

TAKING YUAN (冤) SERIOUSLY:

WHY THE CHINESE STATE SHOULD STOP SUPPRESSING CITIZEN PROTESTS AGAINST INJUSTICE

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I. INTRODUCTION

In the spring of 2009, a professor of forensic psychiatry at Peking University triggered an incident that became widely known throughout China. In an interview with a domestic newspaper, Professor Sun Dongdong commented on the group of people in Chinese society who are at the center of this Article.¹ This group of Chinese citizens makes use of China's petitioning or "Letters and Visits" system to submit thousands of grievances each year to Party and State offices in Beijing and other cities in the hope of obtaining redress.² Many of the petitioners responsible for these complaints have been forcibly confined by the State in psychiatric hospitals.³ Professor Sun defended this practice:

Everybody thinks that only those wild-looking people who go on mad rampages are mentally ill. But in fact, many mentally ill people are quite normal, as long as the symptoms of their mental illness are

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1. 北大教授孙东东：上访专业户至少99%精神有问题 [*Peking University Professor Sun Dongdong: Petition Specialized Households at Least 99% Have Mental Problems*], PHOENIX NEWS (Apr. 3, 2009, 7:50 AM), http://news.ifeng.com/mainland/200904/0403_17_1089530.shtml [hereinafter *Peking University Professor*]; see also Sky Canaves, *A Professor's Comments on Mental Illness Draw Ire in China*, CHINA REAL TIME REPORT (Apr. 3, 2009, 4:59 AM), <http://blogs.wsj.com/chinarealtime/2009/04/03/a-professors-comments-on-mental-illness-draw-ire-in-china> (reporting on Professor Sun's controversial comments).

2. Carl F. Minzner, *Xinfaang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT'L L. 103, 110 (2006).

3. See, e.g., 山东新泰多名欲进京上访者被强送精神病院 [*Several Petitioners from Xintai in Shandong Forcefully Taken to Psychiatric Hospitals*], BEIJING NEWS (Dec. 8, 2008), <http://news.sina.com.cn/c/2008-12-08/015816800838.shtml> (describing the confinement of petitioners in Xintai City); ROBIN MUNRO, DANGEROUS MINDS: POLITICAL PSYCHIATRY IN CHINA TODAY AND ITS ORIGINS IN THE MAO ERA 38 (2002) [hereinafter MUNRO, DANGEROUS MINDS] ("Chinese authorities have, in fact, a longstanding record of misuse of psychiatry for politically repressive purposes.").

not concerned. And as for those long-term professional petitioners, I will say responsibly that if not 100% then at least over 99% of them have mental problems – that they suffer from paranoia.

....

It is proper for paranoia patients of this kind to be forcibly treated, because they disturb the social order. That kind of person insists on their viewpoint, and that viewpoint is the symptom of their paranoia. They abandon their family and their work in order to pursue their mad quest; they are willing to pay any price just to engage in petitioning. You can go and examine these people engaged in obsessive petitioning for yourself. The problem they are complaining about has in reality already been entirely resolved; or there may even never have been any problem. And yet they keep making trouble, and no explanation you give them will work. And then the public starts being concerned that these people's rights are not protected! In fact, that is just because [the public] lacks a basic understanding of mental hygiene. This kind of situation exists not only in China but in any other country worldwide. It is a problem that gives headaches to governments the world over.

....

To lock these people up is the best protection. They endanger society as well as themselves. If we lock them up and treat them, we speed up their mental recovery. That protects their human rights.⁴

Professor Sun's remarks provoked a storm of hostile reactions in what became known as the "Sun Dongdong Incident."⁵ Hundreds of petitioners flocked to the gates of Peking University and demanded to see Professor Sun; some accessed the campus, where they reportedly spoke to his wife.⁶ A petitioner named Zhou Li told the media that she wished "to get [her] diagnosis from Professor Sun!"⁷ In online posts, there were demands that Professor Sun be fired; some people announced that they wanted to sue him,⁸ while others called for his death.⁹ Responding to this criticism, Professor Sun

4. See *Peking University Professor*, *supra* note 1; see also Canaves, *supra* note 1.

5. See Stephanie Wang, *China's Elite Stirs Up 'Paranoid' Petitioners*, ASIA TIMES ONLINE (May 9, 2009), <http://www.atimes.com/atimes/China/KE09Ad02.html> (referring to Professor Sun's comments and the ensuing protests as the "Sun Dongdong Incident").

6. Interview with an Anonymous Petitioner, in Beijing, China (Apr. 2010); see also Mohit Joshi, *Chinese Petitioners Protest "Mentally Ill" Label*, TOPNEWS (Apr. 8, 2009, 6:47 AM), <http://www.topnews.in/chinese-petitioners-protest-mentally-ill-label-2149118> ("Nearly 300 people rallied outside the university . . .").

7. *Sun Dongdong's Comments on Mental Illness Produce Strong Reaction, Petitioners Confront Him, Plan to Sue Him*, RADIO FREE ASIA (Apr. 1, 2009), <http://www.rfa.org/mandarin/yataibaodao/fangmin-04012009084816.html>.

8. See Canaves, *supra* note 1 (discussing a group of Shanghai petitioners who were preparing to file a defamation suit against Professor Sun).

9. On the internet, one could find a headshot of Professor Sun, crossed out, with the character 下 ("down!") written on his forehead and the character 死 ("death") scribbled next to him. See Ding Xiao, 孙东东就访民精神病论道歉 民愤难平新闻跟贴受限 [*Peking University Opposes Support from Petitioners, Students; Police Violence Stepped Up; Petitioner*

issued a public apology a few days later.¹⁰ The crowds at Peking University's South Gate were subsequently dispersed, but not without several detentions of petitioners.¹¹ Zhou Li, the woman who wanted a personal diagnosis, was criminally charged with instigating a public disturbance for allegedly leading the siege on Peking University.¹² Despite attempts at suppression, online discussion of Professor Sun's remarks continued, and the incident became part of an unofficial history of Chinese citizen protest.¹³

This Article discusses the official attitudes and practices that gave rise to the Sun Dongdong Incident, as well as the popular reactions that followed. It presents an analysis of the framework of rules and practices governing China's response to complaints, as well as case reports and conversations with complainants, lawyers, and scholars. An understanding of the concept of *yuan* (冤)—translated to mean “a wrong,” “tort,” “injustice,” or “grievance”¹⁴—is central to this discussion in the context of both the traditional *xinfang* (信访)¹⁵ or “letters and visits” system for handling petitions and the modern court system.

This Article argues that, as a traditional moral concept, *yuan* is analogous to the concept of rights in modern political settings because it captures the ruler's political responsibilities towards the ruled. Rights-assertion via the courts and protests against injustice via the petition system thus share the same moral and rational core. However, *yuan* is different from rights in that it adopts a distinctive view of the moral obligations of victims of injustice. In modern China, people with grievances typically engage in both practices simultaneously; they draw on both tradition and modernity to articulate their grievances.

This argument provides a basis for a critical assessment of the Chinese government's preferred interpretation of the Chinese moral tradition as one centered in the concept of harmony (*hexie*). As the Chinese State propagates “harmony,” it also increasingly rejects rights-centered political ideas,

Zhou Li Disappeared], RADIO FREE ASIA (Apr. 16, 2009), <http://www.rfa.org/mandarin/yataibaodao/fangmin-04162009163047.html>.

10. See Joshi, *supra* note 6 (“Sun apologized in a statement on the China News Service on Monday afternoon.”).

11. See Ding Xiao, *supra* note 9 (describing police efforts to suppress protests in response to Professor Sun's comments).

12. *Id.*

13. *Id.*; see generally Yu Jianrong, Lecture at the University of California, Berkeley: China's Governance Crisis and Riots (Oct. 30, 2007) (transcript available at <http://www.clb.org.hk/chi/node/140745>) (discussing the rapid increase in mass incidents in China and their effect on social development).

14. The online dictionary *Chinese Dictionary* (汉语词典) translates *yuan* (冤) as “bad luck, enmity, injustice, or wrong.” *Definition of Yuan*, CHINESE DICTIONARY, <http://tw.18dao.net/%E6%BC%A2%E8%AA%9E%E8%A9%9E%E5%85%B8/%E5%86%A4> (last visited Nov. 27, 2011).

15. See Minzner, *supra* note 2, at 109-20 (providing a detailed definition, historical background, and modern description of the Xinfang system).

characterizing them as “Western” and inappropriate for China. As it steps up repression of complainants and rights defenders, it denounces their actions as socially harmful, not in conformity with the Chinese moral tradition, and occasionally even as insane. However, citizen complaints against injustice, which take *yuan* and rights seriously,¹⁶ are neither irrational, nor socially harmful, nor un-Chinese. If anything, the tradition exemplified in uses of the concept of *yuan* attributes wider responsibilities to government than the liberal tradition commonly associated with rights-centered litigation. The State’s recently reinforced efforts to cleanse from ordinary moral language all those ideas—traditional and modern, indigenous and “foreign”—that suggest conflict, confrontation and dissonance; to enforce “mental hygiene;” and to suppress citizen protest against injustice is unlikely to succeed, as it has no basis in China’s oft-blamed imperial-era moral tradition.

Section II of this Article discusses the concept of *yuan* and its implications for conceptions of justice. Returning to the Sun Dongdong Incident, Section III contrasts the traditional concept of *yuan* with that of rights. Section IV proposes that the denunciation and repression of *yuanmin* and rights defenders are an integral part of the State’s “harmony” propaganda. Section V argues that this propaganda tries to define rationality and sanity in inappropriate ways. Finally, Section VI concludes by observing that the State’s current enmity towards, and persecution of, *yuanmin* may backfire.

II. YUAN (冤) AS A MORAL CONCEPT

Among the Chinese academics who have studied the phenomenon of “petitioning” or *xinfang*, “letters and visits,” is Professor Yu Jianrong of the Chinese Academy of Social Sciences. In 2007, Professor Yu drew attention to a well-known term used by petitioners to describe their own group.

On the streets of Beijing you can see thousands of petitioners. They have changed the name of the Supreme People’s Court ‘Office For Receiving Petitioners’ into ‘Office For Receiving the Wronged.’ They say that they belong to a particular nationality, one that exists in addition to the People’s Republic fifty-six other nationalities: namely,

16. See generally Liufang Fang, *Taking Academic Games Seriously*, 3 PERSPECTIVES, no. 7 (Dec. 31, 2002), available at http://www.oycf.org/Perspectives2/19_123102/takingAcademic.htm (discussing Professor Dworkin’s visit to China and the value of engaging in academic activities); Yanan Peng, *Taking Dworkin Seriously*, 4 PERSPECTIVES, no. 1 (Mar. 31, 2003), available at http://www.oycf.org/Perspectives2/20_033103/TakingDworkinSeriously.pdf (arguing that Chinese scholars “should focus on the substantial content, not the moral and rational bases of foreign criticism, and [the]...need to promote substantive dialogue with foreigners without overthrowing the procedural foundation of their voices”); Ronald Dworkin, *Taking Rights Seriously in Beijing*, N.Y. REV. BOOKS (Sept. 26, 2002), available at <http://www.nybooks.com/articles/archives/2002/sep/26/taking-rights-seriously-in-beijing/> (“China’s record of ignoring the rule of law, suppressing democracy, and systematically violating human rights is notorious, and the universities, like every other Chinese institution, are in the end under the ruling Communist Party’s control”).

the Tribe of the Wronged (*yuanmin* 冤民).¹⁷

Yuan (冤) translates as “wrong,” “injustice,” “tort,” “bad luck,” and in certain combinations “enmity.”¹⁸ As the name *yuanmin*, “People of Yuan,” suggests, *yuan* is almost ubiquitous in the way Chinese citizens discuss their legal cases and seek to attract the attention of their fellow citizens and the authorities.¹⁹ Its power as a concept and symbol can be attributed to (1) its invocation of a natural order, and (2) its appeal to moral duty. These two aspects of *yuan* as a moral concept are discussed in the following Subsection.

A. Natural Order

First, *yuan* invokes what might be called a traditional conception of natural justice and order, which is reflected in much of popular Chinese literature.²⁰ In Guan Hanqing’s popular thirteenth century drama, “The Injustice to Dou’E” (*Dou’E Yuan*), a woman is falsely accused.²¹ She warns that the injustice done to her by punishing her with death will have devastating results, such as snow falling in the month of June.²² After her death, her *yuan hun*, her “wronged spirit,” discloses the truth to her father and all her prophesies of unnatural phenomena come true.²³ In this story, the wrong done to Dou’E not only affects her and the perpetrators, it also disrupts the wider order of things that appears to bear no responsibility for her wrongs.²⁴ Or do they? Dou’E’s story both accentuates the terrible consequences of human wrongdoing and suggests that such wrongdoing is part of a wider web of causes and effects. In contrast to some of the philosophy of Western

17. Yu Jianrong, *supra* note 13.

18. See *Definition of Yuan*, *supra* note 14; see also THE CONTEMPORARY CHINESE DICTIONARY: CHINESE-ENGLISH EDITION 2354-55 (Foreign Language Teaching and Research Press 2002) (translating *yuan* as “enmity, rancor, and hatred resulting from being harmed or insulted”).

19. Another term commonly in use is *fangmin*, a term for “petitioners.” For examples of historical references to petitioning practices, see Du Bin (杜斌), 上访者：中国以法治国下的活化石/ [*Petitioners: Living Fossil Under Chinese Rule by Law*] (Hong Kong 2007). The title page depicts a petitioner in traditional petitioning garb (hat and cloak), prominently displaying the character 冤 in various places. Id. 冤 is translated as “injustice,” “grievance,” or “wrong.” CHINESETOOLS.EN, <http://www.chinesetools.eu/chinese-dictionary/index.php?q=also%20written%20%26%2320900%3B&champs=en> (last visited Nov. 27, 2011).

20. For example, this concept is reflected in works such as Pu Songling’s *Liaozhai’s Records of the Strange* (聊斋志异), The Records of Yuanhun [Wronged Souls] (冤魂志), Amazing Cases (拍案惊奇) The Strange Case of Prince Peng (彭公案), The Strange Case of Prince Shi (施公案), Legend of Song Ci (大宋提刑官宋慈), and Notes from Yuewei Cottage (阅微草堂笔记) by Ji Xiaolan (纪晓岚) in addition to *Dou’E Yuan*.

21. Guan Hanqing, 窦娥冤 [*The Injustice to Dou’E*], <http://www.tianyabook.com/lnz/doueyuan.htm> (last visited Nov. 27, 2011).

22. *Id.*

23. *Id.*

24. *Id.*

analytical tradition, the unique moral quality of human intention or conscience does not distinguish human action from other causes and effects. Nature, or Heaven, on this account is morally concerned.

The conception of the natural order and justice underpinning Dou'E Yuan's and similar tales has further implications. Given that injustice is understood as the result of a wide web of morally relevant events, some of which are natural occurrences beyond human control, a person's duty is not necessarily limited to causing or preventing a particular outcome, or to acting on morally correct motives. Philosophers who believe that responsibility rests with morally free individuals struggle to account for the fact that some moral challenges are not our own doing, even though our failures to meet these challenges are. Discussing "moral luck"²⁵ as a provocatively oxymoronic term, contemporary analytical moral philosophy considers whether people really cannot be morally assessed or blamed for factors beyond their control.²⁶ The *yuan*-centered conception of justice reverses this analysis. It assumes wide responsibility not narrowed down to a sphere of personal control and relates moral responsibility to one's position in the natural order, of which social and political order is but a part. To put it differently, a *yuan*-centered conception of justice takes a much wider approach to what is a particular person's responsibility.

