

RETHINKING PEACE AND CONFLICT STUDIES
Series Editor: Oliver P. Richmond

Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building



Edited by Tamra Pearson d'Estrée
and Ruth J. Parsons



Rethinking Peace and Conflict Studies

Series Editor
Oliver P. Richmond
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Manchester, UK

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Tamra Pearson d'Estrée • Ruth J. Parsons
Editors

Cultural Encounters
and Emergent Practices
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To the colleagues with whom I have worked in various projects and from whom I have learned so much. It is from their energy and motivations that I have decided to pull together this volume of stories to be shared with others who are committed to this endeavor.—RJP

To Vivian, Karyna, Guguli, and Esra, international colleagues and friends who have endured conflicts and hostile governments to bring dreams and tools of self-determination and peace to their people, and from whom I have learned so much, including realism with resolve.—TPE

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ABBREVIATIONS

CBO	Community-based organization
CSO	Civil society organization
IFC	International Finance Corporation
INGO	International non-governmental organization
NGO	Non-governmental organization
UN	United Nations
USAID	United States Agency for International Development
RFP	Request for proposals

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CHAPTER 1

The State of the Art and the Need for Context-Grounded Practice in Conflict Resolution

Tamra Pearson d'Estrée and Ruth J. Parsons

INTRODUCTION

As old as human conflict itself are social practices for resolving conflict. Primatologists suggest that as mammals dependent on the social group for survival, mechanisms for restoring social harmony were essential in our evolutionary history (De Waal, 1989). Practices of conflict resolution have been documented by anthropologists across many cultures (Nader & Todd, 1978; Gulliver, 1979). However, anthropologists teach us that cultures and cultural practices are not static. They evolve and adapt to respond to new challenges. Social innovations occur that respond to problems in new ways.

Social innovations provide novel solutions to existing social challenges or problems in a way that brings benefits not only to individuals but also to the society. They provide measurable improvements over existing

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practices, often addressing areas that have been neglected or poorly served by market approaches or state services. Many definitions of social innovation include an empowerment dimension: changing “the basic routines, resource and authority flows or beliefs of any social system” and transferring agency to underserved or marginalized groups (Westley, 2008).

Conflict resolution practices have also experienced innovation. While conflict resolution practices involving intermediaries have been documented for centuries (Bercovitch, 2002) and exist across many religions and cultures (Nader & Todd, 1978; Gulliver, 1979; Moore, 2003), the modern era’s increased awareness of individual human rights brought accompanying emphases on participation and agency (Moore, 2003). Conflict resolution practices evolved to address people’s demand for participation in democratic processes, and for voice in decisions that affect them (Lind & Tyler, 1988; Tyler, 1990), including justice, fairness, and social ordering. Innovative conflict resolution processes emerged with increased attention to efficiency, participation, and self-determination, as well as attempts to counter the divisive and exclusionary framing of gains embedded in adversarial (legal) approaches to dispute resolution. The “alternative dispute resolution” movement both generated new approaches and institutions, such as community mediation centers and neighborhood justice centers, and modified existing institutions, such as adding mandatory mediation tracks to family and civil courts.

Another characteristic of innovations, social and otherwise, is that they are disseminated or exported. New ideas and technologies spread through cultures in understandable, if not always predictable, ways, depending on adopters, communication channels, time, and the social system itself (Rogers, 1962/2003). Decades of research on the diffusion of innovation have led to increased understanding of elements, process and rate of diffusion, and the way that opinion leaders, organizations, and networks play a role in the adoption or rejection of an innovation. However, while a bias often exists toward assuming innovations are positive and should be adopted (Rogers, 1962), scholars acknowledge that both positive and negative outcomes can result from the adoption of innovations (Rogers, 1962/2003; Wejnert, 2002). Innovations can even be costly: as innovation diffuses, cultural traditions and beliefs can be consumed by those of the culture bringing the innovation (Downs & Mohr, 1976). Though such models assume one-way communication and transference of the innovation, many have acknowledged the oversimplification this represents, and that in complex environments, communication and information

travels in both directions, both from and back to the sender (Robertson, Swan, & Newell, 1996), and may in fact out of necessity be designed to be more participatory. As novel conflict resolution practices are exported to new settings as innovation, existing cultural traditions and beliefs are often ignored. Communication of innovation in complex environments would suggest the need for mutual information exchange and a participatory learning approach.

