

RESEARCH PAPER:
“MEDIATING DISPUTES – THE PROBLEMS OF CULTURE”

THEORY AND PRACTICE OF MEDIATION
INSTRUCTOR: PROF. FRED ZEMANS
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BRETT COHEN

Abstract

The concept of culture has been recently applied to the theory and practice of mediation. As such, mediators are encouraged to become “culturally fluent” in order to facilitate better understanding between parties in cross-cultural disputes. It is also believed, that this will shore up culture against the homogenizing tendencies of a legal culture that aims to treat everyone equally. This paper, however, is intended to problematize the use of culture as an analytical tool in mediation. It will show that theorists and practitioners of dispute resolution have failed to heed the warnings of their anthropological forebears. Anthropologists had long grappled with the concept of culture and were cognizant of its potential dangers when applied in the real world. Yet theorists and practitioners of mediation hold it up as the panacea to all their ills. Guided by the experience of culture in other disciplines – such as anthropology, history, and international law – this paper reveals that cultural analysis still suffers from many of the same symptoms it suffered there. This paper will reveal its reifying tendencies in creating cultures that weren’t there. This paper will expose its essentializing proclivities in fixing cultures that are fluid and dynamic. And this paper will show its potential to exacerbate stereotypes – in spite of loud protests to the contrary. While accepting that there are, indeed, differences between people, this paper will also suggest an alternative approach to mediation – one that focuses on the commonalities between peoples. Such an approach, it is argued, allows mediators to achieve the same objectives as cultural fluency while avoiding its concomitant pitfalls.

A Short History of Culture

In his book, *Survival in Two Worlds*, historian Leonard Thompson quotes a missionary report from 1848 on the BaSotho Chief, Moshoeshoe (pronounced Mo-shwe-shwe):

The most extraordinary feature of [the Basotho Chief’s] intellectual character is his talent for generalization. While Mr. Casalis is reading to him any portion of ancient or of modern history, which he sometimes does at his request, his mind is always occupied with the philosophy of the subject, and striking his thigh with his right hand, and throwing himself

back on the sofa of the Missionary, like a man who has found a new principle, or new proofs he had been hunting after in support of one which he wishes to be more firmly established, he will sometimes express himself with feelings bordering on ecstasy. “Casalis,” he will explain, “I see men have been the same in all ages. Greeks and Romans, Frenchmen, Englishmen and Basutoos have all one common nature.”¹

There is a deep irony to Moshoeshoe’s pronouncement. His observation regarding the universality of man was made to Eugene Casalis, one of the missionaries who documented in meticulous detail the differences between themselves and the new communities in which they proselytized. In a sense, they were acting as the first anthropologists. It is particularly apt that this example should come from South Africa, where, a century later, these perceived differences would be used to justify the policy of *apartheid* – but more on that later. In the meantime, the writings of the first missionaries provided the necessary fodder for British colonial rule, as colonial administrators, who could barely afford the outright occupation of these new colonies, sought to administer them through a policy of indirect rule. This meant identifying the traditional leaders of discrete political entities, and ruling through them. The problem was that these neat and tidy political units did not exist. The people they sought to rule did not define themselves within a fixed geographic boundary. Borders and identities remained fluid as people shifted their political allegiances according to which leaders could provide them with the

¹ Quoted in Leonard Thompson, *Survival in Two Worlds: Moshoeshoe of Lesotho, 1786-1870* (Oxford: Clarendon Press, 1975), 81.

necessary security.² Very soon, colonial administrators were employing their very own professional anthropologists who underpinned their studies of culture with descriptions of racial difference: the Khoisan had yellow skin; the Zulu were attractive; the Xhosa were lazy.

Anthropologists have since made a science of the study of culture. A large part of this endeavour has been to separate the concept of culture from its racial underpinnings. Ever since Franz Boas repudiated the racial explanation of difference, anthropologists have loudly proclaimed that it is culture that makes us, *not* biology.³ The argument is that we become what we are by growing up in a particular cultural setting; we are not born that way. In fact, the anthropology of culture has become something of a success story. Culture is now more fashionable than ever. Other disciplines have taken it up. And for our purposes, it has been increasingly applied in the field of conflict resolution. There has recently been increasing interest in the relation of culture to conflict resolution. In particular, theorists and practitioners have touted the virtues of a cultural approach to mediation. This has been largely in response to the emergence of a universal set of conflict resolution techniques – one which many theorists believe threatens to relegate cultural differences to the background simply because their presence mask the commonalities in human nature.⁴ In addition, there is tremendous heuristic appeal in the possibility that differences in the context of a mediation can be explained in terms of some generalized cultural trait. When it comes to the application of culture, theorists have

² Elizabeth A. Eldredge, *A South African Kingdom: The Pursuit of Security in Nineteenth-Century Lesotho* (Cambridge: Cambridge University Press, 1993).

