

Cultural perspectives on China resolving disputes through mediation

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Executive Summary

Some think that cultural differences that exist between countries influence how disputes are resolved. In China mediation is a common mechanism for resolving disputes and it is said that this is because of its Confucian past. In Confucian thought the courts and the law were viewed as a necessary evil and there is great emphasis on community rather than individual.

This paper will examine some of the cultural differences as between China and the UK that might have influence on how disputes are resolved in these countries and to see if there are lessons that each country might learn from the other.

Introduction

Over the last twenty five years China has been transforming itself economically and Chinese leaders accept that law has a most important part to play in this. As part of its accession to the World Trade Organisation (WTO) in December 2001, China agreed to ensure that its laws and regulations would conform to its obligations undertaken in WTO Agreements and the Accession Protocol and that these would be applied uniformly through out the country.

In the period from 1999 to 2005 in line with its WTO commitments China constituted, adjusted and abolished over 2,000 laws, regulations and rules. As the new legal and administrative systems must co-exist with those found in other market economies the reform has inevitably involved the incorporation of Western ideas of law.

Since joining the WTO China's volume of trade has expanded rapidly and is expected to reach US\$1.7 trillion in 2006, more than three times the US\$509.6 billion achieved in 2001.

Professor David Zweig who heads Hong Kong's University of Science and Technology Center on China's Transnational Relations does not view this in an entirely optimistic way saying that when China joined the WTO it submitted itself to a universal set of rules and signing off sovereignty it had defended fiercely for millennia *"China basically accepted the fact that the outside world could tell it what it could and couldn't do domestically"*.

It is clear that joining the WTO has changed the lives of individual Chinese, the Chinese economy and the Chinese legal system. It is open to question as to whether it will also change Chinese culture and the way that Chinese people prefer to resolve disputes.

Development of culture

Culture is a difficult concept and one reason for this is that it means so many different things to different people. When I worked for the American computer company Unisys one of my colleagues was a very brash and dour Scots' salesman and the joke ran thus. What is the difference between Wallace McDougal (a pseudo name) and a yogurt? The correct answer apparently was that if you leave a yogurt in the fridge long enough it will develop a culture.

The very nature of culture or what culture is has evolved considerably over the last one hundred and fifty years from Matthew Arnolds (1822 – 1888) essay on Culture and Anarchy defining *"culture being a pursuit of our total perfection by means of getting to know, on all the matters which most concern us, the best which has been thought and said in the world"*. This rarefied definition of culture was challenged by Edward Taylor (1832 – 1917) who defined culture *"Culture or civilisation, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society"*. This inclusive *"complex whole"* proposition said that all people have culture which operates as an integrated system and is something which undergoes social evolution.

It was however the social evolution concept which supported those (mainly in the West) who believed that there was a cultural hierarchy and that European culture was more advanced and therefore superior to other cultures *"underneath everybody wants to be an Englishman"*.

In the 20th century Franz Boaz (1858 – 1942) and his students offered quite a different view, that of cultural relativism. According to Boas there are no inferior or superior cultures, they are all equal and each culture is as a unique result of its own historical processes. Cultures are of equal value and need to be studied from a neutral point of view. All aspects of culture such as beliefs and morals can only be judged through their significance to a given culture. External value judgements are rejected and there is no single scale through which to judge one culture from another.

More recently, the United Nations Educational, Scientific and Cultural Organization UNESCO (2002) described culture as follows: *"... culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs"*.

In the context of "Culture and Conflict Resolution" Avruch says that any conception of culture is inadequate if it over simplifies or is connected in any way with a political or ideological agenda and that there are at least **six related inadequate** ideas of culture :-

- Culture is homogeneous, that is it is free of internal paradoxes or contradictions.
- Culture is a thing, leading to the notion that it can act, irrespective of human members.
- Culture is uniformly distributed among members of a group and intracultural variation is a deviance.
- An individual possesses but a single culture. She is Chinese, he is English and his or her culture is synonymous with the group identity.
- Culture is a custom and associated with tradition or customary ways of behaving. Culture here is reduced to a surface level etiquette, such as the presentation of business cards.
- Culture is timeless and therefore has a changeless quality.