Cultural similarities and differences manifest in particular when cultural models “meet” in new settings where social innovations are disseminated, such as training development. In his 1995 work on training in other cultural contexts, *Preparing for Peace: Conflict Transformation Across Cultures*, Lederach proposes a continuum from prescriptive training to elicitive training. While the most prescriptive trainers transfer “Western” ideas about ideal conflict resolution to a new culture, the most elicitive trainers distill out norms and practices from within a new culture to shape ideal conflict resolution training. Most trainers, as well as models for conflict resolution training, fall somewhere along this continuum. As cultures interact, partners learn about each other’s best practices as well as synthesize new and emergent practices for conflict resolution implementation and training. This edited book documents experiences in the intersection of traditional cultural mediation practices with Western cultural frameworks and models. In each chapter, the author(s) tells a unique story of efforts to bring together “institutional” or Western models of mediation with traditional or customary practices in a given cultural setting.

This book is in response to the developmental waves over the last approximately 30 years in the transfer of neutrality-based “institutional” or “formal models” of mediation to many developing countries with highly diverse cultures. Steeped in the cultural norms and values of Western societies such as the UK, the US, Canada, and Australia, the original *carte blanche* approach to this transfer has been a questionable and uneven process, highly criticized by many for its lack of attention to the local and traditional cultures and customary practices. Subsequent waves of analysis have focused primarily on documenting traditional and indigenous cultural practices. Yet curiously missing has been the recognition and analysis of the actual intermingling and interacting of Western and traditional cultural practices that have produced new and emergent practices in our global community. Documenting such innovations and lessons learned from these encounters is the next logical step in our evolution of understanding innovative and culturally relevant conflict resolution.

GROWTH OF MEDIATION AS SOCIAL INNOVATION

We begin our understanding of these encounters by first outlining the development of mediation as a social innovation in the West that then some sought to transfer and others sought to receive. Mediation, the use of intermediaries to facilitate the negotiation and decision-making of the parties themselves, is to be distinguished from conflict and dispute resolution processes where a third party acts as an authoritative decision-maker or adjudicator (Gulliver, 1979). Mediation practices have been documented across the ages, as early as the Bible (ca. 2000 BC), the Amarna letters in Egypt (1500 BC), and the *Iliad* (750 BC) (Bercovitch, 2002), and likely before, and across many cultures. Though most early mediators functioned within religious roles and institutions, the rise of secularism and nation-states brought secular figures playing mediative (as well as adjudicatory) roles also (Moore, 2003). North America had colonies where immigrants of both ethnic and religious sects such as Puritans, Quakers, Jews, and Chinese brought and developed alternative procedures for their communities (Auerbach, 1983; Moore, 2003) that coexisted with preexisting procedures developed by indigenous North Americans (LeResche, 1993).

Mediation as a practice and as a profession gained momentum during the twentieth century. Mediation evolved from a role attached to existing positions and professions (clergy, teacher, elected or appointed leader) to become a profession unto itself. Mediation processes that returned the decision-making authority to primary parties reflected the zeitgeist of increased attention to individual human rights, democratic processes and political participation, support for private ordering, and acceptance of diversity (Moore, 2003).

A renaissance and reexamination of the innovation opportunities provided by mediation had grown out of increased scholarly and practical attention to conflict processes more generally. Conflict strategies did not have to be reduced to dominating or being dominated, or pursuing compromise as the only hybrid. Mary Parker Follett, the foremother of these new approaches, outlined in the 1920s how conflict could be turned to positive ends in the search for solutions where desires were *integrated* (Follett, 1995): “[T]hat means that a solution has been found in which both desires have found a place, that neither side has had to sacrifice anything. ... [T]he revaluing of interests on both sides may lead the interests to fit into each other, so that all find some place in the final solution”

Her classic teaching example was two library patrons in the same reading room, where one wanted the window open, and the other wanted it shut. By opening the window in the next room, one was able to have fresh air, while the other could avoid a draft, and neither had to curtail their desire. Integrative solutions could be achieved through inventiveness, training ... and a critical examination of the “habit” of relishing domination.

