

AN ANTHROPOLOGIST'S APPROACH TO MEDIATION

*Rebecca Golbert**

Foreword by

Nancy A. Walsh†

On October 31, 2008, the Dispute Resolution Section of the American Bar Association, in collaboration with AAA International Centre for Dispute Resolution, ACB Group-Netherlands, ADR Center-Rome, CEDR, CMAP, International Academy of Mediators, International Institute for Conflict Prevention & Resolution (“CPR”), JAMS, Netherlands Mediation Institute, and the International Mediation Institute, held its first International Mediation Leadership Summit. The Summit’s setting—the Peace Palace in The Hague in the Netherlands—was both breathtakingly beautiful and evocative. The Summit’s goals—guided by the leadership and vision of Section Chair Lela Love and former Chair Bruce Meyerson, as well as international partners Manon Schonewille and Giuseppe de Palo—were ambitious: building a relationship between members of the American dispute resolution community and their counterparts around the world; beginning to develop bridges between the efforts, initiatives, and ideas that may be particular to one country but that have the ability to raise the bar for all mediation practitioners and programs; and establishing a dialogue among mediation groups around the world regarding issues of importance to the development of the mediation field.

Through the Summit, the American Bar Association reached out to the world, not as an omniscient mentor, but as a partner, ready to share and learn. The Section and its collaborators hoped that the event would be a first step in an ongoing process of building an international dispute resolution community.

The Summit was held on a beautiful October day and surpassed its planners’ wildest expectations. Participants attended from Western Europe and the United States, of course, but also

* Visiting Professor of Jewish Studies, Pepperdine University; Executive Secretary, LA Center for International Conciliation and Arbitration. D.Phil. Social Anthropology, University of Oxford, 2001; MDR, Straus Institute for Dispute Resolution, Pepperdine University School of Law, 2007; B.A. Anthropology, Princeton University, 1993.

† Professor of Law, Dickinson School of Law, Penn State University.

from Australia, Canada, Israel, Egypt, Turkey, India, Japan, Slovakia, Thailand, Nigeria, Slovenia, China, and Russia. Those of us lucky enough to attend listened to provocative and knowledgeable presenters and participated in intense, stimulating conversations. And throughout, we kept in mind five (disguised as three) challenges that Lela Love had established for the day: (1) learn something new about mediation in other cultures, meet a colleague who might become important to our—and our countries’—future, and enrich our understanding about the topics covered in the focus groups; (2) leave with information on how we, and our colleagues at home, could submit a written work in response to the Call for Papers; and (3) think of ways in which the Summit could serve as the basis for further interaction and exchange to build an international dispute resolution community.

As part of the community-building process, and with essential support from the JAMS Foundation, the Section and its collaborators had issued a Call for Papers in September, 2008. Recognizing that valuable scholarship comes in both large and small packages, the Section invited submissions that were both short, practice-oriented papers and longer scholarly papers. The papers were expected to discuss mediation-related ideas, practices, or experiences in one country or region that might be useful and instructive to the development of the mediation field in other countries or regions.

In the Summer of 2009, *Dispute Resolution Magazine*, the primary publication of the ABA Section of Dispute Resolution, published two quite different pieces submitted in response to the call for short practice-oriented papers: Geetha Ravindra’s *Is Mediation A Profession?* and Stuart Ness’ *A Pilgrim’s Progress: A Reflection on How the Mediation Process in Construction Has Evolved Into the Hands of the Legal Profession* (which won the prize for best short submission).

Now, it is with great pleasure that the Section greets the publication in the *Cardozo Journal of Conflict Resolution* of the article that won the prize for best scholarly submission in response to the Call: Rebecca Golbert’s *An Anthropologist’s Approach to Mediation*. Ms. Golbert issues her own challenge to mediators who claim to be able to work in cross-cultural and international contexts. Such mediators must “do more than explain and translate important cultural differences.” They “must attempt to incorporate dimensions of cultural difference into the mediation model.” Mediators must somehow embody paradox and bridge differences. Challenging indeed.

I will end by noting here that selected submissions from the Call will also be published in *Nederlands-Vlaams Tijdschrift voor Mediation en Conflictmanagement* (Dutch-Flemish Mediation and Conflict Management Journal), the premiere conflict management journal in the Netherlands. This dual publication has not yet occurred, and neither its negotiation nor its implementation has been flawless. Nonetheless, with these publications and the other initiatives and relationships that have arisen out of the Summit, the hard, yet exhilarating, work of building an international dispute resolution community has begun.

