

Justice from Above or Below? Popular Strategies for Resolving Grievances in Rural China*

Ethan Michelson

ABSTRACT Research on rural conflict in China suggests that village leaders are sources of trouble and obstacles to justice and that aggrieved villagers have more trust in and receive more satisfactory redress from higher-level solutions than from local solutions. In contrast to this account of “justice from above,” evidence presented in this article from a 2002 survey of almost 3,000 households supports an alternative theory of “justice from below.” According to this latter theory, the social costs associated with appealing to higher authorities, including the legal system, for help with local disputes tend both to discourage the escalation of disputes and to produce relatively disappointing experiences and outcomes when such routes are taken. Survey respondents indicated that local solutions, often with the involvement of village leaders, were far more desirable and effective than higher-level solutions.

As social and political conflict intensifies in the Chinese countryside, villagers are escalating their disputes in growing numbers to higher authorities.¹ Official efforts to control growing tensions in rural China include material concessions such as abolishing agricultural taxes² as well as procedural reforms such as strengthening and expanding the courts and the official complaints system.³ This

* The survey data on which this article is based were collected with the generous financial support of the Ford Foundation (Beijing); for this I owe a special thanks to Phyllis Chang and Titi Liu. I would also like to thank Feng Shizheng, Guo Xinghua, Han Heng, Li Lulu, Liu Jingming, Lu Yilong, Shen Weiwei, Wang Ping and Wang Xiaobei for making the data collection possible. I am grateful to Joshua Klugman and Jing Tong at Indiana University for their research assistance. Feedback and suggestions from Gardner Bovington, Lijun Chen, Neil Diamant, Sara Friedman, David James, Pierre Landry, James Lee, Sida Liu, Kevin O'Brien, Phillip Parnell, Brian Powell, Benjamin Read, Frank Upham, Jianxun Wang and Dali Yang greatly improved this article. Of course I remain solely responsible for all remaining defects and omissions.

1 Thomas B. Bernstein and Xiaobo Lü, *Taxation without Representation in Contemporary Rural China* (Cambridge: Cambridge University Press, 2003); Thomas B. Bernstein, “Instability in rural China,” in David Shambaugh (ed.), *Is China Unstable?* (Armonk, NY: M.E. Sharpe, 2000), pp. 95–111; and Ian Johnson, *Wild Grass: Three Stories of Change in Modern China* (New York: Pantheon, 2004).

2 Ray Yep, “Can ‘tax-for-fee’ reform reduce rural tension in China? The process, progress and limitations,” *The China Quarterly*, No. 177 (2004), pp. 42–70 and John James Kennedy, “From the fee-for-tax reform to the abolition of agricultural taxes: the impact on township governments in north-west China,” *The China Quarterly*, No. 189 (2007), pp. 43–59.

3 Yuen Yuen Tang, “When peasants sue en masse: large-scale collective ALL suits in rural China,” *China: An International Journal*, Vol. 3, No. 1 (2005), pp. 24–49 and Carl Minzner, “*Xinjiang*: an alternative to formal Chinese legal institutions,” *Stanford Journal of International Law*, Vol. 42, No. 1 (2006), pp. 103–79.

article compares the popularity and effectiveness of competing dispute-resolution strategies from the point of view of the villagers who pursue them. How frequently do aggrieved villagers appeal to local authorities, mobilize the legal system or advance their claims to other authorities in the state bureaucracy? Do they evaluate local solutions more positively than higher-level solutions? Beyond their obvious policy relevance, answers to these questions also contribute to the growing scholarly literature on popular contention in rural China and to our theoretical understanding of access to justice more generally.

Rightful Resistance in Rural China is the capstone of Kevin O'Brien and Lianjiang Li's long-standing collaboration, the fruits of which have nourished the growth of research on rural conflict in China.⁴ Their contributions are both empirical and theoretical: they have developed a conceptual framework for making sense of their rich empirical findings on popular strategies for redressing grievances in the Chinese countryside. Because neither their primary research focus nor their primary research goal has been the evaluation of either the relative *popularity* or the relative *effectiveness* of competing strategies, this article builds on and extends the contributions of O'Brien and Li by tackling head-on the question of justice from above or justice from below. "Justice" here refers to the lay notion of obtaining satisfactory help in efforts to resolve grievances. Such a broad definition compels us to look in all the places to which – and at all the methods by which – villagers report pursuing remedies to their grievances. I present evidence from a survey of grievances and strategies of redress in rural China strongly suggesting that, *ceteris paribus*, local solutions are superior to higher-level solutions. Higher authorities appear no more successful than village leaders at satisfying the needs of complainants. Indeed, by some measures, higher authorities performed significantly worse than village leaders.

Justice from Above

In the prevailing portrait of rural conflict in China, villagers are depicted seeking the help of higher authorities, including the courts, to fight injustices suffered at the hands of tyrannical and predatory local leaders. On the one hand, village leaders try to keep a lid on conflict by obstructing justice, often through intimidation tactics, especially when they are subjects of complaints. From the villagers' perspective, on the other hand, resolution of a grievance typically requires the support of outside authorities – "elite allies" – far removed from the influence of local cadre networks. Local officials are portrayed as corrupt and despotic, whereas the centre is portrayed as relatively upright, sympathetic and responsive. Aggrieved villagers reportedly believe their chances of getting justice improve the further away from local leaders and the closer to the centre they seek help. In their efforts to appeal to higher authorities for intervention,

4 Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance: Contentious Politics in Rural China* (New York: Cambridge University Press, 2006).

villagers have adopted strategies of “rightful resistance”: as they advance their claims to higher authorities, rural complainants display and articulate unwavering loyalty to and faith in the centre and to its policies and laws.⁵ The justice from above hypothesis is distilled in the following passage:

Contrary to understandings of Chinese politics that assume the central state weighs heavier on villagers than its local representatives do, many villagers believe that the higher they go the more likely they are to receive a satisfactory response. In fact, this may be one reason why a popular maxim in the countryside holds: “the Centre is our benefactor (*enren* [恩人]), the province is our relative, the county is a good person, the township is an evil person, and the village is our enemy.” If villagers are able to reach higher levels, either directly or through visiting journalists, relatives outside the village, passing inspection teams, or even through visits by provincial or national leaders, their chance of gaining a hearing and redress may indeed improve.⁶

This position is also what might be termed the *squeaky wheel theory* of dispute escalation – the expectation that the squeaky wheel gets the grease. First, with respect to the “squeaky” part of the theory, “rightful resistance is invariably noisy, public and open.” Second, with respect to the “gets the grease” part, the mobilization of officially sanctioned tactics of contention spawned by China’s “growing rights consciousness” and “rights talk” is both a viable means of redress and portends institutional change.⁷ The squeaky wheel theory is not merely a scholarly proposition but is also represented in popular discourse by the oft-quoted saying “a major ruckus leads to a major resolution, a small ruckus leads to a small resolution, and no ruckus leads to no resolution” (*da nao da jiejie, xiao nao xiao jiejie, bu nao bu jiejie* 大闹大解决, 小闹小解决, 不闹不解决).⁸

It is important, however, to make clear that O’Brien and Li’s primary focus is on one particular strategy of collective contention. Moreover, they have also asserted that “trust in the Center is indeed waning. When rightful resisters turn to higher levels, what awaits them more often than not is disappointment.”⁹ Finally, and by way of anticipating a central argument I make, they acknowledge the problem of selection bias introduced by their research design and therefore recognize the severely circumscribed ability to generalize from their data.¹⁰ This article contributes to an emerging research agenda on rural

5 O’Brien and Li, *Rightful Resistance*; Kevin J. O’Brien, “Rightful resistance,” *World Politics*, Vol. 49, No. 1 (1996), pp. 40–41; and Johnson, *Wild Grass*.

6 Kevin J. O’Brien and Lianjiang Li, “The politics of lodging complaints in rural China,” *The China Quarterly*, No. 143 (1995), p. 778 and Lianjiang Li and Kevin J. O’Brien, “Villagers and popular resistance in contemporary China,” *Modern China*, Vol. 22, No. 1 (1996), p. 43.

