Shenzhen government officials, and local farmers were able to co-ordinate in small-property transactions in spite of their legal risks. More interestingly, a sophisticated set of formal documents and legal mechanisms were established to facilitate those illegal transactions. This is what Qiao terms "legal magic," by which government-recognized authorities and legal professionals confer "an aura of legality on illegal rural real estate transactions" (p. 85).

The judicial response to small property discussed in Chapter 6 is another example of how the legal system interacts and evolves with informal social norms and institutions. Qiao contrasts what he calls "judicial minimalism" in Shenzhen and "judicial entrepreneurialism" in Beijing: whereas the former approach avoids legal consequences by leaving property rights undecided, the latter invents a rule to minimize the negative impact on the buyers and deter the sellers from suing them. What the two approaches have in common, however, is an effort to maintain the status quo and minimize the negative consequences of illegality. A key implication of this finding is that, while social norms often are more responsive to market development than formal law, the Chinese legal system displays a remarkable degree of tolerance towards illegality when that illegality contributes to state-sponsored economic growth, which is the most important source of legitimacy for the Chinese government in the reform era.

These fascinating and theoretically meaningful chapters make *Chinese Small Property* an appealing text for students and researchers interested in property rights, law and development, and legal pluralism, among other topics. As a monograph, however, some chapters could use a little more structural integration. Traces of journal articles can be seen in various places of the text and the organization of chapters does not consistently point to a coherent logic. To be sure, this is not a unique problem for this book, but a general trend in today's social science research, which increasingly values journal articles over monographs and, as a result, changes the traditional styles of book writing. Furthermore, the law-and-economics jargons make some discussions hard to comprehend for readers unfamiliar with this approach. It is also difficult to assess the efficacy of the theory of focal point without discussing viable alternative explanations for the survival of small property in China. Nevertheless, the book remains an excellent piece of scholarship that deserves the wide attention of China specialists and socio-legal scholars alike.

Sida LIU
University of Toronto

Court Mediation

Shahla Ali, *Court Mediation Reform: Efficiency, Confidence, and Perceptions of Justice* (Cheltenham, UK: Edward Elgar Publishing, 2018) pp 298. Hardcover: $135.00.
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Where there are people, there is conflict; and where there is conflict, there are conflict-resolution institutions. In many societies, including the ten countries that form the heart of

this book, the government-run institutions charged with resolving conflict are called courts. Yet, in all ten countries, experts and the populace more generally believe that courts are to some degree failing. In response, they have created alternative dispute resolution (ADR) institutions to handle at least some of the conflict bubbling throughout society. In addition, country by country, they have retooled their courts and introduced court-based mediation in an effort to provide an attractive venue to disputants.

Professor Shahla Ali's book, *Court Mediation Reform: Efficiency, Confidence, and Perceptions of Justice*, takes a careful look at whether mediation provides a solution to the various problems that allegedly are endemic to courts around the world. Is mediation less expensive than litigation, for litigants themselves or for the state? Does mediation reduce the caseloads that so often overburden the civil-litigation system? To what extent does mediation serve to mend, or even enhance, relationships that might be permanently frayed by litigation? Does the relative informality of mediation improve the experience of those who engage in conflict by involving them more thoroughly in the process of dispute resolution? Might mediation offer social benefits that elude litigation, like creating a shared sense of harmony? By looking systematically at court mediation in a variety of national settings, Ali provides insight into how mediation currently functions, as well as its successes, failures, and continuing challenges.

Ali, a law professor at Hong Kong University, has carefully constructed this comparative study. Because of differences between civil-law and common-law jurisdictions, she explores mediation in both types of legal systems. She also accounts for gaps between more and less economically advanced countries, and for differences between mandatory and voluntary mediation systems. The result is a book with ten case-studies, five of which focus on voluntary mediation (UK, Hong Kong, France, the Netherlands, Malaysia) and five on mandatory mediation (the US, Australia, Italy, China, and India). The studies are centred on the five years following the introduction of mediation in each jurisdiction. A survey of 83 practitioners provides a complementary, qualitative assessment of mediation.

The tight, rigorous construction of Ali's comparative project belies the far-reaching, multifaceted nature of the questions it addresses. As her review of the theoretical framework of the project makes clear, her aim is to put some empirical meat on the bones of the debate over the strengths and weaknesses of ADR. What happens, she asks, when conflict resolution bypasses formal, state-sponsored, judicial decision-making, and is instead managed through ADR? Does ADR serve as a venue for the public airing of values? Does it establish precedent for future cases? Does it damage the authority and credibility of courts? To what extent does it diffuse the legitimate claims of parties? How well does it serve justice? As Ali makes clear, defenders of ADR generally (and mediation more particularly) argue that it enhances participation in the legal process, empowers participants, strengthens values like dignity and empathy, underscores relationships, and promotes justice. Does it? Or do the critics of ADR have a long list of legitimate gripes? Against this ideologically charged debate, Ali insists that we put aside the rhetoric and look carefully at how mediation is working on the ground.

