Marginal Doors? Avoidance and Violence in the Multi-Door World of Process Pluralism

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Abstract

At the heart of Carrie Menkel-Meadow's work lies "process pluralism", the recognition that responses to disagreement extend beyond litigation. This essay, offered in her honour, argues that the pluralist repertoire, viewed sociologically, should embrace the neglected ends of the processual spectrum more firmly: avoidance and prevention at one end, self-help and violence at the other. Drawing on legal anthropology, the sociology of conflict and Chinese materials, it proposes that process links structural and situational accounts of both. Seen from the poles, the middle ground of negotiation, mediation, umpiring and hybrid processes appears as a valuable but partial repertoire.

Keywords: dispute resolution; process pluralism; avoidance; dispute prevention; violence; self-help; mediation; Menkel-Meadow; sociology of conflict; China.

[A] INTRODUCTION

Few scholars have done more than Professor Carrie Menkel-Meadow to encourage in dispute resolution discourse the understanding that the responses to disputing are plural. Her early writings in the still-emerging field of alternative dispute resolution (ADR) reconstructed negotiation as problem-solving rather than adversarial bargaining (Menkel-Meadow 1984), offered a carefully qualified defence of settlement (Menkel-Meadow 1985a; 1995), tested models of negotiation against what lawyers actually do (Menkel-Meadow 1993) and diagnosed the limits of binary, adversarial thinking (Menkel-Meadow 1996). She had long held that disputes of different kinds may need different processes (Menkel-Meadow 1999: 57), and by 2002 "process pluralism" had become the heading for her account

[1] This essay returns to issues explored earlier in Palmer (2020; 2023).

of "different modes for different claims" (Menkel-Meadow 2002: 42),[2] and her later work has carried the concept into hybrid and mixed processes (Menkel-Meadow 2020), transitional and restorative justice (Menkel-Meadow 2015) and dispute resolution as civil justice (Menkel-Meadow 2024), and so beyond civil disputes into criminal and international justice (Menkel-Meadow 2015: 6-8, 13-14; 2020: 416; 2024: 4, 19). Each returns to the same refrain: one size does not fit all (Menkel-Meadow 2015: 4; 2020: 407; 2024: 20). The repertoire of response to social disagreement is far wider than adjudication and litigation; choices about decision-making involve important values; and legal scholars should look outside the courtroom in order to see the bigger picture.

This essay is offered in her honour. It argues that the foundational notion of process pluralism, taken seriously but viewed with more of a sociological perspective, should extend to include more determinedly the two ends of the processual spectrum that mainstream dispute resolution scholarship tends to neglect: avoidance—together with its forward-looking relative, prevention—at one end, and self-help, above all violence, at the other. Empirically, these too are common human responses to trouble. Analytically, they show how much of standard process theory in ADR is in fact a theory of the middle ground of negotiation, mediation and umpiring, an orientation that understandably reflects the concerns of legal practice and is not misplaced: the middle ground gives the parties a voice, keeps conflict within manageable bounds, and frequently yields outcomes that neither withdrawal nor force could secure. Normatively, the two ends test the values of consent, procedural fairness, participation and compromise that ADR scholars hold. The discussion builds on my earlier work (Palmer 2014a; 2014b; 2020; 2023; Palmer & Roberts 2020), on Simon Roberts's anthropology of order (Comaroff & Roberts 1981; Roberts 2013b), and on studies of avoidance by Philip Gulliver (1996) and Fiona Cownie and Anthony Bradney (2020). Section [B] examines why the field has gravitated towards the middle ground. Sections [C] and [D] take each pole in turn. Section [E] argues that process, occupying the interstitial space between structural and situational accounts of violence, and of avoidance and prevention alike, is the link that both usually lack, and draws out what the poles teach process pluralism.

[2] Menkel-Meadow and her co-authors gave the term programmatic form in the preface to the first edition of their casebook, subtitled "Beyond the Adversarial Model" because "modern life requires additional processes that better meet the needs of parties in conflict" (Menkel-Meadow & Ors 2005: xxxiii).

[B] THE PULL OF THE MIDDLE GROUND

Societies around the world provide disputants with a range of processes that can be called into operation when trouble arises (Nader & Todd 1978: 8). Typologies of response usually run from avoidance at one end, through negotiation, mediation and umpiring, to coercion and violence at the other (Nader & Todd 1978: 9-11). Even in this continuum of ideal types, the two poles were seldom treated as a further core opposition. Rather, they were added as afterthoughts, to round out the picture (Palmer & Roberts 2020: 105). Frank Sander's "multi-door courthouse" (Sander 1979) institutionalized a version of the continuum, with a professionally conservative reluctance to move away from the court as centre stage (Palmer 2014a), and Menkel-Meadow, perhaps more than anyone, gave the multi-door vision its intellectual depth, insisting that each door have clarity of purpose and its own ethical commitments while rejecting Lon Fuller's view that the integrity of each process forbids their mixing; hybridization, she argues, "reflects an integrity of its own" (Menkel-Meadow 2020: 418-419). The courthouse image was innovative in its own way, but as a symbol it carried a cost. The court may be where the cases are, but it is not where most disputes are (Palmer 2014a: 30; Palmer & Roberts 2020: 307-309).

