



## Peace and Conflict Studies

Volume 5 | Number 1

Article 1

6-1-1998

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### Recommended Citation

LeBaron, Michelle (1998) "Mediation and Multicultural Reality," *Peace and Conflict Studies*: Vol. 5: No. 1, Article 1.  
Available at: <http://nsuworks.nova.edu/pcs/vol5/iss1/1>

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# **MEDIATION AND MULTICULTURAL REALITY**

## **Michelle LeBaron**

### **Multiculturalism and Mediation**

Mediation and multiculturalism arise from separate histories and serve different ends. Mediation is a collaborative alternative to the legal system for resolving all kinds of conflicts. Multiculturalism is the philosophy and practice of honouring cultural difference through developing systems that institutionalize pluralism (Roberts and Clifton, 1990). While each of these ideas have animated programs and literatures, little attention was given to the connections between them until the early nineties.<sup>1</sup> Since that time, conflict resolution systems and processes have been scrutinized for embedded cultural values and implications for who is included and excluded. Training programs in mediation have progressed from making no mention of culture to adding modules on culture. But modules on culture are only the beginning. Truly competent practice and process design requires a complex understanding of culture and the development of intercultural capacities by third parties.

This article seeks to advance our theory and practice in connecting mediation and multiculturalism in three ways: (1) by summarizing implications of multiple cultures for the study and design of conflict resolution processes; (2) by examining communication frameworks for understanding cultural difference for their usefulness in advancing practice; and (3) by exploring how intercultural capacity can be built by third parties.

### **The Imperative of Cultural Sensitivity**

An exploration of the roots of the mediation movement in the United States and Canada reveals a surprising lack of cultural awareness in theory and practice development. Mediation arose from American organizational behaviour practice and theory as a response to critiques that the legal system caused costly delays and damaged relationships. A second influence shaping the development of mediation was the international problem solving workshop, which involved bringing parties of deep-rooted conflicts together with third parties to address issues among them (Scimecca, 1991). Surprisingly, this international influence did not lead to an awareness of the centrality of culture that grew along with the expansion of the domestic field of mediation. Nor did the reported roots of mediation in the African k'pelle moot lead to the development of multicultural models to serve an increasingly diverse public in North America (Gibbs, 1963).

Recognition of the need for culturally sensitive conflict resolution processes and theories can be traced to a burgeoning literature first appearing about a decade ago. Merry observed that "disputing is cultural behaviour, informed by participants' moral views about how to fight, the meaning participants attach to going to court, social practices that indicate when and how to escalate conflicts to a public forum, and participants' notions of rights and entitlements. Parties to

a conflict operate within systems of meaning..." (1987: 2063). Cultural assumptions of North American mediation models were explored by Avruch, Black and Scimecca (1991), Lederach (1991) and LeBaron (1992). As processes for resolving conflict were recognized as arising from complex systems of meaning, new options for designing culturally appropriate processes were explored.

The case for going beyond sensitivity and awareness to elicitive process design was made powerfully by Lederach (1995). He used the term "elicitive" to describe an approach that envisions training as discovery, creation, and solidification of models rather than the transmission of immutable prescriptions. While this approach is attractive, it is time-consuming and without a track record in multicultural settings. Perhaps because it challenges the assumptions of both process experts with prescriptive models and consumers looking for quick fixes, it has not had a significant impact on practice in the United States or Canada.

As a field, we continue to struggle with the implications of cultural complexity. The tasks of training, theorizing, practising and developing practice standards become more complex as our consciousness of multiple models grows (LeBaron 1994). Expanding awareness has not necessarily led to changes in language or practice. An example of the gap between awareness and practice comes from Sara Cobb and Janet Rifkin's (1991) use of narrative analysis of dispute resolution cases to question third-party neutrality. While their analysis was not centered on culture, their conclusion that multipartiality or equidistance might be a more appropriate standard for third parties than neutrality is consistent with a multicultural perspective. Despite Cobb and Rifkin's work, intervenors continue to refer to themselves as "neutral" in function and "neutrals" in role, and training programs continue to focus on the pursuit of neutrality.

