

## Mediation, Power, and Cultural Difference

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*In Western mediation practice, conflict and violence are typically seen as destructive and unhelpful ways of being, and this does not allow for the constitutive and productive role of conflict in many non-Western traditions. The playing out of these assumptions in mediation practice effects an operation of power that is particularly significant in intercultural mediations. Explicit and implicit mediator techniques lead disputants in intercultural mediations to behave in ways consistent with the goals of mediation and Western norms around conflict and selfhood. The specificity of this analysis means that the findings are indicative and explorative rather than comprehensive. Nevertheless, the results highlight the need to consider ways in which researchers and mediators can begin to mitigate this operation of power and respond to cultural difference in ethical ways.*

Although mediators often think of themselves as advancing a positive and progressive orientation to conflict, mainstream facilitative mediation practice subordinates conflict to harmony and does not recognize non-Western orientations to disputing. This is closely related to a lack of awareness and recognition of different ways of being or versions of selfhood. In Western mediation practice, conflict and violence are typically seen as destructive and unhelpful ways of being, and this attitude precludes the constitutive and productive role that conflict plays in many non-Western traditions. The playing out of these assumptions in mediation practice effects an operation of power that is particularly significant in intercultural

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mediations. It arises among people of both similar and different cultural backgrounds when mediations are provided solely through the dominant Western culture. In adopting a Foucaultian approach, this article expands on the previous contributions of George Pavlich (1996a; 1996b) and adjusts for the approach taken by Dale Bagshaw (2001). The paper draws upon an assumed understanding of facilitative mediation practice and demonstrates points by reference to intercultural issues between Aboriginal and non-Indigenous Australian peoples.

Through this approach it is shown that explicit and implicit mediator techniques lead disputants in intercultural mediations to behave in ways consistent with the goals of mediation and Western norms around conflict and selfhood. The specificity of this analysis means that the findings are indicative and explorative rather than comprehensive. Nevertheless, the results highlight the need to consider ways in which researchers and mediators can begin to mitigate this operation of power and respond to cultural difference in ethical ways. The article concludes that a long-term process of cultural learning, including elicitive dialogue across cultural difference, is necessary to develop processes that respond to different approaches to conflict and modes of selfhood.

### Conflict, Self, and Culture

The question of normative orientation to conflict is often discussed in primary or alternative dispute resolution (ADR) circles, particularly in training courses. Many practitioners and advocates of mediation see themselves as effecting a transformation in their clients' orientation to conflict. A common view is that we have been mistaken in understanding conflict as negative in our interpersonal and societal relations and that engaging positively and assertively with conflict can be beneficial. Practitioners often suggest that conflict is normatively neutral and that its management is the most important consideration. This in part reflects a shift in Western perceptions, beginning in the mid-1950s, within the related field of organizational relations. Rather than viewing conflict as purely detrimental to productivity, management consultants and social scientists began to promote the possibility that, depending upon how they were handled, disputes could have positive effects (Scimecca, 1991, pp. 21–22). Similarly, the personal growth or development movement of the 1970s highlighted the possibility that disputes can be viewed as opportunities for empowerment and personal transformation (Harrington and Merry, 1988, pp. 715–716). Both these approaches have significantly influenced mediation.

At face value, such reformist orientations suggest a positive approach toward conflict. However, in each case, conflict—and disputes as specific manifestations of conflict—are also viewed as blockages to be overcome, as difficult events to *move beyond*. Mediation professionals, for instance, are most satisfied when agreements are completed. This accords with the overall aim of mediation and other dispute management or resolution processes in Western culture. Mediators see their role largely as managing or resolving rather than precipitating conflict. Within the organizational relations context, conflict is viewed as positive only when it generates improved workplace relations or processes. A recent transformative mediation text aims to explore “the ways conflicts are miraculously stripped away, revealing the simple, stark beauty of human love and kindness” (Cloke, 2001, p. xii). In other words, it is only when conflict has been to some extent dispensed with and peace restored that conflict is considered positive.” Hence while mediation values engagement with conflict, this is so in order to achieve peace; conflict is thus subordinated to peace.

