

Harmony, Peacemaking, and Power: Controlling Processes and African Mediation

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Anthropologist Laura Nader has advanced a scathing critique of alternative dispute resolution (ADR) as a controlling process. Data from an anthropological study in The Gambia, West Africa, indicate that processes such as mediation have a wide range of social functions and can be used to challenge as well as reinforce hierarchies. A more balanced analysis of conflict resolution and a cross-cultural perspective illuminate both the challenges and the potential of mediation.

Is conflict resolution a controlling process that contributes to the suppression of justice for the disadvantaged? Writing from the conflict perspective of social theory, Laura Nader argues that it is, and she repeatedly references the literature on Africa to support her claim that mediation performs this function both nationally and internationally. There are several problems with that thesis, however, including the fact that many ADR specialists are actually quite concerned with social justice.

In addition, original data from The Gambia, West Africa, suggest that Nader's portrayal of ADR and harmony ideology is something of a caricature. These data—collected during two and a half years of field research in southwestern Gambia—demonstrate that social aversion to disputing can have multifaceted effects.¹ In The Gambia, alternative methods of settling disputes outside the courts offer a vital forum for local citizens to seek redress and solve problems. This is due in part to the evaluative and normative approach of Gambian mediators, which can act to offset power imbalances. Harmony ideology and mediation not only serve to maintain inequality, but also provide a means by which disputants can seek redress and enact change.

The critique of conflict resolution as a controlling process deserves careful consideration because expressions of power can work to disenfranchise disputants. However, a more robust analysis and more accurate portrayal of the field of conflict resolution will also note the potential for processes such as mediation to act as mediums for empowerment and contestation. The full range of outcomes that can be produced by mediation highlights challenges that should be considered by scholars, practitioners, and policymakers. Widespread adoption of a cross-cultural perspective and an inclusive approach would enhance the study and practice of ADR and help minimize the field's contributions to dominance.

Power Critique of Mediation

Critics (for example, Abel, 1982; Auerbach, 1983; Hofrichter, 1987; Singer, 1979) have pointed out weaknesses in ADR, focusing on issues of power and raising concerns about mediation's potential for maintaining social inequalities and enabling greater social control. Laura Nader has been one of the most trenchant detractors of the field. She has asserted that conflict resolution is used for "pacification by means of harmony ideology" and is "essentially a response by reactionary forces to the 1960s legal-rights and access-to-justice movements" (Nader, 1997, p. 712; see also Nader, 1989, 1993).

According to Nader (1991, 1997), the ideologies encapsulated in conflict resolution promote what she calls "coercive harmony"—the pressuring of people or groups to limit disputing. The negative conception of disputing inherent in ADR and the encouragement to settle outside the court system have a repressive effect, serving the interests of dominant sectors of the national and global population. She posits that the focus on achieving agreement can lead to weaker parties being pressured into compromising or even dropping legitimate grievances.

The issue of power differentials problematizes the notion of mediators as neutral facilitators—a concept that has long been idealized in North America (Merry, 1989). One of the main critiques of facilitative approaches is that they can disadvantage weak disputants. Proponents of approaches such as transformative mediation aim to empower disputants by allowing them to take charge of the resolution process (see Bush and Folger, 1994; Lederach, 1989). That notion resonates well with the members of individualistic cultures who are socialized to believe in individual self-determination, and it may well be accurate in many cases.

Putting decision making and control in the hands of the disputants, however, is risky when there are power imbalances that may inhibit equitable negotiations. Mediators may not be able to detect or prevent all coercion, and power imbalances may discourage disputants from raising certain points or militating strongly for themselves (see Maxwell's [1998] incisive examination of the various types of coercion that can occur in mediation). Impartiality may actually benefit the powerful by supporting the status quo when radical change is needed—change that weak parties cannot attain through direct negotiations. Disenfranchised groups may also feel that mediator claims of neutrality are insincere or even devious (Kochman, 1981).

Nader's thesis is an international one; she is also interested in globalizing expressions of power. However, examining her critique from a cross-cultural perspective highlights both its relevance and several of its limitations. This can be illustrated in reference to the situation in West Africa.

