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Mismatched Discourses in the Petition Offices of Chinese Courts

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Based on participation observations and interviews with petitioners and petition officials in Chinese courts, this article analyzes how the petitioning discourse is organized and how it influences the dispute resolution process. It finds that the discourses between the petitioners and the petition officials are mismatched. The petitioners fight to frame their disputes in legal terms, while the petition officials use a "channeling discourse" to divert the petitioners to legal or extralegal institutions. The two types of discourse barely confront each other; nor are the substantive issues seriously debated. Since being channeled into other institutions does not resolve their disputes, petitioners start calling their petitioning experiences as injurious, blaming officials, and making new claims. Disputes are thus reproduced. The research sheds light on the petitioners' legal consciousness and the operation of the petition system in China, and explores the contextual reasons why the phenomenon of mismatched discourses occurs in China.

INTRODUCTION

The last decade has witnessed tidal waves of petitions (*Shangfang* or *Xinfang*) in China. According to one estimate, petition offices nationwide received as many as 600,000 petitions per month in the first nine months of 2013 (Southern Weekend 2013). As one of the most conspicuous phenomena in China's legal and political landscape, petitions have attracted considerable scholarly attention. Some studies have investigated the petition system as a dispute resolution institution and its relationship with the rule of law (Peerenboom 2001; Wei 2003; Ying 2004; Liebman 2009). Some examine the behavior of Chinese petitioners and the authorities' responses and explore the system's political and legal implications (Luehrmann 2003; Cai 2004; O'Brien and Li 2004; Yu 2005; Minzner 2006; Li, Liu, and O'Brien 2012). In particular, in explaining the drastic increase in the number of petitions, Yu (2005) and Minzner (2006) have focused on institutional incentives, arguing that the government has invited petitioners to Beijing because it offers economic compensation for persistent petitioners.

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The existing studies are able to provide insights, but few efforts have been made to explore the discourses of petitioners and their perceptions of justice (but see Hou 2011). Our understanding of how petitioners perceive justice and law, who they blame, and how they present their grievances is thus still very limited. For example, as seen in O'Brien and Li's observation of Chinese rural people (2006, 42–47), many petitioners believe that "officials in the capital are loved ones, but officials in township government are enemies." This statement vividly illustrates petitioners' expectations of capital officials and the tension between policies at different levels of government. But even after many incidents in which petitioners have been beaten up and physically tortured and the benign image of capital officials has been shattered (Jacobs 2009), why do numerous petitioners still flock to Beijing and other high levels of government? Short of an explanation, officials simply claim that the petitioners are mentally ill.

Petition officials in various institutions tend to categorize the petitioners into reasonable petitioners (*youli fang*) and unreasonable petitioners (*wuli fang*), implying that a great deal of petitioning is irrational. Indeed, mental illness has become a label frequently attached to the petitioners (Minpao 2010; Civil Rights and Livelihood Watch 2013; Boxun News 2014), equating them with vexatious litigants and unusually persistent complaints in Western contexts (Mullen and Lester 2006).

Few scholars will take such assertions seriously: the large and ever increasing number of petitions distinguishes Chinese petitioners from vexatious litigants in the United States and the United Kingdom. To offer a more comprehensive picture, however, needs careful empirical study: What do the petitioners actually claim? Why do they claim in that way? What are the reasons underlying their perceptions of justice and their petition behavior? How do petition officials respond to their claims? What are the results of their interactions?

COMPETING AND MISMATCHED DISCOURSES

Foucault (1972, 1980) understands discourse, far more than being a mere medium, as a domain in which social interests and power relations are reproduced and contested. Although this has been taken for granted in law and society scholarship, little effort has yet been made to explore precisely how notions of rights, entitlements, responsibilities, and moralities are invoked by actors in the petition offices in Chinese courts. If language is indeed power (Foucault 1972, 1980; Bourdieu 1987; Conley and O'Barr 2005), it is plainly impossible to arrive at an understanding of how power is deployed and contested without looking into live discourses in which participants fight over the control of meaning.

This article attempts to fill the gap by examining how petitioners organize their discourses and present their disputes, and how petition officials respond in Chinese courts. Our study builds on the dispute process and the disputing discourse in particular, which has a long tradition in law and society studies. A key characteristic of the disputing discourse, according to anthropologists Comaroff and Roberts (1981), is *competing*. They suggest that the disputing discourse should be understood as *competing* ways of construing events and selves within particular normative

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frameworks. The interpretation of situations is described as the development of a "paradigm of argument," which means "a coherent picture of relevant events and actions in terms of one or more implicit or explicit normative referents." By "ordering facts around normative referents that may or may not be made explicit," a paradigm is asserted (Comaroff and Roberts 1981, 84–85). This point is also echoed in Merry's (1990) study. While she does not explicitly state that the discourses she observed in lower courts were competing, she documents that working-class Americans deploy three types of discourses. The very existence of more than one type of discourse at the same time and in the same space suggests that they must be competing against each other. She particularly points out that when average citizens bring their "problems" to the courts, the courts only take them as "cases" (Merry 1990, 88–109). This process, inevitably, entails discourse competition: the discourse of problems must be competing against the discourse of cases. Similarly, in a recent study, He and Ng (2013) note that in the mediation of divorce cases conducted by Chinese judges, judges' pragmatic discourse is also competing against and prevails over female litigants' moral discourse.

In a way, the competition of discourse is the precondition of the dispute process. In the context of Tswana, Comaroff and Roberts (1981, 85) contend that when the initial party asserts a paradigm by "ordering facts around normative referents," other parties either follow the paradigm by accepting the referents and arguing over the circumstances, or impose a fresh paradigm by "introducing different normative referents," in which case the facts may not be contested. In the latter scenario, there is a competition of paradigms; only when this competition is over will the substantive issues be confronted. This also occurs in the formal setting of the courtroom. In many jurisdictions, legal representation is required in hearings, in part because by so doing, the judges can directly have meaningful dialogues with the trained legal professionals. The hearing thus avoids potential competition of discourses, which may occur between the judges and the litigants, who are not trained to speak a legal discourse.

The phenomenon of competing discourses is well documented; what we will show below is a phenomenon of "mismatched discourses." In a way, it is an extension of the competing nature of disputing discourses. Since disputing discourses are inherently competing, the discourses are mismatched during the dispute process, when two disputing parties hardly reach consensus on which discourse paradigm will be adopted in resolving their disputes. That may occur because one disputing party refuses to yield to the paradigm imposed by the other, which is often the more powerful party, or simply because one party is not genuinely trying to resolve the dispute and thus employs a different discourse paradigm to dodge the real issue in dispute.

We have observed the phenomenon of mismatched discourse in the arena of the petition offices in Chinese courts. The discourse that petitioners adopt to make claims, as will be shown, is mainly composed of what we will call "popular legal discourse." Legal discourse, according to Merry (1990, 112), is "a discourse of property, of rights, of the protection of the self and one's goods, of entitlement, of facts and truth." A series of anthropological and sociological studies suggests that legal discourse is a form of institutional discourse that expresses and constitutes social

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division and inequalities (Conley and O'Barr 1990, 2005; Merry 1990; McCann and March 1995; Hirsch 1998; Matoesian 2001; Trinch 2003; Mertz 2007; Richland 2008; Ng 2009).

Like ordinary legal discourse, the petitioners' legal discourse also centers on legal rights, entitlements, evidence, and facts, but their discourse is not professional because their interpretations of the laws and the facts are highly different from the official version. This may be attributed to their fragmented and incomplete legal knowledge. In most cases, petitioners simply interpret the laws and facts to serve their claims, in a way very different from the original meanings of the laws. Although they also occasionally employ other types of discourses, overall, their legal discourses play a vital role in presenting their disputes to the petition officials.

Since different types of spaces confer legitimacy on different discourses, it should be noted that this popular legal discourse occurs in the context of the Chinese courts. As Thireau and Hua (2003, 2005) show, the petitioners in the Letters and Visits Offices for labor grievances freely mixed moral appeals with legal claims. Their site of fieldwork investigations differs from ours in two major aspects. First, the Letters and Visits Offices, though also popularly called Petition Offices, are indeed a parallel avenue to the Arbitration Committee in processing labor disputes. Most petitioners there have never been exposed to the legal process. But the petitioners who appear in the courts have invariably been through some legal processes. That is why they tend to adopt more legal discourses than the labor petitioners, who find the Letters and Visits Offices cheaper and more accessible than the formal labor arbitration committee. Second, the Letters and Visits Offices in Thireau and Hua's (2003, 2005) studies are a subsidiary branch (*xingfangke*) under the Labor Bureau; they are offices at the lowest rank of the bureaucratic hierarchy. It is not surprising that the petitioners there tend to use more moral discourses. But our findings, as will be explained in detail, primarily come from the petition office of the Supreme People's Court, the top of the Chinese judicial system. The petitioners there are thus more likely to use a legal rather than a moral discourse.