As mediation is institutionalized, cultural appropriateness in practice becomes even more important. Flexibility in responding to difference is essential in large systems that lean toward bureaucratization and homogeneity. Mediation as a tool will be less likely to perpetuate racism and privilege if it is dispensed by a diverse group of practitioners who have the skills to adapt the process to users and a complex appreciation of culture. The more appropriate and flexible our mediation processes, the more people they will meaningfully and justly serve.

### **Conflict as a Cultural Event**

Each of us is affiliated with many groups including those related to national origin, geographic region, generation, gender, race, sexual orientation, occupation, vocation and specific activities. We mediate internal competing messages about appropriate choices in any given conflict, settling on particular actions according to stress levels, context, emotional states, attributions, perceptions, risk/benefit analyses, past experience, unconscious behaviour patterns and, of course, cultural messages.

When conflict is understood as interrelated with culture, every dimension of analysis and intervention is affected, including

### *What constitutes a conflict*

How do the parties name or identify conflict? What are the roots and purposes of conflicts? Are conflicts disagreements, serious questions of principles, different preferences, grave events that seldom occur, expected events that happen frequently or a constant condition incidental to being human? Should a conflict be acknowledged overtly or not?

### *The identity of the parties*

Are the individuals directly involved parties, or are members of extended families and/or communities also parties? Who gets to decide what to do about the situation and how does status and history play into this determination? Do the people in conflict see themselves as individuals or as members of a group? Who should be kept informed? Who may be affected by the outcome of the process? Who are the gatekeepers of the community who may need to be involved or informed about the process?

### *Whether and how the conflict should be approached*

Do parties have different approaches to identifying and articulating issues? Do parties have different ideas about whether to surface disagreement and how to deal with disagreement once it has been surfaced? Do they have different comfort levels with confrontation and frank conversation? Do they have different values regarding the expression of conflict and emotions; different values and thoughts regarding responsibility, honesty, truth, compromise, negotiation, forgiveness, revenge, roles, hierarchy and authority? Do their boundaries between private and public clash or match? What are the parties' expectations of protocol?

### *Which process is most appropriate for intervention*

Are the parties comfortable assuming responsibility for the outcome? Do parties' cultural expectations of a third party and others involved lean toward neutrality or partiality? What are the time frames involved in the situation? How formal or informal must a process be to meet parties' needs? Will parties be comfortable meeting face to face? What kind of ground rules would keep the process safe and comfortable for parties given their cultural expectations? Which process and forum will accommodate all who need to have a voice in the outcome?

### *What constitutes resolution*

How does face saving need to be accommodated in a resolution? How do the parties define fairness, equality and equity? What are their needs for closure or ambiguity? What are their expectations regarding the form of an agreement? Would the parties be happy with an apology, an agreement, a promise to avoid similar situations in the future? Is there scope for addressing issues beyond those in which parties are directly interested?

These questions are only representative of the many questions generated when culture is used as a lens of analysis in conflict. They are included here to illustrate the complex nature of culture as a foundation of standards of reality, knowledge and power. Cultures are much more than traditions and values. Cultures are fluid, changing continually with context and experience. While cultural patterns exist, the manifestation of these patterns varies considerably, reflecting the reality that there is at least as much diversity within groups as between them. Recognizing that cultures are constructed from deeply shared meanings, that each individual is a part of multiple cultures, and that there is wide variation within cultures, the aspiration to design

culturally appropriate processes is seen in its true complexity.

### **Cultural and Individual Identity in Conflict**

While cultures shape individual and group behaviours, individual personality patterns that exist across cultures are foundations from which bridges can be built. Culturally sensitive process design requires an awareness of the macro and micro levels, attending to both group identity and personal dynamics. Particular attention needs to be paid to the process by which one aspect of our cultural identity becomes magnetized because it is unrecognized, perceived as threatened, or used as a force to galvanize a group toward action. When this has occurred, interventions focused on shared aspects of cultural identity and personality convergences are helpful.

