



## Innovations and Pitfalls in Chinese ADR Pedagogy: Experiences from the Field

*Shahla Ali, Kang Rong, Alonzo Emery, Ta-Wei Chao,  
& David Matz, with an Appendix by San Tianyu\**

*Editors' Note: How well do "traditional" (i.e., 1980-2010 era) Western approaches to teaching negotiation translate, in a supposedly "traditional" society that is now undergoing ultra-rapid change? Between them, the authors have extensive experience teaching negotiation in China. Here, they assess that experience in a cross-comparison of five different Chinese law and business teaching environments. One common factor, they find, is that the postmodern innovation of having students participate in every aspect of a course, including course design and the selection of topics for discussion, and explicitly incorporating Chinese historical and philosophical sources, has proved useful in helping the students perceive the universality at the core of principled negotiation.*

### Introduction

This chapter examines negotiation skills pedagogy in the People's Republic of China (PRC) from five different perspectives. By reflect-

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\* **Shahla Ali** is an assistant professor of law at the University of Hong Kong. Her email address is [sali@hku.hk](mailto:sali@hku.hk). **Kang Rong** is a professor at Northwest University School of Economics and Management in Xi'an, China. Her email address is [kangrong@nwu.edu.cn](mailto:kangrong@nwu.edu.cn). **Alonzo Emery** is an assistant professor at Renmin University Law School in Beijing, China. His email address is [alonzo.emery@gmail.com](mailto:alonzo.emery@gmail.com). **Ta-Wei Chao** is the executive director of ESSEC IRENE ASIA (Asian Branch of the Institute for Research and Education on Negotiation, ESSEC Business School) in Singapore. His email address is [chao@essec.fr](mailto:chao@essec.fr). **David Matz** is a professor in the Graduate Programs in Dispute Resolution at the University of Massachusetts/Boston in Boston, Massachusetts and principal at The Mediation Group in Brookline, Massachusetts. His email address is [davidematz@gmail.com](mailto:davidematz@gmail.com). **San Tianyu** is an attorney in Shanghai and formerly was a student at Jilin University Law School. Her email address is [san1986@126.com](mailto:san1986@126.com).

ing on their varied experiences teaching in the PRC, the contributors analyze what teaching strategies proved beneficial and what methods could use improvement. Each analysis concludes with teaching and research recommendations of use to instructors in China and elsewhere. The theme linking the five narratives focuses on how the specific cultural context of China provides both challenges and opportunities for negotiation pedagogy and research.

First, Shahla Ali offers a historical overview of dispute resolution in China and how classroom discussions grounded in such a historical and cultural context can prove most effective. Second, Kang Rong compares her Fulbright research into negotiation pedagogy conducted in the United States to her teaching of negotiation skills in China. Third, Alonzo Emery discusses how empowering students to write their own simulations enabled them to embrace negotiation skills teaching more fully. Fourth, Ta-Wei Chao draws from his experience training business students in China to highlight the role that culture plays in negotiation teaching. Fifth, David Matz analyzes his experience teaching negotiation at Jilin University Law School, with a focus on how controversial topics can teach both students and instructors about cultural differences and similarities in negotiation practice. Together, these five narratives suggest that although many of the principles taught in normative negotiation skills classes seem universally transferable, distancing negotiation skills training from the specific cultural context likely will limit the effectiveness of any course. In the Appendix, former student San Tianyu reflects on her experience in the Jilin University law school class.

## Five Narratives

### *1) History Underpinning Negotiation Skills Teaching in Hong Kong (Shahla Ali)*

In recent years, negotiation scholars have developed a number of useful insights into the field of negotiation teaching. Many of these insights have direct relevance for negotiation teaching throughout the world, including in Hong Kong. Among these insights have included the importance of taking negotiation training outside of the classroom (see generally Coben, Honeyman, and Press 2010; Cohn and Ebner 2010), the involvement of students in course design (see generally Nelken, McAdoo, and Manwaring 2009) and the need for awareness of issues involving subjectivity, kinship and awareness of cultural ties (see generally LeBaron and Patera 2009; Bernard 2009).

First, in applying insights regarding the importance of taking negotiation learning outside the classroom (Coben, Honeyman, and

Press 2010), in recent years, students in negotiation courses taught both at the graduate and undergraduate levels within a law school in Hong Kong have been encouraged to apply the skills learned during the given course (e.g., identifying common ground, effective information gathering, the use of external standards) to a personal life situation during that same week. Time is allotted at the beginning of the following class to discuss what worked well, what was effective and what was not so effective from the student's perspective. A number of useful insights have been gained through this process and most importantly, this practice has reinforced the notion that negotiation is a skill that can be learned through practice rather than an innate capability.

Second, student involvement in course design (Nelken, McAdoo, and Manwaring 2009) has made a significant contribution to course development. At the mid-point of the course students are invited to share anonymous feedback regarding those aspects of the course they find effective and those aspects where they suggest improvement through a "stop" "start" "continue" feedback sheet. In addition, student groups are invited, at the outset of the course, to share their course expectations. Feedback at the beginning, mid-point and end of class has led to some significant adjustments to course structure, design and content including greater integration of negotiation skill demonstrations and examples. Experience gleaned both from student feedback and course delivery for two and a half years sheds light on what teaching methods work well and which might be adjusted or improved, thus offering suggestions for future development.

Third, insights regarding the need to pay special attention to issues involving subjectivity, kinship and awareness of cultural ties has likewise had direct impact on course teaching. The class composition is generally quite international, with students representing a diverse array of cultural and professional backgrounds, with a significant number of students of Chinese descent.

Connecting selected elements of problem-solving negotiation with ancient Confucian texts provides a sense of context and connection between ancient wisdom and contemporary practice (see generally Lee 2010). Increasingly, the link between our societies' visions of social order and the development of systems of dispute resolution has been made explicit. For example, Lawrence Friedman writes that systems of justice stand closely associated with the ideas, aims, and purposes of society (see generally Friedman 1975). Sun Li Bo adds that "differing thought processes have led to differences in the understanding of the concept of justice and the way to put this ideal into practice" (1996: 58).

