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China**

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**Article abstract**

Using a newly available personal journal, *Zhang Gang Diary* (1888–1942), this study explores an understudied area of Chinese legal history: the everyday practice of community mediators in the late Qing and Republican eras. The records of the *Zhang Gang Diary* reveal how social, political, and judicial transformations impacted the practice of local mediation during a period of significant political and cultural change. The community mediator of this generation had increasingly limited room for mediation. However, as the diary reveals, community mediators also swiftly adapted to the new changes. Through a close reading of the life history of one village mediator, this paper examines a relatively low-status gentleman's strategy for survival and how he responded to the grand societal and political transformations of late Qing and Republican China.

# Living with Disputes: *Zhang Gang Diary* (1888–1942) and the Life of a Community Mediator in Late Qing and Republican China\*

WEITING GUO

## *Abstract*

*Using a newly available personal journal, Zhang Gang Diary (1888–1942), this study explores an understudied area of Chinese legal history: the everyday practice of community mediators in the late Qing and Republican eras. The records of the Zhang Gang Diary reveal how social, political, and judicial transformations impacted the practice of local mediation during a period of significant political and cultural change. The community mediator of this generation had increasingly limited room for mediation. However, as the diary reveals, community mediators also swiftly adapted to the new changes. Through a close reading of the life history of one village mediator, this paper examines a relatively low-status gentleman's strategy for survival and how he responded to the grand societal and political transformations of late Qing and Republican China.*

## *Résumé*

*À partir d'un journal intime accessible depuis peu, le Zhang Gang Diary (1888–1942), la présente étude analyse un domaine méconnu de l'histoire du droit de la Chine : la médiation communautaire de tous les jours aux époques de la fin de la dynastie Qing et de la République. Les entrées du journal de Zhang Gang mettent au jour l'incidence des transformations sociales, politiques et judiciaires sur la pratique de la médiation à l'échelle locale à une période de grands changements poli-*

\* I'd like to thank Roger Shih-Chieh Lo, Alison Bailey, Rhonda Semple, anonymous reviewers, and JCHA editorial board for their thoughtful comments. I particularly appreciate Roger Shih-Chieh Lo and the staff at the Rare Book Department of Wenzhou Municipal Library for their help in source collection in the past years.

*tiques et culturels. Les médiateurs de cette génération avaient de moins en moins les coudées franches. Toutefois, comme le journal le révèle, les médiateurs communautaires se sont aussi adaptés rapidement aux nouveaux changements. Cet article, qui présente une lecture attentive de la vie du médiateur d'un village, examine la stratégie d'un homme de condition sociale plutôt modeste pour survivre et s'adapter aux profondes transformations sociétales et politiques de la Chine à fin de la dynastie Qing et pendant la République.*

## Introduction

Scholars have now firmly established that, in China, community mediation contributed to the construction of a distinctive legal culture.<sup>1</sup> For most of the imperial period, the effective reach of the centralized state extended no further than the county level; there, magistrates relied on the help of local villagers by instituting extra-governmental services. Such a “compromised” structure reflects the imperial state’s intentional strategy as it governed through an institution in which only a few thousand centrally appointed officials were burdened with administering a vast realm with a rural population in the hundreds of millions.<sup>2</sup> Community mediation also constituted what Philip Huang has described as “the third realm” in which formal and informal power systems met and local governance and social relations were negotiated through the participation of officials, gentry, and lineage members.<sup>3</sup> During the late Qing and Republican periods, community mediation continued to prevail despite the impact of modern Westernized institutions upon the “traditional” practice of dispute resolution.<sup>4</sup> Scholars have described several mediation reforms instituted during the Republican period, including the introduction of court mediation procedure<sup>5</sup> and the installation of towns (*zhen* 镇), townships (*xiang* 乡), and wards (*qu* 区).<sup>6</sup> Yet the most significant institutional change took place after this period, when the Communist government replaced the mediation system with Party Comrades and political standards.<sup>7</sup> Philip Huang argues that, despite the significant social and political transformations that occurred during the Republican period,

“[m]ediation operated to greater effect in the Republican period in society itself, where it continued to work much as it had in the Qing.”<sup>8</sup>

However, while previous studies advance our understanding of the significance of mediation and its continuity and change during the Qing-Republican transition, limited information exists regarding *how* it was actually practised and *how* it went through these giant social and political transformations. Few records exist that reveal the stories of mediators (*zhongren* 中人, *tiaoren* 调人) or other community actors such as officers of the communal compact (*xiangyue* 乡约)<sup>9</sup> and their activities in the local community. Insufficient evidence has prevented scholars from understanding completely the ways mediators adapted to the changing society during this transformative moment in Chinese history. To fill this void, this paper utilizes the precious records of the *Zhang Gang Diary* (张纲日记, 1888–1942)<sup>10</sup> and explores the life history of a village mediator. Based on a careful reading of this diary, this paper argues that examination of the everyday experiences and life histories of mediators is crucial for a better understanding of mediation in Chinese society of that time.

As the records of the *Zhang Gang Diary* suggest, both social and institutional changes, particularly judicial reform and intensified local political struggles, influenced the practice of mediation, and mediators swiftly adapted their actions in accordance with the circumstances. After the new administrators and local élites began to have an impact on local governance under several waves of a “local self-government” (*difang zizhi* 地方自治) campaign,<sup>11</sup> mediators not only developed relationships with these local actors but also learned to bring cases to the court, to policemen, and to community groups for further investigation. The mediator’s role gradually transformed from dispute arbitrator to case broker, while new legal professionals and formalized local mediators eroded the older mediation practices. Community mediators did not vanish, however. Instead, a new generation of mediators who possessed public service experience and specialized knowledge continued the practice of dispute resolution. All in all, the *Zhang Gang Diary* presents the rise and fall of a mediator of the late Qing generation who witnessed the transformation of mediation in the local world. The grand

transformations of this period compelled local mediators to adopt new strategies to survive changing circumstances. The long life of the diarist Zhang Gang allows us to study this process from the perspective of an individual's experience.

The discovery of local sources in recent years has provided rich evidence about the everyday practices of community mediators that was previously unavailable to researchers of this period.<sup>12</sup> The records in the Qing imperial archives primarily record fully investigated criminal cases, in which officials under strict supervision enjoyed limited room for compromise and negotiation. Other sources of information, local gazetteers compiled by the élite, contain only sketchy information about village mediation. Several county archives, including the Ba County Archives, Dan-Xin Archives, Nanbu County Archives, Huangyan Archives, and Longquan Archives, provide evidence of legal documentation in which middlemen appear to have helped investigate and resolve disputes.<sup>13</sup> The majority of these cases, however, offer limited information about the negotiation process and the complex interactions behind disputations.<sup>14</sup> Some scholars, including Philip Huang, have turned to records of social surveys conducted in the early twentieth century to search for evidence of local practice.<sup>15</sup> However, these surveys reveal very little regarding the everyday practice of village mediators and their involvement in local politics and social networks. Therefore, scholars need to find other sources to probe into commoners' lives and the roles played by local actors.

Fortunately, the *Zhang Gang Diary* provides a solution to the scarcity of sources. Liu Dapeng (刘大鹏) and Pingyang (平阳) gentryman Liu Shaokuan (刘绍宽) are among the very few members of the rural gentry of this period whose diaries have survived.<sup>16</sup> Zhang Gang's diary is a remarkable addition to these extraordinary diaries. For over 50 years, Zhang Gang recorded almost everything in his life, including transactions and cash flow, places he visited, talks with friends, the price of goods, books on which he commented, and the disputes and mediations he conciliated or in which he participated. He kept track of his contact with local elites, officials, *yamen* runners,<sup>17</sup> and later policemen. Such unprecedented accounts provide an excellent window into the everyday practice of community medi-

ation during the long period of dizzying changes. Moreover, while many studies examine letters and diaries of great thinkers and figures, relatively less work has been done on the journals and accounts of commoners, whose stories are not present in most of the sources and grand narratives. The worldview of such commoners differed significantly from that of politicians and intellectuals. Their life histories demonstrate ordinary people's strategies for survival and how they responded to grand societal and political transformation.

Based on a close reading of the *Zhang Gang Diary*, this paper asks the following questions: What did national transformations mean at the local level and in common people's daily lives? Were local mediators like Zhang Gang sympathetic or resistant to the state's attempts to penetrate local society and increase resource extraction? If local mediators remained players of the "third realm," what strategies did they use while interacting with the state? How did they manage their relations with other local powers who increasingly engaged in communal activities and intervened in the practice of community mediation? A single source is of course insufficient to answer all these questions and challenge the considerable body of literature that exists regarding community mediation.<sup>18</sup> Instead, this paper gleans value from the life experiences of a member of the lower gentry by analysing how one front-line mediator acted and responded to change during this period.

The vivid accounts in the *Zhang Gang Diary* allow us to explore an interesting story of lesser figures. As a member of the lower gentry in the village of Tingtian (汀田; previously known as Tingchuan 汀川) who gained the lowest civil service examination degree, Zhang survived and even flourished after the abolition of civil examinations in 1905 and the collapse of the Qing Dynasty in 1911. Although Republican society witnessed what Keith Schoppa and Mary Rankin call the rise of an active local élite movement,<sup>19</sup> the Chinese state, regardless of its political orientation in Beijing, Nanjing, and Chongqing, sought to reach past the county seat and directly into the villages.<sup>20</sup> The newly established judicial police (*sifa jingcha* 司法警察), various levels of local police,<sup>21</sup> and the installation of administrative units gradually began to play an increasingly significant role in the operation of community mediation. After the late 1920s,

while the Nationalist government (Guomindang, a.k.a. Kuomintang) attempted to increase its tax revenue and its control over local communities, various sub-administrative personnel or what Prasenjit Duara calls “entrepreneurial brokers” emerged as the state’s brokers and profited at the expense of both government and villagers.<sup>22</sup> Most of these trends were observed by Zhang Gang, who recorded in his diary how, increasingly, local bullies (*eba* 恶霸) and the new judiciaries, local administrators, policemen, and lawyers involved themselves in community mediation. The alliance between mediators and officials had always been fluid and unstable. The new laws and procedures narrowed the scope of community mediation, although the culture of bribery and intercession continued to prevail in the circle of mediators. All in all, Zhang Gang’s story reveals one dynamic picture of state-mediator-society interaction, which offers evidence that clever mediators were able to adjust their survival strategies to navigate their position successfully with respect to a variety of actors.

While there are advantages to using this precious diary, its distinctive nature and potential limitations need to be considered. Many scholars admit that diarists are interested in specific audiences, even though these audiences may only exist in the diarist’s imagination.<sup>23</sup> The *Zhang Gang Diary* is a case in point. From the beginning, Zhang circulated drafts of his diary to friends and elite acquaintances. He admits to being influenced by Li Ciming’s (李慈铭) widespread *Yuemantang Diary* (越縵堂日记), which was cautiously composed and publicly disseminated. As a scholar long immersed in Confucian classics, Zhang regarded writing as an expression of morality. His accounts were usually accompanied by moral evaluation. He even instructed students to write diaries and then reviewed every effort. However, Zhang’s moral orientation and the fact that he wrote for a presumed audience should not be interpreted as meaning that his accounts were fabricated. He allowed his familiar circle to view his diary, which suggests that its contents were largely recognized by these local elites. He never hesitated to express his ideas in public, and he recorded correspondence with both his friends and his enemies. To a great extent, the *Zhang Gang Diary* provides a great platform that offers insight into both Zhang’s and his contempo-

raries' living worlds. The diary is most clearly the expression of one man's personal views and experiences, but it also has value in offering a reflection of the consciousness and lived experiences of people in that era.<sup>24</sup>

In the following sections, this study first explores Zhang Gang's mediation career. It then analyses his involvement in local politics and his encounters with new judiciaries, policemen, and administrators. I explore Zhang's strategies under several waves of institutionalization that affected mediation practice. In the concluding remarks, I summarize the findings and discuss how the study advances our understanding of the dynamics of mediation practice through the story of a village mediator.

### **Zhang Gang's Career as a Mediator**

Zhang Gang was born in 1860, the year in which the Qing Dynasty was about to strike back against Taiping Rebel forces.<sup>25</sup> The imperilled state was poised to initiate an unprecedented Westernization project, while social unrest and political turbulence pervaded the entire nation. New ideas and practices were current in Zhang's native Ruian county (瑞安), located only about 200 miles south of Shanghai and near the treaty port of Wenzhou in Zhejiang province. Facing the sea, the inhabitants had long counted on fishing, smuggling, and trading for their livelihood. The rugged terrain separated this area from most of the prosperous Jiangnan regions. The local dialect also set it apart from the rest of the nation and even from most regions of Zhejiang. However, people here made use of maritime transportation and frequently connected with the neighbouring Fujian Province and Taizhou Prefecture. Coastal trade turned the Wenzhou Prefecture into a major city during the late nineteenth and the twentieth centuries.<sup>26</sup>

Zhang's grandfather and great-grandfather were both members of the lower gentry. His father Zhang Qingkui (张庆葵) was also a gentryman. Qingkui had organized a militia and participated in the suppression of the local religious group the Golden Coin Association (*jinqianhui* 金钱会). He had the opportunity to serve as a county magistrate, but eventually decided to stay at home and educate his



son.<sup>27</sup> Such family background led Zhang Gang to the road of the literati. At the age of 21, Zhang Gang gained the lowest civil service examination degree.<sup>28</sup> He failed the exams in subsequent years and went no further up the imperial ladder of success. While he recorded having been disappointed, he contributed fully in opportunities to make a living and play a positive role in local society. While for him the opportunity for formal government employment had ended, he found avenues to support himself professionally while serving his community.

