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Concealing and Revealing Senses of Justice in rural China

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On a sultry summer afternoon in 2006, I sat with Yang Zhuren under the porch roof of the farm house of his brother.¹ After an abundant lunch with the village officials, we had gone over to the house of the brother to sit down in the shade. Smoking cigarettes and cracking sunflower seeds, we talked about common acquaintances in the village. Yang Zhuren was an official in the city government of Enshi, responsible for immigration and foreigners (of which there were about 5 in the whole prefecture). He had been assigned the task to supervise my stay and became my main point of contact in the prefecture. Yang also happened to come from the same township in which I was doing fieldwork. Having met many times in Enshi city and in Zhongba village where I lived, this was the first time we visited his *laojia*, the place where he had grown up, in one of the more remote villages of the township.

I knew that one of Yang Zhuren's tasks was monitor the paper trail I left in the hierarchies of the local government, and probably he also contributed his own reports. At the same time I felt sympathy for this man, who had been lucky to become an official after his military service, who kept visiting his parents and young brother on their farm, who worried about his son's education in the city and loved to watch the NBA – Yao Ming, of course – together with his son. It always seemed that Yang also wanted to learn from me, and he often enquired about Germany and the Bavarian countryside where I had grown up. Now our conversation turned from Bavaria back to Bashan, and with some gravitas he asked me what I thought was the most important problem of the local society I had got to know here. I pondered for a while and then tried to express what by then I thought was the crux of China's problems: that there were no abstract and absolute rules and that everything depended on personal relations, on *guanxi*, and that everything was in flux and negotiable. This way people would have no security and confidence, and how could they be asked to belief in the party and the state? This seemed a reasonable answer to Yang Zhuren, he agreed and said, 'Chinese society has to move from the rule of men (*renzhi*) towards the rule of law (*fazhi*)'. While a lot needs to be done in this respect, he was confident that this was happening already.

I was left with some doubts. While I was heartened by Lao Yang's honesty about current social problems, I was not entirely convinced that actually there was a transition towards the 'rule of law' in the strict sense of the term. What follows are some reflections on the situations and contexts in which the 'rule of law' is invoked in

¹ Many thanks to the participants of the workshop on popular justice at the University Oslo and Susanne Brandtstädter for helpful comments.

rural China. Lao Yang spoke to me in a very private context; yet at the same time my position (as a foreign researcher) and our relationship (he being the main person in the city government responsible for me) also certainly influenced our choice of words.

In the following I deal with different invocations of the ‘rule of law’: this includes cases in which the ‘rule of law’ is presented as congruous or incongruous to conflict mediation; in the latter, the ‘rule of law’ represented by courts is sometimes explicitly avoided. The ways in which people relate to the discourse of ‘rule of law’ represent particular senses of justice. I will also deal with other senses of justice that are based on more localized moral frameworks. I focus in particular on the gestures of concealing and revealing such moral frameworks in ordinary social action and talk; and argue that the interplay between ‘front stage’ and ‘back stage’ recreates ‘judging publics’.

I start my discussion with a brief reference to the classical opposition between Confucian morality and Legalist statecraft. Rather than essentialising Confucianism and Legalism into two fundamental moral frameworks, I take this opposition as an inspiration to think about two aspects of popular law in contemporary China: firstly, the relationship between wider vocabularies of law and of morality – similar to Legalism emphasizing the former, Confucianism the latter. Secondly, this adage also points to the crucial relationship between outside display and off-stage performance.

I will focus in particular on the differences between displays and performances when analysing the interplay between different normative registers in contemporary China. In the following sections I will use moral discourses and conflict mediation in a village in Hubei as examples to demonstrate the varying uses of such normative registers. In their arguments and judgements, people make references to several different vocabularies and grammars available for (semi-) legal justification, similar to what Boltanski and Thevenot (2006) have called “orders of worth”, and Hua and Thireau (2001) “registres du juste” (see also introduction to this volume). Shared vocabularies and registers, and a shared platform of expression and audience define ‘judging publics’. But some of these vocabularies and registers are not pronounced explicitly; instead actors share them implicitly. In this chapter, I emphasize the moments and gestures of concealing and revealing different normative registers. The situational use of normative registers points towards implicit understandings, and sometimes ‘communities of complicity’ (Steinmüller 2013), which can be crucially important for ‘judging publics’.

