

# An Analysis of China's Contemporary Criminal Procedure Mode

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## Abstract

The development of criminal procedure has shown great differences among countries and regions. But taking a comprehensive view of the evolution process of criminal procedure, we could find inevitability in these differences. It is all inevitable choice by history that a certain kind of mode came into being, existed and developed. While different cultural tradition and social backgrounds have signed a regional mark to the mode during its evolution. In this essay, the writer tried to analyze the actuality and reforming direction of China's criminal procedural mode, from the aspects of its historical and social association.

**Keywords:** *Criminal Procedural Mode, Historical Association, Society and Culture, Actuality.*

## 1. Introduction

In the long historical river, criminal procedural mode has experienced a conversion from traditional to modern. Traditional modes mainly include accusatorial and inquisitorial procedural modes; Modern modes mainly include litigation system, adversary system and the mixed system.

## 2. The Mode of Accusatorial Procedure of Early Ages

It came into being during slavery age and early feudal age, and was widely adopted in western countries. Individuals have an absolute right to accuse crime, without a positive investigation by the state, who deals with criminal cases as a neutral judge. Thus, it means that after a criminal act occurred, the one who held the burden to look into the crime was the victim himself, or else, the individual whose droit was harmed. While the government kept itself independent and neutral. This mode seems to be unreasonable in the eyes of modern times. But in slavery and early feudal times, when the level of productivity and cognition was extremely low, the mode of accusatorial procedure was adaptive to the social condition. As people were unconscious or had little sense of public power, private right decided their value mostly. They saw crime as merely a kind of invasion towards individual benefits, and didn't recognize its social harmfulness. Then crime acts wouldn't be rebuked by the state or society, regarded as conflicts between individuals. The reflection of ideology also lies in evidence system, namely system of divinity evidence. People judged rights and wrongs according to divine hint, believing that God's will couldn't be disobeyed. Of course such notion is superstitious and ignorant, but in the eyes of people at that time, God's judge was absolutely fair and they

must follow their fate. Even though wronged, they would still blame it on themselves. Under this mode, it is the will of god, rather than people's rational sense, that judges good and evil, right and wrong.

## 3. The Mode of Inquisitorial Procedure

It was adopted during the middle and later stage of feudal age, especially in ancient China, who has a long experience of feudal society. No matter whether the victims accused, the state would exercise its power and execute its authority, to investigate and judge the case actively. Evidently, the state owned the authority of investigation, charge, trial and even execution. Compared to the mode of accusatorial procedure, it showed the consciousness of public power, making this mode a progressive one to some degree. People had come to know that crime was not only harm to private rights, but also an invasion to public power. Then a powerful institution was in need in order to punish crime and secure social order. While the state could represent the public benefits for the most, people authorized the state to perform its power in impleading and judging. It was the will of the state that judged rights and wrongs. Under this mode, the public power was secured and crime was punished efficiently on one hand, but people's fighting for private rights faded. It brought about some bad effects that individual rights couldn't be protected well by government, and public power was abused. Another feature of inquisitorial procedure is that the duty to charge and judge are not separated and the state administrated them all. While the accused is in a weaker status, being the target for public power. As this mode existed and developed, the extortion of confession by torture took on. There was a concept that the defendant be forced to prove his crime. What's worse, trial in secret made this condition more common and prevalent.

Both accusatorial procedure and inquisitorial procedure are traditional types of litigation, and both seem to be unscientific and unreasonable. But they fit in with the low level of productivity and cognition, and contributed to the development of society at that time. Under the mode of accusatorial procedure, as countries had not come into being for long, social control was still weak, and public power didn't interfere too much in private matters, litigation was usually regarded as disputes between individuals. Traditional inquisitorial procedure formed during the vigorous period of feudal age, when centralization was the main organization of political power and tyranny development was at its peak. So power was highly centralized, even expanded, with the negative influence of private rights being seriously weakened. The evolution from accusatorial procedure to inquisitorial procedure reflects the formation process of public power as well as people's deeper understanding of the phenomenon of crime. This is undoubtedly a history progress.

After capitalism came into being and existed as the developing trend of society, the background of "freedom, equality, human rights" had a positive effect on the switch of litigation type from a traditional mode to a modern one. Accusing began to separate from judging, the accused was encouraged to debate against the libellant equally, and more measures were taken to insecure the indictee's rights.

