How Are Laws Practiced?

A Sociological Analysis Based on a Judicial Case in China

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Two traditional perspectives of analyzing the law

The argument over formalism and instrumentalism has always been a major issue in western jurisprudence (Bourdieu 2002). They are the two fundamental perspectives from which the law is studied in academic circles.

In formalist jurisprudence, the law is deemed to be a fully independent and autonomous system whose development can be understood only through its “intrinsic power”; legal philosophies and legal conduct have absolute independence and are never determined by social factors. Representative of this philosophy is the analytical positivist jurisprudence school that came into being in the latter half of the nineteenth century. Adherents “try to separate values from the scope of jurisprudent research and restrict the tasks of jurisprudence to the analysis and anatomy of actual law” (Bodenheimer 1999, 116) and mainly focus on attempts to “analyze legal terms and study the interrelationships between legal propositions in terms of logic” (Stone 1961, 31). As John Austin believed, jurisprudence is an independent and self-contained theory about actual law and “what it is concerned about is the law or the theory of laws in a strict sense, and not the righteousness and evilness thereof” (Austin 1995, 294). Hans Kelsen even regards the law as “being inside an enclosed and sealed container” and advocates the establishment of a “pure theory of the law” (Kelsen 1941, 13). This intrinsically based formalist law perspective actually advocates “law autonomy.”1

In contrast, law instrumentalism tends to regard the law and jurisprudence as the representation of relationships between existing social powers and particularly represents the interests of the ruling party (Bourdieu 2002). Its typical view is that the law is an instrument for controlling society and it is not omnipotent, as stated by Roscoe Pound. He even warns, “We had better remember that the law is highly powerful, but has a weakness in that it relies on other powers” (Pound 1984, 10–11). In Marxist law, the law is regarded as an instrument of class struggle. Roger Cotterrell believes that the law is a mechanism for integrating social interests (Cotterrell 1989, 73).

The operating logic of the law is totally different in formalist and instrumentalist law philosophies. In the former, a specific ruling applies an abstract legal principle to an actual matter; for that reason, applicable and objective laws and legal principles form an “infallible” system (Weber 2001, 18). In the latter, the law is just an instrument and thus can be replaced. It is not sacrosanct, but controlled at the will of men.

There are also two opposing views on the status and role of the law in China. Among academics, the doctrine of the rule of law most commonly seen is that the law is deemed to be an independent and logical system, applicability of the law is defined by legal provisions, and a full set of procedural laws is available to guarantee their stringent enforcement. Representatives of this view include “right as fundamental basis of law” advocated by Zhang Wenxian and “legalism” that prevails in departmental law (Deng 2006, 58–72).2 The opposing view regards the law as an instrument from an extrinsic perspective. It considers the law as a means of social management and its role as one that can be replaced because folk laws, unwritten laws, and even administrative instruments can sometimes achieve better results. Instrumentalism has prevailed in China for long periods of time. For instance, China created many slogans to serve the core work on laws at various stages after the founding of the People’s Republic of China: “Serve the class struggle,”“Serve to guarantee the smooth progress of reform and opening-up,”“Serve the market-oriented economy,”“Serve the local government,” and “Serve to promote local development and harmony.” Such instrumentalism was the product of ideology after 1949. Chinese law had been operating according to the logic of instrumentalism until the economic reforms and opening up of the nation.3 This philosophy is still widespread in grassroots Chinese society.

On the Practical Logic of Law

A New Perspective and the Focus of This Article

Bourdieu believes that both opposing perspectives (intrinsic and extrinsic) totally ignore the existence of a complete social world (he calls it the “judicial field”) (Bourdieu 2002). According to this view, both are idealist models existing on the theoretical level. If we change our perspective and look at the operating procedures of the law in practice, we will find that there is a unique logic based on actual experience and that it is totally different from these two models.

Researchers of practical sociology believe that actual practice has a series of unique properties that differentiate it from formal rationality (or constructivist rationality)—for example, urgency, independence, ambiguity, and generality (Bourdieu and Wacquant 1998, 29), structural unforeseeability, incrementality (Sun 2000), and so on. We will be unable to gain an accurate understanding of the actual state of an object if our approach is limited to theory, and we may very well mistake “theoretical logic” for “practical logic.” Ethnomethodology theorists also proposed much the same notion. They distinguish between daily rationality and scientific rationality, and believe that daily rationality has a certain uniqueness—for example, contingency, indexity, reflexivity, and accountability. They believe that researching daily rationality based on scientific rationality in traditional sociology is not only unable to reveal the “logic” behind daily rationality but may become trapped in “conventional notions” (Yang 1999, 54–62). For that reason, looking at the “constructivist” level alone is not enough to reveal the true nature of an object. Instead, it is necessary for us to focus on its daily practices and explore its intrinsic, “hidden,” and normally unexpressed logic. Similarly, it is necessary to observe how the law operates in people’s daily lives and how all of its parts work in order to gain a thorough understanding of the law (Friedman 1998).

As a matter of fact, understanding the law from a practical perspective may be seen as a tradition in legal sociology. Eugen Ehrlich, the founder of legal sociology, proposed the concept of “living law.” He believes that not only “substantive laws” but also some “living laws” work to settle various types of disputes in actual life. In the absence of such “living laws,” substantive laws cannot be truly understood (Ehrlich 1999/1936, 37). Oliver Wendell Holmes believed that the laws applied in judicial practices are totally different from the set of logic prescribed on paper. He claimed that “the life of the law is not based on logic but on experience” (Holmes 1963, 5). The law is but an approximate expectation of a judge in making a judgment but many factors other than legal provisions are considered in the making of such judgments (Holmes 2001). Benjamin N. Cardozo believed that the judicial process is a complicated process of balancing (Cardozo 1998, 5). Karl Llewellyn saw a difference between paper rules and actual rules and pointed out the unique and special nature of law in practice (Llewellyn1962, 12–17). Jerome Frank regarded the law as the “art of prediction” and said that even an unpleasant breakfast could be a decisive factor in the ruling of a judge (Frank 1930, 50–51). Pound proposed “justice with law,”“justice without law,”“law in book,” and “law in action” to support his opposition to “mechanical law” (Pound 1959). Donald J. Black used empirical research to demonstrate that law in practice is not as pure as law on paper. Instead, it may be affected by various factors like class, relationships, culture, and organizations. He calls this the “social structure of a case” (Black 1994; 2002). Philip Huang’s empirical research on the civil codes of China’s Qing dynasty show that the actual operation of the legal system is highly different from what was officially claimed in legal provisions, which he sees as the “deviation” between “practice” and “expression” (P. Huang 1996).

Such a tradition of focusing on the practice of the law in legal sociology provides considerable inspiration for analysis. The rule of law is a necessity for social transformation. With the development of the rule of law over the past thirty years, “rule of law has become something believed in by the public, much in the way that people believed in revolution in the past and believe in reform now” (Su 2000, 1). People believe that China is moving toward the western rule of law and that the China of tomorrow will be much like the West is today. Driven by such a notion, there has been a huge campaign of law “transplanting” in China and a full set of laws based on western formalist rationality has been established within a period of just years. Amid such a surge of “promoting the construction of socialist rule of law,” people have been unable to take the time to give due consideration to how these transplanted laws actually work in practice and what kinds of deep logic lie behind their operation.

In this article, I will attempt to ascertain exactly how Chinese laws operate in people’s daily lives through observation on a practical level, and identify the logic behind that operation.

How to Study the Law in Practice

Critical Case Study

Li Meng’s analysis shows us the importance of narration, particularly complete narration of a case free of the author’s personal analysis, in understanding actual social practice (Li 1998). I personally advocate looking into the logic of practice through critical case study. It is noteworthy that the critical case study that I advocate has similarities to and differences from regular case study (Huang J. 2006).

What is critical case study? Lee Harvey has given a very good definition:

In critical case study, the researcher meticulously picks out a case for a detailed analysis and this can provide a special focus to reveal an enigma and resolve a paradox. . . . A series of different data collection techniques can be used in critical case study. . . . therefore, critical case leads to abstract theories that are structured (or verified) according to social practice and their operation in society is also explained. . . . critical social researchers use critical case study in order to interpret social structure and historic problems on a more extensive scale. (Harvey 1990, 202)

It can be seen that critical cases have the following main features: first, they are purposefully selected by the researchers and thus can provide a special focus to solve theoretical conundrums. Second, they apparently include theoretical consideration, and the experience gained is used to either support or undermine such theoretical thoughts. Third, critical cases feature openness in their data-collecting approach. Fourth, the research process of critical cases reflects a sound combination of macroscopic and microscopic structure. The meticulous details in a critical case are used with an aim to explain macroscopic social structure and social processes.

What follows is a description of how to analyze critical cases. Our approach is to take the “course” of a case (or an “event”) as the longitudinal axis of analysis, and the “scene” of the case and the “strategy” and “techniques” of various parties in the particular “scene” as the horizontal axis of analysis. The approach of narration is “thick description” (Geertz 1996) and “polyphony,” which makes it possible to go deeper into the practice of an event and realize its connection with the external macroscopic background. The intrinsic logic of objects is “displayed” (Ludwig Wittgenstein) in “deep play” and the external environment arising from such intrinsic logic is displayed in “polyphony.”