From Confucianism and Legalism to the Rule of Law and Men

The opposition between Confucianism and Legalism is perhaps the most important debate in the history of Chinese governance and law (e.g. Qu 1961:226-46). Confucian scholars promoted a rule of ritual and moral exemplar, which would promote self-cultivation and reward virtue. The followers of Han Fei and Lord Shang, which are commonly called ‘Legalists’, directly opposed the Confucian ideals and suggested using the law to impose order, subdue populations to strict discipline, and if necessary, use manipulation to stay in power.

Some regimes in Chinese history were more obviously one or the other: The first Han Emperor Qin Shi Huang's regime, for instance, was founded on the legalist ideas of his advisor Li Si. Later governors would accord primacy to Confucianism. But in between Chinese politics were often "ornamentally Confucian and functionally Legalist" (*ru biao fa li*): rulers pretended to be good-willed Confucians and moral exemplars, whereas in reality they were cold-blooded and power-hungry Legalists.

Even if the rulers and the political system were often 'ornamentally Confucian and functionally Legalist', this was so not only to deceive the governed. Surely both in Confucianist- and Legalist-inspired political systems – just like in any system of political order and hierarchy – obedience to rules and the contingencies of human action and thought must be reconciled. One way to do so this is by 'pretended following' and 'pretended rule', or 'hypocrisy'. The historian Qin Hui points out that hypocrisy in that sense has been crucial for Chinese politics (Qin 2008). In a Confucian-inspired political order, it is vital that people pretend they are good, well-meaning and polite. Only then can rituals be completed and social order maintained. Yet while rulers 'pretended' to be Confucian, they also sometimes demanded absolute obedience and punished their subjects. This was seen as necessary for cases of grave deviance and offence; but often it was also invoked against the ordinary unruliness of the 'small people'. As Confucian ritual was interlinked with literacy and the art of writing (cf. Zito 1993), the illiterate peasants were potentially incapable of this kind of ethical governance and hence in need of a strong and unrelenting rule. But if this was a common elite description of ritual and law, the realities were often exactly the other way around: commoners managed their deals according to Confucian propriety whereas rules schemed and ruled according to legalist principles.

It is clear that both Confucianism and Legalism are very different from a modern 'rule of law'. Implying that no one is above the law, modern rule of law opposes the arbitrariness of personal rule. Confucianism and Legalism both represent a 'rule of men', be it virtuous philosopher-kings or brutal autocrats. Modern rule of law requires that the law is certain, equal, and known by everyone. The classical texts of the Confucian and Legalist traditions are however more of dialogical commentary and mirror-for-princes than scripted 'law'. Hence the modern opposition between rule of law and rule of men – *fazhi* and *renzhi* in Chinese – is of a rather different nature than the opposition between Confucianism and Legalism.²

In China, just like elsewhere, the rule of law is cause and consequence of political representation, universal citizenship and nation-state sovereignty. At the same time, 'rule of law' implies independence of the law from state power and social convention. Ideally, law should be separate from both state and society, but obviously it has to emerge from somewhere and be embedded in state and society. This leads to a series of contradictions, which are fundamental to (modern) sovereignty:³ How can the 'rule of law' be guaranteed and protected by a sovereign, and to which extent can the sovereign itself be subject to the 'rule of law'? How can abstract law be made to address concrete moral practices? In China, these contradictions of the foundation and social embeddedness of the law have a lot to do with the previous Confucian and

² For an overview of early debates about the 'rule of law' and the 'rule of men' in Early Republican China, see Jenco 2010.

³ Gilmartin and Ocko (2009) frame their very insightful comparison of the rule of law in China and India exactly along these contradictions.

Legalist heritage: these were the intellectual and moral resources that had to be negotiated in the creation of modern sovereignty and law.

