Conflict and Conflict Resolution in China

BEYOND MEDIATION-CENTERED APPROACHES

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It is commonly assumed that conflicts in China and other Asian countries that share its cultural heritage are resolved through mediation rather than adjudication or appeals to political institutions. Archival sources in China and interviews with urban and rural officials reveal that the preference for mediation in China and other Asian and even Western societies is largely correlated with region, class, and gender and therefore does not constitute a national pattern. Historical (19th century and Maoist China) and more contemporary evidence reveals that mediation—to the extent that it was actually performed at the grassroots level—was but one method of resolving problems in China. Other methods included interpersonal violence, collective action, and even feigned suicide. A disaggregated perspective on conflict resolution is a more accurate representation of China as it deepens market reforms and a more powerful way to predict China's capacity to manage the conflicts that follow such reforms.

For almost a decade now, thanks to the field research of several American and Asian social scientists, readers of the Journal of Conflict Resolution (JCR) have been treated to some of the intricacies of conflict resolution in Asia, including China, Japan, South Korea, and Malaysia (Wall and Blum 1991; Sohn and Wall 1993; Kim et al. 1993; Wall and Callister 1999; Callister and Wall 1997). The introduction of these comparative cases into a field dominated by studies of the West is an important contribution that clearly follows the trails blazed by scholars working in the field of legal anthropology. A core assumption of this field was that different societies had different methods of resolving disputes and such methods could be discovered by intensive field work among the “natives” of a different country (Nader and Todd 1978; Nader 1997; Gulliver 1979). This view of conflict resolution processes is clearly reflected in the studies of the Asian countries. Unlike litigious Americans, the Chinese “have very few court litigations.” Instead, they mediate. “All disputes there, any and every one,” Wall and Blum (1991) contend, “are mediated.” This reflects state policy that discourages overt conflict and ordinary citizens’ preference for “harmony” rather than conflict. China,

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they conclude, is the "most heavily mediated nation on earth" (pp. 4, 19). Mediation is also a pervasive method of dispute resolution in South Korea and Japan, albeit less formal than in China, largely because of the influence of Confucianism's emphasis of harmony over revealing overt conflict (Kim et al. 1993; Callister and Wall 1997). These studies argue that Asians tend to behave quite differently from Westerners.

Such a view of conflict in Asian society generally and Chinese society specifically, as well as the arguments regarding methods of conflict resolution that have sprung from it are partial at best. As this article will demonstrate, they largely represent the conflict resolution practices of the educated elite and/or the state's desired methods of conflict resolution in Asia rather than the way conflicts are resolved in practice among ordinary people. My own research, based on over a year of fieldwork in China that involved interviews (conducted in Chinese), archival research, reading court documents and the Chinese legal press, suggests that it is impossible to speak of "the Chinese" (a group of 1.2 billion people) as having one preferred method of dispute resolution—mediation—and to proceed from this point to analyze different mediation techniques. Instead, I will demonstrate that many Chinese in "traditional," Maoist, and post-Mao periods frequently eschew mediation and are frequent visitors to courts. Community feuds might lead entire villages, led by their village officials, to courts, whereas appeal to high-level political institutions, even very remote ones, is a well-worn tactic to resolve interpersonal and community disputes. Moreover, mediators themselves often push cases to courts without performing their designated roles. Finally, I will argue that there were important class, regional, and gender differences in the way conflicts are resolved in China and in other Asian countries. Some of these Asian methods are actually quite similar to those among comparable populations in the West. Juxtaposing Asians as a cultural group with uniform, cross-class, gender, and regional characteristics distinctive from those of "Westerners" is not a productive way to study comparative conflict resolution. In short, in this article I challenge both the methodological and empirical findings on conflict resolution in China published in JCR. I make an urgent plea for scholars engaged in comparative research on this subject who skillfully use quantitative methods to be more attentive to the qualitative side of research, particularly by disaggregating concepts, such as "state," "society," "Confucianism," "Asians," and so forth. Such concepts are simply too large and unwieldy to be very useful for analysis. If we can discover regional, class, and gender variation in the way conflicts were manifested and resolved in China, a country whose philosophical tradition influenced much of Asia, then it seems highly likely that a disaggregated approach would hold for other Asian countries as well.

A METHODOLOGICAL CRITIQUE

Before discussing conflict resolution in China, it is worthwhile to assess the contribution of James Wall and Michael Blum to this journal (1991). Their work is one of the few articles published by JCR on conflict resolution in China, and the arguments of their study served as a baseline to establish similarities and differences with South Korea, Japan, and Malaysia. This 1991 article is indicative of the problems that arise
when nonspecialists study an area and publish their work in a non-area studies journal. I will examine many of the features that Wall and Blum believe have caused the Chinese to adopt a rather conciliatory stance toward conflict and then show how the exact opposite was often the case. In their article, "Community Mediation in the People’s Republic of China," Wall and Blum (1991) note that "mediation in Eastern cultures" may be different from in "the West." With specific regard to China, they point to the role of Confucianism as leading to a legal culture that discouraged the open airing of disputes. According to the Confucian precepts they cite, Chinese believed that "if one had been wronged, it was better to endure the suffering than to disrupt harmony by complaining"; Chinese preferred to "forgive, tolerate, and cooperate with others." This traditional view, they continue, "held up over the centuries," and continued well into the period of the People’s Republic of China. Thanks to this long history of Confucianism, Chinese people today, just like their ancestors, prefer mediation to more Western forms of conflict management, most notably, adjudication. Such a cultural preference is also more congruent with the regime's own preferences for order and stability. In line with this thinking, the state assigned people who were "respected... in the community" to be mediators. Because of this, Wall and Blum argue, it is "rare" to find civil disputes that go directly to court; it is also rare that disputes will "escape the mediators' assistance" (p. 8). This cultural preference for mediation is also found in Japan and South Korea (Kim et al. 1993; Sohn and Wall 1993). In their article on Japan, for instance, Callister and Wall (1997) note only parenthetically that "currently, some scholars argue that court avoidance is not due to a societal norm" but because "institutions are structured to discourage it" (p. 314). However, the article to which they refer, John O. Haley's "The Myth of the Reluctant Litigant," was published in 1978, almost 20 years before Callister and Wall's piece. Its emphasis on institutional restrictions to litigation in Japan is now widely seen as more accurate by specialists than earlier, more culturally oriented views. Absent these restrictions, the Japanese would gladly pursue adjudicative solutions.

Here it is worth examining a bit more closely the empirical basis of the claim about conflict and mediation in China. Two sorts of evidence are presented: secondary sources to support the view of "traditional" China as nonlitigious, and field research in China to get at the contemporary scene. Starting with the former, Wall and Blum (1991) cite several English-language sources about rural life and legal practices. To an untrained eye, this would seem to suffice. However, a closer reading of these materials reveals that most all of them—a book about the rural Chinese local elite (published in 1955), two books on law (published in 1961 and 1962), and two articles dealing with mediation (published in 1966 and 1968) are, by 1991, highly outdated. Even in the early 1970s, there were studies that highlighted the role of district magistrates in resolving disputes through adjudication, not mediation (Watt 1972). Studies of Chinese politics and society made it very clear that Chinese society was not particularly harmonious: rebellions involving millions of people were stifled through a militarization of local elites, and community feuds were common (Kuhn 1970). By 1991, after China's opening to the West (which began in 1978) and scholars' access to local archives, officials, and ordinary people, there was an explosion of new literature...
concerning the main protagonists in Wall and Blum’s account: the state, local officials, and the Chinese public. We now know that orthodox Confucianism was not influential to the same degree throughout the polity, and that local elites used a variety of strategies to manage conflict and maintain domination (Perry 1980, 1985; Esherick and Rankin 1990). Because the pervasiveness of mediation hinges on the thesis of widespread and more or less equally distributed Confucian impact, it is unlikely that mediation was much practiced where Confucian norms were compromised by other factors.