Cultural behaviours are shaped and reshaped by the narratives of groups, narratives that give information about degrees of privilege or victimization, status, history, identity, conflict and relationship. When one cultural group with which an individual feels affiliated is threatened, targeted or victimized, that affiliation may become dominant and defended. The aspect of individual identity related to this cultural group for example, women or Serbians, may become a chief lens through which that individual experiences and interprets the world including communication, interactions, and conflict.

To argue that a conflict resolution process should be developed or intervenor identities determined in response to one threatened cultural identification is to reify this monolithic focus to the exclusion of the many other cultural identities of each party that could lead to feelings of connection. International problem-solving workshops aim directly at broadening the cultural identities in the parties' awareness in protracted conflict. Rather than one ethnocultural label (e.g. Jew, Palestinian, Greek Cypriot, Turkish Cypriot) being perceived as encompassing "the other," participants are encouraged to come to know each other as fathers, mothers, shopkeepers, educators, musicians, etc.

The key here is to admit more of the social context inhabited by the parties into the conflict resolution process. Gadlin cautions that any "effort to describe and take into account cultural differences in dispute resolution, or in any other endeavour for that matter, necessarily risks compartmentalizing phenomena of racial and gender conflict and separating psychological dynamics from their social context, which actually heightens discrimination" (Gadlin 1994: 38). Thus, advocacy, representation, dialogue and other methods of developing rapport and additional sources of power should be considered alongside direct communication about issues.

One route into trust-building as a foundation for exploring real differences is personality patterns. Instruments like the Myers Briggs Type Indicator (Briggs Myers) and the Enneagram of Personality (Palmer, 1991) can help people recognize personal similarities related to ways of taking in and processing information, making decisions, and interacting with others. These instruments are widely used in workplaces to help teams work more effectively together and to enhance individual understandings of potential origins and dynamics of conflict. In combination with cultural tools for analysis, they can contribute to the development of flexible processes for

preventing and resolving conflict.

## **Cultural Patterns and Conflict Analysis**

The job of culturally appropriate process design is to develop a process that invites multiple dimensions of meaning into the forum, while addressing significant power imbalances and traumatic histories that contributed to a focus on particular aspects of cultural identity. We are helped in this task by frameworks from the disciplines of anthropology, sociology, psychology and intercultural communication as they inform our practice. Sample frameworks are outlined here, with examples to illustrate possible applications and a discussion of their limitations.

Three frameworks that have been explored in the conflict resolution literature for their potential to help demystify cultural differences are individualist vs. collectivist societies, traditional vs. modern societies, high vs. low context societies. Each of these frameworks provide "big picture" generalizations about clusters of cultures. As with any generalization, they are useful only to the extent that their limitations are acknowledged. These limitations relate to the frameworks themselves and to the generic difficulties of using frameworks to categorize and understand huge, diverse groups or clusters.

### *Framework One: Individualist and Collectivist*

One frame for understanding cultural differences is the individualist/collectivist dimension (Triandis, Brislin and Hui, 1988; Kagitcibasi, 1994). The individualist's values are said to include freedom, honesty, social recognition, achievement, self-reliance, comfort, hedonism, and equity. Collectivists' values tend toward harmony, face-saving, filial piety, modesty, moderation, thrift, equality of rewards, and fulfillment of others' needs.

People in every culture have both collectivist and individualist tendencies, but those from western cultures tend to more individualist values and those from eastern and southern cultures tend to more collectivist values. These generalizations are only guides, however. Cultural influences other than region of origin cross-cut these themes with their own encoded messages of common sense and conflict values. It is also true that group members act differently depending on the context. Collectivist behaviour may be shown in relation to a person's ingroup but not in relation to other outgroups (Triandis, Bontempo and Villareal, 1988).