Qin Hui goes as far as saying that the expression ‘ornamentally Confucian and functionally Legalist’ (*ru biao fa li*) embodies the single most important problem of contemporary Chinese society (Qin 2010). Qin extends the meaning of the phrase to a general opposition between moral talk and immoral action, or people ‘talking about justice and virtue, while behaving like thieves and prostitutes’ (*ibid.*). While I do recognize that contemporary legal practices in China cannot be described in terms of some unchanging essences of Confucianism or Legalism, I think that the opposition of ‘Confucian outside’ and ‘Legalist inside’ still has important implications now: if mandarins and rulers appropriately showed Confucian propriety and concealed Legalist manipulation, villagers and officials in contemporary China sometimes declare ‘rule by law’ (*fazhi*) and conceal the ‘rule of men’ (*renzhi*). Or, at other times, they pronounce the ‘rule of law’ irrelevant and reveal some kind of ‘rule of men’. My suggestion is that such creative practices of display and concealment might bear important insights into popular senses of justice in contemporary China.

Philip Huang, in a recent overview article on Chinese legal practices (2015), identifies a long-lasting preference of substantive over procedural justice, concrete over abstract reasoning, and altogether emphasizes the influence of what he calls ‘Confucian familism’ and ‘practical moralism’ in Chinese law. Huang also makes the points that the history of the relationship between Confucianism and Legalism in Chinese thinking and practice should not be seen as a binary opposite, but rather as a symbiotic and corollary relationship (2015:28). So ‘Confucianism outside, Legalism inside’ does not have to mean that both frameworks exclude each other, but rather have to be constantly related. By concealing and revealing different moral frameworks in ordinary social action, people relate to and recreate ‘judging publics’. This is the core point that I want to explicate with some examples from everyday moral/legal disputes and discourse.

A dispute in the village

During my fieldwork in Bashan Township in the southwest of Hubei province, I only rarely encountered ‘the law’.⁴ Obviously there were conflicts between villagers or between villagers and government officials: conflicts over land rights, for instance, and over the land appropriations by local government for a small land development district near the market town of Bashan. But only in the most exceptional circumstances were these conflicts resolved by involving lawyers or bringing the case in front of local courts. Much more commonly, people sought to find informal agreements by involving mediators, typically men of high standing in the local community who were respected by both sides. More than once, people told me about their complaints and conflicts and sometimes they tried to involve me as a witness, if not as a mediator.

⁴ I did eighteen months of participant observation based in a village that I call Zhongba, in Bashan Township, in the southwest of Hubei Province between 2005 and 2007, and visited again in 2012. All names of people and places below the prefecture are pseudonyms.

Walking home from the market town up the road to the village Zhongba one afternoon in autumn 2006, for instance, a man of the Liao family called me over and invited me for a meal at his house. I had only met him two or three times before in other people's houses and didn't know him well, so I was slightly surprised at his invitation and politely refused to stay for dinner. But I accepted the cigarette he offered, and he immediately started telling me about a recent fight he had been involved. My neighbours had already told me that he had been involved in a very bad fight on the road to Zhongba.

Liao told me that a nephew of his, Deng, had been driving his cargo trike down the road to Bashan when a child of the Yang family ran into the vehicle and was hurt badly. The men of the young family ran after him and they caught Deng just next to Liao's house. The argument and yelling alerted Liao, who came over to mediate, he said. After a few words, fists were flying. Liao said that they started beating him, and when the blood was already running down his face, he got really angry, and started beating around, not paying attention who he was hitting. 'I would have beaten them to death if necessary, because they started', he concluded. Even though Liao insisted that the Yang brothers had started, at the end he and Deng got away with some bruises, while the two Yang brothers were now in the hospital of the prefecture with severe injuries.

They are not 'reasonable' (*tamen mei you daoli*) and he is ready to 'go to court' (*da guansi*), Liao said. He had already called up some of his friends and relatives in the township of Bashan and in the city of Enshi, and tomorrow he will go again to Enshi to meet a relative of his who works in the city government. The neighbours, and especially the people from the Yang family, painted a very different picture when I asked them later: Liao is known as a hooligan and he really started the beating, several others said. Over the following days both parties negotiated and threatened each other with a court case. At several occasions members of the Liao and Yang families publicly stated that they were not afraid of going to court.

Finally the issue was resolved through the mediation of an official who was a distant relative of both families. I met Liao some time later in the bus where he told me that in the end he had agreed to pay 15000 RMB for the treatment and hospital stay of the Yang brothers – even though they had started the fight, he insisted. The same payment had been suggested by the intermediary, and ultimately Liao agreed to pay. He insisted defiantly that he paid, while at the same time strongly implying that it was not actually his fault.