If you are hoping to find an easy answer to the question of whether mediation is "better" than litigation, you will not find it in Ali's careful, balanced analysis. When it comes to the question of whether mediation is less expensive than litigation, for example, Ali concludes that it might be, but "given the mixed findings in terms of overall cost savings, particularly for mandated cases that require further litigation, questions still remain as to whether court-

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referred mediation does in fact reduce litigation costs." In considering the relative speed of mediation, she similarly concludes that the results are mixed. Adding to the difficulty of reaching firm conclusions about cost-effectiveness and speed is the impossibility of knowing what would happen if resources directed to promoting mediation were instead directed to the civil-litigation system.

In addition to looking at issues of cost savings and speed, Ali examines a number of what she calls "extrinsic" factors that might lend support to the efficacy of judicial mediation. They include the possibility that mediation strengthens rather than corrodes relationships; the claim that mediation improves social harmony and stability; and the potential for mediation to engage citizens in the process of dispute settlement, thereby enhancing their satisfaction with the outcome. All of these factors are notoriously difficult to study, and no single source of information provides reliable measures. Ali confronts that challenge by looking to a number of data sources, including the World Bank Group's Worldwide Governance Indicators, the World Economic Forum's Global Competitiveness Report, and the World Justice Projects' Rule of Law Index.

Overall, Ali's results suggest that voluntary programmes have some advantages over mandatory mediation—they are slightly more efficient, people have somewhat more confidence in them, and participants' perceptions of justice are higher. From the perspective of impartiality and effectiveness, however, mandatory and voluntary programmes are indistinguishable. Practitioners, it seems, perceive both mandatory and voluntary mediation programmes as similarly fair, though they have slightly more confidence in mandatory programmes and see voluntary programmes as more efficient. These findings provide texture and nuance to Ali's overall results.

In addition to the intriguing differences Ali identifies between mandatory and voluntary mediation, she makes a number of additional observations based on data from the country studies. In the five jurisdictions that rely on voluntary mediation, Ali finds that three of them appear to settle disputes more efficiently than courts; two have experienced greater accessibility and affordability; four have found ADR more impartial and effective than courts; and all have enjoyed less delay in civil justice, a higher ranking in the quality of civil justice, more effective enforcement of settlements, and less discrimination. In the five jurisdictions relying on mandatory mediation, two have experienced more efficient dispute settlement than courts; four have less delay, higher-quality civil justice, and more impartial and effective ADR; two have experienced lower levels of discrimination; all have enjoyed more effective enforcement of settlements; and one has enjoyed a higher degree of accessibility and affordability.

Do these findings put to rest at least some of the criticisms levelled at mediation? Perhaps. But Ali leaves readers to draw their own conclusions, and instead highlights the limitations of her work, such as small sample size and noisy causal relationships. Moreover, she notes that the relative success of mediation depends to some extent on how well the overall system of civil-litigation functions. In jurisdictions where civil litigation seems to be failing—India is one example—alternatives may be particularly welcome. In places with a reasonably well-functioning and responsive court system, on the other hand, mediation has less opportunity to succeed.

Although this book does not offer definitive answers to all of the questions raised by court mediation, it does something even more important—it presses us to be more rigorous in how

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we think about mediation, the claims we make about its relative strengths and drawbacks, and the framework we use to assess it. It does all of those things by putting comparative work at its core, and including a set of case-studies that literally spans the globe. Ali's tendency to qualify her results and underplay her conclusions is part of what makes the book so compelling. It is not a cudgel, insisting on a particular point of view, and adding to the ideological divide over mediation. It is a scalpel, carefully dissecting overblown claims and adding desperately needed comparative data to an area that has been long on opinion but short on facts.

In sum, this is a rigorous, thoughtful, and innovative analysis of a set of questions important to every country. It is also timely. At this point, there are no clear global patterns as to whether most countries are devoting resources to mandatory mediation, voluntary mediation, or neither. Legal elites pondering their options ought to read this book; and so should anyone interested in civil justice, and how best it can be achieved.

Eric FELDMAN
University of Pennsylvania

Oxymoronic Applications of Neo-Institutional Economic Models

Frank K. Upham, *The Great Property Fallacy: Theory, Reality, and Growth in Developing Countries* (New York/Cambridge University Press, 2017) pp 160. Paperback: $23.
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Frank Upham's book provides a critical examination of the well-accepted, neo-institutional economic axiom shared by many international economic scholars and experts—that is, the establishment and formalization of legal property rights is the *conditio sine qua non* for an effective economic growth strategy. This neo-institutional economic theory was advanced by Ronald Coast, Harold Demsetz, Douglas North, and other prominent economists, and embraced by international economists and neoliberal experts of the World Bank (WB), the United States Agency for International Development (USAID), and other international financial institutions (IFIs). Based on this theorem, these institutions initiated not only the first "Law and Development" movement in the 1960s, but also the second movement in the 1980s, under the expanded programme of neoliberal policies. The book then poses a serious question for legal experts, scholars, and policy-makers as to whether the Western legal system and economic model should be applied indiscriminately across different countries with multitudes of varying legal traditions and practices, including those nation-states that were economically not "well-developed."

The book consists of seven chapters, five of which are devoted to the analysis of case-studies in different countries, including England and the US (Chapter 3), Japan (Chapter 4), China (Chapter 5), and Cambodia (Chapter 6). The book presupposes that the application of property law and property rights in these countries has led to the destruction of the existing socio-legal realities, namely the eradication of "the Commons" through the enclosure movement in England; the destruction of private property of absentee land