Laura Nader (1991) locates this phenomenon more broadly in Western culture, suggesting that Western cultural upbringing leads to a “strong attachment to harmony models” (p. 41). She notes that social science theories “generated in the West reflect the belief that conflict is bad and in need of explanation, while its opposite is valued behavior that needs no explanation” (p. 41). Psychologist Elton McNeil (1965) explicitly articulates this orientation in a discussion of aggression. He states that “Hostile and aggressive behavior are the most powerful obstacles to the formation of a culture which can devote its energies to constructive efforts” (p. 35). Of course, this formulation does not hold universally in the West, with one tradition in international relations viewing war as an inevitable and sometimes necessary extension of politics (for example, see Clausewitz, 1976). Nevertheless, in those circles that have given rise to the mediation movement, the attachment to harmony as an end goal prevails, and many of the West’s internally generated analyses define the achievement and maintenance of order and peace as a central problem (Harrison, 1993, p. 3).

However, anthropologists show us that this problem does not confront many other cultures. Nader (1991, p. 49) reports that “In some Melanesian societies there is a tolerance of and even enjoyment of quarreling.” Similarly, there are numerous accounts of Aboriginal Australian people fighting because it is enjoyable or entertaining (Macdonald, 1990; Myers, 1991, pp. 160–161; Jarret, 2001, pp. 104–105). This is not simply a matter of likes and dislikes but is also linked to how interpersonal ties operate and political communities form. In a general sense, sociologist

Robert Angell (1965, p. 99) suggests that “People are willing to become embroiled in conflict if they have no doubt of their ultimate cohesion.” More fundamentally, however, political communities form and are sustained through differing relationships to disputing. In a striking contrast with Western cultures, Simon Harrison (1993) shows that for certain peoples in Papua New Guinea, interpersonal relationships—not a state of war—are the *a priori* of social life. Violence and conflict are not seen as destructive of society but as one of a number of means of forming and maintaining groups. Thus it is “not groups [as in conflicts between nations of the West] that give rise to violent encounters but violent encounters which give rise to groups” (Harrison, 1993, p. 18). In other words, the maintenance of violence and conflict substitutes for the maintenance of order and peace in the constitution of society.

Conflict can also be constitutive in other ways, as Marcia Langton (1988) has shown in relation to fighting and swearing by Aboriginal people in the context of relations between Indigenous and non-Indigenous Australians. In other words, swearing and fighting can be *politically constitutive* for Indigenous Australians in their relations with police and other authority figures. The challenge of these culturally different orientations to conflict is succinctly summarized by Nader (1991, p. 45) when she points out that harmony and conflict behaviors are not antithetical, as Western theories and practices around conflict have implied. As I discuss below, *not* addressing this challenge in the mediation context leads to serious negative political and ethical implications for mediator practice.

Different versions of selfhood parallel these culturally different views of disputing. Although Westerners usually assume their way of being and selfhood as “normal,” Clifford Geertz (1979) succinctly draws out the specificity of Western personhood. He states:

[The] conception of the person as a bounded unique more or less integrated motivational and cognitive universe, a dynamic centre of awareness, emotion, judgement and action, organized into a distinctive whole and set contrastively against other such wholes and against a social and natural background, is, however incorrigible it may seem to us, a rather peculiar idea within the context of the world’s cultures [p. 229].

In contrast, within cultures in which interpersonal ties predominate, selfhood or subjectivity is often not skin-bound and can be located in other persons and in land and spirit forms (for example, see Swain, 1993; Rose, 1999, p. 181). In this situation, disputing or fighting between individuals

may not signal the breaking of social bonds but rather their reassertion. Gaynor Macdonald (1990) shows that for Wiradjuri people for whom interpersonal ties are crucial, a verbal insult, the casting of aspersions, or even being ignored by others represents a challenge to an individual's very existence, including their integrity as a social being. In this situation, everyday Western responses such as "turning the other cheek" or otherwise withdrawing to a pre-existing self are untenable precisely because that "self" does not exist beyond the relations at hand. Repudiation is necessary, hence in this situation fighting back operates as a "reclamation of sociality and harmony" (Macdonald, 1990, p. 127).

However, there is no simple correlation between disputing behavior and cultural difference. For instance, a regime of selfhood that gives great importance to interpersonal ties and interconnectedness does not prefigure all interpersonal disputing as directed toward the reasserting of social relations. Fred Myers (1991, p. 159) shows that for Pintupi people, fighting can be about sustaining a measure of autonomy *within* the constraints demanded by relatedness.

