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## “We follow reason, not the law”: disavowing the law in rural China

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## **“We follow reason, not the law”: disavowing the law in rural China**

### **Abstract**

Recent debates about the moral climate in China have focused on its citizens' purported loss of traditional values and interest in the public good. According to such views, Chinese society, and in particular its countryside, is now affected by a moral vacuum – the absence of a moral compass that could lead citizens' public behavior to contribute to the nation's greater good. Wedding the "moral vacuum" argument, the current Chinese government is reforming its judicial system with the aim of making it more accessible to its citizenry. The idea is that in the absence of shared moral values, the law and legal rights could provide new forms of ethical bonding between individuals and the collectivity. Widely supported by Chinese legal scholars, this new approach envisions legal mediation as a principled vehicle to bring the law to the countryside. Disproving the above narrative, this paper discusses how in rural Yunnan the law and legal rights come to be seen as instruments of collective disenfranchisement. The ethnography here presented reveals two things. First, that Yunnanese rural society is best described as enjoying a moral "plenum", not a "vacuum". During mediation, legal norms, communist values and traditional moral principles appear to be equally valid normative sources from which to draw on in the attempt to redress grievances. Secondly, that Chinese law, in the form of temporary use rights to local resources, is actively ousting out alternative regimes of resource management that are predicated on local villagers' participation in and responsibility for the public good [legal mediation, public good, Chinese law, rural protests, popular participation].

## Introduction

On the 1st October 2014, the People's Republic of China (PRC) celebrated its sixty-fifth anniversary and, alongside it, six decades of relentless social transformation. In the most recent of these turbulent decades, Chinese citizens have attended to the dislodging of deep-seated expectations about life trajectories and the places people inhabit. These decades have witnessed high-paced urbanisation and industrialisation; the expansion of Party control into family and career planning; environmental degradation; and mass migration. This process has led many commentators of Chinese affairs – journalists, social scientists and common citizens alike (see the discussions in Liu 2000: 182; Brandtstädter 2009: 146-56; Yan 2009: 289; Steinmüller 2013: 19-21) – to debate the current state of Chinese society in terms of an alleged lack of moral values and concern for the common good.

The mainstream narrative emerging from public debate now holds that in contemporary China no time honoured, collectively cherished normative order – that is a set of normative principles which defines correct behaviours and provides ethical directions for living together – has remained sufficiently intact to guide individual or organised behaviour. That is, Chinese people are increasingly seen to live in a moral and legal “vacuum” where self-interests and predatory instincts are left unbound. As such, so the narrative goes, public life has become something to be shunned rather than something one would take part in. In agreement with this reading of contemporary Chinese society, Xi Jinping's administration (which came into power in 2012) has put a renewed emphasis on the “rule of law” (*fazhi*) (Balme 2013: 189-90; Minzner 2013). The Xi administration hopes that a more effective legal system can provide a political remedy to the alleged moral “vacuum”, and allow the Party-State to regulate public life in the absence of shared ethical

principles.

Challenging this overarching narrative – one that suggests a “vacuum” to be filled by centrally designed legal provisions – this paper looks at how a moral and legal “plenum” is actively produced in the Chinese countryside through the joint effort of common citizens and low-level officials. Rather than depicting a society crumbling under the assault of self-interested, anti-social urgencies, this paper shows that ordinary life in rural China is usually collaboratively ordered outside the boundaries of the law and without strict central-State surveillance. Ironically, rather than asking to be protected by state laws, people living in the countryside feel often threatened by state rules and legal provisions. In fact, it is the letter of the law – my interlocutors claim – that ends up cornering them into a position where no citizens' participation in public life is possible, thus producing a public sphere devoid of care for and interest in the common good.

My case study is based upon 16 months of ethnographic fieldwork in a drought-prone agricultural community in the south-west of China: Yancong Township (*zhen*) and two adjoining rural settlements here called Xi and Dong villages<sup>1</sup>. My research addresses the question of how an interest for the common good, if any, is kept alive in the constantly transforming Chinese countryside. In particular, in this paper I look at how locals cooperate to autonomously manage their common affairs, including the government of common local resources, such as water and land. Thus, this paper asks: how do common citizens succeed in coming together to regulate the public management of local resources in face of the divisive forces seemingly unleashed by the massive social and economic transformations of the last decades?

To provide a plausible answer to this question, I will first contextualise the public discourse of moral “vacuum” within my own fieldsite and discuss the State's countermove. I will then move to

the ethnography of a mediation session, showing the actual moral repertoires that are available to Chinese citizens to allay their grievances. In Yancong, one such repertoire is “reason” (*li*)<sup>2</sup>. In the following section I will detail the management of Yancong water infrastructure through “reason”, showing the collaborative, participatory and equitable nature of this technique of government. Lastly, I will show how legally-framed State land development projects lead local people to disavow the law. To their eyes, the practice of following “reason” stands in glaring opposition to the disempowering effects of state-backed legal instruments for managing local resources.