7 O’Brien, “Rightful resistance,” pp. 34, 52–55 and O’Brien and Li, *Rightful Resistance*, pp. 4, 29, 99–102, 109–12.

8 Zhao Donghui, “Xinfaang de tizhi pingjing jidai tupo: rang minyi shun chang shang song” (“A bottleneck in the *xinfaang* system in urgent need of a breakthrough: let the sentiments of the people flow upward unobstructed”), *Liao wang xinwen zhoukan* (*Outlook Weekly*), No. 40 (6 October 2003), pp. 23–24; also see O’Brien and Li, *Rightful Resistance*, p. 62 n. 17 and Yongshun Cai, “Managed participation in China,” *Political Science Quarterly*, Vol. 119, No. 3 (2004), p. 442.

9 O’Brien and Li, *Rightful Resistance*, p. 126, also see pp. 94, 104–08.

10 *Ibid.* pp. 114–15.

conflict in China by locating the position of direct appeals to higher authorities in the broader landscape of contention.

Data and Methods

In late January and early February 2002, sociologists at Renmin University of China administered a survey of 2,902 rural households in five provinces (Shaanxi, Henan, Jiangsu, Hunan and Shandong) and one centrally-administered city (Chongqing). They trained local schoolteachers living and working in the survey sites to conduct interviews using a questionnaire designed in collaboration with me. Because the survey sites were not selected randomly but purposively to maximize regional and economic variation, the households interviewed are not intended to be representative of rural China as a whole but only of the six counties from which they were sampled.¹¹ Nevertheless, age, educational, income and occupational distributions in the sample closely match official statistics and published findings from nationally representative samples.

Each respondent was presented with a list of 16 problem types plus an open-ended “other dispute” category, allowing them to report a maximum of 17 and a minimum of zero grievances. The 16 fixed problem items are: housing land; water use; debt collection; family planning; a major consumer purchase; divorce; neighbours; collecting wages; responsibility land (*zeren tian* 责任田, farmland contracted from the village) or township and village enterprise contracting; agricultural taxes and fees (*nongye fudan* 农业负担); intra-family (such as elderly care or property division); dealings with a government agency; personal injury (complainant); property damage/loss; personal injury or property damage (accused); and children’s education. With the exception of residential housing land grievances, which were not time-bound (owing to a design oversight), each grievance by definition occurred with the past five years. With the exception of divorce, wage-collection, dealings with government agencies, personal injury and property theft/damage, the questions were worded in terms of the entire household, not just the respondent.

If respondents reported a grievance, they were then asked whether they “lumped it” (*chi dian'r kui, ren le suan le* 吃点亏, 忍了算了, literally “swallowed the loss”)¹²; resolved the problem themselves in consultation with their adversary (*ziji zhao duifang jie jue wenti* 自己找对方解决问题, termed “bilateral negotiation” in this article); or sought the help of a third party. If respondents indicated seeking the help of a third party, they were asked, through an open-ended question, to describe the third party (“To whom or to which agency or unit did you or a family member seek help?”). The interviewers were instructed

11 The households were clustered in 37 villages in six townships (in six counties). That is, village samples averaged 78 households and township/county samples (one per province/centrally-administered city) averaged 484 households.

12 Usage of the word “lump” to signify avoiding or ignoring disputes stems from William L.F. Felstiner, “Influences of social organization on dispute processing,” *Law & Society Review*, Vol. 9, No. 1 (1974), pp. 63–94.

to record the respondent's description of the third party (or third parties) verbatim on the questionnaire form. In contrast to fixed, closed-ended response categories, the open-ended questions captured real choices in the original voices of the people who made them. I classified each reported course of action (or nonaction) into one of the following categories: lumped it; negotiated bilaterally; approached an informal relation; approached a village leader; approached a higher-level government office; approached the police; or approached the legal system.

To address my central research questions about the relative popularity and effectiveness – the frequency and consequences – of ascending the administrative hierarchy in pursuit of justice, I compare the dispute-resolution performances of local actors within the village (justice from below) and higher-level authorities outside the village (justice from above) as reported by the aggrieved villagers who approached them for help. I defined local actors within villages as informal relations and village authorities. Informal relations include family members, relatives, friends, neighbours and acquaintances, as well as villagers without official authority but with great local esteem and unofficial authority. Village leaders include village cadres, village heads, village Party secretaries, production team leaders, villagers' committee members (including accountants), village Women's Federation representatives, and so on.¹³ I defined higher-level authorities outside the village as government agencies at the township level or higher. This category includes ambiguous references to "township government" (*xiang zhengfu* 乡政府 or *zhen zhengfu* 镇政府) or "county government" (*xian zhengfu* 县政府) as well as specific references to the land administration and the housing administration, for example. Finally, also in the "justice from above" category are the police, lawyers, courts and judicial (*sifa* 司法) offices.¹⁴

The most important empirical test of the justice from above hypothesis uses information elicited from questions asking whether the outcome and the process of third-party intervention exceeded, matched or fell short of expectations. Separating distributive justice (the outcome obtained by the third party) and procedural justice (the method or manner by which a third party handled the process of disputing) permits a more nuanced and textured picture than that gained from only a single dimension of satisfaction.¹⁵

Whereas in my analysis of the frequencies of competing strategies of getting justice I consider a wide range of responses, including lumping it, bilateral negotiation and a variety of third parties, in my analysis of the consequences I only consider various types of trilateral action – action involving a third party. I cannot assess satisfaction either with bilateral solutions or with lumping it because the questionnaire elicited evaluations of trilateral action only.

13 As much as I would have liked to separate Party cadres from administrative cadres, only three response categories (representing three grievances) include explicit reference to village-level Party officials. Vague terms like "village cadre" (*cun ganbu*) undoubtedly include both administrative and Party leaders.

14 Because only five response categories (representing six grievances) include the word "lawyer," I was unable to separate lawyers into their own third-party category.

15 Tom Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990).

Seeking Justice from Above and from Below

Just over half the respondents (55 per cent) reported at least one grievance from the list of 17 on the questionnaire. Almost one-fifth (19 per cent) reported four or more grievances. However, the geographical distribution of grievances is highly skewed. Although the poorer inland Henan and Hunan areas account for only 34 per cent of the total sample, they have 64 per cent of all reported grievances. At the same time, the richer coastal Jiangsu and Shandong areas account for 31 per cent of the total sample and only 7 per cent of all grievances. Because together they account for 76 per cent of all instances of third-party mobilization in pursuit of justice, the Henan and Hunan samples dominate the analyses in this article. At the other end of the spectrum, the Jiangsu and Shandong samples account for merely 6 per cent of all cases of seeking the help of third parties in response to grievances.

The most commonly reported type of grievance is some sort of conflict with a neighbour, followed, in descending order, by grievances over water use, agricultural taxes and some sort of intra-family issue. These four account for 47 per cent of all grievances, and 47 per cent of all households in the sample reported at least one of them. The probability of a grievance escalating into a dispute involving the intervention of a third party varied enormously by grievance type.¹⁶ Although the housing land category ranks sixth in terms of prevalence, it was by far the most likely type of grievance to escalate above and beyond the village, and thus appears to be the most contentiously disputed problem type. Conversely, although agricultural tax grievances rank third in terms of prevalence, they were sixth in terms of the probability of escalating to higher authorities.

