

# CHINESE PROBLEM-SOLVING COURTS AND JUVENILE JUSTICE REFORM

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**Abstract:** As a judicial system, the Chinese problem-solving courts are more deeply rooted in traditional judicial approaches than therapeutic jurisprudence that fueled the movement in the West. Nevertheless, they share many similarities with problem-solving courts developed elsewhere in the world. To provide a better understanding of the courts, this article first introduces the cultural and legal tradition that served as background for the judicial innovations. It then reviews the social and economic conditions that provided impetus for the judicial reform. Next, the article examines one of the most common forms of the problem-solving court – the juvenile court – and identifies its key functions and procedures. Lastly, it discusses the significance of the legal reform, the challenges it confronts, and the improvement it can achieve.

**Keywords:** Problem-solving courts; juvenile courts; mediation; judicial reform; China.

Like many other countries in the world, China has been facing rising crime rates, increasing prison population, heavy court caseloads, and high rates of recidivism in recent years (Zhao, Zhang, & Liu, 2015). To deal with these problems and address their root causes, the Chinese government has made a series of efforts to reform its judicial system. These reforms were shaped by not

only domestic concerns but also international judicial movements. One of the most far-reaching reforms is the establishment of an array of specialized courts. The effort started with juvenile courts in 1984. Since then, the government has been experimenting with innovative ways to resolve conflict and deliver justice in domestic violence and family cases. This wave of changes led to the creation of additional judicial institutions including the family courts.

Although the Chinese government does not formally identify specialized courts as “problem-solving courts,” the promises of the Chinese specialized courts are consistent with the principles of international problem-solving courts. Viewed in the aggregate, they share the same primary purposes: to deliver justice to the cases under adjudication and seek remedy for the underlying problems that are responsible for the illegal behavior. One of the key functions of these courts is to shift the focus of attention from considering material facts and legal issues to preventing recidivism and promoting offender rehabilitation (Li & Liu, 2019; Porter, Rempel, & Mansky, 2010).

Despite the similarities in the function and operation of the courts, it should be noted that China has fairly distinct political, social, economic and historical structures, compared to their Western counterparts (Potter, 2004). These special cultural circumstances have substantially affected the pathway of development and the institutional characteristics of Chinese problem-solving courts. The Chinese legal system is a top-down system. Any legal reform must first and foremost serve the national interest. Bound by this structural constraint, individual judges have limited discretion in directing the priorities and practices of the court. Further, as social and economic development speeded up in recent years, crimes and legal disputes have increased at an unprecedented pace, which created heavy workload for the courts and the judges. To address the problems of overburdened caseloads, many Chinese court reformers have prioritized efficiency and consistency in their approaches to improve the systems (Woo, 2017). Due to these reasons, it is unreasonable to expect the same breadth and diversity in the Chinese judicial reform to institutionalize problem-solving courts as those observed in the West. The Chinese reform has produced a limited number of models with a narrower range of variation on the local levels. Moreover, the problem-solving courts established in recent years all have close ties to the legal and cultural tradition dating back to the age of Confucius. In this regard, they are not drastic departures from the traditional practices as some of their Western counterparts are.

This article traces the development of problem-solving legal practices in China and discusses the challenge and opportunities of the judicial reform in China. The first section introduces the cultural and legal tradition of problem-solving practices in China. The second section recounts the rise of the problem-solving courts. The third section describes the structure, functions and operations of

juvenile courts in the context of judicial reform. The final section discusses the significance of the judicial reform and the challenges it confronts.

### **Traditional Legal Culture and Problem-Solving Practices in China**

Some observers have maintained that Western problem-solving courts, a trending legal reform around the world, draw upon the principles of therapeutic jurisprudence and restorative justice. Therapeutic jurisprudence's basic insight is that the justice system can influence people's psychological and physical wellbeing, which may in turn affect their future offending (Nolan, 2003). Restorative justice focuses on the restoration of relationship damaged by criminal behavior through a problem-solving process in which victims, offenders, and community members meet to carry out repairs and achieve reconciliation (Braithwaite, 2002a).