In this case, then, the two groups were able to settle their conflict without the involvement of formal law. Yet the threat that the other party would 'go to court' (*da guansi*) played an important role in the negotiations: Liao confidently claimed that he wasn't afraid to do so; but probably he conceded and paid the indemnity because his chances to win the case if it would have gone to court were minimal.

Such a case is surely not unusual in rural China; it is broadly in line with the accounts of dispute resolution and popular justice scholars such as Zhu Suli and Zhao Xudong have given: a situation in which formal legal processes are often not followed (Zhu 2000), or are one possible source of authority amongst a number of others (Zhao 1997; 2003). Conflict resolution in such a context includes references to a diversity of

normative references: moral principles of reciprocity and hierarchical standing in local communities, kinship relations, and the ‘rule of law’ represented by courts. Liao referred to ‘reason’ (*daoli*), and tried to mobilise his network, and appropriate mediators (including me). His opponents did the same, and they also emphasised strongly the bad moral standing that Liao had in the community as a known troublemaker.

Ultimately, successful mediation needs that people agree on the same normative framework, or at least the authority of the mediator. In this case, I had the impression that Liao did actually not agree that he was guilty, but he wanted to avoid further trouble, and so agreed on the suggestion of the mediator to avoid further trouble – and especially, to avoid going to court.

Another important aspect is the timing and context in which different claims are made and different normative registers are invoked. Liao was very direct towards me, giving himself the appearance that he had nothing to hide, but at the same time he tried to involve me in his case in one way or the other. This was quite different to the sensitivity and secrecy that surrounding other cases of disputes: especially local officials tried hard not to reveal too much about local conflicts in my presence. Timing and context, then, are crucial for the judgement within local communities, and ultimately for conflict resolution.

The ‘rule of law’ was barely invoked in this case, if only as a potential threat – to ‘go to court’ (*da guansi*). But even for ordinary people in Bashan, the ‘rule of law’ represents also a larger, ultimate morality. Somewhat contrary to the importance of personal relations in these conflict resolutions, some people in Bashan also expressed the view that actually, conflicts *should* be resolved by recourse to ‘the law’, ‘as in Western countries and in the cities’. My neighbour Wang Wei, for instance, had spent about eight years working in Shanghai. When I asked him about the difference of life in Shanghai and Bashan, he included the following criterion: In Shanghai, he said, people do not fight with their hands, but they resolve conflicts by resource to the law.

Such statements are similar to the official discourse about ‘spreading the law’ (*pufa*) and ‘legal consciousness’ (*fali yishi*) (e.g. Chu 2007; Trevaskes 2007:33 ff). Ordinary people like my neighbour Wang Wei, or Yang Zhuren (mentioned at the beginning of the article) sometimes also expressed similar views – that the ‘rule of law’ was already more prevalent in Chinese cities, corresponding to the higher degrees of economic development and the level of ‘population quality’ (*renkou suzhi*) in urban China.

One might see in such cases of dispute resolution elements of a popular Neo-Confucian morality in opposition to modern formal law. But in popular discourse there are also hints towards ideas of law and order and the ‘rule of men’ that are much more akin to legalist ideas.

The rule of great men

When talking about the law in farmers’ households in Bashan, one thing that drew my attention various times was the unanimity in which people consented to harsh sentences and capital punishment. I do not remember hearing anyone in Bashan

speaking out against the death penalty, for instance. Common reasons given for the death penalty are that it exists to ‘protect society’, ‘because there are so many people in China’, etc. What is more, many adults have also seen executions in their lifetime; and they are commonly reported in the local news.

Such discourses, to my mind, do not speak of the rule of law or the rule of virtue, but of the ‘rule of men’, based on threatened and actual violence. This opposition, however, is barely noticed in either official or private discourse: the ‘rule of men’ is generally used only in the negative sense, and drastic measures, such as the death penalty, are represented as part of the ‘rule of law’ – in many ways not too different from the death penalty elsewhere, including the United States. Such a discursive combination could be seen in the legalist tradition, or in contemporary China, in the tradition of modern policing – towards dangerous criminals and enemies of the revolution ‘justice’ has to be meted out, and without recourse to formal law, let alone Confucian rule of virtue. The state of exception – when measures outside formal law have to be applied – has to be decided by single actors. And such a Schmittian perspective can certainly be applied to many features of Chinese political and legal history: for instance internal party policing⁵, extra-legal detention, spontaneous interrogation and detention.⁶ In such cases, one might speak about the ‘rule of men’ within the ‘rule of law’.