Popular reliance on local actors, including village leaders, emerges in high relief from the data. Out of all 4,757 reported grievances, 33 per cent were lumped, 47 per cent were resolved through bilateral negotiation and 20 per cent were brought to third parties. Among the 956 grievances brought to third parties, 36 per cent went to informal relations, 31 per cent to village leaders, 9 per cent to the legal system, 5 per cent to the police and 18 per cent to intervening government agencies (totalling 99 per cent owing to rounding error). This distribution of strategies remains unchanged even when family and neighbour problems (which together account for 28 per cent of all grievances and 28 per cent of all disputes brought to third parties) are excluded from consideration. It is also broadly consistent with Zweig's finding from a 1999 survey in Anhui province that half of all actions taken by villagers in response to

16 Whereas O'Brien and Li use the terms "grievance" and "dispute" somewhat interchangeably, it is useful to conceptualize the transformation of a grievance into a dispute as the shift from bilateral negotiation between an injured party and the alleged offender to the mobilization or intervention of one or more third parties following the alleged offender's rejection of the injured party's claim. William L.F. Felstiner, Richard L. Abel and Austin Sarat, "The emergence and transformation of disputes: naming, blaming, claiming ...," *Law & Society Review*, Vol. 15, Nos. 3–4 (1980–81), pp. 635–36.

problems involved seeking the help of local village leaders and 27 per cent involved seeking the help of higher-level government authorities.¹⁷

Even if they are approached less frequently than either informal relations or village leaders, administrative and government offices above and beyond the village remain of obvious importance in the disputing process. Robert Emerson's call for bringing public bureaucracies into the study of disputing is arguably nowhere more applicable than in China.¹⁸ Indeed, underscoring the salience of higher-level administrative solutions in China is one of O'Brien and Li's greatest contributions.¹⁹ It is to these intervening layers of bureaucracy that I now direct attention. One of the most important channels for complaints is the *xinfang* (信访) system (translated literally as "letters and visits"), a large network of complaints offices vertically spanning many levels of government and horizontally spanning many administrative jurisdictions. Formalized in the early 1950s, *xinfang* offices have multiplied and strengthened in recent years as part of an official effort to contain the growing volume of conflict and to preserve social stability.²⁰ Besides the official *xinfang* administration, there are *xinfang* departments in the State Council, the public security system, the courts, the procuracy and the Women's Federation, just to name a few examples.

Whereas nationwide in 2004 the courts heard about 4.3 million first-instance civil cases and 93,000 first-instance administrative law suits (popularly known as *min gao guan* 民告官, "citizens suing officials" or "suing the local state"),²¹ about 13.7 million petitions were reportedly processed by *xinfang* offices at the county-level or higher in the same year.²² But the importance of petitioning outside the legal system becomes even more apparent when we consider the many other targets of complaints in China besides the *xinfang* system. According to one estimate, only two of every thousand direct appeals to state authorities are made through the official *xinfang* system.²³ The term *shangfang* (上访, literally meaning "to consult a higher authority") is almost synonymous

17 David Zweig, *Democratic Values, Political Structures, and Alternative Politics in Greater China*, Peaceworks No. 44 (Washington, DC: United States Institute of Peace, 2002), p. 45. As with my survey data, Zweig's data do not permit distinguishing village administrators from leaders of the village Party branch.

18 Robert M. Emerson, "Disputes in public bureaucracies," in Susan S. Silbey and Austin Sarat (eds.), *Studies in Law, Politics and Society*, Vol. 12, Part A (Greenwich, CT: JAI Press, 1992), pp. 3–29.

19 O'Brien and Li, *Rightful Resistance*.

20 Zhang Haihong, "Xin Zhongguo xinfang zhidu de youlai yu xianzhuang" ("The origins and current condition of new China's *xinfang* system"), *Tuanjie (Unity)*, No. 1 (2005), p. 11; Minzner, "Xinfang"; Laura Luehrmann, "Facing citizen complaints in China, 1951–1996," *Asian Survey*, Vol. 43, No. 5 (2003), pp. 845–66; and Cai, "Managed participation."

21 *China Statistical Yearbook* (Beijing: State Statistical Publishing House, 2005), Table 23–20.

22 In 2005 the number of petitions reportedly dropped to 12.7 million. "'Xinfang tiaoli' de guanche shishi qude mingxian chengxiao: fang guojia xinfang ju fuze ren" ("Implementation of 'regulations on letters and visits' produces obvious results: an interview with an official at the letters and visits administration"), *Renmin ribao (People's Daily)*, 29 April 2006, p. 5.

23 Zhang Haihong, "The origins and current condition of new China's *xinfang* system," p. 12. Because it implies an obviously implausible 7 billion complaints made annually to government offices, this figure may have been hyperbolically constructed to make the simple point that the *xinfang* system processes only a tiny minority of all direct appeals to the state.

with *xinfang*. Indeed, virtually any government office can be a site for citizen complaints, for direct appeals and petitions.

Perhaps because *xinfang* and *shangfang* are generic and ambiguous terms, not a single one of the 578 unique descriptions of third parties supplied by survey respondents contains either of these words. Nevertheless, the responses reflect a hefty incidence of direct appeals to higher levels of government administration: 26 per cent of all reported third parties contain the words “government” (*zhengfu* 政府) (74 grievances), “agency” (*suo* 所) (77), “department” (*bumen* 部门) (48), “leaders” (*lingdao* 领导) (34), “bureau” or “administration” (*ju* 局) (21), “office” (*ban* 办) (17), “organ” (*jiguan* 机关) (12), “bring to the attention” (*fanying* 反映) (6) or “higher level” (*shangji* 上级) (4).²⁴

Higher-level government and administrative agencies are particularly prominent in housing land disputes. Whereas 4 per cent of grievances over agricultural taxes escalated to a government office above the village, 14 per cent of housing land grievances did so. Indeed, the land administration was reported 33 times as a third party approached for help (27 times in response to housing land grievances) and the real estate administration was reported 11 times (all in response to housing land property grievances). Unsurprisingly, personal injuries were unique in their high likelihood of mobilizing formal law: a full 13 per cent went to the formal legal system and 9 per cent went to the police, compared to overall averages of 2 per cent and 1 per cent respectively.

Since the respondents were not explicitly instructed to supply information about more than one third party, the survey data under-report the incidence of layer-by-layer, hierarchical movement through the state bureaucracy. While the questionnaire only asked for information about *the* third party, 9 per cent of third-party responses contain multiple categories of third parties. The limited information available about movement between forum types clearly reveals that people were relatively reluctant to appeal to higher authorities directly, and more likely to start locally and to move incrementally upwards. Movement between village and township levels appears in 24 responses (representing 25 disputes); movement between township and county levels appears in eight responses (eight disputes). In six disputes the respondent reported three separate administrative agencies approached for help; in four disputes the respondent reported four or more separate administrative agencies. For example, an 82-year-old woman in Hunan reported seeking help with a housing land dispute from the land administration, the water resources administration, the roads administration and the forestry administration.

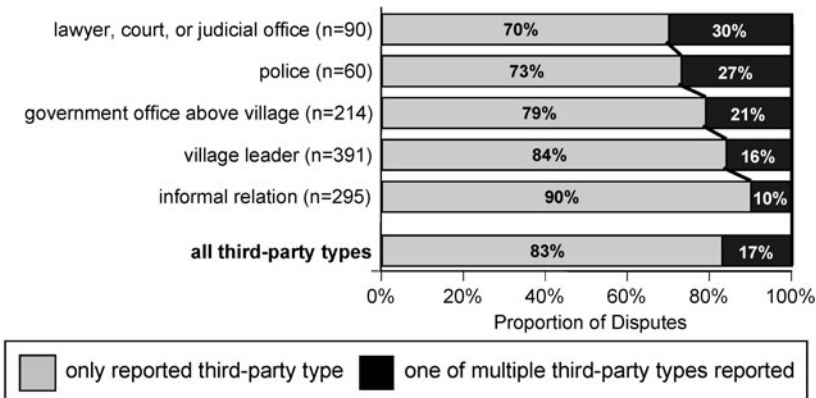
24 These words are not mutually exclusive; some responses contain more than one. What is somewhat surprising is the absence of the mass media from any responses. In Zweig’s survey of villagers in Anhui, “report to mass media” accounted for 5.5% of all actions taken in response to the problems they reported. See Zweig, *Democratic Values*, p. 45.

By establishing that the layers of bureaucracy intervening between the village and the legal system are of considerable importance in the disputing process, the findings presented thus far offer some support to the hypothesis of justice from above. However, on the whole, villagers sought justice from below more frequently than they sought justice from above. Furthermore, the survey data suggest that local third parties (informal relations and village leaders) are remarkably successful at resolving disputes, typically obviating the need to escalate claims to higher-level third parties. Figure 1 shows that only 10 per cent of all disputes brought to informal relations and only 16 per cent brought to village leaders were also brought to additional third-party types. Figure 1 also shows that the higher complainants climbed in pursuit of justice, the more likely they were to have pursued more than one channel of redress. It appears that complainants who approached higher-level third parties did so not right away but rather as last resorts following unsuccessful efforts to secure satisfactory help elsewhere.