In the imperial tradition, the emperor "was in a sense responsible for and expressed in his person the harmony of all things in heaven and earth."²⁷ Similarly, from the perspective of a traditional complainant against an injustice, responsibility attaches to the official "on whose watch" the injustice happened. This includes officials with the power to intervene on the victim's or a relative's behalf, and it means, among other things, that further consequences may be one's own responsibility even if they were immediately brought about by the decision of another person. It is in this context that we can appreciate the translation of *yuan*, the term for "injustice," as "bad luck."²⁸

An example of this "bad luck" translation is the moral responsibility one may acquire for someone else's suicide. According to popular belief, the spirit of a person who suffered a "wrongful death" or *yuansi* (冤死) becomes a *yuanhun* (冤魂) or "wronged spirit."²⁹ Like Dou'E's spirit, it haunts those responsible by demanding clarification and rectification of the injustice.³⁰ The

25. See generally THOMAS NAGEL, MORAL QUESTIONS 24-38 (1979); Dana K. Nelkin, *Moral Luck*, STAN. ENCYCLOPEDIA PHIL. (June 3, 2008), <http://plato.stanford.edu/entries/moral-luck/>, ("Moral luck occurs when an agent can be correctly treated as an object of moral judgment despite the fact that a significant aspect of what she is assessed for depends on factors beyond her control.").

26. NAGEL, *supra* note 26, at 25.

27. Christopher Cullen, *Joseph Needham on Chinese Astronomy*, 87 PAST & PRESENT 39, 49 (May 2008).

28. See *Definition of Yuan*, *supra* note 14.

30. 天堂花园 [GARDENS IN HEAVEN] (AI XIAOMING (艾晓明) AND HU JIE (胡杰) 2007).

same is true when suicide is committed to express a grievance.³¹ The expression *bisi* (逼死), being “forced into death” or “forced to die,” illustrates the strong moral responsibility for death in such cases. A person to whom this expression is applied may have committed suicide in reaction to oppressive circumstances or actions. Reflecting this traditional understanding, Imperial Chinese law treated suicide in certain situations as analogous to becoming a victim of manslaughter—for example, if a woman killed herself after having been raped or insulted.³² Sing Lee and Arthur Kleinmann write that “suicide created social consequences which made it a powerful action, even though a desperate and final one for the dead person . . . [it] menaced the family’s prosperity with the inauspiciousness of the death and with the threatening presence of a hungry ghost, which could attack family members, causing illness or misfortune.”³³ What is striking about the popular understanding of suicide as a form of protest³⁴ is that it is widely regarded as a rational form of behavior and often a way of forcing responsibility upon the person or authority held accountable.³⁵

There have been many reports of petitioners threatening to kill themselves in protest if they are denied justice—some have followed through. Consider the case of Tang Fuzhen, a woman who in December 2009 immolated herself in protest against forceful eviction from her home. Her case became symbolic of the suffering of the urban expropriated and evicted.³⁶ A commentary on her case connected the “tragedy of Tang Fuzhen” to ongoing efforts to improve the legal rules on expropriations and demolitions.³⁷ It stated that “only if a [revised] Regulation on Demolition and Relocation respected the people’s rights, if it gave full consideration to citizens’ rights and honored the majesty and authority of the Constitution, would another such

31. Yu Jianrong, *supra* note 13.

32. See Janet Theiss, *Female Suicide, Subjectivity and the State in Eighteenth-Century China*, 16 GENDER & HISTORY 513, 517 (2004) (“If a woman committed suicide in reaction to either an attempted rape or an unwanted proposition, the offending man received a sentence of strangulation after the assizes.”).

33. Sing Lee & Arthur Kleinmann, *Suicide as Resistance in Chinese Society*, in CHINESE SOCIETY: CHANGE, CONFLICT AND RESISTANCE 221, 228 (Elizabeth Perry and Mark Selden eds., 2000).

34. See *id.* at 232 (describing suicide as a *guan bi min fan* (官逼民反) practice).

35. 吴飞, 自杀作为中国问题 [Wu Fei] (Sheng huo, du shu, xin zhi san lian shu dian ed., 2007).

36. See Roger Cohen, Op-Ed., *A Woman Burns*, N.Y. TIMES, Jan. 25, 2010, <http://www.nytimes.com/2010/01/26/opinion/26iht-edcohen.html?pagewanted=all> (describing the self-immolation of Tang Fuzhen).

37. Yu Haijun (禹海君), 禹海君, 祭奠葬身拆迁条例下的冤魂 [Give a Ritual Burial to the Souls Wronged by the Demolition and Relocation Regulation], DAHE - BIG RIVER (Dec. 10, 2009), http://www.dahe.cn/xwzx/txsy/jrtj/t20091210_1710859.htm [hereinafter *Give a Ritual Burial*]; see also 公安部警察暴打访民 无锡拆迁再添冤魂 [Dajiyuan, Police Brutally Beating Petitioners, Another Wronged Spirit Created by Demolition and Relocation in Wuxi], EPOCH TIMES (Dec. 15, 2009), <http://www.epochtimes.com/gb/9/12/15/n2754723.htm>.

tragedy be prevented and the ‘wronged spirits [*yuan hun*]’ of those who had become victims of the [current] Regulation be appeased.”³⁸ The commentator expressed with great clarity the view that suicide can be a rational means of protesting injustice, because it burdens government with an obligation toward the souls of the wronged.³⁹ By referring to the “spirits of those wronged by the Demolition and Relocation Regulation” collectively, he also expressed a sense that a particular kind of injustice unites its victims in death.⁴⁰

B. Obligation to Seek Justice.

A second important moral connotation of *yuan* is that of obligation. *Yuanmin*, “the wronged,” are in a sense burdened with injustice, which is their misfortune, because *yuan* does not merely generate a right to redress.⁴¹ Instead, seeking redress also becomes a duty the *yuanmin* has to fulfill. This makes sense if one considers justice mainly in the light of a personal virtue—one that requires personal effort, corresponding to the traditional concept of *yi* (义), which translates as “duty,” “righteousness” and “justice.”⁴² The duty to seek justice could be owed to a person who died a wrongful death, for instance. It can also be inherited. The conception of justice employed here can be called “wrongs-centered” because it is focused on obligations to redress wrongs, rather than on any liberal conception of rights or liberties. This aspect of *yuan* is particularly prominent in cases of wrongful death of a close relative, especially where that relative is a child.

For instance, after the Sichuan earthquake of May 2008, there were discussions as to whether the high number of victims was due to official failure.⁴³ It was said that, of the many thousands of children who died, the majority might have survived but for the shoddy construction of school buildings for which public officials were held responsible.⁴⁴ When parents sought clarification of what had happened and began to consider legal action, they were met with repression.⁴⁵ Some parents were forced to sign letters pledging that they would not make any claims, litigate, or disturb the party’s social order and reconstruction efforts.⁴⁶ The activists and writers who persisted in their efforts to count and investigate the cases of dead children, described as *yuan hun* by a Hong Kong newspaper, were met with further

38. See *Give a Ritual Burial*, *supra* note 37.

39. See *id.*

40. See *id.*

41. See *Definition of Yuan*, *supra* note 14.

42. See *id.*

43. See Edward Wong, *China Presses Hush Money on Grieving Parents*, N.Y. TIMES, July 24, 2008, http://www.nytimes.com/2008/07/24/world/asia/24quake.html?_r=1&hp=&oref=slogin&pagewanted=all.

44. See *id.*

45. See *id.*

46. See *id.*

repression including criminal prosecution and beatings.⁴⁷ To the extent that it repressed attempts to find out the truth and assert just claims, the government appropriated the disaster and made it its own injustice. It showed that it was willing to suppress the possibility of being found responsible—it denied the justness of calls for a public investigation, and predictably triggered more determined quests for justice.⁴⁸ A journalist from the New York Times was told by one of the earthquake victim's parents that not only would they themselves seek justice for their dead child, but his infant brother would assume that duty too.⁴⁹ The brother was described as “already [having] a purpose in life” at forty-five days old: he would need to achieve justice for his dead brother if his father, in his own lifetime, failed to do so.⁵⁰

Given that the *yuan* conception of injustice assumes a vindictive natural order, seeking redress for injustice can be easily thought of as a duty and mission. The capability of righting wrongs lies with those in control of the natural order. The obligation arising from *yuan* is, more precisely, to seek out a virtuous official who will help one to “wash off the *yuan*” or *xi yuan* (洗冤).⁵¹ This remains a goal that can only be achieved with the help of the authorities, whose caring intervention is needed. Even today, petitioners seeking redress sometimes use the traditional expression “father and mother official” to address the authorities whose help they seek.⁵²

This conception of injustice helps to explain the institutional structure and practical reality of today's intermeshed petitioning and adjudication systems. It places the wrong—the injustice—at the center of a traditional political theory constructed around the idea that officials have an obligation to set wrongs right again. It is rooted in the assumption that the only way to get redress for the kinds of injustice about which petitioners complain—*yuan*—is

47. See generally Teng Biao (滕彪), 中国公民运动中的民间纪录片 [The Use of Citizens' Documentaries in the Chinese Weiwan Movement], (Aug. 19, 2010), <http://tengbiao1.fyfz.cn/art/701947.htm>; 艾未未斥官方報細數地震學生冤魂至少 7000人 [Ai Weiwei Challenges Official Data, at Least 7,000 Wronged Students' Souls in Earthquake], BOXUN (May 9, 2009), <http://www.peacehall.com/news/gb/china/2009/05/200905090016.shtml>.

48. See Wong, *supra* note 43.

49. Edward Wong, *Year After China Quake, New Births, Old Wounds*, N.Y. TIMES, May 5, 2009, <http://www.nytimes.com/2009/05/06/world/asia/06quake.html>.

50. *Id.*

51. See, e.g., 中国特色 人治而非法治 总是需要青天大老爷 [Rule Of Men, not Rule of Law, with Chinese Characteristics - It Will Always Require a Redeeming Lord], XIAOAOJIANGHU BLOG (Aug. 23, 2011), <http://dgguoiei.blog.163.com/blog/static/1151470712011723103448722/> [hereinafter *Rule of Men*] (describing villagers who kneel before high ranking officials in order to have their grievances heard).

52. See, e.g., DVD: 上访 [PETITION] (赵亮 [Zhao Liang] 2009) [hereinafter PETITION] (DVD copy of documentary on file with author) (showing a woman petitioner address officials behind counter as father and mother official, to no avail, as she is quickly thrown out of the letters and visits office by several strong men).

by persuading an authority to intervene on their behalf. It could thus be said that the “wrongs-centered” practice of *shen yuan* supports the authority of officials to intervene at their discretion. *Yuan* belongs to an authoritarian model of government, a traditional political “rule of men” theory, according to which the ruler’s or official’s discretion is morally constrained. The ruler or official has a moral obligation to attend to the grievances of the people, complementing the obligation and mission of *yuanmin* to “submit” their grievance.⁵³ Both obligations contribute to the stability of a political system of governance by clearly distributing the roles of subject, ruler, and official. Elaborate disciplinary systems are used by the ruler to encourage his officials to be moral, but ultimately, the legitimacy of governance depends on the moral quality of those who govern.

III. YUAN AND RIGHTS

Unlike the discourse of rights, law, legally protected rights and interests, legality, and anti-corruption efforts, etc., the *yuan* discourse is removed from that of the contemporary Chinese State. The word *yuan* is virtually absent from modern Chinese statutory law.⁵⁴ For instance, the official technical term for “tort” used in statutory laws is *qinquan* (侵权), which more literally translates as “rights infringement.”⁵⁵ Some scholars have therefore viewed citizens’ uses of the concept of *yuan* as evidence of the distance between traditional and modern conceptions of justice.⁵⁶ In the following Subsections, the difference between *yuan* and rights is discussed in terms of conceptual characteristics, institutional design, and social practices.

A. Conceptual and Institutional Differences.

The legal historian and philosopher Liang Zhiping has argued that the practices of “crying injustice,” *han yuan* (喊冤), and of “submitting grievances,” *shen yuan* (伸冤, 申冤), are fundamentally different from the idea of “rights-protecting,” *wei quan* (维权).⁵⁷

53. *Shen yuan*, the expression for “submitting grievances,” is also used to describe the process of government “taking on” and addressing the grievance: a good government is one that realizes the maxim, *you yuan bi shen* (有冤必伸), “grievances must be submitted and addressed.”

54. See Carl Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On*, 39 N.M. L. REV. 63 (2009) (noting that official references to wrongly decided cases as *yuan jia cuo’an* (冤假错案) can be found; but otherwise the character appears to play no role in official legal language).

55. *Qin Quan*, MANDARIN TOOLS CHINESE-ENG. DICTIONARY, <http://www.mandarintools.com/cgi-bin/wordlook.pl?word=%E4%BE%B5%E6%9D%83&searchtype=chinese&where=whole&audio=on> (last visited Nov. 27, 2011).

56. See *infra* Part III.B.

57. See Liang Zhi-ping (梁治平), 伸冤与维权— 在传统与现代之间建构法制秩序, 二十一世纪双月刊2007年12月号 总第一〇四期 [*Submitting Grievances and Defending Rights: Constructing the Order of Rule by Law Between Tradition and Modernity*], 104

A violation of rights is a form of injustice, but injustice does not necessarily amount to a violation of rights. In the societies of the Ming and Qing dynasties, those who had been falsely accused would cry injustice, those who had been bullied would cry injustice, even those involved in property disputes and family disputes were accustomed to crying injustice when appealing to the officials, in order to get them to get involved in those disputes. They were demanding justice but not, in doing so, asserting any rights.⁵⁸

In line with this juxtaposition, educated lawyers and scholars tend to contrast the practice of “submitting grievances” through the Chinese petitioning system with rights assertion through the supposedly more focused, more rational, and more confrontational court system in conversation.⁵⁹ The former is often associated with “rule of men” while the latter is associated with “rule of law.” Some go so far as to characterize the practice of “submitting grievances” as an essentially irrational practice—based on emotional grievances—that reflects and multiplies the problems of governance associated with authoritarian concentration of power.⁶⁰

Even if one does not wish to go so far as this, one may note that the price society pays for a wrongs-centered practice of submitting and hearing grievances *ad hoc* is that the institutions of law cannot acquire the constructive function they might otherwise have. Cases solved through intervention of a good official are in a sense not public, in that they are unlikely to establish public standards for handling cases. This argument is similar to the arguments against mediation that are advanced in the West.⁶¹ Insofar as no public standards are established, demands of redress for *yuan* must continue to be made in a supplicant mode. The image of the *yuanmin* is a “kneeling” image, as one scholar put it in conversation.⁶² By contrast, the citizen who asserts her rights is standing as she confronts the authorities.

We should acknowledge conceptual differences between *yuan* and rights along the lines just indicated. They are borne out by influential analyses of the meaning of rights. In “Taking Rights Seriously,” the article from which the present discussion takes its title, Ronald Dworkin draws the important distinction between having a right to do something and something being the

TWENTY-FIRST CENTURY BI-MONTHLY 69 (2007) (stating that other terms for people defending their rights are *weiquanzhe* (维权者) and *weiquan renshi* (维权人士)).

58. *Id.*

59. See, e.g., *Rule of Men*, *supra* note 51 (contrasting villagers kneeling before high ranking officials to submit grievances with bring these grievances to the court system).

60. For comments reflecting this popular view, see *id.*

61. See generally David Luban, *Settlements and the Erosion of the Public Realm*, 83 GEO. L.J. 2619 (1994-1995); Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984), reprinted in MICHAEL FREEMAN, *ALTERNATIVE DISPUTE RESOLUTION* 285 (1995).

62. See *Rule of Men*, *supra* note 51 (describing villagers who kneel before high ranking officials in order to have their grievances heard).

right thing for one to do.⁶³ He reminds us that, of course, not all that we have a right to do would be the right thing for us to do.⁶⁴ This is one way of capturing the liberal character of the idea of rights; it prefigures Dworkin's later characterization of law as a practice that aims "to establish a justifying connection between past political decisions and present coercion."⁶⁵ As discussed above, the idea of *yuan* is different in that it focuses directly on moral obligations and on what is the right thing for one to do.