Attention has since concentrated overwhelmingly on the middle of the continuum. Negotiation, mediation and umpiring hold out the promise of resolution, whereas the poles are primarily unilateral modes of decision-making, offering much less certainty in the parties' future relations, and violence tends to stray out of civil disagreement into criminal justice and public disorder (Palmer & Roberts 2020: 101-102, 105). The concentration also reflects the way the discipline constitutes its object. Legal scholarship has ordinarily worked within an "authority paradigm", building knowledge from texts that carry normative authority rather than within the "enquiry paradigm" of the social sciences, so that only what reaches an authoritative forum registers as legal knowledge at all (Samuel 2009: 437-438, 449-450). Avoidance and much violence fall outside the field's vision not through oversight but by construction; and ADR scholarship, for all its suspicion of the courtroom, has inherited that object. Robert Cover put the starkest form of the point: "Legal interpretation takes place in a field of pain and death" (Cover 1986: 1601). A judge's reading of a text sets in motion an organized practice of violence resting on the state's claim to, in Max Weber's phrase, "the monopoly of the legitimate use of physical force" (Weber 1946: 78). The umpiring at the centre of the spectrum does not stand apart from the violence at its edge; its authority depends on it.

The costs of the concentration from a sociological perspective were identified long ago. William Felstiner and his colleagues (1980-1981: 636) showed that only a small fraction of injurious experiences ever mature into disputes, and that most of the attrition occurs in the earliest, often unperceived, stages of naming, blaming and claiming. Where grievance apathy has done its work, reforms that equalize access at the later stages may achieve less than hoped, because by then the horse has bolted (Felstiner & Ors 1980-1981: 636-637; Palmer & Roberts 2020: 106). Menkel-Meadow's own work has never been guilty of narrowness: her account of the founders of ADR (Menkel-Meadow 2000), her analysis of the drift to "semi-formal" institutions (Menkel-Meadow 2013) and her work on transitional justice (Menkel-Meadow 2015: 8, 24) all attend to the whole institutional framework, and her insistence that theory be tested against practice drew on studies showing most lawyer negotiation to be conventional and low in intensity, and on her own observation of court mediation, in which polarized orientations met in a "compromised middle" (Menkel-Meadow 1993: 369-371, 376-377). The present essay extends that method to the ends of the spectrum.

Even within her framework, though, the two poles have remained at the margin.[3] In 1985 she observed that "many grievances, problems, or troubles never fully ripen into disputes", asked whether some disputes should be "avoided, or eliminated" and others "provoked, encouraged", and called for research into why some disputants avoid seeking redress (Menkel-Meadow 1985b: 27, 30, 40, 42-43). That agenda did not become part of process pluralism. Avoidance recurs only briefly, as "lumping it" (Menkel-Meadow 1999: 57) and as the forgetting with which some societies meet past atrocity (Menkel-Meadow 2015: 5, 15), though her recent treatment of civil justice begins by listing avoidance and self-help among the responses people make before they turn to law (Menkel-Meadow 2024: 1). Force follows a similar course: it figures as metaphor, as the vice that vitiates consent and as the backdrop to transitional justice, and only occasionally enters her classifications (Menkel-Meadow 2006: 560, 570; 2010: 600; 2020: 418). Sometimes she comes close to conceding that the imposed pole is present within the consensual one, as when dispute system design is said to depend on the courts "if only as a shadowy 'threat' of an alternative command process" (Menkel-Meadow 2009: 220).

[3] The pattern can be traced across four decades. On avoidance, non-claiming and forgetting, see Menkel-Meadow 1985b: 27, 30, 40-43; 1999: 57; 2009: 225-226; 2015: 5, 15; 2024: 1. On prevention, see 1985b: 42; 2006: 576-578; 2020: 405, 407. On force, coercion and violence, see 2003: 348-349; 2005: 584; 2006: 560, 570; 2009: 205, 211, 220; 2010: 600; 2012-2013: 79-81, 86-87; 2020: 418. In each case the pole is acknowledged succinctly, and the analysis then returns to consideration of the consensual and adjudicative processes of the middle ground.

If process is anchored in voluntary participation, avoidance falls before process and violence after it, while the trial stands between them as "a contained form of structured verbal 'violence'" (Menkel-Meadow 2005: 584). She identifies the poles and recognizes them as primary forms of response to trouble (Menkel-Meadow 2024: 1), but concentrates on the processes between them. The sections that follow treat avoidance and violence not as the outer limits of the processual range but, more sociologically, as processes in their own right.

[C] AVOIDANCE AND PREVENTION

Conceptual ground

Avoidance is non-confrontational, but beyond this it is not easy to define. Felstiner (1974: 76) first drew attention to its socially widespread nature, though some of his examples, as he conceded, failed to distinguish avoidance as a way of processing an existing dispute from avoidance adopted to prevent disputes arising (Felstiner 1975: 695). Gulliver (1996) distinguished dispute avoidance, evasive conduct once disagreement has emerged or is likely to surface, from what he called "conflict management", the more or less conscious prevention of disputes. The label is awkward, since avoidance is itself a way of managing an emerging disagreement, and dispute prevention is the better term (Palmer 2023: 41-42); but the distinction is valuable even though the two often shade into each other (Palmer & Roberts 2020: 107-108). Georg Simmel had already seen that such conduct need not mark the absence of a relationship: in the metropolis a finely graded latent antipathy secures "the distances and avoidances" without which urban life could not be led (Simmel 2009: 232). Avoidance of this kind is conflict held in reserve, not the "mere mutual indifference" that Simmel treated as the true opposite of both conflict and association (Simmel 2009: 227). Its forms are various: "lumping" the grievance, ostracism, turning the other cheek, refocusing the relationship elsewhere, even accepting an unjustified claim in order to end the interaction. Avoidance may be a temporary strategy, stalling or exerting indirect pressure on an opponent who wants a quick outcome; or it may harden into permanent estrangement, sometimes inherited by the disputants' heirs (Palmer 2023: 43).

