China’s forensic psychiatry and its role in criminal justice system
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Abstract The history of forensic psychiatry in modern China is described, illustrating that the social-historical background, political setting, legal system, culture, and realistic factors have affected the development of forensic psychiatry. The criminal justice system in China is presented, which consists mainly of: the police, procuratorates, courts, lawyers, and correctional systems. These include security hospitals and are collectively addressed as Ankang hospitals, literally meaning “hospital for security and recovery”. Finally, the role of forensic psychiatry in the criminal justice system has been elaborated, including the characteristics of the clinical units of forensic psychiatry, and challenges to the future development and practice of forensic psychiatry.

Key words: Forensic psychiatry, society, culture, legal system, China

INTRODUCTION Forensic psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues. In China, the administration and practice of forensic appraisal (including psychiatric expertise) has been a complicated problem for many years. The National People’s Congress has enacted an Administrative Decision on Forensic Appraisal Issues in February 2005. It is expected that the management and supervision of forensic psychiatric practice will be well developed in the near future. The purpose of this presentation is to introduce the history and development of Chinese forensic psychiatry and to give a brief description of its roles in the criminal justice system in China.

HISTORY OF CHINESE FORENSIC PSYCHIATRY Modern forensic psychiatry had never existed in China until the 1980’s due to a lack of systematic legislative framework. In the 1950’s, some clinical psychiatrists began to practice mental status evaluations for criminal offenders in request of judiciary bodies. Because there has been no national legislation officially defining their legal issues, their evaluation has been based almost entirely on the clinical interview, and the expert conclusion is simply a diagnosis of mental illness. Such practices were thus not forensic ones, and there were no certified forensic psychiatrists.

In the era of Cultural Revolution from 1966 to 1978, the profession of psychiatry was severely affected by political turmoil. Physicians and psychiatrists did not run psychiatric institutions; farmers and workers ran the institutes. Psychiatrists had little influence on political power. No psychiatrist played a role in the formulation or implementation of thought reform in related policies, nor were they involved in the political purpose.

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The modern development of psychiatry in China really got underway with the era of economic reform initiated in 1978. Hospitals began to raise their level of practice, to improve their expenditures on wards and clinics, and the profession rapidly developed. By the end of 2005, mental health institutions in the whole country had reached 1140, with 166,800 psychiatric beds and about 16,400 psychiatrists.

The specialty of forensic psychiatry in China had its actual origins in the 1980s following national laws and regulations. Such legislations include the ‘Criminal Law of the People’s Republic of China’ (1980), the ‘Criminal Procedure Law of the People’s Republic of China’ (1980), the ‘Civil Procedure Law of the People’s Republic of China’ (1982), and the ‘General Civil Law of the People’s Republic of China’ (1987). These provide the legal grounds for forensic psychiatric expertise. However, the actual practice of forensic psychiatry was not initiated until 1983-1984. This was because few mental health professionals understood and appreciated these laws, and even fewer were interested in this demanding and difficult specialty. Although research on this topic was encouraged, it was not until the late 1980s that research publications on forensic psychiatry appeared. This was more than a decade later than the redevelopment of research in the rest of psychiatry.

In 1986, the Chinese Association of Forensic Psychiatry (CAFP) was established as a specialty branch of the Chinese Society of Psychiatry. In June 1987, the first national academic conference of forensic psychiatry was held in Hangzhou, hosted by the CAFP. Thereafter, conferences have been held every two years in different cities. The most recent conference was held in Zhengzhou in May of 2005. Around 240 members of this Association attended the conference to discuss some critical issues in forensic psychiatric evaluation such as the legal criteria of psychological trauma and brain injury, and the administrative and ethical requirements of forensic psychiatry. In June 2002, another academic organization of forensic psychiatry, the Association of Legal Psychiatry (a branch of the Chinese Association of Forensic Medicine) was established. It is estimated that it has a membership of about 100, and most of them are also CAFP members.

THE CRIMINAL JUSTICE SYSTEM AND SECURITY HOSPITALS  In addition to national and local legislature-level bodies responsible for supervision and legislation, the criminal justice system in China consists mainly of the following parts: the police, the procuratorates, the courts, the lawyers, and the correctional system. The criminal justice proceeding itself can be roughly divided into three phases: the police inquest, the judicial proceeding and verdict, and the execution.