Openness to contradiction, surprise, and paradox offer opportunities for developing and improving mediator practice. Thus far, I have highlighted the West's culturally specific orientation to conflict and shown that neither it nor its accompanying version of selfhood are generalizable, natural, or neutral. I now want to consider some of the political implications of these assumptions and specifically the operation of power that occurs through them, as they are played out in intercultural mediation. First, however, I will briefly identify an appropriate conceptual approach to power.

### Conceptualizing Power in Mediation

To explore how power operates through intercultural mediation requires a conceptual approach that is not wedded to the culturally specific assumptions discussed so far. The work of Michel Foucault is useful in this regard because, contrary to traditional approaches to power in the West, he does not begin with the Western understanding of the self as an assumed category or entity. Rather, for Foucault, selves are shifting and continually redefined in networks of power relations. Power is not a commodity, and hence individuals and institutions do not *hold* power. Instead, Foucault (1987, p. 11) focuses on relations and exercise of power. In general terms, power operates through actions upon the actions of both others and one's self (Foucault, 1982, pp. 220–221), and these actions continually (re-)constitute who we

are. Mediators have been previously introduced to Foucault's work on power, first by George Pavlich (1996a; 1996b) and more recently by Dale Bagshaw (2001).

Pavlich (1996a; 1996b) has shown how mediation operates to re-integrate disputing individuals into the general community by fashioning nondisputing identities. Although Pavlich's analysis is in many respects comprehensive, especially in his book-length publication (1996a), the operation of power through intercultural mediation is beyond his purview. Thus, while Pavlich shows how mediation pressures disputants to refashion their subjectivities away from disputing (1996a, pp. 118–129; 1996b, pp. 721–724), he does not identify the cultural specificity of this shift. Moreover, Pavlich tends to focus on the content of presenting selfhoods rather than entertaining that there may be differing regimes of selfhood entering the mediation process (see Pavlich, 1996b, p. 726). Thus, while this paper parallels some of Pavlich's arguments, it also complements and extends his work.

Bagshaw's article (2001) usefully identifies the "central function that professionals such as social workers, lawyers, and mediators play as points of organization and distribution of power and control" (p. 205). Unfortunately and somewhat curiously, however, Pavlich's work is not mentioned, and mediators and their everyday practices escape analysis. Instead, Bagshaw (2001) identifies an operation of power at work in the processes, currently underway in Australia, of definition and classification of mediation and the potential development of standards (see NADRAC, 2001). Bagshaw's article identifies important issues and the relevance of Foucault's work, but it elides a crucial aspect of the operation of power through mediation and does not build on earlier analysis. Having briefly outlined Foucault's conceptualization of power and the literature that has applied it to mediation thus far, I now turn to the operation of power through everyday facilitative and intercultural mediation processes. The following analysis does not claim to represent all intercultural situations, or even the full situation in relation to any one intercultural setting—these are explorative and indicative rather than comprehensive claims.

### The Power of Intercultural Mediation

Following Western assumptions about conflict and disputing, conflict and violence are widely viewed as destructive practices and modes of subjectivity. Consistent with this, the implicit goal of mediation programs is the encouragement and production of peaceful, rational, and responsible subjectivities

in preference and in a shift from conflictual, emotional, and combative performances. Because of this outlook, mediation programs and processes often have difficulty recognizing and respecting non-Western understandings and functions of conflict. (Here I am drawing upon my experience as a mediator, including involvement with preparing people in dispute for mediation.) When disputants continue to fight or be emotional without demonstrating some shift, mediators tend to respond in two broad ways. Sometimes they bring more pressure to bear for disputants to accept responsibility for the dispute and be an active agent in resolving it. At other times, they may close down the process, speculating that the disputants are beyond help or simply noting that mediation cannot work in all cases.

Turning to this operation in more detail, the early stages of a person's contact with a mediation program lay the foundations for the exercise of power in the mediation session. A central way in which this occurs is through the separation of disputants from broader politics and networks, coupled with a focus on the individual person or group as the locus of the dispute and its resolution. As mediators know through experience, the willingness of parties to attempt to resolve the dispute themselves, rather than to locate its origins elsewhere, is crucial to a successful mediation. Preparatory discussions with disputants reflect this, with the mediator typically avoiding siding with disputants or acting as an advocate in what a disputant may feel is an unfair situation. The avoidance of entering into these types of discussion with disputants during the preparatory stage reflects a distinction that mediators make between the "process" and "content" dimensions of the dispute and resolution process. Focusing on process instead of providing advice encourages the party to accept individual responsibility for the dispute and its resolution. The requirement of voluntary participation on the part of disputants also tends to be emphasized in the preparatory stage, serving to reinforce the point that the mediator cannot solve the dispute, only the party can. Reassurances about the confidential nature of the preparatory discussions assist this operation by promoting a level of personal openness and responsibility that parties to a dispute may not otherwise embrace.