Those from collectivist cultures tend to expect vertical hierarchies and function well within them. Many dominant culture Americans carry individualist assumptions, including the primacy of horizontal relationships; that is, they expect equality and acknowledgment while collectivists may be more comfortable with wider and more pronounced power differentials and deference to those higher in status.

Individualist and collective values need not form coherent syndromes in polar opposition. There is much still to be understood about how these values interact, given challenges in conducting credible research related to conflict resolution. Gire and Carment examined individualism and

collectivism as they relate to procedural preferences for conflict resolution (1992). They studied whether a preference for the harmony-enhancing procedures of mediation and negotiation would be stronger in collectivist cultures than individualist cultures using a sample of university students from Canada and Nigeria. Previous research showing a stronger preference for collaborative processes in collectivist cultures had been done using Asian subjects representing the collectivist perspective. Gire and Carment wondered whether other factors unique to Asian culture may have accounted for this finding.

Their results contradicted previous research: Both Canadians and Nigerians preferred harmony-enhancing procedures (negotiation and mediation) over those likely to escalate the conflict such as making threats. Nigerian students showed an almost equal preference for both negotiation and arbitration, while Canadians had a stronger preference for negotiation. Women tended to prefer negotiation more than men, and men indicated that they would use threats more often than women. While research like this is helpful, it contains no explanation of the ethnocultural backgrounds of the Canadian subjects, raising questions about the homogeneity of the sample and the generalizability of their results. All of the subjects were students, as is the case with much of the experimental research relating to this framework. The selection of students who choose to study abroad further restricts the generalizability of findings. Findings such as Canadians perceiving negotiation to be a fairer process than Nigerians beg questions of cultural experiences and associations with negotiation and other processes. How do the customs, values and power relations of Nigerian culture affect the way negotiation is perceived and conducted? How is this different in Canada? Is there any generalizability of these findings to various regions of Canada or Nigeria? How are processes like mediation and arbitration understood by Nigerian and Canadian subjects? More research with diverse groups is needed before reliable conclusions can be drawn about experimental verification of this and other similar frameworks. Theoretical questions also need to be raised about the framework, since the concepts are not reliable as research variables.

Values take on different meanings as cultural contexts shift. Face-saving is not absent from the values of individualist cultures; rather the dynamics of face are conceived and refracted differently in individualist cultures. Similarly, achievement as a value in collectivist cultures can be clearly seen from a study of the productivity of a country like South Korea. Approaches to achievement seen as legitimate may vary, but the value transcends cultural boundaries. The same case can be made for several other values including honesty and harmony. The act of assigning a value to one cultural cluster at the exclusion of another obscures the operation of that value across cultures, assuming it to have a uniform definition.

The usefulness of this frame also breaks down when two groups, both described as either collectivist or individualist, are in conflict. Given the large number of countries and groups to which the framework has been applied, it is inevitable that groups with significant differences will each have the same label. Ben Broome confirms the limited value of this construct in his work with Greek and Turkish Cypriots (1996). Since both of these groups have been called collectivist, the tool is of little or no assistance in distinguishing among the clear and important differences between them. It also has limited usefulness to explain the complexity of a particular cultural group. Broome describes individualism and independence existing in Greek culture alongside strong loyalty and obligation to family and ingroup (1996: 109). A deep understanding

of any particular group quickly goes beyond the individualist/collectivist construct.

### *Traditional vs. Modern Societies*

Another possible frame is the distinction between traditional and modern societies. This framework tends to convey hierarchical values, since "traditional" conjures up images of slowness and being rooted in the past and "modern" has the connotation of being new or cutting edge. They are less desirable than other labels for this reason and have fallen into disuse in the conflict resolution literature. Indeed, the concept of modernity has been severely criticized for "pitting modernity against tradition and assuming that the former will replace the latter, considered by some to be the tradition of social Darwinism" (Kagitcibasi, 1994: 59). Lederach used this frame in his earlier work, but his more recent work tends to focus on specific cultures with which he has direct experience rather than drawing on broad generalizations (1986). Modern societies are described as having the following characteristics: autonomous/individualistic, impersonal/professional, rational/formal, technical/specialized. Traditional cultures, according to Lederach, tend to feature: family/group dependence, personal/relational priorities, affective/assumed interactions, informal/holistic approaches, ascriptive/personal networks.

