Mediation: A Need to Expand the Understanding and Use of this Diverse Peacemaking Tool

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Abstract

Mediation is an interactive process which helps parties work on various issues and resolve conflict. This process has almost unlimited potential at all levels of our global society, regardless of the type, size or location of the conflict, and can thus be viewed as an important peacemaking tool. However, despite the unlimited value and diversity of mediation, many around the world are unfamiliar with or do not take full advantage of its potential. Still, others tend to narrowly categorize, advocate for and use mediation, which takes away from all the tremendous positive impacts this peacemaking tool can have on our global society. This article will argue that there are different fields of thought on what mediation is, and when, how and who should use it. It will also argue that there needs to be a cohesive understanding regarding the various meanings of this process and by doing so, an expansion in the overall understanding and use of this diverse peacemaking tool.

The goal of this article is not do define what is right or wrong about mediation based on different fields of thought, but to bring to light the need for mutual understanding and collaboration in order to strengthen and expand the meaning, use and benefits of mediation to our global society.

Zusammenfassung

Mediation ist ein interaktiver Prozess, der die Beteiligten dabei unterstützt, an ihren Anliegen zu arbeiten und Konflikte zu lösen. Dieser Prozess hat immenses Potenzial für alle Anliegen unserer globalen Gesellschaft, unabhängig von Typ, Größe oder Ort des Konflikts, und kann deshalb als wichtiges friedensförderndes Instrument eingesetzt werden. Trotz der universellen Anwendungsmöglichkeiten von Mediation sind viele damit noch nicht vertraut oder nützen ihr Potenzial nicht. Andere neigen dazu, Mediation zu eng zu sehen, oder so zum Einsatz zu bringen, dass die vielen positiven Aspekte für die Friedensförderung in unserer globalen Gesellschaft nicht voll zum Tragen kommen.

Dieser Beitrag zeigt auf, dass es verschiedene Arten von Mediation gibt, je nachdem, wie sie wann und von wem genützt wird. Es wird auch ausgeführt, dass es einer übereinstimmenden Auffassung der verschiedenen Variationen des Mediationsprozesses bedarf, da ihre verschiedenen Einsatzmöglichkeiten (Erkennen und Anwenden) für friedensfördernde Maßnahmen bei weitem noch nicht ausgeschöpft sind.

Ziel dieses Beitrags ist nicht, aufzuzeigen, was bei Mediation richtig oder falsch in den unterschiedlichen Auffassungen ist, sondern, die Notwendigkeit eines gegenseitigen Verstehens und der Zusammenarbeit zu erhellen, um Bedeutung, Nutzen und Vorteile der Mediation für die Menschheit zu stärken und sie zu erweitern.

Keywords: Mediation, Peacemaking, Legal, ADR, Conflict Analysis and Resolution, Peace Studies, Politics, Diplomacy

1. Background

Known by a variety of names and used in different formats and settings, mediation has been a part of our global society dating back to at least 10,000 BC. Mediation was successfully utilized throughout many ancient civilizations, including those in Mesoamerica, India, Greece, Rome and China (Carmack, Gasco, & Gossen, 2016). The importance of Mediation is also described in ancient scriptures and religious texts from around the world, from Ethiopia and Syria, to Babylon and Jerusalem (Macquarrie, 1995; Mukhtār & Mokhtar, 1990; Richards & Buren, 2000; Staples, 2018). Just as importantly, mediation was, and continues to be used successfully to restore social harmony by various local figures throughout our global society, including many religious leaders, village elders, and even Shamanists (Bagshaw & Porter, 2009). For many, mediation is an essential peacemaking tool applicable to a vast array conflicts, whether marital issues or open war (Alexander, 2006; Bronkhorst, 1993; Davies, 1676; Strong & Wilder, 2009). Yet, despite mediation's versatility, there seems to be an increasingly negative divergence and narrowing in

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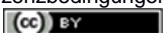
its meaning and usage that needs to be addressed and reconciled.