Ethnographic lessons

When does avoidance flourish? The dominant answer has been "econocentric": avoidance is chosen where its costs are low. Felstiner (1974), drawing on Max Gluckman's (1955: 18-19) distinction between single-interest and multiplex relationships, argued that "the cost of avoidance is always a reduction in the content of the relationship", so that it should be rarer where relationships are multiplex and enduring and commoner where bonds of kin, work and place are weak (Felstiner 1974: 76-84). M P Baumgartner's suburb of "Hampton",[4] where amid privacy, material independence and loose-knit networks avoidance was the dominant technique of conflict management, part of a wider "moral minimalism", supplied a classic confirmation (Baumgartner 1988: 10-13). The ethnographic record resists so simple an account. Gulliver observed of the Arusha and the Ndendeuli that avoidance was rare under precisely the converse conditions (Gulliver 1996: 140), and in the early stages of disagreement emotion may crowd out cost calculation altogether (Palmer & Roberts 2020: 113-114). Bradney and Cownie's ethnography of a British Quaker Meeting confounds the cost logic from another direction. The Meeting is a community of multiplex relationships, where on Felstiner's and Baumgartner's accounts avoidance should have been costly and rare; yet over five years of fieldwork there were very few disputes that were more than trivial (Cownie & Bradney 2020: 66, 68-69; Bradney & Cownie 2000: 152-153, 163). The Quaker Business Method seeks consensus slowly, as members wait to see where the "Inner Light" leads, and records each decision in a minute agreed by all. Quaker law is thus a matter not of rules but of process, and decisions that everyone has wholeheartedly agreed are unlikely to generate disputes (Cownie & Bradney 2020: 65-66). This is dispute prevention built into a community's constitutive procedure, which Bradney and Cownie, following Gulliver, call conflict management (Cownie & Bradney 2020: 69-70). It approximates what Cover called a "paideic" legal order, in which obedience follows from understanding, not from enforcement (Cover 1983: 12-14). Such an order does not refute the state's violent field of interpretation; it sits alongside it, and Cover's *dictum*, Bradney and Cownie conclude, "does not apply to Quakers" (Cownie & Bradney 2020: 66). The preventive pole can have its own law, and not all law draws its authority from the violent pole. Roberts would have called this order rather than law (Roberts 1998), and the choice matters: to call such orders law risks drawing them back into the authority paradigm that keeps avoidance and prevention out of view. Carol Greenhouse's (1986) Southern Baptists of "Hopewell", Georgia,

[4] A pseudonymous, largely affluent suburb in the New York metropolitan area.

offer a different lesson. For these believers disputing is itself unchristian, since Jesus is the judge of all people. Accordingly, conflict is met with narrative, gossip, joking and prayer, and the dispute is acknowledged only obliquely (Greenhouse 1986: 110; 1989: 255-256). Do they avoid disputes, or avoid resolving them (Cownie & Bradney 2020: 67)? The Quakers, we may say, practise prevention; the Southern Baptists practise avoidance; and the suburbanites of Hampton practise a further kind of avoidance, made affordable by the thinness of their ties.

Ideologies of avoidance and harmony

Avoidance conduct is often sustained by ideology. Felstiner suggested that Americans absorb much of their interpersonal conflict through avoidance (Felstiner 1974: 86), and Greenhouse treats Americans' belief in their own litigiousness as a cultural self-representation (Greenhouse 1989: 252, 254). In Chinese society the Confucian valorization of harmony (和, *he*) does comparable work.[5] The superior person (君子, *junzi*) does not allow himself to be drawn into disputes and, if one arises, transcends it by yielding (让, *rang*); the imperial state, for all the sophistication of its legal institutions, expected parties to settle their differences outside the courts, with mediation by lineage or guild leaders as a secondary line of defence (Huang 1996: 12-13; Palmer & Roberts 2020: 97-98, 111-112). The ideal was refurbished in the People's Republic of China (PRC) as a "socialist harmonious society" (社会主义和谐社会, *shehui zhuyi hexie shehui*). It also persists in popular anti-litigation sentiment (Palmer 2023: 45). The contemporary situation shows how far the logic can run. Community mediators, judges and administrative officials have all been expected to resolve, and where necessary suppress, disputes once they arise, and to prevent them arising at all (Palmer & Roberts 2020: 157), and "grand mediation" (大调解, *da tiaojie*) has further entrenched people's mediation committees into a state-built hierarchy (Palmer 2014a: 41). Avoidance, prevention and suppression here become less the choices of disputants than tasks of the party-state. Avoidance can also work at the scale of a whole polity, as in the "collective amnesia" that others have observed in post-Pinochet Chile (Menkel-Meadow 2015: 15).

[5] Chinese material is drawn on in several places for two reasons. The first is personal: my understanding of Chinese disputing was formed in field research in the New Territories of Hong Kong and later as Dean of a mainland Chinese law school. The second is analytical: China offers an unusually long and well-documented record in which a single society shows the whole spectrum at work, from a cultural ideal of yielding and harmony, through a revolutionary period in which class ideology recast civil quarrels as occasions for coercion, to a party-state in which avoidance, prevention and suppression have become official tasks. See, generally, Palmer 2025.

Laura Nader's (1990) analysis of "harmony ideology" reminds us that the preference for harmony, like the preference for forgetting, is not innocent. Processes that emphasize harmony, compromise and the language of therapy may suppress talk of and protest against injustice (Nader 1990: 2, 291, 306-307). Menkel-Meadow has always taken this caution seriously, as did Roberts (2013a): her defence of settlement has been a defence "in some cases", alert to the danger that the weak may be pressed into peace (Menkel-Meadow 1985a; 1995). The same discrimination is needed for avoidance. The strategic withdrawal of a party conserving resources is quite different from the resignation of the aggrieved person who feels they have no choice. Gulliver would exclude the latter from avoidance proper (Gulliver 1996: 128), but the analyst's ability to detect intention is doubtful, and even overwhelming structural pressure does not necessarily mean that no decision is made (Palmer & Roberts 2020: 110; Palmer 2023: 44). The boundary also moves over time: as Marc Galanter (2010: 125) observes, expanding knowledge and social capability turn misfortunes once accepted as fate into injustices waiting to be named. Grievance apathy sits uneasily on the boundary of the category, but squarely within the concerns of access to justice.