The Cross-Cultural Lens: Harmony Ideology, Elites, and Africa

Nader suggests that while social scientists have portrayed harmony ideology as indigenous to other societies, in actuality the West has been instrumental in its evolution. Studies of African and other societies have described customary dispute resolution as a historically developed tool of social cohesion. In Nader's view, the prevalence of harmony ideologies and their use in dispute resolution is linked to Western intervention in other parts of the world, such as Africa. To the more commonly accepted examples of the role anthropology has played in this interaction, Nader adds the contribution the discipline has made to the widespread belief in historical traditions of conciliatory forms of dispute settlement in Africa and elsewhere.

Nader cites some of the classic works on customary law in Africa—such as Gibbs' (1963) work among the Kpelle—and African societies feature prominently in the literature on non-Western dispute resolution. Classic studies describe African methods of managing disputes as historical institutions for maintaining peace and balance in the social system. They tend to portray Africans as harmony and reconciliation oriented, often describing African dispute settlement in terms similar to those used for the “win-win” model of Western ADR.²

The idealization of African dispute resolution has been justly criticized by Martin Chanock (1987). Chanock, a political scientist, asserts that prior to the colonial era local conflict management was often not collaborative or integrative. Instead, conflict cessation was often achieved through the imposition of force or resulted in win-lose outcomes. Additionally, according to Chanock, the view of African dispute resolution as traditional is erroneous. Social scientists and lawyers cooperated with African elites in promulgating this belief, but “customary” dispute resolution was actually constructed by powerful interests such as missionaries, colonial authorities, and local leaders who were often appointed by colonialists.

According to Nader, harmony ideology has been exported from Western countries to other nations as a method of control employed by powerful interests. Her portrayal of Western society as relatively harmony oriented contradicts an enormous body of work that argues the exact opposite. Many analysts perceive Westerners as more comfortable with disputing than members of other societies.³ In Western countries, conflict is often seen as a natural component of society, and is sometimes recognized as potentially productive.

A recent contributor to *Conflict Resolution Quarterly*, Morgan Brigg (2003) cited Nader’s view and referred to social groups found in the Pacific Basin as examples of societies where conflict tolerance is greater than in Western cultures. However, other scholars have described conflict avoidance as a behavioral pattern found in some “peaceable” societies of that area, as described by Hollan (1997) in relation to the Toraja of Indonesia. From an Africanist’s point of view, Nader’s suggestion that American society is characterized by relatively high levels of conformity strikes a dissonant note, at least in terms of its comparative component.

By exposing the influence that forces associated with colonialism had on local-level African dispute resolution, Chanock made a significant contribution to legal scholarship. At times, however, this perspective appears to overprivilege the power of governmental authorities, missionaries, anthropologists, and other elites at the expense of other actors (Rugege, 1995; Spear, 2003).

Many scholars have shown how presumably subjugated populations employ agency in undermining and modifying globalizing influences and attempts at control.⁴ In fact, Nader mentions the anthropological literature on resistance and James Scott’s notable work (1990) on this subject in her 1997 article, but mainly in terms of how it reinforces her argument about power and dominance. Although she acknowledges that “cumulative

tinkering can be a two-way process” (1997, p. 712), her focus is primarily on control, leaving this reader with the impression that she may have a tendency to give the “weapons of the weak” (Scott, 1985) short shrift. The machinations of global elites are a key factor in the course of events, but they do not exert control. A more accurate approach would be to integrate other actors into the equation and examine levels of influence and the interplay of various narratives.

The high value placed on harmony in many African societies may have developed through social interaction with a particular physical setting. Africanist scholars have traced indigenous harmony models to a combination of specific environmental and technological conditions. Historically, land has been relatively bountiful in West Africa, and local modes of production have relied on intensive labor inputs. Wealth, status, and prestige have been gained primarily through controlling people rather than land, leading to the development of harmony ideologies (see Bohannan, 1968; Meillassoux, 1981; Polanyi, 1944).

In the Sahel region of Africa, the widespread aversion to conflict is in part a sociocultural response to a fluctuating environment characterized by regularly occurring extreme conditions and periods of scarcity (Davidheiser, forthcoming). When Gambian farmers were willing to forgo compensation for damaged crops in favor of forgiveness, thereby shoring up ties with others, they may have had good reasons for doing so. In mediations and interviews, Gambians discussed how agreeing to settle often led to the reinforcement of relationships that provided future benefits. As one villager said during a mediation, “People do forgive for reasons.”