When the petitioners assert their own paradigms around rules and rights, however, the responding discourse from petition officials is ordered around concerns for stability maintenance and self-protection, which we will term "channeling discourse." For one thing, preventing petitions from being escalated becomes the major concern of the petition officials. Their goals are, therefore, to alleviate conflicts and pacify grievances. For another, the officials, upon receiving the documents and arguments of the petitions for less than 30 minutes, are not in a position to provide meaningful solutions to the petitioners. The officials thus avoid arguing with the petitioners' legal discourses in order to maintain a peaceful atmosphere. Instead, they steer the petitioners to other legal or extralegal channels. By providing seemingly pragmatic solutions, the officials not only divert the attention of the petitioners from the substantive issues, but also make the petitioners believe that they are making an effort to help.

As a result, the discourse of the petitioners addresses substantive issues, while the discourse of the officials lingers over procedural issues, channeling the petitioners into different procedures and institutions without seriously responding to their requests. Because they focus on different subjects and are organized around

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different normative referents, the discourse of the petitioners and that of the petition officials do not compete against each other, but rather coexist as cross-talk. Unlike the Tswana dispute resolution process recorded by Comaroff and Roberts (1981), in which the parties in dispute have to accept a dispute paradigm in the end, there is seldom a shared paradigm between the petitioners and the petition officials throughout the whole process in China. The two kinds of dispute paradigms rarely confront each other. Subsequently, there are no meaningful debates between the two sides, not to mention any consensus on the issues raised by the petitioners. The discourse paradigms between the officials and petitioners are thus mismatched.

STUDYING PETITIONING DISCOURSES IN CHINESE COURTS

The discourses and cases reported in this article are based on data collected from litigation-related petitioners and petition officials in court. Petitioning, also known as *xinfang*, is an umbrella term to describe "Chinese appeals to justice" (Minzner 2006, 110) through the petition system. As a dispute resolution mechanism, petitioning is controversial. While petitioning serves the positive purpose of allowing resentful citizens to blow off steam, protecting disadvantaged groups, strengthening central supervision over local administration, and pushing forward social reforms (Cai 2004; Ying 2004; O'Brien and Li 2006; Peerenboom and He 2009), its encroachment on judicial authority and the accompanied interference with social justice and stability, as the foreplay of social unrest, cannot be overlooked (Yu 2005; Minzner 2006; China Daily 2007).

As a result, a series of government institutions has been established to address the claims of petitioners. Almost all Chinese social management organs have set up petition offices, including the people's congresses, judiciaries, government branches, Party committees, and Party discipline commissions on various levels (Cai 2004; Minzner 2006). The petition offices in the judiciary deal mainly with litigation-related petitioning that claims against court decisions that have already been effective.

Although the Petition Regulation of the State Council, enacted in 2005, provides articles to protect the rights of petitioners, in reality, petitioning is discouraged, or even outlawed, by judiciaries and government branches. Even if the petitioners finally make their way to Beijing, most of their claims are not successfully addressed. Many of them are labeled by the official rhetoric as "unreasonable petitioners (*wuli fangmin*)," "jobless hooligans (*shehui mangliu*)," "blackmailers (*qiaozhafan*)," or even "mental patients (*jingshen bingren*)." In addition, the evaluation and promotion of officials are often closely related to whether they have successfully prevented incidents of petitioning, especially prevention of incidents that reach Beijing (Li, Liu, and O'Brien 2012). To dissuade petitioners from petitioning, and especially in Beijing, local governments have recently allocated a huge budget to compensate diehard petitioners economically, instead of becoming entangled in arguments over specific legal issues.

We divided our fieldwork investigations in two parts. The first part was a three-month ethnographic observation carried out in the summer of 2013 at the

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Supreme People's Court Visitor Reception Office and Appeal Registration Hall (henceforth, SPC office). The SPC office is located at Hongsi Village, which is on the southeast outskirt of Beijing. The SPC office is a place with extremely inconvenient public transportation: there are only two bus lines passing by, and the nearest subway station is miles away. The office runs six and a half hours per day (8:00–11:30, 13:30–16:30), four days per week, but normally it ceases to receive petitioners after 16:00. To enter the office, petitioners have to present their IDs and effective high court decisions regarding their cases at the entrance. Petitioners who fail to meet the requirements are invariably rejected.

The petition officials in the office are mostly seconded judges from high courts of various provinces. After the petitioners register their information at the office counter, they will be directed, according to the provided information, to the officials seconded from their home provinces. Some petitioners are briefly received inside the office, and others are redirected to the neighborhood of the office, where senior officials from their home provinces and cities will take over and talk with them at length.

The number of petitioners received at the SPC office varies. Normally, the office receives approximately several hundred petitioners per day, including a portion of petitioners who come on almost a daily basis. However, during events of political significance, such as the Beijing Olympics or the Eighteenth CCP National Congress, this number skyrocketed (authors' interview with SPC judges 2013).

To understand whether the administrative level of courts affected the genres and interactions of the discourses, the second part of the investigation was carried out in an intermediate court's petition office from November to December 2013 in southern China. Petition offices of lower-level courts generally receive fewer petitions than those of higher levels. Therefore, most petition offices at lower-level courts, including this one, do not have specialized petition officials. Instead, senior judges serve as the petition officials.

In this intermediate court, the petition office has a twenty-square-meter lobby and two separate conference rooms inside the court's main building. The office opens to petitioners only two Wednesdays of every month, which are called receiving days (*jiefang ri*). One or two (depending on the number of petitioners) petition reception sessions are arranged on each receiving day, and each session lasts for four to five hours. The judges with senior administrative titles take turns to chair the sessions, and usually two petition officials host one session. When the officials are hosting, a nameplate shows their names and administrative titles. For each session, eight to fourteen registered petitioners are invited into the conference room one by one to present their disputes for fifteen to thirty minutes.

Through personal connections, we were allowed to stay inside the conference room of the petition offices. We observed the reception scenarios and interviewed the petition officials. We were introduced to the petitioners as academics who were interested in disputing languages and discourses. Throughout the sessions we sat silently by the officials. After the sessions were over, we interviewed the hosting officials as well as other officials experienced in handling petitioning. The interviews lasted from thirty minutes to an hour. We also interviewed the petitioners

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before and after they went into the office. After making the acquaintance of some petitioners, a total of thirty-two in-depth interviews with fifty petitioners were carried out.

Due to the extremely sensitive nature of the topic, tape recording was not employed; instead, we took notes or, in instances when note taking was not feasible, memorized important details and compiled them in notebooks as soon as possible.

Taken together, these methods allow us to observe the discourse dynamics between the petitioners and the petition officials. They also help us to understand why both sides deployed certain types of discourse. The petitioners were enthusiastic to share with us their grievances and stories in petitioning, and thus mutual trust was relatively easy to establish. By contrast, to build up the same level of trust with the petition officials was harder, due to the sensitive nature of the issue and the relatively short duration of our fieldwork investigations. We thus also use secondary materials to verify our data. Overall, we believe that the data collected are enough for the purpose of our analysis.

POPULAR LEGAL DISCOURSES

When legal discourse is employed, one must be "with the law" (Ewick and Silbey 1998, 129–32), that is, one interprets the law in ways that serves one's purpose. But before they turn to the petition offices, very likely the petitioners' overall attitude to the law used to be one of either fear or awe, as suggested by the findings of other scholars and the petitioners' own narrations (Thireau and Hua 2003; cf. Merry 1990; Gallagher 2006). As in the process of "informed disenchantment," as described by Gallagher (2006, 799–805) in her study of Chinese laborers in litigation, many petitioners had almost no understanding of the law when they first sought help from the judiciary. Most of them had never consulted any legal counsel due to financial difficulties. Nor did their educational background allow them to digest actual texts of the law effectively through self-learning, although the texts were easily accessible on the Internet or at law bookstores. Some petitioners, who drew sporadic legal knowledge mainly from the media and government propaganda, had high expectations of the law before they went into the court (cf. Gallagher 2006). Their interactions with the judges in the litigation process, however, informed them that the legal processes were far more complicated than they thought and that the formal process might be unable to solve their problems.

