

CULTURAL ISSUES IN MEDIATION: A PRACTICAL GUIDE TO INDIVIDUALIST AND COLLECTIVIST PARADIGMS

by

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I. Cultural Differences between Individualists and Collectivists.

A. Introduction.

Every mediation has a unique character influenced by the cultural perspectives of its participants. Differences in perspectives may impede an agreement if the participants' views diverge on such fundamental issues as individual autonomy and group interdependence. When issues based on individual rights or strong group identification arise in a mediation, a mediator's awareness of individualist and collectivist paradigms can help surmount such cultural barriers to an agreement. Familiarity with the paradigms may be helpful because mediation models in the United States are based upon individualist cultural assumptions that group-oriented, or collectivist, participants in a mediation may not share.

B. Attributes of individualists and collectivists.

1. Individualism and individualists.

Individualism is a social pattern that places the highest value on the interests of the individual. Individualists view themselves as independent and only loosely connected to the groups of which they are a part. When establishing the level of their commitment to others, individualists balance the advantages and disadvantages of cultivating and maintaining a relationship; the level of commitment generally corresponds to the level of perceived benefit. Personal preferences, needs, rights and goals are individualists' primary concerns, and they tend to place a high value on personal freedom and achievement. Self-reliance and competitiveness are common individualist traits. When personal goals conflict with group goals, individualists tend to give priority to their personal goals.⁽¹⁾

2. Collectivism and collectivists.

Collectivism is a social pattern that places the highest value on the interests of the group. Collectivists view themselves as interdependent and closely linked to one or more

groups. They often are willing to maintain a commitment to a group even when their obligations to the group are personally disadvantageous. Norms, obligations and duties to groups are collectivists' primary concerns, and they tend to place a high value on group harmony and solidarity. Respectfulness and cooperation are common collectivist traits. When personal goals conflict with group norms, collectivists tend to conform to group norms.⁽²⁾

C. Factors affecting individualist and collectivist behavior.

1. *Socialization.* While all people manifest individualist and collectivist characteristics in varying degrees, the extent to which they exhibit one set of traits more than another usually depends upon their socialization. All children begin their lives in a collectivist context, dependent on their parents and any other adults who rear them. In individualist societies, however, children often are encouraged to identify personal preferences and to pursue personal goals and achievements. As a consequence, they begin to establish separate identities from their parents and other caregivers. With the passage of time, such children's pursuit of personal ends can create conflicts between their goals and the norms of their caregivers. In an individualist society, the pursuit of personal goals that conflict with family norms may be acceptable, even expected. Children's successful cultivation of separate identities leads to a degree of detachment from their families by the time they are adults. Detachment from families often establishes a similar pattern of detachment from other ingroups, such as employers, religious groups and civic organizations.⁽³⁾ In contrast, when children of collectivist societies exhibit individualist tendencies, those tendencies frequently are discouraged. Compliance with group expectations and norms is praised. As a consequence, many children of collectivist societies learn to conform and to identify closely with their ingroups. As adults, they have strongly interdependent relationships with their families and other ingroups.⁽⁴⁾

2. *Demographic factors.* Generally speaking, adults tend to become more collectivist as they age, the affluent are more individualist than the poor, and women have more collectivist tendencies than do men. Those whose occupations emphasize team work generally are more collectivist in their working environments than those whose occupations emphasize individual initiative and accomplishment. Education, travel and living abroad tend to expose people to diverse ideas, thereby increasing their individualism.⁽⁵⁾

3. *Context.* Whether people behave as individualists or collectivists also depends on context. For example, collectivists emphasize harmony and cooperation with members of their ingroups. Because interdependence is not a factor when dealing with members of outgroups, however, collectivists may adopt competitive attitudes toward them.⁽⁶⁾ Similarly, in individualist societies, adults may exhibit competitive traits in business and employment relationships but extend deference and respect to their parents.⁽⁷⁾

D. Geographic distribution of individualists and collectivists.

Every country contains both individualists and collectivists, but most countries have a preponderance of one cultural type or the other. Dutch psychologist Geert Hofstede's survey of cultural differences in over fifty countries found that individualists predominate in the United States, Canada, Australia, New Zealand, Israel, South Africa and most of the countries of Northern and Western Europe.⁽⁸⁾ Collectivists are predominant in most of the rest of the world.⁽⁹⁾ Because examples of both types may be found in every country, however, one must remember that generalizations about the individualist or collectivist nature of a country are based on a statistical tendency that does not apply to every person within its physical boundaries.⁽¹⁰⁾

