

**‘Figuring Out’ Conflict:
An Ethnographic Study of Modernity, Law, and the State
in Rural Southwest China**

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Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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Abstract

Based on 18 months of ethnographic fieldwork between December 2014 - August 2016 in the rural Yunnan province of China, this thesis focuses on family and community conflicts and how people seek to resolve such conflicts by utilising a number of institutions of dispute mediation. Three levels of such institutions are analysed: the personal level of long-term relationships and kinship ties; the official level where police officers, grassroots government officials, and civil servants of the judicial administration are involved as mediators; and the legal level where the mediation is carried out by legal professionals in a court setting.

The thesis deals with the processes of 'figuring out' the right course of action, both by the various mediators and the people involved in the conflict. It is argued that this is a form of reflexive problematisation of a dispute that leads people to specific justifications that tap into different 'orders of worth'. A situational 'order' can be based on cultural models of proper behaviour towards kin and community; state law is also analysed as one such 'order'. It is further argued that each level of dispute mediation has its own sources of reasoning, and people also have different expectations for what the mediation will accomplish or what its long-term effects may be. The backdrop for this research is constituted by the ongoing legal reforms in China that seek to further extend the use of law and legal consciousness into such familial matters as inheritance arrangements, care of the elderly, and marriage. The reforms are analysed here as part of the state-led efforts of modernisation and social progress. The thesis contributes to the field of legal anthropology through its findings on the development of legal consciousness in the contexts of plural normative orders, and increasing the understanding of how people utilise cultural models that are typically associated with life in rural China, to live in a rapidly changing world.

Table of Contents

<i>Declaration</i>	2
<i>Abstract</i>	3
<i>List of Illustrations</i>	7
<i>Notes on the Text</i>	8
<i>Acknowledgements</i>	10
<i>'Crossing the sea blind'</i>	14
PROLOGUE:.....	15
<i>A Public Incident in the Village</i>	15
CHAPTER 1:.....	23
<i>Introduction</i>	23
PART ONE.....	24
Legal Pluralism and Legal Consciousness.....	25
'Rule-based' and 'Relational' Litigants.....	28
'Figuring Out' Unpacked: 'Justification' and 'Orders of Worth'.....	32
PART TWO.....	36
Legal Reforms in China.....	36
Methodology, Fieldwork Arrangements, and Demographic Conditions.....	37
PART THREE.....	44
Outline of the Thesis.....	44
CHAPTER 2:.....	47
<i>Dilemma of Auntie Li</i> :.....	47
<i>Paths for Resolving Disputes at Village Level</i>	47
Dispute Mediation in the Chinese Legal System.....	47
The Dilemma of Auntie Li: How to Resolve a Dispute and Retain Dignity in the Village Social Worlds.....	53
Grit Over Monetary Compensation.....	57
Seeking Help from the Neighbourhood Committee Vice Leader.....	60
Auntie Li's Dilemma and the Model of 'Orders of Worth'.....	63

Conclusion.....	65
CHAPTER 3:	67
<i>The Level of Officials:</i>	67
<i>Police Mediation and the Notion of ‘Rural Culture’</i>	67
Introduction	67
The actors and documents involved at the level of officials	68
‘Rural Work’ of police mediators and local officials	74
Elderly care in law and in (rural) practice	77
A Dispute on Elderly Care Between the two Lu Brothers	81
The Lu Brothers Go to Court	85
Feelings and orders of worth.....	88
Conclusion.....	93
Chapter 4:.....	96
<i>Classification of Disputes and the Expertise of the Police Mediator</i>	96
Native Classifications.....	97
Expertise in Police Mediation.....	104
Conclusion.....	108
CHAPTER 5:	110
<i>Funeral of Teacher Wu: The Register of the State as It Insinuates Itself in the Life of the Village</i>	110
Introduction	110
Funerals and Chinese Funerals.....	112
A Death Is Announced.....	115
The in-between: 10 days of receiving guests	121
Two days of funerary ritual.....	128
Officialdom ritual takes centre stage	133
Summary: the ‘Guanfang’ / ‘Mingjian’ Divide.....	142
Conclusion.....	144
CHAPTER 6:	146
<i>The Level of the Courts: Legal Fictions and Evidence</i>	146
<i>in the Work of ‘Society Lanyers’</i>	146

Introduction	146
Providing Legal Aid in Tengchong County: ‘Lawyer Streets’ and ‘Society Lawyers’	149
Legal Fictions and Evidence in Law	156
Legal Aid Lawyers and the Work of Translation Across Logics.....	158
Legal Logics and Local Logics.....	168
Conclusion.....	172
<i>CHAPTER 7:</i>	<i>173</i>
Conclusion	173
The Notion of Chinese ‘Native Resources’	173
Legislating Tradition	175
Back to Wang Yan’s Petition Letter	176
Concluding thoughts.....	178
<i>BIBLIOGRAPHY</i>	<i>180</i>

List of Illustrations

Picture. P.1: Wang Yan's petition letter.

Picture. 2.1: Designated mediation room for the People's Mediation Committee.

Table 3.1: Excerpt 1 from the document titled: The Classification of the Most Common Civil Law Disputes, as Prepared by the Supreme People's Court of China.

Table 4.2: Excerpt 2 from the document titled: The Classification of the Most Common Civil Law Disputes, as Prepared by the Supreme People's Court of China.

Picture 5.1: Memorial for Wu Jiedong on the day of his cremation.

Picture 5.2: The reception area under a marquee in front of the house of teacher Wu.

Picture 5.3: Table arrangement for teacher Wu 'the author'.

Picture 5.4: Table arrangement on Aug 10th during the Daoist and Buddhist rituals.

Picture 5.5: Detail of the altar table on August 10th

Picture 5.6: The alter with items of 'popular religion' in front and banquet dishes at the back.

Table 5.7: Comparison of the '*guanfang*' and '*minjian*' elements in teacher Wu's funeral.

Picture 6.1: A commercial legal services office on 'lawyer street'.

Picture 6.2: A three storey building on 'lawyer street'.

Figure 6.3: Moving from familiar to unfamiliar.

Figure 6.4: Moving from one institution and logic to another.

Notes on the Text

Chinese Names

Throughout this thesis the names of all persons will be written in the conventional Chinese language format of <family name> <first name>. For example, in the name Zhu Yanhu ‘Zhu’ is the family and lineage name while ‘Yanhu’ is the person’s first or given name.

Ethnic Classification

The research for this thesis was carried out in Tengchong County in Yunnan Province which according to official census figures is an overwhelmingly a Han Chinese majority County, in particular in the southern townships of the County where the research for this thesis took place. Throughout the thesis the term ‘Chinese’ will be used to mean ‘Han Chinese’; for example, when talking about ‘Chinese funerals’ I intend to mean Han Chinese funerary practices. In cases where a person referred to is not Han Chinese this will be made explicit.

Administrative Divisions

Practices around administrative divisions and their hierarchical relationships with each other vary across China somewhat; this thesis will present the administrative hierarchies as they were structured where this research took place.

This thesis will use the following (see table) English language translations for the administrative levels of the Chinese government, and administrative organisations that are not formally part of the government structure. The names for the administrative levels below the Township level used in this thesis are all pseudonyms.

<u>Term in Chinese</u>	<u>Term in English</u>	<u>Example in this thesis</u>
<i>Sheng</i>	Province	Yunnan
<i>Shi</i>	Prefecture	Baoshan; Tengchong (post-2016 administrative change)
<i>Xian</i>	County	Tengchong (pre-2016 change)
<i>Shi</i>	City	Tengchong; Kunming
<i>Zhen</i>	Township	Tengyue
<i>Shequ</i>	Village	Yuhuacun; Laosongcun

In 2016 Tengchong County (*Tengchong Xian*) was granted an upgrade in its administrative level designation, changing into Tengchong Prefecture (*Tengchong Shi*). Until that point Tengchong County had been under the administrative direction of Baoshan Prefecture. Throughout this thesis I will use the pre-2016 designation ‘Tengchong County’ to refer to the wider administrative area, and ‘Tengchong City’ to refer to the metropolitan area and capital of Tengchong County.

The term ‘*shequ*’ is commonly translated as ‘community’ in English. In this thesis, the administrative level of ‘*shequ*’ will be referred to as ‘village’ or ‘administrative village’, and the term ‘community’ will be reserved for its sociological meaning. The more typical Chinese terms for ‘village’ (cun; xiang; zhuang and others) will be distinguished where necessary from my usage of ‘*shequ*’ as ‘village’.

The villages (*shequ*) in which this research was conducted were administrative composites of 3-4 so called ‘natural villages’ (*zirancun*) or smaller ‘hamlets’ (usually called ‘*zhuang*’, ‘*xiang*’, ‘*po*’). In some cases, the reforms that had grouped the natural villages together to form an administrative village had been done during the last 5 years; in all cases the natural village still retained a great deal of meaning to its inhabitants even when some time had already passed since it had ceased to be an administrative unit in its own right. Here the administrative village (*shequ*) is taken as the lowest level of government.

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In the research villages in Tengchong County, the local police officers and rural government officials helped my research project enormously. Being able to observe and ‘hang out’ at the rural police stations and at the administrative compound made all the difference – and the humour of people working there made the research work so much more interesting. I am also thankful for the many hours people took out of their work day in the legal aid centre and the Township judicial administration office to have long and sometimes meandering conversations with me. In Tengchong City, my conversations with Li Zhen ‘laoshi’ on everything ranging from local history and food to hiking the Gaoligongshan mountains were often very important research moments, as well as being a source of inspiration and delight.

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Thank you all, so many times more.

••盲人渡海••

盲人到海上去
月亮很大
风也很大
他们的脸晃得厉害
他们说：这就是海了

风停了
船漂向更大的洋面
他们的帆一动不动
他们的脸面面相觑
他们说：海没有了

顾城

一九八九年十一月

'Crossing the sea blind'

The blind went off on to the sea
The moon was enormous
The wind too was enormous
As it blew against and vigorously rippled their faces
the blind concluded: so this what they call the sea.

The wind stilled
The boat drifted further along the vast sea
Their sails were motionless
Their faces looked at each other in dismay
and the blind concluded: the sea is no more.

Gu Cheng (1989)

(Translation: L. Kohonen)

PROLOGUE:

A Public Incident in the Village

I begin this thesis with a vignette of an event that happened in the village of Laosongcun where the largest part of the ethnographic fieldwork for this research was conducted. Located in Tengchong County in southwest China, some 80km from the border with Myanmar, the population of Laosongcun is a little over 3000 persons. The County seat of Tengchong City is a little less than 10km away, and many inhabitants of Laosongcun use the new highway to Tengchong to go there for work, shopping and leisure. The village has a long and narrow shape, nestled along a long and lush hillside ridge blanketed by evergreen pine trees. In addition to a person's patrilineal descent group affiliations –it is commonly claimed that 90 per cent of people in Laosongcun belong to one of the five so called 'originally settled' lineage groups in this village – another important reference point for a person is the immediate neighbourhood. In the day to day life a person who does not work outside the village may not typically walk very far along the ridge to socialise in this dense Han Chinese community.

An event that would spark a great deal of talk about laws, lawyers and state involvement in village affairs happened three doors down from the house I where I lived during fieldwork, in December of 2015. It was a highly public event in that gossip about it would circle around social occasions for months to come, along with the ideas that it sparked about the direction China was developing in. What had happened was that a man had set a section of his wooden house on fire while under the influence of alcohol and as a response to repeated words of provocation from his wife's previous affinal relation, an elderly man living in the same house. That day, the alleged arsonist was quickly taken into custody by the local police officers; he would wait for several months to be released while criminal charges were considered¹.

¹ Arson is considered a serious crime in the locality as the area has large forest conservation areas including one behind the village in question, and a majority of the houses have wooden sections if not wholly made of wood.

The alleged arsonist, Lin Duyi, had moved into this household four years prior when marrying his wife Wang Yan. The house had belonged to Wang Yan's previous husband as she had 'married in' to his house. When the previous husband had died, the elderly man Huang Jingguo who was the deceased husband's paternal uncle and thus of the same branch of the Huang lineage, had continued to live in the house, not having children of his own. As Wang Yan remarried, her new husband Lin Duyi 'married in' this time, joining Wang Yan and her two children from the previous marriage. While not very common, it does occasionally happen in the rural communities of this area that a man will 'marry in' to the household of his wife and not the other way around. In such cases the wife's relatives would be treated with reverence in the way a husband's would be if the situation were reversed. In a place like Tengchong County where lineage membership is an important underlying organisational principle that comments on a person's everyday obligations, patterns of inheritance and the afterlife, which person in a romantic couple 'marries in' to the other person's lineage is held up as a crucial life decision.

After the arrest of Lin Duyi, Wang Yan got to work seeking to get the authorities to agree to release him on bail. An initial strategy she chose in seeking to influence the police authorities was to get people in the village to sign a petition, addressed to the criminal investigation unit of the Township police, asking for her husband's release. The petition was written by an elderly man from the Wu lineage who was well known as a literary person in the County for writing books about local history². Wu Jiedong was not connected to Wang Yan by lineage but was someone residing in the same neighbourhood unit (*cunmin xiaozu*)³, and more importantly a man people from the village sometimes went to for assistance due to his perceived ability to influence the 'higher ups' in local government. The petition itself was written in a Chinese that mixed literary and seldom used characters with bureaucratic and occasionally colloquial language. This 'peasant writer' (*nongmin zuojia*) as he was commonly referred to inside the village and outside, was a visible presence in the village, and after his death several months later small tour groups would start wandering in to the village to visit the house in which he wrote his books.

² I call him Wu Jiedong in this thesis; he is mentioned again in Chapter 2, and Chapter 6 revolves around his funeral in August 2016, with further elaboration on his position in the village.

³ The neighbourhood group 'cunmin xiaozu' is situated below the village (*shequ* or *cunweibui*) administrative level but is not an official administrative level in its own right.

Two days after her husband had been arrested, Wang Yan positioned herself at the entrance into an alley and waited for large numbers of people to leave the house that was hosting a morning banquet that day. She was hoping to get a good number of villagers to sign and show support for the petition, written on onion skin thin paper that is used at schools to produce neat character handwriting. As people flowed out from the alley, a notable proportion of people would sign their name and dip their finger into the red ink Wang Yan was carrying to produce a red fingerprint on top of their signature⁴. In the space of some 40 minutes she collected 112 signatures. When gathering the signatures Wang Yan acted in a way that was highly unusual for her, as I would come to realise over the next few months. That morning a woman usually known to be steadfast and proud persistently pleaded with her neighbours and showed a particularly high-strung form of desperation, overall tapping into, I argue, a recognisable form of ritualised behaviour that elevates the person on the receiving end of the performance while lowering the person asking for a favour.



Picture P.1: Wang Yan's petition letter to the Township police unit for criminal investigation with signatures and red thumbprints placed on top of one's signature.

The petition Wang Yan pleaded people to sign explained that the elderly man from the Huang lineage had on a daily basis “cursed” her husband Lin Duyi, resentful that he had

⁴ Giving both a signature and a red fingerprint is a common practice to for formal legal or administrative documents; I saw this practice being used for example to sign an agreement after a successful dispute mediation at the local police station.

moved into the house that had originally belonged to the Huang lineage. The petition⁵ states the following:

“After their marriage, the couple lived in good terms with each other without conflict. However, their father⁶ Huang Jingguo was extremely resentful that Lin Duyi had settled down to live with his wife’s family (*anjia shangmen*). Everyday he [Huang Jingguo] cursed him [Lin Duyi] and sought to expel him from the house. He even went so far as to use a pen to carve in a wooden partition of the house a number of insulting and threatening words.”

The letter goes on to explain that close neighbours, villagers, and cadre officials had all sought to mediate the conflict between the two men, Huang Jingguo and Lin Duyi - but to no avail. Lin Duyi, so the petition letter claims, had taken good care of the house and spent a lot of money preparing for the soon to be held wedding banquet of his stepdaughter (from Wang Yan’s previous marriage), inviting workers to adorn and renovate parts of the house. Finally, when the elderly man of Huang lineage still continued with his insults and even wrote a letter demanding that Lin Duyi leave the house within seven days, he had had enough. This detail of the seven-day ultimatum was verified by the police who came to investigate the arson, the petition notes. All this tension gradually built up, culminated in the night of the fire. The petition states the following:

“The roots of this disaster are in the inability of Huang Jingguo to treat people as they should be treated (*dai ren*), who constantly mistreated Lin. This resulted in Lin Duyi trying in vain to burn himself together with the house. “Let me burn to death together with the house”, he said.”

Lin Duyi set a section of the house on fire but was not himself injured. The burning is presented in the letter and by Wang Yan in our conversations as a linear result of the insults

⁵ One methodological note. Wang Yan herself showed me the petition when I asked to see it and also allowed me to take a picture of it. Wu Jiedong, the man who wrote the petition, knew that I had a picture of it; his only restriction regarding my interest in the petition and the case was that I, as a foreigner, would not personally get involved in trying to help Wang Yan release her husband or mention the matter to the police officers among whom I carried out other research activities, as long as the case would remain pending.

⁶ In the petition the elderly man of Huang lineage living in the house is occasionally referred to with the word ‘fu’ for ‘father’ even though he is the paternal uncle of Wang Yan’s previous husband. Here it is used as an honorific title, which also points to the position in which the man is held in terms of implied filial obligations, at least discursively.

from the old man, but neither the letter nor the people with whom I talked to about this incident spoke about whether or not Lin Duyi had meant to die – he was said to have been angry and very emotional in that moment; his wife certainly told me he did not mean for the house to substantially burn. The letter ends by saying:

“Finally, we [the undersigned] are of the opinion that Lin Duyi should be treated with leniency and released to return home where he can continue to show filial piety (*shang xiao laoren*) towards the elderly man living in the house; be present for the daughter’s wedding; and allow the family to be reunited.”

What is remarkable about the petition are the arguments made for what in this situation would be a ‘just’ outcome, and the justifications given for what the petition seeks: the man’s release so that he can be re-united with his family. Broken down to its basic elements, the petition seeks to challenge the arrest made under criminal law by appealing to the family obligations that the accused man had both towards his step-daughter (referred to in the letter as ‘daughter’) and the filial obligations he had towards the elderly man to whom the accused was related only through his wife’s previous marriage (referred to as ‘father’). In addition, it is making claims about the good character of the accused, at least in so far as efforts had been made to reconcile the prolonged conflict with the elderly man. The act of deliberately setting a section of the house on fire and his threat to burn himself along with the house is presented as something that could be explained with reference to the context of the verbal abuse in which it happened, and the inability of the elderly man to treat a fellow person appropriately (*dairan*), which is itself a serious accusation that taps into ideas about moral behaviour in the community.

Simply put, the petition letter presents a person’s kinship obligations and their humiliation as a challenge towards state law, demanding those obligations to be taken into consideration as another way of looking at the situation other than as a criminal act regulated by law. The petition claims that knowing the context for this act of arson, i.e. the accumulation of tension that the man had had to endure as the ‘married in’ husband, is a crucial factor. It is notable that the petition does not present the fire as a mere careless accident or give drunkenness for example as a defence for the man’s actions. Rather, the ‘wrong’ of the deliberate fire is presented as seeking to counter the ‘wrong’ of the humiliation suffered, which is a reasoning

that involves another set of moral valuations altogether than what a defence of ‘carelessness’ for example would refer to. Throughout this thesis I will discuss similar moments where a person presents an alternative reading for a ‘just’ outcome than that offered in the law. Such justifications for an alternate reading are, it is argued, not ‘merely’ excuses but also tap into prevalent value systems.

I did also hear alternative stories about this case during the nine months I lived in this village neighbourhood. Wang Yan herself told me that her husband had been drunk when setting the room on fire and it may not have been done entirely on purpose (unlike the petition claims). Many villagers also did not have a great number of positive things to say about Lin Duyi, his morals or his work ethics when I asked them about the fire, but rather praised Wang Yan for her cunning and ability to thrive and build business success under adverse conditions. Several people quickly pointed out to me that while Wang Yan was a person of great ability (*you nengli de ren*), her husband was a person with little legal consciousness or sense of the law (*mei you falv yishi de ren*). Both are common ways for people in such dense rural communities to evaluate each other. This juxtaposition was present when the case was discussed.

What remains however is that, in the morning after the banquet, a large number of people were willing to support Wang Yan, the specific narration of the event, the justifications listed for the man’s release as laid out in the letter to the police authorities, or a combination of the above reasons. In the end the letter was not effective in securing the release of the man and Wang Yan had to employ the services of a lawyer; eventually Lin Duyi was released and paid a fine. After he came back home to the village, Wang Yan held a small celebratory banquet in his honour, setting off firecrackers in front of the house and burning almost two-meter long incense stacks on both sides of the entrance. Such a ‘hot and noisy’ (*renao*) display was a common occurrence in front of a household celebrating the birth of a child, a wedding, a significant birthday or some other meaningful life-course event. This was not a homecoming where the man would sneak back with the hope of not being noticed - Wang Yan wanted to alert every passer-by on the village main thoroughfare that something noteworthy was going on at this house. The elderly man Huang Jingguo on the other hand

disappeared soon after the fire, leaving Wang Yan to speculate that he must have gone to live with his sister, though she could not be sure of this⁷.

This incident generated a great deal of talk in the village for months after the fire as updates of the case filtered through. One evening soon after the arrest I was sitting at the inner court yard of my host family's house, together with about six of the family's friends and neighbours. It was a cold night and we were gathered around a robust camp fire blazing in a large cast iron vessel once made to contain cooking fires, each of us sitting around the vessel but avoiding the line of smoke. At one point a neighbour, a woman in her late 40s who lived in one of the poorest houses in this neighbourhood section, nods at the fire and asks: "So is making a fire at home now illegal?". Many households indeed preferred to keep open flame or a coal fires for heat in the winter months to save on electricity costs. The question prompted another woman of similar age to jump in and start explaining that there was a difference between an 'intentional act' (*guyi de*) and an 'unintentional act' (*wuyi de*), and anyway, that cooking fires or fires for socialising were different. Having gained the attention of the crowd she continued by saying that "it was a bit like the notion of 'justifiable self-defence' (*zhengdang fanwei*)": with this she meant that the *intention* of one's actions is significant, not just the action or result of those actions.

A student of common law jurisprudence on criminal law might recognise the explanation of what makes cooking fires still lawful as the distinction between 'mens rea' and 'actus reus', the post-Enlightenment notions on the role of intention (the 'guilty mind' of 'mens rea' as opposed to the act itself of 'actus reus') when determining criminal liability and punishment (see Lacey 2001:352). An act cannot be looked at in isolation from the actor. For the first woman asking the question about cooking fires was mostly a matter of practical concern, whether or not she should be aware of a new rule around making fires. The overall conversation around the evening fire however reveals something interesting about how people test and discuss ideas and concepts that are unfamiliar to them (such as certain legal concepts), and how novel situations can spark those conversations. This moment around the fire is also one that concretely suggests how change can happen from thinking about an event in 'traditional' ways of reasoning about an event or a case to thinking in explicitly 'legal' terms,

⁷ According to the usual practice of virilocal residence, a household is not expected to take in the wife's elderly relatives to live with them unless perhaps something unusual has taken place.

to be discussed more fully in the concluding chapter with reference to Zhu Suli's (2016) notion of 'native resources' for legal change. Throughout this thesis I analyse the kinds of perceptions people have about the law and its usefulness in their lives, while at times also noting competing ways of reasoning that have little to do with formal law.

During the time that the arson case was ongoing, Wang Yan, her relatives, and the neighbours in the village community had to 'figure out' a number of things: what had happened? What were the intentions of the people involved? What were the significant relations that impacted on them? They also had to 'figure out', specifically, which frameworks mattered for a given case: the morality of kinship, community norms that are broadly described as 'rural', or the legal reasoning of the state? In the process, people were engaged in re-working their models of 'modernity' and 'tradition', 'law' and 'morality', and 'community' and 'state' as they become visible and pertinent. In this thesis, I follow several actors based in Laosongcun village and (to a lesser extent) Yuhuacun village, analysing the ways in which they were engaged in 'figuring out' these different framings when they were faced with conflict: either in the sense of a 'dispute' or conflict understood as a 'contradiction'.

CHAPTER 1:

Introduction

This thesis is a study into conflict in village communities in rural Southwest China. Many of the Chapters specifically highlight cases of family dispute and how people seek to resolve them utilising different institutions of dispute mediation. Such cases are intended as jumping off points to investigate larger changes that people face today in rural Chinese society. Conflict, familial or otherwise, is a disruption or an interruption of the everyday and may lead people to problematise and question the status quo and find ways for how to proceed. As alluded by the title of this thesis, this research is a gradually widening investigation into the ways in which people in village communities ‘figure out’ their relationship to modernity, law, and the state as they appear in their daily lives, in particular when a conflict erupts, or contradictory narratives of events are offered. ‘Figuring out’ is here meant to function as an analytical tool that points to the ‘dynamic problematisations’, as I call them here, in which people engage as they seek a resolution to the conflict at hand.

Legal terms are sometimes applied to familial conflict – even though the more common description of conflict in local society is expressed in terms of family ethics and exchange. The instances of dispute mediation that I investigate in particular in Chapters 2, 3 and 4 will further elucidate the notion of conflict as interruption, and the responses people come up with. Family conflict is both commonplace (at a community level) and exceptional (at an individual level). Thus, at a community level and the level of culture and kinship practices, there are commonly known strategies and ‘scripts’ for thinking about situations that people are aware of and may rely on at such individually novel/communally common instances. Information on institutions of dispute mediation circulates among people, and the ways in which people seek out one type of mediation over another reveals something interesting about their approaches to law and tradition, and how those categories are weighed against other community and kin concerns.

The legal reforms, incrementally ongoing since the post-Mao period, and the political discourse around law are strongly linked to the modernisation of China and Chinese lives. Developing a nation governed by rule of law (*fazhi guojia*) whereby people utilise laws and

legal thinking in their daily lives is part of what “being modern” means in the state development discourse (Peerenboom 2002; Brandstädter 2013; 2011). This leads me to investigate what it means for people to use legal resources to resolve family conflict; and what those interactions with law produce.

PART ONE

I have intentionally chosen a concept as indeterminate as ‘figuring out’ because it points to an incompleteness in its object: in looking for ways to resolve conflict people may try out various routes and rationalities, be they broadly defined as ‘legal’, ‘relational’, ‘traditional’, or ‘customary’, among others. Additionally, it points to the ongoing nature of a dispute that may only find a temporary solution until a new resolution is needed.

In this section I contextualise this research within two large themes in legal anthropology: the scholarship on legal pluralism (Merry 1988; Moore 1973) and that on legal consciousness (Merry 1990; Silbey 2005). These are the two theoretical points of departure for this research. I will then move on to look more specifically into how the approaches that people choose in defending or justifying their position in a legal case or an extra-legal dispute have been analysed with the use of two different theoretical models, beginning with the classic model of litigant strategies by Conley and O’Barr (1990; 1998). This leads me to a discussion of the second theoretical model on disputes by Boltanski (2012) and Boltanski and Thevenot (2006) that involves the notion of ‘justification’ that links up to ‘orders of worth’ discussed by the authors.

The authors’ emphasis on particular moments of strategizing and justification is then applied to the Chinese context, where we find similar assumptions about modern law. I briefly summarise the introduction of Chinese legal reform, with a specific focus on the connection between ‘legal consciousness’ and modernisation. A core assumption in China (as elsewhere) has been that, as part of modernisation, moral responsibility becomes more formally legalistic and less concerned with social context (Lacey 2017; Weber 1978: 676 on formally rational

law). Finally, in section two of this chapter I will discuss the methodological aspects of this research including the related fieldwork arrangements.

Legal Pluralism and Legal Consciousness

In the prologue to this thesis, I presented the case of Wang Yan, a public event in the village, which momentarily made different sources of reasoning and normative behaviour visible at the same time. These included state law, kinship obligations, and a commitment to maintaining honour and status in the community for example. Anthropology has developed a broad area of scholarship around what came to be known as legal pluralism (see Merry 1988; Moore 1973; Tamanaha 1993; Benda-Beckman 2006). It involves the study of plural normative orders that may interact, be in competition with, or exist separate of each other. Legal pluralism scholarship began with the desire to move away from privileging the study of small-scale and neatly bounded societies and communities. It developed tools to deal with the impacts of broader processes and events such as globalisation, colonialism, the rise of supra-state institutions such as the United Nations. Despite continued formalisation and bureaucratisation of state rule, other normative orders with varying amounts of distance to state law have still persisted.

A now classic study by Moore (1973) on the concept of ‘semi-autonomous social fields’, looks at ‘social fields’ (such as a garment factory floor) that are characterised by fuzzy organisational boundaries and the fact that they are only partially separate from state law in their ability to set their own rules and practices in certain areas of its operation. Importantly, Moore shows that in a more or less stable social field, part of what made people commit to the local negotiated practices (on overtime pay or number of days off for example) on the long run had to do with the overall maintenance of social relations through gift exchange and the sharing of aspects of one’s personal family life. In a Chinese context such negotiations could be discussed using the concept of ‘social heat’⁸ for example which can create enduring and committed relationships. And conversely, formal law or legal procedure in the abstract could in China be seen as its corollary concept, i.e. impersonal and ‘raw’.

⁸ See Chau (2008); Steinmüller (2011)

Legal pluralism scholarship emphasises that societies and communities should not be seen in isolation, and that state law is not just an outcome of state imposition of power. Rather, it is also a result of the interactions between different sources of normative action at all levels of society, as well as of definite ideological currents. This observation has been theorised vis-à-vis China as an ideological movement to ‘localise’ (*bentubua*) the legal system that is seen as having some Western cultural notions which are not so well suited to a developing China⁹.

More recent strands of legal pluralism scholarship have looked for example at religious courts and their partial state recognition (Billaud 2014 on Sharia Councils; Beyer 2015 on Aksakal courts of elders); arrangements drawing from ideas of customary law in the post-colony (Mamdani 1996); and plural normative arrangements as forms of resistance to or rejection of state law (Santos 1977), to name a few. Legal pluralism as a framing device for complex normative arrangements has also gained its critics, who have argued that there is a danger in going too far in labelling a plethora of local or supranational arrangements as ‘law’ or giving different arrangements an equal weight. Roberts (2004) in particular advocates for such scholarship to not lose sight of the role of the state in backing up formal law, and the particular kind of legitimacy and legitimating power that state law has.

The present study takes inspiration from legal pluralism scholarship if not being itself a project in legal pluralism per se. The notion of ‘figuring out’ that I use here emerges from this literature but proposes to see the ‘figuring out’ that people engage in at situations of dispute as a shift in focus. Rather than seeking to identify the boundaries of normative orders and label them as ‘social fields’ as Moore (1973) might do; how those boundaries are created and policed; or what, for example, the internal workings that make those orders maintain legitimacy among its members are, in this study I look at the moments of conflict between different normative orders and their mediation. This somewhat flipped perspective will allow for an investigation into the situation-embedded meanings involved in conflict. In particular, I will examine the dynamic processes of ‘justification’, explored below, that people take up when seeking to resolve conflict. I am not arguing, as will become clear, for the existence of absolute notions of ‘justice’ (see Goodale 2017: 82) that people may hold (and much less, universal notions of it), but rather seek to point out flexibility and the ordinary production

⁹ See Zhu (2016) on some of the ideological currents in Chinese legal reform where ideas about Chinese culture and values are explicitly embedded in the legislation efforts.

of a sense of justice through the acts of justification. In sum, rather than starting with a priori definitions of ‘customary law’, ‘tradition’ or even ‘state law’, I investigate how these notions emerge in people’s strategies of resolving conflict, and how they gain purchase and heft when used. One such clear notion in this research is ‘rural culture’, which is used both by the police officers who mediate family disputes and by their clients who refer to it as a normative source of rules in conflict resolution (see particularly Chapters 3 and 4).

The study of ‘legal consciousness’ was an outgrowth of the legal pluralism movement (Merry 1990:5). It is characterised by a study of the different understandings that people have of the *same* normative order. In his critique Good (2015) notes that much of ‘legal consciousness’ scholarship has emphasised the state legal system to the exclusion of other normative orders. This has been analysed as a kind of continued ‘legal centralism’ in the legal anthropology scholarship, reproducing a hierarchy of normative orders that places state law on top, a critique prominently put forth by Benda-Beckman (1988:900). In Good’s analysis this is unnecessary because for him ‘legal consciousness’ as an analytic does not need to be exclusively used for state systems (2015:427). While the critique on the broader field is well taken, in this thesis I will however use the analytical term ‘legal consciousness’ specifically in connection with state law, acknowledging, much like Roberts (2004) does, that both empirically and analytically state law does have a specific position of power in society. Additionally, this emphasis allows for a productive focus on the Chinese legal reform agenda and how it interacts with other normative systems and, as will be examined in this thesis, the ‘orders of worth’ people may hold.

A very practical way to use the concept of ‘legal consciousness’ is to understand it in the sense of what perceptions, uses, knowledge and experiences people have of law; the research into everyday legal consciousness has looked at the moments in which people may articulate experiences such as offensive speech with the use of legal concepts, and how sociological factors such as social status, gender and race may play a part in the understanding of where the law fits for a person; and in which situations to articulate grievances with the use of legal concepts (Ewick and Silbey 1998; Nielsen 2000). Silbey (2005) in her critical essay on the field of legal consciousness studies urges anthropologists to utilise the concept to its full to analyse the ways in which ‘legal hegemony’ is created, maintained and challenged in society by tracking legal ideology and consciousness; in other words: “how the different experiences

of law become synthesised into a set of circulating schemas and habits” (2005:323). This requires a study into how and why legal authority suffuses everyday life in such a way that it goes unnoticed, or at least gets challenged only through the channels available within law itself (Silbey 2005:331).

The creation of a modern legal system, and the attendant construction of legal hegemony that is habitual, is an important component of the modernisation theory in social sciences: the idea of modern social development as an inter alia formalisation and rationalisation. This is also a stated goal in China’s state projects of legal and economic reforms. Murphy (2004) notes that when thinking more broadly about what state law and its use ‘does’ in societies with modern legal systems, it can helpfully be understood as a system of classification or a ‘grid’ that provides “ways of organising what through its epistemic filters it considers to be facts” (2004:122), creating thus hegemonic understandings. Ewick and Silbey (2005) utilise the term ‘legal consciousness’ more specifically as the participation in the construction of legality in society, where ‘legality’ refers to “the meanings, sources of authority, and cultural practices that are commonly recognised as legal” (2005:347).

This thesis will address this debate on legal consciousness from a particular angle: by looking at those moments of ‘figuring out’ where people weigh their options for which institutions to reach out to, or which general strategy to follow in that situation. The particularities and meanings of using the law and its institutions becomes again visible when contrasted with other possible routes in that social world. ‘Figuring out’ as a dynamic problematisation is the opposite of habitual action. Classically, Weber states as part of his rationalisation thesis that a ‘belief’ in legality and legal authority comes to be established over time and turns routinised or habitual (1978:263). Looking at the case of China, where such ‘belief’ may not be fully habituated, is thus also one way of addressing the idea of rational modernity.

‘Rule-based’ and ‘Relational’ Litigants

In their ethnographic study of discourse in small claims courts in the United States, Conley and O’Barr (1990; 1998) look at the orientations of litigants as they presented their own case or gave oral evidence in court. The authors investigate what a person’s use of state law (as

part of their ‘legal consciousness’) might reveal about the values that a person holds meaningful in relation to the case being argued in court. They note that there are large divergencies in how people identify and analyse legal problems, and when and how they bring them to the formal legal system. The authors present two polar opposite strategies that people utilise when they take their case to court: what they call a ‘rule-oriented approach’ and a ‘relational approach’. A purely ‘rule-oriented litigant’ would see law as a system of rules that are precise in assessing responsibility, with a view of society as a network of contractual opportunities that each individual can enter into on a case-by-case basis. A purely ‘relational litigant’ conversely has a view of society as a network of relationships that a person is partially caught in without choice; with regard to a dispute and how rights and responsibilities for events should be allocated, such litigants would focus on status and social relationships. Law for such ‘relational litigants’ is there to assign rewards and punishments according to the broad notions of social need and entitlement (1990:58-59), rather than being a tool for agreements between atomistic and self-interested individuals.

The authors note the following about ‘relational litigants’:

“In court, such litigants strive to introduce into the trial the details of their social lives. Their accounts of their troubles emphasise the social networks in which they are situated, often to the exclusion of the contractual, financial, and property issues that are typically of greater interest to the court...Whereas the law demands specific proof of responsibility, litigants giving relational accounts are more likely to assert that certain things “just happen” to certain kinds of people. Predictably, the courts tend to treat such accounts as filled with irrelevancies and inappropriate information, and relational litigants are frequently evaluated as imprecise, rambling, and straying from the central issues.” (1990:58)

Conley and O’Barr analyse at length excerpts from court proceedings as a basis for distinguishing between the two orientations. A rule-oriented litigant may not actually refer to laws but still present an account that is a “deductive search for blame” making such a litigant able to adapt to the “logic of the law and the agenda of the courts” (1990:59). The authors continue:

“For example, in a dispute involving a contract, a rule-oriented account would contain a statement about the existence of a valid contract, interpret the meaning of the contract, and present facts that bear on whether the parties have met their obligations under the contract. It would not emphasise motivations, feelings or reasons why the contract should have never existed, nor would it beg for understanding of contract violations on the basis of social considerations that supersede the duty to perform contracts” (1990:59).

These two excerpts make a strong case for ethnography of law to pay close attention to the language people use in making their case, and additionally, to not only analyse the substance of the statements people make but also the structure in which the substantive argument is expressed. In Chapter 3 where I discuss a dispute mediation at a police station more closely, it will become clear how purposefully ‘illogical’ and ‘performative’ actions and statements form part of an argument in the ‘relational litigant’ vein – a kind of argument that could never be accepted in a court mediation. In Chapter 6 I refer to this model in discussing legal aid lawyers explaining such ‘rule-oriented’ concepts in legal procedure as ‘evidence’ and ‘legal fictions’.