More than once I had long conversations about Hitler in Zhongba. One occasion I recall vividly was a dinner with a man from the city of Enshi who came to invest in some local tea factories. At the invitation of a neighbour who was thinking about renting his tea factory to him, we had a lavish dinner and long conversation. While the boss was world-savvy and a good talker, he seemed also very aggressive to me. He wanted to know what my plans were and found it ridiculous that I would not want to be rich and famous. Who the highest officials were I knew in the city and provincial government, and here too he found my answers disappointing. The conversation really turned a little bit antagonistic when he started telling me about Hitler. A tremendous military leader and a great man, really a source of pride for all the German people. I tried to explain that most German people, including myself, did not think highly of Hitler, if anything, we thought he was a disgrace and a catastrophe for German history. But the boss did not want to believe that and went on insisting on the greatness of Hitler.

That sense of the ‘great men’ who are ‘tremendous’ (E. *xiong*, P. *lihai*) links up with the revolutionary tradition of violence. The communist armies often recruited soldiers, and leaders from armies and warlords. And Mao himself famously said that the ‘revolution is not a dinner party’. With its roots in guerrilla warfare, the Communist

⁵ In *Policing Chinese Politics* (2005), Michael Dutton proposes an insightful perspective on Maoist policies and politics. Noting the striking parallel between Carl Schmitt’s definition of the political – the distinction of friend and enemy – and a core sentence of Mao’s collected works (‘who are our enemies, who are our friends?’), Dutton analyses the passion and violence of Maoism in terms of this binary opposition.

⁶ Flora Sapio (2010) suggests that a similar Schmittian perspective might help us to understand the place of lawlessness within contemporary Chinese law. She focuses on practices such as *shuanggui* (extra-legal detention by Party disciplinary bodies), labour re-education, spontaneous interrogation and detention. All of these practices are clearly outside the law, and Sapio suggests looking at them as ‘areas of lawlessness’ and ‘zones of exception’, which are organically articulated with the workings of the law in China.

Party's early leadership was based both on political affiliation and personal allegiance (Chen 1986). A leader such as Mao is commanding respect not only because of his intelligence and charisma, but also because of the fear he inspires. As one of my friends in Zhongba put it, 'the Chinese like leaders who are a little evil' (*you dian huai*).

There was also a very widespread admiration, especially amongst young men, for local gangsters. I heard many stories about a local man of the Kang family who was a small gangster and had spent several years in prison in the 1990s, before he settled in the market town. Several young men in the neighbour, who had spent years in the cities would often say to me that they also knew some men like Kang – actually, men who were even more powerful than Kang. When talking to Kang himself about his deeds in his youth, he would sometimes say to me that when they were young 'they had no notion of the law' (*meiyou falü de gainian*).

At least regarding Hitler and Mao, private discourses often blatantly contradict the official discourses about the same historical figures: Hitler and fascism are condemned in official history writing, and so is the personality cult of Mao. But the respect for great leaders is sometimes expressed too, and especially in more private surroundings.

I want to emphasize here that the principles that are invoked in conflict mediation – including local moral frameworks and the 'rule of law' – depend on the occasion and situations in which they take place. The 'rule of law' and the 'rule of men' have undergone substantive transformations in China's modern history and they can refer to many different things now.

In the following I will look at different invocations of the 'rule of law' and relate them to emerging senses of localized 'publics' at the village level. The cases I have dealt with so far were about local discourses and conflict mediation. Now I will present two cases from Enshi that made it into national news, and compare the local events with the national reporting on the same cases. I will try to show how the combination of normative repertoires is remarkably different in local and national discourse. While government propaganda and official media largely represent the party-state itself as the source both of socialist morality and the 'rule of law', this particular combination is frequently contested, in particular in more private and intimate surroundings.

