

CROSS-CULTURAL ISSUES IN COMMUNITY MEDIATION: PERSPECTIVES FOR ISRAEL

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Given the recent growth in the community mediation movement in Israel, this article explores cross-cultural issues that need to be considered by mediators, program developers, and academics. Using examples from a conflict between orthodox and secular Jews, this article analyzes culturally biased assumptions of a mainstream model of mediation: impartiality, linear and rational problem solving, separating people from the problem, equal bargaining power, and using objective standards. The conclusion offers suggestions for a more culturally informed approach to community mediation.

The increasing emphasis on mediation in Israel, along with the establishment of the National Center of Mediation and Conflict Resolution in the Ministry of Justice, and academic programs in conflict resolution at Bar-Ilan and other universities, reflect an important new trend.

Given the conflictual nature of Israeli society, the need for practitioners, policy-makers, and academics to work together in the area of community mediation is particularly pronounced. In spite of Israel's great accomplishments since 1948, there remain many divisions in this society, between Arabs and Jews, between rich and poor, between religious and secular, and between other

groups who come from different cultural backgrounds (Etzioni-Halevy, 2000; Bargal and Bar, 1998; Halabi, 1998). In addition, the court system has a growing backlog of cases, as Israeli society challenges America's claim to being the most litigious nation (Mustill, 1996). High levels of stress attributable to living in a virtual state of war for so many years also contribute to conflictual relations between people.

Advocates of mediation say that mediation can address each of these issues: diverting cases from court, building bridges between communities, and transforming society into a more tolerant, understanding people (Bush and Folger, 1994). In spite of the accolades and rapid growth of mediation in North America since the 1970s, mediation is not a panacea for all of society's problems. In particular, the dominant models of community mediation are geared towards people from European and American middle class cultures. People from other cultures often do not access traditional mediation services. Even when they do, mediation services are often lacking in methods that take their diverse needs, norms, and values into account (Leung and Chan, 1999).

Here we focus on community mediation; that is, mediation between private individuals or groups in the community. Community mediation does not include family law issues, commercial disputes, labor relations, or international disputes. Community mediation services are sometimes called neighborhood justice centers. Community mediators receive referrals from the disputants themselves, from helping professionals (such as doctors or social workers), from schools, from community agencies, or from the court system (particularly, small claims court and juvenile justice cases).

The Predominant Model of Community Mediation

The predominant model of community mediation is a process where an impartial third party (the mediator) facilitates communication between conflicting parties and engages them in a joint problem-solving process. The mediator guides the parties through a series of stages: Preparation, Orientation to Mediation, Issue Definition, Exploring Interests and Needs, Negotiation and Problem Solving, Finalizing an Agreement, and Follow-up. The process is linear (Kaminsky and Yellott, 1997). Mediators trained in this model are taught to use certain skills and techniques in a particular sequence to guide the parties through each stage of the process (Barsky, 2000). As part of Orientation, for example, me-

diators learn to provide an opening statement that includes a description of the mediation process, the nature of confidentiality, and how parties should communicate during mediation. For the Negotiation stage, mediators learn how to use skills such as reframing and techniques such as brainstorming to move the parties through a problem-solving process.

Most mediators rely on the interest-based model of negotiation and mediation (Fisher, Ury, and Patton, 1997). Mediators move parties away from positions to underlying interests. The overall strategy is based on efforts to move the disputants from a win-lose process, typical of a court trial or adversarial process, towards an agreement that works well for both of them, known as a win-win solution.

Another aspect of interest-based negotiation is to separate the people from the problem (Fisher, Ury, and Patton, 1991). Personal insults, name-calling, and similar behavior tends to sharpen differences and obstruct cooperative solutions. The mediator helps them separate the people from the problem by having them agree to ground rules about name-calling and by having them focus on their mutual problem, not their like or dislike for one another.

Cross-Cultural Concerns

Culture can be defined as, "A learned system of values, beliefs and/or norms among a group of people" (Greey, 1994). Broadly construed, culture includes ethnic background, nationality, gender, disability, race, sexual orientation, and religion. Culture affects language, behaviors, and preferred conflict styles (e.g., avoiding, accommodating, compromising, collaborating, or competing). While the predominant model of mediation can be applied with people from different cultures, this model makes a number of assumptions that may not hold true for cross-cultural mediation:

1. Mediators must be impartial;¹
2. The preferred way of dealing with conflict is through a rational, linear problem-solving process;
3. Conflicting parties should separate the people from the problem;
4. Power between parties must be relatively equal;
5. The parties can agree on objective standards for evaluating which solutions are fair or just.

