

# Town mediation in Taiwan

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## Abstract

The primary aim of this paper is to demonstrate the ways in which historical roots and social context have had an impact on mediation in Taiwan. During the investigation, the history, legal environment, and everyday practice of mediation were analyzed with particular attention to an out-of-court alternative dispute resolution method: town mediation. As the findings of a literature review and the qualitative field work confirm, town mediation only adheres to some principles of professionalism, and only to a limited extent. However, some specific features of town mediation that successfully contribute to peaceful conflict resolution are also discussed.

## 1 | THE ANTECEDENTS OF MEDIATION

Taiwan has a long history of mediation. This is partly due to Confucianism, the belief system in which Taiwanese society is grounded. This paper will not pay particular attention to the moral, social, and philosophical teachings of Confucius, but it is necessary to briefly introduce some of the core values and principles of Confucianism in order to understand present-day Taiwanese society and the current system and practice of local mediation.

The essence of Confucius' approach rests in the importance of social harmony, which must be maintained by all members of society. In a Confucian utopia of social harmony, people evolve harmonious relationships, respect each other, do not create disturbances by conflicts, and try to restore harmony before a dispute is brought to court. The pursuit of social harmony is one of the core values of Confucianism, and is expressed in the so-called “wú song” principle, which translates to “do not go to the courts”. As Confucius advised, “In hearing lawsuits, I am no better than others. What is imperative is to make it so that there are no lawsuits”

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(Watson, 2007, p. 83). Based on this principle, trial, and litigation are inherently tainted and troublesome to social harmony and personal relationships, and thus disturb the social order. A proverb cited by Cohen in his article about Chinese mediation clearly describes this anti-litigious attitude: “It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit” (Cohen, 1966, p. 1201).

As law was “a necessary evil” (Fa, 1980, p. 24) for settling disputes, societal mediation was commonly used in ancient China; justice was typically administered informally by families, clans, villages and associations (Cohen, 1966; Fa, 1980; Xianyi, 2016).

While discussing this ancient value system, the importance of hierarchy and social order should also be mentioned. As Confucius emphasized, “Let the ruler be ruler, ministers ministers, fathers fathers, sons sons” (Watson, 2007, p. 82). Later on, the importance of hierarchy was further emphasized by Dong Zhongshu, one of the most important Confucius scholars. According to Dong, social order is regulated by fundamental ties between superiors and those who have a lower rank in the hierarchy (Zhao, 2015). According to this approach,

Males, lords and fathers belong to the superior metaphysical principle of yang, they are equivalent to each other, while females, retainers, and sons are equivalents due to their sharing in the inferior principle of yin. Thus in the same fashion that retainers treat their lords and wives their husbands, sons should hold their fathers in awe, follow their directives without hesitation. (Knapp, 2005. p. 25)

All in all, social harmony can only exist if every individual knows their place in the social order and acts in accordance with their set tasks and duties, with low-ranking individuals guided by higher-ranking decision makers (that being said, even in these hierarchical relationships exist mutual obligations, responsibilities and reciprocity). The stability of society is largely based on the harmony and togetherness of families in which elder men are superior and powerful, and young family members and women in particular, have subordinate positions (Zheng, 2016).

The migration of Han Chinese people from mainland China to the island of Taiwan started in the seventeenth century (Davison, 2003). In addition to spreading the principles of Confucianism, this migration carried the legal culture over as well; those who migrated continued to handle their disputes informally. As Wang highlighted, while introducing civil dispute resolution during the rules of the Ch'ing dynasty in Taiwan, ordinary people usually tried to resolve their conflicts through conciliation, often assisted by their family members and prominent local noblemen (Wang, 2000, p. 24). According to Diana Lin, two types of mediation can be identified in this period: (1) clan mediation that was facilitated by the “the elder and virtuous” of the clan and (2) local mediation that was guided by the head of small geographic units (the “shiang-pao” or “pao-chia”) (Diana Lin, 2011, p. 200).

The next milestone in Taiwanese history was Japanese colonial rule, which took place between 1895 and 1945. During these decades, two types of mediation were available for disputants. After the Civil Disputes Mediation Law was enacted in 1904, local government officials were put in charge of handling any civil cases within the framework of administrative mediation (Wang, 2010). But the heads of local divisions (renamed from “shiang pao” to “hokñ” in 1898) or policemen also had the right to mediate civil disputes; Wang called this kind of mediation “ordinary mediation” or “unofficial dispute resolution” (Wang, 2000, p. 90). Although mediation was more prevalent in the beginning of the Japanese colonial period, people in Taiwan were affected by the Japanese Civil Code and litigation soon became more commonplace. After a while, the role of modern courts in dispute settlement became increasingly

important, and the number of civil lawsuits overtook administrative mediations in 1915 (Wang, 2000, pp. 92–93).