The Bashan Nail House

In August 2014, a report about a 'nailhouse' in Bashan appeared in national news, including on the very popular newsfeed of Tengtun (the company that operates the social media service QQ). In the last decade, a number of 'nail-houses' (*dingzihu*) that were refusing to yield to large-scale developments have become topics of national debate (Erie 2012). Homeowners who resisted forced eviction could sometimes take advantage of broad support, especially on social media. That was not the case in Bashan, however, where the report of the nail-house was a showcase for a successful solution by local government of such a case. Entitled "A 'nailhouse' in Hubei that occupied a schoolyard for 56 years finally moved", the report told the story of a farmhouse on the schoolyard of the primary school. The Gong family that lived there

had originally refused to move, when the school was built in the 1950s; but now, persuaded by one very diligent official of the township government, they had finally agreed to move. The report in the national media pointed out the repeated efforts of the local government that only met the stubborn resistance of the Gong family:

For 56 years, every new generation of officials in the local government and the Education Departments, and more than ten headmasters in the school, all tried to mobilise and convince Gong Houzhi and his family to move out of the schoolyard, so as to improve the study environment for the students; the government promised to help him to build a new house not far from the school. But Gong Houzhi kept the last will of his parents: ‘You mustn’t lose the land of your ancestors’.

The report went on to describe the kind of problems the house of the Gong family caused the school:

The house of Gong Houzhi covers a surface area of about 500 square meters, it is a traditional wooden two-story structure. Around the house, there are some vegetables plots and fruit orchards, and Gong keeps some pigs and chicken. And so entering the schoolyard, it smells of fowl. One teacher told this reporter, that sometimes when the students did exercises in the schoolyard, a few hens were running back and forth between the students. The students’ dormitory is right next to Gong Houzhi’s house, and so the sounds of pigs and chicken would wake up the students early in the morning.

Finally, in 2014, the government planned an extension of the school and here the Gong family home caused further problems:

In early 2014, an extension of the schoolyard was in the planning phase, and there was also a problem regarding the security standards: Gong Houzhi and his relatives always had to enter through the main gate of the school [to reach their house], and that was harmful to the security of the school. At the same time, the further construction and extension of the schoolyard was impossible, if Gong Houzhi wouldn’t move.

At this point, an official from the township government, Tan Dalun, took up the case:

For more than half a year, the 42-year-old Tan Dalun exhausted his brains in this task, more than ten times he visited, to chat about all the small and big things that mattered to Gong; no matter big or small, everything that Gong Houzhi needed, Tan Dalun willingly took it over and helped him.

One day in June 2014, when he heard that Gong Houzhi planned to go to the Township government to do the paperwork for his pension, Tan Dalun immediately reacted, and helped him to do the paperwork. [...] Gong Houzhi was moved, and said with a smile “I didn’t think that you, Tan Dalun, were so close to help me so much” (*wei wo zenme tiexin*).

Tan Dalun took the opportunity to explain again the disadvantages of having the house inside the schoolyard: there was the constant the noise of the students, it wasn’t convenient for Gong and his relatives to come and go, raising pigs and chicken in the schoolyard had a negative influence on the studying environment, and on top of that, if he built a new house, it would be much more comfortable than his old house...

“You just have to agree to move, and I, Tan Dalun, promise you I take care of everything, you can choose the place for yourself, I take responsibility of all the paperwork.” Gong heard Tan Dalun’s guarantee, he discussed it with his wife, son and daughter-in-law for quite a while, and everyone thought that what Tan Dalun had said was reasonable (*you daoli*).

In early August 2014, Gong Houzhi signed an agreement with the local government; the responsibility of building the house was given to Tan Dalun; leveling the ground, hiring the workers, doing the paperwork, arranging for water and electricity, and all the other work, Tan Dalun arranged it all in good order. Tan Dalun said, the aim is to finish Tan Dalun's new house before the end of the year, so that he could move quickly, and the extension of the school could proceed without problem.

At the end of the interview, Gong Houzhi said with a big smile, he is just waiting until Tan Dalun will have finished the new house, and he will move. (Tengxun 2014)

This article was widely circulated on the internet. One clear message was that Tan Dalun was a good official who had resolved a complicated situation. In comments on social media, some observers remained a little skeptical, whether the report didn't exaggerate the benevolence of Tan Dalun and the local government. Friends from Bashan confirmed that the Gong family had actually received appropriate reimbursements for their new house and that the township government had helped them in particular with any necessary paperwork for the new house. They also emphasized, however, that the media attention had been particularly fortunate for Tan's career in local government.

