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Criminal Justice Models and their Influence on Civilization: A Comparison of East and West

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Criminal justice systems in the world generally seek two major goals: punishment of crime (in turn, protection of society) and protection of individual rights. These two goals are often in conflict with each other in the delivery of justice; sometimes satisfying one would inevitably mean sacrificing the other. Criminal justice systems in different countries differ in the actual execution of their criminal procedure, which has an immediate and long term impact on society, culture, and ultimately the rise, fall, or marginalization of their civilization(s).

Some would prefer to pursue the punishment of guilty at the cost of individual rights, while others would insist on the preservation of rights even if that means the marginalization of criminal investigation and prosecution. This false dichotomy can be better understood as a continuum, with the focus of crime control on one end, gradually adding the protection of rights while lowering the priority of crime control simultaneously.

Generally, the U.S. and China are representatives of these two tendencies, with the U.S. sitting on the side of rights' protection and China on the crime control side. Differences in the balance of these two goals play a major role in shaping the operational philosophies of the two systems. Legislative, structural and procedural features of the two systems are reflective of these philosophies and are deeply rooted in the cultural, political and historical make-up of these two countries.



Figure 1. Map of China from CIA World Factbook 2014

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Figure 2. Map of United States from CIA World Factbook 2014

Structure of Criminal Justice Systems

Articles 123-135 in the Constitution of the People's Republic of China (1982), describe the judicial system of the PRC. It consists of two major components: the people's court system and the people's procuratorate system, consisting of a 4-level hierarchy: the basic (local) level, the municipal (intermediate) level, the provincial (higher) level, and the national (Supreme) level. The procuratorates serve essentially as state entities for legal supervision and they have specific powers and functions that are similar in nature to prosecutors in the United States. They also investigate and decide which cases will be prosecuted in addition to providing other oversight. They also supervise legal aspects of the people's courts, prisons and how judgments are carried out.

One might see the procuratorate as China's public prosecutor by a different name. But the difference in titles reflects the different roles they each play in their respective criminal justice systems. While commonly called the District Attorney at the state level and U.S. Attorney at the federal level, public prosecutors in the U.S. are considered officers of the court, opposing defense attorneys in a virtually equal position. As governmental officials, their job descriptions are limited, for the most part, to representing the government in courts². On the other hand, the Chinese procurators are embedded much deeper into the concerted crime fighting effort by the government: not only do they work more closely with an accusatorily - minded judge in criminal trials, they also exercise key supervisory power (not simply coordinating) over criminal investigation by the police, issue warrants for search and arrests, and are put directly in charge of investigation into corruption crimes by government officials.

² At both the state and federal level, the Attorney General usually heads the department of justice, which makes him or her the leader of state and federal law enforcement. The district attorneys and U.S. Attorneys in the field offices do not generally impose authority over local law enforcement other than coordination and resource allocation. Their primary duty is legal representation and criminal prosecution.

The wide range of power invested in the hands of a procurator can be largely explained by the desire to fight crime more directly and efficiently. However, one can see the potential of abuse when so much power is concentrated in the hands of one agency. At times, concerns over the abuse of power outweigh the need to repress crime. This to a large extent provides the rationale for relative compartmentalization of investigative, prosecutorial and judicial power in the U.S. system.

The hierarchy of China's court structure begins at the lowest level with the Basic People's Court and rises up to the Supreme People's Court.

The *Basic People's Court* consists of local level courts that adjudicate criminal and civil cases of first instances. Criminal cases carrying penalty of death or life imprisonment, as well as certain foreign civil cases, are excluded from jurisdiction at the Basic People's Courts. The Basic People's courts can request certain important cases be transferred to a higher court.

Intermediate People's Court handles *first instance* jurisdiction in some cases, including those transferred to it from the Basic People's Court; major cases dealing with foreign parties; counter revolutionary charges; criminal cases subject to life imprisonment or death and crimes committed by foreigners. This type of court also hears appeals and protests.

The *Higher People's Court* has jurisdiction in the *first instance* in cases assigned by law or transferred from lower courts and major criminal cases which impact the entire province. The Higher People's Court also hears cases of appeals or protests against judgments and orders of lower courts.

The *Supreme People's Court* has original jurisdiction over cases that have been assigned to it by law, or over cases that it decides it should try. It has jurisdiction over appeals or protests from the Higher People's court and Special People's Courts.

In addition to the Higher, Intermediate and Basic Peoples Courts, the following courts also report to the Supreme People's Court. They are: the Maritime Court, the Military Court of the People's Liberation Army (PLA), the Railway Transportation and Forest Affairs Courts. These courts, small in number and size, function as auxiliary to the main frame of the court system, with limited jurisdiction in highly specialized areas that might not be suitable for a regular court to cover.

