.* at 468.

¹⁸ See generally Carl Minzner, *Xinfang: An Alternative to the Formal Chinese Legal System*, 42 STAN. J. INT'L L. 103 (2006). For a good discussion of different formal and informal strategies used by peasants to assert their legal rights, including using courts, media, local congresses, governmental offices at different levels, petitions and sit-ins and demonstrations, see KEVIN J. O'BRIEN & LIANJIANG LI, *RIGHTFUL RESISTANCE IN RURAL CHINA* 68–72(2006).

¹⁹ Good examples of the contradictory attitudes exhibited by rural residents can be found in two chapters. See Ethan Michelson & Benjamin Read, *Public Attitudes Toward Official Justice in Beijing and Rural China*, and Pierre Landry, *The Legacies of Maoism and Popular Trust in Legal Institutions*, in *CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA* 139–203 (Margaret Y.K. Woo & Mary E. Gallagher eds., 2011).

- rural residents find the message of law empowering, but the process technically disempowering;
- they find litigation to be costly and time consuming, however, they are willing to petition endlessly to Beijing;
- they don't trust lawyers or other legal actors because they are seen as outsiders, but at times they welcome these outsiders as being more objective;
- they don't trust the courts as being aligned with local governments, but they "trust" national governmental authorities.

One particular dispute illustrates the conflicting attitudes towards law as well as the multi-faceted steps that rural residents will take in their search for justice. Such conflicting attitudes suggest that ordinary citizens in China are grappling with the limits of a market-based legal system, resilience of customary norms in the face of legal change, and the continued dominance of the development state in the legal system.

The case of Haoxx in Shexian County, Hebei Province, involved a property dispute that made its way to village mediation, litigation in the courts, administrative appeals, and finally, a petition to the national government in Beijing.²⁰ This case demonstrates that rural residents do not hesitate to assert their rights, but the selected method of redress is as much a matter of rational choice as institutional constraints and cultural preference.

In March 3, 2002, Sun bought a house from Hao W. The house was adjacent to one owned by Hao J. and occupied by his cousin Hao G. and Hao G's wife, Tan. The two houses were adjacent with walls back to back on Sun's east side and Hao's west side. There was a storm water conveyer on the back of Hao's house that guided rainwater to the roof of Sun's house and the water then drained through Sun's property. There was also a drainage gap of fifty centimeters between the two houses on the south side. According to Hao G. and his wife Tan, Sun, in renovating his house, cut the west eaves of Hao's house and obstructed their drainage.

The village mediation committee first mediated the case which resulted in the following agreement: Sun could renovate his house, but the house's east room should not be higher than Hao's west room

²⁰ *Rural Legal Aid Student Volunteers—Tsinghua University School of Law Pilot Project, 2006–2007*, 33–37 (year-end report Nov. 16, 2007) (on file with author); *see also id.* at 38–51 (showing a student analysis of the case).

(presumably that would affect the drainage). If Hao's west room were to be damaged during the renovation, Sun would be responsible for repairing it. A drainage gap of fifty centimeters should be maintained between the two properties on the south side. Sun could extend his eaves twenty centimeters to the east, but he could not move the wall further. He should continue to allow the Hao family to use the drainage system. Hao G. and Sun signed the agreement, and Sun commenced work on December 20, 2002.

On May 26, 2003, Hao G. and Hao J. brought litigation to the county court, alleging that Sun had violated the mediation agreement. The complaint alleged that Sun, in renovating his house, had cut off the eaves on the west side of Hao's house. Sun's new building also was built tightly next to the neighboring wall with an added staircase to the South side obstructing Hao's drainage. The complaint asked the court to order Sun to remove the structure and restore the drainage to its original state.²¹ In response, Sun claimed that at the time of the construction, he asked Hao G.'s permission to remove part of Hao's house's eaves, and the village committee to measure the structures, and that Hao G. consented and expressed no objection to the work.²²

The court of first instance considered the mediation documents, certificate for the building base of both properties, records of onsite examination, and statements of both parties. The court found that the building of a staircase right next to the wall of the complainant's house was not inappropriate and that there was still a fifty centimeters drainage gap between the two houses. Defendant Sun, in moving the drainage to under his own property, did not affect drainage of the complainants. In sum, Sun's renovation did not change the preexisting usage of the plaintiff's house nor did it violate their previous agreement. The court thus denied plaintiff's request to restore the houses to their original state, but after considering that the plaintiff's walls were old and under maintained, ordered the defendant Sun to provide maintenance to ensure property drainage for the plaintiff. The cost of the lawsuit was split between the parties with the plaintiff s bearing the cost of 350 yuan and defendant Sun 150 yuan.²³

Dissatisfied with the result, Hao G. and Hao J. appealed to the intermediate court. They maintained that the staircase built by Sun

²¹ *Id.* at 34.

²² *Id.*

²³ *Id.* at 35.

blocked the house's water conveyer and that the staircase should be moved back thirty centimeters. Hao G. and Hao J. argued that the new wall built by Sun obstructed the drainage and, for the first time, pointed out that the mediation agreement was invalid in that Hao G. did not have the right to sign an agreement with Sun alone since half the property belongs to Hao J. Hao J. also alleged that Sun cut the west eaves of Hao's house without permission and asked that the eaves be restored. The Hebei Province Intermediate Court upheld the lower court decision in part, but found that the new wall built by Sun did interfere with the fifty centimeters gap and ordered the dismantling and restoration of this wall. The Intermediate Court also found that since Hao G. did not explain to Sun the true ownership of the house, Sun had no fault in this issue, and Hao's request to restore the eaves could not stand.²⁴

Not satisfied, Hao G. and his wife, Tang, applied, under the Land Management Law, for administrative review to the Henan Dian County Government Bureau, seeking the county government to initiate investigation into the use of a "counterfeit land base certificate." For the first time, Hao G. and Tang argued that the village committee collaborated with the prior owner of Sun's house and, in 1987, conducted an inaccurate land measurement that lengthened the southern end of Sun's house from 7.2 centimeters to 8.3 meters. In the process, they took over the one meter drainage on the back of Hao's house and ten centimeters of the west wall near the south part of the house. Hao G. and Tang also claimed that Sun had called together family members and fought with them multiple times, such that Hao G.'s son was beaten into shock twice, and that three people were injured and had to be treated in the county hospital incurring expenses of three thousand RMB (renminbi).

Hao G. and Tang's request for administrative review was not accepted by the various county administrative authorities. The county *sifasuo* (the judicial bureau), the lowest level office for the Ministry of Justice and responsible for mediation, refused to accept the case. Instead, the judicial bureau sent the case to the county's land administration department, on the ground that it was a land ownership dispute. The land administration department similarly refused to accept the petition and referred it back to the county *sifasuo*, arguing that this was a tort case. Not getting any relief, Hao G. and his wife Tang filed another complaint in the basic people's court, this time suing both the village committee

²⁴ *Id.*

and Sun. The district court rejected the case as previously adjudicated. Hao G. and Tang appealed to the intermediate court, and then, to the high court, but both courts denied the appeals. As a last resort, Tang filed a *xinfang* (a citizen's petition) repeatedly, first with the city government, then with the provincial government, and finally, with the national government in Beijing.²⁵

Through its tortuous course, this case demonstrates the use of all possible mechanisms within the Chinese dispute resolution system. The plaintiffs began by using mediation, then litigation, and later filed an administrative appeal, and followed by a *xinfang* with three levels of government. The attitudes expressed in this case, as well as the steps taken by these plaintiffs, can be traced to a number of national phenomena in China that are examined further below—the limits of a market legal system, the rise of legal technocracy, disenchantment with formal legal process, resulting in a recent national re-emphasis on the use of informal mechanisms and the development of a multi-tracked legal system.