The research methods employed during fieldwork were also problematic. Wall and Blum’s (1991) argument that China is the “most heavily mediated nation on earth” and that “all disputes there . . . are mediated” is based on 100 interviews with mediation officials in one city, Nanjing. Such a sample is highly problematic. First, we are given no information about Nanjing itself: is it a typical city? In fact, many China scholars could easily argue that Nanjing is not typical of China, much as Americans know that San Francisco is hardly typical of the United States. Nanjing, as the Bay Area, is home to a well-known university and has a relatively large foreign presence. Historically, it was the power base of the discredited Nationalist regime, which was in power in China from 1928 until 1949. Because of this, Nanjing’s urban population suffered more than many others when the Communists took over power. Nanjing’s experience under the Communists is therefore representative of relatively large, Westernized cities whose residents suffered a great deal and whose resources were systemically plundered by the state. Such a city is not typical of Chinese urban areas, however.

But despite their focus on one city, Wall and Blum (1991) do not qualify their conclusions as representative of urban trends in China, but instead generalize them to “China” and “the Chinese” in the broadest sense. Nowhere is it acknowledged that China is a predominantly rural, not urban, country, with some 63% to 75% of its population (depending on how authorities define the term urban; Zhongguo zhongyang tongjiju 1988). Rural China, where most disputes occur, is entirely absent from Wall and Blum’s analysis.

But these are not the only problems. In most survey research participants are randomly chosen, for obvious reasons. Wall and Blum’s (1991) informants and research sites, however, were not chosen randomly: they were chosen for them by the state. “The head was contacted,” they explain, “and asked for permission to interview a mediator who was willing to discuss her or his mediation” (p. 7). In other words, prior to their interview a state official spoke to the mediator being interviewed. China, as a Leninist regime, is known to be rather secretive and wary of outsiders, so it stands to reason that the Chinese side probably discussed the issues that would be proper and improper to tell the foreigners. Hence it is not surprising to find that Wall and Blum’s findings mirror the way the regime seeks to present itself to outsiders to a tee: the mediators are “respected” in the community, they handle “all” disputes, they seek “harmony,” and so forth. The authors, dependent on a translator (whose institutional affiliation remains unclear—was he vetted and then assigned to them by China, or employed directly by the authors?), failed to probe deeper. Crucially, there was no systematic effort to interview ordinary people. They are the ones experiencing the conflicts, so shouldn’t they have been consulted to see if the claims presented by the state hold water? Wall and Blum claim that they discussed their work with “scholars” (i.e., mem-
bers of the Chinese elite), a "large number of Chinese leaders" (i.e., the state), and "average citizens" as well. This latter claim hardly seems credible, though, because the "average" citizen in China is a peasant and is unlikely to speak English or candidly to a foreigner accompanied by other officials. What emerges from this account is the "conflict resolution" equivalent of the old Soviet method of impressing visitors by showing them quasifictional Potemkin villages. During my first 3 months in China, I, too, was given the exact same party line by mediators working with the Chinese Women's Federation. Only after 3 additional months of archival research did it become apparent that officials were telling me one eighth or one quarter truths.

In short, before presenting any contrary evidence, claims made about "the Chinese" and China being the most mediated country on the planet on the basis of a sample of 100 urban, state-appointed mediators in a country that is mostly rural seem highly suspect. When added to an outdated literature on conflict resolution in "traditional China," whose mediators supposedly paved the trail for China's current crop of mediators (Wall and Blum 1991, 18), the conclusions are highly problematic. But if this is the case, what would an alternative analysis look like? How are conflicts resolved in China?

THE DATA

This article focuses on interpersonal and community conflicts arising from one of the most dramatic efforts by a state to transform family relationships—the People's Republic of China's "marriage law," promulgated in 1950. I focused primarily on disputes arising from the law's divorce clause, which made it easier for people to divorce than in the past. In 1993 and 1994, and again in 1997 and 1999, I conducted research in urban and rural archives in China, and interviewed judges, mediators, and bureaucrats responsible for handling such disputes in urban and rural areas. Urban and rural interviews were conducted in Mandarin Chinese, which is spoken by most all officials. The archival sources (all in Chinese) are far superior to the official press, mainly because they are not published and therefore are not censored; many documents were hand-written and had never reached a printer. Merely deciphering them was a major effort that on occasion required a friend's assistance. Most of these documents were of the "for-your-eyes-only" sort, never intended for readers even outside of the authoring institution. In two rural areas (Qingpu county in Eastern China and Chuxiong Prefecture in the Southwest), I was allowed to see every document I requested as long as the ideographs for family or women were in the title (such subjects were not considered politically sensitive). In Shanghai, I was granted free access to all materials related to the marriage law in three different archives. My interviews in rural China were conducted without a translator present and were not arranged by my sponsoring institution, the Shanghai Academy of Social Sciences. This was possible because the director of the Civil Affairs Bureau in Qingpu, after knowing me for 6 months, allowed me free access (i.e., he was not present during the interviews) to six of his underlings and introduced me to three lawyers working on civil disputes. My questions were open-ended, posed in very informal settings such as restaurants and taxis and were based largely on

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findings from my documentary research. My questions focused mainly on how conflicts are manifested among different social classes in China rather than on the methods mediators used to resolve disputes, because this was the area where mediators were most prone to emphasize success and the "party line" regarding mediation.  

REVOLUTIONARY POLITICS AND MEDIATION

The accounts of Chinese mediation in JCR omit that China has undergone not one but two revolutions in the past century—the Republican revolution of 1911 and the Communist Revolution of 1949, both of which had significant impact on the way disputes are resolved there. Wall and Blum (1991) argue that the People's Republic of China mediators have followed in the footsteps of their Imperial counterparts in their emphasis on "harmony." Yet the Republican regime and the Chinese Communists were highly critical of Confucian social practices, among them, the absence of modern law and legal institutions. Republicans and Communists both contended that the Confucian emphasis on "harmony" and the elevation of the scholar-official to the highest ranks of the social order created a weak nation and state that failed to meet the Western military challenge in the mid-19th century. Solutions were institutional and cultural and represented departures from past practices. Institutionally, both regimes created Western-like organizations—political parties, military academies, hospitals, ideologies, mass circulation newspapers, courts, centralized schools, and the like (Fitzgerald 1996; Strauss 1998). Culturally, they argued that the Chinese needed to be more military minded, build up their bodies, and learn to be more aggressive (Brownell 1995). In other words, both regimes realized that a revolution needed to take place in Chinese society if China were to become a strong nation capable of competing with the West. Yet beyond the goals of revolutionaries, it was clear that "traditional" (Confucian) society was already undergoing rapid change by the second half of the 19th century. Between 1850 and 1864 China experienced several major political and social crises, including a civil war that claimed over 30 million lives, the Taiping Rebellion (Spence 1996), the Nian Rebellion (1853-1868), the Southwest Muslim Rebellion (1855-1873), and the Northwest Muslim Rebellion (1862-1878). The subsequent decline of the last dynasty (the Qing, 1644-1911), economic crises, and a rising and inequitable tax burden led to a severe social crises in many areas, but especially in the North. Families were hungry; many local elites—some of whom handled mediation in villages—abandoned their communities. Filling the vacuum were local toughs, or "brokers," who often preyed on the peasantry (Duara 1988). Often, peasants went to court to counter the rising power