### **Unruly People**

With a per capita annual income of 1318 RMB<sup>3</sup>, Yancong, a rice-growing community, is one of the poorest Townships of north-east Yunnan. Since 2010 the Township has been severely affected by drought, causing local rice production to plummet. When I first arrived there in November 2011, many farmers complained about the limited availability of water, and cases of water theft or assaults to water infrastructures were increasingly common. People working at the County Water Bureau, a higher-level government office where I conducted long-term participant-observation, talked disparagingly of Yancong's dwellers. They often described them as “unruly people” (*diaomin*). People who did not listen to reason (*buting liyou*) or who would “take water without permission or damage infrastructures just for the sake of it”. If I wanted to conduct research with them, I was told, I should have known from the start that these people were backward (*luohou*), corrupted (*zhuoren*) amoral (*wu daode*), and swindlers (*pianzi*). “You can get into trouble if you associate with the wrong people, and China is full of those!” I was told by one member of the Bureau.

If one had to believe what Chinese media were saying around the time of my fieldwork, the above statements would have come across as a fair representation of not just Yancong's residents, but of a

good portion of the Chinese citizenry. Cases of official malpractice and corruption were hitting the headlines on a daily basis (Penny 2013). These stories told of high-ranking officials expelled from the Chinese Communist Party due to ethical misconduct<sup>4</sup>, as well as of common folk preying on the gullibility of other citizens (Yan 2009). Similarly, a series of scandals have reported how big and small businesses endanger their customers' health, neglect safety concerns, and pollute the environment (e.g. van Rooij et al. 2012: 703; Lora-Wainwright 2013: 315; Tilt 2010). State-owned construction companies have also courted controversy by unilaterally and coercively carry out land expropriation, including the relocation of entire neighbourhoods, for the mere sake of profit (e.g. Erie 2012). This is all in a climate where social protests had already risen to an all-time high. Many of these, often violent, protests have specifically targeted state mismanagement of public goods (Ma, Schmitt 2008: 97; Ma 2008: 35).

Observers have traced back the origins of the current situation to the “opening up” (*kaifang*) of the socialist command economy during the 80s. In their view, the transition from socialist to market economy has inadvertently produced a feeling of displacement and loss in the moral perception of Chinese citizens (Yan 2003; Steinmüller 2010: 540, 2013: 219; Brandtstädter 2011: 268). Acting in the midst of this supposedly “grey”, morally ambiguous society (Tan 2012), both common citizens and party officials are keen to bend the rules to their own advantage (e.g. Zhao 2011: 201), encroach upon common resources, and rob the worst-off of precious assets like land and water (e.g. Judd 1994: 27; Siu 1989: 276; Potter, Potter 1990: 331). Purportedly, Chinese citizens no longer share any set of normative principles that would provide ethical directions for living together (but see Zhang 2001: Ch8 and Oxfeld 2010). What does life under such circumstances look like?

Party cadres on their brief inspection round visits to Yancong usually commented on the brazen carelessness reserved to public goods around Yancong – supposedly evidenced by unfinished roads

and crumbling hydraulic structures – and spoke of its inhabitants' lack of civil virtues (*meiyou shenme gongde*). People working in the local government also complained that the locals did their best to disrupt public services, pointing to acts such as the wilful smashing of household water meters so that water bills cannot be properly collected, or the diversion of common irrigation channels to one's own private plots. Conversely, Yancong dwellers were never ashamed to make open reference to the corrupt nature of the local government, accusing its personnel of embezzling public money for private ends. Whatever angle one might take, the Township appeared a cradle of vice, devoid of care for the common good. One Yancong residents commented: “Chinese attitude today is selfish (*zisi*). As they say: 'Let every man sweep the snow from before his own doors and not trouble himself about the frost on his neighbour's tiles' (*geren zisao menqianxue, moguan taren washangshuang*)”.

## **Legal Remedy**

Of particular interest for this paper is the relation between public discourses about pervasive amorality and social breakdown and the practical, day-to-day management of common resources (e.g. land and water) at the local level. A growing body of literature has begun to address the way in which regimes of governance are typically informed by and legally construed around ideological and moralised visions of the “common good”. For example, the management of land and water resources – and the concomitant exclusion of common people from the enjoyment of said goods – is very often justified or prescribed by political or legal doctrines that presuppose some form of ownership and technological appropriation as “morally” superior to others (e.g. Verdery and Humphrey 2004; Strang, Busse 2011; Strathern 2011).

In the Global South, the utilitarian imperative of achieving the greatest national common good



often justifies a disregard for local interests in pro-development policies (Li 2014: 591; Bakker 2013: 284). This imperative often condemns as immoral or irrational alternative visions of collective advancement put into practice by the people targeted by these very policies (e.g. Flower 2009: 40). In fact, one of the aims of this essay is to salvage such practices from a Chinese public discourse that vilifies everything happening at the margins of society (Steinmüller 2010: 540). In China, the ideological and official equation between the national interest and the common good has given rise to two residual categories of public discourse: corruption (*tanwu*) and backwardness (*suzhidi*). These two words are frequently employed by Yancong people when denouncing the social malaises infecting their own society. And at the same time they are the two principle “social bads” that the central Chinese State is actively seeking to curb.

To do so, the Chinese government has in recent years reinvigorated efforts to “send the law to the countryside” (*songfa xiexiang*). The hope here is to raise standards of accountability for lawbreakers and, more prosaically, to inject the system with a dose of civic concern. The political steps taken in this direction, however, depart consistently from the course taken previously. While up to the 90s, the idea had been that a procedurally strong legal system would have addressed widespread official and private misconduct (Brandtstädter 2013: 333), in the last decades the emphasis has shifted away from legal adjudication and towards non-adversarial solutions to social conflicts. In this respect, the Chinese State has begun to resuscitate the “dispute resolution services” (*tiaojie jiufen fuwu*) that were popular under Maoism (Minzner 2011).