In the negotiation course we discuss how in traditional China, justice was seen as the achievement of harmony. According to Sun Li Bo, the concept of justice was “based on morality, from which one . . . brings harmony to a family, and skillfully administers a country” (1996: 58). During the period surrounding the Warring States, Confucius saw the Chinese empire plagued by interstate war, rebellion, intrigue and immorality, and faced with the challenge of providing sustenance to a significantly large population on a very limited percentage of arable land.

Inspired by the great teachings of the past, Confucius sought to contribute to harmony through promulgating principles of virtue and forgiveness (Sun Li Bo 1996: 62). These principles became integrated into China’s unique system of dispute prevention and resolution, called *tiaojie*, meaning to “reunite” or “bind together.” For centuries, *tiaojie* was used to resolve the majority of all civil disputes in China.

Emphasizing harmony among the collective, for centuries *tiaojie* was the preferred method of dispute resolution, and considered superior to adjudication (Lubman 1967: 1290). Some have considered *tiaojie* to resemble mediation with elements of arbitration. When broken down into its literal meaning, *tiao* meant “to mix or stir” and *jie* meant “solution.” Therefore, *tiaojie* denoted a means by which individuals could restore harmony by means of compromise (through the mixing of views) and forgiveness, resulting ultimately in a solution.

In practice, *tiaojie* focused on resolving disputes through a network of local peacemakers charged with assisting disputing parties. These peacemakers intervened in conflict situations and encouraged disputing parties to yield, forgive, or compromise for the sake of harmony – even in the face of “unreasonable disputants”:

If one gets into fights with others, one should look into oneself to find the blame. It is better to be wronged than to wrong others . . . Even if the other party is unbearably unreasonable, one should contemplate the fact that the ancient sages had to endure much more. If one remains tolerant and forgiving, one will be able to curb the other party’s violence (Akigoro 1993: 604-608).

The following conclusions, from a case study recorded in Shandong province, give a sense of the primacy of harmony in the context of *tiaojie*. In particular, we see how peacemakers worked to encourage parties to “meet half way,” “admit their own mistake,” and eventually “share the expenses equally” regardless of fault.<sup>1</sup>

First, the invited or self-appointed village leaders come to the involved parties to find out the real issues at stake, and also to collect opinions from other villagers concerning the background of the matter. Then they evaluate the case according to their past experience and propose a solution. In bringing the two parties to accept the proposal, the peacemakers have to go back and forth until the opponents are willing to meet half way. Then a formal party is held either in the village or in the market town, to which are invited the mediators, the village leaders, clan heads, and the heads of the two disputing families. The main feature of the party is a feast. While it is in progress, the talk may concern anything except the conflict ... If the controversy is settled in a form of "negotiated peace," that is both parties admit their mistakes, the expenses will be equally shared ... thus the conflict is resolved (Yang: 1945: 134).

In discussions in class, we examine the differences and similarities between a problem-solving negotiation approach and *tiaojie*. While many students acknowledge the importance of understanding historical approaches to negotiation, most also recognize the vast changes that have taken place in contemporary society. In discussing the concept of culture, our starting point is that genetics and biology confirm that we are all one human species and that recent insights into culture view it as a "relatively fluid and variable between populations" (Karlberg 2004) and not necessarily associated with a particular ethnicity. Therefore, through travel, education and exposure we pick up particular habits and approaches that influence our overall approach to negotiation. Based on the insights arising from both the commonality of human origin and the enriching contribution of diverse cultures, we discuss a number of guidelines for working with culture in the negotiation process, including the importance of a learning orientation, empathy and reflexivity, openness to complexity, and a focus on the individual rather than the culture while adapting flexibly to cultural dimensions. Such discussions provide an opportunity to reflect on underlying assumptions regarding the negotiation process.

### Recommendations for the future

In looking toward the future of these courses, it seems that one area of potential development is the further expansion of the course assignment requiring students to engage in experiential learning through the attempt at resolving some real-life existing problems that the students face, either in the workplace or dormitory environment or the community at large. This hands-on applied element of the negotiation

course would include multiple environments, cultural contexts and learning styles, and would aim to integrate theoretical learning into practical application. (For examples, see Chamoun et al., *Bringing the Street to the Classroom*, in this volume.)

## **2) Both Pedagogy and Culture Matter (Kang Rong)**

In 2001, I started teaching international business negotiation at Northwest University of China. As with other negotiation skills courses taught at other universities, students welcomed the pedagogy and also found it extremely different from other courses. From 2009-2010, I conducted research on the composition of negotiation cases and their use in teaching as a Fulbright Scholar at the University of Southern California (USC), where I took part in two courses: Negotiation and Deal-making; and Cross-cultural Negotiation. During my research tenure, I had the opportunity to see how my American counterparts teach negotiation. In this section, I focus on three issues: a) the methodology of simulation teaching; b) the impact of culture on cases used; and c) case comparison assignments.

### **Methodology of simulation teaching**

First, I would like to discuss the most popular way to teach negotiation: simulation or role-play.

I first learned about the role-play or simulation-based method of teaching negotiation in 2000 when taking part in a “train the trainers” session at Peking University geared toward teachers from the western part of China (this training was responding to the fact that in the years leading up to 2000, China’s MBA programs had become extremely popular, but seriously lacked professional instructors who could teach management courses, especially in western China). Ron Anton, an alumnus from the Kellogg School of Management at Northwestern University, taught a negotiation course in the Beijing International MBA program (BiMBA) offered by the China Economy Research Center. Our group of teachers from western China joined in along with the MBA students. Although the course was only six sessions, it was well organized. It was the first time students had been given differing fact-patterns of the same case and asked to engage in live negotiation. Even the method of pairing students for negotiation was carefully designed so that during the whole session, nobody knew in what way his partner would be chosen. The course was interesting and different, because in all other courses, although case studies are used, students got the exact same material to analyze.