Case Overview and Source of Materials

Case Overview

The critical case adopted here is a criminal case with civil claims taking place in District Z of City S in a province in Central China.4 City S is located in the region where the Yangtze and Huai Rivers converge. It used to be a county before it was upgraded to a city subject to approval by the State Council in 2000. District Z is the original City S and has an area of 6,989 square kilometers and a population of 1,606,400, including a rural population of 1,060,100 and an urban population of 546,300. It has a total GDP of RMB112.32 million and the proportion of primary, secondary, and tertiary industries is 226 : 48 : 294. The workers have a mean salary of RMB6,060 and rural residents have an annual income of RMB2,727.5 The District Z People’s Court used to be named City S People’s Court and was a county-level court. It remains on the same level although its name has been changed to District Z People’s Court. The court has a total of 134 staff members of whom 101 are judges. In terms of the educational backgrounds of the judges, seven have a junior high school education or lower, eight were educated to the senior high school and junior occupational school level, twenty-five are university educated, and fifty-nine are college educated (with many having self-studied). The court handled 6,163 cases in 2005, 5,338 of which have been concluded. The objects of litigation have a total value of RMB3.6 billion. There are 5,682 civil and commercial cases, (accounting for around 92 percent of the total), 376 criminal cases, and 105 cases of various administrative types. The case adopted here was a major case handled by the court.

The case involves a violent robbery committed by a gang of adolescents. This group consists of twenty-six juveniles, the oldest of whom is twenty-one years old and the youngest only fourteen. They are all jobless. Their acts are shocking. They would rob victims at night in small groups. Having selected a target, they would slash the victim from behind with knives and rob him of all possessions as he lay helpless. According to police statistics, this gang committed more than forty incidents of robbery starting in March 2005. (The actual number is far greater than this. This will be addressed later.) The gang’s scope of activity covered the urban area and some nearby towns. April 13 was a turning point in the case because the intervention of key victim Huang Hong’s employer quickly forced the attention of the Public Security Bureau, which established a special investigation team led by the head of the bureau. Over 300 policemen participated in it. Twenty-four of the twenty-six juveniles were arrested between April 17 and April 19, arousing a great sensation in the city. A famous media group in Province H gave extensive coverage of the case and it was subsequently reported on the Internet and in major central newspapers such as Law Daily. After the case was solved, five victims filed incidental civil claims together with the criminal lawsuit filed by the municipal procuratorate.

This case is not at all complicated from a criminal or civil perspective. Although the case involved many people, it is characterized by clear facts, irrefutable evidence, and definite applicable laws. However, it is very complicated when it is regarded as a critical case of legal sociology with greater attention given to the sociological elements involved. (1) It has many interested parties. There are fifty-two parties directly involved, including twenty-one criminal culprits, ten criminal culprits with incidental civil claims, two criminal accusers (Procurator Xiao and public accuser Liu), and nineteen victims (including six who filed incidental civil claims). (2) This case involves criminal and civil claims. (3) The parties involved are differentially treated. For instance, the records submitted initially to the procuratorate included only fifteen of the twenty-four captured suspects, while the remaining nine suspects are to be “treated in other cases.” (4) It lasted a very long time, nearly a year from the detention of the suspects to the final judgment, and nearly half a year from the court’s registry of the case to the final judgment. During this period, various forces competed against each other both inside and outside the law, and the operation of the law in a grassroots court was fully displayed.

Source of Materials

For this investigation, I paid three visits to the field site.

The case of Huang Hong took place on April 13, 2005. On April 28, I arrived at the site and spent a week making a detailed investigation. I conducted interviews with the victims, including Huang Hong and a policeman named Yang from the Fourth Division of Criminal Police of the City S Municipal Public Security Bureau. On August 2, as an intern, I formally entered the court of City S that was responsible for hearing the case. On September 4, I had to leave because the new term had begun. A series of mediations were being carried out in the case and the formal hearings did not start until the end of the year. During the winter holiday, I was back at the field site again and conducted detailed interviews with some judges and the parties concerned.

The empirical materials of the study were obtained during my three visits to the field, particularly the interviews with the judges and parties concerned, as well as some internal documents, dossiers, and daily records of the court.

Struggle of Interests, Power, and Law

Logic of the Law in Practice During the Pre-judiciary Period

Starting from the pre-judiciary period,6 a struggle surrounding various interests and the law commenced. Numerous interested parties came to the front of the stage in this “theater,” each having their own strengths (Geertz 1999, 12).

“This Is Not On! This Must Be Sorted Out Immediately!”

At about 11:00 p.m. on April 13, 2005, Huang Hong and his partner Qu Tong were slashed from behind by a group of youths as they turned into an alleyway on their way home. Unable to resist, they were robbed of all the possessions they were carrying. Huang Hong was slashed three times on the back and legs, losing consciousness immediately in a pool of blood. Qu Tong was slashed three times. That evening, upon being informed of what had happened, the manager of the factory where Huang Hong worked rushed to the hospital. He then reported the incident to Board Chairman Xu. Xu, a wealthy man, shook with anger when he heard that one of his key employees had been mugged in such a despicable way. He telephoned the head of the Public Security Bureau and demanded immediate handling of the case. The following passage is from Huang Hong:7

When I came to (in the hospital), the doctor immediately notified our workshop manager, who stayed with me in the hospital all night. He informed the chairman immediately after I explained to him what had happened. The boss was furious and said he would call the head of the Public Security Bureau immediately. Not long after that, our boss called back and said that he had lost his temper with Mr. Liu, the head of the Public Security Bureau, and demanded that he sort this out immediately! He said Liu promised to take action immediately.

Q: Your employer must be a powerful man to speak to the head of the PSB like that.

He is influential in the city and even the mayor listens to him! Our company is the most profitable company in City S with an annual output of RMB400–500 million, or nearly one-twentieth of the whole city. As our boss once said, one in every twenty dollars of the city’s output comes from our company.

The company that Huang Hong works in is controlled by a large automobile group in Province H. It has had an annual output of RMB400–500 million over the past few years, making it one of the top enterprises in the city. It received authorization to manufacture and supply goods to the military last year, making it a state-level confidential unit with substantially elevated status. Company Chairman Xu has close relationships with certain senior officials in the provincial government as they once served together in the armed forces. For that reason, he is a highly influential figure in City S and was honored as a state-level labor model in 2005.

With the intervention of Mr. Xu, the bureau immediately assigned manpower onto the case. On April 15, a special investigation team led by Liu Jianmin, head of the bureau, was set up by the District Z Public Security Bureau for the “April 13 case.” On the evening of April 17, three suspects were captured and twenty-one more were captured in the two days that followed. The police solved the case in less than a week. It is alleged that the head of the bureau glowed with joy because a case as large as this had not been solved in years and this was a “really big achievement” indeed.

“The Case Is Reported in the Media”

On April 26, 2005, the case was covered in detail by an influential newspaper in Province H. Judging from the wording in the article, this is a “complimentary report” probably requested by the police. The reason is that a case this big had not been solved for a long time. “It is really very exciting.” The PSB had got the result they wanted and really wanted to flaunt it.

In the special political system of China, grassroots officials can essentially do whatever they want within their area of jurisdiction because of a lack of effective supervision. However, once “the lid is lifted” (Ying 2001, 326) and bad news is reported and known outside their area of jurisdiction, they lose their grasp and start to get scared. “Nothing is as frightening as media disclosure,”“media coverage is more frightening than reporting,” and “a two-year imprisonment is more desirable than being exposed in the media” are the special feelings of many Chinese officials. Thus, a humorous slogan has become very popular in many governmental organs, namely, “Protect against fire, theft, and journalists.”

Meanwhile, there has been an irrational faith in words throughout Chinese history (Ma 2003), and something becomes particularly important once it is recorded on paper. Against the backdrop of such a special culture, it would be a major thing for any “grassroots” event to be reported in a “provincial newspaper,” let alone a national one. If the report is positive, those praised in it naturally want to show off “the extensive attention and high praise from provincial media” (this is a self-complimentary phrase often used at the grassroots level).

The PSB were therefore all too eager to invite journalists from the provincial media to cover their achievements. After such interviews, the influence of the case quickly spread. This caused the relevant parties to become vigilant and try to contain the case within City S. Huang Hong and other victims and their relatives, however, repeatedly said that the case “had been reported in the provincial media and was everywhere on the Internet” on many occasions in order to arouse the attention of the relevant organs and settle the case as soon as possible. During the hearing, in order gain public support, they did not forget to mention that the case had been reported in the national media (Law Daily) and some domestic and overseas websites. In addition, they kept increasing pressure on the relevant organs by keeping the media updated with the progress of the case. Using media pressure to settle disputes is a highly effective approach at the grass roots in China.

Police of the Fourth Division Felt Shocked and Pressurized to Form Strategies

“We were shocked with what we found when we investigated.” Twenty-four suspects were arrested within a single week, from April 17 to April 23. As the investigation progressed, the officers in the Fourth Division “felt increasingly uneasy”; “it turned out that they had been operating together to commit dozens of offenses, including some that we had still not yet solved.”8 In addition, this group also committed four to seven robberies in the week between the registration of the case and their apprehension on April 19. (Some of the victims did not report having been robbed and the offenders could only vaguely remember the date. The other four took place on April 14 [1 offense] and April 16 [3 offenses].)

A classmate of mine, Mr. Yang, who works in the Fourth Division said:9

This gang has committed numerous robberies over a period of more than a year. They can’t even remember how many offenses they have committed. They are jobless, but some tell their parents that they are working and even report home every once in a while to say how their jobs are going. What they were actually doing was causing trouble on the streets of City S. They linger in Internet cafés and dance halls all day long and mug people when they are running short of money. They have committed numerous robberies downtown and even in rural areas, stopping cars and committing robbery. Sometimes, the victims report to the police but most of them keep silent if their injuries are not serious. There are two reasons why people do not inform the police; first, many people do not go to the police because of a lack of awareness and second is that if they were not robbed of much they think that filing a report is unnecessary.

But such robberies cannot be revealed to senior officials because then the bureau would be condemned for failing to solve such a large number of robberies.

(The joy seen when the suspects were apprehended soon disappeared.)

The policemen of the division and the bureau held discussions and came up with a solution: divide this case into two, including one that focuses on the “April 13 case” and includes all other incidents that took place after April 13, and one that focuses on two to three incidents before April 13.

