

# CULTURE AND MEDIATION: A RED HERRING

CYNTHIA A. SAVAGE\*

## INTRODUCTION†

*Scene: A Mediation at a County Court.*<sup>1</sup>

The judge calls a case from his trial docket. A middle-aged man steps forward and identifies himself as the plaintiff. He speaks English well, but he has an accent. A young woman steps forward and says she is a friend of the defendant. She is there to interpret for him because he speaks only Russian. The judge refers the case to mediation with the understanding that the young woman will continue to act as interpreter.<sup>2</sup> Waiting and observing in the courtroom are the mediators: two law students and a faculty supervisor. One student is a young black man in his twenties from England. The other student is a young white woman, also in her twenties, from the South. The faculty supervisor is an attorney/mediator, a Jewish woman in her mid-thirties, from the East coast. She is a second generation descendent of Latvian and Russian immigrants.<sup>3</sup>

The mediation reveals the following additional information about the participants: plaintiff ("Mr. A") emigrated to the United States from the Soviet Union seventeen years ago. Defendant ("Mr. B")

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\* Director, Office of Dispute Resolution for the State of Colorado; former Director, Mediation Arbitration Center, and Clinical Law Professor, University of Denver College of Law.

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1. The following scenario was an actual mediation conducted by the University of Denver College of Law Mediation Clinic, where I supervised students conducting actual mediation sessions. In order to protect the confidentiality of the session and the participants, no real names are used, and other information which might reveal the actual identity of the disputants has been changed or deleted.

2. *Id.*

3. *Id.*

emigrated to the United States from the Soviet Union during the past year. Both men are Jewish, in their fifties, and served in the Red Army together. Both men have their wives with them; Mr. B also has his son with him. Mr. A is represented by an attorney; Mr. B is pro-se. Mr. A is employed; Mr. B is not.<sup>4</sup> The interpreter ("Ms. C") is a friend of the B's. She is in her twenties, is also a Soviet immigrant, and has been in the United States for ten years.

Mr. A claims Mr. B owes him \$3,000 to repay a loan Mr. A made to Mr. B to help Mr. B and his family emigrate to the United States. Mr. B claims the money was a gift. During the mediation there is increased communication between the parties but no agreement is reached.<sup>5</sup> The parties leave without any indication of reconciliation.

The cultural differences among participants in this mediation, combined with the lack of a satisfactory resolution, raises two questions about the effectiveness of mediation in situations involving cultural diversity.<sup>6</sup> First, how do "cultural" differences among mediation participants - disputants, mediators, and interpreters - impact the effectiveness of mediation?<sup>7</sup> Second, how might these differences be

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4. *Id.*

5. *Id.*

6. It is becoming increasingly important to address cultural differences in mediation.. See John P. Lederach, *Beyond Prescription: New Lenses for Conflict Resolution Training Across Cultures*, 9 CONCILIATION QUARTERLY 1 (1990) (stating that "culture has become the new sexy issue in the field of dispute resolution."). See, e.g., Beryl Blaustone, *The Conflicts of Diversity, Justice, and Peace in the Theories of Dispute Resolution*, 25 U. TOL. L. REV. 253 (1994) (examining issues of diversity and core values in mediation through mythic storytelling). A perusal of recent conference offerings also reveals substantial interest in this issue. E.g., The National Conference on Peacemaking and Conflict Resolution: Diversity, Justice and Peace, Portland, Oregon 1993; The Southwest Conference on Dispute Resolution, "The Many Faces of Dispute Resolution," Albuquerque 1990; The Society of Professionals in Dispute Resolution, "Beyond Borders," San Diego 1991. I attended a workshop on Intercultural Conflict Resolution given by the Community Boards Program in San Francisco in September 1989. It consisted primarily of cultural self-awareness exercises, an examination of the Community Boards mediation process, and an examination of how to deal with discrimination issues in disputes.

7. Similar questions have begun to be posed about lawyering. See, e.g., Laura Finley, *Women's Experience in Legal Education: Silencing and Alienation*, 1 LEGAL EDUC. REV. 101 (1989); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39 (1985); Ann C. Scales, *Surviving Legal De-education: An Outsider's Guide*, 15 VT. L. REV. 139 (1990).

taken into account to maximize the effectiveness of mediation?<sup>8</sup>

To explore the impact of culture on the mediation process in a meaningful way it is necessary to define an accurate and useful theoretical framework for characterizing "cultural" differences; to examine the goals of the mediation process; and to explore how this framework might be applied in the mediation process to more effectively accomplish the goals of mediation. A primary thesis of this article is that the common approach of defining "culture" as being synonymous with one facet of cultural identity, such as race, ethnicity, or gender,<sup>9</sup> is a red herring which diverts attention from the search for a more accurate and constructive approach to exploring the impact of cultural diversity on mediation. Even where an author spends time discussing factors which may differentiate individuals, there is often a reversion to a cookbook type of approach for dealing with individuals from particular ethnic or racial groups.<sup>10</sup> A secondary thesis is that the goals of the mediation process differ according to the culture of each participant. Therefore, a critical element of

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8. I would argue that maximizing "effectiveness" also means protecting parties from nonconsensual imposition of other participants' cultural values. See *Mediation and Inequalities of Power*, in *THE POLITICS OF ENVIRONMENTAL MEDIATION* 129 (1987) (discussing potential influence of the mediator in environmental disputes); JEROLD S. AUERBACH, *JUSTICE WITHOUT LAW?* 1 (1983); Delgado, et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 *WIS. L. REV.* 1359 (raising concerns about increased dangers of prejudice and oppression of minorities by ADR processes); Michelle G. Hermann, *The Dangers of ADR: A Three-Tiered System of Justice*, 3 *J. CONTEMP. LEG. ISS.* 117 (1989) (raising concerns about economic influences on access to skilled ADR providers). Feminists are particularly concerned about the oppression of women who participate in mediation; see, Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 *YALE L. J.* 1545 (1991); Lisa A. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 *HARV. WOMEN'S L.J.* 57 (1984); Lynn L. Rifkin, *Mediation From a Feminist Perspective: Promise and Problems*, 2 *LAW & INEQ.* 21 (1984); D. Woods, *Mediation: A Backlash to Women: Progress on Family Law Issues*, 19 *CLEARINGHOUSE REV.* 31 (1985). But see Joan B. Kelly and Lynn L. Gigy, *Divorce Mediation: Characteristics of Clients and Outcomes*, *MEDIATION RESEARCH* 263-83 (1989) (stating that mediation can be positive for women); Joshua D. Rosenberg, *In Defense of Mediation*, 33 *ARIZ. L. REV.* 467 (1991) (arguing that mediation can be empowering for women); Jessica Pearson & Nancy Thoennes, *Divorce mediation: Reflections on a Decade of Research*, *MEDIATION RESEARCH* 9 (Kenneth Kressel et al. eds., 1989); Joan B. Kelly, *Mediated and Adversarial Divorce: Respondents' Perceptions of Their Processes and Outcomes*, 24 *MEDIATION QUARTERLY* 71 (1989).

9. See Nina R. Meierding, *The Impact of Cultural and Religious Diversity in the Divorce Mediation Process*, 9 *MEDIATION QUARTERLY* 297 (1992); Jeffrey Z. Rubin, *Culture, Negotiation, and the Eye of the Beholder*, 7:3 *NEGOT. J.* 249 (1991); Leigh-Wai Doo, *Dispute Settlement in Chinese-American Communities*, 21 *AM. J. COMP. L.* 627 (1973).

10. See William A. Donahue & Mary L. Bresnahan, *Communication Issues in Mediating Cultural Conflict*, in *NEW DIRECTIONS IN MEDIATION* 135, 155 (1994) (developing a cultural differentiation framework and noting problem of stereotyping, but then applying model to "traditional Hispanic culture."); DERALD WING-SUE, *COUNSELING THE CULTURALLY DIFFERENT* (1981) (noting dangers of stereotyping and discussing different stages of cultural identity development, but presenting implications for counseling specific groups: Asian Americans, Blacks, Hispanics, and American Indians). See also Diana Le Resche, *Comparison of the American Mediation Process with a Korean-American Harmony Restoration Process*, 9 *MEDIATION QUARTERLY* 323 (1992) (focusing on specific ethnic group but noting dangers of stereotyping).

effective cross-cultural mediation is the mediator's ability to understand these different goals or "conceptions" of the process, and to forge a process which satisfies the participants' different conceptions.

The remainder of this article will explore these ideas in more detail, focusing on disputes at the micro-level, that is, mediation between individuals or families<sup>11</sup> of differing cultural or subcultural backgrounds.<sup>12</sup> My intent is to exclude for purposes of this article situations where the mediation participants are present primarily in a representative capacity, with all of the attendant complex political implications.<sup>13</sup> My eventual hope is that if more effective methods can be discovered for the micro-level disputes, these might have some implications for the macro-level as well.

Part I - The Essence of Culture - will discuss attempts to define culture and suggest a framework created by borrowing the concept of "value orientations" from the discipline of anthropology. Part II - Conceptions of Mediation - will explore differing expectations of mediation and their relationship to value orientations. Part III - Other Impacts of Value Orientations on Mediation - will discuss other potential impacts of different value orientations on the mediation process. Part IV will sum up conclusions.

#### PART I - THE ESSENCE OF CULTURE

Culture is a concept that, like pornography, seems obvious until one tries to define it. Anthropologists have tried different approaches to capturing its essence, and have been unable to reach a consensus.<sup>14</sup> For example, the "totalist" versus "mentalist" debate centers on whether culture includes all aspects of people's lives or only includes people's thought processes.<sup>15</sup> There appears to be wide agreement, however, on three points concerning culture: first, that culture affects people's values, beliefs, perceptions, and behav-

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11. This refers to smaller, non-public, non-international disputes (such as neighbor, business, divorce, etc.).