Neutral and Impartial

One of the key assumptions of the predominant model of mediation is that the mediator is impartial. Impartiality is said to be important so that mediation participants will not be treated with bias. After all, why would someone submit to a decision-making process where the mediator is bent on favoring the other party? However, what does impartiality mean when the participants come from different backgrounds? In the Israeli context, consider a dispute between religious and secular neighbors. The mediator might be either religious or secular. A religious mediator might be viewed with skepticism by a secular client, whereas a secular mediator might be viewed with skepticism by a religious client. Accepting the perception that a mediator, despite training, might not be impartial, one alternative is to use co-mediators, one religious and one not. Another alternative is to use a single mediator, whether religious or not, who meets with both parties ahead of time and tries to establish neutrality with both parties, demonstrating that a mediator can be impartial in spite of coming from a different background than one of the parties.

A third alternative is to find a mediator who is not affiliated with either party's background or perspective. For example, in a dispute involving religious and secular parties, a mediator from a Christian, Moslem, or other affiliation, might be found. In Jerusalem's Church of the Holy Sepulcher, the various Christian denominations have agreed to give the key to a Moslem caretaker in order to avoid disputes amongst themselves. Sometimes, an outsider can be trusted as a mediator because the outsider has no prior relationship with the parties and no stake in a particular outcome. If one party holds negative perceptions of the outsider (or the outsider's perspectives), then that party is unlikely to accept the outsider as impartial. Research is only beginning to explore when and how people from diverse cultures use different types of third parties to help them resolve conflicts (Dialdin and Wall, 1999).

If both parties came from the same ethnic group or other common framework, they might decide that they want a mediator from their own background and may not be concerned about impartiality. For example, in Israel, if the conflictants are both Orthodox, they might ask an Orthodox rabbi to mediate their dispute: the rabbi would be able to invoke values and principles from the framework of *halakhah* (Jewish law). (If the parties ask the rabbi to arbitrate the dispute and render a judgment, this is not the same as mediation, in which the parties reach an agreement them-

selves. For a detailed discussion of this distinction in the *halakhic* framework, see Steinberg in this volume.)

In mediation, there is no requirement for mediators to be value free. All mediators have values, for example, self-determination, peace, and consensus. The Ismaili community trains mediators for its "Conciliation and Arbitration Boards" in various countries, incorporating values from the Ismaili faith. Although secular literature on mediation says that mediators should not impose values on the parties, parties from a particular faith might be willing to accept religious guidance from a mediator of their own faith.

One of the key challenges for mediators, regardless of background, is how to combat ethnocentric fairness bias (Leung and Chan, 1999). People tend to interpret the world through their own perspective. A mediator from a secular background, for instance, will have an easier time viewing the issues from a secular perspective. The mediator can compensate for ethnocentric bias by using strategies to develop an understanding of both parties' perspectives: inviting parties to explain their perspectives in detail, identifying and questioning assumptions, using cultural interpreters, or conducting a role reversal.

Rational and Linear

Another cultural issue is that the predominant model of mediation is a rational and linear decision-making process. The mediator guides the parties through a fixed series of problem-solving stages. While this model works well for some groups in society, other groups tend to operate best with different patterns of communication: for example, circular thinking or passionate discussions (LeBaron, 1997; Lederach, 1986). To ask people from such backgrounds to talk about only one issue at a time or to speak without emotions contradicts their traditional patterns of interaction and conflict resolution.

People from disparate ethno-cultural backgrounds reflect different approaches. Some people are more comfortable going through a logical sequence of stages. In contrast, others tend to look at the whole of the conflict, comparing its structure to an intricate spider's web, making it difficult to sort through issues one at a time. When a linear mediator tries to use step-by-step approaches, and to focus the parties on brainstorming solutions, the non-linear party might suddenly ask to reconsider how the issues have been defined. In contrast, a linear thinker might then express frustration at what appears to be difficult and illogical behavior.