It is quite clear that ideas such as "a right to do wrong"⁶⁶ could not be considered with sympathy from a traditional, *yuan*-centered perspective. To contemporary scholars studying the idea of rights from a traditional Chinese perspective, rights can easily carry a connotation of excessive emphasis on individual choice—on liberty understood as negative liberty in Berlin's sense.⁶⁷ Moreover, and partly due to a coincidence of translation,⁶⁸ the term for "right" in Chinese originally connoted selfishness and profit-seeking. It was simply a combination of a word for "power" (*quan*) and a word for "profit" (*li*).⁶⁹ Despite lively philosophical controversy, it is fair to say that a Confucian mainstream view has traditionally contrasted *li* unfavorably with *yi*, "justice" or "righteousness."⁷⁰ Thus, when it was imported into China, the idea of *quan-li*, "power-interest," may not have had immediate moral appeal.

The contrast between liberal and authoritarian backgrounds of the ideas of *yuan* and rights is also brought out by the difference in design of rights-centered and wrongs-centered institutions for the administration of justice. While any institution designed to administer justice will try to safeguard the impartiality of judgment, it is only the idea of rights-centered rule of law that requires strictly independent adjudicators and publicly accessible rules. This is because, as Dworkin in his short 2003 piece, "Taking Rights Seriously in Beijing," wrote,

Two principles are central to the rule of law: that the coercive power of the state may only be exercised in accordance with standards established in advance, and that judges must be independent of the

63. RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 188-205 (1977) [hereinafter DWORKIN, TAKING RIGHTS SERIOUSLY].

64. *Id.*

65. RONALD DWORKIN, LAW'S EMPIRE 98 (1986).

66. See generally Jeremy Waldron, *A Right to Do Wrong*, 92 CHI. JOURNALS (SPECIAL ISSUE ON RTS.) 21 (1981) (concluding that there are many instances when an action may be morally wrong but an individual nevertheless has the right take such action).

67. See generally Isaiah Berlin, TWO CONCEPTS OF LIBERTY (1958) (describing negative liberty as the absence of coercion or interference with an individual's private actions by a social body).

68. In the nineteenth century, "rights" was translated by using the character for "power," *quan*, and then routinely combining it with the character for "profit," *li*. See STEPHEN C. ANGLE, HUMAN RIGHTS AND CHINESE THOUGHT: A CROSS-CULTURAL INQUIRY 108-10 (2002) (arguing that the term acquired a positive connotation).

69. *Id.*

70. MARINA SVENSSON, DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY 71-92 (2002).

executive and legislative powers of government. Traditional legal practice in China has rejected both these principles, following instead what was often called the Confucian view: that law is a matter not of rules or general principles, but of virtue, equity, and reasonableness in individual cases.⁷¹

Dworkin not only commented on what he understood the Chinese tradition to be, but also wrote with a view to the contemporary Chinese system—one he had encountered for the first time and which neither practices nor endorses separation of powers or judicial independence.⁷² He was careful to acknowledge, appropriately, that what he referred to as the “Confucian view” established what might be called a viable view of law.⁷³ It is important to appreciate that decisions made ad hoc by officials who are not constrained by established standards and decisions made by authoritarian arbiters in a system of “rule of men” is irreconcilable with the idea of protecting rights. There is a clear difference between institutions set up according to *yuan*-centered and rights-centered conceptions of justice.

Today’s petitioners nevertheless protest injustice and assert rights concurrently; they participate in a complex contemporary legal reality that, to some extent, denies the sharp contrast between *yuan*-centered and rights-centered practices. As seen in the comments by Professor Sun Dongdong quoted at the outset, and as the *Letters and Visits Regulation* also makes clear,⁷⁴ the official view on the system for petitioners is that it is capable of protecting legal rights. That this system truly can protect rights seems doubtful on the basis of the above analysis. However, the judicial adversarial systems of redress that exist in China today fail to protect rights adequately as well. In the current “formal” legal system, many expressly available rights are not actually enforceable in court,⁷⁵ and court practices are not designed to

71. Dworkin, *supra* note 16.

72. The central leadership reminds everybody at regular intervals that China is not pursuing Western rule of law, separation of powers, or judicial independence. *See, e.g.*, Zhou Yongkang (周永康), 深入推进社会矛盾化解、社会管理创新、公正廉洁执法，为经济社会又好又快发展提供更有力的法治保障 [Further Promote the Resolution of Social Conflicts, Social Management, Innovation, Fair and Honest Law Enforcement is Good and Fast Economic and Social Development of More Effective Protection of the Rule of Law], SEEKING TRUTH (Feb. 20, 2010), <http://www.chinacourt.org/html/article/201002/20/395593.shtml>; Luo Gan (罗干), 政法机关在构建和谐社会中担负重大历史使命和政治责任 [The Political and Judicial Authorities' Historic Mission and Political Responsibility for Constructing a Harmonious Society], SEEKING TRUTH (Feb. 1, 2007), <http://cpc.people.com.cn/GB/64093/64094/5355550.html>.

73. DWORKIN, TAKING RIGHTS SERIOUSLY, *supra* note 63.

74. *See infra* text accompanying notes 91-93.

75. For discussions of this problem, *see generally* Fu Hualing, *Access to Justice and Constitutionalism in China*, in BUILDING CONSTITUTIONALISM IN CHINA 163 (Stephanie Balme & Michael W. Dowdle eds., 2009); Keith J. Hand, *Citizens Engage the Constitution: The Sun Zhigang Incident and Constitutional Review Proposals in the People's Republic of China*, in BUILDING CONSTITUTIONALISM IN CHINA, *supra*, at 221.

satisfy the rule of law requirements described by Dworkin in the above passage. The system, in short, has overall deficiencies that prevent the tension between *yuan* and rights from becoming apparent, as long as injustice is not resolved through either of the corresponding systems of redress.

In popular discourse, any pejorative connotations of the word for “rights” have long vanished,⁷⁶ whereas *yuan* has simply remained part of that discourse. Many contemporary uses of the character indicate that complainants “crying injustice” (*yuan*) do not suggest any incompatibility between doing so and asserting their rights, even if they may be aware of the conceptual tension discussed above.⁷⁷ Citizens employ the term *yuan* as a powerful symbol that accompanies and supports their legal challenges to rights violations. From a standpoint of rhetoric, rights and *yuan* have different virtues: rights can be used to speak the language of the State whereas *yuan* cannot be easily appropriated and defined by the State. Both functions are necessary as petitioners repudiate official attitudes of “the law” toward their submissions and make the point that the law is actually on their side.

Zhou Li, the woman charged with creating a public disturbance in the Sun Dongdong Incident, tells of her own experience in a short, filmed interview titled “From Petitioning (*shangfang*) to Rights-defending (*weiquan*).”⁷⁸ She describes her growing awareness of others with similar experiences.⁷⁹ While she was petitioning, many others around her were fighting against the forced demolition of their homes for urban renewal projects.⁸⁰ In May 2007, Zhou reportedly provided “legal advice” to 1,000 petitioners assembled in the residence of a citizen facing forced demolition of her home, and was detained by the police.⁸¹

Zhou Li comments:

I saw that it was not just I who was experiencing pain, and that the pain of others was even greater . . . Not even their basic right to life was safeguarded. So I felt I had to help them defend their rights. I met many petitioners . . . and accompanied them when they went they went petitioning . . . Later I established a [Housing] Demolition Rights-defence Consultative Association, with over one thousand members. . . .

I am glad that there are more and more petitioners. It is good that they can stand up and defend their rights – or perhaps they are [just] petitioning and not even aware that they are defending their rights; but they have started, when their interests are harmed, to stand up

76. SVENSSON, *supra* note 70, at 80.

77. See Minzner, *supra* note 2, at 106.

78. 从上访到维权 [From Petitioning to Rights Defending], YOUMAKER (Oct. 7, 2007), <http://www.youmaker.com/video/sv?id=cdc46fc46d3641bb9e8a7eb1cc88418f001>.

79. *Id.*

80. *Id.*

81. 大纪元, 周莉维权1: 现场为千人法律咨询被抓 [Zhou Li Defending Rights: Provides Legal Advice to a Thousand Assembled People, is Detained By Police], EPOCH TIMES (May 13, 2007), <http://www.epochtimes.com/gb/7/5/13/n1708947.htm>.

and say “no” to the government; that is progress. They are no longer compromising. Even if they are not yet standing, they’re now at least sitting – at least no longer groveling or kneeling.⁸²

Rights have long entered the moral vocabulary of petitioners and activists like Zhou Li. Their petitioning efforts are part of their wider goal to defend their rights; Zhou Li constructively reinterprets her pain to help her make rights-based arguments. By becoming a rights defender, Zhou Li does not stop being a *yuanmin*. She instead adds new political concepts to her arsenal. Compared to the concepts underlying traditional forms of complaint, these new political concepts allow her to be more critical of both the authoritarian design of the petitioning system and the wider Chinese legal system as a whole.

In complaints practices in China today, the submission of grievances and the assertion of rights also remain institutionally related.⁸³ Having suffered what has frequently been described as a breakdown of all legal institutions during the decade of the Cultural Revolution, China only began to reconstruct its legal system in the 1980s. At that time, legal institutions such as People’s Courts, People’s Procuracies, and the Ministry of Justice were reestablished. Additionally, the ideal of legality (“ruling the country in accordance with law”) was revived and eventually endorsed as national policy by Jiang Zemin⁸⁴ after a period of celebrated “lawlessness”⁸⁵ during the Cultural Revolution. It was considered necessary to channel conflicts into the courts and resolve them in accordance with law.⁸⁶ But law was merely to help control society.⁸⁷ Judicial institutions were not meant to—and indeed could not—decide challenges to the principles of authoritarian governance that regulated their own operation.

The legal institutions continued to suffer from a variety of flaws, including: corruption and institutional weakness of the courts; power concentration in the hands of the Party and a few key State authorities (such as the police) that influenced or even controlled legal processes; lack of media

82. *Id.*

83. See generally Minzner, *supra* note 2 (describing the *xinfang* system, its interaction with formal legal institutions, and the wide range of grievances raised by petitioners, including rights traditionally asserted in the judicial system).

84. See Yang Deshan (杨德山), “依法治国”、“以德治国” [“Rule of Law” and “Virtue”], Xinhua (新华网) (Sept. 6, 2002), http://news.xinhuanet.com/newscenter/2002-09/06/content_552721.htm.

85. Editorial, 无法无天赞 [In Praise of Lawlessness], REN MIN RI BAO [PEOPLE’S DAILY], Jan. 31, 1967, translated in SURVEY OF PEOPLE’S REPUBLIC OF CHINA PRESS No. 3879.

86. See Yu Jianrong, *Address at China at a Crossroads: Searching for a Balanced Approach to Development* (Nov. 5, 2005) [hereinafter Yu Jianrong, *Address at China at a Crossroads*], available at <http://chinadigitaltimes.net/2009/05/yu-jianrong-rigid-stability-an-explanatory-framework-for-china%E2%80%99s-social-situation-2>.

87. *Law in Political Transitions: Lessons from East Asia and the Road Ahead for China: Hearing Before the Congressional-Executive Commission on China*, 109th Cong., 38 (2005) (statement of Jerome A. Cohen) available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:22972.pdf.

oversight; and lack of justifiable constitutional rights.⁸⁸ As scholars have noted, a fundamental problem with court litigation remains that courts will sometime refuse to enforce their judgments.⁸⁹ In other types of cases, such as criminal prosecutions, access to justice is diminished by the fact that hearings are *de facto* closed to ordinary citizens trying to attend them.⁹⁰ In traditional terms, scholars have noted that certain conceptions of law as impersonal, unemotional, and harsh echo the contrasts between law and rites⁹¹ and between punishment and moral persuasion.⁹² This conception of “harsh” law is reflected in the philosophical schools of *ru* and *fa*, “confucianism” and “legalism,” in traditional political thought in China⁹³

The petitioning or “letters and visits” mechanism was revived after 1978 along with the rest of the legal system. At that time—that is, after the conclusion of the Cultural Revolution—there was a virtual onslaught on the petitioning offices by people with grievances accumulated during the prior violent and unlawful period.⁹⁴ The petitioning system gradually became integrated with the legal institutions under reconstruction. The centerpiece of its contemporary regulatory framework is the 2005 State Council Regulation on Letters and Visits.⁹⁵ According to the system for “Letters and Visits,” all governmental authorities are required to institute petitioning offices, and on principle, all citizens are allowed to address their complaints to them in any matter, even though there have been efforts to channel complaints to authorities actually able to handle the matters at issue.⁹⁶ Most authorities in China have an “office for answering letters and receiving visitors.”⁹⁷ People with grievances will direct petitions to anyone whom they consider likely to influence the handling of their case. Notably, this includes the institutions of the Party in addition to those of the State.

88. Jerome Alan Cohen, *The Chinese Communist Party and “Judicial Independence”*, 82 HARV. L. REV. 967, 1005 (1969).

89. *E.g.*, Donald C. Clarke, *The Execution of Civil Judgments in China*, 1995 CHINA Q. 65 (1995).

90. *See, e.g.*, Carlos Wing-Hung Lo, *Criminal Justice Reform in Post-Crisis China: A Human Rights Perspective*, 27 HONG KONG L.J. 90, 97 (1997) (describing the lack of public announcement or notification of a defendant’s appeal hearing, preventing attendance).

91. *See generally* Roger T. Ames, *Rites as Rights: The Confucian Alternative*, in HUMAN RIGHTS AND THE WORLD’S RELIGIONS 188-216 (Leroy S. Rouner ed., 1988).

92. *See* Yu Jianrong, *Address at China at a Crossroads*, *supra* note 86.

93. Yu Xingzhong, *Judicial Professionalism: From Disclosure to Reality*, in PROSPECTS FOR THE PROFESSIONS OF CHINA (William P. Alford et al. eds., 2011).

94. ZHU JINGWEN (朱景文), 中国法律发展报告 [CHINA LEGAL [DEVELOPMENT REPORT]] 5050 (2008).

95. Regulations on Letters and Visits (promulgated by the State Council of the People’s Republic of China, Jan. 5, 2005, effective May 1, 2005) ST. COUNCIL, (Jan. 10, 2005), *available at* <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan039990.pdf> [hereinafter Regulations on Letters].

96. *Id.* art. 3.

97. *E.g.*, LI HONGJIN (李宏劲), 法制现代化进程中的人民信访 [PEOPLE’S LETTERS AND VISITS IN THE PROCESS OF LEGAL MODERNIZATION] (2009).

Given the open way in which the petition system has been designed, it is quite common for petitioners to try to influence ongoing court litigation by petitioning other influential authorities, or to petition to get a final court decision reversed through a re-trial, which the Chinese legal system allows for on a broad basis.⁹⁸ Petitioning also functions as a channel through which government at all levels can receive information on citizens' grievances.⁹⁹ The laws and regulations envisage that the offices for letters and visits will assess the merits of each complaint and then help deserving complainants. For instance, the office may write a letter summarizing its findings, and send the petitioner to the authority immediately responsible for the decision against which he or she is complaining, asking it to revoke that decision, or to institute appropriate procedures.¹⁰⁰ By their nature, judicial processes are spatially removed from the streets and take place within official court premises. By contrast, the petitioning process is more open and easily spills from petitioning offices into the streets and into places outside government buildings.

