



Mediation in the World Today: Opportunities and Challenges

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Abstract

This keynote presentation (from Keynote speech from International Conference, September 4-7, 2014, Edward Kennedy Institute International for Conflict Intervention, NUI Maynooth) highlighted the myriad of changes that have impacted on the nature of conflict, and global responses to it, over the past four or five decades and the domination of Western approaches to mediation in different cultural contexts. The presenter offered possible ways of avoiding the pitfalls caused when mediators and trainers unthinkingly impose their norms and values into another country's dispute response system, regardless of the type and nature of the dispute, including: self-reflexivity - recognising the mediator's own cultural, political and situational embeddedness; discourse analysis - addressing power by raising awareness of the impact of dominant discourses; cultural fluency - valuing differences and pluralities of identity in order to be client-centred; and thinking in terms of conflict transformation. She also argued that mediators should reject notions of neutrality and operate within a framework of social justice and human rights.

Keywords

Mediation, conflict, human rights

Introduction: A 'post' modern view of the world

Postmodernism is not a singular, unambiguous enterprise but is embedded in a variety of theoretical and political orientations. Penna and O'Brien believe that the term 'post' can be understood in at least two senses – firstly:

we are living in a world of flux and transition; the old is crumbling and fading yet the new is still indistinct and ambiguous ...

and secondly, 'post' can also refer to a world in which the old and the new co-exist:

Here the present has many contents, many different political, cultural and economic experiences, many conflicting and unstable social and institutional alliances, many levels of personal and collective action. (Penna & O'Brien 1996: 40).



We are roughly four or five decades into the modern, Western history of mediation. There have been enormous shifts in people's lives and conditions during this time including:

- increasing globalisation
- waves of mass migration (refugees, economic migrants)
- whole scale urbanisation and Westernisation
- trans-national civil rights movements
- the universalisation of the market
- an emphasis on economic rationalism and managerialism
- the development of new service industries
- rapid technological changes
- fast growth and increased use of the internet and social media
- widespread travel
- a major increase in the global population
- rapidly ageing populations
- growth and acceptance of new life-styles
- increasingly complex and diverse family relationships, lifestyles and financial arrangements
- the global spread of life-threatening diseases such as AIDS and Ebola
- profound changes in the nature of global conflicts with an increase in complex internal conflicts due to failed or collapsing states
- transnational threats, such as terrorism and organised crime
- increasing global pollution, global warming, changing climates; and
- rapidly depleting global resources.

These changes have opened, and will continue to open, new markets for mediators including: public policy mediation, environmental mediation, peace mediation, cross-cultural mediation, victim-offender mediation, peer mediation, elder mediation, child-inclusive mediation and online dispute resolution.

In the 1960s and 70s there was one major style of mediation - facilitative mediation. Now there is a huge range of styles, often based on the professional background or paradigms of the mediator, including: expert advisory mediation, evaluative mediation, settlement mediation, interest-based mediation, solution-based mediation, transformative mediation, narrative mediation, insight mediation, mindful mediation, therapeutic mediation, tradition-based mediation, wise-counsel mediation and so forth.

Globalization and the introduction of information technology have altered the boundaries of our conflicts and our practices, and have fostered the domination of Western ways of knowing and Western approaches to mediation. In particular, North American cultural assumptions about conflict and how to



resolve it are embedded in the rational, individually-oriented, interest-based mediation models which have emanated from the United States and dominate mediation practices in many Western countries, including Australia. Courts in other countries, such as those in the Asia-Pacific region, are currently adopting Western styles of mediating and are engaging Western trainers to educate their judiciary and others who will practice as mediators. However, Western mediation trainers may engage a 'residue of imperialism' when they attempt to transfer Western models to other cultures as the right way to resolve conflict' (Lederach 1995: 3).

Traditional mediation practices

It is important to remember that mediation in the world today has a long history, the practice of which falls along a spectrum that defies strict definition. For example, in the Asia Pacific region, there is a longstanding history of informal conflict resolution practices involving intermediaries or third parties. In some generic form, mediation has been practised for at least two millennia in Eastern nations, such as China, Japan, Korea and Sri Lanka, under the influence of Confucianism. It also has roots in Judaism, was evidenced in early Quakerism, and the African 'moot' court (Folberg & Taylor 1984; Irving & Benjamin 2002) and has always been present in the teachings of the Holy Qu'ran (known as *shah*), (Bagshaw 2009a) 'which extols the virtues of forgiveness and negotiated settlement' (Keshavjee 2002: 4).