Strictly speaking, the police inquest is not a judicial procedure, although during the final phases of the investigation, the police collaborate closely with the prosecution. At the end of the inquest, detailed evidence of the crime, either material or testimonial, along with a report explaining how the criminal conduct occurred, is sent to the People’s Procuratorate where the case is put in record. During the gathering of this evidence and its transmission, the criminal suspect is usually detained in a custodial station or at home, but is strictly watched. Forensic psychiatrists are asked by the police or the Procuratorate to evaluate the suspect if: (1) he/she is obviously mentally ill, and has committed a serious offense; or (2) he/she or a family member suggests that he/she might be “abnormal” or have a history of mental disorder. The report of forensic psychiatric evaluation is then forwarded to the prosecution. In some cases, a minor offender or security violator (i.e., one who does not violate the Criminal Law) may be dealt with simply by the department of public security (police). They will be sent into labor camps or be forced into police run custodial facilities for less than 15 days.

During the second phase of the judicial proceeding, the Procuratorate and the defense produce their evidence, and at the request of any of the involved parties, the prosecution or the court will ask forensic psychiatrists to assess the suspect’s criminal responsibility or competence to stand
trial. Once completed, and irrespective of its conclusions, (that is, even if the accused is deemed mentally ill and irresponsible), litigation resumes. It concludes with one of four possible verdicts: (1) Conviction and sentencing; (2) Conviction with a mitigated punishment due to diminished criminal responsibility (similar to the Anglo-American “guilty but mentally ill (GBMI)”; (3) Acquittal because of criminal irresponsibility (similar to the Anglo-American “not guilty by reason of insanity (NGRI)”; and (4) Acquittal and released.

During the phase of execution, the sentences described above are implemented. In general, for those who receive the second verdict, punishment is lighter and probation is an option. Those receiving the third verdict are involuntarily admitted either to one of the security hospitals (Ankang hospitals) or to a general psychiatric hospital, but in most cases, because of the lack of forensic psychiatric facilities in their area or because the general psychiatric hospital to which they are assigned is unwilling to accept them, they end up being transferred to guardian(s). Only when admitted to one of the Ankang hospitals are patients officially classified as “forensic psychiatric inpatients.” Occasionally, those imprisoned for “criminal responsibility” are further evaluated by forensic psychiatrists who determine their “competence to serve a sentence”.

Prior to the 1980s, a number of security custodial facilities were established in cities such as Hangzhou, Xian, Tianjin and Ningbo. These facilities aimed to maintain public safety by cloistering and providing care for mentally disordered offenders. However, they offered little in the way of treatment and kept most patients locked in wards for years. Beginning in 1982, in response to advancements in the legal system and a growing awareness of patients’ human rights, they were restructured as formal mental health institutions known collectively as “Ankang hospitals”. In Chinese language, “Ankang” means “security” and “recovery,” signifying both the security of the public and the recovery of the individual patient towards which these hospitals aim. Funded by local governments and run by the local public security bureau, Ankang hospitals provided inpatient services to mentally disordered patients convicted of serious offenses, much as “maximum security hospitals” in Britain and other countries do. By accepting such “criminally irresponsible” patients, they solved, at least in part, a major problem of the criminal justice system – the shortage of available treatment facilities.

Over the last decade, the number of mental health institutions in the public health system has increased from 320 to 835, and the number of welfare mental hospitals in the civil affairs system has doubled to 257, but the number of Ankang hospitals has only increased by 2 from 20 to 23 because many local governments believe that such facilities are a financial burden. Because of meager financial resources, many can only consistently fill less than a quarter of their available beds, and others are trying to open some of their wards to patients from general psychiatric hospitals.

This shortage of forensic institutions has created significant public security problems. In some rural areas where treatment facilities are scarce, mentally disordered offenders (and usually recidivisms) are secluded, tied, or locked by their family members or neighbors. Therapeutic practices in the Ankang hospitals are largely the same as those in general mental health institutions. Physicians and nurses, on average, account for more than half of the staff members in these hospitals. During hospital stays, family members and friends are granted substantial visitation rights and may even bring gifts to patients, provided that they cannot be construed in any way as weapons. Following 1-2 years of treatment and rehabilitation therapy, if patients’ symptoms stabilize, they may be discharged from the hospital. But there are some patients who stay for a lifetime in such hospitals because physicians are reluctant to discharge them over the fear of these patients re-committing homicide in the community.

Many sources around the country indicate that Ankang hospitals generally do not provide mentally ill offenders with sufficient treatment. Because of limited financial resources, the length of stay in these hospitals is usually short, and as a result, there is an unusually high incidence of malingery among criminal offenders seeking to be admitted to Ankang hospitals.