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I. INTRODUCTION

This paper explores mediation within a wider anthropological and cross-cultural framework. The approach to mediation that has developed in North America has distinctive ideas about the structure and process of mediation, the qualifications and role of the mediator, the relationship of the mediator to the parties, and the relationship between the parties. Debates about many of these issues abound within the field of North American mediation, raising ethical issues about the practice of mediation and professional issues about the boundaries of mediation as a field. These debates take place within the context of a larger effort to increase access to mediation and other forms of alternative dispute resolution within a North American system of conflict resolution dominated by adjudicative and adversarial processes. An examination of mediation as it is perceived and practiced in other national and cultural settings, and in cross-cultural and international settings, may place these and other issues within a broader comparative framework and allow us to rethink some of our assumptions about what makes mediation work in differing cultural contexts.

Thus, we begin with an examination of the concept of culture, which underlies any study of the way social groups interpret and give meaning to their experiences, including their experiences of conflict and conflict resolution. This essay then looks at conflict and conflict resolution as culturally constructed categories. While all cultures experience conflict, they may understand and manage conflict very differently and may have differing legal and social mechanisms for resolving it. Mediation appears to be one of the

most common forms of conflict resolution applied across a diverse range of cultures; however, this wide application of mediation raises the question of what is locally understood by the concept and practice of mediation. How do perceptions of and practices of mediation in different cultures and countries compare and contrast to the North American model applied by mediators in the United States and taught in mediation seminars and trainings both in the United States and abroad?

Following the brief analysis of concepts of culture, conflict, and conflict resolution, this essay turns to the study of mediation across cultures. I draw on a number of case studies on mediation—in Central America, in Asia, and in the Middle East—to examine key aspects of the mediation process, its structure and context. In particular, these studies point to important differences in the role of the mediator and his or her relationship to the parties in dispute. Scholars also point to differences in the timing and structure of the process; the role of the wider community—including relatives, friends, and community leaders—the relationship between the parties, and the goals of the mediation. Anthropologists like Carol Greenhouse also look at the relationship between mediation in small-scale societies and access to the wider social and legal norms of the state.

In its final section, this essay shifts from the study of mediation across cultures to a look at mediation on an international and cross-cultural scale. In such mediated contexts, more than one cultural perspective may shape the understanding and expectations of the mediation process. How can mediation accommodate the differing social and cultural needs and aspirations of the parties to the mediation? Much has been written about the need for mediators to adjust to the differing communication styles and conflict behaviors of parties from different countries and cultures. However, beyond raised awareness, the field of mediation as developed in the United States and exported abroad, may need to adjust its own assumptions, philosophies, and practices to create an approach to international and cross-cultural mediation that is more responsive to both context and culture.¹

¹ KEVIN AVRUCH, *CULTURE AND CONFLICT RESOLUTION* 84–85 (United States Institute of Peace Press 1998).

II. MEDIATION AND CULTURE

What is culture? Culture may be defined as a set of values, beliefs, symbols, and traditions, socially transmitted within a group and across generations, constituting the framework through which individuals in that group interpret and give meaning to their own and others' experiences.² In his writings on culture, Clifford Geertz emphasizes the search for meaning that is so central to human existence. In his landmark text, *The Interpretation of Cultures*, he writes:

Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning.³

Kevin Avruch develops a concept of culture with particular attention to its usage in conflict resolution. Building from the individual, Avruch writes of culture as, "derivative of individual experience, something learned or created by individuals themselves or passed on to them socially by contemporaries or ancestors."⁴ He explains his shift in focus from the group to the individual as the bearer and transmitter of culture: "This reorientation supports the idea that individuals reflect or embody multiple cultures and that 'culture' is always psychologically and socially distributed in a group."⁵ Culture in this framework is complicated; an aspect of both individual and group experiences and encounters. As individuals belong to multiple cultures (and to varying degrees), their interpretations of such experiences and encounters cannot be reduced to any single cultural understanding of social reality. Similarly, the meanings that individuals ascribe to conflict and conflict resolution cannot be deduced solely from their membership in one or more social groups.