1. For readers who believe quantitative evidence is more reliable and credible, I point out here that there are no reliable statistics regarding conflict mediation in China, either in the 1950s and 1960s or even during the reform period. Statistical evidence requires trained statisticians, and these were in short supply then and now. According to one recent study (Y. Huang 1994), in 1988, some 10 years after the reforms began, the headquarters of the State Statistical Bureau employed only 580 people, 1.4% of the staff employed by its institutional counterpart in the former Soviet Union. To this we might add that the Chinese government itself is often frustrated by its inability to gather accurate statistical data, mainly because local officials purposely exaggerate their achievements and discount their failures (Foreign Broadcast Information Service—China 1996).
of these unscrupulous officials. Complaints about excessive litigation in the countryside—against family members, officials, and others—were a staple of official communication prior to the Republican and Communist revolutions (Watt 1972; Macauley 1998; C. C. Huang 1996; Perry 1980).

In the end, it fell to the Communists to actually undertake a revolution on a nationwide scale. This revolution was political in the sense that the regime changed and social in the regime’s determination to overthrow the dominant social classes. This revolution was also extremely violent: millions of rural elites were either executed or deprived of their political rights (Hinton 1966; Friedman, Pickowicz, and Selden 1991); many others fled to Hong Kong or Southeast Asia. Other governing institutions, such as lineage associations, were no longer recognized by the state. In their place the regime established peasant associations, mediation committees, and women’s committees whose membership was composed primarily of poor peasants, many of whom were barely literate or had only primary school education. A similar revolution occurred in cities where institutions that formed a sort of middle ground between state and society prior to the revolution—native place associations, self-help groups, fraternal organizations—were all disbanded and replaced by institutions—among them mediation committees—that were loyal to the regime and, from a sociological perspective, composed of the classes that the regime claimed to represent—mainly poor citizens and workers (Shanghai Municipal Archives [SMA] C31-2-222: 61-3). The premise here was simple: the old elites exploited the lower classes in the countryside and the city. To create a more just society, the state had to be more “of the people,” even if this meant that new officials would be judged not by their competence but by their position vis-à-vis the means of production and political reliability.

In theory, this might have worked. If ordinary people had been intimidated by the high and mighty state prior to the revolution, now that officials were of the same class as the populace there was no reason to be afraid. As it turned out, however, the exact opposite occurred, as evidence from local elections for mediation and residence committees in urban and rural China demonstrates. A report on local elections in Beijing’s working-class Qianmen district, for instance, showed that women residents did not want to elect a fellow woman as their representative on the mediation committee because they believed that women “would not be able get anything done” because they “have no culture and little experience.” But even when the Woman’s Federation identified a good candidate, they found many were unwilling to serve on local committees because the job was both unrewarding and a strain on their time. One elderly woman said, “To be a representative you have to attend a lot of meetings. We’ll only go if someone will prepare our meals for us.” In another case, a resident, on a lark, blurted out, “Let’s elect someone whose name we don’t know!” The group then elected an insane man to be their representative on the committee (Beijing Municipal Archives [BMA] 84-3-22: 28). Naturally such a perspective was entirely absent in the interviews I conducted with Chinese judges, who told me that in the early years of the People’s Republic of China such officials were universally respected by citizens.

But even when saner candidates were elected, there were no guarantees that they would work well on behalf of city residents. Lacking experience and residents’ trust, many new officials were at a complete loss when it came to handling interpersonal
conflicts. Utter confusion, evasion of responsibility and administrative bungling were
the hallmarks of low-level political administration in the early years of the People's
Republic of China. According to one report,

Women's representatives in Qianmen district have the attitude, "If there's a problem
organize a meeting, if there is no problem, why bother?"; others don't know how to go
about doing their work... They don't have an effective way of handling problems, and
can't handle problems quickly. Sometimes problems pile up for a long time. (BMA
84-3-22: 2-4)

Instead of mediating as they were expected to, neighborhood and mediation com-
mittees frequently sent cases involving "ordinary conflict"—often family and neigh-
borhood squabbles—to court. As a result, the courts' heavy case load grew even heavier.
According to a Beijing marriage law office report,

The Women's Federation's mediation section] pushes cases to court because they say
they can only mediate, while courts can actually decide things, but courts will only take
women's cases seriously if there is a threat of committing suicide. As a result, cases are
shifted between courts, the Women's Federation, and the local police station, and then
back to court. In the meantime, they still have to live with abusive relatives. They then
think the only way out is to commit suicide. (BMA 84-3-22: 45-6)

Workers who attempted to find a state institution capable of mediation were also
frustrated. Like many neighborhood officials, those responsible for family mediation
in factories were often women, frequently illiterate, very young, and only recently pro-
moted from among the ranks of ordinary factory workers. They were noted to be either
politically enthusiastic but completely incompetent at handling disputes or not politi-
cally committed and incompetent, not a good combination as far as plaintiffs were
concerned (BMA 101-331: 16). Many workers, reports noted, refused to seek out their
union's assistance to discuss their conflicts (SMA C32-1-5-35; BMA 101-412: 28).
Many interpersonal disputes in cities, therefore, were not mediated at all, but rather
ignored or else sent to higher level state institutions, such as courts.

Such a situation did not change much as the regime finally gained its political foot-
ing toward the mid-1950s. By this time, the state had promulgated guidelines for the
day-to-day operation of mediation committees. According to these, "ordinary" dis-
putes among urban residents were to be mediated within residents' work or residential
units prior to their adjudication in court. Workers, for instance, were expected to pre-
sent their problem to their workshop director or union official; in administrative work
units, such as schools, hospitals, and banks, conflicts were expected to filter up through
the administrative hierarchy prior to a court hearing. In addition to work units, blue-
and white-collar residents might also have to deal with local neighborhood residence
and mediation committees that served as intermediaries between residents and the
higher administrative authorities, as well as local constables who preserved public
peace. These committees were supposed to (1) help arrange residents' public and wel-
fare work, (2) relay residents' opinions to the local government, and (3) ensure that res-
idents obeyed laws and regulations (Dongcheng District Archives [DCA] 11-7-211: 28; DCA 11-7-216; DCA 11-7-213).

In neighborhoods and factories, problems that vexed these organizations during the first 3 years of the People’s Republic continued well into the late 1950s and early 1960s. First, the Communist government, because it did not trust the political allegiance of society’s most educated members, placed ordinary workers—many of whom were uneducated—or women—many of whom were not respected because of their gender—at the helm of mediation and other local institutions (DCA 11-7-213; SMA C321-1-369: 56). This virtually guaranteed that these institutions would enjoy little legitimacy in the eyes of the local population, many of whom still believed that high cultural status (usually defined in terms of wealth and education) and good work habits were far more important than good politics. On one occasion, for instance, when the state tried to engineer the election of a “good class” fruit seller, residents refused to vote for him. They said, “That guy drinks so much he can’t recognize East from West or North from South! Why elect someone like that?” (DCA 11-7-213). Other internally circulated neighborhood reports from the period from 1954 to 1956 complained that, because local officials lacked time, “culture,” “experience,” and “confidence,” they often failed to explain policies or help residents deal with everyday difficulties or disputes. One noted that mediators were so busy running around attending meetings that they mediated and cooked at the same time, children scurrying around their feet (DCA 11-7-199: 5). As they grew impatient, many fell back on ordering them around. These difficulties prompted charges that local officials were “impatient,” “acted blindly,” “poked around in things they shouldn’t [such as illicit sexual affairs] and don’t care about things they should [mediation]” and “do not trust the masses’ opinions” (SMA C312-369:27-8; SMA C312-2-369: 15; DCA 11-7-211: 26).