Chinese problem-solving courts are still in an infant stage. Its emergence and growth have been fueled by the influences of Chinese traditional legal culture as well as the Western model of problem-solving practices. Traditionally, problem-solving practices have always been part of the Chinese justice system. This pragmatic orientation reflects the Confucius value that has dominated China for more than two thousand years. The thinking is consistent with some of the core principles of restorative justice. Several scholars have recognized the compatibility between the Confucian philosophy and the principles of restorative justice because they both emphasize harmonious relationships and restoration of social order over other legal objectives in the administration of justice (Braithwaite, 2002b; Liu & Palermo, 2009; Zhang, 2013).

### **Informal Social Control and Chinese Problem-Solving Practices**

Since the Han dynasty (206 B.C.-221 A.D.), Chinese legal culture has been greatly influenced by Confucianism. Confucius strived for the long-term goals of building a harmonious society and maintaining proper social order. To achieve the goals, Confucius stressed the importance of social hierarchy and advocated voluntary compliance with the moral obligations of each socially ascribed position. Social hierarchy and moral obligations were seen as key to enhancing the community's ability to exercise informal social control over individual citizens (Rojek, 1989).

Within the social hierarchy, individuals are supposed to place social obligations above their own rights and to perform the duties of respected individuals occupying a proper position in the hierarchy. As culturally expected, Chinese individuals are subordinate to a group – such as a family, a local community, or a work organization – and are obligated to avoid conflicts in social relationships. In turn, the groups operate as important agencies of informal social

control with the support of local government and criminal justice agencies (Friday, Ren, Weitekamp, Kerner, & Taylor, 2005).

### **Litigation vs. Mediation**

In Confucius's view, the creation and preservation of a harmonious relationship requires not only moral duties from each individual but also the willingness of the people to stay away from litigation. He encouraged people to show benevolence in their actions. According to Confucianism, a benevolent person will place the harmony of communities above personal interest and will exercise self-control – that is, to “do unto others as you would have them do unto you.” Based on the cardinal value, suing someone in court, which may undermine harmonious relationship, was considered to be malevolent (Zhang, 2014).

From the perspective of Confucianism, moral codes, instead of law, deliver people from evil spirits and return them to the right path. Guided by this principle, when social order and harmony break up because of conflicts or crimes, Chinese tend to prefer mediation to lawsuits as means to dispute resolution throughout the dynasties. Even after the establishment of the communist Chinese government in 1949, political authorities still promoted mediation as a preferred mode of dispute resolution. Article 111 of the *Constitution of the People's Republic of China* stipulates that the residents' committees and villagers' committees, which are mass organizations of self-management at the grass-roots level, may establish people's mediation committees to mediate civil disputes, administer public affairs, preserve public order, and operate social services in local areas (National People's Congress of the People's Republic of China, 1983). John Braithwaite (2002b), a leading scholar of restorative justice, contends that the Chinese mediation system is one of the largest institutions of restorative justice.

In line with Confucianism philosophy, through mediation committees, communities serve as the vehicle of informal control over conflicts and disputes. Although mediation committees are officially regulated by law and are trained by local justice systems, they are identified as informal social control because members of mediation committees are mostly laypersons drawn from local communities. Through mass participation, mediation becomes a common mechanism by which parties seek to resolve civil disputes or settle minor criminal cases by an extrajudicial process (Chen, 2002).

*The People's Mediation Law of the People's Republic of China*, launched in 2010, stipulates the procedures of mediation and the responsibility of people's mediation committees. Under the law, disputants can choose whether they want the mediation committee to adjudicate their disputes. If one party rejects the involvement of the committee, the mediation will not proceed (Article 17). Even if both parties agree to allow the committee to resolve the disputes, the disputants

can end the mediation at any time (Article 23). Once both parties achieve mediation agreement during the mediation proceedings, the agreement is legally binding (Article 31). However, one party can still bring a lawsuit over the fulfillment of mediation agreement or the content of the mediation agreement to the court (Article 32) (National People's Congress of the People's Republic of China, 1983).