In a similarly manner to the ongoing revitalisation of grassroots dispute resolution practices in South East Asia – a revival that international organisations such as the World Bank along with sympathetic national governments hope will assuage conflicts triggered by increasingly skewed economic development (e.g. Baviskar 2003: 297; Lynch 2005; Li 2015: 103-7) – the Chinese

government's provision of these services has the explicit aim of appeasing the popular perception of official malfeasance and of gross injustice in legal proceedings (Pareenboom 2008: 16; Pareenboom, He 2008: 24-28; Minzner 2011: 945; Balme 2013: 189-90). They do so by familiarising citizens with legal concepts such as "rights" (*quanli*) and the "rule of law" (*fazhi*), but without resorting to adjudication (*panjue*).

Theoretical grounding for this legal move has arguably been provided by some of China's most prominent legal scholars, some of whom are anthropologists (Zhu 2000; Zhao 2011). In recent years these scholars have argued that Chinese culture is already endowed with indigenous legal resources (*bentu ziyuan*) that could work as effective antidotes to the present moral decay. If China's moral vacuum is to be filled, so this argument goes, the government needs to simply revive moral Chinese practices of persuasion (*shuofu, shuohe*) and social harmony (*hexie*). Mimicking to a certain extent the old western habits of indirectly governing colonies through the codification of "indigenous customs" (e.g. Nader 1990; Merry, Brenneis 2004) – a position that could be interpreted as providing a check on the more authoritarian tendencies of an uncountable government<sup>5</sup> – the former dean of Peking University Law School Zhu Suli, in particular, has advocated for a legal reformist action that would make room for the cohabitation of state laws (*faliu*) and Chinese "customs" (*xiguanfa*) (2000: 49-50, 2008).

The point that Zhu Suli makes is that what might appear as backwardness and corruption to a proponent of the "rule of law" in the narrow sense are, in fact, "reasonable" ways of accommodating conflicts at the grassroots level. He therefore suggests that the State should imbue legal mediation with the values of such quasi-legal practices, which, if properly respected, can be instrumental to the project of supplementing Chinese contemporary life with an adequate moral compass. Importantly for Zhu Suli, this compass should be crafted towards a moral climate that is

“harmonised” according to the imperatives of social stability.

While the idea to expand the legal services provided to the Chinese population has much to recommend it, the question of what type of legal system is actually being advocated by the central State as a solution to the Chinese social malaise remains. In contrast to the dominant narrative, this paper suggests that the Chinese countryside should not be seen as a mere repository of lawlessness and amorality in need of tidying up by legal reform. In line with Zhu Suli, this paper maintains that rural villagers order their daily affairs by following local rules without the help of external authorities. However, contrary to Zhu Suli and to the expectations of Chinese authorities hoping for a return to mediation to somehow “harmonise” the countryside, my ethnography shows how the process of sponsoring grassroots mediation is not simply integrating state laws with local customs, but also generating a discursive schism between the two. In Yancong, mediation produces an alternative political and legal order – known locally as “conforming to reason” (*heli*) – which is imagined to stand in opposition to legal standards and central state laws. Through legal mediation the everyday unfairness of life at the periphery of the Chinese nation is not merely appeased but also made apparent.

### **From a normative “vacuum” to a normative “plenum”**

What does legal mediation mean in China? Usually, it means third-party negotiations where party-controlled mediators provide non-binding counselling to claimants<sup>6</sup>. If settlement is not reached, the claimants can go on to seek the intervention of higher authorities, and have the dispute adjudicated through adversarial litigation culminating in a judicial ruling. In Yancong, mediation can be initiated by the village authorities, or by a plaintiff sending a formal “request for hearing” (*shenqing*) to the authorities. The employment of mediation in rural China is prescribed by national and provincial

regulations, thus it is understood by participants as a State recognised mechanism for dispute resolution (see Zhang, Heurlin 2014). Yet, as we shall see, the form that mediation assumes in practice does not fully correspond to the project championed by the government. Let me now turn to one particular case I studied during fieldwork. Through this case, I hope to show how a variety of normative resources – a moral “plenum” – is available to participants in the process of debating alleged violations and improper behaviour.

Xi Village “court” (*Renmin Fayuan – Shenpan Fating*) is an unremarkable, dusty room located at the right-end corner of the local Village Committee's building, a grassroots institution operating under the purview of Yancong Government. Contrary to what their name would suggest (see Balme 2009)<sup>7</sup>, this “court” was not a proper tribunal, but rather a specialised fora where villagers could bring to the attention of the local authorities – a Mediation Committee (MC) – their own personal grievances and ask for legal mediation (*tiaojie jiufen gongzuo*).

Here, one day in August 2012, I attended the first “hearing” of a case that involved Qingmei, a 23-year-old female farmer, and Wenke, a 18-year-old male shepherd. The case, as it was described in court by the Village Party Secretary Gao Zong – who was acting as the dispute mediator – was as follows: One day Qingmei was working on a piece of land she owned in a mountainous area not too far from her home. That day, Wenke was grazing his flock in the same area, when suddenly three of his goats entered Qingmei's plot, feeding on her crops. Qingmei tried to stop them, waving her hoe around, ultimately hitting the gluttonous goats. The argument that ensued between Qingmei and Wenke culminated in a brawl. After a week in hospital recovering from injuries she had suffered during the fight, Qingmei went directly to the Village Party Secretary demanding compensation. At the hearing, both parties declared themselves to have been severely injured during the fight. However, while Qingmei's wounds were still visible the day she came to court, there were no

apparent signs of Wenke's injuries. Qingmei also presented a hospital's invoice showing a payment made by her family to cover the cost of the week she spent there recovering.