Unlike the separation of trial courts and appellate courts in the U.S. court system, the Chinese courts are differentiated by levels, not functions. In other words, all courts, except the Basic People's Courts function as trial courts and appellate courts at the same time. Trial jurisdictions are allocated among courts at different levels based on the nature

and gravity of cases specified by the Criminal Procedural Law, the Civil Procedural Law, and the Administrative Procedural Law.

This structural feature actually presents a procedural glitch: the Supreme People's Court sits as a trial court with no upper court available for appeal. It rarely tries cases of first instances. At such a time, the defendants would have virtually no way to exercise their constitutional right to appeal. To this day, this issue is not addressed legislatively and is essentially circumvented in judicial practice: the trial jurisdiction of the Supreme People's Court's is provided by law for cases of national importance or cases it decides to try. This leaves enough room for interpretation, which helps to keep the Supreme People's Court, in essence, an appellate court.

The provincial Higher People's Courts are essentially the highest level any case of first instances can go, regardless of importance. In the last three decades, a handful of top ranking government officials were tried for a variety of crimes, including several members of the Politburo. None of them were tried by the Supreme People's Court; instead, they were all heard by the Higher People's Courts, which left them opportunity for at least one round of appeal.³

The U.S. court system is a dual judiciary system of which the two constituent parts (federal and state) function independently of each other. The federal judiciary system includes district courts, circuit courts of appeals, and the United States Supreme Court. The state system includes trial courts at the local and state levels, intermediate courts of appeal, and state supreme court. The primary agents working alongside each other are the judge, prosecutor, and defense lawyer.⁴

An observer from China can easily identify several structural features of the U.S. court system that distinguish it from the Chinese system: the overlapping judiciary systems, the separation of trial courts and appellate courts, and the relatively limited and comparatively simple role played by the public prosecutor.

The U.S. system, as in China, has its own structural glitch: the potential for violation of the Fifth Amendment's protection against *double jeopardy* because of the dual system structure. The Fifth Amendment prohibits a person from being "subject for the same offence to be twice put in jeopardy of life or limb". So when a person is acquitted, convicted, or punished for an offense, he or she should be free from future prosecution based on the same facts.

³ The Supreme People's Court initially tried only one case in the history of the People's Republic of China, which is the "Gang of Four" case, where four top ranking government officials, including Jiang Qing, wife of Chairman Mao ZeDong, were tried and convicted for treason.

⁴ Comparing US and Republic of China's Criminal Justice System. (Page 3)
<http://www.ukessays.com/essays/criminology/comparing-us-and-republic-of-chinas-criminal-justice-system-criminology-essay.php> Retrieved 2014.04.10

But the “dual sovereignty” doctrine that recognizes federal and state as two different jurisdictions thus allow a federal prosecution of an offense to proceed regardless of a previous state prosecution for the same offense⁵, and vice versa⁶. Although the Supreme Court stands behind this arrangement on legal grounds⁷, the nature of its logic (that one can be held responsible for one action twice if there are two sets of rules overlapping in coverage) has caused reluctance among the federal law enforcement agencies to exploit the condition.

These two systems, despite their many differences, show something in common: pragmatic wisdom when trying to balance two key interests of the justice systems, namely, legality, based on the formal institution, and legitimacy, proven by substantive protection of rights.