Despite their lack of legitimacy among urban residents, some mediators nevertheless became infatuated with the small amount of power placed in their hands. During mediation sessions, manipulation of the proceedings for personal or political ends was not uncommon. In Shanghai and Beijing, some mediation officials refused to discuss a resident’s problems with other committee members, preferring instead to solve the problem independently and thereby receive all the credit should a solution be found. In Shanghai, one committee member was reported to be “active, but wanted to do everything by herself.” Investigators complained that she “sees all achievements as her own, seeks status, doesn’t listen to anyone and is impetuous when dealing with people and their problems.” Other cadres were terrified of incurring her wrath, and rhetorically asked: “Who’s not afraid of her?” Similar accusations were made against a second mediation committee member, and others were accused of “seeking status,” “pettiness,” and “jealousy” (SMA C312-2-369:10).

But these problems were not nearly as dangerous to local residents as the tendency of these officials to use the state’s coercive apparatus to enforce unwanted settlements or settle personal scores. Reports on mediation committees complained that they ignored their roles as mediators and instead focused primarily on their public security function (DCA 11-7-211: 28). In Beijing, a report on mediation instructed mediation committee members to “not punish or arrest the parties in a dispute,” and reminded
them that "mediation is different from adjudication: you can't force people into mediation." The same report also warned mediators not to take "revenge" against local residents during mediation. "Mediation," the report stressed, "should not be used as an opportunity to get back at someone for personal grievances" (DCA 11-7-216).

To deal with mediators and residence committee members who used their official roles to bestow favors and punishment, urban residents seem to have adopted one of two strategies. Some, one report noted, tried to curry favor with mediators by giving them gifts (DCA 11-7-216). Others, however, became reluctant to divulge interpersonal disputes. A report on mediation in Shanghai in 1955, for example, noted a decline from previous years in the number of cases presented to residence and mediation committees (SMA C31-2-417: 51; SMA C31-2-369: 15). By the end of the 1950s, when politics became increasingly politicized during the Great Leap Forward, neither residence nor mediation committees were actually "mediating" cases, because administrative work units handled cases, residents felt uncomfortable divulging the causes for their disputes, or because of fears that conflict would be interpreted as "disunity" at a time when Chinese were urged to be united (Shanghai interview 1994).

The evidence presented above comes from archives in two cities—Shanghai and Beijing. Although important for the purposes of exposing some myths about Chinese mediators and Chinese legal strategies, they actually tell us very little about China as a political unit. For this we have to examine the political situation in the countryside, where most Chinese people live. Many scholars have noted that court use requires a certain level of education, and, perhaps more important, the ability to actually get to court. Both factors would seem to militate against rural court use, because villagers are not very educated (in China, some 90% of petitioners in family disputes are women, and women were often illiterate) and the distance between village and court could be quite long. Moreover, in small communities, William Felstiner (1974, 74, 79, 83) argues, the trust that develops between people makes mediation much more likely than adjudication because mediators "share the social and cultural experience of the disputants they serve." In contrast, larger cities are more anonymous, making it difficult to find a trusted mediator. This, in turn, leads people to seek the assistance of the state’s legal apparatus. Evidence from Thailand confirms this argument (Engel 1978, 143-44). But was this the case for China as well, another country geographically located in "the East" and similarly rural?

Here again there is a great deal of evidence that flies in the face of conventional wisdom. Although Thailand is rural, it differs from China in that it did not experience a rural-based revolution. As a consequence, in Thailand respected community leaders remain the backbone of mediation institutions. But this was not the case in China. During the early 1950s, rural elites who had been responsible for mediating disputes (when peasants did not go to court) were decimated as a political class. As in urban areas, they were replaced by a new leadership group composed either of villagers who were pro-Communist prior to 1949 or were active in one or several post-1949 political campaigns, such as land reform. Most of these villagers were male, young (20 to 25 years old), and often known for their machismo and ruthlessness (Friedman, Pickowicz, and Selden 1991). Higher up the administrative hierarchy at the level of the
district of the county were officials who were slightly older and often came from the outside, sometimes from a different province altogether (An xian zhi 1991, 460, 506).

How did these revolutionary changes affect conflict resolution? The evidence reveals several patterns. First, because they were new to their position, village mediators were uncomfortable mediating. Having been mere ordinary poor peasants with low social status prior to their elevation to “cadre” status, they had very little experience with this sort of work. Perhaps not surprisingly, many mediators preferred not to mediate. In the Shanghai and Beijing suburbs, for example, county-level organizations frequently complained that when dealing with interpersonal disputes, village mediators were “afraid of hassle,” “lack confidence,” “see abuse and run away,” and “encounter a concrete problem and cannot get a single word out of their mouths” (Tong County Archives [TCA] 1-2-31, 7-1-3:128; SMA A71-2-1859: 43, C32-1-4: 76; Qingpu County Archives [QPA] 11-2-1: 5).

Nonetheless, when local officials attempted to mediate they were frequently unable to decide an issue to the satisfaction of all parties. This makes sense if one takes into account the social context in which they were forced to operate. Mediators in China, unlike, say, a family court judge in the United States who has no interaction with couples before or after the case is heard, were forced to mediate disputes among people with whom they lived. If they made a mistake, they would have to continue to interact with the aggrieved party. In one village, for instance, an inexperienced mediator botched a mediation session between husband and wife and was then cursed by the male disputant, “You people who have now become mediators. Damn you! May your generation be cut off with you! You’re breaking up couples!” (QPA 11-2-1: 81). In a village in Yunnan Province, two male mediators vividly captured their dilemma: “Mediating,” they said, “is just like whipping a mule: You whip the mule and it farts, stinking you up. You try to mediate and everyone will be angry with you.” Another complained, “When you mediate . . . both sides threaten you, and each other, with murder or suicide. How can we possibly find a solution?”; one court investigation found that mediators were reluctant to mediate for fear of “making an enemy out of someone.” Unable to reconcile disputing parties, mediators adopted the pragmatic strategy of sending cases to courts and letting judges deal with the hassle. Courts, of course, were not pleased by this and complained that village mediators were sending cases their way “as soon as there’s a conflict in the village” (Chuxiong Prefectural Archives [CXA] 11-4-14B-1: 141; CXA 11-4-14B-1: 126). Rural mediation committees, therefore, were often nonfunctional.

