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MEDIATION IN CONTEMPORARY CHINA: CONTINUITY AND CHANGE

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Introductory Essay to the Special Issue:

Mediation in Contemporary China: Continuity And Change

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INTRODUCTION

The main purpose of this Special Issue is to introduce readers to some of the key developments now taking place in mediation as a form of dispute resolution in China, a society in which mediation has long been a central processual and ideological feature of its legal culture. Generally speaking, there is in the People's Republic of China ('PRC') a number of different institutional contexts within which mediation is used for handling disputes: 'people's mediation', which is primarily a form of local community dispute resolution, judicial mediation carried out by judges in and around the court, administrative mediation as conducted by officials and often focused on specific areas of governmental responsibility (as, for example, is the case with environment disputes), mediation in arbitral proceedings, and private mediation carried out without specific institutional support. Over the past fifteen years or so, in response to the rapid economic and social changes taking place in mainland China (including, *inter alia*, a declining importance of the local community) there have been attempts to institutionalize mediation, to resource it better, and to give it more legitimacy and legal force. In handling cases that come before the courts, judicial mediation continues to be seen as a particularly useful process, offering flexibility and effectiveness in dispute resolution. Under the current Xi Jinping government, the Chinese Communist Party's ('CCP') concern with political stability and social harmony has intensified and judges, people's mediators, arbitrators and others have to consider the social and political impact of what they do, even more so now than in the past.

MEDIATION AND LAW REFORM IN XI JINPING'S CHINA

Dispute resolution is fundamentally a political process in authoritarian states.¹ As commonly observed for China, the Party-State promotes and imposes mediation and informal dispute resolution particularly in times of crisis, perceived or real. This official promotion of mediation is strongly infused with a felt need to impose political control, justified by a responsibility to maintain stability and promote harmony. As a result, an emphasis on mediation for decision-making in the handling of disputes carries within itself the significant danger of serving as a 'turn against law'. In contrast, in a more stable and relaxed atmosphere, such as that which emerged in China in the second half of the 1990s, there is space for a more nuanced and varied approach to the handling of disputes. In the case of the PRC, the more self-confident Party-State of twenty years ago felt able to tolerate and even to promote rule-based adjudication through an autonomous legal process. And it did so as part of a larger endeavour to develop the rule of law.

The Chinese leadership of Hu Jintao and Wen Jiabo (2002-03 to 2012-13) came, however, to rely extensively on mediation and other ad hoc, and highly politically charged, measures so as to maintain order and promote harmony. Under the umbrella of this policy, disputants were to be persuaded, suppressed and even bribed to swallow their grievances, withdraw their claims or simply end their disputes. Legal and extra-legal actors were encouraged—and often required—to bypass legal rules and procedures in the interests of political expediency and achieving proper social impact in 'resolving' disputes. In promoting what was referred to as 'grand mediation' (*da tiaojie*), the distinction between legal and extra-legal processes was intentionally blurred and indeed became quite fuzzy. In the eyes of the Party-State, disputes were disruptive and should be prevented and ended as soon as they had occurred (or even before they had become manifest).²

This reemphasis has taken place alongside a number of other significant socio-political changes. On the one hand, there has been the growth of protests and riots over such issues as environmental degradation, failure to control corruption, employment conditions, ethnic tensions and land grabbing over the past 15 years or so. On the other, there has since the late 1990s been an internet revolution in China.³ The web has become an important forum for expression and organisation of discontent, and helped to make the post Jiang Zemin Chinese leadership increasingly feel the need to prioritise social stability and the CCP's continued political domination. A policy of controlling on-line critical opinions and

¹ As several of the essays in the second volume of Richard Abel's seminal study of the politics of informal justice demonstrated quite early on in the emerging comparative analysis of the use of ADR-type processes in the handling of disputes: Abel, R (ed) (1982) *The Politics of Informal Justice Vol 2: Comparative Studies* Academic Press.

² Study of this retreat from formal justice has not really been balanced in the relevant academic discourse by examination of the other side of the coin: what has been the fate of 'informal justice' and its potent symbol, mediation, in the changes that have taken place over the past decade and one half. With some notable exceptions, the literature on the many faces of Chinese civil justice on the mainland has tended to be rather limited in its gaze and to give insufficient attention to the centrality of mediation. Thus, for example, the fairly recently published book (2010, Cambridge University Press) entitled *Chinese Justice: Civil Dispute Resolution in Contemporary China*, edited by Margaret Woo and Mary Gallagher, mediation is given relatively limited attention, with rather more space devoted to issues of the courts, civil procedure law and the constitution.

³ For an analysis of the early development and social impact of the internet in China see, for example, Bi Jianhai (2001) 'The Internet Revolution in China: The Significance for Traditional Forms of Communist Control' 56 *International Journal* 421.

disapproving reporting has emerged since the early 2000s. Today, the PRC system of internet surveillance and control has become one of the most widespread and effective in the world, with the state authorities spoiling website content, monitoring internet access by individuals and civil society organisations, and clamping down on aggressive journalists and cyber-dissidents. Nevertheless, it is difficult to stop some 600 million users—many of who seem to be in their teens and twenties, resident in urban areas, and relying as much if not more on the mobile phone as the personal computer for internet communication—from liaising with each other very effectively, promoting on-line petitions, employing satire to highlight bureaucratic wrongdoing, complaining about officials' impossibly expensive watches as observed in on-line news images, coordinating to mount 'mass incidents' (*quntixing shijian*), pressuring courts and their judges to overturn miscarriages of justice and so on. In a gerontocracy, the ability of this often youthful 'internet generation' to reach a widespread audience, and express discontent at injustice and to air grievances, is hugely discomfiting. Mediation of disputes as a way of suppressing discontent has been one of the PRC leadership's responses to its growing fears that its political control and ability to maintain social stability are in danger of slipping away.

However, with the enhanced reliance on mediation, there have also been efforts to professionalize, formalize and institutionalize mediation in judicial, administrative and social settings. For the politicization of mediation and its imposition by the state generated immense hostility and suspicion towards mediation and other informal among reform-minded lawyers, judges and legal academics, who have been (and are still) keen to see its restriction and diminution. So while there was a continued general recognition and acceptance of the value of informal mediation, informed by cultural tradition, and a realisation that with scarce judicial resources, mediation was virtually a necessity in dispute resolution in China under the Hu-Wen leadership, there was also within institutions such as the Supreme People's Court a recognition that a degree of refurbishment and reform was needed.

Moreover, even before the 2012-3 leadership transition, and Xi Jinping's assumption of power, tantalizing hints emerged that some leaders might be amenable to returning to a somewhat more liberal atmosphere for legal reform. When Xi Jinping came to power, he immediately promised the rejuvenation of the rule of law as the guiding principle for governance and undertook to implement the most comprehensive legal reform programme in China to date. In October 2012, during the run-up to the Party leadership handover, the State Council issued a white paper laying out official talking points regarding judicial reform. Strikingly, it jettisoned the highly politicized language of the previous leadership in favour of a much more objective tone. In December 2012, on the 30th anniversary of the 1982 Constitution, Xi delivered an address regarding China's need for rule of law. This speech was interpreted by many as a signal in favour of a renewal of more liberal legal reforms. In January 2013, the new Party political-legal head singled out 'the use of judicial authority' and 'law-related petitions' (in addition to re-education through labour (*laojiao*) and household registration (*hukou*) policies) as areas ripe for reform. Then, in March 2013, central authorities announced the appointment of a new President of the Supreme People's Court, one strongly tied to legal reforms of the late 20th century (and offering a stark contrast to the outgoing head, tightly identified with recent hard-line judicial policies).

As a result, there was an initial expectation that mediation and informal settlement, as practiced in the preceding decade, would play a much diminished role in dispute resolution, and that rule-based litigation through the judicial process would be given a

much greater role. After Zhou Qiang, the first Chief Justice trained in law in the post Mao era, was appointed the President of the Supreme People's Court in 2013, there was a clear indication that mediation would no longer receive the same priority that it once did, and that the courts will develop distinct *modus operandi* in dispute resolution with which to regain judicial credibility and effectiveness.

Nevertheless, in the summer of 2013 there was a clumsy attempt to restrict the pro-constitutionalist academic and popular discourse that had begun to take hold in the wake of Xi's December 2012 speech. The Chinese leadership indicated that it intends to maintain one-Party rule, and that this is the political reality within which any legal reforms will have to operate. More recently, there have been detentions and arrests of public interest lawyers and legal activists. State television has even broadcast public confessions of crimes. There has been something of a return to use of campaigns, with yet another movement to crack-down on corruption, and another to clamp down on 'online rumours'. Not surprisingly, then, doubts have been expressed regarding the nature and pace of the return of formal legal values, but clearly any moves in that direction would also require some rethinking of the place of mediation.