³ Franz Boas, *Race, Language, and Culture* (New York, NY: Free Press, 1940).

⁴ Kevin Avruch & Peter Black, “Conflict Resolution in Intercultural Settings: Problems and Prospects,” in Dennis J. Sandole & Hugo van der Merwe (eds.), *Conflict Resolution Theory and Practice: Integration and Application* (Manchester: Manchester University Press, 1993), 131-145.

been careful to echo their anthropologist forbears in arguing that race and culture were independent from one another. One should be careful, however, to presume that this alone will insulate the exercise from the same dangers.

Let us, for a moment, return to the example of South Africa. It should be noted that the intellectual architect of *apartheid* was W.W.M. Eiselen, an anthropologist. It should be further noted that Eiselen repudiated popular racial prejudices. He argued that there was no evidence that evidence varied with race. The true basis of difference, he argued, was not race, but culture! Our cultural differences, he believed, were not only to be valued, but to be preserved and fostered. Eiselen promoted a program of “separate development” which was ultimately realized as one of the most efficient exercises in segregation in the modern era.⁵ As can be seen, simply taking race out of the equation does not necessarily guarantee that one will avoid the same pitfalls that would occur by leaving it in.

This is one of the reasons that anthropologists still get remarkably nervous when they discuss culture. It will be shown, however, that many theorists and practitioners of conflict resolution do not share these reservations – unabashedly propounding the salience of cultural difference and the necessity for cultural awareness and sensitivity on the part of mediators.⁶ In doing so, they echo the increasing popularity of multiculturalism – a trend that sought to challenge the ideology of the American melting

⁵ See Adam Kuper, *Culture: The Anthropologists' Account* (Harvard University Press: Cambridge, Mass., 1999), xii-xiii.

⁶ Terence Turner, “Anthropology and Multiculturalism: What is Anthropology that Multiculturalists Should be Mindful of It?”, *Cultural Anthropology* 8(4) (1993).

pot.⁷ The idea is to shore up the integrity of America's cultural constituents against what is perceived to be the white, Anglo, middle-class, male, heterosexual hegemonic discourse. In the same way, proponents of cultural awareness in mediation practice believe it to be a necessary foil to the overarching legal culture that threatens to dictate all facets of the mediation. It is clear that most mediation happens in the shadow of the law. It is also clear that mediators are frequently lawyers. However, it is less clear as to what this overarching legal culture actually brings to the table. Michelle LeBaron and Zena Zumeta argue that mediators "tend to be oriented by individualist perspectives, expecting clients and others to act in autonomous, self-interested ways."⁸ Others argue that this legal culture disdains the expression of emotion⁹ or spirituality.¹⁰ Whatever shape this legal culture is thought to take, the common denominator seems to be its marginalization of all worldviews that originate outside the law. According to Sonia Nourin Shah-Khazemi,

In the interests of fairness, and in pursuit of the avowed aims of a process such as mediation to restore the locus of control to the disputants, there is a need to ensure that particular extraneous value systems do not dominate in the dispute management process of minority communities who have

⁷ See Joseph F. Healey, *Race, Ethnicity and Gender in the United States: Inequality, Group Conflict, and Power* (Thousand Oaks, California: Pine Forge Press, 1997); George F. McLean & John Kromkowski, *Relations Between Cultures* (Washington D.C., Council for Research in Values and Philosophy, 1991).

⁸ Michelle LeBaron & Zena D. Zumeta, "Windows on Diversity: Lawyers, Culture, and Mediation Practice", *Conflict Resolution Quarterly* 20(4) (2003), 469.

⁹ Robert E. Emery, "Divorce Mediation: Negotiating Agreements and Renegotiating Relationships," *Family Relations* 44 (4) (1995), 377-383.

