Bloqueo, Ausweglose Situation, Impasse:
Culture and Breaking Impasse in Dispute Resolution[1]

Julia Morelli[2] & Daniel Rainey[3]

Part 1: Definitions of Impasse and Culture

Introduction

Two co-mediators had been trying to move a company and one of its unions toward an agreement on a complicated issue that involved relocating a number of union jobs and completely restructuring part of the company. In spite of their best efforts to uncover underlying interests and generate options, the company persisted in holding fast to its original proposal - its anchored position - and it appeared that an impasse had been reached.

---

[2] Julia Morelli is the President of Holistic Solutions, Inc., a dispute resolution practice based in Alexandria, Virginia. She is also the Director of Operations for The Capitol Connection, a communications company associated with George Mason University.

[3] Daniel Rainey is the Chief of Staff for the National Mediation Board in Washington, D.C., adjunct professor at Southern Methodist University and Creighton University, and a member of the Board of Directors for the InternetBar.Org. (http://danielrainey.us)

The lead mediator said to the chief negotiator for the company, "So, if I understand correctly, you are saying that no matter what we talk about today, and no matter what we come up with as options, the company is going to go ahead and implement this relocation and restructuring just as you have outlined it in your proposal. Is that correct?" The chief negotiator confirmed that the mediator's summary was correct, at which time the mediator said to the entire table, "Then I don't think there's anything more we can do for you, so we'll just catch an early plane home. Goodbye."

Neither party said anything while the mediator and the co-mediator gathered their papers, shut down their computers, and headed for the door. In the car on the way to the airport the co-mediator said, "I don't think I've ever fired a client before." The mediator said, "I haven't either, but it seemed like a good idea at the time. If they really are at an impasse, we won't hear from them again. But I think they just needed a reason to move off their positions, so I suspect they'll call and tell us we walked out too soon. If so, we'll let them blame us, get them together again, and see if there's a deal to be made."

Sure enough, the parties did call. The mediators asked them to prep for another session, and, after a series of meetings, the parties signed an implementation agreement. The decision to "fire the parties" as an approach to breaking impasse was based on the mediators' knowledge of the culture in which the parties were operating, and the actions and reactions that one could expect in that milieu.

In this chapter we will address various ways culture is related to impasse, and suggest some culturally aware approaches that may help break impasse. In order to do this, we will address four broad questions: 1) what is impasse?; 2) what is culture?; 3) how is culture related to impasse?; and 4) how can the mediator use her or his knowledge of cultural dynamics to break impasse?

We have written this chapter from the perspective of the practitioner who is engaged primarily in mediation or negotiation, and our definition of impasse will be heavily influenced by that perspective. Among other things, for most third parties trained in the United States, or trained using models developed in the United States,[4] the third party in a mediation or negotiation context is generally working with the parties toward a deal or agreement, and the process usually includes discussions based on positions, stated or unclear, that parties bring to the table. There are, of course, a number of approaches to dispute resolution and conflict management that do not assume the primary parties and the third party are working together to make a concrete deal regarding a specified issue or problem.[5] For third parties in those contexts, the definition of impasse becomes much more of a problem to establish. For purposes of this chapter, we use the term mediation not to describe a single specific process, but to denote broadly a range of conflict management and dispute resolution processes referred to generally as "mediation."

---

[4] The standard approach to mediation taught in the United States and much of what has come to be known as the "Global North" is generally referred to as the "North American Model of Mediation." References to the North American Model abound: an early one can be found in Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict, Jossey-Bass, 1996.

[5] Perhaps most notably, the transformative movement in mediation eschews work toward specific agreement, favoring instead a process that builds relationships among the parties. For basic information about transformative mediation, see: Robert A. Baruch Bush and Joseph P. Folger, The Promise of Mediation: The Transformative Approach to Conflict, John Wiley and Sons (2005). In a more general context, Bernard Mayer has argued that there are many conflict situations in which there is no reasonable hope for a true "resolution," and that an appropriate goal would be to learn how to "stay" with ongoing conflict. See Bernard Mayer, Staying With Conflict: A Strategic Approach to Ongoing Disputes, John Wiley and Sons (2009).

What is Impasse?

It is tempting to echo Justice Potter Stewart's famous declaration about definitions, and simply say that most third parties know impasse when they see it.[6] In fact, this is probably true: most experienced mediators can sense when momentum toward a resolution has stalled, and they feel some sense of duty to break the impasse and move the discussion along.

It is also probably true that the definition of impasse is based in culture. Mediators steeped in the North American Model tend to want and expect steady movement toward settlement. When there is a pause or when there is no perceived movement, we tend to think there is something wrong or that impasse has been reached. In cultures with different temporal rhythms[7], mediators may just see a pause as part of the natural evolution of the discussion.

In our opening example, the mediators heard the same basic positions restated several times by each party, even after the usual attempts to break through positions to get to interests had been tried. This example helps frame the essence of impasse as we will use the term in this chapter. In a mediation/negotiation context as defined by the North American model of mediation, the parties and the mediator avowedly are there to move toward an agreement. When the parties are not moving forward, adjusting positions and

---

[6] The full statement from Justice Stewart related to the definition of hard core pornography. His comment about the definition of pornography in the film "The Lovers" is as follows: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that." Justice Potter Steward, concurring opinion in Jacobellis v. Ohio 378 U.S. 184 (1964).

[7] Conflict rhythms are described by Stella Ting-Toomey and John Oetzel in Managing Intercultural Conflict Effectively, Sage Publications (2001) as one of the four criteria for intercultural conflict competence. They include differences in how time is experienced and whether or not linear time bound processes are valued. For additional information also see Edward T. Hall & Mildred R. Hall, Hidden Differences: Doing Business with the Japanese, Anchor/Doubleday (1987).

reacting to the other party's counter-offers, and when there is no clear path or strategy to create movement toward agreement, one may reasonably declare that an impasse exists.

Even in a linear, settlement oriented mediation context, the lack of movement does not mean that there is no hope, and it does not mean that an agreement is impossible to achieve - it simply means that, for the moment, there is no movement toward an agreement. As an optimistic way to define impasse, one can, depending upon one's cultural lens, look at impasse as a "Janus moment," or as a "crisis."

Janus, the Roman god associated with gates, doorways, beginnings, endings, and time, is usually depicted with two heads, facing opposite directions. One modern use of Janus as a symbol persists in the name of the month of January, that point in the year when one cycle ends and another begins: in January it is no longer last year with promises unfulfilled, but it is the next year, with possibilities intact. For us, a Janus moment is that point in mediation, an impasse, when it is clear that a transition point has arrived. What has been on the table has not worked, so looking back will not help. But that other set of eyes is looking forward to possibilities for breaking the impasse and getting to resolution.

A common interpretation of the Chinese characters for crisis includes the dual concepts of danger and opportunity. On the one hand the point of crisis, or in mediation impasse, is that point when there exists the danger that the parties will conclude the process without an agreement. But on the other hand, the same moment presents an opportunity for redefining, creating, and succeeding.