The article represents a harmonious solution of various potentially conflicting discourses – including the stereotypes of selfish farmers (who don't see the public good) and corrupt officials who do not pay attention to the plight of poor farmers. Similar to official pronouncements on conflict mediation and the 'rule of law', the potential conflicts between different registers are downplayed in the official news report.

The case of this 'nail-house' contrasted broadly with a large scale local development project that took place in the immediate vicinity of the school: on the paddy fields between the school and the market town more than 200 houses were built from 2008 to 2010, effectively doubling the area and reach of the market town. During my fieldwork in 2007, and during a revisit in 2012, there was a lot of talk about the corruption of local officials who had enriched themselves in the process. Yet nothing of these complaints ever reached the news, let alone national news. This is perhaps what typically happens during many forced evictions and development projects in contemporary China.

In the above case, the local official Tan Dalun was ultimately represented as the source of reason and morality. Against the odds, he convinced the 'unruly' farmer to move his house. Yet surely the newspaper report, as part of official discourse, is also in some way a shared production that relies at least also on the cooperation of ordinary people. In other cases, legal conflict has been more substantially shaped by public opinion. One famous case – the case Deng Yujiao – took place not very far from Bashan township.

Public Opinion: The case of Deng Yujiao

In another county of Enshi prefecture, an incident took place in 2009 that became a national cause celebre. On 10 May 2009, Deng Yujiao, a 21-year old pedicure worker in a hotel in Badong County, refused the advances of Deng Guida (no relation), the

director of the local township business promotions committee. Deng Guida had come to the hotel together with colleagues, looking for sexual services. When he didn't respond to Deng Yujiao's refusals, she stabbed him repeatedly with knife, and he bled to death at the scene. Following the incidence, Deng Yujiao was charged by the local police and put under arrest.

The case caused a stir in chatrooms and bulletin boards on the internet. Deng Yujiao was widely seen as a symbol of ordinary people's defense against corrupt officials. Following public pressure, the case came to national attention. Consequently, reporting on the case was censored, but the public discussion of the case also influenced the court proceedings to some extent. On 16th June 2009, the Criminal Court of Badong County announced Deng Yujiao's sentence as 'intentional assault based on self-defense' and she left the court as a free person.

In the aftermath of the court decision, the case led to a minor earthquake in local government. The various officials who had been at the scene of the stabbings were all demoted, one of them, who apparently had supported the victim Deng Guida, was expelled from the party. A number of officials in the police and propaganda departments also lost their positions – some of them without any proven wrong-doing, merely because their name was tainted by having been involved in this famous case. The plight of the Director of the Public Security Bureau of Badong is of particular interest. He had given an interview to Southern Metropolis Daily, defending the initial arrest of Deng Yujiao for 'intentional murder'.⁷ Even though he had done nothing wrong, the case severely damaged his career, and he was put on a quiet position in the Enshi City government with no hope for further promotion. A good friend of his in the Prefectural Government described his case in the following words to me:

It is really a shame, my brother, the director was at the wrong place at the wrong time, Deng Yujiao's case caught up with him, and was his downfall, now he is spending his days as a small official in Enshi. Of course, Deng's case is already decided, and there is an explanatory post on Baidu [the Chinese equivalent of Google], so I don't want to say much about that. But what I want to say is that when he was in office a murder happened; so certainly first you have to arrest the suspect, and that's still not too late to presume innocence. Any person in his right mind would understand this, and you don't need to have any particular legal training, because this is common sense knowledge. But exactly because of this decision, which was 1000% correct, he lost his position. Higher officials, who had to deal with the challenge of public opinion, and the lawyers from Beijing who came to Enshi and didn't want to leave, all of them called again and again for justice for the underprivileged. In this hostile environment, he became a victim of this case. Later on, I asked some friends in the legal profession about the case, and they said that given the particular situation in which both [the perpetrator and the victim] had been, the lightest punishment should have been to pronounce her guilty, end the litigation without indictment and release Deng. There is no doubt that Deng was a weak girl, it is highly probable that her self-defense was excessive; society can provide support through certain ways, but if there is too much [support], that means to disrespect the law, and to trample on the principle of rule of law (*fazhi*). I don't know whether those Beijing lawyers just wanted to step into the limelight, or whether they acted for social justice (*shehui zhengyi*) and the rule of law (*fazhi*

⁷ See 'Interview with Yang Liyong, Badong public security bureau director. May 22, 2009', online at <http://zoniaeuropa.com/200905c.brief.htm#011>

gongping). I think if this happened today, when the state promotes ‘using the law to govern the country’ (*yi fa zhi guo*), this director wouldn’t encounter so much misfortune.