However, their interactions with the courts and judges make the petitioners no longer awe, fear, or resist the law. Losing cases also makes them realize the importance of legal knowledge. Although the petitioning process differs from the formal legal process, they are aware that it is intertwined with the judicial system. By bringing their cases from the courtroom to the petition offices, the petitioners expect to discuss the law. Since discourses can be used as a powerful weapon in structuring expressions of conflicts (Felstiner, Abel, and Sarat 1980–1981; Mather and Yngvesson 1980–1981; Comaroff and Roberts 1981; Merry 1990), it is unsurprising to find petitioners organizing their own legal arguments to resist the

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predominant institutional interpretations of the law. Also, as a means of challenging the court proceedings and court decisions that are processed according to law, legal discourses seem much more powerful than other types of discourses (Woo and Wang 2005; Huang 2010). They thus made efforts to define their grievances as worthy of the law's attention by the extensive use of legal discourses.

From our interviews with the petitioners, many of them have accumulated a certain amount of legal knowledge, primarily through two channels. One was their experience with the legal system. Many learned from the cases that they had been through. The other was self-learning. Although they also talked to each other and shared experiences in petitioning, their cases and relevant legal knowledge were often different. Having studied in depth the rules relevant to their disputes, experienced petitioners had learned to make use of the law in their own ways. They actively presented their own understandings and applications of the law, and a few of them even wrote articles to rebut the courts' decisions (authors' interview with petition officials 2013). Several interviewees started to describe themselves as "legal experts" or citizens who are "familiar with the law." They thus treated judiciary petitioning like a legal process and became with the law like legal professionals (Ewick and Silbey 1998). In other words, if the petitioners were once "before the law" (Ewick and Silbey 1998, 74) or "beneath the law" (He, Wang, and Su 2013, 728–31), now they are with the law (Ewick and Silbey 1998).

As petitioners raise their issues in the petition offices, they frequently quote legal rules and make legal arguments, though occasionally moral and political accusations are also made. Typically, they attempt to contrive a "paradigm of dispute" with reference to legal rules (Comaroff and Roberts 1981, 84).

Labeling Litigation and Petition Experiences as Injurious and Blaming Officials

In most dispute contexts, the type and scale of disputes depend more on the initial perception of injury than on any later decisions (Barton and Mendlovitz 1960; Felstiner, Abel, and Sarat 1980–1981). In the case of petitioners, however, injurious experiences are also perceived and accumulated throughout their petitioning experiences, and the judges and petition officials replace the original target of their complaints to become the major source of their grievances. Although petitioners have their own disputes before they turn to petition offices, most petitioners believe that it is the officials who cause and aggravate their misfortune (cf. He, Wang, and Su 2013). In their mind, their unsuccessful litigation and petition experiences deprive them of the benefits they deserve, and the officials should be held responsible.

In the petitioners' words, the officials are "incompetent," "unprofessional," "misapplying the law," "lacking fundamental legal knowledge," or even "corrupt." These officials' treatment of the petitioners' requests, proposals, or evidence is perceived as injurious.

One Guangdong petitioner (A49) in his fifties was a defendant involved in a personal tort case. He believed that the victim bribed the hospital and faked his injury report. The petitioner said, "I have told him [the judge] about this again and

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again. It was so obvious. Why couldn't he understand? He lacks the basics of legal knowledge. How did he have the authority [to decide]? I am enraged!"

Another young female petitioner, Luo (A57), was petitioning against local government because of a land-taking dispute. She was convinced that the judge was taking sides with the government. She said as soon as she entered the petition office, "I am here just to ask: 'Do judges ever abide by the law?' Judges do not talk about the law. They do not follow the law. What could we do?"

A fifty-two-year-old petitioner from Sichuan (A12) who lost his demolition case due to a lack of evidence presented hundreds of photos to us, showing dust and cracked paintwork to prove that the house into which he had been relocated did not meet the promised standard. He believed that the court was responsible for his loss because it should not disregard his photo evidence: "They said my evidence was not relevant. They barely looked at it. How could they know the evidence was not relevant if they did not look at it? I am completely hurt by those judges." He further demanded 200,000 Yuan from each trial level as spiritual compensation.

An Inner Mongolian petitioner (A25), a fifty-five-year-old woman with six brothers and sisters, was ensnared in a succession dispute with her family members. She appeared sure that her two sisters had bribed the judge and were therefore awarded the largest portion of their parents' heritage. She had no solid evidence for the bribery, but she claimed, "I understand that the judges enjoy discretion. But she decided for them [her family members], so I am pretty sure she took a bribe. It was against the law. I cannot let this go."

A young petitioner from southern China (A62) with a land-taking dispute abreacted his anger in front of a petition official, "I do not mean that this applies to you, but I have known many people who have filed lawsuits, and they all said, 'what the hell is the law? No court follows it'."

A middle-aged Hunan petitioner with a pale-looking face (A34) claimed for workers' compensation against a state-run corporation, connecting her hepatitis to the intensive working environment. She had petitioned for seven years, and she attributed the persistence of her petitioning to the arrogance of the trial-level judge: "The judge did not respect the law. He knew nothing about the law. I told him what the law was, and you know how he responded? 'Appeal if you wish. Even if you appeal to Beijing, nothing would change. I will be unaffected.' So here I am. The law must ring."

As shown, the petitioners perceive the officials' rejection of their requests as injurious experiences. While their opposing disputants are still blameful, the judges and petition officials are dragged into the petitioners' disputing repertoire (Comaroff and Roberts 1981). The petitioners believe that it is the judges' and petition officials' "illicit" and "ignorant" decisions that hinder the materialization of their lawful rights. The focus of their disputes, which used to be their opposing party, has shifted to how the judiciary and the petition system harm them.

Claiming with Reference to Laws

When petitioners make claims at the petition offices, they usually organize their claims with references to legal rules. In other words, they tend to present their

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disputes by drawing connections between the facts and the legal rules. By blaming the court for not "following the law," for instance, they suggest that the law should be followed, which assumes the law as the normative reference of their paradigms. This explains the petitioners' preference for legal discussions despite their rather limited legal knowledge. Compared with the legal professionals' interpretations of the law, the petitioners' quotations of the rules are rather "fragmented" and out of context, but many of them believe that they really know the law. Similar to what Gallagher found about Chinese workers (2006, 807–09), some petitioners even regard themselves as little "legal experts."

Dong (A33), a petitioner of three years in his thirties, is a good example. He had been claiming for extra compensation from a settled land-taking contract that was signed with the government six years ago (henceforth the Land-Taking Case). His argument was that his neighbor received twice the amount of his compensation in a similar contract eighteen months after his contract was performed. During the petitioning process, he claimed that the local government had "committed a crime" against him:

> Judge: You have promised me before you would not come again. What exactly do you want?
> Dong: Don't you know the criminal law?
> Judge: The criminal law is not relevant here.
> Dong (furiously): Don't you know the criminal law? Article Fourteen says that an act committed by a person can constitute a crime if he clearly knows that his act will entail harmful consequences to society but who wishes or allows such consequences to occur. . . . They don't know the law at all. *Criminal Law Article Fourteen explicitly stipulates that intentionally doing harm to people is a crime*. They [the government] have committed a crime against me. It is my legal right. You cannot send me back without responding to my claim" (emphasis added).

To make the legal statutes and rights fit into their claims, the petitioners propose a number of legal rules or rights, and build up connections between their own interpretations of these rules or rights and the facts of their claims. In the above example, Dong interpreted Criminal Law Article Fourteen to fit into his contractual claim by equating "intentional causation of harm" to "incurrence of economic loss resulted from an imprudently negotiated contract." The connection between Dong's contractual dispute and the criminal law is thus established.

In other cases, petitioners make claims based on some specific statutes or regulations that they believed should be applied. For example, Gao (A1), an Inner Mongolian petitioner in his sixties, had been involved in a contractual dispute with the township government since 1989 (henceforth the Compensation Calculation Case). In 2001, the final court decision ruled that the government should pay Gao compensation of 54,000 Yuan plus interest since 1990, which should be calculated "according to the same type of benchmark lending rates over the same period." Gao insisted on applying an invariant annual interest rate of 19.26 percent, which was used by Chinese banks as the special rate for five- to ten-year permanent assets

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loan only in 1989. He said: "Don't think the 19.26 percent rate is high. ... There are so many rates, and I absolutely can choose the highest. ... My understanding has legal basis. Here, 'RMB Interest Rate Regulations [*reminbi lilv guanli guiding*],' and here, 'Notice on RMB lending rate related issues from the People's Bank of China [*zhongguo renmin yinhang guanyu renminbi daikuan lilv de youguan tongzhi*].' Also this, 'A Number of Opinions on Adjudicating Borrowing Cases [*guanyu renmin fayuan shenli jiedai anjian de ruogan yijian*].' See? I have legal grounds." Although Gao's rate was justifiable under none of the regulations he mentioned, his repeated invocation of the regulations formed the basis of his claim.