II. Applications of Individualist and Collectivist Paradigms in the Mediation Context.

A. Individualist nature of United States mediation models.

The Hofstede study found the United States to be the most individualist country surveyed.⁽¹¹⁾ It is not surprising, therefore, that mediation models in the United States are based on individualist cultural assumptions about conflict and how it should be resolved.⁽¹²⁾ Mediators in the United States should become familiar with those assumptions and recognize the ways in which collectivists' assumptions may differ. In some instances, mediators may find it necessary to adjust their models in order to accommodate collectivists' discomfort with certain of the models' individualist aspects.

B. Participation of disputants in the mediation process.

1. *Contrasting views of the nature of conflict.* Individualists tend to view conflict as a natural part of human interaction. For example, one of the leading United States books on conflict resolution systems design holds that "(d)isputes are inevitable when people with different interests deal with each other regularly."⁽¹³⁾ In *Getting to Yes*, the classic text on principled negotiation, the authors describe conflict as a "growth industry."⁽¹⁴⁾ The Texas author of an authoritative mediation textbook notes that while conflict often has a negative connotation, in some cases it can be positive, "an exciting and inspiring experience"⁽¹⁵⁾, and it "is at the root of personal and social change."⁽¹⁶⁾ Collectivists, on the other hand, tend to view conflict as an aberration, at least where ingroup relationships are concerned. For example, a survey of Korean-Americans found that the respondents viewed conflict as a "shameful inability to maintain harmonious relationships with others."⁽¹⁷⁾ The Japanese, for their part, "abhor direct personal confrontation and, to avoid it, almost always operate by consensus."⁽¹⁸⁾ Among collectivists, avoidance is a common, often preferred, approach to conflict.⁽¹⁹⁾

2. *Effect of perception of conflict on participation in mediation.* Under most circumstances in the United States, attendance at a mediation session is at least a tacit admission that a dispute exists. Given their view of conflict as a natural phenomenon, individualists generally are able to acknowledge conflict and participate in a mediation without experiencing shame.⁽²⁰⁾ For collectivists, however, even a tacit acknowledgement of conflict could cause a loss of face,⁽²¹⁾ and participation in a typical mediation in the

United States might be an unwelcome experience. Collectivists might refuse to participate in voluntary mediation, and if mandatory, might resist orders to mediate. If mediation is unavoidable, they might exhibit signs of anxiety and confusion during the process. Collectivists' resistance to mediation, as it is practiced in the United States, is likely to be most pronounced when the other disputants are current or former ingroup members or persons with whom the collectivists wish to maintain or re-establish relationships. Resistance to mediation is likely to be less intense when the other disputants are outgroup members or former ingroup members with whom the collectivists no longer wish to maintain relationships. If mediators in the United States detect resistance to participation in mediation from persons exhibiting collectivist behavioral patterns, the mediators can offer modifications in their mediation formats. Some tactics to encourage collectivists' participation in the mediation process are described below.

C. Preferences and expectations about mediators.

1. *Types of mediators preferred.* Individualists tend to prefer professional mediators who have specialized training in mediation procedures. In an individualist context, the mediator usually is expected to be impartial, with no undisclosed relationship to any disputant.⁽²²⁾ Among collectivists, there tends to be less of a concern about professional credentials and impartiality, but more of a concern that the mediator be an insider, someone who knows the parties or at least the context of their dispute.⁽²³⁾ In a mediation in the United States involving a collectivist, the mediator rarely will know the disputants or have a thorough understanding of the collectivist's insider and outsider relationships. If it appears to the mediator that specialized knowledge of a disputant's social context would be useful, the mediator should consider referring the dispute to another mediator who has the specialized knowledge or asking that mediator to serve as a co-mediator.

2. *Expectations of mediators.* In the United States, there seems to be less consensus today than in the past about mediators' proper roles. Traditional descriptions depict mediators as facilitators of communication, negotiation and decision making.⁽²⁴⁾ Some mediators argue, however, that their roles include the evaluation of the merits of disputants' claims and the proposal of resolutions.⁽²⁵⁾ Among collectivists, there is a tendency to prefer evaluative mediators who are familiar with the context of the parties' dispute and who can suggest resolutions that will restore harmony both to the disputants and their relevant ingroups.⁽²⁶⁾ In order to avoid conflicting expectations among mediators and disputants, mediators should disclose their perceptions of proper mediator roles and attempt to ensure the disputants' understanding of and agreement to those roles. If agreement on such basic matters cannot be secured, it may be best to allow the disputants to find another mediator or choose another dispute resolution process.

