‘JURISPRUDENTIAL MASSAGE’

Legal fictions, radical citizenship and the epistemics of dissent in post-socialist China

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"You have already been incredibly faithful towards the man. And you have been following all the relevant rules for establishing a co-operative. Now, what you need to do is to try to save your relationship as kin. It is not only about the business you are putting together. You need to understand that respecting the law also means respecting the particular circumstances in which your business partner appears to be. What I ask you to have is another pinch of hope and to fix this. Forget about this mandatory entry payment, put the money up yourself if you must, and go ahead! If you're not convinced try out the administrative court, see how it goes there. What you need to know is that the result we can get here is in both parties' interests (*liangbian yao baiping*). Do not ruin everything here, insulting each other and losing temper. What could you expect from your co-op if you establish it on unstable grounds?"

This was Master Du at his best. An extremely witty Communist party cadre, he had been, since the beginning of my fieldwork in the rural town seat of Yancong, northeast Yunnan Province, an omnipresent figure of dispute resolution. The dialogue above comes from a particularly stormy session held by Du and two of his assistants in November 2013 at the Village Committee Common Room of Litian, a rural hamlet hidden behind the hazy rice-terraced slopes eastward of Yancong. To my surprise, once Du had concluded his summation, the old man allegedly responsible for defaulting on his financial commitment towards the joint co-op project gave a half-contrived nod and promised he would forgive his 'unfilial son' (*niezi*) for bringing him to court. In turn, A-Mu, the old man's son-in-law who only a minute before was vehemently rejecting any possibility of reconciliation, promised he would file no further charges against his father-in-law and that he would foot the entry fee.

That day, Du asked me to keep him company as he went through a long day of "extra-court mediation" (*tiaojie gongzuo*). His duty: "making sure that people live harmoniously with one another and have respect for the Law". Out of five cases he sat through only that day, Du successfully persuaded parties to reach an agreement four times. "I have a 90% success rate"[1] he usually boasted to other mediators, "and I do almost one thousand cases per year". "Do they ever go to court?" I asked him that day, out of curiosity – "To court?" – he replied, baffled – "Why would they? The court doesn't care about what happens next, they are simply after establishing compensation.[2] The way I see it is that mediators should combine 'the rule of law' (*yifazhiguo*) with the 'rule of morality' (*yidezhiguo*). What is requested of us, is that we usher people back into harmony (*wei qunzhong kaiqi hexiezhimen*) and that we preserve good social relationships".

<FIGURE 1 HERE>

In contemporary rural China, the extra-judicial and voluntary conciliation of disagreement by a qualified third party – the messy business also known as "mediation"—is experiencing a stunning, if perhaps unlikely, revival (Minzner 2015: 4). After almost two decades of steady decline in favour of court litigation (Di, Wu 2009: 234), the Chinese government is now heavily investing in the professionalization of mediators (Zhang 2013: 262) and in enforcing prerequisite mediation across various arena of social conflict, from labour to administrative disputes (Su, He 2010; Zhuang, Chen 2015). Intrinsically permeable to elite and partisan interests, the practice of institutionalised mediation has been heavily criticised as a form of "control of the political thought of the masses" (Glassman, 1992: 466). However, contemporary observers of China understand this return of mediation as indexing the Party's tottering ideological grip on its citizens' growing awareness of individual rights and evolving "grammar of justice" (Brandtstädter 2017: 14; Minzner 2018: 100). In 2015 alone, China's 3,911,000 people's mediators mediated 9,331,000 civil disputes, a two-fold increase in the space of only ten years (Read, Michelson 2018: 436). Expansive state support to dispute mediation is integral to the current moment in Chinese politics, in which the system's "capacity to respond to public demands" (Tsang 2016: 19) is being tested on a dramatic scale.

The mediated resolution of disputes has a long, and for many sociolegal scholars, praiseworthy history in China (e.g. Huang 2010: 61, 203). One could gesture back to the ancient Confucian predilection for social harmony (*hexie*) and conflict-aversion (*yansu*) – the anti-Hobbesian

idea that harmony, and not conflict, "arises and persists automatically in a hierarchi cal universe" (Stephens 1992: 4). Or point out how such practices channelled and energised class conflict under Mao (Lubman 1967). Under Xi Jinping's rule, the Communist Party is revitalising, but also redefining, the institutional legacies of both the Maoist and Confucian tradition in the belief that this will "enhance its ability to govern or improve its moral authority" (Tsang 2016: 36).

While historical continuity provides popular legitimacy, the versatility of mediation does also pander to contemporary bureaucratic anxieties about the administrative sustainability of continuous state surveillance (He, Warren 2011: 282). Dispute mediation eases the mounting governmental frustration with judicial litigation while providing disgruntled citizens with a first venue of extra-judicial redress. It decreases the level of exposure of the legal system to huge fiscal expenditures rising from expanded access (Li, Kocken, van Rooij 2018: 67-8). It channels increasingly organised and tactically innovative forms of grassroots dissent (Gallagher 2017: 89; Fu 2018: 20), and acts "as the first line of defence (*diyidao fangxian*) against social conflicts and negative mass incidents" (Di, Wu 2009: 239). Thus, dispute mediation is usually conceived as a form of "governing at a distance" (Ong, Zhang 2008: 4), one among a set of institutional mechanisms that by enhancing state legibility allegedly contributes to social stability (*weiwen*).

Between 2011 and 2017 I conducted two years of ethnographic fieldwork alongside Master Du, Mr Ni and a number of other Yunnanese dispute mediators to explore how this "mediation fever" (*tiaojie re*) – to borrow a felicitous expression from the Chinese legal scholar Yao Zhijian (2005) – is currently affecting the popular quest for social justice in rural China. Stuck between an impossible workload and the intractability of bitter village rows, dispute mediators such as Master Du are pressed to catch up with the latest developments in Chinese political and legal ideology while juggling all sorts of official requests for a better, faster and more reliable para-legal service. And yet, despite the heavy toll that this task takes on their time and energies, all mediators I met in Yancong were adamant about the absolute necessity of the service they provide.