This new way of teaching through simulations seemed to reflect well the characteristics of real-life negotiation (traditional Chinese pedagogy in higher education institutions is characterized by the ax-

iom: “teachers talk, students take notes”). Later through research, I realized that simulations and role-play comprise the most popular way of teaching negotiation in many universities all over the world. I started to experiment with this method in my own classes, while observing what happened throughout the entire process. For students who never used the simulation-based method, and even for those who have used simulations where both parties receive the *exact same* information, I found that simulations where there are multiple, slightly tweaked fact patterns given to the opposing parties present the most interesting way of learning from simulations. It is easy for students to realize and agree that real life is full of instances where information is neither equal nor symmetrical. Due to the fact that asymmetric information reflects real life, students can learn more readily from their own behavior and experience.

In using simulations, I arrived at some findings which interested me greatly, some of which far exceeded my expectations. The effect of simulation teaching depends on how seriously students treat the simulation, or how they feel about the reality of such “games.” The more engaged the students are, the more they learn from the experience. Some problems arise from this level of interest, however. For example, some students are always able to “get the jump on” the simulation case, always thinking about how to get to know the other side’s information. Sometimes they put the two opposing sets of confidential instructions together, and compare the various hidden points. If I spot this, I always stop them, and tell their partners that letting the other side know their confidential information may result in their losing ground. But it must be admitted that such kinds of people do exist in real life: in real negotiations, these individuals do not follow the routine or even, necessarily, the rules of society, but rather employ more “creative” methods. Thus, to find a student going beyond the scope of the simulation is not always a pure negative.

Another example concerns an auditor in the last class I taught. He was very active at the beginning, but after several weeks when he had chances to negotiate with other partners, he came to me and asked me whether I should put forward the following rule: an agreement must be reached by the end of class, or alternatively, finalized agreements will get a prize, or additional credit in the class. I asked why he made such a suggestion, and he told me that without this rule, some partners continue to push, without worrying about the time issue, because an outcome of “no agreement” does not result in punishment or “failure.” Although I do believe it is not a good idea to give students who reach an agreement more credit, I continue to wonder what would be a good way to evaluate students’ performance,

especially when the class session has limited time (see Ebner, Coben, and Honeyman 2012 for a comprehensive examination of assessment alternatives).

### **Cultural impact on cases used**

The second obvious impression when I teach in China and compare that experience to observing negotiation teaching in the United States is that culture influences many elements in negotiation and negotiation teaching (see, e.g., Bernard 2009; Gold 2009; Kovach 2009; LeBaron and Patera 2009; Bernard 2010; Docherty 2010; Lee 2010). In my experience and in speaking to my colleagues in China and abroad, I find that Chinese students do not ask questions as often as Western students. First of all, they take what teachers say for granted, and even if they have questions, they generally do not ask them openly. I had encountered a very different situation at USC. I attended the negotiation class, sometimes joining in as a negotiator, sometimes as a teacher. One day, when I joined in as a member of a group, which had gotten the assignment the week before, one young woman questioned my presence and asked the professor why there was a change of team members. In China, I have never met such a reaction. No matter how the team is formed, Chinese students generally do not ask “why?” Also, in reviewing the negotiation syllabi of many U.S. universities, one rule is impressive: the professors ask students to report one day earlier if they cannot be present. I do not employ such a rule in my class, so I cannot decide before the class who should negotiate with whom: matching students is done randomly during the actual day of class.

Another issue on culture relates to the cases chosen. From my experience, some cases are great just because they help students understand another way of living and another set of rules of society; but if the difference lies in the roots of the culture, things may become complex. I still remember how in the BiMBA course, among the six cases used, one case, a negotiation between brothers, stood out as very different from the others. In that negotiation, the father died recently, and the question of which brother should live with their mother and other related monetary issues had to be decided, as well as matters related to their father’s inheritance. Many Chinese students felt this was difficult, and in the Chinese context, a particularly sensitive topic. Thus, that class ended quickly – because each side gave in very quickly. The traditional family network or relationship is often regarded in China, as elsewhere, as the most important foundation of society. Thus, issues related to the family naturally are seen as quite different from business issues. Many students regarded family issues,

such as the negotiation between brothers in the case, as unworthy of negotiation. Giving in quickly was seen as being more appropriate.

During the negotiation competition held at Peking University in May 2011, cases about family members were used. In evaluating the students' performance, my deepest impression was that they were *not* truly representing family members, but rather were using negotiation strategy as they would in the business world. This seemed highly unrealistic and forced. That experience made one question come to the fore: What cases should be used in the classroom? I believe there are several rules of thumb to follow: First, if the training purpose is to help students develop good negotiation habits, simple cases should be used, no matter whether there is cultural shock or not. Second, if the training purpose is on cross-cultural issues, cases written in foreign languages about what happened in other countries should be chosen (with a translation available), because cases originally written in another language may force students to understand more deeply the different language and culture, as the two remain intimately linked. Third, to explain the theory of negotiation, cases composed on the basis of local events are better, because it must be admitted that not only are languages different, many physical items are different. These things are difficult to comprehend, especially for students without much experience living or studying abroad. A well-chosen case may help students understand not only popular negotiation topics, but the underlying conflict structures, and even the cultural roots of the conflict. For understanding theory, cases based in other societies can be referred to as supporting stories, but do not work well as simulation materials.

### Case comparison assignment

In terms of teaching method, I would like to mention a teaching process of comparing two negotiations, wherein students are asked to collect data and information about two negotiations, and then compare and write an analysis of the negotiations.