People are not born with culture; they have to learn it and the long process of cultural transmission takes places as children learn culture from adults. Cultures are different in the way that they welcome and resist change. Culture will change because of internal forces at work, because of contact between societies with different cultures and because of changes in the natural environment. It is clear that because of the way the world is interconnected through communications and global business that the rate of culture change is accelerating.

China and its Culture

When Chinese Premier Wen Jiabao visited Harvard University at the end of 2003 he made a presentation called "Turning Your Eyes to China". He said *"The traditional Chinese culture, both extensive and profound, starts far back and runs a long, long course. More than 2,000 years ago there emerged in China Confucianism represented by Confucius and Mencius. Taoism, represented by Lao Zi and Zhuang Zi, and many other theories and doctrines that figured prominently in the history of Chinese thought, all being covered by the famous term, "the masters' hundred schools." From Confucius to Dr. Sun Yat-sen, the traditional Chinese culture presents many precious ideas and qualities, which are essentially populist and democratic. For example, they lay stress on the importance of kindness and love in human relations, on the interest of the community, on seeking harmony without uniformity and on the idea that the world is for all"*.

Chinese language and history

German born Edward Sapir (1884 – 1939) offered the proposition that language influences thought because it contains *"hidden metaphysics"* which is a view of the world, a culture, a conceptual system. Language expresses thought, it also shapes thought. 汉字(hànzì Chinese characters) have a very long history dating back some 3,000 years. Chinese characters represent specific meaning and some are straight forward pictures or symbols representing objects or concepts. 汉字 (hànzì) act as a bridge between the different Chinese dialects and underpins the concept of Chinese as a language unified through writing (China has 32 provinces and 56 ethnic minorities).

Sapir said that every language is culturally determined and creates patterns through which individuals not only communicate but also think. I touch on the subject of language for two reasons. The first reason is that language (writing reading hearing and speaking) is important because it facilitates communication and understanding between people. The second is that 汉字(hànzì) may give insight as to how Chinese view their world. For example 中国 (Zhōngguó China) is represented by two characters; the first 中 (zhōng centre or middle) and the second 国 (guó country; state; nation) and it is this concept of middle kingdom or central nation which provides a clear indication as to how China historically saw the less developed societies outside its borders. It is said that you will never understand Chinese people unless you understand Chinese language.

Chen Ming Jer points out that there are important grammatical differences between Chinese and English and which have important cognitive and communicative implications. For example Chinese has no equivalent grammar structure where one can make the hypothesis *"If all of the goods had arrived on time, we would have paid the invoice in full!"* That is to put aside immediate reality and enter an imaginary world of events that did not take place.

Because 中国 (Zhōngguó) was self sufficient it remained a closed door society and trading with the West was limited. It was not until the late 17th century that the Chinese government officially allowed access to seaports in southern China. During the 19th century China lost its way in the world and was forced through the exercise of military power and territorial incursions by Britain, France, Russia, Japan, Germany and America into a series of "unequal treaties" and suffered "national humiliations" which lasted for a century.

It should be no surprise that as a result of Western and Japanese imperialism from 1842 to 1945 a Chinese nationalism determined to restore China's pride and prestige and its rightful place in the world should arise.

A deep sense of historic injustice as well as a "dream of a strong China" (强国梦 Qiángguó Měng) means that nationalism can arise in ways very disconcerting to 外国人 (wàiguórén foreigners); for example in the May 1999 anti US demonstrations and the April 2005 anti Japanese demonstrations. Although in April 2005 Japanese Prime Minister Junichiro Koizumi apologised for his country's World War II militarism expressing *"deep remorse and heartfelt apology for its colonial rule and aggression"* anti Japanese sentiment remains strong and is tangible in China.

My own view (as a result of only seven trips to China using an Irish passport and other conversations overseas) is that Britain (英国 Yīngguo England) is generally well viewed by

Chinese people. Indeed 英 (yīng) is a most generous transliteration and meaning hero or outstanding person.

Patience and flexible thinking

To the Westerner China can often appear as a contradiction. Chinese people can be extremely patient, as they are in international affairs. Sometime they are very impatient, for example for many Chinese involved in commerce, if their new business is not making money after six months to a year they quickly move on and try something new.