However, the argument here by Conley and O’Barr (1990) is centred around the idea that people, when bringing their case to court, will always see their dispute as a *legal* problem, even if they are a ‘relationally oriented’ litigant. In Chapter 6 where I look at the profession of legal aid lawyers, I take up this issue and will argue that people may indeed not make such stark distinctions between legal and non-legal problems. In other words, even when taking their dispute to a decidedly ‘legal arena’ of the courts, backed up by the authority and institutions of state law, my research points to the observations that people may not see their case as a categorically different *legal* case or see the need to argue their case differently. A family dispute may still be presented the same, using the same justifications, just argued at a different arena. In China the emic category of ‘legal awareness’ (*falv yishi*¹⁰) is used in connection with the legal reforms as a way of speaking about the purportedly low levels of legal understanding among ordinary people. ‘Legal awareness’ seeks to effect change in this

¹⁰ The Chinese term ‘falv yishi’ is most typically translated as ‘legal consciousness’ into English. Here I will however use the translation ‘legal awareness’ to distinguish this emic concept from the etic one that is the study of legal consciousness in anthropology.

aspect especially: to make people see the difference between a legal case and another kind of case, and to know what laws can do, how to argue a case in legal terms following such legal procedures as the evidentiary requirement. In short, the aim to raising 'legal awareness' as part of the legal reforms is to produce 'rule-oriented' litigants who are able to approach blame deductively with reference to a broader set of legal rules.

Chinese legal education (*pufa*) aims to popularise laws and to encourage people to use the law (Brandstädter 2011); this is similar to other discourses of population development in China that for example seek to raise the civilizational 'quality' (*suzhi*) of the Chinese people themselves (see Kipnis 2006; Jacka 2009). This picture of the aims of the Chinese legal reform including the attendant legal education campaigns is somewhat complicated by the fact that what are called Confucian values around familial obligations and community-oriented morality are also part of the Chinese political discourse that shows up in legislations as well. This is part of what Zhu (2016) calls the 'localisation' (*bentubua*) of the Western legal system into China that incorporates mainstream moral expectations or 'native resources' (*bentu ziyuan*) of thought into the legal code (see Chapter 3).

In essence, where a 'rule-based litigant' will refer to rules (and those from 'plural orders' could be included here theoretically) and procedures, a 'relational litigant' will talk about their own place in the system of relationships; what kinds of people they are; and the ways in which 'the system' in place does not respond to that reality. For a 'relational litigant' legal rules are not capable of catching or seeing them as full persons embedded in social relationships in the first place.

To summarise, having laid out the theoretical groundwork through a discussion of legal pluralism and legal consciousness and how they resonate in this research, I moved on to address the Conley and O'Barr's (1990) model for analysing ethnographic data on dispute and its linguistic articulation. Seeking to avoid a teleological outlook to studying law in modernisation, or the essentialising conclusions that aspect of Conley and O'Barr's and Zhu's (2016) research may rely on, in the next section I move on to the second model for looking at dispute and conflict. By introducing the research on 'justification' and 'orders of worth' by Boltanski and Thevenot (2006), I hope to emphasise the dynamic approach that

people take to conflict, whether familial or within the community, and how conflict can act as an impetus for a broader reflection on social change.

'Figuring Out' Unpacked: 'Justification' and 'Orders of Worth'

Some of the early work in legal anthropology theorised about the location of law in community and proposed to not pathologize dispute as something that has 'gone wrong' in the ordinary course of everyday social lives (Comaroff and Roberts 1981:5). Rather, it was proposed to see conflict as something that is part of social life proper. Separating 'law process' from 'social process' began to be seen as analytically artificial (1981:13) as more attention was paid to the ethnography of law. Disputes, it has since been argued, have a role in constituting the social world: when there is a tension between what Comaroff and Roberts call the "sociocultural order" and the "normative repertoire" of a person – when an individual is required to manoeuvre among the broader structures of society – a conflict turns productive. The key for Comaroff and Roberts however is that while social structures may be formally governed and ideologically constituted, they are also open to challenge, change and individual autonomy (Goodale 2017:18).

In the model of 'orders of worth' Boltanski (2012) and Boltanski and Thevenot (2006) present an argument that people will always, when seeking others to agree with their point of view in a dispute situation, refer to common and generalisable principles that the authors call 'orders of worth'. The authors utilise the concept of 'worth' to highlight that a 'worth' always refers to something that can be justified, and which exists independent of the particular situation or individual in question. More specifically, such an order is based on principles of equivalence so that, in the event of a public dispute, it is not only the truth or the facts of the matter that the disputing parties seek to establish, but also which 'order of worth' applies in that situation. Key for the authors here is that people have access to several 'orders of worth' at one time in what they call the philosophical background (Steinmüller 2017: 140) of society: in the end it is the *situation* rather than the individual or a social whole that is decisive in shaping which worth will be argued for as bringing justice (ibid.). The authors are here arguing against a view that agreement on what is 'just' or 'justice' can only occur when people share the same *values* (or if 'justice' is conceptualised only as 'correct

procedure’): in this model of ‘orders of worth’ the contention is that justifications are much more situated in a moment than the notion of ‘values’ would suggest. Hence the term ‘worth’ is used deliberately instead of ‘value’ because values are not, the authors argue, necessarily oriented towards justice, while ‘worth’ in the authors’ usage always presupposes a reference to a justifiable *order* (2012: 47). Finally, Boltanski and Thevenot seek to “develop a theory of agreement and disagreement that does not merely entail an encounter between arguments and principles”; rather, the authors “present a theory that accounts for the confrontation with circumstances, with a specific reality... a theory that accounts for the involvement of human being and objects in a given action.” (2006: 128)

In this research, I highlight specifically the event-like nature of conflict (broadly understood) and dispute mediation. In those instances (be it a funeral as in Chapter 5 or an inheritance dispute as in Chapter 3), the aspects of social life that are hegemonic and ordinarily hidden, or existing without much comment, can suddenly become very visible as they are defended or argued upon. Solutions to resolve such conflict are justified with the use of ‘worths’ that may not be typically brought up in everyday social interaction. It is important to note that the citations above highlight “circumstances” and “action” instead of a set of *a priori* values; this speaks to the findings in the present research as will become evident. I am not proposing that people do not have *a priori* values when coming into a situation of conflict, but the danger or essentialism looms large if those values are taken too much at face value and ‘set’. Additionally, Boltanski and Thevenot (2006) also offer a way beyond a simple ‘modern law vs customary law’ opposition as their theory of ‘orders of worth’ shows that both ‘modern’ and ‘traditional’ approaches to law or morality imply certain types of reasoning.

Boltanski (2012) notes the following on reasoning:

“In disputes of justice, people present critiques and offer justification. To do this, they must make a particular use of language that consist in moving to a higher level of generality, so as to bring out the principles of equivalence that support the prevailing order of worths in a given situation” (2012:69).

In the quote above Boltanski takes up the issue of generalisation. This step to ‘kick up’ the justification to a level that in turn links up to larger principles is also what distinguishes their

model from that of Conley and O'Barr in the previous section. While the 'relational litigant' remains in the world of the particularities of one's story and how it connects to other particular stories, here the model that is presented proposes to see the underlying system logic in the argumentation of a 'relational litigant'.

The sociologist Honneth (2010) summarises the basic assumptions that Boltanski and Thevenot propose as a three-step process. The first step is the assumption that actors are not intransparent to themselves but coordinate their plans for action using what they have learned about how to live in the particular social milieu in question. People are here not imagined in the Durkheimian model as plugging into a pre-existing collective consciousness that allows for harmony in community living; similarly Malinowski (1951) in his seminal "Crime and Custom in Savage Society" worked against the idea prevalent in early anthropological study of 'other peoples' law' that the "fetters" of tradition would be accepted unconsciously and "as a matter of course", noting that "the dogma of the automatic submission to custom dominates the whole inquiry into primitive law" (1951:10-14). Boltanski and Thevenot rather propose to see people as being able to resort to more than one "model of social order": such models always exist in the plural, and people have their own criteria for choosing among them, as Honneth (2010:377) notes.

The second step of the model proposes that people "can only gain knowledge about models of social order, which aid them in coordinating their intentions, when so called "unnatural" situations occur in which the flow of standard lifeworld practices is interrupted". For Boltanski and Thevenot the moments of "crisis" or conflict can be usefully observed for the purposes of studying the rules of social integration: when people have to 'fix' something that has gone wrong and engage in a "reflexive problematization" of conflicting ideas of order, such moments also show what are those "normative background convictions that enable the coordination of individual actions" in the social setting, from the point of view of the actors themselves (ibid.).

Finally, in the third step, the authors propose that such "unnatural" moments of crisis where ideas about the normal social order are scrutinised discursively can be seen as crucial for social reproduction, as Honneth (2010) summarises:

“Social life is characterised by a “necessity of justification”, which regularly forces the members of society ... to disclose and defend their latent conceptions of order. Such points of discursive justification represent the reflexive aspect of social reproduction through which what has previously been given implicitly by the routinised flow of interactions in the lifeworld is explicated” (2010:377).

In this final step the people involved in a situation of conflict are forced to offer explanations for why the conflict should be regulated by one order and not another (ibid.). Boltanski and Thevenot note that ‘justification’ as a process is also different from what is studied, following Weber, as ‘legitimization’ which can have a meaning of deceit (or I would add, ideology) attached to it; it is also different from a situation where the conflict leads to outright violence or where the threat of violence is a real concern. A social world is always rather in a state of being in danger of “falling into disarray” and efforts must be taken to restore or maintain order; in fact, people “never stop suspecting, wondering, and submitting the word to tests” (2006:37), and justifications work as such mediating vehicles.

The idea of ‘figuring out’ that I present in this thesis is akin to the notion of ‘testing’ one’s social world, with ‘figuring out’ being here used to emphasise the conscious deliberation involved. Additionally, while the authors use the term ‘reflexive problematisation’ to describe the three-step process, for the purposes of this thesis the slightly modified ‘dynamic problematisation’ is used to point to the action and change-oriented approach that people take. People do not seek to ‘figure out’ their approach to conflict – or indeed their relationship to modernisation, the law, or the state in China – only as a self-reflexive activity; rather such ‘figuring out’ here is oriented towards problem-solving and ‘fixing’.

In part two of this introduction I will first outline the main points of the legal reform agenda. I will then address the practical and methodological arrangements involved in the fieldwork period undertaken for this research project.

PART TWO

Legal Reforms in China

The state project of legal reforms was formally launched in 1978, but since that time it has gone through several waves in its emphasis, and different sectors of the law have been prioritised at different moments of the reform (for a comprehensive discussion on the Chinese legal reform see: O'Brien and Li 2005 and 2013; Peerenboom 2002; Shen 2000; Potter 2001 et al). The frequently repeated aim for the reforms is to turn China into a 'rule of law society' (*fazhi shehui*) with modern and professional institutions. The term 'rule of law society' itself encompasses political, economic, administrative and ideological aspects. In the everyday political sense in particular, law is seen by the reformers also as a tool for governance and is thus closely linked to state policies. This is well acknowledged in the political rhetoric (Folsom and Minan 1989:30; see also Diamant, Lubman and O'Brien 2005), while being in contradiction with the classic Western view of 'rule of law' and the doctrine of the separation of powers.

The state project of legal reforms also has a strong moral and developmentalist component to it, especially when a private and familial conflict comes to contact with legal procedures. This will be discussed in Chapter 7 in more detail with reference to the efforts to 'localise' China's laws to accommodate what are seen as the particular circumstances of Chinese traditional moral notions. An overview of the civil law reforms in particular is succinctly provided by Woo and Gallagher (2011). If law incorporates ideas of what is perceived as particularly Chinese tradition, it also has social effects when people come into contact with it in their everyday life and utilise it (Oxfeld 2010), such as the evolving ideas about the proper legal marriage age.

While speaking about 'the legal reforms' may at first seem a uniform and predetermined process, it could more accurately be described as a process that seeks to 'test' certain reforms and ideas gradually at first, paying attention to how they fit on with 'local conditions' on the ground (Huang 2010). Such a gradual approach has been the mainstay in the economic reforms in China, which the oft-quoted motto, 'crossing the river by feeling the stones',

attributed to the Deng Xiaoping, speaks to. Similarly, some areas of law were reformed early on, while others (in particular areas of the civil law) became a focus much later as the reforms progressed. The Marriage Law is such an example of how the reforms at times address very specific lacunae in the existing law, resulting in layered and piecemeal legislation (Huang 2010: 92).

Methodology, Fieldwork Arrangements, and Demographic Conditions

I conducted the research for this project over a period of 18 months, residing in Tengchong County from December 2014 to September 2016. The time was split so that I stayed a total of 12 months in two villages within a 10km radius of the County seat of Tengchong City, and about 6 months in the city itself. The first time I arrived in Tengchong City¹¹ was on Christmas Eve of 2014 in order to conduct a month of exploratory fieldwork; I spent that first trip visiting places and different households with my local contacts and taking trips with them by bicycle to the surrounding villages, to explore possible rural fieldwork locations.

My main local contact in Tengchong City was a government official in the City level government who had worked in several positions during his long career in local government. For this reason, he knew people at various other levels of government personally, as colleagues or by name, and was able to introduce me to the village administration¹² of both of the villages in which I conducted my research. After the head of village administration in both places had given me the permission to settle down in there for the duration of my research, I was then introduced to a local family in both of the villages. The initial contact person in the first family, a man in his early 70s, had long before retired from his job in the local government; the contact in the second family, a man in his mid-40s, was married to a distant relative of my Tengchong City contact person. Both of my village host families, as well as my host family in Tengchong City, gave me invaluable insight into the daily lives,

¹¹ How I came to settle on Tegchong County as a fieldwork location was through various conversations with anthropologists based in Kunming, the capital of Yunnan Province, as well as through the contacts I initially made there during my exploratory fieldtrip. I remain deeply grateful for the people I met in Tengchong in those early months and throughout the fieldwork period, for their invaluable assistance to me.

¹² Here I use the term 'village' for the Chinese government administrative level of 'shequ'. While a rural 'shequ' is typically translated into English as 'community', I have here chosen instead to reserve the word 'community' in its meaning as a sociological concept.

family arrangements and household practices of the people living in the surrounding villages and in the city.

Initially, choosing Tengchong County, and especially the central-southern Tengyue Township as my research site, had a great deal to do with some of its demographic aspects. It is one of the few Counties in Yunnan Province that has a majority Han-Chinese population, in a province that counts 25 ethnic minority groups within its borders. This was significant for my project as I did not intend to explore the plurality of different legal orders along the ethnic group lines, or the dynamic between the ethnic minority legal orders and the majority Han-Chinese ones (see for example Erie 2015; Pirie 2013). Rather, the persons involved in this research all identified themselves as Han Chinese and being part of a broader Han Chinese cultural sphere.

During the one-month preparatory fieldwork period (December 2014-January 2015) Tengchong County was confirmed as being a good location also because of the kind of research access I would be able to have with the help of my initial contacts. Additionally, Tengchong County itself was going through rapid changes with more to come in the near horizon: during my fieldwork a new bridge was opened that cut some 3 hours of driving time between Tengchong City and the provincial capital of Kunming; the building work for the international terminal at the small local airport had already begun with plans to operate regular flights to Myanmar and Thailand in the future; and the city was experiencing another overhaul of housing stock with low-rise old apartment buildings being razed to the ground and new high-rises and entire new residential compounds being erected in almost all districts of the city.

Before the end of my fieldwork in 2016, Tengchong County (*xian*) was also re-categorised into a Tengchong City¹³ (*shi*) level administrative unit. This upgrade from a '*xian*' to the '*shi*' level gave the local administration a larger budget as well as more powers of self-determination than previously. While it is difficult to say what things like bridges, airports,

¹³ Here there is a potential linguistic confusion as the word 'shi' is used in the classification of the levels of government in China to denote both a metropolitan area, a 'city' in the way of London or Shanghai, as well as sometimes to denote an often very large administrative area where such a city forms only one part. In this thesis I will continue to use the word 'County' (written as capitalised) to denote the large area, and 'City' for the smaller metropolitan area, both caught by the Chinese term 'shi'.

and a more prestigious administrative classification mean for a project in anthropology, not to mention for the people living in that place, the question is best approached by thinking about it in terms of many other Counties in China with a low density of population and a high reliance on agriculture over industry. Tengchong County, despite its location as a border County and a certain geographic and developmental ‘remoteness’, is not a net loss County, but one that is able to retain families with children, especially in the southern part of the County. Many people I talked to also kept coming back to a sense of pride about being from Tengchong County, associated with an illustrious history as a border trading area that was made historically prosperous by the “great families of Han-Chinese merchants”¹⁴. While the local government has in recent years promoted the idea of ‘Tengchong culture’ (*Tengchong wenhua*) as something distinctive for the locals to be proud of and visitors to the Country to enjoy, this was also a sentiment that resonated among people who were not associated with the government. Such a ‘Tengchong culture’ would typically also be seen as including the idea that Tengchong people are very loyal to their lineage of birth or marriage, including knowing about at least some of its historical origins of the lineage, doing the associated rituals, and having a sense of how people are connected to each other. A common refrain is that ‘one’s lineage is important’ (*jiazū ben zhongyao*) and something that should be materially present in the daily life through such spatial arrangements as the ‘ancestral altar’ or ‘ancestral room’ in the central part of the house, or through the observance of rituals.

The villages surrounding Tengchong City, the main location for this research, have also been experiencing their own changes, though the level and speed of the upheavals would vary from village to village. For the residents of the villages I lived or conducted my research in, one large shift was that there was work available in the nearby Tengchong City, allowing

¹⁴ Private conversations with a local historian who had worked for the County culture bureau before retiring made it clear to me that historically Tengchong is much less ethnically Han Chinese than it appears to be when people trace their lineage histories. According to this historian, it was not uncommon for cross-border merchants to change their name to a typically Han-Chinese one to gain some advantage; similarly, many lineage books have likely been modified at some points to present a longer association with Tengchong County than is the case historically. For this reason, according to this historian and a few others knowledgeable about the topic I spoke to, many more lineages than is feasible have been able to trace their ancestry to a handful of ‘original ancestors’ in Eastern China (particularly a few areas in Zhejiang and Jiangsu provinces). These ‘original ancestors’ would have first settled to the region some 250-300 years ago, either as soldiers sent by an emperor as part of the strategy to colonise and pacify the border areas, or as civilian settlers and merchants. Such population transfers did indeed occur. However, the story of being part of a very long and uninterrupted line of Han settlers is an important one in the construction of a kind of generalised Tengchong identity, one that also sets itself apart from the ethnic minority areas in the north of the County and the next County in the south, as well as the populations living across the border in Myanmar in the west. It was pointed out to me for example that the local architectural style references the very same eastern seaboard areas of Zhejiang, Jiangsu and Jiangxi provinces. Another important aspect of this identity formation is the idea that Tengchong people have been very diligent in retaining the Han Chinese rituals of their ancestors, occasionally referring to these rituals as ‘cultural relics’. This, it was said, was the case despite the forced disruptions to such practise at different points of the 20th century.

many people to commute from their homes in the villages to construction sites, restaurants, supermarkets, retail outlets, parking garages, hospitals and other places of such work that had positions available especially for people even with only primary school or middle school education. One of the local village Party Secretaries whom I interviewed noted that it was a common occurrence to hear the sounds of a cavalcade of motorcycles or electric bikes at five or six in the morning leaving the villages, and again coming back at six and seven in the evening. Such changing conditions of work had resulted in a so-called 'leave early and return late' (*zao chu wan gui*) patterns of work for many people in the villages.

Alternatively, working age men who were not in schooling might stay 2-3 weeks a month at construction sites that were far away and not convenient for commuting to from their homes each day. Women, and especially those who no longer had small children to care for, could also engage in employment that occasionally required them to be away from the village. One common form of was food preparation employment by becoming part of a group of cooks who travel to banquet halls to do the cooking for the large-scale banquets typical in the area. Such labour migration patterns are discussed by Kipnis (2016), where the movement is *within* a Country rather than the more often talked about migration across provincial lines to for example the factories on the east coast or in the south. The particularities of this pattern of migration lead to people being able to keep a tighter hold of their kinship and other obligations, including their parental care for their small children and their elderly parents, and participate in more of the lifecycle events in the communities.

People who stayed in the villages to work were often still servicing the City or County economy in other ways by engaging in at-home food production of rice noodles, steamed and fried buns or tofu for example, which would be sold at the markets in the city, alongside with a large range of agricultural products from small-scale farming. Additionally, in the villages where this research was conducted in, it was still possible for most households to retain a plot of farmland to grow rice for their own consumption (or hire a villager to do it on their behalf), and vegetables to add to their diet; in a few of the surrounding villages, the local government had taken possession of much of the village farmland to expand the city, leaving a larger proportion of the villagers dependant on the market for their food. Such plans for land repossession were also a topic of frequent gossip in the villages in which this

research was conducted, but to my knowledge concrete plans had not yet been drafted at the time of the research.

Throughout the Tengchong County research period between December 2014–August 2016 I had a room in Tengchong City in the home of the family I call my city host family. From February to May 2015 I mostly stayed with my first village host family in the village of Yuhuaacun, some 5km away from Tengchong City. However, it became untenable for me to stay beyond the initial three and a half months with this family, as I began to understand that it was a little bit too much for my host parents (both in their early 70s) to care for me, the 6-year-old grandson and the 91-year-old elderly mother on a daily basis while the grandson's parents, a couple in their 30s, worked long days in the city. From May to October 2015 I went back to living in Tengchong City, commuting to the nearby villages from there. From November 2015 to August 2016 I stayed with my second village host family in the village of Laosongcun some 10 km from Tengchong City. The first and the second villages were connected by both a narrow village road and a motorway, and so I continued to do research in both throughout. Naturally, my place of residence was very significant for the kinds of events I would be invited to attend: whom I would meet on a daily basis; and in what kinds of activities I would be able to participate in the evenings¹⁵. The two main rural police stations, both important locations for this research, were along the same highway that connected the two villages: the head of the precinct was in Yuhuaacun village, and the subsidiary station was located opposite to Laosongcun village. The radius for this research was thus within some 10km, including the two legal aid centres and various local government offices in the city. I typically commuted these distances by bicycle or sometimes by hailing a mini bus or a taxi from the motorway; as time went by, I got recognised by many as the foreigner who went everywhere by bicycle, notable also because it was very uncommon for a young person to ride the local distances by anything else than a motorbike or an electric scooter.

A typical fieldwork routine in the second village where the majority of the events described in this thesis took place found its shape quite quickly. At that point I had lived extensively both in the first research village and in the City, so I had a good sense of the overall place;

¹⁵ Both of my village host families did not want me to come back late in the evening unless unavoidable; this meant that I made sure to come back to the village before it got fully dark, or alternatively spent the night at my city host family's house if I could not get back in time. It was however possible for me to visit houses within the village late into the evening.

how to approach people; and what was possible for me to research in the first place¹⁶. I would typically spend the mornings near my host family's house, as my host mother would prepare lunch for us at 11 am or so; at times if there was a dispute mediation at nine in the morning or someone preferred to meet with me before lunch, I would make arrangements to eat the first meal of the day elsewhere. Most typically, however, my hosts expected me to eat the meals with them at 11 in the morning and 7 or 8 in the evening, thus structuring my day.

The best times for observational research at the police stations were in the morning from 9am until noon or from 2pm onwards after the police officers came back from their midday break. Sometimes my police contact would call me when they knew that there would be a dispute mediation that day or on another day that week, but more typically I would simply show up at the police station at different times and on different days and see if some of my contacts was on shift and if something was going on. A few times I was also invited to have lunch at the police station where a cook would prepare a meal each day for those on shift.

Other places that I would walk to in the area were the different Buddhist temples nearby. This was another way of meeting people from the villages outside their homes, especially during the various temple festivals. The temples were spaces largely frequented by women in their 40s and up, giving me a chance to have long conversations with them in an environment outside their homes. Every four days Laosongcun village had its market day for vegetables, fruit and cooked food, but also for miscellaneous household and farming items, clothing and ritual items. I made sure to go to this market whenever I could as it gave me yet another chance to bump into people I had met elsewhere; see what new items were being sold, and in general participate in the life of the village. At times I would catch the market days in the nearby villages as well.

¹⁶ Some research avenues, however, remained closed. I had a few conversations about potentially being allowed to observe the lawyer-client interactions over a longer period of time at the legal aid centre in Tengchong City; the daily mediation work at the Township legal administration office (*zhen zhengfu sijasuo*); or court cases at the Basic People's Court. In the end I was not given permission for such observational work, but I was able to have extensive interviews with the key parties involved (excluding the court personnel) at their offices, and in those instances also to observe the life of the offices as people came and went including the clients. Whenever I came to visit, I was always warmly welcomed by the people working in these City offices. The reasons I was given for such research restrictions had mainly to do with concerns over confidentiality commitments and a generalised worry about a non-Chinese national observing what were described as 'sensitive' (*minggan*) issues, even when I made sure to stay away from the obvious topics of potential political controversy.

During the final six months of fieldwork I started making regular interview appointments with people I either had got to know quite well or with people I knew had had a mediated dispute or legal problem in the past. I also made sure to interview the Party secretaries of all three villages I worked in, as well as setting up open-ended or semi-structured interviews with the police officers I mainly worked with. I also interviewed and met socially with the legal aid lawyers at different points of fieldwork, going back to speak to them to clarify some points, or to ask about actual dispute cases I had encountered or heard about in the villages. Finally, I spoke a few times with people at the City and Township judicial administration offices (*sifasuo*), including with people whose work involved coordinating legal aid services in the City or Township, and who were engaged in dispute mediation work themselves.

In the data analysis phase, I hired a research assistant based in Kunming, the capital of Yunnan province, to transcribe the dispute mediations that I had observed taking place in the rural police stations; the semi-structured interviews I conducted with some key research informants; and a few instances of informal conversation. The recordings were in standard Mandarin Chinese or in one of the local Yunnan dialects, and the final transcription was produced in standard Mandarin Chinese characters. Having access to textual representations of organically evolving conversations; mediation events lead by police mediators, and interviews where the conversation was guided along by me, allowed me, at certain points in this research, to analyse the language that is used when talking about broadly legal topics in these different discursive settings.

Conley and O'Barr (1990:34) note that using a 'legal case' as a unit of analysis and comparison can be problematic while also having its advantages. It can create an artificially constituted 'thing' that freezes the moment in court (or elsewhere) as the object of analysis; but on the other hand, it is also one of the few moments whereby much of the assumptions held by the different parties can become explicitly visible while they are being defended. In this project where the dynamic and situational problematisation or 'figuring out' is a central moment of analysis, 'the case' as an object affords precisely the kinds of moments in which it is possible to observe people defending their positions and almost 'thinking out aloud'. Furthermore, even though I did not otherwise follow the lives of all the people whose disputes I observed, I did become familiar with the context in which the parties to a dispute lived by means of classic ethnographic research practices, if not the lives of those people specifically.

PART THREE

Outline of the Thesis

The analysis presented in this thesis will be developed through five main empirical chapters. The organisation of the chapters is done according to a spatial principle of moving outwards: starting from the village social worlds (Chapter 2); moving on to the rural police stations positioned predominantly along the main thoroughfares connecting the villages to the nearby Tengchong City (Chapters 3 and 4); examining a village funeral where the village social worlds come into a direct conflict with state officials and other ‘outsiders’ arriving from outside the village; and finally arriving to the city and the legal aid centre. The reason for this disposition is not merely poetic but rather it rather describes a path that many – though not all by any means – family disputes take when people seek out dispute mediation: people may well first seek out a person in the village to act as mediator; then move outwards to the institution of police mediation or mediation by (village) administration personnel; and finally find the lawyer’s services in the city. The way people describe their options also point to an experience of moving from the familiar to the unfamiliar when embarking on such a journey, which also involves acquiring new skills and behaviours along the way.

I start in **Chapter 2** with the description of a dispute that a person in Laosongcun village whom I call auntie Li had with her neighbour. Here I examine the various strategies she thought up to find a resolution for the conflict. The chapter revolves around the complexities of ‘figuring out’ a solution to a problem while still seeking to remain a moral person in her community and the village at large. Here I discuss what sources of (rational) behaviour or ‘orders of worth’ may be available, and touch upon how such a case as auntie Yin’s dispute may speak about the present-day Chinese village society.

In **Chapter 3** I shift the perspective to look at the work of rural police officers who mediate civil law (and predominantly familial) disputes at the rural police posts. I examine their work, which involves handling different rationalities when mediating a dispute. In this chapter I

present a case of the two brothers Lu whose dispute revolves around the question of how to divide the responsibility and financial contributions involved in caring for their elderly mother. The rural police station is analysed as a nexus where many of the (sometimes conflicting) views on what would be a just outcome would be in such a dispute are made visible and debated.

Chapter 4 continues the discussion on the work of the police mediators, focusing on how they seek to classify the disputes; what strategies they develop in their work, and what they see their work as involving in the larger legal system. The notion of expertise is utilised as a framework for the discussion. The classification of disputes is understood here in particular as a way in which the police officers can personally influence on the course of the dispute mediation, adding their own understanding of the relevant laws into the proceedings.

Chapter 5 takes a step away from the particular cases of dispute and examines conflict in a very specific ritual setting: the funeral of a notable local writer. Here the point of conflict is in the different interpretations that the visiting state officials bring to the funeral as ‘outsiders’ compared to the traditional type ritual behaviour that is more typical in a village social setting. The arrival of such ‘outsiders’ prompts the need to ‘figure out’ work-arounds and ‘fixes’ to manage this conflict so that both of the understandings can be held in the same ritual setting at the same time.

In **Chapter 6** the focus moves to the city where I examine the work of the legal aid lawyers as they help their (often rural) clients to bring their dispute cases into the court procedures. Here I also deal briefly with the developing institution of legal aid in China. The question of ‘legal consciousness’ is central to the work of the lawyers: here it is presented in the context of the ‘figuring out’ that the lawyers engage in to explain the law, the legal procedure and the concepts of evidence and legal fictions to their clients. This chapter hence is a counterpoint to discussion on the work done by the rural police officers. For the lawyers working in the legal aid centre their work represents the future, a more ‘developed’ way of conducting social relations in the event of a conflict.

CHAPTER 2:

Dilemma of Auntie Yin:

Paths for Resolving Disputes at Village Level

In this chapter I explore what options, institutions and sources of logic are available and common for people in these rural communities in question to utilise when they become involved in a dispute. I will begin by outlining first the system of dispute mediation briefly. I will then move on to looking at, in some detail, a case of a dispute in the village of Laosongcun involving a woman in the late 40s called Li Min (whom I came to call ‘auntie Li’ in my interactions with her) and her immediate neighbour. This leads me to consider some of the meanings attached to the idea of the village neighbourhood society as one among a person’s everyday points of reference, and how those immediate associations interact with both kin relations and legal and bureaucratic circles. I will then move on to briefly consider the institution of local mediation by a trusted village mediator. What kinds of normative evaluations do people make of the various institutions available for them in seeking to resolve their disputes? In what ways do people take into consideration their positionality as also being part of (normative) communities in making those evaluations? In the latter part of the Chapter I will go back to the model of ‘orders of worth’ introduced in Chapter 1, to consider what justifications for a desired outcome such forms of mediation give rise to and why they hold meaning for the people utilising them.

Dispute Mediation in the Chinese Legal System

The institutions available for people to seek out a resolution to a dispute¹⁷ can be said to exist at several levels of formality or ‘state-ness’. In the formal description of the Chinese legal system, dispute mediation overall is divided into four categories; for the purposes of this research, however, only two of them are pertinent¹⁸: judicial mediation (*sifa tiaojie*) which in family law cases is almost always a court-led process (Woo and Gallagher 2011), and extra-

¹⁷ A useful summary that breaks down dispute mediation in the way it is formally laid out in the Chinese legal system can be found from the following English language resource managed by the Legal Resource Center of Peking University: http://www.lawinfochina.com/legal/Display_7.shtml

¹⁸ The four different types are: civil mediation; judicial mediation; administrative mediation; and arbitration mediation.

judicial civil mediation which also goes by the name ‘people’s mediation’ (*renmin tiaojie*) in Chinese. A dispute such as Auntie Yin’s could be handled in either. From the point of view of a person living in a village¹⁹ however, this 2-part split is not what is most often referred to, and this split was not well known in the first place among the people I talked to for this research. When speaking about options for resolving a dispute, people reference a larger number of institutions for dispute mediation, options which are often centred around the specific people involved as mediators.

In this research I distinguish between three levels of dispute mediation: the village level; the level of officials (which includes police officers acting as mediators); and the level of the courts. The boundaries inside the various institution are however porous with the same people sometimes occupying several institutions at once, and some institutions may not exist everywhere, not even in the next village over.

Article 111 of the Chinese Constitution specifies that each village administration must establish a people’s mediation committee (*renmin tiaojie weiyuanhui*), as well as a number of other committees:

“Every village administration shall set up a people’s mediation committee; a committee to safeguard public security; and a committee for public health, among others. Such committees shall handle the common affairs of the area, as well as undertake public welfare; mediate disputes between people (*mingjian jiu fen*); safeguard law and order in society; and furthermore, reflect back to the people’s government the viewpoints, requirements and propositions of the masses (*cunzhong*)²⁰

Such mediation committees existed in each of the village administrations I conducted research in, and most had a dedicated ‘mediation room’ for that purpose. The committee was composed of Party members who had been elected for that position from among the village. In formal interviews, I was told (as the Article of the Constitution alludes to) that

¹⁹ There are other, city-specific institutions of dispute mediation, located at urban neighbourhood administrative committees or elsewhere. Such institutions are however outside the remit of this research.

²⁰ Full text of the Constitution (in Chinese) at: http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm. The final translation of the Article is my own.

dispute mediation was crucial for the maintenance of ‘social harmony’ (*hexie*) in the villages; analytically they can be seen to function for an educational purpose as well as a mechanism for the village administration to maintain a greater presence in people’s lives. The actual practice was however quite different: the mediation committee in its elected composition did not gather in most cases of dispute mediation, but rather the disputes at this level of the officials were most commonly handled either by police officers stationed nearby, or by the head of the village administration (*cunweibui*). The dispute mediation room was not even used each time there was a mediation, but a less formal venue was often preferred, as I was told.



Picture 2.1: Designated mediation room for the People’s Mediation Committee (renmin tiaojie weiyuanhui), located at the administrative compound of one of the research villages. The sign at the top reads: “Resolve Conflict – Promote Harmony”. The character inside the circle at both ends means “silence”. The logo of clasped hands that together form a heart is commonly used nationwide in places that conduct ‘people’s mediation’ but, so I was told, does not indicate membership of a larger organisational structure. The text inside the logo reads: “People’s mediation” (renmin tiaojie) in both Chinese characters and in Chinese pinyin lettering.

A lawyer I spoke to in a legal aid office in Tengchong City²¹ noted that extra-judicial ‘people’s mediation’ can be described as something that is done by the following kinds of people: mediation personnel (non-lawyers) at the judicial administration offices in the city (*sifasuo*); people in the villages who volunteer to mediate; people’s mediation committee personnel (*cunmin tiaojie yuan*) who are either volunteers or office holders either at the village

²¹ Legal aid will be discussed in Chapter 6

administrative office (*cunweihui* or *shequ*) or the neighbourhood committee (*xiaozu; cunmin weiyuanhui*). Finally, as the legal aid lawyer noted, there are the following kinds of people who can also get involved as mediators in ‘people’s mediation’:

“... people who have quite a lot of influence in the village and speak in a way that they can convince people; they are people with definite prestige within the village ... they help in preventing issues from going to court when they are the kinds of issues that are possible to resolve without the courts.”

The person the lawyer is describing is a well recorded ‘type’ or ‘character’ across legal anthropology scholarship: someone who for reasons of age, personality, charisma, affiliation or education for example has such a role to play in a community; well-known examples of something involving those characteristics include the so called ‘khadi justice’ system (Weber 1978) or for example the Aksakal courts in Central Asia (Beyer 2015). Chinese historical records recognise a figure of a ‘village gentleman’ (*xiang shen*) who would have sometimes had such a position: a minor scholar who would have received an education in one of the centres of learning and afterwards gone back to his native village.

When I spoke about my research to Chinese university students but also people in the villages they would sometimes tell me about such an institution involving charismatic mediators being in place ‘in the old society’ (*jiu shehui*, meaning pre-1949 revolution, or in a generalised past of imperial China) for resolving disputes in rural villages. Most people I talked to about it in the villages were aware of such persons to have existed in the past – but I was often told they no longer existed in ‘present-day modern’ (*xiandai*) China. However, functionally there are indeed people who act as dispute mediators due to their personal characteristics and not because of being an office holder. In the villages in which this research was carried out, there were such persons who were respected in their patrilineal descent group (*jiazu*) for having a good level of education and an ability to speak in an appropriate manner. They rarely had been ‘appointed’ to mediate disputes, and not every village had such a person that people could turn to. In other parts of the County I heard of lineages that may confer this role simply to the eldest of the lineage.

The rural police officers I spoke to who mediate local disputes, the subject of Chapters 3 and 4, would tell me that such characters were “all over the countryside”, and I needed just to simply locate them in order to really understand how issues are resolved in the rural parts of China. The police chief of the precinct I worked in seemed convinced that such ‘persons with the power of persuasion’ (*you shuofuli de ren*) were almost always the first point of call when people had a dispute. However, this research did not verify this being necessarily the case, in particular in a formal sense.