Getting Justice from Above and from Below

The previous section addressed the “frequency question”: the relative popularity of competing strategies for resolving disputes. This section addresses the “consequences question”: the types of third parties most likely to disappoint complainants. I calculated ordered logistic regression models of evaluations of outcomes (Model 1, distributive justice) and of procedures (Model 2, procedural

Figure 1: **Movement between Third-Party Categories, Rural China, 2002**



Note:

956 disputes reported by 585 households. $\chi^2=27.1$ (d.f.=4), $p<.001$. In 870 disputes only one third party was reported; in 78 disputes two third parties were reported; and in 8 disputes three third parties were reported. $(1 \times 870) + (2 \times 78) + (3 \times 8) = 1,050 = (90 + 60 + 214 + 391 + 295)$.

justice).²⁵ To ensure that empirical differences between types of third parties are not artefacts of differences between types of disputes, regions or households, I controlled for dispute type, geographical location and selected household characteristics.²⁶ The descriptive characteristics of the variables employed in the analysis are presented in Table 1. Regression results are presented in Table 2.²⁷

In neither Model 1 nor Model 2 is justice more forthcoming from above than from below. Among seemingly identical households in seemingly identical contexts with seemingly identical grievances, government offices above the village were not evaluated more positively than local village leaders in either model. On the contrary, village leaders, like informal relations (including friends and relatives), were evaluated more positively than any source of justice from above. Indeed, with respect to the delivery of satisfactory outcomes (Model 1), higher-level government offices were evaluated slightly more negatively than local village leaders (although the difference is not statistically significant). With respect to process (Model 2), higher-level government offices were evaluated dramatically (and statistically significantly) more negatively than local village leaders. Furthermore, in both models, all else being equal, legal institutions and the police were evaluated significantly more negatively than local village leaders.²⁸

To aid the interpretation of the odds ratios presented in Table 2, Figure 2 presents predicted probabilities. Whereas village leaders and higher-level government offices were evaluated similarly in terms of outcome, village leaders

25 When more than one type of third party was reported, I *coded upwards*: I privileged higher-level over lower-level third parties on the assumption that the one further away from the village was more likely to be the final, decisive or most recent third party approached for help, and thus the one being evaluated. To ensure the results are robust to a variety of coding methods, I replicated all results after recoding the third parties in a manner that privileges lower-level third parties over higher-level third parties. Coding changes do not significantly alter the empirical results; the substantive conclusions I draw from all results, regardless of coding method, are identical.

26 Because they fall entirely outside the scope of O'Brien and Li's research on conflicts between villagers and local government authorities, I excluded "intra-family" and "divorce" disputes from the regression analysis. However, because "neighbour" disputes conceivably include conflicts with political leaders, especially if land resources or borders are at stake, I kept them in the analysis. Regardless of whether these dispute types are included or excluded, the results remain virtually identical and in no way change my substantive conclusions.

27 An additional measure I took to ensure that variation in evaluations of third parties is not an artefact of variation in the difficulty of the disputes brought to them was to cross-tabulate satisfaction by third party separately for each dispute type. The bivariate cross-tabulations confirm the main findings presented here. In the regression models, whether or not multiple third parties were reported (a possible proxy for the stickiness or intractability of the dispute and for how long it eluded resolution) is not statistically significant. Other household characteristics (such as the presence of political leaders) are not statistically significant. I replicated all findings with multilevel models containing random intercepts calculated using HLM. HLM results almost perfectly mirror the results from the fixed-effects models presented in this article and entirely support my substantive conclusions. I am grateful to Joshua Klugman for his technical assistance.

28 In the remote chance ambiguously identified local police substations (*paichusuo* 派出所) belonged to villages (rather than to townships or higher levels of government), I replicated all analyses after recoding as "village leaders" the 32 instances of approaching a "police" authority of an unspecified administrative level. Not surprisingly, this coding change reduces the "police" coefficient in Model 1 from 2.242 to 1.212 ($p=.655$) and in Model 2 from 2.431 to 1.484 ($p=.416$). I would like to thank James Lee for bringing this issue to my attention. However, this highly conservative coding change has no effect whatsoever on the other coefficients. Most importantly, the "government office above village" coefficient remains stable and of similar statistical significance in Model 2.

Table 1: Descriptive Statistics of Variables

| | Mean | St Dev | Min | Max | N |
|-------------------------------------|--------|--------|-------|-----|-----|
| <i>Dependent variables</i> | | | | | |
| Evaluations of dispute outcome | 2.288 | .621 | 1 | 3 | 825 |
| 1. exceeded expectations | .090 | .286 | 0 | 1 | 825 |
| 2. met expectations | .532 | .499 | 0 | 1 | 825 |
| 3. failed to meet expectations | .378 | .485 | 0 | 1 | 825 |
| Evaluations of dispute process | 2.229 | .624 | 1 | 3 | 809 |
| 1. exceeded expectations | .106 | .308 | 0 | 1 | 809 |
| 2. met expectations | .559 | .497 | 0 | 1 | 809 |
| 3. failed to meet expectations | .335 | .472 | 0 | 1 | 809 |
| <i>Third party approached</i> | | | | | |
| Informal relation | .326 | .469 | 0 | 1 | 862 |
| Village leader | .338 | .473 | 0 | 1 | 862 |
| Government office above village | .196 | .397 | 0 | 1 | 862 |
| Police | .058 | .234 | 0 | 1 | 862 |
| Lawyer, court, or judicial office | .082 | .275 | 0 | 1 | 862 |
| <i>Household characteristics</i> | | | | | |
| No. members | 3.853 | 1.108 | 1 | 7 | 862 |
| Mean age | 31.772 | 10.383 | 13.25 | 75 | 862 |
| Mean years of education (if age>14) | 6.687 | 2.039 | 1 | 14 | 862 |
| Subjective relative economic status | 3.066 | .874 | 1 | 5 | 862 |
| <i>Dispute type</i> | | | | | |
| Water use | .039 | .195 | 0 | 1 | 862 |
| Debt collection | .037 | .189 | 0 | 1 | 862 |
| Family planning | .103 | .304 | 0 | 1 | 862 |
| Major consumer purchase | .051 | .220 | 0 | 1 | 862 |
| Neighbour | .197 | .398 | 0 | 1 | 862 |
| Collecting wages | .035 | .183 | 0 | 1 | 862 |
| Farmland or enterprise contracting | .094 | .292 | 0 | 1 | 862 |
| Agricultural taxes | .068 | .253 | 0 | 1 | 862 |
| Dealings with a government agency | .061 | .240 | 0 | 1 | 862 |
| Personal injury | .058 | .234 | 0 | 1 | 862 |
| Property damage/loss | .057 | .232 | 0 | 1 | 862 |
| Children's education | .030 | .171 | 0 | 1 | 862 |
| Accused of personal injury of theft | .010 | .102 | 0 | 1 | 862 |
| Housing land | .130 | .336 | 0 | 1 | 862 |
| Other | .028 | .165 | 0 | 1 | 862 |
| <i>County sample</i> | | | | | |
| Jimo (即墨), Shandong | .027 | .161 | 0 | 1 | 862 |
| Ru'nan (汝南), Henan | .550 | .498 | 0 | 1 | 862 |
| Taicang (太仓), Jiangsu | .038 | .192 | 0 | 1 | 862 |
| Zhong (忠), Chongqing | .077 | .266 | 0 | 1 | 862 |
| Yuanjiang (沅江), Hunan | .187 | .390 | 0 | 1 | 862 |
| Hengshan (横山), Shaanxi | .122 | .327 | 0 | 1 | 862 |

Note:

Subjective relative economic status is measured as the response to the following question: "Compared to other families in your village, do you feel your family's economic situation is better or not?" Response categories form a five-point scale: (1) My family's economic situation is much worse than other families; (2) somewhat worse than the typical family; (3) about the same as others; (4) somewhat better than other families; and (5) much better than that of other families.