This partitioning of the dispute from broader political forces and other (for example, family and communal) networks, in combination with an emphasis on individual responsibility, mark out the terrain for the operation of power in the mediation session proper. If the preparatory stages are successful, disputants are less likely to interpret their dispute as part of a broader social issue relating to race, culture, gender, class, power, and so on.

Instead, they will tend to focus on their role in the dispute and what they can possibly do in mediation to resolve it. Putting to one side the broad social justice implications of this operation, such a process has striking cultural inflections.

The introduction to the mediation process typically emphasizes voluntary attendance, willingness to act to resolve the dispute, and agreement to be guided by the mediators in the mediation process. As part of these introductions, emphasis is placed on mediator control over the procedural issues and party control over substantive or content issues. This, along with assurances that mediators do not make value judgments, serves (paradoxically) to assure participants that the mediation process is apolitical and to establish a basis for mediators to exercise power. The scene for more explicit operations of power later in the process can also be set at this stage through the establishment of ground rules or guidelines that the parties voluntarily agree to. These are usually aimed at maintaining a controlled, nonviolent interaction. The opening contribution by parties to the mediation session involves their explaining the concerns that have brought them to mediation or, in common terms, telling their side of the story.

This storytelling begins a process of self-examination in relation to, and reconciliation with, an external order that operates throughout the mediation session. Foucault (1981) terms this process the “confession” and identifies it as a practice that, since the Middle Ages, has become increasingly pervasive in Western society (pp. 58–61). He is interested in the confession as a technique of the self (or practice of subjectivity) in which the individual confesses his or her emotions, thoughts, and desires to an external body or authority. The process of telling “opens” the individual and effects a process of self-work (re-evaluating thoughts, behaviors, actions, and overall way of being). The fact that the confession frequently has redeeming effects accounts for why Westerners have become much practiced at—and in many respects addicted to—confessing. It is for this reason that the process of storytelling can be highly valued by mediation participants as an opportunity to have their say and thereby achieve some measure of justice. It is also why storytelling is often noted as “unique and even magical” in mediation circles (Gunning, 1995, p. 68).

However, Foucault (1981) also demonstrates that power relations are intrinsic to the confessional: “one does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console and reconcile”

(pp. 61–62). In the mediation process, the mediator serves as the figure to whom the disputant confesses and as the one who specifies the parameters for confessing. In considering how they may present their story, parties will “craft their stories in relation to other pre-existing stories and cultural myths with which all the participants, parties and mediators are familiar” (Gunning, 1995, p. 68). In other words, there is pressure on disputants to perform their stories and selves in ways understandable to the mediators and intelligible within the goals of the mediation session and accompanying assumptions about peace and conflict.

From the storytelling phase onward, facilitative mediation processes typically take the form of an extended confessional in which the Western approach to conflict and selfhood is encouraged, promoted, and reinforced through power exercised by the mediators. This occurs through a number of techniques. Depending upon process variation and mediator style, disputants may face coaching about appropriate communication styles, mini-lectures on ways of relating more positively, direct rebukes for how they are behaving, or the invocation of ground rules set at the beginning of the session. However, perhaps the most important technique, which serves as a theme for mediation sessions, is reframing. Conceived in a broad sense, reframing involves shifting the attitude or orientation of parties. At its most subtle, it can involve paraphrasing anger and other emotion that parties express in a calm and steady voice, serving as a demonstration that such matters can and should be handled in a particular way. In its more direct forms, reframing involves choosing not to paraphrase or emphasize certain aspects of dialogue, thereby signaling them as inappropriate, suggesting agenda items in “neutral” terms, diffusing personal attacks, directing a party to address a shared problem, and redirecting discussion from surface-level positions to underlying interests. The use of reframing throughout the mediation process acts on parties through subtle injunctions, inducements, and rewards. For instance, if an emotional or accusatory statement from one party to another is reframed by a mediator and the party subsequently adopts a more conciliatory tone, mediator intervention will be relaxed—signaling appropriate behavior by the party. Conversely, if a party ignores a reframe, more reframes will be necessary—signaling disapproval with the exchange. If the party does not follow up on these, other stronger interventions may be called for. In this way, reframing encourages parties to reposition themselves as rational rather than emotional, constructive rather than destructive, conciliatory rather than combative.