D. Participants in mediations.

Individualists tend to view the parties to a dispute as those who are directly involved in it. As a result, they may consider a relatively small number of people to be the appropriate participants in a mediation session.⁽²⁷⁾ Collectivists, on the other hand, may view members of their ingroup who are not directly involved as parties to a dispute. As a

consequence, collectivists may believe that a relatively large number of people, or at least a respected member of an ingroup, should participate in a mediation session.⁽²⁸⁾

Mediators in the United States, who often have an individualist perspective of the relevant parties to a dispute, should avoid the automatic exclusion from their mediation sessions of all persons who are not directly involved. Rather, they should ask the disputants to identify those who are likely to attend the sessions and the reasons for each person's attendance. Careful inquiry could indicate that some participants, though not directly involved in the dispute, are to be important advisors and participants in negotiation and decision making.

E. Formality and informality in mediation.

While a typical mediation in the United States takes place indoors and often in a formal office setting, mediators tend to deal informally with the disputants, often calling them by their first names.⁽²⁹⁾ In collectivist societies, on the other hand, outdoor and informal indoor mediation settings are common, but the use of first names among strangers or persons of unequal status is not.⁽³⁰⁾ Mediation, as practiced in the United States, certainly is less formal than litigation, but people from collectivist societies may be intimidated by formal office settings. Collectivists also may insist upon using titles when addressing mediators and other mediation participants, while expecting similar manifestations of respect in return. Possible accommodations to collectivists could include informal office settings, non-office mediation venues and the use of last names and appropriate titles for everyone throughout the mediation session.

F. Face-to-face dealings vs. shuttle diplomacy.

Most mediations in the United States begin with the mediator and the disputants in the same room, often seated at the same table. After the mediator explains the ground rules, the disputants have the opportunity to explain the basis of the dispute to each other from their personal perspectives. Direct communication among the disputants generally is considered appropriate, as it provides each disputant with an opportunity to be heard and aids the mediator in the tasks of interest identification and issue clarification. Sometimes, especially at the community mediation level, disputants resolve their issues without a single private meeting between the mediator and one of the parties.⁽³¹⁾ On the other hand, collectivists who prefer conflict avoidance strategies may find the direct approach of an initial joint session uncomfortable, or even a loss of face. In collectivist societies, it is more common for a mediation to commence with private meetings between the mediator and one party. The mediator acts as a shuttle diplomat carrying information and settlement ideas from one party to the other. Once the general outline of an agreement is reached, the disputants may agree to meet in order to negotiate the finer details.⁽³²⁾ In the United States, when a disputant prone to collectivist behavior is involved in a mediation, the mediator may want to adopt a shuttle-diplomat approach to meetings between the parties.

G. Differences in negotiation patterns.

1. *Individualist patterns.* Mediation models in the United States are strongly influenced by individualist negotiation patterns, which tend to be direct, linear and task-oriented. In a typical mediation, an initial fact-gathering stage usually is followed by interest identification and issue clarification. Next, the parties generate options. Individualists tend to be autonomous decision makers. As such, they are more concerned with how an option affects them than with how it affects others. In a successful mediation, issues are resolved, usually one at a time, and a settlement is documented in a written agreement. ⁽³³⁾

2. *Collectivist patterns.* Among collectivists, negotiation styles tend to be indirect, spiral and relationship-oriented. At the outset of a negotiation, considerable time may be spent establishing a relationship of trust upon which further negotiation can be based. Interests sometimes are expressed through the use of metaphors and body language and can be missed by someone unfamiliar with the relevant cultural context. Issues often are seen as interrelated, thus requiring a holistic approach to resolution. A holistic approach may lead to a spiral negotiation technique whereby issues are resolved hypothetically or tentatively and later revisited to evaluate the proposed resolutions' compatibility with a comprehensive agreement. Resolution options are considered not only on the basis of their effects on the disputants, but also in view of the likely effects on ingroups, who may need to be consulted before a final agreement is reached. Collectivists tend to be more interested in the restoration of overall harmony than in written agreements, especially where ingroup relationships are concerned. ⁽³⁴⁾