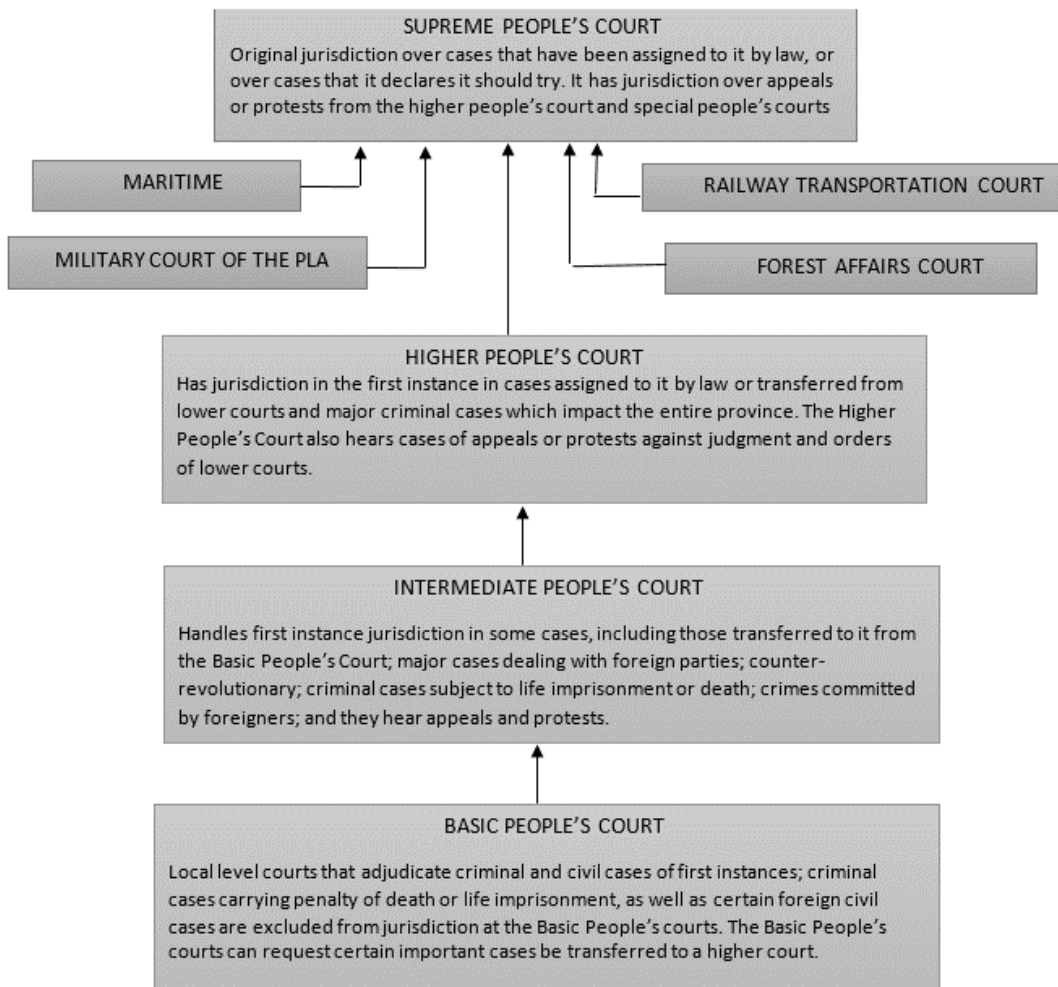


Figure 3. Legal System in China source *Law Info China*

⁵ *Abbate v. United States*, 359 U.S. 187 (1959)

⁶ *Bartkus v. Illinois*, 359 U.S. 121 (1959)

⁷ *United States v. Lanza*, 260 U.S. 377 (1922)

Methods of Punishment

From a comparative point of view, Chinese and U.S. punishment methods look similar at higher levels, but they begin to diverge at lower levels of seriousness.

Both systems retain death penalty provisions despite the international trend of abolition; both reserve death penalties for only the most serious types of offenses. Imprisonment (including life-long and termed) is the most commonly used punishment in both systems. Both systems punish some individuals by imposition of a fine.

Some punishment methods show subtle differences in the ways they are imposed. For example, seizure of property can be used as a punishment for certain types of property crime in China. It sounds similar to what can happen in the U.S. but bears key differences from American criminal forfeiture rules. In the U.S., seizure is normally imposed only upon property believed to be proceeds or instruments of crime. Property subject to seizure under the Chinese law can be all or part of a person's legal property, regardless of its relationship to a crime.

Many in China find its legal property seizure practices to be an effective deterrence to crimes for profit. However, taking of legal property beyond the scope of a fine can be and often is controversial.

Another punishment appearing similar but differing in execution is the deprivation of political rights. In China, all inmates are stripped of their political rights including, but not limited to, the right to vote. The penal code also allows the imposition of such deprivation as either a follow-up to imprisonment or as a stand-alone penalty. The Chinese penal code provides that for the duration of this penalty, one cannot run for public office, cannot head a public enterprise or organization and cannot vote. In addition, individuals may not exercise freedom of speech and press.

By comparison, the deprivation of rights is used in more limited scope in the U.S., usually involving voting restrictions and in some circumstances, beyond incarceration. A prisoners' right to vote is handled differently from state to state, with the majority not allowing inmates to vote while imprisoned. Once the terms are served, most rights are reinstated. However, this position varies between states and political perspectives. In that sense, the deprivation of voting rights, in a general sense, is not used as a punishment, but more as a security measure preventing abuse by a special population.

Some might consider these differences nuances and not substantial. We find them consistent with general orientations of the two systems. The Chinese system, concerned about public safety and social control, tends to be more aggressive when it comes to stripping criminals of their rights, be it property, political or civil. The U.S. system,

concerned more about the government's infringement upon people's rights, treads more carefully when it comes to taking those rights away, even from known criminals.

One right bearing crucial importance is the offenders' right to judicial process (or due process, as referenced by the U.S. Constitution). Differences in how the two systems deal with this issue can be seen in societal and civilizational impacts of the past, present and long term future.

In most Western legal systems, punishment for criminal activity is handled only by courts. By contrast, China has different levels of punishment based on value or damage. Thus it also uses an "administrative penalty" outside the judiciary to manage public security infringements that are not considered a "crime".

According to Xia Yong, Dean of the Criminal Justice School, Zhongnan University School of Economics and Law,⁸ in essence, theft can be a criminal offense if the amount stolen is above 500 Yuan (Chinese currency)⁹, but it is considered an administrative violation if below that amount.