2. The Three Primary Fields Thought

When researching books, journal articles and various websites dealing with mediation, one will quickly learn that there are countless resources that describe what mediation is, who uses it, where and when to use it, and even rules for conducting it. Some books, journal articles and websites even go further and describe the styles of mediation, levels of training, and the need for standardization (Harvard Mediation Program, 2015; Picard, 2002). In addition, there are various websites with links to information from academia, professional nonprofit and for-profit organizations, and even international organizations such as the United Nations and the European Union, describing various aspects of mediation. After examining these many aspects, the understanding and use of mediation appears roughly divided into three primary fields of thought: The Legal Field; Conflict Resolution and Peace Studies; and Politics and Diplomacy.

2.1. Legal Field

When one looks at various mediation resources in detail, many are either written by lawyers or are legal in nature and tend to specifically define mediation as one of several alternative dispute resolution (ADR) processes, including also facilitation, negotiation, arbitration and litigation (Etel, Kraśnicka, & Piszcz, 2014; Fisher, Ury, & Patton, 2011; G. Jones & Pexton, 2015). Also, the skills used during mediation are normally based on prior professional legal experience, and many mediators are current or prior lawyers or judges. Such resources further refer to mediation as a process where a neutral third person helps parties reach a voluntary agreement to a dispute. Many of the same resources describe how mediation can be used to help people resolve civil, family, juvenile, and other matters in a less adversarial setting (CEPEJ, 2010; Hutchison and Stoy, 2016; Statsky, Diotalevi, & Linquist, 2009). Mediation is furthermore being increasingly recommended, supported, and at times, ordered, by some judges working in over-crowded court systems (Cohen Dori, 2006; Stipanowich Thomas J., 2004). Thus, mediation has become the first-choice of many in the legal profession to help clients find acceptable agreements outside of courts of law.

2.2. Conflict Resolution and Peace Studies

A deeper look at other resources shows another definition of mediation under the auspices of peacemaking. In the fields of conflict analysis and resolution and peace studies, which includes social work, mediation is broadly defined as a non-coercive and voluntary problem solving process where a third party helps those in conflict work on their various shared issues to peacefully resolve the conflict (Bercovitch, Kremenyuk, & Zartman, 2008; Moore, 2014). Also, the skills used during mediation are normally based on academic and professional field experience, with many having personal experience in various past conflicts. These same resources consider mediation the most appropriate tactic to peacefully deal with, manage, transform, and resolve complex issues between various conflicting parties. For those who deal with conflicts at the international level, mediation is also one of the most important methods of settling conflicts in the post-Cold War world, which works for both minor and intractable conflicts (Bercovitch, 1996; Bercovitch & Jackson, 2009). Furthermore, mediation is increasingly identified and emphasized by various scholars as an integral part of any conflict analysis and resolution process used at all levels of our global society (Grant & Kirton, 2007; Moore, 2014).

2.3. Politics and Diplomacy

A further examination of these resources brings an additional view of mediation by predominately political scientists, international relations specialists and diplomats. In politics and diplomacy, mediation can be defined as a human relations tool where a third person helps parties communicate with each other and resolve their disputes. Also, the skills used during mediation can be based on prior professional experience, with many being life-long politicians, military personnel, or even business professionals. Mediation also involves people acting as catalysts and adopting positions between parties from which they exercise a series of diplomatic skills (Ederer, 2016; Sharp, 2009). Furthermore, it is at times considered a more short-term effort than other types of peacemaking and diplomacy practices (Beardsley, 2011; Beber, 2012). Finally, these resources show that mediation is a valuable tool and an instrument of statecraft to use in pursuit of foreign relations and diplomatic efforts (Dieckhoff, 2014; United Nations, 2018).

3. Variations

One may argue there are many variations, both small and large, between the three different fields of thought. However, this article will elucidate on just three pertinent areas: the balance and use of power; range and use; and the position on neutrality/biases.