12. The distinction between intercultural and cross-cultural mediation is that the former involves disputants who are of different cultures, whereas the latter involves disputants who are all of the same culture and a mediator who is of a different culture from the disputants. This article will address both intercultural and cross-cultural mediation.

13. Of course, one could argue about the boundaries of public v. private and whether any disputes are without public implications. See, e.g., Owen M. Fiss, *Against Settlement*, 93 YALE L. J. 1073 (1984).

14. See FRANK R. VIVELO, *CULTURAL ANTHROPOLOGY: A HANDBOOK* 10 (1978) (describing various definitions of culture).

15. *Id.*

iors;<sup>16</sup> second, that both individual and cultural differences contribute to differences in values, beliefs, perceptions, and behaviors;<sup>17</sup> and third, that the degree of interculturalness is a continuum rather than a dichotomy.<sup>18</sup> Additionally, an individual may also belong to numerous "subcultures," each contributing to that individual's cultural identity.<sup>19</sup> In mediating between individuals or families, therefore, it is of limited helpfulness to conflate "culture" with "ethnicity," because that approach ignores the impact of other sources of diversity which contribute to cultural identity, and perpetuates false dichotomies.

These limitations can be illustrated by examining the county court scenario described in the introduction. If one limits the cultural identity of the parties to their Russian ethnicity, one misses the potentially major impact of their religion, as well as differences in the length of time each party has lived in the United States, and therefore the extent of their potential assimilation into the "American culture."<sup>20</sup> Their language differences may have cultural impacts, as may gender, age, military service and employment. Perhaps they have different job skills and different levels of education. One has a son who was present, and the other a daughter who was not present. Ms. C, the interpreter, may not be of the same culture. She is Russian and Jewish, bilingual, a female, of a different generation, and came to the United States at a much earlier age.

Are the mediators in this case the same culture as the parties? Would identifying the ethnicity of each of the mediators sum up their cultural identity? One mediator is black, but he is not African-American. He is also a law student, becoming acculturated in the le-

16. See, e.g., A.L. KROEBER, *ANTHROPOLOGY: CULTURE PATTERNS AND PROCESSES* 1 (1948); MARSHALL R. SINGER, *INTERCULTURAL COMMUNICATION: A PERCEPTUAL APPROACH* 6 (1987); JOHN M. DILLARD, *MULTICULTURAL COUNSELING* 10 (1983); Stella Ting-Tooney, *Toward a Theory of Conflict and Culture, in COMMUNICATION, CULTURE AND ORGANIZATIONAL PROCESSES*, 71, 86 (William B. Gudykunst, et al., eds., 1985).

17. See Ting-Tooney, *supra* note 16, at 42 (stating that "[o]ther sources of diversity...affect our communication every day," i.e., "gender, disability, religion, age, and gender orientation...").

18. LARRY E. SARBAUGH, *INTERCULTURAL COMMUNICATION* 3 (1988). See JOHN C. CONDON & FATHI S. YOUSEF, *AN INTRODUCTION TO INTERCULTURAL COMMUNICATION* vi (1975) (discussing the continuous nature of communication).

19. There is no definition of how "large" a group must be in order to have a distinct culture, and there may be permutations of the original culture which result in "subcultures." Gudykunst distinguishes between "cultures" as usually coinciding with political boundaries between countries, and "subcultures" as "subdivisions of a 'national' culture." WILLIAM B. GUDYKUNST, *BRIDGING DIFFERENCES* 44 (1991).

20. Americans may be so diverse that they cannot be described as having a discrete "American" culture. See, e.g., G. ALTHEN, *AMERICAN WAYS* 1 (1988); EDWARD C. STEWART & MILTON J. BENNETT, *AMERICAN CULTURAL PATTERNS: A CROSS-CULTURAL PERSPECTIVE* 10 (1991); see also Derald Wing-Sue & David Sue, *supra* note 10 & accompanying text (examining effects of acculturation process on individual identity).

gal profession. The two women are white and American, but of different generations, different religions, different geographical regions and different levels of acculturation into the legal profession. Of course all of the participants have their individual personality and experience differences as well. Defining cultural identity as being the same as ethnicity misses certain potential similarities in culture between the mediators and the parties.<sup>21</sup> Although none of the mediators in this scenario are from the Soviet Union, one is Jewish and a descendant of Russian immigrants, while another is an immigrant and male.

A second danger of conflating "culture" with ethnicity is that it may perpetuate harmful and simplistic stereotypes.<sup>22</sup> Recognizing that parties may be conflating "culture" with ethnicity and being aware of stereotypes can be of some usefulness to the mediator in dealing with parties' perceptions of each other and the mediator. Such perceptions might be explored and diffused during the mediation process. However, the mediator must guard against believing in, or confirming parties' beliefs in simplistic stereotypes. To increase accuracy and to avoid the dangers of stereotyping, it is critical to identify a theoretical framework which does not conflate "culture" with ethnicity, but rather synthesizes the effects of multiple cultural, subcultural, and individual influences on the identity of the individual participant. The concept of value orientations from the discipline of anthropology provides such a framework, enabling mediators to understand and address core operative factors which inhibit effectiveness in mediation. Value orientations alone do not solve all of the challenges of mediations involving diversity. This framework, however, provides a basic foundation from which to examine these challenges.<sup>23</sup>

"Value orientations" is a concept developed by Florence Kluckhohn and her associates at Harvard.<sup>24</sup> This concept assumes that "there are universal problems and conditions which men [and women] in all societies face and only a limited number of solutions to these problems. Each of these possible solutions is called a value orientation, and we can expect to find variations among these even

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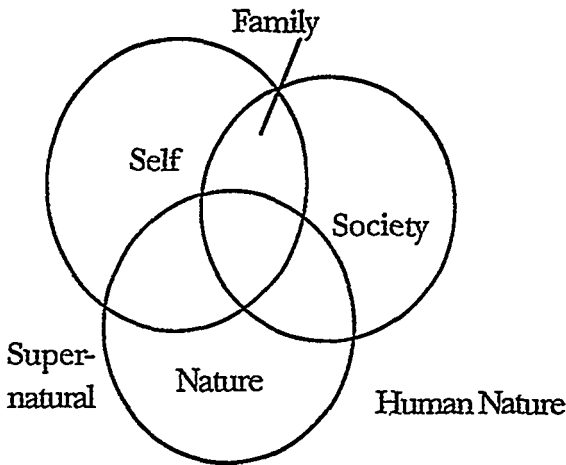
21. See ALTHEN, *supra* note 20, at 2.

22. See Lawrence B. Nadler, et al., *Culture and the Management of Conflict Situations, in COMMUNICATION, CULTURE, AND ORGANIZATIONAL PROCESSES 1* (William B. Gudykunst, et al., eds., 1985).

23. Another aspect requiring attention is differences in "code systems", or systems for communication including verbal and nonverbal behavior. See, e.g., EDWARD TWITCHELL HALL, *THE SILENT LANGUAGE* 119 (Anchor Press 2d. ed. 1973) (defining culture as communication); SARBAUGH, *supra* note 18, at 3. This concept is beyond the scope of this article.

24. F.R. KLUCKHOHN & F.L. STRODTBECK, *VARIATIONS IN VALUE ORIENTATIONS* 10 (1975).

within a single society.<sup>25</sup> Kluckhohn initially researched five sets of value orientations.<sup>26</sup> John Condon and Fathi Yousef further explored the concept of value orientations,<sup>27</sup> retaining the original five sets (with a slight modification of one) and expanding the list to a total of twenty-five sets. These twenty-five sets of value orientations are organized in six different categories, consisting of three overlapping categories: self, society and nature. The three additional categories are derived from the intersections of the first three categories: family (the intersection of self and society), human nature (the intersection of society and nature), and the supernatural (the intersection of nature and self).<sup>28</sup>



This chart sets forth the six categories followed by each of the value orientations within that category:

1. Self: individualism, independence, age, gender, activity.<sup>29</sup>
2. Family: relational orientations, authority, positional role behavior, mobility.

25. The fact that these variations exist provides further support for not conflating culture with ethnicity. CONDON & YOUSEF, *supra* note 18, at 56-7.

26. KLUCKHOHN & STRODTBECK, *supra* note 22, at 12 (listing five sets of value orientations and the range of variations postulated for each - (1) human nature, with the following variations: evil; neutral/mixture of good-and-evil; and good; each of which is further subdivided into mutable or immutable; (2) man-nature, with the following variations: subjugation-to-nature; harmony-with-nature; and mastery-over-nature; (3) time, with the following variations: past, present, and future; (4) activity, with the following variations: being; being-in-becoming; and doing; and (5) relational, with the following variations: lineality; collaterality; and individualism.).