Schelling (1960) also questioned this habit: “[W]inning in a conflict does not have a strictly competitive meaning: it is not winning relative to one’s adversary. It means gaining relative to one’s own value system; and this may be done by bargaining, by mutual accommodation, and by the avoidance of mutually damaging behavior” (pp. 4–5). Thomas (1976) mapped out these broader possible conflict strategies used by individuals, groups, and even nation-states to include avoidance, accommodation, competition, cooperation/compromise, and collaboration, which were later translated into a commonly used conflict style inventory (Thomas-Kilman instrument).

Conflict processes were often complex because the strategies of parties would interact in reciprocal and even escalatory ways to entrap people in counterproductive behavior. Cooperative strategies elicit and escalate cooperative behaviors, while competitive strategies elicit and escalate further competitive behaviors (Deutsch, 1973, 1980, 1982). Dilemmas result from engaging in seemingly rational behavior (Luce & Raiffa, 1957). Competitive strategies may lead to stalemate, as parties can get stuck in the strategy they have chosen. Empirical research on conflict worked to identify conditions under which parties can change their strategy and their outcomes. Parties in conflict were encouraged to explore underlying interests, rather than assert aggressive positions, consider the needs and interests of other parties, and develop strategies of collaborative and creative problem-solving such as “expanding the pie,” taking advantage of different preference orderings, starting with trial agreements and developing rules and processes for respectful coexistence (Menkel-Meadow, 2003).

Greater attention was also paid to the range of alternative conflict processes available, offering choices for individuals and options for overburdened systems. By considering the range and varieties of dispute resolution mechanisms—court adjudication, arbitration, administrative processes, mediation, conciliation, and negotiation—it became possible to analyze which cases might be best for courts and which could be processed in another way (Sander, 1976). “Alternative dispute resolution” could relieve

increased demands on courts that had evolved from a decline of family and religion and their accompanying disputing processes.

The renaissance and reformulation of mediation was also a reaction to increasingly vocal perceptions that institutionalized dispute resolution and Western legal traditions, and their focus on adversarial methods, were actually producing conflict and distress. An argument culture imbued the Western approach to the world, urging people to approach the world and each other with an adversarial frame of mind (Tannen, 1998). Whether discussing an idea, covering a news story, or settling a dispute, the approach pits two “sides” against each other as the way to find truth. However, issues are seldom only two sided: “Often the truth is in the complex middle, not the oversimplified extremes” (Tannen, 1998, pp. 3–4). “Polarized debate distorts the truth, leaves out important information, simplifies complexity, and often obfuscates rather than clarifies,” with the result that courts are often not the best settings for addressing complex, multifaceted, and multisided problems (Menkel-Meadow, 1996, pp. 6–10). Western legal systems, hobbled by a focus on adversarial methods and perceived elitism on the part of the public, had lost attractiveness and even legitimacy for many as a forum for resolving conflicts or addressing grievances. Mediation provided opportunities for considering multiple issues, addressing relationships, incorporating and addressing varying perceptions of justice and fairness, and returning decision-making—and thus power—in disputes and conflicts to the parties and communities themselves.

The last four decades saw increased expansion of mediation use and institutionalization, particularly in North America, but also in Europe, Australia, and New Zealand, and to a lesser extent in other parts of the world. Disputes in the industrial arena gave rise to the first area of institutionalized mediation in the US (Simkin, 1971). The US Labor-Management Relations Act of 1947 provided for the settlement of issues through collective bargaining, encouraging mediated settlements as alternatives to costly and sometimes violent strikes and lockouts. Similarly, after violence racked US cities, the US Civil Rights Act of 1964 established the Community Relations Service as part of the Department of Justice, in order to address disputes linked to discrimination on the basis of race, color, or national origin. The pattern for growth in North America, Australia, and New Zealand was similar in that initial expansion was supported by government agencies, followed by community centers being established in many states and provinces and in larger urban areas. Local

justice centers became institutionalized and either became independent nonprofit organizations or attached themselves to local government. Local and statewide/provincewide programs developed to offer mediation services in a wide range of disputes, from interpersonal to group to community and public disputes.