The preventive turn in legal practice

Prevention, unlike avoidance, is explicitly forward-looking, and it has quietly become part of the established practice of law. Prenuptial agreements, collaborative lawyering, partnering, risk analysis and careful project design are all intended to avert future disputing or to clarify rights should disagreement arise (Palmer & Roberts 2020: 108-109; Palmer 2023: 42-43). Here one of Menkel-Meadow's founding contributions bears directly on the neglected pole. The problem-solving conception of the lawyer's role (Menkel-Meadow 1984), later generalized into a multidisciplinary vision of legal education (Menkel-Meadow 2004), has an implicitly preventive dimension: its attention to the parties' long-run needs and continuing relationships (Menkel-Meadow 1984: 802-803, 835) points towards the lawyer as designer of arrangements rather than champion in a contest of positions, and she herself counts dispute prevention among the gains that hybrid processes may bring (Menkel-Meadow 2020: 407). The United Kingdom construction industry shows how far prevention can be written into the constitutive documents of commercial life. Standard form contracts commit the parties to mutual trust and cooperation, oblige them to give early warning of any matter that could increase the price or delay completion, and maintain risk registers; dispute boards appointed at the outset attend the site and try to resolve

differences before they harden (Gould & Liang 2022: 158-159, 165-167). As in the Quaker Meeting, prevention is built into a constitutive procedure. It also has limits: the risk register does not alter the contractual allocation of risk, so that prevention is layered over an adversarial allocation instead of replacing it, and a board empowered only to recommend may be little used (Gould & Liang 2022: 158, 166-167). Prevention appears to work best where imposition remains available in the background. In this sense dispute prevention is process pluralism practised *ex ante*.

[D] VIOLENCE

Characterizing violence in disputing

At the other end of the spectrum lie the forms of self-help, and in particular recourse to violence: primarily the use or threatened use of physical intimidation intended to secure the outcome the violent party prefers, or antagonistic conduct arising from loss of self-control in the course of disagreement (Palmer 2020: 89). Like every other mode of response, violence occurs within a social relationship. Unlike most, it often amounts to a rejection of all other modes. Short of direct physical coercion, however, even the cruellest domination still leaves "a substantial measure of personal freedom" (Simmel 2009: 130). Imposed outcomes, like consensual ones, retain an element of choice, and the line between the two sides of the conventional dichotomy is less sharp than it appears. Recourse to violence is often part of a process of closure—a social definition of the relationship as finished and non-negotiable—and in this respect it resembles avoidance. It also repudiates the procedural fairness and compromise central to negotiation and mediation (Hampshire 1989: 74-75), a theme from which, by way of Stuart Hampshire's later work, Menkel-Meadow builds her own case for process pluralism (Menkel-Meadow 2002: 38; Hampshire 2000).

Physical force is not the whole of the matter. The United Nations counsels that domestic violence be understood as embracing sexual, psychological and economic violence as well as physical (United Nations 2010: 24-25), and broader still are Johan Galtung's categories of structural violence, the injury embedded in inequality (Galtung 1969: 170-171), and cultural violence, which legitimizes it (Galtung 1990: 291). Just as societies propagate harmony ideologies, so there are ideologies of violence. In China during the Cultural Revolution (1966-1976) an ideology of class difference recast routine civil disputes in revolutionary terms: contradictions among "the people" were to be handled by persuasion, but

the same quarrel between one of the people and a class "enemy" became an antagonistic contradiction, to be handled by the coercive methods of dictatorship (Palmer & Roberts 2020: 118-119; Lubman 1967). The structural substrate persists: the Anti-Domestic Violence Law (反家庭暴力法, *fan jiating baoli fa*) of 2015 came only after long delay and has operated imperfectly (Palmer 2017; Palmer & Roberts 2020: 119-120), and local insistence that mediation is the only appropriate response has at times had tragic consequences (Palmer 2014a: 20; 2017).

The boundaries of the category are unstable. Does violence include its threat? From the Ming dynasty it was a specific offence to drive another person to suicide (威逼人致死, *weibi ren zhi si*), and by the mid-19th century causing another's suicide was treated as virtually a category of homicide (MacCormack 2018: 217). The same concern survives in the justification for early intervention by people's mediators, who must nip the "contradiction" in the bud before it degenerates into violence, under the slogan "combine mediation and prevention, and give primacy to prevention" (Palmer 1988: 235; Palmer & Roberts 2020: 106). Gossip is a case in point. It appeared among the Southern Baptists as a technique of avoidance, and may be the beginning of a moral inquiry, not prying misconduct (Rose 1983: 9). Yet the untruths it carries may ruin a reputation, as even its defenders concede (Alfano & Robinson 2017: 485), and may provoke physical violence in reply (Palmer & Roberts 2020: 117). Gossip belongs to both neglected poles at once. Nor will the line between civil and criminal hold the category steady. Crime and violence overlap less than one might suppose, for violence plays no part in most offences, while much violence, being the work of states and armies, is never counted as crime at all (Ray 2017: 178).

