

Mediating commitments¹

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Resumen

Este artículo explora las implicaciones de la teoría intercultural –la dimensión de la distancia al poder– con el fin de estudiar la naturaleza de los compromisos en el proceso de mediación. El modelo occidental presupone que las partes pueden identificar intereses básicos y negociar en torno a ellos determinando prioridades, compensaciones, equilibrios. En el centro de nuestra reflexión sobre los compromisos se encuentran nuestras ideas sobre condición de agente, autonomía y responsabilidad. Sin embargo, una implicación básica de los trabajos empíricos sobre la distancia al poder sugiere que las expectativas de deferencia pueden hacer que algunos participantes eviten la responsabilidad directa de la toma de decisiones y que, en lugar de trabajar en pro de los compromisos, actúen en función de los compromisos o las obligaciones que ya tienen. Así, los miembros de culturas con corta distancia al poder están más capacitados y dispuestos a comprometerse; los miembros de culturas con gran distancia al poder están más limitados por el hecho de tener obligaciones. Mientras que el modelo occidental de negociación y mediación aborda los medios para llegar a compromisos (la legitimidad parte de las decisiones que toman los agentes autónomos), las normas que determinan la conducta en las culturas con gran distancia al poder son las que reflejan el hecho de tener compromisos y obligaciones (la legitimidad se deriva de las relaciones precedentes).

Abstract

This paper explores the implications of one aspect of intercultural theory –the dimension of power distance– in order to comment on the nature of commitments in the mediation process. The familiar model of Western mediation assumes that parties can identify core interests and negotiate around those, through prioritising, trading and balancing. At the heart of our thinking about commitments are our ideas about agency, autonomy, and accountability. However, a core implication of empirical work on power distance suggests that expectations of deference may lead some participants to avoid direct decision-making responsibility and, rather than work towards commitments, to act on the commitments or obligations they already have. Thus, low-power distance culture members are more able and willing to make commitments; high-power distance culture members are more constrained by having commitments. Whereas the Western model of negotiation and mediation addresses the means to reach commitments (the legitimacy of which stems from the choices the autonomous agents make), the norms that shape conduct in high-PD cultures are those that reflect having commitments and obligations (the legitimacy of which derives from antecedent relationships).



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INTRODUCTION

Typically, mediation is represented as a problem-solving process in which, with the assistance of the third party, the disputants work towards a constructive resolution of their differences and to an agreed outcome.³ Ideally, if there is such an agreed outcome, it takes the form of various reciprocal commitments.

Apart from the parties' commitment to engage in mediation (except in those case where mediation is mandatory), and the mediator's commitment to the principles and practice of mediation, there are three salient forms of commitments at play in dispute resolution, only the first two of which typically receive attention. First, there is the parties' commitment—their attachment—to their perceptions and preferred outcomes. This, in the more familiar terminology of negotiation and mediation practice, is seen as the problem of the parties taking positions rather than reflecting on and exploring their interests.⁴ A core objective of mediation is to assist the parties in letting go of those positions or early commitments in order to generate a more expansive view of possible outcomes.

The second use of the term will also be familiar: ideally, parties in disputes (or transactions) will work towards an outcome that reflects and embodies their commitments. Failing that, parties will turn to whatever alternatives they might see as preferable to the

outcome that is on the table—alternatives ranging from simply walking away from the transaction or the relationship, through to seeking more formal institutional assistance, or litigation, or a return to violent conflict.

The point here is that, whatever the substance of the commitments, and whatever the viability of the alternatives, the parties are seen as autonomous and (by and large) rational agents⁵ able to form and act upon such commitments. Commitments are those firm outcomes—better than mere acquiescence, better also than just an agreement—reflecting the parties' reasoned preferences and their capacity to bind themselves or others to accountability and specific actions.