27. See generally CONDON & YOUSEF, *supra* note 18, at 20.

28. CONDON & YOUSEF, *supra* note 18, at 59-60.

29. Condon and Yousef refer to this orientation as "sex"; I prefer the term "gender."

3. Society: social reciprocity, group membership, intermediaries, formality, property.

4. Human Nature: rationality, good and evil, happiness, pleasure, mutability.

5. Nature: relationship of man and nature, ways of knowing nature, structure of nature, concept of time.

6. Supernatural: relationship of man and the supernatural, meaning of life, providence, knowledge of the cosmic order.

Additionally each value orientation contains three variations.<sup>30</sup> For example, under the category "Self" the value orientation "individualism-independence" has three variations: "individualism," "individuality" and "interdependence."<sup>31</sup>

This value orientation framework is neither definitive nor exhaustive.<sup>32</sup> Rather, it is a useful starting point for exploring cultural diversity, its impact on dispute resolution, and its impact on mediation.<sup>33</sup> Kluckhohn postulated two major theories flowing from the value orientations concept. First, value orientations are not characterized exclusively by the dominant variation within that orientation. Rather, all of the variations of each value orientation are present, but in different rank orderings. There are less dominant variations of each value orientation which are both permitted and required.<sup>34</sup> For example, in the category "Self," the three variations of the value orientation "individualism-independence" are always present, but to differing degrees. In one culture "individualism" might dominate. "Individuality" might be secondary in strength, and "interdependence" third. In the same country, however, a minority culture might rank "interdependence" first. Second, all of the value orientations are present in any culture or society at all times.<sup>35</sup> These theories become particularly important for mediation because the non-exclusive nature of value orientations within both individuals and societies increases the possibility for mutual recognition and

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30. CONDON & YOUSEF, *supra* note 18, at 57, 60. (discussing lack of empirical basis for choosing three variations in each set, but suggesting "to offer only two variations suggests a dichotomy that invites misinterpretation for each position, and to extend the number to four or more would make our 'introduction' hopelessly unwieldy.").

31. See Appendix "individualism-interdependence" chart for a more detailed explanation of these three variations.

32. CONDON & YOUSEF, *supra* note 18, at 60.

33. See SARBAUGH, *supra* note 18, at 61 (stating, "there is a general awareness that intercultural communication is complex and generally highly unpredictable relative to intracultural communication. It seems that the systematic listing of different combinations of the main variables operating in communication dramatizes that complexity.").

34. KLUCKHOHN & STRODTBECK, *supra* note 22, at 341.

35. *Id.*



therefore understanding of these differences.

Four points are important when discussing value orientations. First, values "have to do with normative as opposed to existential propositions." Second, values are different from preferences: different preferences may have the same underlying value,<sup>36</sup> and the same preference shared by two people may have different underlying values.<sup>37</sup> Understanding this difference is key to successful mediation, as the focus of mediation is not on changing values but on finding satisfying preferences.<sup>38</sup> Third, an individual's value orientations cannot necessarily be predicted through knowledge of the individual's ethnicity. Each individual is influenced by a number of subcultures and sources of diversity at any one time, and one must also take into account individual differences.<sup>39</sup> Finally, some value orientations may exist only in certain combinations, and there may be a connection between cultural values and certain forms of non-verbal behavior or communication.<sup>40</sup> For example, if the dominant value orientation is "doing," then time will be important (being on time, following schedules, etc.). If the dominant orientation is "being," time will be less important.<sup>41</sup> This point appears to be somewhat contradictory to the premise that values are normative rather than existential.

The value orientations concept thus provides a framework for identifying differences between mediation participants which flow from a synthesis of cultural and individual sources. An example of how differences in value orientations can have a critical impact on

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36. CONDON & YOUSEF, *supra* note 18, at 52.

37. For example, two people who share the value orientation of happiness as a goal may prefer to pursue that happiness in different ways. One might collect visual art, the other classical C.D.'s. Of course, these preferences may also be formed by other value orientations. CONDON & YOUSEF, *supra* note 18, at 52.

38. "Preferences" are similar to "interests." See ROGER FISHER, ET AL., GETTING TO YES 20 (2d 1991) (describing difficulties present when focus is on values); see also C. W. MOORE, THE MEDIATION PROCESS 178-79 (1986) (discussing reframing value-related issues).

39. See, e.g., KLUCKHOHN & STRODTBECK, *supra* note 24, at 18 (writing,

Individual autonomy is always found even in the most extreme types of *Gemeinschaft* societies. The like-mindedness and behavioral similarities of individuals in 'homogeneous groups' have been overstressed. It is usually, if not always, the case that considerable leeway is permitted for 'individuality' within the confines of the definitely fixed customs which *Gemeinschaft* groups require for the ordering of human relationships. Individuality and individualism are both results of attention being given to the anatomy of the individual, but they are vastly different concepts, and significant nuances of meaning are lost when, as is so often the case, they are either confused or equated.

Again, this is further support for not conflating culture with ethnicity.)

40. CONDON & YOUSEF, *supra* note 18, at 119, 136.

41. CONDON & YOUSEF, *supra*, note 18, at 137. See Appendix.

the mediation process can be seen in the different conceptions of mediation which participants bring to the process.

## PART II - VALUE ORIENTATIONS AND CONCEPTIONS OF MEDIATION

### A. *The Nature of the Mediation Process: Defining Mediation*

What did the participants in the county court scenario described in the introduction intend to accomplish during their mediation? The participants may each have had different expectations. There is little consensus as to the definition of "mediation" at either the normative or existential level. Most would agree that the process involves intervention of a third person to help parties resolve a dispute, but definitions of the role of that third party and the structure of the process vary considerably.<sup>42</sup> This lack of consensus is due to differing value orientations among participants (both disputants and mediators).<sup>43</sup> Therefore, there will never be one accepted definition.<sup>44</sup>

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42. Some would add "neutral" to third party, and many would add that the third party is without authority to impose a solution. As to the former, mediators are not always even ideally neutral. See, e.g., Sandra Kaufman & George T. Duncan, *Third Party Intervention: A Theoretical Framework*, in M. AFZALUR RAHIM, *MANAGING CONFLICT* 273, 277 (1989) (commenting that "[I]ntervenors are sometimes accepted despite, or even due to perceived preference for one party, as was reportedly the case with Henry Kissinger in the 1973 disengagement talks in the Middle East (Touval, 1975), or with Tim Wirth in the Foothills dispute."). See also John Forester & David Stitzel, *Beyond Neutrality: The Possibilities of Activist Mediation in Public Sector Conflicts*, 5 *NEGOTIATION J.* 257 (1989). There is much debate within the literature as to the meaning and possibility of mediator neutrality. See, e.g., Sydney E. Bernard, et al., *The Neutral Mediator: Value Dilemmas in Divorce Mediation*, 4 *MEDIATION Q.* 61, 66 (1984); Kevin Gibson et al., *Biases and Rationality in the Mediation Process*, in *APPLICATIONS OF HEURISTICS AND BIASES TO SOCIAL ISSUES* (Linda Heath et al., eds., 1994) (reframing the neutrality issue by suggesting mediators should examine and reduce their biases and promote optimal rational settlements); Sarah Cobb & Janet Rifkin, *Practice and Paradox: Deconstructing Neutrality in Mediation*, 16 *LAW & SOC. INQUIRY* 35 (1991). Cobb and Rifkin identify three different conceptions of neutrality in mediation. First, "impartiality," meaning "that which ensures against bias" in which "[t]he mediator's goal is either to dismiss their opinions, values, feelings, and agendas or to separate them from the mediation process" in order to avoid coercing the parties and thus imposing the mediator's solution or values upon them." *Id.* at 41-42. Second, "equidistant," which focuses on keeping the relationship between the parties equal even though, at any one moment, the mediator may favor one side or the other. *Id.* at 44-46. Third, "a practice in discourse," in which the "mediators participate by shaping problems in ways that provide all speakers not only an opportunity to tell their story but a discursive opportunity to tell a story that does not contribute to their own delegitimization or marginalization...." *Id.* at 62. The authors argue that the latter, which is based on a communications approach rather than a psychological approach, is more pragmatic in terms of both theory and practice, and imply that this conception recognizes the impossibility of a distinction between process and substance. *Id.* at 47, 56-57. I agree that it is impossible to separate process from substance. While I think this third conceptualization is useful, it fails to take into account the influence of mediator bias on regulating discourse. Thus the mechanisms of attempting to maintain neutrality, regardless of the conception chosen for discussion, remain the same: mediator self-awareness and self-disclosure. In actual practice the power and authority of the mediator to impose a solution varies greatly. Grillo, *supra* note 8, at 1555 (discussing CAL. CIV. CODE § 4607 (e) (West Supp. 1990)). Perhaps not directly during the mediation process, but the mediator's subsequent authority taints the process to the extent that it should be called a med-arb model. Perhaps because of their value orientations California legislators disagreed. See also Minn. Stat. § 518.619(1) (West 1990).

43. But see Robert A. Baruch Bush, *Efficiency and Protection, or Empowerment and Recogni-*

Some critics argue for creation of one vision of quality standards for ADR - that is, one conception - what Professor Bush terms a "singularist" as opposed to a "pluralist" approach.<sup>45</sup> Although Professor Bush analyzes differences in views of quality standards in terms of three different visions of society (Individualist, Collectivist, and Communitarian/Relational), Bush argues that "a right and true definition of quality does exist ... whether or not it can be known with certainty," and that a "common effort [through dialogue] to find it will bring us closer to that knowledge and to each other."<sup>46</sup> I agree with the value of dialogue, but reject both the "singularist" approach and the "pluralist" approach. Instead, the task of the dialogue is to develop consensus regarding the range of acceptable conceptions. This develops a common societal vision which accommodates diversity. It is interesting to note the correlation between Bush's description of three visions of society and the three value orientations concerning individualism-interdependence, social reciprocity, and group membership. As the value orientations system shows, the ultimate visions are much more complex. I agree that conceptions correlate to the three value orientations within individualism-interdependence, but configure these conceptions somewhat differently. As with value orientations, however, it is possible to identify the field of possible variations. The following three conceptions outline the basic differences in approach.<sup>47</sup>

### 1. *The Agreement Conception*

This conception focuses on the achievement of agreement as the overriding purpose of mediation.<sup>48</sup> Within this conception lie several different approaches: the "efficiency approach," the "protection of rights approach," and the "quality of justice approach."<sup>49</sup> The

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tion?: *The Mediator's Role and Ethical Standards in Mediation*, 41 FLA. L. REV. 253 (1989) [hereinafter *Efficiency and Protection*]; Robert A. Baruch Bush, *Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation*, 3 J. CONTEMP. LEGAL ISSUES 1 (1989-90).