Throughout this process, the most powerful operations of power occur through culturally specific expectations—the most closely related is the expectation that people should deal with disputes in a rational rather than emotional way. This is not to suggest that emotions are simply ignored or disavowed in mediation. The most standard formulation here is that emotional outbursts serve to clear the air or let off steam, making it “easier to talk rationally later” (Fisher, Ury, and Patton, 1999, p. 31). However, selfhood in some cultures does not prioritize cognition, nor separate and compartmentalize it in relation to other experiences. Niko Besnier (1990, p. 420) points out that “ethnographic work on emotions has shown that the opposition between cognition and emotion is a Western construct.” In mediation, the reframing techniques discussed above (paraphrasing, for instance, which eliminates or dispenses with emotion) encourage parties to deal with issues rationally rather than emotionally, thereby promoting a culturally specific technique of the self and regime of selfhood.

Consistent with the expectation that disputants will deal with issues in a rational rather than emotional way, their performances are also expected to be relatively “coherent”—that is, able to be readily understood through Western rationality. In mediation circles, this is commonly framed through the notion that participants have underlying interests that are consistent and relatively stable. However, this expectation conflicts with Rose’s account (2000) of the fluidity of subjectivity and the process of locating oneself in multiple contexts. Rose notes that in conflict situations she has observed, Aboriginal people can be involved in “shifting identities, and shifting contexts, sometimes with overwhelming speed and agility” (p. 172). Such behavior may be interpreted by mediators who are focused on interests as “shifts in position,” resulting in attempts to keep parties to agenda items or to fashion “coherent” stories of parties’ motivations and behaviors.

Similarly, the logic of the confession suggests that motivations for negotiating positions and behaviors should be present and able to be articulated by individuals. However, the interconnectedness of social relations and selfhood that characterize many non-Western cultures means that family and communal relations often play a larger role than for Western people. Thus, individuals may not be in a position to articulate interests outside the context of broader relationships. Nor can it be assumed that it is possible to include or represent all contexts within the mediation setting. For instance, Aboriginal Australian people are often required to observe protocols about disclosing knowledge in certain settings or in the presence of certain

people. Gaynor Macdonald (1990, pp. 128–129) has shown that even attempts to understand the basis of disputes may clash with the social order of Wiradjuri people that she has been involved with. To do so may expose contradictions in social relations that Wiradjuri prefer to keep covered as part of maintaining a viable community and knowable social order. Macdonald (1990) points out that the question, often asked by non-Indigenous people, “What do they fight about?” assumes that fights have explicable causes (reasons, motivations, and interests) and that these can enable an understanding and evaluation of a fight. However, Wiradjuri do not share this approach and, in contrast to the approach pursued through the confessional, there is little soul-searching or inquiry into people’s reasons or motives for fighting (pp. 129–130). Framed in the language of mediation, the result of this different approach to conflict is that mediators can be faced with a situation in which parties are not forthcoming about their interests. In response, mediators are usually trained to “draw out” parties’ “underlying” issues and interests consistent with the logic of the confession. In these circumstances, a variety of outcomes can result, one of which is that participants perform according to the requirements of the mediators and this process. (I mention other possibilities below.) In this case an operation of power is effected through a culturally specific conceptualization of conflict and self.

These operations of power may not be immediately apparent to mediators or participants. This is because in many settings Western norms around conflict predominate to the extent that they appear natural, because these operations of power take place within the redemptive framework of the confessional, and because reframing operates in a subtle way. Even when other less subtle techniques, such as direct rebukes and the invocation of ground rules, are employed, the fact that mediators de-politicize their involvement by emphasizing their focus on procedural issues serves to mask the operation of power. However, regardless of whether reframing or more direct techniques are employed, participants are encouraged to reform their subjectivities in a peaceful direction aligning with Western assumptions about conflict and selfhood.