¹⁰ L. Vanderkool & J. Pearson, "Mediating Divorce Disputes: Mediator Behaviour, Styles and Roles," *Family Relations* 32(4) (1983), 557-566.

their own intrinsic values as this clearly militates against the satisfactory resolution of disputes.¹¹

This, it is argued, can be mitigated by introducing an awareness of culture into the mediation discourse – enabling those who fall outside the cultural mainstream to find their respective voices.

The Imperative of Cultural Awareness

Having found their voices, the next step is for those voices to be heard. Cultural differences, it is argued, have a vast potential to fuel conflict. According to Michelle LeBaron, they can “confound communication, leading to misunderstandings and feelings of frustration, fear, or threat.”¹² Having initiated a conflict, it is argued that these cultural differences will certainly do no better in the course of a mediation. By confounding the ability to communicate effectively, cultural differences are said to wrest agency from the parties.

It is therefore argued, that in order to facilitate better understanding between the conflicting parties – so that each may be properly heard – mediators must engage in a “cultural analysis”¹³ of the situation. To do this effectively, they must become culturally

¹¹ Sonia Nourin Shah-Kazemi, “Cross-Cultural Mediation: A Critical View of the Dynamics of Culture in Family Disputes,” *International Journal of Law, Policy and Family* 14 (2000), 322.

¹² Michelle LeBaron, “Cultural Fluency in Conflict: Currencies and Starting Points”, *Bridging Cultural Conflicts* (Jossey Blass, 2003), 53.

¹³ Avruch, *supra* note 4.

fluent¹⁴, or culturally sensitive.¹⁵ (No doubt, it helps to downplay what people have in common, aside, of course, from the capacity to develop very different cultures.) Some authors have taken the more extreme view that, ideally, mediators should be of the same cultural background as the parties. Sonia Nourin Shah-Kazemi, argues that this is because, “no form of training can, *a priori*, impart a fully comprehensive understanding of the “universe of meaning” that shapes our responses to the whole gamut of situations that arise in the course of life.”¹⁶ She continues, however, that,

“this does not absolve all mediators from the need to acquire training into the dynamics of culture, because to be effective mediators it is necessary to recognize problems involved in bridging the gaps – often unconscious – between the psychological responses differentiated, precisely, by divergent cultural attitudes. Only in light of this awareness can there be any question of appreciating the impact that cultural values have upon the dynamics of a dispute and its resolution.”¹⁷

This, of course, is easier said than done. To be well-versed in the dynamics of culture, one must first be able to define it.

¹⁴ *Supra* note 12.

¹⁵ Milton J. Bennett, “Towards Ethnorelativism: A Developmental Model of Intercultural Sensitivity”, in R. Michael Paige (ed.), *Education for the Intercultural Experience* (Yarmouth, Maine: Intercultural Press, 1991).

¹⁶ Shah-Kazemi, *supra* note 11, 320.

¹⁷ *Ibid.*

The Essence of Culture

Culture, like pornography, seems obvious until one tries to define it. Anthropologists have tried numerous approaches to capturing its essence and have still been unable to reach a consensus. A detailed study of the relevant literature only serves to leave one more confused than before as one is pushed and pulled along various axes of disagreement. Jane Cowan writes that “few words in the English language are so fetishized, and so contested – and not just by anthropologists – as “culture””.¹⁸ One is immediately confronted with debates between “totalists” and “mentalists”.¹⁹ One is regaled with the virtues of adopting a “trait” approach, or a “constructivist” approach, or a “dynamic constructivist” approach.²⁰ One is either a “universalist” or a “relativist”. None of these are particularly helpful in guiding the mediator. There is, however, a common thread running through these approaches in that each is looking for some form of a collective cast of mind. The danger with this is that, much like the early missionaries in South Africa, boundaries will be seen where none existed. Taken to an extreme, Roy Wagner even argues that culture is an “invention” of the anthropologist, a “foil (and a kind of false objective) to aid the anthropologist in his experiences”, rather than a description of something which exists in the world.²¹ In any case, the ramifications should not be understated. The perception of cultures as distinct, bounded entities, has the

¹⁸ Jane Cowan, Marie-Benedicte Dembour, & Richard A. Wilson, “Introduction”, in Cowan et al. (eds.) *Culture and Rights: Anthropological Perspectives* (Cambridge University Press, 2001), 14.

