



《南开话语研究》系列丛书 总主编 田海龙 丁建新

中国社区调解中的权力与中立： 调解策略的话语分析

邓一恒 著

Power and Neutrality in Chinese Conflict Mediation:
A Discourse Analysis of Mediation Strategies

Yiheng Deng

南开大学出版社

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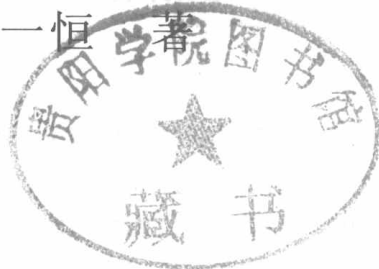
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南开大学出版社

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图书在版编目(CIP)数据

中国社区调解中的权力与中立：调解策略的话语分析 / 邓一恒著. —天津：南开大学出版社，2015.6
(《南开话语研究》系列丛书)

ISBN 978-7-310-04815-1

I. ①中… II. ①邓… III. ①社区—民事纠纷—调解(诉讼法)—研究—中国 IV. ①D925.114.4

中国版本图书馆 CIP 数据核字(2015)第 114424 号

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南开大学出版社出版发行

出版人：孙克强

地址：天津市南开区卫津路 94 号 邮政编码：300071

营销部电话：(022)23508339 23500755

营销部传真：(022)23508542 邮购部电话：(022)23502200

*

唐山新苑印务有限公司印刷

全国各地新华书店经销

*

2015 年 6 月第 1 版 2015 年 6 月第 1 次印刷
230×155 毫米 16 开本 25 印张 2 插页 426 千字

定价：52.00 元

如遇图书印装质量问题，请与本社营销部联系调换，电话：(022)23507125

教育部人文社科一般项目资助（批准号 11YJC840009）

总 序

话语在我们的研究中不仅指语言的运用，而且被认为是社会实践的一种形式，与社会事实存在着塑造和被塑造的辩证关系。在当下社会，新媒体不断在人们生活中渗透，并与控制交际内容和方式的权力交织在一起，更使得话语在构建社会事实中的作用凸显。因此，我们认为，话语是社会科学领域中一个不可忽略的研究课题。

实际情况也是如此。话语成为社会学家、哲学家以及语言学家的关注所在。诚然，不同领域对话语的关注有所侧重，但是这些侧重也造成一些偏颇。例如，社会学传统的话语研究缺乏对话语进行细致的语言学分析，而语言学传统的话语研究则喜欢对话语的内部结构进行分析，很少将这些分析深入到政治和社会的话语层面。

《南开话语研究》系列丛书提倡对话语的跨学科研究，重视语言学的研究方法（如话语分析、社会语言学、系统功能语言学、语料库语言学、认知语言学）与其它社会科学研究方法的结合（如社会学、哲学、历史、经济、法律、管理等等）。丛书旨在探索话语与社会的复杂关系，特别是认识话语在中国社会政治变革中所起的重要作用。

《南开话语研究》是一个开放的丛书系列，由南开大学出版社出版用中文或英文撰写的专著和主题文集，也出版有助于进行话语研究的读本。我们期待着这个系列丛书能够对话语的跨学科研究有所推动，对中国社会科学的繁荣有所贡献。

丛书主编： 田海龙 丁建新
二〇一二年五月四日

Series Preface

Discourse is seen as an element of social practice, which is not only socially shaped but also socially shaping. The dialectics of discourse and society makes it possible that discourse becomes the replica of reality, and this is all the more salient in the post-modern society where new media works together with power over and control of the ways and sources of communication. Based on this understanding of discourse, we believe that discourse is one of the concerns of social sciences.

And indeed this was the case. Discourse has attracted the attention of sociologists, philosophers, as well as linguists. While it is necessary to note that they have different shades of emphasis, it is important to see the side-effects of these emphases. For example, the sociological tradition of discourse studies lacks detailed linguistic analysis of discourse, and the linguistic tradition often limits the analysis of discourse within the intra-structure of the discourse, rarely relating this linguistic analysis to the discourse facet of politics and society.

Nankai Discourse Studies Series (NDSS) favours an interdisciplinary approach to discourse, that is, it highlights the integration of the linguistic research methodology (e.g. discourse analysis, sociolinguistics, systemic functional linguistics, corpus linguistics, cognitive linguistics) with the research methodology of social sciences such as sociology, philosophy, history, economics, law and management. The book series aims to explore the complexity of discourse in relation to society, in particular, to the socio-political transformations in contemporary China.

