

Kluwer Mediation Blog

Confessions (and ramblings) of a Recovering Universalist...

Joel Lee (National University of Singapore, Faculty of Law) · Wednesday, September 14th, 2011

I just returned from (mostly) sunny Brisbane, Australia running a pilot program (5 to 6 September 2011) on intercultural mediation competencies for the [International Mediation Institute](#) before speaking at LEADR's conference "kon gres" (7 to 9 September 2011). It was an honour to be training with [Professor Hal Abramson](#) (Touro Law School) and [Ms. Gigi de Groot](#) (ITIM) and meeting the most talented and skillful of mediators in the Australian industry. It was also a privilege to speak alongside [Professor Ellen Waldman](#) (Thomas Jefferson Law School) and to catch up with friends like [Professor Nadja Alexander](#) and [Mr. Geoff Sharp](#) (who are also contributors to the Kluwer Mediation Blog).

As I reflect upon those 5 wonderful days, a deep irony strikes me. Much of my involvement in those events revolved around the inter-cultural aspects of mediation. The irony arises because, as the title of this entry states, I am a recovering universalist. I used to think that the interests-based (a.k.a. the principled, collaborative, win-win, etc) model of conflict resolution was applicable cross-textually and that only minor variations in practice need be made for cultural differences.

Fate saw it appropriate to get me involved in a project of the [Singapore Mediation Centre](#) that was tasked with looking at intercultural aspects of mediation. After a period of being dragged kicking and screaming to the discussion, I began to see the value of having a cogent model of how cultural differences fit with the commonly practiced interests-based model of dispute resolution. This project culminated in the publication of "[An Asian Perspective on Mediation](#)" (2009, [Academy Publishing, Singapore](#)).

The problem was simple. Do we assert that that the interests-based model was universal and therefore applicable, with some minor tweaks in execution, across cultures? Or do we say that that model is such a non-fit, if not mis-fit, in some cultural contexts that we should discard the interests-based model entirely and create a whole new one for that context?

The answer wasn't so simple. I like the interests-based model. I feel it has tremendous value as a model of dispute resolution that speaks to the commonality that all humans share. Yet, there was no denying that the entirely facilitative, "parties speaking plainly to one another" practices were not always working well.

In a blinding flash of desperation, an insight struck us. What if there were assumptions in the model that were invisible to us? Looking for these assumptions, we identified that the interests-based model valued, inter alia, autonomy of the parties, importance of the individual and a premium placed on direct, explicit and transparent communication.

If the cultural context in which the interests-based model is being practiced shared these cultural assumptions, then there would be a fit. There may be some disjoint in a context where only some of the assumptions were shared and a complete non-fit where the assumptions were completely alien to that cultural context.

Our next thought then was this. What happens if we kept the interests-based model and replaced the assumptions with others that suited the cultural context in question?

We identified that in the context of Singapore's Chinese population, there was a respect for hierarchy, an expectation of parties engaging in proper conduct and a premium placed on maintaining harmony of the collective.

When plugged into the interests-based model, it became clear why pure facilitation and direct speaking were sometimes inappropriate in Singapore. For example, a mediator is seen as someone of authority and status and who, as a result, has certain expected roles that s/he must play. For a mediator to engage in purely facilitative practices can be seen as someone who was abdicating his/her role and responsibility.

Another example would be how parties approached conflict. In a context where harmony is valued, engaging in confrontational behavior is considered shameful. As a result, parties would often engage in indirect ways of expressing conflict or manifesting patterns of deference to authority or the collective and engage in behaviours that would enable parties to preserve or save face.

It is hopefully clear that in this context, the dynamics of the mediation would be very different as between the parties and as between the parties and the mediator, even though the interests-based model is being practiced.

Some of you may be wondering what the big deal is. How is this different from just engaging in indirect communication patterns, building relationships and face management strategies in this context?

At one level, one could say there is no difference because the behaviours that are engaged in for that cultural context would be exactly the same i.e. indirect communication patterns etc. However, this assumes that parties in that context always engage in those behaviours.

The reality of course is that they do not and this is where we suggest that looking at the underlying assumptions and replacing them with more culturally appropriate ones (for the context one is operating within) will make all the difference.

To illustrate, it is tempting to say that when in an Asian context, building relationships and face are paramount. However, this is only true when we understand that the underlying assumptions are that these behaviours are important in the context of a collective and that harmony within the collective should be preserved and maintained.

Therefore, when both parties are considered to be part of the same "in-group" then all the rules about relationship building, face and maintaining harmony within the collective apply. If the "in-group" connection is considered valuable enough, parties may even sacrifice substance to maintain the relationship and harmony.

The dynamics are very different when parties are in "out-groups" relative to one another. In this

case, there would be relatively less, if any, value placed on relationships, face and harmony. In fact, the dynamic may well reflect what would be expected in a typical mediation using the interests-based model in North America.

It can be seen that in this latter situation, blindly following the rules without understanding the underlying assumptions and dynamics would equally be a misfit for that context.

The above 2 scenarios can also be complexified by introducing the element of transition from one state to the other. For example, when both parties are “in-group” but one of them is transiting to an “out-group”, the parties may manifest “out-group” behaviours. The reverse can also apply. Where parties are “out-group” towards one another but there is a desire for them to transit towards an “in-group” relationship, then “in-group” behaviours may manifest.

In these situations, even a mediator who is sensitive to “in-group” or “out-group” distinctions may be confused if s/he does not take into account the element of transition.

I will stop rambling now save for these final thoughts. Culture is important and a short blog entry like this does not do justice to the complexity of its definition or its interaction with mediation. However, I hope that these ramblings have highlighted the importance of questioning and revisiting the assumptions behind our practice of mediation.

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