#### 4.Litigation System

It is mainly adopted by countries in continental legal system, like Germany and France. Pure litigation system has these features: judge promotes the process of procedure and implements its authority to investigate cases actively, unchanging principle is adopted, and procedure doesn't come to an end until judgment is decided. But with the mode developing and improving constantly, the unchanging principle was broken and changing principle is accepted, that is to say, the charge is allowed to withdraw his lawsuit. Litigation system inheriting some features of inquisitorial system, its initial aim is to punish crime, and the relationship between the charge and the judge is closer, while the indictee is placed in a worse situation against the plaintiff and his rights can't be protected enough. But there are still some great differences between litigation system and traditional inquisitorial procedure system, especially for the separation of accusing function and judging function. Then a new sue system was formed--the institution of procuratorate. Litigation system accounts more for the protection of public power, to some extent punishing crime efficiently. But individual rights, especially the indictee's rights can't be safeguarded fully, and the investigation and charging constitution's getting evidence in an illegal way, such as the extortion of confession by torture, become very common and serious.

#### 5.Adversary System

It's mainly adopted by countries in Anglo-American legal system. According to American scholar's definition, the central meaning of adversary mode is, "The jurisprudential network of laws, rules and procedures characterized by opposing parties who contend against each other for a result favorable to themselves. In such system, the judge acts as an independent magistrate rather than prosecutor; distinguished from inquisitorial system. So the judge's job is not that clear and is often passive. He doesn't do the investigation on his own, but bases the verdict on the evidence presented in the conflicts by the advocate and accuser. So the judge is always set neutral, and the other two parties are balanced, making the relationship among the three sides like an equilateral triangle. The accuser and advocate must show evidence and make powerful statements in court, to achieve guilty sues and innocence defense. While the judge's neutral attitude makes the two parties more balanced and the fighting more equal. Such situation has got something in common with the mode of accusatorial procedure. In both systems, the charge and the accused will fight against each other by words and statements, but the privilege to decide who is right belongs to the neutral judge. However, as to people's cognition of crime acts and ways to prove crime, adversary system is much more

improved than the earlier one. The essence of this system is that individuals fight equally for their rights, with the judge, who represents the state power, implements the public power neutrally and doesn't side with any individual. From this aspect, it can make individuals' legal rights safeguarded to the most, and totally free from any interference of the third side. So individuals can try best to protect their rights from being damaged, and defend the adversary. But on the other hand, overstating safeguard of individual rights can provide opportunities for the right criminal to defend for innocence. As judge makes decisions not only by evidences, but also according to the statements and debates in court to a large extent, the criminal will tend to use forensic skills, and even artifices to make the truth hard to be found out, in order to escape from imputation and punishment. Consequently, adversary system safeguards individual rights efficiently and prevents abuse of public power, but can't assure a resultful punishment to crime and make social benefits easily harmed.

#### 6.The Mixed System

The representative countries are Japan and Italy. It keeps the active factor of Litigation system as well as develops the advantages of adversary system. Judge is encouraged to investigate the case and find out the truth positively, and it is also emphasized that the accuser and the defence should confront each other equally and actively. The mixed system is set with the other two modern procedural modes as its models, taking advantages of both. Thus, this newly-founded system insists both the punishment to crime and safeguard of individuals. To some extent, it coordinates the relationship between public power and individual rights. But to attain such a perfect situation in practice is not so easy. It demands that the judge, the charge and the accused do an active work during the litigation, and that these three sides must restrain each other to avoid anyone running to an extreme and keep themselves an organic union.

There isn't any mode to be totally perfect. Each one will always bring about a series of problems, and improve constantly by solving the problems one by one. This is decided by the constant development and improvement of society. Criminal procedural mode, as a form of superstructure of society, should be adapted to the advancing productivity condition. In fact, the evolution of procedural mode is behindhand and should be affected and limited by other factors, like cultural tradition, social background and so on. Taking a comprehensive view of these different modes, we could find disadvantages in each of them, acting in different ways and extents. Because of the differences in historical association, different law systems have developed different criminal procedural modes, so it is with different nations, thus to make these modes lay different emphasis on public power and individual rights, and different primary aims at punishing crime and safeguarding human rights, or use different methods to solve the problems in litigation about moderating the relationships and benefits. But from another view, one mode could be established and develop for long, mainly because it fits in with the state of nation and the level of social development in a certain period. So one procedural mode can just be estimated accommodative or not, rather than good or bad.