It is widely recognized that petitioning does not work well as a system to address complaints.¹⁰¹ It gives Chinese *yuanmin* another channel to express their grievances, but it does not improve their prospects of obtaining justice. In fact, thousands of petitioners in 2007 submitted a special petition to the highest central authorities, complaining about various dysfunctions of *xinfang* and requested the abolishment of the petitioning system.¹⁰² The State's attempts to suppress petitioners are well documented, and some of the official attitudes motivating such repression are examined in the following section of this Article.¹⁰³

Despite the malfunctioning of the system and the cruelty of many forms of repression employed against *yuanmin*, petitioning, *shangfang*, and submitting grievances, *shenyuan*, does provide people who have grievances with channels to air them. As a social practice, petitioning makes visible and palpable the legal and moral issues that may be more easily suppressed from public view in a Chinese court litigation process. As practices surrounding petitioning, court litigation, and protest have taken on new forms in recent years, they have also increasingly allowed *yuanmin* to develop a collective sense of who they are and how they ought to confront State authorities.¹⁰⁴

98. See Zhuoyan Xie, *Petition and Judicial Integrity*, 2 J. POL. & L. 24, 25 (2009), available at www.ccsenet.org/journal/index.php/jpl/article/download/380/341.

99. Minzner, *supra* note 2, at 107.

100. Regulations on Letters, *supra* note 96 (exploring the issues of judicial integrity raised when the petitioning system is used to influence ongoing trials).

101. See Minzner, *supra* note 2, at 177.

102. 上千访民联名信件引起中央重视 [Letter Signed by a Thousand Petitioners Draws Center's Attention], RADIO FREE ASIA (Mar. 21, 2007), <http://www.rfa.org/mandarin/shenrubao/2007/03/21/fangmin/>.

103. See *infra* Part IV.A.

104. See LI HONGJIN, *supra* note 97, at 171; JAMES SCOTT, WEAPONS OF THE WEAK:

B. Contemporary Uses of *Yuan* in the Rights Defender Movement

It is in this context of petitioning that we should see contemporary uses of the *yuan* character as a symbol of protest against injustice, accompanied by attitudes of supplication, remonstrance, accusation, and threat, as the case may be. It has appeared most commonly on the white garments worn by complainants in the streets and in government buildings, and on banners they try to unfold in the streets.¹⁰⁵ A large *yuan* character can also often be found written on leaflets that petitioners distribute in public places.¹⁰⁶ Reportedly, when a dissident journalist named Sun Lin stood trial in Nanjing court in 2008 on charges of disrupting social order, he walked into the courtroom with the character *yuan* written on his forehead.¹⁰⁷ Petitioners have scrawled *yuan* atop court decisions they considered unjust.¹⁰⁸ In 2010, the character *yuan* could be seen on enormous banners used by complainants who threatened to throw themselves from electricity towers¹⁰⁹ and also on the outside of a facemask worn by a complainant protesting the demolition of her home.¹¹⁰ In many of these contexts, *yuan* is no longer a mere word—it has become a symbol.

How powerful a symbol it has become in recent years, and how effectively it can be contrasted with concepts and words of the “official” legal language, is also evident from various collective uses of *yuan*. For instance, in December 2007, petitioners staged a *Shen Yuan* Day just one day before the

EVERYDAY FORMS OF PEASANT RESISTANCE (1985).

105. See, e.g., Photograph of man holding up ‘yuan’ sign engaging in rights-defending (男子街头举“冤”字维权(图), in *Man on the Streets Move ‘Injustice’ the Word Activist (figure)*, NEWS CA315 (Mar. 17, 2009), <http://news.ca315.com.cn/wq/2009/0317/33818.html>; Photograph of four petitioners grabbed and beaten by thugs for holding up ‘yuan’ sign in public square (湖南四访民广场举冤字被抓续(三)—被黑社会的人打), in Long Yi (龙义), [*Petitioners Cite Square Hunan Four Were Arrested Continued Injustice Three Were Hit by the Triad*], CANYU (May 4, 2009), <http://www.canyu.org/n6858c11.aspx>; Photograph of judge protests in professional garments, holding up ‘yuan’ sign (湖北孝感—法官穿工作服手举“冤”牌上访(图)), in Hubei Xiaogan, People (July 2, 2010), <http://unn.people.com.cn/GB/14777/21747/12034408.html>.

106. Tienchia (上传人), 北京闹区访民撒千张传单喊冤 [*Beijing Petitioner Distributes a Thousand Leaflets Crying Injustice*], DAILYMOTION (Dec. 9, 2008), http://www.dailymotion.com/video/x7on46_news.

107. 南京记者孙林头写“冤”字受审 [*Nanjing Journalist Sun Lin Writes “Yuan” Character on His Head as He Enters Courtroom to Be Tried*], RADIO FREE ASIA (May 30, 2008), http://www.rfa.org/mandarin/yataibaodao/sunlin-05302008173412.html/story_main.

108. Wu Xingjin, Petitioning Document (July 2005) (on file with author).

109. See, e.g., BXNews, 玉蜓桥访民登塔喊冤, 北京市民被保安拦截, 不让靠近 [*Petitioner Climbs Electricity Tower Near Yuting Bridge to Cry Injustice, Beijing Citizens Kept Away by Security Officers*], YOUTUBE (June 14, 2010), <http://www.youtube.com/watch?v=IGc3bUKxpRI>; News Times (信息时报), 男子上访无果爬高压电塔 体力不支大哭求救 [*Man Climbs Electricity Tower After Fruitless Petitioning*], BLUEHN (June 1, 2010), <http://www.bluehn.com/2010/0106/43757.html>.

110. 济南李红卫冒雨抗议暴力拆迁 [*Li Hongwei Protests Violent Demolition and Relocation in Jinan*], BOXUN (Aug. 12, 2010), <http://www.peacehall.com/news/gb/china/2010/08/201008120812.shtml>.

official *Pufa* Day or “Legal Knowledge Dissemination Day”.¹¹¹ They used the slogan, *Passing Grievance Submission Day To Celebrate Legal Popularization Day!*.¹¹² The *yuan* character was also chosen by “The League of Chinese *Yuanmin*” founded in January 2009 as a registered NGO in Hong Kong.¹¹³ While asserting its identity as *yuanmin*, the League has also begun to bring lawsuits, including one filed in France against a Shanghai governmental authority for the alleged wrongful demolitions of homes in Shanghai.¹¹⁴ Its representatives have testified before international human rights institutions about the situation of Chinese petitioners.¹¹⁵

Perhaps most importantly, *yuan* complaints can be leveled at the organization whose power cannot—within the Chinese judicial system—be directly challenged.¹¹⁶ They can be used against the Party in forms that often combine rational complaints with emotional expressions of grievance and anger. Thus, according to news media reports, a song called “The Song of the *Yuanmin*” contains the lines: “The Communist Party is Good! The Communist Party Only Talks But Takes No Action! The Communist Party Members Are All Out to Make Money!”¹¹⁷ In another example, the concept of *yuan* was used by the mother of Shanghai housing-rights petitioner Duan Huimin, a young man beaten and left to die by “retrievers” sent after him to Beijing.¹¹⁸ Dressed in a white garb with the 冤 character written on it, and mourning the deaths of her son and husband—one at the hands of the police and the other as a consequence of years of anguish in the quest for justice—this woman wails, “My wrong, I am wronged” and, turning to rage, goes on to cry “down with the Communist Party!” directly into the camera.¹¹⁹

111. 访民北京办申冤节吁当局停止打压(带录像) [*Petitioners in Beijing Hold Shen Yuan Day, Appeal to Authorities to Stop Repression*], RADIO FREE ASIA (Dec. 3, 2007), http://crd-net.org/Article/shipin/200712/20071204110058_6595.html.

112. *See id.* (reporting that petitioners used the slogan “焉度申冤节，欢庆普法日”).

113. 中国冤民大同盟首次代表大会香港召开 [*First Meeting of Representative of Chinese League of Yuanmin Held in Hong Kong*], RADIO FREE ASIA (Mar. 6, 2009), <http://epochhk.com/9/2/27/96356g.htm>.

114. 中國冤民大同盟在法國控告上海政府 [*China League of Yuanmin Sues Shanghai Government in France*], RADIO FREE ASIA (May 6, 2009), http://www.rfa.org/cantonese/news/petitioner_rights-05062009111903.html?encoding.

115. *See, e.g., id.*

116. *E.g.*, He Weifang et al., “冰点”周刊部分作者 致政治局常委的公开信 [*Open Letter to the Standing Committee of the Politburo by Some [Former] Authors of 'Freezing Point'*], BOXUN (June 18, 2006), <http://peacehall.com/news/gb/china/2006/02/200602181417.shtml>.

117. 访民发起大规模集会 反黑监狱要人权 [*Petitioners Organize Large Gathering to Oppose Black Prisons, Demand Human Rights*], RADIO FREE ASIA (June 21, 2009), <http://www.rfa.org/mandarin/yataibaodao/fangmin-06212009231817.html>.

118. BXNews, 段惠民的父亲段波平4月4日含冤去世 [*Duan Huimin Died Without Having Righted His Wrong on 4 April*], YOUTUBE (Apr. 4, 2010), <http://www.youtube.com/watch?v=CJhcnKTSEVs>.

119. *Id.*

The use of *yuan* as a powerful symbol does not mean that petitioners avoid or reject uses of the “official” language of the law when it could serve their purposes. In many cases, they concurrently make references to *yuan* and law—particularly the laws regarding human rights, such as the Constitution and the Criminal Law.¹²⁰ *Yuan* imparts moral depth to these references and expresses a sense that “rights” (*quanli*), including “constitutional” (*xianfa fuyuan quanli*) and “human rights” (*renquan*), are moral as well as legal concepts that may be used against unjustified uses of power.

In a legal system whose autonomy is severely restricted by a party-state, moral concepts like *yuan* may thus be used to denote a distance between the controlled language of the State and the free language of popular discourse. *Yuan* discourse consciously removes itself linguistically and spatially from the State-controlled legal processes and spaces. For instance, the Chinese State can and frequently does keep the public out when it conducts “sensitive” court trials and administrative hearings.¹²¹ But those who have been thrown out of a courtroom may stand in the streets and shout slogans, even though they put themselves at risk by doing so—their experience of exclusion only contributes to their desire to get back at the system that disappointed them.

While *yuanmin* are primarily concerned with righting their original wrong, they often also wish to bring harm—which represents just punishment from their perspective—to officials who wronged them. Petitioner’s can exploit the State’s attitude toward officials with whom “irregular” complaints have been lodged. Such officials are supposed to be disciplined *because such complaints are lodged*, and as Minzner has shown, the rules imposing such punishment are independent of the question of whether the original complaint was justified.¹²² Yu Jianrong, a CASS researcher who has spent years studying the system characterizes “pressure” as the fundamental principle of petitioning, arguing that petitioners will do whatever they think their opponent, namely the local government, fears.¹²³ For example, because local governments are anxious to keep petitioners from submitting their grievances in the capital, petitioners will do just that.¹²⁴ For many of them, making it to Tian’anmen Square feels like scoring in a game, and they will accordingly devise strategies to ensure success:

I told them that they mustn’t take any banners or other signs of

120. Liu Zhengyou, Photograph (2004) (on file with author) (displaying a large banner that states “sentenced to death/without evidence/the person who reported [the convicted] has fled” and a petitioner wearing a T-Shirt that reads, “Upholding the Constitution and Criminal Law”).

121. See, e.g., BXNews, 维权人士、公民记者周莉被审判，庭外情况 [*Rights Defender and Citizen Journalist Zhou Li Tried, Scenes Outside Court*], YOUTUBE (Apr. 6, 2010), <http://www.youtube.com/watch?v=6Q5EIRVKUo>.

122. Minzner, *supra* note 2, at 138-40.

123. Yu Jianrong (于建嵘), “信访悖论”及其出路 [*Petition: The Dilemma, and the Way Out*], CHINA ELECTIONS AND GOVERNANCE (Apr. 9, 2009), <http://www.chinaelections.org/NewsInfo.asp?NewsID=146646>.

124. *Id.*

being a petitioner with them; that they must say they are tourists. Then once they had got there, they let themselves be retrieved [*bei jie*]; and registered with the local police station.

This [the fact that someone from their jurisdiction had complained in the most famous square of the capital] meant trouble for the district-level government. They would get demerits entered in their records. And the [local] government would be fined – according to what I have heard, they were fined 50,000 RMB per person who went to Tian’anmen Square. The township head was really furious. . . .

The whole system is just too irrational. The courts can only decide against you. And the only way you can put pressure on the government officials is through petitioning.¹²⁵

The same logic applied in the Sun Dongdong Incident. The petitioners who flocked to Peking University did so because they were upset and angry, and because doing so provided a way to translate their anger into harm to officials. According to a petitioner who participated in some of these events, they heard that their actions would be treated just like petitioning other institutions of the central State. In other words, the local governments of their hometowns would have entered demerits in their records if they were found to have gone to the gates of Peking University.¹²⁶ In addition, the petitioner says that petitioners also went there because they had heard foreign media were present, “and petitioners will *always* go where foreign media are, because those are the only media [outlets] daring to report about us.”¹²⁷ Moreover, there was a rumor that some petitioners had spoken to Professor Sun Dongdong’s wife and that she had given them some money—“since most petitioners are poor, that was of course another incentive [to go to Peking University].”¹²⁸

We can see here how the activity of “submitting grievances” can transform from supplication into clamouring assertion, from humility into anger and rage. Such changes reflect *yuan*’s vindictive connotations, its meaning of *yuanchou*, the “grudge or enmity between the victim of a wrong and the person who wronged them.” One of the alarming features of the Chinese rights-defense movement is its tendency to trigger destructiveness. Recent years have seen many instances of *yuanmin* using destruction and violence against the State. The most prominent example is that of the embittered petitioner Yang Jia, who as a result of despair, anger, and possibly mental illness, killed six police officers in Shanghai in 2008.¹²⁹ His story and

125. Interview with Petitioner (July 2011) (information altered to preserve anonymity of interview).

126. Interview with Petitioner (Apr. 2010) (information altered to preserve anonymity of interview).

127. *Id.*

128. *Id.*

129. See generally Eva Pils, *Yang Jia and China’s Unpopular Criminal Justice System*, 1

similar stories are considered below as part of the contending conceptions of rationality and justice that underlie the most dramatic current confrontations between *yuanmin* and the State.¹³⁰

IV. THE DENUNCIATION OF *YUAN* AND THE PROPAGATION OF HARMONY

This Article has shown, thus far, that even though uses of *yuan* can easily introduce an element of hatred and destruction, and that *yuan* forms of protest reveal an often hidden, violent, and insurgent aspect of China's tradition, *yuan* discourse and rights discourse are nevertheless inextricably connected in contemporary Chinese citizen-state confrontations. It remains to investigate the State's often hostile attitudes toward both rights and *yuan* through its propagation of a sanitized and—as argued here—adulterated conception of the Chinese moral tradition.

A. *The State's Attitude Toward Complainants*

There is abundant evidence showing the State's hostile attitudes toward *yuanmin*. The plight of *yuanmin* and *fangmin* ("petitioners") has been the subject of several NGO reports and scholarly discussions concerning rights in recent years.¹³¹ Petitioners endure delays, threats, and verbal and physical abuses against themselves or other people in their new environment (e.g. the "petitioning villages").¹³² The government's efforts to constrain the submission of grievances have included the practice of "retrieving" petitioners (截访), where local government officials detain and escort petitioners back to their hometowns. Those from outside the city to which the petitioners have travelled are often followed by "retrievers" or "interceptors" who take petitioners back to their hometowns. These petitioners are often driven out of whatever temporary accommodations they have found while petitioning. Because of the close and hostile attention paid to them in their hometowns, many feel unable to return home at all, since doing so would risk further persecution. Thus, petitioners who have left their old lives in the provinces are effectively uprooted. Even those who are from the capital, like Zhou Li, become socially *déracinés* as they abandon their normal lives in the pursuit of justice.

Detention of petitioners is also common. Detentions may take legal forms

CHINA RTS. F. 59 (2009), available at http://hrichina.org/sites/default/files/oldsite/PDFs/CRF.1.2009/CRF-2009-1_Pils.pdf. (using the story of Yang Jia to highlight the growth of the petitioner movement and concurrent defects in China's criminal justice system).