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ROLE OF FORENSIC PSYCHIATRY

In China, almost all of the practicing forensic psychiatrists work primarily as clinicians in psychiatric hospitals that maintain units of forensic psychiatry designated by the local justice departments. It is this unit that accepts requests for forensic evaluations. It both assembles and oversees “mission groups” comprised of at least 3 psychiatrists responsible for researching all the documents relevant to the case (which sometimes entails requesting additional information from the consigner and/or an on-site investigation), interviewing the patient, and issuing a formal report based both on diagnostic criteria and on national laws. Depending on local regulations and the complexity of the case, the length of time needed for the completion of this process may vary from 15 to 60 days.

Clinical Units of Forensic Psychiatry

There are several characteristics of this system.

1. Individuals or lawyers cannot directly request forensic psychiatric evaluations, but instead, must raise their suggestions to the prosecutor or the judge. This is not the case in the United States, where forensic psychiatrists often serve as consultants to lawyers and may even participate in advocacy strategy if their opinions accord with those of the defense.

2. If the police suspect that a minor violator had mental problems at the time of his or her violation, they may request a “medical assessment” of his/her mental states. If he/she is diagnosed with a mental disorder and inpatient treatment is recommended, he/she will be coercively admitted into a psychiatric hospital instead of into a custodial facility. As described in the “Regulations on Administrative Penalties for Public Security” (1986):
   “A mentally disordered person who violates the administration of public security at a time when he is unable to account for or control his conduct, shall not be penalized, but his guardian shall be instructed to keep a close watch on him and subject him to medical treatment.”

   However, if family members, guardians, or other representatives of the patient refuse this detention, court investigation will be involved at the beginning of the “administration appeal.” This appeal is open to all citizens wishing to contest the decisions and/or behaviors of administrative officials.

3. If any side involved in litigation, either during or after the trial, does not agree with the conclusions reached by the forensic psychiatric experts assigned to their case, they may petition the judge or higher courts to continue the evaluation by soliciting expertise elsewhere, which usually cause litigation cost and unlimited time delay.

4. With few offenders to be raised to forensic psychiatric evaluation, the conclusion of forensic evaluation on the evaluee’s criminal responsibility has the most influential effect in the courtroom. Although about 60% of offenders were evaluated as criminally responsible, while there were 40% being diagnosed as suffering from mental disorders at the time of offence and most (about 90%) of them eventually got lighter punishment or released or got involuntary admission into psychiatric hospitals.

5. Most forensic psychiatric evaluation was involved in severe violence such as homicide and harm. An epidemiological survey in 2002 among 20 forensic psychiatric institutions (accounting for 14% of the whole nation’s such institutions) indicates that criminal cases account for 73.74% of their forensic evaluation.

Compared to its important role in the justice system, forensic psychiatrist is not an attractive profession in China. Few young physicians select it as their medical specialty. In most hospitals, the average age of physicians in the division of forensic psychiatry far exceeds that of other divisions.
Challenge to the Practice of Forensic Psychiatry

Forensic psychiatric administration is not standardized or guided by legislative regulations. Currently, there is no centralized, administrative system for the oversight of forensic psychiatric evaluations and no official conduit between the central government and local government(s). As more and more citizens have gained fluency in the legal knowledge popularized by the media, the need for more specialized and qualified forensic expertise has increased. But few are willing to rise to the challenge, especially when public acceptance of their work is so limited.

Forensic psychiatric practice has not been widely appreciated by the public. Due to popular misunderstandings of the nature of mental illness, the standards for its evaluation, and the means of its practice, many reject forensic science as a valid practice. Public distrust is only exacerbated by the fact that forensic psychiatrists regularly reach disparate diagnoses, a situation further exploited by the media who publicize only the most dramatic of such cases. As a result, it is generally presumed that the methodologies of forensic psychiatrists are subjective and randomized.

Up until very recently, there were no national standards for the fees that could be charged in forensic practice. In most provinces, the payment set out by government for forensic psychiatric expertise was as little as 12-25 U.S. dollars per case, even lower than one hour's psychological counseling. This was usually considered a simple “medical service fee.” Forensic psychiatric practice is a demanding practice, requiring detailed and time-consuming study of the law, criminal psychology, and forensic psychiatry, followed by practice in the field. Understandably, inadequate compensation greatly dampens the enthusiasm of practitioners.

The administrators of many mental health institutions either ignore or are indifferent to this work. Many administrators in the assigned hospitals consider forensic psychiatrists inferior to physicians working in the more profitable branches of medicine simply because they do not “contribute” as much to the hospital financially. As a result, psychiatrists involved in this specialty find it difficult to advance professionally.

Occasionally, the personal safety of forensic psychiatrists is endangered. There have been instances, for example, of clients or their relatives threatening the safety and well-being of psychiatrists whose evaluation reports do not satisfy their interests. In order to protect themselves in such situations, psychiatrists may even go so far as to fail to appear in court.