II. LIMITS OF A MARKET-BASED LEGAL SYSTEM

In part, the limits of a market based legal system can explain the contradictory message from China's countryside about Chinese courts. While rural residents embrace the rights ideal, they, like Hao and Tang, still resort as their first line of redress to bilateral negotiations, social pressure, and mediation by traditional authorities.²⁶ The reasons may be cultural, but they are also rational and institutional.

When rural residents are asked why they do not go to the courts, they inevitably reply that court litigation is too costly, too complicated, and too troublesome.²⁷ Indeed, access to justice requires the assistance of independent and powerful mediating institutions—be it the judiciary or the bar—to navigate the legal system and to mediate between citizens and the state.²⁸ These institutions must exist and be of sufficient numbers to be readily accessible to ordinary citizens. In China today, these

²⁵ *Id.* at 36.

²⁶ Michelson, *supra* note 17, at 466.

²⁷ Michelson & Read, *supra* note 19.

²⁸ See KAGAN, *supra* note 13, at 3 (Kagan claims that the "American way of law" is characterized by lawyer dominated litigation in policy making, policy implementation, and dispute resolution. The idea that lawyers serve as the bridge in the legal system is not new. See also, ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (1835). ("lawyers belong to the people by birth and interest, and to the aristocracy by habit and taste; they may be looked upon as the connecting link between the two great classes of society.")).

institutions are still evolving.²⁹ Like its economic reforms, China's market based legal reforms have created disparities, leaving the rural poor lacking in legal assistance.³⁰ Formal justice absent sufficient mediating institutions means the rural poor must revert back to tried and true but informal methods.

Facing pressure from the international community as well as the needs of a market economy, the Chinese state applied market principles to the provision of legal services and since the 1990s, liberated lawyers somewhat from the role of state workers but adding the burdens of lawyers as private entrepreneurs.³¹ While China now has more than 15,888 law firms with 155,457 full time lawyers, making one lawyer for every 8,586 people,³² fully 85 percent of those licensed lawyers worked in large or medium sized cities, leaving only a small percentage to serve the vast population in rural areas.³³ Equally problematic, lawyers are unevenly distributed, not only with more lawyers in the cities than in the countryside, but also in the matters they handle.³⁴ Lawyers by and large enter the more lucrative areas of commerce rather than the less lucrative areas of family law, debt, and employment.³⁵ With the latter being areas of greatest concern to ordinary citizens, there exists a tremendous gap in the availability of services between the urban rich and the rural poor.

The paucity of lawyers in rural areas has not gone unnoticed by the Chinese government. Beginning in the mid-1980s, the Chinese government created the *falu fuwusuo* (township legal services offices) and housed this service within the local *sifasuo* (justice office).³⁶ These local *falu fuwusuo* are often staffed not by licensed lawyers, but by legal workers (sometimes called "barefoot lawyers") in the grassroots justice

²⁹ See STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* 3 (1999).

³⁰ Fu Yulin, *Dispute Resolution and China's Grassroots Legal Services*, in *CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA*, *supra* note 19, at 314-39.

³¹ RANDALL PEERENBOOM, *CHINA'S LONG MARCH TOWARD RULE OF LAW* 353 (2002).

³² National Bureau of Statistics of China, *Zhongguo tongji nianjian* 2010 [China's Statistical Almanac 2010], section 22-6 at <http://www.stats.gov.cn/tjsj/ndsj/2010/indexch.htm>. Xinhua, "China has more than 143,000 lawyers, China Daily, April 16, 2008, available at <http://english.peopledaily.com.cn/90001/90776/90882/6393774.html>; see also Geoffrey A. Fowler, Sky Canaves, & Juliet Ye, *Chinese Seek a Day in Court*, WALL ST. J., July 1, 2008, at A12.

³³ Fu Hualing, *Access to Justice in China: Potentials, Limits, and Alternatives*, in *LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES* 163, 167 (John Gillespie & Albert H.Y. Chen eds., 2010).

³⁴ PEERENBOOM, *supra* note 31, at 363.

³⁵ *Id.*

³⁶ Hualing, *supra* note 33, at 167.

offices.³⁷ They mediate disputes and provide the main dispute resolution centers for rural residents.

But legal services offices ascend and decline depending more on what central policy dictates than on populist needs and demands.³⁸ Beginning in 2000, the Ministry of Justice issued documents stipulating that legal services are to be spun off from the justice offices and “shall no longer be administratively affiliated institutions or government sponsored institutions.”³⁹ In other words, legal service offices are to be self-financed and subject to market discipline. Thereafter, grassroots legal services offices throughout the country declined dramatically with a total of 34,219 in 2000, 1,164 fewer than the end of 1999.⁴⁰

In turn, the Chinese government responded by establishing legal aid centers at every government level above the county level and this time, staffed these offices with salaried legal aid lawyers and pro-bono private practitioners and supplemented by student volunteers and legal workers.⁴¹ Under the recently amended Lawyers Law, lawyers are now required to provide pro bono legal aid services, with fulfillment of legal aid responsibilities a condition for annual certificate renewal.⁴² Nevertheless, the numbers of these legal aid centers are insufficient to cover the existing need. In the first six months of 2007, these three thousand plus legal aid centers handled 172,600 cases, a jump of nearly 40 percent from a year before. However, this still meant that only one quarter of the rural cases in need had representation, leaving the

³⁷ For most of the time, both offices were staffed effectively by one group of people working under two different titles until the early 2000s when JOF ordered the formal separation of the Township Legal Services Stations. *See id.*

³⁸ *Id.*

³⁹ In March, 2000, the Ministry of Justice promulgated the “jiceng falu fuwü suo guanli banfa” (Administrative measures for Grassroots Legal-services Offices and Administrative Measures for Grassroots Legal Service Workers). *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* The number of legal aid centers grew from 1,235 in 1999 to 3,149 in 2006; legal aid staff increased from 3,920 in 1999 to 12,038 in 2006 (among them 8,032 were qualified lawyers with practicing certificates); legal aid funding increased from less than 30 million RMB in 1999 to 370 million RMB in 2006; total number of legal aid cases increased from 85,841 in 1999 to 318,514 in 2006. *Id.* at 170.

⁴² Quan guo ren min dai bao da hui chang wu wei yuan hui guan yu xiu gai “Zhonghua Renmin Gongheguo Lii Shi Fa De Jue Ding” (全国人民代表大会常务委员会关于修改《中华人民共和国律师法》的决定) [Decision of the Standing Committee of the National People’s Congress on Amending the Law of the People’s Republic of China on Lawyers] (promulgated by Standing Comm. Nat’l People’s Cong., Dec. 29, 2001, effective Jan. 1, 2002) (China), http://www.gov.cn/english/laws/2005-10/11/content_76040.htm.

remainder unassisted.⁴³ Indeed, absent affordable lawyers, it is difficult for rural citizens to navigate the increasingly formal processes imposed by the judicial system.

Similar resource disparity faces Chinese courts and the judiciary. Different levels of economic development between the provinces are reflected in the disparate resources provided to judges and local courts. Until recently, Chinese judges were appointed and paid by the local government rather than by a national fund at the central government level.⁴⁴ Some poor provinces with limited resources even lacked physical court facilities and faced shortages of judicial manpower.⁴⁵ For example, poor provinces such as Hubei, Guizhou, and Sichuan reportedly lacked sufficient courthouses, let alone enough personnel to form three judge panels to hear cases.⁴⁶ Some reports stated that there are only nine hundred judges in the four hundred basic level courts in Guizhou province, meaning that, on average, local courts have fewer than 2.5 judges.⁴⁷ The Hubei local government apparently allocated only two hundred yuan per month per judge as salaries in some courts, and some judges in dirt poor counties were even owed months of back wages.⁴⁸ The dire numbers of legal personnel in these areas has led some commentators to suggest that people without university degrees be permitted to take the bar exam in less developed areas to ensure

⁴³ Fowler, Canaves, & Ye, *supra* note 32.

⁴⁴ Benjamin L. Liebman, *China's Courts: Restricted Reform*, 191 CHINA Q. 620 (2007).