After Japan's defeat in WWII, Taiwan was placed under the control of the Republic of China which during that time was led by the Chinese National Party (hereinafter referred to as Kuomintang). A few years later, Kuomintang lost the Chinese Civil War to the rival Communist Party of China and fled from the mainland to Taiwan. The legal system—in addition to goods, equipment, armed forces, officials, family members, supporters of Kuomintang, military and government institutions—was moved to the island where the party continued to govern. The mediation system, too, originally enacted and enforced by Kuomintang in mainland China (Xianyi, 2016), was brought to Taiwan and replaced the local one. The Township and Country-Administrated City Mediation Act (2009) that was enacted in 1955 designated local people as “men of justice” (Fa, 1980, p. 11) so that they may take part in the work of local mediation committees, rather than having it remain a solely official matter. In addition (and in contrast to Japan's administrative mediation), the court exercised judicial supervision over town mediation (Wang, 2002, p. 557).

During the following decades, several important social and economic changes such as land reform, a new relationship between rural areas and the market economy, increased economic opportunities for peasants and a mass migration from the countryside to the cities took place in Taiwan. As Gallin (1966) noted, these tendencies contributed to the growing independence of individuals from their community and as such reduced the local community's ability to enforce mediation on disputants. On the whole, these decades reshaped the way people felt about mediation and facilitated the growing popularity of lawsuits.

Mediation in relation to the aboriginal people of Taiwan must also be mentioned. Colonization forced the native Taiwanese to learn and accept the value systems, beliefs and customs of their occupiers, all while their territory was continuously expropriated (Hsieh, 2014). Assimilation and oppression continued during the authoritarian, single-party years of the Kuomintang. The first general presidential election in 1996 and the victory of the opposition party in the presidential election in 2000 clearly showed a transition away from dictatorship and toward democracy. Since then, indigenous activism and the fight for equal opportunities have become more noticeable. Protesters have aimed at self-representation, political participation, the recognition of indigenous people's rights and traditional territories, and at the rejection of environmental destruction (for example by coal-burning power plants and nuclear waste facilities) (Chi, 2001; Fan, 2007; Kuan, 2010; Simon, 2002; Simon & Awi, 2015). These movements have often been fuelled by conflicts emerging between indigenous customary law and that of the Taiwan government (Platteeuw, 2016; Wu, 2016).

Mediation seems to be an appropriate tool for answering these disputes. This is especially true in consideration of languages, traditions, customs and values of indigenous groups, which must be respected during judicial procedures—including during mediation—in accordance with the People's Basic Law of 2005. According to interviews that were conducted by Tsai (2015), with town mediators and indigenous people, customary rule was highly appreciated by mediation committees. However, and as Wu argues, for legal scholars of Taiwan the concept of indigenous rules is subordinate and residual “since its remit is delineated by the law and the court” (Wu, 2016, p. 30).

This could also be a reason why mediation practices among indigenous people of Taiwan still exist alongside criminal justice procedures. Tsai (2015) introduced the traditional way of mediation among members of the Paiwan tribes. Sheu and Huang (2015) have described the mediation practices of the Atayal people, which are frequently organized by local police officers

and involve disputants and their supporters in the tribe to discuss a conflict. According to the authors, this kind of unofficial conflict settlement was still preferred by the Atayal people, even though they had access to the formal criminal justice system.

## 2 | WHY TOWN MEDIATION?

Some argued that mandatory mediation is a necessary precondition for achieving settlements in case of disputes. As Quek revealed, the number of commercial disputes referred to mediation increased by 141% when the Civil Procedure Rules introduced an alternative dispute resolution with cost sanctions to the courts (Quek, 2010, p. 483). According to Wissler, who examined mediation in small claims courts and common pleas courts in the Boston area, the benefits of mandatory mediation outweigh its costs (Wissler, 1997, p. 566). McEwen and Milburn have shown that the number of community mediation programs significantly increases if referrals are initiated by the courts or the police, “with the parties under substantial explicit or implicit pressure” in most cases (McEwen & Milburn, 1993, p. 23). The authors emphasized that this pattern in family and divorce mediation was the rule rather than an exception. In other countries like Australia (Rhoades, 2010), the Canadian province of Ontario (Smith, 1998; Winestone, 2015), Germany, Japan (Funken, 2001), Norway (Tjersland et al., 2015), Italy (De Palo & Harley, 2005), England and Wales (Gribben, 2001) mandatory family dispute resolution has also been used as the basis upon which to build.

In Taiwan, there are several identifiable mediation methods. Within the framework of court-annexed mediation, there are eleven types of civil cases (Taiwan Code of Civil Procedure 2015, 2019, Article 403) which have to go through compulsory mediation before litigation (Hsiao, 2018, p. 501).

Mandatory nature of court-annexed mediation is quite prevalent for the following reasons:

- The judge can ordain the parties to be present at the mediation session (Taiwan Code of Civil Procedure 2015, 2019, Article 408) and non-compliance with it by any of the parties may elicit the imposition of a fine by the court (Taiwan Code of Civil Procedure 2015, 2019, Article 409). Overall, mediation is not mandated but “quasi-compulsory” (Hanks, 2012, p. 931) due to adverse costs that may arise.
- The judge has a crucial role in initiating mediation as the court can terminate the legal proceeding as it sees fit and refer the case to mediation (Taiwan Code of Civil Procedure 2015, 2019, Article 420-1)
- Mediation is usually carried out by a committee of three mediators delegated by the judge. However, the judge is authorized to conduct the mediation in person, not only if the parties agree, but even if he/she considers it appropriate (Taiwan Code of Civil Procedure 2015, 2019, Article 406-1).