3.1. Power

For the purposes of this article, power when it comes to mediation may be considered coercive or persuasive (Smith, 1997). Under many disciplines, coercive power is further described as a quantifiable power, which includes the use of hard, soft, and smart power efforts by those in certain positions (e.g., military leaders, politicians and diplomats) (Nye, 2011). Alternatively, persuasive power is primarily based on personal charisma, experience, and other alternative interpersonal skills including leadership and communication. Furthermore, persuasive power is used to help guide and successfully influence others in a positive way (Klann, 2003; Wahl, 2016).

3.1.1. Legal Field
From a legal perspective, power in the mediation process is generally reserved for, and given to the parties involved in the dispute. During mediation, there is no inherent coercive or persuasive power used, especially to impose a solution. Also, typically there is no effort to try to influence or persuade the parties one way or another (Mashamba, 2014). Recently though, some are advocating for a limited amount of persuasive power to be used during the mediation process (Abramson, 2014).

3.1.2. Conflict Resolution and Peace Studies
In conflict resolution and peace studies, persuasive power is primarily recognized as a key enabler during any peace process (Moore, 2014; Webel & Galtung, 2007). Persuasive power is an effective tool used during mediation to empower the parties, and at times, to gently shift the balance of power in the relationship so that all voices can be equally heard, leading to the exploration of new areas and opportunities. Coercive power is also available for limited use during mediation, but only when absolutely necessary.

3.1.3. Politics and Diplomacy
In politics and diplomacy, state or organization-backed coercive power is often used both overtly and covertly as a principal method of choice before, during, and even after the mediation process (Rashid, 2013). Coercive power is used during mediation to push parties in certain directions, and ultimately to a settlement. Additionally, persuasive power is often used in combination with coercive power during the mediation process.

3.2. Range and Use
The range and use of mediation is pertinent to the types of conflicts and disputes in which mediation may be most appropriate for, which may vary depending on the mediator. This includes the degree or level of the conflict or dispute, whether interpersonal or international.

3.2.1. Legal Field
In the legal field, mediation is normally considered most appropriate in place of arbitration or litigation for tangible issues that are negotiable including personal, labor, business, and international legal disputes (Frenkel & Stark, 2015; Gehrig & Rogers, 2009). Mediation is also used to resolve disputes in the timeliest manner with most lasting between 3-5 hours and at the least cost to the disputant parties (Alexander, 2006; Cihon & Castagnera, 2016).

3.2.2. Conflict Resolution and Peace Studies
For conflict resolution and peace studies, mediation can be used for any type of conflict at any level of global society. Additionally, mediation is readily employable at any stage of the conflict as part of the peacemaking efforts. Mediation in this sense is a more long-term problem solving process on issues that are both tangible such as needs and nontangible such as values and beliefs (Bagshaw & Porter, 2009; Haynes, Haynes, & Fong, 2012).

3.2.3. Politics and Diplomacy
In politics and diplomacy, mediation is generally used as part of tracks of diplomacy, including Track One and Track One and a Half Diplomacy (Fahim, 2010). This type of mediation is done at any time at the state-to-state or international level, including during crises and conflicts. In this respect, mediation can be either a critical or cosmopolitan process using coalitions and international organizations or a political power based process using sovereign, unitary or a discreet actor such as a state (Bercovitch, 2011; R. W. Jones, 2001). Finally, in politics and diplomacy mediation can be a short or long-term process, and uses diverse perspectives and ideologies based on tangible and nontangible economic, social, cultural, institutional, and political strategic interests (D. Jones, 1999; Schwab, 2009).

3.3. Neutrality/Biases

Neutrality in mediation means to be free from bias, and is considered by many as the foundation of a mediator's ethical responsibilities (Jacobs, 2002). Pertinently, the term "third party neutral" arises from this principle of neutrality, meaning the mediator is non-partisan and has no pre-conceived biases. For many, third party neutral also means the mediator has no interest or connections to the conflicting parties. However, to others, it does not mean that there is no indifference to the process or outcome of the mediation. Therefore, depending on the situation and field of thought, neutrality and the understanding of biases may be considered somewhat ambiguous terms (Cohen, Dattner, & Luxenburg, 1999).