(In the dossiers transferred from the Fourth Division to the procuratorate, I see that before April 13 there is one case on April 9 and 10 and one case on March 12. The other cases are either “handled otherwise” or shelved without comment. I asked Yang why the incident dated March 12 was also included.)

One reason is that this case involves students from the local technical school.10 The school has made a report to the police. The other reason is to eliminate the doubts that others may have on the high frequency of the cases because it took place much earlier. Any long-term criminal behavior usually has a process of development and doesn’t just appear all at once, so all the incidents being concentrated around this data would be doubtful.

Q: Why is the April 13 case so important?

Because the investigation team is led by the head of the bureau and a report has been made to superiors. So they have to do their best.

Q: How are the other members of the gang treated?

They are included in other cases.

Q: How are they separated?

Some of them have connections.

Q: What connections?

The uncle of one of them seems to be the mayor of Town A and has called a leading official in the municipal government. A relative of another seems to be working in a newspaper. They have some connections to help them. In addition, they didn’t do anything serious around April 13. The situation is really complicated as it is a big case. Everybody is looking for ways out and some of these connections have to be considered. The police in the bureau don’t like this but they have to consider it because this is how things are in China. They are really in an embarrassing situation.

Q: Regarding those charged this time, does it seem that their earlier offenses are not being investigated?

Apparently some victims called the police but most didn’t. All these incidents were disclosed by the suspects themselves (the gang members). For reported cases, the stolen valuables can be regarded as the ill-gotten goods and followed up along these lines so long as nobody was injured. If people got injured then it’s much more serious and the parties involved are to be “handled otherwise.” It is not good to have too many people involved in the case at this critical moment, anyway.

August 28, 2005, was the fifth anniversary of the establishment of City S and was a major event in the city. I came across the paragraph below in the summary report of the Fourth Division:11

Officials attached great importance to the case. . . . As a response to the calls to “Create a safe City S as a tribute to the fifth anniversary of the city” proposed by Comrade Liu Jianmin, all staff in the division devoted themselves to the investigation and inquisition of the case with a high sense of responsibility and mission. . . . After five days and nights of hard work, the “April 13” malicious robbery case was solved. . . . it established a good image for the police. . . . the case received extensive media attention.

An incredibly complicated case was simplified into the “April 13” case amid consideration of offering a “tribute” and “establishing a good image.” Dozens of incidents and offenses became just twelve cases that occurred around April 13, while many other cases were ignored under the pretext that they would be “handled otherwise.” Merely attributing this phenomenon to the work ethic of the Fourth Division is far too simple a conclusion. As a matter of fact, the law was kept hidden during the whole process and was distorted beyond recognition.

“This Case Can’t Spread Outside City S”

The “Big Picture” of the Municipal Government and the Embarrassment of the Procuratorate

As the investigation deepened, the municipal government was shocked. The celebrations for the city’s fifth anniversary at the end of August were the major event on its schedule. In China, such events have always been a good opportunity for publicity, attracting foreign investment or realizing political goals. Therefore, no “event” that damages the image of the city would be acceptable at such a critical moment. This is in consideration of the bigger picture.

Moreover, the year 2005 was designated by the government as an “investment environment year.” All kinds of work were being done to create a better investment environment and attract more foreign investment. On the walls on all sides in the administration building of District Z government, we could clearly see promotional items and goals for the seeking of investment for various organs, including specific goals for various rural and township governments, courts, and procuratorates. As Wang Hao, head of the administration office of District Z government, said, “The investment environment is essential to the development of a city, and the progress that City S has made over the last few years is attributed to investment.”12

With the investment environment being considered most important, it became logical that any major or severe cases be contained within City S. As a matter of fact, as Mr. Xu of the District Procuratorate said, “it is a common understanding that cases like the ‘April 13 case’shouldn’t be known outside City S.”13

Luckily enough, China’s judicial system was able to control this situation. China has a system of second instance as the final stop. Theoretically, any tier of the court can be the court of first instance and can accept any case for first instance. For that reason, the choice of which level of court should be selected for the first instance becomes incredibly important. If a grassroots court is selected, the intermediate court will be qualified to make a final judgment. If an intermediate court is selected, only the provincial senior court has the right to make the final judgment. This way, it is possible to contain the “case within City S” provided that District Z People’s Court is selected as the court of first instance. Although from the perspective of legal provisions it was totally legitimate for the District Z Procuratorate to submit the case to District Z People’s Court and not the city’s intermediate court, it has to be said that the District Z Procuratorate was in an embarrassing situation here.

The procuratorate was in a rather embarrassing position in China’s judicial system because the Constitution grants it the right to review cases investigated by the Public Security Bureau and determine whether an arrest is to be made or whether a suspect is to be indicted or exempted of indictment; it has the right to file and support public lawsuits against criminal suspects and to monitor the legitimacy of the activities of the Public Security Bureau and people’s courts. If this sentence is taken literally, such powers seemingly make the procuratorate independent from administrative organs such as the Public Security Bureau. In reality, it is a mere “symbol” in the bureaucratic system in most cases. At least, the procuratorate silently approved the way the Fourth Division “condensed” such a large number of cases into the much more limited “April 13” case under the rubric “To be handled otherwise.”

Interest, Power, and Law

On August 10, 2005, this case was formally transferred from District Z Procuratorate to District Z Court. At this stage, the outcome of this case amidst the competition of various forces was that the Fourth Division and the procuratorate managed to simplify a complicated case and produce original materials and an indictment that both satisfied the requirements of the law and was convincing. The case then formally entered the judicial “field.” In such formal indictment and dossiers, the complicated maneuvering of various parties is gone. The “calculations” of the Fourth Division, the emphasis on the “bigger picture” of creating a good investment environment by the government, and the embarrassment of the procuratorate are no longer to be seen. What remains is the impartiality of the Fourth Division and the independent indictment of the procuratorate. Advocates of the doctrine of rule of law might feel satisfied to know the case was transferred to District Z Court because justice seemed to be well served and everything unfolded according to legal procedures.

However, as PrasenjitDuara says, “The exploration of history normally sways between texts and historic facts” (Duara 1995, 48) and “Never get indulged in the powerful narration of historic books” (ibid., 225). We cannot be satisfied with the practices so illustrated in the legal dossiers. The formalized indictment of the case and the seemingly infallible original documents of the case as furnished by the Fourth Division have the following facts behind them:

The Public Security Bureau was ignorant of a criminal group that had committed dozens of crimes. After the occurrence of April 13, the case was solved quickly due to pressure from an influential local figure. In order to protect their image and cater to various types of “relationships,” and in consideration of the celebrations of the fifth anniversary of the city, the Fourth Division dared not display the full extent of the case. However, they also dared not fully disregard their legal duties. For that reason, their strategy was to “divide the case,” treating a series of incidents that occurred around April 13 and that were publicly known as an isolated case, while the other less influential offenses committed by the same gang were “to be handled otherwise.” The local procuratorate silently approved this approach under pressure concerning the city’s aim to create a good investment environment. In this process, we can see the presence of the law. However, we can also see the presence of interests throughout, with the benefits and interests of various organs becoming involved at virtually every stage. As public choice economists point out, the government is not only a public institution, it is also an interested organ. The whole operating procedure of the law represents a battle between the interests of various organs and the law. In the practice of such maneuvering, the law is but a framework and various parties compete with each other in the framework of the law. However, no one dares to openly challenge the law for the protection of its interests and exercise of power in an environment in which the rule of law is a mainstream ideology. Instead, such parties hide behind the language of the law or find ways to make conduct adhere to the logic of the law. The term “to be handled otherwise” seen in this case is a product of this approach.

Finally, the multitude of “maneuvers made outside the law” is not seen in the indictment of the procuratorate and the dossiers of the Fourth Division, and the whole process seems legitimate from the perspective of the law. However, this does not mean that “maneuvering outside the law” will end and the whole case will progress strictly according to the logic of the law. We will see that this process actually continues, albeit on a different stage.

Compromise Between Pragmatism and Formalism

Logic Behind the Collegial Panel and the Focus of Work

Sole Judge under the Framework of the Collegial Panel

On August 10, 2005, this case was transferred from the procuratorate to the court, signaling the formal commencement of judicial procedures. Considering the importance of the case, the court immediately started making preparations upon accepting it. The first step was to determine the body and personnel that would preside over the case. Considering that the case primarily involved juveniles, the juvenile delinquency court was designated to take charge of the case and a three-judge collegial panel consisting of Zeng Li (presiding judge), XieHongxia (vice presiding judge), and Gong Wen (judge) was established. With this, it seemed that District Z Court had made a positive start in the legal handling of the case and that the logic inherent to rule of law had started to work.

However, the truth behind these actions is much more complicated than it seems. There was something else occurring on a different level behind this pristine exterior. As the case progressed, I discovered that XieHongxia was the only member of the panel who was genuinely handling the case, while the other two judges only came to know even the basic details of the case shortly before the hearing. The law clearly states that a collegial panel must be established. However, the other two judges made no substantive statements during the hearing. Instead, their only perceivable function was to maintain order in the courtroom and help to dispel any possible embarrassment for XieHongxia during the process of the hearings. Presiding Judge Zeng gave the following explanation for this:14

Actually, most cases in grassroots courts are presided over by just one judge, particularly civil cases, where simplified procedures are applied in over 90 percent of the cases. First, we are short-staffed and only have three judges in the juvenile delinquency court. Moreover, public criminal indictments account for the majority of indictments submitted to us, particularly co-offence cases. You can imagine how many cases we would be able to settle in a year if a collegial panel was set up for every case. Actually, it is not necessary to have so many people on a single case! It is better if we each take charge of a single case and devote our full attention to it, and judges can be more responsible this way. All of the judges have a number of cases pending now.

Q: Is it unreasonable for the law to require a collegial court for a criminal case?

