

Strengths and Weaknesses of China's Characteristic Mediation Model

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Abstract

As a preferred and popular method for dispute resolution with a long history and tradition, Chinese mediation model has evolved into a characteristic and mixed form. The characteristic mediation model indicates that on one hand, the heavily institutionalized mediation style guided by local courts has been widely employed in most coastal cities with relatively economic development; on the other hand, the traditional mediation approach by which disputes are mostly resolved through village heads, clan leaders and/or community elites still exists and is practiced in China's rural areas. This research study introduces the distinctive features of China's mediation model and discusses the merits and weaknesses of China's characteristic mediation model.

Keywords: China, mediation, characteristic mediation model, dispute resolution, traditional dispute resolution

Introduction

Community mediation has long been a preferred and popular dispute resolution tool in China for several hundred years. Some prominent western scholars in the field of conflict resolution studies have often cited this in their book following Chinese old saying: “it is better to be vexed to death than to bring a lawsuit” (Auerback, 1983; Chow, 2002; Cohen, 1966). As the existing China’s mediation model is *de facto* a mixed and complex model combining its traditional self-customary dispute resolution systems and the court-based mediation system, strengths and weaknesses of this mixed mediation model need to be discussed more specifically for deepening understandings of how China’s experiences in developing mediation systems can contribute to other countries.

In order to carefully examine the strengths and weaknesses of China’s mediation model, this study is divided into four sections. The first section aims at introducing the existing mediation model and Chinese mediation culture. Then, the strengths and weaknesses of China’s mediation model are respectively discussed and analyzed in the second and third section of this study. At the end of this paper is a conclusion in which the whole picture of China’s mediation model can be shown to readers.

Through discussing the strengths and weaknesses of China’s mediation model, this paper aims at providing the experiences of how the Chinese government has immersed the traditional, non-western, and self-customary mediation systems into the modern, standardized, court-based mediation systems. Practitioners and scholars in the field of mediation are thus able to gain valuable lessons in terms of discussions regarding China’s mediation model.

Existing China’s Mediation Model

Similar to many Non-western societies, African countries especially, China’s society has its traditionally self-customary mediation systems as one of the important historical legacies (Nader, 1991). There are two main reasons for the natural development of China’s traditionally self-customary mediation systems. On one hand, China was an agricultural country for thousands of years and an agricultural lifestyle required people to live together in the same community. Therefore, maintaining a harmonious relationship in the community is a key concept of Chinese culture (Hazan & Shi, 2009). The prevailing *Confucianism* that focuses on developing a harmonious relationship inside the community also greatly helped the development and popular use of the self-customary mediation model in ancient China (Perkovich, 1996). In this regard, governmental court intervention for resolving disputes was normally regarded as a threat to the community and strongly discouraged, while bringing disputes to local community leaders and/or clan chiefs was highly promoted. In fact, the intervention of the central government in the community/village affairs was widely regarded as a negative way of impairing the authority of local community leaders in a high-contextual society such as China, making them lose face and/or look “bad” (Ausburger, 1995). Thus, local community leaders and/or village elders normally encouraged community members to report and bring their disputes and grievances to them first before taking them to the court or to other higher officials.

On the other hand, the considerable territory of China was another critical factor for the formation of the self-customary mediation model. The size of Chinese territory was too large to effectively deliver the judicial power of the central government to every corner of its territory, especially to those rural

villages far away from big cities. This geographical limitation of the judicial power functioned as a catalyst to stimulate the development of the local community mediation system, making mediation thriving in those remote areas (Davidheiser, 2006). In fact, the Chinese central government used to suffer greatly from controlling such a big country. For this reason, disputes at both the village and county levels had in general been resolved through the mediation of clan leaders and/or respected elders (Macauley, 1998; Huang, 1996; Li 2009). The gap of the legal field caused by the geographical limits of the judicial system did not only provide a suitable environment for the development of the community mediation system, but further re-embedded grassroots and community members with thoughts that the local mediation system was more feasible and cheaper.