130. *Id.*

131. See, e.g., HUMAN RIGHTS WATCH, AN ALLEY WAY IN HELL: CHINA'S ABUSIVE 'BLACK JAILS' (2009), available at http://www.hrw.org/sites/default/files/reports/china1109web_1.pdf; HRIC Press Advisory: *Petitioners Face Ongoing Abuse*, HUM. RTS. CHINA (Mar. 3, 2008), <http://www.hrichina.org/content/66>.

132. PETITION, *supra* note 52.

such as criminal punishment, administrative punishment, or Re-Education Through Labor.¹³³ Detentions may also take extralegal and illegal forms, including black jails¹³⁴ and the practice of medically unjustified incarceration in psychiatric hospitals,¹³⁵ such as that which provided the background for the Sun Dongdong Incident. According to Human Rights Watch, the number of incidents in 2009 in which citizens were illegally detained each year in black jails in Beijing alone was thought to be as high as 10,000.¹³⁶ Black jails were initially set up by the “missions” to Beijing of particular provinces or cities and often consisted of a basement in a cheap hotel or factory, where the petitioners of a particular location might be detained before being retrieved.¹³⁷ In June 2009, it was reported that central-state-level authorities were also setting up black jails.¹³⁸ Apart from the fact that black jails, by their nature, do not envisage any procedural legal safeguards, the conditions in these jails can be deplorable.¹³⁹ Inmates report instances of violence such as beatings and rape.¹⁴⁰

Existing reports and comments have rightly pointed out the illegal nature of much of what is done to Chinese *yuanmin* according to domestic Chinese law. Article 37 of the PRC Constitution clearly prohibits infringements of liberty, and in conjunction with Articles 8 and 9 of the PRC Legislation Law, subjects restraints on the liberty of the person to measures on the basis of NPC laws;¹⁴¹ yet there is no law in China allowing the creation or use of such

133. See, e.g., 深圳认定14种“非正常上访”行为重罚首要份子 [Shenzhen Designates Fourteen Forms of Irregular Petitioning Conduct, Imposing Heavy Punishment on Leaders], GUANGZHOU DAILY (Nov. 12, 2009), <http://news.sohu.com/20091112/n268139942.shtml>.

134. See Melissa Chan, *Screams for Help at China's Secret 'Black Jails'*, YOUTUBE.COM (Apr. 27, 2009), http://www.youtube.com/watch?v=Nsn4-A1G5zc&feature=palyer_embedded (depicting a secret black jail); see also Xu Zhiyong (许志永), *A Petitioner's Tale*, CHINA DIGITAL TIME (Apr. 30, 2009), <http://chinadigitaltimes.net/2009/05/xu-zhiyong-a-petitioners-tale> (telling the story of a petitioner being illegally detained and beaten).

135. See MUNRO, *supra* note 3, at 84; see also Robin Munro, *The Ankang: China's Special Psychiatric Hospitals*, 1 J. COMP. L. 41 (2007), available at <http://www.thejcl.com/pdfs/munro.pdf>.

136. See Human Rights Watch, *An Alleyway in Hell: China's Abusive 'Black Jails'*, Nov. 12, 2009, <http://www.hrw.org/en/reports/2009/11/12/alleyway-hell-0>.

137. See *id.* at 11.

138. 国家级信访办也设黑监狱，访民惶惶自危 [Petitioners Panic at Report That National Petitioning Office Have Also Established Black Prisons], RADIO FREE ASIA (June 9, 2009), <http://www.rfa.org/mandarin/yataibaodao/xinfang-06092009085906.html>.

139. See HRIC Press Advisory: *Petitioners Face Ongoing Abuse*, *supra* note 131, at 21.

140. See 上访女被黑监狱看守强奸多名维权者报警被扣押 [Female Petitioner Raped in Black Prison; Several Rights Defenders Detained While Reporting the Case], RADIO FREE ASIA (Aug. 4, 2009), <http://www.rfa.org/mandarin/yataibaodao/shangfangnv-08042009171614.html>; see also 李蕊蕊已回安徽 刘沙沙被送至南阳 [Li Ruirui Returned to Anhua as Liu Shasha Was Taken to Nanyang], RADIO FREE ASIA (Sep. 8, 2009), <http://www.rfa.org/mandarin/yataibaodao/li-08092009123337.html>.

141. XIANFA art. 37 (1982) (China), translated in

black jail facilities. Chinese laws criminalize the use of torture, extralegal detention, and various other forms of violence, and the constitutional provision of Article 41, as well as national and local regulations concerning petitioners, provide for citizens' rights to bring complaints, litigation, and petitions in situations when they deem their rights to have been infringed or the government to have made mistakes.¹⁴² These rules and principles leave no ambiguity about the lack of legal justifications for the use of black jails, informal "retrievers," and beatings inflicted on *yuanmin*.

Yet, as the Sun Dongdong Incident aptly illustrates, practices of repression of *yuanmin* are systematic and to some extent based in rules.¹⁴³ Such rules may take the form of: official categories to identify targets of forcible "mental hygiene" measures; local regulations stipulating punishment for certain kinds of petitioning behavior; or work routines established for government officials and security personnel companies (such as Andingyuan) dealing with petitioners outside Party and government offices. To coordinate such work, "Stability Preservation Offices" have been established at each level of the State administration down from the Party Central Stability Preservation Offices (*weihu wending bangongshi* or *weiwenban*) under the "Central Stability Preservation Leadership Working Group" headed by CPC Politburo Political and Legal Committee Head, Zhou Yongkang.¹⁴⁴ They reportedly have the task of coordinating measures to control petitioners, rights defenders, and other elements perceived as threats to social stability.¹⁴⁵

The rules and institutions of *yuanmin* repression are supported by efforts to provide moral justifications for these repressive practices. First, censorship efforts and propaganda suppress an ideology of *yuan*, and instead promote an ideology of harmony as a moral value at the core of the Chinese tradition. Second, repression is supported by the characterization of the objects of repression as fundamentally irrational, based in confused emotions, or even as insane. The first of these two strategies is discussed below and the second is discussed in Section V.

<http://english.peopledaily.com.cn/constitution/constitution.html>; Legislation Law (P.R.C.), available at http://english.gov.cn/laws/2005-08/20/content_29724.htm.

142. *Id.* art. 41.

143. See HRIC Press Advisory: *Petitioners Face Ongoing Abuse*, *supra* note 131.

144. Liao Haiqing (廖海青), "维稳办"走上前台 [*The 'Stability Preservation Office' Walks onto the Podium*], NANFENGCHUANG (Apr. 4, 2009), <http://www.nfcmag.com/articles/1463/page/2> (details about SPO are unknown).

145. See TSINGHUA UNIVERSITY, NEW THINKING ON STABILITY MAINTENANCE: LONG-TERM SOCIAL STABILITY VIA INSTITUTIONALIZED EXPRESSION OF INTERESTS (David Kelly trans., SOUTHERN WEEKEND 2010), available at <http://chinaelectionsblog.net/?p=5220> (explaining why the tasks of the stability preservation office need to be changed); see also *Book Details Party's 'Stability Preservation Office' (维稳办)*, CHINA DIGITAL TIMES (Apr. 5, 2009), <http://chinadigitaltimes.net/2009/04/book-details-governments-stability-preservation-office> (detailing the operations of the stability preservation office).

B. "Harmony" Propaganda and the "Harmonization" of Yuan.

References to "harmony," "conciliation," and "peace," in Chinese, *he* (和), can be found throughout the Chinese canon of moral philosophy, and common expressions such as "holding harmony dear" (*yi he wei gui* 以和为贵) have always been used to describe this value. An important distinction drawn in the Confucian Analects is that between *he* and *tong*, "being in harmony" and "making oneself common with, being the same." "A noble person will achieve conciliation based on principle but not blind union. A small person will blindly seek to unite, but cannot achieve principled conciliation."¹⁴⁶ In other words, *he* and other moral values have not generally been viewed in isolation or pursued single-mindedly, but have been treated, appropriately, as related to each other and making sense in their interrelatedness.¹⁴⁷ Harmony has value, but so does justice, and so do other moral principles.¹⁴⁸

The use of "harmony" (*hexie* 和谐) in current political propaganda, by contrast, has been widely described as a tool employed to justify the repression of calls for justice and other dissonant voices, rather than a faithful reflection of traditional conceptions of the value of harmony. As a concept that could apply to music and other performance aspects,¹⁴⁹ "harmony" (*hexie* 和谐) invoked the image of a listener; it implied that dissonance was undesirable. The expression "socialist harmonious society" first appeared in a resolution by the Party Central meeting of October 2006.¹⁵⁰ In a society with rising disparities and tensions, it was initially associated with welfare policies begun under the new leadership. In contrast, "socialist harmonious society" also meant that differences of wealth, status, and power could be understood as part of a central script,¹⁵¹ and that there must be no conflict. This language is in keeping with the wider aim of "preserving [a] social stability" that saw the creation of "Stability Preservation Offices."¹⁵² It also resonates with the

146. 君子和而不同，小人同而不和 [junzi he er bu tong, xiao ren tong er bu he], Confucius, Analects XIII 23 at 207 (Cai Xiqin ed., Lai Bo & Xia Yuhe trans., SINOLIGUA 1994); see CONFUCIUS, THE ANALECTS 13 (Raymond Dawson ed., 1993).

147. *Id.* at 51-53.

148. Stephen C. Angle, *Human Rights and Harmony*, 30 HUM. RTS. Q. 76, 78-80 (2008).

149. THE CONTEMPORARY CHINESE DICTIONARY, *supra* note 18, at 2121 (entry on *hexie* (和谐)).

150. 中共中央关于构建社会主义和谐社会若干重大问题的决议 [Resolution on the Construction of a Socialist Harmonious Society] (promulgated by the Chinese Communist Party Central Committee, passed Oct. 11, 2006) Sixth Plenary Session, Oct. 8-11, 2006, reprinted in *CPC Central Committee on Building a Socialist Harmonious Society and a Number of Major Issues* (中共中央关于构建社会主义和谐社会若干重大问题的决议), XINHUA NEWS AGENCY (Oct. 18, 2006), http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm.

151. Leila Choukroune & Antoine Garapon, *The Norms of Chinese Harmony: Disciplinary Rules as Social Stabiliser*, 3 CHINA PERSPECTIVES 36, 36-38 (March 2007), available at <http://chinaperspectives.revues.org/document2013.html>.

152. See *Book Details Party's 'Stability Preservation Office'* (维稳办), *supra* note 145.

idea of “scientific development perspective,” (科学发展观)¹⁵³ also propagated since 2007, and defined as “striving for growth, sustainable development, social welfare, a person-centered society and a harmonious society.”¹⁵⁴ It provides tropes that can be used to spell out the meaning of “socialism with Chinese characteristics” that is mentioned in the Preamble of the PRC Constitution.¹⁵⁵

State discourse about “harmonious society,” “preserving stability,” and “scientific development” has had important implications for key social and political institutions.¹⁵⁶ “Harmony” presented a challenge to adjudication and petitioning as modes of addressing citizen complaints.¹⁵⁷ Neither adjudication of disputes in court nor petitioning is centrally directed at harmony. Adjudication is directed at providing legally correct decisions, regardless of whether these decisions result in “harmony” among the disputing parties. Sustained disagreement between these parties does not harm the integrity of the adjudicative process, and no one need be forced to agree with the judicial decision even if it is legally correct. Petitioning, on the other hand, assumes that the authority appealed to will be persuaded to make the right decision, and in that sense petitioners seek consensus from the authority they petition. Of course, they do not necessarily seek agreement or reconciliation with the person about whom they complain. In making complaints, in expressing grievances, and often in asserting their grief, anger, and vindictiveness, petitioners do not generally seek to promote harmony—they seek just outcomes of their cases.

Official propaganda, which is in favor of harmony as a core Chinese value, has criticized values associated with western, rights-centered institutions as un-Chinese.¹⁵⁸ Such propaganda has also frequently portrayed the traditional Chinese form of contentious quests for justice as un-harmonious.¹⁵⁹ At the same time, it has maintained that harmonious society can only be achieved through a judicial system under strong Party leadership and “socialism with

153. THE CONTEMPORARY CHINESE DICTIONARY, *supra* note 18.

154. For a discussion of the Scientific Development Perspective by President Hu Jintao, see 科学发展观重要论述摘编 [*Archive of Scientific Development Perspective*], PEOPLE.COM.CN, <http://theory.people.com.cn/GB/68294/137720/> (last visited Nov. 27, 2011).

155. According to an amendment to the 1982 PRC Constitution approved in 1993, the Preamble contains the phrase, “China is at the primary stage of socialism. The basic task of the nation is, according to the theory of building socialism with Chinese characteristics, to concentrate its effort on socialist modernization.” 中華人民共和國憲法 [*Constitution*], Dec. 4, 1982, amend. II, § 3 (China). For a text of the PRC Constitution and its amendments (English translation), see THE CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA, <http://english.peopledaily.com.cn/constitution/constitution.html>.

156. See Luo Gan, *supra* note 72.

157. *Id.*

158. See generally Angle, *supra* note 148, at 78-81 (discussing the Chinese traditions of harmony generally and in the particular context of human rights).

159. *Id.*

Chinese characteristics.”¹⁶⁰ For instance, in a 2007 speech, Politburo member Luo Gan explicitly warned against judicial independence.¹⁶¹ He said that judges “must in their politics, their thoughts and their actions preserve identity with the Party.”¹⁶² After Luo Gan’s speech, other officials of the system duly began to argue that “harmonious adjudication” was only possible if it rested on correct political views, and rejected “excessive individualism, pleasure-seeking, and westernization.”¹⁶³ In an effort to reconcile rights and harmony, a scholar then at the China University of Political Science and Law developed a theory of “harmony rights.”¹⁶⁴ Zhang Jun, Vice President of the Supreme People’s Court, reiterated Luo Gan’s message that the role of Chinese judges was to support Party leadership and expressed concerns about “rights defense” disrupting this effort:

In recent years, the political and legal field has increasingly become a point of entry for ideological infiltration, westernization and separationist strategies by enemy forces inside and outside the country. They brandish the banner of ‘rights-defending’ [*weiquan*], seize the example of individual legal cases and do their utmost to enlarge individual issues and make simple issues more complicated and to politicize ordinary issues, in order to blacken our administration of justice, demand that we change and that we abandon the socialist legal system of administration of justice with Chinese characteristics. There are some ‘nice’ domestic scholars, including some comrades in [party-state] departments, who think that our judicial system has all sorts of problems, think that only a western judicial system is the most perfect, and even think that we can directly copy from the west.... In fact, the reason why the socialist judicial system with Chinese characteristics can be made to operate smoothly and actively to fulfill its function of safeguarding economic, social and scientific development and preserving social harmony and stability is most fundamentally because it benefits from the Party’s strong, powerful, absolute and unified leadership.¹⁶⁵

160. See Luo Gan, *supra* note 72.

161. See *id.*

162. *Id.*

163. Zhao Gaochao (赵高潮), 抓好四个结合 实现和谐审判 [*Correctly Implementing Harmonious Adjudication of Four Trials*], CHINACOURT.ORG (Oct. 19, 2007), <http://www.chinacourt.org/html/article/200710/19/270255.shtml>.

164. Eva Pils, *The Dislocation of the Chinese Human Rights Movement*, in A SWORD AND A SHIELD: CHINA’S HUMAN RIGHTS LAWYERS 141, 147-48 (Stacy Mosher & Patrick Poon eds., 2009) [hereinafter Pils, *The Dislocation of the Chinese Human Rights Movement*] (citing Xu Xianming et al., ‘Harmony Rights’ as Human Rights?, CHINA DIGITAL TIMES (Nov. 26, 2006), <http://chinadigitaltimes.net/2006/11/harmony-rights-as-human-rights-xu-xianming-et-al/>).

