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Book review

East meeting West in the mediation marketplace

Nadja Alexander

China is now 'all the rage'. Everyone is either learning Mandarin or tripping off on a conference to Beijing or a business trip to Shanghai. Commercial concerns are busy establishing trade links with Chinese partners to prepare for the emergence of the biggest marketplace in the world. The business of ADR is no exception.

Law, culture and mediation in China

Lawyering as a profession did not exist in China prior to 1911. Chinese dispute resolution has enjoyed a very different history to the West. It is so closely tied to the traditional cultural fibre of Chinese people that it travelled with them from mainland China to the various parts of the world where Chinese communities settled. Accordingly, the term 'Chinese' is an ethnological reference, referring to global Chinese communities and not a specific region. The publication of a book on Chinese mediation by Goh Bee Chen, *Law Without Lawyers, Justice Without Courts*,¹ is timely and its messages are important.

'Law without lawyers' and 'justice without courts' are phrases that may

mediation may share some common qualities, they are not one and the same.

Like many potential readers of this book, I am not an expert on Chinese culture, the Chinese people or Chinese mediation specifically. So I approached this book about Chinese mediation with the curious and eager eyes of a novice. Before writing this review, I consulted a Chinese lawyer living in Singapore, a Chinese lawyer from Taiwan recently relocated to Australia and a Chinese businesswoman living in Beijing about their thoughts on and experiences with Chinese mediation.² While the views expressed in this book review are solely my own, their comments assisted me greatly in my ruminations.

Interdisciplinary nature

Goh introduces her themes by acknowledging the interdisciplinary nature of her topic and the Chinese preference for non-litigious and informal dispute resolution processes. In the first chapter the author also makes a number of important disclaimers of which the speed reader ought take note.

First, the book is about traditional Chinese mediation. In an increasingly globalised world, Chinese culture is

In an increasingly globalised world, Chinese culture is changing ...

initially sound provocative to the Western ear but in this, her second book, Goh explains how they are an integral part of the Chinese dispute resolution cultural tradition. Mediating is as Chinese as acupuncture. And just as the West has embraced Eastern medicine, so it could be argued it has embraced Eastern dispute resolution. Goh is, however, quick to point out that while Chinese mediation and Western

changing, and so the cultural values of today's Chinese will vary depending on generation and geography.

Second, according to Goh, the definition purists have hijacked mediation in the West. Whereas Western mediation refers to a specific process or processes, mediation in Chinese culture is defined more loosely and refers to the Chinese art of resolving disputes generally. Typically accepted Western

characteristics of mediation such as neutrality and confidentiality do not easily translate to traditional Chinese mediation.

In terms of structure, the book is divided into chapters focusing on the following themes: mediation, cross-cultural insights on mediation, Chinese legal thinking, how social sanctions can effectively have the force of law and how to achieve justice without courts. The penultimate chapter specifically considers these issues in the context of rural Chinese Malaysians.

Although this book is about Chinese mediation, it adopts a comparativist and cross-cultural perspective. However, the comparative research methodology employed is unclear. Despite detailed referencing to academic literature, references to comparative research works are limited to a selection that I would not consider comprehensive. The lack of clear methodology is apparent throughout the book and the quality of the content suffers accordingly. So, for example, while the book is easy to read, I had the sense of repetition in certain sections (although this may be evidence of my Western need for linear thinking and watertight categories).

From time to time the author makes interesting general comparative statements without explanation or justification that leave the engaged reader disappointed. For example, on page 17 Goh makes the point that the Australian indigenous experience of mediation resembles that of the Chinese model. But in what way? And how? That is left to the reader's imagination.

The content of the book is comprehensive and clearly written by someone who has lived and continues to live the Chinese culture. I have read far too many books on dispute resolution and legal systems from a cross-cultural or comparativist perspective by authors who have not lived in the jurisdictions they have analysed, let alone spoken the languages of the relevant cultures or jurisdictions. Such research often suffers from a lack of depth, an uneven texture and doubtful credibility. Not so in Goh's case. She writes that her preparation for this book spanned two decades. I suggest that it has spanned her entire life, as is particularly evident

in the case studies on rural Chinese Malaysia in chapter 5.

In this context it is disappointing that Goh does not engage in a deeper analysis of her material. The lack of a clear comparative methodology makes academic analysis difficult; as a consequence the content is generally descriptive in nature.

Descriptions of Western mediation are made on assumptions that do not always ring true. While diversity in mediation practice is perhaps the most

Western mediation has developed to a sufficient level of sophistication that simplistic differentiations are no longer adequate.

striking feature of the Australian and American mediation marketplaces, Goh refers to Western mediation as rights based and oriented toward zero sum negotiations. If she was referring to a particular segment of the Western marketplace, then this is not apparent to the reader. The reference on page 17 to the necessity of the Western mediator being a complete stranger to the parties is also misleading. Very often mediators are chosen because they are well known in a particular industry on a professional basis. Pre-litigation mediation is commonly conducted by senior barristers or solicitors who have been selected precisely because they are well known to and respected by the legal representatives of the parties, and in certain cases the parties themselves.

While I acknowledge the point that Goh is trying to make, I also see a growing number of similarities between the respected senior lawyer and industry leader as mediator, on one hand, and the village chief as mediator, on the other. Western mediation has developed to a sufficient level of sophistication that simplistic differentiations are no longer adequate.

A final point about the layout of the book: readers who are accustomed to checking the references of an interesting point made in the body of the text 'on the spot' without fumbling through pages and losing their original place

and train of thought will be disappointed that the publication contains endnotes at the close of each chapter rather than footnotes at the bottom of each page. I found myself constantly moving back and forth between the endnotes and almost every page of the text. Perhaps a glossary of Chinese terms defined early in the text and used throughout the book would have facilitated a smoother transit for readers venturing into new cross-cultural and linguistic domains.

Overall this book is well worth the read for those unfamiliar with traditional Chinese mediation. I agree with the author that, despite changing cultural values, learning about the traditions of dispute resolution in the Chinese culture is vital to gaining insights into Chinese negotiation and dispute resolution today. Further, reading this book is a powerful stimulus to reflect on our own mediation values and the dynamics and direction of Western mediation.

Conscious of my own culture, I have tried not to be the 'pedantic Western mediator' referred to in the preface, but rather a reflective Western mediator commenting on a book which I expect will be read by many Westerners curious to learn about the Chinese art of dispute resolution. ●

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Endnotes

1. Goh Bee Chen, *Law without Lawyers, Justice without Courts* Aldgate Publishers London 2002.
2. I would like to thank Christopher Lau, Liang Chien-Wu and Zou Yanyi for their patience with my questions and their insightful comments.