危機

Janet Murdock offers this observation about culture and impasse:

> I guess it depends how you understand impasse. If people
> are negotiating at the same table with the same
> understanding of the process then impasse may be around
> more concrete tangible issues. But when cultures and world
> views collide the space of negotiation and all that is going on
> is seen very differently by the parties and impasse can be
> more complicated because it is like two different negotiations
> going on simultaneously with different sets of ground rules
> and different understandings of the purpose of the
> negotiation. In these circumstances the possibilities of
> impasse grow exponentially.[8]

We take the perspective that impasse is a pivotal point that creates an opportunity to explore differences and deepen our understanding of the issues (cultural and otherwise). In our experience, moments of terminal impasse, that point when there is no movement and in which there really is nowhere to go with the negotiations, occur far less frequently than interim or temporary impasse which may be broken and which may be but a stop along the way to an agreement. For the purposes of this discussion, we will treat impasse in mediation as an *entr'acte* on the way to resolution or settlement.

Culture: What is it and why does it matter?

What is culture? That definitional swamp is one into which many have waded, from many directions. There are anthropological definitions, sociological definitions, psychological definitions, etc., *ad infinitum*, most of which share some common features relating to values and learned behavior. Peter Black and Kevin Avruch

---

[8] Janet Murdock, in correspondence with the authors.

discuss at length the relationship between culture and conflict, warning that there are a number of "dead ends" inherent in looking at culture through a narrow lens.[9]

Most definitions of culture address norms, beliefs, behaviors, and values held by groups, usually large groups, but mediators tend to work with individuals or small groups directly at the table.   There are at least two immediately pressing problems with "reading" culture in individuals who come to mediation.

Although some cultural groupings have easily observed external markers, in many cases it is not possible to predict "cultural" reactions based on individual external appearances. Because relationships with the Muslim world are an important topic of discussion now, we'll use a couple of examples based on intercultural interactions between "typical" Americans and "typical" Muslims.

We have a friend who physically looks as if she could come from any number of Mediterranean countries. She does not wear "traditional" Muslim garb, and in fact dresses in a very Western fashion-conscious way. She is, in social settings, very direct and is very comfortable with Western verbal and nonverbal communication patterns. By all outward indications she behaves like and is a "normal" American businesswoman. Taking the overt cultural markers at face value, in a mediation setting one would expect her to exhibit the cultural attributes of an individualist, low context culture[10].   In fact, she is Muslim and holds dear the familial and social norms she learned as a child in her Palestinian family.

Even when the external signs appear to be clear, individual members of a group may, or may not, conform to stereotypes or cultural assumptions associated with the group. We have another friend who is Muslim, wears the hijab when in public,

---

[9] Peter W. Black and Kevin Avruch, "Cultural Relativism, Conflict Resolution, Social Justice," available at http://www.gmu.edu/programs/icar/pcs/BlackAvruch61PCS.html

[10] Communication in a low context culture is direct, explicit and assumptions are clarified. Indirect nuanced communication and interactions that preserve relationships are valued in cultures that are considered high context. Additional information on this topic is presented later in this chapter.

and who exhibits all the outward signs of having been socialized in the Middle East. Taking the overt cultural markers at face value, in a mediation setting one would expect her to exhibit the cultural attributes of a collectivist, high context culture. In fact, she grew up on a farm in Ohio, converted to Islam as an adult, and has a very good grasp of the "Western" linear, individualist approach to problem solving.

In both of these cases, the mediator or the other party could expect one set of beliefs and behaviors based on external signs, and be very wrong about the other party's perceptions and motivations. We refer to this dilemma as the "Colgate-Crest Caveat." If you have 300 million people in the statistical universe, it is possible to predict within a couple of percentage points which toothpaste they will buy. But if the statistical universe is one person - all bets are off.

As mediators, a problem is created when we assume that group culture is uniformly shared by all group members. In fact, we are all multi-cultural, and although our cultural identities are based in tradition or custom, cultural identification remains fluid, flexible and based on specific situations in which we find ourselves.[11]

An example from the world of online dispute resolution may illustrate this. With the advent of e-commerce and the routine interaction among individuals from many countries, legal systems, and cultural groups, one could assume that inter-cultural misunderstanding would be a major feature of dispute resolution online. This may be true for "social" disputes, but what appears to be happening in the world of international e-commerce is the development of an online culture into which individuals from many local cultures "flex" when they are working online. So, the behaviors or reactions that one might expect from parties if they were sitting at the table together, involved in mediation over an issue related to family or community,

---

[11] Kevin Avruch, *Culture*, in Conflict, Sandra Cheldelin, Daniel Druckman & Larissa Fast (eds.), Continuum (2008).

are put aside and replaced by appropriate behavior for the online commerce community the parties have joined voluntarily.[12]

Even though the general nature of culture creates difficulties in predicting cultural reactions, there are two fundamental beliefs about culture, impasse and mediation that guide our practice.

First, we believe there is no truly "uni-cultural" mediation or negotiation environment. The mediator and the parties may all be of the same race, from the same country, of the same age, of the same social class, etc., but no matter how homogeneous the group at the table may appear there will always be, at some level, cultural divergence. Obviously, the more heterogeneous the group, the more one would expect to find overt cultural elements at work in misunderstandings, confrontations, and impasse. Unfortunately, what we assume to be obvious may, in fact, mask a level of complexity that could drive apparently homogenous groups to have more cultural conflict than apparently heterogeneous groups. When cultural differences are obvious we are more likely to recognize and address them, and even assume that they are to blame for impasse, than when the group or individuals appear more heterogeneous.

Second, we strongly argue that in its impact on the discussions at the table, and the strategies used to enable the parties to move toward agreement, the culture of mediation is as important as the culture of the parties, and in some cases more important. Our focus is not on the culture of the mediator as it would traditionally be defined: the race, age, ethnicity, socio-economic status, etc., of the third party. We refer instead to the *culture of mediation*, created by a complex of assumptions, values, processes, and expectations that the mediator brings to the table as a result of her or his training and interaction with a body of seemingly like-minded professionals.

---

[12] UNCITRAL, the United Nations Commission on International Trade Law, has created a working group to create an online extra-legal system that will address commercial disputes world-wide. See http://www.uncitral.org/uncitral/en/index.html

Notwithstanding the fact that every mediator brings her or his own experience to bear in each situation, there are some general similarities among third parties, and some context specific similarities. The general similarities are reasonably easy to spot: most mediators in the United States have learned a multi-step process that proceeds through sharing perspectives, issue identification, interest generation, option generation, discussion of options, and narrowing of options to create an agreement. Some use narrative or story-telling, some use brainstorming, etc., but the steps in the process tend to look similar. Most of us also learn some variation on the mantra of "work the process" or "stay with the process," and we at least discuss the ethics involved in being directive as opposed to facilitative, and being neutral as opposed to engaging in advocacy. One effect of this perspective, and the strength with which it is shared among the community of mediators, is that we fail to question the process itself, or we question only superficially, and miss the cultural biases or values inherent in mediation conducted using that model. Even when mediators overtly try to get "buy in" from the participants through discussion or through formal "process agreements," usually it is the standard process that is being bought.