That is to say, given a proposed new round of rule of law reform, albeit one to which commitment appears less than full, what would happen to mediation and would the hitherto strong emphasis on mediation continue in a system reembracing – at least to some extent – judicial formalism? Before we are able to answer those on-going questions, we need to have some baseline assessment of mediation as it has been practiced in different institutional settings and in different policy areas over the past few years, and that is what this Special Issue intends to provide. Hong Kong has the highest concentration of China law specialists outside the mainland and many of these scholars have had a keen interest in mediation and dispute resolution in general. They worry about the politicized nature of mediation, what role mediation would come to play in an era of renewed legal reform, however uncertain that reform might be, and how it might be refurbished so as deliver better access to justice. These scholars then decided to organize a series of workshops, together with Shantou University Law School, where the Cheung Kong Centre for Negotiation and Dispute Resolution pioneered the teaching of 'modern' mediation skills and analysis in mainland China,⁴ so as to understand better the various issues arising in out of the institutionalization, legalization and the long-term sustainability of mediation in China.⁵

The Table below shows some broad features of the changes taking place in the processing of civil disputes in the PRC this century. Thus, we can see that in 2005, in the handling of civil cases nationwide there was an important reversal of a declining trend in both the judicial mediation of first instance civil cases that came before the people's courts and in the number of cases handled by people's mediation committees. Mediation came

⁴ At that time (2014) one of the two co-editors of this volume, Michael Palmer, was Chair of the Cheung Kong Centre of Negotiation and Dispute Resolution, as well as Dean of the Law School, at Shantou University. The co-editors of this volume are grateful to Shantou University, for providing financial and administrative support (we thank in particular Ms Chen Lili and Ms Yao Jinjin) and also the venue for these meetings.

⁵ Those workshops, and this resulting Special Issue, focus on civil cases. For an account of the use of mediation in administrative cases handled by the people's courts see, Palmer, M (2014) 'Mediating State and Society: social stability and administrative suits' in Trevasques, S; Nesossi, E; Biddulph, S; Sapio F (eds) *The Politics of Law and Stability in China* Edward Elgar 107.

back in favour under the Hu Jintao and Wen Jiabo leadership of the PRC. As a result, by 2012, two out of every five first instance civil cases handled by the courts were disposed of by means of judicial mediation. By 2011, people's mediation committees were handling approximately twice as many cases as they did in 2004, and it is only in 2013 and 2014 that we see evidence of the steady increase levelling off.

Table 1: Civil Disputes handled at First Instance and by People's Mediation Committees (PMC) 2000-2014

(1) Year	(2) Civil Disputes at 1 st instance	(3) Judicial mediation	(4) Adjudication	(5) PMC
2000	3,412,259	1,336,002 (39.2%)	1,328,210 (38.9%)	5,030,619
2001	3,459,025	1,270,556 (36.7%)	1,417,625 (41.0%)	4,860,695
2002	4,420,123*	1,331,978* (30.1%)	1,909,284* (43.2%)	4,636,139
2003	4,410,236*	1,322,220* (30.0%)	1,876,871* (42.6%)	4,492,157
2004	4,332,727*	1,334,792* (30.8%)	1,754,045* (40.5%)	4,414,233
2005	4,380,095	1,399,772 (32.0%)	1,732,302 (39.5%)	4,486,825
2006	4,385,732	1,426,245 (32.5%)	1,744,092 (39.8%)	4,628,018
2007	4,724,440	1,565,554 (33.1%)	1,804,780 (38.2%)	4,800,238
2008	5,412,591	1,893,340 (35.0%)	1,960,452 (36.2%)	4,981,370
2009	5,800,144	2,099,024 (36.2%)	1,959,772 (33.8%)	5,797,300
2010	6,090,622	2,371,683 (38.9%)	1,894,607 (31.1%)	8,418,393
2011	6,614,049	2,665,178 (40.3%)	1,890,585 (28.6%)	8,935,341
2012	7,316,463	3,004,979 (41.1%)	1,979,079 (27.0%)	9,265,855
2013	7,781,972	2,847,990 (36.6%)	2,316,031 (29.8%)	9,439,429
2014	8,307,450	2,672,956 (32.2%)	2,921,343 (35.2%)	9,404,544

Source: *Zhongguo Falü Nianjian* (China Law Yearbook): 2000-2014.⁶

But that levelling off may indeed be a sign of the use of a more nuanced approach in the coming few years, with mediation having an important but not so overwhelmingly important role to play, as the figures for the handling of civil cases by the courts are a further indication of a reduction in mediatory emphasis, suggesting as they do a 10% decline in the rate of mediated outcomes since a high point in 2012. Further, the Supreme People's Court's Fourth 'Five Year Reform Programme' proposes that more balanced policy in the handling of civil cases (both inside and outside the courts) should be pursued, in a spirit of creating '*jianquan duoyuanhua jiefen jie jue jizhi*' (a sound diversified dispute resolution

⁶ The gap between the total number of civil disputes going to court, column 2, and the number of disputes actually resolved, columns 3 & 4, is in the China Law Yearbook explained by cases being either "withdrawn", "dismissed" or "other". For statistics covering much of the 1990s, see Lubman, S (1997) 'Dispute Resolution in China after Deng Xiaoping: Mao and Mediation Revisited' (11) *Columbia Journal of Asian Law* 229 at 335.

mechanism) and '*kexue de duoyuanhua jiu fen jie jue tixi*' (a [more] scientific diversified dispute resolution system) so that disputants are offered a more genuine choice of process (*yinling dangshiren xuanze shidang de jiu fen jie jue fangshi*). This reversion to a more balanced approach also includes the goal of creating more specialised tracks of dispute resolution suitable for particular kinds of dispute (see the section below entitled 'Substantive Issues').⁷ Overall, there is now some revival of the hope that a more professional and autonomous judiciary may generate greater confidence among ordinary people that China's system of one-party rule is in fact one in which that can have significantly more faith than they appear to do at present.⁸

POLITICIZATION RATHER THAN FORMALISATION AND PROFESSIONALISATION

Although an extensive corpus of rules has been developed in respect of people's mediation over the past fifteen years or so, and in 2012 a significantly revised civil procedure law introduced, making the system and processes that deliver mediatory intervention more formal (in the sense of constructing a sounder legislative framework than had been available in the past) and some encouragement given to the idea of making mediation more professional and specialised, the refurbishment of mediation as a process has in fact been relatively slow. Two unique and significant barriers to such progress stand out as being especially important.

First, there are culturally-based barriers. Although it is common ground in China that mediation is 'a fine Chinese tradition' and a significant form of dispute resolution in both judicial and extra-judicial settings, mediation has never been adequately institutionalized nor professionalized in the PRC. In both Confucian and Communist traditions, mediation is regarded as an art rather than a science, something that can only be mastered through practice—by trying it and by experiencing it. A mediator is successful because of her or his personality, passion and life experience. Like Chinese Gongfu, the skills are passed on from a Master to his pupils through subtle cultivation and realization rather than structured teaching and learning. It is neither possible nor meaningful to teach people to mediate disputes and this cultural understanding of the 'true nature' of mediation weighs heavily against any attempt to make mediation as a distinct, formal area of knowledge and skills that might for example be a subject taught in law schools.

Successful mediation, in the traditional view, relies on the labour intensive efforts of clever mediators who can persuade unwilling parties to reach an agreement. Successful mediators tend to be those with excellent person skills, who are dedicated and able to spend lengthy periods of time to do the often delicate "thought work" on the respective parties, and who can mobilize social pressure and bring it to bear on the parties. The

⁷ Supreme People's Court (2015) 'Guanyu Quanmian Shenhua Renmin Fayuan Gaige de Yijian: Renmin Fayuan Disige Wunian Gaige Gangyao' (2014-2018) 'Opinions Regarding Thorough Deepening of People's Court Reform: Fourth Five Year Court Reform Plan Outline (2014-2018), paragraph 45, at <http://www.chinacourt.org/law/detail/2015/02/id/148096.shtml>

⁸ We are grateful to Susan Finder for pointing us to the significance of the recent reform plans of the Supreme People's Court in relation to the reducing emphasis on mediated outcomes; see, for further comments, Finder, S (2015) 'China's Master Plan for Remaking its Courts: analysing the Supreme People's Court's Outline for Reforming China's Courts,' 26 March 2015 *The Diplomat*, available at: <http://thediplomat.com/2015/03/chinas-master-plan-for-remaking-its-courts/>

objectives are to bring a dispute to an effective end and there is no agenda to enforce any pre-existing rules nor to provide specific guidance to future conduct. Given the perceived nature of mediation, any formalization of mediation, in the sense of creating a mediation process that is based on procedures and rules, is seen as undermining the effectiveness of mediation and, indeed, is the very antithesis of the spirit of mediation. Mediation that is formalized and structured within a firm legal framework is no longer mediation.