In my conversations with people at the natural village of Shanghecun (one part of Laosongcun village) which was, I was told, “99 per cent members of the same Guo lineage descent group” I also pressed the matter of lineage leadership several times. I asked if there really was no one in the village people would habitually go with their disputes. After some considerable thought people told me that “now such things were all done by the government, either the police or the Community office; it was in the old society (*jin shehui*) that you would go to a lineage person”.

This seeming absence of an institution of mediation by notable some person was curious to me because in many other ways the Guo lineage of Shanghecun natural village was a textbook example of what seemed like a strong lineage descent group with an evolving and visible role in the village. They had recently renovated their ancestral hall, in part with money from overseas members of the lineage, complete with a large recreation area attached to it. Frequent events and rituals were held at the ancestral hall or outside on the performance areas at different points of the yearly cycle, and during my stay there the lineage also set up a recreation and social welfare organisation for the elderly members of the village (*laonian xiehui* which can also claim small amounts of money from the local government). There was also a performance group for young boys to learn the dragon lantern performances for the Chinese New Year, and a women’s dance group that performed at festivals around the rural areas and participated in dance competitions. The rituals for ancestors were done with care at the ancestral hall.

All the above description of lineage activities is to say that this was a lineage group that put a lot of effort into doing things together, maintaining a certain status in the area, and showing care towards each other and their deceased ancestors. And yet, the role of normative

leadership, at least when it came to the normative reordering in the case of a dispute, did not seem to exist as a decided upon post. For some time I speculated whether this was because the Party Secretary of the administrative village was a member of the Guo lineage of Shanghecun natural village, but as I observed his work and interactions with the villagers, I came to interpret his status as emanating primarily from his position of officialdom: while people expressed pride in having one of their own lineage members be the Party Secretary, he did not occupy a dual position of official and lineage leader. And in any case, as the Party Secretary, he could not be seen to participate in some of the lineage ritual activities deemed as too close to being activities of ‘superstition’. While such a situation seemed strange to me, the anthropologist perhaps expecting a confluence between ritual activity and normative leadership, the members of that lineage did not see it noteworthy that local state officials or persons otherwise occupying a position in the bureaucracy would take care of problems arising among people; lineage activities had to do with ancestors and festivals.

Neither was there a very clear ‘lineage leader’ in the natural village that made the other half of Laosongcun administrative village. When I asked auntie Li whether Wu Jiedong (the man who wrote the petition I discuss in the prologue of this thesis) could help her mediate the dispute (described below), I was surprised that she had a rather negative view on him. Later on, after the death of Wu Jiedong, I discovered that in fact a great many of the villagers shared her negative opinion of the moral character of Wu – but this had been something one simply could not say while he was still alive, respected as he was outside the village; because at the age of 82, he was also among the few oldest living members of his descent group branch, which in itself gave him a certain status in the lineage rituals.

The next step ‘outward’ from the lineage group would be to go to the village administrative office (*cunmin weiyuanhui* or *cunweihui* for short) and ask for the local Party Secretary or other persons employed by the office to mediate the dispute. A neighbourhood committee (*xiaozu*) leader or vice leader could also be included in this same category; this will be touched upon below. A further step towards a more formal procedure is to make an application to seek the services of the police mediators, at either the local police office branch or the precinct central branch; this process will be discussed in Chapters 3 and 4. If the police mediation fails to produce a result, the dispute can still be taken up to the legal administration office (*sifasuo*) in the city where a civil servant mediator can take on the case. Finally, the parties can seek out

court mediation – though not all cases are admissible to enter this procedure and it is not always possible to enlist the services of a legal aid lawyer, which also makes the process also rather costly; this process will be discussed in Chapter 6.

Analytically, then, these institutions can be divided into three levels: what I call the village level (the subject of this Chapter); the level of the officials; and the level of the courts. The three levels are staffed by persons who are to some extent bound by different sets of rules and sources of reasoning, but who also can to varying degrees employ a personal style and their professional expertise in enacting their role.

The Dilemma of Auntie Yin: How to Resolve a Dispute and Retain Dignity in the Village Social Worlds

I met Li Min soon after moving in to the second research village of Laosongcun. One day she came to seek me out in my host family's house, herself living not far away, and being curious as to who I was and why I had come. Later on, I would come to see this behaviour to be somewhat unusual in the village and would associate her curiosity and proactive approach to getting to know what I was about as part of her way of being in the village. Over time she proved an interesting companion to talk to about the ties that bind people in the surrounding villages and how to strive to live well, while being a morally upright person. When she told me that she was involved in a dispute with a neighbour and was considering different strategies to resolve it in a satisfactory way, our interactions evolved into discussing issues having broadly to do with law, morality and how to seek to gain advantage and 'win' in a dispute in the long run.

Auntie Li had married into the Laosongcun natural village from another nearby village called 'Li family bend' that one could just about see in the distance from her house, located at the foot of the nearby hills. As the name suggests, her village of birth was yet another 'one surname village' and in visiting quite often she was able to maintain close ties with her birth family and lineage there. Although she was, through marriage, part of the Wu lineage which is one of the two largest lineages in her husband's village of birth, she and her husband did not occupy a particularly high status in the village: her husband drives a motorcycle taxi,

making some 50-70 RMB (3-5 pounds) a day, and she herself did not work apart from very occasionally selling handicrafts or tea leaves. When I sometimes mentioned to people that I had spent my day with her I rarely got any comment back, and as time went by I got the sense that auntie Li was not among those people that the village talked about particularly, in good or in bad. What people would say about her was that it was odd that she had decided to stay at home and not work even though both her children were now grown; many women of her age did indeed work on at least a part time or occasional basis. She had however done well in her life considering one very important measurement: her children. Her oldest daughter had married well and given birth to a child, and although they lived a long distance away in a different Province, they had been able to buy a car a few years back and since then come to visit auntie Li once or twice a year. Her youngest son on the other hand was a trainee basic level doctor in the hospital in the nearby city and was expected to make decent money in the future; already while in training he was able to contribute to household expenses. Recently the son had started dating with a young woman who worked as a nurse in the same hospital, and while this made auntie Li glad, she told me that it also made her a little nervous: she did not want the girlfriend who was living in the city to visit them in the village just yet, lest the young woman be too disappointed with the state of the family house that, as is custom, the young couple would be expected to move into at least for the early marriage.

The family house was indeed a modest one even by the standards of the village, though not by any means the 'shabbiest' one that I visited in the village. Since being built over 20 years earlier the house had not gone through many of the usual modernisation improvements I would see in similar houses, still being made up of mud bricks; the floors were covered with concrete only (and not boarded up or tiled), and there was no indoor plumbing for the toilet. One improvement the house did have was an internet connection, not at all common at the time, but something that the son needed to study for his medical professional's exams. One particularly significant downside to the house was the fact that it was sunken in and thus considerably lower than the street level, causing the dispute with auntie Li and her neighbour in the summer of 2016 to heat up when the rainy season got under way.

In early 2016 auntie Yin's neighbour had decided to turn a piece of the rice paddy into a fish farming pond, an increasingly common livelihood strategy in the area to increase one's family's earnings. In this region, the family farm plots are typically very small, and all the

farmland was one contiguous stretch, each family knowing precisely where in the expanse their plot was located. While it is a rather a striking sight when one patch of land in the middle of the large rice paddy is turned into a fish farming pond, such practice is allowed by the current rules of land use. The dispute arose when, with the start of the heavy rainfall, the fish pond right behind auntie Yin's house would start to regularly overflow, causing great quantities of water to rush into Yin's house which, being constructed lower than the pond, had no protection from the additional flood waters. On a few mornings after a night of heavy rain I would go to her house around noon and find her still sleeping because she and her husband had been up most of the night scooping out flood water from their kitchen and living area.

After one such night I went to her house and auntie Li was fuming from anger. She told me that these neighbours were immoral people, and everyone in the village knew it. She had tried to reason with the head of the household to either fix the pond so that it did not overflow or help her fix the flood barriers of her house, but the neighbour would not acquiesce. She then leaned over and whispered: "we all know how he has made his money, through gambling and other illegal means. On top of that, he is a drug user and a person who does not care about anyone else, least of all us common people who are poor". According to auntie Yin, the vast three storey house that the neighbour was now building (which in itself is not formally allowed, the new builds being officially restricted to two storeys only) had also been built with money made through dishonest and immoral means. By that time, I had become quite familiar with the various routes available for settling disputes and went through them with auntie Yin; our conversations on the topic over a few days on the matter can be condensed in the following way:

"Me: Have you asked help from Wu Jiedong?²²

Yin: I would not even ask Wu Jiedong because he does not have sympathy for such a common person like me and very rarely gets involved in village issues like this, preferring to hob-nob with party officials and others from the city who revere him

²² He was the most high-status person of the Wu lineage

and want to be seen with him. He even constructed his house twenty years ago on the land that used to belong to the village, a land where we ordinary people would place the coffins before burial, and where the funerary rites used to be done. He just took that land for himself and does nothing for the village in return.

Me: Have you asked the village administrative office (*cun wei bu*) to come and see what the problem is?

Yin: I spoke to them about it, yes, but when they came to look at the pond it was decided that it had been built according to regulations and so there was nothing they could do. And anyway, nobody in this village dares to go against the neighbour's household because of their high position, and least of all the village administrative officers who know the neighbour personally and are in cahoots with him.²³

Me: Did you go to the police station to apply for mediation?

Yin: Someone from the city, from the judicial office (*sifasuo*) came, but they did nothing, and all they could tell me was that I should build a dam to block the water from flowing into my house. I told them that I had constructed a dam, but the neighbour just dismantled it to let the water flow again; all that the judicial office people could tell me was that I should build the dam again or make an application for a formal mediation procedure [the police mediation, it seems]. Those people, they just walk around high and mighty, they don't care about us little people, all they care about is '*hexie*', harmony. It did not use to be this way, before they cared about actually solving problems that people had. Now they don't solve (*jiejue*) problems, they just mediate (*tiaojie*) them.

Me: Have you sought the help of a lawyer, for example by visiting the legal aid centre located in the city? Maybe you would be able to get some compensation if the issue is taken to a court procedure?"

²³ Issues such as the three-storey house being built against regulations could well count as proof for villagers that the neighbour does indeed have a certain amount of connections.

Grit Over Monetary Compensation

Auntie Li answered my last line of questioning with a long but coded explanation as to why she would not want to go to court despite urging from her husband and daughter to consider it. This was the case in spite of her telling me several times that she and people in the village administration thought that they had a very good chance of winning the case, and by extension, getting a settlement from the neighbour. The problem was that this was not the “correct” way to conduct neighbourly relations, as she told me. Even though the money that the neighbour had earned, and the money that they had used to construct the large house and the fish pond, had been gained (according to Yin) through immoral means, it was still money that they had earned through their own labour (*laodong*) and ability (*nengli*), she explained to me.

For her, then, taking money from them through the courts would not have been correct because she herself had not laboured for that money; they had. Even though she felt that they had done wrong in earning that money, and wrong in not considering the problems that she and her family were facing, the money still was not hers to just take in that way. Another reason for hesitating to take the matter to court or even to the city dispute mediation processes (above, she most likely meant the Township *sifasuo* process, though it seemed that she was a little bit unclear about the precise office that handled such cases) was that afterwards, when the matter had been settled in such a way, her children and grandchildren would still have to continue living with this neighbour and get along with them for generations to come. She noted:

“And anyway, such a resolution [getting monetary compensation through the courts] is not honourable (*bu guangrong*). You compensate my economic losses and I spend your money. Who knows if afterwards people take revenge on you for it.”

This relates to the classic problem of ‘loosing face’ in a community, but the reasons she presents for such an eventuality are very specific. While the meaning of money in people’s social relationships has been extensively studied in the anthropology of China, here monetary

compensation is occupying a different role than that of a gift in banquet celebrations, weddings or temple offerings. Similarly, when contracts for household separation²⁴ are drawn up it is often also decided how the care of the elderly parents will be divided; in those cases money is balanced against practical care duties between the brothers: how much money one brother needs to give the other so that the care of the elderly parent can be carried out in a just manner and without undue burden to the brother taking on the care duties. In such a case, money is calculated against continuing or future costs of care, taking into consideration how much money the brother who is not engaged in care duties can contribute.

Legal reasoning such as the kind that auntie Li would enter into if she went to court, introduces however different kinds of monetary calculations that may not follow on in the patterns typically thought of as 'customary': money as it determines the physical extent of damage. Courts will calculate a monetary compensation for damages according to its own logic. For this reason, auntie Li was urged to gather proof of damage by the village administration personnel who came to look at her house, a proof that could be used in court as evidence of legally regulated harm if she decided to sue.

Discussing the issue of money and when it is appropriate to receive it from someone leads to the second way in which auntie Li explained her qualms about receiving money to help her situation. This related to her sister who had married and lived in the nearby Tengchong City. Auntie Li explained to me that the sister was much better-off than her and lived in a good house, and this meant that Li could not ask for her help. In fact, whenever she went to the city to take care of some errands, she would rarely tell her sister that she was around: in this way, auntie Li was saving her sister's 'face' in not having to come face to face with the fact that she had much poorer relatives; hence the sister could not be under any obligation to come to the aid of auntie Yin's family. In other words, auntie Yin's thinking was that, to avoid mutual embarrassment, it was best for her to avoid interacting with her sister too often, and in this way also her sister could, according to auntie Yin, continue to not think too much about having relatives living in poverty. Both sisters having been 'married out' to join the lineage descent group of their husband, the bond between them was no longer such as to create a *direct* duty to care for each other financially, though it should be said that neither

²⁴ This is a process whereby assets are divided among (usually male) heirs when the parents are still alive.

does the general kinship system expect sisters to become strangers to each other after marriage, and deep ties of affection can well persist. Regarding her sister she said the following:

“No matter how many rich relatives you have, you have to get by on your own hard work (*datie dou dei zisben yin*). When it comes to building a house [or in this case raising its foundations] you can only rely on yourself. Right now in this society everything is difficult. We are in the countryside, here you are slightly inferior; we also worry (*haiya*) that other people look down on us. But in the countryside, this is how it is: the more inferior you are the more people want to bully you and take advantage of your difficulties.”

In general, it is not necessarily the case in such rural places that in making large investments such as building or repairing a house, a relative would not contribute to its costs in the form of a loan for example. However, here Li is tapping into an idea of dignity that is attached to yourself labouring for what you have. This, I argue, is why a monetary compensation gained through the courts can be experienced as being at odds with other notions of proper behaviour.

Finally, a third way in which money was brought up in our conversations was the possibility of receiving it as donations from complete strangers. A few times auntie Li mentioned that her daughter had suggested they set up a donations page on WeChat, a popular social media platform in China, and raise money to be used for raising the foundation of her house. Even then she wanted to be clear that she was not asking money directly from me and my research assistant precisely, but that if we wanted to spread the word within our social media circles about her plight and encourage people to donate small sums, this would make her grateful. Such an idea was again in line with how I came to know auntie Li as someone who is proactive and eager to seek out solutions, combined with an acute sense of the boundaries of what was ‘appropriate’ and what allowed her to retain her dignity. There had been times when she had for example proposed to me that I rent a room from her house (so that she could earn some extra money), only to take back the offer by saying that, actually, I would find the conditions too poor to bear.

What for auntie Li is then the crucial difference, in moral essence or otherwise, between hypothetical money gained through a court order, money received from a sister, and money received as charitable donation via a social media application? One way to see this is that if the money to fix her house came from persons unknown to her, or in any case from outside of the village and its social worlds, then she could bypass some of the dilemmas to do with her relatively low positions within her immediate surroundings.

It quickly became clear through our conversations that auntie Li considered it quite pointless to seek out any formal outside help for her problem, whether within the village, the police station or the city legal aid resource. She had taken some steps to seek advice from people she had access to and, so I came to understand, felt defeated either by the process, the attitudes of the people involved, or her own position. The experience of government officials seeking to maintain ‘harmony’ rather than actually acting as a referee to resolve a dispute offers a small window into some of the shifting sands in people’s relationship to the state in China and perhaps especially in such rural communities. In speaking to elderly villagers one often got the sense that people had quite a wide notion of what the state was there for; indeed, until the reform era began to truly change Chinese labour and state relations in the 1990s, the notion of the ‘iron rice bowl’ came to represent the idea that people could rely on the state to provide for them all their basic needs. This included the notion that the grassroots representatives of the state such as the Commune leaders would be there to solve even mundane problems people might have – though naturally history (and people’s recollections of that time) reveals some of the problems that such a system brought along with it. This was potentially what auntie Li referred to in saying that the officials were not interested in resolving problems (*jiejue wenti*), only mediating them (*tiaojie wenti*).

Seeking Help from the Neighbourhood Committee Vice Leader

I observed such expectations of the state being put into action while living at the house of my second host family. Late into my fieldwork, my host father was elected the vice leader of

the neighbourhood committee (*xiaozu*)²⁵ of the neighbourhood they belonged to. This resulted in him having both an even more ‘outward’ role in the village, requiring him to go and sit at meetings at people’s houses and drink rice alcohol (much to the displeasure of his wife), as well as a more ‘receiving’ role in being expected to see people who had matters that they wanted to discuss with him as the vice committee leader. This, at least in the beginning of his appointment, also limited both his ability and willingness to accept employment further afield than what was feasible on a day’s motorcycle commute. He did, however, quite enjoy his new role and performed it with a certain gusto.

On one occasion, I observed a woman in her late 60s come to my host family’s house to rally the support of the vice committee leader in her quest to receive a higher social security compensation because of her long-term illness. She had brought with her all imaginable documents about her health and her person, down to the certificate of household registration and marriage certificate, as well as x-rays and packets of medication showing just how much her illness had cost her. While this was a kind of performance – and both my host father and the woman started giggle-laughing as she would produce yet another well-worn document from her plastic carrier bag, both of them also made it to the end of the plea and kept within their roles as ‘vice leader’ and ‘villager’. To wrap things up, my host father explained in polite officer-like speak how there was nothing he could do but to advise her to contact the relevant office that dealt with social security issues in the city. After the woman had left, still slightly giggling as she did, my host mother explained to me why she had come to see her husband and had acted in this way. The issue, she explained, was that this woman had lived all her life within a small circle looking out; however, that world within the circle was so small that she just did not know how things worked in the wider world much beyond the village. This included not having much of a sense of how government procedures worked, how to apply for the correct benefits and what one needed to do to have the all-important ID card renewed for example. Hence, she had come that day to see the committee vice leader, hoping he could possibly act as her advocate within the government bureaucracy. She had not fully understood that these issues were for each individual to take care of – this being the era of personal responsibility after all, my host mother told me.

²⁵ The system of neighbourhood committees (*xiaozu*) still exists in villages despite the fact that they no longer have many formal functions, if any, but rather seem to operate as ways to diffuse the role of the local Party office.

Auntie Li came to a different conclusion from that of the elderly woman discussed above on how to deal with the dispute with her neighbour. Or more accurately: how to change her *own* thinking and approach vis-à-vis the dispute. Li did not continue to expect things from local officialdom and pursue her case with the leaders of the neighbourhood committee she belonged to, nor did she keep insisting that the office of the Party Secretary or other village resources would intervene, not to mention going further afield and seek out a resolution at court. What she decided to do was – nothing. Or more accurately: to play the long game. As she did not see direct help available to solve the problem via the village institutions, and considerations around keeping her dignity seemed to prevent her from seeking out legal avenues in the city, she decided to do two things. One, to press on her son of the importance of saving money for them so that they could eventually be able to raise the foundation of the house, and two, to wait if she could over time rally the support of other villagers against the neighbour's household.

Regarding the latter strategy, she explained to me that it should only be a matter of time until the over-flowing fish pond would affect the quality of the public drinking water, available for people to use from the spring water pools nearby. The owner of one of the water buffalo herds in the village was already causing people to complain about the fact that he let the buffalos drink directly from the pools, potentially contaminating the water with buffalo faeces. This discontent regarding the water buffalos was already simmering below the surface and caused auntie Li to speculate that after a few more heavy rains people might notice for themselves the fishpond as having a similar effect on the public water resources. When this happened, and people got thoroughly impatient with their fresh water being in danger of getting contaminated, this is when auntie Li would gain allies for her own struggle against the neighbour, she told me with a satisfied grin.

Finally then, the solution for auntie Li seemed to be time. While nothing would change in the short term and she would still need to wake up in the early hours after the rains ended to scoop out the flood waters, it seemed clear that she had reached a way to look forward into the future that both held a promise of renovations on the house, and sympathetic allies.

Auntie Yin's Dilemma and the Model of 'Orders of Worth'

During one of our conversations, when describing the neighbour whose fish pond was causing so much grief for auntie Yin, she said the following:

“This family has no morals (*daode*), no conscience (*liangxin*), no inner quality (*suzhi*) – all they know is how to cheat people. They don't care about the law, and they disregard the law. But for us to file a lawsuit is also not correct, so we haven't.

That day [after a night of heavy rain that flooded the house] I felt really troubled and went out to take some pictures. I thought that if we really sue and go to court, I need to have evidence. One should, in order to behave in a correct way (*zuoren*), also consider the other person's perspective, think that if I was in their position would I behave in this way ... They really do not have a conscience (*liangxin*), really don't have morals (*daode*).

In the above two short paragraphs, Li references four slightly different 'schemas' (Oxford 2010:32) or 'scripts' for what is a good person and how they behave, namely '*daode*' (morals), '*liangxin*' (conscience), '*suzhi*' (quality) and '*zuoren*' (proper behaviour). Much has been written about the concept of '*suzhi*' (Kipnis 2006; Jacka 2009), which is generally translated as inner quality, with notions about a person's level of civilisation attached to it, a politicised concept used to rally efforts to 'raise population quality'. In the prologue of this thesis we encountered, in the petition of Wang Yan, the notion of '*zuoren*' which is translated often as 'behave with integrity' and meaning broadly speaking correct action towards others. In that instance, Wang Yan accused the old man living in the house as not 'behaving appropriately' towards the man who ended up attempting arson. In everyday usage, '*zuoren*' can also mean very practical things also, in addition to a kind of generalised 'respect' that Wang Yan's petition was calling for. A local primary school teacher in the same village of Laosongcun explained to me that the concept of '*zuoren*' is taught to children as part of 'traditional culture' (*chuantong wenhua*) education, and it has been given its own class called 'pupil guidance' (*dizhi gu*), where '*zuoren*' is taught to these young children through practical means:

“Pupil guidance (*dizhi gni*) classes teach how to live well (*zenme shenghuo*), and there is a book on how to behave appropriately (*zuoren*) ... But we [teachers] don't only use teaching materials to advance such learning, we also make visits to students' homes... We go and see if students are capable of helping the parent or guardian do certain household chores; if they have an ability to show initiative at home in for example washing clothes and preparing food; if they can independently finish sweeping the floor; and if they can complete their homework. Knowing their conditions at home, teachers can give feedback about the situation at school to the parent or the guardian.”

Here the ‘hidden curriculum’ aspect of ‘*zuoren*’ teaching also has to do with imparting ideas about the appropriate parent-child dynamic, which involves not only respect but practical acts of assistance as well; still, to know how to ‘*zuoren*’ involves other relationships as well, such as being a good neighbour or even a generous stranger. And so, saying that a person does not know how to ‘*zuoren*’, as we saw in Wang Yan’s petition and above in auntie Yin’s explanation, is potentially a serious accusation that can even serve as a plausible justification for one’s own bad behaviour (such as the arson in the case of Wang Yan’s husband).

Oxfeld (2010), in her book on moral discourse in rural China, addresses the concept of ‘*liangxin*’ at some length. She notes that although ‘*liangxin*’ could be translated as ‘conscience’, importantly it also has a temporal element attached to it: it involves thinking about what you could have done or should do in the future; it “implies an attempt to act accordingly, even if complete repayment ... is impossible” (2010:53). To have no ‘*liangxin*’ is a person who fails to reciprocate; to have it is to remember one’s moral obligations and take steps to act on them. Oxfeld continues that “*liangxin* is used to evaluate a person’s sense of moral responsibility in many areas that are not defined by hierarchical relationships”, and thus having no ‘*liangxin*’ can be an accusation made against an equal in egalitarian relationships also (2010:66). Here the contrast to the concept of ‘filial piety’ (*xiao*), which speaks about the appropriate role of children towards their elders, is a clear one to make – the two concepts ‘*liangxin*’ and ‘*xiao*’ are different in their hierarchical expectations. Indeed, in Wang Yan’s petition, despite describing the elderly man as not having ‘*liangxin*’ towards the alleged arsonist, the justification for the man’s release from custody that was presented was the

argument that he needed to attend his step-daughter's wedding, but also continue showing 'filial piety' (*xiao*) towards the very same elderly man.

What to make of such discursive moments in conversations where I as the ethnographer steered the direction of the conversation to talking about the various institutions of dispute mediation, and what role the law played in all this, either as experienced or as imagined. In my analysis, such moments as auntie Li bit by bit explaining to me her thinking process where she makes reference to moral 'schemas' that are widely and explicitly taught, can usefully be analysed as such "reflexive problematizations" that Boltanski and Thevenot (2006) propose. In such moments of 'figuring out' and problematising, more fully formed justifications are formed whereby the underlying normative convictions of that social setting are brought to the fore. Oxfeld (2010) also notes that it is typical that ideas about family obligations for example are not expressed at times of quiet reflection, but when actual problems or disputes occur (2010:73). Learning about what having *no 'liangxin'* for example means, involves experiencing when someone has failed to reciprocate or remember their obligations towards you. Conflict, as I proposed in the beginning of this thesis, is part and parcel of social reproduction in so far as it pushes habitual and normalised cultural norms out on to the surface to be problematised and defended, or potentially abandoned.

Conclusion

As I set out to conduct research on the different institutions and techniques available for people to resolve conflicts, and the kind of justifications they lead to, I initially approached the problem from the perspective of legitimacy: how do the institutions of dispute mediation project and maintain a sense of legitimacy? So far in this thesis I have examined a few cases of disputes as they were addressed at the level of the village: auntie Yin's dilemma; the approach Wang Yan first took, described in the prologue of this thesis, before turning to the law; or to a lesser extent the case of the elderly woman who approached my host father and vice leader of the neighbourhood committee.

However, the crucial question was *not* whether or not the institutions of dispute mediation were experienced as legitimate or authoritative, or even whether or not one was better at

delivering a good outcome in the dispute. When auntie Li sought to find the solution that best suited her situation, it was as if she was testing and evaluating the different institutions in question by figuratively 'bouncing off' her case against them. Coming through strongly are the implications of the choices that auntie Li and others make for their personal project of remaining a person with a moral standing in the community social worlds. What drove auntie Li in her quest to seek out a solution was how her position in the community would be affected by the choice of the institution, and what values they represented.

When none of the institutions proved to be satisfactory (even though they might have been perceived as legitimate by auntie Li or the community more widely), she changed course once again. She decided to stop pursuing a resolution through the public institutions of dispute mediation and instead relied on the private resources of personal ability (*nengli*); an expectation that her son would eventually earn enough money to be able to fix the house; and a belief auntie Li had that in time other villagers would turn against the neighbour. While she felt some disappointment that the institutions had not seen her side of things and acted as her ally, the resolution was not experienced by auntie Li as her giving up, but as a deliberate choice which aligned with her own ethical project of remaining a person of good standing and dignity in the village.

CHAPTER 3:

The Level of Officials:

Police Mediation and the Notion of ‘Rural Culture’

Introduction

I began Chapter 2 by looking at the village level, centred around the question of what institutions of dispute mediation are available to people at that level; what cultural forms exist around the idea of the village mediator; and how mediation and problem solving at that level respond to local notions about living in a dense community.

In this this chapter and in Chapter 4 I take one step away from those dense village social worlds to examine the next level of dispute mediation: the rural police officers, the local government officials and the civil servants of the judicial administration office (*sifasuo*) at the Township level (*zhen*) government. The first two typically work at the village administration compound (*cunweibui*) where the main rural government posts are the Party Secretary (*shuji*) and the Head of the community (*cunlingdao*)²⁶, as well as the various support personnel. The police officer mediators work at the police station, which is often also located in the same village administrative compound or in its vicinity. The Township government administrative compound, where the civil servant mediators have their offices, is located in the nearby Tengchong city, despite the Township itself being overwhelmingly classified as rural.

In this chapter the aim is first to look at the approaches of some of my key informants at this level, the police mediators²⁷, and what their role can contain. I will then look at how the police officers themselves conceptualise their work of dispute mediation as ‘rural work’ (*nongcun gongzuo*), which they see as something that cannot solely be the concerned with the

²⁶ Sometimes one person holds both of these positions, but this varies from village to village. In the villages I conducted research in I saw both kinds of arrangements.

²⁷ The terms ‘police mediator’ and ‘police mediation’ are my own term to refer to a police officer who does dispute mediation work in addition to other policing duties. A police mediator will have received training for this aspect of their work, and my understanding is that this role is reserved to the higher-ranking officers. While ‘police mediation’ is not an official term in the Chinese legal system, the ‘police post’ (*paichusuo*) is however identified as one location where extra-judicial mediation or ‘people’s mediation’ can take place and thus is a recognised location in the overall legal system.

letter of the law but needs to be very much involved in conversations of morality and how to live well within a community and a family. I also look at how the formal Chinese state weaves in and out of people's lives at this level of dispute mediation, at times giving more or less room to the 'rural customs', some of the meanings of which were already looked at in Chapter 2.

A common reason given to me by the mediators as to why official or police officer mediation that leans heavily on 'rural custom' is prevalent in the countryside today was that when people have low personal 'quality' (*suzhi*) it is not very easy to speak to them about law and how things should be done legally. Additionally, because a rural place is, according to the mediators, a place of tradition and stricter adherence to kinship rules, legal avenues for resolving conflict may not be culturally suitable or sensitive. Such notions of the distinctiveness of 'rural culture' in the face of law was echoed also by people I spoke to in these communities.

The Actors and Documents Involved at the Level of Officials

I began my research into the police mediation committee at the rural Dahan police precinct which covers an area of roughly 10 000 people and several villages. The station was located at the same village as my first village host family, which meant that the police officers had seen me walking around and talking to people for several months already by the time I first approached them. The first meeting with some of the police mediators was aided by the introduction by the village Party Secretary who was from the same lineage as my host father. I had waited for several months to approach the question of dispute mediation with people working at the village administrative compound, thinking it a sensitive topic to bring up. Instead, the Party Secretary of Yuhuacun village, in a matter-of-fact manner, first talked to me about where dispute mediation stood in their overall work of the village administration and then called one of the police officers, officer Zhao who did such mediation work, to walk across the road to the administrative compound and join in on the conversation at the office of the Party Secretary. I discovered that contrary to my expectations, such work, while involving sometimes difficult or hurtful topics of family and community conflict, was also a very mundane part of being a rural Party Secretary or a rural police officer, and not an unusual topic of conversation among colleagues and a researcher.

During the course of the research I interacted with five such police mediators stationed at two different police posts: the head station of Dahan precinct and one of its subsidiary stations approximately four kilometres away. The head station is a large police post with approximately 10 officers stationed there, and at the courtyard on most days there was a roster of police vehicles parked inside the compound and able to accommodate the swift mobilisation of a large number of officers at once. The head station compound also had dormitory facilities where officers on over-night duty or those temporarily transferred in from other precincts could sleep and live in. The small subsidiary station only had two officers permanently assigned to work there but the station was located within the larger administrative compound where the village administration office and Party offices were located. Both stations employed a cook who prepared a shared hot lunch to the officers where were on duty each day, and it was common to see most officers on day time duty to eat lunch together around a large round table tucked away in one corner of the station; only a few officers had family close by and would go home for lunch each day. The two stations worked closely together, and it would happen often that in the event of a dispute mediation there would be officers from both stations present.

As noted in Chapter 1, police mediation is one type of extra-judicial mediation, or ‘people’s mediation’ (*renmin tiaojie*), distinct from judicial mediation (*sifa tiaojie*) at the level of the courts. In Chapter 2 I discussed other types of ‘people’s mediation’ which do not involve representatives of the state but rather have a person from a local lineage or other respected person to act as mediator. As with all forms of ‘people’s mediation’, the basic premise of the police mediation process is that it is entered into voluntarily by both parties; it is free of charge; and the possible agreements or so called ‘mediation contracts’ signed at the end of a successful mediation are not legally binding but their enforcement is based on trust. Breaking such agreements will not have direct legal ramifications in the form of fines for example – though they can at a later stage be used in court as evidence, if the dispute is brought to court in the first place.

By comparison, if an agreement reached through ‘judicial mediation’ is not followed, the injured party can seek legal orders to force compliance, and a court can order for example the bank accounts of the offender to be frozen or, in more extreme or protracted cases, even

their identity cards to be put on registers that will not allow them to board airplanes or trains until the payments are made as per signed agreement²⁸. The voluntary and formally non-binding nature of people's mediation have led to it being described as a distinctively Chinese form of dispute mediation (see for example Huang 2010) that is said to rely on a high level of willingness or social pressure.

The dispute mediators I interacted with find the long historical roots of these institutions meaningful to some extent. In my encounters with mediators involved in 'people's mediation' either in the capacity of a police officer or a government official, they would occasionally, in the course of our conversation, cite a name of historical figure they had learned about at school and who is associated with this history of normative community mediation and held as a kind of moral paragon. Some would see themselves as continuing this tradition in a small way. Many of the mediators would also stress to me, a foreign researcher, that this type of mediation, which is not based on law in a strict sense, is especially suitable for Chinese social conditions (*shehui tiaojian*) and how Chinese people continue to live (*shenghuo fangshi*) to this day; both terms are common ways to talk about the distinctiveness of China, especially in comparison to 'the West' (*xifang*).

Apart from the mediation contract, another document that gets sometimes produced in the police mediation process is a 'proof of mediation' document, which notes that the parties tried to resolve the conflict outside of the courts but failed. These two types of documents are themselves interesting hybrids between legal and non-legal procedures and reasoning, much like the process of police mediation itself. A court can require a 'proof of previous mediation attempt' before accepting a dispute into the court procedure, but if never taken to court this document has little legal effect beyond a kind of 'receipt'.

While a 'mediation contract' that lays out what was agreed in the mediation is not meaningful in a legal sense as a document to base direct duties upon, they are sometimes brought up in the court procedure as part of a paper trail for the history of the dispute and a kind of 'who did what' style accounting. In short, the documents produced at this level may only gain formally legal relevance at a later time, if ever, but cannot be said to have it intrinsically.

²⁸ This was explained to me by a Tengchong lawyer working in the fields of 'judicial mediation'

Finally, before the mediation is even begun, all the parties are also supposed to produce an application letter (*shenqing shu*) where they lay out the dispute from their point of view, and why they want to enter the process of police mediation. If this ‘application’ is accepted, the police will issue a ‘notice of acceptance to hear the disputed case’ (*shouli tiaojie tongzhi shu*) which tells the parties when and what time they will be required to appear at the police station for the mediation. Sometimes one of the police officers will also produce a rough transcript of the mediation proceeding.

In my observation, not all disputes go through such a heavy documentary practice. It was however clear in all of the mediations I observed that the spectre of the document to be produced at the end was always present, and it was at times explicitly referred to in the course of the mediation as well: the goal was not just to have a discussion about problems but to reach a documented resolution. The police mediators at times deliberately diverted the conversation back to the specific topic of the dispute if it veered too far away from it; this will be discussed below. This is not fully unlike the mediation at the village level – a village mediator may also produce a document detailing what the agreed upon result was – but at this level of the officials the procedure is much more rigidly set, and the documents that are produced have a relationship to the formal legal system.

Every few months, copies of the ‘mediation contracts’ or ‘proof of mediation’ documents are compiled by the police mediators and taken out of the village in bundles and brought to the Township government judicial administration bureau (*sifasuo*), located in Tengchong city. The civil servants in this bureau produce statistics out of the village documentation. They make a note on an Excel table what types of disputes had been mediated at the different police precincts or local government compounds within the Township; who the plaintiffs and the defendants had been; and who in each case acted as the main mediators.²⁹ Looking through a few of these Excel spreadsheets that I was given access to³⁰ at the Township

²⁹ It was not clear to me whether people taking part in police mediation knew that the Township government would collect such information about them and their case in a centralised database. The fact that a variety of documents were produced in the process of mediation would however make it quite clear to the disputing parties that information about them would be stored somewhere.

³⁰ During one of the interviews with mediators at the Township *sifasuo*, one of the civil servants opened the Excel file for years 2014 and 2015 on their computer and allowed me to take notes on the kinds of cases that had been mediated during those years. I wasn’t given access to the overall database, making a statistical breakdown not possible. The categories

government *sifasuo* office, the kinds of disputes I saw were on: land management rights; right to the integrity of the person (*rengequan*); commercial transaction contracts; water access; right to bodily integrity (*shentiquan*); compensation for damaged property; marriage (*hunyin jiating*); building land use rights; easement rights; division of household property at household separation; and determining property boundaries. These categories and the act of categorisation will be discussed more fully in Chapter 4.

According to the Township official report that I was also shown in the *sifasuo* office, in the first half of 2016 there had been 815 mediated cases within the Township at this level of the officials, of which 782 had been successfully resolved. Of those successful cases, marriage disputes made up 83 cases; conflicts between neighbours 341 cases; compensation disputes for property damages 37 cases, leaving 321 miscellaneous cases of dispute. The person going through the report with me noted that the Township wide mediation success rate was 96 per cent³¹; this was written up in the report as an indication that “the masses (*renmin qunzhong*) were increasingly satisfied with the mediation work” done in the Township by the police officers, local village government officials or Township civil servants.