The petitioners make claims not only with reference to substantive laws, but also with reference to procedural laws and regulations. For example, Li (A28), a six-year petitioner who looked old and fragile, employed the procedural rights provided by the Civil Procedure Law to justify her standpoints (henceforth the Absentia Case). Li breached a private lending contract and refused to appear in court as the defendant. The court ruled against her. Li condemned the court decision with reference to the Civil Procedure Law:

> Li: The court has violated my procedural rights! Definitely. How could it be legal to take my money without my presence? ... Shouldn't the people's court guarantee my litigation rights? It's right there in the Civil Procedural Law of People's Republic of China.
> Judge: Why didn't you show up in the court then?

In another case, a petitioner challenged the court decision based on his own understanding of the admissibility of evidence. Wang (A52), a demobilized army officer involved in a labor dispute, wanted to reverse a court decision that validated a labor contract he claimed he had not signed (henceforth the Uncross-Examined Evidence Case). Wang asserted that he negligently missed the court trial, where the employer presented the picture of the contract with his signature to the court (the original contract was torn into pieces by Wang) and won the case. Wang claimed:

> I asked the court clerk and was offered two time slots for hearings. I was wrong about what the right hearing time was. ... But the problem is that the contract they presented is faked. Several other employees all said that they signed labor contracts in May, while the contract they offered indicated that it was signed in April. Isn't it obviously faked? *Another thing is that the evidence was not subject to cross-examination. Civil procedural law books state that evidence that is not subject to cross-examination cannot be admitted as fact. Therefore, the court misidentified the facts* (emphasis added).

In some cases, claims are made because some petitioners believe that the officials' interpretations of certain legal terms are wrong. C (A29) and D (A30), cousins from Jiangxi province, came to Beijing to petition against a local court's criminal judgment (henceforth the Property Infringement Case). D's village head

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leased part of the village's land, on which happened to be located the graveyard of D's clan, to his cousin to raise pigs. Infuriated by the fact that his graveyard was turned into a pig ranch, D, the clan's patriarch, argued with the farm owner, which ended up with a fight leading to the forceful demolishment of the farm. D was then sentenced under Criminal Law Article 275 for "intentional infringement of other's private property." But C believed that D was not guilty.

Obviously having studied the relevant laws, C said:

> You know, I am different from him [D]. I know the law. . . . What do you mean by "intentional"? . . . He [D] is not intentional. How could you say he is intentional? Explain to me, how could you say that? . . . The pig farm wall fell down on its own in the mess. D went there because raising pigs on other family's ancestors was extremely immoral. And they [the pig farm owners] refused to sit down and talk. He did not go there to do harm. That's not "intentional." It is not a crime at all.

The above evidence demonstrates that in various ways, the petitioners primarily employ a paradigm of legal arguments instead of moral excuses or mercy pleas. As mentioned earlier, most petitioners are pushed into the petition system after they have exhausted all formal legal remedies. The petitioners' understanding of law is drawn in part from their own reading of legal textbooks and in part developed out of their litigation experiences, which makes them less likely to share language with legal professionals. In Gallagher's (2006) study, the migrant laborers, after experiencing the court, form a more realistic view of the legal system and begin to acquire a comprehensive understanding of the labor law, often with the help of legal professionals.

Unlike those laborers, few petitioners form a systematic understanding of the law as a whole. It is also hard for the petitioners to seek help from legal professionals due to financial reasons. Despite their frequent quotations of the Criminal Law, the Law of Criminal Procedures, the State Compensation Law, the Labor Law, and the Family Law, their legal discourses are still an expression of popular, rather than professional, legal consciousness.

CHANNELING DISCOURSES AS OFFICIAL RESPONSES

The petitioners' enthusiasm for engaging in legal debates, however, seldom arouses counterarguments from the petition officials. The officials, mostly legal professionals, undoubtedly know the law better than the plaintiffs. However, they rarely respond to the petitioners' legal arguments or address substantive issues. Instead, the officials set the laws aside, and divert the petitioners into various legal procedures or extralegal institutions through channeling discourses. This characteristic is more noticeable at the Supreme Court than at the intermediate court. This is because, according to several of our interviewed judges, lower-level petition officials may have handled the cases or understood the context, so they may substantively engage the issues a little bit. For petition officials at the very top of the hierarchy, their discourses are predominantly channeling.

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Legal Channeling

Legal channeling is the most commonly used discourse to alleviate the conflicts and stabilize petitioners who are filled with dissatisfactions and grievances. When the petitioners are received in the petition offices, the petition officials first make clear their requests and identify all the remedies they have sought. If the petitioners have not exhausted all possible legal remedies, the petition officials always refrain from giving any responses over substantive issues. Rather, they directly channel the petitioners to exhaust the remedies, without looking into their actual disputes.

Like the legal systems in many other jurisdictions, legal procedures in China are complicated. Many petitioners are more concerned with the substantive issues but less clear about the procedural issues. The petition officials' guidance to certain legal channels, therefore, easily diverts the petitioners' attention from their original claims and allows the officials to dismiss the petitions on the grounds of rules with which the petitioners are not familiar. For many petitioners who are still in the middle of legal proceedings, the only response they can obtain is to wait for the final judicial decision.

Take an administrative dispute petitioner, Zhu (A55), for example. Zhu lost his case at the trial level, and had just appealed. After he spent a few minutes describing his claim and quoting administrative statutes, the official cut him short:

> Old Zhu, I have understood your claim. You are talking about the relevant issue, but you have already appealed. After you appeal, a panel of three judges will decide your case. Understand? So, I, and even the court president, have no right to give you a response today. And even if a response is made, it is not valid. So only if the three judges think that you are right after they deliberate on your case, then they can change the trial court decision. I am here to tell you what is the effective way to solve problems. Of course we can talk about your problem for a long time, but it will be no use at all. . . . Only if you have the valid decision at the appellate court level will our discussion be meaningful. At that time I will show you other paths.

In another land-taking dispute, the petitioner, Luo (A57), insisted on petitioning despite the official's dissuasion because she did not believe that the appellate court would solve her problem.

The official responded:

> Petition is not a lawful procedure. It has no legal result.
> Luo: But it solves problems.
> Official: It does not solve problems.
> Luo: It can't solve problems? Then why do we petition?
> Official: Yes. I could only say you have some information for us to know. Yes, you should not petition at all. Look at the foreign countries with better rule of law. Do they have the petition system? If you are dissatisfied with court decisions, you have plenty of remedies, say, appeal.

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In addition, legal remedies are hardly exhaustive. Appeal does not mark the end of legal procedures. Although China adopts a judicial system of two trial levels, the trial supervision procedure (applying to the upper-level court and to the procuracy) offers remedies for disputants, provided that there was a wrongfully decided case or there is new evidence (see Civil Procedural Law of PRC, Articles 198–213; Criminal Procedural Law of PRC, Articles 241–247). As to the petitioners who petition against appellate decisions, the petition officials always encourage them to make an application for retrial. They encourage petitioners who have gone through all the legal remedies inside the courts to seek a retrial decision from the procuracy, no matter how slim their chance is.

In the Uncross-Examined Evidence Case, for example, after Wang spent five minutes presenting his dispute, the official responded:

> So I see that your request is to retry the case right? Let me explain to you about the retrial procedure from the perspective of the law. If you want to apply for a retrial, you need to submit an application. As I have said, we have a procedure for retrying cases. You have to register first. You can go to the registration hall of the court, and there you will see the guidance for applying for a retrial. You can find the materials you need. I see that you have got all the required materials, and all you need now is just a filled application form.

Although the petition officials seem to follow the petitioners' presentation of disputes, their channeling responses do not stem from rational legal evaluation of the petitioners' claims. Even if the petitioners have obviously no chance of successfully applying for retrial, the officials will still guide them to go through these procedures. Take Lin's case, for example. Lin (A51), a stocky man in his fifties, was a petitioner who claimed for an accident victim whose case had been closed in 1996. Lin wanted the court to retry the case and to grant the victim more compensation, based on the assertion that the court decision was a miscarriage of justice. The real reason, as Lin later revealed to us, was that the victim had developed cancer and needed money. After Lin explained his claim, the official said:

> How about this? We will receive your materials now. As to your request, to open the retrial as soon as possible, we will send it to the relevant department and let the superiors decide. . . . Speaking too much to me will be a waste of your time. As I believe, you, as a representative, have plenty of legal knowledge to know about all the relevant laws . . .
> Lin: You talk about the law. Look at the materials, Volume One and Volume Two . . .
> Official: Yes, yes; OK, OK. Just leave here a copy of your materials, and it will be fine. . . . I have to tell you, because your case has been delayed too long, we have no obligation to reopen the trial . . . but we will definitely give you a result, and let you know as soon as possible.