Some traditional practices are similar to approaches that Westerners define as mediation where the parties make their own decisions, others are more like arbitration, where the third party (e.g. a Chief or Elder) makes the decision or reflects the consensus view after listening to others for a considerable length of time.

Australian and New Zealand indigenous communities, and many other indigenous groups in the Asia-Pacific region, are more likely to use a more holistic approach which involves the broader extended family and/or community, relies on indirect or circular communication, focuses on restoring harmony and the restoration of relationships, is concerned with face-saving, relies on a respected elder as mediator and which is often conducted in open spaces outside, rather than in an office.

Traditional or customary mediation practices can also be grounded in religious principles e.g. Islamic, Confucian, Christian, Hindu, Buddhist and so forth, which influence the way that conflict is viewed and handled (Bagshaw & Porter 2009).

There are a number of factors contributing to the increased interest in Western models of mediation in various Asian and Pacific countries today, including the inability of the civil justice systems to deal with the increasing load of cases (triggering lengthy delays), scarce resources (such as legal aid), the rising costs of litigation, and the uncertainty of outcomes where the dispute is not based on a clear legal principle. Democratic and market-based trends are generating too many legal disputes for courts to handle and many judicial systems in the region have not kept pace with the problem. Many suffer from insufficient institutional resources and outdated procedures, and litigants and lawyers complain of excessively adversarial, lengthy and costly trials, unenforceable judgements and court backlogs.



Other factors contributing to the increased interest in mediation in non-Western legal systems include: the need to preserve ongoing relationships, people choosing to stay in control of their conflict or dispute and its resolution, and/or the need for privacy to avoid public humiliation or to save face. In addition, in some countries in the world, judicial systems are either non-existent or corrupt.

Given this trend toward adopting Western approaches, there is a need to develop more inclusive models of mediation in non-Western countries – models that build on the strengths of local, traditional practices – and to locate them within a broader social justice and human rights framework (Bagshaw & Porter 2009).

Western forms of mediation

Western forms of mediation developed in the 1960's, originally in the United States. There is not one Western model of mediation – there are many. However, until recently *problem solving* or *interest-based* approaches have dominated the Western mediation literature and mediation training programs (Boulle 2005; Moore 2003). These stem from early theorists such as Morton Deutsch who defined a conflict as existing 'whenever incompatible activities occur' (Deutsch 1973: 10). From this perspective, conflict and disputes are assumed to occur because individuals do not always share similar interests, understandings and resources. It also assumes that constructive confrontation between parties in dispute, using a problem solving approach, can lead to productive, creative solutions/outcomes that lead to more positive system functioning. This approach is reflected in the following definition of mediation developed by the previous Australian National Alternative Dispute Resolution Advisory Council (NADRAC), which was disbanded by the Australian government in 2014:

Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement (National Alternative Dispute Resolution Advisory Council 2003: 9). It is important to note that this definition is common in most jurisdictions in Australia and the United States, However, many critics have questioned the primacy of the interest-based problem-solving approach in the West, including feminists, critical theorists, rights-based practitioners and those who give priority to the transformation of relationships (Bush & Folger 1994; Folger & Bush 2001), or the importance of deconstructing dominant narratives (Winslade & Monk 2000) over the reconciling of individual interests. A focus on individual interests or needs does not take into account the needs and interests of the collective, or the structural inequities in the broader social context, which may need to be challenged or changed for lasting peace to occur (Galtung 1990). In addition, it may not be possible for parties to share world views or find common interests where there are conflicts involving differing values, for example those related to human rights, philosophical or political views, or religion. However, the parties may have to continue in a relationship and therefore need to find ways to tolerate or respect each other's views, or 'agree to disagree'. The interest-based approach to mediation may not be suitable where there are imbalances of power, unless explicit conditions are put in place, as it requires parties to be competent and willing to negotiate for themselves and to cooperate.



Challenges for mediators today

I have argued that it is essential that mediators in the world today design models of mediation to fit the cultural, individual and collective needs of their clients, rather than force their clients to follow a particular model imposed by the mediator.

Bush and Folger's model of *transformative mediation*, focuses on the 'empowerment' of the parties and their 'recognition' of each other and on the opportunities for personal growth that unfold at every moment of the mediation process (Bush & Folger 1994; Folger & Bush 2001). This approach is more relationship- and process-oriented, and fits more closely with the idea that mediation can be a transformative peace-making activity. However, this particular approach does not explicitly address the issue of power, culture, or structural inequities in the broader context.

