

A CALL FOR A NEW INTERCULTURAL COMPETENCE PLAYBOOK IN MEDIATING SOCIAL TRANSFORMATION

Rory Gowers

Volume 28, numéro 5, 2023

L'humanité face aux conflits actuels. Nouveaux défis pour la médiation : Forum mondial de médiation, 2022 | XIe Conférence

URI : <https://id.erudit.org/iderudit/1109107ar>

DOI : <https://doi.org/10.7202/1109107ar>

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Éditeur(s)

Centre de recherche en droit public Université de Montréal

ISSN

1480-1787 (numérique)

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Citer cet article

Gowers, R. (2023). A CALL FOR A NEW INTERCULTURAL COMPETENCE PLAYBOOK IN MEDIATING SOCIAL TRANSFORMATION. *Lex Electronica*, 28(5), 195–215. <https://doi.org/10.7202/1109107ar>

Résumé de l'article

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Nous sommes confrontés à une pandémie mondiale sans précédent où les normes et attentes culturelles sont menacées, dans des cultures individualistes et collectivistes. Nous sommes confrontés à des menaces existentielles liées au changement climatique et aux catastrophes environnementales. Nous avons besoin d'un nouveau manuel de médiation pour une négociation interculturelle et une résolution des problèmes efficaces.

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A CALL FOR A NEW INTERCULTURAL COMPETENCE PLAYBOOK IN MEDIATING SOCIAL TRANSFORMATION

Rory GOWERS⁸¹

⁸¹ Rory Gowers with a Master of Dispute Resolution MDR and a Master of Education MEd, is an intercultural mediator and business strategist, residing in Brisbane Australia. Rory has extensive international experience as a visionary business problem solver, and certified results coach. Rory's mission is to facilitate a more respectful world by inspiring people and groups to transform business ecosystems with practical sustainable solutions. rory.gowers@gmail.com

RÉSUMÉ

Chaque culture est en conflit ; Le conflit est endémique dans le processus de métamorphose culturelle. Cet article examine le paradoxe selon lequel le conflit est intrinsèque à chaque culture, et pourtant peu d'attention est portée aux normes de la « culture » dans la résolution de ce conflit. Il existe des conflits au sein des cultures et des conflits entre les cultures. Les recherches pionnières sur les traits culturels nationaux, réalisées par des éclairés tels Hofstede et Ting-Toomey dans les années 1990, ont facilité les négociations et la résolution des différends et ont jeté les bases de la différenciation culturelle. Mais depuis lors, beaucoup de choses ont changé dans la compréhension interculturelle. Nous sommes désormais conscients d'énormes variations de valeurs, de styles et de coutumes dans des cultures définies. Aujourd'hui, dans les années 2020, nous sommes en train de devenir rapidement une société interdépendante de plus en plus mondiale, caractérisée par une grande diversité culturelle, une puissance occidentale en déclin et un ordre mondial croissant dirigé par l'Asie, dans une nouvelle ère d'influence commerciale, de robotique numérique à haut débit et d'intelligence artificielle.

Nous sommes confrontés à une pandémie mondiale sans précédent où les normes et attentes culturelles sont menacées, dans des cultures individualistes et collectivistes. Nous sommes confrontés à des menaces existentielles liées au changement climatique et aux catastrophes environnementales. Nous avons besoin d'un nouveau manuel de médiation pour une négociation interculturelle et une résolution des problèmes efficaces.

MOTS-CLÉS

Culture, Interculturel, Médiation, Compétence, Respect

ABSTRACT

Every culture is in conflict; conflict is endemic in the process of culture metamorphosis. This paper examines the paradox that conflict is intrinsic to every culture, yet there is little attention to the 'culture' norms in resolving that conflict. There are conflicts within cultures and there are conflicts between cultures. The pioneering scholarship on national cultural traits, by original thinkers such as Hofstede and Ting-Toomey in the 1990s, assisted negotiation and dispute resolution and provided a foundation for cultural differentiation. But much has changed in intercultural understanding since then. We are now aware of enormous variations in values, styles, and customs in defined cultures. Today in the 2020's we are fast becoming a more global interdependent society with high cultural diversity, declining Western power, and rising Asian-led world order in a new era of commercial influence, high-speed digital robotics, and artificial intelligence.

We are in an unprecedented global pandemic where cultural norms and expectations are under threat, in individualistic and collectivist cultures. We face existential threats from climate change and environmental catastrophes. We need a new mediator playbook for effective intercultural negotiation and issue resolution.

KEYWORDS

Culture, Intercultural, Mediation, Competence, Respect

1. INTRODUCTION

[569] Every culture is in conflict; indeed, conflict is pervasive in the transformation of culture. There are conflicts within cultures and there are conflicts between cultures. This paper examines the paradox that whilst conflict is an intrinsic part of every culture, yet in managing conflicts there is little attention on the ‘culture’ [beliefs, values, and practices] of conflict management itself and especially for intercultural conflicts.