I have found patterns of topic choice a very interesting point of difference between Chinese and American students. For students majoring in international trade and world economy, it would seem natural for them to choose business merger cases to compare. But, in fact, they did not choose business-oriented cases, but rather they chose diplomatic issues, such as border conflicts. This was quite different from what I had seen at USC. The students there chose negotiation cases mainly from the domain of *sports*. I believe this difference exists because when sports negotiations occur in the United States, there is major media coverage of such negotiations. Although I have used the case-comparison analysis only once to date, I believe it is a

very good technique. I will continue to use it in the future because it teaches students to think comprehensively. Through comparison, they may identify the structure of conflicts, as well as solutions to the various conflicts, and especially, what could have been done better. This deeper understanding, I hope, will allow them to reach better results in future negotiations of their own.

### ***3) The Impact of Empowering Students to Write Simulations (Alonzo Emery)***

From November 2010 to April 2011, I taught two quarter-length negotiation skills courses to Masters degree candidates at Renmin University Law School in Beijing. My reflection focuses on both the challenges faced introducing these skills and the strategies used to overcome obstacles. I conclude by proposing a path for ongoing research and pedagogical tools development.

In weekly journal reflections and anonymous course evaluations, students expressed enthusiasm about negotiation in general and the interactive nature of our courses in particular. The opportunity for students to speak at length in class remains a rarity in an educational system where class size can balloon into the hundreds and where professors traditionally lecture and students sit and listen. Like many universities in China, Renmin University Law School is reforming parts of its educational system by hiring more faculty and developing courses focused on skills and clinical practice to supplement courses teaching rules and regulations.

While students in my skills-based courses seemed to embrace a process of learning centered around simulations and discussions, some students still questioned the courses' content. Students often asked about the applicability of the curriculum to the "real-world" challenges they would face living and working in the People's Republic of China. For example, one student cautioned us to deploy active listening skills – particularly the prong of inquiry – with extreme care when operating within highly hierarchical structures, suggesting that even well-intentioned and carefully phrased questions could seem insulting to an individual unaccustomed to inquiries coming from perceived inferiors. During the unit on creating value, other students suggested that invitations to "expand the pie" seemed artificial and risked destroying hard-won deals if not introduced carefully. In response to both comments I noted that in all of my previous negotiation courses, my fellow classmates or, later, pupils – whose backgrounds ranged from environmental lawyers in China's Hubei Province to community leaders in the Mississippi Delta to students in the Harvard Law School Negotiation Workshop – raised similar questions. Thus, hesi-

tance to embrace some concepts of principled negotiation seems fairly universal. In my courses at Renmin University, I explained to students that we spend class time devoted to practicing value creation and active listening precisely because the deployment of these skills often feels unnatural and needs time to become integrated into practice. Although this answer registered as satisfactory enough to move class forward, I failed to answer directly the tougher, underlying questions regarding cultural specificity and universal applicability, in part because I believe there exists no “cookie-cutter” answer: case-specific context will always exert some influence on how skills are deployed.

In both of my courses at Renmin University, some students commented that the simulations were too far removed from their lives and future practice. During the first class, and throughout the term, I reminded students that I chose simulations carefully in order to encourage students to focus on *skills* rather than the substantive minutiae of the law. Still, students thought that operatic divas (ala *Sally Soprano*)<sup>2</sup> and mythical diseases (ala *DONS*)<sup>3</sup> would not loom large in their future. The foreign nature of the simulations, in terms of content and context, made it difficult for some students to take the exercises seriously.

After engaging students in an environmental-impact simulation during the first term,<sup>4</sup> I attempted to target the issue of applicability by anchoring our debrief discussion in reality. I asked students to think about some contemporary environmental-impact cases from around the world and, particularly, to consider what alternatives to a negotiated agreement seemed plausible in those cases. One student noted that an alternative such as “parading” through the streets remains undesirable or impossible in certain political or cultural contexts. Students suggested that principled negotiation might not prove helpful in situations where the legality or *de facto* operability of certain alternatives remains questionable.

In the end, I attempted to surpass the cognitive roadblock created by our specific social, legal, political and cultural context by assigning students the task of researching *real* China-based negotiations and adapting their fact-patterns into simulations that we could run in class. The results were impressive in so far as students were able to focus the simulations on critical skills while also imbuing the fact patterns with details resonating in China’s highly specific cultural and professional climate.<sup>5</sup> As many of my students planned to enroll in the Disability Law Clinic I offered the next term, the simulations they returned with focused primarily on the nexus of disability, education and the law. In our courses, students had already seen simulations that addressed issues of accessibility and inclusive education in the

American context as written by Professor Ruth Colker for her accessibility studies course at Ohio State University's College of Law. In my course, students now presented simulations reflecting their own national reality. Each of their simulations focused on developing a particular skill (active listening in one case, creating value in another, client interviewing in a third), but they all related to a more familiar story about disability in the specific cultural and legal context of China. The enthusiasm for the project encouraged some students to go beyond the call of duty by later adapting their simulations into video recordings of a "bad-take," or "non-skillful," version followed by a "good-take," more skillful, version of the negotiation.

One project in Renmin University's Disability Law Clinic the following semester charged students with developing a one-day negotiation skills training for disabled university students, the parents of disabled children and special and inclusive education teachers from the area. After much debate about whether or not to use a translated version of *Sally Soprano*, students decided to run one of their own simulations to demonstrate the usefulness of value creation. The passion that the training's participants invested in their roles suggested that the students' decision to use their own simulation was appropriate (see Druckman and Ebner 2010).

I think that even if some of the simulations the students authored ultimately prove unsuitable for wider distribution, the practice of researching real-world negotiations and then translating these negotiations into skills-based simulations helped my students embrace a model of learning that relies on simulations. The act of independently identifying the skills used and tensions felt in real negotiations proved more powerful than any story I could have told or newspaper article I could have produced as proof that these types of negotiations actually exist and that the skills we practice might actually work.

Based on my experience teaching negotiation skills in China, it seems that the exercise of researching and writing a reality-based simulation early in a longer negotiation skills course (or as a mid-term assignment, for example) could go a long way toward extinguishing recurring doubt about the applicability of negotiation skills in the real world. As a result, I will continue to work with my colleagues in China to develop an endogenous bank of simulations aimed at honing the same traditional skills of principled negotiation, but in a vernacular and context more familiar to my students. Making these skills culturally specific and relevant remains perhaps the greatest task for negotiation pedagogy as it expands its influence beyond western classrooms. The issue of cultural relativity figures as one of the most intriguing, and yet woefully underexplored, frontiers of negotiation scholarship.