There are also significant political barriers. The Party's 'turn against law' under the Hu-Wen leadership and return to mediation was not only a political response to social instability but also a rational and well-calculated decision, which was made on the ground of a perceived failure of judicial formalism in which the rule-based and court-centric litigation, replacing mediation, was used as the predominant fora of dispute resolution. There was a decisive swing from mediation towards a greater role of litigation starting in the early 1980s and gathering pace in the 1990s, and it was the Party-State, which persistently and forcefully incentivized disputants to resort to courts and legal professionals for dispute resolution.

By the beginning of the new century, however, the Party had become disillusioned about the ability of courts and legal rules in bringing disputes to an effective resolution. In the eyes of the leadership, the courts, with all their sophisticated rules and decision-making procedures, and after a decade or so of reform to professionalize and institutionalize them better, so that they might be a credible and effective institution for dispute resolution, had simply failed to prove their worth. And, indeed, the courts in reality simply could not contain, resolve or otherwise cope with the flow of disputes that China's social and economic transition was increasingly generating, so that more and more disputes escaped the court and landed on the shoulders of the Party itself, posing a threat to social stability which is a policy value close to the heart of the regime, as well as perhaps more indirectly to the Party's grip on political control. But instead of blaming the overall design and politicized nature of the system for accessing justice for these problems, the courts and their umpiring decision-making were made the scapegoats for the growing difficulties.

Disputants—both actual and potential—increasingly came to ignore the courts. Those who wanted to secure remedies for their grievances often preferred to bypass the courts to seek a more 'political' resolution for their disputes. In their eyes the formalized court was no longer the most effective forum for ending disputes, and was also unresponsive to societal needs, and simply no longer credible. So, for both the Party and the public, the courts were inadequate. For the Party, the courts were failing to deliver stability; for many disputants, the courts were no longer delivering justice in response to their perceived grievances. In response, the Party retreated to its comfort zone in dispute resolution. That is to say, the court and other dispute resolution agencies were put under considerable political pressure to reach out to society, abolish bureaucratic differentiation from the citizenry, and intervene in dispute resolution directly but in an informal, ad hoc and politically expedient manner. The traditional way of doing things, like the 'Ma Xiwu' way of handling cases, was brought back to life. In the revived age of informalism and political expediency, judges and others have been required to take off their robes and set aside formal rules and procedures in the Party's relentless pursuit for stability and harmony. Formalism and professionalism in dispute resolution have thus to a significant degree once more become politically incorrect.

CHINESE MEDIATION: EVALUATION MORE THAN FACILITATION

A persisting and perhaps defining feature of mediation (*tiaojie*) in contemporary China is the often predominant concern with evaluation in this mediatory intervention—a concern which is well over and above ‘mere’ facilitation of communication between the disputing parties. There seems to be an entrenched view within Chinese legal and political circles that while in jurisdictions outside the PRC the culturally-appropriate style of mediation may well be ‘facilitative mediation’—encouraging better communication between the parties so that are better able to secure their own outcome—in China today the need continues to be for a much more robustly evaluative approach. And in the PRC such evaluation is not solely, nor often even mainly, an assessment of the disputing parties’ respective legal positions and the likely outcome if the disagreement goes to trial. Instead, the *tiaojie* process is often infused with moral judgment, concern with the impact of the dispute on the parties’ social relationships with significant others, the character traits and past conduct of the parties, and so on. A significant part of this robust approach is a legacy of traditional Confucian moral values, refurnished and revised to suit PRC conceptions of socialist morality and other CCP ideals. In addition, mediation continues to be used in a manner that takes into account the policy goals of the Party, even more so nowadays than in the 1990s. Thirdly, as the Chinese leadership has increasingly come to promote the ideal of a ‘harmonious society’ and to prioritise its felt-need to maintain political stability—concerns that are highlighted in a number of the papers contributing to this volume—so it has become correspondingly difficult to move away from the preference for evaluation, and indeed, from the practice also of early, ‘pro-active’, intervention in trouble situations. The continuing willingness to rely on mixed processes for handling disputes, without what from a comparative point of view might be regarded as proper procedural safeguards in such matters as confidentiality and role of the mediator, also encourages continuing reliance on a firmly evaluative approach. In addition, the growth of ‘grand mediation’ (*da tiaojie*) shows an even stronger concern than in the past with dispute suppression—the authoritarian Party-State sees the better co-ordination of local courts, judicial grassroots agencies, and local administrative departments in delivering mediation as an important way of avoiding the petitioning, mass incidents, and possible litigation that are expression of the social dislocation spawned by China’s rapid economic growth and resultant disputes over land grabbing, employment conditions, environmental degradation, medical mistreatment and so on. Often what is important is a demonstration that local leaders are firmly in control rather than resolving disagreements to the satisfaction of the disputing parties. This, too, encourages retention of an evaluative approach, one in which obedience to system values and authority is seen to be of paramount importance.

SPECIAL ISSUE CONTRIBUTIONS

The essays in this Special Issue deal with three main aspects of mediation in the context of the changing landscape of dispute management in the PRC today.

Thus, in the first section, entitled ‘General Concerns: Policies, Practices and Reform’, the contributed essays consider how over the past decade or so, the Chinese Communist Party has increasingly emphasised mediation as its preferred form of dispute resolution and core aspect of its social control policies, and promoted even greater use of mediation so that, as a result, a very significant majority of civil and commercial disputes in China

today are ‘settled’ through mediation. Although under Xi Jinping there is some relaxation in the emphasis on mediation in the PRC’s legal policies, mediation continues to occupy a very significant position and the essays in this Section of Special Issue offer reflections not only on the uses and abuses of mediation, and the need for mediation reform, but also on the implications of extensive reliance on mediation for the development of the rule of law, to which China is arguably committed constitutionally, in the People’s Republic. Essays in this section attempt to offer a conceptual review of the evolving relations between informal mediation and the use of formal rules in dispute resolution in an authoritarian state undergoing extensive social and economic transition. They also examine the efforts made in striking a balance between the imperative to use informal methods to settle disputes in an expedient manner and the imperative to rely on formal rules in developing the rule of law.

Essays in the next section deal with the incorporation of mediation into systems of umpiring—in particular, as found in courts and arbitral bodies. This incorporation is a particular pronounced feature of the approach taken in dispute resolution in the PRC. The papers examine the interconnectedness between mediation and other more formal mechanisms, giving particular attention to the incorporation of mediation into judicial and arbitral proceedings. This mixing of processes not only brings advantages of greater flexibility and opportunities for settlement, but also creates role conflicts and processual difficulties.

In its final section, the collection of essays also assesses the extent to which and the ways in which mediation is used in responding to different types of dispute and in different institutional settings. The essays in this section explore the use of mediation in relation to disputes in different socio-legal contexts including labour, environment and property rights, securities, doctor-patient relations, and consumer protection. As elsewhere in the world, mediation potentially brings advantages of more expert-based dispute resolution, sustaining better long term relationships, lower costs, prompt resolution of differences, and outcomes that primarily reflect the interests of the parties and so on. These essays offer detailed case studies across a broad range of situations of the operation of mediation in different policy areas, the ways in which mediation is changing, and consider the manner in which it is in reality functioning.

GENERAL CONCERNS: POLICIES, PRACTICES AND REFORM

As we have noted, the three essays in this section look at broad issues of policy, practice and institutional linkage, and how reforms might be put in place.

First, Professor Wu Yuning’s essay ‘People’s Mediation Enters the 21st Century’ examines the changing nature and the persisting continuities in China’s system of community mediation—people’s mediation (*renmin tiaojie*)—in the post-Mao era, giving central attention in her analysis to the nature and significance of the 2010 People’s Mediation Law. The paper charts the development of mediation from its foundations in traditional Chinese legal culture through to the institutionalised and widespread form of ‘people’s mediation’ in the first thirty years of CCP rule (including its temporary demise during the Cultural Revolution), the revival of people’s mediation in the 1980s and its formal re-institutionalisation in 1989 through new organisational rules, to its struggles to respond to the rapidly changing social milieu of China in the 1990s and its resulting

relative decline, to the official efforts post-2000 at 'formalisation' in the sense of providing a more detailed legal normative framework so as better to 'regularise' the system.