It is reasonable to a certain extent because this mode prevents a single judge from having too much power. When cases are complicated, the judges can hold discussions. But we have our difficulties. We have to emphasize our work efficiency. For that reason, it is hard for us to do everything strictly according to the law, and sometimes we can implement the law in form only, not in actual substance. The aim of these stipulations is to supervise and check the possible misconduct of a single judge, but this is easier said than done. People are flexible, but the law itself is not. You can go and investigate just how many courts are actually using collegial courts in a real sense now.

This practice is not limited to District Z Court. It is commonly seen in grassroots courts (Su 2000, 16–17; He 2000; Liu 2005). According to procedural law,15 all cases are to be handled by a collegial court consisting of three judges or people’s jurors. However, the heavy workload in grassroots courts and ignorance of procedure has resulted in a reality where many cases are presided over by a single judge while the other judges or jurors play a purely symbolic role. Simply speaking, such an embarrassing situation is the product of a compromise between the following factors: legal procedures having to be satisfied as a fundamental requirement of justice; and actual conditions having to be considered in practice and efforts being made to solve practical difficulties.

Unique Work Focus and Logic

For such a major criminal case, a general assumption would be that the court would place the focus of its work on pursuing the criminal liability of the defendants. Moreover, the juvenile delinquency court is a subsidiary of the criminal court. But what takes me aback is that Presiding Judge Xie placed the focus of her time and efforts on the incidental civil claims, working on mediation and using various types of techniques to encourage the parties concerned to accept mediation. As a subsidiary claim to the criminal case, the incidental civil claim has far less importance than the primary criminal case itself.

Presiding Judge Xie gives the following explanation:16

Although this case is a criminal case, we have to guarantee that the victims are properly compensated first. Otherwise, the case will become even more complicated. The criminal liabilities can be easily determined because the legal provisions are clear and definite. As the plaintiff, the procuratorate has got an idea of the final ruling and nothing unexpected usually happens. Although the civil responsibilities only play a subordinate role, an appeal would occur if either party were unsatisfied with the ruling.

Presiding Judge Zeng’s explanation for such a phenomenon is even more irrefutable:17

The essence of handling a case at the grass roots is to ensure that everybody is as satisfied as possible and to avoid arousing too many major complaints. Obviously, complaints are totally normal, considering the circumstances, but efforts should still be made to prevent appeals or the parties concerned taking the matter to a higher authority. We have to contain the conflicts within the court. For that reason, the key is to settle the civil disputes. First, the procuratorate is the plaintiff of the criminal case and we are on the same side, with no conflict of interest. We are familiar with each other and will cooperate. We do not normally hand out severe sentences unless the case is disclosed and becomes the focus of public attention. Moreover, we focus on education since we are a juvenile delinquency court. For that reason, the defendants do not usually contest the court too much during the hearing. The only substantive conflicts actually lie between the victims and the criminal defendants. Anyone who has been attacked by a knife for no reason at all is likely to have a great deal of pent-up anger. Some victims would be content to tear the defendant apart as soon as they meet in court. But in reality, their major concern is the compensation; I mean how much money they will get. They are unlikely to care too much about the sentence as long as it is not ridiculously lenient, as this matter is beyond their control. The victims do not benefit much if severe punishment is imposed on the defendants. Therefore, the causes of appeals and visits to higher authorities are primarily related to civil disputes.

The foregoing passages demonstrate to us that the primary purpose of the work of grassroots courts from their own perspective is not to serve justice or safeguard the dignity of law, but to prevent the case from spreading beyond the court—in particular, preventing appeals and visits to higher authorities. For them, being able to do this is the standard by which they appraise their work performance. That is to say, the logic behind their considerations is highly pragmatic and focuses on solving actual problems and balancing the essential interests of the various parties involved. Driven by such logic, the focus of the work they choose is totally contrary to that imagined by academics.

Practical Logic of Pragmatism, Formalism, and Law

Emphasis on procedural justice is the most defining characteristic of western law and is also one of the most important ways to guarantee rule of law. After the economic reform and opening up of the nation, China “transplanted” western laws on a large scale, and the concepts of procedural justice and formalism have gradually been established. However, it is difficult to guarantee procedural justice ergo formalism justice in the actual practice of grassroots courts. One reason for this is that grassroots courts are short of manpower. Another reason is that grassroots society is acclimatized to substantive justice and not procedural justice, and emphasizes actual effects rather than procedures (Feng 2004). Hence, the law is normally practiced as a compromise between formalism and pragmatism. As a matter of fact, the actual operation of the law is based on the logic of pragmatism under the guise of formalism.

Regarding the collegial court, we find that the legal provisions are “satisfied”; the collegial court consists of three members. The court cannot be criticized for “showing no respect to the law”—a real taboo for grassroots courts and related to their “political correctness” in a backdrop dominated by the concept of rule of law. This is just like criticizing someone for “having a low awareness of the working class” in the revolutionary era and “being too closed-minded” in the reform era. However, the motive of the court in practicing this stipulation is totally different from the legislature’s motive in promulgating it, and the way it actually operates is radically different from what is stipulated in law. If we regard the law as an organic combination of formalist justice and substantive justice, then in this case, only formalist justice has been realized, and there is no connection to substantive justice, which is what actually supports the legitimacy of formalist justice. This realization of form is done for the mere sake of form. This may be surprising to advocates of the doctrine of rule of law. However, it should be known that this is but the beginning of legal practice and that such a separation of substantive justice and formalist justice is seen throughout the whole process of legal practice. This paradox is an important constituent of the practical logic of grassroots justice in China.

Similarly, we can clearly see from the center of the judge’s workload and efforts in the case that the logic of pragmatism dominates in the practice of law. In the normal view, the judge should place the focus of the work on the criminal case, while the incidental civil claims are only an accessory part of it. The law even clearly specifies that incidental civil claims can be settled otherwise after the criminal case has been concluded.18 However, the logic of practice no doubt goes beyond the expectations of those who are accustomed to scholastic logic (or thinking logic). As we have analyzed briefly above, glossy words and phrases such as “serving justice” and “safeguarding the dignity of law” seem weak and powerless in the actual practice of grassroots courts.

Law, Power, and Tactics

Logic behind Practice of the Law in Mediation

Power, Strategy, and Tactics

As Michel Foucault believes, any power is at first a strategy. “Power has to be practiced before it is owned” (Deleuze 1988, 71). Furthermore, the practice of power is achieved through tactics. Clearly, the power mentioned here does not refer to the control of one party by the other, nor is it property. Instead, it is strategy as relationships. This power exists in various forms, is seen in various parts of society, and is operated using various different techniques (Foucault 1980, 135–36). We cannot afford to ignore the microscopic and fine powers present in an object if we are seeking to understand its inherent logic, because the operation and practice of such fine power displays its intrinsic logic. For that reason, we will look at how the law is practiced by analyzing the strategies and tactics of power operation in mediation and trial, the two most important forms of legal practice.

Mediation as a Dispute-Settling Mode

Regarding the incidental civil claims, presiding Judge Xie made significant efforts to promote a settlement through mediation. Her explanation for this was:19

It is not because we like mediation. It is an unwritten rule. A ruling is the last resort if mediation fails. The agreement can be easily performed if mediation succeeds and there aren’t many strict requirements regarding the letter of mediation. What is most important is that it can minimize the trouble arising from a judgment. Dozens of people would be present at the hearing considering the magnitude of the case and it would be very troublesome if so. So we prefer settling the case out of court.

Mediation is a very important dispute-settling mechanism in legal sociology and it is usually compared with trials. Thus trials and mediation are considered as two different and contrasting modes of settling disputes (Tanase 1994, 4). According to the law, both mediation and judgment are legitimate dispute-settling modes for civil cases and criminal cases of private prosecution. But the law does not specify form and other details of mediation. However, mastering mediation as a technique is indispensable for grassroots judges.

If “mediation is an art” (Jiang 2003, 4), then this is particularly the case for grassroots judges who not only confront a huge quantity of facts, but are also dealing with people demanding result justice and not procedural justice. Under such circumstances, mediation seems more like a contest of feeling, rationality, and the law, with the plaintiff, defendant, and judge each having their own strategies and skills to realize their purposes. It is amidst such competition for interests and in the absence of the form of rule of law that the genuine purposes of the law are realized. This is totally different from the case division practiced by the Fourth Division and the independent judgment under the framework of a collegial panel. In the latter two, the genuine purposes of the law are not realized, even though the rule of law is seemingly satisfied in form.

Process and Scene

From August 25 onwards, Presiding Judge Xie started to contact and notify the plaintiffs and defendants one by one to come to the court for mediation.

Individual interviews were carried out first, which is also known as “back-to-back” mediation. This is not mediation in a strict sense—at least not court mediation, because court mediation must have the presence of both parties for “negotiations” and the judge only acts as a middleman (Liang 1996, 120). In this case, however, Presiding Judge Xie talked separately with everyone concerned, and her role and character could change at any time. Sometimes she seemed like a close friend, giving the interviewee advice on what to do. Sometimes she seemed be a junior paying respect to the elderly. At other times, she would come across as a strict judge with an interrogating tone: “What would this world be like if everybody’s children were like yours?” Sometimes she came across as a weaker person begging the interviewee to understand what she was doing. Moreover, the plaintiffs and the defendants also had their respective skills.20

Settling the Case

The Strategy of the Judge

The judge plays a prevailing role in the whole process of mediation. She not only has access to information about the plaintiffs and the defendants, but also has mastery of legal knowledge and the power to make a judgment. Therefore, she can easily maneuver between the plaintiffs and the defendants and flexibly choose mediation or judgment as the means to settle the disputes. She can push both parties to reach an agreement. To be more exact, persuading the plaintiff to withdraw the incidental civil lawsuit and thus avoiding the uncertainty of a ruling are her final goal. For that reason, she must try to persuade the plaintiffs to reduce their claims whilst pushing the defendants to offer as much compensation as possible. Although she enjoys all the foregoing advantages, it is still a daunting task to promote a settlement between indignant plaintiffs and the large number of defendants. In this process, she has to use all kinds of strategies and skills available in everyday life.