Extensive participant observation and voluminous data collected during multiple trips indicate that it would be unwise to dismiss Gambian modes of reasoning by assuming that the privileging of relationships and aversion to conflict was due to harmony models imported from the West and bolstered by local elites.⁵ In the southwestern corner of the country, at least, harmony values “make sense” and can prove beneficial to those who share them.

Variance in levels of attachment to harmony models is too complex for broad generalizations about the dynamics and origins of such models. In my comparative study of three ethnolinguistic groups, the Mandinka and the Jola exhibited great concern for harmony and unity, while the Manjago were fairly agonistic and seemed to enjoy quarreling somewhat (see also Gable, 1990). Making blanket statements about all Africans is problematic; however, at least some African societies generated their own harmony ideologies that predated European intervention on that continent.

Power flows are not only relational, they are also contextual (Deutsch, 1973; Gewurz, 2001). The same is true for the relationship of mediation to social change as that relationship is tied to macro and microlevel situational factors. Societal and situational dynamics can moderate the effects of power imbalances in ADR. Problems of inequality applicable in North America do not always translate well in other contexts.

Jennifer Maxwell's article (1998) on mediation between present or former spouses with a history of domestic violence elucidates the hurdles faced by mediators in situations of drastic power imbalances. Maxwell offers a persuasive argument that mediation may be inappropriate in such cases. She notes, however, that this may not be true in settings where the community is involved in the process because the involvement of kinfolk and community members can help level the playing field. In The Gambia, such involvement is common in marital and divorce mediations. The practices of other countries should be considered before making sweeping condemnations of ADR processes as inequitable or inappropriate.

Human social dynamics are amazingly complex and the most heuristic scholarly perspectives are usually situated somewhere between opposing theoretical poles. It is so in this case in that mediation may act as a medium for the activities proposed by both its critics and its proponents. This can be shown by empirical examples from The Gambia.⁶

Mediation and Power in The Gambia

Gambians used local-level mediation as an efficient forum for addressing their interpersonal disputes. Respondent narratives and empirical data included examples of harmony ideology being used to achieve a variety of outcomes. Because much of the work on power issues in mediation has dealt with marital mediations, we will discuss that type of dispute here. Mediations between spouses in The Gambia reflected a wide range of dynamics and outcomes. These ranged from wives being told they should forgive and forget to strong condemnations of husbands and subsequent agreements to make specific changes requested by the wives. How Gambians dealt with these disputes exemplifies their preference for normative and evaluative mediation styles. Such approaches can be coercive, but they can also be used to counterbalance power imbalances.

The questions about gender bias in marital mediation do resonate in The Gambia. Interviews and focus groups suggested that the view of women as subservient to men was widespread. As in the United States,

beliefs about gender roles could translate into women's interests being deemphasized. In the thirty-three observed marital cases collected in one of the studies by this author, mediators urged wives more often than they did husbands to be patient and forbearing.

However, women also sought out and benefited from mediations. Wives often solicited mediation, doing so, for example, when they felt their husbands were failing to provide them with enough money or were neglecting them, when they were being physically mistreated, or when they were dissatisfied in some way. Women used the high value placed on harmony to get local community members to intervene when they had marital problems.

Mediations not only allowed women to express their viewpoints and feel they had been validated, but they also enabled them to gain specific benefits from agreements. For example, observed peacemakings resulted in wives receiving money, beds and other goods, and behavioral concessions from their partners. Women would not turn to mediation if they did not feel it was a forum in which they could seek redress, present their grievances, and achieve positive outcomes.

That Gambian mediators tended to be directive often enhanced the position of weak disputants.⁷ Gambian mediation discourse was normative with custom, religion, and shared values being invoked by both the parties and the mediators. Mediators used shared norms both to promote forgiveness and to pressure stronger parties to accede to demands made by weak disputants.

Harmony ideology can actually provide a supporting discourse for the invocation of rights and for discussions of justice. This may be rarer in some contexts than in others, but the two concerns are not inherently incompatible. In his discussion of a mental health roundtable in Hawaii, Milner (1991, p. 11) notes that there was tension between the two domains; integrating discussions of rights into ADR was difficult and rights were "worrisome things" for conflict resolution practitioners. He suggested, however that there was also the potential for symbiosis between narratives of rights and of cooperation.