In a detailed exposition of the 2010 Law, Professor Wu notes the continuing emphasis in people's mediation on prompt mediatory intervention in the disagreements and turbulences of everyday life in the local community where, typically, the parties are locked into multidimensional and enduring ties, a responsibility intensified by the official policies promoting harmony and stability in the face of China's growing social disharmony. Another area of analysis is the encouragement—not very successful it would seem—in giving a broader remit to people's mediation committees by encouraging their establishment also in organisations such as enterprises, trades unions and so on, as well as by promoting specialised forms of mediation, especially in the commercial sector. Attention is also given in Wu's examination to the role of the people's mediator, and especially to the wide range of discretion mediators are permitted under the 2010 Law in terms of degree of intervention and applicable normative framework—a range that in earlier, more formalistic, drafting of the Law had been kept much narrower. (This toleration of a wide diversity of mediation styles is a point also made by Zhou Ling in her contributed essay dealing with consumer dispute mediation). In general, people's mediation continues to be significantly more evaluative and interventionist than styles of mediation found in many other jurisdictions. And despite the official strengthening of people's mediation, there is evidence to suggest that as a dispute resolution agency, it continues to decline in effectiveness.

The 2010 Law, Wu notes, continues to place people's mediation committees under the bureaucratic control of the local judicial bureau and the guidance of the courts, as well as requiring local governments to fund properly people's mediation committees (even though, it should be noted, people's mediators serve on a pro-bono basis). The law also strengthens the legal status of people's mediation agreements, most notably through its support for the judicial confirmation of people's mediation agreements, with its sanction of compulsory enforcement for failure to perform obligations arising from the agreement of compulsory enforcement.

In recent years, efforts have been made to create a more professional, problem-solving and diverse set of people's mediation forms and institutions as well as a more integrated overall system of 'grand mediation' which brings together differing agencies with an interest in local level disputes so that they might coordinate more effectively, but which also tends to undermine the voluntary nature of people's mediation (despite promises to the contrary in the 2010 Law, and in the general ideology of people's mediation).

Wu takes the view that the long-run fate of people's mediation will depend on creating a fairer process than exists at present, greater recognition of the growing social complexity and diversity of contemporary China with an attendant deficit of trust in China's socio-political environment, and a keener recognition that mediation cannot be a universal panacea for the PRC's many social problems. In short, what is needed is not more coercive mediation applied in the name of creating a more harmonious society but, rather, the creation of a more harmonious society within which people's mediation might provide more meaningful access to justice.

Zhang Xianchu's paper 'Rethinking the Mediation Campaign' explores the reasons for, the nature of, and the issues arising out of the Chinese leadership's persisting campaign to prioritise mediation as the processes for handling civil disputes and social unrest, especially as these issues relate to the role of courts in contemporary China. The essay also considers the limited but perhaps significant changes now taking place under the

political guidance of Xi Jinping, including the manner in which the policy of prioritising of mediation is necessarily now more nuanced as a result of the growing complexity and value diversity of Chinese society. Professor Zhang notes how the pronounced emphasis on mediation over the past decade or so was a response to what were seen by China's leaders as the inability of the courts and their emphasis on adjudicative decision-making in the 1990s to handle emerging problems of social unrest.

Whether or not these perceptions were justified or not, a process of delegalisation was set in train and the courts (and other dispute resolution agencies) and their personnel were made to prioritise social stability and social harmony. Mediation was made more systematic in various ways: people's mediation agreements were given a clearer legal status, 'grand mediation' networks were developed, adjudication became a non-preferred form of judicial decision-making, and a politicised preferment of mediation was pursued in which the primary test of an outcome was its political impact, and Party-State control over the work of the courts, including their dispute resolution functions, was intensified.

But in the face of this seemingly ineluctable and monolithic drift to mediation, academic analysis and professional responses have been more varied and diverse. Some leading commentators have welcomed the pro-mediation developments, although not necessarily for the same reasons as those of the Chinese leadership but, rather, because they have embraced the more general values of the ADR movement elsewhere in the world. Others have a mixed view, seeing the advantages of mediation but also the complications that an overemphasis can create, while still others—including even quite conservative jurists—point to problems of a resulting ineffectiveness of mediation when there is overreliance on it as a dispute resolution process, the loss of rule of law standards, and the marginalised place for courts in Chinese society. Research work, including some carried out by the courts themselves, has shown that the impact of enhanced emphasis on mediation is not necessarily enhanced political stability and social harmony.

The increasing social complexity of China, and the enhanced awareness of differing values means that the Chinese leadership knows that it cannot simply revert to old-style Maoist commands but, rather, has to take into account these new realities. The apparent relegalisation policies of the Xi Jinping leadership in the recent past has seemingly had some beneficial effects but moves away from the prioritising of mediation to date have been relatively restricted, and in other areas of the administration of justice too, progress has been limited. So, the reform task is daunting. The empirical situation is now much more complex than it was (say) twenty years ago, and accordingly the demands placed on any serious reform efforts will be all the greater. There is the officially encouraged diffusion of people's mediation to new areas of work, continued tolerance of a wide range of mediatory styles, enhancement of the legal status of people's mediation agreements, the rise of 'grand mediation', the use of mediation in the promotion of political stability and a harmonious society, and so on. The general policy reprioritising mediation arose after 2000, in the wake of the mainland Chinese leadership's perception that the more formal adjudicative justice experiment in responding to civil disputes in the 1990s was failing to deliver necessary levels of political stability and social harmony. But this revivification of mediation cannot simply be a return to old-style Maoist mediation policies and practices, because of the changes noted above and because of the limits set by many social changes that have taken place in China in recent years—the loss of relatively discrete residential and work communities, more sophisticated and diverse personal values, a greater range of sources of knowledge, and so on.

Professor Zhao Yun's essay 'Mediation in Contemporary China: Thinking About Reform' offers an analysis of the centrality of mediation as a dispute resolution process in Chinese legal culture, and on how China might effectively reform the mediatory process to better suit China's changing society and greater engagement with the outside world. In so doing, the essay naturally complements the preceding papers by Wu and Zhang which pointed, *inter alia*, to some of the difficulties in both people's and judicial mediation. Following his own analysis of these forms, together with examination of administrative mediation and mediation in arbitration, Professor Zhao explores the possibilities of reform, emphasising how mediation in China today needs to be made both more professional and more firmly established in the law school curriculum as a major subject of study, albeit while also recognising that its teaching is best done with an interdisciplinary ethos.

The reform of mediation needs to include both continuities and changes. The nature and value of traditional approaches, assessing the value of Chinese traditional approaches and selectively continuing those that would work in contemporary society, while from a comparative perspective looking at the experience of ADR in jurisdictions elsewhere in the world in order to transplant some of the lesson learned outside of China that would enhance the quality of mediation in contemporary Chinese society. In reviewing the main forms of mediation in China – not only community (people's) mediation and mediation in and around the courts, but also administrative mediation (also dealt with at some length in Zhao Yuhong's essay on environmental mediation included in this volume) and mediation in the context of arbitration, the essay points to the political and utilitarian motives infusing the Chinese leadership's emphasis on mediation.

An examination of the unfolding area of commercial mediation in China suggests a potential for significant reform of mediation more generally, and through greater emphasis on skills training, a better legislative framework (including a 'unified' mediation law), learning from Hong Kong experience, and better appreciation of issues raised in the jurisprudence of mediation—especially the linkage between negotiation and mediation—progress can be made. Two key areas of rethinking are the need for a greater appreciation of facilitative mediation, given that current understandings are so firmly entrenched in the evaluative approach, and the need for greater confidentiality in the mediation process. Other necessary reforms include a better appreciation of the core skills needed for a 'modern' approach in mediatory intervention, the development of a properly rigorous system of accreditation of mediators, and the incorporation of mediation as a subject of serious study into the law school curriculum so that it is formally a part—and, indeed, an important part—of Chinese legal education.

MIXED PROCESSES

The papers in this section of the Special Issue look at what is sometimes claimed to be a distinctive approach in Chinese legal culture to dispute resolution, that is, a 'natural' proclivity to blend the otherwise often quite distinctive processes of mediation and umpiring into a relatively seamless and fluid process that may well involve switching from one to the other as the resolution process unfolds.