3. *Conflicting negotiation patterns in mediation.* Individualist and collectivist participants in mediation may misunderstand each others' intentions and become frustrated with each others' negotiation styles. For example, individualists can misconstrue collectivists' preference for establishing trust before proceeding with negotiations as a delay tactic, while collectivists may perceive individualists' preference for "getting down to business" as rude and imprudent. Collectivists may be offended by individualists' frank and direct statement of demands during negotiations, while individualists may miss subtle communication signals and become frustrated with collectivists' inability to "just say yes or no." Individualists may accuse collectivists of "bad faith" when collectivists attempt to "renegotiate" issues the individualists consider resolved but the collectivists view as "under consideration" until the parties reach a comprehensive agreement. Individualists who quickly evaluate options and decide upon a course of action may not understand collectivists' more deliberate, consensus-based approach to decision making. If individualists attempt to rush a decision, collectivists may feel pressured to make an agreement without consulting appropriate ingroup members. In each of these events, an effective mediator acts as a cultural bridge between the participants by explaining to them the possible bases of their misunderstandings and encouraging them to be patient with, and nonjudgmental of, each other.

III. Conclusion.

Individualists and collectivists hold dramatically different views of themselves and their proper relationships to others. As a consequence, their approaches to conflict resolution tend to diverge in equally dramatic ways. Mediation models in the United States mirror

the conflict resolution preferences of individualists. When collectivists attempt to participate in such mediation models, opportunities for misunderstanding and confusion abound. Effective mediators are aware of the cultural assumptions upon which their mediation models are based and endeavor to adjust the models in order to prevent contrasting individualist and collectivist paradigms from becoming obstacles to agreement.

ENDNOTES

▲1. See Harry C. Triandis, *Individualism and Collectivism* 2, 12, 28, 34-35, 43-44 (1995); see also Geert Hofstede, *Culture and Organizations: Software of the Mind* 50-51 (rev. ed. 1997). For a brief discussion of individualism and individualists in the United States, see Edward C. Stewart & Milton J. Bennett, *American Cultural Patterns: A Cross-Cultural Perspective* 94-96, 110, 133-38, 142-47 (rev. ed. 1991).

▲2. See Triandis, *supra* note 1, at 2, 12, 28, 34-35, 43-44; see also, Hofstede, *supra* note 1, at 50-51; Brishkai Lund et al., *Conflict and Culture: Report of the Multiculturalism and Dispute Resolution Project* 4 (1994). For a discussion of collectivism and collectivists in Japan, see Robert C. Christopher, *The Japanese Mind* 38-58 (1st Tuttle Co., Inc. ed. 1987).

▲3. See Triandis, *supra* note 1, at 9, 37, 63-66. Ingroups also can be based upon friendship, political party, social class, education, race, tribe, caste and language. *Id.* at 9. "Ingroups are usually characterized by similarities among the members, and individuals have a sense of 'common fate' with members of the ingroup." *Id.* See also Stewart & Bennett, *supra* note 1, at 133.

▲4. See Triandis, *supra* note 1, at 9, 37, 63-66; see, e.g., Christopher, *supra* note 2, at 61-76.

▲5. See Triandis, *supra* note 1, at 62-63, 66, 82-83, 86.

▲6. *Id.* at 9-10, 74-76, 126-28, 176-78. Outgroups are "groups with which one has something to divide, perhaps unequally, or are harmful in some way, groups that disagree on valued attributes, or groups with which one is in conflict." *Id.* at 9.

▲7. *Id.* at 27.

▲8. See Hofstede, *supra* note 1, at 53. Greece and Portugal were the dominantly collectivist exceptions in Western Europe. *Id.*

▲9. *Id.* The countries surveyed and found to be predominantly collectivist, in varying degrees, were Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Guatemala, Hong Kong, Indonesia, India, Iran, Iraq, Jamaica, Japan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mexico, Nigeria, Pakistan, Panama, Peru, Philippines, Portugal, Saudi Arabia, Sierra Leone, Singapore, South Korea, Taiwan,

Tanzania, Thailand, Turkey, United Arab Emirates, Uruguay, Venezuela, Yugoslavia and Zambia. *Id.*

▲ 10. See Triandis, *supra* note 1, at 5. The Amish in the United States and kibbutzim in Israel are examples of collectivist groups found in countries whose inhabitants are mostly individualists. In China, a dominantly collectivist country, there are people who advocate individualist ideals, such as free speech, at great personal risk. *Id.* at 87-89; see also George Wehrfritz, *Wei Jingsheng, Free at Last*, Newsweek, November 24, 1997, at 42.