The case of Deng Yujiao shows other emergent public forming around certain senses of justice. There was a large-scale popular movement, in particular on the internet, concerned with this case: numerous netizens read on the internet about this case and wrote commentaries on blogs and BBS. In public opinion, Deng Yuqiao became a personification of the fight of poor citizens against the corruption of party officials. The fact that she was a young woman who refused to prostitute herself made her into an icon of popular resistance.

My friend’s comments are particularly interesting because his opinion points to the potential conflicts in the promotion of the rule of law. He says that there is already an official interpretation of the case, which is available to everyone on Baidu – and he does not want to content this explanation. What he wants to point out, however, is that in the process his friend, the director, lost his job and any chance for promotion. What might be presented as a success of the rule of law has, in his opinion, also lead to some consequences that blatantly contradict the rule of law: the fact that the Director, who had done nothing wrong, lost his position.

But what is also crucial in this case is the context and situation – a private conversation – in which my friend voiced this opinion. The situation itself marks the relative powerlessness of this opinion, and as my friend insisted, he does not want to contend the official decision about the Deng Yujiao, which can be found on the internet.

Conclusion

Various contributors to this volume have emphasized the combination of different registers, orders of worth, or ‘registres du juste’. This corresponds to what anthropologists of law have described as the use of various ‘normative repertoires’ in conflict resolution (Commaroff and Roberts 1981). I have tried to show the combination of such registers, including local moral frameworks, Communist equality, and the ‘rule of law’, in various Chinese cases: in conflict mediation following an accident, in the case of state acquisition of land, and in the public case of Deng Yuqiao. Concrete arguments and mediation always involves shifting between these registers – for instance, between local ideas of kinship, and the letter of the law.

A successful mediation must reach a point where both parties agree on one register; submit to the authority of the mediator; or at least one party either doesn’t have the stamina to continue arguing or agrees otherwise on sufficient reimbursement. The latter might have been the case in the example of the man who agreed to pay for the hospital costs of the family he had had a fight with.

In recent years, mediation has also been promoted explicitly by the Chinese government. National and provincial authorities prescribe regulations for conflict mediation, including by village authorities. This promotion is explicitly supported by some legal scholars (e.g. Zhu 2000, Zhao 2003). But, as Pia (2015) points out, the local moral frameworks invoked in these mediation processes do not always

'harmonise' with the 'rule of law', but instead are often locally perceived as contradicting the law. During fieldwork in Bashan, even though the township government had officially appointed 'conflict mediators' in the village government, these official points of contact were in fact barely, if ever, sought out by villagers. The general situation was similar to my first case: locals preferred to deal with conflicts informally and often used the threat of 'going to court' (*da guansi*).

The larger point I would like to make here is about the loci of conflict, mediation, and agreement. The official discourse in the PRC promotes both the rule of law and local mediation; and affirms that there is no tension or contradiction between the two. Yet locally, in vernacular discourse, the conflict between the two is often pointed out. Not only is 'national law' (*guojia falü*) used and abused by many different actors. But often 'the law' is conspicuously ignored, or 'downplayed', as when young men in my presence admired 'tough' and 'tremendous' leaders, and then also admitted that 'they didn't have a notion of the law'. That generally happens in more private contexts. In the public – even the local public of village level discourse – universal standards are more frequently invoked.

This is especially the case in official newspaper reports, such as those that deal with the Deng Yuqiao case, and with the Bashan nailhouse. The local meanings of such cases (e.g. that the head of the Badong police lost his job, or that reporting about the nailhouse was very fortunate for Tan Dalun's promotion in the government hierarchy) must remain local. In the sense in which they point towards relatively particularistic and selfish aims, they are also potentially embarrassing, compared with the larger meaning of the 'law'. Speaking out in those (more localized) senses would produce an immediate loss of authority – you cannot produce a public on the basis of hidden values. In that sense, perhaps, the emerging 'new publics' are often built on implicit and local understandings.

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