Professor Gu Weixia's essay 'When Local Meets International: Mediation Combined with Arbitration in China and Its Prospective Reform in a Comparative Context' looks at issues arising out of the entrenched practice within arbitration processes in the PRC of using mediation as a prelude to the determination of outcome by arbitration. The

mushrooming of commercial disputes in China and the cultural emphasis on the need of harmonious dispute resolution processes and outcomes, both encourage reliance on med-arb in China's arbitration system. However, the Chinese hybridised process of med-arb often fails to meet due process and other rule of law international standards. Arbitral tribunals in China enjoy extremely wide discretionary powers in their conduct of med-arb proceedings, and there is a notable absence of adequate procedural safeguards for the parties. As a mediation outcome enjoys the legal effect as an arbitral award in a med-arb process, and with arbitral awards being internationally recognised and enforced under the New York Convention, the PRC process of med-arb has not only domestic but also international legal ramifications. Although legal reforms since 1978 have attempted to promote the rule of law, China is still criticised for the legally underdeveloped nature of its arbitral dispute resolution system.

Professor Gu further notes that China's hybrid med-arb hybrid process is a typical example of the gap that may be found between local legal culture and international standards. Compared with mediation as found in other areas of Chinese society—for example, judicial proceedings, land disputes, labour conflicts and so on—med-arb has an 'international' nature. Although the New York Convention does not explicitly deal with med-arb awards, med-arb nevertheless as we have noted carries a significant international dimension. Accordingly, there is likely an incentive for China to reform med-arb procedures so as to adhere better to due process norms and practices and, certainly, med-arb is arguably the sector of mediation in China where norms and institutions are most readily brought into line with international standards. Indeed, for example, some leading arbitration commissions in China have already introduced some important procedural reforms, including ethical rules to govern the conduct of the mediator-turned-arbitrator.

The Chinese experience, Professor Gu further argues, might come in due course to serve as a good exemplar in the comparative legal studies discourse on how best to develop and improve dispute resolution mechanisms which seek to blend local customs and international expectations. While weaknesses in the Chinese-style of med-arb are obvious, the lack of concern currently for due process standards in med-arb proceedings are similarly observed in other jurisdictions, in particular civil law jurisdictions, in many parts of the world. China's experience is distinctive, but by no means unique.

The essay by Dr. Xian Yifan entitled 'Grassroots Judges of China in the Resurgence from Adjudicatory to Mediatorial Justice: Transformation of Roles and Inherent Conflict of Identities' explores the manner in which judges in the civil chambers of the basic-level people's courts have been affected by the renewed judicial policy preference for mediated outcomes to disputes, placing the judges at the centre of a difficult role conflict—should they judge, or should they reconcile? However, the essay also suggests that there may be a silver lining to the cloud of overemphasis on judicial mediation namely the possible emergence of a new approach to handling cases, namely 'communicative justice'.

In such an emergent system of civil justice, the judges and the parties would be better able to exchange information and to learn from each other in a more 'relaxed' conversational mode. Although the author does not specifically draw upon the ideas of Jürgen Habermas, there seem to be echoes here of his ideas of the ideal speech situation and communicative action. If such a welcome transformation does begin to emerge, Dr. Xian advises, then judicial policy makers will need to give much greater attention to properly institutionalising mediation procedures and their regulatory framework if the

more 'dialogue' infused approach to handling cases is to achieve its true potential. At the moment, pre-trial mediation—the predominant form of judicial mediation—retains an uncertain legal status, and allows the judge wide-ranging discretionary authority in handling cases. The essay also argues that a chance was missed in the 2012 revisions of the Civil Procedure Law to regularise the situation, so that in a very real sense the PRC's mediating judges are not only faced with role conflict but also have been left in a legal limbo.

The shift to mediatory justice from the early 2000s onwards involved a transformation in the self-image of judges from professional, elite, authoritative decision-making adjudicators to 'stability-maintaining' citizens. Mediatory skills were now characterised by judges and their bosses as superior to the skills and knowledge required in legally rigorous adjudicative-decision making. Such mediation skills are to be deployed in all stages of a civil cases handled by the courts, even though the law does not formally require the parties to participate in such mediation so that judges need to be pro-active and so apply pressure to parties to acquiesce and take part in the process.

Also involved in the post-2000 shift to mediatory justice is a move to a new work style in which the judges handle many more disputes 'on the spot' so that the judges engage more closely and effectively with the masses, show greater understanding of the difficult lives of ordinary people, and operate in a more intimate setting that is also more conducive to reconciliation. Nevertheless, the judge is still a dispute handling actor who may have to adjudicate if mediatory intervention fails, and therefore is a difficult position in a number of respects, including how best to handle issues of confidentiality and evidence gathering, to respect the autonomy of the parties, and so on. Moreover, the mediatory emphasis may be seen as problematic in several respects: it is inconsistent with PRC civil litigation rules on prompt acceptance of cases, sometimes encourages CCP committee involvement (especially in 'mass incident' cases such as labour disputes), and raises issues as to the extent to which a judge may be safely entrusted to provide substantive legal advice while mediating.

The paper by Chen Yongzhu entitled 'The Judge as Mediator in China and its Reform: A Problem in Chinese Civil Justice', also explores in some depth the place of judicial mediation in Chinese civil proceedings. She focuses in particular on the important role of judges in pre-trial mediation, noting how the widespread practice of use of mediatory intervention by the judge in cases that come to the courthouse is encouraged not only by the general policies of the Party-State promotion of mediation but also a feeling that it offers a flexibility of process and, in the Chinese context where enforcement is a serious issue, greater prospects of implementation of outcome.

But, at the same time, this system of pre-trial mediation creates problems. Among the most important of these are difficulties of various sorts that relate to the issue of confidentiality, the problems that arise from the *de facto* authority of the judge (with parties sometimes experiencing such authority as undue pressure), the complications that arise from using mediation as a success indicator in official performance assessments of judges, and the uncertain status of both process and outcome in terms of the constitutional requirement introduced in 1999 that China be governed in accordance with the rule of law.

Chen then explores the important proposals for reform that have been offered by academic commentators and others within China. These include a clearer separation of roles into an 'adjudicating judge' and a 'mediating judge' in a revised procedural system that might also usefully include the creation of a specific division within the courts

dedicated to judicial mediation, stricter standards of confidentiality, and the introduction of a more formalised pre-trial settlement conference. Such reforms might also usefully draw on the more extensive experience of foreign jurisdictions such as Quebec. In addition, the essay recommends the further development of experiments, carried out within China itself, in the direction of establishing court-annexed and court-referred processes rather than mediation by the court itself. Clearly, these 'hybrid' experiments, some of which date back more than a decade, might also be usefully strengthened by drawing upon relevant overseas experience, in particular in the area of separating more clearly mediatory intervention and adjudicative decision-making. On such experiment, from Shanghai, already provides more than a decade's experience of reforms in this direction.

SUBSTANTIVE ISSUES

The final group of essays looks at a range of areas in which more focussed approaches of mediation have been developed in order better to manage disputes in specific institutional or policy contexts.

Professor Shahla Ali's essay, entitled 'Mass-Claims Mediation in China', explores a hitherto under-researched dimension of civil justice in China namely, the handling of mass claims to deal with liability, compensation, and reconstruction issues arising out of some of the major natural disasters that have occurred in the PRC over the past decade or so. She places emphasis on the role of mediation in these often politically sensitive situations, noting that the policy preference for settlement outcomes raises questions about various rule of law and good governance issues such as due process, transparency in decision-making, soundness of appellate proceedings, especially as these relate to court-based mediation.

Professor Ali's paper also explores the implications of some of these China focussed findings for wider, comparative, understanding of ADR and its development and refurbishment in other parts of the world today. She noted, in her comparative examination of China and the United States, that while the government in both jurisdictions is prepared to intervene directly in post-disaster situations, in China the top-down concerns with social stability—as well as issues of technical expertise—have encouraged a policy of using administrative organs and governmental processes rather than court-based umpiring processes in order to deal with post-disaster issues. Somewhat paradoxically, however, this policy may also encourage aggrieved citizens to create and to promote some kind of social instability precisely so as to secure a hearing for their grievances.

The picture is further complicated by the PRC leadership's distrust of civil society organisations, so that there is a felt need on the part of local governments to cooperate only with NGOs and local organisations that are characterised as politically-safe, and also by post-disaster mediation efforts that attempt to reconcile the need to incorporate the rights and interests of the individual grievant within the often top-down governmental approach.