Nankai Discourse Studies Series (NDSS) is an open book series by Nankai University Press. It publishes both Chinese and English monographs and themed edited volumes. It also publishes introductory textbooks that prepare students for the research on discourse studies. We expect this series to facilitate the interdisciplinary approaches to discourse and to contribute to the prosperity of social sciences.

Series editors: Tian Hailong and Ding Jianxin

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总主编 田海龙（天津商业大学）
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《南开话语研究》系列丛书视话语为社会实践，倡导对话语的跨学科研究。出版的专著和主题文集探索话语与社会的复杂关系，致力于认识话语在当代中国社会政治变革中所起的作用。丛书也出版有助于进行话语研究的读本。

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Nankai Discourse Studies Series (NDSS) views discourse as social practice, and promotes interdisciplinary approaches to discourse. It publishes monographs and themed volumes that explore the complexity of discourse in relation to society, particularly to the socio-political transformations in contemporary China. It also publishes introductory textbooks that prepare students for research on discourse studies.

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Foreword

Since the late 1970's, China has been implementing reform and opening policy. The economy has been increasing steadily at a high rate and has become the focus of the world attention. The opened China is in the ongoing process of incorporating itself with the rest of the world, accompanied by frequent economic and cultural exchanges. In such circumstances of social transformation, conflict and dispute happen all the time, while mediation, as an important alternative means of dispute resolution in China, has been a frequently employed technique for thousands of years. Hence, a close look into the strategies and tactics adopted in Chinese mediation, especially, those with typical Chinese characteristics, has significance in studying and understanding the socio-economic and cultural aspects of Chinese society.

Since the 1960's, both Chinese and western scholars (Cohen, 1966, Lubman, 1967&1999, Palmer, 1989, Ji, 1990, Clarke, 1991, Wall & Blum, 1991, Fu, 1992, Qiang, 2001, Li, 2004) have performed a number of fruitful studies on Chinese mediation. However, to date, very few studies are on neutrality and power distribution in Chinese mediation.

As a normative ideal in western world, mediator neutrality is central to the conceptualization and evaluation of mediators. For example, Harrington and Merry (1988) interviewed six mediators and all defined neutrality as "the essence of their role" (p.729). In his review of statements of mediation standards, neutrality was seen as "central to the very definition of dispute mediation and the role of the mediator" (Hale & Nix, 1997, p.337), "a central obligation" (Tracy & Spradin, 1994, p.117), "of the highest value and concern" and "a fundamental element of the mediator's role" (Cohen et al., 1999, p.341, p.347).

The author of this book is interested in whether mediator neutrality in China is something that plays out in the same way and to the same extent as it does in contemporary Anglo-American practice. If neutrality is not the basis for legitimization in Chinese practice in the way that it is in community mediation in America, on what basis does Chinese mediators legitimize their practice? How do they gain power during the mediation event? Is there a different conception of neutrality, or is there a different conception of the mediator's role altogether? How would this be reflected in mediator practices?

This book is developed in the following steps: First, a comparison of the histories of mediation practices, values and the roles of neutrality and power distribution in China and the United States will be presented. This section will be concluded with a set of research questions. Then, the major strategies and tactics in Chinese mediation will be discussed and evidenced with examples from mediation transcripts from audio-recordings of real mediation sessions in China. In the analysis phase, tactics typical of Chinese mediation characteristics will be discussed about first, followed by the tactics that are also adopted by American mediators to a different extent. Discourse analysis will be employed to analyze the transcripts and the results of the analysis will be used to respond to the questions posed in the earlier section. Finally, based on these analyses, conclusions will be drawn about the major characteristics in Chinese mediation compared to the mediation techniques in the United States with special attention to aspects of neutrality and power, and their social and cultural antecedents and consequences. Note that this study is not meant to be a comparative study of the mediation of China and the US. The focus of the study is on Chinese mediation.