44. But see Bush, *Efficiency and Protection*, *supra* note 43, at 340.

45. Robert A. Baruch Bush, *Defining Quality in Dispute Resolution: Taxonomies and Anti-Taxonomies of Quality Arguments*, 66 DENV. U. L. REV. 335, 341 (1989).

46. Bush, *Efficiency and Protection*, *supra* note 43, at 341.

47. Others have formulated different descriptions of difference in the mediator's role. See, e.g., DEBORAH M. KOLB, *THE MEDIATORS* 23 - 45 (1983) (identifying two conceptions: deal maker and orchestrator); see also Lenard Marlow, *Styles of Conducting Mediation*, 18 MEDIATION Q. 85 (1987) (discussing different mediator "styles"); Carrie Menkel-Meadow, *The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms, and Practices*, 11 NEGOTIATION J. 217 (1995).

48. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION* (1994) (labeling this conception the "problem-solving" approach to mediation).

49. BUSH & FOLGER, *supra* note 48, at 15. Bush and Folger have recently reframed these approaches into the "Satisfaction Story," the "Social Justice Story" and the "Oppression Story."

"efficiency approach" focuses on reaching an agreement at all costs. This "reduces court congestion, frees scarce judicial time, and economizes on public and private expense."<sup>50</sup> "Protection of rights" focuses on assessing the fairness of the agreement. "[T]he protection-of-rights approach holds that the mediator's primary role, and the main value of the mediation process, is to safeguard the rights of the disputing parties and potentially affected third parties by imposing various checks for procedural and substantive fairness on an otherwise unconstrained bargaining process. This prevents settlement agreements from compromising important rights."<sup>51</sup>

The "quality of justice" approach focuses on achieving the best agreement.<sup>52</sup> This approach stems from the belief that

"outcomes derived from our adversarial judicial system or the negotiation that occurs in its shadows are inadequate for solving many human problems. Our legal system produces binary win-lose results in adjudication. It also produces unreflective compromise - 'split the difference' results in negotiated settlements that may not satisfy the underlying needs or interests of the parties... . Some of us have argued that alternative forms of dispute resolution ... could lead to outcomes that were efficient in the Pareto-optimal sense of making both parties better off without worsening the position of the other."<sup>53</sup>

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50. Bush, *Efficiency and Protection*, *supra* note 43, at 259-60. This conception creates the greatest danger of oppression of less powerful parties, because agreement takes precedence over all else. Fairness of both process and outcome, equality in participation, and similar protective concerns will be disregarded if they interfere with the goal of settlement.

51. Bush, *Efficiency and Protection*, *supra* note 43, at 260. Thus, this conception provides a certain amount of protection against oppression of less powerful parties. However, this conception can also disempower parties. First, it disempowers the parties to the extent that their interests or conception of their own rights differs from the law or the mediator's beliefs about the rights and interests of third parties. For example, if the law discriminates against women by not recognizing the validity of certain damages in torts, the possibility of rectifying this unfairness through mediation will be decreased significantly in this conception. If the mediator believes sole custody is best for young children, the mediator may be unwilling to entertain a discussion of joint custody. Second, the protection of rights conception might discourage discussion of concerns about prejudice and oppression, discussion which might lead to a more lasting resolution of these issues. Finally, the likelihood of meeting the parties' interests through agreement will be decreased under this conception since a focus on rights (a) tends to impose an adversarial atmosphere and zero-sum game and (b) lessens the possibility of unique solutions.

52. Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or the Law of ADR*, 19 FLA. ST. U. L. REV. 1 (1991). To some extent Menkel-Meadow's differentiation of conceptions of mediation is similar to Bush's, except that she combines and reduces them to two: "quantitative-efficiency" versus "qualitative-justice." *Id.* at 6. Her "qualitative-justice" conception incorporates both "elements of process and substantive justice claims." *Id.* at 8. I think it is more helpful to differentiate between the four different approaches, which can be recombined for a more accurate portrait, much in the way that Kluckhohn in her value orientations conceptions states that all value orientations are always present, but with different orders of priority. Bush also recognizes the "quality of justice" conception, but somehow this drops out in his final categorizations. Bush, *Mediation and Adjudication*, *supra* note 43, at 257.

53. Menkel-Meadow, *supra* note 52, at 7.

This conception would appear to offer the most protection against prejudice and oppression in terms of outcome; however, there remains the question of who makes the judgment that a Pareto-optimal solution has been reached, and to what extent are mediators and parties influenced by cultural differences to view an agreement as Pareto-optimal when it is not. There is the somewhat circular problem of who makes the judgment and who judges whether that judgment is accurate, and according to what standard.<sup>54</sup>

### 2. *The Individual Personal Growth Conception*

The individual personal growth conception focuses on mediation's ability to provide opportunities for individual personal growth. Growth may occur through learning to manage conflict more effectively, recognizing individual ability to solve problems without depending on outside institutions, and/or recognizing common humanity. This conception of mediation has also been labeled "transformative" or "empowerment and recognition."

In simplest terms, *empowerment* means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems. *Recognition* means the evocation in individuals of acknowledgment and empathy for the situation and problems of others. When both of these processes are held central in the practice of mediation, parties are helped to use conflicts as opportunities for moral growth, and the transformative potential of mediation is realized.<sup>55</sup>

The defining feature of this conception is that it focuses on individual transformation within a moral/ethical framework<sup>56</sup> rather than focusing on transformation of the relationship between the parties, which is the third possible conception.

### 3. *The Relationship Conception*

The relationship conception focuses on healing the relationship between the parties as the main purpose of mediation. Also known

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54. Bush, *Efficiency and Protection*, *supra* note 43, at 357.

55. BUSH & FOLGER, *supra* note 48, at 2. This conception is not as clear in terms of its effects on the possibility of prejudice and oppression. On the one hand, it lessens the possibility because its primary focus is on recognizing individual strengths and interests. On the other hand, to the extent it may not recognize that institutions may increase the power of those otherwise subject to oppression, this conception may end up disempowering those whom it seeks to assist.

56. BUSH & FOLGER, *supra* note 48, at 24. "Transformation, in the sense used here, necessarily connotes *individual moral development*, although this kind of change will very likely lead to changes in social institutions as well." *Id.*; see also Menkel-Meadow, *supra* note 47, at 217 (reviewing three books which address mediation's transformative potential).

as "peacemaking" or "sacred justice,"<sup>57</sup> this conception strives to restore harmony to the relationship, often making use of restitution, apologies, and forgiveness. An example of this conception is *ho'oponopono*, a Hawaiian peacemaking practice which requires participants to agree to process conditions which are designed to ensure an ethos of commitment, honesty, privacy and fairness.<sup>58</sup>

*B. The Relationship Between Conceptions of Mediation and Value Orientations*

The conceptions of mediation flow from and correlate with differences in value orientations. No one value orientation will be the sole determinant, but an examination of the individualism-interdependence value orientation illustrates the influence a particular value orientation can have on the participants' conceptions of mediation. The individualism-interdependence value orientation lies within the category of Self, and allows for at least three distinct variations: individualism, individuality and interdependence.<sup>59</sup>

The individualism variation correlates most closely with the agreement conception of mediation. Each participant in the mediation is allied with other participants for the specific purpose of reaching agreement.<sup>60</sup> Variations within the conception of mediation - efficiency, protection of rights, and quality of justice - all focus on agreement, whether it is simply reaching agreement or focusing on the quality of the agreement reached.<sup>61</sup> The conception variation a participant prefers may correlate with differences in other value orientations held by that participant.

The individuality variation correlates with the individual personal growth conception of mediation. Each participant is allowed and encouraged to grow as long as that growth occurs within a framework of moral and ethical limits. The focus of empowerment in this conception is on the realization of individual freedom, but it must occur within the general constraints related to recognition of common humanity. The transformation is of the individual, focusing on enabling the individual to realize, both conceptually and actually, the full extent of his or her freedom within those general constraints.<sup>62</sup>

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57. Manu Meyer, *To Set Right - Ho'oponopono/A Native Hawaiian Way of Peacemaking*, 12 THE COMPLETE LAW 30 (1995); Diane LeResche, *The Reawakening of Sacred Justice* CLEARINGHOUSE REVIEW 893 (Dec. 1993).

58. Manu Meyer, *supra* note 57, at 31.

59. See Appendix, "Individualism-Interdependence" chart.

60. See CONDON & YOUSEF, *supra* note 18, at 68.

61. See Bush, *Efficiency and Protection*, *supra* note 43, at 261.

62. BUSH & FOLGER, *supra* note 48, at 12.

The interdependence variation correlates with the relationship conception of mediation. Each participant is committed to re-creating and re-discovering harmony, consensus and conformity within the group. A satisfactory process must rest on recognition of the interdependence of the participants and the importance of all relationships, and must heal the wounds in the relationships between the participants. A recognition of the inability to heal the wounds and severance of the relationship would be preferable to an agreement which solves the surface problem but does not address the relationship issues or individual personal growth which does not occur in the context of healing the relationship.

Kluckhohn's theory that value orientations are not characterized exclusively by the dominant orientation would seem to apply here as well.<sup>63</sup> That is, all of the conceptions of mediation are present for each participant, but in different rank orderings. For example, a mediator may have a dominant orientation of agreement but be willing to adopt the relationship approach if it is desired by the participants. A mediator must have a wider range of skills and knowledge in order to be able to implement multiple conceptions of the mediation process.<sup>64</sup>

The mediation will proceed more smoothly if all participants share the same value orientations. It is likely, however, that diversity among participants will result in diverse conceptions of the process. In the county court scenario described in the introduction, it is possible that Mr. B's and the supervisor's dominant conceptions of the mediation were "relationship;" Mr. A's dominant conception was "agreement/efficiency;" the male mediator's dominant conception was "agreement/protection of rights;" and the female mediator's dominant conception was "individual personal growth."