In minor criminal cases, mediation committees have no lawful authority to impose punishments on offenders. They usually settle the cases by educating offenders and negotiating compensation for the victims. According to Confucianism, conflict resolution led by law or punishment does not address the fundamental weakness of the individuals who have no sense of shame and whose only desire is to escape the punishment. Instead of lawsuits, people should be led by virtues and propriety so that their sense of shame can be strengthened (Confucius, B.C.221/1998). This traditional belief has played an important role in shaping the practices of the mediation committees, which place high value on preventing future offending through the education of the offenders. Although Chinese mediation is deeply rooted in Confucianism, scholars have suggested that mediation shares some similarity to the restorative justice approach because they both emphasize collective values and the restoration of harmony (Braithwaite, 2002b; Liu & Palermo, 2009; Zhang, 2013).

### **The Rise of Problem-Solving Courts in China**

Although Chinese authorities have promoted mediation as a major legal instrument to handle civil conflicts and resolve non-serious criminal cases, mediation has waxed and waned over the years. Sweeping social and economic changes since the late 1970s have weakened mediation and have brought about legal reforms in China. Statistics show that from 1982 to 2002, the number of disputes handled by people's mediation committees declined greatly from around 8.2 million to 3.1 million (Zhang, 2013). Although mediation remained prevalent, more and more Chinese individuals chose to settle their disputes in court since the early 1980s. Zhang (2013) demonstrated that the ratio of mediated cases to court cases decreased gradually from approximately 800/100 in 1982 to 61/100 in 2002.

The impetus for the change may lie in several factors. First, increased economic activities not only create wealth and improve the quality of life but also lead to increased conflicts. As the quantity, varieties, and complication of disputes arise, mediation can no longer keep up with disputants' needs. Second, the booming economy has led to rapid migration and urbanization, which transformed the Chinese society from the acquaintance society to the stranger society in urban areas and to the semi-acquaintance society in rural areas (Di & Wu, 2009). As people spend more time with strangers than acquaintances, the traditional

bonds with neighborhood, community, and work organization were weakened. Growing personal rights awareness transcended the power of collective interests and social harmony. Third, since the legal reform of the late 1970s, China has made great efforts to strengthen the rule of law in the country. The government has developed legal education programs and stepped up law-related information propaganda through the media. As Chinese citizens improve their legal knowledge, they no longer consider it shameful or heinous to engage in lawsuits. Halegua (2005) found that people with higher level of education tend to choose litigation over mediation. Di and Wu (2009) suggested that highly educated individuals may be more familiar and comfortable with the law and litigation procedures so they are less likely to experience anxiety when interacting with judges and legal professionals in the justice system. In general, weakened interpersonal bond, coupled with stronger awareness of individual rights, reduced the popularity and effectiveness of mediation (Lubman, 1999). As a result, more and more people seek to solve their disputes through lawsuits rather than mediation.

As greater numbers of people start choosing lawsuits over mediation, courts become overburdened. To solve the problem of heavy caseload and enhance court efficacy, the Chinese government decide to accelerate the judicial reform in the justice system. The experimentation and institutionalization of problem-solving courts are part of the effort to address the problem.