During the hearing Wenke's style of defence was aggressive. He first insisted that three goats could not possibly do any serious damage to Qingmei's crops. Moreover, he suggested that it was not clear where the common grazing land (*caoyuan de lianhu chengbao*) ended and Qingmei's private plot (*ziliudi*) began. Gao Zong reminded him that three goats can actually be a serious threat to farmers' harvest, and that the latter is the "base" (*jidi*) of Chinese farmers' livelihood. Wenke later went on to claim that Qingmei's injuries were less serious than she purported. According to him, Qingmei was overreacting, and he implied that her being a women lead her to misjudge the magnitude of the event, making a fuss of what it was a banal quarrel between a herder and a farmer.

The Party Secretary appeared genuinely insulted by Wenke's sexist reasoning, and began lecturing him in a dry tone: "I'm not here to teach you anything boy, but it has been almost 60 years that women and men are equal in our China (*nünan pingdeng*). It is evident that you think the opposite. Do you know what Chinese women do for our country? They raise chicken and pigs, they till the land, they build houses. They also raise children like yourself! Keep this in mind: Chinese laws says that this lady is your equal! (*Zhongguo falü guiding shuo ta he ni pingdeng*)." Noticing that his speech had intimidated Wenke, he then adopted a less aggressive stance: "You are a smart boy, Wenke. You will go to Kunming as a migrant worker, and this is a very good thing for you and your family. Men are fallible beings (*cuiruo*). There is no need to repay now: when you have the sum, you'll pay".

Wenke was not, however, an inexperienced defendant. He held his position, arguing that he was even more harmed than Qingmei, that he had proof of medical bills and that he should pay only half

of the compensation fees. The dispute came to a halt. Gao Zong tried his best to make Wenke feel guilt, regret and to make him lose face. “This is one of those cases that you should feel in your heart, boy. Don't you have any virtue (*daode*)?” With a change of register, he then added: “Boy, there's no one here who believes you. If you don't have any clue of what the law says (*ni renbuda falü*) it is your problem. It is not me being harsh, it is the law, and you should have known it!”. The boy was unimpressed, and left the courtroom.

In accordance with various works in legal anthropology at the junction between legal practices and language (Comaroff, Roberts 1981; Ch3; Silbey, Merry 1990; Nader 1990), this vignette shows that both Gao Zong and Wenke use language referentially, often pointing at a constellation of supposedly shared principles that are assumed to be reliable guide for behaviour. At the beginning of the mediation, Wenke immediately hinted at the flaws of the property regime in place in Yancong's countryside. Had the common grazing land been demarcated more clearly, he might have avoided leading his flock into Qingmei's land. Actually, if the plot Qingmei was working on was to be later classified as common grazing land, he might have ended up looking like he was the one defending his right of pasture. Here Wenke is exploiting his knowledge of the law to defend himself from allegations.

Gao Zong, in response, reminded Wenke that in Communist China there exists a long tradition of defending farmer's access to land, and that this country is founded upon the sacrifice its peasants' made during the Revolution. Therefore, regardless of what the law says, access to land ought to be protected so that poor farmers may make a living out of it. Wenke opted then to take advantage of a traditional prejudice saying that Chinese women could not be treated as equal to men. While “patriarchism” (*dananzhuyi*) has long been associated with traditional Chinese thought, and especially with Confucianism (e.g. Wolf 1994: 251), Gao Zong felt deeply insulted by Wenke's

remark. A reason for Gao Zong's reaction could be found in the implicit message contained in Wenke's argument. Weren't both Wenke and the Party Secretary men belonging to the same poor, unsophisticated community? Couldn't they possibly agree on an equally unsophisticated patriarchal logic?

Gao Zong felt they could not. To distance himself from Wenke's backward belief system, Gao Zong resorted to another normative repertoire, the one of the “progressive” socialist law. Chinese socialist law is one founded on a revolutionary thought that aims to dislodge old values and privileges from their traditional locus, namely rural village life. Patriarchism is one such value that needs to be eradicated. But immediately thereafter, Gao Zong turned to a more condescending tone, employing the Confucian vocabulary of virtue and human frailty to persuade Wenke into accepting a compensatory solution.

This section has shown how during mediation more than one “normative repertoire” (Comaroff, Roberts 1981: 72) is recruited in efforts to bring about a resolution. Traditional believes, Confucianism, communist values and technical knowledge are all present and eagerly tapped by the people involved in negotiating disputes. My point here is two pronged. First, in line with what much anthropological research on law says of societies elsewhere in the world (e.g. Merry 1988), my interlocutors ordinarily deal with a *plural normative world*, one where the monopoly of legitimacy and uprightness is not vested into one single normative regime. Second, as I will show in the next section, legal mediation as it is enacted in Yancong falls short of being the principled vehicle of a “harmonised” moral order endorsed by the state orthodoxy. Here, villagers do not simply get taught about how to behave in accordance with the “laws” or “customs”, they participate into designing these “laws” and “customs” themselves.