Some authors have made a distinction between “coercion in” and “coercion into” (Goldberg, Green, & Sander, 1999) mediation and emphasized that legal practitioners and parties could even benefit from the latter. However, the author of this paper believes that voluntarism is one of the core requirements of mediation throughout the entire process. I agree with Bazemore and Umbreit (2001) who stress that mediation is a strictly voluntary process based upon the ability of the parties to reach an unforced agreement. Therefore, this article focuses not on *court-annexed* but on *out-of-court* mediation while discussing what is known as *town*

mediation—a very specific form of alternative dispute resolution (ADR) in Taiwan which guarantees voluntariness.<sup>1</sup>

An additional reason behind choosing town mediation should also be mentioned. Court-annexed mediation is based on the legal system of Western countries and thereby has no counterpart in Taiwan's traditional society (Diana Lin, 2011). The same goes for family mediation; its basic framework has been created by judges who have brought their US experiences as primary reference to Taiwan's judicial practice (Grace Kuo, 2011). Town mediation on the other hand stems from ancient Taiwanese and Chinese traditions and as such, has some unique features.

### 3 | REGULATION OF TOWN MEDIATION

According to the Township and Country-Administrated City Mediation Act (2009), townships can establish Mediation Committees (consisting of a minimum of seven, and a maximum of fifteen mediators), allowing people to resolve civil disputes and minor criminal cases. The members of the committees are nominated by the mayor of the township “from the men of eminent fairness...who have legal knowledge or other expertise and good reputation” (Township and Country-Administrated City Mediation Act, 2009, Article 3). Mediators are volunteers, receiving only very minimal remuneration. They are responsible for conducting mediation, which they are required to do in a peaceful and sincere manner, providing reasonable advice to the participants and suggesting a fair solution in order to achieve a result acceptable to both parties involved (Township and Country-Administrated City Mediation Act, 2009, Article 22).

Contrary to court-annexed mediation, town mediation is an entirely voluntary process. In civil cases, the parties agree upon the application for initiating the mediation. In criminal cases, mediation can be initiated only if the victim endorses it (Township and Country-Administrated City Mediation Act, 2009, Article 11). Referring to mediation can be a simple process; the party applies in writing or in an oral statement to the mediation committee (Article 10). The expenses incurred by the mediation process are borne by the towns from their budget (Article 34), so the parties are not charged any additional fees (Article 23).

Compared to the formal and strict nature of trial proceedings, mediation appears more flexible and informal. Parties are allowed to invite one to three person(s) to join the mediation and support the participants (Article 17). Furthermore, the mediation process itself can be organized in the city hall or, if necessary, at any other suitable place (Article 19).

The courts have judicial supervision over town mediation. When the mediation process is successfully completed, the mediation committee has a number of responsibilities, including the issuing of an agreement, informing the township (Article 25) and delivering the agreement, evidence, and any additional materials to the court for further consideration (Article 26). If a mediation is approved, it has the very same binding effect as the court decisions in civil litigation (Article 27).

### 4 | TOWN MEDIATION IN NUMBERS

Town mediation is not really wide-spread in Taiwan. In 2011, an empirical survey on the patterns of legal dispute resolution was conducted across the nation (Chen, Huang, & Lin, 2012a).<sup>2</sup> Researchers aimed to understand the actions and solutions Taiwanese people adopt when an

issue that might result in a dispute occurs in daily life. According to their findings, only 3.2% of the national population had brought their cases to town mediation. Mediation is able to lessen the burden which courts face in providing parties a means to resolve disputes. Still, utilization levels of both court-annexed and town mediation remain low compared to litigation. As the data provided by the Statistics Division of the Judicial Yuan reveals, of the almost 2,400,000 filings and dispositions of civil cases in Taiwan's district courts in 2017 (Judicial Yuan, 2019), only 5.4% went through court-annexed mediations and only 5.9% went through town mediation (Department of Civil Affairs, 2019).

Despite the low numbers, it is still worth pointing out other characteristics of town mediation via Table 1.

As can be seen, the number of mediators has continuously grown, exceeding 4,000 by 2011. The number of civil case town mediations was 141,512 in 2017—nearly triple that of 1991 (44,829). During these decades, the overall success rate of mediation grew from 67.3 to 79.6% (while the percentage of the criminal cases increased from 38 to 65%).