Yunnanese mediators are usually keen to point out that, despite the various legal education campaigns championed over the years by the central state and the multiple opportunities for professional legal advice currently available to its residents, contemporary rural Chinese society still shows very low levels of compliance with the law. Even worst, decades of "law propaganda" (Altehenger 2018: 255-7) have supposedly resulted in a more combative articulation of grassroots collective action, which now leverage established legal principles "to anchor defiance" (O'Brien 2013: 1055). In Yancong, a township of less than one hundred thousand residents, unofficial figures reported an average of thirty "mass incidents" (*quntixing shijian*) per year for the period 2010-15. While local mediators accept that class tensions brought about by three decades of pro-urban biases in state economic policies may matter, they prefer explaining endemic unrest as the symptom of widespread moral decay.

In this paper I investigate dispute mediation as an institutional response to the backfiring of China's legal dissemination programs. In a country currently leading the global innovation race for more efficient and sophisticated technologies of state surveillance (Byler 2019), and therefore already dramatically invested in projects of social "harmonization" (*hexiehua*), what role is there to play for those lower-tech forms of governmentality – forms less rooted in physical coercion and behaviour monitoring and more based on interpellation, moral education and ideological remodelling (Rancière 2010: 36-7) – that were once instrumental in mobilizing and shaping rural consensus under socialism? Complementing anthropological theories of resistible power (e.g. Scott 1990; Simpson 2014) I show how a politically motivated shift in the epistemology of law – i.e. the ways in which statements are appreciated to carry legal weight and therefore expected to have a certain type of agency –correlates with the (im)possibility of meaningful dissent and therefore with the moving moral complexion of politics and citizenship in this country.

How is “agreement” ordinarily made sense of and brought forward in rural Yunnan? According to what moral or legal principle is resolution said to have settled in and how are everyday forms of dissent and refusal managed? Master Du usually referred to cases such as A-Mu’s as ‘petty infighting’ (*wolidou*) or ‘trivial cases’ (*xiaoshi*). “The mission of every dispute mediator is to transform big cases into small cases and small cases into no-cases”, he assiduously remarked to the always bamboozled-looking attendees of dispute resolution sessions. Below, I endeavour to invert Master Du’s laudable adage – turning trivial cases *back* into heuristically pregnant cases – with a view to unpicking the political work that the cautionary tales, half-baked legal fictions, and the cursorily legal lessons imparted by dispute mediators such as Du, as well as by other law-brandishing street-level officials, currently perform in dispute-chocked rural China.

The selection of cases for this paper will reflect an aspiration to generalisability. Among the twenty mediation cases I personally followed and the hundreds of “requests of hearing” and mediation decisions I have collected in various dispute archives during fieldwork, I will focus on those most representative of the existing social and political fault lines in the region. For all the cases I personally studied, I have always followed up with both mediators and disputants to discuss their experiences of and expectations for the mediation process. Below, I will first contextualise mediation within various theoretical debates at the crossroad between Chinese and Western sociolegal studies. I show how looking at the internal *functioning* of mediations, as opposed to its institutional *function*, frees up space to theorise about the micropower wielded by Chinese mediators. Second, I look at an official training session in the “rule of law” to show how mediators are primed to re-imagine the relationship between social stability and the attainment of conciliation by virtue of a creative re-appropriation of socialist jurisprudence. Third, I rely on mediators’ own accounts of successful resolution to highlight the techniques of moral subordination that disputants’ appeals to justice undergo within mediation – a process of epistemic refashioning that Master Du himself calls ‘jurisprudential massage’. Finally, I tease out what the implications of such epistemic shift may be for contemporary Chinese citizenship, and through the ethnography of mass incidents, for an anthropological theory of meaningful dissent.

A VERNACULAR OF REPRESSION

In the last decade, scholarly debates about the possibility of legal redress in authoritarian societies (Lai, Slater 2006; Whiting 2017) have brought attention to China’s continuous reliance on informal means of dispute resolution. A panoply of multidisciplinary case studies now testifies to the ubiquity and versatility of this legal form (e.g. Erie 2015; Balme 2016; for a review Liu, Wang 2015). Importantly, this literature has highlighted the key institutional role played by dispute mediation in smoothing out the potentially very fraught transition from the Maoist planned economy to a capitalist market one (Zhu 2016: 127-9; Peerenboom, He 2009: 25).

A guiding research hypothesis here is that of the “vernacularization” of rights and rules – the process through which the law-in-the-book is actualised, or subverted, by law-in-action. As with other Asian countries (Engle, Engle 2010: 95-6; Tanase 2010: 155-7), in China the desired transition to a modern market economy capable of innovation is usually expected to rely on citizens’ increasing propensity to litigate the rights abuses accompanying economic development. However, such reliance on litigation is now interpreted as having a dwindling effect on the moral force of “customs” (*xiguanfa*) – a term used widely in the official state discourse to speak about challenges to social stability (see Huang 2010: xi–xviii). Customs, the once-powerful moral glue of society, appear to be no longer able to elicit mutual agreement among disputants, the experience of law-enabled social change arguably acting to destabilise ordinary village mores, local notions of fairness and expectations of justice.

The progressive entanglement between these two opposing normative orders, i.e. between the "market-conforming" (Gallagher 2017: 34-6) legality of the party-state and the crumbling moral authority of local customs, have led the Chinese legal anthropologist Zhu Xiaoyang to speak of a "confusion of tongues" (*yuyan hunlun*) seemingly beleaguering the legal consciousness of contemporary Chinese citizens (2007: 107-8). Because of this, sociolegal debates in China are today bent on re-assessing dispute mediation as either a site where "law propaganda and ideas of justice" can be made to overlap (Altehenger 2018: 259; Huang 2010: 259) or, conversely, as a productive space for counter-hegemonic, market-averse claims-making (Pia 2016: 279).