Table 2: **Determinants of Evaluations of Dispute Outcomes and Experiences, Odds Ratios from Ordered Logistic Regression Models**

| | (1) Disappointment with outcome | (2) Disappointment with process |
|--|---------------------------------------|---------------------------------------|
| <i>Third party help sought</i> | | |
| Informal relation | .724† | 1.043 |
| Government office above village | 1.097 | 1.585** |
| Police | 2.242** | 2.431** |
| Lawyer, court, or judicial office | 3.706*** | 3.968*** |
| Village leader (comparison group) | | |
| <i>Household characteristics</i> | | |
| No. members | 1.001 | 1.048 |
| Mean age | .993 | .995 |
| Mean years of education | 1.004 | 1.006 |
| Subjective relative economic status | .890 | .859 |
| <i>Dispute type</i> | | |
| Water use | .882 | 1.664† |
| Debt collection | 1.731 | 3.093** |
| Family planning | .922 | 1.522 |
| Major consumer purchase | .695 | .822 |
| Neighbour | 1.475† | 1.600* |
| Collecting wages | 1.617 | 1.807† |
| Farmland or enterprise contracting | 1.704* | 1.529* |
| Agricultural taxes | 2.110* | 1.796† |
| Dealings with a government agency | 2.607* | 2.567*** |
| Personal injury | 1.196 | 1.266 |
| Property damage/loss | 3.599* | 3.008** |
| Accused of personal injury or theft | 1.514 | 1.885 |
| Children's education | 1.399 | .450 |
| Other | 4.081*** | 1.756 |
| Housing land (comparison group) | | |
| <i>County sample</i> | | |
| Jimo (即墨), Shandong | 2.608 | 2.658 |
| Ru'nan (汝南), Henan | 1.708 | 1.741 |
| Taicang (太仓), Jiangsu | 1.142 | .764 |
| Zhong (忠), Chongqing | 2.138 | 2.642 |
| Yuanjiang (沅江), Hunan | 2.958 | 2.426 |
| Hengshan (横山), Shaanxi (reference group) | | |
| N | | |
| Disputes | 825 | 809 |
| Households | 519 | 511 |
| Villages | 32 | 32 |

Notes:

† $p \leq .10$ * $p \leq .05$ ** $p \leq .01$ *** $p \leq .001$ (two-tailed tests). The dependent variables have three values: (1) exceeded expectations, (2) met expectations, and (3) failed to meet expectations. An odds ratio of 1.000 means one's chances of evaluating a third party one point more negatively (on the three-point scale) neither increase nor decrease. An odds ratio of 2.000 means one's chances double. An odds ratio of .500 means one's chances halve. The models were calculated using Stata's commands for survey data that adjust standard errors for sampling designs in which observations are clustered within strata (counties) and primary sampling units (villages), and in which sampling weights (county-level number of rural households ÷ county sample size) are applied. The results, and the conclusions on which they are based, are robust to a variety of methods. For example, the results are virtually identical without sampling weights; likewise they do not change if robust standard errors are applied (instead of adjusting for design effects).

were about 50 per cent more likely than higher-level government offices to “exceed expectations” and about 25 per cent less likely to “fail to meet expectations” regarding process. These findings are consistent with other evidence that village leaders are sometimes the allies of villagers in their pursuit of justice.²⁹ At the same time, relative to every other type of third party, police and courts were more likely to “fail to meet expectations” and less likely either to “meet expectations” or to “exceed expectations” with respect to both performance indicators.³⁰

Although, on the whole, the survey evidence fails to support the justice from above hypothesis, the particular effect of housing land disputes suggests possibilities for justice from above under limited circumstances. Since the regression coefficients for dispute type presented in Table 2 are all in comparison to housing land disputes (the omitted reference group), the data show that housing land disputes, the largest source of direct appeals to higher levels of the state bureaucracy, were more likely than almost every other dispute type to produce satisfaction.

However, an analysis of the few discrepancies between distributive justice and procedural justice further challenges the justice from above account. Although evaluations of outcome and process are highly correlated,³¹ the distributions of the dependent variables presented in Table 1 and the predicted probabilities presented in Figure 2 show that the survey respondents were somewhat more satisfied with procedures than with outcomes. Indeed, 7 per cent of all reported third parties approached in all 956 reported disputes met or exceeded expectations with respect to process even when they failed to deliver the desired outcome.³² Among all third-party types, village leaders were the most likely to be perceived as fair even when they failed to deliver what complainants wanted. When distributive expectations were not met, village leaders were more than three times more likely than government offices above the village to meet or exceed procedural expectations (32 per cent versus 9 per cent).³³

29 Patricia M. Thornton, “Comrades and collectives in arms: tax resistance, evasion, and avoidance strategies in post-Mao China,” in Peter Hays Gries and Stanley Rosen (eds.), *State and Society in 21st-century China: Crisis, Contention, and Legitimation* (New York & London: RoutledgeCurzon, 2004), pp. 87–104 and Edward Cody, “China’s rising tide of protest sweeping up Party officials: village chiefs share anger over pollution,” *The Washington Post*, 12 September 2005, p. A01.

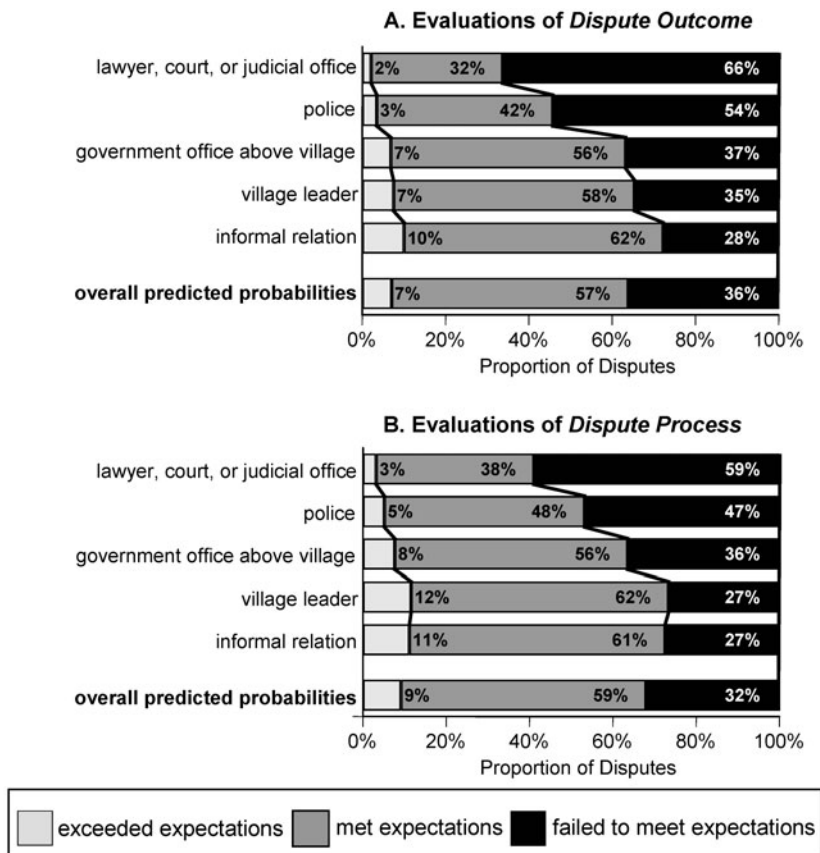
30 Moreover, the higher a dispute escalated, the lower its likelihood of finding *any* resolution. Although respondents had the opportunity to indicate whether a dispute remained unresolved (i.e. still in process), in only 36 (or 4%) of all reported disputes did they do so. However, disputes brought to higher-level third parties above and beyond the village are almost four times more likely than disputes brought to village leaders to elude resolution (6.2% versus 1.7%; a χ^2 equality test shows this difference to be significant at $p=.004$).

31 Evaluations of outcome and process are identical in 81% of all reported disputes and are correlated at $R=.72$.

32 By contrast, only 3% of all reported third parties met or exceeded *outcome* expectations when they failed to meet *procedural* expectations. Procedural justice overrode distributive justice more frequently than vice versa: feeling good about the process when the outcome was disappointing was twice as likely as feeling good about the outcome when the process was disappointing.

33 A χ^2 equality test shows this difference to be significant at $p=.002$. However, when they failed to meet procedural expectations, village leaders and higher-level government offices were equally likely (11% and 9% respectively) to meet or exceed distributive expectations. Put another way, although the likelihood that procedural justice overrode distributive justice was greatest when village leaders were approached, the likelihood that distributive justice overrode procedural justice was similarly low among all third-party types.