¹⁹ See Frank Viveiro, *Cultural Anthropology: A Handbook* (1978).

²⁰ Michael W. Morris and Ho-Ying Fu, “How Does Culture Influence Conflict Resolution? A Dynamic Constructivist Analysis,” *Social Cognition* 19(3) (2001), 331.

²¹ Roy Wagner, *The Invention of Culture* (Chicago: University of Chicago Press, 1981), xii.

potential to become a self-fulfilling prophecy. Leroy Vail's *Creation of Tribalism in Southern Africa* argues, with reference to southern Africa, that cultural identity is not rooted in the primordial past.²² Rather, it is a very much a new phenomenon – forged in the fires of colonialism. In an attempt to sustain themselves against the colonial onslaught, Africans sought to mobilize support by appealing to invented identities. They did so in an attempt to secure a favourable position within the colonial system of governance. As explained already, the British policy of “Indirect Rule” searched for and demanded traditional African polities through which to rule. As a result, the identities that Africans invented usually conformed to European perceptions of what their culture should look like.

These reifying tendencies were not confined to the colonial era. Even today, David Gellner argues that legal systems demand clearly-defined, fixed categories in order to be able to classify persons and deal with them on the basis of these categories.²³ These essentializing proclivities of law contribute enormously to the strategic essentializing of culturally defined groups. Take, for example, international law. This means that, in order to assert claims for political or cultural rights, communities are forced to essentialize something that is, in fact, much more fluid and contradictory. Rachel Sieder and Jessica Witchell allude to such a phenomenon in Guatemala:

²² Leroy Vail (ed.), *The Creation of Tribalism in Southern Africa* (Berkeley and Los Angeles: University of California Press, 1991).

²³ David Gellner, “From group rights to individual rights and back: Nepalese struggles over culture and equality,” in Cowan, *supra* note 7, at 177-200.

Indigenous identities in Guatemala are effectively being narrated or codified through dominant legal discourses, specifically those of international human rights law and multiculturalism. This has resulted in the projection of an essentialized, idealized, and atemporal indigenous identity, the movement's leaders often perceiving such essentializing as tactically necessary in order to secure collective rights for indigenous people.²⁴

Essentialism reflects the worldview, not of indigenous peoples themselves, but of the reductive, reifying tendencies of the law. The cultures that emerge are then externally imposed. Anthony Appiah calls this the politics of recognition, which he equates with the politics of compulsion – where difference is tightly scripted and forced upon the bearer.²⁵ It is no surprise that there is a school of thought that believes “anthropologists would be wise not to hand culture over too quickly to those who would essentialize it, if only because the stakes in the real world are so high.”²⁶ In so far as they have handed over the study of culture to other disciplines, they seem to have done so on the condition that its application not undermine its ever-changing nature.

This admonition should inform our analysis of the application of culture to the theory and practice of mediation. And it is with a critical eye that we must examine the call for mediators to be culturally sensitive. Ostensibly to aid the mediators in their cultural analyses, mediation literature is now rife with studies that purport to characterize

²⁴ Rachel Sieder and Jessica Witchell, “Advancing indigenous claims through the law: reflections on the Guatemalan peace process”, in Cowan, *supra* note 18 at 201.

²⁵ Anthony Appiah, “Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction”, in A. Gutman (ed.) *Multiculturalism and “The Politics of Recognition”* (Princeton, NJ: Princeton University Press, 1992).

²⁶ Cowan, *supra* note 18 at 14.

various cultures. It is indeed unfortunate that many of them read like the ethnographies of colonial administrators in British Africa.

Characterizing Cultures

Each attempt to characterize a particular culture for the purposes of facilitating cultural awareness includes a warning as to the dangers of stereotyping. Benjamin Reese argues for an increased awareness of group norms that may subtly impact the conflict resolution process, but warns of the necessity “to identify those elements of the process that might reinforce underlying or unconscious stereotypes”.²⁷ Derald Wing-Sue and David Sue, in *Counseling the Culturally Different*, warn against the dangers of stereotypes, defining them as “rigid preconceptions we hold about *all* people who are members of a particular group.”²⁸ They then proceed to break down in meticulous detail the cultural characteristics of Asian-Americans, Hispanics, Blacks, and American Indians – prescribing an appropriate counseling strategy for each. Similarly, Diane LeResche, accompanies admonitions against stereotyping with a sweeping characterization of Korean-American culture.²⁹ William Donohue and Mary Bresnahan refer to the mediation of a conflict between police and the local Hispanic community in Lansing, Michigan, in which the police had shot and killed a Hispanic man who, it turned out, had

²⁷ Benjamin D. Reese, “Diversity and Historical Antecedents and Future Challenges,” *Acresolution* (Fall 2001).