[570] The processes and practices of dispute management reflect the dominant culture in the geo-social location in which a conflict is raised for resolution; in matters of international justice, the most dominant world cultures shape the ‘culture’ of adjudication practice. For example, the International Court of Justice [ICJ] established in 1945 by the United Nations reflected its ‘legal culture’ in its choice of official languages (English and French), in its adoption of many US legal principles, and the ‘Eurocentrism’ of its policy and opinions (MCWHINNEY, 1987, p. 874). McWhinney’s positivist anticipation that international law would be shaped by the influence of other cultures in a ‘continuing evolution’ has not borne fruit. While understandable, it’s not appealing to out-groups who suffer the impact of matters determined in a way contrary to their cultural values and practices. Nationally, the disenfranchisement of Indigenous Australians in 1900 (UK PUBLIC GENERAL ACTS, 1900)⁸² is a poignant example of an unresolved power grab that continues to scar Australia today. More recently on the other end of the power scale, China ignored the 2016 South China Sea⁸³ decision of the Permanent Court of Arbitration.

[571] Over the years there has been considerable scholarship differentiating between recognised cultures and their various traits to assist nations, organisations, communities, and individuals to negotiate meaningful outcomes and resolve disputes. Two early scholars Gert Hofstede (HOFSTEDE, 2001) and Stella Ting-Toomey (TING-TOOMEY, 1999) are still referenced decades later. Hofstede’s research reflects a white Western cultural outcomes’ lens with its five cultural dimensions; Ting-Toomey is Eastern-focused on inter-cultural communication and relationships through mindful listening and attuning communication. Their scholarship still assists greater cultural awareness and engagement in significant projects, and they fill an important place in any study of cultural differences. Nonetheless much has changed in contemporary understanding about culture in the interim. Today, we are aware of enormous variations in values, styles, and customs within the broad classification of any defined culture.

[572] It is time for a new Intercultural Competence Playbook in mediating social transformation.

2. PRESENT HISTORICAL PERSPECTIVE

[573] There are key aspects of our changing world which are important to recognize.

⁸² Commonwealth of Australia Constitution Act 1900 (legislation.gov.au)

⁸³ PH-CN-20160712-Award.pdf (pca-cpa.org).

[574] In the 1990s the world was a very different place. Most nations comprised hegemonic cultural structures; multi-cultural societies were very rare. Today most developed nations reflect and seek to embrace multiple cultures as a part of daily life.

[575] The world was still living in the wake of post-World War II expansionism led by the United States, allied with post-colonial European nations. Their dominance led to economic, political, and cultural processes and practices shaped by Great Britain and the United States. Consequently, the English language (encoding Western values, customs, and mores) became the preferred medium for business negotiation and dispute settlement agreements.

[576] The pace of life was slower, simpler, parochial, and predictable; with a place for everyone, and everyone knew their place. Today most nations interlink in a fast-paced global economy accelerated through instant access to data, information, digital technology and social media, the pace is often frenetic, and we expect more immediate responses and express delivery.

[577] The world has changed dramatically; we need to consider the implications for our common understanding of conflict and culture in a global society characterized by great diversity, emerging trends of declining Western power and a concomitant rise in ‘an Asian-led world order’ (KHANNA, 2019.) leading an era of global commercial influence, high-speed digital interconnectivity, robotics, and artificial intelligence.

[578] In the 2020s we live in a very different world, rich in diversity and cultural complexity. In this reality, we need to consider what technology, attitudes, knowledge, understanding, and skills will best support the resolution of the inevitable intercultural conflicts that characterize daily life and work. Many disruptive forces (MANYIKA et al, 2013, pp. 1-176.) challenge our assumptions about the planet’s trajectory in unprecedented (UN REPORT, 6 May 2019.)⁸⁴ and unpredictable ways. Due to ongoing regional warfare and terrorism in vulnerable regions (Syria with an estimated 5.6 million UNHCR refugees in 2019 (UNHCR, 21 November 2019.)⁸⁵, and Ukraine over 4.6 million in 2022 (UNHCR, 13 April 2022.)⁸⁶ people flee in hope of new life, basic resources, and safety in other countries - many with very different cultures. COVID-19 continues to replicate globally heightening personal insecurity and polarising views about vaccines and preventative practices that impact civil liberties.

[579] How can we better equip individuals, organisations, and mediators from every culture to effectively and sensitively respect, and capably harness, such diversity in the effective resolution of disputes for the positive social transformation of all peoples and the planet?