In The Gambia, where mediation discourse was usually highly normative, rights were far from worrisome; in fact, they were central. Mediators were explicit in their reference to rights and morals and did not attempt to sideline them in the interest of neutrality.⁸ Many Gambians did place a high value on a neutral stance, but referred to a neutrality informed by shared norms in which the ideal was to hold both parties to the same

ethical standards. Mediators strongly emphasized the dangers of conflict and that disputants needed to respect each other's rights in order to maintain harmony. Peacemakers often urged husbands to follow accepted norms in dealing with their wives in order to restore conflict and avoid problems.

Mediations also gave women a forum for presenting their viewpoints and challenging existing relations and practices. In the collected cases, wives and female mediators repeatedly argued for women's rights. Male mediators also took part in this. For example, one young Muslim man frequently used religious arguments to militate for improved conditions for wives. He could be highly critical of husbands' behavior and often spoke at length about better treatment of women. In addition to speaking about the problems raised by wives, he often added his own advice such as telling husbands they should discuss their plans with their wives, treat their wives as their partners in household management, and even joke with them to put them at ease.

Members of disadvantaged sectors of Gambian society usually turned to people they knew when they sought mediators to help address their problems. These insider mediators used their relationships with the stronger parties to persuade or pressure them to forgive, change, and compromise. This approach balanced power inequalities and provided an easily accessible medium for change.

For example, in the patriarchal communities of The Gambia, wives usually have less power than their husbands. By asking individuals who have leverage over their husbands to mediate, wives were able to force husbands to take their grievances seriously. Wives often asked friends of their husbands to mediate between themselves and their spouses. The mediators often concluded that the husbands were in the wrong and criticized their friends (the husbands), pointing out their duties to their wives and pressuring them to improve their behavior toward their spouses. The outcome of one such marital case was not only an agreement that satisfied the demands of the wife but, at the suggestion of the mediator, the husband also helped his wife start a business of her own—an action that went far beyond her requests and expectations.

In the interdependent social realm of The Gambia, mediators are able to exert their influence in favor of weaker parties. For example, in the aforementioned marital mediation, after berating the husband as being wrong in his actions toward his wife, the young male peacemaker urged him to take specific actions to fulfill his obligations to her. He even

threatened to terminate his assistance to his friend if he did not accede to his wife's demands, saying, "I am the one who helps you with your financial difficulties. If you do not change your ways with [your wife] then I will stop that and I will not visit you because I will have no place here."

The group mediation approach alluded to by Maxwell was also common in The Gambia, where disputing is a matter that extends beyond two individuals. Weaker parties were often empowered by the participation of insider negotiators. One type of mediation procedure commonly used in marital conflicts by members of the Manjago ethnic group is known in a local dialect as *gulentuu*.

Gulentuu generally refers to gatherings in which kinfolk or other representatives of both spouses are present. As is common in non-Western mediation, the representatives are not neutrals in the sense that they are equidistant from both parties (see Cobb and Rifkin's [1991] discussion of neutrality). However, they do act as mediators insofar as they intervene between the disputants and try to help them resolve the conflict. These meetings usually included the assignment of blame for the dispute, and in 67 percent of the observed cases, the mediators concluded that the husband was at fault. Husbands could be strongly censured by their kinfolk and friends and the relationships realigned in a manner that favored the wives.

ADR or Courts?

Critics of ADR generally appear to favor the court system as the preferred modality of dispute resolution (see, for example, Abel, 1982; Auerbach, 1983). Nader offers no alternative to harmony models other than the judiciary. Although she states that she does not want to "valorize an adversarial model" (1997, p. 714), her analysis suggests that courts may be better able to serve the interests of weak parties and enforce strong parties' compliance with accepted standards. The legal system has a variety of drawbacks, however. For example, the high transaction costs and various shortcomings of the court system undermine its ability to promote justice (see Menkel-Meadow, 1996), as well as the proposition that courts may be preferable to ADR founders when applied to many African nations. In The Gambia, at least, ADR appears to be the most promising option.

Many nations, including The Gambia, have a geographically limited judicial system without easy access to the forums of the formal legal sector. Using such forums also carries significant material and social transaction

costs. Even if disputants are able to shoulder these costs, unbiased treatment of disputants is by no means guaranteed, and courts may actually be less likely to produce a substantive outcome than local-level mediation.