## Following Reason

At this point, it may be interesting to draw a comparison with similar forms of mediation recorded in the anthropological literature on law. In his ethnography of the *panchyat*, a form of mediation traditionally practiced by Hindi-speaking Fiji Indians, Donald Brenneis starts from a position similar to that which I have assumed in the above case study of legal mediations in Yunnan. During *panchyats*, he contends, the communicative style adopted is mainly didactic, about the public teaching of moral “instructions” (1984: 491). Brenneis, however, moves his analysis further by suggesting that for the Fiji Indian communities he studied, mediation not only constitutes a source of normative regimes, but also appears to be a space where a form of knowledge is collaboratively constructed by participants (1983: 241). To Brenneis, the knowledge practice embedded within mediation allows for a form of politics “constructed through the propositions collaboratively stated by questions and witness” (1991:81).

I take this proposition to be also valid for the many mediation sessions I assisted while conducting fieldwork. Participants in grassroots mediations – professional mediators, witnesses, cadres and plaintiffs alike – engage in a practice of participated government whereby ordinary issues about the management of common goods are actively debated and settled. Rather than an administrative solution to widespread bellicosity and unruliness, mediation operates as a shop floor where civic ideals of public participation and common good are discursively and practically assembled. To show how grassroots mediation can provide participants with a forum for active and creative participation in the ordinary government of village affairs, here I will dwell briefly on disputes related to the management of local water infrastructure.

According to my interlocutors, since the collectivization of the countryside and the water



conservancy projects undertaken during the Great Leap Forward, waste water and irrigation ditches in Dong village have seen a long and complex chain of cooperative water schemes<sup>8</sup>. Local residents spoke of how the government of water infrastructure was once a system run by farmers (*nong qilai jiti guanli*). Starting in the 1990s, however, this system was replaced by one run by the economy (*jingji guanli*). Thereby, farmers were dispossessed of collectively owned infrastructures. Most of my interlocutors, for example, raised a particular case of a drinking water supply being diverted by the government to bring water to a newly built hydropower station thus leaving half of the villages surrounding Yancong without access to a safe supply of drinking water. Nevertheless, while being partially disenfranchised from their own system of governance, people in Dong village had still a role to play in running the web of concrete irrigation channels that still cross-cut much of Yancong. Dong villagers purposefully resorted to mediation to reinstate common rules over the government of this system, or to shift accountability on more reliable canal managers, so that the water could continue to flow undisturbed in their community.

During my study of Dong Village Disputes' Archive, I collected 15 cases of mediation over issues of water (*shuigou jiu fen*). These cases incorporate questions about the management of the water network and were brought to the MC's attention when mismanaged water harmed the claimant's properties or interests. A water dispute record looks like this:

Cases: 1, 2007/8/23

Applicant: Liu Wending, Man, 42, Han, Farmer, resident in Jia Family Village.

Defendant: Sun Li, Man, 34, Han, Farmer, resident in Jia Family Village.

Cause of Dispute: waste water channel; irrigation canal.

Mediation:

- 1) The original access road is owned by the Applicant.
- 2) The defendant's property cannot be built on the surface of this road.
- 3) The management (*guan*) of defendant's waste water channel is given to the Applicants, as the defendant has considerably damaged it by pouring an excessive amount of concrete onto it.
- 4) The canal that departs southward from both parties' houses should be kept clean.
- 5) The waste water channel can be preserved only if attached to someone's property; if damaged, it should be built anew, by both parties.
- 6) The mediation fees are on the Applicant.
- 7) From this day onward, both parties should restrain from acting unreasonably (*wuli shengshi*), if this should happen the consequences of transgression will fall on them only.

As in this case, no recorded cases in my possession make explicit reference to any specific law that should be followed to solve the dispute. Likewise, it is not immediately clear why such a decision should come across as more acceptable to claimants than others. However, despite the lack of reference to the law, regularities in ruling can indeed be found. As local mediators and common villagers repeated to me many times during interviews, Yancong people redress their grievances by conforming to “reason” (*heli*), not to the law (*hefa*). In the present case, the “reason” employed to correct wilful mismanagement of common water infrastructure is to reallocate management rights. That is, by asking certain people to participate more in the daily working of the water system, the mediators shift the burden of responsibility from those who failed in keeping the system running onto those who brought the defective behaviour to the MC's attention. This is the “reason” followed by Dong Village mediators and shared by its villagers: to preserve the canal system, thus affording water access for the community as a whole.

For example, in a 2012 case, channelled water had burst onto the claimant's land, destroying his crops. That portion of the channel was managed "collectively" by Mr. Bing and Mr. Su's family. During the discussion reported in the dispute minutes, the defendant claimed that they didn't know that the portion of land belonged to the plaintiff and that they discharged water without malice. The MC found both families to be guilty of wilfully mismanaging their allocated section, thus placing managerial rights with the claimant. Conversely, in a 2009 case, a water waste channel overflowed with filthy water after a rain storm, causing damages to the plaintiff's property. MC agreed with the plaintiff that the owner of the waste water channel had no intention of damaging his land, and thereby decided that from there on the channel would be managed collectively by both. This establishment is collective management was intended to prevent such overflowing from happening again. Similarly in another case, the manager of a canal, which had not received water for a long period of time, was accused by a neighbour of mismanagement when water suddenly flowed through the canal and seeped into the neighbour's basement. The MC found the manager not guilty, but asked him to take responsibility for cleaning the canal and the neighbour's basement.

