Maoist ideology would have us believe that almost all Chinese court actions were mediatory. Such a claim obfuscates the realities of court practices and also greatly stretches the meaning of the language used. The root meaning of the word *tiaojie* 调解 (mediation) in Chinese in pre-Maoist times was in fact much the same as the English—namely, the voluntary settling of differences through third-party facilitation or intervention—and it mainly referred to societal mediation. Under Maoist justice, however, court and administrative mediation became widespread while societal mediation shrank drastically under the expansion of Party-state control. Tiaojie, which had originally emphasized voluntary agreement or at least compliance, came to incorporate the meaning of the term *tiaochu* 调处, which earlier in some of the liberated areas had been carefully distinguished from tiaojie and applied mainly to administrative actions;¹ it included decisions imposed regardless of the will of the litigants. Maoist usage of tiaojie thus came to include adjudicatory and coercive actions even while they continued to be cast as demonstrating voluntary agreement or compliance.

This article will use the criterion of whether a resolution of a dispute is imposed against the will of one of the litigants to distinguish between genuine

---

¹ Thus, a 1944 Jin-Cha-Ji Border Region directive distinguished sharply between “village mediation” (*cun tiaojie*) and ward government tiaochu, making precisely the distinction drawn here (Han and Chang, 1981–84: 3.640–43). In the Shaan-Gan-Ning Border Region, by contrast, the terms “administrative mediation” (*xingzheng tiaojie*) and “judicial mediation” (*sifa tiaojie*) were used in addition to “popular mediation” (*minjian tiaojie*), foreshadowing the expanded usage of tiaojie to come (Han and Chang, 1981–84: 3.630–33). In nineteenth-century case records, tiaojie was used interchangeably with words such as *tiaochu* and *shuohe* to refer to mediation by relatives and friends, as in *jing qinyou tiaochu / tiaojie / shuohe*. Older terms for mediation include *tiaoting, shuohe*, and *hejie* (Morohashi, 1955–60: 10.504, 485; 8.971).
court mediations and adjudicatory actions that are represented as mediation. “Mediation” as used in this article will cover, first of all, the word’s original core sense: voluntary settlement of differences through third-party facilitation. It will include also a range of actions that I term “adjudicative mediation”—that is, mediation with adjudicative features, so long as it is not imposed against the will of a litigant. But I will distinguish mediation from “adjudication,”2 which results in a clear-cut finding of legal right and wrong, a “winner” and a “loser,” as well as from a range of actions that I term “mediatory adjudication,” which is adjudication with mediatory representations or features, imposed regardless of the will of the litigants. These different categories of course tend to shade into one another in practice; nevertheless, we must try to take into account the fundamental substantive difference between mediation and adjudication, a distinction made in fact by both Confucian and Maoist legal discourses themselves.

The article is based, once again, mainly on a sample of 336 civil cases that I have collected from two counties, county A in the South and county B in the North. The cases were drawn at regular intervals: for A county, 40 cases for each of the years 1953, 1965, 1977, 1988, and 1989, and for B county, 20 for each of those years, plus an additional 40 cases from 1995 for a glimpse at what happened in the 1990s. Four of the 340 cases thus gathered were incomplete and therefore discarded—hence the total number of 336 cases.3 Such cases are not generally available to researchers and are discussed in considerable detail in this article.

The purpose of the examination of the case records is, first of all, to delineate more exactly where mediation operated and where it did not. In addition, I will attempt to define what might be termed the operative logic of mediation, as opposed to its ideological constructions. My hope is to uncover the implicit logic guiding mediation in practice that is not apparent from an analysis of the official ideology alone.

Much has already been written on the subject of mediation. The early works by Jerome Cohen and Stanley Lubman pointed out some of complexities and ambiguities of the term “mediation” in contemporary Chinese law (Cohen, 1967; Lubman, 1967). The later work of Michael Palmer emphasized the high-handedness of contemporary Chinese mediation, while Donald Clarke stressed how its character differed according to the type of institution

---

2 In traditional Chinese, duan, duan’an, duanding; also pan, pan’an, panjue; in modern Chinese, mainly panjue (Morohashi, 1955–60: 5.648, 2.233).
3 The names of the counties are withheld to maintain confidentiality of recent court records. For a more complete description of the cases, see Huang, 2005: 152. See also Huang, 2006.