邓小平 (Dèng Xiǎopíng 1904 - 1997) was the visionary Chinese leader who pioneered Chinese economic reform and created "Socialism with Chinese characteristics" (the socialist market economy) bringing his country closer to capitalism. In his 1984 speech "China will always keep its promises". There is only one China and he said *"Why do you need to keep Hong Kong's current capitalist system unchanged for 50 years after 1997? What is the basis for this proposal? It is in China's vital interest to keep Hong Kong prosperous and stable. When we gave the figure of 50 years, we were not speaking casually or on impulse but in consideration of the realities in China and of our need for development. Similarly, we need a stable Taiwan for the rest of this century and the first half of the next. Taiwan is a part of China. China can have two systems within one and the same country"*.

This concept and reality of "one country two systems" worked but in many important respects that it is relevant and significant today in the lives of ordinary Chinese is a non sequitur. The principle that the practice of "socialism" on the mainland and "capitalism" in Hong Kong and Macao would continue is now irrelevant and obsolete. In terms of common Western understanding business conducted on mainland China is "capitalism" rampant and unbridled. The difference now lies not in terms of commerce but only in the ideology of single party state versus liberal democracy. Most Chinese people in business see political ideology as a distraction and willingly submit themselves to market forces as the mechanism to improve their material wealth.

I do not view Chinese thinking as a contradiction, I view it as extremely flexible and have personally experienced and benefited from this. In China with the right approach it seems to me that almost anything is possible.

孔夫子 (Kǒng fūzǐ Confucius 551 – 479 BC)

Confucianism is a complex system of moral, social, political, and religious thought which has had tremendous influence on the history of Chinese civilization through to the present day and the teachings of Confucius and his students, has great influence on the basis of the Chinese education and jurisprudence.

Some say that as China's economy has developed there is evidence that old customs with their roots in Confucianism, such as the ironclad obligation to care for and revere the elderly are falling by the wayside.

Confucian "rites" are the complex set of ideas rendered in Confucian teaching and known primarily as the "Analects of Confucius". At the essence of Confucianism and one of his most important teachings is that exemplification is superior to explicit rules of behaviour. In terms of Chinese receptiveness to mediation there are two aspects of the "rites" worth further exploration.

The first is the set out in Analects II, 3 *"Lead the people with administrative injunctions and put them in their place with penal law, and they will avoid punishments but will be without a sense of shame. Lead them with excellence and put them in their place through roles and ritual practices, and in addition to developing a sense of shame, they will order themselves harmoniously"*

This helps us to explain a key difference between Western and Eastern society; where many in the west generally behave well to avoid punishment under the law but in the east they generally behave well because they fear shame and do not wish to lose face.

In "The Abduction of Modernity: Part 3 Rule of Law versus Confucianism," 2003 Henry C K Liu wrote *"..... Confucian attitude places low reliance on law and punishment for maintaining social orderThe Confucian Code of Rites (Liji) is expected to be the controlling document on civilized behaviour, not law. In the Confucian world view, rule of law is applied only to those who have fallen beyond the bounds of civilized behaviour. Civilized people are expected to observe proper rites. Only social outcasts are expected to have their actions controlled by law. Thus the rule of law is considered a state of barbaric primitiveness, prior to achieving the civilized state of voluntary observation of proper rites. What is legal is not necessarily moral or just"*.

It was probably against this background that led Tang and Ward to their conclusion *"Involvement in this formal system of justice was widely regarded as a road to disaster and therefore to be avoided at all costs. In Confucian thought, law has often been viewed as little more than a necessary evil and it was not unknown for officials themselves to pen articles strongly advising against any resort to the courts"*

Without easy access to a formal legal process it is understandable how mediation became widespread in China and the use of mediation committees, in which informed groups of citizens resolve about 90% of China's civil disputes and some minor criminal cases at no cost to the parties. There are more than 800,000 such committees in both rural and urban areas.

The China Council for the Promotion of International Trade (CCPIT) Conciliation Center has 43 offices in China and is the permanent conciliation institution in China, which, independently and impartially resolves commercial disputes by way of conciliation.

Recently CCPIT created an alliance with the Centre for Effective Dispute Resolution (CEDR) and over the next two years CEDR and CCPIT will work together to establish a UK China Business Mediation Centre in Beijing and London, serving the interests of British and Chinese businesses by offering an alternative to costly arbitration or court proceedings, the aim is that CEDR and its CCPIT partners will jointly administer the Centre.