The third form of commitments is, however, typically less visible, certainly give less attention in mediation practice and theory. Rather than seeing commitments as a variety of intransigence (thus to be overcome) or goals (to be arrived at by rational agents), commitments need also to be seen as the obligations that disputants or negotiators already have by virtue of their status or role.

This paper will explore the relationship between the second and third of these commitments, drawing on intercultural theory in order to better understand that we do not necessarily share, nor do we all readily aspire to, the same understanding of commitments. At the heart of our thinking about commitments are our ideas about agency, autonomy, and accountability.

1 This paper is a revised and abbreviated version of a chapter to appear in Teh Hwee Hwee and Joel Lee (eds), *An Asian Perspective on Mediation*, (Singapore Academy of Law, 2009)

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3 This paper assumes, and will not revisit, the extensive discussions on the varieties of mediation, whether narrative, transformative, elicitive, evaluative, facilitative, and so on.

4 See, as the originating statement of this notion, R Fisher, W Ury & B Patton, *Getting to Yes: Negotiating an Agreement without Giving In*, (2nd ed, Century Business, 1991).

5 For a pertinent comment on the folly of assuming that all negotiators are rational actors, and the reality that many are 'committed', in the sense of a devotion to a cause or faith or 'higher calling', see Scott Atran, "Devoted Actor versus Rational Actor Models for Understanding World Conflict," http://www.edge.org/3rd_culture/atran06/atran06_index.html

That is, we operate, first, on assumptions about the capacity and willingness of disputants or negotiators to arrive at rationally chosen outcomes; and second, expectations that a process of negotiation or mediation that fosters participation and the exploration of interests is one that matches the cultural or contextual capacity of individuals to decide in this manner.

CULTURE AND COMMITMENTS

It is widely assumed that negotiators can and will direct their attention to their “interests”. However, as Kevin Avruch suggests, we do not all share the same assumptions about tradable utilities and “interests” which guide Western models of negotiation:⁶

Of course, the nature of utilities is not a problem at all in neoclassical economics, since if one defines a utility as anything desirable or valued, then one simply needs to identify what, in a given culture, is desired or valuable, and then look around to discover individuals striving to maximize it left and right. The adequacy of this conception of utility for understanding other cultures has long been questioned, but the questions become harder if one imagines trying to “transact” (say, negotiate) across different “utility universes”.

That we are taken to have, and can prioritise, our interests reflects a set of cultural norms about autonomy, agency and choice that do not necessarily hold for all contexts. It is assumed that we share the same cognitive tools and processes for reasoning about our preferences and outcomes. However, in drawing on the work for Richard Nisbett,⁷ comparative psychology indicates that we do not share common understandings of the nature and role of reasoning. While we (whatever the cultural identity of that “we” might be) like to imagine that others can be persuaded by our mode of reasoning, and while we may aspire to

universal or universalisable norms of conduct and fairness, the empirical evidence suggests that we do not necessarily share cognitive worlds across cultures.

These differences in perception and reason will be explored in one particular respect here: one assumption of “Western” dispute resolution is that, largely independently of issues of power differentials, parties will be able to acknowledge differences and to reason and negotiate their way towards an outcome and shared commitments. However, a core implication of empirical work on power distance suggests that expectations of deference may lead some participants to avoid direct decision-making responsibility and, rather than work towards commitments, to act on the commitments or obligations they already have. Thus, as will be later suggested, low-power distance culture members are more able and willing to make commitments; high-power distance culture members are more constrained by having commitments.⁸

The canon of Western negotiation assumes that parties can identify core interests and negotiate around those, through prioritising, trading and balancing. If there are cultural differences in the perception, definition and management of disputes, it follows that not all participants will see the issues at stake in the same interest-oriented terms: they will also see disputes as values-based⁹ and as dependent upon hierarchical relationships. In order to expand on the distinction between *forming* and *having* commitments, one dimension of cultural difference will be briefly explored: the dimension of power distance and its impact on decision-making, participation, and perceptions of procedural justice.