Although there is often no explicit engagement with non-Western practices in typical facilitative mediation, parties sometimes use mediation sessions as a site to play out their own patterns. In response to such experiences, mediators sometimes modify standard mediation processes in recognition of non-Western ways of operating. This indicates the interplay of forces and traditions, signaling that the operations of power discussed so

far are not entirely stable and that it is possible to ameliorate and change them. Nevertheless, because of the predominance of Western cultural norms in the operation of most mediation programs, this possibility needs to be fought for in order to ethically come to terms with cultural difference. Not doing this reinforces Western values as universal, thereby disavowing and disrespecting other worldviews and lifeways.

### Implications for Research and Practice

The broadest implication of the above discussion is the need, often presented as part of a postmodern promise deriving from the work of Foucault and others (see Bagshaw, 2001), to develop ways of valuing cultural difference in mediation. The suggestion here is that a variety of modes of subjectivity and approaches to conflict are equally valuable for people to maintain their social relations and make their way of being in the world. Some may counter that mediation programs in Western communities should reflect Western conceptions so that the order and integrity of these societies is ensured. However, this objection (again) reflects Western assumptions about conflict and the possibilities for formation of political communities; specifically that community forms through sameness and consensus. To explore this issue in detail is beyond the scope of this article. Suffice it to say that a number of contemporary political theorists are exploring the possibility that political communities—including those in the West—can and do form through difference and dissensus (see Nancy, 1991; Lingis, 1994; Secomb, 2000). How then, can researchers and mediators begin to thoroughly value difference given the above discussion on Western assumptions about conflict and selfhood and the accompanying operation of power through facilitative intercultural mediation?

First, caution is necessary. Drawing upon a Foucaultian approach is useful for developing critical analyses and can point to ways of valuing cultural difference. Some of the latter possibilities emerge in Bagshaw's list of goals for the postmodernist mediator (2001, pp. 217–218). However, the rapidity and ease with which these might be put into practice, and the extent to which they are compatible with contemporary Western mediation practice, is less certain. Considering some of the possibilities articulated by Bagshaw (2001) demonstrates this. For instance, she states, but does not substantiate, that through mediation “we have the opportunity to understand the stories and themes that have shaped a person's life and the degree to which the normalizing power of dominant discourses have

included, excluded, or marginalized people” (p. 216). However, as has been shown in this article, mediation itself is a normalizing process that promotes a particular selfhood and embodies the values and approaches to conflict of dominant Western society. Bagshaw’s treatment of the formation of identities through mediation (2001) is similarly problematic. She suggests that we should “place emphasis on allowing people to construct their own identity within the mediation” (p. 218). However, this ignores that self-work never occurs in a vacuum or outside networks of relations of power. The closest Bagshaw comes to indicating how this process might occur is when she draws on the work of Michael White and the idea of narrative selves. She suggests that “separating people from the problem and encouraging them to provide an account of the effects of the problem on their life and on their interactions with others leaves them free to explore alternative and preferred knowledge about who they might be” (p. 216). However, as I have discussed, separating people from the problem is a long-standing technique in Western ADR theory and practice that is directly linked to the regime of subjectivity predominating in the West. This means that the above maxim may be appropriate for a relatively autonomous and self-contained thinking unit. However, again as I have indicated, there are political implications attached to assuming this approach when a person cannot be so readily separated from the problem.

Similarly, the suggestion that encouraging disputants to provide an account of the effects of a problem on their lives leaves them free to explore alternative and preferred knowledge about who they might be, creates a false sense of a zone of freedom. A more likely scenario is that such encouragement would allow the telling of versions of selfhood that are compatible with a Western subjectivity as promoted in mediation processes. This in turn may result in variations on the Western theme that place a substantial limitation on who people might be. At the least, mediation enforces, more or less strongly, certain parameters around the role and meaning that conflict can have in people’s lives and therefore in the formation of their subjectivity. Thus, we need to be cautious about putting too much store in the capacity of contemporary Western mediation at the risk of undermining the possibilities for substantial valuation of difference. This is not to dismiss the possibilities identified by Bagshaw (2001)—indeed searching out these possibilities is crucial to ethical and professional mediator practice. However, to find ways in which cultural difference can be thoroughly valued in mediation requires more research on topics such as how power currently operates to construct subjectivities in intercultural

mediation. The explorative and indicative arguments begun in this article require further research to more fully understand the challenges we face.