And yet, this revamped interest in dispute mediation can still be faulted for trading in the same old homeostatic currency of functionalism; that is the flattening of the discourse of law on to the exigencies of power (Pirie 2013: 31, 187). In a context such as the People's Republic, this usually entails using mediation to test the correlation between the deregulation of justice and regime stability (e.g. Erie 2015: 1003; Hu, Zeng 2015: 47; Gallagher 2017: 30). While this line of inquiry has much to recommended it, its latent legal pragmatism – i.e. the conflation of the assumed social ends of law (stability) and its institutional means (mediation) – is a source of unwanted inconsistency. This is apparent when the stress on mediation as a powerful corrective for social instability is framed against the empirical scholarship on citizens' access to the legal system. In the case of rural China in fact, dispute settlement is alternately shown to be either a relatively underused remedy for aggrieved villagers (Michelson 2007) or a redress mechanism of wildly exaggerated efficacy (Read, Michelson 2018: 448).[3]

<FIGURE 2 HERE>

In this paper, I bring my ethnographic study of Chinese mediation in dialogue with broader theoretical conversations happening in anthropology at the nexus of legality, language and citizenship (e.g. Richland 2013; Dresch and Scheele 2015), to argue that there's much more to this governing technique than a just-so story about its alleged institutional (in)convenience. In what follows I argue that this approach advances our comprehension of current trends in the politics of repression, of both the liberal and authoritarian kind (Povinelli 2013: 25-9; Wang 2016: 152-60), as well as our conceptualisation of law's force as distinct from that of the material apparatus of the State (Riles 2010).

In what follows, I make three specific contributions. First, I argue the ethnographic material in this paper challenges the received interpretation in Chinese studies that mediation, and the country's legal system more broadly, are exclusively motivated by the attainment or maintenance of social harmony (see Benney 2016). Rather, this paper shows that mediation is currently being retooled to affect a "radicalisation" of rural political sensibilities – a political project to introduce in the public sphere more rigid, obtrusive and non-negotiable interpretations of everyday morality.

Second, Chinese dispute resolution offers a privileged vista on emerging forms of state mediation that while minimizing the possibility of hidden resistance (Scott 1990), or autonomy (Simpson 2014; McGranahan 2016), simultaneously allow for the staging of what Jacques Rancière calls "political excess" (2010: 43) – the articulation of a differently ordered polity through the public expression of dissent and refusal. It is in the very articulation of dissent, however, that Chinese mediators are seen attending to socially destabilizing views in ways that make their actual underlying political stakes difficult to say and ultimately dis-acknowledgeable. To achieve such control over the expression of dissent, Chinese mediation does not necessitate the co-option or criminalisation of those who express it. If *hidden resistance* entails a "tacit ideological complicity" with the language of power (Scott 1990:100), and *refusal* an authorizing context that feels diminished by the mere existence of dissensus (Simpson 2014: 18-24), this paper demonstrates a governmental action geared towards the subordination of non-confirming subjectivities which exceeds the problem that their overt or covert existence poses to authority.

Third, with a view to moving away from the functionalist undertones characterising the scholarship of legal consciousness, this paper investigates the *functioning* of dispute settlement[4] – how routine encounters with local grammars and ideologies of law qualitatively transform the possibility and articulation of disagreement. While *functionalism* stands for theories that treat law exclusively as a vector of social control (see Hart 1983: 353-54), zooming in on the twists and turns of mediated agreements discloses the epistemic labour that capacitates legal-brokers beyond the question of control to reshape the moral complexion and the substance of Chinese citizenship itself. Here I stress law's capacity to convey "authoritative images of social relationships and actions" (Merry 1990: 8-9; also Richland 2013: 218) and show how the discursive work that goes into the resolution of rural disputes encapsulates a persuasive vernacular of allusions, metaphors and legal fictions ingeniously concocted by mediators to achieve what, following the feminist philosopher Miranda Fricker (2007), I will call "epistemic resolution", i.e. a disputing stance that pre-empts the performance and intelligibility of meaningful dissent.

Sticking to Du's self-account of mediation, what does "ushering people back into harmony" practically entail? What are the epistemological implications of persuading someone to proceed according to their own better judgment, as when one is cautioned to "preserve their good social relationships"? And above all, what can a study of the *functioning* of dispute mediation tell us about the "durability and ideological power of law" (Silbey 2005: 358) in a global time in which the law is increasingly exercised "in the name of a collectivity" (Hall et al. 2013: 192) rather than in that of justice?

THE STABILITY BLUFF

Yancong mediators spend considerable time debating what they call "the legal consciousness conundrum" (*falü yishi wenti*). If state's popularisation of legal remedies has led people to "use the law as a weapon" (*yongfaweijian*) rather than as a "teaching" for self-restraint (*yifaweijiao*) – as originally intended by governmental policies – could the law still be used to shape social conflict in ways congenial to the objectives of state governance? In response to my continuous querying about this conundrum, in December 2017 master Du gave me the unprecedented opportunity to attend one of the official mediators training sessions organised by the Kunming Civil Affairs Bureau (*Kunmingshi minzhengju*). Entitled "cadre training in social stability through the rule of law" (*fazhi weiwen ganbu peixun*), these mandatory sessions are part of professional development goals for Yunnanese dispute mediators. This session took place in the glamorous premises of a prestigious building in central Kunming city and gathered somewhere around three hundred dispute mediators operating in Qujing Prefecture, where Yancong is jurisdictionally located.

The morning was organised around an orderly sequence of public remarks by village cadres – starting from an elderly Han male party secretary and finishing with a relatively young, democratically elected Tibetan female village leader. Speakers were instructed to spend a few words relating the experience of delivering sound mediation services to their own village constituencies. In all speeches, the biographies of a selected handful of dispute mediators across the swath of Chinese history were dissected, mulled over and repackaged to crowd-pleasing effects. It was on one specific figure though, the communist leader Ma Xiwu, that the organizers wanted us to focus. In small groups of ten trainees each, the better part of the afternoon session was devoted to the exegesis of pre-circulated paper excerpts from an official legal biography of Comrade Ma Xiwu. "Is Comrade Ma's way of judging an example of how mediation ought to be carried out today in view of the imperatives of social stability?" was the prompt to our group discussion.