But what made local officials even less central in resolving interpersonal disputes resulting from the marriage law were the utter contempt and distrust with which some villagers and women in particular viewed the young rural officials who until recently had been their generational cohorts and, because they were poor, often lacked “face.” Although local knowledge is often said to benefit mediation because it generates trust, too much knowledge about certain individuals could just as easily breed mistrust, particularly if the mediators were appointed rather than freely elected. A report from a district in Yunnan noted that, “Women are not willing to go to village or township officials for mediation, and are not willing to accept village mediation at all.” Instead, many
went directly to the district government or to courts, a move that irked village officials. When one woman "ran to court" after getting into a fight with her husband, village officials berated her, "You look down on us, huh! You have some nerve!" (CXA 11-11-14B-1: 46). In Yunnan, court and Women's Federation reports thus complained that "women go rushing off to court, traveling for days, just because of a trivial dispute" (CXA 11-11-14B-1: 104-5), or "go to the district and look for the district chief," thinking that he is the only one who will solve their problem. If he could not be found, they would return. "Because they have a marriage problem," the report noted, "women run off to the district and township governments. At a minimum, they have to go twice and at most, ten times, only then will their problem be solved" (QPA 48-2-31: 84; QPA 48-2-56: 113, 115). Because village and township officials were frequently unwilling or incapable of handling marriage problems, and women often refused to listen to their opinion, courts and districts soon found themselves inundated with lawsuits. In Yunnan, reports from one area indicated an increase from 517 family dispute cases in 1950 to 6,600 cases in 1953, the overwhelming majority of them handled in districts and courts, a 12-fold rise (CXA 4-4-A1: 38; CXA 16-3-A1: 184).

One pattern, therefore, was of women and men either being sent to adjudicative institutions by mediators; another was of women going to these institutions because of their disdain for village mediators. Women conferred political legitimacy on higher level state institutions rather than the local ones with which they had the most everyday interaction.

There was, however, yet another pattern worth noting. Men or their families mobilized village political institutions, such as poor peasant associations, militias, and even mediation committees (often, these institutions had overlapping membership, so that the village chief would also serve as chair or a member of the mediation committee) against people with whom they had personal grievances. In Yunnan, for instance, there were reports of village officials "solving" interpersonal disputes between men and women or their families by locking up women divorce petitioners (for up to 3 weeks), punishing women who requested divorce by assigning them to construction work, making illegal arrests, stringing up the first woman in the village who requested divorce at peasant association offices for other women to see, chopping off body parts, and threatening widows seeking to remarry (Yunnan Provincial Archives [YNA] 89-1-24: 27; CXA 16-3-A1: 52; YNA 103-1-45: 149; CXA 16-5-B1: 11; CXA 16-14-A1: 3; CXA 16-3-A1: 181). These were hardly the sort of people who could be trusted to patiently resolve interpersonal disputes.

The evidence above clearly shows that "mediation"—to the extent that it was actually performed—was but one option for the resolution of disputes in rural China. Adjudication, appeal to higher level political institutions, and violence were also often-used methods. Women (and some men) appealed to courts, and village men did not hesitate to use violence in their dual capacity as officials and mediators. Indeed, there was a relationship between the two—the more violence was used at the village level, the more need there was for higher level adjudicative institutions to intervene. Moreover, even when mediation committees existed in name, in function they were often deployed as coercive institutions. As such, they were often avoided. This was the case in both rural and urban China. The theory behind mediation was, of course, entirely
different. Mediation was said to be in accord with Chinese values of “social harmony” and a much cheaper way to resolve disputes than going to court. It is a stretch, however, to deduce what actually happened in rural villages (and urban neighborhoods) from policy statements or the normative goals of the state. Still, we are left with the question: if mediation was said to be common and an integral part of the Chinese tradition, whose interests and values did it reflect? Who, in other words, is responsible for the view that “the Chinese” solve interpersonal conflicts through mediation rather than through other means?

CLASS AND CONFLICT

To answer this question, much can be learned from comparative studies by anthropologists and historians, particularly those who study legal processes and history. These two subdisciplines rely on some combination of participant observation, extensive field work, and intensive textual research to learn how people in a given society and period understood “law” and used the legal process to resolve conflict. This research has conclusively shown that class and gender are key (but by no means the only) variables in any explanation of interpersonal conflict resolution. Sally Engle Merry’s *Getting Justice and Getting Even* (1990) and M. P. Baumgartner’s *The Moral Order of a Suburb* (1988) examined conflict resolution in the United States and found that overt expressions of conflict and court use are inversely related to class status. Workers are more likely than middle- and upper-class professionals to “wash their dirty laundry” in public and seek out state assistance to resolve their interpersonal disputes. The latter, in turn, are very likely to disparage them for such overt displays of conflict because “taking . . . domestic problems to court allows everyone to see one’s personal affairs and to talk about them. Instead, respectable people should put up with their problems” (Merry 1990, 64; see also Baumgarten 1988, 55). A similar situation has also been noticed in Japan. There, as in China, mediation is often said to be the culturally acceptable and preferred method to resolve interpersonal disputes, because both countries share a similar Confucian heritage. However, it is far from clear that such a notion is shared equally among the Japanese populace. Judges and state-appointed mediators come from a very narrow strata of society; they are the ones who actively discourage couples who do not get along from getting a divorce. But as the legal scholar Frank Upham (1987) has noted, “whether or not this antipathy toward divorce is shared by most Japanese, it is certainly not reflected in the legal norms” (p. 13). Indeed, John O. Haley’s (1978) work on conflict resolution in the 1930s reveals the Japanese, and peasants in particular, to be quite litigious. Class was also important in explaining variation in methods of dispute resolution in 19th-century Russia. As Laura Engelstein (1992) has shown, most upper-class Russians refused to allow outsiders to know about, let alone handle, their interpersonal disputes, whereas workers and peasants did not hesitate to reveal their problems in public forums, often in district (rather than village) courts (pp. 118, 121, 124). According to the historian Peter Czap’s study of courts in rural Russia in the late 19th century, Russian peasants generally were “highly litigious” (1967, 121). In sum, the comparative evidence on
dispute resolution shows that norms emphasizing highly "civil" (quiet, rational, dis-passionate) methods of settling interpersonal disputes are often those of the educated elite of a particular country. These are the norms that find their way into many state practices. The norms and the practices (such as mediation) that result from them, however, are not necessarily the ways in which more ordinary people actually settle disputes in everyday life.

If this is the case regarding countries as different as the United States, Russia, and Japan, it would not be entirely unreasonable to guess that the norms of mediation found so pervasive in China are but the normative goals and practices of China's legal and/or intellectual elite. In fact, recent work by several Chinese historians conclusively demonstrates that the conventional wisdom of traditional China as a nonlitigious, mediation-oriented society needs to be drastically revised. Chinese historian Philip C. C. Huang and Kathyrn Bernhardt (1994) writes, "those who assumed that the formal court system of the Qing dealt little with civil matters were simply wrong [italics added] ... civil litigation was not just the resort of the rich and powerful, for the courts were accessible even to peasants and the urban poor" (pp. 4-5). In one detailed study of lawsuits in the Southwestern Province of Fujian, Melissa Macauley (1994) found that "when peasants could not resolve their disputes over land, debts, marriage, and other mainly property issues, they turned to the ... courts for a settlement. Far from abhorring the state court system ... they increasingly relied on state structures to resolve disputes which were beyond the powers of local people of influence to address satisfactorily" (p. 84). In other words, even in traditional China it is clear that mediation was not the only route to justice. The formal legal system coexisted alongside the informal, mediation-centered one, and peasants could pick and choose the system that best served their interests. Of course, other, more violent, methods of conflict resolution were also common, such as "Hatfield- and-McCoy"-type lineage feuds. Most of these methods of dispute resolution were condemned by the Confucian elite, who, like their Communist elite counterparts today, preferred the order of mediation to the arguments of adjudication and the bloodshed of feuds. As Macauley (1994) writes, imperial authorities "campaigned to eradicate what they labeled the litigiousness of the Chinese people by statutory and rhetorical appeals to traditional structures of harmony" (p. 84). Such appeals, however, should not be equated with people's actual behavior.