For example, in describing a mediation that took place after her child's garden was destroyed by cows, a middle-aged rural Gambian woman dismissed the idea that a court may have helped her daughter receive compensation. She explained the benefit of mediation by saying, "The reason we mediated it is because if you go to the government they will not do anything about it. They will twist and turn, and in the end nothing will come out of it." Mediation may provide a vital means for underprivileged disputants to seek redress and in some cases may actually empower them.

In addition, the problem of power in dispute settlements is not limited to ADR. Written law can offer formal guarantees for weak disputants, but they may not be implemented as foreseen, and legal rules may themselves be less than equitable. In countries where courts clearly reinforce structural inequalities (consider, for example, the application of Islamic law in Northern Nigeria), ADR may actually offer a more empowering option for marginalized citizens.

The enforcement of law can also be skewed by power imbalances and this is true not only for nations with obviously corrupt regimes. In the United States, for example, litigants with more money may hire better lawyers and bring in experts to testify on their behalf, and powerful disputants may exert pressure on legal officials. As members of a social system, lawmakers, judges, and lawyers respond to ideological, social, and pragmatic concerns (Conley and O'Barr, 1990, 1998; Danet, 1980). The problem of hegemony and power imbalances applies to any system of dispute management and is not particular to ADR.

Professor Nader sees the institutionalization of conflict resolution in the international sphere as a strategy to maintain dominance over other societies; "Now that the 'primitives' have courts we move to alternative dispute resolution" (1997, p. 715). However, the legal systems of formerly colonized nations often reflect Western values more than local cosmologies. In The Gambia, the contemporary judicial system is largely based on the arrangements set up by the British during the colonial era (Darboe, 1982). The postcolonial regimes have enacted some modifications but have basically maintained the same framework as the British, including key features such as rural district tribunals run by chiefs (a position invented during the colonial era).

Gambians saw the judicial system not only as inefficient, costly, and inaccessible, but also as a forum that did not reflect their customs and beliefs. For example, as discussed earlier, Gambians place a high value on relationships. Locals strongly expressed that court cases produce lasting ruptures in relationships, but described mediation as a means by which change can be effected without terminating the bonds. This did not preclude the possibility of cessation of relationships through mediation, however. For instance, some wives were adamant about having their marriages end and refused attempts at reconciliation. One woman did not agree to return to her husband despite the mediation efforts of respected figures in the town and many people close to her. In general, however, Gambian wives see divorce as a last resort; what they ordinarily desire are improvements in the state of their marriages. Courts are unable to provide this, but mediation can.⁹

Strathern (1985) has argued that dispute resolution involves renegotiating, not repairing, relationships. Gambians did view mediation as a modality for maintaining interpersonal bonds that would be broken in the court system, but they also used it to reformulate their relationships. In some cases, this rearrangement greatly affected interpersonal power relations.

While we should recognize the potential for disenfranchisement in mediation, we must also be careful about applying hegemonic cultural norms and notions of “justice” in other contexts. The concept of “justice” is socially constructed and deeply embedded in cognitive frameworks, and as such is subject to ideological and cultural influences (see Avruch and Black, 1999). Divergence in notions of justice appear to be linked to the various cultural systems of logic that accompany different modes of social organization. To individualistic Americans, reconciliation without substantive redress for committed wrongs may seem unjust, whereas for Gambians such a settlement may constitute an acceptable and even beneficial outcome.

It is worth noting that most Gambian disputants expressed satisfaction with mediation outcomes.¹⁰ Some Gambian disputants who agreed to forgo compensation explained that they expected the decision to bring them a variety of benefits. They cited a number of reasons that forgiving was a good choice, such as strengthening their relations with the mediators or the other parties and creating goodwill that would make it easier for them to gain assistance in the future when they needed it. Gambian attitudes about just outcomes are related not only to harmony ideology but also to

their collectivistic social and economic system. Their aversion to discord is therefore not simply an expression of their manipulation through controlling processes, but also reflects shrewd decision making conducted in cognitive frameworks with their own systems of logic. The fact that the goal hierarchies of others may differ significantly from our own should not lead us to dismiss their priorities and concerns.

