

Socially Embedded Adjudication in Wartime China: Rethinking Ma Xiwu's Method of Judging

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Abstract

This article reads Ma Xiwu's method not as a timeless symbol of "people-centered justice", and not as a precursor to judicial mediation in its modern form. Rather, it reads Ma Xiwu's method as a socially embedded form of adjudication that was shaped by the specificities of the Shaan-Gan-Ning Border Region in the 1940s. When viewed in that context, the distinctiveness of Ma Xiwu's method was its combination of circuit adjudication, investigation, local knowledge, public explanation, and mediation. This article will also examine the marriage dispute that eventually became the case of Liu Qiao'er and will demonstrate how Ma Xiwu's method was used to bring revolutionary justice to rural China. The power of Ma Xiwu's method was also its limitation. It was a weak form of legal procedure that blurred the line between mediation and adjudication and that rested heavily on political mobilization and managed local consent.

Keywords

Ma Xiwu, Wartime China, Legal culture, Access to justice, Judicial mediation

Introduction

Ma Xiwu is a unique figure in modern Chinese legal history. In official legal discourse, he is remembered as a pioneering judge who was both sympathetic to ordinary Chinese and knowledgeable about the practicalities of legal adjudication. In academic discourse outside China, however, Ma Xiwu's method has appeared in more limited guises. It has appeared as a precursor to judicial mediation, as a form of revolutionary justice in rural China, and as a manifestation of the complex relationship between law and politics in modern China. These perspectives have shed important new light on Ma Xiwu and his method. Yet they do not explain why Ma Xiwu was so important in the 1940s and why he still has relevance for scholars today.

It is more fruitful to think of the method of Ma Xiwu as a form of judgment in which authority was less a matter of professional distance or procedure than of mobility, investigation, explication, and the capacity to make the law workable at the level of the villagers. It was neither merely informal nor merely a form of mediation. It was a form of connecting the judgment to the social world of the villagers without surrendering the power of

judgment to the court.

Considered in this light, the method of Ma Xiwu points to a central problem of the history of law and courts in a comparative perspective: How do courts acquire authority in a setting in which procedure is thin, literacy is low, documentation is scarce, and the law must be translated into a form of intelligibility to society at large before it can become effective as law? The history of legal culture has long indicated that law is effective, or becomes effective, not merely by coercion or by the precision of its doctrine, but also by its capacity to engage the expectations of society as a whole. Legal culture as a field of analysis has been systematically reviewed to reveal its multifaceted roles in social and legal change [1]. The history of legal pluralism reminds us, too, that the courts are only one of a number of sites at which disputes are processed and authority is validated. Recent scholarship has further appraised the tension and interaction between state law and legal pluralism in transitional societies [2]. The method of Ma Xiwu is interesting precisely because of its attempt to engage that space of legal pluralism without reducing the authority of the courts to custom or political fiat.

More concretely, the method was important because it brought the court to the litigants, local knowledge to the process of fact-finding, and the language of revolutionary legal change to the villagers. These are also the aspects of the method that set boundaries on what it could achieve. Social proximity can be thin in process, participation can masquerade as consensus, and mediation can shade into pressure. In these respects, the value of the method of Ma Xiwu in the present is less as a model to be emulated than as subject for analysis.

From revolutionary icon to socio-legal phenomenon

The best recent studies on the figure of Ma Xiwu are provided by Xiaoping Cong in her path-breaking archival research. This has dramatically altered the way in which the subject of Ma Xiwu should be studied. Cong's work has demonstrated that the method of Ma Xiwu did not develop as the pure embodiment of revolutionary ideals. Instead, the method emerged and evolved within the specific historical and social conditions of the 1940s Shaan-Gan-Ning Border Region. These conditions included fragmented local society, entrenched customary authority, severe institutional scarcity, and the imperative to render new policies both implementable and intelligible to rural villagers [3]. Cong's work has also demonstrated that the marriage dispute that later became the narrative of the case of Liu Qiao'er did not have the simple moral dimensions of liberation that are often assumed. Instead, the case was complex in the interplay between revolutionary law, family economy, gender relations, and local custom. This dynamic echoes research on women, property, and marital exchange in post-revolutionary Chinese rural society [4].