Administrative penalties were first enacted in 1986 and amended in 1994 by the Chinese legislature. Administrative penalties may result in a term of confinement or a fine. A person may be charged with an administrative violation for disturbing the social order, endangering public safety, infringing upon the rights of others, or encroaching upon public or private property.

Where an act is not deemed serious enough for referral to the courts, the Chinese police may handle a case. In fact, according to Dean Xia, Chinese police usually settle more cases administratively than as criminal cases each year. (Xia 2002). The existence of administrative penalties helps to increase the efficiency of the court system by removing large numbers of minor cases from the crowded court dockets.

Penalties associated with administrative violations of the public security are classified into three categories:

1. Warning
2. Fines ranging from one to 200 Yuan (or in certain circumstances up to 5,000 Yuan) or
3. Detention ranging from one day to a maximum of fifteen days.

⁸ Xia Yong (2002) Administrative Punishment as a Means of social Control. Page 1-2. Vol. 18 Issue 61. Criminal Justice Institute Archives. <http://www.cjimagazine.com/archives/cji3221.html> Retrieved 2014.04.10

⁹ According to recent changes in the penal code and judicial interpretation, the threshold of criminalization for theft has been raised to 1000 Yuan.

Interestingly, the appropriate jurisdictional authority may administer warnings and fines up to 50 Yuan on the spot. Fines exceeding 50 Yuan may be imposed if there is no objection by the offender. If a person does not accept a fine exceeding 50 Yuan or if there are other penalties involved, different procedures are initiated. These involve: 1) Summons; 2) Interrogation; 3) Presentation of evidence; and 4) Ruling.

After being summoned to the respective public security entity, an offender will be interrogated and an investigation will be conducted. The investigation is not to exceed 24 hours. An offender or victim may protest the ruling of the public security entity or the people's governments of townships or towns. He or she may petition to the public security entity at the next higher jurisdictional level within five days after receiving notice of the ruling. The next higher level shall make a new ruling within five days after receiving the petition.

When an offender protests this ruling, he or she may file a petition within five days with the Local People's court. The case is then handled by the courts. If a mistake was found to have been made by the lower level public security entity, an apology shall be made to the offender and all fines or confiscated property will be returned. Where the legal rights or interests of those who have been punished have been violated, an individual may also be compensated. (Xia 2002).

This method of handling many cases via administrative processes that would otherwise be criminal, impacts citizens, the court process and society. It ameliorates to a large extent the stigma of a criminal offense, helps to reduce a large caseload of the overall courts system, and can provide an incentive to social order and acceptable behavior of citizens. Indeed, the title of Xia's paper is "Administrative Punishment as a Means of Social Control."

Deprivation of liberty, no matter how slight, without a judicial process would be unconstitutional in the U.S. This concern has been raised by scholars in China as well; attention has been called to the lack of qualified and impartial adjudicators, prudent decision-making mechanisms, and effective means for legal challenges. Nonetheless, this particular approach of punishing minor offences is widely supported in the Chinese system for three major reasons: First, only a very short term imprisonment may be imposed. Second, the system is very efficient in handling minor cases. Third, it avoids the unnecessary label of "criminal" that might cause secondary deviance. Apparently, it is yet another example of choosing public security and social control over protection of rights.

Criminal Procedure

Law in the United States stems from four primary sources; constitutional law, statutory law, administrative regulations and common law. The Constitution of the United States is the primary source and all other laws are subordinate to the Constitution. The United

States uses precedent as a means for making decisions in court and previous cases serve as guides for subsequent cases before the court(s). The United States system considers that there is presumption of innocence until proven guilty, allows for plea-bargaining, trial by jury, and the right to a speedy or quick trial.¹⁰ A flow chart of Sino-American criminal procedures is illustrated in *Figure 4*.

The reader can identify a number of differences between the criminal procedures of the two countries as reported in *Figure 4*. Some are inconsequential technicalities. However, others reflect crucial differences in core values.

The following are what the authors deem to be the defining differences:

1) The Jury

The right to be tried by an impartial jury is provided by the Sixth Amendment of the U.S. Constitution. It applies to federal criminal procedures by its own right, and to the state criminal procedures via the Due Process Clause of the Fourteenth Amendment. The concept of a jury trial has been deeply rooted in the American idea of justice and many students of law admit they would have a difficult time imagining how a criminal justice system would function without it. In China, the jury system is a relatively foreign idea.

The literal translation in Chinese for the term “juror” is “accompanying judge.” In the Chinese system, the term is used, but it refers to a significantly different entity, the lay judges who sit on the judge’s panel and serve the same function as a professional judge.

From a Chinese point of view, the two systems are not that different as far as the jury feature is concerned. They both have in their criminal procedure a component called “accompanying judge,” that is, a “jury” member. But this type of “jury” system is not recognized by Western observers, many of whom would rather call it “People’s Assessor” instead. This is an interesting case of *lost in translation*.