POWER DISTANCE - DEFINITIONS AND CONCEPTS

“Power distance” is one of four dimensions of cultural difference identified by Geert Hofstede in a wide-ranging assessment of values scores returned by IBM employees.¹⁰ This dimension is at first sight a

6 Kevin Avruch, “Toward an expanded ‘canon’ of negotiation theory: Identity, ideological, and values-based conflict and the need for a new heuristic,” *Marquette Law Review*, 89: 567, 571 [2006].

7 Richard E Nisbett, *The Geography of Thought: How Asians and Westerners Think Differently... and Why*, (New York, Free Press, 2003).

8 At the risk of seeming too simplistic, we might suggest that those who acknowledge *difference* are, with obvious variations in skills, able to make commitments; and those who acknowledge deference are more likely to act on commitments they already have.

9 This is a stronger position than merely recognising that negotiation may involve values, and that we need to address values in dispute resolution - on which there is a growing body of literature. The point here is that values go to the very heart of the matter: they are, in the final analysis, what the dispute is about, at least for one of the parties.

10 See generally http://www.geert-hofstede.com/geert_hofstede_resources.shtml

relatively straightforward measure of difference, especially as it might affect decision-making and perceptions of the roles of managers and subordinates:¹¹

Power distance (PD) is the extent to which the less powerful individuals from institutions expect and accept that power is distributed unequally.

This analysis embodies both an empirical measure—the variations in power distance—and, more importantly, a perceptual dimension: the expectation and acceptance, especially by lower status individuals, of that power differential. The impact of the differentials and their legitimation can readily be carried over into the decision-making aspects of dispute resolution and the perceived roles of intermediaries such as mediators. It will be seen that patterns of decision-making in mediation will reflect this dimension of difference and the corresponding perceptions of relationships, authority and procedural justice.¹²

“Power distance”, as a dimension of cultural difference, has two main elements: first, the empirical, descriptive fact of differentials in power (whether political, hierarchical, economic or other); and second, the perceptual, attitudinal acceptance of that distribution of power.

The second aspect of power distance is of more immediate importance in that the acceptance of differentials both affects conduct and commitments, and can legitimate unequal relationships and outcomes. This is potentially problematic simply because the norms of Western mediation rest on a number of assumptions including:

- full *participation* in problem analysis and resolution;
- the *agency* of participants—that is, their capacity and willingness to engage in decision-making;
- the relative *informality* of the process (which, as we will see, is likely to be difficult in high power distance cultures);
- the relatively *low substantive authority* of the intermediary; and
- the emphasis on *interest-based* bargaining, which assumes not only that the parties are attending

to negotiable interests rather than values but also that the interests are subject to the bargaining choices and mandates of the parties.

Hofstede’s original research has produced a model of cultural differences that specifically relate to decision-making in the world of work.¹³ It turns, at least initially, on the relationships between “subordinates” and “bosses”, and on the cross-cultural variations in expectations of hierarchy and authority. The analysis goes further to recognise differences in *status* that are accorded as a result of the possession or lack of authority; thus power distance becomes a shorthand way of referring to a complex of relationships involving status, respect, wealth, caste, and access to privilege. Thus, a dimension of difference that is initially and empirically about workplace relationships is also a proxy for the reality and perceived legitimacy of hierarchical relationships in general.

In terms of disputing or transacting parties’ perception of their freedom to seek and make commitments, there are several observations we can draw from this model: First, there will be noticeable differences in the ways in which people will conduct themselves when the relationships are seen to be hierarchical, marked by a tendency to submissiveness. Second, hierarchical relationships have an impact on preferred modes of decision-making; and the more autonomous, participative modes of engagement are less likely to be preferred. Extrapolate from the workplace setting to negotiations and mediation in general, and the implications of power distance, as a form of internalisation of hierarchy, can be seen. It is likely that what the low-power distance culture negotiator would see as “indecisiveness” or “evasiveness”—that is, a “reluctance to commit”—on the part of a high-PD individual is in fact deference to authority and an avoidance of pre-empting the decision-making role of superiors. Decision-making will reflect the perceived or understood structure of authority.