⁸⁴ <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

⁸⁵ https://data2.unhcr.org/en/situations/syria#_ga=2.128628170.719567715.1575201045-907259249.1575201045

⁸⁶ <https://unhcr.org/62572df35c>

3. INTERCULTURAL COMPETENCE WANTING

[580] There is increasing recognition that although there may be broad stereotypical cultural patterns observable within identified people groups, it is unwise to overlay that pattern on individual members of such groups; there is considerable diversity within each grouping. Ting-Toomey warns “a stereotype is an overgeneralization towards a group of people without any attempt to perceive individual variations” (TING-TOOMEY, 2007, p. 18.). Care should be taken in using cultural taxonomies, such as Richard Lewis’ guide to ‘managing successfully across cultures,’ (LEWIS, 1999.) when guiding participants in conflict resolution. Prevailing national resolution processes reflect the dominant cultural pattern of the elite ingroup holding power, rather than embracing the full array of rich cultural diversity available if attributes and strengths of less powerful disenfranchised sub-cultures are included. Taxonomies rarely show positive characteristics of *indigenous peoples* as they are often shunned as primitive by the dominant elite. Lewis epitomizes this dominant Western bias referring to “the 200-year development of Australian society and culture” (LEWIS, 1999, p. 189.), dismissing more than 40,000 years of Aboriginal culture with the stroke of a pen!

[581] These reflections provide insight into the nature and character of dominant cultural traits within the setting of peacemaking or conflict resolution initiatives. However, it is important to remember that ultimately each person engaged in a conflict is unique and unrepeatable – each has a very specific cultural identity. That identity may include basic values, customs and beliefs gained through early family and communal influences, it may be shaped by exposure to other cultures and life experiences through which new meanings are formed and new choices made. Add to this personality traits, educational experiences, and peer pressure we have the makings for some unique cultural trait combinations. It’s challenging to consider how to engage all actors in a way to meet these competing needs.

A FEW HOME TRUTHS ARE IN ORDER

[582] The dominant cultural class in society inevitably has greater sway in the formation of legal frameworks and formal resolution processes. Such normalization of conflict management makes access to justice difficult or impossible for persons in marginalized cultural groupings.

Improved access to justice for some disenfranchised members of society may be better facilitated through informal methods and approaches.

[583] The professional legal class is equipped and rewarded to support privileged access to justice at the expense of less well-resourced participants in formal judicial processes.

[584] Formal legal processes ultimately support aggressive win-lose battles which reduce the potential benefit for all parties to the conflict, whilst transparent and culturally sensitive approaches are more likely to consider all options with the consequence that resolutions may often benefit all parties beyond their initial expectations.

[585] Further, it is important to look at deep historical trends. Khanna (KHANNA, 2019.) invites us to look back from 2100, and it becomes unmistakably clear that the future is Asian. From that vantage point, we can envisage some of the major themes of the next era of human history regarding global power and influence.

[586] The problem is that current mediation industry offerings for training and equipping mediation practitioners are largely silent on the critical intercultural competencies so necessary to establish meaningful and effective conflict resolution in the long term. For example, there is no mention of intercultural competency in Australia's National Mediator Accreditation System [NMAS] Practice Standards (MEDIATOR STANDARDS BOARD, 1 July 2015.). There are references to the mediator's responsibility to consider the cultural relevance of the process and to determine implications for conducting mediation. Mediators are encouraged to consider cultural issues and to select appropriate alternatives to the standard. Whilst that sounds responsive and culturally inclusive, it doesn't address intercultural communication and is potentially patronizing. It does not go far enough for some mediation participants from other cultures where they have no right to voice their opinions directly and instead must submit to the dominant authority figure representing the state. In such cases participants may need additional appropriate steps of preparation to empower them to directly engage in the process, or at other times their cultural background may require them to be advocated for by a family or community elder to speak on their behalf. For example, a married Egyptian couple - Australian citizens, and professional teachers for more than 20 years - disputed a state agency decision. In the private pre-mediation meeting the couple were forthright in expressing their argument. However, in joint sessions, they were submissive, did not make a strong case, and meekly acquiesced to the state agency representative. In private session that day the couple revealed they were unhappy but not able to state their case.

[587] In hindsight, this couple needed an alternative path to enable respectful negotiation, consistent with their cultural needs for power distance and the expectations of their authority. The mediator needed greater awareness of the client's cultural needs and sophisticated cross-cultural engagement strategies "creating a third space or "culture of interaction and confrontation" (WILLIS et al, 2022, p. 1.) - a third culture space - where it is safe to engage with greater cultural congruence and trust from all parties to the conflict

[588] We must establish a higher level of professional intercultural competence for mediators to ensure that justice is done in the important work of conflict management and peacemaking in the 21st century. Ting-Toomey suggests that effective intercultural leadership is a call to "serve as a dynamic intercultural mediator" (CAÑADO, 2008, p.210). Rather than adjusting the Western mediation process for variations, a competent intercultural mediator uses specific cultural knowledge, understanding and expert engagement skills to enable each participant to fully engage in negotiation in an empowered state. Parties should not be forced to adapt their cultural values, practices, and trust relationships to meet the other party's dominant cultural patterns and norms, nor to accommodate the mediator's preferred standard approach.

4 . BUILDING INTERCULTURAL MEDIATOR COMPETENCY

[589] Currently, there is a dearth of intercultural mediator competency development available. What can be done, and what must be done to overcome the tragic consequences of current lop-sided and culturally biased approaches to mediating and managing conflict? Fortunately, the International Mediation Institute (IMI) has an Intercultural Mediator Competency Certification based on global mediator feedback in 2007 (SIEW, 2009, p. 1-2.). Yet Siew tells us that effective training in how to meet that level in Australasia is underdeveloped.