The difference between traditional and modern conflict perspectives may manifest itself in conflicts over task-orientation versus emphasis on process and the development of relationships. One party may be most interested in "getting the job done," and may be perceived by a more traditionally- focused person as impersonal and overly concerned with achievement and accomplishment. Traditionalists may seem too concerned with relational priorities and too informal to the individual from a more "modern" cultural context.

The same caveats apply to the use of this framework as to the previous one. Intragroup differences, intergroup differences within the same cultural cluster, and individual differences again create exceptions to any general pattern. In this case, use of the framework as an educational tool could also introduce perceived bias into the process because of the implied hierarchy in the terms themselves.

### *High vs. Low Context Cultural Perspectives*

Hall originated the concepts of "low context" cultures and "high context" cultures as epistemological tools that may provide helpful clues for analyzing conflict and designing appropriate resolution processes (1976). Low context cultures generally refer to groups characterized by individualism, overt communication and heterogeneity. Communication in low context cultures tends to focus more on the written/spoken word and takes messages at face value.

High context cultures feature collective identity-focus, covert communication and homogeneity. In high context cultures, communication tends to be associative. This means that more attention is paid to the context of communication, including behaviour and environment, the relationship between the messenger and receiver, the messenger's family history and status, and so on. This



approach is said to prevail in Asian countries including Japan, China and Korea, as well as in Latin American and African countries.

The implications of this construct for conflict resolution practices are several. An intervenor bringing low context communication expectations to mediation may encounter reticence from those with more high context communication patterns. This may lead to miscommunication and to misattributions, since bad motives are sometimes associated with those whose communication is different from our own. Further, when communication is indirect, then the very methods that may seem "natural" to a low context mediator to elicit information will not work.

A clear illustration of this phenomenon comes from the simulation activity called Alphaville. Participants in groups of four welcome "cultural consultants" to their culture known as Alphaville. The consultants' role is to find out as much as possible about the culture of Alphaville with a view to reporting back to a corporate client who seeks to locate an industrial facility there. Participants and consultants are instructed that residents of Alphaville answer only yes or no to questions from outsiders. Residents of Alphaville are privately instructed to answer yes when the questioner smiles and no when the questioner does not smile, regardless of the meaning of the question and response.

As the simulation unfolds, the cultural consultants become predictably frustrated that they are receiving unexpected answers and sometimes contradictory information. When time is called, consultants are asked to report about the culture of Alphaville. These reports tend to reflect the content of the questions chosen by the consultants, and include a wide variety of information and interpretations, for example, "Alphavillians do not like to work and prefer to play lacrosse." "Alphavillians have never heard of marriage and prefer to live alone." "Alphavillians are dishonest." "They will not work in an industrial setting, though they do not mind an industrial plant being located in their community." "Alphavillians all belong to an ancient religious sect that instructs them to eat only at night." "Alphavillians are not very intelligent."

It becomes obvious as the activity is debriefed that the consultants encountered a communication system with rules they did not understand, and made negative value judgments about those they encountered even as it became clear to them that there was a communication gap. Those who bring low context communication expectations to this exercise tend to be more frustrated than those who bring a high context awareness including a willingness to look for nuances in the environment and the nonverbal behaviour of the interviewees.

This exercise is a good way to experience high and low context communication, since most cultures have some high context patterns that are not discernible to outsiders but are unspoken and assumed among insiders. Applying the framework to make best guesses about communication patterns at work in a specific situation is more useful than typing specific ethnocultural groups, because it brings awareness and choices about the structure of communication while avoiding stereotyping. Competencies informed by this framework include discernment of nonverbal behavioural cues across cultures, creativity in questioning and rapport-building, appropriate use of cultural informants and communication analysis skills.