All the Chinese mediators I met in Yunnan are extremely familiar with the figure of Comrade Ma. Ma Xiwu, a native of Zhidan county, in Shaanxi province, joined the CCP in 1935 and acted as presiding judge of Longdong Tribunal of the Senior Court of Shaanxi-Gansu-Ningxia Revolutionary

Borderland Base in 1943. After liberation, he went on to become vice president of the Supreme People's Court. During his time as a revolutionary judge, Ma became popular for championing a mediation style that while "based on common sense" (Yu 2008: 81), was still capable of joining the promotion of the state's socialist reform programs with the broad participation and consensus of the masses. All of this, apparently, without creating "antagonism in communities" (Cong 2014: 32).

For instance, in one of the most famous cases he mediated, the 1943 case *Feng vs Zhang*, Ma decided to validate a technically void, arranged marriage conducted through the kidnapping of the bride, basing his ruling on the bride's private testimony that she really wanted to marry her arranged husband. Ma made a point of determining the "popular inclinations" (*yiban yulun quxiang*) of co-villagers towards the case – all in favour of the arranged marriage – before reaching his decision. In so doing, Ma upheld the socialist legal principle of "self-determined marriage" (*ziyuan jiehun*) while at the same time preserving the collective economic interest that had originally led the involved families to arrange the marriage of two of their members.

"Ma's view truly is that of a modernizer" – a middle-aged Han dispute mediators sitting in my group commented – "arranged marriage is a formality that followed local custom. Socialist law says that the essence of this case was the will of the spouses. Ma's practice is to resolve disputes by bridging both local customs and modern law, rather than creating conflict between them. This is the best possible conduct towards maintaining social stability" – "And yet, Ma's judgement won't stick today" – rebutted another – "today's litigation masters (*songshi*) will appeal to the superordinate office, or disputants would suddenly change their mind and sue for cancellation" – "People like Ma are cut from a different cloth, today's people's mediators don't have the harshness (*ying*) that is needed to adjudicate (*panjue*) the way he did" concluded the most experienced mediator at the table.

As our group time was over, the organisers went on to collect take-away points from the various working groups. While noting how the general discussion exuded a certain degree of self-deprecation, they suggested that Ma's legacy had still a crucial role to play in today's rural society. "Ma's mode of mediation came out of the revolutionary experience. And, indeed, the maintenance of social stability today is a comparable war-time endeavour" one of them remarked. The gist of their comment was that embattled mediators today ought to think creatively about the jurisprudence of mediation (*tiaojie jiufen de fali*) – the subtle ways in which the law can be made to simultaneously square with and off the frictions of local politics.

To hammer this point home, the organisers asked us to pause on one aspect of Ma's mode of mediation that, they argued, had been left significantly unexplored by group discussions: "You have been focusing on Ma's moral standing or his subtle knowledge of socialist laws, and yet what really matters is his 'radical method' (*jijin cuoshi*) of executing Mao's mass line". Famously, Mao advocated for a policy practice that relied on the input of the masses to articulate legislative goals. But according to the Civil Affairs officials, Ma performed the mass line in ways that, today, are potentially decisive for China's "mediation fever".

"When addressing complicated cases that weaved together questions of rights to feelings of envy, resentment or selfishness, Ma would always make sure to reach a conclusion that accorded with the revolutionary sentiment of the people". At the same time – the civil affair official continued – Ma would always mediate so that "incorrect opinions" (*cuowu yijian*) or behaviours could be publicly criticised. Conversely, "correct opinions" (*zhengque yijian*), those rooted in the collective interest, would end up being included in the adjudication. If reiterated, the speaker argued, this method could reduce the number of "incorrect" requests of hearings mediators need to process – "you don't have to take up requests that are based on what everyone knows to be incorrect opinions" – while at the same time increasing the legal "quality" of the decisions mediators reach during dispute settlement.

Sociolegal debates in China are currently questioning the state's ability to read the root causes of social conflict in contemporary society. Yu Jianrong, for instance, has argued against the "rigid" governmental concept of "stability" (*gangxing wending*), claiming that it mis-construes genuine concerns for economic equality as inherently political threats (Yu 2009). As we have seen, "cadres training in social stability through the rule of law" does not ask participants to consider the ways in which specific rules and procedures can help assuage socio-economic tension at the grassroots. Rather, mediators are prompted to think about the intersection between the practice of popular justice and the very epistemic foundations of legality. A cluster of ideas that frames consensus, agreement and stability as a political project brought about by mediators' motivated interventions into common people's sensibilities and capacity for discerning what correct legal opinion to follow. In this interpretation, law's function as a facilitative tool of governance gets somewhat side-lined. To receive more attention is rather law's capacity, through the vehicle of dispute mediation, to generate a "social vision" subject of "evaluation and judgement" (Pirie, Scheele 2014: 9).

The institutional de-selection of "incorrect opinions" advocated by the civil affairs officials does not simply aims to *stabilise society* – in the literal sense of achieving a steady state kept in balance by counterforces. In line with Ma's vision, it also endeavours to re-orient society towards those partisan views which, by being monopolised by state authorities, become the solely legally enforceable. As suggested by Dresch and Scheele, the act of re-drawing the epistemic boundaries between what is background and what foreground in legal matters – or in other words, between the implicit categories people live *with* and the explicit rules they ought to live *by* – entails "entrenching" one particular version of rule-following conduct, at the expanses of all others (2015: 13-14). Everything that falls outside those "legal trenches" – behaviours or opinions that rest at an angle to the officially prescribed ones – is neither explicitly resisted nor rejected by legal authorities, but simply relegated to public irrelevance (Pirie, Scheele 2014: 21). In the remainder of this article, I show how dispute mediators are innovating precisely on the rhetorical repertoires and legal instruments that allows for such epistemic shift to happen.