Different expressions of emotions is also an important factor. Different people have different ways of processing arguments, partially depending on the person's culture, gender, and other diversity factors (Tannen, 1998). In some cultures, displays of emotion are discouraged and suppressed, while encouraging calm, collected, and rational discussions. In contrast, other cultures view such behavior as either arrogance or apathy, while displays of frustration, anger, and excitement, expressed through shouting, gesticulating, and facial expressions are the norm. Mediators need to take these different styles into account.

Separate People from the Problem

The traditional model of conflict resolution is also problematic because it asks people to separate the people from the problem. In many cross-cultural conflicts, people and problems are deeply intertwined. One cannot separate them. For some groups, harmony is highly valued; they cannot have a conflict with others and still maintain a positive relationship (Duryea, 1993). The difference must be resolved in order to reconcile the relationship. Another problem with separating the person from the problem is that many cross-cultural disputes are identity-based conflicts; that is, each party sees the other through the prejudices, myths, and biases of his or her cultural group (Rothman, 1997). In order to resolve identity-based conflicts, mediation needs to confront the people problems as well as the substantive ones.

In the Israeli context, conflicts between secular and religious Jews are often identity-based, revolving around the ways in which the individual parties perceive themselves and one another. Victimization is a common trait, on both sides. Both secular and religious Israelis often see the other as part of a powerful group in Israeli society, while viewing themselves as oppressed. For religious Israelis, these perceptions may be reinforced by identities that are wrapped up in the history of oppression of Jews throughout the world. The mediator needs to make connections between the specific issue in dispute and the parties' identities, if the mediator is going to have any chance of helping the parties come to a mutually agreeable solution.

The difficulty of inter-group anxiety also challenges the notion of separating the person from the problem (Leung and Chan, 1999). When people from different backgrounds are brought together, they may experience stress related to a number of factors: lack of knowledge or understanding of the other party, negative

stereotypes, or past negative experiences with people from the other's background. Once again, mediators need to address the people issues in order to deal with the substantive issues. If the parties are anxious about meeting one another, they will have difficulty focusing on the substance of their dispute and the means of resolving it. Interventions to help them establish trust at a personal level can serve to reduce anxiety and promote rational problem-solving.

Equal Balance of Power

The predominant model of mediation assumes a relatively equal balance of power between the parties. This may or may not hold true in cross-cultural conflicts. Significant power imbalances may exist, particularly between people from minority and majority groups in society. The more powerful party may have greater influence because of greater financial resources, better negotiation skills, better language skills, and so on. If the mediator tries to re-balance power in favor of the weaker party, the stronger party may object: how can the mediator redistribute power and still be impartial?

Power imbalances are often related to gender differences. For instance, men and women tend to have different approaches to dealing with conflict (Tannen, 1998). Men are often socialized to be competitive negotiators, using strategies to try to win the dispute (e.g., withholding information, making threats, or focusing on satisfying his own needs). Women are often socialized to be accommodating, with a propensity to using appeasement strategies in which their own interests are sacrificed, in the effort to improve personal relationships. If the mediator does not do anything to equalize power (Leung and Chan, 1999), then dominant parties will be able to take advantage of weaker ones. If there is a history or potential for violence, then the mediator needs to take steps to ensure the party's safety. Ethically, a mediator must not remain neutral on the issues of violence or abuse (Coker, 1999). The challenge here is how to ensure the safety of parties who are most vulnerable.

Objective Standards for Fairness or Justice

Although mediators using the interest-based model encourage parties to use objective standards for fairness or justice, cross-

cultural differences often mean that each party has a different sense of what is fair or just. In the Israeli context, for example, a religious person might emphasize the principles of Jewish law as the basis for decision-making. Each potential framework could lead to a radically different decision.

At a normative level, people from diverse cultures have different perspectives on what they view as desirable outcomes (Leung and Chan, 1999). An individualistic culture focuses on the rights of individuals. A collectivist culture focuses upon the rights of the community. Culture also shapes expectations in terms of types of goals, whether they be relational, instrumental, or identity based (Kopelman and Olekalns, 1999). While some parties to a dispute seek to maximize their individual outcomes, others focus on improving the relationship, and the mediator must decide which goals to encourage. Norms, values, and expectations are difficult to change in a short-term process such as mediation (Leung and Chan, 1999).