Despite failing his exams, Zhang Gang had been noted for his prose and poetry, an essential element of preparation for imperial exams.<sup>29</sup> He opened a private school in 1887 and started to teach his relatives and other local students.<sup>30</sup> In 1891, the prominent scholar-official Sun Yirang (孙诒让) invited Zhang to teach in his school, which indicates the esteem with which Zhang was held.<sup>31</sup> In addition to teaching classics and literature in formal settings, Zhang also dedicated himself to the introduction of new ideas and books to the local community.<sup>32</sup> After civil examinations were abolished, Sun recommended Zhang to teach Chinese history and geography in a new public school, Ruian Middle School (瑞安中学堂).<sup>33</sup> His knowledge of Chinese classics helped him survive the trend towards Western-styled education and enhanced his connection with the county and regional élites.

Zhang Gang's reputation as a learned man gradually spread in the locality. In the early years, he usually mediated disputes within his family and among his students.<sup>34</sup> Sometimes he also observed how elders<sup>35</sup> and magistrates<sup>36</sup> investigated disputes. He began to have more and more cases referred to him from other villagers, and at times represented his village and mediated inter-village disputes.<sup>37</sup> In many cases, he even went to remote areas to mediate disputes for people he had never met.<sup>38</sup> There is evidence that villagers viewed him as a man of fine breeding who had talent in dealing with communal affairs. From the late 1880s, people visited him when they had troubles or questions about various legal matters. Having broad knowledge and good connections with élites and officials, Zhang could usually provide the necessary help. Magistrates and salt officers frequently consulted Zhang's advice when they encountered diffi-

culty in handling local affairs. Some of them also discussed poems and paintings in their conversation with Zhang.<sup>39</sup> The public and private realms in traditional China always overlapped and were mutually structured. Whether in the “public sphere,” “third realm,” or beyond,<sup>40</sup> local élites always developed a variety of strategies to remain on good terms with both imperial authorities and local powers.

By 1888, when he began writing his diary, Zhang's connections and communication skills allowed him to dedicate himself to village mediation. He continued to work as a teacher, mediator, funeral ritual master,<sup>41</sup> and later a local council representative.<sup>42</sup> In 1888, Zhang was 28 years old and the father of three daughters.<sup>43</sup> He was mature enough to handle complex affairs within his family. In the village, he was widely perceived as possessing profound understanding and as a person who was amenable to reason. His wisdom and insight made him a good candidate to judge between right and wrong (*pin'an* 品案 or *panquzhi* 判曲直) and often to propose appropriate solutions. What he did in mediation, to some extent, resembled the role of a teacher. As Fei Xiaotong observes, village mediation was a process of education, as the mediators always blamed both sides for shaming the village.<sup>44</sup> In his mediation cases, Zhang Gang counted on his teaching skills. When people came to him wishing him to uphold justice for them, Zhang usually responded with a cost-benefit analysis. He knew that victims would have a chance to win in a lawsuit, but he also addressed the fact that, after a long process of litigation, with high fees to be paid to government and runners, the costs of winning could outweigh the value of having won.<sup>45</sup> Even more importantly, he acted on the understanding that, while in practice harmony resulted from the prevention of further loss or damage, behind this straightforward cost-benefit analysis lay a deeper consideration of face and social relations, which usually influenced cases involving neighbours and relatives who needed to remain on good terms after a dispute.<sup>46</sup>

Throughout the late Qing period, Zhang Gang's mediation dealt with a combination of three major issues: litigants brought cases that concerned loss of life and property, loss of face, and financial losses. Sometimes people could not halt a litigation process because they felt doing so would harm their dignity. Evidence sug-

gests that, while many individuals recognized fully the high cost of pursuing a lawsuit with the magistrate, they felt impelled to act as if they were making the utmost effort to fight. On some occasions, one side could not agree to compromise because the other side acted as the peacemaker (*heshilao* 和事佬) who could propose solutions. Under such circumstances, Zhang Gang could only persuade or blame these disputants.<sup>47</sup> The very reason that he was usually not involved in the disputes made him qualified to offer criticism. Once a peaceful settlement was in sight (*lueyou heju* 略有和局 or *heji* 和机), Zhang Gang could take the lead and instruct both sides towards reaching an agreement.<sup>48</sup> For decades, Zhang Gang practised this method, and it seemed to work quite well in most of the cases. Before the judicial reforms that took place in the last years of Qing Dynasty and in the Republican period were implemented, Zhang Gang's mediation generally achieved successful results, aside from exceptional cases that involved fierce disputation and difficult-to-resolve political struggles. During the late nineteenth century, China was deeply influenced by its interactions with the West, but the practice of mediation did not fundamentally change. Only after 1900 did the Chinese gradually feel the inevitable trend of change. The subsequent "New Policies" (*xinzheng* 新政; 1901–1911),<sup>49</sup> reforms that included policing and a new school system, began to challenge village mediation, particularly in cases that involved the interests of multiple groups or a serious criminal offence. In terms of mediation techniques, Zhang Gang's method remained unchanged before the advent of judicial reform. In the majority of the cases, he was experienced in negotiation and usually ended disputes in a timely manner.

Family disputes, like those in the public realm, were also very often related to the issue of face. In some cases, Zhang Gang used lineage regulations (*zongfa* 宗法) to punish family members involved in conflict with each other. He acted on the belief that, in this way, he could not only maintain the family's prestige but also avoid statutory punishment and show leniency toward the offender.<sup>50</sup> In many occasions, Zhang initially condemned the offenders as "shameless" (*wuchi* 无耻) or "unscrupulous and unfilial" (*buxiao* 不肖), but then softened his position, acting in a tolerant manner towards the

offenders. He also settled relatively light punishments in the hope that infamous family cases could be quickly resolved and the offenders could repent and reform.<sup>51</sup> Sometimes he also received adultery or incest cases from members of other lineages or different divisions of his lineage who found it difficult to mediate such family scandals.<sup>52</sup> They wished Zhang to settle scandals in a relatively peaceful and private manner, particularly since some family members could not bear the fact that scandals had occurred. Mediation could help reduce the harm to the family compared to the publicity of trial procedure. In one incest case, Zhang warned the offenders that he was willing to bring the case to a magistrate if necessary. The offenders then quickly followed Zhang's and family members' instructions and ceased cohabitation.<sup>53</sup> In doing so they avoided an official procedure that would likely result in severe punishment, but would also impugn the reputation of the family.

In a broader sense, Chinese justice included both public and private elements as well as formal and informal mechanisms that mutually shaped each other. Except for those infamous family scandals, every "private" settlement between two parties had "public" effect, as it forced those found guilty or on the wrong side of the dispute to publicly acknowledge their position with respect to the other party and the entire community. Informal settlement among community members usually imitated official procedure in order to achieve legitimacy that ensured the arrangement after the reconciliation process. As a result, Paul Katz argues, Chinese legal culture embodied what he terms a "judicial continuum" in which "a holistic range of options for achieving legitimization and dispute resolution, including mediation ... formal legal procedure ... and performing rituals" co-existed and influenced one another.<sup>54</sup> Mediation usually influenced compensation and punishment, elements largely dependent on the mediator because of the difficulty in making any side decide on satisfactory compensation. One action Zhang Gang favoured was to require violators to sponsor a public dramatic performance (*faxi* 罚戏), a ritual that was part of Chinese divine justice.<sup>55</sup> The offenders were usually asked to treat the victims to a compromise feast (*heshijiu* 和事酒), which both comforted the victims and mediators and made the offenders suffer humiliation.<sup>56</sup>

Both dramatic performance and compromise feast carried educational and compensational meanings. The acts served as a warning to others not to commit similar offences, and they came at a considerable cost to compensators. The compensation itself came to be a matter of contention: it could be difficult to reach an agreement on the number of feast tables and dramatic performances. These issues were in no way trite. Victims could request an unaffordable number of feasts and performances.<sup>57</sup> In other cases, injured parties felt humiliated when they received what they believed to be insufficient compensation.<sup>58</sup> The injured party also occasionally expressed concern that the harmful effect of “killing air” (*shaqi* 煞气),<sup>59</sup> caused by casualties and conflicts, could be worsened by insufficient compensation and could bring misfortune upon the victim’s family. A successful mediator like Zhang worked hard to find a solution that satisfied the victim’s family against the real financial limits of others involved. In one case of murder, for example, the perpetrator was so poor that he could afford only the coffin fee. Zhang Gang persuaded the victim’s family to accept a reduced amount of compensation that included only the death ritual and a coffin.<sup>60</sup>

Zhang’s writing indicates that he recognized the effect of mediation upon his reputation. While enjoying the pleasure of helping others in mediation, he also expected to gain respect and honoraria (*xiejīn* 谢金). During the early years, he relied on his friends and colleagues to disseminate his fame, but as his skill grew he professionalized this practice. Roughly around 1900, he started to provide his business card at each mediation occasion.<sup>61</sup> Although he did not explicitly state that his presence was “selling his face” (*mai mianzi* 卖面子; to obsequiously bequeath favours on someone) to helpless disputants, he was angered when he felt disrespect from any side. It is clear from his reaction in the following examples that his status was central to his ability to mediate cases and handle villagers’ affairs successfully. In one marriage dispute, both sides fought fiercely, and Zhang’s business card was destroyed. By this act the litigants humiliated Zhang and triggered the breakdown in relations between Zhang and disputants. Even the local constables (*dibao* 地保),<sup>62</sup> who had a certain authority in local affairs and assisted villagers in communicating with the magistrate, could not stop the dispute. Furious,

Zhang blamed the offenders for their disrespectful behaviour. He warned that he would not complete the mediation unless he received a valuable gift. At this moment, the disputant's relatives, who seem to have been on good terms with Zhang, intervened. The case was eventually resolved, and the disputants treated Zhang to a splendid feast where he was assigned the most honourable seat.<sup>63</sup> This public apology reduced Zhang's grievance and restored his reputation. Zhang valued the honorarium and feast he received for successfully completing mediation, and he seems to have linked it to face and dignity. Zhang was not obliged to take on small cases, nor did he need to accept disrespect, because rent from properties he owned and income from teaching allowed him financial independence. Moreover, he was a prestigious teacher and a knowledgeable scholar. As a noted member of the gentry, he did not tolerate any disrespectful act.

As a result, when disputants proposed an honorarium Zhang deemed insufficient, he would refuse to mediate the case. In some cases, he even sued his client if he thought that the pay he received did not match his social status.<sup>64</sup> He behaved similarly when punishments levied were insufficiently carried out, as in the example of dramatic performances that failed to meet set criteria, or when an outcome was fiercely disputed. In a land redemption dispute in 1902, one disputant brought the case to court and fiercely quarrelled with Zhang and the other side. The litigation occurred when villagers were about to celebrate Chinese New Year. The disputant even spread the rumour that Sun Yirang would assist him in mediating the case. Once Sun coordinated the mediation, Zhang would have no role in negotiation, as Sun was a prestigious scholar that Zhang held in high esteem. Yet the rumour was quickly confirmed a lie, and both sides continued to argue through petitions and outside the court. After two months, the disputant eventually gave up arguing and requested that the conflict be settled with a feast. Zhang argued that a mere feast was not enough and required the disputant to hold a dramatic performance "in order to give face to the mediator [Zhang]" (*yi quan zhongren mianzi* 以全中人面子).<sup>65</sup> In this case, it is clear that money was not at issue; Zhang's concern was that he could never tolerate any act that devalued his fame and efforts. In many other cases, face and reward were as important as the pursuit

of harmony. Both mediators and disputants considered face and reputation as part of compensation and reward.

If Zhang's mediation career was so much about fame and reputation, how did he perceive the role of community mediation in local society? Zhang's diary does not explicitly answer this question, but his actions reveal how he perceived the ways of handling mediation. He was not always eager to engage in mediation. Sometimes he was reluctant to get involved in disputes, but the villagers continuously appealed to his acquaintances to persuade him to serve as their peacemaker. Facing endless requests, Zhang usually resorted to the most efficient solution. He preferred mediation not only because it was less expensive for the disputants but also because it required less effort than any other method. However, when lawsuits were inevitable, he assisted disputants in drafting petitions and even helped them go through the process.<sup>66</sup> He clearly knew how to pursue a quarrel. In his own disputes with others, he even brought his rivals to court through high-profile litigation.<sup>67</sup> It may appear ironic that Zhang's behaviour resembled that of the litigation masters (*songsshi* 讼师 or *zhuangshi* 状师), whom he perceived as among the chief culprits behind social disorder.<sup>68</sup> His underlying logic, however, was to assist his client and, more importantly, to embody what he perceived to be the right way to treat wrongdoers.<sup>69</sup> To certain extent, it was this very sense of justice that drove him to pursue litigations. Once "pettifoggers" (*guntu* 棍徒) had stirred up the dispute and triggered litigation, he had no choice but to advise his client to fight back with petitions and disputations.