For example, it is common to hear mediators trained in the North American Model talk about "leveling the playing field" for the parties. In the United States, and in much of Europe, leveling the playing field, or minimizing power differentials, plays well and can create a sense of empowerment at the table, which in turn can open up dialogue among parties who might otherwise not interact. However, leveling the playing field has risks even in the United States, and in much of the world would be very uncomfortable for the parties and could lead to impasse.

In a workplace dispute between an employee and supervisor, where there were overt signs that culture might play a part in the mediation, an employee from the Global South told the mediator, in private caucus, that trying to pretend that she and her supervisor were equals, or on an equal footing in the mediation, was wrong and very uncomfortable for her. She told the mediator that the supervisor had

studied hard to become a doctor, which meant that he deserved respect, and that he was her boss. On at least two levels, in her eyes, they were not equals and they shouldn't be treated that way. The mediator had the parties discuss their power relationship overtly, and then was able to move to a resolution of their problem. Power differentials are only one of the dynamics that can continue to exist outside mediation, that are affected by the culture of mediation, and which may be affected by the parties' cultural values.

These two caveats are related closely to our basic definitions of culture.   Our definitions are more prosaic, and perhaps more utilitarian, than most of the academic definitions, but they help explain why we think there was a definable cultural component to the example with which we began this chapter.

The first is a definition for which we have no seminal reference: *culture is the way we do things around here*. This definition of culture has been cited by many practitioners working in organizational change and development, and we find it to be a good shorthand way of thinking about the behaviors that attend to mediation and negotiation.[13]

In our opening example the mediators were working in a labor-management collective bargaining environment that has well defined cultural norms, known to all the parties at the table. The way things are done at the bargaining table has been developed over many years and has been passed down through generations of bargainers: each side develops positions in isolation, passes the positions as proposals across the table, slowly moves from the opening positions to compromise positions and, ultimately, may reach a zone in which an agreement is possible. The two parties are represented by chief spokespersons who do all the talking at the table, with the rest of the negotiating team as onlookers until there is a caucus break, at which time the rest of the team can give input to the chief negotiator. A show of confrontation is necessary by both parties, and that is built into the

---

[13] For example, this definition is used in Terry Deal & Allan Kennedy, Corporate Cultures, Perseus Books (1987).

expectations of all concerned. These norms, which we argue are clearly cultural, transcend age, race, and sex: most negotiators who have learned their trade in the North American labor-management context would be comfortable no matter what meta-cultural traits they bring to the table.

The culture of mediation in this environment calls for the third party to direct the discussion, but also to work with the parties in caucus to move toward the zone of reasonableness, and when necessary to take actions to move the parties toward settlement. In the opening example, the mediator was acting well within the acceptable cultural boundaries that everyone recognized, and it was possible to predict behavior based on "the way we do things around here." A transformative mediator, doing things the way things are done in a transformative mediation, is less controlling of the mediation process, and probably would have felt that walking out would have violated the expectations of the parties. He or she certainly would not have fired the parties as a tactic to get them to talk more.

The second definition of culture that we find useful relates to the extent that cultural habits and judgments are overt and conscious. Roy Wilkins has said, "*culture is what happens when we stop thinking*."[14] Essentially, our cultural behavior, and the cultural judgments we make regarding others, is not overt. The parties in our opening example probably did not consciously think, "oh, I can't move from my position yet because it will show weakness." They held on to their positions because that's the way things are done at the bargaining table. The mediator did not think, "oh, here's an opportunity for me to be creative and break the impasse - but should I insert myself into the process in an overt way?" He tried a tactic that, in his judgment, he thought would move things along, because of his experience in similar situations, and because that's just what is expected of the mediator at the bargaining table.

We like these definitions because they take the notion of culture far beyond race, gender, and ethnicity, putting it squarely in the center of behavior,

---

[14] This definition was offered during an NPR interview.

relationships, and ways of thinking. In the words of our colleague Janet Murdock, culture is "the operating system on which we load the *software* of our experience".[15]

In our opening example, both parties were operating in a cultural environment in which a lead negotiator on each side controlled the communication from that side, and in which it was expected that anchored proposals would be the point of departure for any discussion. Basically, everyone knew that the anchored positions were not really the final positions, but the culture of the bargaining table would not allow the company representative to say, "sure, I said we've got no room to compromise, but I really didn't mean it." And, on the other side, the culture of the bargaining table would not allow the union negotiator to say, "come on, everyone knows the first offer is ridiculous and is not where we'll end up - what's the real deal?" In this instance, it was the mediator's belief that an extreme action by the third party, essentially cutting of communication, would be a catalyst that would impel the parties toward a more open discussion, and, luckily, the mediator was correct. With these cultural dynamics, and with the mediator's experience operating in that negotiating culture, firing the clients to break impasse seemed to be, and ultimately was, reasonable.

This example highlights a theme to which we will return many times in this chapter: actions to prevent and break impasse should be taken in light of the practitioner's knowledge of the parties, the culture of the venue in which they are operating, and with an understanding of the consequences that come with operating in that culture. Just as there is no one way to mediate or negotiate, there is no simple formula for how to recognize cultural elements in impasse, and there is no simple formula for breaking impasse even when one does correctly diagnose cultural elements as part of the reason for the impasse. However, understanding the relationship between culture and impasse is a starting point for developing creative practical approaches and strategies for preventing and breaking impasse.

---

[15] Janet Murdock, Culture in Mediation, a training manual used by the Northern Virginia Mediation Service (2010).

So, where do we stand with definitions of culture? Culture goes far beyond nationality, race, and ethnicity. Culture is a powerful force in mediation. It influences how the parties understand the conflict, it shapes our perception and worldview[16], influences patterns of communication, affects the way we experience conflict, and it impacts the way we behave. Culture may define what the parties think should be the appropriate process for resolving disputes and affects what parties believe about the outcomes or goals of mediation.

Culture surrounds and affects everything we do, yet our own culture, as third parties or as participants in disputes, is usually obscured. It is not until one culture "bumps up against" another that we take notice. When this happens we tend to talk about the differences in negative terms and generally do not explore the similarities. We see the other as *different*, and as a result of these perceived or real differences, the mediator and the parties may feel greater anxiety during interactions.[17] Consequently, there is a greater likelihood that conflict will escalate or impasse will occur because of increased anxiety, miscommunication, and an inability to accurately interpret the meaning of communication and/or behavior.

---

[16] *Worldview* has been proposed as an alternative to *culture* because it carries less baggage (Nudler, 1990; Docherty, 1998). The belief is that worldview shifts the focus from generalizations or stereotypes to the individual's perspective on the world. Kevin Avruch, *Culture*, as cited in Conflict, S. Cheldelin et al. (eds.) (2008).

[17] Michelle LeBaron Duryea & Victor C. Robinson, Conflict Analysis & Resolution as Education: Culturally Sensitive Processes for Conflict Resolution, UVic Institute for Dispute Resolution (1994).

Part 2: The Relationship Between Culture and Impasse

How is Culture Related to Impasse?

Understanding the concept of culture is a crucial prerequisite for effective conflict resolution.[18]

In the world of statistics two general types of errors are used to explain how researchers go awry. Type I errors, also called false positives, occur when null hypotheses are rejected even though they are true. Type II errors, false negatives, occur when null hypotheses are accepted even though they are untrue. Kevin Avruch has taken the language of statistics and applied it to conflict resolution by describing two cultural errors that mirror Type I and Type II statistical errors.