Two areas where mediation expanded rapidly and quickly became grafted onto existing court services were in areas of family law and minor civil cases. Mediation provided opportunities for attention to relationships as well as to legal issues in disputes, and offered access to justice for even the smallest claims of minor claimants to be heard. Mediation is often used by court systems for family disputes; many systems now have mandatory court-connected programs where one must try mediation before one can appear before a judge. Similarly, mediation has become popular for court systems to use as a first step in civil cases where financial claims are below a certain lower limit, so-called small claims. Mediation is now increasingly used in many arenas, including corporate, commercial and workplace disputes, other organizational conflicts, health-care disputes, environmental and public policy disputes, and for the negotiated articulation of regulations mandated by statute.

WESTERN “INSTITUTIONAL” MODEL OF MEDIATION

While the practice of mediation in Western cultures has emerged from work in many contexts and for many purposes, leading to a broad diversity of approach and the development of alternative schools of practice, institutionalization has also exerted pressure for uniformity and routine (Menkel-Meadow, 1995). The oversimplified approach has itself now become subject to critique. Strands of a dominant, “institutional” model can be identified.

In 1981, Fisher and Ury’s book, *Getting to Yes*, an instructive book for business negotiators from the Harvard Negotiation Project, became a national best seller for many years and launched a popular framework that provided a basic structure for many subsequent frameworks in North America. Its description of “principled negotiation” became the primary advocate for what became known loosely as the interest-based approach, with a framework that was dependent upon assumptions of rationality, individuality, capacity to separate emotions from issues of dispute, and engage in give-and-take processes through agreement. The model has morphed into various forms with permeable and fuzzy boundaries and

with parenthetic fluid applications to other settings (Kolb, 2001). But these premises have remained prominent as an undercurrent of the basic assumption that if one knew this basic mediation process, one could use it everywhere in any setting. It was a set of universal principles based upon the following:

- Linear thinking and rationality
- Individualism
- Low degree of shared meaning and heterogeneity
- Expectation of horizontal power relationships
- Direct and open expression of and dealing with conflict
- Problem-solving more central than relationship issues
- Process is neutrality based; conducted by impartial outsider
- Written and spoken word as prominent—face value of communication

This very Western individualistic framework (Tuso, 2011; Triandis, McCusker, & Hui, 2001; Moore, 1996; Syukur & Bagshaw, 2013a) has an assumptive base steeped in Anglo culture, and has been critiqued and its cultural assumptions contrasted with cultural norms in many societies to which it has been generously introduced. These critiques include not only its heavy and nearly exclusive reliance on rationality, individuality, and material resources for both creating a process and settling a dispute, but also its concept of mediator as professionally trained outside neutral; its lack of provision for addressing spiritual dimensions of conflict; the exclusion of rituals, confession, and forgiveness; a lack of consideration of concerns of the larger community context (Tuso, 2011; Behrendt & Kelly, 2008); and ignoring oppressive power differences (Brigg, 2003).

Certainly, conflict resolution strategies within Western nations have not themselves remained static. What began as government-supported neighborhood justice centers and gained momentum as an alternative to court processes continued to evolve in community settings, where many adaptations were created by professional groups for their practices, creating various frameworks such as transformative mediation (Bush & Folger, 1994), narrative mediation (Winslade & Monk, 2001), insight mediation (Picard & Melchin, 2007), therapeutic mediation (Lebow & Rekart, 2007), and various forms of restorative justice (Zehr, 2002), all of which have deviated in theory and practice from the basic principles of interest-based “Western” or institutional mediation. However, even when subsequent revisions and alternative mediation models began to emerge in Western

literature, the dominant interest-based alternate dispute resolution (ADR) court-influenced model prevailed as a sort of ideal or even ideology, and remained the main model disseminated “for export.” Remaining to be answered is whether or not some of the newer strategic approaches developed may be more complementary with traditional practices elsewhere than the classical ADR model, which was predominant in the early training models taken to various cultures.