## 5 | TOWN MEDIATION IN PRACTICE

While describing the practice of town mediation in Taiwan, it is important to highlight two professional principles in particular—neutrality and impartiality—as well as two additional core values—empowerment and recognition—within a transformative mediation. In order to summarize the current knowledge and substantive findings of this form of conflict resolution, a literature review was conducted. Secondary sources were analyzed solely in English. Because I wanted to gain access into the experiences and findings of Taiwanese scholars and practitioners, field work was conducted between February and May of 2019.<sup>3</sup> During these months, I met a total of ten interviewees who were contacted primarily using the snowball method. The interviewees consisted of three scholars who specialized in the local mediation system, four mediators and three NGO members (each representing organizations who deal with arbitration, mediation and legal aid). Semi-structured interviews in English were conducted in most cases, and only one conversation was supported by an interpreter. I was primarily interested in the strengths and weaknesses of town mediation, but the way in which mediators facilitate sessions was also a focal point. The limited number of interviews has not allowed me to draw far-reaching conclusions, but they did corroborate the findings of those literature reviews previously mentioned. I also had the opportunity to take part in six mediation sessions and conduct participatory observations; however, I have not taken these observation notes into consideration in order to avoid misinterpretations that may have arisen due to my limited knowledge of the Chinese language.

### 5.1 | Neutrality

As Torzs defined, neutrality means that “the mediator does not give advice, does not take any decision, and does not judge the parties or the case itself” (Torzs, 2012, p. 20). Neutrality is a core concept of mediation, and there is wide-spread consensus about the importance of this principle. Astor emphasized that the requirement of neutrality is so crucial in the profession that “the terms ‘mediator’ and ‘neutral’ are sometimes used interchangeably” (Astor, 2007, p. 222).

TABLE 1 Mediation in numbers

Year	No. of Mediators	Total number of cases	Settled	Unsettled	Settled civil cases	Unsettled civil cases	Settled criminal cases	Unsettled criminal cases
1991	3,392	44,829	30,187	14,642	19,577	12,542	10,610	2,100
1992	3,437	49,237	33,530	15,707	22,133	13,450	11,397	2,257
1993	3,444	53,904	36,800	17,104	24,213	14,496	12,587	2,608
1994	3,431	54,076	36,612	17,464	24,212	14,646	12,400	2,818
1995	3,446	64,499	45,064	19,435	29,685	16,293	15,379	3,142
1996	3,518	77,114	55,274	21,840	35,493	18,008	19,781	3,832
1997	3,580	87,234	61,815	25,419	41,370	20,964	20,445	4,455
1998	3,677	85,631	61,282	24,349	39,296	18,983	21,986	5,366
1999	3,755	99,105	73,513	25,592	45,279	19,637	28,234	5,955
2000	3,758	98,301	72,544	25,757	42,998	19,691	29,546	6,066
2001	3,756	92,396	67,308	25,088	38,998	18,425	28,310	6,663
2002	3,762	90,811	64,212	26,599	33,534	18,183	30,678	8,416
2003	3,807	101,729	75,512	26,217	33,335	16,770	42,177	9,447
2004	3,841	102,541	80,604	21,937	32,987	13,522	47,617	8,415
2005	3,811	108,451	84,108	24,343	35,890	14,924	48,218	9,419
2006	3,790	111,840	85,799	26,041	35,309	14,901	50,490	11,140
2007	3,932	112,017	86,148	25,869	32,743	15,126	53,405	10,743
2008	3,959	117,972	91,895	26,077	33,575	14,307	58,320	11,770
2009	3,963	124,806	95,605	29,201	33,066	14,837	62,539	14,364
2010	3,956	132,687	103,222	29,465	34,744	15,640	68,478	13,825
2011	4,028	137,984	107,414	30,570	35,717	14,849	71,697	15,721
2012	4,035	139,622	108,884	30,738	35,118	15,087	73,766	15,651
2013	4,027	138,785	108,060	30,725	35,657	14,714	72,403	16,011
2014	4,028	140,255	108,199	32,056	34,379	14,387	73,820	17,649

(Continues)

TABLE 1 (Continued)

Year	No. of Mediators	Total number of cases	Settled	Unsettled	Settled civil cases	Unsettled civil cases	Settled criminal cases	Unsettled criminal cases
2015	4,014	138,159	107,251	30,908	33,795	13,679	73,456	17,229
2016	4,007	138,930	110,749	28,181	35,933	12,876	74,816	15,305
2017	4,003	141,512	112,711	28,801	36,157	13,417	76,554	15,384

Source: Department of Civil Affairs, 2019.



However, according to the findings of some research programs, the principle of neutrality in Taiwanese mediation is—in practice—often infringed. Huang and Chan (2013) evaluated restorative justice programs in Taiwan and concluded that the mediation system had several deficiencies and was inadequate from a restorative perspective. This was partly due to mediators who made suggestions, commented and forced disputants to reach an agreement while facilitating the process of mediation. Lien (2009) compared the mediation processes in criminal cases in Germany, China, and Taiwan. As she noted, mediators in Taiwan (and China) often give recommendations and persuade or even pressure the parties to accept them (Lien, 2009, p. 47).

