Civil Justice Reform in Chinese Law and Society

Dispute Resolution in China: Litigation, Arbitration, Mediation, and Their Interactions. By London/New York: Routledge, 2021. 288 pp. Hardcover $144.00
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Weixia Gu, Professor at the Faculty of Law at Hong Kong University, has written an original and ambitious new monograph about civil justice reform in China that is both breathtaking in scope yet also methodically organized around a core set of important questions. Gu draws masterfully on a deep knowledge of Chinese law and society, expertise in a diverse set of dispute-resolution systems, and little-known empirical data to weave together a compelling narrative about the path of reform in one of the most dynamic but also poorly understood countries in the world. It is a fascinating read for anyone interested in the relationship among dispute-resolution institutions and processes, law and development, and the rule of law.

The book is divided into four parts. The first part sets the stage for an in-depth look at civil dispute resolution in China (especially the Chinese courts) and the complex social dynamics that have helped shape it. Parts II and III form the heart of the book, providing a deep dive into six key dispute-resolution systems. Part II devotes one chapter each to three pillars of dispute resolution: civil litigation, arbitration, and mediation. The chapters all proceed by (1) examining empirical evidence to assess how each process has been used in the most recent decade in China; (2) describing the relevant regulatory framework for each process; (3) drawing out legislative and institutional reform patterns (e.g. whether reforms proceed primarily from the top down or bottom up, and what are the political, economic, and social factors that influence reform); and (4) proposing improvements and charting out potential challenges. By using a consistent format for each chapter, the author helps facilitate comparative analysis across all three processes. Part III examines interactions among the three pillars covered in Part II: judicial mediation (a cross-interaction between civil litigation and mediation), judicial enforcement of arbitration (a cross-interaction between civil litigation and arbitration), and med-arb (a cross-interaction between arbitration and mediation). The same four lines of inquiry are pursued with respect to each hybrid process—again, in a format that helps draw out comparative insights. Part IV concludes by offering a helpful comparative perspective on dispute-resolution reform in China.

One of the main research questions posed is whether top-down law-making and other efforts to formalize a given process have led to an increase in the use of the process in China. After a close look at the empirical data, Gu largely concludes that they have. For example, amendments to the Civil Procedure Law (in 2012 and 2017) to provide for public interest litigation led to an overall increase in both environmental and consumer cases. Likewise, the enactment of the Arbitration Law in 1994 led to a proliferation of Chinese arbitration Commissions and a significant increase in the cases handled by them. The exception, however, is mediation. Here, Gu concludes that the People's Mediation Law of 2010 did not produce a significant growth in cases handled by the people's mediation system and actually coincided with a decrease in the total number of people's mediation committees.

As to the hybrid processes treated in Part III, the author's principal research question was to determine their modes of reform and regulation, and whether any particular process has been widely adopted for commercial disputes. Gu concludes that all three hybrids are widely used in China, but some are over- and some are under-regulated. For example, judicial mediation has been the subject of numerous court reforms and Chinese courts

commonly use it to resolve a broad array of civil disputes. And while data on consent awards in arbitration and anecdotal evidence suggest that med-arb is gaining importance in commercial disputes, Gu observes a "legislative vacuum" in this space and highlights the danger of inconsistent med-arb practices resulting from the devolution of regulation to local arbitration Commissions.

Another important contribution of this book is that it highlights the way that civil justice reform in China, far from following a set pattern or commitment to a set of core values, is variegated and context-specific, responding to a variety of different social, political, and economic pressures. At one end of the spectrum is arbitration reform, which has proceeded largely from the bottom up, fuelled by competition among the more than 200 Chinese arbitration Commissions to attract cases. Reform from the top down has been minimal, consisting mainly of judicial interpretations from the Supreme People's Court.

At the other end of the spectrum is mediation, which Gu describes as more "socio-politically embedded" and directed at promoting social harmony. The dominant modes of mediation in China are either judicial mediation or grassroots mediation—the latter in the form of the people's or labour mediation systems. Unlike arbitration, the reform of mediation has proceeded largely from the top down, principally via the recent People's Mediation Law of 2010, the establishment of new mediation committees, and court reforms aimed at promoting judicial mediation as the primary method of resolving disputes.