Institutionalized forms

Anthropology and legal history provide many examples of violence as a legitimate, rule-bounded way of bringing disputes to a close: aggression given a limited and formalized expression that may stand in for something worse. Self-help survives in modern legal systems within limits set by the state, so that, contrary to Weber, no state in practice monopolizes the legitimate use of force (Ellickson 2017: 50-52). Much conduct classed as crime is itself self-help, the expression of a grievance by unilateral aggression, and so a mode of social control, not a sign of its breakdown (Black 1983: 34). In organized crime, violence and its threat underwrite a private dispute settlement on terms the stronger party can impose, and a reputation for violence, once established, deters challenges and lets later

disputes be settled by threat rather than force—the violent pole performing, in inverted form, the preventive work of its opposite (Gambetta 1993: 159, 169-171; 2009: 78, 91). Ritualized competitions, from wrestling and the Inuit song duel through to their modern descendants, keep the competitive form while shedding the violence (Roberts 2013b: 117-128), and the record has even inspired contemporary design. In the experimental "Karaoke Court" the parties sign an arbitration agreement and sing their cases for a binding decision (King 2016). The feud institutionalizes retaliatory violence between groups: Fernanda Pirie's Amdo pastoralists hold two sets of norms in constant tension: elaborate mediatory mechanisms for containing violence, and a felt obligation in certain contexts to resort to it (Pirie 2007: 54-55, 63-65). The local agencies of the Chinese state have been drawn into this machinery of truce and compensation without displacing it (Pirie 2007: 65). Vigilantism persists on the margin between lawful and unlawful, delivering a rough justice that state law is felt unable to secure (Smith 2019). What these forms share is that violence operates within parameters of acceptable conduct that confine aggression in the interests of order in the wider polity. As soon as there is "some limit to violent action", Simmel wrote, "there is indeed a force for making a society, even if only as restraint" (Simmel 2009: 236).

Impulsive violence and the micro-situation

Not all disputing violence is institutionalized or instrumental. Institutionalized forms incline to instrumental violence, used to secure compliance; impulsive outbursts to expressive violence, inflicted in anger without any necessary goal. Here the work of Randall Collins (2008) is valuable, if provocative. His central claim is that violence is difficult. Most people in most disputes, however motivated, do not fight. This is because they cannot overcome barriers of confrontational tension and fear; explanations based on social background assume that violence flows readily once motivation exists, but micro-situational evidence suggests otherwise (Collins 2008: 20-21). Socialized into cooperative exchange, people are often clumsy and unskilled in handling the prospect of force (Palmer & Roberts 2020: 120-121). When violence does occur it follows identifiable situational pathways—a victim whose fear is read as weakness, an audience whose presence makes backing down costly. Tense situations, rather than violent persons, generate violence, and even people known to be violent are not violent most of the time. In this the poles differ: avoidance can be protracted and even inherited, whereas violence, sustained domestic abuse apart, tends to be episodic (Collins 2008: 14; Palmer & Roberts 2020: 120).

Collins's critical framing extends to the moral architecture of the category. "Good" violence, carried out by duly authorized agents of the state, is not seen as violence at all, and violence licensed but not formally authorized can escape notice too. In the Cultural Revolution the beating and killing of "class enemies" by Red Guards and local militia were encouraged from above, the public security organs were told not to intervene (MacFarquhar & Schoenhals 2006: 124-125, 128-129), and mediation was condemned for promoting "class harmony" (Palmer 1988: 220, 228). Only after 1976 was the period of the Cultural Revolution renamed "the decade of chaos" and its violence recognized as violence. Menkel-Meadow counts China among the societies that have chosen not to reckon publicly with mass atrocities of this kind (Menkel-Meadow 2015: 22). Whether violence is seen at all, in other words, depends on who licenses it and on the processual categories through which it is named. How the killing was produced matters as much as how it was named. Where it was most extensive, Yang Su (2011: 1-34) argues, it was organized through local state and community structures that turned central calls for class struggle into collective action. The centre supplied the rhetoric of class war but no plan of extermination. What made the rhetoric lethal was its reception by county, township and village cadres and their militias, at a moment when the ordinary legal restraints on killing had been demobilized and the countryside recast as a theatre of war, so that the killings were, in his words, "a result of both state sponsorship and state failure" (Su 2011: 24). The ideology of class war, that is, did not reach the encounters in which neighbours killed neighbours directly. It reached them through the processes by which a community categorized its members, designated its enemies and organized to act against them. That is the argument of section [E] below, reached from the other direction: structure enters the violent situation through process. The point converges with Cover's account of how a judge's words become violent deeds through an organization that suppresses the inhibitions of those who carry them out (Cover 1986: 1613-1615). The violent pole is not sealed off from lawful umpiring: violence is present along the whole spectrum, distributed and named differently at different points.

The macro and the micro: an unresolved problem in the sociology of conflict

The confrontation between Collins and the structural tradition is a local instance of a problem that has troubled the sociology of conflict since Simmel and Lewis Coser pressed the discipline to treat conflict as a social form in its own right (Coser 1956; Simmel 2009): the

