

Blowing in the Wind¹

by Yang Nan (Nanle)

When I was three years old, my father told me a story: if you dig a hole in the ground and you keep digging, you will dig to America! At that time I didn't know American parents also told their children a version of the same story about China, but it did raise a dream in my heart of actually going to and seeing that country across the ocean someday, the country which people always talk about here in my homeland. As I grew up, I finally knew I could not “dig” but fly to America, and I gradually knew more and more about this country, starting with another name of her as the United States. Through my biggest hobby, I know almost every angle of American society and the life people have there, no matter if they live in a big fancy suburban house like “Desperate Housewives” do, or they are “Friends” happily living together in neighboring apartments in New York. I even got to know in a lot of detail how they run funeral homes from one of my favorites, “Six Feet Under”. So I often feel like I have been to America, but the difference between “feel like” and “have been” is obvious, which is — I haven't! That's why I have imagined hundreds of times what my first trip to America would be like since I was a little boy. But beyond all my imagination, I never thought that one day I could “win” this trip on a national competition, and I never expected this trip to be so incredible and amazing as it really turned out to be.

Since I first stepped into Jane and Brad's house, it always felt like home, not only because they treated us as family, but also because everything was so familiar, in terms of the way of living. Back home in Changchun, I live with my parents. We have an apartment, not a house though, but just as roomy and well-furnished as many apartments in America. We own two cars. We have cereal and milk for breakfast. We go to cinema watching Hollywood movies every weekend. In a word, we are really sharing a common modern way of life with Americans. So where could I find the

answer to the question I brought with me to America: compared to China, what do they do better here to solve problems and promote peace?

During my whole trip, I often heard people saying to me that compared to the history China holds, nothing can be called “old” in America. Indeed, we do have a civilized history over five thousand years. Undoubtedly, the disputes people could have within such a long time are far more than those people could have among two hundred years. So in China we have been negotiating and mediating for centuries. In ancient times, we have our own culture of dispute resolution called “Xi Song”, which means “law suit dropping” in English. Disputing parties were encouraged to solve civil and commercial disputes among themselves. If they decided to go to the court, the judge, who was also the mayor or governor, would ask them to drop the law suit and make resolution for them by administrative orders. Because in Confucian culture and ancient Chinese political system, the less law suits a government official faced, the more competent and successful he would be regarded by the Emperor. Even today, Chinese judges are still used to mediating civil cases before they really hear them.

Resolving disputes peacefully and privately is a tradition and preference for Chinese people, along with one of the great Confucius' golden sayings: ‘Harmony is what matters most’, which has never been truer than to today's China and Chinese government, endeavoring to build up a “harmonious society”. So it seems that in the field of dispute resolution, we should teach Americans, since after all, we had been doing that for hundreds of years, even before their country really existed! But the truth is — they have left us far behind. The simplest fact is in our country with over 1.3 billion population, we cannot find even “ONE” professional mediator as good as Brad Honoroff!

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¹Special thanks to my dear friends, also my excellent teachers: Jane, Brad, David, Amy and Chris.



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People have no idea what mediation or ADR is, neither knowing that those are ways they can count on when they meet problems in real life. On the first day of this year, we had a new law in effect called “People’s Mediation Law of the People’s Republic of China”. I have asked everyone I know whether they ever heard or knew about this new law, and all the answers were unanimously “No”. So everything comes to my previous question about “what”, plus another one about “why”. They were always lingering on my mind before I got to America.

With the generous and brilliant arrangement of activities by TMG, I had the chance to find the answer to my questions, from different topics, at different places, and most importantly, with different people. I looked for the answer in Brad’s mediation; I looked for the answer in breakfast chatting with Jane; I looked for the answer in David’s office in UMASS; I looked for the answer in Professor David Hoffman’s class; I looked for the answer in Judge Cratsley’s trial; I looked for the answer in Small Claims Mediation in Quincy; I looked for the answer in CBI with Stacie; I looked for the answer in PCP with David and Alison; I looked for the answer in Melissa’s Ombuds Office; I looked for the answer in CDSC with Gail. Then, altogether in the end, I had the answer for my “what” question: they are doing better at EVERYTHING! How can we compare or discuss with them about ADR, facing the reality that they have accomplished so much but we are barely doing anything? If there does exist anything we do better here in China, the only thing I can think about is we DO have a national law on paper about mediation titled as “People’s”, but hardly known to “real” people.

So why? Based on my observation and learning during the trip, I think the reason is in China we don’t have a civil society as independent and mature as America’s. I regard “civil society” as the fundamental basis of ADR, because for resolving disputes not by public power or judicial authority, but with the

internal strength and consciousness of individuals and the whole community, people must be fully aware of what their civil rights are and how to duly exercise those rights through organizations and institutions characterized as public interest or social self-governance. So we can see TMG and CBI and CDSC really working in America, and people really going to them, with the acknowledgement that no matter when they have disputes with each other or with the government, those places are where they will get well heard and equally treated. In terms of realizing social reconciliation and promoting social justice, ADR does give people a chance to organize and unite among themselves, recognizing that the government cannot cover everything, and the government is not always reliable and trustworthy. But in China, at least for now, things are going on a whole different track. Rather than civil society, the structure of today’s Chinese society can be seen as “the government and its citizens”. Simply speaking, if you and two of your friends want to help people in trouble through ADR in China, you can never just clean your desk, open the door, ask everyone to come and then have your own TMG, because you are not recognized and authorized by your own government! If you have a dispute with the government, most probably, you will finally swallow your complaints and do what the government wants you to do; or, you can sue the government, lose (95%) or win (5%) the case, and then get a lifetime “special treatment” from the government. The consensus building? No way. The public conversation? Never heard. The ADR? Is that some kind of a new drug?

So, what about the future? What can we do now? I think there are two mechanisms which I observed that can be transplanted into today’s China. One is the Ombudsman; the other is the idea and practice of community dispute resolution. They can both well fit into our special social reality, and become a good starting point for the promotion of ADR in China. But how will it go? And to what extent is it a possibility that we will eventually have a real civil society in China? The answer, my friend, is blowing in the wind. But as for now, at least we know in which direction the wind is blowing. ■