The reason why I analyse the police mediation as a kind of hybrid process of legal and non-legal reasoning will be explored more fully below. Here I propose to see police mediation, but also to some extent other forms of ‘people’s mediation’ at this level of the officials, as an institutional manifestation of what Huang (2015) calls the ‘persistent moralism’ that has not dissipated with the continued modernisation efforts of Chinese law (2015:6). Such a mixing of legal norms and ideas about morality and proper behaviour that Huang describes, could be seen as a form of bureaucratic paternalism, where especially local officials and rural police officers are comfortably seen to get involved to discuss the private matters and family circumstances of people within the administrative area of their office. This idea of the ‘private sphere’ in a person’s or family’s life could even be seen as extending in some circumstances to the local officials, though no longer to the extent that it did during high Maoism (see Yan

indicated in the spreadsheet do however closely correspond to what I was told by my informants involved in mediation work are the most common types of cases. This will be discussed in Chapter 4.

³¹ It remains unclear to me how success rate statistics are compiled. One village Party Secretary with whom I worked closely with noted that the 96 per cent statistic did not take into account situations where a mediation initially seems to have been successful but is later on taken up to a court process anyway; or cases that are mediated several times, each time leading to only a temporary resolution. Such ‘repeat cases’, I was told by a few mediators, were a common occurrence: a mediation might not ‘stick’ after just one mediation attempt. This may not be reflected in the statistics however.

2003) when people also could have had little choice about the matter. While it is common to hear people quote sayings to the effect that a family should not ‘air their dirty laundry in public’, and that this was part of the resistance some people in the villages felt in seeking out police mediation for their problems, the police mediators were also not seen fully as ‘outsiders’ either.

The idea of the police officers (and to some extent the local village officials) as straddling the outsider/insider divide was, I argue, part of the reason why their role as dispute mediators was widely accepted in the surrounding communities. Their ability to stand at a slight distance was seen as beneficial because they brought in a sense of neutrality in what came to the specific dispute: the police officers did not have a direct stake in the outcome of the dispute. However, they were also not so far removed as to not comprehend the so called ‘rural lives’ of the people who sought out this type of mediation as well as the particular family and kinship dynamics. Conceptually, this insider/outsider dynamic is closely related to the general/particular dynamic in legal theory: legislation is, perforce, written at the level of general principles so that it can be universally applicable even in very particular situations. As discussed in Chapter 1 with reference to Conley and O’Barr (1990) and their notion of ‘relational litigants’ in court proceedings, people who are not oriented legalistically or who do not possess sufficient ‘legal consciousness’ (Merry 1990) in the eyes of the law, may not think in terms of general legal principles, but rather of particular circumstances. The ‘relational litigants’ described by Conley and O’Barr might find police mediation as a procedure more sympathetic to their ways of expressing their claims.

The police officers, when engaged in dispute mediation, also generalise their clients lives to some extent, but not in the same way as law does: for them the notion of a ‘rural person’ is the general category that most holds explanatory power for understanding their clients’ disputes and how to handle them. This seemingly essentialist move is not however one-sided: the people seeking out this type of mediation also often talk about themselves as ‘rural people’ whose disputes may be better handled outside the modern and formal legal system and its court mediation. This is not particularly surprising, considering the prominent position that ‘the rural’ holds in the modernisation theory in China and elsewhere as simultaneously something to be overcome (Kipnis 2016:2), and particularly in the Chinese context, as the original ‘home place’ that every Chinese person belongs to (see for example Fei 1992). This

inherent contradiction marks the ‘rural’ as noteworthy and participates in creating the rural/urban divide in cultural terms as well³².

‘Rural Work’ of police mediators and local officials

Early on in my research at the Dahan precinct head station, I was given a lesson by one of the police mediators about the relationship between law and morality in mediating conflicts in the countryside. To illustrate this relationship, officer Liu pointed to my rucksack and said with a playful smile: “is it not true that while your mobile phone is in the bag, the converse is not true, i.e. the bag is not inside your mobile phone”. Similarly, he said, I should think of the overall Chinese moral order as ‘the bag’, and law as the ‘mobile phone’ inside the bag, adding:

“When you are doing this rural work (*nongcun gongzuo*), you first explain things in terms of morality because morality and reason (*daode daoli*) are forms of the norm-based action (*xingwei guifan*) that have been passed on in China throughout its 5000 years of history, and something that everyone complies with without much thinking. However, if you do not comply with morality or reason, then the law needs to be used to restrict you. China’s laws are all constructed on a moral basis.”

According to officer Chen’s explanation, inside the Chinese moral order (the ‘bag’) there are things such as the laws of the People’s Republic, but also other sources of normative action, such as those more closely linked to the needs of the family, the community or the lineage group. A common understanding of dispute mediation at this level of officials, as well as at the village level, is that it is based on a common understanding of a shared moral basis: if a person “smashes that moral basis” (*pobuai daode*) then mediation is no longer possible, and law needs to step in. I was told by a few officials involved in dispute mediation that even

³² In Chapter 5 I will get back to this insider/outsider dynamic in the context of a funeral, which received local state officials as guests. As will become clear, the visiting officials were in that case seen as being ‘outsiders’ to a much larger extent than the police mediators and local officials discussed in this Chapter, giving a nuance to the discussion in this Chapter as well.

stealing from someone can for example count as such ‘smashing’, but certainly committing homicide does counts: once a crime has been committed with the intention of committing a crime, it is often not be possible to address it with extra-judicial mediation. In Chapter 7 I further discussed this notion by Huang (2015) of China having a legal system based on shared moral understandings, and rather than being a historical curiosity, customs and morality are still explicitly brought into the legislative work.

When I first had such conversations with the police officers, I was surprised by how quickly they would describe their own work in the community in terms of morality: laws are fine and useful but more often as a police mediator you start with reference to a Chinese moral basis, meant to be commonly shared by everyone. When I asked about the role of values originating from Chinese socialism this was quickly dismissed as not being a large consideration in mediation work, and that times have changed considerably since the era of the People’s Communes. Along with the progression of the reform era, the sources of state ideology and propaganda have also shifted.

I was subsequently allowed to observe the police mediation work done at two rural police stations which were the head station of the Dahan precinct and a satellite station that operated under the auspices of the head station. A central consideration for the local officials and police mediators doing this mediation work, apart from quickly finding a solution to the dispute, was tackling an important tension: how to find a solution that is in keeping with what they call ‘rural thinking’ (*nongcun xiangfa*) and the maintenance of ‘social harmony’ (*shehui hexie*) within the family and community as a whole, while still also being broadly within the legal framework of the state. Resolving this tension meant that the mediation outcome did not always follow the absolute letter of the law but was a ‘fix’ or a workaround that brought the dispute to a close, at least momentarily. In the course of the mediation process the police mediators would often try slightly different discursive framings to settle conflicts, sometimes having to be quick on their feet to come up with solutions to the situations that (it was feared) could otherwise very well escalate.

A civil servant I spoke to at the Township judicial administration office (*sifaxuan*), himself a dispute mediator, described the political aims of the rural police stations and the judicial administration office by saying that both locations had officials working to ‘maintain social

stability' (*weiven*) which is one part of the state plan for developing the rural areas. The concept of '*weiven*' is part of the overall political programs for the development of a 'harmonious society' in China, and in its current form it thus originates from the mid 2000s development programmes. This civil servant at the *sifasuo* office saw these two offices (the police station and the *sifasuo* office) as functioning at a very basic level of the overall administrative hierarchy: basic level because they come into constant contact with ordinary people. Dispute mediation in this context is an important component of the work done in both because "in China at the moment not every dispute can go to be handled in court; 'people's mediation' (*renmin tiaojie*) is a very important channel to resolve conflict arising among the people: uncomplicated things like trivial matters among family members cannot all be taken to court".

I found officer Liu to be the police officer who was most eager to share his thoughts on the larger picture behind the work done at the rural precinct, and in particular, what role the police mediator had in keeping order in the rural villages. This maintenance of order was meant both in the sense of avoiding public disturbances and in keeping people's private disagreements within families, preventing them from escalating into larger conflicts. Other colleagues of Officer Chen, namely Officers Zhao, Meng and Yin, as well as the chief of Dahan precinct, Officer Xie, would also talk to me on their breaks, also allowing me to occasionally observe their work. I found each to have their own style that was reflected in the way they approached their work. Chen's jovial nature and a penchant for thinking in broad generalising strokes, was augmented somehow by his large belly and easy laughs. His style was complemented by the approaches of his closest male colleagues Zhao and Yang who would give a more quiet and measured impression to people walking through the station gates. Officers Zhao and Yang both tended to have a style of closely picking apart an argument when acting as a police mediator in a given case, but I would also see the easy approachability of officer Liu bringing its own advantage to the community police work. The few times I observed officer Meng in her role as mediator I noted that she more quickly seemed to lose her patience and seek to set the disputing parties straight with a stern tone of her voice.

This ‘rural work’ done at the level of the officials can be connected to the classical anthropological observations on social transformation. When people move from a face-to-face social setting with a certain localised normative architecture where all parties may know each other at least to a degree, to situations governed by more formal and standardised procedures, the requirement for employing different logics also follows that movement. As Conley and O’Barr’s notion of ‘relational litigants’ showed us and as will be further discussed in Chapter 6, formal legal systems establish ‘truth’ and ‘evidence’ in different ways than face-to-face settings do. The formation of ‘trust’ in a legal process, when all goes well, is after all achieved via the adherence to proper procedure and other bureaucratic techniques such as the emphasis on documentation. Courts are often experienced as institutions that place less (or no) emphasis on morality by people who come to it from a face-to-face logic of embedded relations. This type of experience however reveals precisely the disconnect that the ‘rural work’ explained by officer Liu seeks to counter: there is equally a moral justification for having evidence-based courts and establishing truth that way, but this justification may not be visible to people who do not see law and legal procedure itself as an ‘order of worth’ that this justification points to.

Elderly care in law and in (rural) practice

One of the dispute mediations I had a chance to observe on two separate occasions at both of the rural police stations, involved the case of two brothers from a nearby village belonging to the Lu lineage. The brothers had not been able to settle among themselves how to arrange the care of their elderly and infirm mother. This case was described by the police officers with the shorthand ‘family disputes - elderly care’ (*jiating jiu fen - shanyang laoren*), so common is this type of a dispute in the rural areas. These brothers had a history of conflict, and five years earlier they had similarly argued about the care of their now deceased father. At the time, the dispute was resolved with the help of a lineage group mediator (see Chapter 1), a respected and ‘learned’ man (*you wenhua de ren*) man from their lineage, who had helped the brothers come to an arrangement about the care of their father. It was then agreed, among other things, that the younger brother would care for the father, but the future care duties of the mother were left open at the time. Since the death of their father and the worsening health of the mother, the issue of which of the brothers would invite the mother to live with

them and which would pay the other brother monetary compensation for this care became again under dispute.

In the course of my research I was told several times that often it is the brother who is less educated who stays on in the old family home tending to the land and undertaking the filial duty of caring for the elderly parent, leaving thus the other brothers to contribute in other ways. Anthropologists have long observed systems of ‘meal rotations’ (*lunlin gongyang laoren* or *chi lun fan*) whereby married sons take turns in inviting their elderly parents to meals for an agreed period of time (Jing 2004:53; Fei 1939; Lin 1947). If the distances are longer, the elderly parents may take up residence in each of their sons’ households in turn, staying with them sometimes for several months at a time (Cohen 1976; Hsieh 1985). The family rotation schedule is often fixed at the event of the household division (*fen jia*) when the existing household is broken up and the married sons establish their independent households (Jing 2004:54; see also Cohen 2005), receiving in the process some or all of their inheritance share. While meal rotation has a very long history in China as a form of old-age support, the practice now also highlights the rural/urban divide: urban households are overwhelmingly composed of the nuclear family only, with live-in old-age support getting increasingly uncommon. The meal rotation in rural areas is also a very public practice, inviting comments on a son’s performance of filial piety, which is a crucial measure of moral behaviour (ibid).

In my first village host family in Yuhucun I observed how the family came up with a workaround that was akin to a meal rotation system, spreading the care of the 90-year old mother slightly more evenly among her three sons who were all in financially sound positions, married and had their own families. While the primary duty stayed in this case with the eldest son, who remained in the old family home, the mother would be taken to live with the youngest son who lived further away for about 4-5 months of the year, and more often but for shorter periods of time with the middle son who lived in the nearby Tengchong city. As she neared the end of her life however, it was decided at one point that she would no longer move out of the old family home where I also lived for a time, especially because she no longer adjusted very well to the hot climate of the city further away where her youngest son had settled. This arrangement was not talked about in terms of meal rotation; rather it was explained to me that the primary residence of the elderly mother stayed with the oldest son

because he also continued to live in the old house, which retained the family ancestral tablets (and by extension, the ancestors).

Daughters are not typically involved in a formal way in the calculations concerning elderly care. In actual daily practice they are however much more involved in the care of their birth parents than the stereotype (or indeed Freedman's 1958 structural-functionalist lineage model) of a 'married out' (*chu jia*) daughter might suggest (see for example Judd 1989; Stafford 2000). When asking my police officer or local official informants about the role of the daughters in elderly care I was sometimes given embarrassed answers about the inherent inequalities involved. Such embarrassment in front of a foreign researcher was less common when I asked ordinary people in the villages about the topic, indicating a level of comfort with the practice of assigning the primary care duty to the sons.

The 2013 law on elderly care called "The Protection of Rights and Interests of Old People"³³ does however ascribe equal elderly care responsibility to all siblings, male and female. The police mediators, rural government officials, and lawyers I talked to about this topic all acknowledged that the law and actual 'rural practice' differed often significantly. As an explanation, I was repeatedly told by this group of informants that it was not possible to have daughters get involved in elderly care in any formal way because they would almost always be 'married out' to another household (and possibly somewhere far away), thus incurring care duties in that new affinal household. Also, as daughters do not tend to inherit land or assets like property from their birth family (a practice that may not be strictly according to law), they would also not be part of the calculations whereby the children taking care of the parents would agree to receive a larger share of the inheritance in exchange for the care. If a daughter does not inherit much beyond what is given to her as the dowry, she is also often outside of the explicitly agreed upon care duties. One Party Secretary, expressing a widely held sentiment in both the rural and urban parts of the County, told me that what remained the daughter's duty was to, whenever possible, visit the elderly parents on important holidays and when they were ill, and to bring fruit and clothing as gifts with them when they came. He continued by adding that even though the duty of the sons was primarily to take care of the physical comforts of the elderly parent, this was not all: the sons should

³³For an interesting journalistic treatment of the topic see: <https://www.nytimes.com/2013/07/03/world/asia/filial-piety-once-a-virtue-in-china-is-now-the-law.html>

also be nice to their elderly parents; greet them in the morning; ask them ‘how is your health’ and ‘what would you like to eat today’; and make sure they were comfortable overall, he explained.

Something like the kind of care that the Party Secretary above describes is, it seems, what the 2013 law on elderly care had in mind when specifying that the duty involved ‘spiritual’ or ‘mental’ (*jingshenshang de*) care in addition to giving respect and providing physical and medical care to the elderly. In the 2013 law, ‘supporters’ are defined as direct descendants of the elderly or others being under the legal obligation to provide for them; ‘elderly’ is defined as citizens over 60 years old. A few articles describing the moral and emotional aspects of elderly care are worded as follows:

“**Article 13** The care of the elderly is in the first instance based on at-home care, and their family members shall respect, care for and look after them [...]

Article 14 Supporters of the elderly shall fulfil their obligations by providing for the elderly economically, taking care of them in daily life and comforting them mentally (*jingshenshang weijie*), and by attending to their special needs [...] The spouses of the supporters shall assist them in fulfilling their obligations to provide for the elderly [...]

Article 18 Family members shall care for the mental needs (*jingshen xiqin*) of the elderly and shall not ignore or cold-shoulder (*lengluo*) the elderly. Family members living apart from the elderly shall frequently visit or greet the elderly. Employers shall, in accordance with the relevant provisions of the state, ensure the rights for the supporters to have the family visit leave [...]

Article 19 The supporters shall not refuse to fulfil their obligations of providing for the elderly with the excuse that they will give up their right of inheritance or for any other reason.³⁴”

Additionally, Article 1 of the 2013 law notes that the aim of the law is to “protect the lawful rights and interests of the elderly [...] and promote the Chinese people's virtues of respecting,

³⁴ Translation obtained from lawinfochina.com, published by the legal information centre of Peking University. Wording of the translation of Articles 13 and 14 is amended from the original by me to, I feel, better reflect the original Chinese. Source: <http://www.lawinfochina.com/display.aspx?id=12566&lib=law>

providing for and helping the elderly”. The ability of an elderly person, as defined in the 2013 law, to bring a case to court if the ‘supporter’ is not fulfilling their care duty is based on this idea of the ‘rights of the elderly’ as distinct. This is what happened in the case of the Lu brothers, which will be discussed below when their dispute ended up in the court mediation. The inclusion of the idea of ‘Chinese people’s virtues in respecting the elderly’ on the other hand is a clear illustration of Huang’s (2015) idea of ‘persistent moralism’ in Chinese law, discussed above.

Finally, the juxtaposition of the 2013 law and the much older system of ‘meal rotation’ presents an example of intriguing clarity of simultaneous continuity and change in one crucial area of Chinese social and family life: the expectations place on the filial son and daughter. It is as if the 2013 law seeks to formalise, standardise and institutionally back (through the courts) the old ‘meal rotation’ system – all three being aspects of the classic weberian modernisation theory. When people’s relations with one another get caught up in a rapid society-wide change³⁵ like that experienced in China during the past three or more decades, and when the state employs a developmentalist agenda of modernisation, both the conflict between the new and the old, as well as the need to ‘figure out’ a way out of that conflict, seem to be inevitable. In the next section I will investigate through ethnography such a conflict and its resolution by looking at how one dispute on elderly care was mediated at this level of the officials.

A Dispute on Elderly Care Between Two the Two Lu Brothers

I happened upon the dispute between the two Lu brothers quite by accident. I was conducting an interview with officer Yang at the smaller satellite station of Dahan police precinct when he got the call regarding the need to mediate this dispute; afterwards Yang suggested that I come to observe it to, see myself what their work involved – the mediations were, as I would later find out from the fact that they were written on a public noticeboard,

³⁵ Here specifically I am thinking about for example the upheaval in Chinese society caused by mass labour migrations that have made large sections of Chinese populations more mobile than ever before. This has led to a myriad of changes in the Chinese family structure, one of which is the phenomenon of the ‘greying’ of many parts of rural China and even the appearance of ‘empty nest elderly’ (*kong chao laoren*) villages where a large number of elderly parents live alone without their children to care for them.

open for anyone to come and observe. On the phone that day was the younger brother Lu asking if he and his older brother could come the next day to the station to try to resolve their dispute on who would care for their elderly mother; this would turn out to be only the first of the two police mediation attempts. The mediation between the two Lu brothers lasted almost two hours on both occasions, and the conversations meandered from the money and land inheritance shares, to the state of the mother's ill health and her hospital bills.

The older brother wanted from the beginning that the police mediators also settle how the family land should be divided between the siblings; this despite the police mediators insisting that land division was first and foremost a private family matter and part of the household division (*fen jia*) arrangements. The older brother was insistent that the land should be divided so that their two sisters also got a share; this was because he seemed confident that the sisters would give their share of the land to him, the older brother, in exchange of him taking care of the mother. The sisters would after all have no use for the land themselves because they had 'married out' to a different community further afield.

Unexpectedly, at one point the conversation during the mediation got stuck on accusations, on both sides, to do with who had hit their deceased father and thus acted in the absolutely most unfilial (*mei you xiaoshun, xiaojing*) way possible. After some back and forth on this theme, the younger brother, frustrated by the way things were going, did something that disrupted the process momentarily. Unlike what I would have expected, the younger brother did not start to accuse the older brother of failings on his part, but rather began a performance of declaring his own guilt. In a loud voice, the younger brother began enumerating his own failings as a bad son to their deceased father, to the extent that, he said, he had actually "strangled their father to death". In this moment he also took out his wallet and offered to give the older brother all the money he had. The older brother was not having any of this performance of 'lowering' and refused to accept the money in this way. The older brother soon after also changed course and no longer claimed he had behaved badly towards their father. But now he began to accuse the younger brother of actually having suffocated their father. After a few moments of this, the mediation proceedings returned to their previous tack and the tone of the conversation shifted back to what it was before: a form of arguing but no longer a 'heightened' or ritualistic performance.

While certainly odd and chilling to observe, the way in which I came to make sense of this performance (after having confirmed with the police officers that there had been no crime involved – neither of the brothers had injured their father) was in the context of the justifications that people present for an outcome. I would see such change in the register to be employed very occasionally when suddenly the tone of speaking and ‘being’ in a space would be switched to a different register, whether by showing contrition and expressing regret in a mediation situation like this one, or by making oneself appear a helpless victim to rally the support for one’s cause from fellow villagers³⁶.

I was once even made party to such a form of ‘lowering’ as part of a negotiation. When my initial Tengchong city host father negotiated my access to Yuhuacun village on my behalf, presenting the case to the Party Secretary of that village, my host father took it upon himself to play the exaggerated role of a person asking for a favour. He made himself appear as someone ‘small’ and ‘silly’ who had come to the Party Secretary to ask for a ‘large favour’. This happened in spite of my host father, in formal terms, having the higher position in local government and being slightly more senior in age as well. As my host father spoke and belittled himself and his request, the Party Secretary listened on with no comment or expression of emotion; neither of the men looked at me even once during this part of the meeting – it was in fact not about me what was going on, but about the relationship between the two men. In the end, my host father’s efforts were successful and I was given permission by the Party Secretary to stay in Yuhuacun village.

The sudden outburst during the mediation by the younger brother Lu when he offered up his guilt and his money, made officer Yang who had thus far let the brothers talk amongst themselves leap into action. Yang, a quiet and mild mannered small man, began to speak at length, urging the brothers to let the past be the past, and whatever mistakes had been made in the care of the father who had died a few years earlier, and whatever the personal responsibility of either of the brothers, now was the time to settle the issue regarding the elderly mother’s care and come to a decision about it together. Officer Meng added that

³⁶ I also discuss such a performance of ‘lowering’ to rally support in the prologue of this thesis where I describe Wang Yan’s efforts to collect signatures for her petition letter. There I note that Wang Yan, like the younger brother Lu in this Chapter, could be seen as tapping into a widely recognisable form of behaviour that is meant to elevate the person on the receiving end of the performance, while ‘lowering’ the person doing it.

whoever was guilty of what kinds of bad deeds in the past would eventually suffer their due punishment if not in life then in death - but now was the time to settle the issue at hand.

In a long monologue towards the end of the mediation, officer Yang told the two brothers the following, urging the brothers to settle the issue and not involve their sisters into the matter:

“I am also a rural person (*nongcun ren*), and in the countryside if a family has a son then he is meant to show filial respect towards the elderly parent (*xiaojing laoren*), support them and finally arrange a proper burial for them (*yang lao song zhong*). The property and assets left behind by the parent would afterwards go to the son. If there are two sons then everything is divided equally – this is the case when any of us take care of the elderly, this is a custom that has always been passed down in the countryside. From the point of view of the law, men and women are equal; from the point of view of the countryside a daughter who has married out does not have right to a share of the assets, and the final fate of the elderly parent is for the son to take care of. Here we often say that a daughter who has married out is ‘spilled water’³⁷ that cannot be recovered, as after they are married, they are part of the husband’s household. Daughters will often, when returning to her parents’ home for a visit, buy some fruit, milk and other things, and if the parents are ill, then of course they will come and look after the parents a little, this is also a duty.”

The speech officer Yang made on rural customs was meant to bring the argument back to the topic of elderly care. His argument, made to convince the older brother rather than accurately describe, is a kind of orthodox version of the story of ‘married out’ daughters that differs from actual rural practice where the place of daughters has always been more complex (Bossler 2000). Officer Yang wanted to close down the discussion on whether or not land should also be given to the daughters in the family, which would then allow the daughters to choose which of the brothers to give their share of land to. The older brother hoped that he would in this way end up with a larger share than just half of the land, trusting that his sisters

³⁷ The phrase ‘married out daughters are like spilled water’ (*po chuqu de shui*) is a commonly known idiom to point to the idea that once married, daughters would no longer have direct economic value to their birth parents as their labour is now used to the benefit of the new affinal family (Zhang 2009:257).

would give their share to him. Officer Yin, in making an almost didactic speech on ‘rural customs’ sought to persuade the brothers to not complicate the matters and to leave the sisters out of the dispute at hand. In other words, the matter should only concern the male heirs.

Before the end of the mediation, officer Yang also spoke about the difference between police mediation and court mediation, saying that here at the village level and the level of the officials it was possible to divide land or settle a compensation sum based on feeling, what *felt* right (*ganqing shang de fenpei*), whereas in the courts this was not possible as they had a set procedure to follow. In this way, the parties would take a risk if they took their case to the court, Officer Yang implied, as the solution there would be achieved through a more rigid process and be legally binding. Officer Yang also offered his opinion that only people with bad relations with each other (*guanxi bu hao de ren*) go seek out a court resolution, otherwise things can be settled at the rural level.

The emotive performance of the younger brother during the mediation, discussed above, or the mediation efforts in general, did not result in the older brother reaching out and agreeing to a compromise. Finally, officer Meng got up and, seemingly angry, told the older brother to take the dispute into the court room in the city if he so wished, and handed him a stamped document proving that the parties had sought to resolve the conflict via ‘people’s mediation’ and had failed.

The Lu Brothers Go to Court

Four months after the second mediation event where the Lu brothers did eventually sign an agreement on how to divide the care of the elderly mother, I met up with the younger brother, Lu Deming, for a long conversation on their dispute and what had happened since I last saw them. He told me right away that about a month earlier they had attended judicial mediation at the basic level court (*sifa tiaojie*) and the matter was now definitively resolved. Lu Deming was not at all pleased. The resolution of the second police mediation had been that the younger brother would take care of the mother and the older brother pay him a recurring sum as compensation. However, a few days later he said to me, the older brother decided

that he would not honour this agreement: he wanted to take care of the mother and have the younger brother pay him a sum as compensation.

In the court mediation the judge sided with the older brother and decided in his favour: the mother would go live with her eldest son, and she had agreed to it. Lu Deming was upset about this resolution for several reasons. First of all, he told me, their mother was too infirm and no longer fully aware of her surroundings to be able to judge which of her sons would take better care of her. Second, the older brother wanted this outcome only because this would allow him to receive money from Lu Deming, money that he could then use for his alleged gambling habit. Third, if the mother lives with the older brother full time, this will prevent him from going out to look for work as an occasional labourer (*da gong*) to support himself, making him even more fully dependant on the money his younger brother gives him for the care of their mother. Finally, Lu Deming told me that the older brother, despite being 42 of age, had not managed to build himself a house and marry (*chengjia jiehun*), something that would become an ever-bigger problem as the years go by. In short, the outcome of the judicial mediation had upset Lu Deming and he felt that the criteria that had been used to decide the case had not been the relevant ones. The judge had decided the case based on the mother's opinion on the matter, and the notion that it was the older brother's turn to take on care duties. I asked which form of mediation he thought was more suitable, and Lu Deming said the following:

“Of course, to mediate here [in the village] is better. After the court mediation, my brother has now no chance [to improve his life] but when we were mediating here he still had some. My goal is to make it possible for him to leave to find work (*chu qu dagong*) and I will care for our mother. He still has a chance to establish a household (*zuyjian yi ge jiating*), but after having gone to judicial mediation, the likelihood (*jili*) of him establishing a household has now diminished greatly³⁸. Here in the countryside, if a man does not have a house by the age of 40, to find a wife is very difficult; besides, he really loves gambling. “

³⁸ Elsewhere in our conversation Lu Deming noted that while it was difficult for his older brother to find a wife (and by extension establish a household) at 42 years of age, considering that their mother would likely live another two or three years, it would only be even more difficult by the time she had died.

When asked if such things as a gambling habit came up in the judicial mediation and whether the judge would take it into consideration, Lu Deming said:

“The court did not consider it [the alleged gambling], their central issue is the question of arranging elderly care; the village mediation is in my opinion quite fair (*gongzheng*) ... The court mediation can only deal with the central issue (*zhuoyao de wenti*), it does not involve other aspects; in the village mediation you can consider such things.”

Here Lu Deming, in analysing and reflecting on the differences, had identified what for him was a big problem with the court mediation, namely that it can only focus on the central issue to be resolved and not look more broadly at, for example, what a decision means to the lives and futures of the people involved. This includes the older brother’s ability to earn money for himself by taking up employment elsewhere.

I also spoke to Party Secretary Hu whose purview extended to the village where the Lu brothers lived; he had acted as an additional mediator at one of the police mediation occasions that I had observed. Hu was disappointed about the result of the court mediation because, as he analysed the consequences of the decision, this would mean that the older Lu brother would forever remain dependent on the financial support of his younger brother, as he had been dependant on their father’s assistance when he was still alive. Hu then went on to explain that the older brother had problems with his intelligence³⁹ which made them at the local village administration consider this household as a ‘special case household’ (*teshu jiating*). Secretary Hu concluded by saying: “If the older brother had married and established a household [like his younger brother], and if he had an ordinary intelligence, we could then divide the responsibilities very clearly between the two of them”. For Secretary Hu, a good arrangement could be to divide the care duties equally among brothers. When I asked more specifically what he thought about the court deciding to grant the care role to the elderly brother, Hu had the following criticism to offer:

³⁹ It is difficult to say what he means exactly by “problems with his intelligence” (*zhibi you wenti*). From other conversations on the matter, it was clear that it was not in reference to the low level of educational attainment of the older brother who had only finished primary school. The younger brother had finished middle school and worked as a truck driver and carpenter on construction sites.

“Regarding the dispute between them, when we [at the police station mediation] handled it, our inclination was to make sure that the family would stop arguing; pass the days in harmony; make sure the elderly mother has food to eat and someone to look after her – when you have someone in your life who attends to you then things are ok. It seems that in court they want to clearly divide up any matter strictly according to the laws and regulations, and this is just not realistic (*ben bu xianshi de*), nor does it make any sense (*mei you yiyi*)”.

What Party Secretary Hu was referring to is a common complaint among the mediators working at this level, be it the police mediators or the civil servants of the Township: the courts use the law in a simplistic way and do not necessarily consider complex lives and people’s individual circumstances, such as what one’s financial, marital or family situation is. Sometimes this complaint was voiced in the language of local government official who has certain quota to fulfil and where an ‘unsuccessful mediation’ that goes to court looks bad in the compiled statistics. Equally however, many of the rural officials working for the local village government saw very clearly the problems associated with the legal route: the decision of the court may simply not be “realistic” or “make sense” in the context of the people’s lives.

Feelings and orders of worth

The above description of the course of the mediation proceedings and the ways in which some of the key figures involved saw it, brings us to consider the role of feeling as a component in mediation. Emotions and what feels ‘just’ play a part in a few ways. The outburst of contrition by the younger brother Lu in connection to the death of their father may itself be difficult to explain definitively – to describe it a calculated ‘strategy’ to gain advantage over the older brother would be imposing an explanation that does not ring fully true, not does it explain the underlying cultural values that the outbursts of the younger Lu brother or the other two performative instances of ‘lowering’ I described tapped into. Here I propose to see the behaviour of the younger brother through the lens of ‘orders of worth’. The brother tried, for a moment, to appeal to a different set of understandings between the brothers, namely the difficulties attached to being a good filial son. What is even more

interesting is how the police officers Meng and Yang reacted to the outburst by allowing it, but also seeking to convince the parties of the futility of these emotions in deciding something so specific and practical: the question of how to organise the care of the elderly mother. Guilt (or its absolution) was not for this process to decide, as Meng had noted in a particularly direct manner.

In a later interview with the younger brother he told me that his older brother had had an outburst of anger during the court mediation, but in that instance the judge had asked the older brother to stop such behaviour and speak in a regular and levelled voice. Unlike officers Yang and Meng, the judge had not seen the value of letting the parties vent their frustration for a moment. Another way in which feeling came into the proceedings as a form of justification was how officer Yang described the way in which justice could be achieved in a police mediation as opposed to a court mediation: the difference was that here at the ‘people’s mediation’ procedure, what “felt just” could be a deciding criterion. And so, there is an aspect in this conception of justice, achieved through mediation, that turns feelings into a truth statement. In other words, in saying that ‘what feels just, is just’ elevates feelings to the role of an arbiter in conflict, even if this means also sidestepping the law. Above, Party Secretary Hu expressed his regret that the court mediation had not come to the same conclusion as the police mediation had – and a large part of his criticism had to do with not looking at justice in this broad contextual sense but in a narrowly legal sense.

A further point of interest to note is the image that emerges from the police officer is that of a kind of social worker. In mediating the dispute between the Lu brothers, officers Yang and Meng sought to urge them to let go of the past and to concentrate on what can be done ‘right’ in the present moment. I will next describe another event that I observed at the head police station of Dahan precinct, which involved even more clearly the qualities of social and emotional work.

In August 2016 I happened to visit the head station a day after a boy who had come to visit his relatives had died in a swimming accident in Yuhucun village. There was no crime involved in the accident, as the boy had simply had a leg cramp at the worst possible moment.

While waiting for the boy's sister and other family members to arrive from a different County, the boy's Yuhuacun relatives had made the decision to immediately cremate his body. Once the boy's sister and aunt did arrive, a huge row was unavoidable: they questioned the motives of the relatives for not allowing the boy's mother (who was not able to travel to the site that day) and sister see the body, to verify with their own eyes that he had truly died of drowning.

This is when police mediator Liu and head of precinct Xie stepped in. They spoke to the boy's family who had arrived that morning about how they had immediately gone to the site of the accident right after it had happened. The two officers assured them that indeed there had been no sign of strangling or any other interference on the body, and that there was no other possible reason for the death than drowning. The witness accounts that they had collected at the scene had also pointed to the same conclusion. Officer Liu also told the boy's family, seeking to comfort them, that as this was the time of the 'ghost month' (*gui yue*)⁴⁰, there just seemed to be a higher occurrence of deaths in general.

A few moments after officer Liu had mentioned 'ghost month' to the boy's family, he came over to the side lines where I was standing. He told me in a low voice that actually it is not really the case that more people tend to die during the 'ghost month'. He had come up with this explanation in this tense moment with the hope that they might find it a source of comfort, to help them come to terms with the boy's death. Besides, "when you are dealing with the ordinary folk (*laobaixing*), you cannot always use scientific explanations to make a point", he said. In fact, officer Liu had been a little unsure if the explanation provided by the idea of ghosts would work. This was because the boy's family was not Han Chinese but belonged to a different ethnic group, and he admitted that he was not sure if this ethnic group also had similar notions about ghosts as the Han did and if they could place what he had said in the same kind of framework. As we observed the scene unfolding it did seem that Chen's words had had a calming effect.

⁴⁰ 'Ghost month' (*gui yue*) is the colloquial name for the 7th month in the Chinese lunar calendar. This is a time of heightened ritual observance both towards one's ancestors and the so called 'wandering ghosts' that can present a danger to people.

Being able to see the state of the corpse was a somewhat more serious matter. In Han custom, as my research assistant and officer Liu explained to me, it is important that a body should be buried whole with no limbs or ideally even organs missing. The police officers who had investigated the death assured the boy's family over and over that the body had been whole before its cremation. Both officer Liu and my assistant thought it very strange however that the more distant relatives, whom the boy had been visiting, would have gone ahead with the cremation in such haste: everyone should understand the anxiety caused by not knowing for sure the state of the corpse, as well as the consequences of an incomplete body in the person's afterlife, I was told.

In any case, after about two hours of arguing and shouting in the courtyard of the police station, the boy's sister eventually stopped fighting with the Yuhuacun relatives and began to cry, and soon after both groups left the station separately. One of the police officers had set up a camera to film the whole episode in case something happened and the tape would be needed as evidence; officer Liu commended the Yuhuacun relatives for instructing the out-of-town relatives to come straight to the police station and not have this argument in a private home with no police presence there to provide assistance and safety.

While it is unclear whether the quick thinking of officer Liu and others, and their sympathetic interference by reassuring that the body had been intact actually did make a difference, it was certainly what the officers themselves saw as being part of their job. Referencing the 'ghost month' as an unsettled time was done to provide some emotionally and rationally satisfactory reason for the death. This could be seen as another example of a process of 'figuring out' where officer Liu in particular engaged in 'testing' by tapping into a (potentially) culturally relevant value system and a system of reasoning.

In the mediation instances I observed, the way in which law was most often referred to by the mediators involved almost always a distancing effect. The message that comes across is that yes, the law and the courts are there to serve the people, but they cannot operate based on just 'human feeling' (*ganqing*), as officer Yang noted, or take into account people's kin relations and rural customs to any great extent. When I would speak to people living in the

local rural communities about the practice of police mediation I would hear the opinion that while bringing an argument to be settled by strange outsiders is a morally dubious thing to do, at least the rural police mediators understood the living conditions in the villages, something that was not always the case with people in the city.

A lawyer informant explained to me that the reason why dispute mediation up until the courts is called ‘people’s mediation’ (*renmin tiaojie*), while court mediation is called ‘judicial mediation’ (*sifa tiaojie*), is because “in the initial levels, it is people mediating other people’s conflicts, whereas in the courts it is the law that mediates the conflicts”. Behind such a statement is the understanding, baked into the institutions of ‘people’s mediation’, that as long as it is ‘people mediating other people’, there is considerable room for human feeling, local solutions and ‘rural work’. The statement also says a great deal about the ideology of modern legal systems. A legal system is meant to be so completely impartial and ‘rational’, as defined in modernisation theory, that the role of the judge as a human agent can fade to the background – to the degree that a judicial mediation is described as ‘law mediating conflict’ instead of ‘a judge mediating conflict’. Not seeing the crucial difference between the two can be one explanation for an experience of an unjust judge who doesn’t understand ‘rural people’. If following the law is not seen as an ‘order of worth’ in its own right, as I discussed with reference to Boltanski and Thevenot (2006), a court decision may lead to a feeling of being wrongly treated.