165. Zhang Jun (张军), 中国特色社会主义司法制度的优越性 [*The Superiority of the Socialist Judicial System with Chinese Characteristics*], NPC.GOV.CN (May 20, 2009), http://www.npc.gov.cn/npc/xinwen/rdlt/fzjs/2009-05/20/content_1503052.htm. Note that, since 2008, the judiciary is supposed to follow the “Three Supremes Doctrine” that enshrines supremacy of the Party’s Cause, the People’s Interests, and the Law. See He

“Harmonious society” was widely used in numerous contexts. For example, railway stations carried large billboards about “Harmonious Railway Construction”¹⁶⁶ and a website called “Harmonious China” featured pages on harmonious society, harmonious cities, a harmonious countryside, harmonious neighborhoods, harmonious families, harmonious enterprises, harmonious school campuses, harmonious personal lives, and harmonious culture.¹⁶⁷ Calls to improve China’s notorious forced eviction processes became calls for “Harmonious Demolition and Relocation.”¹⁶⁸ Making use of this propaganda, Chinese citizens appealed to the State-approved goal of harmony.¹⁶⁹ For instance, citizens called for harmony when resisting State violence in “demolition and relocation” processes.¹⁷⁰

Additionally, “harmony” discourse has underpinned the State’s efforts to control the media and mass communications, especially the internet. Reflecting the way in which “harmony” has been used to justify censorship, citizens’ use of the term is therefore often irreverent and satirical.¹⁷¹ “To have been harmonized” (*bei hexie, bei hexiediao*) has become a word for “having been censored,”¹⁷² which most often signifies deletion from a website. The expression has no other, non-satirical meaning in Chinese.¹⁷³ It is part of a growing list of new, passive constructions indicating citizen frustration with overbearing and disingenuous State measures.¹⁷⁴ Other examples include: “being volunteered,” “being disappeared,” or “being turned mentally ill.” In its new, subversive meaning, *bei hexie* became so popular a term that it was soon

Weifang (贺卫方), ‘三位一体论——与贾宇、李林、王振民、郭峰、韩大元、卓泽渊、张志铭、马怀德、付子堂、王立民、朱继萍教授商榷’ [‘No-trinity-theory’ – Debating Professors Jia Yu, Wang Zhenmin, Guo Feng, Han Dayuan, Zhuo Zeyuan, Zhang Zhiming, Ma Huaide, Fu Zitang, Wang Limin, and Zhu Jiping], (July 22, 2009) http://blog.sina.com.cn/s/blog_488663200100emaw.html.

166. See, e.g., Josh Chin, *Do More to Build a Harmonious Railway*, FLICKR (Dec. 22, 2008), <http://www.flickr.com/photos/21953266@N00/3230236199/> (depicting sign at train station with message of harmony).

167. 和谐中国 [Harmonious China Network], <http://www.hxzg.net/> (last visited Nov. 27, 2011).

168. See Jiang Xuezhou (讲学舟), 钉子户的成因与推进和谐拆迁的思路与对策 [The Root Causes of the Emergence of Nail Houses and the Promotion of a Construction of a Harmonious Society], CHINA ELECTIONS AND GOVERNANCE (Apr. 13, 2007), <http://www.chinaelections.org/NewsInfo.asp?NewsID=106836> (“In this regard, maintaining the fundamental interests of the people, harmony is the demolition of the current problems requiring urgent attention.”).

169. For example, in July 2010, the outside of a home threatened by forced demolition in Gongdesi Village in the Haidian District of Beijing featured the slogan: “we want harmony not violence.” Photograph of Banner Outside Home Threatened by Demolition (July 2010) (picture on file with author).

170. *Id.*

171. Pils, *The Dislocation of the Chinese Human Rights Movement*, *supra* note 164, at 157.

172. *Id.*

173. *Id.*

174. *Id.*

itself “harmonized” from the internet.¹⁷⁵ Citizens responded by using two different Chinese characters, originally meaning “river crab,” to signify “harmony;” river crabs soon became part of a subversive mythology opposing State control of thought and expression.¹⁷⁶

Harmony propaganda and censorship also turned against the traditional concept of *yuan*. At times, the State attempted to “harmonize”—or effectively censor—citizen complainants’ uses of *yuan* by suppressing certain applications of the *yuan* character (冤) in various petitioning contexts. As early as 2005, authorities faced growing problems with the petitioning system, and so created a new regulation that prohibited certain types of conduct deemed irregular.¹⁷⁷ For example, the regulation limited the allowed number of petitioners to five.¹⁷⁸ It also prohibited “jumping instances”—presenting a grievance to the central government without having first done so at the provincial level.¹⁷⁹ After protest from academic advisers, the government decided to omit a provision that banned petitioners from wearing clothes that featured the *yuan* (*yuanyi*) character.¹⁸⁰ Five years later, at the National People’s Congress in March 2010, Luo Qingquan, vice-governor of the Hubei province, proposed similar legislation.¹⁸¹ According to his proposal, prison sentences of up to fifteen years should have been imposed for no less than twenty acts, all of which were commonly used by citizen petitioners to draw attention to their complaints.¹⁸² These acts included wearing shirts that displayed individual complaints and accusations.¹⁸³ Luo Qingquan felt that petitioners deserved punishment if they presented complaints at politicians’ offices and homes, “seriously influencing the regular life and work of the leadership.”¹⁸⁴

Even though Luo Qingquan’s proposal was not adopted, attitudes

175. *Id.*

176. *See id.* (explaining that because “harmony” was censored on the Internet, dissidents used the similar-sounding word, river crab, instead).

177. *See generally* Minzner, *supra* note 2, at 133-35 (2006) (discussing the 2005 National Xinfang Regulations).

178. *See id.* at 131 (“National regulations require that petitioners expressing collective grievances in person select no more than five representatives.”) (citation omitted).

179. *See id.* at 123 (explaining that because central offices can become overwhelmed with grievances, both national and provincial regulations aim to funnel those petitions to lower levels of government.).

180. *See* Beijing Youth Daily, 严惩报复禁穿冤衣写入又删 [*Retaliation Strictly Prohibited, Prohibition of Wearing of ‘Yuan’ Garments Deleted*], YAHOO! (Feb. 1, 2005), <http://news.cn.yahoo.com/050201/67/28kzr.html> (reporting that the State Council Legislative Affairs Office followed the advice of experts such as Yu Jianrong and decided it was inappropriate to prohibit clothing that displayed complaints).

181. *Proposal on Penalties for Improper Petitioning*, NAT’L PEOPLE’S CONGRESS (Mar. 2010) (proposal presented by Luo Qingquan, vice-governor of the Hubei province).

182. *Id.*

183. *Id.*

184. *Id.*

towards petitioners continued to harden. Attempts to define “regular” and legal petitioning more narrowly have gone further in particular localities. For example, the City of Shenzhen announced the introduction of a regulation against fourteen kinds of “irregular” petitioning and imposed a punishment of incarceration at “Re-education Through Labor” facilities administered by the police,¹⁸⁵ although this Regulation was later reportedly modified. Punishable “irregular conduct” initially included shouting slogans, unfolding banners, wearing complaint garments, presenting complaint papers, distributing petitioning materials, sitting-in, and disturbing the public in any way.¹⁸⁶

The 2009 Shenzhen regulation also prohibited using self-injury, committing suicide,¹⁸⁷ jumping off buildings, spreading infectious diseases like AIDS, and displaying corpses, funeral urns, or any objects to instill fear.¹⁸⁸ From the State’s perspective, protest suicide must be suppressed. Some academics have gone so far as to propose imposing civil and criminal liability on people who commit suicide or try to do so.¹⁸⁹ A scholar at Peking University Law School suggests that, depending on the seriousness of the case, the State should react to suicide attempts with “criticism and education, a fine, detention, or criminal punishment.”¹⁹⁰ He argues that from the perspective of the person who committed suicide, they have “solved their problem” through the one short act of suicide and “are no longer troubled by what they no longer see,” but “leave terrible pain in their wake.”¹⁹¹ In the case of persons successfully committing suicide “in order to achieve a particular aim by threatening others,” he therefore believes that their entire property (estate) should be confiscated, in addition to the permanent deprivation of their political rights.¹⁹²

All of the above-mentioned proposed and enacted rules against the use of

185. See Ruan Xiaoguang, 深圳认定14种“非正常上访”行为重罚首要分子 [Shenzhen Designates Fourteen Forms of ‘Irregular Petitioning’ Conduct, Imposes Heavy Punishments on Leaders], SOHU.COM (Nov. 12, 2009), <http://news.sohu.com/20091112/n268139942.shtml> (reporting that those detained for non-normal petitioning may face severe penalties, including reeducation through labor).

186. *Id.*; see also Shenzhen Municipal Court, Procuratorate, Bureau of Justice, Public Security Bureau, 关于依法处理非正常上访行为的通知 [Notice on Handling Fourteen Kinds of ‘Irregular’ Petitioning in Accordance with Law], PEOPLE ESSAY NETWORK (Nov. 18, 2009), <http://www.newsus.com.cn/WangWen/DoNewsList.Asp?lable=6740> (listing same fourteen types of irregular petitioning conduct).

187. *Zisha* (自杀) in Chinese can either mean attempted or completed suicide; in more technical language, there is a distinction between completed (即遂) and attempted (未遂) suicide.

188. See Ruan Xiaoguang, *supra* note 186 (listing the same prohibited methods of irregular petitioning); *Notice on Handling Fourteen Kinds of ‘Irregular’ Petitioning in Accordance with Law*, *supra* note 187 (listing the same prohibited methods of petitioning).

189. *E.g.*, Su Ke (苏科), 该不该追究自杀者的法律责任 [Should People Be Held Legally Accountable for Suicide?], BLOG.CHINACOURT.ORG (July 10, 2006), <http://blog.chinacourt.org/wp-profile1.php?cat=8&author=2142>.

190. *Id.*

191. *Id.*

192. *Id.*

the *yuan* character and associated behaviors reflect the ruling elites' hostility toward *yuan*-related practices. The prohibitions, however, also testify to *yuan*'s power as a moral symbol. The "harmony" that is lauded as a traditional Chinese virtue by the government represents only part of the values of the Chinese moral tradition—a tradition that also contemplates conflict to prevent injustice.¹⁹³ Official language nevertheless reveals that these traditional ideas related to injustice and conflict are being deliberately eliminated, and conduct that would disturb officially ordained "harmony" is being suppressed.¹⁹⁴

V. CONTESTING STATE DEFINITIONS OF RATIONALITY AND SANITY

The threat of persecution described above push some of the *yuanmin* and *fangmin* into anger, despair, depression, or serious mental illness. These psychological changes tend to follow a pattern that is, to some extent, rooted in the traditional idea of an obligation to seek justice. *Yuanmin* begin by focusing on redressing the original wrong done to them and then encounter more injustice while petitioning. At some point, they find themselves unable to focus on anything else. Some exhibit an obsession with righting their wrongs, and the potentially obsessive nature of *shen yuan* can utterly destroy the human lives it touches. In some cases, the State contributes to this destructive potential through what often amounts to persecution of *yuanmin*. In the documentary film *Emergency Shelter*, rights activist Ni Yulan comments:

If you infringe ordinary people's rights, you should correct your mistake without delay. If you correct it, they will not complain against you, right? But the longer you fail to correct it, the more they will complain. It's you who are responsible for social instability. Not your victims. If a person has experienced so much injustice and yet has nowhere to complain to, nowhere to file a case, and all the departments are shielding each other, this increases the number of petitions. Under pressure from all sides, [the petitioners] work themselves up into an increasingly emotional state, and then they do certain things, they can't help it. Some of their more extreme behaviours aren't what they themselves really want. They are forced into this.¹⁹⁵

The State, however, maintains the view that petitioners doing "extreme

193. See generally Angle, *supra* note 148 (discussing the Chinese traditions of harmony generally and in the particular context of human rights).

194. This argument does not challenge Stephen Angle's claim that "a simultaneous commitment to human rights and to harmony is *coherent and desirable*." See Angle, *supra* note 148 (emphasis added).

195. See DVD: 应急避难场所 [EMERGENCY SHELTER] (He Yang (何杨) (2010) (DVD copy on file with the author), <http://chrnet.com/2010/06/21/emergency-shelter-a-documentary-about-ni-yulan/> [hereinafter EMERGENCY SHELTER] (discussing the challenges *yuanmin* faced in a documentary film by He Yang (何杨)).

things” offend the social order, and that their acts cannot be justified.¹⁹⁶ The State also considers itself justified in characterizing petitioners’ conduct as insane and taking measures accordingly.¹⁹⁷

Zhao Liang’s documentary film, *Petition*,¹⁹⁸ follows the story of a petitioner mother and her daughter over a period of twelve years from 1996 until 2008.¹⁹⁹ The mother, Qi Huaying, initially came to Beijing to submit petitions after her husband mysteriously died in a hospital.²⁰⁰ Her husband, a healthy man, was ordered to undergo a medical check-up and was given a blood infusion of “nutrient medication.” He then died, and before an autopsy was performed, the hospital cremated his body.²⁰¹ His widow received a death certificate that stated he had died “from illness.” Their daughter, Fang Xiaojuan, then grew up in Beijing’s “petitioners’ village.” She endured detentions and various other measures while with her mother, who, at one point was taken away for a long period of time.²⁰² The documentary shows the mother shortly after her return home and her appearance had changed drastically. The psychiatric hospital that detained her also gave her medication that caused her face to swell.²⁰³ Fang Xiaojuan eventually ran away from this life. At the end of the film, the aged and destitute woman appears resentful, lonely, withdrawn, neglected, and mentally ill.²⁰⁴

In coming to Beijing to seek justice from a patently senseless and hopeless “letters and visits” system, Qi Huaying made a decision that few would have thought wise, even though it was not irrational. Both women’s stories depict a particularly cruel outcome of petitioning. Similar to other persistent petitioners, the story begins with the State’s denunciation and persecution of *yuanmin* as socially disruptive and “deranged,” and ends with *yuanmin* actually becoming mentally ill. Abusive psychiatric hospitalization and medication are common elements of this pattern.

A. State Abuses of Psychiatric Hospitalization

Like other measures taken against petitioners, the practice of incarcerating them and other “undesirable” citizens in psychiatric hospitals is not random; it follows rules made by administrative authorities seeking to control *yuanmin*, and it is ultimately based on an assessment—however

196. *Id.*

197. *Id.*

198. PETITION, *supra* note 52.

199. See Zeng Jinyan (曾金燕), 上访 [*Petition*] (May 30, 2009), <http://www.zengjinyan.org/archives/284> (providing a thorough synopsis and review of the film).

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

irresponsible or arbitrary—that the person in question is mentally ill.²⁰⁵ Hospitalization in psychiatric hospitals is one part of a wider array of possible measures the State can take.²⁰⁶ The “diagnosis” of mental illness is, however, particularly dangerous to petitioners because there are often no effective procedural safeguards allowing them to challenge such a diagnosis.²⁰⁷ Additionally, this designation leads to a potentially indefinite loss of freedom, and forceful medication of the petitioner can cause severe damage.

In the 1990s, diagnoses were based on “litigation mania” and other “illnesses” persuasively related to a certain type of political system, rather than to any clinical findings.²⁰⁸ It is as though the State abrogated the right to decide who is considered rational based on criteria that served its interest in social harmony and stability.²⁰⁹ Due to its formidable power, the State can make its own assessments come true, crushing individual lives while simultaneously supplying itself with justifications for the continued policing of “mental hygiene” among malcontents. The fact that, as Professor Sun casually noted in his interview, specific psychiatric hospitals—so-called *ankang* hospitals—for the detention of petitioners and other citizens are run by the public security authorities²¹⁰ indicates that these hospitalizations are a means of policing rather than providing health services. In addition, reports indicate that ordinary psychiatric hospitals under the control of the Ministry of Health may also admit “patients” at the directive of the police.²¹¹

205. See MUNRO, DANGEROUS MINDS, *supra* note 3, at 123 (discussing the government’s assessment of political dissidents requiring forced psychiatric institutionalization).