Menkel-Meadow (1995) discusses how mediation has grown in its diversity of practice and ideology, in part to be responsive to variations in contexts, participants, and goals. However, she argues that particularly when brought into bureaucratic contexts (courts, community justice centers), mediation practices lose flexibility and become routinized scripts (see also Shook & Milner, 1995). These formalized mediation practices are more likely to reflect Western ethnocentric assumptions and behaviors, such as the value placed on “expressing your feelings,” or rules such as “no interrupting.” It is these very models of routinized mediation attached to formal settings that are most likely to be exported elsewhere, rather than more general clusters of values, skills, and experience-based adaptation to context. Menkel-Meadow goes so far as to warn of a new sort of “process imperialism” exported in the name of transformation.

Cultural value patterns are constructs for observing cultural variation. They express shared patterns of value that guide meaning-making. They undergird social norms, guide what is considered “normal” behavior, and influence literally what one sees and doesn’t see. They manifest in behaviors as the unwritten scripts for doing things, influencing how we perceive conflict and how we behave to resolve it (Gold, 2005). Exploring how these assumptions guide our understanding of conflict and responses to it allows those who cross cultures to better recognize the role of cultural values in all contexts of meaning-making, and allows innovators to further examine and experiment with the range of behaviors that will increase effectiveness in addressing conflict. We now consider the progress made in encountering, understanding, and working with differences in cultural values and practices in conflict resolution.

WAVES OF MEDIATION SCHOLARSHIP

A significant amount of the literature devoted to the study of conflict and different processes for addressing such conflict exists in a distinctly Western framework. Most of the literature excludes the role of indigenous or

culture-specific processes that existed prior to the emergence and widespread adoption of Western-influenced ADR methods, as well as current practices in various cultures, which may be culturally different from the assumptions in the Western model. While currently in the Western literature there has emerged a call for cultural relevance and the incorporation of traditional practices into the frameworks, there is little indication of how this incorporation happens or can be focused in any nuanced way. The stories in this book attempt to breakthrough this conundrum and explore integrated or “hybrid” systems that integrate both Western and indigenous conflict resolution practice.

The *first wave* in the transfer of Western institution models to various diverse cultures came in the 80s and early 90s, and was a somewhat *carte blanche* transfer, without significant question regarding the cultural limits and transferability of these institutional approaches. It was based on the belief that this teachable model (in most cases, a primarily interest-based model, adopted from the ADR movement) would work everywhere if people just simply learned to use it. These initial assumptions of universality have been questioned. Kevin Avruch and John Paul Lederach were two pioneers, joined by many others, acknowledging the necessity of culture in conflict resolution, and particularly questioning the validity of establishing a universally valid set of conflict resolution techniques and uncritical transference of Western-styled ADR processes to other cultural contexts (Avruch, Black, & Scimecca, 1991; Avruch & Black, 1993; Avruch, 1998; Lederach, 1995; Fry & Fry, 1997; Bush & Bingham, 2005; Behrendt & Kelly, 2008; Tuso, 2011).

As many authors have suggested, not only do many traditional cultures have indigenous practices rooted historically in their approaches to conflict resolution, but they also have current norms, behaviors, and preferences around conflict resolution that cannot be ignored in the provision of useful conflict resolution services (LeBaron, 2003; Zion, 1998; Chia, Lee-Partridge, & Chong, 2004; Said & Funk, 2001). These norms may fit the international norms embedded in imported conflict resolution approaches, or there may be a mismatch. Significant differences are pointed out regarding assumptions, practices, and roles of third parties in conflict through particular religious or ethnic lenses (Abu-Nimer, 1996; Bermudez & Stinson, 2011; Lang, 2002). Mohammed Abu-Nimer specifically breaks down inherent assumptions in the Western framework and challenges the uncritical transfer of Western models of conflict resolution into other cultures.