A second set of literature contextualizes Ma Xiwu within the broader history of mediation and adjudication in China. Philip C. C. Huang has written that Chinese judicial practice cannot be characterized by a binary opposition between "informal mediation" and "formal adjudication". In both late imperial and modern China, mediation and adjudication often overlap, and judges have broad discretion to switch between the two. Subsequent studies on the reform period have shown that this overlap did not disappear with legal modernization. Rather, it reasserts itself in new ways, especially when the courts are called on to stabilize society, reduce conflict, and channel grievances into

mediation-based governance. Yet, if Ma Xiwu is viewed primarily as the progenitor of judicial mediation, what about what made this approach important in the 1940s? If its value rested solely on compromise and conciliation, it would be hard to explain why this approach was publicly identified as a judicial "method" in 1944, rather than merely being lauded as effective local dispute resolution. The record suggests otherwise: the creation of a new judicial presence in the countryside. This is where the language of legal culture and legal pluralism can be especially useful. Friedman's concept of legal culture draws our attention to the expectations and meanings that make law relevant, whereas Galanter's "justice in many rooms" reminds us that formal courts are by no means the sole sources of normative order. In this light, Ma Xiwu's judicial method was merely a bid to enter a crowded field of dispute resolution while retaining the courts' claim to ultimate authority. This blurring of mediation, dispute resolution, and social governance has been analyzed in contemporary grassroots policing as a continuation of long-standing patterns [5].

Law, war, and institutional scarcity

The method of Ma Xiwu was born in the Shaan-Gan-Ning Border Region during the Anti-Japanese War. This is not coincidental. The Border Region was not a consolidated constitutional state with a stable bureaucracy and a routinized legal system and legal profession. It was a revolutionary base area in China during the Anti-Japanese War in which the Chinese Communist Party aimed to rule poor rural societies characterized by low literacy rates, fragile social institutions, imperfect communication infrastructure, and the lingering impact of kinship and customary social organization. In this kind of environment, a highly technical and document-based model of adjudication centered in the courthouse could hardly be operative. In this kind of environment, judicial power had to be constructed in alternative ways. Scholarship on populist legality helps explain why such wartime judicial legacies remain resonant in later legal reforms.

The public nature of the method of Ma Xiwu also underscores the point. On 13th March 1944, the Chinese newspaper *Jiefang ribao* (*Liberation Daily*) published "Comrade Ma Xiwu's Way of Judging",

which made the method of Ma Xiwu public. This publication was associated with the more general effort to make law visible, credible, and teachable in the Border Region. In the article in *Liberation Daily*, Ma Xiwu was not presented as some kind of individual genius. What was presented was a judicial style that was replicable and appropriate for revolutionary legal governance in the course of the Anti-Japanese War. In the course of the Anti-Japanese War in the Border Region, investigation, simplified adjudication, “reliance on the masses”, and dispute resolution were not only seen as virtues in legal adjudication. They were also seen as techniques for exercising power in a base area that was characterized by a lack of trained personnel and infrastructure. From a comparative theoretical angle, such embedded adjudication can be understood as a form of politically situated judicial practice [6].

This explains in part why circuit adjudication played such an important role. Circuit adjudication was also important for a much simpler reason: It made the court present where the dispute was unfolding. Being present reduced the cost of bringing claims, brought greater publicity to the adjudication of those claims, and gave judges access to the social context in which the dispute had begun. In modern parlance, this was an access strategy. But it was also a strategy of state presence.

But how can we describe this method of Ma Xiwu’s without reference to customary justice? Ma Xiwu’s method was carried out in an environment of legal pluralism in which household authority, local reputation, custom, revolutionary policy, and statutory rules co-existed. Judicial authority was also an authority of selection and translation. Which voices were authoritative? Which customs were accepted, and which were overridden? Which disputes were mediated, and which were subject to authoritative adjudication? Ma Xiwu’s method was not simply an echo of village opinion; it was an attempt to remake the normative order by selectively incorporating local knowledge into revolutionary rules.