My qualitative field work confirmed that even in town mediation, a lack of neutrality can be a typical component. Members of the Chinese Arbitration Association (CAA)<sup>4</sup> were also among my interviewees. The organization itself described mediation as a voluntary, non-binding ADR process in which neutral mediators assist (CAA, 2019). However, and as colleagues of the organization point out, town mediators are typically not neutral and usually try to convince disputants:

We strongly recommend the mediators who take part in our training to not make any suggestions or decisions for the parties. It is the parties that should find a solution and it is not the mediator who should provide a solution. However, they often do not know the core, the nature of mediation. Even though they have been practicing mediation for ten or twenty years. They are very confident about making decisions or providing suggestions to the parties. They are rather arbitrators. They only focus on how they can decide and push the disputants to the settlement. (Mediator 1, personal communication, April 21, 2019)

It should be emphasized that all of my interviewees confirmed this statement. As one participant of the field work put it, his peer-mediators even

convince the parties by terrifying them a little bit. Sometimes, the mediators underline that if somebody does not accept a condition, maybe he/she will face criminal law or go to jail. They do not lie! They only use a little bit of their convincing skills. (Mediator 2, personal communication, March 14, 2019)

Somebody else pointed at the contradictory characteristics of mediation in and outside of Taiwan while emphasizing that “according to the western style, the mediator should be neutral and let people just talk. But in Taiwan, most of the mediators push the people to come to an agreement” (Scholar 1, personal communication, May 08, 2019).

Lack of neutrality in Taiwanese mediation has its historical antecedents. Traditionally in China, agreements of mediation often did not represent the interests of the parties, as they were under pressure to settle their disputes (Fa, 1980). Wang-Tay Sheng (as cited in Casabona, 2014) described mediation in the imperial Chinese justice system as a system in which

(T)he magistrate–judge acted as fathers to the parties [...]. Thus, he handled disputes as if parents handled quarrel between kids [...]. The judge was not bound by the law. Since the judge’s authority was basically unlimited, he could use any approach to elicit facts. During the process, if a party appeared to be disobedient, or the judge believed a party was lying, the judge had the authority to discipline. (Casabona, 2014, p. 148)

As the author concluded, mediation was a humiliating and disempowering process during this period.<sup>5</sup>

We also have some information about the practice of mediation in Taiwan under the Japanese rule. Even during these decades, mediators explicitly used coercion to reach agreement. As Wang put it while describing administrative mediation, parties did not really have the freedom to refuse to participate in mediation, given the potential of penalty (for example detention or a fine) (Wang, 2000, p. 90).

More importantly, the mediator often “coerced the parties to accede to his official authority and ‘agree’ with his decision of the disputes” (Wang, 2000, p. 90). In light of this history, lack of neutrality is not a new phenomenon at all—this feature of Taiwanese mediation has endured for centuries.

## 5.2 | Impartiality

In further use of Torzs’ definitions, impartiality means that “the mediator has to be objective, unbiased and cannot have a stake in the conflict itself” (Torzs, 2012, pp. 20–21). As a consequence, mediators must not be involved in any kind of hierarchical or power-based relationship with any of the parties. Even the Township and Country-Administrated City Mediation Act stresses that mediators must recuse themselves from those mediation procedures in which they or a member of their household has an interest in the subject matter of the mediation (Township and Country-Administrated City Mediation Act, 2009, Article 16). However, lack of impartiality, too, could be a problematic feature of town mediation in Taiwan for two reasons:

1. Community-based nature. As the professional literature and the interviewees of this field work confirmed, mediators are usually well-known local people, often involved in various kinships, friendships, and personal and formal relationships; this was true in ancient times as it is in the present day. This embeddedness itself can result in situations wherein the mediator cannot be considered objective or unbiased and may have a stake in the conflict itself. One of my interviewees described such a situation while highlighting that

at the local level everybody knows each other. Mediators know the people who take part in dispute resolution. And mediators know who the influential figures are. If any of the disputants has powerful friends and relatives, mediators have to be very careful not to infuriate them. (Scholar 2, personal communication, 10 February, 2019)

2. The influence of local power groups. Around 25 years ago, Bosco (1992) wrote an article on the factions (“defang paixi”) of Taiwan. Factions can be seen as “political conflict groups” whose members are “recruited by a leader on diverse principles” (p. 157), or as groups based on dyadic and transactional bonds between leaders and followers (Bailey, 1969). Lande characterized factions with terms such as “personal leadership”, “lack of formal organization”, and “a greater concern with power and spoils than with ideology or policy” (Lande, 1977, p. XXXII). According to Bosco, the relationship within a faction is based on mutual assistance, especially in rural areas of Taiwan. There are several ways in which constituencies may support a faction, for example, by voting for them in elections. In exchange, there are

several ways of rewarding the contributions of the constituencies: by patronage in the form of jobs and local improvements, in assistance in bureaucratic problems and in mediation as well (Bosco, 1992, p. 161). Kao pointed out that the members of mediation committees were typically important actors in local factions and, as a consequence, mediation committees could be dominated by these factions (Kao, 2000, p. 1). Overall, the occupation of administrative and legislative positions by local figures of power was realized due to the diminishing importance of those original principles within the mediators' selection process (that is, eminent fairness, legal knowledge, expertise, good reputation etc.) by faction loyalty. This practice easily violates impartiality—especially if voters, supporters or even candidates of a faction have a stake in a dispute.