Dong Village MC show an interest in keeping compensation in water-related cases marginal (only one out of 15 shows a compensatory solution), preferring to allocate managerial rights onto more scrupulous villagers, who will guarantee better supervision. The refurbishment, expansion or alteration of immovable property also features prominently as a cause of water related disputes. In 5 cases present in the dataset, the MC explicitly mentioned that "old ditches" (*gugou*) when affected by the construction or expansion of houses and roads should be reconstructed and that the direction of the flow should not be affected. What preoccupies the mediators the most is to preserve the waterways. Yancong's irrigation system is a complex network of old ditches that lacks complete mapping. Encroaching on such canals is a serious threat to factual water delivery, and thus should

be protected no matter who is involved in the dispute. In a 2007 case, a group of villagers asked the MC to mediate a dispute against a development company which was about to cover an old canal. The MC negotiated with the company, persuading it to build a new channel beside the new road, thus replacing the old one with a more efficient infrastructure.

These cases show how local mediators and common citizens engage with water management, producing solutions – fully endorsed by the villagers and followed strictly – that are deemed “reasonable”. Reason here refers to a set of principles which works to the preservation of the water infrastructures and to their accountable management. These cases also show that the Yunnanese countryside far from being “backwards”, is a place where progressive and participatory solutions to local problems are found without direct state intervention and without explicit reliance on any state laws. Yancong villagers achieve good government by taking part in and assuming responsibility for the smooth reproduction of the social arrangements that give order to their community's daily life.

### **A Popular Protest**

In the final section, I will move to a popular protest against the local government I assisted during fieldwork. In this final vignette, the plurality of normative orders I described previously come into violent contact. While “reason” is the native term used to describe politically valid solutions to problems affecting the village community, state law comes into the village as a self-serving discourse adopted to legitimise state development projects that are unilaterally approved, that is without villagers participation.

A few months after my arrival in Yancong, the local authorities were about to launch the construction of a new government compound. The amount of land that the government was

reclaiming was almost 80 *mu* (13 acres). The land being reclaimed had originally been allocated to eight families who had been farming the land. The project was to cost the local and county governments almost 4 million renminbi, and aimed to provide shelter for 250 government officials and their families.

It was with the inauguration ceremony that the villagers' opposition to the project was made public. That day I exited the hotel, where I was lodged temporarily, to be surprised by a huge crowd silently stationed in front of the main construction site. One hundred meters to their right a yellow and blue grader, followed by a bulldozer and a numbers of other heavy equipment vehicles were patiently lined up along the motorway, facing the toll gate. This stifling sight – the imminent arrival of a horde of land-trampling machines – gave the scene a stillness fraught with unvoiced expectation. The crowd was composed of more than a hundred men, women and children. People stood hand in pocket with somewhat dumbfounded looks, all the time jostling around in an effort to find the best angle from which to see what was about to happen. Dotted the assembly with red helmets were the construction workers, who smoked carelessly and chit-chatted unimpressed by the large crowd.

Notably, as a measure of containment, a ring of troopers was set in place. Outnumbering the civilians almost two to one, they watched the crowd alertly, stopping newcomers from joining in. At specific points along the road the police (*gong'an*) had set up checkpoints. Eventually, the grader arrived at its final destination. Its first move would have been to unload a load of massive stones on the paddy field right behind the crowd. Then something happened. A woman broke away from the crowd, walking slowly towards the vehicle. Looking straight into the eyes of the man piloting the grader, she climbed the vehicle without opposition, reaching for the cabin. Face to face with the pilot, she exchanged a few words with him, apparently scolding him and trying to discourage the man from completing his work. A moment after, the lady turned to the crowd and raising her voice

decared, “This land earns me two hundred *kuai* a year!” The assembly stood silent.

After a few seconds of bafflement, I decided to take pictures of what was going on. The vehicle was now being surrounded by policemen, who were asking the lady to get off the cabin and to refrain from creating further nuisance. Suddenly, my camera was lowered by a stranger's hand. A policewoman warned me: “Look, it'd be better if you just got out of the way. It is dangerous over here. These people are violating the law. Today we are inaugurating an important state project, and the due compensation has been already given out. This was all done according to the law (*shi an guojia de falü guize xingzhi de*). This is nothing more than a small group of lawbreakers (*fanfa de ren*)”. Unable to take pictures, or even to watch the unfolding protest, I left.

During the days that followed the public protest, I probed my interlocutors for the reasons behind its staging. One interlocutor openly complained about the conceit of the State's development initiatives not requiring any consultation with the affected population. “That plot of land was registered as 'convertible' (*zhuanyong*), but look, when the government decides that it wants to do something, it simply does it, without even bothering to inform us of what and why. Saying it is about the law is beyond the point, the problem is that they decide on their own, they just do as they please”. With others, I inquired as to whether the law could be brought on the villagers' side by suing the government. “You have to understand that the requisition was lawful (*an falü*). It is because of the temporary use of land (*zanyongquan*). What could that possibly mean? The Law in China is another way for the government to make a profit. There's nothing to be gained in taking the case to the court, they are just another branch of the government (*zhengfu de zhidu*)”.

