
Kluwer Mediation Blog

The Good Cat Theory

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On 31 August 2023, I spoke at the Maxwell Chambers of Singapore on “Facilitative and Evaluative Models of Mediation: Is the Distinction Still Meaningful or Simply Arcane Semantics? Is it time to bring Evaluative Mediation out of the Shadows” as one of the panel speakers. I am very grateful to the moderator Ms Eunice Chua for allowing me to mention Bruce Lee’s “Be water, my friend” as well as the “White Cat and Black Cat”.

Readers of Kluwer Mediation Blog may have already noticed that I published a blog post “Be water, my friend” on 2 February 2020. This blog post intends to share a little more on the good cat theory and its relevance to mediation.

I am inclined to think that the good cat theory could be traced back to the “Strange Tales from a Chinese Studio” (“Liaozhai zhiyi”), which is a collection of classical Chinese stories authored by Pu Songling in 1766. The gist of one of the stories is that upon encountering the evil spirit, the self-claimed exorcist was so scared that he started to cry, shout and jump emotionally. As such, the evil spirit was scared off by his uncontrolled behaviour and disappeared forever. People then remarked what had happened by saying that no matter whether it was a yellow wild cat or a black wild cat, the one that could catch mice is a hero cat. That means, irrespective of the nature of a particular method of doing things, it is considered as a good method so long as such a method can effectively resolve the problem.

The good cat theory has caught much wider attention after the late Chinese leader Deng Xiaoping, who was instrumental to the reform, opening-up and modernization of China had remarked “Black cat or white cat, if it can catch mice, it’s a good cat.” to illustrate his wisdom that capitalism can have a plan and socialism can have a market. It was Deng’s view, which is still upheld by his successors that as long as the economy can generate productivity, both capitalism and socialism can be used. Deng believed engaging in theoretical debates would delay opportunities and truth can only be tested by practice.

So, how is the Good Cat Theory relevant to our mediation practice?

During the event on 31 August 2023, I shared that as a practitioner, I was not too much bothered by the label of “facilitative mediation” or the label of “evaluative mediation” by sharing that both Singapore and Hong Kong do have a kind of delicacy called “Wife Cake”. Luckily or unluckily, one would not find his wife there. In fact, at the time of preparing this blog post, I also discover that the so called “cake” in fact is more of a flaky cookie or pastry filled with watermelon, almond paste as well as sesame and spiced with five spice powder. The terms “facilitative” and “evaluative” are names only. Name is but the shadow of reality. I raised an ecofriendly shopping bag with two cats, one white and one black to illustrate my point that I am not too concerned about what skills or models that I use in my mediation room so long as I am able to assist the parties to make an informed decision on the future conduct of their disputes. Thanks to the lovely drawing of the two cats, which not only had touched the heart of everyone but also helped shift the vibe of the event to a relaxing one.



Shortly after the 31 August 2023 event, I returned to Hong Kong and had a three-party mediation. At the beginning of the mediation, the lawyers with mediation training and I had made a lot of attempts to think of creative options but the progress was not smooth. Subsequently, we allowed the parties to conduct positional bargaining and progress somehow did occur. However, after several rounds of positional bargaining, the parties had an impasse as they did not want to “concede” more. Then, we had to go back to explore the needs of the parties. With all parties’ further efforts, we managed to generate something that could fill the gap between the parties. After the mediation, I realized that the white cat of interest-based negotiation alone did not work well and the black cat of positional bargaining alone did not work well too. However, when the two cats

were used in a complementary manner, they managed to catch the mice and a settlement was reached.

As a mediation trainer, I keep reminding myself that at the time of sharing the strengths of interest-based negotiation principles and the facilitative model in a class, I may be conveying unintended messages to my students/trainees that mediation should be conducted in a certain way in that “facilitative” is preferred to “evaluative” and “interest-based” is preferred to “positional bargaining”. These unintended messages will make the inexperienced ones mistakenly think that certain skills and/or ways of conducting mediation are more appropriate than the others.

On the issue of cats, I would like to end this blog post by saying that mediators must not let their cats out of the bag. Separately, mediators must be familiar with the unique nature of each cat in their possession and where possible, keep more cats in their tool box so that these cats with different strengths may work together to catch the mice.

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