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Towards a greater global understanding of what mediators do

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Towards a greater global understanding of what mediators do

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy)/October 6, 2012

Geoff Sharp's recent blog posting, **Biased is better and Partiality is In**, challenges the conventional mediation wisdom that views impartiality and neutrality as hallmarks of the mediation process. Here impartiality refers to a disinterestedness in the outcome of the dispute and the absence of real and perceived conflicts of interest in relation to the matter. I'd like to pick up on some of Geoff's comments and extend the conversation in relation to historical and cross-cultural perspectives.

Historically mediators have used diverse approaches to intervene in conflict. At the turn of the last century, German sociologist Georg Simmel identified the ubiquitous role of the mediator, sometimes formally recognised and sometimes not, across all cultures. Simmel distinguishes between, on one hand, mediators as disinterested neutral and impartial third parties (outsider mediators), and mediators actively and equally concerned and connected with the interests of all parties, such as family members, community or industry leaders and organisational line managers (insider mediators) on the other hand. Cris Currie engages in a similar discussion in his article entitled, **Mediating off the Grid**. Unlike outsider mediators who are on no one's side because they are impartial, insider mediators are on everyone's side and are sometimes referred to as omnipartial in this regard.

Anthropologist Philip Gulliver (1979) takes a different angle and located mediators' roles on a continuum based on their level of intervention. Beginning with the very passive mediator, the roles become increasingly active and interventionist. They include chairing the process, enunciating rules and norms and prompting and leading parties towards solutions.

Yet another writer **Nabil Antaki** (2006) distinguishes between two primary world traditions in mediation: intuitive or informal mediation on one hand and cognitive, scientific or western on the other. While the former continues to be practised in Arab and other Muslim Countries, as well as much of Asia, the Pacific and Africa, the latter approach (western mediation) emerged in the United States and, according to Antaki, is spreading worldwide. He goes on to consider the development of mediation and similar processes throughout history from chthonic traditional societies to nation states and modern justice systems. Antaki also explores how mediation models vary according to whether they are serving a

communitarian social structure or a mainly individualistic one. In terms of different western and eastern assumptions, Chinese mediation models and practices are likely to influence dispute resolution internationally as China increasingly engages with the international community.

Advocating for greater acceptance of diversity in mediation, former South African Constitutional Court judge and anti-apartheid activist **Albie Sachs** continues to plead for mediators to recognise their role in getting to 'ubuntu' – an African concept referring to the essence and interconnectedness of being human. Mediating on the level of "ubuntu", he suggests, can look very different in each case, depending on cultural and inter-party dynamics and what type of conflict engagement is required of the mediator.

There is strong historical and contemporary evidence of diverse mediation practice. Yet many mediator training courses across the globe assume a universality of process and principles and mediator accreditation standards are modelled on a western facilitative mediation approach. Not all "accredited" mediators and mediator accrediting institutions are prepared to accept models that deviate from their own, despite the fact that this contradicts the reality of much mediation practice — in both domestic and cross-border settings.

However the winds of change may be upon us. Greater diversity in "accredited" mediation models will likely characterise the next wave of development in the professionalisation of mediation and mediators. Institutions such as the **International Mediation Institute (IMI)** are leading the way in this regard. IMI's world-wide mediator certification scheme expressly recognises that mediators approach their craft in different ways and are informed, at least to some extent, by different values and principles. See **Rick Weiler's Real Mediation Rant** on this point.

In another example, the **Australian National Mediator Approval Standards** are based on a facilitative mediation model, however, they recognise diversity of practice in what they refer to as a blended model.

Finally, as professional training and education in mediation develops in sophistication, so too will offerings that challenge the standard western facilitative dogma. I think this is a good thing as it forces us to reflect on and question the assumptions upon which we practice. Only in this way will the mediation field truly develop.