Reforms that seem to be the most desirable include the development of uniform, just and principled criteria by means of which to mediate public interest disputes in the absence of legal rules and the creation of avenues that might give affected individuals better opportunity to contribute directly to the design of response efforts. In addition, if there is to be a genuine strengthening the rule of law in China, attention can also be

focused on ensuring due process, transparency, full disclosure and providing avenues for appeal in mass claims mediatory decision making.

More generally, the Chinese experience as analysed and explicated by Ali shows that there is a need within ADR discourse to develop a better understanding of criteria by means of which to deliver and assess just outcomes in circumstances where there are no or only limited applicable legal norms, and how a pronounced top-down emphasis on use of institutionalised ADR processes needs to ensure meaningful provision of access to justice for individuals and others with grievances.

Dr. Jiang Jue's essay 'Buying "leniency," selling "justice"? A critical discussion of "criminal reconciliation" (*xingshi hejie*) under China's revised Criminal Procedural Law' looks at the emergence of criminal reconciliation in the Chinese justice system, a development confirmed by new statutory provisions in the 2012 Criminal Procedure Law. Although hailed as a culturally distinctive way of dealing with deviant conduct, superior to approaches to criminal justice found outside of China, the criminal reconciliation scheme is not the progressive reform that it seems to be. Rather than improving the handling of criminal cases in reality exacerbates problems that are already embedded in the PRC's criminal justice system. A significant cause of the problems is the manner in which an authoritarian state creates a coercive context within which such reconciliation must take place. The social instability accompanying China's rapid economic development has revived support for Mao's theory of contradictions, and continued employment of 'strike hard' campaigns, neither of which is noted for any concern with values such a 'due process'.

Formal records of criminal reconciliation maintained by the police, courts and procuracy tend to reflect the theory rather than the practice of criminal reconciliation, and therefore do not reveal the nature and extent of the problems inherent in this manner of handling cases. Interview material carefully gathered by the author, however, presents a different picture. This material shows that pressures from institutional and local leaders as well as the procuracy is often the key factor pushing victims into surrendering their autonomy in decision-making and reluctantly accepting the reconciliation process. These dialogues with informants also reveal that procuratorial decision-making on whether prosecute or to allow a reconciliation process depends often on the size of the financial sum offered in intended compensation, as well as other more intangible but worthy factors such as degree of remorse shown and the risks to society and the victim. But not only are these factors somewhat contradictory, but guidelines internal to the courts indicate to judges handling cases how much the 'agreed' amount to be paid in compensation should be best calculated in making the final decision on the overall outcome of a case. The imperfect working of the system has in itself created unintended consequences so that, for example, in a criminal justice system that has tended in the past to emphasise the naming and shaming of defendants, in the new and sometimes convoluted process of criminal reconciliation it may be the victim who is humiliated in the eyes of the local community because the offender appears to have avoided punishment—or sufficiently serious punishment—for seriously deviant conduct.

Even judges and other involved in managing the criminal reconciliation process who have doubts about the system find it difficult to hold back. Even for very sceptical judges, for example, the process is still attractively convenient because of the problematic nature of the evidence of guilt in many cases. Also, of course, the emphasis on reconciliation outcomes in the judge's official performance appraisals system is an important influence

encouraging judges to accept the process, and similar career pressures are to be found in both the Procuracy and the Public Security Organs performance appraisal systems, so that such work evaluation systems are clearly functioning as a form of ‘professional’ control. Judges also come under pressure from the fact that the handling of cases through the reconciliation process may be more politically correct but is also significantly more time consuming than if holding trials and adjudicating cases. Another problem is that in order to secure ‘good’ reconciliation outcomes, judges may well insert terms—for example, requiring the parties not to appeal the agreement—that not only fail to reflect the parties’ will but which may contravene due process provisions in the Criminal Procedure Law itself. Lack of separation of powers means that it is difficult to correct such problems.

Overall, in the name of promoting social stability and harmony the criminal reconciliation system thus encourages judges, prosecutors and others involved in managing the criminal reconciliation process to pressure the parties into participating in a process with which they feel uncomfortable and an outcome of reconciliation that also leaves them feeling discomfited. The power imbalances between the parties and other involved in the reconciliation process are just too pronounced for the creation of just outcomes. And for these reasons, China’s emerging system of criminal reconciliation is very different from the restorative justice systems that have been developed in the past two decades or so in jurisdictions elsewhere in the world.

Professor Robin Hui Huang’s study of ‘Securities Dispute Mediation in China’ examines the specialized mediation scheme for securities disputes established in 2012 by China’s Securities Association, the self-regulatory body for the securities industry in the PRC. It examines the reasons behind the felt need to introduce this mediation-based scheme, and the nature of China’s securities disputes. It details some of the key aspects of the securities dispute mediation scheme, before identifying difficulties and likely future development.

Noting that in contemporary China there is a general tendency for more securities’ disputes to emerge in times of falling markets, the paper also observes that many of the grievances alleged by distressed investors relate to problems arising out of financial management irregularities, and that there is a tendency in particular for disputes to go to court in cases of alleged securities house mis-management of client accounts. For a variety of reasons, the disputes that emerge are not always easy to handle: they are often relatively numerous but low in value, may involve issues of market practice (for example, hidden fees) rather than law, and arise in a context in which regulatory norms are not yet firmly institutionalised.

In these circumstances, litigation has obvious disadvantages, especially for the small investor. The mediation scheme established by the Securities Association, on the other hand, has a number of attractive features for such grievants: it is free of charge for the complainant, offers confidentiality, trade experience and technical expertise, and also better prospects of enforcement of outcome as a result of the prestige or ‘authority’ of a trade-based mediated agreement endorsed by a body specially established by the Association, namely, the mediation centre for securities disputes. This centre has a broad jurisdiction over cases that are not already before the courts, arbitral bodies or other agencies. The mediators involved in the scheme are typical part-time appointees, with a strong background in the securities field and with a clean criminal record. The centre operates with a strict framework of rules governing such matters as conflicts of interest, maintaining confidentiality, and good conduct by the mediator in handling cases.

On the other hand, it is not clear that the scheme—disregarding here the problems which often occur in the course of institutionalising an innovative dispute resolution process—is free of potentially important difficulties long term. Thus, there are worries about just how genuine is the independence of the mediation scheme’s parent body, the Securities Association, which (like many other agencies in China today) has a vested interest in promoting mediated outcomes in order to fit in with overall, general, policies of the Party-State encouraging conciliation outcomes that the leadership hopes will promote stability and harmony in society. In addition, there is a lack of clarity in the rules governing the size of claim that might fall within the centre’s jurisdiction. There are also doubts about whether the free dispute resolution service offered by the mediation centre will in fact be financially sustainable. Finally, the scheme is sectorally-based in an economic environment in which—largely as a result of globalising pressures and numerous and frequent financial product and service innovations—sectoral divisions as between finance, banking, insurance and so on, are becoming increasingly fuzzy.

Professor Ding Chunyan’s study of the embryonic system of medical medicine emphasises that this mediatory development owes much to the growing problem of disputes between medical-staff and patients (and their families), and in particular the violent struggles that sometimes ensue. Significant legislation has been introduced over the past five years or so in order to encourage the use of specialised mediation in handling the conflicts between grievance patients and doctors and other medical staff. Such legislative support includes encouragement of local experimentation and variation in the mediation systems thus established, and Professor Ding’s paper examines the three most important such new schemes, all of which offer mediatory services free of charge for the patient.