206. See, e.g., 维稳体系全国联网 公民黑箱分级曝光 [*Nationwide Stability Preservation Network Revealed by Citizen Who Finds Himself Classified as Grade Three Surveillance Target*], RADIO FREE ASIA (Aug. 31, 2010), <http://www.rfa.org/mandarin/yataibaodao/wen-08312010111815.html> (reporting that local government is classifying individuals and monitoring their movement as part of a stability maintenance mechanism).

207. See 精神卫生立法：重型精神病人有望免费医疗 [*Mental Health Legislation: Seriously Ill Patients May Get Free Treatment*], ORIENTAL OUTLOOK WEEKLY (Sept. 2, 2010, 1:17 PM), <http://news.163.com/10/0902/13/6FJ2DA1C00014AEE.html> (discussing a mental health law that has been contemplated since the late 1980s, as many academics hope that this legislation will put an end to compulsory admission into psychiatric hospitals.).

208. See MUNRO, DANGEROUS MINDS, *supra* note 3 (stating that persistent petitioners fall into the category of mentally ill persons who suffer from “litigious mania”); Robin Munro, *The Ankang: China’s Special Psychiatric Hospitals*, 1 J. COMP. L. 41, 45 (2007) (describing one famous case, in which hospital authorities at a psychiatric hospital would not reveal a detainee’s medical diagnosis but did say that the man suffered from political paranoia).

209. See MUNRO, DANGEROUS MINDS, *supra* note 3 (explaining that China’s legal-medical authorities consider political and public disturbance cases equally threatening to society as murder and other crimes).

210. See *Peking University Professor*, FENGHUANG WANG (Apr. 3, 2009), http://news.ifeng.com/mainland/200904/0403_17_1089530.shtml (explaining that neither the health system nor the civil system can order compulsory psychiatric treatment, while the public security force can).

211. See generally Jane Parry & Weiyan Cui, *China’s Psychiatric Hospitals Collude with Officials to Stifle Dissent, Say Civil Rights’ Groups*, BMJ (June 25, 2010),

Evidence from the past decade points to a continued practice of forcefully treating mentally healthy people as mentally ill.²¹² “Treatment” is imposed on petitioners, for example, when they are considered disruptive or when the legal institutions are unable to find another reason to confine them.²¹³ These petitioners are referred to as “persons who have caused incidents or accidents” (*chaoshi chaohuo*) and “militant lunatics” (*wufengzi*).²¹⁴ For example, according to a 2010 report from a website of the Public Security (Police) Ministry:

As problems of mental hygiene are becoming more and more evident, the work of *ankang* hospitals [psychiatric hospitals subordinate to the public security ministry and bureaus] is becoming more and more important. The phenomenon of mentally ill people causing incidents or accidents is common; and in accordance with the provisions of the criminal law, the public security organs impose compulsory measures against mentally ill people who cause incidents or accidents, and the special facilities in which these compulsory measures are carried out are the *ankang* hospitals.

In recent years, *ankang* hospitals in various locations have... created a unique universe of their own. From 1998 until today, the *ankang* hospitals have altogether received and treated more than 40,000 mentally ill patients who had caused incidents or accidents and been assigned to them by the public security organs, among them 30% who had caused serious incidents and accidents. Some of the *ankang* hospitals have permeated residential communities and enterprises in order to assist in the preventative security, control and internment (for treatment) work of the residential communities so as to reach the social goal of ‘interning one for treatment, bringing peace to an entire family; interning one for treatment, creating ten-thousand-fold happiness.’ They have received praise from all quarters of society.²¹⁵

<http://www.bmj.com/content/340/bmj.c3371.extract>.

212. See MUNRO, DANGEROUS MINDS, *supra* note 3.

213. See *id.*

214. 武汉女访民邹桂兰被强行关精神病院的惨痛经历 [Wuhan Petitioner Zou Guilan’s Cruel Experience of Being Forcefully Taken to Psychiatric Hospital and Locked Up], Boxun.com (June 23, 2010), <http://www.peacehall.com/news/gb/china/2010/06/201006230117.shtml> (describing the experience of a female petitioner who was held in a psychiatric facility for 187 days and referred to as a special type of criminal for causing an accident.).

215. This report states that there are 24 *ankang* hospitals nationwide, compared to a total of 550 mental health departments and clinics in existence. People’s Public Security News, 强制隔离戒毒所、安康医院、戒毒康复场所的现状与未来 [Current Situation and Prospect Concerning the Compulsory Separation of Detoxification Clinics, *ankang* Psychiatric Hospitals, and Detoxification Rehab Clinics], Ministry of Public Security (Mar. 23, 2010), <http://www.mps.gov.cn/n16/n1976136/n2280587/2363078.html>; see also Xinhua, 我国将提高重症精神病人治疗率防其肇事肇祸 [State to Raise Effectiveness of Treatment for Seriously Mentally Ill Patients, Prevent Them From Causing Incidents and Accidents], China Daily (June 21, 2010), <http://www.chinadaily.com.cn/dfpd/2010->

In May 2010, a screenshot of a news story originating from a public security (police) news service was circulated on the internet. The headline ran, “Mental Hospitals Cannot Admit Normal People Without Police Approval,”²¹⁶ apparently confirming that—as had long been suspected—the police engage in a practice of forcefully hospitalizing citizens who had *not* been diagnosed with a psychiatric illness, but were nonetheless deemed to be a threat to public security.²¹⁷ Due to a growing number of cases in which unfortunate people were confined at the direction of someone else, likely a family member, this article was meant to restrain the practice of detaining mentally sound individuals by leaving that decision to police discretion.²¹⁸

These online reports and instructions have revealed a system in which mental illness can be “diagnosed” by the police whenever someone is deemed to have disturbed the public order through persistent or disruptive petitioning. Petitioning is taken as evidence of a mental illness in such cases. Indeed, Professor Sun hinted at this very issue in his fateful comment:

Patients suffering from paranoia do indeed belong to the category that requires forceful [treatment], because they disturb the social order. *That kind of person insists on their viewpoint, and that viewpoint is the symptom of their paranoia.*²¹⁹

Moreover, as Professor Sun also pointed out, and as Shanghai regulations state on the issue, it is the administrative task of the police to issue a “certificate on receiving (interning) and treating a mentally ill person who caused an incident or accident.”²²⁰

No official data on cases of petitioners being locked up as mentally ill is available. However, a 2008 report on this practice in Xintai City shows Chinese media acknowledging that such cases exist.²²¹ In September 2010, a

06/21/content_9994156.htm (describing additional policing of political-related “mental illness”).

216. 公安部：精神病院未经警方同意不得收治正常人, [Public Security Ministry: Without Police Approval, Psychiatric Hospitals Must Not Consent to Taking in Normal People], Fenghuang Wang (May 28, 2010), http://news.ifeng.com/mainland/detail_2010_05/28/1561522_0.shtml.

217. *See generally* Jane Parry & Weiyuan Cui, *supra* note 211.

218. *See id.* (“In addition to petitioners complaining about local officials’ malfeasance, there are also cases of families and employers using this method to deal with troublesome employees and relatives, observers say.”).

219. *See generally* Peking University Professor, *supra* note 1 (emphasis added).

220. *See* Shanghai Intensive Care Management of Mental Patients Regulations Zhaohuo Accident (promulgated by the Eighth Shanghai Municipal People’s Congress Standing Committee, Sept. 11, 1986, effective Oct. 1, 1986), SHANGHAI MUN. PEOPLE’S CONG., Art. XVI, *available at* <http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3125/node3133/userobject6ai150.html>.

221. *See* 山东新泰多名欲进京上访者被强送精神病院 [Shandong Xintai For More than Sent to Beijing to Petition Were Strong], Beijing News (Dec. 12, 2008), <http://news.sina.com.cn/c/2008-12-08/015816800838.shtml> (recounting examples of

domestic human rights group provided a list containing names of hundreds of citizens, sorted by provinces of origin, who were forcefully incarcerated in abusive “psychiatric” treatment.²²² In addition, this human rights group asserts that abusive practices were becoming more serious.²²³ Domestic groups, family members, lawyers, and journalists have compiled most of the available documentation of these practices.

For instance, in April 2010, Xu Lindong, from Luohe in the central province of Henan, surfaced after being forcefully held in ordinary, non-*ankang* psychiatric hospitals for six years at the orders of local government authorities who were anxious to stop him from petitioning in Beijing.²²⁴ According to news reports by domestic and Hong Kong press, he was protesting wrongful government conduct on behalf of his paraplegic neighbor, who was involved in a conflict over land.²²⁵ During his incarceration, he was allegedly subjected to forced medication that caused dizziness,²²⁶ tied to a hospital bed fifty times,²²⁷ and given electric shocks fifty-five times.²²⁸ According to reports, Xu’s local government authorities paid the hospital 1,500 RMB a month for his incarceration.²²⁹ It was only after his family coincidentally learned about his whereabouts and got the media to report the case that Xu was freed.²³⁰

Hu Guohong, a petitioner describing himself as having been freed in May 2009 and interviewed by Radio Free Asia in May 2010, says in a recorded interview:²³¹

petitioners incarcerated in mental hospitals without any medical justification).

222. 精神病院受难者名单寄世界精神病学国际大会促关注 [Mental List of the Victims to Send the World Psychiatric Conference to Promote International Attention], Boxun (Sept. 3, 2010), <http://www.peacehall.com/news/gb/china/2010/09/201009030953.shtml> [hereinafter *Mental List*]; Jane Parry & Weiyuan Cui, *supra* note 212; 民生观察新书《中国精神病院受难群体录》[Livelihood Observation Book, ‘China Suffered a Mental Hospital Group Recorded’], Boxun (Feb. 15, 2009), <http://news.boxun.com/news/gb/china/2009/02/200902152103.shtml>.

223. *See Mental List, supra* note 222.

224. *See* 访民关精神病院六年多 四官员近日才为此被免职 [Petitioners Off Mental Hospital Six Years to Four Officials Have Been Dismissed Before This (figure)], Radio Free Asia (Apr. 28, 2010), <http://www.rfa.org/mandarin/yataibaodao/fangmin-04282010163013.html> [hereinafter *Petitioners Off Mental Hospital*]; Zhang Jiawei, Four Removed From Duty for Confining Villager, *China Daily*, Apr. 28, 2010, http://www.chinadaily.com.cn/china/2010-04/28/content_9787138.htm.

225. *See Petitioners Off Mental Hospital, supra* note 224.

226. *See* Jane Parry & Weiyuan Cui, *supra* note 211.

227. *See Petitioners Off Mental Hospital, supra* note 224.

228. Raymond Li, *Man in Mental Wards For Six Years to Silence Him*, SOUTH CHINA MORNING POST, April 27, 2010; *Petitioners Off Mental Hospital, supra* note 225; Zhang Jiawei, *supra* note 224.

229. *See* Jane Parry & Weiyuan Cui, *supra* note 211.

230. *See id.*

231. *See* 公安部要在各省建安康精神病院 收放自定 [Ministry of Public Security in the Provinces to Build Custom Retractable Mental Well-Being], Radio Free Asia (May 28, 2010), <http://www.rfa.org/mandarin/yataibaodao/jingshenbingyuan-05282010103536.html>.

Whenever there was an important event, like the Olympic Games, or the Two Congresses [i.e., the annual plenary sessions of the national People's Congress and Consultative Conference in March], or [the anniversary of the crackdown on] June Fourth, they took me to the psychiatric hospital. Each time they took me in they put me on a drip for two hours and tied me up by my feet, my waist, my head and my hands.²³²

A Guangzhou lawyer named Liu Shihui posted another recording of these practices online in April 2010.²³³ Liu obtained secretly-made video recordings of a conversation with petitioner Jin Hanqing, telling of her experience being locked up and forcefully drugged under similar circumstances.²³⁴ He posted the recordings online.²³⁵ Then, on February 20, 2011, Liu Shihui was beaten and seriously injured outside his home by what were believed to be five domestic security police officers.²³⁶ The authorities later declared him to be under “residential surveillance”—a criminal investigation measure—but did not mention his alleged crime.²³⁷

232. 公安部要在各省建安康精神病院 收放自定 [Public Security Ministry to Establish ankaang Psychiatric Hospitals in Each Province, to Decide About Taking in and Releasing Patients by Itself], Radio Free Asia (May 28, 2010), <http://www.rfa.org/mandarin/yataibaodao/jingshenbingyuan-05282010103536.html>.

233. 震撼！十堰将女访民金汉艳、金汉琴姐妹被关精神病院，刘士辉冒险拍摄 [Shock! Shiyan the Female Petitioners Jinhan Yan, Jin Hanqin Sisters Locked Mental Hospital, Liu Shihui Adventure Film], BOXUN (Apr. 13, 2010), <http://www.peacehall.com/news/gb/china/2010/04/201004131518.shtml> [hereinafter Shock!]; 十堰精神病院新恶曝光：金汉琴被打毒针12天/刘士辉 [New Evil Shiyan Mental Exposure: Jin Hanqin Beaten Lethal 12 days Liu Shihui], BOXUN (Apr. 27, 2010), <http://www.peacehall.com/news/gb/china/2010/04/201004270139.shtml>; see Mental Hospitals Detain Petitioners], RADIO FREE ASIA (Apr. 29, 2010), <http://www.rfa.org/english/news/china/china-mental-hospital-04292010114338.html> (citing multiple incidents of petitioners being released from incarceration after media outlets inform the public of their whereabouts).

234. See *Shock!*, *supra* note 233.

235. *Id.*

236. Tania Branigan, *Chinese Lawyer Beaten Ahead of Jasmine Revolution Protests: Liu Shihui Alleges Attack by Five Members of Special Police in Guangzhou as He Set Off to Attend Demonstration*, THE GUARDIAN (Feb. 21, 2011), <http://www.guardian.co.uk/world/2011/feb/21/china-lawyer-beaten-protest>; see also Eva Pils, *China Must Be Held to Account Over ‘Disappeared’ Lawyers*, THE GUARDIAN (Mar. 31, 2011), <http://www.guardian.co.uk/commentisfree/2011/mar/31/china-disappeared-lawyers>; 中国维权律师刘正清取保刘士辉监视居住 [China Human Rights Lawyers Liu Zhengqing Bail Liu Shihui Surveillance], DWNEWS.COM (Apr. 29, 2011), <http://china.dwnews.com/news/2011-04-29/57670100.html>.

237. See *id.* Lawyer Liu Shihui later posted a partial account online of his experience while forcibly disappeared. Liu Shihui, *I’ve Only Begun to Scratch the Surface: Liu Shihui Reveals Details of 108-Day Detention* (Aug. 22, 2011), <http://www.siweiluozi.net/2011/08/ive-only-begun-to-scratch-surface-liu.html>.

B. Yuanmin contesting conceptions of rationality and sanity

An analysis of the Sun Dongdong Incident also requires discussion of *yuanmin* contesting conceptions of their rationality and sanity. Among the petitioners who gathered at the Peking University gates and protested publicly against Sun Dongdong's comments in April 2009, many must have been aware of the threat of a police "diagnosis" as mentally ill. They must have known of such a diagnosis's potentially devastating consequences to one's actual mental health resulting from being coercively "treated" with psychiatric medication, electric shocks, prolonged fixation on a hospital bed, etc. Earlier in this Article, the *yuanmin*'s actions in the Sun Dongdong Incident were explained as part of the logic of petitioning—trying to make trouble for one's local government officials. These actions can also be understood as motivated by fear of the consequences of being labeled mentally ill, and being subjected to coercive "treatment" of one's illness.