⁴⁵ Linchun Zhang (张林春), *Zhongguo zhong xi bu di qu si fa ji gou ren cai liu shi wen ti yan zhong* (中国中西部地区司法机构人才流失问题严重) [*The Serious Problem of Personnel Loss in Judicial Institutions in Central and Western Regions*], XINHUA WANG [XINHUA NET] (Mar. 12, 2006), http://news.xinhuanet.com/misc/2006-03/12/content_4295068.htm. For similar problems in Sichuan Province, see also *Dai biao Suo Weidong wei yuan Chen Zhilun tan fa lü ren cai dui wu jian she* (代表索维东委员陈智伦谈法律人才队伍建设) [*Representatives Discuss Construction of Legal Personnel System*], TENGXUN WANG [TENCENT WEB] (Mar. 9, 2006), <http://news.qq.com/a/20060309/001799.htm>.

⁴⁶ Zhang, *supra* note 45.

⁴⁷ For information on the Hubei Province judicial personnel shortage, see Meng Du (杜萌), *Fa guan duan ceng zhuang kuang ling ren dan you: yu Lü Zhongmei dai biao dui hua fa guan duan ceng wei ji* (法官断层状况令人担忧: 与吕忠梅代表对话法官断层危机) [*The Shortage of Judges Makes People Concerned: Dialog with Representative Lü Zhongmei on the Crisis of the Shortage of Judges*], Fazhi Wang [Legal Daily Web] (Mar. 8, 2006), http://www.legaldaily.com.cn/zt/2006-03/08/content_279135.htm; see also Shourong Li (李守荣), *guan yu nong cun ji ceng fa yuan jian she de diao cha yu si kao* (关于农村基层法院建设的调查与思考) [*Investigation and Thoughts on the Construction of Countryside Local Courts*] Changsha Fayuan Wang [Changsha Court Web] (Aug. 25, 2005), <http://cszy.chinacourt.org/public/detail.php?id=197>.

⁴⁸ Meng, *supra* note 47.

sufficient numbers of lawyers and judges.⁴⁹ Recognizing this disparity of resources between different provinces, the Chinese state has begun efforts to nationalize the court budget.⁵⁰ Until that reform is fully underway, however, rural residents continue to face limited access to justice.

This scarcity of lawyers and judges poses a huge problem as China increasingly formalizes its litigation procedures. In an effort to “modernize” and to alleviate the burgeoning workload of Chinese judges, the Chinese state has moved away from the civil law tradition of an inquisitorial system by imposing on litigants the burden of coming forward with evidence, relieving Chinese judges of the burden of investigation.⁵¹ However, absent the assistance of judges to investigate and gather evidence, poor litigants need legal representation more than ever to navigate the legal system or else be at the mercy of litigants with greater economic resources. Consistent with this change in judicial responsibility, Chinese litigants (rural and urban) now complained that Chinese judges act more to process disputes than to solve them.⁵² With limited affordable legal assistance available to act as intermediaries, it is not surprising that rural litigants, like other disempowered groups, shy away from the formal court process as too complicated and too costly.⁵³ And so, rural litigants like Hao and Tang would still resort to less costly methods like village committee mediation as their first line of dispute resolution.

Indeed, given the limits of the market legal system and the continuing cultural and political emphasis on mediation, discussed later, it is not surprising that Hao and Tang relied on mediation as their first line of

⁴⁹ Guo jia tong yi si fa kao shi bu bi yi kao ding qian kun (国家统一司法考试不必一考定乾坤) [It's not Necessary for the National Bar Exam to be Finally Decisive], XINJING BAO [BEIJING NEWS] (Nov. 30, 2005), <http://theory.people.com.cn/GB/40553/3902597.html>.

⁵⁰ In 2008, the Political and Legislative Affairs committee of the Central Committee of the CCP issued an opinion urging a change from local to national financing of the courts. See 中央政法委员会关于深化司法体制和工作机制改革若干问题的意见. http://www.360doc.com/content/11/0421/11/1993767_111229089.shtml.

⁵¹ See Supreme People's Court, Renmin fayuan dierge wunian gaige gongyao (2004–2008) [The Second Five Year Program for Reform of the People's Courts], (domain name) (Oct. 26, 2005), <http://www.law-lib.com/law/law.view.asp?id=120832>. See Supreme People's Court, Ren min fa yuan di er ge wu nian gai ge gang yao (2004–2008) [The Second Five Year Program for Reform of the People's Courts], (人民法院第二个五年改革纲要(2004–2008) Falü Tushuguan [Law Library] (Oct. 26, 2005), http://www.law-lib.com/law/law_view.asp?id=120832.

⁵² See Margaret Y.K. Woo, Shaping Citizenship: Chinese Family Law and Women, 15 YALE J.L. & FEMINISM 99 (2003), for a discussion of the experiences of Chinese divorce litigants with the courts.

⁵³ This was the sentiment voiced by Chinese women litigants in divorce cases. See *id.* at 127.

recourse. Furthermore, mediation is most commonly used where maintaining and preserving social relationships are critical. And so, where litigation and arbitration are preferred for arms-length economic disputes involving property or commerce,⁵⁴ mediation is more readily used for civil cases involving marriage, love affairs, inheritance, housing, family disputes, relations between neighbors, and debt.⁵⁵

In the Hao case, village committee mediation was utilized when the parties had an ongoing relationship.⁵⁶ The mediation documents specified that the parties were in good communication. It was when the relationship had broken down that litigation was sought. Here, by the time the case was filed in the courts, the court complaint indicated that relationship had broken down between the two families to the point of violence and physical injury.⁵⁷

It was when relationship has also broken down within the village that Hao and his wife lost faith in their village committee's ability to mediate their complaint fairly. In their complaint, the plaintiffs alleged that the village committee, who first mediated the dispute, was staffed by relatives of the defendant and was biased against them.⁵⁸ Hao and his wife then sought relief in the courts as an avenue "outside" the village system and for "win or lose" results rather than a mediated outcome.⁵⁹

In sum, whether rural residents go to court may depend on the nature of the dispute and financial resources of the litigants.⁶⁰ But it will also be a rational decision based on where rural residents have social or political contacts in the system. Rural residents will go outside the village system to court when they believe the locality and social networks have worked against them and especially if they have political connections outside the local system.⁶¹ Outsiders will seek another venue

⁵⁴ Aaron Halegua, *Reforming the People's Mediation System in Urban China*, 35 H.K.L.J. 715, 720 (2005).

⁵⁵ LUBMAN, *supra* note 29, at 224.

⁵⁶ *Rural Legal Aid Student Volunteers—Tsinghua University School of Law Pilot Project*, *supra* note 20, at 33.

⁵⁷ *Id.* at 36.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ethan Michelson, *Popular Attitudes Towards Dispute Processing in Urban and Rural China*, The Foundation for Law, Justice and Society in collaboration with The Centre for Socio-Legal Studies, University of Oxford, 4–5 www.fljs.org/uploads/documents/Michelson%231%23.pdf; see also Margaret Y.K. Woo, Christopher Day & Joel Hugenberger, *Migrant Access to Civil Justice in Beijing*, 4 LOY. U. CHI. INT'L L. REV. 167, 171 (2007).

⁶¹ Michelson, *supra* note 17, at 467, 471, 475.

outside the system, and insiders will want to remain in the system.⁶² However, in the “outside” system of the courts, rural litigants are often alienated by the formal and technical legal process.

III. THE DOMINANCE OF TECHNICAL JUSTICE

When rural litigants do bring their disputes to the formal courts, their experience with formal legality has not always been empowering. In the Hao case, the plaintiffs neither accepted nor understood the court’s decision against them.⁶³ Lacking faith and understanding in the technicalities of the formal system, these plaintiffs appealed again and again—first to the intermediate court, then to administrative agencies, and finally to the national government in Beijing.

