Settlement Judges East and West: A Comparison of Judicial Settlement Activity in China and Canada

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A judge in a court which has institutionalized the practice of active judicial involvement in settlement of pending cases; therefore, a judge who accepts settling cases as part of the judicial function and who sometimes acts in the role of a settlement facilitator.
A theoretical framework or model for analyzing interpersonal relations and communications connected with collaborative work in organizations or institutions.

An activity system consists of these elements:

<table>
<thead>
<tr>
<th>Subjects (interacting agents)</th>
<th>Tools (resources, discourses, culture)</th>
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</thead>
<tbody>
<tr>
<td>Object (goal of collaboration)</td>
<td>Norms (rules, expectations)</td>
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<tr>
<td>Community (audience, reference group)</td>
<td>Division of labour (roles, functions)</td>
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Activity systems examined

**Judges’ personal activity system**
An individual judge’s personal activity influenced by surroundings (goals and resources, reaction from family, friends, colleagues and mentors)

**Courts’ private activity system**
Courts’ work to handle and dispose of filed cases within the court (in the context of government oversight)

**Courts’ public activity system**
Courts’ role in upholding law and achieving justice in the eyes of the public
Features of judges’ *private activity system*:
- **Subject**: Judge candidates are generally graduates of law school, but have little experiences of legal practice
- **Object**: objective to be a respectable judge and cherish the decent job
- **Tools**: Settle cases actively by the method of mediation

Features of courts’ *private activity system*:
- **Object**: objectives of efficiency and effectiveness
- **Tools**: Judicial evaluation system guides performance
- **Culture**: settlement culture supports judicial mediation

Features of courts’ *public activity system*:
- **Object**: objective to keep social order and stability
- **Community**: concern for reaction of parties and netizens to avoid complaint and dissatisfaction
- **Community**: influenced by outside elements especially politics
Canadian activity systems

Features of judges’ *private activity system*:
- **Subject**: close ties with local community as a former lawyer
- **Object**: motivation is to gain respect as a judge, not salary
- **Norms**: norms of independence and impartiality are strong

Features of courts’ *private activity system*:
- **Object**: efficiency and wise use of resources required
- **Tools**: monitoring and scrutiny of courts’ work by government
- **Community**: government control of resources

Features of courts’ *public activity system*:
- **Community**: public trials and media coverage the norm
- **Culture**: Judgments contribute to develop the common law
- **Culture**: adversarial system challenged by ADR
Court hierarchy induces judges to pursue promotion which sometimes makes judges stray away from their original objective of being a respectable and fair judge.

Political objective of social stability requires more judicial mediation than adjudication, which may replace the original objective of efficiency and effectiveness for the court.

Parties and netizens’ objectives may be inconsistent with judicial objectives, but will be catered by courts in order to avoid complaint and public dissatisfaction.

Contradictions among three activity systems: objective of individual justice will be weakened by the objects of efficiency and social order.

The judicial function must be multiple and the judges are not only trial judges but also settlement judges.
Contradictions and change – Canada

Contradictions:
- contradiction between objective of respectable trial judge and objective of settling cases efficiently
- contradiction between objective of settling cases efficiently and objective of rendering public justice

Changes: multiple roles and values
- Judges in their role as independent, impartial arbiters of justice maintain interpersonal distance between themselves, lawyers and litigants; however, the role of settlement facilitator may require more personal engagement and display of empathy by judges.
- The efficiency of settling cases without long and expensive trials is in tension with the need to dispense public justice according to law in those cases where settlement is inappropriate.
Challenges for China and Canada

Different directions:

In China: the tension between the rule of law and traditional social virtues of peace and harmony are a challenge for judges who wish to uphold the law, but also ensure social stability through consensual settlement. (from settlement to rule of law)

In Canada: traditional reliance on the rule of law to ensure peace and order is now being supplemented by dispute resolution through settlement, creating a challenging new role for judges as settlement facilitators. (from rule of law to settlement)
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Questions and comments?