Moving beyond these historical accounts, did such conflictual patterns continue into the 1950s and 1960s? My data are unequivocal on this point: Chinese peasants and the working classes (many of whom were from rural areas) were more likely to resolve their disputes via overt conflict and direct appeals to courts than educated urban elites. This difference cannot be explained only by the rural-to-urban dynamic of the Chinese revolution, which installed thousands of poorly educated, low-status individuals who were not trusted by urbanites and peasants alike. We also have to account for class, especially in the way it shaped varying degrees of comfort in revealing and displaying interpersonal conflicts in state forums. In the campaigns to enforce the marriage law, for example, officials were immediately struck by the differences in working class and elite districts of the same city (Shanghai) when they encouraged them to use state institutions to leave arranged, coerced, or abusive marriages. In an upper class section of one Shanghai district, investigators found that many people, and women in particular,
felt extremely uncomfortable revealing to outsiders the nature of their interpersonal disputes. "Among the bourgeoisie," the report noted, "the women suffer largely from psychological abuse; on the outside everything is tranquil [italics added], but inside they are suffering . . . they are quite vain and concerned with face (Xuhui District Archives [XHA] 1953: 4-5). In a meeting with female teachers, Shanghai Women’s Federation officials complained that it was difficult to help them because they “kept their problems to themselves.” In Beijing, reports noted similar silences. One report discussed a female intellectual who was abused by her university professor husband. According to the report, this woman believed that “people would look down upon her” if she divulged her situation and as a result did not “dare talk about it to anyone.” When her husband beat her black and blue, she left her apartment and rode her bike around the neighborhood, aimlessly and silently. According to the report, she was suicidal (DCA 6-1-57: 10-11). In another case, the wife of the manager of a barbershop owner in the city of Hangzhou in Eastern China was having an affair. After her husband discovered her and her lover in bed, she threw herself in a river, committing suicide. According to the investigation report, no one even knew about her difficulties. “In order to save face,” the report noted, “family conflicts such as these are usually not spoken of. The women don’t tell fellow employees, relatives, or friends, nor do they go to court to ask for assistance” (SMA E81-2-115: 18). Similar ways of handling conflict were also found in the mid-1950s and early 1960s, when upper class women refused to invoke state institutions because they felt that telling outsiders about their disputes would be tantamount to “losing face” (SMA C31-2-636: 18-20; SMA C31-2-1064: 1-4). In China, therefore, one of the requirements for maintaining upper class status was to maintain a fairly rigid barrier between private and public, as well as one’s inner composure, even if this meant harboring suicidal thoughts. As a result, many interpersonal conflicts were either “bottled up” or resolved using nonstate resources, such as family and friends. But even when conflicts became unbearable, there is little evidence that intellectuals, businessmen, and the like appealed to the state. Most, as befitting the view that conflicts should not be overtly displayed, sought out mediation. Most mediation cases did not end up in court. Statistics from an elite district in Shanghai are somewhat revealing here. An investigation by the district’s Women’s Federation branch found that most of the residents in the district were “petty bourgeoisie,” and as a result, “most problems are those of bigamy, cohabiting, and adultery.” Between July and December 1951, the Federation’s mediation section handled 256 “marriage cases,” the majority relating to nonmonogamous relationships. Of these, 71% were reported to have been “successfully mediated” and only 14% sent to court (Jing’an District Archives [JAA] 23-2-2: 11-13).

Elites, however, by definition are not representative of any population. Once we move away from a city’s elite districts to more working-class areas, we encounter very different views of conflict and conflict resolution. At the same time that officials working in elite districts complained about frequent silence in the face of conflict, those working in working-class areas complained about the exact opposite: loud arguments, public brawling, and frequent requests for state intervention. One report from the early 1950s lucidly pointed this out by way of an “oral tour” through a working-class neighborhood:
As soon as I open my window I hear people fighting and screaming. On the left is Old Chen's wife. She was abandoned by him and left alone with the kids. . . . Whenever she gets angry, she takes it out on the kids. On the right is Cai Linfeng, a rickshaw puller. He comes home, and as soon as he opens up his mouth, they start fighting. He smacks her around once or twice and it's over. (SMA C32-1-4: 20)

During the campaign to implement the marriage law, the state gave people the opportunity to vent some of their grievances to authorities. During the many years it spent in the countryside, the Communists learned how to stir up popular emotions and turn these into political ends. Often, this meant exploiting preexisting social conflicts, whether based on class (such as during land reform), gender, age, or simply personal grudges. When the campaign to enforce the marriage law made family behavior a matter of state and community concern, officials soon got an earful of complaints about each other: in a Beijing alleyway residents demanded that the state "punish" a man who had abused his stepdaughter (DCA 1-1-141: 3); in another street, neighbors ratted on each other, sometimes falsely accusing one another to take revenge for various past insults (DCA 11-2-16: 3; BMA 84-3-21: 17). If this did not work, conflicts could be resolved by going to court or to other state institutions. In Beijing, for instance, officials complained, "Some couples do not want to conciliate and do not give their relationship much consideration. Instead, they get into an argument and run to the district government" (DCA 11-7-100: 7). Courts might also be used to "regain face" lost over a relatively trivial matter. A Beijing resident named Song returned home from work one day and knocked on the door to be let in. His wife was in the bathroom at the time and rushed to the door half naked. Embarrassed that she looked like a wreck, he slapped her and then rushed off to the district government to petition for divorce (DCA 11-7-212: 27). Cases such as these irked the more literate officials investigating interpersonal disputes in working-class areas, who called such conflicts "trivial" and such behavior "rash" and "careless" (Yunnan Provincial Archives [YNA] 89-1-55: 8).

If class-based variation in the way interpersonal disputes are resolved can be revealed by examining archival sources from one city, it should not be surprising to find even wider variation when attention is turned to different regions of rural China. Research by political scientists and historians on local elites in the pre-1949 period (Esherick and Rankin 1990) has found much regional variation in the modes through which local elites exercised domination. The southwest, for example, constituted China's "frontier" region and, like the "wild west" in the United States, was well known for its rough-and-tumble politics; widespread militarization and community feuding were common. In the southwest, military power was just as important as skill in mediation or manipulation of the written word in resolving community conflict (McCord 1990). Resolving community and interpersonal conflicts through overt use of force was far less common in more commercially developed areas. In such areas, elites dominated largely by virtue of their cultural skills (such as art, literature, music) because these gave them "face" in the community and thus made them reliable mediators of disputes.

The resolution of intercommunity and interpersonal disputes in the 1950s and 1960s also reveals much regional variation within that unwieldy concept "rural
China.” In the poor and resource-scarce southwest, the Communist Party (CCP) was forced to assert its domination through a combination of overwhelming firepower and higher level mediation. In the early 1950s, for instance, the CCP “resolved” intercommunity disputes simply by executing warring village leaders (CXA 11-1-14B-1: 134). In other cases, the CCP found itself engaged in armed struggles against entire communities and won the day because its armies were more disciplined and powerful (Chuxiong 1993). In still other cases, the CCP was forced into a mediating role because weaker communities appealed for assistance in their conflicts with stronger ones over the distribution of resources such as land, forests, water, and even women (CXA 11-1-14B-1: 103-112; Yunnan wenshi ziliao weiyuanhui 1993, 271-73, 278-81). In these cases, the CCP indeed mediated, but such mediation was conducted under the shadow of the gun. Such was the case in interpersonal disputes as well. Many women knew very well that they would not get justice by appealing to local mediation committees because the heads of these communities were often relatives of their husband and his family. As a result, many simply left their villages to seek out higher level state institutions, such as courts and district governments that were far more likely to resolve these disputes through adjudication than patient mediation. Scenes of women—sometimes dozens of them at a time—knocking at court doors seeking divorce or criminal charges filed against their husbands, in-laws, and others were not at all uncommon (CXA 4-2-A1: 97; CXA 11-4-14B: 126).