Indeed, activist groups such as the Chinese League of *Yuanmin*²³⁸ published online criticisms comparing Professor Sun's public comments to another academic's remarks which, ten years earlier, had preceded a very harsh government crackdown on practitioners of Falun Gong.²³⁹ Individual *yuanmin* said they feared that Professor Sun's remarks—as well as the 2010 convention on mental health issues that triggered the news report quoted above and other public comments—were aimed at preparing the public for even more drastic or large-scale measures against "disorderly" citizen complainants in the future.²⁴⁰ Below is an excerpt from petitioner Dong Jiqin's letter in which he likens Sun Dongdong's views to fascism and then turned the diagnosis of "petitioner paranoia" on its author.²⁴¹

I hope someone will lock you up in your own local health center; in one of those mental hospitals and [under the care of] a psychiatrist you recognize. According to your own theory, if you then persist in the view that you are not mentally ill ('That kind of person insists on their viewpoint, and that viewpoint is the symptom of their paranoia') it means that you will have to be diagnosed with paranoia. The psychiatric hospital will have to take you in and forcibly treat you, to prevent you from inflicting further harm on this society.²⁴²

238. THE CONTEMPORARY CHINESE DICTIONARY: CHINESE-ENGLISH EDITION, *supra* note 18. The official English translation of *Zhongguo yuanmin da tongmeng* is "League of Chinese Victims." See *League of Chinese Victims Press Conference*, PR NEWSWIRE (Oct. 29, 2010), <http://www.prnewswire.com/news-releases/league-of-chinese-victims-press-conference-106341503.html> (showing an official press release from the League of Chinese Victims).

239. 中國冤民大同盟向全國訪民緊急呼籲 [*Chinese People Great Injustice to the National League Called for an Urgent Visit to China*], EPOCHTIMES (Apr. 4, 2009), <http://www.epochtimes.com/b5/9/4/4/n2484819p.htm>.

240. 北京数十位访民至北大抗议孙东东荒谬言论 [*Several Hundred Petitioners Oppose Sun Dongdong's Untruthful Comments in Beijing*], BOXUN, (Apr. 1, 2010), <http://www.peacehall.com/news/gb/china/2009/04/200904011313.shtml>. The text includes Dong Jiqin's open letter. Its authorship has been confirmed by the author.

241. *Id.*

242. *Id.*

The contention between *yuanmin* and the government regarding what behavior is legal and rational and what is insane and illegal came to a head in the Sun Dongdong Incident because it involved an explicit, although not free, debate over the State's labeling of *yuanmin* as mentally ill.

In Zhou Li's indictment, the People's Procuracy stated that she "negotiated a strategy with Cao Shunli and Li Xuehui (dealt with in separate proceedings) because she was dissatisfied with certain comments by a certain Peking University Professor surnamed Sun."²⁴³ The indictment said she "planned to go to Peking University and, under the pretext of asking for a diagnosis, create[d] an incident."²⁴⁴ The indictment further stated that Zhou "had spread Sun's comments among the petitioner masses to instigate them," and "brought petitioners to Peking University in order to argue with Sun."²⁴⁵ A large number of petitioners, the indictment said, "converged upon Peking University and, using methods such as shouting slogans, distributing leaflets and rushing to the University compound, created a disruption, seriously disturbing public order."²⁴⁶

At trial, the court prevented Zhou Li's criminal defense lawyer, Mo Shaoping, from presenting witnesses to demonstrate that Zhou, in fact, tried to calm certain groups of petitioners as opposed to agitate and organize petitioners.²⁴⁷ The court restricted Mo Shaoping to merely questioning the defendant. The following excerpt shows how he drew attention to the issue at the heart of the Sun Dongdong Incident.²⁴⁸

Lawyer Mo Shaoping: When on 31 March you and Cao Shunli and others met and said you wanted a medical appointment with Professor Sun Dongdong, to get a diagnosis from him, did you suggest going to Beida to see Professor Sun then?

Zhou Li: No, you see, I'm not that educated; I just wanted to go there myself and ask him for a diagnosis.

...

Lawyer Mo Shaoping: Do you think you are [mentally] ill?

Zhou Li: When I went and asked them for a diagnosis, whether I was ill or not ill was both fine by me. If they discovered that I was ill, then the police had done wrong in detaining me. But if they found that I had no illness, it would have shown that Sun Dongdong had been wrong in his comments. So it didn't matter to me actually whether or

243. *Id.*

244. *Id.*

245. *Id.*

246. See *Protester of '99% of Petitioners Are Mentally Ill' Statement Gets One Year in Prison*, HUM. RTS. IN CHINA (May 4, 2010), <http://www.hrichina.org/content/396>.

247. *Id.*

248. *Id.*

not I was [diagnosed with being] ill.²⁴⁹

After dismissing the defense's arguments, the court decided that Zhou had perpetrated a criminal public order offense and sentenced her to one year of imprisonment.²⁵⁰ She was released in August 2010, but in March 2011 she vanished in the context of a wider crackdown on rights activists.²⁵¹ She remains missing as of this writing.²⁵²

In author conversations and published reports, petitioners have presented the same argument as Zhou Li: if I am mentally ill, then I must not be held accountable for "crimes" or "public order" offenses, and if I am not mentally ill, then you must not "treat" me in psychiatric institutions. Another protestor in the Sun Dongdong Incident commented:

If we are all [mentally ill] then we'd all have to go to psychiatric hospitals, wouldn't we? . . . And as for Yang Jia [the abovementioned young petitioner who killed six police officers in Shanghai in 2008], if he *was* mentally ill, he obviously should not have been sentenced to death.²⁵³

The cases of Zhou Li and Yang Jia both show the State employing its pervasive powers to maintain order—powers extending even to the ability to define sanity and rationality for its own purposes. Whether the Chinese government labels *yuanmin* mentally ill so that it may detain them or insists on affirming their sanity so that it may convict them, it adopts an approach of unemotional, impersonal, and potentially ruthless utilitarian calculation according to which any perceived threat to social stability can justify coercive measures. With such an approach, the "treatment" given to the target of a "stability preservation" measure is ultimately indifferent to issues of legal or moral responsibility or reasonableness. Any dissonant and destabilizing voice, however reasonable, may come to be labeled as emotional, unreasonable, irrational, or even insane. However, as it becomes intransigent to genuine arguments about reasonableness and legality, and about rationality and sanity, the State ultimately undermines its credibility in assessing these issues.

Yang Jia was tried, convicted, and executed under circumstances

249. 周莉案两次庭审回顾：辩方有理有据 [Zhou Two Court Review the Case: the Defense Was Reasonable], BOXUN (Apr. 24, 2010), <http://www.peacehall.com/news/gb/china/2010/04/201004241238.shtml>.

250. See 维权人士周莉下落不明 北京成“被失踪”多发地 [Zhou Missing Beijing Activists as 'Being Disappeared' Prone to], BOXUN (Apr. 8, 2011), <http://boxun.com/news/gb/china/2011/04/201104080057.shtml>.

251. *Id.*

252. See *Escalating Crackdown Following Call for 'Jasmine Revolution' in China: International Community Must Take Strong and Clear Stance Condemning Rights Violations by the Chinese Government*, CHINESE HUM. RTS. DEFENDERS (Mar. 31, 2011, 7:18 AM), <http://chrnet.com/2011/03/31/escalating-crackdown-following-call-for-“jasmine-revolution”-in-china/>.

253. 孙东东精神病说发酵 访民当面对质并予以起诉 [Sun Dongdong Mental Fermentation that Confront People Visit and be Prosecuted], RADIO FREE ASIA (Apr. 1, 2009), <http://www.rfa.org/mandarin/yataibaodao/fangmin-04012009084816.html>.

suggesting that he may have been mentally ill at the time of the killings.²⁵⁴ Ironically, his mother—a petitioner in possession of her mental faculties—was detained in a psychiatric hospital, where she successfully resisted forced medication while the investigation of Yang Jia was ongoing.²⁵⁵ The result of this State conduct, however, ultimately sidelined Yan Jia’s possible mental illness in the public discourse regarding the case.²⁵⁶ Many petitioners feted Yang Jia as a model and hero, and his name became a byword for citizens standing up to abusive State officials.²⁵⁷ Their admiration for Yang Jia can be seen not only as another reflection of the destructive potential of injustice understood as *yuan*—as a grievance that produces thoughts of enmity and revenge—but also as a consequence of the State’s intransigence to rational argument in this case. In the documentary film *Emergency Shelter*, a petitioner comments, admiringly, that what Yang Jia did “was right [and] if at the time you hadn’t oppressed an ordinary person in this way, of course he wouldn’t have harmed you . . . ‘No injustice without wrongdoer, no debt without debtor.’”²⁵⁸

VI. CONCLUSION

This development should be seen in context with the global phenomenon of “backfire”—“a public reaction of outrage to an event that is publicized and perceived as unjust.”²⁵⁹ The possibility of rational dialogue appears to have been eliminated from certain kinds of confrontation between *yuanmin* and the State, described in the above contexts of the Sun Dongdong Incident, the case of Zhou Li, and the case of Yang Jia. In these kinds of instances, the collective identity of *yuanmin* has become defined by an attitude of “enmity,” *yuanchou* (冤仇), toward the government. One of the questions left open by the preceding discussion is how the “Tribe of the Wronged” is perceived by the wider Chinese public. Some sociologists, who have studied what makes

254. Eva Pils, *supra* note 129, at 60.

255. *Id.*

256. *Id.*

257. *Id.*

258. See EMERGENCY SHELTER, *supra* note 195. Similarly, the June 2010 shooting of four judges in a court building by an aggrieved citizen believing himself a victim of injustice led to spontaneous celebrations of the perpetrator, who had killed himself, by *yuanmin* converging on the court building. They brought wreaths and chanted slogans such as “Zhu Jun, the People’s Great Hero!” 永州法院袭击引发请愿潮 借悼念凶手抗议官黑 [Yongzhou Petition the Court Led Attack by the Memory of the Killer Wave of Protest Against the Official Black], RADIO FREE ASIA (June 3, 2010), <http://www.rfa.org/mandarin/yataibaodao/yz-06032010163340.html>. For a collection of alleged internet postings commenting on the rampage shooting (many of them praising the action), see 永州法官遭枪杀，紧急抢救的网评花絮 [Yongzhou Judge Shot, Emergency Rush in the Harvest of the Network Assessment Snapshots], BOXUN (June 8, 2010), <http://www.peacehall.com/forum/201006/boxun2010/134487.shtml>.

259. David Hess & Brian Martin, *Repression, Backfire, and the Theory of Transformative Events*, 11 MOBILIZATION 249, 249 (June 2006).

“trigger events” of government repression against social movements result in backfire, observe that backfire is more likely when the movement in question has remained nonviolent. For example, the brutal government repression of the peaceful 1930 Indian Salt March produced significant outrage around the world.²⁶⁰

This general observation regarding backfire is supported by the popular appeal of the *yuanmin* appearing as victims, as illustrated in the case of petitioner Tang Fuzhen, whose suicide triggered widespread condemnations of the government.²⁶¹ But the government in China often successfully represses not only protest but also information about its repression. An understanding of the phenomenon of backfire events is therefore greatly complicated by the fact of State censorship. Censorship continues to affect not only the most important repression of a political movement to occur in recent decades—June Fourth—but also the repression of individual, usually case-related, protestations and appeals such as those made by *yuanmin* in the Sun Dongdong Incident. In that instance, the State dispersed the small crowd that had assembled, prohibited the domestic media from reporting on the incident, and later took legal and non-legal measures against some leading petitioners out of public sight.

However, the governmental attempts to repress and control information on protests are likely to contribute to what Yu Jianrong calls “venting” incidents in Chinese society. During such incidents, Chinese crowds respond with outrage to the use of governmental force against members of the ordinary population, such as “stability preservation” where forcible violence is used against the socially marginalized.²⁶² Yu observes that a characteristic of such incidents is “that there is no source of authoritative information.”²⁶³ Thus, venting incidents can be understood as instances of repression backfiring on the government—a government that comprehensively and systematically seeks to suppress even minor incidents of *yuan* protest and to control related information, making it especially vulnerable to rumors and suspicion of wrongdoing. Continued intransigence toward protest against individuated injustice and toward pleas for redress and rights protection, typically at the bottom of a rights-defense or petitioning case, can only aggravate the problem of “venting” incidents and increase the risk of suppression backfiring.

The right way to take *yuan* seriously in China is not by returning to some imaginary, authoritarian version of the Chinese political tradition. It is not by improving the hopelessly dysfunctional petitioning system, by denying the need to improve the court system, or by intensifying repression. Taking both

260. *Id.* at 252.

261. Roger Cohen, *A Woman Burns*, N.Y. TIMES, Jan. 25, 2011, <http://www.nytimes.com/2010/01/26/opinion/26iht-edcohen.html?pagewanted=all>.

262. *See, e.g.*, Yu Jianrong, *Emerging Trends in Violent Riots*, 4 CHINA SECURITY 75, 75, 81 (Summer 2008).

263. *Id.* at 76.

yuan and rights seriously in China requires, first, a rejection of self-serving misrepresentations of the Chinese moral and political tradition. The current party-state-driven “harmony” discourse should be understood as a classic example of “invented tradition.”²⁶⁴ This Article has shown that despite the State’s efforts—through propaganda—to make its citizens believe otherwise, China has a strong indigenous tradition of bringing grievances and confronting the State. Today, the State’s wrongs and rights centered discourses are inextricably related in citizen complaint practices. Despite the often supplicant attitude of the petitioner seeking intervention by a good official willing to right her wrongs—seemingly fulfilling a cliché about “Eastern” models of authoritarian governance²⁶⁵—practices of *yuan* protest may also openly defy the power of the ruler.

Second, it is important to recognize that conceptions of rationality and sanity the State deploys against petitioners can be disingenuous and motivated by a desire to maintain stability, as defined on the State’s terms. In the denunciatory language of the party-state, *yuan* demands appear to negate the official-driven “harmony” discourse. They are irrational, emotional, confused, and unacceptable. However, in the irrationality and cruelty of its own responses to *yuan* protests, the State shows how little its own perspective is able to accommodate the legitimate complaints of its citizens. The protest triggered by the Sun Dongdong Incident, as well as the repression of some *yuanmin* involved in that instance, has offered an example of the increasing divide between conceptions of rationality, legality, and sanity amongst the State and its people. Popular criticism also affects the Chinese party-state’s unsustainably narrow and authoritarian approach to the idea of law. This approach remains deeply illiberal; law is understood as an instrument of control by the ruling classes, susceptible to manipulative definitions provided by the power-holders, which allows for the elimination of political ideas, attitudes, and actions that are not suited to the State’s goal of maintaining its power. Resistance to the State’s “harmony” propaganda, protest against *yuan*, and assertions of rights as discussed in this Article indicate that Chinese citizens are increasingly willing to expose and resist the sometimes cruel illogic of the State that tries to control them.

264. Cf. Frank K. Upham, *Weak Legal Consciousness as an Invented Tradition*, in *MIRROR OF MODERNITY: INVENTED TRADITIONS OF MODERN JAPAN* 48 (Stephen Vlastos ed., 1996).

265. Zhang Jun, Vice President of the Supreme People’s Court said in a speech: “We are a ‘closely knit society’ with a tradition of ‘valuing harmony’ and have a rich ‘Eastern experience’ of mediation famed and emulated by countries all over the world, including developed western countries . . . We are a centralist state in which all localities must accept leadership from Central, and in which all departments must accept the Party’s unified leadership . . . We have a tradition of addressing grievances (冤), correcting mistakes, and acting on the basis of facts.” See Zhang Jun (张军), *中国特色社会主义司法制度的优越性* [*Socialism with Chinese Characteristics and the Superiority of the Judicial System*], NPC (May 20, 2009), http://www.npc.gov.cn/npc/xinwen/rldt/fzjs/2009-05/20/content_1503052.htm.