Chinese litigants’ dissatisfaction with Chinese judges and in turn, with formal legality is not unusual. Litigants have alternately criticized Chinese judges, as either unprofessional or too professional.⁶⁴ Some litigants have complained that the judges were too young, and did not understand,⁶⁵ others have complained that the judge acted “too simply,” “too quickly,” and too much “like an assembly line.”⁶⁶ Scholars such as Mary Gallagher who have examined litigants’ attitudes have concluded that the closer people brought their disputes to the legal system, the less positive and more negative they assessed their experience.⁶⁷ While legal propaganda has been effective in instilling greater expectation in law, the actual experience of litigants with formal justice, by contrast, has been disillusioning.⁶⁸

Despite steps toward a more professional process, Chinese courts have remained tied to local governments and to a socialist and Confucian past.⁶⁹ Even reforms in the judiciary have echoed with remnants of the

⁶² See *id.* at 479.

⁶³ *Rural Legal Aid Student Volunteers—Tsinghua University School of Law Pilot Project*, *supra* note 20.

⁶⁴ Woo, *supra* note 52, at 125–26.

⁶⁵ *Id.* at 126.

⁶⁶ *Id.*

⁶⁷ Mary E. Gallagher & Yuhua Wang, *Users and non-Users: Legal Experience and its Effect on legal Consciousness*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA, *supra* note 19.

⁶⁸ Mary E. Gallagher, *Mobilizing the Law in China: “Informed Disenchantment” and the Development of Legal Consciousness*, 40 LAW & SOC’Y REV. 783, 799–802 (2006).

⁶⁹ Carl Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA, *supra* note 19.

imperial civil service system.⁷⁰ As numerous scholars have pointed out, Chinese judges and lawyers are treated more as “bureaucrats” within a broader civil service system than as independent legal professionals.⁷¹ This, coupled with an increasing turn to legal niceties, means that Chinese lawyers and judges are now “technocrats” rather than advocates or adjudicators of right from wrong.⁷² This is attributable to both politics and culture.

Indeed, one can argue that Chinese judges and lawyers are still developing a culture of profession. Talcott Parsons has pointed out the importance of professionalism as including a sense of broader responsibility beyond the narrow confines of the occupation and that includes “some institutional means of making sure that such competence will be put to socially responsible uses.”⁷³ The idea is that technocratic professionals and experts play the role of buffers but they should also have broader public interests in mind. In the legal realm, this means that lawyers and judges should act as a buffer between top down legal dictates and bottom up real world disputes, all the while keeping in mind their role as “trustees” of the public interest.⁷⁴

Bureaucratic authority grounded in the technical expertise of legal methods and language, absent the sense of “professionalism,” can push out local knowledge of disputants. “Technocrats” can take the most critical aspect of decisions out of the hands of those whom they serve and immobilize citizens who might occupy that space. And so, legal experts must be one that takes on the role of “democratic professional,”⁷⁵ in using legal skills and expertise to include, rather than exclude, the participation of clients. Access to justice requires not only sheer numbers of legal professionals, but professionals who can play the role of buffers between citizens and elites by accommodating the client’s needs and problems to the structures of a larger system of domination and control.

⁷⁰ *Id.*

⁷¹ LUBMAN, *supra* note 29, at 292.

⁷² See Woo, *supra* note 52, at 126, for a discussion of divorce litigants voicing a sense of alienation from technocratic justice.

⁷³ TALCOTT PARSONS, Professions, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 536, 536 (David L. Sills ed., 1968) (stating that in addition to defending the rights and advancing the interests of particular clients, the legal profession embodies and upholds the social conception of justice).

⁷⁴ *Id.*

⁷⁵ The term was used in Susan M. Olson and Albert W. Dzur, *Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*, 38 LAW & SOC’Y REV. 139, 147 (2004)(Olson & Dzur coined the phrase “democratic professionalism” to emphasize that certain professions have special responsibilities to the larger society.).

As a whole, Chinese legal reforms have not allowed Chinese judges or lawyers to develop this culture of independent professionalism, as defined by Parsons.⁷⁶ Clearly, Chinese judges are better qualified than in the past, at least as measured by levels of education received. Since 2002, new judges must have a university degree and sitting judges under the age of forty must obtain such a degree in five years or lose their position.⁷⁷ As of 2005, more than 50 percent of Chinese judges had university degrees, a marked increase from 6.9 percent in 1995.⁷⁸ Older judges who lack a university education are permitted to stay on only if they complete a six-month or one-year training course.⁷⁹ Judges are also now required to pass national judicial (bar) examination.⁸⁰

However, in their work, Chinese judges continue to be treated as bureaucrats within a layered civil service system. While financial reform of the court system is under way,⁸¹ local governments have in the past controlled the court budget, and judicial reward and promotion often depends on subservience to the local government's dictates and interests as well as to central policy dictates.⁸² The Chinese Party state has successively charged judges with implementing policies that varied from "strike hard" campaigns to processing disputes efficiently, to most recently, promoting "harmony."⁸³ In individual case adjudications,

⁷⁶ For an excellent discussion of the search for Chinese legal professionalism, see William P. Alford, *Of Lawyers Lost and Found: Search for Legal Professionalism in the People's Republic of China*, in *EAST ASIAN LAW: UNIVERSAL NORMS AND LOCAL CULTURES* 181 (Arthur Rosett, Lucie Cheng & Margaret Y.K. Woo eds., 2003).

⁷⁷ See Liebman, *supra* note 44, at 625.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See art. 12 of Judges Law of the People's Republic of China 中华人民共和国法官法 at <http://www.cecc.gov/pages/newLaws/judgesLaw.php> and Supreme People's Court Circular on Enforcing the People's Republic of China Judges Law 最高人民法院关于贯彻落实《中华人民共和国法官法》的通知 at <http://www.cecc.gov/pages/selectLaws/judicialReform/judicialReform.php>.

⁸¹ In 2008, the Political and Legislative Affairs committee of the Central Committee of the CCP issued an opinion urging a change from local to national financing of the courts. See 中央政法委员会关于深化司法体制和工作机制改革若干问题的意见, available at http://www.360doc.com/content/11/0421/11/1993767_111229089.shtml.

⁸² *But see* Xin He, Debt Collection in the Less Developed Regions of China, *China Quarterly*, 206, June 2011, pp. 253-275, at 265 (concluded that "local protectionism" exists more as *renqin* (personal connections) and less as interference from local government because of a financial link between the local government and local enterprise).

⁸³ The socialist rule of law requires building a harmonious socialist society. See *China to Launch Education of "Socialist Concept of Rule of Law,"* COMMUNIST PARTY OF CHINA (Apr. 14, 2006), <http://english.cpc.people.com.cn/66485/66498/66501/4501945.html>; see also *Senior Chinese official calls for efforts to ensure stability*, PEOPLE'S DAILY ONLINE (Jan. 8, 2007), http://english.peopledaily.com.cn/200701/08/eng20070108_339031.html.

Chinese judges are subject to what I have called an “ideology of supervision,” which takes the form of an elaborate grid of internal checks—from the chief judges, to the president of the court, to the supervision committees.⁸⁴ Where most court leaders are party members, their supervision provides a system through which party interests can come into play in politically sensitive cases and party policies can be enforced.⁸⁵ A Supreme People's Court (hereinafter “SPC”) decision issued in 2001 states that court presidents and vice-presidents would be forced to resign if their courts issue decisions that harm the state or public interest (as defined by the CCP), fail to investigate or reveal serious cases of wrong doing sufficiently, or fail to engage in oversight over their courts.⁸⁶

Equally important, as Carl Minzner has previously written, judges are also subject to the pressures imposed by the mechanics of the discipline and promotion system, which is an elaborate point system based on judicial reversals, misconduct, and numbers of cases.⁸⁷ This point system means that judges are less likely to take on cases and more likely to process them than to adjudicate right from wrong. Indeed, the incentive and punishment meted out by the court responsibility system encourages judges to seek guidance on handling individual cases from their superiors—both within their court and in higher courts—prior to adjudication and apart from litigant's knowledge. This internal system by Party officials and higher level court officials to render instructions, written or oral, is similar to what Kathy Hendley has called “telephone law” in the Russian courts.⁸⁸

While constant bureaucratic checks can sometimes uncover misapplication of law and facts, it can also inhibit the development of independent judicial decision-making. Chinese judges apply rather than

⁸⁴ See, e.g., Margaret Y.K. Woo, *Adjudication Supervision and Judicial Independence in the P.R.C.*, 39 AM. J. COMP. L. 95 (1991).