Zhang Gang's involvement in litigation reflected what Philip Huang calls the "paradoxical combination" of the representation of "no litigation" and the practice of frequent litigation.<sup>70</sup> It also echoes Huang's depiction of the third realm, in which village mediators utilized both formal and informal resources for resolving disputes. However, in a more practical and strategic sense, Zhang Gang's case reveals the significance of disputation in mediation. To him, any weapon that could help mediators to reach a relatively acceptable outcome was worthy of consideration. Facing the breakdown of peace among the villagers, Zhang's major task was to remedy relations in a realistic way. To this end, the practice of disputation and litigation was not necessarily inconsistent with the pursuit of har-

mony and Zhang's representation of himself as being anti-litigation. Zhang's action was not "litigious," and disputation helped him achieve what he perceived to be a better solution in a realistic sense. Linxia Liang, whose study on Qing civil justice challenges Huang's thesis and approach, has observed a similar correlation in the judicial process.<sup>71</sup> Zhang Gang's story further demonstrates that, in the actual practice of mediators, the relationship between disputation and mediation should not be understood as "paradoxical." Instead, both worked together and jointly contributed to resolution of the dispute.

Zhang's strategy of using both mediation and litigation certainly fit disputes involving property and family issues. Even in a case of manslaughter, in which the state required rigid reporting and review, Zhang sometimes also mediated.<sup>72</sup> In fact, contrary to the state's strict policy, Zhang Gang was able to see the value in seeking reconciliation in cases that involved serious crimes. A major reason was to reduce grievances. In disputes with casualties, filing litigation could only elevate rivalry without eliminating hatred. Even as the case entered official procedure, local officials might forward the case to mediators to resolve the dispute in an efficient and peaceful way. One typical example involved dragon boat races in Wenzhou. Such customary races had caused serious casualties since the Southern Song Dynasty, and local officials usually had a relatively tolerant policy toward the practice. Villages competing for economic resources and cultural capital regarded the races as an arena for contesting and challenging each other.<sup>73</sup> Zhang Gang repeatedly expressed his dislike of the culture,<sup>74</sup> yet he still enjoyed watching the race and the decorated dragon boats every year.<sup>75</sup> During both the late Qing and the Republican periods, he witnessed many boat racing incidents. In some cases, Zhang Gang helped mediate the disputes that resulted. In other cases, he did not get involved in the mediation and only observed the proceedings.

In 1899, when the Ruian people held their dragon boat festival, two villages, Shen'ao (沈岙) and Yanxia (岩下), feuded fiercely during the race, and 13 Shen'ao villagers were killed in the feuding.<sup>76</sup> The county government sent a boat of runners to stop the villages from battling, but the tragedy still happened, and the villagers of Suifeng (穗丰) also participated in the fighting. Zhang Gang's relative in



Yanxia quickly asked him to help resolve the dispute. On his way to Yanxia, Zhang visited another relative in Shen'ao. Some victims' relatives approached him to seek an inter-village negotiation. Zhang persuaded them to avoid disputation because litigation would be costly, and the feud could never bring back the dead. The villagers responded that they would certainly stop disputation if the villagers of Suifeng and Yanxia promised to beg for peace. Zhang Gang then went to Yanxia and Suifeng, whose people agreed to make a peace with Shen'ao. They went to Shen'ao together and visited a victim's relative, Li Shumei (李漱梅), who represented the victims, to mediate the case. He and Zhang negotiated with the Yanxia and Suifeng representatives, and then the two villages agreed to pay compensation (*xulian zhi fei* 恤怜之费).

Two days later, Zhang collected all the funds from the two villages. Yanxia paid 400 foreign yang (洋) and Suifeng paid 300. Zhang took a ferry to meet Li at Shen'ao, and they planned to distribute the money to each victim's family. However, one villager, Chen Pingdong (陈平东), suddenly rejected the plan, and the litigation master Shao Yichen (邵翼臣) joined the quarrel. Chen and Shao requested more payment and attempted to rob Zhang and Li. Zhang quickly fled to a boat and carried the money to Yanxia. Chen and Shao abducted Li as a hostage to press the two villages to pay more. Such a threat might have worked, because Yanxia and Suifeng did not wish the magistrate to intervene in the case, but the magistrate still heard about it; he sent runners to take Li to *yamen* and conducted an examination of each corpse.<sup>77</sup>

The entire investigation lasted for two months. Since Zhang Gang was not directly involved in the disputes, he was not required to go to *yamen* very often. After the investigation was complete, Zhang Gang received word from the magistrate and his relatives in Yanxia that he and Li could conduct the mediation again. Zhang Gang was busy dealing with another litigation case but hoped to finish the Shen'ao killing case as well, and he and Li restarted the work. Finally, in about one month, the entire mediation was completed and compensation made. Zhang received an honorarium of 25 foreign yang. He was not satisfied with the price, but, since a senior had decided it, he had to accept it.

From the tortuous process of this mediation, it is possible to disentangle the complex motivations of individuals on each side of the process. When a conflict broke out and involved loss of life, unsurprisingly, the parties adopted strategies favourable to their respective interests. Individuals who knew very well that they would never completely recover their losses threatened their rivals and even made exaggerated accusations in the interests of receiving a better compensation. Such an approach was common. Only when the mediator lost control of the situation would the magistrate intervene. In serious cases, such oversight was regularized in the system; in the case of manslaughter, for example, the magistrate was normally expected to report the case to upper officials for further review. However, due to the high cost of sending criminals to higher authority and the problem of judicial backlog, the magistrate was usually amenable to the most economical approach to ending the dispute. The mediator was thus a favoured collaborator, even though state law did not expect “felony cases” (*zhong'an* 重案) — cases with sentences of exile, penal servitude, or the death penalty — to be finalized at the local level.<sup>78</sup> In order to reach this end, mediators had to utilize both formal and informal resources, which largely resembled what they did in the non-felony cases. On the surface, Zhang’s attempt to avoid official investigation in a case of manslaughter contradicted the expressions of state law. However, in practice, such mediation met official expectations as it could efficiently restore order and reduce parties’ grievances. The magistrate might trigger an investigation simply because county runners had reported the incident and the runners coveted a bribe, but his presence facilitated negotiation between the two sides and enhanced the legitimacy of post-trial mediation. Mediators thus collaborated with magistrates, even though mediation strategies inevitably amended formal rules.

## Mediation and Local Politics

A dispute about economic resources and cultural-political capital usually triggered fierce struggles that even mediators could not successfully resolve. While community mediators were usually involved in community affairs and had wide connections among élites and

villagers, they could hardly stay aloof from local political struggles. Roughly around the late 1880s, when Zhang Gang was about to open his own school, he started to increase his involvement in local community affairs. Like most literati who devoted themselves to education and public welfare, Zhang had a passion for participating in local organizations and activities. He particularly plunged into the examination aid association (*binxing* 宾兴),<sup>79</sup> local academies (*shuyuan* 书院), and seawall construction. These activities helped him build his reputation, but also drew him into fierce political struggles. From the mid-nineteenth century to the mid-twentieth century, Ruian County and the entire Wenzhou Prefecture encountered the most frequent and fierce political factionalism in evidence in its history.<sup>80</sup> Literati members and various social groups participated in struggles in which local officials usually had no control and had to adapt their strategies to each incident. These struggles shaped social relations among local members and influenced the efficiency of mediation in a broader sense. In some cases, Zhang's intercession eased the tension and helped the parties to reach a compromise. Even though he at times belonged to one of the disputing parties, many people took his advice and adopted his solutions. In other cases, however, disputes affected a large sector of the populace and even led to disintegration of the local community.<sup>81</sup> Cases of this type were unlikely to be resolved by a community mediator with lower gentry status. The intervention of prominent gentry, local officials, or a massive group of local élites became a necessity in the reconciliation of these disputes.

The seawall dispute was one case in which local politics and economic competition challenged the efficacy of community mediation. Residents here had long planted white potatoes and cotton in coastal regions.<sup>82</sup> To prevent devastation by flooding, people built seawalls and sluice gates and extended their agriculture to new reclaimed lands.<sup>83</sup> Disputes frequently occurred, as some villagers used sluice gates without due care, even harming the gates and lands of neighbouring villages.<sup>84</sup> In 1901, after a thunderstorm battered Ruian's harbour, a Xiaodianxia (小典下) villager Lin Dezhen (林德振) volunteered to build a seawall for the village. He purchased the tools and gathered approximately 1,000 workers for the construc-

tion. He invited Zhang to coordinate the project in the hope that Zhang's good reputation in the local society and his status would help the project run more smoothly. Zhang was happy to hear of the plan since he had previously had a similar idea. He provided Lin 20 business cards to be distributed to the surrounding villages, thus lending the weight of Zhang's good name to the project. Construction started a week later, and Zhang and his relatives then surveyed the terrain and supervised the work. In so doing, Zhang discovered that the fields along the shore of Xiayang (下垌) had been destroyed by the floods. He responded by making plans to lengthen the seawall so that it could defend both the cotton fields on the upper shore and the salt fields on the lower shore.<sup>85</sup> However, a gentleman Li Jianqing (李鉴卿) from the nearby village Houli (后里) came to Zhang and argued that the construction might cross the boundary between Houli and Tingtian and invade their lands. As a result of his concerns, Zhang announced, in the presence of village elders, that the work would only reach Houli's salt terrace and would not extend any further. One day later, Houli villagers returned and argued that the construction had crossed the boundary by several *chi*. Zhang responded that this seawall would benefit both the north and south shores. He further stated that, if Houli people were still concerned about these several *chi*, he could survey the shore and set up the boundary marker again in three to five days.<sup>86</sup> Probably because Zhang had promised to survey the boundary within a short time, the two sides kept the peace for about two days. However, despite being a well-trained mediator with plenty of experience, Zhang was still caught up in the dispute between two villages. The worsening conflict that followed this negotiation gave him a lesson about the complications of local economic competition and political struggle.

Conflict erupted on the third day, and the two villages almost came to battle. In the morning, the Houli villagers carried more than 100 wooden sticks and stared at the Tingtian farmers around the boundary. The Tingtian farmers fled back to the village, but the Houli villagers came to Tingtian and threatened to fight. The Tingtian farmers turned to Zhang's family and asked to borrow militia weapons from Zhang Gang's storage. Zhang Gang's father had organized a militia during the Taiping period. His family's involve-

ment in local defence reflected what Philip Kuhn calls “local militarization,” which had become a noticeable trend that marked the new collaboration between the state and society after the middle of the nineteenth century.<sup>87</sup> At this urgent moment, Zhang’s family, as members of Tingtian, had no choice but to assist and respond by lending the weapons. These advanced weapons frightened the Houli villagers and forced them to retreat.<sup>88</sup>

Zhang Gang was not present when the conflict broke out, but he was quickly called back to coordinate the mediation. He was not an uninterested party in this dispute, but he could still provide advice to both sides, as even the opposing villages demanded a learned and reasonable man to help negotiate. Since mediation was a practice through which society members resolved disputes by themselves, they could only employ the resources available to them. A real third party might be able to resolve the dispute, but such a person could hardly understand the complex situation, being unfamiliar with the disputing villages. During the negotiation, Zhang invited the representative of Houli to set a firm boundary. He also suggested that both sides surrender the costly feast compensation as this incident was caused by only a few *ne’er-do-wells* (*wulai* 无赖). The next morning, Zhang Gang went to the shore and visited elders of both sides. He condemned the elders of Houli for failing to manage those village members whose actions had failed to meet the standards of common etiquette. He then set up a clear boundary between the two villages in the presence of all the local heads.<sup>89</sup> The remarking of the boundary maintained the peace between the two villages for a while, but tensions among the three neighbouring villages continued in the following years. During the early years of the Republican period, Houli had captured members of Zhang’s Tingtian village for stealing Houli’s bean crop. Zhang was forced to mediate the case and punish his fellow villagers, who were made to sponsor a dramatic performance for Houli villagers.<sup>90</sup> Later, Zhang’s villagers captured Houli fishermen for poisoning fish, and Zhang sent this case to a police officer.<sup>91</sup> It was not unusual for villages with overlapping fishing and agriculture regions to come into frequent conflict. These villages had made agreements for dealing with inter-village disputes.<sup>92</sup> Zhang at times also helped Houli people to resolve their disputes.<sup>93</sup> However, the fierce

debates and struggles caused Zhang Gang to lament that even an act of charity (*shanju* 善举) aimed at increasing villagers' welfare and preventing dispute could end in disaster between local communities.<sup>94</sup>

Seawalls, salt fields, and the surrounding economic resources usually attracted those who wanted to make profits. As a result, during the last decade of the Qing Dynasty, Zhang Gang faced numerous conflicts over coastal profits that remained unresolved even into the Republican period. Even local officials were usually frightened by the fierce local struggles. When facing difficult cases involving complicated local politics, local officials would need advice from the gentry. Zhang Gang had broad connections and was often invited by officials to provide advice. Some of his advice and reports led to the suppression or investigation of illegal activities in which participants had made trouble for Zhang or his family.<sup>95</sup> Yet this did not always guarantee the resolution of disputes. In some cases in which Zhang reported the wrongdoings of his opponents, the opponents escaped unscathed, and the magistrates were unable to help.<sup>96</sup> Since local officials might not be effective in intervening in local struggles, many negotiations could only rely on prominent gentry, and the entire process of reconciliation was protracted and complicated. Moreover, the so-called "New Policies" and the campaigns of "local self-government" during this period provided a platform for local actors to compete for political or economic resources. To a community mediator who was eager to settle the surrounding conflicts, these frequent political struggles usually brought frustrating results. Zhang Gang's mediation did not always work, and some disputes turned into endless struggles or hopeless litigation.