When we think of culture as a flexible concept that is both value-laden and meaning-centered—generally, a quality of groups but also derived from individuals—and when we add to this a notion of culture that is dynamic and in-motion, we can begin to think about the complex relationship between culture and conflict.

² This definition is adapted from Kevin Avruch, *Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators*, 9 HARV. NEGOT. L. REV. 391 (2004).

³ CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 5 (1973).

⁴ AVRUCH, *supra* note 1, at 5.

⁵ *Id.*

David Augsburger writes, “[c]onflicts are universally similar, culturally distinct, and individually unique.”⁶ Although all human beings experience conflict, the way human groups channel and respond to conflict is, in part, shaped by culture. Nonetheless, as Avruch has pointed out and Augsburger cautions, intracultural variation suggests that any discussion of cultural responses to conflict must be cautious and aware of individual differences. The emergence of conflict challenges each of these three levels of inquiry. Drawing from John Paul Lederach, Augsburger writes of conflict as a clash of social realities, a situation in which individuals and groups must recognize the existence of multiple realities where they had assumed there was only one. In such a situation, conflict resolution entails the renewed search for common meaning and consensus, i.e., a reframing of social reality.⁷

Augsburger draws our attention to the cultural diversity of conflict and conflict resolution practices. He writes, perhaps somewhat idealistically:

From culture to culture, each has developed its unique patterns of managing differences and resolving disputes. Each constructs its repertoire of conflict behaviors, its hierarchy of values, [and] its code of laws. The study of conflict patterns is the study of contrasts. Out of the same basic needs, fears, and hopes, humans have created ways of dealing with competition, frustration, and aggression that reverse and reflect each other and that would, if brought together, complete each other.⁸

Drawing on anthropological studies of conflict (which today require some historical contextualization), Augsburger contrasts the cultural cooperation and compromise among the pygmies of the Ituri forest in Zaire to the callousness and indifference under extreme conditions of scarcity among people in the mountains bordering Uganda, Kenya, and Sudan. Similarly, he contrasts the high levels of violence among the Andaman Islanders in the absence of conflict resolution channels to the lack of violent conflict among the Zuni Amerindians, despite a similar absence of conflict resolution processes. The latter, however, possessed strong social sanctions against conflict.⁹

⁶ DAVID W. AUGSBURGER, *CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS* 17 (Westminster John Knox Press 1992).

⁷ John Paul Lederach, *Of Nets, Nails and Problems: A Folk Vision of Conflict in Central America* (1988) (Ph.D. dissertation, University of Colorado) (on file with author) reprinted in *CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES* at 165 (Kevin Avruch ed., 1991).

⁸ *Id.* at 22.

⁹ *Id.* at 21–23.

While a range of social and legal mechanisms for resolving conflict exists across cultures, Augsburgers emphasizes mediation as the most frequently used process of dispute settlement in traditional societies. Avruch also points to the important role of third parties in managing conflict in small-scale societies. Both authors draw on Evans-Pritchard's example of the leopard-skin chief among the Nuer. Acting as a respected third party to facilitate negotiation, whether over a stolen cow or a blood feud, the leopard-skin chief allows the parties to vent and state their views, invokes cultural norms against vengeance, reaches a verdict couched in a language of persuasion, and encourages the parties to accept the decision to honor the chief, thereby saving face. The chief also arranges compensation and closure rituals.¹⁰

Small-scale societies are traditionally defined by face-to-face, "multistranded" relationships among their inhabitants. The importance of maintaining strong relationships among family, neighbors, kin, and economic partners—categories which frequently overlap—makes mediation an obvious dispute resolution choice. Avruch explains, "mediation aims to preserve and restore social relationships by leaving the parties in charge of their own negotiation and its outcome, often mixing in doses of therapy as part of the process."¹¹ It is worth examining in greater detail what is meant here by mediation and third party roles and processes. Avruch refers to a diversity of possible third party roles and points to the complexity of the term "mediator."¹² Augsburgers offers a continuum of mediator roles—including observer, chairperson, enunciator, prompter, leader, and arbiter. He suggests that the strategy of the mediator frequently changes along with the stages of the mediation, shifting from a more facilitative role as observer, chairperson, or enunciator to a more evaluative or directive role as prompter, leader, or arbiter.¹³

Based on the ethnographic record, both scholars question the presupposition within the North American model of mediation that the ideal mediator should be completely impartial and unbiased and unconnected to the parties or the dispute. Avruch writes, "[t]he ethnographic record in general does not support the existence of the uninvolved third party as either the norm or the ideal

¹⁰ *Id.* at 220–21; AVRUCH, *supra* note 1, at 80–81.