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Chapter One

Chinese Mediation and Conflict Resolution and Management

When discussing Chinese mediation, some traditional values and ideals have to be considered. Some scholars think that Confucianism, Taoism, Buddhism are still the guiding forces in modern Chinese conflict management and resolution (G. M. Chen, 2002). Some researchers (Chen & Starosta, 1997; Kirkbride, Tang & Westwood, 1991, Knutson, Hwang & Deng, 2000) have all identified harmony as a cardinal value in Chinese conflict resolution. Other values include conformity, contextualization, guanxi (interrelation), mianzi (face), seniority and authority.

How important is mediation in Chinese conflict resolution? Is modern mediation still strongly influenced by the traditional values and ideals? What role and function does mediation serve in today's Chinese society? A brief history of mediation and traditional philosophies, ideals as well as values in conflict resolution will provide some place to address these questions. Next, a summary will be presented on modern mediation and the philosophies, ideals as well as values behind it. The final section will review western response to Chinese mediation techniques.

1.1 Traditional Philosophies, Ideals and Values in Conflict Resolution

Confucianism and Taoism have been two fundamental native philosophies in Chinese culture. Confucianism advocates that maintenance of harmonious interpersonal relationships is the result of abiding by a strict social hierarchy. For example, the boundary should be clear between the father and the son, the king and the officials. "Ren (benevolence)," "Yi (righteousness)," "Li

(rites)” are three spokes of the wheel of equilibrium (Zhong), which is the foundation of harmony. According to D.C. Chen (1987), G.M. Chen and Chung (1994), Ren refers to showing love and affection to one’s counterparts in social interaction. Yi is the internal criterion of appropriateness in displaying one’s love and affection. In addition, Yi guides individuals’ behaviors by stipulating what one ought and ought not to do in the process of interactions to prevent them from deviating from social norms. Li is the fundamental regulatory etiquette of human behaviors and refers to propriety and respect for social norms (Yum, 1988).

The doctrine of Taoism is that all people are integral parts of nature (Tian Ren He Yi) (Yang, 1989). Tao is the pivot of the universe and is surrounded by the harmonious natural equilibrium made up of the systems of interaction of all individual entities (Fang, 1980). According to Chu (1974), Zhong (equilibrium) refers to the lack of bias towards either side and refers to the correct course to be pursued by all under heaven. The Doctrine of the Mean is embedded in both Confucian and Taoist thought (W.H. Zeng, 1989), and indicates that equilibrium and harmony are two sides of the same coin (G.M. Chen, 2002). The axis of the wheel of equilibrium and harmony is Chen (a sincere and honest mind). G.M. Chen states that this wheel “has been running in Chinese society for over two thousand years and continues to influence Chinese behavior in the contemporary age” (p.7).

When harmony and equilibrium is disturbed, conflict arises. This marks the corruption of the ideal state in the Chinese paradigm. The Chinese tend to keep harmonious relationships with other people. However, G.M. Chen (2002) notes, it is a mistake to think that conflict in Chinese society is rare. He states that the Chinese just deal with conflict differently from the westerners in that they are more “nonconfrontational, avoiding, obliging, integrating, and authoritarian in the process of conflict resolution” (p.14). The thirty six stratagems used for compliance gaining in Chinese conflict resolution have been conceptualized by G.M Chen (1995) as eight categories: delusion, referring to the method used to confuse opponents; borrowing, referring to the use

of others' strength to achieve one's goal; misleading; threatening; retreating, referring to escape; termination, referring to cutting away all possible resources to prevent opponents from reviving their strength; espionage; and agitating. Other researchers also identified strategies that Chinese use in conflict resolution (G. M Chen & Zhong, 2000; Chiao, 1988; C.N Chu, 1991, Kao, 1976; Senger, 1988; S.C. Wang, 1990; J.P. Yu & Yu, 1995).

Is Chinese mediation a reflection of traditional values? I will review three events in contemporary Chinese history, which greatly diverted the progressive trajectory of Chinese traditional values towards their adaptation to the modern time. The first of these events occurred on May 4th, 1919. After the World War I, Chinese government signed a treaty to let Japan rule Shandong province. This treaty ignited the anger of Chinese people, especially intellectuals, businessmen and workers. A protest was initiated by college students, aiming to overturn what they perceived to be cowardly actions by the government. This event had great impact on the feudalist culture at that time. Confucian and Taoist values that the government relied on were criticized for exploiting and suppressing the population. Revolutionary youth movements held up the flags with the terms "science" and "democracy," and proposed replacing "the old morals" with "the new morals," and "the old culture" with "the new culture." Westernization was advocated. Marxism was introduced and adopted by some people during this event.