Figure 2: **Predicted Probabilities of Evaluations of Disputing Outcome and Process by Third-Party Category, Rural China, 2002**



Note:

The above estimated probabilities were calculated from the regression models presented in Table 2. The “overall predicted probabilities” were calculated by letting all independent variables equal their sample means. The predicted probabilities for the various third parties were calculated by holding all variables constant at their means (as presented in Table 1) except the third-party variables. The response categories comprising each third party type do not always sum to 100% owing to rounding error.

These findings are consistent with recent estimates that only two out of every thousand rural petitioners find any sort of resolution.³⁴ *Xinfang* personnel lament their own ineffectiveness in resolving the grievances of those who approach them, and have reportedly coined the following saying to express their impotence: “We are in charge of everything but can take charge of nothing; we

34 Zhao Ling and Su Yongtong, “Guonei shou fen xinfang baogao huo gaoceng zhongshi” (“China’s first report on petitioning system received high-level attention”), *Nanfang zhoubao* (*Southern Weekend*), 4 November 2004.

cannot overlook anything but are able to neglect everything” (*Shenme dou guan, shenme dou guanbuliao; shenme dou bu neng bu guan, shenme ye dou keyi bu guan* 什么都管, 什么都管不了; 什么都不能不管, 什么也都可以不管).³⁵ When they do try to resolve grievances, *xinfang* personnel may forward supporting documents brought by the complainant to the relevant government agency – which, more often than not, had already been approached by the complainant to no avail – and send the complainant home. Another method is to summon leaders from the complainant’s place of residence to accompany the complainant home where they are to resolve the matter amongst themselves. In either case, the actions of the *xinfang* office serve to bring the grievance full circle and to bring “the destination back to the point of origin” (*zhongdian you hui dao qidian* 终点又回到起点).³⁶ By prolonging the search for justice from above, the futility of petitioning the state only contributes to the seemingly inexorable expansion of the ranks of rural petitioners. Consequently, prominent academics, including Yu Jianrong (于建嵘) at the Chinese Academy of Social Sciences and He Weifang (贺卫方) at Peking University, have called for either seriously reforming or altogether eradicating the *xinfang* system.³⁷

But the survey data suggest that appeals to the judicial system, including the courts and lawyers, are even more likely than direct appeals to state agencies to produce disappointment. Compared to village leaders, the legal system is 90 per cent more likely to fail to meet outcome expectations and more than 100 per cent more likely to fail to meet procedural expectations. These findings support Bernstein and Lü’s bleak assessment of the accessibility and effectiveness of the court system for the problems facing China’s villagers.³⁸ Because local governments continue to appoint judges and supervise their decisions, perhaps we should not be surprised that the court system serves the political needs of the state and the Party more than the legal needs of aggrieved individuals seeking its help.³⁹ Indeed, recent research suggests the growing population of rural petitioners is, to some measure, a

35 Zhao Donghui, “A bottleneck in the *xinfang* system,” p. 23.

36 Zhao Shukai, “Shangfang shijian he xinfang tixi – guanyu nongmin jin jing shangfang wenti de diaocha fenxi” (“Complaint incidents and the *xinfang* system: an analysis of a survey on the problem of peasants coming to Beijing to make complaints”), unpublished report dated December 1999, accessed 3 July 2006 at http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2355, on file with author.

37 Yu Jianrong, “Zhongguo xinfang zhidu pipan” (“A critique of China’s complaint system”), *Zhongguo gaige (China Reform)*, No. 2 (2005), pp. 26–28; Li Li, “Judicial independence should come first,” *Beijing Review*, No. 45 (10 November 2005). However, the survey data suggest, albeit tentatively, that discontent with higher-level administrative agencies is concentrated not at the highest levels but at the township level. Of the 172 reported instances of seeking help from a “government office above village,” in 71 the word “township” (*xiang* or *zhen*) was recorded. When a category created from these 71 instances is introduced, its huge effect on discontent (relative to the omitted “village leader” reference category) suggests that village and township leaders were not of the same ilk, that village cadres were not merely lackeys doing the bidding of township cadres. Compare to O’Brien and Li, *Rightful Resistance*, p. 43. However, because we cannot assume that ambiguous, unspecified government agencies are located above the township, more definitive conclusions must await better data.

38 Bernstein and Lü, *Taxation*, pp. 190–96.

39 Young Nam Cho, “Symbiotic neighbour or extra-court judge? The supervision over courts by Chinese local people’s congresses,” *The China Quarterly*, No. 176 (2003), pp. 1068–83; Pitman B. Potter, “The Chinese legal system: continuing commitment to the primacy of state power,” *The China Quarterly*, No.

consequence of the failure of the courts. Almost two-thirds of the 632 petitioners surveyed in Beijing in 2004 had tried local courts first. Of these, 43 per cent reported that the courts had refused to hear their case.⁴⁰ The failure of higher-level institutions to absorb complaints, which subsequently spill over to other parts of the state bureaucracy, has been labelled an “upside-down pyramid” (*dao jin zita* 倒金字塔).⁴¹

Not only do courts reject the cases of China’s aggrieved villages, but lawyers, too, obstruct justice from above by screening out rural clients. According to a study of screening practices in the Beijing Bar, lawyers do their best to avoid representing shrewd and unyielding “rightful resisters” (*diaomin* 刁民). Petitioners and migrant workers are perceived by lawyers as low-quality (*suzhi di* 素质低) troublemakers who, by reneging on a fee agreement or by filing a malpractice suit, for example, may turn their tactics of resistance against their own lawyers.⁴² Although it is ironic that fitting the profile of a “rightful resister,” of someone who aggressively mobilizes legal resources, is a liability when it comes to hiring a lawyer, lawyers’ aversion to representing some of the neediest members of Chinese society may help explain why villagers report so much difficulty obtaining justice from above. Moreover, the cultural stereotypes about the “low quality” of villagers that inform lawyers’ profiling practices undoubtedly shape screening practices elsewhere, including the petition filing sections of lower courts, legal aid offices and other organizations responsible for helping people in need.

The sections below identify and discuss methodological and theoretical limitations with existing accounts of justice from above. Surmounting these limitations weakens support for accounts of justice from above and strengthens an alternative account of justice from below.

Methodological Limitations of Justice from Above Research

The study of disputing in general and disputing in China in particular must overcome forum bias and grievance bias. Forum bias refers to the restriction of the scope of analysis to formal legal and administrative settings and to the

footnote continued

159 (1999), pp. 673–83; Margaret Y.K. Woo, “Law and discretion in the contemporary Chinese courts,” *Pacific Rim Law & Policy*, Vol. 8, No. 3 (1999), pp. 581–615; Qianfan Zhang, “The people’s court in transition: the prospects of the Chinese judicial reform,” *Journal of Contemporary China*, Vol. 12, No. 34 (2003), pp. 69–101; Sida Liu, “Beyond global convergence: conflicts of legitimacy in a Chinese lower court,” *Law & Social Inquiry*, Vol. 31 (2006), pp. 75–106; and Jerome A. Cohen, “Reforming China’s civil procedure: judging the courts,” *American Journal of Comparative Law*, Vol. 45 (1997), pp. 793–804.

40 Zhao and Su, “China’s first report on petitioning system,” and Yu Jianrong, “A critique of China’s complaint system,” p. 27.

41 Zhang Liping, “Ba wenti jie jue zai jiceng” (“Resolve problems at the lowest levels”), *Gongchandangyuan (Communist Party Member)*, Vol. 5 (2005), p. 11.

42 Ethan Michelson, “The practice of law as an obstacle to justice: Chinese lawyers at work,” *Law & Society Review*, Vol. 40, No. 1 (2006), pp. 18–21.

exclusion of alternative third-party actors and forums. Grievance bias, meanwhile, refers to the exclusion of the less thorny problems more amenable to lower-level, local solutions and to the disproportionate inclusion of the intractable grievances more likely to elude local resolution and to percolate up to higher-level legal or administrative forums. Of course in practice these two types of selection bias overlap and are difficult to disentangle: higher-level forums tend to select for tougher grievances. Therefore these two sources of bias can be conceptualized as a general selection bias syndrome.