### **The Structure, Operation and Functions of Juvenile Courts as Problem-Solving Courts**

The juvenile court has been in existence for more than 100 years in the West and has been seen as “the forerunner” of modern-day problem-solving courts (Winick, 2003, p. 1056). In contrast, the Chinese juvenile court is a fairly recent phenomenon and can be defined arguably as the earliest model of problem-solving courts in the country. Unlike many other nations where such tribunals stemmed from a therapeutic concern for offenders, problem-solving courts in China were driven largely by pragmatic issues surrounding the criminal justice system. Radical social and economic reforms of the late 1970s and throughout 1980s contributed to massive increases in juvenile crimes and growing prison populations. The proportion of crimes committed by juvenile offenders increased from 1.4% in 1977 to 23.8% in 1985 (Bakken, 1993). The sharp increase of juvenile crimes posed a serious concern. To tackle this rising social problem, the Chinese government decided to experiment with a new justice approach that separates juvenile offenders from adult criminals. With the backing of the government, the People’s Court in Shanghai Changning District established the first juvenile collegial panel in 1984 to adjudicate juvenile cases brought over from the adult courts, which marked the beginning of the juvenile courts (Zhang, 2013; Zhao

et al., 2015). Three years later, the Supreme People's Court (SPC) of China endorsed the experiment and encouraged other qualified courts to learn from the approach that integrated legal sanction, education and rehabilitation for juvenile offenders (Niu, 2016; Zhao et al, 2015). Since then, juvenile courts have sprung up throughout China. As of 2014, there were more than 2,253 juvenile courts, of which 55% were juvenile collegial panels, 18% were juvenile criminal tribunals, and 27 % were comprehensive criminal tribunals (Niu, 2016).

### **The Structure of Juvenile Courts**

With the growing number of juvenile courts, the structure of juvenile courts has not remained invariable and monotonous. Currently, there are primarily three types of Chinese juvenile courts: juvenile collegial panel affiliated with a criminal tribunal, independent juvenile tribunal, and comprehensive juvenile tribunal (SPC, 2012). The first two types of courts work exclusively on criminal cases, whereas the third type works not only on criminal cases but also on civil and administrative cases related to juvenile protection.

The variety of juvenile courts is stipulated in Article 6 of the *Rules of Hearing Juvenile Criminal Cases* in 2001 and amended in Article 462 of the *Interpretation of the Supreme People's Court Concerning the Implementation of the Criminal Procedure Law of People's Republic of China (Interpretation)*, enacted in 2012. According to the *Interpretation*, basic-level people's courts, intermediate people's courts, and higher people's courts may establish an independent juvenile tribunal. Those courts that lack the resources can establish a juvenile collegial panel within a criminal tribunal (SPC, 2012).

### **The Age Restriction**

The age at which the offenders should be adjudicated in juvenile courts are defined in Article 463 of the *Interpretation*. Juvenile courts should only take on cases in which the offender is under the age of 18. Moreover, the cases should be filed by a people's court before the individual reaches the age of 20 (SPC, 2012). Children under the age of 14 are not legally liable for their wrongdoing and therefore should not be prosecuted for a crime, as stipulated in Article 17 of the *Criminal Law of the People's Republic of China* (Li, 2016).

### **The Main Emphasis of Juvenile Courts**

Under the influence of Confucianism and the international models of problem-solving courts, Chinese juvenile courts place more emphasis on education and rehabilitation than punishments. Article 266 of the *Criminal Procedure Law of the People's Republic of China* and Article 459 of the *Interpretation* provide detailed statements on the principle and procedures (China Procuratorial Press,



2018; SPC, 2012). According to the legal precepts, the court should adopt education and rehabilitation as a primary means and use punishment only as an ancillary tool to strengthen the protection of youth offenders and reduce their future offending. Article 485 of the *Interpretation* also stipulates that after the closing argument, the court should access and arrange education for the juvenile defendant based on the youth's special needs, even if the defendant is found guilty (SPC, 2012).

### **The Adjudication Process**

According to the Article 270 of the *Criminal Procedure Law of the People's Republic of China*, in order to protect the juvenile defendant, the law requires the court to ask the juvenile defendant's legal guardian to be present during court hearings. At times, the court is unable to notify the legal guardian, the guardian cannot appear in court, or the guardian is one of the accomplices. In these cases, the court can ask an adult relative, a representative of the defendant's school, workplace, or basic-level residential organization or a representative of a child welfare organization to appear (China Procuratorial Press, 2018).