As did the seawall dispute, the 1902 conflict between north and south gentry posed a challenge to the practice of mediation. The controversy in this case focused on the role and operation of the Juxing Academy (*Juxing shuyuan* 聚星书院), built in Xincheng (莘滕) in 1826.<sup>97</sup> Similar to many other local academies, Juxing Academy was not only a place for lectures and gatherings of the literati but also a site for discussion of public affairs and for mediation of local disputes. After the end of the Boxer Rebellion and the announcement of New Policies in 1901, traditional academies received more Western challenges than previously. A new style of school was estab-

lished across the nation, and Zhang Gang, who had previously absorbed some Western knowledge, was eager to devote his ambition to the trend.<sup>98</sup> In January 1902, Zhang wrote a public letter to northern and southern gentry across the Hexiang region (河乡). He proposed to transform the existing Juxing Academy into an elementary school in response to the new imperial policy. Also, he suggested that part of the fund of the *binxing* examination aid association be used for the purchase of newspapers, magazines, and textbooks from Shanghai.<sup>99</sup> The county magistrate quickly approved Zhang Gang's proposal.<sup>100</sup> The northern gentry, however, rejected the project, fearing that the new school and fund would benefit only gentry from the south. Some northern élites questioned whether the fund could purchase sufficient materials while aiding those in the community who proposed to take the exam. Some people even argued that the north should have its own school, and the southern gentry should only access the resources of Juxing Academy.<sup>101</sup>

The subsequent months witnessed fierce debates between the two sides. Fifteen days after Zhang Gang's letter, the northern gentry sent a notice to the public suggesting that Zhang's proposal was for his own profit. The argument of the northern gentry was quite straightforward. They did not want the southern gentry to use the *binxing* fund for this purpose.<sup>102</sup> Facing these critiques, Zhang turned to prominent local scholars for support. He first consulted Huang Shaoji (黄绍箕), a *jinsi* degree-holder who had assisted Kang Youwei (康有为) during the 1898 reform and had coordinated the Imperial University of Peking. Huang supported education reform and hoped Zhang would strive mightily in this debate. He wrote a letter to all the gentry expressing his support for Zhang and stressing the necessity of education reform.<sup>103</sup> Zhang then consulted Sun Yirang regarding the issue of fund-raising. His desire was that Sun would urge officials to shift some money from the salt taxes to the school. He even proposed that government could impose taxes on tenant farmers who usually paid little tax.<sup>104</sup> Sun's response was slightly different from Huang's. He suggested that Zhang should not force the northern gentry to accept this project. He wrote a letter to the leaders of the northern gentry and urged them to agree to the use of the *binxing* fund.<sup>105</sup>

With the support of two such prominent and well-respected scholars, the project should have run more smoothly, but the northern gentry still insisted the fund should not be used.<sup>106</sup> The magistrate then visited Juxing Academy and suggested that Zhang could file a petition with him if the negotiation ended in a deadlock.<sup>107</sup> Zhang Gang was hesitant to file litigation because official procedure might not resolve the mutual distrust between north and south gentry. He also feared for the well-being of the community; the local school had long been regarded as an important site in local society, and he recognized that both sides in the conflict had valid concerns that the school could become a tool for making profits or extending personal power. As a result, during his talk with Zhang, the magistrate lamented that “most of the things in China would only cause more problems and rarely benefit the society” (*Zhongguo banshi biduo lishao* 中国办事弊多利少).<sup>108</sup> The subsidy from the *binxing* was usually equally distributed to qualified members, but sometimes the coordinators did not distribute the money and further worsened distrust.<sup>109</sup> To quell the concern that the south gentry would build the school close to the south, Zhang had suggested that north, south, and west should each have its own campus.<sup>110</sup> His suggestion received no response, and the north gentry continued to file its petition. Zhang had no choice but to file the petition with the magistrate.<sup>111</sup> The negotiation between the two sides continued until February 1906, when both sides signed an agreement and established the new school where the Juxing Academy had been located. By this time, many literati realized that new education was an inevitable trend and that civil examinations were about to come to an end.<sup>112</sup>

In a sense, the controversy over the new school was representative of the competition among regions and villages rather than rivalry between Zhang Gang and his opponents. During almost the same period, the northern gentry were eager to construct their own sea-walls and asked to draw a boundary and distribute benefits with southern gentry.<sup>113</sup> The split between south and north over the new school had also originated in greed for the assets of the school. Three years after the founding of the school, some élites had attempted to monopolize use of the school's money and were warned by the magistrate.<sup>114</sup> In the following years, Zhang continued to face numerous



conflicts between regions, villages, or social groups. These disputes were usually associated with political interests and struggles, and Zhang's reconciliation efforts could achieve only limited results. Such factionalism continued into the Republican period, when the new administrators, police, and state brokers also restructured the local political ecology.

### Encountering New Judiciaries and Policemen

Among all the reforms of the New Policies, local self-governance, judicial reform, education reform, and the introduction of policemen had the most significant impact upon local society. Some of these reforms provided local actors with a new arena for competing resources and even reduced the authorities' power, yet many allowed the state to penetrate society through various forms of standardization and collaboration with local agents.<sup>115</sup> Since the Qing Dynasty had lost to foreign powers in 1900 in the Boxer Rebellion, the government had initiated a series of reforms to pacify widespread discontent and anti-Manchu sentiment. The reform introduced Western institutions, police, military, and laws. Some new court and judicial procedures appeared to restrict the government's power, but in general the reform enabled the state to exert increased effective control over local society. Such state-building continued after the fall of the Qing Dynasty as the so-called Beiyang government and later the Nationalist Party exploited more resources from society through both material and ideological means with the institution of local government bodies and standardization of cultural, political, and economic infrastructure.<sup>116</sup> The police system, for instance, reached into the county level in late Qing and then was installed in villages and towns in 1912.<sup>117</sup> Judicial reform was another area in which new laws and procedures had an impact on local legal practice and even caused panic. Some legislation invoked fear that traditional moral principles would be destroyed under the new legal system. The separation between administrative and judicial powers also generated tension and gave rise to worries that due process would only delay and even fail to deter crimes.<sup>118</sup> In 1906, the Ministry of Law issued the "Law on Trial and Organization of Supreme Court" (*Daliyuan*

*shenpan bianzhi fa* 大理院审判编制法), a code that initiated the separation of judicial and executive branches of the central government in modern China.<sup>119</sup> In the following years, the “Provisional Regulations on Establishing Courts at All Levels” (*Geji shenpan ting shiban zhangcheng* 各级审判厅试办章程, completed in 1907 and issued in 1909) and the “Law on Court Organization” (*Fayuan bianzhi fa* 法院编制法, issued in 1910) further defined legal procedures for criminal and civil cases.<sup>120</sup> Laws on civil and criminal procedures were also enacted during the late Qing reform.<sup>121</sup> Following these laws, a court and prosecution office was installed in some major cities and extended to various other cities. Although financial constraints meant that only a few regions established new court and prosecution offices,<sup>122</sup> judges, prosecutors, and lawyers all appeared as new legal professionals and practised in every realm of legal disputes.

Because certain customs were respected and some procedures mixed new and old styles, community mediators had a chance to adapt gradually to the court system. Local courts did not always apply new laws on every dispute, but Zhang began to realize that even a basic knowledge of them could help him handle disputes. However, the complicated structure of the new laws made them difficult to comprehend. In many cases, Zhang could still rely on bribery and personal relations, but at the same time he found the procedures for some serious crimes had gradually been formalized, narrowing local mediators’ room to manoeuvre.

In 1910, Wenzhou Prefecture, together with other major prefectures in Zhejiang, was authorized to establish a new district court.<sup>123</sup> Ruian County, as a lower administrative unit, did not have its own county court until 1928.<sup>124</sup> However, roughly from the founding of the Republic in late 1911, Ruian County started to appoint a trial officer (*chengshenyuan* 承审员) and assistant trial officer (*bangshenyuan* 帮审员) to adjudicate cases.<sup>125</sup> During the early years of trial officer adjudication, Zhang Gang had attended court trials and observed how cases were pursued under the new system.<sup>126</sup> He had learned the new terms “civil cases” (*minshi* 民事) and “customary law” (*xiguanfa* 习惯法), as well as the two types of petition forms for “civil procedure” (*minshi susong* 民事诉讼) and “criminal

procedure” (*xingshi susong* 刑事诉讼).<sup>127</sup> He had tried to learn the rules of these procedures under the new legal categories, although in many cases he still did not know which procedure applied to his cases.<sup>128</sup>

As Philip Huang notes, the new distinction between civil and criminal cases was a departure from that between “minor matters” (*xishi* 细事) and “felony cases” under the Qing. Qing officials attempted to leave trivial matters to local society while they also facilitated the penetration of state law. According to the late Qing and Republican laws, however, once a case entered the judicial system, the judge alone was supposed to adjudicate it.<sup>129</sup> The difference reflected the compulsory nature of the new laws on civil matters. On the other hand, the 1906 draft of “Criminal and Civil Procedural Law” (*Xingshi minshi susong fa* 刑事民事诉讼法) and the 1911 “Great Qing Draft Civil Procedure Law” (*Da Qing minshi susong lü caoan* 大清民事诉讼律草案) allowed judges to persuade disputants to make a compromise.<sup>130</sup> Such legislation reflected the trend of increasing state influence in the realm of mediation. However, the new laws mainly regulated court mediation procedure and did not deal with the correlation between the court and the community mediator. As a result, once the case entered the court, the judge would handle it either through adjudication or court mediation. For the most part, the pre-litigation process was left unregulated. Mediators could still make use of their familiar tools before the initiation of formal procedure.

Zhang did employ his familiar tactics. Based on his previous experiences, Zhang presumed that he could develop personal relations with the trial officer as he had done during the Qing Dynasty. Sometimes this strategy worked well, particularly when the disputes went through a magistrate. In a dragon boat conflict in 1914, Zhang Gang visited the new county magistrate and asked him to release a suspect caught by police. The magistrate said he was willing to release the suspect because he trusted Zhang Gang.<sup>131</sup> However, while magistrates largely preserved traditional Qing practices, Zhang quickly found that the trial officer acted differently. The former retained certain flexibility in dealing with cases, and the latter intended to maintain judicial independence. This distinction

between the executive and judicial branches taught Zhang that he would need to amend conventional approaches. In litigation against a villager who used his lands without permission, Zhang tried to invite the trial officer to his place for a chat. The officer refused Zhang's invitation and expressed his concern about neutrality.<sup>132</sup> Zhang appreciated this attitude, but, in the cases handled by the magistrate, Zhang continued to rely on personal relations.

During the period when Ruian lacked a court and prosecution office, the trial officer took care of adjudication and the county magistrate acted as prosecutor. This arrangement separated prosecution from adjudication, while in many other regions county magistrates performed both judge and prosecutor functions. The new system was quite different from the system under the Qing, in which the magistrate would wait for mediators and disputants to negotiate before entering the final hearing. Under Republican law, the procedures of adjudication and detainment were formalized, and negotiation was difficult after the case had entered the formal procedure. Only in the procedure before trial and custody could disputants and mediators attempt to persuade the magistrate or policeman to ask for leniency or special consideration (*yundong* 运动 or *shuoxiang* 说项).

Since the adjudication and detainment procedure allowed limited room for negotiation, Zhang Gang could only turn to an investigation process to seek compromises or lighter punishments. In some criminal cases, he asked the policeman to "spare the offenders with his pen" (*bixia chaosheng* 笔下超生)<sup>133</sup> and to "say some good words in the report" (*shanyan bingfu* 善言禀复).<sup>134</sup> He realized that he had to maintain a good relationship with both magistrate and police. He even had to pay a fee to local police so that the police and the magistrate would not accuse the offender after he had paid compensation.<sup>135</sup> Zhang Gang was able to adapt his mediation strategies quickly to survive under the new circumstances. In a broader sense, the new judicial system forced him to adjust his negotiation approaches.

A manslaughter case from 1915 exemplifies how mediators asked for leniency in an investigation procedure. A feud between Xiaodianxia and Dongtian (董田) fishermen resulted in one death and multiple injuries. The victim's family from Xiaodianxia filed a

petition with the magistrate, but, before the arrival of the county police, Zhang Gang had mediated the case and determined the 500 yuan compensation. Two days after compensation had been paid, the magistrate expressed disagreement with the mediation and sent a policeman to catch the offender. It seemed the staff at the county government coveted the high compensation. After hearing about this development, Zhang Gang quickly visited the offender's family and explained that it was not the trickery of the mediator. He then sent some money to his police officer acquaintance Huang Zhiyu (黄志瑜). The county magistrate and police asked no further about the matter.<sup>136</sup> In this case, the police officer Huang Zhiyu played a significant role in keeping the case out of court. He knew that it would not likely be possible to spare the offenders without paying money to other staff at the county government. He had closely cooperated with Zhang, so he entrusted Zhang to negotiate a settlement outside judicial procedure. On the other hand, only during the pre-trial investigation during which county magistrates and policemen handled the disputes, could mediators employ personal relationships and bribes to resolve disputes. In the following cases, we will see how difficult it was to mediate a case that had entered formal judicial process.