[590] What would it mean to prepare for mediation by taking time to consider the unique cultural traits of each participant and to develop a case-specific approach to facilitating the resolution of the conflict? An inter-culturally competent mediator might:

- Identify an individual's cultural identikit (CECCHINI & TOFFLE, 2014, p. 737.).
- Design unique pathways of engagement for individual participant preparation.
- Conduct the pre-session intake based on the client's identified cultural pathway.
- Co-design a specific negotiation roadmap based on the needs, interests, strengths, and opportunities of all participants (including any community representation deemed relevant with customary conflict resolution in those cultures).
- Obtain agreement of all parties to the proposed negotiation roadmap.

[591] What if we developed approaches to negotiate options using an intercultural process enabling participants to bring their cultural strengths and wisdom to the task of sensemaking and resolution? Thus, enabling each person to articulate or show their story in an atmosphere of mutual respect and genuine curiosity.

5. BUILDING A THIRD-CULTURE BRIDGE EXAMPLE

[592] However, 'in the end we have to build a third-culture bridge' (CECCHINI & TOFFLE, 2014, p.212.) as it is insufficient to just take bits from each culture. A third-culture facilitator requires a unique skill set to orchestrate the interaction of participants to co-create a safe space that is culturally appropriate for all parties.

[593] Hermann and Holland (HERMANN & HOLLAND, 2017, p. 43-50.) shared implications from their experience training intercultural mediators in refugee camps on the Thai-Myanmar (Burma) Border in 2011 and 2012. They provide a critical perspective on personal character traits, common types of issues in multicultural conflict situations, and practical examples of when and how appropriate adaptations can or must be made in an intercultural context. They emphasize the importance of flexibility to make appropriate adaptations to fit the cultural realities in-situ. They support the NMAS whilst explaining the need for adaptive design of the process when it is called for especially in

managing power imbalances, creating safe spaces to participate, and encouraging culturally appropriate forms of responsiveness. Their fieldwork and research (HERMANN & HOLLAND, 2017.) offer insight into how to respond and adapt to rapidly emerging and converging Asian cultures with their need to manage conflict more indirectly without confrontation.

6. DESIGN LESSONS

[594] This is a good point to consider the plurality within Asian culture, rather than the general notion that Asian culture is a collectivist culture.

[595] Recent research by Min and Takai revealed significant conflict management style variations between two distinct Asian cultures (Japan and Myanmar) (MIN & TAKAI, 2019, p.109-131).

[596] One of the five major implications of their work was: ‘differences between Asian cultures were significant, although once bunched into one group of collectivists, and we have proven that differences exist for ... all conflict management styles’ (MIN & TAKAI, 2019, p.126.).

[597] They conclude: ‘our results suggest that lumping Asian cultures into one collectivistic group is a gross misconception, and East-West comparisons should be carefully conducted with this in mind’ (MIN & TAKAI, 2019, p. 127.).

[598] These lessons provide some guidance for equipping dynamic intercultural mediators through challenging long-held assumptions about intercultural communication. The field of intercultural competence is very complex and defies simplistic notions of cultural needs, appropriate processes, and mediator capabilities. Facilitators need to break free of unconscious assumptions embedded within their personal cultural paradigm to effectively facilitate third-culture bridge building.

[599] Other significant areas in intercultural mediator competence design include applications of complexity theory to conflict analysis, implications of *neuroscience research* on managing with the brain in mind, key learning about conflict management from the cultural knowledge, wisdom, and insights of *indigenous peoples* over the millennia; and *mindfulness applications* for practitioners (internal) and for participants (external).

[600] *Complexity theory* - David Snowden developed the Cynefin framework (KUTZ & SNOWDEN, 2003, p. 467.) in the awareness of the complexity of our many affiliations as people with roots in culture, religion, geography, community, family, and etcetera. These roots profoundly impact our sense of identity and shape the decisions we make and the way we engage with others, positively and negatively. This framework (SNOWDEN & BOONE 2007, p. 7.) aims to help us make sense in a complex and complicated world; today the realm of intercultural conflict management is increasingly so.

[601] By attending to the narrative of the parties in conflict, severally and together in an emerging third-culture narrative, the intercultural mediator makes sense of the dialogue and locates its elements within one of five domains: Simple (known), Complicated (knowable), Complex (unknown), Chaotic (unknown unknowns), and Disorder (unknowable). Applying the framework may assist the skilled intercultural facilitator to focus parties on the unknowns where there is greater acceptance that they do not have all the answers - away from fixed positions and towards engagement in collaborative problem-solving.