Thus, as discussed above, these two preconditions provided a suitable environment for the development of the traditionally self-customary mediation model that was historically popular in China (Cohen, 1966; Utter, 1990; Wong, 1995). However, the current Chinese mediation model is not the same one with the traditional mediation model discussed. Instead, it has mixed systems combining the self-customary mediation system and the internationalized, court-based mediation system. The court-based mediation system is primarily used in big and economically developed cities, while the traditionally self-customary mediation system is often practiced in rural villages where village heads and clan leaders are legally responsible for resolving disputes. In Chinese big cities, legal culture and judicial behavior have become more consistent with international norms and practice (Potter, 2001), so the court-based mediation system is somewhat like mediation systems of western countries which focus on creating a fair and just mediation procedure that helps promote a mutually acceptable resolution for involved parties (Moore, 2003). In contrast, the traditional, community-based mediation system in rural areas of China does not really focus on a standardized mediation process, but concerns more with long-term relationships of involved parties and a flexible process which can be navigated to a mutually acceptable conclusion (Qian, 2010; Yuan, 2017).

It is worth noting that the two divided mediation systems are not working separately according to the geographical/economic difference, but one is embedded within the other. The integration of two mediation systems costs tremendous administrative efforts of the Chinese government. For example, it is not uncommon that court-based mediators go to villages to introduce and impart legal knowledge to village heads and/or community mediators so mediators in rural villages can better help disputants with their legal knowledge. Also, aged traditional mediators are often invited to big cities to introduce their mediation skills and experiences to court-based mediators so that the toolkits of court-based mediators can be enlarged. What is more, in face of long-lasting and intractable disputes, police officers, lawyers, community mediators, and other third parties occasionally work as a team to mediate involved parties' cases. In this situation, mediators, both court-based mediators and village heads, are closely working together to achieve a workable resolution.

Merits of China's Mediation Model

In the previous section, the development of the traditional Chinese mediation model and the characters of the current Chinese mediation model have been discussed. Having a basic understanding of the current Chinese mediation model, which includes traditional mediation systems and modern, court-based systems, is important and necessary for a discussion on the merits and weaknesses of the Chinese

mediation model. In this section, strengths of the distinctive Chinese mediation model are discussed and analyzed in detail with examples.

There is no doubt that China's mediation model, with its complex mediation systems, has been doing an effective job in helping resolve disputes and maintain social stability for the past decade. For example, the civil mediation/dispute room established by the police in Beijing city successfully handled 88.9% cases from March to July 2010, according to data released by Beijing Municipal Public Security Bureau (2010). Another example is the Shanghai District Courts, where a people's mediation window inside the courtroom was set up so that disputants are able to have a good chance to mediate their case first in advance of litigation. This initiative helped decrease about 15% of cases handled by the courts in 2006 compared to 2005 (Hong, 2007).

In fact, the Chinese central government has been working hard to help develop mediation, which can be learned from a course of legal actions that the Chinese central government enacted. At the beginning of the 21st century, two influential law documents in China were put into effect: *Judicial interpretation on Hearing Civil Cases Involving People's Mediation Agreement* by the Supreme People's Court and *Some Provisions Regarding the Work of People's Mediation* by the Ministry of Justice. Besides, the *Mediation laws of China* legislated later in 2010 can be regarded as a legal way to protect, extend and reinforce these two provisions.

At the core of all these law documents is the enhancement of the legal status of mediation by strongly immersing the traditional mediation system into the Chinese legal system, so that mediation is able to gain more attraction and become more effective in helping litigious people living in big cities. For example, before the enactment of these law documents, judges of China's People courts often ignored the agreement made through mediation in legal practice (Halegua, 2005), which made many Chinese people just doubt the authority of mediation agreements. *Mediation laws of China*, together with *Some Provisions Regarding the Work of People's Mediation*, for the first time in Chinese legal history, allow agreements made in mediation to enjoy a legal status equivalent to civil contracts, which help dispel people's worries (Di & Wu, 2009). By officially and legally recognizing the legitimacy of mediation, mediation services in big cities become more trustworthy and thus become more attractive.

The mutual communications between Chinese traditional mediators mostly from rural areas and court-based mediators from big cities are also an important merit that makes China's mediation model successful, effective, and popular. Through mutual communications, mediation skills and experiences of the traditional mediators can be passed on to many court-based mediators in the next generation. Meanwhile, those village heads and/or clan elders are able to have the latest legal knowledge to deal with disputes and better solutions may thus be created. Again, the Chinese government at all levels should be given credits for their strong administrative power to mobilize all types of mediators together and create opportunities and platforms for them.