#### ***4) The Impact of Culture on Negotiation Skills Training (Ta-Wei Chao)***

In 2011, I taught a course on negotiation skills over two days to thirty-six MBA students from one of China's most prestigious universities. The students' ages ranged from twenty-five to forty; most students had significant working experience. In total, there were four sessions of three and one half hours each that employed a mix of simulations (translated into Chinese from the simulation banks at Harvard, ESSEC IRENE, and the Kellogg School of Business), debriefing sessions, discussion and lecture. I focused on skills and concepts traditionally used in trainings modeled after the Harvard Program on Negotiation workshop, including the three tensions in negotiation: preparation; value creation; and alternatives and anchoring. However, in the fourth session, I focused on cross-cultural negotiation issues, as most of the students planned to work for multi-national corporations or Chinese companies planning to "go global" and I wanted to target the types of cross-cultural issues they would face in their future practice.

##### **What teaching methods worked well**

In the beginning, I was concerned that the students would not talk a lot and could not really engage fully in the role-play, since this kind of pedagogy was new for them and is not aligned with the classical Chinese lecture-oriented teaching style. Instead, students embraced it and performed very well. I did not find that any of them experienced difficulty in engaging in simulation-based learning. (Anecdotally, when I taught in Europe, I occasionally met students who could not accept role-play or did not know how to immerse themselves in the simulations' characters.) During the discussion, my Chinese students also participated enthusiastically and posed many interesting questions.

If we try to explore why this kind of highly interactive and discussion-intensive pedagogy can work so well for Chinese students (when it is not 100 percent aligned with our expectation in the beginning), I would like to offer some possible reasons:

- a) Chinese as the teaching language makes students less nervous, so that they can perform better.
- b) When I led the debriefing session, I tried to contextualize the whole discussion as much as I could. I think this made it easier for students to participate in the discussion since some unfamiliar concepts became more concrete to them. "Contextualize" means that I tried to use Chinese examples or propose real cases in China, and asked them

to comment on these examples in order to illustrate the concepts I would like to share with them.

- c) We successfully created an atmosphere of open discussion. In many Chinese students' eyes, images of teachers are usually related to "serious," "stiff," "conservative" types, so that students often come to the, perhaps therefore reasonable, assumption that it is better not to discuss things openly with their teachers for who would like to discuss issues with people who *will not* change their minds? Students' assumptions may not be based in reality; but the assumption concerning teachers implies that instructors need to make a concerted effort to change Chinese students' bias against engaging with them, if they would like to create an atmosphere of open discussion. So, I used small interactive games, brain-teasers, jokes and anecdotes about personal experiences to make students understand that I am not a "traditional" Chinese teacher, but rather someone who actually likes to interact with them and is open to sharing or receiving ideas. I believe this allowed them to set their minds at ease and try something new with me.

### What teaching methods might be done differently/adjusted

In terms of training content, the ideas on negotiation theory and practice from the Western world are very insightful and are something new for Chinese negotiators. Chinese negotiators can definitely learn a lot from them. Yet Chinese culture is highly context-specific and extremely subtle in its nuances, so that knowing how to read between the lines or say an indirect "no" remain important. Although it may seem like a cliché, the reality is that relationship (*guanxi*) significantly impacts negotiation results in the Chinese context. Leading Western ideas on negotiation (with the exception of certain writings in the current series; see e.g., Bernard 2009; LeBaron and Patera 2009 in volume 1; Bernard 2010; Docherty 2010, in volume 2) do not seem to take into account sufficiently the above-mentioned factors.

Scholars must discuss these two topics in greater detail, along with the classical issues on negotiation as taught in "version 1.0" of the field, if we are to teach Chinese participants in a way that better reflects the reality of their daily experience.

### Recommendations for the future

I would summarize my recommendations for adapting negotiation pedagogy for use in China as follows:

- a) Contextualize the discussion and lectures;
- b) Put extra effort into thinking about how to create an atmosphere of open discussion;
- c) Be sensitive to the issue of language of instruction;
- d) Talk more about specific negotiation challenges in Chinese society (e.g., “Guanxiology,” the art of reading between lines, etc.).

I believe that by contextualizing the content and delivery of negotiation teachings, Chinese students – and perhaps students everywhere (see generally Lewicki and Schneider 2010) – can more easily embrace what are often universal truths about negotiation, and furthermore, create their own solutions to deal with the culture-specific issues.

### ***5) Class Discussion as a Springboard to Cultural Comparison (David Matz)***

In the Spring of 2010, I taught a twenty-eight hour negotiation course to students of the Jilin Law School in Changchun, China. The course was in English; students were screened in advance for their language skills and academic flexibility. Screening was necessary since the course would be “interactive,” not the traditional academic experience for Chinese students. Except for a recently launched Juris Master (JM) program offered by many schools and modeled after the American Juris Doctor (JD) program, law school in China generally comes immediately after high school, so the average age of students was twenty years old. Jilin University, in the northeast corner of the country, is home to a top law school in China (one ranking puts it at fifth in the country); national competition for entry to this and similar schools is intense, and starts when the students are very young.

The syllabus and reading list for this course looked much like the one I teach at UMass/Boston in the Graduate Program in Conflict Resolution: readings, discussion, and role-plays built around the Richard Walton and Robert McKersie (1965) theme of competition and collaboration, with the David Lax and James Sebenius (1986) version of the negotiator’s dilemma at the heart; this is followed by a session on two ethical issues. Techniques, attitudes, conundrums, and goals are woven throughout, surrounded by occasional insights from social psychology and game theory.