¹¹ AVRUCH, *supra* note 1, at 82.

¹² *Id.* at 81, 83.

¹³ AUGSBURGER, *supra* note 6, at 194.

(and how could it be in small-scale, multistranded societies?).”¹⁴ Augsburg describes mediators in a traditional model of mediation as “recognized communal leaders or trusted go-betweens from the social context. They are personally embedded in the social networks and remain in relationship with parties in the dispute both during and after the resolution.”¹⁵ Both scholars draw on the model of third party involvement proposed by Lederach for Central American disputes. John Paul Lederach and Paul Wehr develop the concept of the “insider-partial” as an effective type of mediator particular to traditional societies.¹⁶ They argue that, “[t]he insider-partial is the ‘mediator from within the conflict,’ whose acceptability to the conflictants is rooted not in distance from the conflict or objectivity regarding the issues, but rather in connectedness and trusted relationships with the conflict parties.”¹⁷ Lederach and Wehr urge the broadening of the concept of mediation to include the intervention of the insider-partial, particularly in combination with other types of international mediators, in the resolution of regional conflict in Central America. In the next section, we examine the Central American context and other regional contexts of mediation, focusing in greater detail on the role of the mediator, the structure and process of mediation and the context in which mediation occurs.

III. MEDIATION ACROSS CULTURES

The Esquipulas peace process, as examined by Lederach and Wehr, sheds light on regional mediation in Central America as a historical process, a structure with its own set of rules, and a context with wider influences. As a process, Esquipulas sought to resolve intra and interstate conflict and to promote regional integration. According to the authors, it attained its greatest success in Nicaragua, eventually leading to an internationally monitored election, peaceful transfer of power, and reintegration of insurgents.¹⁸ While the structure of Esquipulas is far too complicated to describe in detail here, it is worth noting that two separate

¹⁴ AVRUCH, *supra* note 1, at 84.

¹⁵ AUGSBURGER, *supra* note 6, at 204.

¹⁶ Paul Wehr & John Paul Lederach, *Mediating Conflict in Central America*, 28 J. PEACE RES. 85, 87 (1991).

¹⁷ *Id.*

¹⁸ *Id.* at 90.

mediation efforts occurred simultaneously in Nicaragua; one mediation effort addressed the Contra-Sandinista conflict and the other mediation effort addressed the conflict between the Sandinista government and the Atlantic Coast resistance, consisting primarily of Indians and Creoles. Lederach and Wehr note that in both mediation contexts, the mediators (who became members of national and subnational commissions charged with leading the reconciliation process) were chosen not because of their neutrality, impartiality, or outsider status. According to Wehr and Lederach, “[c]ommission members were selected for their moral leadership, for useful connections they had with the conflicting parties, and for their experience as intermediaries. They illustrated the connected, trusted insider-partial third party.”¹⁹ Mediators were selected from inside the community; trust and stature were the primary considerations. Lederach and Wehr note that the legitimacy of the mediators derived “from their personal connections that inspired the disputants’ trust.”²⁰ These connections created a safe space for negotiating and for articulating differing viewpoints and objectives.²¹ The legitimacy of the commissioners also derived “from the duration and depth of their functions.”²² Whereas the outsider-neutral leaves the scene after a settlement is reached, the insider-partial continues to maintain a connection with the disputants, helping to realize aspects of the settlement. The authors note that the third parties involved in the mediation of the dispute between the Sandinista government and the Atlantic Coast resistance (whose leaders had joined to form YATAMA) continued to work with the parties on peace development after the ceasefire took hold.

It is beyond the scope of this paper to address the wider context and impact of outside parties influencing the conflicts in Nicaragua and other Central American countries that Lederach and Wehr discuss. However, the authors do examine other mediator roles important to the regional mediation process, including the mediator-negotiator, the mediator-legitimizing, the outsider-neutral, and the international mediator. They suggest that these distinct types may be teamed up, along with the insider-partial, to perform different functions at different stages of the mediation. Knowledge of differing mediator roles and knowledge of the larger context of

¹⁹ *Id.*

²⁰ *Id.* at 94.

