

Mediation



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Mediation within a Cultural Perspective

Introduction

In order to better understand ourselves, we must understand others. These few words shed a different lens when dealing with differences between citizens in a community. The Alternative Dispute Resolution (ADR) movement was born during the 1960-1970 as a substitute process to serve justice outside of the courts. During this era issues of race, class, gender, social inequality, and human rights began a transformative discourse in society. The movement provided a different lens on the realities occurring in American culture. Many communities felt disempowered and unequal within the United States and insisted justice. The legal court system was stumbled with various court cases, each demanding a place to express their voice to reach impartiality.

Therefore, ADR served as a tool that empowers and serves fairness without legal ties. It developed as a reflective process and began negotiating differences. The ADR was a cost efficient process that allowed disputants to voice their stories in a safe environment with the purpose of reaching an agreement through a mediator. The mediator then serves as a neutral third person in the process and common ground between the disputants.

Compared to other forms of conflict resolution, mediation involves the disputants directly in the conflict and in the process of resolution (Frenkel & Stark, 2008). As a result, mediation seeks self-determination, impartiality, and neutrality as the essential foundation in the practice so that inequalities are avoided in the process.

In the article *Why inequalities?* The authors begin discussing stratification between various ethnic groups and the inequalities that constrain a variety of minorities within a historical context. Issues of intelligence and policies rise to the conclusion on how inequalities are not part of nature or by the economic regimen but of due to the historical injustices such as policy's put in place that have continued to take part in acts of injustice. (Shapiro 2004). Taking this idea into perspective, diversity will arise in mediation and the importance of fairness and equality are imperative, and mediators, who are not culturally sensitive, may have biases or misunderstanding of the conflict. What are the cultural disparities that can affect the process of mediation? What are the strategies being used to help bridge the gap between cultural differences within a Western mediation process? How does the United States differ in the mediation process to international mediation? The purpose of this paper is to provide a different and fresh awareness on mediation, especially when cultural differences are at the core of the conflict. The researcher first considers that culture is significant in this discussion of mediation and central to understanding the best methods of effective mediation. ADR and mediation will be used interchangeably through out the paper

Culture

Culture can be defined in many different ways. For this reason, culture will be defined and described as: “[the composition of different norms, values, and beliefs for socially appropriate ways to “ process” conflict and disputes, including their management or resolution (Avruch and Black 1991). A culture is not defined by one entity but can take many shapes and forms. It goes

beyond the ability to identify on the surface of how someone looks, dresses and participates in society; it is the complexity of ideals and values instilled within a persona. “ Our culture shapes how we approach conflict and conflict resolution- including our values, norms and conduct. It even influences how we define conflict itself and what we considered acceptable or desirable goals of problem solving” (Chew, 2004 p. 2). As a result, in mediation, misconceptions can be eluded and the mediator or the disputant shifts the power dynamics. The culture of a person can be based off of beliefs that they bring when in a situation of dispute. By allowing the disputants to have charge in their decision-making, this will empower them and allow the disputant to participate in self-determination, but at the same time it may be dangerous when inequalities of power exist in the process (Davidheiser, 2006). Consequently, this leads to unfairness and misconceptions of mediation as a neutral sphere of negotiation.

Inclusion or Exclusion of Culture in Mediation

Many researchers argue for or against including culture in mediation. Kevin Avruch (2003) discusses how culture has been neglected through out mediation until the early 1980s. He also feels it is crucial for any developing mediation program to incorporate a cultural component in the training process. Mediators must understand that culture can be strongly correlated to the style of negotiation. Avruch (2003) then speaks about Type 1 and Type 2 Errors. He further discusses that each error can be crucial to the conflict resolution process by being to culturally sensitive (Type 1) or not culturally sensitive enough (Type 2). Participating in any of these errors can

impact ADR because it may neglect or over emphasize an issue that intentionally was not meant or should have been exposed in mediation.

Frenkel & Stark have emphasized four essential skills needed by mediation to maintain balance such as communication, established climate, diagnostics and persuasive. These four skills will create an equilibrium that is necessary to begin mediation. Although the mediation environment and mediator are balanced in power, the cultural background of the disputant will proceed as a natural component in the circle to negotiation. “ However it can be socially beneficial by generating awareness of structures of power and producing frameworks within which to debate social norms by individual everyday acts of resistance which illustrate the ways in which relatively powerless people accommodate to power whilst simultaneously protecting their identities” (Mulcahy, 2000, p. 147 as cited in Li On, 2008, p. 458).