Turning to mediator practice and the provision of intercultural mediation services, there is a need for increased awareness about the political nature of mediation. Following from the discussion in this article, service providers need to be made aware that facilitative mediation practice embodies specifically Western views of conflict and selfhood and that it effects an operation of power that has significant political implications for mediation involving people of non-Western cultural background. The inclusion of such perspectives in mediation training programs would be a useful antidote to the often uncritical enthusiasm with which many new recruits to the field adopt mediation. In this process and in the proposals below, mediators of non-Western backgrounds could play a very active role. Moving beyond the need for increased awareness again requires caution, as it would be presumptuous to attempt to address the issues raised so far by closely specifying abilities, skills, and knowledge that mediators should acquire. This is because we are only at the early stages of undertaking the sorts of analyses conducted above. However, it is possible to identify a broad orientation to facilitate our learning and a number of more specific possibilities that suggest areas for research, process development, and mediator training.

In seeking to understand cultural assumptions about behavior and being that come in to play in disputing, Peter Black (1991, pp. 145–146) makes use of a combination of self-awareness, introspection, and perhaps most important, a capacity to be surprised. Black makes the fundamental point that when our assumptions fail to predict or explain action and behavior, there is an opportunity for surprise and learning. The aim of developing this type of orientation is not to generate new explanatory or predictive knowledge or to know culture in a comprehensive way (regarding problems with this approach, see Avruch, 1998). Rather, the aim is to be “attentive to the unknown that knocks at the door” (Deleuze, 1992, p. 165). This allows that ongoing and flexible learning might occur that does not assume unchanging ways of dealing with conflict and being in the world. The challenge within this disarmingly simple suggestion is to suspend one’s assumptions and to make one’s self vulnerable by accepting the cultural specificity and limitations of one’s own knowledge and mode of selfhood. (Part of the aim of this paper has been to articulate some different understandings of conflict and conceptions of selfhood, and thereby surprise some readers.)

Drawing upon this orientation, trainers and mediators can challenge themselves by reflecting upon cultural difference. One aspect of this necessarily occurs through the development of cultural and conflict literacy, which can be pursued through contact with people from different cultural backgrounds or by making use of academic papers, literature, poetry, and artwork. However, equally important as this somewhat external focus is the need to develop self-awareness of the specificity of one's own culture, including its dominant mode of selfhood and orientation to conflict. This is particularly important for people of Western background because the dominance of Western norms means that culturally specific traits are often perceived as normal or universal and thereby rendered invisible. These two types of learning can be leveraged against one another so that surprise about aspects of another culture's orientation to conflict can lead to surprise and insights about one's own culture, and vice versa. This process should yield recognition that the standard assumptions and bases of facilitative mediation do not hold universally. It should therefore militate against interpreting parties' behavior through "commonsense" understandings of "appropriate" or "sensible" or "rational" behavior, and hence through particular versions of selfhood. Instead, attempts to understand why parties may be behaving in particular ways should incite consideration of forces and contexts operating on parties that may not be understood by or available to mediators and teachers, and a new round of learning.

This type of knowledge and learning can be used to develop and improve mediation and other dispute processing methods because it opens the possibility for working with disputants to design or "grow" processes out of their context(s), worldview(s), knowledge(s), and so on. In terms used by John Paul Lederach (1995, pp. 85–107), this reflects an "elicitive" (or dialogic) rather than "prescriptive" approach. In place of imparting knowledge or delivering a pre-established process, the core aim in an elicitive dialogue is drawing on people's local and in-context cultural knowledge. There are no clear guidelines about how this should proceed, as the development of intercultural elicitive dialogue is in its infancy. However, the broad outline of how to elicit ways of dealing with conflict for particular intercultural contexts should become apparent through development of the type of knowledge suggested above. The types of changes from standard facilitative mediation that might be generated through this process are clearly varied, and in some instances an elicitive dialogue may simply highlight the inappropriateness of using a mediation-type process. Here

though, I want to note a number of possible divergences from standard facilitative mediation that might emerge through elicitive dialogue:

- Agendas as well as technical and analytical language may be eliminated, reflecting the importance of poetic, affective, metaphorical, and nonlinear understandings and stories as ways of dealing with conflict.
- Emotional and spiritual spheres may be integral to the mediation rather than being viewed as additional factors or problems to move beyond.
- Apparently “external” political and social contexts may enter into the mediation process. For instance, the mediation may not occur as a discrete process but could be part of a broader facilitated negotiation process that may include visits to individuals’ or families’ homes.
- It may not be expected that parties will be consistent in their contributions to the mediation process.
- Mediators may become more personally involved with the parties than traditional notions of professionalism and neutrality suggest.
- Disputes may not be finalized.