Separate Interviews

The reason that presiding Judge Xie adopts the “back-to-back” mediation method is twofold: first, it is to open sound channels of communication with the parties concerned and get to know them as much as possible. This gives her more preemptive advantages during future contact. Second is to prevent the plaintiffs and the defendants from forming alliances against the court that could lead to unexpected effects: for example, the plaintiffs could work together to heighten their mediation demands or could make joint appeals to the government or other authority. Even the basic exchange of information between the parties could undermine the control of the court in the mediation process. This is because the judge’s prevailing advantages lie in the monopoly of information. An alliance and joint resistance of the defendants against the court’s mediation or their interaction would be highly disadvantageous for the court and deprive the court of its preemptive advantage. Generally speaking, the judge conducts separate interviews in order to consolidate and strengthen her advantage in terms of information and isolate the plaintiffs and defendants, thus guaranteeing that she has the preemptive advantages in mediation.

“Crediting the Well Behaved” and “Punishing the Stubborn”

This is a strategy commonly adopted by the CPC for the sake of mobilization in political tasks. However, Xie has used this means to the maximum in her mediation work.

After the “back-to-back” mediation, Presiding Judge Xie summoned the plaintiffs and the defendants for separate mediation in groups regarding specific civil claims. For instance, in the “Nie Chun case,” she gave a great deal of praise to Chen Yun, who actively cooperated with the mediation work, and publicly promised to treat her son Liu Xiao leniently in the criminal case. As a result, the other two defendants agreed to mediation and an agreement was reached. Nie Chun withdrew her prosecution after she received compensation. For stubborn people in the mediation, the strategy of “punishing the stubborn” is adopted by the court, and a typical case is that of ZouXiuwen. Zou refused the mediation at the beginning and claimed that his son “shouldn’t be subject to criminal sentencing and have to offer compensation simultaneously because he barely did anything wrong.” The vice-president of the court criticized him in what can only be described as a ferocious manner, following which Mr. Zou quickly agreed to offer compensation. Thereafter, the other four defendants in the case also agreed to offer compensation.21

Sympathy, Persuasion, and Pressurizing with the Law

In the mediation of the case, the most frequently seen strategy is resorting to sympathy, reason, and the law in order to win the preemptive advantage. This is particularly the case for the judges. The principle that this judge abides by is inducing others’ sympathy, persuasion through reason, pressurizing with the law.

Presiding Judge Xie often uses phrases such as “I am also a mother” or “I also have a child,” which gives the impression that she empathizes with others and sees things from their perspective. Actually, she is using a strategy of inducing others’ sympathy so that the other party will empathize with her and the parents of the victims (or the defendants) because “it is not easy for them to bring up their children, either.” With such a strategy, the highly serious legal relationships between the judge and the parties concerned and the parties themselves are turned into much warmer personal relationships. The cool relationships between the compensating and compensated parties become characterized by “we all have our hardships,”“nobody wants this result,” and “at this stage, only a compromise will solve things.” In a society where personal relationships and “face” are thought particularly important, remaining impervious when such words are expressed to you by the judge would be equal to self-humiliation or “not wanting face.” In Chinese, being said to not want face is highly humiliating. This is because Chinese tradition emphasizes dignity and respect. Confronted with the highly stubborn ZouXiuwen, Presiding Judge Wang criticized, “I can’t believe that you still have the nerve to raise conditions after having brought up a son like that. . . . Even dogs have a sense of humiliation!” This sentence was aimed at making Mr. Zou feel a sense of humiliation. It turned out to be most effective. ZouXiuwen immediately realized that he was in the wrong and was quick to reply “I don’t mean to refuse mediation, but . . . .” He finally agreed to offer compensation of RMB8,000.

Sympathy and reason frequently coexist, but they are different from each other. Sympathy is not persuasive in the absence of reason. If Xie merely develops personal relationships with the parties and they become friends, they may still refuse her mediation. Persuasion based on rationality and the law itself come into play here. In order to persuade the other party through reason, Xie quotes lots of facts and truths. In dealing with Chen Yun, who admitted that she was in the wrong, Xie pointed out, “Your child is responsible for all this” and “it is reasonable for the plaintiffs to demand compensation of RMB16,000. Their medical expenses alone were in excess of RMB5,900, not to mention lost earnings, nutrition, transportation, and so on.” She also ensured that Chen understood that “mediation is for your good. . . . offering compensation now will be met with a reduced sentence . . . . If you don’t agree now, you will have to compensate more and the sentence will be more serious.” Faced with an angry plaintiff, she was patient in her speech, telling him that compensation could be gained earlier if a deal was made, otherwise, “even if we make a ruling, it will be difficult to enforce. He might get more years in prison, but you might not see a penny.” Such persuasive explanations manage to persuade both parties and the mediation finally results in a deal.

Of course, the law also works effectively alongside sympathy and reason when the judge is communicating with the parties concerned. Being open and voluntary are the basic principles of court mediation as stipulated by the law, and judges are not permitted to force a ruling. Despite this, we can feel the deterrent of the law and are aware of the powers of the judge. Xie reiterates on several occasions that a ruling might be disadvantageous to the parties concerned, but despite this, is still willing to make a ruling. She then goes on to say that “according to [her] personal conscience” she hopes that the interests of all parties can be catered to, and that is why mediation is a sensible choice. She also delivers threats such as “If we can’t sort this out then we’ll just make a judgment, but don’t blame me for not telling you about the consequences.” Vice-Court Head Wang was even more direct: “Don’t blame me if I send people to your house to take away your belongings.”

Delaying the Mediation to Dampen the Feelings of the Parties Concerned

The mediation work for this case lasted more than five months. The plaintiffs came to the court indignantly to “demand punishment” on several occasions. But the more excited the parties were, the more the court dragged its feet. Parties were not sought for mediation until they had calmed down.

Strategies and Skills of the Plaintiffs

Compared with the judge, the plaintiffs and the defendants employed fewer strategies and techniques owing to the fact that they had much less information and were thus much more passive than the judge. However, they still had a series of strategies and techniques that were based on common sense. For the plaintiffs, these included the following:

Resorting to sympathy and reason. During mediation, the plaintiffs enjoyed the upper hand in terms of sympathy and reason, and their claim for compensation was absolutely justified. For that reason, their most commonly adopted strategies were to exploit sympathy and reason. Phrases like “I was just walking down the road minding my own business” and “Just image how you would feel if I stabbed you several times with a knife” were commonly used as tools to express their indignation and undermine the sophistry of the other party. Such tools were highly effective.

Making certain compromises but never going beyond a certain limit. Theoretically, the plaintiff is not obligated to accept the court’s mediation because the conditions accepted by the defendant in the mediation will absolutely be part of the court ruling and supported by the court. The defendant would never accept them otherwise. However, the problem is that compensation stated in a court ruling exists on paper only, and it can be very difficult for plaintiffs to actually receive the compensation that has been ruled. The law clearly specifies that the court suspend the enforcement of the ruling if the defendant has no enforceable assets. Such difficulty in the enforcement of rulings compels plaintiffs to resort to mediation. Thus, their strategy is to make certain compromises without going beyond a certain limit. This limit refers to the lowest compensation acceptable to them, and normally includes medical expenses, lost earnings, and the like. Efforts will be made to maximize the compensation on this basis.

Increasing the publicity of the case. As discussed above, grassroots courts are most afraid of cases slipping out of their control. Therefore, media coverage and visits to superior authorities, such as the government, by parties involved are major worries for the court. Having understood these fears, the plaintiffs often try to increase the publicity of the case (Ying and Jing 2000) so that the court is forced to attach greater importance to it. Confronted with the stalling of the court, Huang Hong used the media to pressurize the court and even wrote to the Intermediate Court to get greater attention and accelerate the settlement of the case.

Strategies and Techniques of the Defendants

The defendants are in the disadvantageous position in this “maneuvering” because they are the source of the case and they are to be held accountable. For that reason, they should be condemned and strictly punished. However, as James C. Scott points out, the weak always have a routine set of techniques to protect themselves—namely, “the weapons of the weak” (Scott 1985).

Voluntarily admitting wrongdoings to gain weight in the scale of morality and justice. In this case, the plaintiffs enjoy an enormous upper hand, be it in morality or justice, and they are fully within their rights to demand apology and compensation. We could even understand, to a certain extent, a plaintiff’s desire to abuse or even beat the defendants, who robbed them for no reason at all. Thus, we did not feel sympathy for ZouXiuwen when Vice-Court Head Wang condemned and humiliated him. In order to gain weight in such a scale of morality and justice, most defendants adopt the strategy of voluntarily acknowledging their wrongdoings, condemning their children’s mistakes, and criticizing themselves for failing to educate their children properly. There is an old saying that goes “It is hard to slap a smiling face.” How can you condemn someone who “admits wrongdoings” with such a sincere attitude? Moreover, the mistakes were not made directly by them but by their children. The self-condemnation of the defendants helps them gain weight in the scale of morality and justice (or at least reduces their moral disadvantages) so that they are not so disadvantaged throughout the whole case.

Seeking forgiveness. After admitting wrongdoing, they then seek forgiveness. Apologizing is often a ploy to earn forgiveness. This is oriented toward the trouble that their children have caused the plaintiffs and aims to lay the foundations for further requests and claims. Naturally, we do not regard such an approach as a purely emotional strategy as they sometimes resort to reason. For instance, we often heard them say, “Consider that he is only a child,”“We didn’t want this,”“He used to be a good boy but got in with the wrong crowd,” and so on.