In Avruch's argument, Type I errors occur when third parties do not see cultural issues present in conflict situations. Type II errors occur when third parties see cultural issues or problems where none exist.[19]

Type II errors may pose a threat to the progress of mediation by making the mediator overly cautious, or by introducing issues at the table that really do not need to be addressed. One might find a woman at the table in a traditional sari with a man in a business suite, and outward signs might suggest that cultural issues will be significant in the mediation. However, there may be no significant gender or power issues between them and it may be that both simply are interested in getting the dispute out in the open, settling it, and getting on with life. In this case, taking time to plumb the depths of cultural differences between India and Wall Street would be a distraction.

---

[18]Kevin Avruch, *Culture*, in Conflict, S. Cheldelin et al. (eds.) (2008), p. 167.

[19] See Kevin Avruch, *Type I and Type II Errors in Culturally Sensitive Conflict Resolution Practice*, 20 Conflict Resolution Quarterly, 3 (Spring 2003), 352-371.

However, Type I errors are, we think, easier to make and are likely to be more significant because most third parties are less likely to see cultural differences in apparently homogeneous groups. Not recognizing cultural issues because they are *invisible* can cause mediation to break down, or for impasse to occur. International media, social media, the Internet generally, increased travel and interaction, and all of the boundary-erasing elements of the world in the early 21st Century combine to create the impression that culture matters less than it did in times when groups and nations were more isolated. If the mediator finds herself or himself in a room with people who all speak English, all are wearing similar clothes, all of whom seem to be at ease with each other, it is easy to assume that they will have similar assumptions about the mediation process, the range of acceptable behavior during the discussions, and the behavior of the other party. This is often a bad assumption.

In whatever way one thinks of culture, it is reasonable to assume that one's cultural guidelines - the notion of how things are properly done - will play a part in guiding behavior in mediation, and that actions and judgment about others' actions often will occur without conscious thought. Whether the cultural roadmap brought to the session by either the parties or the mediator becomes a problem depends on the specific circumstances, but the possibility is always there. One of our colleagues from the Middle East has used the term "cultural supermarket" to refer to a range of outward behavior available to the experienced individual. He was educated in the Middle East and in Europe, teaches at universities all over the world, and is very much at home in business and social settings in a wide variety of contexts. For him and many like him, the "cultural supermarket" offers the option of comfortably operating in multiple cultures, picking and choosing which overt cultural attributes to display.[20] Even so, he would argue, it is likely that there are subconscious elements at work that are related to values and learned behaviors that still will affect behavior and judgment below the surface. You can take the man out of Cairo, but you can't completely take Cairo out of the man.

---

[20]Dr. Mohamed S. Abdel Wahab, in communication with the authors.

A few short decades ago it was common, even in sophisticated academic circles, to treat culture and intercultural interactions as if there were some uniformity among overtly similar groups, and to develop a catalogue of acceptable and unacceptable behaviors related to those groups. Using the "do's and taboos" lists, one could learn to slurp noodles in Tokyo, avoid using one's left hand at the dinner table, etc. Those lists of behaviors still exist and are easily available online or at your local bookstore, and to some extent they even have relevance as behavioral guides. However, most researchers and practitioners have come to look at cultural norms and behaviors as more fluid and complex than any cookie cutter list could outline.

Creating a comprehensive catalog of cultural influences on mediation is an enterprise far beyond the scope of this chapter, but there are some common dynamics related to cultural differences that can result in impasse. Some are outlined below, and they are followed later in this chapter by selected strategies that can be used to help avoid or break impasse when it appears that cultural dynamics have intervened.[21]

Individualist vs. Collectivist Tendencies

A common way of conceptualizing cultural differences, on a very broad scale, is to think of the bundles of values, beliefs, and behaviors associated with the polar terms "individualist" and "collectivist."

Using the United States as an example of an individualist culture, and countries in the Middle East or Asia as examples of collectivist cultures, it is easy to see some fundamental differences that could lead to impasse in mediation.

---

[21] All of the examples used in this chapter are taken from the authors' own experience as mediators, or have been offered as examples by our colleagues around the world.

Generally, the individualist North American would approach the resolution of disputes by assuming that the process would:

- be a linear, rational process, moving from point A to settlement;
- seek outcomes that are results oriented and cost-effective;
- limit the importance of interpersonal relationships to practical issues related to the dispute (exceptions include family and to some extent workplace mediation);
- be based on positions and interests expressed by the parties at the table;
- be oriented toward open information sharing;
- attempt to "separate the problem from the people;"
- conform to norms of the legal system;
- be guided by professionals with process expertise but no relationship to the parties.

Generally, the collectivist Middle Easterner or Asian would approach the resolution of disputes by assuming that the process would:

- be relationship based;
- proceed holistically (not just be confined to a narrow issue);
- be based on experience and context;
- be based on parties representing the community and be focused on "the greater good" ;
- find it very difficult to separate the problem from the people;
- seek solutions based on social experience and tradition;
- be conducted by third parties chosen according to status and social stratification.[22]

What would an impasse related to individualist/collectivist cultural views look like? A common example relates to a set of assumptions embedded in the North

---

[22] See Daniel Rainey & Alma Abdul-Hadi Jadallah, *The Culture in the Code*, proceeding of the Fourth International Online Dispute Resolution Forum, Cairo, 2006; and Mohammed Abu Nimer, note 14; and, J. Laue and G. Cormick, *The Ethics of Social Intervention in Community Disputes*, in G. Bermant, H. C. Kelman, and D. P. Warwick (eds.), <u>The Ethics of Social Intervention</u> (1978).

American model of mediation, specifically the assumption that it is good, perhaps even necessary, to have the "decision maker" at the table during mediation. The culture of mediation suggests that engaging in mediation with parties who cannot make final decisions and who are not prepared to settle may not be productive and in the extreme may be a waste of time. In collective bargaining, the mediator often expresses this mediator value by insisting that the CEO of the organization be at the table or at least be fully briefed along the way, so that when those at the table make a deal, the person who has to sign it is fully supportive. The same impulse results in many mediators asking the parties at the start of mediation to confirm that they can make and implement a settlement deal. This can be very uncomfortable, even insulting, to parties from collectivist cultures.

Individualist/collectivist issues can come into play when the dispute on the table involves a party from a collectivist culture and a party and mediator from an individualist culture. If the mediation is going well, good options are on the table, and things seem to be moving toward a settlement, it is common for the collectivist party to slow things down, or in the eyes of the mediator and the other party, to suddenly have doubts about items that they seem to have supported just moments before. This can cause a great deal of frustration, and it is common for the individualist party and the mediator to believe that the collectivist party is bargaining in bad faith, doesn't really want to make a deal, etc. In fact, it is highly likely that the sudden reluctance comes from the cultural requirements in a collectivist culture that "solutions" to problems, even problems that seem personal and individual to those of us from the Global North, be discussed and managed with family and possibly with other members of the community before agreements are made. A mediator who recognizes that cultural dynamics may be at play, can use an opportunity like this to engage the parties in a discussion of unstated process expectations. Asking both parties to explain their understanding of how the process should unfold can avoid impasse by encouraging parties to view not only solutions but the process through the lens of the other party. Raising process issues for discussion can provide a necessary break in the linear path to impasse.

