

Subjectivity in Empirical Legal Research

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Review of: Yedan Li, In the Name of Mediation: An Empirical Inquiry into the Chinese Court Mediation Practices (diss. Amsterdam UvA), 2015, 288 p.

In the Name of Mediation offers a highly interesting overview of how mediation in China is provided by courts, and its impact on the courts' work in daily practice. The process described fundamentally reflects a 'top-down' policy of promoting mediation on the part of Chinese courts. The contemporary Chinese judiciary system serves both a political and a professional purpose. Focusing specifically on mediation, Li shows how courts and judges balance these two factors. The author's central question is as follows: What is the Chinese courts' role in mediation, and how can that role be evaluated by using a comprehensive framework of courts' adjudication and political functions (p. 8)? The author shows that Chinese court mediation, i.e., judges acting as mediators, can be used as an umbrella process for various activities which substantively differ from the apparent purposes of mediation. The mediation processes examined do not in practice reflect the values of mediation, and are not conducted properly by the courts (p. 225). Li concludes that there are multiple reasons as to why Chinese courts and judges opt for mediation over adjudication. Courts are mainly concerned with achieving the mediation rate target, while trial judges are concerned about meeting government work performance standards in the highly bureaucratic Chinese judicial system. The author's dissertation contains six chapters, several appendices (mainly concerning her empirical research) and a summary in both Dutch and English. As is standard procedure for such dissertations, the first chapter provides an introduction to the topic, explains its academic relevance, and poses the research question. Chapter two presents the analytical and theoretical framework of the courts' role in mediation, with an emphasis on China, and includes a detailed overview of the methodology used. The next chapters are basically empirical in nature; chapter three through five cover mediation rate, trial judge mediation, and case-filing mediation respectively. Li presents her final conclusions in chapter six. This book review has its origin in a presentation given on October 7, 2016 at the *VSR Studiemiddag* which was devoted to Methodology. Therefore, the present review will focus on this aspect of the author's research.

Yedan Li explains on page 45 that she chose to use a qualitative case study method. Although she does not attempt to justify her reasons for this choice (as opposed to other methods, like surveys), her reference to the work of Robert Yin helps explain her decision. Yin states in his book *Case Study Research: Design and Methods* that a case study is particularly relevant when one wants to embark upon an empirical inquiry that investigates a contemporary phenomenon within its real-life context, considering the fact that the boundaries between the phenome-

non and its context are often blurred.¹ For this reason, the daily practice of mediation in two Chinese courts seems perfectly suited to such a case study-approach.

Li provides a reasonable case for proceeding as she did, clearly explaining the methodology used in different parts of her research. For example, during her pilot fieldwork, she drafted a literature review, attended mediation sessions as an observer over the course of three months, held numerous informal conversations with actors in the mediation process, and compiled several cases for later analysis. All of these activities aimed at devising a typology of the different roles of the courts with regard to mediation. She then explains why she chose to focus on labor disputes (see p. 48-49) and on page 50 she provides a description of the two courts where the fieldwork was conducted: the Western-style court-annexed mediation Court P, and the traditional Chinese trial judge mediation Court M. Personally I would have preferred that a separate section be devoted to a more detailed description of the study venues chosen (i.e., instead of reading about this important topic in a small part of the methodology section), but this is a mere trivial complaint.

Based on the pilot fieldwork and an in-depth literature review, Yedan Li developed both observation and interview guidelines for the main fieldwork. These guidelines can be found in one of the book's appendices. She used three kinds of data collection methods: 1) participant observation, 2) interviews, and 3) internal document analysis. And in order to meet the validity requirements of this kind of empirical research, she triangulates the data derived from these methods. She is quite specific on the amount of the collected data: during nine months, she was a participant-observer of 99 mediations, conducted 170 semi-structured interviews, etc. She provides a detailed account of each and every case in one of the appendices, while scrupulously preserving the anonymity of the individuals that participated in her study (and of those involved in the cases she analyzed).