Resorting to facts as the final weapon. What follows next in this strategy is that the defendant turns the focus to reality in an attempt to gain pity. They come up with all manner of reasons to demonstrate that they were unable to offer so much in compensation. This emphasis on reality is their final weapon: “I know I’m wrong. It’s not that I don’t want to compensate, it’s just that we don’t have that kind of money. What can I do?” As a matter of fact, the plaintiffs and the judges find themselves stuck here. Your claims are perfectly supported by both fact and reason, but the fact remains that the defendants do not have the capacity to offer compensation. According to the law, the enforcement of a ruling has to be suspended if the party required to offer compensation is unable to do so. For that reason, this strategy is the most powerful weapon of the weak because it can force the plaintiffs to negotiate and make concessions.

Practice of Law in Mediation

It is now necessary for us to address the question, How is the law practiced in mediation?

The simplest answer is: Law is practiced amidst the maneuvering of the foregoing rights, strategies, and techniques, with little trace of formalist law. We can barely see any sign of the laws in the form in which they exist in provisions. However, the purpose of the law, namely, dispute settlement, has been realized. That is to say, the substantive justice of the law has more or less been served.

The whole mediation process is dominated by the use of measures that contradict formalist law, such as sympathy, reason, psychological tactics, tactics of the disadvantaged, and even separate interviews with the parties, crediting the well-behaved and punishing the stubborn, as well as the combination of reason and pressure. The law is seemingly distorted but actually always present. The judges persist in working with the plaintiffs and the defendants with the aim of settling disputes so that both parties can see “justice” served in a way better than a ruling would. Such “justice” is also favorable to judges, not only because dispute settlement is their obligation (they essentially consider this from the perspective of pragmatism instead of “obligation,”“justice,” and other lofty words), but also because the hassles that could potentially be caused by a ruling can be avoided (for example, appeals, visits to superior authorities, and so on). The plaintiffs can calm their anger and agree to negotiate because they know the limited extent to which justice can be served and the risks involved in rulings. The defendants are qualified to negotiate because the enforcement of rulings eventually depends on whether or not they are able to offer compensation. The plaintiffs and the court would be stuck if the defendants pretended to have no money and were willing to allow their child to serve a longer sentence. The law is realized amidst a battle of wits between the judges, the plaintiffs, and the defendants. From this perspective, we can say that the law is more a skill to be practiced than a system of rules (Jiang 2003, 217).

Separation of Trial and On-Paper Justice in the Bureaucratic System

Trial, Ruling, and the Logic of Law Practice Within

From Mediation to Trial

After repeated mediation of the court, three of the six plaintiffs withdrew their incidental civil claims, but three plaintiffs still insisted on filing their claims. These claims involved two cases. Nine of the fifteen defendants in the incidental civil claims accepted mediation while the remaining six failed to reach a mediation agreement because there were disputes on certain facts in the cases themselves. These defendants claimed that they would reject mediation until justice was served through legal means.

The court organized a hearing on November 15, 2005. During the hearing, in addition to the charges brought forward by the procuratorate and the statements and evidence given by both the plaintiffs and defendants, the two sides contended fiercely over the disputed issues. These were: (1) compensation for lost earnings and injury demanded by Huang Hong and Qu Tong; (2) some criminal defendants alleged that they were just accessories in some cases and therefore should be shown leniency; (3) some criminal defendants withdrew their confessions and denied participating in certain cases or denied carrying or using a knife. Since this article does not address criminal law or civil law, I am neither interested in the rulings on such disputes nor intending to display or analyze the court’s rulings on them. As in the passages above, I am more concerned about the strategies and skills that various parties resorted to in the hearing. This is because it is through these strategies and skills that we can see how the law is practiced. Meanwhile, a comparison with the strategies and skills in the previous scene helps us to better understand the intrinsic logic behind the practice of law.

Strategies and Skills in the Court Battles

Ethnomethodology theorists emphasize the limits of routine practice and activity and believe that all actions and power are practiced in certain scenarios. It is therefore necessary to focus on specific scenarios in our analysis of the execution of power (Li 1997).

As opposed to the casual and relaxed nature of the mediation, in court, three judges sit solemnly at the front of the courtroom above everybody else. The two parties sit at the sides at a moderate distance from the judges. The national emblem that represents supreme power, the capes, the gavels, the solemn expressions, the mechanical procedures, and the bluntness of legal terminology, all create a solemn environment. In such an atmosphere, all those present feel compelled to emotionally identify and accept the law as something sacrosanct. In this way, the equality of all parties and the sanctity of the law are observed during the whole legal procedure. Harold J. Berman regards such ritualization and dramatization of the law as an inseparable part of legal power (Berman 1991, 47–49). Such a special atmosphere leads to changes in the strategies and skills of the various parties, particularly the judge.

“They Are Still Children”

The Strategies and Skills of the Defendants

The basic strategy of the defendants is still “admitting wrongdoing—using some kind of excuse-seeking leniency.” For instance, the statements made by QiuTiande and his mother are typical:22

I didn’t listen to my parents and I was not strict with myself, to the extent that I went astray. I feel most regretful about what I have done because I have inflicted great harm on others and caused much bother for the judges. I am truly regretful about all of this and I have let my parents down. . . . I promise that I will not repeat my mistakes and will start my life afresh. I hope the judges can give me a chance to change.

The statement of Qiu’s mother is even more moving: “I apologize to all for my failure to guide my child. I am full of regret and remorse.” (She then told how her son used to be well behaved but went astray after getting in with the wrong crowd. She sobbed as she spoke on and finally pleaded for leniency from the judges.) “I hope you respectful judges can show him leniency as a first-time offender and give him a chance to start afresh as he is just a child and succumbed to temptation.”

In summary, the defendants’ strategies include:

Voluntarily admitting wrongdoing and even expressing apologies and regret in tears: basically, the criminal defendants voluntarily admit their wrongdoings and express their regret and apologies to the plaintiffs and the judges during their personal statements.

Resorting to objective factors: the reasons they usually quote for themselves include “first-time offence,”“young and stupid,”“enticement by others,” and “spur of the moment.” These objective factors are usually quoted to demonstrate the limited malignity of their intentions, hoping thus to receive leniency.

Focusing on details: another strategy is to focus on details—for example, absence in certain cases, being an accessory, not carrying a knife, not assaulting others despite being in possession of a knife. All these are important details because they affect the sentencing.

Whom Does the Law Protect?

The Indignation of Huang Hong and His Peers

After the hearing, Huang Hong showed his indignation by saying “XieHongxia is despicable! She rejects my simple little requests! I feel that she is totally in favor of them (the defendants)!”23

Huang Hong demanded compensation for three months of lost earnings as he spent three months indoors recuperating. XieHongxia said he could only demand compensation for thirty days, including the fifteen-day period of hospitalization, because the doctor only advised a recuperation period of fifteen days in his “Notes for Hospital Leave.” Both parties had a heated argument over this. Huang Hong said that his legs were bandaged when he left the hospital and that the fifteen-day period specified referred to the period required before the bandages could be removed. However, it took two months to get back to health after the removal of the bandages and this was simple common sense. The judge countered that the court could make decisions only based on evidence and all claims were groundless without evidence. This infuriated Huang Hong. He said “Even the kind of common sense known to toddlers is refuted by her.”24 He had similar results with his demand for compensation for the injuries he sustained. As a matter of fact, the plaintiffs in the other two incidental civil cases also found themselves in similar embarrassing situations.

“This Is a Court of Law!”

The Strategies and Techniques of Judges

As Presiding Judges Zeng and Xie have said, making a judgment is much easier than mediation. The most frequently quoted phrases in court include “This is a court of law,”“You are in a court of law,” and so on. Confronted with volatile plaintiffs and pleading defendants, the court would usually quote these phrases to ward off attacks, as once these words have been uttered by a judge, the plaintiffs have no choice but to “keep silent,” no matter how deep or numerous their grievances are. The logic is that “you have to produce your evidence.” Similarly, the defendants can do nothing, regardless of what schemes they have, once this sentence has been uttered, because the “court does not believe in tears.”

Logic of the Law in Hearings

The foregoing facts show that the practice of the law in a hearing is totally different from what we have seen previously. The parties concerned remain the same—namely, the judges, plaintiffs and defendants—but the strategies and skills used prior to this no longer work. The judges are no longer amicable and patient like a “neighbor,” but suddenly become solemn and impartial. They are reluctant to talk with the parties any more than is necessary and are unmoved by how excited or argumentative they are. Uttering the words “This is a court of law” brings an end to all of this.

If a hearing is regarded as a battle, it is different from the maneuvering seen in mediation. First, the scenarios are different; second, for this very reason, the rules are different; third, the effective strategies and skills of the various parties are different. With such differences, the methods of practicing the law are vastly different. A hearing is based on the logic of the rule of law, while mediation is based on the logic of “dispute settlement.” Does this then indicate a “fracture” in the logic behind the practice of the law? We may only gain a true understanding of this once our analysis has been concluded.

Rulings Out of Court

We would be neglecting some of the features of law in grassroots courts in China if we merely focused on the maneuvering at the site of the hearings. As a matter of fact, what is most important in a hearing is the process of producing evidence and the confirmation of basic facts. The determination of applicable laws and the settlement of dispute both take place after the hearing. As Presiding Judge Xie says regarding the final ruling of the case:25

Grassroots dispute settlement is a rather complicated issue and the presiding judge does not have the power to make the final decision because we have the collegial panel. If the collegial panel is not sure of the final ruling, it has to discuss it with the review committee. A report has to be filed to the intermediate court to seek its opinions in some complicated cases. Otherwise, someone has to be held responsible if the case is transferred back for reexamination. For instance, some facts are not clear in this case, like the issues of principals and accessories. Some people admitted their participation in some cases initially but denied it later on. Some deny that they stabbed the victim. It is hard to make a decision here and sometimes they can’t even remember clearly, as it happened a long time ago. Moreover, the criterion of judgment as specified in the law is flexible. Generally, a sentence of three to five years or fifteen to thirty years of imprisonment is specified. How should we sentence the defendants? The proposals of the review committee and the intermediate court have to be referenced in the end.