The local officials I spoke to are well aware of their work as functioning in a face-to-face, informal-to-a-degree kind setting. Party Secretary Hu noted once that in fact “China is a face-to-face society (*zhenren jiande shehui*) that prioritises relationships, and law courts cannot accommodate a great deal of flexibility, not even taking into consideration a person’s financial situation”. Huang (2015) similarly describes ‘people’s mediation’ hence:

“[a]nchored mainly on the social relations and moral values of the traditional justice system, they have greatly reduced the burdens on the formal justice system and have lent genuine substance to the official slogan of ‘harmonious society’”.

While Huang refers specifically to imperial justice systems, many of the values and social relations that he cites as its source still apply today in rural China in particular. It does seem

that police mediation is a state institution in which ‘harmony’ and ‘mutual agreement’ are genuine, non-ironic goals.

Conclusion

In this Chapter I took a step away from what I called ‘the village level’ where a resolution to a dispute could be sought by utilising such community institutions and resources as mediation by a lineage elder or by seeking the help of the local neighbourhood representative. This ‘level of the officials’ in dispute mediation is only somewhat removed from the village rationalities, as the mediators working at this level are often known to the people who come to the officials seeking help (the mediators may even belong to the same local lineages) and it is also governed by less rigid processes and regulations than the ‘level of the courts’ is, as discussed in Chapter 6.

The institution of police mediation is distinct from the village level mediation in a few key ways as discussed in this Chapter. Formally, and as it is described in the law, the agreements that are reached (written ‘mediation contracts’) are non-binding, and the process relies on all the parties engaging in it voluntarily. Substantively, the mediating officials can take into consideration a wide range of personal and familial issues that go well beyond the strict legal requirement, as set out for example in the 2013 legislation on elderly care. Some of the issues that the younger brother Lu and the Party Secretary wanted to take into consideration in the initial police mediation, for example, were the age and unmarried status of the older brother; the fact that he did not own a house and had not established his own household; his (alleged) gambling habit; and the better chance of finding employment if the older brother did not stay in the village to care for his mother.

In the police mediation these issues were expressed in the language of feeling: the police mediation, it was insisted by the police officers, afforded the chance to resolve the conflict in a way that *feels* right, rather than just following the law. Both the younger brother and the local Party Secretary offered the feeling of justice as a justification for why the younger brother should take on the care duties for the mother. When the case went into court however, the feelings of one side of the argument were not taken into consideration, and the younger brother was given the role of the carer, mainly because the older brother had

taken care of the now deceased father and because the older brother already lived in the mother's house.

Finally, this emphasis on being able to follow the feeling and the 'rural culture' as sources of justice in a dispute taps into the crucial question of how people, in practice, manage the disconnect between formal law and what is described as 'traditional practices' or 'customary law'. In legal scholarship, the analysis and interpretation of the sources of law and legal principles are the mainstream area of study. Such scholarship focuses, on the one hand, on such legislative resources as constitutional principles, statutes, treatises, or lower level regulations, or, on the other (and especially in common law jurisdictions, though not exclusively), on previous judicial decision that can in time become established case law.

In contrast, what ethnographic research can demonstrate, in particularly fine-grain and embedded ways, is that the sources of law and the sources of perceived justice may often not be the same, though they can influence on each other. This is particularly complicated in a situation where there is such diversity of institutions to turn to, as in the case of a family dispute for example. What happens if one party prefers the outcome of one type of mediation, while the other party forces a resolution at another type of mediation? This was the central problem that the Lu brothers faced: going up to the court procedure, which produces a binding resolution, means that all other efforts of mediation become functionally void, despite the parallelism of the different institutions in the meaning that people may give them.

The 2003 law of elderly care clarified it to be the legal duty of the person who is defined as a 'supporter' to provide care in its various forms for the elderly dependant. However, as many of my informants working in dispute mediation confirmed, this brought a new kind of access to the court mediation process. Now, in such cases as that of the Lu brothers, there was a more direct path to force a resolution in the courts even if just one party to the dispute pushed for it. Such ambiguity and at times conflict between the 'formal' and the 'local', 'traditional' or 'rural' comes up again in Chapter 5, where I examine the categories of 'guanfang' (official) and 'mingjian' (local; of the people), and how those different logics are

managed in the same ritual space. In the next Chapter (Chapter 4) I first turn to analyse the ways in which the police mediators themselves see their work, and the kinds of expertise that they cultivate when dealing with cases that are so heavily marked by practices of traditional morality as that of the Lu brothers.

Chapter 4:

Classification of Disputes and the Expertise of the Police Mediator

I had already been visiting the head police station of the rural Dahan precinct over the course of several months already when officer Zhao told me in late July 2016 to come early on the next day so that we could together go through a selection of old cases that he had himself handled during the ten years he had worked as a dispute mediator. We sat down in the station meeting room, a bare office with a large rectangular table taking up most of the space and old discarded pinball machines lined up on the side; at the back were lockers for confidential materials and the desks where officers Zhao and Meng worked when they were not called out in the field.

Officer Zhao went to his own personal locker and brought out a document titled ‘The Classification of the Most Common Civil Law Disputes, as Prepared by the Supreme People’s Court’⁴¹. The nine-page document was already in dog ears and had some stains here and there, clearly having been handled for a while already as a tool in officer Zhao’s work. As the title suggests, these disputes all fell within civil law, and by definition were the kinds of conflicts that arose between legal persons, and thus the state prosecution service did not get involved. These civil law disputes in the officer Zhao’s document were divided into 14 main categories ranging from ‘Disputes Relating to Rights of the Person’, ‘Marriage and Family Disputes’, ‘Labour Disputes’ and ‘Contract Disputes’, to name a few. There were altogether 123 sub-categories, and some of the sub-categories also had further sub-categories. The document presented itself as a classification, in minute detail, of all kinds of human social conflict that nevertheless fell outside the criminal law.

In this chapter I examine the notion of legal consciousness of one group of professionals working in dispute mediation, namely the police mediators. I here consider legal consciousness as it turns into expertise (Mosse 2011; Good 2008; Urueña 2017), defined as a middle position situated between structure and agency (Urueña 2017). The ‘structure’

⁴¹ In Chinese: “Zui gao renmin fayuan dui minshi anjian de fenlei (chang yong)”. The Supreme People’s Court is the highest appellate court in the PRC, located in Beijing.

here is the institution on people's mediation as it takes place in the police context, and the legal system more broadly; in acting as a police mediator and an expert, we will see that there is considerable degree of agency available for the mediators to form their own understandings and practices within the legal constraints. Finally, I argue that the 'structure' that the police mediators reference in their work is not just the legal system or the notions of effective law enforcement included in policing. Rather, as I discussed in Chapter 3, the concept of 'rural work' is concretely present in their overall policing encounters, and the mediation work itself presents as a source of normative ordering.

In this chapter I will first delve into the encounter with officer Zhao that I touched upon in the beginning of this chapter as he explained the classificatory system of disputes to me. In the final part of this chapter I consider what implications these findings suggest to the research on legal consciousness as it appears in the formation of expertise.

Native Classifications

As officer Zhao and I went through his document on the different categories of civil law disputes mentioned above, we examined them carefully section by section and sub-section by sub-section. While we had already had many conversations about his work by then, this discussion allowed me to further explore officer Zhao's understanding of his profession as a dispute mediator. His work clearly involved many kinds of minute decisions that he would make on how to proceed in the course of a mediation process. Some of the dispute categories had been underlined on the page, and these also turned out to also be the ones that he most often encountered in his work. Over and over again, officer Zhao would place his finger on some category and say: "this is what we see all the time here in the countryside" or "this is only an issue in the city". Occasionally he would stop and elaborate on how he would proceed in solving a particular type of dispute in his work.

When we came to the section on elderly care (*shanyang*), he noted that this was an area of dispute that they see constantly in the countryside, when a son (or sometimes, though much less commonly, a daughter) was not fulfilling their duty to care for their elderly parent or

some other relative to a sufficient degree. The section in which this dispute category (sub-category 20 in the figure below) is placed looks like this:

Main category no. 2: Disputes within the conjugal household (*hunyin jiating jiu fen*)

10. Disputes to do with assets mentioned in the prenuptial agreement
11. Divorce disputes
12. Property disputes after a divorce
13. Disputes on liability for damages after divorce
14. Disputes on the validity of the marriage
15. Disputes to do with annulment of marriage
16. Disputes to do with conjugal property agreements
17. Disputes to do with cohabitation relationships
 - (1) Disputes to do with separating property in a cohabitation relationship
 - (2) Disputes to do with child rearing in a cohabitation relationship
18. Disputes to do with child rearing
 - (1) Child support payment disputes
 - (2) Disputes to do with change in child rearing circumstances
19. Disputes to do with spousal support
 - (1) Alimony disputes
 - (2) Disputes to do with change in spousal support circumstances
20. Disputes to do with supporting one's parents
 - (1) Disputes to do with payments for the support of one's parents
 - (2) Disputes to do with change in circumstances of support for one's parents
21. Disputes to do with adoption
 - (1) Disputes to do with acknowledging the adoption relationship
 - (2) Disputes to do with the dissolution of the adoption relationship
22. Child custody disputes
23. Visitation rights disputes

Table 4.1: Excerpt 1 from the document titled: "The Classification of the Most Common Civil Law Disputes, as Prepared by the Supreme People's Court of China". Translation by author.

In the above Table 1 the dispute category involving care of the elderly parent it is placed within the context of the conjugal household (*hunyin jiating*). Notably thus this duty is not classified as an *individual* duty of a descendant (son or daughter) or some other so called ‘supporter’ of a parent. Elderly care here sits with other categories where the dispute deals with a relationship of financial dependence, such as childcare and spousal support. While it is important avoid conjecture here, considering the provenance of the document, it seems a deliberate framing where the husband-wife household is defined as the main container of such legal care duties.

During our long discussion that day, officer Zhao said that when disputes to do with elderly care are brought to his attention, he would first try to appeal to what he calls ‘traditional morality’ (*chuantong daode*) and ‘rural social custom’ (*nongcun de fengsu xiguan*) to solve the issue. Such a circumstance was discussed in practice in Chapter 3 in the case of the Lu brothers. Officer Zhao continued that often the police mediators would first encourage the parties to find a respected person from inside the family or lineage unit to mediate such familial disputes, or someone who has prestige within the village at large. This is advantageous because “they can speak better than we can” due to the specific kind of relationship and position they have among the villagers, he said. However, if the children are simply not willing to carry out their duty to care for their parents, then it is “not realistic” (*bu xianshi*), as officer Zhao noted, to expect other than legal means to resolve the issue: the institution of ‘people’s mediation’ will be of no use in those cases. Once a dispute is accepted into a court mediation procedure, the court will force a result and usually assign the financial obligations to one or all of the parties.

Letting a dispute develop to a court mediation case is something that officer Zhao is keen to avoid: court mediation would usually not be the best way to resolve an issue in the first place, he told me. There was also the question of reputation involved also, and some police mediators and village Party Secretaries were mentioned as being especially skilful in mediating villagers’ disputes. However, if there is both a basic acceptance of one’s care duties and a willingness to keep coming back to the police station for mediation talks then, according to officer Zhao, there is a chance that a court procedure can be avoided. What is clear from the point of view of the police mediators is that the court procedure is the last

resort when dealing with such civil law disputes. However, in order for the voluntary police mediation to work, one role of the police mediators is to create an atmosphere and space where the discussions *can* keep going.

We then moved along officer Zhao's document on the classification of the main dispute categories and arrived at the following list of the title headings with eight sub-headings under it:

Main Category no. 1: Disputes to do with the right to dignity of the person

1. Right to life (*shenmingquan*), right to health, right to bodily integrity (*shentiquan*)
2. Disputes to do with the right to a name and surname
3. Disputes to do with the right to images produced of one's likeness
4. Disputes to do with the right to one's reputation
5. Disputes to do with the right to one's honor
6. Disputes to do with the right to privacy
7. Disputes to do with the right to freely decide on marriage
8. Disputes to do with the right to self-determination of the body

Table 4.2: Excerpt 2 from the document titled: *The Classification of the Most Common Civil Law Disputes*, as Prepared by the Supreme People's Court of China. Translation by author.

Under the heading “Disputes to do with the right to dignity of the person” (*renge quan jiu fen*), the sub-heading “Disputes involving the right to freely decide on marriage” (*hun yin zi zhu quan jiu fen*) prompted officer Zhao to tell a story to illustrate and clarify what, in his experience, this title included. He said that while there naturally is a right to freely marry who one wishes “even here in the countryside”, this sometimes does become a point of dispute among families because in the end, “China still is a traditional society” (*chuantong guojia*), as he told me. Sometimes parents use a local villager to act as a go-between for matchmaking, while the children may feel that they can marry anyone they wish, he added. Even though, in formally legal terms, a person has the right to marry (or refuse to marry) anyone they liked, officer Zhao told me that it was not always helpful to frame disputes between parents and children in those terms using unnecessarily legalistic language like “right to marry freely”.

Sometimes legalistic language can be unhelpful as a framing device for a problem. Rather, in a case in which parents pushed their child into marrying against his or her will, the police mediators would usually simply handle it under the catchall term of ‘family disputes’ (*jiating jiu fen*). This was so even though the document he was holding during our conversation categorising such disputes under the main heading ‘right to dignity of the person’ (*renge quan*).

Similarly, he continued, if a dispute came up under the subsection with the title of ‘Disputes Involving the Right to Self-Determination of the body’ (*renshen ziyou quan*⁴²; main category 1, subsection 8), this would also be rather handled by the police mediators as simply a ‘family dispute’, and not as a kind of violation of a person’s right for self-determination. Officer Zhao said that in fact if you were to follow the full letter and intent of the law, then the disputes under this heading (‘self-determination of the body’) would rather belong to the purview of the Public Security Bureau (*gong’an jiguan*) and not the rural police post. For him, this was because the document mainly referred to cases of deprivation of liberty where a person is held captive – a serious criminal offense, as officer Zhao emphasised. And so, the police mediators take a broad view of such disputes and treat them more often, again, as family matters.

Officer Zhao then gave me an example of a case in which the individual freedoms (covered by the individual ‘right to dignity of the person’ category for example) on the one side, and the wishes of the family on the other side, had clashed, leading to a dispute in which the police mediators came to be involved. About two months prior to our conversation, a young couple had, against the parents’ wishes, made a plan to marry and move away from the village. Officer Zhao, occasionally rolling his eyes as he told me this, explained to me how the young woman was barely of age but hopelessly in love with the man and determined to be with him. The parents of the woman, before they could go through with the elopement, confiscated her mobile phone, bank card and ID card, making it essentially impossible for her to leave

⁴² Linguistically, this is an area where translation may not readily capture what is meant by a term. Here the civil law term ‘*rengequan*’ which is here translated as ‘right to the dignity of the person’ refers to a broad area of rights to self-determination vis-à-vis the body, one’s persona, and various aspects of one’s life course such as deciding to marry. More specifically, it also includes for example the right to bodily self-determination (*renshen ziyou quan*) which typically denotes that a person cannot be held captive against their will; and the right to bodily integrity (*shenti quan*) which refers to a person’s freedom to choose what to do with their physical body and its parts such as the organs. The term ‘*renquan*’ which is usually translated as ‘human rights’ in the sense defined by the 1948 Universal Declaration of Human Rights for example is not used in this document.

her village⁴³. Thus, in technical legal terms, they were severely restricting her personal liberty. Officer Zhao said that the police mediators felt that it did not make sense to approach this dispute by calling it a violation of the ‘right to self-determination of the body’ (*renshen ziyou quan*). Rather, in mediating the dispute, they thus approached it as a simple ‘family dispute’ case. The main way in which the police mediators tried to reason with the two parties was to convince them not to do anything drastic, asking the couple to let some more time pass until potentially getting married. As officer Zhao was telling me this story, another police mediator sauntered in, and the two police officers briefly got animated by the amusing memory of these two “kids”, as they called them, be so in love as to decide to elope.

Officer Zhao was particularly proud of the fact that his long career had afforded him ways to deal with almost any issue that comes through the police station gates. The realisation that the legal language and terminology were often not effective in a dispute mediation had emerged from experience, and officer Zhao reflected at a few occasions how important such ‘translation’ work from technical language to everyday usage was for him. Additionally, he told me of his theory that one of the key techniques of mediation was to refer to past cases, telling the disputing parties stories of similar cases that he had handled and how they got resolved. In this way, officer Zhao presented a kind of informal body of ‘case law’ of village disputes to his clients, as well as offering morally upright examples for people to live by. Such an ability to draw on stories of past cases allowed officer Zhao and his colleagues to put aside the legal categories in their client-facing work, reserving the terminology to the reports that they compiled to be sent to the Township judicial administration bureau (*sifasuo*), as discussed in Chapter 3.

Another theory regarding the successful resolution of disputes, prevalent among the police mediators, had to do with time: often it was a matter of letting some time pass while still continuing to talk about the problems; this could well bring the dispute to a natural close. Part of police mediation, according to this theory, was to reassure the parties that it was not obligatory to reach a final agreement that day, but that the parties could always come back at another time, even if the discussions got heated. In a memorable moment during a dispute

⁴³ A person is required to carry his/her ID card (*shenfenzhen*) everywhere, in particular when leaving their home to live elsewhere or even for travel. For this reason, taking away possession of one’s ID card could conceivably be considered a restriction to one’s freedom of movement, an interpretation that officer Zhao alluded to.

mediation, one of the police officers told the disputing parties: “you can shout as much as you like, it’s ok, here at the police station we are not afraid of conflict”.

The aspect of time-pass was another reason why many police mediators saw it as a good thing that there were so many different local level institutions for the disputing parties to consult before they even got up to the legal stage. After presenting the same case, same facts, and the same demands over and over again in front of different institutions and different mediators, with each having their own way of tackling the dispute (be it the lineage, village administration, police, or judicial administration level), it was more likely that a result would be reached. The distance of time and the amount of repetition involved was seen as part of what should yield a reasonable end result, as it was explained to me by some police mediators.

Some scholars researching Chinese legal reform note that, from the point of view of the Chinese state, one role of the rural mediation procedures is to prevent the courts from getting overcrowded, while at the same time keeping all kinds of disputes under control to prevent them from spreading or gaining wider publicity (Minzner 2011:936). As Comaroff and Roberts (1981) note, the analysis of dispute settlement as an essentially legal activity may obscure its political nature (1981: 10), and certainly this would be a case whereby legal reforms are tied in with such developmentalist and modernisation programs as the building of a ‘harmonious society’ in China (Minzner 2011: 943).

When I asked the police mediators directly whether they thought that it was part of their work to discourage people from using the law, they would say for example that “people can use the law if they like, but usually it is possible to resolve the disputes without going to court” or that “people don’t always realise that the court decision is binding, whereas they can keep coming to us as many times as necessary, and so we try to convince them that this is the better way”. The police mediators would also see it as part of their job to help the court system to avoid getting too many cases on their doorstep, and thus a sense of ‘containment’ of disputes could analytically be seen as a part of the work of the police mediators also here, whereby the police mediation functions as a kind of pre-screening of cases.

Such pre-screening did not mean that mediation would be done behind closed doors or in secret; on the contrary. Many police stations have a notice board listing the past week’s

mediated disputes, sometimes even providing a little summary of them. It would not be unusual for a neighbour or a kin member to come in and watch a mediation in progress, or simply hover around the open doorway and listen in. One such notice board at the Dahan head station most weeks enumerated the number of criminal and administrative cases that they had handled, as well as the number and kinds of disputes that they had mediated. This was the aim at least: some weeks when I passed by the notice board, it had been left empty.

One week in August 2016 for example, one could read from the notice board that there had been two land disputes of which one had already been mediated and the other had been referred on to a “relevant department” for further treatment. Additionally, two intimate relationship disputes (*nan nv jiu fen*, referring most likely to a married couple) had been mediated that week, both of which had been resolved “on the spot” using a “persuading style of mediating” (*quanshuoxing tiaojie*). Finally, the notice board advised people to let the police officers know about the land disputes within their jurisdiction as soon as they arise so that they can be kept in control and quickly resolved before things escalate.

Such notice boards and their statistics-driven picture of police work is one of the mundane ways in which the institution seeks to tell the public what their role is in the communities; it is of course not easy to determine whether many people read such notices carefully and what impression they leave. Giving a prominent role to dispute mediation on such a public-facing medium however, even going so far as describing how and when the disputes had been handled, further points to the idea that mediation is an everyday part of the work of policing. Moreover, claiming a role for itself in the community as publicly as to note how many land or intimate relationship disputes they handled, the institution of police mediation could be seen as further blurring the insider/outsider divide in the life of the community.

Expertise in Police Mediation

While the police officers may be useful outsiders in a dispute, they are not however just any outsider, but one representing the state and the enforcement of the law. Cooper-Knock and Owen (2015) when writing about South African police posts note that when people report a crime or proactively seek for the help of the police, part of it is about representing themselves

as the kinds of people who *would* interact with the police as a good citizen, thus affording them a certain kind of ethical self-image. This aspect of engaging the police also resonates in the context of this research as well. For Cooper-Knock and Owen, the discretion in when to intervene and when to include a case officially ‘in the books’ is an important part of policing. There is a liminal space between the lawmakers and the law-enforcers which sometimes involves considerable leeway: this is where a great deal of policing and police expertise is situated in (2015: 365).

I observed such leeway being the subject of a discussion at times at the head police station break room. Occasionally, the police officers would discuss either amongst themselves or with their superiors when to ‘officialise’ and bring ‘into the books’, to use the authors’ terms, an ongoing dispute, and when to stand back and observe how the dispute would be evolving. Cooper-Knock and Owen note that the intended destination or *telos* of a case among their police officer informants was for a case to be transferred to the courts (though this rarely happened as cases would often be taken off the books and dropped). In my research, however, the police officers seemed to operate under a different kind of *telos* in their work: the maintenance of ‘harmony’, reached through legal, semi-legal and non-legal techniques – whichever was deemed proper in a given case. In this context of policing, ‘harmony’ (*hexie*) was used in a non-ironic sense, as an idea that sometimes the society or the common good needs to take priority over the individual. This is distinct from the notion of ‘harmony’ in China that everyone knows is propaganda, but still needs to be publicly discussed in a genuine way, even if it is given an ironic treatment in more private circles (Steimuller 2013:22).

The idea of discretion and an appropriate use of it is an important part of a police officer’s expertise. The engagement of anthropology with the knowledge practices of experts, such as those in the fields of international development, policy and law, deals more broadly with the moments when there is a need to ‘figure out’ a fix to a problem at hand, using learned skills within the constraints of an institution. Mosse (2011), in writing about anthropology’s encounter with development professionals and policy makers, makes the following observation: anthropology “interrogates categorical constructions with a view to disassembling and hence render meaning explicit, policy makers are concerned with reassembling and reconstruction”, and such reassembling is done with the “aim to alter social ordering, not just interpret it, and to effect such transformations through the channelling of

resources” (Mosse 2011:1). In other words, policy makers contribute to social ordering in terms of concepts, categories, institutions and relations, and this process of reordering ultimately involves political choices on the part of the policy makers and governments more broadly (ibid). Anthropology has more classically dealt with categorisations as being products of social imaginaries and social ordering (Durkheim and Mauss 1963; Douglas 1966). In sum, investigating categories and how they are constructed allows us to better see political processes and human agency in play, and how power may be facilitated as a consequence (2011:49).

To investigate the expertise of the police officers, I will briefly leave the ethnographic context of China and consider scholarship on the role of international lawyers who work in domestic settings and who straddle the two legal systems (domestic and international) of different standing. While the police officers’ work discussed above is in a multitude of ways different from that of international lawyers, they do occupy a professional position with intriguingly analogous characteristics in so far as they are ‘suspended’ in between two somewhat strongly defined ‘levels’: between the village level of normative communities and social relations, and the level of the formal legal system. The police officers perceive themselves as having real obligations towards both.

In writing about lawyers working in the field of international law, Urueña (2017) notes that the interaction between international and domestic law needs not only to be explored at the structural level⁴⁴. Rather, to understand this relationship, one also needs to investigate the people working in those structures. In other words, what needs to be considered is “the role of agents that act within these structures, and their projects” (2017:395). When international law is looked at as a profession (which involves the accrument of expertise over time), this leads us to a more radical proposition, summarised by Urueña as follows: “international law is what people engaged in international law do” (ibid.). In other words: there is no international law independent of the people working in the field of international law, as the professionals working in the field are the ones who bring ‘international law’ into existence. The author continues by saying that in the end, a delicate balance between agency and structure needs to be found in exploring the role of these lawyers and their impact in the

⁴⁴ By ‘structural level’ Urueña means the question of the ways in which international norms or institutions (such as courts or organisations) impact on domestic norms and institutions.

field of law: international law ought not to be seen merely as events happening between abstract entities such as states or international organisations; rather, human agency in international law settings warrants particular focus. For Urueña, this balance can be found in the notion of expertise, explicating the concept in this way:

“The idea is to think of these lawyers as ‘experts’, in the sense that they have influence not because who they are as individuals, but rather because their specific expertise allows them to be influential within a particular structure. Expertise, thus framed, is a middle point between structure and agency: while it is the individual agent...that holds the expertise, such particular traits are irrelevant if a particular structure is not in place” (2017:396).

In my discussion of the police mediators being holders of expertise as defined by Urueña above, I move the focus away slightly from an idea of ‘the exceptional individual’ as well as such classic notions as ‘habitus’ (Bourdieu 1977) or ‘charismatic authority’ (Weber 1978), in order to analyse what makes people influential or effective in their particular setting. This allows for another analytical possibility to be opened up where a person’s knowledge and experience can be given greater focus. Equally, the notion of ‘the expert’ can here dispel images of the *opposite* to the notion of ‘the exceptional individual’ – namely the bureaucratic or otherwise automaton who has *no* agency, but only procedures and documents. In short, the police officers, in my analysis, should neither be seen as the exceptional individual nor as the office holder with little influence over the content of their work.

The case of the police mediators thus suggests us to pay attention to the push and pull of different structures of the state and non-state, and how processes of ‘figuring out’ are involved in informing expertise. In the ideology of the modern legal systems and bureaucracies, law and regulations more broadly are presented as rational and impartial structures that are lacking to a great degree in human intentionality or political intervention. In considering the notion of expertise that treats certain kinds of labour as a productive position, those ideological aspects of law can become more clearly visible.

Conclusion

In the beginning of this chapter I discussed some aspects of officer Zhao's work describing him as an expert dispute mediator. The examples of police mediation that came up involved, formally speaking, two subcategories of dispute: one involving the loss of bodily self-determination and the other a person's right to freely decide about marriage. The decision of the police mediators in both cases had been, on the one hand, to put away the legal jargon and simply call them 'family dispute', and, on the other hand, to utilise stories of past cases to guide the mediation. There may be a certain banality in these decisions taken by the police mediators – preferring what is 'practical' or 'simple' to the 'formal' and the 'complex' – but here I propose to take a somewhat different reading.

What is actually remarkable here, I argue, is the level of reflection and strategizing involved on the part of the police mediator, and the understanding of both the lived realities in the villages as well as what, in the end, is the role of the police mediator in the broader system of governance, including the legal system. While there is a certain practicality in calling all kinds of conflicts 'a family dispute', it still is the reasoning behind it that exposes the expertise involved. In Chapter 3 I recount the case of the boy who had drowned and how officer Liu offered the 'ghost month' as an explanation for the death, which could make sense of the tragedy to the family, hoping that the explanation would give them a sense of peace. At the time officer Liu noted that "sometimes the scientific (*keixue*) explanation is not the one in which 'ordinary people' (*laobaixing*) would find comfort", displaying thus both a sense of bureaucratic paternalism and his expertise as a police officer.

Finally, this institution of police mediation at the level of officials is situated in between local networks of the family and kinship and the community, as well as in the legal spheres of the lawyers and courts. This institution, as I show in this Chapter and Chapter 3, is also encouraged by the state, as it regulates both the access to the courts, and also gives people in the rural communities an avenue for dispute mediation that does seem to respond their particular needs. Like the village structures of self-administration, regulations do leave large 'grey areas' for communities to solve their own problems. Expertise, when understood as an ability to navigate that in-between grey area, consists of repeated processes of 'figuring out',

which at times allows an expert to follow well-worn paths of tradition, while at other times being involved in the production of the 'modern' in rural China.

In the next Chapter I first deal with the oppositions between tradition and modernity, as exemplified in an unusual funeral. After that, in Chapter 6, I move to look at the formal legal level and the notion of what a fully 'modern' handling of disputes looks like, by observing the work of the legal experts at that level.

CHAPTER 5:

Funeral of Teacher Wu: The Register of the State as It Insinuates Itself in the Life of the Village

Introduction

Wu Jiedong, a writer and local historian from the village of Laosongcun died at the age of 81; a little over a week after his death, an unusually large and lavish funeral in his honour took place that anyone could join. The guiding argument running throughout this Chapter is that the funeral of teacher Wu, as he was commonly called in the village, can be seen as a metonymy for the uncertain position that the state occupies in the lives of many Chinese rural people. This uncertainty is visible in the rituals and the general sociality related to the immediate death, as well as in the rituals of the final day of the funeral and entombment. In this chapter I present the funeral proceedings as an instance of where the state struggles (and at times succeeds) to come into the village and participate in the rituals, while also imposing its own narrative, in the process revealing itself as a widely perceived ‘outsider’ to the people in the village. The ‘official’ (*guanfang* or *zhengfu de*) actions by the state are contrasted by people to its opposite, namely action that belongs to the kin group or friends (*jiaren de, pengyou de*), while also being crucially contrasted to action belonging to ‘the rural’ (*nongcun de*). The ‘official’ here is thus imagined by people in the villages as ‘not-rural’, making such a presence of the state appear an outsider to their social worlds.

In Chapter 2, I presented an example of conflict where people from the village refer to the various institutions of dispute mediation (be it lineage member mediation; police mediation; or mediation by the courts) as being staffed by people who are able to understand ‘rural people’ (*nongcun ren*) and their lives to different degrees. While the police officers are seen as being able to understand ‘rural life’ quite well in the event of a dispute, the city officials, lawyers and judges are imagined as being distant and thus unable to empathise with the problems of the ‘rural people’. In Chapter 2 I argued further that reaching out to different institutions of dispute mediation can be analysed as a form of ‘testing’ the institutions and

the social worlds (Honneth 2010:37) which is part of the overall ‘figuring out’ the most appropriate way to resolve a dispute. In doing such ‘testing’, people selectively reach out to state institutions outside the village, looking for a desirable result. In this chapter that movement is reversed: the state temporarily comes in, insinuating its register, logic and reading of the event into the village social life, as here in the case of an important funeral. This reversal, when contrasted to the efforts of auntie Lu in Chapter 2, shows some of the limits of choice and agency that people have in their dealings with the state, while also showing the ways in which people manage these limitations in order to still retain some control over the meaning-making of an event that is crucial in the rural social world, such as a funeral.

After the funeral of Wu Jiedong, several online news sites published articles about him and the lavish and unusual funeral proceedings arranged for him at death. One news item included the epitaph poem (*muzhibiming*) written for him by a Tengchong poet which sketches out some of the accomplishments of Wu. It begins with the following six complementary couplets:

Sigh in sorrow for the master / an extraordinary person.
A peasant farmer / soared to the skies with high moral character.
Residing in a cold hut / stands apart in unique ability.
The mind mourns him for all the world / the will is rejuvenated.
A three *chi*⁴⁵ earthen cave / one speck of green-blue light.
The pen writes about the war of resistance / calls out to the souls of the nation.

The final day of the funeral, and the events during the 11-day period preceding it, proposed many answers to the question ‘who was teacher Wu, and who will he be in death’: a writer and historian; an elder and ancestor to his patrilineal descent group; an exemplary CCP member and former People’s Liberation Army soldier; a discredited historian who was later rehabilitated by the CCP for its own purposes; a poor villager and farmer. This variation of

⁴⁵ A ‘chi’ is a traditional Chinese measurement equivalent to about 1/3 of a meter

in-death identities also required differentiated funerary ritual treatment by the family, lineage and fellow villagers, as well as the local officials and other dignitaries in attendance. The epitaph above, typically a focal point in traditional Han Chinese funeral proceedings and something that is meant to speak about the legacy of the person, alludes to some of the competing ways that Wu would be claimed in death. Despite being a “peasant farmer” who “resided in a cold hut” the poem proposes to see him as a person for China and the wider world (*tianxia*), being someone of high moral character. Additionally, as the poem continues, so strong was his will that he was prepared to suffer while writing in a small cave with just a gas light flame to keep him company. This is reference to an oft repeated story of his early days as an impoverished writer, a story that circulated in media reports of him and was reinforced by a photograph in the dustjacket of some of his books.

In this Chapter I will argue that the so called ‘official’ / ‘vernacular’ (or *guanfang/ mingjian*) divide is important for understanding the uncertain and unstable relationship people – especially people living in rural village China – have towards the state and its officials. Through the lens of the funeral of teacher Wu, a locally notable figure who carried multiple roles in the communities in question, I will show how both the local villagers and the kin as well as the officials and others coming from the ‘outside’ into the village, manage the contested situations by seeking to smooth out contradicting ideas and ideals with help of discursive and interpretive ‘fixes’. By carefully managing the ‘vernacular’ and ‘official’ moments, both logics are allowed to achieve their own intended effects. Throughout Chapters 2 through 5 I have shown how people’s relationship to the state and in particular its officials contains such a need to ‘figure out’ the correct modes of action in a given situation, and how that process is a dynamic one.

On Funerals and Chinese Funerals

To understand what I mean by the funeral as a metonymy for this uncertain relationship it is useful to consider briefly what a funeral ‘is’ in the Han Chinese cultural schema, and what are the dense meanings associated with it. Rubie S. Watson describes funeral rites as the one

ritual that is not optional because they are also meant to protect the living (1988:205). The immediate purpose of the funerary rites is to settle the spirit right after death has occurred: this is crucial as, in the Chinese conception, the spirit at death can become dangerous, requiring funeral rites that “are concerned with converting this volatile spirit into a tamed domesticated ancestor” During the funeral rites the deceased person continues to be an individual and only becomes a “depersonalised” ancestor over time (1988:204). The funeral thus transforms the deceased person into an ancestor, with whom the family and kin group are expected to enter into new kinds of relations of reciprocity, relations not terminated by death (Watson 1988:9). This movement represents an important instance of kin relations going through cycles of separation and reunion, as Stafford (2000:81) notes, whereby ancestors are invited to ‘return’ at ritually significant moments throughout a year to continue the relationship from beyond the grave.

Watson argues against the broad view of Freedman (1958) who sees ancestral ritual as a whole to be a passive reflection of status quo, and as a ritual expression of the power of the community. Watson notes on so-called ‘grave rites’ in particular as follows:

“[t]he ancestral cult as practiced at the grave... is part of the process in which new orders, new status and power arrangements, are created. Grave rites are active; they are part of the process of change itself... During the rites, groups and individuals make claims and counter claims that alter the status quo. Rituals, we are often reminded do not speak with only one voice”. (1988: 204).

The ‘grave rites’ can also take place even several decades after the person’s death. While they differ from the immediate concerns associated with Han Chinese funeral and entombment practices in the contexts of the political struggle that Watson’s New Territories informants had with the then colonial government, an important similarity still remains. What was clear to both Watson’s informants and the people in Tenchong County who had a role in steering the memorial events for Wu was the notion that a person’s legacy is to a large extent up to those remaining alive to define, and that this process is acceptably a political one. Bell (2009) in her work on ritual argues that ritual always has practical effects and may not, as Geertz (1973) and others thought, be so useful as a mechanism to discover culture as embodied in ritual. In discussing the funeral here I adopt such a forward-looking approach and investigate

precisely the effects that the participants to the funeral events seek to achieve.

In the funeral of teacher Wu, the ‘officialdom logic’ and the rural (or more specifically ‘vernacular logic’) needed to be managed in the same ritual space. As such, the official/vernacular or ‘*guanfang*’/’*mingjian*’ divide will be examined below as it links up to ideas about tradition, modernity and rural places. During such an event that interrupts both the ordinary daily lives of people and the ordinary relations that people have to state actors involved, I argue, people engaging in negotiations with the state over what is the ‘proper’ way (in this case), to manage the funeral proceedings. A ritual event can make visible, in a concentrated and contracted form, aspects of culture and community life that otherwise can be difficult to observe explicitly. A funeral can thus involve larger societal discourses, being a metonym for them. While the filial duty of a son to care for his elderly parents can, for example, result in visible conflict that is eventually brought in front of a dispute mediation process (see Chapter 4), the way in which this duty is communicated and re-affirmed in the ritual sheds light to the overall meanings that are attached to that duty, and what is at stake if the promise embedded in the duty is not followed.

Moreover, ritual events often invite popular comment not only about the action itself but also the underlying meanings and principles of that action, and this was certainly the case here: I had several reflective and otherwise rare conversations with people about the state and its contradictions while we were in the side-lines of the many events related to this funeral. More broadly, funerals in these communities are moments when conversations about customs, tradition and social change came up organically, partly because the concrete referents at hand in the funerary events provide the kind of vocabulary for the conversation; but importantly also because funerals are a hotly contested area of reform efforts by the central and local state. In 2016 during the fieldwork for this research there were rumblings about the local township government putting up barriers for burying the dead “in a random fashion” (*luan zang*) in the family tombs on the hills behind the villages, rather than using the large public graveyards. At the time there were also campaigns to encourage people to use cremation rather than burying the body whole.