[602] A further application of the Cynefin framework is to guide the facilitative mediator in matching a changing conflict landscape with the appropriate leading response (SNOWDEN & BOONE, 2007, p. 7.). If the matter is in the *simple* domain, the task is to Sense the facts, then categorize the type of issue, and respond according to the standard procedure. If the issue is *complicated*, the response is to Sense out the data, then analyse for the relationship patterns, and respond by adapting standard approaches accordingly. If the matter is complex with many parties, with the *complex* relationship of the people, goals, and structures, the mediator's role is to first Probe deeper, make sense of emerging patterns, then respond with appropriate strategies. When issues in dispute appear chaotic (such as a life-threatening health, or safety emergency) with no clear pattern emerging the facilitator will need to take immediate Action, observe, and then make sense of what happens, before making the next response to contain and control.

[603] Rooney states the Cynefin approach “... requires leaders who can manage the flow of networks between people in a way that allows for a safe space for minority views, diverging opinions, conflict, and internal disruption. It requires a higher state of alert and the ability to provide a real-time response to emerging patterns and behaviours” (ROONEY, 2017, p. 40.). Creating and holding a safe space for engagement and negotiation is a vital role of mediators.

[604] *Neuroscience research* reveals fresh clues to mindfully managing the brain by isolating key factors in our thinking that trigger a sense of threat or reward; a sense of threat leads to escalation of conflict or flight, whereas a sense of reward (the potential to achieve a positive result) invites meaningful and effective engagement.

[605] David Rock (ROCK, 2008, pp. 1-9.) summarized this research with two main principles. Firstly, we are motivated by an overall principle of ordering our world in ways to minimize threats and maximize rewards in our social interactions. Secondly, there are five specific domains in which we are prone to either respond negatively when threatened or positively when rewards are likely. These domains constitute Rock’s SCARF model: *Status, Certainty, Autonomy, Relatedness* (some call this belonging⁸⁷), and *Fairness*. Conditions that lead to an increase in each domain will result in a reward stimulus in the brain; however, conditions that lead to a perceived loss in any domain will result in a threat response. Rock provides examples of how to reduce the threat or how to increase the reward in each domain.

87 Karen Stott, Talk to Skills in Dispute Management session, University of New South Wales, Sydney Campus, 15 November 2019, unpublished.

[606] Many conflict practitioners find neuroscience a useful metaphor for considering human beings in situations of conflict, and declare that “[b]y leveraging the ... 5 key drivers of social behavior, ADR neutrals can maximize the chances of the parties optimizing their decision-making processes” (LACK & BOGACZ, P. 8). It’s an attractive notion that by just applying these levers one could improve the outcomes of mediation, but a decade later some significant gaps are being identified.

[607] Gundling explores “what could be missing?” (GUNDLING, 2018 p. 1.) claiming it would be an error to assume the model has universal application or that it can bring change ‘without cultural understanding.’ (GUNDLING, 2018 p. 1.) For example, with Status, if someone steeped in the Chinese leadership style promoted a more egalitarian approach of delegated responsibility and opinion, this may be perceived as a threat, yet an Australian might see more directive hierarchical leadership as a threat due to not taking others’ views into account. The same treatment may have the reverse impact depending on the culture of a participant.

[608] This is likely the same for Certainty, Autonomy, Relatedness, and *Fairness*. Gundling makes the point that SCARF shows us factors we need to address yet is not able to prescribe exactly how to apply that in a specific intercultural context. Nonetheless, the SCARF model cannot be dismissed; more work needs to be done on how to apply it in the context of intercultural situations. The cultural narrative or identity story and the unique ways these distinct domain needs are met require greater research.

[609] *Indigenous peoples* over the millennia have gained a profound depth of cultural wisdom for daily living and the resolution of conflict. Of the amazing riches of indigenous Australians perhaps the most remarkable is the way they have mastered the use of story to convey the longest continuing culture in the history of human habitation.

[610] Through stories, Aboriginals learn deeply embedded cultural values and lessons for living. These stories establish a foundational understanding of the implicit rules of life, the processes of decision-making, and each person’s place in the cosmos. These stories are passed on through narration, music, dance and drama and they are deeply connected with the land, vegetation and the creatures that inhabit it. Indigenous Australians can attune with all of creation in a relationship of mutual respect; everyone and everything has its place.

[611] If the West is about individual freedom, rights, and concerns about what’s in it for *me*; and if the East is about community, responsibility, harmony, family, face and the collective *we*; then Indigenous is about community, relationship, respect and *being* present at one with all. At a time of major shifts in global power and influence from West to East, it is appropriate to consider what can we learn from indigenous life even as the new narrative unfolds.

[612] Indigenous people have mastered narrative to pass the stories along the songlines that transmit cultural values, establish natural laws, and guide daily respectful living.

[613] Unfortunately, the First Fleet, intent on depositing the cast-offs of British society, was not looking for a cultured and sophisticated society and thus did not see the evidence before it. In classic confirmation bias, they saw what they wanted and expected to see; a land without civil society where they could detain the convicts. They happily declared terra nullius and took what they wanted for British gain and abused the established indigenous communities.

[614] The decision to deny civil existence to Aboriginal communities is evidence of *unconscious intercultural incompetence* that to this day casts a shadow over Australia. Aboriginal and Torres Strait Islander [ATSI] people represent 3% of the Australian population yet they are disproportionately represented in prisons, social problems such as drug and alcohol dependence, child sexual abuse, and domestic violence statistics.⁸⁸ After a history of at least 250 officially documented community massacres (RYAN et al, 2017-2022.) these resilient people persevere, and the legacy of that 1788 incompetence remains at the heart of the problems that plague the Australian legal system today.