The advocates of the rule of law are certain to be taken aback by the judge’s explanation here. Here, the judge is not as solemn, resolute, and impartial as expected. We can see the other side of the law here; that is, it is severely affected by many actual factors and superior authority. In this case, Xie is the presiding judge who is inevitably most familiar with it. However, she is subject to the collegial panel, which is not as familiar with the case, particularly Presiding Judge Zeng.26 Second, she has to subject herself to Wang, who is the vice head of the court in charge of the criminal tribunal. Wang’s readiness to help Xie settle the ZouXiuwen issue shows that he kept himself updated with the latest developments of the case. Moreover, the review committee and the intermediate court, that are not familiar with the case, can play a role in determining the final ruling of the case.

The “solicitation for proposals” that commonly exists in the judicial system even further undermines the very law that, in the previous section, we concluded was approaching formalist justice but at the cost of the substantive justice. “Solicitation for proposals” refers to a court’s solicitation of proposals from the superior court. However, such proposals determine the ruling of the court. Such “solicitation for proposals” originates from China’s investigatory system for misjudged cases and the judicial appraisal system. The superior court has the right to change the ruling of the inferior court, and the proportion of cases with changed rulings is a very important yardstick for gauging the quality of work of grassroots courts in China’s legal system. In order to avoid a case being sent back for review, grassroots courts are prone to making efforts to align their ruling with the views of superior courts.

Hence, it is clear that the judicial process of the case under the bureaucratic system of China is a complicated organizational and political process27 with multiple main parties who enjoy different rights (head of court, vice head of court, presiding judge, other judges, superior court, and so on) and influence the process. The practice of the law is far from the judge’s quotation of applicable laws for handling a particular case as proponents of the rule of law believe.

Justice on Paper

After much anticipation, the “Criminal and Incidental Civil Verdict” was finally issued for this case. The twenty-five-page verdict reads in a solemn tone:

The court set up a collegial panel according to the law and held consolidated hearings for this case behind closed doors; . . .

The collegial panel has reviewed the case and consulted the Review Committee. The hearings have been concluded; . . .

The foregoing evidence has been subject to the court’s investigation and cross-examination and has been confirmed as originating from legal and valid sources. All the evidence is confirmed by the court as being objective and genuine; . . .

In order to protect the legitimate assets and personal rights of citizens and educate delinquent juveniles, the following verdict has been made according to Article 263 of the “Criminal Law of the PRC” and Articles 119, 130, and 133 of the “General Principles of Civil Law of the PRC”:

The defendant ZouXichun is found to be guilty of robbery and is therefore sentenced to fifteen years imprisonment, a penalty of RMB10,000, and deprivation of political rights for five years;

The defendant Zou Jiao is found to be guilty of robbery and is therefore sentenced to thirteen years imprisonment, a penalty of RMB10,000, and deprivation of political rights for three years;

The sentencing of the remaining defendants was as follows: Hu Hai and Wu Lei were sentenced to ten years’ imprisonment, a penalty of RMB8,000, and deprivation of political rights for two years; Cheng Yi, QiuTiande, and Liu Peng were sentenced to imprisonment for eight, seven, and six years respectively, and penalties of RMB7,000, RMB6,000, and RMB6,000; Jiang Jun and five other defendants were sentenced to three years’ imprisonment and a penalty of RMB5,000; Xu Kun and Liu Yang were sentenced to twelve months’ and eight months’ imprisonment and a penalty of RMB4,000.

Any party that disagrees with this verdict may file an appeal to Hubei City S Intermediate People’s Court directly or via this court within fifteen days, starting from the day after this verdict is received. . . .

From this verdict we can see that the offenders in a juvenile “robbery” case that shocked City S were quickly captured by the local security bureau, sternly indicted by the local procuratorate, and strictly ruled by the local court. The whole process seems like a perfect display of the logic of the law and involves all major and minor factors of the law. The result is that the criminals are punished, social justice is served, and legal authority is guaranteed. However, what cannot be seen here are the amicable negations, heated arguments, verbal strategies, techniques used in daily life, the interests of the various departments, and interference from external parties. This highly animated and diverse process is not seen, and the logic behind practice is exchanged for the logic of the rule of law.

Careful readers will not have missed a phenomenon hidden in the sentences themselves. As the principal punishment, the imprisonment sentencing is not especially strict in the verdict. Generally, it is one year or eight months of imprisonment for offences subject to “imprisonment of three years or less”; it is three years of imprisonment for offences subject to “imprisonment of more than three years and less than ten years”; it is fifteen years of imprisonment at the most for offences subject to “imprisonment of more than ten years, life imprisonment, or death penalty.” The lowest sentences are essentially adopted in this case. Fines, which are accessory punishments, are relatively strict. In addition, suitable civil compensation was ruled on the basis of evidence and the law.

Why is this the case? I personally believe that the court made the verdict according to the principles of pragmatism. First, longer imprisonment will benefit no one, even though imprisonment is the principal punishment. Ruling five years over three years is no more beneficial to the judges, the plaintiffs, or even society. The only benefits of this are abstract: justice is served and the dignity of the law is maintained. The foregoing analysis has shown that such “lofty words” are not hugely important in the code of conduct of judges. Moreover, giving the shortest term of imprisonment is by no means against the law. How can we question the service of justice and the dignity of the law in this case? However, penalties are directly concerned with the interests of the court because they are a major source of its income. Also, incidental civil lawsuits are related to the personal interests of civil plaintiffs. In the failure of mediation, it would be no easy task to satisfy the demands of both parties. If the result is not satisfactory to both parties, the conflict could become drawn out. For that reason, the best choice is to make a judgment in strict accordance with the law.

In summary, the final judgment maximizes the interests of the court, supports the claims of the civil plaintiffs, gives the minimum possible terms of imprisonment to the defendants, and rules the maximum possible fines. These sentences are within the discretion of the court according to the law.

Continuing Stories and Consequences of the Trial

We have covered an entire case, from investigation by the Fourth Division, indictment by the procuratorate, and mediation and trial by the court. This lengthy process fully displays the logic behind the practice of the law as being different from the logic intended in theory. It is worth noting that stories surrounding this case and the trials have not yet ended, although these stories will not be addressed here.

After the verdict was issued by District Z Court, the defendants Sun Yi and Wu Junwen still maintained that they were mere accessories in certain cases because they neither carried a knife nor participated in any robbery. They claimed that they were just with friends and should be shown leniency. For that reason, they filed an appeal to the intermediate court. “The law doesn’t allow sentences to be increased in appeals, so what do we have to lose?” Wu’s father said.28 On March 15, I called Presiding Judge Xie, and she said that the intermediate court maintained the ruling. To me, this was the only possible ruling. This is because when the court made its original ruling (“the fifteen defendants conspired in robbery and there is no apparent evidence showing different roles in the cases. Therefore, it is not appropriate to distinguish principals and accessories”), it had already considered the opinions of the intermediate court.

The ruling has been made, but enforcing this ruling is a different issue altogether. At present, compensation is merely a term and some figures on a verdict sheet. It is uncertain exactly when this compensation, in its entirety, will be offered to the victims.

Conclusions

Embedding and Characteristics of the Law

When we look back at the foundations on which formalism is established—the “autonomy theory” of the law—we will find that the practice of law in China is totally different from the pre-assumptions thereof in grassroots courts.

As Su Li once expressed in poetic words, “You and I are both deeply embedded in this world” (Su 1997, 1), and we can see that the law is deeply embedded in the vast mechanism of relationships in its practice in the grassroots courts of China.

First, our legal procedures are part of the administrative system, which is hugely different from the assumptions of “autonomy theory,” such as autonomy of entity and system. As Presiding Judge Xie said, “Grassroots dispute settlement is a rather complicated issue and the presiding judge does not have the power to make the final decision.” The collegial panel, the review committee, the superior court, the party, and the local government can influence the judgment—and might even determine the operational process and results of the law. Working in such a system, settling a case is not as simple as a judge applying the applicable laws. Instead, judges are like bureaucratic clerks; their decisions have to be approved by all levels in a hierarchy of power before they can take legal effect (Zhang 2003).

Second, our law is deeply embedded in a complicated system of social relationships. As we have noticed in the case, local figures, the news media, the procuratorate, and various factors such as favors and “face” influence the practice of the law. The pure logic of the law does not exist in reality.

It is this embedding that defines the unique characteristics of law at the grass roots of Chinese society. The practice of the law is not merely the general and logical application of the law, but is even more a struggle between various powers, interests, and local factors; such complicated and specific factors have shaped its character.

Does this mean that grassroots practice of law is purely a process of instrumentalism? No. Although the law is restricted by various nonlegal factors, no one dares to openly challenge the authority of the law or violate legal procedures publicly. The numerous stages that we see in this case all work within the framework of the law, albeit only just. This is the case for the “to-be-handled-otherwise” strategy taken by the Fourth Division, the documentation of the procuratorate, the one-judge trial in the name of the collegial panel, the unique focus of the work of Presiding Judge Xie, the battle of wits and courage in the mediation, the solemnity and dignity of the hearing, the internal interference in the court, and the various types of external pressure. Even if this framework has been exceeded, the rules still have to be observed on the surface and all the wording and formal dossiers still have to show conformity to the logic of the law. This is particularly clear in the phrase “This is a court of law!” which sternly blocks out all nonlegal claims. In this way, the authority of the law is respected in a nearly ideal state, as perceived in the minds of its advocates.