JURISPRUDENTIAL MASSAGE

A few days after the Kunming meeting, I sat with Mr Ni and Master Du smoking cigarettes by the porch of Qingkou Village Committee as they waited for a party meeting to begin. Looking troubled, Mr Ni broke the smoke-filled silence: "If the law is not self-explanatory (*ziming*), as the people in the Kunming meeting suggested, I fear we are losing a lot of time learning it…" – Du, looking unimpressed, replied – "Mediation is as much about the moral quality of people (*renpin*) as it is about law . Work on the quality of disputants and what you get back is a law-abiding society (*fazhi shehui*)". He offered one example: one day, while consuming his usual mutton-noodle breakfast by a road-side inn along the motorway to Zhaotong, on his way to Guizhou Province, he casually overheard a group of strangers adoringly quoting a legal summation (*chengci*) he had delivered few days before. "Good mediation is not about establishing guilt (*zhengming beigao youzui*). Nor should it stop at a verbal agreement. Good mediation is about motivating people to become better persons (*zaipei zuoren de xin*)" He remarked.

The Yunnanese dispute mediators with whom I have been in conversation since 2011, are profoundly aware that operating legal services as if they were moral elevators entails an intractable paradox. In Yancong, as in many other places where mediation or adjudication services have been made widely available, people would only turn to them as a measure of last resort (Michelson 2007: 466). How can people be convinced that mediation does in fact contribute to a fairer and more stable society if only very few of them are willing to engage with it? Take the sizeable number of disputants I interviewed in Yancong who reported feeling jaded, patronised (*bei kandi*) or even

misunderstood during mediation. A-Mu's is once again a case in point here. A young, Yi man in his early thirties, A-Mu had been toiling all his life in a remote village further north of Yancong. With the expansion of the township economy, A-Mu was for the first time confronted with life-changing opportunities. In late 2012, the Yunnanese representative of a state-subsidized and relatively shady Dutch-Chinese joint-stock company had been visiting Yancong with the intent of recruiting local farmers into a marigold flower-growing scheme. The representative promised a dividend windfall with the first spring-bloom, and many local farming households fell to his alluring call.

The only legal quibble to join this scheme was that individual households had to be grouped together and merged into agricultural co-ops to benefit from economies of scale. Each household head had first to contribute individually to insure the co-op against crop failure, a sum that A-Mu's father-in-law, the defendant, growing increasingly suspicious of this payment, had suddenly refused to cover. This agitated A-Mu, who could not afford to advance this payment and felt he was missing out on a once-in-a-lifetime chance. Eventually, A-Mu was convinced by his wife to bring her father to a mediation committee. Along with a large group of local villagers, his wife had relied on mediation in the past and considered it reasonable (*heli*) and in defence of common people's livelihoods (Pia 2016). Yet, that day, when it became clear that mediation was not going according to his intentions, A-Mu walked out of the room shouting to the casual attendees: "what is mediation for if the result is always the same, forget about rules and 'respect the elders' (*zunlao*)?". Eventually, A-Mu decided to keep with the agreement reached by Master Du that day, for fear of looking unfilial to his family-in-law.

"Law does not bring itself to the common people. Matter of fact, common people need to put a lot of work in to bring it down to the countryside". This is Mr Ping, one of Du's key dispute collaborators, during a follow-up conversation on A-Mu's case in 2013. Ping's point was that to successfully navigate through China's modern market economy is no small feat, and that "legally illiterate" peasants (*famang*) such as A-Mu's father-in-law would inevitably end up lagging behind and become upset about it. Who knows what a co-op entry payment is for? Who has rights in a shareholder dividend? And besides, why do we have the complicated rules that we have? Failing to get to grips with such questions, Ping explained, usually engender envy, suspicion and animosity between people. Emotions that will eventually catalyse the conditions for further rule-breaking behaviour. "Using persuasion to turn the masses into legally savvy people (*rang qunzhong chengwei falü mingbairen*) is the only reliable way to decrease contention, create more economic opportunities for everyone, and assure that people behave respectfully" – he concluded.

Similar to the civil affairs' reading of Ma's method, what Ping describes is a legal pedagogy that channels paternalism to elevate common people into a politically congruous state of legal awareness, a moralised vision of social betterment. But how could such pedagogy alone be enough to convince A-Mu that he, for instance, was the one in the wrong, since ultimately the one who refused to stick with the rules was his father-in-law? During an interview on this topic in 2017, Master Du started by borrowing a metaphor from his younger sibling, a professionally trained chemist, to describe his mediation effort as a form of therapeutic massage. It is in this passage that Du develops the most articulated account of how Chinese dispute settlement is understood to *function*. Mediators draw from a rich metaphorical repertoire to weave conciliatory interpretations of case-related events in the hope of reaching a form of agreement capable of simultaneously dis-acknowledging the relevance of dissenting views.

> "Meditation is not adjudication. Mediation is about removing the 'root causes of conflict' (*maodun de binggen*). My young brother calls this 'jurisprudential massage (*fali anmo*). Both masseurs and mediators are in the business of making people's lives more *harmonious* (*hexiehua*). All relapsing bodily pains are because of the bad influence that a disharmonic energy (*buhexie de qifen*) have on the body. If left unaddressed, these are likely to lead to brooding (*men*) and all sorts of ill-feelings. The same is for the social body (*shehui*

de shenti). Conflict exists because social relations have lost their *functionality* (*guanxi shibai gongneng le*). Clients can't point to the cause of their pain, just as masseurs can't correct wrong posture by simply telling patients how they actively contribute to its relapsing. Legal mediation works the same way. Disputants know that something is wrong but can't point to the root causes. Mediators can't simply refer to rules and principles to recompose conflict, they have to gently rub these rules into disputants . The case you mention is a typical one, an exuberant Yi son-in-law embittered by his Han father-in-law's authority who believes his real problem is his father-in-law's stubbornness rather than his own shamelessness (*gualianpixing*). Mediation 'healed' (*jie*) that wrong perception (*cuojue*)".