For the present discussion, there is one interesting point to be taken out from the above comments about land requisitioning. In China, land development takes place within an ambiguous

administrative framework (see Ho 2005: Ch2; Pils 2006). Starting with 1982 – the year when decollectivization took place in Yancong – the redistribution of land was carried out according to the number of members in each household. Farmers were required to enter into a 30-year lease contract with the State, which remains the “ultimate” legal owner of all Chinese land (Ho 2001: 396-7). For this reason farmers in Yancong only have “use rights” over land. But the State does not need to wait for leases to expire in order to terminate these “rights”. Rather, when the state needs land, it can simply take the land from its citizens, and the farmers have no choice but to accept the stipulated compensation. As with many other such cases documented in the literature (Zweig 2000; Ho 2001; Cai 2008), the process of requisitioning usually generates strenuous resistance because it is often carried out regardless of the former leaser's consent.

The fact that “use rights” could be suspended at any given time and the land turned back to the state, is one of the reasons behind popular scepticism toward State laws in Yancong. Along the lines of Mary Gallagher's description of how Chinese citizens develop a form of “disenchantment” towards the law out through their experience with it (2006), my informants expressed their disbelief towards the law, disavowing legal provision as an empowering or emancipatory tool. To fully understand why this is so, consider what my interlocutors explained to me about land requisitioning. When the land is taken from villagers' hands, villagers are also deprived of the possibility to meaningfully contribute to the public goods of their community. Participating in the administration of local water infrastructure becomes impossible as the community expects those to whom “managerial rights” over irrigation canals are allocated to actually work the land on which the infrastructure is located.

Thus, lawful requisition damages Yancong villagers twice. It takes away what is perceived by villagers to be a crucial asset, i.e. land, and it also excludes them from contributing to and caring for

their own community. This point could be better clarified by going back briefly to the archive material I collected in Dong Village. In the “requests of hearing” in my possessions, many include villagers complaints about their exclusion from participating into the public life of their own community. In one “request of hearing” signed by “all villagers” (*quanti cunmin*) of Dong Family Village the applicants demanded the suspension or redirection of a segment of a highway. While explicitly asking for the construction company to extend consultations about the project with all villagers, the applicants also demanded a local political figure, whom they refer to as the “unmentionable” (*bugan baolu xingming de ren*), to publicly apologise to the local community for trying to exclude other villagers from negotiation with said company.

I wish that the Village Committee's comrades now come to our village, redressing all other villagers' cases, asking this unmentionable individual to step forward. I want him to say in front of everyone, in the light of day how things really went. He has to say that we deserved [consultation and compensation] and that we did not get anything more than that. We call this “when a noble man loves wealth he/she has a noble way of obtaining it, when a small man loves it, he/she resorts to tyranny” (*junzi aicai quzhi youdao; xiaoren aicai hengxing badao*).

Finally, this is how one of my closest interlocutors during fieldwork sought to make sense of the progressive disenfranchisement of Yancong villagers: “They take your land and then you don't have a place where your voice can be heard, nor a place where to give you version of the facts (*you hua wuchu shuo, you yan wuchu shen*). For the government this is “rightful conduct” (*an fagui de xingwei*), for us, we just call it “unreasonable” (*wu daoli de xingwei*).” In a way, this comment seems to suggest that, if anything, the Chinese moral vacuum is one actively produced by state-backed legal instruments, and not one resulting from their absence.

## Conclusions



As a way to fill China's supposed moral "vacuum" and to control the negative fallouts of decades of unrestrained development, the Chinese State is currently undertaking a series of legal reforms. The movement towards legal mediation is conceived as a key component of these reforms. Apparently, the aim of such a movement is to provide better access to justice for rural communities, and to make the "backward" and "corrupt" governance of rural China finally accountable to its citizens.

However, as we have seen in this paper, legal mediation cannot solely be read as a vehicle for the central state to usher in much needed legal remedies to official malpractices, or to revive traditional values in the face of a public life devoid of shared moral principles. In Yancong, common people approach legal mediation not as the provider of legal and moral guidance, but rather as a counter-public where alternatives to state laws can be collaboratively discussed and crafted. In showing the progressive and creative ways in which common citizens and local officials collaboratively strive for consensual and fair government of village affairs, this paper joins the Chinese anthropologists who have recently begun to approach legal mediation ethnographically, and to investigate the plurality of legal life in the Chinese countryside (e.g. Zhu 2000; Zhao 2011; also Pirie 2013).

Yet, my own account of legal mediation in rural Yunnan differs considerably from the line of argument advanced by scholars such as Zhu Suli, who see mediation as a space where central and local government, public expectations and private needs can be reconciled. I want also to move away from the received anthropological understanding of mediation as a governmental move to muzzle popular calls for justice (e.g. Merry 1990, Roberts 2009). While there would certainly be some truth to such a reading of the cases I have presented here – many instances of mediation in China might, for example, be seen as the reinstatement of Confucian values – here I have emphasised the positive side of mediation in one-Party China. I have tried to demonstrate how legal

mediation in Yancong is capable of producing “a political ideology that is counter-hegemonic” (Nader 1990: 307).