The key difference between the two systems is that the U.S. jury is a separate institution in the courtroom, working independently from the judge both in terms of purpose and decision-making. The Chinese people’s assessor is imbedded in the judge’s panel, united in purpose with and greatly influenced by the professional judge(s) on the panel. Working so closely with the professional judge, the people’s assessors generally are unable to do what the American jury was designed to do: protect the defendant from an arbitrary and capricious decision by taking a substantial portion of judicial power from the judge’s hands.

¹⁰ Comparing US and Republic of China’s Criminal Justice System. (Page 3)

<http://www.ukessays.com/essays/criminology/comparing-us-and-republic-of-chinas-criminal-justice-system-criminology-essay.php> Retrieved 2014.04.10

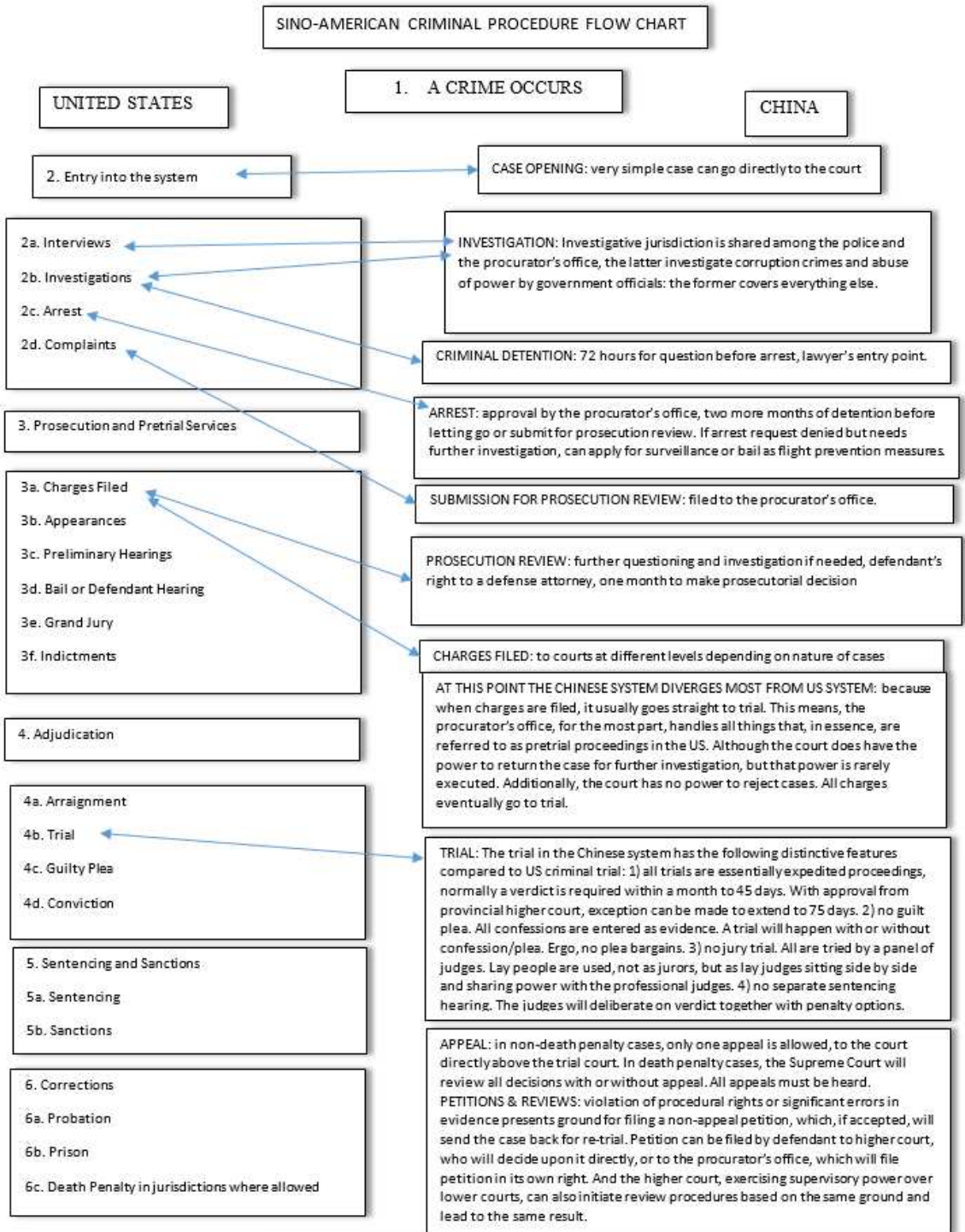


Figure 4. Ling Zhou & H.D. Rhodes 2014

2) The Effect of a Plea

It may be argued that the American jury system has an Achilles heel, to wit, the high demand for allocation of time and resources. A jury trial, in comparison to a bench trial without jury, requires additional personnel, extra procedures, and normally longer deliberation so as to meet the needs of twelve people to reach agreement. When a serious matter is being weighed, or complex fact digested, the additional time is justifiable. However, it is harder to justify the additional time for minor offenses with simple facts that swamp the courtroom on a daily basis. This is one reason the American system invented the “plea bargain” as a remedy.