[615] This is relevant to incorporating intercultural competence in training and equipping mediators in Australia. Until we fully recognize how deep our personal cultural bias is with ATSI peoples and effect a heartfelt effort at recognition and reconciliation, we will not have the essential qualities of professional intercultural competence. Alternatively, mediators who fully embrace and respect ATSI peoples will find considerable scope to facilitate the resolution of long-standing disputes in innovative and interculturally sensitive ways.

[616] Sveiby and Skuthorpe reveal the hidden wisdom of the Nhunggabarra people in north-central New South Wales. They articulate some of the deep legal reasoning of the people in the way “law stories prescribe many processes and institutions for resolving community conflicts, preventing centralized power, for keeping intercommunity peace, for community welfare and for environmental care” (SVEIBY & SKUTHORPE, 2006, p.133.). Story repetition reinforced the rule of law and so conflicts were dealt with through this understanding.

[617] In more complex matters they likely used consensus with the aim get everyone’s buy-in to agreements and getting their implementation support. “Consensus is an unsurpassed conflict resolution mechanism and the ultimate power-sharing process...” (SVEIBY & SKUTHORPE, 2006, p.134.).

[618] There is more; *indigenous peoples* are experts in intercultural conflict management, as they have been doing it successfully for the longest time. Alas, the views of the author represent a minority perspective; Patricia Monture-OKanee states “Alternative dispute resolution does nothing to change the root problem which is the negative perception of Aboriginal people that the law has yet to fully set aside.” (MONTURE-OKANEE, 1997, p. 48.).

[619] *Mindfulness applications* abound today in conservative corporate culture including law schools (GERSHAM, 2015.). While the concept of meditation in mediation practice

88 Norman Laing, Talk on “Indigenous Cultural Capability for Managers”, Australian Taxation Office, Parramatta, 20 November 2019, unpublished.

is still quite rare; for the intercultural third-culture facilitator meditation is an indispensable skill to practice personally, and to assist participants in the negotiation to be fully present. Various parties lay claim to the origin of contemplative mindfulness practice, yet ancient cultures incorporated forms of mindfulness into their daily lives from the earliest times.

[620] Whilst specific practices or methods may assist individuals the main point is to find a way to establish a relaxed calm state of being, and this is usually achieved through a form of breathing practice. Once in a relaxed state, it is easier to engage with others who may have differing views or who may question others' views. The concept is to exercise self-control through awareness of the natural rhythms of the body and mind.

[621] It is essential that mindful mediators stay present in all the interactions (verbal, physical, non-verbal, emotional, spiritual, psychological) of everyone in the mediation and of the emerging third culture. The intercultural mediator is aware of the need to be fully present in the flow of the mediation and all interactions between the parties and as appropriate to guide participants through difficult states in joint and private sessions. Attending to their needs is paramount.

[622] This can be achieved simply and is important for high-intensity conflict. A basic breathing exercise, perhaps accompanied by some minimal physical movement, would be a safe place to start. It can also assist to be in a natural environment and many like to add music and even scents; however, it is best to keep it very basic as scents and sounds may not appeal to some and hence become a distracting issue.

[623] Some practitioners find long-distance running allows them to enter a powerful present state (SHULTZ & CREO, 2017.), whereas others find a mindful walk to be just as helpful. Aboriginal peoples maintain a mindful state in relationship to the land, the animals and the environment and there is great variety within these cultures; but a central theme is being attentive, respectful, and responsive to the needs of all things and supporting inter-connected-ness. The practice of 'deep listening' (JORFF, 2019.) is another method of being mindful. Most cultures have common forms of meditation, and these may be incorporated into the choice of pathways and in designing the mediation approach for the specific matter.

7. IMPLICATIONS FOR PRACTICE

[624] Currently, most *standard mediation practice is the antithesis* of social transformation; it is interculturally incompetent. A new intercultural competence playbook is needed.

[625] A new playbook must tackle *what* is intercultural competence, *why* intercultural competence matters, and how to mediate conflict with intercultural competence to overcome everyday problems and disputes. *When* to use intercultural competence is discussed in the Conclusion.

[626] *What is intercultural competence may best be illustrated by recounting a true story?* There was this one time when a young Australian volunteer living in Rome was asked to drive a friend's 10-year-old son to his mountain village home for the weekend. Mid-afternoon, while preparing to leave, they discover the car headlights are missing, but consider there are enough hours of daylight to complete the journey before dark. Two hours later at dusk, they were 10 minutes from the village when the Carabinieri pulled them over. They ask for the driver's license and ask some questions. The driver, unfamiliar with Italian dialects, was unable to understand or respond to their questions. The driver and the boy were taken to the police station and an investigation began. By now the young driver was very afraid of the circumstances and concerned for the welfare of the boy, as the officers were visibly agitated and arguing about what to do. The driver began to worry they might be spending the night in the jail cell nearby. After a long wait, the 10-year-old boy spoke up in fluent local dialect. Everyone was astonished! The boy asked the officers to call his home village shopkeeper to verify. The officers conferred and decided to make the call. The shopkeeper confirmed that the boy was from the village, and they were waiting for the driver and child to arrive. To the relief of all concerned the officers then escorted them all the way home.