## **Combining Cultural Frameworks**

Clusters of cultural characteristics emerge among the frameworks identified above. On one side is a cluster which includes individualistic, "modern" and low context. On the other side is a cluster which includes collectivistic, "traditional" and high context. These frameworks are not opposites, but orthogonal. The constructs reflect patterns of information processing and evaluating events in the social environment that distinguish broadly different cultures. Care must be taken when interpreting the meaning of specific themes in the context of dichotomies in the meaning between cultures. As Triandis, Bontempo and Villareal reflect on individualist versus collectivist cultures:

Several themes, such as self-reliance, achievement, hedonism, competition and interdependence, change their meaning in the context of the two cultures. Self reliance for the individualistic culture implies freedom to do one's own thing and also competition with others. Self reliance for the collectivist cultures implies not being a burden on the ingroup, and competition is not related to it. Competition in collectivist cultures is among ingroups, not among individuals (1988: 335).

In order to use and apply the cultural constructs identified above for conflict resolution, one must acquire an in-depth understanding of cultural differences which recognizes the complexity and interrelationships between a diverse set of themes and variables. This includes not only the differences identified in the three frameworks, but also individual differences and contextual circumstances. It is also essential that a practitioner be well aware that intragroup differences may be at least as profound as intergroup differences.

## **Applying Cultural Frameworks to Conflict Processes**

Mediation in dominant cultures of North America tends to be characterized by overt communication, structured confrontation and intervention by a "neutral" third party with no decision-making power. A quick glance at these descriptors will make the cultural indebtedness of the model clear: the values and approaches to communication reflect individualistic, low context, "modern" societies. Experience bears out the cultural limitations of the mediation model. Many family and community mediation programs across the United States and Canada have reported difficulty attracting and engaging members of ethnocultural minority groups as intervenors, staff people and parties. Even in programs targeted for a particular minority group, the use of services has been minimal (Roberts, 1992). More troublesome are the results of studies of compulsory mediation programs in the United States where Hispanic parties were financially disadvantaged compared to white counterparts, except in cases where both co-mediators were Hispanic (Rack, 1994). It is not surprising that structural biases long understood to operate in the justice system would be reproduced in a court-attached mediation program, though many advocates for mediation had touted it as a more client-centered alternative, with at least the potential to enhance the quality of justice for all.

Benvenisti has lamented the assumption that prescribed processes can heal long-standing conflicts. He writes of his exasperation with conflict "resolvers...who believe that ... conflicts are like a chessboard where one can think up the best arrangement of chess pieces and move them all

at once" (1986:118). At the same time, well-established means for resolving conflicts that once fit within the fabric of indigenous societies are often fragmented or severely strained in Canada and the United States.

While the limitations of the frameworks are obvious, imagining that parties to a conflict may hold broadly different values is helpful. Mediation done without attention to the cultural values of the parties and the process itself will unconsciously reflect the values of the system from which it is conceived. In our bureaucratic society, these values are likely to include efficiency, rational analysis and objectivity. An emphasis on these values may reproduce unequal power dynamics. To compensate, mediators may invite multiple systems of meaning into the mediation discourse.

For example, in a public policy mediation involving land-use in a forested area, the values of efficient production, resource management for profit and maximal employment may be carried by industry. Values of preservation, reverence for life, and moderation may be held by conservationists. A mediation process focusing on interests and issues may delegitimize conservation values if the mediation process itself or the intervenor her or himself reflects a cultural orientation valuing efficiency, monetary reward, and productivity.

Parties' values are more than just interests, or what is important and why. These values are actually windows on complex worldviews related to how individuals and groups make meaning. If exploration of these values is legitimated as a part of mediation, they become part of the discourse out of which a solution comes rather than an invisible part of the fabric subject to delegitimation by those who have the most resources or those who can fit their narrative best into a culturally-bounded mediation process.