²¹ *Id.*

²² *Id.*

mediation—including the events and people influencing the mediation—could allow for a more effective mediator selection process.²³

In a series of articles, James Wall and colleagues examine community mediation in China, Japan, South Korea, and Malaysia. I draw here from the articles focusing on South Korea and Malaysia, though the authors use China as their primary model for comparison, assuming certain Chinese cultural influences such as Confucianism, with its emphasis on social harmony, have impacted the regional practice of mediation, particularly in South Korea. In the South Korean context, Nam Hyeon Kim, Wall, and their colleagues suggest that mediators are well-respected individuals who emerge from within the community. So too, they suggest that the cultural values of harmony and face-saving, emphasized within Korean society, play an important role in Korean mediation.²⁴ According to the authors, the mediator initially meets with each party separately, encouraging each party in turn to address the conflict, to vent anger, and to fix blame. The mediator agrees with each party that the other is to blame (this apparently saves face and allows the mediator to build rapport), although eventually the mediator and the parties will acknowledge some level of mutual responsibility for the dispute. The mediator may act as a go-between for several rounds during the stage of information gathering “until he or she has identified a zone of potential reconciliation.”²⁵ The authors identify a strong emphasis on reconciliation, compatible with the value of harmony.

Certain aspects of the Korean mediator’s role differ from the North American model. The Korean mediator gathers information from the disputants but also from third parties and from his or her own investigations. Following such data gathering, the Korean mediator appears to take a more evaluative and directive role, using education and persuasion to advise the parties about appropriate behavior. So too, the mediator appears to use more aggressive tactics, including criticism and threats, to obtain apologies, forgiveness, and concessions.²⁶ The authors note that, as informal mediators with a low power base, the Korean mediators must devote significant time to meeting and building trust with the disputants. As mediators from within the community, they do not

²³ *Id.* at 97–98.

²⁴ Nam Hyeon Kim et al., *Community and Industrial Mediation in South Korea*, 37 *J. CONFLICT RESOL.* 361, 366–67 (1993).

²⁵ *Id.* at 368.

²⁶ *Id.* at 373.

have recourse to outside norms or institutions to legitimize their authority as mediators. The authors contrast the informal nature of Korean mediation with the formal nature of Chinese mediation and its reliance on third party assistance (i.e., assistance from parties in addition to the mediator such as family, friends, and co-workers), social and moral norms, and outside legal authorities.²⁷

Interestingly, Carol Greenhouse draws a similar distinction between inclusive and exclusive mediation:

Exclusive mediation, with its explicit normative referents and professionalized neutrality, implies the widest social field in which these norms and statuses are relevant. The outer edge of that social field might be conceptualized as the state, or God, or something else; the point is that its orientation is vertical, or outward. By contrast, inclusive mediation reiterates the face-to-face community; its orientation is local, or horizontal.²⁸

In the context of this distinction between inclusive and exclusive mediation, Greenhouse seeks to examine the relationship between mediation and the law, and, through it, other important relationships such as the legal status of cultural groups. She emphasizes “the relationship between norms, neutrality, social linkage and mediation.”²⁹ What access does the neutral, professional mediator have to wider social and legal norms as sources of legitimacy and authority? Exclusive mediation draws on such outside sources of authority and “creates linkages between the disputants, their community, and their wider social context.”³⁰ In the absence of such normative referents, a different style of mediation takes place, one in which the relationship of the mediator to the disputants must be based primarily on trust, connectedness, and continuity. Like the

²⁷ *Id.* at 375. Neil Diamant challenges the representation of Chinese mediation presented in Kim et al. and other articles, particularly in James A. Wall, Jr. & Michael Blum, *Community Mediation in the People's Republic of China*, 35 J. CONFLICT RESOL. 3 (1991). Diamant suggests that the rural-based revolution in China disrupted the roots of trust so important to community mediation. Those political cadres who replaced the decimated rural elites did not have the trust or respect of the local population, nor did they have the knowledge and know-how to mediate disputes. According to Diamant, deficient mediators encouraged disputants to seek court decisions, and disputants, particularly women, viewed these mediators with contempt and mistrust and thus sought justice at higher level state institutions. See Neil J. Diamant, *Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches*, 44 J. CONFLICT RESOL. 523, 532–34 (2000).

