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How China's Civil and Commercial Dispute Resolution Systems Are Evolving

Different priorities produce different reform paths

By [Weixia Gu](#)

China's commercial importance is attracting global attention to the question of how it resolves civil and commercial disputes and how its dispute resolution landscape has developed and changed. The interactive ecology of dispute resolution in China includes three primary systems – litigation, arbitration, mediation – as well as their cross-interactions – judicial mediation, judicial enforcement of arbitration, mediation combined with arbitration. By deploying a law and development angle and critically engaging with the empirical evidence over the past decade, I have undertaken a first-ever [systematic and comprehensive study](#) of how these three dispute resolution mechanisms deal with civil and commercial disputes in China today. My key takeaway is that litigation, mediation, and arbitration have developed in China along very separate tracks according to their own institutional

imperatives and the State's and ruling Communist Party's perception of the role they play in social control and economic development.

Civil litigation in China includes both civil and commercial litigation. It is governed by China's Civil Procedure Law (CPL) and handled by Chinese courts. The empirical data on civil litigation shows the number of Chinese civil trials has increased significantly and China has evolved into a more litigious society over the past decade. Amendments to the CPL in 2012 and 2017 introduced the option for civil society organizations and prosecutors to bring public interest lawsuits in response to civil mass torts that have disastrous impacts. In two specific types of civil mass torts, consumer product liability and environmental protection cases, eligible social organizations can now sue as the plaintiff, standing in for "the public" as the victim, with damages generally going to a special remediation fund. This has been seen as a move to reduce public discontent, enhance social stability, and maintain the legitimacy of the Chinese courts. However, litigants still face both technical and systemic challenges to achieve access to civil justice in mass torts.

Arbitration, by comparison, has developed in response to very different missions, incentives and objectives. Arbitration in China handles only commercial disputes and is governed by China's Arbitration Law (AL, 1994) which has not been substantially revised in the past 25 years. The empirical data on arbitration shows the high popularity

of arbitration in China, reflected in its rapidly developing caseload and significant increases in both the number of arbitration institutions and amounts in dispute. In the most recent decade, a domestic arbitration market has been formed with more than 250 arbitration institutions across China competing for cases and arbitrators, constantly updating rules and developing best practices, with emerging key local players such as the Beijing Arbitration Commission (BAC) and Shenzhen Court of International Arbitration (SCIA) challenging the traditional market monopoly maintained by the China International Economic and Trade Arbitration Commission (CIETAC). The arbitration market's development trajectory uniquely transcends China's socio-political constraints and is expected to play an [important role](#) under the Belt and Road Initiative (BRI), where arbitration is seen as a primary vehicle of international commercial dispute resolution in an economically integrated Asia. In the "going out" competition in the BRI context, marketization and professionalization have clearly become the primary forces triggering reforms.

The third dispute resolution system, civil mediation, has demonstrated much less competition and vibrancy than commercial arbitration, and is essentially a scattered regime. China has never developed a standalone mediation law to govern the many different types of civil and commercial mediation programs and initiatives, both judicial and extra-judicial. Among them, only the people's mediation system, which targets

social-civil disputes, is regulated by a national law. People's mediation is regulated by People's Mediation Law (PML, 2010) and handled by People's Mediation Committees (PMCs). China's emphasis and reliance on mediation is designed to satisfy not only a cultural legacy that values harmony over conflicts, but more subtly, the political need to maintain social order. The empirical data on people's mediation shows the caseload figures increased steadily until 2010 then largely leveled off, while the number of PMCs is on a downward slope. During 2002-2012, when China was led by Communist Party General Secretary Hu Jintao and Premier Wen Jiabo, the policy emphasis on a "harmonious society" and "grand mediation" caused PMCs to mushroom. People's mediators took responsibility for social stability, but they often lacked occupational security and professionalism. The strong political orientation has set China's mediation development apart from contemporary mediation reforms in other countries, which are solely motivated by the need to relieve the courts' burden and emphasize mediation's role as an ADR method (such as the [Woolf reform](#) in the United Kingdom).

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The fact that three dispute resolution systems have taken such different reform paths in China must be understood as the product of different economic, political, and social contextual factors. For example, there is a clear divide between the roles and functions played by mediation and arbitration in Chinese society. Mediation has been heavily politicized to maintain social stability and is far less professionalized in terms of both mediators and mediation institutions. On the other hand, arbitration serves the commercial sector but not individual citizens' complaints; it is less implicated in social and political controls and has been allowed to respond more directly to market demand. A similar divide is seen in the courts' differing approaches to mediation and arbitration. While the judicial approach towards mediation is very instrumentalist, the judicial approach towards arbitration has been consistently supportive as it closely follows China's investment strategies, both external (such as the BRI) and internal (such as the creation of domestic free trade zones or FTZs).

More generally, China's civil justice reform over the past decade or so has centered upon litigation and mediation due to their social stability functions. The reform agenda has largely grown as a social development project in response to China's economic and societal transformations, rather than as a legal project. Arbitration is largely absent from the agenda without any top-down reforms, but the vibrant market of arbitration institutions has generated bottom-up reforms. Such rapid marketization and

professionalization of arbitration are contextualized through its close connection with China's economic growth and internationalization needs. By contrast, given the social-political nature of the Chinese courts and Chinese PMCs, the reform patterns of civil litigation and mediation are largely top-down and policy-driven. The success of arbitration in China offers lessons for the professionalization of China's social-civil mediation regime and the marketization of China's commercial mediation regime, particularly in light of China's recent accession to the Singapore Mediation Convention in 2019.

In 2018, the China International Commercial Court (CICC) was established to facilitate the resolution of international commercial disputes related to the BRI through a "one-stop" [multi-tiered dispute resolution](#) platform, linking China's most market-driven arbitration and mediation institutions to create a professionalized and marketized [arb-med](#) forum. This is the latest and most innovative interaction among the three dispute resolution systems. Such an initiative is expected to reinforce China's advantage in the BRI international dispute resolution competition across different jurisdictions and legal cultures. In the long run, China's CICC and its innovative dispute resolution platform [signal](#) China's prioritization of international dispute resolution capacity building, as China is incentivized to reinforce its proactive role in international rule of law discourse.

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