Meanwhile Chew (2004) states every disputant is influenced by their cultural lens and frame their ideas and perceptions around, what is culturally correct. As a result, it can shape the outcome of the ADR process because at the core of the conflict is influenced by the values and morals attached to culture by a person. Russell Korobkin would argue that mediation is a process of negotiating, and those cultural differences do not have anything in common with the negotiation strategies of a person. Therefore, Korobkin believes that it is the separation of the person from the problem that mediation and negotiation truly exists. Furthermore, Avruch would disagree and state culture provides cognitive and emotional frameworks for understanding the actions and motives of the self and others. It has been disputed for years,

and the research continues to dwindle in circles. Consequently, culture should not be over or underplayed. Mediators have the responsibility to listen to each individual's voice and be able to identify if cultural difference will be an issue to reach negotiation. The space for each individual to share his or her narrative discourse allots an empowerment process that transits power to the individual.

The Power of Culture in Mediation

Foucault (1982) states where there is power, there is counter power also occurring. The ideas of power transmitting in mediation are crucial in understanding the facilitative process of a mediator. Therefore, their role is not only to be in charge of the process but to also allow the parties control the outcome. By the mediator controlling the process, transmission of powers can circulate in mediation. As a result, some of the conflicts and counter arguments discussed in mediation are how disadvantaged groups lack control in mediation, due to the power being brought in by the disputant. For example, an underprivileged undocumented person may walk in with less power than a person who is “ American”, wealthy, and entering mediation with a lawyer. Cultural differences of respect, conflict, and language can set barriers in the process of negotiation. The power is not equally distributed across the board. Therefore, the mediator is in charge of providing the space for opportunities and to develop a solid communication. Mediators need to be able to diagnose if cultural difference will change the flow of mediation.

The article Family Mediations and Cultural Diversity: Mediating with Latino Families discusses how the mediator can identify differences in

aggressiveness, eye contact and face-saving. Cultural difference in mediation reminds me of both power and powerless participating in a transformative space during mediation; what Kris D. Gutierrez, Patricia Baquedano-Lopez and Carlos Tejeda call a constructed “third space.” The third space allows for dialogue to occur to develop knowledge in a dual voice form to construct cultural resources. The space will allow for transformation and discourse to occur. As a consequence, dialogue will begin to open doors for negotiation and develop common ground between the disputants. The process becomes a transformative space for empowerment. Paulo Freire examines the structural inequalities in society and emphasizes on the importance of dialogue between oppressed and oppressor to advance towards a humanizing pedagogy. Once dialogue is exposed differences between both groups are understood. Mediation becomes a humanizing experience to transport dialogue and discuss conflicts between disputants and reach an understanding. Mark David Heiser (2006) articulated the importance of mediation and power imbalances that occur by using Gambia, a small country west of Africa, and explains how mediation has allowed for women to be empowered and given a voice to speak.

Mediation was labeled a harmonic process where peace and respect for both parties was the central focus. Harmony ceremonies occur when ideologies between men and women are supported through a peaceful ceremony and issues of justice between male and women are shared and through various prayers rights and the need for justice between the couples are discussed. In many cases the women spoke out in front of their husbands about how they felt about their relationships. Mediation became a space that empowers

women to leave their society role and be given a “ voice”. The voice that allows their partners to realize the injustice occurring in their communities and at the same time helps renegotiate the power within the environment of mediation. In parallel, the article An Indigenous Imperative supports the argument of power because many indigenous groups like the Australian Aboriginal communities and the Navajo tribe to feel disconnected from society norms and the structure of mediation. For that sole purpose having knowledge of cultural sensitivity as mediator will help dismantle power imbalances and allow for the voice of the individual to occur. By participating in a “ third space” empowerment that occurs for those whose views, values and beliefs go against the Western views of individuality, a collaborative mediation is developed that values inclusion.

Individuality vs. Community

Mediation ideologies vary in different cultures. Providing mediation is not a single process embraced by all. Mediation across the world varies and is used for various purposes. Discussing the topic of culture, it is important to mention the sense of community many cultures have and how in American culture, which is an individualistic community may clash in ideologies.