Mode of Practice of the Law

As economic sociology found that “all economic activity of human beings is embedded in social life” and thus criticized purely rational economic men and urged us to look at the mode of practice of economic activity from a wider perspective (Granovetter 1985), the embedding of the law renders the autonomy theory of the law and the formalism of the law based on it inert. This is particularly the case in the specific “field domains” as surveyed in the article. Thus, we have to look at the mode of practice of the law from a wider perspective in order to find the truth about Chinese law.

What is the Mode of Practice of the Law?

First, as we have seen in this case, the operational process of the law is a struggle. The principal parties of this struggle include the plaintiffs, defendants, their networks of connections, judges, members of the collegial panel, members of the review committee, the superior court, the party, the government, the public security bureau, and the procuratorate. The purpose of this struggle is to maximize personal interests within the framework of the law.

Second, the logic of pragmatism guides the law during its grassroots practice. Specifically, this means that the purpose of the law is to solve specific disputes and problems. However, this does not mean that the law is just like other modes of settling disputes and problems, as advocates of law instrumentalism believe. As a matter of fact, the law is an art with specific techniques from the perspective of practice.

The Law Is an Art

Saying that the law is an art means that law is a process of balancing the various complicated interests of the parties involved without exceeding the limits of the law and the process of utilizing various types of powers, strategies, and skills in daily life to settle various issues. This means that the practice of the law is also an innovative and unduplicatable process, and is not Max Weber’s vending machine that “swallows facts and money from the top and disgorges rulings and reasons at the bottom” (Weber 2001, 206). In addition, law is an art because its perfect application requires long-term practice and not just full theoretical knowledge of it (Jiang 1997). For that reason, Su Li claims that “the judicial experience of Chinese judges, for contemporary Chinese scholars, will surely be and should be the most important source of China’s judicial theories and even legal theories” (Su 2000, 295). That is why the British Lord Chief Justice Kirk once said to his king, “I am quite sure that you learn quickly and that your talents are outstanding, but a judge needs to have twenty years of research to become a qualified legal expert. . . . the law is an art. A person must study it and practice it for years to acquire sufficient knowledge of it” (Corwin 1996, 34–35).

The Law Is About Technique

Saying that the law is about technique refers to law being carried out in practice through the use of certain techniques. In order to gain “legitimacy,” various parties utilize various powers and techniques in daily life, such as stating the truth, reasoning, persuading, pressurizing, conducting separate interviews, empathizing, inducing sympathy, persuading with reason, and pressurizing with the law. Meanwhile, the practice of the law is a set of professional techniques used to realize “conformity to the law”—for example, interrogation skills, negotiation skills, fact-trimming skills, law-narration skills, case-building skills, and so on. Without these techniques, the law is nothing but written provisions. It was in this sense that Jiang Shigong said “The law is more a skill to be practiced than a system of rules” (Jiang 2003, 217).

Logic of Law Practice

The mode of law practice is determined by the logic behind law practice. Our next question may be: What is the deep-set logic of law practice at the grass roots behind all these skills and techniques?

As Bourdieu says, we “must admit that practice has a logic, a logic that is not a logic” (Bourdieu and Wacquant 1998, 133). There is a certain risk in discussing a “logic that is not a logic.” As he cautions, “We should avoid attempting to dig more logic from the processes in which convention develops than they actually contain. The logic of practice can be refined to a certain extent, beyond which logic would have nothing to do with practice” (ibid., 24).

Throughout the foregoing analysis, we have demonstrated the absence of the formalism advocated by mainstream law circles. In showing that legal procedures were taken seriously at every stage of the case (even though this seems to have been done for the mere sake of it), we have also demonstrated the absence of pure instrumentalism, that opposes formalist logic and was particularly widespread in China before the reform of the nation began. Although using law to serve essential work is still often quoted in grassroots courts, “rule of law has become a public belief” and nobody dares to blatantly put themselves above the law.

From our study and analysis of the case, we can summarize the logic observed in the grassroots judicial “field,” particularly grassroots courts, as “the logic of practice based on rational judicial governance.” The reason I refer to it as being based on judicial governance is that such a blurred logic of practice is difficult to summarize effectively. It can only be summarized according to its principal aspects. The term judicial governance logic encapsulates the following circumstances: the application of various strategies and techniques in grassroots legal practice to settle disputes evenly without going beyond the limits of the law or challenging the rationality of its form.

Such a summarization contains the following meanings: (1) the logic of such practice is different from the logic in formalist written law—mechanical application of legal provisions. This is much the way expression in a language is not a mechanical “application” of grammatical rules (Weber 2001, 206); (2) it is different from the logic of instrumentalism before China’s economic reforms—the law is an accessory of the administration and can be used at will by administrative forces; (3) it features a strong orientation to pragmatism and a “serious” orientation to instrumentalism (but is not complete instrumentalism); such a logic is laden with a strong style of pragmatism, which aims to settle disputes and problems. Such abstract and dogmatic “lofty words” such as “serving social justice” and “protecting the dignity of the law” appear only in formal written documents or are only used in a shallow fashion.

In contrast to the opinions of formalists and instrumentalists, who believe that the law is practiced in conformity with formalist rationality or instrumentalist rationality, I believe that judicial administration rationality is primarily being observed in the grassroots practice of the law in China. The conclusion that I have drawn from the analysis in this article is somewhat experimental and is open to further discussion and exploration.

Notes

1. Engel’s “Law Autonomy” includes the following meanings: (1) entity autonomy, that is, independent system of legal provisions; (2) system autonomy, namely, independent judicial system; (3) professional group of occupations; (4) autonomy of methodology, namely, the methodology of pure conceptual law independent of social, political, cultural, and historic explanations (Engel 1997, 46–47).

2. See Deng 2006 for an analysis of the “Right-based Theory” and “Doctrine of Articles of Law.”

3. Mao Zedong was basically against the comparative independence of the law. He once said “Law is essential. But we have our own way of law. I personally prefer the proposals of Ma Qingtian, namely, carrying out investigations to settle problems on site; the law can’t rule the majority of people; Who can memorize so many provisions in the civil and criminal laws? I participated in the compilation of the Constitution, but I don’t remember much now; 90 percent of our rules and regulations are made by the Judicial Bureau. We basically don’t rely on them. We rely on resolutions and meetings four times a year. We don’t rely on civil law and criminal law to keep order. The People’s Congress and the State Council have their own set of rules for meetings. We do it in our own way.” (Liu Shaoqi says, “I think the rule of man is more reliable than the rule of law. The law can only be regarded as a reference.”) Mao’s theory actually focuses on “rule of policy” and “rule of movement,” while law is just a nominal instrument (cited in Forty-year Development of the System of the People’s Congress, 102).

4. All the names of people and places have been changed in this account.

5. Data for 2003 from “Annual of City S.”

6. The “pre-judiciary period” exists in relation to judicial intervention, that is, court intervention, in a narrow sense. As a matter of fact, the activities of security organs, procuratorate, and courts are to be within the scope of judiciary activities in a broader sense. The practical activities of security organs and procuratorate are also within the scope of legal practices. For that reason, they are incorporated in the scope of this analysis.

7. Interviews with Huang Hong, April 28, 2005; code HL05042801.

8. Interviews with the head of the Fourth Criminal Police Division, May 4, 2005; code HL050504–4.

9. Interviews with Officer Yang of the Fourth Criminal Police Division, May 1, 2005; code HL050504–3.

10. The Technical School of City S is regarded as the best occupational school in City S and is highly influential locally.

11. Huang Hong Case Investigation Diary, August 15, 2005.

12. Interviews with Wang, head of the Administration Office of District Z, January 16, 2006; code HL060116–27.

13. Interviews with Xu, head of District Z Procuratorate, January 17, 2006; code HL0606116–29.

14. Interviews with Zeng, presiding judge of District Z Juvenile Delinquency Court, August 28, 2005; code HL050828–15.

15. Article 147 of Criminal Procedural Law 1996, Article 40 of Civil Procedural Law 1991, and Article 46 of Administrative Procedural Law 1990.

16. Interviews with Xie, presiding judge of District Z Juvenile Delinquency Court, August 28, 2005; code HL050828–16.

17. Interviews with Zeng, presiding judge of District Z Juvenile Delinquency Court, August 28, 2005; code HL050828–15.

18. See Article 78 of Criminal Procedural Law 1996.

19. Interviews with Xie, presiding judge of District Z Juvenile Delinquency Court, August 28, 2005; code HL050828–16.

20. I personally observed twelve mediations of this case. Some were heated and fierce, whereas others were more amicable. The verbal expressions were lengthy and so we are not going to quote them here. (Interviews on the Huang Hong case; code: HL050812–14; HL050817–25.) The quotations and analysis of this case are mainly based on three typical scenarios. See Huang 2006, 1–56.

21. Huang 2006.

22. Interviews on the Huang Hong case, statements of QiuTiande and his mother, November 15, 2005; court dossiers not yet numbered.

23. Huang Hong Case Investigation Diary, November 16, 2005.

24. Ibid.

25. Interviews with Xie, presiding judge of District Z Court, January 16, 2006; code HL060116–30.

26. The establishment of a collegial panel is highly influenced by the administrative level; the role of the presiding judge is not assumed by the chief judge but by the person of the highest administrative level. For that reason, the role of presiding judge of the collegial panel, or the presiding judge of the judicial tribunal, is not assumed by Xie, who is the chief judge, but by Zeng, who is the head of the juvenile delinquency court. Although Zeng neither interferes with the case much nor gives many substantive speeches in the trial, Xie has to consider the personal opinions (or merely the attitude) of Zeng, who is the presiding judge in the panel.

27. The same conclusions were drawn in Liu Sida’s study on grassroots courts in Qinghe county of Hebei province and in QiangShigong and Zhao Xiaoli’s interviews with ten grassroots judges. See Liu 2005 and Jiang and Zhao 1998.

28. Interviews with Wu Junwen and his father, January 18, 2006; code HL060118–33.

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