relation between macro and micro. One line of thinking, culminating in Galtung's categories, explains violent conduct by inequality, exclusion, domination and the ideologies that legitimate them. The other, of which Collins is the most rigorous contemporary exponent, insists that broad conditions do not fight; only situations do. Each is weakest where the other is strongest. Structural theory cannot say why, under identical conditions, violence erupts here and not there, now and not then, nor why most of the deprived and dominated are, most of the time, not violent at all. Situationism cannot say why the same micro-dynamics of tension, weakness and audience produce such different rates, forms and targets of violence across societies and periods. Part of the difficulty is conceptual: structural accounts speak mostly of conflict, the broad and often long-lasting struggle in which trouble arises without any rule being broken, and situational accounts mostly of encounters, and neither has much to say about the dispute—a grievance voiced as a claim and rejected—that lies between them (Palmer & Roberts 2020: 104-105). In the terms that Geoffrey Samuel adapts from Jean-Michel Berthelot, the one reasons through structural and causal schemes of intelligibility and the other through something closer to an actional scheme, and neither can be reduced to the other (Berthelot 1990: 62-82; Samuel 2014: 81-89). The limits of a purely situational account are visible in Collins's own materials, which are mainly North American and should be treated as tentative until tested across cultures (Palmer 2020: 100). Two Chinese cases illustrate the point. In the first, a poor rural woman, repeatedly battered, killed her husband after her complaints had been brushed aside as an ordinary state of affairs by the local Women's Federation, the people's mediation committee and the police. In the second, a prosperous American migrant in Beijing, violently abused, posted photographs of her injuries online, refused mediation, won massive public support and successfully sued for divorce (Palmer 2017; 2020: 99). A full explanation must rest on both macro and micro. That conclusion, however, merely restates the problem. What is still needed is an account of how macro conditions enter micro-situations.

[E] PROCESS AS THE MISSING MIDDLE: WHAT THE POLES REVEAL FOR PROCESS PLURALISM

Menkel-Meadow's work supplies something that the sociology of conflict has lacked, namely the processual middle. Structure and situation meet in process. A dispute process is at once a structure—an institutionalized repertoire with its own rules of access, form and authority—and a sequence of actions taken within an encounter, so that it is the place where structural and actional explanation must be combined rather than chosen between. Harmony ideology, patriarchal values and ideologies of violence do not act on disputants directly. They act through the repertoire of processes that a society makes available to people in trouble, withholds from them, or imposes on them. The mediation committee that dismissed the battered rural wife's complaints was the mechanism by which patriarchal values entered her micro-situation and helped to produce its violent outcome. The online forum through which the American woman refused mediation and summoned an audience of millions was the mechanism by which a quite different structural position entered hers. Collins tells us that much violence turns on perceived weakness and the presence of an audience; the two cases suggest that both are to a significant degree constituted by the processes on offer. Menkel-Meadow's own observational work points the same way: a minority of lawyers and parties in court mediation proved open to a new process and saw it as an opportunity to improve their own negotiating, which she took to justify the claim that mediation can serve an educative and transformative function (Menkel-Meadow 1993: 377).

The socio-legal literature on the transformation of disputes supplies a vocabulary for this mechanism. Felstiner and his colleagues (1980-1981: 639-649) treated naming, blaming and claiming as transformations themselves transformed by parties, reference groups, lawyers, officials and dispute institutions, professionals in particular defining a client's problem in terms of the services they offer. Lynn Mather and Barbara Yngvesson (1980-1981) showed that disputes are narrowed, fitted into established categories, or expanded, reframed in terms that connect them with wider social issues, as they come before third parties and audiences. Both transformations are processual, and each carries structure into the dispute: the mediation committee narrowed the rural wife's grievance to a family quarrel apt for reconciliation; the online audience expanded the Beijing case into a public question about domestic violence. Lauren Edelman and colleagues show the same process inside the organization, where internal complaint procedures recast discrimination claims as

managerial problems, often handled as "mediation", so that a public right was privatized and depoliticized (Edelman & Ors 1993: 501, 515, 530), and Menkel-Meadow's work on restorative justice carries it to the scale of the polity, where truth and reconciliation commissions turn individual testimony of injury into public acknowledgement (Menkel-Meadow 2007). The anthropology of dispute processes leads to the same conclusion. As Roberts and I have argued, the public sphere is always present in social life, taking its simplest form wherever a third party observes a bilateral exchange and offers the tacit assurance that "this is the way things are done" (Palmer & Roberts 2020: 80-82). Collins's audience is this elementary public sphere seen from inside the violent encounter, and whether it urges a quarrel on or calms it depends on the processual expectations it brings. Institutions can route disputes around the danger point, as when Kgatla disputants, fearing a fight, skipped bilateral negotiation and went straight to senior kin (Comaroff & Roberts 1981; Palmer & Roberts 2020: 95-96): the shape and availability of processes govern how tension in an encounter is handled. *Rules and Processes* supplies the theoretical ground: Tswana norms formed a loosely ordered repertoire on which disputants drew in constructing competing "paradigms of argument", so that disputes were moments at which the wider socio-cultural order was invoked, contested and reproduced (Comaroff & Roberts 1981). Structure, on this account, enters the dispute as the stock of normative and relational resources with which the parties argue, and is remade by the outcome. That is the connection between levels that neither structural nor situational accounts of violence supply.

The same holds at the other pole. Accounts of avoidance also divide between the structural, which explains it by the shape of social relationships (Felstiner 1974; Baumgartner 1988: 12-13), and the situational, which stresses the early encounter in which emotion and the urging of others decide whether a grievance is pressed or dropped (Palmer & Roberts 2020: 113-114). Neither explains the Quaker Meeting. Bradney and Cownie find the explanation in the Business Method: because each corporate decision is meant to be the personal decision of every member, there is nothing left to dispute, and the naming, blaming and claiming through which grievances become disputes were "largely absent" (Bradney & Cownie 2000: 153, 166). The same culture had its price, for when disputes did arise the Meeting was poor at resolving them (Bradney & Cownie 2000: 153-157). Process can also produce avoidance instead of preventing trouble: when the mediation committee treated the rural wife's complaints as an ordinary family matter, withdrawal was not simply chosen. Instead, it was manufactured, as a structural preference

for harmony entered the encounter through the repertoire on offer. Prevention is the clearest case of all, for it is process designed in advance to carry structural expectations into future encounters. At both poles, then, process channels a society's patterns of conflict into the individual choice to fight, to withdraw, or never to quarrel at all. On this reading, process pluralism is a sociological perspective as well as a design template for court reformers: to study the whole range of response is to study how the macro becomes the micro.

