

Here, There and Everywhere: taking mediation online

Kluwer Mediation Blog
March 28, 2014

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University)

Please refer to this post as: Ian Macduff, 'Here, There and Everywhere: taking mediation online', *Kluwer Mediation Blog*, March 28, 2014, <http://mediationblog.kluwerarbitration.com/2014/03/28/here-there-and-everywhere-taking-mediation-online/>

In my previous entry, I wondered about high and low context communication, and what this might mean at the mediation table when we're not always aware of what is NOT being said. Here, I continue the speculation, this time about and taking that communication and mediation online.

The "here" of my title is the world of familiar, everyday, face to face interactions, in which we seek to turn a "blooming, buzzing confusion" of disputes into orderly and agreed results. "There" is the more complicated world, across borders, outside of the familiar, in someone else's physical, national and cultural space, in which our pursuit of agreement and understanding is likely to be mediated or muddled by differences in perception, language and priorities. "Everywhere" is the non-physical space of the Internet, now just 25 years old and thus both unfamiliar because of the rapidity of changes wrought and yet entirely familiar as it's the world many of us occupy for much of our time, through email, web searches, social media and mobile communication.

My question is, first, whether life and negotiation online in effect create new 'cultural' spaces and, second, how the more conventional issues of culture in communication impact on Internet-based mediations.

Take as a starting point the idea that mediation is often a form of communication and engagement in the face of uncertainty. At the risk of some oversimplification, we might say that the tools of conventional mediation - and the insights derived from cross-cultural communication research - are designed to reduce as much of that uncertainty as possible. When we move into the amorphous and expanding world of online communication, we may face a new set of uncertainties which mediation practice can try to alleviate.

Previously the issue was that of not knowing what was **not** being said in some intercultural mediation settings, given differences between high and low context communication styles. Here I pick up on just one element of communicative preferences that is of particular relevance for online culture and communication. This is the distinction between high- and low-context communication styles. I choose this not because it's the most important; but rather because it is usefully illustrative of the rest of the dimensions of difference; it is founded in both differences in communication preferences and in the importance of context; and it may be most closely linked to the challenges of context in the online world. It is also illustrative of the links between (cultural) identity, location, perception and communication, the combination of which is relevant and complicated in the online world, especially where identity may be stolen, faked or unknown, and can readily be disconnected from any national location, and where communication is marked by the absence of many of the conventional hallmarks of human interaction.

A useful summary of the communicative differences is provided by Kim et al in noting that a high-context culture:

"is one in which people are deeply involved with each other. As a result of intimate relationships among people, a structure of social hierarchy exists, individual inner feelings are kept under strong self-control, and information is widely shared through simple messages with deep meaning. A low-context (LC) culture is one in which people are highly individualised, somewhat alienated, and fragmented, and there is relatively little involvement with others. As a consequence, social hierarchy, as well as society in general, imposes less on individuals' lives, and communication between people is more explicit and nonpersonal." [Kim, Pan & Park, "High- versus Low-Context Culture: A Comparison of Chinese, Korean and American Cultures," *Psychology and Marketing*, 15: 507, at 508-509 [1998]]

It doesn't take much reinterpretation of this account of the difference to begin to see that the world of the Internet looks predominantly like a low-context world, with all that this may imply by way of directness of communication, fragmentation of relations and potentially ephemeral links between people. But, as the worlds of social media also - and paradoxically - illustrate, vast legions of people tend to use the medium of online communication for the kind of self-revealing communications that one would normally associate with far more intimate relations. The immediate point to be drawn is that the Internet, the online world, provides a very distinct kind of context for communication - so much so that, at least for high-context communicators, it appears necessary to use **more** communication signals that would normally be necessary, simply to create the context of connection that is otherwise absent.

Again, what this tells us in cross-border communication is that there will be, in many instances, an interwoven complex of factors affecting communication, not merely in terms of choice of language but also - and more so - in terms of the core perception of relations, values, hierarchy and embedded preferences for styles of reasoning and communication. We cannot but help to take that same complex of factors into the online world, compounded by the uncertainty that it is not always immediately obvious just whom we are dealing with and what their context is - other than the ephemeral yet shared world of the Internet.

The single - and simple - point is that context matters. Context shapes relations, perceptions and communication preferences. And context matters when we shift from the reasonably familiar world of our own comfort zones, into someone else's territory and then, into the contemporary world of virtual negotiation and interaction.

What does emerge from both cross-cultural communication studies and cognitive psychology is an awareness of the complex mix of communication practices, norms and perceptions, which seems especially to rest on acquired norms of agency and decision-making, which in turn translates into practices of discourse and argumentation. Thus the low-context negotiator is more likely to hold and (forcefully) defend his or her opinions, grounded in a belief in autonomy, agency and accountability; the high-context negotiator is disinclined towards that degree of "lively" argumentation and disagreement that might disrupt perceived harmony; and, in normative terms, the negotiators' sense of "fairness" will reflect beliefs in the relative importance of harmony, consistency, order, hierarchy, authority, and agency. Norms and practices of communication and negotiation will, thus, reflect the degree to which the negotiator perceives him or herself to be embedded in a web of social relations and obligations, which shape both the style and the substance of the negotiation.

Where does this leave us as we launch into the online world? We can say at least that what the West has done is to de-contextualise negotiation and mediation, to assume that it can be a value-neutral process and rational; yet all of the key characteristics of the practice of contemporary bargaining and dispute settlement are themselves value-laden: direct participation, individualism, norm-creating, private and confidential, interest-oriented, and logical/rational.

Taking negotiation offshore gives us at least pause to recognise that this 'rational' process of bargaining is itself a cultural construct, shaped by - and faced with - the context of the values and assumptions of decision-making practice. Take this now into the borderless and essentially anarchic world of the Internet, we begin to get the sense of a new set of challenges for thinking about mediation practice and pedagogy. The very nature of the Internet seems to mean that it is low-context or even no-context. And that is likely to mean that it encourages the styles of negotiation and communication outlined above that are to be expected in low-context settings.

[With thanks also to Kimberlee Kovach, South Texas College of Law, for earlier conversations on this topic.]