The relative significance of Ma Xiwu’s method becomes apparent when its basic components are analyzed. First is accessibility. Much has been written on access to justice and the role of cost, delay, and complexity. While all of these factors are important, the experience of the Border Region suggests that there is

another side to access: Courts must become socially legible. One can imagine a court that exists on paper but is nonetheless inaccessible because its procedures are mysterious, its language is foreign, and its location is too remote from ordinary life in the villages. Ma Xiwu’s method addressed this difficulty by reversing the flow of institutional movement. Rather than asking people to become familiar with the court, the court became familiar to people. The expansion of judicial roles and grievance redress in China’s socialist legality echoes this pursuit of accessible justice [7].

The second element is fact-finding. Formalist systems often relied on procedural legitimacy and evidentiary rigor. However, in Ma Xiwu’s system, legitimacy rested on investigative embeddedness. The judges went to the location of the dispute and talked to people in the area to gather facts through social knowledge and legal knowledge. This process could offset distortions that resulted from distance and formalism, especially where documentary evidence was poor. This process also enabled the court to grasp the social significance of the dispute for the wider community. This is vital for disputes over land, debts, marriage, and family authority. However, there is a downside to this process. When knowledge is socially constructed, there is always the danger that the views of the majority in an area can dominate.

The third element is public explanation. The decision of a court is not automatically legitimate because it is made by an authority. Rather, it has to be narrated and justified to the wider social world. Ma Xiwu’s process was unusual in its focus on public explanation. The aim was to ensure that disputes were resolved but there was an explanation for why this was reasonable from both legal and social perspectives. This was especially important because this was a revolutionary period and new norms could not be imposed without explanation. New norms had to be justified to villagers in ways that villagers could understand.

What the approach of Ma Xiwu, at his best, achieved was to make the law legible, something that could be seen, heard, and discussed, rather than merely complied with at a distance. This is why the approach has implications for the global debate on informal justice and community-based dispute resolution.

Recasting marriage: The case of the Feng v. Zhang (Liu Qiao'er)

The best way to illustrate these arguments is with the famous marriage case that has also been popularized as the story of Liu Qiao'er. The research of Cong makes it clear that this case has been far more than the simple morality tale of the enlightened judge freeing the woman from traditional feudal patriarchy. Instead, it has been the site of marriage reform, family economy, village tradition, local custom and revolutionary state-building. This revolutionary reconstruction of marriage law and its public narrative was further developed in the 1950s through distinct narratives of divorce and legal publicity [8].

The first of the major changes that we can see in this case is the change in legal subjectivity. In the village context, marriage has traditionally been subject to the control of the family and the practice of bride-price. Individual consent has played a role, but not necessarily in defining the validity of marriage. The revolutionary court attempted to reverse this process. The major change, however, in the context of marriage in the revolutionary court was not the simple declaration of the freedom of the marriage, but the slightly more specific notion of self-determined marriage. This notion of marriage has adapted the revolutionary reforms to the world in which the family economy and family authority were important. The court did not declare simple freedom of marriage. Instead, it replaced marriage in the context of the family economy with the notion of self-determined marriage. Before 1949, the Communist Party already used marriage and family law to socially mobilize rural women, shaping both custom and state authority [9].

The second transformation involved jurisdiction. In the case of Feng v. Zhang, the conflict shifted the determination of marital legitimacy from the patriarchal family to a public arena in which the court asserted its authority to decide the matter. This was not merely a conflict resolution in a private arena; it was a transfer of normative power. What was formerly subject to control by the family or customary exchange was now subject to a public arena of adjudication, and this was a key feature of state-building. This shift of normative authority from private patriarchy to public adjudication forms a chapter in China's broader history of

revolutionary transitional justice [10].