## 7. Profound Social and Cultural Association in Modern Mode

Chinese criminal procedural mode has experienced an evolution from a traditional one to a modern one, or the switch from the mode of inquisitorial procedure to litigation system. It has got progress and improvement in safeguard of human rights, after the Criminal Procedure Law was amended. But as a whole, Chinese criminal procedure law still set its primary aim at punishing crime, and it values the protection of public power more. The judge is not totally neutral and he has a closer relationship with the prosecutor, or else, they cooperate with each other to deal with the case. Besides, the defender's right is limited, especially when it comes to meeting his lawyer. Stressing too much leads to the overlook of legal procedure, though raises the efficiency of litigation. Besides affected by the one thousand years' traditional inquisitorial procedural mode, Chinese modern mode also has its profound social and cultural association

### 7.1 The Philosophy of Confucianism is Deep Rooted in China

Confucian advocates of "Moral method is principal, while penalty is auxiliary" and "Harmony is precious", has a strong effect on the ideology of Chinese criminal procedure. In a dispute, the two parties usually tend to ask a third one to help solve the conflict. To act in a strong fighting disobeyed their principle of benevolence. Litigation system just fits in with Confucianism, and it is the judge that investigated the case and made a judgment actively and positively, which avoided severe conflicts and thus realized justice in a peaceful way.

### 7.2 Chinese Psychological Factors

The dispute in court is to a large extent related to the psychological condition of the parties. In the countries venerating individualism, people tend to debate and represent actively to stick up for their rights, and show a strong desire for performance. Even though they didn't win the litigation at last, they would get satisfied psychologically. The situation in China is totally different. People in general don't have such a strong mind for disputing, and think highly of harmony and peace. So they always perform passively in court and would like to reach a compromise.

Long-time feudalism system makes protection of public power a priority. On one hand, the state is put on much power and is the symbol of authority. No one could infringe public power, or being punished strictly. On the other hand, individuals release some rights to the community, and individual interests must obey public interests. The consciousness of individual rights is not so evident. Dispute is regarded as individual's infringement towards state power, rather than conflicts between individuals. So crime punishment underlies safeguard of human rights.

### 7.3 Chinese Criminal Procedure hasn't Developed Adequately

It is only thirty years since the Criminal Procedure Law of PRC was enacted. The amendment and modification during this period has undoubtedly improved the procedural mode, and the concept of safeguarding human rights and procedural justice has been

generalized and promoted to some extent. It is a great progress and advance towards the foundation of a democratic, civilized, and scientific criminal procedure. What's more, China is in its climacteric period, with criminal rate rising, making it a necessity to emphasize crime punishment. But as to some irregularities in the mode, such as the extortion of confession by torture, we must take correct and proper measures.

## 8. The Reform of Criminal Procedure Mode

By analyzing the actuality of Chinese procedural mode and its reason, the reform is based on the following two aspects. Depending on tradition, developing in practice, and taking other modes for reference. The establishment of one mode is not a blind choice, but based on the social and cultural tradition. Abandoning the essence of tradition, the mode would lose its root. As society is developing, it is unavoidable that one mode exposes some defects and become unaccommodated to society. The mode of criminal procedure also faces the same situation during its development. So we should keep the essence part of our tradition, as well as discover the problems in practice and work them out in time. It is also necessary to innovate constantly and learn from other advanced modes.

Improving the criminal procedural structure, and trying to find a better way to adjust the relationship between crime punishment and safeguard of human rights, substantive justice and procedural justice, fact and legal fact. The framework of an ideal procedural mode is, the judge, the charge and the defence could all play active roles in procedure, and be free from the contrived limits or suppression. In order to gain such a perfect goal, it is necessary to keep the judge more neutral and to encourage the two parties to dispute equally. Taking the extortion of confession by torture as an example, it is caused by the concept of crime punishment and the incomplete system of safeguarding human rights. Laying too much stress on substantive justice and overlooking the importance of procedural justice also have a passive function. The extortion of confession by torture is an illegal action to procure evidence and find out the fact. But without legal fact, objective fact has no legal effects; even the evidence obtained is true. So stressing crime punishment and substantive justice lopsidedly, sometimes hinders the process of finding out truth and realizing justice. Besides, to improve the system of judicatory supervision can also limit the abuse of public power and help to safeguard individual rights..

## 9. Conclusions

Although Chinese criminal procedural mode is not advanced, with some problems existing for long, it accommodates Chinese state and actualities overall. So we should make efforts to improve the procedural mode and innovate constantly, without deviating from the main orientation, and gradually develop a particular criminal procedural system with Chinese Characteristics.

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