The second aspect of the “rites” worth further exploration is the concept 中庸之道 (zhōngyōng zhī dào the doctrine of the middle way). This is simply known as 中庸 (zhōngyōng the middle way) and in the “Doctrine of the Mean” Confucius espoused that the correct or right course of action is always some middle point between the two extremes of excess (too much) and deficiency (too little) :- *“Tsze-lu asked about energy Confucius said "Therefore, the superior man cultivates a friendly harmony, without being weak.- How firm is he in his energy! He stands erect in the middle, without inclining to either side.- How firm is he in his energy!"*

Those of us involved in mediation know that its goal is settlement of disputes through compromise and finding the “middle way” is an intrinsic part of mediation. Litigation is more about entrenched positions often offering extremes and this runs contrary to basic Chinese instincts.

Two other important Chinese cultural concepts

- 关系 (guānxi relationship). This is often misunderstood as cronyism associated with bribery and corruption, but its genesis is much purer. Chen Ming Jer states *“Guānxi does consist of connections, but more specifically of connections that are defined by reciprocity and mutual obligation. Ideally, these connections are supported by a sense of goodwill and personal affection. Since the Chinese in general prefer to do business with people they know, or with friends of friends, they devote a substantial amount of time and energy to establishing relationships with people they find respectable. It is this commitment of time to building relationships with others that truly defines guānxi”*.
- Face. In relationships involving Chinese people face involves two separate but related concepts. The first is 面子 (miànzi face) and the second 脸 (liǎn face). Liǎn is about the confidence that society has in a person's moral character and miànzi represents social perceptions of a person's standing. Face is important within Chinese social relations because face translates into power and influence and attention should be paid to

preserve the face of others. Because of it Chinese are careful with criticism, how to say no and with imparting personal information for fear of gossip.

Five styles of conflict management

In his 1976 paper on “Conflict and Conflict Management” Kenneth W. Thomas provided what many believe to be one of the most useful models for considering the different approaches open to parties in dispute, the five styles of conflict management.

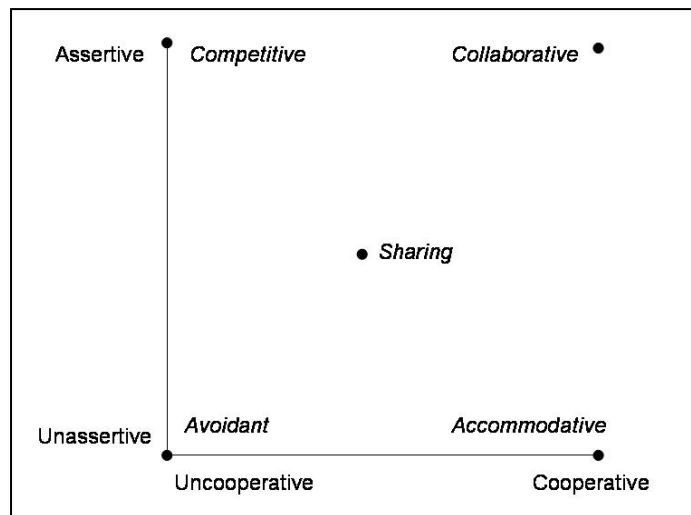


Figure 1 Approaches to dispute resolution (Thomas 1976)

Thomas considered behaviour in two dimensions. One the desire to satisfy one's own concerns (the vertical axis) and the other the desire to satisfy the concerns of another (the horizontal axis). From this analysis behaviour can be characterised in five different styles : avoidance, compromise / sharing, competition / domination, accommodation and collaboration / integration.

In 1986 Tang and Kirkbride undertook a comparison of British and Chinese attitudes to conflict resolution using a questionnaire designed to measure which of the five solutions was preferred. The two groups comprised British and Chinese (Hong Kong SAR) government officials with similar background and seniority and also a third group of Chinese managers from the private sector. The Chinese preferred the less assertive “avoiding” and “accommodative” solutions in contrast to the British who preferred the “competitive” and “collaborating” styles. Also in 1987 Leung found a similar Chinese preference for compromise where Chinese expressed a preference for mediation as opposed to adjudication as a means to resolve disputes.