3.3.1. Legal Field
In the legal field, many believe and insist that neutrality is central to the mediation process. In addition, the mediator should not possess preconceived biases, and should remain absolutely neutral throughout the process (Astor, 2007). For others such as legal realists, neutrality means to identify and disclose any potential conflicts of interest, such as past or current relationships between the practitioner and a party, any personal interest in the outcome, or experiences or knowledge preventing the practitioner from acting impartially (Michie, 2014; Mortensen, Bartlett, & Tranter, 2010).

3.3.2. Conflict Resolution and Peace Studies
In conflict resolution and peace studies, it is recognized that all humans have biases, and accepting of this works to ensure that any biases are pre-emptively addressed before mediation (Cobb, 2013). In addition, neutrality is considered a myth and subjective since the position of the mediator may need to shift during the process, yet neutrality in personal interests should be firmly observed (Vuković, 2015).

3.3.3. Politics and Diplomacy
In politics and diplomacy, there may or may not be neutrality and biases during mediation. Also, mediators may represent a neutral state, states or an international organization such as the UN during the mediation process. However, typically mediators are directly assigned or supported by a state or large organization, which can make true neutrality problematic (Leguey-Feilleux, 2017). Also, such mediators generally possess biases directly reflecting the state's interests (Rudolph Jr & Lahneman, 2013).

4. The Need for Mutual Understanding and Synthesis

Regardless of these differences, including others not addressed in the article such as mediation process and structure, there are very important similarities. Each of the fields of thought encourage empowerment of the conflicting parties and effective communication to identify what can be done to improve ongoing relationships and resolve conflicts (Cloke, 2013). Each field of thought also uses a unique set of personal and professional skills to assist in the mediation process. More importantly, all three fields of thought have the same objective and that is to quickly and peacefully resolve the dispute or conflict. Therefore, there is a need to recognize the special role that all mediators have in our global society.

In the end, the goal of all mediation should be to facilitate dialogue and assist the parties in generating the solutions needed to peacefully resolve all conflicts (Breukhoven, 2016). In order to do this, scholars and practitioners from the various fields should come together to look at the best practices of each field of thought and jointly map a positive and inclusive way ahead. If a synthesis in the meanings of this process can be created, it will work to expand the overall mutual understanding and use of this diverse peacemaking tool at all levels of our global society. This would also work to help improve the overall education and practice requirements, including levels of training, competence, integrity, and accountability of mediators.

5. Conclusion

As discussed above, the goal of this article was to bring to light the need for mutual understanding and collaboration in order to strengthen and expand the meaning and use of mediation for the benefit of our global society. This was done by exploring three different fields of thought: Legal field, conflict analysis and resolution and peace studies, and politics and diplomacy.

The article showed that the legal field defines mediation as one of several alternate dispute resolution (ADR) processes, and the power in the mediation process is generally reserved for, and given to, the parties involved in the dispute. Mediation is also considered most appropriate in

place of arbitration or litigation for tangible issues that are negotiable. Finally, neutrality and biases are important concepts during the mediation.

Likewise, in conflict analysis and resolution and peace studies, mediation is broadly defined as a problem solving process where a third party helps those in conflict work on various shared issues to peacefully resolve the conflict, and persuasive power is recognized as a key enabler used during mediation. Moreover, mediation is appropriate for any type of conflict at any level of our global society. In addition, all humans have biases and the term neutrality is subjective as the position of the mediator may change to facilitate the process.

For politics and diplomacy, mediation can be defined as a human relations tool where a third person helps parties communicate with each other and resolve their disputes, and state or organization-backed coercive and personal persuasive power are used in the mediation process. Lastly, mediation is generally used at the state or organization level as part of tracks of diplomacy including Track One and Track One and a Half Diplomacy. Finally, mediators may or may not be neutral and may or may not have biases.

It is hoped that through this and similar articles, the emphasis, understanding and use of mediation as a peacemaking tool can be greatly expanded for the benefit of our global society, based not on the difference, but the strengths and diversity of these various efforts. Moreover, that various scholars and practitioners can come together to work on this important task.

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