Informal dispute resolution outside of the realm of the state has actually assisted locals in their struggle to maintain control over their lives and resist controlling forces.¹¹ Villagers used the Mandinka term “Mansa Kunda,” translatable as the domain of the king or ruler, to refer to governmental institutions of dispute resolution. The usage and connotations of this term (which include such statements as “give unto the mansa what is for the mansa”) spotlight the dissimilarities between rural modalities of conflict settlement and those of the bureaucratic legal-rational state. Interviews and panel discussions with various sectors of the population revealed a widespread preference for internal mediation of disputes rather than going to courts, even local ones. In countries such as The Gambia, dispute resolution outside the court system appears to be a better solution for the needs of locals. What impact local-level mediations can have on the structural violence of societies remains an open question; however, ADR can benefit even marginalized disputants.¹²

Effective and sustainable social change cannot simply be mandated from above. A single mediation may not abruptly change national patterns. However, such peacemakings do contribute to the ongoing process of reconstituting social organization (and potential ripple effects may be especially significant in small nations such as The Gambia, where it is said that everyone is related to each other). At the very least, by providing a forum in which such microlevel alterations may take place, mediation does provide a medium for gradual change. In that way, ADR may complement social change enacted through the courts, and in some contexts mediation may offer a more practical or efficient medium. That is particularly likely when, as in The Gambia, significant segments of the population hold a negative view of the court system and consider it inappropriate for their milieu.

Anthropology and Conflict Resolution Revisited

Several scholars have noted the need for more cross-pollination between conflict resolution and anthropology (see, for example, Magistro, 1997; Wolfe and Yang, 1996). As anthropologists such as Kevin Avruch and

Mohammed Abu Nimer have shown, these fields have great potential for symbiotic thinking, and that potential should be fully realized.

Social theorists are still exploring the boundary between the universal and the particular and wrestling with questions of structure, agency, patterning, and change. Scholars of conflict resolution are uniquely situated to add to this inquiry because cultural production and reproduction are at their most explicit during disputing and peacemaking—situations in which shared beliefs, values, and norms are starkly illuminated. The crucible of conflict transformation offers an ideal arena for those interested in observing how societies transmit, reproduce, and rework their scripts and structures.

The anthropological perspective should also be considered indispensable to the field of conflict transformation. Conflict resolution is based on theories of human behavior, and anthropology has made vital contributions in that area.¹³ Cross-cultural studies can offer a useful lens for analyzing the evolving challenges we will face as ADR is further institutionalized in ever-changing and increasingly multicultural societies. This lens can provide fresh ideas for use at home and vital knowledge for policymakers and planners interested in employing conflict resolution methodologies elsewhere.

For example, the power dynamics of the Gambian mediations raises an intriguing notion that may be worth exploring: Rather than simply dismissing ADR as inappropriate in cases of power differentials, should we consider using less facilitative procedures? Despite the strong attachment to facilitation found in many parts of our field, other practices exist and are becoming more widespread as lawyers continue to swell the ranks of ADR practitioners (see Riskin, 1996). While we cannot simply assume that Gambian phenomena are applicable in the American context, we can learn from their situation. When mediation is explicitly evaluative, leveling the playing field and discussing rights is not so out of place. It is possible that some weak disputants may be best served by more directive styles of mediation. Comparative analysis underlines how much there is to gain from a flexible and inclusive praxis.¹⁴

Conclusions

Abandoning the ideal of human betterment through ADR would be a great mistake. The potential benefits of mediation can be seen in cases such as the reconciliation of the families of a young female and a young male driver whose collision caused the death of the woman. While the court

sought to sentence the man (who had been sober but speeding slightly in rainy conditions) as a perpetrator of negligent vehicular homicide, the families came to a negotiated agreement that satisfied both sides, and they asked the court to accept it in lieu of sentencing (for more detail, see Raye and Roberts, 2004).

Furthermore, conflict resolution processes may even be beneficial in cases of marked power differentials. This study found that mediation can be used for empowerment. Socially transmitted beliefs about the dangers of conflict do not preclude right-seeking by weak actors. Conflict resolution techniques and harmony models may be employed in a variety of ways and can lead to both the reification and the renegotiation of power relations.

Given this multiplicity, it should be clear that the concerns of critical scholars have some validity and should not be ignored. The use of mediation does present challenges to those interested in equitable peacemaking. We must not be naive or overly sanguine about our field; conflict resolution is not a panacea, and a practical approach to mediation that deals fully with questions of power and justice has not yet been found. However, overlooking the relationship between mediation and progressive social change is theoretically stultifying and factually inaccurate. Mediation can provide effective mechanisms for addressing the interests of both high- and low-status peoples. The most accurate descriptions of mediation will account for its full range of social action.