²⁸ Derald Wing-Sue & David Sue, *Counseling the Culturally Different: Theory and Practice*, 3rd edition (New York, NY: John Wiley & Sons, 1999).

²⁹ Diane LeResche, “Comparison of the American Mediation Process with a Korean-American Harmony Restoration Process,” *Mediation Quarterly* 9 (1992), 323-339.

been carrying an unloaded BB gun.³⁰ Warning of the problems that come with stereotyping, they go on to draw sweeping generalizations as to the character of the Hispanic culture and urge mediators to act in accordance with these presumptions.³¹ In the context of family mediation, Jessica Dominguez further breaks down this characterization of Hispanic culture further along lines of gender.³² She argues that “it is imperative that the mediator be aware of the *different spices* that a Latino parent brings to a mediation process.”³³ This, she believes, is necessary to ensure a level playing field between the participants. And what exactly are these differences, according to Rodriguez? According to Dominguez, “Latinas are socialized to be feminine, to be mothers and wives. Their most important aspiration is to get married, have children, and serve their families.”³⁴ This is in sharp contrast to the portrayal of Latino men as “macho”, a characterization that molds Latino men as “cold, profound, strong, authoritarian, independent and brave.”³⁵ Whatever their potential implications for the practice of mediation, one can’t help but wonder whether such sweeping characterizations of very particular cultures can be anything *but* stereotypes.

³⁰ William A. Donohue & Mary L. Bresnahan, “Communication Issues in Mediating Cultural Conflict”, in Joseph P. Folger and Tricia S. Jones (eds.), *New Directions in Mediation: Communication Research and Perspectives* (London: Sage Publications, 1994).

³¹ *Ibid.*, 155.

³² Jessica R. Dominguez, “The Role of Latino Culture in Mediation of Family Disputes,” *Journal of Legal Advocacy & Practice* 154(1) (1999), 161.

³³ *Ibid.*, 163 [emphasis mine].

³⁴ *Ibid.*, 164. Dominguez is quoting Berta Esperanza Hernandez-Truyol, “Borders (En)Gendered: Normativities, Latinas, and a Latcrit Paradigm”, 72 *New York University Law Review* 919 (1997).

³⁵ *Ibid.*, 165.

Generalizations or Stereotypes?

One novel approach has been to argue that stereotypes are stereotypes only if they involve a *negative* characterization of a particular group.³⁶ Indeed, Benjamin Reese, in warning about the dangers of stereotyping, seems to be referring only to those that come with a negative bias.³⁷ I would argue, however, that the fact that a stereotype is positive does not make it any less a stereotype. It still implies a pervasive, continual influence of a particular cultural characteristic. And one need only look at our South African example to see how even positive cultural stereotypes may result in negative consequences.

Most authors take another tack and explain that these are *not* stereotypes, but generalizations. Derald Wing-Sue & David Sue argue that “[g]eneralizations are necessary for us to use; without them we would become inefficient creatures.”³⁸ They argue that generalizations are merely “guidelines” rather than “absolutes”; that they remain “open to change and challenge”. “It is exactly at this stage,” they explain, “that generalizations remain generalizations or become stereotypes.”³⁹ Stereotypes, they argue, are impervious to logic or experience. Therefore, the content of generalizations and stereotypes seems the same – the difference being the way in which they are applied. In other words, we begin with generalizations; we begin *and* end with stereotypes. This kind of reasoning is echoed by Diane LeResche, who argues that “documenting an ethnic group’s general orientation toward interpersonal conflicts and methods for handling them

³⁶ Thomas Kochman, *Black and White Styles in Conflict* (Chicago and London: University of Chicago Press, 1981).

³⁷ *Supra* note 27.

³⁸ *Supra* note 2828 at 73.