The relationship that people have to the Chinese state has in the anthropology of China increasingly been characterised as uncertain, ambiguous or contradictory, theorised with the

use of such concepts as the notion of ritual as popular resistance against state discourses (Yang 1989), or the emergence of ‘communities of complicity’ (Steinmüller 2013), where an ironic stance towards state plays a part in the making and reinforcing of the communities. During Maoist socialism, the drive to control and regulate the everyday, along with the campaigns to mobilise the masses, was once a hallmark of its ideology in practice (Steinmüller 2013:15). This could be seen in the introduction of bureaucratic mechanisms such as the establishment of work units or ‘production brigades’ (2013:16) that sought control over many aspects of people’s lives through for example regular meetings or by requiring permits to marry or travel outside one’s home County or Province. In reform era China⁴⁶ however, the role of the state in people’s lives has changed considerably but, it could still be argued that it has also blurred some of the lines for where state involvement ends and where, for example, the private matters begin of a person or a family begin.

This issue is not unique to China per se: all societies with a state differentiate between what belongs to a private or a public sphere, and when does the state become interested in what happens purportedly ‘in the private’. In reform era China this has been theorised with a focus on new spaces of privacy (Yan 2003) and the new entanglements in the public/private or state/kin divisions (Ruf 2001). This ambiguity and the perceived ‘other’ represented by aspects of the state is, I argue, what gives rise to people’s evaluations of certain kinds of state actors understanding or failing to understand ‘rural lives’ in situations such as the event of a legal dispute.

A Death Is Announced

I first heard of the death of teacher Wu through a circulating text message on the Chinese social media application WeChat, sent to me by my Tengchong city host father on July 31st, the day of his death. The circular read⁴⁷:

⁴⁶ In this thesis I use the term ‘reform era’ to broadly denote post-1978 China which is when the economic reforms known as the ‘Reform and Opening Up’ (gaige kaifang) policies began under the then president Deng Xiaoping. It is noteworthy that the legal reforms (zhifa gaige), a subject at the background of this thesis, did not begin as early as the economic reforms, and continue to be implemented in a piece by piece fashion to this day.

⁴⁷ Translation from original Chinese by the author.

“Tengchong rural writer Wu Jiedong has passed away this afternoon at 5pm⁴⁸ due to a misfortune of illness [three emojis of praying hands]. Wu Jiedong was born in Tengchong on July 10th 1935 at *sishi*⁴⁹ (in the lunar calendar: on *yihai* year’s⁵⁰ sixth month and 10th day at *sishi*). Wu Jiedong was generous in his lifetime, upright in his dealings, and held a devotion to righteousness that inspires reverence. His literary works were rich and abundant in number, making him an exemplary scholar. Wu Jiedong will never be forgotten!”

This circulating text message stressed the legacy of Wu Jiedong as a writer, emphasising his character and actions that made him an exemplary figure. The birth year is given in both the lunar and Gregorian calendars, used sometimes in scholarly or literary contexts for a sense of formality and gravitas. Similar to the epitaph poem quoted in the beginning, this circular text message emphasises the moral righteousness of Wu and implies that such righteousness could actually be the same in ‘official’ and ‘vernacular’ registers: these textual sources propose a merge of the two registers. The answer to the question “who was teacher Wu and who will he be in death” that comes across from the poem and the text message do not contain contradictions, pointing to a more unified answer. As I will demonstrate below, however, there are contradictions between the ‘vernacular’ and ‘official’ registers, and formal announcements work to sweep away or unify such contradictions.

This work of merging or removing contradictions when talking about a person or narrating events can be understood as seeking to achieve a ‘fix’ which allows the people involved to carry on while still not fully compromising on their chosen register. Pia (2017: 124) discusses the so called ‘ethical fixes’ as a way in which, in the case of water management, the contradictory goals in the management of public resources are allowed to remain in tension due to the “buffering and deferring effects of acts of self- and other-regarding care put in place by state bureaucrats” that allow the resources to keep being accessible. For Pia an ‘ethical fix’ can be an administrative action or a techno-legal solution that is temporary and

⁴⁸ People I spoke to in the village told me that Wu had died in his home at noon time and not at 5pm – an account that I find more credible.

⁴⁹ This refers to a form of timekeeping where a 24-hour day is divided into 12 segments, where *sishi* is the segment that denotes the time between 9-11am. This system dates back to the Song Dynasty (960-1279).

⁵⁰ The term ‘yihai’ corresponds to the year 1935 in the Chinese 60-year calendrical cycle called the gan-zhi system. The term for a given year is composed of one of the ten heavenly stems (gan) and one of the twelve earthly branches (zhi).

“personally and reflectively contrived”, and actions that operate mostly behind the scenes and are potentially invisible to persons that are not involved in the ‘fixing’. Bear (2015:131) notes that the contradictions involved in such large-scale public works as austerity capitalism in India, an ‘ethical fix’ that allows the suspension and management of such contradictions is not often a large-scale and top-down solution but a piecemeal and highly local ethical one.

My discussion on processes of ‘figuring out’ that lead people to reach solutions that suit their views of their own lives better is a close cousin of the concept of an ‘ethical fix’: both share the view that the nature in which people relate to larger structures in their lives such as the state, the legal system or (in Bear’s work for example) the economy have this local and dynamic aspect to them that bring the larger structures down to fit their lives. In this Chapter both processes can be seen when people relate to state officialdom and discourses of modernisation as they enter into the village spaces including the ritual ones. This is yet different from the discussion around the ‘localisation’ (bentuhua) of the Chinese legal system (Zhu 2016); here ‘figuring out’ and ‘fixing’ is understood not as a systemic solution, but as a response.

Teacher Wu lived in the same section of Laosongcun village as my second village host family and had been introduced to me on the first day after arriving to the village; a scholar like myself, I was told, would certainly have a lot to talk about with teacher Wu. I found him to be a generous conversation partner who was willing to talk about almost any topic I proposed; more practically, as he could mostly be seen sitting on his porch between the meal times with his little Pekinese dog, he would be someone I could talk to on the days when I would not know where to turn my research activities next. In the late summer of 2016, he disappeared from his porch for a period of about a month, and when I asked about him, I was told he was ill and recovering in a hospital. I was perhaps naively surprised by his death as I had been under the impression that his health was on the mend: he had, after all, been sent home from the hospital. As it turned out, he had been sent home to die, and indeed a ‘good death’ is generally considered as something that happens at home and in the company of one’s descendants.

When I expressed my surprise of teacher Wu's death, people I spoke to were in turn surprised I had not seen his discharge from the hospital as a sign of what was to come. A few months earlier I had taken attended a funeral in the same natural village of Laosongcun for a person who had died quite suddenly in the hospital and thus had not been able to return home to die. In such a case when the death had occurred outside the home, a careful ritual was conducted by the local Daoist ritual practitioner (*dao shi*) at the beginning of the final funeral proceedings, whereby a 'spirit path' (*xian dao*) that stretched from the front door of the house to the coffin was constructed, along which the spirit (*ling hun*) of the deceased person could return home from the hospital, and thus would not become a wandering ghost. Much care was observed to make sure that the meticulously laid out spirit path would allow the spirit to find its way home. For example, I was sternly told off by one of the descendants to stop hopping across the spirit path as I took pictures, but to remain on one side of the path so as not to impede the spirit's literal (and not just metaphorical) progression to the coffin at the other end of the path.

Teacher Wu died however in his own bed surrounded by some members of his own lineage in the house that he had constructed himself in the village. Bringing the dying person home to die is explicitly understood and codified by everyone as a rural or vernacular custom and seen as the proper way to handle death; a hospital death was not seen on balance as giving much of an advantage. Many in the village must have known that he was dying, but when I had asked people about his health upon his return home from hospital, I was always only told that he is now at home – his imminent death was not speculated upon. His remains were quickly cremated in a facility in the city.

While the death itself occurred privately in the village, later on that day his cremated remains became a focus of an official ceremony. News reports note that after the cremation was done in the city, the box of ashes was first brought to the township government building memorial room, used for such occasions, and several township and city dignitaries came to pay their respects; only after that was the box brought to the village for the successive rituals. From the published picture (6.1. below)⁵¹ it can be noted that the box of his remains was displayed among flower arrangements underneath a clear plastic dome in the shape of a coffin; his

⁵¹ Variations of a picture from this event appear at a few online news sites.

picture hung above the arrangement on a LED screen, and the memorial words written on electronic notice boards were located on both sides as in a traditional couplet arrangement.

A few important details in this arrangement at the township government building belied however the care that was taken to make the memorial *not* read too much as popular religion or belonging to imperial Chinese traditions, but rather for the tableau to read as ‘official’ or ‘Maoist modern’, which itself includes elements from Chinese rural customs (Friedman et. all 1993; Friedman et. all 2005). The couplets are written in simplified rather than traditional characters, and in place of such words as ‘spirit’ (*linghun* or other) to denote the person’s soul, the word denoting a person’s vitality and the mind (*jingshen*) is used⁵². The top bar reads “mourning with deep grief comrade Wu Jiedong”. In this space exclusive of officialdom, the word ‘comrade’ (*tongzhi*), which by now has almost disappeared from other contexts in its sincere meaning, is the honorific title of choice, and not ‘master’ (*xiansheng*) or ‘peasant writer’ (*nongmin zuojia*). The two latter terms were commonly used later on in the village funeral proceedings. The flowers displayed are mainly yellow chrysanthemums, which are commonly used in funerary contexts. In short, to stay clear of the risk that the memorial appear too much on the side of ‘superstitious beliefs’ (*mixin*), which the officials cannot be seen to be engaging in, a certain amount of management of the message is needed in this event at the Township government office. In teacher Wu we have to some extent a ‘public body’ that belongs to groups beyond the lineage, which leads to a degree of struggle over appropriate and applicable ritual.

⁵² In full the couplets read (from left to right): “Like a towering high mountain the illustrious name will not die, like gurgling fresh water vitality will last forever. In original Chinese: 高山巍巍英名不朽，清水淙淙精神长存”.



Picture 5.1: Memorial for Wu Jiedong on the day of his cremation at the township government building.⁵³

The first evening after his death, when the remains had already returned to the village, many of the villagers, both people of the same lineage and others, went to visit and kowtow in front of the box of remains. That evening the villagers also offered their help in arranging things in the house for the next day, when people from outside the village would begin to arrive to pay their respects. Such ‘work parties’ where help is offered is not an insignificant part of what is considered a rural or vernacular funeral: this is described as customary and ‘proper’, and people in the villages see it as such. Part of such rural ‘work parties’ is that people do not need to be specifically invited to attend them, or the actual funeral for that matter. I was told by several informants that unlike weddings, which are a ‘happy occasion’ (*xi shi*), anyone can come to a funeral to offer the deceased person thoughts of comfort (*gei ta wennuan* or ‘giving his/her warmth’). Unlike the weddings, where one must be invited to share in the joy of the family and the couple, expressing respect or grief for the deceased does not require an invitation, and this also is part of the reason why a funeral can balloon to become a large-scale occasion. This is how the eleven-day period between the death and the interment began, whereby the centre of the village sociality shifted to its far edge, where the house of teacher Wu was located.

⁵³ The online source of the picture is withheld by the author to ensure anonymity; some identifying features (such as the name and picture of the deceased) are removed for the same reason.

The in-between: 10 days of receiving guests

I happened to be in Tengchong city the evening when I received the circulating text message and when the box of teacher Wu's ashes was brought back to the village. When I returned to the village in the early afternoon on the next day, the mood in the village, and especially the section where both the house of my village host family and that of teacher Wu were located, was decidedly different from what it had been before teacher Wu's death. That morning had seen a seemingly endless cavalcade of people from the city bringing enormous memorial flower arrangements that were made of paper. So numerous were the visitors on that morning that I was told the line of cars had extended all the way from the village primary school to the far end of the village main thoroughfare where Wu's house was located, at the distance of about one kilometre. Officials high up in the Party structure both in the County government and in the city government had come, as had representatives of various cultural organizations and students from primary and secondary schools.

A few people I spoke to told me explicitly that the evening of the death had been reserved for the villagers to pay their respects, while the next morning was for the officials including people from the local party structure (*dannei de ren* or 'people from the work unit'; *shuji* or 'Party Secretaries'). The various groups from outside the village had all left a paper flower arrangement with a strip of writing on paper explaining in calligraphy which institution they represented, thus leaving a visible and literally legible trace of their visit: these strips of paper and others would be scrutinised and read over again by successive visitors during the 10-day in-between period, thus allowing for the visit of the dignitaries on that first morning to be noticed each time anew. As days went by, such flower arrangement could be counted in the several hundreds – in fact so many that they had to be lined up so that they circled the whole reception area, where a tarpaulin marquee was eventually erected to protect the paper flowers from the rainy season downpours.



Picture 5.2: *The reception area under a marquee in front of the house of teacher Wu. Several low tables were brought in for people to gather around in the evenings. During the day new paper flower garlands would be added around the area each day by visiting groups of people.*

As days went by, people seemed to become used to a certain new rhythm in village life, and each visiting group was no longer marked upon so closely. Outsiders would occasionally arrive suddenly and ask the people along the main village thoroughfare for the directions to teacher Wu's house. Towards the end of the 10-day period one could often hear music and chanting that signalled people from the nearby villages coming in to pay their respects; this was the way in which other villagers announced their arrival with percussion instrument music, while people visiting from the city or those representing various institutions typically came in large cars without the accompaniment of musicians. But mainly the village social life was influenced by one fortuitous feature of funerals: it was the duty (filial and otherwise) for the house in mourning to receive anyone coming to pay their respects, gesture them to sit on one of the many low tables laid out on the yard in front of the house and offer tea, rice alcohol, small snacks like seeds and candy, and provide playing cards for the visitors to amuse themselves with.

While funerals are not necessarily an occasion to get drunk, the mood in the reception area would nevertheless be light and convivial, with people enjoying each other's company. The traffic of the people became quickly too big and the amount of sunflower seed husks and cigarette butts so numerous that the Wu family had to bring a small skip load of gravel for the outdoor reception area, to make it easier to sweep up the trash after each day and night of hosting. The reception area truly became the centre of social gathering and play (*wanr*), especially for the men in the village but also to the bands of small children who would swoop in to get some candy now and again from the bowls laid out to visitors; whenever a larger

group of outsiders would come to visit the house, several people would often stop washing their laundry at the nearby outdoor washing pools, or halt their other errands and come to see who had come this time.

I was told that many men, who would ordinarily not be in the village but out working at construction sites, had come back for the immediate death, and had now decided to stay and wait for the funeral until making the long journey back to their places of work. On the first day of receiving guests, I asked a few people who were not closely related to the Wu family about when the funeral would take place. None of them knew exactly but speculated that the reception period would last at least five days because this was a funeral for an important person. As they waited eleven days for the funeral day to come, they had quite a bit of free time to entertain themselves at the reception area.

The in-between time was, however, not without its own perils in the vernacular conceptualisation of the ghosts and the pollution danger. A person whom I knew well in the village asked me at one point why I had not been in the reception area for a day or two during this in-between time, adding if this was because I feared that teacher Wu's ghost (*sign*) would still be present. When I asked if this was what people thought was the case, she answered in a slightly evasive fashion that was typical when being asked such questions: "nobody knows if there are ghosts or not, right?". Such an answer, in which the question of the presence of the ghosts or spirits of the ancestors was not addressed directly – and of which I heard variations throughout my research activities - represents a discursive 'fix'. Such a 'fix' allows the person to avoid committing to a view that can be seen as embarrassing or 'superstitious' and not modern and secular. Steinmüller (2013) describes analogous potentially embarrassing instances as contributing to the creation of 'communities of complicity'. As an extension of that idea I propose to see such moments as part of the overall processes of dynamic 'figuring out', where people are cognisant of certain rural or vernacular customs as being problematic from the perspective of the officialdom and their programmes of modernisation, but as those customs are held as having significant meaning and value, a place needs to be found for them nonetheless.

During this in-between time after the death and before the funeral I went to have dinner with teacher Xu in Tengchong city, an elderly local scholar who has vast knowledge on the

history of the County, and also an enthusiasm for collecting local lineage records. An archaeologist by training, he spent most of his working life as a civil servant in the Tengchong County culture bureau. On that day at dinner, it was obvious what topic would dominate our conversation: the death of teacher Wu. Xu explained to me that Wu's books on the history of the Japanese occupation in Tengchong County⁵⁴, and the war against Japan as it happened in Yunnan province relied heavily on the oral histories that Wu had collected from people who had lived through those times. For a long time, these books had been somewhat controversial within the historiography of the war against Japan because he gave more credit to the Guomindang (GMD) party forces for the outcome of the war than what the historic narrative of the Communist Party would be prepared to admit for many decades to come⁵⁵. Eventually, and after having been side-lined for more than a decade, well into the current reform period, Wu did gain once more a high position of respect in the local government in Tengchong County and within the party structure, Xu explained to me. His long career in the People's Liberation Army (PLA) before becoming a writer was once again celebrated in Tengchong County politics after his literary rehabilitation. Wu continued to receive a pension from the state until his death and served for many years in various Party committees and positions of honour. Through talking with other local officials, I learned that while not being in a position to have much practical influence, Wu had come to occupy a symbolic position of an elderly and learned person (*wenren*) in Tengchong County.

During our dinner I pointed to teacher Xu that the duty to be always available to host anyone coming to pay their respects during this 'in-between' time must have been rather a heavy one, having to be there in the ready until past midnight on each day. Teacher Xu noted dryly, however, that the daughters of teacher Wu, with whom he also was acquainted, were the *kinds* of people who would "enjoy that kind of tiredness" (*tamen xihuan zhe zhong lei*) that resulted from the filial work of remembering, but also the work of promoting the name of

⁵⁴ The war against Japanese forces during the second world war is known in China as the 'Chinese People's War of Resistance Against Japanese Aggression' (*kang ri zhanzheng*), while the most common English name is 'Second Sino-Japanese War', lasting from 1937 to 1945. Several important fronts were located in Western Yunnan province, including in Tengchong County, due to its strategic location as an access point to South-East Asia, in particular to Burma/Myanmar.

⁵⁵ During the Second Sino-Japanese war, the Guomindang (GMD) forces and the People's Liberation Army (PLA) formed an alliance against Japan. After the war however fighting between the two sides resumed, and with the official founding of the People's Republic of China in September 1949, many Guomindang members left mainland China. In successive decades, the narrative of the Sino-Japanese War would change with the political climate, and the role of the GMD forces in securing victory against Japanese forces was typically underplayed. At different times since the founding of the PRC, suggesting a positive contribution by the GMD was seen as a more or less serious offence against the Party or the state.

their deceased father. In making ‘a big deal’ out of the death of teacher Wu, Xu said, the descendants themselves also became important. Additionally, receiving guest over such a long period of time also meant potentially receiving large sums of money. This, Xu thought, was not quite proper, and in fact it also showed the performance of a kind of ‘*jia ku*’ or fake ‘*ku*’, where ‘*ku*’ refers to a moral form of ‘enduring hardship’. If a funeral reception area becomes a ‘place for drinking rice wine’ (*jiu chang*), Xu noted, something was amiss, as it made the proceedings into a money-making venture rather than being about mourning.

Teacher Xu was not alone in his cynicism over the behaviour of the descendants and the scepticism over the true scholarly merit of teacher Wu’s writings. Soon after the death of Wu the rumors of just how lavish the funeral would be also started circulating. There was talk of the main banquet being arranged for 100 tables (meaning 800 guests), while others thought that this was too conservative an estimate. Another persistent rumor, brought up by several more elderly villagers, was that among the guests there would also be people from Taiwan who were not related to Wu, but were fans of his work. As Wu had credited the Guomindang forces’ role in the war against Japan, he was a known and well-liked historian even in Taiwan, I was told. Usually when people told me of such rumours they also noted that Wu had, of course, written his works much later, as this would not have been possible before the reform era began.

Another source of gossip was the fact that 10 days is a highly exceptional amount of time to carry out reception duties and perform rituals of mourning, and towards the end there started to be talk around the neighbourhood of the morally dubious nature of such a lavish and protracted funerary period. The regular drinking at the reception area kept some men who normally work as mix labourers away from their worksites; my village host father for example did not return to the construction site where he was working during the whole intermediate period because he did not want to make the 2-hour motorcycle trip four times, first to come for the immediate death and then for the actual funeral. Being paid only according to each day at work, this meant that the month of August did not see particularly good wages being generated for my host family’s household, though it did mean that the village work, which was usually done mostly by my host mother and her son at the rice paddy and at the fish pond, was now done by one more person.

While many people told me that it was proper for funeral arrangements (as well as the tomb itself) to match the importance of the person deceased, and that great persons would appropriately have a bigger funeral, this in-between period was the first time during my stay when people began to talk openly that teacher Wu had, in fact, not been the kind of a great man that everyone outside the village believed him to be. They further said that many of the things for which he had been respected in life and now remembered so thoroughly in death, had in fact been ‘fake’ accomplishments. My neighbour was one of those who wanted me to know that it was not true that teacher Wu had actually written all his works in the caves located at one end of the inner courtyard of his house: “did you know that he had only posed in front of the caves for the numerous photographs published of him; but he actually wrote his books at his desk in the house”, he quizzed me.

Wu’s house had originally been located elsewhere but got destroyed. When he came back to live in the village after years in the army, he took over a place that had been used in the village as a communal space. The caves that now had become famous as Wu’s writing den and as a symbol of his humble character had for example been used as places to store coffins before holding funeral rites, and as a place to keep pigs at other times. Wu came in to claim the space for himself and built his large house there, and his action was still remembered with resentment several decades later as a loss of the space for everyone to use, despite people also acknowledging that Wu also had suffered hardship in his life. Funeral guests coming from outside the village could be seen as posing in front of the caves for pictures, being glad to document for themselves the truthfulness of the official narrative about ‘Wu the peasant writer’ (*nongmin zuojia*). Such moments of conflict between the ‘official’ and the local or ‘vernacular’ knowledge were numerous throughout the funerary period.

My host father went even further in his evaluation of the general mood in the village over how teacher Wu was actually perceived. He noted that while he was a celebrity in Tengchong and Yunnan province, the locals did not like him (or even hated him) because Wu never did anything to benefit the village, but stayed away receiving praise from outsiders. This conversation made my host father and another person present somewhat upset, and even use quite strong negative words to describe Wu. The other person present said that even though Wu had been ‘locally born and bred’ (*tu sheng tu zhang*) he had behaved more like a celebrity (*mingren*) in his later life. The opinion that was expressed publicly among at least

some segments of the villagers was turning, and it was not improved by the way in which the family of teacher Wu chose to remember him.

The main issue that my neighbour and a few others seemed to have was that the family was *too* interested in gaining favour from government officials and other important outsiders, while at the same time also adhering to what are considered ‘traditional’ customs such as inviting Daoist ritual practitioners and Buddhist monks to perform rites during the ‘in-between’ period, and also at the funeral. Teacher Wu’s family chose both the ‘official’ and ‘vernacular’ registers, alternating between the two at different times. A moral evaluation of teacher Wu himself was also formed of him as having set aside his own village and lineage in favour of the fame beyond the village. This had also come up previously in my interviews with people on how family disputes got resolved in the village: an oft repeated opinion was that teacher Wu was not the person in the village to go to for help in mediating intra-family conflicts, even though this was a general expectation for someone who was a learned man and an elder of one of the larger lineages in the village. Wu did, however, intervene in the case of Wang Yan whose husband was detained for an attempted arson, which was discussed in the prologue of this thesis, by drafting a petition to the police authorities. For some people this indicated that he only became involved when it was not just an internal village family conflict.

It was teacher Xu who instructed me to be vigilant in taking part in the final funerary events before the final day of Wu’s funeral (when his ashes would be interned in the family tomb). As he explained, this would be a unique occasion for me to observe an event where two social worlds would collide and intermingle to such a degree: the funeral, he predicted, would be a fascinating mix between ‘*guanfang*’ (‘of the government’ or ‘official’) and ‘*mingjian*’ (‘of the people’, ‘vernacular’, or ‘local’). In effect, apart from local custom and ritual, what would be present was the ‘state custom’ and the ‘state ritual’, captured also by the term ‘*guanfang*’. My gaze primed, I came to see how this final day of the funerary rituals would in several important ways be different from the three village funerals that I had attended previously.

Two days of funerary ritual

The main focus at the house for a visitor coming to pay respects during the 10-day in-between period at the house was what I call here the memorial altar, where the box of the cremated remains of teacher Wu was displayed. In front of the box was a framed picture of Wu sitting with his large bookshelf in the background. On this memorial altar were the typical everyday ancestral altar items such as several bowls of rice, a cup of rice wine, fresh fruit and tea; at the edge of the table were displayed some of the books and articles that teacher Wu had published. One of the things that visitors might do after having completed the ritual component of the visit (whether kowtowing, bowing, or standing silently, depending on who they were) would have been to briefly leaf through some of these books. I came to think of this altar arrangement as something that was made with reference to Wu ‘the author’.



Picture 5.3: *Table arrangement for teacher Wu ‘the author’, picture taken on Aug 9th.*

On August 10th, the first day of the two-day funerary rites, things began to change as the Daoist and Buddhist ritual practitioners were also called in. As per usual, the two Dong Daoist masters, a father and son from the same village, were called to do the appropriate rituals in the reception area in mid-morning on that day. Long tables were set up in the reception area in front of the house, with an additional ‘altar’ at one end. A ceremony lasting about one hour was done, and the younger master Dong, dressed in his yellow robe, led the event throughout, requiring the participants, the descendants of teacher Wu, to follow him in silence and walk or bow when he did.

The two Buddhist practitioners had been called from outside the village, who performed the rituals in the early evening on the same day. In both the Daoist and the Buddhist rituals the only explicit participants to the ceremony were the descendants who would be expected to wear a white cap as a sign of their relative position to teacher Wu. The purpose of the Daoist ritual is usually described as an enactment of the journey that the deceased undertake into the spiritual world (Stafford 2000:82). As the rituals went on, many villagers would come and go, to observe for a while and then leave; others would continue sitting at the low tables drinking tea and playing cards. In this sense, it was a typical vernacular funerary scene with both explicitly ritualised action as well as other bustling action on the side lines going on at the same time in the same space. In conversations with people who came to see the two rituals, these activities were not seen as particularly odd or noteworthy, being only done to a greater degree of detail and length than usual. The first day of the actual funeral, August 10th, was also typical in that two banquet meals were served on that day in the village Guo lineage hall. This day was meant for the family and the villagers in general, and both of the banquet meals reflected this in being slightly more modest. I noticed that a great many people attended both the meals, unless they had regular employment that took them out of the village for one or both of the meals.

The final day of the funeral on August 11th 2016 (as the 11 days preceding it) was an intriguing event precisely because of the various affiliations that teacher Wu carried within him and in the community and the wider County, and how those affiliations became manifest in the remembrance of him: as the ancestor of the Wu lineage and a father to three daughters; as a former PLA soldier; as a member of the Communist Party and the various cultural

organisations linked to it; because of his appearance in the local government politics, and as a writer and cultural figure. These various roles that he had held in his life came up most explicitly at his funeral when the sometimes conflicting elements of ritualised actions were occasionally at odds with each other, as well as the need to ensure a kind of ‘afterlife’ for teacher Wu both as an ancestor and a cultural figure.



Picture 5.4 Table arrangement on Aug 10th during the Daoist and Buddhist rituals. Here, the box containing the ashes has been covered by a Buddhist wall hanging. Also note that the ancestral tablets (*tian di pai*) at the back have been covered after the death of Wu “so that the Wu lineage ancestors would not be able to see what was going on during this unsettling in-between time”, as teacher Xu explained to me. The paper and bamboo structure around the box of his ashes have been present since the early days of the in-between period.



Picture 5.5: *Detail of the altar table on August 10th, with instruments and other objects associated with Daoist ritual. The shell is sitting on a bed of incense, allowing for the smoke to rise through the conical end of the shell.*

On the final day of the funerary events, the day's events started early. My host family urged me to get to the Wu lineage hall (*zongzi*) at already 9am for the first banquet meal of the day, so that we would get a seat immediately and be ready to eat a large and meat-heavy banquet meal by 9.15 am. That morning the 'memorial altar', where the box of ashes was displayed, was rearranged once more: the banquet food was laid out on the altar table, and an additional table was set in front of the main altar table to hold additional ritual food items. The banquet food thus laid out would interact with the spirit of Wu. This arrangement could be labelled as one following the notions of 'popular religion' (Feuchtwang 2001) because it included several elements from the Chinese cosmology such as the inclusion of a pig's face and tail to represent the whole pig (itself an auspicious animal that appears in a variety of family celebrations); a figurine of a fisherman crafted from food items such as pig skin and food dye; the 12 painted zodiac animals moulded from dough; a whole fish; a small elephant statue; food stuffs made to look like kidneys or a heart, and so on.

People with whom I spoke in the village about the meaning of the altar items described them typically as being "a bit of fun" ("*jiushi hao wanr de dongxi*"); "various auspicious (*jili*) things"; or belonging to a generalised 'traditional China'. Such statements include some doubt about

the proper or ‘orthodox’ meaning of such objects (which the respondent may not have known); additionally, saying that an object is ‘auspicious’ or ‘wealth-generating’ (*you yu*) for example, is part of daily conversation and not related only to ritual events, and often such statements are not interrogated further in terms of how do the objects’ relate to more theoretical cosmological notions.

I argue that such vague sounding comments function as kinds of ‘fixes’. As noted above with regard to the epitaph poem and the circular text message, such statements try to smooth out contradicting messages by downplaying the meaning of ‘superstitious’ elements such as altar objects. Above I recounted my host mother avoiding my question of whether or not ghosts exist; similarly, a not-quite-an-answer like ‘this is just for fun’ avoids potentially difficult, embarrassing or troublesome (*majian*) conversations. This, I have argued, is part of what is involved in the processes of ‘figuring out’ which can be quite ad hoc when a justification is offered as a ‘fix’, but still dynamic as they respond to the situation at hand. I wish to stress that I do not imply that people would not possess a solid moral framework or core assumptions about the world; rather, there is room for manoeuvres and problematisations to take place, much like I discuss in Chapter 1 with reference to the theory on ‘orders of worth’. Death and funerals involve a great deal of concern over what is ‘proper’ in a situation (such as descendants trying hard to give the dying person a home death), which often required a moment of ‘figuring out’ what to do – even if no officials or ‘outsiders’ are in attendance. Such ‘fixes’ smooth out that process, as when there are two ‘proper’ registers to take into consideration like ‘official’ and ‘vernacular’ ones.

When I asked my friends in Tengchong city about the altar items, people typically in middle-class professions, they would usually express pride in such vernacular and rural practices. Some even saw them as specifically Tengchong customs that preserved some important Han Chinese ideas such as the incorporation of the 12 zodiac animal figurines into the ritual.



Picture 5.6: *The altar with items of ‘popular religion’ in the front and the dishes from the banquet at the back (Aug 11th).*

For the purposes of the present discussion on ‘figuring out’ and putting in place ‘fixes’, I next move on to what happened when the Wu household began to anticipate the arrival of outsiders from the city and elsewhere, including Party officials and the media. There was also a camera crew in attendance from a private company, which often recorded cultural events around the County.

Officialdom ritual takes centre stage

Most typically when a household decides to arrange a banquet, it is arranged as a two-day event. The first day’s two meals would be modest and aimed more for the villagers, and in the evening a simple snack of noodle soup would also be provided to keep the people helping with the cooking fed and ‘paid’ for. The second day would be when people from the outside the of village and possibly much further away would arrive, and the first banquet meal of that day would be the most substantial and lavish one, the second banquet meal sometimes

only consisting of leftovers or rehashed scraps, being intended to send away the guests coming from far with still some more food in their bellies. Most of the main banquet meals that I attended were catered for crowds numbering somewhere between 30-80 tables (i.e. 240-640 people) when each square table can accommodate eight people (called the *ba xian zhuo* or ‘eight immortals table’ - an auspicious gathering). It is hard to give an exact estimate of how many tables were served at Wu’s funeral but considering that the guests were seated at two different ‘waves’ (people had to stand on the side-lines waiting for the tables to finish eating) I would say the number was around 110 tables (880 people). People I spoke to also speculated the number to be above 100 tables

Earlier in this chapter I flagged up teacher Li’s advice to be alert to the ‘*mingjian*’ (‘of the people’, ‘local’, ‘vernacular’) and the ‘*guanfang*’ (‘official’, ‘of the state’) aspects of the funeral; so far, the discussion has been at the ‘*mingjian*’ realm, touching briefly on what can also be called ‘religious’ practices. The reason for this is obvious and temporal: apart from the immediate next morning after the death, when scores of outsiders came to visit, the ‘*guanfang*’ aspects of the funeral of teacher Wu were most pronounced on this final day and after the villagers had finished eating their morning banquet meal at the Wu lineage ancestral hall.

After the villagers and other ‘insiders’ to the funeral had finished their meals and come to pay their respects at the memorial altar, which held a dish of each banquet food served, the reception area at the house of teacher Wu needed to be quickly prepared for the ‘outsider’ guests, some of which represented the officialdom or the Party structure in some capacity. In a great haste, the symbolic food items such as the pig face, the elephant statue and the fisherman figure were cleared out, and the front table holding some of the banquet food (meant as an offering to the deceased person) was removed. I struggled to take even a few pictures of this table arrangement, such was the rush to make way for the next altar arrangement: back to what I called the one representing teacher Wu ‘the author’, complete with the stack of his books and articles, incense and bowls of fruit. The quilts from the floor on the side of the altar were also removed as the ‘outsider’ guests coming to visit that morning would not be kowtowing to the ashes of teacher Wu, which removed the need for knee protection quilts for the descendants who would have been expected to kowtow together with the guests. If the funeral can be understood as a metonymy for the uncertain relationship that people have towards the state, whereby the state seeks to enter villages and

private spaces, such brief moments as removing the knee protection quilts to make way for remembrance actions in a different register, are where this struggle between the two is embodied.

Around noon the reception area began to fill up with people from ‘the outside’ who had already eaten the banquet meal at the ancestral hall after the villagers were finished and were now waiting for the official part of the funeral to commence. It was easy to spot the outsiders, not only because many of them were wearing a white paper flower on their shirt with the composite word ‘mourn and remember’ (*ai nian*)⁵⁶ written on it, but also because many of them were wearing quite formal black clothing and shoes, with many of the women in high heels. The difference was stark: for the villagers, a funeral is not an occasion to get dressed up for, and in any case the colour of mourning is traditionally white, the colour that the direct descendants are expected to wear; second, the flower that people had pinned on their shirt was not in any way a typical occurrence at funerals. When I asked a few of my village neighbours about what it was I got the answer that they did not really know but “It was what the government people (*zhengfu de ren*) wear”.

The reception area in front of teacher Wu’s house also got something of a makeover that morning. Gone were the low tables with even lower chairs – all guests were expected to stand rather than eat snacks and play cards. A black banner was hung above the main door to the house reading in white characters: ‘the sending-off ceremony of Mr Wu Jiedong’ (*Wu Jiedong xiansheng songbie yishi*). This is what the final day of a funeral is for: the idea of sending-off of the remains of teacher Wu, in order for him to gradually turn into an ancestor in his lineage. Formally, this constitutes a proper “separation” of the deceased from their descendants so that a “reunion” can take place at appropriate times, as Stafford (2000:82) notes:

“[i]f care is not taken, the dead will become ghosts and suffer terribly, but they will also bring suffering to the living. By contrast, properly buried and worshipped ancestors – by definition those properly ‘sent-off’ and then routinely ‘welcomed back’ – bring blessings to the descendants”.

⁵⁶ ‘哀念’ (*ai nian*) which is a composite of ‘悲哀’ (*bei'ai*) and ‘想念’ (*si nian*)

Such a process of sending-off is not however without its dangers for those participating in the proceedings as a funeral procession invariably involves taking in a degree of “pollution” inherent in the corpse (Stafford 2000:80), and hence becoming vulnerable to “spiritual harm” (Watson 1982). In the ‘sending-off’ part of the funerary proceedings the two different groups of participants stayed together.

The ‘official’ ritual was brief: a few of the guests of honour such as a representative from the Yunnan writer’s organisation gave speeches in front of the gathered crowd, as did the husband of teacher Wu’s eldest daughter. The names of the distinguished guests were read out loud along with the organisations that they represented; present was for example a representative of the CPPCC⁵⁷ Baoshan Prefecture branch, the next administrative level up from the Tengchong County level. In this way, reading out the names of the distinguished guests was similar to the custom of reading out the names of people who had given money donations for a dragon lantern performance at Chinese New Year by a village performance troupe. The difference between the two was of course in the meaning: typically money is given not only as a contribution towards the costs of the performance, but also to receive in return wishes of an auspicious new year when the contributors’ names are read out aloud. In this case the intention in reading out the names was to acknowledge the status of the guests present, and by extension, the status that was implied teacher Wu as having.

In village funerals such formal speeches done standing up and facing the crowd are so exceptional that the several people I spoke to did not remember ever seeing it happen: the usual form is for a family group to bring a calligraphy well-wish or eulogy written on a large sheet of paper to be hung on a wall near the coffin. The well-wish is often poetically written, includes allegorical imagery, and is produced in as beautiful a calligraphy as the family group can muster, written either by themselves or by a hired calligrapher. This sheet of paper would then be read aloud by someone from the family group in a sing-song-y, ritualistic voice, often aided by the presence of a ritual specialist and done facing the coffin. Such obviously ritualistic speech being the expectation, the speeches at teacher Wu’s funeral were decidedly different. The content of the speeches also dealt with thanking the persons in attendance rather than exclusively speaking about the deceased person. These speeches also directed all

⁵⁷ Chinese People’s Political Consultative Conference which has an advisory role in legislation, with regional committees at all formal levels of state.

attention towards the speaker: if typically guests at a funeral do not necessarily pay attention to the action 'on stage' such as the recitation of a calligraphy eulogy, that day all attention was focused towards the house and the person speaking as everyone stood tightly packed on the reception area gravel.