One of the difficulties of attempting to use cultural patterns to inform mediation processes is that parties do not normally articulate their deeply-held values and worldviews. Instead, they are left to frame them in whatever form the mediation process permits. Mediators make many microdecisions about who should be recognized, what is relevant, what is central or peripheral, and how to proceed, informed by their own cultural sets and worldviews. A commercial or public policy mediation is generally held in a formal setting, is time-bound, is designed to legitimize data and involves individuals as representatives of constituents. Such a mediation process may be a better fit for those with a strong individualist orientation than a collectivist orientation.

Lederach (1995:66) points out the difficulties with unexamined cultural assumptions of mediation processes. He uses the example of a Virginia mediator using a prescriptive approach to teach Hondurans how to do neighbourhood mediation. This model will carry implicit cultural assumptions common to a Virginia setting affecting roles, formality, pacing, communication style and purpose. Lederach observes: "I will likely also make more concrete cultural assumptions in terms of specific conflict-resolution techniques that are fundamental to the implementation of the model we use in Virginia. For example, conflictants may be expected to be autonomous decision-makers, who can openly and directly talk about their problems and negotiate an agreement in a two-hour "session" in my office."

The process-design challenge in North America is a different one, but no less complex. Here, we search for cues about culture that can be embedded in processes, making them more suitable or multiculturally-friendly. Yet, it is not possible, nor even always desirable, to reconstruct culture-specific models in new settings. The village punchayat system from India, for example, involves male elders hearing all sides and pronouncing a course of action to be followed. South Asian women living in Canada interviewed about their preferred processes for conflict resolution indicated that they had no wish to encounter such a system in Canada (LeBaron 1993). At the same time, the impossibility and undesirability of recreating culture-specific models in the image of predecessors should not lend itself to the wholesale adoption of a dominant culture approach. The dominant culture approach is privileged through its adoption by professional groups and those with voice by virtue of race and social class. As Avruch reminds us:

The politics of personhood establishes the hegemony of one conception...over others. As the proper and acceptable negotiator is evaluated, so too is the process of negotiation. This means that the white theory of negotiation is not simply one theory among a number of alternatives; it becomes a theory for negotiation in general. The discourse of such a theory, which, conceptually speaking, is but one folk model among many, gets reified and elevated to the status of--if not science then--an expert system (1991: 5).

To truly respond to a multicultural community, we must move away from assuming there is only one viable conflict resolution system. This involves challenging the orthodoxy of particular approaches. For example, dominant culture models stress the decoupling of emotions from substance in negotiation or conflict resolution. It is thought that separating them can lead to wiser solutions crafted from rationality, logic and calmness. In a related strategy, Fisher and Ury admonish negotiators to "separate the people from the problem"(1991). However, while this dualism is treated as a universal principle, it may be much more limited in application. Kochman tells us that American Blacks view the "White" idea that they should leave their emotions at the door as devious, a product of a political rather than a reasoned requirement (1981). Relationship, identity and behaviour are not viewed as divisible in collective cultural contexts.

Another example of a nearly-unquestioned precept in training is mediator or intervenor neutrality. The existence and desirability of neutrality has been questioned fundamentally in the writing of Cobb and Rifkin (1991), Nader (1992) and others. In many cultural contexts, parties would reject a so-called neutral outsider in favour of a partial insider, one who knows the history and embeddedness of the conflict and the parties. An insider-partial will discern nuances that would be missed by an outsider, will understand the communication preferences of the parties, and will follow fewer "blind alleys" than an outsider. These advantages may be counterbalanced by a desire not to air dirty laundry inside a community, perceptions of bias or alignment of intervenors long known to the parties, and a lack of formal training for the would-be intervenor in conflict resolution.