In all likelihood, partiality was to blame to a certain extent for the loss of trust in town mediation at the end of the 1990s (which can even be tracked via a decrease in the number of cases). During these years, concerns arose about the selection process of town-mediation as “the appointee's character and knowledge were lacking” and “the committee position could be used as a reward” (Shen, 2015, p. 718). The amendment of the Township and Country-Administrated City Mediation Act (2009) aimed at improving the situation. Since 2005, members of the legislative body and administrative leaders cannot join mediation committees. Both district courts and the prosecutor's office review the candidates that are nominated by the mayor of the township and select the qualified candidates from among them (Article 3). On the whole, strong judicial supervision is implemented in the selection process in order to reduce potential conflicts of interest.

As previously mentioned, the limited number of interviewees in my fieldwork make it impossible to draw far-reaching conclusions. That being said, one conversation must be cited here. According to one of my interviewees, about half of the mediators within the local mediation committee are nominated because of their skills—while the other half of them are selected due to their commitment to the ruling party. Partiality amidst these mediators is obvious as some of them work among the closest staff of the party leader. Overall, the mediators' selection process may still be strongly influenced by party politics, even today. If factions have survived the past few decades, it makes it difficult to fulfill the requirement of impartiality during the process of town mediation.

### 5.3 | Empowerment and recognition

Empowerment was defined by Bush and Folger as “the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems” (Bush & Folger, 2005, p. 22). As they outlined it, helping the disputants to fully participate in the discussion was itself empowering. According to Swift and Levin (1987), without the awareness of self-interests and needs, there is no empowerment.

Empowerment is strongly interconnected with the recognition that can occur only if parties are already empowered. Recognition is understood as the “acknowledgement and empathy for the situation and problems of others” (Bush & Folger, 2005, p. 22). Thus, recognition can be seen as an ability for openness and responsiveness to others. Empowerment and recognition are necessary components of transformative mediation, which puts great emphasis on interaction and communication between parties, the ability to express feelings freely and the importance of improving understanding (even if parties cannot reach an agreement) (Torzs, 2012).

Taking the findings of the literature review into consideration, one concludes that these two principles can be easily violated during town mediation. As was previously mentioned, the importance of social harmony is the foundation of the traditional approach of Confucianism; people in an ideal society aim to avoid the disturbances of conflict. The requirement of maintaining social harmony can be identified in the practice of mediation as well. According to Huang and Chang, restoration and harmony remained the major goals of the mediation process in Taiwan (Huang & Chang, 2013, p. 292). Berti notes that although victim-offender mediation focuses on the individuals and not the whole community, “maintaining harmonious social order is much more important than protecting individual rights” in Taiwan (Berti, 2016, p. 84). As the author argues, an apology (expressed by the offender) which confirmed repentance and—in recognition of the apology—forgiveness on the part of the victim, were the cornerstones of peaceful settlement and served in the restoration of social harmony. Jung also emphasized (as cited in Diana Lin, 2011, p. 207) that town mediation was often used as a forum to reach an agreement, avoid litigation and reconstruct social harmony.

However, deference to the concept of social harmony may result in a strain on the disputants for two important reasons:

1. The importance of peaceful dispute settlement. As Berti argued, a culture that highly appreciates apology and forgiveness can exert great pressure on the participants to peacefully resolve their conflict. As a consequence, parties may “accept an unwelcome agreement so as to avoid the social disapproval that would result from its refusal” (Berti, 2016, p. 58).
2. Traditional values regarding the unity of the family and gender roles. As previously discussed, Confucianism highly values societal stability, which is largely predicated on familial harmony and togetherness. These traditional values are still accepted and supported by Taiwanese society (Chang et al., 2018) and, of course, by mediators. According to the data of Diana Lin, 53% of family mediators opposed divorce for the sake of preserving harmony in the family (Diana Lin, 2011, p. 213).<sup>6</sup> Further research data confirms that the majority of mediators not only accept the subordinate position of women within families, but that such women are “often encouraged by the mediator and male relatives to respect their husbands and to sacrifice themselves a little bit in order to maintain a peaceful family life” (Scholar 3, personal communication, April 19, 2019). As Diana Lin noted, 55% of mediators have condemned wives who had rejected moving in with her in-laws as being morally wrong. 52.3% agreed with the idea that women should do most of the housework even if they were away from the household to earn money (Diana Lin, 2011, p. 213). 48.3% of mediators have reportedly told a female spouse at least once that physical violence was not a serious issue. And finally, 49.4% of them did not consider it abuse if a husband frequently used swear words with his wife (therefore, such a behavior can be tolerated) (Diana Lin, 2011, p. 213).

Overall, the conciliation process is not always constraint free. Disputants may have an awareness of self-interests and needs but they cannot (or would not like to) reveal and enforce them lest they evoke social disapproval and clash with the traditional social norms that are often represented by the mediators themselves. As a result, even the principle of recognition cannot be reached because empathy, openness, and responsiveness to others cannot emerge in such a situation; “forced recognition is a contradiction in terms” (Bush & Folger, 2018, p. 87).