After the speeches were over, a moment of remembrance was called out, during which everyone in the crowd was invited to listen to a piece of solemn classical orchestral music coming from a tape recorder, keeping their heads slightly bowed. Then it was called out for everyone to bow three times from the waist up towards the direction of the cremated remains. Later on, and when I had a chance to ask my host father and a few others about the action of bowing three times, it was explained to me in the following way: "kowtowing is appropriate for relatives and friends (*jia ren, pengyou*), while bowing from the waist up is for more distant persons and outsiders (*wai ren*)"; after explaining this to me he tapped on his knee and pointed out that going on your knees showed a different kind of respect. This was for me one of the clearest moments all day that spoke about the insider/outsider and official/vernacular - indeed *guanfang/mingjian* - dynamics that was present in the funeral of teacher Wu.

Kipnis (1995) notes that kowtowing, a sign of filial respect in particular, cut to the heart of peasant subculture in late 1980s and early 1990s, while villagers who were eager to construct themselves as non-peasant, would try to avoid situations where kowtow or a form of bowing was required (1995:127). Kipnis notes that funerals are moments in which one can scarcely avoid kowtowing and that more broadly,

“[f]iliality implies continuing past practices and, hence, tradition ... To adopt an advanced posture [i.e. not kowtow] at a funeral would imply forgetting one's ancestors. The same may be said of ancestral sacrifices. When asked why he performed ancestral sacrifices if he no longer believed in ancestor spirits, one villager said, "Ancestral sacrifice is a tradition. It shows that we will never forget our ancestors" (*wangbuliao zuxian*)” (1995:126).

In the citation above, Kipnis' village informant was able to distinguish between a belief in the spirits and filial behaviour, keeping the two categories apart through the notion of

‘tradition’. Invoking categories like ‘tradition’ can function as an effort to bridge between otherwise ill-fitting schemas, as a ‘fix’. In Chapter 3, invoking ‘rural culture’ had a similar such role of labelling practices that did not fit in with certain aspects of the state reform agenda. At times the contradicting schemas are given distinct moments, such as when the ‘vernacular kowtowing’ and the ‘officialdom standing in silence’ actions were temporally kept apart.

There is an additional temptation to describe certain moments during the funeral as being ‘Western’ (*xifang*) in character, as understood along the common Chinese narratives about the differences between ‘Eastern’ and ‘Western’ traditions and trends. Indeed, playing a recording of classical orchestral music rather than inviting er’hu-players and percussion musicians⁵⁸ to perform live could conform to this divide, as could the use of the colour black or inviting the guests to join in a moment of silence as a sign of respect and remembrance. However, everyone I spoke to about such divergencies from the usual progression of a (village) funeral emphasised the ‘official nature’ (*zhengfu de*) of such differences; some even made the link to former Maoist practices of mourning, such as the use of black arm bands in the event of a death in the family⁵⁹.

After the proceedings at the reception area were finished, everyone began to walk towards the direction of a clearing at the other end of the village where the next phase of the funeral would take place. A procession formed where both guests from the outside and the villagers would carry the paper flower garlands and items made out of paper to be burned for the deceased person to use in afterlife. Designated villagers carried the box containing the ashes in a palanquin structure: the box was on the top half and a live chicken (which was to contain teacher Wu’s ‘*linghun*’ or soul) was teetering on the bottom half of the structure below the box of cremated remains. The procession stopped on a clearing where the village Daoist master began a ceremony around the palanquin containing the box of the ashes and the chicken. The female descendants began a sorrowful wail while walking around the box behind the Daoist master, and other villagers assumed their usual roles in such a situation,

⁵⁸ The ‘er’hu’ is a Chinese string instrument; on some occasions such as someone’s 70th or 80th birthday celebration, the family might invite a performance troupe to play traditional Chinese songs on the flute and various other percussion and string instruments.

⁵⁹ In an ethnographic project such as the present one, tracing back the histories of ritual action is not always possible. Harrison (1999) notes that the action of bowing from the waist up as a sign of respect and deference was begun during the Republic Period in China (1912-1949) as a way to replace the action of kowtowing which was considered ‘undemocratic’ and belonging to the imperial past that the reformers sought to overcome.

such as burning incense and burning the paper flower arrangements or sprinkling water on top of the mourners with twigs.

Most of the ‘outsider’ guests stayed behind and did not walk the last few meters to reach the clearing; looking around the clearing there were hardly any persons left in the crowd with paper flowers pinned on their shirt. And so, the space became ‘*minjian*’ in character once more. As noted above, notions around funeral pollution may also have been an issue here. I spoke to a few of the ‘outsider’ guests who were left behind on the road before the clearing, and they did not seem to want to go further or be interested in the clanging sounds that could be heard from the instruments of the Daoist master; many of them were rather quite interested in the opportunity to chat and catch up with friends or colleges, some of whom had come from far away to attend the event. In this sense, the scene before the clearing resembled more a professional reception in tone, in contrast to the usual ‘*renao*’ (hot and loud action) associated with a Chinese village funeral going on a few meters away. The ‘*minjian*’ and ‘*guanfang*’ were spatially divided once more.

After the ritual portion was over, most of the villagers and almost all of the women left the clearing, while a small group of villagers continued to climb up the hill carrying the box of the cremated ashes and a few of the paper items to the site of the tomb to be built for teacher Wu (and ultimately for his descendants). As with other funerals I had observed, the mood became relaxed and mundane again at this stage of the funeral: the ritual portion was now mostly over and what was left was the more concrete action of building up the tomb, placing the remains inside, sacrificing the chicken and burning the last few paper items, to be sent off with the deceased to the next world. As I chatted with the men, talk turned to very concrete things, such as the reasons for why teacher Wu had been able to secure such a large plot for himself, while the new regulations that had been released just some months earlier limited tomb construction considerably.

The tomb was being built in part on the forest plot of teacher Wu’s household. It was strictly not strictly permitted to convert family land designated for forestry use into a burial site. However, as my neighbour and a few others saw the matter, it was acceptable for teacher Wu to have an enormous tomb site since he was close to the government (“*gen zhengfu hen*

shu”), while ordinary people (*laobaixing*) would not be able to get away with such an infraction. Still, being an ordinary person also had its advantages, as people reflected with me, and one of these was the possibility to still choose to not be cremated, despite the increasingly vigorous campaigns launched by the local government. Officials and those with close links to the state through the army, for example, were often cremated not only because it was required of a good official to show an example of proper behaviour even in death, but also because, if Wu’s family for example had decided to not cremate, they would also not receive a further 10⁶⁰ months of Wu’s pension payments in return. A person from the village I spoke to about this issue noted: ”regular people can do what they like [i.e. not cremate] as the government cannot make them do it (*kongzhi bu liao*)” The same person continued by explaining that a Daoist master came to the funeral proceedings because the family wanted it, and this is something that the government could not restrict: “China has a history of 5000 years, and these rural customs cannot be denied if people want to do them” he concluded. While an official is still an official in death as regards the expectation for cremation, in other areas of the funeral ‘rural custom’ the associated adherence to continue certain traditions can override ideas about officialdom behaviour.

Kipnis (1995: 126) observed in early reform era China that while alive “[p]arty members were supposed to be oriented forward, towards communism and were, thus, unreliable bearers of tradition” with the result that “[m]ost party members themselves asked more traditional members of their extended families to organize their funerary rituals”. The tensions between the vernacular tradition on the one hand, and Maoist modernity with its own teleological commitments on the other are, enable people to reflect on and observe them as they occur in practice, and recognise that a funeral has certain obligatory ‘traditional’ components that allow them to be considered ‘proper’.

The practice of building tombs on the hills behind the villages has also become a topic of contestation locally. In theory, people in Laosongcun are supposed to bury their deceased on the communal graveyards (*gong mu*) on the outskirts of the city; in a neighbouring village this rule was enforced more strictly, and at one point the local government came in to move the old and new family graves to a new communal graveyard when parts of the village land was

⁶⁰ From different people (including a few officials) I heard different accounts of the exact number of months a family could continue to receive salary or pension payments after the death of a government employee, ranging from a few months to 13 months. In the case of teacher Wu, I was told that his family would continue to receive 10 months of pension payments if they decided to cremate.

sold for redevelopment. In Laosongcun, however, the rule has not been so fully enforced, and new grave plots are still dug on the hills; when asked about this one of my informants told me that he was glad that they could still continue doing this in their village, as the huge communal grave yards set up by the government “do not cater to the needs of the people in the countryside” (“*bu mianxiang nongcun*”). This included ideas both about good *fengshui* that could be followed by burying people in a specific way on the hillside ridge, and also the idea of having one’s deceased ancestors nearby and being able to conveniently attend to their graves at important holidays.

In 2017 the township government passed an official policy to strongly push for both cremation and burial in the public graveyards: the stated aim is to achieve 100 per cent cremation rates and 100 per cent use of public graveyards for internment. To this end the township offers financial incentives for people who move the remains from old family village tombs to the public graveyard. According to the policy document, the aims of this policy are to “improve the quality of funerary services; the standardisation (*guifanghua*) of the management of the funeral and internment procedures; to make funerary reforms proceed in a more orderly fashion; to improve the ecological treatment of the bone ash; to civilise (*wenminghua*) the local funerary customs; and to modernise the facilities related to funerary and internment procedures”⁶¹. The policy presents a number of justifications for why people should change their ‘rural’ or ‘traditional’ ways, justifications that range from ecological concerns to a concern for bringing greater order to the perceived chaos with the help of modern and civilised practices. Such goals are quite distant from what people held important about funerals in the villages. As the informant whom I quoted above saying that the public graveyards did not cater to the needs of rural people, a similar evaluation could also be made of the above policy, further highlighting the gulf between ‘vernacular’ and ‘official’ practices and values.

The final day of teacher Wu’s funeral saw one more banquet meal served in the late afternoon once the cremated remains had been buried with the appropriate rituals. Once again, the crowd consisted only of villagers and other family members and friends of teacher Wu. On

⁶¹ Document titled “Tengyue Township Officially Launches Policy to Push for Funerary and Internment Reforms; Both Cremation and Moving of Tombs will be Rewarded”. Yunnan Legal Affairs Gazette (Yunnan fazhi bao) on 24.3.2017. Source: <http://www.ynfzb.cn/zhoushi2016/BaoShan2016/246505.shtml> (last accessed on 20.2.2019)

the next day on August 12th a final meal was served at the Wu family lineage hall, to send off the relatives and friends who had come from afar with food in their bellies, and to not waste the scraps from the enormous amounts of food that had been prepared for the day before.

Much of the discussion in this chapter has dealt with how people relate to the state, one that seems at times as being out of touch with or separate from the villagers' needs and culture. Such a disconnect or conflict is often indexed with the use of the term 'zhengfu de' to denote 'the other'. As the state initiates projects of modernisation and urbanisation, it at times becomes, I argue, an outsider – something quite distinct from what Maoism sought to achieve. Such a kind of conflict would sometimes require moments of 'figuring out', as in the case of this high-stakes funeral, in which disregarding the vernacular or '*minjian*' narrative and logic was not an option.

Summary: the 'Guanfang' / 'Mingjian' Divide

The emphasis on the 'vernacular' logic or even on popular religion did not just take place at the final days of the funerary period. Rather, throughout there were such 'vernacular' moments: the preference for dying at home; organising the work party to prepare the house and the banquet meals; giving money to the family of teacher Wu – which I did not witness but understood also taking place; and inviting the Daoist and Buddhist ritual specialists. Importantly, people saw these moments explicitly as such, as 'insider' 'vernacular' traditions, which are meant for the descendants and the wider kin at large, as well as the village.

When writing about '*minjian* intellectuals' Veg (2019) notes that the term 'minjian' is not a straightforward one to translate. Apart from the literal meaning 'among the people' it can be used in the sense of 'folk' as in 'folk music' (*minjian yinyue*) or 'unofficial'; what is noteworthy for this present discussion is however the historical dichotomy between 'min' (people) and 'guan' (officials) (Veg 2019:8). This dichotomy, as we have seen, retains the meaning as an organisational category in certain kinds of encounters between people and officials. In the historical context of the PRC in particular, Veg notes, 'min' also refers to something that is 'outside the system' (*tizhi wai*) of the work unit (*danwei*), and thus outside the state or Party

activities; in this context ‘min’ can refer to a person, a group or even an activity (ibid). Despite the gradual dismantling of the system of work units since the 1990s, the notion of working outside or inside the system (*tizhi nei*)– and ‘the system’ may not have easily defined borders either – is still a way of describing activities and positionalities of people vis-à-vis the state, of which the enduring *min/guan* divide is one expression.

The table below present some of the contrasting and predominantly material elements that could be observed both on the final day of the funeral and throughout the 11-day period.

Element	' <i>Guanfang</i> '	' <i>Minjian</i> '
Speech	Speeches done in front of the crowd which is gathered to listen in silence, standing up and facing the speaker	Each grouping takes turns to present a written eulogy which is then read aloud in a sing-song voice; other people present may be listening or doing other activities such as playing cards and drinking tea. This also happened at teacher Wu's funeral, but not on the final day.
Clothing	Formal office clothing (suits, skirts, high heels, shirts for men); the color black was common; wearing a paper flower on the shirt.	The guests pay no particular attention to the dress. Direct descendants wear white, including a white head dress. At points a short cane was used by the primary male descendant (in this case the husband of the oldest daughter) to walk with, and rough yarn is tied on the waist of descendants. These two elements both represent filial piety, humility (<i>pusu</i>), and a contrite disposition towards the deceased ancestor.
Actions of respect	Bowing the head; silence. At one point a person called out for everyone to bow three times in the direction of the box of remains.	Kowtow; no particular requirement for silence outside the explicit ritualistic action.
Directionality of the action	The guests were all standing and facing the direction of the cremated remains; concentration is one-directional, even by the villagers gathered in the sidelines to watch the event.	Guests come and go, some involved in ritualistic action (reading the eulogy, kowtowing), others follow on at the side-lines, and others are still engaged in other activities such as playing cards,

		snacking, looking at the items on the memorial altar and chatting inside or outside the house. Activity is done in several small groupings.
Writing	<p>A black sign above the main door of the house with the words ‘sending off ceremony of Mr Wu Jiedong’.</p> <p>Some writers also delivered artistic calligraphy pieces to be displayed at the house even after the funeral was over. Some of these were later framed and remained as permanent elements in the house of Wu even after the funeral.</p>	<p>Explicit signage is few; the title ‘<i>xiansheng</i>’ (for ‘Mr’) is not typical in a ‘<i>minjian</i>’ context. In some of the ‘<i>minjian</i>’ eulogies for teacher Wu the title ‘peasant writer’ (<i>nongmin zuojia</i>) was used, or an honorific/kinship title such as ‘lao’ (‘old’), ‘<i>da ge</i>’ (older brother), ‘<i>laoshi</i>’ (teacher) or ‘<i>lao da ren</i>’ (honored person of importance).</p> <p>The signage such as the eulogies are typically burned together with the paper flower arrangements to be sent off with the deceased. In a ‘<i>minjian</i>’ context very little or no signage remains after the funeral is over</p>

Table 5.7: Comparison of the ‘*guanfang*’ and ‘*minjian*’ elements in teacher Wu’s funeral

Conclusion

In this Chapter I have discussed some of the ways in which people in the village negotiate and ‘fix’ contradictions and ambiguities when sharing the same ritual event with the state actors, who are conceptualised as coming from outside the village social worlds. This Chapter complements the discussion in the thesis so far by further exploring what it means to be rural and committed to a ‘vernacular’ logic, in spite or sometimes being against the state, and while also being part of families and lineages that come with their own commitments. I demonstrate that in the process of going through the complex ritual acts, people are also ‘figuring out’ their relationship to the state, tradition and to each other in the community. Such ‘figuring out’ results at times in following the ‘official’ logic and regulations (such as agreeing to cremation; allowing for moments of state ritual), while switching to the

‘vernacular’ logic when possible and when it is crucial to do so (such as bringing in the Buddhist and Taoist ritual practitioners; burying in the hills behind the village; enacting respect with bodily expression). ‘Figuring out’ takes place as a mechanism to handle an uncertain or ambiguous situation, in which several different rationalities to resolve a dispute are available. Here such dynamic problematisation takes place along the lines of official/vernacular logics and registers of action.

At times the processes of ‘figuring out’ lead to ‘fixes’ that are aimed at removing contradiction and smoothing out interactions between the ‘official’ and ‘vernacular’ registers, without actually resolving the very conflict or contradiction. The epitaph poem and the circular text messages were analysed as such a moment in which the ‘fix’ takes the form of a managed version of the events. Conflict in the sense of contradiction is thus the key hinge for understanding the core issues discussed in this chapter: there is a great deal of ‘pretending’ that takes place when the official and the vernacular logics or registers meet but do not fit together; at times, something is called out as ‘fake’ outright, like the evaluation of Wu’s legacy. This leads to a kind of willed indifference, or its opposite, where the ‘insiders’ criticise the actions of the state-as-outsider; both of these can be seen as ‘fixes’. Such a case as teacher Wu’s funeral can help us elucidate what it means to be rural. Part of the answer has to do with managing the relationship to the state as an outsider, while at times also positioning oneself as being ‘against the state’ or ‘in spite of the state’ in one’s actions and ways of reasoning.

CHAPTER 6:

The Level of the Courts: Legal Fictions and Evidence in the Work of ‘Society Lawyers’

Introduction

In Chapter 5, I analysed the contradiction between ‘official’ and ‘vernacular’ modes of action and reasoning as a metonymy for how people relate to the state as it seeks to enter the everyday lives of people in rural China. I argued that people in the rural communities are required to ‘figure out’ how to position themselves among such outsiders who enter their lives, including how to manage the ritual requirements of a rural funeral, in which the representatives of state institutions and the local policy objectives also become integrally involved. Such tensions and contradictions need to be managed and occasionally brought to a ‘fix’, I argued.

This Chapter picks up the above observation on tension and ‘figuring out’, analysing situations in which people become involved in a court procedure to resolve family conflicts. The main ethnographic setting here is at the two offices of a legal aid centre, where qualified lawyers give advice on how to bring such conflicts to court. In seeking out for the formal legal system, people encounter two specific aspects of legal reasoning to be discussed in this Chapter: the concepts of evidence and ‘legal fictions’ in a legal setting. Understanding, to some degree, these two aspects of formal law and legal reasoning are a component of a person’s ‘legal consciousness’. State campaigns to increase the ‘legal consciousness’ and the ‘legal knowledge’ of ordinary people, as part of the overall legal reform efforts, give thus the larger backdrop to this discussion.

I will argue that, much like in the ‘official’ / ‘vernacular’ tension discussed in Chapter 5, when people are engaged with the formal legal system to address family conflict, they encounter the tension between the reality as addressed by law and legal procedure, and the everyday reality (which certainly has its own biases and is experienced through a plethora of other filters) as experienced by the people seeking out the law. As such, this tension between two kinds of realities is a variation of the ‘official’/ ‘vernacular’ divide, being related more specifically to the question of what aspects of social life and people’s behaviour should count when deciding on the outcome of a dispute. Managing this tension while giving expert legal advice is thus a large part of the work of the legal aid lawyers’ work, which I will be discussing next in this Chapter.

Substantively, this Chapter is a continuation of the discussion in Chapters 2-4 where I look at how people seek out ways to resolve family conflict through different institutions of dispute mediation. In this Chapter the institution is a court-led process of dispute mediation (*falv tiaojie*), in which a judge is present and all or some of the sides of the conflict are represented by a lawyer.

My research was carried out at two different locations of a legal aid centre in Tengchong city, where people across the County would come to seek help from qualified lawyers in their civil law⁶² disputes, sometimes also progressing to the court-led procedure with the assistance of these lawyers. At times a dispute cannot be brought to court even if the parties want it to, often due to a lack of evidence. My focus here is on the kinds of conversations that the legal aid lawyers have with their clients in the course of a consultation for a possible legal case.

A few clarifications on the two concepts are crucial for the discussion in this Chapter. Legal fictions are conventionally defined as legal statements understood to be non-factual, but which are still taken to be necessary for the functioning of the legal system (Riles 2005; 2010). Classic examples of this in socio-legal scholarship are the legal notions of ‘corporate personhood’ (Riles 2011) or ‘brain death’, both of which give rise to legal options once they have been declared. However, in both examples it is also evident they are not ‘real’ in the

⁶² This legal aid centre does not take on criminal law litigation. As it was explained to me, the majority of the cases the legal aid centre takes on are in such civil law areas as labour disputes, family law (including for example marriage, child rights and inheritance cases) and property law. The lawyers are also free to take on private client commissions outside their work in the legal aid centre.

usual sense that people consider something to be real; a corporation is not a natural person, and a person cannot be dead if he or she is still in fact alive as judged by the commonplace cardiopulmonary criterion for being ‘alive’⁶³. However, declaring an indigenous community as having ‘corporate personhood’ can give them access to communal land titles (Diaz 2016), and the declaration of a brain death sets in motion the possibility of an organ donation and eventual organ transplantation (Spanò and Vallerani 2016) - both being legal outcomes that are in some circumstances seen as desirable.

Legal evidence, on the other hand, includes those particular facts that the legal system can consider for making a judgement, in the process thus eliminating other facts that are deemed as ‘irrelevant’ for the legal context. In other words, what counts as evidence is what a legal system ‘sees’, an idea that was touched upon in Chapter 4 through the notion of classification. De Sousa Santos’ (1987:282) approaches the issue of what is included in the purvey of a legal system through the analogy of laws as a map: maps, like laws, “in order to fulfil their function ... inevitably distort reality”; a legal system or a map that includes absolutely everything that exists in the world is no longer workable, nor would it address the political intentions involved in drawing the map or legislating the laws.

In this Chapter the focus is more specifically on what the evidence ‘does’ in a legal system. Here I will treat the legal evidence (simply put: what facts are admissible in court and can be considered when judging a case) as another kind of fiction: everyone involved knows that legal evidence still does not comprise of absolutely everything that is involved in the case at hand, being a specific and deliberate reduction of them.

These fictions are, I argue, another type of an ‘outsider’ entering into the vernacular ways of reasoning, requiring the processes of translation and ‘figuring out’ to take place when a dispute is brought in front of a court procedure. In Chapters 2-4 we saw the ways in which a family dispute can be conceptualised when it remains at the level of the village or that of the officials, carried out by a lineage member mediator or by a police officer for example. In Chapter 5-6 I look at the role of the actors and rationalities that are more clearly perceived as ‘outsiders’ to the village social worlds. Here in Chapter 6 the focus also shifts to the city

⁶³ For some of the criteria for determining brain stem death in English law: <https://www.nhs.uk/conditions/brain-death/>

and the lowest rung of the courts system. When entering a court procedure a dispute needs to be conceptualised according to the formal and legalistic principles that can be in conflict with the vernacular or kinship and the community-based principles.

I begin this Chapter first with a brief overview of the concept of legal consciousness, in both its emic and etic usages; I then give an overview of the legal aid sector in China, and where my research is situated in that. I then discuss legal fictions and legal evidence as a way of deepening and expanding the discussion on legal consciousness and analysing whether the moments of disconnect and confusion between the legal aid lawyers and their clients can be understood as problems with the fictions in the professional legal setting.

Providing Legal Aid in Tengchong County: ‘Lawyer Streets’ and ‘Society Lawyers’

In Chapter 1 I gave an overview of the legal reforms, since the late 1970s. In 2003, the legal reform process amended the regulations on legal aid in China⁶⁴ and set targets for County level local governments on how to develop these services. The stated aim of the amendments was to improve the access to legal procedures and, by extension, also the access to justice. These regulations further specified the criteria for a person to be able to access legal aid for free or with little cost, as the 2003 law on legal aid services was aimed at targeting poor and disadvantaged people in China. Article 10 paragraphs 1-6 of the 2003 regulations limit legal aid to a restricted number of civil law circumstances (a separate Article deals with legal aid in criminal proceedings), when a person is economically too disadvantaged to pay for it. State legal aid, according to the 2003 regulations, can be sought when:

“(1) Lawfully requesting state compensations; (2) Requesting social insurance pay or minimum livelihood guarantee pay; (3) Requesting survivor’s pension or relief funds; (4) Requesting alimony (*fu2yang3*), child support payments (*fu3yang3*⁶⁵) or maintenance allowance [for elderly parents] (*shanyang*); (5) Requesting labour remuneration; (6) Claiming civil rights and benefits arising from ‘acting heroically for a just cause.’”

⁶⁴ Legal Aid Ordinance no. 385, effective since September 1st 2003

⁶⁵ The characters for alimony is 扶养 (*fu2yang3*) and for child support is 抚养(*fu3yang3*).

The work of the legal aid centre reflected these categories, with most of the cases falling under the labour remuneration category and the child support or elderly parent maintenance claims category. In Chapter 5, I discussed the case of the two brothers, who eventually took their case regarding elderly care to court mediation; there the elderly mother was able to claim legal aid based on para (4), which protects the care of elderly parents, children and former spouses in an analogous fashion.

In the case of Tengchong County, the public legal aid sector was in the state of reform at the time of this research. The persons working in the County judicial office (*sifaju*) told me that the legal aid lawyers directly employed by the County were too few to meet the need. For this reason, at the time of my fieldwork research, the County was expanding its reach by cooperating with a local legal aid centre, which was the one that I researched. The legal aid centre had been established as a charity⁶⁶ in 2014 but had recently been granted more funding by the County government and was in the process of being more closely integrated with the County legal administration structure. The legal aid centre, however, was independent in the sense that the lawyers there were not civil servants and thus could also take on private paying clients in addition to their legal aid clients.

The young lawyers whom I met working at the legal aid centre (*falv yuanzhu zhongxin*) were very keen to stress that they were working for “the good of society” in their legal aid work, seeing themselves as “society lawyers” (*shehui lvshi*). Analytically speaking, these lawyers saw their work as quite different from ‘human rights work’ that includes representing civil rights -type cases against government departments or officials, which has brought the so-called ‘rights lawyers’ (*weiquan lvshi*) in other parts of China at odds with the government⁶⁷. A large area of the legal aid practice in Tengchong County involved labour rights (*gongren quan*) litigation that assisted workers to bringing claims against their employers for unpaid wages, as well as disputes involving the obligation for children to care for their elderly parents

⁶⁶ While I use the term ‘charity’ here it should be noted that regulations regarding civil society organisations in China always require that a charity is affiliated with, and registered under, a local government department that acts as a kind of overseer for their activities. For this reason, they have less of the kind of independence typically associated with the civil society sector in many other contexts. However, depending on the kind of work done by the charity and other very specific factors, the daily operations may be carried out with very little government input or oversight. For the purposes of this research the aspect of government involvement/non-involvement in the legal aid centres in Tengchong is less crucial because my main concern is the client work itself done by the lawyers.

⁶⁷ The most famous example is the law practice Fengrui in Beijing that specialised in controversial civil rights cases and saw many of its lawyers be detained.

(*shanyang laoren*). But equally, however, they also took cases that involved a wide range of civil law issues from inheritance disputes to land disputes.

One way to understand how these young legal aid lawyers specifically saw themselves as professionals was in relation to other parts of the now vast legal profession. An important aspect of the legal reforms has been to develop better accreditation systems and standards to qualify as a lawyer, both for those who take on litigation work in court and those who do not. There are ongoing efforts to set up registers for qualified lawyers, and the All China Lawyers Association also has a system that gives qualified members the right to use their logo as a sign of membership⁶⁸. However, in walking the streets around the Basic Level Court (*jiceng fayuan*), in Tengchong City, one sees a succession of lawyers' offices lining the street in front of the main entrance of the courthouse. Some offices are three stories high with sleek advertising placards detailing the services that they offer, while others have hand-painted signs in front of a low wooden walk-up building that could have once housed a breakfast noodle shop in its previous occupancy. Such 'lawyer streets' (commonly called *lvshi jie*), located in the vicinity of the courts of first instance, are an ordinary occurrence in many County level cities and elsewhere. They conform to an older urban logic in Chinese cities that concentrates one type of service in one or few areas of the urban landscape. Another vivid example of this spatial logic was the street that the Tengchong 'lawyer street' leads to, namely a 'funerary services street'. In addition to the courthouse nearby there is also a large hospital that for a long time was the main one to service Tengchong City; the back gate of the hospital lead to the 'funeral street' street, where one could buy everything that was needed for the funerary rituals of someone who had passed away in the hospital.

⁶⁸ This system of accreditation was explained to be in a conversation on the topic with a lecturer at Renmin University Law School in October 2014



Picture 6.1: A commercial legal services office on 'lawyer street'. The red sign to the right details the services on offer (including for example help in writing contracts and other legal documents). At the back to the left is another sign where the same information is written by hand.



Picture 6.2: *A three storey building on 'lawyer street' with a commercial law practice at street level; a Township level dispute mediation office in the first floor (the signs with the writing in an arch pattern); and a public legal services office at the second floor.*

Walking along the 'lawyer street' allows the passer-by to experience some of the materiality of law, discussed more commonly in anthropology with reference to the physical aspects of court houses (Just 2011) and contracts and other documentary practices. Legal materiality in the form of documents has been analysed as influencing people's experience of law and bureaucracies, even creating affective relationships to the documents. (Navaro-Yashin 2007; Hull 2012). These legal streets are an interesting variation of such scholarship because they

present the legal materiality through the profession of law which is deliberately on display, thus contributing to people's 'legal consciousness' and ideas about the legal profession. What such a 'lawyer street' also speak about is the diversity within the legal profession, including the putatively varied levels of 'legal consciousness' of different professionals working in that space.

Among this landscape of a concentration of lawyers' offices and (further down the road) coffin makers, the legal aid office that I researched did not particularly stand out in its sleekness or otherwise. This stylistic hodgepodge of lawyers' offices along the street partly also a point of irritation to these legal aid lawyers. One of the young lawyers told me, speaking in a lowered voice, how frustrating it was that people often did not know that the neighbouring offices could be staffed by wholly unqualified lawyers who were there just to get their money (the 'crooked lawyers', as I occasionally heard people in the villages referring to them), and how at this stage of the legal reforms there still was no good way of allowing people to truly distinguish between the professionals and the 'fakes'. Who one goes to for legal consultation could thus be just a matter of luck, the same lawyer reflected. Also, for someone with 'low legal consciousness' (*falv yishi di*), it would even be impossible to tell if a person whom they hired was doing a good job or not, I was told.

At the end of the day, however, it was important for these legal aid lawyers to continue working from their ramshackle offices on 'lawyer street' (in addition to a nicer office in the eastern part of the city), in order for people to have at least a chance to stumble across with them as they came to the area looking for a lawyer. The young lawyers even saw its shabbiness as having certain benefits; as the other office in the eastern district got a lot fewer walk-in customers, they attributed this to people being intimidated by the size and beautiful interiors of that office. It was thus beneficial that the legal aid centre office on 'lawyer street' had a shop-front style entrance with large shutters that could be kept open all day, allowing people passing by to see directly inside where the lawyers were working.

In spite of my lack of access to observational research in their client work, I had numerous broad ranging conversations with a group of young legal professionals in the legal aid centre offices. In our initial meetings some of them described themselves as 'social lawyers' (*shehui hushi*). When I asked them to reflect on their profession and how their work was situated in

the legal landscape, some of them were particularly adamant about preferring this career to the more lucrative alternative as a commercial lawyer, because here they were able to work for “the good of society and its development”. For some, who were from Tengchong County and had left to study elsewhere, coming back to work at the local legal aid centre was an important a way to contribute specifically to their place of origin.

From the point of view of the state, legal aid services also play a part in the broader picture of making China into an advanced and rule-of-law based nation (*yifa zhi guo*) while being increasingly governed by modern ways and ‘scientific thinking’⁶⁹. These properties are also seen as prerequisites for a fully developed society. When talking about a future where more people utilise the law, these lawyers also anticipate a model of change for the state-society relationship in future: moving further away from a paternalistic state, which is well-documented in research on Chinese society (Fairbrother 2013), towards a more formal and procedure-driven state. As we saw in Chapters 3 and 4 on rural police work, this vision is, however, not shared by all state actors: the police mediators, for example, still see their profession in a fatherly or a ‘state as authority figure’ kind of frame. I will return to this contrast in the concluding section of this Chapter.

These conversations, conducted mostly in the public areas of the legal aid office on ‘lawyer street’, were revealing for an understanding of the deliberate ways in which the increase in ‘legal consciousness’ is sought in society from within the legal profession. At the same time, they also gave a certain counterweight to the broad ranging research that I conducted at the rural police stations especially on handling disputes of a familial kind.

⁶⁹ Building a ‘modern’ and ‘harmonious’ society (*xiandai shehui, hexie shehui*) based on a ‘scientific outlook on development’ (*kexue fazhan*) are all concepts that were solidified as political goals during Hu Jintao’s era of functioning as the General Secretary (2002-2012). They have since then been adopted as ways of updating the ideological basis of the CCP. The exact expression of ‘*yifa zhi guo*’ or ‘rule-of-law society’, on the other hand, has become a key phrase for the leadership of Xi Jinping since he came to power in 2012. While these concepts, and others, have specific histories and have been used both to index ideological positions and as propagandistic catch phrases, here I will not go into more analytical detail on them.

Legal Fictions and Evidence in Law

A 'legal fiction' seeks to smooth out the contradiction and the messiness of social life; this is a process much like the one described in Chapter 5, where the account of teacher Wu's life and achievements was made to conform, in the official account, to a picture that many people in the villages saw as 'fake'. I argue that law is often experienced as functioning in a similar way as an incomplete account of reality: several people in the villages who had interacted with lawyers or had cases go to court told me that the legal personnel "does not understand their rural lives"⁷⁰. As we will see below, this was also what the legal aid lawyers told me as being the case.

In the account of Conley and O'Barr's on 'relational litigants', discussed in Chapter 1, the authors do not specifically talk about legal fictions but rather frame the issue in terms of 'do people predominantly refer to laws or to relationships when making their argument in court'. However, when bringing in a case to the court procedure, not only are people required to become law-literate and know which laws are relevant to their specific cases, but they also are more fundamentally required to gain a sense of what 'legal fictions' are, and how they operate in a legal system. In other words, being turned into a 'rule-oriented litigant' also means seeing one's own case in the context of more general legal principles and thereby also being able to move away from the specific and intimate particularities of their own cases. Helping their clients to complete this shift in focus is what the legal aid lawyers told me they struggle with. This is why it is so challenging for the lawyers to explain the requirement for the specific kinds of evidence that speaks to those general legal principles.

Most of the legal aid lawyers with whom I spoke saw the strength of law being in the fact that it does not take into account an individual's moral make-up, personal history or relational setting, while this was what many of the people whom I interviewed in the villages precisely saw as being the weakness of the law. In treating people as 'in general' and not strictly as individuals, law and legal procedure exclude such considerations about a person's past moral

⁷⁰ This is not to say that people in the villages who had used the services of a lawyer had only negative experiences; most people also never require a lawyer. One aspect of the kind of research that relies heavily on specific cases is that it is not possible to 'catch' all types of experiences or cases; this is addressed briefly in the introduction where I discuss the methodological arrangements for this research. Here, however, I deal specifically with the disconnect people may feel when using legal means to resolve disputes, an experience that is also not uncommon.

behaviour. This is something that many clients in the legal aid centre said is important for understanding what a person's future actions will be; but this is not how the law works. People in the villages are not unaware of the laws of the People's Republic that govern them or how the law works. Indeed, there is much talk about laws and people's experiences of it; how justice should be carried out in a given situation; and what the law might do better than other arrangements of normative action and social control. The point of analysis here is rather how law (including the legal institutions and professionals) is experienced, what role law is seen as having in seeking to resolve family conflicts, and where the notions of morality and 'proper behaviour' should come in.

Evidence is about establishing certainty and making truth visible – which is a central aspect of law, science, various belief systems and theologies (Eckert 2016). The methodology for collecting evidence and arriving at certainty varies in different knowledge practices and areas of social life. In, however, law the idea of the 'evidentiary requirement' is sacrosanct, because this is the way in which 'justice' is seen as being made possible. Much as a scientist establishes something to be a finding after enough evidence of the correct kind is available, in law a crime or a breach of contract can be determined as having happened only when certain requirements for the evidence are met, almost regardless of the subjective experience of the victim or the other parties to the contract. As Eckert (2016) notes, it is evidence that provides the justification for a judgement in law. Spanò and Vallerani (2016:34) propose the following on the legal in their analysis of the work of the legal historian Yan Thomas:

“The fictitious element lies precisely in the pretension that something exists independently of the law, at the same time as the law is qualifying and defining it. Nature as a pre-judicial fact is actually already a product of a legal qualification... [in judicial literature] what is constantly repeated is that a fiction is a practical tool that is pragmatic and economical, used to make laws applicable in unforeseen circumstances or to make the application of laws more just in paradoxical situations.”⁷¹

What the authors stress above is that the pretension inherent in a fiction has to do with the idea that a fiction is a technical tool which extracts concepts from the real world without

⁷¹ Translation from Italian my own.

influencing on and defining them in the process, and without the interference of politics. From the judicial point of view the fiction is an impartial (if not perfect) and necessary tool to arrive at the ultimate goal of justice, which is itself defined by law. In the context of the legal aid lawyers' work, the lawyers are in the role of convincing their clients that the laws which apply to a case are mere 'pragmatic tools' – even though it is obvious to both that they impose a specific reading on a case. Pia (2016) argues that in China the very notions of the 'harmonious society' or the 'civilised' citizen are the kinds of fiction that the Party seeks to fix into place through legal techniques.