In Lin's case, the official knew that the court would not retry Lin's case, as he stressed that the court had "no obligation to reopen the trial." In another case

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involving labor-related injuries, the official advised the petitioner (A71), who had exhausted all remedies in the formal court system, to apply for the opening of retrial at the Provincial High Procuracy. The fact, however, is that the Procuracy at this level rarely offers any such decisions. In our interviews with the official later, he admitted that he knew that most of the petitioners' problems could not be solved by channeling them into legal procedures, but he had no better options other than to ask them to appeal or to apply for retrial. The best resolution for most of the petitioners, according to the official, was to "go back home and start a new life." However, officials would almost never propose this directly because it proved to be unacceptable to the petitioners, who are convinced that their claims are justified legally and morally.

Consistent with the findings of Cai (2004) and Minzner (2006), the petition officials' legal channeling, as an institutional response, is one of expediency. This channeling discourse sounds lawful procedurally, but is hollow with regard to substantive issues. The legal proceedings into which the petitioners are channeled are not likely to improve anything, but these proceedings are time consuming and self-comforting, which may relieve the conflicts for the moment.

Extralegal Channeling

Extralegal channeling discourses are adopted when there are no legal proceedings available into which the officials can channel. The situation is more likely to occur for petitioners with longer petitioning experiences who have already exhausted all the legal remedies. In other words, they have nowhere else to go except for the petition offices. The extralegal channeling discourses are aimed at relieving the conflicts for the moment. Like legal channeling, extralegal channeling refrains from addressing petitioners' substantive issues, but unlike legal channeling, in extralegal channeling even the procedural laws are forgotten.

In the Land-Taking Case, for example, Dong talked in lengthy and furious legal discourses. The petition official calmly replied: "Let's negotiate peacefully. I am here to help you, not to harm you." By saying that, the official neither accepted nor challenged Dong's claim. He tried to convey the idea that he knew and cared about Dong's best interests. He then promised Dong that a solution to the petitioned problem would "be delivered into Dong's hand through telephone" and persuaded Dong to "go back home and wait patiently."

Similarly, in the Property Infringement Case, the official listened patiently to C's arguments for about thirty minutes, then changed the topic: "I have heard enough, and I fully understand your feelings. Now let's move on. You know, I understand you. But as you know, it is a case from a long time ago. Retrial is not impossible, but it is not a good option for you. What about we negotiate an acceptable remedy, as long as you don't come up to Beijing (to petition) any more?" The negotiation, however, ended up with no immediate result. C and D wanted an apology from the owner of the pig ranch and reparation for the cost of moving the family graveyard. The official took their materials, promised he would consider

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them carefully, and asked them to go back home and wait for the call from the provincial high court.

In a petition, Han (A27) claimed that her son was not committing an *intentional* homicide because he only took a knife at the victim's home, instead of carrying a knife there himself (henceforth the Intentional Homicide Case). This is actually not a bad argument, but instead of pointing out the possible misreading of the criminal law in her legal analysis, the official replied: "I understand your feelings as a mother. I am a mother too. I will carefully consider your claim, but as a mother I am obliged to tell you there are better ways to help him. Challenging the court decision is difficult, but as long as he performs well inside (the prison), there are many ways to shorten his sentence. It is worth a try. If you keep petitioning, it is not helpful to him, and will eventually worsen his situation."

In another case, Ge (A7), a middle-aged two-year petitioner with an extremely loud voice, argued that his daughter-in-law should not inherit any family property because his son died in an accident two days before the traditional marriage ceremony (the young couple had been legally registered). The official first tried to explain the relevant family law to Ge, but this soon enraged Ge: "You guys just dodge responsibility. When it comes to me, you say you apply the law strictly. When it comes to her [the daughter-in-law], you have all the excuses. The law is not there. Don't you people respect the law? Clearly she is a criminal. Why don't you round her up?" Realizing that his original explanation was not helpful, the official quickly changed his strategy: "Calm down. Calm down please. OK, I will give you a name and an address, and you just go to find this person. He is in the provincial high court, and might be able to help you. But don't tell him I guided you to him." The official successfully persuaded Ge to leave the SPC petition office. He drove Ge to the Beijing Liaison Office of his hometown, where he was treated to a meal and sent home by officials there.

These channeling discourses may relieve the conflicts temporarily, but are not likely to resolve the disputes once and for all. Of the more than 200 petitioners we had conversations with, more than half claimed that they received promises from the officials to handle their problems. But consistent with the existing studies that the success rate of petition is extremely low (China Labor Bulletin 2007; Peerenboom and He 2009), some of our interviewees waited for one or two months, only to receive perfunctory replies; the other complaints were completely forgotten.

For the more experienced petitioners, however, the officials' promises are less likely to stop them from petitioning. In these instances, the petitioners are usually offered economic compensation, which is mainly drawn from local governments' stability maintenance budgets (*weiwen jingfei*) (BBC China 2011; Sohu News 2013). In the Absentia Case, Li finally agreed to leave Beijing when the petition official promised to apply on her behalf for a poverty grant of 5,000 Yuan. In the Compensation Calculation Case, Gao received an offer of 10,000 Yuan from the provincial government for settling his dispute for the moment. He also asked for a taxi driver's permit, but this was not granted. He admitted that every time he went to Beijing to petition, he got some payment from the local officials, and he had already received around 150,000 Yuan accumulatively. "But it is far below my expectation, which is about five or six hundred thousand Yuan. I may leave Beijing for now, but

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I will not stop petitioning unless my request is fulfilled," he said to the petition official.

A Guangdong petitioner (A21) in her fifties petitioned at the SPC office against a demolition arrangement sixteen years ago. When the petition official asked her to wait for the official response at home, she was straightforward: "I am acquainted with all your people that come from my place. They have invited me to dinner several times. They have rented hotel rooms for me to stay. But unless I see money in my bank account, I will not leave Beijing." At that point, the petition official became speechless; he then called an official from Guangdong to negotiate with her the transaction details. Wang (A18), with around ten years of petition experience, claimed for state compensation for wrongful labor reeducation (*laojiao*). Several times the petition officials tried to negotiate a compensation agreement of a one-time payment in the form of poverty grants, but he refused to give up petitioning. He explained:

> I took some of the money [offered by the government for stopping petitioning], about seventy or eighty thousand Yuan, but I did not sign the agreement. . . . I knew that once I signed, those people would charge me with blackmailing the government (*qiaozha zhengfu zui*). It is a bad crime. I will not do that. . . . They said what they offered was more than the state compensation law provides: a one-time payment of fifty thousand Yuan. But I heard from a villager that he got six hundred thousand for two months' wrongful imprisonment. My period was not much shorter than his.

As demonstrated, the petition officials' extralegal channeling discourses are attributed to pragmatic responses aimed at relieving conflicts for the moment. For petitioners who have gone through all the available legal procedures, the officials attempt to settle them down to avoid potential disruptive tactics (Zhong and Guo 2006; Cai 2008; Beijing Youth 2013). To dissuade effectively, the law, which is likely to arouse confrontations, is often neglected. As to the more experienced petitioners, the most frequently adopted solutions often involve economic compensation.

MISMATCHED DISCOURSES

Our China case looks similar to the paradigm competition (Comaroff and Roberts 1981, 85) because the petitioners and the officials make reference to different paradigms. The difference, however, is that serious confrontation over the paradigm rarely exists in China's petition system and the discourses are mismatched.

As shown, petitioners tend to stick to a paradigm similar to that adopted in the courtroom: laws, rules, and rights are mentioned and discussed, and facts are analyzed and organized with reference to them. By following the courtroom paradigms, their mindset is to frame their disputes in legal discourses. Thus, when petitioners present their claims to the officials, the cited legal rules form the core of their arguments. Although their understanding of the law is often fragmented and incomplete, and even absurd sometimes, the way they present their disputes shows great resemblance to the way conflicts are rephrased into cases. That is, through

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the use of legal discourses, factual situations are defined into rights, and rights thus have to be either contested or confirmed (Merry 1990, 108–09).