### *C. Using Value Orientations to Forge a Joint Conception of Mediation*

For mediation to be effective, it must accomplish the goals which flow from the participants' conception of the process. For example, a mediation which results in agreement might satisfy the goals flowing from the mediator's agreement conception of the process; but if the disputants share a dominant conception of relationship, the process will have been ineffective for them. The ideal mediator must be able to discover the conceptions of all participants - including his or her own conception - and be able to forge a process which meets

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63. See Kluckhohn & Strodtbeck, *supra* note 24, at 18.

64. See Heath, *supra* note 42, at 180 (discussing need for mediators to recognize biases that may impede mediation).

all of the conceptions present.<sup>65</sup> The participants need not alter their own conceptions, but must be willing to accommodate the conceptions of others. Just as a mediator moves from positions to interests in order to arrive at collaborative agreements, a mediator can move from identifying participants' conceptions of mediation to identifying value orientations in order to forge an acceptable joint conception of the process.

The conundrum of identifying individual value orientations is that this attempt will inevitably be colored by the value orientations of the person performing the identification. Nevertheless, an attempt must be made to select appropriate participants, structure the process in a constructive manner, develop constructive interventions and make appropriate disclosures.

Identification of value orientations should begin at the intake stage and continue throughout the mediation process.<sup>66</sup> It might be possible to develop a written test to identify value orientations.<sup>67</sup> However, this could add layers of formality, cost and time. In addition, a written test might be offensive to some potential participants. Instead, many value orientations can be identified in the ordinary course of the mediation process. Ideally, both mediator(s) and disputants would engage in this identification. Something similar already occurs, consciously or not. For example, it occurs when a disputant contacts a mediator to determine whether to hire that mediator, or during the mediation when a disputant confronts a mediator about a suspected bias. However, most disputants will not be knowledgeable about a formal framework of value orientations.<sup>68</sup> Therefore, the mediator should have the burden of becoming aware of their own value orientations prior to mediating. They should identify the disputants' value orientations through conversation and other interactions with the disputants, and make appropriate disclosures to the disputants.

For example, in the county court scenario presented in the introduction, the two mediators and their supervisor should have the

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65. This ideal would seem to contradict Bush and Folger's cautions against attempting to integrate problem-solving and transformative approaches. See BUSH & FOLGER, *supra* note 48, at 108-12.

66. Value orientations may help determine ranges of preferences, and will be crucial in framing and reframing options. To be acceptable, options must fit within a party's value orientations.

67. Perhaps along the lines of the Myers-Briggs Type Indicator or other personality tests. See ISABEL BRIGGS MYERS, INTRODUCTION TO TYPE: A DESCRIPTION OF THEORY AND APPLICATIONS OF MYERS-BRIGGS TYPE INDICATOR (4th ed., 1987) (discussing use of Myers-Briggs personality test).

68. Mediators may also lack knowledge of a formal framework of value orientations. However, the mediator's ignorance may be remedied through training.



burden of being aware of their own value orientations and how these orientations impact their conception of mediation.<sup>69</sup> The mediators should then elicit information regarding each participant's value orientations, discuss any differences, and negotiate an acceptable approach.

If mediation is to be effective, disputants must be able to choose a different mediator should the mediator be unable to accommodate the disputants' value orientations. In mandatory mediation, this will be particularly important, but may be difficult administratively.<sup>70</sup> For this reason, I agree with those who support mandatory mediation but would provide an easy out for the disputants.<sup>71</sup> In the county court scenario, the mediators should emphasize that, although they hope they can help the parties resolve their dispute, the parties are under no obligation to do so and are free to terminate the mediation at any time. The mediators should also indicate to what extent, if any, they are willing to alter the process in accordance with the parties' preferences.

### PART III - OTHER IMPACTS OF VALUE ORIENTATIONS ON MEDIATION

The impact of individualism-interdependence on the participants' conceptions of mediation is only one example of the potential impact of value orientations on the mediation process. This part will highlight other potential impacts, and offer some suggestions for process interventions to increase effectiveness in the face of varying

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69. The mediators should, of course, discuss and reconcile any differences in their individual conceptions prior to mediating as a team.

70. For example, a court-annexed mediation program may offer only one model of mediation (probably efficiency), or assign a particular mediator from the staff without giving parties input. An example is the program which I administer, teach and supervise at the University of Denver College of Law. Law students mediate cases at Denver County Court by showing up at the courtroom, with a supervisor, during the trial docket; judges then "refer" cases to mediation and the mediation takes place immediately. Sometimes the referral will take the form of an explicit court order; at other times, although the judge merely suggests or offers mediation, disputants have indicated that they interpreted that suggestion or offer as an order. The disputants have no choice of mediator in that situation because only one mediation team is available on site.

71. Menkel-Meadow, *supra* note 52, at 1. Magistrate Brazil made a similar statement at the Session on Civil Justice Reform Act of 1990, American Association of Law Schools Annual Conference, San Francisco conference 1993. The way I implement this philosophy is to ask disputants to listen to the description of the process. If disputants then say they are willing to give it a try, we proceed; if they are not, they go back to court. See Joshua D. Rosenberg, *In Defense of Mediation*, 33 *Ariz. L. Rev.* 467, 471 (1991) (discussing mandatory mediation); see also NANCY H. ROGERS & CRAIG A. MCEWEN, *MEDIATION: LAW/POLICY/PRACTICE* 43-59 (1989) (discussing history of mediation policy objectives).

value orientations.<sup>72</sup>

### A. *Potential Impacts on the Mediation Process*

The twenty-five sets of value orientations identified by Condon and Yousef can be categorized as potentially impacting the mediation process in four ways: fundamental, structural, power balance, and substantive impacts. Fundamental impacts are those which affect whether mediation will be an acceptable process, which conception(s) will be acceptable or preferable, and the parties' likelihood of responding to any of the mediator's available roles and techniques. Structural impacts are those which affect who is allowed or invited to be present during the mediation, as well as who are acceptable spokespersons, negotiators, decision-makers, and mediators, application of particular techniques and roles, patterns of communication, and the use of caucus. Power balance impacts affect whoever has more or less power, and substantive impacts affect the range and framing of acceptable solutions for resolving the dispute. Some value orientations have the potential for more than one type of impact.

#### 1. *Fundamental Impacts*

Value orientations which will have fundamental impacts on the mediation process include individualism-independence, activity, authority, social reciprocity, group membership, intermediaries, good and evil, happiness/pleasure, mutability, concept of time, meaning of life, and providence.<sup>73</sup>

For example, the authority value orientation will have a substantial effect on both the mediator's and participants' views of the appropriate mediator's role. In particular, the directiveness of the mediator will be affected. Applying Kluckhohn's theory of rank orderings,<sup>74</sup> there are six different potential combinations of the three authority value orientations, with impacts on the choice of mediator's role as indicated in the Authority Value Orientations and Fun-

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72. More research is needed, at both the theoretical and empirical levels, to identify issues which are likely to arise due to the conflict of particular value orientations, as well as methods of addressing these particular conflicts. It might be possible to develop a computer program in which one could enter each participant's value orientations (including the mediator(s) and the process conception) to make some of these predictions on a theoretical level. This task is beyond the scope of this article. There is one study which attempts to empirically investigate the interaction of value differences in the context of conflict resolution. See Daniel Druckman & Benjamin J. Broome, *Value Differences and Conflict Resolution: Familiarity or Liking?*, 35 J. CONFLICT RESOL. 4, 571 (1991) (focusing on effects of liking and familiarity between two groups with different values, in context of conflict).

73. See CONDON & YOUSEF, *supra* note 18, at 76.

74. See discussion of Kluckhohn's theory of rank orderings, *infra* fn 32-39 & accompanying text.

damental Impacts chart.<sup>75</sup> Of course, the authority value orientation will not be the sole determinant of conception of the mediator's role; other value orientations will also affect the choice of role.

## 2. *Structural Impacts*

Value orientations which will have structural impacts on the mediation process include age, gender, relational orientation, positional role behavior, intermediaries, formality, rationality, ways of knowing nature, concept of time, and knowledge of the cosmic order. For example, intermediaries has three potential value orientations. There are six possible combinations of intermediaries, with impacts on structure as to the use of caucus and patterns of communication as indicated in the Intermediaries Value Orientations and Impacts on Mediation Structure chart.<sup>76</sup> Value orientations toward intermediaries will be only one factor affecting mediation structure.

## 3. *Power Balance*

Value orientations which may have power balance impacts on the mediation process include age, gender, relational orientations, positional role behavior, and group membership.<sup>77</sup> Other value orientations related to desirable or acceptable solutions may also have power balance impacts, because the ability to deliver on a solution will also be a source of power. For example, if property concepts include individual ownership, then owning property will be a source of power. If property belongs to everyone, then this type of power will not exist.

Power balance impacts may have potential impacts on fairness of the process and outcome. The mediator should therefore discuss with the participants to what extent power imbalances will be countered during the process; for example, through provision of information or encouraging legal counsel to attend the sessions. An example of a value orientation with a power balance impact is positional role behavior. There are six possible combinations of this value orientation, with impacts on power balance and the possibility of influencing that balance as indicated in the Positional Role Behavior Value Orientations and Impacts on Power Balance chart.<sup>78</sup>

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75. See Appendix, "Authority Value Orientations and Fundamental Impacts" chart

76. See Appendix, "Intermediaries Value Orientations and Impacts on Mediation Structure" chart.

77. See CONDON & YOUSEF, *supra* note 18, at 77.

78. See Appendix, "Positional Role Behavior Value Orientations and Impacts on Power Balance" chart.

#### 4. *Substantive Impacts*

Value orientations which may have substantive impacts include relationship of man and nature, relationship of man and supernatural, mobility, positional role behavior, property, structure of nature, and the meaning of life. An awareness of these potential impacts will assist the mediator in identifying potential solutions and framing them in acceptable ways. An example of a value orientation with a potential substantive impact is property.