²⁸ Carol J. Greenhouse, *Mediation: A Comparative Approach*, 20 MAN (NEW SERIES) 90, 110 (1985).

²⁹ *Id.* at 111.

³⁰ *Id.* at 108.

insider-partial, the inclusive mediator must possess local knowledge and local ties.³¹

In the context of South Korean mediation, Kim and his colleagues describe a context of inclusive mediation, where the mediators and the disputants know one another and cultivate relationships which precede the mediation and continue after the mediation is over. Wall and Ronda Callister encounter a similar situation in the context of Malaysian community mediation. They write:

Malaysian mediators share many characteristics with their counterparts in preindustrialized societies (Merry 1989). They know the disputants, understand the dispute, and wish to resolve the dispute fairly and in the interest of societal harmony. Furthermore, as the mediators seek resolution, they lack formal civil authority to impose judgment; yet, they have considerable power because of strong community support.³²

The authors also point to an interesting aspect of Malaysian mediation: its tandem structure. In the context of village life, disputants may bring a dispute to the attention of the *ketua kampung* (the village head man) or the *imam*. Although the two village leaders—one is political and the other is religious—may handle all forms of dispute, some division of labor in the mediation process does appear to occur. The *imam* handles religious disputes and family disputes, particularly between husband and wife. The *ketua kampung* handles family disputes and economic and agricultural disputes.³³ Despite these differences and other differences in their social and moral roles as village leader and religious leader, respectively, both the *ketua kampung* and the *imam* are intimately connected to the social fabric of the community.

Augsburger uses cases of “ethno-mediation” drawn from the ethnographic literature to explore the intimate relationship between culture and conflict resolution. In one example from Lebanon, taken from Cathie Witty, he describes a violent quarrel between a fifty-seven year-old Christian named Yussef and an eighteen year-old Muslim named Ahmad. Yussef was shot in the leg, and Ahmad was seen fleeing with a gun. After the event, Ahmad’s family elders reached out to the relatives of Yussef, re-

³¹ *Id.* at 105.

³² James A. Wall, Jr. & Ronda Roberts Callister, *Malaysian Community Mediation*, 43 J. CONFLICT RESOL. 343, 363 (1999) (citing Sally Engle Merry, *Mediation in Nonindustrial Societies*, in *MEDIATION RES.* 68, 90 (Kenneth Kressel & Dean G. Pruitt eds., Jossey-Bass 1989)).

³³ *Id.* at 350.

questing that the case be settled between families. Yussef's family agreed and suggested that Ahmad remain hidden until discussions started to prevent any act of revenge. The families kept the event out of the public light, from the police and the courts. While preliminary negotiations began over reparations and Ahmad's family visited Yussef in the hospital three times to show their concern and assess his feelings, the mediation did not begin until two months later. Present in Yussef's home for the mediation were a wide array of people representing insider-partial mediators and other third party participants. Yussef was supported by elders, the Christian mayor, and leaders from other villages (twenty one men). Ahmad's family was represented by the Muslim mayor and other elders (twenty three men).

The mediation opened with a statement of regret from the uncle of Ahmad and a recounting of the long history of cooperation between the two families. The uncle then recounted the assault and acknowledged Ahmad's primary guilt. He then acknowledged the willingness on the part of Yussef to mediate and thus, to keep the event confidential. He expressed his hope that the family's apologies would be accepted and the matter would be closed. At this time, a pouch was passed through many hands to Yussef, symbolizing his acceptance of reparations. Yussef then spoke, expressing his shock at the event, his deep ties to Ahmad, and the permanence of the deed, but accepting the apology and the gift of compensation. The mediation ended with a ritual of reconciliation, in which Yussef lathered and shaved Ahmad with a razor and donned him in a new white robe. The conversation then turned to other things and rituals of hospitality were shared, including coffee and tobacco. Augsburg notes several key components of conflict management—the role of the elders, the agreement to use mediation, the patience with the lapse of time, the movement of the mediators between parties, the balancing of power through storytelling, the presence of community leaders, the willingness to hear the dispute and seek satisfaction from the process, the use of rituals of apology and reconciliation, the concern with saving face and honor for both of the parties, their families, religious groups, and wider communities.³⁴

³⁴ AUGSBURGER, *supra* note 6, at 222–24; *see also* George E. Irani, *Islamic Mediation Techniques for Middle East Conflicts*, MIDDLE E. REV. INT'L AFF., June 1999, at 1, available at <http://meria.idc.ac.il/journal/1999/issue2/irani.pdf> (briefly discussing the significance of family, rituals of hospitality, and conflict mediation in Lebanon and in the Middle East).