## 6 | DISCUSSION

This article attempts to introduce the historical antecedents of Taiwanese society vis-à-vis the local mediation system. It is my hope that the analysis successfully clarifies the ways in which historical roots have influenced the practices acknowledged and followed by town mediators. Taking the findings of the literature review and qualitative field work into consideration, one might conclude that town mediation does not meet professional standards in certain respects, as it does not ensure neutrality and cannot guarantee that mediators are impartial. But, I would like to offer a different perspective that points to the cultural impact on mediation. This perspective accepts and encourages different interpretations of the practice and takes the strengths of mediation into consideration, instead of focusing solely on its previously mentioned “deficiencies” and “weaknesses”.

Various communities, societies and cultures have their own interpretations of conflicts and conflict resolutions (Avruch, 1998). Brigg explains how interconnectedness, and social and family relationships often play a significant role in the conflict resolutions of non-Western cultures (Brigg, 2003). Similar conclusions were drawn by Augsburg (1992) while describing “traditional cultures” in which the group (and not the individual) has primary ownership over conflicts. Saxon details a form of informal justice, *Sulha*, that is used in Middle Eastern societies in order to restore relations in communities after an offense is committed. In this context, the author points to the differences between Western and Middle Eastern conflict resolution practices. These differences include the status of the third party (an impartial professional vs. an influential and notable elder), the parties who are involved in dispute resolution (individuals vs. wider community), the relationships between disputants and the mediator (neutral vs. personal) or the strategies that are followed by the facilitator (neutral vs. convincing and persuasive). Similar differences can be observed in *Jirga*—the practice that is still wide-spread in the rural areas of Afghanistan and Pakistan (Pfeiffer, 2011; Shaukat & Shughla, 2018; Zahid & Farooq, 2018). This informal reconciliation process also differs from the Western model. Members of *Jirga* are neither impartial nor neutral external actors to a given conflict. Rather they are the elder, powerful and well-reputed men who enjoy the support and trust of their own communities. The primary aim of *Jirga* members is to maintain harmony in the community, and as a consequence, this practice “is simply confirming the power constellation between the parties” (Pfeiffer, 2011, p. 88).

Mediation also has diverse characteristics all over the world. Kozan and Ergin (1998) laid out the differences between the preferences of Turkish and US disputants.<sup>7</sup> Davidheiser (2005) described the several differences between the mediation activities of Gambia and those of the United States.<sup>8</sup> And Stadler (2020) refers to several research programs pointing at the non-Western styles of mediation (for example in Nicaragua, Indonesia or among the Bedouin tribes) that do not follow the principles of neutrality, impartiality, empowerment and recognition. Listing the various forms of mediation and the different interpretations of conflicts and conflict resolutions would likely be an endless endeavor. This diversity encourages us to focus on the local, Taiwanese interpretation of town mediation instead of judging it as a “deviant” practice. Hereinafter, a description about the opinion and feedback of my interviewees will support this attempt.

First, the capacity to support disadvantaged social groups which usually possess less power and are in lack of financial and cultural capital should be highlighted. People living in rural areas have easy access to this kind of dispute resolution service as all towns (and districts in major cities) in Taiwan—even those with very small populations—have set up Mediation

Committees. Laymen may also easily initiate a mediation as knowledge and understanding of the law is not a necessary prerequisite. Because they are essentially free, town mediation can be a fair solution for people coming from poor financial backgrounds. Taking the feedback of my interviewees into consideration, even an endeavor to balance inequalities between disputants can be recognized. As one of them put it, “mediators often try to protect the victims and the people who are weak, as these people deserve more support” (Mediator 3, personal communication, May 2, 2019).

Secondly, there are several advantages that town mediation has over formal litigation. It can be extremely quick—with agreements being reached and even approved by the court within weeks. Compared to strict and rigid courts, town-mediation ensures a cost, informal and safe environment where disputants meet face-to-face to discuss their conflicts. As most of my interviewees noted, people also prefer mediation because it affords them the opportunity to express emotions, which is something not ordinarily acknowledged during litigation at all. Furthermore, victims can gain access to alternative forms of compensation which do not violate legal and moral rules (Township and Country-Administrated City Mediation Act, 2009, Article 26). As one of my interviewees put it,

Sometimes people need special compensations that cannot be achieved by courts, as the court focuses solely on financial issues. But town mediation does not do that. In town mediation, the victim may need monetary compensation. But an apology may be more appropriate. Maybe the wrongdoer should apologise to the victim and to his/her whole family. Maybe the perpetrator writes “sorry” on a piece of paper a thousand times and gives it to the victim. Sometimes, they buy food for the whole family or even for the whole village. Or they repair the harm somehow. There are several ways to show their apology. (Mediator 4, personal communication, February 27, 2019)

The specific position of the mediators and their special relationship with the disputants must also be addressed. Mediators are volunteers, a fact that enhances the possibility of having motivated, enthusiastic and committed practitioners supporting the dispute settlement. Due to the special prestige of the mediators, disputants trust them, which increases the chance of the process being peaceful and successful. The embeddedness of mediators in the local community can also increase the chance of agreement. Mediators can refer to mutual relationships in order to reach an agreement if the disputants belonged to their informal network. In addition, these participants are sometimes asked to “perform a favour of benevolence, or *jen ch’ing*, on behalf of an elder mediator, by thinking of the situation from the opposite party’s perspective and achieving conciliation” (Diana Lin, 2011, p. 207).