Beginning at the arraignment, a defendant may enter a guilty plea. Thereupon, a judge may skip trial and proceed directly to the sentencing stage. So, in the American system, the plea of guilty may substantially alter court proceedings. It is utilized fully today, alleviating the court’s burden while avoiding a jury trial, the defendant’s constitutional right.

One may argue that very few guilty pleas at arraignment arise from the good conscience of the defendant. The plea is commonly used by defendants as leverage to bargain for a more favorable outcome of the case and the prosecutors frequently are under pressure to complete their caseload in a timely fashion. If a lesser charge can entice a guilty plea, it will in turn save a potentially lengthy (sometimes unwinnable) trial, so most prosecutors would consider this a step forward. Hence the term “plea bargain.” Of course, constitutional rights are not technically infringed upon in such a situation since the right to a jury trial has been given up voluntarily.

In contrast, the Chinese criminal procedure recognizes a guilty plea, regardless of the time it was entered, only as a confession extracted by investigation.

The Chinese criminal justice system includes a stated policy of “leniency on confession, harshness on resistance” (坦白从宽 抗拒从严). There is a somewhat similar concept in U.S. practice, whereby a defendant who professes innocence but is found guilty may receive harsher treatment simply because of continued claims of innocence. But the Chinese policy should in no way be interpreted as the Chinese version of the plea bargain. Why? Because all confessions of a crime must be independently verified just as any other evidence obtained must be. Thus, a guilty plea (or confession, in essence) will not alter the criminal proceeding substantively.

The police or the procurator uses this policy to entice cooperation from the accused, but not nearly to the extent of a plea bargain in the U.S. This is primarily because, unlike a U.S. prosecutor, who can use his or her prosecutorial discretion to lower or raise the seriousness of charges and penalties asked for, the procurators in China are permitted only to file charges based on the facts and according to the law. Without discretion, there is simply no position to bargain. The most one can expect in return for a confession to

Chinese authorities is the consideration of the court during sentencing. The penal code provides for confession as an alleviating factor for the seriousness of a crime, therefore justifying a relatively milder punishment. But the decision is in the hands of the judge and not up for negotiation.

It is said by some that the Chinese system does not need the plea bargain because, unlike the U.S. system, there is no pressing need to speed up the pace of criminal proceedings. This brings us to the third difference between the two systems.

3) The Pace of Proceedings

When it comes to the pace of criminal proceedings, both an American looking towards the Chinese system and a Chinese looking toward the American system are likely to be surprised. The American observer would likely cry out “too quick!” and the Chinese observer “too slow!”

To put this comparison into perspective, we compare two actual capital cases handled by the two systems: the Scott Peterson case of the U.S. and the Ma Jiajue case of China.

Both cases featured severe crimes of extreme cruelty. Peterson, a California businessman, was accused of murdering his pregnant wife in December 2002, presumably so he could be free from the marriage and be with his lover. He was arrested on April 18, 2003. Ma, a biology student of Yunnan University, was accused of murdering four of his classmates in February 2004, allegedly over trivial disputes. He was arrested on March 15, 2004.

The two events happened about 14 months apart. Peterson’s arrest took longer as a result of his apparent deception during the investigation. Ma was named the prime suspect almost immediately and caught as a fugitive shortly after the crime. Both men were brought to justice in a reasonably swift manner. However, if we take the time of arrest as the official starting point of criminal proceeding, the pace and progress of the cases show significant differences.

Following his arrest, Peterson was officially charged with murder on April 21, 2003; he plead not guilty. A preliminary hearing was held on October 29, 2003. As a result of the preliminary hearing, two charges of murder were filed against him on November 18, 2003. A few months later, in February 5, 2004, trial began with the selection of the jury. On May 27, 2004, jury selection was completed, enabling the fact-finding to begin. On November 12, 2004, the jury convicted Peterson on the two charges of murder. On December 13, 2004, almost two years after the victim, Laci Peterson, was reported missing, the jury recommended the death penalty for Peterson. He was not formally sentenced to death for another three months, on March 16 of 2005. However, the criminal proceedings continued. On July 5, 2012, eight years after being sentenced to death and several rounds of appeals, Peterson filed an automatic appeal to the California Supreme

Court¹¹. As of this writing, Scott Peterson continues to be held in San Quentin State Prison in California, awaiting the final conclusion of his case. Peterson may continue to file further petitions through the federal court systems if his appeal were denied by the California Supreme Court. His case may continue for years to come.