The petition officials, however, do not respond to the petitioners' legal discourses. They tend not to address the rights or the substantive laws. As illustrated, their responses are aimed at alleviating the conflicts and pacifying the confrontations. In most situations, the petitioners' legal arguments are perfunctorily treated, if not completely neglected. In the instance of legal channeling, the officials do talk a lot about the laws, but their talk is mainly intended to introduce another legal channel for the petitioners to try, even though the officials know from the very beginning that such efforts are fruitless. Talking about the law in this way, they do not really help solve the petitioners' substantive problems. Such talk is simply a stopgap to delay the breakout of conflicts and dilute disputes.

In extralegal channeling, the law is completely neglected. Through their responses, the petition officials refrain from confrontational discourses that might agitate the petitioners. Nor do they confirm the rights proposed by the petitioners. At that moment, the officials' primary concern is to prevent the petitioners from further petitioning or committing "vicious incidents" (*exing shijian*) such as demonstrations, and, in the worst instance, self-injury attacks (authors' interview with petition officials 2013; cf. O'Brien and Li 2006). The stability maintenance consideration has thus become the implicit normative referent of the petition officials. All the official responses are organized around this guiding principle.

The discourses between the officials and the petitioners are thus mismatched. The two contradictory paradigms coexist in one dispute resolution process. The paradigm of the petitioners is organized around legal rules, while the paradigm of the petition officials centers on stability concerns. Despite the petitioners' expectation to debate and persuade based on substantive rules and rights, the responses they receive are carefully organized channeling strategies, designed to prevent events of social instability from occurring.

Unlike the judges in the courtroom, the petition officials are not adjudicators who deliver binding decisions according to fixed rules. In most situations they are not in a position to make changes to those effective decisions. As one veteran official told us, shaking his head: "Things can be changed only through established legal procedures, such as re-trial, and there must be a reason to reopen the case. It is so rare that we hear sound legal arguments that make sense. In most situations they are just absurd and we can do nothing." Another official told us that by her estimate, less than 3 percent of petitioning cases were eventually changed. In other words, the legal system is unable to address the grievances raised by the petitioners effectively, and it may not even be designed to address them at all.

The seemingly powerful petition officials are indeed incapable of offering direct solutions to most petitioners. That is why the officials, often frustrated by the petitioners' apparently crazy legal arguments and their persistence, start to maintain a very friendly attitude to the petitioners, greeting experienced ones just like their old friends, rather than employing the traditional brutal means to deal with the petitioners. In this sense, the channeling discourses allow the officials to maintain a benign image. Equipped with channeling discourses, the petition officers take control over the volatility of disputes, containing and deflecting anger, managing

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passions, and soothing tensions, at least inside the petition offices. The petitioners are thus likely to be guided by the petition officials' channeling.

The mismatched discourses, nonetheless, reveal an imbalanced power relationship between the petitioners and the petition officials. As Foucault (1980) points out, discourse is the way things get talked about. Power in the petition system is not just determined by the right to make the ultimate decision over the issue, but also by how the issue is discussed and in what type of discourse. The petitioners, investing a great deal of time and energy to study the law, expect to use the law as the weapon to address their grievances. While they may not be aware that their arguments do not really make sense professionally, they expect the petition office to be a battlefield of legal discourses.

But the officials here almost completely ignore their claims and expectations. They simply impose a discourse paradigm, which is often unrealistic for the resolution of the disputes. As the channeling discourse prevails, it dominates the discussion of the disputes and represses any meaningful legal discussions on substantive issues. By asserting and maintaining the channeling discourse, the petitioners' legal discourse is repressed. The dominance of the channeling discourse thus unveils the relative power hierarchy inside the petition office: no matter how high the volume of the petitioners' yelling and how thick the sheaves of documents they present, the channeling discourse of the officials determines how the dispute is interpreted and how it is resolved.

To make things worse, the assertion of the channeling discourse is conducted in a peaceful way, without offering an opportunity for the petitioners to confront and challenge. In other words, there is not even a competition of paradigms. Their grievances are not accepted as a case, as they hope. Instead, they are grossly interpreted as problems and channeled away. Except for a few experienced petitioners, such a paradigm is also deceiving: most petitioners are made to believe there is a solution in those institutions. There is virtually no competition on which paradigm is adopted, nor is there any meaningful confrontation on the substantive aspects of the original disputes. The dominance of the channeling discourse explains the continuing dissatisfaction of the petitioners with the processing of their grievances. That is also why many petitioners, also frustrated, have to resist the dominance of the discourse by repeated petitioning. Others understand that the court officials may not be able to do much for them: visiting courts for them has become a routine to vent their frustration.

REPRODUCED DISPUTES AS A CONSEQUENCE

One ramification of the mismatched discourses is the reproduction of disputes. On the one hand, the petition officials find no shared languages with the petitioners whose legal discourse is so different from theirs, and thus have to rely further on the channeling discourse to avoid the real problems. On the other hand, the petitioners believe that the officials, employing channeling discourses, do not take their grievance seriously, but merely kick them about. A vicious circle is thus formed: in some instances, the original dispute is not resolved, but new disputes

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between the petitioners and the petition system are generated, so much so that the original disputes may be marginalized and forgotten.

From the perspective of the petitioners, the officials' channeling discourses reinforce their existing legal arguments and encourage them to develop new legal discourses. Most petitioners could hardly realize the real normative referents of the official paradigm—the stability concerns. They attribute the officials' avoidance of substantial legal issues to either "disobeying the law" or "tacit assent." The reactions of the officials make them believe that their legal arguments are valid: the officials simply dare not confront and discuss these with them.

A Sichuan petitioner with ten years of experience in petitioning (A37) advised newcomers in this way: "If you want them to listen to your claim, tell your problem in the language of the average citizen . . . they simply don't speak of the law." Another veteran petitioner from Hunan province (A34) said: "If you want a kind feedback from them [the officials], never say they are against the law. They definitely know the law better than you do, but they just don't follow it." Petitioner C of the Property Infringement Case said: "The court people hated me because I argued with them about the law, which was on my side." Han of the Intentional Homicide Case complained: "In the past several years, I have raised a lot of arguments [of law] to them [the petition officials]. . . . They just asked me to go elsewhere. . . . Sometimes they even refused to listen. . . . I know they cannot give a lawful answer [to my legal arguments]." Gao of the Compensation Calculation Case had similar complaints: "The officials dare not challenge my calculation method. I know they loathe me. Other people just let it go, but I stick to the law."

The petitioners are thus convinced that their legal discourses and arguments are valid and powerful. The officials' forbearance is (mis)interpreted by the petitioners as a recognition of the validity of their legal arguments, which, in turn, encourages their continued usage and further development of these legal discourses. The officials' time-consuming, yet mostly fruitless, channeling strengthens the petitioners' conviction that the law is on their side, and prompts them to perceive their petition experiences as injurious. As their petition experiences snowball, the petitioners name more injuries, blame more officials, and claim more compensation.

From the perspective of the petition officials, on the other hand, the petitioners' legal discourses are, in their own words, "distorted and annoying," which make them reluctant to respond seriously in legal discourses. One SPC petition official (B1) noted: "Petitioning experiences have made petitioners self-righteous and ridiculous 'legal experts'. There is no way to reason with them." Another official (B7) complained: "Most petitioners were blind to the law. They hoped the law became whatever they imagined. I almost wanted to shut my ears when those petitioners were showing off their 'profound' understanding of the law." A lawyer (C1), dedicated to providing counseling service to the petitioners, corroborates: "Every day I encountered a lot of petitioners with piles of documents arguing with officials in legal terms. . . . None of those arguments made sense."

But in a way these annoyances and further disputes are being reproduced by the very channeling discourses the officials adopt. As they find the petitioners difficult to reason with, the officials become more dependent on conflict-alleviating tactics, but these approaches in turn fuel the petitioners' usage of legal discourses.

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The deadlock thus makes the petition system less effective in resolving disputes. In some instances, it escalates a small legal dispute into a series of legal and political problems, and thus causes the reproduction or even proliferation of disputes.

For example, in the above-mentioned case of the Hunan petitioner who had developed hepatitis (A34), the petitioner's original dispute was with her employer; she saw her factory's working environment as the cause of her illness. After she started petitioning, however, she felt that the trial-level judge and lower-level petition officials were "arrogant" and "did not respect the law." Such feelings at some point turned to "perceived injurious experiences" (Felstiner, Abel, and Sarat 1980–1981, 633) and finally developed into new claims against the judge and some of the officials.