Authors Glenn E. Singleton and Curtis Linton discuss in their book titled *Courageous Conversations about Race*, The differences of individualism vs. collectivism in the U. S. although a myriad of examples were provided, the differences between a self-expression vs. respect for authority. Developed connections to the various cultures exposed who respect a group consensus over individual thinking. This key component of culture gives insight on cultures group orientation strategy and the role it plays in mediation various

studies have been conducted to compare U. S Mediation strategies to other countries. In one particular study it was compared to Korean- Harmony ceremony. The Author Diane LeReche (1992) discovered that Korean mediators have a crucial and interconnected role in mediation. In many cases they provide advice and are personally connected to the disputant. They become knowledge consultants who can provide guidance and reach harmony. In a very similar process, The Navajo tribe are an example of how their culture, language and traditions have influenced their way of managing conflicts. Their views on life have molded their outlook when dealing conflict resolution. Philmer Bluehouse and James W. Zion explain how the Navajo people have a deeper meaning to mediation by using strong community leaders to refocus the members to their state of reaching harmony within themselves. Through the Peacemaker court, the Navajo enforce two main laws (Bluehouse & Zion, 1993). The laws incorporate life skills such as cooperation, friendship and unselfishness for the betterment of the community. Unlike American mediation where a third member is facilitating the communication, the peacemaker is completely involved in the process and gives advice and possible solutions to help resolve the conflict and maintain the relationship between the individuals when possible. The individuals respect the peacemaker and absorb all advice given because it is a cultural norm and the person assigned, as peacemaker is an elder highly appreciated. The individuals respect the peacemaker and absorb all advice given because it is a cultural norm and the person assigned, as peacemaker is an elder highly appreciated. Then it is the cultural lens is applied to what the needs of the community are and its members. In the Navajo clan, maintaining relationships is important and valued. Therefore, in mediation,

the process becomes a medicine and is guided through a ceremonial process intended to diagnose the problem.

Mediation is used to resolve conflict resolution and how the process is obtained varies in various cultural communities. Embracing community unity is significant also. In Japan community represents whole no individuality. Everything exerted is for the benefit of the community. Therefore, it is a community responsibility to participate in mediation and avoid the court unless mediation fails. In which then it represents the individuals accepting personal failure. While community unity is important as a way of life, it is also established as a community norm where the court only exists as a process for those community members who failed to participate in mediation. It is a process not embraced as an option or an alternative to legal dispute. Mediation must occur as a community duty to help maintain relations with others (Callister, Wall1997). When member of a disputants participate in community mediation, it enhances the human achievement and needs of belonging in a society without feeling excluded (Schwerin, 1995). In Eastern Europe, community mediation is viewed as a transfer of power from an authoritative structure to a democratic ideology. Community mediation can be a powerful tool if the correct tools are used to execute the process.

Western vs. Community Mediation is vividly viewed across internationally in all mediation. The differences between peacemakers and mediators distinguish the role of respect between members in the community. In Western mediations, a mediator is a facilitative person not representing any party in the process. In contrast, a peacemaker is a most commonly a

relative. It builds on the unity of a community, rather than the self most commonly seen in western mediation. The process also establishes the importance of relation in relative to the essence of time. In community mediation, relationships are important for the benefit of maintaining relationships in society. In Western mediation, mediation means money. Therefore, the process is not about the relationships but of tackling the problem. The problem is detached from the person and singled out to discuss the conflict. Although the purpose of mediation is to find a common space, cultural inequalities will continue to stand out as an issue in mediation. American culture establishes the principles for all interracial group interactions (Singleton & Linton, 2006). Hence why culture continues to have “ differences” in mediation. Just because other cultures do not have the same individualistic mentality and way of living does not conclude there are problems in mediation. Consequently they become differences in ADR because they do not constitute the norms, and routines of the individual.

Cultural Differences in Mediation Perception

Perceptions Understanding perceptions can expand the range of possible solutions. In the book, *Getting to YES*, The authors explain the importance of detaching the individual from the problem in order to better grasp the conflict. One of the key components in being able to do is by clarifying the perception of the disputants. Understanding perceptions can expand the range of possible solutions. Without identifying the perceptions, assumptions are made. Those assumptions developed, take part on the negotiation process. Every person carries different assumptions. While some may feel to restore connections others are there to voice justice.

