Chinese Mediation on the Eve of Modernization

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It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit.

Chinese proverb

One of the most striking aspects of the legal system of the People's Republic of China is the unusual importance of mediation in the resolution of disputes. Adjudication and even arbitration are regarded as last resorts in Communist China because those methods, by definition, terminate controversies without consent of the parties. In this article the term “mediation,” which for our purposes is synonymous with “conciliation,” refers to the range of methods by which third persons seek to resolve a dispute without imposing a binding decision. The Chinese mediator may merely perform the function of an errand boy who maintains contact between parties who refuse to talk to one another. At the other end of the spectrum, he may not only establish communication between parties, but may also define the issues, decide questions of fact, specifically recommend the terms of a reasonable settlement—perhaps even give a tentative or advisory decision—and mobilize such strong political economic, social and moral pressures upon one or both parties as to leave little option but that of “voluntary” acquiescence.1

Today's mainland Chinese faithfully follow the admonition of Mao Tse-tung that “disputes among the people” (as distinguished from those involving enemies of the people) ought to be resolved, whenever possible, by “democratic methods, methods of discussion, of criticism, of persuasion and education, not

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1 The latter illustration stretches the theoretical American definition of mediation as the process by which a third person intervenes between two contending parties in an effort to reconcile them. But that definition fails to recognize the extent to which American mediators, at least in disputes affecting the public interest, actually bring pressure on reluctant parties to accept an unsatisfactory settlement. See, e.g., Cox and Bok, Cases on Labor Law 891-98 (6th ed. 1965).
by coercive, oppressive methods.\(^1\) Most civil disputes between individuals are settled by extrajudicial mediation.\(^2\) From incomplete Chinese statistics we can infer that there are probably more than two hundred thousand semi-official "people's mediation committees" in urban and rural residential areas and that their members annually dispose of millions of disputes.\(^3\) Policemen, bureaucrats, members of the Communist Party and Communist Youth League, work supervisors, union activists and members of other semi-official local groups undoubtedly settle an even larger number.\(^4\) A great many of those disputes that actually reach the courts end in judicially sponsored compromises.\(^5\) Furthermore, disputes between public enterprises, such as a state factory and an agricultural commune, are often resolved through mediation processes,\(^6\) and this appears to be almost exclusively the case with international maritime and trade disputes handled in Peking.\(^7\) There is also a large volume of extrajudicial mediation in

\(^{1}\) Address by Mao Tse-tung, "On the Correct Handling of Contradictions Among the People", Feb. 27, 1957, reprinted in 5 Chung-hua jen-min kung-ho-kuo fa-kuei hui-pien (Collection of Laws and Regulations of the People's Republic of China) 1, 5-6 (1957).


\(^{3}\) In late 1954, a time when mediation committees had not yet been established throughout the nation, it was reported that according to initial statistics there were already 155,100 such committees. On the basis of many fragmented reports of the number of cases settled by these committees it would be conservative to estimate that on an average each of them settles fifty disputes per year. See "People's Mediation Organizations Develop Great Effect to Strengthen Unity and Promote Production," New China News Agency, Dec. 19, 1954, reprinted in SCMP 960, p. 23 (1955). For details concerning the structure and function of these committees, see General Rules for the Provisional Organization of People's Mediation Committees (hereinafter cited as Mediation Committee Rules), March 22, 1954, Chung-yang jen-min cheng-fu fa-ling hui-pien (Collection of Laws and Decrees of the Central People's Government) 47 (1954).


\(^{5}\) Chinese statistics for the "great leap forward" years of 1958 and 1959 generally state that at least half of the civil cases that reach the courts are settled through mediation. See, e.g., Shansi Report 16-17 (over 70%); Kiangsi Report 31 ("the great majority"); Wu Ch'ing-ch'eng, "Hopeh Province Judicial Report," Hopeh Daily, Oct. 29, 1958, English translation in U.S. Joint Publication Research Service (hereinafter cited as JPRS) 1877-N (60%); Liu P'eng, "The Work Report of the Liaoning Provincial Higher People's Court", Liaoning Daily, Dec. 22 1959, English translation in SCMP 2193, pp. 39, 42 (1960) (75.9%). Again, the author's interviews with emigrees confirm this general point.


\(^{7}\) See, e.g., Fellhauer, "Foreign Trade Arbitral Jurisdiction in the People's Republic of