Dominant discourses in a culture or group play a powerful role in how concepts of 'normality' are fashioned and subjectivities or identities are positioned (Penna & O'Brien 1996). Mediators can fall into the trap of categorizing or labelling their clients and their problems (for example, as 'normal' or 'dysfunctional') in ways that reify and reinforce the power and knowledge of the mediator and the dominant cultural view. Winslade and Monk in their book, *Narrative Mediation*, critically analyse the premises underlying the problem solving approach to conflict, which generate and apply 'universal cultural truths' (Winslade & Monk 2000: 35). They view problem-solving as only one conceptualization of mediation practice: a 'plausible story' of how conflict occurs and can be resolved, which has a particular historical and cultural slant. A narrative mediator focuses on the deconstruction and reconstruction of the dominant societal and cultural discourses reflected in conflict narratives or stories about conflict that the parties bring to the mediator. From the narrative perspective, which is based on the writings of Michele Foucault, there is no universal truth – there are many 'truths'. Dominant discourses or stories mediate, shape, and create our 'truths' or realities. Stories or narratives are viewed as cultural creations or social constructions constituted in a particular historical time and place. In mediation all parties and others involved, such as lawyers, will have their own stories or versions of the 'truth'. The mediator works with the parties to create an alternative but plausible story in a way that makes sense to the participants.

Neutrality

The so-called 'neutrality' or 'objectivity' of our professional practices have been questioned (Lincoln & Denzin 1994: 579). It is now recognized that professional practices can construct a colonizing discourse of the 'other' under the veil or guise of 'neutrality' or 'objectivity', without acknowledging that representations of 'self' and 'other' are always situated politically (Ahluwalia 2007; Fine 1994: 72). Many Western definitions of mediation still refer to the need for the third party to be 'neutral', ignoring the potential for mediation to 'perpetuate racism and privilege' if practitioners do not have 'a complex appreciation of culture' and the skills and flexibility to respond to difference (LeBaron accessed 17/10/2007: 2).

Western approaches to mediation also tend to emphasize the 'impartiality' and 'objectivity' of the mediator, and are often individually-oriented, confrontational and solution-focused. However, as previously mentioned, Indigenous or other collectivist cultural groups in the world are more likely to



value the involvement of the broader extended family or community, indirect or circular communication, harmony, holistic and community-oriented approaches with an emphasis on face-saving and the restoration of relationships. The ‘objectivity’ and ‘impartiality’ of the mediator may be prized in some cultural groups, or with some kinds of disputes; respected, well-known elders may be preferred in others. However, it is important not to stereotype individuals or groups within an Indigenous culture, or to generalize within and across Indigenous groups (Bagshaw 2009b; Bagshaw & Porter 2009; Bauman & Williams 2004; Behrendt & Kelly 2008; National Alternative Dispute Resolution Advisory Council 2006; O'Donnell 1995; Pringle 1996).

What can mediators do differently?

There are possible approaches that mediators can use to avoid the pitfalls caused when mediators and trainers unthinkingly, and not at all benignly, insert their norms and values into another culture or country's dispute response system. As various authors point out, there needs to be a recognition of Indigenous values and perspectives on conflicts and disputes and their transformation or resolution, which in Australia involves: consultation with Indigenous people at the local level – recognizing and acknowledging local differences, respecting both new and traditional approaches to conflict and the preferred use of terms, such as ‘peace-making’; the delivery of flexible and adaptable services which allow for a modification of practices to take account of Indigenous needs, and the development and evaluation of accredited training programs and networks for both Indigenous and non-Indigenous practitioners (National Alternative Dispute Resolution Advisory Council 2006).

Self-reflexivity

Lang and Taylor's *reflective, artistic* approach to mediation stresses the need to use an *elicitive* approach to practice and training (Lang & Taylor 2000) and the *reflexive* approach to mediation that I have promoted in various papers (Bagshaw 2003b, 2005, 2006, 2009b) stresses the importance of mediators engaging in *self-reflexivity*, so they can make visible personal biases and cultural, political and social influences which impact on their so-called neutrality.