All of these features explain why people in Taiwan are satisfied with the process and results of mediation. This statement is further confirmed by the findings of a survey about patterns of legal dispute resolution in Taiwan (Chen, Huang, & Lin, 2012b). According to the results, 51% of respondents who have taken part in town mediation considered the process helpful and only 13.6% would not return to town mediation in the event of a future conflict.

It is also important to emphasize that practitioners anywhere around the world may face difficulties in pursuing some professional standards, and that this is, of course, not unique to Taiwan. As Astor points out, although neutrality is one of the core concepts of mediation, it is not well defined, nor is it really practiced by mediators or even attainable (Astor, 2007, p. 226). Izumi also noted that “neutrality is discussed, practiced, and researched rhetorically, but there

are no empirical studies demonstrating exactly what neutrality means” (Izumi, 2010, p. 77). Empowerment can also be seen as a problematic requirement from, for example, a feminist perspective in regards to the power imbalances between men and women in the process of mediation (Fineman, 1988; Gagnon, 1992).

Furthermore, the rules and principles of town mediation are quite familiar to the practitioners of evaluative mediation (which emerged in *court-mandated* or *court-referred* mediation in western countries) (Zumeta, 2019). Evaluative mediators also make formal and informal recommendations (Riskin, 1996, p. 24). According to Lowry, this type of mediation includes expressing an opinion, recommending a solution and even “predicting the ultimate outcome if the case were to be resolved in another forum” (Lowry, 2000, p. 48).

All in all, there are similarities as well. Despite the fact that certain principles and standards widely accepted in the professional community (and often believed to be universal) may have a particular interpretation in Taiwan, these differences do not at all hinder the ability of town mediation to achieve the ultimate goals of the profession. Town mediators have a crucial role in involving conflict stakeholders and helping them to reach agreements. Therefore, this unique form of alternative dispute resolution undoubtedly contributes to peaceful conflict resolution and thus helps in the preservation and improvement of relationships which have been damaged.

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## ENDNOTES

<sup>1</sup> This article does not discuss either mediation for specific professional disputes, that are handled by administrative authorities (Hsiao, 2018, p. 502), or family mediation, which is a special type of court-annexed mediation (Shen, 2015, p. 716). Town mediation can be carried out in rural townships (鄉調解), urban townships (鎮調解) and cities (市調解). However, this article uses the umbrella term “town mediation” as all of these varieties follow the same regulations. Furthermore, the vast majority of research reports and scientific articles (available in English) use this term.

<sup>2</sup>  $n = 5,601$ , with a sample reflecting the age, gender, and educational demographics of the Taiwanese population.

<sup>3</sup> This report would not have been possible without the generous support of the Taiwan Fellowship Program. I would like to express my gratitude to the colleagues of the Chinese Arbitration Association who were not only open for inspirational conversations but who helped me to get in contact with several interviewees in Taiwan. Due to requests for anonymity, I do not enlist the name of my interviewees. However, without the support of these mediators, researchers, lawyers and NGO members I would not have been able to compile this report. Finally, I also would like to thank Borbala Fellegi and Chen-Fu Pai for their constructive comments and suggestions regarding this paper.

<sup>4</sup> The CAA, which offers mediation services in Taiwan, has established a mediation center in Taipei and several offices around the country and is responsible for the sole mediation training course in the country.

<sup>5</sup> A Lack of neutrality is still characteristic of Chinese mediation. According to Zhang (2018), compared to the western-style facilitative mediation, mediators in China usually take a more active role, give advisory opinions, instruct, criticize the parties and even suggest punishment to the wrongdoers. Johnston and Van Ness (2007) described Chinese mediation as coercive and arbitrate and, as such, inconsistent with the neutrality professed in Western practice. Xiaoyu (2016) also recognized during his field work that mediators were active and directive in giving advice.

<sup>6</sup> We can suppose that patriarchal attitudes are even stronger among town mediators as they are generally less educated and have fewer possibilities of taking part in various training programs (Diana Lin, 2011, p. 210).

Furthermore, as the author emphasized while referring to a study from Hsia (Diana Lin, 2011, p. 214), elder males among town mediators (who still constitute the majority of the committees) can be described as being more dismissive of gender equality.

<sup>7</sup> Turkish disputants tend to prefer negotiating through an intermediary, whereas disputants from the United States favor direct mediation (Kozan & Ergin, 1998).

<sup>8</sup> These differences pertain to establishing an appropriate atmosphere, the social ties between the parties and the mediators, the collection of the narratives of the disputants and the way persuasion is part of the process (Davidheiser, 2005).

## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

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