If the Peterson case raises Chinese readers' eyebrows for its crawling pace, the Ma case likely sends chills down American readers' spines for the opposite reason. Almost immediately after his arrest on March 15, 2004, a charge of murder was filed against Ma by the Kunming People's Procuratorate. His trial began on April 22, 2004, and he was convicted on April 24. Because Ma did not file for appeal, the Yunnan Higher People's Court automatically initiated the Death Penalty Confirmation process. And on June 17, 2004, less than 4 months after the crime was reported, the Higher People's Court confirmed Ma's death penalty and he was executed the same day.

Differences in pace between the two systems are not easily explained. The presence or absence of a jury in criminal proceeding is a major factor. Even in the U.S., a bench trial can be swift. Another important reason is the dynamic in the courtroom during trial, be it unilateral or contentious. This brings us to the next major difference between the systems.

4) The Dynamics of the Courtroom Work Group

Generally, the U.S. courtroom work group consists of the judge, the prosecutor, and the defense attorney. Other than the jury (or the people's assessors in China's case), they are the major players in the courtroom and to a large extent determine how things move forward in the criminal proceedings.

They are grouped together because they interact with one another on a routine basis and share commonalities relating to occupation, education and experience. Although not formally, the courtroom work group is a type of social organization, with its own values, norms, and accepted practices (Neubauer 1996, 70-76). And the members each are dependent upon the others to accomplish their goals in the criminal proceedings.

The same characterization applies to the Chinese courtroom. With closer inspection, one might even say that the courtroom work group in the Chinese system brings the nature of such a group to the next level. If one would paint a picture of a typical U.S. criminal trial as the prosecutor and the defense attorney fighting in front of a neutral judge for the fate of the accused, he or she might describe the Chinese criminal trial as the judge, aided by the prosecutor, coming down hard on the accused, while the defense attorney barely puts up a fight. Comparative criminal justice study has specific terms for each of the above scenes: the former is known as the adversarial trial model, and the latter accusatorial trial model.

¹¹ Fox News, 2012. Timeline: The Scott Peterson Case, FoxNews.com: July 06, 2012. Online article retrieved on June 12, 2014 at: <http://www.foxnews.com/us/2012/07/06/timeline-scott-peterson-case/>

A tenet of comparative criminal justice study is that the difference between the adversarial model and the accusatorial model is highly related to the criminal justice system's orientation on rights' protection or crime control.

- In the adversarial model, the most powerful player, namely the judge, is to a large extent limited to a passive role, while the accuser and the accused present arguments against each other from equally entitled footing. The benefit of this model is that the government is stripped of its administrative power, left only with the tools of evidence and logic, and carries the need to prove the burden of proof. Thus it is hard to wrong an innocent man, but it is correspondingly difficult to convict a guilty one.
- On the contrary, the accusatorial model moves the judge out of the passive position, charges him with the fact-finding authority. And the roles of the prosecutor and defense attorney are also changed subtly, from representatives of each side (regardless of the fact), to judge's aids in the search for truth, each from a different perspective. The benefit of this model is if everyone is working together to uncover the truth, the truth (or assumed truth) will be revealed much faster. Of course, even with all parties acting impartially, the rushed procedure itself risks a higher chance for errors. To advocates of the adversarial model, that is simply the price to be paid for swift justice.

The distinct features of each model and their pros and cons demonstrate why the U.S. criminal justice system is described as adversarial in nature and the Chinese accusatorial.

Underlying Cultural Foundations

The value of equality as experienced in each culture is another vantage point from which to understand the two systems.

Both cultures emphasize the importance of equality in maintaining social order. The great Chinese philosopher Confucius once said: "It is not the insufficiency, but the inequality that worries me." It resonates deeply with the famous observation by Plato about the poor and the rich being at war with each other. Therefore, both countries were constructed with the desire to promote social justice via social equality. This is seen in the phrase averring that "All men are created equal" found in the Declaration of Independence of the United States and in the statement that "each person stands equally in front of the law" found in the Constitution of the People's Republic of China.

Differences between the two cultures cause differences in how each country materializes the promises of equality. The criminal justice system, whose very existence stems from the issue of inequality, and whose operation relies on the perception of equality, highlights such differences for everyone to see.

The U.S. style of equality is deeply rooted in the idea of individualism. While the Declaration of Independence states that “All men are created equal,” all may not necessarily end up as equal. In fact, U.S. ideals of equality may endorse inequality resulting from personal endeavor: as long as everyone starts on equal footing, some say, the rich deserve to be rich, and the poor pay by being poor. A social system of individualistic equality may tend to elevate private entities while sometimes demeaning public entities such as, for example, the government. Some on the American right today argue that the former embodies the value of personal endeavor while the latter, according to them, seeks to “take from the achieved and give to the under-achiever.

Thus, when it comes to the U.S. criminal justice system, the notion of equality based on individualism can easily translate into a design that allows the protection of rights to be enhanced by personal wealth (or compromised by the lack thereof). At the core of this design are attorneys who enter the profession and are subsequently paid for their services. Many features of the criminal proceedings make lawyers even more influential in shaping the delivery of justice, such as the adversarial trial model, the jury, the plea bargain.