It has been already noted that Chinese Communist Party-speak long relied on a wide range of therapeutic metaphors for the self-diagnosis of institutional malfunctions (Sorace 2017). However, what interests me here is to show how the more abstract metaphorical process performed by 'jurisprudential massage' fundamentally analogizes consensus to wellbeing. 'Jurisprudential massage' is a discursive technique that aims at taking the stakes of motivated dissent away from the political field and into the conflict-blind register of therapy. It subordinates legitimate invocations of prescriptive rules – disputants' only possible "voice under domination" (Scott 1990: 137) – to a hierarchical vision of exemplary conduct, and through this, denies legal protection to these very rules. Miranda Fricker calls similar forms of metaphorical subordination "epistemic injustice" (2007), a formulation intended to capture the wrongful act of denying to a speaker their capacity to know what their own political and moral stakes are in self-reported accounts of injustice.

<FIGURE 3 HERE>

Such "injustice" is evidently at play in a case co-mediated by Du and Party Secretary L. in 2012. The case saw six farmers, three older men – the defendants – and three younger women as opposing parties. According to the latter, it involved a new house being built too close to another one, the subsequent demolishing of the claimants' waste-water channel (*yingou*), and the misuse of the communal irrigation ditch that passed in front of both buildings. The old man inhabiting the newly built house used it as a garbage dump, the three women said, polluting the water and stopping its free flow. To that the old man, accompanied by his two sons, replied that the complainants were the ones "throwing filthy water" (*pozangshui*), a trope used to accuse the opposite party of slandering.

One of the women accusing the old man stated that she had been requested by her own community – incidentally, the same as that of the old man – to "supervise and be accountable for" (*guan*) other people's behaviour in matters of public concern. How could the old man say she was a slanderer just because she was doing what had been requested? Had Master Du himself not pleaded with the community to "take care" (*ziliao*) of their own petty business? How was it that she was now discredited for doing precisely that? "You are doing a very important job (*renzhong*)" – glossed Du in response – "but you should remember that being a community guardian means above all to preserve the good feelings (*haoganqing*) among all members of the community!" The mediation eventually ended when the woman accused of slandering stated that she would drop charges if proper measures were taken to confirm she did not speak ill of anyone.

As with other cases, that day Du achieved "resolution" by pushing a interpretation of the principles at stake, thus reordering them according to the imperative of social harmony. By dis-acknowledging the defendants' illegal encroachment on the claimants' water channel, Du also discredited the latter's testimony by suggesting supposed incompetence as an office-holder. Following Fricker once more, we could refer to the outcome of Du's "massage" as "epistemic resolution", a conciliation agreement that is reached by denying individual standing to the legal arguments expressed by the hierarchically subordinate party.

FICTIONALISING CITIZENSHIP

Comparatively, 'jurisprudential massage' could potentially fall in Angela Garcia's typology of "disputing techniques" (1991) – the speech exchanges used by the American mediators to escalate agreement and prevent argument from occurring. However, Du's approach innovates on these techniques by explicitly recurring to astutely concocted legal fictions in the attempt to shift the epistemic grounds of the disputing process.[5] My ethnography of Yunnanese mediation shows a number of legal fictions – i.e. statements universally understood to be non-factual but which are nonetheless taken to be valid or useful in a legal context (Thomas 2011) – being deployed in dispute settings. The most popular of these is certainly what we have seen in A-Mu's case, and, in a slightly different form, in the one above. Briefly put, this is the unexamined and unprovable assumption that disputants always entertain a relationship that they would be better-off preserving, even in the face of disputants asserting the contrary. The full normative form of this fiction is the Confucian-sounding statement: "You should preserve good social relationship" (*yao baochi renqingguanxi*). In such fiction, keeping "good relationships" is what any "civilised" (*wenming*), law-abiding, harmony-craving Chinese citizen would recognise as their own moral responsibility. The implication is that performing and behaving in accordance with these fictions is ethical, civilised and lawful, while not doing so, or worse ignoring that one should, is backward and immoral.

Du's appeal to legal fictions works similarly to Comrade Ma's method of "entrenching" a radical social vision for Chinese society through mass-line mediation. This time though, through a different grammar of justice: Confucian revivalism. In discussing mediation's outcomes with dispute participants, an argument that constantly resurfaced was that mediators seem to prescribe an extreme version of behaviours (e.g. cultivating relationships of trust among neighbours) that disputants themselves should know quite well how to execute already (e.g. being filial, showing deference). For instance, in a private conversation A-Mu rejected the argument proposed by Du that bringing his father-in-law to mediation meant that he was being "unfilial". Rather, the most *filial* thing to do in that situation – he commented – was to convince his father-in-law that his stubbornness was doing a disservice to the economic prospects of the whole family.[6]

To fall back on Dresch and Scheele again, disputants in Yancong often felt as if they were commanded to "stand to a rule with which their conduct conforms" (2015:14). To bring about agreement Chinese mediators refrain from employing legal rules that may appear not as obvious to "legally illiterate" peasants. Rather they devise legal fictions that, by decoupling ordinary language from ordinary practice, they also "untie" the norms of customs from their "usual social moorings" (Mertz 1998: 158). In this sense, legal fictions maintain a non-heuristic relation with truth (Thomas 2011: 33-5). They are not used to regulate or constitute social facts but contrived to make some of them irrefutable. By "locking in" and bringing "finality" (Pirie 2015: 114) to customary figurations of relationships, deference or responsibility, the fictions of Chinese mediation offer a space for the radical redrawing of grassroots political sensibilities.

Think for instance to how in all cases covered until now, A-Mu's, *Feng vs Zhang* and the "filthy water" case, mediators actively construed their fiction-rich conciliatory strategies to advance a specifically patriarchal and paternalist view of Chinese citizenship. A-Mu was ultimately scolded for not having abided by his father-in-law's better judgement, a behaviour that contradicts the age-old fiction that wants Han fathers "not simply to guess what may benefit their sons but know it" (Ruskola 2013:97). What looked as a progressive resolution in *Feng vs Zhang* ultimately meant that the decision taken by two male elders over a woman's reproductive decision received official validation. Finally, female authority – famously championed by the legal reformist rhetoric of Mao –

was somehow "put back in its place" when in the filthy water case Du subtly accused one of the complainants of failing in her own official duties *viz* a senior male member of her constituency.