Trust

In this process, trust is important. Without the trust between the mediator and the disputant, reaching negotiation is complicated. In the article *Trust and other-Anxiety in Negotiation: Dynamics Across Boundaries of Self and Culture*, the authors argue trust is a hidden feature rarely exposed in the negotiation process but is present through tension. High and low layers of trust will expose the communication between the disputants. Communication is the goal of mediation trust can be expanded by allowing the individual to feel comfortable in their environment and begin exposing the trust.” It is dynamic rather than static in quality, if not downright fluid.” (Wu & Laws, 2003, p. 329).

Face expulsion

In Hawaii the majority of its people consist of Asian descent. The “ face” concept discussed in this article as a form of self-respect and can affect the process of mediation. In Hawaii, mediation occurs very procedural. The mediators first lay the rules for mediation, and then the mediators consult with each disputant separately twice. Once voices are heard and mediators understand the situations of both disputants mediation occurs as with both disputants. This process has been successful in Hawaii in dealing with cultural differences. According to the authors, face also exists as culturally acquired social phenomena. Facial expression can originate from nature or form nurture. The Asian community has a variety of perspectives of face and how it is define is very similar within cultures. The author then recognizes Ting-Toomey face work theory and the study he conducted with Asian cultures and American culture. “ Face displays not only an individuals

features and uniqueness but also that person's sense of social identity, by using metaphorical expressions"(Ogawa 1999 p. 5)

Depending on what culture you are from the concept of face develops and carries a natural instinct of one's persona. Face work is important to recognize because it may lead into communication dialogue. The dialogue is intended to create awareness of cultural differences and value mediation in a different way. Face concept plays a role in our communication strategies everyday. Every person quickly gets and diagnoses the face expression of a person. Face concept is important to understand in culturally diverse communities because it allows to lower the tension between disputes and allows the mediator to understand how face is a part of an embedded culture. Mediators who understand the importance of face, will better understand the communication process of members from various cultures

Tools for Cross Cultural Issues

Researchers across the literature have provided various tools to help with creating equity in mediation. Culture is something deeply rooted within an individual. In order to be able to understand the perspective of the individual, reflection must be incorporated. Mediators should follow various strategies to help create a safe environment within mediation. Some of the important tools to use are Reframing. Frenkel and Stark mention how a simple reframing of a statement by the mediator can reduce disputes and embrace positive information. If the mediator is aware of the strategy, it can be constructive when racial or negative tension exists between disputants. Furthermore, the authors gave an example on focusing on the human needs in mediation. What are the needs of the disputant? By doing so, mediation

becomes a productive environment. Next Active listening, listening allows the individual to feel empowered and valued in the process. y actively listing, the participants begin to communicate the core of the problem. It is crucial for the mediator to balance and transmit he power of voice to both side in mediation. By neglecting or preferring one over the other can cause conflict in the negotiation process. Also mediators as mention by Frenkel and Starkstate mediators should continuously summarize. By summarizing you are assuring you understand the narrative story of each disputant and it avoids for assumptions to be made. Above all, I feel each individual should be valued for who they are. Everybody is unique and differences should be embraced and not singled out, as a conflict in mediation is a space to help conquer differences and establish common ground to help problem solve through collaboration.

Mediation from the start! Education and Mediation

Timothy Hedeem, author of Dialogue and Democracy, community and Capacity: Lessons for conflict Resolution Education from Montessori, Dewey, and Freire, expresses the importance for cultural mediation to begin at a young age. He uses the work of three huge contributors in education to help establish a dimension for conflict resolution in education. The purpose is to empower the students and to begin participating in their own self-determination process. The process becomes almost a way of living. Taking key models from the leading researchers in education, learning bout conflict becomes a group effort and a learning process. The process also allows for children to begin critically thinking and taking charge of their own voice. The process will establish end result of participants in society as problem solvers.

Critically thinking about this process, can leads me to think on the transformative change that can occur in society. By establishing norms at a young age on the importance of solving our own problems, mediation would be conducted at a personal level. At the same time, children will also participate in constant dialogue with reflection and understand the viewpoints of other while in conflict.

In conclusion, society has established inequities amongst various cultural groups. Mediation has expressed through out the research differs across the world. Mediators must learn to use key tools to be able and to conduct a space for any individual to feel comfortable and valued in dialogue. Establishing norms of how to deal with conflict resolution at a young age will help establish a community of critical and problem solving thinkers.

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