Conflict theory and practice carry particular assumptions about how people think, behave and change. If these assumptions are unchallenged, mediators and conflict intervenors will find themselves working with a group of people who share similar ideas, lamenting their lack of diverse clients. Embracing mediation without a critical look at cultural issues may cause intervenors to miss some of the following:

- the importance and legitimacy of preserving harmony through nonaction or indirectness
- the importance of face saving
- the systemic roots of conflict and the need for systemic change
- time frames stretching far into the past and the future
- structural lack of power experienced by members of some groups over a long period of time unchanged by "power balancing" techniques of mediators
- the personal costs of emancipation or empowerment of oppressed or lower power parties in social and relational terms
- an inclusive definition of parties (including extended family, for example)
- healing as an effect of conflict transformation
- the importance of symbolism and ritual
- visual and nonverbal cues
- the importance of involving "elders," gatekeepers, and "wise ones" in conflict resolution processes
- the legitimacy of advice-giving and directiveness in some cultural contexts
- the honour attached to indirectness and subtlety in various cultural contexts
- varying needs for formality or informality
- the meaning of a contract or written agreement; this is considered evidence of bad faith in some cultural contexts and a necessity in others
- variances in communication norms and styles

Mediators who recognize the cultural dimensions of their processes will gather information on these dimensions as they consult with parties prior to intervention. Rejecting the notion that one formula is to be applied to every conflict without adjustment, they will work to include parties in designing a process that fits the cultural common sense of the parties. This will result in higher levels of commitment and procedural satisfaction by all involved.

### **Capacities for Effective Multicultural Mediation**

Designing flexible models is one important focus for multicultural work. With it must come the cultivation of capacities for working effectively with diversity, change and complexity. These capacities include cultural analysis, communication skills, the appropriate use of cultural informants, and trust-building. But these are not sufficient. They must be supported by the nurturance of creativity and a spirit of curiosity, appreciation and openness modeled by the intervenor and encouraged in the parties. These underlying capacities can be developed, but they are usually not addressed in mediation training. The first step in this direction is acknowledgment of their importance. Organizational consultants suggest that these capacities will be more easily developed if we re-examine our problem-solving orientation.

The limitations of the problem-solving orientation embedded in mediation include the difficulty of using the same mental frame that created the problem to attempt to address it; focusing on deficiencies rather than possibilities; fragmenting problems leading to missed systemic solutions; and extending divisions among stakeholders. Intervenors thus display what Chris Argyris calls "skilled incompetence," protecting ourselves from the risks of learning or failing through sticking to a few tried and true "recipes." Barrett (1996) suggests generative learning as a

complementary orientation. This approach emphasizes experimentation, systemic rather than fragmented thinking, and a willingness to think outside the accepted boundaries of problems.

Multicultural conflict resolution involves learning by all involved. If the intervenor sees her role not as prescriber but as guide; not as a keeper of a catalogue of givens, but as a repository of possibilities, this learning will be richer. Process leadership then comes in the form of structuring dialogue in collaboration with the parties, but more fundamentally in creating and holding the space where something new can be brought into being. This something new may come through insight or a shift in perspective invited by the use of appreciative lenses. It may lead to the creation of a third culture (Broome 1993) or to the development of cooperative initiatives even in the face of continuation of the conflict as in the work of the Network for Life and Choice on the abortion issue (LeBaron and Carstarphen, 1997.) Wherever it leads, the learning invited through elicitive process design and cultivation of the capacities for creativity and innovation is rich and essential to the continued and widespread development of effective conflict transformation.

In the end, effective multicultural mediation depends on the development of capacities for flexibility, creativity, and innovation, as well as a deep awareness of culture, both of self and other.

### Notes

1. One of the largest initiatives that addressed the connection between multiculturalism and dispute resolution was The Multiculturalism and Dispute Resolution Project. This Project ran from 1991-95 under the auspices of the University of Victoria Institute for Dispute Resolution in Victoria, British Columbia, Canada. Its purpose was to investigate cultural aspects of disputing and dispute resolution processes and to develop training materials incorporating research findings. This Project was directed by Michelle LeBaron and funded by the Donner Canadian Foundation, Multiculturalism Canada and the Law Foundation of British Columbia.

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