Chinese handling of disputes between citizen and state shows the mechanism at the level of the polity. The Administrative Litigation Law (行政诉讼法, *xingzheng susong fa*) of 1989 barred the people's courts from using mediation to decide the substance of an administrative case. From the mid-1990s, however, trial judges increasingly mediated before trial, after which the plaintiff withdrew the suit, in some localities in as many as 60% of first-instance cases, and rules issued by the Supreme People's Court (SPC) in 2007 regularized the practice under the name of settlement (和解, *hejie*) (Palmer 2014b: 108-112). A law intended to control the state became in part an instrument for controlling the citizen (Palmer 2014b: 120, 123), while discontent with administrative misconduct flowed less into litigation than into petitions, strikes and local protests (Palmer 2014b: 116). Where the processual channel for a grievance against the state is narrowed, trouble moves towards the poles: towards lumping on one side and collective confrontation on the other. Yet, in parts of eastern Guangdong, revived lineage elders' groups (老人组, *laoren zu*) now settle village disputes and are tolerated precisely because they keep order (Palmer 2014b: 113-114): the same ideology works through different processual channels, suppressive in the courtroom and preventive in the village.

What, then, do the poles teach process pluralism? First, they expose the limits of the field's organizing dichotomy. The standard characterization sorts processes by the source of the outcome: negotiation and mediation are consensual, adjudication and arbitration imposed. Avoidance and violence fall outside it. Both are *unilateral*: avoidance a unilateral withholding of interaction, violence a unilateral imposition without authority. Neither seeks the other party's consent, and neither claims the legitimate authority on which imposition ordinarily rests. Their neglect flatters the tidiness of a divide which practice blurs even in the middle of the spectrum, as I have argued elsewhere (Palmer 2014a), as Menkel-Meadow's "semi-formal" justice suggests (Menkel-Meadow 2013), and as her analysis of hybrid processes shows in detail—consensual processes made mandatory, porous categories, voluntarism inverted (Menkel-

Meadow 2020: 405, 409-410, 412-413). Court-mandated mediation, costs sanctions and judicial case management (Roberts 2013a) sit uneasily with the voluntarism on which mediation's legitimacy rests (Palmer 2014a: 19, 37-38), and the courts of England and Wales have since moved in that direction: the Court of Appeal has held that a court may lawfully order parties to engage in non-court-based dispute resolution, departing from the earlier view that compulsion would obstruct access to the court (*Churchill v Merthyr Tydfil County Borough Council* 2023; *Halsey v Milton Keynes General NHS Trust* 2004); the Civil Procedure Rules now give an express power to order participation in ADR (CPR 3.1(2)(o)), and the High Court has used it to order unwilling commercial parties to mediate shortly before trial; they settled (*DKH Retail Ltd v City Football Group Ltd* 2024). At the bottom of the scale compulsion is already routine: since May 2024 defended small claims for a specified sum of up to £10,000 have been referred automatically to the court's own mediation service, which the parties must attend on pain of costs or other sanctions (Practice Direction 51ZE). Roberts saw where this was heading, warning early that mediation drawn into the courts risked becoming an adjunct of adjudication (Roberts 1993; 2000) and concluding from his ethnography of the Mayor's and City of London Court that civil courts in England had become, above all, arenas for structured negotiation (Roberts 2013a). Consent and imposition are then not alternatives offered at different doors, but phases managed within a single institution, and Menkel-Meadow's observation of court-annexed mediation found the same blurring (Menkel-Meadow 1993: 372 n 72, 373, 375 n 82). A processual theory that starts from the full range should treat consent and imposition as variables running through all responses to trouble rather than as a binary sorting device. Menkel-Meadow's taxonomy already treats consent and compulsion as one dimension among several (Menkel-Meadow 2020: 409); what the poles add is a further axis that it does not accommodate: responses that claim neither consent nor authority.

Secondly, the poles show what the middle processes are for. Violence as non-negotiation and avoidance as non-engagement are both processes of closure: each redefines the relationship, the one as finished and to be settled by force alone, the other as not worth the cost of confrontation. Against that background the distinctive value of negotiation, mediation and even umpiring becomes clear: they keep the relationship open and presuppose procedural fairness and the possibility of compromise (Hampshire 1989: 74-75). This is the terrain of her "Peace and Justice", which recognizes that process is "the human bridge between justice and peace" (Menkel-Meadow 2006: 580), and of her later treatment of

peace as the necessary, if not sufficient, condition of human flourishing (Menkel-Meadow 2015: 7). The middle is not sealed off from the poles. Violence may be mixed into negotiation as a show of force (Palmer 2023: 50; Gulliver 1979: 137), or may open the way to talk, a raid or a strike precipitating a crisis in which other procedures can begin (Gulliver 1979: 1-2). The middle can also drift towards the poles from within: the low-intensity bargaining that the studies Menkel-Meadow reviewed found to predominate, with negotiators accepting whatever is good enough to close and producing outcomes that reflect neither what the parties need nor what they are entitled to (Menkel-Meadow 1993: 369-371, 377). This is a form of minimal engagement not far removed from avoidance. Apology deserves particular notice as a neglected process that runs through negotiation, mediation and umpiring alike. An effective apology recognizes the wrong done, accepts fault, expresses remorse and implies, if it does not state, that the conduct will not be repeated; one lacking these elements may deepen the very grievance it was meant to ease (Tavuchis 1991: 8, 36, 80, 121; Palmer 2023: 47-48). The practising lawyer treats it as a bargaining chip in "litigotiation" (Galanter 1984: 268), whereas disputants challenging an administrative body or a large business may value it above any financial settlement, and an early acknowledgement of wrongdoing may stop a dispute developing at all (Palmer 2023: 48-49; Palmer & Roberts 2020: 310). Hong Kong's Apology Ordinance 2017 accordingly protects apologies from being treated as admissions (Vines & Carroll 2018).