In contrast to the 1915 manslaughter case, there was little room to manipulate in disputes that had entered adjudication and detainment procedures. Even though the accused might flee or bribe officials, proceedings would still continue after the usual delay. In a drug addiction case, Zhang Gang attempted to help the suspect plead for mercy, but the evidence was solid, and the suspect was sent into custody.<sup>137</sup> In another case that took him six years in judicial procedure (1913–1919), Zhang Gang accused his opponent of occupying his lands. In 1917, Zhang filed an additional petition through criminal procedure accusing the offender of forging a cultivation agreement. The accused fled and sent his friends to ask Zhang for a private settlement. Many people came to persuade Zhang to settle the case, and he eventually agreed to have the case mediated, but criminal proceedings had already been filed with the trial officer, and the accused was eventually detained for a short period. Although the offender escaped jail, a ruling was still made against him.<sup>138</sup> Even

though this offence was less serious than that of the 1915 manslaughter case, the judicial officials and the police exerted more control over it than in the manslaughter case because the formal proceedings had been triggered. All in all, as these cases reveal, mediation and negotiation were more restricted once cases entered formal procedure. This trend reduced the possibility of peacemaking, particularly as policemen and magistrates gradually increased the severity of accusations after the late 1910s.

Although in many cases Zhang attempted to prevent the magistrate from sending cases to adjudication, in dealing with violent cases he tended to allow more intervention from the police and the community security watch group (*baoweituan* 保卫团) than before, to a great extent because police possessed more discretion and sentencing power than pre-reform *yamen* runners.<sup>139</sup> Such force had been introduced to Wenzhou in 1904<sup>140</sup> and gradually increased in significance in village mediation in the Republican period. In 1914, facing a feud between two groups of people, Zhang Gang suggested they talk to a policeman, although the fighters did not listen to his words.<sup>141</sup> In the same year, Zhang forwarded to the police an illegal encroachment case in which both sides had approached Zhang Gang for mediation.<sup>142</sup> In a later feud during the dragon boat festival, the disputants came to Zhang, who quickly informed the police to settle the conflict.<sup>143</sup> In the following years, Zhang Gang continued to act as a broker between police and disputants in various violent or serious disputes.

Zhang's new strategy probably stemmed from his belief that the compulsory force of the police could guide disputants to negotiate in a relatively peaceful and regular way. It differed from his strategy during the late Qing, when he usually perceived *yamen* runners as troublemakers whose interest in collecting fees rarely resolved disputes.<sup>144</sup> Zhang Gang's mind was contradictory. On the one hand, he thought that formalized state procedure could help reconcile disputes in a regular way. On the other, during the investigation procedure, he hoped that the magistrate and police could spare the offender and allow him to finalize the case through an informal approach. Having connections with policemen became the only solution that allowed him to combine both formal and informal

approaches. The local policeman also mediated various disputes that Zhang Gang forwarded to him. As a result, even though he still needed to pay a fee to police as he had to late Qing runners, Zhang Gang preferred to let policemen intervene.

### The Last Years as a Mediator

After the 1920s, the extension of formal institutions and the growth of the legal profession had a deep impact on mediation practice. The state enacted a series of laws regulating mediation. The 1921 “Provisional Regulations on Civil Arbitration” (*minshi gongduan zhanxing tiaoli* 民事公断暂行条例), the 1922 “Regulations on Civil Procedure” (*minshi susong tiaoli* 民事诉讼条例), and the 1930 “Law on Civil Mediation” (*minshi tiaojie fa* 民事调解法) regulated the reconciliation procedure during the trial.<sup>145</sup> Among others, the 1922 “Regulations on Civil Procedure” particularly strengthened compulsory court mediation. Only some regional regulations such as “Shanxi Civil Conciliation Regulations” (*Shanxi xisong banfa* 山西息讼会办法; enacted in 1922)<sup>146</sup> and some special procedure laws such as “Regulations on Commercial Arbitration” (*Shanshi gongduanchu zhangcheng* 商事公断处章程; first enacted in 1913)<sup>147</sup> dealt with out-of-court mediation. Although most of these laws did not directly regulate community mediation, they acknowledged the effect of out-of-court mediation. The formalization of civil procedure extended the state’s control over local disputes. The complicated legal concepts in the regulations enhanced people’s need to consult lawyers or those with modern legal knowledge. This trend challenged old-style mediators who lacked legal training, who gradually vanished from the mediation market.

Zhang Gang was one of those influenced by this trend. He was interested in acquiring legal knowledge, and he even helped local workers to establish a company under new laws,<sup>148</sup> but his knowledge was not enough to handle the rapid specialization of legal practice. In criminal procedure, his activities were gradually restricted to pre-trial intercession and less serious criminal cases. In the realm of civil cases, his mediation could only deal with simple family disputes, land issues, and miscellaneous matters. Sometimes he got the chance to mediate

cases involving water gates or violent conflicts.<sup>149</sup> His involvement in local affairs sharply decreased during the 1920s. After 1926, he gradually withdrew from mediation practice and, when he retired from teaching in 1927, he also left education circles, which had dragged him into several struggles in previous years.

Zhang Gang still had ambitions in local affairs and community mediation, but the intensified local political struggles and complicated judicial procedures made it difficult to engage in these affairs. Many villagers lusting for unclaimed lands had fierce conflicts with Zhang Gang and his collaborators.<sup>150</sup> Frequent protests and riots also made him worry about the hardship of ordinary people during such a turbulent period.<sup>151</sup> The advent of the Nationalist Party in late 1926 further increased the unrest in local society. Party members usually captured and punished people without legitimate grounds.<sup>152</sup> Some local bullies and villains (*di'e* 地惡) swindled villagers by referring to their party memberships.<sup>153</sup> Facing such chaotic times, Zhang Gang gradually changed from active involvement in public affairs to looking on as a disinterested bystander. He lamented, "During this Republican era, the human heart is full of treachery. The politicians are eager to reap unfair gains via improper means. Thus it's nearly impossible for an old crock like me to save such desperate crisis. Alas! I should withdraw from these affairs to avoid being the target for scorn and attack" (*minguo renxin rixian, er zhengjie jieze er yu zhi shouduan, yi yuyan yula. ququ laoxiu shi buneng zhang ci kuanglan. heru zaori citui, mian zhiwei zhongshizhidi ye*. 民国人心日险，而政界竭泽而渔之手段，亦愈演愈辣。区区老朽实不能障次狂澜，何如早日辞退，免致为众矢之的也)<sup>154</sup> After the Nationalist Party intervened in local politics, his feelings of helplessness became much stronger.

Zhang Gang's frustration with local affairs was accompanied by his retreat from legal practice. The professionalized legal procedure and the rise of the lawyer class made him shrink from involvement in legal affairs. During the Qing Dynasty, Zhang Gang perceived litigation masters to be among the chief culprits behind social disorder. In the Republican period, he had contradictory perspectives toward lawyers. In some cases, Zhang condemned lawyers for losing humanity and making trouble.<sup>155</sup> He took pleasure in the misfortune of



those he had looked down on as being pettifoggers in the past.<sup>156</sup> In other cases, he consulted lawyers or people with legal training to win a lawsuit or understand the cases with which he dealt.<sup>157</sup> On a few embarrassing occasions, Zhang Gang's mediation cases were even snatched away by a licensed practitioner. In a 1925 case, Zhang Gang assisted a villager Li Fuquan (李福全), who was in debt to a local chamber of commerce and had been captured by the police upon the chamber's request. Zhang Gang quickly contacted the policemen and went to the prison to release Li on bail. In the following months, Zhang helped Li to negotiate with the police and the chamber. They discussed the case and filed petitions in both civil and criminal procedures, but their cases all failed and Li's property was eventually seized by the law enforcement office.<sup>158</sup> In another 1925 case in which Zhang Gang intended to mediate the dispute, Zhang provided legal advice to his client and even discussed the difference between civil and criminal procedures. His client then replaced Zhang with a lawyer, who definitely knew more about procedures than Zhang.<sup>159</sup> In fact, Zhang Gang had tried to learn law from the *Law and Regulation Book* (*fagui daquan* 法规大全),<sup>160</sup> but he had only a little legal knowledge. He once argued that the Republican laws were scattered and fragmented (*zhiliposui* 支离破碎).<sup>161</sup> However, he clearly knew that a layman could not mediate cases in disputes over land or debt.

Zhang Gang's withdrawal from mediation indicates the vanishing of old-style mediators in his generation. A younger generation joined the practice during Zhang's later years, and he also forwarded cases to his students and younger acquaintances.<sup>162</sup> Police and lawyers played significant roles in local dispute resolution. Some of Zhang's students started to act like "pettifoggers" in local litigation.<sup>163</sup> Facing the rapid change, Zhang Gang could not do anything but coldly observe the world. Every new age has its new style, and Zhang was now far removed from the major local actors. In 1942, Zhang passed away at the age of 83. His long life was filled with stories that reveal not only Zhang's personal experiences but also the fate of others living in his time. Zhang's stories also tell us how local mediators encountered challenges and their strategies during such a transformative moment.

## Conclusion

During the Qing-Republican transition, local mediators and dispute resolution practices could not remain aloof from the social and political transformations. The life of Zhang Gang demonstrates how mediators were affected by transformations and swiftly learned from the new world. His stories show that gradual and indirect changes in the regulations over local mediation, the formalized judicial procedure, the emergence of local policemen, the rise of the legal profession, and the continued local political struggles all had an impact on the practice of community mediation.

Despite the rapid change, mediators swiftly adapted to the new social and judicial circumstances. The life history of Zhang Gang reveals how a small figure in a Chinese village learned new procedures and developed strategies to survive the changing politics and society. Unfortunately for him, the new laws and new professionals gradually replaced old practice and mediators. The world of the *Zhang Gang Diary* demonstrates the rise and fall of a mediator of the Qing-Republican transition. His diary provides empirical access to the dynamic development of community mediation in local society.

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## Endnotes:

- 1 Scholars have argued that mediation features one of the major differences between the Chinese and Western legal systems. Philip Huang points out that, while the United States developed "alternative dispute resolution" nearly half a century ago, it has yet to resort to mediation as frequently as China. Jerome Cohen argues that, even as the Soviet Union attempted to increase the use of extrajudicial institutions, it did not surpass China in the number of mediations. See Philip Huang, *Chinese Civil Justice, Past and Present* (New York: Rowman & Littlefield, 2009), 22; Jerome Cohen, "Chinese Mediation on the

- Eve of Modernization,” *California Law Review* 54, no. 1 (1966): 1203–1205.
- 2 The term “compromise” is borrowed from Kung-ch’üan Hsiao. See Kung-ch’üan Hsiao, *Compromise in Imperial China* (Seattle: School of International Studies, University of Washington, 1979).
  - 3 Philip Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996), Ch. 5. Philip Huang recently reconceives this concept as “centralized minimalism.” See Huang, *Chinese Civil Justice, Past and Present*, 13–17.
  - 4 Through a systematic examination of a large quantity of legal cases from different parts of China, Huang notices the changes of mediation during the Republican periods. He points out that the installation of the *court mediation* system is one of the few changes of mediation during this period. However, he still asserts that the main characteristics of the whole system of *community mediation* remained unchanged. In his 2001 book *Code, Custom, and Legal Practice in China: The Qing and the Republic Compared* (Stanford: Stanford University Press, 2001), Huang discusses the impact of Republican laws and judicial system upon Chinese dispute resolution and custom, but he also explores mediation cases (e.g., 79–84, 93–95, 148–154, 170–174, 189, 194–196). While attending to the impact and limitation of new civil codes and state institutions, Huang does not contend that the extensive use of litigation refers to any decline of community mediation. According to his theory, the co-existence of flourished formal and informal systems (and the third realm between these two) is a phenomenon that applies to both Qing and Republican eras. In his later article “Court Mediation in China, Past and Present,” Huang explicitly argues that mediation in the Republican period continued to work much as it had in the Qing. See Philip Huang, “Court Mediation in China, Past and Present,” *Modern China* 32, no. 3 (2006): 283–285. In addition to Huang, earlier studies that tend to view Chinese society as a whole usually stress the continuation of mediation practice. Fei Xiaotong is among the leading scholars of this school. To Fei, the practice of village mediation was closely related to the society of the “well acquainted” (*shuren* 熟人) and the “differential mode of association” (*chaxugeju* 差序格局). See Fei Xiaotong 费孝通, *Xiangtu Zhongguo* 乡土中国 (Shanghai: Shanghai guanchashe, 1947). For other studies that observe the continuity of mediation in the post-1949 period, see Stanley Lubman, “Mao and Mediation: Politics and Dispute Resolution in Communist China,” *California Law Review* 55, no. 5 (1967): 1284–1359; Stanley Lubman, *Bird in a Cage: Legal Reform in China After Mao* (Stanford: Stanford University Press, 1999); Cohen, “Chinese Mediation on the Eve of Modernization.”
  - 5 See Huang, “Court Mediation in China, Past and Present.”
  - 6 Qin Zhang particularly criticizes Philip Huang’s thesis that community mediation was largely unchanged during the Republican period. Using the archives of Liaoning Province (particularly the archives of the Haicheng District Government Office), Zhang examines 268 cases mediated by local ward heads appointed as formal government officers since the 1920s. He