To illustrate the problem of selection bias in the simplest terms, the squeaky wheel theory proceeds from research designs that systematically exclude from consideration the squeaky wheels that *do* get the grease at lower levels, obviating the need to escalate to higher levels. If one's research design captures only the most troublesome problems brought to higher authorities, by definition one is limiting the scope of analysis to the problems that eluded successful resolution at earlier stages. Elsewhere in the world, too, an appeal for help to a higher authority implies a history of prior failures at local levels including bilateral negotiation:

Most disputes are resolved by the parties themselves and only those cases involving anger, intractable problems, or both end up before judges and mediators. Hence, authorities are constantly faced with the most difficult cases In such a situation, it is seldom possible to give both parties what they want or feel they deserve. Dissatisfaction may, therefore, be inevitable.⁴³

Selection bias can also be illustrated by the phenomenon of the "three 80-percents." It is widely reported that over 80 per cent of complaints made in the *xinfang* system have been determined to be complaints about basic-level government, complaints made for good reason, or complaints that should have been resolved by local agencies.⁴⁴ Research designed to capture the most extreme problems that had already escalated to full-blown disputes brought to higher-level third parties, and that accordingly ignore problems that did not escalate, will exaggerate assessments of the magnitude and severity of local problems and negatively bias assessments of the dispute-resolution capacity of village leaders. This type of selection bias is known alternately as "sample truncation" and "selecting on the dependent variable."⁴⁵

The justice from below position is built on a research design that begins far upstream with grievances that may be abandoned, may be resolved locally or may ultimately be pursued at higher levels. Only by including all these

43 Tom Tyler, "Citizen discontent with legal procedures: a social science perspective on civil procedure reform," *American Journal of Comparative Law*, Vol. 45 (1997), pp. 871–904.

44 Zhao Donghui, "A bottleneck in the *xinfang* system," p. 24 and Zhang Liping, "Resolve problems at the lowest levels." In another published report, the various "80 per cents" are actually "over 80%" and refer to collective complaints. A fourth "80%" is sometimes cited: "over 80% of complaints reflect problems created by the reform and development process." Zhang Haihong, "The origins and current condition of new China's *xinfang* system," p. 12.

45 Christopher Winship and Robert D. Mare, "Models for sample selection bias," *Annual Review of Sociology*, Vol. 18 (1992), pp. 327–50 and Barbara Geddes, "How the cases you choose affect the answers you get: selection bias in comparative politics," *Political Analysis*, Vol. 2 (1990), pp. 31–50.

possibilities can the relative effectiveness of appealing to higher authorities be fairly assessed. A proper evaluation of the impact of lawyers and courts, for example, demands some knowledge about the problems that do *not* avail themselves of lawyers and courts but rather are dealt with through alternative means. Similarly, if we want to evaluate how effectively labour laws protect aggrieved workers, we must make comparisons with the labour problems that do not get processed according to official labour grievance procedures. Finally, to draw meaningful conclusions about the effectiveness of administrative litigation presupposes some knowledge about citizens' grievances with government agencies that do not end up as legal petitions. In short, in the absence of the denominator, the numerator is of limited value.

Theoretical Limitations of Justice from Above Research

When conflict erupts in rural contexts in which most aspects of human life are deeply embedded in dense networks of durable social relationships, local solutions are normally preferable to outside solutions. This finding has been replicated repeatedly in studies of why people choose and how they experience state law versus customary, indigenous law in Africa,⁴⁶ the United States⁴⁷ and Mexico,⁴⁸ for example.⁴⁹ A central theoretical proposition in the ethnographic literature on disputing is that social relationships discourage direct appeals to the state, including formal legal action, and that there are important social limits and social disincentives to approaching higher authorities for help with local problems. Thus, the theory of justice from below posits that people choose third parties bearing in mind the social costs of escalating disputes. While people have a significant measure of legal freedom to choose dispute forums, their choices are also socially constrained. Even when offenders face potential legal liability, their adversaries face a palpable social liability for mobilizing higher authorities including the law.

At the root of this theoretical proposition is the distinction between multiplex and simplex relationships. While multiplex relations are diffuse and affective,

46 Max Gluckman, *The Judicial Process among the Bartose of Northern Rhodesia* (Manchester: The University Press, 1955); P.H. Gulliver, "Dispute settlement without courts: the Ndendeuli of southern Tanzania," in Laura Nader (ed.), *Law in Culture and Society* (Chicago: Aldine, 1969), pp. 24–68; and John L. Comaroff and Simon Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981).

47 Karl L. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman, OK: University of Oklahoma Press, 1941).

48 Laura Nader, "Choices in legal procedure: Shia Moslem and Mexican Zapotec," *American Anthropologist*, Vol. 67, No. 2 (1965), pp. 394–99; June F. Collier, *Law and Social Change in Zinacantan* (Stanford, CA: Stanford University Press, 1973); Philip Parnell, "Village or state? Competitive legal systems in a Mexican judicial district," in Laura Nader and Harry F. Todd Jr. (eds.), *The Disputing Process – Law in Ten Societies* (New York: Columbia University Press, 1978), pp. 315–50; and Philip Parnell, *Escalating Disputes: Social Participation and Change in the Oaxacan Highlands* (Tucson, AZ: The University of Arizona Press, 1988).

49 For additional cases from around the world, including Turkey and Lebanon, see Nader and Todd, *The Disputing Process*, and Richard L. Abel, "A comparative theory of dispute institutions in society," *Law & Society Review*, Vol. 8, No. 2 (1974), pp. 217–347.

spanning multiple domains (such as neighbours who are also colleagues whose children attend the same school), simplex relationships are limited to a single domain.⁵⁰ In general, the closer the relationship between two parties approaches the multiplex end of the continuum, the less likely formal legal action (including litigation) will occur in the event of a dispute between these two parties. Insofar as “village dispute processes effectively preserve ongoing, multiplex, affectional relations,”⁵¹ the likelihood of escalation to higher authorities increases in proportion to the unimportance of the complainant’s relationship with the adversary.⁵²

More so than their urban counterparts, villagers embroiled in disputes risk damaging multiplex relationships.⁵³ “Today they are disputing in court, tomorrow they may be collaborating in the same work party.”⁵⁴ It is worth repeating Gluckman’s oft-quoted statement that “the parties (and often the judges too) are normally involved in complex or multiplex relations outside the court-forum, relations which existed before and continue after the actual appearance in court.”⁵⁵ Owing to the importance of multiplex relationships, “villagers avoid and resent the ‘law powers’ of their fellow villagers. They prefer to negotiate on an informal basis, since the outcomes are more flexible and negotiation as a process is part of everyone’s daily, routinized behavior.”⁵⁶ Thus, “courts are resorted to where an ongoing relationship is ruptured.”⁵⁷ Of course the centrality of multiplex social relationships does not preclude the

50 Gluckman, *The Judicial Process*.

51 June Starr, “Turkish village disputing behavior,” in Nader and Todd, *The Disputing Process*, p. 138.

52 Felstiner “Influences of social organization,” and William L.F. Felstiner, “Avoidance as dispute processing: an elaboration,” *Law & Society Review*, Vol. 9, No. 4 (1975), pp. 695–706. As Marc Galanter writes: “Which human encounters are we likely to find regulated at the ‘official’ end of our scale and which at the ‘private’ end? It is submitted that location on our scale varies with factors that we might sum up by calling them the ‘density’ of the relationship. That is, the more inclusive in life-space and temporal span a relationship between parties, the less likely it is that those parties will resort to the official system and more likely that the relationship will be regulated by some independent ‘private’ system.” Marc Galanter, “Why the ‘haves’ come out ahead: speculations on the limits of legal change,” *Law & Society Review*, Vol. 9, No. 1 (1974), p. 130. Similarly, according to Donald Black, “If we know that the relational distance between the adversaries differs in two otherwise identical cases, we can predict which is likely to attract more law ... We cannot be certain, but our ability to anticipate the result is vastly improved. In sum: *Law varies directly with relational distance*.” Donald Black, *Sociological Justice* (New York: Oxford University Press, 1989), p. 12, emphasis in original.

53 Gluckman, *The Judicial Process*; Jan Van Velsen, “Procedural informality, reconciliation, and false comparisons,” in Max Gluckman (ed.), *Ideas and Procedures in African Customary Law* (London: Oxford University Press, 1969), pp. 137–52; Felstiner “Influences of social organization”; Felstiner, “Avoidance as dispute processing”; David Engel, *Code and Custom in a Thai Provincial Court* (Tucson, AZ: The University of Arizona Press, for the Association of Asian Studies, 1978); and David Engel, “The oven bird’s song: insiders, outsiders, and personal injuries in an American community,” *Law & Society Review*, Vol. 18, No. 4 (1984), pp. 551–82.