Similarly, in the Compensation Calculation Case, Gao attributed his demand for the high amount of compensation largely to the channeling practices of the petition officials: "in the past ten-odd years, I have been visiting all kinds of institutions. I have gone all the ways they [the petition officials] said might work. I have invested too much. I cannot quit with nothing. I must get a result."

In yet another example, a middle-aged male petitioner from Hebei (A47) had a personal tort and private lending dispute with his neighbors, who were the relatives of a top local township government official. After three years' petitioning experiences, however, his claim was not merely with the original disputants any more. In his complaint, which was written into a two-square-meter color poster, he listed in detail the statements of the petition officials at various levels who channeled him about or discouraged him from petitioning. He claimed against the listed officials, and asserted that those officials "refuse to see the laws," and thus "injured me even more than the original disputants."

The petitioners expect their conflicts to be solved by the petition offices; however, their petition experiences only generate more conflicts. Simple disputes have been transformed into complicated and enormous ones, so much so that they cannot be contained and resolved by the legal institutions (Komesar 1997). As petitioning is costly and unproductive, many petitioners lose other aspects of life after years of petitioning. As more disputes are reproduced throughout the process, the petitioners have no meaningful choice other than to keep on petitioning. Due to the reproduction of disputes, the petition offices, whose goal is to maintain social stability, ironically, frequently lead to incidents that disrupt social order and threaten social stability.

CONCLUSIONS AND IMPLICATIONS

Primarily based on firsthand data collected from both petitioners and petition officials, this article has analyzed how petitioning discourses are organized, developed, interacted, and reproduced. It demonstrates how the conflict expression is chosen and structured, and how it influences the dispute resolution process. Since the data were collected only from two courts, we do not suggest that this represents a whole picture of China's petition system. In fact, there are variations between the two courts: the discourses of the officials in the Supreme People's Court are

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predominantly channeling, while those in the intermediate court are less so because there are more routine complaints there. Occasionally, the petitioners also use moral or political discourses to blame the government for their grievances, which are nonetheless neglected or responded to with channeling discourses.

Overall, we find that the discourses between the petitioners and the petition officials are mismatched. The petitioners, presumably understanding little law, fight to frame their disputes in legal terms in order to convince officials that their grievances are worthy of the law's attention. But in the eyes of the petition officials, this type of legal discourse is awfully distorted. Out of concern to maintain social stability as well as a less confrontational environment in the offices, the petition officials, who are legal professionals, rarely contest the legal discourses presented by the petitioners. Instead, they usher channeling discourse to divert the petitioners to legal or extralegal channels. The two types of discourse rarely confront with each other, nor are the substantive issues raised by the petitioners seriously discussed.

Channeling discourse allows petition officials to look friendly, control the volatility of the dispute, contain and deflect anger, manage passions, and prevent violence, at least in the petition office. However, after the petitioners realize that being channeled into other institutions does not resolve their disputes, many of them identify their petitioning experiences as injurious. They start to blame petition officials and make new claims. The channeling discourse is employed mainly because it relieves the pressures faced by the petition officials in the short run.

Echoing the emphasis on stability maintenance since the mid-2000s, such channeling discourse reflects how political objectives are deeply embedded in dispute resolution mechanisms in contemporary China. In the past, this type of discourse may not have been as conspicuous as now, as the officials might have been more serious about the substantive issues raised. However, since the pressures are further accumulated in the channeled petitioners, the ultimate goal of the petition system—maintaining social stability—is subverted. The research thus sheds light on the legal consciousness of the petitioners in China and the operation of the petition system. It also shows how a dispute resolution procedure can alter or even generate disputes.

The phenomenon of mismatched discourses can also be understood through Merry's distinction between problems and cases (1990, 88–109). According to Merry, problems refer to situations understood as "social relationships with strain and conflicts." When problems come into court, they are reinterpreted under the legal framework as cases. The problems are framed as "a confrontation between two parties over a particular issue or incident, including not only the plaintiff and the defendant." The case structure is the way that the court "attempts to manage, contain, and control" the problems (Merry 1990, 108). Factors deemed irrelevant under the structure are disregarded.

In the case of petitioning, the discourses of the petitioners and officials are not confrontational, but the distinction between cases and problems exists, though in a reversed sequence. When the petitioners take their issues to the petition offices, they strive to frame the issues as cases. They hope the officials will take their claims seriously and that they can obtain remedies eventually. However, the officials do not believe that these issues can be resolved either by the legal system or the

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petition system. They do not treat them as cases; instead, they treat them as problems not only involving strain and conflict, but also carrying social and political ramifications. Therefore, the expected outcomes of both sides are differentiated and their discourses are mismatched.

In this sense, the phenomenon of mismatched discourses is not unique in China. In the United States, the distinction between problems and cases and the three types of discourses by court users, as illustrated by Merry (1990), all suggest that the discourses are mismatched in one way or another. However, in the United States, the court users eventually have a way out for their problems under the legal framework imposed by the courts, even though many of them are dissatisfied (Merry 1990). They have to accept the legal discourse and analysis of the courts; and the courts also provide a self-consistent set of discourses and analyses.

The uniqueness of this China case is that most petitioners do not obtain real solutions for their problems. Ironically, though the petition process is regarded as a dispute resolution mechanism, the petition officials are not in the position to deliver meaningful solutions. The petitioners present their disputes as legal cases, but the petition officials do not treat them as cases. Instead, they regard them only as problems that might threaten social stability. In their eyes, these problems cannot be resolved by either the legal or the petition system. They can only pacify the petitioners for a short run.

The phenomenon of mismatched discourses persists through the whole process of petitioning. That is why many petitioners, being channeled in this endless process, become mentally ill. The petition system inside China's judiciary, as a component of the overall petition system, may still serve political functions in legitimacy maintenance (Zhu 2013), social control (Cai 2004), and information collection (Peerenboom 2001; Minzner 2006), but its function in dispute resolution seems very limited. Furthermore, the establishment of petition institutions in courts, which allow the litigants to challenge final court judgments, has greatly undermined the finality of judicial decisions.

Through the perspective of petitioning discourse, this article has thus revealed how and why disputes are reproduced in the petitioning process. Existing studies have mainly examined the reproduction from an institutional perspective. Many find, for example, that local government officials offer economic rewards to experienced petitioners in order to reduce the number of petitions, a key measurement of their performance. They argue that this creates incentives for petitioners to keep on petitioning (Yu 2005; Minzner 2006). Our study, however, suggests that the disputes are reproduced primarily because the channeling discourse does not really address the petitioners' original claims. Channeling them to other procedures and institutions seems a temporary solution. Feeling ignored or cheated, petitioners identify the petition treatment as injurious and blame the petition officials and systems. New claims are thus made. In this way, new disputes are generated and proliferated.

This Chinese case also enriches the literature on the dispute transformation process. Echoing Merry's (1990, 92) criticism of Felstiner, Abel, and Sarat's (1980–1981) dispute pyramid, this article demonstrates that dispute transformation does not have to be unidirectional. Court and litigation do not have to be the tip of the pyramid, nor does the process of dispute transformation even have to be a pyramid.

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When the petitioners present their grievances in the petition office, they do not receive a simple "yes" or "no" answer; rather, they are guided by a suggestion that their disputes have to be processed elsewhere. Such a response determines that the trajectory of the dispute is multidirectional, depending on whether the petitioners follow the advice of the petition officials and the outcome of the processing. In this sense, it is unlikely that litigation in court is the final destination of such a transformation.

Moreover, the notion of dispute transformation by Felstiner, Abel, and Sarat (1980) also presumes that fewer and fewer disputes will be escalated. This is because only a small proportion of disputes can survive the naming, blaming, and claiming processes. But as our study shows, the dispute resolution process itself generates and reproduce different disputes. It is not that the dispute changes or is transformed, but that the way the conflict is handled is so dissatisfactory that it itself becomes a source of injurious experience and thus provokes blaming and claiming.

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APPENDIX : LIST OF INFORMANTS

A. Petitioners

Petitioners at Supreme People's Court Petition Office

A1. Male from Inner Mongolia. Cause: dissatisfied compensation calculation of a contract case against local government. Interviewed in 2013.

A2. Female from Hubei. Cause: dissatisfied placement of laid-off workers in a state-run corporation. Interviewed in 2013.

A3. Female from Hubei. Cause: dissatisfied placement of laid-off workers in a state-run corporation. Interviewed in 2013.

A4. Male from Hunan. Cause: dissatisfied placement of laid-off workers in a state-run corporation. Interviewed in 2013.

A5. Male from Chongqing. Cause: dissatisfied compensation for land taking. Interviewed in 2013.

A6. Female peasant. Cause: trial court's refusal to grant her written judgment. Interviewed in 2013.