Impacts of property value orientations on the county court mediation described at the beginning of this article might be as indicated in the Property Value Orientations and Substantive Impacts chart.<sup>79</sup> Property is only one of many value orientations which may have substantive impacts. Preferences unrelated to value orientations will also come into play.

#### B. *Process Interventions*

##### 1. *Increase Liking and/or Familiarity.*

At least one study has shown that increasing both the parties' appreciation of each other's value differences and their affection for each other increases the parties' expectations for success as well as the likelihood of achieving a successful outcome.<sup>80</sup> Although further research needs to be done, the authors of the study theorize that "strong manipulations of *either* variable could conceivably produce positive effects on conflict-resolving behaviors."<sup>81</sup> Increasing these variables can be accomplished in mediation through (1) identification of similar value orientations ("So you both agree it is important to put the past behind you and look to the future to resolve this dispute"), which should produce increased liking,<sup>82</sup> and (2) identification of different value orientations in the context of rank-ordering ("For you, intellectual, material and physical goals are all important, but intellectual goals take precedence"), which may reduce the perception of conflict compared to the stereotype reaction which reflects categorical differences.<sup>83</sup>

For example, in the county court scenario a primary issue is whether money was provided as a gift or as a loan. Several value ori-

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79. Druckman & Broome, *supra* note 72, at 590.

80. Druckman & Broome, *supra* note 72, at 590.

81. Druckman & Broome, *supra* note 72, at 590.

82. Druckman & Broome, *supra* note 72, at 590.

83. Druckman & Broome, *supra* note 72, at 590.

entations could be involved here, but two in particular stand out as possibilities: meaning of life (physical-material goals, intellectual goals, spiritual goals)<sup>84</sup> and property (private, utilitarian, community).<sup>85</sup> The mediators attempted to surface information which relates to these value orientations by asking Mr. A why the money was important to him. He stated that it was important to him that this money was a loan because it represented his daughter's education. Had the mediators had the value orientations framework in mind, they might also have asked why the daughter's education was important. The answer could clarify value orientations about the meaning of life for Mr. A (e.g., so his daughter can get a high paying job vs. so she can continue her intellectual development). Mediators might, of course, take this further step without having a value orientations framework in mind. However, without the value orientations framework, mediators are more likely to assume they understand its importance and therefore not seek to further understand its significance to the parties.

The mediators could then follow up with similar questions to Mr. B. Depending on the answer received, the mediators could then reframe in either of the methods proposed above.<sup>86</sup> For example, the mediators could use an identification of similar value orientations ("So you both agree that material success is important") or identification of different value orientations in the context of rank ordering ("So you both agree that both material success and intellectual development are important, but Mr. A would place higher priority on intellectual development and Mr. B would place higher priority on material success"). Similarly, the mediators might ask both Mr. A and Mr. B how they feel property, and in particular, money, should be allocated - perhaps starting with the general, and then with the particular situation as between friends, and, finally, reframing according to the answers received.

## 2. *Reframing in Terms of Parties' Value Orientations*

Options will be more or less acceptable to parties depending on their fit with each party's value orientations. To the extent the mediator can frame or reframe options to identify this fit, the options will be more attractive. For example, options for resolution in the

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84. See, Appendix, "Meaning of Life" chart.

85. See, Appendix, "Property" chart.

86. In the context of mediation, reframing refers specifically to statements of participants being restated in positive language, by each other or by the mediator. See, e.g., James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLINICAL L. REV. 457, 474 (1996) (noting use of reframing to produce progress in mediation).

county court scenario might include: (1) Mr. B pays Mr. A \$1500; (2) Mr. B pays Mr. A the entire \$3000, but over three years; (3) Mr. B pays nothing, but offers to teach the daughter his occupation; (4) Mr. A's family tutors Mr. B's family in English, and the B's pay for this at \$20 per hour for 150 hours over the next year.<sup>87</sup> Assuming Mr. A places higher priority on intellectual development and Mr. B places higher priority on material success, the options can be re-framed in the following terms: (1) Mr. A receives \$1500 towards his daughter's education, and Mr. B ends up with more money than if he went to court and lost; (2) Mr. A receives the entire \$3000 towards his daughter's education, and Mr. B has time to get on his feet financially at the same time as he pays the money back; (3) Mr. A's daughter gains knowledge and skills about how to perform Mr. B's occupation, and Mr. B contributes to the daughter's job opportunities and increases his own family's standard of living faster since he will not have to pay any money; and (4) The A's contribute to the B's intellectual development and receive money which can be spent on the daughter's education, and the B's increased ability to speak English will increase their opportunities to get higher paying employment. Again, good mediators already try to frame options in terms of the parties' interests. The advantage of the value orientations framework is that it gives mediators more readily-accessible categories and terminology.<sup>88</sup>

### 3. *Process Structure*

The wider the gap between the parties' value orientations, the greater the probable need for increased use of the caucus, both pre-mediation<sup>89</sup> and during the process.<sup>90</sup> The reason is that more exploration of differences and reframing will need to take place, and caucuses can provide more safety for testing hypotheses about differences and finding acceptable terminology. The substance of what needs to be accomplished, however, remains the same.<sup>91</sup>

87. See FISHER, ET AL., *supra* note 38, at 56 - 80 (inventing options for mutual gain).

88. See KLUCKHOHN & STRODTBECK, *supra* note 24, at 3-10 (noting earlier studies of similar topics were too simplistic to be useful in predicting human behavior).

89. Silke Hansen, Community Relations Service Address, at CCMO Annual Meeting, on Cross Cultural Mediation: Facing the Challenge of Diversity (May 15, 1993) (observing that most of her work is accomplished before parties even get to the table).

90. In caucus, the mediator can hear the thoughts of a party and aid them in restating their ideas in a manner less likely to anger the other party. Mediation, Inc., Mediator Certification Training Course (Jan. 1995) (training materials available from Mediation, Inc.).

91. See P. H. GULLIVER, DISPUTES AND NEGOTIATIONS: A CROSS-CULTURAL PERSPECTIVE 81, 170 (1979) (proposing two concurrent negotiation processes, one of developmental stages and the other of changing information and expectations which follow same general patterns regardless of culture).

*C. Promoting Mediator Self-Awareness and Diversity*

Mediator training to increase awareness of potential differences among participants in value orientations and in different conceptions of mediation would increase mediator effectiveness, not just in those mediations we label "cross-cultural," but in all mediations.<sup>92</sup> In view of the potential effects of mediator value orientations, training to increase mediator self-awareness is critical.<sup>93</sup> Furthermore, in many communities, mediators are overwhelmingly white and middle-class.<sup>94</sup> This situation creates a possible dearth of acceptable mediators, particularly where language differences exist. Increasing diversity among mediators would provide additional perspectives as to how to increase effectiveness of mediation in the face of differences in value orientations. There are, of course, mediators who are not white and middle-class. Some minority mediators are involved in training on these issues. A particular conflict resolution workshop that I attended included one black male and one white male trainer as well as a session which included a panel of mediators which included a white male, an Asian female, and a man of mixed ethnicity: Native American, Chinese, English, and African.<sup>95</sup>

PART IV- CONCLUSIONS

Every mediation is intercultural; it is only a matter of degree as to how different the parties' cultures are. Furthermore, there is no such thing as a culture which is completely homogeneous. Although stereotypes appear to be inevitable, simplistic stereotypes are less accurate and lead to less effective, rather than more effective, communication.<sup>96</sup> All of these factors lead to the conclusion that rather

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92. See SARBAUGH, *supra* note 18, and accompanying text.

93. See HALL, *supra* note 23, at 30 (stating, "Years of study have convinced me that the real job is not to understand foreign culture but to understand our own.")

94. See, e.g., William A. Donohue, *Ethnicity and Mediation*, in COMMUNICATION, CULTURE AND ORGANIZATIONAL PROCESSES 134-54 (1985) (discussing a large number of cases in which the mediator is middle-class and white and the disputants are black); see also, The Colorado Council of Mediators and Mediation Organizations (CCMO) has made diversification of its membership an important priority, and in February 1992 co-sponsored a training in Denver in Community-Based Mediation which solicited trainees from agencies which work with minority communities. The actual training was conducted by Silke Hansen of the Community Relations Service of the U.S. Dept. of Justice, an agency which focuses on resolving interracial conflicts, with CCMO members acting as coaches and assistant trainers (information on file with author).

95. The Community Boards, Intercultural Conflict Resolution Workshop (Sept. 1990) (attended by author).

96. See Fred L. Casmir, *Stereotypes and Schemata*, in COMMUNICATION, CULTURE, AND ORGANIZATIONAL PROCESSES 48, 63-64 (defining stereotypes as pre-existing structures in perception.) Casmir explains impossibility of acquiring any information without stereotypes but notes increased efficiency that follows evolution of such structures.

than to approach differences in terms of racial, ethnic or other single identifying characteristics, it would be more effective in mediation to approach recognition of differences in terms of value orientations, thus allowing for individual differences and the effects of multiple "cultures." This is not to say that if the parties identify their own value orientations as related to their self-identified culture the mediator should contradict them. Rather, mediators might increase positive results in conflict resolution if they frame differences in terms of value orientations. Even with this approach, it is important to take a "genotypical" approach to this more complex stereotyping system, treating every categorization as a hypothesis.<sup>97</sup> In other words, be humble.<sup>98</sup>

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97. *Id.* at 57 (stating that "[G]enotypically, an individual would stay open to his or her environment and, while using stereotypes or schemata as a beginning point, would take into consideration an evolving situation with the understanding that modification and change are part of the process.").