As stipulated in Article 467 of the *Interpretation*, a public trial does not apply to cases involving juvenile defendants under the age of 18. However, representatives from the school and the child welfare organization with which the juvenile defendant is affiliated may attend the trial, with the consent of the defendant and his or her legal guardian. If permitted by the court, the representatives can also participate in courtroom discussion. (SPC, 2012).

Moreover, to protect the legal rights of juvenile defendants, Article 266 of the *Criminal Procedure Law of the People's Republic of China* requires courts, prosecutorial offices, and public security to provide legal assistance for the defendants. In addition, the *Interpretation* requires the assessment of the defendant by judicial officers who are familiar with the physical and psychological states of the minor. In the process of the trial, the judge is required to use language that the defendant can understand (China Procuratorial Press, 2018; SPC, 2012).

### **Psychological Evaluation and Report**

A report of psychological evaluation may be provided by people's procuratorate or the defendant. Once receiving it, the juvenile courts are required to consider the findings of the report concerning the juvenile's personality, family, social relationship, growth experience, the causes of crime, pre- and post-crime behavior, and other related factors. If necessary, the courts can conduct its own investigation to verify the report or delegate the task to other organizations. Findings from these reports serve as a useful resource for adjudication and sentencing aimed at protecting the interests of the minor (SPC, 2012).



### Reconciliation

In cases involving crimes against person and property, the juvenile courts should seek reconciliation between the juvenile offender and the victim. If the offender and victim agree to reconciliation, depending on the circumstance, the court may hand down a more lenient sentence. Cases illegible for reconciliation include crimes undermining national security, crimes endangering public safety, and crimes disrupting social order.

### Sentencing

The severest punishment for a juvenile offender is life imprisonment. If the offender is under 16 and convicted for a non-serious offense, the courts generally instruct the legal guardians of the juvenile defendant to enforce the discipline. If necessary, the government will provide accommodation for juvenile offenders in need of education and rehabilitation (China Procurational Press, 2018).

To reduce stigma and facilitate rehabilitation and reintegration, the criminal records of the minors who have been sentenced to no more than 5 years of imprisonment are sealed. However, judicial and other related organizations can apply to review the records, and the courts can decide whether or not to agree to the request based on criteria given in Article 275 of the Criminal Procedure Law of the People's Republic of China (China Procurational Press, 2018). The courts can also make follow-up visits to juvenile offenders or their families to check on the progress of rehabilitation and provide help if necessary.

### Challenges

Similar to other countries in the world, the juvenile court system in China is facing enormous challenges and is in need of substantial improvement. First, although Chinese authorities advocated more education and rehabilitation and less punishment, a high proportion of juvenile offenders are still sentenced to incarceration. For example, from 2006 to 2011, among all juvenile court cases resulting in convictions, more than 64% of the juvenile defendants were sentenced to incarceration across the country (National Bureau of Statistics of China, 2012).

Further, unlike many other nations, China has enacted no juvenile delinquency law. The *Chinese Criminal Procedural Law* only stipulates procedures for juvenile criminal tribunals that handle juvenile criminal cases. Specific law is required for the legal protection of children and adolescents who are involved in the civil and administrative cases. Third, it has been observed that judges and prosecutors are more interested in lecturing the juvenile defendants than finding facts during the trial, which may run contrary to the ideas of rehabilitation and protection of the minor's interest (Zhao et al., 2015).

Finally, the system suffers from case imbalance in the number of juvenile

courts. Most juvenile courts (73%) in China handle criminal cases only. Only a small minority of them (27%) are comprehensive juvenile tribunals that accept both criminal and civil cases involving children and adolescents. Due to limited capacity, judicial officers in the comprehensive juvenile tribunals are all burdened with heavy workload, which has severely reduced overall court effectiveness (He, 2014; Niu, 2016). Given that a great number of civil cases involving children are related to family disputes, the Chinese government has begun to officially develop pilot programs integrating juvenile tribunals with family tribunals in some major cities in recent years.