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A7. Male from Liaoning. Cause: heritage distribution conflict with his daughter-in-law. Interviewed in 2013.

A8. Male peasant. Cause: demolition relocation compensation conflict with local government. Interviewed in 2013.

A9. Male from Chongqing. Cause: delayed appellate decision. Interviewed in 2013.

A10. Male from Jiangsu. Cause: private lending dispute with the local village head. Interviewed in 2013.

A11. Female from Sichuan. Cause: ex-husband's intentional assault on her daughter. Interviewed in 2013.

A12. Male from Sichuan. Cause: land-taking compensation and demolition relocation conflict with local government and real estate developer. Interviewed in 2013.

A13. Male from Sichuan. Labor dispute regarding unreasonable dismissal of laborer with a state-run corporation. Interviewed in 2013.

A14. Male from Shanghai. Cause: demolition relocation compensation conflict with real estate developer. Interviewed in 2013.

A15. Male from Anhui. Cause: unsettled compensation for his son's sudden death after work with a private corporation. Interviewed in 2013.

A16. Female from Shenyang. Cause: contractual dispute with local government cadre regarding property rights. Interviewed in 2013.

A17. Male from Shandong. Cause: labor dispute regarding unpaid pension insurance with a private corporation. Interviewed in 2013.

A18. Male from Henan. Cause: wrongful sentence of labor reeducation due to reporting the corruption of village head. Interviewed in 2013.

A19. Male from Henan. Cause: wrongful imprisonment due to petitioning in Beijing. Interviewed in 2013.

A20. Male from Henan. Cause: unsettled state compensation for misjudged case. Interviewed in 2013.

A21. Female from Guangdong. Cause: demolition relocation compensation conflict with local government. Interviewed in 2013.

A22. Female from Liaoning. Cause: labor dispute regarding injury compensation with a private corporation. Interviewed in 2013.

A23. Male from Heilongjiang. Cause: execution of a contract case court decision. Interviewed in 2013.

A24. Female from Shanghai. Cause: personal tort. Interviewed in 2013.

A25. Female from Inner Mongolia. Cause: heritage distribution dispute with other family members. Interviewed in 2013.

A26. Male from Liaoning. Cause: land-taking compensation dispute with local government. Interviewed in 2013.

A27. Female from Anhui. Cause: her son's wrongful criminal accusation of intentional homicide. Interviewed in 2013.

A28. Female from Heilongjiang. Cause: dissatisfied with absentia judgment due to her reluctance to appear in the court. Interviewed in 2013.

A29. Male from Jiangxi. Cause: wrongful criminal accusation of intentional property destruction. Interviewed in 2013.

A30. Male from Jiangxi. Cause: wrongful criminal accusation of intentional property destruction. Interviewed in 2013.

A31. Male from Jiangsu. Cause: demolition relocation compensation conflict with local government and real estate developer. Interviewed in 2013.

A32. Male from Liaoning. Cause: personal tort resulting from private lending conflict. Interviewed in 2013.

A33. Male from Heilongjiang. Cause: land-taking compensation conflict with local government. Interviewed in 2013.

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A34. Female from Hunan. Cause: labor dispute regarding workers' compensation with a state-run corporation. Interviewed in 2013.

A35. Male from Jiangsu. Cause: dissatisfied placement of demobilized soldiers (claim for treatment as a civil servant). Interviewed in 2013.

A36. Male from Henan. Cause: wrongful imprisonment due to petitioning in Beijing. Interviewed in 2013.

A37. Male from Sichuan. Cause: disputed compensation for personal tort against local town cadre. Interviewed in 2013.

A38. Male from Zhejiang. Cause: demolition relocation compensation dispute with local government and real estate developer. Interviewed in 2013.

A39. Male from Jiangxi. Cause: reporting three corrupted town cadres. Interviewed in 2013.

A40. Male from Jiangxi. Cause: reporting three corrupted town cadres. Interviewed in 2013.

A41. Female from Liaoning. Cause: dissatisfied placement of workers in disintegrated state-run corporation. Interviewed in 2013.

A42. Female from Liaoning. Cause: dissatisfied placement of workers in disintegrated state-run corporation. Interviewed in 2013.

A43. Male from Anhui. Cause: corrupt village head in land-taking process. Interviewed in 2013.

A44. Female from Shanxi. Cause: disputed compensation for work injury against a state-run corporation. Interviewed in 2013.

A45. Male from Jiangsu. Cause: dissatisfied placement of demobilized soldiers in a private corporation. Interviewed in 2013.

A46. Male from Sichuan. Cause: land-taking compensation conflict with local government. Interviewed in 2013.

A47. Male from Hebei. Cause: personal tort and private lending dispute with government official's relatives. Interviewed in 2013.

A48. Male from Liaoning. Cause: demolition relocation compensation conflict with local government. Interviewed in 2013.

A49. Male from Guangdong. Cause: unsettled compensation for personal tort. Interviewed in 2013.

A50. Male from Liaoning. Cause: demolition relocation compensation conflict with local government. Interviewed in 2013.

Petitioners at Southern China Intermediate Court Petition Office

A51. Male from southern China. Cause: wrongful tort case judgment in 1996.

A52. Male from southern China. Cause: labor dispute regarding placement of demobilized soldiers.

A53. Female from southern China. Cause: contractual dispute regarding defective products.

A54. Male from southern China. Cause: trial court's refusal to register his litigation.

A55. Male from southern China. Cause: administrative dispute regarding education rights of children.

A56. Female from southern China. Cause: contractual dispute.

A57. Female from southern China. Cause: land-taking compensation conflict with local government.

A58. Male from southern China. Cause: delayed reply from appellate court in administrative litigation.

A59. Male from southern China. Cause: delayed court decision in criminal litigation.

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A60. Male from southern China. Cause: labor dispute regarding retirement treatment with a state-run corporation.

A61. Male from southern China. Cause: execution of contract case decision.

A62. Male from southern China. Cause: land-taking compensation conflict with local government.

A63. Male from southern China. Cause: private lending conflict.

A64. Male from southern China. Cause: victim of fraud case that could not locate the offender.

A65. Female from southern China. Cause: execution of court decision.

A66. Female from southern China. Cause: labor dispute regarding retirement benefits.

A67. Male from southern China. Cause: medical malpractice dispute.

A68. Male from southern China. Cause: denial of a solid mediation agreement.

A69. Male from southern China. Cause: labor dispute regarding worker's injury.

A70. Male from southern China. Cause: court's refusal to register a personal lending litigation due to statute of limitations.

A71. Male from southern China. Cause: insufficient compensation for labor injury.

A72. Female from southern China. Cause: private lending dispute.

A73. Male from southern China. Cause: compensation conflict for personal torts.

A74. Male from southern China. Cause: land leasing conflict.

A75. Male from southern China. Cause: labor dispute regarding unpaid wages.

A76. Male from southern China. Cause: private lending dispute.

B. Petition Officials

B1. Male, SPC petition official, interviewed in 2013.

B2. Male, SPC petition official, interviewed in 2013.

B3. Male, former SPC petition official, interviewed in 2013.

B4. Male, vice president and petition official of a Southern Chinese Intermediate Court, interviewed in 2013.

B5. Male, judge and petition official of a Southern Chinese Intermediate Court, interviewed in 2013.

B6. Male, tribunal director and petition official of a Southern Chinese Intermediate Court, interviewed in 2013.

B7. Female, judge and petition official of a Southern Chinese Intermediate Court, interviewed in 2013.

B8. Female, president and petition official of a Southern Chinese Trial Court, interviewed in 2013.

C. Petition Lawyers and Middlemen

C1. Male, petition lawyer near SPC petition office, interviewed in 2013.

C2. Male, petition lawyer near SPC petition office, interviewed in 2013.

C3. Male, petition lawyer near SPC petition office, interviewed in 2013.

C4. Male, petition lawyer near SPC petition office, interviewed in 2013.

C5. Male, "citizen jurist" (similar to petition lawyers, but with no lawyer's license), interviewed in 2013.

C6. Male, petition consular (similar to petition lawyers, but with no lawyer's license), interviewed in 2013.

C7. Male, law bookshop owner near SPC office, has many personal connections with SPC petition officials; serves as middleman sometimes; interviewed in 2013.

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C8. Male, promoter of a "rights protection website," charging a substantial fee (several thousand Yuan) to support petitioning through media and the Internet, interviewed in 2013.

C9. Female, promoter of another "rights protection website," charging a substantial fee (several thousand Yuan) to support petitioning through media and the Internet, interviewed in 2013.

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