When preparing, I received the standard warning that Chinese students in class do not interact with teachers: they take notes and look at their shoes. I planned the class prepared to work at changing that attitude; it took about five minutes. For the balance of the course their behavior and comments were largely indistinguishable from students in the United States. I used one role-play in which a real

estate developer negotiates with a state government. In monitoring their negotiations, I heard much of what I would hear at home. After the debrief I asked, as I did for each role-play, whether anything in the role-play was different or difficult because it was set in the United States. Half the hands in the room went up:

"In China, we don't negotiate with government. We go around it, we use *guanxi* ("networking, pull"), and we use pressure. We don't negotiate."

"But you were negotiating with government in this role-play," I said.

"Sure. That was the assignment and that is what you do in America."

Flexibility was not their problem.

Differences, of course, did arise. Halfway through the course one young man asked for the opportunity to "say something to the class." He delivered an obviously heartfelt and thought-out speech of about ten minutes. He is the son of a high-ranking military father and, as a result, had seen much of China. His experience negotiating with women in the class worried him. About three-quarters of the class was female. He had great respect for "these lovely girls" but expressed his conviction that China is run by men and would continue to be so. He felt that a course like this could give the women in the class the expectation that after they left university, they would be on an equal footing with men. While that might be true at lower levels of government, party, or military, he felt that it would never be true in the middle or higher levels.

As he spoke I focused on the women in the class, expecting an explosion of scorn, derision, or worse. When he finished, there was silence. I asked for reactions. One woman said matter-of-factly that she thought the male speaker was probably wrong, that China is changing, and so would the gender roles. Another said, with apparent calm, that it would have to change because half the students in law schools and medical schools today are female, so they would be needed, if only to fill the leadership positions of the future. And another woman pointed out that she had just negotiated with the male speaker and that there had been no problem at all. No one mentioned justice, fairness, or practice in the West.

I asked if the women spoke amongst themselves about the future of women in leadership, about a glass ceiling, etc. "No. Not really." I asked the male speaker if he had any response to the women's comments, and he said that "they are not taking account of the Chinese way, of Chinese history and Chinese culture. Women-in-power is a Western idea. We will never do that."

I asked the speaker if he himself had any special issue negotiating with women in the class. He said no, but that he had not given it his full energy because “that would not be fair.” Making it personal did produce a modest explosion; several women told him, in Chinese while I begged that they translate, that he was just making an excuse for not doing better in the negotiation.

This was not the only occasion when a Chinese student’s view clashed sharply with my own. (I also taught a course in human rights; such clashes came up predictably and often.) When this happens in the United States, I do what I did in Jilin: I look for differences among the students to open up value assumptions, the implications for their different lines of thought, and how those differences fit with other things we have discussed. In the United States, when this discussion ends, I will usually offer my view, including which arguments I find persuasive, which I do not, and why. In China I did not take this last step. I expected that they would ask about the role of women in the United States or the West; they did not, and I did not volunteer on this. There is a centuries-old tension in China between a deep loyalty to the Chinese way of doing things, on the one hand, and being open to the ways of the West, on the other. This tension is no less present today. Though we tend to see dramatic demonstrations of openness to learning from Western thought, I found many occasions where even students drew boundaries. My practice was to respect those boundaries, and when the students did not ask me about the role of women in the West and focused instead on what women’s changing roles meant for the development of China, I chose not to volunteer anything about this.

Student enthusiasm and participation in the course was widespread. One student, San Tianyu, said toward the end that she wanted to write a book about her experience. (I suggested she start with an essay, which she did. It is presented here as the Appendix.) In the essay she describes how initially she had decided against taking the course, because she imagined a fast-talking American laying out rigid rules. She overcame this expectation because she “was attracted by the selection process: only those who were going to pass the interview were eligible to attend the training. For me, giving up or escaping means cowardice.”

San Tianyu’s competitive motivation was of course also demonstrated in her work in the role-plays. Near the end of the course I gave them *Peopulator*<sup>6</sup> (a prisoner’s dilemma variant). In round eleven, her opposing negotiator made a quite rational-sounding promise to let her side “win” that round in return for the reverse in round twelve, thus maximizing their joint gains. Then he defected. He had lied. His

lie became the subject of intense discussion in the debriefing, and in the next role-play, the same person was unable to persuade anyone to trust him, and his negotiation result suffered. "This role-play helped me understand the sentence 'history never goes away.' Even today I am still obsessed with it." Her paper spells out that obsession. The class discussion began with a focus on competitiveness and truth telling, but the students soon took it to questions of the kind of society they wanted for China, where they saw the country headed, and where they thought they could fit in. If their classroom comments reflect their feelings, they are not happy.

China's mercurial history, recent and distant, and rocketing rate of contemporary change leaves students unsettled. Though getting a good job is of course their most common conversation, very close to the surface are the interwoven questions of national and personal identity. Seen from the outside, China is full of energy and optimism, but these students, who seem inevitably to be among the country's leaders in the next generation, were troubled and perplexed. A negotiation course was not a bad framework for students to explore these questions.

## Conclusion

In negotiation pedagogy, as elsewhere, context and participation remain key. The introduction of foreign concepts to China has suffered a fraught history due largely to a failure to appreciate the importance of cultural context and the participation of the recipients in the discourse surrounding these concepts. As the historian Jonathan Spence (1980) writes in his landmark book *To Change China: Western Advisers in China*, ideas and individuals from the West have tried to influence Chinese thought from the Ming Dynasty (1368-1644) onward, and yet most of those attempts proved futile, meeting active resistance at worst or selective assimilation at best. The authors here have shown how student participation in all aspects of a course – from course design to discussion topic selection – can help reveal the universality inherent in many of principled negotiation's core concepts. Specifically, looking to Chinese historical and philosophical sources to underpin theoretical teachings highlights this universality and therefore demonstrates how these concepts are not necessarily "foreign." Also essential to fostering engagement is centering discussions on contextually relevant case studies that resonate with students. The academic institutions described here, and others across China, should coordinate to establish a bank of Chinese-language (or multilingual) simulations that can be shared freely across schools – an endeavor not yet undertaken in a systematic way. To ensure a future for negotiation

studies in the PRC, students and the professoriate in China should continue to engage in discussions they find relevant, design curricula and simulations reflecting their reality, and add further to the discourse on negotiation through academic research and writing translated to reach a broader audience. In so doing, Chinese students and scholars can continue to explore issues related to negotiation while their counterparts from around the world can learn from them in this specific academic domain.