In making these appeals, few were as concerned with “face” and “privacy” as their elite urban counterparts. For instance, in Yunnan peasant couples came to court shouting and yelling at one another, often using very explicit, sexually charged epithets. Needless to say, this conduct made it difficult for judges to conduct hearings. Orders then came down instructing judges to individualize hearings so that peasants’ yelling and screaming would not disrupt the court. Peasants, they said, should have “civilized divorces” (CXA 16-27-A1: 36-37). In other cases, women sought to resolve their interpersonal disputes through collective action aimed at courts and other state institutions. In Fujian Province, for example, several women came to court and said, “We want a divorce. All of us or none of us.” The official, faced with this united front, did not conduct mediation or even invite the husbands to court but granted them a divorce on the spot: “What could I have done?” he quipped (SMA E81-2-117: 102).

This was certainly not the only time that interpersonal conflicts were resolved through collective action that bypassed state mediation institutions. In a case in the Shanghai suburbs in the early 1950s, a young peasant woman committed suicide because she had been abused and humiliated by her husband. After the suicide, he colluded with his mother to cover up his tracks by claiming that she had died of an illness. One village woman, however, was suspicious, because she knew that the couple did not get along. With some other women, she obtained the corpse, inspected the body, and discovered scars left from the rope around her neck. Acting on their own initiative, the women reported the case to the local public security bureau and government. Then they staged a demonstration to intensify pressure on the government. Throughout this conflict, officially appointed mediators were not on the scene (SMA A71-2-1958: 57-60).
If mediation under the shadow of the gun was a staple of dispute resolution tactics in the southwestern frontier, conditions in the more commercially developed eastern seaboard shaped other sorts of methods. In the Shanghai suburbs, for example, there were many streams and rivers, and women often tried to resolve their interpersonal disputes by attempting suicide by jumping into them or lying on one of the many railroad tracks in the area. One local official complained:

Women are always pretending to die. They try to commit suicide over the most trivial problems. They’re so stupid! If we tell them, “go ahead, kill yourself,” then they don’t dare. They jump into the river where the river is most shallow, and stand there screaming and crying that they’re going to die. Next time it happens we’ll dive in the water with them and dunk their heads in. That way we’ll be able to see if they really want to die. (SMA A71-2-1863: 24)

Nearby, there were others who, as if they had learned something from watching “spaghetti Westerns,” plopped themselves down on railroad tracks. For instance, the wife of a man surnamed Xu wanted to file for divorce, claiming irreconcilable differences. Court officials refused to hear the case, so she tried to commit suicide. After she was rescued, the court heard the case, but did not mediate it to her liking. In full view of state officials, she sat on nearby railroad tracks, waiting for the next train to run over her. She was then taken off the tracks by the township chief who also accompanied her to court. The court eventually agreed to rehear her case (SMA A71-2-1864: 24). Indeed, suicide was so prominent a method of dispute resolution that the state compiled very rudimentary statistical records regarding its occurrence and causes. Findings indicated that few suicides actually succeeded (23%), which researchers attributed to the use of suicide as a tactic for resolving some other dispute (SMA A71-2-1861). They also found that suicide was largely a female strategy for resolving conflict. The Shanghai study found that, broken down by gender, suburban women accounted for almost 70% of suicide (attempt) cases (n = 128).

MEDIATION AND MARKETS

What has been the impact of the reform period on conflict resolution in China? Has this period been characterized by extensive mediation, or have disputes and their methods of resolution been characterized by a panoply of forms? Interviews conducted with lawyers, judges, mediators, and ordinary Chinese reveal much continuity between the contemporary scene and earlier periods in Chinese history, including the 1950s and 1960s. That is, class, gender, and region continue to be key variables to explain the way people resolve their disputes: peasants and workers continue to make use of courts (with women as the most common plaintiff), whereas more educated people, congregated in cities, keep their problems to themselves or agree to nonconfrontational methods of dispute resolution. Divorce lawyers and Women’s Federation officials I interviewed in Shanghai and Nanjing in 1994 told me that workers more than intellectuals were more likely to use courts to settle their interpersonal disputes, all things being equal. The latter, informants said, were frequently reluctant
to go to court because of a combination of longstanding housing problems, concern with "face," keeping family problems "private," and fear of their work unit's response. In Shanghai's elite Jing'an district, for instance, a Women's Federation official I interviewed said, "People here don't really know when intellectuals have a problem . . . because they keep things inside and don't want to talk about it." A divorce lawyer told me of an intellectual couple who did not get along but did not petition for divorce because there was no way they could find alternative housing. Instead, they simply hung a curtain in the middle of their small apartment and continued living together (interviews with L. P., April 19, 1994; Jing'an Women's Federation, April 16, 1994).

Indeed, internally circulated and confidential reports on mediation in cities show that it is probably smarter to avoid mediation. Many local mediators in Chinese cities are, in fact, elderly, and thus have little in common with younger disputants. In an unpublished report on mediation and domestic violence, for instance, a lawyer tells of a case involving a woman whose husband beat her when she refused to have sex with him. The "old ladies" in the mediation committee told her that it was basically the man's right to demand sex and that the fault lay with her (Linfei 1994, 1-2). Moreover, according to another analysis, many of these elderly mediators are increasingly reluctant to bother with such disputes because they have been influenced by "market mentality." That is, they were unwilling to serve as mediators unless they received better monetary or other forms of compensation. Many of them receive little or no support from family members, who see no point in their roles (Deyuan 1994, 4-5). Many mediation committees exist in name only and serve only a limited function actually mediating disputes (Biaoxin 1994).

At the same time that intellectuals remain reluctant to use the state to solve disputes, evidence shows that workers are quite willing, and often too willing, to "draw the state into" their affairs, much as they had done in the 1950s and 1960s. In early 1994 I interviewed judges in Yangpu District Court, located in Shanghai's largest working-class district. During the interview I asked the assembled judges whether Yangpu's residents were reluctant to go to court or to "go public" with their families' "dirty laundry." One of the judges told me about a case she had recently handled involving a female factory worker. This worker had filed for divorce because of her husband's gambling problem. The court began an investigation and discovered that the woman was telling the truth: neighbors and other family members confirmed her account. The court then sent three officers to talk to the gambler face-to-face, warning him that if he continued with this activity he could be sent to detention and probably lose his wife as well. Faced with this prospect, he promised to stop. Soon after this, his wife reappeared in court to withdraw her complaint and received a partial refund of the court's handling fee. The judge claimed that this had been her strategy all along. She had never really wanted to divorce, only to get him to stop gambling. By drawing the state into her family, she had made her "private" problem public, and was thus able to get it solved. Such a solution would not have occurred to Chinese intellectuals because of their fear of losing face and unwillingness to engage the state apparatus.