The kind of research Yedan Li conducted needs to be systematic, explicit, transparent and verifiable in order to meet scholarly standards, and she seems to have met these rigorous criteria. Perhaps she could have been clearer on when she interviewed who, and where the interviews took place. After all, it makes a difference whether an interview is held in a formal setting with no other persons around than the researcher and the interviewee, or whether you have an informal talk with several people while standing in line by a coffee machine. Along similar lines, she does not offer specifics as to how she transformed her raw data (i.e., handwritten notes, recorded or unrecorded interviews, drawings of places and situations, etc.) into field notes, but considering her account on how she coded data with the help of the ATLAS.ti software, I am willing to give her the benefit of doubt as to her having taken necessary measures to protect the integrity of the data she collected. Indeed, her use of footnotes for the sourcing of empirical data throughout the book is nothing less than exemplary.

1 Yin 2003, p. 14-15.

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If there is a substantive criticism to be made of this dissertation, it has to do with the 'quality' of the research or, more specifically, with its internal validity. In her acknowledgements, Yedan Li refers to Gerd Baumann, among others, who provided her with training in *ethnographic* methodology. In addition, as I've previously indicated, she herself chose to conduct a *qualitative* case study research. She did fieldwork, and she used the qualitative research methods of observation, participant observation, and interviewing. It thus came as something of a surprise to me when she declared on page 46 that the conclusions she reached are based on the overall evidence collected and the researcher's *objective* analysis of it. Frankly, the very notion of 'objective analysis' strikes me as an oxymoron. After all, empirical and qualitative research is inherently subjective! What I mean here is that the researcher herself is the 'research instrument' in these kinds of studies, given that the researcher observes, participates, conducts the interviews, and then analyzes the collected data. This cannot be done in a manner that is one hundred percent objective. There will always be some sort of bias. And there will also always be an interaction between the researcher and the collected data that will affect the way these data are construed. It is, for example, a well-known fact that people have the tendency to change their behavior when they know they are being studied.

Given such inescapable subjectivity, I would have very much appreciated some reflections on the role and the background of the researcher. Who is she, what has she done to become a researcher and what were her motivations to conduct the present study? Thus, it certainly matters that the researcher in this case is a young Chinese woman who speaks Mandarin Chinese fluently, and that she has a theoretical background in Law. The data collected at the same courts during the same nine months would have been quite different if, for example, a 50 year-old male not fluent in Chinese and with nothing more than an anthropological background had conducted the fieldwork. The personal characteristics of a researcher, training and experience, and theoretical orientation undoubtedly color the data obtained in a research study. I think it essential that all socio-legal research not only acknowledge this fact, but reveal possible sources of bias. Such information is indispensable for allowing the reader to interpret the data, the arguments, and the conclusions drawn.

The same point can be made regarding the specific activities underlying the collection of data. Specifically, we are told nothing of the researcher's relationships with informants, experts or even key informants, and how these might have evolved over time. There is a big difference, for example, if you conduct an interview with someone only once, or whether you conduct a series of interviews. This point especially applies when the research is about a sensitive subject like mediation in China. On page 52, Yedan Li mentions a gradual process of building trust with three judges, which made them feel comfortable, but then says nothing about how this process of trust-building influenced either her data collection or her interpretation of said data.

Of course, one could look at mediation in China from a distance and conclude in a statistical way that a strong downturn before 2004 was followed by a sharp upturn in the years 2004-2011. Li's study, however (and this is precisely why it merits such close attention) tries to understand the resurgence of mediation in

China at both the micro and macro levels. Its conclusion is that both the court's and the judges' interests play a vital role in the mediation process in China. In a way, the mediation-boom in China seems to be to a large extent politically driven. This means that everybody involved in providing data for the author's research likely had some sort of personal interest or bias regarding the mediation process. Maybe her informants kept systematically silent about something. It would have been extremely interesting if Li had offered us a glimpse of her informants' interests by telling us a bit more about their personal backgrounds, along with other information that might suggest a bias of one kind or another. Such information would have provided the reader an idea of how the subjective data this dissertation is built on have been constructed.

Because of the author's failure to address sources of bias, this dissertation does not provide a deeper understanding of the data that she has presented. This is regrettable, given that such identification of bias constitutes a crucial element of ethnographic qualitative research. And it is specifically a pity because of the richness of the empirical data presented in this study. To conclude: Yedan Li has conducted fine research and has written a very interesting dissertation. I can recommend it to anyone interested in mediation, in Chinese courts, and in socio-legal research because of her dual micro/macro-level focus, and because of the wealth of information it contains regarding mediation as it is conducted in China.

References

- Yin, R.K., *Case Study Research: Design and Methods*, Thousand Oaks/London/New Delhi: SAGE Publications 2003.