Steier variously describes *self-reflexivity* as the ‘turning-back of one's experience upon oneself’ (Steier 1991: 2) and ‘being conscious of ourselves as we see ourselves’ (Steier 1991: 5). Self-reflexivity recognizes that our practices are culturally specific, not neutral, and requires the mediator to be ‘explicit about the operation of power’ (Ribbens 1989: 162) and to be mindful of their powerful position in the mediation process. The reflexive mediator assumes a non-hierarchical position (‘bottom up’ rather than ‘top down’) and works collaboratively with clients in a more collegial, partnership role, sometimes described as engaging in conversation *rather* than as intervention. It is the *participants'* knowledge that is privileged, and the *participants* who supply the interpretive context for determining the meanings of events. The mediator is primarily interested in their different world views and ‘truths’, as expressed through their stories about the conflict, and assists them to open up to alternative views or stories that might be more useful to their situation and to the resolution or transformation of the conflict.



Cultural fluency

In the past three decades, theorists have raised awareness of the impact of culture on the mediation process and the culturally complex systems of meaning that third parties and parties in conflict bring to mediation (Avruch, Black & Simecca 1991; LeBaron 2001; Lederach 1995; Merry 1987). Michelle LeBaron sees culture as integral to conflict, and advocates the need for mediators to engage in ‘cultural fluency’ through a process of what she calls ‘mindful awareness’, by reflecting ‘on our own cultural ways of knowing and being’ (LeBaron 2003a; 2003b: 12). This notion is similar to reflexivity. She also stresses that when conflict is interrelated with culture, it is important to challenge processes that institutionalize, bureaucratize and homogenize mediation processes.

Recognizing that cultures are constructed from deeply shared meanings, that each individual is a part of multiple cultures, and there is wide variation within cultures, the aspiration to design culturally appropriate processes is seen in its true complexity (LeBaron accessed 17/10/2007: 2).

Increased knowledge of customary dispute resolution practices can contribute to the development of more culturally fluent mediation practices in various institutions in the world. Priority needs to be given to retrieving and reclaiming local epistemologies and customary or ‘folk’ knowledge with regard to conflict and its resolution. That is to say, ‘knowledge that ordinary people have about causes and ways to deal with conflict in their particular cultural setting ... not just empirical observation, theoretical research, and systematic testing of methodologies, but also personal experience, intuition, and imagination’ (Maiese 2005 :1).

Addressing power and the impact of dominant discourses

The issue of imbalances or abuses of power should always be a major consideration in mediation, both within the mediation process and within the culture, context and structures within which mediation takes place. Dominant Western models of mediation presuppose that there is a roughly equal balance of power between the parties, and that the mediator will work to balance any slight differences. However, models of mediation as outlined in mediation texts rarely address the power inherent in the dominant discourses in a culture (with the exception of narrative mediation), nor the structural (e.g. political, economic, gendered) inequities in the broader social context, which sociologists and feminists draw our attention to (Bagshaw 2000, 2003b).

One facet of power, which narrative mediation addresses, is overlooked in other Western approaches. Michel Foucault, the French philosopher, highlighted how dominant discourses in a culture have the power to determine what counts as knowledge or ‘truth’ and what does not, whose voices are dominant and whose voices are marginalized, subordinated or silenced (McHoul & Grace 1993). For example, the colonial legacy present in many countries in the world has tended to ignore, marginalize or subordinate Indigenous knowledge and has privileged Western ways of knowing. This has led to a process of “othering” or seeing minority groups as the “other” (Ahluwalia 2007; Pickering 2001).

Because mediation focuses on building cooperation, critics have worried, justifiably, about the possibility that effective negotiators may ignore structural inequities and violate the rights of weaker



parties, or that a supposedly 'neutral' mediator may press the weaker party to settle. For the outcomes of mediation to be fair and just, the issue of the use and abuse of power must therefore be addressed; this is especially so because mediation is a private process. When mediators are not aware of, or fail to deal with, imbalances or abuses of power these imbalances and abuses are sanctioned and reproduced: '... dominant narratives will colonize alternative narratives and mediation becomes a method of entrenching dominant power structures, not a forum in which diverse voices can be heard' (Astor 2007: 226).