Laura Nader also points to the role of culture and context in conflict resolution. In an essay critiquing John Burton's universal (and cultureless) model for resolving conflict, she writes, "[t]he only thing wrong with this idea [of defining the universal components of a peacemaker], as set forth, is that it does not adequately account for variation in type of dispute, in type of relationship between disputants, and in the cultural load affecting the conflict."³⁵ She provides an example from northern Lebanon to emphasize the importance of the mediator. A dispute that began as a disagreement between two herdsmen spread to a line of Sunni and Shia Muslim villages extending from the Syrian border to the Mediterranean Sea. The Lebanese government, responding to the particular situation, dropped some bombs as a scare tactic (without hurting anyone), and then sent a well respected peacemaker to the region. This peacemaker spoke to the men in the villages who had a reputation for settling disputes in their own villages. Then he invited these men to a banquet in the mountains paid for by the government. These men, Shia and Sunni, could no longer feud now that they had shared bread and salt. According to Nader, the situation dictated the methods used to resolve the conflict:

He [the mediator] was selected because he was already known and respected for his ability to settle conflict and for his situation-sense as to how to go about cooling and resolving conflict. This prior knowledge about the third party is important in Arab culture, as, indeed, is the idea that one does not 'face' an opponent in conflict until a respected third party has already achieved a result that is agreed upon before the parties meet to consume bread and salt together.³⁶

IV. MEDIATION CROSS-CULTURALLY AND INTERNATIONALLY

Many of the issues that have emerged in the discussion of mediation across cultures—the role of the mediator, the structure and timing of the mediation, the relationship between the parties, the role of the wider community, the context of the dispute and mediated intervention—remain significant to a discussion of mediation cross-culturally and internationally. At the level of conflict between states, Jacob Bercovitch seeks a broad definition of interna-

³⁵ Laura Nader, *Some Notes on John Burton's Papers on 'Resolution of Conflict,'* 16 INT'L STUD. Q. 53, 54 (1972).

³⁶ *Id.* at 54–55.

tional mediation that can encompass the diversity of third party roles and activities but can adjust to the context and circumstances of a particular dispute. Bercovitch argues:

Mediation is context and mode specific. Mediators' behaviour and roles are contingent on circumstances. There is no such thing as a set of role categories and strategies that can be transferred automatically from one environment to another; from one dispute to another. Concrete international reality is much more complex than the apparent analytical clarity of a prescriptive approach to mediation.³⁷

Like Nader, Bercovitch appears to be responding to attempts by scholars such as John Burton to universalize a model of conflict resolution and mediation. He argues instead—like Nader, Wehr and Lederach, Avruch, and Augsburg—that mediation is context and culture specific. The situation dictates the methods. Thus, Bercovitch's framework for international mediation explores the relationship among conditions, forms of mediation, and mediator roles. Wehr and Lederach's model of the insider-partial deeply embedded in the local context and Kriesberg's definition of quasi-mediators, who may act simultaneously as mediators and disputants, fall within Bercovitch's broadened conception of mediation.³⁸ Kimberlee Kovach also notes the distinctive role of the international mediator, who may serve as, "communicator, formulator, and manipulator," and whose strong relations with the countries in which he or she works challenge traditional notions of neutrality.³⁹

Just as an international mediator must adjust his or her role to the circumstances of the conflict, the parties involved, and the nature of their relationship, a cross-cultural mediator must respond to the differing cultural perspectives shaping the context of the conflict and the mediated intervention. How does culture shape the needs and aspirations of the different parties? How does culture shape the understanding and expectations of the mediation process? As we have seen above, in some cultural and national contexts, the mediator may play more of a decision-making role.⁴⁰ The effort of the cross-cultural mediator to examine the conflict and the mediation from the perspective of each party reflects an emic-centered approach to understanding conflict and conflict resolution.

³⁷ Jacob Bercovitch, *International Mediation*, 28 J. PEACE RES. 4 (1991).

³⁸ *Id.* at 4–6.