Thirdly, the poles test the presumption of choice on which process pluralism rests. The multi-door courthouse imagines a disputant choosing, with advice, the process that best fits the fuss (Sander & Goldberg 1994). Menkel-Meadow has herself questioned that picture, asking who chooses the process (Menkel-Meadow 2020: 407, 409 n 6) and now regarding the ideal of party choice as possibly overly optimistic (Menkel-Meadow 2024: 7, 17). The poles push the point further back. The decisive choices may well be made, or forgone, long before any courthouse is reached (Felstiner & Ors 1980-1981: 631, 636). Many of the homeless applicants in London studied by Patricia Ng never got beyond an unperceived injury: unaware of any entitlement, they could not name a grievance unless friends, relatives or a housing lawyer helped them to do so (Ng 2009; Palmer & Roberts 2020: 311-312). Grievance apathy, limited rights consciousness and structural violence together ensure that for many people the only "doors" ever encountered are lumping it and, at the desperate margin, counter-violence. The rural Chinese woman who killed her abuser had, in any meaningful sense, been offered no other process. Negotiation is

no easy remedy either, since disputes that cross lines of stratification will seldom be well resolved by bilateral means (Palmer & Roberts 2020: 139). Access to justice requires more than opening the middle doors more widely. It also requires an understanding of why the poles are so heavily used.

Fourthly, the poles bear on process design and practice, a field whose ethics Menkel-Meadow has done much to shape, through the CPR-Georgetown Commission on Ethics and Standards in ADR and in her writing on the ethics of ADR and of dispute system design (Menkel-Meadow 1997; 2009). Screening for domestic abuse in family mediation and careful handling of power asymmetry are now staples of the literature she helped to develop (Palmer & Roberts 2020: 321). The analysis here suggests that sound design must reckon with exit, where avoidance is the rational or the imposed response; with safety, where the shadow of violence distorts consent; and with prevention, where good design forestalls the dispute altogether. Roberts argued for a minimal form of intervention because the more active the intervener becomes, the closer mediation moves towards umpiring (Roberts 1986), and as ADR is incorporated into civil justice systems the value that matters most—that the parties themselves learn how to resolve and prevent their differences—may drop out of view (Palmer 2014a: 17-18, 43). Avoiding conflict and preventing violence are, moreover, usually desirable goals in their own right, and have generated their own practices and skills. William Ury sets alongside the resolving roles of mediator, arbiter, equalizer and healer a group of preventive roles (provider, teacher, bridgebuilder) and a group of containing roles (witness, referee, peacekeeper), each of which can be learned and taught (Ury 1999: 114-195, 200); de-escalation training and conflict-resolution education work in the same register. The PRC has made the goal an explicit object of policy. “Governance at the source of litigation” (诉源治理, *suyuan zhili*) is framed primarily as a means of reducing litigation and “dispute-derived” cases through front-end prevention and non-litigious resolution, but the SPC’s implementing opinions also make the prevention of civil disputes from turning into criminal cases one of its objectives, in risk screening and assessment and in marriage and family disputes alike (SPC Implementing Opinions 2021, paras 4, 15, 25). The qualification “usually” matters. Prevention may build capacity, but it may equally suppress grievance, as Nader’s critique warns (Nader 1990: 291; 2002: 43), and the Chinese programme displays the suppressive as well as the enabling form. Process design at the preventive pole must ask not only whether trouble has been forestalled, but whose grievances have been silenced along the way.

[F] CONCLUSIONS

Four claims have been advanced: that the poles of the processual range are processes in their own right and not merely its outer limits; that their neglect is rooted in the way legal scholarship constitutes its object; that attention to them shows process to be the link between a society's structures of conflict and its episodes of violence and avoidance; and that the processes along the spectrum are best understood as ideal types rather than as discrete alternatives. Empirically, the poles are seldom found pure: violence is displayed within negotiation, feuds are contained by mediatory machinery, prevention is built into consensus procedure, and low-intensity bargaining shades into avoidance, while the middle itself mixes consent with compulsion. Each type is a one-sided accentuation against which actual responses to trouble, typically compounds, can be measured (Weber 1949: 90); the continuum is a map of analytical possibilities, not a menu of doors. Seen from the poles, what negotiation, mediation and umpiring can achieve also comes into sharper focus (Palmer & Roberts 2020: 122). Several lines of inquiry follow. Collins's micro-situational model of violence awaits systematic cross-cultural testing against the anthropological record. The ethnography of prevention—of communities and practices that stop disputes arising, such as the Quaker Business Method or the early warning machinery of construction contracts—has barely begun. Apology merits sustained comparative treatment as a process in its own right, as do the skills through which conflict is avoided and violence prevented, and the conditions under which they enable and those under which they silence. The ways in which states channel grievances against themselves offer a demanding test of the processual-middle thesis, and the broader claim that process repertoires connect structure and situation deserves systematic development as a contribution which dispute resolution scholarship, long a borrower from the sociology of conflict, is now well placed to repay.

These are inquiries in the spirit of a scholar who has always looked beyond the adversary paradigm, learned from other disciplines and other societies, and asked of every process not only whether it resolves disputes but what kind of human relationships it makes possible. Faced with strong evidence that most negotiation is low in intensity and potentially inefficient, Menkel-Meadow chose to persist in a prescriptive vision of better lawyering (Menkel-Meadow 1993: 378). The study of the ends of the spectrum calls for a similar combination of realism and hope.

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