▲ 11. Hofstede, *supra* note 1, at 53. On an individualism scale of zero to one hundred, the United States received the highest score, 91. *Id.*

▲ 12. See generally, John P. Lederach, *The Mediator's Cultural Assumptions*, Conciliation Q. (Mennonite Conciliation Svc., Akron, Pa.) Summer 1986 at 2-5, reprinted in *Mediation and Facilitation Training Manual: Foundations and Skills for Constructive Conflict Transformation* 80 (Jim Stutzman & Carolyn Schrock-Shenk eds., 3d ed. 1995); see also David W. Augsburger, *Conflict Mediation Across Cultures: Pathways and Patterns* 28-35 (1992).

▲ 13. William L. Ury et al., *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* xii (1988).

▲ 14. Roger Fisher, et al., *Getting to Yes: Negotiating Agreement Without Giving In* xvii (2d ed. 1991).

▲ 15. Kimberlee K. Kovach, *Mediation: Principles and Practice* 2-3 (1994).

▲ 16. *Id.* See also Diane LeResche, *Comparison of the American Mediation Process with a Korean-American Harmony Restoration Process*, 9 *Mediation Q.* 323, 326 (1992).

▲ 17. Diane LeResche, *supra* note 16, at 326.

▲ 18. Christopher, *supra* note 2, at 53.

▲ 19. See Triandis, *supra* note 1, at 77, 128, 160-61; Augsburger, *supra* note 12, at 94-96; LeResche, *supra* note 16, at 326.

▲ 20. See, e.g., Augsburger, *supra* note 12, at 200-05; Stewart & Bennett, *supra* note 1, at 96-99; Lederach, *supra* note 12, at 2-5.

▲ 21. See, e.g., Augsburger, *supra* note 12, at 200-05; Christopher, *supra* note 2, at 53-55; Lederach, *supra* note 12, at 2-5.

▲ 22. See, e.g., State B. of Tex. ADR Sect., *Ethical Guidelines for Mediators* No. 4 (1994); Soc'y of Prof. in Disp. Resol., *Ethical Standards of Prof. Resp.* No. 4 (1986); Augsburger, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲23. Lund et al., *supra* note 2, at 6-7; Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5. *See, e.g.*, Jane Fishburne Collier, *Law and Social Change in Zinacantan* 169-265 (1973).

▲24. *See, e.g.*, Kovach, *supra* note 15, at 28-29; Barbara Ashley Phillips, *Finding Common Ground: A Field Guide to Mediation* 119 (1994); Melinda Smith & Scott Bradley, *What is Mediation: A Perspective from Community Mediation*, NIDR News, Apr.-June 1997, at 8.

▲25. *See, e.g.*, Charles Guittard, *Muscle Mediation*, *Texas Lawyer*, March 4, 1996 (Mediation Magazine), at 24, 27-30. For a description of "advisory mediation," see Phillips, *supra* note 24, at 119.

▲26. Lund et al., *supra* note 23, at 4-7; Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲27. *See, e.g.*, Stewart & Bennett, *supra* note 1, at 62-69; Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲28. *See, e.g.*, Augsburg, *supra* note 12, at 200-05; Stewart & Bennett, *supra* note 1, at 62-69; Christopher, *supra* note 2, at 53-55; Lederach, *supra* note 12, at 2-5.

▲29. *See* Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5. *See also*, Kovach, *supra* note 15, at 23-27.

▲30. *See* Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲31. *See, e.g.*, Kovach, *supra* note 15, at 23-27; Phillips, *supra* note 24, at 145-154; Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲32. Augsburg, *supra* note 12, at 94-102, 187-228; Lederach, *supra* note 12, at 2-5; *see, e.g.*, Collier, *supra* note 23, at 169-265.

▲33. *See, e.g.*, Kovach, *supra* note 15, at 23-27; Phillips, *supra* note 24, at 145-154; Augsburg, *supra* note 12, at 200-05; Lederach, *supra* note 12, at 2-5.

▲34. Augsburg, *supra* note 12, at 94-102, 187-228; Lederach, *supra* note 12, at 2-5; *see, e.g.*, Collier, *supra* note 23, at 169-265.