When such couples arrive at court or other state institutions to sue for divorce, officials are confronted with a population often willing to go to great lengths to secure
their goal. Much like the earlier periods discussed in this article, state officials dealing with working-class conflicts in the reform period are often perturbed by their "messiness." The following quote is from an article by Xu (1996) entitled "Education in Civilized Divorce," and is based on the experience of court officials in Nanjing, the location of Wall and Blum's (1991) study of Chinese mediation:

A special school for divorcing couples in Nanjing ... has helped check the rising number of divorce in the city's [working-class] Gulou district. ... Some couples initiated divorce for common conflicts in everyday life. Some even went to court with scissors, hammers, or pesticide or written wills threatening to commit suicide if the decision was against their will. (P. 24)

How have political and economic changes in the post-Mao period affected interpersonal disputes in the Chinese countryside? My interviews with lawyers, registration officials, township chiefs, and Women's Federation officials in Qingpu and Jiangpu counties in 1993 and 1994 (Jiangpu is in Jiangsu Province, near Nanjing) reveal the tenacity of historical patterns. Qingpu women were said to use a number of methods to solve their conflicts: some threatened to go to court to expose their husbands' gambling problems to their bosses, their affairs to courts and to the local Women's Federation; in other cases, they threatened to divorce, boycott domestic chores, or return to their parents' place, acts that would force their husbands and his family to take up the slack in cooking and cleaning. Newspapers continue to complain that peasants are too prone to resolve conflicts using violence (Haiqing 1994). Other evidence, available as early as the mid-1980s in English-language journals, has documented other methods of resolving conflicts in several regions of China—feuding, violent raids on government offices, hunger strikes, and mass protests. Many of these incidents are actually led by village officials, who, in a different capacity and time, might also serve as mediators (Perry 1985). More recent studies have shown peasants to be quite capable of lodging complaints with the higher authorities (including those in at the provincial level and in Beijing) in an effort to bypass obstructionist and corrupt local institutions (O'Brien and Li 1995, 1996).

Indeed, one of the hallmarks of the post—Cultural Revolution period in the People's Republic of China is a growing interest in "law," which is seen as an antidote to the widespread anarchy of the Cultural Revolution. The 1980s and 1990s has witnessed hundreds if not thousands of new laws dealing with everything from marriage to personnel administration to real estate to foreign investment. Concomitant with this new interest in law has been the growth of a legal profession. Now, in addition to mediators, peasants in many areas have access to lawyers who can help them file the necessary paperwork and present their cases in court. Although there still are cases of peasants "rushing to court" after a heated argument with a wife or neighbor, their access to the official legal system is now frequently mediated by a new quasi-professional class, who, in the interest of professionalism and greater efficiency, try to make sure that their clients refrain from wild outbursts in court.

Other evidence, however, suggests that state efforts to channel conflict into more orderly forms such as mediation and lawyer-guided lawsuits might not always be the
preferred solution from peasants’ perspective, particularly women’s, nor always the most successful. As in the past, peasant women who are frustrated by low-level intervention in their cases proceed to court, claiming that in villages and townships they are unlikely to get a fair hearing. Moreover, couples fighting over custody of the children and the possession of the television view the court as the institution best able to force the hand of their adversaries (Qingpu and Jiangpu interviews, 1994).

People’s willingness to use courts is not the only reason accounts of an orderly dispute resolution process might be misleading. Other evidence suggests that the mediation remains almost as messy as it was in the 1950s, albeit for different reasons. Whereas in the 1950s and 1960s incessant political campaigns made rural governance extremely difficult, in the 1980s the main cause for disorder appears to be new opportunities in the market economy. As in the cities, the economic reforms in the countryside have turned many officials into entrepreneurs whose main priority is to bring “pork”—investments, contracts, and supplies—home to their families and villages. The rush to make money—particularly in prosperous suburbs in the eastern seaboard—has made mediation at the village and township levels even less attractive than it was in the 1950s. Many village cadres, an internally circulated investigation report from Qingpu county complained, neglect mediation because their efforts are unremunerated. Investigations also found that many village mediation “committees” are committees in name only and have only one member—because of the dearth of incentives and attraction of the market. Many conflicts between villagers thus end up in courts, which find themselves overburdened with letters and visits by irate peasants (Wenqi 1994, 7-8).

CONCLUSION

The historian J. H. Hexter (1979) points out that his colleagues can generally be divided into “lumpers,” or those who “want to put the past into boxes . . . and then to tie all the boxes together into one nice shapely bundle,” and “splitters,” who would rather “point out divergences . . . perceive differences [and] . . . draw distinctions” (pp. 241-43). Is the present article, then, representative of an effort by a “splitter” to raise doubts regarding a “lumpish” argument concerning Chinese methods of conflict resolution? To a certain extent such an interpretation would be fair.

Throughout this article I have emphasized that mediation is but one of several methods of conflict resolution in China, and that there are important differences among Chinese regarding the preferred method. The general pattern was of lower class individuals and women appealing to relatively high-level political and adjudicative forums, and upper class individuals either keeping their problems to themselves or mediating their conflicts. Regions differed from each other mainly in the extent of the use of state coercive power to settle disputes. These are a few of the differences that are easily detectable when a more microscopic lens is applied to conflicts and their methods of resolution within the Chinese polity. This diversity within China, however, should not completely obscure similarities with other countries; it is simply not the case that “the West” does things differently from “the East.” Upper class Chinese are not very dissimilar from their counterparts in the United States in their determination
not to allow outside eyes (with the exception of therapists) to peer into their family life; Chinese workers are not very different from the American working class in their more porous border between public and private. Showing diversity in China, therefore, also helps us make useful comparisons across cases. Against this background, it would be fair to characterize this article in the "splitter" category.

The question, remains, however, of just how important it is to point out such diversity to the non-China specialist audience. To put the question more bluntly, why would a nonspecialist care if there are regional, class, and gender differences in the way conflicts are resolved in China? Isn't it enough to know that mediation is a conflict management strategy there? My answer to this question is straightforward. Even readers of nonspecialist publications (such as the New York Times, Washington Post, Economist, Christian Science Monitor) are aware of the fact that the economic reforms in China have resulted in growing disparities of wealth; the seaboard is growing at rates far exceeding the interior; within cities industrial restructuring has led to the "de-employment" (to use the Chinese euphemism) of millions of workers and women at the same time that an entrepreneurial middle class (wedded to, rather than independent of, the state) is slowly emerging. As befits these changes, the types of conflict that surface in the Chinese polity are also quite diverse. Peasants have attacked government offices and lodged complaints against the police; some intellectuals have written to newspapers and attempted to form opposition parties; workers have gone on strike; many rural women have continued to commit suicide (Eckholm 1999; Rosenthal 1999a, 1999b). Some of these conflicts are new (such as the attempt to form opposition parties), whereas others are quite similar to conflicts during the Maoist period (attacks on government offices, strikes, lodging complaints, suicides). Some of these threats can be defused in the short term through mediation, quick arrests, or some form of economic compensation. The regime, however, is very aware that other sorts of conflicts require more systemic solutions (such as the strengthening of the legal infrastructure) and encouraging other forms of political participation (such as letter and petition writing and voting in village elections). How successful China is in institutionalizing these methods will, I believe, have important ramifications for the stability of the most populous country in the world. A China that is incapable of managing its internal conflicts will also have a very difficult time upholding its international agreements, particularly those that involve the potential for increased internal strife, such as market liberalization required for its future membership in the World Trade Organization.

REFERENCES