The second event of interest is the founding of People's Republic of China in 1949. With the slogan of "overthrowing the three big mountains", the Communist Party decided to remove the influence of the Confucianism and Taoism as feudalist outdated values. "Today mainland Chinese faithfully follow the admonition of Mao Tse-Tung that 'dispute among the people' (as distinguished from enemies of the people) ought to be resolved, whenever possible by, 'democratic methods, methods of discussion, of criticism, of persuasion and education, not by coercive, oppressive methods'" (Cohen 1966 cites Mao, 1957).

The third event from Modern Chinese history is the "Cultural

Revolution” which occurred between 1966 and 1976. The national movement of “destroying the four ‘olds’” almost uprooted Confucianism as one of the “four olds.” Anything related to Confucius was smashed, burnt or otherwise destroyed. Confucian scholars were beaten and publicly humiliated. After the Cultural Revolution, the “gang of four” (Qing Jiang, Chunqiao Zhang, Wenyuan Yao and Hongwen Wang) was overthrown, but Confucianism lost its original status in the spiritual and moral sphere.

These three events in contemporary Chinese history had a detrimental impact on the place of traditional values and ideals in everyday life. After Deng Xiaoping’s opening and reforming policy was implemented, the western concept of law-governed society has replaced the concept of people-governed society. A movement to educate the population in the concepts of law was carried out on a national level.

When the Republican regime was established, the Communist government was highly critical of the Confucius social practices on the grounds that they lacked modern law and legal institutions. Since then, there has been a growing interest in law in the post-cultural revolution period in the People’s Republic of China (Diamant, 2000).

Today, the government proposes to “establish a socialist harmonious society,” and some elites have advocated re-establishing the important position of the doctrines of the Confucius and Meng Tze (the predecessor of the Confucius). However, restoring the damaged traditions and values requires many years of efforts, and is not an instantaneous event. Therefore, two questions arise in my study of Chinese mediation. The first one is: Do today’s mainland Chinese people still value Confucius and Taoist thought in mediation as some scholars have claimed even after three major national historical events have attempted to eliminate Confucius and Taoist traditions, do modern mainland Chinese people still value these traditional notions in mediation? The second question is: Given that there has been greater effort by the government to have conflict settled by rule

of law over traditional mediation, do modern mainland Chinese people prefer the traditional mediation route?

In order to answer these questions, a review of the history of Chinese mediation is necessary.

According to Wall and Blum (1991) and G. Li (2004) Chinese mediation can be traced back to Confucius time (551-479 B.C.). Pei (1999) even states that Chinese mediation was recorded in folklores that can be traced back to 4000 years ago. Chinese mediation is a product of Confucius' thought. Confucianism highly valued compromise and persuasion as well as the intermediary who were able to secure them (Cohen 1966 cites Wall & Blum, 1991). In *Confucius' Analects*, the famous book on Confucius thought, it is recorded that Confucius states, "Although I listen to cases as other judges do, I must make my best effort to instruct people to live without litigation." (子曰: "听讼, 吾犹人也, 必也使无讼乎!") According to Pei (1999), under Confucius ideology, "the prevailing glory of the people was having no lawsuit in their area because that showed they had good ethical relationship in their community" (p.34-35). During the Song Dynasty (960 - 1279 CE), some families gave advice to interfamily disputants (Shiba, 1970). "Rulers during the Ming dynasty (1368 - 1644 CE) actively encouraged village leaders and elders (li-lao) to solve petty disputes within and between families" (Wall & Blum, 1991, p.4). In reality, "very few disputes went beyond the village" (Wall & Blum, p.5). According to Cohen (1966) and Van Der Sprenkel (1962), this is due to the prevailing social and economic structure of the Chinese society. Most Chinese people at that time were farmers and lived in remote areas that were far from the magistrate's office. Therefore, it was neither convenient nor affordable for them to travel to the magistrate's office to bring forth a trial. Importantly, the magistrate was usually incapable in trying the cases due to his lack of knowledge of local customs and dialects (Chang 1955; Cohen 1966). Magistrates often tortures disputants in order to obtain evidence (Ch'u 1961). In the Ming dynasty (1368-1644), village leaders and elders were often responsible for resolving disputes among families. Emperors and their