98. Interview with Arnold Levinson, diversity training participant, (Dec. 27, 1992) (quoting response received when asking a dissatisfied fellow training participant of color, "how, then, can we best approach diversity?"); see also Jan Jung-Min Sunoo, *supra* note 99, at 383-88 (1990) (suggesting general rules of conduct for mediating intercultural disputes).



## APPENDIX

*SELF*

<i>Individualism-interdependence</i>	
Individualism	separate but equal; "voluntarily allied with others for specific purposes..." <sup>99</sup> The person who stands out is praised.
Individuality	person is allowed individual freedom of behavior and expression within the limits set by the social structure, be it age, gender, family, tribe, etc. <sup>100</sup> The person who stands out doesn't matter as long as acting within general constraints.
Interdependence	"[W]here a person's concept of self almost always involves a consciousness of his place in society and his relationship to another or others with whom he interacts." <sup>101</sup> The emphasis is on interdependence, harmony, conformity, and consensus within the family, organization, and nation. <sup>102</sup> "[T]he person who stands out is not praised." <sup>103</sup>

99. CONDON & YOUSEF, *supra* note 18, at 68. Paradoxically, the "individualism" value orientation results in greater conformity.

100. CONDON & YOUSEF, *supra* note 18, at 66-68.

101. CONDON & YOUSEF, *supra* note 18, at 68.

102. CONDON & YOUSEF, *supra* note 18, at 67.

103. CONDON & YOUSEF, *supra* note 18, at 67.

<i>Age</i>	
Youth	"[V]igor, idealism, and a freshness that is thought to be dissipated with age," and "experiences" rather than "experience" are valued. <sup>104</sup>
The Middle Years	"[A]voids the excesses of both alternatives;" "the middle years are most productive." <sup>105</sup>
Old Age	Experience and wisdom are valued. <sup>106</sup>

This value orientation involves not only the fact of age but also "the characteristics which are assumed to accrue with these ages."<sup>107</sup>

<i>Sex</i>	
Equality of Sexes	Active and passive, process and goal, context and principle, independence and interdependence are equally important. <sup>108</sup>
Female Superiority	Passive, process context and interdependence are more important. <sup>109</sup>
Male Superiority	Active, goal, principle, and independence are more important. <sup>110</sup>

Condon and Yousef discuss sex in terms of men's and women's roles and how they are treated.<sup>111</sup> As with age, however, certain val-

104. CONDON & YOUSEF, *supra* note 18, at 68-69.

105. CONDON & YOUSEF, *supra* note 18, at 69.

106. CONDON & YOUSEF, *supra* note 18, at 69.

107. CONDON & YOUSEF, *supra* note 18, at 68.

108. *See, e.g.*, CAROL GILLIGAN, *IN A DIFFERENT VOICE*, (1982); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

109. GILLIGAN, *supra* note 108, at 10.

110. GILLIGAN, *supra* note 108, at 10.

111. CONDON & YOUSEF, *supra* note 18, at 70-71.

ues may be associated with the male and female.<sup>112</sup>

<i>Activity</i>	
Doing	A person identifies him or herself in terms of activities. <sup>113</sup>
Being-in becoming	Self-discovery and personal fulfillment are valued. <sup>114</sup>
Being	The being orientation has been equated by Stewart with Maslow's concept of self-actualization and characteristics of his peak experiences, which are valued in themselves without comparison to other standards. <sup>115</sup>

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112. Of course, cultures may place different values on the different genders, and behavior exhibited by men in one culture may be classified as feminine in another culture. For example in Iran, "Men are expected to show their emotions...they are sensitive and have well-developed intuition and in many cases are not expected to be too logical. They are often seen embracing and holding hands. Women, on the other hand, are considered to be coldly practical." EDWARD T. HALL, *THE SILENT LANGUAGE* 20 (1959).

113. CONDON & YOUSEF, *supra* note 18, at 71. "[O]bjectifiable and practical doing activities are more highly valued than sentiment activities, in which it is difficult to see what one does." *Id.* at 72.

114. CONDON & YOUSEF, *supra* note 18, at 72.

115. CONDON & YOUSEF, *supra* note 18, at 72.

*THE FAMILY*

<i>Relational Orientations</i>	
Individualistic	A family may be considered to be only slightly more than a biological necessity. <sup>116</sup> This idea is reflected in speech patterns using metaphors for relations: neighbors, friends, allies, and partners. <sup>117</sup>
Collateral	Family identification is strong but more limited to terms of generations, number of relations, and historical consciousness as compared with lineal. In the extended family, which is typical of the collateral orientation, even the separation between uncles or aunts and distant cousins can be felt with the deep sense of relationship akin to the feeling between a child and parents. <sup>118</sup>
Lineal	Identification is with a very old and widely extended family. This may involve activities such as taking care of graves of ancestors and obeying the wishes of parents who are long dead. <sup>119</sup>

116. CONDON & YOUSEF, *supra* note 18, at 74.

117. CONDON & YOUSEF, *supra* note 18, at 75.

118. CONDON & YOUSEF, *supra* note 18, at 74.

119. CONDON & YOUSEF, *supra* note 18, at 74.

<i>Authority</i>	
Democratic	The authority figure should ideally solicit the opinions of all members and act according to their wishes. <sup>120</sup>
Authority-centered	Actual authority resides in an abstract or general form, such as religious beliefs or a family name, rather than residing in an individual. <sup>121</sup>
Authoritarian	An individual makes important decisions which others are expected to follow, thus the authority position is by "ascription" and thus no one else can properly serve as the authority role. <sup>122</sup>

<i>Positional Role Behavior</i>	
Open	There is no specific role or behavior which is appropriate to an age or sex. <sup>123</sup>
General	Rights and obligations exist in general terms only, thus maintaining a balance between completely fixed and completely free. <sup>124</sup>
Specific	Specifically delineated rights and obligations are set put within a family, usually determined by sex and age. <sup>125</sup>

120. CONDON & YOUSEF, *supra* note 18, at 76.

121. CONDON & YOUSEF, *supra* note 18, at 76.

122. CONDON & YOUSEF, *supra* note 18, at 76.

123. CONDON & YOUSEF, *supra* note 18, at 77.

124. CONDON & YOUSEF, *supra* note 18, at 78.

125. CONDON & YOUSEF, *supra* note 18, at 77-78.

<i>Mobility</i>	
High	In an effort to better oneself, the norm appears to be continuously shifting. <sup>126</sup>
Phasic	Limited or periodic movement is valued for specific gains, such as money or education, but there is an expectation that one will return to their place of origin. <sup>127</sup>
Low, static	One is expected to stay in one place for a long period of time to gain rights and trust. <sup>128</sup>

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126. CONDON & YOUSEF, *supra* note 18, at 79.

127. CONDON & YOUSEF, *supra* note 18, at 79.

128. CONDON & YOUSEF, *supra* note 18, at 79-80.

*SOCIETY*

<i>Social Reciprocity</i>	
Independence	In order to avoid having freedom threatened, the value is to avoid commitments and obligations. <sup>129</sup>
Symmetrical-obligatory	One's obligations are primarily to equals or to institutions with whom one has a contractual base. <sup>130</sup>
Complimentary-obligatory	All people are forever indebted to others, and are recipients of such debts, especially those of superior or subordinate status. <sup>131</sup>

Social reciprocity refers to the practice of give and take in formal and informal interpersonal communication.<sup>132</sup>

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129. CONDON & YOUSEF, *supra* note 18, at 81.

130. CONDON & YOUSEF, *supra* note 18, at 81.

131. CONDON & YOUSEF, *supra* note 18, at 81.

132. CONDON & YOUSEF, *supra* note 18, at 81.

<i>Group Membership</i>	
Many Groups, Brief Identification, Subordination of Group to Individual	People are encouraged to make friends and establish contacts which best suit them, however, friendships and associations are likely to be segmented: "[m]y coworker may not be my drinking buddy." <sup>133</sup>
Balance of Above and Below Categories	Exercise greater personal freedom when selecting group affiliations than in the next category; however, there is a much greater range of obligations and length of affiliation than in the previous category. <sup>134</sup>
Few Groups, Prolonged Identification, Subordination of the Member to the Group	The individual is "born into social groups and remains a part of those limited groups throughout his/her life." <sup>135</sup>

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133. CONDON & YOUSEF, *supra* note 18, at 84.

134. CONDON & YOUSEF, *supra* note 18, at 83.

135. CONDON & YOUSEF, *supra* note 18, at 83.



<i>Intermediaries</i>	
No Intermediaries (Directness)	Direct interaction is valued, and the use of intermediaries may be seen "as an inconvenience and at times as a sign of weakness or lack of courage." <sup>136</sup>
Specialist Intermediaries	Technical, special intermediaries, are used in a more limited range of circumstances than where intermediaries are seen as essential. <sup>137</sup> The intermediary is more likely a stranger or professional.
Essential Intermediaries	Most important transactions require intermediaries. <sup>138</sup> The intermediary may guarantee the agreement, and may have certain obligations to maintain the agreement. The intermediary may have a more personal relationship with the parties. <sup>139</sup>

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136. CONDON & YOUSEF, *supra* note 18, at 84.