- argues that the installation of lower-level governmental officers extended the state's authority into the practice of community mediation in local society. See Qin Zhang, "Civil Justice in Early Twentieth-Century Northeast China: Fengtian Province, 1900–1928" (Ph.D. diss., McGill University, 2005), Ch. 7.
- 7 Lubman, "Mao and Mediation"; Huang, *Chinese Civil Justice, Past and Present*, 22–23, 34–61.
  - 8 Huang, "Court Mediation in China, Past and Present," 285.
  - 9 The term *zhongren* (中人) usually refers to the middleman who served to avoid disputes during transactions or various legal practices. In many occasions, he also helped villagers to settle disputes. In addition to middlemen, various individuals mediated disputes at different levels. These individuals include kinsmen, guarantors (*baoren* 保人), and officers of communal compact, leaders of the mutual security group (*baozheng* 保正). See Zhang, "Civil Justice in Early Twentieth-Century Northeast China," 228–234; Huang, *Code, Custom, and Legal Practice in China*, 24–31; Liang Zhiping 梁治平, *Qingdai xiguanfa: shehui yu guojia* 清代习惯法：社会与国家 (Beijing: Zhongguo zhengfa daxue chubanshe, 1996), 120–126.
  - 10 The original script of the *Zhang Gang Diary* is called *Duyinyuan riji* (杜隐园日记). The script is stored in the Rare Book Department of Wenzhou Municipal Library. An excerpt version was published in 2003, which, according to the staff at the library, was only about one fourth of the original script. Wenzhou Municipal Library, Rare Book Department, MS 4506, Zhang Gang 张桐, *Duyinyuan riji*, 1888–1942; Yu Xiong 俞雄 ed., *Zhang Gang Riji* 张桐日记 (Shanghai: Shanghai shehui kexue chubanshe, 2003). This paper uses the original script version. Few studies have utilized this diary. See, for example, Shih-Chieh Lo, "The Order of Local Things: Popular Politics and Religion in Modern Wenzhou, 1840–1940" (Ph.D. diss., Brown University, 2010); You Yuhao 尤育号, "Zai juxue yu xinshi zhijian: yi ge xiangcun shishen de yuedu shijie" 在旧学与新知之间：一个乡村士绅的阅读世界, *Lishi jiaoxue wenti* 历史教学问题 (2011 no. 4): 93–100.
  - 11 Philip A. Kuhn, "Local Self-Government under the Republic: Problems of Control, Autonomy, and Mobilization" in *Conflict and Control in Late Imperial China*, ed. Frederic Wakeman Jr. and Carolyn Grant (Berkeley: University of California Press, 1976), 257–98; Keith R. Schoppa, "Local Self-Government in Zhejiang, 1909–1927," *Modern China* 2, no. 4 (1976): 503–53; Roger Thompson, *China's Local Councils in the Age of Constitutional Reform, 1898–1911* (Cambridge: Harvard University Press, 1995).
  - 12 For the studies that explore Chinese legal history using diaries and personal journals, see, for instance, Kishimoto Mio 岸本美绪, "Qingchu Shanghai de shenpan yu tiaojie: yi linianji wei li" 清初上海的审判与调解：以《历年记》为例, in *Jinshi jiazu yu zhengzhi bijiao lishi lunwen ji* 近世家族与政治比较历史论文集, ed. Zhongyang yanjiuyuan jindaishi yanjiusuo (Taipei: Zhongyang yanjiuyuan jindaishi yanjiusuo, 1992), 238–57.
  - 13 Unlike Ba County Archives and Dan-Xin Archives, which are widely used by

- scholars (e.g., David Buxbaum, Mark Allee, Shiga Shūzō, Dai Yanhui, Philip Huang, Madeleine Zelin, Matthew Sommer, Terada Hiroaki, Bradley Reed, Tay-sheng Wang, Peng-sheng Chiu, Karasawa Yasuhiko, Nanbu County Archives, Huangyan Archives, and Longquan Archives have only recently been made available and are just beginning to be used in research.
- 14 Many scholars use judicial archives to explore how litigants used false accusation as a strategy to resolve their disputes. See Shiga Shūzō 滋賀秀三, “Qingdai zhouxian yamen susong de ruogan yanjiu xinde: yi Dan-xin dang’an wei shiliao” 清代州县衙门诉讼的若干研究心得：以淡新档案为史料, in *Riben xuezhe yanjiu Zhongguo shi lunzhu xuanyi* 日本学者研究中国史论著选译, vol. 8 *falü zhidu* 法律制度, ed. Liu Junwen (Beijing: Zhonghua shuju, 1992), 522–8; Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998), 173–89, 197–214; Quinn Javers, “Conflict, Community and Crime in Fin-de-siècle Sichuan” (Ph.D. diss., Stanford University, 2012), Ch. 4.
  - 15 Huang, *Civil Justice in China*, Ch. 3.
  - 16 *Liu Dapeng Diary* (1890–1942) and *Liu Shaokuan Diary* (1888–1942) cover almost the same period as Zhang Gang’s. These three men of the lower gentry shared similar life histories: they all witnessed the giant national transformations in politics and society, while at local level they engaged in education, local governance, and public affairs. Similar to Zhang, Liu Shaokuan’s locus of activities was a village (Wenzhou). His diary is now stored in the Rare Book Department of Wenzhou Municipal Library. According to the library staff, it will be soon published. For the story of Liu Dapeng, see Henrietta Harrison, *The Man Awakened from Dream: One Man’s Life in a North China Village, 1857–1942* (Stanford: Stanford University Press, 2005).
  - 17 Serving as extra-statutory government personnel who exercised a large scope of administrative functions, clerks and runners were frequently involved in mediation and played a significant role in dispute investigation and resolution. For the practice of county clerks and runners during the Qing Dynasty, see Bradley Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000).
  - 18 A number of scholars have explored the practice of community mediation during late imperial and Republican China. See, for instance, Hsiao, *Compromise in Imperial China*; Cohen, “Chinese Mediation on the Eve of Modernization”; Huang, *Civil Justice in China*; Fei, *Xiangtu Zhongguo*; Zhang, “Civil Justice in Early Twentieth-Century Northeast China”; Martin Yang, *A Chinese Village: Taitou, Shantung Province* (New York: Columbia University Press, 1945); Tung-tsu Chü, *Local Government in China Under the Ch’ing* (Cambridge: Harvard University Press, 1962); Dai Yanhui 戴炎辉, *Qingdai Taiwan zhi xiangzhi* 清代台湾之乡治 (Taipei: Lianjing, 1979); Mark Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford: Stanford University Press, 1994); Nakajima Gakushō 中島榮章, *Mindai gōson no funsō to chitsujo: Kishū monjo o shiryō to shite* 明代鄉村の紛争と秩序：徽州文書を史料として (Tokyo: Kyūko Shoin, 2002).

- 19 Keith R. Schoppa, *Chinese Elites and Political Change: Zhejiang in the Early Twentieth Century* (Cambridge: Harvard University Press, 1982); Mary Backus Rankin, *Elite Activism and Political Transformation in China: Zhejiang Province, 1865–1911* (Stanford: Stanford University Press, 1986). For the rise of local activism during late Qing and Republican period, see also Xin Zhang, *Social Transformation in Modern China: The State and Local Elites in Henan, 1900–1937* (Cambridge: Cambridge University Press, 2000).
- 20 Philip A. Kuhn, *Rebellion and its Enemies in Late Imperial China: Militarization and Social Structure, 1796–1864* (Cambridge: Harvard University Press, 1970), 216; Philip A. Kuhn, “Local Taxation and Finances in Republican China” in *Select Papers from the Center for Far Eastern Studies*, No. 3, 1978–79, ed. Susan Mann Jones (Chicago: University of Chicago Center for Far Eastern Studies, 1979), 121–5.
- 21 Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937* (Stanford: Stanford University Press, 2008), Ch. 6.
- 22 Prasenjit Duara, “State Involution: A Study of Local Finances in North China, 1911–1935,” *Comparative Studies in Society and History*, 29, no. 1 (January 1987): 132–61; Prasenjit Duara, *Culture, Power, and the State: Rural North China, 1900–1942* (Stanford: Stanford University Press, 1988).
- 23 For discussion on the debate over the audience’s influence upon diaries, see, for instance, Deborah Martinson, *In the Presence of Audience: The Self in Diaries and Fiction* (Columbus: Ohio State University Press, 2003), 141. For subjectivity in Chinese diaries and autobiographies, see Robert E. Hegel & Richard Hessney ed., *Expressions of Self in Chinese Literature* (New York: Columbia University Press, 1985); Pei-Yi Wu, *The Confucian’s Progress: Autobiographical Writings in Traditional China* (Princeton: Princeton University Press, 1990); Martin Huang, *Literati and Self-Representation: Autobiographical Sensibility in the Eighteenth-Century Chinese Novel* (Stanford: Stanford University Press, 1995); Leo Ou-fan Lee, *The Romantic Generation of Modern Chinese Writers* (Cambridge: Harvard University Press, 1973); Wendy Larson, *Literary Authority and the Modern Chinese Writer: Ambivalence and Autobiography* (Durham: Duke University Press, 1991); Haiyan Lee, *Revolution of the Heart: A Genealogy of Love in China, 1900–1950* (Stanford: Stanford University Press, 2006).
- 24 Many historians of China use diaries to explore actions and ideas behind significant events. Letters and diaries of various thinkers and political figures, including Lu Xun (鲁迅), May Fourth writers, and Chiang Kai-shek (蒋介石), have served this purpose in past scholarship. Many recent studies have begun to explore or translate diaries of small figures, including soldiers, civilians, foreign travellers, and lower-rank officials. See, for instance, Aaron W. Moore, *Writing War: Soldiers Record the Japanese Empire* (Cambridge: Harvard University Press, 2013); Hua-ling Hu, *The Undaunted Women of Nanking: The Wartime Diaries of Minnie Vautrin and Tsen Shui-fang* (Carbondale: Southern Illinois University Press, 2010); Harrison, *The Man Awakened from Dream*; Nicola Di Cosmo, *The Diary of a Manchu Soldier in Seventeenth-*

- Century China* (London: Routledge, 2009); Kishimono, “Qingchu Shanghai de shenpan yu tiaojie: yi linianji wei li.”
- 25 For the studies on the history of Taiping Rebellion, see Kuhn, *Rebellion and its Enemies in Late Imperial China*; Philip A. Kuhn, “The Taiping Rebellion,” in *Cambridge History of China, Volume 10, Part 1*, ed., John K. Fairbank (Cambridge: Cambridge University Press, 1970), 264–350; Rudolf G. Wagner, *Reenacting the Heavenly Vision: The Role of Religion in the Taiping Rebellion* (Berkeley: University of California, Institute of East Asian Studies, 1982); Jonathan Spence, *God’s Chinese Son: The Taiping Heavenly Kingdom of Hong Xiuquan* (New York: W. W. Norton, 1996); Thomas H. Reilly, *The Taiping Heavenly Kingdom: Rebellion and the Blasphemy of Empire* (Seattle: University of Washington Press, 2004); Stephen R. Platt, *Autumn in the Heavenly Kingdom: China, the West, and the Epic Story of the Taiping Civil War* (New York: Knopf, 2012); Tobie Meyer-Fong, *What Remains: Coming to Terms with Civil War in 19th Century China* (Stanford: Stanford University Press, 2013). For the restoration following the Taiping Rebellion, see Mary C. Wright, *The Last Stand of Chinese Conservatism: The T’ung-Chih Restoration, 1862–1874* (Stanford: Stanford University Press, 1957).
- 26 Schoppa, *Chinese Elites and Political Change*, 19; Rankin, *Elite Activism and Political Transformation in China*, 42–43.
- 27 For Zhang Qingkui’s life and his involvement in the campaign against the Golden Coin Association, see Ma Yunlun 马允伦 ed., *Taiping tianguo shiqi Wenzhou shiliao huibian* 太平天国时期温州史料汇编 (Shanghai: Shanghai shehui kexue chubanshe, 2002), 174–87; Zhang Junsun 张钧孙 et al., *Duyinyuan shiwen jicun* 杜隐园诗文辑存 (Hong Kong: Xianggang chubanshe, 2005), 433–5.
- 28 Zhang et al., *Duyinyuan shiwen jicun*, 531–2.
- 29 Wenzhou Municipal Library, Rare Book Department, MS 4528, Zhang Zucheng 张组成, *Congfu zhenxuan zhang fujun xingzhuang* 从父震轩张府君行状; Zhang et al., *Duyinyuan shiwen jicun*, 531–2.
- 30 Zhang et al., *Duyinyuan shiwen jicun*, 380, 531–6.
- 31 *Congfu Zhenxuan Zhang fujun xingzhuang*.
- 32 See, for instance, *Zhang Gang Diary*, 15 April 1901 (GX27/2/27), 11 January 1902 (GX27/12/2), and 28 February 1902 (GX28/1/21). All the dates hereafter are given in the Western (Gregorian) calendar. The dates in parentheses refer to Chinese imperial reigns (GX = Guangxu reign) and the dates given in the Chinese lunar calendar.
- 33 *Zhang Gang Diary*, 25 January 1907 (GX32/12/12) and 28 January 1907 (GX32/12/15). Zhang and Sun maintained a very good relationship and they frequently assisted each other in terms of public affairs. At that time, Sun’s Ruian Middle School lacked instructors and encountered a serious student-teacher conflict. Sun persuaded Zhang to fill the teacher vacancy, while Zhang requested Sun’s help for his mediated salt dispute case. See *Zhang Gang Diary*, 21 December 1906 (GX32/11/6) and 25 January 1907 (GX32/12/12).
- 34 See, for instance, *Zhang Gang Diary*, 24 April 1895 (GX21/3/30), 1 February