Possible Frameworks for Solutions

Before applying mediation in cross-cultural conflict situations, mediators need to consider the assumptions underlying their model of mediation. Essentially, there are three possible responses: (1) apply one's generic model of mediation, but try to be sensitive to cultural issues; (2) adapt one's model to better meet the needs of the parties, given their cultural backgrounds; and (3) develop new conflict resolution models grounded in the traditional norms and practices of the groups one is mediating (Lederach, 1986; 1995).

The first response, cultural sensitivity, preserves the main elements of the interest-based mediation process. The mediator, however, needs to become aware of cultural factors and how they affect the mediation process. For example, eye contact varies in different cultures: in some cultures, giving direct eye contact is a sign of respect; in others, direct eye contact in certain situations is offensive. The mediator can adjust eye contact accordingly. Similarly, the mediator tries to be sensitive to the participants' values, beliefs, and other norms of communication. The mediator may also use cultural interpreters in order to learn more about the culture (Barsky, Este, and Collins, 1996; Freshman, 1998). The adjustments to the process are minimal in comparison to the other two approaches. Mediators also need to be aware that they do not apply adjustments in a stereotypical manner; for example, just be-

cause indirect eye contact may be a norm within a culture, there are individual and situation-specific differences where more direct eye contact may be called for.

In the second approach, *adapt-a-model*, the mediator starts with the generic model of mediation and makes certain changes to accommodate the culture of the parties. If the conflictants are not used to having formal meetings in the offices of professionals, for instance, the mediator might establish a model where the meetings are less formal and take place in the homes of the parties. If the parties tend to be very expressive with emotions, the mediator will allow more time for expression of feelings and de-emphasize rational decision-making techniques.

The final model is an *elicitive* approach. Rather than impose a generic model on people from all cultures, the conflict resolution professional (CRP) first learns about the culture, including its methods for dealing with conflict. The CRP works with people from the culture to support existing methods of conflict resolution or to create new models that build on existing strengths in the culture. The CRP can act as a consultant to the cultural community. For instance, if rabbis² or other leaders in a community have a conflict resolution role, the CRP can teach these individuals conflict resolution skills that they can use when people approach them. Alternatively, the CRP can provide conflict resolution services using a model of intervention designed specifically for the culture. The *interest-based* approach is based on satisfying the interests of the individuals; if the parties come from a *communitarian* culture, then the new model could focus on satisfying the needs of the community. The model of intervention may look more like community development work (Campfens, 1997) than clinical mediation.

Although creating *ethnospecific* models sounds attractive, the *elicitive* approach requires a significant investment in time. Some of the more successful attempts at drawing upon traditional conflict resolution approaches include *Ho'oponopono* among Native Hawaiians (Wall and Callister, 1995), *peace-making* and *healing circles* among Native North Americans (Bear Chief, Barsky, and Este, 2000; Coker, 1999), and *family group conferencing* among the Maori of New Zealand (Hudson, Morris, Maxwell, and Galaway, 1996). In Israel, there have also been attempts at supporting traditional conflict resolution processes within a number of *ethnocultural* groups, including Bedouin, Arab, and Ethiopian communities (Al-Krenawi and Graham, 1999; Jabbour, 1996; Sharon and Shwartzman, 1998). While traditional processes often provide useful insight into how to establish constructive conflict resolu-

tion systems for different groups, caution must be taken so as not to over-romanticize these processes. Traditional processes might be fraught with ethical and clinical issues: for example, some traditional processes might subjugate women or other groups (Coker, 1999); others might restrict the autonomy or self-determination of the conflicting parties.

When community mediation was popularized in North America during the 1970s, most mediators assumed that one model of mediation worked for all people. Cross-cultural issues have been receiving greater attention in the last fifteen years. As Israel embarks on new research and service projects in conflict resolution, it can learn from the experiences abroad. Given the diverse nature of the population in Israel, the mediation community in that country will soon have much to teach other countries about how to handle cross-cultural issues.

Notes

1. Some writers speak of mediator neutrality rather than impartiality. This article uses the term impartiality because it suggests lack of bias or favoritism to one party or specific outcome. Neutrality is sometimes construed as having no values.
2. The role of clergy in conflict resolution varies across religious groups and cultural backgrounds. For example, Haredi communities in Israeli often use their rabbis to assist with conflict resolution. While less orthodox Jews in Israel might not view rabbis as resources for conflict resolution, Conservative and Reform rabbis in North America often assist individuals and families with conflicts.

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