54 Van Velsen, “Procedural informality,” p. 138, cited in Nader and Todd, *The Disputing Process*, pp. 12–13.

55 Max Gluckman, *Ideas and Procedures in African Customary Law* (London: Oxford University Press, 1969), p. 22, cited in Laura Nader, “From disputing to complaining,” in Donald Black (ed.), *Toward a General Theory of Social Control*, Vol. 1: Fundamentals (Academic Press, 1984), p. 77.

56 Starr, “Turkish village disputing behavior,” p. 149.

57 Galanter, “Why the ‘haves’ come out ahead,” p. 108.

possibility of litigation in rural settings, but it encourages local courts to adopt mediation, conciliation and negotiation.⁵⁸

Finally, direct appeals to higher authorities carry the palpable risk of revenge, the threat of local retribution in response to the mobilization of legal solutions. Parnell – echoing Collier’s statement that “few plaintiffs take their cases to San Cristobal [the state court] because they prefer restitution and reconciliation to revenge and continuing hostility” – writes, “those who choose the state are faced with the prospect of revenge and continuing hostility.”⁵⁹ Revenge not only reflects the failure of state coercion,⁶⁰ but also the intended consequence of state power⁶¹ and the unintended consequence of legal mobilization. Zweig underscores the importance of revenge and retribution as a disincentive in rural China to appeal to higher authorities: “In fact, winning a case is not always the best solution as cadre revenge may negate a victory in court. According to one article, family members said that: ‘No matter whether you win or lose, you lose. You still have to live here and the township government won’t forgive you’.”⁶²

Conclusions and Directions for Future Research

I have endeavoured to demonstrate in this article that, after expanding the scope of empirical observation to a wider array of third-party actors and forums than has been measured in previous research, satisfactory resolution to disputes appears to be more forthcoming from local, less formal third parties than from higher-level, more formal third parties. This empirical pattern, revealed through survey data from rural China on real-life grievances and real-life strategies of redress, is inconsistent with “justice from above” expectations that complainants in rural China fare better appealing to higher levels of the state than to local authorities. My findings also point to the importance of moving beyond the study of generalized political trust based on questions posed to villagers in the abstract without reference to actual, concrete encounters with the institutions they are asked to evaluate.⁶³

The empirical patterns I have revealed reaffirm an older “justice from below” research tradition based on research in a variety of societies around the world

58 See Robert Kidder, “Courts and conflict in an Indian city: a study in legal impact,” *Journal of Commonwealth Political Studies*, Vol. 11, No. 2 (1973), pp. 121–39; Frank Upham, “Who will find the defendant if he stays with his sheep? Justice in rural China,” *Yale Law Journal*, Vol. 114, No. 7 (2005), pp. 1675–1718; and Liu, “Conflicts of legitimacy.”

59 Parnell, “Village or state?” p. 317 and Collier, *Law and Social Change*, p. 228.

60 Jonathan Rieder, “The social organization of vengeance,” in Black, *Toward a General Theory of Social Control*, Vol. 1, pp. 131–62.

61 Richard Madsen, “The politics of revenge in rural China during the Cultural Revolution,” in Jonathan N. Lipman and Stevan Harrel (eds.), *Violence in China: Essays in Culture and Counterculture* (Albany, NY: State University of New York Press, 1990), pp. 175–201.

62 David Zweig, “To the courts or to the barricades: can new political institutions manage rural conflict?” in Elizabeth J. Perry and Mark Selden (eds.), *Chinese Society: Change, Conflict and Resistance*, 2nd ed. (London & New York: RoutledgeCurzon, 2003), pp. 117–19.

63 Compare to Lianjiang Li, “Political trust in rural China,” *Modern China*, Vol. 30, No. 2 (2004), pp. 228–58.

consistently identifying local informal solutions as the preferred and more effective means of balancing the needs of justice with the imperative to preserve local social relationships. Zhang Yimou's (张艺谋) classic 1992 film, *The Story of Qiuju* (*Qiuju da guansi* 秋菊打官司), illustrates the theoretical proposition about the social limits and social costs of petitioning higher levels of the state. From a strictly technical standpoint, Qiuju's efforts to escalate her dispute (a personal injury her husband sustained by a kick to the groin inflicted by the village head in response to some measure of verbal provocation in a land dispute) to higher administrative levels of the state were successful. By ultimately winning her court case in the second instance on a legal technicality, justice, in the narrowest of senses, was delivered. However, this was a hollow victory insofar as it undermined Qiuju's overriding desire to repair and preserve her family's relationship with the village head and his family. Zhang Yimou's ambivalence about the ability of higher levels of the state, including the legal system, to resolve village-level disputes is captured by the expression of horror on Qiuju's face as she watches the police drag away the village head the day after he saved her life and the life of her baby in a complicated childbirth.

Indeed, consistent with the theory of justice from below, a popular reliance on village leaders to solve problems emerges in high relief from the survey data. Not only are village leaders a more popular source of help than other third parties located above and beyond the village, but village leaders also appear, relative to higher-level sources of help, to be adept at solving problems to the satisfaction of local complainants. In contrast to the popular image of rural conflict in China in which village leaders are portrayed as a primary source of problems that escalate to higher levels, the survey data presented in this article suggest that village leaders do much to solve and contain problems from escalating to higher levels. It is not fair to characterize them sweepingly as obstacles both to popular justice and to official efforts to build a "harmonious society." Rather, they appear to be doing something right. From a policy perspective, their precise methods merit further scrutiny.

What is it about local village leaders that causes their performance to be evaluated relatively positively and to be perceived as relatively fair? Part of the answer lies with the relative stickiness and intractability of the problems escalated to higher levels. Even if state actors closer to the centre are as able and willing as village leaders to resolve the local disputes of villagers, the delivery of justice is relatively unlikely at higher levels of the state because disputes that escalate are more difficult to resolve insofar as efforts to resolve them are more likely to have failed at lower levels. But why is it that village leaders are better able than higher-level government authorities to deliver satisfaction with procedural fairness even when are not significantly better able to deliver satisfactory results? What accounts for relatively high levels of satisfaction with village leaders' *methods* of dispute resolution even when the people who sought their help failed to get the *outcomes* they wanted? Do these patterns suggest that village elections are becoming increasingly effective? Have village leaders

become more responsive to their local constituents? Or do the patterns I have reported simply suggest that, even if village leaders remain highly unresponsive and ineffective, possibilities for justice are even slimmer at higher levels of the state bureaucracy? Answers to these questions must await future research more narrowly focused on the concrete techniques and procedures of dispute processing.

Another task for future research is to investigate the nature and consequences of bilateral negotiation, the most popular strategy for resolving grievances, even when local state actors were the source of the problem. Although we know that bilateral negotiation was an exceedingly popular response to grievances, limitations in the survey design prohibit an assessment of its character and its relative effectiveness.

Finally, future research must compare the more violent and disruptive strategies studied in prior research to the apparently more institutionalized methods of central focus here. Similarly, it must compare the collective strategies of disputing at the centre of prior research with the household strategies at the centre of this article. In all likelihood, individual, household and collective strategies of contention overlap and interact in interesting ways not only with each other but also with both violent and non-violent strategies of contention.

Even if the possibilities of justice from below are greater than suggested by earlier research, there remains a dire need for improved access to justice from above. One of the paramount goals of China's legal reforms is to preserve social stability, and thus regime stability, by resolving the popular grievances of an increasingly contentious citizenry. In the process of expanding the courts and popularizing legal education, the state has heightened popular expectations of justice from above and has equipped aggrieved individuals with the weapon of the law. Therefore, in a context in which the legal system systematically denies justice to a highly aggrieved and potentially volatile segment of society, an unintended and paradoxical consequence of the legal reforms may be to jeopardize social stability and to erode regime legitimacy.⁶⁴

64 Also see Mary E. Gallagher, "Mobilizing the law in China: 'informed disenchantment' and the development of legal consciousness," *Law & Society Review*, Vol. 40, No. 4 (2006), pp. 783–816.