Because our "normal" mediation model is firmly based in Global North assumptions, it is very common for any of the basic differences between the cultures to cause misunderstandings and break down mediation, resulting in apparent impasse. And, of course, when we "explain" why the other party is behaving as they are we use our own culture as a lens and we tend to frame the others' actions as being outside the norms of acceptability, which deepens the impasse.

High Context vs. Low Context Tendencies

Another way of broadly conceptualizing cultural tendencies is to think of the values, beliefs, and behaviors associated with "high context" and "low context" cultures.[23]

Members of low context cultures tend to take the view that words have concrete meaning, and that a high level of specificity is important when making agreements to end conflict. Low context cultures like the United States prize written agreements, parsed and massaged by lawyers to nail down exact details in an immutable form. Of course, the courts are filled with disputes about the words that parties put on the page, but still we prize directness and specificity - we want it all spelled out in detail.

Members of high context cultures can be very uncomfortable with directness and specificity. In high context cultures, a word or a phrase can, and most often does, carry a complex of meanings, understood by the members of the culture but opaque to those outside the culture. Low context parties want a written agreement that is so specific and clear that anyone picking it up anywhere at any time can understand the issue and the agreement. In high context cultures, a nod of the head by a respected party, in the context of the community and the discussion, can

---

[23]For additional information regarding low and high context cultural traits see various works by Edward T. Hall including: Beyond Culture, Anchor (1989); and The Silent Language, Doubleday (1959) and The Hidden Dimension, Doubleday (1966).

carry as much or more weight and be understood perfectly by members of the community, just as the painstakingly crafted contract can be understood in our low context culture. In fact, requesting a written agreement can be perceived as an insult or an indicator of a lack of trust in a high context culture.

Because high context cultures are often also collectivist cultures, a very common problem that can lead to impasse early in mediation involves naming the issue. The culture of mediation suggests that the way to start a session is to establish what happened between party A and party B, clearly define the issue, and begin to discuss responsibility and brainstorm options for resolution, etc. In high context cultures, it is often an insult to directly name bad or improper behavior, particularly when the bad behavior is attached to an individual.   Instead, high context parties are more comfortable with general discussions in which there is little or no labeling of wrongdoing and no direct confrontation. High context parties would rather discuss the situation generally and let the context of everyone's actions make clear the responsibilities of the parties. In an individualist, low context culture, we want the specificity and the contract so that our agreements are enforceable. In high context cultures, the general discussion will lead to understanding: everyone will know what happened and who was at fault, and the agreement, in the context that everyone understands will be enforced by the community collectively. In collectivist, high context cultures, Global North parties and mediators might not see a deal at all, but the community in a high context culture may see a very clear deal that can be strongly enforced.

In Indonesia a multi-national group was engaged in work on a complex design, engineering, and fabrication project. The local managers were in charge of the project, but they had enlisted the assistance of a group of consultants from the United States, Australia, and Europe. Conflict was created when the consultants directly confronted the Indonesian managers, telling them that they were making mistakes and that their work would not pass international inspections when the product was on the market. The consultants were frustrated because there seemed to be no response to their comments and the Indonesian workers were anxious

because the consultants were insulting the managers. Consultation with the parties quickly revealed that a traditional mediation approach would not work. The mediation team enlisted the assistance of a respected elder from the local academic community, and put together a training session in "strategic planning." The session was, in fact, a conflict intervention, but it was not built directly around the areas of conflict that had surfaced in the working relationships between the consultants and the managers. Instead, the discussions focused on "best practices" in planning, and many of the examples were drawn from the conflict areas. With the respected elder present the entire group could discuss "planning," understand what needed to happen in order to make the product meet international standards, and move forward. The term "conflict" was never used, no direct confrontations took place, but the requirements for success were clear and the work teams were able to move on with face intact and cultural norms un-violated.

In terms of impasse, what is seen and what is valued by each of the broad types of cultures is quite different, and the fact that most of us in the United States work with an essentially Global North mediation model suggests that sticking points or outright impasse can easily be generated by these very different cultures rubbing up against each other. The likelihood of impasse depends on a number of factors, including whether or not the parties are aware of their cultural differences, a willingness to accept the "other's" style, and an overarching culture such as business negotiation that may trump the party's high or low context culture.

Gender Differences

Few cultural elements have been written about more than the differences across cultures related to gender. In most of the Global North, it has come to be accepted that women are "equals" in society and should be treated, for purposes of mediation and other social interactions, as no different from men. At least that's the belief that is expressed on the surface. In the Global North, there is also a tendency to think of women in the Global South as oppressed and lacking in rights.

Many Global South women would disagree, but the stereotype persists, aided in many cases by spectacular examples of oppression and "unfair" treatment. So how does this play into the creation of impasse in mediation?

A common Type I error related to gender involves mediator attempts to level the playing field. A mediator trained in the North American model may tend to create at the table a sense of equality among the parties, enforcing the ground rules related to speaking in turns, valuing each participant's contributions equally, etc., because in the culture of the mediation that's the way it is supposed to be, and because in the larger North American society that is the way we describe the ideal relationship between men and women in a professional environment. Notwithstanding the mediator's cultural perspective, and notwithstanding the general attitude at large in society, if the parties at the table, the man and the woman, accept a relationship that is not equal, and if they are comfortable with a culturally defined "inequality" (which may not, in their eyes, be unequal at all), attempts to shoehorn them into a process that fits the mediator's culture will leave them with little to say, and may well create impasse.

Views of Power and Status

It is often the case that gender issues are related to issues of power and status, but they are not inextricably linked. In a workplace mediation in the United States, both the supervisor and the employee involved in the mediation were originally from collectivist, high context cultures. The mediator was a white male, reared in the United States, trained in the North American model, and experienced in conducting workplace mediation.

It was at first difficult to get the parties to discuss the problem that led the supervisor's supervisor (a white female North American) to suggest that they engage in mediation. In fact it wasn't until the mediator talked to the employee in caucus that he understood that the employee did not know what the supervisor

wanted as a work product, and was therefore afraid that her job was in jeopardy. Back in session, the mediator tried to steer the conversation toward a joint statement of the problem, with no success. This made the employee visibly uneasy. She finally said, "Is this voluntary? Can I leave now?" Again in caucus, the mediator asked the employee why she wanted to end the mediation, and she explained that she was very uncomfortable asking the supervisor to explain his expectations. She explained to the mediator that she was very aware of the status and power differences between them, and that no matter what happened in the mediation, the status and power differences between them would remain. Finally she explained that those power and status differences didn't bother her - in fact, she was quite comfortable with them. She did not want to ask the supervisor to explain himself because she thought that would be an affront to him, and would be tantamount to saying that he had failed as a supervisor, which she did not want to communicate to him.