Some personal observations about China

Some personal observations about Chinese people and why they are successful in business :-

- Education. Chinese people value education and learning enormously and are willing to make great personal and family sacrifices to acquire it. This may stem from the enormous hardships that so many Chinese have living memory off and it may come from the general desire to make better their circumstances. In any event it is consistent with another core Confucian value, that of self improvement. Training of staff both internally and using external agencies is common and widespread.

- Hard work. Trying to connect the “middle way” and the Chinese work ethic reveals another contradiction. Recently the Beijing Bureau of Statistics said employed people in China's capital worked for 5.9 days, or 47.2 hours, a week on average. Most of the employees in labour-intensive businesses and the service trade worked for more than six days a week. My experience of Chinese management and administrative staff is that long hours of hard work are the norm.
- Money. I have found Chinese people to be a very generous people and in so many different ways. However, they understand the value of money and are careful with it. If the western mindset can be characterised as consumption orientated the Chinese mindset can be characterised as savings orientated and this gives Chinese people more flexibility to invest in commercial opportunities.
- Family and business. Chinese culture has always promoted the family as a fundamental and important part of society and it the modern day extension of this is the family business. Confucian thought attached great weight to filial piety and through the assignment of family roles the family is a self regulating group. From a cultural perspective Chen Ming Jer reveal four main types : (1) family directed operation; (2) the dominant family head; (3) enduring roles and family obligations and (4) the family financed, family accountable corporation.
- Risk taking. The Chinese are known for their industriousness, their ability to exploit business opportunities, to network and to save, and by many they are also known for their passion for gambling. When I recently asked a Chinese person why they were successful they put risk taking as an essential ingredient in the lethal mix of successful Chinese led enterprise. A Malaysian business man competing with China recently said *“It is their penchant for risk-taking that scares me more than their hard work and intelligence”*.
- Project execution. I have experience of service delivery in China that is second to none in the world. In 上海 (Shànghǎi) in 2005 I managed a project to select, execute lease, furnish and fully equip with communications and computers broadband connected to the internet a small office for ten people, all undertaken and delivered in four days. All purchases with the exception of China Telecom were cash transactions. I could not have achieved this in the West.

If you want to be successful with Chinese people I recommend the following :-

- Sponsor. Try and get someone who is trusted to act as your sponsor. This should be someone who is familiar with the people and the places that you hope to do business. The right introduction and knowing that you have a good relationship with someone they trust can make things that are impossible possible.
- Humility. Showing humility and respect for Chinese values and principles. When you speak using Chinese language you will be complimented because this is culturally important to Chinese people. The support is sincere but don't take yourself or your competence too seriously.

- Socialising. If you can't drink don't drink. Chinese people are very welcoming and offer generous hospitality. They like to have fun and 干杯 (gānbēi drink a toast) is often the centerpiece of a formal Chinese meal. Toasting is a way of showing respect and you should participate in it even if you are not consuming alcohol (many Chinese don't), which may be copiously available.

Conclusion

In Inside Chinese Business Chen, Ming-Jer pointed out *"Of course, most cosmopolitan Chinese will find it acceptable for outsiders to act according to their own cultural codes, as long as such behaviour does not proceed from insincerity or criticism"*.

The Chinese expect foreigners to be "foreign" but common sense and a basic knowledge of Chinese culture is invaluable. In any new relationship it is natural to feel apprehensive. Misapprehension works both ways and to manage it effectively it is important not to take our own cultural presuppositions and values for granted.

It is clear that there are cultural differences between China and the UK which have great influence on how disputes are resolved and those involved in commerce need to understand business customs and protocol, social etiquette and negotiating tactics. Chinese people are more likely to resolve disputes through mediation rather than arbitration and litigation and this is in the main through the deep secular influence of Confucian teaching.

The rate of culture change is accelerating and perhaps there is evolving a new business culture that compliments or in commerce even transcends other cultures? It is clear that the Chinese legal system is incorporating Western ideas of law, it is not clear that this will adversely affect the Chinese cultural disposition for mediating disputes rather than using the law.

My own view is that In the context of culture one of the flattering things that a Chinese person may say is 我的朋友你是中国通 (Wǒ de péngyǒu nǐ shì Zhōngguó tōng my friend you understand Chinese people). If you hear his compliment you should know that you are on the right track to making a good relationship which will help you to avoid disputes .

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