The reform of civil litigation stands between these poles. Like mediation, it has been shaped primarily in response to social and political needs from the bottom up (e.g. the need to accommodate civil activism in mass torts) even though the reforms themselves have proceeded entirely from the top down, in the form of amendments to the Civil Procedure Law. But like arbitration, litigation reform in recent years has prioritized adherence to the rule of law, the professionalization of judges, and China's ambition to compete in the international dispute-resolution market-place.

Finally, the book provides a fascinating comparative perspective. One of its most interesting claims is that, compared to jurisdictions with strong rule-of-law traditions such as the UK and Hong Kong, reform in China has taken an instrumentalist approach that focuses primarily on values other than procedural justice. Whereas the goal of the Woolf reforms in the UK was to improve the efficiency and quality of disputing processes—for example, by reducing costs, improving case management, or further integrating alternative dispute resolution (ADR) within the judicial system—the reform of civil litigation, arbitration, and mediation in China has been a means of promoting largely exogenous ends such as economic growth, social stability and harmony, and above all the legitimacy of the Party. Consider the introduction of public interest litigation in 2012, in response to societal problems caused by rapid industrialization and urbanization in China such as the devastating Sanlu product liability case and incidents of environmental pollution. Although an important by-product of such reforms was improved access to justice, Gu argues that the underlying motivation was to create a mechanism for the public to air grievances of a socioeconomic or sociopolitical nature. Gu goes so far as to argue that in China, "[i]mprovements to civil and commercial dispute resolution procedures ... are considered ancillary, and only happen to emerge when state legitimacy is in the first place improved." This leads her to conclude that civil justice reform in China is a "social development project" rather than "a purely legal project" aimed at improving procedural justice; this is "the core reason" that distinguishes the Chinese reform path from that of other jurisdictions.

There are many things to commend about this book. First, Gu provides a much-needed update to existing scholarship on dispute resolution in China by focusing on developments in the most recent decade. Second, unlike many treatments of dispute resolution in China, Gu's work is comprehensive, spanning all three primary dispute-resolution systems (litigation, arbitration, and mediation) as well as their interactions in the form of judicial

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mediation, judicial support for the arbitration process, and med-arb. The result is a truly global view that still manages to do justice to important context-specific nuances. The chapters relating to arbitration in particular are significant, as the literature on arbitration in China is comparatively sparse and Gu is already a recognized expert on the subject. Third, this book brings to light a variety of empirical metrics about caseloads and providers (some of which are difficult to access by non-Chinese-speaking audiences), thereby providing valuable insights about what is happening on the ground. Finally, this book contextualizes China's civil justice reforms in the past decade, both within broader legal, sociopolitical, and market developments, as well as within existing debates in the scholarly literature relating to dispute resolution and law and development. It skilfully draws out implications of the author's research for a number of conversations of interest to law and society scholars, comparativists, China experts, proceduralists, and scholars of arbitration and ADR.

The book raises many more interesting questions that the limits of space prevent me from considering in a meaningful way. For example, to what extent are private, informal processes such as mediation appropriate for disputes involving large numbers of plaintiffs or sensitive issues of a public nature, as they have been in China through the use of Party-led "grand mediation" in complex product liability and land seizure matters? Ever since Owen Fiss's *Against Settlement*, a dominant strand of scholarship holds that civil disputes with a "public policy dimension" belong in public courts rather than in ADR[1]—even though scholars have recently begun documenting the ways that informal dispute resolution are increasingly being preferred for certain divisive social conflicts.[2] US dispute-resolution scholars in particular will find Gu's comparative study a refreshing perspective on these issues.

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Rule of Law with Chinese Characteristics

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Despite the growing number of books on Chinese law and its relationship with Chinese society, studies of this subject for the entire Chinese history remain rare. In light of this,

[1] E.g. Hensler & Khatam (2018). But see Aragaki (2018).
[2] E.g. Cohen (2021).