Finally, the employee agreed to go back into session one more time. In the session, the mediator said to the supervisor, "Since I don't know very much about your work, it would be helpful to me if you could describe the kind of work your employee does and tell me what you expect from her." The supervisor did so, giving both the mediator and the employee the information the employee was reluctant to seek directly. After a bit more discussion the mediator ended the session. The employee knew what was expected. The supervisor understood that the employee would now work to those expectations. There was no confrontation and neither felt compromised by the process, and even though it did not look, externally, like a classic mediation session, the parties' interests were served.

Respect, Trust, and Communication

In the dispute resolution training we have done, we have for many years discussed conflicts and disputes in light of what we shorthand as RTC - Respect, Trust, and Communication.   Many disputes are generated and fueled by issues related to Respect, Trust, and Communication, and it is significant that definitions

of respect and trust depend in great part on the cultural assumptions one brings to the table.

In a divorce mediation, an Irish-American lawyer represented a Black American male. The Puerto Rican wife was *pro se.* True to cultural stereotype, the Puerto Rican woman was very animated as she presented her side of the story, gesturing broadly, speaking loudly, and being very assertive. She was not, however, being personally abusive, name calling, etc. The husband seemed neither surprised nor upset by his wife's behavior, but the lawyer was very offended, and in fact demanded from the husband, "are you going to let her talk to us this way?"

It seemed that the mediation was at risk of breaking down, so the mediator took the parties into caucus. In the caucus with the husband and the lawyer, the mediator assured the lawyer that she wouldn't let the wife go beyond the bounds of acceptable behavior, and asked that he understand that she was communicating in the way that was natural to her. The husband reinforced the idea that she was always like that - "that's just Puerto Rican." To the wife, the mediator explained that the lawyer was not accustomed to dealing with strong women, and that, without compromising herself, it might be possible to be a little less animated so he could pay more attention to what she was saying than how she was saying it. Both parties accepted the mediator's advice and the mediation was concluded successfully.

In this case, the cultural definition of respect that the lawyer brought to the table was violated by a party who had no idea that speaking softly had anything to do with respect. Absent an attentive culturally sensitive mediator, they would have likely reached a true terminal impasse.

An example from international arbitration can illustrate the impact of culture on trust. In a session held between parties in two different European countries, the issue of trust was tied to sharing of information. In one country it was normal to engage in discovery, analogous to an exchange of information with the other party

at the beginning of a mediation.   The other party, from a country with a more closed legal and social culture, had no history of discovery, and was very reluctant to proceed. The party who wanted the discovery process thought the other party saw them as untrustworthy, and the party that did not want the discovery did not trust the process because it was one that did not exist in their jurisdiction. The third party's solution was to design a joint process so that he mediated the creation of a unique discovery process for these parties, developed by them, and overseen by the third party. His approach to the cultural divide that did not allow sharing of information was to create a third path through a mutual endeavor by the parties.

A cultural lesson for mediators is to be aware that we tend to trust and respect those things with which we are familiar, and we are likely to show respect and trust in ways that make sense within the confines of our own cultures. Communication is the key to finding out why attempts at dispute resolution go off the rails - and how to get back on the rails.

Strategies: How can the mediator use her or his knowledge of cultural dynamics to break impasse?

The first unfortunate truth related to breaking impasse, or navigating intercultural waters generally, is that one could study constantly for a lifetime and still not understand the nuances of all the macro and micro cultures with which we come into contact as mediators. The good news is that if we don't have all the knowledge as mediators, the parties do have the knowledge - if we will listen for it.

Fight, Flight, or Flex?

When cultures clash in mediation the parties tend to revert to age old strategies related to fight or flight. Fight responses may present as hardened

positions, extreme reactions to the "other," and aggressive language and nonverbal communication. Flight responses can present as non-responsiveness, withdrawal, and apparent hardening of positions. In either case, impasse is possible or likely.

A third avenue for dealing with cultural clashes is for the parties and/or the mediator to flex – to move out of a cultural comfort zone and operate in ways that are not a first choice, but are acceptable.   A major question related to flexing is, "who bends and how?" Often it is the mediator who must flex, adapting her or his normal style or process to meet the needs of parties with different expectations about mediation. The basic principle involved in flexing is that more often than not the mediator and the parties can create a relationship within the mediation process that addresses the cultural needs of everyone.

During an intervention between two employees from different cultural backgrounds, the issue of communication style arose. The impasse was so deep that shuttle diplomacy, rather than mediation, had to be used. One employee felt uncomfortable because of the loud and more direct style of her co-worker. During a caucus with the employee who was perceived as intimidating, the mediator said, "You've both recognized that you need to be able to work together. You have very different ways of communicating and you said she (the other party) should just 'deal with' your style and not feel intimidated. In this situation, how do you decide who should change her style?" The party responded by saying she hadn't thought about it that way, and she agreed to monitor her communication style.   Overtly discussing their cultural differences, and introducing the culture of the workplace as an element, both parties were able to get beyond impasse. It was the overarching culture of the workplace that enabled them to find common ground, and led one of the parties to recognize the need to flex.

When confronted with impasse, many of the strategies that are used in "non-cultural" situations, if there is such a thing, are the same ones used in situations where impasse has been caused by overt cultural dynamics. Most of the successful strategies revolve around communicating well, discovering that there are cultural issues, and then engaging the parties to help solve the cultural problems. But there are some specific strategies that can be helpful when the mediator has an idea that impasse may involve culture.

Nosce Te Ipsum – Know Thyself

The first and most potent strategy for dealing with cultural issues and getting beyond impasse is not really a strategy at all – it's a commitment to self-reflection and self-understanding. If we are correct when we argue that the culture of the mediator is as important or more important than the culture of the parties in creating and breaking impasse, it seems axiomatic to say that the mediator must understand her or his own cultural lens before dealing with the parties'. When preparing for and participating in mediation, the mediator must be aware of her or his assumptions about the mediation process, and must be aware of her or his own cultural values and biases.

At a basic level, we are suggesting that a mediator routinely question her or his "fitness" in relation to the parties and the context in which the mediation is taking place. It has long been recognized that excellent training, and correct responses based on that training, do not always yield positive results. Kenneth Burke used trained chickens to make the point, and although we do not suggest that mediators belong in the same category as trained chickens, there may be some value in his observations. It is possible to train chickens to recognize a certain bell, and to have them associate that bell with being fed. Hearing the bell, the chickens come running.   This is perfectly fine as long as the intent of the farmer is to feed them. If the farmer rings the bell with the intent of gathering the ingredients for chicken and dumplings, the "correct" response from the chickens is .

. . regrettable. At least from the point of view of one of the chickens. Burke sums up this training-versus-context dilemma succinctly:

> One adopts measures in keeping with . . . past training - and the very soundness of this training may lead [one] to adopt the wrong measure. People may be unfitted by being fit in unfit fitness.[24]

As third parties, our default preferences may be dysfunctional with parties not comfortable with the North American model, and our own culture may give us an inadequate lens for understanding reality as it is experienced by the parties. [25] This requires making a concerted effort to continuously recognize and check your own assumptions. It is not easy and it takes practice to approach each mediation by asking whether you are working as you are because it is your normal practice, or if the way you are working is the best way to work with the specific parties who are with you in mediation.[26]   Mediators should notice when they are surprised by reactions from the parties, or when they are surprised by their own reactions. This violation of expectations can lead to insight regarding the relationship of culture to impasse.