At another level, the question of whether a conflict is asymmetrical or symmetrical is often difficult to answer and has cultural connotations. In Western cultures, egalitarian individualism influences how we view power, whereas in non-Western cultures collectivism and vertical power relations are often seen as 'natural'. Therefore, power imbalances are not viewed as problem in themselves, but only when there are actual abuses of power (Ting-Toomey & Oetzel 2001). However, regardless of these different world views, constructs of mediation must enable the mediator to recognize and explicitly address abuses of power and human rights abuses, or mediation could easily become another process which marginalizes and subordinates women and other disadvantaged groups, in particular those who are subjected to violence and abuse in patriarchal, hierarchical cultures. It is also essential for constructs of mediation to address issues of human rights and social justice for long-term peacebuilding to occur.

Feminist scholars have pointed out that the effect of ignoring the social and cultural context of mediation where there is domestic violence, for example, is to ignore those responsible for violence and to leave violence unchallenged (Astor & Chinkin 1992; Bagshaw 2003a; McCarthy 1997; Yllo & Bograd 1990). The tendency of Western mediators to focus on individual interests and needs, rather than on the social context, and to try to be 'neutral' and 'impartial' in their role as facilitators, may lead to compromises that imply that the victims of violence are blameworthy and need to change in some way. We need to be mindful that some traditional conflict resolution practices may produce agreements that are unjust for one party; in patriarchal cultures, for example, the victims are often women.

Mediation as a conflict transformation

The language we use to describe what we do as mediators is important. For example, John Paul Lederach, points out that popular conceptions of the term 'conflict resolution' promote the idea that conflict may be undesirable and should be stopped at the expense of justice, whereas in ongoing relationships, conflict remains. The term 'conflict management' is too 'narrow' and 'technical', suggesting that we can control conflict (Lederach 1995: 16). Conflict 'transformation', however, is more closely linked to peacemaking (Curle 1991; Friere 1990) than conflict 'resolution' or 'management'. The term 'transformation' addresses the ongoing, longer term conflicts and the potential need for structural changes. To quote Lederach:

Social conflict is a ... phenomenon that transforms events, the relationships in which conflict occurs, and indeed its very creators. It is a necessary element in transformative human construction and reconstruction of social organization and realities ... in other words conflict is seen as a transforming agent for systemic change (Lederach 1995: 17-18).



I am attracted to Lederach's concept of conflict transformation as a framework for building healthy relationships and communities, both locally and globally, and its requirement of fundamental changes in mediators' thinking. He highlights that conflict impacts on people personally, relationally, structurally and culturally and conflict transformation focuses the mediator's attention on the context of conflict and the cultural meanings attached to the complex web and system of relational patterns. In addition, he suggests that mediation must be 'understood and integrated into an overall peace-building framework, oriented toward social empowerment and change' (Lederach 1995: 119).

In 1971, Adam Curle described mediation as a peacemaking function, along with education and advocacy. He noted that these approaches shared a vision of justice which enabled less powerful groups to attain a voice. Successful mediations can facilitate the articulation of the legitimate needs and interests of each of the parties and enable relationships to be restructured, so that substantive and procedural issues contributing to conflicts can be dealt with in a mutually acceptable way, thereby contributing to building peace (Curle 1971:1991).

However, Lederach has argued that in order to build lasting peace, mediation should not just address the resolution of interpersonal and relationship issues, it should also be concerned with transforming conflicts, which may involve the need for structural change (Lederach 1995). He suggests that: 'transformative peacemaking is based on understanding fair, respectful, and inclusive process as a way of life and envisions outcome as a commitment to increasing justice, seeking truth, and healing relationships' (Lederach 1995: 22). He describes mediation and peacebuilding as 'two broad camps, that of non-violent social change, the "revolutionary" camp, and that of mediation, the "resolutionary" camp' (Lederach 1995: 11).

Lederach (Lederach 1995) and Adam Curle (Curle 1971) both argue that mediators can be peacemakers if they work to empower people to be active participants in transforming conflict and making decisions that affect their lives. Lederach states that '[t]ransformative peace making ... empowers individuals and nurtures mutuality and community' (Lederach 1995: 21). Catherine Morris suggests that peacebuilding should also include an emphasis on human rights. She notes that: '[p]eacebuilding includes building legal and human rights institutions as well as fair and effective governance and dispute resolution processes and systems' (Morris 2000: 1). Instilling notions of peacebuilding into our dispute resolution systems requires us to move beyond the dominant, narrow models of mediation that are currently in favour.