Legal Aid Lawyers and the Work of Translation Across Logics

From the first time when I walked into the legal aid centre on 'lawyer street', lawyer Song stood out as someone eager to talk endlessly about his work there. He was one of the set of young lawyers in their late 20s to mid 30s working in the two offices in Tengchong City – but the one who expressed most excitement about discussing their work with me, something that I came to see as an aspect of his personality. He seemed like someone with an overflowing enthusiasm for thinking about law, correct procedure and the bigger principles enshrined in law.

The profession of a lawyer is not always seen as a particularly desirable one in China – and in popular parlance lawyers can be characterised as being people who are out to 'stir more trouble' (*chao mafan*) for their own gain. Such negative views about lawyers may potentially be even more prevalent in the countryside because the sector of law about which people hear most, or mainly come in contact with, concerns for example family conflict, illegal drugs and criminal fraud (such as those related to food and other large scale scandals). All these are areas of law that often carry a more pronounced moral evaluation than for example contract law as practiced in a large company. In other words, there was some indication that the kind of law and legal cases that a lawyer comes into contact with 'rubs on' to their person, which leads to people potentially seeing lawyers in an unfavourable or even an immoral light.

Lawyer Song explained, however, that he saw himself as having chosen an honourable path for himself. He was one of the lawyers who had come back to his hometown of Tengchong

City after completing his studies in the provincial capital. He told me that his work was to help people access legal representation and do his share for the betterment of society. Calling him an idealist would, however, mean misjudging the context in which he and his specific corner of the profession existed in: for the Chinese state this was a fully desirable and laudable goal, and the route that these legal aid lawyers took to achieve it, was very much in line with the broader objectives that were set in the legal reform agenda. Additionally, as the kind of legal aid that the lawyers provided, remained clear from wider Party politics and mostly also away from any adversarial engagement with the state or local government⁷², their position in the profession seemed rather uncontroversial. Whether or not lawyer Song's narration of his professional path as a more honourable choice was also due to other factors is hard for me to say. Interestingly, when I have spoken about my research with a few Chinese lawyers and academics who study socio-legal issues in China, I am often asked whether these lawyers, who do legal aid work in a 'backwater place' like Tengchong City, do it because they had not been able to open their own legal practices or get hired by a big city law firm. This is somewhat revealing of the attitudes within the profession in general, and also indicative of what is considered 'success' for an ambitious person with a degree in law.

Lawyer Song, in talking about his work as a legal aid lawyer during one of our long conversations, at one point brought up an aspect of his work as a legal aid lawyer that I had not considered in my research prior to that occasion: the difficulty of explaining to his clients the nature of evidence in a legal setting, and specifically counts as 'legal evidence'. Memorably, he said as follows: "the greatest challenge in doing this work is explaining to people what is the difference between 'legal reality' (*falv shishi*) and 'real reality' (*shishi shishi*)". For him this difference was about the divergent ways in which the two 'realities' consider what constitutes *evidence of a fact*, and so ultimately - fact. He went on to explain that a great deal of his work involved explaining to his clients, often coming from villages around Tengchong City, the kinds of evidentiary hurdles that they need to overcome before a case could be brought to a court hearing; what documents they were to provide; in what form those documents should be; and what kinds of sources of evidence would be considered reliable in court. These clients

⁷² I was circumspectly told that they did not undertake certain kinds of cases that would have had a political angle; also, as part of their budget depended on obtaining local government funding, they needed to assume a position that did not put that in danger.

could often access legal aid for free or in exchange of a small fee, as specified in the 2003 law on legal aid.

Sometimes the clients of the legal aid centre may also fabricate evidence to boost their own claims or bring up irrelevant facts that could not be used in court, lawyer Song continued. Often people also do not keep the receipts of their payments and other paper documentation that would typically count as evidence in court. In the event of a household separation (*fen jia*) the family members involved may avoid making a written agreement unless some aspects of the asset division are under dispute.

Typically also, people who come to seek their help do not necessarily see the law as something that stands next to them and can help them resolve conflicts or fight for their legal rights, seeing it rather as an adversary that needs to be beaten – by trickery if necessary. This made lawyer Song seem especially frustrated, and his usual rapid-fire way of speaking became more careful and measured when he admitted to me that sometimes the progress seemed very slow. Eventually, the way to go would be to reduce the role of the various institutions of police and officialdom mediation in resolving the conflicts, while rather allowing for the legal route to become stronger and better established.

A common example that lawyer Song and his colleagues gave me was a divorce case, in which one party was not willing to agree to the divorce in the first place, not just to the financial and other arrangements following the divorce. One of the circumstances in which a contested divorce (where only one party is seeking a divorce) could be granted by the court is where the party seeking the divorce was able to give evidence of a situation where ‘relations between a couple have completely broken down’ (*fuqi shuangfang ganqing wanquan polie*) and that, crucially, the couple had also lived apart for at least two years. What counts as evidence here, it was explained to me by the young lawyers, is for example the separate rental contracts in which the residents are named; water and electricity bills; a residence permit for another city and other similar documentation. Such documents would all prove that the couple had indeed lived apart for the required period of time. Additionally, evidence would have to be provided to prove that the circumstances of living separately were due to marital strife, not a situation where a couple moved to different places for reasons of work for example.

Another circumstance in which a contested divorce can be granted is in cases of domestic violence. To prove it, the party seeking divorce can bring a police incidence report as evidence to the court; if the party has not reported the incident to the police, the village administrative office (*cunweibui*) can also issue a document that is admissible evidence in court, and so is a document issued by the All-China Women's Federation (*fulianhui*), a state-sponsored women's rights organisation. However, a common problem is that domestic violence goes unreported and so the injured party typically cannot provide admissible evidence in court to prove it, making it difficult for a court to grant a contested divorce on grounds of domestic violence, it was explained to me. It is also interesting to note here that the local village level administration (the '*cunweibui*' which has its office at the administrative compound at rural communities) still has a role in providing such evidence. This is so even though the grassroots government work, in the recent waves of reform, has increasingly become involved in providing social services, and its role in monitoring individual households is meant to have decreased, the state thus retreating somewhat from what are now considered more private family affairs⁷³. In such small moments as a village administrative office (including the Party office) having the authority to issue evidence of domestic violence, we can see that such local government workers still see it as part of their work to keep an eye on family life, including conflicts arising within it.

As the two circumstances of contested divorce suggest, the world of the court legal procedure is fundamentally mediated by a specific kind of evidence, and one where there is a difference between 'reality' and a 'legal reality' as lawyer Song noted. This difference is something that people coming into the legal aid offices for the first time may find it hard to grasp, as another lawyer noted:

“...if there is no real evidence the court cannot only take into account one side of the case, and even if the court believes the accounts on domestic violence, the court needs evidence. Because court procedures are all based on evidence, and the cases are all evaluated according to legal criteria, *then if there is no evidence there are no facts*. Facts [in a

⁷³ This was a common sentiment also of two local Party Secretaries I spoke to who work in the villages where I conducted research, and a few other government workers I spoke to. How it was presented to me was as a deliberate shift towards a 'service mentality' in the rural government office, away from a surveillance and disciplining role.

legal case] are those that evidence can give expression to, and so in other words they are legal facts” (emphasis added).

The lawyers at the legal aid office kept returning over and over again to this point in our conversations: however important it is to uphold the requirement to have appropriate evidence so that the overall system of just rulings could be kept in place, it was also a source of frustration for the lawyers. This was because of the practical problems that ‘legal evidence’ presents in their everyday work, and even more urgently, the distortions that it produces between the reality as presented in court in front of the judge, and what was called ‘real reality’ by lawyer Song. It is crucial for the ideology of law to uphold the link that showing particular and by and large pre-determined types of evidence also leads to a court decision that is just. This may be so in spite of admitting that the court personnel as individuals or the court as an institution may not know the full circumstances of people’s lives.

The ‘real reality’ referred to above presents, however, its own problems: no matter how ‘real’ it may be, it may not always be very ‘desirable’ from the point of view of the state which creates laws. This is why legal reforms are often also very much connected to social reform goals as an attempt to change or, in the case of the Chinese state, ‘develop’ (*fazhan*) the society and its people. Raising the legal marrying age to 20 years old for women, for example, may not reflect ‘real reality’ as many people in rural areas still marry earlier, but it does represent a ‘legal reality’ which is the ‘desirable reality’ for the future from the point of view of the state. Later marriages may lead to later pregnancies, which in turn may allow more opportunities for education and vocational training and higher earnings down the line. This is the desired developmentalist chain reaction that higher legal marrying age seeks to legislate for. Hence, while social relations and their implications may be seen as ‘more real’ by both these ‘society lawyers’ as well as by their clients, they are made to be less relevant by political design.

By the time I had these conversations on the different realities and logics with the legal aid lawyers, I had over the course of my research spoken to many people living in the villages about their approaches to using legal means to resolve disputes, and the possible gaps that

they saw between the legal procedures and the more local and informal procedures. Some aspects of the ‘real reality’ (in other words here: rural practice) that I was told the law did not grasp had to do with a person’s trustworthiness and moral character; others talked to me about how the law and the courts were not able to grasp their ‘rural cultures’ and ways of life in the villages. ‘Rural culture’ was sometimes used as a shorthand for kinship arrangements that are more typical in rural communities, among them issues like marriage age and inheritance patterns; at other times, the notion of ‘rural culture’ referred to a generalised sense of being disconnected from urban China.

A clear disagreement with the law that I heard many people express was the fact that in law, a woman could get legally married only at the age of 20 and a man at the age of 22; in rural Tengchong it was not at all uncommon for a woman to get married at the age of 16 or 17. While not legally valid⁷⁴, these marriages were nevertheless considered fully valid within their own social environs.

Another common complaint towards legal procedures was that often, such issues as a person’s moral character or a gambling habit, for example, were not acceptable considerations in court mediation. Gambling or even a criminal record might not count as evidence. One of the legal aid lawyers explained this point to me by saying that from the point of view of the court, “a person’s past does not represent their future [...] and even if a person has a criminal record we cannot think that they will always be a criminal; [the court and us lawyers] must believe that a person has the ability to turn a new leaf”.

The critique made by many in the villages towards the law and court procedures is that the law does not see ‘moral reality’ (or the reality of traditions); for the lawyers, however, the advantage of law is precisely that it does not see a moral reality, and that a person’s past is not imagined as necessarily being part of their future. It is thus easy to see the difficulties involved in a state project that is aimed at enhancing people’s ‘legal consciousness’ when the same object can be viewed so differently.

⁷⁴ I was told by one of the police mediators that even though a woman can only get the marriage certificate once she is 20 years old (and a man when he is 22), there also exists a legal category of ‘customary marriage/marriage in fact’ (*shishi bunyin*) after the couple has lived together for at least 4 years. Such a legal category would become important in for example cases of divorce where the couple had never obtained the official marriage certificates in the first place.

Justice, as expressed in the court procedure, may then view a narrower part of a person's biography than the parties involved in the dispute might like it to do. Also, the courts and lawyers make use of a kind of theory on personhood and its change, imbued in the law, whereby people are seen as having the ability to change their behaviour for the better. This may not always be the theory that is operationalised in a (relational) setting of a village, especially in the kinds of village settings studied here, where the population has by and large remained stable, and people still know each other over a long period of a close interaction with each other.

'Relational litigants', as Conley and O'Barr (1990) call them, "analyse and describe legal problems in terms of social relations", even though employing such an approach may not respond to the issues raised by the judge's questions. Rather, these litigants may in court produce long accounts about the history of the relationship with the other party to the dispute, as the authors note:

"[t]hese digressions meander through time and place, drawing [their] audience ever deeper into [their] social world, but providing little information about the specific issues that are of interest to the court... the account assumes that the listener shares [their] knowledge of background events and places. Although the assumption of shared knowledge is common and appropriate in familiar conversation, it creates difficulties for a stranger who is trying to extract a set of facts and to apply strict legal rules to them."
(1990:61)

Good (2015:430) adds that, while lawyers may view such accounts as 'illogical' and 'unstructured', analytically the issue is that the 'legal consciousness' of such litigants is different from that employed in a formal legal analysis, and "[c]onsequently, the court often fails to understand their cases, regardless of their legal merits".

To such litigants, and in contrast to Conley and O'Barr's (1990) account above, I argue here that in many cases the disputes that are brought to court are never perhaps understood as *legal* disputes to begin with, remaining rather disputes of social relations throughout the process. People who are unfamiliar with legal processes may not make the jump into a

different ‘category’ of meaning and analysis. I noticed such thinking also when talking to people about the institutions that were available for them, in which they could resolve their dispute. Many of the people I spoke to did not see a great functional difference between one system of dispute mediation and another. The main difference that they found was in how well they themselves knew the dispute mediators, and how well the dispute mediators knew their ‘rural lives’. The difference between a village kin mediator and a city judicial office mediator, as I understood it, would be a matter of social and cultural proximity. While a respected village mediator would be both ‘best known’ to the disputing parties and also know their lives most intimately, the lawyer or the judge, on the other hand, would be both strangers to the villagers and know their lives least well. However, when I spoke to a few people who had had complex disputes, it seemed to me that while the various institutions went from ‘familiar’ to ‘strange’ as the disputes moved further out of the village social worlds, they still remained within the same logic. They thus did not necessarily make the jump from ‘real reality’ to ‘legal reality’.

I have visualised below the two different ways of conceptualising a dispute as it moves from one institution to another. In Figure 6.3, each ring represents an institution and the arrows denote the movements that some disputes take, in particular those that are difficult to resolve⁷⁵. Here the dispute is seen as remaining inside the same logic. In contrast, Figure 6.4 illustrates how the police mediators and the lawyers to whom I spoke tended to see the journey of a dispute: when a dispute moves between institutions, it also encounters different logics that result in differences in the procedure, the sources of evidence and the notions of what is a just outcome. The legal aid lawyers, in particular, noted that people with little ‘legal consciousness’ (*falw yishi*) do not necessarily understand fully that engaging with one institution was not the same as engaging with another institution. To describe this distinction, I represent the different institutions as separate boxes in figure 6.4, rather than being part of one and the same system.

⁷⁵ What is not represented in a simplified figure like this one is that, in many cases, a dispute does not get resolved once and for all in a linear fashion, but the parties may go back and forth between institutions and skip some possible ones along the way. The figures are thus meant to simply illustrate the reasoning itself.

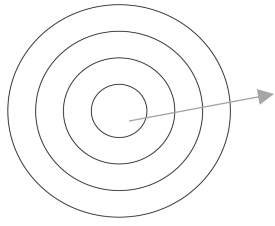


Figure 6.3: Moving from familiar to unfamiliar.

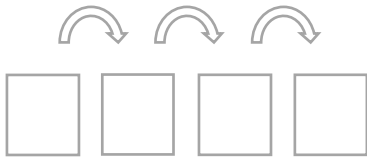


Figure 6.4: Moving from one institution and logic to another

Anthony Good (2008) notes that an important difference between the anthropological and legal analyses is in how they relate to ambiguity and complexity: while anthropology sees complexity as an “immanent aspect of all real-life situations”, law “seeks to prune away ‘extraneous’ details so as to identify the abstract, general, de-contextualised legal principles assumed to lie within” (2008:51). In an interesting parallel, then, such an anthropological analysis looks like it is not too far removed from the (contextualised, relational) ‘village’ understandings of morality.

Pottage (2004) discusses the same issue through the idea of legal fictions: “[a]ccording to the modern doctrinal understanding of proof and procedure, fictions and presumptions are devices which assist in making decisions in conditions of uncertainty. Typically, presumptions are presented as crude, pragmatic instruments of probabilistic reasoning: as encrypted experience”. Additionally, law produces objectivity by “knowing as little as possible about the object” (2004: 23).

A practical example of the issues raised by Pottage (2004) above can be gained from the practice of how law is taught to students who have yet to internalise some of the ways in which law functions. A student of Common Law reads through vast amounts of case law, which is presented in the way that is typical to law that is presented as being objective. At the top of such a case review, a terse account of only the facts that are deemed most relevant to the legal decision are extracted from the actual case and written as a coherent narrative on the page; the persons relevant to the case are presented as very roughly sketched characters. After the top section of the facts has been presented, the rest of such a case review is devoted to extrapolating the crucial legal principles from those facts, and to a consideration of how those principles in turn relate to the broader ecosystem of existing case law and other sources of legal principles. While the actual court proceedings would have heard a much richer account of the facts and the persons involved, what ends up on the page as case law needs to be made *less* rich and to speak more about the general and less about the particular.

Good (2015:432) notes that such legal training, in focusing on written legal decisions that speak about neutral principles “whose application is believed to transcend human variation”, teaches something very particular: law students are taught a ‘legal discourse’ that is removed from ordinary, particularistic, and narrating language patterns. While the above example is

from a Common Law jurisdiction, and Good (2015) probably did not have in mind Chinese law students, the lawyer training in China also needs, by necessity, to achieve the same end result.

Legal Logics and Local Logics

Returning to my focus on the Tengchong legal aid office and the work of the young lawyers there poses the following question: what ‘legal fictions’ (in the technical, legal sense of the term) might they find as being the more difficult to explain to their clients? One aspect of the work done at the legal aid centre involves working in the intersection of legal norms and what is commonly called ‘rural custom’. One lawyer, in referring to the duty to care for one’s elderly parents (which was also addressed also in Chapter 5), made the following observation:

“This kind of duty [to care for one’s parents at old age] does not end at household separation (*fen jia*). However, in rural areas there is a kind of completely irrational (*bing bu beli de*) principle, whereby the duty to care for one’s parents is proportional (*bilie*) to the share received in the event of a household separation when land and other assets are divided up. According to this principle [in the countryside], if your gains in the separation are small, your duty to undertake elderly care is also small. In reality (*shiji shang*), the legal principle says that even if the parents have not passed on *any* assets at all to their children, they must still undertake care duties, and this also includes daughters who have married out.

In the ‘common rural consciousness’ (*nongcun pubian de yishi*), however, only the sons have a duty to care for elderly parents [...] It is a legal rule that parents must take care of their under-age children, and this duty is not terminated when the parents get a divorce. Similarly, the duty to care for elderly parents does not change even if the parents have divorced, and for example even if a child was not brought up by their mother after the divorce, both parents still have the right to demand their [biological] children to fulfil their care duties. In the final analysis, these legal regulations prescribing such duties cannot change or just cease to exist when they hit difficulties in the course of their practical implementation; the law does not recognise a ‘severance of the parent/child relations’ type of eventuality”.

The above extract gives some of the most striking examples that I encountered among both the legal aid lawyers and the police mediators whereby they, as experts and office holders, find themselves and their work as taking place between different cultural frames and logics, and see a need to ‘figure out’ a reasonable work-around within that.

What the above legal aid lawyer is criticising, when referring to the ‘proportionality’ (*bilie*) of care duties vs. the assets received as inheritance, is a very specific interpretation of ‘rural relations’: what you give as care depends on what you gained as assets. I did not hear this principle being expressed in quite so stark terms in the villages, but people there did speak to me about such ideas more broadly. It is noteworthy that the above lawyer displays an almost mathematical distillation of this aspect of ‘rural culture’ which, though having its own internal logic, is still “illogical” to this lawyer when looking at it from the outside, and crucially, with the legal framework of rights and obligations in mind. The lawyer’s main criticism is thus the idea that the burden to care for one’s parents is seen as a quid pro quo calculation, whereas for the lawyer such relations should not demand reciprocity – especially not in a material sense.

This discussion on legal evidence and legal facts (or legal fictions) gives a revealing counterpoint to the discussion in Chapters 3 and 4 on police mediation. In all of my conversations with the police mediators, as well as in the few instances of dispute mediation that I observed, it was decidedly *not* about evidence and what evidence the parties to the dispute could bring to the table. Rather, what came up over and over again was that it was the rupture in the social relations itself that the police mediation was concerned with, and thus considerably less time was spent on discussing blame or proving it.

What the discussion on police mediation indicates is a clear contrast to the flow of an expressly legal procedure that prioritises establishing the legal facts, as expressed by evidence, and producing a ruling which is enabled by those legal facts. In comparison with the aims of a police mediation, the time frame in a court mediation procedure is more like a short-term or a one-off process: the pressure is on coming to a conclusion and making a ruling that closes the dispute, with the main concern in the first instance being not the future of the disputing parties’ relations. For such a manoeuvre to be possible, the procedure in a legal setting, derived from the ideology of law, needs to be lifted somewhat above the everyday lives and relations, and make reference to a broader structure of legal fictions.

Indeed Fuller (1994) in his essay on the place of legal anthropology within the broader discipline, calls for a greater treatment of law as a system of thought. Following Merry (1988), he also proposes going beyond seeing law as a set of coercive rules, examining it rather as “a system of thought by which certain forms of relations come to seem natural and taken for granted” (1994:11). Moreover, Fuller points to the work by Conley and O’Barr (1990) and notes that while the professional legal discourse takes its raw materials and, indeed, its justification for being, from the everyday discourse of disputes, law goes on to select among the voices of litigants, “silencing some and transforming others to conform to legal categories and conventions” (ibid). Fuller continues: “How we normally discuss our affairs – broadly in terms of relationships among people – is thereby converted into a specialised discourse of rules, which is then subject to interpretation by legal professionals” (ibid). While other studies (see for example Moore 1973) show that legal discourse is not contained solely to the use of lawyers, Fuller points out that “the authoritative legal discourse of professionals is, particularly in civil law, a complex and counter-intuitive transformation of everyday relational and moral understandings”, which produces a “distinctive and often powerfully self-validating system of thought” (ibid).

‘Legal facts’ do arise from what Fullers calls the ‘everyday discourse of disputes’, as in the situation described by lawyer Song, in which one party seeks to dissolve a marriage due to a breakdown in relations, but the other party is not willing to see the situation that way. When those disputes come into the purvey of what lawyer Song calls ‘legal reality’, however, they also need to, I argue, be seen as a *legal* discourse. That discourse then contains rules that are not present in the original form of the dispute, rules that can be applied and interpreted predominantly by legal professionals. The requirement for example that a couple reside separately for a two-year period before a contested divorce can be granted, is a legal addendum placed on top of the original dispute; once that first requirement has been created, additional evidentiary requirements are then placed on top of it, and the dispute moves ever further away from the original discourse of the dispute.

In researching the work of the legal aid lawyers, and the self-conscious processes of ‘figuring out’ their professional role, I observed a kind of self-awareness among the lawyers, and an acknowledgement of the contradictions involved in their profession. What lawyer Song and his colleagues seemed to get back to, over and over again, was the power of legal reasoning

over others, not in exclusion of others. As Latour noted in his public lecture at the London School of Economics in 2014⁷⁶, where he touched upon his ethnographic research among legal professionals, it was not that the lawyers could not come up with other than legal ways of reasoning and seeing the case at hand; they were indeed quite nimble at identifying that law provides just one perspective. However, the power of the ‘legal’, and what the legal way of understanding a case is, was such that other attempts at understanding a case would be dismissed by the same lawyers as quickly as they were raised.

Finally, the way in which lawyer Song frames the issue of evidence is in terms of the knowledge that the courts have, as against the kind of knowledge that the local mediators have on people’s living situations in the villages. In other words: for Song all the court officials have is legal evidence, while the local mediators (including the police officers) have knowledge of context. He continued by saying:

“The judicial administration is aware of the real situation of people. But law is like a water surveyor’s rod, it can only really collect and gather information on the legal reality and not the actual reality. Law stresses evidence, and only things that can be expressed through evidence are knowable to law [...] Court personnel do not come into contact with the lives of the litigants and in no way know the real situation [...] hence the result of the judgement does not necessarily conform in any way to the circumstances of the litigant because so many things that cannot be shown through evidence still do nevertheless exist [...] However, only the evidence [requirement] can protect the principle of justice (*gongzhengxing*)”

Describing law as a ‘water surveyor’s rod’ (*biaochi*) gives a good image to locate law, as Song and some of his legal aid colleagues to whom I spoke saw it: a surveyor’s tool can only measure physical phenomena in the world that it is built to measure (it can, for example, measure water levels but not gas levels). In an analogous way, law cannot deal with information that goes beyond its technical capabilities. The passage above also illustrates some of the ways in which Song has formulated theories about his own work, and where some of his labour is located when preparing cases to court. Indeed, a great deal of my conversations with the lawyers at the legal aid centre revolved around a very specific problem

⁷⁶ Latour also addresses something analogous as ‘legal mode’ in his 2013 book “An inquiry into modes of existence: an anthropology of the moderns”

of not only giving people information about what laws there are that are relevant to a given case, but more broadly also seeking to change people's relationship to some aspects of the world around them, at least temporarily, in so far as what is relevant for the case at hand. The 'problem of legal consciousness' remained an underlying concern in all of their work, and thus, by extension, their work also involved an educational aspect of teaching their clients how to 'translate' everyday (social) life into legal fictions.

Conclusion

This Chapter has also dealt with conflict, but a conflict in a more abstract sense: that between what the law can see and process, and what ordinary people using the law may want it to see and process. The legal aid lawyers, whose work and expertise involves managing this conflict, expressed it as the difference between 'real reality' and 'legal reality'. Analytically speaking, the problem can be distilled into the questions of how to convey reality through law and what kind of reality can be conveyed through law in the first place. The treatment of this problem highlights the ideology and purpose of law in the process, as it is tightly wound up with projects of modernisation, which seek to rationalise and standardise certain areas of social life. Translating 'reality' into 'legal reality' with the use of such tools as evidence and legal fictions is another form of 'figuring out': the lawyers, in the course of their work, find ways to guide their clients to better understand what they can expect from such institutions as court mediation.

CHAPTER 7:

Conclusion

In the next two sections I will first briefly consider two influential legal scholars who write about the special characteristics of the Chinese legal system, and how they view Chinese culture and traditions as shaping and changing Chinese legal culture. I will then look into how these legal theories can be reflected against people's lived realities in rural China, by going back to where I began this thesis: the petition of Wang Yan. Finally, I offer my concluding thoughts on 'figuring out' as a 'dynamic problematisation', which can offer interesting ethnographic insights into human social conflict broadly understood.

The Notion of Chinese 'Native Resources'

The connection between legal reform (*bianfa*) and the modernisation of China is so strong in the Chinese mainstream political discourse that it may seem obvious. China is still somewhere "on its way of becoming developed" ("zài fazhān de guochengzhōng") and this is why institutions such as rural police dispute mediation, relying on non-legal techniques of mediation, still exist and have not been done away with – yet. Or at least so my Tengchong legal aid lawyer informants told me. There is less popular certainty about how long the process of modernisation will take, but what is certain is that China is 'on its way' (*guochengzhōng*).

Zhu Suli (2014) offers a different take on these issues in his book *Sending the Law to the Countryside: Research on China's Basic Level Legal System*⁷⁷, arguing against the fast-paced desire for such 'legal modernisation' as my lawyer informants alluded to. This mainstream idea in Chinese legal sociology posits that China is 'backward' compared especially to the West and needs to 'catch up' not only economically but also in its efforts to establish a rule of law system of governance (Chen 2014:232). For Zhu, the idea of using legal reforms to advance social change by transplanting Western legal principles into China is wrongheaded: China has enough of its own 'native resources' (*bentu ziyuan*) to draw on in crafting a rule of law system that is better suited for the specific historical, cultural and social conditions of China. By 'resources' Zhu doesn't mean specific Confucian principles or textual referents in general

⁷⁷ The book was originally published in 2000 as "Song Fa Xiaxiang: Zhongguo Jiceng Sifazhidu". Here I refer to the 2016 English language version.

but rather, how people actually live, as well as the local customs and non-legal institutions that exist everywhere in China. Simply denying people of their local and long-held practices should not be the goal of the legal reforms, but accepting that change takes time and, in any case, Western norms and practices may not be appropriate for China in the first place, as Zhu argues.

Zhu's views on what a specifically Chinese rule of law system should be based on have gained its critics. Upham (2005) has taken on Zhu's jurisprudence from the point of view of law and development scholarship, noting that Zhu does not offer a model for change. Zhu admires the flexibility of China's basic level judges in their ability to adjust their rulings and come up with creative solutions in situations where "rural society's lack of standardisation" also requires it (2000:1711). However, he ultimately does not offer a different model for a future legal system in China than a legal formalist one, which relies on universalist norms that can be applied uniformly all across China (ibid). For Upham, leaving aside both the idea of strict rule formalism as a goal in the distant future and the essentialising of China's current rural traditions, would allow a less static and black and white view of what is possible in China.

In the villages where this research was conducted in, as in many other parts of rural Yunnan province, it was quite common still that women might get married at the age of 16 despite the legal marrying age for women being 20 (and 22 for men). The fact that such 'rural marriages' that are legally speaking informal until the marrying age is reached⁷⁸ are common does not however mean that many do not see the potential problems of marrying at the age of 16. Rather, those who opposed such practice and told me they would themselves forbid their daughters or sons from marrying at such a young age tended to see themselves already removed from such rural and 'old society' (*jiu shehui*) practices. How one positions to such now contentious topic in the community is part of a person's 'figuring out' what it is to modern or law-abiding. Similarly, many people do acknowledge that giving male descendants a greater claim to the parents' inheritance (like we saw in Chapter 3) put female children in an unequal and potentially disadvantageous position. People's ability to be reflective on one's

⁷⁸ It was explained to me by several people that by getting married in the village and, crucially, holding a wedding banquet made the marriage fully valid in village society. Once both in the couple reached their respective legal marrying age, they would at that point register the marriage officially and get the marriage certificate which is necessary for certain administrative procedures such a jointly owning marital property.

own traditions and be critical of them as new ideas spread, is not however addressed in Zhu's model.

Legislating Tradition

In writing about the distinctive character of Chinese law, Huang (2015) emphasises what he calls the “persistent moralism” that remains in Chinese law despite the importation of “formalist Western law”, done as a way to modernise the Chinese legal system (2015:7-8) so as to better suit a modern China. Such moral substance for Huang is not, however, the same as Zhu's ‘native resources’; for Huang looking to rural customs; the revolutionary tradition; or to the generalised notions about Chinese tradition that are juxtaposed to Western and modern legal cultures, is missing an opportunity to look at what Huang calls the concrete content of traditional law, and what how it persists in the legal system today (2015:6).

Huang (2015) draws particular attention to dispute mediation as a distinctly Chinese aspect of the legal system where the inclusion of moral principles are part and parcel of the process: here it is not just about determining what is legal, Huang notes, but equally important is to consider what *morally ought to be*. Huang continues:

“It is about virtue, even more than justice. It is about “harmony”, not rights and their violations, and about resolution of disputes through compromise, not adjudication of legal right and wrong. It is about drawing on the compromising and forgiving side of humans to build a moral society, not just about the forbidding and punishment of illegal behaviour” (2015:7).

This approach, and the language in which it is articulated, is very familiar to those following Chinese political discourse, which emphasises a unified Chinese culture. In this view, the informal or extra-judicial mediation (for example lineage member or police mediation) takes cues from Confucian ethics that may place, for moral reasons, ‘communitarian’ concerns at times above individual ones (Huang 2010). Huang sees the entire system of dispute mediation from the local village level institutions up to the court procedure as a continuum from mainly moral to mainly legal emphasis, and this moralism in the face of calls for ‘modernisation’, is what for Huang is characteristic (and appropriate) in the Chinese legal system. Another example of such embedded moralism is the inclusion into formal legislation

principles of Confucian virtue ethics (2015:10); we saw this in Chapter 3 in the law on elderly care that incorporates in concrete legal terms the notion of ‘filial piety’ as an obligation to care for one’s parents, irrespective of the amount of inheritance one has received from their parents.

The emphasis Huang places on mediation and the moral overtones of that process was something I observed empirically in the dispute mediation events I was present in. The police mediators did refer to such traditional concepts as the primacy of sons in caring for elderly parents, and more broadly they talked about law as only one source of guidance in the larger Chinese moral system.

However, the reliance on textual sources leads, I argue, Huang to overstate his conclusion about the stability of the moral component in the Chinese legal system. Similarly, as Zhu (though for different reasons), Huang tends to veer on the side of essentialism and uniformity in describing Chinese culture and traditional sources for legal reasoning and practice. An ethnographic investigation such as the present one complicates Huang’s rather uniform and smooth picture of what happens in a dispute mediation, especially at the local levels. While notions of morality, rural culture, and proper behaviour are all very present, the police officers do also see other possible ways of resolving disputes. More importantly, the people who seek out the institutions of mediation, do not exclusively look for a more moral solution to their dispute; rather, in ‘figuring out’ a solution or a reconciliation to a family dispute or to broader conflict in the community, people engage with multiple sources of reasoning.

Back to Wang Yan’s Petition Letter

In the prologue to this thesis I detailed the events around an attempted arson in the same village in which I conducted most of the research for this thesis. Initially I thought that what was most interesting about Wang Yan’s petition to the police authorities was the emotive way she presented it in the village streets that day, and the personal plea to a higher government authority it represented. The letter seemed to be akin to how the ‘*xinjang*⁷⁹’

⁷⁹ The ‘*xinjang*’ or ‘letters and complaints’ system is a still existing institution within the Chinese bureaucracy/legal system whereby any person can petition the government to amend a perceived wrong done to them by the authorities. This

system of petitioning the government (or the ‘letters and complaints’ system) works, a system that is now much less frequently used.

Later I came to see the justifications for her husband’s release, presented in the petition, as even more interesting and, importantly for this discussion, revealing of what I have called ‘worths’ that people hold. Utilising the model by Boltanski and Thevenot (2006), I argue that one important ‘order of worth’ referred to in the letter was the idea of continued obligations towards one’s kin; those obligations ranked higher in the hierarchical order than the principle of not setting fires, a criminal offence. Wang Yan’s emotive plea tapped into another ‘worth’ around ideas of hierarchy where she was expected to ‘lower’ herself to show proper respect to those she was seeking a favour from. Referencing the specific humiliation experienced by a ‘married in’ husband (*shangmen nixu*) that drove him to make a threat on his own life is another ‘legible’ statement to the people in the community that ‘makes sense’ in a particular way. Yet another ‘worth’ here are the ideas around how to treat people properly (*dairan*), which is relative to a person’s social position and their relationship to the other person in question. Such gestures, language and documentary practices make different ‘orders of worth’ visible to others.

Looking at the arson attempt as a situated event and how Wang Yan and others speak about it, those kinds of contextual details that reveal the relationships of obligation are crucial. It is also the kind of context that state law in a formal sense is not able to ‘hear’ but is rather interpreted as a sign of low ‘legal consciousness’ (*falv yishi*) if brought up in a court setting. Indeed, the petition letter could be used by the state as a prime example of a situation where certain kinds of people in rural China do not understand the law (*‘bu dong falv’*), as the oft used refrain goes).

For a social scientist and an ethnographer, the letter is an interesting artefact that involves mimetic practices that seek to evoke a sense of formality and officialdom in its use of archaic language and the collection of the signatures topped by fingerprints. Additionally, it taps into a kinship ideology classically thought of as traditional and rural.

results in people, having sometimes exhausted all other levels of government, travelling to Beijing to petition the central government as a final effort to be heard.

If the story of Wang Yan's efforts to secure the release of her husband ended here it could be interpreted as being more in line with aspects of Zhu's and Huang's legal sociology. Wang Yan, having exhausted the route of petitioning the officials with the backing of the village community, changed course, however, and hired a lawyer. Similarly, as detailed in Chapter 3, the Lu brothers, not being satisfied with the outcome of the police mediation, saw the older brother seek the backing of the court for his claim. The three different levels (the village; officialdom; the courts) represent a field of options that people can and do bring their conflicts to, in the process 'testing' how their own sense of justice and living a morally proper life are impacted by it.

Concluding thoughts

I argued above that, in looking at legal change in China and specifically Chinese legal resources from a historical and textual vantage point, Zhu and Huang overstate the static nature of 'tradition' as a baseline principle for people's reasoning of conflict and justice. Rather, what the ethnographic cases have demonstrated throughout this thesis is that, if we put aside the essentialising notions of 'tradition' or 'rural morality', we can better notice how tradition and a sense of having 'rural culture' do continue to matter, but as one source of meaning and reasoning among several. Looking at such 'figuring out', understood as a dynamic and contextual process, shows what meanings ordinary people give to the law, as well as to modernity and to the state, and how professionals working in the various institutions discussed in this thesis adjust to those meanings.

I began this thesis with an ethnographically rich and even somewhat puzzling case, told through Wang Yan's letter of petition. This case introduced both the location for this research as well as some of the main normative issues that have bearing on people's everyday lives. In Chapter 1 I set out to sketch the broad theoretical background of this thesis, as well as the institutional arrangements involved in the state project of legal reform. In Chapter 2 I discussed the weaving of local village and kin connections that people live among, and the kinds of resources available for 'figuring out' a solution to a conflict. The discussion of Auntie Yin's case in particular brought home some of the reasons for why some institutions of dispute mediation may not fit well into overall ethical projects of a person. In Chapters 3 and 4 I discussed the institutions of police or officialdom mediation as mid-way points between community and the state; in this locale, the state employees themselves come to

theorise about ‘rural culture’ and their own work and expertise within that. In Chapter 5 I presented a different kind of conflict – one where the ‘outsider state’ impinges upon local and rural ritual requirements – and described some of the ways in which ‘fixes’ and work-arounds were made to manage that conflict. The funeral was a prime case where two crucially important but contradictory ‘tasks’ needed to be accomplished in the same ritual space and at nearly the same moments: for both the family and the lineage as well as the representatives of the state, the legacy of the deceased person needed to be resolved according to their particular requirements. Finally, in Chapter 6, I discussed the work of legal aid lawyers and the challenges they face in translating to the language of the law people’s cases before they can be brought to court.

Overall in this thesis I have addressed the ways in which ‘figuring out’ is involved when everyday conflicts between such large referents in Chinese society as modernity and tradition; morality and the law; and community and the state become acute. Conflict, I have argued here, is a useful way of investigating what meaning is given to modernity, law and the state in these rural communities, and what role they are seen to be playing in people’s lives.

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