Listen to the Parties

Listening to the parties can, and should, be done before and during the mediation session. In caucus the mediator can explain the process that he or she is

---

[24] Burke discusses fitness in Chapter III ("Occupational Psychosis") of a larger work, first published in 1935, that considers the importance of context generally. See Kenneth Burke, Permanence and Change: Anatomy of Purpose, University of California Press, Berkeley, CA, 1984.

[25] Peter W. Black, *Identities,* a reference to the work of John Paul Lederach in Conflict, S. Cheldelin et al. (eds.) (2008), p. 165.

[26] Much has been written about the process of reflective practice in mediation. For one example, see Michael D. Lang & Alison Taylor, The Making of a Mediator: Developing Artistry in Practice, Jossey-Bass (2000).

going to use, judge the comfort level of the party, and address any discomfort or unease that the party has before going into joint session. There is no magic formula for pre-session discussions, but there are some questions that may prompt a party to discuss issues related to culture, and the expectations they have of the session based on their cultural lens. Before explaining the mediation process, ask, "what do you expect from the mediation session?" Better than generalizations or assumptions about conflict behavior based on observable demographic identification, statements about expectations can reveal the party's self-identity and the extent to which an individual identifies with a particular culture.[27]

After explaining the mediation process, asking whether the party is comfortable with the process as explained, and really listening to both verbal and non-verbal responses, can offer clues about the party's level of comfort and acceptance, and can give a clue as to how much interaction they are likely to exhibit during the session.

Asking if there are any worries or concerns going into the session can give the party an opening to discuss culturally based issues, and asking how the session could be adapted to make the party more comfortable provides an opportunity on the front end of the mediation to buffer against reluctance or impasse. Finding the *right* questions to ask can be challenging, and the definition of "right" will vary depending on the mediator, the venue and the parties.

During the session the mediator should look for non-verbal and verbal signs that the process as adapted is working, or that the parties appear to have problems with the process. Of course, not all process problems are cultural in nature, but paying attention to the parties' meta-messages is one way to pick up cultural problems before the parties shut down completely.

---

[27] Ellen Kabcenell Wayne & Lorig Charkoudian, *Fairness, Understanding and Satisfaction: Impact of Mediator and Participant Race and Gender on Participant's Perception of Mediation*,28 Conflict Resolution Quarterly 1, (Fall 2010).

Words and phrases that reflect values have deeper meanings that often need to be explored. Examples include: *fairness, trust, respect, values, justice, safety,* and *normal.* There is a tendency to assume that everyone knows what these words mean, yet without clarification an impasse can be created. When these words are used, ask the parties what they mean to them and why they are important. Respect is an issue that is either at the heart of or is involved in most, if not all, disputes. Too often we take for granted that we have a shared understanding of what it means. When asked to describe respect, a party in mediation once said, "You know what it means; it is what your parents taught you." While there are undoubtedly common themes, as they say, the devil is in the details. One approach is to ask what respect "looks like". Find out how we will know it when we see it, and request examples of what behaviors do and do not demonstrate respect.

Be Overt and Question Assumptions

As practitioners we need to be culturally aware of our own metaphors, goals and practices, and we must determine when to adapt our mediation practice to the needs of the parties.   Part of the defense against cultural impasse involves simply being overt about what you are doing, and sensitively naming problems or issues as they arise.

Cultural clues come from a variety of sources, and can be detected with straightforward questions. Ask about background information at the organizational, group and/or personal level. For example, ask about corporate values, when the company began a certain practice and find out why it is implemented, inquire about historical references to discover how things have been done, and whey they are important.

During a mediation involving forensic medical professionals and administrative staff, there was an impasse that seemed to defy explanation. It was not until the mediator realized that the term "fact" appeared to be a sticking point that the impasse was broken. The mediator asked the participants to describe the meaning of "fact." A member of the forensic staff said she could observe behavior and draw conclusions regarding someone's intent, and describe what happened as a "fact." The mediator facilitated a discussion about perception and "reality," the conversation continued, and the impasse was broken.

One form of cultural identity that Avruch asserts can have a powerful impact on individual and group members is "chosen traumas."[28] This form of cultural identification involves situations related to genocide, slavery, and forced relocation of peoples. "Chosen traumas" can spark conflict or trigger impasse when individuals feel their social identity has been violated. As mediators, one avenue to avoid impasse is to become more aware of and overtly question the use of metaphors and images, because these often hold cultural clues. A strategy for recognizing chosen traumas or discovering other indicators of culture is to listen for metaphors and to pay attention to the context in which they are used. For example, "he treats me like his slave" is less likely to trigger a deep emotional reaction in a Swede than in an African American or someone from the Caribbean. In this situation asking the person to tell you more about the meaning of their comment provides an opportunity for the other party and the mediator to gain a deeper understanding of the conflict. In turn this can open a door for moving beyond impasse.

Use Curiosity and Creative Questions

Todd Kashdan advocates using overt curiosity to create successful outcomes during negotiations and discussions about conflict. He recommends asking a question keeping the following guidelines in mind:

---

[28]Kevin Avruch, *Culture*, as cited in Conflict, S. Cheldelin et al. (eds.) (2008), p. 173.

Think of it as making an assessment of what the other person is thinking instead of judging them . . . When you show curiosity in what they care about, they show a greater willingness to gather additional information from you. In the end, they are more willing to negotiate and come to a compromise that benefits everyone. . . When we train ourselves to be curious ahead of time, when we prepare questions that don't smell of judgment and criticism, we open the doors to achieving the greatest possible outcomes in emotionally charged situations. Curiosity offers a back-door route to managing anxiety, conflict, and the uncertainty and ambiguity that colors most of our social world.[29]

In discussions with Kashdan, two approaches were suggested that practitioners can use to prevent or break impasse when culture is a factor: 1) Begin by acknowledging that during the discussions the other person/group will have perspectives that are different from your own and from the other party. Explain that trying to understand that different view may help resolve the problem. 2) Ask each person / group what two things they want to know about the other participant.

These strategies can be used during pre-negotiation sessions, during caucus, or they can be incorporated into the mediation session. Of course the real challenge is asking questions without an agenda and without judgment. As practitioners we may or may not recognize the potential impact of the questions we ask.   Notice the difference between these approaches: "Why is fairness important to you?" vs. "I'd like to hear more about the importance of fairness and how it is established in your company [or family, or community, etc.]" Just the use of the word "why" in the question is more likely to prompt a defensive reaction on the part

---

[29] Todd Kashdan, Ph.D., Psychology Today blog post, *Curiosity and the Chrysanthemum: Defuse Conflicts, Become a Masterful Negotiator, and Relish the Beauty of Change*. http://www.psychologytoday.com/blog/curious/200903/curiosity-and-the-chrysanthemum-defuse-conflicts-become-masterful-negotiator-and (March 26, 2009).

of the party. Ask yourself, "what I am trying to accomplish with that question?" or "how are the parties likely to hear that question?"