³⁹ KIMBERLEE KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE* 504 (3d ed. 2004).

⁴⁰ *Id.* at 505.

When combined with an etic-centered, or ascriptive, approach to the conflict and its resolution, the mediator may, ideally, be able to translate each party's understanding of the conflict for the other party, as he or she simultaneously holds an understanding of the conflict from within and without.⁴¹

In an essay on cultural issues in mediation, Walter Wright addresses the impact of individualist and collectivist paradigms on the mediation context. While these ascriptive dimensions of culture, when applied too literally and too simplistically, may obscure both cultural and individual differences among disputants, they do shed light on some of the issues cross-cultural mediators must address. Many of these dimensions have already emerged in the examination of mediation across cultures. For example, Wright suggests that where individualists prefer professional mediators, collectivists prefer a mediator who is an insider, someone who knows the parties and the context of their dispute. As we have seen, this is also the case in many small-scale and traditional societies. Similarly, individualists, according to Wright, view the parties as those directly involved in the dispute, whereas collectivists may view a wider number of people—family members, friends, members of the community or social group—as parties to the dispute.⁴² Kristine Paronica notes a similar phenomenon in her mediation, training, and facilitation with Native American communities; “[t]here may be a greater number of people at the table in order to fulfill the relational worldview and insure that strength of self (empowerment) and connection to the community (other) take place.”⁴³ Other aspects of the tension between individualist and collectivist paradigms played out in mediation include differing perceptions of formality and informality,⁴⁴ the contrast between face-to-face con-

⁴¹ See AUGSBURGER, *supra* note 6, at 36. The terms “emic” and “etic” emerge from linguistic and anthropological usage. As Augsburger points out, “emic” captures the indigenous frame of reference from within a given culture and “etic” evokes external frames applied from outside the culture. Augsburger adapts these concepts to the context of mediation and conflict resolution, contrasting the “conflict wisdom of the culture” to external models of conflict. Just as an anthropologist seeks both internal interpretations and external theories of culture, a cross-cultural mediator listens and learns from local approaches to conflict but also applies conflict models from outside to the understanding of a given dispute. *Id.* at 35–36.

⁴² Walter A. Wright, *Cultural Issues in Mediation: Individualist and Collectivist Paradigms*, *MEDIATE*, Jan. 2000, <http://www.mediate.com/articles/Wright.cfm>.

⁴³ Kristine Paronica, *Lessons Learned of Mediation in Indian Country: Exploring and Comparing Transformative Mediation Process and Theory and American Indian Values and Processes*, *MEDIATE*, June 2006, <http://www.mediate.com/articles/ParonicaK2.cfm>.

⁴⁴ Does the mediation meet in a conference room or in a home? Do participants use first names or last names to address one another? Is food or drink or other rituals of hospitality

frontation and shuttle diplomacy, differing negotiation patterns and communication styles, and perceptions and uses of time. Many of these issues, such as the role and significance of shuttle diplomacy, we have seen drawn out in examples above. In addressing these and other issues, Wright and other scholars suggest that cross-cultural mediators must act as a cultural bridge between the participants of different cultures, explaining to each party the possible bases of their mutual misunderstandings and encouraging them to be tolerant and respectful of one another.⁴⁵ While unquestionably important, I wonder if this approach is adequate to the task. An approach to cross-cultural and international mediation that is truly responsive to context and to culture must do more than explain and translate important cultural differences; it must attempt to incorporate dimensions of cultural difference into the mediation model.⁴⁶

shared? How much time is afforded to trust and relationship-building before addressing the dispute itself? In determining the desirable level of formality or informality guiding the mediation, the cross-cultural mediator must consider both the cultural expectations of the parties and the interpersonal and cross-cultural dynamics at play.

⁴⁵ Wright, *supra* note 42, at 6.

⁴⁶ One important suggestion in response to cultural differences in mediator preferences is to select a co-mediator with specialized cultural knowledge. *Id.* at 4; Edward P. Ahrens, *Kiss, Bow or Shake Hands*, MEDIATE, July 2006, <http://www.mediate.com/articles/ahrens20.cfm>; Fred Butler, *When Should Race, Gender or Culture Be a Factor When Considering the Mediator?*, MEDIATE, Aug. 2000, <http://www.mediate.com/articles/butler.cfm>.