³⁹ *Ibid.*

is *only the initial step* in preparing a full complement of true alternative dispute resolution services.”⁴⁰ A generalization, it is argued, is not a stereotype as long as it remains flexible. And this flexibility is considered to be very much a function of the knowledge that at any point in time, an individual within the group may not conform to the pattern of expected behaviours. Indeed, each of the aforementioned authors cautions that individuals often exhibit beliefs that are different from their cultural stereotypes. Donohue and Bresnahan cite Linda Berg-Cross and Lisa Zoppetti who argue that “[c]ultural knowledge devoid of personal knowledge inevitably leads to stereotyping and an inability to relate empathetically.”⁴¹

The problem, however, is that even where authors spend time discussing factors which may differentiate individuals, they still do so within a cookbook-type approach for dealing with individuals from particular ethnic or racial groups. And herein lies the fundamental problem: the fact that these cultural generalizations, for whatever they’re worth, conform to racial or ethnic groupings. Race, or its more benign cousin, ethnicity, has managed to find its way back into the discourse on culture. One can practically hear Franz Boas turning over in his grave.⁴²

Given the difficulties attending the definition of culture, it should come as no surprise that authors still tend to confuse culture with ethnicity. Take for example, Jessica Dominguez’s smooth and almost unnoticeable transition from a discussion of ethnicity to a discussion of culture:

⁴⁰ *Supra* note 29 at 338 [emphasis mine].

⁴¹ *Supra* note 30 at 145.

⁴² Franz Boas died in 1942.

Ethnicity can be defined as being a member of a “human group that entertains a subjective belief in its common descent because of similarities of physical type or customs or both, or because of memories of colonization and migration”. “Ethnicity plays a major role in determining what we eat, how we work, who we relate to, how we celebrate holidays and rituals, and how we feel about life, death, and illness. We see the world throughout our own *cultural filters* and we often persist in our established views in spite of evidence to the contrary.” *Culture* is defined as the totality of socially transmitted behaviours.⁴³

Dominguez discusses ethnicity and culture within the same paragraph, as if the two were one and the same. Donohue and Bresnahan state that, with respect to mediators, “the clients’ cultural *and* ethnic identity must be considered.”⁴⁴ The two terms are used interchangeably. As long as culture remains synonymous with ethnicity, proponents of cultural sensitivity in mediation will be perceived to have dropped the ball, so to speak. The close conformity with ethnicity or race leaves characterizations of culture in danger of resembling the fixed and immutable racial groupings from which cultural anthropology had managed to extricate itself.

Towards an Alternative to Culture

⁴³ *Supra* note 32 at 161 [emphasis mine].

⁴⁴ *Supra* note 30 at 143.

Michelle LeBaron makes a brave attempt to forsake any ethnic underpinnings to her cultural generalizations.⁴⁵ Espousing the virtues of cultural fluency, LeBaron identifies three broad cultural patterns. These, she refers to as individualism and communitarianism; high and low-context communication; and specificity and diffuseness. For the purposes of this paper, it is not necessary to go into each in great detail. The first of these refers to the way we think of ourselves and define our roles and relationships. Individualistic cultures orient themselves around the individual, while communal cultures orient themselves towards the community. The second – high and low-context communication – refers to the manner of communication. In high-context communication, people leave most of their message implicit in the surrounding context as opposed to direct verbal expression. In low-context communication, people are more literal – relying on verbal communication to receive and impart their message.

LeBaron has managed to avoid the highly specific application of these cultural patterns to discrete ethnic groups. However, she hasn't quite managed to extricate herself from the need to apply these characteristics to some sort of category of peoples, no matter how broad and sweeping. She argues, for example, that high-context communication is typical of Eastern and Southern cultures; and low-context communication the realm of Western cultures, "generally". Other cultural patterns, she states, remain the domain of either the Eastern hemisphere or the Southern hemisphere. Some are specific either to East Asia, South America, and Catholic Europe, or to United States, Canada, and the United Kingdom. So vast are these categories that one can't help but query the efficacy in

⁴⁵ Michelle LeBaron, Chapter 3: "Cultural Fluency in Conflict: Currencies and Starting Points," *Bridging Cultural Conflicts* (Jossy-Bass, 2003), 53-82.