- 1898 (GX24/1/11), and 7–9 February 1901 (GX26/12/19–21).
- 35 *Zhang Gang Diary*, 27 June 1898 (GX24/5/9).
  - 36 *Zhang Gang Diary*, 20 May 1888 (GX14/4/10).
  - 37 See, for instance, *Zhang Gang Diary*, 12 June–15 September 1899 (GX25/5/5–GX25/8/11).
  - 38 See, for instance, *Zhang Gang Diary*, 21 April 1914 (MG3/3/26). “MG” here refers to Chinese era name “Minguo” (Republican).
  - 39 *Zhang Gang Diary*, 7 June 1902 (GX28/5/2).
  - 40 For the debate on the concept over the existence of “public sphere” or “civil society” in China, see the special issue of *Modern China* 19, no. 2 (1993).
  - 41 For the systematic studies on death ritual and ritual master in late imperial and modern China, see James Watson and Evelyn Rawski, eds., *Death Ritual in Late Imperial and Modern China* (Berkeley: University of California Press, 1988); Yonghua Liu, *Confucian Rituals and Chinese Villagers: Ritual Change and Social Transformation in a Southeastern Chinese Community, 1368–1949* (Leiden: Brill, 2013).
  - 42 For Zhang’s experience of serving as township council member, see *Congfu Zhenxuan Zhang fujun xingzhuang*.
  - 43 Zhang et al., *Duyinyuan shiwen jicun*, 532–3.
  - 44 Fei, *Xiangtu Zhongguo*, 59–63.
  - 45 See, for instance, *Zhang Gang Diary*, 24 March 1901 (GX27/2/5) and 14 June 1902 (GX28/5/9).
  - 46 See, for instance, *Zhang Gang Diary*, 24 April 1895 (GX21/3/30), 26 January 1897 (GX22/12/24), 1 February 1898 (GX24/1/11), 7–9 February 1901 (GX26/12/19–21), and 24 September 1901 (GX27/8/12).
  - 47 See, for instance, *Zhang Gang Diary*, 23 June 1895 (GX21/fifth intercalary month - May(r5)/11) and 19 June 1898 (GX24/5/1).
  - 48 See *Zhang Gang Diary*, 23 June 1895 (GX21/r5/11), 1 February 1898 (GX24/1/11), 15 September 1899 (GX25/8/11), and 27 October 1906 (GX32/9/10).
  - 49 The term “New Policies” refers to the reform carried out after the Eight-Nation Alliance (1900) that defeated the Qing Dynasty and the boxers. The reform introduced a wide range of Western political, judicial, economic, and educational institutions. For discussion of New Policies, see, for example, Douglas R. Reynolds, *China, 1898–1912: The Xincheng Revolution and Japan* (Cambridge: Harvard University Council on East Asian Studies, 1993); Meribeth E. Cameron, *The Reform Movement in China, 1898–1912* (New York: Octagon Books, 1963); Thompson, *China’s Local Councils in the Age of Constitutional Reform, 1898–1911*.
  - 50 *Zhang Gang Diary*, 3 March 1903 (GX29/2/5).
  - 51 See, for instance, *Zhang Gang Diary*, 2 April 1898 (GX24/3/12) and 3 March 1903 (GX29/2/5).
  - 52 *Zhang Gang Diary*, 21–25 June 1902 (GX28/5/16–20) and 4 August 1906 (GX32/6/15).
  - 53 *Zhang Gang Diary*, 21–25 June 1902 (GX28/5/16–20).



- 54 Paul Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (London and New York: Routledge, 2009), 7, 47–60; Paul Katz, “Swearing down the Law – A Debate” on the website of The China Beat: <http://www.thechinabeat.org/?p=3653>.
- 55 In a broader sense, the punishment of presenting dramatic performances is part of Chinese judicial ritual. For the sources and discussions of this punishment, see Zheng Zhenman 郑振满 and Kenneth Dean 丁荷生, eds., *Fujian zongjiao beiming* 福建宗教碑铭 (Fuzhou: Fujian renmin chubanshe, 2003), 1035; Wang Rigen 王日根, “Ming-Qing Fujian minjian guiyue yu shehui de jingyan yu jiejian” 明清福建民间规约与社会管理的经验与借鉴, in *Chuantong wenhua yu xianjin goujian xueshu lunwenji* 传统文化与先进构建学术研究论文集, ed. Fujian sheng yanhuang wenhua yanjiuhui (Fuzhou: Fujian sheng yanhuang wenhua yanjiuhui, 2006), 437–47; Zhao Xiaogen 赵晓耕 et. al., *Shenfēn yu qiyue: Zhongguo chuantong minshi falüxingtai* 身份与契约: 中国传统民事法律形态 (Beijing: Zhongguo renmin daxue chubanshe, 2012), 172–3; Liu Daosheng, “Ming-Qing Huizhou minjian qiyue guanxi de weixi” 明清徽州民间契约关系的维系, *Anhui shifan daxue xuebao* 安徽师范大学学报 35, no. 2 (2007): 143–8. For discussion of the use of dramatic performances in judicial rituals, see Paul Katz, *Divine Justice*, 52–4; Michael Szonyi, *Practicing Kinship: Lineage and Descent in Late Imperial China* (Stanford: Stanford University Press, 2002), 190; Zheng Zhenman, “Shenmiao jidian yu shequ kongjian zhixu” 神庙祭典与社区空间秩序, in *Xiangtu shehui de zhixu, gongzheng, yu quanwei* 乡土社会的秩序、公正与权威 (Beijing: Zhongguo zhengfa daxue chubanshe, 1997), 178–83.
- 56 Katz, *Divine Justice*, 47–50.
- 57 *Zhang Gang Diary*, 22 March 1902 (GX28/2/13).
- 58 *Zhang Gang Diary*, 14 November 1910 (XT2/10/13). “XT” here refers to the reign name “Xuantong.”
- 59 Regarding “killing air,” see Watson and Rawski, eds., *Death Ritual in Late Imperial and Modern China*, 112–15; Sung Jin-Shiu (Song Jinxiu) 宋锦秀, “Kuileixi jidian yishi zhi yanchu: Jianshuo Lanyang diqu kuileixi de chusha yishi” 傀儡戏祭典仪式之演出: 简说兰阳地区傀儡戏的除煞仪式, *Taiwan wenxian* 台湾文献 39, no. 4 (1988): 43–60; Lee Fong-Mao (Li Fengmao) 李丰懋, “Sha yu chusha: yi ge yuzhou zhixu de pohuai yu chongjian” 煞与出煞: 一个宇宙秩序的破坏与重建, in *Minsu xilie jiangzuo 10* 民俗系列讲座 10, ed. Guoli zhongyang tushuguan Taiwan fenguan (Taipei: Guoli zhongyang tushuguan Taiwan fenguan, 1993), 257–336.
- 60 *Zhang Gang Diary*, 21 April 1914 (MG3/3/26).
- 61 See, for instance, *Zhang Gang Diary*, 26 August–2 September 1901 (GX27/7/13–20), 5–6 February 1914 (MG3/3/1–2), and 21 April 1914 (MG3/3/26).
- 62 For the practice of local constables, see Allee, *Law and Local Society in Late Imperial China*, 157–158; Chü, *Local Government in China Under the Ch'ing*, 3–4; Kung-ch'üan Hsiao, *Rural China: Imperial Control in the Nineteenth Century* (Seattle: University of Washington Press, 1960), 64–6; Saeki Tomi 佐

- 伯富, “Shindai no kyōyaku, chiho ni tsuite: Shindai chihō gyōsei no hitoku-sari” 清代の乡约・地保について——清代地方行政の一出, *Tōhōgaku* 東方学 28 (1964), 91–100.
- 63 *Zhang Gang Diary*, 5–6 February 1914 (MG3/3/1–2).
  - 64 *Zhang Gang Diary*, 1 April 1901 (GX27/2/13).
  - 65 *Zhang Gang Diary*, 3 April 1902 (GX28/2/25). The dispute happened on January 21 1901 (GX27/12/12) and ended on April 4 1902 (GX28/2/26).
  - 66 See, for instance, *Zhang Gang Diary*, 23 June 1895 (GX21/r5/11), 21 June 1899 (GX25/5/14), 3–7 April 1902 (GX28/2/25–29), 22–29 September 1906 (GX32/8/5–12), 21–25 October 1910 (XT2/9/19–23), and 10 March 1914 (MG3/2/14).
  - 67 See, for instance, *Zhang Gang Diary*, 21–25 October 1910 (XT2/9/19–23).
  - 68 For litigation master in late imperial China, see Macauley, *Social Power and Legal Culture*. For Zhang Gang’s critique of litigation master, see, for instance, *Zhang Gang Diary*, 13 August 1906 (GX32/6/24).
  - 69 *Zhang Gang Diary*, 23 June 1895 (GX21/r5/11), 26 June 1898 (GX24/5/8), and 21–25 October 1910 (XT2/9/19–23).
  - 70 Huang, *Civil Justice in China: Representation and Practice in the Qing*, 15–18. For the idea of “no litigation,” see Liang Zhiping, *Xunqiu ziran zhixu zhong de hexie* 寻求自然秩序中的和谐 (Beijing: Zhongguo zhengfa daxue chubanshe, 2002), Ch. 8; Fei, *Xiangtu Zhongguo*, 59–63. For the “litigious” culture in traditional China, see Fuma Susumu 夫馬進, *Chūgoku soshō shakaishi no kenkyū* 中国訴訟社会史の研究 (Kyoto: Kyoto Daigaku Gakujutsu Shuppankai, 2011); Fuma Susumu, trans. Fan Yu 范愉 & Wang Yaxin 王亚新, “Ming-Qing shidai de songshi yu susong zhidu” 明清时代的讼师与诉讼制度, in *Ming-Qing shiqi de minshi shenpan yu minjian qiye* 明清时期的民事审判与契约, et al. Shiga Shūzō 滋賀秀三 (Beijing: Falū chubanshe), 389–430; Deng Jianpeng 邓建鹏, “Jiansong yu xisong: Zhongguo chuantong susong wenhua de maodun jieshi” 健讼与息讼: 中国传统诉讼文化的矛盾解释, *Qinghua faxue* 清华法学 (2005 no. 4): 176–200; Xu Zhongming 徐忠明 & Du Jin 杜金, “Qingdai susong fengqi de shizheng fenxi yu wenhua jieshi: yi difangzhi wei zhongxin de kaocha” 清代诉讼风气的实证分析与文化解释: 以地方志为中心的考察, *Qinghua faxue* (2007 no. 1): 89–125; You Chenjun 尤陈俊, “Qingdai jianyue sifa tizhi xia de jiansong wenti yanjiu: yi caizheng zhiyue de jiaodu qieru” 清代简约型司法体制下的健讼问题研究: 从财政制约的角度切入, *Fashang yanjiu* 法商研究 (2012 no. 2): 154–160; You Chenjun, “Yansong huanxiang xia de jiansong shixiang chongsi Ming-Qing shidai de susong yu shehui” 厌讼幻像下的健讼实相重思明清时代的诉讼与社会, *Zhongwai faxue* 中外法学 (2012 no. 4): 815–34.
  - 71 Linxia Liang, *Delivering Justice in Qing China: Civil Trials in the Magistrate’s Court* (London: Oxford University Press, 2007), 11, 248–59.
  - 72 Some studies notice that manslaughter cases were occasionally mediated in local practice. See, for instance, Kishimoto Mio, “Qingchu Shanghai de shenpan yu tiaojie,” 238–57. What is interesting is that the source used in Kishimoto’s article is also a diary. This suggests that diary as an important