Powerful cross cultural questions are described as being simple and clear; they involve values, hopes and ideals. Examples include: "what possibilities exist that we haven't thought of yet?", "if I am going to ask you just one question: what's the question I should be asking?", and "what does it mean to be ethical?" Powerful questions resonate across cultures, spark curiosity, are thought provoking, question our assumptions and evoke more questions. These questions shift the focus from the problem to possibilities, and may hold the key to breaking impasse.

All of the overt questioning, and discussions surrounding the questions, can slow the pace of mediation. If there are no cultural issues at play, the parties are equally comfortable with the process and the mediator, and if the parties are committed to working out a solution within the process guidelines, mediation may be quick. But if there are issues that make the parties uncomfortable or that violate cultural norms, the time that it takes to question, listen, clarify, and understand is well spent.

Discuss and Define Who is "At the Table"

Begin by expanding the definition of, and deepening our understanding of, who is at the negotiation table. We should, of course, take this in the literal sense: who is sitting physically at the table. That question is really at the center of overt questioning and taking time to relate to the parties. There is another sense of "who is at the table" that is also culturally related and involves "parties" who are not actually in the room.

For parties from broadly collectivist cultures there will always be invisible parties at the table. Collectivist participants will generally be uncomfortable with outcomes determined by individuals, divorced from the community or communities

to which they belong. In caucus or in general session, it is important to determine whether there is a need for pauses in mediation during which non-present parties can be consulted, or whether there is a special way that the agreement made in mediation must be implemented in order to be acceptable to the community whose interest has been served by the actual bargainer.

The phenomenon of ghosts at the table is most evident, and perhaps understandable, when broad cultural attributes like collectivism/individualism are involved, but there can be ghosts at the table in unexpected situations. In a mediation between two managers at a large company in the United States, it appeared that a settlement was in sight when one of the parties asked to postpone the session until the next morning. After some discussion he revealed that a manager from another department, apparently totally uninvolved in the issue in the mediation session, needed to be consulted before a final deal was struck. In the discussion about the delay it was revealed that in the culture of this company, the "operations guys," supervised by the absent manager, were instrumental in making programs work or fail, and they would not feel any ownership of the settlement if they were not consulted before an actual deal was made. The mediator took a break until the next morning, the parties came back, and the deal that was on the table the afternoon before was signed with no changes.

Look for "Culture Clusters"

Christopher Moore and Peter Woodrow have described what they call "culture clusters" to identify those points at which even very different cultural systems overlap.[30] In the classic issue-interests-options model, the discussion of party interests is really an attempt to find where there are areas of overlap between otherwise divergent cultures. An example from U.S. corporate/union cultures is

---

[30] Christopher Moore & Peter Woodrow, *Mapping Cultures: Strategies for Effective Intercultural Negotiations*, 7 Track Two, 1 (April 1998). (Track Two is a quarterly publication of the Centre for Conflict Resolution and the Media Peace Centre, South Africa.)

safety: in any discussion about any contract issue a list of interests will contain a number of unrelated interests, perhaps a couple of mutually exclusive interests, but almost always one mutual interest will be safety of the work force. If there is no other point of agreement - nothing else in the cluster - that at least gives a mediator a place to begin working with the parties.

In intercultural situations, where the differences in culture are contributing to impasse, often the culture clusters will involve basic human needs, and the respect, trust, and communication issues discussed earlier in this chapter.[31]   In order to break impasse, the mediator can often explore areas in which even parties from very different cultural backgrounds have agreement, using the overlap as an anchor for discussions.

Conclusion

There are long-standing debates in the field of conflict resolution regarding whether or not there should be an attempt to use mediators who are "culturally matched" to the parties. If we are correct about the multi-cultural nature of all parties and all mediation sessions, matching one mediator (or even a group of co-mediators) perfectly to the parties may be nearly impossible. It is also likely that using overt cultural markers like race and nationality is an imperfect way to think of overcoming cultural differences.

Charkoudian and Wayne looked at the practice of matching mediator-participant gender and race or ethnicity to participants' perception of fairness, understanding and satisfaction. They found that parties are more likely to perceive mediation as satisfying when there is a gender match between the mediator(s) and participants. They found that there is less of a negative effect than expected when

---

[31] There is a large body of literature in the field of dispute resolution dedicated to the dynamics surrounding human needs and their place in creating and resolving disputes. For one of the early examples in conflict resolution, see: John Burton, Conflict Resolution and Prevention, St. Martins Press (1990).

there is not a racial or ethnic match between the mediator(s) and parties. However, when there is a match between the mediator and one party, but not the other, satisfaction with mediation decreases from the perspective of the isolated participant. This seems to indicate that there are problems with trying to match racial or ethnic groups between mediators and the parties. First, because there is a false assumption that one's group identity assures a common culture or worldview. Second, it is not necessarily safe to assume that having a shared racial or ethnic group will result in a more effective mediation. Charkoudian and Wayne suggest avoiding a situation in which one of the parties may feel isolated because the other party and the mediator appear to share the same ethnic or racial group. This can be accomplished by not using a culturally matched mediator-participant combination or by using co-mediators who share the identity groups of the parties.[32] Needless to say, this raises pragmatic questions about the viability of trying to culturally match mediators and mediation participants. Even if there were a culturally diverse (by outward appearances) pool of mediators the likelihood of perfect matches with one party seems remote, and the likelihood of perfectly matching both parties seems impossible.

In a mediation involving two Spanish-speaking Latin American parties, a mediation center went to some trouble to find a native Spanish speaker to mediate. However, the mediator was perceived by one of the parties as being from a different social class, and therefore did not want to work with him.

In a mediation involving Jordanian and Lebanese parties, with an Egyptian mediator, culture differences played out through language. Overtly, all were male, all spoke Arabic, all were businessmen of a similar class, and all were of a similar age. During the mediation the third party used certain phrases to summarize positions. In Egyptian Arabic, the phrases were perfectly acceptable. In Jordanian Arabic, they were offensive. In Lebanese Arabic, they were unknown. It took a

---

[32] Ellen Kabcenell Wayne & L. Charkoudian, (2010) p. 32-47.

fourth party, fluent in all three dialects, to establish what was said and assure everyone that no offense was intended.

As Chittu Nagarajan observed:

In high context cultures like the one where I live [India] . . . face saving, egos, men and women inequalities, religious factors, respect issues, and other issues can easily create an impasse. The entire [mediation] process is driven by culture. You need to understand the culture to understand the parties and the situation. Once you understand, you need to heed the cultures and break impasse without offending the culture.[33]

So where do we stand with the relationship of culture to impasse? We have argued that culture is a fluid concept, not necessarily tied to overt physical markers, and that culture can have an impact in mediation even when it appears that the parties are "the same." We have argued that the culture of mediation is as important as the cultures of the parties in creating and getting past impasse. We have discussed some of the common ways that gross cultural differences can lead to impasse, and we have suggested some strategies and approaches to discovering cultural issues and adapting the mediation process to accommodate differences. In the end, we believe it is the willingness and capacity of the mediator to be flexible, question her or his own culture and listen closely to the parties that will allow for successful breaking of culturally induced impasse.

---

[33] Chittu Nagarajan, in correspondence with the authors.