### **Discussion**

In China, the formal justice system in conjunction with informal system, especially the mass mediation system, form a vast justice system to resolve disputes and conflicts between parties (Huang, 2016). In the last several decades, as Chinese citizens became increasingly aware of their legal rights, more people have started to choose lawsuits as preferred ways of settling problems and differences. Despite this new trend, mediation still plays a prominent role in the Chinese systems of justice and has been integrated into the legal proceedings of many newly created judicial institutions, including the emergent problem-solving courts.

The development of the Chinese problem-solving court system is deeply rooted in its centuries-long legal tradition: the redeployment of the vast informal justice system to alleviate the heavy workload confronted by the formal justice system (Huang, 2016). In the case of problem-solving courts, informal organizations and groups are assigned formal roles in the revamped juridical system. On the operational level, mediation serves as one of the major working mechanisms in problem-solving courts, including the juvenile courts, to facilitate dialogues between the parties and finding solutions to the problems that cause the conflicts or disputes. Juvenile courts strive for restoration of the relationship between the juvenile offender and the victim as well as rehabilitation of the delinquent. Overall, problem-solving courts in China are heavily dependent on the support of the informal social control system and its interplay with the formal justice system. In this regards, Chinese traditional legal culture provides an essential context for the understanding of the legal reforms and the development of the court system.

While acknowledging the cultural connection between the old and the new, it is important not to lose sight of the international influence in the development of Chinese problem-solving courts. In the last few years, problem-solving courts have spread over the world. They were seen as a more effective way to settle criminal and civil cases involving children and family by providing parties an opportunity to restore their relationships. Since China established their first

problem-solving court in the 1980s, official media have generated considerable discussion of these specialty tribunals, drawing attention to the worldwide movement and its successes. A great number of publications have called for the development of juvenile courts and family courts as a way to improve the existing justice system (Xia, 2017; Yu, 2017). In addition, the SPC organized several professional meetings inviting international and domestic experts and practitioners to discuss the problem-solving approach in the judicial system and its adoption in China. All these efforts fostered strong governmental and public support for judicial innovations that enhance the system's problem-solving capability (SPC, 2018), which paved the way for the experimentation of problem-solving courts in the country.

The Chinese problem-solving court systems, including the juvenile courts, are still in the early stages of development. There is ample room for growth and refinement. To improve its structure and operation, the following problems should be addressed. First, due to the lack of specialized laws and official guidance from the central government, problem-solving courts vary from one place to another. As a result, many of these courts operate in ways inconsistent with the principles of problem-solving judicial approach to at least some degree. Second, juvenile courts, especially those located in financially stressed areas, often receive insufficient funding. Although they can apply for a special grant to support their operation, the amount provided through the grants is often limited. Due to a lack of funding, many courts have had to cut services or programs, which undermines their effectiveness. Third, there is a lack of accountability because the system has not been rigorously evaluated through empirical research. To the best of our knowledge, no experimental or quasi-experimental studies have been conducted to assess the effectiveness of the problem-solving courts in China. Research is needed to identify the strength of the courts and the areas of improvement.

In conclusion, the enduring vitality of the traditional Chinese legal culture, coupled with international court reform, provides a favorable condition for the emergence and development of problem-solving courts in China. Despite the multiple challenges that it faces, the system has shown true potential of addressing many of the problems contributing to juvenile delinquency, domestic violence, and family conflict. The system also seems capable of promoting offender rehabilitation and reintegration through individualized services arranged or referred by the courts. To be sure, being at an early developmental stage, many of the courts have not yet adhered to all of the best practices identified by the problem-solving court model, thus limiting their effectiveness. As strides in this direction are made, however, the popularity of problem-oriented courts is likely to grow and bring reform to China's justice system.

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