<FIGURE 4 HERE>

The political philosopher Joseph Chan has suggested that Confucianism justifies the paternalistic nature of government in promoting the cultivation of a specific vision of the good life on the assumption that the common people cannot fully govern themselves (Chan 2013: 51-3). But the legal fictions proliferating in contemporary Chinese mediation encapsulate not just a vision of the good life – where good relationships are cultivated by self-nurturing communities in seamless harmony – but a "sectarian" one too. This is a vision that by subordinating principles of everyday conduct to a radicalised version of state Confucianism intentionally relegates a subset of the country's citizenry (i.e. women, ethnic minorities and junior generations) to a Rancièrian "surplus" (2010: 42), a space where dissent becomes both inarticulable and ineffectual. Importantly, legal fictions do not require that disputants believe in their correctness (see Riles 2010: 802). What fictions do is to rob disputants' contextual statements of their ability to produce the right kind of legal consequences from the right kind of legal arguments.

Moreover, looking at Chinese mediation from this angle allows us to focus on the role this governing technique plays not just in managing local expectations of justice, but also in the constitution of modern Chinese citizenship. As A-Mu's and the "filthy water" case clearly show, mediation is linked to citizenship to the extent that welfare entitlements, compensation, property and economic opportunities are usually the matters under dispute (Simpson 2007). When Du affirms that mediation "is about motivating people to become better persons", he is vouching for a governmental action that ties the "substantive entitlements" (Woodman 2017: 756) of citizenship to its more aspirational and normative dimensions. One result of this is that the "radical" subject assembled out of Yunnanese mediation is one for whom access to material well-being is subordinated to the voluntary recognition that the social vision undergirding mediated exchange is ethically attractive and therefore legitimate. Indeed, it is hard to imagine how common citizens could escape this legal order without seriously jeopardising their livelihood and wellbeing.

THE END OF DISSENT?

In contemporary Yunnan, people experience "epistemic injustice" through their encounter with dispute mediators. Injustice is produced when mediators present as unproblematic and self-evident certain aspects of the law, in particular those mediating the relationship between the state and its citizenry or among citizens. As they rhetorically naturalise certain rights or obligations to disputants, Chinese mediators also produce certain legal interpretations that make a normative set of relations and behaviours irrefutable, and everything outside of this set unintelligible. Borrowing from Master Du's legal epistemology, in this paper I have called 'jurisprudential massage' an emerging extrajudicial form of dissent management that discursively reframes justice as a form of moral therapy. According to this reframing, participants in grassroots mediation are not simply exerting their rights to administrative redress but are more consequentially being taught a redeeming lesson about the merits of adopting morally appropriate behaviour. This is performed via the purposeful and systematic layering of legal fictions which work to condition the political sensibilities of disputants and promote an extremely paternalistic and patriarchal view of citizenship.

While typically handed-down from the austere armchair of a village mediator, this technique of government features conspicuously also in public encounters between street-level officials and ordinary citizens. In these occurrences the bone of contention is always the management of some common good such as land, water or infrastructures. Villagers usually complain that state agents are making decisions on common goods without consulting them. In turn, local officials complain that

villagers are too greedy and oblivious to how the legal system works. For instance, when one day of 2012 swaths of cropped land north of Yancong were flooded by the breaching of a faulty irrigation canal – a state infrastructure only very recently subcontracted to a local village cooperative – villagers staged a mass protest against the government for failing to uphold its responsibilities.

A group of forty people had diverted through sandbag barricades the water flowing from a huge irrigation channel on the upper side of the main road linking Yancong to Zhaotong, flooding an important and usually busy crossroads with mud. A long queue of bikes, buses, tractors and excavators had formed on both side of the blockade, bringing all economic activities in town to a halt. When the police and other local authorities arrived on site, they were confronted with a crowd of no less than three hundred people, all standing in relative silence by the water margin. No slogans were shouted at this time, nor did anyone feel the need to communicate what was truly going on. While on a first look it may have been difficult to make sense of the scene, the presence of a group of men impeding passage to oncoming vehicles by the only practicable spot on the road soon made it clear that this gathering of people was in fact a public protest – in party parlance, a "mass incident" – and not a collection of passers-by randomly aggregated by the faulty work of infrastructures.

Among the dispute mediators who I interviewed in the aftermath of this protest the majority did acknowledge the gathering as an "incident" but had a hard time grasping the "logic" of it. For instance, Mr Ni was genuinely taken aback by the massive turnout as well as by the action taken. This was even more surprising if one considered that "according to regulations" – he commented – "the upkeep of the faulted canal was villagers' sole responsibility (*duli fuze*)". If this simple fact of law didn't go down very well with villagers, it would only mean that they were intentionally acting as immoral hooligans (*liumang*) who wanted to pressure the government for unwarranted compensation. By now, the reader should recognise this as the trademark move of Yancong mediators, pulling the legal rug from under citizens' claims to malfeasance. Conversely, Party Secretary L. qualified the nature of villagers' opposition in different tones: "Only 20% of the people present were there to express their anger against the government, the remaining 80% were actually mere passers-by". When pushed on this point, the secretary argued that the stance adopted by the crowd, i.e. mute spectatorship, signalled its "tacit consent" (*moxu*) – another legal fiction – to government's actions.

In the literature on popular protests in China, the tongue-tied fashion in which popular protests are often staged has been widely read as a side-effect of the legal framework that regulates demonstrations in this country. The *Law on Processions and Demonstrations* in fact makes mass protesting legal only with the prior approval of the police department (Cai 2010: 31). By naturalising the assumption that silence equals approval, the legal fiction of 'tacit consent' intentionally throws the political foundations of organised dissent into a state of illegibility. Proof of this is the fact that no one of those who took part in the protest was formally prosecuted, as if their intentional breaking of the law had never taken place. This move inverts anthropological accounts of resistance to hegemonic legal orders. Here, "alternative logics" (Simpson 2007: 76) of justice are not bridled by instrumental recognition but relegated to categorical impossibilities and inverted into their opposite.