It is to be expected, therefore, that the conduct of high-PD culture parties to a negotiation will reflect their perception of legitimate differences in authority and power, and will be expressed in patterns of greater courtesy and deference—both to members of their

11 G. Hofstede, *Cultures and Organizations: Software of the Mind*, (London; McGraw-Hill), 2001; p.98.

12 G. Hofstede *Cultures and organizations: software of the mind*. London: Harper Collins Business, 1994); pp 27-28.

13 “Hofstede’s major contribution was to construct a model linking country, institutional, and individual value systems, *particularly as they relate to the role of work*.” S. Bochner, & B. Hesketh, “Power distance, individualism/collectivism, and job-related attitudes in a culturally diverse work group,” *Journal of Cross-Cultural Psychology*, 25: 233-257, 240 (1994), [emphasis added].

own team and to those other parties perceived to deserve such respect and deference. While one might hope that *all* negotiations and mediations might be marked by a degree of courtesy, there will be differences between what one can expect, on the one hand, as a matter of civility and agreed norms of conduct, and deeply imbued patterns of respect and deference on the other.

To go back to basics on this dimension of difference, the key is that, whatever the actual structures of power might be, people from high-PD cultures believe in the legitimacy of power differentials and accept that power and hierarchy are facts of life.

Power distance is not only a tangible reality; it is also a belief system—and perceptions and belief systems shape conduct. Again, whereas the Western—typically low-PD—canon of negotiation and mediation addresses the means to *reach* commitments (the legitimacy of which stems from the choices the autonomous agents make), the norms that shape conduct in high-PD cultures are those that reflect *having* commitments and obligations (the legitimacy of which derives from antecedent relationships).

IMPLICATIONS

Three linked implications can be taken from this comment on the power distance dimension, two of which have already been touched on. First, this dimension of difference turns on *relationships* in negotiation and mediation. This is a self-evident aspect of all such transactions and a wealth of literature addresses the means of relationship building and of avoiding pitfalls. Intercultural studies add to this knowledge through not only emphasising the diversity in the structure of social relationships, but also in pointing to the reality of asymmetrical relationships and to the norms which sustain and legitimate that asymmetry. Inequality of relationships and decision-making authority in negotiation counterparts is not likely to be mitigated merely through the adoption of a set of process norms that, for example, assume or seek to create equality of participation in any transaction.

Assuming that in most cases of dispute resolution there will a degree of asymmetry of influence, the dif-

ferences between high- and low-PD cultures can be described in terms of the norms of decision-making assumed by the parties. For low-PD, Western parties to mediation, the process is designed to mitigate the impact of that asymmetry through norms of equal participation and agency. Conversely, for high-PD culture members, the asymmetry is accepted as a normative feature of the engagement, the decision-making responsibilities will reflect this, and the norms of the process are not intended to remove or reduce this differential.

Second, those patterns of relationships influence *commitments*—those either that the parties can make or that they have and accept. Commitments in turn reflect the levels of trust in relationships: for high power distance culture members, the complex of expectations depends heavily on a foundation of trust. Status-based trust is based on hierarchically structured relationships and carries with it a commensurate set of obligations or commitments, unlike the trust that may be fostered through reputation and the implementation of open transactions and transparent decision-making criteria.

Third, this complex of relationships and commitments has a bearing on parties' perceptions of *justice* and the acceptance of a degree of injustice in outcomes. Hofstede found that PD was negatively correlated with injustice; that large-PD cultures are “not troubled by unjust terms... [and] where inequality and injustice are taken for granted, direct communication would not seem to be a response to perceived injustice”.¹⁴ At the same time, individuals from large-PD cultures also more likely to be supported for conformity and acceptance of injustice.