The third transformation involves the issue of legitimacy. What made the decision binding was not the technical procedures involved. It was the interplay of inquiry, consultation, and explanation, all of which were presented in a form that villagers could understand. Ma Xiwu's procedures yielded a decision that could be explained to villagers as normatively justified and socially intelligible, and that is why the conflict was so readily translated into the political and cultural forms of the past. Once translated into the form of the conflict between Liu Qiao'er, it came to stand for a new relationship between the court, the village, and the state. But it is also important to note that this case highlights the limitations of this model. Community participation should not be romanticized. Moreover, participation did not necessarily guarantee equality, nor did it necessarily produce a rights-bearing subject in a liberal sense. The claims of women remained tied to economic insecurity, reputation within the community, and revolutionary priority. In addition, the capacity of the court to broker agreement is partly because it is part of a broader political project. What is left is not necessarily a neutral proceduralism or a spontaneous form of communal justice. Rather, it is a politically facilitated form of persuasion, and this is mediated through the court.

Comparative significance and normative limitations

The importance of Ma Xiwu's method is not necessarily as a commemorative symbol but as a case for thinking about adjudication in low-capacity settings. Firstly, Ma Xiwu's method is important for thinking about access to justice in low-capacity settings. Much of this literature assumes that access to justice is limited primarily by cost, distance, and procedural complexity. However, the Border Region case suggests that access to justice is not simply about cost, distance, or procedural complexity. Rather, access to justice is also about whether or not a court's language, procedures, and presence make sense to the people in front of them. Ma Xiwu's method is important for highlighting this aspect of access to justice.

Secondly, the approach also blurs the line between adjudication and mediation. In modern legal systems, adjudication and mediation are often seen as separate and distinct legal processes. However, Chinese legal history reveals that the line between them has always

been blurry. Ma Xiwu's approach was one of the earliest and most important examples of this. Yet, the lesson to be drawn from the comparative approach to Chinese judicial mediation is not that the line should be blurred. Rather, more recent studies of judicial mediation in China highlight the potential pitfalls of collapsing adjudication and mediation into one [11]. These pitfalls include role confusion, settlement pressure, loss of clarity in the legal process, and the subordination of legal rules to the administrative goal of closure.

Third, it offered a new way of thinking about legal culture. Too often, legal culture is described as tradition inherited in some fashion or as an obstacle to modernization. The Border Region's legal culture was neither of these things. Rather, it was in the process of being recreated by repeated interactions between institutions and village society. Ma Xiwu's approach was successful because it actively recreated local culture in accordance with a new political and legal order.

These virtues of the model must not obscure its limitations as a normative ideal. From the viewpoint of modern rule of law principles, it offered little in the way of procedural protection. Its reliance on local input left open questions of hierarchy, social pressure, and unequal access to speech. Its legitimacy rested on a revolutionary ideal that did not sharply distinguish between judicial authority and ideological goal. Its focus on resolution could submerge individual rights as claims separate from socially acceptable outcomes. What Ma Xiwu's approach offers is not an answer to modern reform problems but rather a rich historical case in terms of which to consider questions of proximity, flexibility, and embeddedness in modern rule of law reform.

Conclusion

When viewed through a global socio-legal lens, Ma Xiwu's practice is not best understood either as revolutionary mythology or early mediation. Rather, it is best understood as a historically particular form of socially embedded adjudication. In a context characterized by institutional weakness and wartime exigency, the judiciary in the Border Region pursued legitimacy through a series of strategies that brought courts closer to society, fact-finding more closely to local knowledge, and legal transformation more closely

to social understanding. The marriage dispute that eventually became known through Liu Qiao'er is best understood as a case in which Ma Xiwu's practice reshaped marriage, displaced patriarchal household authority with public authority, and made legality visible in social practice.

The relevance of this case is best understood in terms of what it may tell us about law and legal practice under pressure. Law is not legitimate simply because it is based on texts or authority. Rather, it is legitimate to the extent that individuals may recognize the process, follow the logic, and connect the result to a world they know and understand. However, this proximity is a double-edged sword. Ma Xiwu's legacy is best understood not only in terms of what it may tell us about law and legal practice but also in terms of the ways in which proximity to society is at once a source and a limitation for judicial legitimacy and legality.

Funding

This work was not supported by any funds.

Acknowledgements

The authors would like to show sincere thanks to those techniques who have contributed to this research.

Conflicts of Interest

The authors declare no conflict of interest.

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