- genre enables historians to go beyond the limitation of other sources.
- 73 Lo, “The Order of Local Things: Popular Politics and Religion in Modern Wenzhou, 1840–1940,” Ch. 4.
- 74 See, for instance, *Zhang Gang Diary*, 6 June 1907 (GX33/4/26).
- 75 *Zhang Gang Diary*, 12 June 1899 (GX25/5/5).
- 76 For the complete story of this incident, see *Zhang Gang Diary*, 12 June–15 September 1899 (GX25/5/5–GX25/8/11).
- 77 *Zhang Gang Diary*, 17 June 1899 (GX25/5/10).
- 78 For the procedure of Qing judicial review, see Na Silu 那思陆, *Qindai zhongyang sifa shenpan zhidu* 清代中央司法审判制度 (Taipei: Wenshizhe chubanshe, 1992), 193–294.
- 79 As an investment tool and mutual-aid organization, *binxing* had sharply increased during the latter half of the Qing Dynasty. See, for instance, Yang Lien-sheng (Yang Liansheng) 杨联陞, “Keju shidai de fukao lüfei wenti” 科举时代的赴考旅费问题, *Qinhua xuebao* 清华学报 2, no. 2 (1961): 116–28; Zhang Xiaopo 张小坡, “Qingdai Jiangnan binxing zuzhi de yanbian ji yunzuo” 清代江南宾兴组织的演变及运作, *Anhui daxue xuebao* (*Zhexue shehuixue ban*) 5 (2010): 147–56; Yang Pinyou 杨品优, “Keju shehui zuzhi yu shehui quanshi de zhuanqi: yi wanqing zhi minguo jiangxi nankang binxing-hui weili de fenxi” 科举社会组织与社会权势的转移：以晚清至民国江西康宾兴会为例的分析, *Zhongguo jindaishi* 中国近代史 6 (2008): 68–75.
- 80 For the development of Wenzhou local politics during this period, see Lo, “The Order of Local Things: Popular Politics and Religion in Modern Wenzhou, 1840–1940”; Li Shizhong 李世众, *Wangqing shishen yu difang zhengzhi: yi Wenzhou wei zhongxin de kaocha* 晚清士绅与地方政治：以温州为中心的考察 (Shanghai: Shanghai renmin chubanshe, 2006).
- 81 Philip Huang also notices that some conflicts led to litigation and open disputes due to inequalities in power and status. Huang, *Civil Justice in China: Representation and Practice in the Qing*, 75.
- 82 *Zhang Gang Diary*, 2 September 1901 (GX27/7/20). For the introduction of potato to China, see Ping-Ti Ho, “The Introduction of American Food Plants Into China,” *American Anthropologist* 57, no. 2, part 1 (1955): 191–201. For the development of planting potato and cotton in nineteenth-century China, see Kenneth Pomeranz, “Re-thinking the Late Imperial Chinese Economy: Development, Disaggregation, and Decline, circa 1730–1930,” *Itinerario* 24, no. 3–4 (2000): 29–74.
- 83 Yu Guang 俞光, *Wenzhou gudai jingji shiliao huibian* 温州古代经济史料汇编 (Shanghai: Shanghai shehui kexue yuan chubanshe, 2005), 82–97.
- 84 *Ibid.*, 91–2, 103–104.
- 85 *Zhang Gang Diary*, 26 August–2 September 1901 (GX27/7/13–20).
- 86 *Zhang Gang Diary*, 4–5 September 1901 (GX27/7/22–23).
- 87 See Kuhn, *Rebellion and its Enemies in Late Imperial China*.
- 88 *Zhang Gang Diary*, 7 September 1901 (GX27/7/25).
- 89 *Zhang Gang Diary*, 7–8 September 1901 (GX27/7/25–26).

- 90 *Zhang Gang Diary*, 21 May 1916 (MG5/4/20).
- 91 *Zhang Gang Diary*, 15 July 1916 (MG5/6/16).
- 92 *Zhang Gang Diary*, 15 July 1916 (MG5/6/16).
- 93 See, for instance, *Zhang Gang Diary*, 11 February 1919 (MG8/1/11).
- 94 *Zhang Gang Diary*, 7 September 1901 (GX27/7/25).
- 95 See, for instance, the anti-gambling campaigns during 1910 and 1911. *Zhang Gang Diary*, 1910–1911.
- 96 For example, a dispute over unauthorized cultivation remained unresolved even after several magistrates. See *Zhang Gang Diary*, 1913–1919.
- 97 Ruian xian xiuzhi weiyuanhui 瑞安县修志委员会, *Ruian xianzhi gao* 瑞安县志稿 [reprint], vol. 2 (Hong Kong: Fuchi shuyuan, 2006), 709–11; Zhengxie Ruian xian wenshi ziliao yanjiu weiyuanhui 政协瑞安县文史资料研究委员会, *Ruian wenshi ziliao* 瑞安文史资料 vol. 11 (Ruian: Zhengxie Ruian xian wenshi ziliao yanjiu weiyuanhui, 1994), 121–3.
- 98 Zhang Gang's experience of Western learning resembles the experiences of coastal elites. For the influence of littoral elites on Western learning and reform, see Paul Cohen, *Between Tradition and Modernity: Wang T'ao and Reform in Late Ch'ing China* (Cambridge: Harvard University Press, 1974).
- 99 *Zhang Gang Diary*, 28 February 1902 (GX28/1/21).
- 100 *Zhang Gang Diary*, 5 March 1902 (GX28/1/26).
- 101 *Zhang Gang Diary*, 7–10 March 1902 (GX28/1/28–GX28/2/1).
- 102 *Zhang Gang Diary*, 14–17 March 1902 (GX28/2/5–8).
- 103 *Zhang Gang Diary*, 15–18 March 1902 (GX28/2/6–9).
- 104 *Zhang Gang Diary*, 16 March 1902 (GX28/2/7).
- 105 *Zhang Gang Diary*, 18–19 March 1902 (GX28/2/9–10).
- 106 *Zhang Gang Diary*, 20–29 March 1902 (GX28/2/11–20).
- 107 *Zhang Gang Diary*, 30 March 1902 (GX28/2/21).
- 108 *Zhang Gang Diary*, 6 April 1902 (GX28/2/28).
- 109 *Zhang Gang Diary*, 6 September 1902 (GX28/8/5).
- 110 *Zhang Gang Diary*, 8 May 1902 (GX28/4/1).
- 111 *Zhang Gang Diary*, 12 May 1902 (GX28/4/5).
- 112 *Zhang Gang Diary*, 5–16 March 1906 (GX32/2/11–22).
- 113 See, for instance, *Zhang Gang Diary*, 30–31 March 1902 (GX28/2/21–22), 28 April 1902 (GX28/3/21), and 7–22 June 1902 (GX28/5/2–17).
- 114 *Zhang Gang Diary*, 2 April 1906 (GX32/3/9).
- 115 Kuhn, *Rebellion and its Enemies in Late Imperial China* and “Local Taxation and Finances in Republican China.”
- 116 Duara, *Culture, Power, and the State*; R. Bin Wong, *China Transformed: Historical Change and the Limits of European Experience* (Ithaca: Cornell University Press, 1997); Julia Strauss, *Strong Institutions in Weak Polities: State Building in Republican China, 1927–1940* (Oxford: Oxford University Press, 1998); Elizabeth Remick, *Building Local States: China during the Republican and Post-Mao Eras* (Cambridge: Harvard University Asia Center, 2004).
- 117 Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937*, Ch. 6.

- 118 For the debate over the reform during the late Qing, see Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937*, Ch. 1.
- 119 Gugong bowuyuan ming qing dang'an bu 故宫博物院明清档案部, *Qingmo choubei lixian dang'an shiliao* 清末筹备立宪档案史料, sha (Taipei: Wenhai, 1981), 824–7.
- 120 Huang, *Code, Custom, and Legal Practice in China: the Qing and the Republic Compared*, 35–38; Xu, *Trial of Modernity*, 40–45.
- 121 Xu, *Trial of Modernity*, 45–49.
- 122 Huang, *Code, Custom, and Legal Practice in China*, 40–43; Xu, *Trial of Modernity*, Ch. 4–5.
- 123 *Shen Bao*, no. 13397 (27 May 1910), p. 11.
- 124 Ruian xian xiuzhi weiyuanhui, *Ruian xianzhi gao*, vol. 1, 297–300.
- 125 According to *Ruian xianzhi gao*, the trial officer appeared before the assistant trial officer in Ruian. In *Zhang Gang Diary* both officers appeared in 1914. The assistant trial officer disappeared after 1914, when regulations removed the assistant trial officer and only allowed the trial officer and magistrate to adjudicate cases at the local level. See Xu, *Trial of Modernity* 65.
- 126 *Zhang Gang Diary*, 31 October 1914 (MG3/9/13).
- 127 *Zhang Gang Diary*, 3 March 1914 (MG3/2/7), 10 March 1914 (MG3/2/14), and 27–28 April 1914 (MG3/4/3–4).
- 128 *Zhang Gang Diary*, 17 June 1914 (MG3/5/24).
- 129 Huang, *Code, Custom, and Legal Practice in China*, 36.
- 130 *Da Qing xin falü huibian* 大清新法律汇编 (Linzhangshuju, 1910), 339–40.
- 131 *Zhang Gang Diary*, 17–18 June 1914 (MG3/5/23–24).
- 132 *Zhang Gang Diary*, 8 September 1914 (MG3/7/19).
- 133 *Zhang Gang Diary*, 21 November 1922 (MG11/10/3).
- 134 *Zhang Gang Diary*, 21 January 1923 (MG11/12/5).
- 135 See, for instance, *Zhang Gang Diary*, 21 April 1922 (MG11/3/25).
- 136 *Zhang Gang Diary*, 24–28 May 1915 (MG4/4/11–15).
- 137 *Zhang Gang Diary*, 2 December 1915 (MG4/10/26).
- 138 *Zhang Gang Diary*, 25 July 1916–16 January 1917 (MG5/6/26–MG512/23) and 3 February–7 December 1917 (MG6/1/12–MG6/10/23).
- 139 For discussion of the discretion and sentencing power of late Qing and Republican police, see Li Chunhua 李春华, “Zhongguo jindai weijing fafa de yan'ge” 中国近代违警罚法的沿革, *Shandong gong'an zhuanke xuexiao xuebao* 山东公安专科学校学报 77 (2004): 76–80; Yu Shubin 于树斌, “Qingchao monian yu minguo shiqi jingcha jiguan yushen zhidu yanjiu” 清朝末年与民国时期警察机关预审制度研究, *Gong'an daxue xuebao* 公安大学学报 69 (1997): 42–3.
- 140 *Shen Bao*, no. 11039, (10 January 1904), p. 3. Ruian also introduced police during the late Qing and extended the force after the Republican period. See Ruian xian xiuzhi weiyuanhui, *Ruian xianzhi gao*, vol. 1, 299.
- 141 *Zhang Gang Diary*, 26 January 1914 (MG3/1/1).
- 142 *Zhang Gang Diary*, 26 March 1914 (MG3/2/30).
- 143 *Zhang Gang Diary*, 15 May 1914 (MG3/4/21).

- 144 See, for instance, *Zhang Gang Diary*, 30 March 1902 (GX28/2/21).
- 145 Liu Yiyuan 刘燁元 et al., *Minguo fagui jikan* 民国法规集刊 (Shanghai: Minzhi shuju, 1929), 462–5; *Zhengfu gongbao* 政府公报 (1921, no. 1932); Xu Baiqi 徐百齐 ed., *Zhonghua minguo fagui daquan* 中华民国法规大全 (Shanghai: Shangwu yinshuguan, 1936), 5499–501.
- 146 Tong Zhenhai 童振海, *Xianxing xingmin gongshangshi tiaojie fagui jijie* 现行刑民工商事调解法规集解, houbian (Shanghai: Shanghai fazheng xueshe, 1931), 155–9.
- 147 Xu, *Zhonghua minguo fagui Daquan*, 3469–72, 5499–501.
- 148 *Zhang Gang Diary*, 29 May 1915 (MG4/4/16).
- 149 *Zhang Gang Diary*, 2–4 November 1924 (MG13/10/6–8) and 3 May 1925 (MG14/4/11).
- 150 See, for instance, *Zhang Gang Diary*, 8 April 1926 (MG15/2/26).
- 151 *Zhang Gang Diary*, 21 February 1927 (MG16/1/20) and 9 March 1927 (MG16/2/6).
- 152 See, for instance, *Zhang Gang Diary*, 8 May 1927 (MG16/4/8), 13 May (MG16/4/13), and 16 May 1927 (MG16/4/16).
- 153 *Zhang Gang Diary*, 8 September 1931 (MG20/7/26).
- 154 *Zhang Gang Diary*, 18 July 1926 (MG15/6/9).
- 155 *Zhang Gang Diary*, 4 May 1926 (MG15/3/23).
- 156 *Zhang Gang Diary*, 5 April 1927 (MG16/3/4).
- 157 *Zhang Gang Diary*, 2 December 1924 (MG13/11/6).
- 158 *Zhang Gang Diary*, 16–20 January 1925 (MG13/12/22–26) and 1 March–1 May 1925 (MG14/2/7–MG14/4/9).
- 159 *Zhang Gang Diary*, 5 April 1925 (MG14/3/13).
- 160 *Zhang Gang Diary*, 10 March 1925 (MG14/2/16).
- 161 *Zhang Gang Diary*, 31 May 1925 (MG14/r4/10).
- 162 *Zhang Gang Diary*, 30 October 1924 (MG13/10/3) and 2 September 1928 (MG17/7/19).
- 163 *Zhang Gang Diary*, 4 February 1925 (MG14/1/12).