In large-PD cultures, there is an acceptance that there are inequalities and that there will be substantive injustices; the individualism and rights-orientation of low-PD cultures will, conversely, incline disputants and negotiators to a greater sense of indignation or anger where there are perceived injustices which appear to reflect differentials of power and influence.¹⁵

Thus, people in low-PD cultures are less accepting of injustice and are more likely to perceive injustice. People in these cultures are thus more likely to be assertive (and rights claiming); less likely to be accepting of status quo; more likely to engage in active

14 Rebecca S. Merkin, “Power distance and facework strategies,” *Jnl of Intercultural Communication Research*, 35: 139-160, p.146 (2006).

15 “The acceptance of injustice in large-PD societies is highlighted by the fact that PD is significantly and positively correlated with beliefs that the world is unjust . . . If people accept that the world is unjust, they are less likely to experience anger over relationships reflecting inequality and/or injustice. In fact, findings show that people from collective large-PD cultures experience less intense emotions than people from individualistic small-PD cultures.” *Idem*.

communication; more likely to expect participation in decision-making; and less likely to be as attentive to face-preserving communication.

Each of these responses can be taken to reflect the differences between low-PD expectations of substantive and procedural justice based on commitments made in the course of negotiations, and low-PD expectations of outcomes reflecting commitments largely already in place. The corollary of such acceptance of commitments reflecting hierarchical relationships is that those possessing authority are expected to act justly. Thus, in countries of moderately high-PD, such as Hong Kong, Taiwan, and Singapore individuals are aware of hierarchies but regard this as acceptable provided that those in authority also acknowledge, and act on the basis of their obligations. Members of such nations will still acknowledge frustration at aspects of power distance, but rarely act overtly on that frustration, though it might have an impact on, for example, organisational efficiency.¹⁶

If we draw together these three elements –*relationships*, *commitments* and *justice*– we can suggest that differences in power distance are grounded in the structure of relationships and the norms that are generated by those relationships. Thus, in low PD societies, people have more *relational* connections with authorities and higher expectations of fair treatment; in high PD societies, people will have *role-constrained* relationships with people in authority, more limited personal connections, and lower expectations of those relationships –other than, as indicated above, that those in authority will act on their obligations of status– and probably higher expectations of outcome fairness.

CONCLUSIONS

Power distance is of interest to practitioners of dispute resolution not only because different cultural norms will affect patterns of participation, deference, decision-making and agency, but also because power and the legitimacy granted to the incidents of power are themselves moderators of relationships. At the

very least, power distance, as a normative framework, will affect participant perceptions of the degree of interdependence of relationships and attendant obligations. The asymmetry of relationships will be reflected in differing responses –either those process-oriented practices, as in Western, low-PD mediation, designed to reduce the impact of asymmetry on outcomes, or in high-PD practices, where asymmetry is more likely to be accepted and it is not the point of the process to reduce its effect.

In the same ways in which the implicit and internalised norms of high- or low-PD culture membership may have an impact on how negotiators respond to others in a transaction, those norms will affect the expectations of and comfort with the kind of participation expected in a negotiation. The standard assumptions about participation, agency and decision-making in the Western canon of mediation and negotiation do not hold up under scrutiny in light of the norms of high power distance cultures. This in turn relates to assumptions about procedural justice: low-PD culture expectations of participation and “voice” in dispute resolution are less likely to be shared by high-PD culture members. Indeed, the assumptions about participation in decision-making carry additional cultural freight in that research on cultural norms in management demonstrate that low-PD norms encouraging the involvement of subordinates in decision-making might be seen by high-PD employees or participants as a mark of managerial incompetence.¹⁷

Thus high –and low– PD culture members will not only be familiar with different patterns of dispute resolution and decision-making, but they will also attach value to the preferred and familiar modes, those values turning on –at least– norms of procedural justice and the correct relationships between the parties.