<FIGURE 5 HERE>

As a governing technique, 'jurisprudential massage' is intentionally brought on stage owing to its capacity for throwing the boundaries of law, morality and politics into a convenient state of indistinction only to then recompose them in new shapes. It is precisely by deploying this technique that mediators rather than vernacularizing the letter of law are often able to evacuate the "possibility of political dissensus" (Rancière 2010: 193) from their own constituencies. In particular, the political weaponization of legal fictions seems not only capable to pre-empt the potentially subversive appropriation of the language and ideals of law (cfr. O'Brien 2013). Rather, by simultaneously "entrenching" the language of customs (as in A-Mu's case) while sabotaging any

counter-appropriations of that of "deference" (as with the farmer's appeal to Master Du's prior plea to her community), it also systematically shrinks the "zone of volition in which individuals make decisions about how law will shape their political behaviour" (Marshall, Barclay 2003: 623). Or as Scott (1990: 224) and McGranahan (2016: 322) would respectively put it, systematically shrinks the "symbolic reach" and "generativity" of refusal.

And yet, while epistemic resolution is achieved by policing the dialogical process though which disputants articulate disagreement, the normative interpretations resulting from this may in fact offer inroads to performative politics in this country. One could read "tacit consent" as a state-baked fiction through which dissent is disabled by disaggregation. But one could also see in the coordinated silence of tactical standstills a specific, pre-articulate form of resistance. One through which the "well-ordered partition of speech and silence which constitutes the community as harmonious animal" (Rancière quoted in Liu 2019: 106) falls perceptually apart, and its accompanying political ventriloquy – oppositional claims thrown by disputes mediators in the voice of moral insanity – is made to contend with what is seen more than what can be said about dissent.

Finally, as an innovative low-tech tool of voluntary subordination, 'jurisprudential massage' comes handy to street-level officials in a political moment in which high-end technologies of social control are reconfiguring the societal purchase of China's coercive state apparatus. At the same time, the analysis of 'jurisprudential massage', if taken out of its authoritarian context, demonstrates how the strategic blurring of backgrounds and foregrounds in the epistemology of law should force us to reconsider the political credentials of *functionalism* in sociolegal scholarship. The "authoritarian populism", to quote Stuart Hall's famous phrasing (2013: 396), that has seemingly overtaken global politics hinges upon the promotion of a form of reactive traditionalism – the "radical" recuperation of Maoist and Confucian values in the case of Xi's China – that thrives on delinking the representation of social conflict from its roots in systemic inequality, while dis-acknowledging responsibility for any negative consequence for marginal groups this delinking generates. If the Law is not just an instrument, but the repository of a social vision, its contribution to politics may exceed stability-maintenance and come to encompass projects of political radicalisation of what might once have been a more relaxed and capacious social imaginary.

ABSTRACT

While China leads the global race to high-tech surveillance, a homegrown low-tech institution of dissent management is experiencing a surprising revival: dispute mediation. Drawing on Confucian and socialist practices of justice, Yunnanese dispute mediators are today considerably innovating on the jurisprudential techniques that frame the composition of conflict and the meaning of state laws in dispute settings. 'Jurisprudential massage' is the emic term given to one such technique. Here I show how this technique stands for the deployment of therapeutic analogies and legal fictions with the aim of re-orienting the political sensibilities of disputants towards a neo-paternalistic form of citizenship. Contributing to the anthropology of law and resistance, this paper shows how civil dissent can not only be physically quenched through state coercion, silenced by pervasive surveillance or tactical buyouts. It can also be ushered off the political stage by a selective redrawing of the epistemic foundation of legality. [China, law, mediation, dispute, dissent, resistance, protests, rights, justice, authoritarianism, citizenship]

摘要

当中国政府在大力发展高精端社会监控技术的同时，一种土生的低端社会抗争管理机制，“争议调解”，也正在蓬勃发展。在综合了孔子的正义观和相关的社会主义实践经验之后，如今，云南的争议调解人员在法理的应用上体现出了相当的技术创新力。他们往往很有技巧性的用法律来确定争议的构成性质，也时常会就案件的实际需要用它们来诠释国家法令。在当地，这种技术被称为“法律按摩”。笔者在本文欲描述当地的调解人员是如何通过按摩疗法类比和援引法律拟制等方法来完善这套调解技巧的。对于他们来说，使用这些技巧的目的是重新塑造抗争者的政治觉悟，将其转变为一种新父权主义形式下的公民意识。旨在丰富法人类学和社会抗争理论，本文展现了公民抗争不仅仅会因国家强制，或因无所不在的社会监控和政治买断而“消声觅迹”。抗争也会因有选择性的重新界定行为合法性的认知基础而退出政治舞台。

【中国，法律，调解工作，纠纷，异议，抗争，抗议，权益，正义，威权主义，公民权】

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[1] Official figures, which are typically controversial (Li, Kocken, van Rooij 2018), record comparable success rates nation-wide (Zhang 2013: 245).

[2] Philip Huang argues that the “Chinese legal system continues to show a preference for mediation over adjudication. Today, one out of two open (recorded) disputes involving outside intercession is still settled by some form of mediation outside the court system” (2015: 7).

[3] Since the late ‘80s the Chinese government has surreptitiously de-incentivised citizens’ recourse to litigation by raising various barriers to access (e.g. costs, geographical proximity of courts). Before the inauguration of a local branch in 2013, Yancong’s closest Basic Level People's court was a 2 hours bus-drive away. More generally, Chinese citizens’ experience of litigation has so far been described as a mixed bag of disenchantment, disappointment and strategic inculturation (Gallagher 2017: 189-90).

[4] I am grateful to Giulia Zoccatelli for clarifying this point for me.

[5] People’s Mediation Law of 2010 defines mediation as a process through which parties to disputes are brought together to promote mutual understanding and safeguard the harmony and stability of society. Yunnanese mediators creatively engage with this intentionally underdefined legal framework by formulating party-validated, fictional standards of conduct which become the only appropriate medium of legal expression in a context where legal duties are formally acknowledged only to establish the political effects of their discharging.

[6] As convincingly argued by Ames (2011), traditional Confucianism – as opposed to its current state-sponsored revitalisation – can indeed be hospitable to individual rights to dissent and criticism.