⁸⁵ Benjamin L. Liebman, *China's Courts: Restricted Reform*, 21 COLUM. J. ASIAN L. 1, 19 (2007) (“Local party organizations continue to oversee court appointments, court presidents are often primarily chosen for political reasons, and the overwhelming majority of judges continue to be Party members.”).

⁸⁶ Di fang ge ji ren min fa yuan ji zhuan men ren min fa yuan yuan zhang, fu yuan zhang yin jiu ci zhi gui ding (shi xing) (地方各级人民法院及专门人民法院院长、副院长引咎辞职规定(试行)) Rule Regarding Accepting Blame and Resigning for Presidents and Vice Presidents of All Levels of Local Courts and Special Courts (interim)] (Nov. 7, 2001), http://www.law-lib.com/law/law_view.asp?id=16512.

⁸⁷ Minzner, *supra* note 69.

⁸⁸ Kathy Hendley, *'Telephone Law' and the 'Rule of Law': The Russian Case*, 1 HAGUE J. ON RULE OF L. 241, 241–42 (2009).

interpret the law, and hesitate in carving out a bigger role for themselves as arbiters of public norm.⁸⁹ Chinese judges are more bureaucrats and technocrats in a governmental system than professional interpreters of public norms.

As with judges, the Chinese bar has also yet to step into the independent professional's role. Its associations remain weak, with key positions often filled by justice officials.⁹⁰ Most recently, the All China Lawyers Association even issued guidelines to limit the ability of lawyers to bring collective actions, those cases most likely brought on behalf of the public interest to bring about social and structural change.⁹¹ Legal education remains more theoretical than practical, with a greater emphasis in memorization of law, rather than problem solving and shaping legal solutions.⁹² And as Ethan Michelson has found in his study of Chinese labor lawyers, the technicalities of law are "an important tool of obfuscation wielded by lawyers to manage and screen out commercially undesirable cases brought by socially undesirable prospective clients."⁹³

More problematically, a lawyer's role is often poorly understood by the courts and even by the general public. Lawyers frequently encounter problems in carrying out their work, and when lawyers do act to represent clients zealously, they may even be subject to physical abuse or arbitrary arrest.⁹⁴ While the central state may encourage some activist (*weiquan*) lawyering as a way of checking local corruption, such spaces

⁸⁹ See LUBMAN, *supra* note 29, at 281.

⁹⁰ See, e.g., *China's Human Rights Lawyers: Current Challenges and Prospects: Roundtable Before the Cong.-Exec. Comm'n on China*, 111th Cong. (2009) (statement of Jerome A. Cohen, Professor, New York University School of Law; Co-director, U.S.-Asia Law Institute; and Adjunct Senior Fellow for Asia Studies, Council on Foreign Relations), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:51189.pdf.

⁹¹ *Zhonghua quan guo lü shi xie hui gang yu lü shi ban li qun ti xing an jian zhi dao yi jian* (中华全国律师协会关于律师办理群体性案件指导意见) [*The All-China Lawyers Association's "Guiding Opinion on Lawyers Handling Collective Cases"*], (Mar. 20, 2006), <http://china.findlaw.cn/bianhu/xingshifagui/xingshishusongfa/55915.html>. ("[lawyers who file collective suits must] promptly explain the facts through the appropriate channels to the government organizations involved.")

⁹² Deborah Meiners & Jian Chen, *Professionalization in the Chinese Legal System: Current Education and Certification of Chinese Lawyers*, 76 B. EXAMINER, May, 2007, at 31, available at http://www.ncbex.org/uploads/user_docrepos/BEMayChineseLawyers.pdf.

⁹³ Ethan Michelson, *The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work*, 40 LAW & SOC'Y REV. 1, 27 (2006).

⁹⁴ CONG.-EXEC. COMM'N ON CHINA, ANNUAL REP., H.R. DOC. NO. 61-507 at 194-195 (2d Sess. 2010), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_house_committee_prints&docid=f:61507.pdf.

are tightly controlled and confrontational stances are sometimes met with harsh crackdowns.⁹⁵ And so, legal aid clinics that initiate symbolic litigation, such as Peking University's Center for Women's Law and Legal Services, face closure or disassociation by sponsoring institutions.⁹⁶

Undeniably, the Chinese central state also recognizes the dangers of technocratic dominance and relying excessively on formal rules and procedures in dispute resolution. The Chinese Communist Party has criticized judges for "blindly worshipping" the western style of civil procedure without paying sufficient attention to the special needs of Chinese society, for their heavy reliance on law without regard for the social impact of their judgments, and for their bureaucratic and elitist attitudes.⁹⁷ But even as the call is for the legal profession to be more cognizant of the underlying social ramifications of disputes, the response is also a reassertion of Party authority. In 2006, under the slogan of "education on socialist rule of law theory," judges nationwide were reminded again on the importance of following Party leadership, applying "socialist rule of law" and emphasizing the legal system's obligation to follow Party leadership, and in particular, Hu Jintao's theory of a harmonious society.⁹⁸ Similarly, in a July 2009 speech, China's Justice Minister Wu Aiying admonished lawyers to "obey the Communist Party and help foster a harmonious society."⁹⁹ And so, lawyers and judges are encouraged to make social problems go away, to promote greater harmony, but not necessarily to promote greater legal rights.

In sum, where Chinese litigants are by and large dissatisfied with their experiences with the courts, it is because judges and lawyers as

⁹⁵ Fu Hualing & Richard Cullen, *Climbing the Weiquan Ladder: A Radicalizing Process for Weiquan Lawyers*, 205 CHINA Q. 40 (2011).

⁹⁶ CONG.-EXEC. COMM'N. ON CHINA, *supra* note 90, at 162.

⁹⁷ See Fu Hualing & Richard Cullen, *From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA, *supra* note 19.

⁹⁸ *Id.*

⁹⁹ Andrew Jacobs, *Arrests in China Rattles Backers of Legal Rights*, N.Y. TIMES, Aug. 10, 2009, at A1, available at <http://www.nytimes.com/2009/08/10/world/asia/10rights.html?pagewanted=1&r=1>; see also 关于深化“中国特色社会主义法律工作者”主题教育实践活动积极推进三项重点工作的意见 available at http://www.moj.gov.cn/index/content/2010-02/10/content_2055394.htm?node=7346 (in which an MOJ opinion harkened back to the 1980's to remind Chinese lawyers that they are "legal workers in socialism with Chinese characteristics legal workers).

bureaucrats and technocrats have yet to give full voice to legal participants. The focus on formality has meant the rise of technocratic control without the availability of mediating professionals. Absent the development of an independent profession more oriented towards the public good than commercial gain, and more problem-solving than technocratic application of law, and more independent adjudication than bureaucratic processing of claims, Chinese litigants (like Han and Tang) will view the Chinese legal system as unresponsive to their needs and will continue to seek other channels to relitigate their claims.

IV. RESILIENCE OF CUSTOMS IN THEIR NORMATIVE AND INSTITUTIONAL FORMS

In many respects, Chinese rural residents' attitude towards formal justice is also a story of the resilience of customs and tradition in their normative and institutional forms. It is an often-told tale that China prefers informal over formal dispute resolution and harmony over the assertion of rights.¹⁰⁰ In this respect, Chinese legal reforms and in turn, how Chinese rural citizens view these reforms, have not strayed too far from its people's historical and traditional roots. The course of Chinese legal reforms moved from a focus on informality to formal legality to a recent returned emphasis on informality and mediation.