Mediation and conflict resolution processes can be employed against social stratification. To fulfill this “promise of mediation” it will be necessary to take into account the problem of power and inequality. Further research and an open approach are required to minimize the relationship between conflict resolution and coercive harmony. The challenges are great but, given the increasingly destructive potential of conflict, the possible rewards are tremendous.

Notes

1. The Gambia is a small country on the west coast of Africa. The United States Institute of Peace and the Center for African Studies of the University of Florida generously supported key components of this body of research. Thanks are also due to Ansu Badjie, Art Hansen, Alyson Carrol, Dennis Galvan, Sainey Kanteh, Tony Oliver-Smith, Christopher Timura, and the anonymous reviewers of CRQ for their intellectual contributions to this article.

2. The idealization of African disputing played a formative role in the American ADR movement, with some early mediators considering themselves to be

following in the tradition of the noble Africans who lived together in utopian tranquility prior to colonialism (Merry, 1989).

3. For example, this comparison has been made in relation to Asian (Barnes, 2001) and Middle Eastern (Abu-Nimer, 1996) societies. Distinctions between categories such as high- and low-context communicators and individualistic or communalistic groups also underline the relative comfort with conflict found in the West (see, for example, Goldstein, 1986; Ting-Toomey, 1985, 1988).

4. See, for example, Escobar (1992) and Watts (1992).

5. The author conducted field research on Gambian dispute management, mediation, and legal reform in 1999, from 2000 to 2002, and in 2003 and 2004. The analysis of southwestern Gambia is based on the data gleaned from these studies, in which women, youths, and a low-status minority ethnic group comprised significant target populations.

6. The discussion here describes general patterns found in the data. However, sociocultural variation in peacemaking modalities was evident within and across Gambian groups. Ethnicity, religion, gender, and age were all associated with how confrontation averse southwestern Gambians were likely to be (see Davidheiser, 2004).

7. Most Gambian mediators do not strive to be impersonal facilitators. Instead, they actively participate in shaping the content of discussions and express their opinions on the actions, ideas, and grievances of the disputants. For example, 66.1 percent of 121 observed cases included explicit advising, indicating the prevalence of evaluative activity in Gambian mediation.

8. During a marital mediation, for example, a male peacemaker emphasized spousal rights saying, “[Your wife] is not your slave. She is your path to a brighter future and the woman who is bearing your children.”

9. One wife who asked her neighbors to mediate between herself and her spouse most emphatically did not desire a divorce, but she did want to shore up her relationship with her husband and she had a specific demand for a bed. The mediation succeeded in providing her with both of these outcomes, illustrating how ADR may ably serve local needs. The findings from follow-up investigations indicate that the reconciliation between the spouses has been maintained over the past three years. Additionally, the wife expressed great satisfaction with the outcome.

10. How to determine whether a mediation was a success is a complex and thorny subject. Not only do scholars disagree on how to define it (Bercovitch, 1996), but the whole notion of “success” is highly subjective. Transformative mediators define success in a much different manner than problem-solving mediators, for example (Bush and Folger, 1996). In this study, statements made by disputants (in the absence of the other mediation participants) that they were pleased with the outcome of the mediation were taken as indicators of success.

11. Although this conclusion emerged from the data collected during the Gambian research, this phenomenon has also been observed in other contexts, such as in Tanzania (see Bukurura, 1994).

12. See Clements (2003) for a discussion of how macrolevel conflict transformation can be used to mitigate structural violence. The idea of social change through ritual and social drama has a venerable history in anthropology. While many previous works of legal anthropology were limited by functionalism, some analyses recognized the dynamic nature of “customary law” and how it is constituted through continual internecine struggle. Victor Turner (1969) and Max Gluckman (1967) drew on their African research in elucidating how ritual, including customary forms of conflict management, such as is practiced in Gambian mediation, is a means for social transformation.

13. Avruch (1998) provides an excellent review of the role these theories have played in the development of the discipline of conflict resolution.

14. This should be read as a statement in support of the voices for inclusive theorizing and practice and against the standardization of mediation through certification requirements or legislation such as the Uniform Mediation Act. For an example of such a voice, see Picard’s (2004) recent article in this journal on an integrative approach to mediation.

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