## Notes

<sup>1</sup> During this time, the concept of “gain” was understood as the happiness of the majority (Lieberthal 1995: 16).

<sup>2</sup> Authored by Wayne Davis, Mark N. Gordon, and Bruce Patton, *Sally Soprano Part I* is a simulation focused on negotiating the employment terms of an operatic diva. Available from the Harvard Law School Program on Negotiation at <http://www.pon.harvard.edu/shop/sally-soprano-i/> (last accessed June 15, 2012).

<sup>3</sup> Authored by Robert Bordone and Jonathan Cohen (adapted from *PONS Negotiation* by Nevan Elam and Whitney Fox), *DONS* is a simulation negotiating potential damages for willful infection of a disease. Available from the Harvard Law School Program on Negotiation at <http://www.pon.harvard.edu/shop/dons-negotiation/> (last accessed June 15, 2012).

<sup>4</sup> Authored by Denise Madigan, Thomas Weeks, and Lawrence Susskind, *Harborco* is a multi-party, multi-issue scoreable negotiation over a proposal to build a new deep-water port. Available from the Harvard Law School Program on Negotiation at <http://www.pon.harvard.edu/shop/harborco/> (last accessed June 15, 2012).

<sup>5</sup> In a chapter in volume two of this teaching series, Daniel Druckman and Noam Ebner (2010) also noted that students who designed simulations learned more than students who simply participated in them. Druckman and Ebner conclude that class role-play exercises should therefore be supplemented by simulation design exercises.

<sup>6</sup> Authored by Mark Dooks and Mark Gordon, *Peperator* is a scoreable, multiple round negotiation between companies over the monthly price of a product. Available from the Harvard Law School Program on Negotiation at <http://www.pon.harvard.edu/shop/peperator-pricing-exercise/> (last accessed June 15, 2012).

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## Appendix

### Real Feeling in a Role- Play

*San Tianyu\**

June 21-30 in the year 2010 were the best ten days that I have ever had.

On June 6, while I was attending my sister's wedding, I received a message from a classmate: our law school (Jilin Faculty of Law) was going to organize a negotiation course, to be given by an American professor (David Matz from the University of Massachusetts/Boston). An interview was required for selecting students to attend the training.

Since students were required to attend the class seven days, full time, and were not allowed to be absent, my first reaction was not to attend to avoid the rigid schedule. However, I was attracted by the "interview selection": only those who were going to pass the interview were eligible to attend the training. For me, giving up or escaping would mean cowardice. So I registered immediately. Half a month later, I was proud of my slight desire for competition, although it looked a little naïve.

Before I attended the course, when I thought of "negotiation skills" two scenarios came to mind: in one, the party with the most power won; in the other a weaker party, through eloquence, quick thinking, or some ability to detect the other's weakness turned the tables. He would be like a leading actor in a movie who saved the heroine in a dangerous situation, and won the applause afterwards. The winner seemed to be endowed with talents I would be unable to duplicate. Such an endowment could not be taught to ordinary people, just as it was impossible to teach a student how to write an inspiring poem.

I also worried about how to deal with the opposite party's lies. Should we expose his lies or make up our own to respond? Should we treat the opposite party sincerely in an effort to build up mutual trust, or should we deal with him cautiously, as if we were playing chess? How could we tell his real needs from his lies? How should we view the relations with the opposite party? Should we keep fighting until the opposite party was squished like a bug on a windshield, or should we save his face while getting what we want?

As it turned out, if the class had focused only on theories, I wouldn't have regarded it as the best class I have ever had. It was the role-plays which were held almost every day that were really unforgettable. One striking thing about the role-plays was that nobody regarded them as a game. All of us were devoted to our roles. Those who failed to reach agreement frowned and complained that their opposite party was asking for too much. One student who needed to receive \$700,000 for his result, opened by asking for \$3,000,000. When, in the debriefing, we laughed at him for his greed, David said "every-

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\* Editors' note: The author and her "opponent" are now "life partners" living in Shanghai. This essay is edited down from the original. Translation assistance came from Kun-Xu.

thing in the role play is fake: materials, roles, money and consequences. You won't get one more cent in your pocket. But one thing is real, and that will follow you after this course. Do you know what that is?" We answered: time, knowledge, connections. Then David asked us to consider reputation. Our real characteristics were reflected in our role-playing, and the reputation we developed would last a long time.

What David said was soon confirmed. During the second half of the training, after we had already learned a lot about negotiating skills, a role-play featuring a commercial war between two companies was presented. Even today, I am still obsessed with it.

Though the instructions were simple, the game was complex. Two companies made the same product, and made money according to the amount they charged for that product each month. The goal of each side was simple: make the most money you can make. They could sell their goods at 10 yuan, 20 yuan or 30 yuan. If their quoted prices each month were the same, they would share the market evenly. If one side's price was higher than the other side's, the company that set the higher price would lose market share, while the other, with its lower price, would win a larger market share. And if both companies set the lowest price (i.e., 10), each would receive only a minimal profit. A result of 30-30 would mean that each company made the same profit *and* did well. But if one priced at 30 and the other at less (10 or 20) the one with less would make the most that could be made in one round by one company, and the one with 30 would do poorly. Thus each company was reluctant to take the risk of charging 30 in any one round. There were eight rounds and profits were reported for each round.