Social justice and human rights

Taking a culturally relativistic approach to mediation has its limitations – it should not mean that 'anything goes'. Mediators in the world today must pay attention to the broader structural issues of social justice and human rights. Where there are breaches of the law, or of human rights (which can be considered to be universal, or have been enshrined by the country within which the mediator functions and are therefore not-negotiable), structural inequities and/or gross imbalances of power between the parties, mediators need to challenge traditional practices or consider whether another dispute resolution



process may be more appropriate. If these issues are ignored, mediators are in danger of mediating agreements which are individually, legally or socially unjust and which may never come under public scrutiny or be challenged, thereby maintaining the status quo (Bagshaw 2008).

Mediators need to be cautious about being too concerned with definitions, process and outcome and neglecting the issue of justice, in particular where there are concerns about an injustice or human rights. For example, in relation to some Indigenous, customary or traditional approaches to dispute resolution, critics have concerns about the lack of regulation leading to uncertain outcomes, gender inequality, lack of transparency and accountability, human rights abuses (particularly in relation to gender) and about who is vested with decision-making capacities in disputes (oftentimes male village chiefs) (Mackey 2005; Peace and Democracy Foundation 2004). The United Nations Human Rights Unit and the International Rescue Committee, for example, have raised concerns over customary approaches violating the rights of women and children (Mackey 2005). Various authors have therefore suggested that there are benefits to be gained from blending Western approaches with traditional restorative practices (Dinnen 2003).

Conclusions

This paper has argued that some of the major challenges for mediators in the world today relate to our Western constructs of mediation. The author has questioned some of the assumptions underpinning Western concepts of mediation, including notions of ‘neutrality’, and argues that mediators must be self-reflexive and recognise their own cultural, political and situational embeddedness as interveners, culturally fluent and incorporate and value differences and pluralities of identity, deconstruct dominant discourses and reject discourses on violence and their institutional underpinnings, and operate within a framework of social justice and human rights.

In order to promote long-term and sustainable peace between individuals, cultures, communities and countries, our practical objectives must focus on early intervention and prevention through processes such as mediation; and introduce emancipatory knowledge and promote social transformation in schools, workplaces and other institutions in relation to the legitimisation of violence. There is an urgent need to educate and train culturally fluent mediators at every level in our various societies and regions in the world. It should be a compulsory part of the mainstream curriculum from the first year at school and a pre-requisite for all people in positions of influence, including teachers, community leaders, religious leaders, workplace managers, heads of organisations and politicians.

In order to transform conflicts and build a just peace, mediators need to ask the right questions to uncover the nature of social relations, in particular from the perspective of those who are ‘othered’, marginalized or relatively disempowered. Culturally fluent mediators are interested in the lived experience of people and place emphasis on allowing people to construct their own identity, process and outcomes within the mediation process.

However, I have argued that there are limitations to mediation. Where there are breaches of the law or of human rights which can be considered to be universal or non-negotiable, structural inequities



and/or gross imbalances of power between the parties, mediators may need to challenge traditional practices or consider whether another dispute resolution process may be more appropriate in order for the outcomes to be 'fair' and 'just' for all parties.

Mediators in the world today need competence in understanding that their clients supply the interpretive framework necessary for determining appropriate interventions. They must be client-centred, use enabling and empowering ways of working and strive to be inclusive, especially ensuring the inclusion of previously excluded or 'othered' voices, such as those of Indigenous people. For example, Indigenous values, world views and traditions need to be explored, understood and built into approaches to dispute resolution if the processes are to be effective in dealing with conflict within Indigenous communities and between Indigenous communities and other stakeholders. Structural issues may also need to be addressed to ensure that the outcomes of dispute resolution processes are fair and just for all concerned.

Culturally competent mediators need to accept that tensions and conflicts will be associated with recognition of diverse values and difference and avoid defining themselves and their role as 'neutral'. Most importantly, it is essential for mediators to engage in self-reflexivity (which demands awareness and control of one's own professional, personal and cultural biases in order to understand the standpoint of the other) and provide a basis for focusing on client needs. This must occur within an explicit framework which addresses issues of social justice and human rights.

Finally, it is impossible for mediators to be value-free and the human rights of oppressed individuals and groups in a society can easily be ignored by mediators in the guise of 'neutrality'. As more and more groups define identity as a human right, we must become aware of the ways in which social policies are embedded within relations of cultural oppression (Penna & O'Brien 1996). The language of 'rights' should include the right to define one's situation and experience across a broad range of cultures, social situations and institutions. We all hold the concept of rights by virtue of being human, even if we have a different cultural construct of what those rights might mean in practice.



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