First, in Shanghai, a city already something of a pioneer in the field of medical dispute resolution, a medical mediation committee scheme has been set up for handling cases in which compensation of 30,000 yuan (a little over £3,000 or US\$4,600) or more is claimed by the aggrieved patient. Each district government in the city established its own medical mediation committee, which is fully funded by the government and subject to the supervision of the district bureau of justice. The medical mediation committee employs both full-time and part-time mediators to deal with the large number of medical disputes that arise. In larger and more serious cases, the medical mediation committee is required to seek expert advice given by a listed expert consultant to assist its handling of the dispute, and medical insurance companies must also be involved. Secondly, in Ningbo, a system of medical mediation operates alongside a compulsory medical liability insurance scheme in which public health care institutions are required to participate. Four larger insurance companies run a non-for-profit co-insurance body which offers medical liability insurance to the public health care institutions in the city, as well as claim settlement centres to handle patients’ claims for compensation. The hospitals pay into the scheme in terms of their past record on medical disputes. A hospital may privately negotiate and settle with a patient when she or he claims for compensation of 10,000 yuan or less; otherwise the hospital must advise the co-insurers to handle the patient’s claim through one of these claim settlement centres. Such a centre will investigate and evaluate the case, and suggest a settlement figure. Alternatively, the case may be submitted to the medical mediation committee for mediation, provided that the disputing parties agree so to do. The medical mediation committees have been set up under the supervision of the local bureau of justice. A committee will seek expert advice in the larger cases. If such mediation fails,

then the parties are free to pursue other avenues of dispute resolution. Shenzhen, the third new scheme, has introduced a system in which government-funded medical mediation units operate within hospitals. A particularly distinctive feature of the Shenzhen system is that the city's local district governments recruit the system's mediators through service contracts with law firms and NGOs—Shenzhen has perhaps the most NGO friendly political environment of all Chinese cities today—as well as hiring a cadre of permanent mediators for each mediation unit.

Overall, the impact of these sorts of reform is to bring aggrieved patients to the mediation table and to put strong pressure on hospitals to enter into the medical mediation process in order to deal with patient grievances if the aggrieved patient decides on mediation as a way of pursuing her or his claim. A medical mediation agreement may be judicially confirmed if the parties so wish. This approach, it is hoped, will prevent an intensification of disputes. Interestingly, it seems that where mediation fails, aggrieved patients have little faith in using administrative mediation as an alternative, as administrative mediators are considered to be too willing to promote government interests. Instead, such patients are more likely to attempt directly to bring their case to court. However, a court will not accept a case that is already being handled in the mediation system and which may therefore end with a judicially confirmed settlement agreement. On the other hand, the courts will accept a case if one party does not want to fulfil the terms of a settlement agreement that has not been confirmed by a court. In general, it is also hoped that through the more robust systems of medical mediation that are emerging, disputes will be resolved more promptly, the exposure of hospitals to heavy compensation payments contained, good doctor-patient relations nourished, and standards of health care enhanced.

There continue to be doubts, however, these innovations. There are worries about the impartiality of the medical mediators given that most hospitals are still public institutions and it is the local government which, basically, pays for the system. Medical mediators' levels of technical expertise are also an issue, as are freedom of aggrieved patients to choose the mediators for their dispute, the role of experts, the often difficult position of the insurance companies, and the independence and impartiality of the medical mediators. A further worry, in the view of Professor Ding, is the lack—in the enabling legislation—of a detailed and robust procedural model for handling a mediation through its successive stages in the direction of an agreed outcome. As a result, there is a tendency for medical mediatory intervention to degenerate into mere compensation bargaining. In addition, insufficient attention is given to the need for mediation to be a positive and learning 'experience' and ensuring that there are procedural safeguards for claimants who bring their grievance to the system.

As Professor Zhao Yuhong's paper on the 'Mediation of Environmental Disputes' emphasises, in the contemporary PRC most environmental disputes are resolved by processes of extra-judicial mediation. A substantial number are specifically dealt with by administrative mediation. However, some quarrels over environmental problems do nevertheless lead to 'mass incidents' (*quntixing shijian*) which are seen the Chinese leadership as a threat to socio-political stability, and others end up as high-profile court cases with substantial socio-legal impact—environmental degradation is in many parts of China tolerated by local governments in the interest of promoting rapid economic growth, but the adverse impact of such growth on environmental standards has often been very distressing for many people in the community. The vast majority of environmental disputes are, in fact, handled by a local governmental agency, the Environmental Protection Bureau,

intervening by a process known 'administrative mediation', an aspect of dispute handling in the PRC to which in general little attention has been given hitherto.

Local victims of pollution and other forms of environmental degradation seem generally to have a relatively high degree of trust in the ability of administrative mediation intervention by the EPB to deliver a fair and prompt process and outcome. The system of environmental administrative mediation was encouraged significantly by a clarification of the legal status of administrative mediation in the early 1990s by the Supreme People's Court. Such third party mediatory intervention was characterised by the Court as not constituting 'concrete' administrative conduct, and therefore did not give rise to liabilities for which an aggrieved party could bring an administrative suit against the mediator. The administrative mediation intervention by the EPB and other agencies was instead characterised as '*tiaojie chuli*' (to mediate to settle [disputes]). Such intervention has a number of potential advantages. The EPB brings to the mediation table not only technical expertise but also detailed knowledge of local emission and discharge levels, capacity to intervene promptly (especially important in many pollution cases) and an authoritative status as a governmental agency. The EPB mediators are thus in a good position promptly to conduct sometimes quite detailed investigations into the issues that need to be resolved in local environmental disputes.

Nevertheless, the practice of administrative mediation of environmental disputes struggles to achieve this potential, with EPB officials often avoiding mediatory intervention rather than making a prompt response to a complaint. One seriously important reason for this reluctance to intervene relates to the problem of enforceability of administrative mediation agreements, as such outcomes may not be directly enforced by the people's courts, and a party unhappy with an administratively mediated outcome may still initiate civil litigation. In addition, the structure, resourcing, and functioning of the EPBs discourage mediatory intervention. In particular, as no provision has been made in the design of the institution for a dedicated mediation body within the Bureau—except in recent times in the case of a limited number of local EPB initiatives. In the absence of such a body there is a lack of resources for important activities such as specialised training in mediation skills. As a result, the standard of EPB mediation is sometimes very unsatisfactory. A third difficulty is that the statutory basis for EPB-type administrative mediation provides that mediation may only be used to deal with issues of liability and compensation. However, in many cases the real and immediate major need may be cessation of polluting conduct.

In addition to EPB administrative mediation of environmental dispute resolution, the community-focussed system of people's mediation has also played for many years a supplementary role, dealing with local differences over relatively routine matters such as excessive noise, water supply, waste water disposal and so on. A strengthening of people's mediation over the past decade or so in such areas of enforcement of agreements has made the system increasingly attractive as a forum for handling local environmental quarrels. Greater use of people's mediation—and, indeed, of judicial mediation—is now officially encouraged also because the Party-State has become more and more worried about the relative ease with which local environmental disputes turn into serious unrest. Given the relatively informal nature of people's mediation, however, this development is also encouraging the recruitment of mediators with stronger educational and professional backgrounds, especially those with legal or technical expertise, or both. Other important unfolding initiatives include the introduction of specialised Environmental Dispute People's Mediation Committees, operating with expert, specialised, mediators and under

the guidance of both the local EPB and Justice Bureau, as well as the beginnings of a new system of firmly professional environmental dispute management.

The paper by Dr Zhao Yixian, entitled, 'Divorce Disputes and Popular Legal Culture of the Weak: A Case Study of Chinese Reality TV Mediation' examines the novel but already very popular 'bottom-up' phenomenon of reality television mediation, in which there is a very public performance of mediation. This process is relied on to handle disputes between mainly socio-economically disadvantaged parties. It takes place in front of a studio audience that is full of members who are also low in socio-economic status. Although mediation elsewhere in the world is conceived as a private and confidential process, and in China family disagreements are considered best kept and managed within the home, most of the cases handled by reality TV mediation are in fact family—mainly matrimonial—disputes. The possibility of adverse publicity and loss of face is an important factor in understanding the class nature of the shows—the more well-off and better educated members of Chinese society may enjoy watching the shows, but they are disinclined to be participants in such a public process.

Despite its novelty, reality TV mediation has in fact been encouraged indirectly by provisions in the 2010 People's Mediation Law, an item of legislation mainly for the refurbishment of traditional, local, community mediation. and the settlements agreed through the televised process enjoy the same formal legal status as ordinary people's mediation agreements. It is officially seen as a form of 'edutainment', with didactic as well as dispute handling functions. The programmes are well organised and may well involve official participation in one form or another. Nevertheless, reality TV mediation shows give most of their attention not to formal, legal rights and wrongs, but to moral values (and locate what they see as the parties 'interests' within not only a practical but also a significantly moral universe) and, of course, the entertainment value of particular cases.

The programmes attract high audience ratings and TV mediators have been given nationwide awards for their mediatory expertise by the Ministry of Justice. Linked to their entertainment value, argues Dr Zhao, is the way in which such programmes revelations though screened mediation serve as a modern form of shaming—it is the equivalent to the gossip that was once such a powerful form of 'negotiation' pressure in the relatively closed and face-to-face communities of production brigades, work units, and so on in Mao's China, but now much weakened by the economic changes, greater freedom of movement, and enhanced social mobility of the reform era. Into its place has stepped reality TV mediation, with its very public processes of disgracing and blaming.