China's emphasis on formal legal process lasted for just over twenty years. Speaking at the landmark national civil justice conference held between December 1978 and January 1979, Jiang Hua, the former President of the SPC, initiated the necessity and legitimacy of civil justice, positioned the SPC to take the lead in judicial administration, and started to assert the SPC's institutional autonomy.¹⁰¹ For the next twenty years, China was determined to develop a professional legal system and to leave the particular design of civil justice to the expertise of the judiciary.¹⁰²

¹⁰⁰ See generally Arthur Rosett & Lucie Cheng, *Contracts with a Chinese Face: Socially Embedded Factors in the Transformation from Hierarchy to Market, 1979–1989*, 5 J. CHINESE L. 143, 224 (1991); but see PHILIP C. HUANG, *CIVIL JUSTICE IN QING CHINA: REPRESENTATION AND PRACTICE IN THE QING* 180 (1996).

¹⁰¹ See Editorial Comm. of the Biography of Jian Hua, *Civil Justice is Equally Important*, in JIANG HUA ZHUAN [THE BIOGRAPHY OF JIAN HUA] ch. 16, § 5 (2007), available at <http://book.sina.com.cn/nzt/history/cha/jianghuaz/66.shtml>, cited in Hualing Fu, *Access to Justice in China: Potentials, Limits and Alternatives*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA, *supra* note 19.

¹⁰² See, e.g., Supreme People's Court, *Renmin fay yuan wu nian gai ge gang yao* (人民法院五年改革纲要) [The Five-Year Program for Reform of the People's Courts],

For a time in the mid-1990s, the Chinese central state even encouraged the use of the courts in the hopes that courts could assist in stabilizing society and reining in local bureaucrats.¹⁰³ It was hoped that courts could provide a more neutral forum for litigants in challenges against local authorities.¹⁰⁴ And so, Chinese legal reformers at the time focused on more procedural and institutional changes and the SPC decreed that Chinese courts should “further improve the work of trying civil cases, protect the civil rights and interests of citizens and legal persons according to the law, and promote the just, safe, civilized, and healthy development of society.”¹⁰⁵

The 1990s then witnessed increased attention on the formal courts and on promoting the neutrality of adjudicators.¹⁰⁶ Chinese courts emphasized adjudication over mediation and even adopted some aspects of the adversary process, including a requirement that litigants bear burdens of proof.¹⁰⁷ In a series of Five Year Plans, the SPC reduced the inquisitorial and investigative role of judges, and increased the responsibility of parties to produce evidence and prove their case.¹⁰⁸ Legal reformers argued that mediation deterred the development of judicial professionalism and the rule of law, in requiring judges to act not as adjudicators but rather as social workers, and in privatizing disputes and issues of social concern.¹⁰⁹ During this period, Chinese judicial

CHINALAWINFO.COM (Oct. 20, 1999), <http://law.chinalawinfo.com/newlaw2002/SLC/slc.asp?db=chl&gid=23701>. Legal Daily [Fazhi ribao], 2 October, 1999, No. 1.

¹⁰³ See, e.g., PEERENBOOM, *supra* note 32, at 394–438.

¹⁰⁴ Ren Jianxin (任建新), Supreme People's Court President, Address before the Fourth Session of the Eighth National People's Congress (Mar. 12, 1996), in BBC SUMMARY OF WORLD BROADCASTS, Apr. 9, 1996, at 26. And Renmin Ribao (人民日报) [China Daily], Mar. 14, 1997.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* This has also led to the 2005 SPC notice to improve court decisions requiring both accurate descriptions of the facts and evidence and logical arguments and legal reasoning. Supreme People's Court, Zui gao renmin fa yuan guan yu zai quan guo fa yuan min shi he xing zheng shen pan bu men kai zhan “Gui fan si fa xing wei cu jin si fa gong zheng” zhuan xiang zheng gai huo dong de tong zhi (最高人民法院关于在全国法院民事和行政审判部门开展“规范司法行为、促进司法公正”专项整改活动的通知) [Notice of the Supreme People's court regarding implementing the “Standardizing judicial acts, enhancing judicial justice” special alteration and correct movement in the civil and administrative divisions of courts nationwide] (July 15, 2005), <http://china.findlaw.cn/fagui/gj/21/6677.html>.

¹⁰⁷ See *Renmin Fayuan Dierge Wunian Gaige Gangyao (2004–2008)* [Second Five-Year Reform Program for the People's Courts (2004–2008)], CECC VIRTUAL ACADEMY (Oct. 25, 2006), <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=38564>.

¹⁰⁸ *Id.*

¹⁰⁹ See Fu, *supra* note 97; but see Owen Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984).

reformers urged the development of civil courts to play a more general, public, and normative role in applying and proclaiming rules.

Recent fear of instability in China, however, has seen a return to emphasis on mediatory and conciliation methods, as well as greater state control of courts and the judiciary.¹¹⁰ More significantly, the emphasis on social stability has meant that improved legal work is equated with greater consideration of the social and political context of cases.¹¹¹ In 2006, the SPC signaled the shift back to mediation for solving disputes.¹¹² SPC President, Yang Xiao, called for courts to adopt the principle of “[u]sing mediation whenever possible, using adjudication whenever appropriate, combining mediation with adjudication, concluding the case and having the dispute resolved.”¹¹³

In the courts, the call is for preserving a “harmonious society,” and the goal is to stabilize society.¹¹⁴ In 2005, President Hu Jintao called for the construction of a “harmonious society” in an effort to stem the tide of social unrest.¹¹⁵ Since 2006, the SPC has acknowledged retreat from a decade long path of civil justice reform towards adjudication and a return to mediation, with an endorsement of enhanced mediation for cases of “great social concern.”¹¹⁶ To encourage greater use of mediation by courts, the SPC recently published a list of people’s courts which have made “outstanding achievements in mediation,” and called on courts at all levels “to learn from these commended courts and do their best to turn a new page on the mediation work of the people’s courts.”¹¹⁷

¹¹⁰ Xiao Yang: Chong fen fa hui si fa tiao jie zai gou jian he xie she hui zhong de ji ji zuo yong (肖扬：充分发挥司法调解在构建和谐社会中的积极作用) [*Yang Xiao: Fully demonstrates the positive functions of court mediation in the construction of a socialist harmonious society*] XINHUA WANG [XINHUA NET] (Oct. 6, 2006), http://news.xinhuanet.com/politics/2006-10/06/content_5171884.htm.

¹¹¹ See *China to Launch Education of “Socialist Concept of Rule of Law,”* *supra* note 83 (stating socialist rule of law is the building of a socialist harmonious society).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Building Harmonious Society CPC’s Top Task*, CHINA DAILY (Feb. 20, 2005), available at http://www.ChinaDaily.com.cn/english/doc/2005-02/20/content_417718.htm.

¹¹⁶ *Yang Xiao, supra* note 108; Si fa bu biao zhang min tiao gong zuo “shuang xian” (司法部表彰民调工作“双先”) [Ministry of Justice Commends the ‘Two Advances’ in People’s Mediation Work] (Mar. 1, 2005), http://www.legalinfo.gov.cn/moj/jcgzds/2005-05/17/content_133971.htm (reemphasizing the importance of mediation in serving the interests of building a “harmonious society”).

¹¹⁷ *Notice of the Supreme People’s Court on Commending the People’s Courts Which Have Made Outstanding Achievements in Mediation*, LAWINFOCHINA.COM (July 23, 2009), available at <http://www.lawinfochina.com/law/display.asp?ID=8047&DB=1>.