Last but not the least, *Confucianism*, as a dominant ideology in China, has played an important role in promoting the development of mediation, especially contributing to the Chinese mediation skills and process (Colaterlla, 2000; Jianxin, 1997). With the strong influence of *Confucian* philosophy, Chinese people prefer to resolve their disputes through a way that hurts their personal connection at the minimum (Cohen, 1966; Utter, 1987). There are just many precious thoughts from *Confucianism* used by Chinese mediators for enlarging their mediation tool boxes. For example, encouraging disputants to conduct self-criticism is a distinctive one (Fei, 1993). The central idea of self-criticism originally from

Confucianism in mediation practice is to encourage disputants to focus on what they have done wrong (Perkovich, 1996). Disputants are always strongly encouraged to apologize first in the mediation process to earn other's forgiveness and respect in order to reach an agreement in good faith.

Weaknesses of China's Mediation Model

Even though China's mediation model works effectively in maintaining social order and resolving disputes, there are three obvious drawbacks in the development of China's mediation. First and foremost, there is no single university in China providing mediation/conflict resolution degree program. Although some Chinese universities do offer some mediation courses in law schools, it is far away from their western counterparts who have been growing their teaching interests in offering degree programs in mediation and conflict resolution. Lack of university education, many Chinese mediators are short of theories and skills in conflict resolution and have to learn it at their job from experienced mediators. In fact, there is a huge gap between the growing mediation services and the professional and skillful mediators in the Chinese mediation services market.

Moreover, although the Chinese central government attempted harder to promote legal education in rural town and villages than big cities, the effects of these top-down movements were indeed limited (Song, 2006). As a result of the lack of enough institutional support and legal resources, people living in rural areas rely more on the mediation of clan leaders and/or village heads. Although these clan leaders and/or village heads are powerful in maintaining villages' order and skillful in practicing mediation skills, they may not be strictly impartial, nor absolutely neutral. Quite often, village heads and/or clan leaders approach a dispute by opening a discussion in a village meeting room with all of the villagers or sometimes important villagers, listening to complaints from both sides, but they always show their strong personal styles in resolving conflicts, emphasizing the importance of harmony of village or community (Chia et al., 2004). In some situations, the role of these Chinese mediators, especially those village heads, could be "authoritative mediators" in the modern ADR system as Moore (2003) describes that the mediator has "an authoritative relationship to the parties in that he or she is in a superior or more powerful position and has potential or actual capacity to influence the outcome of a dispute" (p. 47). Therefore, the justification of the agreements made by those mediators sometimes can be daunting.

Furthermore, mediation has long been viewed by Beijing as "the first line of defense to guarantee social stability," so the Chinese officials from the central level to the local level have been strongly supporting the use of mediation for maintaining the social order and peace with strong administrative power since 1990 (Kleinlei, 2014). It does effectively contribute to the popular use of mediation in China. However, the strong invention of the governmental power can be harmful to the process and outcome of mediation too as mediation has to proceed with the willingness and good faith of involved parties (Moore, 2003). In China, some disputants are forced to go to mediation rooms but not willingly seek the help of mediation. In fact, mediation has also been placed in China at a priority position with a policy promoted by the China's supreme people's court in 2010 (Zhang, 2012). The policy is called "mediation first" (*tiajie you xian*), which encourages, sometimes even enforces disputants to go for mediation first before entering the courtroom. For example, Chinese courts in many situations would not review the case by deliberately delaying the process until disputants go for mediation first.

Conclusion

The past two decades of the 21st century are the golden years for the development of China's mediation model which has been doing a good job in combining its two arms. One arm of the mediation model is the court-based and more standardized mediation system in big cities and the other arm practices the relatively traditional mediation style in rural areas. Through a variety of legal documents, administrative power, *Confucian* ideology, and communications between different types of mediators, China's complex mediation model exemplifies how traditional mediation patterns can be embedded into the institutionalized mediation model and co-work with court-based mediation systems in non-western society. The experiences of how the Chinese government has integrated two different mediation systems also provide a new angle to scholars and practitioners in the field of mediation.

However, it seems that the continuation of the prosperity of China's mixed mediation model faces many serious challenges. The lack of good mediation teaching programs in higher education severely fades the future of mediation's development away in China. The government-led development model makes mediation relies more on administrative power rather than on market needs. Once the central government changes or adjusts its strategies, mediation may become less popular. In addition, the traditionally acquaintance-community-based mediation systems in rural areas of China have some flaws such as depending occasionally on mediators' personal skills and thus may not be fair enough in resolving disputes (Yang et al., 2005; Zhang, 2015).

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