[627] The boy's intercultural competence and presence of mind had saved a complex case. His competence was enabled by accessing language to communicate, but the key to his action came from his full acceptance of that culture, alongside his primary Anglo-Canadian family cultural imprint. He was able to see past that imprint intuitively.

[628] *Resolving conflicts with intercultural competence and predisposition can save lives!*

[629] Dominant cultures in a locale expect others to fit into their model and their way to do things. By excluding 'out-cultures,' on purpose or not, everybody loses as communication suffers. *We must become conscious of intercultural incompetence.* Research tells us that such 'third-culture kids' are adept at interacting with diversity and leading international projects. This should be the case for intercultural mediators too.

[630] *Why intercultural competence matters* is because some people can feel locked into standard processes that restrict potential outcomes. Another true-life example follows.

[631] A mediator insisted that the powerful party in a compensation case should make unfounded accusations and propose an unacceptable offer before commencing mediation. When confronted that the notion was contrary to mediation principles, they said *it's what everyone does* to lower the amount they will have to pay out in the end.

[632] Such standard practices restrict access to justice by using negotiation powerplay to deny the potential for a greater benefit for all parties - including the less empowered. This practice is transactional negotiation, where the offending party proposes a compromise solution to pay a sum of money (admitting their error) but continues the abusive conduct unabated. This is a basis for corruption by legitimizing avenues for the privileged to override the natural rights of all citizens. They are unhappy to pay, and the other party is unhappy with the ongoing abuse.

[633] Interculturally competent mediators recognize these gaps and propose just and intelligent solutions that include all relevant third parties. If we don't confront incompetent practice our silence endorses it, and our common future suffers.

[634] The cost of mediator intercultural incompetence is significant at all levels of society.

[635] How to mediate conflict with intercultural competence requires a respect predisposition. Consider this scenario:

An administrative tribunal requested intercultural mediation to resolve a drawn-out conflict between an Asian businessman and a government agency. The issue was the businessman did all his business in cash whenever possible. The agency preferred and expected that legitimate businesses do all their business using banks. This way the public record of all business transactions was available to see.

For the businessman, it was a matter of trust. Coming from his cultural background and personal history he had learnt to never trust authorities and family members but to keep his own business counsel about where he put his money. For the agency, they did not trust cash business because they believed they were hiding things to avoid fulfilling their community obligations and paying their dues.

The judge wisely foresaw the communication problem and directed it to mediation.

[636] In this mediation through discussions with the parties, the author facilitated a positive and amicable outcome between the parties using intercultural principles and practices.

[637] These principles and practices involve applying the '7 steps of RESPECT' in achieving amicable intercultural conflict resolutions, and the power of the mediator's *intercultural predisposition*. The first two steps with each involved party precede any joint meetings.

[638] *Reveal foresight* requires going back and getting a broader context by getting an idea of the cultural background and expectations in that culture about how to conduct yourself and how to resolve conflict. *Establish focus* is based on that background and how they chose to engage with the mediation exercise based on their cultural context.

[639] The joint sessions *specify facts* and *ponder feelings* of each party – listening to the other party's different motivations, values, and important matters for them. Then spend time to *examine findings* about obstacles and options available for resolution.

[640] After discussion, they can *confirm finalization* of any agreement whereby decisions are clarified and formalized. The final step is to *track fulfillment* of that agreement.

[641] There are five main considerations for setting a *respectful* environment for intercultural mediation. These are to find the right place, with the right people, to apply the right process, using the right platform, and guided by the right predisposition of the mediator.

8. CONCLUSION

[642] This paper considers responses to the heightened need for greater intercultural competence in negotiating solutions to very challenging conflicts and problems today.

[643] These include the problematic legacy of Western Eurocentric global dominance over local and global negotiation instruments and practices, and deep historical trends involving a seismic shift to Asian dominance over a chaotic and accelerating pace of global change. Against this backdrop, we have considered the core issue of the clash of cultures with disenfranchised resilient indigenous cultures that have significant contributions to make in drawing from their deep reservoir of wisdom on how to survive and thrive through major global and social disruptions. Finally, we looked at key themes in the development of greater intercultural mediator competency in facilitating a more effective and inclusive resolution culture for the betterment of society and the future of the planet.

[644] This research has identified three key learnings about the need to enable all participants to come to the table in culturally appropriate ways that embrace their unique personal cultural traits; the need for skills in facilitating third-culture bridges; and the importance of incorporating complexity theory, *neuroscience research*, indigenous contributions and *mindfulness applications* in more effective training and practice for intercultural negotiation.