These are necessarily tentative suggestions because their appropriateness cannot be evaluated outside an elicitive dialogue that needs to be developed in particular intercultural settings. Similarly, the extent to which such changes mitigate a West-dominated operation of power cannot be claimed in advance. In this sense, the proposals advanced here do not offer certainty or simple answers to the politics of intercultural mediation practice. However, they do offer the possibility for intercultural learning and opportunities for different ways of relating and being for mediators and participants.

The suggestions advanced so far focus predominantly on awareness of the operation of power discussed in the previous section and on the development of processes of elicitive intercultural dialogue. These processes respond to postmodern suggestions about the importance of local and particular contexts. While they are therefore more likely to yield ethical outcomes than ideas or suggestions from a particular context, it may be useful to offer some illustrative ideas about the behavioral and procedural changes that postmodern intercultural mediators might adopt. To address the issues raised in this paper, a mediator may:

- Allow that mediation be a site for the production of meaning through conflict as well as a site for the amelioration and management of conflict. This may involve greater acceptance of (including resisting intervening into) outbursts of anger and similar behaviors. Outbursts can signal important

boundaries and the fault lines of (currently) irreconcilable differences that speak to participants' identities and political orientations. To attempt to address these can violate participants' perspectives and undermine political and personal goals they may be pursuing both through and beyond mediation.

- Experiment with personal sensibilities that develop literacy with a variety of modes of dealing with conflict. What positive roles, for instance, might the expression of anger and the playing out of conflicts through anger play in relations between people? This is useful because overly earnest mediators can themselves become subjects of mediation discipline, with the attendant risk of adopting a universally conciliatory approach to conflict at the expense of other ways of operating. Developing such sensibilities increases awareness of the variety of subjectivities that people might bring to mediation, thus providing a basis to avoid subjecting them to the normalizing and ordering strains of mediation that emerge through its implicit orientation to conflict.

- Allow subjectivities to combine or fragment in ways contrary to those either advocated by or accepted in standard mediation practice. For instance, in some cases it may be more ethical to allow that the person and the problem are one, rather than attempting to separate the inseparable. This allows recognition of the integral nature that emotion and affect may play for some people and mitigates the extent to which participants' subjectivities are available for dissection by mediators. At other times, it may be appropriate to allow subjectivities to fragment rather than combine. For example, rather than valuing consistent and coherent performances by participants, it may be appropriate to accept that a person's behaviors will change throughout a session because of different contexts coming into operation.

- Be aware that participation by previously excluded groups (for example, Indigenous people, youth, and women) is not sufficient basis to ensure ethical practice. Involving people, for instance, in setting their own agenda does not address the operation of power that occurs through the process of organizing interactions in this way.

- Experiment with different conversational and organizing structures. This can include resisting ordering strategies drawn from one tradition or heritage and experimentation with non-standard approaches. For instance, it may be useful to abolish the use of agendas and instead make use of place, story, precedent, or other means for organizing and structuring interactions between people.

- Accept that the mediation process is not neutral, and suspect its transformative potential. The process can appear humanistic, but within

this humanism the transformations generated can reflect values and norms about self and conflict that are historically and culturally specific.

- Experiment with identifying the normalizing processes of mediation in a dialogue with participants. For example, identify phases of the mediation process being used that might be problematic for participants; acknowledge that participants may want to operate in a different way; and seek—and be responsive to—their input.

- De-professionalize. Being formal, professional, and avoiding being affected by people's emotions are not neutral behaviors. Within the limits of impartiality, mediators can experiment with allowing themselves to be affected by people's situations, emotions, difficulties, and frustrations, and with linking personally and building relationships with participants.

While these suggestions can help to mitigate the operation of power identified in this paper, it should be remembered that they are drawn from a particular context and that they are ideas and experiments rather than proven principles of mediation practice. They are also not proposed as a program for change, but as a partial antidote to aspects of modernist mainstream mediation practice and as insights for the further development of facilitative mediation.

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