Dr. Zhao notes that on the programmes when men ask for agreement to divorce through the mediation they tend to mean it, but for women a demand for a mediated divorce may be only a presenting issue that is designed in reality to discomfort a defendant husband so that he conducts himself better in the future. Domestic violence is an issue in a significant number of cases subjected to reality TV mediation, though it appears not to be given the weight in the programmes that from a comparative point of view might be expected. In fact, many of the programmes are relatively free of legal analysis and solutions embedded in the law. Instead, they increasingly offer a range of innovative outcomes: agreements to promote better, more moral conduct, and more detailed and gender-justiced financial provisions. As well as, hopefully, reconciliation of the parties. This more nuanced approach helps to explain the growing popularity of the programmes both for disputing parties and the audiences, a popularity that also reflects a growing interest in social justice and rights in popular legal consciousness, as well as reality TV mediation's sheer entertainment value.

The paper by Ling Zhou explores issues of access to justice in the PRC's rapidly growing field of consumer protection in which, stimulated by the economic reforms of post-Mao China, the dominant image of the individual as a work-unit comrade is giving way to one of the consumer citizen. In her field study of consumer disputes and their resolution in Shenzhen, Zhou outlines the primary consumer dispute processes and explains how they work—in particular, the manner in which the local Consumer Council handles claims by aggrieved consumers. The status of the Consumer Council as a quasi-government body, with local government funding, and working closely with government departments in a 'Three-Consumer-System' of consumer protection that has been created, as well as the long-standing paternalistic emphasis in Chinese political-legal culture in which the government is regarded as the key moral guardian of the people, have moulded popular expectations of the role of the Consumer Council. Many aggrieved consumers hold the erroneous view that the Consumer Council is itself a regulatory body with significant interventionist powers, and are therefore disappointed to find that the Council mainly concentrates on dispute resolution.

In her probing analysis, a major distinction emerges between two kinds of Consumer Council mediatory intervention in order to resolve disputes. On the one hand, there is intervention that is little more than the provision of minimal assistance for the parties. This is referred to as '*hejie*'—in effect, the Consumer Council provides a limited facilitatory assistance as a forum for getting the parties to make their own decisions on the best ending for their differences. This process from an observer's perspective takes the form of a facilitative 'mediation', but the Council staff regard it primarily as a 'negotiation' process. If such efforts fail, then a process of *tiaojie* or mediation is attempted, and in which the council actively assesses the parties' positions in the dispute and offers suggestions for outcomes (which, in reality, are often based on the consumer's position in the dispute). Sometimes this *tiaojie* intervention is done by telephone-call caucusing, sometimes by face-to-face meetings held at the with the Consumer Council. In this process, mediators of the Consumer Council tend to use a more evaluative approach to help the parties to reach an agreement, just as many people's mediators do in the processes of people's mediation. The distinction between *hejie* and *tiaojie* is contextualised in the essay by a detailed empirical exploration of the processes by which consumer complaints are handled by the Council, and the Council staff's shared working understandings of how best to handle consumer cases, primarily to prevent complainants from bringing up complaints to the Council again. These shared understandings, on the other hand, leave much room for staff members to develop and practice their own individual styles for dealing with cases in the *tiaojie* process, and mediators who take control of the mediation meeting could be either more facilitative or more evaluative in their approach, their choice of style often being a response to the personality of the individual complainant.

The Council offers a fast-track dispute resolution channel for large corporations and other 'repeat' defendants—who are often more bothered by the adverse publicity that complaints against them generate than they are with the financial costs of settlement. In addition to this important innovation, the Consumer Council is looking for new ways, such as using an online mediation room, in order to enhance consumer access to justice.

The essay on 'Regulating Collective Labour Disputes in China: A Tale of Two Actors' by Professors Mimi Zou, Pan Xuanming, and Han Sirui, looks at the labour problems in the PRC's rapidly changing economy, and in particular at the ways in which the growing issues of inequality, insecurity, and instability in employment relations are generating

many disputes and sometimes quite widespread conflicts. In a socio-political system in which traditionally one organisation, the ACFTU (the All China Federation of Trade Unions) was empowered to impose a top-down regulatory approach and had a monopoly on the representation of workers, changes are ineluctably taking place in labour relations in which workers are increasingly disposed to assert their rights, interests and grievances and NGOs are emerging to provide various forms of assistance to workers, and to enter into relations—albeit somewhat complicated relations—with the ACFTU.

A major cause of the unfolding problems has been a widespread failure of local governments to regulate fairly and in an even handed manner, labour relations. This failure has included an unwillingness to extend legal protection to migrant workers—workers whose efforts have been so important to the success of China's economic reforms. New laws for regulating labour relations emerged in 2008, establishing inter alia, new mediation and arbitration mechanisms for handling employment disputes. Problems that come before these mediation and arbitration bodies typically include employers' failure to pay wages and social insurance, uncertain employment contracts, and dismissals. But these committees have not functioned effectively enough to prevent the continuing proliferation of 'mass-group incidents', forms of collective action that are not formally recognised but certainly are a serious worry for the authorities.

The emphasis in the official dispute resolution system for employment disputes is on mediation, both as the sole way of handling a labour dispute or as a primary step in a dispute that in due course might go on to arbitration or to trial. In something like 60 percent of all cases, the outcome to a labour dispute is achieved by mediation. The labour mediation committees may be established in one of several ways, sometimes within enterprises, sometimes in local community structures, and sometimes as stand-alone bodies. In some instances, local NGOs have been able to play an active role in mediating labour disputes. The ACFTU tends to play a predominant role in collective labour contract negotiations, but unfortunately this often means that there is limited scope for participation by the workers themselves in such activities. Moreover, the 2001 Trade Union Law continues to lay emphasis on ACFTU mediation as the best process for bringing an end to industrial action. The system also continues to limit the recognition that may be given to competing grassroots unions that are independent of the official ACFTU structure and activities. The ACFTU's dominant position, and the official policies it must implement which encourage heavy reliance on mediation, are among the reasons why the ACFTU is in reality not as effective as it might otherwise be in resolving collective labour disputes. Nevertheless, the influence of NGOs and NGO representatives of worker interests remains legally restricted and it is unofficial, grassroots, NGOs—often staffed by people drawn from the ranks of disadvantaged migrant workers—that tend to be more effective in engaging with labour-related issues on behalf of workers. The strong social networks of mutual support and care that these emerging unofficial agencies generate, together with their work in enhancing workers' rights consciousness, the experience they have gained from repeat playing in labour dispute resolution, and effective capacity building through internships and the like, have made them effective agents of change and dispute resolution.

Not surprisingly, however, and especially in the context of collective labour disputes, such grassroots NGOs and their staff are negatively characterised by local governments as turning workers away from 'politically correct' forms of dispute resolution, especially mediation, towards more robust and threatening action. Other responses have perhaps been more positive. Thus, the past five years have seen some reform in the official system—new

rules for collective bargaining, more direct election of union and worker representatives within the enterprise, and a more nuanced understanding of the benefits that greater NGO involvement might bring to labour relations. This suggests that the policy hitherto followed of ‘suppression’ of labour disputes by mediation may also become somewhat more relaxed in the years to come, but with many NGOs still struggling to find an accepted place at the employment dispute resolution table.

GLOSSARY OF CHINESE TERMS

Romanisation (Hanyu Pinyin)	Chinese Characters	English Translation
<i>da tiaojie</i>	大调解	‘grand mediation’
<i>hejie</i>	和解	conciliation; settlement; facilitated negotiation/mediation
<i>hukou</i>	户口	household registration
<i>jianquan duoyuanhua jiefen jie jue jizhi</i>	健全多元化纠纷解决机制	sound diversified dispute resolution mechanism
<i>kexue de duoyuanhua jiufenjie jue tixi</i>	科学的多元化纠纷解决体系	a [more] scientific diversified dispute resolution system
<i>laojiao</i>	劳教	re-education through labour
<i>quntixing shijian</i>	群体性事件	mass incident
<i>renmin tiaojie</i>	人民调解	people’s mediation
<i>tiaojie</i>	调解	mediation
<i>tiaojie chuli</i>	调解处理	to mediate to settle disputes
<i>xingshi hejie</i>	刑事调解	criminal reconciliation
<i>yinling dangshiren xuanze shidang de jiufen jie jue fangshi</i>	引导当事人选择适当的 纠纷解决方式	disputants are offered a more genuine choice of process