[645] However, *the most significant lesson* is becoming a fully effective intercultural mediator requires one to first confront the best and worst of one's own cultural bias (in my case, white western male) whilst willingly crossing over with appropriate immersion in at least one other culture. Much as the young Nhunggabarra men were required to do after their initiation ceremonies (SVEIBY & SKUTHORPE, 2006, pp. 68-69 and p. 100.) and in so doing, learning the language, the customs, the rules, and the respect of that culture and returning to one's own culture enriched and empowered to serve as a dynamic intercultural mediator.

[646] When to use intercultural competence? The premise of this paper is that every culture is in conflict; conflict is endemic in the process of social change itself. In many ways, it's always a good time to apply intercultural competence in all we do with a respectful approach to every situation. Our times are impacted by major ongoing economic, political, and cultural crises and upheavals on a global, regional, and local level. These events directly or indirectly affect our confidence and connection with ourselves, others, the environment, and our fragile planet.

[647] All of us have felt dislocated and impotent at times as we face these crises, and we find many of our life presuppositions being questioned and found wanting. Every day we have opportunities to develop and apply intercultural competence.

[648] Interculturally competent mediation practice is adaptable to social transformation. How do you plan to come out of these current crises? What predisposition will you choose to apply? What steps will you use to mediate and shape the social transformation that is underway?

[649] I invite your active collaboration in defining and applying the new Intercultural Competence Playbook for mediation. Together, we need to take it to the next level.

[650] In today's world, we still struggle with deep-rooted biases that harm our planet. We need to work together to create a playbook that respects the interconnectedness of all life forms. This is not just about doing good; it's about our survival and making a timely tangible turnaround.

[651] To start with, we must develop and renew our future focus to include everyone. Educators, academics, mediation trainers, accreditors, and practitioners at all levels must team up to define the practical principles, techniques, and practices necessary to navigate cultural and intercultural complexities with gracious sensitivity and down-to-earth effectiveness.

[652] We've known about the magnitude of this challenge for some time, but what's been lacking is the will of individuals (at all levels) to change their thinking and action. We can't rely solely on governments or organisations. We each have a responsibility to future generations and the power (however uncomfortable) to make a difference through our daily choices.

[653] The task is to design and implement solutions without compromising our common future. The key issue is our relentless human pursuit of growth, which we need to fathom better. It's time to face this intercultural test and shape a future that embraces all of life and fosters peace.

[654] This is a call to action for all stakeholders to unite, collaborate and commit to transforming our viewpoints, priorities, and actions. Let's create a new era of intercultural mediation that contributes to a sustainable and harmonious future for everyone involved.

[655] Important stakeholders in developing this new playbook for intercultural mediation include educators (colleges and universities), *academics and thought leaders*, professional mediation training and development entities, national accreditation bodies, and leading practitioners. Collaboration between stakeholders, together with client group representatives, must define the principles, practices, and techniques necessary to navigate intercultural complexity sensitively and effectively to produce wise, wonderful, and workable solutions.

[656] How can you contribute to the development of the Intercultural Competence Playbook? Here are some immediate actions stakeholders can take in the collaborative development of the Intercultural Competence Playbook for mediating conflicts and social transformation.

[657] Educators (universities and institutes) can add intercultural mediation modules into existing mediation programs; collaborate with other institutions for intercultural immersion programs; and forge partnerships with mediation organisations. Also providing internships and training opportunities to enable students to apply intercultural principles in real-world scenarios.

[658] Academics and thought *leaders* can conduct research exploring the impact of intercultural competence on resolution outcomes; organise symposiums, webinars, or conferences to facilitate intercultural dialogue and knowledge exchange; and publish articles, and papers. This contributes to a more practical understanding of intercultural principles and practices.

[659] *Professional mediation training entities* can update training curricula to include intercultural competence alongside deep engagement with diverse cultures; offer specialised workshops focusing on intercultural techniques and strategies; and promote mentorship by experienced intercultural mediators to further extend this vital competency into mediation practice.

[660] *Accreditation bodies* can continue to review standards to include intercultural competencies as essential assessable elements for accreditation (beyond just specific culture sensitivity); collaborate with professional associations to develop best practice guidelines in intercultural mediation; and promote the value of intercultural competence in public statements, awareness campaigns, or professional conferences to encourage mediators to prioritise its development.

[661] *Leading industry practitioners* can share success stories in applying intercultural principles in articles, blog posts, or social media; mentor aspiring mediators by offering guidance and support to develop more intercultural competence; and lobby for updated mediation practice guides and codes of ethics with successful intercultural conflict resolution approaches.

[662] All professionals can acquire intercultural skills, mentorship, or supervision; join immersion events to extend intercultural awareness and communications skills; foster inclusive work environments; adapt coaching methods; cultivate intelligence about cultural differences; and engage with a positive intercultural predisposition, and approach.

[663] Everyone can actively facilitate social transformation by making peace with the other cultures in your land as a vital forerunner to effective intercultural mediation of disputes.

[664] To give peace a chance we must unlock and activate intercultural competence in mediation!

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