The power distance dimension illustrates that cultural norms may sanction and require different degrees and modes of participation in decision-making; what will vary will be the norms and expectations of participation. This research also can be linked to earlier observations as to the nature of commitments in decision-making in that the interaction of the norms

16 Norma R.A. Romm, Cheng-Yi Hsu, “Reconsidering the exploration of power distance: an active case study approach,” *Omega (The International Journal of Management Science)* 30: 403 - 414 (2002).

17 “[T]he use of participation may be inappropriate in high power distance cultures as it could create an impression of managerial incompetence. At the least, it indicates that employees who are comfortable with high power distance will put less value on participation and thus the participation factor is less likely to influence organizational commitment.” A M Francesco & Zhen Xiong Chen, “Cross-Cultural Differences within a Single Culture: Power Distance as a Moderator of the Participation-Outcome Relationship in the Peoples' Republic of China,” School of Business, Hong Kong Baptist University, Business Research Centre Papers on Cross-Cultural Management, <http://net2.hkbu.edu.hk/~brc/CCMP200007.pdf>, p.5 (of web version).

of power distance and the levels of participation interact to influence an individual's commitment to processes, organisations and outcomes. "Commitment" becomes a proxy for the individual's sense of procedural justice and fairness –shaped either by the expectation of the power and entitlement to *make* commitments or by the obligations of *having* commitments.

The underlying theme here has been that it cannot be expected that people will share, or be comfortable with, a supposedly "neutral" process of participation and decision-making, which rests on assumptions of agency and independence in decision-making. There are two ways of approaching this question. First, the current literature on and practice of mediation make it clear that there is no one model of mediation. Within the Western canon of mediation (and negotiation) there will be considerable variations, reflecting differing degrees of intervention, mediator "activism", the social and institutional roles of mediation and the perceived outcomes of mediation. It is clear that these distinctions are likely to affect party expectations as to participation, decision-making, outcomes and perceptions of legitimacy.

Second, if we think in terms of mediation and negotiation as forms of influence, the foregoing analysis of power distance points to different experiences expectations of influence and leadership. Two of the core assumptions of the familiar low-PD, low-context model of mediation are that the mediator's

influencing role is restricted, typically non-substantive and accepted by consent of the parties, and that the very nature of open engagement is oriented towards mutual, interest-based influence. But neither of those assumptions will hold true for high-PD and high-context participants: high-PD, typically more conservative cultures are more likely to rely on conflict management and transactional methods that reflect the role of hierarchies and assume less by way of participation and equality in decision-making.

The question raised in this paper concerns the kinds of strategies and interventions seen as likely to evoke commitment from the other. The Western assumption is that interest-based, rational processes engaged in by autonomous agents are the most likely to lead not only to *commitments* but also to legitimate outcomes –neither of which can be assumed on the part of high-PD participants. High-PD participants will have an implicit preference for hierarchical decision-making and a discomfort with expectations of higher levels of participation.

The point is that, in the differing contexts of high- and low-power distance, individuals will feel themselves less or more free respectively to engage in debate, to argue, to create the rules of engagement, to create the norms for outcomes, and to make commitments. This is both a matter, reflecting patterns of obligation, hierarchy, autonomy; and a *cognitive* matter, reflecting the degree to which the individual understands and perceives their context. ■



Publicacions de l'Abadia de Montserrat NOVETAT EDITORIAL

Activistes de la pau

Estudi sociològic i polític dels activistes del moviment per la pau de la dècada de 1980. **Enric Prat Carvajal**

Aquest llibre constitueix una font d'informació directa de gran vàlua sobre la ciutadania que davant la injustícia o l'abús i, en aquest cas, enfront de la inhumanitat de la guerra i la violència, aixequen la seva veu, dediquen el seu temps i els seus esforços a lluitar per un món lliure de dominacions i explotacions.