137. CONDON & YOUSEF, *supra* note 18, at 85-86.

138. CONDON & YOUSEF, *supra* note 18, at 85.

139. CONDON & YOUSEF, *supra* note 18, at 85-86.

<i>Formality</i>	
Informality	Formality is often considered to be a mask for reality and thus is distrusted. <sup>140</sup> "Formal codes of conduct, titles and honorifics, and politer forms of speech seem at least unnecessary and frequently disruptive to 'real' communication" and "sincere human relations." <sup>141</sup>
Selective Formality	Selected interactions are dignified by formality. <sup>142</sup>
Pervasive Formality	Formality allows for smooth and predictable communication while avoiding risks of awkward or embarrassing encounters. <sup>143</sup>

All societies seem to allow for both formality and informality in specific relationships; the difficulty cross-culturally is knowing which is which.<sup>144</sup>

140. CONDON & YOUSEF, *supra* note 18, at 87.

141. CONDON & YOUSEF, *supra* note 18, at 86.

142. CONDON & YOUSEF, *supra* note 18, at 86.

143. CONDON & YOUSEF, *supra* note 18, at 86.

144. CONDON & YOUSEF, *supra* note 18, at 86.

<i>Property</i>	
Private	Property is viewed almost as an extension of one's self. <sup>145</sup>
Utilitarian	Property is only considered to have value as long as it is useful and used. <sup>146</sup>
Community	Neither personal claims of ownership nor right through usage are relevant or recognized. <sup>147</sup>

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145. CONDON & YOUSEF, *supra* note 18, at 88.

146. CONDON & YOUSEF, *supra* note 18, at 88. The author believes that property value orientations may be tied to concepts of time; for example, a private orientation would be more likely in a future-oriented society, a utilitarian more likely in a present-oriented society, and community more likely in a past or present-oriented society.

147. CONDON & YOUSEF, *supra* note 18, at 89.

*HUMAN NATURE*

<i>Rationality</i>	
Rational	People can be reasoned with and can be shown alternatives with the expectation that they will choose the best. People will adhere to criteria and standards which will be accepted by other reasonable people. <sup>148</sup>
Intuitive	"Intuition is not subject to the same kinds of judgments as rationality; it springs from the person and not an impersonal set of standards." <sup>149</sup>
Irrational	People are seen as "inherently stupid or emotional and always have to be told what to do." <sup>150</sup>

<i>Good and Evil</i>		
Good	Mixture of Good and Evil	Evil

These alternative value orientations are somewhat self-explanatory; however, cultures may differ in what constitutes good or evil, or even whether that dualistic analysis can be made. One could also add the factor of change, that is, whether an individual is basically good but corruptible, or basically evil but with the possibility of salvation.<sup>151</sup>

148. CONDON & YOUSEF, *supra* note 18, at 93.

149. CONDON & YOUSEF, *supra* note 18, at 94.

150. CONDON & YOUSEF, *supra* note 18, at 93. Condon and Yousef note that values in this category are closely tied to value orientations of human nature, nature and the supernatural.

151. CONDON & YOUSEF, *supra* note 18, at 95-97.

<i>Happiness, Pleasure</i>		
Happiness as Goal	Inextricable Bond of Happiness and Sadness	Life is Mostly Sadness

These value orientations are also self-explanatory. Again, it is important to note that different cultures will have different conceptions of what constitutes happiness. The authors also discuss correlations with activity orientations and the role of luck; e.g. "happiness if you work for it" corresponds to a "doing" orientation, whereas the inextricable bond corresponds to a "being-in-becoming" orientation.<sup>152</sup>

<i>Mutability</i>		
Change & Growth, Learning	Some Change	Unchanging

This value of orientation refers to the possibility of change in the human condition. The authors cite it as one of the most important value orientations. Although the authors present three orientations to mutability, they offer three possibilities as contrasting change-oriented assumptions. These possibilities "(1) may regard any change as threatening; (2) may minimize any change as only superficial; or (3) may allow the possibility of change for some segments of the population while denying it to others."<sup>153</sup> They also suggest that "[p]olitical and philosophical models may be especially revealing of change values."<sup>154</sup>

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152. CONDON & YOUSEF, *supra* note 18, at 97-99.  
 153. CONDON & YOUSEF, *supra* note 18, at 101.  
 154. CONDON & YOUSEF, *supra* note 18, at 101.

## NATURE

<i>Relationship of Human and Nature</i>	
Human Dominating Nature	Nature is seen as objective, separate from human, an object over which human exerts control. <sup>155</sup>
Human in Harmony with Nature	Human and nature are inseparable, each is part of the other. <sup>156</sup>
Nature Dominating Human	In a master-slave relationship, nature is seen as the master. Nature is unpredictable, uncontrollable, and unexploitable, and to try to treat nature as otherwise may invite misfortune or may even be unthinkable. <sup>157</sup>

<i>Ways of Knowing Nature: Perceiving and Describing Nature</i>	
Abstract	Nature is viewed in terms of concepts and theories. <sup>158</sup>
Circle of Induction -Deduction	"[A]bstractions are valuable as they organize and show relationships among specifics. Concrete evidence tests and, where necessary, modifies the theory or calls for additions or deletions of abstract concepts. It is the ideal of contemporary scientific thought." <sup>159</sup>
Specific	Knowledge is based on what is seen and experienced as opposed to abstract concepts and theories. <sup>160</sup>

155. CONDON & YOUSEF, *supra* note 18, at 103-04.

156. CONDON & YOUSEF, *supra* note 18, at 103-04.

157. CONDON & YOUSEF, *supra* note 18, at 103-04.

158. CONDON & YOUSEF, *supra* note 18, at 105.

159. CONDON & YOUSEF, *supra* note 18, at 105.

160. *See* CONDON & YOUSEF, *supra* note 18, at 105-06 (stating that, for example, eating ginseng root will make a man virile because the root is shaped like a phallus; the circle would analyze the root according to physiological concepts and theories and conduct scientific tests to determine whether it affects virility in accordance with these theories.).

<i>Structure of Nature</i>	
Mechanistic	Following an analytical thinking pattern of cause and effect reasoning. <sup>161</sup>
Spiritual	Questioning and testing is seen as destructive or blasphemous. <sup>162</sup>
Organic	"Any intrusion into the natural world has repercussions which cannot so easily be anticipated by talk of cause and effect." <sup>163</sup>

<i>Concept of Time</i>	
Future	Characterized by planning ahead, enthusiasm for "progress," achievement, "controlling one's own destiny." <sup>164</sup>
Present	What is considered important is what is happening now. <sup>165</sup> It may even be considered blasphemous to predict the future. <sup>166</sup>
Past	Characterized by respect and value for tradition, preserving and passing on heritage. "[O]lder persons may be valued more than youth; the lineal relationship orientation, phasic or low-mobility orientations, and formality may be expected, as well." <sup>167</sup>

161. CONDON & YOUSEF, *supra* note 18, at 107.

162. CONDON & YOUSEF, *supra* note 18, at 108. For example, if man was meant to fly, God would have given him wings.

163. CONDON & YOUSEF, *supra* note 18, at 108. For example, if you pull up a carrot to see how it is growing, you will destroy the carrot.

164. CONDON & YOUSEF, *supra* note 18, at 109.

165. CONDON & YOUSEF, *supra* note 18, at 109.

166. See HALL, *supra* note 21, at 119.

167. CONDON & YOUSEF, *supra* note 18, at 110.

*THE SUPERNATURAL*

<i>Relationship of Human and the Supernatural</i>		
Human as God	Pantheism	Human Controlled by the Supernatural

Kluckhohn originally combined this value orientation with the human-nature relationships, and the parallel is clear.<sup>168</sup> Condon and Yousef argue that in some cultures the distinction is inappropriate, but in others, particularly in Western cultures, the value orientation may diverge.<sup>169</sup> The first and third categories are self-explanatory; pantheism "does not distinguish clearly nature from the supernatural. God or the gods are present in all things, and thus is likely to conform to the 'harmony with nature' orientation described previously."<sup>170</sup>

<i>Meaning of Life</i>		
Physical & Material Goals	Intellectual Goals	Spiritual Goals

These categories are fairly self-explanatory. Condon and Yousef note that they are unaware of any culture which ranks intellectual goals first;<sup>171</sup> however, in applying these concepts to mediation, this distinction will certainly be displayed in terms of individuals and the "subcultures" from which they derive their value.

168. CONDON & YOUSEF, *supra* note 18, at ¶11-12.

169. CONDON & YOUSEF, *supra* note 18, at 112.

170. CONDON & YOUSEF, *supra* note 18, at 113.

171. CONDON & YOUSEF, *supra* note 18, at 115. Some examples the authors give are, for physical material goals, the "cynical challenge," 'If you're smart why ain't you rich?' and for spiritual goals the concept of life after (or before, as in the concept of karma) death.



<i>Providence</i>	
Good in Life in Unlimited	Man's imagination and will are the only things that limit good. <sup>172</sup>
Balance of Good and Misfortune	The view that gains, luck, or good fortune will be balanced by loss or misfortune, albeit of a different type or even after death or in one's children's lives. <sup>173</sup>
Good in Life in Limited	"[T]he 'good things' in life - including health, love, honor, as well as land and wealth - are considered finite and thus in limited supply." <sup>174</sup>

<i>Knowledge of the Cosmic Order</i>		
Order is Comprehensible	Faith and Reason	Mysterious and Unknowable <sup>175</sup>

These categories are self-explanatory.<sup>176</sup>

172. CONDON & YOUSEF, *supra* note 18, at 116.

173. CONDON & YOUSEF, *supra* note 18, at 115-16. The authors describe what for some people exists as "a kind of divine balance sheet."

174. CONDON & YOUSEF, *supra* note 18, at 116. This orientation essentially views good as zero-sum game: what one gains is always another's loss. This set of orientations will thus be particularly important to mediation, which is often described as a "win-win" process.

175. CONDON & YOUSEF, *supra* note 18, at 60-62.

176. See CONDON & YOUSEF, *supra* note 18, at 117-18 (listing examples and discussing the categories).