making these assignments in the first place, *especially* when LeBaron herself argues that “[w]ithin these huge categories there are important differences and many variations.”⁴⁶ In addition, she argues that “[m]ost people move along the continuum, tending towards a low-context approach in some settings and a high-context approach in others.”⁴⁷ For the purposes of cultural inquiry, this would render these huge categories largely redundant. Even LeBaron seems unconvinced of their relative importance: “These starting points and currencies help us get a lay of the land, but they cannot function as complete maps because the territory shifts as cultures change and evolve”.⁴⁸ It seems that, in spite of her best efforts, LeBaron has not found a way out of the predisposition to link culture within identifiable categories of people, no matter how large, or unhelpful, they may be. The point is, that if LeBaron were to throw out these broad categories of people, her discussion of cultural patterns would be no less valuable. The only difference is that they would be the domain of individuals, rather than the domain of groups of individuals. Her cultural patterns would be more akin to what Florence Kluckhohn has referred to as “value orientations”.⁴⁹

Presenting an Alternative to Culture

⁴⁶ *Ibid.*, 55.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 54.

⁴⁹ F.R. Kluckhohn & F.L. Strodtbeck, *Variations in Value Orientations* (Westport, Conn.: Greenwood Press, 1973, c.1961).

“Value orientations” is a concept developed by Florence Kluckhohn and her associates at Harvard. This has been further developed by John Condon and Fathi Yousef who explain that the concept assumes that,

there are universal problems and conditions which men [and women] in all societies face and only a limited number of solutions to these problems. Each of these possible solutions is called a value orientation, and we can expect to find variations among these even within a single society.⁵⁰

Take for example, LeBaron’s description of individualism versus communitarianism. These would fall within Condon and Yousef’s value orientations of self, family, and society, to mention only a few. Each of these is further divided into sub-categories. For the purposes of this paper, these are not important. What is important is that they have achieved the same level of analysis and elicited the same benefit to the mediator, with barely a mention of the word “culture”. And in so far as the word is used, it is with reference to the culture of the individual, and not the culture of a broad swath of people.

Bernard Mayer offers a similar approach, substituting “value orientations” with “fundamental human needs”, the universality of which defies cultural assignment.⁵¹ He argues that “cultural gaps are best bridged when people find a mechanism to focus on the

⁵⁰ John C. Condon & Fathi S. Yousef, *An Introduction to Intercultural Communication* (New York : Macmillan ; London : Collier Macmillan, 1975), 56-7.

⁵¹ Bernard Mayer, *The Dynamics of Conflict Resolution: A Practitioner’s Guide* (Jossey-Bass, 2000).

fundamental needs at the heart of a conflict.”⁵² Look, for instance at the way people communicate. There is no doubt that there are extreme varieties in the way people communicate. Michelle LeBaron has already drawn our attention to high-context and low-context cultures. Mayer, however, reveals how focusing on these differences can lead to stereotyping. He argues that “*with all these differences in the way people communicate, it is easy to overlook the commonalities.*”⁵³ Instead, he urges that we focus on our fundamental human needs, which, he argues are common across all cultures. With regard to communication, for example, Mayer argues that “[t]he most basic constant is that everyone fundamentally wants to be understood and will usually respond well to others who are making genuine, respectful efforts to grasp what is being said.”⁵⁴ The interests of the parties in a conflict, then, are best served by focusing on what they have in common – their fundamental human needs.

Conclusion

Up to now, the study of culture as applied to mediation has been the study of difference. Mediators have been urged to pay close attention to these differences, for this will enable them to facilitate understanding between the opposing parties. The mediator is the bridge. On the other hand, if mediators were to focus on those fundamental human needs that we all have in common, they could take themselves out of the equation, and

⁵² *Ibid.*, 74.

⁵³ *Ibid.*, 81 [emphasis mine].

⁵⁴ *Ibid.*

allow the opposing parties to relate to each other by themselves. This approach would more easily facilitate a resolution whilst adhering even closer to the mediation ideal. It would also preclude the reifying tendencies of cultural analysis and its associated potential for stereotyping, while still being sensitive to differences between people or peoples. And finally, it would satisfy my moral objection to culture theory, which tends to draw attention away from what we have in common instead of encouraging us to communicate across, national, ethnic, and religious boundaries, and to venture between them. It should come as no surprise then that Moshoeshoe was considered an excellent mediator.

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