Following Don Brenneis, I have argued that in Yancong the practice of “following reason” as it unfolds during mediated discussion makes apparent the unilaterality of state interventions and lays bare the pro-development bias that is hard-wired into the Chinese legal framework. It is the law – my Chinese interlocutors maintain – to considerably eschew and neglect villagers' interests for the “common good”. Here, rather than Zhu Suli's, it is the work of the Chinese Anthropologist Zhao Xudong that comes to mind: “there are two ways of thinking about the relationship between custom and state laws: to the intrusion of state laws into the rural countryside, one should add the ensuing resistance to such intrusion”(2008: 239). In relation to this, one thing emerges from this essay. The recourse to mediation as an ordering mechanism of village life is being interpreted by common people as creating a polarization between how the law works and how disputes are instead resolved at the village level. This polarization is made of two normative orders: on the one hand there is the “law” (*hefa*) on the other “reason” (*heli*).

For the people of Yancong, the law remains very much an “unfulfilled promise” (Merry, Brenneis 2004: 24). The law provides a set of rules similar to those in the normative repertoire they ordinarily refer to when discussing daily affairs such as water management, but it falls short of achieving what reason can: the consensual government of public goods. Thus, the ethnographic material presented here is intended to debunk the overriding myth of social collapse, moral decay and unrestrained selfishness which seems to have captured the imagination of common Chinese citizens as well as that of professional observers of China. And yet, the very same material lends itself to moderating my own interlocutors view that the law is there only for the Chinese government “to make a profit”. The idea that all citizens, regardless of their gender, ethnicity or status are legally entitled to fair

treatment and are allowed to have a voice on matters of public interests is genuinely seeping into daily conversations and the common sense of rural China. As described above, when addressing Wenke, Party Secretary Gao Zong made wide reference to the Chinese law in force, and publicly praised its emancipatory power, which to his mind has made an immense contribution to the advancement of Chinese society.

Nonetheless, the ethnographic material of this essay contributes to recent debates about the advent of the rights-era in China (e.g. Perry 2008, Li 2009) and in the Global South (Ghai, Cottrell 2010; Fu, Gillespie 2014), by suggesting a more nuanced picture of the dissemination of law into the countryside of many developing countries. Following similar works in anthropology at the juncture of the study of property, rights and development, I have suggested that formal, state-backed legal rights may be adopted to allocate not just the benefits but the burdens of development (e.g. Verdery 2004: 140). As Yancong villagers remarked, the crucial question is not if legal provisions and practices are being currently popularised by the government, but what type of legal provisions and practices these are. In fact, some of these legal provisions could actually work against, rather than with, the idea that the law is there to empower common citizens.

## Notes

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1. Due to confidentiality agreements, I will make use of pseudonyms throughout the paper.
2. *Li*, "reason" and *heli*, litt. "conforming to reason, reasonable". It has to be noted here, that differently from what the English translation of the term may lead to imply, Chinese speakers do not use it to refer to "the process of uncovering essences of which particulars are instances", that is to deductive reasoning, but to that of thinking and acting according to patterns of relationships as mediated by tradition (Hall, Ames 1999: 157; also Cabestan 2005:49). In that, the term has strong Confucian overtones. Moreover, within China's own debate about the indigenous philosophical sources of law, "reason" in my interlocutors' sense stands also in opposition with the idea of reasonable "standards" (*lii*) promulgated by the Legalist tradition (see Peerenboom 2002: 33-4). As the remainder of this paper will show, it is within this traditional debate that the practice of following "reason" acquires meaning for my interlocutors.
3. Yancong Township Government data. At the time of fieldwork 1 RMB equalled to 0,6 USD.
4. The most recent and discussed cases at the time of fieldwork was Bo Xilai's. See for instance Flora Sapio's piece at <http://www.thechinastory.org/2012/08/law-as-liturgy-the-show-but-do-not-tell-case-of-gu-kailai/>, accessed 7 September 2015.

5. I am grateful to Tim McLellan for pointing out this to me.
6. This paper focuses on what Chinese legal scholars usually call "people's mediation" (*renmin tiajie jizhi*). Under the current administrative regime, this is a mechanism of dispute resolution formally distinct from "judicial mediation" (*susong tiaojie jizhi*), in that, with the former, mediation is administered by local party cadres and few appointed assistants, rather than by the courts. Moreover, the decisions taken by people's mediators are not enforceable (*meiyou zhifa quanli*) and are usually centered on compensatory solutions (see Zhao 2009: 64-66). The MC of Xi Village is composed of five members, three of which are members of the local Village Committee. The remaining two are appointed assistants, both of whom are "group leaders" (*xiaozuzhang*) elected in small constituencies. Assistants are in charge of filling the disputes forms during mediations and keeping the disputes archive in order. To be eligible for the job, assistants have to attend an official exam on administrative procedures, laws and regulations every year. In Yunnan, mandatory legal training sessions, called "cadre training in social stability through the rule of law" (*fazhi weiwen ganbu peixun*) are offered every few months by the relevant County Civil Affair Bureau.
7. The reasons behind this misnomer were not completely clear. The local Party Secretary claimed authorship of its erroneous use. He explained that the term "court" (*fayuan*) proved capable of inculcating a sense of acquiescence into the applicants, making positive resolution likelier.
8. The Great Leap Forward (GLF), in Chinese *Dayuejin*, was a mass campaign organised by the Communist Party aimed at rapidly transforming the country's agrarian economy into one based on heavy industries. The GLF produced hideous consequences. In only four years, an estimated 36 million people died of starvation.

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