During the first round, neither company trusted the other but neither were we too unfriendly. So my team set the price of 20 yuan. We were excited and eager to learn the price from the opposite party. When the professor's assistant wrote down the prices on the black board, we felt ashamed when we saw that our opponents offered a very friendly price of 30. So we planned to offer 30 as well during the second round. Thus the role-play started smoothly. I naively believed that both sides would report 30-30 for the following rounds, trust each other, and share the market evenly.

At the fourth round, David added a new regulation: each side would choose a representative to negotiate with the other side. Moreover, the profit during this round would be doubled. After negotiating we reached an agreement that we would both report 30-30 for the fourth, sixth, seventh, and eighth rounds, and during the fifth round we would let them offer 20 and we would report 30 to give them a chance to offset their loss during the first round. We were very afraid that the doubled profit would make them become very profit-driven, but we still chose to trust them. When I saw the result 30-30 during the fourth round, we were very happy and started to absolutely trust them.

But in the sixth round, the other side did not keep to its commitment, and the prices were again 20-30. David then announced that another negotiation was allowed before the seventh round, and profit was fourfold. Although, again, we reached a negotiated agreement of 30-30, our trust in the other team's willingness to keep its word had collapsed as a result of their

behavior in the sixth round (20-30). As a consequence, the prices during the seventh (and eighth) rounds were 10-10. These, of course, were lose-lose results.

At the end of the eighth round, the teams came back to the classroom. We looked at our opponent with anger. David said: "It is difficult to build up trust, but easy to destroy it. A single number can convey a good-will gesture, or greed." He taught us the value of forgiveness in building trust, and how to convey friendly information in order to enhance mutual trust. Yet, after telling us how to reach a win-win result, he said "History never goes away". And then he asked, with what we had learned so far, to do another four rounds.

We and our opponents collaborated during rounds nine and ten with 30-20 and 20-30. Then new regulations were again added. Profit quintupled for the last two rounds, *unless* both sides reported the same price in the same round. Only when each side set a different price in each round would the party reporting the lower price receive the fivefold profit. Negotiation before the eleventh round was allowed.

The results of that negotiation were encouraging. The opposite team swore to keep to their commitment, promising that during the eleventh round, they were going to offer 30 and let us offer 20 so that we could earn the profit first. And in the twelfth round we would reverse the offers. I imbued my teammates with the "be forgiving" approach, and we chose to trust the opposite party again. The opposite party, however, embraced the approach of "history never goes away". They believed that we would not forgive their history of going against a negotiated agreement early in the role-play, and thus we would seek revenge in the twelfth round. With that assumption, they took a preemptive step by setting the price of 10 against our price of 20 during the eleventh round.

When I saw the number "10" on the bulletin board, my heart almost stopped working. I couldn't believe there were people who lied again and again. The result, of course, was 10-10 in the twelfth round, and nobody won the fivefold profit.

The game was over. We were back in the classroom again. Our teammates rushed to the opponents and questioned them. Sitting alone, I was too sad to look at them. Was it ridiculous? Apparently, everything was fake. It was a mock commercial war. It was just a game. The so-called "perfidy" was part of the game and the game rules allowed such perfidy. But my heart was broken. I didn't want to speak a word. Looking back, I had encouraged my teammates to make our company grow fast by treating our partners sincerely. But two bad moves made our scores drop steeply. Among the four teams playing (in two parallel games), my team, known now for being "naïve and sincere," ranked last. Thus the opponent beat us, though they did not make the most money they could.

In the debriefing, David raised a puzzling question. One set of teams used the hallway to make decisions, while the other group stayed in the classroom. As it was the height of summer and sweltering, the front and back doors of the classroom had been kept open during the first eight rounds to increase air circulation. During the last four rounds, however, someone was continually closing (and David was continually re-opening) the two doors. When David

asked “who closed the doors?” nobody answered. The classroom suddenly became quiet, as if a pair of intangible and cold hands froze the moment. During the role-play, there had been more and more mistrust, so various students, fearing suddenly that their deliberations could be overheard, had shut the opened doors again and again. We were all devoted to the game and had unconsciously kept away from our close friends and classmates. A pretend commercial war had built up a wall between two teams that until then had had no ill feeling toward each other.

I then began to realize that what I experienced was not only the implementation of a negotiation theory, but a real society where you needed to have survival skills. Being sincere was not enough for self-defense. It was a society in which no chance was given to you to peacefully co-exist with others.

I was shocked that morning. Something I had believed for a long time was questioned. I took our scores down from the bulletin board and kept them. Every time I looked at the numbers, I felt as if I was looking at my scar. In my eyes, the numbers looked like little guys: Our little guys were naïve and simple; their little guys were shrewd. I couldn’t even find an appropriate word to denounce them. And yet, in spite of all this disappointment about the result, I still viewed the morning as the “best morning ever.” And then, on the last day of the course, even the feeling of being hurt was cured.

The role-play of the last day dealt with sharing snow-plowing expenses. Each negotiating team had five people. They came from different backgrounds and the size of their houses varied. Before an upcoming snowstorm, they negotiated the share of the expense to support the snow-plowing fund. Each person had a budget limit and all wanted to contribute as little as possible. The negotiation was supposed to be tough but in fact went smoothly. All of us were devoted to our roles, and agreement was eventually reached. When the results were disclosed, we found that all five of us had contributed his/her maximum budget. We shook hands afterwards as if it were a real case. I was very happy and thought the other (parallel) negotiations had reached the same result. But one of them turned out very differently. One team consisted of my former teammates plus their former opponent who had failed to keep his promise during the commercial war. This time he played the role of the poor single mother, and even when he claimed that he had already given his maximum budget, nobody trusted him. He was finally forced to contribute more than his budget limit and ended up with additional obligations helping neighbors with housework, taking care of children, and taking dogs for a walk. People made fun of him and his result during a group discussion. We finally got back at him.

This set of role-plays gave me a better understanding about the sentence “history never goes away.” And, finally, at the end of the training, I regained my faith. I believed that kindness, sincerity and mutual help were necessary and powerful; they could not only help us realize our own negotiating goals, but they also might keep us happy.