In the movement to help create a harmonious society, Chinese courts are rediscovering the virtues of customs and using them to supplement, if not to replace, legal provisions.¹¹⁸ Mediation with its flexibility can integrate China's rich, and often messy, social norms with the more abstract and general legal dictates. In fact, China often emphasizes the variations within its borders and encourages the need to recognize local conditions.¹¹⁹ And so, rather than subjecting the indigenous social ordering to the strictures of state law, the reverse may be happening as state laws are blended and made increasingly congruous with the customs in the countryside.¹²⁰ In 2004, for example, the Jiangyan court in Jiangsu, with the apparent endorsement of the provincial high court, issued formal rules on the handling of betrothal gift cases.¹²¹ The rules essentially rewrote the law by incorporating local customary rules, giving such customs formal recognition in dispute resolution.¹²²

In the Hao case, the courts also were concerned with preserving peace and in adjudicating, tried to give some relief to each party. As the Hao case demonstrates, Chinese rural residents will ultimately go to the courts when they believe their rights have been violated and when mediation has failed.¹²³ But even in the rural courts, it would also appear that notions of preserving harmony, as recently codified in the new Party policy, dominated. In the Hao case, the intermediate court sought to preserve peace even as it ruled against the plaintiffs.¹²⁴ It commanded that defendant Sun maintain the shared wall and preserve Hao's water

¹¹⁸ See Zhu Suli (朱苏力), *Song fa xia xian: Zhongguo ji ceng si fa zhi du yan jiu* (送法下乡：中国基层司法制度研究) [Sending Law to the Countryside: Research on China's Basic Level Judicial System] (2000), reviewed in Frank Upham, *Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China*, 114 *Yale L.J.* 1675 (2005).

¹¹⁹ See Pitman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 *Law & Soc. Inquiry* 465, 476 (2004).

¹²⁰ See *id.*

¹²¹ Yang Xiao, *supra* note 110.

¹²² *With Regard to Good Morals into the Guidance in Civil Trials*, Jiangyan Fa Yuan Wang [Website of Jiangyan Court] (Nov. 23, 2007, 2:34 PM), <http://jysfy.chinacourt.org/public/detail.php?id=841>; see also Zhongguo min shi shen pan kai shi zhong shi yong shan liang xi su fa lü yi jian jiang chu tai (中國民事審判開始重視用善良習俗 法律意見將出臺) *China Began to Attach Importance to Civil Trial Practice with Good Legal Advice Will Be Issued*, *Legal Daily* (Oct. 12, 2008 1:23:55 PM), http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2008-10/12/content_10182401.htm (stating that the use of customs is said to be able to improve court's credibility and authority, help maintain stability and harmony in society, fill the gaps in legislation and preserve cultures and customs).

¹²³ *Rural Legal Aid Student Volunteers –Tsinghua University School of Law Pilot Project*, *supra* note 20.

¹²⁴ *Id.* at 34.

conveyance.¹²⁵ This was not a request made by the plaintiffs. Yet, in this instance, the activist court reached out to create some kind of relief in hopes of preserving stability by giving something to every party. But the complexities of the decision, the failure of courts to garner legitimacy, and the lack of legal assistance nevertheless made the adjudicated decision unacceptable to these litigants.

V. "RULE OF LAW WITH CHINESE CHARACTERISTICS"

Ultimately, rural litigants' experience with and attitudes toward the Chinese legal system may reflect the development of a new system. Just as China embarked on "socialism with Chinese characteristics," we may be witnessing "rule of law with Chinese characteristics."¹²⁶ It is a multi-tracked legal system that, until it shakes out with some consistency, is creating confusion in ordinary citizens. And so, like Hao and Tang, Chinese litigants will voice distrust of the legal system, but at the same time, bring their cases there, and dissatisfied with the experience, search other avenues and petition in every other available space.

The Chinese civil justice system varies depending on the nature of the case. In ordinary commercial and civil litigation, Chinese reformers and courts are applying more formal procedures and more neutral judging.¹²⁷ By contrast, in litigation viewed as more socially significant, Chinese dispute resolution may be more informal than formal, more substantive based than procedural-justice based, with more government intervention than private party control. For cases recognized to have more policy implications, the Chinese courts are known to avoid litigation by refusing to accept them, or in some instances do the opposite and solicit the litigation.¹²⁸ In some cases, Chinese courts can bring in relevant parties, shape the legal issues, and craft carefully constructed settlements in order to bring global peace.¹²⁹ This is all part and parcel of the new state policy on preserving a "harmonious society."

¹²⁵ *Id.* at 35.

¹²⁶ Coincidentally, on October 2, 2011, the Chinese government issued a white paper entitled "The Socialist Legal System with Chinese Characteristics" *see* http://www.china.org.cn/government/whitepaper/node_7137666.htm.

¹²⁷ *See* PEERENBOOM, *supra* note 31, at 497.

¹²⁸ Jerome A. Cohen, *China's Legal Reform at the Crossroads*, FAR E. ECON. REV., Mar. 2006, at 25.

¹²⁹ Margaret Y.K. Woo & Cai Yanming, *China's Developmental State and the Challenge of Formal Process: The Case of the Counterfeit Medicine*, in J. WALKER & O.G. CHASE, COMMON LAW, CIVIL LAW AND THE FUTURE OF CATEGORIES (2010).

Thus, for example, in the Sanlu milk contamination cases, the Xinhua district court refused to accept the victim's complaint and chose, instead, to pressure parties into informal mediation and settlement.¹³⁰ In other provinces, such as Henan, there were even internal guidelines barring courts from accepting lawsuits such as those challenging re-education through labor decisions.¹³¹ By contrast, in other cases, the Guangdong court insisted on bringing in parties contrary to the plaintiff's wishes, to ensure that some deep pocket payment could be made to the plaintiff.¹³² In that case, the court made sure the "deep pocket" party was brought in even though it was difficult to prove that party was liable. In yet another case, the Chengdu city government apparently paid a disgruntled citizen's legal fees so that he could retain a lawyer to sue the city and resolve the issue along legal routes rather than resorting to violent means.¹³³ All of these cases exhibit an active role on the part of the Party state and Chinese courts to shape the litigation, rather than simply serving as a neutral forum, in order to buy global peace.

It is a multi-track approach to rendering justice, one focused more on ensuring stability and harmony than in the rigid application of the law. Relatively insignificant cases are left for courts to handle, while more significant cases are either actively avoided by the courts or if the courts are confident of its ability to resolve the case, actively solicited by the courts. Like litigants everywhere, Chinese rural residents are astutely assessing which legal forum would best address their disputes.

Today, the new emphasis is on solving the individual dispute and making the discord go away, and less on a normative role for law. And, discouraged with the courts' failure in containing discontent, the Chinese state may be increasingly channeling social discord towards administrative and Party officials for management or resolution.¹³⁴ In the rural areas, where the social cost of "lumping it" are higher and access to courts is limited, the turn to bilateral negotiations and social network, as

¹³⁰ In the Sanlu milk contamination cases, nine victims filed suit with the Xinhua district people's court but the court refused to initiate the case. The court also refused to issue a non-acceptance decision. Rather, the court indicated that it was simply following an internal directive from the upper court. See SICHUAN DAILY, <http://www.scol.com.cn/focus/zgsz/20091031/200810311194908.htm>.

¹³¹ *Henan Petitioner Liu Xueli Sends Letter to Mo Shaoping Law Firm from Re-education through Labor Calling for Legal Aid* (Oct. 9, 2009), available at <http://thelcv.org/?p=1546>.

¹³² Woo & Yanming, *supra* note 129.

¹³³ Meng Dengke, *Report a Rare Public Official: Government Accused of Their Own Money, Please*, S. WEEKEND (Nov. 13, 2008, 8:44:44 AM), <http://www.infzm.com/content/19870>.