In the end, we are left with a criminal justice system that spares no effort to protect the rights of those who can afford it, and leaves it to governmental support, friends, and charity to cover the rights of those who cannot. One might protest the unfairness of the system, but when individualism is added into the equation, it becomes a common outcome.

By contrast, the Chinese style of equality is collectivistic at its core. While it recognizes the endeavor by individuals, it pays particular attention to the underprivileged. It is mindful that those with more stature could take advantage of their established position, causing undue harm to those in a less defensible position.

A social system of this orientation attempts to emphasize the importance of the state as a balancing force and upholder of social justice. As a result, the criminal justice system would not intentionally endorse a design that would allow manipulation based on wealth or power *unless it is absolutely necessary*.

The result of this is a more limited role for lawyers and fewer loopholes to be exploited by the legal professionals. We may note the lack of enthusiasm for an independent jury in China’s criminal procedures. A jury made up by lay people, lacking in basic training in legal reasoning, may be easily swayed by a highly skilled (probably very expensive) defense attorney. This creates substantial inconsistency in a jury’s decision, with the defendant’s financial resources as a primary predictor. Many Chinese feel that by removing the jury, and leaving the decision to a panel of professional judges properly trained in truth-finding and the application of law, the lawyers will be limited in the number and type of methods (tricks) to use in the courtroom, and the delivery of justice

will be largely independent from the wealth of the defendant, and more reflective of the evidence and the law.

A 2008 report by the American Bar Association, entitled Criminal Justice System Improvements, begins by saying all of us rely on the criminal justice system to keep us safe and maintain order. We expect our criminal laws to enable the courts to separate the guilty from the innocent, to incapacitate truly dangerous individuals, and to promote deterrence and retribution for those who violate the law. We also expect the criminal law and the criminal justice system to be fair and even-handed and to enable the rehabilitation of criminal offenders. Further, we expect the criminal justice system to assist offenders who completed their sentences to re-enter the community as productive citizens and to avoid commission of crimes in the future.¹²

Current national policy on crime prevention, control and punishment in the United States is, however, overbalanced toward punishment. In 2014 the Executive branch of government – the President and Justice Department – have begun to re-evaluate such things as disparate mandatory sentencing laws and confinement practices that are excessively harsh. The American Bar Association Report cited above supports use of alternatives to incarceration for offenders who pose little or no threat to communities.

Criminal justice systems in China and the United States both seek to curb the proliferation of crime, maintain public safety and minimize additional offenses. Both systems use court systems, employ police, and have correctional or detention facilities. But because of ideologically different government models, there are clear differences that affect outcomes and society.

Chris Jones, Rutgers University, wrote in an article Comparison of Social Control in China and the United States¹³ that to bring about social compliance, the United States utilizes formal institutionalized means as it controls crime through the state and government at all levels. The views of society have less influence than institutional actions. We have an exceedingly active formal legal system. Because of that, deterrence of crime is through the police, the law, and the court system. In the United States almost all instances of crime involve use of the police as the first resort. People call the police for nearly everything. In addition to the police, the court system is used extensively. The concept of “innocent until proven guilty” is one reason why people constantly resort to the court system. Another is that there is the chance one might avoid punishment for crime.

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http://www.americanbar.org/content/dam/aba/migrated/poladv/transition/2008dec_crimjustice.authcheckedam.pdf Retrieved 2014.05.12

¹³ Jones, Chris. (2014) Comparison of Social Control in China and the United States. Rutgers University Alum. Yahoo Contributor Network (now closed). Pp1-2

Social control in China sharply contrasts with social control in the United States. In China, Jones states, the main source of social control is informal. The Chinese rely on morality and family pride to deter crimes. Thus, what you do reflects strongly on your image and family's honor. In addition, the numerous teachings of morality in early childhood have a strong impact on values and mindset. They stress that a person must have self-discipline and subordination to the family and country. The Chinese rely on the social collective to enforce crime.

Morality plays a large part in the deterrence of crime in China as it is part of early education and norms. Crime deterrence in the United States is primarily due to external factors which work to impede crimes. The difference is between intrinsic (China) versus extrinsic (United States), this argument maintains. According to Jones, a number of psychological studies have shown intrinsic factors are stronger than extrinsic motivating factors. American children are taught that committing a crime will lead to severe punishments such as jail, Chinese children are taught what it means "to be a dutiful son, a loyal official, and even a benevolent ruler". Education and reasoning provide a much stronger and lasting effect on controlling crime.

There are fundamental differences in the effectiveness of the two systems. Each country begins with a different cultural paradigm. For the culture of the United States being individualistic is paramount; for China's culture, it is being collective. While people in China measure crimes and deviance through morality and how it will affect their family image, people in the United States, for the most part, avoid committing crimes because of punishment. (Jones P 1-2).

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