¹³⁴ See O'BRIAN & LI, *supra* note 18.

well as direct appeals to administrative agencies at higher levels, are salient.¹³⁵

Here, in the Hao case, not only did plaintiffs exhaust the formal court appeals system, they also turned to seek relief from administrative agencies.¹³⁶ Hao and Tang filed a grievance with the county government alleging that the original land site certification was fraudulent, giving Sun's house an extra meter or so.¹³⁷ The *sifasuo* referred the case to the land management bureau as a case involving a land dispute.¹³⁸ The land management bureau in turn refused the case and referred it back to the *sifasuo*, alleging that it was a tort case and should therefore be mediated by that office.¹³⁹

In rural China, then, the "dispute pyramid," begins with residents resorting to mediation by village elders, a village mediation committee, or the county *sifasuo* and/or appeal to the relevant administrative departments. When all else fails, and the local authorities and the courts are not to be trusted, petitions to the national government follow. Discontent has bred petitions, and a large portion of the petitions are law-related. Aggrieved individuals petition to political authorities, directly bypassing the judiciary, or continue to petition political authorities after having gone through the judicial process. Courts are seen as lacking the ability to absorb, contain, and end disputes.¹⁴⁰

While Chinese courts reported hearing 8.1 million cases in 2006, more than triple the number heard in 1986, the caseloads have grown only modestly, if at all, since 1999.¹⁴¹ By contrast, the number of petitions has skyrocketed.¹⁴² According to the director of the national

¹³⁵ See LUBMAN, *supra* note 29, at 224.

¹³⁶ *Rural Legal Aid Student Volunteers—Tsinghua University School of Law Pilot Project*, *supra* note 20, at 36.

¹³⁷ *Id.* at 36–37.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ This has led the Supreme People's Court to re-emphasize the importance of mediation in judicial work, to end the dispute, and prevent the number of cases that may be brought to the attention of other branches of the government—"neng tiao ze tiao, dang pan ze pan, diao pan jie he, an jie shi liao" (能调则调, 当判则判, 调判结合, 案结事了) [mediate cases that could be mediated, adjudicate cases that should be adjudicated, concluding the case and ending the dispute concurrently]. See Xiao Yang: *Chong fen fa hui si fa tiao jie zai gou jian he xie she hui zhong de ji ji zuo yong* (肖扬: 充分发挥司法调解在构建和谐社会中的积极作用) [Fully Demonstrate the Pragmatic Function of Court Mediation in the Construction of a Socialist Harmonious Society], RENMIN SI FA [PEOPLE'S JUDICATURE], 10 (2006), 4–6.

¹⁴¹ Liebman, *supra* note 85, at 4.

¹⁴² Carl Minzner, *Xinfa: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT'L L. 103, 105 (2006).

xinfang bureau, the State Bureau for Letters and Calls, letters and visits to Party and government *xinfang* bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year.¹⁴³ These figures dwarf those for the number of cases handled by the court system, which amounted to about six million in 2004.¹⁴⁴ Similarly, in 2004, SPC apparently handled 147,665 petitions, compared with 2923 formal appeals.

The Petitions Bureau of the National People's Congress (NPC) Standing Committee estimated that about 40 percent of the petitions were challenges against decisions made in the legal system, including the courts.¹⁴⁵ Many of the petitioners come to Beijing under the traditional belief of "*qingguo wei min zuo jui*," to clean government by bringing the problem to the attention of the central government, and 88.5 percent came because the local government has pressured petitioners and they are seeking resolution from Beijing.¹⁴⁶ A study by Cai Yongshun of Beijing petitioners revealed that 64.4 percent had previously filed suit in court, and courts had refused to hear 42.9 percent of these cases.¹⁴⁷

These rural residents' goal in petitioning Beijing is to express, participate, and seek assistance.¹⁴⁸ To some extent, the Beijing government has taken these petitions as informative sources about issues on the local level, because an overwhelming number of peasants use petitioning to contest violation of their rights and appeals of government decisions.¹⁴⁹ Scholars have warned that the ability of the Beijing government to contain and resolve petitions is the foundation of its ability to maintain its legitimacy.¹⁵⁰ Indeed, to the extent that these petitions offer information to the central government about policy implementation and cadre oversight at the ground level, how these issues are resolved may be the linchpin to Chinese good governance.¹⁵¹ In the

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 160.

¹⁴⁵ Cai Yongshun, *Managed Participation in China*, 119 POL. SCI. Q. 425, 450 (2004).

¹⁴⁶ Minzner, *supra* note 142, at 156 n.325.

¹⁴⁷ *Id.* at 119.

¹⁴⁸ Citizen petitioning of *xinfang* institutions represents a form of permissible citizen political participation in an otherwise authoritarian regime. *Id.* at 118–19.

¹⁴⁹ *Id.* at 119–20. ("Xinfang regulations direct *xinfang* bureaus to provide information to central authorities and conduct research on social problems; serve as a channel for citizen input into policy making; monitor the conduct of local government officials; participate in maintaining social order; conduct some propaganda functions; and handle individual grievances.")

¹⁵⁰ See, e.g., O'BRIAN & LI, *supra* note 18.

¹⁵¹ O'Brien & Li, *Popular Contention and Its Impact in Rural China*, 38 COMP. POL. STUD. 235, 241 (2005).

Hao case, when asked as to why they are petitioning, they replied, “it is my right,”¹⁵² and as expressed by other petitioners, “Beijing has to know.”¹⁵³

CONCLUSION

Formal legal dispute resolution requires mediating institutions that are all-encompassing and embedded in rural society. Where such institutions are absent (as in a public-minded legal profession), rural residents make the rational choice of reverting to informal dispute resolution mechanisms. While the message of law has not gone unheard, formal legal process is met with greater resistance. In China, the message of law has served as the basis of “rightful resistance;”¹⁵⁴ that is, a narrative frame to assert claims and even to narrowly challenge the state. However, formal legal process as a method of dispute resolution has not achieved the legitimacy to replace either traditional authorities or that of the developmental state.

Legality and formality has led to greater expectations resulting in “rights” language, but the use of the legal system has not been conducive to law becoming an organic part of social life. Rather, as pointed out by Sida Liu, formalistic law has become more technocratic, authoritative, and sometimes even incoherent.¹⁵⁵ As such, formality could become a barrier to rights attainment rather than an equalizer enabling citizens to access justice. Legal technicalities can even legitimize state repression. Formal process has led to greater responsibilities on litigants, but absent greater legal assistance, those with more resources will always be able to use legal niceties against those with less resource.

Certainly, these methods are not exclusive of the other, and the choice to seek formal justice depend on the status of the individual, the nature of the dispute, and whether the individual has personal contacts with the formal legal system. All in all, the Hao case reveals a continuing belief in the power of the state to provide relief, and in some instances, an avenue of last resort. And if a dispute rises above individual interests, such as a dispute involving a political or collective interest, the choice of

¹⁵² See Hao Case in *Rural Legal Aid Student Volunteers—Tsinghua University School of Law Pilot Project, 2006–2007*, *supra* note 20, at 43.

¹⁵³ Of the 625 Beijing petitioners surveyed by Tsinghua law students, 90.5 percent state that they are petitioning to bring these problems to the attention of the central government in Beijing. *See id.*

¹⁵⁴ *See, e.g., O'BRIAN & LI, supra* note 18.

¹⁵⁵ Sida Liu, *With or Without the Law: The Changing Meaning of Ordinary legal Work in China, 1979–2003*, in *CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA*, *supra* note 19.

which avenue to turn to may be taken away from the individual litigant. The developmental state may step in to solicit the litigation, organize the mediation panel, and issue a global settlement. Astute rural citizens are cognizant of these multiple sites for law in China. Their conflicting attitudes reflect a calculated guess on which site(s) can best redress their grievance, even as law in China continues to operate as a representative of the developmental state. And Clifford Geertz's now-famous quote that "whatever law is after, it is not the whole story"¹⁵⁶ must take into account the interpretive and constitutive nature of Chinese law and the complexity of China's developmental state.

¹⁵⁶ CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETATIVE ANTHROPOLOGY 173 (1983).